



Decision

by

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

Elmedin Kikanovic
(born 2 September 1988)

hereafter:
(“the Player”)

(Nationality: Bosnia and Herzegovina)

Whereas, the Player underwent an in-competition doping test organised by the Antidoping Agency of Serbia (“ADAS”) on 7 June 2010 in Belgrade, Serbia at a play-off semi-final game between the Serbian basketball clubs Partizan Belgrade and KK Crvena Zvezda;

Whereas, the analysis of the Player's sample (code no.: 2388849) was conducted at the WADA-accredited laboratory of Seibersdorf, Austria (“Laboratory”), which informed ADAS on 28 June 2010 that the analysis showed the presence of the prohibited substance 4-Methyl-2-hexanamine in the Player’s sample.

Whereas, by letter dated 5 July 2010 the Player explained his position regarding the adverse analytical finding and waived his right to have the B sample analysed;

Whereas, on 9 July 2010 the Basketball Federation of Serbia and the Basketball Federation of Bosnia and Herzegovina (“KSBIH”) concluded an “Agreement on the transfer of jurisdiction to initiate proceedings on anti-doping rule violation”, according to which *–inter alia–* KSBIH undertook to resolve the matter at hand in accordance with the World Anti-doping Code;

Whereas, on 27 August 2010 the Disciplinary Commission of KSBIH decided to impose on the Player a sanction of eight months, starting on 7 June 2010;

Whereas, on 2 September 2010 KSBIH forwarded to FIBA an English translation of the said decision;

Whereas, by letter dated 16 September 2010 FIBA informed the Player that in accordance with Article 13.7 of the FIBA Internal Regulations governing Anti-Doping, 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 and that said decision should then be applied by all national member federations. In the same letter, the Player was informed about his right to be heard either by telephone conference or in person;

Whereas, on 5 October 2010 the Player was heard via telephone conference by a FIBA Disciplinary Panel composed of Mr. Antonio Mizzi, member of FIBA's Legal Commission and of Dr. Heinz Günter, President of FIBA's Medical Commission. Mr. Amir Ibrahim, FIBA Anti-Doping Assistant as well as Mr. Andreas Zagklis, FIBA Legal Advisor, were in attendance;

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

- did not contest the result of the test;

- stated that during the 2009/10 season his club KK Crvena Zvezda faced serious financial difficulties and as a result stopped providing its players with supplements while the team doctors remained unpaid and did not attend the club's activities frequently;
- submitted that in March 2010 he bought the same supplements provided by the club (Aminofuel and 100% Whey protein) and from the same shop in Belgrade, namely "AMG sports". Since the total amount he paid was quite high, approx. 70-80 Euros, the owner of the shop gave to the Player as a promotion a new liquid creatine product called "VPX";
- submitted that he twice checked the components of VPX on the basis of the label and information sheet and compared them with the list of prohibited substances, so he was convinced that the declared components – which included Geranamine – were allowed in basketball; however, he did not immediately use VPX but just stored it in his refrigerator;
- stated that on 7 June 2010 and approx. 45 minutes before an important game towards the end of the season against Partizan he decided to take VPX because he was feeling tired;
- informed the Panel that he was submitted to doping controls both on 7 and on 9 June 2010, of which only the former was positive;
- argued that he had learned only after the announcement of the results that the banned substance 4-Methyl-2-hexanamine was a result of intake of Geranamine;
- asserted that this was his first anti-doping rule violation;

Now, therefore, the Panel takes the following:

DECISION

A period of twelve (12) months' ineligibility, i.e. from 9 June 2010 to 8 June 2011, is imposed on Mr. Elmedin Kikanovic.



Reasons:

1. Article 2.1 of the FIBA ADR reads as follows:

“ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

Players and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample.

2.1.1 It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Player’s part be demonstrated in order to establish an anti-doping violation under Article 2.1. [...]”

2. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA FIBA ADR since 4-Methyl-2-hexanamine, a prohibited substance listed in WADA's 2010 Prohibited List (the “2010 Prohibited List”) under letter S.6.1 (Non-Specified Stimulants) was found in his urine sample. 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. Furthermore, 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 eliminated or, as the case may be, reduced. 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. The Panel feels satisfied that the presence of 4-Methyl-2-hexanamine in the Player's sample is consistent with the use shortly before the game of the supplement VPX, which contains geranamine.

5. 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."
6. In the present case, the Player is a 22-year old professional player who, already at a young age, became a member of his country's men's national team and signed a contract with a well known foreign club such as KK Crvena Svzda in Serbia. Given his – admitted – experience as a top-level athlete, the use of a supplement provided to him for free and "as a promotion" in a supplements' store represents per se a negligent behaviour on his part.
7. In evaluating the Player's arguments, the Panel considers that the lack of medical and dietary support for players in a top-level professional club is unacceptable: the Player was obliged to purchase, prepare and consume his supplements on his own. Although this is not a mitigating factor, it proved to be important in this case where the prohibited substance was added on the WADA Prohibited List for the first time on 1 January 2010 (i.e. in the middle of the 2009/2010 season) and is mentioned with a name (methylhexaneamine) different than the one commercially used (geranamine). Thus, comparing the WADA 2010 Prohibited List with the ingredients of VPX did not serve the Player at all. However, the Panel considers that a simple internet research would have revealed immediately the connection between geranamine and methylhexaneamine and would have made the Player avoid the use of VPX.

8. Under these circumstances, the Panel is of the opinion that the duty of diligence should not be set too high for the Player at hand who indeed used this creatine product containing geranamine only once: two days later, on 9 June 2010, he was again tested and the substance was not found in his body.

9. Lastly, and without taking a position about the inclusion of methylexaneamine on the WADA 2010 Prohibited List and especially on the list of non-specified substances, the Panel underlines that it would probably have reached a different conclusion in case of an anabolic steroid, i.e. of a prohibited substance with unquestionable performance enhancing and health endangering effects which is consistently dealt with by the anti-doping authorities. The Panel regrets to be left with very limited discretion by the applicable WADA and FIBA rules, despite the fact that in the recent case CAS 2009/A/1918 the CAS Panel, applying rules under which geranamine/methylexaneamine was – then – still a specified substance, considered a sanction of three months' eligibility to be proportionate for a football player.

10. Based on the above findings, the Panel holds that it is appropriate to impose on the Player a sanction of twelve (12) months.

11. 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.

12. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on the date of the player's last game, i.e. on 9 June 2010, given that he has not participated in any official basketball competitions since that date.

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

Fédération Internationale
de Basketball



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Geneva, 11 November 2010

On behalf of the FIBA Disciplinary Panel

Antonio Mizzi
President of the Disciplinary Panel