



Decision

by

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

George Stouppas

(Nationality: Cypriot)

Whereas, Mr. George Stouppas (“Mr. Stouppas”) was the physiotherapist of the national team of Cyprus during the XIII Games of the Small States of Europe (the “Games”);

Whereas, two players of the Cyprus national team, namely Messrs. Grigoris Pantouris (“Mr. Pantouris”) and Panagiotis Trisokkas (“Mr. Trisokkas”) underwent an in-competition doping test on 5 June 2009 in Nicosia (Cyprus) on the occasion of the Games;

Whereas, on the Doping Control Form Mr. Pantouris noted that he had used on 29 May 2009 “m[e]sterolone”, a prohibited substance under the applicable rules;

Whereas, the analysis of Mr. Pantouris' sample showed the presence of a different substance, metenolone, which is also prohibited under the applicable rules;

Whereas, on 9 July 2009 Mr. Pantouris provided a letter to the National Anti-Doping Organization of Cyprus (the “CYP-NADO”) admitting the “*Use of the Prohibited Substance Methenolone*” and waiving his “*right for the analysis of [the] B sample*”;

Whereas, during the hearing before the FIBA Disciplinary Panel on 31 July 2009 Mr. Pantouris

- confirmed that he had provided the National Anti-Doping Organization of Cyprus (“CYP-NADO”) with information regarding the source of the prohibited substance, on the basis of which the Cyprus police (drug enforcement unit) had initiated a criminal investigation;
- testified that Mr. Stouppas advised him to falsely declare the use of the prohibited substance mesterolone on the Doping Control Form dated 5 June 2009;
- declared his availability to provide any further information available to him with respect to anti-doping rule violations and/or relevant criminal behaviour of third persons;

Whereas, by decision dated 4 August 2009 the FIBA Disciplinary Panel found that Mr. Pantouris had violated Articles 2.1 (Presence of a Prohibited Substance in a Player’s Sample) and 2.5 (Tampering) of the FIBA Internal Regulations governing Anti-Doping (“FIBA ADR”) and imposed on him a two-year period of ineligibility. Said decision has become final;

Whereas, by decision of the same day the FIBA Secretary General, considering that Mr. Pantouris had provided “Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations” (Article 10.5.3 of the FIBA ADR), decided to suspend six months of the two-year period of ineligibility;

Whereas, on 5 August 2009 the FIBA Secretary General wrote to the Cyprus Basketball Federation (“CBF”) in the following terms:

“[...] At the hearing [Mr. Pantouris] identified [Mr] George Stouppas, member of the team delegation, as the person who allegedly advised him to falsely declare on the doping control form “MASTEROLONE 29/5/2009”. Please note that the FIBA Disciplinary Panel already found the Player’s behaviour sanctionable inter alia on the basis of Article 2.5 (Tampering or Attempted Tampering with any part of Doping Control) of the FIBA Internal Regulations governing Anti-Doping.

*FIBA herewith **requests** that the Cyprus Basketball Federation officially open a disciplinary procedure against all persons involved in that incident and collaborates with FIBA and the local competent authorities. FIBA reserves its rights to intervene and/or decide whether and to what extent a sanction may be*

*imposed for the purposes of FIBA Competitions. FIBA expects that a final national decision in this matter will have been reached by no later than **30 October 2009.***”

Whereas, by letter dated 29 October 2009 the CBF informed FIBA about the status of the case and requested the following:

“[...] Further to your request for a disciplinary procedure with regards to the above case please note that for reasons beyond our control, the committee appointed for this purpose did not produce any work.

We have now appointed a new committee and the[y] will begin work as from next Monday 2nd November.

For this reason, we ask for your understanding and request an extension for submitting our report for the end of November 2009.”

Whereas, on 3 November 2009 FIBA granted an extension of the time limit to issue a decision until 30 November 2009;

Whereas, by document dated 30 November 2009 and entitled “Disciplinary Investigation of the Doping Case of the Player Grigoris Pantouris” the CBF informed FIBA that the CBF Executive Committee had appointed an ad-hoc committee (comprised of the CBF Secretary General, a CBF Executive Member, the Legal Adviser to the President and the Team Manager) which conducted a series of separate interviews with the persons involved and concluded as follows:

“1. After his devastating punishment, the Player seems to be regretting his actions.

2. On the question whether to believe the Player or Mr. Stouppas, the Committee had a long discussion and concluded that during his long service with the National Teams of Cyprus and his even longer service with Cypriot clubs, there has never been any suspicion of Mr. Stouppas of any discrepancy in respect of doping involvement, but also for any breach of ethical and legal rules that underlie his profession. On the contrary, he has always been of a good character. He was even awarded the Fair-Play prize after during the play-offs semi-finals he trea[t]ed an opponent, (something he did numerous times in his career). Mr. Stouppas is considered to be of high principles and moral virtues. Participating in a conspiracy to deceive the authorities, especially on a doping case, does not fit his character and it will risk his future business career.

3. The only information on Mr. Stouppas involvement in the case is the Players statement and nothing further supports such a case.

4. It is therefore the Committee's suggestion to relieve Mr. Stouppas of any charges as nothing proves that he was involved in any way in this case.

5. As regards the Player, we believe that the sanction imposed to him had a deterrent effect and he seems to honestly regret about his previous actions, which jeopardised his career. We suggest that no further sanction shall be imposed."

Whereas, by letter dated 22 December 2009 FIBA advised Mr. Stouppas, Mr. Pantouris, the CYP NADO and CBF (collectively referred to as "the Parties") that:

- the FIBA Disciplinary Panel would decide whether and to what extent a sanction shall be imposed on Mr. George Stouppas for possible violations of Articles 2.5, 2.6, 2.7 and 2.8 of the FIBA ADR;
- A hearing would take place on Friday, 22 January 2010 at noon (12.00 am) at the FIBA offices;
- Messrs. George Stouppas and Grigoris Pantouris were requested to appear in person at the hearing in order to testify and answer questions by the Panel and the other Parties involved in this matter;
- The Parties were invited by no later than Friday, 15 January 2010 to file with FIBA their written position and requests together with all supporting documentation, as well as their list of witnesses and other persons who would participate at the hearing;

Whereas, the Parties –with the exception of Mr. Pantouris, who simply confirmed his previous testimonies– filed their written submissions along with supporting documentation;

Whereas, Mr. Stouppas in his written statement submitted the following, supported by relevant documentation:

"[...] After the game between the Cyprus National Team and the National Team of San Marino, a representative of the anti-doping committee, entered the pitch and approached the Cypriot basketball player Gregory Pantouris and informed him that he was a targeted player and he had to follow him for testing.

After a few minutes I, and the curator of our team Mr. Evangelos Acheriotis, accompanied Gregory Pantouris and Panagiotis Trisokkas, another player who was chosen for the same testing to the control room.

On our way to the control room Gregory Pantouris was visibly worried and annoyed and he told us that he would not give a sample because he really recognized that he was not clean and thus not ready for an anti-doping testing.

Then we all asked him what happened and he told us that he took various substances which affect the anti-doping testing.

Myself and Mr. Acheriotis were waiting for some time in and out of the control room until the completion of the testing of the two athletes.

I categorically deny that I advised or suggested or told or urged Mr Gregory Pantouris to make any statement or declaration that he used any substances or medicine containing any substances. [...]

I also evoke another testimony of the ex president of the Cyprus National teams who heard Gregory Pantouris making reference to my name not for any other reason other than just for getting a lighter punishment. [...]

I am very proud that for all these years I am sitting on the benches of all teams I am co-operating with for games in and out of Cyprus (including over 100 FIBA games) and I have never faced any category (sic). Such teams are the Cyprus National teams, Proteas-EKA Ael and K.V.Imperial AEL. [...]"

Whereas, on 22 January 2010 Mr. Stouppas, accompanied by his spouse, exercised his right to be heard by a FIBA Disciplinary Panel composed of Mr. Antonio Mizzi, President of FIBA's Legal Commission and of Dr. Heinz Günter, Vice President of FIBA's Medical Commission. Ms. Cendrine Guillon FIBA Anti-Doping Manager, Mr. Amir Ibrahim, FIBA Anti-Doping Assistant as well as Messrs. Andreas Zagklis and Benjamin Cohen, FIBA Legal Advisors, were in attendance. The CBF and the CYP-NADO, despite having been invited, decided not to attend the hearing;

Whereas, at the hearing Mr. Stouppas added in essence the following:

- he did not feel that he had to disclose to the anti-doping authorities the fact that Mr. Pantouris was not “clean” since he would be submitted to a doping control test; even if the test would turn negative he would have kept this information for himself;
- Mr. Pantouris did not tell him exactly what prohibited substance he had used;

- the coach of the team, Mr. Stylianidis came also to the doping control station, which was located in a different building, approx. five minutes' walking distance from the basketball arena;
- he did not enter the sampling area with any of the players;
- while waiting outside he spoke several times on the phone, most likely with his wife and members of the team's delegation who were already at the hotel;
- he is the person responsible for the nutritional supplements, vitamins and first-aid medication purchased and provided to the players, since the national team has no permanent collaboration with a doctor;
- upon return to the hotel most members of the delegation had learned that Mr. Pantouris was not "clean" and would probably test positive;

Whereas, Mr. Pantouris was called as a witness and answered questions by the Panel and Mr. Stouppas. His testimony can be summarised as follows:

- One day before the tournament (Sunday 31 May 2009) he told Mr. Stouppas that he was not "clean" and that he wanted to leave the team; Mr. Stouppas encouraged him to stay on the team saying they could "find a solution" although he did not know what substances were used by Mr. Pantouris;
- He invoked a family issue when asking the coach's permission to leave the hotel where the team was residing; he returned home and did not train on Monday morning;
- The coach asked him to play at least in the first two games of Tuesday and Wednesday (1-2 June 2009) because he was already registered and, after the coach insisted, Mr Pantouris decided to return on the team;
- During halftime of every game Mr. Stouppas would check which players had been drawn for doping control and would inform him accordingly; Mr. Pantouris felt they were risking too much;
- After having been selected to provide a sample on 5 June 2009 he was accompanied by the CYP-NADO chaperone, by Mr. Acheriotis –a CBF Executive Committee member and national team delegate– and Mr. Stouppas. The captain of the team, Mr. Trisokkas was also selected to provide a sample;

- Mr. Stouppas and Mr. Acheriotis were very tense because he was not “clean”; the coach Mr. Stylianidis also came later to see what had happened;
- He had a private conversation with Mr. Stouppas outside the doping control area; Mr. Stouppas called an acquaintance of him and told Mr. Pantouris that this person is a chemist and had suggested to write on the form the substance “mesterolone”: in case of positive Mr. Pantouris would claim that he was receiving medication due to sexual problems and thus would explain the positive finding and escape sanction;
- He is sure that Mr. Stouppas tried to help him; they both ignored the rules and thought that declaring something false on the doping control form would have no consequences on any of them; it could be something useful to defend himself in case of a positive result and simply useless if his sample would turn out negative;
- He completed the doping control form on his own; he inquired the Doping Control Officer if he could declare that he took a substance one month earlier (more or less when he had received the last tablet of anabolics) and he was told that only substances used 7 days before the test had to be declared. This is why next to “m[e]sterolone” he wrote “29/5/09”, i.e. 7 days before the control of 5 June 2009.
- He called Mr. Stouppas right after the hearing of 31 July 2009 before the FIBA Disciplinary Panel because he wanted to inform him about having disclosed his name and actions to FIBA; he apologized because, although Mr. Stouppas tried to help him, he had no option but to say the truth.

Now, therefore, the Panel takes the following:

DECISION

A period of one year ineligibility, i.e. from 22 January 2010 to 21 January 2011, is imposed on Mr. George Stouppas.



Reasons:

1. According to Article 4.6.f. of the Doping Control Guide for the Games:

“In the event that the Sample A analysis results are confirmed, the Chairperson of the SESG shall call a meeting of the Organizing Committee of the SESG. The athlete, a maximum of three representatives from his/her delegation, and a representative of the corresponding International Federation will be invited to this hearing. Notwithstanding the aforementioned, the corresponding International Federation has full jurisdiction for results management if the above mentioned hearing cannot be held within the period of the Games.”

(emphasis added by the Panel)

2. In the present case, the laboratory results were announced to the CYP-NADO on 1 July 2009 and the information about Mr. Stouppas’ alleged involvement was disclosed by Mr. Pantouris on 31 July 2009, i.e. after the end of the Games. Therefore, the FIBA Disciplinary Panel has jurisdiction to decide this case which arose in connection with the above test in accordance with Article 8 of the FIBA Internal Regulations governing Anti-Doping (the “FIBA ADR”).
3. Article 2 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: [...]

2.5 Tampering or Attempted Tampering with any part of Doping Control. [...]

2.8 Administration or Attempted administration to any Player In-Competition of any Prohibited Method or Prohibited Substance, or administration or Attempted administration to any Player Out-of-Competition of any Prohibited Method or any Prohibited Substance that is prohibited Out-of-Competition, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation.”

4. The language of Article 2.8 is broad in order to capture any form of complicity. The sentence is written in the disjunctive in order to make clear that any such action may be sufficient to show

complicity. The latter part, “*assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted violation*” is intended to be very broad and to cover any anti-doping rule violation by any person bound by the FIBA ADR, including a coach or a support staff member such as a physiotherapist.

5. In the context of the ADR, the first part of Article 2.8 may be fulfilled in the physical sense where, for example, a person physically assists an athlete or support staff member by providing equipment to him or her that is necessary for the administration of a Prohibited Substance or Method. That physical assistance would also almost inevitably be a violation of the second part of Article 2.8.

6. In the absence of proof of physical assistance, a violation of Article 2.8 can also be established by what might be termed “psychological assistance”. Psychological assistance would be any assistance that was not physical assistance, such as, for example, any action that had the effect of encouraging. Such conduct is the first element of joint causation of damage. The second element requires that the assistance rendered by the accessory contributes to the damage caused. This plain reading of the article is supported by Swiss Law, which governs the FIBA ADR (see CAS 2007/A/1286, 1288, 1289 for further analysis).

7. In the case at hand, it has been established by the evidence before the Panel that Mr. Stouppas accompanied Mr. Pantouris to the doping control station (“Station”) knowing about the latter’s use of a prohibited substance. The “Check-in/Check-out” document of the Station signed by the Doping Control Officer (“DCO”) and the players submitted to doping control, including Mr. Pantouris, leaves no doubts about this:

NO.	ATHLETE’S NAME	CHECK-IN	ATHLETE’S ESCORTS	CHECK OUT	SIGNATURE
[...]	[...]	[...]	[...]	[...]	[...]
3	TRISOKKAS PANAGIOTIS	22:15	STOUPPAS GIORGOS	23:41	(signed by Mr. Trisokkas)
4	PANTOURIS GRIGORIS	22:15	STOUPPAS GIORGOS	23:20	(signed by Mr. Pantouris)

8. Further, the Panel finds that, since Mr. Pantouris announced that he was not “clean” at the latest on the way from the basketball arena to the Station, this issue was thoroughly discussed between the members of the Cyprus delegation present. The fact that the coach also joined them and participated in the discussions is a strong indication to that effect. At this point it is relevant to quote the statement of Mr. Trisokkas:

“At the Doping Control Station we were processed one athlete at a time. The two athletes from Malta were first, then it was Gregoris Pantouris turn and I was the last one. While waiting, we were sitting out of the Station (in the waiting area), but still in the building, escorted by an officer of the Cyprus Anti-Doping Authority. Mr. Evangelos Acheriotis stayed out of the building. While we were there waiting, Grigoris Pantouris seemed to be very nervous and at that time I understood that something was wrong. At some time, Pantouris, Stouppas and I went out of the Station. Pantouris and Stouppas went by the corner and Stouppas started talking on his phone. Soon it was Pantouris turn to proceed with testing and they went in. When he finished, I followed with Stouppas. Pantouris was out waiting for us and when I finished, we all left.”

(emphasis added by the Panel)

9. Under these circumstances, the Panel finds that during such conversation Mr. Stouppas found out about mesterolone through contacting another expert and advised Mr. Pantouris to falsely note it on the doping control form as a “declared medication” in order for Mr. Pantouris (and potentially the national team and the CBF) to avoid the consequences of an anti-doping rule violation. The Panel reaches such conclusion considering also the fact that mesterolone is a rather sophisticated anabolic steroid used for treatment of male sexual disorders and no player is expected to know such information unless he has medical training. This is not the case of Mr. Pantouris, who also misspelled the name of the substance (writing “masterolone” instead of “mesterolone”) on the doping control form, as if he had only heard it and never read it. Mr. Stouppas’ argument that both Mr. Acheriotis and Mr. Trisokkas in their statements confirmed that they never heard such advice given by Mr. Stouppas is irrelevant, since the advice was provided in a private conversation in which none of the above took part. And this medical-related advice could have only come from the single person in the delegation with relevant background and with more than a decade of experience in doping controls at international events.

10. The Panel underlines that, in accordance with Article 3.1 of the FIBA ADR, an anti-doping rule violation must be established “*to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt*”. In making the above finding regarding the facts of this case the Panel took into account the entirety of documentation submitted by the Parties as well as the credibility of the persons who testified before it. Mr. Pantouris provided a plausible explanation which a) fits to the sequence of undisputed facts, b) was presented in a straightforward way, c) was not actually challenged at any stage of the hearing by Mr. Stouppas, who simply denied any involvement. Lastly, the Panel notes that Mr. Stouppas’ intention to “help” Mr. Pantouris was confirmed by the former’s honest statement that, if the result of the doping control were negative, he would still not disclose to the authorities that Mr. Pantouris had used a prohibited substance.

11. In light of the foregoing, the Panel concludes that Mr. Stouppas assisted Mr. Pantouris in tampering with part of the doping control process in order to cover up an anti-doping rule violation. Such behaviour falls well within the scope of Article 2.8 of the FIBA ADR.

12. As regards the applicable sanction, the Panel notes that Article 10.2 of the FIBA ADR reads:

“10.3 Ineligibility for Other Anti-Doping Rule Violations

The period of Ineligibility for violations of these Anti-Doping Rules other than as provided in Article 10.2 shall be as follows: [...]

10.3.2 For violations of Article 2.7 (Trafficking) or Article 2.8 (Administration of Prohibited Substance or Prohibited Method), the period of Ineligibility imposed shall be a minimum of four (4) years up to lifetime Ineligibility unless the conditions provided in Article 10.5 are met.”

13. Considering that

- a) Mr. Stouppas was not involved in the administration of a prohibited substance,
- b) there is no evidence that his actions belonged to an organised scheme but they were apparently a thoughtless reaction and a misguided attempt to “help” Mr. Pantouris,

- c) his assistance did not harm or jeopardize the health of any player, the Panel is of the opinion that the present case is substantially different from the typical doping cases involving athletes' support personnel which characterize the relevant jurisprudence of the CAS and, thus, must be considered to be truly exceptional and unique.
14. As a consequence, the issue that arises in the present case is not an issue which the draftsmen of the World Anti-Doping Code ("WADC") appear to have had in mind. Indeed, the sanction of four years fixed for violations of Article 2.8 of the WADC (which is identical with Article 2.8 of the ADR) covers a very wide range of sanctionable behaviours. The Panel finds that not all sorts and variations of complicity in an anti-doping rule violation deserve the same (four-year) penalty which is primarily meant for much more significant breaches such as the administration of a prohibited substance or the assistance in the application of a prohibited method.
15. Taking into account that FIBA is an international federation established under Swiss law, the Panel wishes quote at this point Prof. Kaufmann-Kohler's legal opinion on the "paramount role of proportionality" in determining the sanction in doping cases
- "From court decisions in sports and doping matters, it is clear that proportionality plays the predominate role in assessing the validity of restrictive doping regulations. Proportionality is not only the paramount condition for the validity of restrictions for fundamental rights it is also a general principle of law governing the imposition of sanctions of any disciplinary body, whether it be public or private."*
- (Legal Opinion on the Conformity of Certain Provisions of the Draft World Anti-Doping Code with Commonly Accepted Principles of International Law)
16. The Panel holds that, in view of the totality of the evidence before it, a four-year period of ineligibility would be largely disproportionate in this extraordinary case.
17. For the above reasons, the Panel decides to impose a sanction of one year ineligibility on Mr. Stouppas.
18. Given that Mr. Stouppas continued to work in basketball after 5 June 2009, the sanction shall start from the date of the hearing before the Panel (Art. 10.9.1 of the FIBA ADR).



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

Geneva, 22 February 2010

On behalf of the FIBA Disciplinary Panel

Antonio Mizzi
President of the Disciplinary Panel