TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Arbitration CAS 2023/A/9518 Konstantinos Mitoglou v. Fédération Internationale de Basketball (FIBA), award of 18 March 2024 (operative part of 5 July 2023)

Panel: Prof. Stefano Bastianon (Italy), President; Mr Manfred Nan (The Netherlands); Mr Patrick Lafranchi (Switzerland)

Basketball
Doping (metandienone)
Lack of intent and proof of source
Concept of indirect intent
Significant doping risk
Substantial Assistance and suspension of the period of eligibility

1. **In accordance with article 10.2.1.1 of the FIBA Anti-Doping Rules (FIBA ADR), athletes bear the burden of establishing that the violation was not intentional. And while several CAS awards have held that athletes must necessarily establish how the prohibited substance entered his/her body, some other have found that a lack of intent could theoretically be established without establishing the origin of the prohibited substances, but only in very specific cases. This principle has been codified in the comment to Article 10.2.1.1 of the World Anti-Doping Code (WADC). It is therefore theoretically possible that an athlete can establish a lack of intent without establishing the source of the prohibited substance, however, such a burden could only be met in circumstances where an athlete can demonstrate on objective, specific and credible evidence that an intentional violation can be excluded.**

2. **Intent is established if the athlete knowingly ingests a prohibited substance. However, it suffices to qualify the athlete's behaviour as intentional, if the latter acts with indirect intent only, i.e., if the athlete's behaviour is primarily focused on one result, but in case a collateral result materializes, the latter would equally be accepted by the athlete. For the concept of indirect intent to apply, two prerequisites need to be fulfilled. First, the athlete must have known that his conduct involved a significant risk. Second, the athlete must have manifestly disregarded that risk. Thus, in order to rebut the presumption that he acted intentionally, the athlete must either show (by a balance of probability) that he did not know that his conduct involved a significant risk or that he did not manifestly disregard such risk.**

3. **In the world of sport, particular care is required from an athlete when applying medications or taking medicines, because the danger of a prohibited substance entering the athlete's system is particularly high in such context, i.e., significant. Therefore, an athlete does not need specific anti-doping education to know that prohibited substances may enter into the athlete's system via ingestion, skin or bloodstream.**

4. Under Article 10.7.1 of the FIBA ADR, FIBA may suspend a part of the consequences imposed in an individual case where the athlete or other person has provided Substantial Assistance to an Anti-Doping Organisation, criminal authority or professional disciplinary body which results in, *inter alia*, a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another person and the information provided by the person providing Substantial Assistance is made available to FIBA or other Anti-Doping Organisation with Results Management responsibility. The criteria to be considered in the determination of the extent to which the otherwise applicable period of ineligibility may be suspended are: (1)the seriousness of the anti-doping violation; (2) the significance of the Substantial Assistance provided; and (3) no more than three-quarters of the otherwise applicable period of ineligibility may be suspended.

I. THE PARTIES

1. Mr Konstantinos Mitoglou (the "Appellant" or the "Athlete") is a Greek professional basketball player. He has played at the highest level since the 2012-2013 season for the Greek top-tier club Aris Thessaloniki and since 2017 he has been a member of the Greek national basketball team. At the material time of the present proceedings, the Athlete played with the Italian club Olimpia Milano.

2. The Fédération International de Basketball (the "Respondent" or "FIBA") is the international governing body for the sport of basketball and is an independent international association with a non-profit-making purpose in accordance with the laws of Switzerland. FIBA's mission is to control, regulate, supervise and direct, and to foster, encourage and advance the sport and practice of basketball in every country worldwide.

3. The Athlete and FIBA are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Background facts

4. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced at the hearing held in Lausanne, Switzerland, on 4 July 2023. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. In the course of the summer 2021, the Athlete decided to work with a medical professional in order to improve his overall health and strengthen his immune system.

6. Following the recommendations from several persons, including other athletes the Appellant regularly trained with, the Athlete first met with Dr Ilektra Gerou, a microbiologist and pathologist located in his hometown in Greece, around July 2021.

7. The Appellant claims that during the first meeting, he informed Dr Gerou of his status as a professional basketball player and that, as a result, he had to comply with the FIBA Anti-Doping Rules ("FIBA ADR") and the Club's internal testing rules.

8. From July 2021 to February 2022, Dr Gerou treated the Appellant with intravenous "serotherapy" serum infusions ("IV therapy") on approximately six occasions.

9. On 31 October 2021, the Athlete was subject to an in-competition anti-doping test by the Italian National Anti-Doping Organisation ("NADO Italia") which did not result in an Adverse Analytical Finding ("AAF").

10. On 28 November 2021, the Appellant fractured the fifth metatarsal in his left foot and underwent surgery. Subsequently, Dr Gerou gave him a bottle of unmarked yellow pills in tablet form to help the Athlete's recovery.

11. On 4 March 2022, the Athlete was subject to an in-competition anti-doping control following a EuroLeague match between Olimpia Milano and Panathinaikos.

12. The urine sample provided by the Athlete on 4 March 2022 was analysed by the World Anti-Doping Agency ("WADA")'s accredited laboratory in Cologne, Germany, which reported an AAF for the presence of Metandienone metabolite 17β-hydroxymethyl-17α-methyl-18-norandrost-1,4, 13-trien-3-one.

13. Metandienone is a non-Specified Substance listed under class S.1 (anabolic androgenic steroids) of the 2021 and 2022 WADA Prohibited Lists, which is prohibited at all times.

14. On 28 March 2022, the Athlete was notified by FIBA of the AAF for the presence of Metandienone and was provisionally suspended in accordance with Article 7.4.1 of the FIBA ADR and Article 6.2.1 of WADA's International Standard for Results Management ("ISRM"). In the same communication, the Athlete was also informed of his right to request the analysis of the B sample and invited to provide his explanation for the AAF by 11 April 2022.

15. On 11 April 2022, the Athlete provided his explanation for the AAF. In essence, the Athlete stated that he *"believe[d] that his 04 March 2022 positive test resulted from the pills and/or IV therapy treatments he received from Dr. Gerou from approximately July 2021 through February 2022"*. The Athlete also claimed that he was unaware that IV therapy exceeding 100mL in a 12-hour period constituted a prohibited method. The Athlete further explained the circumstances in which Dr Gerou recommended him to take some pills in order to recover from his surgery.

16. On 4 May 2022, FIBA requested the Athlete to elaborate his explanation.

17. On 16 May 2022, the Athlete provided FIBA with additional details on his treatments received from Dr Gerou.

18. On 22 June 2022, an interview was conducted in the presence of FIBA's and the Athlete's respective legal counsels.

19. On 29 June 2022, the Athlete informed FIBA that he intended to pursue disciplinary and/or criminal charges against Dr Gerou in accordance with Article 10.7 of the FIBA ADR.

20. On 14 July 2022, the Athlete informed FIBA that he had filed complaints against Dr Gerou before the Criminal Prosecutor of Athens, Greece, the Athens Medical Association and the National Anti-Doping Organisation.

21. On 4 August 2022, FIBA formally charged the Athlete with the commission of an Anti-Doping Rule Violation ("ADRV") for the Presence of Metandienone metabolite in his sample collected during the 4 March 2022 test as well as for the Use of intravenous infusions and/or injections of more than 100mL per 12-hour period. At the same time, FIBA proposed the following consequences to the Athlete:

    (a) a period of ineligibility of three years under Articles 10.2.1, 10.3.2.1 and 10.8.1 of the FIBA ADR starting on 28 March 2022 (*i.e.,* the day in which the Athlete was provisionally suspended), provided that the Athlete signs and returns the Acceptance of Consequences Form within the next twenty days;

    (b) disqualification of all competitive results obtained from 4 March 2022 through the start date of the period of ineligibility with all resulting consequences, including forfeiture of any medals, points and prizes.

22. On 10 August 2022, the Athlete challenged the ADRV and the proposed consequences and requested an oral hearing before the FIBA Disciplinary Panel ("FIBA DP").

B. The proceedings before the FIBA DP

23. On 17 October 2022, the Athlete filed his written statement before the FIBA DP. In his written statement the Athlete reiterated the contents of his explanations provided to FIBA as to the source of the Metandienone metabolite in his body and added that:

    (a) in or around early October 2022, the Greek Sports Prosecutor had brought Dr Gerou's case to the attention of the Directorate of Financial police on belief that Dr Gerou had been involved in additional criminal activities, including illegal medicine trafficking and money laundering;

    (b) on 11 October 2022, the Athlete had testified before the Directorate of Financial police regarding Dr Gerou's practices;

    (c) on 14 October 2022, the Athens Medical Bar had confirmed to the Athlete that an investigation was pending against Dr Gerou before the Board of Directors following the Athlete's complaint.

24. In light of the above, the Athlete requested the FIBA DP to find that the default or starting sanction should be 2 years, subject to further reduction on the basis of no significant fault or negligence and substantial assistance.

25. On 1 November 2022, the FIBA DP requested the Athlete to provide additional information regarding the proceedings pending before the Greek Sports Prosecutor in Athens, the Greek National Anti-Doping Organisation, the Athens Medical Bar and the Directorate of Financial Police.

26. On 18 November 2022, the Athlete, as per the FIBA DP request, filed the following additional documents:

    (a) a search and seizure report issued by the Financial Police Division, according to which several pharmaceutical products (with and without an authenticity band from the National Organisation for Medicines) were found and confiscated from Dr Gerou's home;

    (b) the Athlete's witness examination before the Athens first instance court;

    (c) the report of a sworn witness examination of an employee of the National Organisation of Medicines commenting on the nature of certain substances seized at Dr Gerou's home;

    (d) Dr Gerou's arrest report of 1 November 2022;

    (e) a document entitled "Execution of prosecutor's order" according to which Dr Gerou is accused of several violations;

    (f) an order issued by the 23rd Investigator Judge of Athens imposing Dr Gerou to appear to the Police Station of her residence once every five first days of each month;

    (g) a list of fraudulent prescriptions issued by Dr Gerou;

    (h) a bill indictment issued on 7 November 2022 by the Office of the Public Prosecutor of Athens.

27. On 24 November 2022, the FIBA DP invited the Athlete to file a supplemental submission addressing the relevance of the newly submitted documents.

28. On 29 November 2022, the Athlete filed a supplemental pre-hearing submission arguing that (i) the newly produced documents establish that Dr Gerou's treatment was the source of his AAF and (ii) he has provided substantial assistance within the meaning of the FIBA ADR and, therefore, he should benefit from the maximum possible reduction.

29. On 1 December 2022, a hearing was held by videoconference before the FIBA DP.

30. On 8 December 2022, Dr Gerou sent an unsolicited email to FIBA. In essence, Dr Gerou claimed that (i) she had never been involved in the Athlete's rehabilitation after his injury and

that Metandienone could not be administered through intravenous therapy; (ii) denied having provided any pills to the Athlete and that, in any event, the Athlete would not have tested positive in March 2022 because of the time that elapsed between the injury and the 4 March 2022 test; (iii) denied being at the origin of the Athlete's AAF.

31. On 16 December 2022, the Athlete submitted that the documents filed by Dr Gerou were inadmissible for being filed late and disputed the merits of Dr Gerous' statements.

32. On 6 February 2022, (and again on 14 February 2023 further to a clerical error) the FIBA DP's decision (the "Appealed Decision") was rendered and notified to the Athlete on the same day.

33. The operative part of the Appealed Decision reads as follows:

"In light of the above, the panel decides as follows:

1. Mr. Konstantinos Mitoglou has committed an Anti-Doping Rule Violation.

2. Mr. Konstatinos Mitoglou is suspended for a period of Ineligibility of 4 years. The period of Ineligibility shall commence on the date of the decision, i.e., 6 February 2023. However, Mr Konstatinos Mitoglou shall receive credit for the Provisional Suspension he has served since 28 March 2022.

3. Mr. Konstatinos Mitoglou's period of Ineligibility shall be suspended for 16 months on the basis of the substantial assistance provided by Mr. Konstantinos Mitoglou.

4. The results obtained by Mr. Konstatinos Mitoglou from July 2021 until 28 March 2022 are disqualified.

5. All other and or further-reaching requests are dismissed.

6. (…)".

34. In finding against the Athlete, the Appealed Decision *inter alia* held that:

"A. The ADRVs under Article 2.1 and 2.2

The Panel finds that the Player has committed: (i) an ADRV of Presence and/or Use of a Prohibited Substance (metandienone); and (ii) an ADRV of Use of a Prohibited Method (intravenous infusions in excess of what is permitted under the relevant regulations).

i) Metandienone (Article 2.1 and 2.2 of the FIBA ADR)

74. Metandienone is a non-Specified Prohibited Substance listed under class S1 (anabolic agents) of the 2022 WADA Prohibited List (Prohibited List).

75. As such, FIBA charged the Player with the commission of an ADRV pursuant to Article 2.1 of the FIBA ADR (Presence of a Prohibited Substance) and pursuant to Article 2.2 of the FIBA ADR (Use of a Prohibited Substance).

76. With respect to Article 2.1 of the FIBA ADR, there was no departure from the WADA International Standards either alleged or proven, and the Player waived his right to the opening and analysis of the B Sample.

77. According to Article 2.1.1 of the FIBA ADR, it is each Athlete's personal duty to ensure that no Prohibited Substance enters their bodies [and] it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

78. Article 2.1.2 further provides that 'sufficient proof of an anti-doping rule violation under Article 2.1 is established by […] presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed […]'.

79. The Player has not disputed the reliability of the AAF and has admitted the ADRV.

80. In view of the above, an ADRV under Article 2.1 of the FIBA ADR is established.

81. Having established an ADRV for Presence it is clear that the ADRV of Use is also established, 'Use' being defined as '[t]he utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method.' Moreover, as per Article 3.2 of the FIBA ADR, facts related to anti-doping rule violations may be established by any reliable means, which includes the uncontested laboratory analysis of the Player's A-Sample. Thus, an ADRV under Article 2.2 of the FIBA ADR is also established.

ii) Intravenous infusions (Article 2.2 FIBA ADR)

82. Intravenous infusions are a specified Prohibited Method listed under class M2 (chemical and physical manipulation) of the WADA Prohibited List when they involve "more than a total of 100mL per 12-hour period" (except for those legitimately received in the course of hospital treatments, surgical procedures or clinical diagnostic investigations).

83. In his explanations, the Player admitted to receiving IV therapy from Dr. Gerou on at least six occasions between July 2021 and February 2022. Despite being charged with an ADRV of Use for such intravenous infusions, the Player has not contested that his IV therapy involved amounts of "more than a total of 100mL per 12-hour period" nor suggested that it was 'legitimately received in the course of hospital treatments, surgical procedures or clinical diagnostic investigations'.

84. To the contrary, the Player acknowledged in his explanation of 11 April 2022 that the IV therapy was in breach of the relevant regulations stating '[i]t should be noted that Mr. Mitoglou was unaware that IV therapy exceeding 100 mL in a 12-hour period constituted a "prohibited method".

85. As such, FIBA charged the Player with the commission of an ADRV pursuant to Article 2.2 of the FIBA ADR (Use of a Prohibited Substance).

86. As noted above, 'Use' is defined as "[t]he utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method".

87. Moreover, as per Article 3.2 of the FIBA ADR, facts related to anti-doping rule violations may be established by any reliable means, including admissions.

88. After having admitted he received IV therapy and being charged by FIBA with an ADRV of Use in relation to same, the Player has at no stage contested that he committed the ADRV of Use.

89. Thus, the Panel finds that an ADRV under Article 2.2 of the FIBA ADR is also established.

B. The Period of Ineligibility

90. In determining the relevant period of Ineligibility in this case, as a threshold matter, it is recalled that Article 10.9.3.1 provides as follows in cases concerning multiple violations:

…an anti-doping rule violation will only be considered a second violation if FIBA can establish that the Athlete or other Person committed the additional anti-doping rule violation after the Athlete or other Person received notice pursuant to Article 7, or after FIBA made reasonable efforts to give notice of the first anti-doping rule violation. If FIBA cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction, including the application of Aggravating Circumstances. […]

91. The violation that carries the more severe sanction in the present case is the Player's ADRV for the Presence and Use of the non-Specified Substance Metandienone, as the intravenous infusions the Player received are classified as a Specified Method under the WADA Prohibited List.

92. As such, the sanction imposed shall be assessed below for the Presence of Metandienone and the possible application of Aggravating Circumstances.

93. In that respect, Article 10.2 of the FIBA ADR provides that the base sanction for an ADRV of Presence and/or Use involving a non-Specified Substance (such as Metandienone) is 4 years unless the Athlete can establish that the ADRV was not intentional.

94. It should also be recalled that Article 10.4 provides for potential aggravating circumstances, including 'where the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions'. If FIBA were to establish Aggravating Circumstances, then the period of Ineligibility may be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances.

95. In the present case, and considering that the Player's ADRV of Use (i.e., receiving in excess of the permitted volume during an intravenous infusion) appears to have been caused by an (albeit negligent) lack of knowledge of the relevant anti-doping rules, the Panel does not consider it appropriate to increase the base sanction of 4 years for the Presence of Metandienone on the basis of aggravating circumstances.

96. Further, as set out above, in determining the final sanction the Panel must also consider whether the Player has established: (i) a lack of intention; (ii) an entitlement to a reduction based on the defined concept of No Significant Fault or Negligence; or (iii) an entitlement to a suspension of part of his period of ineligibility based on the defined concept of Substantial Assistance.

97. In the present case, the Player submits that he proved a lack of intention by establishing that Dr. Gerou was at the source of the Metandienone in his sample, or alternatively, that he did not act with what is commonly referred to as 'reckless intent'.

98. The Panel respectfully disagrees.

99. Indeed, Article 10.2.3 of the FIBA ADR provides that an athlete acts with intention in committing an ADRV also where he or she 'knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk'.

100. The concept of 'indirect intention' has been described in CAS jurisprudence as follows:

Even before the introduction of the legal concept of 'intent' in the 2015 edition of the World Anti- Doping Code, CAS panels already elaborated on the concept of 'indirect intent' or 'dolus eventualis' and the Sole Arbitrator sees no reason to deviate therefrom:

'[…] the term 'intent' should be interpreted in a broad sense. Intent is established – of course – if the athlete knowingly ingests a prohibited substance. However, it suffices to qualify the athlete's behaviour as intentional, if the latter acts with indirect intent only, i.e., if the athlete's behaviour is primarily focused on one result, but in case a collateral result materializes, the latter would equally be accepted by the athlete. If – figuratively speaking – an athlete runs into a "minefield" ignoring all stop signs along his way, he may well have the primary intention of getting through the "minefield" unharmed. However, an athlete acting in such (reckless) manner somehow accepts that a certain result (i.e., adverse analytical finding) may materialize and therefore acts with (indirect) intent' (CAS 2012/A/2822, para. 8.14).

'[…] the Athlete took the risk of ingesting a Specified Substance when taking the Supplement and therefore of enhancing his athletic performance. In other words, whether with full intent or per "dolus eventualis', the Panel finds that the Appellant's approach indicates an intent on the part of the Appellant to enhance his athletic performance within the meaning of Art. 10.4 IWF ADP" (CAS 2011/A/2677, para. 64).

101. Applying this to the case at hand, the Panel considers that the Player acted with indirect intention for the following reasons:

a. The pills Dr. Gerou gave the Player were unmarked and unlabeled, and said to be a 'miraculous cure from Russia'. This should have rung significant alarm bells to the Player and yet, despite this, he has not even suggested that he attempted to ascertain what the pills actually contained. Whilst the Panel agrees with the Player that independent testing of the pills would be an onerous step to take, the reality is that the Player did not even take the simple step of asking the name of the pill or what were the contents of the product he was taking.

b. Additionally, based on the documents produced to support his position, the Panel considers that the Player has only alleged, and not established, that he informed Dr. Gerou of his anti-doping obligations and insisted on knowing whether the treatments provided by Dr. Gerou were safe prior to receiving them.

c. Finally, the nature of the intravenous infusions provided by Dr. Gerou should have rung additional, significant, alarm bells to the Player. Indeed, as noted above, one such product is expressly described in the photos produced by the Player as performance enhancing for athletes: 'ATHLETIC PERFORMANCE ENHANCEMENT Improve fatigue; Increased endurance during physical exercises; enhancing athletic

performance; increase the strength and power of the organization; metabolism optimization; growth of growth hormone production; energy improvement'.

102. In view of the above, the Panel finds that 'whether with full intent or per "dolus eventualis"', the Player's approach was intentional within the meaning of such concept in the FIBA ADR.

103. Having found that the Player did not meet his burden to establish a lack of intent, the Player's period of Ineligibility is 4 years, and it is not necessary for the Panel to rule upon either whether the Player established the source of the substance or whether the Player's sanction could be reduced on the basis of No Significant Fault or Negligence (indeed, the application of this latter concept is ruled out by the finding of intention).

C. Commencement date of the Period of Ineligibility and credit for Provisional Suspension

104. Pursuant to Article 10.13 of the FIBA ADR, the Period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

105. The Player has not argued that there were substantial delays in these proceedings that were not attributable to him, nor would this be sustainable. Thus, the Panel sees no reason to depart from the general principle that the period of Ineligibility shall start on the date of this decision.

106. With that said, considering that the Player was provisionally suspended since 28 March 2022, the Player shall receive credit for the provisional suspension served since that date.

D. Return to training

107. As per Article 10.14.2 of the FIBA ADR, the Panel notes that the Player may return to train with a team or to use the facilities of a club or other member organization of FIBA or of a National Federation or other Signatory's member organization during the shorter of: (1) the last two months of his period of Ineligibility, or (2) the last one-quarter of the period of Ineligibility imposed.

E. Substantial assistance

108. Finally, the Panel must consider whether the Player is entitled to have part of his period of Ineligibility reduced on the basis of Substantial Assistance (as defined under the FIBA ADR).

109. The Player relies in this respect on Article 10.7.1 FIBA ADR to suggest that the maximum 75% of his sanction should be suspended on the basis of proven substantial assistance (i.e., he should receive an effective sanction of only one year).

110. Article 10.7.1.1 provides that:

10.7.1.1 FIBA may, prior to an appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the Consequences (other than Disqualification and mandatory Public Disclosure) imposed in an individual case where the Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organisation, criminal authority or professional disciplinary body which results in: […]; or (ii) which results in a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional

rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to FIBA or other Anti-Doping Organisation with Results Management responsibility; […]. After an appellate decision under Article 13 or the expiration of time to appeal, FIBA may only suspend a part of the otherwise applicable Consequences with the approval of WADA.

111. Considering the charges brought against Dr. Gerou and the fact that prohibited substances were seized from her possession, it appears that a suspension of the sanction on the basis of substantial assistance is, in principle, applicable in this case.

112. The question is then the degree of such suspension, which is described as follows:

The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in sport, non-compliance with the Code and/or sport integrity violations. No more than three-quarters of the otherwise applicable period of Ineligibility may be suspended. […]

113. The Player has relied on several precedents to support his position that 75% of the sanction should be suspended, however noting that each of these precedents is fact dependent, the Panel considers that it is essential to apply the factors set out in the FIBA ADR to the precise circumstances of the Player's case.

114. In doing so, the Panel notes that:

a. In assessing the seriousness of the Player's offence, the Panel has considered that:

(i) the Player has committed multiple ADRVs; and (ii) one such ADRV involved a non-Specified anabolic agent. However, the Panel has not found that the Player acted with full intent but only indirect intent under the relevant regulations.

b. In assessing the significance of the Player's substantial assistance to the effort to eliminate doping in sport, the Panel has taken into account that certain prohibited substances were found in possession of Dr Gerou – who is a medical professional indisputably treating high level athletes. For this reason alone, the Panel considers that a considerable suspension of the period of Ineligibility is appropriate.

c. The Panel notes – as other panels have noted – that the mechanism of substantial assistance 'is meant to be essential in the fight against doping [and] it is therefore important that the objective of [substantial assistance] i.e. to encourage athletes, subject to the imposition of an ineligibility period, to come forward if they are aware of doping offences committed by other persons, is not undermined by an overly restrictive application of the provision' (see inter alia CAS 2021/A/8296). In that respect, the Panel notes that in the present case the Player immediately admitted his ADRVs and sought to provide substantial assistance, however in the time it took for the authorities to take action in Greece he had already lost the benefit of the possible (automatic) one year reduction for prompt admission under the FIBA ADR.

115. Taking all of the above into account, the Panel considers that the Player should be entitled to a maximum suspension of one third of the sanction imposed (i.e. a suspension of 16 months of the period of ineligibility, resulting in a final 32 month period of ineligibility).

116. The Panel considers that such a reduction is consistent with the approach taken in prior cases, and notes that in the recent decision CAS 2021/A/8296 WADA v FIFA and Vladimiar Obuhkov a 50% reduction was given in circumstances where the substantial assistance '[…] was promptly given as soon as the Player received a notification of his potential anti-doping rule violation, it concerned the practice of a doctor, i.e. of an individual having peculiar responsibilities within a football club [and] it exposed a potential violation that could involve a number of other players and individuals'.

The Panel wishes to note that, should further information be obtained by the Player that indicates that a more significant suspension of the period of ineligibility is appropriate, the Player may request FIBA to further suspend the period of Ineligibility prior to an appellate decision under Article 13 of the FIBA ADR (or the expiration of the time to appeal) or even after such date with the approval of WADA.

F. Disqualification

117. In accordance with Article 10.10 of the FIBA ADR, all competitive results obtained by the Player from the date the positive sample was collected through the commencement of his Provisional Suspension shall be disqualified.

118. However, according to Article 10.9.3.1 of the FIBA ADR which governs multiple violations, 'Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in Article 10.10'.

119. As a result, all competitive results from July 2021 (when the Player has admitted to first receiving IV therapy) are disqualified, including forfeiture of any medals, points and prizes".

C. The proceedings before the FIBA Appeal Body ("FIBA AP")

35. On 15 February 2023, the Athlete filed his Statement of Appeal before the FIBA AP.

36. On 1 March 2023, the FIBA AP issued a Procedural Order, whereby it granted the Athlete and FIBA until 15 March 2023 and 29 March 2023 respectively to file their submission.

37. On 13 March 2023, the Parties signed an arbitration agreement.

38. On 14 March 2023, FIBA, on behalf of the Parties, informed the FIBA AP that the Athlete and FIBA had concluded an arbitration agreement whereby the Appealed Decision could be appealed directly at CAS.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 22 March 2023, pursuant to Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed a Statement of Appeal against the Respondent with respect to the decision rendered by the FIBA DP on 6 February 2023. In his Statement of Appeal, the Appellant nominated Mr Manfred Peter Nan as an arbitrator.

40. On 11 April 2023, the Respondent nominated Mr Patrick Lafranchi as an arbitrator.

41. On 13 April 2022, in accordance with Article R51 of the CAS Code, the Appellant filed his Appeal Brief.

42. On 8 May 2023, the Appellant wrote to the CAS Court Office requesting *"that the hearing in this matter be held on a mutually agreeable date that permits the Award (or at a minimum, the Operative Award) to be issued on or before 10 July 2023. The reason for this request is so that, if permitted by the Award, Mr Mitoglou can prepare for and participate in the 2023 FIBA World Cup for Greece"*.

43. On the same date, the Respondent filed its Answer.

44. On 9 May 2023, the CAS Court Office informed the Parties that Ms Annett Rombach was appointed as President of the Panel.

45. On 11 May 2023, the Appellant wrote to the CAS Court Office requesting that, pursuant to Article R34 of the CAS Code, Ms Annette Rombach be removed as President of the Panel arguing that her status as an arbitrator at the Basketball Arbitral Tribunal (BAT) *"creates an appearance of a lack on independence that potentially undermines confidence in CAS by the player population"*.

46. On 16 May 2023, the CAS Court Office informed the Parties that Ms Annette Rombach has decided to resign as President of the Panel and that, pursuant to Article R36 of the CAS Code, a new President of the Panel would be appointed in due course.

47. On 17 May 2023, the CAS Court Office, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of CAS Appeals Arbitration Division, informed the Parties about the constitution of the Panel in this procedure as follows:

    President: Prof. Stefano Bastianon, Professor of Law and Attorney-at-Law, Busto Arsizio, Italy.

    Arbitrators: Mr Manfred Peter Nan, Attorney-at-Law, Amsterdam, The Netherlands.

    Mr Patrick Lafranchi, Attorney-at-Law, Bern, Switzerland.

48. On 1 June 2023, the Respondent signed the Order of Procedure.

49. On 2 June 2023, the Appellant signed the Order of Procedure.

50. On 4 July 2023, a hearing was held in Lausanne.

51. In addition to the Panel and Dr Björn Hessert (CAS Counsel), the following persons attended the hearing:

    - <u>For the Appellant:</u>

        - Mr Konstatinos Mitoglou (athlete);
        - Mr Howard Jacobs (counsel);

- Ms Christina Syrengela (counsel);

- For the Respondent:

  - Dr Antonio Rigozzi (counsel);
  - Dr Marie-Christin Bareuther (counsel);
  - Mr Nejat Haciomeroglou (in-house counsel).

52. At the outset of the hearing, the Parties confirmed that they had no objection to the appointment of the Panel.

53. During the hearing, the Parties were given a full opportunity to present their case, submit their arguments and submissions, and answer the questions posed by the Panel.

54. After the Parties' final arguments, the Parties' counsels confirmed that they were satisfied with the hearing and that their right to be heard was fully respected.

IV. SUBMISSION OF THE PARTIES

A. The Appellant

55. The Appellant requests the following reliefs:

"9.1.1 Declare that Appellant's Appeal should be upheld;

9.1.2 Declare that the 4-year sanction issued by the FIBA Disciplinary Panel be set aside;

9.1.3 Declare that the default sanction is 2 years, subject to further reduction as explained above; and

9.1.4 Award Appellant a contribution towards his legal costs in this appeal".

56. In support of his requests for relief, the Appellant relied on the following main arguments:

(a) The Athlete did not act with "indirect intent". In particular, the Athlete argues that:

(i) according to CAS jurisprudence, a lack of indirect intent may be established if an athlete's behaviour was not reckless, but only oblivious; moreover, an indirect intent can only be determined by the surrounding circumstances of the case;

(ii) the Appellant did not have actual knowledge that there was a significant risk that the treatments he received from Dr Gerou might result in an ADRV;

(iii) Dr. Gerou was an established microbiologist and pathologist who was well-known in the area for treating professional/elite-level athletes subject to anti-doping rules and therefore appeared to be a trusted and reliable source;

(iv) before accepting treatment from Dr Gerou, the Appellant informed her that he was a professional basketball player who was subject to drug testing and anti-doping rules;

(v) Dr Gerou promised the Appellant that her treatments were completely safe and free of any banned substances;

(vi) shortly after becoming Dr Gerou's client, the Appellant was selected for drug testing while receiving serum treatments from Dr Gerou on a monthly basis, confirming his belief that he could fully trust Dr Gerou;

(vii) when Dr Gerou gave the Appellant the pills and clear serum to rehabilitate his broken foot, the Appellant specifically warranted Dr Gerou not to give him anything that could violate anti-doping rules and Dr Gerou again promised the Appellant that the pills and the clear serum were safe for consumption:

(viii) the Appellant was completely unaware that Dr Gerou had banned substances in her possession, let alone that she was trafficking illegal medicines/substances and administering them to clients without their knowledge as part of a larger scheme;

(ix) in light of the above, the Appellant had virtually no knowledge or understanding that receiving treatments from Dr Gerou carried a significant risk of constituting an ADRV.

(b) The Appellant did not manifestly disregard the risk that his conduct may constitute an ADRV. To this regard, several previous cases support the Appellant's position that his conduct would not qualify as reckless. In particular, the Appellant refers*, inter alia*, to the following cases:

(i) CAS 2012/A/2822, where the Panel found that the athlete acted without indirect intent in taking a supplement that he did not know contained a banned substance, despite the fact that the athlete did not research the product's ingredients, admitted that he did not understand anything of the product and clearly used the product to improve sport performance;

(ii) CAS 2019/A/6249, where the Panel found that the athlete acted without indirect intent was based, *inter alia*, on the fact that the player sought advice from the team doctor which was not an unreasonable approach to informing himself about the legitimacy of the substance;

(iii) AAA No. 01-19-0000-6431, where the Panel found that the athlete acted without indirect intent was based, *inter alia*, on the fact that, prior to receiving the treatment, the athlete consulted his long-time friend, trainer and nutritional coach about the treatment as well as a doctor;

(iv) ITF/Spears, where the Panel found that the athlete did not act with indirect intent relying on the fact that the athlete did not know that the substance at issue was a

prohibited substance and that before taking the supplement the athlete consulted with a doctor of Eastern Medicine that worked with several professional athletes subject to anti-doping rules.

(c) Under the World Anti-Doping Code ("WADC") and FIBA ADR as well as considering several CAS cases (CAS 2016/A/4534, para. 37; CAS 2020/A/7083, paras. 104-106; CAS A1/2020, paras. 101-102; CAS 2016/A/4676, paras. 66-72), it is undisputed that proof of source of the prohibited substance is not required to prove that an athlete acted unintentionally.

(d) The source of the Appellant's positive test was the supplements and serums provided by Dr Gerou. In particular, the Appellant argues that:

(i) the Appellant has never knowingly taken any banned substance, orally or through intravenous injections;

(ii) in the months preceding his positive test, the only supplements used by the Appellant that could have been the source of Metandienone were those provided by Dr Gerou, *i.e.,* the intravenous serums and the yellow tablets;

(iii) there is no evidence to suggest that the painkillers and anti-inflammatory medications taken during the relevant period and not provided by Dr Gerou contained Metandienone;

(iv) the yellow tablets that Dr Gerou gave to the Appellant are consistent in appearance with Metandienone pills. Furthermore, the effects/benefits of the pills, as described by Dr Gerou – a *"miraculous medicine from Russia"* that would rapidly speed up the Appellant's recovery from his injury – are consistent with Metandienone, a substance known to assist with recovery and increase and retain muscle mass at an accelerated rate;

(v) Dr Gerou refused to provide the Appellant's medical records despite his repeated requests;

(vi) Dr Gerou has been arrested and charged with illegal medicine trafficking, administering prohibited substances to athletes, storing and circulating illegal substances and chemicals, and obtaining false/forged pharmaceuticals.

(e) The Appellant has established no significant fault or negligence. In particular, the Appellant argues that:

(i) his positive test was caused by Dr Gerou's misrepresentations and any negligence on his own part was not significant in relationship to the ADRV;

(ii) he did not know or suspect that Dr Gerou had administered Metandienone to him as Dr Gerou guaranteed that her treatments were completely safe and would not violate anti-doping rules;

(iii) the intravenous serums and pills provided by Dr Gerou did not have labels or a list of ingredients. Therefore, the only way he could fully determine the substances inside each supplement was through independent testing, which likely would have been expensive and impractical;

(iv) the only fault that could be attributed to him was that he did not have the pills or clear serum independently tested for banned substances before using it or consult a second medical professional.

(f) The Appellant's degree of fault falls at the middle of the spectrum. Relying on the so-called Cilic test (CAS 2013/A/3327 & CAS 2013/A/3335), the Appellant argues that:

(i) as regards the objective factors, the Appellant's case is very similar to the Johaug case in CAS 2017/A/5015 & CAS 2017/A/5110. Accordingly, the appropriate sanction range would be 16-20 months;

(ii) as regards the subjective factors, the Appellant noted that (a) he had not received extensive anti-doping education, (b) he was suffering from a high degree of stress in trying to recover from his injury, (c) his level of awareness was reduced by a careless but understandable mistake, in that he specifically asked Dr Gerou if any of the substances she gave him contained any banned substance and she assured that they did not;

(iii) based upon the assessment of the subjective factors, the appropriate sanction should – at minimum – fall in the lower range of the "normal" degree of fault (*i.e.*, 16 months). However, in certain cases the subjective elements of fault can be great enough to move the athlete not only to the lower end of the objective fault category (*i.e.,* 16 months instead of 18 or 20), but to an entirely different objective fault category (i.e., from "normal" to "light" fault). Accordingly, the appropriate sanction range is between 12 and 18 months.

(g) The Appellant is entitled to a suspension of the sanction for providing substantial assistance under Article 10.7.1 of the FIBA ADR. In particular, the Appellant argues that:

(i) he filed complaints against Dr Gerou related to her administration of Metandienone before the Greek Sports Prosecutor, the Greek National Anti-Doping Organisation and the Athens Medical Bar Association;

(ii) as a result of his complaints, the Greek Sports Prosecutor, criminal authorities, the Greek National Anti-Doping Organisation and the Athens Medical Bar Association each opened an investigation into Dr Gerou's business and discovered that she was engaged in conduct that would constitute multiple anti-doping rule violations, criminal offenses and breaches of professional rules;

(iii) he has fully disclosed all information he possesses regarding Dr Gerou's anti-doping rule violations, and he has fully cooperated with each investigation against Dr Gerou;

(iv) the information provided by the Appellant is credible as the authorities have discovered that Dr Gerou engaged in illegal activity that violated both anti-doping rules and criminal laws and have seized numerous items of evidence from her home and business, including various types of banned substances;

(v) the seriousness of the Appellant's ADRV is not severe enough to undermine or outweigh the value of the substantial assistance provided, given that (a) it is his first violation, (b) he did not knowingly ingest any banned substance, (c) he reasonably believed that the treatments from Dr Gerou were safe under the anti-doping rules, (d) he did not intentionally ingest any banned substance and certainly did not ingest them for the purposes of gaining a competitive advantage and (e) there are no aggravating circumstances that would heighten the seriousness of his ADRV;

(vi) in the assessment of the importance of the substantial assistance provided by the Appellant, the following elements must be taken into account: (a) although at this time Dr Gerou is the only individual implicated, given the depth and complexity of her crimes and offences it is plausible that she was working with multiple actors; (b) Dr Gerou's status in sport was most analogous to athlete support personnel; (c) a complex scheme of illegal medicine trafficking and the circulation and administration of harmful/prohibited substances was discovered; (d) the Appellant provided substantial assistance as soon as reasonably possible under the circumstances; (e) the present case qualifies as a very exceptional case and accordingly, the maximum suspension (*i.e.*, 75%) of the period of ineligibility should be applied;

(vii) alternatively, the period of ineligibility should be suspended by, at minimum, 50%.

(h) Should the Appellant receive a sanction longer than 12-18 months, his basketball career will likely be in jeopardy and could cost him his entire livelihood. Accordingly, pursuant to the principle of proportionality, the Appellant should not receive a sanction that is longer than 12-18 months.

B. The Respondent

57. The Respondent requests the following reliefs:

"(i) Dismissing [the Appellant's] *Appeal and all prayers for relief.*

(ii) Upholding the Decision of the [FIBA DP] *of 6 February 2023.*

(iii) Condemning [the Appellant] *to pay a contribution towards FIBA's legal fees and other expenses".*

58. In support of its requests for relief, the Respondent relies on the following main arguments:

(a) The Appellant failed to establish that he acted unintentionally. In particular, the Respondent argues that:

(i) the Athlete has not even attempted to establish that he used a Prohibited Method unintentionally and, therefore, the standard sanction applicable is in any event 4 years;

(ii) in any case, the Appellant failed to establish the source of the Prohibited Substance in his sample, given that:

- the Athletes' claim that he has never knowingly taken any banned substance and that the only supplements he used that could have been the source of Metandienone were those provided by Dr Gerou *"are a textbook example of what CAS Panels commonly refer to as mere protestation of innocence and are not sufficient for an athlete to establish the source of a prohibited substance"*;

- the contentions that the pills that Dr Gerou gave to the Athlete are consistent in appearance with Metandienone pills and that the effects/benefits of the pills are consistent with Metandienone *"are not supported by any concrete and verifiable evidence"*;

- the contention that the IV therapy treatments would have been an attempt at masking the use of Metandienone *"is also speculative and, again, not supported by any concrete and reliable evidence"*;

- the fact that Dr Gerou did not provide the Athlete's medical report does not necessarily mean that she administered Prohibited Substances to the Athlete;

- Metandienone was not among the substances confiscated by the Greek police at Dr Gerou's home;

- the Athlete has provided no scientific evidence to support the assertion that the treatments provided by Dr Gerou could be the source of the AAF.

(b) Even assuming that the Athlete has established the source of the prohibited substance, the Athlete acted with (at least) indirect intent. In particular:

(i) the Athlete cannot simply argue that he had no actual knowledge that there was a significant risk that the treatments he received from Dr Gerou might result in an ADRV;

(ii) according to constant CAS jurisprudence *"[i]t is well known in the world of sport that particular care is required from an athlete when applying medications, because the danger of a prohibited substance entering the athlete's system is particularly high in such context, i.e., significant"* (CAS 2016/A/4609, para. 68), especially when the relevant medication is administered by intramuscular injection or, as in the present case, by intravenous injection;

(iii) the Athlete has sufficient anti-doping education and/or understanding to know and appreciate the risks associated with the simple use of nutritional supplements. Accordingly, it is difficult to accept that the Athlete did not know that the administration of IV therapy treatments and the use of unlabelled and unmarked pills would entail a significant risk of testing positive;

(iv) the Athlete's conduct was not merely oblivious as he blindly believed Dr Gerou's assertions but had no reason to credibly trust that no ADRV would occur, given that:

- the pills Dr Gerou gave the Athlete were unmarked and unlabelled, and said to be a *"miraculous cure from Russia"*;
- the Athlete did not even take the simple step of asking the name of the pill or what were the contents of the product he saw taking;
- the Athlete has only alleged, and not established, that he informed Dr Gerou of his anti-doping obligations;
- the nature of the intravenous infusions provided by Dr Gerou should have rung additional, significant, alarm bells to the Athlete;

(v) accordingly, the Athlete was indeed running *"in a minefield ignoring all stops signs along the way"*, to use the image of the CAS panel in CAS 2012/A/2822 to illustrate what is meant by indirect intent;

(vi) moreover, the simple fact that Dr Gerou offered the Athlete to provide her treatments by intravenous injection should have rang serious alarm bells in the Athlete's mind, given that a simple review of the 2021 Prohibited List would have quickly allowed the Athlete to realise that such treatments constitute a Prohibited Method if more than 100 mL are administered per 12 hours period, which was clearly the case of Dr Gerou's IV therapy treatments;

(vii) the text messages exchanged between Dr Gerou and the Athlete show that the latter did not fully trust the doctor and that he had doubts as to the nature of Dr Gerou's treatments;

(viii) the fact that the Athlete chose not to disclose his relationship with Dr Gerou to his team doctor, who could be qualified as a more trusted source, further shows that the Athlete more likely than not knew that it constituted a doping risk but manifestly disregarded that risk;

(ix) the cases referred to by the Appellant in his Appeal Brief are not relevant because they are not comparable to the present case, given that:

- in CAS 2012/A/2822, the athlete used a nutritional supplement that happened to contain a specified substance, whereas the Appellant used IV therapy treatments on at least six occasions and used unlabelled and unmarked pills. Moreover, the CAS panel in this Qerimaj case noted that (a) the athlete had provided documentary evidence that he had asked about whether the product was "clean" and disclosed the use of the nutritional supplement in two doping control forms; (b) there is a clear difference between trusting a friend who had provided the athlete with supplements for six years and trusting an unknown microbiologist and pathologist with no verifiable experience in sports medicine simply because it was allegedly recommended by some unspecified people including other athletes;

- in CAS 2019/A/6249, the substance used by the athlete (*i.e.*, mildronate) had previously been used within the team and provided by the team's doctor at a time where the substance was not prohibited yet and the athlete did not know that it had become prohibited. Moreover, the athlete was able to establish, based on other team members' written statements, that he asked the team doctor whether he could use the substance prior to using it and had received confirmation from said doctor;

- in AAA No. 01.19.0000.6431, the athlete received medically-approved treatments through a doctor that was recommended by the athletes trusted friend, trainer and nutritional coach and the athlete had known this friend for 10 years, whereas the Appellant did not know Dr Gerou before July 2021 and did not have any concrete reasons to blindly trust her. Moreover, in the case referred to by the Appellant, the doctor who provided the medical treatment had contacted the United States Olympic and Paralympic Committee and had allegedly received confirmation that the treatment was allowable;

- the ITF v. Spears case was rendered under a version of the WADC that defined the term "intention" as meant to *"identify those [athletes] who cheat"*, which is not the case in the version applicable to the Appellant. Moreover, in the ITF v. Spears case, the athlete took the supplement *"solely for therapeutic reasons relating to her general well-being, independent of her sports career"*, whereas in the present case the Athlete contacted Dr Gerou because he wanted not only to *"improve his overall health and strengthen his immune system"*, but also to be *"as prepared as possible for the upcoming season"*, thus implying that he reached out Dr Gerou for reasons closely related to his sports career, if not for performance-enhancing purposes.

(c) In the event that the Panel would consider that the Athlete has established the source of the Metandienone and that he has shown that he acted without indirect intent, the Appellant is not entitled to a reduction of the applicable period of ineligibility on the basis of Article 10.6.2 of the FIBA ADR (No Significant Fault or Negligence). In particular, the Respondent argues that:

(i) the text messages exchanged between the Athlete and Dr Gerou clearly show that the Appellant at the very least suspected that Dr Gerou could be administering prohibited substances to him, but chose to ignore it;

(ii) the Appellant had no reasonable and objective basis to place his trust on Dr Gerou;

(iii) it is simply disingenuous to claim that because the treatments were unlabelled, the Athlete's only option would have been to have the treatments independently tested;

(iv) the Appellant himself admitted that he did not conduct any of the steps recommended by the Cilic case as regard the objective level of fault. In particular:

- the Athlete did not even attempt to ascertain the ingredients contained in the treatments provided by Dr Gerou;
- the Athlete failed to make any internet search of the products provided by Dr Gerou, whereas even a simple search containing only the keywords "IV infusion" and "athlete" would have led the Appellant to websites that would have made it clear that IV therapy was prohibited in the manner in which Dr Gerou offered to administer it;
- the fact that the pills were said to be a "miraculous medicine from Russia" should have led the Athlete to be more cautious and to ask further questions of the product;

(v) the Appellant cannot rely on CAS 2017/A/5015 & 5110 given that in that case

- the athlete was provided with a skin cream containing a prohibited substance in order to treat a severe sunburn on her lips;
- the cream was provided by the athlete's team doctor described by the Panel as a *"highly-respected expert in anti-doping"*

(vi) as to the assessment of the Athlete's subjective level of fault, it should be considered significant and therefore no reduction should be granted; alternatively, if the Panel considers a reduction appropriate, that sanction should be at the higher end of the 20-24-month range given that:

- the Athlete has sufficient anti-doping education to understand the risks associated with supplements and, *a fortiori*, with medications;
- the alleged Athlete's personal impairment due to the stress after his injury cannot be compared to the personal impairment described in the Cilic case where the athlete's wife had just passed away and the athlete had to deal with moving from the West Coast of Canada to Ontario on his own;

- according to CAS jurisprudence (CAS 2008/A/1488, para. 17), the Athlete cannot rely on an alleged reduced level of awareness caused by the fact that Dr Gerou assured him that her products did not contain any prohibited substances.

(d) The suspension of the Appellant's period of ineligibility based on substantial assistance is proportionate and consistent with the CAS jurisprudence referred to by the Appellant as well as with other CAS cases.

(e) The Appellant's period of ineligibility cannot be reduced based on a proportionality analysis given that the recent CAS jurisprudence simply does not allow the Panel to depart from the sanctioning regime provided for by the FIBA ADR on the basis of the principle of proportionality.

V. CAS JURISDICTION

59. Article R47 para. 1 of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

60. On 13 March 2023, the Parties entered into an arbitration agreement (the "Arbitration Agreement") which provides, *inter alia*, as follows:

"(…) FIBA and the Player hereby agree that the FIBA DP Decision can be appealed before CAS within a time limit of 21 days following the conclusion of the present Agreement.

For the sake of clarity, the present agreement constitutes 'a specific arbitration agreement' within the meaning of Article R47 of the CAS Code".

61. The Panel notes that CAS jurisdiction is not disputed by the Parties. Moreover, the Parties confirmed CAS jurisdiction by signing the Order of Procedure.

62. It follows that CAS has jurisdiction to adjudicate and decide on the present appeal.

VI. ADMISSIBILITY OF THE APPEAL

63. The appeal was filed within the deadline of 21 days set by the Arbitration Agreement. Furthermore, the admissibility of the Appeal is not disputed by the Parties. The Statement of Appeal also complied with the requirements of Articles R47 and R48 of the CAS Code, including the payment of the CAS Court Office fee.

64. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

65. Article R58 of the CAS Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

66. FIBA submits that, in accordance with Article R58 of the CAS Code, the present dispute shall be decided according to the FIBA ADR and associated regulations (including WADA's International Standards) and, subsidiarily, Swiss law. The Appellant only refers in its submissions to the applicable provisions of the FIBA ADR.

67. The Panel notes that the appeal is directed against a decision issued by the FIBA DP, and that in the Arbitration Agreement, the Parties *"agree that the applicable regulations are "Book 4 of the FIBA Internal Regulations – Anti-Doping" as revised on 1 January 2022"* (the "FIBA ADR").

68. In light of the abovementioned provisions, the Panel concludes that the *"applicable regulations"* for the purposes of Article R58 of the CAS Code are those of the FIBA ADR. In view of the fact that FIBA has its seat in Mies, Switzerland, the Panel holds that, in principle, Swiss law shall apply on a subsidiary basis. Furthermore, the Panel's conclusion is further supported by the express choice made by the Parties in the Arbitration Agreement in relation to the law governing the dispute.

VIII. RELEVANT FIBA ADR PROVISIONS

69. The following provisions of the FIBA ADR are material to this appeal:

> Article 2 Anti-Doping Rule Violations
>
> *"(…)*
>
> *The following constitute anti-doping rule violations:*
>
> *2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*
>
> *2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes 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 Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*
>
> *2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; (…).*

2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.

(…)".

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

2.2.2 (…)".

Article 3 Proof of Doping

"3.1. Burdens and Standards of Proof

FIBA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FIBA has established an anti-doping rule violation 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. Where these Anti-Doping Rules place 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, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability".

Article 10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

"The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Articles 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

(…)

10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.

10.2.3 As used in Articles 10.2, the term 'intentional' is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

(…)".

Article 10.5 Elimination of the Period of Ineligibility where there is No Fault or Negligence

"If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated".

10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

"10.6.1 (…)

10.6.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.6.1

If an Athlete or other Person establishes in an individual case where Article 10.6.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. (…)".

Article 10.7 Elimination, Reduction, or Suspension of Period of Ineligibility or Other Consequences for Reasons Other than Fault

"10.7.1 Substantial Assistance in Discovering or Establishing Code Violations

10.7.1.1 FIBA may, prior to an appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the Consequences (other than Disqualification and mandatory Public Disclosure) imposed in an individual case where the Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organisation, criminal authority or professional disciplinary body which results in: (i) the Anti-Doping Organisation discovering or bringing forward an anti-doping rule violation by another Person; or (ii) which results in a criminal or disciplinary body discovering or brining forward a criminal offense or the breach of professional rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to FIBA or other Anti-Doping Organisation with Results Management responsibility; or (iii) which results in WADA initiating a proceeding against a Signatory, WADA-accredited laboratory, or Athlete passport management unit (as defined in the International Standard for Laboratories) for non-compliance with the Code, International Standard or Technical Document, or (iv) with the approval by WADA, which results in a criminal or disciplinary body brining forward a criminal offense or the breach of professional or sport rules arising out of a sport integrity violation other than doping. After an appellate decision under Article 13 or the expiration of time to appeal, FIBA may only suspend a part of the otherwise applicable Consequences with the approval of WADA.

The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in sport, non-compliance with the Code and/or sport integrity violations. No more than three-quarters of the otherwise applicable period of Ineligibility may be suspended. If the otherwise applicable period of Ineligibility is a lifetime, the non-suspended period under this Article must be no less than eight (8) years. For purposes of this paragraph,

the otherwise applicable period of Ineligibility shall not include any period of Ineligibility that could be added under Article 10.9.3.2 of these Anti-Doping Rules.

(…)".

FIBA ADR Appendix 1 – Definitions

"No Fault or Negligence: The Athlete or other Person's establishing that he or she did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athletes' system".

"No Significant Fault or Negligence: The Athlete or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system".

IX. THE MERITS

70. It is not disputed between the Parties that the Athlete committed an ADRV of Presence of a Prohibited Substance (Metandienone) under Article 2.1 of the FIBA ADR and an ADRV of Use of a Prohibited Method (intravenous infusions in excess of what is permitted under the relevant regulations) under Article 2.2 of the FIBA ADR.

71. However, what is contested between the Parties is whether the Athlete has established his lack of (indirect) intent and the appropriate period of ineligibility as a consequence of the ADRV committed.

72. Accordingly, the dispute at hand (*i.e.*, the determination of the appropriate period of ineligibility) pivots around the following questions:

(a) Has the Athlete established his lack of (indirect) intent? ("Proof of Lack of (indirect) intent")?

(b) If question (a) is answered in the affirmative, is the Athlete entitled to rely on Article 10.6 FIBA ADR (No Significant Fault or Nesligence) and to what extent? ("Reduction for No Significant Fault or Negligence")

(c) In any case, is the Athlete entitled to rely on Article 10.7.1 (Substantial Assistance in Discovering or Establishing Code Violations) FIBA ADR and, if the answer is positive, to what extent? ("Substantial Assistance")

(d) Is the period of ineligibility determined in question (b) and (c) disproportionate? ("Proportionality")

(a) Proof of Lack of (indirect) intent

73. The Appellant submits that he did not engage in any conduct in which he knew that there was a significant risk that the conduct might constitute or result in an ADRV and did not manifestly disregard that risk. In particular, the Appellant relies on the fact that *"he did not have actual knowledge that there was a significant risk that the treatments he received from Dr Gerou might result in an anti-doping rule violation"*. In any case, the Appellant claims that under the FIBA ADR (as well as under the WADC) the proof of source is not required to prove that an athlete acted unintentionally, arguing that *"if the drafters of the WADA Code and/or FIBA's Anti-Doping Rules intended that proof of no intent to violate anti-doping rules required proving exactly how the banned substance entered the athlete's system, they would have included that requirement in the wording of the definition of 'intentional', like they did for the definition of 'No Fault or Negligence ' and 'No Significant Fault or Negligence'"*. To this regard, the Appellant also relies on a range of publications and jurisprudence discussing the possibility of establishing an athlete's lack of intent in the absence of proof of the source of the prohibited substance.

74. The Respondent, on the other hand, argues that establishing the source of the prohibited substance is crucial for the assessment of intention and that the Appellant failed to establish the source of the Prohibited Substance in his sample because he simply claimed that he *"has never knowingly taken any banned substances"* and that the *"only supplements he used that could have been the source of Metandienone were those provided by Dr Gerou"*. The Respondent submits that the Appellant should have adduced concrete evidence to demonstrate that Dr Gerou's treatments were the source of the AAF. In any case, even assuming that the Athlete has established the source of his AAF, the Respondent argues that the Appellant has failed to establish that he did not act with indirect intent.

75. The Panel notes that the Appellant argues that the proof of source is not required to prove that an athlete acted unintentionally and, accordingly, he deals with the issue of source only in the section of his Appeal Brief concerning the reduction of the sanction for No Significant Fault or Negligence. By contrast, the Respondent claims that the Athlete cannot establish a lack of intent without proving the source of the prohibited substance in the present case.

76. In this context, the Panel notes that, according to Article 10.2.3 of the FIBA ADR (which reflects Article 10.2.3 WADC), *"[a]s used in Article 10.2, the term 'intentional' is meant to identify those Athletes or other Person who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk"*.

77. As the Athlete bears the burden of establishing that the violation was not intentional in accordance with Article 10.2.1.1 of the FIBA ADR (within the above meaning), a whole series of CAS cases have held that it follows that the athlete must necessarily establish how the prohibited substance entered his/her body (CAS 2017/A/5248, para. 55, CAS 2017/A/5295, para. 105, CAS 2017/A/5335, para. 137, CAS 2017/A/5392, para. 63, CAS 2018/A/5570, para. 51).

78. However, the Panel is also aware that certain CAS panels have departed from this line of cases and found that a lack of intent could theoretically be established without establishing the origin

of the prohibited substances. Nevertheless, the vast majority of these awards stressed that this would happen only in the rarest of cases. For example:

- in CAS 2016/A/4534, the CAS panel admitted *"the theoretical possibility that it might be persuaded by an athlete's simple assertion of his innocence of intent when considering not only his demeanour, but also his character and history (…). That said, such a situation would inevitably be extremely rare (…). Where an athlete cannot prove source, it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him"* (Para. 37);

- in CAS 2016/A/4676, the CAS panel found *"the factors supporting the proposition that establishment of the source of the prohibited substance in a Player's sample is not mandated in order to prove an absence of intent (para. 70) more compelling. In particular, the Panel is impressed by the fact that the UEFA ADR, based on WADC, represents a new version of an antidoping Code whose own language should be strictly construed without reference to case law which considered earlier versions where the versions are inconsistent. The relevant provisions (Article 9.01(a) and (c) UEFA ADR) do not refer to any need to establish source, in direct contrast to Articles 10.01 and 10.02 UEFA ADR combined with the definitions of No Fault or Negligence and No Significant Fault or Negligence, which expressly and specifically require to establish source. Furthermore, the Panel can envisage the theoretical possibility that it might be persuaded by a Player's simple assertion of his innocence of intent when considering not only his demeanour, but also his character and history, even if such a situation may inevitably be extremely rare"* (Para. 72).

79. This principle has been codified in the comment to Article 10.2.1.1 of the WADC which states: *"[w]hile it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance".*

80. In light of the above, the Panel admits the theoretical possibility that an athlete can establish a lack of intent without establishing the source of the prohibited substance. However, the Panel is also strongly convinced that such a burden could only be met in circumstances where an athlete can demonstrate on objective, specific and credible evidence that an intentional violation can be excluded.

81. The forgoing, in fact, does not mean that the Athlete can simply plead his lack of intent without giving any convincing explanations, to prove, by a balance of probability, that he did not engage in a conduct which he knew that there was a significant risk that said conduct might constitute or result in an ADRV and manifestly disregarded that risk. The Panel repeats that the Athlete, *"even though he is not bound to prove the source of the prohibited substance, has to show, on the basis of the objective circumstances of the ADRV and his behaviour, that specific circumstances exist disproving his intent to dope"* (CAS 2017/A/5036, para. 124).

82. That said, regarding the concept of indirect intent, the Panel notes that, even before the introduction of the legal concept of "intent" in the 2015 edition of the WADC, CAS panels already elaborated on the concept of "indirect intent" or *"dolus eventualis"* and this Panel sees no reason to deviate therefrom.

83. In particular, in CAS 2012/A/2822, the CAS panel held at para. 8.14 that *"the term 'intent' should be interpreted in a broad sense. Intent is established – of course – if the athlete knowingly ingests a prohibited substance. However, it suffices to qualify the athlete's behaviour as intentional, if the latter acts with indirect intent only, i.e., if the athlete's behaviour is primarily focused on one result, but in case a collateral result materializes, the latter would equally be accepted by the athlete. If – figuratively speaking – an athlete runs into a 'minefield' ignoring all stop signs along his way, he may well have the primary intention of getting through the 'minefield' unharmed. However, an athlete acting in such (reckless) manner somehow accepts that a certain result (i.e., adverse analytical finding) may materialize and therefore acts with (indirect) intent"* (…).

84. For the concept of indirect intent to apply, two prerequisites need to be fulfilled. First, the Appellant must have known that his conduct involved a significant risk. Second, the Athlete must have manifestly disregarded that risk. Thus, in order to rebut the presumption that he acted intentionally, the Athlete must either show (by a balance of probability) that he did not know that his conduct involved a significant risk or that he did not manifestly disregard such risk.

aa) Did the Appellant know that there was a significant risk?

85. It is well-known in the world of sport that particular care is required from an athlete when applying medications or taking medicines, because the danger of a prohibited substance entering the athlete's system is particularly high in such context, *i.e.*, significant (e.g., CAS 2020/A/7299, para. 133, CAS 2013/A/3327 & CAS 2013/A/3335, para. 75, CAS 2016/A/4609, para. 68). Accordingly, and contrary to the Appellant's argument, an athlete does not need specific anti-doping education to know that prohibited substances may enter into the athlete's system via ingestion, skin or bloodstream (CAS 2020/A/7536, para. 92).

86. The Panel notes that in the present case the Appellant has sufficient anti-doping education to know the risks associated with the use of nutritional supplements. In his Appeal Brief the Appellant admitted that he *"is extremely diligent with his training and preparation as an athlete, including his use of supplements and treatment methods"* and he is also *"aware of the dangers associated with supplements if not chosen carefully"*. Moreover, as noted by the Greek National Team's Assistant Coach in his written statement, the Athlete *"has never used any supplement that was not prescribed by his club or the national team"*.

87. Accordingly, the Panel finds it difficult to accept that the Athlete would not know that the ingestion of unlabelled and unmarked pills, said to be a *"miraculous medicine from Russia"*, and the administration of IV therapy treatments would entail a significant risk of testing positive. Especially because the IV therapy is taken by intravenous injection and, therefore, is certainly not administered inadvertently.

88. In such a context, the Appellant can rely neither (a) on the fact that Dr Gerou appeared to be a trusted and reliable source, nor (b) on the fact that, before accepting treatment from Dr Gerou the Athlete informed her that he was subject to drug testing and anti-doping rules.

89. As regards to letter (a), the Panel notes that the Athlete had no reasonable and objective basis to place his trust on Dr Gerou, given that she was merely recommended to him by several,

unspecified people, including other athletes he regularly trained with, none of whom, however, were called upon to give their testimony in the present case. Moreover, assuming that the Appellant decided to consult with Dr Gerou *"to be as prepared as possible for the upcoming season"*, it is not clear why the Athlete did not consult with the team's doctor before undergoing Dr Gerou's treatments. Moreover, with regards to letter (b), the Athlete *"cannot simply hide behind his contention that he asked [his doctors] whether the medication prescribed contained any prohibited substances and relied on their assurance that it did not"* (CAS 2016/A/4609, para. 72), especially in the present case where it is not in dispute that the Athlete did not ask the team's doctor, and where there is no corroborating evidence of the fact that the Athlete indeed asked Dr Gerou besides the Athlete's own testimony.

90. In light of the above, the Panel concludes to its comfortable satisfaction that the Athlete knew that there was a significant doping risk in the ingestion of unlabelled and unmarked pills said to be a *"miraculous medicine from Russia"* and in the administration of IV therapy treatments provided by a microbiologist and pathologist not previously known and recommended by some unspecified people, including other athletes.

bb) Did the Appellant manifestly disregard the risk?

91. In relation to the second prerequisite, *i.e.*, whether the Athlete manifestly disregard the risk, the Panel finds that, in view of the severe consequences flowing from intentional doping, such prerequisite should not be accepted lightly.

92. According to CAS 2020/A/7536, para. 94, *"(…) in order to qualify a behavior as 'intentional' the person concerned must have accepted or consented to the realization of the offence or at least accepted it for the sake of the desired goal. On the other hand, a conduct is negligent or oblivious only, if the offender does not agree with the occurrence of the offence that is recognized as possible and, in addition, credibly - not only vaguely - trusts that the offence will not materialize. Thus, in order to separate negligence from (indirect) intent one must - in particular - look at this voluntative element. Of course, such element is difficult to determine ex post. However, as a general rule one may say that the more remote the realization of the offence is in the offender's mind, the less he or she may be deemed to have accepted it and, thus, to have acted intentionally within the above meaning"*.

93. In the case at hand, the Panel finds that the Athlete manifestly disregarded a series of red flags. In particular:

(i) the fact that the pills Dr Gerou gave the Athlete were unlabelled and said to be a *"miraculous medicine from Russia"* should have warned the Athlete not to take the pills until he was certain of their content;

(ii) the nature of the intravenous infusions provided by Dr Gerou should have further warned the Athlete, especially considering that, as shown by the evidence produced by the Appellant, the IV therapy is expressly described on Dr Gerou's website as follows: *"ATHLETIC PERFORMANCE ENHANCEMENT Improve fatigue; Increased endurance during physical exercises; enhancing athletic performance; increase the strength and power of the organization; metabolism optimization; growth of hormone production; energy improvement"*;

(iii) the text messages exchanged between Dr Gerou and the Athlete show that the latter clearly feared that Dr Gerou's treatments could result in an ADRV. For example:

- When the Athlete wrote to Dr Gerou asking whether the "miraculous pills from Russia" were "ok" with the urine test the Athlete's team was about to conduct on him and Dr Gerou advised the Athlete not to take the pill the night before the test and to say beforehand that he took anti-inflammatories for 2 days because his leg hurt, the Athlete's first reaction was to ask Dr Gerou: *"is this doping?"*;

- In another text message, the Athlete sent Dr Gerou a picture of a basketball player who tested positive to a banned substance and warned Dr Gerou to *"[b]e careful not to make me like him"*.

94. More generally, the Panel also notes that the jurisprudence referred to by the Appellant is neither pertinent nor relevant in the present case. In particular, in the case at hand the Panel notes that:

(a) The Appellant did not use a supplement that happened to contain a prohibited substance, but used IV therapy treatments on at least six occasions and ingested unlabelled pills;

(b) The Appellant has failed to prove that he informed Dr Gerou of his anti-doping obligations at the outset of receiving any treatments from Dr Gerou;

(c) The Appellant trusted a microbiologist and pathologist not previously known, with no verifiable experience in sports medicine and recommended by some unspecified people;

(d) The Appellant did not consult with his team's doctor before accepting Dr Gerou's treatments;

(e) The Appellant contacted Dr Gerou also for reasons closely related to his sports career.

95. In light of the above, the Panel finds that the Athlete's behaviour was not only extremely negligent, but indeed reckless, and failed to comply with his duties as an athlete subject to the FIBA ADR. The Athlete neglected all stop signs and accepted the manifest risk that Dr Gerou's treatments could result in an ADRV.

96. Accordingly, the Panel concludes that the Athlete manifestly disregarded the significant risk that the treatments prescribed to him would result in an ADRV and, as a result, committed the ADRV with indirect intent, or at least failed do establish to the comfortable satisfaction of the Panel that the ADRV was not committed intentionally. A four-year period of ineligibility is therefore, in principle, warranted.

(b) Reduction for No Significant Fault or Negligence

97. In view of the above and as set out in Article 10.2 of the FIBA ADR, the period of ineligibility to be imposed on the Player is in principle four years, subject to potential reduction or suspension pursuant to Article 10.6 (*i.e.,* Reduction of the Period of Ineligibility based on No

Significant Fault or Negligence) or 10.7 (*i.e.,* Elimination, Reduction, or Suspension of Period of Ineligibility or other Consequences for Reasons Other than Fault).

98. Since the Panel concluded that the Athlete failed to establish that the ADRV was not committed intentionally, the assessment of whether the Athlete may or may not have had no significant fault or negligence (Article 10.6 of the FIBA ADR) in committing the ADRV becomes obsolete. In conclusion, the Panel finds that the finding that the Athlete's violation was committed intentionally excludes the possibility to eliminate the period of ineligibility based on no significant fault or negligence.

(c) Substantial Assistance

99. It is undisputed between the Parties that the Appellant is entitled to a suspension of his period of eligibility under Article 10.7.1 of the FIBA ADR in light of the charges brought against Dr Gerou and the fact that prohibited substances were seized from her possession. However, what is disputed between the Parties is the length of such suspension in consideration of the Athlete's substantial assistance provided.

100. The Appellant submits that the following reasons justify the application of the maximum suspension (75%) of his period of ineligibility: it was his first ADRV; he ingested the banned substances unintentionally; there is a lack of aggravating circumstances; he rendered substantial assistance which lead, *inter alia*, to a criminal investigation against Dr. Gerou and the seizure of other illegal substances in her house.

101. The Respondent, in turn, argues, *inter alia*, that (a) the CAS cases referred to by the Appellant are not comparable with the present case, (b) a 75% reduction shall only be applied in very exceptional circumstances, (c) the 18-month suspension granted by the FIBA AP is consistent with CAS jurisprudence.

102. By way of introduction, the Panel notes that, as affirmed by the CAS panels in CAS 2011/A/2518 (at para. 10.23) and CAS 2021/A/8296 (at para. 96), *"each case must be decided on its own facts and, although consistency (…) is a virtue, correctness remains a higher one"*.

103. That said, the criteria to be considered in the determination of the extent to which the otherwise applicable period of ineligibility may be suspended are indicated in Article 10.7.1.1 para. 2 of the FIBA ADR to be:

- the *"seriousness of the anti-doping violation"*;
- the *"significance of the Substantial Assistance provided"*; and
- *"no more than three-quarters of the otherwise applicable period of ineligibility may be suspended"*.

104. With respect to the seriousness of the violation, the Panel considers the ADRV committed by the Athlete is very serious. However, such a seriousness does not undermine or outweigh the value of the Substantial Assistance provided by the Athlete, given that (i) this is the Appellant's

first violation, and (ii) the Athlete did not commit the ADRV with direct intent, but, nonetheless, as a result of ignoring very clear warnings, which lead him to an incorrect assessment of the circumstances of the case.

105. With respect to the assessment of the significance of the Substantial Assistance, in CAS 2021/A/8296 at para. 115 the CAS panel identified the following factors as relevant:

"b. In the assessment of the importance of the Substantial Assistance:

i. the number of individuals implicated,

ii. the status of those individuals in the sport,

iii. whether a scheme of 'Trafficking' under Article 2.7 or 'Administration' under Article 2.8 of the WADC was involved,

iv. whether the violation involved a substance or method which is not readily detectible in Testing;

c. as a general matter, the earlier in the results management process the Substantial Assistance is provided, the greater the percentage of the otherwise applicable period of Ineligibility may be suspended;

d. the maximum suspension of the ineligibility period shall only be applied in very exceptional cases".

106. In the case at hand, the Panel notes that the Substantial Assistance (i) was timely provided by the Athlete (*i.e.*, less than two months after he received the notice of his positive test); (ii) concerned the practice of a doctor who used to treat a large number of athletes and, therefore, having particular responsibilities within the sports sector; (iii) allowed to uncover a complex scheme of illegal medicine trafficking.

107. Moreover, the Panel notes that the Athlete has done almost everything he could do in terms of Substantial Assistance. In particular:

(a) the Athlete filed complaints against Dr Gerou related to her administration of Metandienone before the (i) Greek Sports Prosecutor, (ii) the Greek National Anti-Doping Organisation and (iii) the Athens Medical Bar Association;

(b) as a result of the Athlete's complaints, the Greek Sports Prosecutor, the Greek National Anti-Doping Organisation and the Athens Medical Bar Association each opened an investigation into Dr Gerou's business and discovered that she was engaged in conduct that would constitute multiple anti-doping rule violations, criminal offenses and breaches of professional rules;

(c) Dr Gerou has been arrested and charged with illegal medicine trafficking, administering prohibited substances to athletes, storing and circulating illegal substances and chemicals, and obtaining false/forged pharmaceuticals;

(d) a large quantity of pharmaceutical products has been found and confiscated in Dr Gerou's home;

(e) The Athlete has fully disclosed all information he possesses regarding Dr Gerou's alleged anti-doping rule violations, and he has fully cooperated with each investigation of Dr Gerou.

(f) However, during the Hearing, the Panel was under the impression that the Athlete was in possession of more information, regarding other Athletes, which made use of the (illegal) services provided by Dr. Gerou. However, he was not willing to provide any information in this regard, which, of course, is his right.

108. In light of the above, in particular the seriousness of the ADRV committed by the Athlete and the very significant substantial assistance, the Panel finds appropriate that the otherwise applicable period of ineligibility of 4 years is suspended for a period of 32 months on the basis of the substantial assistance provided by the Athlete.

(d) Proportionality

109. The Appellant argues that the principle of proportionality should apply here as, *"should Mr Mitoglou receive a sanction longer than 12-18 months, his basketball career will likely be in jeopardy and could cost him livelihood altogether"* and relies on several CAS cases.

110. The Athlete submitted that a sanction longer than 12-18 months would likely put his basketball career in jeopardy and thus be disproportionate. Since the Panel has suspended the 48-month period of ineligibility for a period of 32 months, the effective period of ineligibility to be served by the Athlete is within the range, which the Athlete himself deems proportionate and a further assessment of the proportionality thus becomes obsolete.

111. Furthermore, the Respondent contends that the CAS cases referred to by the Appellant were rendered under 2003 and 2009 versions of the WADC and, therefore, are not applicable to the present case. Moreover, the Respondent (with references to CAS 2016/A/4534, paras. 51-52; CAS 2018/A/5546 & 5571, paras. 86-87 and SFT 4A_318_2018 of 4 March 2019, para. 4.2.4.) claims that both CAS and the Swiss Federal Tribunal have clarified that WADC's sanctioning system, upon which FIBA ADR is based, already incorporate the principle of proportionality.

112. The Panel is of the view that there is no basis for reducing the sanction further by applying the principle of proportionality. The Panel's basis for this position is that the WADC, from which the FIBA ADR is derived and on which it is based, has been found repeatedly to be proportional in its approach to sanctions (see the references mentioned above and further in CAS 2017/A/5015 & CAS 2017/A/5110 and CAS 2016/A/4643).

(e) Conclusion

113. As a result, the Panel, in the exercise of its de novo power of review of the facts and the law under Article R57 of the CAS Code, finds that the otherwise applicable period of ineligibility of

4 years to be imposed on the Athlete is suspended for a period of 32 months on the basis of the substantial assistance provided by the Athlete.

114. Therefore, and in accordance with Article 10.13.2 of the FIBA ADR, the period of ineligibility not suspended shall run from 28 March 2022 (Provisional Suspension), with credit given for the period of ineligibility already served under the Appealed Decision and will thus be concluded on 28 July 2023. Such finding corresponds to the positions submitted by the Parties.

115. As per Article 10.10 FIBA ADR, all competitive outcomes achieved by the Athlete from the positive sample collection until the start of his Provisional Suspension are disqualified, unless fairness requires otherwise. Moreover, in line with Article 10.9.3.1 of the FIBA ADR addressing multiple violations, "*Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in Article 10.10*." The Athlete admitted to first receiving IV therapy in July 2021 and did not oppose the Appealed Decision in respect of the disqualification of the results obtained by him from July 2021 until 28 March 2022. Consequently, and as there are no reasons of fairness to decide otherwise, the Panel confirms that all individual results from July 2021 until 28 March 2022 are disqualified.

116. All further or different submissions or requests of the Parties are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Konstantinos Mitoglou on 22 March 2023 against the decision issued on 6 February 2023 by FIBA Disciplinary Panel is admissible and is upheld in part.

2. The decision issued on 6 February 2023 by FIBA Disciplinary Panel is set aside.

3. Konstantinos Mitoglou is found to have committed an Anti-Doping Rule Violation under Articles 2.1 and 2.2 of the 2021 FIBA Anti-Doping Regulations.

4. Konstantinos Mitoglou is sanctioned with a period of ineligibility of 4 years.

5. Konstantinos Mitoglou's period of ineligibility is suspended for a period of 32 months on the basis of the substantial assistance provided by Konstantinos Mitoglou.

6. The period of ineligibility is deemed to have started on 28 March 2022 and concludes on 28 July 2023.

7. Konstantinos Mitoglou's results from July 2021 until 28 March 2022 are disqualified.

8. (…).

9. (…).

10. All other and further motions or prayers for relief are dismissed.