



**Arbitration CAS 2017/A/5000 Eid Mohamed Al-Suweidi v. World Anti-Doping Agency (WADA), award of 24 July 2017**

Panel: Prof. Jens Ewald (Denmark), President; Mr Fabio Iudica (Italy); Mr Alexander McLin (Switzerland)

*Handball*

*Doping (stanozolol)*

*Review of decision of suspension of Ineligibility based on Substantial Assistance*

*Criteria for the determination of the quantum of a suspension of a period of Ineligibility*

*Assessment of the seriousness of an Anti-Doping Rule Violation (ADRV)*

1. Given that art. 10.6.1 of the WADA Code leaves a discretionary power to the disciplinary body in charge of determining the *quantum* of a Substantial Assistance-related suspension of Ineligibility, a CAS panel shall exert self-restraint while reviewing said decision at appeal level and limit its amendment thereof to cases of gross and evident disproportion to the offence.
2. According to art. 10.6.1.1 of the WADA Code, 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 (ADRV) committed by an Athlete or another Person and the significance of the Substantial Assistance provided by said Athlete or other Person to the effort to eliminate doping in sport. No more than three-quarters of the otherwise applicable period of ineligibility may be suspended.
3. In the process of analysing the seriousness of one athlete's ADRV in the context of a review of the *quantum* of a Substantial Assistance-related suspension of Ineligibility, the facts that the prohibited substance giving birth to said athlete's second ADRV was the same as in his first ADRV, that his second ADRV was detected the day prior to his return to competition and that during the second ADRV proceedings, said athlete remained unable to establish how the banned substance entered his body are to be taken into consideration.

**I. PARTIES**

1. Mr Eid Mohamed Al-Suweidi (the "Player" or the "Appellant") is a professional Emirati handball player, born in Dubai (UAE) on 6 June 1986, currently registered with Al Shabab Al-Arabi, affiliated with the UAE Handball Federation.

2. The World Anti-Doping Agency (the “WADA” or the “Respondent”) is a Swiss private law Foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. The Respondent is an international independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.

## II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties’ submissions on the merits of this appeal. Additional facts and allegations found in the parties’ written submissions may be set out, where relevant, in connection with the legal discussion that follows. While the Panel 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.
4. On 16 October 2011, on the occasion of the Gulf First Sports Competition, the Player underwent an in-competition doping control. The Player tested positive for stanozolol and methenolone, two exogenous anabolic steroids (the “First Anti-Doping Rule Violation” or the “First ADRV”).
5. In its decision dated 6 January 2012, the Player was sanctioned by the Disciplinary Committee of the United Arab Emirates National Anti-Doping Organization (the “UAE NADO”) with a two-year period of ineligibility, from 29 November 2011 to 28 November 2013 (the “First Decision on the First Anti-Doping Rule Violation” or the “First Decision on the First ADRV”).
6. On 29 February 2012, the UAE NADO Disciplinary Appellate Committee reduced the period of ineligibility to one year, running from 29 November 2011 to 28 November 2012 (the “Second Decision on the First Anti-Doping Rule Violation” or the “Second Decision on the First ADRV”).
7. In its decision of 29 February 2012, the UAE NADO Disciplinary Appellate Committee stated:

*“Whereas this committee considers non-existence of the gross fault and negligence from the player side especially that he denied at the hearing on 22/11/2011 AD that he did not abuse the banned substances as well as the player declared that he took proteins and tablets for decreasing the weight only. Moreover, it is the first time that the player was imputed to this abusing such banned substances which the committee satisfied and convinced with the same”.*
8. On 29 November 2012, the Player underwent an out-of-competition doping control. The collected sample revealed the presence of stanozolol and its metabolites and therefore the Player was temporarily suspended (the “Second Anti-Doping Rule Violation” or the “Second ADRV”).
9. On 25 December 2012, a hearing was held before the UAE NADO Disciplinary Committee. In its decision of 29 April 2013, the Disciplinary Committee imposed an eight-year period of ineligibility, from 29 November 2012 to 28 November 2020 (the “Decision on the Second ADRV”).

10. On 28 June 2013, the Player filed an appeal against the UAE NADO Disciplinary Committee Decision before CAS, requesting the annulment of the appealed decision as well as a stay of execution of the decision. On 13 August 2013, the Deputy President of the CAS Appeal Division rejected the request for provisional measures made by the Player. On 20 February 2014 (cf. CAS 2013/A/3256), the CAS ruled that it had no jurisdiction to decide the appeal filed by the Player. The Disciplinary Committee Decision thus became final and binding, and the ineligibility period until 28 November 2020 was thereby confirmed.
11. On 23 November 2014, the Player wrote to the UAE NADO, asking for reconsideration of his case. In his letter, the Player, *inter alia*, submitted, that “*I really feel repentant about taking drugs and I agree to accept any punishment that the law merits*” and the Player expressed his availability to be examined again.
12. On 22 July 2015, the UAE NADO applied to WADA on the Player’s behalf for the remaining period of the sanction (more than five years) to be eliminated. In its letter, the UAE NADO stated the following:
  - “1. *The player attended various workshops with other players so as to educate the same of the risks resulting from using banned drugs. In such workshops, the player distributed copies of the regulations issued by the UAE National Anti-Doping Committee and the World Anti-Doping Agency as a way of promoting the efforts thereof (...).*
  2. *The player reported to the UAE National Anti-Doping Committee and the Department of Economic Development of Dubai Government, about one of the gymnasiums in Dubai and some individuals trading in banned drugs that include performance-enhancing substances in the United Arab Emirates. The gymnasium and individuals illegally sold such banned drugs to young Athletes and sportsmen. Accordingly, the UAE National Anti-Doping Committee in coordination with the Department of Economic Development at Dubai Municipality and the General Authority of Youth and Sports Welfare seized such banned drugs and sanctioned the gyms in breach with the following punishments:*
    - \* *A fine of AED 11000 which is equivalent to (USD 3000).*
    - \* *Closure of the gymnasium in breach.*
    - \* *Refer the case to the police authorities and then to the competent courts in the UAE so as to settle the same and render final judgments against the traders of such banned drugs and the gymnasium in breach (...).”*
13. On 19 August 2015, WADA replied to the request and requested additional information in order to complete the assessment. In particular, it required the name of the sportsmen involved in dealing banned substances, especially those who are players on UAE national teams, and the status of the disciplinary and criminal proceedings against these sportsmen.
14. On 28 January 2016, after having received additional information and documentation, WADA communicated its decision to the UAE NADO. After having reviewed the entire case file, WADA denied the Player’s request and stated that none of the period of ineligibility could be suspended. WADA emphasized, in particular, the severity of the Player’s anti-doping violations

and the fact that there was no evidence that the information provided had led to athletes to be charged with (or convicted of) anti-doping rule violations.

15. On 28 November 2016, the UAE NADO informed WADA that the Player had reported to the UAE NADO that two body builders, registered with the UAE Union of Body Building, were using doping substances. The UAE NADO enclosed the decisions sanctioning the two relevant individuals for anti-doping rule violations, and requested that WADA, once again, consider reducing or eliminating the Player's remaining period of ineligibility.
16. On 31 January 2017, after having reconsidered the Player's case and having consulted the International Handball Federation (IHF), WADA decided to suspend 18 (eighteen) months of the Player's remaining period of ineligibility. Consequently, the Player's period of ineligibility would end on 28 May 2019 instead of 28 November 2020 (the "Substantial Assistance Decision").
17. On 20 February 2017, the Player lodged an appeal with CAS against WADA's Substantial Assistance Decision.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

18. On 20 February 2017, the Appellant filed his Statement of Appeal against the WADA Substantial Assistance Decision with the Court of Arbitration for Sport (the "CAS") in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration, Edition 2017 (the "Code").
19. On 3 March 2017, upon the Appellant's request, the CAS Court Office extended the deadline to file his Appeal Brief until 23 March 2017.
20. On 9 March 2017, the Respondent nominated Mr Ken Lalo, Attorney-at-Law in Israel as arbitrator.
21. On 23 March 2017, the Appellant filed his Appeal Brief in accordance with Article R51 of the Code.
22. Subsequent to a challenge brought by the Appellant, Mr Lalo ultimately withdrew and on 31 March 2017, the Respondent nominated Mr Alexander McLin as arbitrator.
23. On 13 April 2017, the Respondent filed its Answer in accordance with Article R55 of the Code.
24. On 27 April 2017, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division, confirmed that the Panel had been constituted as follows: Mr Jens Evald, Professor of Law in Aarhus, Denmark (President of the Panel), Mr Fabio Iudica, Attorney-at-Law in Milan, Italy (nominated by the Appellant), and Mr Alexander McLin, Attorney-at-Law in Geneva, Switzerland (nominated by the Respondent).

25. On 12 May 2017, the CAS Court Office advised the parties that the Panel had deemed itself sufficiently well informed to decide the matter without the need to hold a hearing in accordance with Article R57 para. 2 of the Code.
26. In his letter dated 14 May 2017, the Appellant *“retains necessary to reply to the respondent’s submissions contained in the answer dated 13 April 2017 and, for this reason, in respect of the right of defence, it kindly asks the Panel to grant a second round of written submissions”*.
27. In its letter dated 14 May 2017, the Panel invited the Respondent to file its position regarding the Appellant’s request to be granted a second round of written submissions no later than 19 May 2017.
28. In its letter dated 16 May 2017, the Respondent accepted a second round of submissions provided that the Appellant’s reply was limited to responding to WADA’s Answer (as opposed to advancing new arguments and/or evidence) and WADA was given a reasonable deadline to respond to such reply. In its letter, the Respondent further stated, that if the request for a second round of written submissions was maintained, WADA *“will be required to incur yet further expense; this should be taken into account when assessing the question of costs”*.
29. In its letter dated 18 May 2017, the Panel informed the Parties that before deciding to grant (or not) a second round of submissions, the Panel wished to hear from the Parties about (i) the jurisdiction of the CAS in the matter at hand and (ii) whether the Appellant should be considered an “International-Level Athlete” within the meaning of the World Anti-Doping Code (“WADA Code” or “WADC”). The Parties were invited to file their submissions in this regard within seven (7) days.
30. In its letter dated 26 May 2017, the CAS Court Office acknowledged receipt of the Appellant’s email of 25 May 2017 and the Respondent’s letter of 26 May 2017 enclosing their comments with regard to CAS jurisdiction in the present case and with respect to whether the Appellant should be considered an International-Level Athlete.
31. In its letter dated 18 May 2017, the Panel notified the Parties, of its decision to grant a second round of written submissions pursuant to Article R56 para. 1 of the Code. Consequently, the Appellant was invited, no later than 6 June 2017, to file a reply strictly limited to the Respondent’s Answer dated 13 April 2017. Furthermore, the Appellant was requested to summarize his assertions. The Parties were informed that upon receipt of the Appellant’s reply, the Respondent would benefit from the same time limit to file its rejoinder.
32. In its letter dated 7 June 2017, the CAS Court Office acknowledged receipt of the Appellant’s reply dated 6 June 2017 and invited the Respondent to file its rejoinder no later than 14 June 2017.
33. In its letter to the Parties of 12 June 2017, the CAS Court Office acknowledged receipt of the Respondent’s rejoinder dated 9 June 2017.

34. On 26 June 2017, the CAS Court Office forwarded the Order of Procedure to the Parties.
35. On 2 and, respectively, 3 July 2017, the Parties returned duly signed copies of the Order of Procedure to the CAS Court Office, confirming the jurisdiction of the CAS.

#### IV. PARTIES' SUBMISSIONS

##### A. The Appellant's submission

36. The Appellant's submissions, in essence, may be summarized as follows:
  - WADA's Substantial Assistance Decision to suspend eighteen months of the Appellant's remaining period of ineligibility is erroneous.
  - The Appellant's remaining period of ineligibility must be evaluated pursuant to the following three aspects: (i) the seriousness of the Appellant's doping violation, (ii) the nature of the information provided by the Appellant, and (iii) the relevance of the substantial assistance.
  - As to the seriousness of the Appellant's First ADRV, it is necessary to consider the type of violation committed by the Appellant and that the UAE NADO Disciplinary Appellate Committee considered that the Appellant bore "No Significant Fault or Negligence" and reduced the period of ineligibility to one-half the period of ineligibility otherwise applicable.
  - As to the seriousness of the Appellant's Second ADRV, "*it is crystal clear* that [the sanction of 8 (eight) years' ineligibility imposed on the Appellant] *is not correct*." In fact, in determining the sanction for the second violation, the Disciplinary Committee of the UAE NADO should have taken into consideration the nature and kind of the first one. Therefore, if the UAE NADO Disciplinary Commission had applied the correct range, the sanction would have been 6 (six) years of ineligibility.
  - An Athlete who is serving a sanction imposed on the basis of the previous WADA Code may ask for the reconsideration of his ineligibility period in the light of the 2015 WADA Code. Pursuant to Article 10.7.1, lit. c) of the 2015 WADA Code, the Appellant's period of ineligibility would have already expired.
  - The Appellant is serving the same sanction as Athletes who committed two ADRVs with significant fault and "*This is a clear violation of the principle of equality at the Appellant's expenses*" and a "*clear abuse on the Player with violation of the principle of equal treatment*".
  - As to the nature of the information provided, the Appellant attended various workshops with other players so as to educate them of the risks resulting from using banned drugs and the Appellant distributed copies of the regulation issued by the UAE NADO and WADA. Furthermore, the Appellant reported to the UAE NADO about a gymnasium

in Dubai trading banned substances, including the names of the two body builders involved.

- As to the relevance of the substantial assistance of the Appellant's information, it led to the following outcomes: (i) seizure of banned and performance-enhancing drugs (anabolic agents and growth hormone), (ii) closure of the gym in breach of the law, as well a 3,000 USD fine, and (iii) the referral of the case to law enforcement authorities and to the competent court to render final judgments against the dealers and the owner of the gym.
- With respect to the two body builders, they both tested positive for prohibited substances (anabolic steroids), and each of them was sanctioned with four years of ineligibility by the UAE NADO Disciplinary Committee.
- In brief, it is clear that the period of the suspension is measured taking into consideration the seriousness of the violation, the value of the substantial assistance provided and the sanction to be served. Considering these criteria, as well as the fact that the sanction of eight years imposed on the Appellant does not reflect the extent of the Appellant's guilt, the suspension of the totality of the period of ineligibility is the appropriate measure to be taken by the Panel.

37. The Appellant makes the following requests for relief, asking the CAS:

- “i. To uphold the appeal filed by [the Appellant] against the decision passed by Wada dated 31<sup>st</sup> January 2017.*
- ii. To set aside the decision of WADA dated 31<sup>st</sup> January 2017.*
- iii. To suspend the totality of the period of ineligibility that [the Appellant] is currently serving, or, in alternative, to reduce the period of ineligibility or to suspend the ineligibility for a period of more than eighteen months.*
- iv. To condemn WADA to pay all the legal costs and the fees borne by the Appellant in the present proceeding”.*

## **B. The Respondent's submissions**

38. The Respondent's submissions, in essence, may be summarized as follows:

- WADA's Substantial Assistance Decision to reduce the Appellant's period of ineligibility by 18 (eighteen) months was a generous (if not to say overly generous) one.
- The two criteria for a reduction of sanction in connection with Substantial Assistance are (i) the seriousness of the violation and (ii) the significance of the assistance in the effort to eliminate doping in sport.

- As to the seriousness of the violation, the Appellant tested positive for a powerful steroid (stanozolol) for which he had already tested positive in the past and shortly before his scheduled return to competition (when he should be at his most vigilant). Whatever the Appellant now says, he previously wrote that he was “*repentant about taking drugs*”.
- The Appellant makes a number of (flawed) arguments in an attempt to detract from the seriousness of the ADRV. Firstly, he seeks to derive some benefit as a result of the finding, on appeal, that he bore “No Significant Fault” in respect of the first ADRV. Secondly, the Appellant argues that the UAE NADO erred by imposing an eight-year period of ineligibility on him as the correct ineligibility period would have been 6 years. This rationale is wrong. In short, the starting point for the consideration of any suspension of the sanction is 8 years and any attempt to re-litigate the Decision on the Second ADRV is illegitimate.
- The Respondent wishes to underline in the strongest terms that it is illegitimate to use an appeal against a Substantial Assistance suspension to re-litigate final and binding sanctions.
- The Appellant made a similar illegitimate attempt to introduce an argument based on *lex mitior*. The *lex mitior* argument is flawed for all manner of procedural and substantive reasons.
- As to procedural reasons, the *lex mitior* argument has, *inter alia*, nothing to do with the Substantial Assistance Decision and is, therefore outside the scope of these appeal proceedings. As to the substantive reasons, the argument is flawed on the merits, *inter alia*, as the second ADRV under the 2015 WADA Code would have attracted a 4-year sanction (as an intentional violation), meaning that the applicable sanction would be 8 years. If the 2015 WADA Code is to be applied *lex mitior*, then it must be applied in its entirety.
- As to the significance of the assistance, the Emirates Bodybuilding Federation has confirmed that the two bodybuilders who were sanctioned further to the assistance provided by the Appellant competed only at a local level. In fact, it would appear that both these athletes have only ever competed in one competition in 2015. The Appellant’s assistance therefore resulted in the conviction of two low-level athletes who had hardly competed and in a non-Olympic sport that is rife with doping. This is unlikely to significantly advance the fight against doping in sport.
- Given that a reduction of 18 months is one of the most significant suspensions (of an eligibility period) that has been handed down in connection with Substantial Assistance and viewed against the background of CAS practice (see CAS 2011/A/2678 and CAS 2012/A/2791), the suspension of 18 months can certainly not be characterized as too low.

- In any event, it must be recalled that decisions with respect to Substantial Assistance are discretionary ones that should only be interfered with in the event that they are grossly and manifestly wrong (see CAS 2009/A/1817 & CAS 2009/A/1844 paras. 173 and 174 and, more recently, CAS 2016/A/4615).

39. The Respondent makes the following request for relief, asking the CAS:

- I. *The Appeal filed by [the Appellant] is dismissed.*
- II. *The World Anti-Doping Agency is granted an award for costs”.*

## V. JURISDICTION AND ADMISSIBILITY

40. Article R47 of the Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with 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”.*

41. The jurisdiction of the CAS, which is not disputed, derives from Article 13.2 of the WADA Code that provides for a right to appeal to the CAS “*a decision to suspend, or not suspend, a period of Ineligibility*”, and as confirmed by the Parties agreement on jurisdiction specified inside the signed Order of Procedure signed on 2 July 2017 by the Appellant and on 3 July 2017 by the Respondent.

42. In addition, the Order of Procedure contained the following language:

*“Moreover, the Parties independently and specifically confirm their intent to submit this dispute to the CAS further to the Code, notwithstanding any possible limitations thereto in Article R47 of the Code”.*

43. It follows that the CAS has jurisdiction to adjudicate on and decide the present dispute.

44. The appeal was filed within the 21 days set by Article 13.2.3 of the WADA Code. The appeal complied with all other requirements of Article R47 of the Code including the payment of the CAS Court Office fee.

45. It follows that the appeal is admissible.

## VI. APPLICABLE LAW

46. Article R58 of the Code provides the following:

*“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 the law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

47. In accordance with R58 of the Code, the applicable regulations in this case are the WADA Code and, subsidiarily Swiss Law.

## **VII. MERITS**

48. The Panel will address the issues as follows:

- A. Legal framework
- B. Seriousness of the ADRV
- C. The value of the substantial assistance provided
- D. The Panel’s conclusions

### **A. Legal framework**

49. The main relevant rule in this case is Article 10.6.1.1 of the 2015 WADA Code that provides the following:

*“(…) 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. No more than three-quarters of the otherwise applicable period of Ineligibility may be suspended (…).”*

50. The commentary of Article 10.6.1 of the 2015 WADA Code provides as follows:

*“The cooperation of Athletes, Athlete Support Personnel and other Persons who acknowledged their mistakes and are willing to bring other anti-doping rule violations to light is important to clean sport. This is the only circumstance under the Code where the suspension of an otherwise applicable period of Ineligibility is authorized”.*

51. The 2015 WADA Code, Appendix 1 defines Substantial Assistance as follows:

*“Substantial Assistance: For purposes of Article 10.6.1 a Person providing Substantial Assistance must: (1) fully disclose in a signed written statement all information he or she possesses in relation to anti-doping rule violations, and (2) fully cooperate with the investigation and adjudication of any case related to that information, including, for example, presenting testimony at a hearing if requested to do so by an Anti-Doping Organization or hearing panel. Further, the information provided must be credible and must comprise*

*an important part of any case which is initiated or, if no case is initiated, must have provided a sufficient basis on which a case could have been brought”.*

52. The WADA 2015 World Anti-Doping Organizations Reference Guide (section 10.4 “Substantial Assistance”) provides the following guidance:

*“The language of what qualifies as ‘substantial assistance’ has been expanded in Code Article 10.6. WADA now has authority to assure that for an athlete or another person giving such assistance, an agreed-upon reduction cannot be challenged on appeal.*

*.Also, in appropriate circumstances, the disclosure of such ‘substantial assistance’ may be limited or delayed. And, in exceptional circumstances, WADA may approve an agreement that provides for no period of ineligibility. In any event, for assistance provided to a criminal or disciplinary body to result in substantial assistance treatment under the Code, the information must be made available to the ADO with RMA”.*

53. The Panel finds that in the determination of a suspension under Article 10.6.1 of the WADA Code, the disciplinary body enjoys a discretionary power (cf. CAS 2009/A/1817 & 1844 at para. 67). The Panel in this case agrees with well-established CAS practice as outlined by the Panel in CAS 2009/A/1817 & 1844 at para. 68 that *“the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see, e.g. the awards of: 24 March 2005, CAS 2004/A/690, § 86; 15 July 2007, CAS 2005/A/830, § 10.26; 26 June 2007, 2006/A/1175, § 90; and the advisory opinion of 21 April 2006, CAS 2005/C/976 & 986, § 143)”.*
54. Even though the Panel retains the full power to review the factual and legal aspects involved in this case, it will in alignment with the well-established CAS practice, exert self-restraint in reviewing the reduction of 18 months handed down by WADA to the Appellant in connection with Substantial Assistance. Accordingly, this Panel will only reassess the period of reduction if WADA’s Substantial Assistance Decision is evidently and grossly disproportionate to the offence.

## **B. Seriousness of the ADRV**

55. As a preliminary matter, the Panel notes that the WADA Substantial Assistance Decision concerns the Appellant’s Second ADRV and it is therefore the seriousness of the Second ADRV that is relevant in this case. It therefore follows that the Appellant’s First ADRV is of no pertinence to the case at hand.
56. The Appellant holds the position, that the UAE NADO Disciplinary Committee erred by imposing an eight-year period of ineligibility on the Appellant as he committed a standard violation after having already committed an ADRV with No Significant Fault, the applicable range under Article 10.7 of the 2009 WADA was 6-8 years, and the correct ineligibility period would have been 6 years.

57. The Respondent contends that the sanction imposed for the Second ADRV has become final and binding and may not be re-litigated, “*Even assuming that the UAE NADO might have been minded to apply a lesser sanction, the fact is that they did not do so. They imposed an eight year sanction that was compatible with the WADC*”.
58. The Panel concludes that it will refrain from entering into more detail in respect of the contentions and assertions expressed by the Appellant that the UAE NADO Disciplinary Committee erred by imposing an eight year-period of ineligibility on the Appellant. The Panel considers this approach to be justified because the sanction imposed by the UAE NADO Disciplinary Committee for the Second ADRV has become final and binding. According to the principle of *res judicata* defined by Swiss Law and jurisprudence, once a cause of action has been litigated, it may not be re-litigated (cf. CAS 2015/A/4026-4033 at paras. 44-54).
59. The Appellant further argues that “*an athlete who is serving a sanction imposed on the basis of the previous WADA Code may ask for the reconsideration of his ineligibility period in the light of the WADA Code 2015*”. The Appellant submits that, as the Second ADRV would have attracted a lesser sanction under the 2015 WADC, he could now benefit from that lesser sanction. The applicable sanction under the 2015 WADA Code would be four years, which would already have expired.
60. The Respondent argues, *inter alia*, that the *lex mitior* argument has nothing to do with the Substantial Assistance Decision and is, therefore outside the scope of the present case. The Respondent contends that if the Appellant had been sanctioned under the 2015 WADA Code the applicable sanction would have been eight years based on Article 10.7.1 (c). The Respondent states, that the Appellant appears to be arguing that, if one assessed the Second ADRV (in isolation) under the 2009 WADA Code (which might potentially only give rise to a two-year sanction), the applicable sanction under the multiple violation provisions in the 2015 WADA Code might potentially only be four years. The Respondent argues that “*cherry picking*” of the two different versions of the WADA Code is not possible and if the 2015 WADA Code is to be applied, then it must be applied in its entirety.
61. The Panel finds that the Appellant’s *lex mitior* argument is of no pertinence to the Substantial Assistance Decision as the applicable rule in the present case is Article 10.6.1.1 of the 2015 WADA Code (as opposed to Article 10.5.3 of the 2009 WADA Code). If the Panel were to follow the assertions made by the Appellant on *lex mitior*, it would inevitably have to review the UAE NADO Disciplinary Committee Decision on the Appellant’s Second ADRV. The Panel reiterates that it will not re-litigate the UAE NADO Disciplinary Committee Decision on the Appellant’s Second ADRV. In any event, it finds that the Appellant’s assertion that the Second ADRV would have attracted a lesser sanction under the 2015 WADC to be purely speculative.
62. The Panel finds that the Appellant’s Second ADRV is very serious as it involves anabolic steroids (stanozolol), the same substance taken previously by the Appellant. The Panel notes that the steroid was detected on the eve of the Appellant’s return to competition. The Respondent asserts that the Appellant admitted that he took stanozolol deliberately and that the Second ADRV therefore is a case of deliberate, recidivist doping. The Appellant contends that he asked to be submitted to an anti-doping test in order to be allowed to compete again

therefore it would be completely illogical for him to have intentionally used banned substances. The Panel finds that the Appellant's explanation lacks credibility, especially as it has no evidentiary basis, and as the Appellant has not established how the substance entered his body.

### **C. The value of the substantial assistance provided**

63. The Panel notes that the factual background for the assistance provided by the Appellant is undisputed. The Parties disagree on the relevance and value of the Substantial Assistance Provided.
64. The Appellant contends that the relevance of his Substantial Assistance ((i) seizure of banned drugs, (ii) the closure of the gymnasium in breach of the law, as well as a 3,000 USD fine, and (iii) the referral of the case of the two body builders to the competent court) balanced with the seriousness of the anti-doping violations, considering that the disqualification does not reflect the real event and does not respect the principle of proportionality, justifies the suspension of the totality of the period of ineligibility that the Appellant is currently serving.
65. The Respondent argues, *inter alia*, that the two body builders who were sanctioned further to the assistance provided by the Appellant competed only at local level. The Appellant's assistance therefore resulted only in the conviction of two low-level athletes who had hardly competed in a non-Olympic sport that is rife with doping, which is unlikely to significantly advance the fight against doping in sport.
66. Both Parties rely, *inter alia*, on CAS 2011/A/2678, that provides a summary of many of the CAS Awards on Substantial Assistance. The summary outlined by the Sole Arbitrator in the mentioned CAS Award provides the Panel in this case with a general view of cases on suspension of the period of ineligibility. The Panel notes that in all the cases mentioned, the suspension of the period of ineligibility was between three and six months. The Panel further notes, that the Sole Arbitrator in CAS 2011/A/2678 states the "*even if the Athlete had been found to have given Substantial Assistance, past CAS decisions in this area suggest that a one-year reduction would have been excessive*". More recent CAS Awards align with this practice, e.g. CAS 2012/A/2791, where the athlete received a 6-month reduction for providing the principal evidence that was relied upon in order to prosecute the Vice-President of the Malaysian Athletics Federation for being involved in doping practices.
67. The Panel acknowledges that the Appellant has been found to have given Substantial Assistance, but in the light of the above-mentioned CAS cases, the Panel finds that it would be disproportionate to suspend the totality of the period of ineligibility that the Appellant is currently serving or to suspend the ineligibility period for a period of more than 18 (eighteen) months.

### **D. The Panel's conclusions**

68. After considering the submissions of the Parties, the Panel is not persuaded that the WADA Substantial Assistance Decision is evidently and grossly disproportionate to the Appellant's

offence, or that it violated the principle of equal treatment. On the contrary, considering the Parties submissions and viewed against the background of CAS practice, the Panel finds that the suspension of 18 months of the Athlete's ineligibility period can only be characterized as generous.

69. The Panel has accordingly decided to dismiss the appeal.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed on 20 February 2017 by Mr Eid Mohamed Al-Suweidi against the decision issued by the World Anti-Doping Agency on 31 January 2017 is dismissed.
2. The decision rendered by the World Anti-Doping Agency on 31 January 2017 is confirmed.
3. (...).
4. (...).
5. All further and other requests for relief are dismissed.