Arbitration CAS 2015/A/4215 Fédération Internationale de Football Association (FIFA) v. Korea Football Association (KFA) & Kang Soo Il, award of 29 June 2016

Panel: Mr Rui Botica Santos (Portugal), President; Mr Efraim Barak (Israel); Mr Peter van Minnen (the Netherlands)

Football
Doping (methyltestosterone)
CAS jurisdiction
Admissibility of a cross or subsequent appeal
Notion of contaminated product
Determination of the applicable sanction for a non-specified substance
Burden of proof regarding the establishment of the absence of significant fault
Absence of reduction of a sanction on grounds of "prompt admission"

1. **According to FIFA ADR, FIFA has an option of filing a direct appeal to the CAS against any anti-doping rule violation decision rendered at national level without necessarily having to first exhaust the remedies available at the relevant National Anti-Doping organisation if no other party has appealed the said decision. This is regardless of whether or not the player in question is an international-level player.**

2. **Article 75.4 in the FIFA ADR (like Article 13.2.4 in the 2015 WADA Code) does not establish a right of a party to submit a cross appeal within the answer. These regulations respect and adopt the change that was made against the 2010 edition of the CAS Code which no longer allows a counter or cross appeal to be submitted as part of the answer. Instead, under these new provisions, a party wishing to challenge a decision is obliged to file a separate, independent appeal within the time limits stipulated in the CAS Code. So Article 75.4 FIFA ADR do nothing more than extend the time period in which a party to a doping appeal may file a cross appeal (or any subsequent appeal). In such cases, the time limit for a party to submit its cross or subsequent appeal is extended until the moment it submits the answer. This time limit can thus be longer than the normal filing period of 21 days. This possibility is perfectly in line with Article R49 of the CAS Code which gives preference to the time-limits set forth in a federation's regulations. The standard 21-day deadline remains the default situation otherwise. In addition, any cross appeal must specifically comply with the usual procedural requirements set forth under Article R47 *et seq* of the Code.**

3. **Pursuant to the FIFA ADR, a contaminated product is one which contains a prohibited substance that is not disclosed on the product label or in information available in a reasonable internet search. In this regard, the fact that the ingredients are written in a language unfamiliar to a player does not take away the fact that the contents of the product are clearly disclosed on the product label as required by the FIFA ADR.**

4. Subject to the player establishing the existence of circumstances warranting a reduction or elimination of the period of ineligibility, the maximum ineligibility period applicable for the non-intentional use of a non-specified substance is 2 years as provided for under the FIFA ADR.

5. As the party claiming not to have been significantly at fault or negligent, a player bears the burden of proof which, in accordance with the FIFA ADR is on a *"balance of probability"*. The totality of the circumstances vis-à-vis the criteria for No Fault or Negligence to establish whether the player's fault was not significant in comparison to the anti-doping rule violation must be considered. Notably the fact that the player did exercise utmost caution to avoid the use of a prohibited substance is relevant. In this respect, lack of knowledge of a foreign ingredient label should heighten a player's duty to investigate the substances contained therein and proceed to have such ingredient translated before using the product. The lack of evidence that the player made such efforts suggests negligence on his part and therefore excludes a reduction of the otherwise applicable sanction based on no significant fault or negligence.

6. No grounds exists for reducing the maximum 2-year period of ineligibility on the grounds of prompt admission. In this respect, the FIFA ADR is only applicable to players who are otherwise liable to the maximum 4 year ineligibility period.

I. THE PARTIES

1. Fédération Internationale de Football Association (the "Appellant" or "FIFA") is an international association of national and international football associations/federations, and is the governing body of football worldwide. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players belonging to its affiliates. Its seat is in Zurich, Switzerland and has legal personality under Swiss law.

2. The Korea Football Association (the "First Respondent" or the "KFA") is the governing body of football in the Republic of Korea. It is a member of FIFA and of the Asian Football Confederation (the "AFC"), the governing body of Asian football and one of the six Confederations recognized by FIFA.

3. Kang Soo Il (the "Second Respondent" or the "Player") is a South Korean professional football player. He currently plays for Jeju United Football Club ("Jeju United"), a South Korean professional football club affiliated to the KFA.

II. FACTUAL BACKGROUND

4. This matter is related to an appeal filed by FIFA against the decision rendered by the 5th Disciplinary Committee of the KFA (the "KFA Disciplinary Committee") on 12 August 2015 (the "Appealed Decision"). The grounds of the Appealed Decision were notified to the Appellant and translated into the English language on 3 September 2015 by means of an email from the AFC.

5. The facts leading to the present arbitration as presented by the Parties can be summarized as follows.

A. The Player's Social and Racial Background

6. The Player is of a multi-racial background. His mother is Korean and father African American. As a result of his mixed race, the Player lacked an ability to naturally grow facial hair (for example, his left eyebrow was two thirds shorter than his right). This, he claims, made him the subject of ridicule and discrimination among the South Korean people, thereby affecting his self-esteem and causing him mental distress.

7. With a view towards growing facial hair, he sought advice from his long term and trusted friend Lee Sang Kyu ("Lee"). Lee recommended the Player to use a product called Microgen, a creamy substance that was packed in a tube and applied by rubbing onto the body. Lee told the Player that he used the cream and it was very effective. Lee already had a Microgen tube open (which he was using) and gave it to the Player, who then proceeded to apply small portions of the product on his body. The tube carrying the Microgen contained product information in the Japanese language regarding its ingredients, among other things Methyltestosterone and testosterone propionate.

B. The Anti-Doping Control Undertaken on the Player and the Proceedings within the "K-League"

8. The Korean Professional Football League (the "K-League") is Korea's professional association football league and is affiliated with the KFA. On 5 May 2015, following a K-League match between Jeju United and Ulsan FC, the Player was subjected to an in-competition anti-doping control conducted by K-League anti-doping officers. His urine sample was sent for analysis to the Doping Control Centre in the Korea Institute of Science and Technology (the "Korean Doping Control Centre"), a doping control centre accredited by the World Anti-Doping Agency (the "WADA").

9. On 10 June 2015, the Korean Doping Control Centre reported an adverse analytical finding for the presence of the Methyltestosterone metabolite ("Methyltestosterone"). Methyltestosterone is an anabolic agent classified under S1 of the 2015 WADA Prohibited List and is defined thereunder as a non-specified substance.

10. On 11 June 2015, the Player was notified of the results of the doping control test. He did not request an analysis of his B Sample. On the same date, he was immediately provisionally suspended by the K-League pending the hearing and determination of his case by the league.

11. On 22 June 2015, the 5th Disciplinary Committee of the K-League held a disciplinary hearing and rendered its decision (the "K-League Decision") sanctioning the Player with a 15-match ban from playing in any K-League competition.

12. On 23 June 2015, the AFC wrote to the KFA requesting among others, a copy of the K-League Decision. It further informed the KFA that the AFC had the right to appeal the K-league Decision to the Court of Arbitration for Sport (the "CAS") to the extent no other party appealed the final decision of the relevant competent decision making body. FIFA was copied to the letter.

C. The KFA Disciplinary Committee Proceedings

13. In a letter mistakenly dated 25 July 2015[1], the KFA wrote to the AFC enclosing a letter confirming the K-League Decision. The KFA also informed the AFC that the KFA Disciplinary Committee would sit in mid-July to decide whether any further disciplinary sanctions ought to be taken on the Player in light of the K-League Decision. On the same date, the KFA also furnished the AFC with a copy of the K-League Decision in its original Korean version. The aforementioned letter read, *inter alia*, as follows:

> *Please note the decision of KFA will be notified to you upon the result of the KFA Disciplinary Committee which is scheduled to take place in mid-July. As such, the 15 match suspension issued by the K League is pertinent to league games only and we can also confirm that no appeal has been lodged by any party in relation to the sanction. Any further disciplinary decisions including extending sanctions to have effect at confederation level in accordance with Article 136 of the AFC Disciplinary Code will be informed to you after the KFA Disciplinary Committee.*

14. In a letter dated 29 June 2015, copied to FIFA, the AFC asked the KFA to send an English translation of the K-League Decision.

15. On 7 July 2015, the KFA sent an English translation of the K-League Decision to the AFC.

16. On 29 July 2015, the KFA informed the AFC that *"due to unforeseen circumstances"*, the KFA Disciplinary Committee had postponed its sitting to the middle of August 2015.

17. On 11 August 2015, the Player, through Jeju United, received a notice from the KFA that the KFA Disciplinary Committee would hear the matter on 12 August 2015.

[1] It is understood that such letter was intended to bear the date 25 June 2015.

18. On 12 August 2015, the KFA Disciplinary Committee convened with a view to reviewing the Player's status. In his defence, the Player who attended the hearing, submitted that:

    a) He resorted to using a hair growth substance called Microgen which was given to him by Lee in order to fend off discrimination he suffered from the *"Korean society, whom he said would constantly ridicule him for lacking facial hair as a result of his multi-racial genes"*;

    b) He could not understand the information/contents of the Microgen as engraved in the tube therein due to the relatively sophisticated Japanese language used;

    c) An internet search proved to be difficult in revealing any information that could raise an alarm regarding any suspicious contents or contaminated products inside the Microgen cream; and

    d) He consulted his club's medical department on a regular basis with a view to ensuring that he was not using any prohibited substances. There was no intentional negligence on his part.

19. Upon hearing the matter, the KFA Disciplinary Committee rendered the Appealed Decision on the same date and held as follows:

    The disciplinary committee has reached the decision to change the original 15 match suspension sanctioned by the Korea Professional Football League (K-League) to a 6 month suspension in accordance with the FIFA Anti-Doping Regulations (the FIFA ADR) for the player.

20. The 6-month suspension was based on the following grounds:

    a) The Player was not significantly at fault or negligent. He had used a substance that came from a contaminated product and was therefore entitled to a reduction of the otherwise applicable sanction of 2 years as established under Article 22.1 (b) of the FIFA Anti-Doping Regulations (the "FIFA ADR");

    b) The Player had promptly admitted to the offence, thereby allowing the reduction of his ineligibility period in accordance with Article 22.3 of the FIFA ADR;

    c) The general Korean public and footballers at large are unaware that products applied to their bodies in the form of cream or lotions could contain banned substances;

    d) It was difficult for the Player or any ordinary person who does not read and understand Japanese to read and understand the contents inscribed on the tube carrying the Microgen tube;

    e) An internet search revealed little information on the contents of the Microgen tube and it was thus difficult for the Player to verify whether it was contaminated;

    f) At the time of the doping test, the Player by himself informed the anti-doping officials that he was applying a cream, named Microgen, on his body. He admitted the offence and did not ask to examine the B sample; and

g) The Player did not intend to commit an anti-doping rule violation. He used the substance in small portions and frequently visited the team's doctor to make sure his diet and any other medication he took did not contain banned substances.

21. On 28 August 2015, the KFA sent a copy of the Appealed Decision to the AFC.

22. On 2 September 2015, the AFC wrote to the KFA acknowledging receipt of the Appealed Decision and copied FIFA in the said correspondence.

23. On 3 September 2015, the AFC sent a copy of the Appealed Decision to FIFA.

III. THE PROCEEDINGS BEFORE THE COURT OF ABITRATION FOR SPORT

24. On 23 September 2015, the Appellant filed its Statement of Appeal dated 14 April 2015 before the CAS pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code"). The Appellant nominated Mr. Efraim Barak, attorney-at-law, in Tel Aviv, Israel, as arbitrator.

25. In letters respectively dated 7 and 8 October 2015, the Respondents jointly nominated Mr. Peter van Minnen, attorney-at-law in Schoonhoven, the Netherlands, as arbitrator.

26. On 8 October 2015, the Appellant filed its Appeal Brief together with documents and evidence it intended to rely on. In its submissions, the Appellant reserved the right to supplement its arguments by replying to any issues which the Respondents might raise in their Answers and which issues the Appellant may not have been foreseen in the Appeal Brief.

27. On 30 October 2015, the First Respondent filed its Answer together with the exhibits it intended to rely on.

28. On 6 November 2015, the Second Respondent filed his Answer together with the exhibits he intended to rely on and *inter alia*, objected to the CAS jurisdiction and the admissibility of the appeal.

29. On 30 November 2015, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel had been constituted as follows:

President:	Mr. Rui Botica Santos, attorney-at-law, Lisbon, Portugal
Arbitrators:	Mr. Efraim Barak, attorney-at-law, in Tel Aviv, Israel
	Mr. Peter van Minnen, attorney-at-law in Schoonhoven, the Netherlands

30. On 22 December 2015, at the permission of the Panel, the Appellant filed its supplementary submissions.

31. On 29 December 2015, the Second Respondent filed its reply to the Appellant's supplementary submissions. The First Respondent did not respond to the Panel's invitation to reply to the Appellant's supplementary submissions.

32. On 5 January 2016, the CAS Court Office issued an Order of Procedure, which was duly signed by the Parties.

33. On 5 February 2016, the hearing was held at the CAS Alternative Hearing Centre in Shanghai, China. At the outset of the hearing, all Parties confirmed that they had no objection to the composition of the Panel.

34. At the hearing, the Panel was assisted by Mr. Brent J. Nowicki, Counsel to the CAS. In addition, the following persons (including witnesses) attended the hearing:

For the Appellant (by video conference)

- Dr. Martin Vaso, FIFA Head of Medicine and Science
- Dr. Volker Hesse, FIFA Legal Counsel,
- Mr. Alexis Weber, FIFA Medical Office Manager

For the First Respondent

- Mr. Youn Jun Park, KFA Official
- Mr. Taenam Jung, KFA Official
- Mr. Jung Joe Lee, KFA Legal Counsel
- Mr. Hokwong Jang, a K-League official attending as an observer

For the Second Respondent

- Mr. Myung Hoon Choo, Mr. Timothy Dickens, Mr. Jungdong Kim, and Ms. Kyeong (Catherine) Kim, Legal Counsel with DR & AJU International Law Group LLC, Seoul, Republic of Korea
- Mr. Kang Soo Il
- Ms. Gui Ying Xuan, translator

35. At the end of the hearing, the Parties stated that they were satisfied with the manner in which the hearing had been conducted and that their right to be heard had been respected. The Panel also invited the Parties to explore the possibilities of reaching an out of court settlement.

36. On 15 February 2016, the Second Respondent informed the CAS Court Office that the Parties had been unable to reach a settlement.

IV. THE PARTIES' RESPECTIVE POSITIONS

37. Below is a summary of the facts and allegations raised by the Parties. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

A. The primary submissions

a) The Appellant's Submissions

38. It is the Appellant's position that the Second Respondent committed an anti-doping rule violation for which he should be declared ineligible from taking part in active sports for a period of 2 years in accordance with Article 19.1 of the FIFA ADR as read together with Article 19.2. The Appellant reiterates that no grounds exist for reducing this period of ineligibility and the KFA Disciplinary Committee erred to this effect.

39. The Appellant's submissions can in essence be summarized as follows:

aa) CAS Jurisdiction

40. FIFA states that the CAS jurisdiction derives from Article 67.5 of the FIFA Statutes and Articles 75.1 and 81 of the FIFA ADR, which respectively state as follows:

Article 67.5 FIFA Statutes:

"FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by the Confederations, Members or Leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations".

Article 75.1 of the FIFA ADR:

"In cases arising from participation in an International Competition or in cases involving International-Level Players, a final decision within FIFA's, the Confederation's or the Association's process may be appealed exclusively to CAS".

Article 81 of the FIFA ADR:

"Where FIFA has a right to appeal under this chapter and no other party has appealed a final decision within the Anti-Doping Organisation's process, FIFA may appeal such a decision directly to CAS without having to exhaust other remedies in the Anti-Doping Organisation process".

41. According to FIFA, the Second Respondent is an international-level player within the meaning of the definitions of the FIFA ADR. He regularly featured in competitions organised by the AFC in the 2014-2015 season and was particularly:

a) Fielded by his then club Pohang Steelers in a 2014 AFC Champions League match against FC Seoul on 20 August 2014;

b) In the preliminary although not final register of the players registered by the KFA for the 2015 AFC Asian Cup Australia; and

c) In the preliminary register of the KFA's joint preliminary qualification FIFA world cup Russia 2018 and AFC Asian Cup UAE 2019 squad although he had not taken part in any matches.

42. Therefore, the CAS has jurisdiction to entertain the appeal.

ab) The Second Respondent committed an anti-doping rule violation

43. The Player's sample examination revealed an adverse analytical finding, being the presence of Methyltestosterone, an anabolic agent banned on the 2015 WADA Prohibited List.

44. The Player therefore committed an anti-doping rule violation within the meaning of Article 6 of the FIFA ADR regardless of intention, knowledge, fault or negligence. Pursuant to Article 6 of the FIFA ADR:

- The Player breached his personal duty to ensure that no prohibited substance entered his body and is responsible for any prohibited substance or its metabolites or markers found to be present in his samples; and
- The presence of a prohibited substance or metabolites or markers constitutes sufficient proof of an anti-doping rule violation. It is not necessary that intent, fault, negligence or knowing use on the Player's part be demonstrated in order to establish an anti-doping rule violation.

ac) The Sanction

45. FIFA does not dispute the Player's assertion that he did not intend to commit an anti-doping rule violation. Consequently, the Player must be sanctioned in accordance with Article 19.2 of the FIFA ADR, which, as read together with Article 19.1, calls for a 2-year ban. Articles 19.1 and 19.2 of the FIFA ADR state as follows:

"The period of Ineligibility for a violation of arts 6 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample), 7 (Use or attempted Use by a Player of a Prohibited Substance or a Prohibited Method) or 11 (Possession of a Prohibited Substance or a Prohibited Method) shall be as follows, subject to potential elimination, reduction or suspension pursuant to arts 21 (Elimination of the Period of Ineligibility where there is No Fault or Negligence), 22 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence) or 23 (Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault):

1. The period of Ineligibility shall be four years where:

a) the anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional.

b) the anti-doping rule violation involves a Specified Substance and FIFA can establish that the anti-doping rule violation was intentional.

2. If art 19 par. 1 does not apply, the period of Ineligibility shall be two years".

i. The Player was significantly at fault or negligent

46. The Player has failed to establish that he bears No Significant Fault or Negligence which could otherwise entitle him to a reduction of the applicable 2-year suspension. In order to benefit from the fruits of No Significant Fault or Negligence, he must establish that he took *"clear and obvious precautions which any human being would take"* (CAS 2005/A/847 at paragraph 7.3.6) and that he was *"active to ensure that* [the] *medication that he (…) used* [did] *not contain any compound that is on the Prohibited List"* (CAS 2008/A/1565 seq 67).

47. Given that the ingredients of the product were inscribed in Japanese, the Player ought to have taken greater caution. He would easily have known of its contamination had he undertaken a simple google search of the product by using google translator or by confirming its contents from someone who spoke Japanese. He could also have sought the opinion of his personal or team doctor before using the substance, and must have received some anti-doping education in the course of his career by virtue of being a professional player. The Player cannot therefore be exempt from his negligence. He was even more careless and negligent by using a substance whose tube had already been opened. His conduct constituted Significant Fault or Negligence and he is therefore not entitled to a reduction of the two year ineligibility period established under Article 19.2 of the FIFA ADR.

ii. Microgen is not a contaminated product

48. The KFA Disciplinary Committee erred in regarding Microgen as a "contaminated product" and consequently reducing the otherwise applicable 2-year suspension to 6 months on grounds of Article 22.1 (b) of the FIFA ADR.

49. Pursuant to the FIFA ADR, a contaminated product is one which *"contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable internet search".*

50. The tube carrying the Microgen ingested by the Player contains clear information of its ingredients, albeit in Japanese. One of the ingredients inscribed is Methyltestosterone and testosterone. The Player ought to and should have asked for a translation of the ingredients if he did not understand Japanese or at least done a google search on the product in his native Korean language, as this could easily have revealed the words *"Microgen doping"* in English.

51. It thus follows that Microgen cannot be considered a contaminated product, because its contents had been disclosed on the product label and could also have been known from an internet search.

iii. No grounds for reducing the 2 year ineligibility period on account of *"prompt admission"*

52. The KFA Disciplinary Committee also erred by applying Article 23.3 of the FIFA ADR to reduce the sanction to 6 months merely because of the Player's *"prompt admission"*. Pursuant to Article 23.3 of the FIFA ADR, the otherwise 2-year ineligibility period could only have been reduced with the approval of FIFA or WADA, which approvals were never given. In addition, there is no evidence that the Player promptly admitted to the offence.

53. It therefore follows that there exists no grounds for the reduction of the 2-year ineligibility period.

ad) Commencement of period of ineligibility

54. Pursuant to Article 28 of the FIFA ADR, FIFA asserts that the period of ineligibility should start running from the date of communication of the CAS award, with any period of ineligibility already served by the Player being credited to the Player.

ae) Prayers Requests for Relief

55. The Appellant concludes its submissions by making the following prayers for relief:

1. The appeal of FIFA is admissible.

2. The decision rendered by the 5th Disciplinary Committee of the Korea Football Association on 12 August 2015 is set aside.

3. Mr. Kang Soo Il is sanctioned with a two-year period of ineligibility starting the date on which the CAS award enters into force. Any period of ineligibility already served by the Player shall be credited against the total period of ineligibility imposed.

4. The costs of the proceedings shall be borne by the Korea Football Association.

b) The First Respondent's Submissions

56. The First Respondent calls for the dismissal of the appeal. It generally upholds the findings made in the Appealed Decision, saying it took into account the Player's conduct and the particulars of the substance he applied.

57. The First Respondent's submissions can in essence be summarized as follows:

ba) Lack of information regarding the contents of the substance

58. In Korea, links such as www.naver.com and www.daum.net are popular and more frequently used as opposed to Google. A simple internet search on either of these two links on 5 May 2015 reveals that the cream used by the Player contained no doping related information. It is very

rare for news journals to report on the effects and/or contents of creams and the Player was therefore not in a position to *"obtain all available information on the internet"*.

bb) Reasons behind the 6-month ban

59. In arriving at the Appealed Decision, the KFA took into account:

- The Player's racial background, educational level and surrounding social circumstances;
- That the Player applied a cream similar to any other body lotion. He frequently attended anti-doping educational courses, which focused on substances ingested through injection or oral intake but never on those applied on the body;
- That it was difficult for an ordinary man to know that the cream contained a banned substance given that the said substance did not enter the body through injection or oral intake like most banned substances;
- The word "Methyltestosterone" as inscribed on the tube was written in "Katakana", a Japanese syllabary which is difficult to understand and can only be understood with the help of a Japanese expert. This was proved by one of the KFA Disciplinary Committee members and the KFA Disciplinary Committee therefore found out very difficult for the Player to have been in a position to know the contents of the cream;
- The Player regularly consulted a team doctor on health and dietary supplements to ensure he did not take any banned substance;
- The Player's friend, Lee, had previously used the cream with no side effects. Therefore, the Player had no reason to be suspicious;
- Korean criminal law, which allows the deciding body to consider mitigating circumstances;
- The Player's prompt admission under Article 23.3 of the FIFA ADR;
- The Player's conduct – his prompt admission and prior disclosure to the doping officer that he was using the cream; and
- The Player used a small portion of the cream and did not intend to commit an anti-doping violation. This was his first anti-doping rule violation.

bc) Prayers and Requests for Relief

60. The First Respondent concludes by requesting the CAS to find that:

1. The appeal of FIFA is dismissible

2. The costs of the proceedings shall be borne by the Appellant (FIFA).

c) The Second Respondent's Submissions

61. It is the Second Respondent's position that the appeal ought to be dismissed on several technical and procedural grounds and that in the unlikely event of these grounds being dismissed, then he is only liable for a 6-month ineligibility period on grounds of No Significant Fault or Negligence.

62. The Second Respondent's submissions can in essence be summarized as follows:

ca) CAS Jurisdiction

63. The Player contests CAS jurisdiction on grounds that he is not an International-level player within the meaning of the definition accorded in the FIFA ADR.

64. He refers to paragraph 28 of the definitions section of the FIFA ADR, which defines an international-level player as a *"Player designated by FIFA or a Confederation as being within FIFA's or the Confederation's Registered Testing Pool and/ or a Player who participates in International Competitions (as defined in these Regulations) and/ or Competitions under the jurisdiction of a Confederation"*, and reiterates that although he was registered with Jeju United at the time he was tested, he had not taken part in any international competition for 8 months. The Player states that an international-level player is one who currently participates in international events (of which he is not), and that a player's past history is irrelevant.

65. The Player further cites Article 75.2 of the FIFA ADR and states that given that he is not an international-level player, FIFA must instead direct the appeal to the Korean Anti-Doping Agency (the "KADA"), and that the CAS lacks jurisdiction.

cb) Inadmissibility of the CAS appeal

66. On the grounds expounded below, it is also the Second Respondent's submission that the appeal is inadmissible for having been filed out of time. This, he says, should lead to the setting aside of the Appealed Decision and the reinstatement of the K-League Decision. He specifically draws the CAS's attention to an inaccurate English translation of the KFA Disciplinary Rules as adduced by FIFA, claiming that the Korean word "재 심" as contained in Article 10.4 of the KFA Disciplinary Rules means "re-trial" and not "appeal" as contained in the English translated version adduced by FIFA. The Player thus disputes the admissibility of the appeal on the following grounds:

i. The K-League Decision is final and binding

67. Although Article 67.5 of the FIFA Statutes entitles FIFA to file an appeal to the CAS against an internal doping decision rendered by its members or leagues, this provision only allows FIFA to do so on condition that the said decision is *"final and binding"*.

68. However, FIFA missed the deadline for filing any such appeal, thereby rendering the K-League Decision final and binding. The K-League Decision was clear in saying that any party affected by the said decision had 7 days within which to appeal. The same is replicated in Chapter 7 Article 21.1 of the K-Rules which states in part that *"the player (or the club) who wishes to appeal against the committee's disciplinary decision shall submit a statement of appeal within 7 days of the notice of the confirmed decision of the sanction (…)"* and Chapter 6 Article 19.2, which states that *"[a] claim for retrial must be made within 7 days of the receipt of the notice of the disciplinary decision"*.

69. Given that the K-League Decision was rendered on 22 June 2015, and considering that no party appealed the decision, the date for FIFA to appeal to the CAS started running on 22 June 2015. At the very least, the date on which FIFA could allege that its time limit to appeal started running is on 7 July 2015, when it received an English translation of the K-League Decision.

70. Either way, FIFA's statement of appeal to CAS dated 23 September 2015 is time barred even if one takes 22 June or 7 July 2015 as the date it received notice the K-League Decision.

ii. FIFA's Statement of Appeal is time barred

71. The Player further contends that in the unlikely event of the K-League Decision not being found to have been final and binding, the CAS appeal is still inadmissible because by filing the Statement of Appeal on 23 September 2015, FIFA did so outside the 21-day time limit fixed under Article 80.1 of the FIFA ADR.

72. According to the Player, The period of 21 days for FIFA to appeal to CAS started running on 28 August 2015, when the KFA sent the grounds of the Appealed Decision to the AFC. The Player argues that FIFA cannot claim that its appeal deadline started running on 3 September 2015 (when it received the Appealed Decision from the AFC) because all along it had been working hand-in-hand with the AFC in these proceedings given that Article 20.3 of the FIFA Statutes requires the Confederations to *"work closely with FIFA"*.

73. The Player, therefore, contends that FIFA's Statement of Appeal dated 3 September 2015 is time barred and the appeal inadmissible.

cc) The KFA Disciplinary Committee's procedural irregularities

74. The Player contends that the KFA Disciplinary Committee performed a number of procedural irregularities which should also lead to setting aside the Appealed Decision and maintaining the K-League Decision. He particularly asserts that:

- The KFA failed to meet the 7-day deadline for appealing the K-League Decision as fixed under Article 21.2 of the KFA Disciplinary Rules, which states that *"[i]n the event the party subject to disciplinary action appeals against the re-trial outcome made by the (…) league, such application shall be made within 7 days of the receipt of such re-trial outcome to that relevant member association or organization"*.

- The KFA never notified the Player or Jeju United (before 11 August 2015) of its objection to the K-League Decision. The KFA Disciplinary Committee was thus invalidly convened by failing to meet its own stipulated deadlines;
- The KFA Disciplinary Committee breached the 3-day hearing notice established under Article 10 of the KFA Disciplinary Rules by only granting him one-day notice of the hearing, i.e. on 11 August 2015; and
- In addition to the above, Article 20.4 of the KFA Disciplinary Rules required the KFA Disciplinary Committee to hear the matter within 30 days following the date of request of the appeal. The KFA Disciplinary Committee, however, breached this deadline by hearing the matter on 12 August 2015, despite having communicated its request of the appeal on 25 June 2015 to the AFC.

cd) The sanction

75. The Player claims to have had no intention of committing an anti-doping rule violation. He, therefore, states that he is entitled to have the maximum 2-year ineligibility period provided for under Article 19.2 of the FIFA ADR reduced in accordance with the terms and provisions of Article 22.1 (b) and/or Article 22.2 of the FIFA ADR.

76. Pursuant to Article 22.1 (b) of the FIFA ADR, a Player who ingests a prohibited substance that came from a contaminated product is liable, at a minimum, to a reprimand and no period of ineligibility, and at a maximum, to two years provided that he or she can establish No Significant Fault or Negligence.

77. Article 22.1 (b) of the FIFA ADR states as follows:

Reduction of sanctions for Specified Substances or Contaminated Products for violations of art. 6 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample), 7 (Use or attempted Use by a Player of a Prohibited Substance or a Prohibited Method) or 11 (Possession of a Prohibited Substance or a Prohibited Method)

a) (…)

b) Contaminated Products

In cases where the Player or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Player's or other Person's degree of Fault.

78. On the other hand, the Player submits that in cases where Article 22.1 (b) of the FIFA ADR is not applicable, Article 22.2 of the FIFA ADR provides for the reduction or elimination of the otherwise applicable 2-year ineligibility period to not less than half of the ineligibility period otherwise applicable on condition that the player can establish that he bears No Significant Fault or Negligence.

79. Article 22.2 of the FIFA ADR states as follows:

If a Player or other Person establishes in an individual case where art. 22 par. 1 is not applicable that he bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in art. 23, the otherwise applicable period of Ineligibility may be reduced based on the Player 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. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this artide may be no less than eight years.

80. The Player argues that pursuant to the FIFA ADR's definition of No Significant Fault or Negligence, the Panel must look at whether his fault or negligence was not significant in relationship to the anti-doping rule violation. The Player further refers to a list of factors contained in the FIFA ADR, such as the Player's experience, any impairment, and the player's level of care and investigation, which he says ought to be taken into account in measuring his fault.

81. In addition to the above, the Player requests that the Panel refer to CAS jurisprudence on matters regarding fault on an athlete's part and particularly consider the following factors:

i. CAS Jurisprudence

82. The CAS jurisprudence on the threshold for establishing whether an athlete was not significantly at fault or negligent, which *"must not be excessively high"* (CAS 2005/A/847); and

83. That if the panel finds that there is more than the minimum lack of Significant Fault (on the Player's part), but that such fault was not egregious, then it can impose an ineligibility period greater than 12 months but less than 24 months (CAS 2012/A/2804);

ii. Prolonged stress

84. According to the Player, stress can have a severe and direct impact on an athlete's well-being, thereby influencing his actions and reactions. He says he faced ridicule, hostility and discrimination in South Korea due to his different appearance and complex facial hair. This caused him mental stress and hardship. He could not think clearly and concisely as corroborated in Lee's affidavit, eventually leading to a reduction in his level of care. Indeed, the panel in CAS 2012/A/2756 recognised that emotional stress could lead an athlete to ignore his level of care.

iii. Anti-doping education received

85. The Player claims to have not received proper education on doping and its consequences. He cannot, therefore, be said to have lacked care as it is the duty of the K-League, the KFA and FIFA to ensure players are well-educated on doping. The K-League first implemented its anti-doping education programme for professional footballers in 2009 and did so about once a year. The fact that other professional sports in South Korea implement even a shorter period of

ineligibility (i.e. a 15-match ban for a first offence) is further proof that no anti-doping education exists in Korean professional sports. The K-League itself confirmed in a newspaper publication that its players had not been educated on creams as a potential source of prohibited substance.

iv. Language

86. The Player says he is neither fluent in English nor is he familiar with Japanese. It was, therefore, almost impossible for him to correctly insert the characters or letters inscribed on the tube with the correct combination on google as FIFA easily suggests. It is also not true as FIFA states that using search terms like *"Microgen"* or *"Microgen Pastae"* reveals the ingredients of the cream used by the Player. The words *"Microgen ingredients"* does not in fact offer any readily available information showing the ingredients of Microgen. The Player's situation, i.e. his ignorance of Japanese ought to be equated to that of another athlete (Cilic) in CAS 2013/A/3327 *Cilic v. International Tennis Federation*, where the panel exonerated Cilic from liability after finding that he had tried to read the ingredients from the product and misinterpreted the content, thereby missing the substance which was in fact a banned substance.

v. Level of care

87. The Player says he relied on the product given to him by his friend Lee. It was not labelled in a manner which could reasonably have enabled him to discover its ingredients. He says he regularly consulted the club's physician on his health and dietary supplements. He did not take the substance orally but merely applied it on his skin in small portions. He did not consider that the product would absorb into his body, as opposed to substances ingested orally.

vi. The Player is inexperienced

88. The Player claims to have been relatively inexperienced at an international level, having just played in 2 AFC matches. Because of this, his accountability could not be held to the same level as somebody who is regularly playing international matches.

89. He states that an athlete's inexperience was indeed taken into account in CAS 2008/A/1490, which dismissed an appeal filed by WADA and stated that *"Mr. Thompson was a naïve and inexperienced high school athlete. He had never competed at the international level and this was his first competition at the national level"*.

90. He adds that pursuant to the K-League regulations, all players had been informed that a first offence would invite a 15-match ban, a fact which shows their level of education. Therefore, and as held in CAS 2012/A/3029, *"the athlete should not be fully at blame for the failures of the anti-doping authorities involved in his sport"*.

vii. The harm caused

91. The Player says he did not intend to enhance his performance. He submits that he was part of a team and the harm caused by exposure to the substance was minimal as he was not involved in an individual sport. He cites CAS 2005/A/830, where the panel held that *"[a]s the Appellant appears to have no intention whatsoever to gain an advantage towards her competitors, her negligence in forgetting to check the content of a medical cream can be considered as mild in comparison with an athlete that is using doping products in order to gain such advantage. Accordingly, the Appellant appears to bear no Significant Fault or Negligence (…)".*

92. The Player also calls for a proportional sanction *vis-à-vis* the seriousness of the offence, asking the Panel to refer to CAS 1999/A/246, which held that *"the severity of a penalty must be in proportion with the seriousness of the infringements".*

viii. First offence

93. The Player says he is a first offender in as far as doping is concerned. He points to the fact that he immediately accepted the sanctions imposed by the K-League and the KFA Disciplinary Committee and did not ask for his B-sample to be tested, which he wants the Panel to take this into account in arriving at its sanction (CAS 2012/A/2804).

ix. Conclusion

94. In concluding his mitigating submissions, the Player reiterates that the tube containing the banned substance did not disclose (as it was written in Japanese – a language he does not understand) that it contained Methyltestosterone. He says information on the contents of Microgen was not easily available on an internet search. Article 22.1 (b) of the FIFA ADR is therefore applicable.

95. The Player claims to have proved No Significant Fault or Negligence and should therefore have the ineligibility period reduced if the Panel finds either of Article 22.1 (b) or Article 22.2 of the FIFA ADR to be applicable.

96. The Player avers that under the circumstances, the 6-month suspension imposed by the KFA Disciplinary Committee is fair and reasonable and should be maintained.

ce) Commencement of period of ineligibility

97. The Player contends that although the ineligibility period should ideally start running from the date of the K-League Decision (22 June 2015), that should not be the case in these appeal proceedings because the KFA, AFC and FIFA delayed the sanctioning process by close to 3 months without merit. He avers the delay to be unacceptable to a speedy resolution of the matter and therefore wants the ineligibility period to start running from 5 May 2015 – the date he was tested.

cf) Prayers and requests

98. The Player concludes his submissions by asking the CAS to:

(i) Dismiss the appeal;
(a) Ordering that the original K-League Decision is final;
(b) Alternatively, the KFA Decision is final and FIFA's appeal is time barred;
(ii) In the event that the appeal is upheld or partially upheld, then;
(a) The Player had no significant Fault or Negligence;
(b) Should it be found that section 22(1)(b) is applicable then the Player is to be suspended for six (6) months;
(c) Alternatively, should it be found that section 22 (2) is applicable then the Player is to be suspended for one (1) year.
(iii) Costs of the proceedings including all legal fees and associated costs of the appeal to be borne by the Appellant.

B) The supplementary submisisons

a) The Appellant

aa) Prayer for Relief (i) (a) of the Second Respondent is inadmissible

99. FIFA objects to the admission of prayer (i) (a) as sought by the Player on grounds that it is a counterclaim and thus inadmissible in CAS proceedings.

100. According to FIFA, the Player cannot seek an order declaring *"the original K-League Decision (…) final"* because he neither disputed the KFA Disciplinary Committee's jurisdiction nor argued (before the KFA Disciplinary Committee) that the Committee's proceedings were time barred. The Player accepted the KFA Disciplinary Committee's decision without appealing and therefore waived his appellate rights. As such, the CAS cannot impose a sanction less than that imposed by the KFA Disciplinary Committee.

ab) The CAS appeal is admissible

i. In general

101. FIFA states that since it was not party to the disciplinary proceedings undertaken at national level in the KFA, it could not be aware of any procedural irregularities. According to FIFA, the Player never raised any queries regarding these alleged irregularities during the KFA Disciplinary Committee proceedings and therefore FIFA could not foresee that the procedural irregularities within the KFA could form part and parcel of the CAS proceedings. FIFA therefore wants the procedural and technical issues raised by the Player dismissed.

ii) The K-League Decision is not final and binding

102. FIFA refutes the Player's assertion that the K-League Decision is final and binding. In its letter dated 25 July 2015 (but sent on 25 June 2015), the KFA informed FIFA that the K-League Decision was not final and that the KFA would render a fresh decision regarding the matter, meaning FIFA had to wait for the KFA Disciplinary Committee's final decision at an internal level. Under the circumstances, FIFA could not exercise Article 67.5 of the FIFA Statutes and appeal the K-League Decision to the CAS.

103. Notwithstanding the above, FIFA reiterates that the 7-day deadline for appealing the K-League Decision does not apply to the KFA. Pursuant to Article 19.1 of the KFA Disciplinary Rules, this deadline applies to *"a party subject to disciplinary action"*, which could either be the Player or Jeju United. The KFA was not a party in the K-League proceedings.

104. According to FIFA, the relevant law governing the KFA's rights and course of action *vis-à-vis* the K-League Decision is Article 10.3 of the KFA Disciplinary Rules. Article 10.3 of the KFA Disciplinary Rules empowers the KFA to "retry" the matter and does not provide a 7-day time limit for the KFA to act.

105. FIFA avers that even if the 7 day deadline were to apply to the KFA, the KFA met this deadline on 25 June 2015, when it officially informed AFC in writing that it would sit in mid-July to decide whether further action had to be taken with regard to the K-League Decision. Whether or not the Player was informed of the appeal is irrelevant.

iii. The Statement of Appeal is not time barred

106. FIFA states that it is a different body from the AFC and documents received by the AFC cannot trigger the time limits applicable to FIFA.

107. According to FIFA, the date triggering FIFA's deadline for filing the CAS appeal is not when the AFC received the grounds of the Appealed Decision but the date FIFA received the same, i.e. on 3 September 2015.

108. FIFA therefore states that its Statement of Appeal is not time barred as the same was filed within the 21 days deadline fixed under Article 80 of the FIFA ADR, which states that the appeal deadline starts running with effect from *"(…) receipt of the motivated decision in an official FIFA language by the appealing party"*.

ac) The KFA Disciplinary Committee's alleged breach of its procedural rules

109. The KFA Disciplinary Committee's failure to provide the Player with 3-days notice (as supposedly required under Article 10 of the KFA Disciplinary Rules) of the impending KFA Disciplinary Committee hearing, and any other procedural error can be cured by virtue of the *"de-novo competence"* provided for under Article R57 of the CAS Code.

b) The First Respondent

110. The First Respondent did not file any supplementary submissions.

c) The Second Respondent

ca) Prayer (i) (a) of the Answer is admissible

111. The Player argues that even if prayer (i) (a) of the Answer were a counterclaim as FIFA claims, it is admissible by virtue of Article 13.2.3 of the WADA Code 2015, which states that *"[c]ross appeals and other subsequent appeals by any respondent named in cases brought to CAS under the Code are specifically permitted"* and Article 75.4 of the FIFA ADR, which also provides that *"[c]ross-appeals and other subsequent appeals by any respondent named in cases brought to CAS under the Code are specifically permitted. Any party with a right to appeal under the Appeals section of these Regulations must file a cross-appeal or subsequent appeal with the party's answer at the latest"*.

112. He adds that in any case, Article R57 of the Code allows the CAS to review the matter *de novo*, reiterating that he does not seek a reduction of the sanction imposed by the KFA Disciplinary Committee but rather its setting aside on grounds of the procedural irregularities performed at KFA Disciplinary Committee level.

113. The Player therefore submits that prayer (i) (a) of the Answer is admissible.

cb) The CAS appeal is inadmissible

i. The K-League Decision is final and binding

114. The Player states that the K-League Decision was not appealed within the required 7 days, meaning it is final and binding. He argues that notice to render a new decision cannot constitute an appeal and that any matter being appealed must be notified to the relevant parties. He states that there is no correspondence proving that he was ever notified of the appeal, and this shows that no party had in fact appealed the K-League Decision.

115. The Player avers that by stating that the K-League Decision could be appealed by *"a party subject to disciplinary actions or a complainant"*, Article 20.2 of the KFA Disciplinary Rules means that any party who wished to seek a re-trial of the K-League Decision could be a complainant, and not necessarily Jeju United or the Player as FIFA alludes.

116. The Player states that FIFA confirms having received the K-League Decision from the AFC on 25 June 2015 and that the AFC's letter is clear to FIFA that *"no appeal* [had] *been lodged by any party in relation to the sanction",* meaning FIFA could (but did not) exercise Article 67.5 of the FIFA Statutes and appeal the K-League Decision to the CAS. He therefore argues that FIFA's failure to appeal the K-League Decision within the required 7 days rendered it final and binding.

ii. The Statement of Appeal is time barred

117. The Player refutes FIFA claims that it did not delegate any anti-doping duties to the AFC. He argues that if this were the case, then Article 20.3 of the FIFA Statutes, which obliges the AFC to comply with and enforce the Statutes, Rules and decisions of FIFA, would be rendered meaningless. FIFA was copied in all AFC correspondence leading to this matter, indeed corroborating FIFA's objectives under Article 14 of the FIFA Statutes, which requires FIFA to work closely with the Confederations.

118. The Player consequently submits that FIFA missed the 21-day appeal deadline stipulated under Article 80 of the FIFA ADR, rendering the appeal inadmissible.

V. JURISDICTION

119. 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 the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

120. The Second Respondent objects to the CAS jurisdiction, arguing that he is not an International-level Player and that the appeal should instead be directed at the KADA pursuant to Article 75.2 of the FIFA ADR.

121. Pursuant to Article 67.5 FIFA Statutes, *"FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by the Confederations, Members or Leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations"*.

122. Article 75.1 of the FIFA ADR states that *"*[i]*n cases arising from participation in an International Competition or in cases involving International-Level Players, a final decision within FIFA's, the Confederation's or the Association's process may be appealed exclusively to CAS"*.

123. In addition, Article 75.3 of the FIFA ADR adds that:

In cases under art. 75 par. 1 (Appeals involving International-Level Players or International Competitions), the following parties shall have the right to appeal to CAS: (a) (…); (b) (…); (c) FIFA; (d) (…).

In cases under art. 75 par. 2 (Appeals involving other Players or other Persons), the parties having the right to appeal to the national-level appeal body shall be as provided in the National Anti-Doping Organisation's rules but, at a minimum, shall include the following parties: (a) (…); (b) (…); (c) FIFA; (d) (…)

124. Article 81 of the FIFA ADR further provides that *"*[w]*here FIFA has a right to appeal under this chapter and no other party has appealed a final decision within the Anti-Doping Organisation's process, FIFA*

may appeal such a decision directly to CAS without having to exhaust other remedies in the Anti-Doping Organisation process".

125. It is apparent from the above FIFA ADR provisions that:

- FIFA may appeal a final anti-doping rule violation decision involving an International-Level Player rendered at association level (*in casu* the KFA) to the CAS (Article 75.1 of the FIFA ADR);
- In anti-doping rule violation matters involving non International-Level Players, FIFA has the right to appeal to the relevant National Anti-Doping Organisation, in this case the KADA as confirmed by the Player (Article 75.3 of the FIFA ADR); and
- FIFA also has an option of filing a direct appeal to the CAS against any anti-doping rule violation decision rendered at national level without necessarily having to first exhaust the remedies available at the relevant National Anti-Doping organisation - *in casu* the KADA - if no other party has appealed the said decision (Article 81 of the FIFA ADR).

126. Since no other party has appealed the KFA Disciplinary Committee decision, the Panel shares FIFA's interpretation of the above provisions. Under such circumstances, Article 81 of the FIFA ADR effectively allows FIFA to overlook the remedies available to it at the KADA and to instead approach the CAS by appealing a decision rendered at a national level. This is regardless of whether or not the player in question is an International-Level Player.

127. Consequently, Articles 75.3 of the FIFA ADR as read together with Article 81 thereof confirms that the CAS has jurisdiction to entertain this appeal.

128. Notwithstanding the above, the Panel rejects the Player's assertion that he is not an International-Level player.

129. Pursuant to paragraph 28 of the definitions section of the FIFA ADR, an International-Level Player is a *"[p]layer designated by FIFA or a Confederation as being within FIFA's or the Confederation's Registered Testing Pool and/ or a Player who participates in International Competitions (as defined in these Regulations) and/or Competitions under the jurisdiction of a Confederation".*

130. From the facts, it is evident that the Player was ready and eligible to take part in international competitions. He was in the preliminary list of players registered by the KFA for the 2015 AFC Asian Cup Australia, and in the preliminary register of the KFA's joint preliminary qualification FIFA World Cup Russia 2018 and the KFA's 2019 AFC Asian Cup squad. In addition, he had been called up to make his international debut for South Korea against the UAE in June 2015, only to miss out as a result of having failed the doping test he had underwent on 5 May 2015. The Panel therefore finds that the Player meets the jurisdictional requisites of an International-Level player within the meaning and objectives of the FIFA ADR by virtue of his eligibility, even if he was not fielded in any of these competitions.

131. To sum up, the Panel finds that the CAS has jurisdiction to entertain the appeal in accordance with Article 67.5 FIFA Statutes as read together with Articles 75 and 81 of the FIFA ADR.

VI. ADMISSIBILITY

132. It is the Player's primary contention that the appeal is inadmissible because FIFA failed to appeal the K-League Decision within the 7 days stipulated in the K-League Rules, in particular Chapter 6 Article 19.2 and Chapter 7 Article 21.1 thereof, thereby rendering the K-League Decision final and binding. He also asserts that FIFA's statement of appeal was filed outside the 21-day time limit fixed under Article 80.1.1 of the FIFA ADR, which also renders the appeal inadmissible.

133. The sub-issues for determination therefore are (i) whether the K-League Decision is final and binding; and (ii) whether the Statement of Appeal is time barred. The Panel proceeds to address these issues here below.

A. Is the K-League Decision final and binding?

134. Pursuant to Chapter 6 Articles 19.1 and 19.2 of the K-League Rules:

> *(1) if a party subject to disciplinary action or a complainant has objection to the disciplinary action decided by the Reward and Punishment Committee may claim for re-trial.*
>
> *(2) A claim for re-trial must be made within 7 days of the receipt of the notice of the disciplinary decision.*

135. Chapter 7 Article 21.1 of the K-League Rules adds that *"*[t]*he player (or the club) who wishes to appeal against the committee's disciplinary decision shall submit a statement of appeal within 7 days of the notice of the confirmed decision of the sanction (…)".*

136. It is therefore apparent from these provisions that the K-League Decision could be appealed or re-tried at the behest of either the Player or "a complainant", provided that the party intending to do so issued a statement to this effect within 7 days of receiving the K-League Decision.

137. With this in mind, the Panel notes that upon receiving the K-League Decision on 23 June 2015, the KFA proceeded to inform the AFC that the KFA Disciplinary Committee would sit in mid-July to decide whether *"any further disciplinary decisions"* would be taken. This was on 25 June 2015. The KFA went further to assure the AFC that *"(…) the decision of KFA will be notified to you upon the result of the KFA Disciplinary Committee".*

138. Indeed, the KFA's right to re-try the K-League Decision *suo moto* has also been vested in Articles 10.3 and 10.4 of the KFA Disciplinary Rules, which state as follows:

- Article 10.3 of the KFA Disciplinary Rules: *"KFA's Disciplinary Committee shall have the right to re-decide on the application of the disciplinary action that are imposed by the (…) affiliated league organizations".*
- Article 10.4 of the KFA Disciplinary Rules: *"[i]f by any reason that the decisions made involving a disciplinary matter by (…) affiliated league organizations are deemed problematic, the disciplinary*

committee may request for a retrial or the KFA can become directly involved in the case with the decision of the case being final".

139. It is for this very reason why the AFC, and consequently FIFA, took no immediate action to the CAS in relation to the K-League Decision despite the AFC in particular having drawn the KFA's attention to the AFC's right to appeal the K-League Decision to the CAS in the event that no other party had appealed the final decision of the competent decision-making body.

140. FIFA's decision not to appeal the K-League Decision to the CAS was indeed logical in order to pre-empt an undesirable situation of *lis pendens*, whereby both the CAS and the KFA Disciplinary Committee would apparently have been tasked with reviewing the K-League Decision.

141. In effect, the KFA's letter dated 25 June 2015 served as a statement notifying the AFC that as a complainant, the KFA would exercise its rights under Chapter 6 Articles 19.1 and 19.2 of the K-League Rules by re-trying the K-League Decision. This notice, which was made within the 7 days specified in the K-League Rules, therefore rendered the K-League Decision interim and indefinite, or, contrary to the Player's assertion. It did not render the K-League Decision final and binding as the same had already been subjected to a re-trial before the KFA Disciplinary Committee within the required 7 days.

142. The Panel therefore rejects the Player's contention that the K-League Decision is final and binding.

B. Is FIFA's Statement of Appeal time barred for having allegedly been filed outside the 21-day time limit?

143. The Player alternatively contends that FIFA's Statement of Appeal filed with the CAS on 23 September 2015 is time barred for having failed to meet the 21-day appeal time limit stipulated under Article 80.1.1 of the FIFA ADR, and that the appeal should therefore be declared inadmissible.

144. He argues that FIFA's 21-day appeal deadline started running on 28 August 2015, when the KFA sent the grounds of the Appealed Decision to the AFC. He refutes FIFA's argument that its appeal deadline started running on 3 September 2015 (when FIFA received the Appealed Decision from the AFC), arguing that FIFA had all along been working hand in hand with the AFC in these proceedings in light of Article 20.3 of the FIFA Statutes, which requires the Confederations to *"work closely with FIFA"*.

145. FIFA insists on the admission of the appeal, saying its 21-day deadline started running when it received the grounds of the Appealed Decision from the AFC on 3 September 2015, and not when the AFC received the said grounds from the KFA on 28 August 2015.

146. Pursuant to Article 80.1.1 of the FIFA ADR, *"[t]he time to file an appeal to CAS shall be 21 days from the date of receipt of the motivated decision in an official FIFA language by the appealing party"*.

147. It is apparent that as the appealing party, FIFA received the grounds of the Appealed Decision on 3 September 2015. This is evidenced from the AFC's email dated 3 September 2015 to FIFA.

148. Even if FIFA and the AFC were in constant communication regarding the KFA Disciplinary Proceedings as alleged by the Player, he has not adduced any evidence to the effect that FIFA indeed received the grounds of the Appealed Decision on the same date as the AFC, i.e. on 28 August 2015.

149. As a matter of fact, the KFA's letter dated 28 August 2015 enclosing the grounds of the Appealed Decision has only been addressed to the AFC. FIFA was not copied to this letter.

150. Notwithstanding the above, the Panel remarks that FIFA and the Confederations are autonomous bodies with their own administrative systems and in the absence of direct irrefutable evidence, mere communication between these bodies does not necessarily imply that any and all correspondence sent to either body is deemed to have been received by the other.

151. The Panel therefore rejects the Player's assertion that FIFA received the grounds of the Appealed Decision on 28 August 2015 merely because they were working closely with the AFC, and finds FIFA's appeal deadline to have started running on 3 September 2015.

152. Therefore, by filing the Statement of Appeal on 23 September 2015, FIFA did so within the requisite 21-day period fixed under Article 80.1.1 of the FIFA ADR.

153. In view of the foregoing, this appeal is admissible.

VII. SCOPE OF THE PANEL'S REVIEW

154. In accordance with Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

155. FIFA objects to the admission of prayer (i) (a) of the Second Respondent, claiming the same to be a counterclaim. According to FIFA, the Player accepted the KFA Disciplinary Committee's decision without appealing and therefore waived his appellate rights. As such, FIFA says that the CAS cannot impose a sanction declaring *"the original K-League Decision (…) final"* as requested by the Player, because this would effectively give way to a sanction less than that imposed by the KFA Disciplinary Committee.

156. The Player contends that prayer (i) (a) of his Answer is admissible, arguing that both Article 13.2.3 of the WADA Code 2015 and Article 75.4 of the FIFA ADR allow cross appeals. He also cites Article R57 of the Code, saying it allows the Panel to review the matter *de novo*.

157. Article 75.4 of the FIFA ADR states as follows:

"[c]ross-appeals and other subsequent appeals by any respondent named in cases brought to CAS under the Code are specifically permitted. Any party with a right to appeal under the Appeals section of these Regulations must file a cross-appeal or subsequent appeal with the party's answer at the latest".

158. The above provision allows a respondent in an appeal proceeding before the CAS to file a cross appeal challenging a certain part of a decision rendered by the lower instance body. However, a cross appeal, like any other normal appeal, must be filed separately and not within the respondent's Answer to the Appeal Brief as if it were a mere counterclaim. This is indeed corroborated by Article 75.4 of the FIFA ADR's use of words such as "file" and "subsequent appeal".

159. Indeed, at first sight, Article 75.4 of the FIFA ADR may lead to a wrong interpretation in respect of the meaning of same article. However, in order to understand such provision, and to reach the right conclusion and the right interpretation, the Panel notes the overall background surrounding the insertion of this article in the FIFA ADR following the insertion of a similar article, 13.2.4, in the 2015 WADA Code. This overall examination includes the following facts (a) the change made in the Code in 2010; (b) The change made in Article 13.2.1 of the 2015 WADA Code (if compared to the 2009 edition), (c) the comment to Article 13.2.4; and (d) the specific wording of Article 13.2.4 and the choice of the words *"must file"* and *"at the latest with the party's answer"*.

160. On the basis of this examination, the Panel comes to the conclusion that Article 75.4 in the FIFA ADR (like Article 13.2.4 in the 2015 WADA Code) does not establish a right of a party to submit a cross appeal within the answer. These regulations respect and adopt the change that was made against the 2010 edition of the Code which no longer allows a counter or cross appeal to be submitted as part of the answer. Instead, under these new provisions, a party wishing to challenge a decision is obliged to file a separate, independent appeal within the time limits stipulated in the Code.

161. So what is the true meaning of Article 75.4 FIFA ADR (and Article 13.2.4 2015 WADAC)? In the Panel's view, these articles do nothing more than extend the time period in which a party to a doping appeal may file a cross appeal (or any subsequent appeal). In such cases, the time limit for a party to submit its cross or subsequent appeal is extended until the moment it submits the answer. This time limit can thus be longer than the normal filing period of 21 days. This possibility is perfectly in line with Article R49 of the Code which gives preference to the time-limits set forth in a federation's regulations. The standard 21-day deadline remains the default situation otherwise.

162. In addition, any cross appeal must specifically comply with the usual procedural requirements set forth under Article R47 *et seq* of the Code, meaning the respondent must accompany the same with a copy of the challenged decision, the CAS Court Office fee and all other procedural and documentary elements required to set it in motion.

163. From the facts before the Panel, it is apparent that the Player did not filed a separate cross appeal but has rather raised arguments in his Answer asking for Appealed Decision to be reviewed. In addition, there is no evidence that the Player complied with the appeal

requirements as set forth in the Code. It would, in the Panel's opinion, be a departure from the general legal procedures if a party were to take advantage of Article 75.4 of the FIFA ADR by overlooking the provisions of the Code by enjoining its cross appeal in its Answer (as the Player has). The Panel is of the view that for purposes of a valid cross appeal, Article 75.4 of the FIFA ADR must be read harmoniously with the Code.

164. It therefore follows that prayer (i) (a) of the Player's Answer is inadmissible for having failed to meet the procedural requirements established in the Code.

165. In view of the foregoing, the Panel shall not address the Player's arguments that procedural irregularities performed at KFA Disciplinary Committee level, *in casu* (i) The alleged admission of the KFA's request outside the prescribed 7 days (ii) whether the KFA Disciplinary Committee breach Article 10.1 of the KFA Disciplinary Rules (iii) the consequences of the KFA Disciplinary Committee's alleged delay in notifying the Player of the re-trial and (iv) whether the KFA Disciplinary Committee breach Article 20.4 of the KFA Disciplinary Rules. These issues relate to the Appealed Decision, which has not been properly and validly appealed by the Player and therefore fall outside the scope of the appeal.

VIII. APPLICABLE LAW

166. Article R58 of the Code provides the following:

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

167. Article 66.2 of the FIFA Statutes so provides:

The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

168. In addition, Article 80.3 of the FIFA ADR states that *"*[w]*here FIFA appeals against a decision of in particular an Association, Anti- Doping Organisation or Confederation to CAS under this chapter, the applicable law for the proceeding shall be the FIFA regulations, in particular the FIFA Statutes, the FIFA Anti-Doping Regulations and the FIFA Disciplinary Code".*

169. Therefore, the Panel finds that the applicable law under which the appeal will be decided is the FIFA regulations, in particular the FIFA Statutes, the FIFA ADR, the FIFA Disciplinary Code and supplemented by Swiss law, if necessary. FIFA ADR.

IX. MERITS OF THE APPEAL

A. The scope of the appeal

170. This appeal basically centres on whether or not the 6-month sanction imposed by the KFA Disciplinary Committee should be increased. The Parties are in common ground that although a prohibited substance was found in the Player's body, he did not intend to commit an anti-doping rule violation and that the Player is therefore not exposed to the maximum 4-year period of ineligibility provided for under Article 19.1 of the FIFA ADR.

171. FIFA submits that the 6-month period of ineligibility should be increased. It points to Article 19.2 of the FIFA ADR, which it says must be read together with Article 19.1 thereof, with the consequence being a 2 year period of ineligibility for the Player. FIFA reiterates that the Player was significantly negligent and at fault and that contrary to the KFA Disciplinary Committee's findings, Microgen is not a *"contaminated product"*, meaning there exists no grounds for reducing the 2-year period of ineligibility on account of Article 22.1 (b) of the FIFA ADR.

172. The Player submits that the 6-month period of ineligibility should be upheld on grounds that he was not significantly at fault or negligent. He states that Microgen is a contaminated product, meaning he is entitled to a reduction of the otherwise applicable 2-year period of ineligibility sought by FIFA on account of Article 22.1(b) of the FIFA ADR. As an alternative, he submits that in the event that the Panel finds Microgen not to be a contaminated product, he is still entitled to a reduction of the 2-year period of ineligibility on the grounds that he was not significantly at fault or negligent as provided for under Article 22.2 of the FIFA ADR.

173. The KFA wants the 6-month period of ineligibility upheld, saying it was arrived at after a consideration of the Player's conduct, the particulars of the substance he applied and the provisions of Article 23.3 of the FIFA ADR (prompt admission).

B. Classification of the substance found in the Player's body

174. It is an undisputed fact that the samples taken from the Player revealed the presence of the Methyltestosterone, a substance classified as an Anabolic Agent and included in S1 of the 2015 WADA Prohibited List.

175. It, therefore, follows that the Player committed an anti-doping rule violation as a prohibited substance was found in his body.

176. Contrary to the Player's assertion, Microgen is not a contaminated product.

177. Pursuant to the FIFA ADR, a contaminated product is one which *"(…) contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable internet search"*.

178. The Player does not dispute the fact that the tube carrying the Microgen had its ingredients visibly and conspicuously inscribed in Japanese on the product label, one of which is Methyltestosterone.

179. Whether the ingredients were written in a language unfamiliar to the Player does not take away the fact that the contents of the Microgen had clearly been disclosed on the product label as required by the FIFA ADR, and the Panel therefore rejects the Player's assertion that Microgen is a contaminated product.

C. The sanction

180. Article 19 of the FIFA ADR provides as follows:

> *"The period of Ineligibility for a violation of arts 6 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample), 7 (Use or attempted Use by a Player of a Prohibited Substance or a Prohibited Method) or 11 (Possession of a Prohibited Substance or a Prohibited Method) shall be as follows, subject to potential elimination, reduction or suspension pursuant to arts 21 (Elimination of the Period of Ineligibility where there is No Fault or Negligence), 22 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence) or 23 (Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault):*
>
> *The period of Ineligibility shall be four years where:*
>
> *the anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional.*
>
> *the anti-doping rule violation involves a Specified Substance and FIFA can establish that the anti-doping rule violation was intentional.*
>
> *If art 19 par. 1 does not apply, the period of Ineligibility shall be two years".*

181. Methyltestosterone is a not a Specified Substance. FIFA does not dispute that the Player's anti-doping rule violation was not intentional. Therefore, subject to the Player establishing the existence of circumstances warranting a reduction or elimination of the period of ineligibility, the maximum ineligibility period applicable is 2 years as provided for under Article 19.2 of the FIFA ADR.

D. Can or should the maximum 2 year ineligibility period be reduced?

182. The Player invokes Article 22.2 of the FIFA ADR and seeks a reduction of the maximum 2 year period of ineligibility on grounds that he was not significantly at fault or negligent. The Panel also notes that the KFA Disciplinary Committee applied Article 23 of the FIFA ADR and reduced the maximum 2-year period of ineligibility on the grounds that the Player had promptly admitted to the anti-doping rule violation.

a) Was the Player significantly at fault or negligent?

183. The Player claims not to have been significantly at fault or negligent, and in doing so, cites CAS jurisprudence arguing that the threshold for establishing whether an athlete was not significantly at fault or negligent, *"must not be excessively high"* (CAS 2005/A/847). He asks the Panel to take into account that:

- He was under prolonged stress;
- He was inexperienced at international level and had not received proper education on doping;
- He is neither knowledgeable on English nor Japanese, and could not have easily ascertained the contents of the Microgen;
- The internet does not offer any readily available information showing the ingredients of Microgen;
- His level of care, stating he regularly consulted the club's physician;
- He did not intend to enhance his performance and therefore caused less harm given that he engaged in a team sport. He also says that he had heard that other professional football players, subject to doping tests, used Microgen; and
- He is a first-time offender.

184. As the party claiming not to have been significantly at fault or negligent, the Player bears the burden of proof which, in accordance with Article 62.2.2 of the FIFA ADR is on a *"balance of probability"*.

185. Paragraph 43 of the Definitions and interpretation section of the FIFA ADR gives guidelines on the threshold required from the Player in establishing, on a balance of probability, that he was not significantly at fault or negligent by defining No Significant Fault or Negligence as follows:

No Significant Fault or Negligence: the Player or other Person's establishing that his 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. (…).

186. The Panel must therefore look at the totality of the circumstances *vis-à-vis* the criteria for No Fault or Negligence to establish whether the Player's fault was not significant in comparison to the anti-doping rule violation.

187. Paragraph 42 of the Definitions and interpretation section of the FIFA ADR fixes the criteria for No Fault or Negligence as *"the Player or other Person's establishing that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. (…)"*.

188. So, the Panel must now consider whether the Player could reasonably have suspected or known that the Microgen contained a prohibited substance. In doing so, it considers the following.

189. The Player applied a substance (Microgen) from a tube that had already been opened. The substance was given to him by his friend Lee and not at the doctor's prescription. The ingredients inscribed on the tube carrying the Microgen were written in Japanese, a language unfamiliar to the Player. Under the circumstances, the Player, or any other professional sportsperson ought to have been naturally suspicious of the contents of the substance.

190. The natural suspicion expected from the Player ought to have led him to make genuine and reasonable efforts to know the contents of the cream, regardless his unfamiliarity with Japanese. It is improper to assert that since the ingredients were in Japanese that somehow the Player is excused for not reading or studying the contents of the product he was using. Indeed, quite the opposite is true. The Panel considers that lack of knowledge of a foreign ingredient label should heighten a Player's duty to investigate the substances contained therein and proceed to have such ingredient translated before using the product. There is no evidence that the Player made such efforts, thereby suggesting negligence on his part.

191. The Panel therefore finds the Player to have failed to discharge his burden of proving that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he was applying a prohibited substance.

192. In addition, even if the Panel were to borrow the definition of "fault" as set forth in paragraph 19 of the Definitions and interpretation section of the FIFA ADR vis-à-vis the Player's arguments, it would still not be persuaded on a balance of probabilities that the Player was not at fault.

193. Paragraph 19 of the Definitions and interpretation section of the FIFA ADR defines "fault" as *"[a]ny breach of duty or any lack of care appropriate to a particular situation"*. It adds that *"the factors to be taken into consideration in assessing a Player or other Person's degree of Fault include, for example, the Player's or other Person's experience (…) special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behaviour"*.

194. The Panel in CAS 2012/A/2804 para 8.2.4 stated that an athlete's fault is to be *"(…) measured against the fundamental duty which he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any Prohibited Substance"*, with the Panel in CAS 2005/C/976 & 986 underlining at paragraphs 73-74 that *"(…) this standard is rigorous, and must be rigorous, especially in the interest of all other competitors in a fair competition (…). It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified. "No fault" means that the athlete has fully complied with the duty of care"*.

195. Relating paragraph 19 of the Definitions and interpretation section of the FIFA ADR to the aforementioned CAS awards, the Panel observes that contrary to the Player's assertion, *"harm*

caused" or lack of intention to benefit from the prohibited substance cannot be considered in reducing the period of ineligibility even if the same was considered in CAS 2005/A/847 and CAS 2005/A/830. Indeed (and contrary to the facts in CAS 2005/A/847 and CAS 2005/A/830 which respectively involved the application of the International Ski Federation Anti-Doping Rules and the Fédération Internationale de Natation Amateur Doping Control Rules), Articles 19.1 and 19.2 of the FIFA ADR already seem to have taken the element of *"harm caused"* or *"lack of intention"* into account by providing for a 2-year sanction as opposed to the otherwise applicable sanction of 4 years in cases where the Player can establish (as he has), that the anti-doping rule violation was not intentional.

196. In addition, the Player cannot claim to be inexperienced and/or uneducated on anti-doping matters to the extent of applying a substance without exercising reasonable care and caution. He is 28 years old and began his professional career in 2007. He has therefore been playing professional football at the highest level in Korea for close to 9 years. It is common knowledge that Korea is a fairly developed country with a relatively sophisticated tools and structures established in the fight against doping, having co-hosted the 2002 FIFA World Cup. Even if the KFA's anti-doping educational courses were not as advanced as claimed by the KFA, this did not absolve the Player from performing his duty to investigate and to take appropriate care. This duty applies to all adult players regardless of their level of anti-doping education.

197. And although he claims to have been under prolonged stress, the Player has not adduced any evidence to this effect. The fact of an athlete being a first offender is not a factor in assessing Significant Fault or Negligence. Finally, the Player's assertion that he had heard of other professional football players using Microgen as purportedly passing an anti-doping test to be irrelevant and cannot be taken into account in mitigation.

b) Can the sanction be reduced on grounds of prompt admission?

198. It is the KFA's request that the Appealed Decision be upheld on grounds that the KFA Disciplinary Committee rightly reduced the sanction on account of Article 23.3 of the FIFA ADR.

199. Article 23.3 of the FIFA ADR states as follows:

A Player or other Person potentially subject to a four-year sanction under art. 19 par. 1 or 20 par. 1 (for evading or refusing Sample collection or Tampering with Sample collection), by promptly admitting the asserted anti-doping rule violation after being confronted by FIFA, and also upon the approval and at the discretion of both WADA and FIFA, may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Player or other Person's degree of Fault.

200. The above provision is clearly applicable to players who (i) are otherwise liable to the maximum 4 year ineligibility period as provided for under Article 19.1 of the FIFA ADR, or (ii) contravene Article 8 of the FIFA ADR as read together with Article 20.1 thereof by evading, refusing or tampering with sample collection. Looking at the case at hand, the Panel has found the anti-doping rule violation committed by the Player to attract the maximum 2 year ineligibility period (subject to any elimination or reduction) as provided for under Article 19.2 of the FIFA ADR,

and not the maximum 4 year ineligibility period provided for under Article 19.1 of the FIFA ADR. In addition, the Player did not evade or refuse to give his sample, and neither is there evidence that he tampered with the sample collection process. As such, the Player cannot benefit from any reduction under Article 23.3 of the FIFA ADR, and the Panel finds the KFA Disciplinary Committee to have erred to this extent in reducing the sanction on grounds of Article 23.3 of the FIFA ADR.

201. Therefore no grounds exists for reducing the maximum 2-year period of ineligibility on the grounds of prompt admission.

202. In view of the foregoing, the Panel finds the Player failed to establish that he was not significantly at fault or negligent. He is therefore liable to the maximum 2-year period of ineligibility. As a professional sportsman, the Player should have perceived a higher degree of risk when applying the facial cream, and consequently exercised greater care and investigation given that (i) he was applying cream stored in a tube which had already been opened (ii) the cream had not been prescribed by a doctor but had merely been recommended to him by a friend; and (iii) the ingredients of the cream were inscribed in a language he was unfamiliar with. His failure to consider these factors amounted to a significant fault and a breach of duty to take appropriate care.

E. Commencement of the Period of Ineligibility

203. The Player wants the ineligibility period to start running from 5 May 2015 – the date he was tested – and not from 22 June 2015, the date the K-League Decision was rendered. He argues that the KFA, AFC and FIFA delayed the sanctioning process by close to 3 months without merit and wants this to be taken into account.

204. Citing Article 28 of the FIFA ADR, FIFA wants the period of ineligibility to run from the date of communication of this award, with any period of ineligibility already served by the Player being credited to him.

205. Looking at the facts, it is evident that upon receiving the K-League Decision on 22 June 2015, the KFA informed the AFC and FIFA that the KFA Disciplinary Committee would sit in mid-July to decide the matter. However, it was only on 12 August 2015 (51 days later) when the KFA Disciplinary Committee heard and determined the matter.

206. As earlier mentioned, the Panel reiterates the need for judicial bodies to adjudicate anti-doping matters as expeditiously and efficiently as possible not only because the athlete remains provisionally suspended during the proceedings, but also because third parties affected by the alleged anti-doping rule violation could potentially suffer harm or prejudice pending a final and binding decision in relation to the charges proffered against the athlete.

207. No reason has been advanced by the KFA as to why the KFA Disciplinary Committee took so long, and there is no evidence or claim to the effect that the KFA Disciplinary Committee had not received all the necessary documentation from the K-League, or that the Player had a role in the delay. It therefore seems as though the KFA Disciplinary Committee was in a position

to hear the matter with immediate effect following its notice dated 25 June 2015 and could reasonably have given itself 5 working days to prepare and adjudicate the matter by 30 June 2015.

208. Under the circumstances, the Panel takes 30 June 2015 as the date the KFA Disciplinary Committee could reasonably have heard and decide the matter, and that by rendering the Appealed Decision on 12 August 2015, the KFA Disciplinary Committee unreasonably and unduly delayed the proceedings by 43 days. This delay must be taken into account in fixing the date of commencement of the ineligibility period.

209. Indeed, Article 28.1 of the FIFA ADR states as follows:

Delays not attributable to the Player or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Player or other Person, the FIFA Disciplinary Committee may decide that the period of Ineligibility shall start at an earlier date, commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be disqualified.

210. Article 28.1 of the FIFA ADR does not oblige the judicial body to set the ineligibility period with effect from the date of sample collection as requested by the Player. By using the phrase *"as early"* as opposed to the word *"shall"*, Article 28.1 of the FIFA ADR gives the judicial body the discretion to decide when a player should start serving his ineligibility period in the event if finds substantial delays in the hearing process.

211. In view of the foregoing, and in exercising its discretion, the Panel credits the 43 days delay occasioned by the KFA Disciplinary Committee from the 2 year ineligibility period to be served.

212. In addition, Article 28.3 (a) of the FIFA ADR states as follows:

If a Provisional Suspension is imposed and respected by the Player or other Person, the Player or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, the Player or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.

213. With the above-provision in mind, the Panel orders that any provisional suspension served by the Player be further credited from the 2-year period of ineligibility.

214. For purposes of clarity, the Panel credits 43 days plus any provisional suspension already served by the Player from the 2-year period of ineligibility herein imposed.

215. Pursuant to Article 28 of the FIFA ADR, the Player shall start serving his ineligibility period *"as soon as the decision providing for Ineligibility is communicated to the Player",* i.e. from the date of communication of this award.

X. CONCLUSION

216. The Panel finds the Player to have committed an anti-doping rule violation, contrary to Article 6 of the FIFA ADR. He is therefore liable to serve a 2-year period of ineligibility in accordance with Article 19.2 of the FIFA ADR. The appeal filed by FIFA is therefore upheld and the KFA's 5th Disciplinary Committee Decision is set aside.

217. Finally, the Panel urges the KFA to update its anti-doping rules, regulations and educational programmes so as to bring them in line with the FIFA ADR and WADA benchmarks and to expedite the resolution of disputes at national level. The Panel also urges FIFA to ensure that the KFA complies with the rules and regulations established by the KFA, FIFA and the WADA.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Fédération Internationale de Football Association against the Korea Football Association's 5th Disciplinary Committee decision dated 12 August 2015 is upheld.

2. The Korea Football Association's 5th Disciplinary Committee decision dated 12 August 2015 is set aside.

3. Mr. Kang Soo Il is sanctioned with a two (2)-year period of ineligibility as from the date of this award with credit given for any period of ineligibility served by Mr. Soo Il, as well as an additional forty-three (43) days credit due to delay in the underlying procedure unattributable to him.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.