



Arbitrations CAS 2008/A/1588 Fédération Internationale de Football Association (FIFA) v. Malta Football Association (MFA) & C. and CAS 2008/A/1629 World Anti-Doping Agency (WADA) v. MFA & C., award of 9 February 2009

Panel: Mr Lars Hilliger (Denmark), President; Mr Goetz Eilers (Germany); Prof. Ulrich Haas (Germany)

Football

Doping (norandrosterone)

Scope of application of FIFA anti-doping regulations and of national anti-doping regulations

Application of FIFA anti-doping regulations by reference?

Mitigating circumstances

Limitation of reference to CAS jurisprudence by the content of the applicable regulations

- 1. In line with CAS jurisprudence, the system put in place under the FIFA Disciplinary Code (FDC) shows that FIFA has exclusive competences at international level whereas national federations have exclusive competences at national level. Therefore, the FDC is not directly applicable when it comes to sanctions imposed against players on national matches and competitions. In order to ensure the harmonization of doping sanctions at national level FIFA cannot claim the direct applicability of the FDC antidoping regulations but must use its disciplinary prerogatives provided under article 152 FDC in order to have national antidoping regulations amended accordingly. Once the national antidoping regulations have been harmonized, it is then FIFA's and WADA's duty to ensure that those national regulations are correctly applied by the national judicial bodies, using their right of appeal if necessary.**
- 2. Although the FDC antidoping regulations can apply at national level per reference through national civil law or through the Statutes and antidoping regulations of the relevant national association, as a general rule the FDC antidoping regulations don't prevail on national antidoping regulations. If the decision appealed against and the 'parties' submissions deal with the sanction of a player at national level, the national association antidoping regulations should be applied independently and without any reference to the FDC antidoping regulations which are therefore not applicable.**
- 3. According to CAS jurisprudence, by not exercising the required caution when he purchased and ingested the nutritional supplements which he argues to have caused the positive test, a player commits a gross negligence which does not justify that the period of suspension be reduced.**
- 4. The fact that a case is governed by the national association antidoping rules and not by the FIFA Regulations does not prevent a CAS panel from applying similar principles as to the question of the existence or not of mitigating circumstances.**

However WADA and FIFA should not deduct from this that this would systematically lead in other cases to the application of CAS jurisprudence or even of the provisions of the WADC or the FIFA antidoping regulations on the issue of reduction of the period of suspension. Any reference to CAS jurisprudence is limited in each case by the content of the applicable regulations. CAS jurisprudence is thus not applicable if it conflicts with regulations which are validly applicable.

The Fédération Internationale de Football Association (FIFA) is the International Federation of Football with its registered office in Zurich, Switzerland.

The World Anti-Doping Agency (WADA) is the international independent organisation created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms. It coordinates the development and implementation of the World Anti-Doping Code (WADC). It is a Swiss private law Foundation with corporate seat in Lausanne, Switzerland and its headquarters in Montréal, Canada.

The Malta Football Association (MFA) is the national football federation in Malta and affiliated with FIFA since 1960.

The football player C. (“the Player”) is playing for the Maltese football club “Valetta FC”, which team is affiliated with the MFA.

On the occasion of an in-competition test performed on the Player on December 26, 2007 after the match of his team against Hibernians FC, the Player tested positive to 19-norandrosterone.

The A-sample was analyzed by the Antidoping Laboratory of Dresden, which is accredited by WADA and revealed a concentration of 19-norandrosterone of 3.3 +/- 0.8 ng/mL. The Player was informed of the adverse analytical finding by a letter dated January 29, 2008 from the MFA General Secretary.

On February 12, 2008, the MFA Executive Committee decided to temporarily suspend the Player from February 19, 2008 and on February 14, 2008, the General Secretary requested the analysis of the B-sample. The Player did not wish to be present for the analysis of the B-sample, in which a concentration of 3.6 +/- 0.9 ng/mL was detected.

The Player was informed of this second adverse analytical finding by a letter dated March 24, 2008 from the MFA General Secretary.

At a meeting before the Medical Committee of the MFA held on April 8, 2008, the Player denied any ingestion of drugs/medication which contained the prohibited substance. However he admitted having taken nutritional supplements which were available in pharmacies or health shops.

In a decision dated May 21, 2008, the MFA Control and Disciplinary Board imposed to the Player a four months period of suspension starting on February 19, 2008 for his violation of the anti-doping rules.

The decision of the MFA Control and Disciplinary Board was sent to FIFA by the MFA by means of a fax dated May 29, 2008. The appealed decision and the complete file were sent to FIFA on June 6, 2008.

Based on those documents, the decision of the MFA Control and Disciplinary Board, which no internal appeal was lodged against, can be summarized in essence as follows:

“(…) The case was referred to the Medical Committee which heard the evidence of the player, who denied ingestion of drugs/medications which contained the banned steroid. However he had consumed common supplements which are available in pharmacies and health shops.

The Medical Committee feels that since there is no evidence of steroid ingestion, however the test’s marginal positive result could have resulted from supplement contamination. The Medical Committee is aware that this in itself may mitigate the case but does not exculpate completely as there is quite a clear warning in WADA rules as to the danger of possible supplement contamination.

The Control and Disciplinary Board of the Malta Football Association, during its meeting of 21st May 2008, heard the charge against player C. The Control and Disciplinary Board, after hearing the evidence of the player and the player’s representative concerned, found the player guilty of infringing Article 1 – Part 4 “The M.F.A. Doping Regulations – Use of Prohibited Substances and Prohibited Techniques”.

The Control and Disciplinary Board took note of the fact that in previous similar cases of players in foreign clubs the players accused were suspended from four (4) to six (6) months.

The Control and Disciplinary Board, after taking into consideration all the facts particularly that the substance consumed does not enhance performance and that the test result was marginally positive, suspended C. for four (4) months, starting from 19th February 2008 when he was suspended temporarily by the Executive Committee”.

On June 26, 2008 FIFA filed with CAS a statement of appeal against the decision taken by the MFA Control and Disciplinary Board and completed it with an appeal brief sent on July 7, 2008.

FIFA filed the following request for relief:

- “1. In conclusion, we request this Honourable Court to review the present case as to the facts and to the law, in compliance with Article R57 of the Code of Sports-related Arbitration.*

2. *Equally, we request this Honourable Court to issue a new decision setting aside the decision passed on 21 May 2008 by the MFA as being in violation of Article 65 of the FIFA Disciplinary Code and pass a new decision.*
3. *We also request this Honourable Court to suspend the player C. for two years from all football activities for violation of anti-doping rules.*
4. *Finally, all costs related to the present procedure as well as the legal expenses of the Appellant shall be borne by the Respondents”.*

On August 5, 2008, WADA filed as well an appeal against the decision taken by the MFA Control and Disciplinary Board and confirmed its statement of appeal with the filing of an appeal brief on October 30, 2008.

WADA submitted to CAS the following requests for relief:

- “1. *The Appeal of WADA is admissible.*
2. *The decision of the MFA Control and Disciplinary Board in the matter of C. is set aside.*
3. *C. is sanctioned with a two years period of suspension starting on the date on which the CAS award enters into force. Any period of suspension (whether imposed to or voluntarily accepted by C.) before the entry into force of the CAS award shall be credited against the total period of suspension to be served.*
4. *WADA is granted an Award for costs”.*

The MFA replied to FIFA’s submissions in an answer dated July 28, 2008.

The MFA submitted to CAS the following requests for relief:

- “1. *The MFA requests that FIFA’s appeal brief above referred to be rejected (...).*
2. *The Appellant be ordered to incur all costs related to the present procedure.*
3. *The Appellant be ordered to cover all legal expenses and the other costs of the Respondent related to the present procedure”.*

On November 12, 2008, the MFA filed a complementary answer in response to WADA’s statement of appeal and appeal brief. The MFA basically repeated its submissions related to FIFA’s statement of appeal and expressly recognized CAS jurisdiction under point II.4 of its complementary answer.

On November 20, 2008, the Player filed an answer, where he repeats the submissions made before the MFA Control and Disciplinary Board, confirming that he did not know that he had consumed prohibited substances and can only explain the positive results of the tests by the ingestion of nutritional supplements. The Player claims that he never intended, in his capacity as amateur player who only gets pocket money from his sport activity, to enhance his performances. The Player further argues that his amateur status in an amateur club prevents him from getting standard medical support and advice, with regard to prohibited substances. Had he known the content of the

supplements he would have kept away from it. Eventually, the Player mentions that he suffered damages in his reputation, which lead to *“major psychological difficulties”*.

A hearing was held on November 24, 2008.

LAW

CAS Jurisdiction and admissibility

1. The jurisdiction of CAS is not disputed and all parties signed the order of procedure where a specific reference is made to the competence of CAS based on article 61 of the FIFA Statutes, which CAS jurisdiction derives from. The Panel notes that the decision of the MFA Control and Disciplinary Board is an internal final and binding doping related decision, as no appeal was lodged internally before the MFA Appeals Board, which is undisputed.
2. As to the time limit to lodge an appeal before CAS, article 61 par. 1 and par.7 of the 2007 FIFA Statutes provide that the appeal must be lodged *“within 21 days of notification of the decision in question”* and that *“the time allowed for FIFA and WADA to lodge an appeal begins upon receipt by FIFA or WADA, respectively, of the internally final and binding decision in an official FIFA language”*. The decision was notified to FIFA by means of a fax dated June 6, 2008 and FIFA’s appeal was lodged on June 25, 2008, therefore within the statutory time limit set forth by the 2007 FIFA Statutes, which is undisputed. As to WADA, the decision was notified to it by an email of FIFA dated July 21, 2008 and WADA lodged its appeal on August 5, 2008, which was as well within the statutory time limit set forth by the 2007 FIFA Statutes and which is also undisputed.
3. It follows that the appeals are admissible.

Applicable law

4. Art. 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”.

5. The Panel notes first that the Parties disagree on the applicable regulations and the rules of law or national laws applicable to the present case. It then notes that the present case is of disciplinary nature in relation to a doping offence. For such matters, FIFA and the national football federations have issued extensive regulations, which are self explanatory, so that there is in principle no need for the Panel to refer to any national law.
6. The main question that the Panel has to deal with is thus the one of the applicable regulations to the present case. FIFA claims that the FIFA antidoping regulations, namely the FIFA Doping control regulations 2008 together with the FIFA Disciplinary Code entered into force on September 1st, 2007, are applicable to the exclusion of the MFA Regulations. WADA holds a slightly different position. WADA claims indeed that the FIFA antidoping regulations are applicable but argues that those FIFA regulations do not contradict the MFA regulations which, according to WADA, are clearly compatible with the FIFA ones. As to the MFA, the national association clearly expresses that FIFA antidoping regulations are not applicable at the national level and that only the MFA antidoping regulations can apply to the present case.
7. The Panel noted that it was not the first case where CAS had to decide on the question of the scope of application of FIFA and national antidoping regulations and on the question of potential conflicts between those regulations.
8. In a recent case involving the Qatari Football Association (QFA), CAS concluded that FIFA antidoping regulations were applicable because the last version of the QFA Statutes and QFA Regulations referred to the FIFA antidoping regulations but not to any specific and extensive QFA antidoping rules. The regulations of the QFA named “Competition Domestic for 1st and 2nd Division Club” provided under article 96 that *“it was prohibited to use illegal drugs for activation according to FIFA regulations (...) which contain a list of illegal materials and methods”* (CAS 2007/A/1446, 4.5 *et seq.*).
9. In the same case, CAS decided that *“Based on the very clear wording of the FIFA Statutes and of the FIFA Doping Control Regulations and, on the fact that nothing in the QFA Statutes or Regulations provides for any contrary interpretation and on the numerous references to the FIFA regulations by the QFA official bodies during the procedure before the QFA disciplinary committee, the Panel concludes that the FIFA Statutes, Regulations and Directives are directly applicable to the present case”* (CAS 2007/A/1446, 4.8). In that context, CAS pointed out that *“the suspension for a specified period is one of the sanctions provided under article 60, which is in line with the FIFA Disciplinary Code”*. The Panel notes that the use of the terms *“directly applicable”* by CAS did not mean in the specific case that CAS considered that the FIFA antidoping regulations were applicable *per se* but that the numerous references to the FIFA antidoping regulations in the QFA regulations lead to the application in casu of the FIFA antidoping regulations which operated as complementary regulations of the QFA. As the QFA had not edicted specific antidoping rules, the FIFA antidoping rules could be applied by CAS without any restriction. This interpretation by CAS contradicts FIFA’s opinion but is somehow in line with WADA’s position when WADA seems to

recognize that in order to apply FIFA antidoping regulations, such application should not contradict MFA regulations.

10. In another case quoted by FIFA and WADA (CAS 2007/A/1370 & 1376 “Dodo”), CAS admitted that the FIFA antidoping rules were applicable to the player because, on the one hand, Brazilian law imposed on Brazilian federations and athletes the observance of international sports rules and, on the other hand, article 65 of the Statutes of the Brazilian football federation provided that *“the prevention, fight, repression and control of doping in Brazilian football must be done complying also with international rules”*. The Brazilian football federation apparently considers FIFA Disciplinary code *“of universal application”*. Eventually CAS pointed out that the compliance with and the enforcement of FIFA rules is even indicated in Article 5, par. V of the Brazilian football federation statutes as one of the basic purposes of this Federation. In that case, CAS thus drew the conclusion that the Brazilian national regulations acknowledged the legal primacy of FIFA disciplinary principles and that the FIFA rules were applicable (CAS 2007/A/1370 & 1376, 101 *et seq.*). The Panel sees here again that in order to apply FIFA antidoping regulations, the national federation regulations must be taken into consideration.
11. However, in the same case, CAS made reference to article 60 par. 2 of the 2007 FIFA Statutes, which provides that *“CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”*.
12. In the present case, FIFA seems to draw the conclusion from this article of its statutes that FIFA Regulations are directly applicable to the Player and that no transcription in the national federation regulations would be necessary. FIFA and WADA seem to consider that previous CAS case law, notably the ones quoted above confirm this interpretation of article 60 par. 2 of the FIFA Statutes.
13. The Panel notes on one hand that FIFA is an association of national federations and international confederations. As such FIFA issued various regulations on the basis of the competences which were granted to it by its members. Such competences are notably granted to FIFA in its Statutes. On the other hand it is undisputable that FIFA’s members, in particular the national football federations, are issuing their own national regulations and thus retain, in accordance with the FIFA Statutes, their own regulatory competences, notably with regard to national competitions. In principle FIFA regulations thus apply to international games only.
14. However the Panel points out that FIFA and its members are aware of the need to set international standards which should be applicable in any type of football competitions be it at national or international level, be it professional or amateur competitions. In order to pursue this objective, FIFA and its members can decide that FIFA issues regulations which are directly applicable at national level or that FIFA issues international regulations which need to be adopted by each FIFA member in order to be applicable at national level.

15. In antidoping matters, the Panel stresses first that FIFA and many other international federations insisted on the fact that the World Anti-Doping Code (WADC) was not directly applicable to them but that it was necessary that it be adopted by federations in order to be applicable to their individual members. In this respect FIFA and WADA are thus correct when they rely on the FIFA Disciplinary Code and FIFA antidoping regulations and not on the WADC in their statements of appeal. However, the Panel notes further that FIFA not only issued antidoping regulations at FIFA level but requested from its members to issue similar regulations. This whole set of national regulations on antidoping matters tends to prove that FIFA antidoping regulations are not directly applicable at national level, otherwise those national regulations would be useless at best or conflict with FIFA regulations at worst.
16. The Panel checked first whether FIFA Regulations provided for their direct applicability at national level or not. Should no clear answer be found in FIFA Regulations as to their scope of application, the Panel decided that it would then address the issue of the potential conflict between FIFA rules and national rules, bearing in mind that the various CAS precedents expressly referred to national regulations or national civil law before concluding that FIFA regulations were applicable per reference.
17. According to article 2 “Scope of application: substantive law” of the FIFA Disciplinary Code (FDC) the FDC “*applies to every match and competition organized by FIFA. Beyond this scope, it also applies if a match official is harmed and, more generally, if the statutory objectives of FIFA are breached, especially with regard to forgery, corruption and doping. (...)*”. The present disciplinary case is not related to a match or a competition organized by FIFA, so it does not fall within the scope of the FDC as far as the first sentence of article 2 FDC is concerned. However this is a doping case and as such the Panel finds that it falls within the scope of the second sentence of article 2 FDC, as part of the statutory objectives of FIFA. In other words should the Player have perpetrated a doping offense during the game organized by the MFA, he would be subject to the FDC, on the basis of article 2 FDC, 2nd sentence.
18. Article 2 FDC determines in which type of competition a disciplinary case can lead to the application of the FDC and thus to the sanctions provided by it. Yet the scope of application of the sanctions is not clearly defined. In other words the Panel needs to understand whether a sanction imposed on the basis of the FDC applies to international matches and competitions or to national matches and competitions as well. In this respect article 2 FDC remains unclear. Should the sanctions provided by the FDC apply to national competitions, national bodies should then apply the FDC and not their national regulations. This would therefore mean that the FDC is directly applicable and that all doping cases would be subject to the same rules in any national federation.
19. However article 152 FDC refers clearly to “Associations’ disciplinary codes” and provides that “*the associations are obliged to adapt their own provisions to comply with this code for the purpose of harmonizing disciplinary measures*” [par. 1]. Article 152 FDC provides further that “*the associations*

shall, without exception, incorporate the following mandatory regulations of this code into their own regulations in accordance with their internal association structure: (...)” [par. 2]. Many of those so called “mandatory regulations” of the code are related to doping offenses. Eventually article 152 par. 5 provides that “*any association that infringes this article shall be fined. In the event of more serious infringements, further sanctions may be pronounced in accordance with this code, including exclusion from current or future competitions (...)*”.

20. The Panel is of the opinion that article 152 FDC is clearly excluding the direct applicability of the FDC at national level, notably the provisions on doping offences, for the following reasons:
- (1) Article 152 FDC par. 1 clearly specifies that national associations must adapt their provisions in order to comply with the FDC for the purpose of harmonizing disciplinary measures. If the provisions of the FDC on doping offences were directly applicable, the wording of article 152 FDC would be totally different, as no adaptation would be necessary and no harmonization would be needed, the direct applicability of those FIFA rules ensuring that the same disciplinary measures are taken worldwide.
 - (2) Article 152 FDC par. 2 provides that the associations will incorporate inter alia antidoping regulations into their own regulations in accordance with their internal association structure. This shows that a process of transposition of the relevant regulations of the FDC is necessary in order for those regulations to be applicable at national level. This process is in particular due to the internal structure of each association.
 - (3) Article 152 FDL par. 5 specifies various sanctions against the association which infringes this article. The Panel sees in this series of sanctions a clear proof that the FDC regulations on doping offences are not directly applicable and that FIFA needs to “threaten” the associations with sanctions in order to ensure that national antidoping regulations are harmonized with the FDC.
 - (4) Eventually the Panel observes that according to FIFA circular number 1059 (which is publicly accessible and thus was consulted by the panel *ex officio*) FIFA provided the national federations with a deadline to proceed with the amendments to their antidoping regulations. In case of the national associations missing the deadline, FIFA threatens them with fines, whereas no reference is made to a potential direct applicability of the relevant regulations of the FDC.
21. During the hearing, FIFA admitted that according to article 2 FDC, this code applies in principle only to FIFA competitions but it claimed that it applied as well to doping matters in other competitions based on article 2 FDC, second sentence. As mentioned above, the Panel is of the opinion that doping offenses committed during matches or competitions not organized by FIFA may indeed fall in the scope of application of the FDC. This is not contradicted by the Panel’s opinion that the antidoping regulations of the FDC are not directly applicable at national level but means that FIFA can sanction a player, who committed a doping offence during a national competition, with regard to matches and

competitions organised by FIFA. This is confirmed by an in depth analysis of the meaning of article 2 FDC, second sentence.

22. Under chapter 1 “organization”, section 1 “Jurisdiction of FIFA, associations, confederations and other organizations”, article 77 “General rule”, the FDC provides that “*with regard to matches and competitions not organized by FIFA (cf. art. 2), associations (...) are responsible for enforcing sanctions imposed against infringements committed in their area of jurisdiction. If requested, the sanctions passed may be extended to have worldwide effect (cf. art. 143 ff.)*” [par. 1]. Article 77 FDC provides further that “*the judicial bodies of FIFA reserve the right to sanction serious infringements of the statutory objectives of FIFA (cf. final part of art. 2) if associations (...) fail to prosecute serious infringements or fail to prosecute in compliance with the fundamental principles of law*” [par. 2]. Article 77 FDC then foresees that “*associations (...) shall notify the judicial bodies of FIFA of any serious infringements of the statutory objectives of FIFA (cf. final part of art. 2)*”.
23. Article 77 FDC is a jurisdiction clause and does not as such give information on the "substantive law" to be applied by the competent jurisdiction. The Panel finds however in it an important confirmation that disciplinary matters at national level are of the competence of the national federations, whereas FIFA’s judicial bodies, namely FIFA Disciplinary Committee, Appeal Committee and the Ethics Committee as defined under article 80 FDC, only reserve their right to sanction at international level doping cases mentioned under article 2 FDC, second sentence. Moreover, article 77 par. 3 provides that doping cases must be notified to FIFA judicial bodies. The specific regulations provided under article 77 par. 2 and 3 are thus exceptions to the general principle of article 77 last sentence, where sanctions decided by national judicial bodies can be extended to have worldwide effect only at the request of the national associations.
24. Going further in the analysis of the FDC jurisdictional rules, the Panel reviewed carefully articles 143 and 144 FDC and noted that for doping offenses, article 143 FDC provides for an obligation of the associations to request FIFA to extend the sanctions they have imposed. If such a request is not made, article 143 par. 3 FDC provides that FIFA judicial bodies will pass a separate decision and not simply *ex officio* extend the national decision.
25. Far from considering those regulations as mere jurisdictional clauses, the Panel came to the conclusion that the system put in place under the FDC shows that FIFA has exclusive competences at international level whereas national federations have exclusive competences at national level. However, in order to avoid that doping offenses remain unsanctioned at international level, the FDC obliges the national federations to disclose them to FIFA judicial bodies. Should the national associations fail to meet their disclosure obligations, then the FDC authorizes FIFA judicial bodies to sanction only at international level doping offenses committed during national matches or competitions.
26. The Panel noted as well with interest that according to article 144 lit d) FDC a request for extension is approved by FIFA’s judicial bodies if “*the decision complies with the regulations of*

FIFA". This provision combined with article 77 par.2 FDC ensures that FIFA judicial bodies impose or extend sanctions at international level on all doping offenses committed worldwide during matches or competitions not organized by FIFA. Based on the foregoing, the Panel finds that the FDC applies to every match and competition organized by FIFA if its statutory objectives on doping are breached in any type of match or competition, be it organized by FIFA or not.

27. The Panel concludes that this corresponds to a literal and systematic interpretation of article 2 FDC. It thus appears that the Panel's decision not to recognize the direct application of the FDC when it comes to sanctions imposed against players on national matches and competitions is not only in line with CAS precedents but above all with FDC's scope of application as defined under article 2 FDC.
28. As to national decisions on doping offenses and as mentioned before, the disciplinary measures provided under article 152 FDC ensure that the associations implement the necessary antidoping regulations. On top of that article 61 paragraphs 5 and 6 of the 2007 FIFA Statutes grant to FIFA and WADA a right of appeal in order to ensure that national judicial bodies apply correctly their national antidoping regulations.
29. Based on the foregoing, the Panel concludes that in order to ensure the harmonization of doping sanctions at national level FIFA cannot claim the direct applicability of the FDC antidoping regulations but must use its disciplinary prerogatives provided under article 152 FDC in order to have national antidoping regulations amended accordingly. Once the national antidoping regulations have been harmonized, it is then FIFA's and WADA's duty to ensure that those national regulations are correctly applied by the national judicial bodies, using their right of appeal if necessary.
30. Having excluded FIFA's submissions on the direct applicability of the FDC at national level, the Panel then considered WADA's position which sees the FDC antidoping regulations as being part of the national antidoping regulations per reference, as expressed during the hearing, or as prevailing on the national antidoping regulations should there be a conflict between those rules. In this respect, the Panel admitted that the CAS jurisprudence quoted by WADA and summarized above clearly recognized that the FDC antidoping regulations could apply at national level per reference, be it for instance through national civil law, as in the case CAS 2007/A/1370 & 1376 or through the Statutes and antidoping regulations of the relevant national association in the same case or in the case CAS 2007/A/1445. On the other side, CAS quoted jurisprudence is very reluctant to recognize that the FDC antidoping regulations prevail as a general rule on national antidoping regulations. This would in practice mean that the FDC is directly applicable at national level, which the Panel already excluded.
31. However, as rightly claimed by the MFA, the MFA Statutes and MFA antidoping regulations do not leave any room for such an interpretation. The MFA Statutes do indeed refer to the FIFA regulations but together with the UEFA and MFA regulations. The clear wording of the

MFA Statutes shows that there is no intention on the MFA side to extend the scope of application of the FIFA or UEFA regulations per reference. In other words, each set of regulations is applicable within its proper scope. CAS is competent as the highest external jurisdiction of the MFA with respect to disputes related to MFA Regulations. CAS competence cannot be interpreted as an admission of the applicability of FIFA Regulations to national cases, as wrongly claimed by FIFA on the erroneous basis of article 60 par. 2 of the FIFA Statutes.

32. As to the MFA antidoping regulations and procedures, contrary for instance to the Qatari antidoping regulations and procedures, very few references are made to FIFA regulations. No use is made of FIFA logo, FIFA forms, etc. The Doping Charter of the Malta Football Association (“The MFA Charter”), provides actually for an extensive set of rules.
33. As to specific references to FIFA in the MFA Charter, the fact that as an introduction to the Charter, the MFA expresses that *“the Maltese government is a signatory of the anti-doping convention of the council of Europe”* and that the Charter is *“in accordance with the policies of FIFA and UEFA and in accordance with the recommendations laid down by the World Anti-Doping Agency (WADA)”* cannot lead to the conclusion that any provision of the Charter which might be contrary to the FDC or the WADC is automatically superseded by the relevant FDC or WADC provision.
34. Article 2 “Definitions” provides under “prohibited substances and methods” that those prohibited substances and methods comprise everything published by WADA from time to time but with reference to the MFA website and not to WADA’s or FIFA’s website. This case of application of another “regulation” per reference is clearly limited to the list of prohibited substances and methods. It is very usual with regard to antidoping regulations and this cannot lead to the application of the whole WADC or the FDC antidoping regulations.
35. Article 3 last paragraph and article 5 para. 5.2 of the Charter refer to FIFA but only with regard to transfer of information, in accordance with article 77 par. 3 FDC, mentioned above. Schedules A and B of the MFA Charter refer several times to FIFA but with the objective to coordinate TUE procedures at national and international levels in order to avoid contradictory decisions.
36. Based on the foregoing, the Panel comes to the conclusion that the MFA antidoping regulations should be applied independently and without any reference to the FDC antidoping regulations which are therefore not applicable in the present case, considering that the decision appealed against and the Parties’ submissions deal with the sanction of a player at national level.
37. Considering now the question of the applicable rules of law or of the applicable law, the Panel notes that the Parties do not specifically agree on any applicable rules of law to the present arbitration. As to the applicable law, the Panel is of the opinion that one could consider, on the basis of Art. R58 of the Code, that Maltese law is applicable as the challenged decision was

issued by the MFA Central and Disciplinary Board, who must apply the Laws of the Republic of Malta, which govern the MFA Statutes and consequently all the subordinated MFA Regulations, as provided under paragraph 158 of the MFA Statutes. However, the MFA Statutes specifically refer to the FIFA Statutes which provide, in the 2007 edition, under article 60 par. 2, that CAS will apply Swiss law “additionally” to the FIFA Regulations. Far from seeing in this a conflict of governing laws, the Panel considers that, in this specific case, where FIFA Regulations are partly applicable as mentioned under nr. 65, Swiss law should apply additionally, if this is needed. The Panel notes however that none of the parties draw arguments from the respective national laws and that it did not need eventually to refer to or consult *ex officio* Swiss or Maltese law. This question is thus here actually not relevant and the Panel does not need to further develop the reasons for his decision on the applicable law.

Merits

A. *Doping offence*

38. Prohibited substances and methods are defined under article 2 of the MFA Charter with reference to WADA’s prohibited list. Article 4 par. 1.1 of the MFA Charter prohibits the use by a player of a prohibited substance or method and article 6 par.1.1 provides that a player shall be suspended for twelve months in case of a first doping offence. Art. 1.2 of the same article provides that the sanction may be scaled down or extended in particular circumstances.
39. Based on the analysis of the A and B samples of his bodily specimen, the Player was tested positive to 19-norandrosterone an endogenous anabolic androgenic steroid listed under class S1, Anabolic Agents of the 2007 and 2008 WADA Prohibited List. The antidoping procedure conducted by the MFA is undisputed and the file does not show any wrongdoing. The Player did further not dispute that the results of the test could not be caused by an endogenous production but admitted having taken nutritional supplements, which were available in pharmacies and health shops.
40. 19-norandrosterone being a class S1, Steroid, according to the WADA List classification and to the MFA Charter, this substance are thus prohibited at all times, in and out of competition. The presence of 19-norandrosterone, in the Player’s bodily sample which is above the cut-off limit of 2ng/ml constitutes therefore an anti-doping rule violation or a doping offence according to section 4 of the MFA Charter.

B. *Mitigating circumstances and sanction*

41. The MFA Medical Committee and the MFA Control and Disciplinary Board believed the Player when he stated that the positive test results were due to the ingestion of nutritional supplements. Although the MFA Medical Committee clearly refers in its report to “*the clear*

warning in WADA rules as to the danger of possible supplement contamination”, both the MFA Medical Committee and the MFA Control and Disciplinary Board see in this type of contamination and in the *“tests’ marginal positive results”* a mitigating circumstance which justifies an eight-months reduction of the standard one-year period of suspension provided by the MFA Doping Charter. The MFA Control and Disciplinary Board surprisingly refers to *“similar cases”* in other countries which lead to similar periods of suspension.

42. According to article R57 of the Code, the Panel has full power to review the facts and the law. It can thus freely decide whether the circumstances mentioned above are mitigating circumstances, which justify a reduction of the period of suspension according to section 6 art. 1.2 of the MFA Doping Charter. Should the Panel take a different decision from the one passed by the MFA Control and Disciplinary Board, it must however give the reasons for it, based on general procedural rules applicable to an appeal court.
43. In this respect, the Panel noted first that contrary to the WADC and the FIFA antidoping regulations, the MFA Doping Charter leaves a large margin of appreciation when deciding whether the standard period of suspension should be reduced or extended. There is actually no rule in the MFA Doping Charter which can guide the court when it is balancing the various factual circumstances in order to fix the final period of suspension. The Panel then considered each mitigating circumstance separately. It first rejected the comparison made by the MFA Control and Disciplinary Board related to similar decisions taken in other countries and stressed that the MFA Control and Disciplinary Board and the MFA’s representatives did not provide any reference supporting this assessment. This is in particular contradictory to CAS jurisprudence, correctly quoted by WADA, which states clearly that the ingestion of nutritional supplements easily available on the market, does not lead to a reduction of a period of suspension. The Panel considers thus that far from justifying a reduction of the period of suspension, the comparison with foreign precedents, and in this respect CAS jurisprudence should be the best reference of all, as CAS is applying FIFA and national regulations from all around the world, leads to the opposite conclusion that the ingestion of nutritional supplements is an athlete’s fault or negligence which prevents any reduction of the period of suspension provided under the relevant applicable regulations (see notably CAS 2007/A/1446).
44. This Panel’s conclusion leads its members to logically reject as well the MFA Medical Committee’s argumentation, adopted by the MFA Control and Disciplinary Board. The MFA Medical Committee indeed pleads for a reduction of the Player’s period of suspension because the positive test appears to be caused by a contamination through ingestion of nutritional supplements. There is no specific reference in the MFA Doping Charter on this subject and, more generally, there is no definition of a *“mitigating circumstance”* in the MFA Doping Charter. The MFA and the Player did moreover not refer to any specific case law in relation with Doping Offences in Malta, which help the Panel to find such a definition.

45. In the present case, the Panel notes that the Player, who renounced to come to the hearing, did not explain whether he had made any inquiry as to the content of the nutritional supplements he was taking. The issue of nutritional supplements leading to positive doping tests is however well known in sport. As the MFA Medical Committee correctly pointed out in its report, WADA and the WADC do clearly refer to it. The Panel comes thus to the conclusion that the Player did not exercise the required caution when he purchased and ingested the nutritional supplements which he argues to have caused the positive test. By so acting, the Player committed a gross negligence which does not justify that the period of suspension be reduced.
46. The Panel's position is in line with other CAS precedents on similar matters, notably the ones correctly mentioned by WADA in its appeal brief. Contrary to the MFA's opinion expressed in its answer to WADA's appeal brief, the fact that the present case is governed by the MFA Regulations and not by the FIFA Regulations does not prevent the Panel from applying similar principles as to the question of the existence or not of mitigating circumstances. The Panel stresses however that WADA and FIFA should not deduct from this that this would systematically lead in other cases to the application of CAS jurisprudence or even of the provisions of the WADC or the FIFA antidoping regulations on the issue of reduction of the period of suspension. Any reference to CAS jurisprudence is limited in each case by the content of the applicable regulations. CAS jurisprudence is thus not applicable if it conflicts with regulations which are validly applicable. This is not the case with the MFA Regulations.
47. The Panel considers as well that the fact that the Player did not want or could not enhance his performance cannot be considered as a mitigating circumstance. This fact is not at all substantiated by the MFA or the Player. There is indeed no evidence which proves the MFA Medical Committee's assumption. There is thus no need for the Panel to make further developments on this specific issue.
48. The Panel comes to the conclusion that the circumstances of the case are very classical and not particular at all, namely the case of a player who by negligence, if not willingly, took a prohibited substance. The Panel stresses that the same level of cautiousness should be required from any player independently from its status, the first objective of antidoping regulations being a fair competition among competitors. As mentioned, antidoping issues are known in the world of sport and the Player cannot hide behind his status and the lack of medical infrastructure within his club, to justify a positive test result. The Player is thus fully responsible of the doping offence and no reduction of the sanction can be granted contrary to what the MFA Control and Disciplinary Board decided and to the MFA's submissions in the appeal procedure before CAS. On the other side, no party refers to any particular factual circumstance which should justify an extension of the one-year period of suspension provided under section 6 art. 1.1 of the MFA Doping Charter. As to the applicable regulations, the Panel already excluded the direct application of the FIFA DC and thus of the two year period of suspension provided by it.

49. The Panel does further not agree with WADA when it claims that based on section 6 art. 1.2 of the MFA Doping Charter, it could extend the sanction up to two years and thus reach the minimal sanction provided by the FIFA Disciplinary Code. WADA's reasoning would indeed lead to constantly extend the period of suspension independently from the particular circumstances of the case which is clearly not the objective of article 6 par. 1.2 of the MFA Doping Charter. In the present case, there is no particular circumstance which could lead the Panel to adapt the period of suspension. If there are no mitigating circumstances, there are as well no aggravating ones.
50. Based on the foregoing, the Panel considers that the MFA Control and Disciplinary Board was wrong in reducing the period of suspension from one year to four months. The Panel therefore decides to impose on the Player a one-year period of suspension as provided under section 6 art. 1.1 of the MFA Doping Charter. Accordingly, all other prayers for relief must be rejected.

C. Period of suspension

51. The Panel notes that the Player was suspended for a four-month period starting on February 19, 2008 and thus ending on June 19, 2008.
52. Based on the foregoing the Panel decides to fix the starting date of the 8 remaining months of suspension on the date of notification of the award to the Parties.

The Court of Arbitration for Sport rules:

1. The FIFA's and World Anti-Doping Agency's appeals against the decision dated May 21, 2008 of the MFA Control and Disciplinary Board are partly upheld.
2. The decision issued by the MFA Appeals Board is set aside.
3. The Player, C., is declared ineligible from the 19 February 2008 until 19 June 2008 and for an additional period of eight months starting on the date of notification of the present award to the parties.
4. All other motions or prayers for relief are dismissed.
5. (...).