Arbitration CAS 2021/A/7768 Bauyrzhan Islamkhan v. Asian Football Confederation (AFC) & Al Ain FC, award of 16 March 2022

Panel: Prof. Martin Schimke (Germany); Mr Jeffrey Benz (USA); His Hon. James Robert Reid QC (United Kingdom)

Football
Doping (methylhexanamine)
Balance of probability standard
Lack of cooperation of club and laboratory standards during the COVID-outbreak
Wide variety of potentially contaminated products and medical team
Disciplinary proceedings against other teammates
Evidentiary value and relevance of polygraph tests

1. **The balance of probability standard requires the indicted player to prove that his hypothesis is more probable than other explanations, and/or at least 51% likely to have occurred. He must establish that the alleged chain of events is more likely than not to have happened, by submitting actual and/or scientific evidence, not just possible scenarios and mere speculation.**

2. **The player who faces difficulties in proving "negative facts" can legitimately expect that his former club, which he accuses of supplying him with contaminated products, will cooperate in the investigation and, failing that, can theoretically prevail himself of its adverse attitude during the assessment of the evidence. However, he cannot go so far as to invoke a reallocation of the burden of proof, which would place him in an overly favourable position, nor can he summon the club as a defending party subject to sanctions, in the absence of a legal or regulatory basis in this sense. Moreover, he cannot hide behind the so-called tardiness of the dealing of his sample by the laboratory in charge of the test, when the delay is justified by the sanitary situation related to the COVID-19 outbreak and in line with the special standards adopted for this purpose.**

3. **The player who merely suspects the many supplements that he consumed through his former's club medical team, without pointing out a specific product or clarifying the grey areas surrounding various products provided by other stakeholders, fails to demonstrate the source of his antidoping rule violation on the balance of probabilities or at all. He cannot either shift his responsibility to his team doctor or nutritionist, after ingesting all sorts of nutriments without checking their content and labelling, in violation of his obligation to ensure that no prohibited substances enter his body.**

4. **Allegations according to which former teammates are subject to disciplinary proceedings or have even been sanctioned for doping carry little weight, if they are not supported by clear documentation or the testimony of those players. The lack of**

evidence in this respect, as well as the absence of any other witnesses called to the hearing, make any in-depth discussion thereto unnecessary.

5. **Polygraph tests are usually considered by courts as inadmissible or mere statements. They may have very limited probative value in specific instances, in particular when supported by other strong evidence or filmed. Their relevance is further limited when they reveal a score which is considered uncertain in relation to crucial questions and/or are based on a series of incomplete questions.**

I. THE PARTIES

1. Mr Bauyrzhan Islamkhan (the "Player" or the "Appellant") is a Kazakh professional football player.

2. The Asian Football Confederation (the "AFC" or the "First Respondent") is the governing body of Asian football and one of the six Confederations recognised by FIFA.

3. Al Ain FC (The "Second Respondent") is an Emirati football club located in Abu Dhabi, United Arab Emirates ("UAE"). It is affiliated to the United Arab Emirates Football Association (the "UAE FA"), which is in turn affiliated to the AFC and FIFA.

II. FACTUAL BACKGROUND

4. This matter is related to an appeal filed by Mr Islamkhan against the decision rendered by the AFC Disciplinary and Ethics Committee (the "AFC DEC") on 23 December 2020 (the "Appealed Decision") to impose a two-year suspension on him for an antidoping rule violation (ADRV). The grounds of the Appealed Decision were notified to the Appellant on 17 February 2021 by means of an email from the AFC.

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

A. The doping control and result

6. On 18 September 2020, the Appellant participated in a football match between his club, Al Ain FC, and Al Sadd SC in Doha, Qatar, for the AFC Champions League ("The Match").

7. On this occasion, the Appellant was selected for doping control, to which he submitted at the Jassim Bin Hamad Stadium in Doha, Qatar.

8. The Appellant signed the doping control form and list of prescribed medications. The only declaration of medication disclosed on the list was the consumption of a painkiller, "Arcoxia".

9. On 2 November 2020, the Anti-Doping Laboratory Qatar notified the AFC of an Adverse Analytical Finding ("AAF") for the presence of Methylhexanamine ("MHA" or the "Prohibited Substance") in the urine A sample provided by the Appellant. MHA is a substance listed under the category "SA Stimulant" part "B. Specified Stimulants" of the World Anti-Doping Agency ("WADA") Prohibited List (January 2020 version). It is stated to be a "Specified Substance" and prohibited "In-Competition".

10. On 4 November 2020, the Appellant was apprised of the results of the doping control test. He expressly waived the analysis of the urine B sample.

B. The proceedings before the AFC DEC

11. On 9 November 2020, the Chairman of the AFC DEC issued a provisional suspension of the Appellant.

12. On 10 November 2020, the AFC issued a Charge Notice to the Appellant for a possible violation of Article 6 of the AFC Antidoping Regulations.

13. On the same day, the Chairman of the FIFA Disciplinary Committee extended the suspension to have a worldwide effect.

14. On 30 November 2020, the AFC Secretary provided the Appellant, upon his request, with a copy of the concentration level report received from the laboratory. The estimated concentration, using a qualitative method, amounted to 90 ng/mL.

15. On 14 December 2020, the Appellant submitted a written statement of defence. He did not contest the ADRV, but indicated, *inter alia*, that:

- He stayed with the national team of Kazakhstan in Almaty, Kazakhstan from 29 August 2020 to 7 September 2020;

- During his stay, he lived in the national team's facilities and only ate the food prepared for the whole national team. Furthermore, he received food supplements from the national team doctor, consisting of the products "Uni Sport" (Nutrend Sports Drink), "53% Protein Bar" (Multipower) and "Magnesium" (Power System);

- He also took nasal drops called "Xymelin Extra" for his seasonal allergy during this time in Kazakhstan;

- He returned to the UAE on 8 September 2020;

- He stayed in the UAE from 8 to 11 September 2020;

- On 11 September 2020, he flew to Qatar with the Club to play in the AFC Champions League. The team went through the customs control procedure at the border, where all food, liquids, medicine, and supplements were confiscated, except for the team doctor's first-aid kit.

- During his stay in Qatar, he was locked down in the hotel, he did not use room service, he did not have a stocked mini bar in his hotel room and only consumed food and beverages prepared for the whole team;

- The Club's nutritionist allegedly gave nutritional supplements to the Player and the rest of the team, including "Easy Iron", "Vitamin C 1000 mg", "Long energy drink", "Electrolytes", "Calcium-magnesium-Zinc", "Coq-10", and "High Energy". None of these supplements contained any prohibited substances, according to their labels;

- On 18 September 2021, during the first half of the Match, he suffered a minor injury and received a painkiller named "Arcoxia", from the Club's doctor.

- The banned substance, in light of its very low concentration, most likely entered his system through a contaminated product provided by the Club, either nutritional supplements or Arcoxia.

- The circumstances of the case, and CAS jurisprudence, required a reprimand and no ineligibility period, or a short ineligibility period (0 to 8 months, or any other period of ineligibility at the discretion of the AFC DEC that is less than 2 years).

16. In addition, the Player insisted that the Club had failed to collaborate and mentioned that he had *"repeatedly sought the Club's, the Doctor's, and the Nutritionist's cooperation in the pre-trial discovery process to no avail"*. The Player consequently requested the AFC DEC to assist him in calling certain witnesses from the Second Respondent and procuring various samples of products from the Second Respondent for testing purposes on his behalf.

17. On 15 December 2020, the Club submitted a letter to the AFC refuting the claims of non-cooperation made by the Player. The Club also stated that it had ruled out the possibility that the medicine "Arcoxia" could be the source of the MHA after having conducted an "extensive scrutiny". It mentioned in particular that "Arcoxia" was made by Merck-Sharp & Dohme Limited (MSD), which does not use or manufacture MHA in its production facilities worldwide, including in its UK production, where "Arcoxia" was made. Furthermore, the US Food and Drug Administration (FDA) had banned US companies from manufacturing, using and marketing MHA.

18. The Club also agreed to send *"any and all samples of product(s) directly to any WADA accredited laboratory (...) for testing purposes"*, and to make the requested witnesses available at the upcoming hearing.

19. On 21 December 2020, a hearing was held by video-conference before the AFC DEC. It was attended by the Player, his legal representative and four witnesses called by the Player (the Club's nutritionist, doctor, sports director, as well as a medical expert). The national team's doctor did not attend the hearing as initially planned, but provided a written statement.

20. On 23 December 2020, the AFC DEC rendered the operative part of the Appealed Decision as follows:

" 1. Mr. Islamkhan Bauyrzhan (AFC/141109/KAZ) has violated Article 6 of the AFC Anti-Doping Regulations – 2019 Edition.

2. Mr. Islamkhan Bauyrzhan (AFC/141109/KAZ) is banned from taking part in any kind of football-related activity (which includes, inter alia, all domestic, international, friendly and official fixtures) for two (2) years. Such period shall commence on 9 November 2020, being the date on which the provisional suspension (imposed via Decision VTC 20201109DC01) took effect.

3. Mr. Islamkhan Bauyrzhan (AFC/141109/KAZ) is informed that a repeat violation of the AFC Anti-Doping Regulations may be met with more severe punishment".

21. On 17 February 2021, the AFC notified the grounds of the Appealed Decision to the Player. The two-year suspension was in summary based on the following grounds:

- The AFC proved the ADRV to the comfortable satisfaction of the AFC DEC and the Player had admitted the ADRV;

- The Player did not demonstrate which of the products he claimed he had consumed actually contained the relevant Prohibited Substance and no laboratory analysis had been provided in respect of any of the Club's products, national team's products and the nasal drops;

- The AFC could not establish that the ADRV was intentional;

- However, one could not exclude that the Player had consumed other products than the ones specifically mentioned and there was a possibility that he could therefore be misleading the panel;

- The Player failed to demonstrate how the Prohibited Substance entered his system on the balance of probability in order to profit from an elimination or a reduction of a period of ineligibility;

- The Player identified 12 products and supplements as being the potential cause of his positive test. However, he did not set out exactly what he had consumed and when. The Player could only present speculation and could not present any witness who could corroborate his claims;

- The other player who had potentially ingested the Club's products was tested negative at the same doping control after the Match;

- The Player's claim related to an alleged lack of collaboration from the Club cannot be taken into consideration as there had been an exchange of information and communication with the Club and due identification of the Club's products after the AAF;

- The CAS jurisprudence mentioned by the Player was not similar to the matter at hand;

- The Club's products were not the only possible source of the Prohibited Substance. However, for some reason, the Player took minimal effort to eliminate the national team Products and his nasal drops from consideration. Furthermore, the Player's own expert *"had highlighted the uncertainty in isolating the source of the relevant Prohibited Substance and in identifying the amount(s) consumed"*. Finally, the national team's doctor failed to attend the oral hearing and was not available for cross-examination.

22. On 27 December 2020, the Player received a termination notice of his employment contract from the Club.

III. THE PROCEEDINGS BEFORE THE COURT OF ABITRATION FOR SPORT

23. On 10 March 2021, the Appellant filed his Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport (the "CAS") pursuant to Articles R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code").

24. In his Statement of Appeal, the Appellant nominated Mr Jeffrey G. Benz, attorney-at-law in London, England, as arbitrator. He asked the Panel to compel the Second Respondent to produce the samples of the products from the same batch given to him between 8 and 18 September 2020. Finally, he requested the application of the expedited procedure.

25. On 11 March 2021, the CAS Court Office initiated an arbitration procedure under the reference *CAS 2021/A/7768 Bauyrzhan Islamkhan v. the Asian Football Confederation & Al Ain FC* and invited the Respondents to indicate whether they agreed with the application of the expedited procedure, and to jointly nominate an arbitrator. The Second Respondent was also *"invited to (1) voluntarily produce the requested documents; or (2) state the basis of its refusal to make such production"*.

26. On 14 March 2021, the Second Respondent indicated that it agreed with *"some sort of expedited procedure"*. It specified that it was willing to produce the product samples, either through the CAS Court Office or a WADA-accredited laboratory designated by the Appellant.

27. On 15 March 2021, the First Respondent informed the CAS Court Office that it supported the use of an expedited procedure.

28. On the same day, the CAS Court Office informed the Parties that it could not liaise directly with scientific laboratories. It invited the Parties to come up with a mutually agreed solution to test the product samples, and propose a procedural expedited calendar.

29. By email dated 18 March 2021, the Appellant renounced to the application of the expedited procedure so as to carry out the necessary product testing.

30. By letters dated 18 and 19 March 2021, the Respondents jointly nominated His Hon. James Robert Reid Q.C., Retired Judge in West Liss, United Kingdom, as arbitrator.

31. On 30 April 2021, The Appellant informed, *inter alia*, the CAS Court Office that he has *"recently managed to find a laboratory that is willing to conduct the required testing of nutritional supplements upon the private request"*.

32. On 5 May 2021, the Second Respondent informed the CAS Court Office that it had made arrangements with the Anti-Doping Laboratory Qatar to test the product samples, which had come back negative.

33. On 6 May 2021, the Appellant contested these results, due to various procedural irregularities and doubts on the provenance of the product samples.

34. On 19 May 2021, the Appellant filed his Appeal Brief within the prescribed deadline, previously temporarily suspended, together with documents and evidence he intended to rely on. He requested the Panel to order the Respondents to produce additional documents, including the notifications of the AAFs and or charge notices based on the alleged ADRVs of four players of the Club. He listed the name of four witnesses, while asking subsidiarily the First Respondent to provide the audio or video recording of the first instance hearing. He sought approval for a late submission of evidence, with the view to submit research data on the excretion of MHA from his system ("Ligand research").

35. On 24 May 2021, the Second Respondent challenged the jurisdiction of the CAS, and contested its own standing to be sued, as well as the Appellant's standing to sue it. It requested the Panel to decide these matters by way of a preliminary award, which led to the suspension of the proceedings.

36. On 21 June 2021, 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: Prof. Dr. Martin Schimke, Attorney-at-law, Dusseldorf, Germany

Arbitrators: Mr Jeffrey G. Benz, Barrister, London, United Kingdom

His Hon. James Robert Reid Q.C., Retired Judge, West Liss, United Kingdom

37. On 7 July 2021, the Appellant produced the Ligand Research study report, allegedly showing that the Prohibited Substance *"most probably entered his system through one of the Club's products"*. It also required the hearing of an additional expert witness.

38. On 12 July 2021, the Panel decided, after considering the Parties' arguments, that these proceedings did not need to be bifurcated, and invited the Respondents to file their Answers within the prescribed deadlines.

39. On 13 July 2021, the First Respondent requested the suspension of its deadline to answer, since the Parties had not received the Panel's considerations regarding the Appellant's belated evidence.

40. On the same day, the CAS Court Office indicated that the First Respondent's deadline to submit its Answer was suspended until further notice.

41. On 14 July 2021, the CAS Court Office informed the Parties that the Panel would not rule on the admissibility of the Appellant's request for late submission of evidence until all the relevant pleadings have been received. It indicated that the First Respondent's deadline to submit its Answer was re-imposed with immediate effect.

42. On 26 July 2021, the First Respondent filed its Answer, together with documents and evidence it intended to rely on, and the video recording requested by the Appellant. It denied the existence of ongoing or closed doping cases regarding other players. It opposed the Appellant's request for late submission of evidence, and provided the name of one additional witness.

43. On the same day, the CAS Court Office acknowledged receipt of the First Respondent's Answer. It highlighted that it had not yet received the Second Respondent's Answer, and that any failed deadline would not prevent the Panel from proceeding with the arbitration and delivering an award. It invited the Parties to indicate whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

44. Still on the same day, the Second Respondent filed its Answer, together with documents and evidence it intended to rely on. It highlighted that the Appellant had never provided a letter from an adjudicative body stating that the samples needed testing for doping purposes. It reiterated its objections regarding CAS jurisdiction, the standing to sue and to be sued, and its request for late submission of evidence.

45. Simultaneously, the Second Respondent argued, by way of a separate letter, that it had timely filed its Answer, and asked the CAS Counsel to withdraw her comments.

46. On 27 July 2021, the Second Respondent requested the Panel to pass a ruling on the admissibility of its Answer, with the view to decide whether or not a hearing would be necessary, and further developed its arguments.

47. On 29 July 2021, the Appellant indicated that he would prefer a hearing to be held in this matter. He also requested CAS to oblige the Club to secure the presence of its doctor and nutritionist as witnesses at the hearing. He asked the Club to clarify whether these two persons had been dismissed, and whether such dismissal was related to the ADRVs committed by other players.

48. On 2 August 2021, the First Respondent stated that it would prefer a hearing to be held in this matter.

49. On 2 August 2021, the CAS Court Office indicated that the Panel did not deem it necessary to issue a preliminary decision on the admissibility of the Second Respondent's Answer, since no issue of admissibility was at stake at this stage of the proceedings.

50. On 7 September 2021, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing, by videoconference, and consulted them about possible hearing dates. It also admitted the Appellant's request for late submission of evidence.

51. On 12 September 2021, the Club indicated to the CAS Court Office that its nutritionist was still under contract and that he would agree to be present at the hearing if a list of questions was provided in advance. The Club also explained that its doctor's contract had not been renewed and that it could not secure his attendance as a witness.

52. On 13 September 2021, the Appellant, *inter alia*, respectfully asked the CAS to oblige the Second Respondent to provide information on the ADRV of the four other players of the Club, prior to the hearing.

53. On 21 October 2021, the CAS Court Office informed the Parties that, in view of their respective availabilities, a hearing would take place by video-conference on 24 November 2021. It also invited them to provide a list of their hearing attendees, which they did, and stated that the Panel would be assisted by Dr Alexandra Veuthey, CAS Clerk. Finally, it highlighted that, according to the AFC's Answer, there were no ongoing or closed doping cases in relation to the four other players of the Club.

54. On 26 October 2021, the Appellant objected to providing questions in advance to the Club's nutritionist. He also sought the last contact details of the Club's doctor, and requested the CAS to oblige the Club to provide relevant information regarding the ADRV of its four other players.

55. On 27 October 2021, the CAS Court Office indicated, *inter alia*, that the Appellant's letter had been transmitted to the Panel for its consideration. It also invited the Parties to sign the Order of Procedure, issued on behalf of the Panel, which they did. The Club expressed reservations regarding the Appellant's standing to sue and its own standing to be sued.

56. On 23 November 2021, the Appellant requested the CAS Court Office to ask the Club to confirm whether its nutritionist would attend the hearing. He emphasised that the list of

questions would not differ from the questions asked during the first instance proceedings. He also provided the name of the interpreter who would assist the Appellant during the hearing.

57. On the same day, the Club highlighted that it had not received the list of questions to the attention of its nutritionist, as requested. It indicated that it had tried to reach him to determine if he was willing to attend the hearing based on the Appellant's belated proposal, to no avail. It argued that it had no standing to be sued, and could therefore not be subject to any evidentiary measure.

58. On 24 November 2021, the hearing was held by video-conference. In addition to the Panel, Dr Alexandra Veuthey, CAS Clerk, and Ms Andrea Sherpa-Zimmermann, CAS Counsel, the following persons attended the hearing:

<u>For the Appellant</u>

- Mr Bauyrzhan Islamkhan, Player
- Mr Yury Zaytsev, Counsel for the Player
- Mr Georgi Gradev, Counsel for the Player
- Mr Sergei Lysenko, Counsel for the Player
- Prof. Oleg Talibov, expert witness
- Mr Viktor Sinelnikov, expert witness
- Mr Kirill Chereshko, interpreter

<u>For the First Respondent</u>

- Mr Marc Cavaliero, Counsel for the AFC
- Ms Carol Etter, Counsel for the AFC
- Prof. Aishah A Latiff, expert witness
- Mr Andrew Mercer, AFC General Counsel & Director of Legal Affairs
- Ms Tan Soay Ling, AFC Legal Counsel
- Mr Akshay Sinha, AFC Legal Counsel

<u>For the Second Respondent</u>

- Mr Nezar Ahmed, Counsel for the Club

59. At the outset of the hearing the Parties declared that they had no objections as to the constitution of the Panel.

60. The Panel heard the testimony of the Appellant. It also heard evidence from Prof. Oleg Talibov, Mr Viktor Sinelnikov and Prof. Aishah A Latiff. The expert witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss Law. All of them were cross-examined and confirmed their previous expert reports.

61. The Parties thereafter were given a full opportunity to present their case, submit their arguments and submissions and answer the questions posed by the Panel.

62. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard had been fully respected.

IV. THE PARTIES' RESPECTIVE POSITIONS

63. Below is a summary of the facts and allegations asserted 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 Appellant's submissions

64. In his Appeal Brief, the Appellant requests as follows:

"1. Set aside Decision VVC 20201223DC01 made by the AFC Disciplinary and Ethics Committee on December 23, 2020.

2. Issue a new decision, whereby Mr. Islamkhan's sanction is limited to a warning or a reprimand and no period of ineligibility or reduced at the Panel's discretion. In the latter case, the suspension period shall begin on November 9, 2020.

3. Hold Al Ain FC (jointly) liable for Mr Islamkhan's anti-doping rule violation and sanction it.

4. Order AFC to bear all costs incurred with the present procedure.

5. Order AFC to pay Mr Islamkahn a contribution towards his legal and other costs in an amount to be determined at the Panel's discretion".

65. The Appellant's arguments can in essence be summarised as follows:

a) CAS Jurisdiction

66. The Appellant states that the CAS jurisdiction derives from Article R47(1) CAS Code, Article 66(1) and 57.1(a) of the AFC Statutes (2020 edition), and Article 77.1.1. and 77.2 of the AFC Antidoping Regulations (AFC ADR, 2021 edition), which respectively state as follows:

    Article R47(1) CAS Code:

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

    Article 66(1) AFC Statutes:

    "Any final decision made by an AFC body may be disputed exclusively before CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration".

    Article 57.1(a) AFC Statutes:

    "The judicial bodies of the AFC are:

    a) the Disciplinary and Ethics Committee; […]*"*

    Article 77.1.1. AFC ADR:

    "The following types of decisions may be appealed exclusively as provided by Articles 77- 82 of these Regulations:

    A decision that an anti-doping rule violation was committed, a decision imposing consequences or not imposing Consequences for an antidoping rule violation, or a decision that no anti-doping rule violation was committed";

    Article 77.2. AFC ADR:

    "In cases arising from participation in an International Competition or in cases involving International-Level Players, the decision may be appealed exclusively to CAS".

67. According to the Appellant, the doping test was performed after the AFC Champions' League match, i.e. an international competition, for which the AFC is the ruling body.

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

b) The relevant provisions

69. The Appellant does not dispute committing an ADRV by breaching Article 6.1 AFC ADR (2019 edition) on 18 September 2020, as his doping test returned a positive result for MHA.

MHA is a specified substance in the 2020 WADA Prohibited List under class S6B, prohibited in-competition only.

70. The Appellant notes that the AFC DEC sanctioned him with a two-year suspension, namely the highest possible sanction for an unintentional ADRV, pursuant to Article 19.1.2 AFC ADR.

71. The Appellant submits, however, that there are grounds for eliminating or reducing his period of ineligibility based on Articles 21 and 22 AFC ADR, which state as follows:

*"**21. Elimination of the period of Ineligibility where there is No Fault or Negligence***

21.1. If f a Player or other Person establishes in an individual case that they bear No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

22. Reduction of the period of Ineligibility based on No Significant Fault or Negligence

22.1. In relation to sanctions involving Specified Substances or Contaminated Products for violations of Articles 6, 7 or 11.

<u>Specified Substances</u>

22.1.1. Where the anti-doping rule violation involves a Specified Substance, and the Player or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Player's or other Person's degree of Fault.

<u>Contaminated products</u>

22.1.2. 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, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Player's or other Person's degree of Fault".

72. The definitions of "contaminated products", "no fault", "no significant fault" can be found in the Preliminary Title of the AFC ADR, which reads as follows:

"Contaminated Product:	*A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.*
[…]	
No Fault or Negligence	*The Player or other Person's establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule.*

Except in the case of a Minor, for any violation of Article 6, the Player must also establish how the Prohibited Substance entered their system.

[…]

No Significant Fault — *The Player or other Person's establishing that their Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 6, the Player must also establish how the Prohibited Substance entered their system".*

73. In addition, the AFC ADR provisions must be interpreted in light of the comments and case law related to the WADA Code (2015 version).

74. In all instances, the Player must establish how the Prohibited Substance entered his system.

c) The applicable standard of proof

75. The Appellant argues that the applicable the standard proof is the balance of probability, in accordance with Article 66.2 of the AFC ADR.

76. In this context, the Appellant highlights the following points which are, he submits, supported by CAS jurisprudence:

- The Appellant undertook a polygraph test, which confirms his assertions, and should be accepted as a means of evidence (CAS 2011/A/2384 & 2386; CAS 2019/A/6313).

- The balance of probability means that the indicted athlete must prove that his hypothesis is more probable than other possible explanations; and/or at least 51% likely to have occurred (CAS 2007/A/1370, para 58; CAS 2011/A/2384 & 2386, para 6).

- An athlete may meet his burden of proof by direct, indirect and circumstantial evidence (CAS 2013/A/3370, para 169; CAS 2019/A/6443, paras 145-146); he may also be subject to lower requirements when the evidence is too difficult to provide, when negative facts are involved or when the laboratory or anti-doping organisation caused some delays (CAS 2017/A/5178, para 87; CAS 2011/A/2384 & 2386, paras 254, 256 and 261; CAS 2019/A/6313, para 84).

- In the present case, the Club did not cooperate by providing the product samples for months, finally anonymously conducted its own testing, and never confirmed or proved that that the samples tested were the right ones; therefore, the Appellant could not adduce the usually expected direct evidence.

- The tardiness of the notification of the ADRV, which occurred one month and a half after the doping test, should also be considered as an aggravating factor impeding the Appellant's ability to adduce evidence.

- Under specific circumstances, the burden of proof may even be reversed in order to avoid the situation of *probatio diabolica*; likewise, in the case of contaminated products, the athlete may not be able to provide a laboratory analysis or designate a specific product (CAS 2018/A/5546, para 70; CAS 2018/A/5853, para 139; see also CAS 2019/A/6313, para 65).

d) The source of MHA

77. The Appellant identifies three possible sources for his ADRV, and blames the Club's products, as follows:

(i) The national team's products

- The Appellant stayed with his national team from 29 August 2020 to 8 September 2020.

- The Appellant took some supplements provided by the national team doctor during his stay; however, these supplements did not contain any prohibited substance, as demonstrated by the witness statement of the doctor and the label of ingredients.

- The Appellant did not take any other products at that time, as supported by his polygraph test.

- The AFC DEC decision wrongly determined that the Appellant did not put enough efforts to try to investigate those products, since:

  - the laboratory analysis of the same batches as those given to the Player was simply impossible in the relevant time period;

  - the doctor lives in a small village in Belarus, without internet connection;

  - the Appellant's sample MHA concentration of merely 90 ng/mL is below the minimum required performance level for detection and identification of non-threshold substances established by WADA.

- The expert opinion of Dr Oleg Talibov concludes that the most probable cause of ADRV, given the low level of MHA, is an accidental contamination; yet, the contamination of the national team's products is very unlikely, given the fact that the identification of MHA in urine is almost impossible 5 days after the administration; in the present case, the doping test was taken 10 days afterwards;

- It can be concluded on the balance of probability that the national team's products are the least probable source of MHA.

ii) The Appellant's own products

- The Appellant did not take any medications and supplements during his flight from Kazakhstan to UAE.

- The Appellant could not bring any products containing MHA into Qatar, due to custom restrictions.

- The Appellant could not buy any product containing MHA in Qatar: he was notably restricted from leaving his room, due to COVID-19 restrictions, which is confirmed by the polygraph test; and he does not speak English.

- The Appellant has always had a very good reputation, as supported by the General Secretary of the Kazakh football federation, his former employer, and the absence of any previous ADRV.

- The Appellant would not benefit from taking MHA for football, particularly at such very low concentration, since this product does not increase stamina, and is used for weight loss effect, according to Dr Talibov's opinion.

- The Appellant did not use his nasal spray in Qatar, as supported by his polygraph test; in any case, the nasal spray does not contain any MHA, according to Dr Talibov.

- Consequently, the ADRV cannot be explained by the Appellant's own products.

iii) The Club's products

- The contamination of the Club's products is the most probable scenario.

- This scenario is supported not only by the above-mentioned factors, but also scientific data and the Club's behaviour, in particular:

  - the elements highlighted in Dr Talibov's report (contamination as the most probable explanation for ADRV, low concentration of MHA suggesting a recent ingestion, etc);

  - statistics and studies about the prevalence of contaminated products (e.g., a study showing that contaminated supplements cause between 6.4% and 8.8% of all positive drug tests in competitive sport);

  - the Club's unwillingness to collaborate.

- The analysis of the Club's products by the Qatari laboratory does not provide conclusive evidence, because:

- The Club deliberately listed only the European-based WADA-accredited laboratories (which were all unsuccessfully contacted by the Appellant), whereas it arranged its own testing in Qatar shortly afterwards;

- The WADA International Standard for Laboratories does not allow laboratories to engage in analysing commercial material or preparations, if not requested by an anti-doping organisation or hearing body or an athlete; in the latter case, specific conditions must be complied with (sealed packages, etc);

- The Club waited for a long time before disclosing its arrangements with the Qatari laboratory, which is suspect; it also unclear why the laboratory agreed to process the analysis;

- The timing of the Club's announcement of the results is also suspect (after the Appellant notified CAS that it had arranged the analysis with a private independent laboratory, and after the Appellant requested the invoices and receipts of the products);

- It is unclear whether the products tested were from the same batches as those given to the Player, since the related invoices were not provided; in addition, the Club's nutritionist, during the AFC DEC hearing, indicated that those exact batches were not saved; this contradicts the assertions of the Club's counsel in correspondence.

➢ Further inconsistencies in the Club's statements include the number of players who actually used the products; these inconsistencies were not taken into account in the Appealed Decision.

➢ The Club's doctor, who filled the doping control form on behalf of the Player, deliberately or negligently failed to indicate any of the Club's products.

➢ At least four more players of the Club tested positive for stimulants following the Appellant's ADRV, according to media reports; three other players were also suddenly excluded from the squad from February 2021 onwards; only one of these players is still playing for the Club's first team.

➢ The Ligand Research study report, admitted as a late submission of evidence, also points to a responsibility of the Club. It highlights in particular two crucial points:

- MHA cannot be detected in urine samples beyond 144 hours. Consequently, the source of MHA in the Appellant's system could not be one of the national team's products, or the nasal spray;

- The MHA concentration of 90 ng/ml demonstrates that MHA was probably ingested 3 to 4 days prior to the doping test, namely during the Appellant's stay in Qatar.

e) The Appellant's degree of fault or negligence

78. Principally, the Appellant maintains that there are grounds to establish that he bears no fault in his ADRV and that his sanction should be eliminated in accordance with Article 21 AFC ADR.

79. He notes the definition of "fault" in the AFC ADR, which refers to a "breach of duty" or "lack of care" in a specific situation. He highlights the Club's evasive and secretive conduct in the aftermath of his ADRV, aimed at hiding the actual source of his positive test. He believes that he could not reasonably have known or suspected, even with the utmost caution, that any of the Club's products could contain a prohibited substance. He concludes that the absence of direct evidence to support his allegations do not oppose the finding of "no fault", in light of CAS jurisprudence (CAS 2019/A/6313).

80. In the alternative, the Appellant argues that he should be deemed to have acted with no significant fault or negligence. He underlines that the relevant threshold should not be set excessively high, according to CAS jurisprudence. In particular, the athlete can restrict himself to following the same precaution as any other reasonable human being. He does not have to exhaust *"every conceivable step to determine the safety of a nutritional supplement"*, nor is he unable to delegate some regulatory aspects to doctors or nutritionists (CAS 2005/A/847, paras 16 and 17; CAS 2016/A/4416, para 66; CAS 2008/A/1489, para 13; CAS 2016/A/4643, para 85).

81. In the present case, the Appellant exercised due caution and entrusted his medical support to the Club doctor and nutritionist, who were both experienced and reputable. In addition, he just had his contract renewed for three additional years, which reinforced his trust.

82. On these grounds, the Appellant considers that a reduction of his ineligibility period could, at the very least, be considered, based on his degree of fault.

f) The Sanction

83. According to the Appellant, the CAS recognises three degrees of fault, with different sanction ranges (CAS 2013/A/3327):

- Significant degree of or considerable fault: 16 to 24 months, with a "standard" significant fault leading to a suspension of 20 months;

- Normal degree of fault: 8 to 16 months, with a "standard" normal degree of fault leading to a suspension of 12 months;

- Light degree of fault: 0 to 8 months, with a "standard" light degree of fault leading to a suspension of 4 months.

84. In this context, the Appellant submits that objective elements (reasonable person standard) and subjective elements (personal capacities of the athlete) must be considered. In addition,

some athletes have previously benefitted from leniency in more serious circumstances (CAS 2013/A/3327; CAS 2014/A/3549, paras 108 and 109).

85. The Appellant repeats his trust in the Club's personnel, as part of the objective elements' assessment. He also draws attention to his own situation, including his lack of anti-doping education and English language skills, good faith, and transparent behaviour throughout the process.

86. The Appellant asserts that his ADRV should be placed at the very minimum with the range of sanctions under the "light" degree of fault, i.e. reprimand and no period of ineligibility. Alternatively, he submits that an eligibility period not exceeding eight months should be imposed.

87. The Appellant concludes that his ineligibility period, if any, should run from 9 November 2020, namely the date of the coming into force of his provisional suspension, pursuant to Article 28.4 AFC ADR.

B. The First Respondent's submissions

88. In its Answer, the First Respondent requests as follows:

"Prayer 1: The Appeal lodged by Mr. Bauyrzhan Islamkhan shall be dismissed.

Prayer 2: Mr. Bauyrzhan Islamkhan shall be ordered to bear the costs of these proceedings and shall be ordered to contribute to the legal fees incurred by the First Respondent".

89. The First Respondent's arguments can in essence be summarised as follows:

a) CAS jurisdiction

90. The First Respondent does not contest CAS jurisdiction in its Answer, nor does it make any comments in this regard.

b) The relevant provisions

91. The First Respondent relies, in essence, upon the same provisions as those invoked by the Appellant. However, he draws diametrically opposed conclusions, and excludes any reduction of the period of ineligibility in the case at stake.

c) The applicable standard of proof

92. The First Respondent observes that the Appellant fails to mention CAS longstanding jurisprudence, which clearly states that athletes must establish, on the balance of probability, the source of the Prohibited Substance as a prerequisite to benefit from reduction of period of ineligibility (CAS 2019/A/6541; CAS 2017/A/4954, and the references mentioned).

93. The First Respondent underlines that the ADRV was notified in compliance with WADA standards, bearing in mind that the sample had first to be frozen for two weeks before testing due to the COVID-19 outbreak.

94. The First Respondent contests the relevance of the CAS jurisprudence invoked by the Appellant, which notably revolves around the alleged impossibility of him establishing the source of the MHA. It highlights that this jurisprudence includes cases which are very different from the Appellant's situation, and taken out of context. It raises, *inter alia*, the following points:

- CAS 2019/A/6313: this case relates to a non-specified substance, where the athlete had to establish his absence of intent in order to escape for the otherwise applicable period of ineligibility of four years. In the context of contaminated meat, it was impossible for the athlete to adduce actual evidence or concrete origin of the prohibited substance (no testing on human beings was possible) and the slowness of the laboratory's notification had made other potentially relevant evidence unavailable.

- CAS 2017/A/5178: this case also pertains to a non-specified substance, where the athlete had to establish his absence of intent.

- CAS 2011/A/2384 & 2386: this case affirms that the athlete bears the burden of proof in establishing how the Prohibited Substance entered his system and that he bears no (significant) fault or negligence. Exceptions to this rule include cases where the athlete is faced with serious difficulty in discharging his burden of proof or is unable to prove "negative facts". They do not require the counterparties to examine all the possible scenarios that may have caused the AAF, nor do they exempt the athlete from keeping track of the products he consumed.

- CAS 2018/A/5546: this case involves the ingestion of cocaine, namely a non-specified prohibited stimulant. It reiterates the strict principles that athletes must follow to demonstrate no significant fault or negligence (burden of proof, personal duty to ensure that no prohibited substance enters their body, possible scenarios and speculation not sufficient). It places significant weight on a professor's expert evidence and the fact that athlete could specifically identify the hotel he stayed in as a source, which in turn acted suspiciously in the aftermath.

- CAS 2018/A/5853: this case, again, identifies the stringent principles that athletes must follow to benefit from a reduction of their period of ineligibility. It involves an athlete who clearly identified the source of the prohibited substance (the use of caffeine pills), and had to wait for six months between the sample collection and notification of the AAF.

d) The source of MHA

95. The First Respondents submits that the Player could not discharge the burden of proof in relation to the source of the AAF. He puts forward no less that twelve products, offering mere

speculations rather than concrete evidence, and did not identify how the Prohibited Substance entered his body.

(i) *The national team's products*

- The Appellant failed to rule out the possibility that one of the national team's products could be the source of the Prohibited Substance.

- The Appellant did not make any efforts to prove that the products provided by the national team's doctor did not contain the Prohibited Substance. He did not request, or provide detailed information about the products (storage, chain of custody, labels) nor did he ask for these products to be tested. He limited himself to providing a witness statement of the doctor, who was not available for cross-examination, and submitting an advertisement for the products, devoid of any evidential value. Finally, he never explained why it was *"hard to keep the same batches of the products which were given to the players of the whole National Team"*.

- The statements of the Appellant in respect of the duration of the possible detection of MHA, i.e. that it cannot be detected when it was administered more than 105 hours before the test, are misleading:

  - Both Dr Talibov's oral testimony before the AFC DEC and the Ligand research study report base their assumptions on a single use of the substance. However, it had not been alleged or shown that there had been only a single use of the Prohibited Substance in this case;

  - The First Respondent's expert, Dr Latiff, explained that in case of multiple usage, the urine concentration level would *"only begin to drop over 210-140 hours following the last ingestion"* (recte: 120-140);

  - The Ligand Research study report seems to be flawed, as either the ingested dose may not be stated in the study report or there is a calculation error.

- The Club's doctor reported that the Appellant told him that he got a Platelet Rich Plasma (PRP) injection twice in five days when he was with his national team. This factor has been completely left out by the Appellant.

(ii) *The Appellant's own products*

- The Appellant's attempts to explain why he could not possibly have taken a product containing MHA to Qatar or could not have obtained such product there are speculative and unsubstantiated (no evidence that customs control confiscated all medications and supplements upon arrival, no copies of relevant Qatari rules).

- The Appellant's allegations are contradicted by Prof. Latiff's testimony during the AFC DEC hearing. He has been living in Qatar for several years and travelled to and from Qatar 4-5 times a year.

(iii) The Club's products

- The Appellant claims that only the Club's products could be the source of the AAF. Nevertheless, he does not state which one(s) of the 7 listed products besides of Arcoxia he actually consumed, when, how often or how much.

- The theory of contamination of the Club's products is disproven by several factors:

  - MHA is forbidden in Switzerland, the United Kingdom and the United States. The Appellant did not point to any of the manufacturers of the above-mentioned products as being producers of other products containing MHA.

  - According to the Club's nutritionist, several other members of the team underwent doping tests at or about the time of the Appellant's doping test. One other player was tested at the same time as the Appellant, and did not test positive for MHA. The AFC is also not aware of any positive test results from other players during this period.

  - The Club's products have been tested by a WADA-accredited laboratory, which confirmed that none of the Club's products contained MHA.

  - The Club's alleged lack of cooperation is not corroborated by any evidence on record. On the contrary, the Club did exchange information and communicated regularly with the Player, made its personnel available for cross-examination during the AFC DEC hearing, and proceeded with the relevant analysis.

  - The UAE Ministry of Health yearly tests the products sold in the UAE, where MHA is prohibited.

- The "low concentration" of the MHA found in the Appellant's system does not, in itself, prove that the AAF was caused by a contaminated product:

  - At the first instance hearing, the Appellant's own expert, Dr Talibov, acknowledged that there were two possibilities for the AAF: an administration of a "standard" dose (estimated 40mg) of MHA before the doping test or the administration through a contaminated product shortly before the doping test.

  - The Ligand research study report provides evidence that the concentration found in the Appellant's system could stem from the administration of a "standard dose" of MHA, clarifying that such concentration would be found five to six days after said administration.

  - The First Respondent's own expert, Dr Latiff, constructed three possible hypotheses: the ingestion of a usual workout dose (40-50 mg MHA) 3-4 days before the doping test was conducted, the ingestion of sub-optimal doses (less than 40-50 mg MHA) as a single ingestion or on a continuous basis or a continuous daily ingestion of a supplement with MHA (unknown). She concluded that an accidental contamination of ingested products with MHA (option 3) was only *"equally as likely as the other two options"*.

96. The First Respondent concludes that the Appellant has failed to show on the balance of probability that any of the products he refers to, in particular the Club's products, are the source of the ADRV. Other sources, such as the PRP injection, must be the cause thereof.

e) The polygraph test

97. The First Respondent submits that the polygraph test undertaken by the Player has no evidentiary value before Swiss courts and the CAS (as per the numerous references mentioned).

98. The two cases referred to by the Appellant were two exceptions to the inadmissibility of polygraph tests as means of evidence. They are based on very specific circumstances (polygraph results and video reviewed by an independent expert, results supported by accompanying evidence), which are not comparable to this case. As such, they do not have any precedential value for this matter.

99. Moreover, three questions of the test, related to the use of medications and supplements during the trip from Kazakhstan to UAE, the meals taken in Qatar and the way MHA entered the Player's body, received a score which is considered uncertain.

100. Finally, the First Respondent underlines that none of the polygraph test, the expert opinion pertaining to the nasal spray, the request to the Club to send the invoices of the products, or the Ligand research study report, were part of the case file submitted to the AFC DEC.

f) The Appellant's degree of fault or negligence

101. The First Respondent argues that the Appellant did not establish the source of his AAF, which prevents any discussion regarding his degree of fault.

102. Therefore, the Appellant cannot take advantage of the mechanisms set out in Article 21 or 22 of the Regulations to claim a reduction of the period of ineligibility decided by the AFC DEC.

103. Subsidiarily, even assuming that the Appellant has established that the Club's products are involved, he should not benefit from any reduction, due to his lack of diligence.

g) The sanction

104. The First Respondent refers to the same three degrees of fault and related sanction ranges as the Appellant (CAS 2018/A/5739). Nevertheless, it underlines that no fault cases are truly exceptional and rare (CAS 2018/A/5739, para 60).

105. In the First Respondent's submission, the Appellant's own conduct is fatal for various reasons. In particular, he did not keep track of the medication and supplements that he ingested, submitted uncomplete information on his doping control form and did not consult his doctor before using his nasal spray.

106. The Appellant did not act diligently, despite the explicit warning expressed by WADA in its "Q&A on the Prohibit List".

107. According to CAS jurisprudence, athletes cannot just rely on their doctors. Such a shift in responsibility would put an end to any meaningful fight against doping. This especially applies when there have been warnings from WADA emphasising the risk of contamination in nutritional supplements (CAS OG AD 18/004, para 47; CAS OG AD 04/003, para 26; CAS 2008/A/1489).

108. Consequently, the Appellant must serve the two-year suspension imposed by the AFC DEC under Article 19.1.2 AFC ADR.

C. The Second Respondent's submissions

109. In its Answer, the Second Respondent requests as follows:

1) Holding that the CAS has no jurisdiction to entertain the present appeal.

2) Holding that the Second Respondent has no standing to be sued in this matter.

3) Holding that the Appellant has no standing to sue the Second Respondent in this matter.

4) Holding that the Appellant has not established how the Prohibited Substance entered his system.

5) Holding that the Second Respondent is not (jointly) liable for the Appellant's ADRV.

6) Dismissing the present appeal in its entirety.

7) Condemning Appellant to pay the Second Respondent legal fees and other expenses incurred in connection with the proceedings no less than CHF 30'000.00.

110. The Second Respondent's arguments can in essence be summarised as follows:

a) CAS jurisdiction, standing to sue and to be sued

111. The Second Respondent reiterates its two preliminary objections in its Answer. It argues that CAS does not have jurisdiction to determine the present appeal, and denies its own standing to be sued and the Appellant's standing to sue it.

112. Its position can be summed up as follows:

(i) CAS jurisdiction

113. The Second Respondent submits that CAS does not have jurisdiction to decide on the present appeal, directed against a decision passed by the AFC DEC.

114. It notes that Article 66.2 of the AFC Statutes (2020 edition) specifies that *"[r]ecourse may only be made to CAS after all other internal AFC channels have been exhausted"*. In its submission, this condition is not met.

115. It bases its submission on Article 59(2) of the AFC Statutes, which entails that *"[t]he Appeal Committee shall have jurisdiction to hear appeals arising from decisions of the [DEC] that are not declared final pursuant to the AFC Disciplinary and Ethics Code"*.

116. Further, Article 122.1 of the AFC Disciplinary and Ethics Code ("The AFC Ethics Code", 2019 edition) states as follows:

"122.1. An appeal may be lodged to the AFC Appeal Committee against any decision passed by the AFC Disciplinary and Ethics Committee, except:

122.1.1. where the sanction imposed is:

122.1.1.1. a warning;

122.1.1.2. a suspension for less than three (3) Matches or of up to two (2) months (with the exception of doping-related decisions);

122.1.1.3.a fine of less than USD5,000 imposed on a Member Association or a Club;

122.1.1.4. a fine of less than USD2,500 imposed on all other legal or natural persons; or

122.1.2. those decisions:

122.1.2.1. passed in compliance with Article 63 of this Code; or

122.1.2.2. which this Code sets out are final and binding".

117. The Second Respondent submits that under Article 122.1.1.2. all decisions from the AFC DEC passed in doping-related matters are appealable before the AFC Appeal Committee even if they impose a suspension of less than two months.

118. This interpretation is, in its submission, supported by Articles 76.4 and 81.1 of the AFC ADR (2021 version), which emphasise that only certain decisions are exempted from exhausting AFC internal channels before appealing to CAS. Additionally, FIFA Circular 1724, which lists all new important procedural amendments, does not refer to the elimination of internal remedies. Moreover, while Article 77.2 AFC ADR, quoted by the Appellant, designates the CAS for *"cases arising in an International Competition or in cases involving International-Level Players"*, it is subject to various exceptions in subsequent paragraphs. Finally, the Appealed Decision refers both to the AFC ADR and the AFC Ethics Code.

(ii) Standing to sue and to be sued

119. The Second Respondent highlights that CAS jurisprudence requires any party to the proceedings to have *"some stake in the dispute"* because *"something is sought against it and it is personally obliged by the disputed right"* (CAS 2008/A/1518, para 22, and the references; MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport*, p. 411-412 ad Article 48, and the references).

120. The Second Respondent asserts that the Appellant third prayer for relief, by which he seeks to hold it *"jointly liable for its anti-doping rule violation and sanction it"* is without merit.

121. The Club claims that it has no standing to be sued, since it has no right to dispose of such relief and any finding of the Panel concerning such relief shall not affect it. In addition, it lacks legal basis and has no relevance in the context of a vertical dispute between the AFC and a player.

122. Likewise, the Club argues that the Appellant lacks the necessary standing to make such request within the meaning of the Swiss jurisprudence. This jurisprudence requires the party to be sufficiently affected by the decision and have a legitimate, direct interest on its annulment at the time the appeal is filed and the decision rendered (see *inter alia*, CAS 2013/A/3140, paras 8.1 et seq; CAS 2007/A/1278 & 1279, paras 75 et seq; SFT 4A 620/2015, para 1.1).

123. The Club contrasts this situation with Article 17 of the FIFA regulations on the Status and Transfer of Players (RSTP), and its related jurisprudence, which clearly define the situations where clubs have standing to appeal (as per the numerous references mentioned).

124. Moreover, the object of the appeal cannot extend beyond the limits of a review of the issues arising from the challenged decision (CAS 2007/A/1204; CAS 2007/A/1294; CAS 2015/A/4059; CAS 2016/A/4379).

125. Finally, the Club was not a party to (and did not act as a party at) the AFC DEC proceedings.

(iii) Final remarks

126. Both the Appellant and the First Respondent opposed the request for bifurcation presented by the Second Respondent in order to avoid further delays in the proceedings.

127. The Appellant further developed his arguments regarding the conditions of Article 77.2 of AFC ADR, and highlighted his international status and the international nature of the AFC Champions League. He clarified his position that the AFC ADR was a *lex specialis* in doping matters, and that Article 77.3 AFC ADR was only applicable on a subsidiary basis.

128. The Appellant repeated that the Second Respondent had standing to be sued, since it was specifically nominated as a respondent and was the subject of a specific request for relief. The Second Respondent also acted as a party during the AFC DEC proceedings, by receiving all the correspondence and participating in the hearing through its witnesses.

b) The relevant provisions

129. The Second Respondent refers to the same provisions as those invoked by the other Parties, including Articles 21 AFC ADR (no fault or negligence) and 22 AFC ADR (no significant fault or negligence).

130. It adds that these provisions should be interpreted in light of the comments related to the WADA Code (2015 version, with 2019 amendments), since the AFC ADR follow the FIFA ADR, which refer to these comments and prevail in case of discrepancies:

Article 86.3 AFC ADR:

"These Regulations govern all parts of AFC's anti-doping work and are in compliance with the FIFA Anti-Doping Regulations. In the event of any discrepancy between the FIFA Anti-Doping Regulations and these Regulations, the provisions of the FIFA Anti-Doping Regulations shall prevail [...]*"*.

Preface FIFA ADR:

"FIFA has accepted the World Anti-Doping Code 2015 and implemented the applicable provisions of this code in these Regulations. Thus, in case of questions, the comments annoting various provisions of the World Anti-Doping Code 2015 and the International Standards shall be used to construe these Regulations where applicable".

131. In particular, Article 21 AFC ADR should be construed pursuant to the commentary to Article 10.4 of the WADA Code, which states as follows:

"[…] *No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates* […]*"*.

132. Article 22 AFC ADR should be read jointly with commentary on Article 10.5.1.2. of the WADA Code, which provides that:

"In assessing the Athlete's degree of fault, it would, for example, be favourable for the Athlete if the Athlete had declared the product which was subsequently determined to be contaminated on his or her Doping Control form".

133. The Second Respondent adopts the same position as the First Respondent, by maintaining that no reduction of the period of ineligibility should be inferred from the above-mentioned regulations.

c) *The applicable standard of proof*

134. The Second Respondent states that the applicable standard of proof is the "balance of probability". It submits that, based on CAS jurisprudence, this standard is very high. In particular, *"the occurrence of the scenario suggested by the Athlete must be more likely than its occurrence and not the most likely among competing scenarios"* (CAS 2014/A/3615, para 52; CAS 2012/A/2759, paras 11.31-11.32). Presenting possibilities, speculations and mere attestations of innocence, or identifying a potential source do not allow to meet the required threshold (as per the numerous references mentioned).

135. The Second Respondent maintains that it offered unrestrained support to the Appellant as soon as it was informed of his AAF, and that the Appellant had no intention whatsoever to test the Club's products.

136. In this context, it sets forth, *inter alia*, the following sequence of events:

(i) Cooperation with the Appellant

- From 6 to 9 November 2020, the Appellant's agent exchanged messages with the Second Respondent's legal team.
- On 11 November 2020, the Appellant's attorneys and the Second Respondent's legal team took part in a video conference. On this occasion, the Second Respondent confirmed that it possessed the litigious product samples and was willing to send them to a laboratory once the Appellant had made the necessary arrangements for testing them.
- On 12 November 2020, the Second Respondent's legal team took custody of two sealed samples and stored them in a secured location.
- On 14 November 2020, the Appellant sent a letter to the Second Respondent, asking it to provide the list of medications and supplements given to the Player and pictures of relevant packaging and composition. It also *"unnecessarily"* invited the Respondent to indicate whether the Club's doctor possessed the samples of each of the products.
- On 22 November 2020, the Second Respondent provided the Appellant with a list of photos of the nutritional supplements the Club used during the AFC Champions' League 2020. It did not provide the product samples that, contrary to the Appellant's allegations, were not requested.
- On 1 December 2020, the Appellant unfairly accused the Club's doctor of having filled the anti-doping form on his behalf without disclosing the supplements. He also made several requests regarding the Club's products, and asked, again, if the Club's doctor possessed the relevant samples.
- On 6 December 2021, the Appellant accused the Second Respondent of causing his ADRV. He also requested to receive a sample of the *"Arcoxia"* and to depose the Club's

doctors by oral examination through a video conference, which would be electronically recorded.

- On the same day, the Second Respondent sent the Appellant additional information regarding the Club's products. It indicated, *inter alia*, that *"all the players of Ail Ain FC without exception followed the same nutritional protocol during the team's stay in a hotel in Qatar"* (irrespective of their starter or substitute status). Unlike the Appellant's allegations, this statement does not contradict the Club's nutritionist testimony during the AFC DEC hearing, according to which *"the consumption of some products was optional"*. Since the Appellant alleged from the outset of his doping situation that he was ingesting the Club's products, the Club just presumed that he did.

- On 6 and 7 December 2020, the counsel for the Player and for the Club exchanged a series of emails. The Club confirmed that its team doctor would be available to testify in the hearing, and that it was willing to have the product samples tested once the Appellant had arranged the required process with the AFC.

- On 7 December 2020, the same counsel was in touch by phone in order to organised a new video conference. This conference was held one day later, and involved eight participants, including the counsel for the Appellants and the Club's doctor and nutritionist.

- On 15 December 2020, the Appellant sent eleven questions to the Second Respondent. In reply thereto, the latter indicated that all these questions had already been answered during the video conference and could be addressed, again, during the AFC DEC hearing.

- On the same day, the Second Respondent received a letter from the AFC, stating that the Appellant had complained about its lack of cooperation. In response, the Second Respondent denied any wrongdoing. It underlined that its team personnel would be available for cross-examination in the upcoming AFC DEC hearing. It reiterated its willingness to send the product samples to any WADA accredited laboratory identified by the Appellant or the AFC DEC for testing purposes.

- On 17 December 2021, the Appellant and Second Respondent exchanged letters regarding the AFC DEC hearing, which eventually took place by video conference on 21 December 2021. The Club's sports director, doctor and nutritionist were heard as witnesses.

- On 11 March 2021, the Club received the Statement of Appeal filed by the Player before the CAS. The Club continued to fully cooperate during the proceedings, which were suspended several times in order to allow the Player to arrange the testing of the product samples and receive the results of the Ligand research. The Club went as far as to providing the Player with a list of WADA accredited laboratories in Europe (his place of residence) and worldwide. Finally, the Club decided to take the lead and managed to find a private laboratory willing to test the requested product samples.

137. The Second Respondent concludes that there should be no departure from (or re-allocation of) the otherwise applicable standard of proof.

(ii) The Appellant's unwillingness to test the products

138. In light of the above, the Second Respondent submits that the Appellant had in fact no actual desire to test the Club's products, as he knows that they were not the source of the substance MHA present in his sample.

139. The Second Respondent points to the fact that the Appellant kept turning around in circles in his requests, and was never able to organise appropriate testing. This is not surprising, since he did not send a letter from the AFC (during the AFC proceedings) and the CAS (during the present proceedings) to the laboratories that he contacted, nor even mention specifically the reference of such proceedings.

d) The validity of the testing of the Club's products

140. The Second Respondent notes that the Appellant contests the validity of the testing of the Club's products, due to doubts regarding their provenance.

141. The Second Respondent notes that it was the Appellant's personal duty to ensure that no prohibited substance enters his body, and then to establish the pathway that led to his positive test.

142. The Club then shows in detail that the products tested by the Qatari laboratory were from the same batches that it used between 8 and 18 September 2020. Proof of this are the interruption of football competitions due to the COVID-19 outbreak from 15 March 2020 until the end of August 2020, as well as the invoices, purchase orders, receipts, and customs form provided as exhibits.

143. The Club maintains that these documents clearly show that it had sufficient sealed samples of each of the products used in Qatar. It also states that it preserved one set of sealed products for the Appellant, and submitted the other set to the Qatari laboratory.

144. The results of the testing conducted by the Qatari laboratory clearly show that the Club's products do not contain MHA.

e) The polygraph test

145. The Second Respondent strongly questions the reliability of the polygraph test undertaken by the Appellant.

146. In its submission, the CAS has only decided that such evidence is not inadmissible as a matter of law. However, it has not clearly ruled on its reliability. Some CAS panels have once admitted it in support to other elements, but also have underlined on several occasions, its limited

weight or absence of probative value (CAS 2011/A/2384 & 2386, para 393; CAS 2016/A/4534, para 46; CAS 2014/A/3487, para 119; CAS 2008/A/1515, para 119; CAS 96/156, para 14.1.1.).

147. In the same vein, the US Supreme Court emphasised the poor reliability of polygraph evidence as a whole and that its rejection was not unconstitutional (US v. Scheffer, 1998 USSC 32).

f) The source of MHA

148. The Club submits that concrete evidence completely eliminates its products as being the pathway of the Prohibited Substance found in the Player's sample. It then points to other possible explanations.

(i) The Club's products

149. The Club lists seven arguments which it submits prove that the Player's version is not plausible:

- The Club's products were tested by a WADA accredited laboratory, and did not contain any MHA (as per detailed explanations above).
- The Club's products were manufactured by and purchased from reliable sources in UAE, Switzerland, USA, France and Australia.
- The Club's products have never been associated with doping (based on its *"extensive and advanced internet search"*).
- The Player was the Club's top scorer, and the most valuable asset in the team. The Club had, therefore, no interest in taking risks nor withholding information.
- It is doubtful that the Player ever ingested the Clubs' supplements, in light of the information provided in his anti-doping form, and the multiple questions that his counsel asked the Club in this regard.
- The Appellant never showed any genuine intention to test the Club's products (as per detailed explanations above). Likewise, he did not even trouble himself to search the internet to determine how the Club's products could have been contaminated by MHA, which is only synthetised in China.
- The other player who underwent doping testing after the match did not test positive.

150. The Club challenges the conclusions of the Ligand Research study report, for various reasons:

- This study is based on a random intake of 50mg MHA, whereas the usual dose ranges from 10mg to 150mg; this assumption has the potential to distort the window of detection of the substance.

- The MHA concentration in the Appellant's urine samples reported in the study were not corrected to specific gravity; the report does not provide any information in this regard either.

- The MHA urine concentrations in Appellant's urine samples reported in the study are not comparable with what had been consistently reported in the literature.

(ii) Other possible explanations

151. The Second Respondent argues that the MHA concentration found in the Appellant's sample can be estimated to be 95 ng/mL or 112 ng/mL (if corrected to specific gravity). In light of scientific evidence, the window of ingestion could be as long as fourteen days in case of a deliberate ingestion, and four or five days in case of a contamination.

152. There are endless possible explanations for the Appellant's positive testing, which the latter was not able to clarify satisfactorily.

153. Finally, the polygraph test undertaken by the Appellant received a score which is considered uncertain in relation to the use of medications and supplements during the trip from Kazakhstan to UEA, the meals taken in Qatar and the way MHA entered the Player's body.

g) The Appellant's degree of fault or negligence

154. The Second Respondent argues that the Appellant cannot benefit from a reduction of his period of ineligibility under Articles 21 and 22 AFC ADR.

155. The Second Respondent submits that Article 21 AFC ADR is not applicable in the context of an alleged contaminated product and/or administration of a prohibited substance by the athlete's physician, in light of the commentary to Article 10.4 of the WADA Code. It also submits that the Appellant failed to exercise the standard of care required for no fault or negligence, i.e. *"utmost caution"*, despite the *"well-known"* and *"great risks"* involved in the use of supplements. It asserts that the Appellant cannot shift his responsibility to his team doctors or nutritionists (CAS OG AD 18/004, para 47; CAS OG 04/003, para 26; CAS 2014/A/3798, and related references).

156. The Club also denies the applicability of Article 22 AFC ADR. In its submission, the Appellant has failed to discharge his burden of proof in establishing how the Prohibited Substance entered his system.

h) The sanction

157. The Second Respondent refers to the same three degrees of fault and related sanction ranges as the Appellant and the First Respondent (as per the numerous references mentioned). Nevertheless, it observes that one Panel used a two-tier category of fault (a "normal" degree

of fault with 24 to 12 months and a "light" degree of fault with 12 to 0 months) following the adoption of the 2015 WADA Code (CAS 2017/A/5301-5302).

158. In his submission, the Appellant has been extremely careless, by ingesting blindly and without hesitation fourteen supplements and using a nasal spray without renewed consultation. Such behaviour appears even more reckless when put in perspective with the alleged high risk of positive test through contaminated supplements (6.4% to 8.8%, which would be *"fourteenfold"* here). In addition, he did not declare these supplements in his anti-doping form, which prevents him from invoking leniency pursuant to comment 10.5.1.2. of the WADA Code.

159. The Appellant cannot shift his responsibility to his team doctor and nutritionist, based on CAS jurisprudence (CAS OG AD 18/004; CAS OG 04/003, para 26; CAS 2014/A/3798, para 93, and the references mentioned). The Appellant's situation is, in fact, very similar to that of a doping case decided by the CAS in 2008, where a football player had various supplements given by his team doctors, without knowing their names and what they were. On that occasion, the player was found *"significantly"* at fault (CAS 2007/A/1370 & 1376). Finally, the Appellant cannot pretend that he did not know the risks associated with supplements, which have triggered stringent and increasing warnings in the sports world (CAS 2009/A/1870, para 50).

160. Consequently, the Appellant is liable for the full two-year suspension imposed by the AFC DEC pursuant to Article 19.1.2 AFC ADR or alternatively, for the upper end of the 16 to 24-month range under Article 22 AFC ADR.

V. HEARING AND EXPERT EVIDENCE

161. During the hearing held on 24 November 2021, the Parties confirmed and built upon their written submissions. The Appellant, however, raised two new arguments. He first evoked, very briefly, the possibility that the Club knowingly provided MHA to him. He then argued that this substance was only prohibited in-competition, and that he had ingested it "out-of-competition", thus making any punishment unjustified. He referred, in support, to the UEFA Anti-Doping Rules, which define "out-of-competition" as the period commencing at least 24 hours before the match played and its relevant doping test, and to CAS related jurisprudence (CAS 2017/A/5078, para 85).

162. The Panel heard evidence from three expert witnesses instructed by the Parties, Prof. Oleg Talibov, Mr Viktor Sinelnikov and Prof. Aishah A. Latiff. All of them were cross-examined and could provide explanations on their own expert reports, as well as the Ligand Research report filed as late evidence by the Appellant, which states that *"the duration of* [*MHA*] *identification in urine after its single oral administration at a dose of 50 mg is no more than 144 hours"*.

163. Their work experience and findings may be summarised as follows:

- Prof. Oleg Talibov (expert witness for the Appellant):

Prof Talibov is a Candidate of Medical Sciences (Ph.D.) and Professor at the Department of therapy, clinical pharmacology and emergency medical services at the Moscow State University of Medicine and Dentistry.

His report, dated 11 December 2020, sums up the medical literature and incorporates calculations related to the Prohibited Substance concentration. It concludes that the concentration of the substance fund in the sample *"most likely indicates that the initial dose of the ingested substance was approximately 17-200 times less (depending on the time elapsed after absorption) than the standard dose of methylhexaneamine used in pre-workout complexes. The latter probably indicates accidental contamination with methylhexaneamine of any of the products in which this substance is not indicated as a component"*.

At the hearing, Prof. Talibov confirmed his expert report. He also highlighted that the Ligand research was a pilot-research, and could not be projected on the entire population. It was, however, conclusive for the Appellant, bearing in mind that the water consumption of all participants was closely monitored.

- Mr Viktor Sinelnikov (expert witness for the Appellant):

Mr Viktor Sinelnikov is a polygraph expert from Kazakhstan, who conducted a polygraph test on the Appellant on 22 February 2021.

His report of the same day concludes that *"physiological reactions of Islamkhan, B. E. in responding to the key (relevant) questions of this test were evaluated only positively (see the table.). The sum of the scores was "+22". Such number of positive scores indicates that the probability of non-involvement of the test subject in the events in question is 99.9%. [...] The results of the analysis of physiological reactions to the questions asked during the testing indicate that Islamkhan, B. E. responded truly to the test questions with a high degree of certainty and has nothing to do with intentional use of doping [...]"*.

At the hearing, Mr Sinelnikov confirmed his expert report. He provided detailed explanations on his work experience and the methodology used for polygraph tests.

- Prof. Aishah A. Latiff (expert witness for the AFC):

Prof. Latiff is an Honorary Professor School of Pharmaceutical Sciences University of Science Malaysia Penang, Malaysia.

Her report, dated 15 July 2021, reviews the medical evidence submitted by the Appellant, namely the Ligand research report and Prof. Talibov's report. It examines three possible hypotheses: (i) the ingestion of a usual workout dose (40-50 mg MHA) 3-4 days before the doping test was conducted; (ii) the ingestion of sub-optimal doses (less than 40-50 mg MHA) as a single ingestion or on a continuous basis, with variations of use that are aimed at getting peak performance during training; (iii) a continuous daily ingestion of a supplement with MHA (unknown). It highlights that an accidental contamination of ingested products with MHA (option 3, supported by Prof. Talibov) is, in view of the medical literature, only *"equally as likely*

as the other two options". While accepting that a single dose of 50mg of MHA generally clears from urine over a period of five or six days, it contends that the Ligand research report seems to be flawed, as either the ingested dose may not be as stated in the study report or there is a calculation error. It concludes that in case of multiple usage of MHA, the urine concentration level *"[would] only begin to drop over 120-140 hours following the last ingestion"*.

At the hearing, Prof. Latiff elaborated on her expert report. She also stated that she lived in Doha, Qatar, for seven years, and was only inspected once for supplements at the airport out of about thirty flights (back and forth). She clarified that individuals taking MHA at the same time could get different doping test results, depending on the time the time their body takes to excrete the substance. She confirmed that specific gravity was usually taken into account by doping laboratories.

164. The Player gave oral evidence at the hearing before the Panel. Upon the President's request, who noted that the polygraph expert's report was silent on his whereabouts from 8 to 11 September 2020, the Player clarified that he flew to Dubai, UAE, on 8 September 2020, in the morning, and stayed there from 9 to 11 September 2020. During his stay, he did not take any nutritional supplements nor medicine, but drank juice and took two tablets.

VI. JURISDICTION

165. Article R47 of the CAS Code provides as follows:

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

166. The Club challenges the jurisdiction of the CAS to entertain the present appeal on the basis that internal remedies have not been exhausted as required under the various AFC Regulations. It argues that internal remedies must be exhausted as a rule unless exemption is given in the relevant regulations. It contends that FIFA and the AFC cannot have completely eliminated the concept of exhaustion of internal remedies in doping-related matters. It points out that Article 122 of the AFC Ethics Code states that even if a suspension is less than two months, the decision in doping cases would be appealable to the Appeals Committee, and that Article 77.2. AFC ADR must be read in conjunction with its next paragraph.

167. The Club's arguments regarding lack of jurisdiction are not convincing. Article 81.1 of the AFC Ethics Code (2019 edition), certainly, establishes a general jurisdiction of the AFC Appeal Committee. However, it expressly reserves the case where other provisions refer to another body:

"The AFC Appeal Committee is responsible for deciding appeals against any decision of the AFC Disciplinary and Ethics Committee that AFC regulations do not declare as final or referable to another body".

168. Yet, Article 77.2 of the AFC ADR (2021 edition) clearly states that if an "international competition" or "international athlete" is involved, then the decision may be appealed exclusively to CAS, notwithstanding its following paragraph:

"77.2. In cases arising from participation in an International Competition or in cases involving International-Level Players, the decision may be appealed exclusively to CAS.

77.3. In cases where Article 77.2 is not applicable, the decision may be appealed to an appellate body in accordance with rules adopted by the NADO having jurisdiction over the Player or other Person. The rules for such appeal shall respect the following principles: a timely hearing; a fair, impartial and operationally and institutionally independent hearing panel; the right to be represented by counsel at the Player's or other Person's own expense; and a timely, written, reasoned decision. If no such body as described above is in place and available at the time of appeal, the Player or other Person shall have a right to appeal to CAS".

169. This is the case here, since the Appellant is a professional football player, who represented the Kazakh national team and was tested positive during a match of the AFC Champions League.

170. In addition, Article 122 of the AFC Code of Ethics provides that:

"122.1. An appeal may be lodged to the AFC Appeal Committee against any decision passed by the AFC Disciplinary and Ethics Committee, except:

122.1.1. where the sanction imposed is: […]

122.1.1.2. a suspension for less than three (3) Matches or of up to two (2) months (with the exception of doping-related decisions)";

171. This shows, once again, that the provisions of the AFC ADR must be seen as a *lex specialis* with regard to doping matters.

172. Moreover, the Appealed Decision states that details of available channels of appeal can be found in Section 6 of the AFC ADR and where applicable, Section 7 of the AFC Disciplinary Code.

173. Finally, the Club did not express any reservation regarding CAS' jurisdiction when signing the Order of Procedure.

174. Hence, the Panel considers that CAS has jurisdiction to decide the present appeal.

VII. ADMISSIBILITY

175. Article R49 of the CAS Code reads as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against […]".

176. Art. 82.1 of the AFC ADR (2021 edition) correspond to Article R49 of the CAS Code:

"The time to fle an appeal to CAS shall be twenty-one (21) days from the date of receipt of the motivated decision by the appealing party […]".

177. The grounds of the Appealed Decision were communicated to the Appellant on 17 February 2021.

178. On 10 March 2021, the Appellant filed his Statement of Appeal against the Appealed Decision with the CAS Court Office.

179. Consequently, the Appellant complied with the time limits prescribed by the CAS Code. The Appeal was therefore filed in time.

VIII. APPLICABLE LAW

180. Article R58 of the Code provides the following:

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

181. Article 62.3 of the AFC Statutes (2020 edition) specifies that:

"The CAS shall apply the various regulations of the AFC, and additionally where relevant, the Laws of Malaysia".

182. Article 1.2 of the AFC ADR (2021 edition) indicate that:

"These Regulations shall apply to all Doping Controls over which the AFC and, respectively, its Member Associations have jurisdiction".

183. Article 87.1 of the AFC ADR states that:

"The provisions of the AFC Disciplinary and Ethics Code and all other AFC Regulations shall apply in addition to these Regulations".

184. Therefore, the Panel finds that the applicable regulations under which the appeal will be decided are the AFC regulations, in particular the AFC Statutes, the AFC ADR, the AFC Code, supplemented, if necessary, by Malaysian law.

185. The ADRV was committed on 18 September 2020. Thus, as highlighted by the Parties, the 2020 edition of the AFC Statutes and the 2019 editions of the AFC ADR and AFC Code shall apply to the merits of the present case. The 2021 edition of the AFC ADR shall apply to the procedural matters of the proceedings.

186. Finally, the Panel concurs with the Respondents that the AFC ADR should be interpreted in light of the comments related to the WADA Code, since the AFC ADR follow the FIFA ADR, which refer to these comments and prevail in case of discrepancies. The WADA Code 2015 with 2019 amendments, which entered into force on 1 January 2019, is in particular relevant in this instance.

IX. PRELIMINARY ISSUES

A. Standing to be sued

187. The Club claims that it is not a proper party to these proceedings, as it cannot be held jointly liable with the Appellant for his positive doping test, and any finding of the Panel concerning such relief cannot not affect it. It can therefore, it is said, be described as not having standing to be sued in these proceedings. It also challenges the Player's standing to sue it on the basis that he does not have any legitimate interest in having a sanction imposed on it.

188. CAS jurisprudence has held that a defending party has standing to be sued ("légitimation passive") if it is personally obliged by the "disputed right" at stake. In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (see e.g. CAS 2008/A/1518, para 22; see also SFT 142 III 782, 4A_635/2016, 4A_560/2015; MAVROMATI & REEB, The Code of the Court of Arbitration for Sport, p. 411-413, more specifically p. 413).

189. In the present case, the Player asks the Panel to hold the Club jointly liable for his ADRV and sanction the Club for it. However the Club was not a party to the original proceedings against the decision in which the Appellant appeals and it is clear that there is no legal or regulatory basis either in the AFC ADR or elsewhere upon which the Club could be made a party to this appeal or for the relief sought to be granted against it. As such, there is clearly no stake in the dispute for the Club.

190. In consequence, the Panel holds that the Second Respondent has no standing to be sued in these proceedings. It will therefore dismiss the appeal as regards this party, bearing in mind that according to CAS jurisprudence, the question of the standing to be sued relates to the merits of the case, and not to the admissibility of the Appeal (see e.g. CAS 2015/A/3140, and the references).

191. The Panel would like to clarify that, the appeal being rejected against the Second Respondent, its position and statements are, strictly speaking, not relevant for the outcome of this case. The Panel may, however, refer to the positions or statements of all Respondents in the remaining parts of the present Award, without limiting its comments on the position and statements of the AFC, in order to facilitate the reading. Likewise, it may reflect some of the Second Respondent's arguments in light of the principle *iura novit curia*.

192. The issue of whether the Appellant has standing to sue the Club in some other jurisdiction is irrelevant to this appeal and can remain unanswered. For the purpose of these proceedings it is sufficient to say that the Club itself has no standing to be sued.

B. Admissibility of Second Respondent's Answer

193. On several occasions during the proceedings, the Second Respondent asked the CAS Court Office and the Panel to confirm that its response was filed within the appropriate time limit.

194. On 2 August 2021, the Panel indicated that this issue was not 'at stake'. The Appellant and the First Respondent did not object to this statement.

195. For the sake of clarity, the Panel confirms that the Second Respondent's Answer was filed in time and is admissible. In any event, the Respondent was able to reiterate and develop his written submissions and arguments during the hearing.

C. Evidence

a) Polygraph test

196. The Parties disagree on the admissibility and evidentiary value of the polygraph test submitted by the Player. The Player principally relies on two awards to claim that the results of his polygraph test add credibility to his version of events and can be accepted as a means of evidence. The AFC submits that these two cases constitute an exception to the inadmissibility of polygraph tests and are considerably different from the present case. The Club argues that such evidence has, at most, limited probative value. Both Respondents quote awards showing that test results may be treated as mere personal statements.

197. The Panel retains that polygraph tests are, in light of the Swiss Federal Tribunal and CAS jurisprudence, usually considered as inadmissible or mere statements (see e.g. SFT 6B_663/2011 para 1.3; SFT 6B_708/2009 para 1.6; SFT 109 Ia 273 para 7; CAS 1999/A/246, para 9; CAS 1996/A/157, para. 14; CAS OG 00/006, para 40d; CAS 2008/A/1515, para 119; CAS 2017/A/4954; CAS 2017/A/5954). They may have limited probative value in very specific instances, in particular when supported by other strong evidence or filmed (CAS 2011/A/2384 & 2386; CAS 2019/A/6313), which does not appear to be the case here.

198. Moreover, as both Respondents point out, three crucial questions of the test, related to the use of medications and supplements during the trip from Kazakhstan to UAE, the meals taken in Qatar and the way MHA entered the Player's body, received a score which is considered uncertain. Likewise, no questions were asked of the Player in relation to his whereabouts and actions from 8 to 11 September 2020.

199. Consequently, the Panel concludes that the polygraph expert's written report and oral testimony (if indeed they are admissible as evidence) have very limited evidentiary value, if any and do not assist in the resolution of the issues in the case.

b) The Ligand report and other documents not filed in the first instance

200. In his Appeal Brief, the Appellant sought approval for a late submission of evidence, with the view to submitting research data on the excretion of MHA from his system. On 7 July 2021, the Player filed the Ligand report as additional evidence and expressed the desire to add an expert witness. On 7 September 2021, the Panel admitted this late filing of evidence and request on an exceptional basis, in accordance with Articles R44.3 and R56 of the CAS Code, since the Appellant cited logistical issues related to the COVID-outbreak. The Panel also considered that this report might shed some light on the present case.

201. The Panel is also aware that several other documents (the polygraph test, the expert opinion pertaining to the nasal spray and the request to the Club to send the invoices of the products), were not part of the case file submitted to the AFC DEC. Nevertheless, it determined that this evidence was admissible in light of Article R57(3) of the CAS Code, since the purpose of this article is only to prevent the parties to withhold information in an abusive way and/or for strategic reasons (see CAS 2016/A/4859, para 64). The Respondents do not make any arguments in this regard, the AFC merely highlighting that certain documents were not part of the initial file.

c) Four other players' ADRVs

202. In his Appeal Brief and subsequent written submissions, the Appellant repeatedly sought information on alleged ADRVs committed by four other players of the Club. In its Answer, the First Respondent stated that *"In this respect, the AFC cannot provide any documents as there are no on-going or even closed cases in relation to those players. In short, the AFC has not undertaken itself any proceedings against these individuals and has not received any information that another anti-doping organisation would be doing so"*. At the hearing, the counsel for the Second Respondent indicated that one player had been transferred and that the other players were still employed by the Club, in the reserve team.

203. In the Panel's view, the information provided by AFC and the Club is considered sufficient. Further, the Appellant is not in a position to compel the Club to provide more information, as the latter has no standing to be sued. The Appellant also failed to demonstrate that there was any valid reason for seeking such information, especially in light of the explanations that have already been provided to him. He also, for reasons of his own, did not seek to adduce the testimony of the players in question, and must therefore bear the consequences of the failure of proof in this respect.

d) Other procedural requests

204. In his Appeal Brief, the Player requested the presence of the Club's doctor and nutritionist to give oral evidence. He then reiterated this request on several occasions, and asked the Club to secure their presence at the hearing, and to provide information on their employment status and/or reasons for dismissal. On 12 September 2021, the Club confirmed that its doctor was still employed by it, and would agree to be present at the hearing if he received the list of

questions to be asked in advance. The Club also stated that its nutritionist's contract had not been renewed and that it was not its duty to facilitate his testimony. On 26 October 2021, the Player objected to sending the questions in advance to the Club's doctor, and enquired about the last contact details of the nutritionist.

205. The Panel notes that, despite last-minute exchanges between the Parties, neither the Club's doctor, nor the Club's nutritionist, attended the hearing. However, this absence is solely attributable to the Appellant, who is required to ensure the presence of his witnesses at the hearing.

206. Subsidiarily, the Player requested the audio/video recordings of the witness testimonies of the Club's doctor and nutritionist given to the DEC hearing held via videoconference on 21 December 2020. In response to this request, the AFC filed the audio recordings of all the witness testimonies before the DEC. This request has accordingly been fulfilled.

207. After carefully reviewing these recordings, the Panel considers that the witness testimonies of the Club's doctor and nutritionist were, globally, correctly summarised in the Appealed Decision. However, the testimony of the Club's nutritionnist provides a few more details in relation to the Club's products use and storage. First of all, the nutritionnist insists, on several occasions, on the optional nature of the products (energy bars, drinks, etc), and the impossibility of controlling the precise use that each player makes of them. At the very end of his hearing, he then indicates, in relation to the batches administered to the players between 11 and 18 September 2020, that the products were made available to the players, including the Appellant, until the boxes were finished.

208. The Panel will discuss the consequences of this statement further in section X.B.a), in conjunction with the explanations provided by the Club.

X. MERITS OF THE APPEAL

A. The scope of the appeal

209. This appeal basically centres on whether or not the two-year suspension imposed on the Appellant by the AFC DEC should be eliminated or reduced. The Parties are in common ground that a prohibited substance was found in the Player´s body. While they set forth different potential causes and scenarios for the ADRV, they concur that the Player should not be exposed to the maximum four-year period of ineligibility provided for under Article 19.1.1 of the AFC ADR, which sanctions intentional anti-doping offences.

210. The Appellant did not contest, in his written submissions, committing an ADRV by ingesting MHA. MHA is a substance listed under the category "SA Stimulant" part "B. Specified Stimulants" of the WADA Prohibited List (January 2020 version). It is stated to be a specified substance and prohibited "In-Competition". Notwithstanding his earlier acceptance of the ARDV in arguments raised by the Appellant at the very end of the hearing, the Appellant asserted that this case was about an "In-Competition" substance, as defined by the AFC ADR

and that the test did not reveal any In-Competition adverse finding. The argument was advanced by reference to the UEFA anti-doping rules. Those rules are not relevant and CAS related jurisprudence is of no avail, especially since this jurisprudence dealt with an intentional violation, and placed emphasis on the moment when the substance was fully excreted from the player's body.

211. The Player mainly argued a case of contamination. He invited the Panel to issue a warning or reprimand and eliminate his period of ineligibility, or at the very worst, reduce it, on grounds that he was not at fault or negligent, or not significantly at fault or negligent under Articles 21 and 22 AFC ADR. The Respondents maintained that the appeal should be dismissed and the Appealed Decision upheld.

212. Under the definition of "No Significant Fault or Negligence" in the AFC ADR, the Player has to establish 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. Except in the case of a Minor, for any violation of Article 6, the Player must also establish how the Prohibited Substance entered their system"*.

213. The definition of "No Fault or Negligence" in the AFC ADR is also of interest: *"The Player or other Person's establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 6, the Player must also establish how the Prohibited Substance entered their system"*.

214. As is clear from these provisions, the Player who seeks a reduction or elimination of sanction must establish how the Prohibited Substance entered his system. In the Appealed Decision, the AFC DEC found that the Player was unable to do so. Ultimately, therefore, any reduction will be based on the degree of fault of the Player.

215. In view of the above, the Panel must resolve the following issues:

- What is the applicable standard of proof?
- Has the Player established how the MHA entered his system?
- If so, what is the degree of negligence and fault attributable to the Player?
- What are the consequences thereof?

B. Discussion

a) Applicable standard of proof

216. The standard of proof is defined as the level of conviction that is necessary for the Panel to conclude in the arbitral award that a certain fact happened. Whether this is a matter of substantive or procedural law is a matter of controversy under CAS jurisprudence (see e.g.

CAS 2018/0/5666, para 84; CAS 2017/A/5045, para 83; CAS 2016/A/4501, para 117; CAS 2013/A/3256, para. 274).

217. In any event, this controversy does not need be to be examined further in this case, since the AFC ADR (2019 and 2021 editions) both refer to the balance of probability standard in their Article 66(2):

"Where the Code or these Regulations place the burden of proof upon the Player or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Article 69.2.2 and 69.2.3, the standard of proof shall be by a balance of probability".

218. This standard is very strict, and usually entails the following principles:

- The indicted athlete must prove that his hypothesis is more probable than other possible explanations; and/or at least 51% likely to have occurred (CAS 2007/A/1370, para 58; CAS 2011/A/2384 & 2386, para 6).

- There is no need to decide which is the most likely between two or more competing scenarios, but rather the athlete must prove that the chain of events presented by him was more likely than not to have happened. The athlete is allowed to address other scenarios put forward in an effort to support his position. However, the other party does not have the burden of proving the prevailing likelihood of a different scenario and it is not obliged to put forward any other competing scenarios (CAS 2019/A/6541 para 80, CAS 2012/A/2759, paras 11.31 and 11.32, CAS 2014/A/3615, para. 52).

- Mere denial, attestations of innocence and effforts to locate the source are not enough to meet the required standard. The athlete has to submit actual evidence as opposed to mere speculation (CAS 2010/A/2230, para 11.34; CAS 2014/A/3820, para 80; CAS 2014/A/3615, para 56).

- Therefore, establishing that a scenario is possible is insuficient to establish the origin of the Prohibited Substance. By way of example, the Panel in CAS OG 16/25 *"found the sabotage(s) theory possible, but not probable and certainly not grounded in any real evidence"* (para 7.27).

- The athlete must also demonstrate that the source could have caused the actual adverse finding, using corroborating evidence, such as scientific or other evidence (CAS 2010/A/2277, para 36).

219. Nevertheless, the Appellant alleges that, in view of CAS jurisprudence, he should be allowed to meet his burden of proof by indirect and circumstantial evidence, and be subject to lower standard requirements (CAS 2013/A/3370, para 169; CAS 2019/A/6443, paras 145-146; CAS 2017/A/5178, para 87; CAS 2011/A/2384 & 2386, paras 254, 256 and 261; CAS 2019/A/6313, para 84). He invokes, in support, the tardiness of the anti-doping organisation/laboratory in notifying his AAF and Club's lack of cooperation and bad faith, which made it almost impossible for him to prove the source of the MHA.

220. The Appellant goes so far as to evoke a reversal of the burden of proof and argue that in the case of contaminated products, the athlete may not be bound to provide a laboratory analysis or designate a specific product (CAS 2018/A/5546, para 70; CAS 2018/A/5853, para 139; see also CAS 2019/A/6313, para 65).

221. The Respondents retort that the doping tests were processed in compliance with current regulations and reject any exception to the usual burden and standard of proof.

222. The Panel recalls that the Player was notified about his AAF about 1.5 months after the sample was collected from him. The AFC clarified that since the sample collection and the test were conducted during the COVID-19 pandemic, there were certain guidelines and protocols in place from WADA whereby every sample had to be frozen prior to testing. More specifically, the "COVID-19: ADO Guidance" (March 2020), point 9b, states that:

"WADA has, in conjunction with its Laboratory Expert Group, provided comprehensive guidance for laboratories, which includes that laboratories suspending operations must: (…)

• Establish a procedure whereby samples that are already on their way to the laboratory can be securely received and either redirected to another accredited laboratory or safely stored frozen for when the laboratory's analytical activity resumes".

223. This is confirmed by the email sent by the Qatar Antidoping Laboratory to the AFC on 20 September 2020:

"According to WADA guidelines and recommendations for laboratory coronavirus protection:

1. Please be informed that the samples will remain frozen for 14 days in our laboratory before analysis.

2. If any of the tested athletes is found positive for coronavirus, please inform the laboratory with the sample code(s) as soon as possible".

224. Consequently, the AFC or the laboratory was not tardy in handling the sample and this argument must be disregarded.

225. The Panel also notes that the Player devoted considerable efforts to highlighting the Club's alleged lack of cooperation and bad faith. It considers that his position is not convincing for the following reasons:

- The Club was in touch with the Player's agent from immediately after the notification of the AAF and even arranged a video conference meeting on 11 November 2020 with the Player's attorneys.

- The Club responded to the various letters that the Player sent them asking for information. The Club's refusal to send the samples directly to the Player for testing was to ensure that there was no tampering.

- The Club conducted testing on its own products by itself at Anti-Doping Laboratory Qatar, a WADA accredited laboratory (in fact, the same laboratory at which the Player's sample was tested), as requested by the Player. The Club also provided detailed information and calculation, which appears to be satisfactory in demonstrating that the samples provided were of the same batch as those used by the Player. Finally, the Club stated in its Answer that it had preserved one set of the samples tested by the laboratory for the Player.

226. The statement of the Club's nutritionist before the AFC DEC, according to which he had used the batches of nutriments until they were finished, is, certainly, of interest. However, this statement does not exclude the possibility that another member of the Club's staff could have put away, sealed and kept one or several of those batches as from the first contact established with the Player's legal team, with or without the consent of the nutritionist. Furthermore, even assuming that it was not the case, it is inexplicable that the Player, assisted by experienced lawyers, was not able to arrange an analysis with an accredited laboratory from 4 November 2020 (date of the notification of his positive doping test) to 30 April 2021 (date of his letter to the CAS Court Office), before these batches were all used.

227. The theory that the Club voluntarily administered the Prohibited Substance without the Player's knowledge, which was put forward out of the blue at the very end of the hearing, is for its part completely devoid of any evidence. There is no evidence either that any other players of the Club have complained in this regard or of any other ADRV as a result of such alleged action.

228. Moreover, the Panel endorses the conclusions expressed in CAS 2011/A/2384 & 2386, according to which a reversal of the burden of proof will not occur even when evidence is inaccessible or when it is a question of proving a negative fact:

104. In its decision the Swiss Federal Tribunal makes it clear that difficulties in proving "negative facts" result in a duty of cooperation of the contesting party. The latter must cooperate in the investigation and clarification of the facts of the case. However, according to the Swiss Federal Tribunal the above difficulties do not lead to a re-allocation of the risk if a specific fact cannot be established. Instead, this risk will always remain with the party having the burden of proof.

105. Furthermore, the Swiss Federal Tribunal states that in assessing and determining whether or not a specific fact can be established, the court must take into account whether or not the contesting party has fulfilled its obligations of cooperation.

106. The Panel considers that the foregoing interpretation of the concept of "burden of proof" is compatible with international standards of law and therefore should apply in these proceedings and that by applying the above principles any danger that the First Respondent would be burdened with a kind of "probatio diabolica" – as feared by the RFEC – can be avoided".

229. Finally, as the AFC explained in detail, the present case differs in many respects from the CAS awards quoted by the Appellant, whether in terms of the substance detected, the

circumstances preventing the athlete from providing the required evidence, or the number of products potentially incriminated.

230. In view of all these considerations, the Panel takes the view that there is no reason to depart from the usual burden and standard of proof.

(b) Source of MHA

231. The Player attempted to prove the source of his MHA by a process of elimination by putting forward three categories of products that he allegedly consumed: the Club's products, the national team's products and his own products.

232. The Player sought to limit the time period to be considered for the consumed product by relying the Ligand Research Report and Prof. Talibov's expert opinion. The Player argued that the Club's products are the most probably source of MHA due to the period of time in which the MHA would have been excreted from his body (144 hours maximum, namely six days) and his whereabouts, as follows:

- training camp with his national team in Kazakhstan from 29 August 2020 to 7 September 2020;
- stay in Abu Dhabi, UAE with his Club from 8 to 11 September 2020;
- stay in Doha, Qatar with his Club from 11 to 18 September, including the Match and doping test on 18 September 2020.

233. The Respondents maintained that these reports presume a standard dosage of MHA that is incorrect. The AFC also relied on Prof. Latiff's report to highlight some flaws in the Ligand Research report and put forward other explanations for the Player's antidoping test, which appear equally probable as the theory of contamination. This includes the ingestion of a usual workout dose (40 to 50mg) three to four days before the doping test was conducted, and the ingestion of sub-optimal doses (less than 40-50mg) as a single ingestion or on a continuous basis, with variations of use that are aimed at getting peak performance during training.

234. The AFC and the Player globally agreed that the usual excretion time for a 50mg single intake of MHA was about six days, compared to five to six days in case of a multiple usage. The Club invoked a longer excretion window due to specific gravity.

235. The Panel observes that the two other possibilities mentioned by Prof. Latiff involve intent. Since the Respondents do not challenge the finding of the AFC DEC that there was no intentional consumption of the prohibited substance by the Player as such, the Panel need not specifically address the issue of intentional consumption.

236. The Panel also notes that the Ligand Research seems to contain some obvious flaws. Nor does it exclude the possibility that the Player may have taken more than a 50mg dose of MHA, resulting in a longer excretion time.

237. Nevertheless, these scientific questions can, there also, remain unanswered. Indeed, as argued at length by the Respondents, the Player did not identify one single product as the possible source of MHA. He referred to the "Club's products" as a whole, and was unable to point out a specific product out of the many supplements that he consumed. This is clearly insufficient when seeking to establish a case on the balance of probability.

238. Furthermore, the results of the analysis of the Club's products undertaken during these proceedings by a WADA accredited laboratory came back negative to MHA. Even if it is not decisive *per se*, the other player who underwent the doping control test along with him on the same day did not test positive for MHA. The Club also submitted that eight other players of the team were tested in a period of one month close to the date of the Player's test and none of them tested positive for this substance. All these elements seriously undermine the theory of the Club's products as being the source of the positive doping test.

239. On the other hand, there are unresolved questions with respect to the national team's products and the Player's own products. During the AFC DEC hearing, the Club's doctor stated that the Player reported to him that he had received a PRP injection twice in five days while he was with his national team. The national team doctor's unavailability in the hearings before the DEC and the CAS also means that it was not possible to question him. Likewise, the Player may have consumed other products during his stay in UAE from 8 to 11 September 2021, either by importing them (since, according to Prof. Latiff's testimony, this was feasible) or by purchasing them locally, with or without the help of his interpreter. Questions were also raised regarding a "nasal spray" that the Player used, despite the expert opinion provided with the appeal brief.

240. Finally, as already explained (section IX.C), the polygraph test undertaken by the Player is of no assistance to him. At best it would be of very limited probative value, and in any event, its results are unclear in respect to three crucial questions, and are silent on the Player's whereabouts and actions from 8 to 11 September 2021. As to the alleged ADRVs of the Club's other players these were denied by the AFC, and were not supported by any witness testimony. The Appellant has failed to establish the existence of the supposed ADRVs.

241. Consequently, the Panel concludes that the Player has failed to demonstrate the source of the MHA that was found in his sample on the balance of probabilities or at all.

(c) Degree of negligence and fault

242. Since the Player failed to determine the source of MHA, he cannot take advantage of the mechanisms set out in Article 21 or Article 22 of the AFC ADR to claim a reduction of the period of ineligibility decided by the DEC.

243. Moreover, Article 21 of the AFC ADR is not applicable in case of contaminated nutritional supplements or administration of a Prohibited Substance by the Athlete's personal physician or trainer, in light of the Comments to the WADA Code. Likewise, with regard to Article 22 of the AFC ADR, strong emphasis is placed on the (non-) disclosure of the Prohibited substance in the Doping Control Form.

244. Finally, according to CAS consistent jurisprudence, an athlete's reliance on his team doctors is generally not sufficient to claim a reduction of a sanction (see e.g. CAS 2005/A/872, paras 5.7ff; CAS 2018/A/5581, paras 54ff; CAS 2016/A/4609, paras 72ff; CAS 2012/A/2959, para 8.19; CAS 2019/A/6249, para 66). Yet, even admitting a contamination by the Club's products, the Player's responsibility would be high, as he appears to have ingested all sorts of nutriments without checking their content and labelling, in violation of his obligation to ensure that no prohibited substances enter his body.

(d) Consequences

245. The Panel confirms that the Appellant must serve the two-year period of ineligibility imposed on him by the AFC DEC on 23 December 2020.

246. In accordance with Article 28.4 AFC ADR, the period of ineligibility shall be calculated as starting from the date upon which the Appellant was first provisionally suspended, namely on 9 November 2020.

XI. CONCLUSION

247. After carefully reviewing the Parties' submissions and evidence, the Panel decides to dismiss the Appeal. It considers that the Appellant did not dispose his burden of proof in relation to the source of his ADRV on the balance of probability and in all the circumstances of the case cannot benefit from a reduction of his period of ineligibility for no fault or no significant fault.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The CAS has jurisdiction to hear the appeal filed by Mr Bauyrzhan Islamkhan against the decision of the AFC Disciplinary and Ethics Committee of 23 December 2020.

2. The appeal filed by Mr Bauyrzhan Islamkhan against the decision of the AFC Disciplinary and Ethics Committee of 23 December 2020 is dismissed.

3. The decision of the AFC Disciplinary and Ethics Committee of 23 December 2020 is confirmed.

4. (…).

5. (…).

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