



**Arbitration CAS 2016/A/4676 Arijan Ademi v. Union of European Football Associations (UEFA), award of 24 March 2017**

Panel: Mr Ken Lalo (Israel), President; Mr Jeffrey Benz (USA); Mr Hans Nater (Switzerland)

*Football*

*Doping (stanozolol)*

*Admissibility of belatedly filed exhibits not introducing meaningful new evidence*

*Exceptional admissibility of evidence submitted belatedly*

*Regime applicable to an ADRV according to UEFA ADR*

*Proof of source of the prohibited substance for the purposes of lack of intent (Article 9.01 UEFA ADR)*

*Proof of lack of intent*

*System of reduction of the sanction based on No Significant Fault or Negligence*

1. Even if the language of Article 62(6) of the UEFA Statutes which states that the CAS shall not take into account facts or evidence which the appellant could have submitted at an earlier stage, can be read to refer to only one of the parties, it would be unfair and unjust to allow only one party to the proceedings i.e. the respondent to utilize a procedural safeguard which is there to encourage the parties to litigate efficiently and fairly and avoid hearings being decided based on a new set of evidence which was or could have been available earlier. Additionally, where the admissibility of some exhibits submitted by a party merely simplifies the panel's work in understanding parts of a testimony, the exhibits cannot be considered as introducing meaningful new evidence such that the other party's right to be heard is limited. Therefore, those exhibits should be allowed into evidence and their late introduction should be considered in assessing the costs to be assessed in the arbitral award.
2. According to Article R56 of the CAS Code, a CAS panel has the right to allow late additional evidence in exceptional circumstances. Such may be the case of a late request filed by an athlete to have the product containing the prohibited substance analysed, as such analysis may be relevant, especially where there is no good reason to prevent such analysis from the player who is trying to support his position and minimize any sanction imposed on him.
3. A finding of an anti-doping rule violation (ADRV) results, *prima facie*, in a period of suspension of four years under the UEFA Anti-Doping Regulations (ADR). In order for the period of suspension to be reduced to two years, it is for the player to establish on the balance of probabilities that his ADRV was not intentional under the UEFA ADR. The period of suspension may be reduced or eliminated, if the player can establish on the balance of probabilities that he bears No Fault or Negligence or No Significant Fault or Negligence for the presence of a prohibited substance in his

systems and can also establish on the balance of probabilities the source of such prohibited substance.

4. The establishment of the source of the prohibited substance in a player's sample is not mandated in order to prove an absence of intent. The fact that the UEFA ADR, based on WADC, represents a new version of an anti-doping Code whose own language should be strictly construed without reference to case law which considered earlier versions now inconsistent is relevant. The relevant provisions (Article 9.01(a) and (c) UEFA ADR) do not refer to any need to establish source. Furthermore, the theoretical possibility that a panel might be persuaded by a player's simple assertion of his innocence of intent when considering not only his demeanour, but also his character and history, even if such a situation may inevitably be extremely rare, can be envisaged.
5. The special circumstances of a case and the totality of the evidence i.e. the possibility that the prohibited substance came from a product used by the athlete, combined with the credible testimony provided by the player, as further supported by the evidence of a witness and of the club doctors, can lead to consider on the balance of probabilities that a player discharged his burden of proving lack of intent to cheat.
6. The definition of "*No significant fault or negligence*" requires a player to establish "*that his fault or negligence, when viewed in the totality of the circumstances and taking into account the no fault or negligence criteria, was not significant in relation to the antidoping rule violation*". The "*totality of the circumstances*" include the level of a professional player purchasing a product from a non-secure source and using a suspicious package and pills. The "*no fault or negligence criteria*" refers to the player not knowing or suspecting, and not being able to "*reasonably have known or suspected, even with the exercise of utmost caution*" that he may have used an unsafe product. Finally, the significance is "*in relation to the antidoping rule violation*". In this respect, the use of stanozolol, a steroid notoriously used for doping and not allowed in and out of the competition is relevant.

## I. INTRODUCTION

1. This appeal is brought by Mr Arijan Ademi (the "Player" or the "Appellant") against the decision of the Appeals Body of the Union of European Football Associations ("UEFA"), dated 12 May 2016, which found that the Player had committed an anti-doping rule violation ("ADRV") pursuant to Article 2.01 of the UEFA Anti-Doping Regulations 2015 Edition ("UEFA ADR") and thereby imposing a four-year ban on the Player in accordance with Article 9.01 UEFA ADR (the "Appealed Decision").

## II. PARTIES

2. The Player is a Croatian-born Macedonian professional football player born on 29 May 1991. The Player is registered to play for GNK Dinamo Zagreb (the “Club”), a Croatian football club playing in the top tier of the Croatian football league system. The Player has played for the national team of FYR Macedonia.
3. UEFA is the governing body of European football. UEFA is an association under Article 60 et seq. of the Swiss Civil Code, headquartered in Nyon, Switzerland. Its responsibilities include the regulation of football in Europe, including enforcement of its anti-doping program in compliance with the World Anti-Doping Code (the “WADC”).

## III. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion below. While the Panel has considered all the facts, evidence, allegations and legal arguments submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 16 September 2015, following a match between the Club and Arsenal FC in Zagreb, the Player underwent a doping control test and provided a urine sample to UEFA.
6. On 7 October 2015, the Player was notified of an Adverse Analytical Finding for stanozolol metabolites in the sample provided by him on 16 September 2015. These results were provided by the WADA accredited “Laboratoire Suisse d’Analyse du Dopage” (“Lausanne laboratory”). Stanozolol is a substance prohibited at all times, both in and out of competition, and is not a specified substance.
7. Also on 7 October 2015, the Control, Ethics and Disciplinary Body of UEFA (“CEDB”) provisionally suspended the Player from participating in any football related activity for 30 days.
8. On 20 October 2015, the Player was notified that the B-sample analysis confirmed the result of the A-sample for stanozolol metabolites. These results were also provided by the Lausanne laboratory.
9. On 21 October 2015, disciplinary proceedings were opened against the Player for alleged doping offences in accordance with Article 13 of the UEFA Disciplinary Regulations (“UEFA DR”).
10. On 6 November 2015, the CEDB extended by 15 days the validity of the provisional suspension imposed on the Player.

11. On 19 November 2015 a hearing was held and on the same date the CEDB issued a Decision suspending the Player from participating in any football-related activity for a period of four (4) years.
12. On 7 December 2015, the Player appealed the CEDB decision to the UEFA Appeals Body.
13. On 12 May 2016, the UEFA Appeals Body issued the Appealed Decision, which reads in its operative part as follows:
  1. *The appeal lodged by the GNK Dinamo player Arijan Ademi is dismissed. Consequently, the Control, Ethics and Disciplinary Body decision of 19 November 2015 is confirmed.*
  2. *The costs of the proceedings, totalling € 3'000 (minus the appeal fee), are to be paid by the Appellant.*
  3. *This decision is final (subject to Article 58.7 DR) and is communicated to:*
    - a) *the parties;*
    - b) *the UEFA Control, Ethics and Disciplinary Body;*
    - c) *the UEFA administration;*
    - d) *the Croatian Football Federation*
14. The Appealed Decision was notified on 17 June 2016.

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

15. On 27 June 2016, the Player filed his statement of appeal at the Court of Arbitration for Sport (the "CAS") against UEFA in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code") challenging the Appealed Decision. In his statement of appeal, the Player nominated Mr Jeffrey Benz as arbitrator.
16. On 18 July 2016, the parties were notified on behalf of the President of the CAS Appeals Arbitration Division that the Player's requests for disclosure of the full case file including the recordings of the hearing before the UEFA Appeals Body will be dealt by the Panel once constituted.
17. On 20 July 2016, UEFA nominated Dr Hans Nater as arbitrator.
18. On 28 July 2016, following a short granted extension, the Player filed his appeal brief in accordance with Article R51 of the Code.
19. On 22 August 2016, the Secretary General of the CAS, considering Articles R33, R52, R53 and R54 of the Code recorded the Arbitral Panel in this appeal as follows:

President: Mr Ken Lalo, Attorney-at-Law in Gan-Yoshiyya, Israel  
Arbitrators: Mr Jeffrey G. Benz, attorney-at-law in Los Angeles, USA

Dr Hans Nater, Attorney-at-law in Zürich, Switzerland

The Panel was assisted in these proceedings by Andrea Zimmermann, Counsel to the CAS and by Jose Luis Andrade, Counsel to the CAS.

20. By CAS letter of 25 August 2016, the Panel confirmed the procedural calendar agreed by the parties regarding the submission of the recordings of the hearing before the UEFA Appeals Body, the timing of the filing of observations to such recordings and of the answer, the holding of a hearing and the issuance of the award.
21. On 14 September 2016, the CAS Court Office advised the parties that the hearing in this appeal will be held on 28 October 2016.
22. On 20 September 2016, UEFA filed its answer in accordance with Article R55 of the Code.
23. On 30 September 2016, the Player addressed UEFA's answer (in which UEFA indicated, among its many other arguments, that the Player "*refused to analyse the original pot of Megamin used by him*") and filed a request to analyse the pills contained in an unsealed container of Megamin pills received by the Institute of Biotechnology Center for Preventive Doping Research German Sport University Cologne, a WADA accredited laboratory (the "Cologne Laboratory") from the Club on 5 January 2016 (the "Pills"). In the same letter the Player also requested to apply Article 62(6) of the UEFA Statutes and to exclude UEFA's exhibits 5, 6, 12, 15, 16, 17, 18, 21 and 22, since these could have allegedly been available to UEFA in the prior proceedings before the UEFA bodies.
24. On 5 October 2016, UEFA objected to the Player's requests citing Article R56 of the Code which states that: "*[U]nless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer*".
25. On 17 October 2016, the Panel invited the parties to express their positions on the issue of admissibility of the exhibits and on the testing of the Pills requested in the Player's letter of 30 September 2016, indicating that the Panel will make its determination in these matters at the hearing or within the award.
26. On 17 and 18 October 2016, the Player and UEFA, respectively, signed and returned the order of procedure in this appeal.
27. On 28 October 2016, a hearing was held at the CAS Court Office in Lausanne. The Panel was assisted by Mr Jose Luis Andrade, Counsel to the CAS, and joined by the following persons:

For the Player:

Mr Arijan Ademi, Player  
Mr Claude Ramoni, counsel

Mr Tomislav Kasalo, counsel  
Mr Paul Green, counsel  
Mr Tomislav Svetina, representative of Dynamo Zagreb, observer  
Mr Jan Kemp Nel, legal intern at Libra Law, observer  
Ms Aracely Saenz, legal intern at Libra Law, observer  
Dr Tomislav Cerovecki, witness  
Mr Branimir Vajda, witness (by videoconference)  
Dr Hrvoje Šojat, witness (by videoconference)

For UEFA:

Mr Carlos Schneider, UEFA Disciplinary Lawyer, counsel  
Dr Jan Kleiner, counsel  
Mr Miguel Liétard Fernandez-Palacios, UEFA Ethics and Disciplinary Inspector  
Professor Dr Hans Geyer, Deputy Head of the Cologne Laboratory

28. Before the hearing was concluded, all parties expressly stated that they did not have any objection to the constitution or conduct of the Panel or to the procedure adopted by the Panel and that their right to be heard has been respected.
29. On 10 November 2016, in accordance with the instructions of the Panel at the conclusion of the hearing and the parties' agreement embodied in a letter from the Player's counsel of 8 November 2016, the Cologne Laboratory was requested to analyse the Pills.
30. On 21 November 2016, the Cologne Laboratory sent its analytical report in regard to the Pills, as well as its answers to the parties' questions in regard the Pills (the "Cologne Analysis").
31. On 23 November 2016, the Player submitted his observations relating to the Cologne Analysis.
32. On 24 November 2016, UEFA submitted its observations relating to the Cologne Analysis.
33. The Panel has carefully taken into account in its decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

**V. JURISDICTION**

34. Article R47 of the Code provides as follows:

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

35. The Player asserts that the jurisdiction of the CAS derives from Article 62(1) of the UEFA Statutes which reads as follows:

*Any decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration.*

36. UEFA expressly consents to jurisdiction in its answer. Moreover, both parties confirmed CAS jurisdiction by execution of the order of procedure, and no party objected to the proceedings or the jurisdiction of the arbitrators. It follows, therefore, that CAS has jurisdiction in this appeal.

## **VI. ADMISSIBILITY**

37. Article R49 of the Code provides 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

38. Article 13.01 of the UEFA ADR provides that: “[i]n case of litigation resulting from or in relation to these regulations, the provisions regarding the Court of Arbitration for Sport (CAS) laid down in the UEFA Statutes apply”.

39. Article 62(3) of the UEFA Statutes provides that: “[t]he time limit for appeal to the CAS shall be ten days from the receipt of the decision in question”.

40. The Appeal was filed on 27 June 2016, within ten (10) days of notification of the Appealed Decision, on 17 June 2016.

41. UEFA noted that it has no objection to the admissibility of the Player’s appeal “in so far as the appeal is directed against a final decision of UEFA”; namely, in conformity with Article 62(4) of the UEFA Statutes.

42. The Panel agrees, for those reasons, that the appeal is admissible.

## **VII. APPLICABLE LAW**

43. Article R58 of the Code provides as follows:

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

44. According to Article 62(4) of the UEFA Statutes, “[...] proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS”.
45. The parties agree that the dispute is governed by UEFA Statutes and its rules and regulations and, in particular, the UEFA DR and the UEFA ADR.
46. Therefore, the applicable law, accordingly to which the Panel will decide the present appeal, is the UEFA ADR and, subsidiarily, Swiss law given UEFA’s domicile in Switzerland.

### VIII. RELEVANT UEFA DOPING REGULATIONS AND DEFINITIONS

47. The following provisions of the UEFA ADR, which are based on the WADC, are material to this appeal:

UEFA ADR 2 (“Anti-Doping Rule Violations”) provides in its pertinent part:

*2.01 The following constitute anti-doping rule violations:*

*a) Presence of a prohibited substance or its metabolites or markers in a player’s sample*

*i) It is each player’s personal duty to ensure that no prohibited substance enters his body. Players are responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the player’s part be demonstrated in order to establish an anti-doping rule violation.*

*ii) Sufficient proof of an anti-doping rule violation is established by any of the following: presence of a prohibited substance or its metabolites or markers in the player’s A sample where the player waives analysis of the B sample and the B sample is not analysed; or, where the player’s*

*B sample is analysed and the analysis of the player’s B sample confirms the presence of the prohibited substance or its metabolites or markers found in the player’s A sample; or, where the player’s B sample is split into two bottles and the analysis of the second bottle confirms the presence of the prohibited substance or its metabolites*

*or markers found in the first bottle.*

*iii) Excepting those substances for which a quantitative threshold is specifically identified on the Prohibited List, the presence of any quantity of a prohibited substance or its metabolites or markers in a player’s sample constitutes an anti-doping rule violation.*

*iv) As an exception to the general rule of this paragraph 2.01 a, the*

*Prohibited List or international standards may establish special criteria for the evaluation of prohibited substances that can also be produced endogenously.*

UEFA ADR 3.01 (“Burden and Standards of Proof”) provides:

*3.01 UEFA has the burden of establishing that an anti-doping rule violation has occurred. The standard of proof is whether UEFA has established an antidoping rule violation to the comfortable satisfaction of the*

*hearing panel, bearing in mind the seriousness of the allegation which is made. Where a player or other person alleged to have committed an anti-doping rule violation has the burden of rebutting a presumption or establishing specified facts or circumstances, the standard of proof is the balance of probability.*

UEFA ADR 9 (“First violations and increasing suspensions”) provides in its pertinent part:

*9.01 Suspension for presence, use, attempted use, or possession of a prohibited substance or a prohibited method*

*The period of suspension for a first violation under paragraph 2.01 a (presence of a prohibited substance or its metabolites or markers), 2.01 b (use or attempted use of a prohibited substance or prohibited method) or 2.01 f (possession of a prohibited substance or prohibited method) is as follows, subject to any reduction or suspension of this period pursuant to paragraph 10.01, 10.02 or 10.03.*

*a) The period of suspension is four years if:*

*i) the anti-doping rule violation does not involve a specified substance (unless the player or other person can establish that it was not intentional); or*

*ii) the anti-doping rule violation involves a specified substance and*

*UEFA can establish that it was intentional.*

*b) If paragraph a) does not apply, the period of suspension is two years.*

*c) As used under paragraphs 9.01 and 9.02, the term “intentional” is meant to identify those players who cheat. The term, therefore, requires that the player or other person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an adverse analytical finding for a substance which is only prohibited in-competition is rebuttably presumed to be “not intentional” if the substance is a specified substance and the player can establish that the prohibited substance was used out-of-competition.*

UEFA ADR 10 (“Lifting, reducing, or suspending a sanction”) provides in its pertinent part:

*10.01 Lifting the period of suspension where there is no fault or negligence*

*If a player or other person establishes in an individual case that he bears no fault or negligence, then the otherwise applicable period of suspension is lifted.*

*10.02 Reducing the period of suspension based on no significant fault or negligence*

*a) Reducing suspensions for violations of paragraph 2.01 a (presence of prohibited substance or its metabolites or markers), 2.01 b (use or attempted use of a prohibited substance or method), or 2.01 f (possession of a prohibited substance or prohibited method) involving specified substances or contaminated products.*

*[...]*

*ii) Contaminated products*

*In cases where the player or other person can establish no significant fault or negligence and that the detected prohibited substance came from a contaminated product, then the minimum sanction is a*

*reprimand and no period of suspension and the maximum sanction two years of suspension, depending on the player's or other person's degree of fault.*

*b) Application of no significant fault or negligence beyond the application of paragraph 10.02a*

*Where paragraph 10.02a does not apply, if a player or other person establishes in an individual case that he bears no significant fault or negligence then, subject to any further reduction or lifting of the period pursuant to paragraph 10.03, the otherwise applicable period of suspension may be reduced based on the player or other person's degree of fault, but the reduced period of suspension may not be less than half of the period of suspension otherwise applicable. If the otherwise applicable period of suspension is a lifetime, the reduced period under this paragraph may be no less than eight years.*

UEFA ADR 12.02 ("Team Disqualification") provides:

*If more than two players from the same team are found to have committed an anti-doping rule violation during a competition period, UEFA imposes the appropriate sanction(s) in accordance with the UEFA Disciplinary Regulations and the present regulations on the team to which the players belong, in addition to the consequences imposed on the individual player(s) found to have committed the anti-doping rule violation. The sanction(s) imposed on the team may include disqualification from the competition in progress and/or exclusion from future competitions.*

Appendix C (Definitions) provides, in its relevant parts:

Contaminated product: *A product that contains a prohibited substance that is not disclosed on the product label or in information that can be found by means of a reasonable internet search.*

Fault: *Any breach of duty or lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a player or other person's degree of fault include, for example, the player's or other person's experience, whether the player or other person is a minor, special considerations such as impairment, the degree of risk that should have been perceived by the player and the level of care and investigation exercised by the player in relation to what should have been the perceived level of risk. In assessing the player's or other person's degree of fault, the circumstances considered must be specific and relevant to explain the player's or other person's departure from the expected standard of behaviour. Thus, for example, the fact that a player would lose the opportunity to earn large sums of money during a period of suspension, the fact that a player only has a short time left in his career, or the timing in terms of the sporting calendar would not be relevant factors to be considered in reducing the period of suspension under paragraph 10.02.*

No fault or negligence: *If the player or other person establishes that he did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he had used or been administered a prohibited substance or prohibited method or otherwise violated an anti-doping rule. Except in the case of a minor, for any violation of paragraph 2.01a, the player must also establish how the prohibited substance entered his system.*

No significant fault or negligence: *If the player or other person establishes that his fault or negligence, when viewed in the totality of the circumstances and taking into account the no fault or negligence criteria, was not significant in relation to the antidoping rule violation. Unless he is a minor, for any violation of paragraph*

*2.01 a the player must also establish how the prohibited substance entered his system. For cannabinoids, the player may establish that he bears no significant fault or negligence by clearly demonstrating that the use was not intended to enhance sporting performance or unrelated to sport.*

## **IX. EVIDENCE**

### **A. Admission of UEFA's Exhibits**

48. The Player sought, in its letter of 30 September 2016, to exclude UEFA's exhibits 5, 6, 12, 15, 16, 17, 18, 21 and 22 since these could have allegedly been available to UEFA in the prior proceedings before the UEFA bodies. The Player relied on Article 62(6) of the UEFA Statutes which states that: "[t]he CAS shall not take into account facts or evidence which the appellant could have submitted to an internal UEFA body by acting with the diligence required under the circumstances, but failed or chose not to do so". The Player argued that the same rule should apply to UEFA as well.
49. UEFA responded on 5 October 2016, citing Article R56 Code which states that "[U]nless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".
50. Article R56 CAS Code is not relevant as the Player's filing was by way of objection to exhibits introduced by UEFA.
51. These exhibits were or could have presumably been available at an earlier time and at least during the proceedings before the UEFA Appeals Body. They include correspondence and pictures relating to the Megamin Med product used by the Player as well as doping control forms of other Club players.
52. Even if the language of Article 62(6) of the UEFA Statutes can be read to refer to only one of the parties, it would be unfair and unjust to allow only one party to the proceedings to utilize a procedural safeguard which is there to encourage the parties to litigate efficiently and fairly and avoid hearings being decided based on a new set of evidence which was or could have been available earlier. Additionally, some of the more relevant exhibits relating to the Pills could have also been brought through the testimony of Dr Gayer. The exhibits merely simplified the Panel's work in understanding parts of his testimony. The exhibits did not introduce meaningful new evidence such that a party's right to be heard was limited.
53. The Panel allows those exhibits into evidence and will consider their late introduction in assessing the costs to be assessed in this arbitral award.

### **B. Testing of the Pills Post Hearing**

54. In the same letter of 30 September 2016, the Player also requested to analyse the Pills. The Player supported its request by the fact that such testing had been requested even prior to the

UEFA proceedings and also arguing that it could resolve matters addressed in UEFA's answer.

55. UEFA's objection citing Article R56 of the Code is relevant to this matter. However, the Panel has the right to allow such additional evidence in exceptional circumstances.
56. The Panel heard the parties' positions on this matter during the hearing. The Panel proposed that the Pills be analysed and suggested that the parties coordinate the requests and instructions to the Cologne Laboratory. The parties agreed to such suggestions.
57. The Panel notes that such analysis may be relevant, that it should have been done at a much earlier stage and that there was no good reason to prohibit or avoid such analysis even if there may be good arguments by either party to object to the relevancy of or explain the findings.
58. The Panel indicated that it can assume how each party may react to either a positive or a negative finding which will not change dramatically the parties' positions, but that there is no good reason to prevent such analysis from the Player who is trying to support his position and minimize any sanction imposed on him.

### **C. Testing of the Various Supplements**

59. In order to better understand the parties' positions, a summary of the tests performed on the various supplements used by the Player appears below:
  - On 19 October 2015, after notification of the A positive and before the opening of the disciplinary proceedings, the supplements listed on the Player's Doping Control Form (namely, Vitamins, Minerals, Tribulus Terrestris and Mega Min) were delivered for analysis to the Croatian National Doping Organisation ("Croatian NADO").
  - These supplements were sent to the WADA accredited laboratory, Seibersdorf laboratory in Austria. They were not tested because Croatian NADO did not authorise such testing.
  - On 10 November 2015, UEFA refused to grant the Player's request of 5 November 2016 to permit the Seibersdorf laboratory to test the supplements.
  - The Player asked for the supplements to be returned to him and in the short time before the hearing in front of the CEDB was allegedly only able to receive confirmation from the Croatian Veterinary Institute that the Megamin product used by the Player was contaminated with stanozolol. While this laboratory is a state of the art one it was not in a position to issue a proper certificate of analysis.
  - The products were then sent by the Athlete to the RIKILT Research Institute of the University of Wageningen in the Netherlands ("RIKILT"), a National and EU Reference Laboratory in food safety research. RIKILT detected suspect peaks for stanozolol in the Megamin, but eventually did not confirm the presence of stanozolol in that product. All other products tested negative for stanozolol.

- At the request of UEFA, the Club then sent the BCAA and Ultrasport (containing the tribulus terrestris) products to the Cologne Laboratory. The Player directed RIKILT to send the Megamin directly to the Cologne Laboratory.
- At UEFA's instructions, the Cologne Laboratory tested one sealed container of Megamin which did not reveal the presence of stanozolol.
- The Player attempted to purchase Megamin of the same batch as the one used by the Player or at least having the same expiry date. Unfortunately, allegedly through frequent use of the container containing the Pills, the batch number and most of the date were undetectable. The Player and Dr Cerovecki purchased what they believed to be similar Megamin products in the form of blisters (rather than sealed bottles, to be able to send separate blisters to a number of laboratories) and sent them to both RIKILT and AEGIS laboratory in the USA (accredited by the American Association for Laboratory Accreditation). Both RIKILT and AEGIS confirmed the presence of stanozolol in some of the Megamin blisters at a very low concentration.
- The post hearing Cologne Analysis of the Pills concluded that “[i] none of the yellow capsules stanozolol was detected. In all white capsules stanozolol was detected...”. The Cologne Laboratory remarked on the Cologne Analysis that “[t]he test results of the white capsules could not be verified by the analysis of an originally packed and sealed and independently obtained product”. In its remark the Cologne Laboratory referred to the fact that the Pills were from the original open container delivered on behalf of the Player.
- The Cologne Analysis also included responses to the parties' questions. The Cologne Laboratory advised, *inter alia*, that the container of the Pills contained 4 yellow capsules and 17 white capsules. “Both kind of capsules contain powders, which, after visual inspection, have the same colour and consistency ... Based on the rough comparison of the powders in the yellow and white capsules, it can be concluded that their composition is similar”.

## **X. SUBMISSIONS OF THE PARTIES**

60. The Player's submissions, in essence, may be summarized as follows:

- The Player suffered a muscle rupture on his left hip during a match on 15 August 2015. The treatment of this injury included the use of certain supplements, treatments and medications prescribed by the Club's doctor, Dr Hrvoje Šojat and by Dr Zoran Tocilj, which, according to the Player, were all checked and authorized and cannot explain the adverse analytical finding.
- At the beginning of September 2015, the Player appeared to be cured of his hip injury, but his pain in the lower back still existed. In an effort to relieve such back pains the Player was treated by Mr Branimir Vajda, allegedly a renowned Croatian Physiotherapist, trainer and coach, at his centre. Mr Vajda apparently treated other well-known Croatian elite athletes and players.
- The Player, at the recommendation of Mr Vajda, started to take the product “Megamin/Megacomplex”, a dietary supplement marketed by a Croatian company and sold over

the counter in Croatia. The Player had heard of this product which, according to him, was popular with players in Croatia and Macedonia. The Player was advised to take 4 capsules after hard practice. The Player took those tablets approximately every other day in the period between 9 September and 16 September 2015.

- The Player bought the product Megamin from Mr Vajda at his centre.
- The Player checked the product and informed the Club doctor, Dr Hrvoje Šojat, who checked the ingredients and indicated that the label of the product did not contain any prohibited substances.
- On the Doping Control Form, the Player listed that he took Vitamins, Minerals, Tribulus Terrestris and Mega Min. Besides Mega Min, all other supplements were regularly provided by the former Club doctor Dr Zekic to all Club players.
- On the day of notification of the adverse analytical finding regarding the Player, 10 other Club players were tested out-of-competition, which resulted in no adverse analytical findings.
- The Player did not challenge the adverse analytical finding or the breach of Article 2.01(a) of the UEFA ADR.
- The Player contended that Article 10.02(a)(ii) UEFA ADR applies and that *“the player... can establish no significant fault or negligence and that the”* stanozolol *“came from a contaminated”* Megamin *“product”* and that therefore *“the minimum sanction is a reprimand and no period of suspension and the maximum sanction two years of suspension”* and, in this case and considering the low degree of fault, a sanction at the lower end of the scale, being a reprimand or no more than up to 6 months of suspension.
- The Player has the burden of proof to prove his version of facts under the balance of probabilities (more probable than not) in accordance with Article 3.01 UEFA ADR.
- The Player has met his burden of proof to show on the balance of probabilities that the positive test result resulted from an intake of contaminated Megamin: (i) Megamin was the only product consumed by the Player and not by the other Club players; (ii) the Pills contained Stanozolol as evidenced by the positive test result as concluded by the Croatian Veterinary Institute and by the positive test results of the white capsules determined by the Cologne analysis; (iii) similar such products tested positive at RIKILT and AEGIS laboratories; (iv) the concentration found was similar to the concentration in the positive result and was a small concentration and was therefore in line with a contamination theory; (v) contamination is the most likely source for the positive finding of stanozolol.
- The Cologne Analysis further proves that the Pills were contaminated. If UEFA claims that the Cologne Analysis is not relevant since the analysed Pills were in an open container and that the Player manipulated other samples and blisters, why has the Player not manipulated the other closed container originally sent by him to Croatian NADO, why have all those products been voluntarily sent to Croatian NADO and why have only some blisters been manipulated by or on behalf of the Player. UEFA’s theory of manipulation is no more than a speculation.

- The Player did not manipulate the Megamin products tested by the various laboratories and any such theories advanced by UEFA are highly improbable and do not form a credible alternative to the simple scenario proposed by the Player; namely, the contamination of the Pills.
- UEFA tries to advance a theory of contamination of the tribulus terrestris product used by the Player, but this product was tested and found not to contain prohibited substances.
- The Player neither intended to cheat nor was reckless or negligent in relation to his obligations to avoid an ADRV, or knew that there was a significant risk that his conduct might constitute or result in an ADRV and manifestly disregarded that risk.
- The Player has proven the source of the stanozolol, being a contaminated Megamin product. The Player exercised caution in using this product (checked with the Club doctor and checked the ingredients) and had no reason to suspect that Megamin obtained from Mr Vajda's centre, which is a reliable source, and used under medical supervision, contained stanozolol.
- Considering the low degree of fault, a sanction at the lower end of the scale is warranted, being a reprimand or no more than up to 6 months of suspension.
- The Player had established, on a balance of probability, that he did not knowingly ingest stanozolol or intend to cheat.
- If the Panel does not accept that the Player had no Significant Fault or Negligence, the Panel should at least find that the ingestion of stanozolol was not intentional and, therefore, the Player should benefit from Article 9(b) UEFA ADR and have a reduced suspension of two years.
- If any suspension is imposed on the Player, the Player should be credited the period of suspension already served by him.

61. In his requests for relief, the Player seeks the following:

*Arijan Ademi applies for the Court of Arbitration for Sport to rule as follows:*

- (i) *The appeal is upheld.*
- (ii) *The decision of the UEFA Appeals Body on 12 May is set aside.*
- (iii) *The decision of the UEFA Control, Ethics and Disciplinary Body on 19 November 2015 is set aside.*
- (iv) *The Player is sanctioned with a reprimand or alternatively a suspension equalling the period of suspension already served on the day of the hearing before the UEFA Appeals Body.*
- (v) *UEFA shall be ordered to reimburse Arijan Ademi the minimum CAS Court Office fee of CHF 1000.*

(vi) UEFA shall be ordered to reimburse Arijan Ademi a contribution towards the legal and other costs incurred in the framework of these proceedings in an amount to be determined at the discretion of the Panel.

62. UEFA's submissions, in essence, may be summarized as follows:

- UEFA cares about football and in order to safeguard the sport of football must respect and ensure a clean sport.
- The Player tested positive for a steroid (stanozolol) which is notoriously used for doping. The natural inference is that the Player used it for that purpose.
- Stanozolol is prohibited at all times and is one of the most popular anabolic steroids of all times; it is one of the best known performance enhancing drugs widely used by athletes.
- The Player's "*adventurous theory of contamination*" of the product Megamin is not a possible one since such product cannot be the source of stanozolol.
- The products used by the Player including Megamin could not have been properly analysed. The Pills' container was open when sent to the Cologne Laboratory; the Player caused confusion by sending the products used by him to various labs without ensuring a proper chain of custody; most tests and primarily those evidencing suspected readings of stanozolol are not reliable (but for the tests run by the Cologne Laboratory); the RIKILT and AEGIS laboratories on blisters (different formats of Megamin) are not teaching and additionally not consistent; the blisters could have been easily tampered with; various blisters produced differing results; the batch number and date of the Pills' container was illegible so no comparable products could be tested; other Megamin products were of different formats (contained in blisters and not bottles).
- The Croatian Veterinary Institute has not used a valid method to analyse the Pills and RIKILT found no stanozolol in the products used by the Player.
- The only reliable test is of the sealed closed container of Megamin (container of pills and not blisters) and not any analysis of the Pills (which were in an open container which could have been easily tampered with). Therefore, we can only rely on the negative result of such closed container of an equivalent product determined by the Cologne Laboratory and not by any analysis of the Pills by any of the laboratories or by the Cologne Laboratory post hearing.
- The Player had a motive and an opportunity to manipulate the evidence including the blisters of Megamin sent for analysis.
- Contamination of the product *tribulus terrestris* is much more likely and stanozolol was found in such product in the past. An intentional intake of *tribulus terrestris* containing stanozolol is a much more likely scenario.

*"[T]ribulus terrestris is very common among body-builders and even dopers, and it accordingly has a long doping-related history".*

- Alternatively, an intentional intake of stanozolol by the Player by other means is a much more likely scenario.
- The Player bears the burden of proof regarding the source of the prohibited substance in order to enjoy a reduced sanction under Article 10.02(a)(ii) (contamination). The Player has failed to meet this burden.
- The Player must additionally prove that he bears No Significant Fault or Negligence and he has failed to meet this second requirement as well.
- The Player is required to prove such matters based on the balance of probabilities which must rely on objective means of evidence and not merely on the Player's theory, assumptions and wishes.
- The Player bears the burden of proof to persuade the Panel that he did not intend to cheat. If he cannot do so, he must be sanctioned with a four-year period of ineligibility.
- For this purpose, the Player must first prove how the prohibited substance came to be present in his system. Absent such proof (which the Player did not provide), he cannot show that the ADRV was not intentional.
- The analyses carried out on behalf of the Player does not show that the origin of the prohibited substance is a contaminated supplement and there is no other evidence to the effect that it was so caused.
- The Player's theory that the ADRV could have been caused by his consumption of Megamin was mere speculation, unsupported by any cogent evidence.

63. In its requests for relief, UEFA seeks the following:

*Based on the foregoing, UEFA respectfully requests the CAS to issue an award:*

- *Rejecting all reliefs sought by the Appellant.*
- *Confirming the Appealed Decision.*
- *Ordering the Appellant to pay all of the costs of this arbitration and a significant contribution towards the legal fees and other expenses incurred by UEFA in connection with these proceedings.*

## **XI. MERITS**

### **A. Overview of the Panel's Legal Analysis**

64. It is common ground between the parties that the Player was guilty of an ADRV under Article 2.01 UEFA ADR in that stanozolol was present in his sample. A finding of an ADRV results, prima facie, in a period of suspension of four (4) years under Article 9.01(a)(i) UEFA ADR. In order for the period of suspension to be reduced to two (2) years, it is for the Player to establish on the balance of probabilities that his ADRV was not intentional under Article 9.01(a)(i) UEFA ADR as defined in Article 9.01(c) UEFA ADR. The period of suspension may be reduced or eliminated under Articles 10.01 or 10.02 UEFA ADR, if the Player can

establish on the balance of probabilities that he bears No Fault or Negligence or No Significant Fault or Negligence for the presence of stanozolol in his systems and can also establish on the balance of probabilities the source of such prohibited substance. Specifically, the Player can benefit from a reduction or elimination of the period of suspension if he can establish on the balance of probabilities that he bears No Significant Fault or Negligence for the presence of stanozolol in his systems which entered his body through a contaminated product, under Article 10.02(a)(ii) UEFA ADR.

**B. Main Issues**

65. The following are the main issues which arise in this appeal:
- (a) In order to establish absence of intent for the purposes of UEFA ADR 9.01, is it necessary for the Player to establish the source of the prohibited substance present in his sample?
  - (b) If it is necessary, has the Player established the source of the stanozolol present in his sample?
  - (c) If it is not necessary, has the Player established his lack of intent?
  - (d) Has the Player established that the positive finding is due to No Fault or Negligence or to, at least, No Significant Fault or Negligence?
  - (e) Has the Player established the source of the stanozolol for the purposes of 10.02(a)(ii) (No Significant Fault or Negligence in consuming a contaminated product)?

**a) Proof of Source for purposes of Lack of Intent (Article 9.01 UEFA ADR)**

66. Under Article 9.01(a) UEFA ADR “[t]he period of suspension for a first violation is four years” unless, in a case not involving a specified substance, “the player or other person can establish that it was not intentional”.
67. Article 9.01(c) UEFA ADR states that the “the term “intentional” is meant to identify those players who cheat. The term, therefore, requires that the player or other person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk”.
68. Article 9.01(c) UEFA ADR is based on Article 10.2.3 WADC and uses similar language as well as similar sanctions and consequences to a finding of lack of intent. With the increase of the “standard” suspension under the 2015 version of WADC from two (2) years (under the 2009 version of the WADC) to four (4) years (under the 2015 version of WADC), it was made clear that where there was no intent the sanction “returned” to the “standard” two (2) years suspension. In this regard it was clarified that the term “intentional” was meant to identify those players who cheat.
69. A legal question which arises is whether a proof of source of the prohibited substance is mandated under Article 9.01 in order to allow a player to establish lack of intent, in the same

way that it is mandated for the purposes of Articles 10.01 or 10.02 UEFA ADR under the definitions of No Fault or Negligence and No Significant Fault or Negligence which require that *“the player must also establish how the prohibited substance entered his system”*.

70. The following factors support the proposition that establishment of the source of the prohibited substance in a Player’s sample is not a *sine qua non* of proof of absence of intent:

- (i) The relevant provisions (Article 9.01(a) and (c) UEFA ADR) do not refer to any need to establish such source.
- (ii) Establishment of such source is specifically required when a Player seeks to prove No Fault or Negligence (Article 10.01 UEFA ADR) or No Significant Fault or Negligence (Article 10.02 UEFA ADR) and the definitions of No Fault or Negligence and No Significant Fault or Negligence. If such establishment is expressly required in one rule, its omission in another must be treated as deliberate and significant.
- (iii) Articles 9.01(a) and (c) UEFA ADR which do not specifically mandate the need to establish source as a precondition of proof of lack of intent are modelled on WADC and must be presumed to be deliberate.
- (iv) Any ambiguous provisions of a disciplinary code must, in principle, be construed *contra proferentem*. See, CAS 94/129: *“The fight against doping is arduous and it may require strict rules. But the rule makers and the rule applicators must begin by being strict with themselves. Regulations that may affect the careers of dedicated Players must be predictable”* (para. 34).
- (v) This is especially so when on the express language of the code the purpose of the concept of intent is to identify Players *“who cheat”*.
- (vi) In an article by four well recognized experts including Antonio Rigozzi and Ulrich Haas *“Breaking Down the Process for Determining a Basic Sanction Under the 2015 World Anti-Doping Code” International Sports Law Journal, (2015) 15:3-48* the view is expressed:

*“The 2015 Code does not explicitly require a Player to show the origin of the substance to establish that the violation was not intentional. While the origin of the substance can be expected to represent an important, or even critical, element of the factual basis of the consideration of a Player’s level of Fault, in the context of Article 10.2.3, panels are offered flexibility to examine all the objective and subjective circumstances of the case and decide if a finding that the violation was not intentional”*.

71. On the other hand, there are a number of factors which support the proposition that establishment of the source of a prohibited substance in a Player’s sample is a *sine qua non* of proof of absence of intent:

- (i) It is difficult to see how a player can establish lack of intent to commit an ADRV demonstrated by presence of a prohibited substance in his sample if the player cannot even establish the source of such substance.

- (ii) The proof of source may be implicit in connection with this provision which may arguably not be the case in connection with the establishment of No Fault or Negligence or No Significant Fault or Negligence.
- (iii) There is a consistent line of jurisprudence that establishment of source is necessary when a Player seeks to establish absence of fault in order to ensure that one does not rely merely on speculation or matters which are entirely made up and which would undermine the strict liability rules. See, e.g. CAS 2013/A/3124, at para. 12.2, quoting with approval CAS 2006/A/1130, at para. 39.
- (iv) That jurisprudence is logically applicable *mutatis mutandis* to a case where the Player needs to establish absence of intent. Indeed, it has already been applied in cases where intent rather than fault was in issue. See 2016/A/4662 where the Sole Arbitrator said at para. 39 by reference to RADO 10.2.3 (adopting the same provision in 2015 WADC “*The Player bears the burden of establishing that the violation was not intentional... and it naturally follows that the Player must also establish how the substance entered her body;*”; (see also CAS 20126/A/4377 at para. 51 to same effect)) However, in CAS 2016/A/4439, the Panel did not appear to have considered it mandatory for the Player to establish how the prohibited substance got into his system in order for him to show that the ADRV was not intentional. While noting that the Player was unable to identify the source, the Panel nevertheless went on to consider whether the Player could show that the ADRV was not intentional, and, in finding that he could not, relied on various reasons other than such inability (para 41. *et seq.*).

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

**b) Source of Stanozolol**

73. The Panel is unpersuaded that the Player, if contrary to its preferred view he is required to establish the source of the stanozolol, has been able to do so. The tests of the Megamin were not conclusive as indicated above. No representative of the Megamin manufacturer for its part gave evidence about its product sources or how they were processed. See para. 87 below.

**c) *Proof of Lack of Intent***

74. Article 9.01(c) UEFA ADR requires, in order to meet the definition of “*intentional*” and “*identify those players who cheat*” to determine “*that the player or other person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*”.
75. Irrespective of any inability to identify the source of the stanozolol, the Panel finds that the Player established, on a balance of probability, that he did not engage in conduct which he knew constituted or might constitute or result in an ADRV, in that he did not knowingly ingest stanozolol or otherwise intended to cheat.
76. In the special circumstances of this case, the Player discharged his burden of proving lack of intent. The totality of the evidence, including the possibility that the stanozolol came from the Pills (even if not necessarily due to contamination and even if not meeting the burden of proving source for purposes of Article 10.02 UEFA ADR), combined with the Panel’s acceptance of the testimony provided by the Player which the Panel found to be credible, as further supported by the evidence of Mr Vajda and of the Club doctors, that the Player had no intent to use a prohibited substance and that the Player merely used Pills provided by Dr Vajda for back pains believing them to be safe to use (even if this amounted to, at the very least, significant negligence) is sufficient to establish on the balance of probabilities that the Player had no intention to cheat.
77. The Panel views this scenario (including the possibility that the Pills used were from an open container provided at the centre whether intended or not intended specifically for the Player but not necessarily manipulated by the Player) as more plausible than the alternative scenario put forward by UEFA of a plan masterminded by the Player under which he knowingly and intentionally used stanozolol and then manipulated the Pills and the other Megamin products tested by the various labs in order to try to prove contamination. The Panel notes that this would have required a well thought concentrated actions of manipulating the products through sealed blisters and quick action even before the sending of all products to the Croatian NADO which was indeed done without delay by the Club.
78. According to Dr Geyer’s testimony at the hearing and the comments regarding the Cologne Analysis, the open Pills were not tested earlier at UEFA’s instructions, since the only meaningful test is one of an equivalent product and not of the Pills which could have easily been manipulated. Similarly, pills contained in blisters may be injected without noticing holes in the blisters, thus more susceptible to manipulation.

Dr Geyer also testified that many product contaminations are the result of suppliers’ chains and contaminations at sub-contractors with manual or less controlled manufacturing systems. Correspondence with the Megamin producer indicated that the producer sourced substances from suppliers and that the product was then produced by a third party under a long term contract with the Megamin producer. While the Megamin producer confirmed that neither it nor the third party produced any products containing stanozolol and that “[c]ompany Megammin Med has never had any contamination issues at all, especially not with the substance in question”.

Taking into account all tests results and all matters known or revealed in connection with this case, Dr Geyer commented at the hearing that he could not say whether the tests results including the concentration of the detected substance were more likely the result of contamination or doping and manipulation. The detected concentration of stanozolol was low, which may result from consumption of contaminated products or from an intentional consumption of a small dosage in an effort to avoid a positive finding.

79. The Panel considers that the Player, who has the burden of proof under Article 9.01(a)(i) UEFA ADR, was able to discharge that burden and establish that he had no intention to use stanozolol and was, therefore, not a cheater, thus benefiting from the provisions of Article 9.01(b) UEFA ADR, and a two year period of suspension (in lieu of a four year one).

**d) *No Fault or Negligence / No Significant Fault or Negligence***

80. In order for the Player to benefit from the provisions of UEFA ADR 10.01 or 10.02 and have the period of suspension reduced or even completely eliminated, the Player must prove, on the balance of probabilities (UEFA ADR 3.1), both of the following elements:

- da) That he bears No Fault or Negligence or No Significant Fault or Negligence for the presence of stanozolol in its systems; and
- db) The source of the stanozolol (under the specific definitions of the terms No Fault or Negligence and No Significant Fault or Negligence).

81. To enjoy a reduction or elimination of the period of suspension (reprimand and no suspension and up to two years suspension based on the degree of fault) in a special case in which the detected prohibited substance came from a contaminated product, the Player should establish under UEFA ADR 10.02(a)(ii), which is specifically relied upon by the Player in this case, not only that he bears No Significant Fault or Negligence and the source of the substance but additionally *“that the detected prohibited substance came from a contaminated product”*.

82. To assess the Player’s degree of fault, the following elements should be taken into account:

- da) On the one hand, that:
  - i. the Player took Megamin, checked its label and confirmed that its listed ingredients did not include any prohibited substances;
  - ii. the Player allegedly confirmed with the Club doctor that no prohibited substances were listed among the Megamin ingredients; and
  - iii. the Player listed the supplements used by him including Megamin on the Doping Control Form; and
- db) On the other hand, that:
  - iv. the Player did not conduct an internet search regarding Megamin, its produce and its ingredients;

- v. the Player did not purchase the Megamin product from a licensed pharmacy or drug store or another well recognised certified store;
  - vi. the Player purchased the Megamin directly from Mr Vajda at the centre in which he received treatments, a place which may be more susceptible than a pharmacy to lack of controls, to delivery of open partially used supplements and even to possible product manipulation;
  - vii. the Player did not have a clear recollection of procedures introduced by himself to ensure that the product was fully sealed and intact;
  - viii. the Player indicated that he probably took off the protective ring from the Megamin container, but testified that this happened long ago and he had no specific recollection, while Mr Vajda indicated that he gave the Player a closed card box containing the Megamin bottle without opening it so could neither confirm that the bottle was closed with its protective ring nor indicate the colour of the pills (the fact that the batch number and most of the date on the cap of the Pills' container were illegible remains suspicious and at least indicates a long term usage and is difficult to explain through the mere opening for the purpose of using the Pills; it may relate to the condition of the container when first provided to the Player);
  - ix. the Player did not immediately cease to use the Pills when he noticed (or should have noticed) that the same container had both yellow and white Pills; indeed this should have immediately alerted the Player that something may be wrong with such container and its Pills; and
  - x. the Player is a professional experienced international Player, playing in a top club and should have acted with a high degree of care.
83. The Panel considers that the Player's actions and omissions as detailed in para. 82(b) are not in line with the responsibilities of a diligent Player and cannot be considered as prudent actions. Such behaviour cannot be considered as evidencing No Significant Fault or Negligence.
84. The Panel reminds that the definition of "*No significant fault or negligence*" requires the Player to establish "*that his fault or negligence, when viewed in the totality of the circumstances and taking into account the no fault or negligence criteria, was not significant in relation to the antidoping rule violation*". The "*totality of the circumstances*" include the level of a professional Player purchasing a product from a non secure source and using a suspicious package and Pills. "[*T*he no fault or negligence criteria" refers to the Player not knowing or suspecting, and not being able to "*reasonably have known or suspected, even with the exercise of utmost caution*" that he may have used an unsafe product. Finally, the significance is "*in relation to the antidoping rule violation*" which here is the use of stanozolol, a steroid which is notoriously used for doping and which is not allowed in and out of the competition.

**e) *Proof of Source for purposes of 10.02(a)(ii) (contaminated product)***

85. The definitions of No Fault or Negligence and No Significant Fault or Negligence require that *“the player must also establish how the prohibited substance entered his system”*. If the use of a contaminated product is alleged, the Player must further establish under UEFA ADR 10.02(a)(ii) *“that the detected prohibited substance came from a contaminated product”*; namely, the source of the prohibited substance and that such substance was found in that source due to contamination (rather than manipulation or other possibilities).
86. Having determined that the Player did not meet his burden to show on the balance of probabilities that he did not act with No Significant Fault or Negligence, it is no longer relevant for the purposes of a possible reduction of the sanction under Article 10.02 UEFA ADR whether the Player met his burden to establish the source of the substance.
87. The Panel notes that the white Pills analysed by the Cologne Laboratory post hearing did evidence the presence of Stanozolol. However, this alone is not sufficient as the container was open and suspicious (two colour pills and no batch number and date). Tests of other packs were not decisive as some were positive and some were negative, with all of the qualifying comments and evidence provided by UEFA regarding the reliability of such tests and questions about which products were analysed as well as the negative test of the equivalent container by the Cologne Laboratory. There was no way to establish that the tested packs were from the same batch. The Player did not provide the receipt of purchase, did not conduct a thorough search with the manufacturer nor produced evidence from the manufacturer evidencing any possible contamination.
88. Even if the source could seemingly be determined to be the Pills, the evidence is not sufficient to establish that this was due to contamination for the same reasons presented above. At the very least we would have expected evidence that any other Megamin pills have two different colours. Without further proof this is more likely to be the result of manipulation and not contamination

**f) *Conclusion***

89. For these reasons the Panel imposes a sanction of two-year ban.
90. The UEFA ADR do not provide a starting date for such suspension. Under the WADC the period of Ineligibility typically starts on the date of the hearing decision providing for Ineligibility. However any period of provisional suspension served by the Player may be credited against such period of Ineligibility.
91. Based on the forgoing and considering that the provisional suspension imposed on the Player is still ongoing, the Panel decides that the period of suspension of two years shall start on 7 October 2015, on the day when the provisional suspension imposed by the UEFA CEDB began to run.

92. Article 12.02 UEFA ADR does not apply and therefore there is no disqualification of Club results.

## ON THESE GROUNDS

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

1. The appeal filed on 27 June 2016 by Mr Arijan Ademi against the decision of the UEFA Appeals Body of 12 May 2016 is partially upheld.
2. The decision of the UEFA Appeals Body of 12 May 2016 is amended as follows:  
  
Mr Arijan Ademi is suspended from participation in any football-related activity for a period of two (2) years, commencing on 7 October 2015.
3. (...).
4. (...)
5. All other or further motions or prayers for relief are dismissed.