CAS 2020/A/6852 Fédération Internationale de Football Association (FIFA) v. Dimitry Korobov & Russian Anti-Doping Agency (RUSADA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof. Luigi Fumagalli, Professor and Attorney-at-Law in Milan, Italy

Arbitrators: Mr Alexis Schoeb, Attorney-at-Law in Geneva, Switzerland
Dr Vanja Smokvina, Professor of Law in Rijeka, Croatia

in the arbitration between

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Miguel Liétard, FIFA Litigation Department, Zurich, Switzerland

Appellant

and

Dimitry Korobov, Voronezh, Russia

Represented by Mr Artem Patsev, Attorney-at-Law in Moscow, Russia

First Respondent

&

Russian Anti-Doping Agency (RUSADA), Moscow, Russian Federation

Represented by Mr Graham Arthur, Counsel in Liverpool, United Kingdom

Second Respondent

I. BACKGROUND

1. The Fédération Internationale de Football Association (the "Appellant" or "FIFA") is the governing body of football worldwide. FIFA is an association under the Swiss Civil Code with headquarters in Zurich, Switzerland. FIFA adopted and implemented a set of Anti-Doping Regulations (the "FIFA ADR") pursuant to the World Anti-Doping Code ("WADC") to which FIFA is a signatory. The WADC is "*the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The purpose of the Code is to advance the anti-doping effort through universal harmonization of core anti-doping elements.*"

2. Mr Dmitry Korobov is a professional football player (the "Player" or the "First Respondent"), born on 10 June 1994.

3. The Russian Anti-Doping Agency ("RUSADA" or the "Second Respondent") is the National Anti-Doping Organisation in Russia, with registered office in Moscow, Russia. RUSADA is a signatory to the WADC. Accordingly, RUSADA has *inter alia* the responsibility to pursue all potential anti-doping rule violations within its jurisdiction pursuant to the All-Russian Anti-Doping Rules (the "ARADR"), adopted in order to implement RUSADA's responsibilities under the WADC.

4. The First Respondent and the Second Respondent are the "Respondents". The Appellant and the Respondents are the "Parties".

II. FACTUAL SUMMARY

5. Below is a summary of the main relevant facts, as submitted by the Parties in their written pleadings and adduced at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. Although 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.

6. On 24 April 2019, the Player underwent an anti-doping control at the end of the match of the Russian National Football League played in Moscow (the "Match") between FC Chertanovo and FC Avangard, his team at that time (the "Team"). The doping control form (the "DCF") signed by the Player contained a declaration regarding the medications used in the preceding 7 days ("*Actovegin, Diclofenac, Sirdalud, Lidocaine, Cytoflavin, Melaxen, Opti-men*") and the blood transfusions received in the preceding three months ("*No blood transfusion has taken place*"), and no comments with respect to the collection procedure.

7. On 15 May 2019, the Anti-Doping Laboratory of Seibersdorf, Austria (the "Laboratory") reported an adverse analytical finding (the "AAF") for "*the presence of the stimulant octodrine and its metabolite heptaminol*". Heptaminol is mentioned as a specified substance prohibited in-competition under "*S.6(b) Specified Stimulants*" of the list of prohibited substances and methods published by the World Anti-Doping Agency ("WADA") for 2019 (the "2019 Prohibited List"). The 2019 Prohibited List includes in the same category, in addition to the stimulants expressly mentioned, also "*other*

substances with a similar chemical structure or similar biological effect(s)", with the clarification that "*a stimulant not expressly listed in this section is a Specified Substance.*" Whether Octodrine falls in this category is a disputed matter in this arbitration.

8. On 17 May 2019, RUSADA opened disciplinary proceedings against the Player. The Player was notified of the AAF and informed of his right to either accept the AAF or request the B sample analysis, as well as of his immediate provisional suspension from participating in training camps and competitions.

9. On 29 May 2019, the Player sent an email to RUSADA indicating that he did not dispute the correctness of the conclusions of the Laboratory, including the detection of the substances, and therefore that he did not intend to demand the opening of the B sample. At the same time, *inter alia*, the Player informed RUSADA that he was ready to provide full and unconditional assistance in identifying the reasons and conditions by which Octodrine had found its way into his body.

10. On 17 June 2019, the Player submitted his "*Written Legal Position*", requesting that the case brought against him be dismissed, because, *inter alia*, "*the substance 'octodrine' is not included in the 2019 Prohibited List, and therefore its detection […] cannot constitute an ADRV*". The Player's submission had attached, amongst other documents, an expert opinion of Dr Olga I. Kiseleva dated 17 June 2019.

11. On 8 July 2019, Ms Tatyana Galeta, Head of the Results Management Department of RUSADA, sent emails to WADA, the Laboratory, as well as to the WADA accredited laboratories for doping analyses in Switzerland, Belgium and Sweden, of the following (or very similar) content:

"*[…] During the investigation of a possible ADRV, we needed to clarify when and in what form WADA notified the accredited anti-doping laboratories that octodrine is a prohibited substance (class S6) and about the need to develop appropriate detection methods. We will be very grateful if you can provide us this information*."

12. On the same date or the next days, RUSADA received the following answers:

    i. on 8 July 2019, Dr Tiia Kuuranne, Director of the Swiss laboratory, wrote as follows, "*starting with the general items related to octodrine*" and referring RUSADA to WADA's science department for the details relating to the WADA correspondence with the laboratories in its regard (underlining in the original):

    "• *<u>Nomenclature</u>: As with many stimulants, there are many names for the same compound, and octodrine has also been called as 2-amino-6-methylheptane and dimethylhexylamine*

    • *<u>Prohibited list</u>: In order to keep WADA list of substances and methods dynamic, it is not exclusive and almost all categories, except for the S7, end with the comment:*

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    and other substances with a chemical structure or
    similar biological effect(s)
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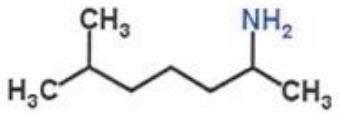
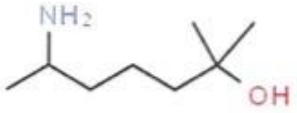
    • *Origin/metabolism: It has been reported that octodrine is metabolised into heptaminol (S6 Stimulants, b. Specified stimulants) and that after the administration of octodrine, in fact, heptaminol was the predominant target*

compound to detect in urine samples. Heptaminol has been indicated by name in the Prohibited list since 2006.



Octodrine



Heptaminol

- *<u>Cases</u>: According to the laboratory testing figures, published by WADA, the first case of octodrine was reported in 2016. The statistics of year 2018 are unfortunately not yet available for the comparison with the more recent situation.*
- *<u>Publicity</u>: In autumn 2018, there has been the following press release to announce the risks of octodrine associated with the use of nutritional supplements … Furthermore, there is quite an illustrative scientific publication from 2018, dealing with octodrine in the context of sport …*";

ii. on 8 July 2019, Prof. Peter Van Eenoo of the laboratory of the University of Gent, Belgium, provided the following answer:

"*There was – to the best of my knowledge – no specific communication regarding octodrine. However, as heptaminol is a metabolite, and based upon it's [sic] structure it was/is prohibited.*

Due to it's [sic] metabolism to heptaminol, all labs would detect use of this substance.

Based upon AAF in our lab and Cologne, the labs were informed about the existence and metabolism of octodrine and that labs needed to take care to investigate the presence of octodrine parent in heptaminol samples to assist the RMA.

In reality, heptaminol is always present at higher concentrations than the parent compound after use. […]";

iii. on 9 July 2019, Dr Magnus Ericsson, Director of the Swedish doping control laboratory, wrote as follows:

"*I am not aware of any such notification, however Octodrine is prohibited IC, looking in the WADA statistics one case was reported back in 2016.*

Octodrine is not mentioned by name (or any of its other names[…]) in the prohibited list but goes with the 'and other substances with a similar chemical structure or similar biological effect(s).'

Octodrine is closely related to the following mentioned substances: 3-methylhexan-2-amine (1,2-dimethylpentylamine), 4-methylhexan-2-amine (methylhexaneamine), 4-methylpentan-2-amine (1,3-dimethylbutylamine), 5-methylhexan-2-amine (1,4-dimethylpentylamine) […]";

iv. on 9 July 2019, Dr Günter Gmeiner, Head of the Laboratory, transmitted copy of some correspondence exchanged with WADA on 27 June 2018, whereby:

- the Laboratory requested WADA:

  "*[…] to confirm that the substance octodrine is regarded as S6b substance,*

Specified Stimulants with a similar chemical structure. It is simply a homolog of methylhexaneamine.

This substance, also called 1,5-Dimethylhexylamine (1,5-DMHA) or Methylheptaneamine, or 5-Methylheptane-2-amine, was recently published as an ingredient of supplements […].

By the way: there is evidence that this substance forms heptaminol as metabolite. […]";

- WADA (Dr Irene Mazzoni, Senior Manager, Research & Prohibited List) wrote to:

  "*[…] confirm that octodrine is prohibited as a S6b substance, specified stimulant (similar chemical structure/biologic effect). […]*"

v. on 10 July 2019, WADA (Dr Osquel Barroso, Senior Deputy Director Science) wrote as follows (underlining in the original):

"*Octodrine is considered a prohibited substance within class S6b-Specified Stimulants of the Prohibited List. This class is an open one, and includes other substances with a chemical structure or biological effect that is similar to those listed. Therefore, octodrine, which is similar to other listed stimulants (e.g. methylhexaneamine, heptaminol) does not have to be specifically listed to qualify as a prohibited substance. It is prohibited, and analysed using methods typical for the detection of stimulants. The decision to include octodrine or not as a specific example listed under S6b is in the hands of the List Expert Group. However, that would not change the fact that it is already prohibited.*"

13. On 21 August 2019, the Player submitted a "*Supplement to [his] Written Position*".

14. On 22 August 2019, a hearing was held before the RUSADA Disciplinary Anti-Doping Committee (the "DADC").

15. On 22 August 2019, the DADC issued a decision (the "Decision") as follows:

"*Within the procedure set out by art. 10.5.1.1 of All-Russian Anti-Doping Rules, the applicable sanction in this case is reprimand without imposing period of ineligibility.*"

16. On 7 September 2019, the Player, having received the notification of the Decision in the period between 22 August 2019 and 6 September 2019, took part in a match with his Team.

17. On 16 December 2019, the grounds of the Decision were issued and notified to the Player. In essence the DADC indicated the following (English translation submitted by FIFA):

"*In the Committee's opinion, during the case review, the Athlete was able to demonstrate in which way Octodrine substance and its Metabolite Heptaminol entered his body, namely during the intake of drug Sports Nutrition DHMAHCL Extreme Energy Booster, which was purchased for him by the club sport doctor.*

In addition, the Committee notes that Octodrine substance is not listed on WADA 2019 Prohibited List, and the Athlete could not establish without special knowledge that the drug consumed by him, contains prohibited substance.

Basing on the above, the Committee believes that the fact of intentional violation by the Athlete of the anti-doping rules within the meaning of art. 10.2.3 of the All-Russian Anti-Doping Rules has not been proved by RUSADA.

Considering the circumstances of the case, the Committee believes that in the committed violation of the anti-doping rules, the Athlete's negligence takes place."

18. On 17 January 2020, the grounds of the Decision were notified to FIFA.

19. On 19 February 2020, RUSADA provided FIFA, upon FIFA's request, with part of the case file of the proceedings brought against the Player.

III. PROCEDURE BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 11 March 2020, FIFA filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS"), pursuant to the Code of Sports-related Arbitration (the "Code"), to challenge the Decision, naming the Player and RUSADA as Respondents. The Statement of Appeal contained, *inter alia*, the appointment of Mr Alexis Schoeb as an arbitrator, and a request for "*assistance from CAS to order RUSADA to provide the remaining documents of the file that have not been provided yet to FIFA*".

21. On 16 March 2020, the CAS Court Office forwarded to the Respondents the Statement of Appeal filed by the Appellant and drew the Respondents' attention to the request of FIFA that "*the remaining documents of the file*" be provided by the Second Respondent. In addition, the Respondents were invited, *inter alia*, to jointly nominate an arbitrator.

22. On 27 March 2020, the counsel for the First Respondent informed the CAS Court Office that discussions with counsel for the Second Respondent for the joint appointment of an arbitrator were ongoing.

23. On 2 April 2020, the First Respondent informed the CAS Court Office that, since the Second Respondent had remained silent on the First Respondent's proposal for the joint appointment of an arbitrator, he nominated Prof. Phillippe Sands, QC, as arbitrator.

24. On 8 April 2020, the Second Respondent in a letter to the CAS Court Office advised that it was not yet in a position to determine whether in its opinion the case was to be submitted to a Sole Arbitrator or to a Panel of three arbitrators. However, in the event the case was referred to a Panel, the Second Respondent declared that it wished to appoint Prof. Ulrich Haas as arbitrator. At the same time, the Second Respondent indicated that it was liaising with the Appellant with respect to the case file documents. In a communication to FIFA of the same date, in fact, RUSADA indicated that, in order to assist FIFA to identify the documents that FIFA considered helpful for the preparation of the Appeal Brief and to be translated it would prepare a schedule of the documents within the case file.

25. In a letter of 9 April 2019, the CAS Court Office noted *inter alia* that the Second Respondent had not formally requested that the matter be submitted to a Sole Arbitrator and therefore that a Panel would be constituted to rule on the Appellant's request for production of documents.

26. In an email to the CAS Court Office of 10 April 2020, the First Respondent summarized

the steps taken to agree with the Second Respondent on the joint designation of an arbitrator, insisted on the "*candidature*" of Prof. Sands and requested that the matter be referred to the President of the CAS Appeals Arbitration Division for consideration and a decision.

27. On 14 April 2020, the CAS Court Office noted that the Parties had not been able to jointly nominate an arbitrator, and therefore that it would be for the President of the CAS Appeals Arbitration Division to appoint an arbitrator in lieu of the Respondents.

28. On 21 April 2020, the Second Respondent, in a letter to the CAS Court Office requested that the President of the CAS Appeals Arbitration Division appoint a Sole Arbitrator. At the same time, the Second Respondent enclosed a schedule of documents from the case file, so as to enable the Appellant to indicate which of them it considered necessary in relation to its appeal.

29. On 22 April 2020, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had already decided to submit the case to a Panel of three arbitrators and to appoint an arbitrator in lieu of the Respondents.

30. On 27 April 2020, the Appellant reiterated its request that the entire case file be translated into English and provided. However, in order to facilitate the production of the requested file, the Appellant indicated some documents, whose translation could be prioritized. Finally, the Appellant anticipated that it would strongly oppose the reliance by any of the Respondents on documents contained in the case file and not produced pursuant to its request, and that it reserved the right to request a second round of submissions in the event such belated filing occurred.

31. On 28 April 2020, the First Respondent sent an email to the CAS Court Office noting the poor quality of the translation of the list of documents in the case file. He therefore requested to be copied with such translations in order to have time allowing a review of their correctness.

32. On 4 May 2020, the Second Respondent confirmed its request that the case be submitted to a Sole Arbitrator.

33. On 4 May 2020, the First Respondent indicated his preference for the case to be submitted to a Panel of three arbitrators.

34. On 6 May 2020, the Appellant confirmed its position that the case be decided by a Panel of three arbitrators.

35. On 6 May 2020, the CAS Court Office informed the Parties on behalf of the President of the CAS Appeals Arbitration Division that a Panel of three arbitrators would be appointed to hear the appeal.

36. On 12 May 2020, the Second Respondent provided translated copies of the documents requested with priority by the Appellant.

37. On 13 May 2020, the CAS Court Office invited the Second Respondent to provide the remaining documents by a set deadline.

38. On 19 May 2020, the Second Respondent answered the request of the CAS Court Office, by providing translations of some of the remaining documents and stating its position with respect to the others.

39. On 25 May 2020, the CAS Court Office informed that Parties that it would be for the Panel to decide on the production by the Second Respondent of the documents not yet provided.

40. On 3 June 2020,

    i. the Appellant informed the CAS Court Office that, having reviewed the documents that far filed by the Second Respondent, it deemed itself sufficiently informed to file the Appeal Brief. The request and reservation expressed in the letter of 27 April 2020 (§ 30 above) were however maintained;

    ii. the Second Respondent confirmed that it had already provided all documents that have, or could have, a bearing on the issues relevant to this arbitration;

    iii. the First Respondent declared that he had provided to RUSADA, in the proceedings before the DADC, all documents available to support his case. However, he indicated that, in light of the *de novo* power of review of the case by the CAS Panel, he would probably submit new arguments depending on the content of the Appeal Brief.

41. On 15 June 2020, the Appellant filed its Appeal Brief pursuant to Article R51 of the Code. The Appeal Brief had attached 14 Exhibits.

42. By communication dated 16 June 2020, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr Alexis Schoeb and Dr Vanja Smokvina, arbitrators.

43. On 10 July 2020, the Respondents filed their respective Answers pursuant to Article R55 of the Code:

    i. the Answer of the First Respondent had attached 40 Exhibits, which included witness statements signed by the Player himself, by Dr Maxim Rudyakov, by Mr Andrey Batyutin, by Mr Roman Minaev, by Mr Anton Vorontsov and by Mr Nikolay Volokitin, as well as an expert opinion of Dr Olga Kiseleva;

    ii. the Answer of the Second Respondent had attached 4 Exhibits.

44. On 27 July 2020, the Appellant noted, in a letter to the CAS Court Office, that "*a great deal of emphasis*" had been placed by the First Respondent on scientific issues and specifically on whether Octodrine is considered a prohibited substance. As a result, since "*such scientific issues were not raised in the […] Decision, as the RUSADA Committee accepted that octodrine was indeed a prohibited substance*", the Appellant requested that the Panel authorize a second round of submissions limited exclusively to the issue of Octodrine and its status as a prohibited substance.

45. On 30 July 2020, the Parties were informed that the Panel had decided to allow the filing of a second round of submissions, "*strictly limited to the issue of octodrine and its*

consideration as a prohibited substance".

46. On 3 August 2020, the Parties were advised that the right to make submissions on a specific issue did not mean that the parties were allowed to submit new evidence, as such filing would remain subject to Article R56 of the Code.

47. On 10 August 2020, the Appellant lodged with CAS its Second Submission, together with an expert opinion signed by Prof. Martial Saugy.

48. On 12 August 2020, the Second Respondent lodged with CAS its Second Submission.

49. On 20 August 2020, the First Respondent submitted his Rejoinder, together with a second expert opinion signed by Dr Olga Kiseleva. In his Rejoinder, the First Respondent objected to the introduction by the Appellant of the expert opinion of Prof. Saugy, as the conditions under Article R56 of the Code had not been met.

50. On 8 September 2020, the CAS Court Office advised the Parties that the Panel had decided to hold a hearing in this matter on 10 December 2020, but that whether the hearing could take place in Lausanne, Switzerland, or by video or teleconference would depend upon the evolution of the situation in respect of the COVID-19 pandemic.

51. On 15 October 2020, the CAS Court Office issued, on behalf of the President of the Panel, an order of procedure (the "Order of Procedure"), which was signed by the Appellant on 20 October 2020, by the First Respondent on 16 October 2020 and by the Second Respondent on 19 October 2020.

52. On 11 November 2020, the CAS Court Office informed the Parties that, in light of the ongoing pandemic crisis and related travel restrictions, the Panel had decided to proceed with a video-hearing.

53. On 21 November 2020, the First Respondent filed with the CAS Court Office a new document – The Guardian publication about the UEFA CEDB decision in the case "Sakho" ("Sakho" case), indicating the reasons in support of its admissibility.

54. On 27 November 2020, the Appellant objected to the admissibility of the new production and indicated that in any case such document was absolutely irrelevant.

55. In a letter of 2 December 2020, the Second Respondent noted that the document produced by the First Respondent was a reference to a reported news story, which could not be ignored by the Panel, but was absolutely irrelevant to the issues in this appeal.

56. On 8 December 2020, the First Respondent informed the Panel of a discussion among the Parties' counsel and that it had been agreed that, "*in order to streamline the provision of witnesses' testimonies and the hearing itself, some witnesses' statements can be agreed as standing as their evidence, so those witnesses (namely, Mr Minaev, Mr Batyutin, Mr Vorontsov and Mr Volokitin) will not be cross-examined by the parties.*"

57. A hearing was held on 10 December 2020 by video link. The Panel was assisted at the hearing by Ms Delphine Deschenaux-Rochat, Counsel to the CAS.

58. The Panel was joined at the hearing:

i. for the Appellant: by Mr Miguel Liétard Fernandez-Palacios, FIFA Director of Litigation, and by Mr Jaime Cambreleng Contreras, FIFA Head of Litigation;

ii. for the First Respondent: by the Player himself, assisted by Mr Artem Patsev, counsel, and by Ms Alexandra Volkova-Jurema, interpreter;

ii. for the Second Respondent: by Mr Graham Arthur, counsel.

59. At the hearing, preliminarily, the Parties confirmed that they had no objection as to the appointment of the Panel and the holding of the hearing by video connection. Then, the Panel, dealing with procedural matters, informed the Parties of its decision, based on Article R56 of the Code, to admit the submission by the Appellant of the expert opinion signed by Prof. Saugy (§ 47 above) and by the First Respondent of a new document (§ 53 above).

60. After opening submissions by the Parties in support of their respective cases, the Panel heard the depositions[1] of:

i. the Player, who described the circumstance of the use of a product, named "Sports Nutrition DHMA HCL Extreme Energy Booster", containing Octodrine (the "Supplement"), as already detailed in his written statement dated 14 September 2019. In that context, the Player referred to the pains he had in his groin and the administration by the former doctor of his club of a "pink liquid" in order to be helped to tolerate training workloads: such "pink liquid", however, did not assist, and the Player had in the end to undergo surgery. Upon resumption of training, he asked the new physician, Dr Rudyakov, whether he would give him the same "pink liquid" in order to help him to return in good shape. On that basis, on 2 March 2019, Dr Rudyakov bought and gave him the Supplement, purchased at a sports nutrition shop in a department store in Kaliningrad, near the hotel where the Team was staying. The Player reimbursed the doctor for the expense. When handing the Supplement to the Player, Dr Rudyakov told him how the product had to be consumed. He said that the capsules could affect the heart, and, as the Player had problems with the heart valve, that he had better consume the product not in the way it was written on the instructions, but much less – one capsule once a week or twice a week (max). The Supplement was then used according to the doctor's suggestions. The Player finally confirmed that he did not have a deep knowledge of the anti-doping rules, that he made no Internet check, as he reads no English, and did not inquire with the doctor where the Supplement had been bought: he relied on Dr Rudyakov; and

ii. Dr Maxim Rudyakov confirmed his written statement dated 7 July 2020, as well as the circumstances referred to by the Player. Dr Rudyakov declared that on 2 March 2019, when he was with the Team in Kaliningrad, the Player addressed him with the question whether he would continue to give the players the "bitter tasted pink liquid" to drink, which the previous doctor had given them. As he did not

[1] The Panel emphasizes that it considered the entirety of the declarations made at the hearing, even though only a summary of such declarations is set out in this Award.

understand what kind of liquid the Player meant, he made some investigation and was told that it had been useful to give the players some stimulating nutritional supplements during the pre-training period. As a result, after consultation with the Player, he purchased a nutritional supplement in capsules (the Supplement), on the advice of the seller, in a sports nutrition store located in the shopping mall near the hotel of the Team. When he returned to the hotel room, he informed the Player and, while waiting for the Player to come and pick up the purchased nutritional supplement, he looked up general information about it on the Internet, but not on the RUSADA website. He saw that this Supplement contained 1,5-dimethylhexylamine (also known as Octodrine), but, when he checked the 2019 Prohibited List, he did not find this substance in it. At the same time, he saw that this Supplement had a stimulating effect. He knew that the Player had some minor problems with his heart rate, and so when he gave him the Supplement, he told him that he should better ingest 1 capsule no more than 1-2 times a week and only in the pre-training period in the evening, but not as it was written in the instructions for its use (1-2 capsules daily). He did not inform the Player about the chemical formula of this substance, or about its other names, because football players are often not interested in this information.

61. The Panel, after the witnesses, heard, by way of conferencing, the experts indicated by the Parties: Prof. Martial Saugy for the Appellant and Dr Olga Kiseleva for the First Respondent. Prof. Saugy and Dr Kiseleva confirmed in essence their respective positions as expressed in the written reports:

    i. Prof. Saugy explained why in his opinion Octodrine can be considered as a specified stimulant, prohibited under S.6(b) of the 2019 Prohibited List, even though not directly mentioned since it does have a similar chemical structure with Heptaminol and some other specified stimulants such as 3-Methylhexan-2-amine [1,2-dimethylpentylamine], 4-Methylhexan-2-amine [methylhexaneamine], 4-Methylpentan-2-amine [1,3-dimethylbutylamine] and 5-Methylhexan-2-amine [1,4-dimethylpentylamine]. Furthermore, since Heptaminol, as a stimulant, is the major metabolite of Octodrine, from his point of view, Octodrine and Heptaminol have also a similar biological effect;

    ii. Dr Kiseleva indicated that, from a professional's point of view, Heptaminol and Octodrine certainly have quite similar chemical structures, but that such a conclusion on structural similarity of these compounds requires an excellent proficiency in the field of natural sciences in general and organic chemistry in particular. Therefore, it would have been highly unlikely for a non-professional to suggest at the beginning of 2019 that Octodrine had a similar structure with Heptaminol. Moreover, even a professional in biochemistry might have had some doubts in early 2019 whether the administration of Octodrine was prohibited or not by the 2019 Prohibited List. At the same time, Dr Kiseleva explained why in her opinion it is impossible to make a scientifically sound and reliable conclusion as to the similarities/proximities of the biological effects of Octodrine and Heptaminol or of Octodrine and any other substance.

62. After the examination of the experts, the Parties were invited by the Panel to deal in their final submissions with some specific points regarding the applicable regulations, and chiefly with respect (i) to the possibility for the Panel to consider in this arbitration the

First Respondent's contention that Octodrine was not in 2019 a prohibited substance and the consequences of any such finding, and (ii) to the existence of the conditions for a back-dating of the starting point of any ineligibility which might be imposed on the Player and the consequences of any such determination. On that basis, the Parties presented their submissions in support of their respective cases, and the First Respondent made a final declaration.

63. Before the conclusion of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.

IV. THE POSITION OF THE PARTIES

64. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, indeed, has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Position of the Appellant

65. In its statement of appeal, the Appellant requested the CAS to issue an award:

"*(a) admitting this appeal;*
(b) setting aside the Appealed Decision issued by the RUSADA Disciplinary Anti-Doping Committee on 22 August 2019;
(c) imposing on Mr Dmitry Korobov a period of ineligibility ranging between eighteen (18) and twenty-four (24) months. The period of ineligibility already served by the Player during this provisional suspension shall be credited against the final sanction; and
(d) ordering RUSADA to make a substantial contribution to FIFA's legal and other costs."

66. In the appeal brief, then, the Appellant requested the Panel to rule:

"*(a) admitting this appeal;*
(b) setting aside the Appealed Decision issued by the RUSADA Disciplinary Anti-Doping Committee on 22 August 2019;
(c) imposing on Mr Dmitry Korobov a period of ineligibility of two years or, alternatively, ranging between eighteen (18) and twenty-four (24) months. The period of ineligibility already served by the Player during this provisional suspension shall be credited against the final sanction; and
(d) ordering RUSADA and the Player, jointly or individually, to bear the costs of these proceedings.
(e) ordering RUSADA to make a substantial contribution to FIFA's legal and other costs."

67. In support of its appeal, the Appellant preliminarily submits that, although the Decision was issued in application of the ARADR, the applicable regulations in this arbitration are the FIFA rules and regulations, as expressly foreseen in Article 80.3 of the FIFA ADR.

68. In the merits, FIFA submits that in essence the case revolves around the sanction to which

the Player should be subject: the First Respondent was finally recognized by the DADC, in the absence of an appeal by the Player, as having committed an anti-doping rule violation; however, the Decision is fundamentally flawed, insofar as it imposed a too lenient sanction, based on an improper evaluation of the Player's absolute level of fault or negligence.

69. As to the commission of an anti-doping rule violation, the Appellant underlines that the analysis of the Player's A sample undisputedly found the presence of Octodrine and its metabolite Heptaminol, which are prohibited substances. As a result, the violation under Article 6(1) of the FIFA ADR is established. In fact:

    i. although not expressly listed in the 2019 Prohibited List, Octodrine falls under the category S.6(b) Specified Stimulants. Indeed, this category enumerates a series of prohibited substances by means of example ("*including, but not limited to*") and adds that it also includes "*substances with a similar chemical structure or similar biological effect(s).*" Octodrine clearly falls within this scope, as confirmed by WADA and several accredited laboratories following RUSADA's requests;

    ii. as for Heptaminol, not only is it expressly listed in the 2019 Prohibited List, but it is a metabolite of the also prohibited Octodrine. In other words, the presence of Heptaminol in a person's samples is an indicator of consumption of Octodrine. In any event, for the purposes of Article 6 FIFA ADR, the only relevant question is whether a prohibited substance is present.

70. In addition, since the Player admitted the use of the Supplement, also his breach of Article 7 of the FIFA ADR is established.

71. The Appellant disputes the First Respondent's contention that Octodrine cannot be considered a prohibited substance under the 2019 Prohibited List, and therefore that no anti-doping rule violation was committed. In that regard, FIFA submits that:

    i. the Player has not filed an independent appeal against the Decision, and is therefore bound by its findings, including the conclusion that Octodrine is a prohibited substance. As a result, any challenge to the finding by the DADC that Octodrine is a prohibited substance is inadmissible and should be rejected as such;

    ii. in any case, the scientific evidence, as supported by the opinion of Prof. Saugy, shows that Octodrine was a specified stimulant pertaining to category S.6(b) of the 2019 Prohibited List, prohibited even if it was not expressly named. Indeed, the addition of Octodrine to the 2020 version of the Prohibited List (the "2020 Prohibited List") is a confirmation of the constant view (and practice) of considering it a prohibited substance of category S.6(b). It also confirms that Octodrine fulfils (and always has fulfilled) at least two of the three requirements for substances to be prohibited in sport: (i) it has the potential to enhance sport performance, (ii) it represents an actual or potential health risk to the athletes, and (iii) it violates the spirit of sport. Actually, the expert report of Prof. Saugy confirms that Octodrine has a similar chemical structure and biological effect as other substances in category S.6(b) of the 2019 Prohibited List and explains that the differences in molecular weight of the similar substances is based on the slight difference in their composition, but does not withdraw from the fact that the substances are to be considered as "similar" from both a chemical and a practical

perspective. In fact, Octodrine meets both criteria, although not cumulative, to be considered as pertaining to category S.6(b) of the 2019 Prohibited List: have a similar chemical structure or a similar biological effect as other substances in the category. The fact, then, that Heptaminol is (undisputedly) a metabolite of Octodrine further corroborates that both substances share a common, and therefore similar, chemical structure, which results in Octodrine also being classified as a specified stimulant in the 2019 Prohibited List.

72. With regard to the determination of the sanction for the anti-doping rule violations committed by the Player, the Appellant submits that it is not its case that the Player's use of the substances was intentional within the meaning of Article 19(3) of the FIFA ADR (*i.e.*, to cheat), although this cannot necessarily be discarded in the absence of any medical justification or prescription to use the prohibited substances found in his system and considering the fact that he took a supplement expressly containing a specified substance, with the admitted intention of improving his form. As a result, the period of ineligibility to be imposed on the Player is two years.

73. However, with respect to a possible reduction of the sanction, FIFA submits that the Player's level of fault or negligence was significant and serious. Consequently, any reduction should result in the imposition of a sanction in the range between 18 and 24 months of ineligibility, according to categories defined in the CAS jurisprudence, and specifically in CAS 2013/A/3327, Cilic v/ ITF & CAS 2013/A/3335 ITF v/ Cilic, "*Cilic*"). In fact, FIFA:

i. accepts that the anti-doping rule violation was caused by the direct consumption by the Player of the Supplement; but

ii. submits that the Player incurred in a degree of fault or negligence far superior than the one established by the DADC in the Decision, because:

a. with respect to the objective elements of fault, the Player's fault appears more than significant, or at the very least is to be classified in the upper level of the *Cilic* scale, since:

- the Player did not read the label of the Supplement, which mentioned a chemical name for Octodrine;
- the Player did not check the ingredients of the Supplement and blindly relied on the absence of a warning for athletes;
- the Player did not make any Internet search, which would have returned alarming results;
- the Player did not ensure that the Supplement was reliably sourced;
- the Player did not consult any appropriate expert in the matter;

b. with respect to the subjective elements of fault:

- the Player, despite his age, was an experienced footballer;
- the Player did not take the Supplement due to a misunderstanding based on language, nor did he do so due to problems in his personal environment;
- it is unlikely that, even without having undergone any anti-doping education as he alleges, the Player would not have been aware not only

of the relevant anti-doping regulations and the consequences for violating them, but also of the strict duties imposed on all athletes to ensure that no prohibited substances enter their systems;

- there was no other personal impairment affecting the Player.

74. In summary, in light of the Player's significant level of fault and negligence, the Decision appears severely flawed, as the DADC imposed only a reprimand on the Player (*i.e*., the minimum possible sanction), without any reason whatsoever for such determination. The Decision should therefore be set aside and a period of ineligibility should be imposed on the Player.

B. The Position of the Respondents

a. The Position of the First Respondent

75. In its Answer, the First Respondent requested the CAS to rule that:

"- *this Answer Brief is admissible;*
- *the FIFA appeal is dismissed,*
  or alternatively:
- *the RUSADA DADC decision of 22 August 2019 (reasoned decision of 16 December 2019) in respect to the case of Mr Dmitry Korobov is set aside,*
- *no ADRV has occurred in Mr. Dmitry Korobov's case, so the case against him shall be dismissed,*
- *Mr Dmitry Korobov is granted a significant award for his legal costs and other expenses pertaining to these appeal proceedings before CAS;*
- *RUSADA and FIFA jointly bear the costs of the arbitration.*"

76. Such requests for relief were maintained in the Rejoinder and confirmed at the hearing.

77. In summary, the First Respondent requests this Panel to dismiss the appeal, because no anti-doping rule violation was committed: the Appellant did not provide clear evidence and scientifically sound arguments to prove that Octodrine, a substance not mentioned in the 2019 Prohibited List, was included, through the reference to the "other substances", in its section S.6(b); the detection of Heptaminol in the Player's sample is not sufficient to establish an anti-doping rule violation, since Heptaminol, a metabolite of Octodrine, appeared endogenously in the Player's system. In other words, no prohibited substance was ingested by the First Respondent. Therefore, the appeal should be dismissed on the basis that there is no evidence that can establish the commission of an anti-doping rule violation.

78. Preliminarily, the First Respondent disputes the Appellant's contention that the case has to be judged according to the FIFA ADR. The Decision was issued in Russia by the RUSADA's independent tribunal. The DADC applied the ARADR, as RUSADA was the Testing Authority, Sample Collection Authority and the Result Management Authority, and the Player is an athlete of national level. The Player is a Russian national and resident, affiliated with the Russian Football Union. The sample at stake was collected from the Player in Moscow, Russia, just after the Match, played as a part of a Russian

championship. It would be truly odd and legally unacceptable if a different set of rules (*i.e.*, the FIFA ADR, as suggested by FIFA) are applied to this appeal arbitration. As a result, the ARADR shall apply primarily on the merits in this particular case. To the extent that there are any contradictions between the ARADR and the FIFA ADR, those contradictions fall to be resolved in favour of the Player, due to the *contra proferentem* principle.

79. On the merits of the appeal, the First Respondent submits that no anti-doping rule violation has occurred. Indeed, the Player never accepted that he committed a violation of the anti-doping rules. Well, to the contrary, in the disciplinary proceedings before the DADC, while not disputing the analytical findings of the Laboratory, he always maintained that Octodrine was not a prohibited substance under the 2019 Prohibited List, and that Heptaminol is a natural metabolite of a non-prohibited substance. Therefore, no AAF could be reported. On the other hand, FIFA has not discharged its burden to prove in this arbitration that an anti-doping rule violation has been committed.

80. The First Respondent submits that he is not precluded from denying the commission of an anti-doping rule violation by the fact that he did not lodge with CAS an independent appeal against the Decision. Indeed, he did not appeal against the Decision because of a "*money issue*": the costs involved were prohibitive for him, and, in any case, the practical consequences of the Decision (a reprimand) or the cancellation of the Decision would not make any difference for him. In any case, an evaluation of the commission of an anti-doping rule violation is possible at this stage because the Panel has a full power to review the facts and the law under Article R57 of the Code, and because the Appellant itself in its petitions for relief requested the Panel to set aside the Decision: therefore, "*the Appellant threw the doors open for a full re-consideration of the case by the CAS Panel*". Consequently, no party is bound by the Decision.

81. The First Respondent submits that the detection of Octodrine and Heptaminol in the Player's sample in 2019 could not be reported as an AAF. In that regard, the First Respondent emphasizes the following:

    i. the general principles of "predictability" and "legal certainty" require that the rules and regulations that might be a basis for a serious sanction must be clear and easy to understand, as recognized by a constant line of CAS jurisprudence;

    ii. it is undisputable that Octodrine, while directly mentioned in the 2020 Prohibited List, was not expressly listed in the 2019 Prohibited List;

    iii. FIFA's assertion which sounds like "all stimulants are prohibited, as all of them fall under such a broad description" is simply wrong, since there are many well-known stimulants that are not prohibited in sport (Caffeine, Nicotine, etc.). The 2019 Prohibited List itself admits that there are many clear exceptions, in addition to Caffeine and Nicotine mentioned above: Clonidine, Imidazole derivatives, Bupropion, Phenylephrine, Phenylpropanolamine, Pipradrol, and Synephrine, with some other stimulants with threshold values for reporting their presence as anti-doping rule violations;

    iv. it is not enough for FIFA to simply refer to the indication in the 2019 Prohibited List that all substances that might possibly fit a very vague description are prohibited. This is not specific enough and thus violates the mentioned general legal

principles. Indeed, a reasonable approach was elaborated in the CAS jurisprudence when determining whether a substance not expressly listed in the Prohibited List might fall under such a general description. In more details, a CAS Panel (in CAS 2004/A/726, Calle Williams v/ IOC, "*Calle Williams*") held that a category of the Prohibited List is not an open list and that similarity must exist with a particular substance before a non-listed substance can be treated as similar. In CAS 2009/A/1805&1847, for instance, similarity of chemical structure was demonstrated upon the showing that the substances involved had: (a) the same molecular formula, and (b) the same molecular weight, while no contrary evidence was adduced by the athlete;

v. with respect to Octodrine, in the present arbitration:

   a. there is nothing that confirms that Octodrine has a truly similar chemical structure to any substance listed in the 2019 Prohibited List. FIFA failed to provide any single piece of evidence in support of that, definitely failing to meet its procedural burden. The very fact that doubts existed prior to the inclusion of Octodrine in the 2020 Prohibited List shows that there was no unanimity on the point within the scientific community;

   b. it is impossible to make a scientifically sound conclusion whether any Octodrine's biological effects fit with, or resemble, those of any other substances, because there have been no scientific studies on Octodrine effects on humans so far. As a result, there is no room for a discussion whether Octodrine's biological effects are similar to those of the substances expressly mentioned in the S.6(b) class of the 2019 Prohibited List, because the scientific community is simply not aware of Octodrine's properties and effects on humans;

vi. with respect to Heptaminol, its presence in the Player's sample was caused by the consumption of the Supplement containing Octodrine, which at that time was not prohibited. Therefore, in this particular case, it shall not be considered as an anti-doping rule violation, since it appeared naturally (endogenously) in the Player's system.

82. The circumstances in which the Supplement was ingested by the Player show that there was no intention to cheat on his side. In fact, the Player, when deciding to obtain and further ingest the Supplement, fully relied on the Team physician's professionalism, experience and special knowledge, as well as on the fact that the Supplement purchased and provided to him by the physician was produced and officially and openly sold in Russia in a specialized sports nutrition store, was labelled as meeting not only national, but also international quality requirements, was specifically intended for athletes' use, for pre-workout in particular, and not to enhance sport performance. Indeed, the Supplement was used not only because it would help the Player for pre-workout purposes, but also to help recover safely after surgery, taking into account that the Player had been diagnosed with leaking mitral valve long before.

83. In addition, the First Respondent notes that, even if the Player, in order to show the highest degree of "utmost caution", had made an Internet search for the supplement itself or for the active ingredient of it (Octodrine, DMHA, 1,5-dimethylhexylamine), he would obviously not have understood that this substance (Octodrine, DMHA, 1,5-dimethylhexylamine, etc.) was prohibited in sport. Indeed, if Google searches are made

within Russia (from a Russian IP-address), then Google delivers completely different search results compared to those returned from a non-Russian IP-Address: no "warning-sign" questions in English or in Russian, no websites showing the Supplement as being banned or having potential risks. The same outcome is yielded for the same search queries with Yandex, the most popular search engine in the Russian segment of Internet. In summary, the Player did not know or did not suspect and could not objectively know or suspect, even exercising utmost caution, that he used an allegedly prohibited substance, or that he could violate an anti-doping rule.

b. The Position of the Second Respondent

84. In its Answer, the Second Respondent concluded as follows:

"*[…] The Player has committed an Anti-Doping Rule Violation contrary to ADR Article 2.1;*

[…] The Consequences to be applied in respect of the Anti-Doping Rule Violation are that a period of Ineligibility be imposed pursuant to Article 10.5.1.1 of the ADR;

[…] RUSADA respectfully requests that costs be awarded to RUSADA in accordance with Rule 64.4 and Rule 64.5 of the Code of Sports-related Arbitration."

85. The position of the Second Respondent may be summarized as follows:

i. RUSADA does not agree that the FIFA ADR apply to the appeal. The jurisdiction of CAS, and the FIFA's right to appeal, are provided for in the ARADR, and there appears to be no reason why the appeal cannot be determined according to the ARADR. However, the relevant provisions of the ARADR and the FIFA ADR relating to what constitutes an anti-doping rule violation, and the applicable consequences to be applied in that respect, are in substance identical. Both RUSADA and FIFA are required by the WADC to adopt the text of Articles 2 and 10 of the WADC in their anti-doping rules "*without substantive change*". The issue as to which anti-doping rules apply to the appeal may, therefore, be largely moot: nevertheless, in the event of any material inconsistency, the ARADR should take precedence;

ii. the Decision contained two important elements: (i) the DADC found that the Player had committed an anti-doping rule violation arising from the presence of Octodrine in the A Sample. In so doing, the DADC accepted that Octodrine is a prohibited substance included with S.6(b) of the 2019 Prohibited List; (ii) the DADC imposed no period of ineligibility upon the Player, limiting the consequences to a reprimand;

iii. the finding of an anti-doping rule violation should be upheld, since Octodrine was at the material time a prohibited substance included within the 2019 Prohibited List 2019. As a result, the Player committed an anti- doping rule violation as a result of Octodrine being present in the A Sample. The conclusion reached by the DADC in that respect should be confirmed by CAS;

iv. the only issue that requires resolution in this appeal is that of the applicable sanction to be imposed in respect of the Player's anti-doping rule violation. That sanction has to be determined according to the Player's degree of fault. RUSADA agrees with FIFA in that it believes that a period of ineligibility should have been imposed upon the Player. This is the position it took before the DADC. RUSADA believed,

and still believes, that the evidence supports a conclusion that the imposition of a period of ineligibility was the correct and appropriate outcome. The DADC erred in imposing a reprimand with no period of ineligibility

v. the Player acted with "No Significant Fault or Negligence". In more details, the Player was at fault for failing to act reasonably in relation to the Supplement. He did not weigh the risks (which he was, or should, have been aware of) associated with supplements; he did not ask reasonable questions as to why he had been given it; he did not satisfy himself that he knew what was in the Supplement. The Player was also at fault in respect of his failure to make reasonable enquiries of his medical advisor in respect of the supplement that was being recommended to him;

vi. as result, by failing to take steps to understand and act on his responsibilities in connection with the use of supplements, and in his over-reliance on Dr Rudyakov, the Player acted with a degree of fault that warrants a period of ineligibility. However, the Player's fault should be assessed in light of what it would have been reasonable for him to do. For that reason, RUSADA maintains the view that the Player's fault was relatively low, and warranted a relatively light sanction in accordance with Article 10.5.1.1 ARADR.

V. JURISDICTION

86. The jurisdiction of the CAS, which is not disputed by the Parties, is based by the Appellant on Article R47 of the Code, Article 58.5 of the FIFA Statutes, Article 75 of the FIFA ADR and Articles 13.2 of the ARADR, and has been confirmed by the Order of Procedure, signed by the Parties.

87. Therefore, the CAS has jurisdiction to decide the present dispute between the Parties.

VI. ADMISSIBILITY

88. The Statement of Appeal was timely filed, as accepted by the Respondents, and complied with the requirements set by Article R48 of the Code. In addition, pursuant to Article 81 of the FIFA ADR, the Appellant was not required to exhaust any internal remedy available within the structure of RUSADA. Accordingly, the appeal is admissible.

VII. SCOPE OF REVIEW

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

90. It is to be noted, however, that the power to review the dispute *de novo*, as granted to the Panel by Article R57 of the Code, does not alter the arbitral nature of CAS proceedings. In other words, it does not authorize the Panel to render a decision *ultra petita*, *i.e.* beyond the disputed issues submitted to arbitration and the petitions lodged by the parties according to the rules governing its jurisdiction and their admissibility.

VIII. APPLICABLE LAW

91. Pursuant to Article R58 of the Code, the Panel is required to 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*".

92. An issue arose in this arbitration with respect to the exact identification of the "applicable regulations" which this Panel should consider for the decision of this case.

93. The Appellant, in fact, submits that the Panel should apply the FIFA ADR and invokes in support of its contention Article 80.3(a) of the FIFA ADR, which provides the following:

"*Where FIFA appeals against a decision of an Association, Anti-Doping Organisation or Confederation to CAS under this chapter, the applicable law for the proceeding shall be the FIFA regulations, in particular the FIFA Statutes, the FIFA Anti-Doping Regulations and the FIFA Disciplinary Code.*"

94. The Respondents, on the other hand, submit that the appeal against the Decision was filed pursuant to Article 13 of the ARADR in an entirely Russian domestic case: therefore, Article 80.3(a) of the FIFA ADR needs not be invoked, and the ARADR fall to be applied in this case.

95. The Panel sees a merit on both sides. In support of the application of the FIFA ADR weigh the express wording of their Article 80.3(a) and the need to ensure consistent application of the anti-doping regulations tailored for football related violations. In support of the application of the ARADR speaks the domestic nature of the Player's case, regarding a violation committed in Russia at a national event by a national level athlete, heard by a Russian entity.

96. The Panel notes that both sets of rules contain the same provisions: no material difference was identified by the Parties with respect to the rules relevant to this arbitration. Indeed, they all refer to the WADC on the basis of which they were adopted. As a result, the question appears to be merely academic and can be left open. The Panel only confines itself to note that in some CAS awards, dealing with situations in which diverging rules existed, the FIFA ADR were held to prevail in order to guarantee a uniform fight against doping and an equal treatment of all football players (*e.g.*, CAS 2017/A/5144, CAS 2007/A/1370&1376, CAS 2018/A/5853).

97. However, the Panel finds that the ARADR can be adopted as a mere point of reference to describe the infringement and the applicable consequences on the Player. The Panel adopts this point of view in this specific case only because those rules were applied by the DADC and, as agreed by the Parties, the ARADR do not materially differ from the FIFA ADR.

98. At the same time, the Panel notes that it was not directed to the application of any specific set of domestic law, which might apply subsidiarily.

99. The provisions from the ARADR that are relevant, or have been invoked, in this case, are the following:

Article 2 "*Definition of Doping, Rule Violations*"

[corresponding to Article 6 of the FIFA ADR]

"*[…] The following constitute anti-doping rule violations:*

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes 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 Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1. [FIFA ADR, Article 6]

2.1.2 Sufficient proof of anti-doping rule violation under Article 2.1 [FIFA ADR, Article 6] *is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or where the Athlete's B Sample is analyzed and the analysis of the B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's Sample; or, where the Athlete'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.*

2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation."

Article 10 "*Sanctions on Individuals*"

[corresponding to Article 19 of the FIFA ADR]

"*[…]*

10.2 Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method

[…]

10.2.1 The period of Ineligibility shall be four years where:

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

10.2.1.2 The anti-doping rule violation involves a Specified Substance and the RUSADA [FIFA] *can establish that the anti-doping rule violation was intentional.*

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

[…]

10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

[corresponding to Article 21 of the FIFA ADR]

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence [corresponding to Article 22 of the FIFA ADR]

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6. [FIFA ADR, Articles 6, 7 &11]

10.5.1.1 Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Athlete 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 years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

10.5.1.2 Contaminated Products

In cases where the Athlete 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 years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

[…]

10.10 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed. [corresponding to Article 28 of the FIFA ADR: Except as provided below, the period of Ineligibility shall start as soon as the decision providing for Ineligibility is communicated to the Player or other Person concerned.]

10.10.1 Delays Not Attributable to the Athlete or other Person

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

10.10.3 Credit for Provisional Suspension or Period of Ineligibility Served

10.10.3.1 If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served

pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal."

Article 11 "*Consequences to Teams*"

"*[…]*

11.2 Consequences for Team Sport [corresponding to Article 32.1 of the FIFA ADR]

If more than two members of a team in a Team Sport are found to have committed an anti-doping rule violation during an Event Period, the ruling body of the Event shall impose an appropriate sanction on the team (e.g., loss of points, Disqualification from a Competition or Event, or other sanction) in addition to any Consequences imposed upon the individual Athletes committing the anti-doping rule violation. …" [corresponding to Article 32.1 of the FIFA ADR: If more than two members of a team are found to have committed an antidoping rule violation during a Competition Period, the FIFA Disciplinary Committee, if FIFA is the competent body, or otherwise the Association concerned, shall impose an appropriate sanction on the Association or club to which the members of the team belong in addition to any consequences imposed upon the individual Player(s) committing the anti-doping rule violation].

Appendix 1 "*Definitions*" [corresponding to the Preliminary Title of the FIFA ADR]

"*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.*"

"*Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.* [FIFA ADR Article 22.1.&2]"

"*No Fault or Negligence: The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she 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 2.1,* [FIFA ADR Article 6] *the Athlete must also establish how the Prohibited Substance entered his or her system.*"

"*No Significant Fault or Negligence: The Athlete or other Person's establishing that his or her 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 2.1, [FIFA ADR Article 6]*the Athlete must also establish how the Prohibited Substance entered his or her system.*"

IX. MERITS

100. The object of this arbitration is the Decision, which issued a reprimand on the Player, without imposing any ineligibility period for the anti-doping rule violation contemplated by Article 2.1 of the ARADR: the Player's violation was found to be not "intentional", within the meaning of Article 10.2.3 of the ARADR, and the Decision taken "*considering the circumstances of the case*". The Appellant disputes this conclusion and requests the Decision to be set aside and a period of ineligibility of 2 years, or from 18 to 24 months, to be imposed. The First Respondent requests this Panel to dismiss the appeal and to confirm the Decision. The Second Respondent requests that a decision is adopted in line with Article 10.5.1.1 of the ARADR.

101. As a result of the Parties' requests and submissions, there are two main issues that need to be addressed by this Panel:

    i. is the Player responsible for an anti-doping rule violation?

    ii. if so, what are the proper consequences to be applied?

102. The Panel will consider each of those issues separately and in sequence.

i. Is the Player responsible for an anti-doping rule violation?

103. The first issue to be addressed concerns the commission by the First Respondent of the anti-doping rule violation contemplated by Article 2.1 of the ARADR ["*Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's sample*"].

104. The Panel notes in this respect that the results of the A sample analysis are not disputed: there is no doubt that Octodrine and Heptaminol were detected in the Player's sample collected at the Match. In addition, the Player waived the analysis of the B sample and did not contest the regularity of the sample collection procedure.

105. The First Respondent, however, submits in this arbitration, as he did also in the proceedings before the DADC, that the detection of Octodrine and Heptaminol in his sample should not have been reported as an AAF, because those substances were not prohibited under the 2019 Prohibited List. As a result, no violation pursuant to Article 2.1 of the ARADR was committed.

106. According to the Appellant, joined on this point by the Second Respondent, the examination of such issue, *i.e.* whether Octodrine and Heptaminol were prohibited under the 2019 Prohibited List and hence whether a violation pursuant to Article 2.1 of the ARADR was committed, is precluded before this Panel, because the First Respondent did not file an appeal against the Decision's finding of an anti-doping rule violation, which therefore became final and binding.

107. The Panel agrees with the Appellant: the issue whether an anti-doping rule violation was

committed by the Player was settled by the Decision. The DADC in fact applied a sanction "*within the procedure set out by art. 10.5.1.1*" of the ARADR (operative part issued on 22 August 2019: § 15 above), which indicates the consequences to be imposed for an anti-doping rule violation involving specified substances (such as Octodrine and Heptaminol), and (in the reasoning published on 16 December 2019: § 17 above) stated that it "*believe[d] in the committed violation of the anti-doping rules*". In this context, the circumstance that the operative part of the Decision did not expressly declared the Player responsible for an anti-doping rule violation under Article 2.1 of the ARADR is immaterial: the matter was discussed in the proceedings before the DADC, since the Player had disputed the characterization of Octodrine as a prohibited substance (§ 10 above); and the entire Decision and the sanction imposed is premised on such finding, which implies that Octodrine and Heptaminol were prohibited, and appears to be a necessary factual and legal element for the application of consequences for the Player: no sanction could be applied without such finding; and the imposition of sanctions (even to a minimum level) necessarily implies that the commission of an anti-doping rule violation was found. In short, no sanction could be applied if Octodrine and Heptaminol were not considered prohibited substances.

108. In other words, the Decision had two constituent parts: a first, consisting in the finding of an anti-doping rule violation for the presence of prohibited substances; and a second, consisting in the application of the reprimand. The second could not stand alone: without the first part, the second part could not be adopted.

109. As a result, since the finding of a violation of Article 2.1 of the ARADR was covered by the Decision, the First Respondent, if he wanted to submit that Octodrine and Heptaminol were not prohibited substances in 2019, had the burden to file an appeal against it. The First Respondent did not file any such appeal: therefore, the Decision remains final and binding in this respect.

110. The Panel cannot depart from such conclusion on the basis of the indications of the First Respondent that:

    i. he lacked the financial means to file an appeal. In this respect the Panel notes that the Player had the possibility to apply for legal aid, according to the CAS rules;

    ii. Article R57 allows a *de novo* review of the case. Indeed, that power can be exercised by the Panel only within the limits of the petitions of the Parties and does not allow the Panel to examine issues finally decided by the DADC not covered by an appeal to CAS;

    iii. the Appellant requested the Decision to be set aside. Actually, that request was submitted only in order to allow a modification of the sanction to be imposed, which the Appellant wants to be more severe than that decided by the DADC, while it is clearly expressed in the Appellant's submissions and pleadings that the Appellant concurs with the DADC's finding with respect to the commission of an anti-doping rule violation. In addition, it would appear rather odd to draw consequences in favour of the First Respondent from the "opportunity" given by a request for relief submitted by the Appellant (to be partially accepted against the Appellant), while the First Respondent asked, in his petitions for relief, the Panel to dismiss it.

111. In other words, since the point was decided by the DADC, the Decision became final in

its respect, because it was not made the object of an appeal. Thus, the same cannot be relitigated in this arbitration: the Player is responsible for the violation of Article 2.1 of the ARADR, for the presence of prohibited substances (Octodrine and Heptaminol) in his A sample.

112. The Panel, at the same time, notes that, irrespective of the foregoing, in itself sufficient to confirm the violation of Article 2.1 of the ARADR, the conclusion reached by the DADC would not change, even if the examination of the status of Octodrine and Heptaminol as prohibited substances in 2019 were not precluded by the absence of the First Respondent's appeal. In fact:

i. the presence of Heptaminol was detected. Heptaminol is a prohibited substance, included without reservations in the 2019 Prohibited List. No mention is contained in the 2019 Prohibited List with respect to the origin of Heptaminol as an endogenous bio-transformation of an exogenous, non-prohibited substance (as the First Respondent claims Octodrine was in 2019). Under Article 4.3 of the ARADR (corresponding to Article 17 of the FIFA ADR) the determination by WADA of the Prohibited List is final and cannot be the object of a challenge by an athlete or re-examination or qualification by a CAS Panel. As a result, the mere finding of Heptaminol would be sufficient to confirm the commission of an anti-doping rule violation under Article 2.1 of the ARADR;

ii. Octodrine must, in any case, be considered a prohibited substance for the purposes of category S.6(b) of the 2019 Prohibited List, as it had at least a "similar chemical structure" as other substances expressly listed in such category. The point was explained by Prof. Saugy, whose declarations regarding the similarity with a number of listed substances remained unchallenged, and conceded by Dr Kiseleva, who only disputed the possibility for a non-professional to reach a conclusion on the structural similarity of compounds. The Panel notes that the category S.6(b) Specified Stimulants of the 2019 Prohibited List include a list of stimulants, which include Heptaminol, but is not limited because it does also include other substances with a similar chemical structure or similar biological effect(s). It is important to note that it is not a cumulative criteria and that is enough that a substance has either a similar chemical structure or a similar biological effect(s). "It is a "catch all" provision which aim is to "avoid substances failing outside the List purely because they are not specifically named in a particular category"." (David, Paul, A Guide to the World Anti-Doping Code, Cambridge University Press, 2013, pp. 87-88). To conclude, both experts, agreed that Octodrine has a similar chemical structure with Heptaminol (even though they could not agree on the similar biological effects of those two substances), which is enough for the Panel to conclude that both Octodrine and heptaminol, which were found in the Player's sample were prohibited substances;

iii the Sakho case is irrelevant for the purposes of the present dispute. In the Sakho case the player's sample was found to contain "Higenamine", which was not specifically listed under category S.3 Beta-2 Agonists. "Higenamine" was later put on the list under the category S.3. However, for the category S.3 there is no reference to "similar" substances or a "catch-all provision", which are present in the case at hand.

113. In summary, the Panel confirms the commission by the First Respondent of the anti-

doping rule violation contemplated by Article 2.1 of the ARADR ["*Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's sample*"].

ii. In light of such finding, what are the proper consequences to be applied?

114. According to Article 10.2 of the ARADR (corresponding to Article 19 of the FIFA ADR), the sanction provided for the violation committed by the Player, involving a specified substance, is an ineligibility period of 2 years (Article 10.2.2 of the ARADR – Article 19.2 of the FIFA ADR), unless FIFA proves that the violation was intentional: in such event the period of ineligibility is of 4 years (Article 10.2.1.2 of the ADR – Article 19.1(b) of the FIFA ADR). However, the sanction can be eliminated or reduced if the Player proves that he/she bears "*no fault or negligence*" (Article 10.4 of the ARADR – Article 22.1(a) of the FIFA ADR) or "*no significant fault or negligence*" (Article 10.5.1.1 of the ARADR – Article 21 of the FIFA ADR). In this latter case, the sanction shall be at a minimum a reprimand and no period of ineligibility, and at a maximum two years of ineligibility, depending on the player's fault.

115. In the case of the Player, the DADC found the anti-doping rule violation not to be intentional and, "*considering the circumstances of the case*", decided to impose a reprimand and no ineligibility period, *i.e*. the minimum sanction provided for the case of "No Significant Fault or Negligence" (Article 10.5.1.1 of the ARADR – Article 21 of the FIFA ADR).

116. The Appellant concedes that the anti-doping rule violation was the result of the ingestion of the Supplement and that it was not intentional. However, the Appellant submits that the level of the Player's fault was significant, and therefore a sanction, at the maximum level (2 years), or in the upper range (18-24 months), should be imposed.

117. The main question therefore in this arbitration is whether the level of the Player's fault requires a modification of the Decision and the application of a harsher sanction. In the context of the present case, in fact, the "threshold" condition established by the anti-doping rules to allow "access" to a finding of "No Significant Fault or Negligence" is satisfied. In fact, as made clear by the "Definition" of "No Significant Fault or Negligence", the Player (who is not a "Minor") had to establish how the prohibited substance entered his system (the so-called "route of ingestion"). In the Player's case, it is accepted by FIFA that the AAF was caused by the ingestion of the Supplement.

118. The issue whether an athlete's fault or negligence is "significant" has been much discussed in the CAS jurisprudence, and chiefly so with respect to the various editions of the WADC (e.g., in *Cilic*, discussed by the Parties in the present arbitration, but also in a number of other cases: *e.g., inter alia* CAS 2004/A/690; CAS 2005/A/830; CAS 2005/A/847; CAS OG 04/003; CAS 2006/A/1025; 2008/A/1489&1510; CAS 2009/A/1870; CAS 2012/A/2701; CAS 2012/A/2747; CAS 2012/A/2804; CAS 2012/A/3029). These cases offer guidance to this Panel. It is, however, to be underlined that all cases are "fact specific" and that no doctrine of binding precedent applies to the CAS jurisprudence. Indeed, the FIFA ADR itself, while defining the conditions for the finding of "No Significant Fault or Negligence", stresses the importance to establish it "*in view of the totality of the circumstances*", and therefore paying crucial attention to their specificities.

119. One point needs to be underlined in this respect. A period of ineligibility can be reduced based on "No Significant Fault or Negligence" only in cases where the circumstances justifying a deviation from the duty of exercising the "*utmost caution*" are truly exceptional, and not in the vast majority of cases. However, in the Panel's opinion, the "bar" should not be set too high for a finding of "No Significant Fault or Negligence". In other words, a claim of "No Significant Fault or Negligence" is (by definition) consistent with the existence of some degree of fault and cannot be excluded simply because the athlete left some "*stones unturned*". As a result, a deviation from the duty of exercising the "*utmost caution*" does not imply *per se* that the athlete's negligence was "significant"; the requirements for the reduction of the sanction under Article 10.5.1.1 of the ARADR – Article 21 of the FIFA ADR can be met also in such circumstances. It is in fact clear to this Panel (as noted in *Cilic*, §§ 74-75) that an athlete can always read the label of the product used or make Internet searches to ascertain its ingredients, cross-check the ingredients so identified against the Prohibited List or consult with the relevant sporting or anti-doping organizations, consult appropriate experts in anti-doping matters and, eventually, not take the product. However, an athlete cannot reasonably be expected to follow all such steps in every and all circumstances. To find otherwise would render the "No Significant Fault or Negligence" provision in the WADC (translated into the ARADR and the FIFA ADR) meaningless.

120. As noted by the Parties, therefore, the issue in this case revolves around the determination of the degree of the Player's fault: very high, according to the Appellant; minimal, according to the Decision and the First Respondent.

121. In order to have guiding indications, the Panel was referred by the Parties to the award rendered in *Cilic*, according to which "objective" and "subjective" levels of fault must be taken into consideration. The objective level of fault points to "what standard of care could have been expected from a reasonable person in the athlete's situation", while the subjective level consists in "what could have been expected from that particular athlete, in the light of his particular capacities". On the basis of those elements, in *Cilic* a distinction was made between three degrees of fault or negligence ("significant", "normal" and "light") and a corresponding distribution of the range of the period of ineligibility was suggested: 16-24 months for a significant degree, with a "standard" significant fault leading to 20 months; 8-16 months for a normal degree, with a "standard" normal degree leading to 12 months, and 0-8 months for a light degree of fault, with a "standard" light degree leading to a period of 4 months.

122. As noted in CAS 2017/A/5301 & 5302, Errani ("*Errani*"), *Cilic* was decided in 2014, under anti-doping rules which allowed a distinction between three degrees of fault or negligence. However, Article 10.5.1.1 of the ARADR (adopted on the basis of the 2015 version of the WADC) significantly differs from the previous scheme for the consideration of the specificities of the individual cases. The *Cilic* doctrine, therefore, had to be adapted to the sanctions system of the 2015 WADC and, thus, the ARADR (or FIFA ADR) applicable in this arbitration.

123. As a result, the time span of 24 months which is still available now covers only two instead of three categories of fault:

    i. normal degree of fault: over 12 months and up to 24 months with a standard normal degree leading to an 18-month period of ineligibility; and

ii. light degree of fault: 0-12 months with a standard light degree leading to a 6-month period of ineligibility.

124. As suggested in *Cilic*, and confirmed in *Errani*, in order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault: the objective element should be foremost in determining into which of the relevant categories a particular case falls; the subjective element can then be used to move a particular athlete up or down within that category. All in all, however, this Panel recognizes that there might be some overlap within those elements.

125. In the present case the Panel notes the following elements:

i. in favour of the Player:

- Octodrine, in any of its names, including the one mentioned on the Supplement, was not expressly listed in the 2019 Prohibited List, and it might not have been immediately evident that it was covered by the extension of category S.6(b) to stimulants having a "similar chemical structure" as those expressly listed;
- the Player used the Supplement upon the suggestion of a doctor;
- the Player used the Supplement within the limits of the doctor's indications;
- the Player is of national level and lacked anti-doping education;
- the Player does not read English;

ii. against the Player:

- the use of the Supplement was not indicated by the Athlete in the DCF;
- the Player did not have a medical condition requiring the use of the Supplement;
- the suggestion by the doctor to use the Supplement was made upon request of the Player;
- the doctor's verification of the content of the Supplement, which allowed him to suggest the Player a limited use of the Supplement, in light of the possible effects on the Player's heart, appears hurried and negligent, as, apparently, the doctor did not notice any possible anti-doping implications of the Supplement;
- the Player blindly followed the doctor's advice, and did not make any independent verification of the Supplement, notwithstanding the existence of clear indication by the Team doctor of possible side effects, which could have rung an "alarm bell" as to the content of the Supplement;
- the presence of Octodrine is expressly mentioned on the label of the Product, although in English, but the Player did not seek any clarification or explanation;
- the Player did not verify the origin of the Product beyond the doctor's indications;
- the Player was not subject to any personal impairment.

126. In other words, the Player's case is the case of an athlete who freely put himself in the hands of the Team's doctor. Such circumstance, however, somehow mitigating the

Player's fault, in light of his limited anti-doping education, does not allow a consideration of his fault as light. Indeed, it was a clear obligation and a personal duty of the Player under Article 2.2.1 of the ARADR (Article 7.1 of the FIFA ADR) to ensure that no prohibited substance entered his body: the administration of a substance by a doctor or physician does not detract from this obligation.

127. Having regard to all of the circumstances of the case, the Panel comes to the conclusion that the Athlete's degree of fault was "normal" and accordingly warrants the imposition of a sanction between 12 and 24 months of ineligibility. With regard to the subjective elements of the Player's fault, the Panel finds that the sanction to be imposed is of 15 months, corresponding to the middle of the lower half of such range.

128. The Decision is therefore to be set aside and replaced by a decision imposing a 15-month ineligibility period.

129. In accordance with Article 10.10 of the ARADR, such ineligibility period should commence on the date of this award. The Panel however remarks that (i) delays not attributable to the Player occurred in the present case, and that (ii) credit should be given for the period of provisional suspension served by the Player.

130. With respect to the first point, in fact, the Panel notes that the Decision was issued, in its operative part, on 22 August 2019, but that its reasons were published only on 16 December 2019; that the appeal was filed by FIFA, for reasons not attributable to the Player, only in March 2020; and then that the hearing before this Panel could be held only in December 2020, at least in part due to the COVID-19 pandemic. This Panel estimates the delay incurred not attributable to the Player to amount to twelve months. This allows the Panel to set the starting date of the ineligibility as from 1 January 2020: the consequences (including any disqualification of results) of such back-dating in team sport are governed by Article 11.2 of the ARADR (Article 32.1 of the FIFA ADR). As a result, the period of ineligibility imposed on the Player should come to an end on 31 March 2021. The Panel specifically raised the issue at the hearing and FIFA did not formally object to any back-dating of the starting date of any ineligibility period imposed.

131. The Player is however entitled to a credit for the period of provisional suspension already served. As noted by FIFA, the Player was suspended with immediate effect on 17 May 2019, and took part in a match on 7 September 2019, after the Decision, adopted on 22 August 2019, had been notified. As a result, the Panel finds that the Player was provisionally suspended between 17 May 2019 and 22 August 2019 included, in the absence of an indication that the Decision was notified on a subsequent day, and therefore for 98 days (15 days in May 2019, starting from 17 May 2019 included; 30 days in June 2019, 31 days in July and 22 days in August 2019, until 22 August 2019 included). The period of 98 days has to be credited to the Player against the ineligibility imposed by this award, pursuant to Article 10.10.3.1 of the ARADR (Article 28.3(a) of the FIFA ADR).

132. As a result of the foregoing, the period of ineligibility imposed on the Player has come to an end on 23 December 2020, i.e. 98 days before 31 March 2021 (8 Days in December 2020, 31 days in January 2021, 28 days in February 2021 and 31 days in March 2021).

133. In conclusion, the Panel finds that the appeal has to be granted and the Decision modified so as to impose on the Player a period of ineligibility of 15 months starting on 1 January

2020 and expiring, credit given for the provisional suspension already served, on 23 December 2020.

X. COSTS

134. The Panel observes that Article R64 of the CAS Code provides the following:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*

- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

135. Article R64.5 of the CAS Code provides as follows:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

136. Having considered the outcome of the arbitration, in particular the fact that the appeal was granted, the Panel determines that the costs of the arbitration, as notified by the CAS Court Office, shall be borne by the Respondents in equal shares, as to their 50% each.

137. Article R64.5 Code gives the Panel discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters, even "*without any specific request from the parties*". In the present case, the Appellant, which has prevailed, was not assisted by outside counsel. As a result, the Panel holds that each party shall bear the costs, for legal fees and other expenses, incurred in connection with the present arbitration procedure.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Fédération Internationale de Football Association with the Court of Arbitration for Sport against the decision issued on 22 August 2019 by the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency is upheld.

2. The decision issued on 22 August 2019 by the Disciplinary Anti-Doping Committee of the Russian Anti-Doping Agency is set aside.

3. Mr Dmitry Korobov is declared ineligible for a period of 15 months starting from 1 January 2020 and expiring, credit given for the period of provisional suspension already served, on 23 December 2020.

4. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by the Russian Anti-Doping Agency as to their 50% and by Mr Dmitry Korobov as to the remaining 50%.

5. Each party should bear the costs, for legal fees and other expenses, it incurred in connection with these proceedings.

6. All other prayers for relief are dismissed.

Seat of the Arbitration: Lausanne, Switzerland
Date: 25 March 2021

THE COURT OF ARBITRATION FOR SPORT

Prof. Luigi Fumagalli
President of the Panel

Mr Alexis Schoeb
Arbitrator

Dr Vanja Smokvina
Arbitrator