



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1445 WADA v/ Qatar Football Association & Ali Jumah A.A. Al-Mohadanni

ARBITRAL AWARD

Pronounced by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President: Mr Lars Halgreen, Attorney-at-law, Copenhagen, Denmark

Arbitrators: Mr Quentin Byrne-Sutton, Attorney-at-law, Geneva, Switzerland
Mr Ulrich Haas, Professor, Zurich, Switzerland

Ad hoc Clerk: Mr Nicolas Cottier, Attorney-at-law, Lausanne, Switzerland

in the arbitration between

World Anti-Doping Agency (WADA), Lausanne, Switzerland,

Represented by MM François Kaiser and Claude Ramoni, Attorneys-at-law, Lausanne, Switzerland

As Appellant

and

Qatar Football Association and Ali Jumah A.A. Al-Mohadanni, Doha, Qatar

Both represented by Mr Ettore Mazzilli, Attorney-at-law, Doha, Qatar,

As Respondents

* * * * *

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1445 PAGE 2

I. FACTUAL BACKGROUND

1. Parties

- 1.1 The World Anti-Doping Agency (hereinafter "WADA") is the international independent organisation created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms. It coordinates the development and implementation of the World Anti-Doping Code ("the WADC"). It is a Swiss private law Foundation with corporate seat in Lausanne, Switzerland and its headquarters in Montréal, Canada.
- 1.2 The Qatar Football Association (hereinafter "the QFA") is the national football federation in Qatar and is affiliated with FIFA since 1972.
- 1.3 The football player Ali Jumah A.A. Al-Mohadanni (hereinafter "the Player") is born in Doha, Qatar on 9 January 1982.

2. Facts

- 2.1 In 2007 the Player was playing for the Qatari football club named "Qatar Sports Club". On 7 April 2007, on the occasion of an in-competition test performed on a urine sample provided by the Player during a football game between Al-Khor Sports Club and Qatar Sports Club, the Player tested positive to 19-norandrosterone at a concentration higher than the 2 ng/ml threshold stated in the World Anti-Doping Agency Technical Document, namely more than 20 ng/ml.
- 2.2 On 3 June 2007, the QFA notified the Player of the presence of a prohibited substance in his bodily specimen and of his right to request the analysis of the B-sample, as provided by the QFA anti-doping rules. The Player did not request the analysis of the B-sample.
- 2.3 In the following days, the Player appeared spontaneously several times before the Head of the QFA Doping Control Committee. During those hearings, the Player declared that he had taken some nutritional supplements called Yohimbine, just before the game and that he had bought all of them in a local supermarket in Doha. He claimed that he had believed that those were natural products containing only vitamin and mineral salts particularly useful for a football player during that part of the season when the climate in Qatar is usually very hot and with a really high percentage of humidity. In order to prove his statement, the Player provided the Head of the QFA Doping Control Committee with a box of the pills that he claimed to have used, emphasizing that those pills can be easily purchased in several local supermarkets, even without medical prescription.
- 2.4 The Player confirmed his various previous statements to the Head of the QFA Doping Control Committee during the hearing before the QFA Doping Control Committee. He stressed once again that he was in perfectly good faith and insisted on the fact that the product that he was using was easily accessible.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1445 PAGE 3

- 2.5 On 7 June 2007, the Disciplinary Committee of the QFA sanctioned the Player with a three-month suspension from 7 June 2007 until 7 September 2007.
- 2.6 The decision of the Disciplinary Committee of the QFA included the following reasons and holding:

"II. Considerations of the Disciplinary Committee"

1. *First of all, after a depth and careful analysis of all the doping test procedures as well as of the subsequent disciplinary procedures related to the case at stake, the Disciplinary Committee confirmed the regularity of both these procedures.*
2. *In continuation, and entering into the substance of the matter, the Members of the Disciplinary Committee started by acknowledge the above mentioned facts and all the further documentation contained in the field. In particular, they took note of statement made by the Player which has been then also expressly confirmed by Dr. Seemer, QFA Medical Official and Member of the QFA Doping Control Committee.*
3. *Equally, the Disciplinary Committee noted that the Player had spontaneously admitted to have taken a product firmly believing that it was a natural supplement containing only vitamins and minerals salts. In addition he also personally provided the QFA Doping Control Committee with a box of the pills for the relevant analysis.*
4. *In continuation, the Disciplinary Committee acknowledge that Dr. Seemer confirmed the presence of a prohibited substance in the product taken by the Player.*
5. *The disciplinary Committee finally concluded that there could be not doubt about the fact that the Player had taken a prohibited substance, even though in good-faith. Consequently, he had committed an anti-doping rule violation in accordance with the QFA and FIFA Regulations governing this matter and he had therefore to be sanctioned accordingly.*
6. *However, the Disciplinary Committee took into due consideration some exceptional circumstances of the case of the stake. In this respect, first of all the Disciplinary Committee considered that it was unquestionable proved that Player took a prohibited substance contained in a product which is legally sold in the territory of Qatar without any medical prescription, and that it can be purchase even in a common supermarket. In addition, the Disciplinary Committee evaluated the extremely co-operative behavior held by the Player in any and all the phases of this proceedings.*
7. *In the view of all the above, the Disciplinary Committee considered that the minimum sanction to be imposed to the Player should be reduced in its length and therefore a period of disqualification of three (3) months appeared to be appropriate to the anti-doping rule violation committed by the Player, also in accordance with the applicable regulations governing this matter.*

III. Decision of the Disciplinary Committee

1. *The player Mr. Ali Jumah A.A. Al-Mohannadi, Jersey n° 13 of Al-Khor Sports Club, is condemned to the sanction of a sportive disqualification for a period of three (3) months with immediate effect.*

2. *As consequence of the above-mentioned period of disqualification the player Mr. Ali Jumah A.A. Al-Mohannadi will be ineligible to play for any football club affiliated to the Qatar Football Association in any competition organized by the QFA from the date of the present decision until 7 September 2007."*

2.7 Neither the club nor the Player appealed against this decision.

2.8 On 1 September 2007 and on 29 September 2007, FIFA requested the QFA to provide it with a copy of the decision. On 2 December 2007, the QFA sent to FIFA and WADA, a "free translation" of the decision issued by its Disciplinary Committee.

3. **Proceedings before the Court of Arbitration for Sport**

3.1 On 21 December 2007, WADA filed with CAS an appeal against the decision taken by the Disciplinary Committee of the QFA and confirmed its statement of appeal with the filing of an appeal brief on 11 February 2008.

3.2 WADA's submissions, in essence, may be summarized as follows:

3.2.1 FIFA is the football world governing body and a signatory of the World Anti-doping Code (WADC). QFA is the football governing body in Qatar and is a member of FIFA. Pursuant to article 13 par. 1 let. (a) and (d) of the FIFA Statutes in force until 31 July 2007 ("2006 FIFA Statutes", as well as of the FIFA Statutes in force as from 1 August 2007 ("2007 FIFA Statutes", QFA has to "*comply fully with the Statutes, regulations, directive and decisions of FIFA bodies at any time*" and to "*ensure that [its] own members comply with the Statutes, regulations, directives and decisions of FIFA Bodies*". As the Player was affiliated to QFA, he had therefore also to comply with the FIFA Statutes and regulations.

3.2.2 The decision being appealed states that it was rendered pursuant to the QFA and FIFA Regulations. In its letter to the Player dated 3 June 2007, the QFA stated that the presence of a prohibited substance in the athlete's bodily sample was in violation of the QFA and FIFA Regulations.

3.2.3 According to WADA, none of the national rules and regulations provided by the QFA contained specific detailed provisions on doping control and sanctions. These national regulations only contained general rules, which refer to the regulations adopted by FIFA or WADA. WADA refers in particular to article 96 of the QFA competition rules, which refer to the FIFA regulations governing doping control, as well as to article 2 par. 1 of

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1445 PAGE 5

the 2004 QFA Statutes which refers to the "*regulations approved by FIFA*", to article 2 par. 11 of the 2004 QFA Statutes which further states that one of the objectives of QFA is "*to maintain international regulations & principles of the games as approved by the International Federation*".

- 3.2.4 Moreover, article 2 par. 2 let. l) of the 2007 QFA Statutes states that one of the objectives of QFA is "*to combat the use of prohibited substances as stipulated by FIFA and WADA*". Article 4 of the 2007 QFA Statutes further states that: "*The legislation of QFA consists in: [...] (d) the FIFA and AFC Statutes and Regulations. (e) the WADA Anti-Doping Regulations.*"
- 3.2.5 According to WADA, the WADC and the FIFA Statutes and Regulations are therefore applicable to the present case, together with the QFA regulations, which do not contain specific rules governing doping controls and sanctions.
- 3.2.6 Based on the above, WADA claims that it has a right of appeal in the present case, according to article 61 par. 5 of the 2006 FIFA Statutes which states that: "*The World Anti-Doping Agency (WADA) is entitled to appeal against doping-related decisions which are deemed to be final under the terms of par. 1 above.*" WADA points out that this article was amended and replaced with a new article 61 par. 6 in the 2007 FIFA Statutes, which states that: "*The World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed by FIFA, the Confederations, Members or League under the terms of par. 1 and par. 2 above.*"
- 3.2.7 As the decision rendered by the QFA Disciplinary Committee is a "final" decision at the national Qatar federation level, WADA deems that it has a right of appeal to CAS against the decision.
- 3.2.8 Considering that WADA lodged its appeal several months after the decision was taken by the QFA Disciplinary Committee, WADA stresses that the QFA provided WADA with a "free translation" of the decision that is appealed only on 2 December 2007. Based on article 61 par. 7 of the 2007 FIFA Statutes, WADA argues that the time limit for WADA to lodge an appeal begins upon receipt of the internally final and binding decision in an official FIFA language. WADA concludes therefore that its statement of appeal dated 21 December 2007, was lodged in due time, namely within the 21 days time limit fixed under article 61 par. 1 of the 2006 and of the 2007 FIFA Statutes.
- 3.2.9 Referring to the QFA regulations, the FIFA regulations, in particular the FIFA Statutes, the FIFA Disciplinary Code and the FIFA Doping Control Regulations as well as to the WADC and CAS case law (in particular CAS 2006/A/1025 *Puerta v/ ITF*, par. 10), WADA considers that the provisions of the WADC have in the present case to be construed in a manner that is consistent with Swiss law. According to WADA, Qatari law may thus only

be applied in the present case if such law does not prevent the application of the FIFA Regulations and of the WADC, as construed under Swiss law.

- 3.2.10 This being mentioned, WADA points out that 19-norandrosterone is an Endogenous Anabolic Androgenic Steroid that appears on the WADA 2007 Prohibited List under class S1, Anabolic Agents. In the case of the Player the laboratory detected the presence of 19-norandrosterone at a concentration greater than 2ng/ml in the bodily sample taken from Mr. Ali Jumah A. A. Al-Mohadanni, which, according to WADA, is incompatible with an endogenous production of the substance and demonstrates the exogenous intake of this substance. As the Player did not request the analysis of the B-sample and did not contest the presence of the prohibited substance in his bodily sample, WADA concludes that the presence of a prohibited substance in the bodily sample of the Player and the violation by the Player of anti-doping rules are established.
- 3.2.11 With respect to the sanction to be pronounced against the Player, WADA refers to articles 65 par. 1 let. a of the FIFA Disciplinary Code and 10.2 of the WADC, which provide that the period of ineligibility imposed for a violation of Chapter II.1 of the FIFA Doping Control Regulations or 2.1 of the WADC (presence of a prohibited substance or its metabolites or markers) shall be two years for a first violation of anti-doping rules. Pursuant to article 10.5 of the WADC, in order to have the period of ineligibility reduced or eliminated, the Player must establish how the prohibited substance entered his body. WADA claims that the possibility to reduce or eliminate the sanction according to article 65 par. 2 and 3 of the FIFA Disciplinary Code must be construed and interpreted in a manner that is consistent with the WADC. This means to WADA that a reduction or an elimination of the otherwise applicable sanction for no fault or negligence or no significant fault or negligence, as provided by the FIFA Disciplinary Code, may occur only if the player establishes how the prohibited substance entered his body.
- 3.2.12 In this regard, WADA notes the explanations provided by the Player as reflected in the decision being appealed and points out that the medical specialist of the QFA, Dr. Seemer, mentioned during the hearing before the Disciplinary Committee of the QFA that the medicine that the Player had taken contained prohibited substances.
- 3.2.13 Based on WADC and on CAS jurisprudence, namely CAS 2006/A/1025 Puerta v. ITF, Nr. 11.4; CAS OG 06/001 WADA v. Lund, USADA & USBSF Nr. 4.11, WADA argues that the Player did not succeed in establishing that he bore no fault or negligence in order to eliminate the period of ineligibility can be eliminated as provided under articles 65 par. 3 of the FIFA Disciplinary Code and 10.5.1 of the WADC). WADA invokes that the file does not contain any information showing that the nutritional supplement taken by the Player was "mislabelled" and did not mention the presence of a prohibited substance. Neither does the file contain any information regarding specific precautions that the Player would have taken

to ensure that the supplements he was taking were free from any prohibited substances. WADA argues that the Player has not established that he bears no significant fault or negligence, as defined in the WADC, in order to benefit from a reduction of the period of ineligibility as provided under article 65 par. 2 of the FIFA Disciplinary Code and 10.5.2 of the WADC. Regarding the use of nutritional supplements, WADA stresses in particular that CAS panels have always been reluctant to admit no significant fault or negligence in view of the numerous warnings of the well-known risks linked to the use of such substance.

3.2.14 In any event the Player did not establish that he took any precaution or made any inquiry to assess whether the nutritional supplement taken by him contained prohibited substances. The fact that the Player bought his nutritional supplement in a local supermarket and did not acquire the product illegally or in some dubious manner does not constitute an exceptional circumstance justifying a reduction of the otherwise applicable period of suspension. It is each player's duty of care to ensure that the products he ingests do not contain any prohibited substance, as provided under art. II.1.1 of the FIFA Doping Control Regulations.

3.2.15 In view of the foregoing, WADA concludes that the ordinary two-year suspension period provided for under articles 65 par. 1 let. (a) of the FIFA Disciplinary Code and 10.2 WADC is applicable to the Player.

3.3 Based on the foregoing submissions, WADA made the following prayers for relief:

1. *The Appeal of WADA is admissible.*
2. *The decision of the QFA Disciplinary Committee dated June 7, 2007 in the matter of Mr. Ali Jumah A. A. Al-Mohadanni is set aside.*
3. *Mr. Ali Jumah A.A. Al-Mohadanni is sanctioned with a two-year suspension, starting on the date on which the CAS award enters in set aside.*
4. *Any period of suspension (wheter imposed to or voluntarily accepted by Mr. Ali Jumah A. A. Al-Mohadanni) before the entry into force of the CAS award shall be credited against the total period of suspension to be served.*
5. *WADA is granted an award for costs."*

3.4 The QFA and the Player jointly answered in a submission dated 7 March 2008, which can be summarized, in essence, as follows:

3.4.1 Based on the article 1 and 2 of the QFA Statutes (edition 2004) as well as on article 60 and 96 of the QFA Regulations governing domestic competitions for first and second division clubs [edition 2006 / 2007] (hereinafter the "QFA Regulations") the Respondents claim that the applicable rules in the

present case are firstly the QFA statutes (edition 2004) and its regulations valid for the football season 2006/2007 and only subsidiarily the FIFA statutes and its regulations that is to say the Disciplinary Code and the Doping Control Regulations.

- 3.4.2 The Respondents firmly contest the direct applicability of the WADC and stress that all references made by WADA to the latest version of the QFA statutes edition 2007 which contains many references to the FIFA regulations and to the WADC, are not valid as this version of the QFA statutes has not yet been officially approved by the QFA General Assembly.
- 3.4.3 The respondents therefore challenge the right of appeal of WADA and claim that CAS lacks jurisdiction in the present case.
- 3.4.4 The Respondents further argue that according to article 77 par.1 of the FIFA Disciplinary Code, the QFA is responsible for enforcing sanctions imposed against infringements committed in its area of jurisdiction and that in accordance with article 70 in combination with article 143 of the same FIFA Disciplinary Code, the sanction, passed by an association may in principle be extended to have worldwide effect.
- 3.4.5 According to the Respondents, this means that the QFA was not obliged to inform FIFA of the case in question or to notify FIFA the relevant decision. As a further argument against WADA's right of appeal and CAS' jurisdiction, the Respondents point out that article 61 ("jurisdiction of CAS") of the FIFA's statutes, in force until 31 July 2007, did not provide for the same rules as article 61 par.7 of the new FIFA statutes entered into force on 1 August 2007 and that under the previous provision, WADA's right of appeal was not provided.
- 3.4.6 The Respondents admit that the Player took a natural supplement and refer to Dr. Seemer's declaration according to which this supplement contained a substance called "Yohimbine". Based on this, the Respondents claim that "Yohimbine" is not on the list of prohibited substances of FIFA and WADA but is closely related to 19-Norandrosterone. As proof of the foregoing, the Respondents filed with their answer several articles found on Internet. On such basis, the Respondents consider therefore that it is *"scientifically undisputed that Yohimbine is sufficient to cause positive urine test for 19-Norandrosterone"*.
- 3.4.7 Referring to the literal interpretation of the FIFA's disciplinary code, namely article 65 par. 2 and 3 and excluding any interpretation of this provision in accordance with the WADC, the Respondents claim that the Player took a natural supplement which did not contain any prohibited substance and is legally sold in Qatar. The Respondents admit that the Player should have been more careful about the natural supplement in question and its internal composition, even though no prohibited substance was mentioned on its packaging. Based on the foregoing, the Respondents claim that the degree of

fault or negligence of the Player in the overall circumstances was not significant in relationship to the doping offense.

3.4.8 Based on article 96 of the QFA Regulations governing doping matters and, in particular, on its paragraph 8, whereby the QFA is the competent committee to impose a sanction on a player as provided by article 60, the Respondents argue that the QFA Disciplinary Committee had the right to fix a sanction as it seemed "appropriate" and that the CAS should rely on the interpretation of the circumstances made by the Disciplinary Committee and confirm its decision.

3.5 Based on the foregoing submissions, the QFA and the Player made the following prayers for relief:

"I. To declare the Appeal filed by WADA on 21st December 2007 not admissible and/ or that the CAS has not jurisdiction in this case, and consequently to fully confirm the decision of the matter of Mr. Ali Juma A. A. Al-Mohannadi.

II. For the effect of the above, to order that the above-mentioned Appellant has to pay to the Respondents any and all the costs and expenses incurred in connection with this Appeal Arbitration Proceedings, including – without limitation – attorney's fees and expenses.

Should the above-mentioned request not be accepted.

III. To dismiss in full the Appeal filed by WADA on 21 December 2007 and, consequently, to fully confirm the decision of the QFA Disciplinary Committee dated 7 June 2007 in the matter of Mr. Ali Juma A. A. Al-Mohannadi.

IV. For the effect of the above, to order that the above-mentioned Appellant has to pay to the Respondents any and all the costs and expenses incurred in connection with this Appeal Arbitration Proceedings, including – without limitation – attorney's fees and expenses."

3.6 In a letter dated 6 May 2008, the Player and the QFA provided additional information about the nutritional supplement that the Player claims he took before the game of April 2007. This information can be summarized as follows: The natural supplement is named "GNC MEN'S YOHIMBE 451" a dietary Supplement – Standardized Herbal – Support Preparation. One capsule of such dietary supplement contains 451 mg of Yohimbe Bark Extract (Pausinystalia yohimba; 2% Yohimbe Alkaloid =9 mg), plus other ingredients (i.e gelatine, cellulose, calcium carbonate). Yohimbe is an alkaloid contained in the herbal product "Yohimbe" able to increase serum testosterone levels, 19-norandrosterone particularly. Furthermore, GNC MEN'S YOHIMBE 451 is a dietary supplement legally sold in the State of Qatar. It was bought by the Player at the "GNC – City Centre Branch", a shopping mall located in the centre of the city of Doha. The Respondents claim that the fact that this dietary supplement can be easily found and

purchased in Qatar is clearly proved by a copy of the receipt of payment for an amount of 110.00 Qatari Riyals issued by the aforesaid GNC Branch on 21 April 2008.

- 3.7 WADA reacted to these complementary submissions from the Player and the QFA by filing the following written statement by its Medical Director, Dr. Alain Garnier:

"Statement of Dr. Alain Garnier

1. My full name is Dr. Alain Garnier. My address is the World Anti-Doping Agency, European Office, Maison du Sport International, Av. de Rhodanie 54, 1007 Lausanne, Switzerland.

2. I have been employed by the World Anti-Doping Agency (WADA) as its Medical Director, since the spring of 2000. I have extensive experience in the field of anti-doping. In addition to a medical degree, I hold a Masters in pharmacological sciences and a degree in nutrition. I have also spent many years practicing medicine in French hospitals. I served as the head of the medical bureau at the French Ministry for Youth and Sports from 1994 to 2000, where I was responsible for the national anti-doping program while also serving as chair of the monitoring group in charge of the Council of Europe's anti-doping Convention.

3. In his correspondence of May 6th 2008, Mr. Mohammadi indicated that he had taken a natural supplement called "GNC Men's Yohimbe 451", the main ingredient of which is "yohimbine". Mr Mohammadi maintained that yohimbine consumption leads to an increase in the endogenous level of anabolic steroids, in particular of 19-norandrostenedione and testosterone.

4. Yohimbine is an alkaloid extracted from a tree called "Corynanthe Yohimbe" found in Western Africa. With regard to this product, and according to our current scientific knowledge, nothing leads us to confirm that this substance, which does not have the same chemical structure of 19-norandrostenedione, can modify the level of 19-norandrostenedione endogenously produced by the body.

5. In any case, and in the event that scientific studies validate Mr. Mohammadi's allegations, which have yet to be provided, this explanation remains irrelevant because the GC/IRMS analysis has clearly demonstrated the exogenous origin of the 19-norandrostenedione found in Mr. Mohammadi's body."

6. Consequently, the GNC Men's Yohimbe 451's absorption by Mr. Mohammadi cannot explain the presence of exogenous 19-norandrostenedione in Mr. Mohammadi's body."

- 3.8 A hearing was held on 27 May 2008. The Parties did not attend but were represented. As Dr. Alain Garnier's written statement was accepted by the Player and the QFA, WADA renounced to the hearing of its Medical Director.
- 3.9 During the hearing, the Parties made full oral submissions, confirming their written submissions. In order to be able to decide on the question of jurisdiction before entering into the further merits of the case, the Panel asked the Parties to expose first their

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1445 PAGE 11

position and plead on this particular issue. The Parties then proceeded with their oral submissions on the merits.

- 3.10 The Player's representative affirmed at the hearing that the Player had left Qatar and had not played since the decision of the QFA Disciplinary Committee was communicated to him.

II. IN LAW

4. CAS Jurisdiction and applicable law

4.1 The jurisdiction of CAS is disputed by the Respondents on the ground that WADA does not have a right of appeal and CAS does not have jurisdiction according to the applicable Qatari regulations, notably the anti-doping regulations.

4.2 Art. R58 of the Code provides the following:

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

4.3 At the time of the anti-doping test, the Player was registered with the QFA. QFA Regulations as well as FIFA Regulations are mentioned as the applicable Regulations in the letter sent by the QFA to the Player on 3 June 2007 following the positive result of the anti-doping test and in the disputed decision issued by the QFA Disciplinary Committee. The QFA Disciplinary Committee stated under paragraph I.1 of its decision that the anti-doping test was performed *"in accordance with the relevant Qatar Football Association (QFA) Regulations as well as the FIFA Regulations governing the matter of doping control"*. The Panel notes as well that the FIFA logo is printed next to the QFA logo on the registration form of the urine sample.

4.4 Pursuant to article 13 par. 1 let. (a) and (d) of the FIFA Statutes in force until 31 July 2007, all national federations members of FIFA must comply *"fully with the Statutes, regulations, directive and decisions of FIFA bodies at any time"* and have to *"ensure that their own members comply with the Statutes, regulations, directives and decisions of FIFA bodies."* The latest version of the FIFA Statutes, entered into force as from 1 August 2007 provides for the same rule. Pursuant to article 2 of the FIFA Doping Control Regulations, *"all associations shall (...) undertake to comply with these FIFA Doping Control Regulations"*.

4.5 The 2004 edition of the QFA Statutes provides under article 2 par.1 that the QFA's duty is to *"lay down the general principles (...) which shall be implemented by member clubs (...) within the framework of the general policy laid by QNOC [the Qatari National Olympic Committee] and the Regulations approved by the FIFA (Fédération Internationale de Football Association)."* Article 2 par. 11 of the 2004 QFA Regulations provides further that the QFA shall *"maintain international regulations & principles of the game as approved by the International Federation"*.

4.6 The 2004 QFA Statutes do not contain any specific reference to specific Qatari anti-doping rules, whereas the draft version of the 2007 QFA Statutes, which is not applicable in the present case, provides under article 2 par. 2 let. 1) as a specific objective of the QFA *"to combat the use of prohibited substances as stipulated by FIFA"*

and WADA". The draft 2007 QFA Statutes provide as well under article 4 that "*the legislation of QFA consists in. (...) (d) the FIFA and AFC Statutes and Regulations. (e) the WADA Anti-Doping Regulations.*

- 4.7 The regulations of the QFA named "Competition Domestic For 1st and 2nd Division Club provide under article 96 that "*it is prohibited to use illegal drugs for activation according to FIFA regulations (...) which contain a list of illegal materials and methods*". According to article 96 of those regulations, Players found guilty of doping are subject to the sanctions provided under article 60 of the same regulations. The suspension for a specified period is one of the sanctions provided under article 60, which is in line with FIFA Disciplinary Code.
- 4.8 Based on the clear wording of the FIFA Statutes and of the FIFA Doping Control Regulations, on the fact that nothing in the QFA Statutes or Regulations provides for any contrary interpretation and on the numerous references to the FIFA regulations by the QFA official bodies during the procedure before the QFA disciplinary committee, the Panel concludes that the FIFA Statutes, Regulations and Directives are directly applicable to the present case.
- 4.9 Accordingly, CAS jurisdiction derives from art. 60 ff. of the 2006 FIFA Statutes in force until 31 July 2007 and the 2007 FIFA Statutes, as entered into force on 1 August 2007 and from art. R47 of the Code of Sport-related arbitration (hereinafter the "Code").
- 4.10 Consequently, the Panel decides that:
- (1) CAS has jurisdiction to decide the present dispute.
 - (2) According to article 60 par. 2 of the FIFA Statutes and to article IV.2 of the FIFA Doping Control Regulations, the FIFA Regulations shall apply primarily and Swiss law shall apply additionally.
- 4.11 Under art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts, including new facts, which had not been mentioned to the QFA Disciplinary Committee.

5. Admissibility

- 5.1 It is undisputed that the decision of the QFA Disciplinary Committee is final at the national Qatar federation level. Based on article 61 par. 5 of the 2006 FIFA Statutes which was in force when the decision of the QFA Disciplinary Committee was issued, WADA has a right to appeal against the decision of the QFA disciplinary committee
- 5.2 The Respondents claim that WADA's appeal should be rejected due to its tardiness. This claim must be dismissed as article 61 par. 1 of the 2006 FIFA Statutes provides clearly that the appeal must be lodged "*within 21 days of notification of the decision in question*". The decision was notified to WADA on 2 December 2007 and the appeal was lodged on 21 December 2007 within the statutory time limit set forth by the 2006 FIFA Statutes.

5.3 It follows that the appeal is admissible.

6. Review of the Parties' submissions

6.1 Having decided that CAS had jurisdiction and that the appeal was admissible, the Panel reviewed the Parties submissions on the merits of the case and found as following:

a. Applicable rules

6.2 As mentioned above in relation to the question of jurisdiction, the Panel deemed the FIFA anti-doping regulations to be applicable. However, the Panel took the QFA regulations into consideration and noted that those regulations are compatible with the FIFA Regulations. Indeed, under the 2004 QFA Statutes and the regulations for the sporting season 2006 – 2007, the regulatory framework of the QFA respected the FIFA Regulations, which means that the national body, notably the QFA Disciplinary Committee was in a position to abide by the FIFA regulations without contradicting its national set of rules. This situation also squares with the QFA's various submissions regarding the efforts and commitments made in Qatar over the past years to introduce an efficient anti-doping system.

b. Doping offence

6.3 Based on article 63 of the FIFA Disciplinary Code (hereinafter the "FDC"), Article II.1 of the FIFA Doping Control Regulations (hereinafter the "DCR") defines by a list what constitutes an anti-doping rule violation or doping offence:

"The following constitute anti-doping rule violations

1. The presence of a Prohibited Substance or its Metabolites or Markers in a player's bodily sample.

(...)

2. Use or Attempted Use of a Prohibited Substance or a Prohibited Method

2.1 The success or failure of the use of a prohibited substance or prohibited method is not material. It is sufficient that the prohibited substance or prohibited method was used or attempted to be used for an anti-doping rule violation to be committed.

(...)"

6.4 Based on the analysis of the A sample of his bodily specimen, the Player was tested positive to 19-norandrosterone. The analysis of his bodily specimen indicated more than 20 ng/ml of the Prohibited Substance, well above the admitted threshold of 2 ng/ml. The Player was informed of the results of the anti-doping test in a letter dated 3 June 2007 and met with QFA officials several times before taking part in a hearing before the QFA Disciplinary Committee. In none of those opportunities to contest the results of the anti-doping test the Player rejected them or requested that the B sample be analysed, although the QFA had informed him of his right to request it. During the proceedings

and at the hearing before CAS, the B sample analysis was never requested. In its decision the QFA Disciplinary Committee confirmed the results of the anti-doping test. It is therefore undisputed that the Player tested positive to 19-norandrosterone. The Respondents do not dispute that the results of the test could not be caused by an endogenous production. On the contrary, the Player tried to demonstrate that the result was caused by the intake of a natural supplement containing Yohimbine.

- 6.5 The Appendix A to the DCR lists 19-norandrosterone under class S1, Anabolic Agents. According to the DCR classification, 19-norandrosterone is thus prohibited at all times, in and out of competition.
- 6.6 The presence of 19-norandrosterone in the Player's bodily sample constitutes therefore a doping offence according to chapter II of the DCR and article 63 et seq. of the FDC.

c. Sanctions

- 6.7 As the Player tested positive he is subject to the sanctions mentioned under article 65 FDC.

- 6.8 The Player never violated an anti-doping rule before and 19-norandrosterone is not on the DCR list of specified substances but falls under chapter II.1 of the DCR. The Panel must thus apply article 65 par. 1 let. a of the FDC which provides that:

"a) Any violation of Chapter II.1 (The presence of a prohibited substance or its metabolites or markers), (...) shall incur a two-year suspension for the first offence (...)."

- 6.9 Article 65 par. 2 and 3 FDC provides that the two-year suspension can be reduced or eliminated under the following conditions:

"if the suspect can prove (...) that he bears no significant fault or negligence, the sanction may be reduced, but only by up to half the sanction applicable under par.1 (...)

If the suspect can prove (...) that he bears no fault or negligence, the sanction otherwise applicable under the terms of par.1 becomes irrelevant.

d. No fault or negligence

- 6.10 CAS case law places the burden of proof very high to establish no fault or negligence. As correctly stressed by WADA, the Player must prove that he did not know or suspect or could not reasonably have known or suspected, even with the utmost caution that he had used or been administered a prohibited substance (see CAS jurisprudence as mentioned by WADA, 2006/A/1025 *Puerta v. ITF*, Nr. 11.4; CAS OG 06/001 *WADA v. Lund, USADA & USBSF* Nr. 4.11). As WADA further pointed out, athletes must now be aware that they are responsible of the consequences of taking aliments, medicine or plants which may contain prohibited substances and have therefore to take all necessary measures in order to make sure that those aliments, medicine or plants do not contain prohibited substances notably when taking natural supplements without any medical prescription (see CAS 2004/A/690 *D. Hipperdinger v/ATP*).

- 6.11 In the present case, the Respondents produced no evidence that the Player took any particular precautions when purchasing and ingesting the nutritional supplement; and the fact that the nutritional supplement was apparently easy to buy in Qatar is irrelevant in that respect since one of the risks with food supplements is that they are often easy to purchase on Internet or otherwise.
- 6.12 Furthermore, the Respondents have failed to provide any convincing evidence that the ingestion of the nutritional supplement in question caused the positive result of the anti-doping test, i.e. that the consumption of Yohimbine contained in the nutritional supplement can lead to an increase in the endogenous level of anabolic steroids, in particular of 19-norandrostenedione and testosterone. The Panel considered that this uncertainty as to how the prohibited substance entered the Player's body makes it all the more difficult to find that the Player exercised any degree of caution in verifying that he was not taking any product that might contain a prohibited substance. In that relation and although the WADC is not directly applicable in this case, it is noteworthy that under the WADC a finding of no fault or negligence is not possible if an athlete has not proven how the prohibited substance entered his or her system. Indeed, under the WADC, establishing how a prohibited substance entered an athlete's system is a fundamental precondition to the defences of "no fault or negligence" or "no significant fault or negligence".¹ For all the above reasons, the Panel finds that the Respondents have failed to establish a case of no fault or negligence.

e. No significant fault or negligence

- 6.13 For the same reasons as the ones described here above, the Panel came to the conclusion that the Player did not prove that he bears no significant fault or negligence.

f. Period of suspension

- 6.14 The Player's representative indicated that the Player had left Qatar and had not played since the decision of the QFA Disciplinary Committee was communicated to him. However, no evidence was offered by the Respondents to establish this assertion or to prove that the Player intended to voluntarily impose a suspension on himself while awaiting a decision from CAS. Consequently and absent any specific FIFA regulation regarding the starting date of the period of suspension, the Panel considers it appropriate to credit against the total ineligibility period of two-years, the three-month suspension imposed by QFA Disciplinary Committee.

¹ See CAS 2006/A/1130 *WADA v. Stanic and Swiss Olympic*, at para. 39 ("Obviously this precondition is important and necessary otherwise an athlete's degree of diligence or absence of fault would be examined in relation to circumstances that are speculative and that could be partly or entirely made up.")

6.15 Accordingly, the Panel decides that the Player's two-year period of ineligibility shall run for 21 months starting from the date of the hearing, i.e 27 May 2008.

7. Costs

7.1 Art. R65 of the Code is in the following terms:

"R65 Disciplinary cases of an international nature ruled in appeal

R65.1 Subject to Articles R65.2 and R65.4, the proceedings shall be free.

The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by the CAS.

R65.2 Upon submission of the statement of appeal, the Appellant shall pay a minimum Court Office fee of Swiss francs 500.— without which the CAS shall not proceed and the appeal shall be deemed withdrawn. The CAS shall in any event keep this fee.

R65.3 The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties."

7.2 As this is a disciplinary case of an international nature brought by WADA, the proceedings will be free, except for the minimum Court Office Fee, already paid by WADA, which is retained by the CAS.

7.3 Having taken into account the outcome of the arbitration, the conduct and the financial resources of the parties, the Panel has determined that the QFA shall pay to WADA a contribution, in the amount of CHF 5,000 (five thousand Swiss Francs), towards the expenses incurred by WADA in connection with this arbitration proceeding.

7.4 Bearing in mind that the appeal proceeding is linked in part to differences of interpretation of the FIFA anti-doping regulations by WADA and the QFA Disciplinary Committee, the Panel considers that there should not be any cost consequences for the Player.

Tribunal Arbitral de Sport
Court of Arbitration for Sport

CAS 2007/A/1445 PAGE 18

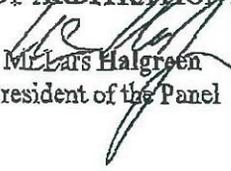
ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The World Anti-Doping Agency's appeal against the decision dated 7 June 2007 of the QFA Disciplinary Committee is upheld.
2. The decision issued by the Qatar Football Association Disciplinary Committee is set aside.
3. The Player, Mr. Ali Jumah A.A. Al-Mohadanni, is declared ineligible for a period of 21 months starting from the 27 May 2008.
4. All other motions or prayers for relief are dismissed.
5. This award is pronounced without costs, except for the court office fee of CHF 500 (five hundred Swiss francs) paid by WADA, which is retained by CAS.
6. The QFA is ordered to pay the amount of CHF 5,000 (five thousand Swiss Francs) as a contribution towards the expenses incurred by WADA with this arbitration proceeding.

Lausanne, 21 August 2008

THE COURT OF ARBITRATION FOR SPORT


Mr. Lars Halgreen
President of the Panel