



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1446 WADA v/ Qatar Football Association & Hamad Rakea Humood Alanezi

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, Doha, Qatar

Represented by Mr Ettore Mazzilli, Attorney-at-law, Doha, Qatar,

As 1st Respondent

and

Hamad Rakea Alanezi, Bahrein,

Represented by Mr Pierre Ochsner, Attorney-at-law, Geneva, Switzerland

As 2nd Respondent

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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 1970.
- 1.3 The football player Mr Hamad Rakea Alanezi (hereinafter "the Player") was born in Riffa, Bahrain, on 22 April 1984.

2. Facts

- 2.1 The Player signed an employment contract with the Qatari football club "Al-Arabi Sports Club" for the period from March 2007 to May 2007. In consideration for his work with the Al-Arabi Sports Club's first team, the Player received a total amount of 30,000 USD, another 30,000 USD being paid to a third party, namely the Al Refa Club from Bahrein.
- 2.2 On 1 April 2007, on the occasion of an in-competition test performed on an urine sample provided by the Player during a football game between Al-Arabi Sports Club and Al-Ahli 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.
- 2.3 In a letter dated 3 June 2007, the QFA notified the Player of the presence of a prohibited substance in his bodily specimen and explained that this was in violation "*of the Qatar Football Association Regulations and the Regulations Doping Control for FIFA competitions In and Out of Competitions [sic]. As consequence, you [the Player] could be seriously sanctioned by the competent judicial bodies in accordance with the above-mentioned Regulations.*" In the same letter, the QFA informed the Player of his right to request the analysis of the B-sample, as provided by the QFA and FIFA anti-doping rules. The Player did not request the analysis of the B-sample.
- 2.4 On 6 June 2007, the Player was questioned by the QFA General Secretary, Mr. Saud Al-Mohannadi, the QFA Medical Officer, Dr. Saadalla Mohamed Seemer and the QFA Legal Advisor, Mr. Ettore Mazzilli. During his examination, the Player declared that he had never in his life taken any substance to improve his physical ability or his sports performance and that he had not taken any medicine during the three days preceding the game in which he tested positive. However, he took medicine under medical prescription for about 45 days, from 15 January 2007 until the end of February 2007.

- 2.5 During the procedure before the QFA, the Player produced a medical report dated 14 March 2007 which had been issued by Prof. Dr. Med. Ziad Al-Naieb, an urologist at the Bahrain Specialist Hospital B.S.C.. According to this report, the Player was under Prof. Al-Naieb's care for a chronic prostatitis diagnosed 3 months before the certificate was issued. Consequently, he was daily given a low dose of Lomax 400, an antibiotic therapy, for 6 weeks and then another daily dose of Tavanic 250mg for another 6 weeks. In the meantime the Player started to complain about some sexual dysfunctions, which was a part of his post-prostatitis period. Therefore, Dr. Al-Naieb confirmed in his medical report that the Player was given a low dose of Proveron 25mg for one month. It was the Player's father who procured the medicine for him in Bahrain.
- 2.6 On 7 June 2007, at a hearing before the QFA Disciplinary Committee, the Player confirmed his statements made the previous day and emphasized once again that he had never taken any prohibited substance to improve his physical ability or sports performances.
- 2.7 During the hearing, Dr. Seemer declared that the medicine taken by the Player to cure his "prostate's disease" (Proveron 25 mg.) contained some prohibited substances and that, after a long period of treatments with such medicine, the level of testosterone in the blood as well as in the urine can be very high, even several weeks after the date of the last medical treatment.
- 2.8 On 7 June 2007, the Disciplinary Committee of the QFA decided not to pronounce any sanction against the Player.
- 2.9 The decision of the Disciplinary Committee of the QFA included the following reasoning 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 file. In particular, they took note of contents of the minutes related to the Player's questioning held on 6 June 2007, which was also fully confirmed by the same Player during the hearing of today. In particular, the Disciplinary Committee evaluated carefully that the Player was suffering from a "prostate's disease" and, in consequence of such sickness, of a sexual dysfunction. As consequence of the above, the Player took a medicine (Proveron 25 mg) that contains the prohibited substance in accordance with the prescription issued by his doctor. Such circumstance was officially and unquestionably attested by the "Medical Report" of the Prof. Al-Naieb on 14 March 2007.*

3. *In addition, the Disciplinary Committee took note of the reason why the Player, at the moment of the doping test concerned, did not inform the QFA Doping Control Doctor about his previous medical treatment to cure the aforesaid disease.*
4. *Equally, the Disciplinary Committee also took in due account the statement of Dr. Seemer, QFA Medical Official and Member of the QFA Doping Control Committee, who officially confirmed that after a long medical treatment with the medicine taken by the Player to cure his sickness (Proveron 25 mg.), the level of testosterone in the blood as well as in the urine can be very high, even several weeks later.*
5. *The Disciplinary Committee then concluded that the presence of the prohibited substance in the Player's urine was exclusively due to a therapeutic use exemption.*
6. *Finally, the Disciplinary Committee passed to evaluate the behaviour held by the Player and, in particular, the reason why, at the doping test concerned, he did not inform the Doping QFA Control Doctor about the medicine that he had taken. Also in this respect, the Disciplinary Committee concluded that the Player was entitled not to inform the QFA Doping Doctor of such circumstance, as the medicine in question was taken by the player for the last time more than 72 hours before the date of the doping test concerned. As consequence of the above, this specific Player's omission should be considered correct and legitimate.*
7. *In the view of all the above, the Disciplinary Committee considered that the Player did not commit any anti-doping rule violation and he therefore cannot be sanctioned as the presence of a prohibited substance in his urine sample was exclusively due to a specific as well as legitimate therapeutic use.*

III Decision of the Disciplinary Committee

1. *The Bahrain player Mr Hamad Rakea Humood Alanezi, Jersey no. 11 of Al-Arabi Sports Club, has not committed any anti-doping rule violation, as the presence of a prohibited substance in his urine sample was exclusively due to a specific as well as legitimate therapeutic use.*
 2. *As consequence of the above, the aforesaid Player is acquitted."*
- 2.10 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 eventually 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's governing body and a signatory of the 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 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 WADA stresses further that the 2007 QFA Statutes contain many references to the FIFA regulations and to the WADC. More specifically, article 2 par. 2 let. 1) 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 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 is of the opinion 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 provided under article 61 par. 1 of the 2006 and of the 2007 FIFA Statutes.
- 3.2.8 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 argues that the provisions of the WADC have in the present case to be construed in a manner that is consistent with Swiss law. It is thus WADA's opinion that Qatari law may 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.
- 3.2.9 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 the Player, 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 thus a violation by the Player of anti-doping rules are established.

- 3.2.10 Coming now 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.
- 3.2.11 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. WADA insists, however, on the fact that in the course of the procedure before the QFA Disciplinary Committee, the Player stated that he was suffering from a chronic "prostatitis" and that he had been prescribed Lomax 400 and Tavanic 250 by an urologist in Bahrain. This treatment seems legitimate to WADA for prostatitis. As these two products do not contain any prohibited substance, this treatment cannot, however, explain the presence of 19-norandrosterone in the Player's urine.
- 3.2.12 With respect to the Player's other statement according to which his urologist had given him a substance called "Proveron", supposed to treat an alleged erectile dysfunction; WADA acknowledges that impotence may effectively be a transitory consequence of prostatitis. However, according to WADA, Proveron is not a treatment recommended by the good medical practice to treat this pathology. WADA alleges that this substance is unknown within the international pharmacopoeia and it is not distributed through official pharmaceutical channel. Based on documents submitted with its appeal brief, WADA claims that Proveron is made available on the Internet and is promoted on websites which promote doping products and anabolic steroids.
- 3.2.13 Independently from the question of how the prohibited substance entered the Player's body and 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 as provided under articles 65 par. 3 of the FIFA Disciplinary Code and 10.5.1 of the WADC. WADA explains again that Proveron is not recommended by good medical practice to treat an

alleged impotence. However even if the Panel should accept that the substance was prescribed to the Player by a doctor, the Panel should consider that the Player should have immediately asked for a TUE, as Proveron contains a prohibited substance (Anabolic Agent). However, the Player did not establish that he had filed an application for a TUE in order to be authorized to use this product. Furthermore, WADA stresses that other efficient medications exist to treat impotence, which do not contain prohibited substances and, according to WADA, a TUE would therefore never have been granted. According to CAS case law, athletes are responsible for the choice of their medical personnel and the possible failure for a doctor to check the prescribed substance does not exclude the personal responsibility of the player in connection with prohibited substances (CAS OG 04/003 Edwards v. IAAF & USATF; CAS 2006/A/1133 WADA v. Stauber & Swiss Olympic; CAS 2005/A/951 Caftas v. ATP). In the present case, the Player did not establish that he took any precaution or made any inquiry to assess whether the substance "Proveron" was free from prohibited substances. He did not either demonstrate having informed his urologist that he was a professional football player, bound by a duty of care to avoid the ingestion of any prohibited substance, as required under art. II.1.1 of the FIFA Doping Control Regulations.

- 3.2.14 WADA considers that the Player did not establish that he bears no significant fault or negligence, as defined in the WADC. WADA stresses indeed again that (i) the Player's doctor who prescribed "Proveron" to the Player did not seem to be a specialist in sports medicine, that (iii) "Proveron" is not a treatment recommended by good medical practice to cure an alleged impotence, whereas other efficient medications exist, which do not contain any prohibited substance and that (iv) the Player did not mention on the doping control form or to the QFA doping control officer that he had taken the substance "Proveron".
- 3.2.15 WADA underlines that the Player did not establish having taken any precaution before consuming the substance "Proveron", notably when, according to WADA, a short search on the Internet immediately confirms that Proveron is not a recognized medicine, but is available on websites, which sell and promote anabolic steroids and doping substances. For all the foregoing reasons, WADA claims that the Player cannot be granted 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.
- 3.2.16 Accordingly, 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 these submissions, WADA made the following requests for relief:

"1. The Appeal of WADA is admissible.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1446-PAGE 9

2. *The decision of the QFA Disciplinary Committee dated June 7, 2007 in the matter of Mr. Hamad Rakea Humood Alanezi is set aside.*
3. *Mr. Hamad Rakea Humood Alanezi is sanctioned with a two-year suspension, starting on the date on which the CAS award enters into force.*
4. *Any period of suspension (whether imposed to or voluntarily accepted by Mr. Hamad Rakea Humood Alanezi) 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 (hereinafter together designated as "the Respondents") jointly replied through their, at that time, common representative, by means of an answer dated 7 March 2008, which can be summarized, in essence, as follows:

- 3.4.1 Based on the articles 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 the QFA Regulations valid for the football season 2006/2007 and only subsidiarily the FIFA statutes and its regulations that is to say the FIFA Disciplinary Code and the Doping Control Regulations.
- 3.4.2 The Respondents thus firmly contest the direct applicability of the WADC. The Respondents 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 General Assembly of the QFA.
- 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 With respect to the merits of the case, the Respondents emphasize the content of a new "Medical Report" by Prof. Dr. Med. Ziad Al-Naieb dated 24 February 2008, produced with their answer, by means of which, *inter alia*, the aforesaid specialist confirms his previous "Medical Report" dated 14 March 2007, adding some information related to the Player and the medical treatment prescribed to him. Dr. Al-Naieb confirms that the Player is still under his care for a "chronic prostatitis", which was diagnosed on 14 December 2006. Finally, this doctor attests that "Proveron" (or "Proviron") is a drug available upon medical prescription in the pharmacies of the Kingdom of Bahrain, which contradicts, according to the Respondents, WADA's assertions. As additional evidence, the Respondents produce a medical prescription of "Proveron 25mg" issued by Doctor Al-Naieb to the Player on 15 January 2007 as well as a copy of two receipts concerning the purchase of "Proveron" respectively issued by the Nasser Pharmacy in Bahrain on 24 February 2008 and the Diplomat Pharmacy in Qatar on 6 March 2008.
- 3.4.7 As to the question of whether Proveron is a treatment recommended by medical practice to treat impotence, the Respondents admit that it is not, due to the possible risk of generating a carcinoma of prostate, but they claim that it was for a long time the sole medicine to treat this sexual dysfunction until the substance "sildenafil citrate" - which is an active principle contained in some new medicine, notably Viagra, for treating impotence - was discovered. The Respondents note further that Proveron is still sold in all the pharmacies of the Middle-East.
- 3.4.8 The Respondents stress that the Qatar Football Association as well as the Qatar National Olympic Committee are proactively involved in the fight against doping. QFA has been one of the first football association to amend its Statutes expressly mentioning and recognizing WADA and its WADC. The Qatar National Olympic Committee recently launched an intense campaign against doping and collaborated intensively with WADA, declaring publicly its intention to build an anti-doping laboratory in Doha. A letter of intention was signed with WADA in this regard.
- 3.4.9 Coming back to the legal argumentation and based in particular on the new facts evidenced in their answer, the Respondents claim that article 65 ("Sanctions") par 2 and 3 of the FIFA Disciplinary Code is the first rule to be taken into consideration in the present case. According to the Respondents those provisions cannot be interpreted in a manner that is consistent with the WADC but must be interpreted literally *per se*.
- 3.4.10 Assessing whether the Player bears a significant fault or negligence, the

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1446-PAGE 11

Respondents claim that the Player had enquired whether the prescription contained prohibited substances and had received a negative answer. The Respondents claim further that Dr. Al-Naieb is not a doctor specialized in doping matter but is a qualified urologist specialist in the prostatitis affecting the Player. This doctor strongly recommended the Player this specific treatment saying that there was no reasonable and indicated therapeutic alternative. In this respect, the doctor then issued the medical report dated 14 March 2007 as mentioned by the QFA.

- 3.4.11 The Respondents further stress that when the Player was submitted to the doping test on 1 April 2007, he did not inform the officials in charge of the anti-doping test about his medical treatment with "Proveron", because he had already suspended it for one month, whereas it is only requested from a player to inform the officials about any medicine taken within the 72 hours preceding the game when the test occurs.
- 3.4.12 The Respondents point out that the information sheet contained in the "Proveron" box does not mention that such drug contains any prohibited substances included in the relevant list issued by the competent sports entities.
- 3.4.13 For the foregoing reasons, the Respondents claim that the Player bears no fault or negligence in the case in question and, must therefore not be considered as responsible of any doping offence in accordance with the FIFA regulations.
- 3.5 Based on the above submissions, The QFA and the Player made the following prayers for relief:

"I. To declare the Appeal filed by WADA on 21 December 2007 not admissible and/or that the CAS has not jurisdiction in this case, and consequently to fully confirm the decision of the QFA Disciplinary Committee dated 7 June 2007 in the matter of Mr. Hamad Rakea Humood Alanazi.

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 Proceeding., 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. Hamad Rakea Humood AI.

IV. For the effect of the above, the 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 Proceeding, including - without limitation - attorneys fees and expenses."

- 3.6 Without apparently advising his legal representative, the Player concomitantly filed an undated separate answer, sent on 6 March 2008 to CAS from the Swiss Consulate of Bahrein, which can be summarized as follows:
- 3.6.1 The Player repeats several arguments mentioned in his joint answer filed with the QFA, namely CAS' lack of jurisdiction and the allegation that the circumstances which lead to the positive result in the doping test prove that he did not have the intention to use a doping substance, that he thus bore no fault or negligence and should therefore not be sanctioned for having committed a doping offence.
- 3.6.2 The Player adds, however, in this separate answer some points related to the anti-doping procedure before the QFA, arguing that he has not seen the result of the analysis and that he has not waived his right to request the analysis of the B-sample. He alleges, without providing any supporting documentation, that the QFA knew before about his treatment and that he took the medicine at a time when he was not subject to the QFA regulations.
- 3.6.3 The Player claims further that he was not notified the decision in due time and that his separate answer should be considered as "*an appeal by the player against the QFA Disciplinary Committee's decision imposing a sanction against him or against any sanction that will be taken against him in the future*".
- 3.6.4 As a further submission, the Player explains that he took Proveron, when he was still an amateur player in Bahrein and claims that he was at that time not bound by the anti-doping rules of the QFA, since he was not registered with it.
- 3.6.5 Eventually, the Player requests a Therapeutic Use Exemption (TUE) in order to be allowed to use the medicine prescribed by his doctor.
- 3.7 On 12 March 2008, the previous counsel for the Player informed CAS that although the Player had not yet revoked his power of attorney, he would no longer be representing the Player; due to the conflict of interest arising from the separate answer of 6 March 2008, in which irregularities by the QFA in the anti-doping procedure were alleged by the Player
- 3.8 On 31 March 2008, CAS informed the parties that the Panel had decided that they were entitled to file an additional written submission limited to (i) the issue of jurisdiction, (ii) the status of the Player at the time of the anti-doping test and (iii) the further statement of Dr. Alain Garnier regarding the medication Proveron and the difference between Proveron and Proviron.

- 3.9 In a letter dated 10 April 2008, the QFA provided CAS with its additional written submission and confirmed regarding the status of the Player that he was a professional player at the time of the anti-doping test. The QFA relied on (i) the ITC issued by the QFA in favor of the Bahrain Football Federation where it is stated that the Player is transferred as a professional and on (ii) the employment agreement between the Player and Al-Arabi Sports Club, where it appears that the Player was paid 30,000 USD for his three-month employment. As to the question of jurisdiction, the QFA referred to its previous statements. It did not comment on Dr. Alain Garnier's written statement.
- 3.10 In its additional written statement dated 10 April 2008, WADA refers first to pages 8 and 9 of the answer lodged on 7 March 2008, where the Respondents state that the Player was registered by the QFA for Al-Arabi Sports Club on 8 March 2007 and that he therefore had to comply with the QFA Statutes and Regulations as well as the FIFA Statutes and regulations.
- 3.10.1 WADA is thus of the opinion that at least the QFA recognizes the application of the FIFA Statutes and regulations to itself and the football players affiliated to it, in particular the Player. WADA stresses further that article 61 of the FIFA Statutes is directly applicable to QFA. As member of FIFA, QFA is bound to comply with the FIFA Statutes (art.13 of the FIFA Statutes). WADA considers therefore that the FIFA Statutes, in particular article 61 of the FIFA Statutes providing for WADA's right of appeal against decisions rendered by members of FIFA in doping-related matters, are directly applicable to QFA and that there is no need for a further implementation of said rule by QFA for it to be applicable.
- 3.10.2 WADA stresses further that, according to CAS precedents and to the case law of the Swiss Federal Tribunal, a reference to statutes or regulations, which contain an arbitration clause can be interpreted as meaning that the parties have consented to such arbitration clause. Neither an explicit arbitration clause, nor a specific reference thereto is necessary. A global reference to a document that contains an arbitration clause in favour of CAS is a sufficient ground to establish CAS jurisdiction (CAS 2000/A/262 Roberts v. FIBA, Digest of CAS Awards II, p.377 ; Judgment of the Swiss Federal Tribunal of 7 February 2001, published in Digest of CAS Awards II, p.808, esp. p.812; Judgment of the Swiss Federal Tribunal of 16 October 2003, ATF 129 III 727, p.735, Exhibit 13).
- 3.10.3 WADA notes that the Swiss Federal Tribunal ruled that, in view of article 61 of the FIFA Statutes, any football player has to take into account that the decisions of his/her national sanctioning authority may be appealed by WADA before CAS (Swiss Federal Tribunal, judgment of 8 June 2007, 4A_17/2007, par.5). Article 61 of the FIFA Statutes is therefore to be construed as a customary arbitration clause for football players, providing for an appeal right of WADA to CAS in doping matters.
- 3.10.4 WADA refers further to other CAS precedents, namely CAS 2006/A/1153, Wada v. Assis and FPF nr. 31 et seq., where FPF Statutes contained a global

reference to the jurisdiction and arbitration provisions contained in the FIFA Statutes; CAS 2006/A/1102 & 1146, WADA v. Eder and Ski Austria, where Ski Austria's Order of Conduct contained a global reference to article 13.2.1 of the FIS Anti-Doping Rules and of the WADC.

- 3.10.5 On the issue raised by the QFA with regard to the various versions of article 61, WADA explains that WADA's right of appeal against decisions rendered by members of FIFA in doping matters is provided for under article 61 of the FIFA Statutes, both in the version in force until 31 July 2007 (art. 61 par. 5) and in the version in force as from 1 August 2007 (art. 61 par. 6). According to WADA, pursuant to both versions of article 61 of the FIFA Statutes, WADA is entitled to appeal against decisions rendered by FIFA members. In the present case, QFA notified WADA of the decision being appealed against on 2 December 2007 (see Exhibit 4 to QFA's Answer). WADA was therefore entitled to appeal this decision within 21 days as from this date. Based on the foregoing, WADA claims that the issue whether QFA had an obligation pursuant to the FIFA Statutes to notify WADA is irrelevant to determine whether WADA is entitled to appeal.
- 3.10.6 Regarding the status of the Player at the time of the anti-doping test, WADA notes that according to article 5 of the FIFA Regulations for the Status and Transfer of Players in force in 2007, "*a player must be registered with an Association to play for a club as either a Professional or an Amateur in accordance with the provisions of Art. 2. Only registered players are eligible to participate in Organised Football. By the act of registering, a player agrees to abide by the Statutes and regulations of FIFA, the confederations and the Associations.*" WADA deducts from the wording of article 5 of the FIFA Regulations for the Status and Transfer of Players that the Player was bound to comply with the FIFA Statutes and regulations, as well as with QFA regulations. WADA thus states that the Player was subject to FIFA (and QFA) anti-doping regulations, at the date of the doping control, namely 1 April 2007.
- 3.10.7 WADA adds that the QFA produced an ITC between the Bahrain Football Association, a member of FIFA, and the QFA, which proves that even before his transfer to QFA, the Player was bound to comply with FIFA Statutes and regulations, in particular FIFA anti-doping rules, as the player was already registered with a FIFA member.
- 3.10.8 Regarding the distinction between Proveron and Proviron, WADA filed a new statement of Dr. Alain Garnier regarding the substance Proveron, claiming that Proveron is an unknown substance within the international pharmacopeia. WADA explains that Proviron (mesterolone) is an androgenic steroid. WADA stresses that the substance found in the Player's bodily specimen (19-norandrosterone) is not a metabolite of mesterolone, which confirms, according to WADA, that the presence of 19-norandrosterone in the player's urine sample cannot be explained by Proviron intake.

- 3.10.9 WADA further argues that the various documents and explanations filed by both Respondents are contradictory and that it is impossible to know whether the player actually consumed the substance Proveron or Proviron. WADA also considers the medical "reports" unclear, if one compares for example the report of 14 March 2007 - which states that the Player was given Proveron 25mg as a low dose for one month - and the report dated 24 February 2008 in which, after repeating that the Player was given Proveron 25mg at a low dose twice a day for one month, the doctor then contradictorily states the Player "*was instructed to take the medicine for 6 weeks commencing on 15/01/2007*".
- 3.10.10 In support of its complementary submissions, WADA produced the following written statement of Dr. Olivier Rabin:

"Statement of Dr. Olivier Rabin

1. *My full name is DR. Olivier Paul Rabin. My address is the World Anti-Doping Agency 800 Place Victoria, Suite 1700, Montreal, Quebec H4Z 1B7, Canada.*
2. *I have been employed by the World Anti-Doping Agency (WADA) as its Science Director, since October 1, 2002. My qualifications include a PhD in pharmacology, toxicology and a degree in biomedical engineering. Before WADA, I was a principal investigator in fundamental research in the areas of neuropharmacology and neurotoxicology and I also supervised the development of new pharmacological agents for various neurological diseases.*
3. *The prescription of Lomax 400 (lomefloxacin) for 6 weeks and of Tavanic 250 (lomefloxacin) for 6 weeks seems to be a legitimate treatment for a prostatitis, as long as the diagnostic confirms the bacteriological cause.*
4. *Proviron (mesterolone) is an androgenic steroid (1 methyl-dihydrotestosterone) which is a derivative of DHT (dihydrotestosterone). It is a recognized medication, listed in the Martindale, sold in many countries. Proviron is reported to have androgenic and anabolic properties. Mesterolone is prescribed for the treatment of androgen deficiency or male infertility associated with hypogonadism. It is therefore a possible treatment for partial androgen deficiency in aging men (PADAM), which is allegedly the pathology of Mr. Alanezi. However, as mesterolone appears on the WADA Prohibited List (section S1-a), its use without a TUE is prohibited.*

However, and based on the scientific knowledge 19-norandrosterone

(19-NA) is not a metabolite of mesterolone which confirms that the presence of 19-NA in the urine Sample cannot be explained by Proviron intake.

Proveron is to our knowledge a substance unknown within the international pharmacopeia (cf Martindale) and which is not distributed by the official pharmaceutical channels. This substance appears to be available on internet and in particular on websites which promote doping.

5. Impotence could effectively be a transitory consequence of prostatitis. However, a treatment with mesterolone is certainly not the most appropriate treatment recommended by good medical practices. With regards to the allegation of impotence, several efficient medications, which do not contain prohibited substances in sport (for example tadalafil and sildenafil), exist to treat this pathology.

6. Regarding the properties of Proviron and its medical indications it is very unlikely that its use could result in impotence.

7. The anti-estrogenic properties of Proviron make it particularly useful for subjects using anabolic steroids in order to alleviate undesirable side-effects resulting from steroids abuse."

- 3.11 Based on the foregoing and in light of the facts relied on by the Respondents in their answers, WADA argues that the Player did not demonstrate how the prohibited substance entered his bodily system.
- 3.12 The Player also filed an additional written submission where he insists on the fact that he was informed of the QFA decision only "*when he received the memorandum submitted by the first respondent to the Court of Arbitration for Sport, which is dated March 7, 2008*". The Player explains further that he is now "*an amateur player holding a government job in the Government of Bahrain, and he is engaged in football as a hobby that he enjoys*." When joining the Qatari club Al Arabi Sports Club, the agreement was to sign an amateur contract. As to the distinction between "Proveron" and "Proviron", the Player claims that reference should be made to "Proveron" only. Any reference to "Proviron" must be considered as being the consequence of a typing mistake. The Player indicates that the answer filed on 7 March 2008 jointly with the QFA must be taken into consideration by CAS as "*the First Respondent's [QFA] defense pleadings serve the Second Respondent's high interests*" and confirms therefore the requests for relief contained therein.
- 3.13 A hearing was held on 28 May 2008. The Parties did not attend but were all represented, notably the Player who was represented by his own attorney. All parties approved the order of procedure, subject to the Respondents' maintaining their objection to CAS jurisdiction.

- 3.14 After the Player's new representative had confirmed at the beginning of the hearing that he had no further development to make on the issue of CAS jurisdiction, the Parties made full oral submissions, confirming their written submissions. The Player stressed that FIFA knew about the decision from 1 September 2007, and should have lodged an appeal immediately. The Player is thus of the opinion that the appeal filed by WADA is late, notably considering that article 61 par. 7 of the FIFA Statutes provides that the decision must be sent immediately. The Player concludes that CAS should reject the appeal under the principle of fairness.
- 3.15 The Panel then heard Mr. Alain Garnier who was called by WADA in his capacity as Medical Director of WADA. Dr. Alain Garnier therefore appeared as a representative of WADA and not as an independent witness.
- 3.16 Mr. Alain Garnier confirmed the content of the written statements filed by WADA with its appeal and further explained that Proviron cannot explain the presence of 19 norandrosterone in the Player's bodily sample. Mr. Alain Garnier explained that the Player could have been treated against impotence by going through the TUE procedure, which he obviously did not do. Dr. Garnier added that there exist more efficient and non prohibited alternatives to treat impotence. When requested by the Respondents to indicate what would be the best treatment for Padam, which the Player claimed to suffer from in his last submissions, Dr. Garnier explained that he could not confirm the Padam diagnosis but explained that mesterolone can be an appropriate treatment. This treatment cannot, however, explain the presence of 19-norandrosterone as this is not a metabolite of mesterolone. Norandrosterone is a metabolite of nandrolone, which can remain several months in the body, whereas mesterolone only stays a few weeks. Nandrolone is, however, useless for Padam. Dr. Alain Garnier also stated that Proviron can be useful to mask the markers of nandrolone.
- 3.17 The Panel then asked the QFA whether there existed a TUE procedure in Qatar. According to the QFA's representative, such a procedure existed under the supervision of Dr. Seemer and was now transferred to the Qatari National Olympic Committee. The Panel then asked if the Player was still playing football in competitions. The Player's representative confirmed at the hearing that the Player had left Qatar and had not played since the hearing before the QFA Disciplinary Committee.
- 3.18 During the oral pleadings, the Parties confirmed the legal arguments made in their previous written submissions, apart from the Player's representative additionally questioning WADA's right of appeal for the reason that it was not party to the procedure before the QFA Disciplinary Committee. Based on the answers provided by Dr. Alain Garnier at the hearing, the Player's representative argued further that it was difficult for the Player to know where the product had come from; that he had perhaps been contaminated through aliments and that there was therefore a doubt on the reasons for the positive result. The Player's representative confirmed, however, that it was not necessary to analyse the B sample.

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 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 (Federation 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 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 applicable to the present case. As to the submission of the Player that he was registered in Bahrein during the period when he was taking Proveron, the Panel notes that the Bahrein Football Federation is also a member of FIFA and that therefore the FIFA Regulations were already applicable to the Player at that time, as evidenced by the two ITCs delivered in 2007, which refer to FIFA.
- 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 The Player claims that WADA's right of appeal depends on it taking part in the procedure before the national federations. The Panel finds such claim to be contradicted by the system put in place by FIFA granting a right of appeal to WADA in its role as supervisory authority in doping matters. Indeed, according to the wording of article 61 of the 2006 FIFA Statutes, WADA has a right of appeal against any final decision on doping matters, without such right being subject to the participation of WADA at the lower instance.

5.4 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 by a letter dated 3 June 2007 and was first heard before a QFA panel 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 on his right to request it. During the proceedings and at the hearing before CAS, the B sample analysis was never requested. The QFA in the decision 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 Proveron, a medicine that was prescribed by his urologist.
- 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, a prohibited substance, in the Player's bodily sample constitutes a doping offence according to chapter II of the DCR and article 63 et seq. of the FDC.

c. Therapeutic justification

- 6.7 The QFA Disciplinary Committee justified the decision not to sanction the Player with the reason that he was suffering from impotence and that he had been prescribed a treatment with Proveron, in order to cure it. As this medicine was prescribed by his doctor and as the Player had claimed that he never intended to increase his sport performances, the QFA Disciplinary Committee considered that this was a case of therapeutic use exemption (hereinafter "TUE").
- 6.8 TUEs are subject to very specific procedures and conditions. In order to be granted a TUE, an athlete must prove that no other admissible treatment exists. He must provide a certificate, which shall prove in details why he needs the treatment. This certificate must be provided before any competition in order for the competent body to deliver a TUE certificate in advance. This procedure is standard among various sports, not only football, and is based on principles set by the WADC.
- 6.9 Article 64 DC implements this procedure for football and provides that "*the prohibited substance or treatment will be considered justifiable only if endorsed by the relevant*

body of FIFA". For FIFA competitions the TUED advisory group is responsible for granting TUEs under specific conditions mentioned in Appendix B of the DCR. The Panel notes that the principles are the same as for all other international or national federations namely:

- (i) the player must submit his application for a TUE several days before participating in an event;
 - (ii) the player must prove that he would experience a significant impairment to health if the prohibited substance or method were to be withheld in the course of treatment;
 - (iii) the therapeutic use would not enhance his performance,
 - (iv) there is no reasonable alternative;
 - (v) an application for a TUE will not be considered for retroactive approval except in case of emergency or due to exceptional circumstances, where there was insufficient time to submit the TUE application.
- 6.10 The QFA confirmed that it applied a similar procedure at the national level under the responsibility of the Qatar National Olympic Committee (QNOC). The Qatar Disciplinary Committee was thus clearly not the national competent body to issue a TUE. The Panel finds therefore that the QFA Disciplinary Committee was not in a position to grant a retroactive TUE and did actually not intend to formally do so.
- 6.11 The Player requested in his separate answer sent on 6 March 2008 that CAS grants him a TUE. Not being competent to grant TUE's, the Panel is bound to reject this request.

d. Sanctions

6.12 As the Player tested positive and was not under the benefit of a TUE, the Player is subject to the sanctions mentioned under article 65 FDC.

6.13 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 (...).”

6.14 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.

e. No fault or negligence

6.15 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, according to CAS case law, athletes are responsible for the choice of their medical personnel, and the possible failure of a doctor to verify the compatibility of the prescribed substance does not exclude the personal responsibility of the player in connection with the prohibited substances (CAS OG 04/003 *Edwards v. IAAF & USATF*; CAS 2006/A/1133 *WADA v. Stauber & Swiss Olympic*; CAS 2005/A/951 *Cañas v. ATP*).

6.16 In the present case, the Respondents allege that the Player asked his doctor whether there was any prohibited substance in the product and that the doctor strongly recommended the Player this specific treatment saying that there was no reasonable and indicated therapeutic alternative. However, the Respondents produced no convincing evidence to support such assertions and offered no evidence that the Player made any effort to verify either the doctor's knowledge of anti-doping requirements or the reliability of his answer. .

6.17 Furthermore, the Respondents have failed to provide any evidence that the ingestion of Proveron/Proviron caused the positive result of the anti-doping test, whereas the statements by Dr. Garnier and Dr. Rabin tend to indicate that according to scientific knowledge 19-norandrosterone (19-NA) is not a metabolite of mesterolone (Proviron) and therefore that the presence of 19-NA in the urine Sample cannot be explained by Proviron intake. The Panel considered that this big 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 medicine or any other 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.

f. No significant fault or negligence

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

6.19 According to CAS case law, there would be no significant fault from the Player if the anti-doping offence were caused by truly exceptional circumstances. The Panel refers in this regard to a recent case where CAS admitted that a cyclist did not bear a significant fault or negligence when he applied for a TUE for similar medical reasons as the ones alleged by the Player. This cyclist was granted a TUE by the official Olympic committee of his country. Several national officials confirmed to him that such TUE was valid for international competitions. It was however not the case and the cyclist was sanctioned for having tested positive in an UCI competition. CAS considered that the cyclist did not bear any significant fault or negligence because he applied for a TUE procedure, obtained the document and moreover did not rely on a team doctor, his personal doctor or any other person in his personal environment but on an independent and renowned expert in the fight against doping (CAS 2007/A/1356 Tomas Nose v/ Slovenian Cycling Federation).

6.20 In the present case, if one relies on the Player's own allegations, he definitely did not act in a comparable way since he neither consulted a specialist in anti-doping matters nor even considered applying for a TUE, and the doctor he consulted was not a sports-medical specialist. Thus, in view of all the circumstances of the present case, the Panel considers that the Player failed to establish a case of no significant fault or negligence and must be subject to a 2-year suspension for a first offence.

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.")

g. Amateur Player vs Professional Player

6.21 The Player claims in his separate answer that he is not subject to the FIFA anti-doping regulations due to allegedly benefitting from amateur status at the time of the facts. The Panel rejected this submission for two reasons. First, the Player was obviously playing in Qatar as a professional for he had signed a written contract and was being paid 10,000 USD per month, which is without any possible doubt above the threshold to be qualified as non-amateur player according to FIFA regulations notably article 2 of the Regulations for the Status and Transfer of Players which provides that "*a professional is a player who has a written contract with a club and is paid more than the expenses he effectively incurs in return for his footballing activity.*" Second, the FIFA regulations on doping apply to any player no matter what his status is. Indeed, neither the FDC nor the RDC make a distinction between amateur and professional players. As a player of the Bahrein and then the Qatar football federation, the Player was thus constantly subject to the FIFA anti-doping regulations.

h. Period of suspension

6.22 Since the Player was not sanctioned by Disciplinary Committee of the QFA, i.e. was not suffering from a suspension during the period when the QFA delayed notifying its decision to WADA, and absent any specific FIFA regulation regarding the starting date of the period of suspension, the Panel considers it appropriate that the period of ineligibility should begin to run on the date of the hearing, as is the general principle and practice with respect to doping sanctions under the WADC.

6.23 Consequently, the Panel decides that the Player's two-year suspension shall run from 28 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/1446-PAGE 27


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. Hamad Rakea Alanezi, is declared ineligible for a period of two years starting from 28 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 in connection with this arbitration proceeding.

Lausanne, 21 August 2008

THE COURT OF ARBITRATION FOR SPORT


Mr Lars Halgreen
President of the Panel