



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2017/A/5078 Roman Eremenko v. UEFA**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition

**President:** Mr Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy

**Arbitrators:** Mr Jeffrey G. Benz, Attorney-at-law, Los Angeles California, USA and  
London, United Kingdom  
Mr Ken E. Lalo, Attorney-at-law, Gan-Yoshiyya, Israel

between

**ROMAN EREMENKO**, Finland

Represented by Mr Mikhail Prokopets, Mr Yuri Zaitsev and Mr Georgi Gradev of SILA  
International Lawyers, Moscow, Russia

Appellant

and

**UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL**, Nyon, Switzerland

Represented by Dr Emilio Garcia, UEFA Managing Director Integrity, and Mr Carlos  
Schneider, UEFA Disciplinary Lawyer, Nyon, Switzerland

Respondent

## I. THE PARTIES

1. Roman Eremenko (the “Appellant” or the “Player”) is a professional football player of Finnish nationality, born on 19 March 1987. In the season 2016/2017, the Appellant was a player of PFC Central Sport Club of the Army, Moscow (Russia) (“CSKA Moskva”).
2. The Union des Associations Européennes de Football (the “Respondent” or “UEFA”) is the confederation governing the sport of football in Europe, and is based in Nyon, Switzerland. UEFA organizes, *inter alia*, club competitions at confederation’s level, which include the UEFA Champions League. In respect of such competitions, UEFA has the responsibility to conduct and manage anti-doping testing. To these ends, UEFA adopted the Anti-Doping Regulations (the “ADR”) to implement the provisions of the World Anti-Doping Code (the “WADC”) established by the World Anti-Doping Agency (“WADA”).
3. The Appellant and the Respondent are hereinafter referred to as the “Parties”.

## II. BACKGROUND FACTS

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 14 September 2016, following a match of the UEFA Champions League 2016/2017 between CSKA Moskva and Bayer Leverkusen, the Player underwent in Leverkusen (Germany) an in-competition doping control. In the doping control form the Player declared that he had received on 10 September 2016 an intramuscular injection of *Tramadol* for a “*thigh injury*”.
6. On 6 October 2016, the Player was notified that the results of the analysis of his A sample conducted by the Doping Control Laboratory of Seibersdorf, Austria (the “Laboratory”) had revealed the presence (the “AAF”) of metabolites of *Cocaine* (the “Substance”), a non-specified stimulant, prohibited in-competition under S6 of the list of prohibited substances and methods published by WADA for 2016 (the “Prohibited List”).
7. On 6 October 2016, the Control, Ethics and Disciplinary Body of UEFA (the “CEDB”) provisionally suspended the Player for 30 days in accordance with Article 42 of the UEFA Disciplinary Regulations and Article 16 of the ADR.
8. On 10 October 2016, the Player accepted the analytical findings and waived his right to request the opening and analysis of the B sample. At the same time, the Player informed UEFA that he accepted the provisional measure and did not wish that a hearing relating to his provisional suspension be held.

9. On 14 October 2016, UEFA opened disciplinary proceedings against the Player for an alleged doping offence and invited the Player to provide information about the ingestion of the Substance.
10. On 19 October 2016, the Player sent the information he was invited to submit regarding the circumstances of the ingestion of the Substance.
11. On 26 October 2016, UEFA forwarded to the Player the full documentation package relating to the AAF provided by the Laboratory. The documents therein contained indicated that the Substance and its metabolites had been detected in the Player's sample in the following concentrations:
  - Cocaine: 46.2 ng/ml
  - Benzoyllecgonine: 1322.1 ng/ml
  - Ecgonine Methylester: 139.5 ng/ml.
12. On 31 October 2016, a report dated 28 October 2016, prepared by Dr Martial Saugy, an expert appointed by UEFA, was submitted for the Player's consideration. In his report, Dr Saugy in essence came to the conclusion, in light of the concentrations found, (i) that *"the time between the intake and the urine test was certainly shorter than 24 hours"*, (ii) that *"it is highly improbable that the administration of smoked cocaine in the body occurred more than 24 hours before the test"*, and (iii) that he doubted that an injection of Tramadol 4 days before the test could have any effect on the excretion of Cocaine.
13. On 4 November 2016, the CEDB decided to extend for 15 days the provisional suspension imposed on the Player.
14. On 4 November 2016, Dr Arthur T. Kopylov, of the Institute of Biomedical Chemistry of the Russian Academy of Medical Sciences in Moscow, Russia, signed a *"scientific opinion"* concluding as follows (footnotes omitted):

*"... I have to admit that administration of cocaine cannot give any advantages to the athlete as well as cannot enhance his/her performance, due to short effect of cocaine upon single dose (up to 1 hour). Pharmacokinetics of cocaine is still highly complicated and cannot be described by simple one-compartment model. It was demonstrated by many researchers, that cocaine elimination is characterized by several phases including short and prolonged phases, when the last positive signal for some metabolites (BZE, EME) can be detected even in 164 hours after a single administration. Besides, ... close concentration of BZE and EME can be detected 2-3 hours after administration as well as 27-33 hours after administration. Rate and ration of cocaine's metabolites is route-dependent ... Apart from route dependence, obviously, concentration of metabolites is dose-dependent, and considering observed concentrations of cocaine metabolites in athlete's sample and research findings related to cocaine elimination, I would assume that COC was administered at dose about 250-30 mg for 4-6 days before sample collection and testing. Relatively high concentration of COC can be explained mainly by co-administration of tramadol (in dose of 100 mg) which significantly inhibits carrier-mediated transport of cocaine (but not BZE) which extends its retaining in the body system, unlike BZE. That can be a reason of the observed high concentration of both COC and BZE in the presented analysis"*.

15. On 9 November 2016, the Player submitted his position regarding the AAF.
16. On 10 November 2016, a hearing was held before the CEDB.
17. In his submissions before the CEDB, the Player contended that the Substance entered his body through unintentional ingestion. In essence, the Player declared that on 8 September 2016 he visited with his cousin and some friends a café in which they smoked “*hookahs*”. Some days after this event the police contacted the Player and informed him that the café was allegedly a place in which drugs are distributed. As a result, the Player submitted that *Cocaine* had entered his body by means of the “*hookahs*” he actively and passively smoked and that he did not know that the “*hookahs*” may have had any narcotics in it. Therefore, the Player could not have been aware of the fact that he ingested *Cocaine* (in the “crack” form). It was simply impossible for the Player, even when exercising the utmost caution, to know that by smoking an ordinary “*hookah*”, he could intake *Cocaine*.
18. On 11 November 2016, the CEDB decided to appoint Dr Detlef Thieme, director of the *Institut für Dopinganalytik und Sportbiochemie Dresden* in Kreischa, Germany, as an expert and requested him to answer a number of questions.
19. On 14 November 2016, Dr Thieme submitted his report, expressing his opinion that the Player’s description of events “*includes major discrepancies*” because:
  - “• *The administration route of inhalation of cocaine is rather unusual for unexperienced cocaine users aiming to socialize.*
  - *The proposed timing (i.e. administration 4-6 days before testing) does not match with the high concentration of benzoylecgonine and the detection of (any concentration of) cocaine. According to published data, the upper maximum of detecting high levels of benzoylecgonine (e.g. >300 ng/mL) in urine samples is 48 hours.*
  - *The detection of intact cocaine at the time of collection demonstrates the presence of relevant amounts of the biological active cocaine at the time of sample collection. This is not in accordance with a late stage of drug elimination and indicates potential performance enhancement”.*
20. On 17 November 2016, the Player submitted his written statements on Dr Thieme’s expert opinion.
21. On 17 November 2016, the CEDB issued a decision imposing on the Player a suspension “*from participating in any football related activity for a period of two (2) years*” (the “CEDB Decision”).
22. On 8 December 2016, the Player announced his intention to file an appeal against the CEDB Decision.
23. On 30 December 2016, the Appellant submitted the grounds for his appeal. In such submission, the Player admitted that he directly ingested the Substance, but that that he suffered from a *Cocaine* addiction as a consequence of a number of personal impairments, *i.e* a conflictive marriage situation deriving from a gambling problem.

This submission had attached, *inter alia*, the witness statements signed by the Player, by his wife, Mrs Marika Eremenko, and by Dr Fausto Tirelli, Sports Sciences Doctor and Mental Trainer.

24. On 13 January 2017, the UEFA Ethics and Disciplinary Inspector filed his reply to the appeal, requesting that it be rejected and the costs charged accordingly.
25. On 2 March 2017, a hearing was held before the UEFA Appeals Body (the “Appeals Body”).
26. On 2 March 2017, the Appeals Body issued a decision (the “Challenged Decision”) as follows:
  - “1. *The appeal lodged by the player Roman Eremenko is partially admitted. Consequently, the UEFA Control, Ethics and Disciplinary Body’s decision of 17 November 2016 is amended as follows:*
    - The CSKA Moskva player Roman Eremenko is suspended for a period of two (2) years.*
    - The costs of the proceedings, totalling € 5,000 (minus the appeal fee), are to be paid by the Appellant”.*
27. In the Challenged Decision, the Appeals Body, preliminarily, decided to admit in the file of the proceedings the documents lodged, and the deposition of a witness (Mr Marco Trabucchi, the Player’s agent) on the basis of a summary of his expected testimony submitted by the Player (on 22 February 2017), at a late stage of the proceedings before it.
28. The Appeals Body, then, considered the merits of the case. It first noted that the Player, who before the CEDB had claimed that the AAF was the consequence of an inadvertent intake of *Cocaine* by means of contaminated “*hookahs*” (pipe) when he was celebrating his cousin’s birthday, before the Appeals Body had recognized his addiction to *Cocaine* and invoked a difficult personal context and other factors to mitigate the original sanction. In continuation, the Appeals Panel addressed the various legal questions raised by the Player’s case as follows:
  - i. *Is the anti-doping violation established?* The Player did not contest the AAF and declared before the UEFA disciplinary bodies that he had no reasonable doubts as to the qualifications or authority of the doping control officer who collected the sample, the sample collection procedure and the custody and transmission of the sample. Consequently, since the doping infringement was admitted by the Player and there was no element in the file which would contradict this conclusion, the anti-doping violation was considered to be established.
  - ii. *Is it established how and when the prohibited substance entered the Player’s body?* The Appeals Body first noted that the Parties agreed on the fact that the Player had directly taken the Substance out of the 24 hours established to consider the intake as “in-competition”. However, with regard to the identification of the exact date of the intake, the Appeals Body agreed with the CEDB’s conclusions: the date proposed by the Player (the night of 11 September 2016, *i.e* almost 68 hours before the doping control) was not scientifically justified. As indicated by

Dr Thieme, the upper maximum level of concentration of *Benzoyllecgonine* higher than 300 ng/ml is of 48 hours, while the Player's concentration was 1322 ng/ml. As a result, the Appeals Body came to the conclusion that the Player had ingested *Cocaine* most probably the night before travelling to Germany. On the basis of this finding, the Appeals Body held that the Player could enjoy the presumption set by Article 10.2.3 WADA Code, *i.e.* non-intentional use of the prohibited substance, and was subject to a maximum sanction of two years.

- iii. *Is there a significant fault or negligence of the Player?* Preliminarily, the Appeals Body noted that the Player relied on the idea that the use of a recreational drug, such as *Cocaine*, in a context unrelated to sport, excluded the existence of significant fault or negligence. In this regard, the Player quoted *inter alia* the award in CAS 2016/A/4416, *FIFA v/ CONMEBOL & Fernandez* (the “*Fernandez*” award). According to the Appeals Body, however, the CAS case law does not support the conclusion that in this context there is never a significant fault or negligence: in those cases where a recreational drug is used in a context unrelated to sport, CAS only held that an athlete can claim a reduction of the standard sanction after an evaluation of his/her fault or negligence. Consequently, the fact that the Appeals Body concluded that the use of the Substance was unrelated to sport, did not mean *per se* that the Player presented no significant fault or negligence. Turning to the fault or negligence of the Player,
- the Appeals Body stated there can be no doubt that the utmost caution required for finding “*no fault or negligence*” is incompatible with an athlete who deliberately and intentionally ingests a substance that is prohibited in-competition. Consequently, and having in mind also the high concentration found in his sample, the Appeals Body concluded that the Player bore negligence and fault, the level of which had to be measured;
  - in order to measure the level of fault or negligence, the Appeals Body followed the approach suggested by CAS precedents (CAS 2013/A/3327 and CAS 2015/A/3876) and considered the relevant objective and subjective elements:
    - √ with regard to the relevant objective elements, the Appeals Body underlined that the time passed between the last ingestion of the Substance and the doping control was approximately of 48 hours, in the best of scenarios for the Player. However, even accepting the date proposed by the Player, the presence of an extraordinarily high concentration of *Cocaine* metabolites in the urine sample does not speak for a diligent attitude of the Player, since it is reasonable to believe that the higher the concentration in the urine, the less cautious the Player was to avoid the finding of an anti-doping rule violation. Having that in mind, the quantity of *Cocaine* ingested to obtain the result of 1322 ng/ml in 72 hours is definitely shocking and evidences an irresponsible attitude by the Player, which can only be deemed as within the “normal to significant” degree of fault. Consequently, the potential period of suspension in the case at hand would range between 18-24 months;
    - √ with regard to the relevant subjective elements (*i.e.*, to what could have been expected from the Player, in light of his personal

capacities), the Appeals Body found that there are four factors speaking for a significant degree of fault:

- the Player is an experienced player who played professionally in different countries and, before having been suspended by UEFA, was the captain of his national team. Consequently, the level of his experience and seniority is well established;
  - there were no language or environmental problems encountered by the Player in understanding that the use of *Cocaine* is wrong in general terms, and, certainly even worse for a person performing as a professional athlete;
  - as an experienced and international, the Player had certainly access to a large number of educational programs connected to these competitions;
  - the Player had a high degree of knowledge of the Substance, mainly with regard to “*cooling-off*” period and its excretion period, and knew that it was prohibited;
  - the arguments deriving from an alleged personal impairment of the Player (marriage conflicts, depression, addiction, social context, absence of prior incidents) cannot be accepted;
- on such basis, it could be concluded that the subjective level of negligence was not negligible. Consequently, the sanction of two years (24 months) imposed by the CEDB could not be reduced in accordance with the conditions contemplated in Article 10.2(b) ADR.

iv. *Is the sanction proper and proportionate?* The Appeals Body noted that the Player relied mainly on two factors in support of his request that the sanction be mitigated on the basis of a proportionality factor: the possible participation of the Player in the FIFA World Cup 2018 and the impact of a two year ban on his professional career and the possibility to transfer from one club to another. However, the Appeals Body found that the Player’s assertions could not be accepted: the logical consequence of a disciplinary suspension is to exclude an athlete from competitions during the period of ineligibility, including from the participation in any international event such as the FIFA World Cup; in addition, the Appellant could be employed and registered by a club before the end of his suspension. In any case, the CEDB neither abused nor exceeded its broad powers of discretion: its decision complied with the UEFA Statutes, rules and regulations and with the principle of proportionality.

29. In summary, the measure of the sanction imposed by the CEDB had to be confirmed. However, the Appeals Body agreed with the Player that the wording used in the dispositive part of CEDB Decision was confusing, since the ADR do not contemplate a suspension “*from any football related activity*”, but rather a suspension with a specific status described at Article 15 ADR. The decision of the CEDB was to be modified accordingly to clarify the point.

### III. THE PROCEEDINGS BEFORE THE CAS

30. On 13 April 2017, pursuant to Article R47 of the Code of Sports-related Arbitration (the

“Code”), the Player filed a statement of appeal with the CAS against the Challenged Decision.

31. The statement of appeal contained, *inter alia*, the appointment of Mr Jeffrey G. Benz as an arbitrator. In addition, the Appellant requested that the arbitration be expedited.
32. On 18 April 2017, the Respondent agreed to an expedited procedure and appointed Mr Ken Lalo as an arbitrator.
33. On 20 April 2017, the CAS Court Office, noting the agreement of the Parties, suggested a calendar for an expedited procedure.
34. On 20 April 2017, UEFA informed the CAS Court Office of an agreed calendar for the conduct of the arbitration.
35. On 21 April 2017, the Appellant filed his appeal brief pursuant to Article R51 of the Code.
36. On 11 May 2017, pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel appointed to hear the dispute between the Parties was constituted as follows: Professor Luigi Fumagalli, President; Mr Jeffrey G. Benz and Mr Ken Lalo, Arbitrators.
37. On 24 May 2017, the Respondent lodged its answer to the appeal, pursuant to Article R55 of the Code.
38. On 31 May 2017, the Parties were advised by the CAS Court Office that the hearing would be held on 11 July 2017.
39. On 31 May 2017, the CAS Court Office issued on behalf of the President of the Panel an order of procedure (the “Order of Procedure”), which was accepted and signed by the Parties.
40. On 11 July 2017, a hearing was held in Lausanne. The Panel was assisted by Mr William Sternheimer, CAS Deputy Secretary General. The following persons attended the hearing for the Parties:
  - i. for the Appellant: Mr Georgi Gradev and Mr Mikhail Prokopets, counsel, Mr Marco Trabucchi and Mr Tommaso Casimirri, observers, as well as the Appellant himself;
  - ii. for the Respondent: Mr Emilio Garcia Silvero, UEFA Managing Director Integrity, Mr Carlos Schneider, UEFA Disciplinary Lawyer, Mr Axel Brunk, UEFA Disciplinary Researcher, and Mr Luca Tarzia, external counsel.
41. At the opening of the hearing, both Parties confirmed that they had no objection to the appointment of the Panel. The Panel, thereafter, heard opening statements by counsel as well as declarations from Mrs Marika Eremenko, Dr Fausto Tirelli, Dr Detlef Thieme and the Player. Any witness, who had submitted a witness statement before the UEFA



disciplinary bodies, confirmed such statement.

42. The contents of the respective statements can be summarised as follows:<sup>1</sup>

- i. the Player, after an explanation of the difficult period he had gone through in the relations with his wife, declared that:
  - his problems with gambling started in 2008/2009, on the eve of a vacation in Spain (Costa del Sol), when he lost the entire amount allocated for the holiday, and had to borrow money from his mother-in-law to go on vacation. He then gambled on the Internet, by using the credit card account of his wife. In December 2015 he lost a lot of money in a casino in Finland. However, he did not have to go through a rehabilitation process for gambling addiction;
  - he used the Substance on 11 September 2016, and not on 12 September 2016, when he stayed in a Moscow airport hotel with his mother, even though not sharing the same room;
  - he did not use *Cocaine* to improve his sporting performances: in fact, the day after a use he was feeling bad and could not even train properly;
  - he started to use *Cocaine* in February 2016 in Marbella, Spain, and after March/April 2016 he became a regular user, by taking it first once a week, although not every week, and then in July 2016 reaching the quantity of 1 or 2 doses of 2g almost every week. During this period he never had to undergo a doping control. After the positive test, he started a rehabilitation process. He now lives with his family and is tightly controlled: for instance, he does not even own a mobile phone;
  - when he was requested to undergo the doping control on 14 September 2016 he understood he was going to test positive. He therefore informed the doctor of his club of his *Cocaine* problem, even before providing the sample. The following day, at the club's training centre, he had a meeting with the club's staff, where he was "offered" the fake story he used in the proceedings before the CEDB. At that time, he was too ashamed and feeling guilty to reject such a proposal, which he therefore accepted;
  - he was aware that *Cocaine* requires a "cooling-off" period of 3 to 4 days because he had made some Internet research on the matter;
  - he never received a medical diagnosis of being a *Cocaine* addict, was never hospitalized as a result, did not undergo rehabilitation in order to stop using *Cocaine* and immediately stopped using it on his own accord after the "shock" of the positive test result;
  - as a result of his use of *Cocaine* he became "reckless" and did not think about the consequences of its behaviour;
- ii. Mrs Eremenko, the wife of the Player, with the Player outside of the room for her testimony, confirmed the difficulties she encountered with her husband as a result of his problems with gambling, which started when, the night before leaving to

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<sup>1</sup> The summary which follows intends to give an indication of only a few points touched at the hearing. The Panel, in fact, considered the entirety of the declarations rendered at the hearing and/or contained in the relevant witness statements filed for the purposes of this arbitration.

Spain, he lost all their vacation money in a casino. In addition, she felt badly when the Player did not attend the birth of their third son, notwithstanding the promise he had made, because he had to play a football match. She then learnt about the Player's problem with *Cocaine* when she was informed, in October 2016, of the positive test. Such event caused a new marital crisis, at a time the relations were improving. She now knows that the Player is clean, because she controls him tightly. Finally, she confirmed that football is everything in the life of her husband;

- iii. Dr Tirelli confirmed his qualifications and experience as a doctor in sport sciences and a mental trainer combining practices from Eastern and Western traditions. However, not being a doctor in medicine, he does not treat mental disease or pathological conditions from a medical point of view. He was first contacted by the Player in mid-October 2016: a first meeting was then arranged, and on that occasion the Player had an interview for 3 hours with a psychologist, Dr Cecilia Fantappiè. In total, he met the Player face-to-face on 4 occasions. Purpose of his activity was to give the Player a positive view of his life, and not to treat *Cocaine* or gambling addictions. Overall, his idea is that the Player needs only to go back to his work;
- iv. Dr Thieme offered explanations with regard to the retention time for *Cocaine* and its metabolites, and chiefly *Benzoyllecgonine*. At the same time, he confirmed that *Benzoyllecgonine* is not biologically active. He then indicated that 46 ng/ml of *Cocaine* is “analytically” a low concentration, but corresponds to an amount “biologically” significant. Finally, he declared that the explanation as to the timing of intake of *Cocaine* given by the Player (a recreational user) is not credible, in light of the concentrations found: in his opinion, in fact, such concentrations show that the intake could not have occurred longer than 48 hours before the sample collection and that *Cocaine* was most probably ingested closer to 24 hours before the sample collection.

43. At the conclusion of the hearing, after concluding pleadings by counsel and a final declaration of the Player, the Parties expressly stated that their rights to be heard and to be treated equally in the proceedings had been fully respected.

#### **IV. THE POSITION OF THE PARTIES**

44. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Appellant and the Respondent. The Panel has nonetheless carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

##### **A. The Position of the Appellant**

45. In his appeal brief the Appellant requested this Panel:
  - “1. To set aside and annul the entire decision passed on 2 March 2017 by the UEFA Appeals Body.
  2. To rule that Roman Eremenko is suspended for a period of twelve (12) months; or, alternatively, for a period to be determined at the discretion of the Panel, but,

*in any event, not exceeding eighteen (18) months, commencing on 14 September 2016; or, alternatively, on 6 October 2016.*

3. *To order UEFA to reimburse Roman Eremenko for the EUR 1,000 fee paid in relation to the appeal procedure before the UEFA Appeals Body.*
  4. *To order UEFA to bear all the costs incurred with the present procedure as well as with the procedure before the UEFA Appeals Body (EUR 5,000).*
  5. *To order UEFA to pay Roman Eremenko a contribution towards his legal and other costs, in an amount to be determined at the discretion of the Panel”.*
46. At the hearing, however, the Appellant advanced, in his final pleadings, a new request for relief, seeking the entire setting aside of the Challenged Decision, with no sanction imposed on the Player. In the Appellant’s opinion, in fact, no anti-doping rule violation could be established, since the presence of the metabolites of *Cocaine* (such as *Benzoyllecgonine*), not expressly mentioned in the Prohibited List (unlike the metabolites of other prohibited substances), does not constitute an anti-doping rule violation. In addition, *Cocaine* could not be (and in fact was not) reported, because the concentration found (46.2 ng/ml) was below the concentration of 50 ng/ml, corresponding to 50% of the Minimum Required Performance Level (the “MRPL”) of 100 ng/ml set by Section 4.0 of the WADA Technical Document TD2015MRPL on Minimum Required Performance Levels for the Detection and Identification of Non-threshold Substances in force since 1 September 2015 (the “TD2015MRPL”) for *Stimulants* prohibited in-competition only (such as *Cocaine*). At the same time, the Appellant maintains that such new claim is admissible pursuant to Article R56 of the Code on the basis of “*exceptional circumstances*”, consisting of the declarations at the hearing of Dr Thieme, who confirmed that *Benzoyllecgonine* is not biologically active. Such circumstance, *inter alia*, explains why the metabolites of *Cocaine* are not mentioned in the Prohibited List.
47. The Appellant in any case submits that the Challenged Decision “*contains numerous flawed contentions ... which led the UEFA Appeals Body to take an erroneous decision on the merits*”. The Appellant’s contentions in that regard can be summarized as follows:
- i. the anti-doping rule violation at stake constitutes the Player’s first violation and the Player promptly admitted it, when he was confronted with the AAF and did not request the B-sample analysis;
  - ii. the Player ingested the Substance out-of-competition and in a context unrelated to sport: the Appellant submits that the Parties agree on the point. Indeed, the Player explains the reasons (chiefly a family conflict) and the circumstances in which he became an addict to *Cocaine*, as well as frequency (1 or 2 times a week) and dosage (2g each time) of his regular use. In addition, he specifies that the last time he ingested *Cocaine* before the doping control (of 14 September 2016) was late in the night of 11 September 2016 at his club’s training centre. There is no issue regarding the admissibility of the Player’s submission regarding the circumstances of his ingestion of the Substance: the CAS proceedings are *de novo* (Article R57 of the Code) and the Player is not bound by his submissions before the UEFA disciplinary bodies. On such basis, his violation was “*not intentional*” in the sense of the ADR, and the starting point for the determination of the period

- of suspension should be 2 years;
- iii. the violation was committed with “*no significant fault or negligence*”, considering the analogy between *Cannabinoids* and *Cocaine* for the purposes of the ADR and the use of the Substance in a context unrelated to sport. Therefore, the Player would qualify, along the principles stated by CAS in *Fernandez*, to a fault-related reduction of the sanction, to one half of the standard sanction of 2 years, *i.e.* to a sanction of 1 year. The Respondent’s position is in that regard contradictory and corresponds to a violation of the prohibition of *venire contra factum proprium*: it is not possible to agree that the Player used the Substance in a context unrelated to sport with respect to the issue of intent, and claim that the use of the Substance had taken place in a context related to sport when the Player’s “*no significant fault or negligence*” is reviewed. In addition, the Challenged Decision erroneously referred to the expert opinions, which considered a situation of smoking (not intranasal) administration, and did not take into account the Appellant’s excessive long-term usage, which leads to longer detection intervals, where it found that the use of the Substance was close to the moment in which it would have been considered in-competition;
- iv. balancing the objective and subjective aspects, the Player’s case is one of light degree of fault. The Player had no intention to gain an advantage towards his competitors, and his failure to make sure that the Substance was fully excreted at the time of the match can be considered as mild in comparison with a player who uses prohibited substances in order to gain such advantage. More specifically, the following should be noted:
- the Player had used the Substance over a period of time without any incident,
  - the Player found himself in a difficult psychological and family situation,
  - the Player ingested *Cocaine* nearly 72 hours before the match, taking precaution to observe a “*cooling-off*” period. However, the detection window was influenced by his regular use of *Cocaine* for a significant period and in considerable doses. Contrary to the UEFA’s opinion, the levels of *Cocaine* and of its metabolites found in the Player’s sample are “*very low*” and consistent with such submission. In addition, the presence of *Cocaine* should not have been (as it was not originally) reported, because it was found in a concentration lower than 50% of the MRPL, and as such cannot be considered for any purposes. At the same time, the concept of the necessary respect of a “*cooling-off*” period is disputable, because by definition in every case in which an adverse analytical finding is reported a “*cooling-off*” period was not fully observed (otherwise the test would be negative) and still the issue of “*no significant fault or negligence*” is to be discussed;
  - the Substance is prohibited in-competition only,
  - the Player’s case is not about an athlete who cheats,
  - the Player never received guidance with respect to doping from his club;
- v. thus, a period of suspension at the minimum threshold of 12 months would be appropriate. Alternatively, such period should not exceed 18 months (*e.g.*, 15 months), along a “*tendency in similar cases*”;

- vi. the commencement of the period of suspension should be established as from the date of the sample collection, *i.e.* 14 September 2016, or, alternatively, as from the date of the Appellant's provisional suspension, *i.e.* 6 October 2016.

## **B. The Position of the Respondent**

48. In its answer to the appeal, the Respondent requested the Panel to issue an award:

“i) *Dismissing Mr. Eremenko's prayers for relief.*

ii) *Confirming the decision under appeal”.*

49. At the same time, the Respondent indicated, with regard to the Respondent's costs, that:

*“bearing in mind that UEFA has more financial resources than the Appellant, the Respondent considers that no contribution towards the legal fees and other expenses incurred by UEFA in connection with these proceedings must be paid by Appellant regardless of the outcome”.*

50. Preliminarily, the Respondent at the hearing challenged the admissibility of the new claim raised in the final pleadings by the Appellant: in the Respondent's opinion no “*exceptional circumstances*” were given allowing, under Article R56 of the Code, such late submission. In any case, the new claim is without merit, since under Article 2.01 of the ADR the presence of a prohibited substance or of its metabolites or markers in a player's sample constitutes an anti-doping rule violation. Therefore, the simple finding of *Benzoyllecgonine* in the sample provided by the Player constitutes a violation.

51. UEFA in addition submits that there are no reasons to impose on the Player a reduced sanction for “*no significant fault or negligence*”, as requested in these appeal proceedings. According to UEFA, the Player's fault was significant, because:

- i. he knew that *Cocaine* is a prohibited substance;
- ii. he acted recklessly and took *Cocaine* without respecting a reasonable “*cooling-off*” period before returning to competition;
- iii. the quantities of *Cocaine* and its metabolites found in the Player's sample are substantial;
- iv. the Player was aware of the nature and effects of his actions and in fact, immediately after the test, anticipating its outcome and informed his club that he had taken *Cocaine*.

52. The Respondent's answers to the “*legal arguments*” of the Player can be summarized as follows:

- i. the Player's credibility is seriously put into question because of the different versions he offered throughout the proceedings of the circumstances of the intake of the Substance: before the CEDB, the Player offered an explanation (inadvertent ingestion) which he later admitted to amounting to a lie, just to adopt a position, unsupported by evidence, in order to match the factual circumstances at the basis of some CAS precedents, and chiefly the *Fernandez* award. In addition, before this Panel the gambling addiction, the depression and the addiction to *Cocaine*

nearly disappeared, and focus is put on a self-constructed theory of respect of a “cooling-off” period of 3 days;

- ii. the UEFA disciplinary bodies “generously” accepted to consider the Player’s violation as non intentional. As a result, the Respondent does not dispute the finding that, in terms of the intention to commit the anti-doping rule violation, the intake of *Cocaine* could be presumed as having occurred in a context unrelated to sport. However, UEFA does not believe that the ingestion of *Cocaine* did not have any relation at all with the Player’s sporting performance. The Player’s declarations show in fact that the sporting component played an important role in his decision to use *Cocaine*, at least in a way to confront his bad performances;
- iii. as to the Player’s fault or negligence, the Respondent is not willing to accept that the approach to *Cocaine* should be distinguished from the approach to all other prohibited substances, and that the Player’s lack of significant fault is demonstrated by the simple showing that the context in which he used the Substance was unrelated to sport. In that regard, UEFA submits that the Player’s fault was significant and warranted the sanction imposed by the Challenged Decision. In fact, the Player’s assertions in these proceedings are “misleading and unfounded”, since:
  - the circumstances of this case do not match any other previous case dealt with by CAS (with respect to football or other sports) or the decisions issued by adjudicating bodies of international federations referred to by the Appellant;
  - the Appellant failed to refer the award rendered in CAS 2015/A/4200, Radjev v/ FINA, in which a sanction of 2 years was imposed for the use of *Cocaine*;
  - no “cooling-off” period was respected by the Player:
    - √ the concentrations found in his urine match better with an intake closer to the in-competition period, *i.e.* around 24 hours, than with the 72 hours prior intake argued by the Player,
    - √ this scientific conclusion fits perfectly with the argument that a 50 ng/ml concentration of intact *Cocaine* demonstrates an intake within the 24 hours before the doping control. It is recalled that the concentration found in the Player’s sample was 46 ng/ml of *Cocaine*,
    - √ the combined presence of *Cocaine* and *Benzoyllecgonine* in high concentrations strengthens the conclusion that the intake was rather close to the doping control and is completely unrealistic assuming an ingestion 72 hours prior to the match,
    - √ the combined presence of *Cocaine* and *Benzoyllecgonine* is also relevant in this case, when it is considered that in none of the CAS awards or decisions quoted by the Appellant the presence of both compounds was found in the samples of the athletes: in those cases only the presence of the metabolite was detected;
  - the personal difficulties of the Player did not impair the Player’s control over his life and his ability to steer it:
    - √ there is no reliable, medical or psychological evidence, submitted by the Player, that would support the self-diagnosis he offered that he

- suffered from three different medical sicknesses: a gambling addiction, a depression and an addiction to *Cocaine*,
- √ based on the information made available, the circumstances portrayed by the Player are not as severe as he intends to demonstrate,
  - √ the Appellant admits that he was reckless and he did not care about any possible negative consequence of his consumption of *Cocaine*;
- iv. the sanction imposed by the Appeals Body is proportionate.
53. In summary, there are no reasons that support the appeal of the Player, which is totally “*unfounded*” and should be rejected. Accordingly, the Challenged Decision is to be confirmed because:

- *The Player has not managed to demonstrate by any means that he took any particular precautions or respected a particular long "cooling off" period.*
- *He has also not proven the existence of any personal impairment reducing his capacity of control over or to steer his private life.*
- *In particular he has not provided any reliable expert evidence of those mental disorders allegedly suffered before and during the time he consumed cocaine, i.e. gambling addiction, depression and cocaine addiction.*
- *The personal context lived by the Player is and was a normal frame, with a supportive family and a constantly improving sporting performance.*
- *The Player admittedly managed to keep the consumption of cocaine within certain limits and in secret. He never suffered from any withdrawal syndrome or anything similar neither during the time he used cocaine nor after deciding to stop consuming it.*
- *The Player recognised he had been sloppy, reckless and didn't care about the consequences of using cocaine, which he thought was an in- and out-prohibited substance”.*

## V. JURISDICTION

54. CAS has jurisdiction to decide the present dispute.
55. In fact, the jurisdiction of CAS is accepted by the Respondent, is confirmed by the Order of Procedure, signed by the Parties without any reservation, and is contemplated by Article 62 of the UEFA Statutes and by Article 17 of the ADR. No objections were filed to the Panel's jurisdiction, despite the invitation to do so at the hearing by the Panel.

## VI. ADMISSIBILITY

56. The statement of appeal was filed within the deadline set in Article 17.5 of the ADR and complied with the requirements of Articles R48 and R64.1 of the Code, including the payment of the CAS Court Office fee. The admissibility of the appeal is not challenged by the Respondent. Accordingly, the appeal is admissible.
57. At the hearing, the Appellant raised a new claim, seeking the setting aside of the

Challenged Decision, with no sanction imposed on the Player. The admissibility of such claim is disputed by the Respondent, which sees no “*exceptional circumstances*” under Article R56 of the Code for its submission. This point will be considered in the legal discussion which follows.

## VII. SCOPE OF THE PANEL’S REVIEW

58. According to Article R57 of the Code,

*“the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. ...”.*

## VIII. APPLICABLE LAW

59. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

60. Article R58 of the Code provides the following:

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

61. In the present case the “*applicable regulations*” for the purposes of Article R58 of the Code are, indisputably, those contained in the UEFA rules because the appeal is directed against decisions issued by the Appeals Body, which was passed applying the ADR.

62. As a result, ADR shall apply primarily. Swiss law, being the law of the country in which UEFA is domiciled, applies subsidiarily.

63. The provision of the ADR which are relevant in this case are the following:

### **Article 2 “Anti-doping rule violations”**

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

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

### **Article 9 “First violations and increasing suspensions”**

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

*The period of suspension for a first violation under paragraph 2.01a (presence of a prohibited substance or its metabolites or markers), 2.01b (use or attempted use of a prohibited substance or prohibited method) or 2.01f (possession of a prohibited substance or prohibited method) is as*



*follows, subject to any reduction or suspension of this period pursuant to paragraph 10.01, 10.02 or 10.03.*

- a) *The period of suspension is four years if:
  - i) *the anti-doping rule violation does not involve a specified substance (unless the player or other person can establish that it was not intentional); or*
  - ii) *the anti-doping rule violation involves a specified substance and UEFA can establish that it was intentional.**
- b) *If paragraph a) does not apply, the period of suspension is two years.*
- c) *As used under paragraphs 9.01 and 9.02, the term “intentional” is meant to identify those players who cheat. The term, therefore, requires that the player or other person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an adverse analytical finding for a substance which is only prohibited in-competition is rebuttably presumed to be “not intentional” if the substance is a specified substance and the player can establish that the prohibited substance was used out-of- competition*

**Article 10 “Lifting, reducing or suspending a sanction”**

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

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

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

- (b) *Application of no significant fault or negligence beyond the application of paragraph 10.02a [relating to “specified substances” and “contaminated products”]*

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

**Appendix E “Definitions”:**

**No significant fault or negligence:** *If the player or other person establishes that his fault or negligence, when viewed in the totality of the circumstances and taking into account the no fault or negligence criteria, was not significant in relation to the anti-doping rule violation. Unless he is a minor, for any violation of paragraph 2.01a the player must also establish how the prohibited substance*

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

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

***In-competition:*** *This phase starts 24 hours before a single match or the first match of a tournament and terminates 24 hours after the single match or the end of the tournament.*

***Out-of-competition:*** *Any time which is outside the in-competition phase.*

64. In addition, Article 10.2.3 WADC was referred to in this arbitration. It reads as follows:

*An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not “intentional” if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered “intentional” if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.*

## **IX. THE MERITS**

65. The object of this arbitration is the Challenged Decision, which found the Player responsible for the anti-doping rule violation contemplated by Article 2.01 of the ADR and imposed on him the suspension for 2 years pursuant to Article 9.01 (b) of the ADR: the Player’s violation was found not to be “intentional”, within the meaning of Article 9.01(c), for the purposes of Article 9.01(a) of the ADR; however, the Player was not considered to be entitled to a fault-related reduction of the period of suspension pursuant to Article 10.2(b) of the ADR. The Appellant disputes this conclusion and requests the Challenged Decision to be set aside, and the sanction cancelled or reduced, in this case with a retroactive indication of its starting date. The Respondent, on the other hand, requests this Panel to dismiss the appeal and to confirm the Challenged Decision.
66. As a result of the Parties’ requests and submissions, there are 3 issues that need to be addressed by this Panel:
- i. is the Player responsible for the anti-doping rule violation found by the Challenged Decision?
  - ii. if so, what is the proper sanction to be applied?
  - iii. what is the starting moment for any such sanction?

67. The Panel will consider each of those issues separately.
- i. Is the Player responsible for the anti-doping rule violation found by the Challenged Decision?*
68. The first issue to be addressed concerns the commission by the Player of the anti-doping rule violation contemplated by Article 2.01 of the ADR for which he was found responsible by the CEDB: this finding in the CEDB Decision remained unchallenged before the Appeals Body and was therefore confirmed by the Challenged Decision. The issue, as mentioned above (§ 46), was eventually raised by the Appellant in his final pleadings at the hearing before this Panel, after the testimony of Dr Thieme, invoked as giving the “*exceptional circumstances*” justifying the late submission. As also mentioned (§ 50 above), the admissibility and the merits of this request are disputed by the Respondent.
69. The Panel sees the force in the Respondent’s objection of inadmissibility. The Appellant, in fact, was confronted with Dr Thieme’s opinion since November 2016, before the CEDB Decision was issued, and had, including at the hearing before Appeals Body, the opportunity to examine Dr Thieme and obtain his opinion on the points lately touched at the hearing before CAS. As a result, the fact that Dr Thieme rendered “only” at the hearing before CAS the declarations on which the Appellant grounds his new request for relief might not appear to constitute one of “*exceptional circumstances*” which may justify the departure from the basic principle in CAS arbitration that all the Appellant’s claims must be included in the appeal brief, at the latest.
70. The Panel, however, does not need to draw any consequence as to admissibility of such claim, since the claim has no merits, and must therefore be dismissed.
71. The Panel, in fact, finds that Article 2.01 of the ADR, perfectly matching Article 2.1 of the WADC, describes as an anti-doping rule violation the presence not only of a prohibited substance, but also the presence of the metabolites of a prohibited substance. The fact that the Prohibited List, at *S6 Stimulants*, does not refer to the metabolites of the prohibited substances therein mentioned (including *Cocaine*) is therefore irrelevant.
72. In addition, the Panel finds that *Cocaine* itself (and therefore not only its metabolites) was found in the Athlete’s sample. The circumstance that the concentration was lower than 50% of the MRPL for *Cocaine* is irrelevant. In fact, *Cocaine* is a non-threshold substance and the finding of any quantity in an athlete’s sample constitutes an anti-doping rule violation, whatever the laboratory reporting obligations are. In fact, as made clear by Section 1.0 of TD2015MRPL “*the MRPL is not a threshold ... nor is it a Limit of Detection*” and therefore “*Adverse Analytical Findings may result from concentrations below the established MRPL values*”. Such rule is consistent also with the purpose and meaning of MRPL, which are not intended to provide for quantitative limits to adverse analytical findings, but only to set a standard for laboratories, so that they operate at least at a common level and are able to report the presence of prohibited substances according to minimum detection and identification capabilities.
73. As a result, the Panel confirms that the Player is responsible for the anti-doping rule violation contemplated by Article 2.01 (“*Presence of a prohibited substance or its*

*metabolites or markers in a player's sample*") of the ADR.

**ii. What is the proper sanction to be applied?**

74. In light of the foregoing, the second issue to be examined in this arbitration relates to the measure of the sanction to be imposed on the Player for such violation.
75. According to Article 9 of the ADR, the sanction provided for the violation committed by the Player is a suspension for 4 years; such sanction, however, can be replaced with a suspension of 2 years if it is proven (by the Player) that the violation was not intentional. The CEDB Decision, first, and the Challenged Decision, later, indicated that the Parties had agreed that the violation was not intentional, and therefore imposed a suspension for 2 years. More specifically, such conclusion was based on the Parties' agreement as to the applicability of the final sentence of Article 10.2.3 WADC, as supplementing Article 9.01(c) of the ADR, which provides that an anti-doping rule violation resulting from an adverse analytical finding for a non specified substance prohibited only in-competition is considered non intentional if it is established that the prohibited substance was used out-of-competition and in a context unrelated to sport performance. UEFA conceded that the intake of *Cocaine* took place more than 24 hours before the match played on 14 September 2016 and, therefore, could be considered as having occurred out-of-competition.
76. This conclusion is not challenged in this arbitration, even though UEFA now maintains that its internal bodies had a "*generous*" attitude towards the Player. As a result, the starting point for the determination of the sanction is the suspension of 2 years, applicable for the non-intentional anti-doping rule violation committed by the Player.
77. The Player, however, seeks a further reduction of such suspension, by pleading his "*no significant fault or negligence*": in the Appellant's opinion, the fact that *Cocaine* was involved triggers *per se* the applicability of Article 10.02 of the ADR and the evaluation of the relevant objective and subjective elements leads to the applicability of the maximum reduction allowed by that rule, and therefore to the imposition of a suspension of 1 year.
78. Article 10.02 of the ADR, read in combination with the definition contained in Appendix E, sets two conditions for the reduction of the ineligibility period to be applied on a player following the finding of a violation of Article 2.01 of the ADR (presence of a prohibited substance):
- i. the player must establish how the prohibited substance entered his system;
  - ii. the player must establish that he bears "*no significant fault or negligence*", as therein defined.
79. The Panel notes that the first condition is satisfied. The issue is indeed not even disputed by the Parties in this arbitration: the Substance entered the Player's system as a result of his direct intake out-of-competition, more than 24 hours before the match played on 14 September 2016 and the in-competition test undergone on that occasion.
80. The dispute between the Parties concerns the satisfaction of the second condition,

denied by the Respondent and claimed to be fulfilled by the Appellant, who disputes the conclusions of the Appeals Body.

81. The issue whether an athlete's fault or negligence is "significant" has been much discussed in the CAS jurisprudence, and chiefly so with respect to the various editions of the WADC. These cases, although not binding, offer guidance to this Panel.
82. A point to be underlined on their basis is that a period of ineligibility can be reduced based on "*no significant fault or negligence*" only in cases where the circumstances justifying a deviation from the duty of exercising the "*utmost caution*" are truly exceptional, and not in the vast majority of cases.
83. Even though, consistently with the CAS precedents, the "bar" should not be set too high for a finding of "*no significant fault or negligence*", and a claim of "*no significant fault or negligence*" is (by definition) consistent with the existence of some degree of fault, the Panel finds that that the Player's fault was significant and warrants no reduction of the sanction below the suspension of 2 years imposed by the Challenged Decision.
84. The Panel is led to this conclusion by a number of elements.
85. The Player knew that he was using a prohibited substance, and used it deliberately. It is true that the Substance was used out-of-competition, *i.e.* at least 24 hours before the match played and the test undergone on 14 September 2016, but the Player did not use any care to avoid returning to competition before the Substance had been fully eliminated from his body. Contrary to the Appellant's submission, the issue in this respect is not the objective fact of whether the Substance (or its metabolites) had been fully excreted; the issue concerns the negligence of the Player in verifying the timing of excretion. The Player submits that he made some Internet search, but gives no additional evidence on the matter, and the value of his words has been much devaluated by his lies before the CEDB. In addition, the conduct of such research is contradicted by the fact that he admitted having anticipated an adverse analytical finding in a conversation with the doctor of his team, even before providing the sample, when requested to undergo the test. In other words, this shows that the Player was rather certain that the Substance had not been fully excreted.
86. In that context, the fact that the Player had used the Substance over a period of time without "incidents" is irrelevant: the repeated use of a substance known to be prohibited is not a reason justifying a deviation from the duty of care. In addition, in the period he used the Substance the Player was not subjected to any anti-doping control. Therefore, he cannot invoke any prior experience to explain the timing of his return to competition following the ingestion of the Substance.
87. In addition, the Panel finds that the Player, who bears the burden to prove his "*no significant fault or negligence*", has not been in a position to prove that the Substance was used on 11 September and not the day after or just before leaving to Germany, *i.e.* at a moment much closer to the 24 hours limit before the match of 14 September 2016. The Player's words are contradicted by the convincing evidence offered by Dr Thieme, and chiefly by the presence in the sample of traces of *Cocaine*, that would have been already eliminated had the Substance been ingested by the Player 3 days before the test.

88. At the same time, the fact that the Player did not take the Substance in order to gain an advantage, or that the Player's case is not about an athlete who cheats, is irrelevant to verify the Player's "*no significant fault or negligence*": indeed, a contrary finding would have implied the imposition of a suspension for 4 years for an intentional violation.
89. The Panel, then, notes that the Player's capacity was not impaired by any addiction, or by a state of depression (which is a severe clinical condition and not simply a state of mood), which were not medically certified and have not been medically treated. The intervention of a mental coach, indeed, as evidenced at the hearing, had a different purpose, and did not concern any addiction or depression.
90. As a result, there is no room for any reduction below the "standard" sanction for the violation of Article 2.01 following the detection of *Cocaine* in the Player's sample. Such sanction appears to be proportionate to the infringement and to the level of fault. The fact, then, that *Cocaine* may be assimilated under some respects to *Cannabinoids* (as it was held in the *Fernandez* award) does not imply that in every single case a reduction of the sanction is warranted: as indicated in the same *Fernandez* award, in fact, an individual evaluation of the relevant objective and subjective elements is to be conducted. And such evaluation excludes in the current case that the Player is entitled to any such reduction.
91. As a result, the Panel confirms that the sanction of the suspension for 2 years is to be imposed on the Player. The Challenged Decision which so found has to be confirmed.

**iii. *What is the starting moment for such sanction?***

92. The Challenged Decision, in the same way as the CEDB Decision, did not specify the starting date of the suspension thereby imposed. The Player wishes it to be backdated to the date of the sample collection (14 September 2016) or to the date on which the provisional suspension was imposed (6 October 2016).
93. The rules governing the "*Commencement of suspension*" are contained at Article 14 of the ADR. Under this provision, the suspension commences in principle on the date the decision to impose the suspension is communicated to the player concerned. However, the commencement date can be set at an earlier date in case of "*Delays not attributable to the player*" or in the event of "*Timely admission*". In both situations, the period of suspension may start as early as the date of sample collection.
94. In the Panel's opinion, there is no reason to depart from the general rule and set the commencement date of the suspension imposed as early as the date of sample collection. In fact, no delays occurred in the proceedings before the UEFA disciplinary bodies: the provisional suspension was imposed 22 days after the sample collection, as soon as UEFA received from the Laboratory the notification of the AAF; the CEDB Decision was issued on 17 November 2016; the Challenged Decision was rendered on 14 April 2017. In other words, the two levels of internal adjudication were completed in 6 months. At the same time, the Panel does not see in the Player's behaviour a timely admission of the infringement: indeed, the Player advanced submissions before the CEDB based on an insincere explanation of the events, and the simple waiver of the B sample analysis is not a timely admission of an anti-doping rule violation.

95. As a result, the suspension of the Athlete should start from the date of notification of this award.
96. However, the Panel notes that on 6 October 2016 the Player was provisionally suspended for a period of 30 days; on 4 November 2016 (*i.e.*, before the end of that period) the provisional suspension was extended for 15 additional days; on 17 November 2016 (*i.e.*, before the expiry of the extended period of provisional suspension), the CEDB imposed on the Player the suspension for 2 years, thereafter confirmed by the Challenged Decision. In other words, the Player has been suspended without interruption since 6 October 2016.
97. Pursuant to Article 14.02 of the ADR, if a provisional suspension is imposed and respected by the player, then the player receives a credit for such period of provisional suspension against any period of suspension which may ultimately be imposed. In addition, if a period of suspension is served pursuant to a decision that is subsequently appealed, then the player receives a credit for such period of suspension served against any period of suspension which may ultimately be imposed on appeal.
98. As a result, under that rule, the Player should receive credit from 6 October 2016 throughout the date of notification of the present award. Since no interruption occurred in that period, the giving of this credit means that the Player would serve a suspension of 2 years from 6 October 2016, the date of his provisional suspension. Since the Challenged Decision did not specify the date of commencement of the suspension, the Panel finds it proper to clarify the point and modify the Challenged Decision accordingly, to confirm (for reasons of simplicity) that the Player is suspended for a period of 2 years from 6 October 2016, the date of his provisional suspension.

## **X. COSTS**

99. Article 65.1 of the Code reads as follows:

*This Article applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. In case of objection by any party concerning the application of the present provision, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the panel on the issue.*

100. Article R65.2 of the CAS Code provides as follows:

*Subject to Articles R65.2, para. 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 CAS are borne by CAS.*

*Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.-- without which CAS shall not proceed and the appeal shall be deemed withdrawn. [...]*

101. Article R65.3 of the CAS Code provides:

*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has*

*discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*

102. The present arbitration procedure is therefore free, except for the CAS Court Office fee of CHF 1,000 paid by the Appellant, which is retained by the CAS.
103. The Panel notes that the Respondent, which expressly waived any request that the Appellant be ordered to contribute to its costs, was not represented by external counsel. As a result, the Panel holds that the Parties shall bear their own expenses sustained in relation with the present appeal.



**ON THESE GROUNDS**

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

1. The Appeal filed by Mr Roman Eremenko on 14 April 2017 against the decision rendered on 2 March 2017 by the UEFA Appeals Body is partially upheld, only to the extent that the commencement date of the suspension is concerned.
2. The decision rendered on 2 March 2017 by the UEFA Appeals Body is modified as follows: Mr Roman Eremenko is suspended for a period of two years from 6 October 2016, commencement date of his provisional suspension.
3. All further points of the decision rendered on 2 March 2017 by the UEFA Appeals Body are confirmed.
4. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr Roman Eremenko, which is retained by the CAS.
5. Each party shall bear his/its own legal costs and expenses incurred in connection with the present proceedings.
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 21 August 2017

Operative part issued on 21 July 2017

**THE COURT OF ARBITRATION FOR SPORT**



Luigi Fumagalli  
President