

Decision of 22 February 2018

Malta (U-21) – Kyrian Nwoko (Doping)

Circumstances of the case

On 20 November 2017, the player Kyrian Nwoko (the “Player”) underwent a doping control test after the UEFA European Under-21 Championship 2019 match between Malta and Turkey on 10 November 2017. The analysis of the Player’s A sample revealed the presence of a substance called “methylphenidate”. In conformity with the WADA Prohibited List 2017, the above substance is prohibited in-competition under the category S6.b. Specified stimulants. On 29 November 2017, UEFA notified the player of the finding and of the fact that this may result in a possible anti-doping rule violation. On 7 December 2017, disciplinary proceedings were instigated by UEFA against the player for Doping Offences (Art.13 DR).

Legal framework Article 2 (1) (a) of the UEFA Anti-Doping Regulations

Decision

The CEDB recognized that the player committed a mistake with regard to the failure to have a valid Therapeutic Use Exemption (“TUE”) for the use of the medication “concerta” that contained the prohibited substance methylphenidate at the time he was tested. The CEDB considered that the player was negligent and the fault of the player was not significant. The player did not check the UEFA rules and procedures regarding the TUE. The player was taking concerta for a treatment but had not obtained the approval of UEFA (i.e.TUE) to take this medical treatment. The player wrongly believed he was entitled to take methylphenidate because his National Anti-Doping Organisation (NADO) had granted him a TUE a year before. During the proceedings, the player was granted a TUE by UEFA, which proves that his medical condition was recognised and the treatment appropriate. Furthermore, the player recognised his fault and never tried to hide the fact that he was taking this treatment. Indeed, the player declared taking concerta (containing the prohibited substance) on the doping control form. The CEDB also examined the jurisprudence and the mitigating subjective factors in this case to determine if a lower suspension was justified. The player is already suffering physically and mentally from his pathology and due to his young age and little experience in international competitions, the CEDB considered that the most appropriate sanction was to give to Mr Kyrian Nwoko a warning.

<u>Chairman:</u>	Partl Thomas (AUT)
<u>Vice-Chairman:</u>	Berzi Sándor (HUN)
<u>Members:</u>	Antenen Jacques (SUI) Gea Tomás (AND) Larumbe Beain Kepa (SPA) Leal João (POR) Lorenz Hans (GER) Wolff Joël (LUX)

I. Facts Of The Case

1. The elements set out below are a summary of the main relevant facts, as established by the Control, Ethics and Disciplinary Body (“CEDB”) on the basis of the official reports, the written submissions, the exhibits filed and the statements produced in the course of the CEDB proceedings. While this UEFA disciplinary body has considered all the facts, allegations, legal arguments and evidence submitted by the player and the club in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning.
2. On 20 November 2017, the player Kyrian Nwoko, hereafter also “the player”, was tested in-competition (“the doping control”) after the match at the UEFA European Under-21 Championship 2019, qualification round played between Malta and Turkey on 10 November 2017 (“the match”). On the Doping Control Form (DCF), the player declared under “3b. Declaration of medication” “ADHD (diagnosis), *concerta* (substance), 36 mg (dose), *p.o.* (route of administration), 1 year ago – *continuing* (Start and duration of treatment)”.
3. On 23 November 2017, the WADA-accredited laboratory of Seibersdorf reported an Adverse Analytical Finding (also “AAF”) for sample A 3326726. Methylphenidate was found in the sample. This substance is a specified stimulant according to the WADA Prohibited List, category S6.b.
4. On 28 November 2017, UEFA contacted the National anti-doping organisation (NADO) of Malta whether or not the player had a valid Therapeutic Use Exemption (TUE) for the medication declared in the DCF.
5. On 29 November 2017, UEFA contacted the Malta Football Association and, on the same day, sent the letter to the player informing him of the AAF and granting the player a deadline of 2 days to (a) confirm if he wanted his B sample to be analysed and (b) provide any other explanation he might have in relation to the result of his A sample.
6. On 30 November 2017, the player informed UEFA that he did not want the performance of the analysis of his B sample. He admitted he was taking the medication “concerta” described on the DCF because he suffers from ADHD (i.e. Attention deficit hyperactivity disorder). In this respect, the player explained that a TUE for the use of “concerta” (containing Methylphenidate) was granted on 23 September 2016, being valid for one year, enclosing the expired TUE. The player also mentioned he had an appointment planned for 6 December 2017 with his doctor and affirmed having received from the NADO of Malta a reminder for renewal of the expired TUE on 28 November 2017.
7. On 1 December 2017, UEFA informed the player that as long as he does not hold a valid TUE and continues his treatment, his participation to any matches (national or international) might be considered as a violation to the anti-doping rules. Considering he is an international-level player, he was due to participate in UEFA European Under-21 qualification matches in March 2018 and therefore, he had to submit his TUE request to UEFA and not the NADO. In case a TUE is granted by UEFA, it would be valid on international level and on national level as well.

8. On 5 December 2017, the Anti-doping unit forwarded the case to the Disciplinary unit.
9. On 7 December 2017, the Disciplinary unit informed the player that disciplinary proceedings were opened against him.
10. On 27 December 2017, the player informed the Disciplinary unit, through a letter dated 26 December, that a TUE was submitted to UEFA on 22 December 2017 with a request to grant the TUE retroactively. Since the potential grant of a retroactive TUE could have an influence on the outcome of the case, the player asked for the stay of the proceedings as long as the TUE procedure is pending.
11. On 18 January 2018, the CEDB Chairman accepted the request to stay of the proceedings.
12. On 19 January 2018, UEFA granted a TUE for the period of one year, valid as from 18 January 2018 until 17 January 2019.
13. On 29 January 2018, the Disciplinary Unit informed the player that the disciplinary proceedings are resumed and any further statement and evidence can be submitted in a deadline of 10 days. The player was also informed that the case would be decided on the next CEDB meeting on 22 February 2018.
14. On 1 February 2018, the player submitted a statement in which he explained his medical condition and recognized having committed a mistake.
15. On 1 February 2018, the player's club Valletta FC requested to participate in the proceedings as intervener, enclosing its statement. The club explains that the player was hired by Valletta FC in June 2017 and the parties have an employment contract registered at the Malta Football Association since 19 June 2017.

II. Summary of the Respondent's position

16. The player does not challenge the AAF and for that reason does not wish for the B sample to be analysed.
17. The player confirms that, as declared in the DCF, he takes the medication "concerta" and have been doing so since September 2016, following the advice of his doctor to treat a disorder he suffers from, i.e. ADHD. He further details that the doctor prescribed the treatment with "concerta" for 3 years to the player. In this respect, he explains that following the diagnosis he has applied for a TUE at the NADO of Malta which was granted for one year and had been in place since 23 September 2016.
18. According to the player, he was not aware that the TUE had expired a few days before the match and was only informed by the NADO regarding such circumstance on 28 September 2017 and thus, after the doping control. He further states that there is currently a process to renew his TUE.

19. The player asks for understanding of his situation, a young player that has to deal with such medical condition. He states that his condition puts him in a vulnerable state and only thanks to the medication he is taking he can continue to play football. In this situation, he affirms that there was no bad faith from his part and that he declared the medication in the DCF before the doping control.
20. The player also accepts that he could have been more careful and seek a new TUE to cover the medication.
21. The player confirms that he takes 36 mg of “concerta” on the day of a match and daily in the weeks leading up to it. He emphasizes that he freely admitted taking the medication and never thought he was doing anything wrong.
22. The more detailed arguments made by the player in support of his written submissions are set out below as far as they are relevant.

III. Summary of Valletta FC’s position

23. Valletta FC explains its interest in participating in the present proceedings as an intervener, stating that the club will be directly affected by its outcome considering the player is registered with the club.
24. Valletta FC’s request to participate in the present proceedings as an intervener was accepted, in accordance with Article 37 (2) of the UEFA Disciplinary Regulations (DR), and the club’s arguments contained in its statements are summarized below.
25. The club explains that the player had been granted a TUE valid for one year. However, considering that the player’s doctor had established that the duration of the treatment required for the player’s condition would be of 3 years, it is just logical that the player would have to continue using the prescribed medication for a further period of 2 years.
26. The club argues that it only became aware of the TUE granted to the player after the doping control as well as that it became clear that the player did not want to hide anything from the club, but was rather afraid that his condition could negatively affect his arrival at his new club.
27. The player takes the medication declared following the advice of his psychiatrist to treat his symptoms and control his diagnosed condition. Therefore, he evidently did not try to avoid any procedure in an attempt to benefit from any unfair advantage.
28. The player did not submit a new TUE application because he was expecting a notification from the NADO informing about the expiration, but the NADO only notified the player a few days following the relevant match. The club assumes that this occurred after UEFA issued the notification about the doping control result.

29. Finally, the club states that the granting of the new TUE by UEFA proves the genuine medical necessity of the player.
30. The club states that no disciplinary measure should be imposed on the player for the following reasons:
 - The player's intention was never to cheat or gain any sporting advantage from the medication he was taking;
 - The UEFA Anti-doping regulations in section 9.01(c) define the term "Intentional" in the offence category that the player's alleged violation could be categorized into as referring to "those players who cheat" and the player falls abundantly outside this definition;
 - The player has no previous record;
 - The player has been clear and genuine about his medical condition.

IV. Merits of the Case

A. UEFA's competence.

31. Pursuant to Article 52 of the UEFA Statutes, as well as Article 29 of the UEFA Disciplinary Regulations (DR), the Control, Ethics and Disciplinary Body is competent to deal with the case.
32. In light of the above, the UEFA Statutes, rules and regulations, in particular the UEFA Anti-Doping Regulations are applicable to these proceedings.

B. Applicable legal framework and general remarks

33. The anti-doping rule violation the player committed results from a report of the WADA accredited laboratory, so the following provisions of the UEFA Anti Doping Regulations (ADR) version 2016 can be applied
34. According Article 2.01 a. ADR on the presence of a prohibited substance:

The following constitute anti-doping rule violations:

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

- ii) *Sufficient proof of an anti-doping rule violation is established by any of the following: presence of a prohibited substance or its metabolites or markers in the player's A sample where the player waives analysis of the B sample and the B sample is not analysed; or, where the player's B sample is analysed and the analysis of the player's B sample confirms the presence of the prohibited substance or its metabolites or markers found in the player's A sample; or, where the player's B sample is split into two bottles and the analysis of the second bottle confirms the presence of the prohibited substance or its metabolites or markers found in the first bottle.*
- iii) *Excepting those substances for which a quantitative threshold is specifically identified on the Prohibited List, the presence of any quantity of a prohibited substance or its metabolites or markers in a player's sample constitutes an anti-doping rule violation.*
- iv) *As an exception to the general rule of this paragraph 2.01a, the Prohibited List or international standards may establish special criteria for the evaluation of prohibited substances that can also be produced endogenously.*

35. According to Article 5 ADR regarding Therapeutic Use Exemption (TUE):

5.01 The presence of a prohibited substance or its metabolites or markers (paragraph 2.01a), and/or the use or attempted use (paragraph 2.01b), possession (paragraph 2.01f) or the administration or attempted administration (paragraph 2.01h) of a prohibited substance or prohibited method is not considered an anti-doping rule violation if it is consistent with the provisions of a TUE granted in accordance with the UEFA TUE policy and the International Standard for Therapeutic Use Exemptions.

(...)

5.04 A player who already has a TUE granted by the NADO must ask UEFA for recognition of said TUE. UEFA will recognise it if it fulfils the criteria set out in the International Standard for Therapeutic Use Exemptions.

36. The provisions related to the sanction applicable for such an anti-doping rule violation are the following:

- According to Article 9.01 ADR:

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:

v) 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

vi) 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.

37. According to Article 10.01 ADR, the period of suspension can be lifted in case it is established that there is no fault.

38. In the 10.02 a) i) ADR if the substance concerned is a specified substance, which is the case here and the player can establish no significant fault or negligence, then the minimum sanction is a reprimand and no period of suspension and the maximum sanction two years of suspension, depending on the player's degree of fault.

39. The definition of no fault or negligence contained in the Appendix E ADR is the following:

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

40. The definition of no significant fault or negligence contained in the Appendix E ADR is the following:

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.*

C. The case in hand

41. This case is about a player, Kyrian Nwoko, who tested positive for methylphenidate, after a UEFA European Under-21 Championship 2019 match played between Malta and Turkey on 10 November 2017. This substance is prohibited according to the WADA Prohibited List of 1 January 2017 at category S.6.b as “specified stimulant” and, for this reason, the player who needs to take it for medical reasons must ask UEFA authorization to use it through a TUE in order not to commit an anti-doping rule violation, In accordance with Article 5.01 ADR.
42. The player had declared on the DCF on the occasion of the doping control the treatment he is undergoing indicating in the section 3b. “declaration of medication” that he was taking the medication “concerta”, which contains the substance found by the WADA-accredited laboratory of Seibersdorf, methylphenidate. This treatment is needed to treat ADHD, the condition suffered by the player.
43. The player was granted a TUE by the NADO of Malta for the duration of one year, in September 2016. However, the TUE granted expired on 23 September 2017, thus one month and a half before the match and the doping control. The player had not asked for the renewal of the TUE to the NADO. In this respect, in line with the WADA TUE Guidelines, the TUE is granted for one year because the medical condition ADHD can evolve and change from year to year, especially with young people as the player.
44. Upon UEFA’s request, the NADO of Malta confirmed that, on 28 November 2017, the player had not requested a renewal of the TUE.
45. The CEDB highlights that even in the case the player had a valid TUE by his NADO at the time of the doping control, according to Article 5 ADR, the TUE is not valid on international level because it was not submitted to UEFA (or FIFA) for recognition. Considering the recognition of the TUE granted by the NADO is not automatic, the UEFA TUE Committee would have to review the whole file and receive recent documents regarding his medical file before deciding to grant/recognise the TUE.

46. Moreover, the TUE cannot be granted retroactively since retroactive TUEs can only be granted in accordance with WADA International Standard for TUE (WADA ISTUE), 4.3 if a) the treatment is an emergency or an acute medical condition b) exceptional reason (insufficient time to submit the TUE). In the present case, neither of these conditions are fulfilled, since the player's medical condition was known because it is a chronic disease and he was under treatment. Consequently, there is no "emergency" factor.
47. In this respect, the CEDB refers to the decision of the UEFA TUE Committee dated 19 January 2018 which did not grant a retroactive TUE as requested by the player.
48. Having remained undisputed during the proceedings before this UEFA disciplinary body that the player used a prohibited substance and considering that the player did not have a TUE granted by UEFA at the moment of the doping control, it is possible that an anti-doping rule violation was committed which has to be analysed by the CEDB.
49. Bearing the above in mind, the CEDB concludes that in this particular case there are mainly two legal questions that need to receive an answer.
 - Did the player demonstrated the source of the prohibited substance; and
 - What is the player's degree of fault
50. Again, this UEFA disciplinary notes that the more detailed arguments made by the player in support of his written submissions are set out below in as far as they are relevant.

a. Did the player demonstrated the source of the prohibited substance?

51. The question remains as if there are sufficient grounds to apply for lifting the period of suspension (i.e 2 years) or a reduction of that period in accordance with Article 10 UEFA Anti-Doping Regulations (ADR).
52. First and foremost, this UEFA disciplinary body wishes to highlight that from a legal perspective, the only way a player could apply for a reduction or a lifting of the standard sanction of two years, is by establishing "how the prohibited substance entered his body" (Appendix C of the UEFA ADR). Appellant must discharge his burden of proof based on a balance of probabilities.
53. The standard of balance of probabilities succinctly means that the accused must prove that his version of the facts is more likely than not to have occurred (CAS 2009/A/1926 ITF vs Gasquet, at para 5.9).

54. It is recalled that Methylphenidate metabolites is a substance prohibited in-competition under the WADA Prohibited List of 1 January 2017, category S.6.b. This substance is categorised as a “specified stimulant”.
55. According to the WADA International Standard for Therapeutic Use Exemptions, a player who needs to use a prohibited substance for therapeutic reasons must obtain a TUE before the use of such prohibited substance.
56. In this regard and in substance, the player holds that the origin of the prohibited substance is the use of the medication “concerta” which was prescribed by his doctor to treat his condition, i.e. ADHD. To sustain his position the player brings forward the medical diagnosis and prescription of the relevant treatment as well as the expired TUE granted by the NADO of Malta.
57. The CEDB also takes note that the TUE granted by the UEFA TUE Committee on 19 January 2018 confirms that the player suffers indeed by this pathology ADHD and needs treatment with the stimulant methylphenidate, 36 mg to be taken orally on a daily basis.
58. In particular, the CEDB acknowledges that the treatment granted by the UEFA TUE Committee is the same declared by the player in the DCF when tested in the doping control, i.e. 36 mg of methylphenidate (“concerta”) and is in line with the treatment described on the TUE granted by the NADO of Malta (10 mg of phenyphenidate, 4 times a day).
59. This UEFA disciplinary body accepts that the source of the substance was indeed the use of “concerta”.
60. Bearing in mind the above, this UEFA disciplinary body finds no reasons as to deviate from the position of the player, who, in substance has accepted having violated the Anti-doping Regulations.
61. With regard to the intention of the player, this UEFA disciplinary body deems that from the documents contained in the file and the circumstances of this case, the CEDB is satisfied that the use of this substance wasn’t intentional, meant here to identify those players who cheat (Article 9.01 ADR).
62. Consequently, this UEFA disciplinary body is persuaded that the player had no intention to cheat in the sense of Article 9.01(c) ADR and was straight-forward about his medical situation and the use of the medication from the start. The CEDB is satisfied that the medication was taken only with the aim to re-establish the player’s *normal* state of health and not to enhance his performance.

b. What is the player’s degree of fault?

i. The fault of the player

63. According to Article 9.01 a) of the UEFA ADR, the period of suspension for a first violation under inter alia Article 2.01 a) (presence of a Prohibited Substance or Prohibited Method) “is four years if the anti-doping rule violation does not involve a specified substance (unless the Player or other person can establish that it was not intentional)”.
64. According to Article 9.01 b) of the UEFA ADR, “if paragraph a) does not apply, the period of suspension is two years”.
65. According to Article 10.01 ADR (corresponding to Article 10.04 of the WADA Code), if a player or other person establishes in an individual case that he bears no Fault or Negligence, then the otherwise applicable period of suspension is lifted.
66. As regards the existence of Fault or Negligence, CAS has steadily concluded that utmost caution is required by the Player for finding no Fault or Negligence. In this regard, any breach of his duty of care or lack of it relating to his particular situation would already justify the existence of fault. This, again, in the context in which the Player is requested to implement the “utmost caution” (CAS 2016/A/4643 at para 74).
67. The regime of no fault or negligence is contemplated in both Article 10.01 (b) ADR and in Appendix E of this same regulations:

- According to Article 10.1 ADR:

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

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

- According to Appendix E of the UEFA Anti-Doping Regulations:

No fault or negligence: *If the Player or other person establishes that he did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he had used or been administered a prohibited substance or prohibited method or otherwise violated an anti-doping rule. (...)*

68. This disciplinary body recalls the content of the applicable CAS jurisprudence and the relevant provisions in this legal context, which required the player to apply utmost caution for finding no fault or negligence, with any breach of his duty of care or lack of it relating to his particular situation already justifying the existence of fault. In this regard, the UEFA ADR

in Appendix E precisely stipulate that for the concept of no Fault or Negligence to apply, it is the requirement that the player could not reasonably have known or suspected, even with the exercise of utmost caution, that he had been administered a prohibited substance.

69. The duty of utmost caution requires athletes to take at least reasonable steps to ascertain that their conduct does not constitute an anti-doping rule violation (cf. CAS 2008/A/1489 & 1510 Despres v. CCES).
70. In the case in hand, as accepted also by the player, the latter was at fault when using the substance without renewing the expired TUE and without requesting a TUE to UEFA. Also the player recognizes his fault.
71. Consequently, the CEDB concludes that the concept and regime of no fault or negligence does not apply in the present case, i.e. Article 10.01 UEFA ADR is not applicable. Therefore, the applicable sanction would be a two year suspension in accordance with Article 9.01 b) UEFA ADR, if the Player cannot establish on a balance of probabilities that there was no significant fault or negligence.
72. Following the above lines of argumentation, the question now is if the player has proven on a balance of probabilities the existence of no significant Fault or Negligence in which extent his fault is to be assessed in accordance with Article 10.02 ADR.

ii. The existence of no significant fault or negligence

73. Significant fault or negligence is contemplated in both Article 10.02 (b) ADR and in Appendix E of this same regulations:

- According to Article 10.2 (b) ADR:

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

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

- According to Appendix E of the UEFA Anti-Doping Regulations:

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. (...)*

74. For the sake of clarity, the CEDB recalls that CAS has recently established the way in which the significant fault or negligence shall be assessed and this in relation with the sanction to be imposed (CAS 2013/A/3327 Marin Cilic v. International Tennis Federation and CAS 2013/A/3335 International Tennis Federation v. Marin Cilic; CAS 2015/A/3876 James Stewart Jr. v. Federation Internationale de Motocyclisme).
75. Summarily, as recovered from the above CAS Case law, this UEFA disciplinary body distinguishes between different categories of negligence, i.e. light, normal and significant.
76. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.
77. Further, the objective element should be foremost in determining into which of the three relevant categories a particular case falls. In this regard, the CEDB shares the approach of the CAS Case law insofar at the outset, it is important to recognise that, in theory, almost all anti-doping rule violations relating to using a prohibited method and/or substances could be prevented. In this regard, an athlete cannot be reasonably expected to follow all of the preventive steps in every and all circumstances. Instead, these steps can only be regarded as reasonable in certain circumstances for prohibited methods.
78. The subjective element can then be used to move a particular athlete up or down within that category. Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether.
79. Here it is noted that, in substance, the subjective element describes what could have been expected from the athlete, in light of his personal capacities. Whilst each case will turn on its own facts, the following examples of matters can be taken into account in determining the level of subjective fault (cf. also LA ROCHEFOUCAULD, CAS Jurisprudence related to the elimination or reduction of the period of ineligibility for specific substances, CAS Bulletin 2/2013, p. 18, 24 et seq.):

- a. An athlete's youth and/or inexperience (see CAS 2011/A/2493, para 42 et seq; CAS 2010/A/2107, para. 9.35 et seq.).
- b. Language or environmental problems encountered by the athlete (see CAS 2012/A/2924, para 62).
- c. The extent of anti-doping education received by the athlete (or the extent of anti-doping education which was reasonably accessible by the athlete) (see CAS 2012/A/2822, paras 8.21, 8.23).
- d. Any other "personal impairments" such as those suffered by:
 - i. an athlete is suffering from a high degree of stress (CAS 2012/A/2756, para. 8.45 seq.).
 - ii. an athlete whose level of awareness has been reduced by a careless but understandable mistake (CAS 2012/A/2756, para. 8.37).

iii. The evaluation of the objective and subjective level of fault of the Player

80. This UEFA disciplinary body considers that from both an objective and subjective perspective, the present case shows that the level of fault of the player was not significant.
81. The player holds, in substance, that he used this substance due to a medical treatment needed due to ADHD. He explains that he was not aware that the TUE granted by his NADO was expired and never had the intention to cheat.
82. This UEFA disciplinary body deems that the position submitted by the player is credible in the light of the particular circumstances of this case and the evidence at hand.
83. The CEDB considers, on the one hand, that indeed the player did not have a TUE valid at national level on the occasion of the doping control and also did not ask UEFA to grant a TUE even though he was participating in a UEFA competition before the doping control. On the other hand, the CEDB takes into account that the player was taking the medication "concerta" following a treatment that was approved a year before by his NADO and that was also approved by UEFA TUE Committee on a later stage after the doping control. Consequently, it is accepted that the player suffers from the ADHD and the treatment is appropriate and has not changed.
84. The CEDB understands that although the player was negligent while not checking the UEFA rules regarding the TUE, his fault was not significant.
85. The player is young (DOB 04.08.1997), being 20 years old on the occasion of the doping control, and is not very experienced as a professional player, having started participating in international competitions in 2014.
86. The CEDB considers that despite the fact the player attended a UEFA anti-doping education session and was supposed to read the anti-doping information given to all athletes, he is young and unexperienced.

87. The Control, Ethics and Disciplinary Body emphasises that the player never tried to hide any information, having duly indicated the medication used in the DCF and being honest during these proceedings. Also the player recognizes his fault and expresses his regrets.
88. The CEDB also takes into account the fact that the player suffers from a chronic condition and has to deal with this situation at a young age while trying to pursue his career playing football.
89. The prohibited substance was used for a medical condition that requires such use and the prohibited substance is part of the "specified substance" of the WADA Prohibited List.
90. Bearing the above in mind, the Control, Ethics and Disciplinary Body deems that the player has met the standard of proof required in these proceedings and has proven in the given standard that he bears no significant fault. Consequently the player is entitled to apply for a reduction of the standard sanction, which in this case is a two years suspension in accordance with Article 9 and 10 DR.
91. The CEDB considers that any suspension would be too harsh for a young player who is already suffering physical and mentally from his pathology. Indeed, such medical condition is already a factor that complicates relationships with others. Also this UEFA body deems that suspending the player could even worsen his medical condition. Practicing football is helping him in his integration in social life and could help in the evolution of his pathology.
92. In this context and considering all the particularities of the present case, the most appropriate sanction is to give the player a warning and no suspension at all. It is clear that the player is aware of his fault and will act with the utmost caution in the future.