Arbitration CAS 2009/A/1918 Jakub Wawrzyniak v. Hellenic Football Federation (HFF), award of 21 January 2010 (operative part issued on 15 December 2009)

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Piotr Nowaczyk (Poland); Prof. Petros Mavroidis (Switzerland)

Football
Doping (Methylhexaneamine)
Principles of tempus regit actum *and* lex mitior *in anti-doping rules violations*
Substances similar to prohibited substances listed by the WADA administration
Meaning of no (significant) fault or negligence in the WADA Code and in the regulations of the Federations
Substances pharmacologically classified as stimulants and not identified under the monitoring programme
False information provided by the medical personnel and exemption from fault and negligence
Meaning of the balance of probability standard
CAS' power of review and discretion of the disciplinary body of an association to set a sanction

1. **In order to determine whether an act constitutes an anti-doping rule infringement, the Panel applies the principle *tempus regit actum*, i.e. the law in force at the time the act was committed. In other words, new regulations do not apply retroactively to facts that occurred prior to their entry into force, but only for the future, unless there are grounds for the application of the *lex mitior* principle.**

2. **The classification of a substance as "similar" to one of the listed substances made by the WADA administration can be challenged. The determination of similarity to substances expressly listed on the list of prohibited substances requires in fact the similarity to one (or several) of the listed substances; moreover, the similarity of a substance to a prohibited substance must be accompanied by the fulfilment of any two of the three criteria: the potential performance enhancement, the potential health risk, and the violation of the spirit of sport. Two of these three criteria must be met for a substance to be treated as similar and, thus, prohibited.**

3. **According to the CAS case law, the expressions "No Fault or Negligence" or "No Significant Fault or Negligence" should be considered as having the same meaning in all regulations (HFF, FIFA and WADC).**

4. **The WADA Prohibited List is an "open list" and "all substances pharmacologically classified as a stimulant and not identified under the Monitoring Programme are by definition prohibited". This means that, even if the WADA administration could only identify the substance at a given time, Methylhexaneamine was still a prohibited substance already before that time because it was a stimulant.**

5. **Even in cases where the doping offence has occurred following false information**

provided by the medical personnel, the athlete is not automatically exempted from fault or negligence. The WADA Code system makes it clear that athletes bear responsibility for the intake of substances without conditioning, in principle, their responsibility on (mis-)information that they might have obtained.

6. **The balance of probability standard means that the indicted athlete *"bears the burden of persuading the judging body that the occurrence of the circumstances on which he relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence"*. This principle applies also to the demonstration that Methylhexaneamine was *"not intended to enhance sporting performance"*.**

7. **In general terms, a Panel *"is willing to enforce a strict approach in the definition of its power reviewing the exercise of the discretion enjoyed by the disciplinary body of an association to set a sanction"*. Under the CAS jurisprudence, the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence.**

Jakub Wawrzyniak (the "Player" or the "Appellant") is a professional football player of Polish nationality, born on 7 July 1983.

The Hellenic Football Federation (HFF or the "Respondent") is the national football association for Greece. It is affiliated to the Fédération Internationale de Football Association (FIFA), the governing body of international football.

The main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings, are reproduced in what immediately follows.

On 5 April 2009, the Player, who was at the time playing for the Greek football team FC Panathinaikos ("Panathinaikos"), took part in a football match between Panathinaikos and FC Skoda Xanthi of the Greek 1st National Division Championship. After the football match, the Player underwent a doping control.

After the laboratory analysis, the Hellenic national anti-doping organization ("Eskan") informed the HFF that the "A" sample collected from the Player had tested positive for Methylhexaneamine. The "B" sample confirmed the adverse analytical finding of the "A" sample.

As a result of the above, disciplinary proceedings were started against the Player before the competent Greek authorities for an anti-doping rule violation.

On 4 June 2009, the Disciplinary Committee of the First Instance Greek Super League (the "Disciplinary Committee") issued decision No. 201/2009 (the "DC Decision") finding that the Player had *"carried out the act attributed to him"*, i.e. that he was responsible for an anti-doping rule violation, and imposing on him

> *"the penalty of three-month (3) disqualification"*.

In support of the DC Decision, the Disciplinary Committee made reference to some Greek provisions (and chiefly to Article 24 of the Disciplinary Code of the HFF then in force: the "2008 HFF Disciplinary Code") and applied Article 47.1 and Article 47.4 (c) of the 2009 FIFA Anti-Doping Regulations ("2009 FIFA ADR"), finding that

> *"the forbidden substance 4-methyl-2-hexanamine … which is characterized as a special reference substance … entered the appellee's body as a diet booster, for weight loss (during the time he was in Poland with the National Team of this country) and not to enhance his athletic performance. This was explicitly deposited by the witness examined, Panagiotis Kouloumentas, doctor of … Panathinaikos. This opinion is often adopted by the Committee given the fact that in previous doping controls carried out by ESKAN on the appellee footballer … he was found negative.*
>
> *From the aforementioned it derives that the above appellee footballer did not take the above substance in order to improve his athletic performance.*
>
> *Therefore, according to the above provisions, a reduced penalty should be imposed on him in relation to the one provided for, relative to the grade of his liability …".*

On 5 June 2009, the Player lodged an appeal against the DC Decision. On 10 June 2009, the Deputy President of the Appeals Committee of the HFF lodged an appeal against the DC Decision.

On 1 July 2009, the Appeals Committee of the Hellenic Football Federation (the "Appeals Committee") issued the decision No. 197/1-7-2009 (the "AC Decision"), holding, in its certified English translation, as follows:

> *"It rejects in merits the appeal … of the professional footballer JAKUB WAWRZYNIAK. ... It accepts upon merits the appeal … of the deputy Chairman of the Appeal Committee … . It cancels the appealable decision. … It accepts that JAKUB WAWRYZNIAK committed the disciplinary violation implied. It imposes on him according to the majority the penalty of his one (1) year disqualification, beginning from 5-4-2009".*

In the AC Decision, the Appeals Committee underlined that

> *"from the combination of the above provisions it derives that the footballer is obliged in case of a prescribed therapy or medication for therapeutic reasons, to ask and be informed whether the medication contains forbidden substances or methods and in case of an alternative therapy to take the relevant medical certificate that will be sent to the relevant body within 48 hours from the medical certificate, that in case a forbidden substance … is detected in the athlete, for the first violation will be imposed and if proven that he bears no liability or negligence, the penalty will be decreased by half. Furthermore, it derives that in case forbidden substances are detected in a doping control but it is proven that these substances were not used aiming at the improvement of the athletic performance, the first violation will be punished at least with a critical remark whereas the beginning of the sanction on doping violation will be counted from the date of sample taking.*

Moreover, negligence according to jurisprudence and in theory exists when the offender does not pay, impartially judging, the attention required which every average prudent and conscientious person ought under the same circumstances to pay based on the legal rules, the prevailing habits and common experience and sense and the offender himself having the possibility in view of his personal qualities, knowledge and abilities due to his service or profession, to predict and avoid the publishable result that should be under an objectively causal nexus with the action or the omission".

The Appeals Committee, then, remarked that

"the substance methylhexaneamine was detected in his [the Player's] organism, which on one hand is not independently mentioned in the forbidden substances of the relevant list of stimulants, but on the other hand it has the same pharmacological characteristics and the same chemical structure with the substance of specific reference in the corresponding list of stimulants. This is also fully proven by the content of the letter dated 30-3-2009 of the World Anti-doping Association to ESKAN from which it derives that the methylhexaneamine substance that was detected during the specific athlete's testing is a stimulant, having the pharmacological characteristics of a forbidden substance, based on the last paragraph 06 b of the list of Forbidden Substances of 1-1-2009.

The athlete's allegation that the only thing he was taking without a doctor's prescription from the beginning of February 2009 (when he was on a mission with the National Team of Poland), upon the recommendation of a co-athlete of his and without informing anyone of that, was the preparation Tight Extreme for weight loss only, is rejected as it was neither proved nor is it allowed and justified according to the standing regulations in football activity and particularly for experienced and international athletes to take any preparation without informing at least the team's doctors and without any further testing of the content of these preparations, besides the fact that even in case his allegation was true, it is again unjustified taking any preparation without following the provided for procedure and informing the doctor and the provided for by the regulation bodies.

Therefore, it was refutably proven in the testing that took place for the detection of forbidden substances that the substance methylhexaneamine was found in the athlete's organism, which on the one hand it is not specifically mentioned in the relevant list of stimulants but on the other hand it has the same exactly characteristics and chemical structure of the substance mentioned in the list and called tuaminoheptane, therefore the footballer committed the violations of article 24 of the disciplinary code on the taking of a forbidden substance for which the statutory disciplinary penalty is a two (2) year disqualification.

However, it is a fact that the non reference of the substance of "special reference" called methylhexaneamine in the list of stimulants, and the reference only of a substance with a similar action, that is tuaminoheptane, in the judgment of the majority of the present Appeal Committee, led the appellant footballer, out of negligence, to the involuntary violation of the Anti-doping Regulation, this negligence of his being specified on the one hand as an objectively difficult fact having the possibility to know whether this belonged to the forbidden substances due to the fact that there was no specific reference of that in the relevant list of WADA and on the other hand to the reasonable doubt of even an expert in drugs as to whether this substance belongs directly and not inductively to the forbidden substances as it was not proven that the action of the detected substance, methylhexaneamine, is perfectly identical to that of the substance tuaminoheptane".

As a result, the Appeals Committee, applied *"the provision of paragraph 2, chapter C, article 24 of the Disciplinary Code"* to conclude that *"the penalty"* of two years of suspension, otherwise applicable, *"should be reduced by half"*. In other words, the Appeals Committee found that the Player had committed a violation of Article 24 of the 2008 HFF Disciplinary Code of the HFF for taking

prohibited substances; it imposed, nonetheless, the reduced sanction foreseen by Article 24 Chapter C para. 2 of the 2008 HFF Disciplinary Code for no significant fault.

The AC Decision was notified to the Player, according to his unchallenged submission, on 13 July 2009.

On 21 July 2009, the HFF informed FIFA about the AC Decision.

By a decision dated 27 July 2009, the Chairman of the FIFA Disciplinary Committee issued a decision in order *"to extend a sanction to have worldwide effect"* and ruled as follows:

> *"1. The player Jakub Wawrzyniak is suspended worldwide for the duration of the suspension imposed by the association. This suspension coves all types of matches, including domestic, international, friendly and official fixtures.*
>
> *2. The procedural costs are not to be borne by the player Jakub Wawrzyniak".*

On 24 July 2009, the Player filed a statement of appeal with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the "Code"), to challenge the AC Decision, naming the HFF as respondent. The statement of appeal contained also an application for provisional measures, seeking the stay of the challenged AC Decision, and the appointment of Mr Piotr Nowaczyk as arbitrator.

On 3 August 2009, the Appellant filed his appeal brief, confirming, in substance, the request for relief submitted in the statement of appeal.

The HFF did not formally submit an answer to the appeal pursuant to Article R55 of the Code.

On 6 August 2009, HFF sent a letter to the CAS, attaching a copy of the AC Decision and the decision rendered by FIFA on 27 July 2009. As to the request for provisional and conservatory measures filed by the Appellant, the Respondent confirmed its position, as stated by the AC Decision, and indicated that the *"request has no ground and is … inadmissible"*.

With order rendered on 13 August 2009, the Deputy President of the CAS Appeals Arbitration Division dismissed the request for a stay, on the grounds that the Appellant had failed to demonstrate that the measure sought would protect him from irreparable harm.

In a letter dated 11 November 2009, the HFF informed the CAS that it would *"not be represented at the hearing"*.

On 12 November 2009, the CAS Court Office acknowledged the Respondent's letter of 11 November 2009 and noted that, although the Respondent would not be present at the hearing, the Panel would nevertheless proceed with the hearing pursuant to Article R57, last paragraph of the Code, and issue an award on the basis of Article R58 of the Code.

A hearing was held in Lausanne on 26 November 2009 on the basis of the notice given to the parties in a letter of the CAS Court Office dated 15 September 2009. At the hearing no

representative for the Respondent was present; the Appellant attended in person together with his counsel.

During the hearing, the following witnesses for the Appellant testified through tele-conference: Prof. Jerzy Smorawinski, Head of Polish Anti-Doping Organization, and Mr Jacek Jaroszewski, former Head of the Polish National Team medical staff.

Prof. Smorawinski testified first. In his deposition Prof. Smorawinski stated

- that in late winter-March 2009, Methylhexaneamine was not commonly recognized by the medical staff as a prohibited substance and that in January-February 2009 he would not know whether Methylhexaneamine was prohibited or not;
- that it is difficult to say whether Methylhexaneamine is a *"similar substance"* to prohibited substances, according to the WADA's terminology , and it was only after a WADA colloquium held in Cologne in March 2009 that Methylhexaneamine was indicated as a substance similar to Tuaminoheptane, which has stimulating effects on the central nervous system; in general, there was little scientific information as to Methylhexaneamine at that time;
- that Methylhexaneamine is just an ingredient, not a self-standing substance which can be taken separately, and that it could be used as a dietary supplement or as a nasal spray against nasal congestion; and that its weight reduction effect comes indirectly through neural stimulation;
- with respect to the question of the quantity of Methylhexaneamine that an athlete should take in order to have performance enhancing effects, that Methylhexaneamine has not a great influence on the physical capacity and, therefore, that it is not sure at all whether it can enhance performance. He added that it would surprise him if an athlete took such substance in order to enhance his/her performance;
- that Methylhexaneamine was not detected before the WADA colloquium held in March 2009, since laboratories use the method of medical screening and before March 2009 this substance was not being investigated at all.

In his deposition, Mr Jacek Jaroszewski stated that in winter/spring 2009 it was not clear to him whether he would advise the Player to refrain from using the supplement that he was taking. Mr Jaroszewski would compare the substances of the supplement to those included in the WADA's prohibited list. Further, Mr Jaroszewski stated that he normally buys supplements containing non-prohibited substances from known companies, and that, in case of doubt, he would ask for Prof. Smorawinski's opinion before allowing his players to use such supplements. To the question whether Mr Jaroszewski would allow players to take their own food supplements, Mr Jaroszewski said that he would allow such supplements if prescribed by the club, but that he would also check himself to see whether there was anything wrong with using them. The key point in his declaration is that absent authorization he would be opposed to their use. He further stated that he does not prescribe supplements for weight loss, but recommends more training instead.

During the hearing, the Player stated that he took the supplement from a specialized store, and he informed the doctor of his former club (Legia Warsaw), who controlled the supplement and did not

oppose its use. Further, he stated that he informed the doctor of Panathinaikos that he was taking the nutritional supplement for weight reduction "Tight Xtreme" ("Tight Xtreme" or the "Supplement"), shortly after the first doping control but before March 2009. According to the Appellant, the doctor of Panathinaikos told him that they normally use their own supplements, but there was no problem with this specific supplement.

At the end of the hearing, counsel for Appellant presented a letter dated 12 November 2009 sent by the Polish Anti-Doping Agency (and signed by Prof. Smorawinski), asking the Panel to take this document into consideration. According to the counsel for the Appellant, the new document aimed rather to summarize in writing the statements made by Prof. Smorawinski at the hearing and not to add new elements.

In view of the fact that Respondent was absent during the hearing, the Panel reserved its right to decide on the admissibility of the document upon acceptance thereof by the Respondent, and set a deadline for the latter to file its position or observations on this document on or before 3 December 2009.

By letter dated 3 December 2009 the Respondent transmitted to the CAS copy of the WADA letter dated 30 March 2009; the Appellant did not comment on this document during the hearing. In a letter dated 4 December 2009, the CAS Court Office, writing on behalf of the President of the Panel, requested the Appellant whether he accepted that the Respondent's letter of 3 December 2009, together with its attachment, be included in the file of the arbitration.

In a letter dated 7 December 2009, the Appellant informed the Panel that it accepted the Respondent's letter of 3 December 2009, together with its attachment.

Consequently, the Panel decided that the letter dated 12 November 2009 from Prof. Smorawinski and the Respondent's letter of 3 December 2009, together with its attachment, were both admitted. A decision to this effect was communicated to the parties by the CAS Court Office in a letter dated 9 December 2009.

LAW

CAS Jurisdiction

1. CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of CAS is not disputed by the HFF and was based *in casu* on Article R47 of the Code. It is further based on Article 63 para. 1 of the FIFA Statutes (2008 edition) and on Article 63 of the 2009 FIFA ADR, in force at the time the appeal was filed, according to which

"1. In cases arising from participation in an international competition or in cases involving international-level players, a final decision within FIFA's, the confederation's or the association's process may be appealed exclusively to CAS in accordance with the provisions applicable before such court.

2. The following parties shall have the right to appeal to CAS:

a) the player or other person who is the subject of the decision being appealed (...)".

Appeal Procedure

2. As these proceedings involve an appeal against a decision in a dispute relating to a contract, issued by a federation (HFF), whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case, in the meaning and for the purposes of the Code.

Admissibility

3. The Player's statement of appeal was filed within the deadline set in Article R47 of the Code and Article 63 para. 1 of the FIFA Statutes (2008 edition). It further complies with the requirements of Article R48 of the Code. Accordingly, the appeal is admissible.

Scope of Panel's Review

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

5. In this respect, the Panel confirms that, by using its full power to review the facts and the law, it can consider all the elements of the dispute, and review the exercise of the power to evaluate vested in the Appeals Committee of the HFF, and determine whether an anti-doping rule violation has been committed by the Player and, in the event an infringement can be established, decide on the proper sanction to be imposed on the Player.

Applicable Law

6. The applicable law in the present arbitration is to be decided by the Panel in accordance with the provisions of Chapter 12 of the Swiss Private International Law Act (PIL), the arbitration bodies appointed on the basis of the Code being international arbitral tribunals having their seat in Switzerland within the meaning of Article 176 of the PIL.

7. Pursuant to Article 187.1 of the PIL:

"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the law with which the case is most closely connected".

8. Article 187.1 of the PIL reflects the entire conflict-of-law system applicable to arbitral tribunals, which have their seat in Switzerland: the other specific conflict-of-laws rules contained in Swiss private international law are not applicable to the determination of the applicable substantive law in Swiss international arbitration proceedings (KAUFMANN-KOHLER/STUCKI, International Arbitration in Switzerland, Zurich 2004, p. 116; RIGOZZI A., L'arbitrage international en matière de sport, Basle 2005, § 1166 *et seq*).

9. Two points should be underlined with respect to Article 187.1 of the PIL:

   i. it recognizes the traditional principle of the freedom of the parties to choose the law that the arbitral tribunal has to apply to the merits of the dispute;

   ii. its wording, to the extent it states that the parties may choose the *"rules of law"* to be applied, does not limit the parties' choice to the designation of a particular national law. It is in fact generally agreed that the parties may choose to subject their dispute to a system of rules which is not the law of a state and that such a choice is consistent with Article 187 of the PIL (DUTOIT B., Droit international privé suisse, Basle 2005, p. 657; LALIVE/POUDRET/REYMOND, Le Droit de l'Arbitrage interne et International en Suisse, Lausanne 1989, p. 392 *et seq*.; KARRER P., in HONSELL/VOGT/SCHNYDER (eds.) Kommentar zum schweizerischen Privatrecht, Internationales Privatrecht, Basle 1996, Art. 187, § 69 *et seq*.; see also CAS 2005/A/983 & 984, § 64 *et seq*.). It is, in addition, agreed that the parties may designate the relevant statutes, rules or regulations of a sporting governing body as the applicable "rules of law" for the purposes of Article 187.1 of the PIL (RIGOZZI A., L'arbitrage international en matière de sport, Basle 2005, § 1178 *et seq*).

10. This far-reaching freedom of the choice of law in favour of the parties, based on Article 187.1 of the PIL, is confirmed by Article R58 of the Code. The application of this provision follows from the fact that the parties submitted the case to the CAS. Article R27 of the Code stipulates in fact that the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS.

11. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute:

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

12. In the present case, the question is which *"rules of law"*, if any, were chosen by the parties: i.e., whether the parties chose the application of a given state law, and, if yes, what is the role of the *"applicable regulations"* embedded in Article R58 of the Code.

13. To address this question the Panel has to consider the following:

i. the dispute was heard, and the AC Decision issued, by a disciplinary body of the HFF that applied some provisions of the 2008 HFF Disciplinary Code; but

ii. the Appellant made, in his briefs in these arbitration proceedings, no reference to any Greek rules or regulations, applicable within the HFF system, or to Greek law: indeed, the Appellant based his submissions on provisions of the 2009 FIFA ADR and the FIFA Disciplinary Code, 2009 edition (hereinafter referred to as the "2009 FIFA Disciplinary Code");

iii. the Respondent made no objections in this arbitration to the Appellant's exclusive reference to the FIFA rules;

iv. the DC Decision also applied the relevant provisions of the 2009 FIFA ADR.

14. In the Panel's view, this dispute has to be discussed on the basis of the relevant Greek regulations, taking into account the FIFA rules referred to by the Appellant and applied in the DC Decision. The Panel notes that the provisions of the 2008 HFF Disciplinary Code applied in the decisions issued by the HFF disciplinary bodies have the same content as the corresponding FIFA rules.

15. The Panel, at the same time, remarks that some problems may be caused by the succession in time of the pertinent rules that have evolved since the Player underwent the doping control at which he tested positive. Indeed, the applicable FIFA and HFF regulations were modified following the modifications by WADA of the World Anti-Coping Code (WADC), from its 2003 edition (the "2003 WADC") to its 2009 edition (the "2009 WADC"). In fact, at the time the doping control took place the following regulations (corresponding to the 2003 WADC) were in force:

- the FIFA Doping Control Regulations of 2004 (the "2004 FIFA DCR"), which defined the actions constituting anti-doping infringements;
- the FIFA Disciplinary Code of 2007 (the "2007 FIFA Disciplinary Code"), which in its Articles 63-70 set the sanctions for the anti-doping infringements indicated in the 2004 FIFA DCR;
- the 2008 HFF Disciplinary Code.

17. But, thereafter, following the adoption of the 2009 WADC,

- the 2009 FIFA ADR entered into force on 1 May 2009,
- the 2009 FIFA Disciplinary Code entered into force 1 January 2009,
- the 2009 edition of the HFF Disciplinary Code (the "2009 HFF Disciplinary Code") entered into force on 13 June 2009.

18. The Panel identifies the applicable rules by reference to the principle *"tempus regit actum"*: in order to determine whether an act constitutes an anti-doping rule infringement, the Panel applies the law in force at the time the act was committed. In other words, new regulations do not apply retroactively to facts that occurred prior to their entry into force, but only for the

future. As stated in a CAS precedent (CAS 2000/A/274, *Digest of CAS Awards II (1998-2000)*, p. 389 at 405), in fact,

"under Swiss law the prohibition against the retroactive application of Swiss law is well established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time that the facts at issue occurred …".

19. The principle of non-retroactivity is however mitigated by the application of the *"lex mitior"* principle. In this respect the Panel fully agrees with the statements contained in the advisory opinion CAS 94/128 (*Digest of CAS Awards (1986-1998)*, p. 477 at 491), which read (in the English translation of the pertinent portions) as follows:

"The principle whereby a criminal law applies as soon as it comes into force if it is more favourable to the accused (lex mitior) is a fundamental principle of any democratic regime. It is established, for example, by Swiss law (art. 2 para. 2 of the Penal Code) and by Italian law (art. 2 of the Penal Code). This principle applies to anti-doping regulations in view of the penal or at the very least disciplinary nature of the penalties that they allow to be imposed. By virtue of this principle, the body responsible for setting the punishment must enable the athlete convicted of doping to benefit from the new provisions, assumed to be less severe, even when the events in question occurred before they came into force. This must be true, in the Panel's opinion, not only when the penalty has not yet been pronounced or appealed, but also when a penalty has become res iudicata, provided that it has not yet been fully executed.

The Panel considers that […] the new provisions must also apply to events which have occurred before they came into force if they lead to a more favourable result for the athlete. Except in cases where the penalty pronounced is entirely executed, the penalty imposed is, depending on the case, either expunged or replaced by the penalty provided by the new provisions".

20. In light of the above, in order to establish an anti-doping rule violation, the Panel shall apply the 2004 FIFA DCR to which the 2008 HFF Disciplinary Code referred in Article 24 Chapter 1 para. 1 (according to which *"Doping and doping rule violations are determined according to the FIFA Regulations on Doping Control for in- and out-of-competition"*). In any event, according to the principle of *lex mitior*, the Panel will apply those rules subsequently entered into force which are more favourable to the Player.

21. More precisely, the rules which are relevant to the case at hand are the following:

i. Article II (Anti-Doping Rule Violations) of the 2004 FIFA DCR

The following constitute anti-doping rule violations:

1. The presence of a prohibited substance or its metabolites or markers in a player's bodily sample.

1.1. 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 bodily or conscious use on the player's part be demonstrated in order to establish an anti-doping violation under part II article 1.

Individual Case management is obligatory and is not affected by this regulation. (...)

ii. Appendix A of the 2004 FIFA DCR (as in force in April 2009)

Substances and methods prohibited in competition

In addition to the categories … defined above, the following categories are prohibited in competition:

Prohibited Substances

S6. Stimulants

All stimulants ... are prohibited ….

Stimulants include:

... tuaminoheptane and other substances with a similar chemical structure or similar biological effect(s).

A stimulant not expressly mentioned as an example under this section should be considered as a specified substance only if the player can establish that the substance is particularly susceptible to unintentional anti-doping rule violations because of its general availability in medicinal products or is less likely to be successfully abused as a doping agent.

Specified Substances

"Specified substances" are listed below:

… tuaminoheptane and any other stimulant not expressly listed under section S6 for which the player establishes that it fulfils the conditions described in section S6.

iii. Article 24 Chapter C para. 1 (a) of the 2008 HFF Disciplinary Code

Any violation of Chapter II.1 (The presence of a prohibited substance or its metabolites or markers) [of the 2004 FIFA DCR] ... shall incur a two-year suspension for the first offence and a lifelong ban in the case of repetition.

provision corresponding to Article 65.1 (a) of the 2007 FIFA Disciplinary Code.

iv. Article 24 Chapter C para. 1 (b) of the 2008 HFF Disciplinary Code

If any specified substances contained in the list of prohibited substances and methods (cf. appendix A of the Doping Control Regulations for FIFA Competitions and Out of Competition) are detected, for which proof can be produced that the specific substances were not intended to enhance sporting performance, at least a caution shall be given for the first offence and a two-year suspension in the case of repetition. A third offence shall incur a lifelong ban.

provision corresponding to Article 65.1 (b) of the 2007 FIFA Disciplinary Code.

v. Article 47.1 of the 2009 FIFA ADR

Where a player can establish how a specified substance entered his body or came into his possession and that such specified substance was not intended to enhance the player's sporting performance or mask the use of a performance-enhancing substance, the period of ineligibility imposed under art. 45 shall be replaced with the following: at a minimum, a reprimand and no period of ineligibility from future competitions, and at a maximum, two years of ineligibility.

To justify any elimination or reduction, the player must produce corroborating evidence in addition to his word that establishes to the comfortable satisfaction of the FIFA Disciplinary Committee the absence of intent to enhance sporting performance or mask the use of a performance-enhancing substance. The player's degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility.

vi. Article 24 Chapter C para. 1 (c) of the 2008 HFF Disciplinary Code

If the suspect can prove in an individual case that he bears no fault or negligence, the sanction otherwise applicable under the terms of para. 1 becomes irrelevant.

provision corresponding to Article 65.3 of the 2007 FIFA Disciplinary Code.

vii. Article 24 Chapter C para. 2 of the 2008 HFF Disciplinary Code

If the suspect can prove in each individual case that he bears no significant fault or negligence, the sanction may be reduced, but only by up to half of the sanction applicable under para. 1; a lifelong ban may not be reduced to less than eight years.

provision corresponding to Article 65.2 of the 2007 FIFA Disciplinary Code.

The Merits of the Dispute

22. The Player, in order to have the sanction cancelled or reduced, is advancing three distinct claims:

i. that Methylhexaneamine should not be treated as a "similar substance" within the meaning of the pertinent anti-doping rules because its similarity to a "listed substance" cannot be established;

ii. that he bears no fault or negligence for the acts for which he was punished, within the meaning and for the purposes of Article 47 section 2 of the 2009 FIFA ADR (analogous to Article 10.5.1 of the 2003 WADC and of the 2009 WADC);

iii. that Methylhexaneamine entered his body through the weight reduction supplement Tight Xtreme, and, consequently, that he had no intention to enhance his sporting performance. Hence, he should be exonerated from any liability.

23. The Panel, in order to assess the well-founded of the Player's claims, needs to answer the following questions:

A. was Methylhexaneamine a substance similar to a prohibited substance according to the anti-doping rules applicable at the time the facts took place? If so, can Methylhexaneamine be considered, and treated as, a "specified substance"?

B. in the event that the Panel finds that Methylhexaneamine was a prohibited substance, being a substance similar to a prohibited substance, and, therefore, that a doping offence had been committed, the Panel needs to further respond to the following question: has a doping offence been committed without fault or negligence on behalf of the Player?

C. should the Panel answer question (ii) negatively and consider that Methylhexaneamine had to be treated as a "specified substance" then the Panel would have to respond to one additional question: are the conditions necessary for the application of the reduced sanction set in Article 24 Chapter C para. 1 (b) of the 2008 HFF Disciplinary Code, and the other related provisions (§ 21 (iv) and (v) above) met here?

D. what is, in light of the above, the appropriate sanction?

A. Was Methylhexaneamine a substance similar to a prohibited substance according to the anti-doping rules applicable at the time the facts took place? If so, can Methylhexaneamine be considered, and treated as, a "specified substance"?

24. It is undisputed that the doping control that took place on 5 April 2009 showed the presence of Methylhexaneamine in the Player's sample. Consequently, all the Panel needs to do in order to establish whether an anti-doping rule violation has taken place (according to Article II.1 of the 2004 FIFA DCR), is to clarify whether Methylhexaneamine was prohibited at the time when the doping control took place.

25. Methylhexaneamine was not explicitly included in Appendix A of the 2004 FIFA DCR, in force in April 2009 (the "2008 Prohibited List"), that is, at the time the Player underwent the doping control where he tested positive. This does not in and of itself exonerate the Player from liability: the Panel still has to determine whether Methylhexaneamine was a substance similar to a prohibited substance; this is so because, in accordance with the principle well enshrined in anti-doping regulations, the Player is liable for the intake not only of one the listed substances (that is, substances that are explicitly prohibited through inclusion in the relevant list), but that also for the intake of any *"other substances with a similar chemical structure or similar biological effect(s)"*. We note here that, according to the law, the Player is presumed to know that an illegality has been committed through the intake of a substance which has either been enlisted in the relevant list or a substance which although not itself enlisted, still exhibits similar effects to those of one of the enlisted substances.

26. In this respect, the Panel notes that the characterization of Methylhexaneamine as a prohibited substance by the HFF disciplinary bodies was based on a letter sent to HFF on 30 March 2009 by Dr. Olivier Rabin, science director of WADA, indicating that Methylhexaneamine has the same pharmacological features and similar chemical structure with Tuaminoheptane, which is stated as a "specified substance" in the relevant list of stimulants. The WADA letter reads, in relevant part, as follows:

"… methylhexaneamine is s stimulant that has a pharmacological profile of a sympathomimetic and a chemical structure similar to tuaminoheptane.

Consequently, methylhexaneamine is a prohibited substance under section 6b (Stimulants, specified) of the Prohibited List that came into force on January 1st, 2009".

27. The Panel notes in this respect that the classification of a substance as "similar" to one of the listed substances made by the WADA administration can be challenged. Indeed, this precisely what the Player did in the instant case. The Panel refers here to case law, namely, another CAS award (award of 19 October 2005, CAS 2004/A/726, para. 2.4), to which this Panel fully subscribes. The determination of similarity to substances expressly listed on the list of prohibited substances requires in fact:

- the similarity to one (or several) of the listed substances: to this effect, it does not suffice to simply assert that a substance is "a stimulant" without also specifying the particular substance on the Prohibited List with which similarity is supposed to exist (CAS 2004/A/726, para. 2.5.1.3);

- the similarity of a substance to a prohibited substance must be accompanied by the fulfilment of any two of the three criteria (established in Article 4.3 of the 2003 WADC and of the 2009 WADC for the inclusion of a substance in the list of prohibited substances): (a) the potential performance enhancement; (b) the potential health risk; and (c) the violation of the spirit of sport. Two of these three criteria must be met for a substance to be treated as similar and, thus, prohibited (see CAS 2004/A/726, para. 2.5).

28. The first condition, namely the similarity to a given substance) is *in casu* met, since WADA, in its letter of 30 March 2009, expressly recognized Methylhexaneamine as having *"pharmacological features of sympathomimetic and chemical composition similar to tuaminoheptane"*. This is not disputed not even by the experts that the Appellant has called to testify before the Panel: according to a letter sent to the WADA on 6 July 2009, Prof. Smorawinski explicitly stated that Methylhexaneamine was a specified substance *"according to the Code (a stimulant not expressly listed as prohibited, but with a similar chemical structure or similar biological effect as the listed ones)"*; Prof. Smorawinski, in his letter of 12 November 2009, further acknowledged that the similarity of the chemical structure of Methylhexaneamine to the chemical structure of Tuaminoheptane was emphasized during a workshop on *"dope analysis"* held on 1-6 March 2009 (see letter of 12 November 2009, p. 2). To the Panel's view, these are sufficient elements establishing the similarity between Methylhexaneamine and Tuaminoheptane.

29. As to the other condition (fulfilment of two of the three criteria mentioned *supra* in para. 27), the Panel notes that Methylhexaneamine has been specifically included in the list of prohibited substances coming into effect on 1 January 2010 (the "2010 Prohibited List") as a prohibited substance. This means that the so-called "List Committee", i.e. the group of specialists in the field of doping substances representing all stakeholders in the fight against doping, was firmly convinced that said substance meets the conditions set in Article 4.3 of the WADC. The Panel finds this conclusion to be sufficient evidence that Methylhexaneamine fulfils at least two out of the three criteria to be satisfied also for the purposes of its characterization as similar to a prohibited substance and thus prohibited. The fact that Prof. Smorawinski, in his letter of 12 November 2009, contested the effect of Methylhexaneamine on the human body, as well as its performance-enhancing effect is not enough to put into question the Panel's conclusion on this point.

30. The Panel, in addition, finds that Methylhexaneamine, being a prohibited substance, had to be considered and treated as a "specified substance", for the purposes and effects of the pertinent anti-doping rules, with respect to an anti-doping rule violation occurring in April 2009 for the reasons that are explained immediately *infra*.

31. The Panel notes that in Section S6 concerning stimulants the 2008 Prohibited List indicated that *"a stimulant not expressly mentioned as an example under this section should be considered as a specified substance only if the player can establish that the substance is particularly susceptible to unintentional anti-doping rule violations because of its general availability in medicinal products or is less likely to be successfully abused as a doping agent"*. Under this rule, therefore, it was incumbent on the Player to give

evidence that Methylhexaneamine met the conditions necessary to be considered a "specified substance".

32. The Panel however has also noted that:

- Article 16 of the 2009 FIFA ADR provides that *"… all prohibited substances shall be specified substances except those stimulants … so identified in the Prohibited List"*, without providing for any further "burden-of-proof" rule;
- the list of prohibited substances that came into effect on 1 May 2009, as Appendix B to the 2009 FIFA ADR (the "2009 Prohibited List") did not include the "burden-of-proof" rule contemplated in the 2008 Prohibited List, but indicated *"tuaminoheptane and other substances with a similar chemical structure or similar biological effect(s)"* among the "specified substances";
- the disciplinary decisions adopted against the Player by the HFF took the position that Methylhexaneamine, a prohibited substance, was indeed a "specified substance" for the purposes of anti-doping regulations; this position remained unchallenged in this arbitration: the Appellant implies that, if prohibited, Methylhexaneamine is in any case a "specified substance", while HFF failed to submit any answer.

33. As a result of the above, this Panel is of the view that with respect to the anti-doping violation committed by the Player, Methylhexaneamine has to be considered as a "specified substance": the Panel has to apply the 2009 Prohibited List as the law which is more favourable to the Player according to the principle of *lex mitior*. The Panel is aware of the fact that the 2010 Prohibited List, for the first time, enlists Methylhexaneamine among the "non specified substances". This characterization will apply to doping offences committed after 1 January 2010; it cannot, however, retroactively apply to actions that occurred before its entry into force.

34. In conclusion, the Panel adopts the view that, in the case at hand, Methylhexaneamine must be considered as a specified prohibited substance similar to the Tuaminoheptane, a specified prohibited stimulant specifically mentioned in the 2008 Prohibited List. As a result, the presence of Methylhexaneamine in the Player's bodily sample constitutes a doping offence.

B. In the event that the Panel finds that Methylhexaneamine was a prohibited substance, being a substance similar to a prohibited substance, and therefore that a doping offence has been committed: has such doping offence been committed without Fault or Negligence?

35. The Panel notes, at the outset, that the FIFA and HFF provisions correspond to the rules contained in the 2003 WADC and in the 2009 WADC. As a result, the Panel submits that the understanding and interpretation of the FIFA rules can be informed by the text and the interpretative notes included in the WADC. In this vein, the Panel notes that case law has already followed this approach and held that the expressions *"No Fault or Negligence"* or *"No Significant Fault or Negligence"* should be considered as having the same meaning in all

regulations (HFF, FIFA and WADC) (see the award of 3 June 2008, CAS 2006/A/1385, para. 54).

36. Under the definitions included in the WADC an athlete bears *"No Fault or Negligence"* when he 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 the Prohibited Substance"*, and he bears *"No Significant Fault or Negligence"* when he establishes that *"that his … fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to an anti-doping rule violation"*.

37. According to the Comment to Article 10.5.1 of the 2009 WADC, *"to illustrate the operation of Article 10.5.1, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); …"*.

38. Comment to Article 10.5.1 alone seems to suggest that the application of the *No Fault or Negligence*-principle in the case at hand should be excluded. The Panel shall analyse, nonetheless, all other Player's submissions.

39. The Player raised the argument that he bore no fault or negligence because, in early 2009, Methylhexaneamine did not figure in the Prohibited List and there was neither information about its illegality, nor any method available to trace this substance.

40. The Panel cannot accept this argument. It stresses that, according to CAS case law, the Prohibited List is an "open list" and *"all substances pharmacologically classified as a stimulant and not identified under the Monitoring Programme are by definition prohibited"* (CAS 2004/A/726, para. 2.5.1.2). This means that, even if the WADA administration could only identify the substance in its letter on 30 March 2009, Methylhexaneamine was still a prohibited substance already before that time because it was a stimulant.

41. The Appellant further argues that, prior to the doping control he had taken Tight Xtreme from time to time since January 2009, and was submitted during this period to anti-doping controls without testing positive.

42. Again, the Panel cannot see how such an argument could be upheld: first, it cannot be proven whether the Player actually took Tight Xtreme prior to the first doping control; second, and according to Prof. Smorawinski, the doping controls follow the so-called "screening method", which means that only certain substances which are actually searched can be detected. In a nutshell, Methylhexaneamine could not have been detected during controls taking place prior to March 2009, since this substance was not being investigated at all.

43. The Panel notes that it cannot find that the behaviour of the Appellant was not negligent for the reasons mentioned above; the Panel finds additional support to its finding in that even Prof. Smorawinski, the expert appointed by the Appellant, in a letter dated 12 November 2009 acknowledged that the athlete *"behaved recklessly having used the substance"*.

44. The Player also argued that, even if he had asked a medical practitioner specialized in sports about Methylhexaneamine, he would not have received confirmation that the substance was prohibited. Hence, he argues that he bears no responsibility for this reason as well. This argument cannot be upheld either: according to well-established case law, even in cases where the doping offence has occurred following false information provided by the medical personnel, the athlete is not automatically exempted from fault or negligence (see *inter alia* CAS 2005/A/847, para. 7.3.2; see also 2008/A/1370 & 1376, paras. 147 ff.). The WADC system makes it clear that athletes bear responsibility for the intake of substances without conditioning, in principle, their responsibility on (mis-)information that they might have obtained.

45. Finally, the Panel notes that the last paragraph of the 2008 Prohibited List, in force at the time the Player took the Supplement, contained the following *"warning"*: *"The results of studies recently carried out on so-called food supplements for athletes have shown that these products, which are principally manufactured and distributed by companies in the USA, are contaminated with anabolic-androgenic steroids or so-called pro-hormones, in other words, with prohibited substances. It cannot be ruled out that such food supplements are also being produced and distributed by other firms on behalf of these US companies. This contamination is not detectable from the indications given on the packaging or on the enclosed information leaflet! Every player who uses such food supplements is responsible for ascertaining whether they are contaminated with prohibited substances, for, in the case of a positive doping test, an athlete is liable to the relevant sanctions"*.

46. Thus, even if the Player submits plausible evidence as to how Methylhexaneamine came into his body, it seems to the Panel that the Player's behaviour was negligent under the alleged circumstances.

C. Should the Panel answer question (ii) negatively and consider that Methylhexaneamine had to be treated as a "specified substance": are the conditions necessary for the application of the reduced sanction set in Article 24 Chapter C para. 1 (b) of the 2008 HFF Disciplinary Code, and the other related provisions (§ 21 (iv) and (v) above) met here?

47. Having established that Methylhexaneamine is a substance similar to a "specified substance", that has to be treated *in casu* as a "specified substance", the Panel shall examine whether the circumstances of Article 24 Chapter C para. 1 (b) of the 2008 HFF Disciplinary Code (§ 21 (iv) above) are fulfilled, i.e. whether evidence has been supplied to the effect that Methylhexaneamine was *"not intended to enhance sporting performance"*.

48. According to the Comment to Article 10.3 of the 2003 WADC, which is analogous to the corresponding HFF provision (Article 24 Chapter C para. 1 (b) of the 2008 HFF Disciplinary Code), this rule allows for some flexibility in disciplining athletes who test positive as a result of the *"inadvertent use"* of substances of *"general availability in medicinal products or which are less likely to be successfully abused as doping agents"*.

49. The Comment to Article 10.4 of the 2009 WADC reads as follows: *"Specified Substances are not necessarily less serious agents for purposes of sports doping than other Prohibited Substances (for example, a stimulant that is listed as a Specified Substance could be very effective to an Athlete in competition); as to the burden of proof, the hearing panel has to be comfortable satisfied by the objective circumstances of the case that the Athlete in taking or Possessing a Prohibited Substance did not intent to enhance his or her sport performance. As examples of such objective circumstances which in combination might lead a hearing panel to be comfortable satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete …"*.

50. The Comment to Article 10.4 of the 2009 WADC then mentions, as an example of non-performance enhancing intention, *"the Athlete's open Use or disclosure of his or her Use of the Specified Substance"*.

51. In the case at hand, the Player stated during the hearing that he had informed both the doctor of Legia and the doctor of Panathinaikos about the use of Tight Xtreme. This position was also expressed in the course of the disciplinary proceedings before the HFF bodies.

52. The Panel regrets that the full file of the disciplinary case was not transmitted by the HFF to the CAS, the repeated requests of this Panel notwithstanding. In the absence of such file, the Panel can only refer to the content of the two disciplinary decisions rendered by the HFF. In the DC Decision, the Disciplinary Committee was satisfied that the substance entered into the Player's body through the Supplement was intended for weight loss and not as means to enhance performance, and *"this was explicitly deposited by the witness examined, Panagiotis Kouloumentas, doctor of PAE PANATHINAIKOS"* (see p. 3 of the DC Decision). This is why it punished the Player with a three months ban from sporting competitions. The Appeals Committee implicitly (that is, without addressing the testimony by Dr Kouloumentas on its head) rejected this argument stating that this allegation *"was neither proved nor is it allowed and justified"*.

53. The Panel notes that the Player has to establish the facts that he alleges to have occurred by a *"balance of probability"*. According to CAS jurisprudence, the balance of probability standard means that the indicted athlete *"bears the burden of persuading the judging body that the occurrence of the circumstances on which he relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence"* (see CAS 2008/A/1370 & 1376, para. 127; CAS 2004/A/602, para. 5.15; TAS 2007/A/1411, para. 59). This principle applies also to the demonstration that Methylhexaneamine was *"not intended to enhance sporting performance"*.

54. The Player, in order to satisfy his burden, did not simply offer his version of the facts with respect to the manner in which the substance entered his body. The Panel, in fact, notes the

statements made by Dr. Panagiotis Kouloumentas, which can be found in the DC Decision, from which it can be deduced that the Player had informed him before taking the substance. The Panel notes that the statements by Dr. Kouloumentas have not been addressed at all in the AC Decision, which is drafted in general terms, and on the basis of abstract reasoning, without addressing the alleged circumstances and the evidence brought by the Player and the team doctor regarding the manner in which the substance entered its body and the intended purpose for taking the substance. Also on this point the Panel regrets the position taken by the HFF in this arbitration: its failure to file an answer and to appear at the hearing not only has caused the Appellant's contentions to remain un-contradicted, but also has deprived the Panel of the possibility to fully explore the circumstances of the case.

55. For these reasons the Panel is led to the conclusion that, on a *"balance of probability"*, Methylhexaneamine entered into the Player's body through the ingestion of TightXtreme and that the Player has not used this substance in order to enhance his sporting performance. As a result, the Player "qualifies" for the application of the reduced sanction provided in specific circumstances by the pertinent rules when a "specified substance" is involved in the anti-doping rule infringement.

D. What is, in light of the above, the appropriate sanction?

56. Article 24 Chapter C para. 1 (b) of the 2008 HFF Disciplinary Code foresees that *"at least a caution shall be given for the first offence and a two-year suspension in the case of repetition"*. It is a principle that for the first violation the sanction will depend on the degree of fault of the athlete involved.

57. According to the Comment to Article 10.4 of the 2009 WADC, *"In assessing the athlete's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article. It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional cases"*.

58. The Appellant disputes the proportionality of the one year sanction imposed by the AC Decision. According to the Appellant, this sanction is excessive.

59. In general terms, a Panel *"is willing to enforce a strict approach in the definition of its power reviewing the exercise of the discretion enjoyed by the disciplinary body of an association to set a sanction"* (see also 2006/A/1175, para. 90). This Panel subscribes to the CAS jurisprudence under which the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence (see CAS 2004/A/690, para. 86; CAS 2005/A/830, para. 10.26; CAS 2005/C/976 & 986, para. 143).

60. The Panel notes that in the specific case the sanction imposed by the Appeals Committee of the HFF is evidently and grossly disproportionate to the offence.

61. Indeed, the sanction imposed by the Appeals Committee was based on a different (more serious) finding, i.e. that the Player had not met the conditions for the application of the reduced sanction contemplated for the "specified substances", but that he had acted with no significant fault or negligence. Therefore, the Appeals Committee applied a rule (Article 24 Chapter C para. 2 of the 2008 HFF Disciplinary Code) which foresees a minimum sanction of one year of suspension. On the other hand, this Panel has concluded that the Player "qualifies" for the application of the reduced sanction provided in specific circumstances by Article 24 Chapter C para. 1 (b) of the 2008 HFF Disciplinary Code when a "specified substance" is involved in the anti-doping rule infringement.

62. This Panel's conclusion, therefore, corresponds to the finding of the Disciplinary Committee. It seems appropriate to the Panel to also follow the DC Decision in the measurement of the sanction and impose three months of suspension, a measure which, in the Panel's view, is not evidently and grossly disproportionate to the offence. The three month period starts from the date of the provisional suspension of the Player.

Conclusion

63. In the light of the foregoing, the Panel holds that the appeal is to be partially upheld and the Decision set aside. The Player is to be declared ineligible for a period of three (3) months, starting on 5 April 2009, date of his provisional suspension.

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Jakub Wawrzyniak against the decision issued on 1 July 2009 by the Appeals Committee of the Hellenic Football Federation is partially upheld.

2. The decision adopted by the Appeals Disciplinary Committee of the Hellenic Football Federation on 1 July 2009 is amended as follows:

3. The Player Jakub Wawrzyniak is declared ineligible for the period of three (3) months, starting on 5 April 2009.

4. All other motions or prayers for relief are dismissed.

(…).