

Disciplinary Committee

FIFA[®]

Date: 15 August 2022

Sent to:

Mr Sabri Ali Mohamed
via Fédération Djiboutienne de
Football
sec.general.fdf@gmail.com

CC:

- Djibouti Football Federation
- Confédération Africaine de Football
- Agence Mondiale Antidopage
- FIFA Anti-doping Unit

Notification of the grounds of the Decision

Ref FDD-9952

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by the FIFA Disciplinary Committee on 14 June 2022.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

FIFA



Carlos Schneider
Director of Judicial Body

Fédération Internationale de Football Association

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Decision of the FIFA Disciplinary Committee

passed on 14 June 2022

DECISION BY:

Anin YEBOAH (Ghana), Deputy Chairperson
Thomas HOLLERER (Austria), Member
Mark Anthony WADE (Bermuda), Member

ON THE CASE OF:

Mr Sabri Ali Mohamed, Djibouti

(Decision FDD-9952)

REGARDING:

Article 17 of the FIFA Disciplinary Code [2019 ed.] – Doping
**Article 6 of the FIFA Anti-Doping Regulations [2021 ed.] – Presence of a Prohibited
Substance or its Metabolites or Markers in a Player’s Sample**

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the FIFA Disciplinary Committee (**the Committee**) has thoroughly considered any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.
2. On 12 November 2021, the Djiboutian player Sabri Ali Mohamed (**the Player** or **the Respondent**) was subjected to a doping control after the match *Djibouti v. Algeria* played in the frame of the Preliminary Competition for the FIFA World Cup Qatar 2022™.
3. The urine sample collected was sent to a World Anti-Doping Agency (**WADA**) accredited laboratory in Lausanne.
4. On 22 December 2021, the aforementioned laboratory reported the analysis results via the Anti-Doping Administration and Management System (**ADAMS**), where it was stated that the Player's urine sample had returned an Adverse Analytical Finding for exogenously administered testosterone, a non-specified substance prohibited under the World Anti-Doping Code (**WADC**) International Standard Prohibited List 2021 (**Prohibited List**).
5. Upon receipt of the aforementioned finding, the FIFA Anti-Doping Unit conducted an initial review as per art. 53 (1) FIFA Anti-Doping Regulations (**FIFA ADR**), which did not yield a justification for this Adverse Analytical Finding.
6. On 5 January 2022, the FIFA Anti-Doping Unit therefore notified the Player of a potential Anti-Doping Rule Violation (**ADRV**), informing him, *inter alia*, that his case would be referred to the FIFA Disciplinary Committee. Moreover, the Player was asked if he wished to verify whether the Prohibited Substance detected in the "A" sample was also present in the "B" sample.
7. On 9 January 2022, the Djibouti Football Federation (**DFD**) requested the opening and analysis of the "B" Sample.
8. Subsequently, on 11 January 2022, the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) informed the Player of the opening of disciplinary proceedings against him and notified him of his mandatory provisional suspension pursuant to art. 52 FIFA Disciplinary Code (**FDC**) and arts. 34 and 35 FIFA ADR. In addition, the Player was informed of his right to a preliminary hearing before the aforementioned Committee.
9. On 9 February 2022, the FIFA Anti-Doping Unit informed the Player that the analysis of the "B" sample confirmed the presence of exogenously administered testosterone.

10. In view of the above, the Secretariat gave 20 days to the Player to submit any explanation in accordance with art. 54 (5) FIFA ADR¹.
11. On 30 March 2022, the Secretariat notified a letter of charge to the Player. In particular, the Player was informed that the present proceedings related to breaches of the following provisions:
 - **Art. 6 FIFA ADR** - Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample, and
 - **Art. 17 FDC** – Doping.
12. Moreover, the letter of charge recounted the factual background of the case as well as the evidence on file and informed the Player that the abovementioned offences should be accompanied by a four-year period of Ineligibility in accordance with art. 20 (1) FIFA ADR.
13. The Player was therefore invited to inform the FIFA Disciplinary Committee within 20 days whether he wished:
 - To admit the alleged Anti-Doping rule violation and accept the aforementioned sanction;
or
 - To contest in writing the aforementioned allegations and/or the proposed consequences and/or to request in writing a hearing with the FIFA Disciplinary Committee.
14. On 14 April 2022, the Player provided his position, which is summarized hereafter.
15. On 3 June 2022, the Secretariat informed the Player that his case would be submitted to the FIFA Disciplinary Committee on 14 June 2022. The Player was also provided with the composition of the Committee that would hear the case on that date.
16. On the same day, the Djibouti Football Federation asked whether the Player could be heard by the Committee at the aforementioned meeting.
17. On 9 June 2022, the Secretariat provided the relevant information with respect to the hearing.
18. On 14 June 2022, a hearing was held by video-conference (**the Hearing**) in the presence of the following persons:
 - For the Committee:
 - Mr Anin Yeboah, deputy chairperson;
 - Mr Mark Anthony Wade, member;
 - Mr Thomas Hollerer, member;

¹ No position was received from the Player following this correspondence.

- For the Respondent:
 - Mr Sabri Ali Mohamed, the Respondent;
 - Mr Hamza Hassan Farah, lawyer;
 - Mr Youssouf Ahmed Mahamoud, General Secretariat of FDF;
 - Mr Mahdi Moumin, president of FC Dikhil;
 - Mr Abdoukader Houmed Daoud - Deputy Director of Stade Gouled.

- Representatives of the Secretariat

19. During the Hearing, the Respondent received the opportunity to provide his position and answer questions from the members of the Committee.

II. POSITION OF THE PLAYER

20. The position of the Player can be summarized as follows:

- The Player apologized for the delay in providing his response and to clarify the facts that led to the presence of anabolic substances in his samples.
- In preparation for the National Championship and given his physical condition at the time, the Player joined a gym in order to strengthen his muscles and acquire the physical capacities required for such a high-profile championship.
- A few months later, on the advice of his fitness trainer, the Player began taking steroid injections, the purpose of which was to increase his hormone production in order to strengthen his body.
- The Player argued that this was in no way a doping activity but rather a way to improve his body. In particular, he had no intention of continuing to take this substance repeatedly.
- As a national team player, he was then selected for a doping control after a match with the national team in November 2021.
- In light of the foregoing, the Player admitted taking steroids and expressed his sincere apologies to all FIFA entities.
- As a mitigating circumstance, the Player stated that he was not aware of the doping rules - so he was "simply" negligent in committing an unintentional fault, in the sense that this should constitute an excusable error.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

21. In view of the circumstances of the present matter, the Committee decided to first address the procedural aspects, namely, its jurisdiction and the applicable law, before entering into the substance of the matter.

A. Jurisdiction of the FIFA Disciplinary Committee

22. First of all, the Committee noted that at no point during the present proceedings did the Respondent challenge its jurisdiction or the applicability of the FDC.

23. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasize that, in view of arts. 17 and 53 of the FDC [2019 ed.] – edition applicable to the present matter as outlined below – as read in conjunction with art. 61 FIFA ADR, the Disciplinary Committee is competent to evaluate any Doping-related violation and to impose sanctions in case of corresponding violations.

B. Applicable law

24. In order to duly assess the matter, the Committee first recalled the factual circumstances which led to the Adverse Analytical Finding, in particular the Player's doping control that took place on 12 November 2021. Bearing in mind that the current 2019 edition of the FDC entered into force on 15 July 2019, the Committee considered that both the procedural aspects and merits of the present disciplinary proceedings should be governed by the provisions stipulated in the 2019 edition of the FDC.

25. Secondly, the Committee observed that according to art. 17 FDC, doping offences shall be sanctioned in accordance with the provision of the FDC as well as those contained in the FIFA ADR. Consequently, the Committee determined that the 2021 edition of the FIFA ADR (which came into force on 1 January 2021) should, in addition to the FDC, also apply to the present disciplinary proceedings.

26. The above clarified, the Committee decided to begin by recalling the content of the relevant provisions of the FDC and the FIFA ADR applicable to the present case, this without prejudice that other rules may also be at stake. In particular, the Committee acknowledged that the letter of charge sent to the Player on 30 March 2022 referred to a potential violation of arts. 17 FDC and 6 FIFA ADR, which read as follows:

Article 17 FDC – Doping:

“Doping is sanctioned in accordance with the FIFA Anti-Doping Regulations and this Code.”

Article 6 FIFA ADR – Presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample:

- “1. It is the 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 under art. 6.*
- 2. Sufficient proof of an anti-doping rule violation under art. 6 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 analyzed; or where the Player’s “B” Sample is analyzed 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 “A” or “B” Sample is split into two parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Player waives analysis of the confirmation part of the split Sample.*
- 3. Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample shall constitute an anti-doping rule violation.*
- 4. As an exception to the general rule of art. 6, the Prohibited List, International Standards or Technical Documents may establish special criteria for the reporting or the evaluation of certain Prohibited Substances”.*

C. Standard of proof

27. The above having been established, the Committee recalled that the burden of proof lies with FIFA, which is required to prove the infringement (namely that an ADRV had occurred) under art. 36 (1) FDC and 68 (1) FIFA ADR.
28. Furthermore, the Committee noted that, in accordance with art. 68 FIFA ADR, different standards of proof apply in doping proceedings: on the one hand, the Disciplinary Committee must establish to its "comfortable satisfaction" that an ADRV occurred (par. 1), whereas on the other hand, where the FIFA ADR places the burden of proof on the person alleged to have committed an ADRV to rebut a presumption or to establish specific facts or circumstances, a lower standard of proof applies, i.e. the "balance of probabilities" (par. 2).

29. Finally, the Committee pointed out that as per art. 69 (1) FIFA ADR, “[f]acts related to anti-doping rule violations may be established by any reliable means, including admissions.” Moreover, with respect to the sample analysis, the second paragraph of the above provision clarifies that:

“b) WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Player or other Person may rebut this presumption by establishing that a departure from the International Standard for laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Player or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then FIFA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.”

30. Having clarified the foregoing, the Committee subsequently proceeded to consider the merits of the case at hand.

D. Merits of the dispute

I. The Anti-Doping Rule Violation

31. To begin with, the Committee observed that pursuant to art. 66 FIFA ADR, it had to “consider first whether or not an [ADRV] [had] been committed”, and if this was the case, “it shall consider the appropriate measures applicable under art. 20 (...) and 21 (...) prior to the imposition of any period of Ineligibility”.

32. In this regard, the Committee noted that the “A” Sample collected on 12 November 2021 and analyzed by a WADA-accredited laboratory in Lausanne revealed the presence of exogenously administered testosterone, which was subsequently confirmed when the “B” sample was opened and analyzed.

33. With respect to the substance found, the Committee recalled that testosterone is considered a prohibited non-specified substance when administered exogenously. Accordingly, the values reported in the corresponding laboratory report were consistent with the exogenous administration of testosterone so that these values could not have been produced naturally by the Player’s body. As outlined, exogenous administered testosterone is a non-specified substance which is on the Prohibited List (2021) under S1.1 “Anabolic Androgenic Steroids” and is prohibited for use in- and out-of-competition.

34. Against this background, the Committee pointed out that according to the information contained in the case file, (i) the Player did not have a “Therapeutic Use Exemption” for the use of the anabolic agent detected in his body, (ii) there appeared to be no evidence of an apparent departure from the International Standard for Laboratories, the International Standard for Testing and Investigations or any other applicable provision of the FIFA ADR that caused the

Adverse Analytical Finding to call into question the validity of the result and (iii) the Adverse Analytical Finding was not caused by ingestion of the Prohibited Substance through an approved route (cf. art. 53 (1) FIFA ADR). Finally, the Committee noted that the Player admitted having taken steroids and explained that the steroid injections were intended to increase his hormone production in order to gain muscle mass.

35. Consequently, and in accordance with art. 66 FIFA ADR, the Committee concluded that the presence of exogenous administered testosterone found in the Player's urine samples "A" and "B" by the WADA-accredited laboratory in Lausanne constituted a violation of the FIFA ADR, more specifically of art. 6 FIFA ADR that specifically prohibits and sanctions the presence of a Prohibited Substance – as *in casu* – in a player's sample.

II. Liability of the Player

(1) The conditions to establish the standard period of Ineligibility for an ADRV

36. Having established that the Player had infringed art. 6 FIFA ADR, the Committee went on to determine the extent of the Player's liability, and thus whether or not a disciplinary sanction should be imposed.
37. In this respect, the Committee recalled that the Player was found in violation of art. 6 FIFA ADR due to the presence of exogenous administered testosterone, a non-specified substance, in his urine samples. With this in mind, the Committee observed that according to art. 20 (1) FIFA ADR, the period of Ineligibility for a violation of art. 6 FIFA ADR shall be of four years if the ADRV involves a non-specified substance – as *in casu* – unless the Player can establish that the ADRV was not intentional. In particular, the Committee noted that should the Player establish that his ADRV was not intentional, then the period of Ineligibility would be of two years in accordance with art. 20 (2) FIFA ADR.
38. With the above in mind, the Committee deemed that, as a first step before assessing the period of Ineligibility applicable to the Player, it had to determine whether the latter deliberately ingested the Prohibited Substance or, on the contrary, whether there was evidence establishing that the Player's ADRV was not intentional.

(2) Did the player intend to engage in doping?

39. The contours of the notion of "intentional" doping are defined in art. 20 (3) FIFA ADR and serve *"to identify those Players or other persons who engage in conduct which they knew constituted an [ADRV] or know that there was a significant risk that the conduct might constitute or result in an [ADRV] and manifestly disregarded that risk"*.
40. Furthermore, the Committee recalled that according to CAS jurisprudence, the Athlete bears the burden of proof of demonstrating that he did not intend to violate the Anti-Doping rule².

² CAS 2017/A/5139; CAS 2016/A/4377; CAS 2016/A/4662; CAS 2016/A/4563; CAS 2016/A/4626.

41. In view of the above, the Committee first turned its attention to the written submissions of the Player, who explained that, given his physical condition, he had joined a gym in order to develop the physical capacities required to participate in the championship. However, a few months later, on the advice of his fitness trainer, he started taking steroid injections in order to increase his production of hormones to develop his muscle mass. In addition, the Committee noted that the Player presented a consistent position at the hearing.
42. Considering that for an ADR to be committed intentionally the accused (i) must have known that there was a significant risk that his conduct would constitute or result in an ADRV and (ii) manifestly ignored that risk³, the Committee could only conclude that the Player manifestly knew, or ought to have known, that the injection of steroids was prohibited and could result in an ADRV. Despite this, the Player decided to ignore this risk and proceed with the steroid injection.
43. Finally, the Committee wishes to emphasise that – as explicitly stated by the Player himself – the purpose of the Player's injections was clearly to enhance his sporting performance, *i.e.* to develop his muscle mass and eventually to improve his performance through the use of a Prohibited Substance.
44. In view of the above, and despite the fact that the Player stated that it was in no way a doping activity but rather a means to improve his body and that he had no intention of continuing to take the substance repeatedly, the Committee considered that the Player failed to prove that his ADRV was not intentional. On the contrary, the record and the position submitted by the Player clearly indicate the latter's apparent intention to resort to doping to enhance his sporting performance.
45. Consequently, the Committee decided that the standard period of Ineligibility should be four years in application of art. 20 (1) FIFA ADR.

(3) Possible reduction of the period of Ineligibility (arts. 22-24 FIFA ADR)

46. The standard period of Ineligibility defined, the Committee then focused on arts. 22-24 FIFA ADR which provide for several "possibilities" for the accused to have his sanction reduced. Put differently, the Committee recounted that the standard period of Ineligibility would be of four years, unless the conditions for eliminating or reducing it are met.
47. However, the Committee considered that, since the Player failed to demonstrate that his ADRV was committed unintentionally, it did not consider it necessary to assess whether the Player may have had "No (Significant) Fault or Negligence" in committing the ADRV. Indeed, in accordance with CAS jurisprudence⁴, the Committee considered that a finding that a violation was committed intentionally precludes the possibility of eliminating or reducing the period of Ineligibility based on fault-related grounds.

³ CAS 2017/A/5022.

⁴ CAS 2017/A/5022.

48. In this regard, the Committee further noted that the abovementioned award also referred to legal doctrine, according to which *"A basic assumption in this article is that the 2015 Code treats intentional and non-intentional as mutually exclusive categories of anti-doping rule violations. This premise, in and of itself, should not be overly controversial. However, we also suggest that violations committed with No (Significant) Fault or Negligence are categorically considered as non-intentional. **Simply put, if a violation is intentional as understood in the 2015 Code, it should not also be considered as committed with No (Significant) Fault or Negligence, and vice versa"***⁵ (emphasis added).
49. As a result, and in view of the circumstances of the case outlined above, the Committee concluded that the Player should not benefit from any non-fault related deductions and decided to impose a period of Ineligibility of 4 years on the Player for infringing art. 6 FIFA ADR, and by corollary, art. 17 FDC.

(4) Commencement of period of Ineligibility

50. In accordance with art. 29 FIFA ADR, the Committee noted that where a player is already serving a period of Ineligibility for an ADRV, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served.
51. The Committee also paid attention to art. 29 (2) (a) FIFA ADR, which provides that if a provisional suspension is complied with by the player, the latter will receive credit for that period of provisional suspension against any period of Ineligibility that may ultimately be imposed – as *in casu*.
52. In view of the fact that the Player was already serving a provisional suspension as of 11 January 2022, the Committee decided that the period served as a provisional suspension should be credited against the four-year period of Ineligibility imposed under this decision.
53. For the sake of completeness and ease of computation, the Committee considered that the four-year period of Ineligibility imposed in the present decision should run until 11 January 2026.
54. Finally, and with regard to the extent of the suspension, the Committee wished to refer to art. 30 FIFA ADR, which states that *"No Player or other Person who has been declared Ineligible or is subject to a Provisional Suspension may, during a period of Ineligibility or Provisional Suspension, participate in any capacity in a Match or activity (other than authorised anti-doping Education or rehabilitation programmes) authorised or organised by FIFA, any Association, any other Signatory of the Code, a club or other member organisation of an Association or of any Signatory to the Code, or In-Competitions authorised or organised by any professional league or any international or national-level Competition organisation or any elite or national-level sporting activity funded by a governmental agency"*.

⁵ RIGOZZI/HAAS/WISNOSKY/VIRET, Breaking Down the process for determining a basic sanction under the 2015 World Anti-Doping Code, Int Sports Law J (2015), p. 10.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. The player, Mr Sabri Ali Mohamed, is sanctioned with a period of Ineligibility of four (4) years for having infringed the relevant provision of the FIFA Disciplinary Code related to Doping as well as the relevant provision of the FIFA Anti-Doping Regulations sanctioning the Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample.**
- 2. This period of Ineligibility shall run until 11 January 2026.**
- 3. The aforementioned sanction covers the participation, in any capacity, in a competition or activity authorised or organised by FIFA or any association, a club or other member organisation of an association, or in competitions authorised or organised by any professional league or any international or national - level competition organisation or any elite or national level sporting activity funded by a governmental agency.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Anin YEBOAH

Deputy Chairperson of the FIFA Disciplinary Department

NOTE RELATING TO THE LEGAL ACTION:

According to art. 57 (1) of the FIFA Statutes as read together with art. 49 of the FDC and art. 77 (1) of the FIFA ADR, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.