

CAS 2024/A/10443 Paul Pogba v. NADO Italia

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Hans Nater, Attorney-at-Law in Zurich, Switzerland

Arbitrators: Mr Jeffrey G. Benz, Attorney-at-Law and Barrister in London, UK, and
Los Angeles, USA

Prof. Dr Martin Schimke, Attorney-at-Law in Düsseldorf, Germany

in the arbitration between

Paul Pogba, France

Represented by: Mr Mike Morgan, Mr Tom Seamer, Morgan Sports Law, 3 More London
Riverside, SE1 2RE London, United Kingdom

Appellant

and

NADO Italia, Rome, Italy

Procura Nazionale Antidoping, Viale dei Gladiatori, 2, 00135 Roma, Italy

Represented by Mr Pierfilippo Laviani, Chief Prosecutor, Procura Nazionale Anti Doping,
Rome, Italy

Respondent

I. PARTIES

1. Paul Pogba (the "Athlete" or the "Appellant") is a French professional Football player domiciled in Italy. He is currently under contract to play professional football for Juventus.
2. The Italian Anti-Doping Organization ("NADO" or the "Respondent") is the national anti-doping organization of Italy, recognised as such by the World Anti-Doping Agency ("WADA") in accordance with the World Anti-Doping Code ("WADA-Code"), acting through its Anti-Doping Prosecution Office ("NADP").
3. The Appellant and the Respondent will be jointly referred to as the "Parties".

II. NATURE OF THE CASE

4. The issues under consideration in the present arbitration concern the consequences of an Anti-Doping Rule Violation ("ADRV") for the presence of prohibited substances (which presence is undisputed by the Athlete), in particular the issue of whether the decision of the Italian National Anti-Doping Tribunal ("TNA"), which imposed a sanction of disqualification for four years, should be set aside and the period of ineligibility imposed on the Athlete be reduced to a maximum reduction of 12 months.

III. BACKGROUND FACTS

5. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows in this Award. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the arguments and evidence it considers necessary to explain its reasoning.
6. On 20 August 2023, the Appellant played the "Serie A Championship, First Day, Udinese-Juventus-match".
7. At the end of the Udinese-Juventus-match played on 20 August 2023, the Appellant provided an in-competition urine-sample, which was assigned the reference code 1137277.
8. The test report, provided to the NADP (the "PNA") showed that the urine sample was positive for the presence of non-endogenous testosterone metabolites, a non-specified substance included in the WADA 2023 Prohibited List, category S1.1 *anabolic androgenic steroids*, which is prohibited both in and out of competition.
9. By letter of 6 October 2023, the Appellant was notified of his B-sample analytical result, which confirmed the result of the A-Sample.

10. By letter of 9 November 2023, the Appellant accepted the Adverse Analytical Finding (the "AAF") and admitted that he had committed an ADRV.
11. By letter of 16 November 2023, the Respondent charged the Appellant with the commission of an ADRV under Articles 2.1 and 2.2 of the Anti-Doping Sports Code (the "ADSC").

IV. THE PROCEEDINGS BEFORE THE ITALIAN NATIONAL ANTI-DOPING TRIBUNAL

12. On 11 September 2023, the PNA notified the Athlete of the Adverse Analytical Finding, accusing him of *"infringement of Arts. 2.1 and 2.2 of the Anti-Doping Sports Code (ADSC), for the presence of Testosterone Metabolites of non-endogenous origin, a substance included in the WADA List category S1.1 <<Anabolic Androgenic Steroids (AAS)>> ascertained at the outcome of the check during the competition, ordered by NADO Italia at the end of the football competition <<Campionato Italiano Serie A prima giornata [Serie A Italian Championship, first day]: Udinese - Juventus held in Udine on 20/08/2023. In Udine on 20/08/2023, date of sampling"*.
13. On the same date, the TNA ordered the immediate provisional suspension of the Athlete.
14. On 13 September 2023, the Athlete requested the analysis of the "B" Sample, as well as the analytical documentation of the samples.
15. On 15 September 2023, the Anti-Doping Laboratory of Rome informed the Athlete that the analysis of the B Sample would take place on 5 or 12 October 2023.
16. On 18 September 2023, the Athlete gave notice of the availability of the Athlete's representative to participate in the counter-analysis on 5/6 or 12/13 October 2023.
17. On 20 September 2023, the PNA forwarded a copy of the analytical documentation from the Anti-Doping Laboratory of Rome received on the same day.
18. On 6 October 2023, the Athlete was notified of the analysis of the B-Sample and was granted a deadline until 13 October 2023 to file written observations, documentation and/or a request for a hearing.
19. On 9 November 2023, the Athlete admitted the ADRV.
20. On 16 November 2023, the PNA submitted a request to the TNA for imposing a disqualification on the Athlete for four (4) years from the date of the decision of the TNA, after deducting the provisional suspension period, and, in addition, the imposition of an economic sanction of EUR 5'000 or a sanction of a different, equitable magnitude.
21. In view of the Hearing scheduled for 28 February 2024, the Counsel of the Appellant submitted a request to the TNA asking that i) the maximum available reduction of the sanction pursuant to Article 11.6.2 ADSC be applied and ii) a period of ineligibility

exceeding 12 months should not be imposed, as the ADRV was committed without intention and was not characterized by significant Fault or Negligence.

22. At the TNA Hearing of 28 February 2024, the Athlete requested that the ADRV be declared "unintentional" and that a reduction for "No Significant Fault or Negligence" ("NSF") should be granted, i.e. no period of ineligibility exceeding 12 months be imposed.
23. On 22 March 2024, the TNA issued its decision confirming the Request by the PNA, imposed a sanction of disqualification for 4 (four) years starting from 11 September 2023 and expiring on 10 September 2027, thus deducting the time already served, and applied an ancillary economic "sanction of Euro 5'000 (five thousand/00)", adding that the decision may be appealed pursuant to Article 18 of the Results Management Procedure.

V. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 21 March 2024, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the Respondent (the "Statement of Appeal") in accordance with Articles R47 and R48 of the Code of Sports related Arbitration (the "CAS Code"). He requested to submit the Appeal to a Panel of three Arbitrators and nominated Mr Jeffrey Benz to be appointed to the Panel. The Appellant requested that all matters relating to these proceedings, including the fact that he has filed an appeal, remain confidential until further notice.
25. On 28 March 2024, the Appellant noted the CAS' position on confidentiality regarding the final award as provided by Article R59 of the CAS Code, and requested that no press release or similar be made by the CAS prior to a final award having been issued (for example, in relation to the fact of the filing of his Appeal or the setting of a hearing date).
26. On 5 April 2024, the Respondent nominated Prof. Dr. Martin Schimke, Attorney-at-Law in Germany, as arbitrator.
27. On 12 April 2024, the Appellant submitted his "updated Statement of Appeal" and requested that the Respondent be ordered to explain what "procedural and substantial aspects" purportedly justify its non-payment of the advance costs.
28. On 16 April 2024, the Appellant requested an extension of the deadline for filing its Appeal Brief until 20 May 2024.
29. By letter of 18 April 2024, the Respondent informed the CAS Court Office that the "*updated Statement of Appeal*" was not timely filed and, therefore, not admissible.
30. By e-mail of 18 April 2024 to the Parties, the CAS Court Office invited the Appellant to file his comments on Respondent's objection to the "*updated Statement of Appeal*".

31. By letter of 18 April 2024, the Appellant commented on the Respondent's objection to the updated Appeal Brief and requested to a) hold that the updated Statement of Appeal was filed on time and is admissible and b) extend the deadline for filing his Appeal Brief until 20 May 2024.
32. By letter of 18 April 2024, the CAS Court Office informed the Parties that the issue of *"the admissibility of the updated Statement of Appeal"* will be decided by the Panel once appointed and extended the time limit to file the Appeal Brief until 20 May 2024.
33. On 30 April 2024, the CAS Court Office provided to the Parties a copy of the "Arbitrators' Acceptance and Statement of Independence" form completed by Dr Hans Nater, who has been appointed as President of the Panel by the Deputy Division President, reminding the Parties that, pursuant to Article R34 of the CAS Code, an arbitrator may be challenged if the circumstances give rise to legitimate doubts over his independence.
34. By e-mail of 1 May 2024 to the CAS Court Office, the Appellant's Counsel referred to Dr Nater's Statement of Independence and invited the CAS Court Office to ask Dr Nater to provide a copy of the reasoned award disclosed in his Arbitrator's acceptance and Statement of Independence relating to another arbitration involving the Respondent.
35. On 2 May 2024, the CAS Court Office forwarded to the Parties the correspondence related to Dr Nater's disclosure in his Statement of Independence.
36. On 10 May 2024, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel (the "Panel") had been constituted to decide the present matter in the following composition: Dr Hans Nater, Attorney-at-Law in Zurich, Mr Jeffrey G. Benz, Attorney-at-Law and Barrister in London and Los Angeles, and Prof. Dr Martin Schimke, Attorney-at-Law in Düsseldorf.
37. On 27 June 2024, within an extended time limit, the Appellant filed its Appeal Brief.
38. By letter of 28 June 2024, the Respondent requested that the time limit for filing the Answer be extended until 25 September 2024, adding that the extension includes the standard 20 day plus the 69 granted as extensions to the Appellant for the filing of the Appeal Brief.
39. On the same date, the CAS Court Office invited the Appellant to comment on Respondent's request that its deadline to file its Answer be extended until 25 September 2024.
40. By correspondence of 2 July 2024, the Appellant objected to NADO's request to extend the deadline to file the Answer until 25 September 2024.
41. By correspondence of 3 July 2024, the CAS Court Office noted the Appellant's objection to the Respondent's request for an extension of the time limit to file the

Answer and informed that it will be for the President of the Panel to decide on the Appellant's request.

42. By correspondence of 3 July 2024, the CAS Court Office, on behalf of the President of the Panel, extended the time limit to file the Answer until 2 August 2024.
43. By correspondence of 4 July 2024, the Respondent asked to reconsider the President's decision to extend the deadline to submit the Answer until 2 August 2024 and requested "to set the Respondent's time limit for the filing of its Answer not before than 6 September 2024, so partially balancing the need of all the Parties."
44. By correspondence of 4 July 2024, the CAS Court Office invited the Appellant to comment on the Respondent's request to extend the time limit to submit the Answer until 6 September 2024.
45. By correspondence of 5 July 2024, the Appellant objected to the Respondent's request to extend the time limit to file the Answer until 6 September 2024.
46. On 10 July 2024, the CAS Court Office, on behalf of the President of the Panel and upon consultation of the co-arbitrators, informed the Parties of its decision to maintain the deadline of 2 August 2024 for the Answer.
47. On 16 July 2024, the CAS Court Office, on behalf of the Panel, invited the Parties to confer and find an agreement on the issue of the Respondent's time limit to file the Answer by 19 July 2024, adding that in the event the Parties failed to reach an agreement, it will be for the President of the Panel to take a final decision on the Respondent's time limit to file the Answer.
48. Still on 16 July 2024, the Appellant's Counsel asked to clarify the CAS Court Office on the Panel's position regarding the time limit to file the Answer, given that, by letter of 10 July 2024, the Panel had decided to maintain 2 August 2024 as the Respondent's deadline for the filing of its Answer and on 16 July 2024 invited the Parties to find an agreement regarding Respondent's time limit to file its Answer.
49. By correspondence of 16 July 2024 to the Parties, the CAS Court Office clarified the Panel's position as follows:

"Following further deliberations by the Panel, the Panel considers that the Parties, first and foremost, in good faith can and should solve their disagreement on the issue of the Respondent's time limit to file the Answer.

If the Parties fail to reach an agreement, the President of the Panel can either maintain or reconsider his decision on the Respondent's request for an extension of the time limit to file the Answer, considering all the current circumstances such as (i) its obligation to conduct the proceedings efficiently and swiftly at every stage and (ii) the current time limit to file the Answer may be challenging considering the upcoming Olympic and summer period."

50. By correspondence of 17 July 2024, the Respondent proposed 28 August 2024 for filing the Answer.
51. On 17 July 2024, the CAS Court Office acknowledged receipt of the Respondent's correspondence of even date and invited the Parties to confer and make their best efforts to find an agreement on the issue of the Respondent's request for an extension of the time limit to file the Answer.
52. By correspondence of 19 July 2024, the Appellant informed the CAS Court Office that the Parties are currently in discussions about the Answer's deadline and requested a short extension to reach an agreement until 23 July 2024.
53. On 19 July 2024, the Respondent informed the CAS Court Office that its proposal to the Appellant to set the deadline for the Answer on 28 August 2024 has not been answered and requested the Panel to decide about the deadline for the Answer as soon as possible.
54. On 19 July 2024, the Appellant requested a short extension to inform whether the Parties reached an agreement on the deadline to submit the Answer until 23 July 2024.
55. On 23 July 2024, the Respondent informed the CAS Court Office that the Parties did not reach an agreement on the deadline to submit the Answer and asked the Panel to render a final decision.
56. On 23 July 2024, the Appellant informed that no agreement has been possible on the deadline to submit the Answer and confirmed the Appellant's position that the Answer deadline should be 2 August 2024.
57. On 23 July 2024, the Appellant submitted to the CAS Court Office a letter addressed to the Counsel for the Respondent suggesting, as a final proposal, to extend the deadline for filing the Answer by 5 days until 7 August 2024 and, provided that a one-day hearing is held on 16, 21 or 22 August 2024 and an operative decision is issued prior to midnight on 26 August 2024.
58. On 23 July 2024, the Respondent informed the CAS Court Office that the Respondent does not agree on the time limit of 7 August 2024 for filing the Answer suggested by the Appellant.
59. On 24 July 2024, the Respondent in a letter to the CAS Court Office requested to delete the Appellant's letter to the Counsel of the Respondent dated 23 July 2024 and complained about compressing the Respondent's right of defense.
60. On 24 July 2024, the CAS Court Office, on behalf of the Panel, extended the Respondent's time limit to file the Answer until 16 August 2024 and invited the Parties to advise by 29 July 2024, whether they are available for an in-person hearing in Lausanne on 27, 29 or 30 August 2024.

61. On 29 July 2024, the Appellant informed the CAS Court Office that the Parties have not yet reached an agreement regarding the date of the hearing and requested that the deadline for any agreement between the Parties on a hearing date be extended until 2 August 2024. In the same letter, the Appellant noted that 29 August 2024 would appear to be the most suitable date for a hearing and enquired of the Panel whether it has availability for a hearing (whether in-person or remote) prior to 29 August 2024 (providing that the Respondent's Answer will be filed by 16 August 2024).
62. On 30 July 2024, the Respondent informed that it has not been able to – and still is not – confirm any date prior to the 29 August 2024 in a remote mode and maintained its proposal for a remote hearing on 29 August 2024 and in-person hearing on 30 August 2024.
63. By letter of 31 July 2024 to the CAS Court Office, the Appellant submitted new evidence (Witness Statement of Dr. Le Gall and a University of Miami "My Health" sheet).
64. Still on 31 July 2024, the CAS Court Office acknowledged receipt of the Appellant's letter of even date, enclosing new evidence, and, on behalf of the Panel, granted an extension to the Parties to agree on a hearing date until 2 August 2024.
65. On 2 August 2024, the Respondent confirmed that it will comment on the Appellant's submission of new evidence in its Answer and reiterated its availabilities for the Hearing on 29 August 2024 (Parties and Witnesses in a remote mode) and 30 August 2024, Parties in person, witnesses in a remote mode.
66. On 5 August 2024, the Appellant informed the CAS Court Office that, should the Panel not wish to hold a hybrid hearing, the Appellant would agree to hold on 30 August 2024 an in-person hearing (with all witnesses to attend remotely), noting, however, that that is the Appellant's least preferred option.
67. On 5 August 2024, the Parties were informed that the Panel decided to hold a hearing on 30 August 2024 at the CAS Court Office in Lausanne.
68. On 7 August 2024, the CAS Court Office invited the Respondent to inform the CAS Court Office whether it agrees to the Appellant's Request of 21 March 2024 to keep the proceedings "strictly confidential", and informed that the CAS will announce the Hearing date and will inform the media that the Final Award will be published after notification to the Parties, unless both parties agree to keep this matter fully confidential as of now.
69. On 7 August 2024, the Respondent, referring to the CAS Letter and the Appellant's submission of even date, agreed with the Appellant's claims regarding the hearing date and a media release regarding the hearing.
70. On 14 August 2024, the CAS Court Office acknowledged receipt of the Respondent's Answer and invited the Parties to inform the CAS Court Office, by 19 August 2024,

whether they request a Case Management Conference with the Panel in order to discuss procedural issues, the preparation of the hearing and any issues relating to the taking of evidence.

71. On 20 August 2024, the Appellant suggested scheduling a Case Management Conference, in case an agreement on all procedural issues cannot be agreed on with the Respondent. If the latter is the case, the Appellant proposed scheduling the Case Management Conference for some point after 14.00 (Swiss time) on Friday 23 August 2024, subject to NADO Italia's and the Panel's availability.
72. On 21 August 2024, the Respondent reiterated that it does not see any necessity for scheduling a Case Management Conference.
73. On 27 August 2024, the Appellant submitted additional materials ("alongside the "complaints" from NADO Italia's Answer that the materials address") and requested the Panel to admit the materials to the file.
74. On 28 August 2024, the CAS Court Office invited the Respondent to file its comments on the submission and its enclosed documents submitted by the Appellant on 27 August 2024 by 28 August 2024.
75. On 28 August 2024, the Respondent rejected the written submissions and the new evidence produced by the Appellant on 27 August 2024 and requested the Panel to disregard any related allegations and/or documents.
76. On the same day, the CAS Court Office acknowledged receipt of the Respondent's comments of even day and advised the Parties that further directions will be communicated by the Panel in due course.
77. On 28 August 2024, the Appellant submitted new evidence, inter alia a draft settlement agreement and tort release between [...], a company providing health care services in the United States), [...] with the Appellant that was provided by outside counsel for [...] from a major US-based international law firm as a condition of [...] and its personnel providing testimony in this proceeding (Mr. Pogba had refused to sign such settlement agreement and release).
78. Still on 28 August 2024, the CAS Court Office advised the Parties on behalf of the Panel that the Panel will (i) address the pending evidentiary issue and (ii) the Tentative Time Table at the outset of the Hearing.
79. On 29 August 2024, the CAS Court Office invited the Respondent to either (i) file its written comments on the documents enclosed to the Appellant's correspondence of 28 August 2024 today or (ii) at the outset of the Hearing.
80. On 30 August 2024, a hearing was held in Lausanne, Switzerland (the "Hearing"). The Panel was assisted by Antonio de Quesada, Head of Arbitration. In addition the following persons physically attended the Hearing.

For the Appellant:

- Mr. Mike Morgan (Counsel)
- Mr. Femi Mathias Falola (Counsel)
- Mr. Sam Comb (Counsel)
- Mr. Tom Seamer (Counsel)
- Prof. Paul Scott (Expert)
- Dr. Diederik Smit (Expert)
- Mr. Hugo Scheckter (Expert)
- Dr. Philip Hopley (Expert)
- Mr. Paul Pogba (Party, Witness)
- Ms. Zulay Pogba (Witness)
- Dr. Steven McNally (Witness)
- Ms. Ellen Kerr (Witness)

For the Respondent:

- Mr. Pierfilippo Laviani (Chairman NADO)
- Mr. Pierluigi Spedicati (Prosecutor NADO)
- Prof. Francesco Botré (Expert)
- Dr. Luca Stefanini (Witness)
- Dr. Marco Freschi (Witness)
- Dr. Franck Le Gall (Witness)
- Dr. Giuseppe Cuzzocrea (Witness)
- Dr. Paolo Cavallo (Witness)
- Mr. Andrea Francesco Goddi (Witness)

81. At the beginning of the Hearing the Parties confirmed that they had no objection as to the constitution of the Panel.
82. Before opening the discussion on the timetable of the Hearing, the Panel asked the Parties whether they still expect the notification of the operative part of the Award on the day the Hearing was to end, i.e. 30 August 2024. The Parties answered that they have agreed that the operative part of the Award should be notified by the end of September 2024.
83. The Parties submitted a common proposal of the tentative hearing schedule, which was discussed and approved by the Panel.
84. After the opening statements of the Parties, the Panel heard testimony/evidence from the following persons, in order of appearance:
 - (i) Prof. Paul Scott, Dr. Diederik Smit, Prof. Francesco Botré (Hot-tub Session)
 - (ii) Mr. Hugo Scheckter
 - (iii) Mr. Paul Pogba

- (iv) Mrs. Zulay Pogba
 - (v) Dr. Philip Hopley
 - (vi) Dr. Steven McNally
 - (vii) Dr. Luca Stefanini
 - (viii) Dr. Marco Freschi
 - (ix) Dr. Franck Le Gall
 - (x) Dr. Giuseppe Cuzzocrea
 - (xi) Dr. Paolo Cavallo
 - (xii) Mr. Andrea Francesco Goddi
85. All witnesses were instructed by the President of the Panel to tell the whole truth and nothing but the truth, subject to penalties of perjury under Swiss law. They all confirmed their written statements and the Parties had the opportunity to examine and cross-examine the witnesses and experts. The Panel members also put questions to the witnesses and experts.
86. The evidence of the Athlete and the above-mentioned witnesses at the Hearing can be summarised as follows:
- In all concurrent expert evidence, in which Dr. Smit, Prof. Scott and Prof. Botré participated, the following views and points emerged:
 - At the outset, Dr. Smit opined that it is very unlikely that DHEA intake would result in any performance enhancing effects for a football player (or for any other male athlete). In his view, the effects of DHEA in men are extremely weak (to the extent that there are any), due to the already (naturally) elevated testosterone levels in men (he noted specifically that, in women, DHEA did have a performance-enhancing effect). Had Mr. Pogba wanted to commit an ADRV, he would not have used DHEA.
 - According to Prof. Scott all of the substances reported as present in the Sample have been confirmed to be exogenous, either:
 - (a) DHEA itself; or
 - (b) Metabolites of DHEA.
- Therefore, the presence of those substances in the Sample is consistent with DHEA having been consumed by the Athlete.

- Prof. Botré principally agreed with the interpretation of the analytical data given by Prof. Scott. He added, however that it cannot be excluded that a conversion – also partial – of DHEA to testosterone may occur, even if not directly but by conversion, which may explain why the data – delta value of testosterone did not exceed the threshold to report an AAF for testosterone itself. Without being contradicted by his expert colleagues, Prof. Botré explained that DHEA, upon consummation, disappeared and a short time thereafter only traces can be seen.
- Mr. Hugo Scheckter: Mr. Scheckter, a Player Care professional working in elite football, explained the day-to-day life of an elite professional footballer, how they manage their professional and private affairs, and how they typically meet people and advisors. Mr. Scheckter, in sum, testified that professional football players like Mr. Pogba, live sheltered lives where most of their daily lives are taken care of by others, and in particular their anti-doping obligations are generally handled by their teams when they are with their teams. Professional football players at the level of Mr. Pogba often have difficulty socializing and even going out of their homes because of their fame; as a result, they, and Mr. Pogba, may have difficulty creating and judging relationships with others. Mr. Hugo Scheckter, upon cross-examination by the Counsel for NADO, confirmed that he has previously read Mr. Pogba's first witness statement dated 18 February 2024, no more.
- Mr. Paul Pogba: Mr. Pogba submitted two witness statements, the first dated 18 February 2024 and the second dated 27 June 2024. In November 2022, [...], one of his neighbours in Miami, introduced him to Mr. [...], the owner of [...]. Mr. [...] provided him with assurances in relation to his anti-doping responsibilities. Mr. [...] and [...] employees showed him photos of their working with [...] and other famous athletes subject to doping controls, and their marketing materials, website, and their company uniform polo shirts bore the logo of "[...]", suggesting that they worked with the NFL. Mr. [...] showed him the bag of a Turmeric product supplied by [...], which confirmed on its label that it was tested for banned substances and safe for athletes to use. To determine his baseline levels of health, [...] collected two blood samples from Mr. Pogba, the first one in November 2022 and the second one in June 2023. In an in-person meeting, Mr. [...] explained to Mr. Pogba that his testosterone levels were low. Following the meeting with Mr. Pogba, [...] prescribed and provided Mr. Pogba with vitamins and supplements, as well as Turmeric, DHEA 25mg and Omega+ (with DHA). Mr. Pogba declared that he mistook "DHEA" for "DHA" and did not realise that they were different products. Mr. Pogba testified to his particular difficult experiences related to his personal life and career that occurred in 2022 (a burglary on 15 March 2022 at his home in Manchester while his children were at home and he was playing in a match, kidnapping and extortion events by his brother and childhood friends in France in 2022, the appearance of those involved in the kidnapping and extortion events at his team's training facility after the events in question, the death of his agent, with whom he was very close, and the death of his father, in the same year, his knee injury on 24 July 2022, and his deteriorating relationship with Juventus). Mr. Pogba

stated that, by the time of his test on 20 August 2023, he had only been taking the DHEA tablets from the pill box provided by [...], which pill box he had filled upon receipt of the supplements sent to his Miami home by [...] in July 2023. In oral testimony, Mr. Pogba confirmed that he did not know before his positive test on 23 August 2023 that the DHEA bottle provided by [...] in June 2023 contained a warning to athletes. The first pill bottle of DHEA sent by [...] did not contain any commercial labelling or warning and was simply in a typical US prescription pill bottle with the name of the substance and amount, a direction for taking it, and the name of the doctor prescribing it.

- Mrs. Zulay Pogba: Mrs. Pogba attended one of the first meetings of her husband with Mr. [...] and recalls Mr. [...] telling them that he knew that anything that goes in her husband's body needs to comply with the anti-doping rules and she recalled Mr. Pogba telling Mr. [...] this as well. On 3 August 2023, she took a box of supplements sent by [...] (received in early July 2023) from her Miami home to her Italian home. She confirmed that 2022 was a very traumatic year for her family. Her husband became very withdrawn that year, distracted and lost his thoughts as a result of the turmoil in his personal and professional life.
- Dr. Philip Hopley: Dr. Hopley provided a "Confidential Psychiatric Report" dated 26 June 2024, wherein he diagnosed Mr. Pogba with [...], a medically recognized disorder [...]. In case of Mr Pogba such state was characterized by [...]. Dr. Hopley differentiated between two periods of [...] suffered by Mr. Pogba. The first one occurred in response to Mr. Pogba's frustration at Manchester United in 2020 at the age of 27, and the second episode started in 2022 when he was subject to traumatising events including the kidnapping and attempted extortion at gunpoint, burglary of his home when his children were there while he was playing in a match, serious knee injury, deaths of his agent and father, etc. In his oral testimony, he declared that [...] is a psychiatric condition that may have considerable effect. No contrary evidence was adduced to his evidence.
- Dr. Steven McNally: Dr. McNally gave evidence for the Appellant and confirmed that he was the head of football medicine and science at Manchester United Football Club from 17 July 2006 to 28 February 2023. He declared that the players' day-to-day anti-doping obligations were generally handled by the club, not the player. The club filed the whereabouts information of the players. He recalls that DHA was recommended to be taken by Mr. Pogba.
- Dr. Luca Stefanini: Dr. Stefanini, Head of Juventus' medical area, appeared on behalf of the Respondent and testified based on the minutes of the interview of the Chief Prosecutor of NADO taken on 17 July 2024. Dr. Stefanini confirmed that neither his medical staff nor Juventus knew that Mr. Pogba used supplements or medications procured on his own initiative. In accordance with Juventus' policy, the athletes have to sign a letter wherein they promise to inform the club should they use medications or supplements on their own initiative. According to Dr. Stefanini, Mr. Pogba never told Dr. Stefanini that he had undergone blood tests during his stay in Miami nor that they have ever found anything in Mr. Pogba's

athletic performance that suggested a situation of testosterone deficiency or abnormality. Upon notification of the negative blood results on 11 September 2023, Mr. Pogba was asked whether he had consumed the hormone testosterone. He denied doing so and, later on, came back with all the supplements he allegedly had used. In answering a question from a Panel member, Dr. Stefanini testified that he does not know whether the above mentioned letter allegedly signed by the athlete was related to or contained in the employment contract. The witness testified that they never had a positive test result at Juventus and, therefore, he is not aware whether Juventus would sanction an athlete for non-compliance with his obligation to disclose his use of medication.

- Dr. Marco Freschi: Dr. Marco Freschi, member of the Juventus medical team, appeared on behalf of the Respondent and testified based on the minutes of the interview of the Chief Prosecutor of NADO on 17 July 2024. Dr. Freschi assisted the Appellant during the doping controls in October 2022 and May 2023. In the “Declaration of medication and supplements”-section of the doping control form Mr. Pogba declared, inter alia, “Arcoxia Vitamines”, “Arcoxia 120mg cp”, “tachifludec bst”, “efferalgan 1000 cp”, “vit. D melatonin 2mg tablets”, “vivin c tablets”. The witness declared that he always asked Mr. Pogba *“have you taken something on your own, in addition to the things we have declared?”* The declaration section of the doping control form was filled out after the athlete was asked whether he has taken something on his own initiative. The witness affirmed that there is a policy on supplements at Juventus. Dr. Freschi confirmed that he received two messages from Ms. Kerr of the Appellant’s law firm and confirmed his legal advice from the Juventus legal counsel that he was under the duty of confidentiality not to discuss its content, yet he was apparently given permission by his employer Juventus to cooperate concerning the same information and subject when asked by NADO.
- Dr. Franck Le Gall: Dr. Le Gall is the French national team doctor. He testified that he has seen players undergo doping tests many times. According to his experience, the section on the Doping Control Form is usually filled out by the team doctors, and not by the players themselves. They do not necessarily know what the players are taking as the players are most of the time with the clubs. In particular, he was not aware that Mr. Pogba used Omega 3, which is not a doping product. On re-direct examination by Counsel for the Appellant, Mr. Le Gall confirmed that he is with a player when they fill out the Doping Form. After a match, he asks the players whether they have taken any supplements and he is present when they are asked about medication and supplements, and he is more focused on supplements.
- Dr. Giuseppe Cuzzocrea: Dr. Cuzzocrea, a nutritionist, appeared on behalf of the Respondent and testified based on the minutes of the interview of the Chief Prosecutor of NADO on 17 July 2024. Dr. Cuzzocrea confirmed that Juventus has a policy on supplements and medications and requires its athletes to comply with the obligation to only take products approved by the club and to inform the club on medication and supplements they take on their own initiative.

- Dr. Paolo Cavallo: Dr. Cavallo, a doctor of Juventus' medical staff, appeared on behalf of the Respondent and testified based on the Minutes of the interview of the Chief Prosecutor of NADO on 17 July 2024. Dr. Cavallo assisted Mr. Pogba during sample testing. Dr. Cavallo confirmed the products listed on the "Match Supplemets Chart" dated 10 August 2023, which were given to the Athletes upon their request before and after the matches. It is not mandatory to follow the proposal according to the chart as the players can choose the product they wish to get from the list.
- Dr. Andrea Francesco Goddi: Dr. Goddi, a doctor of the Juventus' medical staff, appeared on behalf of the Respondent and testified based on the minutes of the interview of the Chief Prosecutor of NADO on 17 July 2024. Mr. Goddi confirmed that he had a telephone conversation with Ms. Kerr of the Appellant's Counsel firm on 31 May 2024. Ms. Kerr wrote a file note on that conversation which was pulled up on the screen. On cross-examination, the witness remained vague and did not confirm the content of the file note. The witness said that he could not remember what exactly he said two years ago in his telephone conversation with Ms. Kerr on Mr. Pogba's consumption of supplements as he was assigned to a team of 25 players. Mr. Goddi, upon cross-examination by the Appellant, confirmed to have told Mr. Pogba not to take any supplements beyond those recommended by the club.

87. The Parties were given the opportunity to present their cases, to make their submissions and arguments, and to answer the questions asked by the Panel. Neither Party objected to the procedure and the hearing schedule adopted by the Panel (as amended at the beginning of the Hearing). At the close of the Hearing, the Parties confirmed that they had had a fair hearing.

88. At the end of the Hearing, the Parties agreed that the Panel could send out the Operative Part of the Award first and then notify the fully reasoned Award to the Parties at a later stage.

VI. POSITIONS OF THE PARTIES AND REQUESTS FOR RELIEF

89. This section contains a brief summary of the Parties' positions in these proceedings. The Panel's recapitulation of the Parties' positions serves the purpose of synopsis only and does not necessarily include every submission advanced by the Parties in their written submissions and oral pleadings at the Hearing. The Panel has, however, considered all arguments advanced before it in deciding the present Award, including allegations and arguments not mentioned in this section of the Award or in the discussion of the merits below.

A. Appellant

90. In its Appeal Brief, the Appellant requested the CAS to:

"(a) set aside the Decision in its entirety:

- (b) hold that the ADRV was not committed intentionally (as per ADSC Article 11.2.2);*
- (c) hold that he acted without significant fault or negligence (as per ADSC Article 11.6.2);*
- (d) reduce the period of Ineligibility imposed on him to a maximum of 12 months (either further to ADSC Article 11.6.2 or further to the principle of proportionality), or as the Panel otherwise considers to be proportionate;*
- (e) commence any period of Ineligibility imposed on Mr Pogba from 11 September 2023;*
- (f) eliminate the fine and costs award imposed on Mr Pogba;*
- (g) order NADO Italia to meet the arbitration costs of this appeal; and*
- (h) order NADO Italia to reimburse his legal costs and expenses related to this appeal."*

91. The Appellant's position, in essence, may be summarized as follows:

- The Athlete has admitted the commission of an ADRV caused by his use of the DHEA provided by [...];
- The ADRV was not intentional;
- The Appellant bears No Significant Fault or Negligence for the ADRV;
- The period of ineligibility imposed should be no more than 1 year;
- No fine nor costs order should be imposed on the Appellant;
- The following key events had a significant impact on the Appellant: The kidnapping and attempted extortion in March 2022; the burglary of his home while he was playing and his children were in the house in March 2022; the death of his agent Nino Raiola with whom he was very close; the death of father; his knee injury in 2022; the deterioration of his relationship with Juventus; and the lack of care and diligence by the firm [...], which provided the product DHEA despite assuring him that they knew what his anti-doping obligations were and stating that they would ensure that he would not receive any prohibited substances.
- The Athlete used DHEA (i) from November/December 2022 from a generic prescription pill bottle, in the style used in the United States for prescription medication (no prescription is required for using DMEA in the US), provided by [...] and labelled with [...]'s brand name and ii) from August 2023 from a commercially-available bottle labelled as "Gluten-free, non-GMO, Hypoallergenic" with a commercial label.
- For reasons unknown to the Appellant, Juventus, the employer of the Appellant, has not assisted him in these proceedings.
- The Respondent showed hostility towards the Appellant and has refused to enter into a case resolution agreement according to Article 11.8.2 ADSC.

- One of the dietary supplements the Athlete used included DHA (“Docosahexaenoic acid”, an omega-3 fatty acid found naturally in fish and included in omega-3-based dietary supplements), which is not a Prohibited Substance.
- Mr Pogba underwent many anti-doping tests during his career and did not ever return an AAF.
- DHEA is a precursor hormone and can increase an individual's natural production of testosterone and provide associated health benefits.
- According to the expert, Mr. Paul Scott, the testosterone that was found to be present in the Sample was of exogenous origin, i.e. consistent with the Athlete having ingested a daily dose of 25 mg of DHEA.
- In November 2022, [...] collected a blood sample from Mr. Pogba, which was ordered by Dr [...], [...]'s Medical Director.
- The blood test taken in November 2022 revealed that Mr Pogba's "free testosterone (direct)" level was low and below the reference interval.
- During the week of 8-14 May 2023 the Athlete used DHEA and provided three urine samples, which returned negative results.
- In June 2023, [...] collected another blood sample from Mr Pogba. Mr. [...] told Mr Pogba at a meeting that the results of those blood tests showed abnormally low testosterone levels, and recommended the use of, inter alia, DHA.
- In its oral arguments at the Hearing, the Appellant listed the following facts submitted by the Appellant which NADO did not challenge:
 - Whenever Mr. Pogba obtained advice from experts, or even his personal chef, he would tell them about the Anti-Doping Rules he was subject to and the importance of avoiding violation.
 - Mr. Pogba was clear that he told [...] that he was subject to Anti-Doping Rules. Mr. Pogba's wife was present at that meeting and confirmed that in testimony.
 - [...] provided Mr. Pogba with Anti-Doping assurances. He mentioned that he had a competent team for support and that he was knowledgeable about international sport anti-doping standards and he worked with other high profile international sport athletes subject to anti-doping testing.
 - DHEA was provided by [...].
 - Mr. Pogba suffered from [...].

- Mr. Pogba thought DHEA was DHA. That argument was not challenged by NADO, who did not contest or challenge that thinking by Mr. Pogba.
- NADO did not challenge Mr. Pogba's argument that he did not notice the warning on the DHEA bottle. It was not put to him that he was lying.

B. Respondent

92. In its Answer, the Respondent requested that the CAS rule as follows:

"(i) The appeal filed by Mr. Pogba and all its requests for relief are dismissed in its entirety and, as a consequence, the Appealed Decision of the Italian National Anti-Doping Tribunal is confirmed.

(ii) Mr. Pogba shall bear all the costs of this arbitration procedure and all the legal costs and expenses of NADO Italia related thereto."

93. The Respondent's position, in essence, may be summarized as follows:

- The ADRV was intentional.
- By arguing for a negligent rather than intentional ingestion of the pharmaceutical product DHEA, classified under the WADA Prohibited List 2023 within the category S1 Anabolic Agents, substances prohibited at all times since 2004, the Appellant relies on self-referenced statements that are not corroborated by objective, documentary or third-party evidence.
- It is not proven that, in June 2023, [...] provided the athlete with DHEA 25mg, which, moreover could no longer be provided based on the prescription by Dr. [...].
- The intake of DHEA resulted from conduct which Mr Pogba knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV and he manifestly disregarded that risk under Article 11.2.3 of the ADSC (recte: CSA).
- The ADRV is the result of a deliberate ingestion of a medication prescribed by Dr. [...], after the blood test on 22 November 2022 revealed low levels of Testosterone and DHEA.
- Mr Pogba's assertions that he received a variety of products from [...] on 2 July 2023, including DHEA produced by [...], and that those products were provided by [...] rather than sourced independently by the Athlete are not credible.
- It is unproven and unclear why Dr [...] would have altered the method of prescribing a DHEA product to Mr Pogba.
- There are several inconsistencies regarding the Appellant's assertions related to the consumption of the pills from the orange pill bottle from November 2022 and the

pills from the [...] delivered in August 2023: There is no reliable evidence demonstrating that the products in the 2 July 2023 photo were provided by [...] rather than sourced independently by the Athlete. It is also not credible that the [...] bottle was started in August if, according to the Appellant's version, it was delivered to him in Miami on 2 July 2023. It remains unexplained why the Athlete started using the [...] pills instead of finishing those from the orange pill bottle first.

- From 1 January 2021 to 14 May 2023, the Athlete had 12 anti-doping controls under the testing authorities of UKAD, UEFA, AFLD and NADO Italia. In none of these tests did the Athlete declare DHEA, DHA, or EPA on the doping control form.
- The thesis that the Athlete confused DHEA with DHA is not credible, as the two products are extremely different and clearly only the use of the former was linked to the low levels of testosterone and DHEA Sulfate referred to in the blood analysis produced by the Athlete.
- If the Panel finds the conduct of the Athlete not to be intentional, it could only be characterized by the highest level of significance, resulting in a sanction of two years' disqualification.
- In its oral arguments at the Hearing, NADO Italia submitted the following:
 - The Appellant's argument regarding a spelling confusion with respect to the different products is not credible.
 - Mr. Pogba's motive to use DHEA was his deficit in testosterone.
 - The Appellant never requested a TUE.
 - Upon repeated questioning by the Panel, counsel for NADO admitted that
 - (i) the intake of DHEA caused the positive test, and
 - (ii) [...] delivered the DHEA, which caused the positive test, to Mr. Pogba.

VII. JURISDICTION

94. Article R47 of the CAS Code provides that:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body."

95. CAS jurisdiction in these proceedings results from Articles 18.2.1 and 18.2.3 ADSC, which reads as follows:

"18.2.1 Appeals involving International-level Athletes or International Events"

In cases arising from participation in an international event or in cases involving international-level athletes, the decision may be appealed exclusively to CAS.

[...]

18.2.3 Persons Entitled To Appeal

18.2.3.1 Appeals involving International-level Athletes or International Events

In cases under Article 18.2.1, the following parties shall have the right to appeal to CAS: [...] (a) the Athlete or other Person who is the subject of the decision being appealed; [...]

96. No party objected to the application of Articles 18.2.1 and 18.2.3 ADSC and to the jurisdiction of the CAS.
97. By signing the Order of Procedure, the Parties confirmed the jurisdiction of the CAS. In addition, the Parties have not objected to the exercise of jurisdiction by this Panel during the proceedings and have participated fully.
98. Therefore, the Panel confirms the jurisdiction of the CAS.

VIII. ADMISSIBILITY

99. Article R49 of the CAS Code provides that:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."

100. Pursuant to Article 18.5.1 of the ADSC, *"the time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party"*.

101. On 29 February 2024, the Operative Part of the Appealed Decision was issued.
102. On 21 March 2024, the Appellant filed his Statement of Appeal against the Decision of the TNA.
103. On 22 March 2024, the reasoned Appealed Decision was notified to the Parties.
104. On 12 April 2024, the Appellant submitted his "updated" Statement of Appeal.
105. On 18 April 2024, the Respondent objected against the admissibility of the "updated" Statement of Appeal on the grounds that it was not timely filed.
106. The twenty-one (21) days limit began on the day following the notification of the reasoned Appealed Decision, i.e. 23 March 2024, and expired on 12 April 2024.
107. Consequently, the "updated" Statement of Appeal was submitted within the time limit of Article 18.5.1 of the ADSC.
108. Therefore, the Panel confirms that the Appeal is admissible.

IX. APPLICABLE LAW

109. Article R58 of the CAS Code provides that:

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

110. The ADRV occurred on 20 August 2023. As of 1 February 2023, version 1.0 of the ADSC came into force.
111. Hence, the Version 1.0, in effect as from 1 February 2023, applies to the case at hand.
112. The relevant articles of the ADSC read as follows:

"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

[...]

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

[...]

4.1 Burdens and Standards of Proof

NADO Italia shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether NADO Italia has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where this Anti-Doping Sports Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 4.2.2 and 4.2.3, the standard of proof shall be by a balance of probability.

11.2 Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 11.5, 11.6 and 11.7:

11.2.1 *The period of Ineligibility, subject to Article 11.2.4, shall be four (4) years where:*

11.2.1.1 *The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

[...]

11.2.2 *If Article 11.2.1 does not apply, subject to Article 11.2.4.1, the period of Ineligibility shall be two (2) years.*

11.2.3 *As used in Article 11.2, the term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they 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. [...]*

[...]

11.5 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

11.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

11.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Article 2.1, 2.2 or 2.6.

All reductions under Article 11.6.1 are mutually exclusive and not cumulative.

[...]

11.6.2 Application of No Significant Fault or Negligence beyond the application of Article 11.6.1

If an athlete or other person establishes in an individual case where Article 11.6.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 11.7, the otherwise applicable period of ineligibility may be reduced based on the Athlete or other person's degree of fault, but the reduced period of ineligibility may not be less than one-half of the period of ineligibility otherwise applicable. If the otherwise applicable period of ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years.

[...]

Appendix 1 to the ADSC defines No Significant Fault or Negligence as follows: The Athlete or other Person's establishing that any 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 the anti-rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1 the Athlete must also establish how the Prohibited Substance entered the Athlete's system.

16. Financial Consequences and Cost of Proceedings

[...]

- 16.2 Financial consequences are ancillary penalties imposed in addition to *Ineligibility*. As a result, they do not constitute a valid reason for a reduction of the *Ineligibility* period or any otherwise applicable sanction under this ADSC.

[...]

24. Final Provisions

[...]

- 24.3 This ADSC have been adapted pursuant to the applicable provisions of the [WADA] Code and the International Standards and shall be interpreted in a manner that is consistent with applicable provisions of the [WADA] Code [...]."

[...]

X. PRELIMINARY ISSUES

113. During this arbitration, the Panel was called upon to make several procedural decisions on issues raised by the Appellant in his submissions of 31 July, 27 and 28 August 2024.
114. In particular, the Panel informed the Parties that it was inclined to accept the new evidential request submitted by the Appellant on 31 July, and 27 and 28 August 2024 provided that the new evidence was considered to be relevant. Counsel for Respondent replied that he would need to liaise with his client before being able to advise whether the Respondent upholds its objection to admit the Appellant's new evidence.
115. At the Hearing, before starting its closing submission, Counsel for Respondent informed the Panel that it does not challenge the decision by the Panel to admit the aforementioned three evidentiary requests by the Appellant. The President of the Panel then confirmed the admissibility of the evidentiary requests by the Appellant submitted on 31 July and 27 and 28 August 2024 and stated that the objections by the Respondent are considered to be withdrawn.

XI. MERITS

A. The Issue

116. It is undisputed that the Appellant committed an ADRV pursuant to Art. 2.1.1 ADSC when he tested positive for the presence of non-endogenous testosterone metabolites on 20 August 2023.
117. First, the Panel must determine the basic sanction, which is four (4) years, unless the Panel comes to the conclusion that the Appellant can establish that the ADRV is not intentional, in which case the basic sanction is two (2) years. In a second step, if the basic sanction is assessed to be two (2) years, the Panel must decide whether any of the Fault-related reductions apply, and whether the Appellant bore No Significant Fault or Negligence (Art. 11.6 of the ADSC) for his ADRV, and, if the Appellant acted without

Significant Fault or Negligence, determine the applicable sanction against the Appellant (the Appellant did not assert an argument for applying No Fault or Negligence (Art. 11.5 of the ADSC), conceding that he bore some fault, so the Panel will not consider the application of those standards).

B. Period of ineligibility

1. The Parties' position

118. The Appellant submits that the ADRV was not intentional and caused by his unknown and inadvertent use of the nutrition supplement DHEA provided by [...].
119. According to the Appellant, the period of ineligibility shall be no more than one year.
120. The Respondent submits that the ADRV admitted by Mr Pogba resulted from his intentional ingestion of DHEA and should be sanctioned with a period of four years.
121. The Respondent submits that even if the Panel were to find the conduct of Mr Pogba not to be intentional, it could only be characterized by the highest level of significance of fault, resulting in a sanction of two years disqualification.

2. The legal framework

122. Pursuant to Art. 11.2.1, the period of ineligibility (basic sanction) is four years. If the Athlete establishes that the ADRV was not intentional, the period of ineligibility will be two (2) years.
123. The term "intentional" is *"meant to identify those athletes or persons who engage in conduct which they knew constituted an anti-doping 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"* (Art. 11.2.3 ADSC).
124. Whether the conduct is intentional is to be judged on the actual knowledge of the Athlete, not on the basis of what an Athlete ought to have known or understood (CAS 2016/A/4643).
125. To rebut the second alternative, the presumption that the Athlete acted intentionally, the Athlete must show (by a balance of probability) that he or she did not know that his or her conduct involved a significant risk or that he or she did not manifestly disregard that risk.
126. Intent includes a volunative element (CAS 2020/A/7536). Risk awareness in the context of intent means that the Appellant is consciously accepting the risk that his or her conduct may end up in an ADRV.
127. CAS jurisprudence on whether the establishment of the source of a prohibited substance is a strict condition to establish absence of intent is mixed.

128. There may be circumstances in which a Panel can be satisfied that the ADRV was not intentional despite the inability of the Athlete to show the origin of the substance (CAS 2015/A/2280, CAS 2023/A/9451, CAS 2023/A/9455, CAS 2023/A/9456).
129. The fault-based reductions set forth in the provisions relating to No Fault or Negligence and No Significant Fault or Negligence (Articles 11.5 and 11.6 ADSC) are not available to an Athlete unless and until the Athlete can demonstrate that the ADRV was not intentional (CAS 2023/A/9451, CAS 2023/A/9455 and CAS 2023/A/9456, para. 342).

3. *Basic sanction*

130. The Panel has to determine the basic sanction, which depends on whether the Appellant succeeds in rebutting the presumption that he acted without intent in committing the ADRV.
 - a) No direct intent
131. The Respondent accepted at the Hearing that the product provided by [...] containing DHEA, a prohibited substance that is not a Specified Substance, caused the positive test for the Sample taken on 20 August 2023 at the end of the Udinese-Juventus-match. Hence, source and provider are not disputed. In other words, the Respondent conceded the source as put forward by the Athlete, which, if accepted by the Panel, reduces the maximum sanction from 4 years to 2 years, provided it can also be established that the Appellant acted without intent.
132. According to the scientific evidence of the experts heard the ingestion of DHEA would not result in any performance enhancing effects for a man (the contrary would apply to a woman taking DHEA, however). The Panel also heard evidence that if an athlete was trying to enhance their performance they would not use DHEA because it is of dubious efficacy and widely tested for.
133. The Appellant retained professional services from [...], a company that claimed great expertise in anti-doping matters for international athletes and was informed by the Appellant about his anti-doping obligations in advance of retaining the services of [...].
134. Contrary to what Respondent alleged, the Panel finds that the Appellant's testimony that he confused DHEA and DHA is credible. He had been taking DHA for quite some time, he had been assured by [...] that they would only give him substances that were not on the Prohibited List and that were consistent with his anti-doping obligations of which they purported to be experts, and "DHEA" and "DHA" are confusingly similar enough (particularly given his impaired judgment caused by his uncontroverted, diagnosed psychological condition). In addition, the fact that it was DHEA, about which there was uncontroverted evidence at the hearing that said substance provides limited if any performance enhancing effect to a male athlete, is compellingly favorable to the Athlete.

135. The Panel, based on the evidence, did not recognise any motivation of the Appellant to enhance his performance by using DHEA.

136. In sum, it is evident for the Panel that the Appellant did not engage in a conduct which he knew constituted an ADRV.

b) No indirect intent

137. The term ‘intent’ indisputably includes direct and indirect intent, the latter also called “*dolus eventualis*” (see above and CAS 2016/A/4609, CAS 2018/A/5784, CAS 2020/A/7536). In order to rebut the presumption that he acted with (indirect) intent, the Appellant must show by a balance of probability that he did not know that his conduct involved a significant risk to commit an ADRV.

138. Without contradicting the [...] blood test results in November 2022 and June 2023 on the Appellant’s low level of testosterone, the Panel sides with the Appellant that his case is on DHEA and on the Appellant’s actual risk awareness of its intake and not on testosterone.

139. The reason for taking DHEA is that Mr Pogba mistook DHEA for DHA. Contrary to what Respondent alleged, the Appellant’s testimony that he confused DHA and DHEA is credible. His confusion between the products may turn out to be negligent, but does not qualify as conduct involving a significant risk to commit an ADRV, *inter alia* for the following reasons:

- Mr Pogba had a long history of using DHA and rightly believed that DHA was safe.
- [...] assured Mr Pogba that the products they gave were not on the Prohibited List and that they were experts in ensuring that, having a history of working with professional athletes who were subject to anti-doping testing, including subject to international anti-doping testing.
- Mr Pogba suffered from [...] and, according to his expert’s psychiatric report, which has not been challenged by the Respondent, Mr. Pogba’s disorder would have impaired his ability to differentiate between DHA and DHEA.
- In sum, the Panel concludes that Mr Pogba’s conduct did not demonstrate that he consciously accepted the risk to commit a ADRV. Therefore, his ADRV was not committed on indirect intent.

c) Conclusion regarding basic sanction:

140. As a result, the Panel concludes that ADRV committed on 22 August 2022 was not intentional and, therefore, the maximum period of ineligibility should be two years.

141. Having assessed that the ADRV was not intentional, the Panel turns to the question whether any of the Fault-related reductions apply.

4. *Fault-related reductions*

a) No elimination for No Fault or Negligence

142. Pursuant to the ADSC, fault is defined as any breach of duty or any lack of care appropriate to a particular sanction. According to that definition, factors to be taken into consideration in assessing an athlete's *Degree of Fault* include, for example, the athlete's experience, the degree of risk that should have been perceived by the athlete and the level of care and investigation exercised by the athlete in relation to what should have been the perceived level of risk.
143. The Appellant asks the Panel to hold that the Appellant acted without Significant Fault or Negligence and does not request to eliminate the period of ineligibility totally, suggesting that twelve (12) months is the starting point. The Respondent considers the conduct of the Appellant to be intentional, and, if the Panel disagrees, requests the Appellant's conduct be qualified on the highest level of significance of fault.
144. Therefore, the Panel has to examine whether the sanction should be reduced for No Significant Fault or Negligence to a period between twelve (12) months and twenty-four (24) months, inclusive.

b) Reduction for No Significant Fault or Negligence

145. The Panel must identify whether the Appellant bears No Significant Fault or Negligence, in which case the basis period of ineligibility may be reduced based on the Appellant's degree of fault up to one-half of the basic period of ineligibility of two years (Art. 11.6.2 ADSC).
146. According to the definition of No Significant Fault or Negligence there are two prerequisites for the application of Art. 11.6.2 ADSC. The Appellant must establish, by a balance of probability
- (i) how the prohibited substance entered his system and
 - (ii) that any fault or negligence was not significant in relationship to the ADRV.
147. The first criterion regarding source has been met by the Respondent's explicit admission at the Hearing that the DHEA supplement provided by [...] was the source of the positive test. Hence, the source must be considered as having been established.
148. As to the second criterion, the following principles must be taken into consideration:.

149. The point of departure for the level of care to be expected from athletes is their high responsibility to take care that no prohibited substance enters their system (CAS 2017/A/5301), as set forth in Art. 2.1.1 ACSD:

"It is the *Athletes'* personal duty to ensure that no *prohibited substance* enters their bodies. Athletes are responsible for any *prohibited substance* or its *metabolytes* or *markers* found to be present in their samples."

150. As noted in CAS 2014/A/3798, "it is a key principle of the fight against doping that an athlete cannot blindly rely on his support staff including doctors [...]. He is responsible for the conduct of people around him from whom he receives food, drinks, supplements or medication, including his doctor, and cannot, therefore, simply say that he trusts them and follows their instructions".
151. In *Cilic*, the Panel distinguished three categories of fault and established criteria to assess the objective and subjective levels of faults, namely "*significant degree of or considerable fault*", "*normal degree of fault*" or "*light degree of fault*" (CAS 2013/A/3327 *Cilic v. ITF*, CAS 2013/A/3335 *ITF v. Cilic*). The possible sanction range of 0 to 24 months was divided into each category of fault, i.e., 16 to 24 months for a significant degree of or considerable fault, 8 to 16 months for a normal degree of fault, and 0 to 8 months for a light degree of fault (CAS 2013/A/3327 *Cilic v. ITF*, CAS 2013/A/3335 *ITF v. Cilic*, para. 96 et seqq.).
152. In order to determine into which category of fault a particular case might fall and determine the factors of fault, it is helpful to consider both the objective and the subjective level of fault.
153. The Panel considers in essence the following objective and subjective fault factors, based on the evidence and submissions:
- i. Against reduction:
 1. Mr Pogba did not check the product label of the DHEA products he used, one of which had an express warning label. The Panel finds his obliviousness highly careless.
 2. Mr Pogba did not carry out any internet search of the products he used, in particular after he received the retail bottle in July 2023 and before ingesting, though this is somewhat understandable given that he had been assured he would not have to worry about being given products containing Prohibited Substances.
 3. Mr Pogba did not consult "Informed Sport" or any other website providing neutral information on supplements, although there was a bag of a Turmenic product supplied by [...], which confirmed that it was tested for banned substances and safe for athletes to use.

4. The Panel heard evidence on how the elite group of top athletes in football are sheltered and that these athletes are assisted by professional teams on the medication and supplements to use as well as on filling out the doping control forms. However, the Panel takes the view that there should be no exception on top athletes in football or in highly organized team sports from the personal duties of athletes to ensure that no prohibited substance enters their body.
5. Mr Pogba is a high level athlete and is or should be aware of the anti-doping obligations he was subject to.

ii. Favouring reduction:

1. Mr Pogba appeared to have acted in good faith.
 2. The Panel did not hear any evidence of anti-doping training since Mr Pogba was a young player in the years 2013/14, although, as NADO has admitted the WADC and case law have changed substantially since then.
 3. Mr Pogba relied on [...], a professional team that claimed great expertise in anti-doping matters for international athletes.
 4. the medical doctor of [...] prescribed DHEA, although a prescription for DHEA is not required in the US, and Mr Pogba relied on such prescription.
 5. The firm [...] provided Mr Pogba with anti-doping assurances.
 6. Mr Pogba suffered from [...] as confirmed by an expert that impaired his thinking in many relevant ways as detailed above.
 7. Mr Pogba used DHA for a long time without incident and erroneously took DHEA, a prohibited substance, for DHA, a non-prohibited substance.
 8. It was established by scientific evidence that the effects of DHEA in men are extremely weak, to the extent that there may not be any.
 9. It has not been established that there was a legal or other obligation on the Appellant when he was playing for Juventus to declare the products taken on the athlete's own initiative to the medical staff of Juventus.
154. The Panel concludes that Mr Pogba has satisfied his burden of proving that his ADRV falls into the category No Significant Fault or Negligence.
155. The Panel finds that the exacerbating factors outweigh the mitigating factors and concludes that the Appellant's fault does not fall into the category of a light degree of fault.

156. The Panel concludes that the Appellant's degree of fault should be at the "normal level" leading to a sanction of 18 months.

C. Sanction

157. Considering the totality of the circumstances, the Panel determines that a period of ineligibility of eighteen (18) months is appropriate.
158. The starting date of the Appellant's period of ineligibility should remain as 11 September 2023.
159. Having determined that the period of ineligibility is 18 months based on no significant fault or negligence the Panel determines that there is no room for any ancillary penalty. Consequently, the ancillary economic sanction of Euro 5.000 imposed by the previous instance should be quashed.

XII. COSTS

(...)

* * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Paul Pogba against the decision rendered on 28 February 2024 by the Tribunale Nazionale Antidoping is partially upheld.
2. The decision rendered on 28 February 2024 by the Tribunale Nazionale Antidoping is amended as follows:
 - Mr Pogba is suspended for a period of eighteen (18) months commencing 11 September 2023.
 - The financial penalty of EUR 5'000 is set aside.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Operative Part notified on: 4 October 2024
Seat of arbitration: Lausanne, Switzerland
Date: 22 April 2025

COURT OF ARBITRATION FOR SPORT

Hans Nater
President of the Panel

Jeffrey Benz
Arbitrator

Martin Schimke
Arbitrator