

Date: 13 June 2022

Sent to:

Mr Sylvain Gbohhou
c/o Mr Prosper Abega
prosper.abega@wandoo.fr

CC:

- Fédération Ivoirienne de Football
- Fédération Ethioienne de Football
- Confédération Africaine de Football
- Agence Mondiale Antidopage
- FIFA Anti-doping Unit
- Organisation Régionale Antidopage Afrique Zone II et III

Notification of the grounds of the Decision

Ref FDD-9867

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned case by the FIFA Disciplinary Committee on 27 April 2022.

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

Yours faithfully,

FIFA



Carlos Schneider
Director of Judicial Bodies

Decision of the FIFA Disciplinary Committee

passed on 27 April 2022

DECISION BY:

Thomas HOLLERER (Austria), Acting Chairperson
Mark Anthony WADE (Bermuda), Member
Yasser AL-MISEHAL (Saudi Arabia), Member

ON THE CASE OF:

Mr Sylvain Gbohouno

(Decision FDD-9867)

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 16 November 2021, the Ivorian player Sylvain Gbohouo (**the Player** or **the Respondent**) was subjected to a doping control after the match *Cameroon v. Ivory Coast* 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 18 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 the substance Trimetazidine, 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 22 December 2021, 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" sample¹.
7. Subsequently, on 23 December 2021, 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.
8. On 30 December 2021, the Player informed the Secretariat that he wished to have a hearing so that he could "*present his personal situation in all honesty*".
9. On 4 January 2022, the Player was informed that a preliminary hearing would be held on 5 January 2022 at 15:00 CET.

¹ Said letter was directed to the Player but was addressed to the Ivorian Football Association, which was requested to immediately forward this correspondence to the Player.

10. The Player's position transmitted by the Ivorian Football Association (**FIF**) on 30 December 2021 and presented during the hearing can be summarised as follows:
 - *"After an interview with the Player, it is established that the latter recalls having consulted an ophthalmologist practising in Abidjan, Côte d'Ivoire, for an eye disease";*
 - *On 29 March 2021, the Player was prescribed a medical prescription "for a drug called VASTAREL for a period of 3 months". "The substance Trimetazidine found in the Player's urine is a metabolite of this product";*
 - *"The Player acknowledges having taken the said medicine for the treatment of an eye disease without knowing that it could not be taken without authorization and that it contained a substance prohibited to sportsmen";*
 - *The Player "affirms that he stopped the treatment prescribed for his eye for therapeutic use since July 2021" and "specifies that the taking of VASTAREL was in no way for doping purposes";*
 - *FIF noted that "good eyesight" is "essential" for a goalkeeper, which is why the Player "legitimately went to see an ophthalmologist for treatment" without any intention of doping;*
 - *The suspension of the Player, which would deprive him of the upcoming African Cup of Nations, "risks causing harm to his teammates, the national team, and even the entire Ivorian nation";*
 - *This suspension "would be unjust, especially as he did not know he was taking a substance prohibited for sportsmen and that this was not of his own volition";*
 - *The Player therefore requests that the provisional suspension imposed on him be lifted "so that he can take part in the 2021 African Cup of Nations in Cameroon, with his national teammates".*
11. On 10 January 2022, following the said hearing, the Secretariat informed the Player of the Committee's decision passed on 5 January 2022 (to confirm his provisional suspension) and gave him 20 days to submit any supplementary explanation pursuant to art. 53 (5) FIFA ADR.
12. On 19 January 2022, the Player requested to be provided with the full report of his urine analysis by the laboratory. Said report was provided one day later.
13. On 25 January 2022, the Player submitted his explanations and essentially claimed that:
 - he had not been able to exercise his right to have the B Sample analysed on the grounds that the procedure was unfair.
 - he intended to challenge the classification of Trimetazidine on the Prohibited List.
 - he was completely unaware (as were his doctors) that *Vastarel* contained Trimetazidine, a substance on the Prohibited List for the year 2021.
14. On 23 February 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 FIFA Disciplinary Code (FDC) – Doping.

15. 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 two-year period of Ineligibility in accordance with art. 20 (2) FIFA ADR read in conjunction with art. 20 (1) (a) FIFA ADR.
16. 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.
17. On 9 March 2022, the Player provided his position and requested a hearing to be held.
18. On 14 April 2022, the Secretariat *inter alia* informed the Player that he would be heard by the Committee on 27 April 2022.
19. On 22 April 2022, the Secretariat informed the Player about the composition of the Committee.
20. On 27 April 2022, a hearing was held by video-conference (**the Hearing**) in the presence of the following persons:
 - For the Committee:
 - Mr Thomas Hollerer, acting chairperson;
 - Mr Mark Anthony Wade, member;
 - Mr Yasser Al-Misehal, member;
 - For the Respondent:
 - Mr Sylvain Gbohoun;
 - Mr Prosper Abega, legal representative of the Respondent
 - Representatives of the Secretariat
21. 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

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

A. Facts

- On the occasion of a request made by the medical staff of the Ivory Coast national team, the Player went for a consultation with Dr Khalaf, accompanied by Professor Bana, member of the medical team of the Ivory Coast National Football Team.
- The consultation took place on 29 March 2021 and a medical examination of the Respondent's eyes was carried out. A medical report was drawn up at the end of which he was given a prescription for *Vastarel*-based medication.
- Trimetazidine dihydrochloride, an active compound marketed under the name *Vastarel*, is a medicine used to treat visual acuity and visual field disorders presumed to be of vascular origin.
- Thus, it is in order to treat his ocular disorder that the Player took this medicine. In other words, the Player cannot be sanctioned for having ingested a product exclusively intended to treat his eye disease.

B. The strict liability rule

- This case reveals the incoherence and absurdity of the freedom-destroying "strict liability" rule, which makes any athlete guilty of an ADRV if a substance on the Prohibited List is found in his samples, even before he is heard on the alleged violation.
- In other words, the fact of doping is thus constitutive in itself of a breach liable to sanction. It is no longer the Tribunal that determines the existence of an ADRV, but rather the laboratory that analyses the sample.
- This means that in the context of art. 6 FIFA ADR, the conception of the presumption of innocence is in fact a purely theoretical concept, devoid of any meaning and deprived of any effect. Indeed, the presumption of innocence exists prior to the finding of an abnormal analysis but serves no purpose, and it disappears after the same finding without having existed.
- This is exemplified by the fact that there is no case for reinstatement of an athlete prosecuted under art. 6 FIFA ADR. Only the annulment of the period of Ineligibility can occur, but the athlete is guilty in any event and his name is irreparably damaged.
- In view of the foregoing, the presumption of innocence is thus flouted and this constitutes a violation of art. 6 of the European Convention on Human Rights (**ECHR**).
- The above also means that the Disciplinary Committee has no power to decide on the responsibility of the Player and therefore his guilt. Indeed, the Disciplinary Committee can only intervene on the period of Ineligibility, (cancellation, suspension or reduction of the period of Ineligibility) and not on the principle of the athlete's guilt itself.
- Considering that the Disciplinary Committee is not a court in the sense of art. 6 ECHR, this poses a certain number of difficulties when one knows the consequences of the potential period of Ineligibility that can be imposed, i.e. depriving the athlete of income.

C. Violation of the right of the Player to request the analysis of the “B” sample

- FIFA failed to preserve the most elementary right of the Player to benefit from the analysis of the “B” Sample, and thus demonstrate his innocence, by enacting regulations that are totally unsuitable to ensure this objective.
- In particular, FIFA notified the Player on 22 December 2022 of a potential ADRV. In the said letter, the Player was asked whether he wished that the “B” Sample be opened and analysed.
- However, the correspondence indicated that *“the request [to open and analyse the B sample] must be sent within 12 hours of receipt of this notification. Applications sent after this deadline will not be considered”*.
- Bearing in mind that the letter was directed to the Player but sent to FIF which was requested to forward this correspondence to the Player immediately, the 12-hour deadline to request the analysis of the “B” Sample was simply impossible.
- In this case, the sample was collected on 16 November in Cameroon and the result was notified to FIF on 22 December 2021, but the Player was only officially notified of this letter on 28 December 2021, while he was with the Ivorian National team in Jeddah, Saudi Arabia.
- In other words, the deadline to request the “B” Sample was well past when he received the notification from FIFA.
- As a result, it is totally illusory to think that a notification letter addressed to a national association can reach the player in time to allow him to make known his willingness to assert his rights within the required timeframe.
- Moreover, by limiting the time limit for requesting the opening of a “B” Sample to twelve hours, the FIFA ADR deprived the Player of a fundamental right, so that it cannot be denied that the Player’s procedural rights were not respect in this case.

D. The list of prohibited products has not been transposed into FIFA law and is therefore not enforceable against players

- The information on the modification of prohibited products as published by WADA each year is ineffective in ensuring its circulation, even though FIFA does not ensure its transmission in its positive law but merely refers to a regulation published by an association outside of FIFA:
“Annex A: Reference is made to the Prohibited List published by WADA, which is available at www.wada-ama.org.”
- A reference to a list of prohibited products published on the website of a foreign association, which has not been duly transposed into its domestic law, cannot in any case serve as a basis for a disciplinary sanction before the Disciplinary Committee.
- Moreover, the list of products banned by WADA for the year 2021 has not been voted by a FIFA governing body.
- It is therefore not binding and cannot be used as a basis to sanction the Player.

E. The player is not at fault

- The Player trusted the doctor who prescribed him the recommended treatments to improve his health and he had no reason to question the competence of the professionals who

supervise the national team. In particular, the Player has no diploma and had to stop his studies very early to devote himself exclusively to football.

- The Player had absolutely no intention to improve his sporting performance or to gain a competitive advantage by ingesting the medicine prescribed. To the contrary:
 - The Player was totally unaware that *Vastarel* contained an active substance on the Prohibited List;
 - He discontinued the treatment on his own after one and a half months, i.e. in mid-May 2021, in the absence of any significant improvement;
 - The origin of the presence of the Prohibited Substance in his body is clearly documented – *Vastarel* was prescribed for the sole purpose of "*improving retinal blood flow*";
 - He always acted in good faith and has never had the intention to conceal these facts before the Disciplinary Committee.
- Moreover, no significant fault or negligence can be attributed to the Player for the following reasons:
 - No mention was made on the packaging of the medicine purchased in Abidjan and the leaflet did not contain any warnings that might have alerted the Player to the true nature of the product prescribed;
 - It cannot be expected from the Payer, who interrupted his studies too early to devote himself exclusively to football, not to have undertaken all the steps on the internet or on the WADA website to try to determine whether the product prescribed by a recommended doctor and at the request of the national team's sports management contained a Prohibited Substance likely to lead to a four-year suspension for the Player;
 - The Player did not benefit from any competitive advantage over other players.
- In other words, the Player cannot be held responsible for an ADRV to which he is completely unrelated due to the "negligence" of national team doctors, who wrongfully prescribe a Prohibited Substance.

F. Request for relief

- The Player who was convinced of his innocence, refused to be judged guilty of a fault he did not commit.
- *"He would, however, be prepared to accept a six-month suspension starting on 22 December 2021, the date of the provisional suspension, in order to definitively turn the page of the very bad episode he is currently experiencing"*.
- The Player cannot, in fact, accept the proposal of two years of "Ineligibility" that is made to him.

23. The Committee once again reiterated that it had considered all the facts, allegations, legal arguments and evidence provided by the Respondent, and in the present decision, had only referred to those observations and evidence for which it considered necessary to explain its reasoning.

III. Considerations of the Disciplinary Committee

24. 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

25. 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.
26. 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 – the Disciplinary Committee is competent to evaluate any Doping-related violation and to impose sanctions in case of corresponding violations.

B. Applicable law

27. 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 16 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.
28. 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.
29. 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 23 February 2021 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

30. 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.
31. Furthermore, the Committee noted that, in accordance with art. 68 FIFA ADR, different standards of proof apply in doping proceedings: on the one hand, FIFA must establish that an ADRV occurred to the "comfortable satisfaction" of the Disciplinary Committee (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).
32. 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.”

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

D. Merits of the dispute

I. Preliminary issues

34. Before focusing on the Player’s Adverse Analytical Finding and the resulting potential ADRV committed by the Player, the Committee wished to address some “procedural issues” put forward by the Player.

(1) The strict liability rule and presumption of innocence

35. The Committee observed that the Player, in essence, argued that the strict liability rule in doping-related matters violates the presumption of innocence and thus is contrary to the ECHR.
36. In this regard, the Committee noted that the Court of Arbitration for Sports (**CAS**) has constantly applied the principle of strict liability when justified by the terms of the doping control rules at issue². Moreover, the Swiss Federal Tribunal confirmed that doping control rules which provide for strict liability are valid under the law of Switzerland³.
37. With respect to the argument concerning the presumption of innocence, CAS pointed out that this is a concept of criminal law and that “[d]isciplinary sanctions imposed by associations are subject to the civil law and must be clearly distinguished from criminal penalties. The shifting of the burden of proof to the athlete to demonstrate that he or she acted without (significant) fault does not conflict with the presumption of innocence. Athletes have a rigorous duty of care towards their competitors and the sports organization to keep their bodies free of prohibited substances. Anti-Doping rule violations do not “just happen” but are, in most cases, the result of a breach of that duty of care. This justifies (i) to presume that the athlete acted with fault or negligence and (ii) to shift the burden of proof from the sanctioning body to the athlete to exonerate him-or herself⁴.”
38. In light of the above, the Committee considered that the aforementioned arguments of the Respondent could be dismissed without further analysis or detailed explanations.

(2) Violation of the right of the Player to request the analysis of the “B” Sample

39. The Committee then took due note that the Player contended that he had been prevented from requesting the analysis of the “B” Sample due to the short 12-hour deadline, specifically considering that the letter dated 22 December 2021 informing him about the potential ADRV had been sent to

² CAS 95/141 ; CAS 2000/A/317 ; CAS 2006/A/1132.

³ 4P.105/2006; 4A_522/2012 ; ATF 134 III 193.

⁴ CAS 2006/A/1102.

him via his national association (FIF). In particular, the Player claimed that the said letter had only been forwarded to him by FIF on 28 December 2021 and that the 12-hour deadline to request the analysis of the “B” Sample had thus already expired.

40. In this respect, the Committee recalled that, pursuant to art. 62 FIFA ADR, decisions and other documents intended, *inter alia*, to players “are addressed to the Association concerned on the condition that it forwards the documents to the parties concerned without delay (...)”. As such, the Committee found that the letter informing the Player of his potential ADRV could validly be sent to FIF, which had to forward this letter to the Player.
41. Given the Player’s assertion that he was “only officially notified of this letter on 28 December 2021 while he was with the Ivorian National team in Jeddah (Saudi Arabia)”, the Committee held that the aforementioned correspondence had in fact reached its (ultimate) recipient, i.e. the Player, on 28 December 2021.
42. Against this background as far as the analysis of the “B” Sample is concerned, the Committee pointed out that the above letter had been addressed to the Player in accordance with arts. 53 (5) (c) and 54 (1) FIFA ADR⁵ and notified the latter that “the request [to open and analyse the “B” Sample] must be sent within 12 hours of receipt of this notification. Applications sent after this deadline will not be considered” (emphasis added).
43. In view of the Player's assertion, it turned out that the Player wrongly assumed that the time limit for requesting the “B” Sample had already expired when he received FIFA's letter on 28 December 2021. In this respect, and based on the wording of art. 53 (5) and 54 (1) of the FIFA ADR, the Committee considered that the 12-hour (or 48-hour out-of-competition) time limit could be understood as starting to run from the moment the player is informed of his Adverse Analytical Finding and the possibility to request the “B” Sample, i.e. once he is aware of it, and not from the moment the letter reaches the association that was requested to forward said letter to the final recipient. *In casu*, the Committee deemed that the 12-hour time limit precisely started when the Respondent was “notified of this letter on 28 December 2021 while he was with the Ivorian National team in Jeddah (Saudi Arabia)”.
44. In view of these explanations, the Committee was comfortably satisfied that the Player had been duly notified and informed of his right to request the analysis of the “B” Sample, but due to his lack of action, this right was considered as irrevocably waived pursuant to art. 53 (5) (c) FIFA ADR.

⁵ Art. 53 (3) (c) FIFA ADR reads:

“In the case of an Adverse Analytical Finding, the Player shall be promptly notified of the following (see art. 62 (Addressees of decisions and other documents) and chapter X section 4 (Confidentiality and reporting)):

(...)

c) his right to promptly request the analysis of the “B” Sample and, failing such request within the time limit set by these Regulations, of the fact that the “B” Sample analysis may be deemed irrevocably waived. The Player shall be advised at the same time that, if the “B” Sample analysis is requested, all related laboratory costs shall be borne by the Player, unless the “B” Sample fails to confirm the “A” Sample, in which case the costs shall be borne by FIFA;”

Art. 54 (1) FIFA ADRC reads:

“The Player has the right to request the analysis of the “B” Sample, within 12 (In-Competition)/48 (Out-of-Competition) hours of being notified. The request of the analysis of the “B” Sample has no impact on a Provisional Suspension of the Player.”

45. In addition to the above, the Committee noted that the Player, through FIF, informed FIFA on 30 December 2021 that he wished to have a hearing so that he could "*present his personal situation in all honesty*", without, however, requesting the analysis of the "B" Sample, or at least requesting further information on how to proceed to ensure the protection of his rights in that respect. Likewise, the Player did not request for (nor have even a word on) the "B" Sample during the hearing on the Provisional Suspension held on 5 January 2022. Thus, the first time that the Player raised his concerns about the "B" Sample was in the letter dated 25 January 2022 from his legal representative. In other words, the Committee considered that this correspondence was nothing more than an attempt to pretend that the Player's procedural rights had not been respected in order to mask the Player's failure to request the "B" Sample analysis in a timely manner.
46. The foregoing established, the Committee turned its attention to the last preliminary issue, namely the fact that the Prohibited List of products had not been transposed into FIFA's law.

(3) The Prohibited List of products has not been transposed into FIFA's law

47. The Committee duly acknowledged that, in substance, the Player claimed that FIFA had never transposed the WADC Prohibited List into its FIFA ADR, so that it could not apply to him. In other words, the Player is of the opinion that since FIFA only referred in Annex A of the FIFA ADR to a list of prohibited products published on the website of a foreign association (WADA), this list was not binding and could not be used as a basis for sanction.
48. In this respect, the Committee pointed out that the FIFA ADR contains more than a simple reference to the Prohibited List in its annex as put forward by the Player. To the contrary, art. 17 of the said regulations is clear and unambiguous in so far that it provides that "*Unless otherwise communicated by FIFA, the Prohibited List and its revisions shall come into effect under these Regulations three months after publication of the Prohibited List by WADA without requiring any further action by FIFA or its Member Associations. All Players and other Persons shall be bound by the Prohibited List, and any revisions thereto, from the date they go into effect, without further formality. It is the responsibility of all Players and other Persons to familiarize themselves with the most up-to-date version of the Prohibited List and all revisions thereto*" (emphasis added).
49. In view of the above, the Committee decided to reject the Player's arguments because the FIFA ADR clearly contains a reference to the WADC Prohibited List and makes it clear that all players are bound by this list, thus ensuring, *inter alia*, the principles of legality and legal certainty.
50. As a side note and for the sake of good order, the Committee took note of the fact that the Player intended to challenge the classification of Trimetazidine on the WADC Prohibited List. In this regard, the Committee considered that this contention did not require any particular analysis, as art. 18 FIFA ADR clearly provides that "*(...) the classification of a substance or method as a Specified Substance, Specified Method or Substance of Abuse is final and shall not be subject to any challenge by a Player or other Person, including, but not limited to, any challenge based on an argument that the substance or method was not a masking agent or did not have the potential to enhance performance, represent a health risk or violate the spirit of sport*" (emphasis added).

II. The Anti-Doping Rule Violation

51. The preliminary issues clarified, 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*”.
52. To begin with, the Committee noted that the “A” Sample collected on 16 November 2021 and analyzed by a WADA-accredited laboratory in Lausanne revealed the presence of Trimetazidine, a non-specified substance which is on the Prohibited List (2021) under S4.4 “Metabolic Modulators” and is prohibited for use in- and out-of-competition. Furthermore, the Committee observed that Trimetazidine is not subject to a minimum threshold, so that any reported quantity of that Prohibited Substance in a player’s sample constitutes an ADRV pursuant to art. 6 (3) FIFA ADR.
53. 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 Trimetazidine 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 highlighted that the Player did not dispute the above Adverse Analytical Finding, but rather explained that it was the result of the intake of *Vastarel*, a medicine prescribed by a doctor to treat a visual field disorder, presumably of vascular origin.
54. Consequently, and in accordance with art. 66 FIFA ADR, the Committee concluded that the presence of Trimetazidine found in the Player’s urine sample 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 – such as Trimetazidine – in a player’s sample.

III. Liability of the Player

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

55. 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.
56. In this respect, the Committee recalled that the Player was found in violation of art. 6 FIFA ADR due to the presence of Trimetazidine, a non-specified substance, in his urine sample. 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.

57. The Committee further took note of art. 20 (4) (b) FIFA ADR, which reads as follows *“If the ingestion, Use or Possession occurred In-Competition, and the Player can establish that the context of the ingestion, Use or Possession was unrelated to sport performance, then the ingestion, Use or Possession shall not be considered intentional for the purposes of art. 20 par. 1 (...)”*.
58. 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?

59. 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”*.
60. 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 rule⁶.
61. In light of the above, the Player explained that, at the request of the medical staff of the Ivory Coast national team, he underwent a medical examination of his eyes on 29 March 2021. Following this, a medical report was drawn up and he was given a prescription for a *Vastarel*-based medication to improve his retinal blood flow. However, after one and a half month, the Player decided to stop the treatment on his own due to the lack of significant improvement.
62. In other words, the Player submitted that his Adverse Analytical Finding was due to the use of *Vastarel*, a medication prescribed by a doctor to treat a visual field disorder, presumably of vascular origin. To corroborate the above, the Player filed various documents, including a medical prescription for the medicine *Vastarel*, a report of the consultation dated 29 March 2021 and a statement from the national team doctor attesting that he accompanied the Player to the ophthalmologist for consultation.
63. In view of the above explanations, the Committee verified the composition of the medicine and was satisfied that the active substance of *Vastarel* was indeed Trimetazidine Dihydrochloride. Therefore, after careful consideration of the documents on file, the Committee concluded that the Player proved, on a “balance of probabilities”, that he had ingested the Prohibited Substance unintentionally, i.e. that he did not intend to dope, but rather wished to treat a visual field disorder by taking a medicine prescribed by an ophthalmologist.
64. Consequently, the Committee decided that the standard period of Ineligibility should no longer be four years, but two years, in accordance with art. 20 (2) FIFA ADR, due to the Player’s lack of intent to dope.

⁶ CAS 2017/A/5139 ; CAS 2016/A/4377; CAS 2016/A/4662; CAS 2016/A/4563; CAS 2016/A/4626.

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

65. 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 two years, unless the conditions for eliminating or reducing it are met.
66. In this regard, the Committee observed the following:
- If the Player can establish that he bears no fault or negligence (art. 22), the otherwise applicable period shall be eliminated;
 - If the Player can establish that he bears no significant fault or negligence (art. 23 (2)), the otherwise applicable period may be reduced based on the Player’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 Player (i) provides substantial Assistance in discovering or establishing Code violations (art. 24 (1)); (ii) admits an Anti-Doping rule violation in the absence of other evidence (art. 24 (2)); (iii) enters into a Results Management or case resolution agreement (art. 24 (4) and (5)), the period of Ineligibility normally applicable may be suspended or reduced depending on the circumstances of the case.
67. In this respect, the Committee could already conclude that the different scenarios described in art. 24 FIFA ADR would not apply in the present case.
68. Moreover, the Committee recalled that a WADA-accredited laboratory detected the presence of a Prohibited Substance - Trimetazidine - in the Player’s urine sample, so the latter was deemed to be at fault⁷.
69. Given that the Player was at fault, the Committee felt that the degree of fault or negligence on the part of the Player in relation to his ADRV had to be assessed as this assessment could have an influence on the period of Ineligibility to be imposed in view of arts. 22 and 23 (2) of the FIFA ADR.
70. In this regard, the Committee first noted that the contours of the notion of "fault" were defined by the FIFA ADR in the following terms:

“Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player’s or other Person’s degree of Fault include, for example, the Player’s or other Person’s experience, whether the Player or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player’s or other Person’s degree of Fault, the circumstances considered must be specific and relevant

⁷ Cf. *supra* “The Anti-Doping Rule Violation”.

to explain the Player's or other Person's departure from the expected standard of behaviour."⁸

71. Then, the Committee deemed it appropriate, in assessing the correct period of Ineligibility, to follow the guidance given by CAS in the *Cilic* award, in which three different degrees of fault and sanction ranges were distinguished (significant, normal or light degree of fault)⁹.
72. The Committee finally noted that the panel in the *Cilic* award suggested that in order to determine into which category of fault a particular case might fall in, the objective (standard of care expected from a reasonable person in the athlete's situation) and subjective (what could have been expected from that particular athlete, in light of his personal capacities) level of fault have to be taken into consideration.
73. In application of the above guidance, the Committee began by focusing on the objective level of fault and recalled that some of the actions or situations that could constitute an objective element would be whether the athlete¹⁰:
 - a. read the label of the product used (or otherwise ascertained the ingredients);
 - b. cross-checked all the ingredients on the label with the list of Prohibited Substances;
 - c. made an internet search of the product;
 - d. ensured the product is reliably sourced; and
 - e. consulted appropriate experts in these matters before consuming the product.
74. With respect to the present case, the Committee noted that from the Player's position provided in the course of these proceedings, it appeared that the latter marginally exercised the relevant care expected of a reasonable athlete as he would only have read the product label. Indeed, the Player argued that there was nothing on the packaging of the medicine purchased in Abidjan or on the leaflet that would have alerted him to the true nature of the product prescribed. In particular, the Player did not carry out any further checks but rather asserted that he had no reason to question the competence of the doctor who prescribed the medicine or that of the professionals supervising the national team.
75. In this regard, the Committee recalled that, according to CAS consistent jurisprudence, "*athletes cannot shift their duty onto their doctors. As a result, the Athlete bears a personal responsibility to ensure that no Prohibited Substance reaches his system, regardless of whether a doctor prescribed it*"¹¹. To the contrary, "*athletes are under a constant duty to personally manage and make certain that any medication being administered is permitted under the anti-doping rules, the prescription of a particular medicinal product by the athlete's doctor does not excuse the athlete from investigating to their fullest extent that the medication does not contain Prohibited Substances*"¹².

⁸ Definition 28 in the FIFA ADR.

⁹ The *Cilic* guidelines in CAS 2013/A/3327 & 3335.

¹⁰ The *Cilic* guidelines in CAS 2013/A/3327 & 3335.

¹¹ CAS 2017/A/5139 ; CAS 2012/A/2959; CAS 2006/A/1133; CAS 2005/A/951; CAS 2005/A/828

¹² CAS 2016/A/4609 ; CAS 2008/A/1488.

76. In view of the foregoing, the Committee held that the Player could not shift the responsibility of his ADRV on the doctor/ophthalmologic who prescribed the medicine *Vastarel*.
77. The Committee subsequently assessed the subjective level of fault, namely those attached to the personal situation of the Player, and made the following observation:
- a. With respect to the Player' age and experience: the Player was 33 years old at the time of the ADRV and was a professional football player. In particular, the Player himself pointed out that he had won multiple trophies with his former club TP Mazembe and had been selected with the national team of Ivory Coast to participate in continental competitions.
 - b. With respect to the language or environmental problems that the Player might have encountered: The medicine was purchased by the Player in the capital of his home country. Therefore, the chances of the Player encountering language or environmental problems were extremely limited.
 - c. Extend of Anti-Doping education received by the Player: The latter stated that he had limited education because "*he interrupted his studies too early*".
78. In view of the above, the Committee could only conclude that the Player was an experienced professional player - with an international career - so that he could legitimately be expected to exercise caution and carry out some checks before ingesting the medicine. Furthermore, the fact that the Player had limited education was of limited relevance in light of CAS jurisprudence which clarified that "*while [it can be accepted] that the Athlete may have had limited education, it should be noted that the anti-doping rules cannot be interpreted differently based on different levels of education or cultural background. This would defeat the whole purpose of having a consistent and fair anti-doping system*"¹³.
79. Notwithstanding the above, the Committee considered that the impact of the doctor who prescribed the medicine that caused the Player's ADRV could not be completely ignored, nor the fact that the Player was accompanied by the national team doctor during this consultation.
80. In this sense, the panel's reasoning in the *Guerrero* award has some resonance in the present case. In reaching its conclusion that Mr Guerrero's degree of fault was light, the panel noted, *inter alia*, that "*Mr Guerrero's belief, borne of long experience of the artificially cocooned life of an international footballer, that the team officials would, as had been the case in the past, ensured the safety of any food or drink served to the Players in designated areas separate from the main body of the hotel, was far from unreasonable.*"¹⁴
81. In the case at hand, the Committee found that the Player was driven by the same beliefs as Mr Guerrero, namely that in the artificial cocoon of an international footballer's life, the doctors and/or team officials would ensure that any medication and medicine prescribed would be "safe", so that

¹³ CAS 2017/A/5139

¹⁴ CAS 2018/A/5546 & 5571.

there was no reason to question the competence of the doctor or the professionals supervising the national team.

82. The Committee was totally aware that the Player could not shift his duty onto his doctor as previously outlined, but deemed that it was not prevented from taking into account the above reasoning in assessing the degree of fault of the Player.
83. As a result and in view of the circumstances of the case outlined above, the Committee concluded that the Player's degree of fault was normal rather than significant.
84. In view of all the above – and bearing in mind that the Prohibited Substance found in the Player's sample was a non-specified substance, the reduced period of Ineligibility may not be less than one half of the period of Ineligibility otherwise applicable according to art. 23 (2) FIFA ADR – the Committee decided to impose a period of Ineligibly of 18 months on the Player for infringing art. 6 FIFA ADR, and by corollary, art. 17 FDC.

(4) Commencement of period of Ineligibility

85. 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.
86. 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*.
87. In view of the fact that the Player was already serving a provisional suspension as of 23 December 2021, the Committee decided that the period served as a provisional suspension should be credited against the 18-month period of Ineligibility imposed under this decision.
88. For the sake of completeness and ease of computation, the Committee considered that the 18-month period of Ineligibility should run from 23 December 2021 until 23 June 2023.
89. Finally, and with regard to the extent of the suspension, the Committee reminded the Player of 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”*.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. The player, Mr Sylvain Gbohouno, is sanctioned with a period of Ineligibility of 18 months 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 from 23 December 2021 until 23 June 2023.**
- 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



Thomas HOLLERER

Acting 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.