



**Arbitration CAS 2017/A/5144 Fédération Internationale de Football Association (FIFA) v. Confederación Sudamericana de Fútbol (CONMEBOL) & José Angulo Caicedo, award of 1 March 2018 (operative part of 18 December 2017)**

Panel: Mr João Nogueira da Rocha (Portugal), President; Prof. Ulrich Haas (Germany); Mr Francisco González de Cossío (Mexico)

*Football*

*Doping (cocaine and metabolites)*

*FIFA right of appeal*

*Applicable law*

*Assessment of the period of ineligibility*

1. Art. 75 para. 7 of the CONMEBOL Disciplinary Regulations does not address appellants who have not been parties in the proceedings conducted before the Disciplinary Tribunal of CONMEBOL. Instead, the provision is only addressed to “*the interested parties*” in those proceedings. FIFA’s right of appeal constitutes a different and separate way of challenge of Anti-Doping decisions aimed at guaranteeing that international Anti-Doping standards are always respected at the international level (international competitions and/or international players), and that an equal treatment is granted by the disciplinary bodies to all the members of the football family. For this reason, FIFA’s right of appeal is not subjected to the ordinary legal requirements that may be established at the national or confederative level for the parties of the disciplinary proceedings, but to the general requirements and conditions established in FIFA’s own regulations (i.e. the FIFA Anti-Doping Regulations, ADR).
2. FIFA ADR provides for a set of provisions that are intended to guarantee that its anti-doping regulations will always prevail over any other anti-doping regime, either by its direct application by the adjudicating body or by the exercise of FIFA’s right of appeal against anti-doping decisions in front of CAS, that would be ultimately subjected to the FIFA regulations. With regard to the CONMEBOL Anti-Doping Regulations (ADR), in line with the principle of hierarchy of rules, these regulations also seek (or at least should seek) guaranteeing that the standards established by the FIFA ADR are always respected. Therefore, all potential inconsistencies existing between the regulations of CONMEBOL and those of FIFA on anti-doping matters must be solved in favor of FIFA regulations, that guarantee a uniform fight against doping and an equal treatment of all the football players with regard to anti-doping rule violations. This solution is the most respectful with the principle of hierarchy of laws that is inherent to the *lex sportiva*.
3. The burden of proof lies on the player to demonstrate that his/her anti-doping rule

violation was not intentional or that s/he acted with **No Fault or Negligence or Non-Significant Fault** if s/he wants to benefit from a reduction of the 4-year period of ineligibility. If the player could not establish on a balance of probability that s/he unintentionally committed the anti-doping violation and in addition, failed to establish that s/he consumed cocaine in a recreational / social context unrelated to sport performance that would qualify for **Non-Significant Fault**, this, far from justifying a reduction of the period of suspension, shows the athlete's fault which prevents any reduction of the period of suspension provided under the relevant applicable regulations.

## **I. PARTIES**

1. The Fédération Internationale de Football Association (the "Appellant" or "FIFA") is the governing body of football on a worldwide level. FIFA exercises regulatory, supervisory and disciplinary functions over its members. Its seat is in Zurich, Switzerland, and has legal personality under Swiss Law.
2. Confederación Sudamericana de Fútbol ("CONMEBOL" or the "First Respondent") is the continental football confederation in South America and has its headquarters in Luque, Paraguay. It is the governing body of football in South America and it is affiliated with the FIFA.
3. Mr. José Angulo Caicedo (the "Player" or the "Second Respondent") is a professional football player of Ecuadorian nationality. At the time of the facts the Player was registered with the Ecuadorian football club Independiente del Valle.

## **II. FACTUAL BACKGROUND**

4. A summary of the most relevant facts and the background giving rise to the present dispute is based on the parties' written submissions and the evidence filed with these submissions. Additional facts and allegations found in the parties' written submissions, pleadings and evidence is set out, where relevant, in connection with the legal discussion which follows. The Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.
5. On 20 July 2016, the final of the Copa Bridgestone Libertadores 2016 organized by CONMEBOL was played between Independiente del Valle and Atlético Nacional. The match started at 19:45 in Ecuador. 10 minutes after the match's end, the Player underwent an in-competition doping control.

6. On 16 August 2016, the WADA accredited Laboratory in Bogotá (COLDEPORTES laboratory) reported that the analysis of the Player's urine A-Sample (Sample nr. 6180572) revealed the presence of Cocaine (a Stimulant –S6- substance which is prohibited in-competition) and its metabolites Methylecgonine and Benzoylecgonine, in the following concentrations:
  - Cocaine 65.4 ng/ml
  - Methylecgonine 97.1 ng/ml
  - Benzoylecgonine 63.7 ng/ml
7. On 22 August 2016, the Player was notified of the adverse analytical result of his urine A-Sample.
8. On 24 August 2016, the Anti-Doping Unit of CONMEBOL informed the Player that the analysis of the urine B-Sample was going to take place on 30 August 2016, at 09:00.
9. On 1 September 2016, the Anti-Doping Unit of CONMEBOL informed the Player that the COLDEPORTES laboratory had reported that the urine B-Sample (Sample nr. 6180572) analysis had confirmed the results of the urine A-Sample and the presence of the prohibited substance Cocaine and its metabolites Methylecgonine and Benzoylecgonine.

### III. PROCEEDINGS BEFORE THE DISCIPLINARY TRIBUNAL OF CONMEBOL

10. On 5 September 2016, the Player was notified of the opening by the Disciplinary Unit ("DU") of the Disciplinary Tribunal of CONMEBOL, of a disciplinary procedure (file D/2/2016) as a result of his adverse analytical result. The DU charged the Player with violations of articles 6 and 7 of the FIFA Anti-Doping Regulations and warned the Player with the potential imposition of the sanction envisaged by article 19 of the FIFA Anti-Doping Regulations. Furthermore, with this first decision, the Chairman of the CONMEBOL Disciplinary Tribunal imposed a provisional suspension on the Player based on arts. 33 and 34 of the FIFA Anti-Doping Regulations and arts. 93 and 94 of the CONMEBOL Disciplinary Code.
11. On 2 March 2017, upon the Player's request, a hearing was held before said Tribunal.
12. On 3 April 2017 the Disciplinary Tribunal of CONMEBOL rendered the following decision<sup>1</sup>:
  - "1. That Mr JOSE ANGULO CAICEDO is guilty of a violation of articles 14 and 15 of CONMEBOL's Disciplinary Regulations.*
  - 2. Consequently, a punishment of one (1) year's suspension is ordered against Mr JOSE ANGULO CAICEDO.*

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<sup>1</sup> Translation into English produced by the Appellant and not contested by the Respondents.

3. *The calculation of the punishment ordered shall commence as from 20 July 2016, the date of collection of the sample from Mr JOSE ANGULO CAICEDO that produced the adverse analytical finding.*

4. *An additional fine of THIRTY THOUSAND UNITED STATES DOLLARS (USD 30,000) is also ordered. [...]*

5. *This decision may be appealed before CONMEBOL's Appeals Chamber in the period of seven days from the notification of the statement of grounds for this decision in accordance with Article 75.7 of CONMEBOL's Disciplinary Regulations (RD).*

6. *The appeal must comply with the formalities required in articles 81 et seq. RD. [...]*

13. On the same day 3 April 2017, the DU of the Disciplinary Tribunal of CONMEBOL notified the decision to the Player without grounds, granting him a term until 4 April 2017 at 18:00 to request the grounds of the decision.
14. On 5 April 2017, the Director of the DU of the Disciplinary Tribunal of CONMEBOL notified the decision that had been rendered in connection with the Player to FIFA.
15. On 11 April 2017, FIFA requested the DU of the Disciplinary Tribunal of CONMEBOL to provide it with a copy of the complete case file.
16. On 27 April 2017, the Secretary of CONMEBOL sent a copy of the complete case file to FIFA.

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (“CAS”)**

17. On 17 May 2017, FIFA filed a Statement of Appeal before the CAS against the decision rendered on 3 April 2017 by the Disciplinary Tribunal of CONMEBOL (“the Appealed Decision”) pursuant to Article R48 of the Code of sports-related Arbitration (the Code).
18. On 12 June 2017, the Appellant filed its Appeal Brief together with the evidence it intended to rely on.
19. On 11 July 2017, the CAS Court Office informed the parties that, pursuant to art. R54 of the Code, the Panel had been constituted in the following composition: Mr. João Nogueira Da Rocha, attorney-at-law in Lisbon, Portugal, as President of the Panel; Mr. Dr. Ulrich Haas, professor in Zurich, Switzerland, as arbitrator appointed by the Appellant; and Mr. Francisco González de Cossío, attorney-at-law in Mexico City, Mexico, as arbitrator jointly appointed by the Respondents.
20. On 19 July 2017, the Respondents submitted their answers to the appeal together with the evidence they intended to rely on.

21. On 25 July 2017, the Second Respondent informed the CAS that he was of the opinion that a hearing had to be held in this matter.
22. On 27 July 2017, both the Appellant and the First Respondent informed the CAS that they were of the opinion that a hearing had to be held in this matter.
23. On 9 August 2017, the CAS Court Office sent the Order of Procedure to the parties, which was duly signed by them.
24. The hearing of the present procedure took place in Lausanne, Switzerland, on 31 October 2017. The following persons attended the hearing:
  - For the Appellant: Mr. Volker Hesse (Counsel), Mr. Alexis Weber (FIFA Head of Medical & Anti-Doping).
  - For the Second Respondent: Mr. José Angulo Caicedo, Mr. Juan de Dios Crespo Pérez (Counsel), Mr. Enric Ripoll González (Counsel), Mr. Diego Herrera (Counsel), Ms. Ana Lara Egüez (translator).

The First Respondent did not attend the hearing, despite having been duly summoned to it.

25. At the outset of the hearing, both parties confirmed that they had no objections to the constitution of the Panel or to the jurisdiction of the CAS. At the hearing, the parties had the opportunity to present their case, to submit their arguments, examine the witnesses and answer the questions posed by the Panel. In particular, besides the examination of the Second Respondent, during the hearing the following expert witnesses were heard and examined:
  - Prof. David Cowan, Director of the Drug Control Centre of the King's College London.
  - Prof. Martial Saugy, PhD and Director of the Center of Research & Expertise in Anti-Doping Sciences of the University of Lausanne.
  - Dr. Pascal Kintz, Ph. D. Université Louis Pasteur in Toxicology and Expert for Justice appointed by the French *Court de Cassation* for Doping, Chemistry, Toxicology and Blood alcohol determination.
26. At the end of the hearing, after the closing statements, all the parties expressly declared that they were satisfied with respect to the procedure and that their right to be heard had been fully respected.

## V. SUMMARY OF THE PARTIES' SUBMISSIONS

27. The Panel has carefully considered all of the submissions made by the parties, which can be summarized as follows.

**A. The Appellant**

28. In its Statement of Appeal and its Appeal Brief the Appellant filed the following prayers for relief:

- “1) *The appeal of FIFA is admissible.*
- 2) *Mr. José Angulo Caicedo is sanctioned with a four-year period of ineligibility starting the date on which the CAS award enters into force. Any period of ineligibility already served by the Player shall be credited against the total period of ineligibility imposed.*
- 3) *The costs of the proceedings, if any, shall be borne by the Respondents.*
- 4) *FIFA shall be granted a contribution to its legal fees”.*

29. The Appellant’s submissions, in essence, may be summarized as follows:

**a. Applicable law**

30. CONMEBOL charged the Player with a violation of articles 6 and 7 of the FIFA Anti-Doping Regulations (“FIFA ADR”) and informed him that the sanction would be imposed based on article 19 of the FIFA ADR. In addition, the Player was provisionally suspended on the basis of the FIFA ADR and the CONMEBOL Disciplinary Regulations. However, in the Appealed Decision the Disciplinary Tribunal of CONMEBOL refers to violations of articles 14 and 15 of CONMEBOL Disciplinary Regulations -Ed. 2014 - (the “DR” of CONMEBOL).

31. The existing apparent confusion with regard to the applicable law has to be dispelled in favour of the FIFA ADR, as it has been previously done by the CONMEBOL Disciplinary Tribunal in other doping cases, where the FIFA ADR have been applied on the basis of the principle of regulatory hierarchy and the obligatory application of the FIFA Regulations by its members, in particular when the regulations of the CONMEBOL do not comply with the international standards.

32. Pursuant to the FIFA Statutes (art. 22, para. 3), Confederations shall comply with the FIFA Regulations. In addition, art. 1 para. 1 of the FIFA ADR establishes that those regulations shall apply to FIFA Confederations, as well as that (art. 80, para. 3 of the FIFA ADR) when FIFA files an appeal against a decision of a Confederation in doping matters, the applicable law for the proceeding shall be the FIFA Regulations.

33. In line with these provisions, in its own Statutes (art. 3, para. 2) CONMEBOL commits itself to comply with the obligations established by the FIFA Statutes. CONMEBOL Statutes also imposes this obligation to its own member associations (art. 7 of its Statutes). For this reason, art. 74 of the CONMEBOL Statutes envisages that they shall be interpreted in accordance with the Statutes, Regulations, Circulars and decisions of FIFA. The Competition Regulations of the Copa Libertadores also refer to the application of the FIFA Statutes and regulations

(art. 2). The same occurs with the CONMEBOL Anti-Doping Regulations – Ed. 26 November 2015 – (“CONMEBOL ADR”), which contains various references to the FIFA ADR (arts. 7, para. 3 and art. 31, para. 3). Ultimately, the application of the FIFA ADR would be consistent with the fact that the Player is an international level-player in the sense of the FIFA ADR and shall therefore be sanctioned in accordance with the international applicable rules.

**b. *Anti-doping rule violation***

34. The COLDEPORTES laboratory found the presence of “Benzoylecgonine”, “Methylecgonine” and “Cocaine” in the Player’s samples that were taken in-competition, and consequently reported an adverse analytical finding. Cocaine is a prohibited substance classified as a stimulant under class S6a) of the 2016 WADA Prohibited List and is defined as a non-specified substance. “Benzoylecgonine” and “Methylecgonine” are metabolites of Cocaine. Cocaine can be a powerful doping substance.
35. In addition, during the procedure conducted before the Disciplinary Tribunal of CONMEBOL the Player accepted having committed an anti-doping rule violation. It is therefore clear that the Player violated art. 6 of the FIFA ADR.

**c. *Sanction***

36. In accordance with art. 19 of the FIFA ADR the starting point of the assessment of the appropriate sanction is a 4-year period of ineligibility. The concentrations of the substances in the Player’s samples clearly indicate the use of cocaine in-competition, i.e. shorter than 24 hours before sample collection. The player also admitted in the previous proceedings that the cocaine entered his body within 24 hours before the match.
37. According to art. 19 a) of the FIFA ADR, the burden of proof lies on the Player to demonstrate that his anti-doping rule violation was not intentional. In the first instance procedure, the Player argued that he inadvertently ingested cocaine by drinking out of a water bottle on the day of the match in which his brother had put some cocaine. This version of the facts is not credible in itself and is also indeed in contradiction with the scientific conclusions made by experts of the concentrations of the prohibited substances found in the Player’s urine.
38. The ingestion of a powerful stimulant such as cocaine on the match day, shortly before the start of the match, was certainly in a context related to sports performance with a performance enhancing effect on the Player, as confirmed by the experts. The Player could not establish on a balance of probability that he unintentionally committed the anti-doping violation. Consequently, a four-year period of ineligibility shall be imposed on him. No grounds for a reduction of the sanction are visible in the present case, as the Player failed to establish how the prohibited substance entered his body.

39. Pursuant to art. 28 of the FIFA ADR the period of ineligibility shall start with the date the CAS Award is communicated to the parties, and any period of ineligibility already served by the Player shall be credited to his definitive period of ineligibility.

**B. The First Respondent**

40. In its answer to the appeal the First Respondent requested the Panel to reject the Appellant's appeal and to confirm all the terms of the Appealed Decision.
41. The First Respondent sustains that its Disciplinary Bodies are independent and have autonomy to decide and apply their own rules. In particular, the Disciplinary bodies of CONMEBOL can only apply the FIFA Regulations when there is an absence of specific provisions. Otherwise they have to apply the rules of CONMEBOL.
42. The previous cases of the Disciplinary Tribunal of CONMEBOL that had been referred to by the Appellant had nothing to do with the case at stake. First of all, in these other cases the player did not request the procedure to be conducted in accordance with the CONMEBOL Regulations, as it happened in the present case. In addition, at the time of the opening of these cases, the current Anti-Doping Regulations of CONMEBOL, that were approved by its Executive Committee on 26 November 2015, were not in force yet, neither was the new Statute of CONMEBOL (approved by its Council on 14 September 2016).
43. CONMEBOL's Disciplinary Tribunal has initiated more than 6 doping cases in accordance with the Disciplinary Regulations of CONMEBOL and FIFA, which has been informed about this, has not questioned the applicability of these regulations.
44. As a consequence, the First Respondent considers that the present dispute shall be decided in accordance with the regulations of CONMEBOL.

**C. The Second Respondent**

45. In his answer to the appeal, the Second Respondent requested the CAS to rule as follows:
- “1. To declare the appeal inadmissible.*
- 2. Alternatively, in the hypothetical event that the CAS considers the appeal admissible, it is requested that the Panel issues an award determining the following:*
- a. that the Player demonstrated how the substance entered into his body;*
- b. that the Player demonstrated that the contact with the substance was incidental and that he had no intention to improve his performance; and*

- c. therefore Player bears no significant fault or negligence and in application of articles 27.4 and 31 of CADR (or in the case FADR is considered law applicable, 19.1.a, 19.2 and 22.2 of FADR) confirm the Decision appealed.*
3. *To fix a sum of 20,000 CHF to be paid by the Appellant to the Second Respondent, to help the payment of its legal fees and other costs.*
4. *To condemn the Appellant to the payment of the whole CAS administration costs and the Arbitrators fees”.*
46. The Second Respondent’s Submissions may be summarized as follows:
- a. *Inadmissibility of the appeal***
47. The Appellant did not request the grounds of the Appealed Decision and, thus, the appeal is not admissible. Both the CONMEBOL ADR and the CONMEBOL DR require that the grounds of the relevant decision are requested within the given deadline (art. 75.7 of the CONMEBOL DR), before filing an appeal. The request of the grounds of the decision is a mandatory condition for any valid appeal to the CAS. Indeed, such requirement is identical to the one established by the FIFA ADR (art. 80) and the FIFA Disciplinary Code (art. 116). This has been also confirmed by the CAS Jurisprudence.
- b. *Applicable law***
48. During the first instance the Player sustained that the applicable regulations were the ones of CONMEBOL, and the Appealed Decision sanctioned the Player based on articles 14 and 15 of the CONMEBOL ADR.
49. Arts. 2 and 20 of the Copa Libertadores regulations establish the applicability of the CONMEBOL ADR and DR. Furthermore, arts. 14 and 64 of the Statutes of CONMEBOL envisages the applicability of its DR. In line with this, art. 30 of the ADR of CONMEBOL establish the applicability of the CONMEBOL DR. The only possibility envisaged by the CONMEBOL ADR to apply the FIFA regulations is on a subsidiary basis, i.e. in those cases not regulated by the DR of CONMEBOL.
50. Indeed, art. 4 of the CONMEBOL DR imposes a limit on the subsidiary applicability of the FIFA regulations, establishing that the disciplinary bodies of CONMEBOL may ground their decisions on the FIFA disciplinary rules provided that those regulations do not oppose to the provisions of the CONMEBOL DR. Therefore, it is clear that the FIFA regulations can only be applicable in cases where there is a lacuna to fill in. To summarize, pursuant to the CONMEBOL regulations, the FIFA Regulations might be only applicable on a subsidiary basis (art. 31 of the CONMEBOL ADR), in the absence of other rules (art. 4 of the CONMEBOL DR) and in a complementary manner provided that they do not contradict the CONMEBOL DR (art. 4 of the CONMEBOL DR).

51. This is consistent with art. 146 para. 2 and 3 of the FIFA Disciplinary Code, which imposes to its members the obligations to incorporate the FIFA ADR into their own regulations. This is also envisaged by the FIFA ADR, that impose upon its members to incorporate, either directly or by reference, the FIFA ADR into their own regulations.
52. Applying any other regulations different than the CONMEBOL regulations to a player competing within the CONMEBOL territory in a competition organized by CONMEBOL violates the principle of legal certainty. Ultimately, the Player cannot suffer the consequences of CONMEBOL's lack of implementation of the FIFA ADR within its own regulations.

**c. *The Appellant's lack of evidence***

53. In the first instance the Player discharged his burden of proof to the comfortable satisfaction of the Disciplinary Tribunal of CONMEBOL, demonstrating how the prohibited substance entered into his system, his lack of intention to improve his sporting performance and that he bore no significant fault or negligence. The Player demonstrated that the contact with the substance was accidental without any intention to enhance his sporting performance. In particular, Dr. Kintz' expert opinion demonstrated that the analytical finding is consistent with incidental exposure of the Player to minimum amounts of cocaine around 8 to 12 hours before the match.
54. Therefore, even though it is not possible to determine on which grounds the sanction was reduced in the first instance (because nobody requested the grounds of the Appealed Decision), the fact that the Appealed Decision reduced the sanction to a period of 1 year proves that the Player discharged his burden of proof. In the present case, even if the Panel would apply the FIFA ADR instead of the CONMEBOL regulations, in any case the standard sanction would have to be reduced because the Player has proven that he bore no significant fault or negligence and that he did not intentionally violate the Anti-Doping rule.
55. The Appellant sustains that the version of the facts of the Player is not credible, but it has not provided any evidence that substantiate its allegations. Therefore, the Appellant has not discharged its burden of proof, and its appeal must be rejected.

**VI. JURISDICTION**

56. Article R47 of the Code provides the following:

*“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. [...]”*

57. In this regard, art. 66 para. 1 of the Statutes of CONMEBOL (i.e. the association that has rendered the Appealed Decision) recognizes the jurisdiction of CAS (“CONMEBOL *reconoce*

*la jurisdicción del Tribunal Arbitral del Deporte (TAD) con sede en Lausana (Suiza)” which can be freely translated into English as follows: “CONMEBOL accepts the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland)”.*

58. In addition, CAS jurisdiction is also recognized by FIFA for appeals against decisions rendered by Confederations. In particular, article 57 and article 58 para. 5, of its Statutes entitles FIFA “to appeal to CAS against any internally final and binding doping-related decision passed in particular by confederations, member associations or leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations”.
59. To this purpose, art. 75 para. 1 of FIFA ADR establishes that “In cases arising from participation in an International Competition or in cases involving International-Level Players, a final decision within FIFA’s, the Confederation’s or the Association’s process may be appealed exclusively to CAS”. In addition, para. 3 of this same article 75 of the FIFA ADR grants FIFA a specific right to appeal against these decisions of this kind (i.e. related to anti-doping rule violations involving International-Level Players or International Competitions).
60. In the present case, the doping control was performed on a player of an international-level (definition 28 of the FIFA ADR) during an international competition (i.e. the Copa Bridgestone Libertadores de América). Therefore, the Panel is competent to rule on the present appeal.
61. Finally, and for the sake of completeness, the Panel deems it worth noting that the CAS jurisdiction has been expressly recognized by the parties by signing the Order of Procedure of this arbitration procedure. In conclusion, CAS is competent and has jurisdiction over the present appeal.

## VII. ADMISSIBILITY

62. In accordance with art. R49 of the Code, “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”.
63. Pursuant to art. 58 para. 1 of the FIFA Statutes, “Appeals against decisions passed by FIFA’s legal bodies and against decisions passed by confederations [...] shall be lodged with CAS within 21 days of notification of the decision in question”.
64. On the other hand, art. 80 of the FIFA ADR provides as follows:

*“80 Time for filing appeals*

### *1.1 Appeals to CAS*

*The time to file an appeal to CAS shall be 21 days from the date of receipt of the motivated decision in an official FIFA language by the appealing party. The above notwithstanding, the following shall apply in*

*connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed:*

- a) *Within 15 days from notice of the decision, such party/ies shall have the right to request a copy of the case file translated in an official FIFA language from the body that issued the decision;*
- b) *If such a request is made within the 15-day period, the party making such request shall have 21 days from receipt of the file to file an appeal to CAS.*

[...]

*3. Where FIFA appeals against a decision of in particular an Association, AntiDoping Organisation or Confederation to CAS under this chapter, the applicable law for the proceeding shall be the FIFA regulations, in particular the FIFA Statutes, the FIFA Anti-Doping Regulations and the FIFA Disciplinary Code”.*

65. On 5 April 2017, FIFA was notified of the Appealed Decision and on 11 April 2017 it requested the Disciplinary Tribunal of CONMEBOL to provide it with a copy of the complete case file, that was finally sent to FIFA on 27 April 2017. The Statement of Appeal was filed with CAS on 17 May 2017, hence within the 21-day term established by the applicable regulations. This leads the Panel to the preliminary conclusion that the Appeal was filed timely by the Appellant and that it should be in principle admissible.
66. The Second Respondent contests the admissibility of the Appeal stating that the Appellant failed to request the grounds of the Appealed Decision, which in his view is a mandatory prerequisite in order to be entitled to file a valid appeal before the CAS. The Second Respondent grounds this submission on art. 75 para. 7 of the CONMEBOL DR that, pursuant to the translation produced in his answer to the appeal (the Second Respondent has not produced a copy of the relevant CONMEBOL DR), reads as follows:

*“7. El Tribunal de Disciplina o su Juez Único, podrán remitir decisiones sin fundamento las cuales serán plenamente ejecutivas desde el momento de su comunicación. Se concederá un plazo para solicitar los fundamentos por la parte interesada, transcurrido el cual, si no lo solicita expresamente la decisión devendrá firme. Los plazos de recurso se computarán, en su caso, desde la notificación de la decisión con fundamentos”.*

which can be freely translated into English as follows:

*“The Disciplinary Tribunal or its Single Judge may render decisions without the grounds which shall be fully enforceable from the moment of its communication. A deadline will be granted to request the grounds for the interested party, after which, if not expressly requested, the decision will become binding. The time limits for appeals shall be calculated, where appropriate, from the notification of the decision with grounds”.*

67. The Panel rejects the Second Respondent’s position. Firstly the Panel notes that even when considering only the regulations of CONMEBOL (and not the FIFA regulations), the alleged art. 75 para. 7 of the CONMEBOL DR does not address appellants who have not been parties in the proceedings conducted before the Disciplinary Tribunal of CONMEBOL. Instead, the

provision is only addressed to “*the interested parties*” in those proceedings. FIFA’s right of appeal constitutes a different and separate way of challenge of Anti-Doping decisions aimed at guaranteeing that international Anti-Doping standards are always respected at the international level (international competitions and/or international players), and that an equal treatment is granted by the disciplinary bodies to all the members of the football family. For this reason, FIFA’s right of appeal is not subjected to the ordinary legal requirements that may be established at the national or confederative level for the parties of the disciplinary proceedings, but to the general requirements and conditions established in FIFA’s own regulations (i.e. the FIFA ADR).

68. Notwithstanding the above, the Panel observes that the specific provisions passed by CONMEBOL with regard to FIFA’s right to appeal against Anti-Doping decisions do not impose FIFA the burden of having to request the grounds of the decision against which it intends to appeal. On the contrary, in line with FIFA’s regulations, art. 66, para. 5, of the CONMEBOL Statutes provides as follows:

*5. El plazo para presentar apelación ante el TAD será de 21 días desde la fecha en que el recurrente reciba la decisión. Sin perjuicio de lo anterior, se aplicarán las disposiciones siguientes en las apelaciones que pudiera realizar la FIFA:*

- a) en un plazo de diez días desde que se reciba la decisión, la FIFA tendrá derecho a solicitar al órgano que la dictó la decisión una copia íntegra del expediente en el que se basó dicho fallo;*
- b) si se realiza dicha solicitud en el plazo de diez días, la FIFA dispondrá de 21 días desde que reciba la copia íntegra del expediente para presentar una apelación ante el TAD”.*

which can be freely translated into English as follows<sup>2</sup>:

*“5. The deadline for lodging and appeal with CAS shall be 21 days from the date on which the appellant receives the decision. Notwithstanding the above, the following provisions shall apply for appeals that may be made by FIFA:*

- a) within ten days of receiving the decision, FIFA shall have the right to request from the body that has passed the decision a complete copy of the case file in question;*
- b) if such a request is made within ten days, FIFA shall have 21 days from the date on which it receives the complete copy of the case file to lodge an appeal with CAS”.*

69. The Panel observes that, as a general rule, CONMEBOL regulations (art. 66, para. 5 of its Statutes) simply grant FIFA a 10-day term to request from the corresponding disciplinary body a complete copy of the corresponding case file and grant an additional term of 21 days as from the receipt of the complete case file to file the relevant appeal. However, no specific

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<sup>2</sup> Translation provided by the Appellant in its Appeal Brief and not contested by the Respondents.

burden to request the grounds of the decision against which it intends to appeal is imposed to FIFA by the CONMEBOL regulations.

70. Indeed, even though the Second Respondent has omitted to mention it, the Panel has noted that this same regime established by art. 66, para. 5 of the CONMEBOL Statutes is also provided by the specific provision of the CONMEBOL DR that regulates FIFA's right to appeal against Anti-Doping decisions issued by the disciplinary bodies of CONMEBOL. In particular, art. 128 of CONMEBOL DR<sup>3</sup> literally transcribes the provision contained in art. 66, para. 5 of the CONMEBOL Statutes. Therefore, it is clear that, contrary to what the Second Respondent sustains, the CONMEBOL regulations do not establish "*an absolute prerequisite necessary to file a valid appeal to the CAS*" pursuant to which FIFA would have had to request the grounds of any decision against which it intends to appeal.
71. In addition and *ad abundantiam*, the Panel has observed that when the Disciplinary Tribunal of CONMEBOL notified FIFA about the Appealed Decision, it did not grant it any term to request the grounds of such decision, as it had previously done with the Player when it notified the Appealed Decision on 3 April 2017 to him. Indeed, the term that was granted "*to the interested party*" (i.e. the Player) pursuant to art. 75 para. 7 of the DR of CONMEBOL expired on 4 April 2017 at 18:00 (i.e. before the Appealed Decision was notified to FIFA). Therefore, it is clear for the Panel that no specific term to request the grounds of the Appealed Decision was imposed by the Disciplinary Tribunal on FIFA, whose right of appeal is referred to Anti-Doping decisions, and not to Anti-Doping "motivated" decisions, and hence it is not conditioned by the alleged prerequisite of having to request the grounds of the Appealed Decision. Therefore, the Panel rejects the Second Respondent's submissions in this regard.
72. For the sake of completeness, the Panel deems it necessary to clarify that the appeal that has been filed by the Appellant in the present case is not based on CONMEBOL's regulations, but on FIFA regulations that, as it will be explained hereunder in Section VII, are the applicable regulations at stake. In particular, the admissibility of the present appeal shall be analyzed under art. 58, para. 1 of the FIFA Statutes and art. 80 of the FIFA ADR, that establishes that any appeal filed by FIFA before the CAS against Anti-Doping decisions issued by Confederations are regulated by the FIFA regulations and, in particular, the FIFA Statutes, the FIFA Anti-Doping Regulations and the FIFA Disciplinary Code, which do not impose FIFA any obligation to request the grounds of the decision against which it intends to appeal. On the contrary, these regulations confer FIFA a specific right to appeal Anti-Doping decisions even "*without having to exhaust other remedies in the Anti-Doping Organisation process*" (art. 81 of the FIFA ADR).
73. In light of the foregoing, the Panel considers the appeal admissible.

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<sup>3</sup> <http://www.conmebol.com/es/normativa/reglamentos>

## VIII. APPLICABLE LAW

74. Article R58 of the Code reads as follows:

*“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”.*

75. The Appellant considers that the FIFA regulations (in particular, the FIFA Statutes and the FIFA ADR) apply to the present procedure. On the contrary, both Respondents consider that the CONMEBOL regulations (and, in particular, its Statutes, its ADR and its DR) are the applicable regulations at stake. The Panel notes that this is not a trivial issue, because the standard length of a period of ineligibility varies considerably between both sets of rules. While the FIFA ADR provide for a standard sanction of a 4-year period of ineligibility in case of an Anti-Doping rule violation (art. 19), the CONMEBOL DR envisages a standard sanction of a 2-year period of ineligibility for the identical Anti-Doping rule violation (art. 27).

76. The Panel has observed that when the disciplinary proceedings were opened by the Disciplinary Tribunal of CONMEBOL, such disciplinary body considered the FIFA ADR as the applicable regulations at stake. In particular, by means of its resolution of 5 September 2016, the Disciplinary Tribunal of CONMEBOL charged the Player with an alleged offence under articles 6 and 7 of the FIFA ADR, and warned him about the potential imposition of a sanction envisaged by art. 19 of the FIFA ADR. Notwithstanding this, the Panel also observes that when deciding the case, the Disciplinary Tribunal finally found the Player guilty of a violation of articles 14 and 15 of CONMEBOL’s DR, thus sanctioning the Player on the grounds of the CONMEBOL regulations. In the present case the Appealed Decision was rendered without grounds, and thus the Panel cannot know for what reason the Disciplinary Tribunal of CONMEBOL finally decided that the applicable regulations were those from CONMEBOL and not the FIFA ones. Notwithstanding this, taking into account that pursuant to art. R57 of the CAS Code the Panel has full power to review the facts and the law, it is for the Panel to decide which are the applicable regulations at stake in the terms of art. R58 of the CAS Code.

77. In this regard, after considering all the regulations at stake, the Panel firstly observes that CONMEBOL is a Confederation expressly recognised by FIFA in its Statutes (i.e. art. 22, para. 1). As a FIFA member, CONMEBOL has “to comply with and enforce compliance with the Statutes, regulations and decisions of FIFA” (art. 22, para. 3, section a) of the FIFA Statutes). In line with this, in its Statutes CONMEBOL includes a set of provisions aimed to assure the compliance of the FIFA regulations by CONMEBOL and by its member associations. In particular, the following articles of the Statutes of CONMEBOL are intended to preserve the existing hierarchy of laws within the FIFA family:

- Article 3, para. 2: “LA CONMEBOL cumplirá con las obligaciones dispuestas en los Estatutos de la FIFA [...]” which can be freely translated into English as follows: “CONMEBOL will comply with the obligations set in the FIFA Statutes”.
- Article 4 m): “Los objetivos de la CONMEBOL son: [...] Hacer respetar a sus asociaciones miembros, a los clubes afiliados a éstas últimas, así como al resto de personas físicas o jurídicas directa o indirectamente sometidas a la jurisdicción de una asociación miembro (Ligas, Federaciones Regionales, oficiales, jugadores, entrenadores, árbitros, etc.) los principios y obligaciones básicas que se recogen y/o inspiran la normativa de la CONMEBOL y la FIFA. Para ello la CONMEBOL podrá adoptar a través de los órganos competentes (Consejo y Órganos Disciplinarios) las medidas correctoras que se consideren necesarias, incluidas las de carácter disciplinario sobre las personas físicas y jurídicas anteriormente mencionadas, con efectos tanto a nivel nacional como internacional”;

which can be freely translated into English as follows:

“The objectives of CONMEBOL are: [...] Make its member associations, the clubs affiliated to the latter, as well as to the rest of individuals and legal entities that are directly or indirectly subjected to the jurisdiction of one member association (Leagues, Regional Federations, officials, players, coaches, referees, etc.) enforce the principles and basic obligations that are established and/or inspired in the regulations of CONMEBOL and FIFA. To this purpose CONMEBOL may adopt through its competent bodies (Council and Disciplinary Bodies) the corrective measures that are deemed necessary, including those of disciplinary character over the aforementioned individuals and legal entities, with effect both at national and international level”.

- Article 7: “Las asociaciones miembro se obligan a: [...] b) Cumplir en todo momento los Estatutos, reglamentos, restante normativa de la FIFA y sus decisiones [...] k) “Incluir en sus estatutos las disposiciones de la FIFA y CONMEBOL contra la discriminación y disposiciones pertinentes en materia de lucha contra el dopaje, [...]””, which can be freely translated into English as follows: “Member associations oblige themselves to: [...] b) Fulfill at any time with the Statutes, regulations and the rest of the legislation of FIFA and its decisions [...] k) Include in its Statutes the provisions of FIFA and CONMEBOL against discrimination and the relevant provisions with regard to the fight against doping [...]”.
- Article 58, para. 1: “Se sancionará disciplinariamente el comportamiento antideportivo y las violaciones o infracciones a las Reglas de Juego y a los Estatutos, reglamentos, decisiones, órdenes e instrucciones de la CONMEBOL y de la FIFA, las cuales serán reguladas en el Reglamento Ético y el Reglamento Disciplinario de la CONMEBOL”, which can be freely translated into English as follows: “Unsportsmanlike conduct and the violations and infringements of the Laws of the Game and of the Statutes, regulations, decisions, orders and instructions of CONMEBOL and FIFA, that will be regulated in the Code of Ethics and in the Disciplinary Regulations of CONMEBOL, will be sanctioned”.
- Article 74: “Los presentes Estatutos han de ser interpretados de conformidad con la normativa deportiva, especialmente de acuerdo con el Estatuto, reglamentos, circulares y decisiones de la FIFA y,

*supletoriamente, de acuerdo con la Ley paraguaya”, which can be translated into English as follows: “This Statutes shall be interpreted in accordance with the Sporting regulations specially in accordance with the Statutes, regulations, circular letters and decisions of FIFA and, additionally, in accordance with the Paraguayan Law”.*

78. On the other hand, the Regulations approved by CONMEBOL with regard to the Copa Libertadores de América 2016 (the “Copa Libertadores Regulations”), provide in art. 20, para. 1, that in this competition the CONMEBOL ADR shall apply (*“En este torneo será de aplicación el Reglamento Antidopaje de la CONMEBOL”*). At the same time, in line with CONMEBOL’s general obligation to comply with FIFA regulations, art. 2.2 of the Copa Libertadores Regulations imposes the following obligation to the clubs that intend to participate in this competition:

*“En la Carta de Conformidad y Compromiso constará el compromiso de los clubes de garantizar el cabal y formal cumplimiento de la Reglamentación vigente del Torneo, del Manual Técnico de Derechos de Patrocinio, el Reglamento Disciplinario, Reglamento de Seguridad y Reglamento Anti-Dopaje y de los Estatutos y restantes reglamentos de la CONMEBOL y de la FIFA [...]”.*

Which can be translated into English as follows:

*“In the Letter of Conformity and Commitment the commitment of the clubs of guaranteeing the full and formal fulfillment of the Regulation in force of the Tournament, the Technical Guide of Sponsorship Rights, the Disciplinary Regulations, the Security Regulations and the Anti-Doping Regulations and the Statutes and the rest of the regulations of CONMEBOL and FIFA [...]”.*

79. However, the Panel observes that, despite this clear obligation and commitment of CONMEBOL and its members to comply with the FIFA regulations, in the present case CONMEBOL did not fully adapt its regulations to the FIFA standards. In this regard, as a signatory of the WADA Code, on 25 September 2014 FIFA adapted its ADR in accordance with the new World Anti-Doping Code 2015, including as one of the principal amendments an increase of the general sanction for ADR violations, from two years to four years. These new regulations came into force on 1 January 2015.
80. Furthermore, in order to guarantee a uniform treatment of Anti-Doping regulations and to ensure that its regulations prevail over regulations of lower rank, the FIFA ADR envisage a broad scope of application, providing in its art. 1 of the FIFA ADR the following:
- “1. These Regulations shall apply to FIFA, its Member Associations and the Confederations and to Players, clubs, Player Support Personnel, Match Officials, Officials and other Persons who participate in activities, Matches or Competitions organised by FIFA or its Associations by virtue of their agreement, membership, affiliation, authorisation, accreditation or participation.*
- 2. These Regulations shall apply to all Doping Controls over which FIFA and, respectively, its Associations have jurisdiction [...]”.*

81. In line with this and in order to ensure the supremacy of its Anti-Doping legal regime, art. 2, para. 2, of FIFA ADR imposes the following obligations on FIFA's members:

“1.

*All Associations shall undertake to comply with these Regulations. These Regulations shall be incorporated either directly, or by reference, into the rules of each Association. Each Association shall include in its rules the procedural regulations necessary to implement these Regulations and any changes that may be made to them.*

2.

*All Confederations shall, by signing the “Doping Control Declaration of Agreement”, undertake to comply with these Regulations. In respect of the Confederations’ remit, reference in these Regulations to the Associations shall, where appropriate, be understood as meaning the Confederations.*

3.

*The rules of each Association shall specifically provide that all Players, clubs, Player Support Personnel, Officials, and other Persons under the jurisdiction of the Association shall be bound by these Regulations.*

4.

*It is the responsibility of each Association to collect Samples form Doping Control at National Competitions and to initiate and direct Out-of-Competition Testing on its Players, as well as to ensure that all national-level Testing on its Players and the results management from such tests comply with these Regulations. In respect of this schedule of responsibilities, reference in these Regulations to FIFA shall, where appropriate, be understood as meaning the Association concerned.*

[...]”.

82. Furthermore, in order to implement these Regulations, art. 59, para. 1 and 4 of the FIFA ADR, provides as follows:

“1.

*Where it is asserted that an anti-doping rule has been violated in connection with any test conducted by FIFA, the case shall be submitted to the FIFA Disciplinary Committee. In all other cases, it shall be submitted to the relevant hearing panel of a Confederation or Association.*

[...]

4.

*For the purpose of chapter X, references hereafter to the FIFA Disciplinary Committee shall, where appropriate, be understood as meaning the relevant hearing panel of the Association and references to the Player shall, where appropriate, be understood as meaning any Player Support Personnel or other person”.*

83. Finally, the Panel recalls that art. 75, para. 3, of the FIFA ADR grants FIFA a right to appeal against decisions regarding anti-doping rule violations involving International-Level Players or International Competitions. In this regard, pursuant to art. 80, para. 3 of the FIFA ADR, such appeal shall be governed by FIFA regulations:

*“Where FIFA appeals against a decision of in particular an Association, Anti-Doping Organisation or Confederation to CAS under this chapter, the applicable law for the proceeding shall be the FIFA regulations, in particular the FIFA Statutes, the FIFA Anti-Doping Regulations and the FIFA Disciplinary Code”.*

84. Therefore, it follows from the above that FIFA ADR provides for a set of provisions that are intended to guarantee that its anti-doping regulations will always prevail over any other anti-doping regime, either by its direct application by the adjudicating body or by the exercise of FIFA’s right of appeal against anti-doping decisions in front of CAS, that would be ultimately subjected to the FIFA regulations.

85. With regard to the CONMEBOL ADR, the Panel observes that, in line with the principle of hierarchy of rules, these regulations also seek (or at least should seek) guaranteeing that the standards established by the FIFA ADR are always respected. Just as an example, it is worth mentioning that CONMEBOL ADR imposes to all the member associations of CONMEBOL the obligation to respect FIFA ADR when performing anti-doping controls and managing its results. In particular, art. 7, para. 4 of the CONMEBOL ADR provides as follows (emphasis added):

*“Asimismo, las asociaciones miembro asumen la responsabilidad de enviar a la Unidad Antidopaje de la Conmebol copia de todas las decisiones que en materia de dopaje pudieran dictar sus órganos especiales (sus propias Unidades Antidopaje) y/o disciplinarios, así como de **garantizar que todos los controles de sus jugadores y la gestión de resultados de tales controles en el ámbito nacional cumplan con la normativa antidopaje y disciplinaria de la Conmebol y de la FIFA**”.*

Which can be freely translated into English as follows:

*“Furthermore, the member associations accept responsibility for sending to the Anti-Doping Unit of Conmebol a copy of all the decisions that its special bodies (its own Anti-Doping Units) and/or disciplinary bodies may render in doping matters, as well as **to guarantee that all the control over its players and the management of the results of these controls at the national level fulfill with the anti-doping and disciplinary regulations of Conmebol and FIFA**”.*

86. Notwithstanding this, at the same time the Panel has noted that the CONMEBOL ADR (that were approved on 26 November 2015) did not establish a list of Anti-Doping rule violations and the corresponding set of sanctions. Therefore, there is room for discussion as to which regulations would have to be applied to fill this lacuna. In the Panel’s view, in accordance with the CONMEBOL ADR this lacuna may be filled in two different ways. One theoretical possibility could be to apply the CONMEBOL DR (which is dated back to 2014) on a subsidiarily basis, pursuant to art. 30, para. 1, of the CONMEBOL ADR, that envisages that *“The provisions of the Disciplinary Regulations of Conmebol will be also applied”* (“*Se aplicarán además las*

*disposiciones del Reglamento Disciplinario de Conmebol*”, in its original version). If this was the case, the standard sanction to be taken into account will be a 2-year period of ineligibility for an Anti-Doping rule violation (art. 27 of the CONMEBOL DR).

87. Alternatively, the Panel considers that, pursuant to the CONMEBOL ADR, it would be also possible to fill the lacuna by applying the FIFA ADR, that is indeed a *lex specialis* on doping matters and hence, regardless of his superior hierarchy, it shall in any case prevail over a general regulation like the DR of CONMEBOL. In this regard, the Panel observes that art. 31, para. 3, of CONMEBOL ADR provides as follows (emphasis added): “*For all aspects not envisaged in the present Regulations, as well as on a subsidiary basis, **the Anti-Doping Regulations of FIFA in force at any time will be applicable***” (“*En todo lo no previsto en el presente Reglamento, así como de forma subsidiaria será de aplicación el Reglamento Antidopaje de la FIFA vigente en cada momento*”, in its original version).
88. As it has been proven by the Appellant during this procedure, there is a number of precedents (all of them dated from 2015 on) in which the Disciplinary Tribunal of CONMEBOL dispelled such lacuna by applying the sanctioning regime envisaged by the FIFA ADR. From the analysis of these former decisions of the Disciplinary Tribunal of CONMEBOL, the Panel observes that this disciplinary body was aware of the fact that CONMEBOL’s DR was not respecting the international sanctioning standards established by the FIFA ADR in line with the WADA Code and that, for this reason, pursuant to the principle of hierarchy of laws, the FIFA ADR would have to be applied to disciplinary cases in front of the Disciplinary Tribunal of CONMEBOL.
89. Just as an example, in its Decision D/02/15, CONMEBOL’s Disciplinary Tribunal ruled the following with regard to the applicable law for that case (translation provided by the Appellant and not contested by the Respondents):
- “2. *With regard to the applicable regulations, the Tribunal notes that the offence attributed to the Player occurred after the entry into force of both WADA’s World Anti-Doping Code and the FIFA Anti-Doping Regulations (hereinafter the FIFA ADR), both on 1 January 2015.*
3. *Furthermore, the Tribunal notes that at the time that the sample was taken from Mr. [...], neither the DR nor the CONMEBOL Anti-Doping Regulations had been brought in line with the new international regulations on doping. Bearing in mind the principle of regulatory hierarchy and the obligatory application of the FIFA ADR by the national associations and the confederations since their entry into force, as established in art. 1 of the FIFA ADR, which states that:*
- “*These regulations shall apply to FIFA, its Member Associations and the **CONFEDERATIONS** [...]*”.
4. *Meanwhile, the Tribunal notes that art. 8.1 of the DR establishes that:*
- “*Disciplinary sanctions shall be applied for any breach of the principles of behavior established in 5.2, and the others described in the present Regulations, unsporting conduct and the violation or breach of the*

*Laws of the Game and the statutes, regulations, decisions, rulings and instructions of CONMEBOL and FIFA [...]*”.

5. *This provision is in line with what is established in art. 20.3 of the FIFA Statutes:*

*“3. Each Confederation shall have the following rights and obligations: a) to comply with and enforce compliance with the Statutes, regulations and decisions of FIFA; [...]*”.

6. *It is for the reasons outlined above that the Tribunal considers the provisions of the FIFA ADR applicable in assessing the merits of the present case<sup>4</sup>”.*

90. The Panel agrees with the position of the Disciplinary Tribunal of CONMEBOL in these former decisions and, contrary to what has been sustained by the Respondents during this procedure, it considers that all potential inconsistencies existing between the regulations of CONMEBOL and those of FIFA on anti-doping matters must be solved in favor of FIFA regulations, that guarantee a uniform fight against doping and an equal treatment of all the football players with regard to anti-doping rule violations. At the same time, this solution is the most respectful with the principle of hierarchy of laws that is inherent to the *lex sportiva*.

91. In other words, as it was declared by CAS Jurisprudence (see CAS 2007/A/1370 & 1376):

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<sup>4</sup> That in its original version reads as follows:

*“2. En cuanto al Derecho aplicable, el Tribunal toma nota de que la infracción imputada al Jugador ha tenido lugar tras la entrada en vigor tanto del Código Mundial Antidopaje de la AMA como del Reglamento Antidopaje de la FIFA (en adelante, “RAD FIFA”), ambos desde el 1 de enero de 2015.*

*3. Asimismo, el Tribunal observa que en el momento de la toma de muestra del Sr. [...], ni el RD ni el Reglamento Antidopaje de la CONMEBOL habían sido adecuados a la nueva normativa internacional en materia de dopaje. Teniendo presente el principio de jerarquía normativa y la obligatoria aplicación del RAD FIFA por las asociaciones nacionales y las confederaciones desde su entrada en vigor, tal y como expresa el propio Art. 1 del RAD FIFA al expresar que:*

*“El presente reglamento se aplicará a la FIFA, sus asociaciones miembro y **CONFEDERACIONES** [...]*”.

4. *Por otro lado, el Tribunal toma nota de que el Art. 8.1 del RD establece que:*

*“Se sancionará disciplinariamente las infracciones a los principios de conducta recogidos en el 5.2, a las restantes descritas en el presente Reglamento, el comportamiento antideportivo y las violaciones o infracciones a las reglas del juego y a los estatutos, reglamentos, decisiones, órdenes e instrucciones de la Conmebol y de la FIFA, [...]*”.

5. *Esta disposición se encuentra en línea con lo previsto en el Art. 20.3 de los Estatutos de la FIFA:*

*“3. Los derechos y obligaciones de cada confederación son: a) respetar y hacer respetar los Estatutos, reglamentos y decisiones de la FIFA; [...]*”.

6. *Es por las razones expuestas que el Tribunal considera aplicable al presente caso las disposiciones del RAD FIFA en cuanto al fondo de la cuestión”.*

*“considering that this is a disciplinary case involving an athlete of international status, the Panel is of the view that the FIFA Disciplinary Code – incorporating by express reference (at Article 63, para. 1) the FIFA Doping Control Regulations – must prevail, in case of conflicting provisions, over the Brazilian Code of Sports Justice and the CBF Doping Control Regulation because, as expressly acknowledged by the CBF Statutes, the FIFA disciplinary rules are of “universal application” whereas the corresponding CBF rules are merely of “national application” (Article 70, para. 3, of the CBF Statutes, supra at Paragraphs 79 and 102).*

*107. In addition, the right of appeal to CAS against national decisions – granted to FIFA and WADA under Article 61, paras. 5 and 6, of the FIFA Statutes (see supra at Paragraph 40) – confirms that national football associations (which, as members of FIFA, have the collective legislative power to enact and modify the FIFA Statutes) have expressed the clear wish to pursue uniform interpretation and application of anti-doping rules and sanctions vis-à-vis athletes of international status throughout the football world. Such uniform interpretation and application would be imperiled or impeded if the CAS – absent any mandatory rule or public policy principle imposing such legal course – had to accord precedence to domestic anti-doping rules over a FIFA disciplinary system contractually accepted, on a basis of reciprocity, by all national football associations and their affiliated clubs and registered individuals”.*

92. For the sake of completeness, the Panel would like to clarify that the direct and imperative application of the FIFA ADR does not exempt the First Respondent from fulfilling its Statutory obligations towards FIFA, by enacting a complete set of anti-doping rules in which all the anti-doping rule violations are defined and all the potential sanctions are established in accordance with what is envisaged by the FIFA ADR. This without prejudice of the correlative duty from the Appellant “to control every type of association football by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA or of the Laws of the Game” (art. 2.d) of the FIFA Statutes), in order to give all the football stakeholders legal certainty. In particular, the Panel considers that it would be desirable that FIFA reacts against the violations that its affiliates may commit in respect of its statutory obligations and, in particular, to assure that its members “comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time [...]” as envisaged by art. 14.1.a) of the FIFA Statutes or, in the case of Confederations, that it “comply with and enforce compliance with Statutes, regulations and decisions of FIFA” as established by art. 22.3.a) of the FIFA Statutes.
93. Therefore, for all of these reasons the Panel holds that the present appeal must be adjudicated in accordance with the FIFA Regulations, and in particular the FIFA ADR. Additionally, the Panel can also take into account the provisions of the CONMEBOL ADR that are not in conflict with the FIFA ADR. In addition, pursuant to art. 57, para. 2 of the FIFA Statutes, Swiss law will also be applied where necessary on a subsidiary basis.

## **IX. MERITS**

### **A. The Anti-Doping Rule Violation**

94. It is undisputed that the analysis of the Player’s A-Sample produced an adverse analytical finding for the substance “Cocaine” (65,4 ng/ml) and its metabolites “Methylecgonine” (97.1

ng/ml) and “Benzoyllecgonine” (63.7 ng/ml). Furthermore, it is also undisputed that the result of the analysis of the Player’s B-Sample confirmed the adverse analytic finding for these substances. The usage of Cocaine, which is a non-specified substance, is prohibited In-Competition under section S6 (Stimulants) of the 2016 WADA Prohibited List.

95. The Player does not contest the scientific accuracy of the analysis performed by the WADA-accredited COLDEPORTES laboratory, nor the scientific conclusions reached. In this regard, art. 6 of the FIFA ADR provides as follows (emphasis added):

“1.

***It is each Player’s personal duty to ensure that no Prohibited Substance enters his body.*** *Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their 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 analysed; or where the Player’s “B” Sample is analysed and the analysis of the Player’s “B” Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Player’s “A” Sample; or where the Player’s “B” Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*

3.

*Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any 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 or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously”.*

96. As a result, the Panel finds that the objective presence of the prohibited substance in the Player’s urine samples constitutes an anti-doping rule violation in the terms envisaged by art. 6 of the FIFA ADR (Presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample). In addition, the Panel observes that, pursuant to the 2016 WADA Prohibited List, there is no quantitative threshold applicable to Cocaine and thus any amount present in the Athlete’s bodily sample shall constitute an anti-doping rule violation. Therefore, the Panel concludes that the Player’s anti-doping rule violation has been proven to its comfortable satisfaction, bearing in mind the seriousness of the allegation which is made (art. 66, para. 1, of the FIFA ADR).

## B. Period of Ineligibility

97. Article 19 of the FIFA ADR provides as follows (emphasis added):

**“The period of Ineligibility for a violation of arts 6 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample), 7 (Use or attempted Use by a Player of a Prohibited Substance or a Prohibited Method) or 11 (Possession of a Prohibited Substance or a Prohibited Method) shall be as follows, subject to potential elimination, reduction or suspension pursuant to arts 21 (Elimination of the Period of Ineligibility where there is No Fault or Negligence), 22 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence) or 23 (Elimination, reduction, or suspension of period of Ineligibility or other consequences for reasons other than Fault):**

1.

**The period of Ineligibility shall be four years where:**

- a) **the anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional;**
- b) *the anti-doping rule violation involves a Specified Substance and FIFA can establish that the anti-doping rule violation was intentional.*

2.

*If art 19 par. 1 does not apply, the period of Ineligibility shall be two years.*

3.

*As used in arts 19 (Ineligibility for presence, Use or attempted Use, or Possession of a Prohibited Substance or Prohibited Method) and 20 (Ineligibility for other anti-doping rule violations), the term “intentional” is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. With regard to anti-doping rule violations resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition, there shall be a rebuttable presumption that said violations are not intentional if the substance is a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance”.*

98. Furthermore, pursuant to articles 21 and 22 of the FIFA ADR, the period of ineligibility envisaged by art. 19 of the FIFA ADR can be eliminated or reduced if the Player establishes that he bears No Fault or Negligence or No Significant Fault or Negligence in the terms

envisaged by the FIFA ADR. In the present case cocaine and its metabolites methylecgonine and benzoylecgonine were found in the Player's urine samples.

99. From the experts' statements it results that cocaine is very rapidly chemically modified, i.e. it is metabolised quickly producing a number of metabolites (like methylecgonine and benzoylecgonine). Cocaine has a short half-life (i.e. the time taken for the concentration of the drug in the body to reduce to one half of that at the start of the time interval) because the body excretes the drug very fast. In particular, pursuant to Prof. Cowan's report, the documented half-lives of cocaine, methylecgonine and benzoylecgonine are 2.4-3 hours, 5.2-6 hours and 5.9-6.2 hours, respectively.
100. Because of this metabolism when analysing a sample for cocaine, normally the metabolite benzoylecgonine will be found in a largest concentration. However, in the present case its concentration was very low (i.e. 63 nanograms per millilitre), lower than that of cocaine (65 nanograms per millilitre). The presence of the parent substance (cocaine) in the Player's urine in this concentration, clearly points to an exposure to the drug shortly before sample taking. As explained by Prof. Cowan during his witness examination, as a general rule if you have a bigger concentration of cocaine than its metabolites in a urine sample, the consumption must have been recent. Furthermore, methylecgonine is normally found in relatively large concentration, normally much less than that of benzoylecgonine. However, in this case it is present in the largest concentration (97 nanograms per millilitre), which is very unusual except in the early hours after cocaine consumption.
101. From this objective data two of the experts conclude that the exposure to the substance was clearly shortly before sample taking, and that only a short delay could have elapsed between the exposure to the substance and the urine collection. In this regard, the experts reached the following conclusions:
- Prof. Martial Saugy concluded that the intake of cocaine was done shortly before the urine collection, and that even the relative concentrations of the substance can be considered as low, whatever the original dose was it had an effect on the performance of the Player.  
  
In particular, during his examination at the hearing Prof. Saugy clarified that the in view of the data the cocaine must have been ingested between half an hour and 2 hours before the sample collection;
  - Prof. David Cowan concluded that, based on the presence of cocaine in the urine samples, the administration must have occurred within hours from the time of sample collection, and that it is more likely than not that the amount of cocaine taken by the Player may had an effect on the athlete's performance;
102. The other expert, Dr. Pascal Kintz, concluded that the athlete was incidentally exposed to minute amounts of cocaine (up to 2-3 mg) in the 8 hours before he gave his urine specimen and that, at this dose, cocaine had no pharmacological effect.

103. During his examination at the hearing, the Player gave to the Panel his version of the facts and explained how the prohibited substance allegedly entered into his body. He submitted that the night before the match he invited his brother Mr. Edison Angulo Caicedo to stay with him in the sporting complex where he was gathered with the team to prepare the match. Both brothers were sharing the same room. Around 22:00, after dinner, the Player went to his room to sleep, while his brother remained in the bar of the complex where they were staying. Apparently, as his brother later confessed to him after the Player's adverse analytic finding, the brother consumed cocaine that night (around 2 grams). He allegedly snorted most of the cocaine. However, pursuant to the version given in the first instance, before going back to the room, the Player's brother decided to dispose the rest of the unused cocaine in a bottle of water. This way he could keep consuming the cocaine without having anyone noticing. When he went to the room to sleep, he left the bottle of water close to the Player's bed, who drank the water unknowingly the next morning.
104. The Panel has considered the Player's version of the facts and it has concluded that it is not supported by the record.
105. There are multiple inconsistencies in the Player's story. In particular, during his examination by the Panel the Player slightly modified this version of the facts, stating that when he went to sleep at around 22:00 the bottle of water was already there, close to his bed, and that his brother put the drug inside the bottle later, in the middle of the night, when he went up to the room to sleep. Pursuant to this version, the Player was sleeping and did not realize what his brother was doing. The next morning, around 10:00 he woke up and the bottle of water was close to his bed, already opened. He drank the adulterated water from the bottle and then went to have breakfast. He did not notice anything strange. Later that day, at 19:45, he played the final of the Libertadores Cup, and 10 minutes after the match (i.e. around 21:40) he underwent the doping control.
106. The Panel considers that the Player has not been able to establish on a balance of probabilities how the substance entered into his body. In the Panel's opinion the facts submitted by the Player are neither proven nor plausible. In addition, during his examination the Panel noted some contradiction with the version of the facts that the Player gave during the first instance procedure. And, in any case, in the Panel's view putting cocaine in a bottle of water in the dark before going to sleep without any specific purpose and placing it at the Player's reach does not make much sense. Therefore, the Panel considers that the version of the facts given by the Player is not at all convincing or credible to try to get his sanction reduced.
107. In fact, as provided in the art. 19 of the FIFA ADR, the burden of proof lies on the Player to demonstrate that his anti-doping rule violation was not intentional or that he acted with No Fault or Negligence or Non-Significant Fault if he wants to benefit from a reduction of the 4-year period of ineligibility. With the explanation given during the hearing by the Player as detailed above, the Panel believes that the Player could not establish on a balance of probability that he unintentionally committed the anti-doping violation. In addition, the Player failed to establish that he consumed cocaine in a recreational / social context unrelated to sport performance that would qualify, in accordance with the CAS jurisprudence, for Non-

Significant Fault (CAS 2016/A/4416). As stated by said jurisprudence, “*from the standpoint of the fight against doping there is, in principle, no issue if these drugs are ingested in a “recreational” context unrelated to competition as long as the athlete does not return to competition with the drug still present in his or her system*”. The Panel considers thus that far from justifying a reduction of the period of suspension, the facts and explanations submitted by the Player leads to the opposite conclusion, i.e., it showed the athlete’s fault which prevents any reduction of the period of suspension provided under the relevant applicable regulations.

108. Furthermore, the Panel has reached the conclusion that the Player’s version does not fit with the medical evidence produced by the parties. From the experts’ conclusions it has been established that the cocaine had been ingested between 30 minutes up to 8 hours before the match. Indeed, the statement given by Prof. Saugy during the hearing convinced the Panel that the consumption of the substance was very recent, at most 2 hours before the sample collection (i.e. 19:40, immediately before the start of the match). But in any event, taking into account the time line submitted by the Player (i.e. consumption at 10:00 in the morning and the doping control taking place at 21:40; i.e. 11 hours and 40 minutes later), his version of the events is objectively impossible to reconcile with the analytical results and is incompatible with the medical evidence produced.
109. The time it takes for the Prohibited Substance to be identified as ingested is relevant in this matter (what experts call “halve-time”). Given that (i) there is unanimity among the experts heard in relation to the time frame in which cocaine can be identified, and (ii) the amount of metabolites found in the sample, the Panel is forced to conclude that either the amount consumed by the Player was higher than that explained in the Player’s statement of the facts, or the (allegedly) accidental consumption occurred closer to the competition than advocated by the Player. Thus, the Panel is forced to conclude that the record does not fit the explanation advanced by the Player.
110. Therefore, the Panel considers that the Player has not been able to establish on a balance of probability how the substance entered his system, that the consumption was not intentional and to demonstrate that, ultimately, he bears no fault or negligence, or no significant fault or negligence. As a result, the Panel considers that there are no grounds to eliminate or reduce the sanction envisaged by art. 19 of the FIFA ADR, and thus it rules that the Player is liable for the full 4-year period of suspension provided under art. 19 of the FIFA ADR for a violation of art. 6 (presence of a prohibited substance) of these same regulations.

### **C. Commencement of the period of ineligibility**

111. As a general rule, pursuant to art. 28 of the FIFA ADR the period of ineligibility shall start as soon as the decision providing for ineligibility (in this case, the present award) is communicated to the person concerned (i.e. the Player).
112. However, para. 1 of the aforementioned art. 28 of the FIFA ADR, provides as follows:

*“1. Delays not attributable to the Player or other Person*

*Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Player or other Person, the FIFA Disciplinary Committee may decide that the period of Ineligibility shall start at an earlier date, commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be disqualified”.*

113. As it could be seen, art. 28, par. 1, of the FIFA ADR gives the Panel discretion to decide when the Player shall start serving his ineligibility period taking into account the specific circumstances at stake with the temporary limit established in the same article. In the present case, the Appealed Decision established that the ineligibility period had to commence as from 20 July 2016; i.e. the date of the sample collection. In this specific issue, the Panel agrees with the Disciplinary Tribunal of CONMEBOL and considers that, given the particularities and circumstances of the present case, and how the first instance proceedings were conducted, as well as the obvious relevance that this decision has for the Player’s professional activity and career, the Panel considers that it is fair and reasonable that the period of ineligibility starts and is computed as from the date of Sample collection on 20 July 2016, as it had been previously adjudicated by the Appealed Decision.
114. In this regard and for the avoidance of doubt, such decision implies that no credit for the provisional suspension already served shall be granted, because given the particularities and circumstances at stake, in the present case the 4-year period of ineligibility is computed as from the date of the Sample collection (i.e. 20 July 2016), thus including the time of provisional suspension already served by the Player.

#### **D. Disqualification of Individual Results**

115. Article 25 of the FIFA ADR provides:

*“In addition to the automatic disqualification of the results in the Competition which produced the positive Sample under these Regulations, all other competitive results of the Player obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or period of Ineligibility, shall, unless fairness requires otherwise, be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes”.*

116. As a consequence, the Panel rules that all individual results obtained by Mr José Angulo Caicedo as from 20 July 2016 are disqualified.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed by the *Fédération Internationale de Football Association* on 17 May 2017 is partially upheld.
2. The Decision passed on 3 April 2017 by the *Tribunal de Disciplina* of CONMEBOL is set aside.
3. The period of ineligibility of Mr José Angulo Caicedo is four years starting on 20 July 2016, date of the sample collection.
4. All individual results obtained by Mr José Angulo Caicedo as from 20 July 2016 are disqualified.
5. (...).
6. (...).
7. Any other motions or prayers for relief are rejected.