



**Arbitration CAS 2010/A/2062 World Anti-Doping Agency (WADA) v. Real Federación Española de Fútbol (RFEF) & Gregorio Ciudad Real Linares, award of 16 November 2010**

Panel: Mr Efraim Barak (Israel), President; Mr Jan Paulsson (France); Mr Marcos de Robles (Spain)

*Football*

*Doping (benzoyllecgonine)*

*Sanction*

The Spanish Act 7/2006 distinguishes between “very serious” anti-doping violations (art. 14.1) due to the presence, use or consumption of prohibited substances or methods, leading to a sanction of ineligibility for a period of two to four years, and “serious” anti-doping violations (art. 14.2) related to substances or methods identified in the corresponding legal instrument as of less seriousness, leading to a sanction of ineligibility for a period of three months to two years. However, benzoyllecgonine is a non-specified prohibited substance, in accordance with all the applicable regulations in the case at stake, and thus is far from being a substance of “less seriousness”. Elements such as relevant circumstances, no reiteration of the conduct or non-existence of previous records of the player related with anti-doping infringements, are totally irrelevant to the parameters envisaged in article 14.2 and therefore cannot constitute grounds to justify the reduction of the seriousness of the anti-doping violation.

The World Anti-Doping Agency (WADA, the “Appellant”) is a Swiss private law foundation devoted to promote, coordinate and monitor the fight against doping in sport in all its forms. It has its seat in Lausanne, Switzerland and its headquarters in Montreal, Canada.

The Real Federación Española de Fútbol (RFEF) is the national Football Association governing the sport of football in Spain, and a member of the Fédération Internationale de Football Association (FIFA).

Mr. Gregorio Ciudad Real Linares (the “Player”) is a Spanish football player who at the time of the facts leading to the present proceedings was playing for the Spanish club Real Jaén C.F. in the – “Segunda División B” – which is the Third Division of the Spanish football Championships.

On 21<sup>st</sup> June 2009 the Player was selected for an in-competition anti-doping control test following a match in the Spanish National Championship between his club Real Jaén C.F., S.A.D. and the club Villarreal C.F., S.A.D.

The result of the urine sample analysis performed with regard to the referred control revealed the positive presence of Benzoyllecgonine (a metabolite of cocaine) which is a prohibited substance according to the WADA Prohibited List (2009) and which is also included as Appendix B to the FIFA Anti-Doping Regulations (the “FIFA ADR”). Further, under the Spanish doping regulations, i.e. the Resolution of the Presidency of the Spanish National Sports Council (the “CSD”) dated 19<sup>th</sup> December 2008 – *Resolución de 19 de Diciembre de 2008, de la Presidencia del Consejo Superior de Deportes* –, which approves the prohibited list of substances and methods in sport in Spain for the year 2009, Benzoyllecgonine is also listed as a prohibited substance (category S6.a).

This positive result was notified to the Player on 23 July 2009 and proceeded to inform him that he had four days to file his defence and that he was entitled to request the analysis of the retrieved B sample. He neither made any statement with regard to the matter nor requested the analysis of the B sample.

On 31<sup>st</sup> July 2009 the Competition Judge of the RFEF (“*Segunda División B*”) initiated Extraordinary Disciplinary Proceedings against the Player in respect of the mentioned facts.

On 3<sup>rd</sup> August 2009, the Player was informed by the RFEF that disciplinary proceedings were opened against him for the use of prohibited substances in competition and about the possible sanctions to be imposed on him. In addition a 15 days term was given to the Player to file his arguments or grounds of defence, which he failed to do.

On 21<sup>st</sup> September 2009 the Competition Judge of the RFEF (“*Segunda División B*”) decided to impose a sanction on the Player in the following terms:

*“Imponer al jugador del Real Jaén C.F., D. GREGORIO CIUDAD REAL LINARES, sanción de suspensión de la licencia federativa por tiempo de UN AÑO en aplicación de los artículos 14.2.b) y 15.3 de la Ley Orgánica 7/2006, de 21 de noviembre de protección de la salud y de lucha contra el dopaje en el deporte”.*

which translation into English, as submitted by the Appellant, reads as follows:

*“To impose on Real Jaén C.F.’s player MR. GREGORIO CIUDAD REAL LINARES a sanction consisting in a suspension of his Federation License for a ONE-YEAR term as set forth in Sections 14.2.b) and 15.3 of Organic Law 7/2006, November 21 for health care and against doping in sport”.*

In accordance with article 29.1 of the referred Spanish Act 7/2006 and article 20 of the Spanish Royal Decree 63/2008 which govern the proceedings for the imposition and review of disciplinary sanctions in the field of doping, such RFEF decision could have been revised by the Anti-Doping Section of the Spanish Sports Disciplinary Committee (“*Comité Español de Disciplina Deportiva*”) by means of an appeal. However, the Player did not file any appeal against the decision.

On 7<sup>th</sup> October 2009 the RFEF notified the abovementioned decision to FIFA.

On 15<sup>th</sup> October 2009 the Disciplinary Committee of FIFA extended the sanction imposed by the RFEF to the Player so as to have worldwide effect in accordance with Article 136 of the FIFA Disciplinary Code for the same period of time.

The RFEF notified the decision of the Disciplinary Committee of FIFA to the Player by means of registered letter delivered to him on 16<sup>th</sup> October 2009.

On 22<sup>nd</sup> January 2010 FIFA communicated the decision of the Competition Judge of the RFEF to WADA.

On 12<sup>th</sup> February 2010 WADA appealed the decision rendered by the Competition Judge of RFEF on 21<sup>st</sup> September 2009 (the “Appealed Decision”) before the CAS, requesting the following elements of relief:

- “1. The Appeal of WADA is admissible.*
- 2. The decision rendered by the Competition Judge of RFEF, on September 21, 2009, in the matter of Mr Gregorio Ciudad Real Linares is set aside.*
- 3. Mr Gregorio Ciudad Real Linares is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility (whether imposed to or voluntarily accepted by the Player) before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
- 5. [Sic] WADA is granted an award for costs”.*

On 10<sup>th</sup> March 2010 WADA filed the corresponding Appeal Brief, reiterating the claims submitted in its Statement of Appeal.

On 6<sup>th</sup> April 2010 the RFEF filed its Answer to the Appeal, accepting WADA’s request in the following terms:

- “1. The Answer of Respondent be admissible.*
- 2. The decision rendered by the Competition Judge of the Second “B” Division be set aside, and Mr. Gregorio Ciudad Real Linares sanctioned with a two-year period of ineligibility.*
- 3. The costs of the appeal be awarded as determined by the CAS Secretariat”.*

The Player did not file an answer to the appeal.

Within the obligatory consultation proceeding with the parties, WADA and RFEF agreed on the case being decided on the basis of the written submissions, without a hearing being held. The Player remained silent on this issue. In accordance with article R57 of the Code of Sports-related Arbitration and Mediation Rules (the “Code”), the Panel decided not to hold a hearing in the present case and to resolve the case on the basis of the written submissions filed by the parties.

## LAW

### CAS Jurisdiction and Admissibility

1. According to art. R47 of the Code:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide [...] and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.*

2. Article 63.6 of the FIFA Statutes reads as follows:

*“The World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed by FIFA, the Confederations, Members or Leagues under the terms of par. 1 and par. 2 above”.*

3. Article 62.4 of the FIFA ADR stipulates that:

*“FIFA and WADA shall have the right to appeal to CAS against any internally final and binding doping-related decision in accordance with art. 63 par. 5 and 6 of the FIFA Statutes”.*

4. Taking the abovementioned provisions into account, the Panel finds that CAS is competent to deal with the present appeal and that this appeal is admissible based on the following grounds:
  - a) The RFEF expressly acknowledges the jurisdiction of the CAS in article 1.4.d) of its Statutes.
  - b) The Appealed Decision was not appealed before the Anti-Doping Section of the Spanish Sports Disciplinary Committee, and therefore in this case it is a final and binding doping-related decision and all prior legal remedies in National level have been exhausted.

In this respect the Panel notes that:

- Article 19 of the Spanish Royal Decree 63/2008 governing the proceedings for the review of disciplinary sanctions related to doping, stipulates that the revision procedure of such sanctions before the Anti-Doping Section of the Spanish Sports Disciplinary Committee may be raised by (i) the sanctioned athlete, (ii) the State Anti-Doping Agency (against decisions adopted in doping matters by the Spanish Health and Doping Control and Supervision Committee) or (iii) the Spanish Health and Doping Control and Supervision Committee (against decisions ruled by the disciplinary bodies of the Spanish Sports Federations).
- The Player did not ask for the mentioned revision procedure.
- In accordance with the strict wording of the abovementioned article WADA is not entitled to appeal such revision proceedings. In this respect WADA refers also to the opinion of the Spanish Sports Disciplinary Committee in its decision of January 22, 2010 (File 177/2009 (S.A)). In that case, an appeal submitted by WADA to the Spanish Sports

Disciplinary Committee was declared inadmissible. This decision results in the conclusion that in the opinion of the Spanish Sports Disciplinary Committee the Appealed Decision could have not been appealed by WADA before the referred internal Spanish body.

In order to draw a full picture of this matter, The Panel find it essential to point out that it is aware of the fact that the decision of the Spanish Sports Disciplinary Committee in File 177/2009 was appealed by the Athlete in that case in front of the Central Court of Administrative Litigation in Madrid (Juzgado Central De Lo Contencioso Administrativo) and this appeal is currently still pending. Nevertheless, as long as the decision of the Spanish Sports Disciplinary Committee remains with full effect, as the case is at present, WADA is correct in maintaining the position that all prior legal remedies in National level were exhausted. Therefore the Panel understands that in the present case the final nature of the Appealed Decision and the exhaustion of prior legal remedies concur.

5. Furthermore, the Panel notes that (i) none of the parties has challenged the appeal's admissibility or CAS' jurisdiction in the present case and (ii) WADA and the RFEF have signed the relevant Order of Procedure confirming CAS jurisdiction.
6. Consequently, the appeal is admissible and CAS is competent to deal with the matter.

### **Applicable law**

7. Article R58 of the CAS Code reads as follows:

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

8. According to the abovementioned provision, and taking into account the regulations that both WADA and RFEF have invoked in their respective written submissions, the Panel considers that the present dispute shall be decided according to the Spanish legislative acts together with the FIFA Anti-Doping Regulations, both in their condition of applicable regulations and as rules of law chosen by the parties.

## Merits

### A. *The anti-doping rule violation*

9. The Panel begins the examination of this case by pointing out that (i) the analysis of the Player's urine sample "A" showed evidence of an adverse analytical finding (presence of Benzoylcegonine, a cocaine metabolite, which is considered a prohibited non-specified substance both under the 2009 Prohibited List included in Appendix B of the FIFA ADR and the Resolution dated 19<sup>th</sup> December 2008 of the Presidency of the Spanish CSD), and (ii) the Player did not request the analysis of the sample "B".
10. Article 5.2. of the FIFA ADR provides that *"the presence of a prohibited substance or its metabolites or markers in a player's "A" sample where the player waives analysis of the "B" sample and the "B" sample is not analysed"* constitutes *"sufficient proof of an anti-doping rule violation"*.
11. Furthermore, pursuant to article 14.1, subsections (a) and (b), of the Spanish Act 7/2006, the following conducts are considered to constitute "very serious" Anti-Doping violations:
  - "a) el incumplimiento de las obligaciones a que hace referencia el artículo 13.1 de esta Ley, que dé lugar a la detección de la presencia de una sustancia prohibida, o de sus metabolitos o marcadores, en las muestras físicas de un deportista;*
  - b) la utilización, uso o consumo de sustancias o métodos prohibidos o no autorizados en el deporte".*

Which, translated into English, reads as follows:

- "a) breach of the obligations referred to in section 13.1 of this Act, giving rise to the detection of the presence of a prohibited substance or of its metabolites or markers in the physical samples of an athlete;*
- b) the utilisation, use or consumption of prohibited or unauthorised substances or methods in sport".*

12. The obligations envisaged in article 13.1 of the Spanish Act 7/2006 consist of:

*"Los deportistas se asegurarán de que ninguna sustancia prohibida se introduzca en su organismo, siendo responsables en cualquier caso cuando se produzca la detección de su presencia en el mismo".*

Which, translated into English, reads as follows:

*"Athletes shall ensure that no prohibited substance enters their body, being liable in any case when the presence of such substances is detected in it".*

13. Taking the abovementioned provisions into account and the occurrence of the facts as described above, the Panel is satisfied (as was the RFEF Competition Judge) that, in the present case, the presence of Benzoylcegonine (a cocaine metabolite) in the Player's urine "A" sample is established, resulting in the establishing of a "very serious" anti-doping rule violation and that the Player, therefore, should be sanctioned in accordance with the applicable regulations.

B. *Sanction*

14. These kinds of violations lead to the mandatory application of the sanctions in accordance with article 15.1. of the Spanish Act 7/2006, which states that:

*“1. Por la comisión de las infracciones muy graves previstas en las letras a), b), c), d), e), f), g) y j) del apartado primero del artículo 14, se impondrán las sanciones de suspensión o privación de licencia federativa por un período de dos a cuatro años y, en su caso, multa de 3.001 a 12.000 euros. Cuando se cometan por segunda vez las referidas conductas, la sanción consistirá en la privación de licencia federativa a perpetuidad y, en su caso, la correspondiente sanción pecuniaria, de acuerdo con lo dispuesto en el apartado tercero del artículo 19 de la presente Ley”* [emphasis added].

Which, translated into English, reads as follows:

*“1. For committing the very serious violations provided for in points a), b), c), d), e), f), g) and j) of the first paragraph of section 14, the penalty of suspension or withdrawal of the federative licence shall be imposed, for a period of two to four years and, if applicable, a fine of 3,001 to 12,000 euros. When the aforementioned behaviour has been committed for a second time, the penalty shall consist of the permanent withdrawal of the federative licence and, if applicable, the corresponding pecuniary penalty, in accordance with that provided for in paragraph three of section 19 of this Act”* [emphasis added].

15. In the same line, under article 45 of the FIFA ADR, the sanction for the presence of a prohibited substance or its metabolites or its markers is a two year suspension, unless the conditions for removing, reducing or increasing such period of ineligibility are met. Such conditions have not been argued or presented for consideration before the Panel by any of the parties and in any case are not relevant to the matter at hand.
16. The Appealed Decision indeed imposes a sanction on the Player. However, the sanction imposed by the RFEF Competition Judge is a period of one year of ineligibility in light of the fact that the conduct of the Player was erroneously considered by the distinguished RFEF Competition Judge to constitute a “serious violation” in accordance with:
17. Article 14.2.b) of the Spanish Act 7/2006, which reads as follows:

*“2. Se considerarán infracciones graves:*

*b) las conductas descritas en las letras a), b), e) y g) del apartado anterior, cuando afecten, versen o tengan por objeto sustancias o métodos identificados en el correspondiente instrumento jurídico como de menor gravedad, salvo que se cometan de forma reiterada, en cuyo caso se considerarán infracciones muy graves”* [emphasis added].

Which is translated into English as follows:

*“2. The following are considered to be serious violations:*

*b) The conduct described in points a), b), e) and g) of the previous paragraph, when they affect, relate to or are concerned with substances or methods identified<sup>1</sup> in the corresponding legal instrument as of less seriousness, unless committed repeatedly, in which case they shall be considered as very serious violations”* [emphasis added].

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<sup>1</sup> Translated by WADA as “specified”.

18. Article 15.3. of the Spanish Act 7/2006, which reads as follows:

*“3. Por la comisión de las infracciones graves previstas en el apartado segundo del artículo 14 de esta Ley, se impondrá la sanción de suspensión o privación de licencia federativa por un período de tres meses a dos años y, en su caso, multa de 1.500 a 3.000 euros. [...]”* [emphasis added].

Which is translated into English as follows:

*“3. For committing the serious violations provided for in paragraph two of section 14 of this Act, the penalty of suspension or withdrawal of the federative licence shall be imposed for a period of three months to two years and, if applicable, a fine of 1,500 to 3,000 euros. [...]”* [emphasis added].

19. In order to justify and apply the aforesaid articles 14.2.b) and 15.3, the Appealed Decision relies on the wrong grounds of law raised by the RFEF appointed Examining Judge in his Resolution Proposal, which in its pertinent part reads as follows:

*“CUARTO.- En efecto, de los hechos imputados puede desprenderse, tal como consta en dicha resolución, una vulneración del art. 14.1 apartados a) o b) de la citada Ley Orgánica, si bien en el caso presente y atendiendo a las circunstancias concurrentes y a la gravedad de la infracción, reconocida tácitamente por el jugador al no haber efectuado alegaciones ni solicitado el contraanálisis y al no existir reiteración en la misma y no constar antecedentes por infracciones similares de doping, entendemos por ello que a la vista de lo expuesto, el jugador es responsable de una infracción del art. 14.2.b”.*

Which is translated into English as follows:

*“FIVE<sup>2</sup>.- Indeed, it arises from the charges, as stated in the above-mentioned resolution, that the provisions of Section 14.1, Sub-sections a) or b) or Section 14.2.b) of the said Organic Law 7/2006 have been breached. It is to be stated, however, that in view of the circumstances surrounding the case, the seriousness of the offence, the fact that the player has impliedly recognized having committed it by having failed to file pleadings and/or request a counter-analysis and the absence of repetition, it is our understanding that the player is to be charged with the violation of Section 14.2.b) and that the need arises to abide by the principle of proportionality between the offence committed and the punishment to be imposed...”.*

20. After examining the circumstances of the present file, and particularly the criteria applied by the RFEF Competition Judge therein when coming to decide the sanction to be imposed, the Panel cannot uphold the result of the proceedings of the first instance.
21. The Panel is aware that in accordance with the Spanish Act 7/2006, for a doping-related conduct of the kind examined herein to be considered as merely “serious”, the circumstances foreseen in article 14.2.b of the Spanish Act 7/2006 must apply. That is to say, the doping related conduct shall affect, relate to or be concerned with “*substances or methods identified in the corresponding legal instrument as of less seriousness*”.

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<sup>2</sup> This paragraph was titled “FIVE” in the English translation submitted by WADA attached as Exhibit 4 to its Appeal Brief. The Panel has amended the title of this paragraph as “FOUR” in order to coordinate the English translation with the original Spanish document. Further to this, Paragraph “SIX” of the Spanish document was not concluded in the submitted English translation. However, these discrepancies have no impact on the substance of these documents.



22. In this case, the Panel found no grounds whatsoever, on the basis of the referred article, to justify the conclusion that the concerned anti-doping violation is solely “serious” and not “very serious”. On the contrary, the Panel notes that the prohibited substance found in the Player’s urine is considered to be a non-specified prohibited substance, in accordance with the prohibited list of FIFA ADR, WADA and the Spanish regulations (2009 editions) and thus is far from being a substance of “less seriousness”. The elements set out in the Appealed Decision to justify the one year sanction (relevant circumstances, no reiteration of the conduct, non-existence of previous records of the player related with anti-doping infringements, etc.) are totally irrelevant to the parameters envisaged in article 14.2.b. of the Spanish Act 7/2006. Therefore in the Panel’s view, there are no grounds to justify the reduction of the seriousness of the anti-doping violation.
23. Furthermore, the Panel finds that the violation committed by the Player is a “very serious” one, and shall be sanctioned as such, thereby effectively setting the Appealed Decision aside. In consequence, the sanction to be imposed in this case, taking the abovementioned circumstances and the regulations into account, shall be fixed at a two year period of ineligibility as requested by WADA.
24. As to the commencement of such period, the Panel shall recall article 53.1. of the FIFA ADR, which reads as follows:

*“1. Except as provided below, the period of ineligibility shall start as soon as the decision providing for ineligibility is communicated to the player concerned. Any period of provisional suspension (whether imposed or voluntarily accepted) shall be credited against the total period of ineligibility imposed”.*
25. Pursuant to this article as well as the provisions envisaged in the Spanish Anti-Doping and Disciplinary regulations of the same context, the Panel decides that the period of ineligibility shall start as soon as the decision providing for the ineligibility is communicated to the Player, and that any period of provisional suspension (whether imposed or voluntarily accepted) shall be credited against the two-year suspension imposed in the present award.

### **Confidentiality**

26. In its answer to the Appellant’s Appeal Brief, the RFEF requests the CAS in accordance with Article R59 of the Code to maintain the confidential nature of this appeal and the ruling that it issues thereon, and thereby expresses its opposition to the publication by CAS of any communication relating to the issue.
27. By letter sent to CAS on October 6, 2010 the Appellant notified its disagreement to the RFEF request.
28. Article R59 of the Code stipulates that:

*“The award, a summary and/or a press release setting forth the results of the proceedings shall be made public by CAS, unless both parties agree that they should remain confidential”.*

29. Therefore, in the absence of such an agreement by both parties, The Panel has no other possibility but to deny the RFEF's request.

**The Court of Arbitration for Sport rules:**

1. That the appeal filed by WADA against the Decision rendered by the Competition Judge of the RFEF on 21<sup>st</sup> September 2009 with regard to the player Mr. Gregorio Ciudad Real Linares is admissible.
  2. The referred Decision of the Competition Judge of the RFEF dated 21<sup>st</sup> September 2009 is set aside.
  3. Mr. Gregorio Ciudad Real Linares is sanctioned with a two-year period of ineligibility, starting on the date on which this award is communicated to the Player. Any period of suspension (whether imposed to or voluntarily accepted by the Player) shall be credited against the total period of ineligibility imposed.
- (...)
6. Any other prayers for relief are rejected.