



Arbitration CAS 2011/A/2605 Fédération Internationale de Football Association (FIFA) v. Confederação Brasileira de Futebol (CBF), Superior Tribunal de Justiça Desportiva do Futebol (STJD) & Mr Vinicius Sarturi Hess, award of 1 October 2012

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Dirk-Reiner Martens (Germany); Mr Efraim Barak (Israel)

Football

Doping (fenproporex)

Jurisdiction of CAS over decisions passed by a justice body which is an integral part of the organisational structure of the national federation

Admissibility of an appeal before the entire case file has been received by the appellant

Use of plastic bottles as container for the samples

Proof of the use of plastic bottles as a cause for the Adverse Analytical Finding

Starting date of the suspension

Credit for the period already served even if such period was not served as provisional suspension

- 1. The STJD is a justice body which is an integral part of the organisational structure of the CBF, with no legal personality of its own: its independence and autonomy in adjudicating the disputes brought before it does not entail that the STJD is a body which could legally stand alone if the CBF did not exist. The decisions rendered by the STJD, although independently adopted by the STJD, must be considered to be decisions of the CBF. Therefore, the CAS has jurisdiction *ratione materiae* over decisions rendered by the STJD but does not have jurisdiction *ratione personae* to hear an appeal against the STJD.**
- 2. The fact that a statement of appeal is lodged before the entire case file has been received by the appellant does not imply its inadmissibility. Nothing in the FIFA system prevents the lodging of an appeal immediately upon receipt of the challenged decision and parts of the case file, or sanctions such “early” appeal with the inadmissibility thereof. However, the rights of the respondent(s) must not be impaired by such an “early” filing of the appeal. They are not impaired if the respondent has been given the possibility to state his case after the filing by the appellant of its appeal brief, lodged upon receipt and consideration of the entire disciplinary file.**
- 3. The relevant provisions of the FIFA ADR provide for the use of collection equipment that complies with the requirements stipulated in the WADA International Standard for Testing; the latter, then, does not set, within the minimum criteria that the sample collection equipment must meet, the fact that it is composed by glass containers.**
- 4. The mere submission that the plastic nature of the bottle containing the sample makes a sabotage theoretically possible, since the bottle could be pierced by a needle, without**

offering any evidence or making any submission of an actual sabotage of the sample, is not enough to establish, even on a balance of probability, that the use of plastic bottles could reasonably have caused the Adverse Analytical Finding. Indeed, mere speculation regarding a fact is not proof that such fact did actually occur.

5. The period of suspension should start, in principle, as soon as the decision providing for ineligibility is communicated to the athlete concerned. However, substantial delays occurring in the arbitration proceedings, which are not attributable to the athlete, but are caused by the length of the appeals proceedings before the previous instance, the time taken to transmit the complete file of the case to the next instance and the time taken to forward the decision to the International Federation allow a CAS panel to set the starting date of the ineligibility period at an earlier date. A delay of eleven months in the proceedings is to be considered as substantial.
6. As long as an athlete was not eligible to play for six months after the finding of his commission of an anti-doping rule violation, it would be unfair and result *de facto* in a total suspension of two years and six months not to give him credit for that period. The fact that such prior period was not served as a provisional suspension is no impediment to that conclusion. Article 53 para. 1 of the FIFA ADR, while providing for the obligation to give credit for periods of provisional suspension, does not exclude (but logically requires) credit for periods of suspension imposed and served on the basis of “final” disciplinary decisions subsequently set aside.

1. BACKGROUND

1.1 The Parties

1. The Fédération Internationale de Football Association (hereinafter referred to as “FIFA” or the “Appellant”) is the world governing body of football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players, worldwide. FIFA is an association under Swiss law and has its headquarters in Zurich (Switzerland).
2. The Confederação Brasileira de Futebol (hereinafter referred to as “CBF” or the “First Respondent”) is the Brazilian football association, governing the sport of football in Brazil.
3. The Superior Tribunal de Justiça Desportiva do Futebol (hereinafter referred to as “STJD” or the “Second Respondent”) is the highest sports court in Brazilian football.
4. Mr Vinicius Sarturi Hess (hereinafter referred to as the “Player” or the “Third Respondent”), is a Brazilian football player born on 16 January 1988, registered with the Brazilian club Boa Esporte Clube (formerly known as Ituiutaba Esporte Clube) of Varginha, Minas Gerais, Brazil, affiliated to the CBF.

5. The CBF, the STJD and the Player are hereinafter jointly referred to as the “Respondents”.

1.2 The Dispute between the Parties

6. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
7. On 9 October 2010, the Player underwent an in-competition anti-doping control on the occasion of a match of the “*Campeonato Brasileiro da Série C*” between the Associação Chapecoense de Futebol and the Ituiutaba Esporte Clube.
8. The A sample provided by the Player, bearing the identification No. 20990, was analyzed by the LADETEC laboratory of Rio de Janeiro, Brazil (hereinafter also referred to as the “Laboratory”), which is accredited by the World Anti-Doping Agency (hereinafter also referred to as the “WADA”).
9. On 27 October 2010, the Laboratory reported the presence of Fenproporex, a prohibited substance appearing, as a non-specified stimulant, in class S.6, on the 2010 WADA list of prohibited substances (hereinafter also referred to as the “Prohibited List”), pursuant to which, “*All stimulants ... are prohibited. Stimulants include: ... a: Non-Specified Stimulants: ... fenproporex ...*”.
10. The Player did not request the analysis of the B sample.
11. Following the analytical finding reported by the Laboratory (hereinafter also referred to as the “Adverse Analytical Finding”), on 18 November 2010 the Player was informed that his case (together with the case of another athlete) would be heard at a hearing before the 2nd Disciplinary Commission of the STJD (hereinafter also referred to as the “Disciplinary Commission”) on 23 November 2010.
12. In a letter of 30 November 2010 the Laboratory answered a request for information sent by the President of the Disciplinary Commission *inter alia* as follows:
“The laboratory received the samples with identification numbers 25191 and 20990 on 13 October 2010. The chain of custody for the samples with identification numbers 25191 and 20990 had not been broken, the security seals were intact, and the samples were stored in tamper-evident bottles”.
13. On 7 December 2010, the Disciplinary Commission decided, by majority vote, to impose on the Player a suspension of one year, “*for violation of Article 2.1 and Article 10.2 of the World-Anti Doping Code*”.
14. Appeals were lodged in December 2010 with the STJD against the decision passed by the Disciplinary Commission. On 7 April 2011, the STJD adopted by majority vote a decision

(hereinafter also referred to as the “Decision”) to modify the Disciplinary Commission’s decision and to reduce to six months the ineligibility period imposed on the Player as follows:

“The preliminary arguments concerning curtailment of the defence were rejected by a majority of votes, with the exception of Judges Alberto dos Santos Puga Barbosa and Wagner Nascimento who voted in favour; by unanimous vote, the merits of the Appeal were partially upheld to reduce the suspension awarded to the athlete... Vinicius Sarturi Hess ... to 6 (six) months for each player, in accordance with Article 2 of the World Anti-Doping Code, with Judge Alberto dos Santos Puga Barbosa moving to absolve ...”.

15. The report of the *Judge Rapporteur*, concerning the Player and another athlete, reads as follows:

“Initial considerations:

The athletes first requested in their appeal that “the trial be postponed to enable the burden of proof to be placed upon the Prosecutor’s office, certainly because this was a precaution requested by the accused, who have shown that the Kit is not made of glass as required by law, and, furthermore, that even if the plastic Kit is considered acceptable by the CBF it is extremely vulnerable, which was demonstrated at the hearing to justify the request ...”.

As stated by the appellants themselves, the carrying out of an expert assessment was totally unnecessary to prove, as “demonstrated at the hearing”, that the plastic Kit was penetrable, for which a plastic Kit punctured by a needle was appended to the case files.

Moreover, it is worth emphasising that the athletes’ defence did not request an expert ruling on the Kit used to collect the urine samples, but rather the Kit used by the CBF.

For this reason, I rejected the accused’s initial considerations.

Merits:

What is important in the defence is the argument that the Kit utilized is in violation of international standards, but this does not invalidate the existence of doping, which was proven in the regular examination; the fact that the bottle was not in conformity with the international standard does not negate the presence of the banned substance found in the athletes’ urine, with the accredited laboratory also providing a statement that the bottles had not been tampered with.

As such, I vote to maintain the sentence given to the athletes. However, regarding the length of the sanction, and taking into consideration the provision of Article [sic] and bearing in mind the precedence of this Court, I hereby rule to reduce the sentence of the athlete Vinicius Sarturi Hess to 6 (six) months ...”.

16. On 20 September 2011 the STJD sent the complete file of the case of the Player to the CBF. The CBF forwarded the Decision to FIFA on 2 October 2011.

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS Proceedings

17. On 18 October 2011, FIFA filed a statement of appeal, with 3 exhibits, with the Court of Arbitration for Sport (hereinafter also referred to as the “CAS”), pursuant to Article R48 of the

Code of Sports-related Arbitration (hereinafter also referred to as the “Code”), to challenge the Decision. In such submission, the Appellant nominated Ms Nguyen Thi My Dung as arbitrator. At the same time, FIFA requested the CAS to invite the Respondents “to provide FIFA with the full case file, including in particular the grounds of the Appealed Decision, translated into English” and to grant an extension of the deadline to file the appeal brief, until after the examination of the case file to be provided by the Respondents.

18. On 21 October 2011, the CAS Court Office, writing on behalf of the Deputy President of the CAS Appeals Arbitration Division, invited the CBF or the STJD to provide the complete case file requested by FIFA and suspended the deadline for the filing of the appeal brief until after the lodging of such case file.
19. In a letter of 7 November 2011, the First Respondent *inter alia* requested that the seat of the arbitration be changed, “since he would not [be] able to attend to the hearing with his attorneys at Lausanne”, suggesting Montevideo (Uruguay) as an alternative seat.
20. In a letter dated 8 November 2011, the CBF indicated that it would not participate in the present arbitration, as “any award rendered by this CAS would have an impact only on the player’s eligibility”.
21. On 9 November 2011, the CAS Court Office informed the parties, that, as the Respondents had failed to jointly nominate an arbitrator, Mr Efraim Barak had been appointed as arbitrator by the Deputy President of the CAS Appeals Arbitration Division.
22. On 15 November 2011, the Appellant informed the CAS that it did not agree that the hearing be held in Montevideo (Uruguay).
23. On 21 November 2011, the STJD sent a letter dated 16 November 2011 to CAS, requesting to be excluded from the procedure and informing that it would not take part in the proceedings.
24. On 25 November 2011, the Appellant did not agree that the STJD be excluded from the arbitration.
25. On 28 November 2011, the CAS Court Office invited again the CBF or the STJD to provide the complete case file requested by FIFA. Other requests to that effect were made on 30 November 2011 and 9 December 2011.
26. In a letter sent on 19 December 2011, the STJD requested again to be excluded from the arbitration.
27. On 22 December 2011, the Appellant objected once again to such exclusion.
28. In a letter dated 16 January 2012, Ms Nguyen Thi My Dung, nominated to be appointed as arbitrator by the Appellant, informed the CAS Court Office of her decision to resign from the Panel, having been appointed to be a member of a FIFA body. As a result, on 20 January 2012, the Appellant nominated Mr Dirk-Reiner Martens as new arbitrator.

29. By communication dated 25 January 2012, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr Dirk-Reiner Martens and Mr Efraim Barak, arbitrators.
30. On 31 January 2012, following additional reminders from the CAS Court Office, the Panel formally requested from the STJD the production of the complete case file related to the present matter.
31. On 9 February 2012, the STJD filed the complete case file concerning the Player.
32. On 29 March 2012, within the deadline set by the Panel, the Appellant filed its appeal brief, pursuant to Article R51 of the Code, together with 8 exhibits.
33. On 5 April 2012, the CBF confirmed its renouncement to participate in the present proceedings and commented on the issue of costs.
34. On 20 April 2012, the STJD reaffirmed that it should be excluded from the proceedings.
35. In accordance with Article R55 of the Code, on 25 May 2012, after an extension of the deadline authorized by the Panel, the Player filed his answer to the appeal, without exhibits, seeking its dismissal. Such submission, in addition to the relief sought, contained the request for some evidentiary measures. At the same time, the Player insisted in his request of relocation of the hearing.
36. In a letter of 4 June 2012, the Panel addressed the Player's requests as follows:

"The parties are informed that the Panel has decided to hold a hearing in Lausanne, Switzerland The Panel shall not relocate the place of the hearing in South America. ... Mr Hess is informed that he is entitled to participate via video-conference should it be impossible for him to attend in person. The same applies to Mr Hess' experts and witnesses.

The Panel wishes to bring Mr Hess' attention to the provisions contained in Article R44.2 of the CAS Code, applicable in appeals proceeding pursuant to Article R57: "the parties are responsible for the availability and costs of the witnesses and experts called to be heard".

Furthermore, the Panel has decided to request the CBF and/or the STJD to provide the kits requested by Mr Hess in his answer brief. The Panel requests that three series of kits be sent to the CAS Court Office

The Panel has decided to reject Mr Hess' request to have a Panel-appointed expert to inspect the kits produced by the CBF and/or the STJD, as it is for the parties to bring in the experts they wish to call. Mr Hess shall send to the CAS the name of the expert he nominates in this respect

Finally, with respect to the opening of the B-sample, the Panel considers that such request must be addressed to the relevant Brazilian authority".
37. In a letter dated 8 June 2011, the Player informed the Panel of his availability to attend the

hearing by video-conferencing, but added that, since *“the athlete has no financial conditions to nominate an expert ..., he dismisses the technical evidence he was willing to produce”*.

38. On 12 June 2012, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the “Order of Procedure”). The Order of Procedure was signed by the Appellant, CBF and the Player.
39. In a letter of 12 June 2012, the CBF confirmed that it would not attend the hearing.
40. On 13 June 2012, the CBF advised the Panel that the 2012 doping control kit, the production of which had been sought by the Third Respondent and ordered by the Panel (§ 36 above), was being sent to the CAS Court Office.
41. On 18 June 2012, the STJD informed the CAS Court Office that it would not sign the Order of Procedure, and would not attend the hearing, as it has *“no legal interest in the subject of this arbitration”*.
42. On 25 June 2012, the STJD sent to the CAS Court Office the doping control kit exhibited at the hearing before the STJD.
43. A hearing was held in Lausanne on 3 July 2012 on the basis of the notice given to the parties in the letter of the CAS Court Office dated 11 June 2012. The Panel was assisted at the hearing by Mr William Sternheimer, Counsel to the CAS. While nobody appeared for the CBF and the STJD, the following persons attended the hearing:
 - i. for the Appellant: Mr Benoit Pasquier, legal counsel at FIFA, and Mr Volker Hesse, legal counsel;
 - ii. for the Third Respondent: by videoconference, Mr Eduardo Amorim, counsel, and the Player in person.
44. At the hearing, the parties made submissions in support of their respective cases: the Player, *inter alia*, waived the request to hear witnesses and experts contained in his answer brief (§ 35 above), and confirmed that he had not played after serving the suspension imposed by the Decision. During the hearing, the Panel examined the doping control kits provided by the parties, including the doping control kit exhibited at the hearing before the STJD: one of the plastic bottles, intended for use as urine sample container, was pierced by a needle.
45. At the conclusion of the hearing, the parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings and that they had been given the opportunity to fully present their cases.

2.2 The Position of the Parties

46. The following outline of the parties’ positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully

considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a. *The Position of the Appellant*

47. FIFA requests the Panel to rule as follows:
- 1) *The appeal of FIFA is admissible.*
 - 2) *The decision rendered by the “Superior Court of Sports Justice in Football” on 7 April 2011 is set aside.*
 - 3) *Mr Vinicius Sarturi Hess 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 served by the Player before the entry into force of the CAS award, shall be credited against the total period of ineligibility.*
 - 4) *The costs of the proceedings shall be borne by the CBF.*
 - 5) *FIFA shall be granted a contribution to its legal fees”.*
48. In its submissions, in other words, the Appellant criticizes the Decision, which it asks the Panel to set aside and to replace with a new decision sanctioning the Third Respondent. For such purposes, the Appellant makes submissions, *inter alia*, concerning the CAS jurisdiction, the law applicable to the merits, the anti-doping rule violation committed by the Player and the sanction to be imposed.
49. In support of its requests, the Appellant, in fact, preliminarily submits that CAS has jurisdiction to hear the appeal in accordance with Articles 62 and 63 para. 5 of the FIFA Statutes (hereinafter referred to as the “Statutes”) and Article 62 para. 4 of the FIFA Anti-Doping Regulations (hereinafter referred to as the “ADR”). More specifically, FIFA indicates that the CBF is a member of FIFA and as such is bound by the Statutes and other FIFA regulations; the Player, then, being affiliated to the CBF, is in his turn bound by FIFA’s regulations, which include the clause providing for CAS arbitration. To confirm such submission, FIFA refers to CAS jurisprudence.
50. With respect to the applicable law, FIFA contends, also on the basis of the *Lei Pelé* (Law N. 9615/98), that *“international sports rules are directly applicable to Brazilian Sport and any athlete registered with a Brazilian federation is therefore directly bound by the international rules accepted by that federation”*. Therefore, *“the applicable rules in these appeal proceedings shall ... be primarily the ... ADR ... in the version entered into force on 1 April 2010, and subsidiarily, and where necessary, the CBF rules and Brazilian law. In case of inconsistency between a CBF/Brazilian law provision and a FIFA provision, the FIFA provision must prevail. Additionally, Swiss law shall be applied in connection with the interpretation and application of FIFA rules”*.
51. In the Appellant’s opinion, as a result of the Adverse Analytical Finding, the anti-doping rule violation contemplated by Article 5 ADR (presence of a prohibited substance) is established. In addition, FIFA underlines that the Player’s sample was collected, transported and analysed in accordance with the applicable regulations, and maintains that *“although FIFA uses glass bottles for*

doping controls organized and performed by FIFA itself”, the ADR “do not provide for a mandatory use of glass bottles”. In such connection, FIFA makes reference to Article 6 of Annex E (Testing Procedure) of the ADR and to Article 6.3.4 of the WADA International Standard for Testing (hereinafter referred to as the “IST”), and invokes a CAS precedent (award of 6 May 2010, CAS 2009/A/1903) to submit that “the use of plastic bottles could not have led to the production of the prohibited substance concerned”.

52. The Appellant requests that the anti-doping rule violation committed by the Player be sanctioned with a two year ineligibility period in accordance with Article 45 ADR, as the conditions for its reduction under Article 47 para. 2 and 3 are not met: the Player did not bring any evidence on how the prohibited substance entered his body; no argument has been advanced with respect to any lack of fault or negligence or of significant fault or negligence.
53. Finally, FIFA observes that there were no substantial delays in the hearing process that were not attributable to the Respondents. Therefore, the period of ineligibility should start with the communication of the CAS award, as Article 53 para. 2 ADR cannot apply. However, FIFA of course accepts that any suspension already served by the Player until the award of the present arbitration enters into force shall be credited to the Player’s period of ineligibility.

b. The Position of the Respondents

i. The Position of the First Respondent

54. In its correspondence with the CAS Court Office, the CBF indicated that it would not participate in the present arbitration. CBF, however, requested that, should the appeal be granted,
“the costs of the present arbitration shall be borne solely by the Respondent player”.
55. More specifically, the CBF addressed, in a letter dated 5 April 2012, the Appellant’s request that the costs of the procedure be borne by CBF as follows:

“... we deem appropriate to highlight that the STJD is the administrative body where the procedure was in course. In other words, STJD was always in the possession of the entire case file, however, it preferred not to send a copy of the file to CAS by alleging that the complete case file was publicly available at the STJD office.

Furthermore, not content with such baseless argument, STJD tried to refrain from its competence – the Tribunal where the procedure was filed – by informing CAS that it has sent copies of the complete case file to CBF.

In either case, in order to comply with its international federation directions, on 02 October 2011 CBF sent to FIFA the relevant parts of the proceeding. Also, CAS did not establish any deadline for CBF and STJD providing a copy the case file. On the contrary, CAS correctly mentioned that they could send it at their earliest convenience, as the entire file would have to be translated into English, which would be time consuming.

Thus, as it is demonstrated, CBF is not responsible for a possible delay in the present proceeding, either because CBF sent to FIFA the relevant copies of the file or because CAS did not establish a deadline for said request.

Nonetheless, the present appeal proceedings fall under Article R65 of the CAS Code once this is a case of an international nature, which means that this disciplinary proceeding shall be free of costs. Yet, in case that the Panel applies Article R65.3 of the CAS Code, it shall bear in mind that CBF has complied with all the CAS directions in this case, even before the filing of the appeal. Needless to mention that CBF has cooperated with FIFA in all doping cases, especially by implementing their statutes and enforcing CAS decisions.

In addition, FIFA has not incurred and/or will not incur no substantial legal costs and other expenses, as the present proceeding was brought by FIFA in execution as a monitoring and regulatory institution of its regulations. Such aspects shall be considered by the Panel in relation to the legal costs”.

ii. The Position of the Second Respondent

56. In its correspondence with the CAS Court Office, the STJD acknowledged the importance of the CAS in the resolution of sports-related disputes, particularly those involving doping. At the same time, it expressly recognised that the CAS has jurisdiction *ratione materiae* over this case and may review the decisions rendered by the STJD.
57. However, the STJD asserts that the CAS has no jurisdiction *ratione personae* over it and that, accordingly, it should not have been summoned as a party to these arbitration proceedings. In that respect, the STJD refers to a CAS precedent (award of 11 September 2008, CAS 2007/A/1370&1376, hereinafter the “Dodô Award”), and requests to be excluded from proceedings because
- i. the STJD has no legal interest in the dispute;
 - ii. it has no jurisdiction to enforce any penalty that the CAS may impose;
 - iii. the Decision was based on the principles and rules of Brazilian and international sports law; and
 - iv. there are no claims against the STJD in FIFA’s appeal brief.

iii. The Position of the Third Respondent

58. In his answer, the Player requested the CAS to “dismiss the present appeal filed by FIFA”.
59. The Player, indeed, in his answer, expressly “recognizes the CAS jurisdiction over the present case” and agrees with the FIFA’s indication of the applicable law. The Player, however, requests that the appeal be dismissed, because it is not admissible and because “the existence of extremely relevant issues leads to the conclusion of the inexistence of the doping offence attributed” to him.
60. The Player, in fact, preliminarily, challenges the admissibility of the appeal. In that respect, the Player refers to the fact that FIFA filed its statement of appeal based only on the receipt of parts of the file of the proceedings before the STJD, while, under the applicable rules, the appeal should have been filed within a deadline to be counted from the receipt by FIFA of the full case file, which CBF failed to timely transmit: “FIFA should not have filed an appeal based on parts of the

documents sent by CBF. It is unacceptable that the presentation of an appeal brief is corroborated by incomplete files. ... The Player considers his rights to be disrespected, as the filing of the appeal occurred without the observance of the norms that himself is compelled to respect”.

61. In the merits, the Player emphasizes that he never used a prohibited substance and requests that FIFA’s claims be rejected, because *“the Kit used by CBF does not match international standards”*. As shown at the hearing, before the STJD and CAS, a *“needle can be inserted through the plastic container without tampering the bottles”*. Therefore, *“the present case has not established a doping offense beyond reasonable doubt”*. In addition, the Player contends that the use of plastic bottles is inconsistent with FIFA regulations, since the provision set in the 2006 version of the ADR (making the use of glass bottles compulsory) has non been revoked by the subsequent version of the ADR.
62. In conclusion, the Player *“does not contest the presence of the substance in his samples”*, but emphasizes that *“the only possible and real explanation for its presence is the miscarriage of doping procedures and/or sabotage”*: the presence of the prohibited substance *“must be considered an unintentional anti-doping rule violation because of the inobservance of sports rules by CBF, and also the absence of intention to enhance sport performance”*.

3. LEGAL ANALYSIS

3.1 Jurisdiction

63. CAS has jurisdiction to decide the present dispute between the parties.
64. The jurisdiction of CAS is not disputed by CBF and the Player. However, the Second Respondent disputes that CAS has jurisdiction *ratione personae* over it.
65. The CAS jurisdiction is contemplated by Articles 62 to 64 of the Statutes and Article 62 ADR as follows:

Article 62 of the Statutes

1. *FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players’ agents.*
2. *The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*

Article 63 of the Statutes

1. *Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*

3. *CAS, however, does not deal with appeals arising from:*
 - (a) *violations of the Laws of the Game;*
 - (b) *suspensions of up to four matches or up to three months (with the exception of doping decisions);*
 - (c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.*
4. *The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect.*
5. *FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed by the Confederations, Members or Leagues under the terms of par. 1 and par. 2 above.*
6. *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.*
7. *Any internally final and binding doping-related decision passed by the Confederations, Members or Leagues shall be sent immediately to FIFA and WADA by the body passing that decision. The time allowed for FIFA or WADA to lodge an appeal begins upon receipt by FIFA or WADA, respectively, of the internally final and binding decision in an official FIFA language.*

Article 64 of the Statutes

1. *The Confederations, Members and Leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS. The same obligation shall apply to licensed match and players' agents.*
2. *Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations.*
3. *The Associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the Association or disputes affecting Leagues, members of Leagues, clubs, members of clubs, Players, Officials and other Association Officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation or to CAS.*

The Associations shall also ensure that this stipulation is implemented in the Association, if necessary by imposing a binding obligation on its members. The Associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law.

Article 62 of the ADR

1. *In cases arising from participation in a national competition or in cases involving national-level players, as defined by each association, who do not have a right to appeal under art. 63, the decision may be appealed to an independent and impartial body in accordance with rules established by the association concerned and in accordance with art. 64 par. 3 of the FIFA Statutes.*
2. *The rules for such appeal shall respect the following principles:*

- a) *a timely hearing, if requested;*
 - b) *a fair, impartial and independent hearing panel;*
 - c) *the right to be represented by counsel at the player's own expense;*
 - d) *a timely, written, reasoned decision.*
3. *The parties having the right to appeal to the national-level reviewing body shall be as provided in the NADO's rules but, at a minimum, shall include the following parties:*
- a) *the player or other person who is the subject of the decision being appealed;*
 - b) *the other party to the case in which the decision was rendered;*
 - c) *FIFA;*
 - d) *the NADO of the player's or person's country of residence;*
 - e) *WADA.*

Notwithstanding any other provision herein, the only person that may appeal a provisional suspension is the player or other person upon whom the provisional suspension is imposed.

4. *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.*
 5. *Any internally final and binding doping-related decision shall be sent immediately to FIFA and WADA by the body passing that decision. The filing deadline for FIFA and WADA to lodge an appeal to CAS shall be 21 days after receipt of both the internally final and binding decision and the complete case file in an official FIFA language.*
 6. *Any party filing an appeal shall be entitled to assistance from CAS to obtain all relevant information from the anti-doping organisation whose decision is being appealed and the information shall be provided if CAS so directs.*
 7. *FIFA and WADA's right to appeal under the terms of this article also applies in the event that the final and binding doping-related decision has been reached by any state body.*
66. As mentioned above, the question is whether this Panel has jurisdiction over the STJD *ratione personae*. It is in fact conceded by all parties to this arbitration that CAS has jurisdiction, on the basis of the mentioned provisions, over the Decision issued by the STJD.
67. In that respect, this Panel concurs with the findings of the CAS Panel that rendered the Dodô Award, and notes that the STJD is a justice body which is an integral part of the organisational structure of the CBF, with no legal personality of its own: its independence and autonomy in adjudicating the disputes brought before it does not entail that the STJD is a body which could legally stand alone if the CBF did not exist. Accordingly, this Panel is of the view that the Decision, although independently adopted by the STJD, must be considered to be a decision of the CBF.
68. In conclusion, the Panel finds that the STJD has no autonomous legal personality and may not be considered as a Respondent on its own in a CAS appeal arbitration concerning one of its rulings; consequently, the procedural position of the STJD before the CAS must be encompassed within that of the CBF. Therefore, the Panel holds that the CAS has jurisdiction

ratione materiae over the Decision, but does not have jurisdiction *ratione personae* against the STJD. In other words, while the CBF has been properly made a Respondent in this case by the Appellant, the STJD cannot be treated as an autonomous party to this arbitration.

3.2 Appeal Proceedings

69. As these proceedings involve an appeal against a decision rendered by a national federation (CBF) regarding a national level athlete in a disciplinary matter brought on the basis of rules providing for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings, in the meaning and for the purposes of Article 64 of the Code.

3.3 Admissibility of the Appeal

70. The statement of appeal was filed within the deadline set in Article 62 para. 5 ADR. No further internal recourse against the Decision is available to the Appellant within the structure of CBF.
71. The Third Respondent, however, disputes the admissibility of the appeal and submits that it should be rejected on this preliminary ground, since FIFA filed its appeal on the basis of incomplete documentation and because CBF and FIFA had failed to comply with the rules by which they are bound.
72. The Panel does not agree with the Player and notes that the appeal was filed in accordance with the rules applicable to it. The fact that the statement of appeal was lodged before the entire case file had been received by the Appellant does not imply its inadmissibility. It is to be noted in that respect that, even though FIFA could have waited until receipt of the full file, nothing in the system prevents the lodging of an appeal immediately upon receipt of the challenged Decision and parts of the case file, or sanctions such “early” appeal with the inadmissibility thereof. In addition, FIFA complied with the provisions set by Article R48 of the Code, by indicating in, and attaching to the statement of appeal, *inter alia*, the challenged Decision.
73. At the same time, the Panel notes that the rights of the Third Respondent have not been impaired by such an “early” filing of the appeal. The Player, in fact, has been given the possibility to state his case after the filing by FIFA of its appeal brief, lodged upon receipt and consideration of the entire disciplinary file. In the same way, the alleged violation of FIFA and CBF rules, committed by CBF in delaying the transmission of the disciplinary file and allegedly failing to comply with FIFA regulations on doping control, are not relevant in the context of an evaluation on the admissibility of the appeal.
74. Accordingly, the appeal is admissible.

3.4 Scope of the Panel's Review

75. According to Article R57 of the Code,

“the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance...”

3.5 Applicable Law

76. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

77. Pursuant to Article R58 of the Code, the Panel is required to 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”.

78. As a result of the foregoing, the Panel considers the FIFA rules and regulations, and chiefly the ADR, to be the applicable regulations chosen by the parties for the purposes of Article R58 of the Code, and that Brazilian law applies subsidiarily.

79. The provisions set in the ADR which are relevant in this arbitration include the following:

Article 5

Presence of a prohibited substance

- 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 violation under this article.*
- 2. Sufficient proof of an anti-doping rule violation under this article is established by either of the following: the 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.*
- 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 this article, the Prohibited List or international standards may establish special criteria for the evaluation of prohibited substances that can also be produced endogenously.*

Article 13

Burdens and standards of proof

1. *FIFA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FIFA has established an anti-doping rule violation to the comfortable satisfaction of the Disciplinary Committee bearing in mind the seriousness of the allegation that is made. In all cases, this standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*
2. *Where the FIFA Anti-Doping Regulations place the burden of proof upon the player or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided under art. 47 par. 1 and art. 51, under the terms of which the player must satisfy a higher burden of proof.*

Article 14

Methods of establishing facts and presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

1. *WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The player or other person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred that could reasonably have caused the adverse analytical finding.*
If the player or other person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred that could reasonably have caused the adverse analytical finding, FIFA shall have the burden of establishing that such departure did not cause the adverse analytical finding.
2. *Departures from any other international standard or other anti-doping rule or policy that did not cause an adverse analytical finding or other anti-doping rule violation shall not invalidate such results. If the player or other person establishes that a departure from another international standard or other anti-doping rule or policy that could reasonably have caused the adverse analytical finding or other anti-doping rule violation occurred, FIFA shall have the burden of establishing that such departure did not cause the adverse analytical finding or the factual basis for the anti-doping rule violation.*
3. *The facts established by a decision of a court or disciplinary tribunal of competent jurisdiction that is not the subject of a pending appeal shall be irrefutable evidence against the player or other person to whom the decision pertained, unless the player or other person establishes that the decision violated principles of natural justice.*

Article 45

Imposition of ineligibility for prohibited substances and prohibited methods

The period of ineligibility imposed for a violation of art. 5, 6 or 10 shall be two years unless the conditions for eliminating or reducing the period of ineligibility, as provided under art. 47 to 50, or the conditions for increasing the period of ineligibility, as provided under art. 51, are met.

Article 47

Elimination or reduction of the period of ineligibility based on specific or exceptional circumstances

2. *No fault or negligence (exceptional circumstances)*

If a player establishes in an individual case that he bears no fault or negligence, the otherwise applicable period of ineligibility shall be eliminated. When a prohibited substance or its markers or metabolites is detected in a player's sample in violation of art. 5, the player must also establish how this prohibited substance entered his system in order to have the period of ineligibility eliminated ...

3. *No significant fault or negligence (exceptional circumstances)*

If a player establishes in an individual case that he bears no significant fault or negligence, then the otherwise applicable period of ineligibility may be reduced, but the reduced period of ineligibility may not be less than one half of the period of ineligibility otherwise applicable. If the otherwise applicable period of ineligibility is a lifetime, the reduced period under this article may not be less than eight years.

When a prohibited substance or its markers or metabolites is detected in a player's sample in violation of art. 5, the player must also establish how the prohibited substance entered his system in order to have the period of ineligibility reduced.

Article 53

Commencement of the ineligibility period

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.*

2. *Where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the player, the FIFA Disciplinary Committee may start the period of ineligibility 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.*

Article 6 of Annex E [*"Testing Procedure"*] to the ADR

Conducting the sample collection session: collection of urine samples

3. *... the player is offered a choice of sample collection equipment that shall comply with the requirements stipulated in the International Standard for Testing.*

80. In addition to the above, Article 6.3.4 of the IST is relevant in this arbitration:

The ADO shall only use Sample Collection Equipment systems which, at a minimum, meet the following criteria. They shall:

- a) *Have a unique numbering system incorporated into all bottles, containers, tubes or other item used to seal the Sample;*
- b) *Have a sealing system that is tamper evident;*
- c) *Ensure the identity of the Athlete is not evident from the equipment itself; and*

d) *Ensure that all equipment is clean and sealed prior to use by the Athlete.*

3.6 The Dispute

81. In accordance with the relief requested by the parties, object of these proceedings is the determination, on the basis of the Adverse Analytical Finding, of the commission by the Third Respondent of the anti-doping rule violation contemplated by Article 5 ADR and, should this violation be found, of the consequences to be imposed on the Third Respondent under the ADR. The parties, in fact, disagree on both points. The Third Respondent, on one hand, denies any responsibility for the Adverse Analytical Finding; the Appellant, on the other hand, holds that an anti-doping rule violation has been committed and that the standard sanction of two years of ineligibility has to be applied.
82. As a result of the above, there are two main questions that the Panel has to examine:
- i. the first is whether the Player can be found to have committed an anti-doping rule violation;
 - ii. the second, to be addressed in the event the Player is found to have committed an anti-doping rule violation, concerns the sanction to be imposed on him, with respect to its duration and starting date.
83. The Panel shall consider each of said questions separately.
- i. Is the Player responsible of the anti-doping rule violation contemplated by Article 5 ADR?***
84. As mentioned, the Player, as a result of the Adverse Analytical Finding, was found responsible of an anti-doping rule violation: more exactly of the anti-doping rule violation contemplated by Article 5 ADR (*“Presence of a Prohibited Substance”*).
85. The Player does not challenge the analytical finding as such. He submits, however, that the presence of a prohibited substance in the analysed A sample cannot be linked to his use of any prohibited substance, which he strongly denies. The Player, in fact, emphasizes that *“the only possible and real explanation”* for the presence of the prohibited substance in the sample analysed by the Laboratory is *“the miscarriage of doping procedures and/or sabotage”*. In that respect, the Player refers to the fact that the containers used for the urine sample he had provided were plastic bottles. Such circumstance, in the Player’s opinion, constitutes a violation of the applicable provisions, and makes tampering with the bottles (or sabotage) possible, as shown at the hearing, where it was demonstrated that a needle can pierce the bottle. Therefore, no evidence *“beyond reasonable doubt”* is given that he is responsible for an anti-doping rule violation in accordance with Article 5 ADR.
86. The Panel does not agree with the Player’s contentions, and finds that, as a result of the Adverse

Analytical Finding, the commission by the Player of an anti-doping rule violation contemplated by Article 5 ADR is established.

87. The Panel is led to this conclusion by a number of reasons, relating to the Player's allegation that the use, by the CBF anti-doping officer who collected the urine sample, of plastic bottles constitutes a violation of the FIFA regulations.
88. Contrary to the Third Respondent's contention, in fact, the Panel notes that the rules in force in 2010, at the time the Player underwent the doping control, did not provide for the mandatory use of glass bottles. The relevant provisions are clear on the point: Article 6 of Annex E to the ADR provides for the use of collection equipment that complies with the requirements stipulated in the IST; Article 6.3.4 of the IST, then, does not set, within the minimum criteria that the sample collection equipment must meet, the fact that it is composed by glass containers. Such regulation is clearly exhaustive: it cannot be maintained that the rules previously in force within the FIFA system (that provided for the use of glass bottles), failing an express provision repealing them, had to be applied also in 2010. By Article 6 of Annex E to the ADR, in fact, FIFA clearly expressed the intention to implement in its system the uniform rules, established at WADA level, by the IST with respect to testing procedures and collection equipment: the assumption that different (FIFA specific) rules remain in force would be inconsistent with such approach and therefore cannot be accepted.
89. As a result, by using plastic bottles, the CBF anti-doping officer who collected the urine sample from the Player did not depart from the applicable FIFA regulations.
90. In the Panel's opinion, the Player failed to establish, even on a balance of probability, that the use of plastic bottles (assuming it to be a departure from the applicable provisions, *quod non*) could reasonably have caused the Adverse Analytical Finding. The Player only submits that the plastic nature of the bottle makes a sabotage theoretically possible, since the bottle could be pierced by a needle: the Adverse Analytical Finding would therefore be unreliable. No evidence is however offered (and indeed no submission is made) of an actual sabotage of the Player's sample, or that urine adulterated with the prohibited substance was injected in the bottle containing the Player's A sample. Indeed, contrary to the Player's allegations, stands the Laboratory report to the Disciplinary Committee (§ 12 above) which confirmed that "*the chain of custody for the samples with identification numbers 25191 and 20990 [the latter being the Player's sample] had not been broken, the security seals were intact, and the samples were stored in tamper-evident bottles*". In addition, as the Panel itself could verify during the hearing, the piercing of the bottles would result in the spilling of the contained liquid. Indeed, one hypothetical source of a contamination does not prove to the level required that it is factually probable that the prohibited substance came to be present in the Player's sample in the way alleged by the Third Respondent. Such theory appears to be only speculative guessing or an explanation uncorroborated in any manner and mere speculation regarding a fact is not proof that such fact did actually occur.
91. In conclusion, the Panel finds that there was no departure from the IST and no actual sabotage of the Player's sample was proven and thereby the Adverse Analytical Finding is confirmed. As

a result thereof, the Player is responsible of the anti-doping rule violation contemplated by Article 5 ADR.

ii. *What are the consequences to be applied for the anti-doping rule violation committed by the Player?*

92. Article 45 ADR provides, for a first anti-doping rule violation under Article 5 ADR, the sanction of two years' ineligibility. However, the period of ineligibility may be eliminated or reduced on the basis of Articles 47 para. 2 [*"No Fault or Negligence"*] or 47 para. 3 [*"No Significant Fault or Negligence"*] ADR.
93. The Panel notes indeed that the Player makes no submission with respect to Article 47 para. 2 or 3 ADR and the conditions for their application. In fact, under the rules therein contained, the Player had to establish how the prohibited substance entered his body and that he lacks any fault or negligence or any significant fault or negligence.
94. Since no indication and evidence of the relevant factors has been established by the Player, Article 47 para. 2 and Article 47 para. 3 ADR cannot be applied, and the standard sanction cannot be reduced.
95. As a result, the Panel finds that the sanction to be applied to the Player for his anti-doping rule violation is a period of ineligibility of two years. The Decision, which held otherwise without any explanation to justify the application of a milder sanction, is to be set aside.
96. The question that arises, then, relates to the starting moment of the ineligibility period imposed by this award on the Player.
97. Under Article 53 para. 1 ADR, in fact, *"the period of ineligibility shall start as soon as the decision providing for ineligibility is communicated to the player concerned"*. However, *"where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the player"*, the starting date of the ineligibility period may be set *"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"*.
98. The starting moment of the suspension should therefore, in principle, be the day this award is communicated to the parties. The Panel observes, however, that delays occurred in these arbitration proceedings, which were not attributable to the Player, but were caused by:
 - i. the length of the appeals proceedings before the STJD, which took about four months before the Decision was adopted. The Panel estimates the delay in such proceedings to correspond to two months;
 - ii. the time taken by the STJD to transmit the complete file of the case of the Player to the CBF, which received it five and a half months after the Decision had been rendered;
 - iii. the time taken by the CBF to forward the Decision to FIFA, that received it two weeks after the complete file of the case of the Player had been received by the CBF;

- iv. the delayed transmission by the CBF/STJD of the entire file of the disciplinary proceedings. As noted above (§§ 18, 25, 30 and 31), in fact, the CAS Court Office first requested the transmission of such file on 21 October 2011 and reiterated the request several times; the Panel ordered the production of the same file on 31 January 2012; the file was eventually transmitted on 9 February 2012, about three months late.
99. On the basis of such circumstances, the Panel comes to the conclusion that the proceedings were delayed by about eleven months.
100. On the basis of Article 53 para. 2 ADR, therefore, and by taking into due consideration the chronology of this case and the mentioned factual elements, but without making any strict arithmetical calculation, the Panel finds it proper to set the starting moment of the period of ineligibility imposed on the Player on 1 October 2011, thereby taking into account the eleven month delay not attributable to the Player.
101. Pursuant to Article 53 para. 1 ADR, and as confirmed by the Appellant in its submission, any period of provisional suspension is to be credited against the total period of ineligibility imposed. In any case, in the determination of the exact period of ineligibility that the Player has to serve of the two years hereby imposed, account is to be taken of the six months' period already served pursuant to the Decision. Even though the Decision is set aside, the fact remains that the Player was not eligible to play for six months after the finding of his commission of an anti-doping rule violation: it would be unfair and result *de facto* in a total suspension of two years and six months not to give him credit for that period. The fact that such prior period was not served as a provisional suspension is no impediment to that conclusion. The Panel, in fact, remarks that Article 53 para. 1 ADR, while providing for the obligation to give credit for periods of provisional suspension, does not exclude (but logically requires) credit for periods of suspension imposed and served on the basis of "final" disciplinary decisions subsequently set aside. As a result, credit is to be given to the Athlete for any period of suspension (whether provisional or based on the Decision) he had served prior to the starting date of the ineligibility imposed by this sanction.

3.7 Conclusion

102. In light of the foregoing, the Panel holds that the appeal brought by FIFA against the Decision is to be granted. The Decision is to be set aside; and the Player, having committed an anti-doping rule violation under Article 5 ADR, is sanctioned, in accordance with Article 45 ADR, with a period of ineligibility of two years, starting on 1 October 2011, with credit given for any period of suspension at that time already served.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The CAS has jurisdiction *ratione materiae* and *ratione personae* to entertain the appeal of the Fédération Internationale de Football Association (FIFA) in respect of the Confederação Brasileira de Futebol (CBF) and Mr Vinicius Sarturi Hess, while it has no jurisdiction *ratione personae* in respect of the Superior Tribunal de Justiça Desportiva do Futebol (STJD).
 2. The appeal filed by the Fédération Internationale de Football Association (FIFA) on 22 December 2011 against the decision taken by the Superior Tribunal de Justiça Desportiva do Futebol of the Confederação Brasileira de Futebol on 7 April 2011 is upheld.
 3. The decision taken by the Superior Tribunal de Justiça Desportiva do Futebol of the Confederação Brasileira de Futebol on 7 April 2011 is set aside.
 4. A suspension of 2 (two) years is imposed on Mr Vinicius Sarturi Hess commencing on 1 October 2011, with credit given for any period of suspension at that time already served.
- (...)
7. All other prayers for relief are dismissed.