



Arbitration CAS 2008/A/1495 Fédération Internationale de Football Association (FIFA) v. Federazione Italiana Giuoco Calcio (FIGC) & Edgar Alfredo Schurtz, award of 30 April 2009

Panel: Mr Manfred Peter Nan (The Netherlands), President; Mr Olivier Carrard (Switzerland); Mr Michele Bernasconi (Switzerland)

Football

Doping (furosemide)

Internally final and binding decision and right to lodge an appeal to the CAS

Criteria for establishing the lack of “significant fault or negligence”

Standard of proof for the facts alleged by the athlete

Relevant and non-relevant circumstances with regard to the degree of the athlete’s fault

Commencement of the ineligibility period

1. **If to all parties no further appeal is possible in the national disciplinary doping proceedings, there is an internally final and binding decision, against which FIFA, according to its regulations, has the right to lodge an appeal to the CAS within 21 day after notification. Where the conditions for appeal to CAS are fulfilled, independently on the applicability of Article R47 of the CAS Code, FIFA’s appeal is admissible and CAS has jurisdiction.**
2. **Along with the well-established CAS case law and in line with the WADA Code, a player, in order to establish that he bears no significant fault or negligence, must prove a) how the prohibited substance came to be present in his body and b) that his fault or negligence, when viewed in the totality of the circumstances was not significant in relationship to the anti-doping rule violation. In this respect, the burden of proving the above is a very high hurdle for an athlete to overcome. The mitigation of mandatory sanctions is possible only in cases where the circumstances are truly exceptional and not in the vast majority of cases.**
3. **With regard to the standard of proof required from the indicted player, the player must establish the facts that he alleges to have occurred by a “balance of probability”. According to CAS case-law, the balance of probability standard means that the indicted player bears the burden of persuading the judging body that the occurrence of the circumstances on which he relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence.**
4. **Where the player’s departure from the required duty of utmost caution was clearly significant, the player’s behaviour is considered to be significantly negligent even if the player’s explanations of how the prohibited substance came into his body are plausible. A player that uses the same medicine for years without searching for an alternative treatment or asking for a Therapeutic Use Exemption, is considered to knowingly and**

wilfully accepting the risk that this medicine could be a specified substance that would be present in his body at a doping-test. The circumstances, that the player immediately admitted the anti-doping rule violation, played (the highest level of) non-professional Futsal and was not aware of the need of a Therapeutic Use Exemption, are not relevant as with regard to the degree of his fault.

- 5. If acknowledged delays in the judging process are not attributable to the player, and the latter timely admitted the anti-doping rule violation, it is fair to make use of the possibility contemplated by the applicable regulations and, thus, to start the period of suspension at an earlier date than the day of notification of the CAS award.**

The Appellant, Federation Internationale de Football Association (FIFA) is the governing body for the sport of football at worldwide level, and has its headquarters in Zurich, Switzerland.

The first Respondent, Federazione Italiana Giuoco Calcio (FIGC) is the Italian football association, governing the sport of football in Italy. It is a member of FIFA.

The second Respondent, Mr Edgar Alfredo Schurtz (the “Player” or “Schurtz”), is a Brazilian non-professional five-a-side football player born on 11 February 1979. At the point in time relevant in these proceedings he was registered with FIGC, having played for the club Arzignano. Schurtz was playing the highest non-professional level of Italian Futsal.

On 8 May 2007, Schurtz was selected for an in-competition anti-doping control on the occasion of the Italian Futsal match between the clubs of Arzignano and Marca Trevigiana. The test was performed by the WADA-accredited Anti-Doping laboratory of Cologne. The urine sample provided by the Player revealed the presence of “Furosemide”, which is a prohibited substance appearing on the 2007 Prohibited List in Appendix A of the FIFA Regulations Doping Control under category S5, diuretics and other masking agents.

After the Player was notified that his “A” Sample of 8 May 2007 had tested positive, he waived his right for an analyses of the “B” Sample.

On 8 June 2007, the Italian Disciplinary Commission of the National Amateur League provisionally suspended the Player from all sporting activity with immediate effect.

In the national proceedings at the Anti Doping Attorney’s Office and at the Federal Court of Justice of FIGC (Corte di Giustizia Federale, “CGF”), the Player, assisted by his defending counsel, admitted the disciplinary charge levelled against him and, with reference to the substance found, declared (as already declared when the sample was taken), that the positive result was due to him taking the medicine “Lasix” on account of diuretic problems and headaches he suffered for years, in the belief that this medicine did not contain prohibited substances.

On 14 September 2007, CGF imposed a 1 year suspension to the Player, starting from 8 June 2007, stating that the conduct of the Player – who at the time of the control had given the same declarations as those later contained in the defensive brief – was “*non-significant negligent*”, because he did not ask for the counter analysis and because “*the nature of the prohibited substance itself leads to the conclusion that there was no persistent will to act unlawfully*”. CGF argued that for that reason mitigating circumstances as indicated in Article 10.5.2 of the WADA Anti-Doping rules were applicable.

On 13 February 2008 FIGC notified FIFA by fax, which was dated 11 February 2008, about the Decision of CGF dated 14 September 2007.

On 27 February 2008 FIFA filed with CAS its statement of appeal against the decision of CGF. The timeline of the appeal filed by FIFA is undisputed.

On 31 March 2008, FIFA filed its appeal brief together with the relevant exhibits.

On 28 April 2008 FIGC filed its answer.

The Player did not file his answer.

On 15 January 2009, CAS issued an Order of Procedure. All parties signed the Order of Procedure before the hearing.

The hearing took place in Lausanne on 28 January 2009.

At the beginning of the hearing FIGC changed its prayers for relief denying the jurisdiction of CAS. This new position of FIGC will be discussed below in more detail.

With regard to the jurisdiction issue, FIFA primarily raises objections to the handling by the Panel of the lack of jurisdiction that was newly invoked by FIGC during the hearing. The issue was not mentioned before in the written submissions and FIGC signed the Order of Procedure. FIFA therefore strongly objects to the inclusion of the jurisdiction issue. FIFA points out that, as FIGC is a member of FIFA, CAS has jurisdiction to adjudicate this case on the basis of Article 61 of the 2007 version of the FIFA Statutes (in particular §5 thereof) and Article 63 of the current version of the FIFA Statutes.

With regard to the merits of the case, FIFA emphasizes that the Player did not dispute the results of the doping test and his admission to have taken the medicine “Lasix” which contains “Furosemide”, a diuretic and masking agent, which is a prohibited substance according to Appendix A, under S5 of the Regulations Doping Control, so the violation of the Anti-Doping rule is established. FIFA points out that on the basis of Article 65, §1, of the FIFA Disciplinary Code, a mandatory sanction of a two-year suspension for the first offence has to be imposed upon any player who tests positive for a prohibited stimulant, such as “Furosemide”. Only if the Player on the basis of Article 65 §2 of the FIFA Disciplinary Code, establishes that he bears “*no significant fault or negligence*” the period of ineligibility may be reduced. FIFA states that the circumstances have to be truly exceptional to adopt a reduction and refers to CAS 2005/A/951. In this respect, arguments that “*there was no persistent will*

to act unlawfully” for reducing the penalty cannot lead to the reduction of the sanction in application of Article 65 FIFA Disciplinary Code or Article 10.5.2 WADAC and that the Player was significantly negligent because on the leaflet contained in the package and even on the package itself it was stated that the product contained “Furosemide” - Diuretics.

Therefore, FIFA requests the Panel to review the present case according to Article R57 of the Code, to issue a new decision annulling the decision passed on 14 September 2007 by the FIGC and to suspend the Player Edgar Alfredo Schurtz for two years.

As to the FIGC, at the beginning of the hearing it denied jurisdiction of CAS referring to Article 61 §1, 2 and 5 of the applicable 2007 version of the FIFA Statutes (currently Article 63 of the FIFA Statutes). FIGC argues that FIFA has to be aware of all internal channels and whenever an internal channel exists, FIFA must use that channel. FIGC points out that CGF is not an appeal body and that the decision of CGF dated 14 September 2007 is a first decision. Therefore the parties and FIFA had the opportunity to appeal to the competent appeal body GUI. Therefore, FIFA’s recourse to the CAS is premature and therefore not admissible in line with CAS 2007/A/1347.

On the merits of the case, FIGC states that the facts of the case are unchallenged and that Article 65 of the FIFA Disciplinary Code is applicable. FIGC points out that the reduction of the period of ineligibility to 1 year on the basis of Article 10.5.2 WADAC is applicable, inter alia because the player showed good faith by immediately declaring to the medical inspectors that he had assumed Lasix, because the Player was not a professional player, and that he did not request a therapeutic use exemption due to his non-professional status.

In this respect, FIGC, by changing its initial prayers for relief it requests the Panel to primarily declare its lack of jurisdiction and alternatively to reject the appeal of FIFA.

The Player did not file its answer brief and did not show up for the hearing. He agreed upon the Order of Procedure by having it signed by his counsel. He did not dispute the jurisdiction of CAS.

In the national proceedings the Player argues that the positive doping-test result was due to him taking the medicine “Lasix”, in the belief that this did not contain prohibited substances, on the account of diuretic problems and headaches he suffered for years. The Player bought “Lasix” in huge quantities every time he visited Brazil. There was no reference to doping on the package or leaflet in the package.

The Player did not submit prayers for relief.

LAW

CAS Jurisdiction

1. As seen above, the parties have taken the following positions on the preliminary issue of jurisdiction:
 - FIGC did not dispute the jurisdiction of CAS in its answer brief, but on the contrary signed the Order of Procedure accepting it. It was not until the hearing that FIGC changed its prayers for relief and disputed CAS's jurisdiction *ratione materiae*;
 - the Player did not file its answer brief, but had the Order of Procedure signed by his counsel. At the hearing the Player did fail to show up;
 - FIFA raised objections to the exception of non-jurisdiction raised by FIGC during the hearing and stated that the appeal is admissible according to Article 61 §5 FIFA Statutes (currently Article 63 §5).
2. The Panel points out that Article R56 of the CAS-Code is applicable. R56 provides:

“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorised to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer.
3. This means that no party may raise any new claim without the consent of the other party or the President of the Panel's express indication after the written submissions have been exchanged.
4. The Panel notes that both Respondents did not mention the jurisdiction issue in their answer brief and that they both reconfirmed the jurisdiction of CAS by accepting and signing the Order of Procedure. To raise a new issue at the hearing (about the lack of jurisdiction) the Respondents would have needed the consent of FIFA, but FIFA did not approve it. It would therefore be to the President of the Panel to decide whether there are such exceptional circumstances to justify the late objection of lack of jurisdiction raised by FIGC. However, for the reasons set out below, this issue and the applicability of Article R47 CAS-Code does not need to be answered.
5. First of all, the Panel observes that FIGC is a member of FIFA and, as such, is contractually bound to respect the Statutes of FIFA to which it has voluntarily adhered.
6. Article 61 of the 2007 version of the FIFA Statutes and Article 63 of the since 1 August 2008 enforceable FIFA Statutes, read as follows (as far as relevant):
 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. (...)*

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.(...).

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”.

7. As mentioned, the new FIFA Statutes came into force as from 1 August 2008, whereas Article 63 is identical to Article 61 of the 2007 version of the FIFA Statutes. The Panel shall apply the current version of the FIFA Statutes.
8. FIFA’s right to appeal to CAS against any internally final and binding doping-related decision passed by the Confederations, Members or Leagues under the terms of §1 and §2 of the mentioned article, derives from Article 63 §5 FIFA Statutes.
9. To exercise this right, the internally final and binding doping-related decision passed by the Confederations, Members or Leagues must have been sent to FIFA immediately by the body passing that decision (Article 63 §7 FIFA Statutes).
10. On the basis of Article 63 §1 FIFA Statutes, FIFA must lodge the appeal to CAS within 21 days of notification of the decision in question.
11. Article 63 §2 FIFA Statutes expressly stipulates, that recourse can only be made to CAS after all other internal channels have been exhausted. This stipulation corresponds to the right given to FIFA, as laid down in Article 63 §5 FIFA Statutes, to appeal to CAS against any internally final and binding decision.
12. The Panel points out that there is only one way to interpret these stipulations. Read in conjunction with each other, these stipulations state that the national decision must be final and binding on the parties thereto (see also CAS 2007/A/1347).
13. Regarding the present case, the abovementioned means:
14. In the Italian proceedings (under the rules of FIGC) two parties were involved, namely, the Attorney’s Office and the Player Schurtz.
15. According to the exchanged submissions and to what was brought forward at the CAS’ hearing, neither the Attorney’s office, nor the Player had lodged an appeal to the Italian appeal body (GUI) against the decision of CGF.
16. During the CAS proceedings FIGC indicated that it was satisfied with the decision of CGF. At the CAS’ hearing FIGC confirmed that, by the time the decision of CGF, dated 14 September 2007 was notified to FIFA (13 February 2008), the decision was final and binding to both the Attorney’s Office and the Player.

17. FIGC did not indicate under which FIFA-regulations FIFA might be entitled to participate in any national disciplinary doping proceedings. FIFA denied the existence of any such rule in its Statutes and/or Regulations. Nor in its official capacity, any such rule in the FIFA Statutes and or Regulations has become evident to the Panel.
18. The statement of FIGC that FIFA's appeal was premature because not all internal remedies had been exhausted, like in the case of CAS 2007/A/1347, cannot succeed. In that particular case, the athlete filed an appeal to CAS on the same day that he filed an admissible appeal against the decision with the national appeal body. Therefore the athlete's appeal to CAS was considered premature. In the present case, to both parties no further appeal was possible in the national disciplinary doping proceedings. That means that an internally final and binding decision was there, against which FIFA had indeed the right to lodge an appeal to CAS within 21 day after notification.
19. This leads to the conclusion that FIFA used the only legal remedy it had available under the applicable rules, which was to appeal to CAS against the internally final and binding decision. Because the conditions for appeal to CAS are fulfilled, the Panel considers that – independently on the applicability of Article R47 CAS-Code, FIFA's appeal is admissible and CAS has jurisdiction.

Applicable law

20. 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”.
21. Such provision was expressly mentioned in the Order of Procedure agreed to by the parties.
22. No issue of applicable law arose in the present case.
23. Pursuant to Article R57 of the CAS Code, the Panel has ‘*full power to review the facts and the law*’. As repeatedly stated in CAS case-law, this means that the CAS appellate arbitration procedure entails a *de novo* review that it is not confined to deciding whether the body that issued the appealed ruling was correct or not.
24. The Panel shall have to assess on the basis of Article 4 FIFA Disciplinary Code (2007 version and 2009 edition) which rules are applicable, since the FIFA Disciplinary Code (2009 edition), FIFA Anti-Doping Regulations 2009 and the WADA-Code 2009 came into force as from 1 January 2009. The FIFA Anti-Doping Regulations will replace the doping rules as described in the 2007 version of the FIFA Disciplinary Code and the FIFA Doping Control Regulations.

25. Article 4 FIFA Disciplinary Code reads as follows:

“This code applies to facts that have arisen after it had come into force. It also applies to previous facts if it is equally favourable or more favourable for the perpetrator of the facts and if the judicial bodies of FIFA are deciding on these facts after the code has come into force. By contrast, rule governing procedure apply immediately upon the coming into force of this code”.

26. The foregoing means, that the Panel will apply the most favourable rules for the Player.

Merits

A) Evidence of the anti-doping rule violation

27. It is undisputed that the analysis of urine sample “A” delivered by the Player on 8 May 2007, on the occasion of the Futsal-match between Arzignano and Marca Trevigiana, showed evidence of an adverse analytical finding of “Furosemide”, that is a diuretic or masking agent, and therefore listed as a prohibited substance in section S6 of the 2007 Prohibited List of Appendix A of the FIFA Regulations Doping Control and listed as a prohibited specified substance in section S5 of the 2009 Prohibited List of Appendix B of the FIFA Anti-Doping Regulations.

28. The Player waived his right for a counter analysis and admitted the anti-doping rule violation.

29. Article 1 of Chapter II of the 2007 version of FIFA Doping Control Regulations, referred to by the 2007 version of Article 63 of the FIFA Disciplinary Code, provides that the *“presence of a prohibited substance or its metabolites or markers in a player’s bodily sample”* constitutes an *“anti-doping rule violation”*. Article 1.1 of Chapter II further specifies that 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 bodily samples. Accordingly, it is not necessary that intent, fault, negligence or conscious use on the player’s part be demonstrated in order to establish an anti-doping violation under part II article 1”*.

30. The abovementioned view regarding the presence of a prohibited specified substance is reproduced in Article 5 of the FIFA Anti-Doping Regulations, referred to by Article 63 of the FIFA Disciplinary Code (2009 edition).

31. As a result, the Panel finds that the objective presence of “Furosemide” in the Player’s urine sample, regardless of the player’s subjective attitude (i.e. his possible intent, knowledge, fault or negligence), constitutes an anti-doping rule violation.

32. Having established that the Player committed an anti-doping rule violation, the Panel has to determine the applicable sanction.

B) *Sanction*

I. Sanction under application of the FIFA Disciplinary Code (2007 version)

(a) In general

33. The Panel decides first to look at the situation assuming the application of the FIFA Disciplinary Code (version 2007). Under Article 65 §1(a), of the FIFA Disciplinary Code (version 2007) the sanction in relation to the presence of a prohibited substance like “Furosemide” is a two-year suspension.
34. The Panel remarks that, under the FIFA Disciplinary Code (version 2007), the two-year sanction may be eliminated or reduced if a player discharges the burden of proving that *“he bears no fault or negligence”* (Article 65, §3 FIFA Disciplinary Code) or, at least, that *“he bears no significant fault or negligence”* (Article 65, § 2 FIFA Disciplinary Code).
35. In light of the admitted anti-doping rule violation by the Player, the sole issue is whether the Player bears no significant fault or negligence.
36. Article 106 §2, of the FIFA Disciplinary Code (version 2007) provides that in *“case of a doping offence, it is incumbent upon the suspect to produce the proof necessary to reduce or cancel a sanction. For sanctions to be reduced, the suspect must also prove how the prohibited substance entered his body”*.
37. Accordingly, relying on a long line of CAS cases (see e.g. CAS 2006/A/1067, § 6.8) and on the WADA Code principles related to the athletes’ fault or negligence, the Panel observes that the Player, in order to establish that he bears no significant fault or negligence, must prove:
 - (a) how the prohibited substance came to be present in his body and, thus, in his urine samples, and
 - (b) that his fault or negligence, when viewed in the totality of the circumstances was not significant in relationship to the anti-doping rule violation.
38. The proof of both (a) and (b) would reduce the Player’s sanction to a penalty ranging between one year and two years (Article 65, §2 of the FIFA Disciplinary Code: *“the sanction may be reduced, but only by up to half of the sanction”*).
39. The Panel observes that in the light of the CAS case-law, the burden of proving the above is a very high hurdle for an athlete to overcome (cf e.g. CAS 2005/A/830; TAS 2007/A/1252). Indeed, the WADA Code’s official comment to Article 10.5 (version 2003) unequivocally states that the mitigation of mandatory sanctions is possible *“only in cases where the circumstances are truly exceptional and not in the vast majority of cases”*.
40. With regard to the standard of proof required from the indicted player, the Panel observes that, in accordance with established CAS case-law and the WADA Code, the player must establish the facts that he alleges to have occurred by a *“balance of probability”*. According to CAS case-law, the balance of probability standard means that the indicted player bears the burden of

persuading the judging body that the occurrence of the circumstances on which he relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence (see CAS 2004/A/602, para. 5.15; TAS 2007/A/1411, para. 59).

(b) Evidence of how the prohibited substance entered the Player's body

41. In the national proceedings at CGF, the Player has argued that the prohibited stimulant came to be present in his system because he used a medicine called "Lasix", which medicine contains the prohibited substance "Furosemide". Although the Player has not brought substantial evidence in this respect, the Panel, taking in consideration all the special elements of the present case, could be willing to share the conclusion that the explanation offered by the Player is acceptable. In any event, for the reasons set out below, the Panel believes that the issue about how the substance entered into the body of the Player, can be left open.

(c) Player's caution and degree of fault or negligence

42. With regard to the duty of caution required, the Panel shares the following opinion expressed by other CAS Panels:
"No fault" means that the athlete has fully complied with the duty of care. [...] "No significant fault" means that the athlete has not fully complied with his or her duties of care. The sanctioning body has to determine the reasons which prevented the athlete in a particular situation from complying with his or her duty of care. For this purpose, the sanctioning body has to evaluate the specific and individual circumstances. However, only if the circumstances indicate that the departure of the athlete from the required conduct under the duty of utmost care was not significant, the sanctioning body may [...] depart from the standard sanction" (CAS 2005/C/976 & 986; CAS 2007/A/1370 & 1376).
43. This definition is also in line with the WADA Code's official comments (version 2003) to Article 10.5 WADAC (the last mentioned provision whose application was expressly invoked by FIGC).
44. In the light of such definition of the athlete's duty of care, even if the Player's explanation of how the prohibited substance had come into his body were plausible, it seems to the Panel that the Player's behaviour was significantly negligent under the circumstances. His departure from the required duty of utmost caution was clearly significant. Indeed, the Player did not exercise the slightest caution.
45. Because the Player was not present at the hearing, the Panel has to rely on the evidence produced and in particular on the written documents in the file. On the basis of this evidence and of these documents the Panel concludes that although the Player argues that he used the medicine for years because of diuretic problems and headaches, he did not explain, nor did he submit evidence that there was no alternative treatment. He never asked for a Therapeutic Use Exemption. Apparently he never made inquiries about the details of the medicine.

46. Under these circumstances, the Player knowingly and wilfully accepted the risk that this medicine could be a prohibited substance that would be present in his body at a doping-test.
47. Therefore, the Panel finds that the Player's degree of 'fault or negligence' viewed in the totality of the circumstances, is clearly "significant" in relation to the anti-doping rule violation. The circumstances, that he immediately admitted the anti-doping rule violation, played (the highest level of) non-professional Futsal and was not aware of the need of a Therapeutic Use Exemption, are not relevant as with regard to the degree of his fault.
48. Assuming that the FIFA Disciplinary Code (version 2007) is applicable, the Panel would decide to sanction the Player with a two-year suspension.

II. Sanction under application of the FIFA Disciplinary Code (2009 edition)

(a) In general

49. As mentioned before (see §61), the Panel has the obligation with regard to Article 4 of the FIFA Disciplinary Code to judge which application of the FIFA-rules and regulations are the most favourable to the Player.
50. The Panel notes that under Article 63 of the FIFA Disciplinary Code (2009 edition) in relation to Article 16 of the FIFA Anti-Doping Regulations "Furosemide" is no longer a prohibited substance, but a prohibited **specified** substance, listed in section S5 of the 2009 Prohibited List of Appendix B of the FIFA Anti-Doping Regulations.
52. Under Article 45 of the FIFA Anti-Doping Regulations 2009 the period of ineligibility imposed for the presence of a prohibited specified substance like "Furosemide" shall be two (2) years unless the conditions for eliminating or reducing the period of ineligibility, as provided in Article 47 §1 are met.
53. Article 47 §1 of the FIFA Anti-Doping Regulations reads as follows:
"Where a player can establish how a specified substance entered his body or came into his possession and that such specified substance was not intended to enhance the player's sport performance or mask the use of a performance-enhancing substance, the period of ineligibility found in Article 45 shall be replaced with the following: at a minimum, a reprimand and no period of ineligibility from future competitions, and at a maximum, two (2) years of ineligibility.
To justify any elimination or reduction, the player must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the FIFA Disciplinary Committee the absence of intent to enhance sport performance or mask the use of a performance-enhancing substance. The player's degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility".
54. Accordingly, the Panel observes that the Player, in order to establish an elimination or reduction of the sanction, must prove:

- (a) how the specified substance came to be present in his body and, thus, in his urine samples, and
 - (b) that such specified substance was not intended to enhance his sport performance or mask the use of a performance-enhancing substance.
55. The proof of both (a) and (b) would eliminate the Player's sanction to a reprimand (as a minimum) or reduce the Player's sanction to a penalty ranging between one day and two years (Article 47 §1 of the FIFA Anti-Doping Regulations 2009).
56. FIFA has incorporated principles for elimination or reduction of the period of ineligibility based on specific or exceptional circumstances. Article 47 §4 of the FIFA Anti-Doping Regulations provide (as far as relevant) that "*All decisions taken under the FIFA Anti-Doping Regulations regarding specific or exceptional circumstances must be harmonised so that the same legal conditions can be guaranteed for all players. Therefore, the following principles shall apply:*
 - a) *Specific or exceptional circumstances will exist only in cases where the circumstances are truly exceptional and not in the vast majority of cases.*
 - b) *The evidence considered must be specific and decisive to explain the player's departure from the expected standard of behaviour*".
57. As has been concluded by the Panel in §74 and §75 with regard the standard of proof required from the indicted player, the Panel observes that, in accordance with established CAS case-law and Article 13 §2 of the FIFA Anti-Doping Regulations, the player must establish the evidence of how the prohibited specified substance entered his body by a "*balance of probability*". According to CAS case-law, the balance of probability standard means that the indicted player bears the burden of persuading the judging body that the occurrence of the circumstances on which he relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence (see CAS 2004/A/602, para. 5.15; TAS 2007/A/1411, para. 59).
58. In accordance with Articles 13 §2 and 47 §1 of the FIFA Anti-Doping Regulations the player must satisfy a higher burden of proof (he must produce corroborating evidence) to justify any elimination or reduction, in addition to his word which establishes to the comfortable satisfaction of the Panel the absence of an intent to enhance sport performance or mask the use of a performance-enhancing substance.
59. In this respect the Panel observes that FIFA has adopted the provisions of Article 10.4 WADA-Code 2009 in Article 47 §1 of the FIFA Anti-Doping Regulations. The Preamble of the FIFA Anti-Doping Regulations provides that "*FIFA has accepted the World Anti-Doping Code 2009 and implemented the applicable provisions of this code in these regulations. Thus, in case of questions, the comments annotating various provisions of the World Anti-Doping Code 2009 and the International Standard of Testing 2009 may be used to construe the FIFA Anti-Doping Regulations where applicable*".
60. WADA's official comment on Article 10.4 WADAC 2009, provides "*This Article applies only in those cases where the hearing panel is comfortably satisfied by the objective circumstances of the case that the*

Athlete in taking or possessing a Prohibited Substance did not intend to enhance his or her sport performance. Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete, the Athlete's open use or disclosure of his or her use of the Specified Substance and a contemporaneous medical records file substantiating the non-sport-related prescription for the Specified Substance".

(b) Evidence of how the specified substance entered the Player's body

61. In the national proceedings at CGF, the Player argued that the prohibited stimulant came to be present in his system because he used a medicine called "Lasix", which medicine contains the prohibited substance "Furosemide". Like already said in above, the Panel, for the reasons set out below, the Panel believes that the issue about how the substance entered into the body of the Player, can be left open.

(c) Evidence of the absence of an intent to enhance sport performance or mask the use of a performance-enhancing substance.

62. Because the Player did not send any answer and was not present at the hearing, the Panel has to rely on the evidence produced and in particular on the written documents available. In those the Player argues that he used the medicine for years because of diuretic problems and headaches. However, the Player did not supply any information that might explain why especially this medicine was used and not some other medicine that was not on the Prohibited List. Besides, the Player failed to inform the Panel about the nature of "Lasix" or the timing of its ingestion. Neither did the Player provide the Panel with a contemporaneous medical records file substantiating the non sport-related prescription for the Specified Substance.

63. Under these circumstances the Panel is of the opinion that the Player failed to prove that he had no intent to enhance his sport performance or mask the use of a performance-enhancing substance.

64. The fact that he immediately admitted the anti-doping rule violation, played (the highest level of) non-professional Futsal and was not aware of the need of a Therapeutic Use Exemption, are not relevant in relation with the degree of the fault of the Player.

65. For the above mentioned reasons, the Panel decides that the Player is sanctioned with a period of ineligibility of two years, in accordance with Article 45 of the FIFA Anti-Doping Regulations 2009.

C) *Period of suspension*

66. As to the commencement of the ineligibility period, the Panel takes notice of the principle set forth by Article 53 of the FIFA Anti-Doping Regulations and Article 10.9 of the WADA-Code 2009. Article 53 of the Anti-Doping Regulations 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.

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.

3. Where the player promptly (which, in all events, for a player means before the player competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by FIFA, the period of ineligibility may start as early as the date of sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this article is applied, the player shall serve at least one half of the period of ineligibility going forward from the date the player accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed.

4. If a provisional suspension is imposed and respected by the player, then the player shall receive credit for such period of provisional suspension against any period of ineligibility which may ultimately be imposed.

5. If a player voluntarily accepts a provisional suspension in writing from FIFA and thereafter refrains from competing, the player shall receive credit for such period of voluntary provisional suspension against any period of ineligibility which may ultimately be imposed. A copy of the player’s voluntary acceptance of a provisional suspension shall be provided promptly to each party entitled to receive notice of a potential anti-doping rule violation under art. 67.

6. No credit against a period of ineligibility shall be given for any time period before the effective date of the provisional suspension or voluntary provisional suspension regardless of whether the player elected not to compete or was suspended by his club”.

67. Article 10.9 of the WADA-Code 2009 reads as follows:

“10.9 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed.

10.9.1. Delay Not Attributable to the Athlete or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the body imposing the sanction 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.

10.9.2 *Timely Admission*

Where the Athlete or other person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the Anti-Doping Organization, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision, imposing a sanction, or the date the sanction is otherwise imposed.

10.9.3 *If a Provisional Suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed”.*

68. The official WADA comment on the revised Article 10.9 provides:

“The Text of Article 10.9 has been revised to make clear that delays not attributable to the Athlete, timely admission by the Athlete and Provisional Suspension are the only justifications for starting the period of Ineligibility earlier than the date of the hearing decision. This amendment corrects inconsistent interpretation and application of the previous text”.

69. The Panel wishes to point out that these CAS proceedings lasted longer than usual, but this was determined by the difficulty to find suitable hearing dates accommodating the parties other than the Player. Due to this delay in the judging process, not attributable to the Player (he was not able to influence the lateness of the notification of the decision by FIGC to FIFA, he did not ask for a hearing, nor for the 2 postponements), and the timely admission of the anti-doping rule violation by the Player, the Panel deems fair to apply the mentioned principle set forth by Article 53 of the FIFA Anti-Doping Regulations (and Article 10.9 of the WADA Code 2009) and, thus, to start the period of suspension at an earlier date than the day of notification of this award.
70. Accordingly, the Panel holds that, taking into account the totality of the circumstances, the two-year period of suspension must start on 26 September 2008, that is the date of the first assigned hearing (see §17).
71. The ineligibility of the Player should last for two years. However, the Panel shall apply Article 53 of the FIFA Anti-Doping Regulations, which provides that *“Any period of Provisional Suspension...shall be credited against the total period of ineligibility imposed”*. That means that the period of provisional suspension already inflicted to the Player must be credited against the two-year suspension. During the proceedings it is not disputed that the period to be credited amounts 1 year. Therefore, the Panel orders that the duration of the suspension still to be observed is of one year, starting, as mentioned above, on 26 September 2008.

D) *Other prayers for relief*

72. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. CAS has jurisdiction to entertain the appeal of the FIFA.
2. The appeal of FIFA against the decision dated 14 September 2007 of the Corte di Giustizia Federale is upheld.
3. The decision dated 14 September 2007 of the Corte di Giustizia Federale is set aside.
4. Mr Edgar Alfredo Schurtz is suspended for a period of two years, to be reduced with the suspension period of one year already served, with the remaining period of one year starting from 26 September 2008.
5. (...).
6. (...).
7. All other prayers for relief are rejected.