Arbitration CAS 2000/A/262 R. / International Basketball Federation (FIBA), preliminary award of 28 July 2000*

Panel: Mr. Beat Hodler (Switzerland), President; Mr. Walter Seitz (Germany); Mr. Christoph Vedder (Germany)

Basketball
Doping (amphetamines)
CAS jurisdiction
Arbitration clause referring to CAS

1. **Swiss Law requires for an arbitration agreement to be valid, that it is made in writing. The written form has as a purpose firstly to warn the parties about the existence of an arbitration clause and secondly to serve as evidence. When reference is made to an external document, and particularly when this reference is of a global nature only (not specifically mentioning the arbitration clause) the question as to whether the requirements of form are met, must be decided upon the principle of trust.**

2. **A global reference is not sufficient, when the party proposing an arbitration clause in this way knew or should have known by experience, that the other party did not want to agree to such a clause or if such a clause was unusual under the given circumstances. A global reference on the other hand is valid and sufficient between two parties, who are experienced in the field or when an arbitration clause is customary in the particular sector of business, regardless of whether the other party has indeed read the document of reference and therefore knew, that it contained such a clause. The Swiss Federal Court has applied and confirmed this principle of trust also to sports related disputes.**

3. **A professional basketball player can be considered experienced in the field of professional sports. Arbitration clauses have become customary in most international sports federations and many By-Laws or procedural regulations of these organisations refer to CAS arbitration with the explicit exclusion of the right to appeal to ordinary courts. Arbitration is also a widely applied way of dispute settlement in the sport in the US. An arbitration clause such as the one contained in the FIBA Rules can therefore not be considered as unusual.**

The Appellant is a professional basketball player, who until November 1999 played in the National Basketball Association (NBA). On 24 November 1999, the NBA banned the Appellant from its league for two years because of a violation of the Anti-Drug Program agreed by the NBA and the

* NB: This award has been challenged before the Swiss Federal Tribunal; see judgment of 7 February 2001, R. c. FIBA, 4P.230/2000 (n.p. ATF).

National Basketball Players Association following a positive test for amphetamine. An appeal lodged against this ban in the USA is still pending.

On 10 December 1999, the Respondent suspended the Appellant from all FIBA competitions also for a period of two years as of 24 November 1999, referring to the doping test conducted by the NBA and applying section 6.6.2 and 6.6.3 of the FIBA Internal Regulations (IR), which latter refers to doping control tests conducted under the control of organizations outside FIBA and its affiliated Federations. The Appellant was informed about his right to appeal against this decision and a "Notice about appeals procedure", which again referred to the Internal Regulation governing Appeals, was added to the facsimile letter.

The suspension was subsequently communicated to the national federations of FIBA and the FIBA Zone Commissions by circular letter dated 14 December 1999.

On 21 December 1999, R. appealed against the decision of FIBA based on article 12.2.2 of the Internal Regulations governing appeals, combined with a motion for a stay based on article 12.7.5 IR.

The filing of the appeal was preceded by an exchange of correspondence between Appellant's legal representative in the US and FIBA. On 14 and 15 December 1999, the former inquired about the time limit for filing the appeal and requested – *inter alia* – a complete copy of the FIBA rules, particularly those regarding appeals. FIBA's legal advisor replied on 16 December 1999, sending at the same time a copy of the FIBA Internal Regulations governing Appeals.

After receipt of the appeal and the motion for a stay (both undated, but with fax transmission date of "Dec-21-1999") Respondent's legal representative wrote to Appellant's legal representative in Germany on 23 December 1999, stating – *inter alia* – that *"[R.] will be issued a foreign player license, … if and when a Court/Court of Arbitration makes a final determination that FIBA's doping sanction of December 10, 1999 is lifted"*.

Upon receipt of the appeal, the Chairman of the Appeals Commission (AC) of FIBA decided that the case should be ruled upon by the Chairman of the Permanent Panel alone, because the matter required an immediate decision (IR Art. 12.2.1).

The Chairman of the Permanent Panel issued an "Order of Procedure" on 27 December 1999 and summoned the parties for a hearing to be held on 11 January 2000. The order was evidently based on the Internal Regulations governing Appeals but did not explicitly mention Art. 12.9 regarding the sole possibility of appealing against the Panels decision to the CAS.

Appellant's legal representative in Germany acknowledged receipt of this order and returned it duly signed as *"read and agreed, subject to the reservations in my letter of 29 December 1999"*. The reservations referred to the representation of the Appellant, the doping test conducted by NBA and the time limit for filing the reasons for the appeal. With reference to the "applicable law" (point 9 of the Order of Procedure) the Appellant's representative commended as follows: *"It is our understanding that the applicable regulations and the substantive law will have to be found by the Panel after consultation of the parties"*.

The hearing took place on 11 January 2000, from 2.10 till 5.15 p.m. and was minuted by the assistant of the Chairman of the Panel. According to the minutes neither party rose questions with reference to the procedural regulations.

In his "Arbitral Award" of 4 February 2000, the Chairman of the Panel of FIBA's Appeals Commission dismissed the appeal and gave the Appellant notice of his right to further appeal to the CAS within 30 days following receipt of the reasons of the award.

On 18 February 2000, Appellant submitted a "Petition for an Order for an Interim Injunction" (Gesuch um Erlass einer einstwilligen Verfügung) to the Landgericht München I requesting this Court to order Respondent to revoke the suspension from all FIBA competitions declared in the letter of 10 December 1999, to inform the federations of FIBA and the FIBA Zone Commissions accordingly, to issue the FIBA identity card to the Appellant and to refrain from excluding the Appellant from exercising his registration and participation rights with respect to the Europa Cup competitions and the national championship competitions within the European zone.

In its ruling of 29 February 2000, the 7th Civil Chamber of the Landgericht München I admitted these petitions in full and ordered Respondent accordingly. The Chamber acknowledged its competence to decide on interlocutory measures based on § 1033 of the German Code of Civil Procedure (ZPO, Zivilprozessordnung), notwithstanding an eventual arbitration agreement between the parties. The question of whether Respondent was subjected as a non-member to the regulations regarding the appeals procedure or whether the parties had entered into an arbitration agreement was left open by the chamber.

Respondent complied with this ruling and informed the national federations of FIBA and the FIBA Zone Commissions in a circular letter dated 9 March 2000, that the suspension of the Appellant was not applicable.

According to the Panel's knowledge an appeal of FIBA against the ruling of the Landesgericht München I is still pending before the Oberlandesgericht in Munich.

On 3 March 2000, the Appellant lodged a "Further Appeal" with the Court of Arbitration for Sport (CAS) against the arbitral award of the Appeals Commission of FIBA dated 4 February 2000, submitting the following petitions:

I. The preliminary declaration that the Tribunal du Sport does not have jurisdiction to make a substantive (law) decision in this matter;

II. In the alternative, to reverse the arbitral award of February 4, 2000 and

1. to order the Respondent to cancel the 2 year suspension of the Appellant from all FIBA competitions which it declared in a letter dated December 10, 1999, again in the alternative, to declare that the 2 year suspension of the Appellant from all FIBA competitions declared in the letter dated December 10, 1999, is invalid;

2. to order the Respondent to inform the federations of the FIBA and FIBA zone commissions, which were notified in the circular letter dated December 14, 1999, by way of a similar

circular letter that the suspension of the Appellant from all national competitions is, finally and conclusively, not to be complied with;

3. *to order the Respondent to issue the FIBA Identity Card to the Appellant;*

4. *to order the Respondent, in order to avoid the penalty of a disciplinary fine in the amount of DM 500,000.00, to refrain from excluding the Petitioner from exercising his registration and participation rights with respect to all international and national basketball competitions falling within the charter and Internal Regulations of FIBA, to the extent to which this is based on the suspension decision of the NBA dated November 24, 1999;*

5. *to declare that the Respondent is obliged to compensate the Appellant for all loss which he has suffered and which he will suffer in the future on account of his worldwide suspension declared in the letter of the Respondent dated December 10, 1999.*

In his statement of appeal the Appellant contested the existence of a legally effective arbitration agreement and declared the appeal to the CAS as *"taking place for precautionary reasons"*, at the same time requesting the CAS to first decide on the issue of its jurisdiction. He further proposed to await the written reasons for the judgment of the Landgericht München I of 29 February 2000, prior to deciding on the jurisdiction.

On 31 March 2000, the President of the Appeals Arbitration Division of CAS decided to suspend the time limit set to the Respondent to file an answer to the appeal until the judgement of the Landgericht München I would be available.

Upon receipt of the said judgment on 14 April 2000, the Chairman of the Panel decided to limit the proceedings for the time being to the question of CAS jurisdiction only. An order of procedure containing such a limitation was issued on 12 May 2000 and was accepted by both parties.

Reference will be made to the arguments of the Appellant against and of the Respondent in favour of CAS jurisdiction in the following reasoning in so far as they are relevant for the Panel's decision.

LAW

1. The statement of Appeal against the decision of the FIBA Appeal's Commission of 4 February 2000, was submitted to the CAS on 3 March 2000, thus respecting the time-limit of 30 days set out in Article 12.9 of FIBA's Internal Regulations governing Appeals. The statement fulfils all of the requirements set out in Article R48 of the Procedural Rules of CAS and the Court office fee of CHF 500.-- has been acquitted to the CAS.

   The appeal is therefore admissible.

2. The jurisdiction of CAS to receive and decide on an appeal is governed by the provisions and conditions set out in art. R47 of the Procedural Rules which reads as follows:

"A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body".

3. There is no doubt that the Statutes and Regulations of FIBA clearly stipulate the settlement of any dispute arising from the enforcement of the By-Laws and other internal regulations solely and exclusively by way of Arbitration before the CAS. Article 64 para. 1 of FIBA's General By-Laws reads as follows.

"Any dispute arising from these General Bye-Laws or the Internal Regulations of FIBA which cannot be settled within FIBA shall be definitively settled by a tribunal constituted in accordance with the Statute and Regulation of the Court of Arbitration for Sport, Lausanne, Switzerland. The parties concerned shall undertake to comply with the Statute and Regulation of this Court of Arbitration for Sport and to accept and enforce its decision in good faith".

Furthermore Chapter 12 of the Internal Regulations provides for a two-step procedure for appeals. As a first instance *"[t]he World Appeal's Commission (AC) shall hear appeals filed by an affected party against decisions of FIBA including its divisions and disciplinary bodies, unless such appeal is the competence of an Appeals Commission or a FIBA Zone or expressly excluded in the FIBA By-Laws or Internal Regulations"* (article 12.1.1).

Article 12.9 grants the right for a "further appeal" against the decision of the AC to the CAS as "an arbitral tribunal", but explicitly excludes the right to appeal to an other jurisdictional body. The provision reads as follows:

"A further appeal against the decision by the AC can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within 30 days following the receipt of the reasons for the award. The Court of Arbitration for Sport shall act as an arbitral tribunal and there shall be no right to appeal to any other jurisdictional body".

4. Although Article 12.1.1 refers to any "affected party" the particularity of the case on hand lies in the fact that the Appellant as a professional basketball player in the NBA was and is not a member of any Federation affiliated to FIBA nor has he entered into a contractual relationship with FIBA, for instance by accepting the regulatory framework of FIBA when signing up for a players licences. On the contrary the decision of FIBA of 10 December 1999, and subsequently the ruling of the Appeals Commission of 4 February 2000, prevented or excluded him from becoming a member of the "FIBA family".

The Panel therefore concludes, that in this particular case there was no arbitration agreement by reference to the Statutes and Regulations of FIBA prior to the decision of 10 December 1999, as it could usually be admitted when the appeal is lodged by an athlete who is a member or licensed player of a Club and by that of a national federation, which in return belongs to the International Federation, in this case the FIBA.

5. It remains to be examined if a specific arbitration agreement has been concluded between the parties after the decision of FIBA dated 10 December 1999.

The Court of Arbitration for Sport having its seat in Lausanne, Switzerland, and both parties having their domicile (Appellant), respectively their seat (Respondent) outside of Switzerland, Chapter 12 on "International Arbitration" of the Swiss Act on Private International Law of 18 December 1987 (Bundesgesetz über das Internationale Privatrecht, hereafter "IPRG") applies (article 176.1 IPRG).

The requirements of a valid arbitration agreement are set forth in Article 178.1 IPRG:

"As to form, the arbitration agreement shall be valid if it is made in writing, by telegram, telex, telecopier, or any other means of communication that establishes the terms of the agreement by a text".

[English translation from CAS Guide to Arbitration, Annex III]

The Arbitral tribunal shall rule on its own jurisdiction (article 186.1 IPRG) and if so doing shall give a preliminary award ("Vorentscheid", article 186.3 IPRG).

6. The parties have exposed their arguments for and against the jurisdiction of the CAS in their briefs, both acknowledging the applicability of chapter 12 of the Swiss IPRG.

The Appellant has set forth that:

- he is neither directly nor indirectly a member of a national federation of the FIBA, who must comply with the Statutes and Internal Regulations;
- there is an absence of a legally effective arbitration agreement between the parties (no written agreement, also in the form of a telegram, telex or telefax and no document signed by both parties);
- his decision to first make an internal appeal pursuant to chapter 12 of FIBA's IR did not alone amount to a recognition by him of the jurisdiction of the CAS;
- the internal appeal was only lodged as a matter of precaution in observance of German jurisprudence on the law of associations;
- the arbitration clause is not directly found in the General By-Laws of FIBA (section 12.9 of the Internal Regulations);
- the order of procedure of 27 December 1999, referred solely to the FIBA internal appeal proceedings and not to a further appeal to the CAS; such being inconceivable at that time;
- the questions raised by Appellant's legal representative in the US contained no recognition or confirmation in the sense of an arbitration agreement;
- it is irrelevant whether and at which point Appellant knew that Respondent stipulated in its internal regulations the exclusive jurisdiction of the CAS, since *"knowledge does not amount to consent"*;
- there is also no arbitration agreement "by reference";

- he did not recognize article 12.9 of the FIBA Internal Regulations (IR) in the sense of a contractual offer to enter into an arbitration agreement.

The Respondent on the other hand brought forward – amongst others – the following arguments:

- the notification of Appellant's suspension by fax of 10 December 1999, contained a "Notice about Appeals Procedure" (in Appellant's language), with reference to the Internal Regulations governing Appeals;
- on 14 and 15 December 1999, Appellant's US attorney requested Respondent to send a copy of the Internal Regulations governing appeals; a complete copy was sent by fax on 16 December 1999;
- in his statement of Appeal to the Appeals Commission of 22 December 1999, Appellant's US attorney submitted the appeal on behalf of R. *"pursuant to FIBA's regulation governing Appeals"* and thus accepted Chapter 12 of the IR in its integrity;
- Appellant's legal representative in Germany accepted and signed the order of procedure of 27 December 1999, making some reservations but none with reference to the Internal Regulations governing appeals;
- at the hearing before the AC of 11 January 2000, Appellant was represented by three attorneys, all of whom knew or ought to have known, that FIBA's appeals procedure contained in article 12.9 the arbitration provision; the minutes were signed without any reservation regarding the appeal procedure;
- Respondent never forced Appellant to instigate the appeal procedure; Appellant could have chosen to go to ordinary courts;
- Appellant never mentioned that he only accepted selected parts of FIBA's Internal Regulations governing Appeals;
- a further appeal was not "inconceivable", as no party can expect for certain that a court or panel will decide in its favour;
- Appellant had a choice to accept or refuse the appeals procedure; by accepting them he must be considered to accept them in full and he should not be permitted to change his mind subsequently.

7. From the point of view of the Appellant the appeals regulations as set out in Chapter 12 of the FIBA Internal Regulations form in themselves a unity, providing to members (or even any "affected party") a two instance procedure with the "World Appeals' Commission" as first and the CAS as second and final instance. For any Appellant belonging to the "FIBA family" in one way or another, there is no doubt, that the final dispute settlement is subjected to arbitration before the CAS, as stated not only in the Internal Regulations but also in article 64 of the General By-Laws.

   This approach however can not be directly applied to the Appellant in this particular case, as he evidently is not a member of the "FIBA family". Rightly Appellant points out, that a

distinction must be made between the (internal) appeal to the AC and a subsequent appeal for arbitration before the CAS.

Although the Chairman of the Panel of the AC issued an "Arbitral Award" on 4 February 2000, and although a panel of the AC "*can act as an arbitration panel for disputes that have arisen within the world of basketball*" (article 12.1.2 IR), it must be recognized, that the Appeals' Commission and its Panels do not fulfil the very stringent requirements of neutrality so as to be considered as an arbitration court. The President, the Vice-President and the "AC judges" are all appointed by the Central Board of FIBA (articles 12.1.3 and 12.3.1 IR). Hence they are part of the internal structure of FIBA and must be considered as statuary organs of the International Federation.

From the point of view of the Appellant and on receipt of the "Notice about Appeals Procedure" together with the decision of 10 December 1999, it was indispensable to submit an appeal to the AC. Failing to do so, Appellant might have risked that any action before a public court would be dismissed. German (and Swiss) law permit actions against decisions of an association (or federation) only under the condition, that such a decision is final within the organisation and that all and every internal possibility of appeals has been exhausted (see also art. R47 of the Procedural Rules of CAS). It is therefore understandable, that Appellant first lodged an appeal with the AC, notwithstanding the fact, that as a non-member he was not under a statutory obligation to do so.

8. The order of Procedure issued by the Chairman of the AC panel on 27 December 1999 and agreed by Appellant's legal representative did not mention the sole and exclusive further appeal to the CAS. Reference was made in general to the Internal Regulations governing Appeals. It would have been wise and appropriate to expressively mention the arbitration clause of article 12.9 IR and article 64 of the General By-Laws, when accepting an appeal by a non-member as "affected party" in the sense of articles 12.1.1 IR.

9. This omission however does not exclude in itself the existence of an arbitration agreement between the parties. Article 178.1 IPRG requires for an arbitration agreement to be valid, that "*it is made in writing, by telegram, telex, telecopier or any other means of communication that establishes the terms of the agreement by text*".

It is generally agreed that in international arbitration an arbitration agreement need not be signed by the parties and an exchange of documents between the parties is not requested (HONSELL/VOGT/SCHNYDER, *IPRG-Kommentar*, Basel/Frankfurt a.M. 1996, Art. 178 notes 12 and 13; LALIVE/POUDRET/REYMOND, Art. 178, note 10; RÜEDE/HADENFELDT, *Schweizerisches Schiedsgerichtsrecht*, 2nd ed., Zürich 1993, p. 66-67; Stephan NETZLE, *Arbitration agreement by Reference to Regulations of Sports organisations*, p. 50).

It is furthermore customary, that the arbitration clause is not *verbatim* included in a contract or agreement, but much rather in an other document, to which reference is made (HONSELL/VOGT/SCHNYDER, *IPRG-Kommentar*, Basel/Frankfurt a.M. 1996, Art. 178 note 52).

The written form required by article 178.1 IPRG has as a purpose firstly to warn the parties about the existence of an arbitration clause and secondly to serve as evidence. When reference is made to an external document, and particularly when this reference is of a global nature only (not specifically mentioning the arbitration clause) the question as to whether the requirements of the form of article 178.1 IPRG are met, must be decided upon the principle of trust ("Vertrauensprinzip"), which has been developed by jurisprudence and the precedents of the Swiss Federal Court (BGE 121 III 38, with references; HONSELL/VOGT/SCHNYDER, *IPRG-Kommentar*, Basel/Frankfurt a.M. 1996, Art. 178 note 54). The particularities of each case must be examined and a distinction must be made, if the parties involved are experienced in business or not.

A global reference is not sufficient, when the party proposing an arbitration clause in this way knew or should have known by experience, that the other party did not want to agree to such a clause or if such a clause was unusual under the given circumstances. A global reference on the other hand is valid and sufficient between two parties, who are experienced in the field or when an arbitration clause is customary in the particular sector of business, regardless of whether the other party has indeed read the document of reference and therefore knew, that it contained such a clause. The Swiss Federal Court has applied and confirmed this principle of trust also to sports related disputes (see decision of 31 October 1996, in *Digest of CAS Awards 1986-1998*, Staempfli Editions, Berne 1998, p. 585 ff.).

10. On the merits of the case on hand, the Panel has considered the following:

    a. When communicating the ban of two years from all FIBA competitions on 10 December 1999, Respondent gave Appellant the opportunity to appeal against this decision to the World Appeals' Commission. A "notice about appeals procedure" (in the language of the Appellant) was added to the communication. Point 6 of this notice contained the following information. "*For details of the Appeals Procedure please see the attached Internal Regulations governing Appeals*". If in fact chapter 12 of the IR was not attached to the notice, this omission was remedied at the latest when Respondent sent the full wording to Appellant's American attorney on 16 December 1999.

    b. Appellant is a professional basketball player and can therefore be considered experienced in the field of professional sports. Arbitration clauses have become customary in most international sports federations and many By-Laws or procedural regulations of these organisations refer arbitration to the CAS with the explicit exclusion of the right to appeal to public courts. Arbitration is also a widely applied way of dispute settlement in the sport of the US. An arbitration clause such as article 12.9 of the IR of FIBA can therefore not be considered as unusual.

    c. From the point of view of Respondent, chapter 12 of FIBA's Internal Regulations form a unity, offering to members and even to any other "affected party" a two-stage appeals procedure. The Panel shares the view of Appellant, that the first stage of this procedure before the Appeals' Commission does not fulfil the requirements of an arbitration "*stricto sensu*", but has to be considered as the exhaustion of the internal course of law within FIBA, the decision of the AC thus becoming the final internal ruling of the

association. On the other hand it must be admitted, that Respondent would not or need not have offered Appellant the possibility to appeal, if the latter had explicitly only accepted the competence of the AC but refused the arbitration (before the CAS) in the event of a further appeal and reserved his right to appeal to state courts in Germany.

d. Appellant chose to appeal to the AC, hoping to reverse the decision of 10 December 1999. He was represented at that stage by an experienced American attorney-at-law, who – after having requested from Respondent to be provided with a complete set of all the FIBA rules "and particularly those regarding appeals" – lodged his statement of appeal on 21 December 1999 explicitly writing (point 2): *"[R.], **pursuant to FIBA's regulation governing appeals**, desires to appeal the aforementioned decision"* (emphasis added).

e. On 23 December 1999, Respondent's legal representative wrote to Appellant's legal representative in Germany, that FIBA will comply with R.'s request to issue a foreign players license "… *if and when a Court/**Court of Arbitration** makes a final determination that FIBA's doping sanction of December 10, 1999 is lifted*" (emphasis added).

f. The Order of Procedure was issued by the Chairman of the Panel of the AC only four days later making reference again to the Internal Regulations governing Appeals. This order was signed by Appellant's German attorney without reservations as to the rules of procedure.

g. During the Hearing of 11 January 2000, at which Appellant was represented by his American as well as his German attorneys, again no objection was made as to the rules of procedure.

11. These considerations lead the Panel to the following conclusions:

Prior to lodging the appeal to the Appeals' Commission of FIBA and later on when accepting the Order of Procedure, Appellant's legal representatives had knowledge of the Internal Regulations governing Appeals, which include in article 12.9 the arbitration clause in favour of CAS. Respondent had agreed to receive the appeal even though Appellant was neither directly nor indirectly a member of the federation. Respondent had clearly communicated, that such an appeal would be dealt with under the provisions of chapter 12 of the IR governing Appeals. Appellant referred to these regulations in his statement of appeal and did not object to them, when the Order of Procedure was submitted for acceptance.

When initiating the appeal's procedure before the AC's panel, Respondent could therefore *bona fide* rely on the fact, that the entire regulations governing appeals were accepted by the other party. This was all the more the case, as the legal representatives of the Appellant, especially those acting in Germany, are well accustomed with the procedural regulations of FIBA. Furthermore the arbitration clause in favour of the CAS was and is in no way unusual. In fact it is in line with similar regulations of many other international sports federations.

The objection from the part of the Appellant, that *"knowledge does not amount to consent"* can not be heard. On the contrary, the principle of trust ("Vertrauensgrundsatz") developed by the Swiss Federal Court would have requested under the given circumstances, that the Appellant

clearly communicated his objection to the arbitration clause before starting the appeal's procedure before the AC. Even though the case on hand is not identical to the case N. v. FEI, the considerations of the Swiss Federal Court are nevertheless pertinent. The Swiss Federal Court concluded as follows (see decision of October 31, 1996, in *Digest of CAS Awards 1986-1998*, Staempfli Editions, Berne 1998, p. 590):

"Thus, it is not admissible to hold that an arbitration agreement resulting from a global reference does not bind the person who, already ***knowing*** *the existence of the arbitration clause when he signs the document referring to it and thereby satisfies the requirements of the written form, makes no objection to such a clause and further demonstrates, through his subsequent behaviour, that he regards himself as bound"* (emphasis added).

Appellant knew at the time he lodged the appeal and when he signed and accepted the Order of Procedure about the existence of the arbitration clause according to article 12.9 of the IR. Applying the principle of trust it was his obligation to decline the arbitration (and by that most probably also the right to appeal to the AC). Failing to do so, he had accepted the arbitration clause, which had been offered to him by Respondent.

By virtue of article 178.1 and article 186.3 IPRG the Panel therefore confirms its jurisdiction to hear this case.

12. The jurisdiction of the CAS can however not go beyond the competence of the body, whose decision the appeal is lodged against. Before the panel of the Appeals' Commission the dispute carried on the question of whether the ban of two years was lawful or whether Appellant was entitled to be granted a player's license for competitions under the authority of FIBA. If the panel had decided in favour of R., it could not have ruled on claims for damages, since the panel itself is to be considered as an organ of FIBA.

The jurisdiction of the CAS is therefore also limited to the application of the FIBA regulations against the use of doping substances and any sanctions derived there from. To be able to hear Appellant's claims for damages would necessitate a specific arbitration agreement between the parties, which can not be derived by reference to article 12.9 of the IR governing Appeals.

The Court of Arbitration for Sport hereby:

1. Affirms its jurisdiction in the present matter.

(...)