



**Arbitration CAS 2008/A/1494 Fédération Internationale de Football Association (FIFA) v. Federazione Italiana Giuoco Calcio (FIGC) & Alessio Recchi, award of 30 April 2009**

Panel: Mr Manfred Peter Nan (The Netherlands), President; Prof. Denis Oswald (Switzerland); Mr Michele Bernasconi (Switzerland)

*Football*

*Doping (benzoyllecgonine)*

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

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

*Standard of proof for the facts alleged by the player*

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

*Prohibited substance and lack of intention to enhance the player’s sports performance*

*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. This is the case where the player knew that he had consumed the prohibited substance**

a few days before the match, but did not tell anyone about it, nor had he seen a doctor for advice, nor did he made a comment on the Doping Control Form. The circumstances, that he admitted the anti-doping rule violation, participated in an anti-doping program and/or played the lowest professional championship of the national football, are not relevant as with regard to the degree of his fault.

5. If the prohibited substance is not listed as a specified substance, it is also irrelevant whether the player had no intention of enhancing his sport performance. Only if the prohibited substance is listed as a “specified substance”, is it relevant to give evidence for the declaration that the specified substance was not intended to enhance sporting performance.
6. 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, Fédération 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 Alessio Recchi (the “Player” or “Recchi”), is an Italian football player born on 14 May 1978 in Civitanova Marche. He is a goalkeeper who has played his whole career in Italy. At the point in time relevant in these proceedings he was registered with FIGC, having played for the club Gela Calcio S.p.A. Recchi was playing the lowest professional championship of Italian professional football (Serie C/2).

The background facts stated herein are a summary of the main relevant facts, as established on the basis of the parties’ written and oral submissions and of the evidence examined in the course of the proceedings. Additional facts will be set out, where material, in connection with the discussion of the parties’ factual and legal submissions.

On 3 June 2007, Recchi was selected for an in-competition anti-doping control on the occasion of the Italian championship match (Serie C/2) between the clubs of Potenza and Gela. The test was performed by the WADA-accredited Anti-Doping laboratory of Cologne. The urine sample provided by the Player revealed the presence of “Benzoyllecgonine”, which is a metabolite of cocaine. This is a prohibited substance appearing on the 2007 Prohibited List in Appendix A of the FIFA Regulations Doping Control under category S6, stimulants.

After the Player was notified that his “A” Sample of 3 June 2007 had tested positive, he waived his right for an analyses of the “B” Sample.

On 16 July 2007, the Italian National Disciplinary Commission provisionally suspended the Player from all sporting activity with immediate effect.

At a hearing on 14 September 2007 at the Anti Doping Attorney’s Office, the Player, assisted by his defending counsel, admitted the disciplinary charge levelled against him and, with reference to the substance found, declared:

*“In the days prior to the match I had argued frequently with my wife. On Wednesday ... I returned home from training and found a letter left by my wife, saying she had left for Civitanova Marche with our two daughters. I felt alone and abandoned, and after a while I went out to a pub, where I ate something. There I was recognised by some local youngsters, who came over to me. I told them what was wrong, and one of the youngsters said he had something to pull me up. He offered me some white powder and invited me to inhale it with my nose. In that moment of confusion I agreed to do what had been suggested to me. Afterwards I asked what I had taken, and received the reply that it was cocaine”.*

In the disciplinary proceedings brought by the Italian Anti-Doping Attorney’s office against the Player before the Federal Court of Justice of FIGC (Corte di Giustizia Federale, “CGF”) a hearing was held on 30 October 2007. The Player, once again assisted by his defending counsel, admitted the disciplinary charge levelled against him and, with reference to the substance found, confirmed the reconstruction of the facts as described in the hearing of 14 September 2007 at the Anti-Doping Attorney’s Office.

On 30 October 2007, CGF imposed a 1 year suspension to the Player, starting from 16 July 2007, stating that the explanations provided by the Player were plausible, and that the conduct of the Player was therefore “*non-significant negligent*”, entailing the application of mitigating circumstances as indicated in Article 10.5.2 of the WADA Anti-Doping rules.

On 13 February 2008 FIGC notified FIFA by fax, which was dated 11 February 2008, about the Decision of CGF dated 30 October 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 21 April 2008 the Player filed his answer.

On 28 April 2008 FIGC filed its 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 27 January 2009. The parties did not raise any objection as to the constitution and composition of the Panel.

At the beginning of the hearing FIGC changed its prayers for relief, denying the jurisdiction of CAS. This new position of FIGC will be described 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 cocaine, which is a prohibited substance according to Appendix A, S6 of the FIFA 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 a cocaine metabolite like “Benzoyllecgonine”. 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, the submissions made by the Player about his particular psychological state cannot lead to the reduction of the sanction in application of Article 65 FIFA Disciplinary Code or Article 10.5.2 WADAC as openly stated in the relevant decision.

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 30 October 2007 by the FIGC and to suspend the Player Alessio Recchi 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 30 October 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 did not assume the prohibited substance at the purpose of enhancing his sporting performances, but for a negligent behaviour due to a particular moment in his life, and because the assumption of drug by the player was not wilful.

In this respect, FIGC argues that a reduction of the suspension period to 1 year does not violate the principle of strict liability and, 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 has no comments on the issue of jurisdiction of CAS.

As to the merits of the case, the Player argues *inter alia* that he inhaled an unknown white powder just 5 days before a football-match, because his wife had left him that day with their two daughters. He argues that the presence of a cocaine metabolite in his “A” sample was the result of a moment of exceptional gravity in his personal life and that he did not use it to enhance his sporting performance.

The Player points out that he bears no significant fault or negligence and concludes that the Panel confirms the 1 year suspension from the date of the provisional suspension (16 July 2007).

## 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 dispute the jurisdiction of CAS in its answer brief and signed the Order of Procedure. At the hearing the Player did not take a position on CAS’s jurisdiction;
  - FIFA raised objections to 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 of the CAS Code of Sports-related Arbitration (“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. (...)*
  3. *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.(...).*
  4. *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.
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 both Respondents indicated that they were satisfied with the decision of CGF. At the CAS' hearing both Respondents confirmed that, by the time the decision of CGF dated 30 October 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, rules 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 3 June 2007, on the occasion of the match between Potenza and Gela, showed evidence of an adverse analytical finding of “Benzoyllecgonine”, that is a cocaine metabolite, and therefore a prohibited substance, listed as a stimulant included as well in section S6 of the 2007 Prohibited List of Appendix A of the FIFA Regulations Doping Control as well in section S6.a 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 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 "Benzoylecgonine" (a cocaine metabolite) 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*

(a) In general

33. Under Article 65, §1(a), of the FIFA Disciplinary Code (version 2007) and under Article 45 of the FIFA Anti-Doping Regulations (2009), the sanction in relation to the presence of a prohibited substance or its metabolites or markers, is a two-year suspension.
34. The Panel remarks that, under the FIFA Disciplinary Code and the FIFA Anti-Doping Regulations, 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 Disciplinary Code; Article 47 §2 FIFA Anti-Doping Regulations) or, at least, that "*he bears no significant fault or negligence*" (Article 65 §2 Disciplinary Code; Article 47 §3 of the FIFA Anti-Doping Regulations).
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) and Article 99 §2 of the FIFA Disciplinary Code (2009 edition) provide 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*". This principle is adopted in Article 47 §2 en §3 of the FIFA Anti-Doping Regulations.
37. Accordingly, relying on a long line of CAS cases (see e.g. CAS 2006/A/1067, para. 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 (2007 version) and Article 47 §3 of the FIFA Anti-Doping Regulations: *"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 10.5.1 and 10.5.2 (versions 2003 and 2009) 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"*. FIFA has adopted this principle in Article 47 §4.a of the FIFA Anti-Doping Regulations.
40. With regard to the standard of proof required from the indicted player, the Panel observes that, in accordance with established CAS case-law, Article 13 §2 of the FIFA Anti-Doping Regulations 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). In this respect Article 47 §4.b of the FIFA Anti-Doping Regulations provides that *"the evidence considered must be specific and decisive to explain the player's departure from the expected standard of behaviour"*.
- (b) Evidence of how the prohibited substance entered the Player's body
41. In these proceedings, exactly as in the CGF proceedings, the Player has argued that the prohibited stimulant came to be present in his system because he inhaled cocaine in a pub a few days before the match. 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 under the applicable rules, 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 and 2009) to Article 10.5.1 and 10.5.2 WADAC (the last mentioned provision whose application was expressly invoked by FIGC and the Player).
44. In the light of such definition of the athlete’s duty of care, even if the Player’s explanation of how the cocaine metabolite 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. Questioned at the hearing on the caution that he took before inhaling the cocaine, the Player candidly answered that he was very upset because his wife had left the house with their daughters and simply took the white powder he was offered in a pub without asking and knowing what it contained. After consuming he learned he took cocaine. The Player did not know the suppliers by name. At the day of the football-match, it did not occur to him that he had sniffed cocaine a few days earlier.
46. Although it might have slipped his mind at the day of the match, the Player knew that he had consumed cocaine a few days before the football-match on 3 June 2007. Still he did not tell anyone about it, nor had he seen a doctor for advice, nor he made a comment on the Doping Control Form. He just played the match without thinking that the cocaine might still be present in his body. Under these circumstances it cannot be said that *“the Player’s assumption (consumption) of drugs was not wilful”*, as FIGC stated. By inhaling the white powder given to him by strangers in a pub, the Player knowingly and wilfully accepted the risk that this powder could be a prohibited substance that would still be present in his body at the day of the match.
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 admitted the anti-doping rule violation, participated in an anti-doping program and/or played the lowest professional championship of the Italian football, are not relevant as with regard to the degree of his fault.
48. Because cocaine (and its metabolites) is (under the old and new anti-doping rules) a prohibited substance and is not listed as a specified substance in Appendix A of the FIFA Regulations Doping Control (2007) or as such in Appendix B of the FIFA Anti-Doping Regulations, it is also irrelevant whether there was a lack of intention to enhance his sport performance. Only if cocaine (and its metabolites) would have been listed as a “specified substance”, it would be relevant to give evidence for the declaration that the specified substance was not intended to enhance sporting performance. The Panel refers to Article 65 §1.b FIFA Disciplinary Code (version 2007) and Article 47 §1 of the FIFA Anti-Doping Regulations 2009.

49. The Panel concludes that the Player did not demonstrate that he bears no significant fault or negligence.
50. The Panel thus holds that the Player is liable for the full two-year period of suspension provided under both Article 65, §1(a), of the FIFA Disciplinary Code (2007) and Article 45 of the FIFA Anti-Doping Regulations.
51. For these reasons, the Panel decides that the Player is sanctioned with a period of ineligibility of two years.

C) *Period of suspension*

52. 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 FIFA 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”.*

53. 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”.*

54. 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”.

55. 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”.*

56. 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. Another reason to do so comes from the fact that, without these delays, the present decision would have been made before the end of the one year suspension whereas under the present circumstances, the Player had to find a new club, he played again and he will have to interrupt his activity again.

57. Accordingly, the Panel holds that, taking into account the totality of the circumstances, the two-year period of suspension must start on 25 September 2008, that is the date of the first assigned hearing.
58. 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. According to a not disputed statement submitted by the Player’s counsel, 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 25 September 2008.

*D) Other prayers for relief*

59. 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 Fédération FIFA.
2. The appeal of FIFA against the decision dated 30 October 2007 of the Corte di Giustizia Federale is upheld.
3. The decision dated 30 October 2007 of the Corte di Giustizia Federale is set aside.
4. Mr Alessio Recchi 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 25 September 2008.
5. (...).
6. (...).
7. All other prayers for relief are rejected.