



Arbitration CAS 2008/A/1625 Rodrigo Souto v. Confederación Sudamericana de Fútbol (CONMEBOL) & Fédération Internationale de Football Association (FIFA), award of 19 February 2009

Panel: Mr Ricardo de Buen Rodríguez (Mexico), President; Mr José Juan Pintó (Spain); Mrs Margarita Echeverría Bermúdez (Costa Rica)

Football

Doping (benzoyllecgonine)

Breach of the right to be heard

Breach of doping procedural provisions

- 1. The right to be heard which is expressly recognised in the applicable FIFA Doping Control Regulations, shall be considered as a procedural principle universally recognised in all fields of law, and as such shall be respected in any case. A player's right to be heard in a football private association's doping procedure is disregarded when the player is unable to produce allegations and to express his position at any stage. The violation of the player's fundamental right to be heard renders the procedure followed before the football association null and void, which implies that the outcome of the mentioned proceedings (i.e. the sanction imposed to the player) is left without effect.**
- 2. According to the applicable regulations, a breach of doping procedural provisions occurs when the analysis of the sample has taken place in a laboratory which is not accredited by WADA. In such case, the legal steps and proceedings have not been observed and the result of the doping control cannot be considered as a valid result justifying a sanction.**

Mr. Rodrigo Ribeiro Souto (the "Player" or the "Appellant") is a Brazilian professional football player affiliated to Confederação Brasileira de Futebol (CBF).

Confederación Sudamericana de Fútbol ("CONMEBOL") is a Private Law Civil Association made up of the National Football Associations of South America, with seat in Luque, Gran Asunción, Paraguay.

Fédération Internationale de Football Association (FIFA) is an association submitted to Swiss Law governing the sport of football worldwide with seat in Zurich, Switzerland.

On 19th March 2008, the Player took part in a match played by his team Santos FC against Club San José of Bolivia in the Copa Libertadores de América international tournament.

After the match the Player was ordered to pass a doping control, which result turned to be positive as the substance “Benzoilecgonina” (metabolite of cocaine) was found in his urine.

On 10th June 2008 such positive result was communicated by the President of the Doping Committee of CONMEBOL to the President of the Executive Committee of CONMEBOL in the following terms:

“Solicitamos notificar el más pronto posible a la máxima Autoridad de la Delegación a la que pertenece el jugador en cuestión y proponemos que el segundo análisis utilizando la muestra B, en el caso que la Delegación esté conforme, sea realizado el viernes – 20 de Junio a las 07:30 horas de la mañana en el Laboratorio acreditado por la CSF y AMA – Brasil (Laboratorio LADETEC – Director Dr. Francisco Radler de Aquino Neto), en la siguiente dirección:

LADETEC – LABORATORIO DE DESENVOLVIMIENTO CIENTÍFICO E
TECNOLÓGICO I – HA DO FUNDÃO
UNIVERSIDADE FEDERAL DO RIO DE JANEIRO
CENTRO DE TECNOLOGIA – BLOCO A – SALA 512
DEPARTAMENTO DE QUÍMICA

Para que podamos tomar las providencias necesarias, solicitamos que el equipo Santos FC, nos confirme, hasta las 13 horas de Miércoles (11/06/08), el pedido de realización de contraprueba a través del fax +55 21 3535 9614.

Recordamos que el Reglamento, en su ítem 6.4 establece que: “En el momento del análisis de la muestra “B” deberá estar presente un representante de la Comisión de Control de Dopaje de la CSF, y deberá(n) asistir representante(s) del equipo afectado y/o jugador. Caso que no haya interés manifestado POR ESCRITO por el club/Jugador, dentro del plazo previsto en el ítem 6.3, el informe del laudo de la muestra A, emitido por el laboratorio, será considerado válido para fines de aplicaciones de las sanciones que correspondan”. El costo de este análisis, si confirma el resultado encontrado en la muestra “A”, será de responsabilidad del equipo/jugador”.

The translation into English of such communication could read as follows:

“We request the notification, as soon as possible, to the highest Authority of the Delegation to which the player belongs to and we propose that the second analysis using sample B, in case the Delegation agrees, is carried out on Friday – 20th June at 7:30 hours in the morning at the Laboratory accredited by CSF and WADA- Brazil (LADETEC Laboratory – Director Mr. Francisco Radler de Aquino Nieto), in the following address:

LADETEC – LABORATORIO DE DESENVOLVIMIENTO CIENTÍFICO E
TECNOLÓGICO I – HA DO FUNDÃO
UNIVERSIDADE FEDERAL DO RIO DE JANEIRO
CENTRO DE TECNOLOGIA – BLOCO A – SALA 512
DEPARTAMENTO DE QUÍMICA

In order to take the necessary steps, we request Santos FC team to confirm, until 13 hours on Wednesday (11/06/08), the request of execution of the counter test through the fax +55 21 3535 9614.

We remind that the Regulations, in its item 6.4, stipulates that: "At the moment of the analysis of the sample B a representative member of the CSF Doping Control Commission must be present as well as a representative(s) of the concerned team and/or the player. In case there is no WRITTEN interest from the team/ Player, according to the mentioned term on item 6.3, the result of the sample A report, issued by the Laboratory, will be considered valid in order to impose the proper sanctions". The cost of the analysis, if it confirms the sample A result, will be charged to the team/ Player".

The result of the analysis of the sample B confirmed the presence of the above mentioned substance in the Player's urine.

On 9th July 2008 CONMEBOL, by means of a letter of its Executive Secretary, decided to suspend the Player for 2 years in all CONMEBOL's competitions. The text in Spanish of the mentioned letter, is the following:

"CONSIDERANDO:

Que ante la realización de la contraprueba (frasco B) por parte de la Comisión, Jefes de Laboratorios y el Médico del Santos Futebol Club y considerando que queda confirmado el uso de BENZOILECGONINA, (METABOLITO de la COCAINA), por parte del mencionado jugador, hecho este punible por esta Confederación y que la Comisión de Doping da como válido el resultado de las pruebas correspondientes, la Confederación Sudamericana de Fútbol,

RESUELVE

- 1. Homologar el resultado aprobado por la Comisión de Doping, hallado en las muestras "A" y "B" de la orina perteneciente al jugador Sr. RODRIGO RIBEIRO SOUTO, camiseta N° 11, del Santos Futebol Club de Brasil, llevado a cabo en el partido oficial ante el Club San José de Bolivia el 19/03/08, en el Estadio Oruro, por la "Copa Libertadores de América", edición 2008.*
- 2. Suspender al citado jugador Sr. RODRIGO RIBEIRO SOUTO, por el término de dos años (2), a partir del 20 de junio de 2008, para todas las competiciones organizadas por esta Confederación, como consecuencia del resultado del análisis que acusa en su contenido la sustancia señalada en el considerando.*
- 3. Notificar esta Resolución a la Confederación Brasileña de Fútbol, para lo que hubiere lugar y para hacer conocer a su afiliado".*

The translation into English of such communication could read as follows:

"CONSIDERING

That upon the performance of the counter-test (sample B) by the Commission, the Laboratory Managers and the Santos FC Doctor and considering that the use of BENZOILECGONINA (COCAINE METABOLITE) by the mentioned player is confirmed, being this a punishable behaviour by this Confederation, and that the Doping Committee has validated the result of the corresponding tests, the South American Football Confederation,

RULES AS FOLLOWS

To homologate the result approved by the Doping Committee, found in samples A and B of the urine pertaining to the player Mr. RODRIGO RIBEIRO SOUTO, T-shirt N° 11, of Santos Futebol Club of Brazil, carried out in the official match against San José Club of Bolivia on the 19/03/08, in the Oruro Stadium, in the frame of the “Copa Libertadores de America”, edition 2008.

To suspend the mentioned player Mr. RODRIGO RIBEIRO SOUTO for the term of two years (2) from the 20th of June of 2008, in all the competitions organized by this Confederation, as a consequence of the result of the analysis that reveals the presence of the substance indicated before.

To notify this Resolution to the Brazilian Confederation of Football, to the corresponding effects and to the affiliate’s knowledge”.

On 11th June 2008 the Appealed Decision was communicated to FIFA, which Disciplinary Committee decided on 18th July 2008 to extend the suspension worldwide in the following terms:

“The Player Rodrigo Ribeiro Souto is suspended worldwide for the duration of the suspension imposed by CONMEBOL. This suspension covers all types of matches, including domestic, international ones”.

On 21st July 2008 the Player appealed the FIFA Disciplinary Committee decision before the FIFA Appeal Committee.

On 22nd July 2008 the Player’s attorneys asked CONMEBOL which were the legal channels to appeal its decision dated 9 June 2008, to which CONMEBOL answered the following:

“El interesado debe pedir a la CONMEBOL por medio de nuestra afiliada la Confederación Brasileña de Fútbol, que el caso del jugador de la referencia sea reabierto en grado de apelación, con los argumentos que respalden lo peticionado, para ello se concede un plazo de 10 días computables a partir de la fecha.

Si los argumentos son valederos y sustentables, el caso será considerado y el jugador podrá ser recibido en audiencia por una comisión única”.

The translation into English of such response could be as follows:

“The concerned person shall request to CONMEBOL through our affiliate the Brazilian Football Confederation to reopen the case of the referred player in appeal, providing the grounds to support his requests, being given a 10 days term counting from today’s date to such purpose.

If the arguments are valid and sustainable, the case will be considered and the player will be heard by a unique committee”.

The Player’s attorneys expressed to CONMEBOL their surprise with regard to the mentioned response, as until then they had no notice about this appeal body, its legal basis and the rules of procedure of such appeal either. And thus such attorneys asked CONMEBOL to provide them with the Statutes and Regulations ruling such appeal body, its composition and even nature. They also announced that no allegations would be filed until a response on the mentioned points was received from CONMEBOL.

CONMEBOL did not answer to the above mentioned request.

On 29th July 2008 the Player appealed before CAS CONMEBOL's decision dated 9 June 2008 (the "Appealed Decision"), requesting it to be set aside and as provisional measure, that the suspension of the Appealed Decision was granted. The appeal was directed against CONMEBOL and FIFA as Respondents.

On 13th August 2008 CONMEBOL communicated to CAS that it did not accept CAS arbitration in the matter at stake, as CONMEBOL does not foresee in its Statutes the institution of arbitration, and it in the following literal terms:

"Al respecto lamentamos no aceptar el arbitraje del TAS, debido a que la CONMEBOL, no considera en sus Estatutos, la figura del arbitraje.

El ámbito donde el jugador Sr. Rodrigo Souto puede reclamar sus derechos, en caso de existir algún procedimiento erróneo en su sanción de dopaje, es la Confederación Sudamericana de Fútbol así se lo hicimos saber al interesado. Además obra en su poder copia de nuestros Estatutos (...)"

which could be translated into English as follows:

"In this regard we regret not to accept the arbitration of the TAS, due to the fact that CONMEBOL does not stipulate in its Statutes the institution of arbitration.

The framework in which the player Mr. Rodrigo Souto can claim for his rights, in case any erroneous procedure related to his doping sanction existed, is the South American Football Confederation as we had already informed. Besides the player has already a copy of our Statutes (...)"

On 15th August 2008 FIFA communicated to CAS that it had no objection in the provisional measures asked for by the Appellant being granted.

On 20th August 2008 CONMEBOL reiterated its decision not to accept CAS jurisdiction for the same explained reasons, and thus refused to appoint any arbitrator. It also insisted in offering CONMEBOL's framework to know about any claim the Player may have (literally: *"Ofrecemos el ámbito de la CONMEBOL para atender cualquier reclamo del jugador demandante"*).

On 21st August 2008 FIFA Appeal Committee revoked FIFA Disciplinary Decision of 18 July 2008 and set aside the worldwide extension of the suspension imposed by the Appealed Decision on the basis of the following considerations:

"9. The chairman started to analyze whether the player had been cited properly and whether he had the opportunity to state his case. The chairman stated that the conditions listed in art. 144 a) and b) of the FDC may be summarized as the player's right to be heard during the proceedings of the confederation. Reflecting on the ratio of the conditions set forth in art. 144 a) and b) of the FDC, the chairman considers that a confederation or an association has a certain freedom in the appreciation of facts. However, a suspension of an association or a confederation like in the case at stake imposed on a player should only be extended to have worldwide effect when fundamental procedural rights, like the right to be heard have been respected. This includes that the sanctioned person was informed of the charges made against him and that he was given a reasonable time frame to reply to the accusations.

10. Based on the documents of the file, the chairman could not establish that Souto was invited to file a statement or that he was invited to an oral hearing at the deciding body. No proof could be produced that CONMEBOL informed Souto of the charges made against him. The chairman noted that a doctor of the player's club was present when the B-sample was opened at the LADETEC- Laboratório de Desenvolvimento Científico e Tecnológico da Universidade Federal do Rio de Janeiro. It is not important at this stage to analyze in detail whether the doctor was at the laboratory in representation of the player. Even if this had been the case, the doctor's presence in the laboratory when the B-sample was opened would not assure in a sufficient way that the player's right to be heard had been respected. The chairman reiterates that the conditions in art. 144 a) and b) include the player's right to be officially informed about the accusations made against him. Violations of anti-doping rules may lead to suspensions of up to two years, or even more in cases of second anti doping rule violation, which can heavily affect a player's career. The respect of a fair trial is therefore of utmost importance. Even assuming that the club doctor informed Souto of the results of the analysis of the B-sample, the player was never properly informed of the charges made against him. As a consequence the chairman states that Souto has not been cited properly and that he has not had the opportunity to state his case at the proceedings at CONMEBOL.

11. The chairman then analyzed whether the decision of CONMEBOL suspending Souto for two years complies with the regulations of FIFA. In this regard, the chairman firstly analyzed the FIFA Regulations Doping Control, art. 6.1 of which states that the analysis of the samples shall be carried out in a laboratory accredited by WADA. The official report filed by CONMEBOL upon request show, that the analysis of the sample A was performed in the "Laboratorio de Control de Dopaje en Montevideo, Uruguay" which is not accredited by WADA. The chairman establishes that the proper analysis of doping samples is a precondition in each doping case. Only laboratories accredited by WADA assure that the analysis has been performed according to reliable scientific standards of testing. The wording of art. 6.1 of the FIFA Regulations Doping Control establish clearly that the analysis of both the A and the B-sample has to be performed compulsorily in a laboratory accredited by WADA. Consequently the chairman states that the decision of CONMEBOL does not comply with the regulations of FIFA.

12. In view of the above, the chairman establishes that the proceedings at CONMEBOL did not satisfy the conditions set out in art. 144 a), b) and d) of the FDC. The decision of the chairman of the Disciplinary Committee dated 18 July 2008 is consequently set aside and the decision of CONMEBOL suspending Souto for two years is not extended to have worldwide effect".

On 29th August 2008 FIFA answered to the appeal, accepting to be a party in the proceedings but only formally, as the Appealed Decision had been issued not by FIFA but by CONMEBOL. In fact the written submissions of FIFA do not contain any request for relief except for the request not to be condemned to pay the costs of the proceedings. Notwithstanding this, FIFA made several statements regarding (i) the nature and obligations of the confederations of FIFA, and (ii) CAS as body of appeal for FIFA members and confederations' decisions. In addition FIFA pointed out the following with regard to the denial of the worldwide extension of the suspension imposed by the Appealed Decision:

"The Chairman of The FIFA Appeal Committee observed that the player had not been cited properly and that he had not had the opportunity to state his case throughout the proceedings at CONMEBOL.

In addition to the above, it was also ascertained that the analysis of the A and the B sample were not both performed in a laboratory accredited by WADA, as provided for under the applicable regulations.

In light of the above, the Chairman of the FIFA Appeal Committee concluded that the decision of CONMEBOL does not comply with the preconditions set out in the FIFA Disciplinary Code for an extension at worldwide level and therefore cannot be extended (cf. art 143 ff. of the FIFA Disciplinary Code, annexe 3)".

On 12th September 2008 Mr. Ricardo de Buen Rodríguez was appointed by CAS as President of the Panel.

On 15th September CONMEBOL insisted, once again, in the fact that it did not accept CAS jurisdiction.

In light of the discussion arisen between the parties as regards of CAS jurisdiction to deal with the case, the Panel deemed appropriate to primarily decide on such issue before entering, if it was the case, into the merits of the case.

The Panel decided in this respect that CAS has jurisdiction to deal with the present dispute for the reasons extensively explained in the award on jurisdiction rendered on 21st November 2008 which are not reproduced herein for the sake of brevity.

In the same award the Panel decided to grant the provisional measures asked for by the Appellant, so the Appealed Decision (and in consequence the sanction imposed therein) was stayed.

The parties were called to appear to a hearing to be celebrated in Mexico, D.F., on 13th January 2009. Despite of it CONMEBOL announced by means of its written submissions dated 26th November 2008 that it would not attend the hearing as it did not accept CAS jurisdiction in the case. At its turn, FIFA informed that it would not attend the hearing as well, as in its view, it cannot be considered a substantial party to these proceedings.

The hearing took place in Mexico, D.F. with the sole presence of the representatives of the Appellant, which presented the case and made the allegations it deemed convenient.

The language of the present proceedings is English.

LAW

CAS Jurisdiction

1. The Panel ruled in its award on jurisdiction dated 21st November 2008 that CAS has jurisdiction to decide on the present dispute. The Panel refers to the grounds contained in the mentioned award, which are not reproduced herein for the sake of brevity.
2. Therefore the Panel considers that CAS is competent to decide on this case.

Applicable law

3. 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”.

4. In this respect the Panel has taken into account that:

- a) CONMEBOL produced to the file an agreement taken in Sidney in May 2008 by unanimity of all its members by virtue of which CONMEBOL applies FIFA rules on doping following the procedure of the FIFA Disciplinary Code (in the present case version 2007, FDC). The text of such agreement reads as follows:

“CONTROL ANTIDOPING

En la reunión realizada por los representantes legales de los diez países integrantes de la CONMEBOL que participaron en el 58º Congreso de la FIFA y por unanimidad resolvió:

- 1. Ajustar la aplicación al código de procedimientos de FIFA sobre CONTROL ANTIDOPING y aplicar desde la fecha y sin excepciones, la suspensión por dos años de todo aquel jugador que dé un resultado positivo, siguiendo el procedimiento indicado en el código disciplinario de la FIFA.*
- 2. Seguir en la medida que las circunstancias lo permitan utilizando los laboratorios aprobados por el AMA que nos faciliten su regularización.*
- 3. Aquellos casos de jugadores sancionados con anterioridad a la fecha de esta resolución por las asociaciones nacionales por la CONMEBOL que ya cumplieron con las sanciones impuestas de seis meses, quedaran habilitados una vez cumplidas las mismas.*
- 4. Proseguir gestionando ante la FIFA y el AMA para solicitar su colaboración en la habilitación de más laboratorios en Sudamérica”.*

which translation into English could be read as follows:

“ANTIDOPING CONTROL

In the meeting held by the legal representatives of the ten member countries of CONMEBOL that participated in 58th FIFA Congress it was unanimously decided the following:

- 1. To adapt the application to the FIFA procedural code on ANTIDOPING CONTROL and to apply from the date and without exceptions, the two years suspension of every player whose control appears to be positive, following the procedure indicated in the FIFA disciplinary code.*
- 2. To keep on using the laboratories approved by WADA who facilitate their regularization, as long as the circumstances allow it.*
- 3. Those players who were sanctioned prior to the date of this resolution by the national associations by the CONMEBOL and had already fulfilled the six months sanctions imposed, are habilitated once the sanctions are complied with.*

4. To keep on dealing with FIFA and WADA to request their collaboration regarding the habilitation of more laboratories in South America”.

- b) The Appellant has invoked in his written submissions several FIFA provisions on doping on which he intends to ground his appeal.
5. The Panel shall therefore understand that the provisions of FIFA on doping and disciplinary proceedings shall apply to the present dispute, not only in their condition of “applicable regulations” but also because both parties have called for their applicability.
6. Therefore the present dispute shall be resolved in accordance with the mentioned FIFA provisions.

About the dispute submitted to the panel by the parties

7. According to the written statements filed by the parties and to the allegations served in the hearing it appears that:
- a) The Appellant pleads that the Appealed Decision is set aside as it considers that (i) his fundamental right to be heard has been violated in the proceedings before CONMEBOL and (ii) several irregularities were committed in the doping control procedure.
 - b) CONMEBOL has merely opposed to CAS jurisdiction without entering into the merits of the case.
 - c) FIFA has not made any particular request to CAS in this case (except for not being condemned to pay the costs of the proceedings).
8. In such scenario, and being clear that CAS is competent to deal with the matter, the Panel understands that to resolve the dispute, it shall mainly examine if the infringement of fundamental rights and procedural doping provisions denounced by the Appellant has occurred or not in the present case.

A. About the eventual breach of the right of the Player to be heard in the proceedings

9. In this regard the Panel shall firstly mention that the right to be heard shall be considered as a procedural principle universally recognised in all fields of law, and as such shall be respected in any case. The Panel has the obligation to ensure that this principle has been respected. Otherwise the rights to defence and to the equality of treatment of the parties in the proceedings could not be guaranteed.
10. In particular and taking into account the “applicable regulations” to this case, the right of the parties to be heard in the procedure is expressly recognised in article 101 of the FDC, which according to CONMEBOL’s statements, is applicable to doping proceedings held within its frame:

“Contents

1. The parties shall be heard before any decision is passed

2. They may, in particular:

- a) refer to the file;*
- b) present their argument in fact and in law;*
- c) present production of proof;*
- d) be involved in the production of proof;*
- e) obtain a reasoned decision*

3. Special provisions may apply in certain circumstances”.

11. It is therefore patent that the mentioned right to be heard shall be duly respected in doping procedures followed within CONMEBOL, not only because CONMEBOL has acknowledged that the FDC (which expressly proclaims the right of the parties to be heard) is applicable to its doping cases, but also because this right is a basic principle of law of inexcusable observance in any and all procedures.
12. The Panel shall thus examine if the Player’s right to be heard in CONMEBOL’s procedure was infringed or not.
13. To such purpose the Panel has taken into consideration that:
 - a) There is no evidence in the file which enables to consider that the Player could produce allegations and express his position before CONMEBOL at any stage. In fact there is no evidence which accredits that the Player was notified of the existence of the proceedings.
 - b) CONMEBOL has not even denied that the Player was not given the opportunity to defend his case before CONMEBOL.
 - c) CONMEBOL had the burden of proving that the right to be heard of the Player was duly respected and guaranteed in the proceedings, and has done nothing in this file to prove it.
 - d) In the decision of FIFA’s Appeal Committee dated 22nd August 2008 it is stated that the Player was not properly cited and had not had the opportunity to state his case throughout the proceedings at CONMEBOL. The following paragraphs of the mentioned decision are self-explanatory:

“Based on the documents of the file, the chairman could not establish that Souto was invited to file a statement or that he was invited to an oral hearing at the deciding body. No proof could be produced that CONMEBOL informed Souto of the charges made against him. [...]. The respect of a fair trial is therefore of utmost importance. Even assuming that the club doctor informed Souto of the results of the analysis of the B-sample, the player was never properly informed of the charges made against him. As a consequence the chairman states that Souto has not been cited properly and that he has not had the opportunity to state his case at the proceedings at CONMEBOL”.

- e) CONMEBOL did not challenge the above mentioned decision of FIFA in which it was stated that the right of the Player to be heard in the proceedings had not been respected.
14. In the Panel's opinion, the above mentioned elements shall lead to consider that the Player's right to be heard in CONMEBOL's doping procedure was indeed disregarded.

B. *About the eventual breach of doping procedural provisions*

15. As mentioned above, the Player contends that the following provisions of the FDCR have been infringed:
- a) Article 6.1, as the Doping Control Laboratory of Montevideo (Uruguay) in which sample A was analysed is not a laboratory accredited by WADA.
 - b) Articles 4.1 and 4.2, as non-authorized people were present at the doping control room, and on the contrary the club's doctor was not present therein.
 - c) Article 4.3, as the water made available in the doping control room was contained in plastic bottles and not in glass bottles.
 - d) Article 5.2, as samples were taken in plastic bottles instead of in glass bottles.
16. Regarding the eventual infringement of articles 4.1, 4.2, 4.3 and 5.2 of the FDCR, the Panel considers that according to the pieces of evidence produced to the file, it cannot be considered as proven that the facts and behaviours eventually leading to the alleged infringements occurred. There is no document, witness statement, declaration or any other evidence from which the Panel
17. However the Panel understands that the situation is quite different with regard to the alleged infringement of article 6.1 of the FDCR.
18. The Panel takes note that according to the mentioned article, "analysis of samples shall be carried out in a laboratory accredited by WADA". This provision is clear and shall be inexcusably observed given the compulsory nature of the FDCR. In this respect the Panel shall recall:
- a) The grounds of FIFA's Appeal Committee decision dated 21st August 2008 denying the worldwide extension of the sanction imposed to the Player, which relevant part reads as follows:
"The chairman establishes that the proper analysis of doping samples is a precondition in each doping case. Only laboratories accredited by WADA assure that the analysis has been performed according to reliable scientific standards of testing. The wording of art. 6.1 of the FIFA Regulations Doping Control establish clearly that the analysis of both the A and the B-sample has to be performed compulsorily in a laboratory accredited by WADA. Consequently the chairman states that the decision of CONMEBOL does not comply with the regulations of FIFA" [emphasis added].

- b) CAS jurisprudence in similar cases, for instance the award of the recent case CAS 2008/A/1472:

“A la vista de todo ello, la Formación pone de relieve que el seguimiento y cumplimiento de los Estándares tiene una importancia capital en la determinación de los resultados de los análisis y en el valor que debe atribuirse a los mismos, y que su observancia no puede ser desatendida so pena de vulnerar los objetivos perseguidos por la propia norma. Si bien es cierto que los deportistas deben acatar el cumplimiento de la normativa antidopaje, no lo es menos que las instituciones deben cumplir y hacer cumplir dichas normas en aspectos tan fundamentales como los controles de dopaje o los procedimientos de análisis de las muestras obtenidas, para estar en posición de garantizar la validez de los resultados obtenidos”.

which could be translated into English as follows:

*“In sight of it the Panel points out that the follow-up and fulfilment of the Standards is of utmost importance in the determination of the results of the analysis and in the value that is attributed to them. Its compliance cannot be disregarded as it would infringe the objectives of the same provisions. It is true that the athletes shall fulfil the anti-doping rules, **but it is also true that the institutions shall fulfil and enforce the fulfilment of such rules in so fundamental aspects as the doping controls or the procedures of analysis of the samples, to be in a position to guarantee the validity of the results obtained**” [emphasis added].*

19. In this respect and after evaluating the evidence produced in the file (mainly CONMEBOL’s documents produced by FIFA to the file), the Panel has indeed confirmed that sample A of the Player’s urine was analysed by the Doping Control Laboratory in Montevideo, Uruguay, and that such laboratory is not one of the laboratories accredited by WADA. This only confirms the statements made in decision of FIFA’s Appeal Committee dated 22nd August 2008, which was not challenged by CONMEBOL:

“The official report filed by CONMEBOL upon request show, that the analysis of the sample A was performed in the “Laboratorio de Control de Dopaje en Montevideo, Uruguay” which is not accredited by WADA”.

20. In view of it, the Panel considers that the infringement of article 6.1 of the FDCR is absolutely blatant.

C. *Consequences of the above mentioned*

21. In the Panel’s understanding, the consequences of the referred breaches of rights and procedural irregularities are clear and indisputable:

- a) The breach of article 101 of the FDC and the consequent violation of the Player’s fundamental right to be heard makes that the procedure followed before CONMEBOL is considered null and void, which implies that the outcome of the mentioned proceedings (i.e. the sanction imposed to the Player) is left without effect.
- b) The breach of article 6.1 of FDCR impedes the Panel to consider the result of the doping control as a valid result that can justify the sanction imposed, as the legal steps and proceedings have not been observed.

22. This leads the Panel to conclude that the Appealed Decision (and the sanction imposed therein) shall be set aside.
23. To finalise and just for clarification purposes, the Panel wishes to point out that after evaluating the case and in light of the evident breaches occurred in it, it did not consider necessary to order to CONMEBOL the production of the documents requested by the Appellant in page 11 of the Appeal Brief.

The Court of Arbitration for Sport rules

1. The decision of CONMEBOL dated 9th July 2008 imposing a sanction of two years of suspension on Mr. Rodrigo Ribeiro Souto is set aside.
2. All other prayers for relief are dismissed.

(...).