

# Chapter 7

## Doping: CAS Jurisdiction

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## **7.1 CAS 2007/A/1370 FIFA v. Superior Tribunal de Justiça Desportiva do Futebol & Confederação Brasileira de Futebol & Mr Ricardo Lucas Dodô; CAS 2007/A/1376 WADA v. Superior Tribunal de Justiça Desportiva do Futebol & Confederação Brasileira de Futebol & Mr Ricardo Lucas Dodô**

In the Dodô Award the CAS had to resolve two main issues: the CAS jurisdiction in doping matters and the sanctioning of a doping verdict. In the author's words: 'The CAS panel ruled that the general reference to the FIFA Statutes provided for under the rules of the CBF constituted a valid arbitration clause, allowing WADA and FIFA to appeal decisions rendered by CBF in doping matters.' But care is needed; the author notes that this could not be extended to all decisions rendered by a sports federation, outside the scope of doping-related decisions. As to the merits, the author concludes that the CAS confirmed its jurisprudence on the burden of proof and the duty of care of the athlete.

## **7.2 Background Facts**

On 14 June 2007, the Brazilian football player Ricardo Lucas Dodô (Dodô) underwent an anti-doping test on the occasion of a football match between his club Botafogo and Vasco de Gama. The sample provided by Dodô revealed the presence of Fenproporex, a prohibited stimulant.

After receiving the notification that the B sample analysis confirmed the adverse analytical finding, the Botafogo football club sent several nutritional supplements used by the team to the laboratory of the São Paulo University. Such laboratory issued a report stating that some capsules sent by Botafogo contained Fenproporex. These capsules, packed in two sealed containers and one unsealed and partially used container, were supposed to be caffeine capsules manufactured by a pharmacy called *Farmácia de Manipulação*.

Dodô submitted in the disciplinary proceedings before the Disciplinary Commission in Brazil that he had been administered, without his knowledge, contaminated caffeine capsules prepared by *Farmácia de Manipulação* and that he had absolutely no reason to doubt the products given to him by the medical team of Botafogo.

The Disciplinary Commission did not believe Dodô's explanations and imposed a 120-day suspension on him. Dodô then appealed the decision with the *Superior Tribunal de Justiça Deportiva de Futebol (STJD)*. Contrary to the Disciplinary Commission, the STJD was convinced by Dodô's submissions and acquitted the player, setting aside the Disciplinary Commission's decision.

Both WADA and FIFA appealed to the CAS, the decision rendered by the STJD, requesting that the CAS impose a two-year suspension on the player Dodô in accordance with the then applicable FIFA Disciplinary Code and WADA Code.

## 7.3 Admissibility of the Appeal

### 7.3.1 The “Independence” of STJD

Dodô challenged that the CAS had jurisdiction over his case. He first submitted that the STJD was an independent appeal body and that the decision of such body could not be appealed to the CAS as:

- The STJD statutes did not provide for an appeal to the CAS; and
- The decision rendered by the STJD should not be considered as a decision “taken by FIFA, Confederations, Members or Leagues”, which may be appealed to the CAS by FIFA or WADA pursuant to Article 61 para 5 and 6 of the 2007 FIFA Statutes.

It is true that in some countries, the authority to issue decisions in doping matters is not exercised by the national federations themselves, but by independent bodies organised by the National Anti-Doping Organisation (NADO). This is, for example, the case in the United States where, if an athlete does not agree with the suspension period imposed on him or her by the anti-doping authorities, he or she may raise a claim with the American Arbitration Association (AAA). In Switzerland too, all decisions in doping matters are rendered by a disciplinary commission established by the Swiss National Olympic Committee (Swiss Olympic), in cooperation with the Swiss national anti-doping organisation. As long as the statutes or regulations governing the sanctioning authorities provide for a right of appeal of WADA or of the international federation to the CAS—in compliance with the World Anti-Doping Code (WADC)—WADA or FIFA’s right of appeal derives directly from the (national) rules governing such bodies. For example, in the cases of the Italian football players Cherubin or Mannini and Possanzini,<sup>1</sup> the CAS had jurisdiction to decide on the appeals lodged by WADA under the Italian anti-doping regulations. In those cases, the FIFA rules were not referred with regard to CAS jurisdiction.

In the case of Dodô, the legal status of STJD did not appear clear. Therefore, WADA and FIFA chose to name STJD as a Respondent in their appeals, as if it was an autonomous party. However, after careful analysis of all Brazilian rules and regulations—which were provided after the filing by WADA and FIFA of their appeal—the CAS panel came to the conclusion that STJD had to be considered part of the organisational structure of the *Confederação Brasileira de Futebol* (CBF). The CAS panel relied on the criteria of the “stand-alone test” to conclude that STJD was part of CBF. The panel ruled that, if the CBF did not exist, the STJD would not exist and would therefore, not perform any function.

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<sup>1</sup> See CAS 2008/A/1551 *WADA v CONI, FIGC & Cherubin*, §§ 49 *et seq.*; CAS 2008/A/1557 *WADA v CONI, FIGC, Mannini & Possanzini*, §§ 28 *et seq.*, this award was later rescinded by the CAS panel, but the CAS jurisdiction was never challenged by the parties.

As the STJD had no autonomous legal personality but was just one of the bodies of the CBF, even though it benefited from independence when taking its decisions, the decision rendered by STJD was to be considered as CBF's decision, i.e. a decision of a FIFA member in the meaning of Article 61 of the 2007 FIFA Statutes. Dodô tried to challenge this ruling by the CAS before the Swiss Federal Tribunal. However, in recourses against international arbitral awards, the Swiss Federal Tribunal does not review the facts established by the panel. In the case at hand, the Swiss Federal Tribunal considered that the factual ruling by the CAS panel that the STJD was part of CBF, which was supported by evidence in the file, was binding upon the Swiss Federal Tribunal; Dodô's submissions in this respect were dismissed.<sup>2</sup>

As a consequence, the CAS panel held that, as the STJD did not have an autonomous legal personality, the decisions rendered by such body could be appealed to the CAS as decisions rendered by CBF, but that the STJD may not be considered as a Respondent in the procedure.

The award rendered by the CAS in the Dodô case confirms that, even though national or international federations set up independent bodies in order to decide on doping offences,<sup>3</sup> such bodies are nevertheless an integral part of the sports federations. Decisions rendered by such bodies are therefore—legally speaking—decisions of the concerned federation, which may be appealed to the CAS.

The situation would have been different if STJD would have had an autonomous legal personality and would stand alone if CBF did not exist. In such a case, it would have been quite doubtful that decisions of such an organism could be considered as decisions of a FIFA member in the meaning of Article 61 of the 2007 FIFA Statutes. The wording of Article 61 of the 2007 FIFA Statutes was "too narrow"; a literal interpretation of such provision seemed to indicate that if a decision was not rendered by FIFA, a confederation, a FIFA member or a league, but by another body, such decision could not be appealed to the CAS as per the FIFA Statutes. This issue has been cured under the FIFA Anti-Doping Regulations that entered into force further to the adoption of the new WADC. Under Article 62 of the 2010 FIFA Anti-Doping Regulations, decisions rendered by the body passing the decision (including a "national-level reviewing body" as provided in the National Anti-Doping Organisation's rules or even a state body), may be appealed to the CAS.

### 7.3.2 Arbitration Clause by Reference

Dodô also challenged the CAS jurisdiction on the basis that the CBF bylaws and regulations did not expressly provide that the CAS has jurisdiction in doping matters.

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<sup>2</sup> See Judgement of the Swiss Federal Tribunal of 9 January 2009, 4A\_460/2008, § 6.3, published in ASA Bulletin Vol. 27, p. 540.

<sup>3</sup> According to WADA Model Rules for International Federations, the hearing panel deciding on anti-doping rules violation shall be "fair and impartial" (Article 8.3 WADA Model Rules for International Federations, Version 5.0, June 2010).

It is true that the CBF Statutes or regulations do not contain an express arbitration clause providing for an appeal to the CAS. However, such regulations state that all players affiliated to CBF must comply with the rules of FIFA. The key issue in the case at hand was therefore whether the global reference contained in the CBF statutes to the FIFA rules, including Article 61 of the 2007 FIFA Statutes, did constitute a valid arbitration clause by reference.

In several cases, CAS panels held that, in order for the CAS to have jurisdiction as per Article R47 of the Code of Sports-related Arbitration (the “CAS Code”), the statutes or regulations of the body that rendered the decision should expressly provide for the ability of a party to appeal to the CAS.<sup>4</sup> In a case rendered about the sport of Cricket in Pakistan, a CAS panel held that the very broad reference to “IOC/WADA law” in the Pakistani rules under the heading “Matters not provided for” was not a valid arbitration clause by reference.<sup>5</sup> However, in this latter case, the Pakistani rules did not contain, contrary to the CBF Statutes, any express reference to the rules of the international federation (the International Cricket Council).

In the case of the player Dodô, the CAS panel held that the general reference in the CBF statutes to the FIFA rules was a valid arbitration clause by reference. Dodô was bound to comply with FIFA rules, including FIFA and WADA’s right of appeal provided for under Article 61 para 5 and 6 of the 2007 FIFA Statutes. The CAS therefore had jurisdiction. Dodô tried to challenge the admissibility of such arbitration clause by reference before the Swiss Federal Tribunal, but the Court dismissed this argumentation, confirming that a general reference to statutes providing for an arbitration clause was a valid arbitration agreement.<sup>6</sup>

In view of the CAS jurisprudence, a distinction should be made, in the FIFA Statutes, between para 5 and 6 of Article 63 of the 2009 FIFA Statutes (Article 61 of the 2007 FIFA Statutes), which provide that FIFA and WADA are *entitled* to appeal any internally final and binding decision and Article 63 para 1 and Article 64 of the 2009 FIFA Statutes (Article 61 para 1 and 62 of the 2007 FIFA Statutes), which provide for an obligation of FIFA members to recognise CAS, with a reference that decisions of FIFA members shall be appealed with CAS within 21 days. Para 5 and 6 of Article 63 of the 2009 FIFA Statutes are sufficiently explicit to constitute a valid arbitration clause by reference if the rules of the national federation contain a global reference to the FIFA Statutes.<sup>7</sup> On the contrary, the mere reference to the obligation of FIFA members to recognise CAS or the indication of the deadline to appeal *do not constitute* valid arbitration clauses

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<sup>4</sup> See e.g. CAS 2005/A/952 *Cole v Premier League*, § 8.

<sup>5</sup> See CAS 2006/A/1190 *WADA v Pakistan Cricket Board & Akhtar & Asif*.

<sup>6</sup> See Judgement of the Swiss Federal Tribunal of 9 January 2009, 4A\_460/2008, § 6.2, published in ASA Bulletin Vol. 27, p. 540. See also ATF 133 III 235 c. 4.3.2.3.

<sup>7</sup> This was accepted by the CAS not only in the *Dodô* case, but in other cases, see e.g. CAS 2007/A/1445 *WADA v QFA & Mohadanni*; CAS 2007/A/1446 *WADA v QFA & Alanezi*.

by reference, should the rules of the national federation not contain explicit provisions with regard to the CAS jurisdiction.<sup>8</sup>

On one hand, this reasoning is convincing, in particular in view of the specificity of doping and the obligation made to all anti-doping organisations to recognise the right of appeal by WADA and the applicable international federation provided for under the WADC. On another hand, the distinction made by the CAS between para 5 and 6 of Article 63 of the 2009 FIFA Statutes (Article 61 of the 2007 FIFA Statutes) and para 1 of the same provision could consequently make an undue distinction between WADA's or FIFA's right of appeal and the player's right of appeal. The CAS reasoning could have an adverse effect in that WADA or FIFA may be entitled to appeal a national decision in doping matter (as ruled by the panel in the *Dodô* case), but that the player would not be granted the same right to appeal the decision with CAS, due to the lack of proper implementation of a CAS arbitration clause in the rules of the national federation (as ruled by the panel for example in the *Cole* case), and as para 5 and 6 of Article 63 of the 2009 FIFA Statutes (Article 61 of the 2007 FIFA Statutes) only provide for FIFA or WADA right of appeal and not for the player's right of appeal.

As of 2009, this issue is solved as the FIFA Doping Control Regulations contain explicit provisions governing the appeal against doping-related decisions (in accordance with the WADC). Such provisions (i) reinforce Article 63 para 5 and 6 of the 2009 FIFA Statutes for appeals against doping-related decisions and (ii) confirm that doping matters are governed by specific rules with regard to the CAS jurisdiction.

In fact, it is fully justified to adopt different rules and to distinguish doping-related disputes, as the right of appeal to the CAS is provided for under the WADC and has been (or should have been) implemented by all anti-doping organisations worldwide, from other sports-related disputes, where sports organisations or parties are free to adopt the dispute resolution mechanism they find the more appropriate (jurisdiction of the ordinary court, CAS jurisdiction, other arbitration clause, constitution of a specific arbitral tribunal, etc.).

## 7.4 Applicable Rules on the Merit

In the *Dodô* case, the panel noted that both the CBF Statutes and Brazilian law impose players to comply with international rules, in particular with reference to doping or anti-doping controls. The panel further relied on Article 60 para 2 of the 2007 FIFA Statutes, which provided that "CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law" to rule that the "applicable

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<sup>8</sup> This reasoning was expressly followed by a CAS panel in the case CAS 2008/O/1694, *CSKA Sofia v BFU*.

regulations” governing the dispute according to Article R58 of the CAS Code were primarily the rules of FIFA and, subsidiarily, the rules of CBF.

The *Dodô* award is, in this respect, in line with well-established CAS jurisprudence about the interpretation of the choice of law provided for under Article 60 para 2 of the 2007 FIFA Statutes<sup>9</sup> and the integration by reference of FIFA rules in rules of a national federation.<sup>10</sup> We note however that, in three cases about Maltese football players, the CAS panel came to the opposite conclusion and ruled that national rules overruled FIFA regulations in national matters.<sup>11</sup>

This conclusion as to the applicable law nevertheless raises two issues.

1. In the *Dodô* case, the panel justified its ruling that FIFA rules shall prevail over CBF rules by the fact that the player was “of international status”, without further defining this concept. We observe that, under the WADC, an international-level athlete is defined as an athlete included in the registered testing pool of an international federation. Cases arising from the participation in an international event<sup>12</sup> are also considered as cases involving international-level athletes for the purpose of the appeal rights provided under Article 13 of the WADC.

Certainly, the player *Dodô* played with the national Brazilian team in 1997 and was employed by clubs outside Brazil, in South Korea, Japan or the United Arab Emirates. Nevertheless, it has not been submitted that, in 2007, *Dodô* was registered in the FIFA registered testing pool. Furthermore, he tested positive during a doping control organised on the occasion of the national Brazilian championship. Therefore, even though *Dodô* is without any possible doubt a football player of international calibre, he does not qualify as an international-level athlete in the meaning of anti-doping rules. The finding by the CAS panel with regard to the “international status” of *Dodô* is therefore quite surprising.

2. According to Article 60 para 2 of the 2007 FIFA Statutes, the CAS panel is to apply the various regulations of FIFA and Swiss law. Several international federations have adopted similar rules, such as for example the UCI.<sup>13</sup> However, national federations, such as for example, the CBF in the case of

<sup>9</sup> See CAS 2008/A/1519 & 1520 *Shakhtar Donetsk v Matuzalem, Real Zaragoza & FIFA*; CAS 2007/A/1298, 1299 & 1300 *Heart of Midlothian v Webster & Wigan Athletic FC*; CAS 2009/O/1808 *Kenya Football Federation v FIFA*.

<sup>10</sup> See CAS 2007/A/1364 *WADA v FAW & James*; CAS 2007/A/1445 *WADA v QFA & Mohadanni*; CAS 2007/A/1446 *WADA v QFA & Alanezi*; CAS 2008/A/1558 & 1578 *WADA & FEI v SANEF & Gertenbach*.

<sup>11</sup> See CAS 2008/A/1627 *WADA v MFA & Martin*; CAS 2008/A/1628 *WADA v MFA & Grech*; CAS 2008/A/1629 *WADA v MFA & Mattocks*, commented by C. Ramoni in Chap. 6 of this book.

<sup>12</sup> International event is defined by the WADC as an event where the International Olympic Committee, the International Paralympic Committee, an International Federation, a major event organisation (defined as a continental association of National Olympic Committees or other international multi-sport organisation that function as the ruling body for any continental, regional or other international event), or another international sport organisation, is the ruling body of the event or appoints the technical officials for the event.

<sup>13</sup> See CAS 2007/A/1396 & 1402 *WADA & UCI v Valverde & RFEC*, § 5.

Dodô, will probably primarily apply their national rules and national law when sanctioning an athlete in the course of a national proceeding. In the case of an appeal against the national decision by WADA or FIFA before the CAS, it is quite likely that the CAS panel will not apply the same set of rules or the same governing law than the body which issued the challenged decision.

This confirms that the appeal to the CAS by WADA or an international federation against a decision rendered by a national sports federation is not a proper “appeal”. Such appeal departs from the right to submit a decision of an association to the control of a judge or arbitrator recognised by Article 75 of the Swiss Civil Code.<sup>14</sup> The appeal by WADA or an international federation before CAS in doping matters is a totally new proceeding, aiming at ensuring that the WADC/the FIFA rules are properly applied worldwide. The CAS panel does not automatically apply the same sports regulations or governing law as the first instance decision-making body. It has full power to review the facts and the law (Article R57 of the CAS Code) and is not bound by specific issues that may have affected the procedure at national level.<sup>15</sup>

Nevertheless, when an appeal is lodged by WADA or an international federation with the CAS, the panel shall first determine whether the initial decision was erroneous or not. It is only if the panel comes to the conclusion that the first decision has to be set aside that it has the full power to review the facts and the law and to issue a new decision.<sup>16</sup>

## 7.5 Sanction

The anti-doping rule violation by Dodô, namely the presence of the prohibited stimulant Fenproporex in his bodily sample, was undisputed.

With regard to the sanction, Dodô applied that the prohibited stimulant came to be present in his system because the caffeine capsules that were administered to him by the medical team of his club before the match, were contaminated with Fenproporex. He therefore submitted that no fault at all was attributable to him and that he should not be sanctioned for the presence of a prohibited substance in his body.

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<sup>14</sup> Article 75 of the Swiss Civil Code: “Each member shall be entitled by force of law to challenge in court, within one month of his having gained knowledge thereof, resolutions that he has not consented to and that violate the law or the articles of association” (translation by the Swiss American Chamber of Commerce).

<sup>15</sup> See CAS 2007/A/1396 & 1402 *WADA & UCI v Valverde & RFEC*, § 7.10, whereby the CAS panel held that it was not bound by the orders issued by the Spanish Justice, banning the use by the RFEC of the copy of the record of the Spanish criminal proceedings; CAS 2006/A/1153 *WADA v Assis & FPF*, whereby the CAS panel held that any possible irregularities in the proceeding before the Portuguese authorities had been cured before CAS.

<sup>16</sup> This reasoning in two steps has been well described by a CAS panel in the case CAS 2008/A/1471 & 1486 *FINA & WADA v CONI, FIN & Tagliaferri*. On the contrary, the reasoning of the panel on this issue in the case CAS 2007/A/1396 & 1402 *WADA & UCI v Valverde & RFEC* is difficult to follow (see in particular section 7 of the award).



According to Article 106 para 2 and 65 para 2 and 3 of the 2007 FIFA Disciplinary Code, in order to obtain a reduction or cancellation of the ordinary two-year suspension period provided for under Article 65 para 1 (a) of the 2007 FIFA Disciplinary Code, the player had to demonstrate:

- How the prohibited substance entered his body; and
- That he bore no fault or negligence or no significant fault or negligence.

Even though, in 2007, the FIFA Disciplinary Code did not expressly mention that a reduction or elimination of the ordinary two-year suspension period may occur in exceptional circumstances only, the CAS panel relied on the wording of the WADC and the CAS case jurisprudence to rule that those principles instituted by the WADC were also applicable with regard to FIFA rules.

### ***7.5.1 How did Fenproporex Enter Dodô's System?***

Dodô relied on analyses performed by the laboratory of the University of São Paulo (USP) to submit that the cause of the Fenproporex found in his urine was contaminated caffeine pills manufactured by *Farmácia de Manipulação*. Despite the report issued by the USP, which confirmed that pills contained in boxes provided by Botafogo football club were containing Fenproporex, the panel did not find this evidence conclusive to demonstrate that Fenproporex entered Dodô's system by the ingestion of contaminated caffeine pills.

The panel noted the following:

- The report issued by the USP did not contain details as to the number of pills analysed and whether all of them were contaminated or not;
- The USP issued a warning that it did not assume liability for the origin of the material delivered for the analysis;
- Nobody from the USP was called to give evidence on the analysis performed;
- Dodô delivered urine samples at three other doping controls, which show no presence of Fenproporex, even though Dodô ingested the allegedly contaminated caffeine pills before the matches preceding such controls;
- Dodô did not declare on the doping control form that he took caffeine pills before the match;
- The other players of the Botafogo team, who were controlled after the same match as Dodô, stated in the doping control form that they ingested caffeine pills. They did not test positive for Fenproporex, even though they ingested pills from the same source;
- None of the Botafogo football players ever tested positive for Fenproporex, despite their massive ingestion before matches of caffeine capsules manufactured by *Farmácia de Manipulação* Pharmacy;
- The head of the *Farmácia de Manipulação* testified that Fenproporex capsules and caffeine capsules were produced at different times and in different places;

- Caffeine capsules could easily be opened and closed again, while containers could also be unsealed and re-sealed.

The reasoning by the panel shows that, in order to bring scientific evidence—such as the analysis of products by a laboratory, one should clearly define the protocol of any testing in order for such analysis to be conclusive. The football club should at least have taken the appropriate measures to demonstrate which pills were analysed. It would also have been useful to ask the laboratory to identify all substances in the capsules, in order to see whether the concentration of Fenproporex was compatible with an accidental contamination or whether such concentration was very low, which could have explained why Dodô or other football players of the Botafogo football club had never tested positive for Fenproporex after having ingested such capsules.

This case also shows that doping control forms have to be filled-in carefully by indicating all substances taken before the control. Any failure in providing all the requested information is often interpreted as evidence, which excludes any reduction of the ordinary two-year period of ineligibility for no significant fault or negligence.<sup>17</sup>

### 7.5.2 *Dodô's Duty of Care and Degree of Fault or Negligence*

The panel also examined whether, in the event that Dodô had provided a plausible explanation of how Fenproporex entered his system (*quod non*), the player duly exercised his duty of care.

At the hearing, Dodô confessed that he simply trusted his club and the team doctors and that he did not know exactly how and where the products given to him were manufactured. He was unable to mention the names of the products regularly administered to him.

The WADC clearly states that “it is each athlete’s personal duty to ensure that no prohibited substance enters his or her body” (Article 2.1.1). The definition of “No fault or negligence” provided for under the WADC states that the athlete has to establish not only that he did not know or suspect that he had used or been administered a prohibited substance, but that he *could not reasonably have known or suspected* such use or administration.

The award rendered by the CAS in the *Dodô* case confirms a long standing jurisprudence ruling that athletes, who do not comply with their personal duty of care and do not exercise caution before ingesting products, do not deserve any reduction of the ordinary two-year period of ineligibility.<sup>18</sup> We hope however that, more than five years after the entry into force of the first WADC, players and clubs

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<sup>17</sup> See e.g. CAS 2008/A/1597 *Akritidis et al. v IWF*, § 7.2.21. On the contrary, in the case CAS OG 06/001 *WADA v USADA, USBSF & Lund*, the fact that Lund indicated on the doping control forms that he was taking a medication, containing a prohibited substance, played a key role in the decision of the panel to accept that Lund bore no significant fault or negligence.

<sup>18</sup> See e.g. CAS 2008/A/1597 *Akritidis et al. v IWF* ; CAS 2003/A/484 *Vencill v USADA*.

are now aware of their duties and obligations as per the anti-doping rules and that negligence, such as the one observed by the CAS panel in the case of *Dodô*, would be avoided in the future.

## 7.6 Conclusion

The *Dodô* award is key with regard to the CAS jurisdiction in doping matter. The CAS panel ruled that the general reference to the FIFA Statutes provided for under the rules of the CBF constituted a valid arbitration clause allowing WADA and FIFA to appeal decisions rendered by CBF in doping matters. This ruling was confirmed by the Swiss Federal Tribunal.

The reasoning by the CAS as to the jurisdiction cannot, in our opinion, be extended without limitation to all decisions rendered by a sports federation, outside the scope of doping-related decisions. In doping matters, the CAS arbitration is specific:

- The CAS jurisdiction is not agreed upon “freely” by the parties, but it is a mandatory rule, which is applied worldwide.
- Article 13 of the WADC allows WADA, the international federation and in some cases the IOC to appeal doping-related decisions. Therefore, the parties to the appeal to the CAS are not necessarily the same as the parties in the procedure that led to the decision, which is appealed against.
- With regard to the applicable law on the merit, it may well happen that the CAS panel applies a different law or different rules than the national federation, by virtue of Article 60 para 2 of the 2007 FIFA Statutes.

On the contrary, the CAS jurisprudence, which requests that the CAS arbitration clause be specifically included in the rules of the body rendering the appealed decision in order for CAS to have jurisdiction, remains valid for other disputes than doping cases.

As to the merit, the *Dodô* case confirms that, in order to obtain a reduction or elimination of the ordinary two-year suspension period, the player needs to bring satisfactory evidence showing how the substance entered his or her body and that he exercised specific caution in avoiding the ingestion of any prohibited substance.<sup>19</sup>

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<sup>19</sup> For a recent example of an award admitting that the athlete bore no fault or negligence, see CAS 2009/A/1926 & 1930 *Gasquet*, WADA, ITF (where Gasquet got contaminated with cocaine by kissing a girl named Pamela, whom he met in an “unsuspicious environment like an Italian restaurant”). For a recent example of an award accepting that the fault of the athlete was not significant, see CAS 2009/A/1870 *WADA v Hardy & USADA* (where Hardy was contaminated with clenbuterol by using a supplement, but who was told by the manufacturer of the supplement that its products were tested by an independent company for purity, who purchased the supplement from a reliable source unrelated to prohibited substance, who consulted with the team nutritionist and the USOC sport psychologist about the supplement, and who used the same supplement (and no other) for a long period of time).