CAS 2006/A/1149 and 2007/A/1211 World Anti-Doping Agency (WADA) vs Federación Mexicana de Fútbol (FMF) and Mr José Salvador Carmona Alvarez

AWARD

rendered by

THE COURT OF ARBITRATION FOR SPORT

Decided by the Panel comprising:

President:	Mr Jan Paulsson (Paris)
Arbitrators:	Peter Leaver Q.C. (London)
	Prof Massimo Coccia (Rome)
Ad hoc secretary:	Mr Nicolas Cottier (Lausanne)

In consolidated arbitrations between

The World Anti-Doping Agency (WADA), Montreal, Canada
Represented by Messrs François Kaiser and Claude Ramoni, Attorneys-at-law in Lausanne, Switzerland.

versus

The Federación Mexicana de Fútbol (FMF), Mexico D.F., Mexico.
Represented by its General Secretary, Mr Decio de Maria Serrano, and by Mr Victor Garza Valenzuela, in-house counsel.

Mr José Salvador Carmona Alvarez, Mexico D.F., Mexico.
Represented by Messrs Víctor Manuel Garcés Rojo, David Cohen Sacal, and Gonzalo Bernardo Zubillaga Ochoa, Attorneys-at-law in Mexico D.F., Mexico; and Gorka Villar Bollain, Attorney-at-law in Madrid, Spain.

OVERVIEW

1. WADA asserts that Mr José Salvador Carmona Alvarez ("the Player") is guilty of repeated drug offences and should therefore be declared ineligible for life under the FIFA Disciplinary Code, and that this ban should be imposed by the Court of Arbitration for Sport due to the failure on the part of Mexican sport authorities to pronounce appropriate sanctions.

2. A test carried out on 31 January 2006 at the premises of the Player's club in Mexico City revealed the presence in his urine of Stanozolol, an exogenous anabolic steroid which appears on the WADA 2006 Prohibited List (Appendix A to the FIFA Doping Control Regulations 2006) under class 51 ("anabolic agents"). The analysis was carried out by the UCLA Olympic Analytical Laboratory, which is accredited by WADA.

3. The samples were received by the UCLA Laboratory on 1 February 2006. The Laboratory sent its positive finding to the FMF on 21 February 2006. The next day the FMF communicated this result to the Player's team, Club Cruz Azul, and noted that pursuant to Article 8 of the FIFA Doping Control Rules the Player had 48 hours to request an analysis of the "B" sample, failing which he would be deemed to have accepted the analysis of the "A" sample. As a matter of routine, the finding was forwarded by the Laboratory to FIFA, which on 9 March 2006 asked the FMF to be informed of the name of the Player and his club, as well as the disciplinary measure taken by the FMF.

4. As he later testified when he appeared before the FMF Disciplinary Commission, the President of Club Cruz Azul considered that his club was not required to notify the Player of the result of the analysis of this "A" sample by the UCLA Laboratory because it was up to the FMF itself to do so. In any event, according to the written declaration of the FMF's Secretary General of 15 February 2007, Club Cruz Azul never answered the FMF's communication of 22 February.

5. The Player had been suspended for one year by the FMF on 4 July 2005 following a positive test for the same prohibited substance. On 31 August 2005 and pursuant to

Art. 140 of the Disciplinary Code, FIFA's Disciplinary Committee extended this ban to worldwide effect.

6. Article 62(2) of the applicable FIFA Disciplinary Code (namely the version that entered into effect on 15 September 2005) provides that "a lifetime ban shall be imposed for a repeated offence."

7. In light of the new positive test, the FMF commenced disciplinary proceedings against the Player. But by a decision dated 20 July 2006, the FMF's own Disciplinary Committee dismissed the indictment. It based its decision on the single ground that a failure of notification had deprived the Player of the possibility of requesting an analysis of the "B" sample within 48 hours; this, the Commission said, "nullifies the entire sample analysis procedure". This conclusion was, however, reached on the basis of the unfounded premise that the "B" sample had been destroyed and that therefore it was "no longer possible to rectify the procedural error". The UCLA Laboratory expressly confirmed by letter to CAS that as late as 18 April 2007: "The B sample is still secured, stored frozen and with intact chain of custody."

8. On 27 July 2006, FIFA wrote to WADA, referring to the Player's case and concluding as follows:

> *According to the file in our possession, we believe that the player should have received a (lifetime) ban for the second offence. Consequently, we kindly ask you to lodge an appeal against the decision pronounced by the Mexican Football Association with the Court of Arbitration for Sport in Lausanne, as it is foreseen in art. 60, par. 5 FIFA statutes.*

9. WADA thereupon commenced CAS proceedings on 17 August 2006 against the Player and the FMF, seeking the nullification of the 20 July decision. This case was given the CAS docket number CAS 2006/A/1149.

10. Almost simultaneously, the President of the FMF wrote to the President of its Disciplinary Commission on 18 August 2006 requesting that it reconsider the decision of 20 July 2006 on the grounds that notification to the Player's club was sufficient under applicable rules. The President of the Disciplinary Commission answered quickly, on 21 August 2006, writing that his Commission was "very disconcerted and

bothered" ("*muy desconcertada y molesta*") by the FMF letter, and rejected the request for reconsideration on the grounds expressed by the Commission in its previous decision.

11. The FMF quickly made it known to FIFA, which passed along the information to WADA by letter dated 23 August 2006, that the FMF was appealing the 20 July 2006 decision before the so-called *Comisión de Apelación y Arbitrage del Deporte* (hereinafter "CAAD"), an organ of the Mexican Ministry of Public Education created pursuant to the General Law of Physical Culture and Sports.

12. On 6 September 2006, the President of the CAS Appeals Arbitration Division, at the request of WADA and with the assent of both the Player and the FMF, ordered a suspension of the CAS proceedings "until the CAAD issues a final decision on the internal appeal proceedings."

13. On 4 December 2006, CAAD dismissed the FMF's appeal, in effect confirming the 20 July 2006 decision. It is unclear why CAAD did not react to information given to it, as is clear from its 4 December 2006 decision, by the FMF to the effect that the UCLA Laboratory still had the "B" sample and was in a position to analyse it; FMF indeed requested such an analysis, according to a letter to CAS dated 15 February 2007 from the Secretary General of the FMF.

14. On 12 July 2006, WADA instituted a separate arbitration against the CAAD decision, naming as respondents not only FMF and the Player, but also CAAD itself. This case was given the CAS docket number CAS 2007/A/1211. The Panel named for that case is identical to the one appointed for case CAS 2006/A/1149.

15. On 19 March 2007, the Panel in case CAS 2007/A/1211 informed the parties that it did not consider that it had jurisdiction over CAAD, and that if WADA wished to pursue the case against the two other respondents it should so inform CAS, in which case CAS 2007/A/1211 would be treated as consolidated with case CAS 2006/A/1149.

16. On 2 April 2007, WADA confirmed its intention to pursue case CAS 2007/A/1211 on this basis.

17. As a result, these proceedings consist of two cases involving identical parties. The difference is that case CAS 2006/A/1149 seeks to set aside the 20 July 2006 decision of the FMF's Disciplinary Commission, while case CAS 2006/A/1121 seeks a declaration of the irrelevancy of the 4 December 2006 CAAD decision for the purposes of the FIFA rules. In each case, WADA also asks the Panel to impose lifetime ineligibility on the Player pursuant to the FIFA Disciplinary Code (see Paragraph 6 above).

18. After a full exchange of written pleadings and evidence, the hearing was conducted in Lausanne on 21 April 2007 and attended by Messrs François Kaiser, Thierry Boghosian and Claude Ramoni representing WADA; Messrs David Cohen Sacal, Gorka Villar Bollain, Jorge Vaquero and Gonzalo Zubillaga Ochoa representing the Player; and Mr Víctor Garza Valenzuela representing the FMF. The Player himself did not appear. Each party presented oral arguments, and was questioned by the arbitrators.

JURISDICTION

19. WADA proceeds against the two Respondents on the basis of Article 60 of the applicable version of the FIFA Statutes (as amended with effect as of 1 December 2005). This Article contemplates that WADA may appeal to CAS in certain cases of doping decisions. Article 60 contains a number of provisions which, if their wording or application were a matter of debate, might require interpretation. Among the materials attached to its written submissions, WADA included a legal opinion concerning the application of Article 60. And it is relevant in this connection to note that by his letter dated 28 August 2006, wherein he acceded to WADA's request for a suspension, the Player explicitly referred to FMF's appeal to CAAD as an "internal appeal proceedings" ("*una apelación interna*"). In the event that the terms of Art. 60 had been debated, this characterisation would doubtless have been significant as a matter of exhaustion of internal remedies. At any rate, it does not appear from the documents provided to the CAS that the Player was a party to the proceedings before CAAD, where the opposing parties were the FMF, on the one hand, and the Disciplinary Commission of the FMF, on the other.

20. CAS jurisdiction over the three parties in this case, however, does not require the arbitrators to endorse the analysis put forward by WADA for the simple reason that the two Respondents have not questioned CAS jurisdiction *rationae personae*. (The Player's arguments in relation to jurisdiction *ratione materiae* with respect to the CAAD decision will be dealt with in due course). Accordingly, the Panel does no more than to observe that (i) the case has been initiated on a plausible jurisdictional foundation, (ii) no timely jurisdictional objection has been raised by the two Respondents, and (iii) no inferences are to be drawn from this award as to the proper interpretation of Article 60 of the FIFA Statutes.

21. At the outset of the oral hearings, counsel for Mr Carmona raised certain jurisdictional objections which did not concern Article 60 of the FIFA Statutes, but rather the proposition that all relevant parties, including WADA, had foreclosed CAS jurisdiction by accepting the authority of another arbitral body, i.e. CAAD.

22. In principle, this objection was inadmissible due to its tardiness. On the other hand, the ground of the objection relates to a factual development which had not occurred at the time case CAS 2006/A/1149 was filed. Moreover, WADA did not protest. The Panel accordingly has considered the substance of this objection, and decides as follows.

23. The dominant theme of the Player's case, as presented at the hearings, was that the CAAD decision should be deemed a binding arbitral resolution because the relevant parties had consented to it, and that WADA, in particular, implicitly accepted that the outcome before CAAD would be authoritative and definitive when it sought, and obtained, a stay of the CAS proceedings pending the CAAD decision.

24. This assertion depends on a proper understanding of the letter, dated 23 August 2006, by which WADA requested the suspension of case CAS 2006/A/1149. WADA rejects the notion that the letter constituted an implicit acceptance that the CAAD decision would be authoritative and definitive. WADA's position is plainly right. If WADA had had the intention of conferring upon CAAD the authority to make a final and binding determination as to the consequences of the analyses of the samples taken

from Mr Carmona on 31 January 2006, WADA would simply have withdrawn its case before CAS. The very notion of suspension implies the possibility of resumption.

25. The Player's argument also seemed to suggest that it would for some reason be impermissible for a party to ask for the suspension of a case it has initiated on the basis that if it is satisfied it will desist, but if not it will pursue. There is no substance in this argument. It is an everyday occurrence that claimants in the most ordinary disputes agree to suspend their legal activities pending the outcome of some event – such as negotiations – which may give them satisfaction. If it did, they would then *but only then* withdraw their action; if it did not, they may resume their legal action. Not only is this acceptable, but it is desirable inasmuch as it reduces litigation and promotes efficiency in the administration of justice.

26. In the alternative, the Player's counsel sought to argue that in any event the jurisdiction of CAAD was obligatory as a matter of Mexican law, and would therefore make it impossible for CAS to exercise authority in this case. True enough, the Mexican Law on Physical Culture and Sport contemplates that CAAD may decide disputes in relation to cases of alleged doping. But the coexistence of national and international authority to deal with doping cases is a familiar feature, and it is well established that the national regime does not neutralise the international regime.

27. National associations have vested disciplinary authority in international federations precisely in order to eliminate unfair competition, and in particular to remove the temptation to assist national competitors by over-indulgence. The objective is to subject all athletes to a regime of equal treatment, which means that national federations must be overruled if they look the other way when their athletes breach international rules. Thus, in a case involving doping in the sport of swimming, a CAS tribunal recognised the imperative need for international federations to be able to review decisions resolved by national federations, lest international competition be distorted by reason of laxness on the part of national bodies (CAS 96/156, award rendered on 10 November 1997, F. v. FINA).

28. Subsequently, in B. v. International Judo Federation (CAS 98/214, published in DIGEST OF CAS AWARDS II 1998-2000, pp. 291 ff.), CAS extended this approach to

sanctions decided by national public authorities. That case involved a doping violation which led to a suspension decided by the French Minister of Sports, who under a French law of 1989 had the power to substitute his decision for that of national sports federations. The French judo federation had handed down a suspension of two years, of which one was with remission (*sursis*); the ministerial decree reduced this sanction to a simple one-year suspension. The ministerial decision was not in conformity with the rules of the International Judo Federation, which brought the case to CAS and obtained a modification of the suspension to 15 months. The arbitrators reasoned notably as follows:

> *The panel is of the view that the latitude which this precedent* [the FINA case referred to in Paragraph 27 above] *accorded to international federations should be extended to cases where the control and sanction of doping is carried out not by a national federation acting pursuant to sports rules, but by a public authority acting either pursuant to a national law, as in this case, or on the basis of an international convention.*
>
> *The subordination of national decisions in the realm of doping to international control, irrespective of the authority which renders them, is justified not only by the objective of avoiding that certain federations or governmental organs engage in a wholly unhealthy form of unfair competition, by declining to sanction their own athletes with the same degree of rigour and severity as other federations and/or their international federations, but also by the goal which each international federation should have of ensuring the equal and consistent treatment of all participants in a sport.* [Translated from French.]

29. In the case of UCI v. Muñoz and Federación Colombiana de Ciclismo (CAS 2005/A/872), the arbitrators concluded as follows:

> *The panel is prepared to accept that as a matter of Colombian Law it was possible for Mr Muñoz to appeal to the General Disciplinary Committee of the Colombian National Olympic Committee. However, to do so was a breach of his contract with the UCI. At best, the decision of the General Disciplinary Committee could only have an effect within Colombia. It would not entitle Mr Munoz to participate in cycle races organized under the auspices of the UCI, or to avoid the UCI's disciplinary code.*

30. The just-mentioned awards were cited with approval in the two cases rendered in December 2006 by CAS arbitrators faced with a Spanish law which, according to the argument of two cyclists having tested positive for doping, forbade recourse to arbitration in the context of alleged doping infractions. The arbitrators rejected the objection to their jurisdiction, reasoning as follows:

> *States and international sports federations are not rivals for authority; on the contrary, their roles are complementary. States are concerned only with the conduct of those who fall within the reach of their laws, while international federations administer competitions within the scope of their activity. The same behaviour may be subject to criminal sanctions in a particular territory without the cyclist necessarily being sanctioned on the international level. Similarly, it may well be that behaviour which gives rise to no criminal sanctions may nevertheless lead to exclusion from sports events because it offends fair play.*
>
> *The complementary functions of state and international authorities may be observed in a particular guise whenever a public authority substitutes itself for a national federation in order to pronounce sanctions – as in the International Judo Federation case referred to above, or in the present case. National sovereignty, as expressed in a sports disciplinary measure decided by a national authority, is in principle and by its nature limited to national territorial application. A national decision may, however, be replaced by a decision of the international authority – CAS – in order to ensure the required uniform application of law. True, it is theoretically conceivable that a state would impose its national decisions with respect to international events taking place on its territory even in disregard of the international authority. Such an attitude would, however, contradict the effort to fight doping on the international level, and could lead to the exclusion of the concerned state from the organisation of international competitions. It would be surprising for a state to wish to adopt such a posture, and nothing in the texts invoked in this case suggests that such is the position taken by Spain. To the contrary, the preamble of Royal Decree* 255/1996 *makes it clear that Spain wishes to ensure the coherence of its norms with international ones*:
>
> > *"In application of Article 76.1(d) of the Law of Sport and in conformity with the criteria established by international sports norms, the present Royal Decree defines the actions that constitute violations of the rules concerning*

> *doping and establish the sanctions relating thereto."*
>
> (UCI v. Landaluce and Real Federación Española de Ciclismo, TAS 2006/A/1119, paras. 49-50, translated from French. A three-member panel comprising two of the same arbitrators, sitting in UCI v. González and Real Federación Española de Ciclismo, TAS 2006/A/1120, at para. 48 explicitly adopted the reasoning in the *Landaluce* award.)

31. It is noteworthy that the Spanish cycling federation in the *Landaluce* and *González* cases agreed with this conception of the coexistence of national and international authority. The same posture is adopted by the FMF in the present case.

32. The Panel does not presume to be empowered to repeal the CAAD decision. Moreover, WADA expressly confirmed at the outset of the hearing in Lausanne that it had abandoned its initial request that the CAAD decision be set aside; its position is rather that whatever the status of that decision may be for other purposes it should be held to have no effect in the context of the FIFA regime. It may be difficult to understand, *soit dit en passant*, why the Mexican authorities would wish to uphold a disciplinary decision which had been based on the erroneous premise that the "B" sample had been destroyed. This is all the more curious since CAAD was made aware by the FMF that the "B" sample sent to the UCLA Laboratory had remained available all along; its failure in these circumstances to exercise its plenary appellate jurisdiction and to rule that the Player had not been prejudiced by the alleged failure of notification reflects an exaltation of form over substance which stands in stark contrast with the pronouncements of CAS in a long line of cases from USA Shooting & Quigley v. UIT (CAS 94/129, published in DIGEST OF CAS AWARDS I 1986-1998, pp. 187 ff.) to Annus v. IOC (CAS 2004/A/718). WADA's position is legitimate.

33. The CAAD decision is thus given no effect for the purposes of the international regulation of the sport; the FMF and the Player are obliged to respect the international regime irrespective of the CAAD decision and whatever the latter's effects may be outside the domain covered by the FIFA rules. It would be a mistake to consider this conclusion to be contrary to Mexican interests. In the first place, the exclusion of recidivist doping violators is in the interest of all Mexican clubs and players who

respect the doping Rules. Secondly, all Mexican associations, clubs and players obviously benefit from the coherent and effective regime which FIFA has sought to establish. For example, in Club Atlético Mineiro v. Club Sinergia Deportiva (Tigres), Enilton Menezes de Miranda & FIFA (CAS 2004/A/565 & 566, award rendered on 2 May 2005), the Mexican club Tigres was able, with the support of FIFA, to obtain a ruling that the Brazilian Club Atlético Mineiro was liable to pay Tigres USD 750,000 on account of the failure of a player to respect his contractual obligations to Tigres. Moreover, that award was made even though a Brazilian labour court had ruled that the player was entitled to pursue his football career notwithstanding that he had breached his contract with Tigres and therefore been provisionally suspended by FIFA from "any football activities worldwide." The Brazilian court decision may have freed the player to sign a new contract with Atlético Mineiro; but even if the Brazilian player was thus enabled to execute a Brazilian contract with a Brazilian employer, this did not, consistently with the decisions described above, prevent the autonomous generation of international responsibility of both the player and his new team for having disregarded an existing, internationally recognised contract.

34. The Panel observes that the Player's belated arguments concerning the CAAD decision focussed on WADA's alleged consent to CAAD's authority rather than on a contention that this is a case which fell to be decided by "an independent and duly constituted arbitration tribunal recognised under the Rules of an Association or Confederation" which therefore could not be appealed to CAS under Article 60(3)(c) of the FIFA Statutes. Such an argument would have been inconsistent with the Player's characterisation of the CAAD case as "internal appeal proceedings," (see paragraph 19 above). The present Panel sees no reason to go outside "the general rule that the arbitrator verifies his jurisdiction only if it has been challenged by the respondent or respondents in good time, that is to say before the defence on the merits," J.-F. Poudret and S. Besson, DROIT COMPARE DE L'ARBITRAGE INTERNATIONAL 419 (2002); *accord* G. Kaufmann-Kohler & Antonio Rigozzi, ARBITRAGE INTERNATIONAL: DROIT ET PRATIQUE A LA LUMIERE DE LA LDIP para. 424 (2006). Indeed, to do so in this case would be to enter into a factual inquiry as to the "independence," "due constitution," and "recognition" of CAAD which could not be

satisfied on the record of this case. In light of the foregoing, CAS has jurisdiction to hear WADA's appeal against the two Respondents.

THE NOTIFICATION OF THE ADVERSE FINDING

35. The Player insists that under Mexican law it is impermissible to achieve the serious effect of depriving someone of his livelihood without formal personal notification at his residence. But no probative evidence of such provision of Mexican law was submitted, nor any demonstration of its applicability to the present case. At any rate, it would be utterly inimical to the establishment and maintenance of a uniform international regime in the fight against doping if athletes could invoke more or less identifiable rules for giving formal notice which are peculiar to their home countries. Worse, it would open the door to clubs wishing to maintain the infringing athlete in active service to do themselves – and him – an illicit favour by neglecting to forward the notification properly.

36. Pursuant to Article 46 of the *Reglamento de Sanciones* of the FMF, notifications to players are made through their club, or "*à través de su Club*" as the President of the FMF wrote to his Disciplinary Commission on 18 August 2006, asking it to reconsider its decision of 20 July 2006. He noted that Article 46 was consistent with the FIFA Disciplinary Code, and asserted that this meant that a *personal* notification to the Player was not necessary. At the hearings, the representative of the FMF explicitly confirmed the position that his Federation considered that the Player had been properly notified.

37. WADA observes that at any rate the Player lodged a defence before the FMF's Disciplinary Commission, thereby plainly demonstrating that he had actually received notice of the adverse analytical finding, and that he was thus not deprived of any procedural – let alone substantive – rights as a result of any delays in notification. There is force in this argument. In the absence of a showing of prejudice, it is difficult to see why athletes guilty of doping offences should go free on the basis of this type of (alleged) formal defect, with the result of prejudicing other athletes who are left to compete with someone who as a matter of principle should be excluded.

38. But the most important feature in this respect is that pursuant to a very familiar provision of its Rules, namely Article R57 of the Code of Sports-Related Arbitration ("the Code"), CAS is entitled to conduct a full review of the facts underlying an appeal. It is a matter of settled case-law, as noted in Paragraph 32 above, that procedural flaws of a previous disciplinary decision may be cured at a level of CAS, since its arbitrators are free to review decisions appealed to them. In this case, that would obviously mean that past procedural impediments to the Player's exercise of his right to demand analysis of the "B" sample could be neutralised in the context of the proceedings before CAS.

39. Evidently conscious of the fact that this principle might lead to a focus on the "B" sample which he did not welcome, the Player argued, in a written submission of 11 April 2007, that such a step would violate Article R44 [*recte* Articles R48 and R51] of the CAS Code which requires appeal briefs to specify prayers for relief. He argued that WADA had not asked for an analysis of his "B" sample, and that the matter was closed. This is a feeble argument indeed, since the issue is not whether WADA had demanded such an analysis. In point of fact, the FMF expressly requested, at para. 16 of its Answer, that the "B" sample be analysed; and WADA's Appeal Brief explicitly reserved the possibility of making such a request. The only issue in this respect is whether the Player – who is the party primarily entitled to make such a request in his own interest – had been prevented from doing so.

40. An even more unattractive argument raised in the Player's written submissions is based upon Art. 8.5 of the FIFA Doping Control Regulations and Art. 5.2.4.3.2.1 of the International Standard for Laboratories. Art. 8.5 is in the following terms:

> *If no request for a second test is made, the laboratory shall dispose of sample "B" as provided for in the International Laboratory Standards.*

The Player submitted that as he had not requested testing of the "B" sample, it should have been destroyed after 30 days and must now be disregarded for all purposes. The implication of this submission seems to be that if an athlete can postpone, by whatever means, the date upon which he receives notice of the adverse analytical finding of the "A" sample, he can say that he was not put in a position to request the analysis of the

"B" sample, and was therefore deprived of the opportunity to have the "B" sample analysed because it no longer exists.

41. This submission fundamentally misapprehends the structure and intent of the FIFA Doping Control Regulations and the International Standard for Laboratories.

42. Art. 5.2.4.3.2 of the International Standard for Laboratories is concerned with *" 'B' Sample Confirmation"*. It provides that if confirmation of an adverse analytical finding in the "A" sample is requested by analysis of the "B" sample, the analysis should *"occur as soon as possible and should be completed within 30 days"* of the notification of result of the analysis of the "A" sample. As stated above, the Player did not request the analysis of the "B" sample at the time, and persisted in his unwillingness to have it analysed up to the conclusion of the hearing. In these circumstances, Art. 5.2.4.3.2 is inapplicable and thus provides no support for the Player's argument. In any event, that Article simply states a best standard to be applied if the analysis of the "B" sample is requested: it does not suggest that if the analysis takes place more than 30 days after the notification of the result of the "A" sample analysis, the result of the "B" sample analysis must be disregarded.

43. The applicable provision, when the analysis of the "A" sample shows an adverse analytical finding and the analysis of the "B" sample has not (yet) been requested, is Art. 5.2.2.6, which provides for the retention of the samples for "*a minimum of 3 (three) months after the Testing Authority receives the final analytical "A and B Sample) report*". As the three month retention requirement is a "minimum", no rule is violated if a sample is kept longer, as long as it is "*retained frozen under appropriate conditions*."

44. When the analysis of a sample is *"challenged or disputed"*, and the laboratory is informed of the challenge or dispute, Art. 5.2.2.7 calls for the sample to be retained frozen, and all records of the testing to be stored, until the challenge has been resolved. As the dispute about the accuracy of the CONADE analysis was known from an early stage, it is doubtful whether CONADE should have destroyed the "A" and "B" samples as it did. However, that is not a matter upon which the Panel is required to express a concluded view.

45. Art. 8.5 of the FIFA Doping Control Regulations simply requires the laboratory to dispose of the "B" sample in the manner provided for in the International Standard for Laboratories. But if there is a dispute or challenge as to the analysis of a sample, be it "A" or "B", the International Standard for Laboratories requires that the sample is retained frozen until the challenge has been resolved. The Panel understands the definition of *"sample"* - i.e. any biological material collected for the purpose of doping control - to include what is referred to as both the "A" sample and the "B" sample. Thus, all samples should have been retained frozen until the final resolution of the challenge. The policy is self-evident: it should be possible to test (or even re-test) controversial samples at a later stage. The Player's curious argument of a right to the destruction of evidence has no basis in the applicable rules.

46. Finally, the Panel refers to Art. 8.2 of the FIFA Doping Control Regulations. That Article provides, inter alia, that if the Player does not request the analysis of the "B" sample, he *"accepts the sample 'A' test results"*. The Player did not request the analysis of the "B" sample.

47. The Panel can only conclude that neither the FIFA Doping Control Regulations nor the International Standard for Laboratories provide any support for the Player's submission.

THE CONADE TEST

48. A central element of the Player's defence is the fact that urine samples taken from him on 31 January 2006 were sent not only to the UCLA Laboratory, but also to a Mexican laboratory operating under the authorisation of the so-called *Comisión Nacional de Cultura Física y del Deporte* ("CONADE"). That laboratory did not have WADA accreditation. The "A" sample analysed there yielded a negative result.

49. WADA has suggested that "it is highly probable that the LC/MS/MS screening procedure used by the UCLA Laboratory picked up the signal while the GC/MS screening procedure (used by the Mexican laboratory) would not and could not." It also notes that the chemistry of Stanzolol is complex, and stretches the GC/MS procedure to its limits, with risk for "variability in final results" and inability to detect

the metabolites in the event the instrument is not properly maintained. Moreover, WADA considers that ambiguities in CONADE's records of the chain of custody are such that "there is no way to determine with certainty which of the two samples belongs to Mr Carmona;" in other words, the negative "A" sample may have been that of another person. Happily, none of these suppositions or doubts needs to be resolved by this Panel given the sole relevance of the accredited Laboratory; they would otherwise lead to endless debate. This confirms the soundness of a system which gives decisive effect to the findings of a single accredited laboratory as long as it has followed applicable protocols, rather than to leave open the door to insistence upon the lowest common denominator of a number of laboratories. What is relevant is that the UCLA Laboratory is internationally accredited, whereas CONADE is not.

50. The Player insists that given the two discrepant results, it should be considered that there is a doubt, and that this doubt should be resolved in his favour by an acquittal. But there is no such thing as entitlement to "the most favourable laboratory". Otherwise there would be no end to the multiplication of testing, as long as there remains a laboratory to be consulted. Athletes are entitled to the assurance that their specimens are analysed in an accredited laboratory in accordance with a rigorous protocol; and that if the outcome is adverse to them they are entitled to ask for the examination of a second ("B") sample, once more in accordance with a rigorous protocol. According to footnotes in the factual summary recorded by the FMF's Discliplinary Commisssion, the samples were sent to UCLA because ("*por ser*") it was a WADA-accredited laboratory; and also to CONADE "as a precautionary measure, taken on the basis of National Law" (translated from Spanish). It is not for this CAS Panel to speculate about whether this was wise, given the evident impossibility of guaranteeing that two laboratories would reach the same result (e.g. if one has more powerful analytical tools than the other). Nor it is appropriate to speculate what the purpose of a "precautionary measure" taken for purposes of national law might be. It is enough to say that *for the purposes of enforcing the FIFA rules*, to which both the FMF and the Player are subjected, what matters is only whether the adverse analytical finding was made by a properly accredited laboratory properly following protocol.

51. The situation would not be different if the Player were able to demonstrate that another WADA-accredited laboratory would have produced a favourable finding because its equipment was less able to detect a particular substance than that of the laboratory which discovered the positive. This point was dealt with in Ribero v. UEFA (TAS 2005/A/958), where the arbitrators noted that laboratories are required to be able to detect at least a defined quantity of a given substance. If they cannot do so, they will not be accredited. But this does not mean that athletes may rely on such a minimum requirement as a threshold; they should not go free if a first-class laboratory detects the substance in even lesser concentrations. With respect to exogenous anabolic androgenic steroids like Stanazolol, adverse analytical findings do not require a threshold level of concentration, because there is no acceptable explanation for the presence of a substance which cannot be produced by the human body. There may be cases, so concluded the arbitrators, where a concentration of a given substance less than the minimum required to demonstrate technical proficiency is detected by one laboratory but not by another. This does not invalidate the adverse finding, in the same way as with respect to traffic violations for speeding, where

> *… there may be a range of tolerance depending on the instruments and methods used. A driver whose license is suspended on the basis of a very precise stationary speed trap can obviously derive no argument from the fact that more tolerant standards applicable to mobile radars would have led to a different result.* (Para 72, translated from French.)

52. Put another way, it is the bad luck for an offender if his sample happens to be analysed in a state-of-the-art laboratory – and of course, by the same token, the *good* luck of the general mass of non-offenders who are thus protected from the distortion of competition.

53. In a written submission dated 11 April 2007, the Player argued that the CONADE test "should have the same value as the result issued by UCLA, considering that CONADE is the highest doping-related authority in Mexico." This argument is based on a fundamentally flawed premise, namely that the anti-doping controls in football have not achieved an internationally harmonised regime, but lurch haphazardly along within a maze of territorially autonomous and inconsistent national zones. This

conception is happily outdated, not only for football but for other major sports, as explained above in the section on jurisdiction.

54. In sum, if the result declared by the UCLA Laboratory was the proper outcome of a proper procedure, CONADE's intervention is irrelevant to the FIFA regime, and therefore also to CAS.

THE "B" SAMPLE

55. At the time of the hearings in this case, the "B" sample delivered to the UCLA Laboratory was preserved and available for analysis there, as confirmed in writing to CAS (see Paragraph 7 above). The tribunal expressed its preference that this analysis be conducted, in the interest of the Player – if indeed he had *not* committed an infraction. For its part, the FMF explicitly requested that such an analysis be carried out "in order to clarify the situation". Such an analysis would have been carried out in the presence of whomever the Player might have chosen, in order to verify the integrity of the sample, the laboratory's compliance with protocol, and the methods used and the readings recorded by the Laboratory. In this manner, any legitimate procedural concerns could have been dealt with in such a way as to ensure perfect compliance with his rights.

56. And yet the Player has emphatically objected to the analysis of his "B" sample. This is a remarkable feature of this case, given the fact that the "B" sample is preserved for his protection. Although in principle the time for the Player to request analysis of the "B" sample had long since elapsed, the arbitrators were willing that the analysis be conducted, in the Player's interest and in order to dissipate any genuine concerns he might have had with respect to any aspects of the analysis of the "A" sample.

57. The FMF, which had provided the samples for the UCLA Laboratory and was therefore in a position to instruct the Laboratory to conduct an analysis of the "B" sample, informed the Player in writing, by letter dated 8 April 2007, that it was giving those instructions, and asked him to indicate (i) his preferred date and (ii) the number of experts he might wish to send to observe the analysis.

58. Yet the Player immediately responded on 9 April 2007 to the effect that he objected to the opening and analysis of the "B" sample ("*me opongo a la apertura y análysis de la muestra B*") and therefore declined to give the information requested by the FMF.

59. The next day, the FMF asked the UCLA Laboratory to "suspend" analysis of the "B" sample pending the decision of this Panel.

60. In a written submission dated 11 April 2007, the Player reiterated (underlined and in bold-face) his "absolute objection to analysis of his "B" sample." At the end of the hearings, the president of the Panel asked the Player's advocates "one last time" if he persisted in objecting to the analysis.

61. The Player's counsel not only confirmed the objection, but stated that it was important for him to state the reasons behind this stance. First, he contended that the UCLA laboratory should have destroyed its "B" sample as CONADE did; it would be "unfair" to analyse the "B" sample in the possession of the laboratory which returned an adverse analytical finding, and not of the other. This may be a unique case of an athlete, in whose interest the "B" sample is retained, insisting on its destruction. At any rate, this argument fails (i) because it is based on a misapprehension of the relevant regulations (see Paragraphs 42-47 above) and (ii) by virtue of the irrelevance of the CONADE test for the purpose of compliance with the FIFA rules. Secondly, he asserted that an analysis of the retained "B" sample would contradict what he considered to be an agreement that the CAAD decision would be final and binding. But as seen, this Panel finds that there was no such agreement. Finally, it would be unfair to allow a "new fact" (*hecho nuevo*) to intrude into the proceedings. This is, however, a matter with respect to which the Player must assume the consequences of his decisions; the *hecho nuevo* of a "B" sample analysis could only help the accused, and if he rejects it now he cannot complain that he did not have the opportunity to ask for it earlier.

62. These arguments are unconvincing not only for the reasons given above, but above all because they are contrary to the logic that one would expect of an innocent athlete. Each of these arguments assumes that all of the Player's procedural arguments are correct: with respect to (a) the alleged relevance of the CONADE analysis

notwithstanding its lack of accreditation; (b) the alleged agreement that the CAAD decision be final and binding; (c) the alleged irreparable imperfections of notification; and (d) the alleged irreparable doubts as to the certainty of the positive finding. It makes no sense to adopt this posture, because

- if these procedural defects existed and could not be repaired, as per the Player's thesis, he would have nothing to fear from the analysis of the "B" sample because even if it were positive he could not be sanctioned; and

- if on the contrary the "B" sample were found to be negative, the Player would go free even if all of his other arguments failed.

63. In light of his repeated and insistent refusal to avail himself of an opportunity which exists only for the protection of the accused, the Panel accedes to his demand and will not give instructions for the "B" sample analysis. Given that in principle he had nothing more to fear and everything to gain if he had availed himself of this opportunity, the Player's posture lacks credible justification.

THE MERITS

64. Unlike the situation in many if not most doping cases, the Player here does not contest the scientific accuracy of the analysis carried out by the UCLA Laboratory; his complaint is rather focused on his allegations that notification to him was flawed; that there was a conflicting result from CONADE which should entitle him to the benefit of the doubt; and that the CAAD decision should be given full faith and credit.

65. The discussion of the bona fides of the analysis of the "A" sample may therefore be brief. The Player signed his *registro de muestra urinaria* without objection on 31 January 2006, as did his "accompanying person." He did not list any prescribed medication. From that point on, as documented in the file provided by the UCLA Laboratory, the sample was preserved, transported, received and analysed in accordance with detailed procedures which have not been challenged by the Player. Nor does the Player challenge the scientific conclusion as to the identification of stanozolol metabolites (3'OH-stanozolol and 16β-OH-stanozolol) in the sample –

except for his argument that somehow this outcome should be neutralised by virtue of the fact that the unaccredited CONADE laboratory produced a negative reading.

66. As the FMF's representative stated in the course of the hearing in Lausanne, players as well as federations are affiliates of FIFA, and accept the applicability of the FIFA rules. Indeed, Mr Garza referred to the Player's own application to the FMF for registration as a professional player ("*solicitud de afiliación de jugador professional*") produced before the arbitrators, which contained the following mention immediately above his signature:

> *While attesting to the truth of my declaration, I confirm that the personal documents necessary for my registration as delivered to my club are authentic, and express my undertaking to respect the Statutes and Regulations issued by FIFA of which I am fully aware.* [Translated from Spanish.]

67. The Player argues, in his written submissions, that the samples taken on 31 January 2006 "were not carried out during a competition or an event organised by FIFA and therefore, it turns out to be irrelevant that said organisation does not recognise CONADE as a Laboratory." He adds that the 31 January 2006 test was not initiated by FIFA in order "to verify my rehabilitation," and therefore was not in conformity with Art. 63 of the FIFA Disciplinary Code. But WADA observed correctly that Art. 66 of the FIFA Disciplinary Code allows FIFA to "order any player sanctioned for a doping offence to undergo further doping tests while serving a suspension". It is thus irrelevant that the test which revealed the Player's repeated offence took place while he was still under suspension as a result of his first one. The Player has not attempted to make the physiologically implausible argument that the steroids detected had remained in his body from the time of the initial test.

68. None of the possible exceptions to the lifetime ban imposed on repeat offenders are applicable here. Under the FIFA Disciplinary Code, an athlete may seek the reduction of the period of ineligibility imposed on him if he can prove that no significant fault or negligence on his part contributed to the adverse finding. In the present case, the Player has not even attempted to demonstrate any excuse or other extenuating circumstance.

69. The Player's advocates have stressed that the stakes in this matter are extremely serious for their client, since a lifetime suspension would deprive him of the possibility to pursue his preferred profession. This may be so, but it should be clear that its paramount implication is that those who seek to make their livelihood in professional sports should not violate the anti-doping rules. Those rules exist not only in the interest of an athlete's own health, but also in the public interest of discouraging doping among younger athletes, as well as of ensuring that all professionals compete with an equality of arms, and that those for whom sports have an important meaning are not disaffected by the degeneration of ethical standards. Professional athletes are no different than others whose work is regulated – much as physicians or public servants or accountants – who face disqualification if they violate the rules to which they are held. It merits repeating that anti-doping rules are designed and intended to protect athletes who compete fairly, and to punish those who do not. The latter must be prepared to face the consequences when they transgress the rules.

70. (…)

ON THESE GROUNDS

The Court of Arbitration for Sports rules that:

1) The World Anti-Doping Agency's appeals against the decision dated 20 July 2006 of the FMF's Disciplinary Commission and against the decision of the *Comisión de Apelación y Arbitrage del Deporte* dated 4 December 2006 are upheld.

2) The decision dated 20 July 2006 of the FMF's Disciplinary Commission is set aside.

3) The decision of the *Comisión de Apelación y Arbitrage del Deporte* dated 4 December 2006 has no effect on the system of sanctions established under the FIFA Statutes and Regulations.

4) The Player, Mr José Salvador Carmona Alvarez, is declared ineligible with immediate and lifetime effect.

5) (…)

Lausanne, 16 May 2007

The Court of Arbitration for Sport