CAS 2009/A/1879 Alejandro Valverde Belmonte v. Comitato Olimpico Nazionale Italiano

ARBITRAL AWARD

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Ad hoc clerk: Mr. Pierantonio **D'Elia**, Attorney, Rome, Italy and Brussels, Belgium

In the arbitral appeal proceedings

between

MR. ALEJANDRO VALVERDE BELMONTE, Murcia, Spain
Represented by Mr. José Rodríguez, Madrid, Spain and Mr. Federico Cecconi, Milan, Italy

- Appellant -

versus

COMITATO OLIMPICO NAZIONALE ITALIANO (CONI), Rome, Italy
Represented by Mr. Ettore Torri, General Public Prosecutor

- First respondent -

WORLD ANTI-DOPING AGENCY (WADA), Lausanne, Switzerland
Represented by Mr. Stephen Drymer, Montréal, Canada

- Second respondent -

INTERNATIONAL CYCLING UNION (UCI), Aigle, Switzerland
Represented by Mr. Philippe Verbiest, Leuven, Belgium and
Mr. Pablo Jimenez of Parga, Madrid, Spain

- Third respondent -

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This translation is provided for information purposes only.

I. THE PARTIES

1. Alejandro Valverde Belmonte (the "Athlete" or "Appellant") is a professional cyclist of Spanish nationality with a licence from the Spanish cycling federation, the *Real Federación Española de Ciclismo* ("RFEC").

2. The Comitato Olimpico Nazionale Italiano ("CONI") encompasses all Italian national sports federations. It is responsible for regulating and monitoring the organization of sports activities in Italy. In particular, CONI adopts preventive and punitive measures with respect to the consumption of substances altering the physical performance of athletes during their sports activity. The *Ufficio di Procura Antidoping* of CONI ("UPA-CONI") is the organization responsible for investigating violations of NSA Anti-doping standards in Italy, adopted by CONI pursuant to the World Anti-Doping Code ("WADC") of the World Anti-Doping Agency ("WADA"). The *Tribunale Nazionale Antidoping* ("TNA") is the supreme authority over CONI in doping matters.

3. The International Cycling Union ("UCI") is the association of national cycling federations. It is a Swiss private law association and its mission is to manage, develop, regulate, control, and discipline cycling in all its forms at the international level (Article 2, paragraph *a*, of the UCI Statute). In order to combat doping in cycling, the UCI adopted Anti-Doping Rules ("UCI Rules").

4. WADA is a Swiss private law foundation, responsible for promoting, coordinating and monitoring the battle against doping. As part of its activities, WADA adopted the WADC, providing a framework for the anti-doping practices and regulations of sports organizations and public authorities.

II. FACTS

A. PROCEEDINGS IN SPAIN

5. This case originated from the investigation known as "Operation Puerto", which began in Spain in 2004 as part of a coordinated investigation involving the *Juzgado de Instrucción* no. 31 of Madrid ("Investigating magistrate no. 31") and the Spanish Civil Guard. The objective of this criminal proceeding was the doping practices of physicians and other parties that could constitute "offences against public health" as defined in Article 361 of the Spanish Penal Code. As mentioned *infra*, doping by an athlete did not constitute an offence in Spain at the time of the incriminating facts.

6. The Civil Guard carried out telephone monitoring, as well as numerous warrants, pursuant to which several people were arrested. Among these people was Dr. Eufemiano Fuentes, the alleged mastermind of a clandestine international doping network.

7. At the time of his arrest on May 23, 2006, Dr. Fuentes was carrying a card from the Silken Hotel, on the back of which was written a list of pseudonyms and the name "Valverde".

8. In the context of the investigation, the Civil Guard seized a large quantity of documents, equipment, doping products (hormones, steroids, etc.), as well as bags of blood and plasma. Most of the approximately 200 blood bags seized contained a code number permitting the identification of the athlete to whom the blood belonged. Dr. Fuentes confirmed this, admitting that the blood bags identified by means of codes were intended to be re-transfused into the athletes from whom they were taken.

9. On May 30, 2006, RFEC was made civil party to a court action in the context of the investigative proceedings conducted by Investigating magistrate no. 31. UCI and WADA were also made civil parties to the same proceedings.

10. The Civil Guard drafted a report ("Report no. 116") dated June 27, 2006, describing the organization and operations of Dr. Fuentes' doping network, in which, in the section describing the blood bags seized, reference was made to a bag of plasma with the reference "18 VALV. (PITI)" ("Bag no. 18"); see Documents no. 114 and 116, summarized in Report no. 116, page 3).

11. Report no. 116 also contained a list of athletes suspected of being involved in Operation Puerto. The Athlete's name did not appear on this list.

12. Following an investigation by the Public Public Prosecutor, Investigating magistrate no. 31 ordered a certified copy of Report no. 116 to be sent to the *Consejo Superior de Deportes* ("CSD") on June 29, 2006, so that the latter could take appropriate administrative and disciplinary measures.

13. That same day, the CSD sent a copy of Report no. 116 to RFEC with instructions to send a copy to UCI. RFEC then sent a copy of Report no. 116 and most of its appendices to UCI.

14. Following a decision by Investigating magistrate no. 31, the Civil Guard sent some of the bags seized during the investigation (which up to that point had been held in Madrid under the responsibility of the Civil Guard) to the *Laboratoire de l'Instituto Municipal d'Investigación Medica* (IMIM – Hospital del Mar) in Barcelona ("Barcelona Laboratory") in order for them to be stored and analyzed. The following day, on August 1, 2006, the Barcelona Laboratory received 99 bags of plasma, including Bag no. 18, and proceeded to analyze them. As indicated hereinafter, the analyses by the Barcelona Laboratory revealed that nine bags of plasma, including Bag no. 18, contained recombinant erythropoietin ("EPO"), a substance prohibited by anti-doping legislation.

15. Investigating magistrate no. 31 issued an order dated October 3, 2006, prohibiting the use of elements resulting from the criminal proceedings in administrative proceedings ("Order of October 3, 2006"). Specifically, the Order prohibits the use of items of evidence arising from the criminal proceedings related to certain people from being used to launch administrative proceedings, due to the impossibility of determining the nature and degree of the involvement of the accused persons at a preliminary stage of the criminal proceedings.

16. On October 10, 2006, Investigating magistrate no. 31 adopted another order aimed at clarifying the content of the Order of October 3, 2006 ("Order of October 10, 2006").

17. The appeals filed by the Public Public Prosecutor and RFEC against the Orders of October 3 and 10, 2006, (i.e. the *recurso de reforma* filed before Investigating magistrate no. 31, and the *recurso de apelacion* filed before the Madrid Court of Appeal) were dismissed[1].

18. In the meantime, on October 9, 2006, Investigating magistrate no. 31 granted the application by UPA-CONI (*Exhorto* no. 713/2006) and authorized the collection of samples from Blood Bag no. 2, which was believed to belong to the cyclist Ivan Basso. As a result of the Italian proceedings, Ivan Basso was sentenced to a two-year suspension after admitting—and after being confronted with a DNA test matching the samples from Blood Bag. no. 2 to his own blood—that he had had blood collected from him in order to perform an auto-transfusion for the purposes of doping and that the pseudonym "Birillo" in Dr Fuentes' documents referred to him and corresponded to the name of his dog.

19. On October 16, 2006, Investigating magistrate no. 31 approved letters rogatory that had been issued by the German authorities and authorized the collection of samples from the blood bag identified as "Jan, No. 1", which was believed to belong to the cyclist Jan Ullrich. These samples were confirmed to match the DNA of Jan Ullrich, who, in the absence of German legislation penalizing the consumption of doping substances by an athlete, was accused of fraud.

20. Investigating magistrate no. 31 also approved a request for information from CONI regarding the cyclist Michele Scarponi, by sending CONI a report by the Civil Guard dated April 13, 2007. As a result of the Italian proceedings, in which he admitted to having had blood drawn in order to perform an auto-transfusion for the purposes of doping, Michele Scarponi was found guilty of violating of Italian Anti-doping rules[2].

21. On March 8, 2007, Investigating magistrate no. 31 issued a first order closing the criminal proceedings concerning Operation Puerto on the grounds that doping did not constitute an offence yet at the time of the incriminating facts.

22. UCI, WADA and RFEC appealed the order of closure before the Madrid Court of Appeal, which ordered the reopening of the criminal file on February 11, 2008. Investigating magistrate no. 31 closed the file again on September 26, 2008, but, after the appeals of the parties, the Madrid Court of Appeal once again ordered that the file be re-opened on January 12, 2009.

23. In light of the developments during the Italian proceedings (see *infra*), RFEC requested that it be given access to the evidence in the Operation Puerto file. However, Investigating magistrate no. 31 denied the request in a decision rendered April 15, 009. Following an

[1] On November 26, 2006, Investigating magistrate no. 31 dismissed the *recurso de reforma* and clarified this order on November 28, 2006.

[2] Within the context of Operation Puerto, cyclist Jörg Jaksche admitted to German authorities to having had blood drawn in order to perform an auto-transfusion for the purposes of doping. Jörg Jaksche also admitted that the pseudonym "Bella" referred to him, as Bella was the name of his dog.

appeal by WADA, this decision was upheld by the Madrid Court of Appeal in a decision dated November 26, 2009.

24. Lastly, as far as disciplinary sporting proceedings in Spain against the Athlete were concerned, UCI invited RFEC to launch disciplinary proceedings on August 29, 2007, to investigate the situation, but the *Comité Nacional de Competición y Disciplina Deportiva* decided not to launch proceedings against Mr. Valverde, and closed the file (see RFEC letter dated September 7, 2007).

25. WADA and UCI filed appeals against this decision before CAS, respectively, in cases CAS 2007/A/1396 *WADA v. RFEC & Alejandro Valverde* and CAS 2007/A/1402 *UCI v. RFEC & Alejandro Valverde*, which are still pending at this time. In the context of those cases, UCI and WADA asked CAS to find the Athlete guilty of a violation of Article 15 of the UCI Rules and to impose on him a two-year international suspension.

B. **PROCEEDINGS IN ITALY**

26. After investigating Operation Puerto and receiving Report no. 116 from Investigating magistrate no. 31 on March 1, 2007[3], on April 24, 2007 UPA-CONI communicated the reopening of the Operation Puerto file by the *Procura della Repubblica presso il Tribunale di Roma* ("Public Public Prosecutor of Rome") with respect to certain athletes affiliated with the *Federazione Ciclistica Italiana* ("FCI").

27. Within the context of this investigation (referred to as "Operation Puerto-bis"), and following requests by the Public Public Prosecutor of Rome, UPA-CONI sent the Public Public Prosecutor copies of various case documents on several occasions. On January 9, 2008, UPA-CONI indicated to the Public Public Prosecutor of Rome that the evidence also appeared to implicate other parties who were not affiliated with the FCI but who were participating in sporting competitions in Italy. The Athlete's name appeared on the list of alleged individuals.

28. On July 21, 2008, during a stage of the Tour de France in Italy (at Chiusa di Pesio), CONI carried out anti-doping controls on several cyclists, including the Athlete. The Athlete consented to blood collection and his samples were sent to the anti-doping laboratory in Rome by courier the same day, as noted on the chain of custody form. The Athlete signed CONI's standard sample collection form when he consented to the blood collection. The form contained the disclaimer that the Athlete could be sanctioned for "*violating the charter of the organization*". CONI's logo is the most salient visual feature on the sample collection form and it is obvious from reading the document that the organization mentioned on the form is CONI. The form does not indicate any limit or restriction on what CONI is authorized to do with the sample for anti-doping control purposes, although it does indicate that "*all information related to doping control, including but not limited to, laboratory*

[3] Investigating magistrate no. 31 responded to the request from UPA-CONI dated September 14, 2006, which requested the case documentation, specifying "*for the purposes of sports justice*".

results and possible sanctions, shall be shared with the relevant body in accordance with Anti-doping Rules ."

29. On November 6, 2008, following exchanges of information with the Public Public Prosecutor of Rome, UPA-CONI sent a letter to Investigating magistrate no. 31 requesting, in the format previously established for the letters rogatory for Athlete Basso (*Exhorto* no. 713/2006), a sample of the blood contained in Bag no. 18.

30. On November 7, 2008, in the margin of the letter of November 6, 2008, the Public Public Prosecutor of Rome provided UPA-CONI its "*nulla osta*" or authorization, by which it adopted as it own the procedure for the collection of blood samples.

31. That same day, the Public Public Prosecutor of Rome charged the judicial police (namely, Capt. Angelo Lano and M.A. Renzo Ferrante) with operational responsibility for the collection of blood samples at the Barcelona Laboratory, authorizing as well the appointment of Dr. Marco Arpino (head of CONI's Anti-doping office) and Dr. Tiziana Sansolini (physician expert in haematology and a CONI Doping Control Officer) as auxiliaries of the judicial police.

32. On November 10, 2008, UPA-CONI sent Investigating magistrate no. 31 the communication from the Public Public Prosecutor of Rome of November 7, 2008, clarifying in the accompanying letter that this was a decision of the Italian criminal judicial authorities.

33. On November 27, 2008, the Italian-Spanish Liaison Magistrate, Mr. D'Agostino, informed UPA-CONI and the Public Public Prosecutor of Rome that Investigating magistrate no. 31 had received the request regarding the collection of a sample from Bag no. 18 and, given that this was a new rogatory commission, Investigating magistrate no. 31 had sent it to the Spanish Public Minister for his opinion. Mr. D'Agostino also indicated that this opinion had not yet been issued.

34. On December 16, 2008, following a decision by the Public Public Prosecutor of Rome, the police seized the samples collected during the Tour de France in Italy that were stored in the Rome Anti-doping Laboratory .

35. On January 22, 2009, via the Italian-Spanish Liaison Magistrate, UPA-CONI received a copy of *Exhorto* no. 447/09 (i.e. letters rogatory no. 447/08) by which Investigating magistrate no. 31 approved the request from the Public Public Prosecutor of Rome ("*comisión rogatoria procedente de la Fiscalia de Roma*") and ordered the Director of the Barcelona Laboratory to cooperate in the collection of a sample from Bag no. 18.

36. On January 30, 2009, the members of the judicial police appointed by the Public Public Prosecutor of Rome (Cap. Angelo Lano and M.A. Renzo Forrante) and the auxiliaries of the judicial police (Dr. Marco Arpino and Dr. Tiziana Sansolini) collected samples from Bag no. 18 and received a certificate of delivery of the material by the Barcelona Laboratory,

which concerned the chain of custody from the moment of the receipt of the bags from the Civil Guard until the collection of the samples[4].

37. On February 2, 2009, following a decision by the Public Public Prosecutor of Rome (dated January 29, 2009), the Police Scientific Service – Genetic Forensics Section proceeded to analyze the DNA of the samples collected in Barcelona and compared the results with the DNA analyses of three of the samples (anonymous, but identified by codes) collected during the Tour de France.

38. The analysis resulted in a positive match between the DNA of the plasma in Bag no. 18 and the DNA of one of the three samples from the Tour de France (identified with code A-278350). Specifically, the analysis established a positive match of 16 genetic markers between the two samples, a large number that exceeds the number considered sufficient for identification purposes within the context of criminal proceedings in various countries (see Dr. Caglia's and Dr. Castella's statements during the hearing of January 13, 2010).

39. In a note dated February 10, 2009, the Gendarmerie for the Tutelle de la Sante – Service Analyse [Police] informed the Public Public Prosecutor of Rome of the positive match and asked CONI to provide the necessary documentation to identify the subject to whom the sample identified with code A-278350 belonged.

40. This request allowed it to be established that the DNA of sample A-278350 collected during the Tour de France matched that of Bag no. 18, which belonged to the Athlete.

41. At the end of this verification and on the sole ground of the result of the analysis establishing that the DNA from the sample of Bag no. 18 matched that of the Athlete, UPA-CONI summoned the Athlete on February 16, 2009. Further to the Athlete's requests, the hearing was re-scheduled to February 19, 2009.

42. On February 18, 2009, following the filing of a memorial by the Athlete, Investigating magistrate no. 31 adopted a new order that revoked the Order approving the letters rogatory ("Order of Revocation"). Specifically, Investigating magistrate no. 31 found that (i) CONI was not a judiciary authority, and therefore its decisions could not be subject to proceedings before the ordinary courts; (ii) pursuant to Article 3 of the Mutual Legal Assistance Convention of May 29, 2000 ("Convention of 2000"), international cooperation is limited by public order; (iii) the use of evidence, such as the blood bags, in other proceedings relating to a different offence is null; (iv) the proceedings regarding judicial cooperation instituted by CONI are therefore null and void. On January 18, 2010, following an appeal by CONI, the Madrid Court of Appeal upheld the validity of the Order of Revocation ("Decision on the Order of Revocation").

[4] On February 3, 2009, UPA-CONI received a service report from Mr. Marco Arpino in his quality as judicial police auxiliary responsible for sample collection, with the following attachments: (i) a model of the chain of custody; (ii) a certificate of delivery of material dated January 30, 2009; and (iii) originals of the documents appointing the judicial police auxiliaries, Mr. Marco Arpino and Dr. Tiziana Sansolini.

43. On February 18, 2009, UPA-CONI received, via UCI, the detailed analytical Report from the Barcelona Laboratory dated November 15, 2006, demonstrating that nine bags of plasma, including Bag no. 18, contained recombinant EPO, a substance prohibited by anti-doping legislation ("Report from the Barcelona Laboratory").

44. On February 19, 2009, the Athlete appeared before UPA-CONI. On this occasion, the Athlete challenged the jurisdiction of CONI and defended the legitimacy of his conduct.

45. That same day, the Italian Scientific Police (*Nucleo Antisofisticazione,* or "NAS") informed the Athlete in person of his investigation ("informazione di garanzia") in the criminal proceedings launched by the Public Public Prosecutor of Rome.

46. Within the context of the proceedings before the TNA, the latter decided that "*on the basis of Article 7.1 of the 'Documento Tecnico attuativo del Programma Antidoping WADA', approved by CONI National Council on June 30, 2005, Article 17.8 of Deliberation no. 615 of CONI National Council dated December 22, 2005, Articles 9, 10 and 11 of the UCI Rules, Article 2.2 of the WADC,* [to impose on Valverde]*, as a precautionary measure, the sanction of a two-year ban, prohibiting him from assuming any duty in CONI, National Sports Federations, and Associated Sports Disciplines, or participating or taking part in any competitions organized by one of the above on the territory of Italy*" (the "Decision").

47. As indicated in the reasons for the Decision, TNA decided that:

- In Italy, doping is an offence under criminal law and sports law, and criminal and sports proceedings are launched and managed independently by the competent bodies. The investigators cooperate and exchange information about the evidence collected in their respective proceedings;

- Mr. Valverde's objections regarding the use of evidence allegedly derived from an illegal procedure are without merit;

- First, the document containing the list of codes, including the one referring to "Valv. (PITI)", is an attachment of Report no. 116, which UCI received and sent to the Italian Cycling Federation (*Federazione Ciclistica Italiana,* or FCI) and UPA-CONI;

- The orders of October 3 and October 10, 2006 from Investigating magistrate no. 31, which did not contain any absolute ban on using the documents, must be considered in relation to (i) the previous authorization that authorized the collection of samples from the bag containing the blood of an Italian cyclist (Ivan Basso) and (ii) the use of this evidence against the athlete, which was not challenged by Investigating magistrate no. 31. Moreover, the decisions of Investigating magistrate no. 31 do not have any effect on the Italian sports juridical order because the documents were legally acquired by UCI and sent to the Italian authorities;

- Second, the acquisition and use of Bag no. 18 are valid and the Order of Revocation is not in compliance with law for several reasons. The request for cooperation came from a judicial authority (the Public Prosecutor of Rome), not from CONI or another non-judicial

body. These samples were collected at the Barcelona Laboratory by police officers and auxiliaries of the judicial police. This procedure was explicitly authorized by Investigating magistrate no. 31 on January 22, 2009, who referred to the letters rogatory from the Public Prosecutor of Rome. Lastly, the Order of Revocation, which was adopted in violation of procedural safeguards, is null and void;

- In the third place, a former colleague of Mr. Valverde's (Mr. Jesus Manzano) testified that the Athlete engaged in doping practices;

- A blood sample collected from the Athlete during the Tour de France was analyzed by the Italian police, who established a match with the DNA from Bag no. 18. A blood sample can be stored for up to 8 years according to the WADA 2008 International Standards for Laboratories;

- With regard to the match between the DNA from Bag no. 18 and the sample collected from the Athlete during the Tour de France, the use or attempted use of a prohibited substance or method has been established;

- Mr. Valverde's objections regarding the absence—at the time of the violation—of Italian legislation sanctioning anti-doping violations committed by foreign athletes are without merit. In fact, the violation took place between May 2004 and May 23, 2006, when the Civil Guard seized the bags of blood and plasma. At the time, Italian anti-doping rules provided for the imposition of "precautionary measures" against non-affiliated subjects, including foreign athletes. These measures already included the sanction of an "inhibition". Subsequent standards (Article 2.11 of the *Regolamento* of December 23, 2008) have only made this principle even more explicit;

- According to the Athlete, Articles 9, 10 and 11 of the UCI Rules apply and thus, UCI has jurisdiction to determine the case, not CONI. However, it is CONI that discovered the violation and that, according to UCI Rules, has jurisdiction to determine the case in accordance with UCI Rules;

- With regard to the alleged lack of connection to Italy, the Athlete participated in races in Italy and will probably participate in them again in the future. This fact may be considered a sufficient connection for the adoption of the sanction of an "inhibition";

- In his claims, the Athlete did not provide any valid defence on the merits concerning the violation of anti-doping rules.

III. SUMMARY OF PROCEEDINGS BEFORE CAS

48. This summary only mentions the principal procedural steps and key arguments of the parties. Nonetheless, the Arbitral Panel naturally took into account all of the submissions made by the parties, including the ones to which reference is not expressly made here.

49. The Athlete filed an appeal against CONI's decision in a statement of appeal dated June 17, 2009, and filed his appeal brief on July 16, 2009.

50. According to the Athlete:

- UCI, and not CONI, has jurisdiction to determine the case according to Articles 9 and 10 of the UCI Rules. Moreover there is no link between the jurisdiction of CONI and the alleged violation of anti-doping rules.

- The CONI proceedings prejudice the Athlete's rights of defence (such as the principle of equal treatment; the right to be informed of the charge; the right to not incriminate himself; the right to question all witnesses; etc.) and violate numerous international agreements, as well as the WADC.

- Following the orders of October 3 and 10, 2006, the evidence from the Spanish criminal proceeding could not be used;

- Failing that, the evidence used by CONI is not valid or sufficient to sanction the Athlete. Specifically, (i) certain documents from the file (such as Document no. 114, Dr. Fuentes' schedule, and the analysis from the Barcelona Laboratory) are not certified by the competent judicial or police authority; (ii) the analysis from the Barcelona Laboratory revealing EPO in Bag no. 18 is not valid because the chain of custody of the bags seized by the Civil Guard was not respected and the Barcelona Laboratory is not approved to screen for EPO in blood; (iii) CONI did not have jurisdiction to carry out anti-doping controls during the Tour de France; (iv) the collected samples should have been destroyed and the DNA analysis should have been done with the express consent of the Athlete; (v) the DNA analysis carried out by the police during the criminal investigation could not be used in a sport proceeding; (vi) in order to determine the true involvement of a person in Operation Puerto, the entire criminal file must be consulted in order to have knowledge of potential evidence both for and against the person; (vii) the statements by Mr. Manzano are contradictory and have been challenged by statements made by another cyclist from the same team. Lastly, among the hundreds of documents in the file, there is no proof of any payment, blood analysis, or medical treatment plan such as to establish a connection between the Athlete and Dr. Fuentes. CONI has proved nothing: neither the use nor the attempted use of a prohibited substance.

In light of the above, the Athlete asked the Arbitral Panel, first, to annul the appealed decision and declare CONI incompetent, and subsidiarily, to annul the appealed decision and declare him innocent, with costs and expenses to follow.

51. On September 4, 2009, CONI filed its response a request for the joinder of WADA and UCI in the arbitration. In its brief, CONI emphasized that:

    - CONI has jurisdiction to impose preventive measures against non-affiliated athletes, particularly with regard to its power/duty to safeguard the Italian sporting system;

- The NSA Italian Anti-doping standards are applicable as well on the basis of Articles 9, 10 and 11 of the UCI Rules, which make a provision for the application of the anti-doping provisions of the anti-doping organization that discovered the illicit conduct (i.e. CONI);

- The Athlete's objections regarding a violation of the rights of defence are without merit; and, moreover, the rights that were allegedly infringed in the first case are guaranteed during these proceedings, which may result in a "*de novo*" decision with regard to the Athlete;

- The evidence used is admissible: (i) numerous documents arising from the Spanish criminal file are accessible to the public and CONI received a copy from the competent authority (the authenticity of the copy was acknowledged by an officer of the Civil Guard); (ii) CONI limited itself to using the results of the analyses and not have direct access to the blood samples; and (iii) the analyses of the Italian criminal file may be used in the application of Italian anti-doping legislation, which provides for close cooperation between the judicial authorities and CONI.

In light of the above, CONI dismissed the appeal and upheld of the sanction of an "inhibition" issued by the TNA, with costs and expenses.

52. An Arbitral Panel composed of Mr. Romano Subiotto QC (President), Mr. José Pinto (Arbitrator designated by the Appellant), and Prof. Ulrich Hass (Arbitrator designated by CONI) was constituted on August 3, 2009.

53. On October 12, 2009, and after having duly consulted WADA, UCI and the Athlete, the Panel rendered a preliminary decision on the request for joinder, joining WADA and UCI to the present proceeding as co-respondents.

54. On October 19, 2009, given the participation of WADA and UCI, the members of the Panel were invited to sign a new statement of acceptance and independence.

55. On October 27, 2009, Mr. José Pinto – the Arbitrator appointed by the Athlete – resigned his position because of his unavailability. After Mr. Quentin Byrne-Sutton declined his nomination, the Athlete nominated Mr. Ruggero Stincardini. The latter accepted his appointment.

56. On October 29, 2009, the Athlete filed an application for the recusal of Prof. Ulrich Haas, which was denied on November 23, 2009 by the Office of the International Council of Arbitration for Sport.

57. On November 27, 2009, WADA and UCI filed their briefs, according to which:

- CONI has jurisdiction to judge foreign-affiliated athletes;

- Mr. Valverde's objections regarding the admissibility of evidence are without merit; the formalities regarding the letters rogatory were respected and the Order of Revocation was erroneous and—in any event—made *ultra vires* because the samples had already left Spanish territory by the time it was rendered; thus, the samples from Bag no. 18 were validly obtained by the Italian authorities; the blood samples collected during the Tour de France can be used because, in order to establish an anti-doping violation, Article 3.2 of the WADC refers to any "reliable means" of evidence, such as the DNA analysis; in any event, CAS is not be bound by the orders of Spanish judicial authorities;

- The other elements in the file also constitute reliable evidence in support of the violation of anti-doping standards (such as, for example, the admissions of Dr. Fuentes, the documents from the Spanish criminal file, the business card found on Dr. Fuentes when he was arrested, the schedule of blood treatments, Document no. 87 containing a list of cyclists, the statements by Mr. Manzano, and even the conduct of Mr. Valverde himself);

- The Athlete's rights of defence were not infringed and, in any event, a proceeding before CAS is "*de novo*" and potential violations of the Athlete's right to be heard by the first instance authority are thus be rectified by these proceedings. With regard to the other alleged violations, they are without merit;

- CAS should therefore dismiss the Athlete's appeal, uphold the decision or its conclusion (*dispositif*), declare that the Athlete committed violations under Articles 2.1, 2.2, 15.1, and 15.2 of the WADC and, thus, ban him for a period of two years at the international level, disqualify all of his sports results from May 4, 2004, and order him to pay the costs of the proceedings and indemnify the other parties' costs.

58. Having been invited to file a response to the requests of WADA and UCI going beyond their request for a mere confirmation of the Decision, the Athlete filed a brief on December 23, 2009, in which he noted that:

- UCI has jurisdiction to determine the case, and the principle of worldwide jurisdiction that CONI is attempting to apply clashes with the position of numerous competent authorities;

- UCI and WADA did not appeal the decisions adopted by other national anti-doping authorities regarding the closure of other files relating to athletes involved in Operation Puerto, which constitutes a violation of the principle of equality;

- UCI is acting in contradiction to its previous statements (i.e. prior recognition of the impossibility of using evidence from Operation Puerto and the blood samples of cyclists for the purposes of carrying out DNA comparisons);

- CONI never launched a disciplinary procedure against another cyclist not affiliated with the Italian Federation;

- The respondents introduced only part of the evidence from Operation Puerto, thereby depriving Mr. Valverde of his means of defence;

- CAS does not have jurisdiction to rule over the applications by UCI and WADA aimed at declaring Mr. Valverde guilty of a violation of UCI Rules and banning him internationally;

- In light of the applications by UCI and WADA, there exists litispendence between these proceedings and the aforementioned cases concerning the refusal of RFEC to open proceedings against Mr. Valverde (CAS 2007/A/1396 and 1402).

In light of what precedes, the Athlete asked this Panel to suspend these arbitral proceedings on the grounds of litispendance, declare itself incompetent to rule on the new claims by UCI and WADA, declare him innocent, order certain evidentiary measures and, during the suspension of the proceedings, order the conservatory suspension of the sanction imposed by CONI.

59. On December 31, 2009, the Panel rendered an order denying the application to suspend the present proceedings on the grounds of litispendance, in light of the different scope of these proceedings and CAS/2007/A/1396 and CAS 2007/A/1402.

60. On January 8, 2010, UCI filed documents requested by Mr. Valverde and put them at the disposal of the parties on January 11, 2010.

61. On January 12, 13 and 14, 2010, the parties attended the evidentiary hearing and were heard, as were the experts and witnesses.

62. During the hearing, the Panel rendered a preliminary decision on the applications filed by UCI and WADA to suspend the Athlete at the international level for a period of two years. The Panel considered that CAS could not rule on the matter since these applications did not fall within the framework of the present arbitral proceedings.

63. Considering the Athlete's objections regarding the match between his DNA and that from the plasma in Bag no. 18, and without prejudice to the recognized reliability of DNA tests, the Panel invited the parties to agree on a means of proceeding to a new DNA test and set a supplementary deadline of two weeks for them to communicate a procedure to the Panel. Since the parties were unable to come to an agreement, the Panel is ruling on the basis of the file as constituted.

64. At the request of the Panel during the hearing, WADA, CONI and the Athlete filed on January 25 and 28, 2010 respectively, their observations on the rules regarding judicial cooperation between Italy and Spain and, in particular, on the applicability of the Bilateral mutual legal assistance convention of May 22, 1973.

65. On February 22 and March 3, 2010, CONI, the Athlete, UCI and WADA presented their observations regarding the Decision on the Order of Revocation, as well as experts' reports.

Without ruling on the admissibility of the observations and reports, which may have gone beyond the debate relating strictly to the Decision on the Order of Revocation, the Panel analyzed them carefully and considers that they do not introduce anything new to the debate, and in any event, in this award the Panel responds to the theories contained in these observations and reports. The same is true for the exchange of correspondence between the parties regarding Mr. Manzano's statements.

IV. LAW

A. JURISDICTION OF CAS AND ADMISSIBILITY OF THE APPEAL

66. The jurisdiction of CAS results from Article R47 of the CAS Code and preambles "vi.iv" and "ix" of the NSA Anti-doping standards as well as Article 1 of Appendix G and Article 3 of Appendix H of the NSA Anti-doping standards in the version approved December 2008 in effect at the time of publication of the decision, and applicable in accordance with the principle of *tempus regit actum*[5].

67. In any event, the parties to the present arbitration signed the procedural order of January 5, 2010. According to Article 1 of this order, the jurisdiction of CAS is confirmed by the parties' signature of this document.

68. Thus, the Panel declares that CAS is competent to rule on the present dispute.

69. The Athlete's appeal was filed according to the formal conditions and deadlines set out by Articles R48 and R51 of the CAS Code, which is not disputed by the respondents. Thus, the Panel, in a unanimous finding, concludes that the Athlete's appeal is admissible.

B. POWER OF EXAMINATION

70. The Panel's power of examination in the present arbitral appeal procedure is regulated by the provisions of Articles R47 and following of the CAS Code. Specifically, Article R57 confers on CAS a complete power of examination of the elements of fact and law within the context of the case.

71. The Arbitral Panel also took note of the Athlete's arguments regarding violations of the rights of defence, which would prejudice the procedure before CONI. Because of the complete power of examination conferred on CAS Arbitral Panels, appeals to CAS allow for "the purging of procedural deficiencies which may have affected previous proceedings"[6].

[5] See Cass., sez. un., 20.12.2006 no. 21772 (see *infra* on the application of Italian law on alternative merits).

[6] CAS 2004/A/549 *G. Deferr & RFEG v. FIG*, paragraph 31, also see CAS 2003/0/486 *Fulham FC v. Olympique Lyonnais*, paragraph 50, CAS 2006/A/1153 *WADA v. Assis and FPF*, paragraph 53, CAS 2008/A/1594 *Sheykhov v. FILA*, paragraph 109, CAS 2008/A/1582 FIFA v. URBSPA & Michael Wiggers, paragraph 54.

72. Nonetheless, CAS has the power to rule on the dispute as defined by the decision subject to appeal and its jurisdiction, based on the arbitration clause contained in the rules of national federations, is limited by the objective and subjective scope of the appealed decision[7]. Specifically, because of the territorial jurisdiction of CONI and the TNA, the Decision declares a violation of Italian anti-doping rules and imposes the sanction that is provided for in the event of violation by a non-affiliated subject, which can only be limited to Italian territory[8].

73. Because of these limitations, as stated orally on January 12, 2010 during the hearing this Panel, in a unanimous finding, considers that that it cannot rule on the conclusions presented by UCI and WADA aimed at declaring Mr. Valverde responsible for a violation of UCI Rules or the WADC, suspending him at the international level, and declaring the cancellation and disqualification of his results since May 4, 2004.

C. **APPLICABLE LAW**

1. On the merits

74. Sports arbitration is regulated by the CAS Code, and particularly by Articles R27 to R37, and R47 and following.

75. According to Article R58 of the CAS Code: "*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.*"

76. The Panel notes that WADA, supported by UCI, considers that, in addition to the NSA anti-doping standards, the WADC and UCI Rules are equally applicable in the present circumstances. For the reasons given in the following paragraph, the Panel rejects the conclusions of WADA and UCI and declares the CONI Rules applicable in the present case.

77. The conclusions of WADA make reference to Article R57 of the CAS Code, according to which the Panel "*shall have full power to review the facts and the law*". On several occasions CAS Panels have found that Article R57 authorizes them to judge proceedings *de novo*. According to WADA, the right to judge *de novo* means that the Panel has the right to refer to any anti-doping regulations that it considers applicable. However, the conclusions of WADA do not take into account the jurisprudence that it cites in support of its arguments. According to this jurisprudence, the jurisdiction of CAS to judge *de novo* is "based on the regulations of the concerned Federation", a limit to which this Panel

[7] Cf., *ex multis*, CAS 2007/A/1426 *Giuseppe Gibillsco v. CONI* and CAS 2007/A/1433 *Di Luca v. CONI.*

[8] The Panel notes that the Decision does not state a direct violation of the WADC, even if it cites it. With regard to the UCI RulesUCI Rules, the decision limited itself to referring to Articles 9, 10 and 11, which are used to determine which authority has jurisdiction in a specific case.

subscribes[9]. As a private arbitral proceeding, the jurisdiction of CAS is limited by the jurisdiction of the arbitral procedure upon which the appeal is based. CAS does not have the competence to take measures relating to jurisdiction on its own initiative, including submitting athletes to sports rules different than the ones to which they were subject in first instance. A CAS Panel is not authorized to apply different rules except in exceptional circumstances according to Article R58—these exceptional circumstances presenting themselves when parties cannot agree on the applicable rules and, according to CAS, other rules are "*appropriate*" in the circumstances[10]. In the present case, WADA is not claiming that CONI's Anti-doping standards are inappropriate. It argues that the NSA Anti-doping standards apply in the same way as the WADC and UCI Rules. In the absence of such a claim, the rules that this panel deems applicable are the rules applied in first instance, that is, CONI's NSA Anti-doping standards. In conclusion, the UCI Rules and the WADC are only applicable to the extent that the NSA Anti-doping standards refer to them.

78. With this established, it is necessary to identify which version of the NSA Anti-doping standards are applicable in the present case and, specifically, which version was in effect at the time of the violation.

79. The principle according to which no one can be pursued for an offence not defined as such at the time of the facts is a general principle, recognized by Article 7 of the European Convention on Human Rights (ECHR) of November 4, 1950, as well as CAS jurisdiction (see CAS 2000/A/274, *Susin v. FINA* and CAS 2007/A/1433 *Di Luca. v. CONI*). This principle applies to substantive rules, which would include, in particular, rules regarding sanctions (cf., *ex multis*, Cass., sez. III, 15.12.1995, and Cass., sez. I, 04-07-1994; see *infra* on the application of Italian law to the merits, as a subsidiary point).

80. Rules that enter into force after the facts may be applied retroactively if they are more favourable for the Athlete, based on the principle of *lex mitior,* also recognized by the jurisprudence of CAS (see CAS 2001/A/318, *V. v. FCI*).

81. In the present case, we therefore apply the version of the NSA Anti-doping standards in effect on May 23, 2006, that is, the date of the seizure of the blood bags by the Civil Guard.

82. In effect, the violation (or attempted violation) continued until the seizure of the blood bags by the Civil Guard, which seizure interrupted their possession by Dr. Fuentes and therefore their possible use for doping purposes.

83. As indicated *infra*, in the version in effect in May 2006, the NSA Anti-doping standards provide for the possibility of imposing "conservatory measures" against non-affiliated persons. Given that subsequent versions of the NSA Anti-doping standards (including the version currently in effect) impose a greater sanction, and even include the possibility of

[9] Cf. CAS 2008/A/1700 *Deutsche Reiterliche Versinigung e. V. v. FEI & Christian Ahlmann* and CAS 2008/A/1710 *Christian Ahlmann v. FEI*, Decision of April 30, 2009, para. 66.

[10] The court could exercise its discretionary power under Article R58 of the CAS Code if, for example, other rules had a greater connection with the facts of the case. This is not the case here.

imposing a monetary sanction (see Article 2.1 of the NSA Anti-doping standards in the version approved on July 28, 2009, currently in effect), the principle of retroactivity *in mitius* does not apply in the present case.

84. In order to avoid any confusion, it is specified here that any reference to the WADC in this award must be understood as a reference to the corresponding NSA Anti-doping standards, which alone are found to apply directly.

85. Italian law is also applicable in a supplementary manner.

2. On the proceedings

86. On the procedural level, the Panel applies the provisions of the Swiss federal law on Private International Law (CPIL) with respect to international arbitration and the CAS Code, which was chosen by the parties pursuant to Article 182, paragraph 1 of CPIL. Lastly, the Panel is also bound by the procedural provisions forming part of international public order.

D. JURISDICTION OF CONI

87. The Athlete challenged the jurisdiction of CONI to impose a sanction for violation of the NSA Anti-doping standards against an athlete affiliated with a foreign federation who committed a violation outside of Italian territory.

88. In the version in effect in May 2006, the NSA Anti-doping standards provide for the application of conservatory measures against non-affiliated subjects. In particular, Article 7.1, paragraph 2, of the "*Documento Tecnico attuativo del Programma Antidoping WADA*", approved June 30, 2005, provides that "UPA may also request, against non-affiliated individuals having committed any kind of a violation of the Regulation, preventative measures, also with the purpose of preventing repeat offences" ("*l'UPA è altresì legittimata a richiedere, qualora soggetti non tesserati abbiano posto in essere un qualunque comportamento vietato dal Regolamento, provvedimenti cautelativi, anche al fine di impedire reiterazioni*"). Moreover, according to Article 17.8 of Document no. 615 from the Giunta Nazionale of CONI dated December 22, 2005, "if, during the course of an investigation, the responsibility of a non-affiliated individual is established, UPA shall take all necessary measures to launch preventative proceedings before the judicial bodies of the National Sports Federations and Disciplines or before [CAS] in order for them to adopt decisions banning these persons from assuming a function or office in CONI, National Sports Federations and Disciplines, or participating in sports events or performances organized by them." ("*[s]e nel corso di una indagine si afferma la responsabilità di un soggetto non tesserato, l'U.P.A. adotta tutte le misure necessarie per avviare procedimenti cautelativi dinanzi alla Commissione Giudicante della Federazione Italiana Rugby, affinché assu mano provvedimenti di inibizione a rivestire cariche o incarichi in seno alla Federazione Italiana Rugby stessa, ovvero a presenziare allo svolgimento delle manifestazioni od eventi sportivi organizzati sotto la loro egida*".

89. As previously noted by CAS (see CAS 2008/A/1478, *Coletta v. CONI*), the expression "non-affiliated subjects" contained in these rules must reasonably be understood to refer to

individuals who are not affiliated with Italian federations (who are subject to the general rules), that is, individuals who are either (i) not affiliated with any federation, or (ii) as in the present case, affiliated with a foreign federation.

90. These standards can be justified and must be interpreted in the context of the Italian sports legal system, under which CONI is the body responsible for adopting preventative measures and also punitive sanctions against doping. Thus, the purpose of these rules is to prevent individuals who have committed violations, including those who are affiliated with foreign federations, from participating in sports activities in Italy and distorting results, to the detriment of fair sport competition and the health of athletes.

91. This interpretation of the rules is also justified in light of the WADC, which the NSA Anti-doping standards incorporate for the Italian territory. According to the WADC, the definition of "Athlete" includes "*any individual who, in matters relating to anti-doping control, participates in a sports activity at the international level […] or national level*", without providing for exceptions relating to individuals affiliated with a different federation than the one responsible for applying the code in the specific case.

92. Mr. Valverde is an Athlete subject to Italian anti-doping regulation (insofar as he participated in sports competitions in Italy), including the rules that provide for sanctions (limited to Italian soil) for individuals not affiliated with any Italian federation.

93. As was noted by CAS in the *Coletta* case, a different interpretation would have the aberrant consequence of removing athletes affiliated with foreign federations from the jurisdiction of CONI in doping matters, a jurisdiction that is otherwise limited to Italian territory.

94. With regard to the alleged absence of any connecting link between the alleged violation and CONI, this Panel observes that, in terms of literal interpretation, the rules in question do not provide for any limitations regarding the place where the violation was committed. On the contrary, the Italian legislator intended the rule to apply extremely broadly, by providing for the possibility of imposing conservatory measures for "any prohibited conduct" in the spirit of preventing any conduct or repeat conduct that that is contrary to anti-doping rules.

95. Moreover, as has already been emphasized, the Athlete participated in the past and would very probably participate in the future in competitions on Italian soil, which justifies CONI's interest in adopting the restrictive measure at issue here. Moreover, on the basis of available information, the Athlete was subject to a criminal investigation in Italy when UPA-CONI issued its formal act of accusation ("*atto di deferimento*") against the Athlete on April 1, 2009. The two investigative procedures—criminal and sport—were taking place in parallel, which was also the case when the TNA rendered its Decision. The criminal proceedings are still ongoing at this date.

96. Based on the foregoing, the Panel recognizes that CONI is competent in the present case.

E. ADMISSIBILITY OF EVIDENCE

97. The Athlete challenged the admissibility of the evidence both before the TNA and in the present procedure, relying in particular on the following points:

- The analyses that establish a match between the DNA of the plasma from Bag no. 18 and the samples collected during the Tour de France, may not be used. On the one hand, the samples from Bag no. 18 may not be used by application the Order of Revocation, which is a valid and definitive decision. On the other hand, the use of the samples collected during the Tour de France to carry out a DNA analysis infringe the fundamental rights of Mr. Valverde, who was not informed and did not provide his consent;

- The documents from the Operation Puerto criminal file were not validated by the competent authorities and may not be used by application of the Orders of October 3 and 10, 2006, which prohibit their use in proceedings other than the Spanish criminal procedure. In any event, the code "Valv. (PITI)" does not refer to the Athlete, which is demonstrated by the fact that his dog is not named Piti and he did not receive any re-injections of blood on April 7, 2005;

- Mr. Manzano's statements are contradictory and were subject of investigation by the Spanish judicial authorities, who decided to close the file;

- The business card found on Dr. Fuentes does not constitute evidence of a connection to the Athlete.

98. The respondents disputed these arguments, stating that:

- DNA analyses from the samples represent a reliable means of proof. The Order of Revocation is erroneous and, in any event, does not have effect beyond Spanish territory. The DNA analyses were ordered by the Public Public Prosecutor of Rome and are therefore valid. The chain of custody of all samples was respected;

- Documents from the criminal file were sent by Investigating judge no. 31 to UCI and CONI and were moreover known to the general public. Further, other CAS Panels have previously stated that the orders of October 3 and 10, 2006 do not bind CAS.

2. **Rules regulating the admissibility of evidence before CAS**

99. The issue of admissibility of evidence is procedural in nature and therefore subject to the procedural rules that are applicable before this Panel[11]. As a consequence, the Panel is not

[11] See *Poudret/Besson*, Comparative Law of International Arbitration, second edition 2007, number 643.

bound by the rules regulating the admissibility and choice of evidence applicable before that national courts of the seat of the arbitral tribunal[12].

100. The arbitration procedure is regulated, first, by Article 176 of CPIL. These rules provide a procedural framework for arbitration. Within this framework, it is the responsibility of the parties, in the first place, to provide for more detailed rules[13]. The parties exercise this procedural autonomy which they are accorded—as in the present case—through the adoption of institutional arbitration rules. Most institutional rules, however, only provide part of this procedural framework and leave a certain number of issues open. It falls to the arbitrators to react to and fill any lacunae.

101. According to Article 184, paragraph 1 of CPIL "*the arbitral tribunal itself proceeds to the administration of evidence*". This provision gives the arbitrators the power to rule on the admissibility of evidence submitted by one of the parties[14]. The power of the Panel to rule on the admissibility of evidence is also noted in the CAS Code (cf. Article R44.2). It follows from Article 184, paragraph 1 of CPIL (as well as from the provisions of the CAS Code) that the Panel disposes of a certain discretion to determine the admissibility or inadmissibility of evidence[15].

102. The discretionary power of the Panel to fill in any gaps is—in the absence of express rules in Article 176 of CPIL and articles in the CAS Code—limited only by procedural public order and the procedural rights of the parties[16]. According to the jurisprudence of the Swiss Federal Tribunal, procedural public order is not easily violated. According to the Federal Tribunal, procedural public order is only violated "*when fundamental and generally recognized principles have been violated, which leads to an untenable contradiction with the sentiment of justice to the extent that the decision appears incompatible with the values recognized in a State governed by law*".[17]

2. **Samples from Bag no. 18**

103. According to the Athlete, the analyses of the samples from Bag no. 18 are not admissible as a means of proof because of the deficiencies involved in the mutual legal assistance procedure.

104. In particular, with regard to the mutual legal assistance procedure, the rogatory commission is null because it was contrary not only to the procedural rules applicable to the

[12] See *Poudret/Besson*, Comparative Law of International Arbitration, second edition 2007, number 643.

[13] See Rigozzi, *Arbitrage International*, 2006, number 464.

[14] See Rigozzi, *Arbitrage International*, 2006, number 478.

[15] See *Poudret/Besson*, Comparative Law of International Arbitration, second edition 2007, number 645.

[16] See Rigozzi, *Arbitrage International*, 2006, number 464.

[17] TF Bull ASA 2001, 566, 570.

mutual legal assistance process itself, but also to rules relating to the protection of privacy, which prevent the processing and distribution of certain information, such as a genetic profile.

105. As will be explained *infra*, the Panel considers the Athlete's arguments to be without merit, but believes it relevant, first, to identify the rules of judicial cooperation applicable in the present case in order to assess, as necessary, the validity of the cooperation procedures that were used here.

a. ***Rules regarding judicial cooperation***

106. Judicial cooperation in criminal matters between Italy and Spain is regulated, first and foremost, by the *European Convention on Mutual Assistance in Criminal Matters* of April 20, 1959 ("Convention of 1959"). The Convention of 1959 came into effect for Spain on November 16, 1982, the date from which this convention therefore applies to cooperation between Spain and other member states party to the convention, including Italy[18].

107. Article 26, first paragraph of the Convention of 1959 provides that "*this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties*". Thus, the bilateral Spanish-Italian convention of May 22, 1973, which came into effect on December 1, 1977, was implicitly repealed by the Convention of 1959, which came into effect later.

108. Finally, the Panel emphasizes that the *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union* from May 29, 2000, does not apply to cooperation between Italy and Spain since it has not yet been ratified by Italy.[19]

109. The legislation applicable to mutual legal assistance between Italy and Spain having been identified, it is possible to examine the Athlete's arguments with regard to (aa) the rogatory commission and (bb) the Order of Revocation.

i. Rogatory commission

110. According to the Athlete, pursuant to the Convention of 1959, legal cooperation and mutual assistance is reserved for judicial authorities, to the excludion of all other bodies. At the time of its ratification, Spain indicated that the authorities considered to be judicial authorities within the meaning of the Convention were: (i) judges and courts of common law; (ii) members of the Office of the Public Prosecutor; and (iii) military judicial authorities. Given that the letters rogatory were issued by a non-jurisdictional body, UPA-CONI, the request for cooperation was not covered by mutual legal assistance and was illegitimate. Moreover, even if the Public Prosecutor of Rome managed the subsequent

[18] The convention came into effect for Italy on June 12, 1962. See the state of ratifications: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=030&CM=&DF=&CL=ENG

[19] See http://register.consilium.europa.eu/pdf/en/09/st13/st13598.en09.pdf

stages of the cooperation, its "*nulla osta*" of November 7, 2008 was posterior to the initial request from UPA-CONI. The Public Prosecutor of Rome opened the criminal investigation against Mr. Valverde only in February 2009, which shows that he could not have requested the letters rogatory in November 2008 and that UPA-CONI was thus the genuine author of the rogatory commission. In any event, the letters rogatory are incomplete, given that they did not contain the elements required by Article 14[20] of the Convention of 1959, such as the offence in question, the identity of the person concerned, and a summary of relevant facts[21].

111. The Panel, in a unanimous finding, concludes that even if UPA-CONI took the initiative to request samples from Bag no. 18 in the context of an earlier rogatory commission, the "*nulla osta*" from the Public Prosecutor of Rome makes the letters rogatory valid. By means of a decision issued in the margins of the communication of UPA-CONI, the Public Prosecutor of Rome associated himself with the request, thereby correcting any potential procedural deficiencies or lack of legitimacy of UPA-CONI. Moreover, even if the letters rogatory initially made reference to a previous mutual legal assistance procedure (*Exhorto* 713/2006), Investigating magistrate no. 31 opened a new procedure and requested the opinion of the Spanish Office of the Public Prosecutor based on the complete file, which included the communication from the Public Prosecutor of Rome. *Exhorto* no. 447/08 regarding Bag no. 18 was therefore solicited and adopted in a legitimate manner.

112. With regard to the alleged absence of the conditions provided for by the Convention of 1959, it is noted that the rogatory commission *de qua* specified the requesting authority (the Public Prosecutor of Rome), the object of and the reason for the request, as well as the offense that was the object of the investigation (samples from Bag no. 18 were required in the context of a procedure the object of which was the offense set out in laws no. 401/89 and no. 376/2000). As regards the identity of the person concerned, according to Article 2 of the Convention of 1959, such identity must only be indicated "where possible", which excludes the automatic illegitimacy of the letters rogatory in case of absence of reference to the person concerned. Moreover, in the present case, the request concerned the collection of a sample from a blood bag whose owner was unknown, which justifies the lack of any reference to the Athlete.

113. Moreover, the Convention of 1959 does not make any provision for any sanction of nullity for incomplete requests and, under Article 2, the list of circumstances justifying a refusal of mutual legal assistance does not include the absence of elements in the request.[22]

[20] Tr. N.: Although the source document states that the content of this Article derives from Article 13 of the Convention of 1959, the information is, in actual fact, derived from Article 14 of this same Convention. Please see this site for a full copy of the Convention in English: http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=030&CL=ENG

[21] Article 14 of the Convention of 1959 states that: "*Requests for mutual assistance shall indicate as follows: a) the authority making the request; b) the object of and the reason for the request; c) where possible, the identity and the nationality of the person concerned; and, d) where necessary, the name and address of the person to be served. 2. Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.*"

[22] Article 2 states that: "*Assistance may be refused: a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence; b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security,* ordre public *or other essential interests of its country.*"

In a spirit of cooperation between authorities, rather than refuse to cooperate, authorities must be free to request such complementary information as they consider necessary.

114. In the present case, no objection or request for additional information was made with regard to the content of the letters rogatory.

115. The regularity of the procedure is further confirmed by the absence of objections from the Spanish Office of the Public Prosecutor, which issued a positive opinion, as well as from the judge responsible for relations between Italy and Spain, who supervised the exchange of correspondence and informed the Public Prosecutor of Rome of the progress of the procedure (see communication from the judge, Mr. D'Agostino, dated November 28, 2008).

116. Furthermore, the fact cannot be challenged that the Public Prosecutor of Rome legitimately undertook all the steps necessary for the collection of the samples, such as the appointment of the members of the judicial police and the appointment as well of auxiliaries to the judicial police for the purpose of sample collection. These steps were taken within the context of a criminal investigation in 2008 (as indicated by the file number: no. 5599/08) and which resulted, on February 19, 2009, in the information given to the Athlete during his examination.

117. It is thus established that the request as well as the collection of samples from Bag no. 18 took place within the context of an investigation conducted by the Public Prosecutor of Rome, not by UPA-CONI.

ii. Order of Revocation

118. According to the Athlete, the Order of Revocation prohibits this Panel from using the results of the analysis of the samples from Bag no. 18 as means of proof.

119. This statement is entirely without merit insomuch as: (a) the Order of Revocation cannot bind the Panel in the assessment of evidence; and (ii) the Order of Revocation is ill-founded and was issued in violation of procedural safeguards.

(A) The scope of the Order of Revocation

120. A fundamental principle of international law is that of the territoriality of acts: state acts, including judgments, only have judicial effect in the territory of the country to which the authority that issued them belongs, unless a treaty provision provides for the possibility for them to be recognized and executed in another country. In other words, "[a]s *an act of government* [a judgment's] *effects are limited to the territory of the sovereign whose court rendered the judgment, unless some other state is bound by treaty to give the judgment effect in its territory, or unless some other state is willing, for reasons of its own, to give the judgment effect*".[23]

[23] Hilton v. Guyot, 159 US 113, 163 (1895). See also BORN, *International Civil Litigation in United States Courts*, Kluwer, 1996, "*in most circumstances, the judgment of a national court has no independent authority outside the forum's territory*" (page 935).

121. The Order of Revocation was made only on February 18, 2009, which is to say after the samples had been collected from Bag no. 18, had left Spanish territory and had been analyzed by the Italian police laboratory on February 2, 2009.

122. As a consequence, the question to verify is whether the Order of Revocation could produce judicial effects outside of Spain in accordance with the Convention of 1959 or other conventions regarding the recognition and execution of decisions in criminal matters. In this regard:

- Even if the requested State may refuse to cooperate in certain specifically identified cases (Article 2), the Convention of 1959 does not provide for the possibility of revoking (the effects of) a procedure that has already been completed nor does it indicate the judicial effects of decisions rendered in the context of a mutual legal assistance procedure that are addressed to the requesting authorities. Given that there is an obligation of cooperation resulting from the Convention of 1959, once a competent judge has authorized the mutual assistance procedure and the other party has acted on the basis of this authorization, the competent judge may not withdraw his authorization in the absence of treaty provisions on this matter or consent from the requesting country. Thus, once the cooperation is completed (by the collection of the samples), the investigating magistrate does not have any legal ground to revoke his authorization.

- With regard to provisions regarding the recognition and execution of decisions in criminal matters,[24] the Order of Revocation falls outside the field of application of these conventions, which only concern decisions condemning physical persons.

- In any event, the issue of potential juridical effects resulting from the recognition of decisions is not at issue since no one requested recognition of the Order of Revocation or of the Decision regarding the Order of Revocation outside Spain.

123. Apart from the absence of juridical effects, it is recalled that, according to constant CAS jurisprudence, as an independent *forum* the Panel is not bound by the decisions of another jurisdictional body. With regard to its full power to review the facts and the law, "[the] *Panel is not bound by decisions taken by any other jurisdictional body*".[25] Further, as regards specifically the admissibility of evidence, the Panel "[is] *not bound by the rules of evidence and may inform* [itself] *in such a manner as the arbitrators think fit*".[26]

[24] See Decision-Cadre 2008/909/JAI of the European Union Council of November 27, 2008, regarding the application of the principle of mutual recognition for judgments in criminal matters ordering fines or privative measures of freedom for the purposes of executing them in the European Union (Official Journal no. L 327 of 05/12/2008, page 27). This Decision-Cadre sets out the rules upon which judgments ordering fines or privative measures of freedom rendered in a member state are recognized and executed in another member state. In any event, this text was not transposed in Italy or Spain.

[25] See CAS 2001/A/354, *Irish Hockey Association (IHA)/Lithuanian Hockey Foundation (LHF)* and *International Hockey Federation (LHF)*, and CAS 2001/A/355, *Lithuanian Hockey Federation (LHS)/International Hockey Federation (IHF)*, paragraph 6; and CAS 2002/A/399, P./*Federation Internationale de Natation (FINA)*, paragraph 13.

[26] See CAS 2008/A/1574, *Nicholas D'Arcy v. Australian Olympic Committee*, paragraph 13.

124. Moreover, the CAS award in the *Caruso* case, which ruled on the effects of the Orders of October 3 and 10, 2006, confirmed that the Panel "*is not bound by the orders of a Spanish judge […] Secondly, it is completely unclear what the consequences are of any – alleged – failure to comply with the judicial order*" (paragraph 9.3). Furthermore, "[t]*he 'full power' granted the deciding Panel under the CAS Code precludes any notion that the Panel must abide by restrictions on evidence which may or may not have been adduced in previous proceedings before a national or international disciplinary tribunal*." Lastly, in an order made on December 22, 2009, in the cases of CAS 2007/A/1396 *WADA v. RFEC & Alejandro Valverde* and CAS 2007/A/1402 *UCI v. RFEC & Alejandro Valverde*, the Panel took a similar position, still with regard to the Orders of October 3 and 10, 2006, stating that "*this Panel does not regard the Serrano-orders prohibitive for the production and use of the Operation Puerto documents in this arbitration*" (paragraph 47).

125. Thus, in accordance with settled CAS jurisprudence, the Panel, in a unanimous finding, concludes that its discretionary power concerning the (non-)admissibility of evidence is not limited by the Order of Revocation or by the Decision regarding the Order of Revocation.

(B) The Order of Revocation is erroneous

126. Furthermore, the Order of Revocation is based on incorrect interpretations of fact and law.

127. First, the Order of Revocation considers that UPA-CONI alone participated in the cooperation procedure and does not mention the role of the Public Prosecutor of Rome. The decision to revoke the letters rogatory is therefore based on the fact that UPA-CONI is not a judicial body to which the conventions on judicial cooperation apply. Contrary to the order that initially authorized the cooperation (referring to the "*Fiscalia de Roma*", Public Prosecutor of Rome), the Order of Revocation confused UPA-CONI and the Public Prosecutor of Rome. As stated *supra*, the Public Prosecutor of Rome associated itself with UPA-CONI's initial investigation of, and took responsibility for, all procedures relating to the collection of samples in the criminal proceedings. Indeed, this confusion is all the more surprising given that UPA-CONI sent the "*nulla osta*" from the Public Prosecutor of Rome with an accompanying letter explaining that this was a decision made by the Italian criminal judicial authority.

128. Second, the Order of Revocation also bases its legal reasoning on the Convention of 2000 which, as has already been stated *supra*, is not applicable to a request for mutual legal assistance between Italy and Spain.

129. Third, the Order of Revocation also violates minimal procedural safeguards: Investigating magistrate no. 31 adopted this measure without consulting either party to the cooperation (neither the Public Prosecutor of Rome nor even UPA-CONI), in violation of the principle of cooperation that underlies the Convention, or the Office of the Italian Public Prosecutor who participated in the cooperation procedure and issued a positive opinion regarding the requested cooperation.

130. Fourth, the Order of Revocation is based on the fact that under Spanish law, evidence in a pending criminal proceeding cannot be used in a different proceeding concerning violations other than the ones at issue in the criminal proceeding. In this regard, the Panel notes that the sample from Bag no. 18 was used by the Italian criminal authorities in order to perform a DNA test to compare this sample with three anonymous samples collected during the Tour de France 2008. CONI merely used the results of the DNA test performed by the Italian criminal authorities, who established a match of 16 genetic markers between the sample collected from Mr. Valverde during the Tour de France 2008 and the sample from Bag no. 18, which it considered to be sufficient proof of a violation of the NSA Anti-doping standards. In any event, and as an additional measure, as explained hereafter, Article 2, paragraph 3 of Italian law no. 401/1989 confirms that evidence in a pending criminal procedure in Italy can be used in a sports procedure at any time, due to the independence of these procedures.

131. The Panel considers the Decision regarding the Order of Revocation rendered by the Madrid Court of Appeal does not introduce any new element to this analysis, insofar as it bases its judgment on the observation, which this Panel finds is erroneous, that the letters rogatory originated from CONI and not the Public Prosecutor of Rome, and on a principle of Spanish law which prohibits the use of evidence from an ongoing criminal proceeding in another proceeding. For the reasons already stated, the Panel considers that this principle is not relevant in the present case. Lastly, the Panel recalls the principle of territoriality of national acts, which, except where otherwise permitted, prevents judgments from producing juridical effects beyond the national territory.

iii. Subsidiarily: The admissibility of evidence acquired in an illegitimate manner

132. Even if—contrary to what has been previously stated—the rules regarding judicial cooperation were violated or if the Order of Revocation could have the effect of nullifying the validity of the acquisition of the samples from Bag no. 18, the Panel finds that it would nonetheless be free to assess the analyses of Bag no. 18.

(A) The situation regarding proceedings before national civil courts

133. The juridical consequences of evidence obtained illegitimately are well-established by Swiss jurisprudence and doctrine related to the procedure before national civil courts. In principle, one distinguishes between “irregular evidence” and “illicit evidence”. In substance, irregular evidence is evidence that has been collected in violation of a procedural rule within the context of an investigation (for example, a witness testifies without having been instructed on his or her right to refuse to testify). Illicit evidence, on the other hand, is evidence that has been collected in violation of another rule of law. In the present case, we would be, hypothetically, facing the latter type of case.

134. The Swiss national legal order does not establish any general principle according to which illicit evidence is to be considered generally inadmissible in procedure before state civil courts. On the contrary, the Federal Tribunal, as set out in constant jurisprudence, is of the opinion that a decision regarding the admissibility or non-admissibility of illicit

evidence must be the result of a *balancing* of various juridical interests.[27] Matters considered pertinent, for example, are the nature of the violation, the interest in discerning the truth, the difficulty of adducing evidence for the concerned party, the conduct of the victim, the legitimate interests of the parties, and the possibility of acquiring the (same) evidence in a legitimate manner.[28] The predominant Swiss doctrine follows this jurisprudence of the Federal Tribunal.[29] This approach adopted by the Federal Tribunal and the dominant doctrine, moreover, have been codified in the new Swiss Civil Code (Article 152, paragraph 2), which will enter into effect on January 1, 2011.

(B) Relevance of these principles for international arbitration

135. The principles that have just been described constitute only a feeble source of inspiration for the practice of arbitration tribunals. Of course, the assessment of illicit evidence by an arbitration tribunal could (legally) be the object of an investigation before a state court in order to determine whether it could constitute a violation of public order. However, this is where the commonalities end. In particular, any prohibition on relying on illicit evidence in a national procedure does not in itself bind an arbitration tribunal. According to the law of international arbitration an arbitral tribunal is not bound by the rules applicable to the administration of proof before national civil courts of the seat of the arbitration[30]. As we have seen *supra*, the discretionary power of the arbitrator to rule on the admissibility of evidence is limited only by procedural public order. Moreover, [the prohibition of] the use of illicit evidence is not a principle that arises automatically from Swiss public order, because Swiss public order is only violated in the situation of an untenable contradiction with the sentiment of justice, of such sort that the decision appears incompatible with the recognized values of a State governed by law.

136. The Panel concludes, unanimously, that the (alleged) violations of the rules relating to judicial cooperation are not of the nature of public order and are therefore not an impediment to the possibility of the Panel assessing the results of the analysis of Bag no. 18. The Panel arrives are these conclusions after having weighed the various juridical interests involved. In particular, the Panel rejects the idea that the violations alleged by the Athlete would constitute, even if they were proved, an untenable violation of the sentiment of justice, notably given the conduct of CONI which did not—in any manner—violate the provisions relating to judicial cooperation, but which—on the contrary—obtained the analyses of Bag no. 18 in full compliance with the provisions of Italian law no. 401 of December 13, 1989. According to Article 2 paragraph 3 of Law no. 401/1989 sports

[27] See TF 18.12.1997 – 5C.187/1997; 17.2.1999 – 5P.308/1999 and TF 17.12.2009 – 8C_239/2008.

[28] See *Frank/Sträuli/Messmer*, Kommentar zur zürcherischen Zivilprozessordnung, 3. ed. 1997, vor § 133 ff no.6 ; *Vogel/Spühler*, Grundriss des Zivilprozessrechts, 9. ed. 2008, 10. Kap. No. 101.

[29] See *Spühler* ZZZ, 2002/2, p. 148 ; *Staehelin*, Der Beweis im schweizerischen Zivilprozessrecht, in : Der Beweis im Zivil- und Strafprozess der Bundesrepublik Deutschland, Österreichs und der Schweiz, Mittelbarer oder unmittelbarer Beweis im Strafprozess**,** 1996 ; *Rüedi*, Materiellrechtswidrig beschaffte Beweismittel im Zivilprozess, 2009, p. 35 ss.

[30] See *Poudret/Besson*, Comparative Law of International Arbitration, 2007, no. 644: "*The arbitral tribunal is not bound to follow the rules applicable to the taking of evidence before the courts of the seat*".

disciplinary bodies may request a copy of the file of criminal proceedings, even if the investigation is still ongoing.

b. ***The rules regarding protection of personality***

137. The Athlete emphasizes that the rules regarding the protection of his personality would be breached if the analyses of Bag no. 18 were admitted in this procedure, because the standards for protection of privacy would prevent the processing and distribution of certain information such as his genetic profile. The genetic profile of a person is protected, among other things, by Article 28 of the Swiss Civil Code (SCC). It is undisputed that the rules regarding the protection of personality, particularly Article 28 of the SCC, are part of public order and that this Article can impose limits on the law of administration of evidence. It is also undisputed that individual personality does not enjoy absolute protection. According to Article 28, paragraph 2 of the SCC, a beach of personality is not considered illicit when it is justified by the consent of the victim, by a preponderant private or public interest, or by law.

138. The Panel, in a unanimous finding, concludes that the admission of the results of the analysis of Bag no. 18 in the present proceedings would not qualify as an illicit breach of the Athlete's personality. First, prior consent from the Athlete to analyze the sample was impossible to obtain because the match between the contents of Bag no. 18 and the Athlete was unknown at the time. Moreover, the Panel is of the opinion that prior consent was not necessary because the analysis, in the context of the criminal proceedings, was justified by Italian law. Bag no. 18 was analyzed by the Italian criminal authorities, who obtained it on the basis of rules relating to judicial cooperation with the Spanish authorities. The analysis was ordered by the Public Prosecutor of Rome in the context of a criminal investigation. CONI obtained the results of the analysis of Bag no. 18 in full compliance with the rules of Italian law no. 401 of December 13, 1989.

139. Lastly, the Panel believes that any breach of the Athlete's personality would also be justified by a preponderant interest. A preponderant interest may be either private or public in nature.[31] For example, the Federal Tribunal has concluded that the interest of an insurance company in detecting insurance fraud (by means of the services of a private detective) is worthy of protection and can justify a breach of the insured's personality.[32] In the present case, the Panel finds that the successful battle against doping constitutes not only a private interest of the association in question but also a public interest. This is also highlighted by Conventions of which Switzerland is a contracting state.[33] The interest underlying the fight against doping is—according to the unanimous opinion of the Panel—in the present case preponderant over the Athlete's interest in not having the analyses carried out in the context of a criminal investigation transmitted to the competent sport disciplinary authority.

[31] *Aebi-Müller*, in Handkommentar zum Schweizer Privatrecht, 2007, Art. 28 no. 32; *Meili*, in Basler Kommentar zum ZGB, 3rd edition, Art. 28 no. 46.

[32] ATF 129 V 323 E 3.3.3.

[33] Anti-doping Convention of the Council of Europe, no. 135, *UNESCO International Convention Against Doping in Sport*.

3. The samples collected during the Tour de France

140. The Athlete challenges CONI's right to use the blood collected on July 21, 2008, during the Tour de France, for DNA testing purposes. The Athlete has two main objections regarding the use of his blood sample. First, the blood collected during the Tour de France 2008 may only be used to determine whether the Athlete committed an offense relating to doping during that competition, to the exclusion of all other uses. Second, preservation of the Athlete's blood sample collected during the Tour de France 2008 is a violation of the protection of privacy afforded by Italian law and the ECHR. According to the Athlete, this proves the sample is not admissible as evidence in the present proceedings.

141. The Panel rejects the Athlete's first objection. At the time of the Tour de France 2008, the Athlete signed the standard form used by CONI for sample collection. It has already been stated that this form did not impose any restrictions on what CONI could do with this sample after collection. On the contrary, the form stated that the sample would be subject to applicable anti-doping rules (in this case, those of CONI). The applicable NSA Anti-doping standards do restrict CONI's use of biological samples collected from athletes, prohibiting CONI from using these biological samples for purposes other than screening for prohibited substances or prohibited methods (see Article 6 of the NSA Anti-doping standards in the version approved January 23, 2008, and applicable at the time of the facts, making reference to Article 6.2 of the 2003 WADC). Given that the sample collected during the Tour de France 2008 was used to compare the Athlete's DNA with the DNA contained in Bag no. 18 with a view to confirming the use of a prohibited method, the use of the sample collected during the Tour de France 2008 is covered by the uses authorized by NSA Anti-doping standards, such that this objection by the Athlete must be dismissed.

142. The Panel also dismisses the Athlete's second objection. The limitation period set out in Article 5.2.2.6 of the International Standard for Laboratories in effect at the time of the relevant facts is eight years. No provision requires the destruction of samples after their use before the expiry of this limitation period. More generally, WADA guidelines concerning results management do not exclude the possibility of performing new testing on such samples over the course of the eight-year limitation period (Article 2.4). It goes without saying that the battle against doping in sports would be adversely affected by recognizing a right of athletes to have their samples destroyed after a negative test—such destruction would hinder (i) the establishment of satisfactory biological profiles and (ii) the detection of new and innovative doping substances and of methods unknown to anti-doping authorities at the time of the original testing.

143. In any event, the blood sample was used by the Italian criminal authorities, not by CONI. The DNA analysis was carried out by the Police Scientific Service – Genetic Forensics Section at the request of the Public Prosecutor of Rome. The investigation by the Italian criminal authorities could not be limited by any restriction imposed by a sporting authority on the use of evidence, such as the blood sample collected on July 21, 2008 during the Tour de France (Articles 192 and 193 of the code of criminal procedure). CONI merely used the results of this analysis, establishing the ownership of the content of Bag no. 18 as belonging to the Athlete, pursuant to Article 2, paragraph 3 of Law no. 401/1989, according

to which sports disciplinary bodies may use all of the elements of a criminal proceeding, even if it is still ongoing.

144. With regard to the alleged violation of standards on the protection of privacy resulting from the absence of consent during the analysis, Article 53 of the Italian Code for the protection of personal information (d. lgs. June 30, 2003, no. 196) provides that the processing of personal information by the police during a criminal investigation does not require the consent of the concerned party.[34]

145. Given that the analysis was ordered by the Public Prosecutor of Rome in the context of a criminal investigation, the processing of samples collected during the Tour de France without the Athlete's explicit consent cannot constitute a violation of the standards applicable to the protection of privacy.

146. This Panel does not rule on the applicability of Article 8 of the European Convention on Human Rights (ECHR), which contains the right to the respect of one's privacy. However, even supposing that that Article were applicable, the Panel would not hesitate to conclude that the preservation of the Athlete's biological samples by CONI after the initial test and for eight years is justified by the necessity of protecting health and morals, as set out in Article 8, paragraph 2 of the ECHR.

147. Thus, the blood sample collected during the Tour de France 2008 is an element of proof that is admissible for the purposes of these proceedings.

4. The documents from the Spanish criminal proceedings

148. The Athlete has asserted that the documents from the Spanish criminal proceedings may could not be used in the context of the Italian sport proceedings, pursuant to the Orders of October 3 and 10, 2006. As explained *supra* with regard to the Order of Revocation, the orders of October 3 and 10, 2006 do not bind this Panel as regards the use of these means of evidence.

F. ASSESSMENT OF THE EVIDENCE

149. According to the Athlete, the evidence presented does not have probative force. In particular, the Athlete relies on the following claims:

- The analyses of the samples from Bag no. 18 cannot be relevant because of the [break in the] chain of custody;

- CONI did not establish the maintenance of the chain of custody of the blood sample from the Tour de France 2008, which proves that the integrity of the sample cannot be guaranteed;

[34] Also see the decision of the Italian authority on the protection of privacy November 5, 2003, number 105328.

- The analyses from the Barcelona Laboratory revealing the presence of EPO in Bag no. 18 are not valid because the Laboratory is not certified to test for EPO in blood and the Athlete was not able to request a counter-analysis;

- Mr. Manzano's statements are contradictory and were the object of an investigation by the Spanish judiciary, which decided to close the file;

- The business card found on Dr. Fuentes does not constitute evidence of a connection to the Athlete.

150. The respondents challenged these arguments by noting that:

- The analyses by the Barcelona Laboratory demonstrate the presence of EPO in Bag no. 18 and a counter-analysis was not required in the context of the present case;

- Mr. Manzano's statements are reliable and have been confirmed by subsequent developments in Operation Puerto;

- The business card shows that the Athlete was in contact with Dr. Fuentes.

151. According to article 184, paragraph 1 of CPIL, the Arbitral Panel has the power to decide not only on the admissibility of evidence but also on its relevance.[35]

1. The chain of custody between seizure of the bags by the Spanish Civil Guard and delivery of the bags to the Barcelona Laboratory

152. Although the Athlete acknowledged at the hearing that he did not have any reservations about the chain of custody between the Barcelona Laboratory and the Rome Laboratory, he nonetheless challenged the regularity of the chain of custody for the previous period, which covers the seizure of the bags by the Spanish Civil Guard and delivery of the bags to the Barcelona Laboratory. In particular, the Athlete challanged the method of transport of the bags, because fewer bags arrived at the Barcelona Laboratory (which received only 99 bags instead of the 100 bags sent by the Civil Guard) and they arrived the day after they were received by the private courier, which cannot rule out the possibility that they were tampered with.

153. This Panel considers that the challenges in this regard are unfounded: the Civil Guard acted under the strict management of the judge responsible for the investigation and sent 99 bags of plasma to the Barcelona Laboratory via a private courier, taking all necessary safeguards for their preservation, and the Barcelona Laboratory did not raise any objections regarding the correct preservation of the samples. Moreover, as explained hereafter, the shipping of the samples via private courier is expressly permitted by the WADA guidelines on the management of blood samples, which do not impose a maximum time for the transport of the samples (but merely recommend a period of 24 hours for delivery to the

[35] See *Rigozzi*, *Arbitrage International*, 2006, number 478.

laboratory, see paragraph 5.13.10 of the guidelines currently in effect). Lastly, the difference between the number of bags at the time of their receipt by the Barcelona Laboratory and at the time of transport is explained by the fact that one of the bags was counted twice when it was sent.

154. Thus, the Panel finds that the chain of custody of the bags seized by the Civil Guard and, in particular Bag no. 18, is also valid for the period covering their seizure by the Civil Guard until their delivery to the Barcelona Laboratory.

155. Moreover, as regards DNA tests, which seek a genetic imprint specific to each individual, the Panel observes, as the experts (Dr. Caglia and Dr. Castella) confirmed during the hearing, that the conditions of the chain of custody (as opposed to the continuity of the chain itself) are not as important as for the detection of prohibited substances in blood. This is confirmed by the fact that DNA tests are often used in criminal matters to solve crimes and, more recently, in archaeological matters, for example, to determine the genealogy of certain pharaohs, where DNA evidence is preserved in far more uncertain conditions than here. Moreover, the chain of custody in this case obviously did not modify the genetic profile of Bag no. 18, since the analysis performed by the Police Scientific Service – Genetic Forensics Section enabled a match to be established between Bag no. 18 and the sample collected from the Athlete during the Tour de France 2008 based on 16 genetic markers.

2. <u>The samples collected during the Tour de France</u>

156. The Athlete contests the probative force of the analysis of the blood collected on July 21, 2008 during the Tour de France. The Athlete emphasizes that CONI has not established the maintenance of the chain of custody of the blood sample from the Tour de France 2008, even though this is necessary in order to convince the Panel that the sample was not contaminated notably during the doping control testing conducted in 2008. According to the Athlete, this proves that the integrity of the sample cannot be guaranteed.

157. The Panel unanimously dismisses this objection. Despite the Athlete's efforts, no credible evidence was introduced that could raise any credible doubt regarding the preservation of the chain of custody of the blood sample collected during the Tour de France 2008. In particular, the sample was sent to the anti-doping laboratory in Rome following the applicable packaging and identification procedures (see "Guidelines for blood sample collection" in the June 2008 version).[36] The Laboratory did not raise any objections regarding the preservation of samples (as it is required to do in case of irregularity). The fact that the samples were handed off to a transportation company is specifically permitted by the aforementioned guidelines and cannot therefore be criticized (according to paragraph 5.1 4.3 "[s]*amples may be taken directly to the Laboratory by the DCO, or handed over to a third party for transportation. This third party must document the chain of custody of the samples. If an approved courier company is used to transport the samples, the DCO shall*

[36] Based on the document indicating the chain of custody, the sample was collected at 11 PM on July 21, 2008. It left the hotel at 11:40 PM, to be transported to Bra, where it arrived at 12:15 AM, on July 22, 2008, and was handed off to the private courier for transportation to Rome at 12:45 AM, on July 22, 2008.

record the waybill number"). Moreover, even if other samples could sustain damage during transportation, this could not have any influence on the preservation of the samples collected during the Tour de France 2008, which arrived sealed and intact at the Rome anti-doping laboratory.

3. Credibility of the DNA analysis

158. The Athlete also seeks to cast doubt on the credibility of the DNA analysis carried out by the forensics laboratory. However, such an assertion is not supported by any credible evidence and therefore constitutes mere speculation.[37] In his defence the Athlete did not introduce any evidence that might permit any doubt to be raised regarding the reliability of the results of the DNA analysis. In particular, Dr. Caglia's and Dr. Castella's statements during the hearing confirmed that the samples were processed and analysed correctly, and clarified that manual (rather than mechanical) processing of the samples has no effect on the reliability of the results and that storage conditions do affect the results of the DNA testing.

4. Matching of the DNA profile

159. In February 2009, the Police Scientific Service – Genetic Forensics Section confirmed the match between the DNA contained in Bag no. 18 and one of the three different anonymous samples collected from athletes during the Tour de France on July 21, 2008. Shortly thereafter, CONI confirmed that the corresponding sample identified by the police laboratory belonged to the Athlete.

160. In addition to his objection to the admissibility of the underlying physical evidence, the Athlete contests the admissibility of the results of the DNA analysis. The Athlete affirms that this constitutes a violation of his rights as an Athlete, given that he was not authorized to request the analysis of a B sample.

161. The Panel rejects this argument. The analysis of a B Sample is required in cases of alleged violations of the rules relating to the use of a prohibited substance and not those regarding the use, or attempted use, of a prohibited method, as in the present case. This conclusion is also justified by the reliability of the DNA test and is supported by the applicable NSA Anti-doping standards, which make reference to the WADC, distinguishing, on one hand, a violation based on the presence of a prohibited substance (potentially confirmed by the analysis of the B Sample) and, on the other hand, a violation based on the use of a prohibited method, which does not necessarily entail the presence of a prohibited substance in the Athlete's blood. This distinction is reproduced even more clearly in the version of the WADC currently in effect (as of January 1, 2009).[38]

[37] See CAS 2006/A/1067 *IRB v. Keyter*.

[38] See in particular, Article 2.1.2: "*Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample*."

162. The Panel, in a unanimous finding, thus accepts the conclusion of the DNA analysis according to which the blood contained in Bag no. 18 matches the blood sample provided by the Athlete during the Tour de France 2008. Other CAS Panels have already recognized that "*given that a genetic profile only belongs to one individual, it cannot be falsified*".[39] This means of proof is admissible and significant; it shows that the Athlete committed certain acts, including allowing Dr. Fuentes to have access to his blood. The Athlete did not provide any other alternative, legitimate reason for Dr. Fuentes to have possession of his blood.

163. Lastly, the Panel would like to recall that CONI only referred to the results of the DNA analysis conducted by the Italian criminal authorities at the request of the Public Prosecutor of Rome, which CONI received in accordance with Italian law concerning exchanges of information between judicial sporting authorities.

5. <u>Final remarks about the proof of a violation of the anti-doping rules concerning the use or attempted use of a prohibited method</u>

164. In light of the elements of proof assessed above, the Panel finds that CONI has established, over and above what is required, the admissibility of the evidence relating to the use or attempted use of a prohibited method by the Athlete.

165. The identification of plasma matching the Athlete's DNA is sufficient to prove the attempted use of a prohibited method. As was explained at the hearing, plasma can be used to influence hematocrit levels, which is a blood doping technique. It is thus possible to conclude that the plasma was intended to be used for blood doping practices. From the hearing, it emerged that the quantity of plasma found in the bag is incompatible with any hypothesis of an involuntary extraction or collection of a relatively small sample. From this, the Panel can deduce that the Athlete gave his permission for this extraction, with a view to its re-transfusion for doping purposes. Dr. Fuentes and other athletes have admitted to using blood doping techniques through re-transfusions of blood and plasma.

166. Moreover, the Athlete did not provide any reason to explain why his blood was found in Dr. Fuentes' laboratory.

167. In any event, in the present circumstances, the mere collection of blood for non-therapeutic use is prohibited and constitutes a violation of the NSA Anti-doping standards of CONI, (which transpose the rules of the WADC), at least as regards the prohibition of the attempted use of a prohibited method.

168. The Panel concludes that the DNA test result is sufficient to prove in a satisfactory manner that Mr. Valverde—at the very least—attempted to use prohibited doping methods. The considerations that follow regarding the serious, clear and convergent body of evidence

[39] Joint cases CAS 2008/A/1718-1724 *IAAF v. All Russia Athletic Federation and Others*, decision of November 18, 2009, paragraph 179.

of Mr. Valverde's participation in the Dr. Fuentes' clandestine doping network corroborate these findings and confirm that Mr. Valverde violated anti-doping rules.

6. Presence of EPO

169. At the beginning of the proceedings launched against the Athlete for use of a prohibited method, UPA-CONI learned that Bag no. 18, which was identified as belonging to the Athlete, also tested positive for EPO in 2006. Based on this, UPA-CONI then charged the Athlete with use of a prohibited substance, which the TNA confirmed in its Decision.

170. The Athlete's appeal is based on the claim that the Barcelona Laboratory, having examined Bag no. 18, was not certified to carry out this analysis. Moreover, the EPO in question was found in the contents of a bag containing plasma, and the ingestion of EPO via a plasma transfusion would not allow the subject to enhance performance. The Athlete also made reference to his clean record and stressed the impossibility of carrying out an analysis of a B Sample of the plasma.

171. In this regard, given the final conclusions of this award and the provisions of the TNA Decision, the Panel, in a unanimous finding, concludes that it is not necessary to pursue the examination of this issue insofar as it will not affect the sanction imposed on the Athlete.

172. However, the Panel notes that the presence of EPO in Bag no. 18 is an indication that reinforces the conclusion, already established independently, that this bag was intended to be used for doping purposes. In this regard, the Panel notes that the Athlete did not present any evidence such as might cast doubt on the reliability of the analysis carried out by the Barcelona Laboratory. At the hearing, it emerged that at the time of the analysis by the Barcelona Laboratory, the analytical procedures ("Technical Document") in effect only involved the screening of EPO in urine, and not blood (see "WADA Technical Document TD2004EPO"). The fact that other standards were developed later on for blood sample analysis cannot have any influence on the reliability of a prior test[40], even more so since—as was explained by the experts during the hearing—the EPO screening test cannot result in false positives (i.e. positive results that are incorrect), and this irrespective of the circumstances surrounding the analysis and preservation of samples.

7. Other means of evidence

a. Documents from the Spanish criminal proceedings: Report no. 116, its appendices and the business card found on Dr. Fuentes

173. The Athlete noted that the documents from the Spanish criminal proceedings are not sufficient to establish a connection between Mr. Valverde and Dr. Fuentes.

174. With regard to his specific challenges regarding these documents, we note the following:

[40] See, for example CAS 2009/A/1912 *Claudia Pechstein v. International Skating Union.*

- Report no. 116: The Athlete contested the origin and authenticity of this document. However, as is clear from the file, Report no. 116 was obtained legitimately by CONI via UCI (which received it from RFEC), and Investigating magistrate no. 31, who sent it to CONI after having issued the orders of October 3 and 10, 2006. Moreover, as has already been demonstrated by the respondents, the information and documents in question are known to the general public. Extracts from Report no. 116 can be consulted on the Internet. Challenges related to the alleged absence of authentication of the documents by competent law enforcement or judicial authorities are unfounded because the authenticity of the documents was acknowledged by the Civil Guard officer who wrote them.

- The alias "Valv. (Piti)" and the number "18": As previously mentioned *supra*, in Report no. 116 the alias "Valv. (Piti)" and the number "18" are present in the tables referring to the content of one of the freezers used to store the blood bags (Documents no. 114 and 116 of Report no. 116). Moreover, one sees an "R" for Athlete no. 18 on the 2005 schedule (on April 7, 2005) used by Dr. Fuentes and forming part of the criminal file. The "R" in Dr. Fuentes' numbering system indicates the administration of a re-transfusion.

  As part of the Athlete's defence, he disputed the association between these codes and himself: the article in "AS" magazine on June 23, 2006 (*Un dia con Valverde*) indicating that Valverde had a dog named "Piti" is not reliable because it was written after the beginning of the Operation Puerto scandal, when the name of the Athlete had already appeared in the press. As stated by the Athlete at the hearing, Mr. Valverde has never owned a dog named "Piti" and is not the Athlete identified under the number "18".

  This is confirmed by the fact that on the day marked with an "R" on Mr. Fuentes' calendar for Athlete no. 18 (April 7, 2005), Valverde participated in the "Vuelta Ciclistica Al Pais Vasco" competition, where he underwent anti-doping control the results of which were negative. Moreover, Dr. Fuentes' calendar is not reliable because there was no "E" symbol for Athlete no. 18 indicating a blood draw, which should have preceded the transfusion by approximately one month. Mr. Arrieta, a cyclist who shared a hotel room with Mr. Valverde during the Tour of Spain competition, confirmed that Mr. Valverde did not undergo a transfusion on April 7, 2005, and that, as is common among cyclists, Mr. Valverde always left the door to his hotel room open, which would be incompatible with an attempt to conceal clandestine doping practices.

  Lastly, the documents in the Operation Puerto file show that Athlete no. 18 was not Mr. Valverde, but Mr. Angelo Vicioso.

  These challenges are insufficient: Mr. Enrique Iglesias, author of the article in "AS" magazine indicating that Mr. Valverde had a dog named "Piti" confirmed this fact during his hearing before the Panel. Any questions regarding the period during which the article was written are irrelevant, even more so because, as Mr. Iglesias

declared, the article was published before the existence in the Operation Puerto file of the alias "Piti" was made known to the general public. Moreover, other articles in the file confirm that Mr. Valverde owned a dog named "Piti": in an interview dated December 16, 2006, Mr. Valverde confirmed he owned a dog named "Piti" that he bought in 2005 (see *Exhibit* 40-UCI), and in an article dated June 1, 2007 (see *Exhibit* 6-CONI), Mr. Valverde admitted to owning a dog named "Piti". Lastly, Mr. Manzano also confirmed that Mr. Valverde owned a dog named "Piti" in 2002-2003 (or, well before the publication of these articles or the launch of the Operation Puerto investigation) and that he often made reference to it in conversations with other cyclists and his wife.

With regard to the re-injection, it is clear from the file, and Mr. Manzano confirmed during the hearing that Dr. Fuentes would visit athletes during competitions (for injections of prohibited substances as well as re-injections) and that the re-injections were performed during competitions. Therefore, the fact that Mr. Valverde participated in a competition on April 7 strengthens, rather than excludes, the possibility that Dr. Fuentes re-injected him with blood for doping purposes on that date. On this, the negative drug control result does not necessarily exclude the possibility of a re-injection, which has the characteristic of not being detectable, especially during anti-doping control by means of urine sample collection. With regard to the absence of a symbol indicating the extraction of blood, Mr. Manzano stated that the "R" symbol does not always have to follow the "E" symbol because the treatment plan was often modified. Therefore, the "E" symbol could be absent in subsequent versions of the plan and, as Mr. Batista of the Civil Guard stated during the hearing, frozen blood (or plasma) can be re-injected a long time after being drawn. Moreover, given the relatively brief amount of time required to perform a re-injection and the fact that Mr. Arrieta was not in Mr. Valverde's company continuously throughout the day, Mr. Arrieta's statements are not enough to exclude the possibility that a re-injection took place on April 7, 2005. Lastly, the habit of leaving the hotel door open is not necessarily incompatible with doping practices, especially if—as appears from Mr. Manzano's statements—these doping practices seem to have been widespread in that milieu.

Regarding the so-called identification of Mr. Vicioso as Athlete no. 18 in Dr. Fuentes code, as was emphasized during the hearing the documents from the Operation Puerto file state that Mr. Vicioso was actually the Athlete identified with number 16, and not number 18 (which was merely the number of the filing cabinet of the file containing the documents that mention Mr. Vicioso).

- Business card: the Athlete challenged the idea that the name "Valverde" appearing on the back of a business card found on Dr. Fuentes when he was arrested refers to Mr. Valverde and that, in any event, the mere fact of finding a business card does not automatically establish an association with Dr. Fuentes' doping activities (for example, Dr. Fuentes was also in possession of the business cards of other people who were clearly not part of Dr. Fuentes' doping network).

> The Panel finds that the fact that this business card was found, in addition to the overabundance of other indicia and elements of proof, is such as to lead reasonably to the belief that it is indeed the name of the Athlete that appears on the back of the card. Moreover, the name "Valverde" appears on a list of pseudonyms annotated by hand, which is entirely different from an exchange of business cards, for example, during an appointment.

175. In conclusion, the Panel, in a unanimous finding, finds that the documents from Operation Puerto provide—in addition to the DNA analysis—a body of evidence that is serious, clear and convergent proving that Mr. Valverde engaged in doping practices with the assistance of Dr. Fuentes.

176. IN particular, it emerges from the Operation Puerto documents that, as was the case with other athletes (for example, Jörg Jaksche), the alias "Piti" referred to Mr. Valverde's pet, as the "Valv." abbreviation that accompanies it also leads one to believe. Mr. Valverde is therefore the athlete identified by the number 18 in Dr. Fuentes' documents, including in the calendar indicating a re-injection for April 7, 2005. Given these circumstances, it is also reasonable to find that the name "Valverde" on the back of a business card found on Dr. Fuentes referred to the Athlete.

b. ***Statements by Mr. Jesus Manzano***

177. Lastly, the Panel cannot ignore the statements made by Mr. Manzano, a former member of the team to which Mr. Valverde belonged (Kelme), who confirmed that Mr. Valverde engaged in doping practices.

178. In particular, Mr. Manzano stated that each cyclist on the Kelme team (including Mr. Valverde) received a doping treatment program based on his or her own competition schedule, which included the use of doping substances such as EPO and testosterone. Injections were given directly by Dr. Fuentes during competitions (in hotel rooms where the athletes were staying), or the athletes (such as Mr. Valverde) received pre-filled syringes with which to perform the injections at home during training. According to Mr. Manzano, Mr. Valverde received injections of doping substances (such as EPO) on several occasions (for example, when the cyclists were training in Alicante). In addition, on the occasion of Tour of Spain 2003, the cyclists (i.e. Mr. Valverde) also received testosterone patches that they were required to wear for a particular period of time (2 hours) in order to avoid a positive test during anti-doping controls.

179. As far as blood extractions for purposes of re-injection are concerned, Mr. Manzano declared that in general two half-litre blood bags were drawn before major competitions in order to re-inject the blood partway through the competition or when the level of hematocrit dropped too low. Plasma was also re-injected even though the treatment procedure was more complex and costly. In particular, he declared that a blood extraction took place at the clinic of Dr. Marino (one of the members of Dr. Fuentes' doping network) with Mr.

Valverde and the other team members who were supposed to participate in the Tour of Spain 2003.

180. Mr. Manzano stated that the Athletes, including Mr. Valverde, "had" to submit to doping practices and that "*it was a situation of generalized doping, if we did not do it we would be kicked out.*"

181. This Panel does not have any reason to doubt the truth of the statements made by Mr. Manzano, which are corroborated by the statements and admissions of Dr. Fuentes and the other cases linked to Operation Puerto, which resulted in sanctions, to which the Panel has made allusion in this award, and Mr. Iglesias, who stated—like Mr. Manzano—that the Athlete had a dog named "Piti".

8. Conclusion regarding the violation of the NSA Anti-doping standards

182. Given what precedes, the Panel finds that the Athlete is guilty of a violation of applicable NSA Anti-doping standards, which prohibit the use or attempted use of a prohibited method and provide that "*UPA can also request, against non-affiliated individuals having committed any kind of a violation of the Rules, preventative measures, also with the goal of preventing repeat offences*" and that "*if, during the course of an investigation, the responsibility of a non-affiliated individual is established, UPA takes all necessary measures to initiate preventative procedures before the judicial bodies of the national sporting disciplines and federations or before the* [CAS] *in order for them to adopt decisions prohibiting them from assuming a duty of office in CONI, National Sporting Federations or Disciplines, or participating in sporting events or performances organized by them.*"[41]

183. The Athlete having presented no defence with respect to the absence of fault or negligence (or significant fault or negligence), which might have annulled or reduced the applicable sanction, the Panel is not required to rule on the satisfaction of the conditions in this regard.

G. VIOLATION OF THE PRINCIPLE OF EQUAL TREATMENT

184. The Athlete also claimed a violation of the principle of equal treatment insofar as CONI did not pursue or convict other athletes who allegedly committed anti-doping violations in the context of Operation Puerto. Moreover, the UCI and WADA did not appeal other decisions concerning the closure of files by other national federations notwithstanding the presence of clear evidence proving violations of anti-doping rules.

[41] See Article 7.1, paragraph 2, of the "*Documento Tecnico attuativo del Programma Antidoping WADA*", approved June 30, 2005, and Article 17.8 of Deliberation no. 615 of the Giunta Nazionale of CONI of December 22, 2005.

185. In this regard, the Panel can only state that CONI declared that it has launched proceedings that are not yet public, and that in any event, each case must be judged on its own merits. Moreover, in the present case, the Panel did not discover any clear violations of the principle of equal treatment, which in any case cannot on its own be interpreted as imposing an obligation to pursue every conceivable path of investigation.

H. **SANCTION**

186. The Panel is not required to examine the duration or scope of the sanction imposed on Mr. Valverde given that he has not specifically disputing the applicable sanction. That being the case, as this consists of a *de novo* judgement, it is up to the Panel to consider the appropriate sanction, on the basis of fact that the Athlete has committed a violation of CONI rules.

187. The Athlete did not raise any substantive defence to counter the key accusations against him. Pursuant to the NSA Anti-doping standards of CONI, the penalty applicable to non-affiliated athletes in the circumstances of the present case is the prohibition from assuming any function whatsoever within CONI or its Associated Federations and from participating in any competitions in Italy for a period of two years.

188. The Panel finds that this duration, which was not contested by the Athlete, is proportionate and corresponds moreover to the period of suspension that would have been imposed on an affiliated athlete.

I. **COSTS AND EXPENSES**

189. Pursuant to Article R65.1 of the Code, these proceedings are free, except for the Court Office fee of CHF 500 (five hundred Swiss Francs) already paid by the Athlete and which shall be retained by CAS.

190. Pursuant to Article R65.3 of the Code: "[t]*he costs of the parties, witnesses, experts and interpreters shall be advanced by the parties*" and "[i]*n the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties*."

191. Regarding costs, the Athlete requested that CONI bear the costs incurred by him for the present proceedings. In turn, the co-respondents requested that the Athlete bear the costs and other expenses incurred by them during these proceedings.

192. In light of the final conclusions of this award, the Panel orders the Athlete to reimburse the costs and expenses incurred by CONI, which was assisted by counsel during the hearing, in the amount of CHF 12,000-.

193. The Panel rules that WADA and UCI shall bear their own costs, given that the Panel rejected their claims going beyond those of CONI, and that, for the rest, neither WADA nor UCI introduced any decisive elements to the debate beyond the arguments presented by CONI.

ON THESE GROUNDS

The Court of Arbitration for Sport ruling unanimously

- Declares the appeal filed by Alejandro Valverde Belmonte against Decision no. 42/2009 rendered May 11, 2009 by the *Tribunale Nazionale Antidoping* (TNA) of CONI is admissible;

- Upholds, based on the reasons of this award, Decision no. 42/2009 rendered May 11, 2009, by the TNA sentencing Alejandro Valverde Belmonte to a ban from assuming duties or offices within CONI, Italian national sport Federations or Disciplines, and participating in sporting events or copemtitions organized by the above organizations on Italian territory for a period of two years as of May 11, 2009;

- Declares that the award is rendered without costs, except for the Court Office fee of CHF 500 (five hundred Swiss Francs) already paid by the Appellant and to be retained by CAS;

- Orders Alejandro Valverde Belmonte to pay CONI the amount of CHF 12.000-, as a contribution toward the costs of these proceedings;

- Decalres that Alejandro Valverde Belmonte, UCI and WADA will bear their own costs and expenses;

- Dismisses all other applications or conclusions of the parties.

Lausanne, March 16, 2010

THE COURT OF ARBITRATION FOR SPORT

[signed]
Romano Subiotto QC
President