



Arbitration CAS 2002/A/378 S. / Federazione Ciclistica Italiana (FCI) & Union Cycliste Internationale (UCI), order of 2 May 2002*

Cycling

Request for a stay of the execution of a sanction

In view of the statement of appeal filed S. on 16 April 2002 against the decision pronounced by the Commission Antidopage of the Union Cycliste Internationale (UCI) on 10 April 2002;

In view of the request for a stay of the execution of the decision challenged also dated 10 April 2002;

In view of the answer to such request for a stay filed by the UCI on 19 April 2002 concluding to its dismissal;

In view of art. R37, R48 and R52 of the Code of Sports-related Arbitration;

In view of the urgency of the case;

LAW

The President of the CAS Appeals Arbitration Division, ruling in camera, hereby considers:

In accordance with art. R37 and R52 of the Code of Sports-related Arbitration, it is for the President of the CAS Appeals Arbitration Division to rule on the application for a stay, considering that the Panel has not been formed yet.

In accordance with art. R47 of the Code, “*A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body.*”

As a general rule, when deciding whether to stay the execution of the decision appealed from, it is necessary to consider whether the measure is useful to protect the Appellant from irreparable harm,

* NB: In relation to this case, see award CAS 2002/A/378 S. *v.* FCI & UCI.

the likelihood of success on the merits of the appeal and whether the interests of the Appellant outweigh those of the opposite party.

S. is an Italian cyclist. In July 1999, he appeared as a witness before the Italian Magistrature which was informing on the use of doping in cycling races. He acknowledged that he had used doping substances and advised the investigators of the circumstances and methods of ingestion, disclosing in addition the names of the writers of the prescriptions and of the suppliers of the prohibited substances.

On 23 November 2001, the FCI conducted a disciplinary proceedings against S. on the grounds of his confessions and sentenced him to a disqualification from racing for three months.

On 10 April 2002, on the basis of its antidoping rules, the UCI revised the sanction and prolonged it until 31 July 2002. The sanction was notified to the FCI on 10 April 2002.

On 16 April 2002, S. filed an appeal with CAS against the decision made by the UCI and requested the immediate suspension of the ruling as it will lead to his loss of the most important races for which he had trained.

The Appellant has listed his grievances against the UCI decision as follows:

- His basic rights have been violated by the UCI which acted simultaneously as an investigating body and an official decision-making without granting him any right to defence.
- The UCI acted out of delay (30 days), the decision made by the FCI having been published in the official gazette of the UCI on 6 December 2001. Furthermore, the UCI requested information on the case on 20 February 2002 and the FCI replied on 5 March 2002. Its decision was made 36 days later.
- The prohibition of two trials has been violated, S. having already completely served his period of disqualification.
- The regulations applied by the UCI with respect to those in force at the time of events are not similar: art. 94 on which UCI founds its sanction did not exist as such at the time of the hearing before the FCI.
- S. did not test positive in a international race. For this reason, the UCI regulations are not applicable.
- The calculation of the period of inactivity is erroneous, the Appellant practising also cyclo-cross and road races.
- The Appellant must be rewarded for his cooperation and spontaneous recognition of his faults and deserves to be less sanctioned.
- The sanction will make him loose the most important races for which he had trained in particular “La Settimana Lombarda” (17 – 21 April 2002), the Tour del Trentino (25 – 28 April 2002), the Tour of Italy (11 May – 2 June 2002), the Tour of Switzerland (18 – 27 June 2002).

The decision of the UCI is based on the provisions of art. 131, 90 § 1 and 94 § 1-3 and 2 of the UCI Antidoping Examination Regulations as in force in 1998 and 2001 which read as follows:

Art. 131: “Any rider or licence-holding former rider who declares or admits that he has made use of doping agents or methods without that use having been discovered by a drug test shall be considered positive on the day of his declaration or admission...”.

Art. 90 §1: “A rider declared or considered to be positive shall be disciplined as follows:

1) Elite

Men:

1st Offence: disqualification + suspension six months minimum to one year maximum, fine of CHF 2'000.-- minimum to CHF 4'000.-- maximum”.

Art 94 § 1) 3 “If the defendant is found guilty and no suspension or a suspension under the minimum is imposed in the decision, the minimum suspension shall be imposed automatically, subject to the right of appeal with CAS. The UCI shall inform the defendant thereof, in which case the term of appeal or for applying probation starts from the date of that communication” (in force only as from 2001).

Art. 94 § 2) “The suspension becomes effective from the day after the date of the decision (in force in 1998).

To the term of suspension imposed by the decision shall be added the period of normal inactivity of the rider concerned as follows:

...

the period of normal inactivity is determined as follows:

for a rider whose principal activity is road cycling, from November 1st until January 31...” (in force in 2001).

Considering the preliminary nature of this procedure, it appears:

a) *The violation of the basic right of the Appellant*

The Appellant had been heard before the FCI and the regulations which allow the UCI to revise automatically the sanctions ruled on the national level may be based on the perception that those two procedures constitute one single proceedings. It has been ruled by CAS that “if a hearing in a given case was insufficient in the first instance, the fact is that as long as there is a possibility of full appeal to the Court of Arbitration for Sport, the deficiency may be cured” (CAS 94/129 USA Shooting & Q. v. International Shooting Union (UIT), award of 23 May 1995).

b) *The delay for UCI to act*

The 30 day time limit to lodge an appeal apparently doesn't apply to the UCI when it decides to revise a sanction automatically. This time limit is granted to the rider sanctioned. No delay is imposed to UCI by its regulations to act.

c) *The prohibition of two trials*

It derives obviously from the provisions of its Regulations that UCI is entitled to reconsider and augment automatically a penalty imposed by a national federation to a rider if the sanction is under the minimum mentioned in the UCI regulations.

d) The issue of the existence of art. 94 in 2001

It appears from the examination of the successive changes in the UCI Regulations from 1998 to 2001 that art. 90 § 1 existed already at the time of the hearing before the FCI. An innovation is related to the paragraph 3 which entitles the UCI to impose automatically the minimum sanction of six months. Therefore, it appears that the sanctions applicable have always remained the same.

e) The applicability of the UCI Regulations

No provision in the UCI Regulations apparently links the application of the regulations to a doping case following the fact that it has been committed in an international or a domestic race. Art. 131 of the UCI Regulations is applicable to any rider.

f) The calculation of the period of inactivity

The calculation by the UCI of the period of inactivity at this stage cannot be considered as erroneous since the Appellant has not established that his principal activity is not road cycling.

g) The issue of reward

It will be up to the Panel, when ruling to consider if the rider can be rewarded for his spontaneous recognition of his faults and his cooperation. These facts cannot be considered at this stage.

Finally, the Appellant's wish to take part in some forthcoming events cannot prevail on the application by the UCI of its own rules and its desire to fight doping in cycling.

The President of the CAS Appeals Arbitration Division, ruling in camera:

1. Dismisses the request for a stay of the execution of the decision of the Commission Antidopage of the Union Cycliste Internationale (UCI) dated 10 April 2002 and filed by S.
2. States that the present order is pronounced without costs.