

REAL SPANISH CYCLING FEDERATION

THE NATIONAL SPORTS COMPETITION AND DISCIPLINE

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File No 17/2010

The National Committee for Sports Discipline Competition and the Royal Spanish Federation Cycling at its meeting on February 14, 2011, adopted the following

RESOLUTION

FACTUAL BACKGROUND

FIRST .- Don Alberto Contador Velasco, head of the Elite Pro License No. 2247396, during the month of July last year, 2010, participated as a member of the cycling team "Team Astana" in the competition TOUR DE FRANCE, proof of an international character is registered in the calendar of the International Cycling Union (UCI).

SECOND .- As a result of various anti-doping controls are performed participants in this trial, on July 21, 2010, the rider was under control doping at the request of ICU in the city of Pau (France), at the end of stage sixteenth of the Tour de France 2010, namely at 19.35 hours, obtaining two Urine samples were stored in separate containers identified as follows: form: A- and B-2512045 2512045. These samples were taken for analysis to laboratory accredited by the World Anti-Doping Agency (WADA)-German Sports University Cologne Laboratory for Doping Analysis, Institute of Biochemistry in Cologne (Am Sportpark Mungersdorf 6 DE - 50933 Koln Germany).

Thus, the analysis made by this laboratory, as recorded in the analytical report S2010003810-1 dated August 19, 2010, revealed an adverse outcome when it became apparent the presence of Clenbuterol, a substance that is included in paragraph S1.2 "Other Anabolic Agents "from the" List of Prohibited Substances and Methods of the World Agency Doping ", effective January 1, 2010 and incorporated in the Anti-Doping Rules (RAD) ICU by express provision of Article 29.2

THIRD .- On August 26, 2010, the rider received the communication from the ICU, Previous dated August 24, reporting an alleged violation by the presence of RAD of clenbuterol in the sample in the container A-2512045, with a request by the Athlete opening and analysis of the sample in the container B-2512045, which was place on September 8, 2010, as contained in the analytical report-1 S2010003810 (B-Analysis Report), resulting in an adverse analytical finding again the same substance.

FOURTH .- Given the adverse analytical finding, the rider, in accordance with the provisions of Article 235 of the RAD, has been suspended as a precautionary measure by UCI competition in the rights granted by their licenses from the 26th of August 2010.

FIFTH .- In view of the results of samples A-and B-2512045 2512045 and subsequently analyzed, as indicated by its own international federation communication dated August 26,

2010, the "extremely low concentration measure" and the fact that the samples collected in the days before the July 21, 2010 did not contain the substance Clenbuterol, both UCI and WADA, decided to hold a series of investigations in order to try to understand the result and, in particular, whether the appearance of substance detected indicated that we could find before other rule violations doping.

SIXTH .- Following the completion of the UCI and WADA investigations considered convenient, that closed the performance management process, confirming that there had been an anti-doping rule violation and urging the National Committee Racing and Sports Discipline (CNCDD) of the Royal Spanish Cycling Federation (RFEC), the initiation of disciplinary proceedings in accordance with the provisions Article 234 of RAD.

In the communication dated November 8, 2010, with check in at headquarters federation on the same day, UCI articulated the case against the rider on the basis of a series of possible explanations, shared by the WADA regarding the origin of adverse outcome detected in the doping control carried out the athlete. Thus, the alternatives set unilaterally by the UCI are as follows:

- i. - Taking nutritional supplements contaminated with clenbuterol.
- ii .- ingestion of food contaminated with clenbuterol.
- iii .- Transfusion of blood products containing clenbuterol.
- iv .- microdose of Clenbuterol intake.
- v. -

The athlete at that time was already temporarily suspended the Pending the opening of this CNCDD the relevant disciplinary proceedings in order determine whether he had committed a doping violation or, on the contrary, presence of the substance in his body was not due to error or negligence on their part and therefore, the suspension period applicable to the case could be overturned.

SEVENTH .- UCI, along with the resolution dated November 8, 2010, in addition to for analytical records of the corridor, enclosed a letter dated 5 November 2010, submitted by Mr David Howman, Director General of the World Anti-Doping Agency (WADA), Don Pat McQuaid, President of UCI, as well as the documentation accompanying the same, comprising a total of nine annexes.

The information contained in the Annexes referred to above is:

- Report of the European Union (EU) in 2008 of 286,748 indicates that analysis in animals, there was only a potential case of Clenbuterol in Europe (Notably in Italy). Indicated that the report of 2009 is not yet available and that these official figures are evidence that the prevalence of meat contamination is extremely low, being below the levels EU detection of 0.1 ug / kg (100 ng / kg) or less.

- It is also reported that, based on information provided by the rider WADA instances and were made inquiries about the carnage which was acquired meat and their suppliers. The findings of the research are those that act out in Annex 2. The report finally attempt to show that the beef

purchased on July 20 came from Spain and not from imports and the exact provider was identified. The conclusion reached is that there was never a case related Clenbuterol nor with the carnage, or the provider of beef purchased on 20 July, or the slaughter of cattle slaughtered in this particular supplier.

- According to WADA, evidence reports have established contact with one of the Clenbuterol and manufacturing companies, with the help of previous studies were able to estimate the amount of Clenbuterol which should have contained meat ingested (Annexes 3, 4 and 5). Thus, taking into account various scenarios and assumptions, the most favorable to the athlete should show contamination 312ng/kg have been around., contamination would be at least 3 times higher than the minimum detection level set by the EU. Other scenarios are up to 11,000 ng / kg, based on excretion studies developed by the Cologne laboratory, ie 110 times the minimum level of detection within the EU (these calculations were confirmed by a pharmacokinetic one Clenbuterol manufacturers companies). In all cases mean high Clenbuterol concentration fully detectable by the health authorities.

Moreover, these reports consider that the level of contamination in meat beef treated with anabolic doses of clenbuterol 5 varies considerably depending on dose duration and frequency of treatment and what More importantly, the time between the last administration and sacrifice the animal. In this sense, argues that to achieve the greatest benefit of treatment (the animal to gain muscle mass while avoiding detection and possible adverse effects in humans), animals treated with clenbuterol did not were sacrificed immediately after giving the last dose. According to treatment systems of reporting used in livestock and in accordance a more reasonable scenarios resulting from these calculations (Annexes 6, 7, 8 and 9), the beef should have been sacrificed 3 or 4 days after the last Clenbuterol dose to have produced a pollution levels are estimated in each case: "It goes without saying that 8 or 10 days later, Clenbuterol content in beef have been so low that it would incompatible with the assumptions provided by the rider.

All these investigations lead to WADA to conclude: "For the rider would have an adverse outcome of clenbuterol at levels of 50 pg / ml, had to be eaten beef that would have been highly contaminated and sacrificed, against all logic, shortly after the last administration of clenbuterol. This has to be seen in the context of the fact that meat comes from an EU country where the use of Clenbuterol is forbidden, where veterinary checks are frequent and not the butcher where bought the meat or its suppliers have no known case of clenbuterol."

The receipt of the documentation submitted by UCI led to on 10 November 2010, the RFEC CNCDD, whose powers to impose sanctions for processing of this record are delegated by the international organization, agreed to initiate disciplinary proceedings under number 17/2010 the runner Don Alberto Contador Velasco, the alleged commission of an offense under Article 21 paragraphs 1 and 2 RAD.

EIGHTH .- On November 11, 2010 was formulated for Tender Instructor charges. In it, was summoned to the rider "to appear in CNCDD dependencies on November 26, 2010, at 16:30, in order to meet the hearing procedure provided for in the rules is applicable, may appear to this act with all means of proof that try to rely to defend their interests as established in Articles 256 and following of the RAD. Notwithstanding the foregoing, offers the rider the ability to waive the

hearing procedure put into effect so choose to submit oral and, if his right be convenient, its written in the same term. "

Both the agreement to initiate the disciplinary proceedings, as the Statement of Objections, were reported to the rider personally on November 11, 2010.

NINTH .- The day of the hearing held before the national instructor and CNCDD secretary, appearing the rider to counsel and stating that their arguments and evidence would be presented simultaneously in writing at that same event, so that was attached to record the dossier provided by the athlete consisting of written statement for the defense numbered up to number 85, annexed of 23 documents being reported for a sample number 20 Spasmobronchal physics (Clenbuterol injected).

Finally, the Court noted that the rider was granted the right to the last word in accordance with Article 268 of the RAD, which used to apply the innocence against charges of doping.

TENTH .- Given the abundant evidence of expert technical, medical and scientific articulated by the rider, who was admitted at the hearing held on November 26 and given the contradiction arising from the comparison of it with reports as character that were initially provided by WADA and UCI with his decision dated July 8 November 2010, the instructor decided to conduct those tests it deemed of interest order to clarify the subject of the record, that under the provisions of article 17.3 of Royal Decree 1398/1993, which is applicable to processed this record in accordance with the procedural rules that are applicable to competition CNCDD disciplinary company in the RFEC, despite its international character under also the provisions in Article 258 RAD.

Therefore he sent two official letters to the Medical and Anti-Doping Committees of UCI, WADA and the State Anti-Doping Agency (AEA) Spanish, in order that the same is undertake technical considerations deemed appropriate in relation to reports provided by the rider, specifically in relation to documents 3, 4, 5, 6, 7, 10, 14, 17 and 21. At the request of the athlete, the offices were expanded to also issued reports on the document bearing the number 15 of those provided with written release by the rider.

ELEVENTH .- The office was provided by the Spanish AEA by issuing various reports were recorded with date of entry into the CNCDD 23 and 27, December 2010. The first three, dated December 23, containing an assessment of documents cited in the previous fact. Thus, the first was made by Mrs. Cecilia Rodríguez Bueno (Head of Department of Prevention and Control of Doping) and Dona Coral Gumiel Fernandez (Head of Division, Department of Prevention and Control of Doping), the second report was evacuated by Don Jesús Muñoz-Guerra Revilla (Director of Laboratory (Doping Control) and the last, is signed by Don Antonio de Campos Calderon Gutierrez (Member of the Medical Unit of the Department of Prevention and Control Doping). The report dated December 27 of the document contains the evaluation result 15 and is signed by all the experts mentioned above.

For his part, UCI on December 20, 2010, sent a letter to court instructor who reported not to provide the request made on 24 January 2011, citing as reasons the large volume of documents

submitted and holidays Christmas of some of its members. Reached the appointed date ie January 24 2011, a communication sent by e-mail, requested an extension of the term "sine die".

Also, WADA, on January 12, 2011, wrote to the examining body indicating that he would not take up the invitation that had been made not to be of competition.

In this regard, the Committee agrees to confirm his astonishment Instructor by the lack of cooperation from international organizations required in the issue in relation to the complex medical and scientific issues raised and this and no other reason for the delay in the processing of the procedure, since WADA reported that does not even going to address the request made by the instructor and UCI requested a time to evacuate the office expiring on January 24, 2011, and reached its end requested an extension of it, but until today has provided the office submitted.

TWELFTH .- On January 3, 2011, in view of UCI's request to extend the deadline of January 24, 2011 to answer, the rider filed a brief in which Declare requested that precluded the procedure for submitting claims by the non-ICU met the requirements of Article 33.1 of the Disciplinary Regulations the RFEC and 49.1 of Law 30/1992 of 26 November Legal Regime Public Administration and Administrative Procedures, as amended by Law 4 / 1999 of 13 January.

Thus, given the lack of response by international agencies, Instructor was terminated, dated January 25, 2011, the trial proceeding to issue the corresponding Resolución Proposal.

THIRTEENTH .- Proposal Dictated the above resolution, the disputed corridor based on the following allegations:

1. Possibility of applying the exemption from liability for non-negligent (Article 296 RAD) without having to bring the piece of evidence, only being required to make a balance of opportunities between possible reasons why the result was positive analysis (Article 22 of RAD).
2. The ingestion of contaminated meat was the cause of the appearance in the body corridor of the banned substance "clenbuterol".
3. The right to know the basic elements of procedure in federal disciplinary decisions: violation of Article 24 of the Spanish Constitution.
4. Epikeia application (sic) by the sanctioning body: bankruptcy of principles of equality and legal certainty under articles 14 and 9.3 of the Spanish Constitution.
5. Regarding the former, erroneous interpretation of Article 22 and 296 the UCI Anti-Doping Regulations.

LEGAL BASIS

FIRST .- On the jurisdiction of the Competition Committee and the Sports Discipline Royal Spanish Cycling Federation.

In order to handle and resolve adjusted to the applicable rules Record before us, we must first make a brief comment on CNCDD sanctioning competence of the RFEC on their federal and controls doping away from our homeland by the International Federation it belongs to the RFEC, ie ICU.

Spanish sports federations are set up (Article 30.1 of Law 10/1990, October 15, Sports) as "private" legal personality own, and as such private entities may be part of an international body, UCI, International non-governmental association which brings together the national cycling federations based in Switzerland and governed by private law rules (its own statutes and Regulation). Thus, the order of the Third Preliminary Layout of ADR, Federations Nationals must be included in the publication of its own regulations and the latter must contain a clause expressly stating that that regulation is part of UCI its own rules.

Following this, both the RFEC, as an integral member of this international organization, like the athletes that are part of it, is undertake to respect the UCI's rules and regulations, so that holders of licenses required by the Federation through the International Federation, are under the jurisdiction of the competent disciplinary bodies (Article 1.1.004 of Sport UCI Cycling Regulations).

It is also necessary to know that when an athlete calls license RFEC it conforms to a form that is committed not only to respect the constitution and UCI regulations, but also to accept the Court of Arbitration for Sport (CAS) as the only appeal, and, particularly, as regards doping, submit to ADR clauses World Anti-Doping Code and International Standards and is expected specifically, to "submit to the conflicts on the Court of Arbitration for doping Sport (CAS) which accepted a ruling of last resort "(Article 1.1.023 of Sport UCI Cycling Regulations), as the sanction of suspension deprives the affected right to participate in organized sports activities under the UCI regulations (section Regulation 12.1.032 UCI Cycling Sport) .

Should not be forgotten, moreover, that RAD allows anti-doping controls start or at the request of the UCI itself or at the request of National Anti-Doping Commission number, so you have to differentiate two possible procedures for punishing doping:

- i) The first would be international in character, to which regulations apply International (RAD-in the case of cycling, and World Anti-Doping Code WADA / WADA (the CMA).
- ii) And the second national character, which result from applying the national legislation (Organic Law 7 / 2006 of 21 November and its implementing regulations development).

This distinction is entirely consistent because, while Federations Spanish sports can act exercising delegated functions of the Administration Public, in which case their actions are subject to judicial review of the courts administrative litigation, they also act, as members of a private international organization that brings together, as delegates of the organization and, where they do, their private rules will apply in such cases and their decisions be subject to control mechanisms established by its own rules, without therefore it violates national law or public functions are unknown internal order who have not come into play, because there has been any public initiative or are having functions delegated administrative public.

This also follows from Article 1 of Law 10/1990, of 15 October, in which provides that the national sports management occurs within the scope of powers under the State Administration. Furthermore, Article 58 of this same law adds that these powers are exercised in relation to official competitions state level, which is consistent with the provisions of Article 84 of the Law 10/1990, as confers jurisdiction on the Spanish Sports Disciplinary Committee, a body state level, to decide ultimately and administrative matters sports disciplinary jurisdiction, ie, issues arising from competitions and activities that are purely domestic.

As a result of the foregoing, the present disciplinary proceedings is not Spanish law applies, but the RAD (version 2009) and the CMA to be, as we indeed, a doping control conducted on a test or international competition, "Tour de France", held in France and carried out by the UCI itself, which RAD, responsibility for the resolution of this record (Article 256) to Committee Competition of the National Federation of the athlete.

SECOND .- Concerning the management of the adverse analytical finding detected in the samples A-B-2512045 and 2512045 of the athlete. Initiation Agreement and the Statement of Objections.

The process of managing adverse analytical finding (positive) has been found in the athlete's physiological samples has been processed in accordance with the provisions of Articles 184 to 223 of RAD. Thus, when estimating the UCI Anti-Doping Commission in its resolution dated November 8, 2010, there was a breach of the RAD, the Commission notified the alleged infringement of the RFEC, as a national federation of licensed asked this CNCDD of the RFEC, initiation of disciplinary proceedings, such as set out above.

From that moment, that is, when the UCI Anti-Doping Commission determined that there had been a deviation which caused the adverse analytical finding, the result was notified to the rider in the manner provided in the regulations, initiating the appropriate disciplinary proceedings through the RFEC CNCDD, procedure is regulated in Articles 224 and following of the RAD and respecting the provisions of Article 8.1 the CMA, which includes the right of every athlete on the defense and assistance counsel, to be informed of the accusation is made against it, a process without undue delay and with all the guarantees, and to use relevant evidence for defense. In short, it establishes the right to call a "fair trial" has been right respected in dealing with this procedure.

Well, dated November 10, 2010 was issued by this Institution Agreement CNCDD which clearly advised of the substance detected as well as the standard was applicable, the provisions infringed and the possible sanctions to impose on you. For its part, the Statement of Charges issued by the instructor requires those concepts and address the same row at the time claimed it deems appropriate, providing and requesting considered appropriate evidence to defend their interests.

Against the proposed resolution now claims the rider has been broken right of defense and the right to be informed of the charges by the mere fact that Instructor has considered the above proposal if it is true that "the athlete tries prove that the substance detected is not listed as a result of certain practices that UCI referred a resolution dated November 8, 2010 (Blood

transfusions, microdose, etc.), So is that these practices or actions, not prove to be a numerus clausus of possibilities, there are others that have not been warned or analyzed by the athlete, which makes specific ingestion pathway is to be enforced by the person not be marginally more likely if there happened. "

In this respect, the law states that the Statement of Objections has the function of inform the record of the charges made, in compliance with the constitutional legality of Article 24.2 of the Spanish Constitution in two ways: one hand, knowing that materially complaint against the same targets and, secondly, to define formally and fully substantive effect, the field will act as the public power against the accused. Such demarcation must be referred to facts and not assessments or generic offenses since, according to the judgments of state Supreme Court of 30 June, 20 December 1999 and 12 February 2003

"The right to be informed of the indictment, the guarantee of fundamental guaranteed in Article 24.2 of the Constitution EDL1978/3879 is satisfied usually in administrative disciplinary proceedings through notice of the proposed resolution because it is where it contains a precise statement about the responsibility that is charged, integrated at least by the definition of unlawful conduct that is appreciated, and subsumption in a specific offender type, and the punitive consequences that it is linked in the case concerned. "

In short, we conclude that the Agreement on Opening and objections are rigorous compliance with the provisions of Article 135 of Law 30/1992, but may speak of helplessness by the fact that the instructor made in its proposal an assessment on the different possibilities by which the substance could enter the body Clenbuterol corridor, much less be forced to consider each and every one of them, independence of course, the final assessment I can do this CNCDD.

We must remember that under the principle of charge recognized in aforementioned provision, the Constitutional Court in its Judgement 117/2002 of 20 May, emphasis has been placed "in the normative complexities involved, since together obvious mandate to inform who is subjected to the exercise of the right to punish State the reason for this presupposes the existence of the indictment itself and is, in turn, indispensable instrument to exercise his right of defense, it represents a guarantee the avoidance of helplessness that result from the fact that someone could be convicted by anything other than the one being accused, "which is clearly not occurring in the present case in which the rider has been able to exercise fully their right to defense against allegation has been made (violation of Article 21 of the RAD to having been detected Clenbuterol in a doping control). We insist that no more than observe the documentation provided by the rider to verify the full exercise of their right defense against the charge, having been admitted to all expert reports and documentary evidence. Thus, it is not reasonable nor acceptable to argue that a Instructor simple allusion to the possibility of other causes which may be positive for Clenbuterol, and still less to claim that should explain every of them, is sufficient to vulenerar the principle of prosecution and to remember that according to current anti-doping rules, it is the runner who must prove it has come prohibited substance into your body.

Nonetheless, this CNCDD should consider how and how UCI initially articulated and delineated the terms of the indictment since it established different possibilities by which the banned substance could reach the body of the athlete. Thus, as has been explained elsewhere in this

resolution, the organization International indicates that the presence of the substance in the body of the corridor may be due to the ingestion of contaminated food supplements Clenbuterol, food intake contaminated with clenbuterol, transfusion of blood products containing Clenbuterol; microdose of Clenbuterol intake, and "V. -"

That has to be considered that in making this unusual adversarial approach, UCI information available and expert technical, scientific and statistical and other additional information were collected from 24 August 2010 date on which the adverse analytical finding confirmed by the outcome of the sample B, until November 8, 2010, in which the communication refers to the RFEC initiation of the relevant files. Therefore, the structure of the charge kicks these disciplinary proceedings determines, not only the defense strategy of the corridor having to focus on those assumptions UCI considers itself more likely, but somewhat limiting the processing of this disciplinary record, as the purpose of debate has been constrained to the actual terms of the prosecution, defense and test practiced, including the possibility despised by UCI and WADA to complete reports initially provided by these agencies under the prerogative was to available to the instructor, who opted to complete the body of evidence by reference of the offices listed above. Thus, the failure of this resolution is due to strictly to the material evidence on the record, so that any findings later be brought up by the parties, could lead to the collapse of the right fundamental range defense recognized in Article 24.2 of the Spanish Constitution, by see committed in this case the right to know the terms of the charge and enable joint under the same defense.

THIRD .- On the violation of the principle of equality and legal certainty.

Prior to the analysis of documentation in the file and order to give coherence to this resolution, we should analyze the argument concerning the violation of the principle of equality within the rider includes the more generic "Application of epikeia (sic) by the sanctioning body. "

The athlete argues on the basis of reports requested by Spanish AEA Instructor, the results of the analysis laboratories approved by WADA in not everyone can find the tiny amount of clenbuterol detected the rider, represent not only a breach of the principle of equality, but also of legal certainty.

How could it be otherwise, supports its argument in different case Constitution with which we cannot agree more, but we think not of apply to this case. Indeed, we must remember that the same law of the Court tells us that the constitutional principle of equality does not operate in the area of illegality and lack of ability to cover situations which are contrary to law or, what is the same, "the principle of equality before the law cannot become a requirement equal treatment of all extra-legal, non-compliance in some cases it may certainly lead to rulings annulling or unitive in nature, but cannot failure to protect all or coverage under an alleged principle of equality was of the law "(for all, STC 43/1982, of July 6).

Furthermore, the resolution of CAS 2009/A/1847 IAAF v. RFEA & Josephine Onyia, and specifically addressed the argument that now analyzed, considering that while for Clenbuterol minimum detection level required for a laboratory to be accredited WADA is 2 ng / ml., this does not mean that if a laboratory can detect a lower level should not report it. In this sense, technical

documents specify that WADA MRPL not a threshold or a limit of detection and that the adverse analytical findings can be in concentrations lower than the MRPL, which is the threshold at which all Laboratories should be able to operate. In short, consider the Court of Arbitration:

"WADA accredited laboratories are required to simply adverse analytical findings reported as the presence of any prohibited substance in an athlete within the range of their ability detection (which obviously varies from one laboratory to another.) This is supported by the decision of UEFA Jerson Anes Ribeiro 2005/A/958 v TAS: see paragraphs 70 to 72. To hold otherwise would be to align the 35 laboratories WADA accredited by the less able. "

While the above allows us to reject the allegation of breach of the principle equal, this does not mean that we believe the current rules should be amended sake of legal certainty, as will post later, since there seems very consistent with the basic legal principle that the analysis of urine samples with identical Clenbuterol number of adverse or negative result depending only on the laboratory the analysis.

FOURTH .- The documentation in the file.

As set forth in this record, the rider controls underwent seven consecutive months during the international event called "Tour de France 2010", as clear from the analysis performed at the "Institut fur Biochemie, Cologne" and "Laboratory of Lausanne. " In the latter yielded a negative result in urine samples 5, 12, 19 and July 20, 2010, and a positive for Clenbuterol, which led to initiation of this record, in the days July 21, 2010 (50 pg / ml), July 22 2010 (16pg/ml), July 24, 2010 (7pg/ml) and July 25, 2010 (17 pg / ml) in samples were analyzed in Cologne.

In view of the adverse analytical finding detected on July 21, 2010 and subsequent counter-analysis, we proceeded by the UCI Anti-Doping Commission to manage results, and finally, by the oft-cited communication dated 8 November 2010, to refer this analysis to RFEC which, in turn, referred all documentation to the competent disciplinary body quine initiated this record Discipline, calling the athlete for a hearing at which he presented in writing their exculpatory arguments and evidence, thus having complied with each and every one of the requirements which guarantee the right of defense, set out in Chapter IX of the RAD "Right to a fair hearing, and Article 8 of the CMA.

The athlete, with his written statement presented a consistent and large character test expert (medical, scientific, technical, etc ...) intended to prove that there was no fault or negligence, arguing that the banned substance had been Clenbuterol-detected, had entered his body through a food product contaminated (meat), without, in his opinion, there were other possible distinct have led to the emergence of the substance.

4.1 .- Reports that appear in the disciplinary proceedings provided by the rider.

4.1.1 Technical Report on the Clenbuterol, issued by the professor, Don Julio Cortijo Gimeno, dated November 25, 2010 (Document 3 of those provided by the athlete).

This report deals with the pharmacological activity and dosage of Clenbuterol necessary to cause bronchodilation (12 micrograms every 12 hours) and have an anabolic effect (200-400 micrograms every 12 hours in 20 days), and is subject study to answer two specific questions:

- If the presence of 50 pg / ml of clenbuterol in urine by Don Alberto Contador Velasco, may have produced an anabolic effect and, therefore, have increased athletic performance.
- If it is likely that the amount (50picogramos/ml of Clenbuterol in urine), is from an accidental ingestion.

Dr. Cortijo Gimeno, reaches the following conclusions in its report:

- In the case of Don Alberto Contador, not plateau drug causes blood only produces a single maximum of Clenbuterol, which do not correspond in any case, the administration of multiple doses of Clenbuterol and even not to repeated therapeutic doses below (microdose). It is also possible determine the time of intake of the substance, since the 20th of July obtained a negative result in a doping test and the next day showed that Clenbuterol maximum (50 pg / ml), the intake was indisputably among 20 and July 21, 2010.
- In view of the data, we can say that the amount of drug reached in the Blood Don Alberto Contador, has been negligible and in any case Clenbuterol will have had an anabolic effect, no increase in performance sports.
- The amount to eat at Don Alberto Contador, is outside the range of existing pharmaceuticals in the pharmaceutical market (Drugs), therefore we can state that the intake of Clenbuterol by Don Alberto Contador, has been accidentally and unintentionally (being the most likely course of intake of contaminated food), without a therapeutic purposes or anabolic.

4.1.2 Report by Dr. Douwe de Boer, dated October 14, 2010 (document number 4 of those provided by the rider). This report examines the so-called passport Athlete biological and concludes as follows, "The Athlete Passport Hematology Alberto Contador, sample other than the normal biological variation, some variants interest for which there are several explanations, but found no evidence of autologous blood.

4.1.3 Expert opinion issued by Professor Don Giuseppe Banfi, in conjunction with biological passport and hematological data of the corridor during the season 2009-2010, November 10, 2010 (Document No. 5). The teacher is quoted as follows conclusions: "The evaluation and interpretation of hematologic profile of the athlete Alberto Contador during the 2009-2010 seasons, to suggest that changes in hematological values are physiological and are the characteristic tendency of cyclists professionals throughout the racing season.stimulation of blood or bone marrow manipulation. "

4.1.4 Documents marked with the numbers 6, 7, and 15 provided by the athlete, are the reports issued by Dr. Tomas Martin Jimenez called "Evaluation Pharmacokinetics of the traces of Clenbuterol, observed in urine samples Rider Alberto Contador "the first of those contributed doc.6-is-on" with autologous Clenbuterol-contaminated blood, "dated November 24, 2010, and aims exclude that the concentration of clenbuterol detected in the sample of Tour de France

may correspond to the autotransfusion of blood contaminated with clenbuterol. The Doctor Martin, appears in this report that "the thesis of clenbuterol contamination due to its adventitious presence in blood bags for transfusion in a monkey athlete who had treated with the drug months ago, is not compatible with the existing scientific data Pharmacokinetics of clenbuterol in humans. Therefore, we conclude that this thesis is and it is unlikely, therefore, scientifically defensible. "

The second report focuses on "micro-doses of Clenbuterol" and aims to exclude that the concentration of clenbuterol detected in the sample of Tour de France may correspond with the administration of a microdose 24 hours before making samples. Dr. Martin concludes that, "the thesis of deliberate use of microdose to obtain therapeutic or beneficial effects on performance sports is not consistent with the pharmacokinetic data and existing farmacodinámicos clenbuterol in humans. Therefore, we conclude that this thesis is not defensible from a scientific standpoint."

The document number 15 will be a study of food contamination, be the conclusion in this report as follows: "The argument put forward by the rider Alberto Contador, in relation to the positive for Clenbuterol during the last Tour de France is consistent with the existing pharmacokinetic data on Clenbuterol in cattle and in humans. The consumption of two steaks, according to the sequence described by the rider, resulting in Clenbuterol concentrations in urine at 24 hours well above 50 pg / ml, if withdrawal time was zero and about 50 pg / ml if the withdrawal time was 3-4 days. This time of withdrawal could be 5-7, days to individuals with longer half-life or daily urine volume of less than 1.5 L. Although it is expected that a farmer applies withdrawal period required to pass the inspections, we have historically been note that this is not always so. Although the EU is generally considered an area of low incidence of illegal use of clenbuterol in cattle, due to its use for fattening is forbidden and carried out spot checks in slaughterhouses and other establishments, necessary to evaluate the real level of detection of the current sampling system in order to individual maximum likelihood estimate of food contamination by Clenbuterol ".

4.1.5 It is the document number 8 provided by the rider, a statement affidavit dated November 9, 2010 the physiotherapists Astana cycling team, on all nutritional supplements have been provided to the rider and are common to the rest of the team, without any supporting documentation submitted to respect, regardless of one's own statement of those who subscribe.

4.1.6 In addition to the scientific and technical reports, the rider, to support its claims provides a descriptive statistical analysis and representative sampling on detection controls Clenbuterol in cattle slaughtered in the Autonomous Community Basque Country, developed by Professor José María Pérez-Fructuoso (document number 10). The findings in this statistical analysis are as follows sets: 1) For best results from a statistical point of view (ie with a confidence level of 95% and a prediction error of 1%) should be analyzed 8,586 cattle in 2007, which contrasts with the 97 cattle that are actually analyzed that year. 2) With the sample of animals tested, the probability that the controls in the Basque Autonomous Community, to identify contaminated beef is Clenbuterol 0.001221 extremely low in 2007. This level does not ensure sampling from a statistical point of view there are no meat products contaminated by Clenbuterol C.A in the Basque Country. 3) From these data, it appears that the checks are far from optimal on a

statistical basis to assert that the analysis could be able to detect, even with minimal rigor, illicitly fed cattle Clenbuterol.

4.1.7 The document 14 is an expert report of Dr. D. De Boer, the origin of unexpected presence of clenbuterol in biological samples in general and in a sample of cyclist's urine specific. In this report Dr. De Boer argues that, "1) The concentration which is of Clenbuterol in the urine sample from Mr. Counter is very low. 2) It is very likely and would be fair to consider the scenario of accidental ingestion of small amounts of Clenbuterol by eating meat. 3) It confirms the opinion of Professor W. Schanzer WADA anti-doping laboratory in Cologne that the time has come to set a limit tolerance for Clenbuterol. 4) WADA accredited laboratories should not give Clenbuterol part of below 10% (1 / 10 part) of MRPL of 2 ng / ml (= 200pg/ml) and concentration "fair and reasonable" for an adverse analytical finding of Clenbuterol.

4.2 Reports issued by the Spanish State Anti-Doping Agency at the request of the Investigating, evaluating the documents Nos. 3, 4, 5, 6, 7, 10, 14, 15, 17 and 21 provided by the corridor.

4.2.1 Doña Cecilia Rodríguez Bueno (Head of Department of Prevention and Control Doping and PhD in Chemistry) and Mrs Coral Gumiel Fernández (Head of Division Department of Prevention and Control of Doping and BA in Chemistry) considered on the documents provided that:

While the documents produced by different experts can become expert evidence, may be of interest to insist on the small sample analysis livestock, which means it cannot be conclusive of the assessment provided.

It also should also stress the need to check that the limits detection set for meat testing laboratories such as to ensure will not produce an adverse analytical finding in an athlete by eating meat allegedly contaminated.

They conclude:

"It is clear that in the interest of fairness, and in order to eliminate potential grievances comparison, WADA should urge, from the various forums and agencies as possible so that analytical limits are established, not only for the detection of substances, but also in information concerning laboratories communicate in the case of a result as adverse to the corresponding detection. In this case, a lower value set for considered as adverse outcome could be reported by the laboratory, and therefore should not be punished, but the information provided could be used by the body responsible official for, where appropriate, to conduct a follow-up.

Moreover, the analysis of clenbuterol in cattle, provided they were statistically significant, ensure the sanitary quality of the risk of poisoning, but in principle do not rule out the risk of doping.

It is also considered that a detection in quantities below the detection limit established for the laboratories accredited by WADA, which is consistent with single administration does not comply in principle with the requirements established to considered as responsible for increasing athletic performance. "

4.2.2 Don Jesús Muñoz-Guerra Revilla, (Director of the Doping Control Laboratory and Doctor in Chemical Sciences), the study of the documentation submitted to it, concluded the follows:

a) The method of analysis of Clenbuterol is qualitative, not quantitative, which is why has an associated level of uncertainty that leads to the estimation of concentrations are accurate. Consequently, small spikes of concentration in the analysis should associate more with the error of the method with potential microdose repeated over time. A Clenbuterol concentration rise from 7 to 17 picograms per milliliter may be due to estimation error of the concentration rather than a second microdose.

b) Given the excretion kinetics of the case can correspond to a single intake on 21 July and with a normal clearance time of three days Clenbuterol.

c) Assuming a minimum and timely administration, there appears to be a use made voluntary in order to artificially enhance athletic performance. The this amount would correspond to an administration order as well as suboptimal course of bronchodilation as anabolic effect.

4.2.3 Don Antonio Calderon Campos Gutierrez, Bachelor of Medicine and Surgery Medical Specialist Physical Education and Sports and member of the Medical Unit Department of Prevention and Control of Doping, maintains that, "from the point of view Clinically, in principle, the presence in urine of 50pg/ml reference cyclist, does not allow us state categorically that such a presence would undermine the athlete's health. In clinical terms from the perspective of sports performance, can not be said categorically that a concentration of 50 pg / ml in urine represents an exogenous Special for improving performance. However it is recalled, the effects appropriate, that Clenbuterol is in the S1.2 group from the list of substances and methods force are banned in sport. "

4.2.4 With regard to document number 15 of those provided by the athlete, the AEA Spanish professionals listed in the foregoing, the conclusions remain contained in the report issued by Mr. Thomas Martin Jimenez, in relation to food contamination, are assumed as missing data.

4.3 Documents provided by WADA and UCI.

We have already commented that international organizations have not replied to offices interested in the Instructor test. Thus, the only reports of these organizations are those provided by the resolution dated November 8, 2010 which was sent the RFEC, working its contents in the Seventh Factual Background to this letter, which we here reproducido.

FIFTH .- Lack or absence of negligence.

Once exposed and summarized all of the documentation attached to this Record, it is obvious that the allegations made by the athlete trying to prove that eating meat contaminated with clenbuterol, consumed 20 and 21 July 2010, is the source of the banned substance on your body.

Thus, having rejected the arguments that might justify the annulment these proceedings for infringement of certain fundamental rights or principles of law administrative penalty and once

made the appropriate considerations for a hypothetical change of scene evidence, which could give it an identity and sense these arguments, this CNCDD, coinciding with the statement by the instructor believes the debate should focus on the presence or absence of negligence on the part of the corridor. To We must therefore based on a fundamental premise and is none other than the possibility that some substance found (Clenbuterol) may be due, in a high probability, consumption of contaminated meat, without thereby determining the country of origin of meat because, although the steak was acquired in a Spanish butcher, not all meat sold in Spain is Spanish origin.

To reach this conclusion one need only examine the documentation provided to record and summarized in the earlier legal basis. It is apparent that the tiny amount ("Extremely low concentration of measure" in the words of UCI) found in the body corridor may be due to food contamination. The reports provided by WADA completely rule out this possibility by considering it unlikely but not impossible, and the rest of the possibilities initially considered ICU, blood transfusion or microdose injection should not be considered as the most likely cause. In this regard, technical reports made to the record, all signed by renowned experts, are inconclusive and, in the absence of evidence to the contrary, dismiss a conscious practice of dopaje.

Sitting above premise, which largely answers allegations against the proposed resolution is to analyze the claim for which the rider calls for a correct application and interpretation by the disciplinary body of Articles 296 and 22 of the RAD.

That Article 296 of the ADR provides as follows: "If a rider credited individual if he did not commit any fault or negligence, the period of suspension that decide to implement will be removed. When a Prohibited Substance or its metabolites or markers were detected in a sample of a corridor as indicated in article 21.1 (presence of Prohibited Substance), the rider must also prove how he entered the prohibited substance in his body to make it lifted the suspension period. In For purposes of this Article and the lifting of the suspension period applicable the anti-doping rule violation shall not be taken into account as such for determining the period of suspension to be applied in the case of multiple violations pursuant to Articles 306 to 312. "

As stated by the instructor, the literal of that article requires that the rider must prove not only that you have eaten meat (which has been established through the extensive testing documents produced), but also it contained the banned substance "Clenbuterol" and that substance is the one that appeared in the adverse analytical finding leading to the initiation of this procedure so that there is a direct relationship between the onset of substance in your body and in turn had been found which served to feed animal whose meat ingested the athlete, something which is quite impossible to have missing the element of conviction, that is, the actual meat ingested by the athlete that day.

This is one of the main problems with the current athletes based on the principle of strict liability: to show that there has been a doping rule violation not only have to prove how a substance has reached forbidden to her body, but also rule out any other possibility. In this way, not only reverses the burden of proof but in some cases the test results for athletes evil to be committed to prove facts, making it virtually impracticable for boundless.

It is therefore we must refer to Article 22 of the RAD, which states:

"When Anti-Doping Rules place the burden of proof on the owner of a License accused of committing a doping rule violation in order to rebut a presumption or establish certain facts or circumstances, standard of proof must be a balance of possibilities, except Sections 295 and 305, in which the licensee must satisfy a higher burden of proof. "

For its part, the art. 3.1 of the CMA states that "the standard of proof in any case, must be greater than a mere balance of probability but less than proof beyond reasonable doubt. " In short, "the standard of proof to be submitted to the Doping Organization is similar to the standard that applies in most countries for cases involving professional misconduct "(Commentary to Article 3.1 of that CMA).

Based on that right balance and documentation in the record that rule out the possibility that the occurrence of the prohibited substance: a) is consequent upon a Volunteer doping corridor be quite ineffective for the tiny amount detected enhance sport performance, and b) arising from the use of vitamin complements, microdose or autologous blood, the Committee considered the most probable cause of detected positive consumption of contaminated meat and is, therefore, the fact must be value.

In fact, we said that the rider has failed to show that on 20 and 21 July 2010 ate meat purchased at a butcher shop where no Spanish, in principle, can be expected to be selling contaminated by Clenbuterol, but nevertheless it is possible under the limited number of tests are performed on animals for the total EU cattle population, or at best express the Drs Dona and Dona Cecilia Pérez Bueno Coral Gumiel Fernández, Director and Head of Division, respectively, Department of Prevention and Control of Doping Spanish AEA, in relation to the EU Report, 2008 cited in the background: "It might be of interest to insist on the small sample analysis livestock, which means it cannot be conclusive assessment made. " In this sense, is trivial in the recent case of dioxin in Germany where they have been closed more than 4,700 poultry and pig farms after finding that their animals are contaminated with dioxin. Does anyone could have imagined when he bought a pig or poultry product in that country could be contaminated by a substance such as dioxin, strictly forbidden by the EU and which also conducts periodic checks? Obviously not, but unfortunately has happened.

Also, it is relevant to this CNCDD that the rider was the subject during the development of the Tour de France, even the days before the July 21, 2010, various doping controls, all with negative results, which, coupled with the fact that, as UCI's own admission, is extremely low concentration of clenbuterol found in athlete's sample (50 pg / ml), we insist, prevent occurrence of the effect of enhance sports performance of athletes in the Tour de France, leading to the result clear that the substance found in the absence of other evidence or belief in Record could be due, in a high probability, meat consumption contaminated on 20 and 21 July and therefore we must analyze how an athlete should be diligent in food consumption within the EU.

It is obvious that in any athlete's diet are meat products more or less common and consumption within EU should be considered safe in the sense they do not contain banned substances such as clenbuterol and, as in the case of Spain, when its use in cattle is a criminal offense (Article

364 of Criminal Code). At Therefore, it is conceivable that the rider did not know or suspect, even with the exercise of utmost caution, that I was eating meat contaminated with a banned product. Thus, no seems unreasonable to require the athletes when they buy meat in the EU are to be so diligent that they have to go to a butcher accompanied by an expert analyst and a mobile laboratory.

As already mentioned, the current anti-doping rules are based on the principle of liability as a test that detects any prohibited substance determines a doping offense, but it is necessary to prove intent or negligence. However, both the RAD and the CMA do allow a runner trying to demonstrate the lack of negligence or, which is, that the substance found is introduced into your body accidental, however act quite diligently.

In this regard, the Court of Arbitration for Sport, in its resolution 2009/A/1930 WADA v. ITF & Richard Gasquet, of December 17, 2009, to discuss a positive test for cocaine French player, considered the most probable cause for which the substance appeared in his body, that kiss with a lady who had used that substance:

"... Even in the exercise of utmost caution, the player could not have been aware of the consequences that could have kissed Pamela about it. It was simply impossible for the player, even in the exercise of most prudence, knowing that the kiss with Pamela, it could be contaminated with cocaine. The next question to this conclusion is therefore as follows: Is intent of the program or the WADA Code to a reproach to a player if kisses an attractive stranger whom he met that night in circumstances of this case? This cannot be, obviously, the intention of a Program to Fight Doping ".

Moved to this case, it is clear that the current regulations, including the application the very slight negligence, meaning it should be noted that a professional circumstances relating to the exercise of their activity cannot prevent, or blame-to corridor to go to a restaurant and eat a fillet steak, let alone make him determine in each case if the meat they purchase or consume a proper trade authorized to carry on such activities in the EU is contaminated or a little farther come to impose the obligation to save before a notary or notary public and a part of all each of the pieces of meat you eat for later analysis or, indeed, that the Athlete must analyze your intake prior to each of those pieces of meat, not be forgotten, is a staple and very common in the diet did not already any athlete but for anyone. If that were the case and took it to the extreme, could fall into the absurdity of forced de facto exclude athletes from their diet of meat, are wholly disproportionate to the intended purpose, absurd, irrational and, indeed, contrary to all the basic principles of logic and law.

Obligations described as absurd as they would in their own words TAS used to analyze different activities that athletes should not perform to preserve due diligence, "unrealistic and impractical and should not be imposed on athletes by sanctioning bodies in their efforts to defeat doping (CAS CAS advisory opinion 2005/C/976 986 and FIFA and WADA, para. 73). From this perspective, we must ask the following question: Eat meat at a European Union country where Clenbuterol is prohibited and the supply of cattle is a crime, should be considered a negligent act? An opinion of this Committee, in any case.

Obviously, we are not facing the only positive case for "clenbuterol" in which a Athlete alleges consumption of contaminated meat. Thus, it is very illustrative case German player Table Tennis Dimitij Ovtcharov, which has exonerated Federation responsibility for a recently tested positive for Clenbuterol (75pgr/ml, something than the amount found to Don Alberto Contador Velasco). He based this decision on absence of fault as it considered the most probable cause that the substance detected was due to consumption of contaminated meat or spoiled. In view of this result, it is necessary to draw attention to one end of undoubted relevance supports finding of lack of negligence of the corridor. Thus, in this course, as mentioned, not appreciated negligence in a case of food contamination and meat consumed in China, when she found credibility and is notoriously known that in this country is Clenbuterol often used in raising livestock. Therefore, if there is no negligence in athlete who ate meat in such conditions, with greater difficulty can be seen negligence in the conduct of Mr Contador, who relied on a product delivered by a legally authorized establishment situated in a country where use is banned of clenbuterol in cattle. Also, what is especially relevant is that neither International Federation of Table Tennis, which from the beginning supported the player, or WADA appealed that decision to CAS, and is therefore the resolution of the German Table Tennis final.

In short, all the above together, we reiterate once again that the tiny amount found could not be an improvement of athletic performance, to that in samples from the days before the test result was negative to the biological passport corridor has not been found any evidence of blood transfusions and has been subjected to dozens of analysis throughout the season, all with negative results leads to the conclusion that, with a high degree of probability, was found positive as a result of consuming contaminated meat, but this fact may introduce or considered, for the reasons already explained, negligent conduct.

SIXTH .- The current anti-doping rules.

Not want to end this CNCDD this resolution without making a brief reflection on the current anti-doping rules which, while acknowledging that it was a good instrument in the fight against doping, must adapt to the times and we believe that the matter now try, in the present circumstances, no sanction can lead to a resolution.

In fact, the list of prohibited substances published by WADA for the year 2010 (also of 2011), includes Clenbuterol in the group of beta-2 agonist, classified as a anabolic agent (S1.2 Other Anabolic Agents), although we are not witnessing a specific substance as the list of prohibited substances provides that all Beta-2 agonist are specific substances except Salbutamol, 1000ng/ml above, and Clenbuterol.

Thus, while a limited number of substances that are reflected in the list prohibited substances can only be considered an adverse outcome when detected in an analysis of the substance concentrations exceeding the permitted threshold, the Clenbuterol, a day, not a substance subject to threshold which, as the Instrutora, continues to call wide attention that this threshold has not yet been established whether we consider that the detection of any amount, scanty it may be, must be considered by laboratories as an adverse analytical finding and, therefore, as a doping rule violation.

In this sense, the Spanish AEA in the report to which reference has already been done in history, referring to it states that "... in the interests of fairness, and in order to eliminate possible comparative grievances should be urged to WADA, from various forums and bodies as possible to analytical limits are established, not only for detection of substances, but also with respect to information that laboratories communicate in the event of an adverse outcome to the corresponding detection. In this case, a lower value set to consider a result as adverse may be reported by the laboratory, and therefore should not be punished, although that information provided could be used by the official agency responsible for, in your case, you can track back".

In this case the concentration detected in the sample analyzed in the laboratory Cologne was 50 pico grams per milliliter, that is, 40 times less than the minimum level of sensitivity required by WADA laboratories. That tiny amount has begun to be detected by some laboratories and has led in recent times has increased positive for Clenbuterol in such small quantities that Dr. D. Wilhelm Schanzer, Director of the Laboratory of Cologne, he said, with respect to the matter Ovtcharov, "The intake of this substance through contaminated food is the most likely explanation probable positive "and that" the use of clenbuterol for doping is highly unlikely." Thus, he considers setting a limit of tolerance for this substance to be able to meet and even food, water (as a documentary work in the background article "Methods analysis for the detection of Clenbuterol "Mary K. Parr, Georg Opfermann, and Wilhelm Schanzer. Research Center for Preventive Doping, which realizes that fact.)

On the other hand, is not negligible as expressed by the Director of the Tour de France Christian Prudhomme, who, when asked about the matter, said "the system must be more clearly, too many times we have moved into the gray, we need a system black or white. "

These last words are nothing more than a finding that the law does not respects as it should, with respect to this substance at least, the principle of legal certainty recognized in all countries of our environment. The lack of threshold, the fact that some laboratories to detect 2ng/ml below and others not, or that the Sports Federations may reach different conclusions by analyzing similar situations, should reflect the WADA and seriously consider changing the rules in place to ensure uniform application and more respectful of that principle of legal certainty.

On those grounds, the Committee RESOLVED

FILE this record.

In accordance with Articles 329.1 and 333 of the Anti-Doping Regulations ICU, the decision may be appealed to the Court of Arbitration for Sport (CAS) in within one month of notification.

Notifíquese this agreement concerned, the President of the Royal Spanish Cycling, the President of the Commission of Control and Supervision of the Health and Doping, the Chairman of the Committee on Health and Prevention of Doping and Cycling Union RFEC International.

Fernando Uruburu Sistiaga
President C.N.C.D.D.