Arbitration CAS 98/192 Union Cycliste Internationale (UCI) / S., Danmarks Cykle Union (DCU) and Danmarks Idraets-Forbund (DIF), award of 21 October 1998

Panel: Mr. John Faylor (Germany), President; Mr. Olivier Carrard (Switzerland); Mr. Guido de Croock (Belgium)

Cycling
Doping (testosterone)
Conflict between the rules of an International Federation and those of a National Olympic Committee

1. **Rule 30 of the Olympic Charter assigns the international federations the responsibility to "establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application". The mission of the NOC's, on the other hand, is to "fight against the use of substances and procedures prohibited by the IOC or the IFs". This mission is focused upon political actions vis-à-vis the competent authorities of their respective countries.**

2. **The international federations enjoy the principal competence with regard to the fight against doping. The natural consequence of this is that their rules prevail over those which an NOC or national sports authority (for example an NF) might have enacted.**

3. **Pursuant to the UCI regulations, in case of endogenous steroids, a sample is deemed positive if the urine T/E ratio is above 6, unless this ratio is attributable to a physiological or pathological condition.**

The International Cycling Union (UCI) is an international federation of national cycling associations. UCI is governed by its constitution and regulations, among them the "Cycling Regulations" and the "Antidoping Examination Regulations", the latter being most recently amended after approval of the UCI Management Committee on November 15th, 1997. The "Antidoping Examination Regulations" are hereinafter referred to as the "UCI AER".

S. is a Danish citizen and a cyclist of the elite category. He is the holder of a rider's license issued by the Danmarks Cykle Union.

Danmarks Cykle Union (DCU) is the Danish national cycling federation which is a member of both the International Cycling Union and the National Olympic Committee of Denmark. The latter recognizes the DCU as the exclusive federation for the sport of cycling in Denmark. By virtue of its affiliation with the UCI, it has subscribed to the "Cycling Regulations" and the "Antidoping Examination Regulations of the UCI".

Danmarks Idraets-Forbund is the Danish National Olympic Committee (the "Danish NOC") whose membership consists of one national sports federation, associate federation, sports organization or service beneficiary organization for each Olympic sport in Denmark. Like the UCI, it, also, is recognized by the IOC. The Danish NOC is governed by its Statutes on the basis of which it has promulgated its own Doping Control Regulations. By virtue of Art. 6, para 3.1 of the Statutes of the Danish NOC, the DCU must submit to doping control conducted by the NOC's Doping Control Committee on the basis of its Doping Control Regulations.

On 7 August 1997, S. participated in the Tour of Denmark ("Post Danmark Rundt"), an international cycling event on the UCI's International Calendar for elite riders. After the competition, S. was required to submit to a doping test pursuant to the rules set forth in the UCI's AER. Upon analysis of the A-Sample on 7 August 1997, the Doping Analytical Section of the Rigshospitalet in Copenhagen reported to the UCI Antidoping Commission in Lausanne on 18 August 1997 that a Testosterone/Epitestosterone Ratio (T/E Ratio) of 8.2 was identified in the urine specimen. After submission of additional data by the Rigshospitalet on 18 August 1997 regarding the concentrations of prohibited substances in the specimen, the UCI Antidoping Commission, acting in accordance with Article 59 of the UCI AER, notified the DCU per letter of 21 August 1997 that S. tested positive. The UCI Antidoping Commission pointed out that in light of the excessive T/E Ratio, S. must be given the opportunity to undergo further endocrinological examination in a laboratory to be chosen by the UCI in order "*to ascertain whether this high ratio is due to a physiological or pathological condition*." This procedure accords with the rules set down in the UCI's List of Categories of Doping Substances and Methods (List Nr. 1/97 of the UCI). The UCI stated in this letter that:

> *"Should [S.] not wish to avail himself of this right, you will have to initiate the procedure provided for in Art. 60 to 65 of the same Regulations.* ***We would remind you that, under the said articles, you have to keep us informed of all steps you take by sending us copies. Moreover, we draw your attention to the fact that - according to Art. 82, §3 - if there is no final decision within the deadlines (see Art. 82, § 1), the defendant shall be automatically suspended until the date of the decision, unless an extension of the period is granted by the Antidoping Commission.****"*
>
> (Bold lettering contained in original letter of notification)

The DCU confirmed receipt of this notification on 29 August 1997 and reported that it was "in contact" with S. and that he had chosen to submit to an endocrinological examination. It informed the UCI Antidoping Commission that the examination would take place on 29 September 1997 and be repeated two months later. The DCU stated explicitly in this letter that:

> *"… the results from these tests will form the basis of the judgment in Denmark. The test results will of course be at your disposal, should you wish so. If the UCI will recognize this method as the basis of judgment in the matter together with a later laboratory test, i.e. after three months, we ask you kindly to inform us about it."*

The DCU's reference to being "in contact" with S. refers to the letter of the Doping Control Commission of the Danish NOC to S. of 26 August 1998. Acting at the request of the DCU and on the basis of the UCI's 21 August letter, the Danish NOC notified S. that the sample taken on 7 August 1997 showed a raised T/E ratio of 8.2. The Danish NOC's letter proceeds to state to S. that

before the sample can be declared positive or negative additional testing will be required. This letter to S. from the Danish NOC makes no mention of the procedures of the UCI Antidoping Examination Regulations, nor does it inform the rider of his rights to request an endocrinological examination as explicitly described in the UCI notification letter of 21 August 1997 to the DCU. It points out to S. that "the rules on the T/E ratio are described in "Information on Doping", page 4 and provide:

> *If the ratio between testosterone and epitestosterone (T/E ratio) at urine analysis is more than 6 to 1, then there is a violation of the regulations, unless there is proof that the matter deals with a physiological or pathological case.*
>
> *If the T/E ratio is greater than 6, additional tests will be made before the sample is declared to be positive.*
>
> *We therefore ask you, as quickly as possible, to contact the Doping Control Commissions's Dr. Jens Elers, at telephone number 7589 1811, to discuss an appointment for a new test.*"
>
> (Unofficial Translation of the Panel)

The UCI was not in possession of this letter as of 10 July 1998, the date of the Panel's hearing of this dispute. It was expressly requested by the Panel pursuant to its Order of 10 July 1998.

In the report of its results of the endocrinological tests dated 19 November 1997, the Deutsche Sporthochschule Köln, Institut für Biochemie, stated that:

> *"[S.] does* ***not*** *have a naturally elevated T/E ratio. All steroid profile parameters of the athlete are within the population based reference ranges of male athletes. The T/E ratio of Code No. A047027 is both outside the individual reference range and the population based reference range for the T/E value. We recommend to give the sample A047027 positive for the application of an endogenous steroid. The GC/C/IRMS results are in accordance with the results obtained after an application of dehyroepiandrosterone (DHEA)."*
>
> (Bold type also contained in original of the report.)

The UCI Antidoping Commission informed the DCU on 19 November 1997 of the results of the endocrinological examination conducted in Cologne and asked the DCU *"...to continue the procedure according to Art. 62 and subsequent of the UCI Antidoping Examination Regulations in force. We would remind you that, under the said articles, you have to keep us informed of all steps you take by sending us copies."*

Again, the UCI Antidoping Commission issued its instructions that, in accordance with Art. 82 Section 1 of the UCI AER, proceedings before the DCU's competent doping tribunal must be ended within one month of receipt of the notification of the positive result of the A-Sample and, in the event of the counter-analysis of the B-Sample, any extension of time required between the date of the rider's request for the "counter-analysis" and the date on which the laboratory issues the results of such "counter-analysis."

The DCU forwarded the UCI's letter of 19 November together with the examination report of the Cologne laboratory directly in a letter to S. dated 20 November 1997. It did not first notify the Danish NOC of the results of this examination. The letter from the DCU to S. stated as follows:

"UCI therefore considers this matter to be a doping matter and have asked us to act in accordance with UCI's Doping Statute. The letter has, in accordance with the applicable regulations, been delivered to DIF's Doping Control Commission. They will, at a meeting on Tuesday November 25, make a decision on whether they will commence proceedings. As part of their consideration, they will review the 4 tests taken by Dr. Jens Ehlers.

You must do the following:

1) In accordance with UCI's Doping Statute, you must, before Wednesday November 26, decide whether you want to have the B-sample analyzed -- and, if so, you must advise DCU's office of your decision in writing, Wednesday morning at the latest, by the morning mail, otherwise the opportunity will have passed with respect to the UCI -- kindly note the enclosed signature form. You have the possibility of coming there yourself in person and may take one companion with you. You are required to pay all expenses in connection with the B-sample analysis in Copenhagen. The actual taking of the sample is free.

2) ...."

(Unofficial Translation of the Panel)

The submission of the above correspondence was requested by the Panel by its Order of 10 July 1998.

The DCU informed the UCI Antidoping Commission in its letter of 24 November 1997 that S. would have until 26 November to request analysis of the B-sample and that the case "*has been handed over to the NOC Antidoping Commission for further action*."

In a further letter statement from the DCU dated 27 November 1997, the UCI Antidoping Commission was instructed that S. had requested the analysis of the B-sample and that this analysis would take place on Monday, 1 December 1997 at the Dopinganalysesektionen, Rigshospitaet, Copenhagen. The results of the analysis were notified directly by the Rigshospitalet to the UCI Antidoping Commission by letter dated 3 December 1997. The results were positive.

The UCI Antidoping Commission notified the DCU of the positive result of the counter-analysis of the B-sample by letter of 3 December 1997 and confirmed "*that it is objectively an infraction to the UCI Antidoping Examination Regulations (T/E 7.9)*." After stating that the result of the endocrinological study carried out at the Institut für Biochemie in Cologne was positive as well, the letter asked the DCU "*to implement proceedings according to Arts. 69 and the following of the UCI Antidoping Examination Regulations*." The letter again gives notice that "*...according to the said articles, you have to keep us informed of all measures you take by sending us copies thereof*."

The letter also repeats the reference to Art. 82 Section 1 regarding the deadlines for ending the proceedings before the competent tribunal of the National Federation and the requirement for suspension if no final decision is made within these deadlines unless an extension of the period is granted by the Antidoping Commission.

By letter dated 27 January 1998, the DCU informed the UCI that, on 19 January 1998, a verdict had been rendered by the Doping Tribunal of the Danish NOC in the S. matter. The Doping Tribunal sentenced S. to a two year suspension commencing 13 December 1997. The Tribunal held that both

the A- and B-Samples had been identified as positive and that the Institut für Biochemie in Cologne had concluded that the T/E ratio found in the samples was not naturally increased. With repect to the sentence, the Tribunal of the Danish NOC held:

> *"...the Doping Tribunal is aware of the divergence between the rules of the UCI and the rules of the NOC and Sports Confederation of Denmark and of the fact that it is the policy of the NOC and Sports Confederation of Denmark not to protest, should the UCI in the following decide to fix a penalty for international competitions in accordance with UCI rules. In conformity with Art. 6, Par. 1 of the Doping Control Regulations, the Doping Tribunal finds that the penalty shall be two years suspension from participation in all sports under the National Olympic Committee and Sports Confederation of Denmark."*

In its Statement of Appeal dated 27 February 1998, the UCI pleaded that the two year sanction imposed upon S. by the 19 January decision exceeded the maximum sanctions prescribed by the applicable UCI Antidoping Examination Regulations and petitioned the CAS to impose the sanctions prescribed in Articles 90 through 94 of the UCI AER. In addition, the UCI challenged the fact that the decision of the Doping Tribunal did not pose a disqualification from the Tour of Denmark or a fine. The Appeal cited Articles 84 to 89 of the UCI AER as the basis for jurisdiction of the CAS and, alternatively ("by way of precaution"), Article 135.

UCI's statement of appeal was served upon S., the DCU and the Danish NOC by letter of 3 March 1998.

In a brief dated 9 March 1998, legal counsel for the UCI provided arguments in support of the appeal. This brief was forwarded to S., the DCU and the Danish NOC immediately upon receipt.

The UCI stated in its 9 March 1998 brief that it accepted DCU's appointment of the NOC's Doping Tribunal as, "*...its competent body, which appointment apparently is based on DCU's perception that they are obliged under Danish NOC rules to refer doping matters to the said Doping Tribunal.*"

Counsel for the UCI stated further that the appeal from the Doping Tribunal's decision may not be taken before any other body (appeal or higher court) within that same federation, unless the legislation of the country so requires. Citing Art. 84 Section 2, counsel for the UCI concluded that no other recourse than the appeal before the CAS shall be permitted. UCI counsel stated as follows:

> *"UCI accepts that the suspension starts from 13 December, 1997 from which date [S.] has been suspended on the basis of Art. 8 of the «Doping Control Regulations» of the NOC and Sports Confederation of Denmark, on the condition that it is shown by the defendants that such suspension has been effectively served by [S.] in a period of normal competition activity (see art. 94 AER). It should be noted in this respect that according to AER a rider cannot be suspended before his case is brought to trial and judgment is pronounced and that a retrospective suspension is not possible – see article 94 AER".*

UCI's counsel cited the fact that in the case of a divergence between the rules of an international federation such as the UCI and the rules of a national body, the former prevail. He cited, in this regard, the CAS Advisory Opinion of 5 January 1995 r.a. CONI/UCI (see Digest of CAS Awards 1986-1998) and the CAS Decision no. 97/169 regarding M./FCI.

In further support of UCI's jurisdiction in the matter, counsel for the UCI stated as follows:

"In addition, an agreement was made between UCI, DCU and Denmark's NOC that the Doping Tribunal would act as DCU's competent body for handling doping cases according to Art. 71 AER and that the Doping Tribunal would apply AER.

The reasons for such agreement were that Denmark's NOC did not allow its member federations to sanction doping offences themselves (which is confirmed in the Doping Tribunal's fax to UCI of 5 December 1997). UCI did not agree with such a position, but in order to avoid more difficulties UCI accepted the said agreement as a practical solution which, in addition, was not in contradiction with AER.

It has become clear now that, in contradiction with the agreement, Denmark's NOC refuses to apply AER."

Lastly, UCI takes the position that the position expressed by the Danish NOC stands in conflict with the Olympic Charter.

"Paragraph 2.6 of Rule 31 stipulates that it is the mission and the role of the NOC's to fight against the use of substances and procedures prohibited by the IOC or the IF's, in particular by approaching the competent authorities of their country so that all medical controls may be performed in optimum conditions. The role of the NOC's regarding doping is not in establishing or ensuring the application of doping rules, but in prevention and in creation of the conditions for an optimum application of the doping rules issued by the IOC and the international federations. Also, Rule 33 of the Olympic Charter stipulates that to be recognized by an NOC, a national federation must, inter alia, conduct its activities in compliance with both the Olympic Charter and the rules of its IF. Therefore, an NOC must respect itself the rules of the international federation and cannot forbid a national federation to apply the rules of its international federation."

Finally, counsel for the UCI cites the alternative application of Art. 135 of the UCI AER as a basis for the jurisdiction of the CAS:

"An appeal may be brought before CAS against the decision of the Doping Tribunal if it acted as the competent body under AER.

Now that it appears that the Doping Tribunal did not want to apply AER, UCI is also entitled to ask CAS for a final decision on the grounds of Art. 135 AER, as DCU has taken no decision and will not take a decision as long as Danmarks Idraets-Forbund forbids DCU to do so and CAS will not have confirmed that AER has to be applied in all parts."

In a letter from the Doping Control Commission of the Danish NOC to the UCI dated 10 March 1998 and forwarded to the CAS on 18 March 1998, the Doping Control Commission stated that S. had appealed the sentence of the Doping Tribunal of the Danish NOC to the Commission of Appeals and Arbitration of the Danish NOC. It noted that, because the appeal to the CAS by the UCI was not based on a final sentence of the Danish NOC's Doping Tribunal, the case pending before the CAS should be postponed until the result of the appeals case in Denmark is known, probably in April 1998. The letter refers to a meeting which would take place between the UCI and the Danish NOC to seek a solution "*which respects both organizations' doping regulations, but avoids that every doping case involving Danish cyclists must also be heard before the CAS*."

In an undated letter received by the CAS on 16 March 1998, S. stated that he "*was not quite sure whether [he] understood the situation totally*." He alleged that he could not understand how he could have

used an illegal substance, pointing out that DHEA did not stand in any published doping list in Denmark in the year 1997. He stated that the raised T/E ratio had a "natural reason".

In response to the inquiry posed by the CAS to the UCI concerning the postponement of the proceedings requested by the Danish NOC, counsel for the UCI stated on 23 March 1998 to the CAS that UCI agreed to such postponement "*until further notice from me*", pointing out, however, that this request had nothing to do with the appeal in Denmark, but with a meeting which was scheduled between UCI and the Danish NOC at which time the conflict between the UCI rules and the NOC rules would be discussed.

Having obtained the agreement of all parties concerned in the dispute, the CAS ordered the postponement to commence on 30 March 1998.

On 4 May 1998, the appeal filed by S. was heard before the Commission for Appeals and Arbitration of the Danish NOC. The two year sentence imposed by the Doping Tribunal on 19 January 1998 was upheld, but the commencing date of the suspension was moved back by one day to 12 December 1997.

In his letter to the CAS dated 11 May 1998, counsel for the UCI requested that the proceedings before the CAS be resumed.

In his brief dated 13 May 1998, S. requested that his case "be taken up". He pleaded that the penalty imposed by the Doping Tribunal is longer than the sanction prescribed by the UCI and that for this reason it is unacceptable. He pleaded: "*A possible judgment in CAS ought to be valid for all bicycle events within the framework of the UCI – worldwide.*" In his defense, S. cited irregularities in the labeling of the sample bottles which implied that the bottle codes were changed, that the T/E corrected ratio of 6.0 established in the Institut für Biochemie was not above the legal limit, that he did not take a banned substance, that especially his loss of weight and rest had caused his "special situation" and that DHEA had been sold until then in Denmark as a legal substance.

In its letter of 26 May 1998, the CAS informed all parties that upon request of the UCI the proceedings would "now resume". S., the DCU and the Danish NOC were called upon to submit by 18 June 1998 an answer to the appeal statement.

By letter of 22 June 1998, the parties to the proceedings were informed that a hearing before the Panel would take place in Lausanne on 10 July 1998. In a letter dated 2 July 1998, the Danish NOC informed the CAS that the Danish NOC would not attend the hearing and that "*It should be stressed that as far as the NOC and Sports Confederation of Denmark is concerned, this case is between UCI and [S.], and the NOC does not consider itself part of this case.*"

In a letter dated 6 July 1998 to the CAS, the DCU stated that it would not be present as the scheduled hearing. It cited the fact that S. had been suspended on the basis of "*national rules and not the UCI antidoping regulations*". The DCU pleaded that it is "*forced to let all doping cases be handled by the Doping Tribunal of NOK*" and that, for this reason, it did not consider itself a party to this dispute. The letter proceeds:

> *"We, the Danish Cycling Federation, are looking forward to a verdict from CAS that will solve the problem between Danish NOC and UCI. A verdict that means that the Danish Cycling Federation in the future cannot be held hostage between the Danish NOC and the UCI."*

On 10 July 1998, the Panel held a hearing to which all parties were invited. The UCI was represented by its legal counsel and by its Medical and Anti-Doping Coordinator. Neither S. nor the DCU nor the Danish NOC appeared at this hearing.

When questioned by the Panel during the hearing, legal counsel for the UCI stated that the DCU had always told the UCI that it had no jurisdiction to deal with doping cases and that it had to refer these cases to the Danish NOC for a decision. This question of jurisdiction in Denmark had been discussed with all parties concerned and that the Danish NOC had accepted application of the UCI's AER instead of their own regulations, but that the Danish NOC did not respect this agreement.

Upon further questioning by the Panel regarding information provided by the DCU and the Danish NOC to the UCI, legal counsel for the UCI confirmed that the UCI had received only a copy of the decision made by the Danish NOC. No other information relating to the proceedings had been submitted to the UCI. The UCI could not intervene properly during the proceedings because it was not informed about the schedule of the procedure. At the time this procedure started, stated the UCI's legal counsel, the UCI was confident that the UCI's AER would be applied by the competent tribunal in Denmark.

In response to the interrogatories raised by the Panel, the Danish NOC reiterated its position stated in its letter of 2 July 1998 that it considers itself "*not party to the case UCI v/ S*."

> *"As a national sports federation affiliated to Danmarks Idraets-Forbund, Danmarks Cykle Union must observe DIF's rules and regulations, including suspension of athletes in connection with doping sentences. If Danmarks Cykle Union fails to comply with decisions by Danmarks Idraets-Forbund it may result in Danmarks Cykle/ Union's exclusion from Danmarks Idraets-Forbund."*

In this response, the Danish NOC further confirmed that "*Danish law does not impose rules or requirements in terms of procedure and sanctions which would prevent the application of the UCI's Anti-Doping Examination Regulations*."

In its response to the interrogatives raised by the Panel's 10 July 1998 order, the DCU has confirmed that "*the rider has been informed of the development in his case by copies of all correspondence between DCU/UCI/DIF/CAS. All copies have been sent immediately after we received them at the DCU office*."

LAW

1. UCI's appeal of the 19 January 1998 decision of the Doping Tribunal of the Danish NOC was filed within the applicable deadlines. Rule 49 of the Code of Sports-Related Arbitration ("the

Code") sets the time limit for appeal at 21 days from the communication of the decision which is appealed, provided the statutes or regulations of the federation, association or sports body concerned do not set a different limit. Pursuant to Article 86 of the UCI's AER, the statement of appeal must be lodged with the CAS within 1 month from receipt of the decision by the Appellant. The UCI received notice of the Doping Tribunal's decision of 19 January 1998 [after 27 January 1998]. The UCI's Statement of Appeal dated 27 February 1998 was received by the CAS per registered mail on 3 March 1998. Accordingly, the 21-day limit set forth in Rule 49 of the Code will not apply.

2. UCI's Appeal Brief dated 9 March 1998 was received within the 10-day period described in Rule 51 on 10 March 1998. Both response by S. and counter-appeal and his appointment of an Arbitrator were received on 18 March 1998, both declarations being made within the time limits set forth in Rules 53 (appointment of arbitrators) and 55 (answer of respondent) of the Code.

3. Neither DCU nor the NOC filed statements which could be construed as responses within the meaning of Rules 53 and 55 of the Code. To the contrary, their letters to the CAS dated 6 July 1998 and 2 July 1998, respectively, indicate that they do not consider themselves parties to this arbitration.

4. After review of the facts of this case and the applicable provisions of the Olympic Charter and the AER of the UCI, the Panel has concluded that the participation of the DCU and the Danish NOC as parties to these proceedings is not required. On the grounds further discussed below, the Panel holds that the Doping Tribunal of the Danish NOC acted only as the "competent body" of the DCU for adjudicating doping offences. The jurisdiction to be exercised in this case was the jurisdiction of the UCI. Because the DCU was exercising the (original) jurisdiction of the UCI and because the DCU delegated prosecutorial and judicial authority to the Doping Tribunal of the Danish NOC with the consent of the UCI, all actions, measures and decisions of the Danish NOC's Doping Control Commission and the Doping Tribunal must be attributed to the UCI. Accordingly, the Panel deems that only the UCI and S. may be considered parties to this dispute. For this reason, the Danish NOC's withdrawal from the proceedings as declared in its 2 July 1998 brief to the CAS, despite its earlier approval of the arbitrator chosen by S., and its recommendation to suspend the proceedings raised in its 10 March 1998 brief to the CAS have no dispositive effect upon these proceedings.

5. The Panel has determined that the brief of S. of 15 March 1998 to the CAS meets the requirements of Rule 53 of the Code. He received the UCI Appeal Brief under cover letter of the CAS dated 13 March 1998. Because the proceedings were suspended by Order of the CAS of 30 March 1998, the 20-day time limit for filing his answer to the Appeal Brief pursuant to Rule 55 of the Code had not yet expired. Appellant's 13 May 1998 brief to the CAS, which ended the suspension, constituted both a response coupled with the filing of his own appeal for a reduced sentence.

6. The jurisdiction of the CAS is founded on Article 84 AER. Both the UCI and S. have the right pursuant to this provision to enter an appeal against the 19 January 1998 decision of the Doping Tribunal of the Danish NOC by requesting arbitration before the CAS. Paragraph 2 of this Article 84 clearly and unequivocally states that "*no other recourse shall be permitted*." The Commission of Appeal and Arbitration of the Danish NOC had no jurisdiction to hear the appeal filed by S. Moreover, Article 81 AER establishes that:

   "The decision, once taken by the competent body of the National Federation of the rider or the license-holder concerned, may not be appealed before any other body (appeal or higher court) within that same Federation unless the legislation of the country in question so requires."

7. The Danish NOC confirmed in its 20 July 1998 response to the Panel's corresponding interrogatory that Danish law does not impose rules or requirements in terms of procedure and sanctions which would prevent the application of the UCI's AER.

8. The Doping Tribunal of the Danish NOC, which acted as the "competent body" of the DCU in the adjudication of the doping violation, erred, however, in its application of the Doping Control Regulations, in particular, with regard to the sanctions imposed.

9. Article 4 AER states that "*these Regulations and these alone*" shall apply to international competition. The AER is "*binding upon all National Federations which may neither deviate therefrom nor add thereto*." Accordingly, the AER was binding upon the DCU in its handling of doping cases. As counsel for the UCI stated during the hearing on 10 July 1998, the UCI has chosen not to adjudicate doping violations within the framework of its own organization, i.e., by instituting its own tribunal and trying doping cases itself, but has delegated its jurisdiction to the national federations for reasons compelled by the proximity of the national tribunal to the athlete, language differences and costs.

10. Pursuant to the rules set forth in Articles 69 et seq. AER, therefore, the DCU is charged with the investigation, prosecution and adjudication of international doping violations. It utilizes its competent bodies in the exercise of UCI's jurisdiction. The only exceptions hereto concern races on the national calendar of the respective national federation when national regulations are permitted to be applied (see Preliminary Provisions No. 1 of the 1996 UCI Cycling Regulations). The Tour of Denmark was, however, undisputedly a race on the International Calendar of the UCI.

11. On the basis of the UCI's own admissions, it has recognized and accepted that the DCU has appointed the Doping Tribunal of the Danish NOC as its (the DCU's) "component body". The UCI has provisionally agreed, pending further negotiations with the Danish NOC, to accept this appointment in recognition that the Danish NOC has mandated under its Doping Control Regulations that "*no member federation is allowed under these regulations to conduct doping cases on its own, regardless of the regulations of the International Federation in question*" (see Letter of the Danish NOC dated December 5th, 1997 to UCI).

12. The UCI's provisional acceptance of the appointment was made subject, however, to the condition that the Doping Tribunal of the Danish NOC applies the UCI's AER. This fact is

clearly evidenced in the letter issued by Werner Göhner as President of the Antidoping Commission of the UCI dated 12 December 1995. Despite the evidence submitted by the UCI in the form of the correspondence passed between the UCI, the DCU and the Danish NOC in November/December 1995, the Panel is forced to conclude that no agreement ever existed between them regarding the application of the UCI's AER. The existence of this hidden dissent was first exposed in the grounds of the Doping Tribunal's decision that, in light of the divergence between the rules of the UCI and the Danish NOC, it is the policy of the latter "not to protest" if the UCI, subsequent to the national decision, wishes to set its own penalty for violations of UCI rules in international competition.

13. Accordingly, the Danish NOC appears to assume that two separate and independent jurisdictions exist with regard to international doping cases: (1) the jurisdiction of the UCI for international sporting events and (2) the exclusive jurisdiction of the Danish NOC with regard to sanctions to be imposed upon Danish athletes, regardless of whether the event in question is on the International Calendar of the UCI or is exclusively a Danish national event.

14. The Panel wishes to establish, however, that the parallel jurisdiction of the kind propagated by the Doping Tribunal and in the pronouncements of the Danish NOC does not take into account the following considerations:

    If the Danish NOC agrees to respect the jurisdiction of the UCI with regard to international sporting events, but insists, at the same time, upon the hearing of all doping cases involving Danish athletes before its own tribunals under exclusive application of its own Doping Control Regulations (see Art. 9 para. 3 of its Regulations amended as of 1 December 1996), it inexorably deprives the UCI of any jurisdiction whatsoever to enforce its Antidoping Examination Regulations with regard to Danish athletes competing in international sporting events inside and outside of Denmark.

15. The issue which the Danish NOC has chosen to ignore is the following: How are violations of the international doping provisions of the International Federations to be prosecuted and adjudicated in Denmark, if the Danish NOC in the exercise of its jurisdictional monopoly denies the DCU or any other National Federation the opportunity to decide international doping violations within its own competent bodies on the basis of international rules and regulations? If the Danish NOC states that its jurisdiction is "only national", but refuses at the same to apply the international rules of the UCI's AER in the competent bodies to which the DCU has legitimately – and with the consent of the UCI – delegated its authority, the Panel is forced to conclude that doping violations of Danish athletes participating in international competition will remain unenforced. This cannot be the intention or the policy of the Danish NOC.

16. In this regard, the Panel need not remind the Danish NOC of its rights and obligations and those of the international federations pursuant to the Olympic Charter. Rule 30 of the Charter assigns the international federations the responsibility to "*establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application*." The mission of the NOC's, on the other hand, is to "*fight against the use of substances and procedures prohibited by the IOC or the IFs*." This mission is focused upon political actions vis-à-vis

the competent authorities of their respective countries. The Danish NOC is bound in Rule 33 to "*conduct its activities in compliance with both the Olympic Charter and the rules of its IF*." In the Advisory Opinion rendered by the CAS in the case CAS 94/128 UCI/CONI (see *Digest of CAS Awards 1986-1998*, Staempfli Editions, Berne 1998, p. 495), the Panel held that "...*the IFs enjoy the principal competence with regard to the fight against doping. The natural consequence of this is that their rules prevail over those which an NOC or national sports authority (for example an NF) might have enacted*."

17. Because the Panel does not wish to conclude that it has become the policy of the Danish NOC to hinder the enforcement of international antidoping regulations in Denmark, it concludes that the Doping Tribunal of the Danish NOC has erred in not applying the AER in the case at hand. This conclusion does not stand in conflict with the Doping Control Regulations of the Danish NOC. Art. 5 of the Regulations states that "*Doping control shall be conducted in accordance with the regulations of the International Olympic Committee, the member organization's international body and the rules of the National Olympic Committee and Sports Confederation of Denmark*."

18. The Panel has also concluded that the UCI acted in good faith in believing that the Danish NOC would apply the UCI's AER, although the Panel has certain reservations with regard to the diligence with which the UCI Antidoping Commission exercised its interventional prerogatives as set forth in the AER. UCI had authority to intervene in the proceedings, either in writing or through its presence at the hearing, and to demand the imposition of a penalty pursuant to Art. 90 (1) AER. It did not exercise these rights. Clearly, it failed to even give an opinion in the case, although Article 73 para. 1 mandates that "*the hearing may not take place unless the UCI has stated its opinion or has in writing waived its right to do so*."

19. The proceedings against S. were initiated by the UCI in accordance with Articles 58 et seq. of the AER. Its notification to the DCU of 21 August 1997 conformed to the requirements of Article 59 para. 2 AER. The UCI also informed the DCU in this letter and in its subsequent letter of 19 November 1997 that it must adhere to the procedures provided in Article 62 through 65. Moreover, it reminded the DCU in both letters that, pursuant to the said Articles, UCI was to be kept informed "*of all steps you take by sending us copies*". Despite these instructions and the clear references to the DCU's informational obligations, the UCI's failure to request information regarding the initial scheduling and the course of proceedings cannot be overlooked. Had the Antidoping Commission of the UCI diligently and circumspectively requested information, it may have learned far before the decision of the Doping Tribunal that the AER were not being applied.

20. If, therefore, the UCI was caught by surprise upon learning in the 19 January 1998 decision of the Doping Tribunal that only the sanctions contained in the Doping Control Regulations of the Danish NOC were applied to the total exclusion of the UCI'S AER, the Panel is forced to attribute a certain portion of fault to the Appellant itself. In making this judgment, however, the Panel acknowledges that the UCI, upon learning the tenor of the Tribunal's decision, acted correctly in immediately appealing the decision to the CAS and not allowing the case to be heard on appeal by S. before the Commission of Appeals. Counsel for the UCI was careful

to establish in his 23 March 1998 letter to the CAS, that his willingness to accept the suspension of the proceedings had "*nothing to do with the appeal in Denmark, but with a meeting scheduled between the UCI and the Danish NOC in order to resolve jurisdictional issues*."

21. It is also clear to the Panel that the DCU attempted and failed to reconcile the short-sighted and intransigent position of the Danish NOC with regard to its claim of exclusive jurisdiction in doping matters, on the one hand, with the UCI'S misplaced faith and trust that doping violations brought before the Doping Tribunal would be decided on the basis of the AER, on the other. The DCU's handling of the flow of information regarding the course of the proceedings demonstrates its dilemma impressively. The DCU has indeed been placed in a position which it cannot resolve itself and its reference to being held "hostage" between the Danish NOC and the UCI is not without grounds. All parties acting in this dispute must realize, however, that the real victim of this jurisdictional impasse is not the DCU, but rather the athlete, S.

22. In the 26 August 1997 notification of the Danish NOC to S. that his A-sample had tested positive, a notification initiated by UCI and passed through the DCU to the Danish NOC's Antidoping Commission, no mention is made at all of the rules and regulations which would apply in adjudicating his case. Even the instructions given to him regarding his rights in light of the excessive T/E Ratio make no reference to the rules which govern. The Doping Control Commission of the Danish NOC cites merely the "Information on Doping" page 4, without even identifying whose "Information" is meant. No explicit reference is made to the rules which will apply, neither to the Doping Control Regulations of the Danish NOC nor to the AER of the UCI. DCU's failure to furnish the UCI a copy of this letter allows the inference to be drawn that the DCU did not wish to make the UCI aware that its rules would not be applied. Importantly, however, the instructions given to S. regarding his rights with regard to the endocrinological examination were incorrect and certainly did not conform to the AER. These documents show clearly that the Danish NOC never intended to apply the AER. This letter was never sent in copy to the UCI. The UCI learned of its content only after the copy was requested by the Panel in its 10 July 1998 Order.

23. The opposite occurred, however, with the DCU's letter to S. of 20 November 1998. This letter was sent directly by the DCU to S. The defendant is placed on notice that, in light of the findings of the Cologne laboratory, the UCI considers the matter to be a doping matter and that it (the DCU) has been asked to act in accordance with UCI's doping statute. The letter further states that, "*in accordance with UCI's doping statute, S. must decide whether to request an analysis of the B-sample*." This letter was sent in copy to the UCI in compliance with the information instructions given to the DCU by the UCI. Here, however, the DCU could assume that the express reference to the application of the AER would assure the UCI that its rules were being applied. The question posed, however, is how S. reacted to these instructions, in particular, in light of the conflicting reference to the Danish NOC's "Information on Doping" made in the 26 August notification letter.

24. This correspondence with S. – with only a portion of it being received in copy by the UCI – reflects the torturous dilemma in which the DCU found itself and clearly demonstrates the confusion which must have arisen in the eyes of S.

25. After all of the above, the Panel has concluded that the jurisdiction of the CAS is based on Art. 84 UCI. The Doping Tribunal of the Danish NOC acted as the "competent body" of the DCU with the knowledge and consent of the UCI. The DCU, in turn, exercised the original jurisdiction of the UCI as prescribed by the applicable provisions of the AER. The UCI initiated the doping proceedings against S. in accordance with AER, informed the DCU regarding applicable deadlines and requested to be kept informed of all measures taken by the DCU in the proceedings. Its good faith reliance upon the DCU's representations is evidenced in the exchange of information between the UCI and the DCU, on the one hand, and the DCU/Danish NOC and S., on the other. It is shown clearly in the UCI's timely filing of its appeal to the CAS in accordance with Art. 84 and its refusal to accept the jurisdiction of the Danish NOC with regard to the appeal by S. to the Commission of Appeals of the Danish NOC.

26. Pursuant to Art. 2 of the AER, the use of the pharmaceutical substances appearing on the List of Categories of Doping Substances and Methods is prohibited. S. tested positive for the use of testosterone, which is on the List of Categories which became effective as of 1 May 1997.

27. For endogenous steroids, a sample is deemed positive if the urine T/E ratio is above 6, unless this ratio is attributable to a physiological or pathological condition. In the case of S., the A-sample was found to have a T/E ratio of 8.2. The endocrinological examination determined that the ratio was not due to a natural physiological or pathological condition. Furthermore, the B-sample also yielded a positive result with a T/E ratio of 7.9. The Cologne laboratory recommended that the sample be declared positive for the application of an endogenous steroid, stating that "*the GC/IRMS results are in accordance with results obtained after an application of dehydroepiandrosterone (DHEA).*" The Doping Tribunal found that a result of 6 from the laboratory which conducted the analysis of the B-sample was a "corrected ratio" figure, and accepted the recommendation of the laboratory that the sample be considered positive. The Panel finds no grounds upon which the accuracy of these findings is subject to challenge.

28. S. points out that there was a correction of the bottle code number on the control form. However, he advances no other evidence in support of a charge that the sample was misplaced, tampered with, manipulated, switched, etc. It is the opinion of the Panel that the crossed-out code number in the appropriate box reflects a slip of the hand at the time the control form was filled out by the competent official. If this slip took place subsequent to the signature of the form, there is no record that S. raised an objection or initiated any inquiries at the analyzing laboratory to determine the origin of the changed code number, thus indicating that the change was done before his eyes at the time the control form was filled out. Therefore, the Panel concurs with the Doping Tribunal that "*the fact that a figure has been corrected in a form...does not afford grounds for assuming that there has been a mistake with respect to the identity of samples*."

29. S. claims that there could be natural reasons for the fluctuation in his T/E ratios. However, the endocrinological examination ruled out any physiological causes for the elevated ratios. Furthermore, a Gas-Chromatography/Combustion/Isotope Ratio Mass Spectrometry analysis was performed which confirmed the exogenous application of testosterone and dehydroepiandrosterone (DHEA). The contention by S. that DHEA was not on the list of forbidden substances in 1997 is not correct: it is indeed listed as dehydroepiandrosterone under the heading 1 at the bottom of the List of Categories on page 2 among the androgenic anabolic steroids.

30. S. also claims that he may have ingested DHEA without his knowledge. Under Art. 2 of the AER, however, the participants in cycling races have the responsibility to ensure they do not "*avail themselves of forbidden agents*".

31. With regard to the reduction in the sentence imposed by the Doping Tribunal of the Danish NOC from two years to nine months commencing as of 12 December 1997, the Panel has taken into consideration the fact that the AER prescribes a maximum suspension of one year for the first offence as opposed to the maximum suspension of two years prescribed in the rules applied by the Danish NOC. It cannot be overlooked, however, that the reduction in the sentence is also justified by the disadvantages suffer by S. in formulating his defense as a result of the jurisdictional dissent between the UCI/DCU and the Danish NOC.

The Court of Arbitration for Sport hereby rules:

1. The January 19th, 1998 Decision of the Doping Tribunal of the National Olympic Committee and Sports Confederation of Denmark (Danmarks Idreaets-Forbund) as modified by the Decision of the Commission of Appeals and Arbitration of May 4th, 1998 shall be modified as follows:

   (a) The term of the sentence shall be reduced from two years to nine months commencing as of December 12th, 1997. Accordingly, the term of suspension ends August 11th, 1998.

   (b) The Court of Arbitration for Sport imposes a fine on the Respondent S. in the amount of CHF 2'000.00 (two thousand Swiss Francs).

(...)