

DEFENDANTS

B1) FERRARI MICHELE AND GUANDALINI MASSIMO (AGAINST WHOM A SEPARATE ABBREVIATED PROCEEDING IS ONGOING)

for the offense Cr.P. from article 81 paragraph, 110 and 348 of the Criminal Code, for getting general drugs (from the GUANDALINI's pharmacy) , designed to optimize athletes performance, and supply them outside the drugstore, directly to his own clients, therefore acting in a manner illicit to the pharmacist profession, while GUANDALINI partook to the FERRARI's misbehavior by being aware of the usage Dr. FERRARI made of the drugs.

In Bologna and Ferrara until August 1998.

B2) FERRARI MICHELE AND GUANDALINI MASSIMO (AGAINST WHOM A SEPARATE ABBREVIATED PROCEEDING IS ONGOING)

for the offense Cr.P. from article 81 paragraph, 110 and 445 of the Criminal Code, because by several actions on the same criminal design, the former as a owner of the GIARDINI MARGHERITA pharmacy in Bologna, the latter as prescribing sport doctor, concurred in giving substances and pharmaceutical products such as DHEA, ADRENALIN, IGF1 (INSULIN GROWTH FACTOR -LIKE), SAIZEN, ERITROGEN, ANDROSTEN, STRONG SINSURRENE and others, in a way dangerous for the health of those athletes practicing various sport disciplines among them ROMINGER Tony, MERCKS Axel, BERTOLINI Alessandro, BORTOLAMI Gianluca, GOTTI Ivan, BEAT Zberg, ZAINA Enrico, ESCARTIN Fernando, BERNHARD Olivier, CIPPOLINI Mario, TONKOV Pavel, DE LAS CUEVAS Armand, FURLAN Giorgio, LIVINGSTON Kevin, CHIAPPUCCI Claudio, SALVOLDELLI Paolo, FARESIN Gianni, OLANO Abramo, SIMEONI Filippo, MAZZOLENI Eddy, PONTONI Daniele and KAPPES Andreas.

In Bologna and Ferrara, from indefinite starting date until August 1998.

B3) FERRARI MICHELE

Offense Cr.P. from the art. 6, Co. 1, 23, Co.2, Legal Code volume 29.5.1991 nr. 178, because, in absence of the prescribed ministerial authorization, he imported from abroad the medical specialties called (FERRLECIT", "THIOCTACID" ,"OZOTHIN" and "ANDRACTIM".

B4) FERRARI MICHELE

Offense Cr.P. from the art. 81 paragraph of Criminal Code and 23 co. 3, Legal Code volume 29.5.1991 nr. 178, for trading (as indicated in paragraph B3 above), foreign medicinal specialties for which no ministerial authorization had been requested.

In Ferrara, from indefinite starting date until 08.12.1998.

B5) FERRARI MICHELE AND GUANDALINI MASSIMO (AGAINST WHOM A SEPARATE ABBREVIATED PROCEEDING IS ONGOING)

Offense Cr.P. from the art. 81 and 444 of Criminal Code, because with recurrent actions within the same criminal design, distributed for its consumption, Animine tablets, acquired by Dr. GUANDALINI. Such tablets are hazardous to the health of the individual who take them, since each contains high dosage of caffeine equivalent to 3.5 cups of "espresso" coffee and their intake was in addition to the normal alimentary diet of the user and without therapeutic requirements.

DEFENDANT__

B6) offense Cr.P. from article 81 paragraph, 110 1 statute 13.12.1989 n. 401, because within the contest of the accusations listed above, he did partake (together with Guendalini Massimo) in administering directly or indirectly to the participating athletes, drugs and compounds of doping actions with the objective to make them achieve a result different from the one achievable by a correct and fair sport competition. Facts committed in the places and at the time above described.

TARSI DANIELE, MAINI ORLANDO and ROSSIGNOLI LUCIANO. GUANDALINI MASSIMO (against whom a separate abbreviated proceeding is ongoing)

D2) offense Cr.P. from article 110 and 348, the second party, the third party, fourth and fifth parties, together and in a concerted plan, did exercise illicitly the druggist profession, by receiving from the Guandalini's pharmacy thousand of confections of drugs, with the aim of dealing them with the athletes of the cycling team Refin (tens of confections of 55 pharmaceutical products received the 5th of February 1996, of 9 products received the 23th of March 1996, of 110 products received the 8th of May 1996, of 64 products received the 24th of June 1996).
In Bologna

PROCEDURE N. - 7538/02 RG. NR -N. 2448/02 RG DIBATT.
(RE-UNITED to the N. 2997/97 RG NR - 2083/2001 RG DIBATT. TO THE AUDIENCE OF THE 02.11.2003

A)FERRARI MICHELE, also:
of the crime Cr.P. from article 81 paragraph, 110 1 statute 13 Decembers 1989 n. 401, because by several actions on the same criminal design, in an indeterminate number and at various times by prescribing on the training schedule or directly giving to a number of athletes, drugs with doping action (in the species: erythropoietin /EPO and anabolic agents); such drugs are prohibited by IOC sport regulations and by the CONI (*translator note: Italian National Olympic Committee*), Those indeterminate number of athletes were participants of sport competitions organized by teams recognized by the Italian National Olympic Committee (CONI). Furthermore blood samples were systematically taken and clinical/biomechanical tests were also executed on the same athletes. With such activity of exogenous treatment either direct or to support autogenous or etero-determined treatment on the athletes, set to be a deciding factor to participate to the sport competitions. Therefore (the defendant) committed fraudulent actions aimed to reach,

through the improvement of the agonistic performance so artificially affected in the athletes, results that are different from the ones accomplished if correct and loyal competition was followed.

The athlete placed under treatment based on the facts of the investigations:

Simeoni Filippo, born in Desio (MI) 8/17/1971 - in Ferrara and other localities not specified, from 1995, to 1997.

B) about the offense Cr.P. from article 81 and 445 because with further actions on the same criminal design, has been giving substances and drugs (in the species: erythropoietin/ EPO), in total absence of medical prescription, and outside of any necessity or therapeutic scopes, therefore in a manner dangerous to the health of the athletes practicing different disciplines, indicated on the preceding paragraph. In Ferrara and other not specified places. From 1995 until 1997.

C) about the offense Cr.P. from article 81 and 348, because with further several actions on the same criminal design, by getting supplies of drugs (in the species: erythropoietin / EPO) and making them available in a direct delivery manner – outside any necessity or therapeutic scope, with the methods that have been indicated in the preceding paragraphs, was abusively exercising the profession of druggist. In Ferrara and other not specified places. From 1995 until 1997.

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As result of today's hearing, having heard the parties:

The P.M. concludes *{translator note: department of public prosecution}* has concluded

1) *Refer to the minutes of hearing on the 10-01-04*

And relative {translator note: illegible}

.....

The counsels of the defendants	<i>Ferrari</i>	Lawyers	<i>Bolognesi</i>
Concludes	<i>Tarsi</i>		<i>Viviani</i>
	<i>Maini</i>		<i>{translator note: illegible}</i>
	<i>Rossignoli</i>		<i>Viviani</i>

.....

Refer to the minutes of hearing on the 10-01-04

And relative {translator note: illegible}

Judgement 10/01/2004
Filed 12/27/2004

N. 2997/97 Notarial Deed. Offenses
N. 2083/2001 Notarial Deed Trial

**COURT OF LAW OF BOLOGNA
SOLE JUDGE
IN THE NAME OF THE ITALIAN PEOPLE**

The judge Dr. Maurizio PASSARINI

At the trial hearing of

With the intervention of the District
Attorney Dr. Lorenzo GESTRI

has stated and made public through reading
the following
JUDGEMENT

In regard to

- 1) FERRARI MICHELE, born in Ferrara on 3/26/1953, living in Ferrara, Via Pomposa n.268
- 2) TARSI DANIELE, born in Castiglion della Pescaia (GR), on 8/5/1957, officially resident in Grosseto, Via Cipro n. 151
- 3) MAINI ORLANDO, born in Bologna on 12/17/1958, and living in Bologna, Via Martin Luther King n. 30
- 4) ROSSIGNOLI LUCIANO, born in Isola della Scala (VR) on 06/18/1951, and living in Isola della Scala, Via De Gasperi n. 6

JUDGEMENT N. 1718
Dated 10/01/2004

APPEAL
N.
Refutation Record

SUPREME COURT CLAIM

N.
Refutation Record

ARRESTED
On

RELEASED
On

JUDGEMENT FILED WITH
THE OFFICE OF THE
COURT'S CLERK
12/27/2004
[Illegible signature]
OFFICE OF THE COURT'S
CLERK
(Massimo MASCAGNI)

EXECUTIVE ABSTRACT
DISTRICT ATTORNEY

Reg. Mod. 29

Article

Filed with the Judicial
Register

On

REASONS OF THE DECISION

With its own decree dated 02.12.2001, the Preliminary Hearing Judge (GUP) has arranged to commit to trial FERRARI Michele, TARSİ Daniele, MAINI Orlando and ROSSIGNOLI Luciano in order to answer for the crimes they were respectively charged as described in headings BI), B2), B3), B4), B5), B6) and D2) of the minutes index.

During the trial, at the 02.11.2003 hearing, it was ordered to join the original trial (having as objective the crimes as indicated by the indictment) with an other trial identified as n. 7538/2002 RGNR - 2448/02 RG Dibatt., having as objective further accusations relative to the headings A), B) and C) of the minutes.

The trial was conducted in contumacy of the defendant MAINI.

At the 12.12.2001 audience the transcription of seven telephone calls has been ordered from an expert in the person of Giuseppe MAZZITELLI (Measuring Surveyor). Those calls were part of those recorded (within the preliminary investigation) during the wiretapping of the Giardini Margherita pharmacy phone line in Bologna, in where, according to the prosecution, the defendants carried out the purchase of drugs intended for the cyclists whom they had respectively followed. The preparatory debate investigation has evolved, through the hearing of numerous witnesses and technical advisers, indicated by the Prosecution as well as by the Defense.

Moreover SIMEONI Filippo has been heard as a person investigated for a connected crime, according to the art. 210 of the Cr.P.

Furthermore, during the 04.16.2003 audience, the examination of the defendants ROSSIGNOLI, TARSİ and FERRARI has taken place.

According to art. 512 bis Cr.P., the declarations of MERCKX Axel, OLANO MANZANO Abraham and BARCO Silvano (witnesses all residents in a foreign country, regularly summoned but not appeared) have been acquired.

At the 12.17.2003 hearing, according to art. 508 of the Cr.P, this judge has mandated three expert's reports, one on graphology (entrusted to the expert Dr. Maria Barbara CONTE), the second one on forensic medicine and having as primary objective the haematic measurements made, in the course of the time, on a group of cyclists followed up by FERRARI (entrusted to the expert Professor Roberto CONTE), third in pharmacology, meant to clarify if a series of substances and druggist products repeatedly mentioned during the trial were or weren't included among the classes of substances prohibited by the CIO (International Olympic Committee) and of the UCI (International Cyclist Union) anti-doping regulations; in affirmative case assessing also the starting date from which such mentioned product and substances had been prohibited by the regulations indicated above and if they were substances and products prohibited in absolute way, that is subjected to so called restriction of use (this last one expert report was entrusted to Professor Marcello FAINA).

At the following hearing of the 04.20.2004 the three experts have reported the findings of their respective assessments. Such reports were conflicting with the FERRARI's defense technical advisers.

At the end of the preparatory debate, according to the art. 511 Cr.P, many of the acts contained in the file of the debate were read, and their usability (for the decision) declared.

The discussion did take place at the hearings of the 21st and 23rd of September 2004, with continuation at the hearing of the 1st of October 2004, for the rebuttal.

Conclusions of the argument by the parts were documented by the hearings reports.

Lastly, it shall be noted that having all the counsels and all the defendants adhered to the abstentions from the hearings established by the Union Penal Chambers on the days of the 06.25.2003 and the 10.17.2003, the trial remained "de facto" suspended during the period of 06.25.2003/12.17.2003.

2. The most complex position to be examined is the one of the defendant FERRARI, and among the several charges presented by the prosecution, the one that has mainly

occupied this trial - and that mainly will occupy the course of this sentence - is for sure the one relative to the so called sport fraud (art. 1, law 401/1989), contested at item B6), as well as item A) of the original ruling n. 7538/2002 RGNR - 2448/02 RG Dibatt., later joined to the present ruling n. 2997/97 RGNR - 2083/01 RG Dibatt. This is the first imputation that will be considered, also because its examination implies a series of observations and appraisals that will also be of relevance in relation to some of the successive charges raised against the defendant FERRARI, therefore such issues will be followed with more agility in later instances.

3. Prior to the examination of the merit of the dispute, there is one legal issue, that is if the norm of art. 1, law 401/1989 (that provides the crime so called of sport fraud) is applicable to the doping facts.

FERRARI's attorney, recalling also the only instance in which the Court of Appeals had the opportunity of handling a similar issue (Cass. Section VI, 03.26.1996, n. 3011, defendant Omini), denies decidedly such possibility.

The Art.1, paragraph 1, law 401/1989 punishes "anyone who offers or promises money or other service or advantage to any of the participants to a sport competition organized by the federations affiliated to the Italian National Olympic Committee (CONI), to the Italian Union for the increment of the equine breed (UNIRE) or to other sport related entities recognized by the State and by the associations to which they adhere, with the scope of reaching results different from that those achievable by the correct and loyal development of the competition; that is to commit other fraudulent actions aimed to the same scope".

Such norm, therefore, previews two criminal conducts. Being the first one a form of corruption within the sport environment, this consists of an offer or a promise to offer money or amenities or other advantages. The second is instead constituted by a generic fraud.

FERRARI's defense, as a result of the interpretation of the law (this is an admirable legal fineness), proposes an extremely restrictive interpretation of the "other fraudulent actions" stated on the second part first paragraph of the previously reported art. 1, law 401/1989.

In reality, looking at a legislative text whose literal tenor seems not to leave space for doubts, in the sense that it is manifestly considered to cover any fraudulent act that, by means of pretense or swindle, is concretely suitable to alter the results of sportive competitions, the FERRARI's defense believes also that cases of the second part of paragraph I (that one referring to "other fraudulent actions") regulates, on the same order of the above mention paragraph, a form of corruption.

"The first conduct described in the first paragraph", exposes the remarkable memory of FERRARI's defense of the recording during the hearing of the 23.9.2004, "materializes in the formulation of an offer, or else of a promise of money or other services or advantage of any kind to any of the participants to a sport competition. As an example the offering of expensive gifts and travels to the referee in order to favor the home team or as well the promise made to an athlete (i.e. goal-keeper) of being recruited by more prestigious teams or as well to be chosen as *testimonial* in an advertising spot with the scope of letting the opposing team win the game. (i.e. let goals to be scored). The second conduct described in the first paragraph also presents itself as a form of corruption, which is also characterized by features of fraudulence. As an example we can imagine the coach of the soccer team asking the referee to replace the ball with a remote controlled one, or... to the coach of a soccer team asking the sidelines officials to signal an offside to the referee, any time the competing team is about to make a goal, or...to the manager of a cycling team who asks an adversary team athlete, to offer a laxative drink to his team mate who is the most feared antagonist"¹.

According to the interpretation of the regulation proposed by the FERRARI's defense, even the second one of the two behaviors described in art.1, paragraph 1, law 401/1989 constitutes a hypothetical sport corruption where "there ought to be a bribing

¹ see pages 175 and 176 of FERRARI's defense transcripts, produced during the 09-23-2004 hearing

subject who tempts the bribed one, by the means of money or other services, away from the institutional purposes he should have pursued².

This interpretation of the regulation, by the power of which, also the "other fraudulent actions" stated on the second part of the paragraph of art. 1, law 401/1989 would be considered, also and always and necessarily, as a dishonest agreement qualified by the fraudulent act, could be supported by a series of historic and systematic considerations.

According to FERRARI's defense, the rather obscure formulation of the literal regulation (see page 174 of transcripts of the defense, deposited on the 09.23.2004) it is indispensable to refer to the principle of the historical interpretation, accordingly with the hermeneutical relations stated by art. 12 of the pre-laws.

Therefore by researching and examining the real intentions of the legislator of 1989, it is easily found that, by passing the rule 13 December 1989, such legislator "did not have any intention to confer criminal importance to the so called doping occurrences"³

This subject is also supported by the examination of the laws on doping theme which followed, and such occurrence was sanctioned by the art. 3 and 4, law 26 October 1971, n. 1099, which characterized as illicit and criminal, to be punished by an amendable fine, (subsequently decriminalized and transformed in mere illicit processing, by effect of the famous disposition of art. 32, law 689/1981) the usage by the athletes, the supply by third parties and the possession, at the places of and during sport competitions, of substances apt to artificially modify the natural energies of the athletes and to turn out harmful to their health.

After the de-penalization by the law 689/1981 ("all the violations for which is contemplated only a fine or amend, do not constitute a crime and they are punishable merely by the payment of a monetary sum": art. 32, law 689/1981), the phenomenon of doping could have been considered and sanctioned as a mere misdemeanor and such a void in the penal consequences was not mended by the law 13 December 1989, n. 401, where "there ought to be a bribing subject who tempts the bribed one, by the means of money or other services, away from the institutional purposes he should have pursued.

² see transcripts of FERRARI's defense deposition of 09.23.04

³ see transcripts of FERRARI's defense deposition of 09.23.04

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Only with law 14 December 2000 n. 376 the usage of doping during the sport competitions would return to be a crime sanctioned and made punishable, as known, with the punishment of three months to three years of prison and a fine from 5 to 100 million

Liras “to whoever provides, supplies to others, ingests or favors in any way the usage of drugs or substances biologically or pharmaceutically active, re-including in the classes listed under art. 2, paragraph 1, those that are not justified by pathological conditions and are capable of modifying the psychophysics or biological conditions of the organism in order to alter the agonistic performances of the athletes, which means to modify the final results by the intake of such drugs or substances.

FERRARI’s defense, in support of his own theory and with a historic *excursion* around the laws that have ruled this subject at that time, observes that from the compilation of law 376/2000 would emerge that the legislator of the 2000 has never doubted that the phenomena of the doping has been considered as a misdemeanor ex art, 3 and 4, law 1099/1971, and not as a crime according to art 1, law 401/1989, that is the norm whose violation is contested by FERRARI at this hearing.

FERRARI’s defense emphasizes that there would be many and quite serious inconveniences by interpreting the expression “other fraudulent acts” in a much wider sense at the second part of art 1, law 401/1989.

In the first place, it would delineate a legal case extremely vague and elastic, so that each interpreter could fulfill the content at his will, with final outcomes that would violate the principle, of constitutional rank, of precision of the criminal provision⁴.

Moreover interpreting the expression “other fraudulent acts” at the second part of art 1, paragraph 1, law 401/1989 as trick, fraud or a lie to alter the competition outcome, it would lead to qualify as criminally illicit any deontologically incorrect behavior from the competition participants or from a third party, extending beyond any rational limit the intervention of the criminal judge, therefore making it impossible to differentiate among unlawful acts those with criminal profile from those merely sport related⁵.

FERRARI’s defense, in looking on to such extremely restrictive interpretation of the meaning to be attributed to the “other fraudulent acts” at the second part of art 1, law 401/1989, as previously stated, recalls as supporting element of his opinions, the only previous case law of legitimacy, constituted by the Court of Appeals sentence Sect. VI, 03.26.1996, n. 3011, defendant Omini.

⁴ see FERRARI’s defense transcripts of 09.23.04 page 176

⁵ see FERRARI’s defense transcripts of 09.23.04 page 182

The case, concretely examined by the Supreme Court, was the one of the president of the Federazione Ciclistica Italiana that, having omitted to signal a hypothesis of crime by art. 1, law 401/1989 relative to the ingestion of performance-enhancing drugs by a runner, with a verdict pronounced by the judge for preliminary survey of the District Court of Rome was declared guilty, by abbreviated trial, of the crime at art. 361 of the Cr. P. (omitted crime report by a public officer).

The Supreme Court had to accept the appeal of the defendant, based upon the reasoning that follows.

The wording of regulation of art. 1, law 401/1989 does not seem to be sufficiently clear, therefore is being interpreted by the means of the will of the legislator. Said that, accordingly to the Supreme Court, there is no doubt that the determination of the legislator of the 1989 was to identify the other and unnamed “fraudulent acts meant for the same scope” by the same standards of the act expressly indicated in the principal proposition, which means by the offer or by promise of money or other services or advantages to each contestant of a sport competition.

Accordingly with the Cassation Court, all the actions mentioned at art. 1 paragraph 1, law 401/1989, would be “actions projected outside of the persons who have deliberated them and such to involve other individuals together with the ones engaged in the same activity directly”. Moreover, they would be profit-making activities because they relate to the scope sought by the subject, of manipulating the result of the competition, by promises of money, or other services to the contenders of the competition.

That being stated, since “the assertively criminal act, which the defendant would have omitted to report, does not apply to neither characteristics (this is: because the ingestion of doping substances by the athlete cannot be considered illicit criminal conduct) therefore the President of the *Federazione Ciclistica Italiana* did not have the obligation to denounce the fact to the Judiciary Authority so that the disputed crime of omitted accusation cannot be formulated.

Beside this concrete, quite specific and particular, case examined by the Cassation Court what emerges from the economics of the present ruling is that the legitimate judge, in the verdict of the 1996:

- a) expressly moved from a strictly legal interpretation of art. 1, law 401/1989, adhering instead to a personal systematic interpretation, considering the literal tone of the norm as convoluted and uncertain, definitively ambiguous.
- b) asserted that both demeanors described on the first codicil of art. 1. law 401/1989, describe “activities projected outside from the persons who have considered them” and “activities somehow commercial ,” since the alteration of the competition outcome always correlates to the money or other benefits that are given or promised to the contestant of a competition.

There is no doubt that such sentence, once having been assimilated after its frankly difficult reading, runs through the same paths of the interpretation sustained by FERRARI’s defense, according to which even the “other fraudulent acts” at the second part of the 1, paragraph 1, law 401/1989, must be inserted in a sort of unscrupulous agreement, characterized ..

TRANSLATOR Note: Page 9 of the original document in Italian appears to be MISSING.

It appears very difficult to be able to share the FERRARI’s defense opinions, even by appealing to such unnecessary cryptic principles different from the semantic ones. For instance, the affirmation that the law 401/1989 would be the “fruit” of the scandal of the so called “soccer bets” and, as such, should contrast only the phenomenon of the illegal betting, is not acceptable. And beside *the boutade* which even if it were a “fruit” it would be a tardily fruit (because the scandal of the so called “soccer bets” dates to the year 1980⁶, as can be verified by examining the press of that time) and beside the fact that such law regulates in details

⁶ the scandal of the so called “soccer bets” exploded at the beginning of the 1980: a large number of illegal bets, including many associations and famous soccer players, emerged; sport justice applied strict sanctions: two well known clubs of the A league were demoted to the B league, other were inflicted five penalty points; disqualifications were inflicted to famous soccer players such as Rossi, Albertosi, Giordano, Manfredonia, Savoldi. But by 1982 “illegal bets” became silent. In that year the National Italian soccer team won its third world championship – thanks to the decisive contribution of Rossi’s goals and this happenings allowed the Soccer Federation to close the issue with clemency toward those who were still serving disqualifications

even other subjects (such as the art. 6 and 7, the so called violence at the stadiums), it is to be noticed that the 1989 legislator, while shaping the sporting competition fraud as a typical anti-judicial issue to be persecuted also by the civil jurisdiction, intended to guarantee the fairness of those most popular competitions (namely those protected by important public entities such as the CONI or National Olympic Committee, the UNIRE or National Union for the Increment of the Equine Breeds and other organizations recognized by the state) from any kind of fraud, not only those within the illegal betting boundaries.

The report to the DDL underlined that the incriminating provision of art. 1 aimed “to safeguard, in the field of the sport, those fundamental values which means “fair play” at competitions”⁷.

Under this prospective, the legislator meant to delineate a wide category of “sport fraud,” which includes all those acts (not always and necessarily related to a corruptive context) that fraudulently modifies the outcome of a competition.

This was done by introducing an incriminating rule – precisely the sport fraud as per art. 1, law 401/1989 – elaborated to remedy not just the few inconveniences deriving from the appeal to the only existing case, this is the fraud stated at art. 640 Cr.P., case which has originated several and complex problems and debates, in single concrete cases due to its simple specifications.

So, the sporting fraud – as the crime of cheating (and under certain aspects even more predominant since art 1 law 401 reduce the punishment threshold) has to be interpreted not only for its wording but also for the will the legislator had, and therefore has to be interpreted as applicable to any type of fraudulent activities intended to deviate the loyal and correct result of the sport competitions, where they are of activities of corrupting nature (conduct contemplated at the first part of art. 1. paragraph 1, commonly known as “sport fraud”) or where they are other activities, not belonging to a corruptive environment, but whose final scope is reached by trick or deceit.

Not even the above conclusions are diminished by the historic strain of the legislature.

⁷ See Assembly of the Lower Chamber, Relation to DDL {draft Law} n. 1888 introduced on the 11.14.1987

The circumstances, that in 1989 the phenomenon of doping was already under the attention of the law 1099/1971, are of no relief. It is to be underlined that such law (not by chance called "Health protection of the sport activities") was intended to safeguard the welfare of the athletes (and not the fair and correct development of sports competitions) as did law 401/1989; and this beside the fact that such law (due to the mildness of the sentences and their later revocation) did not find any function. Therefore, it is evident that the regulations contained in the two different legislations could very well coexist, since the existence of the law 1099/1971 does not contradict the following law 401/1989. Neither has any meaning the issue raised by the FERRARI's defense (regarding the correct interpretation of the article 1 paragraph 1 law 401/1989), who stated that the legislator of the 2000 (by approving the law n. 376 "Discipline of protection of the sport activities and the fight against doping") has really shown, that before law 376/2000, the phenomenon of doping was considered a demeanor under art. 3 and 4, law 1099/1971. It is not understood how a hypothesis, extracted by the preparation of law 2000, could have any influence on a law passed in 1989; this could only happen if we consider admissible that a law approved in 2000 has influenced a law approved eleven years earlier. FERRARI's defense objects that, by interpreting extensively "other fraudulent acts" at art. 1, paragraph 1, law 401/1989, the result would become so vague and elastic to the point of regarding the principle of validity of this penal norm as constitutionally doubtful. Such opinion expressed by FERRARI's defense cannot be shared. It is important to remember that the law, as already well known, is about crimes so called of free form, that is crimes committed by any means and that result in a criminal acts. Let's emphasize this. In case of sport crime, the fraudulent nature of the act itself is considered more than enough evidence. Under this law any appropriate activity that alters the loyal and correct development of a sport competition is not punishable, but it is the opposite for activities using tricks (in other word, an alteration of the reality which depicts an "almost authentic" reality, which is not a "real" reality: for example like a measuring tool, which forges the performance of an athlete and makes him win), or a scam (that is, an artificial set up capable to cheat people: think about a lineman who fraudulently, during a soccer game, reports a player's insistent fault so to favor the opposing team by having the player expelled).

Obviously, the mere violation of the rules of the game cannot constitute a fraudulent act. Even if they are not allowed, behaviors such as shoving elbows, cheap shots, cutting lanes, overtaking, during a competition, usage of non regulated equipment, etc., are not considered sport fraud).

With such obvious precise statement fell the last objection of FERRARI's defense, who states that the interpretation of the law is such that "who writes also proposes" and ends by defining illicit any behavior ethically incorrect performed by the participants of the competition. This would result in the absolute impossibility to distinguish between the illicit acts under the penal profile from the illicit acts under the sport profile. In reality, as we can see, there isn't any risky and penal drift, because shoving elbows, poking, cheap shots, cutting lanes, and so on remain confined to sport violation.

Concluding, after all that has been said, who writes assumes that the absolute interpretation of the regulation at art. 1. law 401/1989 is the one that states that the "other fraudulent acts" as for the second part of art. art. 1. law 401/1989 ought to be understood as disconnected and independent from the corrupted behaviors described on the first part of the same paragraph; therefore, such law must include the athletes' doping, which is considered an absolute fraudulent activity that consists of an occult expedient apt to give an athlete some faculties, different from their natural ones.

With a further and last warning that to better preserve the obligatory principle of the penal act, to link the evaluation of the judge to specific norm so not to give too many options to the single interpreter who deals with pharmaceutical events and any other doping practice, only the substances and the practices forbidden by the sport regulation shall be considered as such.⁸

The conclusion, that has been reached here, is the same conclusion achieved, even if through different paths, by the known jurisprudence⁹. Such jurisprudence is divided on one issue, which does concern the object of the present judgment; the quest being whether to make punishable under art. 1, law. 401/1989 only the doping so called exogenous (that is the administration and/or the prescription of doping substances to the

⁸ Interesting ideas, on this line, are drawn from the most recent Cassation sentence. Sect. III, n. 46764. 2.12.2004. defendant Gillet, published while the editing of this present ground for the decision was going on.

⁹ Here we are citing the sentences 21.2.1992 GIP Court Rome; 11.12.2000 Single Judge Court of Forli; 23.10.2001 Court of Appeal Bologna; 23.5.2002 GUP Court Ferrara; 16.2.2004 Single Judge Court Ferrara. To such

athletes by a third party), or also the so called autogenous doping (this is the intake of doping substances by the competing athletes).

Concluding, the only legal precedent, represented by the sentence of Cassation Section VI, , 26.3.1996, n.3011, Omini, does not persuade, in spite of the due respect to the Cassation Court.

It starts from a non shareable preamble (the obscure character of the text of art. 1, paragraph, law 401/1989, defined as “intricate and uncertain”) and later on introduces the necessary support for a business relationship between the author of the crime, that is, the author of a corrupted proposal to a person receiving the proposal, so to highlight a pluralistic case, which is not justified by the tone of the norm.

It is to reinforce that, accordingly with this Judge, the phenomenon of doping (and specifically, regarding this specific case, the so called exogenous doping) belongs to the fraudulent acts of the crime of sport fraud. Therefore, it has been criminally sanctioned under art. 1, paragraph, 1. 401/1989, even before the becoming into effect of the actual law 376/2000.

5.One of the main evidence for the prosecution of FERRARI, in relation with the disputed crime of sport fraud, has been given by the declaration of Filippo SIMEONI ¹⁰, a professional cyclist who was attended by FERRARI from November 1996¹¹ until the end of the season of the 1997¹².

It is to be explained right now that SIMEONI has been examined as a person already investigated for related offense, under art. 210 Cr.P. As documented by FERRARI's defense at the hearing of the 02.12.2002, at the beginning of the hearing of SIMEONI, it came out that SIMEONI Filippo has undergone investigation from the office of the Attorney General of Ferrara for the crimes of dealing and complicity. In details and based

sentences it must be added sentence 26.11.2004 Single Judge Turin Court, related to the famous case of the soccer team Juventus, given while the current was being edited.

¹⁰ SIMEONI Filippo has been examined at the hearing of the 02.12.2002; his pleading can be read in the transcript of the hearing at pages 101 and ss

¹¹ From the reading of SIMONI's journal, copy of exhibit, to the act of the trial (enclosure to the minutes of the hearings on the 02.12.2002) it is possible to find out that SIMEONI went for the first time to Ferrara to be attended by Dr. FERRARI exactly on November the 16th, 1996.,

upon acquired information provided by witnesses and the SIMEONI himself, it results that some pharmaceuticals with the label of a hospital in Latina were found in possession of SIMEONI during a search on July 1999. SIMEONI was put under investigation for the crimes of dealing with the drugs (with the assumption that they were coming from a crime), and complicity because he did not provide information about who gave him such drugs.

Therefore, at the trial of 02.12.2002, before SIMEONI's hearing started and again at the beginning of the present process, this judge, with a decision dictated by prudence, has regarded that the crimes of dealing and complicity, hypothesized by the office of the Attorney General of Ferrara against SIMEONI, should be considered as combined, under art. 371, paragraph 2, letter b) of the Code of Criminal Procedure, together with the crimes of this present trial; the judge has considered that: assuming that the pharmaceuticals from the Latina's hospital were to be used in the sport doping arena; and considering that their possession by the SIMEONI (July of 1999) coincided with the period of the crimes contested in this present trial, the proof of crimes of dealing and complicity, assumed at the trial in FERRARA, could affect the proof of the crimes handled in this present trial.

Consequently, accordingly with the most correct interpretation of what stated under art. 197 bis and 210, Code of Criminal Procedure, SIMEONI, as already said, has been examined under art. 210, Code of Criminal Procedure, as person already investigated for connected crimes.

As it has emerged during the trial, this de facto connection is much more evanescent in the reality (or may be completely inexistent) of what it could have looked like on date 02.12.2002.

Subsequently it emerges that the criterion adopted at the trial of the 02.12.2002 has resulted as being much more prudent of what it needed to be.

Anyhow, it remains the formal evidence of the SIMEONI's hearing under art. 210, Code of Criminal Procedure, and when evaluating his statements such circumstance must be taken into consideration, under art. 192, paragraph 3, Code of Criminal Procedure.

Stated the theory of procedure to define the trial of SIMEONI, the examination of his declarations may proceed.

Well, SIMEONI, without any hesitation nor misunderstandings, has expressly declared, and repeated many times that, upon FERRARI's indications and prescriptions, during the time in which he was followed-up by the defendant, he has taken erythropoietin (better known as EPO)¹³,¹⁴ and andriol (testosterone based drug with anabolic effects)¹⁵

SIMEONI has clarified that FERRARI did not personally supply the EPO and andriol (even though he made him understand that he would have been able to do it), he just prescribed them, during the training programs that the same FERRARI organized.

It is to be noted that SIMEONI has explained that the asterisks on the training plans prepared by FERRARI, meant to mark the ingestion of andriol.

We will come back to talk about such asterisks briefly.

SIMEONI's declarations are very precise. When he makes such accusations, he is perfectly conscious of what he is stating and of the relevance of such affirmations.

From this viewpoint, those are affirmations that cannot generate misunderstanding or ambiguities.

Therefore, it only remains the alternative, talking in straight terms and reducing the problem to the mere essential, to establish if SIMEONI is to be believed or not; to decide if he is the cyclist who, after having been using enhancing drugs, has bravely cut the ties with the past and broke the too many silences and, solidarities among criminals, that surround the phenomena; or to decide if he is a liar who, perfectly aware of the gravity of his statements, attributes to his sport ex-physician practices opposed by everybody (at least verbally).

FERRARI's defense has tried to undermine in several ways SIMEONI's credibility.

12 ref. SIMEONI's statements, transcript hearing 02.12.2002, pages 111 and 125

13 The erythropoietin is a hormonal substance naturally produced by the healthy human organism, compounded as a product of synthesis is present in numerous drugs in commerce: it increases the capacity of the blood to transport oxygen to the tissues, therefore its use is illicit in the sport. It is found in sport activities characterized from extended effort in the time (such as cycling or cross country sky) in which the aerobic component is a major factor for performance of the athlete. The use of EPO of synthetic has always been prohibited by regulations of the CIO (International Olympic Committee) and UCI (International Cyclist Union), also previously expressed mention in regulations, so to be included among the substances forbidden (class I) within ones of the F group (hormones peptide and analog), so that it becomes group E in lists CIO and UCI of 1993: v. report professor Marcello FAINA, p. 66. See also successive note.

14 For more precise indications about the pharmaceuticals prohibited by the anti-doping regulations of the CIO and UCI that the defendant, whatsoever it is said, has prescribed to the athletes and for more detailed indications about the time when such drugs started to be banned, for clarity and comfort refer to next chapter

21

15 The andriol is also banned by the UCI and CIO regulations: for more details refer to paragraph 21

SIMEONI, underlines the defendant's defense, is an athlete who had large experience with doping substances even before turning to FERRARI. He had massively used EPO and other banned substances, before and after his relationship with FERRARI. SIMEONI (the defendant's defense stressed), minimized the role of other sport physicians who had assisted him and who had surely suggested the usage of doping substances.

SIMEONI, the defense continues, contradicted himself with its own declarations about the usage of the andriol.

And as a final point, the defense concludes, he is a cyclist that, exposed as "doped", decided to feed the not guilty FERRARI to the regular and sport justices and, not as last move, to the public opinion, to acquire merits before the judges and hope for a benevolent treatment.

None of the arguments of FERRARI's defense is capable of shaking the credibility of SIMEONI, whose declarations find comfort and are supported by a series of other elements collected along the duration of the process (the doping is a subject that the world of professional sport is not capable to face, at the moment, with the necessary and upfront courage required by a sincere auto critic).

The admission made by SIMEONI himself, that he has being used EPO (and other doping substances) even before meeting FERRARI, does not prove anything.

Apparently of major relevance is the circumstance that emerged from the trial:

SIMEONI accused vehemently FERRARI while he seemed to want to minimize the role of other physicians (particularly doctor SANTUCCIONE) to whom he asked for and from whom he received information about the use of doping substances, and first of all EPO¹⁶.

From the journal of SIMEONI, edited with details, emerges that between the 16th of November 1996 and the end of the 1997 season (this is when he trained under FERRARI's supervision), he had contacts with physicians or "doctors" other than FERRARI only in two occasions: the 19th of December 1996 (date recorded with the note "visit doctor SANTUCCIONE") and the 22nd of February 1997 (date recorded the note "1/5 pill Doctor SANT.*" and another, "pill 1/5 for 5 days"). The first of such visits (the one on the 12.19.1996) seem completely innocent, first because there is no indication of

¹⁶ See transcripts hearing 02.12.2002. p. 119/121

the ingestion of anything, secondly because of its timing (so that it seems to be a friendly meeting, close to the Christmas holidays, to dismiss the doctor, since SIMEONI has decided to turn to FERRARI. For sure, the visit on the 02.22.1997, coinciding with the intake of one fifth of a non specified pill to be taken for five days in a row is much more compromising. Nevertheless, this is and remains the only event about SANTUCCIONE during all the period of Ferrari's management.

Our intention here is to stress that SIMEONI is not trying to accuse other individuals. He admitted taking EPO and andriol while he was training under FERRARI's supervision; he stated that both substances were prescribed by FERRARI himself. Except for the isolated episode on 2/22/1997 (see above) SIMEONI only dealt with Dr. FERRARI, as we can see in an agenda kept during a period of time when SIMEONI surely did not think that he would have found himself involved in the unfortunate events that followed.

The statement that SIMEONI wrongly accused FERRARI only to achieve some personal gain (i.e., in order to present himself under favorable light to receive an indulgent judgment by the sport justice), simply is not supported by any evidence.

Let's keep in mind:

- SIMEONI was sanctioned by Italian Cyclist Federation. The sentence was later increased by ICU (see disciplinary sanctions agreed upon by both parties, hearing dated 4/16/2003, enclosed to the minutes of this trial: SIMEONI was suspended for three months by the ICF as per judgment dated 11/23/2001; the suspension was then extended to six months by the ICU as per judgment dated 4/10/2002)
- SIMEONI is a very unique case in an environment (the cycling world and more generally the professional athletes' world) obviously not yet ready to turn the page on an embarrassing past, and by not doing so, to extend it into a present whose end is not yet in sight. SIMEONI not only admitted using doping substances in larger amounts and for longer periods of time than proved by the evidence (i.e., he was found in possession of banned substances intended for an illegal use); he also named some of the bad "teachers". This behavior did not make him a very popular figure in the athletic community where he still belonged

This said, and even if we admit that sport justice was indulgent with him, the undersigned does not see what is so shocking, unless we wish that our judicial system punishes more

those very few who are willing to remember and admit, those very few who can be responsible for their actions and are now collaborating in trying to unmask the doping phenomenon.

Furthermore, FERRARI's defense has stressed some alleged contradictions apparently very obvious in his deposition, in an attempt to undermine his credibility.

It was pointed out, for instance, that SIMEONI declared that he had been using andriol even before meeting Dr. FERRARI. In his journal, the use of andriol is indicated with the letter "A". Such letter shouldn't appear anymore after the athlete started to train under Dr. FERRARI's supervision. Ergo, one should assume that, after meeting FERRARI, it is not true that SIMEONI had continued to use the banned substance.

This is one of those cases where, in order to accept the legitimacy of the conclusions, it is necessary to verify the accuracy of the preliminary remarks. If we observe SIMEONI's journals very carefully, we found out that the letter "A" does not appear frequently before his meeting with Dr. FERRARI. It appears only in two occasions in 1995 and 1996: on March 30, 1995 ("A after hard training sessions"); and on April 4, 1996 ("Stop A").

If we can deduced anything from the usage of this letter "A" in SIMEONI's journal, this is that the single uses of the andriol were not marked by the letter "A". We know that the drug was frequently used by the cyclist (to be taken after hard training sessions: see note of 3/30/1995; used quite frequently until 4/4/1996: see note on the same day) but the letter only appears twice in the period before FERRARI. It is therefore normal that the use of andriol between November 16, 1996 and the end of the 1996 season (the period during which SIMEONI trained under Dr. FERRARI's supervision) was not marked in his journal with an "A", as it was not marked even before.

SIMEONI had stated that it was not recommended to take andriol right before racing, to avoid the risk of flunking a drug test. He had also stated that an asterisk marked each day andriol was to be taken. As FERRARI's defense pointed out, in the training plans FERRARI prepared for SIMEONI we can see asterisks marking the days when the athlete was to race. This again contradicts SIMEONI's statement.

Again, we must observe that the evidence at our disposal is not as final as FERRARI's defense. Indeed, SIMEONI said that in 1996 andriol could be taken even during the races, without risking to be caught, while in 1997 "people said, I believe, two or three

days [that is, to take andriol two or three days before the races, N.o.E.], I think”⁸. “I believe”, “I think”: words full of uncertainty which clearly show that SIMEONI cannot remember exactly what the athletes were supposed to do, at least in 1997 (which is the year we are interested in), in order not to fail their drug tests because of andriol.

As one of the experts appointed by this judge added, if the anti-doping test could detect the presence of illegal anabolic substances, back then there were also ways to hide their presence in the cyclists’ blood⁹.

The defense also emphasized another alleged contradiction in SIMEONI’s deposition. While SIMEONI stated that FERRARI started to prescribe andriol in March/April 1997 in his training plans (as prepared by Dr. FERRARI) the well-known asterisks started to appear in January, 1997 or even before (see page 20 of FERRARI’s defense memorial dated 9/23/2004).

So then we will see that, only by using a little of the reader’s patience and attention, in this case as well things are not exactly as absolutely pictured by the defense attorney. Actually in the undersigned opinion, it is quite hard to spot any clear contradiction in SIMEONI’s statement.

The training plans belonging to SIMEONI can be seen attached as exhibit 257, folder 2. Specifically, the training plans containing asterisks we are now interested in, are those enclosed as exhibit 257, page 12, 14, 16, 17 and 18.

Unfortunately, the various training plans introduced by the Prosecutor, as well as the cyclists hematic and blood tests requested by Dr. FERRARI also introduced by the Prosecutor, are not chronologically filed. This fact makes their examination more difficult (undoubtedly, in such a delicate investigation, a more careful gathering and filing of documents would have helped), but a patient reading of the documents and a cross-reference of data eventually allowed a dating of most of the documents.

Let’s go back to the training plans enclosed as exhibit 257, page 12, 14, 16, 17 and 18. Page 12 is not dated, but the comment on the first line, starting from the top (“29=test”) allows us to place this training plan, with certainty, in the month of July, 1997; in fact,

⁸ see SIMEONI’s statement, in hearings records dated 2/12/2002, p.133

⁹ see the statement made by Prof. FAINA’s (court appointed expert), in hearing records dated 4/23/2004, p.8/10

the only test SIMEONI did on the 29 was the enclosed test (257, page 22), dated July 29, 1997.

It was easier to date the training plan attached as page 14, as some dates are written on it: 3/3/1997 (and the first asterisk, in this training plan, appears on the 5th, that 3/5/1997).

The training plan attached as page 16 is not dated either. In this case as well, the comment referring to a blood test (on the 20th) allow us to place this place in the month February 1997, because the only test SIMEONI did on the 20th was a test done on February 20th, 1997, (257, page 29). In the training plan enclosed as page 16, the first asterisk is on the 22nd, that is, February 22nd, 1997.

The training plan attached as page 17 is not dated either, but it clearly follows right away the training plan enclosed as page 16. The notes pertaining to some races (“Pantalica”, “Etna”) helped to date it. This training plan starts on the 1st, and it means March 1st, as confirmed by FERRARI’ d defense (see FERRARI’ s defense memorial, dated 9/23/2004, p.21).

Lastly, the training plan attached as page 19 is not dated. In this case, the only useful information we found was “until Palma (competitive debut)”. According to the FERRARI’ s defense memorial introduced by the defendant’ s defense during this trial, it is a competitive race at the beginning of the season, in January/February. This information has not been verified but has been accepted as true by this judge¹⁰.

The author of this writings realized his pedantry, but it lead him to firmly put the first datable asterisk on February 22, 1997 (see exhibit 257, page 16). Some other asterisks could probably be placed at the end of January/beginning of February 1997.

Now, let’ s keep in mind that SIMEONI made his deposition 5 years after the described events took place. SIMEONI said that he started to take andriol as suggested by Dr.

FERRARI (and as he had previously already done, before training under Dr. FERRARI’ s supervision) around the months of March/April 1997. In his training plans the asterisks (and therefore the use of doping drugs) appeared at the end of January/the beginning of February. The undersigned believes that there are no obvious contradictions between his

¹⁰ In reality, The Tour of Maiorca is a short stage race, which takes place during the very first part of the season: in 2004, as it is possible to verify in any internet site dedicated to cycling, the race took place between February 1st and February 5th.

statements and the documented evidence, i.e., his training plans, contradictions which could nullify the credibility of the witness.

In the meticulous reconstruction of events and dates, collected among such abundant documentation to be discussed during this trial, only an inappropriate usage of the entomologist's lens (this is said with considerable admiration for the work done by FERRARI's defense attorneys) could lead to the conclusion that SIMEONI's credibility depends on these trivial details.

* * * * *

6. Finally, FERRARI's defense attorneys believe they can undermine the credibility of SIMEONI's statement based on what other cyclists have said during this trial about the function of the already mentioned asterisks.

FURLAN¹¹, BORTOLAMI¹², ZAINA¹³, GOTTI¹⁴, MAZZOLENI¹⁵, FARESIN¹⁶, BERTOLINI¹⁷ and CHIAPPUCCI¹⁸ are the cyclists we heard as witnesses who made statements regarding their relationship with Dr. FERRARI and the training plans he prepared for them.

All the above-mentioned athletes declared that FERRARI never prescribed nor even suggested the use of doping substances.

¹¹ FURLAN's statement can be read in the hearing records dated 2/12/2002, p.1 and following; his training plans are enclosed in folder n. 2, attachment 244.

¹² BORTOLAMI's statement can be read in the hearing records dated 2/19/2002, p.3 and following; his training plans are enclosed in folder n. 2, attachment 228.

¹³ ZAINA's statement can be read in the hearing records dated 5/22/2002, p.22 and following; his training plans are enclosed in folder n. 2, attachment 233.

¹⁴ GOTTI's statement can be read in the hearing records dated 10/16/2002, p.1 and following; his training plans are enclosed in folder n. 2, attachment 229.

¹⁵ MAZZOLENI's statement can be read in the hearing records dated 10/16/2002, p.21; his training plans are enclosed in folder n. 2, attachment 259.

¹⁶ FARESIN's statement can be read in the hearing records dated 11/12/2002, p.1; his training plans are enclosed in folder n. 2, attachment 253.

¹⁷ BERTOLINI's statement can be read in the hearing records dated 11/12/2002, p.30; his training plans are enclosed in folder n. 2, attachment 226.

¹⁸ CHIAPPUCCI's statement can be read in the hearing records dated 2/11/2002, p.2; his training plans are enclosed in folder n. 2, attachment 249.

They also maintained that the asterisks profusely evident in their training plans pointed out the use of amino acids for those days in which their practice was particularly tough. supporting what the defendant had stated.

To better understand these different interpretations of the asterisks given by the D.A. and the defense attorneys, it seems appropriate to look closely at a training plan.

For instance, let's look at one of GOTTI's training plans (enclosed as attachment 229, page 230). It details, as we can clearly see, what the athlete has to do day by day (practice, rest periods, races, etc.). Some days are marked with the asterisk. On the same training plan we can see, top right, in a sort of summary window, among other remarks, the following comment: "2 spoons AA after *".

The prosecution believes that the asterisks are nothing less than a prearranged sign which hides the consumption of something that cannot be spelled out in the training plans.

According to the D.A.'s reading, the comment "2 spoons AA after *" means that the athlete was supposed to take amino acids, but also a doping substance which could not be clearly spelled out in the plans.

On the other hand, in FERRARI's opinion, the asterisk was only a reminder to the cyclist, a sign to draw his attention on a particular day distinguished by a particularly intense work load. Let's go back to GOTTI's training plan (enclosed as attachment 229, page 230). The 9th day was marked by "4 hours* 1 slope 8/10 km/h etc. etc.". According to FERRARI, it meant that GOTTI was supposed to take some amino acids that day, as a consequence of a very intense training including 4 hours of uphill racing. The "summary window" in the top right corner of the same page 230 explained this as "2 spoons AA after *".

This interpretation offered by FERRARI seems to be supported also by other facts. If we keep examining GOTTI's training plans (enclosed as attachment 229, page 229), we will notice another comment, written at the bottom of the page: "after practice * 10-12-g AA in Gatorade". FERRARI's attorneys stressed how in this case it is very obvious that the asterisk only marked the day involving a particular hard training schedule or race and requiring the taking of amino acids.

We recognize that the defense interpretation of the asterisks appears at least as logic and convincing as the interpretation proposed by the prosecutors. Nonetheless, we must add

some observations to the statements made by the athletes about this same issue, which will only achieve the purpose of surrounding the infamous asterisks with more confusion and arising more questions and doubts.

The undersigned may be accused of zealous philological meticulousness (as all other parts involved in this trial), but it seems that in some of the training plans the asterisks explanation offered by DR. FERRARI does not work. Let's look once more at GOTTI's training plans, specifically at the training plan enclosed as attachment 229, page 243. Here, as always, we see some asterisks marking some specific days. In this particular sheet, though, in the "summary window" at the bottom of the page we cannot find the expected comment "after * 10-12-g of AA", but a different comment, "10-12-g AA after gym and bicycle". We would like to point out the fact that in this case (as in many other cases all over the training plans¹⁹) the asterisk appears to have lost its meaning of conventional sign used to underline the occasions in which the cyclist was supposed to take amino acids. We are lead to believe that it might have a different meaning.

Let's look at BORTOLAMI's training plan (enclosed as attachment 228, page 167). It lists the athlete's daily routine starting from the 10th (we do not know of which month, but it is not relevant in our case) to the 25th. The usual asterisks are marked next to the 11th and the 12th. The "summary window" at the bottom of the page reads: "after hard stages 8-10 g amino acids". According to FERRARI's explanation, the "window" should have more logically read "after * 8-10 g amino acids". The next entry is the *Tour de Suisse*, and the days from the 16th to the 25th are marked with "1/2 * after stage". In this case as well we have to wonder: if before we saw "after hard stages 8-10 g amino acids", what is the real meaning of "1/2 * after stage"? In this particular case, as in other training plans enclosed, it seems impossible to justify the presence of the asterisk as a conventional and symbolic sign indicating a particularly hard practice day.

Beside the asterisks issue, some doubts were aroused by some of the athletes' statements, distinctively, CHIAPPUCCI's and even more BORTOLAMI's.

CHIAPPUCCI, as all of his colleagues heard as witnesses (except, of course, SIMEONI, who was heard as a witness formerly charged in a related criminal action), declared

¹⁹ See, as additional examples, Axel MERCK'S training plan, enclosed as attachment 224, page 83 and 86; and also OLANO's training plans, enclosed as attachment 255, page 807 and 813 – in this case even if we do not have asterisks but dots, their meaning appears to be the same

(hearing dated 2/11/2003) without any hesitation that the asterisks marked the days which required the taking of amino acids. It was very easy for the prosecutor to challenge his statement by saying that CHIAPPUCCI himself had previously told the police (March 8, 1998) that he did not remember the meaning of the asterisks²⁰. Now, if we consider that the training plans shown to CHIAPPUCCI in March 1998 were dated 1997, that is, they were only a few months old; and, that their training plans should be for cyclists what the penal code is for attorneys, or what train schedules are for trainmasters, CHIAPPUCCI's amnesia during the spring 1998 appears as a little suspicious or, looking at the same issue from another point of view, his newly found memory of February 2003 appears as very doubtful.

The prosecutor's intervention, (as per article 500, point 2, Code of Criminal Procedure) makes CHIAPPUCCI's statement during this hearing not very credible, as far as the asterisks meaning is concerned.

If CHIAPPUCCI's statements aroused some doubts, BORTOLAMI's declarations appeared to be characterized by falsehood.

BORTOLAMI was heard in the 2/19/2002 hearing. He stated that the asterisks indicated the taking of mineral salt, amino acids, and vitamin supplements, that is, only legal and approved substances. The prosecutor intervened promptly, reminding BORTOLAMI that he had given a very different statement to the Alassio judicial police (February 16, 1998). BORTOLAMI had in fact told the police that the asterisks referred to a suggested use of EPO (made by Dr. FERRARI to the athlete), aiming at improving his physical conditions and boosting his performance.

BORTOLAMI added during the deposition that he never accepted the doctor's proposal. When asked to explain the meaning of "1/2 *" (found in one of his training plans), the cyclist said that it indicated the suggestion made by FERRARI to take half a vial of EPO²¹.

In the face of the obvious differences between BORTOLAMI's statement to the judicial police and his statement in court, FERRARI's defense attorneys and BORTOLAMI himself stressed the fact that already in July 1999, BORTOLAMI had withdrawn his

²⁰ See CHIAPPUCCI's statement, hearing records dated 2/11/2003, p15/17

²¹ the whole note reads "1/2 * after stage"; see training plan enclosed as 228, page 167

1998 statement. He explained that he didn't mean to challenge the historical authenticity of that statement (i.e., he did not deny having made that statement), but that the recording betrayed his thoughts, as he meant to speak of amino acids but by mistake he mentioned EPO.

BORTOLAMI, during this hearing, tried to explain the striking differences between his two statements (1998 in Alassio, and during this trial). He said that in Alassio he had talked to the NAS police right after a race, in stressful physical conditions. Talking right away about EPO was, in his opinion, the only way to leave the police station fast and return to his hotel.

In the undersigned opinion, BORTOLAMI's explanations are ludicrous; a copy of this record will be forwarded to the District Attorney's Office, to decide if the witness can be charged with false testimony.

It is absolutely ridiculous that BORTOLAMI, in February 1998, in trying to explain the meaning of the asterisks, said they indicated the suggested use of EPO, while later on he said that what he really meant was the taking of amino acids. It is also ridiculous how in 1998 he insisted on explaining that yes, Dr. FERRARI had suggested the use of EPO, but that he had refused to take it, adding that "½ *" meant taking half a vial of EPO. A professional cyclist cannot confuse the two substances (i.e., EPO and amino acids)! It is absolutely preposterous on his part to state that he only mentioned EPO to quickly leave the police station (was he confused? naïve? scared by the presence of agents?) and return to his hotel, as if he did not understand the gravity of his statements.

In this case as well, the prosecutor's intervention makes BORTOLAMI's statement during this hearing not credible (as per article 500, point 2, Code of Criminal Procedure); we must therefore consider his statement as untruthful.

7. CONVALLE Fabrizio also made a statement about the meaning of the asterisks (see paragraph **18** below). We will examine his statement in detail later on.

Briefly, he trained under Dr. FERRARI's supervision in 1992 and 1993, when he was racing as an amateur. According to the cyclist, the training plans FERRARI prepared for

him were marked by asterisks which indicated the taking of an unknown substance contained in vials. FERRARI never told the athlete what the substance was.

Finally, but crucially, the fact that the asterisks not always referred to the taking of legal substances also unmistakably appears from KAPPEAS's training plans. As we will better show later on (see paragraph **10** below), KAPPEAS' training plans (particularly the training plans enclosed in folder n.2 and attached as exhibit n. 262, pages 76 and 77), beside the usual asterisks, are also characterized by this comment at the bottom of the page: “* androsten”.

Such a comment is not clearly legible on page 76 (only the first part of the word is in fact perfectly clear: “* androst”; the reader may guess that there are more written letters, but the copy poor quality does not allow to read them) but it is very visibly spelled out on page 77.

As we will further discuss in paragraph **10** and **11** below, FERRARI stated that he didn't know anything about it; he also said he believed he was not the author of the note saying “* androsten”.

We will see that androsten, as well as andriol (as reported by SIMEONI) is a banned anabolic substance. We will also see that the expert graphologist appointed by the undersigned has concluded that the handwritten comments at the bottom of page 76 and 77 (enclosed in folder n.2 and attached as exhibit n. 262) were actually written by Dr. FERRARI.

8. Relying for our judgment on the preceding considerations, we now are able to tell that no meaningful contradiction invalidates or weakens the credibility of SIMEONI's statement. We believe in the truthfulness of the witness, especially in light of the conditions that led him to decide to share his knowledge of these facts. SIMEONI, on the other hand, was heard as a witness formerly charged in a related criminal actions (according to article 210, Code of Criminal Procedure), as already stated above. Therefore his statement has to be examined and used as per article 192, section 3, Code of Criminal Procedure, as clearly stated in article 210, last chapter, Code of Criminal Procedure.

His statements will be evaluated together with other evidence that can prove the witness' credibility. One last observation: some of the evidence which will now be introduced, not only confirms SIMEONI's statements but appears to work as well as circumstantial and direct evidence against Dr. FERRARI.

* * * * *

9. It seems appropriate to open this new section with the results of blood tests done on many of the athletes who trained under the supervision of Dr. FERRARI. These results were enclosed with the documents seized from FERRARI (see attachments enclosed in folder n. 2). The blood tests introduced in court by the prosecutor were only a small part of all the exams kept by FERRARI. During the investigation, the judicial police seized all these results from FERRARI: it was a file containing more than 200 blood tests done by 17 cyclists. According to the prosecutor, the high number of tests available is enough to prove that many of the tested athletes showed anomalous variation in blood values in the period of time they worked under DR. FERRARI's supervision.

FERRARI's defense attorneys have asked and obtained to show the athletes' blood test results in their entirety, as this will allow a more complete and exact reading of all available data.

As a result, after their request was approved (2/19/2002), they added to the existing blood test results about 50 more, which included the test of 3 new athletes. Totally, we now have almost 300 blood test results, belonging to 20 cyclists. These new results were filed on 2/26/2002, that is, before the 3/19/2002 hearing which was completely dedicated to the reports of the technical experts summoned by both parties.

We believe it was wise to deal with the issue of the blood tests as soon as possible. In my opinion, and for their relevance in making my final decision, they ended up having an importance inversely proportioned to the incredible amount of time spent examining it. The blood values which attracted the attention of both the expert summoned by the judge and the consultants, are the hematocrit (Hct) and the hemoglobin (Hb). Their levels (if measured constantly and if inconsistency of values is shown) can be an indication that EPO has been used (synthetic EPO). EPO stimulates bone marrow to make red blood cells. Therefore using EPO increases the number of red cells in blood. Because red blood

cells carry oxygen to the muscles, raising the number of red blood cells considerably improves athletic performance. The hematocrit value is expressed in a percentage: it corresponds to the ratio between the volume of a blood sample (mostly red cells) and the total volume of the blood (red and white cells; serum). As using EPO increases the number of red cells, it also increases the hematocrit value (i.e., the blood becomes thicker as the mass of red cells increases and the mass of white cells and serum decreases).

Hemoglobin is a protein found in red blood cells. Its primary function is to supply oxygen to the tissues. It is therefore obvious that an increased number of red blood cells and a higher blood density due to the EPO also implies a higher hemoglobin value.

After this introduction, let us say that the reading of the blood tests had some objective limits, due to the fact that the blood tests were requested by Dr. FERRARI to determine the athletes' physical conditions at specific points in time, and not to study the inconsistency and the variation of their blood values. All technical consultants of both parties and the expert (prof. Roberto CONTE) summoned by the undersigned agreed Prof. CONTE summarized the concept in a very effective way: the investigation, we are quoting, was not carried out prospectively (as in a scientific research) but retrospectively, as required by the circumstances.

The fact that the blood tests were requested by Dr. FERRARI to determine the physical conditions of the athletes training under his supervision at specific points in time, (and not for a scientific research) probably also implies that the blood samples were not all taken at the same time and under identical circumstances²² (the so-called variable analysis). It is very difficult to ascertain what kind of an impact, if any, these circumstances may have on the actual blood test results.

It is also very likely that the time passed between the moment the actual blood sample was taken and its analysis was different from athlete to athlete. This could also constitute a variable element which may have affected the final blood test results.

Finally, one last remarks regarding the lab in which the actual analysis were performed. About 80% of the tests were done at Laboratorio San Giorgio, in Ferrara. The remaining

²² It appears sensible to assume that the cyclists coming from different places arrived in Ferrara to see Dr. FERRARI at all times of the day (as confirmed by the cyclists); therefore, some of them may have been on an empty stomach and in relaxed conditions; other, may have arrived right after lunch and in a less relaxed condition.

20% were done in different labs. We believe this could also constitute a variable element which may have affected the final blood test results.

After examining the above-mentioned issues connected with the blood test results, the prosecutor's technical consultants and the expert (prof. Roberto CONTE) summoned by the undersigned agreed on what follows: the inconsistency and the variation in hemoglobin and hematocrit values found in some of the athletes while they were training under Dr.FERRARI's supervision are definitely anomalous and in such a way to make it impossible to justify them in any physiological way.

Our expert prof. CONTE, in his report, wrote that "the individual variations of the hematocrit and hemoglobin values found in some cyclists during the same year are higher than the average values recorded for athletes practicing that same sport". During the hearing, he explained that he "saw in some athletes a variation of 15 - 20% during the same summer period (...). I do not have enough elements to establish the cause of this variation. Clearly, it is not a physiological variation"²³.

Similarly, the prosecutor's technical consultants believe "there is no doubts that the test results of several athletes simply cannot be explained in light of today's knowledge of biological variability" (prof. PLEBANI)²⁴.

The prosecutor's technical consultants were more careful in their report. They wrote that the hematocrit variations did not appear to have a physiological explanation. They also added that a final judgment was to be "very carefully" expressed, because of the objective limitations explained above²⁵.

To get to the point, please see Gianluca BORTOLAMI's blood tests results²⁶:

	Blood sample taken (date)	hematocrit value	hemoglobin value
1.	02/12/1996	46.4%	15.5 g/dl
2.	04/17/1996	48.8%	16.0 g/dl

²³ See Prof. Roberto CONTE's statement, in the hearing records dated 4/20/2004, p.57

²⁴ See Prof.PLEBANI's statement, in the hearing records dated 3/19/2002, p.12. Prof. PLEBANI was one of the prosecutor's technical consultants.

²⁵ See PLEBANI's, CAZZOLA's and FERRARI's reports, page 203

²⁶ Gianluca BORTOLAMI's blood tests can be seen in their entirety in the documents enclosed as exhibit 228 bis (folder n. 2); they also appear in the reports prepared by the technical consultants and by Prof. Roberto CONTE.

3.	08/05/1996	38.0%	12.6 g/dl
4.	01/21/1997	41.3%	13.7 g/dl
5.	03/05/1997	41.0%	14.3 g/dl
6.	03/10/1997	40.0%	13.5 g/dl
7.	03/22/1997	43.6%	15.8 g/dl
8.	04/16/1997	46.8%	15.6 g/dl
9.	05/15/1997	44.0%	13.7 g/dl
10.	06/13/1997	47.6%	13.6 g/dl
11.	06/27/1997	48.9%	16.5 g/dl
12.	07/31/1997	51.0%	17.1 g/dl
13.	09/04/1997	50.2%	16.6 g/dl
14.	08/19/1997	48.0%	16.2 g/dl
15.	12/03/1997	43.1%	13.9 g/dl
16.	12/24/1997	42.0%	14.4 g/dl
17.	01/15/1998	48.1%	16.1 g/dl
18.	01/22/2998	39.9%	N/A
19.	03/31/1998	50.0%	15.1 g/dl
20.	06/10/1998	43.1%	14.5 g/dl
21.	06/26/1998	48.0%	16.1 g/dl

The above-listed figures indeed show considerable variations in time.

If we consider the lowest value (38.8% on 8/5/1996) and the highest value (51.0% on 7/31/1997), the variation is +34.2%. Let's now look at the hemoglobin: the lowest value is 12.6 g/dl on 8/5/1996; the highest 17.1 g/dl on 7/31/1997, with a variation of +35.7%. Even if we look only within the same athletic season, the inconsistency of his values is quite surprising.

In 1996, BORTOLAMI goes from a hematocrit value of 48.8% on 4/17/1996, to 38.0% on 8/5/1996 (-22.5%) and from a hemoglobin of 16.0 g/dl on 4/17/1996, to 12.6 g/dl on 8/5/1996 (-21.2%).

In 1997 he goes from a hematocrit value of 40.0% on 3/10/1997, to 51.0% on 7/31/1997 (+22.5%); then the value drops to 42.0% on 12/24/1997 (-17.6%). His hemoglobin

changes from 13.5 g/dl on 3/10/1997, to 17.1 g/dl on 7/31/1997 (+26.6%); then it also drops (13.9 g/dl on 12/3/1997, with a difference of 18.7%).

As surprising are the values for 1998: BORTOLAMI's hematocrit rises and drops considerably (two digit variations) in the four blood tests he took on 1/22/1998, 3/31/1998, 6/10/1998 and 6/26/1998.

We have been looking at BORTOLAMI's results simply because we have the highest number of blood test results for him. If we were to examine the blood test results and the hemoglobin and hematocrit values of the other athletes that trained under Dr. FERRARI's supervision, we would reach a similar conclusion, even though based on the smaller amount of data available.

We must add that outside factors may have had an influence on the values found. The available studies regarding the variability of hematocrit levels do not all agree: in FRASER's study (introduced by the D.A.' technical consultants) the biological variation value is set at about +/- 9.7%; other studies, as acknowledged by the D.A.'s technical consultant as well, raise the number to +/- 14%.

We also need to add that it is really difficult to establish the hematocrit base level for each cyclist, in order to add the biological variation value to find out if compatible with the athlete's physiological data. The technical consultants on both sides agreed on the difficulty of such a task, especially using the blood test results available. As we have already mentioned, these blood test were done with a completely different purpose, i.e., to determine the athletes' physical conditions. Prof. CONTI, the expert witness appointed by the judge, also agreed.

To summarize this analysis and all the objective uncertainties it created, we must say that the blood values found in the cyclists do not prove beyond reasonable doubt that they used EPO, even if such values can be considered very suspicious.

I believe it is only fair to at least have a doubt about the results of these blood tests. If we look again at BORTOLAMI's results, we see that his average hematocrit level is 44.5% (his lowest level being 38.0% and his highest 51.0%). This is a very rough procedure, but it is the only one we have available. Now, if we change his average value by adding or subtracting 9.7% (biological variability of the hematocrit level, according the FRASER's study), we have a value which ranges between 40.2% and 48.8%. If we were to use the

higher biological variability proposed by other studies, these values would increase as well. If these values had been even slightly modified by any of the variables listed above, then even his highest and lowest values could be explained in different ways, without automatically implying he used EPO.

In the undersigned opinion and according to the outcome of the very intense debate among all the technical consultants who examined the issue, we must conclude that the hematocrit levels in many of Dr. FERRARI's cyclists appear suspicious but not in such a way to prove, beyond reasonable doubt, that those values were merely caused by pharmacological substances (particularly EPO).

We cannot treat this subject fully without mentioning SIMEONI's blood test results. The athlete stated that in 1997 he took EPO and andriol, following FERRARI's advice. In 1997 SIMEONI had six blood tests done between 1/22/1997 and 4/26/1997. His results show as well noticeable inconsistencies in his hematocrit values: from 40.5% (1/22/1997) to 47.9% (4/26/1997), with a variation of +18.7%. His hemoglobin goes from 12.9 g/dl (1/22/1997) to 16.4 g/dl (4/26/1997), with a variation of +27.1%. These variations can be viewed as highly suspicious, especially because all of SIMEONI's tests were done in the same lab (Laboratorio San Giorgio di Ferrara). Therefore, in SIMEONI's case, we have one less variable to worry about, as we can assume that all his tests were done in the same way and using the same lab equipment, especially because they were all done in a short period of time (4 months).

The blood test results cannot be considered definite evidence that the athletes took EPO. The blood test results are nonetheless very suspicious and, at least in SIMEONI's case they can technically be regarded as a significant confirmation of SIMEONI's statement.

10. There are evidences, beside the SIMEONI's statements, that corroborate and confirm the FERRARI's legal responsibility.

As we have already seen, SIMEONI recounts that, during the year 1997, he has been using EPO and andriol, which were prescribed by FERRARI.

The training plans of other cyclists records show the presence substances pertaining to the anabolic group, which are forbidden by the ICU and IOC anti-doping regulations . First from the chart of the cyclist KAPPEAS.

As already stated in paragraph 7., KAPPEAS' training plans, at pages 76 and 77 of attachment 262, show as usual several asterisks pointing to a footnote indicating “*androsten”.

As already stated in paragraph 7., the indication of page 76 is not perfectly legible, since the quality of the available copy allows to read perfectly only “* androst”, leaving to intuition the existence of additional letters.

On the contrary, the indication “* androsten” is perfectly and unmistakably legible at the following page number 77.

FERRARI, questioned by this Judge over this issue has declared ³⁹:

- that in such note... he reads “androten” and not “androsten”
- that, in any case, he does not know what androsten is
- that he does not recognizes such annotations as his

On the fist of FERRARI's objection, one single word to be uttered, that the word in dispute is androsten and not androten, since anybody can examine the cited pages 76 and 77 and conclude as such. *In claris non est interpretatio* (Latin for “obvious evidences shall not be interpreted”,N.of T.), recurring to Latin might seem an exaggeration since the issue is not even controversial because the solution is extremely obvious.

As already said, FERRARI, on his interrogation (see transcripts hearing 04.16.2003 p. 140) declares that he does not know what this androsten is. However, androsten has been also the subject of a note (friendly recorded ... as indicated by the defendant himself), and found, together with other documents linked to the defendant, at the Massimo

³⁹ v. transcripts hearing 04.16.2003 p. 139 and 140 FERRARI interrogation

GUANDALINI's residence, the Giardini Margherita⁴⁰ pharmacy owner (drugstore from which FERRARI was buying pharmaceutical products and potions). By request of this judge, who asked about the meaning of androsten in the above mentioned document, FERRARI has declared that it deals with testosterone, therefore providing the justifications (in this exhausting game of continuances and recalls, made anyhow necessary considering the complexity of the evidences to be examined) that will be spelled out in the subsequent paragraph 15.⁴¹

Testosterone is the androgen steroid hormone, which is the active principle of many anabolic drugs, all of them banned by the ICU and IOC regulations.

The pharmacological evaluation requested by this Judge and entrusted to professor Marcello FAINA, even if it concludes that androsten does not match any drug in the market (namely none of the drugs listed in the official pharmaceutical data base) it also underlines that its desinence clearly links it to substances such as androstenedion and androstenediol. Those are substances which are both testosterone metabolites characterized by anabolic effects and which are banned by the ICU and IOC regulations⁴².

Finally, conclusively and if it were still necessary definitively: the last page (page 108) of the enclosure 262, which is the one containing KAPPEAS's training plans, contains the copy of what appears to be an ad of a product called Androsten, which is promoted and sold via Internet, evidently available in the United States, since it is priced in American dollars.

Therefore, the indication “* androsten”, in the foot notes of cyclist KAPPEAS training plans, has the clear meaning that the athlete had to consume anabolic substances testosterone based on the days marked with an asterisk (which, as already noted in the asterisks present in SIMENONI's training plans, corresponded to those days of heavy and intense work and training).

It is also important to arrange such training plans in chronological order.

Regarding page 76 of training plan it is relevant the annotation “test+trip” made on day 12. Examining the tests made on KAPPAEAS, it emerges that the one of 05.12.1998

⁴⁰ It is about folder 2, exhibit 67, that we will return at the subsequent paragraph 15

⁴¹ see FERRARI's depositions transcripts of 04/16/2003, pages 167/170

⁴² see professor's Marcello FAINA's evaluation pages 10,11,47 and 48

(enclosure 262, page 106) is the only one which took place on the 12. Therefore, the chart at page 76 refers evidently to the month of May 1998.

The chart on page 77 clearly makes reference to the month of May (there is an explicit reference), while it is not possible to be certain of which year.

However, since all the tests and haematic exams relative to cyclist KAPPEAS (contained in annexes 262 and 263) make reference to the years 1997 and 1998, it is logical to assume that the training plan on page 77 must refer to May 1997 or May 1998.

11. Ferrari, as said in precedence, declares that he tends to exclude that the notes “*androsten”, found on pages 76 and 77 of the training charts, had been posted by himself.

Therefore, this Judge has also prescribed a graphological analysis, meant to verify if the handwriting of the previously indicated notes belonged to FERRARI’s calligraphy or not. The expert, Doctor Maria Barbara CONTE has concluded that the notes under examination are attributed to Doctor Michele FERRARI’s handwriting.

The expert has not doubt about the conclusions mentioned above, in spite of the limitation of the sample used for the graphological exam. In fact being such samples photocopies, evidences such as the pressure of the writing could not be verified.

The expert declares that the script presents characteristics that allow to determine this fact in a quite objective and detailed manner, due to the formative movements and the aspect of relevance, by catching the sensitive dynamism and the equilibrated and reciprocal correlation of the graphic parameters (form, setting, thickness, wideness, caliber, direction. Cohesion and speed).

Moreover, the expert underlines in details the consistence of the marks, the handwriting’s inclination toward the right and the substantial retention of the direction of the movement, the simplification of some formative movements (i.e. the simplification of the graphic forms of the tri-letters “ros” of “androsten” and the shortening of the cut of the “t”), the curvilinearity of the tracts and the linking among the letters and the presence of filiform tracts: all these being details that, beside the kind of scripts to be examined, allow to affirm with certainty that the handwritings in question can be usefully examined.

With this premise, the expert compares the handwriting “*androst” and “*androsten”, cited many times on page 76 and 77, with other scripts, autographed, for sure, by Doctor FERRARI, that the evaluation of the handwriting’s identification becomes possible.

In details the expert underlines that the compared writings (this is the ones to be examined and those used as comparative scripts):

- have the same rhythm and grade of personal fluidity
- present perfect analogy in the inter-letter spaces
- tend to start the word with a tendency to right slants and keep the direction of the movements, straightening or reversing the axial orientation at letter groups “ros” due to the increase of graphic speed.
- present a perfect analogy in the slant of tracing of the connections “A/n”, “n/d”, “d/r”, “r/o”, “o/s”, “s/t”, “t/e”, and “e/n”.
- even when maintaining the horizontal alignment with sufficient precision, the handwriting under analysis and the comparing handwriting are characterized by the same collapsing under the line of the capital “A”s and from rapid high jumps in correspondence of the group of letters “os”, due to graphic increase in speed.
- presents specific shapes of the letters that depict and bear indicative signs, that the expert points out with details

Considering all the above said it is to conclude that the samples of scripts under examination belong to FERRARI’s handwriting.

The defense’s technical consultant, lawyer professor Susanna MATTEUZZI, has contested the conclusions of the expert appointed by the Judge.

The defense’s technical consultant underlines that doctor CONTE’s conclusion was faulty, from the very beginning, due to the unavailability of the original document: the evaluation of a photocopy does not consent to draw exact conclusions.

All in all, and beside the detailed elements to debate the issue used by the expert assigned by the Judge, the Technical Consultant admits that there is a generic compatibility among the characters, and she underlines that on her opinion there are also dissimilar characteristics between the handwriting samples under scrutiny and the comparing ones.

She concludes that examining the analyzed samples cannot draw to a certain identity judgment⁵⁷.

This author is of the opinion that the observations made by the court expert examiner are without a doubt “shareable”, this is because they were given with high level of details and arguments, and moreover due to the good responses given to the objections raised by the defense’s Technical Adviser.

But this author ought to underline that the results of the graphologic examination are to be considered in a comprehensive frame of evidences, even if the Technical Adviser’s doubts were to be considered unfounded; by doing so, the practical conclusions would not change much, or better, they would not change at all.

There is to say that we are in presence of a handwriting which would anyhow be similar to the defendant’s handwriting samples used as comparison., and even by admitting the issues raised by FERRARI’s defense, and even in the numerous and almost unnoticeable details,

Therefore, to hypothesize that the footnotes “* androst” and “* androsten” on the training plans, at pages 76 and 77 of enclosure 262, and written by FERRARI’s own hand do not belong to FERRARI himself, would mean to accept a brainy and fictional reconstruction of the facts. It would be necessary indeed to hypothesize that someone, in a period preceding the seizure by the NAS (*“Nuclei Antisofisticazioni e Sanità dell’Arm” similar to the US ATF - Bureau of Alcohol, Tobacco, Firearms, N.of T.*), got in possession of FERRARI’s training plans and added to such plan handwritten notes, and moreover faking the defendant’s handwriting with great ability. Why? ...and in which occasion? ...and capitalizing on which favorable conditions of time and place, since such documents were kept by FERRARI himself?

According with all proceeding evidences, it appears appeasing that the often mentioned footnotes “*androst” and ”androsten” were added by FERRARI.

Therefore it has been the defendant the one to prescribe the anabolic substances to the cyclist KAPPEAS, in those training plans of the years 1997/1998.

⁵⁷ Moreover naturally, the report made by CT {transcript typist} by Susanna MATTEUZZI, can be seen a condensate version of declaration made by the same person at the hearing of the 04.20.2004 (transcript pages 45 and 46)

12. But KAPPAES' training plans reveal to us something still important.

The plan in enclosure 262, page 79 shows, on the last line, the indication "DHEA 20 mg 1 in the morning x 1 month."

It is a chart referring to the month of March (from the indication on the first line) going back without a doubt to the years 1997 or 1998, since, it as already been said, about the temporary location the to the training charts of page 77.

DHEA is a steroid hormone that belongs to the group of androgens with anabolic effects like the ones of andriol and androsten; it has been banned by the ICU and the IOC (without any possibility of waivers), explicitly mentioned in such regulations since 1997, and also to be plainly considered banned even at earlier dates, because of its similarities to the anabolic steroids of class V of the previously mentioned regulations.⁴⁴

Under interrogation, FERRARI has stated that it was not his prescription but a notation of medical history. KAPPEAS, according to FERRARI, had reported to him that while on vacations with his wife (no competition was taking place), to have taken one DHEA pill of 20 milligrams during the entire vacation time (*due to the ambiguous wording of the original document, it is not possible to define if it is a pill/day during the entire vacation or if it was a single pill during the entire vacation, N. Of T.*); FERRARI had just noted the event on the training plan.⁴⁵

FERRARI has also added that at that time, the DHEA was not a banned product, but it was considered a dietary supplement.⁴⁶

Regarding this last statement, it is to point out that:

- after being asked by this author, FERRARI could not indicate to which period the training chart on page 79 dates, he has explained that he has been monitoring KAPPEAS from 1993 until 1996/1997, as he believes to remember (in reality, it is proven by documentation that he has surveyed such cyclist at least until 1998).
- Accordingly to what it has been already said, the training chart in question shall be placed at the 1997 or 1998 season.

⁴⁴ See pharmacologic expert report Professor Marcello FAINA, pages 7, 8 and 46

⁴⁵ see FERRARI examination, transcript hearing 04.16.2003, page 138

⁴⁶ see FERRARI examination, transcript hearing 04.16.2003, page 139

- At that time, as it has already been and will be said again substance by substance at following chapter 21, the DHEA had been already banned by the ICU and the IOC
- Regarding the statement saying that the annotation “DHEA 20 mg 1 morning x month” not being one of his prescriptions, but a mere medical history note, this appear of scarce likelihood.

It does not make much sense that a medical history annotation (related to what has happened) is recorded in a cyclist’s training plan (and therefore meant to the future).

Moreover: being a medical history annotation, it does not make much sense that it does not record the period in which KAPPEAS has taken DHEA. However, above all, it does not make much sense that, if this is truly a medical history annotation, it is so precise and meticulous in the indication of the pills’ dosage, the duration of the treatment and, more than anything, the time during the day in which the pills out to be taken: if it had been a medical history what interest could FERRARI have had by making an annotation that KAPEAS had taken a pill of 20 mg of DHEA, for one month, in the morning instead of, for example, after dinner? Moreover, the considered training plan refers to, as we have already seen, to the month of March: thus, it is well known and can be easily learned just by consulting a schedule of the cycling competitions, in the month of March the season is rather advanced (it starts in Europe in the month of February): when so, would KAPPEAS spent one month of vacations with the wife and take DHEA?

We conclude that the indication relative to DHEA, and the other concerning the already mentioned androsten, belong to anabolic substances prescribed to KAPPEAS by the FERRARI, prescription that defined method of administration, times and dosage that the cyclist could obtain from the training charts.

13. Prescriptions of DHEA were also found in the training charts of Bernhard OLIVIER, a triathlon athlete of Swiss nationality.

Bernhard OLIVIER's training plans are found in folder 2, attachment 237.

At page 443 of such annexed it is said "take DHEA and AND. Until day 6/3" (*in English in the original text, N. of T*); at page 445 it is annotated the indication "DHEA 1 morning" (*in English in the original text, N. of T*); and at page 453 it can be read "DHEA 20 mg 1 at breakfast" (*in English in the original text, N. of T*).

Under interrogation, FERRARI has admitted to have prescribed DHEA to OLIVIER, explaining that it was due to the athlete's pathologic situation, which the defendant declares has been documented in the numerous evidences of his defense and anyhow, a situation that was causing a state of muscular fatigue, recorded in series of result from the lab analysis, to OLIVIER.⁴⁷

Regarding the documentation, relative to Bernhard OLIVIER, provided by the defendant, this is the document filed at the chancery on the 26th of February 2002, relative to a series of further haematic exams, which FERRARI's defense (as recorded in the previous paragraph 9) asked and obtain to produce, as an addenda to those already provided by the PM (Public Prosecutor).

The documentation relative to Bernhard OLIVIER consists, in fact, in a large number of blood tests in the span of time between 11.20.1992 and 08.05.1998. During this almost six year period, there is not any mention of any pathology affecting the athlete; such pathology is not specifically cited or assumable by the presented documentation.

Seeking to place in time the training charts at pages 443, 445 and 453 of enclosure 237, such charts, in spite of not having been dated, can rationally go back to the year 1998 or, at the most 1997. Examining the entire set of OLIVIER's training plans found in enclosure 237, it is to observe that some of them (in details, those at pages 447, 448, 452, 459, 460, 461, 465, 466, 467, 468 and 469) are dated and all of them make reference to the span of time between January and July 1998; similarly, all the Bernhard OLIVIER's blood tests and exams, found in enclosures 237 and 238, are placed in the period

⁴⁷ see FERRARI examination, in transcripts hearing 04.16.2003, pages 125/129

December 1997 / March 1998. Therefore, it can be rationally deducted that, the training charts on pages 443, 445 and 453, belong to the same period.

The defendant, in spite of his said uncertainty, places them at years 1996/1997.

Now, whatever the training plans compilation timing was, and with them the DHEA prescription to OLIVIER (either 1996, or as more probable 1997 or 1998) what is relevant is that the DHEA, being an anabolic androgen steroid, was already banned by the ICU and the IOC regulations⁴⁸ (this issue to be further clarified at the following paragraph 21),

To be noticed, this means drugs banned without exceptions and not just subject to restricted control. The drug subject to restrictions is the drug that can be taken by the athlete, in presence of pathologies, with limitation about the mode of use (as an example, it is admissible the external application, but not the systemic use, this is by oral, rectal, intramuscular or intravenous conduits) and also by declaring their intake to the anti-doping sport authorities in advance and including the medical prescription to such declaration. The banned drug, on the other end, is the one whose intake is absolutely forbidden. Naturally, the athlete could, if necessary, take the banned drug; in such case, the athlete must stop and interrupt the training and the competitions (it is to observe that the athlete who needs the use of such drug cannot be in condition to perform in agonistic activities).

Therefore, after such preamble, it is good to point out that the DEHA, based upon the regulation of the ICU and IOC, was not subjected to restrictions but, much more drastically, forbidden.

After this clarification we return to the discussed OLIVIER's training plans (those at pages 443, 445 and 453 of enclosure 237) and we will see that during the periods in which OLIVIER was taking the DEHA, prescribed by FERRARI, the athlete kept on participating normally to competitions and training.

Therefore, the conclusion is that FERRARI could have not prescribed the DHEA to OLIVIER while preparing his training plans.

⁴⁸ see report expert professor Marcello FAINA, pages 7, 8 and 46

Regarding the DHEA's prescriptions to OLIVIER, there is one last observation: interestingly, the DHEA prescribed to OLIVIER has the same dosage (20 mg pills) and the same schedule (the morning) of the DHEA that, as already said, was indicated on KAPPEAS's training plans, by annotations that, as for the defendant's saying, did not correspond to prescriptions, but to medical history annotations. However the absurdity of such argument of the defense has already been remarked, and the note made here confirms the already reached conclusions; this is that the DHEA references on KAPPEAS's training plans correspond to prescriptions of forbidden doping substances.

14. DHEA is found again in an order that the defendant, on a paper whose heading bears his name, made to GUANADALINI, the owner of the Drugstore Giardini Margherita.⁴⁹

It consists of an order of 50, 20 mg pills of DHEA (incidentally, pills identical to the ones prescribed to KAPPEAS and OLIVIER, pills of also 20 mg), the order is dated 02.13.1998 and it has been found by the NAS in a red folder (which contained other medical documentation, which will be soon discussed) during the 08.12.1998 search of the GUADALINI's residence.⁵⁰

FERRARI has explained that those pills were meant for his father, afflicted with a form of rheumatic arthropathy that forced him to take cortisone, whose intake would cause a DHEA's deficiency. The latter was corrected pharmacologically by FERRARI giving DHEA pills to the parent.⁵¹

15. In the red folder found at GUANDALINI's home, beside the already mentioned order of 500 pills of DHEA dated 03.13.1998, there were additional and somehow interesting documents referent to the defendant FERRARI.

⁴⁹ The order is found in folder 2, attachemnt 64.

⁵⁰ the minutes of the search and seizure is found in folder 1, file VOL. III

⁵⁸ Search records and transcripts are available on folder 1, file VOL III

⁵¹ See FERRARI examination, transcript of hearing 04.16.2003, page 90.

For example, it was found, on a writing paper whose heading bears his name, a note containing, among others, the indication IGF1.⁵²

The IGF1 is a hormone naturally produced by the human body. The name of this substance is mentioned in the ICU and IOC regulations only since 1999, but as a substance easily comparable to the class of the peptic and analog hormones (actual class E of the CIO regulations), it was considered completely, evidently and incontestably forbidden since the preceding years (accordingly with simple medical and pharmaceutical considerations, this is that, a sport physician, mainly with an undisputed experience like FERRARI, could not have ignored).⁵³

Under interrogation, FERRARI has declared that he limited himself by asking GUANDALINI for information regarding the pharmaceutical under question, but without having neither used nor prescribed it.⁵⁴

In another page handwritten by FERRARI⁵⁵, already discussed in the preceding paragraph 10, it is indicated the androsten, anabolizing substance, testosterone based. FERRARI has explained such note, that he places during the years 1996/1997, refers to a collaboration (completely foreign to biking competitions world) that at that time was going on between GUANDALINI and himself and it had the objective the remedy for masculine impotence.⁵⁶

Beside the fact that such FERRARI - GUANDALINI collaboration on masculine impotence studies does not have any documentation, this author cannot ignore the fact that the annotation relative to the androsten is set in a wider context, in which besides androsten, another 1000 capsules of placebo and 20 containers for urine are listed. There is no doubt that the 1000 capsules of placebo and the 20 containers for urine are orders placed by FERRARI to the pharmacist GUENDALINI (as far as the 1000 capsules of placebo, FERRARI himself confirmed the information; no question was expressly asked about the containers but it appears very obvious that it is an order placed by Dr. FERRARI to the pharmacist GUENDALINI)

⁵² It is folder 2, annexed 66

⁵³ regarding the non-exhausting but merely simplistic of the list of forbidden substances listed in the anti-doping regulations of the UCI and CIO, see following paragraph 21.

⁵⁴ See FERRARI examination, transcript of hearing 04.16.2003, page 163/166

⁵⁵ It is page in folder 2, annexed 67

We want with this comments underline how is it possible that in an order sheet submitted by the defendant to GUENDALINI, it is inserted a medical advice that FERRARI supposedly offered GUENDALINI.

Most likely, the note seems to refer to an order of testosterone for more than a total of 100 mg, with an indication of the vials and pills in which to divide the required amount of the product.

16. As we have by now fully examined the documents pertaining to Dr. FERRARI

found in the red folder seized from GUANDALINI, we must go back to some of the cyclists' training plans. Specifically, FURLAN's and GOTTI's schedules.

From their training plans it appears that Dr. FERRARI prescribed to both of them sinsurrene [*brand name for a synthetic hydrocortisone (corticosteroid) made by Parke-Davis, N.o.T.*].

Sinsurrene is a drug commonly used to treat kidney problems. It lists DHEAS as an active ingredient. DHEAS is an anabolic steroidal hormone, similar to testosterone, and therefore unconditionally and without exception prohibited by the ICU and IOC anti-doping regulations⁵⁹.

Sinsurrene is prescribed to FURLAN (see his Training plan, attached document 244, page 568) as: "The morning of the race 1/3 -1/2 of sin.); it is prescribed to GOTTI (see his Training plan, attached document 229, page 227) as: "x stage ½ sinsurrene".

When asked by his attorney, FERRARI specified that he prescribed sinsurrene to FURLAN in 1994, before the drug was prohibited, as the athlete showed symptoms of fatigue and arterial hypotension. He denies prescribing sinsurrene to GOTTI⁶⁰.

FURLAN states the FERRARI prescribed sinsurrene among other drugs to treat his fatigue. He believes the doctor prescribed it in 1996. When questioned by FERRARI's attorney, who reminded him of a report the athlete had previously submitted, the witness added that he cannot rule out the possibility that he actually took the drug in 1994⁶¹.

⁵⁹ See Prof. FAINA's expert testimony, p.5/6 and 41/45; see also paragraph 21.

⁶⁰ See FERRARI's cross-examination, in the hearing records dated 4/16/2003, p.167/169

⁶¹ See FURLAN's statement, in the hearing records dated 2/12/2002, p.4/5, 17, and 20/21.

As we have previously noticed, because of the disorganized filing of documents (such as training plans and schedules) that took place during the preliminary investigations, it is not possible today to date precisely the above-mentioned training plan (document 244, page 568). Nonetheless, all the dated documents pertaining to FURLAN enclosed in the attached file 244 date back to the years 1996/1998. All of FURLAN's results of doping tests contained in the same file 244 date back to the same period of time.

It could be deduced, then, that also the Training plan quoted above (page 568) dates back to the same years.

GOTTI declared he was under the supervision of Dr. FERRARI from 1996 to 2000⁶².

He later declared that the training plan filed as page 568 does not concern him⁶³, even though this training plan was found among the documents seized from DR. FERRARI by NAS in connection with Ivan GOTTI's case. The witness statement appears therefore more as an obvious attempt to avoid possible accusations of doping than a thorough consideration of the objective data presented in court.

FERRARI's defense will object that in at least another recorded instance (training plan enclosed as 226, page 143), there is clear evidence of filing errors, as the investigators or prosecutors who filed the documents attributed to BERTOLINI a schedule that did not belong to him. The schedule makes clear references to an athlete who weighs Kg.81, whereas BERTOLINI's weight was clearly below Kg. 81 at the time. BERTOLINI's weight was verified during his hearing and it also appears well below Kg. 81 in some of his training plans dating back to the same period of time⁶⁴.

For this very reason, i.e., that among hundreds of documents filed this one only appears to be attributed to the wrong athlete, it is reasonable to believe that the enclosed training plan 229, page 227 really belongs to GOTTI, and it is completely reliable. Unfortunately, many documents were not filed in the appropriate chronological order within each athlete's folder, and were therefore produced in court in an untimely manner.

GOTTI collaboration with Dr. FERRARI began in 1996. Therefore, it can be assumed

⁶² See GOTTI's statement, in the hearing records dated 10/16/2002, p.2.

⁶³ See GOTTI's statement, in the hearing records dated 10/16/2002, p.15/16

⁶⁴ See BERTOLINI's statement, in the hearing records dated 11/12/2002, p.42 and enclosed training plan 226 (back of page130) in which his weight more realistically appears to be Kg. 67 .

passed since these events took place; and that in the course of the years these procedures underwent many changes. These circumstances would make it very hard for anybody at the present time to defend himself from the accusations of prescribing the above-mentioned illegal drugs.

Regarding these illegal drugs, we must conclude that it cannot be proved that Dr. FERRARI illegally prescribed them.

18. Beside what has been just said about illegal substances, the evidence presented against Dr. FERRARI so far as related to sport fraud is already quite strong.

More evidence will be introduced, as the statements of CONVALLE and especially COBALCHINI will be discussed.

Fabrizio CONVALLE is a cyclist who contacted FERRARI, when he became a professional athlete at the end of the 1997 season. He started to train under FERRARI's supervision during the following season, 1992.

Even though the events described by CONVALLE dated back to 1992 (i.e., if compared to the 1996/98 events described so far, they took place in a previous period of time), they nonetheless appear very interesting.

CONVALLE reports that in 1992 Dr. FERRARI gave him several vials (or better said, small bottles; the witness later on during his deposition described the vials as small glass containers sealed by lids⁶⁷). Dr. FERRARI never told him exactly what the vials (or small bottles) contained. The vials (or small bottles) were to be kept in the fridge, adds CONVALLE; their content was to be used in the form of subcutaneous injections.

According to the training plans prepared by Dr. FERRARI⁶⁸, the injections were taken every practice day marked with the infamous asterisk⁶⁹.

Two facts are obviously very interesting: first, that FERRARI had CONVALLE use some drugs without explaining to him what he was using; second, that CONVALLE was

⁶⁷ The witness appears to be a little confused about the difference between vial and small bottle (see his statements in the hearing records dated 2/12/2002, p.150)

⁶⁸ During the hearing, some training plans belonging to CONVALLE were shown in court by the D.A. (enclosed as evidence in the records dated 2/12/2002). More training plans were shown by CONVALLE himself during his deposition at the hearing on 4/9/2002 (enclosed in the records). All these sheets are clearly marked by several asterisks.

⁶⁹ See CONVALLE's statement dated 2/12/2002, p.136 and following; 4/9/2002, p.2 and following.

that the above-mentioned training plan, even though not dated, cannot date back to earlier than 1996, and by them ICU and IOC had already unconditionally banned sinurrene⁶⁵

17. To conclude the examination of the training plans, and simply to wrap up the matter, it must be added that the training plans of a few cyclists include the prescriptions of illegal substances.

We will deal with this issue in a very concise manner, as it is important to add that there is no evidence that the athletes actually took these drugs or used them in violation of sport regulations.

Among other drugs, prescriptions were found for clenyl and ventolin (prescribed to ROMINGER and BERTOLINI); decadron (to GOTTI); xilocaine (to Bernard OLIVIER). Moreover, these drugs can be used daily in certain situations, according to the ICU and OIC regulations, provided that the anti-doping commission is informed, and if under medical supervision. For instance, clenyl and ventolin are rather common remedies, which can be prescribed as spray or powder to cyclists to treat asthma or allergic rhinitis. Decadron can be prescribed to athletes as an anti-inflammatory, even though its active ingredient is a synthetic steroidal compound. It can be prescribed on the condition that it is locally injected. Xilocaine is an anaesthetic allowed when used locally through applications of ointment or spray or through injections⁶⁶.

Dr. FERRARI defended himself by claiming that he only prescribed the above-mentioned drugs if required by medical circumstances, and that his prescriptions were fully justified by the athletes' medical conditions.

BERTOLINI confirms that he was suffering from asthma and that he took clenyl and ventolin only to treat it.

The documents produced by Dr.FERRARI's attorneys do not fully justify the above-mentioned prescriptions, as they don't completely explain the medical need for such drugs or prove that the appropriate and mandatory procedure to inform the anti-doping agencies was correctly followed. Nonetheless, it must be said that several years have

⁶⁵ see paragraph 21.

⁶⁶ For more complete information regarding these drugs, their medical use and the conditions under which their use is allowed by athletic regulations, please see Dr. FAINA's report.

to inject himself the content of the vials specifically on the days marked with an asterisk on his training plan sheets.

FERRARI defended himself claiming that the asterisks marked on the training plan sheets had nothing to do with the vials described by the athlete. The asterisks, he continued, simply marked the days when the legal supplement VIGO PLUS was to be taken⁷⁰.

With respect to the vials, the defendant remembers giving about ten of to CONVALLE, not labeled. He explained they only contained a homeopathic remedy, to be used to strengthen the athlete's immune system. FERRARI himself had taken the labels off the vials and had given them to CONVALLE without explaining what they contained, as CONVALLE did not believe in homeopathic treatments⁷¹.

With respect to the asterisks and their meaning, we go back to an already discussed issue (see above, paragraph 6): in the 3rd page of the training plans shown by the D.A. during the 2/12/2002 hearing (the documents were legible even though in quite a difficult way, seen their awful quality) the asterisks are marked as: "*2-3 doses of VIGO PLUS"; in the 5th page, the note reads "VIGO PLUS 1-3 doses after practice*".

In FERRARI's opinion, such annotations meant that after the training sessions marked with an asterisk CONVALLE was to take the doses of VIGO PLUS as prescribed.

According to CONVALLE, the asterisk meant that he was to inject himself with the mysterious or, to use a simpler term, unknown liquid contained in the vials. If beside the asterisk the plan also listed other supplements such as VIGO PLUS (as in page 3 and 5 mentioned above), he was supposed to take those supplements as well, after the injection⁷².

In regard to the asterisks, it appears important to add that upon examination of the training plans handed over by CONVALLE during the 04/09/2002 hearing (see records) it was noticed that in spite of the presence of the asterisks, there isn't any annotation at the beginning or at the end of the training plans which might explain their meaning.

⁷⁰ See FERRARI's cross-examination, in the hearing records dated 4/16/2003, p.116/17.

⁷¹ See FERRARI's cross-examination, in the hearing records dated 4/16/2003, p.119/120

⁷² See CONVALLE's statement, in the hearing records dated 2/12/2003, p.151/52

Incidentally, such an absence seems to be in accordance with CONVALLE's statement, according to which the asterisks referred to something well known to the athlete (the injection of the vial liquid content) which did not require any further explanation.

If FERRARI's explanation were true (i.e., the asterisk was only a reminder to the athlete to take the substances listed on his training plan on the days marked with it – amino acids, vitamins, supplements, or other legal drugs) it is difficult to understand why no explanation appears anywhere in the training plans mentioned above as to what the athlete was supposed to take the days only marked with an asterisk.

It is also very meaningful that, beside SIMEONI, another athlete who trained at one time under Dr. FERRARI's supervision (an ex-cyclist now far removed from the cycling world⁷³) denies the meaning given by Dr. FERRARI to the asterisks, reading them in a completely different manner.

In regard to the unlabeled vials and their content, FERRARI's explanation appears to be quite weak and not very convincing.

* * * * *

CONVALLE stated that he never knew what the unlabeled vials prescribed by FERRARI contained. He knew when he was supposed to take them, i.e., when an asterisk marked a training session. His statement may not seem very effective to prove the wrong-doing of Dr. FERRARI. In the opinion of the under-signed, the deposition of witness COBALCHINI appears to be more meaningful and effective.

Carlo COBALCHINI is a former cyclist, by now far removed from the cycling world. He was successfully racing as an amateur at the end of the year 1991. Among other achievements, he had won a military world cup.

At the end of 1991, his athletic manager Fortunato CESTARO advised him to contact Dr. FERRARI. COBALCHINI met two or three times with the defendant in his ambulatory in Ferrara.

⁷³ This statement does not apply to many other witnesses who, while being former cyclists, keep tight connections to the cycling world: CHIAPPUCCI, for instance, as he was cross-examined during the 2/11/2003 hearing, had stopped racing but had just accepted the position of Advisor with the Professional Cyclist Association (see hearing record dated 2/11/2003); ZAINA, who also stopped racing in 2000, is an agent for young cyclists (see hearing records dated 5/22/2004, p.40)

COBALCHINI reports that during their meetings, FERRARI talked to him about the possibility of having a plan prepared for him which included the intake of particular substances. COBALCHINI says that the proposal was done without adding many details and in very generic terms, but was nonetheless clear enough to avoid misunderstandings or wrong interpretations. A sentence that COBALCHINI remembers very well, and that he heard many times from the doctor, was: "Remember, COBALCHINI, that unless your name is MERCKS [the doctor was of course referring to Eddy MERCKS, unanimously considered as one of the best cyclists of all times, father of Axel MERCKS] today without doping you won't get anywhere".⁷⁴

COBALCHINI adds that he rejected the offer, and that he simply asked the doctor to prepare a diet and athletic plan for him, as FERRARI had told him that he needed to lose some weight. The relationship between the two of them did not last very long, also because the following season (1992) was quite disappointing for the athlete. In COBALCHINI's opinion, his performance was greatly compromised by the severe weight loss caused by the diet plan Dr. FERRARI had prepared for him.

Following the intervention of the D.A., who reminded him of statements he had made in 1997, that is, about 6 years earlier, the witness also remembered other conversations between himself and Dr. FERRARI. The content of these exchanges was not as clearly remembered, but COBALCHINI stated that FERRARI had talked to him about EPO, among other substances. EPO was at the time the "cure" every cyclist was talking about⁷⁵.

The course of COBALCHINI's statement is also extremely meaningful. He declares that the following year he turned to the Ferrara's *Centro Studi*⁷⁶, and contacted Dr. MAZZONI, one of the doctors working there. Dr. MAZZONI knew Dr. FERRARI very well as FERRARI had previously worked with the *Centro Studi*⁷⁷. When Dr. MAZZONI found out that COBALCHINI had trained under the supervision of FERRARI, "He asked

⁷⁴ See COBALCHINI's statement, hearing records dated 4/15/2004, p.2/4 and 22

⁷⁵ See COBALCHINI's statement, hearing records dated 4/15/2004, p.5 and 6

⁷⁶ Centro Studi is the well known Athletic Biomedical Facility of the University of Ferrara, directed by Prof. CONCONI.

⁷⁷ As related by MAZZONI (hearing records dated 4/15/2003, p.43) and FERRARI himself during his cross-examination (hearing records dated 4/16/2003, p.58)

me” reports the witness, “if I had taken GH or any other growth hormones or similar drugs”⁷⁸. Dr. MAZZONI was very surprised when the cyclist told him he had not.

FERRARI’s defense attorneys tried in every possible way to discredit COBALCHINI’s credibility.

The defense attorneys argued that COBALCHINI may be seeking revenge against Dr. FERRARI, whom he holds responsible for a diet plan that in his opinion destroyed his career. They added that in their opinion the witness’ credibility was irreparably undermined when, a few years later, he started using EPO by injections of Eprex. They also underlined the fact that COBALCHINI’s statement regarding his conversation with MAZZONI was disproved by MAZZONI himself. They tried to suspiciously link COBALCHINI to Alessandro DONATI, who could have used the athlete to accuse an innocent DR. FERRARI. Alessandro DONATI was one of CONI’s managers and sport instructors, as well as a member of a commission created by CONI to study and prevent doping practice in sports. DONATI had fiercely argued for many years with CONCONI, another member of the above-mention commission. DONATI supposedly did not like FERRARI, as he had been one of CONCONI’s students.

The undersigned now judges as very poor the arguments used by FERRARI’s defense attorneys to undermine the credibility of COBALCHINI.

It is true, COBALCHINI admits, that years later, in 1996, he took two vials of Epex (EPO), under the supervision of his sport doctor of the time (Enrico LAZZARI). How this frank admission undermines his credibility? Actually, having experienced the effects of EPO as a user, if his intentions were to defame an innocent Dr. FERRARI, he could have done it in a much more serious way: he could have accused him of prescribing and injecting him with EPO. Instead, COBALCHINI only declared that Dr. FERRARI talked to him about the possibility of using the enhancing drug as part of his training program.

We also need to consider what is meant by MAZZONI’s refutation. We need to clarify what kind of witness MAZZONI really is and to what exactly amounted his refutation.

MAZZONI was heard as a witness (see ex article 197 bis, Code of Civil Procedure), as he had previously been investigated by the Ferrara’s District Attorney’s Office in connection with similar charges. He was found not guilty. With FERRARI, he was one of the most

⁷⁸ See COBALCHINI’s statement ,hearing records dated 4/15/2004, p.7 and 8

important staff members at the already mentioned *Centro Studi di Ferrara*, directed by Prof. CONCONI. He is obviously on very good terms with Dr. FERRARI.

Now that we establish a few objective characteristics of the witness, let's look at his statement. He limited himself to a few observations, concluding that he could not exclude he made a "functional evaluation" of COBALCHINI. When asked by FERRARI's defense attorneys, he denied having offered to him illegal substances. But COBALCHINI never said he offered him illegal substances. What he had said was that, once MAZZONI had learned that the previous year COBALCHINI had trained under Dr. FERRARI's supervision, he appeared very surprised to find out that during that training period the athlete had never used GH or any other growth hormone.

As far as the link between DONATI and COBALCHINI and the theory that COBALCHINI could be an instrument in DONATI's hands, there is no evidence to prove it. All we have is one meeting between the two of them in a restaurant in Bassano del Grappa, where COBALCHINI worked when he left the cycling industry. COBALCHINI explained that he had found out that DONATI was at the restaurant. As DONATI was very well known in the cycling world because of his battles against the use of doping substances, COBALCHINI decided to go to the restaurant to talk to DONATI about it, in general, "as anybody who has some experience in that world would talk about it"⁷⁹.

In the undersigned opinion, it is really hard to argue, on the sole evidence of this meeting, that COBALCHINI and DONATI planned an attack against FERRARI. Their meeting is better and more simply explained by COBALCHINI. Besides, as we have previously said, if COBALCHINI really wanted to defame the defendant, he could have easily described his relationship with FERRARI in far more damaging and compromising terms. Moving on to DONATI, who the defense seems to view as a *deus ex machina* in a proven conspiracy against FERRARI, we need to underline that his effectiveness as a witness in this hearing was very poor. Are these the main indications of an evil plot fabricated by COBALCHINI and DONATI with the intent of providing crafty and false evidence against FERRARI? Positively not.

⁷⁹ See COBALCHINI's statement, hearing records dated 4/15/2003, 34/36

COBALCHINI is undoubtedly a reliable witness. He is giving us circumstantial evidence (FERRARI, in COBALCHINI's case, did not prescribe doping substances. He only suggested their use; MAZZONI only appeared to be very surprised to find out that COBALCHINI had never used GH or any other growth hormones during the training period under Dr. FERRARI's supervision). It is very specific and serious circumstantial evidence, and of great value. It positively shows that at that time (in COBALCHINI's case, 1992) Dr. FERRARI advised the cyclists who asked for his professional opinion to take doping substances. It also shows that his actions were very well known in the athletic and medical circles in Ferrara, where FERRARI had belonged and with which he kept in touch. Or, at least, that all this was very well known to his colleague MAZZONI.

20. All the evidence gathered so far (both circumstantial and not) could already be enough to prove FERRARI guilty as charged of sport fraud.

We shall add two more pieces of evidence.

These are the statements made to the judicial police by Axel MERCKX and Silvano BARCO (the latter is a cross-country skier).

Such statements, as per a request made by the D.A., have been acquired and read according to article 512 bis (Code of Criminal Procedure) during the hearings dated 11/12/2002 and 5/14/2003 (see attachments).

The witnesses Axel MERCKX and BARCO⁸⁰ are domiciled abroad (respectively, in the Principality of Monaco and Finland) and did not appear in court even though properly summoned.

In the undersigned's opinion, all conditions have been satisfied in order to proceed with the acquisition and reading of the above-mentioned statements (article 512 bis, Code of Criminal Procedure).

Specifically:

- it has been verified that Axel MERCKX and Silvano BARCO are legally domiciled abroad

⁸⁰ Axel MERCKX and BARCO were listed as witnesses requested by the D.A.. The request was approved for both of them. MERCKX was listed in the witness list pertaining the main trial (i.e., N. 2997/97 RGNR - 2083/01RG Trial); BARCO was included in the D.A.'s witness list pertaining the original criminal procedure (N. 7538/02 RGNR-2448/02) which was later included in the main list

- even though they were summoned, they did not appear in court
- even the last condition of article 512 bis, Code of Criminal Procedure, was fulfilled (“keeping all other evidence into consideration”). By the time the actual statements made by MERCKX and Silvano BARCO were read, this court had already acquired profuse evidence
- it was impossible to discuss their statements with the witnesses during the trial

The undersigned understands very well the complexity of this last requisite. According to a strict and literal interpretation of article 512 bis, Code of Criminal Procedure, it is necessary to prove that all means were tried to get witnesses domiciled abroad to appear in court. This includes an international formal request, when such an international assistance agreement exists between Italy and the foreign country where the witness is legally domiciled.

In my opinion, it is instead preferable to read this last condition as an option left to the judge, if all other requirements are met. The judge is to determine the difficulties involved in the admission of evidence, apart from the abstract possibility of an international formal request.

It is also important to notice that, technically, the evidence gathered by the foreign country judicial police cannot be examined in this trial (where the last requisite of article 512 bis, Code of Criminal Procedure is the “absolute impossibility of participation at the trial of the witnesses”). The foreign authority could, at its own discretion, not allow the presence of the requesting country and the parties involved at the admission of evidence; by doing so, it would exclude any debate or cross-examination of the parties. The debate itself would anyway be seriously compromised by article 4 of the Strasbourg Convention, Judicial Assistance in Criminal Matters. Article 4, in fact, states that the requesting country can only allow the involved parties and its representatives to assist but not to intervene during the execution of the request.

Whatever the correct interpretation of this last requisite may be, it shall be emphasized that Axel MERCKX is domiciled in the Principality of Monaco, and that apparently this country does not comply with the European Convention of Strasbourg’s Judicial Assistance in Criminal Matters. The only reciprocal agreements between Italy and the Principality of Monaco appears to be the Convention for the extradition of criminals

(bilateral agreement signed in Florence on May 19, 1866, a very long time ago); and the European Convention on recycling, research, kidnapping and confiscation, signed in Strasbourg in 1990. None of these legal instruments looked useful in carrying out a formal international request aiming at the examination of a witness, more so in a case of sport fraud, offense unknown to the Principality's judicial system. As a consequence, only behaviors of "international courtesy" could have led to the acceptance of our request to examine the witness in the Principality of Monaco.

In addition to these preliminary remarks regarding the possible use in this court of Axel MERCKX and BARCO's reports of evidence (reports filed by the judiciary police and containing some concise information), we must stress that Axel MERCKX stated that he trained under Dr. FERRARI's supervision from 1994 to 1998; he also reported the FERRARI, in order to improve his physical recovery time, suggested he took a supplement called Understor, available in Belgium and to MERCKX known as banned by anti-doping regulations.

It is true that the expert Dr. FAINA (appointed by this judge) explained in his report that a product called Understor does not exist in the official pharmacopoeia, but we want to underline here is that even in the memory of Axel MERCKX, in the years between 1994 and 1998, FERRARI suggested the use of a substance banned by anti-doping regulations. Silvano BARCO, after reporting about procedures of blood self-transfusion he used until 1988 (not linked to FERRARI in any way, but linked to other doctors working at the *Centro Studi dell'Universita` di Ferrara*), added that in the Fall of 1995 he became very curious about EPO, which was becoming more and more popular and had by then ousted the practice of self-transfusion. BARCO said and that he contacted Dr. FERRARI to ask him to explain how EPO worked (he had previously met FERRARI, when the doctor was still working with Prof. CONCONI's team). BARCO stated that "on the phone, FERRARI told me (...) about the advantages of EPO and explained how to use it. Specifically, he said that I could take the drug at any time, as long as I also took some other drugs which helped in keeping the blood density under control. In closing, he said that for one cycle the cost was about Liras 5.000.000, while his fee to work with me for the whole season was about Liras 20.000.000-25.000.000. At that time I tried to play for

time, and I told him I had to think about it. FERRARI said that it was OK and gave me his cellular phone number”.

1995: when EPO was already completely banned, and without exceptions⁸¹. In fact EPO was one of the banned substances, enclosed in group D substances by ICU and in group E substances by IOC – peptic hormones and similar hormones-; these hormones will all be enclosed in group E in 1999 and 1993 by both organizations.

* * * * *

We now need to summarize what we have so far said; our circumstantial and direct evidence, and specifically:

- Filippo SIMEONI’s deposition (according to ex article 210, Code of Criminal Procedure), in regard to prescriptions of andriol and EPO during the 1997 season
- the prescriptions of androsten (like andriol, an anabolic substance containing testosterone) observable in the training plans of Andreas KAPPEAS, to be dated 1997/1998
- the prescriptions of DHEA (anabolic steroidal hormone) observable in the training plans belonging to KAPPEAS and to the triathlon athlete OLIVIER, as well dated 1997/1998
- the order of 500 capsules of DHEA, dated 3/13/1998, found in the residence of the pharmacist GUENDALINI, written by FERRARI on a piece of paper bearing his letterhead
- the notes regarding vials and capsules of androsten, also related to an order of such anabolic substance, which can be dated 1996/1997 at the latest, also found in the residence of the pharmacist GUENDALINI
- the reference, in the same notes, to the growth hormone IGF 1, reference that could be read as an order for the substance
- the prescriptions of sinsurrene (brand name for a corticosteroid) for Ivan GOTTI e Giorgio FURLAN, to be dated approximately between 1996 and 1998
- Fabrizio CONVALLE’s deposition
- Carlo COBALCHINI’s deposition

⁸¹ see following paragraph 21

- the witness statement of Axel MERCKX
- the witness statement of Silvano BARCO

All this evidence makes it clear that Dr. FERRARI, in the years 1996/1998 indeed prescribed doping substances to several athletes that trained under his supervision, fully aware of the fact that such substances had been banned, and not merely restricted, according to sport regulations. Specifically, keeping in mind only the proven and verified facts surfaced during this trial, he prescribed EPO and andriol to SIMEONI, androsten to KAPPEAS, DHEA to KAPPEAS and OLIVIER, sinsurrene to GOTTI and FURLAN.

In the report of the expert Prof. Marcello FAINA (President of the National Health Commission of the Italian Cycling Federation) regarding the above-mentioned substances we read that:

a) erythropoietin (according to ICU regulations) is listed among the banned substances (first class) in group D (peptic hormones and similar products), which becomes group E (peptic and mimic hormones and similar products) in the 1999 list. It also appears in the list of forbidden/wanted substances in tests performed outside competitions: it appears in the list for the first time in 1995 as class 5 and moves to class 4 in list n.2 of 2001.

According the IOC regulations, erythropoietin is among the banned substances (first class) in group F (peptic hormones and similar products) which becomes group E (peptic hormones and similar products) in the 1993 list. In the 1995 list, group E is identified as peptic, glycoprotein and similar substances. In the 1999 list, the term glycoprotein is substituted with mimic. It also appears in the list of forbidden/wanted substances in tests performed outside competitions: it appears as article 6 in the 1996 list for the first time, then as class 4 in list n. 1 of 2000, which finally became class 5 in the 2003 list⁸².

b) andriol, according to ICU regulations, is listed among banned substances (first class) in group C (anabolic substances) as an androgenic anabolic steroid (AAS). As an anabolic substance it also appears in the list of forbidden/wanted substances in tests performed outside competitions. It is listed for the first time as class 5 in the 1995 list, which became class 4, list n.2, in 2001.

⁸² see. Prof. FAINA's report, p.66

According to the IOC regulations, andriol is among the banned substances (first class) in group C (anabolic substances) as an androgenic anabolic steroid (AAS). As an anabolic substance it also appears in the list of forbidden/wanted substances in tests performed outside competitions: it appears for the first time as article 6 in the 1996 list, then as class 4 in list of 2000, which finally became class 5 in the 2003 list⁸³.

- c) Androsten (substance related to androstenedione and/or androstenediolic), according to ICU regulations, is listed among banned substances (first class) in group C (anabolic substances) as an androgenic anabolic steroid (AAS). As an anabolic substance it also appears in the list of forbidden/wanted substances in tests performed outside competitions. It is listed for the first time as class 5 in the 1995 list, which became class 4, list n.2, in 2001.

According to the IOC regulations, androsten (androstenedione and/or androstenediolic) is among the banned substances (first class) in group C (anabolic substances) as an androgenic anabolic steroid (AAS). As an anabolic substance it also appears in the list of forbidden/wanted substances in tests performed outside competitions: it appears for the first time as article 6 in the 1996 list, then as class 4 in list of 2000, which finally became class 5 in the 2003 list⁸⁴.

- d) DHEA, according to ICU regulations, is listed among banned substances (first class) in group C (anabolic substances) as an androgenic anabolic steroid (AAS). As an anabolic substance it also appears in the list of forbidden/wanted substances in tests performed outside competitions. It is listed for the first time as class 5 in the 1995 list, which became class 4, list n.2, in 2001.

According to the IOC regulations, DHEA is among the banned substances (first class) in group C (anabolic substances) as an androgenic anabolic steroid (AAS). As an anabolic substance it also appears in the list of forbidden/wanted substances in tests performed outside competitions: it appears for the first time as article 6 in

⁸³ see Prof. FAINA's report (p.49)

⁸⁴ Prof. FAINA's report (p.47 and 48)

the 1996 list, then as class 4 in list of 2000, which finally became class 5 in the 2003 list⁸⁵.

- e) sinsurrene, particularly regarding one of its active ingredient (sodic deidroepiandrosterone sulphate - DHEAS-, absolutely banned); according to ICU regulations, is listed among banned substances (first class) in group C (anabolic substances) as an androgenic anabolic steroid (AAS). As an anabolic substance it also appears in the list of forbidden/wanted substances in tests performed outside competitions. It is listed for the first time as class 5 in the 1995 list, which became class 4, list n.2, in 2001.

According the IOC regulations, sinsurrene (specifically its active ingredient sodic deidroepiandrosterone sulphate – DHEAS) is among the banned substances (first class) in group C (anabolic substances) as an androgenic anabolic steroid (AAS).

As an anabolic substance it also appears in the list of forbidden/wanted substances in tests performed outside competitions: it appears for the first time as article 6 in the 1996 list, then as class 4 in list of 2000, which finally became class 5 in the 2003 list⁸⁶.

This long and under certain aspects very boring list exemplifies the fact that all of the above-mentioned drugs (erythropoietin, andriol, androsten, DHEA and sinsurrene) were already clearly banned at the time they were prescribed by Dr. FERRARI to the athletes SIMEONI, KAPPEAS, OLIVIER, GOTTI and FURLAN.

In regard to this issue, the remark made by FERRARI's defense on several occasions, (see hearing records filed on 9/23/2004, i.e., that some of the above-mentioned drugs and active ingredients were unequivocally mentioned in IUC and IOC regulations only during the same years in which the facts we are here discussing took place), has no bearings whatsoever. The prescriptions of doping substances to the athletes, according to the evidence gathered during this trial, took place during the years 1996/1998. Based upon these facts we cannot reach the conclusion that, even if FERRARI had actually prescribed those drugs to those athletes, he would not be guilty of sport fraud, as at the time these

⁸⁵ Prof. FAINA's report p.46

⁸⁶ Prof. FAINA's report (p.41/45)

substances were prescribed, they were not unequivocally mentioned in IUC and IOC anti-doping regulations.

In fact, if it is true that androstenedione and androstenediolic (main ingredients of androsten) are unequivocally mentioned in IUC and IOC regulations respectively since 1998 and since 1999 only, and DHEA is mentioned in IUC and IOC regulations since 1997, it is also true that in the same regulations (Prof. FAINA explained this point clearly during the trial⁸⁷) for each class of banned substances (stimulants, narcotics, anabolic agents, diuretics, peptic hormones, mimic substances and similar products) a list of active ingredients is clearly listed, except for the drugs grouped as “and similar substances” in the closing of each class of banned substances. Likewise, in the same anti-doping regulations, in the paragraph dedicated to the tests performed outside competitions, the listing of banned substances are clearly specified as “not exhaustively listing of all the illegal substances”. In the IOC regulation, for instance, one can read (paragraph 4): “ATTENTION: what follows is not an exhaustive listing of illegal substances. Many substances not included in the listing are to be considered banned, as they are included in the definition <<...and similar substances>>⁸⁸”.

Therefore, there is no doubt whatsoever that (and obviously a doctor with the reputation and as well known as Dr. FERRARI could not have had any doubt) androstenedione and DHEA, even before they were explicitly mentioned in the listings of anabolic substances (specifically, the androgenic anabolic steroids), were banned, because clearly similar to the substances specifically listed.

At this point we only need to underline that, based on what has been said so far, the prescriptions of erythropoietin and andriol to SIMEONI, of androsten to KAPPEAS, of DHEA to KAPPEAS and OLIVIER, of androstenedione to GOTTI and FURLAN were obviously set towards the artificial and fraudulent improvement of the athletes' agonistic performance, in violation of anti-doping regulation. And that these actions could potentially very well alter the correct and loyal results of the competitions attended by the above-mentioned athletes.

These facts amount to the crime of sport fraud the defendant is charged with.

⁸⁷ See Prof. Marcello FAINA's statement, in the hearing record dated 4/20/2004, p.6 and following.

⁸⁸ We are here referring to the IOC regulation effective until 12/31/2002.

* * * * *

22. Dr. FERRARI, defendant, is also charged with acting in a manner illicit (and continued) to the pharmacist profession (described in headings B1. and C of the original ruling n.7538/2002 RGNR – 2448/02 RG Dibatt. later joined to the present ruling n. 2997/97 RGNR – 2083/01 RG Dibatt, at the hearing of 2/11/2003).

The accusations listed above are based on article 122 T.U. of health regulations, (RD 7/27/1934, n.1265) according to which “only pharmacists can sell doses of drugs and pharmaceutical products to the public; such sale must take place in the pharmacy under the full responsibility of the pharmacy’s proprietor”.

According to a common and constant interpretation of the law, the sale of drugs by an individual without a proper license and not listed in the appropriate Pharmacist register, amounts to a crime⁸⁹, as per article 348 of the Penal Code.

Well then, the cyclists SIMEONI, CONVALLE, BORTOLAMI and MERCKX stated that FERRARI sold drugs to them.

Specifically, SIMEONI stated that FERRARI (when he was his sport doctor, i.e., in the period between November 1996 – end of the 1997 season) sold him drugs such as vitamin supplements, amino acids and proteins; these products were all packed and sealed as they are in a pharmacy⁹⁰.

CONVALLE, talking about the vials received from FERRARI in 1992 (containing substances to take through subcutaneous injections), specified that the payments he made to Dr. FERRARI also included payments for the above-mentioned vials⁹¹.

The witness BOLTOLAMI, also reported that while working under Dr. FERRARI’s supervision (from 1995 to 2000⁹²) he received from him vitamins supplements, even though, to be truthful, the witness did not specify if these products were given to him for free or in exchange for a payment⁹³.

Axel MERCKX trained under FERRARI’s supervision from 1994 to 1998. In his report of evidence enclosed to the records of this trial (ex. Article 512 bis, Code of Criminal

⁸⁹ See *ex pluribus* Cassation Court, section 6, 1/18/1975, n.479, defendant Ricotta; Cassation Court, section 6, 6/15/1981, n. 5980, defendant Mizzon

⁹⁰ See SIMEONI’s statement, in the hearing record dated 2/12/2002, p.106 and 130

⁹¹ See CONVALLE’s statement, in the hearing record dated 2/12/2002, p.139 and 140

⁹² information supplied, even if with some uncertainties, by BORTOLAMI, in the hearing record dated 2/19/2003, p.24

⁹³ See BORTOLAMI’s statement, in the hearing record dated 2/19/2002, p.21 and 21.

Procedure), he stated that he bought pharmaceutical products from FERRARI, distinctively some supplements (inosine and pyruvate)⁹⁴.

Besides, the above-mentioned statements made by SIMEONI, CONVALLE, BORTOLAMI and MERCKX are more than confirmed by the objective fact of the great number of purchases made by FERRARI at the “Giardini Margherita” drugstore, managed by the pharmacist Massimo GUANDALINI.

This fact, i.e., that FERRARI used to buy relevant amount of pharmaceutical products from the “Giardini Margherita” drugstore, appears unequivocally:

- from what was seized from him on 8/12/1998
- from the orders of pharmaceutical products made by the defendant at the Giardini Margherita drugstore, orders found in the already mentioned red folder found at the GUENDALINI’s residence⁹⁵
- from the phone call between GUENDALINI and a not better identified “Enrico”, during which GUENDALINI, talking about FERRARI, says “he cleared out my drugstore”. We report here the passage of the phone call:

GUENDALINI: “Michele FERRARI showed up here, I’ll tell you later...”

ENRICO: “Yeah, you’ll better tell me later...”

GUENDALINI: “Well, he took everything I had, Good God!

ENRICO (sneering): “He cleared out your drugstore!”

GUENDALINI: “Yes, he cleared out my drugstore! (sneering)”⁹⁶

From all the elements shown above, it unmistakably appears that FERRARI, in quite a habitual manner, used to sell drugs to the athletes training under his supervision. At this point it is irrelevant to verify whether he did it with a lucrative purpose or if he only did it, as it also seems possible, to assist the athletes he was working with, so that he would personally provide them with the drugs they would have had otherwise to purchase for themselves in a drugstore.

⁹⁴ See Axel MERCKX’s report of evidence, containing his declarations to the NAS of Bologna and Firenze, 2/16/1999

⁹⁵ We are talking about the orders enclosed in the files of this trial, folder 2, attachments 64/67

⁹⁶ This is a phone call recorded during the wiretapping of GUENDALINI’s line during the primary investigations. This particular phone call took place on 10/30/1997, at 9:34. The whole conversation is transcribed in the report of the expert Giuseppe MAZZITELLI (Measuring Surveyor), p.14 and following

What is important, however, is the sale of pharmaceutical products, which cannot be carried out by individuals without a proper license and not listed in the appropriate Pharmacist register.

Based on everything said so far, FERRARI has to be considered guilty as charged for the offense described in headings B1. later joined to C of the original ruling n.7538/2002 RGNR – 2448/02 RG Dibatt.; it is nevertheless fair to add that, based on what said so far in regard to sport fraud, if we have definite proof of the prescription of doping substances by the defendant, we do not have explicit evidence that such substances banned by anti-doping regulations were not only prescribed but also sold to the cyclists. In other words, in regard to the charge of acting in a manner illicit to the pharmacist profession, the only definite evidence we have proves the sale to a third party of drugs which can be legally used by athletes, and not the sale of drugs and compounds with a doping action.

* * * * *

23. Under the headings B2) and B) of the original trial n. n.7538/2002 RGNR – 2448/02 RG Dibatt. (joined to the present trial at the 2/11/2003 hearing) FERRARI is charged with prescribing (continuously) pharmaceutical products in a dangerous way for the public health.

The charge, of course, is linked to the charge of sport fraud (see headings B6) and A) of the original trial n. n.7538/2002 RGNR – 2448/02 RG Dibatt., joined to the present trial 2997/97 RGNR – 2083/01 RG Dibatt.).

Dr. FERRARI is charged with prescribing general drugs to the athletes training under his supervision. The substances he prescribed were not only banned by sport regulations or at least subjected to use limitations, from which the charge of sport fraud, but also dangerous for the athletes' health.

According to what we have already said, we can considered as proved the fact that FERRARI prescribed at least to some of the athletes working under his supervision doping substances (specifically, erythropoietin, andriol, DHEA, androsten, sinsurrene). We did not prove, though, that in addition to prescribing them, he also directly and personally supplied them.

But beside this consideration, which by itself would acquit FERRARI of the responsibilities linked to the charge we are examining, we also need to point out that

since the initial formulation of the charges that we are here discussing (see headings B6) and B) of the original trial n. n.7538/2002 RGNR – 2448/02 RG Dibatt.), the prosecutor gave the impression of having neglected an important constituent element of the charge (article 445 Penal Code): the fraudulent character that must distinguish the conduct of the perpetrator of the crime.

The crime described in article 445 of the Penal Code is truly a crime which endangers public health through fraud. The typical conduct of the dispensing agent must be accompanied and characterized by another circumstance, i.e., that the author omits to tell the supplied party, completely or partially, which and what amount of drugs they are given.

Well, in our case it is at least uncertain that the cyclists to whom the so called doping substances were prescribed were not sufficiently informed about what they were taking. SIMEONI was certainly conscious of what kind of substances he was taking (erythropoietin and andriol); he showed to be a very well educated cyclist as far as banned substances are concerned. We can however assume that the same is true for KAPPEAS (DHEA and androsten), for Bernhard OLIVIER (DHEA) and for GOTTI and FURLAN (sinsurrene), as they are all professional cyclists which most likely were fully aware of what kind of drugs FERRARI was prescribing, as those drugs were all well known in cycling world.

In regard to the various racers who positively took substances subjected to use limitations following FERRARI's advice (again, OLIVIER and GOTTI as well as ROMINGER and BERTOLINI, specifically drugs and pharmaceutical products such as xilocaine, ventolin, clenyl, decadron), we must say that first of all, we do not have explicit evidence that the intake of such drugs was not necessary to treat the athletes' health conditions; second (and this second point is strictly linked to our matter), we do have explicit evidence that the athletes knew very well what kind, what quality and what quantity of those substances they were taking.

Therefore, FERRARI has to be acquitted of the crime he was charged with, as per article 445 Penal Code (see headings B2) and B) of the original trial n. n.7538/2002 RGNR – 2448/02 RG Dibatt., joined to the present trial 2997/97 RGNR – 2083/01 RG Dibatt.), lacking the necessary evidence with a degree of certainty beyond any reasonable doubt.

* * * * *

24. FERRARI was also charged (headings B3) and B4) with two violations, i.e., that in the absence of the prescribed ministerial authorization, he imported from abroad medical specialties and that he traded the foreign medicinal specialties for which no ministerial authorization had been requested.

We must say right away that, maybe because we are dealing with prescribed offences, the prosecutor completely neglected, during this trial, to furnish any evidence of such offences.

Lacking any evidence regarding these two offences, the most correct response seems to be the complete acquittal of the defendant regarding the violation listed in heading B3) and B4), as the facts have not been proven.

* * * * *

25. FERRARI was also charged (heading B5) with recurrent actions of distribution for its consumption of tablets intended for feeding purposes which are hazardous to the health of the individual who take them (article 444 of the Penal Code).

Such substances, in the prosecutor's original formulation, were animine tablets containing high dosage of caffeine (each tablet equivalent to 3.5 cups of "espresso" coffee) which FERRARI allegedly gave or at least prescribed to the cyclists, or to the cyclists training under his supervision.

The preliminary investigation has shown that the prosecutor incurred into an evident misunderstanding as far as this count of indictment is concerned.

The dispute began with a prescription with the heading "Dr. Michele FERRARI, Surgeon, Sport Medicine Specialist" who ended up in prof. DONATI's hands. Prof. DONATI is known as a fierce enemy of doping substances use in sports. He handed in the prescription to NAS.

In this prescription, we can read the annotation "Farmacia Giardini Margherita" and the actual prescription "ANIMINE 2 c. 40' before racing" (a copy of the prescription was filed with the hearing records dated 1/15/2002).

The witness DONATI reported that the above-mentioned prescription was given to him by an in-house lawyer working for CONI (Italian National Olympic Committee), Mr. Sandro CAMILLI⁹⁷, who had probably heard of DONATI's commitment in fighting doping practices.

Even if we wanted to consider here as a fact that such prescription, written on FERRARI letterhead, indeed proves that FERRARI prescribed animines to athletes before their races, it is nevertheless important to underline that the content of the above-mentioned animines is in reality quite different from the content described by the prosecutor in its original formulation.

Truly, rather than containing an amount of caffeine equal to the caffeine contained in 3.5 cups of espresso coffee, during the preliminary investigations it surfaced that the animine tablets (the subject of our dispute) must not be confused with caffeine tablets.

Actually while caffeine tablets normally have a rather high content of caffeine (equal to about 3.5 cups of espresso coffee), animines tablets contain an average of 70/75 mg of caffeine, equal to one cup of espresso coffee.

This information could have been deduced early on (even though with some difficulties) from the first of the two reports written by Dr. MORSELLI, technical consultant of the Prosecutor⁹⁸; it was anyway confirmed by MORSELLI himself during the 3/19/2002 hearing⁹⁹.

We have now clarified what these disputed animines are. This Judge believes that even if FERRARI actually prescribed one or two tablets before racing to the athletes training under his supervision, the prescription would not have implied any concrete health risk for the athlete.

⁹⁷ See DONATI Alessandro's statement, hearing record dated 1/15/2002, p. 28/30

⁹⁸ See report dated 9/28/1998 by Dr. MORSELLI, where on page 6 he describes the exhibits consisting of two packages containing respectively 5 and 6 dark red tablets and where, on page 13, he specifies that the two packages (referred to as n. 14 and 15) contain substances with a net weight of respectively 2.218 g and 2.629 g, with a presence of caffeine as main ingredient equal to 16%. Now, if we divide the net weight of the substance contained in each package by the number of tablets respectively contained in each package (5 and 6) we arrive to a net weight of each tablet of about 440 mg, that is, keeping in mind the above-mentioned percentage of 16% of active ingredient, a caffeine content equal to approximately 70 mg.

⁹⁹ See Dr. MORSELLI's statement, hearing record dated 3/19/2002, p. 126/130

Therefore, the most correct response seems to be the complete acquittal of the defendant regarding the charge detailed in heading B5), as no definite evidence of his unlawful activity has been supplied to this court.

* * * * *

26. After FERRARI's position (which was by far the most important and for sure the most complex) we should now look at the other defendants, Daniele TARSI, MAINI Orlando and ROSSIGNOLI Luciano, charged in heading D2) with exercising illicitly the druggist profession.

These three defendants, at the time of the discussed facts (1996) were respectively team doctor (TARSI), sport director (MAINI) and president (ROSSIGNOLI) of the cycling team REFIN.

The assessment of the responsibilities of the defendants only needs a few concise comments, as during this otherwise very long trial the prosecutor has dedicated them very little attention. Objectively, there was not enough information or evidence pertaining to their offences to dedicate more time to the discussion.

The original indictment was based – better said was only based- on three orders of drugs faxed form TARSI to Dr. GUENDALINI, manager of the by now well known Farmacia Giardini Margherita. The faxes are dated respectively 2/5/1996, 3/23/1996 and 5/8/1996. They are attributed to TARSI because they show his seal and also because the defendant acknowledged them as his.

The three faxes were found by NAS on 8/12/1998 during a search at GUENDALINI's residence¹⁰⁰. They are enclosed to the files of this trial as attachment to hearing records dated 2/19/2002.

The above-mentioned orders faxed by the defendant are indeed orders for big quantities of drugs, but we have to keep in mind that TARSI was the team doctor of a professional cycling team, made of numerous athletes very busy with racing in Italy and abroad, some

¹⁰⁰ See the statement made by the witness Marshal PALMAS (NAS, Bologna) in the hearing records dated 2/19/2002 and also the report of evidence regarding the search and confiscation (8/12/1998) carried out by NAS of Bologna and Florence in the drugstore and residence of GUENDALINI Massimo

These drugs therefore represented the team supply of drugs, available to the team doctor TARSI. It is not our responsibility during this trial, in spite of the ongoing dispute with the defense, to further discuss the use made of the above-mentioned pharmaceutical products. The defendants were not trading or selling these drugs and as a consequence they are not guilty as charged per article 348 of the Penal Code.

TARSI, MAINI and ROSSIGNOLI must therefore be acquitted, as no definite evidence of their unlawful activity has been supplied to this court.

Not even a very important fact as the one that follows can modify this judgment: when NAS found the three above-mentioned faxed, stapled to them were a receipt and a note clearly showing the purchase of lutrelef, saizen and epnex, all banned substances according to anti-doping sport regulations (see attached records)¹⁰².

Even if these illegal drugs were connected to TARSI (the defendant denied this claim, but we must objectively underline the fact that the note is written on a piece of paper bearing, in the top left corner, the letterhead of the REFIN team, and that TARSI was the team doctor) their use could have implied the charge for TARSI (as it did for FERRARI) of sport fraud (see article 1, 1 .401/1989). But TARSI was not charged with sport fraud by the prosecution, and therefore it appears superfluous to further discuss the matter during this trial. It would also be pointless to start an investigation, as we are dealing with documents which date back to 1996 (the receipt is dated 6/25/1996), as this hypothetical Crime would by now be prescribed.

At the most we can stress that the note and the receipt, independently from being or not connected to TARSI, show once more that during those years (because those years only are the topic of our investigation) the use of doping substances was unfortunately a very well spread and common practice in the cycling world. Truly, we should add that in spite of our attempts to stick to the facts pertaining to our discussion and to the charges we were examining, during this trial the names of many sport doctors were mentioned, and not even marginally; during those years, most of these doctors, like FERRARI, did not ask themselves too many questions about the lawfulness of some of the products they were using.

¹⁰² The receipt and the note are enclosed to the records of this trial and can be found attached to the hearing records dated 2/19/2002

times even at the same time. In fact, sometimes some of the members were racing in a stage race in Italy while other team members were attending competitions in a completely different place. In this case the organization of the team had to be split in two.

The explanation given by TARSI during his hearing appears therefore as possible: those drugs represented all the drugs needed for a complete racing season, with contemporaneous commitments in different locations. Those were not drugs bought to be traded or sold, but only and much more ordinarily, drugs the team doctor needed to have at his disposal to fulfill the requirements of the cyclists.

However, and in spite of the opinion one may have of the necessity of having such a conspicuous amount of drugs available, we must here only look at the charge against the defendants TARSI, MAINI and ROSSIGNOLI, i.e., exercising illicitly the druggist profession.

This is the charge against the three defendants. Its formulation refers (as we have already said for the same charge against FERRARI, see paragraph 22 above) to article 122 T.U. of health regulations (RD 7/27/1934, n. 1265), according to which “only pharmacists can sell doses of drugs and pharmaceutical products to the public; such sale must take place in the pharmacy under the full responsibility of the pharmacy’s proprietor”.

Therefore, only if we had proved that TARSI, MAINI and ROSSIGNOLI had traded and sold drugs, we could consider them guilty as charged.

The prosecution has not supplied this court with any final and positive evidence regarding the trade the three defendants were allegedly engaged in.

On the contrary, some of the witnesses summoned by the defense (especially witness COLAGE’, cyclist who in 1996 was a member of the REFIN team; but also witnesses CREMONTE and BROMBINI, team masseurs), declared that the drugs were needed to cover the team necessity and that they were available to all team members when needed, without having to pay for them¹⁰¹. These statements confirmed the declarations of TARSI.

¹⁰¹ See statements made by witness COLAGE’ Stefano, CREMONTE Giovanni, BROMBINI Michele in the hearing records dated 2/12/2002, respectively on p.188 and following; p.192 and following; and p.197 and following

These facts were confirmed by the defendant MAINI (REFIN sport director) to the Prosecutor during his interrogation on 9/23/1998 (enclosed to the acts of this trial as per article 154, Code of Penal Procedure; the report is attached to the hearing records dated 4/16/2003). MAINI said, during that interrogation, that among the drugs that the REFIN team bought in 1996 at the farmacia "Giardini Margherita" were substances such as Eprex (erythropoietin) and Saizen (drug containing somatotropin, a growth hormone), that is, doping substances and therefore banned by sport regulations.

* * * * *

27. We now need to determine the punishment to inflict to the defendant FERRARI, who resulted guilty as charged of the offenses of sport fraud and exercising illicitly the druggist profession. We must begin with a brief introduction: between these two offenses exists a link created by the obvious uniqueness and continuity of the criminal design which ties the two offenses together. We must therefore add a few brief comments. Dr. FERRARI undoubtedly was and still is, within the cycling world, a sport doctor unanimously considered as a very serious and highly regarded professional. Issues of doping in sports have always been very common and realistically a gap will likely always subsist between research developments (always able to substitute old drugs with new and more sophisticated ones) and the likelihood to discover them through tests. The target we are struggling to reach is to convince the athletic world in general that it is still and really possible to fight doping practices, by trying to reduce the above-mentioned gap. We need more effective, specific and random tests carried out also during practice and not only before or after races. As you might expect, we also need to punish those who break the rules with strict sanctions. But when, as in the case of Dr. FERRARI, it is one of the best sport doctors that resorts to doping substances, a doctor who graduated from a research center sponsored by INOC (Italian National Olympic Committee), then maybe we really have to fear that fraud, pure and trivial fraud, will continue to win over the actual value and potential of athletes. We must fear that the culture of "as everybody else does" will prevail; and that, behind the more or less sincere declarations of principle, the aberrant belief that it is not possible to achieve great results without pharmacological support will be the dominant belief.

It is for this same reasons that the sanctions against the defendant FERRARI, after having evaluated all the criteria as per article 133 of the Penal Code, cannot be mild. Even if we recognize the defendant's general mitigating factors (he has a clean record), the penalty will have to amount to the maximum allowed for the major offense of sport fraud (see article 1., comma 1, 1, 401/1989), that is, one year in jail and a fine of Euro 1000. This penalty must be reduced to eight months of jail time and Euro 700 as per FERRARI's general mitigating factors, and then again increased to one year and Euro 900 as per the continuity of FERRARI's criminal design.

The defendant is sentenced to pay for all the legal costs as prescribed by the law.

The defendant is also sentenced with a related and consequent punishment, and suspended from the medical profession for a period of eleven months and twenty one days, according to article 37 of the Penal Code.

As a first offender and based on a favorable prognostic judgment, the defendant can make a use of the right of conditional suspension of the main and related punishments.

* * * * *

28. As far as the seized documents are concerned, it is important to say that they must be returned to the defendants, as detailed in the following attached purview. Only exception to this arranged and general restitution regards the drugs still under sequestration, which, because of the time lap, are by now all well beyond their expiration date. These drugs must therefore be destroyed according to the detailed instructions contained in the attached purview, once this judgment is filed.

FOR THESE REASONS

Articles 533 and 535 of the Code of Penal Procedure examined and enforced,

This Judge declares

FEARRARI Michele guilty as charged of the offenses described in headings B1) and B6), which absorbed the offenses described in headings C0 and A) of the original trial 2448/02 RG Dibatt.; having recognized the link created by the obvious uniqueness and continuity of the criminal designs and the general mitigating factors

This Judge sentences him to one year in jail and a fine in the amount of Euro 900 (nine hundred), and to pay for all the legal costs.

After examining articles 31 and 37 of the Penal Code, this Judge declares Michele FERRARI suspended from the medical profession for a period of eleven months and twenty one days.

After examining articles 163 and 166 of the Penal Code, this Judge arranges that the main penalty as well as the related penalty is conditionally suspended for a period of five years.

After examining articles 530 comma 2 of the Code of Penal Procedure

This Judge discharges

FERRARI Michele from the charges described in headings B3), B4) and B5). This judge also discharges TARSI Daniele, MAINI Orlando and ROSSIGNOLI Luciano from the charges described in heading D2), as the facts have not been sustained by any evidence.

After examining article 262 the Code of Penal Procedure this judge arranges the restitution to TARSI Daniele and ROSSIGNOLI Luciano of what was respectively seized from them on 9/21/1998, as per the investigation reports filed by NAS Bologna and Florence, except for the drugs seized from TARSI (listed in the above-mentioned report as n. 1 through 5), which, because of the time lap, are by now all well beyond their expiration date. These drugs must therefore be destroyed once this judgment is filed.

This judge also arranges that the drugs seized from FERRARI and still kept under sequestration (listed in the Bologna and Florence NAS report dated 9/26/1998), which, because of the time lap, are also by now all well beyond their expiration date, are destroyed once this judgment is filed.

After examining article 207, comma 2 of the Code of Penal Procedure this judge arranges for the transmission to the local District Attorney's Office of a copy of BORTOLAMI Ginaluca's hearing records (dated 2/19/2002), completed with a transcription.

After examining article 544, comma 3 of the Code of Penal Procedure this judge fixes to ninety days the date within which to file this judgment.

Bologna, 10/1/2004

The Judge
(Dr. Maurizio Passarini)