ANNEX 3

TO THE AFFIDAVIT OF FILIPPO SIMEONI

TAS 2002/A/378 Filippo Simeoni vs. UCI and FCI

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr. Hans **Nater**, Attorney at law, Zürich, Switzerland

Arbitrators: Prof. Massimo **Coccia**, Attorney at law, Rome, Italy
Mr. Olivier **Carrard**, Attorney at law, Geneva, Switzerland

Ad hoc Clerk: Mr. Laurent **Isenegger**, Attorney at law, Geneva, Switzerland

between

Mr. Filippo Simeoni, 245 via Piagge Marine, Sezze (LT), Italy

assisted and represented by Mr. Giovanni Fontana, Attorney at law, Sezze, Italy, and Mr. Andrea Gemma, Attorney at law, Italy

- Appellant -

and

Union Cycliste Internationale ("UCI"), with its registered office in Aigle, Switzerland

assisted and represented by Mr. Philippe Verbiest, Attorney at law, Leuven, Belgium,

and

Federazione Ciclistica Italiana ("FCI"), Stadio Olympico, Curva Nord, 00194, Rome, Italy

represented by its President, Mr. Giancarlo Cerutti

- Respondents -

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I. MAIN FACTS

1. The Appellant, Mr. Filippo Simeoni, is a professional road cyclist. He is an Italian citizen and holder of a licence issued by the FCI. Mr. Simeoni is currently a member of the cycling team "Acqua & Sapone Cantina Tollo", which is based in Civitanova Marche (Italy) and whose general manager is Mr. Vincenzo Santoni.

2. In the context of an investigation conducted by the Italian criminal authorities on the use of doping substances in cycling, Mr. Filippo Simeoni was called to testify as a witness in July 1999.

3. In the course of that investigation, Mr. Filippo Simeoni admitted having used prohibited and doping substances from November 1996 until July 1997, at a time when his medical support was provided by Dr. Ferrari.

4. The facts revealed by Mr. Filippo Simeoni to the Italian investigating authorities were not disclosed by the Appellant to the cycling sports bodies until the second semester of 2001. After the FCI had learned of these facts, it rendered a decision which was allegedly published in its bulletin on 6 December 2001. According to this decision of the FCI, Mr. Filippo Simeoni was suspended for three months, i.e. from 6 December 2001 until 6 March 2002.

5. On 20 February 2002, following media reports of Mr. Filippo Simeoni's testimony admitting the use of doping substances in the past, the UCI - which had apparently not been informed and was unaware of Simeoni's confessions - wrote to the FCI asking for an investigation and for disciplinary proceedings to be started against Mr. Filippo Simeoni.

6. On 5 March 2002, the FCI replied to the UCI that it had already carried out proceedings against Mr. Filippo Simeoni, who had been suspended by the national federation on 23 November 2001 for a three-month period starting at the time of the FCI's decision. The suspension had become effective on 6 December 2001 and remained in force until 6 March 2002.

According to the UCI, the aforementioned registered letter of the FCI dated 5 March 2002 was received by the UCI in Switzerland only on 11 March 2002. The latter date is confirmed by the stamp print which appears on the letter's copy filed with CAS by the UCI as exhibit 7 to its Statement of Answer of 15 May 2002.

7. By letter to Mr. Filippo Simeoni dated 10 April 2002 (reference number 1003/02), the "Commission Antidopage" of the UCI informed the Appellant that the sanction imposed on him by the FCI on 23 November 2001 was not in line with the applicable anti-doping rules providing for a minimum suspension of 6 months and a minimum fine of CHF 2'000.--. Furthermore, the Commission gave notice of the fact that the period of inactivity had not properly been taken into account by the FCI.

In the same letter, the "Commission Antidopage" of the UCI informed Mr. Filippo Simeoni of its decision to sanction him with a fine of CHF 2'000.-- and a suspension of six months ending on 31 July 2002 (taking into account the period of inactivity according to article 94 par. 2 of UCI Anti-Doping Examination Regulations).

II. ARBITRATION PROCEEDINGS

8. On 16 April 2002, Mr. Filippo Simeoni filed a Statement of Appeal with CAS, together with 12 exhibits, against the UCI decision dated 10 April 2002, and requested the decision being stayed immediately.

9. By fax dated 19 April 2002, the UCI moved to dismiss such request for a stay.

10. On 2 May 2002, the President of the CAS Appeals Arbitration Division, ruling *in camera*, decided to dismiss the Appellant's request for a stay of the execution of the decision rendered by the UCI on 10 April 2002.

11. The UCI filed its Statement of Answer on the merits, accompanied by 9 exhibits, on 15 May 2002, requesting the CAS to dismiss Mr. Filippo Simeoni's appeal, with all costs and compensations to be charged to the Appellant.

12. By letter to CAS dated 15 May 2002, the FCI filed a short statement to the Appeal Brief. The FCI submitted that the original sanction had been imposed on Mr. Filippo Simeoni in conformity with the applicable rules taking into account the athlete's confessions and collaborating behaviour.

13. On 31 May 2002, the CAS issued an Order of Procedure, outlining the procedural guidelines for the conduct of the arbitration and confirming the composition of the Panel. The Order of Procedure was accepted by the parties.

14. On 6 June 2002, the Appellant's Counsel provided the CAS and the UCI with a copy of several documents that he intended to produce at the forthcoming hearing of the CAS. These documents included two written witness declarations from top executives of Mr. Simeoni's cycling team who stated that the Appellant, had he not been suspended, would very likely have been among the team members participating in the Tour of Qatar and the Tour of Malaysia in January / February 2002.

15. The hearing was held on 24 June 2002 at the Villa du Centenaire in Lausanne («the Hearing»). The Panel was present, assisted by the *ad hoc* clerk, Mr. Laurent Isenegger, and by Mr. Ousmane Kane, Counsel to the CAS.

The Appellant and the UCI were present and assisted by their respective Counsel(s). Appellant's Counsel referred to the fact that the UCI had not produced a power of attorney for Mr. Verbiest, who submitted, at a later stage of the proceedings, a letter of the UCI authorizing him to represent the UCI in the case in hand. The FCI was not represented at the Hearing.

16. The parties did not summon any witnesses or experts. The debates at the Hearing were recorded.

17. Following a number of questions asked by the Panel to the parties, the Appellant and the UCI made their oral submissions.

18. The Appellant's Counsels then produced an additional writ ("Notes for the record") in support of their plea, whereby the Appellant's requests for relief were slightly reworded. UCI's representative, who was given the opportunity by the Panel to read the «Notes», consented to the Appellant's rewording of his requests and to the production of the «Notes», reserving, however, his client's right to object to facts not accurately stated in the «Notes».

19. At the end of the Hearing, the parties presented their final arguments. The Panel then closed the debates and, after deliberation, rendered its decision which, on the date of the Hearing, was notified in writing to the parties. Before closing the Hearing, the President of the Panel broadly outlined the grounds for the decision.

III. THE PARTIES' RESPECTIVE REQUESTS FOR RELIEF AND BASIC POSITIONS

III.1 The Appellant

20. The Appellant requested the following:

> *«that this Sports Arbitration Tribunal revoke, set aside, render and declare null and void the UCI decision 1003/02;*
> *in the alternative, in the event the Sports Arbitration Tribunal does not grant the preceding request, that it:*
> *- include the months of November, December and January in the calculation of the number of months of disqualification in that this was foreseen by the UCI regulations applicable at such time, or, in further alternative, that the Tribunal include in the calculation the months of December and January during which Simeoni, as has been demonstrated, would have competed in cross-country cycling, which he was barred from doing or, in the further alternative, include the month of January in the disqualification period given that Simeoni would have competed in the Quatar Tour and, in any event, if our principle request is not granted, we ask that the Tribunal agree to suspend the penalty as of May 7, 2002 (the date upon which, for the FCI's purposes, half of the penalty had been clearly expiated) or, in a lesser degree, effective upon the date hereof (date to which it appears that even the opposing party is in agreement on the basis of the defence submissions presented to this Sport Arbitration Tribunal by counsel Verbiest on April 26, 2002) so as to permit the appellant to return to racing».*

21. The Appellant's written and oral submissions can be summarised as follows:

a) By rendering its decision of 10 April 2002 «automatically», the UCI violated fundamental rights of defense of the Appellant, i.e. his right to a fair trial and to cross-examination, the principle of *ne bis in idem,* the principle of separation between the investigating body and the disciplinary authority;

b) the UCI, by rendering its decision on 10 April 2002, did not act in due course and infringed upon the principle of certainty of law;

c) the rules on which the UCI based its decision of 10 April 2002 were either not in force or not applicable;

d) the UCI made an erroneous calculation of the period of inactivity applied in the Appellant's case;

e) the Appellant should be rewarded for his co-operation and spontaneous recognition of his faults and, therefore, should have been granted probation.

III.2 The UCI

22. In its Answer of 15 May 2002, Respondent UCI submitted the following Requests for Relief:

> "*To dismiss the appeal;*
>
> *To confirm that Mr. Filippo Simeoni is sanctioned as follows:*
>
> 1. *suspension from all competition from 24 November 2001 to 31st January 2002 and for six more months of effective suspension since 1st February 2002,*
> 2. *a fine of CHF 2'000.-,*
> 3. *order Mr. Simeoni and/or FCI to pay all costs, including a participation in the costs of UCI. "*

23. The UCI was principally of the opinion (a) that the six-month minimum suspension in case of a doping offence is mandatory and must be applied automatically under any circumstances whatsoever, (b) that the same reasoning applies to the minimum CHF 2'000.-- fine to be imposed, (c) that the sanction pronounced by the FCI and the subsequent ruling by the UCI were part of one single procedure in the context of which the Appellant's rights of defense were fully respected, and (d) that the period of normal inactivity provided for in the applicable UCI regulations (namely from 1st November to 31st January) must be taken into account entirely when computing the effective term of suspension of the Appellant.

During the Hearing, Counsel to the UCI indicated that the Respondent was not opposed to the Appellant being granted probation, provided that the effective suspension of Mr. Filippo Simeoni would last for no less than four months. He referred to the precedents set in the case of the Swiss Festina team members (Zuelle, Dufaux, Meier), who, without having tested positive, had also admitted, in the aftermath of the 1998 Tour de France, having used doping substances.

IV. LEGAL DISCUSSION

IV.1 Preliminary issues

IV.1.1 Jurisdiction of the CAS

24. Pursuant to Article R47 of the CAS Code of Sports-related Arbitration, "*a party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body.*"

25. The CAS has jurisdiction over this dispute on the basis of article 85 of the UCI Constitution, and of articles 115 as well as 147 and 148 (last sentences) of the UCI Antidoping Examination Regulations (AER) in force at the time when the appeal by Mr. Simeoni was filed with CAS (i.e. the AER version in force as from 1 July 2001, exhibit 3 to the UCI's Statement of Answer). In addition, the competence of CAS derives from the Order of Procedure approved by the parties (see item 13 above). It was furthermore explicitly acknowledged and agreed by the parties during the Hearing that the jurisdiction of the CAS was not in dispute.

IV.1.2 Applicable laws

26. The CAS rules apply to any sports-related dispute relating to which the parties have agreed to submit to CAS jurisdiction (R27(1) of the CAS Code of Sports-related Arbitration).

27. R58 of the CAS Code of Sports-related Arbitration provides that "*the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled.*"

28. The FCI, a national federation belonging to the UCI, and Mr. Filippo Simeoni, a professional licence-holder, have accepted the applicability of the rules enacted by the UCI for all matters relating to official competition, namely the UCI Constitution, the UCI Cycling Regulations and, in particular, its title XIV containing the UCI Antidoping Examination Regulations (articles 1.1.001, 1.1.004 and 1.1.023 of the UCI Cycling Regulations).

To the extent that the questions at issue may be resolved according to rules and regulations enacted by the UCI, the Panel holds that (i) as far as questions of procedure and competence are concerned, the rules in force at the time when the disciplinary proceedings were conducted, i.e. in 2001, should apply, and (ii) as far as the sanction itself and the calculation of the suspension period are concerned, the rules in force at

the time when the offence was committed or deemed to be committed, i.e. in 1999, should govern, unless later established rules are more favourable to the sanctioned athlete on the basis of the principle of *lex mitior* (*see* CAS cases nos. 99/A/234 and 99/A/235, *Meca-Medina & Maicen v. FINA*, unpublished; 94/128, UCI-CONI, in *Digest of CAS Awards 1986-1998*, M. REEB ed., Berne, 1998, 509; 96/149, A.C. v. FINA, *ibidem*, 260; 98/203, *F. and FCI v. UCI*, in *Digest of CAS Awards II, 1998-2000*, M. REEB ed., The Hague, 2002, 232).

29. The UCI has its registered office in Aigle, Switzerland, and the parties to these proceedings have not chosen the rules of law of a specific country. Therefore, pursuant to the aforementioned article R58 of the CAS Code of Sports-related Arbitration, all and any aspects of the dispute which would not be specifically governed by the relevant UCI rules and regulations, and particularly the question of the construction of the said rules or regulations shall be decided according to Swiss laws.

IV.2 Merits

IV.2.1 No violation of fundamental rights of defense

30. The UCI replaced the FCI decision by its own verdict without hearing neither the Appellant nor the FCI. The Appellant argued that the UCI, by doing so, violated fundamental defense rights of the Appellant. It did, however, not challenge due process as regards the FCI proceedings. The Panel formed the view that the national and supra-national steps of the decision-making process leading to the final sanction constitute one single proceeding. As a result, the Appellant's argument of the violation of his fundamental rights of defense (such as the right to a fair trial and to cross-examination, the principle of *ne bis in idem*, the principle of separation between the investigating body and the disciplinary authority) is rejected.

31. The UCI Antidoping Examination Regulations (AER) in force until 30 June 2001 ("old AER Rules") as well as the AER rules in force as from 1 July 2001 ("new AER Rules") provide that a rider who declares or admits having used doping substances or

doping methods shall be considered as having tested positive on the day of his declaration or admission.

32. The disciplinary proceedings against the Appellant were instituted by the FCI in October 2001, after the FCI had learnt of the admissions made in July 1999 by Mr. Filippo Simeoni in the context of his testimony to the Italian criminal authorities.

33. The proceedings of the FCI against the Appellant were conducted according to the provisions of the new AER rules which were in force at the time, which provide that "*the national federation of the interested party shall start disciplinary proceedings, either automatically or at the request of the UCI antidoping Commission*" (article 134 par. 5 AER). These proceedings conducted by the FCI resulted in a three-month suspension of Mr. Simeoni on 23 November 2001.

34. The subsequent UCI decision found its basis on article 147 of the new AER, which specifies explicitly that "*if the offence is found to have occurred and (...) a suspension effectively shorter than the minimum period is applied, then the minimum period of effective suspension shall apply automatically, without prejudice to the right of appeal*" (emphasis by the Panel). It is noteworthy that the previous version of the AER - to which the UCI referred to in its decision of 10 April 2002 - did use similar language (see article 94 par. 1 of the AER in force since 1 February 1999 until 30 June 2001).

35. Finally, the Appellant has had (and used) the opportunity to bring the case before CAS, where - again - all of the Appellant's fundamental rights have been duly respected. Accordingly, even if any of the Appellant's rights had been infringed upon by the national and international cycling bodies - which is not the case - the *de novo* proceedings before CAS would be deemed to have cured any such infringements, according to the principles set out by this Court in previous decisions (e.g. USA Shooting & Q. vs. International Shooting Union, CAS 94/129, Award of 23 May 1995).

IV.2.2 No violation of the principle of certainty of law

36. The Appellant further submitted that even if the UCI had a right to automatically review the previous ruling of the national federation, the UCI should have acted sooner than 10 April 2002, and that the delay in notifying Mr. Simeoni of its decision should result in the cancellation of the challenged decision, as the athlete must be protected in his *bona fide* perception.

37. According to the Appellant, the UCI was obliged to act within one month from the date when it learnt of the FCI decision of 23 November 2001. As the decision of the Antidoping Commission of the UCI was rendered on 10 April 2002, the Appellant requested that it should be declared null and void.

38. Articles 147 and 148 of the new AER corresponding to article 94 par. 1 of the old AER read as follows:

> *«Art. 147* *If the offence is found to have occurred and no suspension is imposed or a suspension effectively shorter than the minimum period is applied, then the minimum period of effective suspension shall apply automatically, without prejudice to the right of appeal. The effective minimum suspension shall be determined in accordance with Article 125 solely if the conditions of application for that Article have been respected.*
> *The UCI, or, in the case of a national event, the national federation shall notify the guilty person of this. In such a case the time limit within which any appeal must be lodged shall run from the date of this notification.*
>
> *Art. 148* *If the offence is found to have occurred and no fine or a fine below the minimum level is imposed, then the minimum fine shall be applicable automatically. The UCI, or, in the case of a national event, the national federation shall notify the guilty person of this. In such a case the time limit within which any appeal must be lodged shall run from the date of this notification.»*

Contrary to Appellant's understanding, these provisions do neither explicitly nor implicitly contain a time limit within which the UCI has to render a decision in case no suspension has been imposed or, as in the case in hand, a suspension effectively shorter than the minimum period has been applied.

For this sole reason, the UCI decision of 10 April 2002 is not to be considered as null and void due to the alleged lateness of the UCI.

39. The Panel agrees with the Appellant that athletes must be protected in their bona fide perception. This principle is contained in article 2 of the UCI Constitution, which declares the promotion of sportsmanship and fair play to be purposes of the UCI. Fair play in disciplinary proceedings means that federations should act with care, speed and efficiency. The Panel examined whether the UCI, by rendering its decision of April 2002 four months after the FCI ruling of November 2001, violated this principle.

It has not been established to the satisfaction of the Panel that the FCI decision of 23 November 2001 was actually published on 6 December 2001, nor that the UCI was or should have been aware of this or any such publication. It appears from the copy of the letter of the FCI to the UCI dated 5 March 2002 (exhibit 7 of the Answer) that this document evidencing the FCI decision of 23 November 2001 was actually received by the UCI in Switzerland as late as 11 March 2002. It follows that the challenged UCI decision of 10 April 2002 was rendered within one month from the date of receipt by the UCI of the relevant FCI communication. The Panel concludes that the UCI did not violate the principles of bona fide and fair play.

IV.2.3 Applicability of the UCI regulations and determination of the minimum sanctions

40. In the Statement of Appeal, the Appellant expressed the view that the UCI Rules, particularly the AER Rules and the sanctions specified therein, were not applicable in this case because Mr. Filippo Simeoni was not tested positive in an international race.

41. According to the Appellant, the scope of the applicability of the AER Rules (in force when Mr. Simeoni admitted having used doping substances) was explicitly limited to cases where there was a positive test during an international race or when the doping activity was precisely linked to a specific international competition (article 4 old AER Rules).

42. The Panel holds that the Appellant's interpretation of the relevant rules is not reasonably acceptable in view of the main goal of the rules, i.e. to fight doping in cycling to the fullest possible extent. Article 131 par. 1 old AER and article 134 par. 1 new AER apply to all licence holders irrespective of whether they admitted having been doped on the occasion of a specific race.

43. In a next step, the Panel has to define the minimum sanctions in force at the time of the doping offence.

44. As stated above, the Appellant first made his admissions before the Italian investigating authorities in July 1999. The AER in force at that time clearly provide that "*any rider (...) who declares or admits having made use of doping agents or methods without that use having been discovered by a drug test shall be considered positive on the day of his declaration or admission.* " (Article 131 par. 1 AER in force as from February 1999 until 30 June 2001; emphasis by the Panel).

45. Accordingly, the minimum sanctions to be imposed on the Appellant must be ascertained on the basis of the regulations in force in July 1999 (see the AER version produced by the UCI as exhibits 4 and 5a to its Statement of Appeal). The AER rules in force in 1998 cannot be taken into account.

46. According to article 94 par. 1 AER in force in July 1999, an elite rider considered to be positive for the first time incurred a minimum six-month suspension and a minimum CHF 2'000.-- fine.

47. It follows that the UCI was right in assuming that the FCI decision of 23 November 2001 providing a three-month suspension and no fine was rendered in violation of the applicable minimum sanction rules.

IV.2.4 The period of inactivity of the cyclist

48. The first sentence of article 94 par. 2 AER in force in July 1999 states that *"the suspension becomes effective from the day after the date of the decision*". This means that the suspension must start to run on 24 November 2001, as rightly stated by the UCI in the appealed decision of 10 April 2002.

49. Article 94 par. 2 AER in force in July 1999 further states that "*if the term of suspension imposed becomes effective during the period of normal inactivity, the term of suspension is extended with the period of time between the starting date of the suspension and the end of the period of normal inactivity*".

50. According to the same provision of the AER in force in July 1999, "*for a rider whose principal activity is road cycling*", the period of normal inactivity runs "*from November 1st till January 31*". The Panel holds that it is not questionable that the principal activity of the Appellant is road cycling.

51. Unlike the UCI, the Appellant considers that the months of November 2001 to January 2002 should not be considered as a period of inactivity, since he intended to participate in a number of cyclo-cross races (GP Città di Bolzano on 26 November 2001; GP Mamma e Papà Guerciotti on 9 December 2001 and GP Guarfagnana on 23 December 2001) as well as in road cycling races scheduled to be held in the southern hemisphere, particularly the Tour of Qatar as from 21 January 2002.

52. In a precedent decision, the CAS has ruled that the notion of *"period of normal inactivity*" should be construed restrictively, and should only be applied if there are no races during the period that the rider would otherwise participate in (CAS/A/338 - Nauduzs vs LCF and UCI, unpublished). Since UCI road cycling calendar lists twelve road races between November 2001 and January 2002, the UCI cannot reasonably define this period as a period of inactivity.

53. There must be sufficient evidence that the penalised rider would have actually raced during the inactivity period, in order to take it into account. Based on the evidence produced by the Appellant, the Panel is satisfied that the team "Acqua & Sapone

Cantina Tollo" took part in the Tour of Qatar as from 21 January 2002 and that Mr. Filippo Simeoni might have participated in such race as a member of his team had he not been suspended (exhibit 4 to the Statement of Appeal and witness declarations by Mr. Santoni and Mr. Petito).

54. As a result, the Panel formed the view that the period of normal inactivity of Mr. Simeoni must be deemed to have ended on 21 January 2002 (instead of 31 January 2002 as suggested by the UCI).

IV.2.5 The Appellant's behaviour and the grant of probation

55. According to article 95 par. 1 and 2 AER in force in July 1999, a probation to a sanctioned cyclist may be granted by CAS in case of an appeal. This article provides that the probation "*shall not be granted for more than half the period of suspension*".

56. At the Hearing, the UCI agreed to grant probation, provided that the effective suspension of Mr. Filippo Simeoni would not last for less than four months. The UCI referred to the precedents involving the Swiss Festina team members (Zuelle, Dufaux, Meier) who had also admitted having used doping substances in the aftermath of the 1998 Tour de France.

57. The Panel feels that the Appellant did not show a fully co-operative and spontaneous behaviour since he only admitted having used doping substances in the course of the criminal investigation and, subsequently, he did not disclose this fact immediately to the national and international cycling bodies. However, Mr. Simeoni did contribute in a relevant way to the fight against doping, insofar as he broke the «wall of silence» and contributed with his testimony to the criminal indictment and sporting penalisation of other people – in particular, one well-known physician – responsible of doping practices. The Panel concluded to follow the UCI's proposal and to grant probation for two months to the Appellant.

IV.2.6 Calculation of the suspension period

58. In view of the foregoing reasons, the Panel holds that the term of suspension of Mr. Filippo Simeoni must be calculated as set out in the following paragraph.

59. - Beginning of the suspension: on the day following the decision of suspension rendered by the FCI: 24 **November 2001**

- Minimum suspension of six months starting from 24 November 2001, thus ending on **24 May 2002**

- Period of inactivity for Mr. Simeoni: from 24 November 2001 till 20 January 2002, i.e. **58 days** to be added to the term of suspension.

- End of the term of suspension taking into account the period of inactivity of Mr. Simeoni (24 May 2002 plus 58 days): **21 July 2002**

- Addition of the period of time between 6 March 2002 and 10 April 2002 during which Mr. Filippo Simeoni was under no suspension and was free to compete (35 days): **25 August 2002**

- Reduction of two months of the term of suspension as a probation period: **25 June 2002** (end of the term of effective suspension imposed on the Appellant).

IV.3 Costs

60. The costs of appeals arbitration proceedings are governed by article R65 of the CAS Code of Sports-related Arbitration. Apart from the Court office fee of CHF 500.-- paid by the Appellant, which CAS will keep (article R65(2) of the CAS Code of Sports-related Arbitration), the proceedings are free (article R65(1) of the CAS Code of Sports-related Arbitration).

61. According to article R65(3) of the CAS Code of Sports-related Arbitration, "*the costs of the parties (...) shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties*".

62. The present case would most likely not have been brought before this Court should the FCI have properly applied the relevant rules and regulations in the first place, particularly as regards the minimum sanction to be imposed. In addition, the FCI did not file an Answer to the Appeal, nor did the FCI attend the Hearing in Lausanne.

63. The Panel therefore considers that it is fair that the Respondent FCI shall pay a contribution to the other parties towards their respective legal fees, in the amount of CHF 2'000.-- for each of them.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules that:

1. The Appeal filed by Filippo Simeoni on 16 April 2002 is partially admitted.

2. The Appellant is suspended, taking into account a period of inactivity, from 24 November 2001 until 25 June 2002. The fine of CHF 2'000.-- is confirmed.

3. This award is rendered without costs except for the Court office fee of CHF 500.-- (five hundred Swiss francs) already paid by the Appellant and which is retained by the CAS.

4. The Federazione Ciclistica Italiana is to contribute to the expenses of Filippo Simeoni in the sum of CHF 2'000.-- and to the expenses of the Union Cycliste Internationale in the sum of CHF 2'000.--.

Lausanne, 8 August 2002

THE COURT OF ARBITRATION FOR SPORT

President of the Panel

Hans **Nater**

Massimo **Coccia**
Arbitrator

Olivier **Carrard**
Arbitrator

Ad hoc Clerk

Laurent **Isenegger**