**Arbitration CAS 2005/A/969 Erwin Bakker v. Koninklijke Nederlandsche Wielren Unie (KNWU) & Union Cycliste Internationale (UCI), award of 5 May 2006**

Panel: Mr Ercus Stewart (Ireland), President; Mr Olivier Carrard (Switzerland); Mr Hendrik Kesler (The Netherlands)

*Cycling*
*Doping (r-EPO)*
*Gross negligence*
*Second doping violation*
*Determination of the applicable sanction*

1. **An athlete of international level is grossly negligent if he doesn't pay the utmost attention to any substance entering his body especially to a substance reported by his doctor to be a *"risky product"*. In such a case, he must either refuse it or ask what product it is and what it contains, especially if he was already involved in a previous positive case. The athlete who does not react to his doctor's prescription and simply accepts an injection has a behaviour contradictory to all warnings contained in the UCI Anti-Doping Rules. Therefore, the No Significant fault or No Significant Negligence notion cannot be applicable.**

2. **Pursuant to art. 269 of the UCI Anti-Doping Rules, a second anti-doping rule violation may be considered for purposes of imposing sanctions only if it is established that the athlete committed the second anti-doping rule violation after he received notice of the first one. Notice to an athlete may be accomplished by delivery of the notice to his National Federation or as provided by the applicable Anti-Doping Rules. The National Federation shall be responsible for making immediate contact with the athlete. In that case, the two anti-doping rule violations are two separate offences.**

3. **Under the applicable regulations, the sanction that is applicable for a second violation is a lifetime ineligibility. No possibility of reduction is conceivable where the athlete was significantly negligent and infringed basic principles of sport such as sportsmanship and fair play and in particular the UCI Rules governing him and his sport.**

Mr Erwin Bakker is a cyclist of elite category with a licence issued by the Dutch national federation, i.e. Koninklijke Nederlandsche Wielren Unie (KNWU).

KNWU is a member of the International Cycling Union (UCI or Union Cycliste Internationale).

UCI is the international body governing disciplines related to cycling.

In the proceedings CAS 2005/A/936, the Panel found that the athlete was guilty of an anti-doping rule violation related to the use of testosterone.

The CAS upheld the appeal filed by UCI against the decision issued by the KNWU Anti-Doping Committee that acquitted Mr Bakker from any charges related to a doping offence. Consequently Mr Bakker was disqualified from the *"Vuelta Internacional a Valladolid 2005 and any other race in which he competed between 26 March 2005 and 2 February 2006 and declared the rider ineligible for competition for two years commencing on 2 February 2006"*.

On 18 June 2005, four days after he returned from Madrid where he attended the opening of the B sample mentioned in the CAS 2005/A/936 proceedings, Mr Bakker participated in the National Marathon Championship in Holland.

On 20 June 2005, as his result in this latter competition was bad and he was feeling very tired, Mr Bakker visited his doctor.

The doctor administered to Mr Bakker an injection of what was understood as able to help him to recover but was a *"risky product"*. Nevertheless, he did not ask the doctor about the exact nature of this injection.

The same day, he left his country for Canada where he was due to participate in the Mont Sainte-Anne contest.

On 23 June 2005, he had to undergo an out of competition doping control conducted by the Canadian Centre for Ethics in Sports.

The samples were sent to the "Laboratoire de contrôle du dopage IRNS – Institut Armand Frappier" (the IRNS Laboratory) in Pointe-Claire (Quebec).

Once the competition in Mont Saint-Anne was over, while he was still in Canada, Mr Bakker got a phone call from his parents who told him that they received a few days earlier, the summons for the hearing convened by the KNWU on 29 June 2005 which led to the proceedings CAS 2005/A/936.

On 14 July 2005, the IRNS Laboratory reported to UCI that the A sample of the out of competition test collected on 23 June 2005 in Mont Sainte-Anne showed the presence of *"rEPO isoforms"*.

Mr Bakker did not request an analysis of the B sample.

On 20 July 2005, the case was referred by the UCI to the KNWU.

On 18 August 2005, a hearing was held before the KNWU Anti-Doping Committee and was attended by Mr Bakker and a former team manager, Mr R. Rispens.

On 5 September 2005, the KNWU anti-doping committee issued a decision that suspended Mr Bakker from any competition for a period of two years starting on 5 September 2005. Additionally, he was fined a total of CHF 2000.

A statement of appeal was filed before the CAS on 5 October 2005.

On 24 October 2005, the Appellant filed his appeal brief.

On 17 November 2005, UCI filed an application for participation.

KNWU filed its answer brief on 25 November 2005.

## LAW

### Competence of the CAS

1. The competence of the CAS to act as an appeal body is based on art. R47 of the Code which provides that:

   *"A party may appeal from the decision of a disciplinary tribunal of 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".*

   and on article 280 of the UCI Anti-Doping Rules.

2. Moreover, the jurisdiction of the CAS is explicitly recognised by the parties in the order of procedure they have signed and was accepted at the hearing on 2 February 2006.

3. Under art. R57 of the Code and art. 289 of the UCI Anti-Doping Rules, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts, including new facts, which had not been mentioned by the parties before the KNWU Anti-Doping Committee and all legal issues involved in the dispute.

4. As regards to the application for participation filed by the UCI and the motion to issue a sanction that is more severe than the one contained in the decision of the KNWU Anti-Doping Committee, the Panel refers to art. 289 of the UCI Anti-Doping Rules that provides:

   *"The CAS shall have full power to review the facts and the law. The CAS may increase the sanctions that were imposed on the appellant in the contested decision".*

5. The Panel is therefore able to issue a sanction that is more severe that the one issued by the KNWU Anti-Doping Committee.

**Applicable law**

6. Art. R58 of the Code provides:

*"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in absence of such choice, according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

7. Such provision was expressly mentioned in the Order of Procedure signed by the parties.

8. The *"applicable regulations"* in this case are the UCI rules.

9. The parties have not expressly or impliedly agreed on a choice of law applicable to these proceedings before the CAS. Therefore, the rules and regulations of UCI shall apply primarily, and Swiss law, as UCI is domiciled in Switzerland, shall apply subsidiarily.

**Admissibility of the appeal**

10. The appeal is admissible for the following reasons:

11. The KNWU anti-doping committee decision was sent to the parties on 5 September 2005.

12. The Appellant's statement of appeal was filed on 5 October 2005, namely within the one month time limit set out in art. 284 of the UCI Anti-Doping Rules.

13. In the case, the Appellant has met the deadline set by the UCI Rules.

14. Besides, the appeal complies with all other requirements of Art. R47 and R48 of the Code.

**Admissibility of the application for participation**

15. The UCI filed an application for participation asking to sanction Mr Bakker with lifetime ineligibility.

16. According to art. 283 of the UCI Anti-doping Rules, the UCI shall have the right to participate in the proceedings before the CAS and demand that a sanction is imposed or increased.

17. The application for participation is therefore admissible.

**Examination of the contested decision**

*A. The legal presumptions under the Anti-Doping Rules*

18. According to art. 15.1 the presence of a Prohibited Substance or its Metabolites or Markers in a Rider's bodily Specimen constitutes an anti-doping rule violation.

19. Under the UCI Anti-Doping Rules an offence has therefore been committed when it has been established that a prohibited substance was present in the athlete's body. There is thus a legal presumption that the athlete is responsible for the presence of a prohibited substance.

20. The burden of proof on UCI lies in art. 16 of the Anti-Doping Rules which provides the following:

*"The UCI and its National Federations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI or its National Federation has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt".*

21. In the case at hand, the question to be answered is whether the UCI has met its burden of proof or whether the conditions provided for at art. 15.1 and 16 are met.

22. According to article 18 of the UCI Anti-Doping Rules, WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for laboratory analysis.

23. The "Laboratoire de contrôle du dopage IRNS – Institut Armand Frappier" in Pointe-Claire (Quebec) is WADA-accredited. Therefore, it shall be presumed as having conducted sample analysis in accordance with the International Standard for laboratory analysis.

24. In order to rebut this presumption, the Appellant argues that:

- The IRNS Laboratory did not comply with the new WADA guidelines that provides for a second opinion;
- the IRNS Laboratory does not meet the criteria set out in the WADA International Standard for Laboratories and the compulsory possession of ISO 9001 and ISO 17025 regarding the test of EPO;
- The IRNS Laboratory used an antibody that is not accredited by the FDA;
- The combination of an intensive training that caused an excess of protein and the antibody used by the IRNS Laboratory provides for a false positive test whereby natural EPO is recognised as r-EPO.

*B. The WADA Guidelines*

25. On 29 September 2005, the WADA issued a document named "Clarification about the EPO detection method". This document provides:

*"Following review of this information (endogenous EPO that shift into r-EPO), WADA contacted all accredited laboratories performing EPO analysis in July 2005 to inform them of the phenomenon to ensure that they integrate the information in their interpretation. Laboratories have also been advised that a second independent opinion is now mandatory before reporting any adverse result. Therefore, there is still no risk of false positives. All accredited laboratories are in a position to distinguish between this profile and exogenous EPO".*

26. According to this document and the additional information provided by Mr Olivier Niggli from WADA, the Panel interprets the second opinion as being mandatory from 29 September 2005 onwards, once the document was officially released. As such second opinion was not compulsory in July when the analyses were carried out by the IRNS Laboratory, it reported the positive case without requesting the opinion of another laboratory.

27. This second opinion was nevertheless requested by the UCI and performed by the Laboratoire Suisse d'Analyse du Dopage on 17 November 2005 which confirmed the findings made by the IRNS Laboratory.

28. Accordingly, the Panel considers that the procedure followed by the Laboratory is valid and complies with the International Standard Laboratory Analysis.

*C. The ISO certifications*

29. Additionally, the Appellant argues that the Laboratory does not meet the criteria set out in the WADA International Standard for Laboratories and the compulsory possession of ISO 9001 and ISO 17025 regarding the test of EPO.

30. On this matter, Dr Olivier Rabin, Science Director of the WADA, confirmed in his statement that the INRS Laboratory in an ISO 17025 accredited laboratory, like all the WADA-accredited anti-doping laboratories. He added that ISO certification 17025 is a pre-requisite for WADA accreditation and that ISO 9001 is not required for WADA accreditation since this ISO certification does not specifically cover laboratory activities.

31. Additionally, he stated that the IRNS Laboratory successfully passed all the WADA proficiency tests which allow this laboratory to maintain an accreditation status with WADA and that, like any WADA accredited laboratory, the performance result of the IRNS anti-doping laboratory are re-assessed quarterly and a full review of the laboratory's results is conducted at least annually. For the IRNS Laboratory, the last re-accreditation process occurred in November 2004.

32. On this basis, the Panel is of the opinion that the IRNS Laboratory fulfilled all necessary accreditations required by the WADA International Standard for Laboratories. On this matter, the Appellant did not rebut the presumption set at art. 18 of the UCI Anti-Doping Regulations.

*D. The accreditation of the monoclonal antibody*

33. With regard to the contention that the antibody used by the IRNS Laboratory in order to carry out its test is not accredited by the FDA, the Panel refers to the statement of Dr Rabin.

34. On this matter, Dr Rabin confirmed that under the WADA International Standard for Laboratories, there is no requirement for any methods to be certified by the FDA. He added that the EPO IsoElectroFocalisation (IEF) method has been deemed fit for purpose based upon several international publications, expert meetings, and CAS awards. Concerning the monoclonal antibody used, he stated that this antibody is not used for diagnostic tests but, obviously, for an anti-doping test and, therefore, there is no need whatsoever for such an antibody to be validated under rules imposed for clinical diagnosis.

35. At the hearing, Dr Saugy, head of the Laboratoire Suisse d'Analyse du dopage in Lausanne, confirmed, in a convincing manner, that the antibody used was fit for purpose and does not need the FDA accreditation for the use made by anti-doping laboratories.

36. The Panel does not accept that the argument raised by the Appellant or that it rebuts the presumption set at art. 18 of the UCI Anti-Doping Regulations.

*E. The risk of a false positive test*

37. With regard to the argument related to the combination of intensive training and the antibody used by the Laboratory that provided a false positive test, the Appellant produces documents containing the opinion of Dr Bart Landuyt.

38 According to this document the "Non-specific binding of the monoclonal antibody AE7A5" is the following:

*"As urine normally contains only trace amounts of proteins, interference of non-specific proteins with the urinary Erythropoieitin test is almost excluded. A significant number of athletes however excrete large amounts of proteins in their urine after an intensive exercise, a phenomenon that is referred to as exercise induced protein urea. The presence of large amounts of proteins statistically increases the risk of cross reactivity with the urinary Erythropoietin test.*

*Experiments at the Department of Oncology of the University Hospital Gasthuisberg (Leuven, Belgium) have proven cross reactivity of the monoclonal antibody AE7A5 towards urinary proteins form an athlete that suffers from exercise induced protein urea. Several proteins including albumin were falsely recognized as Erythropoietin by the monoclonal antibody AE7A5. Some of these proteins have comparable isolelectric properties as recombinant Erythropoietin and can therefore produce a false positive Erythropoietin test".*

39. Dr Landuyt's document refers to experiments published by three groups of experts, i.e. Gabriel Peltre and Wolfgang Thormann, Dr Hans Heid (University of Köln, Germany) and Dr. Algamir Kahn (Proteome Systems, Australia).

40. The conclusion drawn by Dr Landuyt is the following:

*"Experiments at our and other laboratories indicate a high risk for non-specific interferences with the AE7A5 antibody. The risk for such adverse events statistically increases with the urinary protein concentration and athletes who suffer from exercise induced protein urea are therefore especially at risk for a false positive test".*

41. It is noted that the document of Dr Landuyt, experiments of cross reactivity of the antibody AE7A5 with proteins, which was furnished to the Panel, has not been published in the scientific literature. Dr Olivier Rabin contends that no comment on the experiments carried out by Dr Landuyt can be made, as nobody is provided with its results.

42. Concerning the work of Dr Kahn (A. Kahn, J. Grinyer, S.T. Truong, E.J. Breen and Nicolle H. Packer, *"New urinary drug testing method using two-dimensional gel electrophoresis"*, Clinica Chemica Acta 358-2005-119-130), Dr Rabin relies on several well established facts that can be opposed to the speculative assertions presented this publication. Those facts are the following:

*"- It must be noted that no direct comparison between the 2DE and the IEF method was performed by the authors. Therefore the conclusions of this article comparing the two methods can only be taken as mere speculations, as confirmed by the response of Dr Kahn to a handwritten message from Dr Van Eenoo in March 2005.*

- *EPO isoforms are in reality recognized by three independent antibodies: two antibodies (one capture antibody and one revealing antibody) are used for the Elisa test performed prior to the IEF method, and the antibody AE7A5 used for the IEF anti-doping method. Anti-doping laboratories observe that when an Elisa test does not detect a measurable concentration of EPO, no EPO isoform bands are observed on IEF gel. If the AE7A5 antibody was not specific for the EPO isoforms some discrepancies would inevitably be seen between the two independent analyses.*

- *The potential of antibody AE7A5 to react with other proteins than EPO isoforms (cross reactivity) is well known since the early development phase of the IEF method. However, it must be emphasized that in the experimental conditions specifically developed to perform the IEF method (pH range, double blotting), the method was scientifically demonstrated to be highly specific for EPO isoforms.*

- *HS-glycoprotein precursor, alpha-1-anti-chymotrypsin and alpha-2-thiol proteinase inhibitor, were examined under IEF analysis and were demonstrated experimentally not to cross react with EPO isoforms.*

- *The Tamm Horsfall protein has an isoelectric potential (pI) which makes this protein migrate outside the analytical range of the IEF method. In addition, the Tamm Horsfall protein is thousand of times more present than EPO in urine. If this protein were to cross react with EPO antibodies in the IEF experimental conditions, it would be impossible to analyse EPO due to the overload of Tamm Horsfall on IEF gels.*

- *If the antibody AE7A5 were to react with albumin in the experimental conditions of the IEF method, knowing that albumin is one of the most represented proteins in urine, in particular in case of proteinuria,*

*similarly to Tamm Horsfall, it would be virtually impossible to visualize any signal of EPO on the IEF gels.*

- *Several anti-doping laboratories (Barcelona, Ghent, Paris, Los Angeles) have spiked samples with the so called cross reacting proteins in the Kahn et al. publication, and did not observe any cross reactivity with the IEF method and the EPO isoforms analysis.*
- *Cross reactivity with hyperbasic proteins, as observed in the IEF method, is a known phenomenon from the anti-doping laboratories. These hyperbasic proteins, even if they do not interfere with the EPO analysis are under investigation for further characterization. Such hyperbasic proteins are not always present and would be related to alteration of kidney function (glomerular filtration) by physical effort or disease.*
- *The SDS conditions used by Kahn et al. in the 2DE method are conditions traditionally used to experimentally denature the structure of the proteins. This approach could easily expose buried domains not normally recognized by the AE7A5 antibody in the non-denaturing IEF method.*
- *The protein interferences observed by Kahn et al. based upon 2DE and SDS analysis are by all evidence not observed by the anti-doping laboratories with the IEF analytical method, as expressed in a collective letter to be submitted to the Editor of Clinical Chemica Acta.*
- *Some of the anti-doping laboratories tried the 2DE approach, and did not observe the cross reactivity described in the publication by the group of Kahn et al. pointing more to an issue of sample preparation than of method specificity. In addition, the 2DE method is not deemed of sufficient sensitivity for now to be applied as an anti-doping tool.*
- *Since the work of Kahn et al. is financially supported by WADA, WADA Science Department had the opportunity in the past to raise some serious concerns about the preliminary conclusions and current limits of this work prior to its publication in Clinical Chemica Acta. WADA strongly requested that direct comparison of the 2DE and of the IEF method be performed by an anti-doping laboratory. The Sydney ASDTL was involved in this comparison, and so far concluded that the 2DE method, even if of potential interest, does not perform as well as the IEF method, and cannot as such be validated as an anti-doping tool. WADA is expecting further conclusion from the ASDTL anti-doping laboratory before any further conclusion can be taken on the applicability of the 2DE method for anti-doping purposes".*

43. According to Dr Christine Ayotte, head of the IRNS Laboratory, the sample of the Appellant was relatively dilute, with a specific gravity of 1.010. The risk of having important amount of proteins inside the urine was therefore low. She added that the amount of proteins estimated in the A sample was 8 mg/mL (p. 3 of the documentation package) which is also very low.

44. In relation to the experiments conducted by Dr Kahn, she mentioned that the authors have used a different protocol, the preparation of the samples for their tests showing interferences. As example, she pointed out that the authors used SDS to denaturise totally the proteins they tested for potential interference or cross-reactivity. That denaturation could create interferences which are not observed under the testing procedure of the IRNS Laboratory.

45. Despite the opinion of Dr Landuyt, Dr Ayotte confirmed that the result issued by the IRNS Laboratory on the Appellant's sample is correct.

46. During his testimony, Dr Saugy confirmed in a convincing manner, in commenting the pattern issued by the IRNS Laboratory on the Appellant's urine, that the EPO detected was recombinant EPO and not natural EPO. He contested the conclusions drawn by Dr Landuyt and confirmed the one of Dr Ayotte and Dr Rabin.

47. As regards to the work of Gabriel Peltre and Wolfgang Thormann, according to Dr Rabin, at no place in this report do the two experts question the selectivity of the AE7A5 antibody in the context of the IEF method, nor do they indicate any issue with the EPO – AE7A5 antibody interaction.

48. After reviewing all comments given by the various scientists, the Panel is of the opinion that the position taken by Dr Landuyt cannot be followed. In a convincing manner, Dr Saugy (supported by Dr Rabbin and Dr Ayotte) demonstrated that the assertions made by Dr Landuyt does not cast doubts on the result found by the INRS Laboratory in the Appellant's urine.

49. The Appellant did not rebut the presumption set out in art. 18 of the UCI Anti-Doping Rules.

*F. The Appellant's statement*

50. Despite the Appellant's contentions in relation to the Laboratory and the EPO test, the Panel refers to the declarations he made before and during the hearing.

51. Before the KNWU Anti-Doping Committee, Mr Bakker admitted that his doctor gave him an injection of what he knew at the time was a *"risky product"*. Nevertheless, he did not ask his practitioner further details on the content of this injection.

52. This injection occurred on 20 June 2005, just after he felt very tired after his participation in the National Marathon Championship, the day he left for Canada, i.e. three days before he had to undergo the out of competition test that led to the positive result.

53. He confirmed his declaration during the hearing before the Panel and added that, once he got the positive result of the A sample, he asked his doctor whether the injection was EPO which was then contested by the practitioner.

54. It appears to the Panel that Mr Bakker had been grossly negligent. As an athlete of international level, he should have paid the utmost attention to any substance entering his body. Once his doctor told him that the substance was a *"risky product"*, he should have either refused it or asked what product it was and what it contained, especially as he was already involved in a positive case related to the use of testosterone.

55. He did not react to his doctor's prescription and simply accepted the injection. His behaviour is contradictory to all warnings contained in the UCI Anti-Doping Rules and in any other sport body's anti-doping set of rules:

*"Art. 15*

*1. It is each Rider's personal duty to ensure that no Prohibited Substance enters his body. Riders are responsible for any Prohibited Substance (…) found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence of knowing Use on the Rider's part be demonstrated in order to establish an anti-doping violation under article 15.1*

*Warnings:*

*2) Medical treatment is no excuse for using Prohibited Substances or Prohibited Methods, except were the rules governing Therapeutic Use Exemptions are complied with".*

56. UCI and KNWU have clearly met their burden of proof that in a proper test recombinant EPO was found in the Appellant's urine. All surroundings circumstances and the Appellant's statement confirm that the drug was taken three days before the test. Pursuant to art. 16 of the UCI Anti-Doping Rules this constitutes a violation.

**Sanction**

57. The anti-doping rule violation is now established. The question, which remains to be answered, is what sanction shall be imposed on Mr Bakker.

58. According to the award issued in proceedings CAS 2005/A/936, Mr Bakker was found guilty of an anti-doping rule violation related to the use of testosterone.

59. The Panel considered whether this doping offence and the one related to EPO can be considered as one single first violation or two distinct cases.

60. Pursuant to art. 269 of the UCI Anti-Doping Rules, a second anti-doping rule violation may be considered for purposes of imposing sanctions only if it is established that the Licence-Holder committed the second anti-doping rule violation after he received notice of the first one.

61. According to art. 308.3 of the UCI Anti-Doping Rules, notice to a Licence-Holder may be accomplished by delivery of the notice to his National Federation or as provided by these Anti-Doping Rules. The National Federation shall be responsible for making immediate contact with the Licence-Holder.

62. In the case related to the testosterone doping offence, the KNWU received notice of the positive test result when it got the result of the A sample analysis, i.e. on 15 April 2005.

63. It is not clear when this result was transmitted by the KNWU to Mr Bakker. He was clearly aware of this result before 14 June 2005, as on this day he attended the B sample opening in Madrid that he personally requested.

64. The second anti-doping rule violation occurred on 23 June 2005, when he underwent an out of competition doping control in Canada.

65. At this time, he was aware of the first anti-doping rule violation. He was aware of it when he had the injection on 20 June 2005. In all likelihood this injection was at the origin of the second anti-doping rule violation. No other explanations was put forward by Mr Bakker.

66. For this reason, the two anti-doping rule violations are two separate offences. They are not one single violation.

67. Pursuant to art. 261 of the UCI Anti-Doping Rules, lifetime ineligibility shall be imposed for the second violation.

68. The UCI Rules provides for either elimination or reduction of the period of ineligibility based on exceptional circumstances:

*According to art. 265, if the rider establishes that he bears no significant fault or negligence, then the period of ineligibility may be reduced, but the reduced period of ineligibility, as the rider faces lifetime ban, may not be less than eight years.*

69. The Panel considers that art. 265 (no significant fault or negligence) is not applicable to the Respondent for the following reasons:

- According to article 15.1, the athlete is responsible for the presence of a prohibited substance in his bodily specimen.
- Mr Bakker is aware of doping in sport. He stated he was aware of a lifetime ban for a second violation.
- He accepted that he and his doctor proceeded with an injection of what he knew at the time was a *"risky product"*.
- He accepted this injection despite the fact that he was already involved in anti-doping proceedings and had requested analysis of a B sample a few days earlier.
- In doing so, he infringed basic principles of sport such as sportsmanship and fair play but in particular the UCI Rules governing him and his sport.

70. In the case at hand, the Panel hold that the sole sanction that is applicable is lifetime ineligibility.

**The Court of Arbitration for Sport rules:**

1. The appeal filed by Mr Erwin Bakker is rejected.

2. The decision of the Koninklijke Nederlandsche Wielren Unie's Anti-Doping Commission dated 5 September 2005 is annulled.

3. Mr Erwin Bakker shall be declared ineligible for competition for lifetime.

(…).