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**FINA Doping Panel 06/14**  
**8 September 2014**

**FINA Doping Panel**

comprised of

Robert Fox	(SUI)	Chairman
Mr William Bock III	(USA)	Member
Mr Raymond Hack	(RSA)	Member

In the proceedings against

the swimmer **Sergey Makov** (“the Athlete”)  
affiliated to the Russian Swimming Federation

**I THE PARTIES**

1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing disciplines related to Aquatics. FINA has established and is carrying out, *inter alia*, a doping control program, both for in-competition as well as out-of-competition testing.

1.2. The Russian Swimming Federation (“RSF”) is a member of FINA and as such the aforementioned Federation is required to recognize and comply with FINA’s anti-doping rules which are clearly set out in the FINA Doping Code (“FINA DC”). The FINA Doping Code is directly applicable to and must be followed by *Competitors, Competitor Support*

*Personnel*, coaches, physicians, team leaders, and clubs and representatives under the jurisdiction of Russian Swimming Federation.

1.3 Mr Makov is a 29 year old male Elite International Swimmer. He is resident in Omsk, Russia, and was duly selected to compete in the Mixed 4x50m Medley Relay for the Russian Swimming Federation at the FINA Swimming World Cup held in Moscow (RUS) on 12<sup>th</sup> of October 2013.

At the time of such event Mr Makov was in fact a member of the Russian Swimming Federation and was also a member of the FINA registered testing pool (RTP) for the first quarter of 2012, but removed from the RTP in the third quarter of 2012.

## **II. NATURE OF THE CASE**

2.1 On the 12<sup>th</sup> of October 2013 on the occasion of the FINA Swimming World Cup held in Moscow (RUS) Mr Makov, a member of the Russian Swimming Federation was subjected to an in-competition doping test. Arising out of such test Mr Makov's "A" sample was duly analysed by the WADA-accredited laboratory in Russia.

2.2 Such analysis rendered an adverse analytical finding in terms of which Mr Makov was found to have tested positive for the prohibited substance "Ostarine" (Class S.1.2 Other Anabolic Agents, selective androgen receptor modulators - SARMs).

2.3 The aforesaid analytical report was duly submitted to FINA.

### III. FACTS AND PROCEEDINGS

3.1 In terms of a letter dated 7<sup>th</sup> November 2013, Mr Makov was advised in writing by the FINA Executive Director that the “A” sample analysis which had been analysed arising out of an in-competition doping control test conducted on him on the 12<sup>th</sup> October 2013 had rendered a positive analytical finding for the prohibited substance known as “Ostarine.”

3.2 On the 7<sup>th</sup> November 2013, FINA’s Executive Director addressed a letter to the Russian Swimming Federation advising them of the adverse analytical report relating to the doping control test conducted on Mr Makov on 12<sup>th</sup> October, and a copy of the relevant analyst results record was attached to such letter.

3.3 On the 19<sup>th</sup> November 2013, Mr Makov responded by addressing a letter to the Executive Director of FINA questioning the contents and findings of the analytical results report attached to FINA’s letter of 7<sup>th</sup> November, and disputed same.

He requested “to make a decision on the opening of Test “B”.

3.4 On the 5<sup>th</sup> December 2013, the FINA Executive Director addressed a letter to Mr Makov advising that the WADA-accredited laboratory in Moscow would in fact analyse the “B” sample, and requested Mr. Makov to advise FINA of the name of the person who would attend the analysis of the “B” sample as a witness on his behalf.

3.5 On the 20<sup>th</sup> December 2013 Mr Makov addressed a letter to the Executive Director of FINA formally requesting that the “B” sample be tested, and advised that Mr Ivan Usov would be attending and witnessing on his behalf.

3.6 On the 20<sup>th</sup> January 2014, the FINA Executive Director advised Mr Makov that he had been provisionally suspended by FINA in terms of FINA Rule DC 7.1.11 until such time that he appeared before the FINA Doping Panel. A copy of such letter was also addressed to the Russian Swimming Federation.

3.7 On the 20<sup>th</sup> January 2014, the FINA Executive Director addressed a letter to the Russian Swimming Federation enclosing correspondence to Mr Makov relating to the “B” sample analysis which was conducted on 15<sup>th</sup> January 2014 at the WADA-accredited laboratory in Moscow, and further advised them that the analysis confirmed the presence of the prohibited substance Ostarine in Mr Makov’s sample.

3.8 On the 21<sup>st</sup> January 2014, the FINA Executive Director addressed a letter to Mr Robert Fox, the Chairman of the FINA Doping Panel, enclosing all the relevant documents in relation to Mr Makov’s matter, and advised that the FINA Executive had called for a hearing before the FINA Doping Panel in terms of FINA Rule C 23.9.

3.9 In terms of an undated letter from Mr Makov to the Executive Director of FINA, Mr Makov requested assistance from FINA and advised that he had received no information or support from the Russian Swimming Federation, and further advised that the Federation had suspended him from competing in the Russian Championships which were held in Kazan on the 15<sup>th</sup> November 2013.

3.10 In the aforementioned letter Mr Makov again disputed the finding of the analysis of the samples, and indicated that it may have been caused due to the fact that “he may have drunk from another bottle in a state of euphoria”.

3.11 On the 29<sup>th</sup> January 2014, the FINA Executive Director responded to Mr Makov's correspondence and set out in detail how FINA deals with matters when a sample is reported positive to one of the prohibited substances.

3.12 On the 31<sup>st</sup> January 2014, (correspondence states 31 January 2013) Mr Makov was advised by the Chairman of the FINA Doping Panel Mr Robert Fox, to respond to certain queries raised in the aforementioned letter by the 15<sup>th</sup> February 2014.

3.13 In this regard Mr Makov was specifically requested to advise whether he wished to make use of his rights to a hearing alternatively whether he wished to submit a written defence to the FINA Doping Panel, and was given a deadline until the 15<sup>th</sup> February 2014.

3.14 In terms of an undated letter addressed to the Chairman of the FINA Doping Panel, Mr Makov advised that initially he would like to attend the hearing but could not come personally, and neither did he have a lawyer, and informed FINA that the Russian Swimming Federation would not provide him with any support.

He further sought clarity on various points arising out of his letter, and therein set out an explanation as to why he felt the analysis was incorrect, and presented certain comments/ arguments in this regard as to why the "B" sample analysis in his opinion should not be accepted, and should be regarded as flawed.

3.15 On 7<sup>th</sup> March 2014, Mr Fox duly convened a panel to hear the matter, the panel consisting of Mr William Bock III, Mr Raymond Hack and himself as the Chairperson.

3.16 On the 18<sup>th</sup> March 2014, Mr Fox suggested to members of the Doping Panel a tentative date for a formal hearing.

3.17 On the 20th March 2014, Mr Fox advised all parties that the hearing would be conducted on 28 April 2014 at the FINA headquarters in Lausanne.

3.18 On 21 March 2014, Mr Fox addressed a letter to both Mr Makov and the Russian Swimming Federation reaffirming that Mr Makov was unable to attend the hearing, and had waived his rights thereto, and that the FINA Doping Panel would then formally decide the matter at the hearing to be held in Lausanne on 28<sup>th</sup> April 2014.

3.19 On the 21<sup>st</sup> March 2014, Mr Makov addressed a letter to Mr Fox the Chairman of the FINA Doping Panel wherein he advised that he had no objection to the composition of the panel, and requested that his submission be taken into account that “he could not imagine life without competition and training” and that he had dedicated his “entire adult life to swimming, and wished to continue further”.

3.20 On the 28<sup>th</sup> April 2014, at the conclusion of the hearing the Chairman of the FINA Doping Panel, Mr Fox, addressed a letter to Mr Makov advising that the Panel which had examined his case had established that Mr Makov had not been provided with the full documentation relating to the “B” sample analysis in terms of the correspondence forwarded to Mr Makov by FINA on 20<sup>th</sup> January 2014, and instructed the FINA office to provide Mr Makov with the aforementioned documentation within fourteen (14) days, thus affording Mr Makov the opportunity to peruse and interrogate same in terms of his rights as contained in the FINA Rule DC 8.

3.21 On the 15<sup>th</sup> May 2014, the FINA office advised the Chairman of the FINA Doping Panel Mr Fox, in writing, that the full

documentation package in respect of sample analysis B.2846394 had been forwarded to Mr Makov.

3.22 On the 16<sup>th</sup> May 2014, a letter was addressed by the Chairman of the FINA Doping Panel, Mr Fox, to Mr Makov and “cc’d” to the Russian Swimming Federation, requesting Mr Makov to respond to the documentation package relating to the “B” sample test by no later than the 26<sup>th</sup> May 2014.

3.23 On the 25<sup>th</sup> May 2014, Mr Makov addressed a letter to the Chairman of the FINA Doping Panel Mr Fox, setting out various objections to the aforementioned documentation in which he highlighted his concerns in respect of:

- (1) the identity of the Head of the Anti-Doping Centre in Russia;
- (2) the procedure of opening the sample;
- (3) the independence of the witnesses observing the opening of the sample;
- (4) the failure of a representative of the Russian Swimming Federation to attend the opening;
- (5) the difference in the level of Ostarine in the “A” and “B” samples.

3.24 During June 2014 and on instructions from the Chairman of the FINA Doping Panel, the FINA office addressed a letter to the Chair of the FINA DCRB in regard to certain of the issues raised by Mr Makov in his letter of the 25<sup>th</sup> May 2014.

3.25 On the 3<sup>rd</sup> July 2014, the FINA office received a written response from the Chair of the FINA DCRB, and duly furnished the members of the Doping Panel with such response.

#### **IV. JURISDICTION AND APPLICABLE RULES**

4.1 The FINA Doping Panel has jurisdiction to deal with the above matter in terms of the provisions of the FINA Rules C 23.

4.2 The FINA Doping Panel has complied fully with the provisions contained in DC 8.

4.3 These rules were effective from 1<sup>st</sup> January 2009 (amended on the occasion of the FINA General Congress on 24 July 2009) and as such the members duly reviewed the arguments put forward by Mr Makov.

#### **V. MOTIONS AND CONTENTIONS**

The FINA Doping Panel dealt at length with all motions and contentions as well as arguments put forward by Mr Makov in the form of his written correspondence as set out in point III of the Proceedings above, as well as having reviewed the relevant Rules and Regulations contained in the FINA Constitution and Doping Control Rules.

#### **VI. THE FACTS**

6.1 On the 12<sup>th</sup> of October 2013, Mr Makov, whilst a member of the Russian Swimming Federation, was subjected to an in-competition doping test.

6.2 Arising out of such test, FINA was advised by the WADA-accredited laboratory in Russia in terms of an analytical report that a positive analytical finding had been returned for the substance "Ostarine" (Class S.1.2 Other Anabolic Agents, selective androgen receptor modulators).



6.3 Mr Makov had availed himself of the opportunity of having his “B” sample analysed, and had formally nominated in writing a witness to represent him at the analysis of the “B” sample (it is noted that Mr Makov’s representative was not present at the analysis of the “B” sample).

6.4 On 15<sup>th</sup> January 2014 Mr Makov’s “B” sample analysis was duly conducted at the WADA-accredited laboratory in Moscow, and such analysis rendered a positive analytical finding for the substance “Ostrine”.

6.5 Ostrine is a prohibited substance (Class S.1.2 Other Anabolic Agents, selective androgen receptor modulators).

## **VII REGULATIONS AND LAW**

The FINA Doping Control Rules are founded on the fundamental premise contained in FINA DC 2.1.1 that:

7.1 It is each competitor personal duty to ensure that no prohibited substance enters his or her body. Competitors are responsible for any prohibited substance or its metabolites or markers found to be present in their samples.

7.2 Mr Makov clearly failed in his duty to uphold or to prevent a prohibited substance from entering his body, and as such bears the fault for his positive test.

7.3 As a result thereof, Mr Makov must be sanctioned for the presence of “Ostarine” (Class S.1.2 Other Anabolic Agents, selective androgen receptor modulators) in his system.

7.4 The period for ineligibility for the presence of an anabolic agent in his sample shall be two (2) years unless the athlete can establish:

- (1) how the prohibited substance entered his system;
- (2) that he bears “no significant fault or negligence for the rule violations in terms of FINA DC 10.5.2.”

7.5 Mr Makov has failed in his motions, arguments and contentions to prove any of the grounds for reduction of sentence as set out in DC 10.

## **VIII. SANCTION**

8.1 As explained above the Panel has noted the provisions contained in DC 10. The Panel further notes that in terms of FINA’s DC 10.8 all competitive results obtained from the date of the positive sample through the commencement of any provisional suspension or ineligibility period, shall, unless fairness requires otherwise, be disqualified.

8.2 *Therefore, all competitive results of whatsoever nature of Mr Makov from the 12 October 2013, through and including the date of this decision, shall be disqualified.*

8.3 All medals, prizes and points achieved during that period shall be forfeited.

## IX. SUMMARY OF THE DECISIONS

9.1 Mr. Makov receives a two year period of ineligibility commencing on the 12<sup>th</sup> of October 2013, and ending at the conclusion of the 11<sup>th</sup> October 2015, for his first anti-doping rule violation.

9.2 All results obtained by Mr. Makov on or after the 12<sup>th</sup> October 2013 and through and including the date of this decision, are disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

9.3 All costs of this case shall be borne by the Russian Swimming Federation in accordance with the FINA DC 12.2.

9.4 Any appeal against this decision may be referred to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of this judgement (FINA Rule C 12.10.4).

Robert Fox  
Chairman

Mr William Bock III  
Member

Mr Raymond Hack  
Member

Signed on behalf of all three Panel Members



Robert Fox