



**FINA Doping Panel 10/16
8 November 2016**

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FINA Doping Panel

Comprised of

Robert Fox	(SUI)	Chairman
Peter Kerr	(AUS)	Member
Farid Ben Belkacem	(ALG)	Member

In the proceedings against

The swimmer **Vitalii Melnikov**, ("the Athlete")
affiliated to the Russian Swimming Federation

I. THE PARTIES

1.1 The **FEDERATION INTERNATIONALE de NATATION (FINA)** is the International Federation governing the sport of 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. RSF is required to recognize and comply with FINA's anti-doping rules which are set out in the FINA Doping Control Rules ("**FINA DC**"). The FINA DC is directly applicable to, and must be followed by, *Athletes, Athlete Support Personnel*, coaches, physicians, team leaders, and club and representatives under the jurisdiction of the RSF.



1.3 The Athlete is a Russian backstroke specialist born on 20 March 1990.

II. NATURE OF THE CASE

2.1 On 29 March 2016 in Moscow the Athlete provided urine and blood samples as a result of out-of-competition testing.

2.2 The Athlete's samples were received at the World Anti-Doping Agency (WADA) accredited laboratory in the German Sports University Cologne on 30 March 2016.

2.3 On 14 April 2016, the Laboratory reported to FINA that the Athlete's sample was positive for the prohibited substance Growth Hormone (Class S2 Peptide Hormones, Growth Factors, Related Substances and Mimetics).

2.4 On 21 April 2016 the Chair of the FINA Doping Control Review Board (**FINA DCRB**) Dr Andrew Pipe advised FINA:

"As Chair of the FINA DCRB I would ask that you notify this athlete of the results that have been obtained in order to prevent his participation in the competition schedule this weekend (being an Olympic qualifying tournament). It is important that a competitor with a positive laboratory analysis be provisionally removed from imminent competition while further information is being assembled...."

III. PROCEEDINGS

3.1 On 22 April 2016 Cornel Marculescu, the Executive Director of FINA ("**the Executive Director**") made the Athlete and the RSF

aware of an adverse analytical finding in relation to an out-of-competition test conducted on 29 March 2016 in Moscow, RUS, which indicated the presence of the substance Growth Hormone (Class S.2 Peptide Hormones, Growth Factors, Related Substances and Mimetics).

3.2 The Athlete was advised of his right for an analysis of the B sample and provided with the analytical report and the doping control form related to the test. The Executive Director advised the Athlete that he was provisionally suspended from 22 April 2016.

3.3 On 26 April 2016 the Athlete advised FINA that he wished to open the B sample for analysis and this was appointed for 18 May 2016 by the Executive Director by letter of 27 April 2016.

3.4 On 13 May 2016 the Athlete advised FINA that he waived his right to open the B sample and requested a hearing at the FINA Doping Panel.

3.5 On 1 June 2016 the Athlete was advised by Robert Fox, Chair of the FINA Doping Panel ("**Mr Fox**") that the Executive Director had transferred the management of the case to the FINA Doping Panel and was requested by Mr Fox to confirm his desire for a hearing no later than 6 June 2016.

3.6 No reply from the Athlete was received by Mr Fox by 6 June 2016 and accordingly the Athlete was informed on 15 June 2016 by Mr Fox that a hearing has been set down for 5 July 2016 in Lausanne and a panel appointed. The Athlete was given a deadline of 25 June 2016 to file any brief or submission as well as any evidence. The hearing date was subsequently changed to 8 July 2016 and the Athlete advised accordingly on 22 June 2016.

3.7 By email dated 29 June 2016, the Athlete waived his right to a hearing and requested FINA Doping Panel to decide on the matter.

3.8 Pursuant to DC 7.10 "*...The right to a hearing may be waived either expressly or by the Athlete's or other Person's failure to challenge an Anti-Doping Organisation's assertion that an anti-doping rule violation has occurred within the specific time period provided in the Anti-Doping Organisation's rules.*"

IV. JURISDICTION AND APPLICABLE RULES

4.1 The jurisdiction of the FINA Doping Panel arises out of the following provisions of the FINA Rules: C 22.8, 22.9 and FINA DC 8.1.

4.2 The applicable Rules in this case are the FINA Doping Control Rules in effect since 1 January 2015.

V. MOTIONS AND CONTENTIONS

The Athlete's motions and contentions.

5.1 The Athlete has made neither motion nor contention. He did not question or dispute the adverse analytical finding. Despite being provided the opportunity to give information and benefit from a defence in which he could have pleaded substantial assistance in discovering or establishing anti-doping rule violations, the Athlete did not seize the possibility.

VI. LEGAL POSITION

A. THE FACTS

The FINA Doping Panel has found that the following facts were established in this case.

6.1 Growth Hormone (Class S2 Peptide Hormones, Growth Factors, Related Substances and Mimetics) is a prohibited substance in Class S2 of the WADA Prohibited List and is therefore prohibited at all times, in and out of competition, pursuant to FINA DC 4.1.

6.2 At a prior hearing of the FINA Doping Panel 10/14 published on 13 March 2015 the Athlete was sanctioned for an adverse analytical finding of EPO, a prohibited substance in Class S2 of the WADA Prohibited List. The Athlete received a sanction of a twenty four month period of ineligibility commencing on 12 December 2013 and ending on 12 December 2015.

B. THE LAW

6.3 FINA DC 2.1.1

"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part to be demonstrated in order to establish an anti-doping violation under DC 2.1."

6.4 FINA DC 2.1.2

"Sufficient proof of an anti-doping rule violation under DC 2.1 is established by any of the following: presence of a Prohibited Substance

or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or, where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample."

6.5 FINA DC 10.2

"The period of Ineligibility imposed for a first violation of DC 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension or sanction pursuant to DC 10.4, 10.5 or 10.6:

DC 10.2.1 The period of Ineligibility shall be four years where:

DC 10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

DC 10.2.1.2 The anti-doping rule violation involves a Specified Substance and FINA or the Member Federation can establish that the anti-doping rule violation was intentional.

DC 10.2.2 If DC 10.2.1 does not apply, the period of Ineligibility shall be two years."

The Athlete has not provided any evidence in relation to No Significant Fault or negligence nor provided Substantial Assistance as required pursuant to DC 10.4, 10.5 and 10.6.

6.6 FINA DC 10.7 Multiple Violations

FINA DC 10.7.1 "For an Athlete or other person's second anti-doping rule violation, the period of ineligibility shall be the greater of:

- (a) six months;*
- (b) one-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under DC 10.6;*

(c) *two times the period of Ineligibility otherwise applicable to the second anti-doping rule, violation treated as if it were a first violation, without taking into account any reduction under DC 10.6. The period of Ineligibility may then be further reduced by application of DC 10.6."*

6.7 FINA DC 20.6.5

"For purposes of assessing the period of Ineligibility for a second violation under DC 10.7.1, where the sanction for the first violation was determined based on rules in force prior to the Effective Date, the period of Ineligibility which would have been assessed for that first violation had these Anti-Doping Rules been applicable, shall be applied."

C. THE SANCTION

6.8 In this matter taking into consideration the adverse analytical finding and no explanation provided by the Athlete regarding the conditions or circumstances to explain this in any sense as provided in DC 10.6, the FINA Doping Panel has no option but to apply the maximum sanction provided for by the rules.

6.9 The Athlete was previously suspended for the then maximum period allowable under DC 10.2 of two years such suspension ending on 12 December 2015. The penalty now provided under FINA DC 10.2 is four years unless the Athlete has established any mitigating matter contemplated by DC 10.6 which he has not through his silence and lack of any evidence. The FINA Doping Panel therefore finds that if the current matter was a first offence then the Athlete must receive a period of ineligibility of four years.

6.10 As this is now a second anti-doping rule violation DC 10.7.1(c) becomes operable which specifies a period of ineligibility of two times the period of ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation without taking into account and reduction under DC 10.6. Accordingly, and in accordance with the provisions of DC 20.6.5 the period of ineligibility to be imposed for this multiple violation is eight (8) years.

6.11 According to FINA DC 10.8 all competitive results obtained from the date of a positive sample through the commencement of any provisional suspension or ineligibility period shall, unless fairness requires otherwise be disqualified.

6.12 Therefore, all competitive results of the Athlete as of 29 March 2016 through and including the date of this decision shall be disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

VII. SUMMARY OF THE DECISION

7.1 The Athlete receives an eight (8) years period of ineligibility commencing on 22 April 2016, and ending at the conclusion of 21 April 2024, for his second anti-doping rule violation.

7.2 All results obtained by the Athlete as of 29 March 2016 and through and including the date of this decision are disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

7.3 All costs of this case shall be borne by the RSF in accordance with FINA DC 12.3.

7.4 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 12.11.4 and DC 13.7).

Robert Fox
Chairman

Peter Kerr
Member

Farid Ben Belkacem
Member

Signed on behalf of all three Panel Members

A handwritten signature in black ink, appearing to be 'R. Fox', written over a horizontal line.

Robert Fox