



ΚΟΛΥΜΒΗΤΙΚΗ
ΟΜΟΣΠΟΝΔΙΑ
ΕΛΛΑΔΑΣ

HELLENIC
SWIMMING
FEDERATION

To the FINA

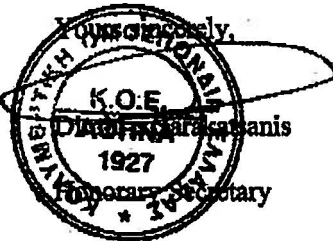
Prot. No. 4245/E
Athens 29 June 2009

RE: Refusal to Test/ Dimitrios Xynadas (GRE)

In reply to your letter dated 17 June, 2009, herewith please find the translation in English of the full wording of the decision taken by the Board of the Hellenic Swimming Federation.

We have forwarded all relevant documents for translation, (about 50 more pages) and we will forward them to you upon receipt (we estimate by 10 July 2009).

We are at your disposal for anything you may need.



Ak.

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The Board of the Hellenic Swimming Federation, after consideration of the following:

The submitted written statement of the athlete Xynadas Dimitrios of Zisis, dated 3-6-2009, the certification under oath no 18900/28-5-2009 of the notary Eordea Grammato Nikolaou Liakou, the official statement of the above mentioned swimmer's coach, Chrisafis Vaggelakakis dated 26-5-2009, the verification of his signature by the police authorities, Station of Toumba-Triandria, the medical certificates and release documents of "Ippokrateio" General Hospital of Thessaloniki, the medical certificates dated 15-4-2009 of the General Hospital of Ptolemaida "Mpodosakeio", the medical Certificate of the General Hospital of Giannitsa dated 4-4-2008, The summon of the Procurator of Court of First Instance in Kozani to the Director of the Psychiatric Department of Kozani General Hospital dated 25-1-2008, the statement of the Member of Scientific Committee of NADO, Giorgos Mavrotas, dated 4-6-2009, the Minister's Decision 19614/16-5-2005, FEK 648b, the Doping Control Form dated 15-4-2009 signed by the athlete Xynadas Dimitrios, The report of unsuccessful doping control location by NADA, have concluded the following:

The athlete Xynadas was called by NADO to undergo an out of competition doping control on 15-4-09, at 17.00 to be staged at the National Swimming pool of Thessaloniki. The athlete Xynadas both accepted the above call and went to the specified place at such date and time and signed the Doping Control protocol. While waiting at the National Pool of Thessaloniki, he was informed by phone by his eleven-years-old brother Kyniakos that his father was admitted to the General Hospital of Ptolemaida "Mpodosakeio" once more (given the fact that his father had been admitted in hospitals many times lately), in a serious medical condition (he was found unconscious on Egnatia Highway at the outskirts of Ptolemaida and was taken to the above hospital) and he was asked to go to "Mpodosakeio" Hospital of Ptolemaida the soonest possible, because of the above incident. Such was repeated by his mother soon after, calling him to go immediately at the hospital where his father was admitted. The above mentioned athlete left all his personal belongings at the pool, immediately left the swimming pool and went directly to Mpodosakeio Hospital of Ptolemaida, where his father was, facing a serious medical problem. It has to be noted that his father suffers from systemic erythematic lupus (a very serious disease) which impregnates extremely serious danger even for his life. Also, his mother faces psychological problems for a long time and has been admitted to psychological instituton for a long period. All above are concluded by the relevant medical certificates of Ippokrateio Thessalonikis and Mpodosakio Ptolemaida Hospital to what concerns his father and Giannitsa Hospital regarding his mother.

The fact that the above mentioned athlete hurried to Mpodosakeio Hospital due to the above fact, is certified by the certification under oath of the doctor of Mpodosakeio General Hospital of Ptolemaida, Mr. Ilias Sarvanis, who, according to the above certification under oath of the notary Grammato Liakou, confirms that Dimitrios Xynadas of Zisis, in the afternoon of 15-4-2009 at about 19.00, visited his father Zisis Xynadas in the above hospital, during the medical examination of his father by the said doctor. The above are certified in detail in the declaration according to Law no 1599 of the coach Chrysafis Vaggelakakis.

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As a result, the Board of the Hellenic Swimming Federation has judged that due to the above most serious reason, the athlete left the National Swimming Pool of Thessaloniki at about 17.00 hours on 15-4-2009, where he was for the aforementioned doping control and at 19.00 same day he was in Mpodosakeio Hospital of Ptolemaida, which is at a distance of appr. 2 hours by car from the National Hospital of Thessaloniki.

Furthermore, according to DC2.3, doping offence is considered "refusing or failing without compelling justification, to submit to Sample collection after notification". In the comment (note) of this clause, it is referred that "A violation of "refusing or failing to submit to Sample collection" may be based on either intentional or negligent conduct.". This means that the Rules demand for intentional behavior and the term "intentional" is used to indicate that, in order to consider it as a violation and summon the competitor, direct intention must be established.

On the next day, 16.4.2009 in the morning, the coach of the athlete Dimitrios Xynadas, Mr. Xrysaifis Vaggelakakis, contacted the person in charge of NADO, Mr. Giorgos Mavrotas, reported to him the above reasons of Dimitris Xynadas (non-submitting to doping control and asked him the same morning (i.e. just 15 hours after the unsuccessful attempt), to bring the athlete to Athens in order for him to submit to immediate doping control. Naturally this petition was not accepted and the above are confirmed in its report dated 4-6-2009 by Mr. Mavrotas himself.

As a result of the above, the Board of the Hellenic Federation decided the following:

1st. The athlete Dimitrios Xynadas when leaving the National swimming pool of Thessaloniki on 15-4-2009 at appr. 17.00, where he was called for scheduled doping control, went directly to Mpodosakeio Hospital of Ptolemaida, where his father, Zisis Xynadas, had already been admitted facing a serious health problem.

2nd. His mother and father suffer from systemic serious health problems that have created an unstable and vulnerable live in the terms of the above athlete's family.

3rd. The athlete Xynadas did not act intentionally so as to avoid the above doping control, since he took the call and went to the assigned place at the assigned date and time and he signed the protocol for the doping control as filled in by the person assigned from NADO and furthermore, within 15 hours from the missed control, he expressed his will to go at any place any time NADO would ask in order to submit to doping control.

All the above, according to the judgment of the Bureau of Hellenic Swimming Federation, do not constitute either intention or negligence of the competitor to submit to the above scheduled doping control. If it was intended, he would not have accepted the call neither would he go to the place for the doping control nor would he sign the Doping Control Protocol and of course, in such a case, the athlete would not be liable to penalty, he would simply have a non-show, in which case 3 non-shows constitute a violation to be imposed. Otherwise, such cannot be considered as negligence to the doping control, since it is clearly shown by the above that the reason of his leaving

and going to Mpodosakeio Hospital of Ptolemaida was most serious and had to do with the health of his father, the life of which was in threaten. As a result, the duty towards the above condition of his father, was stronger than his duties as an athlete to submit to doping control. As it is accepted by the legal science, in the case of conflicting duties in relevant cases, the strongest one according to common sense will prevail significantly to the less important.

After the above, the majority (one vote against) of the Board of the Hellenic Swimming Federation decided that the athlete Xynadas must not be sentenced for not submitting to this doping control scheduled for 15-4-2009 and this charge is dropped.