



Fédération Internationale
de Natation

FINA Doping Panel 1/09

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FINA Doping Panel,

comprised of

Harm Beyer	(GER)	Chairman
Peter Kerr	(AUS)	Member
Toshiro Ueyanagi	(JPN)	Member

In the proceedings against

the swimmer Alexander Morgunov
affiliated to the
All Russian Swimming Federation

it was decided on 18 June 2009:

The athlete is found to have committed an anti-doping rule violation under FINA Rules DC 2.1 and DC 10.2.

He shall be ineligible for two (2) years, commencing on 5 June 2009.

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

This judgement shall become effective immediately.

I THE PARTIES INVOLVED

01. The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing disciplines related to swimming. FINA has established and is carrying out, *inter alia*, a doping control program, both for in-competition as well as out-of-competition.
02. The WORLD ANTI DOPING AGENCY (WADA) is the international independent organization established in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms. WADA has established a uniform set of anti-doping rules, the World Anti-Doping Code (Code). FINA is one of the signatories of the WADA Code.
03. WADA and FINA have a Testing Program according to which WADA is conducting out-of-competition tests on athletes affiliated to FINA. And whenever an out-of- competition testing, carried out by WADA, results in an adverse analytical finding, the case in question shall be managed with the Anti Doping Rules of FINA.
04. Mr. Alexander Morgunov is a 21 years old male Russian Swimmer. He is competing nationally and internationally, especially in 100m freestyle and 100m butterfly competitions. He is an International Swimming Athlete included in FINA's Testing Pool.

II FACTS and PROCEEDINGS

05. On 22 March 2009 Mr. Morgunov had to undergo an out-of competition doping control test in Callella (ESP). The test was conducted by WADA. The urine sample, collected from the athlete, was divided in an "A" sample and a "B" sample. Both were sealed and sent to the WADA accredited laboratory "IMIM hospitaldelmar" in Barcelona (ESP) for analysing.

06. The laboratory on 14 April 2009 reported an adverse analytical finding of *“Norandrosterone at a concentration greater than 2 ng/ml and Noretiocholanolone”* (Class S 1.1.b, anabolic agent) in the “A” sample. (On request of the All Russian Swimming Federation the laboratory on 24 April 2009 additionally informed the exact concentration of *“Norandrosterone”* found to be 11.7 ng/ml and of *Noretiocholanone”* to be 57 ng/ml.)
07. By correspondence of 16 April 2009 FINA informed Mr. Morgunov and the All-Russian-Swimming Federation about the adverse analytical finding. FINA advised Mr. Morgunov in regard to his rights according to FINA Rule DC 7.1.3; his right to promptly request an analysis of the “B” sample, his right to attend or to be represented at such analysis and his right to request copies of the laboratory documentation(s).
08. On request of Mr. Morgunov the “B” Sample was analysed from 29 April 2009 to 4 May 2009. And the Laboratory on 14 May 2009 reported to FINA, that the results of the “B” Sample analysis confirmed the findings of the “A” Sample analysis.
09. In accordance with FINA Rule C 21.5 the matter was then referred to the FINA Doping Panel.
10. The FINA Doping Panel by correspondence of 24 May 2009 offered the athlete either to attend a hearing before the FINA Doping Panel in person or to submit to the Panel in writing his views and arguments in regard to the case in question. The athlete was further advised that it will be assumed he does not want to attend a hearing in person if the FINA Doping Panel has not received a response from him within ten (10) days. The All Russian Swimming Federation was provided with copy of this correspondence.
11. By correspondence of 5 June 2009 the FINA Executive informed Mr. Morgunov that following his positive doping control result it was decided, applying FINA Rule DC 7.1.11 to provisionally suspend him until a hearing

before the FINA Doping Panel can be made. This provisional suspension entered into force on 5 June 2009.

12. Mr. Morgunov neither the All Russian Swimming Federation informed the FINA Doping Panel in which way he/they wanted the hearing to be conducted.

III SUBMISSIONS RECEIVED

13. Mr. Morgunov did not request an in person hearing. He neither made any submission in regard to the case at issue.

14. By correspondence of 12 May 2009 Mr. Grigory Stetsyuk, First Vice-President of the All-Russian-Swimming Federation informed, that the athlete is denying any wrong goings and request an IRMS analysis to clarify endogenous or exogenous origin of the Nandrolone metabolite.

15. By correspondence of 22 May also the Team Manager of the Moscow Swimming Club, to which Mr. Morgunov is affiliated, requested an IRMS analysis to be performed.

16. The FINA Doping Panel did not receive any further submission.

V LEGAL ANALYSIS

17. The jurisdiction of the FINA Doping Panel arises out of the provisions of the FINA Constitutional Rules.

18. The applicable Rules in this case are the FINA Doping Control Rules in effect since January 1, 2009.

19. The case at stake occurred in an out-of-competition doping control test conducted by WADA.

20. The anti-doping rule violation at issue is *“the presence of a Prohibited Substance or its Metabolites or Markers in a Competitor’s bodily specimen (FINA Rule DC 2.1)”*.
21. FINA bears the burden of proving the presence of a prohibited substance within Mr. Morgunov’s bodily specimen. And FINA has satisfied this burden of proving. Analytical research conducted by a WADA accredited Laboratory provides direct and conclusive evidence that the prohibited substances *Norandrosterone at a concentration of greater than 2 ng/ml & Noretiocholanolon* were in Mr. Morgunov’s bodily specimen. Mr. Morgunov does not challenge the correctness of the Laboratory’s report.
22. An IRMS analysis was not to be conducted. The WADA LIST of Prohibited Substances is clearly stating:
“For 19 Norandrosterone, an Adverse-Analytical Finding reported by a laboratory is considered to be scientific and valid proof of exogenous origin of the Prohibited Substance. In such case no further investigation is necessary.” (Comments to Class S 1.1b)

VI THE SANCTION

23. FINA Rule DC 10.2 establishes for a first anti-doping rule violation involving anabolic agents a sanction of two (2) years ineligibility.
24. The prohibited substance, found in Mr. Morgunov’s bodily specimen, is an anabolic agent.
25. There are no reasons to shorten the minimum period of ineligibility, according to FINA Rule DC 10.5.1 or DC 10.5.2.

26. On these grounds a sanction of

two (2) years' ineligibility

was to be imposed on Mr. Morgunov.

27. The time period of two years' ineligibility shall start on 5 June 2009. The FINA Executive provisionally suspended Mr. Morgunov with effect from 5 June 2009. This period of Provisional Sanction shall be credited against the total period of ineligibility to be served (FINA Rule DC 10.9).

VIII THE COSTS

28. All costs related to the case at stake are to be paid by All-Russian-Swimming Federation (FINA Rule DC 12.2).

Harm Beyer

Peter Kerr

Toshiro Ueyanagi

Signed on behalf of all three Panel Members

Harm Beyer



Appeal Instruction

An appeal against this decision may be referred tot the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of this judgement (FINA Rule C 12.9.3).