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FINA Doping Panel 10/10

FINA Doping Panel

comprised of

F.D. van Heijningen	(NED)	Chairman
Peter Kerr	(AUS)	Member
Robert Fox	(SUI)	Member

In the proceedings against

the swimmer **Lukasz Giminski**
affiliated to the Polish Swimming Federation

not present at the hearing

I THE PARTIES

1.1 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 testing.

1.2. The POLISH SWIMMING FEDERATION (PSF) is a member of FINA. PSF is required to recognize and comply with FINA's anti-doping rules which are set out in the FINA Doping Code ("FINA DC"). The FINA DC is directly applicable to and must be followed by Competitors, Competitor Support Personnel, coaches, physicians, team leaders, and club and representatives under the jurisdiction of the Polish Swimming Association.



1.3 Mr. Lukasz Giminski is a 24 year old swimmer and a part of the national Polish swimming team.

II PROCEEDINGS

2.1 By letter dated 5 August 2010, the FINA Executive Director asked the Chairman of the FINA Doping Panel to examine the case of Mr Lukasz Giminski in relation to three filing failures.

2.2 Meanwhile, the FINA Executive Director informed Mr. Giminski about the decision to forward his case to the Doping Panel for consideration.

2.3 The FINA Doping Panel was formed pursuant to FINA Rule C 21.6.

2.4 By letter dated 10 September 2010, the chairman of the FINA Doping Panel informed Mr. Giminski of his right to a fair hearing as per FINA DC 8.1. Mr. Giminski sent a letter dated 14 October 2010 with his explanations for the filing failures.

2.5 By letter dated 27 October 2010 to Mr. Giminski the chairman of the FINA Doping Panel confirmed the date of 5 November 2010 for the hearing.

2.6 The FINA Doping Panel hearing was held on 5 November 2010 at 14.00 hrs in FINA Headquarters, Lausanne (SUI).

III JURISDICTION AND APPLICABLE RULES

3.1 The jurisdiction of the FINA Doping Panel arises out of the provisions of the FINA Rules C 21.5., C 21.6 and FINA DC 8.1.

3.2 The applicable Rules in this case are the FINA Doping Control Rules in effect since January 1, 2009 (amended on the occasion of the FINA General Congress on 24 July 2009).

IV LEGAL DISCUSSION

THE FACTS

4.1 Mr. Giminski belongs to the FINA Registered Testing Pool (FINA RTP). He has not sent FINA his whereabouts information for the first, second and third quarter of 2010 (Q1, Q2 and Q3 2010).

4.2. Mr. Giminski was informed of his three (3) filing failures by letters of FINA dated respectively, 25 February 2010 (Q1), 26 April 2010 (Q2) and 27 July 2010 (Q3).

4.3 Mr. Giminski has been a swimmer for several years, being part of the Polish national team. He has been participating in national championships in Poland and a number of international swim meets, mainly 200m, 400m and 800m free style.

MOTIONS AND CONTENTIONS

4.4 According to Mr. Giminski, as described in his letter dated 14 October 2010, his filing failures can be explained by the fact he unexpectedly had to leave Warsaw to take care of his seriously ill mother in Krakow, on advice of the treating doctor. In this period he had been completely absorbed by the care for his mother. Because of this situation his physical and psychological condition did not allow him to think of the obligation to send whereabouts information to FINA. Apart from this, as Mr. Giminski wrote, he did not have access to internet by that time.

THE LAW

4.5 FINA DC 2.4 reads:

“Violation of applicable requirements regarding Competitor availability for Out-of-Competition Testing, including failure to file required whereabouts information and missed tests which are declared based on rules which comply with the International Standard for Testing. Any combination of three missed tests and/or filing failures within an eighteen-month period as determined by Anti-Doping Organizations with jurisdiction over the Competitor shall constitute an anti-doping rule violation.”

FINA DC 5.4.3:

“FINA shall establish a FINA Registered Testing Pool of Competitors. The criteria for the inclusion in the Registered Testing Pool shall be revised yearly by FINA and be known to the Member Federations. Four (4) times a year the FINA Registered Testing Pool of Competitors shall be updated. All competitors included or removed from the Registered Testing Pool and the Member Federations to which they belong shall receive written information about the inclusion or exclusion of a Competitor in the FINA Registered Testing Pool no later than the first day of the months of March, June, September and December.”

FINA DC 5.4.4:

“It shall be the obligation of each Competitor in the Registered Testing Pool as well as that Competitor’s Member Federation, to keep FINA informed about where the Competitor can be met for unannounced Testing. It is the responsibility of each Competitor in the Registered Testing Pool to report the required whereabouts information to the FINA office no later than the first Monday of the months January, April, July and October. (...)”

FINA DC 10.3.3:

“For violations of DC 2.4 (Whereabouts Filing Failures and/or Missed Tests), the period of Ineligibility shall be at a minimum one (1) year and at a maximum two (2) years based on the Competitor’s degree of fault.”

DOPING RULE VIOLATION

4.6 The FINA Doping Panel finds that it has been established that the athlete has not sent or has not timely sent his whereabouts information to FINA for the quarters Q1 2010, Q2 2010 and Q3 2010. These facts constitute an anti-doping rule violation pursuant to FINA DC 2.4.

V THE SANCTION

4.7 Unannounced testing is an essential part of the anti-doping policy of FINA. Competitors belonging to the RTP have the obligation and responsibility to strictly follow the procedures as described in DC 5.4.3 and 5.4.4. The rules exist to deter doping, help ensure a level playing field and promote confidence in the integrity of swimming competitions. Withholding the whereabouts information has to be regarded as a serious obstruction of the necessary control on the use of prohibited substances or methods.

The mandatory sanction range of one (1) to two (2) years set forth in FINA DC 10.3.3 for violation of athlete whereabouts requirements reflects the important duty of athletes and national federations to ensure that all swimmers under the purview of FINA’s rules be available for out-of-competition drug testing. The FINA Doping Panel is of the opinion that in principal a sanction of two years ineligibility has to be applied to athletes committing a doping rule violation through three filing failures as mentioned in DC 2.4.

The explanation of the athlete, as described in paragraph 4.4, has not led the Doping Panel to the conclusion that his filing failures were excusable. The Doping Panel respects Mr. Giminski's duty as a son to take care of his ill mother and his concern. However, these circumstances did not prevent him from fulfilling his obligations as a professional swimmer belonging to the RTP. The argument he did not have access to the internet, living in Krakow, is not convincing.

Thus, weighing the degree of fault of the athlete the FINA Doping Panel is of the opinion he deserves a period of ineligibility of two (2) years, starting 5 November 2010, being the date of the hearing decision. Regarding the facts and circumstances the FINA Doping Panel has not found sufficient grounds to apply DC 10.9.2.

4.8 All results achieved by Mr. Giminski from the date of the third filing failure, i.e. 5 July 2010, are disqualified and any medals, points and prizes achieved during that period shall be forfeited pursuant to FINA DC 10.1 and 10.8.

VI. CONCLUSION

5.1 Mr. Giminski receives a two years period of ineligibility commencing on 5 November 2010, and ending at the conclusion of 4 November 2013, for his first anti-doping rule violation.

5.2 All results obtained by Mr. Giminski after 5 July 2010 and through the date of this decision are disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

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

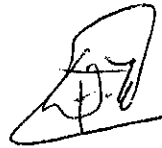
5.4 Any appeal against this decision may be referred to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of this judgment (FINA Rule C 12.9.3).

F.D. van Heijningen
Chairman

Peter Kerr
Member

Robert Fox
Member

Signed on behalf of all three Panel Members

A handwritten signature in black ink, appearing to be 'F.D. van Heijningen', written over a faint rectangular stamp or box.

F.D. van Heijningen