



Fédération Internationale
de Natation

FINA Doping Panel 01/10

FINA Doping Panel

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comprised of

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In the proceedings against

the swimmer **Nikolett Szepesi**
affiliated to the Hungarian Swimming Association

represented by: Mr. Csaba Sós

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 HUNGARIAN SWIMMING ASSOCIATION (HSA) is a member of FINA. HSA 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 Hungarian Swimming Association.



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1.3 Ms. Nikolett Szepesi is a 22 year old female Hungarian swimmer. She's affiliated with the swimming club known as Kobanya SC. She lives in Budapest, Hungary.

II PROCEEDINGS

2.1 By letter dated 4 January 2010, the FINA Executive Director asked the Chairman of the FINA Doping Panel to examine the case of Ms. Szepesi, which, as explained in more detail below, involved whether she had violated provisions of the FINA DC, including, in particular FINA DC 5.5.2, pertaining to the procedure for returning to competition following retirement.

2.2 Meanwhile, the FINA Executive Director informed Ms. Szepesi about the decision to forward her case to the Doping Panel for consideration.

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

2.4 On 11 January 2010, the chairman of the FINA Doping Panel informed Ms. Szepesi of her right to a fair hearing as per FINA DC 8.1 and confirmed the date of 22 January 2010 for the hearing.

2.5 The FINA Doping Panel hearing was held on 22 January 2010 at 14:00 in FINA Headquarters, Lausanne (SUI).

2.6 Both Ms. Szepesi and the HSA were represented at the hearing in this matter by Mr. Csaba Sós.



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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 In January, 2009, Ms. Szepesi informed FINA by means of the FINA Retirement Notification Form ("FINA RNF") about her retirement from swimming. The form was sent to FINA through the HSA, after signing by the HSA General Secretary and caused Ms. Szepesi to be removed from the FINA Registered Testing Pool of Competitors (the "FINA RTP").

4.2 The FINA RNF required a HSA official to confirm that the information given by Ms. Szepesi on the FINA RNF was "true." Part of the information in the athlete's section of the FINA RNF is an affirmation that the athlete is aware of FINA's rules concerning retirement and returning to competition.

4.3 Ms. Szepesi had been a member of the Hungarian national swim team for about eight years, winning a bronze medal in the 2008 European swimming championships and participating in the 2008 Olympic Games.



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4.4 The FINA RNF signed by Ms. Szepesi clearly set forth former FINA DC Rule 5.6.2 which, like current DC Rule 5.5.2, reads:

A Competitor has given notice of retirement to FINA may not resume competing unless he or she notifies FINA at least nine (9) months before he or she expects to return to Competition and is available for unannounced Out-of-Competition Testing at any time during the period before actual return to Competition.

4.5 In August of 2009 Ms. Szepesi announced her return to competitive swimming and her announcement was reported in Hungarian newspapers.

4.6 In November, 2009 Ms. Szepesi competed in the Hungarian National Swimming Championships.

4.7 Shortly after the Hungarian National Swimming Championships, Ms. Szepesi was named to the Hungarian team for the 2009 European Swimming Championships.

4.8 On December 10, 12 and 13, Ms. Szepesi competed in the European Swimming Championships Short Course in Istanbul, reaching the semifinals in the women's 50m and 100m backstroke events and the finals in the women's 200m backstroke, in which race she finished in 6th place.

4.9 From August 2009 on, Ms. Szepesi never informed FINA of her intent to return to competition and availability for out-of-competition testing. She did not submit any athlete location form ("FINA ALF") in this period.



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4.10 After the European Swimming Championships FINA staff became aware that Ms. Szepesi had competed without informing FINA of her intent to return from retirement.

THE LAW

4.11 Pursuant to FINA DC 2.4 “violation of applicable requirements regarding *Competitor* availability for *Out-of-Competition Testing*, including failure to file required whereabouts information,” constitutes an anti-doping rule violation.

4.12 Applicable requirements for competitor availability for out-of-competition testing for a swimmer returning from a period of retirement are partially set forth in FINA DC 5.5.2 which, in relevant part, provides:

A Competitor who has given notice of retirement to FINA may not resume competing unless he or she notifies FINA in writing at least nine (9) months before he or she expects to return to Competition and is available for unannounced Out-of-Competition Testing at any time during the period before actual return to Competition.

4.13 Ms. Szepesi violated FINA DC 2.4 when she competed without having satisfied the requirement of FINA DC 5.5.2 to provide FINA advance written notice of her intent to return to competition. Because she failed to give the required written notice to FINA and failed to submit any FINA ALFs after deciding to return to competition Ms. Szepesi did not make herself available for out-of-competition testing for at least nine months prior to returning to competition as required by FINA DC 5.5.2.



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SANCTION

4.14 FINA DC 5.5.2 is a critical rule designed to prevent an unscrupulous athlete from retiring in order to avoid the prospect of drug testing and returning to competition immediately after what might be euphemistically called a “doping holiday.”

4.15 The rule exists to deter doping, help ensure a level playing field and promote confidence in the integrity of swimming competitions.

4.16 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.

4.17 In assessing where within the range of one (1) to two (2) years to place Ms. Szepesi’s period of ineligibility the Panel considered a number of factors.

4.18 The Panel has found no indications that Ms. Szepesi committed her offense against the Doping Code for the purpose of avoiding drug testing.

4.19 The Panel has accepted the explanation of Ms. Szepesi that she retired for a combination of personal reasons, among which were included the serious illness of her mother and a fracture in her hand.

4.20 The Panel further considered the public nature of Ms. Szepesi’s return to competition months before the European Championships, her candid admission through Mr. Sós that she had



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violated the rules and the frank concession of the HSA by Mr. Sós that the HSA had failed to fulfill its duty to help Ms. Szepesi to understand in the English language the FINA rules and adequately educate Ms. Szepesi and assist her with the retirement process.

4.21 Unfortunately, the HSA spectacularly failed in its responsibility to know, understand, uphold and apply the FINA Rules. It was not difficult to discern why FINA DC 5.5.2 was not followed in this case, not only was Ms. Szepesi unfamiliar with the rule, but apparently no one with an official position within the entire HSA had apparently ever heard of the rule. This lack of familiarity with the FINA Anti-Doping Code is inexcusable. FINA DC 5.5.2 has been a part of the FINA DC since at least 2003 and it is a responsibility of the HSA to know the rules under which its swimmers compete and to educate and advise its athletes in a responsible manner.

4.22 This Panel wishes to underscore the principle recognized by the Court of Arbitration for Sport Panel in the case of *V. v. FINA*, CAS 2003/A/459, at paragraph 8.7, where the Panel observed that “athletes vulnerable to sanctions are entitled to expect fidelity to [the applicable] procedures.” Like many swimmers would do in similar circumstances, Ms. Szepesi put her trust in her national federation to explain the applicable rules to her. In this particular instance Ms. Szepesi will unfortunately bear a significant sanction in large part because her federation fell below the standard of professionalism and care expected of a modern national swimming organization.



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4.23 Therefore, considering all the circumstances related to Ms. Szepesi's degree of fault as required by FINA DC 10.3.3, the Panel concludes that Ms. Szepesi will receive a one year period of ineligibility commencing on 22 January 2010, the date on which this decision was initially communicated as provided in FINA DC 10.9.

4.24 All results achieved by Ms. Szepesi from the date of her retirement through the commencement of her period of ineligibility are disqualified and any medals, points and prizes achieved during that period shall be forfeited pursuant to FINA DC 10.1 and 10.8.

4.25 This case is the first reported FINA Doping Panel decision involving FINA DC 5.5.2; the Panel trusts that it will be read by all of FINA's member federations who bear the responsibility to undertake to educate their athletes regarding the retirement process and who are hereby advised that future violations of athlete whereabouts requirements, including but not limited to those involving the FINA DC 5.5.2 requirements for returning from retirement, may, in future cases, be met with sanctions toward the higher end of the one (1) to two (2) year sanction range set forth in FINA DC 10.3.3.

V. CONCLUSION

5.1 Ms. Nikolett Szepesi receives a one year period of ineligibility commencing on 22 January 2010, and ending at the conclusion of 21 January 2011, for her first anti-doping rule violation.



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5.2 All results obtained by Ms. Szepesi after 21 January 2009 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 HSA 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 judgement (FINA Rule C 12.9.3).

F.D. van Heijningen William Bock III Farid Ben Belkacem

Signed on behalf of all three Panel Members

F.D. van Heijningen