



**Tribunal Arbitral du Sport  
Court of Arbitration for Sport**

**CAS 2011/A/2582 World Anti-Doping Agency (WADA) v. Turkish Swimming Federation (TSF) and Karhan Akay (the Athlete)**

**ARBITRAL AWARD**

**delivered by**

**THE COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

**Sole Arbitrator: His Hon. Judge James Robert Reid QC in West Liss, United Kingdom**

**in the arbitration between**

**World Anti-Doping Agency (WADA), Montreal, Quebec, Canada**

**Represented by Mr Olivier Niggli and Mr Yvan Henzer, Lausanne, Switzerland**

**-Appellant-**

**and**

**Turkish Swimming Federation (TSF), Ulus, Ankara, Turkey**

**Represented by Mr Philippe Kitsos, La-Chaux-de-Fonds, Switzerland.**

**and**

**Karhan Akay (the Athlete), Sariyer, Istanbul, Turkey**

**Represented by Mr Mehmet Uzer, Chihangir-Beyoglu, Istanbul, Turkey**

**-Respondents-**

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**1. THE PARTIES**

- 1.1 The Appellant World Anti-Doping Agency (WADA) is the international body charged with the fight against doping in sport.
- 1.2 The First Respondent Turkish Swimming Federation (TSF) is the Turkish national federation for swimming and is affiliated to FINA, the international federation governing swimming.
- 1.3 The Second Respondent Karhan Akay (the Athlete) is a Turkish swimmer who is affiliated to TSF.

**2. FACTUAL BACKGROUND**

- 2.1 The Athlete was born on 20 June 1995. On 21 October 2010 having competed in the Emre Vardar National Team Election Contest in Istanbul he was selected to provide a urine sample.
- 2.2 The A sample was tested by the Turkish Doping Control Centre and proved positive to metabolites of methandienone (ie 6b-OH-methandienone and 17-methandienone). The Athlete did not request an analysis of the B sample.
- 2.3 Methandienone is an anabolic steroid which appears on the WADA 2010 Prohibited Lists underclass S1.1 anabolic androgenic steroids. It is prohibited in and out of competition, as indicated in the Prohibited List. It is not defined as a "Specified Substance" in the WADA 2010 Prohibited List. By article 4.1 of the FINA Doping Control Rules (FINA DC) those anti-doping rules incorporate the Prohibited List which is published and revised by WADA.
- 2.4 Proceedings were brought before the TSF Disciplinary Committee, a committee constituted under the rules of TSF, at which the Athlete explained that he had to follow medical treatment in order to stimulate growth and to prevent a growth slowdown. The evidence was that under this treatment, supervised by Dr Atilla Boyukkbegiz, a specialist in paediatric endocrinology at the Florence Nightingale Hospital, Istanbul, the Athlete took 1.25mg of oxandrolone per day.
- 2.5 Oxandrolone is a prohibited substance, which is classified under Class S1, anabolic agents, anabolic androgenic steroids.

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- 2.6 The TSF Disciplinary Committee, by its decision dated 19 February 2011, decided to admonish the Athlete, considering that the Athlete did not intend to enhance his performance but rather took oxandrolone for therapeutic purposes. It did not impose any sanction under the FINA DC rules but rather purported to admonish the Athlete under Article 17 of the TSF Penal Instructions. Its decision was in these terms:

“As the offender is a child at the age of 15 and as a child sportsman beyond the capability of providing a medicine from abroad which could not be found at the domestic markets, agreed to use the medicine which was unaware about its doping effect upon the suggestions of his parents and the doctor and due to the therapeutic reasons and left the therapy even the swimming sport after learnt that such medicine was a doping substance upon the urine sample was requested, in case the high interest of the child is not observed, it is obvious to see by our committee as a conscience conviction that future damages to his personality which is incapable of reparation may occur, while it has been understood that [the Athlete], offender has not taken such medicine for doping purpose willingly and knowingly, without any intention, it has been unanimously decided on 19 February 2011 to admonish in accordance with the Turkish Swimming Federation Penal Instructions, Article 17, Unintentional Acts and to remind in case identified any use of doping substance when examined next time, then he shall not shelter under the provisions of the Children's Rights and penalize by applying the corresponding punishment in accordance with FINA Rules, having the rights to apply the Youth and Sports General Management Arbitration Board within (10 days) as of the date the decision served.”

- 2.7 The file of the case was remitted to WADA which appealed against the decision, as the adverse analytical finding was not, in its submission, compatible with the administration of oxandrolone.
- 2.8 On the appeal the Athlete did not contend that the analytical finding was consistent with the administration of oxandrolone. Instead he contended that the pills which he had taken were taken in good faith. He submitted that the pills did not in fact contain oxandrolone but contained the methandienone which had been discovered on the analysis of his urine sample. Similarly TSF did not assert that the Disciplinary Committee had been correct in proceeding on the basis that what the Athlete was oxandrolone.
- 2.9 The Athlete provided a number of the pills which had been obtained by him on prescription from Dr Atilla Boyukkbegiz and dispensed to him by a pharmacy,

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Akademi Drugstore, in Kadikoy, Istanbul. The pills dispensed had (according to the packaging) purportedly been produced by the Italian company SPA Milano.

2.10 These pills were analysed by analysts both on behalf of WADA (by the Swiss Laboratory for Doping Analyses) and on behalf of the Athlete (by the Hacettepe Doping Test Center). The analysis revealed that the pills did not contain oxandrolone but the presence of methandienone and stanozolol was detected in the pills, an analysis consistent with the findings on the analysis of the A sample.

2.11 In the light of these test results WADA accepted that the Athlete had demonstrated how the prohibited substance had entered his body. It accepted that, contrary to the indications on the packaging of the tablets, the active substance in the pills was methandienone and not oxandrolone. In effect that the pills ingested by the Athlete were fakes. They had not been produced by SPA Milano, which had stopped production of the pills in 2007.

**3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

3.1 By its Statement of Appeal dated 30 September 2011 and its appeal brief dated 10 October 2011 WADA requested CAS to rule as follows:

- "1. The Appeal of WADA is admissible.
2. The decision of the TSF disciplinary committee in the matter of Mr Karhan Akay is set aside.
3. Mr Karhan Akay is sanctioned with a two years period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility (whether input to or voluntarily accepted by Mr Karhan Akay) before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.
4. All competitive results obtained by Mr Karhan Akay from 21 October 2010 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes *[sic]*."
5. WADA is granted an award for costs."

3.2 By its Answer dated 20 January 2011 the TSF requested that it be ruled that WADA's appeal was inadmissible, or alternatively that WADA's appeal be dismissed, and in any event that TSF be granted an award of costs

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- 3.3 By his Answer dated 19 January 2012 the Athlete requested that it be ruled that the appeal was inadmissible; that the appeal be dismissed and that the Athlete be granted an award of costs.
- 3.4 By its supplementary brief dated 15 March 2012, after receipt of the analysis of the pills, WADA amended the relief which it sought and requested CAS to rule as follows:

- "1. The Appeal of WADA is admissible.
2. The decision of the TSF disciplinary committee in the matter of Mr Karhan Akay is set aside.
3. Mr Karhan Akay is sanctioned with a one-year period of ineligibility starting on 19 February 2011 any period of ineligibility whether interposed to or voluntarily accepted by Mr Karhan Akay before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.
4. All competitive results obtained by Mr Karhan Akay from 21 October 2010 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes *[sic]*.
5. WADA is granted an award for costs."

- 3.5 In response to the supplementary brief of WADA the Athlete requested by letter of 23 March 2012 that CAS rules (so far as presently material) as follows:

"to pronounce a reprimand or six-month ineligibility starting on 19 February 2011, or as a last resort, one year in eligibility starting 19 February 2011 ...[and] to be exempted from administrative and legal costs."

- 3.6 In response to WADA's supplementary brief TSF filed on 4 April 2012 a supplemental brief submitting that the Athlete bore no fault or negligence within article 10.5.1 of FINA DC and repeating its previous request.

**4. THE CONSTITUTION OF THE PANEL AND THE HEARING**

- 4.1 By the agreement of the parties the panel was constituted by a sole arbitrator, His Honour Judge Reid QC, and a hearing convened for 27 March 2012 in Lausanne.
- 4.2 At the request of the parties the hearing was cancelled and the sole arbitrator was asked to determine the appeal on the written submissions of the parties.

## 5. THE JURISDICTION OF THE CAS AND ADMISSIBILITY OF THE APPEAL

### 5.1 Article R47 of the Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.”

5.2 On behalf of WADA it was submitted that, like all international Olympic Federations, FINA is a signatory of WADC. As the Turkish national federation for swimming TSF is affiliated to FINA. By article DC 14.1 of the FINA DC: “All Member Federations shall comply with these Anti-Doping Rules. The regulations of Member Federations shall indicate that all FINA Rules including Anti-Doping Rules shall be deemed as incorporated into and shall be directly applicable to and shall be agreed to and followed by Competitors ....” Since the athlete is affiliated to TSF he was obliged to comply with FINA DC.

5.3 It was common ground between the parties that by article 13 of FINA DC WADA had a right to appeal against the decision of the TSF’s Disciplinary Committee. It was not disputed that the appeal was lodged within the appropriate time limit.

5.4 On behalf of TSF it was submitted that the competence of CAS to act as an appeal body was based on article R47 of the CAS code. The TSF Disciplinary Committee was the body which made the decision of 19 February 2011. The TSF Disciplinary Committee is, it was submitted, an independent jurisdictional entity from TSF. It was for this reason that the decision was signed by the President of the Disciplinary Committee and the members of the Committee and not by the President of TSF. The submission continued “WADA’s appeal is directed against the TSF. But the TSF is not the decision’s author. The national-level reviewing body responsible of the decision is the TSF Disciplinary Committee. The appeal should be directed against that entity, the TSF having no defence capacity according to articles 59 – 61 of the Swiss Civil Procedure Code applied in a suppletive basis, FINA DC rules not providing this case.” In essence the submission was that WADA had joined an incorrect party to the appeal.

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5.5 The Athlete did not make any separate submission as to why WADA's appeal was inadmissible.

5.6 The submission made on behalf of the Respondents that the appeal is inadmissible is erroneous.

5.7 The rules of TSF provide for a Discipline Committee. Its duty (as expressed in the translation of TSF Discipline Directive provided by TSF to CAS) is as follows:

“9.1 Duties of the Swimming Discipline Committee are examine the disciplinary event in the swimming activities and responsible for the punishment persons and organisations where necessary in the framework of the Directive.

9.2 Swimming Discipline Committee are independent on their work and their decisions.”

5.8 Whilst the Committee may be independent, it is nonetheless a committee of TSF. It has no independent juridical personality. It is immaterial that the decision was signed, as was to be expected, by the chairman of the Disciplinary Committee, rather than the chairman of TSF. By the FINA DC rules WADA was given a right of appeal from the decision of the TSF Disciplinary Committee to CAS. The appropriate Respondents to that appeal are TSF and the Athlete. There is no basis for asserting that TSF should not have been a Respondent to the appeal, nor is any basis for asserting that one of its committees, which has no separate juridical personality, should have been made the respondent in the case of TSF.

5.9 Even if the TSF Disciplinary Committee did have a separate juridical personality it would still not have been the appropriate Respondent. On an appeal the proper parties are the Appellant and the other parties to the proceedings being appealed. It might be otherwise if the proceedings before CAS were not an appeal against the decision below but a challenge to the existence of the jurisdiction of body whose decision is being appealed. That however is not this case.

5.10 The appeal is therefore admissible and the CAS has the jurisdiction to hear it.

## 6. THE PARTIES' SUBMISSIONS

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- 6.1 On behalf of WADA it was submitted that according to FINA DC article 10.2 the period of ineligibility to be imposed for a violation of FINA DC article 2.1 (presence of a prohibited substance or its metabolites or markers) shall be two years for a first violation of anti-doping rules. That sanction may be eliminated or reduced to a minimum of one year only if the strict conditions set out in articles 10.5.1 (no fault or negligence) or 10.5.2 (no significant form or negligence) or 10.5.3 (substantial assistance in discovering or establishing an anti-doping rule violation by another person) are met.
- 6.2 WADA accepted that the fake oxandrolone pills were the source of the analytical finding and the pills were prescribed within a therapeutic treatment aimed at stimulating growth in the athlete's body. Since the Discipline Committee had issued a warning to the Athlete and the Athlete did not challenge that decision he could not obtain elimination of the sanction on the grounds of no fault or negligence within FINA DC Article 10.5.1 Furthermore, it was submitted, the Athlete was at fault by not checking if the medication prescribed by his doctor contained a prohibited substance. It was his fault that he did not obtain a TUE (ie certificate of therapeutic use exemption) in respect of the oxandrolone. The fact that he tested positive for another substance does not alter that.
- 6.3 The cornerstone of the anti-doping system is the personal responsibility of the athlete for what he ingests. That is implemented in FINA DC article 2.1.1: " It is each competitor's personal duty to ensure that no prohibited substance enters his or her body. Competitors 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 competitors part be demonstrated in order to establish an anti-doping violation under article 2.1."
- 6.4 A reduction in the applicable period of ineligibility is intended to occur only in cases where the circumstances are truly exceptional and not in the vast majority of cases. The Athlete in this case had a duty to inform his physician that he was a high-level competitor who had to submit to anti-doping tests. He also had a duty to check that the prescribed medication did not contain any prohibited substance. The fact that the medicine was prescribed by a doctor did not relieve the Athlete of the obligation to check whether the medicine in question contained a forbidden substance, nor could the



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Athlete escape liability because he trusted his support personnel or doctor. He was at fault in not checking that the prescribed medication contained a prohibited substance and not attempting to obtain a TUE.

- 6.5 However WADA accepted that the Athlete in this case could rely on the following mitigating circumstances (1) he ingested the fake oxandrolone pills which contained a prohibited substance for medical reasons only; (2) he did not intend to enhance his performance; (3) he was not properly advised by his parents or his doctor; and (4) and he was young and inexperienced. Whilst this last factor might mitigate the degree of fault it did not constitute an exceptional circumstance justifying and elimination of the sanction altogether.
- 6.6 WADA conceded that the Athlete had not been responsible for the delays in the proceedings and was ready to accept that the period of ineligibility should start on the date of the decision which was being challenged it was further prepared to accept that the ordinary sanction of two years should be reduced to the minimum sanction in cases where there has been no significant fault or negligence and should therefore be reduced to one year running from 19 February 2011, the date of the Disciplinary Committee's decision.
- 6.7 On behalf of TSF it was submitted that whilst a minor was not be given any special treatment in determining the applicable sanction youth and lack of experience are relevant factors to be assessed in determining the person's fault. The treatment which the athlete was undergoing had been decided on by his father and an eminent doctor in order to prevent growth slowdown. The Athlete trusted his father and the doctor and could not be held responsible for the choice of treatment. The treatment was undertaken because of a health problem and not to enhance his performance. He was unaware oxandrolone was a prohibited substance and indeed was unaware of the existence of the WADA and Fina DC rules. He was ignorant of the existence of the TUE procedure. TSF asserts that the doctor told the father that oxandrolone was prohibited by WADA but it was the father who ignored the possibility of applying for a TUE from the national anti-doping organisation. Because of the Athlete's age he could not be held responsible for what his father and the doctor did. In these circumstances there was no fault or negligence and therefore no penalty by way of ineligibility should be imposed upon him.

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- 6.8 On behalf of the Athlete essentially the same factual submissions were made as were made on behalf of TSF but reference was also made to the Preamble of the Universal Declaration of the Rights of the Child which provides that [the child] by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth, and to Article 3.1 of the Convention on the Rights of the Child which provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. A child is not a miniaturised adult. The Athlete was not able to understand that by receiving treatment which aimed at stimulating his growth, he might be violating anti-doping rules. It was also submitted that the Athlete would suffer psychological harm as a result of a period of ineligibility and indeed had suffered harm from the proceedings.
- 6.9 It was further submitted that the Athlete could not be held liable for the negligence of the doctor or his father and so bore no fault or negligence within the terms of FINA DC 10.5.1.

## 7. APPLICABLE LAW

- 7.1 Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

- 7.2 In the present case it was common ground that the case falls to be decided under the FINA DC and subsidiarily Swiss law.

## 8. MERITS OF THE APPEAL

- 8.1 The relevant provisions of FINA DC are as follows:

**“DC 2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Competitor’s Sample.**

**DC 2.1.1** It is each Competitor’s personal duty to ensure that no Prohibited Substance enters his or her body. Competitors 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 Competitor's part be demonstrated in order to establish an anti-doping violation under DC 2.1....

**DC 10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods**

The period of Ineligibility imposed for a violation of DC 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), DC 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or DC 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in DC 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in DC 10.6, are met:

First violation: Two (2) years' Ineligibility.

**DC 10.5.1 No Fault or Negligence.** If a Competitor establishes in an individual Case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Competitor's Sample in violation of DC 2.1 (Presence of Prohibited Substance), the Competitor must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under DC 10.7.

**DC 10.5.2 No Significant Fault or Negligence.** If a Competitor or other Person establishes in an individual Case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years. When a Prohibited Substance or its Markers or Metabolites is detected in a Competitor's Sample in violation of DC 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers), the Competitor must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

**DC 10.8 Disqualification of Results in Events Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation** In addition to the automatic Disqualification of the results in the Event which produced the positive Sample under DC 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes."

- 8.2 The contention of WADA that it is not open to TSF or the Athlete to contend that there was no fault or negligence on the part of the Athlete because the Disciplinary Committee had admonished the Athlete and there was no appeal against that decision fails. The decision of the Disciplinary Committee, while not specifically making mention of FINA DC 10.5.1, appears to have operated on the basis that, given the Athlete's age, the relationship with those responsible for administering the drug and the fact that there was no intention to obtain a sporting advantage he should be regarded as having been guilty of no fault or negligence so as to eliminate the sanction of a period of ineligibility. However, it did admonish the Athlete, under TSF Penal Instructions, Article 17, Unintentional Acts. This is not inconsistent with the application of FINA DC 10.5.1 and the elimination of the period of ineligibility which might otherwise have applied.
- 8.3 In order for the Athlete to establish that FINA DC 10.5.1 is applicable there must be truly exceptional circumstances, as the comments to the rule make clear:

"To illustrate the operation of DC 10.5.1, an example where No Fault or Negligence would result in the total elimination of a sanction is where a Competitor could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Competitors are responsible for what they ingest (DC 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Competitor's personal physician or trainer without disclosure to the Competitor (Competitors are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Competitor's food or drink by a spouse, coach or other Person within the Competitor's circle of associates (Competitors are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Competitor clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Competitor exercised care in not taking other nutritional supplements.)"

- 8.4 While the rights of a young person have to be carefully protected it does not follow that a person of 14 or 15 will be entitled automatically to assert that there has been no fault or negligence in each case where there has been reliance on a parent or coach or other person in a similar position of trust. It is not possible for a young person who is

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sufficiently skilled and mature to compete on equal terms with adults to avoid the consequences of having ingested prohibited substances simply by pointing the finger of blame at a parent or advisor. As was pointed out in, CAS 2006/A/1032 at paras 139 et seq in order to achieve the goals of equality, fairness and promotion of health the anti-doping rules are pursuing, the anti-doping rules must apply in equal fashion to all participants in competitions they govern, irrespective of the participant's age. The rules do not provide a different yardstick or regime for minors when considering the question of "no fault or negligence" or "no significant fault or negligence." The need to have regard to the best interests of the Athlete as a young person as a primary consideration do not require that the overall interests of the sport and of all the other competitors should be ignored.

- 8.5 There was no evidentiary basis for the submission that the Athlete would suffer psychological damage as a result of a period of ineligibility being imposed, and even if there were it would justify a disciplinary body in misconstruing the meaning of the words "no fault or negligence" to the advantage of this particular athlete.
- 8.6 In the present case the Athlete's father was evidently at fault in failing to ensure that a TUE was applied for. This was despite full knowledge that the substance intended to be taken was a prohibited substance. Had a TUE been obtained for Oxandrolone, then it might well have been arguable that the fact that the drugs in fact administered were fakes (although procured from apparently reputable source in apparently proper packaging under prescription from an eminent doctor and with no intent to gain unfair advantage) there might have been a good arguable case for asserting that there was no fault on the part of the Athlete. As it is, the submission that there was no fault cannot be maintained.
- 8.7 So far as the question of "No significant fault or negligence" is concerned, WADA conceded in the light of the totality of the evidence that in this case there was no significant fault or negligence. Furthermore there are significant mitigating factors. The pills containing the prohibited substance were taken under prescription for medical reasons only and were not intended to enhance his performance. He was ill-served by his father in the father's failure (despite the information given by the doctor) to take any steps to seek TUE. The Athlete is young and inexperienced. The

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proceedings have been protracted (not least by the need for analysis of the fake pills) through no fault of the Athlete.

8.8 In all of these circumstances there is no reason to depart from the concession made on the part of WADA that the period of ineligibility should be reduced to the minimum permissible under FINA DC 10.5.2, namely one year and start to run from the date of the Disciplinary Committee's decision, namely 19 February 2011, as permitted by FINA DC 10.9.1 Delays Not Attributable to the Competitor or other Person. "Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Competitor or other Person, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred."

8.9 The reduction of the period of ineligibility does not affect the sanction consequential pursuant to FINA DC 10.8 that on the finding of a doping offence that all competitive results obtained by the Athlete from 21 October 2010 until the commencement of the period of ineligibility should be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes. No argument was advanced for asserting that this was a special case in which (in the words of the rule) fairness required otherwise.

**9. CONCLUSION**

9.1 The appeal by WADA should therefore be allowed and a period of twelve months ineligibility be imposed on the Athlete commencing on 19 February 2011, with the consequence that it has already expired.

9.2 All competitive results obtained by the Athlete from 21 October 2010 until the commencement of the period of ineligibility shall be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.

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## 10. COSTS

### 10.1 Article R64.4 of the Code, provides that:

*"At the end of the proceedings, the CAS Court office shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and financial resources of the parties."*

### 10.2 Article 64.5 of the Code provides:

*"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties."*

### 10.3 In the present case in consideration of the outcome, the nature of these proceedings, as well as the conduct and financial resources of the parties, the Sole Arbitrator holds that WADA's appeal has been successful but in the light of events as they developed during the course of the appeal WADA has modified its stance substantially and that the Athlete was in no way responsible for the mistaken conclusion of the Disciplinary Committee, the costs of the arbitration, to be determined by the CAS Court office, shall therefore be borne in an amount of $\frac{1}{4}$ (one quarter) by WADA and $\frac{3}{4}$ (three quarters) by the TSF.

### 10.4 Furthermore, in view of the above, the Sole Arbitrator holds that TSF shall pay a contribution of CHF 2,000 (two thousand Swiss francs) towards WADA's legal fees in the case, but otherwise each party shall bear their own legal costs.

### ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed by the World Anti-Doping Agency on 30 September 2011 against the decision of the Disciplinary Committee of the Turkish Swimming Federation of 19 February 2011 is admissible.
2. The appeal filed by the World Anti-Doping Agency is upheld.
3. The decision of the Disciplinary Committee of the Turkish Swimming Federation of 19 February 2011, is set aside.
4. Mr Karhan Akay is declared ineligible for a period of twelve months, commencing on 19 February 2011.
5. All competitive results obtained by Mr Karhan Akay (the Athlete) from 21 October 2010 until the commencement of the period of ineligibility shall be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.
6. The costs of arbitration, to be determined by the CAS Court office, shall be borne in the proportion of  $\frac{1}{4}$  (one quarter) by the World Anti-doping Agency and  $\frac{3}{4}$  (three quarter) by the Turkish Swimming Federation.
7. The Turkish Swimming Federation shall pay a contribution of CHF 2,000 (two thousand Swiss Francs) towards World Anti-Doping Agency's legal fees in the case.
8. All other requests for relief are rejected.

Lausanne, 29 May 2012

### THE COURT OF ARBITRATION FOR SPORT



His Hon. Judge James Robert Reid QC  
Sole Arbitrator