

CAS 2003/A/447 Anna Stylianou v/ FINA

**ARBITRAL AWARD**

pronounced by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Mr. John A. **Faylor**, Attorney at Law, Frankfurt am Main, Germany

Arbitrators: Mr. Denis **Oswald**, Attorney at Law, Neuchâtel, Switzerland  
Mr. Pantelis I. **Dedes**, Attorney at Law, Athens, Greece

Ad hoc Clerk Mrs. **Anne Jakob**, LL.M., Attorney at Law, Frankfurt am Main, Germany

(hereinafter referred to as "the Panel")

**IN THE ARBITRATION BETWEEN**

**Mrs. Anna Stylianou, Cyprus (hereinafter referred to as "the Appellant")**

represented by Mr. Nestoras Adamou Nikiphorou, Attorney at Law,  
1, Gladstonos, Panayiotion Court, 2<sup>nd</sup> Floor, Off. 205, Larnaca, Cyprus

and

**Fédération Internationale de Natation Amateur (FINA), Lausanne, Switzerland  
(hereinafter referred to as "the Respondent")**

represented by Mr. Jean-Pierre Morand, Attorney at Law,  
Legrand & Morand, 86 bis Rte de Frontenex, CH - 1208 Geneva, Switzerland

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**I. FACTUAL BACKGROUND**

**1. The Parties**

- 1.1 The Appellant is a competition swimmer who has been a member of the Famagusta Nautical Club in Cyprus since her childhood. Through her club, she is affiliated with the Cyprus Amateur Swimming Association (the "Association") which is the national organization governing swimming competition in Cyprus.
- 1.2 The Appellant has competed in many national and international events during the past years and, as a member of the National Swimming Team of Cyprus, she represented her country in the Olympic Games 2000 in Sydney.
- 1.3 The Respondent, the FINA, is the international federation governing sports related to swimming worldwide. The Cyprus Amateur Swimming Association is a member of FINA (see listing of *Federation Historically Affiliated to FINA* in the *FINA Handbook*).
- 1.4 FINA maintains its seat in Lausanne, Switzerland, and has, *inter alia*, the objective of "promoting the development of swimming in all possible manifestations throughout the world, and providing a drug free sport" (see FINA Constitution C.5.1. and 2.).

**2. Chronology of Material Events**

- 2.1 On June 16, 2002, at the occasion of an official swimming competition in Nikosia, Cyprus, the Appellant underwent a doping control conducted by the Cyprus National Anti-Doping Committee. The analysis of the urine sample was performed in an IOC accredited laboratory, namely at the "*Spiros Louis*" laboratory in the Olympic Athletic Center of Athens, Greece.
- 2.2 The result of this analysis was found to be positive for the anabolic steroid Nandrolone (19-Norandrosterone) in a quantity of more than 25 ng/ml.
- 2.3 On July 2, 2002, the Appellant was informed of this result and immediately suspended by the Association from "any further participation in swimming events."
- 2.4 On August 29, 2002, the Disciplinary Committee of the Association conducted a hearing with the Appellant and her legal counsel. The Appellant admitted to having committed a doping offence pursuant to FINA Rule DC 2.1. (a) and DC 3.1 (c). However, she pleaded "not guilty" to the charge of having knowingly or willfully taken the prohibited substance orally or by injection, or in any other manner.

- 2.5 On August 29, 2002, the Disciplinary Committee of the Association imposed a one (1) year suspension upon the Appellant commencing on June 16, 2002 and cancelled the results achieved by the swimmer in competition retroactively during the six (6) month period prior to June 16, 2002. In determining the length of the suspension, the Disciplinary Committee cited FINA Rule DC 9.10 on the basis of which the minimum sanction of four (4) years provided in FINA Rule 9.1.1 could be reduced.
- 2.6 Pursuant to FINA Rule DC 12.3, the Association reported the sentence to the FINA Executive by telecopy dated September 4, 2002. In its deliberations on September 18, 2002, the FINA Executive held that FINA rules relating to doping control were not followed by the Association and referred the matter pursuant to FINA Rule DC 12.5 to the FINA Doping Panel for review.
- 2.7 On December 3, 2002, a hearing before the FINA Doping Panel was held. The Appellant, who did not attend the hearing personally, was represented by her legal counsel, Mr. Nestoras Nikiphourou.
- 2.8 On February 19, 2003, the FINA Doping Panel rendered its decision and held that Mrs. Stylianou had committed a doping offence under FINA Rules DC 2.1. (a) and DC 9.1.1. The FINA Doping Panel suspended the Appellant for four (4) years commencing as of July 2, 2002. The suspension "included" the suspension already imposed by the Association in its decision of August 29, 2002. All results achieved by the Appellant in competitions during the period between December 16, 2001 and February 18, 2003 were cancelled.

### **3. The Appeal and Incidental Proceedings**

- 3.1 On March 17, 2003, the Appellant submitted a Statement of Appeal of the decision of the FINA Doping Panel of February 19, 2002 to the Court of Arbitration for Sport (hereinafter referred to as "the CAS").
- 3.2 On April 23, 2003, the Appellant's counsel filed per telecopy the Appeal Brief after having requested an extension of the 10 day period mandated in R51 of the Code of Sports-related Arbitration (the "CAS Code"). The Respondent agreed to this extension.
- 3.3 On May 12, 2003, the Respondent filed its Answer to the appeal of the Appellant.
- 3.4 Each party designated an arbitrator. The third arbitrator - the President - was appointed by the President of the Appeals Arbitration Division (see R54 of the Code for Sports-related Arbitration, hereinafter referred to as "the CAS Code"). The parties to this arbitration were informed by CAS on April 8, 2003 that the Panel would sit in the following composition:

President: Mr. Raj Parker  
Attorney at Law, London, England

Arbitrators: Mr. Pantelis I. Dedes (Appellant's nominee)  
Attorney at Law, Athens, Greece

Mr. Denis Oswald, (Respondent's nominee)  
Attorney at Law, Neuchâtel, Switzerland

- 3.5 The first hearing scheduled for June 23, 2003 was postponed by CAS at the request of the Appellant's legal counsel on the grounds that he would be unable to attend the hearing in Lausanne due to pressing court commitments in Cyprus.
- 3.6 At the request of Appellant's counsel, the hearing was rescheduled for September 5, 2003.
- 3.7 By letter dated August 14, 2003, Appellant's counsel requested another postponement of the hearing on the grounds that "FINA and/or the CAS" will decide in October whether they will adopt the World Anti-Doping Code with new minimum suspension sanctions for pending cases. It would make no sense to hear the case in September, according to Appellant's counsel, when such decision may be superseded by new World Anti-Doping Code in October. In its response to this request dated August 15, 2003, legal counsel for the Respondent stated that he would have no objection to such postponement. The parties and the CAS then proceeded to find a new date for the hearing.
- 3.8. Due to the unavailability of the appointed President of the Panel, Mr. Parker, between November 2003 and February 2004 and the inability of the parties to agree upon a hearing date in October and November, the parties agreed tentatively to a new hearing date in Spring 2004. On October 28, 2003, however, the Secretary General of the CAS informed the parties regarding the desire of the President of the CAS Appeals Arbitration Division to conclude this arbitration "as soon as possible considering that the statement of appeal has been filed in March 2003." As a consequence, the President of the Panel, Mr. Parker, withdrew from the Panel in order to allow the arbitration to proceed with a hearing date and the resolution of the dispute as soon as possible.
- 3.9. On October 28, 2003, the Secretary General of the CAS informed the parties that the Panel had been reconstituted with Mr. John A. Faylor replacing Mr. Raj Parker as President. A new hearing date was thereupon rescheduled for December 17, 2003 in Lausanne.
- 3.10 By letter dated December 11, 2003, the legal representative of the Appellant gave notice to the Panel that he would not be able to attend the hearing because the "financial condition of her [the Appellant's] family cannot afford the legal expenses for the representation before the CAS".

- 3.11 By letter dated December 12, 2003, the Respondent also waived its right to attend the hearing and asked the Panel to render a decision based on the file submitted.
- 3.12 Subsequently, the CAS informed the parties by letter dated December 12, 2003 that the Panel, acting in accordance with R57 of the CAS Code, had decided to cancel the hearing scheduled for December 17, 2003 and to render its final award on the basis of the written submissions filed by the parties to date.
- 3.13 Although the seat of the Panel had been established in Lausanne in accordance with R28 of the CAS Code, the Panel agreed to hold its deliberations for cost and efficiency reasons by telephone conference on December 17, 2003 at 11:00 AM, the same time at which the hearing was originally scheduled to take place.

#### **4. The Appellant's Contentions and Motions**

- 4.1 The Appellant petitions the Panel for a reduction of the suspension imposed by the FINA Doping Panel from four (4) years to twenty two (22) months on the grounds that the decision of FINA is based on a misinterpretation of FINA Doping Rules 2002 - 2005. Citing the pleadings of the Appellant before the FINA Doping Panel on December 3, 2002, Appellant's counsel asserts that the decision of the FINA Doping Panel is neither substantiated nor clear.
- 4.2 The Appellant does not contest the fact that a prohibited substance was found in her body fluids. She admits to having committed a doping offence pursuant to FINA Rule DC 2.1. (a). However, the Appellant claims that the FINA Doping Panel should have weighed the Appellant's option to plead guilty or not guilty to the doping charges. In addition to the young age of the Appellant and her untainted past record of competition, the Doping Panel did not take into consideration the genuine facts of the case and the manner in which the violation was committed or the difficulties which the Appellant encountered in attempting to prove the source of the doping.
- 4.3 Counsel for the Appellant asserts that the Appellant "took the tablets with due ignorance" that they contained a prohibited substance.

*"She, her doctor and her coach believed that the tablets were innocent and did not contain any prohibited substance."*

In her pleadings before the FINA Doping Panel to which Appellant's counsel refers in his Statement of Appeal, the Appellant stated that in April 2002, on recommendation of her coach, she bought three nutritional supplements, VITAL, INOSINE and CARSIL. Before taking any of them, she presented the bottles for examination to her doctor, Dr. Solona Demetriou. He checked the labels on the three vessels and ascertained that they did not contain a prohibited substance. She thereupon took these supplements in reliance on her doctor's examination.

- 4.4 Following the results of the urine analysis, she sent the supplements VITAL and CARSIL to a laboratory for chemical analysis. The results were that they did not contain a prohibited substance. However, an analysis of the supplement INOSINE which she ingested was not possible as she had consumed all of the capsules in her possession. Appellant claims to have tried to find another vessel with the INOSINE supplement in all gymnastic centres in Larnaca/Cyprus, but in vain. The supplement had been withdrawn from the market. On the basis of later investigations, Appellant claims to have discovered that the INOSINE capsules which she took prior to the doping test were of "grey colouring" and without anything inscribed on them. The import company for INOSINE in Cyprus, however, confirmed to her that all INOSINE capsules are of a "white colouring" and the initials "UN" (the abbreviation presumably of the manufacturer "Ultimate Nutrition") are inscribed with a "yellow colour". Hence, she concluded before the FINA Doping Panel that the vitamins which she ingested were not those produced and officially imported and that these capsules must have been the reason for the increase of Nandrolone in her body.
- 4.5 In his final brief to the Panel dated December 11, 2003, counsel for the Appellant cites the adoption of the World Anti-Doping Code by the FINA and the reduction of the minimum sanction of suspension from four (4) years to two (2) years. Over and above this, however, counsel for the Appellant petitions the Panel to reduce the suspension by an additional two months to a total of twenty-two (22) months commencing as of June 16<sup>th</sup>, 2002, the day of the collection of the positive sample.

## **5. The Respondent's Contentions and Motions**

- 5.1 The Respondent cites in its Answer of May 12, 2003 that the Appellant acknowledges that her urine tested positive for 19-Norandrosterone. Accordingly, there can be no question that a doping offence has been committed pursuant to FINA Rule DC 2.1 lit a) of the FINA Doping Control Rules (DC) and that a sanction pursuant to FINA Rule DC 9.1.1 must be imposed.
- 5.2 The Respondent further cites FINA Rule DC 9.10 which establishes that the competitor has the personal responsibility to ensure that no prohibited substance enters his/her body and which also contains the express instructions to the athlete that he/she cannot rely on third parties in this respect. In this regard, the Respondent points out the following:

*Since at least 1999, the risk of using certain substances and food supplements (in particular supplements from US companies) of uncontrolled source has been well known and athletes have been specifically cautioned in this respect. Such caution is expressly set forth at the end of the FINA list of prohibited substances which was in use at the time of the analysis of the Appellant's samples.*

*“Athletes must ensure that any medicine, supplement, over-the-counter preparation or any other substance they use, do not contain any Prohibited Substance”.*

- 5.3 The Appellant has failed, in the opinion of the Respondent, to establish that INOSINE was the source of the positive analysis. It is only one possibility and cannot be proved by reference to pending litigation in California against its manufacturer. But even if the Appellant could prove that INOSINE was the source of the doping, it is clear, in the view of the Respondent, that the Appellant acted with negligence. INOSINE is a “typical grey area product produced by a manufacturer known to bring into the market supplements containing prohibited substances. To use such a product is to put oneself at risk.
- 5.4 The Respondent asserts that the Appellant, who despite her age was “not an inexperienced athlete” cannot exculpate herself by having consulted her doctor. Respondent continues:

*“Given the fact that precisely “spiked” supplements would typically not mention prohibited substances, the mere fact to ask a doctor to read the content list and to confirm the obvious fact that it does not indicate the presence of a prohibited substance, is clearly insufficient as it in no way constitutes an appropriate check of a product of this (uncertain) type and origin.”*

As a result of the above, the Appellant, in the judgment of the Respondent, violated her duty of care. The Appellant was, at best, negligent.

- 5.5 By letter dated December 12, 2003, the Respondent confirmed that, in accordance with the transitional rules of the *FINA Handbook*, FINA has accepted to apply in favor of the Appellant the new DC Rules with respect to the sanctions and therefore, to decrease the sanction from a four (4) to a two (2) year suspension.

## II. ON THE MERITS

### 6. CAS Jurisdiction

- 6.1 The jurisdiction of CAS to act as an appeal body is based on R47 of the CAS Code in conjunction with FINA Rule DC 12.8.3. The former provide as follows:

*A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body insofar as the statutes 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 body.*

- FINA Rule DC 12.8.3. provides:

*An appeal against a decision by the Bureau of FINA Doping Panel shall be referred to the Court of Arbitration for Sport (CAS) Lausanne, Switzerland, within one (1) month after receipt of this judgement.*

- In addition to the above, FINA Rule DC 8.9. provides:

*Any person affected by a decision of the FINA Doping Panel may appeal from that decision to the Court of Arbitration for Sport (CAS), Lausanne, in accordance with FINA Rule DC 12.8.3.*

- The Appellant's Statement of Appeal is dated March 17, 2003.

## **7. Applicable Law**

- 7.1 In accordance with R58 of the CAS Code, the award was rendered pursuant to the FINA Doping Control Rules. R58 of the CAS Code provides:

*The Panel shall decide the dispute according to the applicable regulations and the rules or law chosen by the parties or, in absence of such a choice, according to the law of the country in which the federation, association or sports body is domiciled.*

- 7.2 The parties have not expressly or impliedly agreed on a choice of law applicable to the proceedings before the CAS. In the absence of such a choice by the parties and pursuant to Swiss law, FINA's place of domicile, being Switzerland, the FINA Doping Control Rules and Swiss law will govern this dispute.

- 7.3 The applicable FINA Doping Control Rules are those contained in the *FINA Handbook 2002 - 2005*.

- 7.4 The applicable procedure in this case is the appeal procedure provided in R47 *et seq.* of the CAS Code. In particular, R57 of the CAS Code provides:

*The Panel shall have full power to review the facts and the law.*

- 7.5 Accordingly, the Panel is not limited to consideration of the facts adduced before the *FINA Doping Panel* or any other court or body which has ruled in this case, but may consider all facts that have been submitted in writing until the date of the decision. None of the arguments advanced by the parties could or did affect the Panel's responsibility in this regard.

**8. Applicable Material Provisions**

8.1 The material provisions applicable in this case are the Doping Control Rules specifically issued by FINA in their currently governing version, i.e., in the version effective from 11 September 2003. They include, *inter alia*, the following:

DC 2.1 *Doping offences are:*

*a) the finding of a prohibited substance within a competitors body tissue or fluids ...*

DC 3.1 *Except as set forth in DC 3.5, the following classes of substances shall be prohibited in competition (...)*

*and the following classes of substances shall be prohibited at all times:*

*A. Anabolic agents (...)*

Appendix A: *Prohibited substance - in competition*

*Summary of urinary concentrations above which IOC Accredited Laboratories must report findings for specific substances (...)*

*19-Norandrosterone < 5 nanograms / milliliter in females.*

8.2 With respect to the adoption of the World Anti-Doping Code by the Respondent, the transitional provisions of FINA apply. They provide that the new DC Rules be applicable regarding the sanctions.

8.3 The amended Doping Control Rules of the FINA (hereinafter referred to as "the Amended Code") became effective as of September 11, 2003. They provide:

DC 10.2 *Except for the specified substances identified in DC 10.3, the period of Ineligibility imposed for a violation of DC 2.1 (presence of a Prohibited Substance or its Metabolites or Markers)(...)shall be:*

*First violation: Two (2) years' ineligibility. (...)*

DC 10.5.1 *If the Competitor establishes in an individual case involving an anti-doping rule violation under DC 2.1 (presence of Prohibited Substance or its Metabolites or Markers) or Use of a Prohibited Substance or Prohibited Method under DC 2.2 that he or she bears No Fault or Negligence for the violation, the otherwise applicable period of ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Competitor's Specimen 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. . . .*

DC 10.5.2 *This DC 10.5.2 applies only to anti-doping rule violations involving DC 2.1 (presence of a Prohibited Substance or its Metabolites or Markers), Use of a Prohibited Substance or prohibited Method under DC2.2, failing to submit to Sample collection under DC 2.3, or administration of a Prohibited Substance or Prohibited Method under DC 2.8. If a Competitor establishes in an individual case involving such violations that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of ineligibility may not be less than one-half of the minimum period of ineligibility otherwise applicable. (...) When a Prohibited Substance or its Markers or Metabolites is detected in a Competitor's Specimen in violation of DC 2.1 (presence of Prohibited Substances), the Competitor must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.*

DC 10.7 *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 doping 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.*

## **9. The Examination of the Appealed Decision of the FINA Doping Panel**

9.1 At its Annual Congress in July 2003, the FINA adopted the World Anti-Doping Code and incorporated its provisions in the terms of the Amended Code. This Amended Code became effective on September 11, 2003. The Respondent has, by way of the Amended Code, reduced the sanction to be imposed upon competitors for a violation of FINA Rule DC 2.1 (presence of Prohibited Substances) from a previous four (4) year period of suspension to a maximum two (2) years of ineligibility for a first violation.

9.2 Both the FINA (see letter of the Respondent to the CAS dated December 12, 2003) and the CAS Panel in the instant arbitration accede to the fundamental principle of *lex mitior* (see also A. Cullwick v. FINA, Award of March 13, 1997, CAS Digest I, p. 251). This principle requires that the penalty in force at the time of adjudication, if more benign than the penalty in force at the time the offence is committed, be applied as the prescribed sanction. Accordingly, the Panel, in the exercise of the powers granted to it under R57 of the CAS Code, must consider in the case at hand whether

the FINA Doping Panel has erred in its evaluation of the facts and circumstances upon which it based its decision to impose the maximum (4 year) suspension, and if this is the case, to reduce the sanction now to be imposed under the Amended Code in accordance with the provisions set forth under FINA Rules DC 10.5.1 and DC 10.5.2.

- 9.3 In addition, the Panel is charged with the task of reviewing the Appellant's petition for a further reduction of the penalty by an additional two months, i.e., from two years to a total of 22 months of ineligibility under the Amended Code.

**10. The Sanction; Reduction of the Two Year Term of Ineligibility**

- 10.1 The Amended Code provides in FINA Rule DC 10.2 that the minimum sanction for a first violation of the FINA Rule DC 2.1 is a two (2) year term of ineligibility.

- 10.2 The Panel holds that the two year term of ineligibility is applicable as the appropriate sanction in the present case. The Respondent has failed to show cause as to why she bears no "Significant Fault or Negligence" under FINA Rule DC 10.5.2. Exceptional Circumstances do not exist in the case at hand.

- 10.3 It has been determined, and the Respondent has not contested, that the Prohibited Substance Nandrolone (19-Norandrosterone) in a measure of more than 25 ng/ml was present in her body fluids on June 16, 2002. An anti-doping rule violation pursuant to FINA Rule DC 10.1 has therefore been committed which requires a sanction.

- 10.4 The Panel has taken into consideration that the Amended Code under DC 10.5.2 allows the court to mitigate the term of ineligibility by a further one year (one-half of the minimum period of ineligibility).

- 10.5 The Panel takes the view that the Appellant acted with negligence in taking a vitamin or food supplement allegedly packaged in capsules "with grey colouring" which, as admitted in the proceedings before the FINA Doping Panel and not contested in the written pleadings of her counsel, did not even bear the name of the manufacturer ("UN" for Ultimate Nutrition). The products marketed by the official importer of the Ultimate Nutrition product, on the other hand, were "of white colouring and inscribed with the manufacturer's initials." The Appellant heightened the level of her negligence by allegedly presenting the (grey) capsules prior to the competition on June 16, 2002 to her doctor, who perfunctorily read the label on the bottle and stated to her that they did not contain a prohibited substance. The Appellant, who participated at the Olympic Games in Sydney and who could look back on four years of national and international competition, certainly was exposed (and has not contested that she was exposed) to the warnings issued by the FINA regarding the risk of using certain food supplements of uncontrolled sources. Neither she nor Dr. Solanas Demetriou scrutinized the packaging, the vessel (bottle) or box containing the capsules to determine their manufacturer or place of origin. Her attempts to

subsequently obtain additional capsules of the kind she ingested prior to June 16, 2002 resulted only in her determining that the real maker of INOSINE was U.S.-based Ultimate Nutrition. That manufacturer, as she learned only a few months later, however, had been served with a conviction by the Superior Court of the State of California already on August 15, 2001. It is this level of investigation which the Appellant and Dr. Demetriou should have applied in June 2002 when the Appellant first took the capsules. In not doing so, they acted negligently.

- 10.6 If the Panel were now to rule that any athlete who alleges that she had no knowledge of the content of a particular vitamin or food supplement which she has taken and, for this reason, must be exonerated from any fault or negligence, significant or insignificant, in explaining the presence of a prohibited substance in her body, the exception now adopted by the World Anti-Doping Code under the title "Exceptional Circumstances" will be rendered meaningless.
- 10.7. The Panel also considers to be unpersuasive the Appellant's alleged attempts to determine whether the capsules which she took prior to June 16, 2002 (and which she believed to be INOSINE) were, in fact, the cause of the Nandrolone which entered her system. The Panel cannot recognize this attempt as constituting *bona fide* effort to establish how the Prohibited Substance entered her system in order to have the period of ineligibility reduced pursuant to FINA Rule DC 10.5.2 (last sentence). Her statement that, subsequent to the urine analysis, she was unable to purchase the same INOSINE vitamins as the ones which she had taken prior to June 16, 2002 is not convincing. In no way is this statement capable of demonstrating that the capsules which she alleges to have taken were indeed the capsules which caused the contamination of her body fluids. The contamination could have resulted from other ingested substances.
- 10.8 The Panel has also considered the age of the Appellant, but has determined that age does not fall within the category of "Exceptional Circumstances" which warrant consideration in reducing the term of ineligibility. At the age of 16 years, the Appellant was able to discern what constitutes negligent conduct, especially when the applicable standard of caution evidenced in the numerous warnings and instructions regarding vitamins and food supplements of unidentified origin was clearly communicated to athletes by their respective sport federations. Having competed in national and international events and the Olympic Games in Sydney, the Appellant was no novice to the risks and pitfalls of competing athletes in high-level competition.
- 10.9 Counsel for the Appellant has requested an additional reduction of two months to the two year term of ineligibility now imposed under the Amended Code. No where in the Appellant's pleadings, in particular, not in the brief emailed to the CAS on December 11, 2003, does counsel for the Appellant provide any argumentation, much less a statement of facts and circumstances, which justify this particular request. For this reason, the Panel sees no grounds to grant this request and refers to the above grounds which deny the existence of Exceptional Circumstances for mitigating the two year term of ineligibility. The Panel renders this decision with the

consent of the parties on the basis of the file as on the date of its telephonic deliberations on December 17, 2003, the date on which the cancelled hearing was to have taken place.

- 10.10 The cancellation of results achieved by the Appellant during the period between December 16, 2001 and February 17, 2003, as pronounced by the FINA Doping Panel in its decision dated February 19 2003 shall be deemed without effect and replaced in accordance with the "new" provision in FINA Rules DC 10.7. Consequently, in addition to the two-year ban, all competitive results obtained by the Appellant between the date the positive sample was collected (June 16, 2002) and the commencement of the provisional suspension imposed by the Cyprus Amateur Swimming Association (July 2, 2002) shall be deemed cancelled.

## **11. Starting Date of the Sanction**

- 11.1. The Appellant further petitions that the sanction commence on June 16, 2002, the date on which the doping offence was committed.
- 11.2 The FINA Doping Panel held in the decision appealed to CAS that the suspension becomes effective retroactively as of July 2<sup>nd</sup>, 2002. However, the Doping Panel also held that the term of the suspension imposed by the Disciplinary Commission of the Cyprus Swimming Association shall be "included in the 4 years suspension."
- 11.3 The Panel holds that the term of the Appellant's ineligibility shall become effective as of the date of the doping offence, i.e., as of June 16, 2002. The Appellant was not permitted to compete as of this date.
- 11.4 It is the opinion of the Panel that the date of the announcement of the positive result cannot be taken as the commencement date for the ineligibility, because no accused athlete can influence the course of the laboratory analysis of a doping sample. In the present case, this consideration assumes added importance in that no IOC accredited laboratory is located in Cyprus. The Amended Code provides no further guidance on this issue.

## **12. Allocation of Costs**

- 12.1 R 65.3 of the CAS Code provides:

*The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources.*

- 12.2 The Panel considers that the reduction of the sanction by two (2) years is a *de jure* consequence of the adoption of the Amended Code by FINA. Therefore, the Appellant did not obtain the reduction of her ineligibility by reason of her pleadings.
- 12.3 Taking into account the financial situation of the Appellant, which has been made adequately clear by her legal counsel, and the fact that her appeal was filed with the CAS before it was foreseeable that the FINA would adopt the World Anti-Doping Code, the Panel has decided that each party shall bear their own costs.
- 12.4 The CHF (Swiss Francs) 500.00 paid to the CAS in advance will be retained by CAS as provided by art. R65.2 of the CAS Code.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport**

hereby rules the following

**AWARD**

1. The appeal filed by Mrs. Anna Stylianou on March 17, 2003 is partially upheld.
2. The decision of FINA dated February 19, 2003 is hereby amended:
  - a) A term of ineligibility of two years is imposed on Mrs. Anna Stylianou, commencing as of June 16, 2002.
  - b) All results achieved by Mrs. Anna Stylianou during the period from June 16, 2002 until July 2, 2002 shall be deemed cancelled.
3. This award is rendered without costs, except for the Court Office fee of CHF 500.00 (Five Hundred Swiss Francs) already paid by the Appellant, which shall be retained by the CAS.
4. Each party shall bear its own respective costs.

Done in Lausanne, January 30, 2004

**THE COURT OF ARBITRATION FOR SPORT**

President of the Court

**John A. Faylor**

**Pantelis I. Dedes**  
Arbitrator

**Dennis Oswald**  
Arbitrator

**Anne Jakob**  
Ad hoc Clerk