



FÉDÉRATION
INTERNATIONALE
DE NATATION

FINA Doping Panel 02/15 24 August 2015

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FINA Doping Panel

comprised of

Robert Fox	(Switzerland)	Chairman
Raymond Hack	(South Africa)	Member
Farid Ben Belkacem	(Algeria)	Member

In the proceedings against

NIKOLA RADJEN of Serbia, a Water Polo player
affiliated to the Water Polo Federation of Serbia.

Mr Radjen was not represented.

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 Water Polo Federation of Serbia is a member of FINA, and as such is required to recognize and comply with FINA's anti-doping rules which are set out in the FINA Doping Control Rules ("FINA DC"). The FINA DC Rules are 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 Serbian Water Polo Federation.

1.3 The Athlete's name is Nikola Radjen, a 30 year old male water polo player. Mr. Radjen lives in Belgade, Serbia, and trains with the Partizan Water Polo Club. He was selected to compete in the game between Spain and Serbia on the occasion of the FINA Water Polo World League in Madrid, Spain on 17 February 2015. He was selected for the Serbian National Team that competed in Rome in 2009. He has also been a European and World Cup Champion, having represented Partizan and Red Star Belgrade, and represented Serbia at both the 2008 and 2012 Olympic Games where he obtained gold and bronze medals, respectively.

II. NATURE OF THE CASE

2.1 This matter is about two adverse analytical findings of a metabolite of Cocaine found in the Athlete's system pursuant to two in-competition tests on 17 February 2015 and 15 April 2015.

III. PROCEEDINGS

3.1 By letter dated 5 May 2015, the FINA Executive Director advised Mr. Radjen that the A2031023 sample of an in-competition doping control test conducted on 17 February 2015 had tested positive for the metabolites of cocaine (Class S.6 Stimulants) which is a prohibited substance. Mr. Radjen was advised that he could arrange for a B sample analysis.

3.2 By letter dated 7 May 2015 Mr Radjen was provisionally suspended.

3.3 By letter dated 15 May 2015 Mr Radjen waived his right to the B sample analysis to be conducted.

3.4 By email dated 10 June 2015 Mr Radjen waived his right to a hearing and requested permission to submit a written letter of defence.

3.5 By letter dated 10 June 2015 Mr Radjen was advised by the Chairman of the FINA Doping Panel that he had until the 25th June 2015 to file a written brief of defence.

3.6 By letter dated 29 June 2015 the FINA Doping Panel Chairman received communication from Dr. Marija Anđelković on behalf of the Serbian Anti-Doping Agency requesting an extension of the deadline until 10 July 2015 for the filing of the defence brief, citing the reason for this request being that Mr Radjen was due to address the 1st Congress on the Prevention of Doping in Sport on 7 July 2015 in Belgrade.

3.7 On 1 July 2015 by letter, the Chairman of the FINA Doping Panel advised Mr Radjen of a second adverse analytical finding against him, which was conveyed to him from the FINA Executive Director on 24 June 2015. It was noted by the Chairman of the FINA Doping Panel that the deadline which had been provided in the first matter had gone without response, but that an email dated 29 June 2015 had been received from Dr. Marija Anđelković. The Chairman of the FINA Doping Panel advised Mr Radjen that both matters would be treated by the FINA Doping Panel in one decision, and that the final requested extension would be 13 July 2015.

3.8 The FINA Doping Panel was formed in accordance with FINA Rule C 22.9.

3.9 Mr. Radjen tendered an interview held by the Serbian Anti-Doping Agency at the 1st Congress of Prevention of Doping in Sport.

3.10 The FINA Doping Panel Chairman sent a letter on 7 August 2015 to Mr. Radjen informing him of the composition of the Panel and asking him to provide the circumstances surrounding the manner in which the prohibited substance entered his system. He was given deadline to 12 August 2015 to respond. Mr. Radjen responded by email on 11 August 2015 and stated the following:

“Dear Sir,

Thank you for your e-mail and correspondence regarding this matter.

I have no comments regarding this panel and I have full confidence in their work.

Regarding your opportunity to provide the Panel with the additional concrete circumstances of my case, I can tell that I wrote everything in my defense and I can only repeat here all relevant information’s.

I would like to underline that used substance was taken only out of competition without any idea to improve my sport skills and in a context unrelated to sport performance. Forbidden substance I took in a specific life situation with a lot of private problems (I explain everything in my video and written defense already sent to FINA). As a professional athlete, I am aware of anti-doping rules and that the responsibility is solely mine. However, I have no intention to cheat nor to enhance my sports performance. I have no intention to commit anti-doping rule violation.

Thank you for cooperation and understanding.

*Best regards
Nikola Radjen»*

IV. JURISDICTION AND APPLICABLE RULES

4.1 The jurisdiction of the FINA Doping Panel arises out of the following provisions of the FINA Rules: C 22, and FINA Rule DC 7.10.1 and DC.8.

4.2 The applicable Rules in this case are the FINA Doping Control Rules in effect since 1 January 2015.

V. MOTIONS AND CONTENTIONS

5.1 Mr Radjen, during his interview on the 1st Congress for the Prevention of Doping in Sport, advised that during his career he had been tested on numerous occasions including the World Championships, the European Championships and the Olympic Games, and had always tested negative.

5.2 However, when he was notified that he had been selected for a test arising out of the FINA Water Polo World League game between Spain and Serbia, he conceded that he would test positive as he knew what he had done, and still went ahead with submitting himself for a test as he believed in the concept of “clean” sport.

5.3 He advised that as a result of the death of his father at the beginning of 2015, and the low performance of his team together with the fact that he had surrounded himself with “the wrong crowd” he allowed himself to take Cocaine.

5.4 As a result of clause 5.3 above, he further accepted and admitted the second violation which arose on 15 April 2015, also for the banned substance Cocaine.

VI. LEGAL DISCUSSION

A. THE FACTS

The FINA Doping Panel has established the following facts in this case.

6.1 On 5 May 2015 Mr. Radjen was advised of the adverse analytical report resultant from his doping control test conducted on 17 February 2015, which tested positive for the metabolites of cocaine (Class S.6 Stimulants) which is a prohibited substance. Mr. Radjen was advised that he could arrange for a B sample analysis.

6.2 On 7 May 2015 Mr Radjen was provisionally suspended.

6.3 Mr Radjen did not dispute the accuracy of the laboratory testing which found the prohibited substance metabolites of Cocaine in his urine sample, and on 15 May 2015 Mr Radjen waived his right to the B sample analysis to be conducted. In substance Mr Radjen explained that his consumption of illegal substances which led to his positive tests were due to personal difficulties that he had been going through at the beginning of the year. This included the loss of his father.

6.4 Mr Radjen spoke at the 1st Congress of Prevention of Doping in Sport in Belgrade on 7 July 2015 organised by the Serbia Anti-Doping Agency. In addition, he talked with junior water polo players at a memorial tournament over the weekend of the 8/9 August 2015.

B. THE LAW

6.5 Mr. Radjen had two adverse analytical findings against him. Cocaine is a prohibited substance in-competition under Class S6 (non-specified stimulant) under the 2015 Prohibited List adopted by the World Anti-Doping Agency (WADA).

6.6 According to FINA DC 2.1.1, it is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes 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 Athlete's part be demonstrated in order to establish an anti-doping rule violation under DC 2.1.

6.7 Pursuant to FINA DC 10.1, an anti-doping rule violation occurring during or in connection with a Competition may, upon the decision of the ruling body of the Competition, lead to Disqualification of all of the Athlete's individual results obtained in that Competition with all Consequences, including forfeiture of all medals, points and prizes, except as provided in DC 10.1.1. Factors to be included in considering whether to Disqualify other results in a Competition might include, for example, the severity of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Events.

6.8 According to FINA DC 10.1.1, if the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Events shall not be Disqualified unless the Athlete's results in Events other than the Event in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule.

6.9 In this matter, the Athlete provided no specific explanation of the manner nor the circumstances in which he took any substance which would yield an adverse analytical finding. Hence, there is no room for a defense based on no fault or negligence, nor no significant fault nor negligence.

6.10 In addition, the Panel noted that the Athlete spontaneously took steps to render public his anti-doping violation and appears willing to use his misfortune as an educational example for youngsters and other athletes to take lessons from. The FINA Doping Panel finds this commendable and can only encourage the Athlete to pursue in any way possible educating and informing both young and experienced athletes of the advantages of keeping sport clean and having healthy and responsible habits to avoid violating Anti-Doping regulations. This however does not allow for the Panel to envisage a reduction of the sanction imposed by the rules, as the scope within which the Panel may levy sanctions or depending on circumstances alleviate them are clearly set forth in the regulations.

6.11 The Panel considered applying the rules applicable to Substantial assistance pursuant to FINA DC 10.6. This rules provides that the FINA Doping Panel or other Anti-Doping Organisation with results management responsibility may, prior to a final appellate decision under DC 13 or the expiration of the time to appeal, suspend a part of the period of Ineligibility imposed in an individual case in which it has results management authority where the Athlete or other Person has provided Substantial Assistance to FINA, a criminal authority or professional disciplinary body which results in: (i) FINA's discovering or bringing forward an anti-doping rule violation by another Person, or (ii) which results in a criminal or disciplinary body discovering or bringing forward a criminal offence or the breach of professional rules committed

by another Person and the information provided by the Person providing Substantial Assistance is made available to FINA.

6.12 Such is not the case in this matter. The comments of FINA DC 10.6.1 state: "*The cooperation of Athletes, Athlete Support Personnel and other Persons who acknowledge their mistakes and are willing to bring other anti-doping rule violations to light is important to clean sport. This is the only circumstance under the Code and DC Rules where the suspension of an otherwise applicable period of Ineligibility is authorized*" (underlined by the Panel). Undoubtedly, the Athlete's actions after the fact point to a willingness to acknowledge his mistake but he has failed to bring any other anti-doping rule violation to light.

6.13 Finally, the Panel considered that in light of the second adverse analytical finding, it could have considered whether this matter should be decided on based on two adverse analytical finding and as such would have applied the rules for multiple violations. However, after hesitation, in light of the fact that FINA communicated to the Athlete that this matter would be considered as a first violation, and taking into account the public efforts made by the Athlete to atone his mistake, the Panel will refrain from applying the sanctions contemplated in FINA DC 10.7.

VII. SANCTION

7.1 According to DC 10.2.1, the period of Ineligibility shall be four years where:

DC 10.2.1.1 the anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

DC 10.2.1.2 the anti-doping rule violation involves a Specified Substance and FINA or the Member Federation can establish that the anti-doping rule violation was intentional.

Even though the Athlete was honest in admitting that he had taken Cocaine, Mr Radjen fulfils the provisions as set forth above in DC 10.2.1 and is therefore sanctioned with 4 (four) years ineligibility period.

The period of suspension runs in terms of Rule 10.11.3 from 7 May 2015.

VIII. SUMMARY OF THE DECISIONS

8.1 Mr. Radjen receives a 4 (four) year period of ineligibility commencing on 7 May 2015, and ending at the conclusion of 6 May 2019, for his first anti-doping rule violation.

8.2 All results obtained by Mr. Radjen on or after 17 February 2015 are disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

8.3 All costs of this case shall be borne by the Water Polo Federation of Serbia in accordance with FINA DC 12.3.

8.4 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 12.11.4).

Robert Fox
Chairman

Fari Ben Belkacem
Member

Raymond Hack
Member

Signed on behalf of all three Panel Members

A handwritten signature in black ink, appearing to be 'R. Fox', written over a faint horizontal line.

Robert Fox