



FINA Doping Panel 04/15
30 October 2015

President
DR. JULIO MAGLIONE
Uruguay

First Vice President
HUSAIN AL MUSALLAM
Kuwait

Honorary Secretary
PAOLO BARELLI
Italy

Honorary Treasurer
PIPAT PANIANGVAIT
Thailand

Vice Presidents

TAMAS GYARFAS
Hungary

DENNIS MILLER
Fiji

DALE NEUBURGER
United States of America

SAM RAMSAMY
South Africa

Members

FERNANDO CARPENA
Spain

ERROL CLARKE
Barbados

DIMITRIS DIATHESOPOULOS
Greece

DR. MOHAMED DJOP
Senegal

MATTHEW DUNN
Australia

BEN EKUMBO
Kenya

ANDREY KRYUKOV
Kazakhstan

EUGENIO MARTINEZ
Cuba

DR. MARGO MOUNTJOY
Canada

COARACY NUNES FILHO
Brazil

DONALD RUKARE
Uganda

VLADIMIR SALNIKOV
Russia

KAZUO SANO
Japan

ERIK VAN HEIJNINGEN
Netherlands

QIUPING ZHANG
China

JIHONG ZHOU
China

Honorary President
MUSTAPHA LARFAOUI
Algeria

Executive Director
CORNEL MARCULESCU

FINA Doping Panel Chairman

Robert Fox (SUI)

Chairman

In the proceedings against

The open water swimmer **Olga Beresnyeva** ("the Athlete or the swimmer")
affiliated to the Ukrainian Swimming Federation

I THE PARTIES

1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing the sport of Aquatics. 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 UKRAINIAN SWIMMING FEDERATION is a member of FINA. The Ukrainian Swimming Federation 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 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 Ukrainian Swimming Federation.

1.3 The Athlete is a member of the Ukrainian Swimming Federation. On 9 August 2012, she competed in the Women's 10 km

open water marathon event at the occasion of the Games of the XXX Olympiad in London, 2012 (hereafter London Olympic Games).

1.4 The Athlete was born on 12 October 1985 in Mariupol and is an Olympic and national-record holding distance swimmer. She has swum at the 2000, 2004 and 2012 Olympic Games. She competed in the FINA World Championships in 2003, 2005, 2009, 2011 and 2013. At 2003 World Championships, she set the Ukraine record in the 1500m freestyle (16:27.76). After the 2004 Olympic Games, she changed sport nationality and swam for Israel. After failing to qualify for the 2008 Olympic Games, she returned to swimming for Ukraine. The Athlete was originally a distance swimmer in the pool, and began swimming open water races in 2008. She won the 25km race at the 2010 European Championships, the first time she swam the race.

II. NATURE OF THE CASE

2.1 Prior to this competition, the Athlete was requested, under the auspices of the International Olympic Committee (hereafter IOC) to provide a urine sample for a doping control on 28 July 2012 at around 18h30 in Kiev, Ukraine. The A and B samples collected from the Athlete were sent to the WADA Accredited Laboratory of Cologne (hereinafter the "Cologne Laboratory") as instructed by the IOC. The A sample was analyzed at the time, but did not result in an adverse analytical finding.

2.2 After the end of the London Olympic Games, the A and B samples collected from the Athlete under the authority of the IOC were, at the IOC's request, kept for long term storage in the Cologne Laboratory.

2.3 The IOC decided to perform further analyses on samples collected during the London Olympic Games. These additional analyses were performed with improved analytical methods in order to detect prohibited substances which could not be identified with the analyses performed at that time.

2.4 The A sample bottle was not of sufficient volume to perform a new analysis. On 10 March 2015, the above-noted sample was subjected to a new analysis on the basis of the instructions of the IOC, in compliance with the B splitting procedure provided under Article 5.2.2.12.10 of the International Standard for Laboratories, by splitting the B sample into two bottles, in the presence of an independent witness, and resealing the second bottle.

2.5 The results of the analysis of the first bottle of the B sample (hereinafter referred to as "A sample") gave rise to an adverse analytic finding: presence of recombinant erythropoietin (rEPO).

2.6 Pursuant to Article 6.2.1 of the IOC Anti-Doping Rules applicable to the XXX Olympic Games in London, 2012 (hereinafter the "Rules"), Dr Richard Budgett (the IOC Medical Director) as representative of the Chairman of the IOC Medical Commission, was informed on 23 March 2015 by the Cologne Laboratory of an adverse analytical finding on the above-noted A sample of the Athlete.

2.7 Pursuant to Article 6.2.2 of the Rules, the IOC Medical Director determined that the above-noted A sample belonged to the Athlete, and verified that it did in fact give rise to an adverse analytical finding (i.e. that there was no therapeutic use exemption). He also determined that there was no apparent departure from the International Standards for Testing or the International Standards for Laboratories that undermined the validity of the adverse analytical finding.

2.8 Pursuant to article 6.2.5 of the Rules, the IOC President, by letter dated 30 March 2015, promptly set up a Disciplinary Commission.

2.9 In conformity with article 6.2.6 of the Rules, by letter dated 1 April 2015, notified (by e-mail through the NOC of Ukraine) to the Athlete, to the Secretary General of the NOC of Ukraine and to the Honorary Secretary of FINA, the IOC President advised of the above-mentioned adverse analytical finding, the Athlete's right to request the analysis of the B sample and the right of the Athlete to be present or to be represented on these occasions, as well as the Athlete's right to request copies of the A and B sample laboratory package. On 10 April 2015, by return e-mail, the Athlete returned the B confirmation form signed, indicating that she did not wish to have the B sample opened or analyzed, nor did she wish to obtain the laboratory documentation package.

2.10 Pursuant to Article 6.2.7 of the Rules, by letter dated 13 April 2015, notified (by e-mail) to the Athlete, the President of the NOC of Ukraine and to the Honorary Secretary of the FINA, the IOC acknowledged that the Athlete had waived her right to the B opening and asked for the determination of the Athlete as to whether she would attend a hearing of the Disciplinary Commission and/or provide a defense in writing.

2.11 The Athlete provided a written defense in which she stated:

"Herewith I admit that the anti-doping rule violation, with which I am charged, indeed took place and I accept my responsibility for it and the sanction, namely - period of ineligibility.

Such a violation happened under circumstances, which, of course, do not justify my misbehavior, but were really difficult for me to overcome and brought me down physically and psychologically, leading to making this fatal mistake -doping myself.

I practice sport since when I was six years old. I became international in 2002. During my career I have always been one of the leading athletes in Ukrainian national team

My profile can be seen at (.....)

In 2010 I won European championship in Balatonfüred, Hungary (Open water, 25 km freestyle), which is my best achievement in a career.

I know what constitutes an anti-doping rule violation and for all duration of my sports career I was always keeping straight against taking any prohibited substance or using prohibited methods.

In the season of 2011, maybe because of my age, or because of general tiredness due to my long sports career and constant competing on high level, my results and general physical condition started decreasing, whatever I did - changed training conditions, load, methods, took vitamins and different non- prohibited medications to support my physical conditions. Such a situation scared me, because participation in Olympic Games 2012 was my target - to qualify for this edition was definitely the last chance for me due to my age. I missed OG in Beijing 2008 because was not included in the national team. In Sydney 2000 and Athens 2004 my results were not that high, but I was only 15 and 19 years old respectively Therefore. I did not want to miss my last chance to compete in Olympic Games, which is very important for any athlete.

I was working very hard, actually spending all my time training and refusing normal life. When in June 2012 at pre-Olympic tournament in Setubal, POR on June 11, which was the last chance to qualify for the Olympic Games 2012, I demonstrated very low result and finished only 15th, that really put me down to desperation.

The race itself - 10km - went very bad - in the very beginning I got stuck in the net, than rivals took off my swim hat and glasses, which I had to pick up and put back,

loosing time, after I was kicked by a rival in the eye and got big bruise bothering me all the way... When I finished the race I was down and crying, I got into quarrel with my coach/father blaming him in my condition.

Despite qualification with the penultimate result for the Olympic Games 2012 as representative of European continent (.....) I was haunted by shame and desperation, stopped respecting myself, was afraid not to be able to compete well enough during Olympic Games and get defamated.

After all this I understood that my condition is getting worst and worst and I will not be able even to finish the distance while racing in London 2012. After lengthy reflection and hesitation I made my decision and used prohibited substance somewhere in the end of June 2011. I am a sports rehabilitation specialist and used also information from Internet sources to find the substance.

Indeed my results improved, I placed 7th in 10 km freestyle event in London 2012. Being happy about that, I always felt guilty and bad, because I knew that there was doping behind. After London-2012 my results significantly decreased, as can be seen from my profile on FINA webpage.

I am constantly tested by different ADO and each time results of the tests were negative, beside that one of July 28, 2012. That was the only such an occurrence during my sports career. I accept full responsibility for it and indeed regret that it happened.

From my side it was impulsive, emotional, last resort decision, for which, once again, I do not justify myself. I am ready to participate in any anti-doping education or rehabilitation programs.

In accordance with Article 1.2 of "The International Olympic Committee Anti-Doping Rules applicable to the Games of the XXX Olympiad, London 2012": Subject to the specific following provisions of the Rules below, the provisions of the Code and of the International Standards apply mutatis mutandis in relation to the

London Olympic Games". Thus, provisions of the WADA Code 2009 are directly applicable to this case, as it is specifically pointed by the IOC.

In accordance with Article 10.2 WADC "ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods": The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), ... shall be ... : First violation: Two (2) years Ineligibility".

In accordance with Article 10.9.2 WADC "Timely Admission": Where the Athlete ... promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the Anti-Doping Organization, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the Athlete ... shall serve at least one half of the period of Ineligibility going forward from the date the Athlete ... accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed".

In accordance with Article 10.9 WADC "Commencement of Ineligibility Period": ... the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed".

By signing two Forms of April 10 and 16 respectively, I waived opening of B sample and the hearing in the case, admitting anti-doping rule violation and accepting a sanction.

Taking into account all the above:

- 1) I accept my responsibility for an anti-doping rule violation, with which I am charged, sanction and period on ineligibility;*
- 2) I apply for the ineligibility period to be ordered to start as foreseen by articles 10.9 and 10.9.2 of WADC 2009, i. e. of the date of Sample collection, but in any case not later than from the date of the acceptance of ineligibility, i.e. of the day of this document.*

(Signed) April 17, 2015).

2.12 The Disciplinary Commission acknowledged receipt of the submissions of the Athlete and responded by letter dated 19 May 2015 by asking questions relevant to the circumstances surrounding the ingestion of a prohibited substance. The questions submitted to the Athlete and her answers were addressed to the Disciplinary Commission by the Athlete on 21 May 2015 in the following format:

“1. Where did you source the prohibited substance from exactly? (website, name and address of the provider of the product)

I put in Google search engine word “Erythropoietin” in Ukrainian – EPHTPOIIIOETHH - and got the name of the medicine. The medicine named “EPREX” can be easily bought online. For example, like this (website address)

This medicine contains Erythropoietin. I do not remember now which exact link I used and can not precise which of those providers (online pharmacies) sold me this medicine. I have chosen the one which was offering cheapest option back then without asking prescription.

2. What was the name of the product containing the substance?

EPREX

3. How did you get the substance? (was it sent to you by post, did you pick it up)

The medicine named EPREX was delivered to my home by a courier like standard pharmaceutical delivery practiced in my country by almost every state and/or private pharmacy.

4. Was there any other person aware of your use of a prohibited substance and if so, who?

There was no such a person - I kept it in secret because I knew that I can not share it with anybody as what I was doing was against Anti-Doping rules.

5. Did you have these substances with you during the 2012 Olympic Games in London?

No, of course not - I knew that I will be searched at the border during my travel and that medicine and syringes are prohibited to be carried. Also I was afraid that if I had it with me on site it could have been found by anybody who could have access to my room (cleaning lady, teammates, coach etc.). Moreover, the medicine should be kept in the fridge.

6. When did you take the substance for the first time and how often?

I started taken it in the middle of June 2012, immediately after my unfortunate pre-Olympic competition in Setubal, POR on June 11 (as described in my previous submission in this matter) and until the end of July 2012, once a week - according to the prescription attached to the medicine.

7. Have you ever taken any other prohibited substance?

As I wrote in my initial submission, I never took any prohibited substances in the past during whole my career as sportsman. This incident was the first and the only one and happened due to my personal problems and as a step of despair because I was terrified not to produce good result during the London 2012 Olympic Games, the last Olympic Games in my career."

2.13 On 9 June 2015, the IOC Disciplinary Commission rendered the following decision:

"1. On 9 August 2012, Ms Olga Beresnyeva (hereinafter the "Athlete") competed in the Women's 10km open water marathon event at the occasion of the Games of the XXX Olympiad in London, 2012 (hereafter the "London Olympic Games"), where she placed seventh.

2. Prior to her competition, the Athlete was requested, under the authority of the International Olympic Committee (the "IOC"), to provide a urine sample for a doping control on 28 July 2012 at around 18h30 in Kiev, Ukraine.

3. *The A and B samples collected from the Athlete were sent to the WADA Accredited Laboratory of Cologne (hereinafter the "Cologne Laboratory") as Instructed by the IOC.*

The A sample was analysed at the time, but did not result in an adverse analytical finding.

4. *After the end of the London Olympic Games, the A and B samples collected from the Athlete under the authority of the IOC were, at the ICC's request, kept for long term storage in the Cologne Laboratory.*

5. *The IOC decided to perform further analyses on samples collected during the London Olympic Games. These additional analyses were performed with improved analytical methods in order to detect prohibited substances which could not be identified with the analyses performed at that time.*

6. *The A sample bottle was not of sufficient volume to perform a re-analysis. On 10 March 2015, the above-noted sample was re-analysed on the basis of the instructions of the IOC, in compliance with the B splitting procedure provided under Article 5.2.2.12.10 of the International Standard for Laboratories, by splitting the B sample into two bottles, in the presence of an independent witness, and resealing the second bottle.*

7. *The results of the analysis of the first bottle of the B sample (hereinafter referred to as "A sample") have given rise to an adverse analytic finding: presence of recombinant erythropoietin (rEPO).*

8. *Pursuant to Article 6.2.1 of the IOC Anti-Doping Rules applicable to the XXX Olympic Games in London, 2012 (hereinafter the "Rules"), Dr Richard Budgett (the IOC Medical Director"), as representative of the Chairman of the IOC Medical Commission, was informed on 23 March 2015 by the Cologne Laboratory of an adverse analytical finding on the above-noted A sample of the Athlete.*

9. *Pursuant to Article 6.2.2 of the Rules, the IOC Medical Director determined that the above-noted A sample belonged to the Athlete, and verified that it did in fact give rise to an adverse analytical finding (i.e. that there was no therapeutic use exemption). He also determined that there was no apparent departure from the International*

Standards for Testing or the International Standards for Laboratories that undermined the validity of the adverse analytical finding.

10. *Pursuant to Article 6.2.3 of the Rules, the IOC President, Thomas Bach, was informed of the existence of the adverse analytical finding and the essential details available concerning the case.*

11. *Pursuant to Article 6.2.5 of the Rules, the IOC President, by letter dated 30 March 2015, promptly set up a Disciplinary Commission, consisting of:*

Denis Oswald (Chairperson)

Claudia Bokel

Gunilla Lindberg

The IOC President also informed the Disciplinary Commission that, pursuant to Rule 59.2.4 of the Olympic Charter and Article 6.1.6 of the Rules, the decision of the Disciplinary Commission would constitute the decision of the IOC. The IOC President has in this case decided that the procedure may be extended beyond the 24-hour time-limit as per Article 6.2.14 of the Rules.

12. *Pursuant to Article 6.2.6 of the Rules, by letter dated 1 April 2015, notified (by e-mail through the NOC of Ukraine) to the Athlete, to the Secretary General of the NOC of Ukraine and to the Secretary General of the Federation Internationale de Natation (hereinafter "FINA"), the IOC President advised of the above-mentioned adverse analytical finding, the Athlete's right to request the analysis of the B sample and the right of the Athlete to be present or to be represented on these occasions, as well as the Athlete's right to request copies of the A and B sample laboratory package.*

13. *On 10 April 2015, by return e-mail, the Athlete returned the B confirmation form signed, indicating that she did not wish to have the B sample opened or analysed, nor did she wish to obtain the laboratory documentation package.*

14. *Pursuant to Article 6.2.7 of the Rules, by letter dated 13 April 2015, notified (by e-mail) to the Athlete, to the President of the NOC of Ukraine and to the Secretary General of the FINA, the IOC acknowledged that the Athlete had waived her right to*

the B opening and asked for the determination of the Athlete as to whether she would attend a hearing of the Disciplinary Commission and/or provide a defence in writing.

15. On 16 April 2015, by return e-mail, the Athlete notified the IOC that she did not wish to attend a hearing in person but would submit a defence in writing.

16. On 17 April 2015, by return e-mail, the Athlete submitted a written defence in which the Athlete states, in summary that:

-- She admits to having committed the anti-doping rule violation and accepts responsibility for her "fatal mistake;

-- She "accepts full responsibility" and "regret[s] that it happened";

-- She describes, in chronological order, her career as an athlete and more particularly as "one of the leading athletes in Ukrainian national team";

-- She confirms her understanding of what an anti-doping rule violation consists of and claims that for the duration of her sports career, she had "always [kept] straight" against taking prohibited substances and had always, through constant testing by different Anti-Doping Organisations, tested negative;

-- During the year 2011, she noticed that her general condition along with her sport results started decreasing and she did not want to miss her "last chance" to compete in the Olympic Games. She decided to use prohibited substances "somewhere near the end of June 2011";

-- Being a "sports rehabilitation specialist" and with the support of information gathered on the internet, she was able to obtain "the substance" (NB: presumably rEPO);

-- She declares to be ready to participate in any anti-doping education or rehabilitation programs;

-- She requests the application of Article 10.2, Article 10.9.2 (timely admission) and Article 10.9 (commencement of Ineligibility period) of the World Anti-Doping Code (2009 version).

17. On 19 May 2015, the IOC Disciplinary Commission sent the Athlete a number of additional questions surrounding the circumstances of her case.

18. On 21 May 2015, the Athlete provided the following answers:

- She had done a Google search for the word "Erythropoietin" and found that a medicine called "EPREX", containing such substance, could be easily ordered online;
- She did not remember exactly which online supplier she had used, but ordered from the cheapest available without needing a prescription;
- The product EPREX was delivered to the Athlete's home by courier, which, according to the Athlete, is a standard delivery channel for medication in the Athlete's country;
- Nobody else was aware that she was using a prohibited substance;
- She did not have the product with her in London during the 2012 Olympic Games; -
- The substance was taken first mid-June 2012 until end of July 2012, once a week (in accordance with the instructions included with the product);
- She had never otherwise taken any other prohibited substance.

19. After reviewing the file, including the above-noted written statements from the Athlete, the Disciplinary Commission unanimously concluded that the Athlete had committed an anti-doping rule violation pursuant to Article 2.1 and/or 2.2 of the World Anti-Doping Code and Articles 2 and 13 of the Rules in that there was the presence of the prohibited substance, recombinant erythropoietin (rEPO), in her body.

20. The Disciplinary Commission notes that the Athlete has cooperated with the investigation and has answered to the written questions of the Disciplinary Commission in a diligent manner.

The scope of decision of the IOC Disciplinary Commission in this case does not include the duration of ineligibility, which shall be determined by FINA.

It shall therefore be the competence of FINA to determine the duration of ineligibility and other related consequences and conditions, including with respect to the arguments presented by the Athlete regarding application of Articles 10.2, 10.9 (10.9.2) of the World Anti-Doping Code (2009 Edition).

21. In view of the above, and pursuant to Article 7.1 and 8.1 of the Rules, the Disciplinary Commission decided that the Athlete is disqualified from the Women's

10 km open water marathon event in which she participated at the London Olympic Games.

CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXX Olympiad, London 2012 and in particular, Articles 1.2, 2, 7 and 8 thereof and pursuant to the World Anti-Doping Code and, in particular, Articles 2.1 and/or 2.2 and 10 thereof:

THE DISCIPLINARY COMMISSION OF THE INTERNATIONAL OLYMPIC COMMITTEE DECIDES

- I. *The Athlete, Ms. Olga Beresnyeva, Ukraine, Swimming:*
 - (i) *is disqualified from the Women's 10 km open water marathon event of the Games of the XXX Olympiad in London in 2012, where she placed 7th;*
 - (ii) *is excluded from the Games of the XXX Olympiad in London in 2012;*
 - (iii) *shall have her diploma in the above event withdrawn.*
- II. *The Federation Internationale de Natation (FINA) is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.*
- III. *The National Olympic Committee of Ukraine shall ensure full implementation of this decision.*
- IV. *This decision shall enter into force immediately.*

Lausanne, 9 June 2015

The IOC Disciplinary Commission

(...)"

III. PROCEEDINGS BEFORE FINA

3.1 By letter dated 25 June 2015, the FINA Executive Director, informed the Athlete that her situation could constitute a

potential violation pursuant to FINA Doping Control Rules DC 2.1 and DC 2.2. In addition, he requested the Athlete to confirm her decision to accept the A sample result and waive a B sample analysis, as was her initial position in the disciplinary procedure.

3.2 By email dated 3 July 2015, the FINA Executive Director once again wrote to Ms Beresnyeva, as she had not replied to the previous letter. Once again another letter was sent to her on 18 August 2015, as the two previous letters had gone unanswered. An ultimate deadline was set for 21 August 2015 for her to respond, failing which it would be considered she had waived her right to a B sample analysis. A copy by email of the two letters were sent to the Swimming Federation of Ukraine.

3.3 By email dated 18 August 2015, the Athlete responded to FINA Executive Director and stated:

" Dear Sirs,

Dear Mr. Marculescu,

Thank you for kindly reminding me to send back my answer concerning B sample analysis.

I did not have access to Internet for about ten days as I was in mountains in Ukrainian Karpaty.

Herewith I do confirm my earlier position and do not want to proceed with the B sample analysis. I do not have more to add to my previous two written explanations given to the IOC Disciplinary Commission, which are in your possession.

I kindly ask you to proceed with my case according to the standard procedure, which I am ready to follow and will answer any further requests which might be addressed to me.

While considering the case, please kindly take into account my previous written explanations and, as requested before, while considering the appropriate sanction,

apply articles 10.2 and 10.9.2. of FINA Doping control rules, which were in force to the date of commitment of the doping offence.

I kindly ask the sanction of two years of ineligibility to be applied to me with its start as of the date of Sample collection with serving half of the period of such ineligibility from the date when I admitted the offence and accepted the imposition of a sanction, i.e. as from April 17, 2015.

I am looking forward to get FINA decision.”

By a second email of the same day, she explained that she had responded to the correspondence sent on 25 June 2015 by email dated 3 July 2015. This email contained what she wrote on 18 August 2015.

3.4 On 19 August 2015, the FINA Executive Director wrote to the Athlete and explained that pursuant to FINA DC Rule 7.9.1, a mandatory provisional suspension would be imposed on her as of 19 August 2015 which prohibited her according to this provision from participating in all competitions, events or other activities that are organized, convened, authorized or recognized by FINA, the Ukrainian Swimming Federation or any other FINA Member Federation. She was also informed of the interdiction to participate in any other sport with World Anti-Doping Code-compliant rules.

3.5 By letter dated 19 August 2015, the FINA Executive Director sent the file and documentation for this matter to FINA Chairman for consideration by the FINA Doping Panel.

3.6 By letter dated 28 August FINA Doping Panel Chairman wrote to Ms Beresnyeva, setting her a deadline to 4 September 2015 to inform him of her maintaining her position as set forth in previous correspondence to waive her right to a hearing. He also requested she file on the same deadline any other written submissions she may have

and finally inform the Chairman of her acceptance to have her matter dealt with by the Chairman alone pursuant to FINA Constitution C22.9.

3.7 On 31 August 2015, the Athlete responded by email stating: "*Good afternoon. All of you have correctly understood.*".

IV. JURISDICTION AND APPLICABLE RULES

4.1 Jurisdiction of FINA arises out of article 8.3 of the IOC Anti-Doping Rules applicable to the Games of the XXX Olympiad in London 2012. Pursuant to art. 8.3, "*The Consequences of Anti-Doping Rule Violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including with regard to the imposition of sanctions over and above those relating to the London Olympic Games, shall be managed by the relevant International Federations*".

In addition, the jurisdiction of the FINA Doping Panel arises out of the following provisions of the FINA Rules: C 22.8, C 22.9 and FINA DC 8.1.

4.2 Pursuant to FINA Constitution approved at the FINA Congress on 23 July 2015: "*Whenever necessary the Chairman of the Doping Panel shall appoint one or three persons from the Doping Panel to adjudicate all matters before it.*" Hence the Chairman, based on this provision decided to adjudicate on this matter alone.

4.3 The first question to be resolved in this case is to determine the relevant applicable rules. The IOC Disciplinary Commission invited implicitly the application of the FINA DC Rules

dated 1 January 2009 (FINA DC (2009), as it is stated in the decision that: *"It shall therefore be the competence of FINA to determine the duration of ineligibility and other related consequences and conditions, including with respect to the arguments presented by the Athlete regarding application of Articles 10.2, 10.9 (10.9.2) of the World Anti-Doping Code (2009 Edition).*

4.4 The FINA Doping Rules changed on 1 January 2015 (FINA DC (2015). Pursuant to FINA DC (2015) 20.6, *"These Anti-Doping Rules have come into full force and effect on January 1, 2015 (the "Effective Date"). They shall not apply retroactively to matters pending before the Effective Date."* According to FINA DC (2015) 20.6.2: *"The retrospective period in which prior violations can be considered for purposes of multiple violations under DC 10.7.5 and the statute of limitations set forth in DC 17 are procedural rules and should be applied retroactively; provided, however, that DC 17 shall only be applied retroactively if the statute of limitations period has not already expired by the Effective Date. Otherwise, with respect to any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date, the case shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred unless the panel hearing the case determines the principle of lex mitior appropriately applies under the circumstances of the case."*

4.5 This matter was initiated by tests carried out in 2015 on samples which were collected in 2012. Hence, whilst the violation was committed in 2012, the adverse analytical finding and the pending matter dates as of 2015. It is therefore decided that the rules of FINA DC 2009 shall apply, unless the application of the legal principle of *lex*

mitior should indicate a more lenient treatment of the case through application of FINA DC 2015.

V. MOTIONS AND CONTENTIONS

A. Ms Beresnyeva's Motions and Contentions

5.1 The Athlete's position is clearly outlined in her exchanges within the context of the Disciplinary Commission procedure and may be summarized in exactly the same manner. The FINA Doping Panel Chairman therefore considers that:

- the Athlete admitted to having committed the anti-doping rule violation and accepted responsibility for her mistake;
- She "*accepts full responsibility*" and "*regret[s] that it happened*";
- She confirmed her understanding of what an anti-doping rule violation consists of and claimed that for the duration of her sports career, she had "*always [kept] straight*" against taking prohibited substances and had always, through constant testing by different Anti-Doping Organizations, tested negative;
- During the year 2011, she noticed that her general condition along with her sport results started decreasing and she did not want to miss her "*last chance*" to compete in the Olympic Games. She decided to use prohibited substances "*somewhere near the end of June 2011*";
- Being a "sports rehabilitation specialist" and with the support of information gathered on the internet, she was able to obtain "*the substance*", which pursuant to the tests was rEPO.
- She declared to be ready to participate in any anti-doping education or rehabilitation programs;

- She requested the application of Article 10.2, Article 10.9.2 (timely admission) and Article 10.9 (commencement of Ineligibility period) of the World Anti-Doping Code (2009 version).
- She had done a Google search for the word "Erythropoietin" and found that a medicine called "EPREX", containing such substance, could be easily ordered online;
- She did not remember exactly which online supplier she had used, but ordered from the cheapest available without needing a prescription;
- The product EPREX was delivered to the Athlete's home by courier, which, according to the Athlete, was a standard delivery channel for medication in her country;
- Nobody else was aware that she used a prohibited substance; She did not have the product with her in London during the 2012 Olympic Games; The substance was taken first mid-June 2012 until end of July 2012, once a week (in accordance with the instructions included with the product);
- She had never otherwise taken any other prohibited substance.

VI. LEGAL DISCUSSION

A. THE FACTS AND FINDINGS OF THE PANEL

The FINA Doping Panel Chairman has found that the following facts were established in this case:

6.1 EPO is a prohibited substance in Class S2 of the 2012 and 2015 WADA Prohibited List and is therefore prohibited at all times, in and out of competition, pursuant to FINA DC (2012 and 2015) 4.1.

6.2 The FINA Doping Panel Chairman also considered the circumstances which led to the use of a prohibited substance by the Athlete and notes her explanation, which ultimately is that she had done a Google search for the word "Erythropoietin" and found that a medicine called "EPREX", containing such substance, could be easily ordered online. Her reason for ordering this medicine was because she felt that her general performances as of 2011 were decreasing. The substance was taken first mid-June 2012 until end of July 2012, once a week (in accordance with the instructions included with the product). The FINA Doping Panel Chairman can only consider that this is admission to a doping offence, and use of a substance aimed intentionally to enhance her sporting performances.

B. THE LAW

6.3. FINA DC (2009) 2 defines various Anti-Doping Rule violations, the purpose of FINA DC (2009) 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Athletes or other persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included in the Prohibited List.

6.4 Pursuant to FINA DC (2009) 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 to be demonstrated in order to establish an anti-doping violation under DC 2.1"

6.5 FINA DC (2009) 2.1.2

"Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Competitor's A Sample where the Competitor waives analysis of the B Sample and the B Sample is not analysed; or, where the Competitor's B Sample is analysed and the analysis of the Competitor's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Competitor's A Sample."

6.6 FINA DC (2009) 9

"A violation of these Anti-Doping Rules in individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Event with all resulting consequences, including forfeiture of any medals, points and prizes."

6.7 FINA DC (2009) 10.1

"An anti-doping rule violation occurring during or in competition with a Competition may, upon the decision of the ruling body of the Competition, lead to Disqualification of all of the Competitor's individual results obtained in that Competition with all Consequences, including forfeiture of all medals, points and prizes (...)."

6.8 FINA DC (2009) 10.2

"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."

6.9 FINA DC 10.4

"When a Competitor or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Competitor's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in DC 10.2 shall be replaced by the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Competitions, and at a maximum, two years' of Ineligibility.

To justify any elimination or reduction, the Competitor or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the Use of a performance enhancing substance. The Competitor's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility."

6.10 FINA DC (2009) 10.5.2

"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 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."

6.11 The Athlete requested application of FINA DC Rule (2009) 10.9.2 regarding timely admission according to which : *“Where the Athlete or other Person promptly (which, in all events, means for an Athlete before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by FINA or a Member Federation, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this rule is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or date the sanction is otherwise imposed”*.

VII. DOPING OFFENCE AND SANCTION

7.1 In this matter taking into consideration the adverse analytical finding and the explanation provided by the athlete regarding the conditions or circumstances of her consumption of the prohibited substance, the FINA Doping Panel Chairman has no option but to apply the maximum sanction provided for by the rules. EPO is a powerful pharmaceutical and performance enhancer, with severe health risks, that it is the scourge of sport. The route of administration of EPO is invariably injection, making inadvertent use highly unlikely. In fact the Athlete does not argue otherwise and clearly explained that her use was intentional.

7.2 The best way for an athlete to demonstrate her/his commitment to clean sport is not to use such a drug. However, when such a drug is used, it is possible for the athlete to show remorse and commitment to clean sport in the future and come forward with a full

explanation for the positive test. In this matter, the IOC Disciplinary Commission provided the Athlete with an opportunity to explain in more detail the circumstances in which the substance was taken. Whilst the factual questions were answered, the FINA Doping Panel sees no mitigating circumstance or room to apply statutes relevant to timely admission. It is only when she was questioned and confronted with the adverse analytical finding that she provided any information.

7.3 Regarding the sanction to be imposed on the Athlete, it is noted that she would have risked under the new Anti-Doping Rules which came into effect on 1 January 2015, a sanction of 4 years, as it appears that her consumption of a product containing EPO was intentional. In this matter however, the FINA Doping Panel Chairman considers that pursuant to FINA DC (2009) 10.2, the period of ineligibility for a first violation should be 2 years.

7.4 Pursuant to FINA DC (2009) 10.9, if a hearing is waived, the period of ineligibility shall start on the date ineligibility is accepted or otherwise imposed. In this matter, the Athlete was provisionally suspended by the FINA Executive on 19 August 2015.

7.5 According to FINA DC (2009) 10.8 all competitive results obtained from the date of a positive sample through the commencement of any provisional suspension or ineligibility period shall, unless fairness requires otherwise be disqualified.

VIII. SUMMARY OF THE DECISION

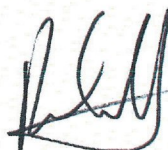
8.1 Ms. Olga Beresnyeva receives a 2 (two) year period of ineligibility commencing on 19 August 2015 and ending at the conclusion of 18 August 2017 for her first anti-doping rule violation.

8.2 All results obtained by Ms. Olga Beresnyeva on or after 28 July 2012 and through and including the date of this decision 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 Ukrainian Swimming Federation accordance with FINA DC (2009) 12.2.

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 and DC 13.6).

FINA Doping Panel Chairman

A handwritten signature in black ink, appearing to be 'R. Fox', written in a cursive style.

Robert Fox