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FINA Doping Panel 05/19 21 July 2019

FINA Doping Panel

comprised of

Robert Fox	(SUI)	Chairman
William Bock III	(USA)	Member
Farid Ben Belkacem	(ALG)	Member

In the proceedings against

the Swimmer **Ms Ruta Meilutyte**, affiliated to Lithuanian Swimming Federation

I THE PARTIES

1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing disciplines related to 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 Lithuanian Swimming Federation is a member of FINA. The Lithuanian 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 Athletes, Athlete Support Personnel, coaches, physicians, team leaders, and club and representatives under the jurisdiction of the Lithuanian Swimming Federation.

1.3. Ms Ruta Meilutyte (“the Athlete”) is a member of the Lithuanian Swimming Federation

II NATURE OF THE CASE

2.1 This matter involves Ms Ruta Meilutyte who has been included in the FINA Registered Testing Pool of competitors since June 2011. On 22 April 2018 in Los Angeles, California, USA, FINA was unable to conduct a test on the athlete. On 19 August 2018, a second whereabouts failure in Los Angeles California, USA was registered. The present matter is relevant to an alleged third whereabouts failure on 28 March 2019 in Kaunas, Lithuania recorded against the Athlete by the International Testing Agency (ITA).

2.2 According to the missed test report, the Doping Control Officer (DCO) came to the premises indicated by the athlete in ADAMS on 28 March 2019 at 07:45 am. The crew knocked on the door five times, to no avail. The door ring did not work and after the time slot of 1 hour, phone calls were made to the provided mobile telephone number. A voice answered indicating that there was no connection.

2.3 By letter dated 5 April 2019, FINA provided the Athlete with the opportunity to respond to the charges of the whereabouts failure.

2.4 On 5 April 2019, the Athlete wrote the following:
“Hi,
These missed tests are entirely my fault. I was not responsible enough for updating my whereabouts on time.
Thank you for informing me.
Can you tell me what happens next?
Best regards
Ruta”

2.5 On 9 April 2019, FINA confirmed that it deemed the 28 March 2019 whereabouts failure as a third whereabouts failure within a twelve month period, liable to constitute a Doping Rule violation and gave the athlete the opportunity to rebut the charge and request an administrative review within 14 days of receipt of the correspondence.

2.6 On 17 April 2019, the Athlete responded by letter and stated:

“Dear all,

As I mentioned before, I take full responsibility for the missed tests. I've been on Adams for the last 7 years of my swimming career and always took a responsibility as an athlete to promote clean sport, never got a positive test. Last year I was traveling a lot - my two missed tests happened on April 2018 and March 2018 as I was traveling from one country to another. August 2018 - I was having time off after main summer competitions, I was traveling in Lithuania and I failed to update the whereabouts correctly. I kindly ask you to consider my situation. If 12 month suspension is given to me - I could still pursue my goal to compete at Tokyo 2020 Olympics, which is probably going to be my last olympics. I would be grateful if I could still have the opportunity to go to Tokyo. Thank you.

Ruta“

III BACKGROUND OF THE ATHLETE

3.1 Ruta Meilutyte was born on 19 March 1997. She is an Olympic gold medalist, and world record-holder. She is the current world record holder in the 100 metre breaststroke (short course).

At the age of 15, she had already broken eleven Lithuanian women's swimming records. At the 2011 European Youth Summer Olympic Festival in Trabzon, the Athlete won the gold medal in the 100m breaststroke, a silver in

the 50m freestyle and a bronze in the 100m freestyle. At the 2012 Summer Olympics in London, she won the gold medal in the women's 100 metre. She was also the youngest Lithuanian athlete to win an Olympic gold medal. The Athlete competed at the 2013 World Aquatics Championships in Barcelona and achieved world records in the 50 and 100 metre breaststroke.

IV PROCEEDINGS

4.1 By letter dated 30 April 2019, FINA formally charged the Athlete with a violation of the anti-doping rule FINA DC 2.4 and forwarded the matter to FINA Doping Panel for consideration. In addition, the Athlete was informed of possibility of accepting a provisional suspension and was given until 10 May 2019 to respond.

4.2 On 3 May 2019, the FINA Doping Panel Chairman wrote to the Athlete and informed her that the matter was under the jurisdiction of the FINA Doping Panel. She was made aware of the fact that she could argue her case at a hearing which had been set for 11 June 2019 at the FINA offices in Lausanne and she was given a deadline to 10 May 2019 to state whether she wished to attend the hearing, even by videoconference.

4.3 On 7 May 2019, the Athlete sent in the provisional suspension form signed and dated 6 May 2019.

4.4 On 21 June 2019, the FINA Doping Panel chairman wrote to the athlete confirming receipt of her email of 6 May 2019 and the return of the voluntary acceptance of a provisional suspension form. He noted that she had not use the opportunity to file any further argument nor did she accept the invitation to a hearing. It was therefore assumed that she has subsequently waived her right to a hearing pursuant to FINA DC 7.10. The FINA Doping Panel Chairman also informed her of the composition of the Panel which

would examine her case and set her a deadline to 30 June 2019 to state any objection she had to the composition of the Panel and a date to 5 July 2019 to file any evidence or argument to present her defence.

4.5 On 28 June 2019, the Athlete addressed to FINA the following email:

“Dear Johan Lefebvre,

Thank you for the letter from Mr. Fox.

In response to his letter- I have no further arguments against this case, like I've said before, I take full responsibility for missing the tests, I had simply been inattentive with ADAMS system for the last year because I was in process of retiring from the sport. I didn't do my whereabouts as diligently as before, I was traveling a lot. As for the hearing in Switzerland, I had assumed that I will just be attending it through a video chat, I understand that was not made clear by me.

I accept the composition of this FINA Doping panel to make decisions on my case.

I also have a question. I have come to a decision to retire from the sport of swimming. I am still on Adams system, but I would like to leave it now because I am not swimming anymore, I don't want to miss any more tests. If I receive suspension when I'm officially retired, does the time of suspension count, or do I need to be on Wada Adams system in the period of the suspension? (if that makes sense) Because the Anti-doping of Lithuania have told me that if I retire and leave Adams system now my suspension time won't be counted unless I register to Wada Adams system again and officially become a swimmer again. Is this true?

Thank you, I hope you understood my question.

Best regards,

Ruta Meilutyte”

4.6 On 21 July 2019, a hearing was held in Gwangzhu, South Korea and the FINA Doping Panel addressed its decision to the Athlete.

V JURISDICTION AND APPLICABLE RULES

5.1 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.

5.2 The applicable Rules in this case are the FINA Doping Control Rules in effect since 1 January 2015 (accepted in November 2014 in Doha).

5.3 FINA DC 2.4 Whereabouts Failures

Any combination of three missed tests and/or filing failures, as defined in the International Standard for Testing and Investigations, within a twelve-month period by an Athlete in a Registered Testing Pool.

5.4 FINA DC 5.4.3

It shall be the obligation of each Athlete in the FINA Registered Testing Pool as well as that Athlete's Member Federation, to keep FINA informed about where the Athlete can be met for unannounced Testing. It is the responsibility of each Athlete in the FINA Registered Testing Pool to:

- (a) advise FINA of his or her whereabouts on a quarterly basis;*
- (b) update that information as necessary so that it remains accurate and complete at all times;*
- (c) make him or herself available for Testing at such whereabouts.*

5.5 DC 5.4.4

For purposes of DC 2.4, an Athlete's failure to comply with the requirements of the International Standard for Testing and Investigations shall be deemed a filing failure or a missed test (as defined in the International Standard for Testing and Investigations) where the conditions set forth in the International Standard for Testing and Investigations for declaring a filing failure or missed test are met. Furthermore, if the Athlete cannot be found for unannounced Testing due to incorrect or insufficient information provided to FINA, the

Member Federation to which the Athlete is affiliated shall be obliged to pay expenses for the unsuccessful attempt of Testing in accordance with DC 12.3 and DC 12.4.

5.6 FINA DC 10.3.2

For violations of DC 2.4, the period of Ineligibility shall be two years, subject to reduction down to a minimum of one year, depending on the Athlete's degree of Fault. The flexibility between two years and one year of Ineligibility in this rule is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.

5.7 World Anti-Doping Code International Standard Testing and investigations (ISTI) I.5.2

I.5.2 When a Whereabouts Failure appears to have occurred, results management shall proceed as follows:

- a. If the apparent Whereabouts Failure has been uncovered by an attempt to test the Athlete, the Testing Authority shall obtain an Unsuccessful Attempt Report from the DCO. If the Testing Authority is different from the Results Management Authority, it shall provide the Unsuccessful Attempt Report to the Results Management Authority without delay, and thereafter it shall assist the Results Management Authority as necessary in obtaining information from the DCO in relation to the apparent Whereabouts Failure.*
- b. The Results Management Authority shall review the file (including any Unsuccessful Attempt Report filed by the DCO) to determine whether all of the Article I.3.6 requirements (in the case of a Filing Failure) or all of the Article I.4.3 requirements (in the case of a Missed Test) are met. It shall gather information as necessary from third parties (e.g., the DCO whose test attempt uncovered the Filing Failure or triggered the Missed Test) to assist it in this task.*
- c. If the Results Management Authority concludes that any of the relevant requirements have not been met (so that no Whereabouts Failure should be*

declared), it shall so advise WADA, the International Federation or National Anti-Doping Organization (as applicable), and the Anti-Doping Organization that uncovered the Whereabouts Failure, giving reasons for its decision. Each of them shall have a right of appeal against that decision in accordance with Code Article 13.

d. If the Results Management Authority concludes that all of the relevant requirements have been met, it shall notify the Athlete within 14 days of the date of the apparent Whereabouts Failure. The notice shall include sufficient details of the apparent Whereabouts Failure to enable the Athlete to respond meaningfully, and shall give the Athlete a reasonable deadline to respond, advising whether he/she admits the Whereabouts Failure and, if not, then why not. The notice should also advise the Athlete that three Whereabouts Failures in any 12-month period is a Code Article 2.4 anti-doping rule violation, and should note whether he/she has any other Whereabouts Failures recorded against him/her in the previous 12 months. In the case of a Filing Failure, the notice must also advise the Athlete that in order to avoid a further Filing Failure he/she must file the missing whereabouts information by the deadline specified in the notice (which must be no less than 24 hours after receipt of the notice and no later than the end of the month in which the notice is received).

e. If the Athlete does not respond within the specified deadline, the Results Management Authority shall record the notified Whereabouts Failure against him/her. If the Athlete does respond within the deadline, it shall consider whether his/her response changes its original decision that all of the requirements for recording a Whereabouts Failure have been met.

i. If so, it shall so advise WADA, the International Federation or National Anti-Doping Organization (as applicable), and the Anti-Doping Organization that uncovered the Whereabouts Failure, giving reasons for its decision. Each of them shall have a right of appeal against that decision in accordance with Code Article 13.

ii. If not, it shall so advise the Athlete (with reasons) and specify a reasonable deadline by which he/she may request an administrative review

of its decision. The Unsuccessful Attempt Report should be provided to the Athlete at this point if it has not been provided to him/her earlier in the process.

f. If the Athlete does not request an administrative review by the specified deadline, the Results Management Authority shall record the notified Whereabouts Failure against him/her. If the Athlete does request an administrative review before the deadline, it shall be carried out, based on the papers only, by one or more persons not previously involved in the assessment of the apparent Whereabouts Failure. The purpose of the administrative review shall be to determine anew whether or not all of the relevant requirements for recording a Whereabouts Failure are met.

g. If the conclusion following administrative review is that all of the requirements for recording a Whereabouts Failure are not met, the Results Management Authority shall so advise WADA, the International Federation or National Anti-Doping Organization (as applicable), and the Anti-Doping Organization that uncovered the Whereabouts Failure, giving reasons for its decision. Each of them shall have a right of appeal against that decision in accordance with Code Article 13. On the other hand, if the conclusion is that all of the requirements for recording a Whereabouts Failure are met, it shall notify the Athlete and shall record the notified Whereabouts Failure against him/her.

5.8 ISTI 1.4.3

An Athlete may only be declared to have committed a Missed Test where the Results Management Authority can establish each of the following:

a. that when the Athlete was given notice that he/she had been designated for inclusion in a Registered Testing Pool, he/she was advised that he/she would be liable for a Missed Test if he/she was unavailable for Testing during the 60-minute time slot specified in his/her Whereabouts Filing at the location specified for that time slot;

b. that a DCO attempted to test the Athlete on a given day in the quarter, during the 60-minute time slot specified in the Athlete's Whereabouts Filing for that day, by visiting the location specified for that time slot.

c. that during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test;

5.9 ISTI 1.5.5

An Athlete alleged to have committed a Code Article 2.4 anti-doping rule violation shall have the right to have such allegation determined at a full evidentiary hearing in accordance with Code Article 8. The hearing panel shall not be bound by any determination made during the results management process, whether as to the adequacy of any explanation offered for a Whereabouts Failure or otherwise. Instead, the burden shall be on the Anti-Doping Organization bringing the proceedings to establish all of the requisite elements of each alleged Whereabouts Failure to the comfortable satisfaction of the hearing panel. If the hearing panel decides that one (or two) Whereabouts Failure(s) have been established to the required standard, but that the other alleged Whereabouts Failure(s) has/have not, then no Code Article 2.4 anti-doping rule violation shall be found to have occurred. However, if the Athlete then commits one (or two, as applicable) further Whereabouts Failure(s) within the relevant 12-month period, new proceedings may be brought based on a combination of the Whereabouts Failure(s) established to the satisfaction of the hearing panel in the previous proceedings (in accordance with Code Article 3.2.3) and the Whereabouts Failure(s) subsequently committed by the Athlete.

VI LEGAL DISCUSSION

6.1 The facts and findings of the FINA Doping Panel in this case are as follows.

a) The FINA Doping Panel to decide on whether the events on 28 March 2019 constitute a third whereabouts failure. The FINA Doping Panel can only come to this conclusion. The previous two failures are dated 22 April 2018 in Los Angeles California, USA and 19 August 2018 in the same location, hence three whereabouts failures within a time span of 12 months.

b) The Athlete, who has been involved in high level swimming and knowledgeable about anti-doping rules for at least 8 years, provided no other explanation than her own negligence than being “inattentive” due to future retirement plans. On examining the facts, the FINA Doping Panel has no alternative but to consider that the Athlete’s behaviour was negligent and contributed to the failure.

6.2 The FINA Doping Panel therefore concluded that the athlete is to be sanctioned. It will not provide the Athlete with the reduction, as there is nothing in this case which shows that there is no wilful pattern of last-minute whereabouts changes aimed at avoiding being tested.

On the first whereabouts test report, it is stated that there was no permanent apartment number attributed to the Athlete at the residence she had stated she would be present at. For the second whereabouts test report, also in California, the person who responded to the testing agents stated that the Athlete had returned to Lithuania for a few days. On all occasions, the Athlete was not able to be contacted by telephone.

6.3 The Sanction

a) In accordance with DC 10.3.2 for violations of DC 2.4 the period of ineligibility shall be two years, subject to reduction down to a minimum of one year, depending on the Athlete’s degree of Fault. The flexibility between two years and one year of ineligibility in this rule is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a

serious suspicion that the Athlete was trying to avoid being available for Testing. It is the FINA Doping Panel's position that the athlete was very slack with the management of the information relevant to her whereabouts, but that no evidence pointed to any pattern, nor did the Athlete, who has the burden of presenting evidence to the Panel to obtain a reduced sanction, provide any explanation which the Panel could consider as rebutting a pattern which could allow it to envisage a reduced sanction.

b) Pursuant to FINA DC 10.11, the period of ineligibility shall start on the date of the final hearing decision providing for ineligibility, as none of the situations in FINA 10.11 et seq. are fulfilled in this case.

VII CONCLUSION

7.1 Ms Rūta Meilutytė is found to have committed an anti-doping rule violation under FINA DC Rule 2.4 – three missed tests within a twelve-month period.

7.2 Ms Rūta Meilutytė is sanctioned with a two (2) years ineligibility period. The sanction starts on 21 July 2019, day of the deliberation and will end on 20 July 2021.

7.3 All costs of this case shall be borne by the Lithuanian Swimming Federation in accordance with FINA DC 12.3.

7.4 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 the complete and reasoned judgement (FINA Rule C 12.11.4 and DC 13.7).

Robert Fox
Chairman

Farid Benbelkacem
Member

William Bock III
Member

Signed on behalf of all three Panel Members



Robert Fox