

FINA Doping Panel 04/21

comprised of

Robert Fox (SUI) Chairman

In the proceedings against

Ms. Alexandra Sokolova (“Athlete”), Prospekt Lomonosova, 216, 34
Arkhangel'sk, Arkhangelskaya oblast', 163001 Russia

Affiliated to the Russian Swimming Federation (RSF)

and

Fédération Internationale de Natation (“FINA”), Chemin de Bellevue
24 A/B, Lausanne, Switzerland

A. THE PARTIES

1. FINA is the world governing body for the sport of Aquatics (meaning swimming, open water swimming, diving, high diving, water polo, artistic swimming and Masters programme). FINA has its headquarters in the city of Lausanne, Switzerland. According to FINA Rule C 5, one of the main objectives of FINA is to provide fair and drug free sport. In furtherance of this goal FINA has adopted and implemented, in accordance with FINA's responsibilities under the World Anti-Doping Code, the FINA Doping Control Rules (Hereinafter the "FINA DC Rules").

2. Ms. Alexandra Sokolova (hereinafter the "Athlete" or "Ms. Sokolova"), born on 21 February 1994, is an Open Water swimmer and was affiliated with the Russian Swimming Federation at the time of the relevant facts. Ms. Sokolova's results in Open Water Swimming include a bronze medal at FINA Open Water Swimming Grand Prix 2012 in Serbia on 5 August 2012. Ms. Sokolova stopped taking part in FINA Competitions since October 2015 and now appears to be a swimming coach.

3. The Russian Swimming Federation (hereinafter: "RSF") is a member of FINA. RSF is required to recognize and comply with FINA's anti-doping rules which are set out in the FINA DC Rules. The FINA DC Rules are directly applicable to and must be followed by Athletes, Athlete Support Personnel, coaches, physicians, team leaders, and club representatives under the jurisdiction of RSF.

B. WHAT THIS CASE IS ABOUT

4. The present case must be adjudicated by the FINA Doping Panel because Ms. Sokolova was charged by FINA with having breached Article 2.2 of the 2013 FINA Doping Control Rules by using the prohibited substance Furosemide in 2013.

5. FINA further alleges that no Anti-Doping Rule Violation (“ADRV”) was pursued against her, because she was protected by an elaborated doping scheme that went on in Russia at that time.

C. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

6. Following allegation of organized doping practices in Russia which involved the corruption of the Moscow Anti-Doping Centre ("Moscow Laboratory"), the World Anti-Doping Agency (WADA) recovered the internal database of the Moscow Laboratory. This internal database of the Moscow Laboratory is referred to as the LIMS.

7. Following investigation of these allegations of organized doping practices, and in particular of the LIMS, WADA provided international federations with investigation reports on the athletes implicated in these organized doping practices.

8. On 14 April 2021, FINA was provided with the final version of a report from WADA on the Athlete ("WADA Report").

9. More precisely, the Report detailed the following:

- On 23 November 2013, the Athlete provided a urine sample (the “Sample”) to RUSADA during an Out-of-Competition doping control and on 25 November 2013, it arrived at the Moscow Laboratory for analysis.
- Following the Initial Testing Procedure ("ITP") and a successful Confirmation Procedure (“CP”) analysis, the Sample (Part “A”) produced a reportable Adverse Analytical Finding (AAF) for Furosemide at a concentration of 0.036 micrograms per millilitre (mcg/mL). Furosemide is always prohibited (both in-competition and out-of-competition) as per Section S.3 of the 2013 Prohibited List and the Athlete does not have a Therapeutic Use Exemption for this substance.
- Examination of the CP Raw Data files by an Independent Laboratory Expert appointed by the I&I WADA, confirmed the existence of a reportable AAF for Furosemide in the Sample.

- The Moscow Laboratory did not report an AAF, instead the Sample was falsely recorded as ‘negative’ in ADAMS by the Moscow Laboratory following the issuance of a “Save” directive. More precisely, on 29 November 2013, the Moscow Laboratory emailed the results of the ITP analysis of the Sample to Doctor Rodchenkov and the Liaison, Aleksey Velikodny (Mr Velikodny). In the body of the email Doctor Sobolevsky stated the following:

“2867670, F, swimming, training camp | 15539, RU Lobnya,33 collection 2013-11-23 Furosemide”.

- On 2 December 2013, Mr Velikodny emailed the Moscow Laboratory and Doctor Rodchenkov and stated, under the heading “Save”:

“2867670, SOKOLOVA ALEKSANDRA A., swimming – open water, training camp | 15539, RU Lobnya, collection 2013-11-23, furosemide. World Championship 2013 – 10 pl (25 km)”.

- Notably, exactly as the “Save” email stipulated, the Athlete placed 10th in the 2013 World Championships in the women’s 25-kilometre open water event.

- Moreover, the analytical documents from the analysis of the reportable AAF were selectively manipulated and data deleted to the betterment (protection) of the Athlete. In other words, analytical evidence that the Athlete was using Furosemide was destroyed and evidence that the Sample was ‘negative’ was created.

- The destruction of the analytical evidence and creation of false evidence was unsuccessful. More specifically, the Independent Experts recovered the “deleted” CP Raw Data files from the Moscow Data and discovered evidence of multiple PDF manipulation.

10. FINA then began conducting its internal and external review of this report.

11. On 17 May 2021, FINA notified the Athlete of the start of an investigation into a potential ADRV pursuant to Article 5.3.2.1 of the International Standards for Results Management (ISRM). By the same letter, Ms. Sokolova was provided with the evidence based on which FINA believed she has committed an ADRV pursuant to Article 2.2 of the 2013 FINA Doping Control Rules (Use). Ms. Sokolova was also given the

opportunity to provide any explanation in respect of this potential ADRV by 31 May 2021.

12. Ms. Sokolova did not reply to this letter.

13. On 25 August 2021, FINA charged Ms. Sokolova with an ADRV pursuant to Article 2.2 of the 2013 FINA DC Rules. By the same letter, Ms. Sokolova was afforded until 6 September 2021 to either (i) admit that she committed an ADRV or (ii) challenge the assertion of the ADRV.

14. On 31 August 2021, Ms. Sokolova informed FINA that she was challenging the assertion of the ADRV but did not provide further explanations:

“Hello,

I am Sokolova Alexandra Alexandrovna, I graduated from professional sports activities in 2015. I do not recognize the charges presented to me by FINA DC, I do not confirm the drug found on November 25, 2013.”

15. Considering the above, FINA referred the case of Ms. Alexandra Sokolova to the FINA Doping Panel on 22 October 2021 to confirm that she committed an ADRV and impose on her the applicable consequences.

16. On 3 November 2021, the Chairman of the FINA Doping Panel wrote to the Athlete informing her of the FINA referral and the prayers contained therein. A deadline to 13 November 2021 was given to the Athlete to allow her to confirm her request for a hearing or not and the possibility to file a defence, should she not request a hearing. There was no response offered within the set deadline.

17. On 29 November 2021, the Chairman of the FINA Doping Panel wrote to the Athlete once again and informed her that that pursuant to art. 14 § 1 of the FINA Doping Panel Procedural Rules (FINA DPPR), he had decided to handle the matter himself. A deadline to 6 December 2021 was set for the Athlete to challenge this decision or provide a motive of recusal

of the chosen FINA Doping Panel member. She was also once again provided the opportunity to file and statement of defence or any evidence he wished to rely on for his case. The Doping Panel also sought the assistance of RSF to obtain an answer from the Athlete

18. Ms. Sokolova did not reply to this letter, and, on 30 November 2021, the RSF reminded the Doping Panel in an email that the athlete challenged the assertion of the ADRV on 1 September 2021.

D. JURISDICTION & APPLICABLE RULES

19. As per Articles 12.3 and 12.5 of the FINA Constitution, the FINA Doping Panel is the responsible body to adjudicate cases relating to violations of the FINA DC Rules.

20. Considering the above, the FINA Doping Panel has jurisdiction to render a decision in this case.

21. This case shall be adjudicated based on applicable FINA Regulations and Swiss law. In particular, the Doping Panel must apply the substantive rules of the 2013 FINA DC Rules (unless the Doping Panel determines the principle of "*lex mitior*" appropriately applies under the circumstances of the case) and the procedural rules of the 2021 FINA DC Rules.

E. LEGAL DISCUSSION

E.1 ESTABLISHMENT OF THE ADRV OF USE (DC 2.2)

22. FINA submits that it has met its burden of proof by establishing - to the required degree of comfortable satisfaction - that the Athlete committed an ADRV (i.e. the Use of the Prohibited Substance Furosemide).

23. “Use” is defined in the FINA DC Rules as:

“The utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method”.

24. FINA relied in particular on the WADA Report and its attachments.

25. For the following reasons, the FINA Doping Panel considers that FINA has met its burden of proof to establish that the Athlete used Furosemide in 2013:

- The Doping Panel considers that the evidence produced by FINA, in particular the evidence from the WADA Report, is highly reliable. In this regard, the Doping Panel finds section H of the WADA Report particularly compelling. The Doping Panel is also comforted by the fact that several other hearing panels recently recognized the reliability of similar evidence arising from LIMS Data, for example IAAF v. RUSAF & Svetlana Shkolina CAS/O/5667, and CAS ad hoc Division and (OG Rio) 16/009 Russian Weightlifting Federation (RWF) v. International Weightlifting Federation (IWF).
- The Doping Panel is satisfied that Furosemide was found in the sample provided by the Athlete on 23 November 2013. As detailed in the WADA Report, examination of the CP Raw Data files by an Independent Laboratory Expert appointed by the I&I WADA, confirmed the existence of a reportable AAF for Furosemide in the Sample the Athlete provided to RUSADA during an Out-of-Competition doping control on 23 November 2013. The FINA scientific expert also confirmed the existence of a reportable AAF for Furosemide in the Sample. Moreover, there is no evidence of any departure from applicable International Standards as it pertains to the analyses which showed the presence Furosemide.
- Furosemide simply could not have been found in the Athlete’s Sample without her having used, applied, ingested, injected or consumed that substance.

- The Doping Panel need not contemplate if the Athlete knew she was doping or intended to, because intent or even knowledge of the use of a prohibited substance is not necessary to establish that an ADRV occurred under DC 2.2 of the FINA Doping Control Rules. Pursuant to DC 2.2.1 of the FINA DC Rules, the mere 'use' of a prohibited substance is sufficient, which, in this case, has been proven by the evidence on file.
- The athlete failed to provide any compelling defence against the evidence adduced by FINA. She merely challenged the ADRV without raising any argument in her defence.

26. In view of all the above, the FINA Doping Panel considers that FINA has met its burden of proof to establish the ADRV of Use and that the only issues outstanding in the present proceedings are the sanctions and consequences to be applied to the ADRV.

E.2 SANCTION AND CONSEQUENCES

Period of Ineligibility

27. FINA submits that an ineligibility period of 4 years should apply to the Athlete's ADRV. In particular, FINA considers that the standard period of ineligibility of two years should be doubled to four years (pursuant to Article 10.6 of the 2013 FINA DC Rules) because aggravating circumstances are present in this case.

28. Pursuant to Article 10.2 of the 2013 FINA DC Rules, the base sanction for the use of the Prohibited Substance Furosemide is a two-year period of ineligibility, unless the conditions for eliminating or reducing the period of ineligibility, as provided in Articles 10.4 and 10.5 of the 2013 FINA DC Rules are met.

29. Under certain conditions, this two-year period of ineligibility can be either eliminated where there is No Fault or Negligence (Article 10.4 of the 2013 FINA DC Rules) or reduced based on No Significant Fault or Negligence (Article 10.5.1.1 of the 2013 FINA DC Rules).

30. For adult athletes, both Articles require that the athlete establish how the prohibited substance entered his or her system. The athlete is required to prove his or her allegations on the “*balance of probability*”, which, according to long established CAS jurisprudence, means that the athlete needs to convince the panel that the occurrence of the circumstances on which the athlete relies is more probable than their non-occurrence:

“...for the Panel to be satisfied [...] on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51 % chance of it having occurred” (cf. CAS 2009/A/1926 & CAS 2009/A/1930, ITF v. Richard Gasquet and WADA v. ITF & Richard Gasquet, §5.9; CAS 38.

31. Ms. Sokolova merely challenged the assertion of the ADRV without providing any explanations. It is therefore clear that she did not establish the conditions for eliminating or reducing the period of ineligibility, as provided in Articles 10.4 and 10.5 of the 2013 FINA DC Rules.

32. Moreover, the Doping Panel considers that the standard period of ineligibility should be doubled to four years (pursuant to Article 10.6 of the 2013 DC Rules) because aggravating circumstances are present in this case.

33. The aggravating circumstances in this case come from the fact that the Athlete’s ADRV was part of a sophisticated doping scheme. This situation is specifically mentioned in the Comment of Article 10.6 of the 2013 FINA DC Rules as an example of what must be considered as Aggravating Circumstances.

34. Ms. Sokolova had the chance to avoid the application of this Article by admitting the ADRV as asserted promptly after being confronted with the ADRV by FINA, but she chose not to do so.

35. In conclusion, FINA Doping Panel considers that a period of ineligibility of 4 years should apply in this case.

Commencement of the Period of Ineligibility and Credit for Provisional Suspension

36. As to the commencement date of the period of ineligibility, FINA notes that Article 10.9 of the 2013 FINA DC Rules provides that, as a general rule, the period of ineligibility shall start on the date of the Doping Panel's decision. the Doping Panel sees no reason to deviate from this principle.

37. Article 10.9 of the 2013 FINA DC Rules also provides for credit for provisional suspensions. In this case, the Athlete has been provisionally suspended since 25 August 2021. Hence, the time she served under provisional suspension must be credited against the period of ineligibility imposed.

38. In accordance with Article 10.14.1 of the 2021 FINA DC Rules, during her period of ineligibility, the Athlete is not allowed to participate in any capacity in a Competition or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by any Signatory, Signatory's member organization of a Signatory's member organization, or in Competitions authorized or organized by any professional league or any international or national level Event organization or any elite or national-level sporting activity funded by a governmental agency.

39. If the Athlete violates the period of ineligibility, the results obtained, if any, shall be disqualified and she will be subject to a new period of ineligibility equal in length of the original period of ineligibility and shall be added to the end of her original period of ineligibility in accordance with Article 10.14.3 of the 2021 FINA DC Rules.

40. The Athlete also remains subject to testing throughout her period of ineligibility and can still provide Substantial Assistance.

Disqualification

41. In accordance with Article 10.8 of the 2013 FINA DC Rules, all competitive results of the Athlete obtained from the date an ADRV occurred, through the commencement of any provisional suspension or ineligibility period, shall, unless fairness requires otherwise, be disqualified with all resulting consequences including forfeiture of any medals, points and prizes.

42. The Athlete has failed to establish any reasons to apply the fairness exception.

43. Moreover, the athlete has not participated in any FINA Competition since 18 October 2014 so the period of results disqualified would effectively be of less than a year.

44. Therefore, all competitive results obtained by Ms. Alexandra Sokolova since 23 November 2013 shall be disqualified with all resulting consequences including forfeiture of any medals, points and prizes.

Costs

45. According to Article 12.2 of the 2013 FINA DC Rules, Member Federations shall be obliged to reimburse FINA or the designated organization for all costs (including but not limited to interpretation, hearing expenses and travel) related to an ADRV committed by a Person affiliated with that Member Federation.

46. As no such costs appear to have been borne by FINA in this case, the present decision is rendered without costs.

Right of Appeal

47. As per Article 13.6.1 of the FINA DC Rules, this decision can be appealed by Ms. Sokolova within twenty-one (21) days from the date of receipt of the decision by email, exclusively to the Court of Arbitration for Sport. The address of the Court of Arbitration for Sport is:

Court of Arbitration for Sport
Av. de Beaumont 2, 1012 Lausanne
Switzerland

F. CONCLUSION

- 1.** Ms Alexandra Sokolova has committed an anti-doping rule violation of Article 2.2 of the 2013 FINA Doping Control Rules.
- 2.** A period of ineligibility of four years is imposed on Ms Alexandra Sokolova, commencing on the date of the decision. The period of ineligibility served by Ms Alexandra Sokolova since 25 August 2021 shall be credited against the four-year period of ineligibility imposed.
- 3.** All results obtained by Ms Alexandra Sokolova since 23 November 2013 with all resulting consequences are disqualified, including forfeiture of any medals, points and prizes.

Done on 11 February 2022

Chairman of FINA Doping Panel

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

Robert Fox