

FISA DOPING HEARING PANEL

IN THE MATTER OF :

Alexander LITVINTCHEV, Evgeny LUZYANIN and Ivan PODSHIVALOV

Preliminary Matters

On 27 November 2007, the Executive Director of FISA convened a Doping Hearing Panel to hear the cases of the three rowers listed above who the Executive Director considered may have committed anti-doping rule violations. The Executive Director had conducted an investigation under Article 7.1.9 of the FISA Anti-Doping Rules, and had notified the athletes in terms of that Article on 11 September 2007 of this fact. As well, he imposed a provisional suspension on these athletes according to Article 7.4 on 11 September 2007.

The Panel convened in Geneva on 27 November in the presence of Mr. Alexander POPOV, President of the Russian Rowing Federation and Mr. Victor BEREZOV, Lawyer from the Russian National Olympic Committee.

The Chairman of the Panel advised them:

1. that the hearing involved an alleged use of a prohibited method – namely, intravenous infusion, other than as a legitimate medical treatment.
2. that the provisional suspension would continue until a decision on the case was reached.
3. they had been provided with the written evidence from the Executive Director which would be the evidence relied on at the hearing.
4. that the athletes had the right to be represented by counsel.
5. that the athletes had the right to adduce any evidence and call any witnesses that they might choose.
6. that they could provide an interpreter, or that FISA would provide one if they wished.
7. that if found to have committed an anti-doping rule violation, the athletes could be liable to a period of 2 years ineligibility, which could only be reduced in certain circumstances outlined in the Rules.

None of the three Russian athletes responded to FISA. The President of the Russian Rowing Federation claimed to have the authority from the athletes to represent them. Mr. BEREZOV served as the interpreter for the hearing.

1. The Chairman of the panel advised Mr. POPOV and Mr. BEREZOV of the process to be followed.

Evidence from FISA

Matt Smith, the Executive Director of FISA provided his written statement (Exhibit A) which explained:

- a. On 16 July 2007 he had been told of medical materials found in a rubbish bin behind the hotel used by the Russian team in Lucerne during the World Cup Regatta from 13-15 July. The materials were provided to him.
- b. The materials were taken to the Anti-Doping Laboratory in Lausanne, and analysed. They comprised intravenous infusion equipment, along with legal substances such as creatine and fructose. The languages appearing on the boxes of the substances were using both Cyrillic and Latin alphabets (Italian and English). Cyrillic handwriting was found on some of the boxes and, in particular, "LM2x" was handwritten in Cyrillic letters.
- c. Blood was found on the intravenous infusion needles and tubes so DNA analysis was ordered to be performed on the blood remains. A number of different identifiable DNA chains were found in the blood.
- d. Surprise testing of some members of the Russian team was then ordered by FISA and was undertaken on 13 August 2007 in Trakai, Lithuania (blood and urine), then on 23 August (blood and urine) and 29 August (blood samples only) in Munich, Germany. All samples were taken and sent to the Lausanne laboratory for analysis.
- e. On 26 and 27 August, Mr Smith, and on one occasion Denis Oswald, the FISA President, met with representatives of the Russian Rowing Federation, including the Secretary General, Mrs. Ludmila Saraeva, and the Team Doctor, Dr Fillipp Shvetsky. At these meetings, both the Secretary General and the Team Doctor confirmed verbally and in writing that no intravenous infusions had taken place on athletes of the Russian team during the month of July of which they were aware (Exhibit B).
- f. On 11 September 2007 the Lausanne laboratory advised FISA that they had matched three DNA samples and FISA confirmed that these were for the athletes here concerned, being members of the Russian men's eight which competed at Lucerne and Munich.
- g. On 26 October 2007, FISA received a "statement" from the Russian Rowing Federation President in which he reports on an internal investigation inside the Federation and in which it was again confirmed that the Team Doctor "did not recommend the athletes to make intravenous injections, either he did not know of the possible usage by the athletes of this substances and methods."
- h. On the afternoon of 26 November 2007, Mr Smith received new testimony from the Russian Rowing Federation and from the Russian Team Doctor in which the prior verbal and written testimony concerning intravenous infusions is completely contradicted. This was forwarded to the Doping Hearing Panel
- i. The panel did not receive any written evidence from the three athletes.
- j. The panel has not received written confirmation from the athletes that the President of the Russian Rowing Federation Mr. Popov or Mr. Berezov are authorized to represent them, but relies on Mr. Popov's representation that this is the case..

k. Mr Smith convened a Doping Hearing Panel for 27 November 2007 in Geneva.

The Russian Rowing Federation was given the opportunity to ask questions of Mr. Smith but they had no questions.

The Evidence from the Russian Rowing Federation

The Russian Rowing Federation had been asked to produce any evidence or make any statements on behalf of the athletes. They said that they relied on the papers sent to Mr. Smith that on 26 October 2007 and 26 November 2007.

The first document (Exhibit C) was an emailed letter from the president of the Russian Rowing Federation on 26 October 2007 in which he reports on the internal investigation of the Russian team following the 2007 World Rowing Championships. In this, he again confirms the position that the team doctor was warned about intravenous injections (or infusions) and the position of the team doctor that he did not use intravenous means to introduce substances to his athletes:

“Also in July the doctor of the team had passed the special certification for the knowledge in Russian and international rules and procedures where he was warned of the prohibition in sport to make the intravenous injections.

“According to the team doctor, he did not recommend the athletes to make intravenous injections, either he did not know of the possible usage by the athletes of these substances and methods.”

The second document was a faxed letter (in Russian) with no date but received by FISA on 26 November 2007 from now former team doctor Dr Shvetsky, the Russian Team Doctor (Exhibit D). In this letter, he completely changes his position on his involvement with intravenous infusions and informs the panel that he did administer intravenous infusions to these three rowers:

“Taking into account changes of laboratory analysis and electrocardiography, augmentation of the symptoms of the disease such as acute dehydration, change of fluid-and-electrolyte balance, cramps I recommended to continue medical treatment prescribed in Moscow, intravenous drip-feed of the fructose fluid (Esafosfina 200,0, intravenous drip-feed, divided) and intramuscular injections of the fluids of Panangin and Inosin (twice).”

He confirmed the names of the athletes having used intravenous infusions and the use of the substance “Esafosfina” which was one of the substances found in the garbage bin along with the intravenous infusion materials.

Regarding the use of Esafosfina, he claims that this substance was the only possible therapy for dehydration and convulsions:

“At that moment I had to take an urgent decision regarding the athletes and taking into consideration acute dehydration and convulsions I decided to make the only possible therapy.”

Regarding his prior testimony, he now writes:

“I did not notify the head coach of the Russian National Rowing Team O. Saraev or any other head officer of the Russian Rowing Federation about the health status of the athletes and intravenous injections made in Lucerne. I was not sure about the consequences of my actions concerning intravenous infusions and I preferred to keep these things in secret. But after my dismissal as a Doctor of the Russian National Rowing Team and right after my arrival from Perm to Moscow I took a decision to cease my career as a sports doctor and now I can tell all the story as it happened in reality.”

A third document was sent by email on the afternoon of 26 November 2007 from the President of the Russian Rowing Federation (Exhibit E). The Federation, in contradiction of explanations previously given, confirms that claims that intravenous infusions of Esofosfina took place and argues that these were legitimate medical treatment executed by the team doctor:

“...that all intravenous injections in the period of July 11, 2007 – July 12, 2007 were executed by the Team Doctor Mr. Shvetsky in the hotel rooms in Lucerne, Switzerland, unambiguously prove that there was no violation of WADC and all intravenous injections were the result of the necessity of legitimate medical treatment as it is prescribed by the Rule M2.2 of the WADA Prohibited List 2007.

And that:

“Intravenous injections were the only possible way for medical treatment of such type of disease taking in mind that two days later the athletes should have competed in the Rowing World Cup III.”

The Russian Federation supported their claim with some Court of Arbitration for Sport case histories in which they present the following:

“The CAS (Court of Arbitration for Sport) jurisprudence produced six criteria by which the legitimacy of a medical treatment would be judged (CAS 2006/A/1102 + CAS 2006/A/1146; CAS 2002/A/389/390/391/392/393):

- (1) The medical treatment must be necessary to cure an illness or injury of the particular athlete.*
- (2) Under the given circumstances, there is no valid alternative treatment available, which would not fall under the definition of doping.*
- (3) The medical treatment is not capable of enhancing the athlete's performance.*
- (4) The medical treatment is preceded by a medical diagnosis of the athlete.*
- (5) The medical treatment is diligently applied by qualified medical personnel in an appropriate medical setting.*
- (6) Adequate records of the medical treatment are kept, and are available for inspection.*

“We are confident that in this case all abovementioned criteria were met and intravenous injections executed by the Team Doctor could be estimated as legitimate medical treatment.”

The Russian Rowing Federation President concludes by stating the following:

“On these grounds the Russian Rowing Federation requests FISA Anti-Doping Hearing Panel for the following relief:

(a) to admit that all intravenous infusions executed in the regard of athletes Litvinichev A., Luzyanin E., Podshivalov I. should be considered as a legitimate medical treatment;”

The Federation presented no further evidence.

Questions from the Panel

The panel started by assessing the CAS case history list:

- (1) *“The medical treatment must be necessary to cure an illness or injury of the particular athlete.”*
- (2) *Under the given circumstances, there is no valid alternative treatment available, which would not fall under the definition of doping.*
- (3) *The medical treatment is not capable of enhancing the athlete's performance.*
- (4) *The medical treatment is preceded by a medical diagnosis of the athlete.*
- (5) *The medical treatment is diligently applied by qualified medical personnel in an appropriate medical setting.*

The panel reserved judgment on these first five points until appropriate medical doctors could be consulted. Regarding the sixth point:

- (6) *Adequate records of the medical treatment are kept, and are available for inspection.*

The panel asked for records of the medical treatment and some photocopied handwritten Russian language records were presented in person and then later translated and sent by post.

Decision

1. The Russian rowing federation admitted that the rowers identified by the DNA analysis were indeed the three rowers identified by FISA and that these three rowers had used intravenous infusion, and had infused the substance “Esofosfina”. These facts are not contested.
2. The panel then assessed the first five points from CAS case history presented in the Russian Rowing Federation statement of 26 November, namely:
 - a. *“The medical treatment must be necessary to cure an illness or injury of the particular athlete.”*
 - b. *Under the given circumstances, there is no valid alternative treatment available, which would not fall under the definition of doping.*
 - c. *The medical treatment is not capable of enhancing the athlete's performance.*
 - d. *The medical treatment is preceded by a medical diagnosis of the athlete.*
 - e. *The medical treatment is diligently applied by qualified medical personnel in an appropriate medical setting.*

The panel consulted with seven experienced sports medicine professionals from seven different countries (Exhibit F).. Their conclusions were (a) that intravenous infusion of this fructose substance “Esofosfina” was not a medical treatment for the reported illnesses of the athletes: *“acute dehydration and convulsions”*, (b) there certainly was alternative treatment for acute dehydration and fructose is not at all the appropriate treatment, (c) The use of “Esofosfina” is capable of improving the recovery time from training which could enhance the performance of the athletes, (d) this is not the appropriate medical treatment for the stated medical conditions of the athletes and (e) the hotel room in Lucerne could be considered “an appropriate medical setting” but not ideal.

The panel also referenced the indications provided by the manufacturer of the substance “Esofosfina” (Exhibit G) in order to understand this substance.

3. On the final point of the CAS case histories, the Russian Federation submitted photocopies from a handwritten doctor’s daily journal and a translation (Exhibit H) which shows a diagnosis of the three athletes along with the prescribed treatment. It is not clear from whom this journal was obtained and why there is a gap from 10 July to 15 July when certainly these athletes would have required daily attention from a doctor given their alleged medical condition.

4. On the basis of the medical reports provided by the Russian Federation and the advice of the medical experts, the Panel finds that there was no legitimate medical treatment involved. This is on two bases: first, that the evidence is that the practice was being undertaken for sports recovery purposes, rather than medical treatment; and secondly that the intravenous infusion of a fructose substance is not a remedy for the illness diagnosed and therefore not legitimate medical treatment.
5. The panel notes that the late provision of a statement by Dr Shvetsky and other evidence in complete contradiction with Dr Shvetsky's initial statements and also in contradiction with the statements of the other Russian athletes in the same situation who have expressly admitted to have applied infusions without medical support and were sanctioned on that basis does raise questions as to the reliability of the evidence submitted.
6. In any event however, the panel does not consider it decisive to the case whether the substance at stake was or not infused by Dr Shvetsky.
7. Indeed, the infusion of such substance is in any event not an appropriate and necessary treatment for the alleged medical conditions and therefore the cumulative conditions set forth for an exception to the prohibition of infusions were in any event not met.
8. It is athletes' personal duty to know what enters his or her body and, in the case of a prohibited method, how any substances enter his or her body: World Anti-Doping Code paragraph 2.2.1 "It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed."
9. Therefore, the panel finds that there has been an anti-doping rule violation under Article 2.2 of the FISA Anti-Doping Rules.
10. There is no evidence to suggest that Article 10.5 should apply to reduce the period of ineligibility based on exceptional circumstances.

11. Therefore the provisions of Article 10.2 apply, and all three athletes are declared to be ineligible within the meaning of the Rules, for a period of two years retroactively from 27 August 2007, in accordance with Article 10.8. The panel considers that these athletes should be treated similarly to the previously banned athletes for the same doping offense and bear a similar consequence for this anti-doping rule violation as allowed in the last sentence of Article 10.8 of the World Anti-Doping Code.

12. This award is given without cost.

Signed in Lausanne, Switzerland on 14 January 2008, by the FISA Doping Hearing Panel

Jean-Pierre Morand (Chairman)

Michael Williams

Jean-Christophe Rolland