

AWARD DELIVERED BY THE FISA DOPING HEARING PANEL

sitting in the following composition

Members

**Tricia Smith
Jean-Christophe Rolland
Mike Williams**

In the case of Olga Samulenkova

In Lausanne, Switzerland on 28 January 2007

I. The Facts

The facts in this case are established by documents made available to the Hearing Panel by FISA and by the athlete, via the Russian Rowing Federation. There was no oral evidence, and therefore no questioning of any person on the basis of the documents. The athlete and her federation waived their right to appear before the Panel.

1.1 Anti-doping Test

On 23 July 2006, Ms Olga Samulenkova was the subject of an out-of-competition anti-doping test. This test was conducted by the service provider IDTM on behalf of the World Anti-Doping Agency. The test was carried out in Belmeken, Bulgaria.

On the doping control form, the athlete mentioned taking “vitamin, GIPOXEN, amino acid and mineral complex”. The athlete made no comments regarding the doping control procedure.

A first sample was taken at 18:25; the bottle number is 397312. Urine density was measured at 1.007. Therefore, consistent with Article 5.11.11 of the “Guidelines for Urine Sample Collection v 4 06.04” published by WADA, a second sample was taken at 20:10.

5.11.11 The DCO shall confirm that the sample meets the requirements for analysis, as specified by the ADO in accordance with the laboratory standards, by testing the residual volume of urine remaining in the collection vessel for specific gravity (greater than or equal to 1.005 if using a refractometer, or 1.010 with lab sticks, or as specified by the relevant laboratory) and, if necessary, pH (between 5 and 7, or as specified by the relevant laboratory). Reagent strips and/or refractometer may be used.

The second sample bottle number is 396666.

1.2. Analysis of the A Samples

The two samples were sent to the Laboratoire National de Dépistage du Dopage at Chatenay Malabry (FRA), a WADA accredited laboratory.

The report on the analysis carried out on samples 397312 and 396666 was received at FISA by fax on 22 September 2006 and by post on 25 September. On sample 397312, the analysis reported a testosterone/epitestosterone ratio greater than 4 (8.2) (Report 215/07-2 28846) and on sample 396666 also a testosterone/epitestosterone ratio greater than 4 (5.5) (Report 215/07-1 28845)

Consistent with WADA recommendations set out in the “2006 List of Prohibited Substances” an additional analysis by Isotope Ratio Mass Spectrometry (IRMS) was made on these samples. The results of these two analyses both indicated an “exogenous source of metabolites of testosterone, consistent with the taking of testosterone or one of its precursors”.

The results clearly establish a violation of the FISA anti-doping rules.

1.3. Information to the Athlete

The national federation of the athlete was informed of the positive result and of her provisional suspension by a confidential email from FISA (Matt Smith) on Tuesday, 26 September 2006 at 14:21 hrs. (CET). The Secretary General of the Russian national federation (Ludmila Saraeva) confirmed receipt of this email on Tuesday, 26 September 2006 at 17:25 hrs (CET) and confirmed in an email on Wednesday, 27 September that the athlete had been informed.

The national federation requested by email on 27 September 2006 an analysis of the B samples. FISA then requested that the B samples be analysed.

1.4. Counter-Analysis of the B samples

The counter-analyses were made at the WADA accredited laboratory in Chatenay-Malabry, France between 6 and 9 November 2006. The analysis was carried out by a different lab technician than the technician who conducted the first tests.

The counter analysis of sample 396666 B confirmed the A analysis of the same sample.

- The T/E ratio was greater than 4 (6.3)
- The additional analysis by Isotope Ratio Mass Spectrometry (IRMS) was carried out on this sample and indicated an “exogenous source of metabolites of testosterone, consistent with the taking of testosterone or one of its precursors.”

The counter analysis of sample 397312 B confirmed the A analysis of the same sample.

- The T/E ratio was greater than 4 (7.9)
- The additional analysis by Isotope Ratio Mass Spectrometry (IRMS) was carried out on this sample and indicated an “exogenous source of metabolites of testosterone, consistent with the taking of testosterone or one of its precursors.”

These results were reported to FISA on 13 November, 2006.

1.5. Information to the Athlete and Hearing Notification

The athlete was informed through the national federation of the B counter analysis on 21 November 2006 and in accordance with Article 8.1 of the FISA Anti-Doping Rules, was invited to attend and participate in a hearing before a FISA Anti Doping Hearing Panel or to provide her position in written format.

1.6. Hearing

In accordance with the rules, a Hearing Panel was formed by the FISA Executive Director consisting of Tricia Smith (CAN) chair, Jean-Christophe Rolland (FRA) and Mike Williams (GBR).

The athlete chose not to attend a hearing but rather sent a letter to FISA on 1 December 2006 expressing her position. In her submission she describes, in general, the basic conditions present during the testing at the remote mountain training centre in Bulgaria. She also expresses her frustration with the delays between the two samples.

1.7. Summary of Key Dates

Date of the Test: 23 July 2006

Date of World Championships at which the athlete won a gold medal in the women’s quadruple sculls: 27 August 2006

Date of the Paris laboratory report: 22 September 2006

Date the athlete was informed and provisional suspension: 26 September 2006

Date of the analysis of the B counter analysis: 11 November 2006

Date of receipt of results of B counter analysis: 13 November 2006

Date the athlete was informed of the counter analysis results: 21 November 2006

Date limit of the procedure of enquiry: 60 days following the receipt of the results of the B samples or 13 January 2007

Latest date to deliver a decision: 30 days following the end of the commission of enquiry or 13 February 2007

II. Applicable law

2.1 The applicable rules

The applicable rules are the FISA Anti-Doping Rules in force at the time of the test (23 July 2006). These rules are consistent with the World Anti-Doping Code.

2.2 The relevant rules

The relevant rules in this case are the FISA Anti-Doping Bye Laws including but not limited to:

- Article 2.1 which sets out the Athlete's responsibility for any Prohibited Substance or its metabolites or markers found to be present in their bodily specimens. Prohibited Substances are defined in the World Anti-Doping Code and incorporated in the FISA Anti-Doping Rules by Article 4.
- Article 10.2 which sets a period of two years' ineligibility for a first violation for the substance here concerned, and which provides that the athlete shall have the opportunity to establish the basis for eliminating or reducing this sanction as provided in Article 10.5;
- Article 10.5 which provides for elimination or reduction of the period of ineligibility based on exceptional circumstances: (10.5.1) elimination in the case of 'no fault or negligence' and establishing how the prohibited substance entered his or her system; (10.5.2) reduction to no less than one half of the minimum period of ineligibility in the case of 'no significant fault or negligence'.

III Merits

The laboratory analysis has established the presence of a Prohibited Substance in the bodily specimens of the athlete. According to FISA rules and the World Anti-doping Code, the burden of proof is on the athlete to explain the presence of the Prohibited Substance in her body.

3.1 The Panel is faced with very little evidence from the athlete and consists only of the explanation given in writing. In her written submission the athlete makes a few general claims that the testing procedure might have been flawed. The Panel notes she did not make any comments about the testing on the doping control form at the time which is a requirement for an athlete who believes the testing might have been incorrectly conducted. She also signed the form.

3.2 The Panel does not consider that the general comments provided by the athlete in her submission regarding possible flaws in procedure to be sufficient to explain away or contradict the finding of the presence of the prohibited substance in her body.

3.3 There is no challenge to the test result, and the Panel has no difficulty finding that the athlete has committed an anti-doping rule violation in that a prohibited substance or its metabolite or markers were present in her bodily specimen (Article 2.1). There is no challenge to the fact that the appropriate sanction would normally be two years' ineligibility (Article 10.2)

3.4 In considering the question of the limiting or elimination of the period of ineligibility under Article 10.5.1 or Article 10.5.2, the Panel has no explanation from the athlete and cannot excuse the athlete from her responsibility for substances in her body.

3.5 The Panel considers that the athlete has not established "no fault or negligence" under Article 10.5 of the FISA Anti-Doping Rules. It has no evidence to consider otherwise. The doping control form invites "comments" and no comments were made at the time of the test. It is understandably difficult for a non-English speaking athlete to write any comments in English, but if an athlete believes that the testing procedure was not carried out correctly, then they can make a comment in their native language. As a high level athlete faced with an anti-doping test, it would at least be negligent not to have made some enquiries, and registered some comment in the circumstances.

3.6 The Panel therefore finds that the period of ineligibility should not be reduced. The Panel finds the athlete has not established that there was no significant fault or negligence on her part.

3.7 Because of the delay of the hearing, the Panel, under Article 10.8, considers that the period of ineligibility should commence from the date of the test when the prohibited substance was in her body.

3.8 The Panel notes with concern the delay between the taking of the sample on 23 July 2006 and the receipt of the report of the analysis by the laboratory only received on 22 September 2006.

The athlete continued to train and competed at the World Rowing Championships in late August 2006 where she was a member of a crew which won a gold medal in the Women's quadruple sculls.

Obviously, it would have been preferable to have been informed of the result before the World Championships; however, the delay does not affect the Panel's finding of a doping offence and ultimately has no bearing on the Panel's decision.

FOR THESE REASONS

The FISA Doping Hearing Panel finds:

1. Olga Samulenkova is ineligible to compete for a period of two (2) years.
2. The ineligibility period of two years began on 23 July 2006, the date of the test when the prohibited substance was found in her body.
3. The athlete is considered disqualified from competitions in which she participated after the date of the test and until 22 July 2008. According to Articles 10 and 11.1 of the FISA Anti-Doping Rules, she and her crew are hereby disqualified from the 2006 World Rowing Championships and the medals from all four athletes in the crew must be returned to FISA to be awarded to the next placing crew.
4. This award is rendered without costs.

Lausanne, 28 January 2007

For the FISA Doping Hearing Panel:



Tricia Smith



Jean-Christophe Rolland



Mike Williams