



Arbitration CAS 2002/A/432 D. / Fédération Internationale de Natation (FINA), award of 27 May 2003

Panel : Mr. John Faylor (Germany), President; Mr. Pantelis Dedes (Greece); Mr. Denis Oswald (Switzerland)

Swimming

Doping (nandrolone)

FINA's competence to initiate disciplinary proceedings

Strict liability

Negligence of the athlete

Prohibition of the reformatio in pejus

Future implementation of the World Anti-doping Code: consequences on the sanctions

1. In accordance with the FINA Rules, a review by the FINA Doping Panel of a decision rendered by a member federation can be ordered by the Executive if it “believes” that the member federation has not followed the applicable FINA Rules. The requirement for such review is the belief that an erroneous application of the FINA Rules has, firstly, been committed and, secondly, that the erroneous application was committed by the member federation. Concerning the belief of an erroneous application of the FINA Rules, the CAS holds that such an evaluation lies within the sole judgment of the FINA Executive and that the Panel has no authority to review the Executive’s exercise of such judgment.
2. If an athlete who competes under the influence of a prohibited substance in his body is permitted to exculpate and reinstate himself in competition by merely pleading that he has been made the unwitting victim of his or her physician’s (or coaches) mistake, malfeasance or malicious intent, the war against doping in sports will suffer a severe defeat. It is the trust and reliance of clean athletes in clean sports, not the trust and reliance of athletes in their physicians and coaches which merits the highest priority in the weighing of the issues in the case at hand. If such a defense were permitted in the rules of sport competition, it is clear that the majority of doped athletes will seek refuge in the spurious argument that he or she had no control over the condition of his or her body.
3. The CAS applies the principle of the prohibition of the *reformatio in pejus* according to which the appeal body can modify the decision that is contested only in the interest of the appellant, without prejudice for him. There are exceptions to this principle: 1) if the appeal body must rule on the application of statutory laws, applicable *ex officio*, that body will be bound to deliver a decision which complies with the applicable law; 2) if the respondent lodges a counter-appeal, then the appeal body is bound to

consider the claims of the respondent which, if they are granted, may result in even more prejudice to the appellant.

In September 2001, the Appellant D. participated in the Mediterranean Games held in Tunis as a Member of the Hellenic Mediterranean Team.

On 5 September 2001, he placed second in the 400 m. individual medley event and was awarded the silver medal.

Immediately after the competition, he was requested to submit to a doping control which was carried out by the Laboratoire du Dépistage du Dopage in Tunis (the "Laboratory").

On 17 September 2001, the Laboratory released the "B" sample analysis confirming the positive findings of the "A" sample to FINA:

*"19-norandrostérone (M1=33.7 ng/ml)
Lidocaine"*

A hearing was held before the Board of Directors of the Hellenic Swimming Federation.

This Board found the swimmer to have committed a doping offence pursuant to the FINA Doping Control Rules (DC) 9.1.1. Considering that he tested positive for the second time, the first offence having involved the use of caffeine, the Board decided to sanction D. with a lifetime expulsion in addition to imposing a retroactive sanction which ordered the cancellation of all results achieved by him in competitions during his competitor's career.

Following the issuance of the said decision, the athlete lodged an appeal before the Supreme Sports Arbitration Council which reduced the sentence to a twenty-month ban from any competition with retroactive cancellation of the results in competition events for three months.

Applying DC 12.3, the Hellenic Swimming Federation by letter of 3 June 2002 reported to FINA the judgment issued by the Supreme Sports Arbitration Council. The FINA Executive held that FINA Rules relating to doping controls were not properly followed in the exercise of the jurisdiction of the Hellenic Swimming Federation. Applying DC 12.5, the FINA Executive by letter of 6 June 2002 referred the case to the FINA Doping Panel for review.

On 26 September 2002, the FINA Doping Panel issued a decision banning the athlete for a four-year period and canceling all results achieved during the time period from 5 March 2001 until 25 September 2002.

A statement of appeal was filed by the athlete before the CAS on 2 December 2002.

The hearing was held in Lausanne on 13 March 2003.

In his Statement dated 25 November 2002, the Appellant challenges the jurisdiction of the FINA Doping Panel, claiming that the decision of the Supreme Sports Arbitration Council, although substantially lessening the penalties imposed by the Hellenic Federation, properly applied FINA doping control rules. Indeed, both tribunals, according to the Appellant, applied FINA doping control rules. As a consequence, the FINA Executive had no grounds to apply DC 12.5 which permits referral to the Doping Panel if a “Federation member has not followed the FINA rules regarding doping control.”

Citing DC 9.10, the Appellant claims that the finding of prohibited substances in his body fluids cannot be deemed the direct or indirect result of his negligence, because he relied on the assurances of his coach. The latter cannot be considered a “third party” within the meaning of DC 9.10 of the FINA rules. The fact that the coach administered the injection poses no issue in the eyes of the Appellant.

In the opinion of the Appellant, a combined assessment of both objective and subjective evidence in a doping violation is accepted under Swiss law and by many CAS panels in many cases.

The Appellant takes the position that, on the basis of the Copenhagen Declaration issued after the World Conference on Doping in Sports held in March 2003 and the World Anti-Doping Code, the maximum sanction for a first offence will be only a two-year term of ineligibility.

On the above grounds, the Appellant petitions the Panel to reverse, annul, change or reduce the sanctions imposed by the FINA Doping Panel and to issue a sanction that is proportionate to the offence committed.

The Respondent points out in its Answer dated 14 January 2003 that, from the expert statements submitted by the Appellant himself, he was regularly given substances of dubious origin. Actovegin, a derivative of calf’s blood, which the Appellant admits to having taken, is itself not a product which can be obtained in open official channels in Western Europe and would be illegal in Greece.

Citing the Appellant’s challenge to the jurisdiction of the FINA Doping Panel under DC 12.5, the Respondent points out that the FINA Executive can indeed order a review of the Hellenic Federation’s decision and the decision of the Supreme Sports Arbitration Council if it believes that the FINA rules were not followed. To reach this conclusion or rather this “belief”, the FINA Executive disposes over a wide discretion, the exercise of which is not open to challenge.

In the opinion of FINA, the Appellant has failed to ground his petition for a reduction in the sanctions as provided in DC 9.10 by demonstrating how these prohibited substances entered into his body and that they did not arrive there as a result of his negligence, direct or indirect.

For these grounds, FINA requests the Panel to reject the appeal and to confirm the sanction imposed by FINA on the Appellant.

LAW

1. The jurisdiction of CAS to act as an appeal body is based on art. R47 of the Code of Sports-related Arbitration (in the version in force as of January 2000) which provides that
"A party may appeal from the decision of a disciplinary tribunal of similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body."
and on Article C 12.8.3 of the FINA Constitution applicable at the time when the Appeal was filed which reads as follows:
"An appeal against a decision by the Bureau of the FINA Doping Panel shall be referred to the Court of Arbitration for Sports (CAS), Lausanne, Switzerland, within the same term as in C 12.8.2. The only appeal from a decision of the Doping Panel shall be to the CAS."
2. The Appellant's appeal is an appeal against the decision of the FINA Doping Panel, i.e., the decision *"of a disciplinary tribunal or similar body of a federation"*. Article C 12.8.3 of the FINA Constitution provides for arbitration before the CAS and the Appellant has exhausted all legal remedies available prior the appeal to the CAS. The conditions set by art. R47 of the Code and Article C 12.8.3 of the FINA Constitution are therefore met.
3. Moreover, the jurisdiction of CAS is explicitly recognized by the parties in their briefs.
4. The appeal is admissible for the following reasons :
5. The decision of the FINA Doping Panel imposing a sanction on the Appellant is dated 26 September 2002 and was served upon him on 1 November 2002.
6. The Appellant's Statement of Appeal is dated 25 November 2002 and the Secretary General of the CAS acknowledged receipt of it on 2 December 2002.
7. Having no evidence of the date when the FINA Doping Panel decision was sent to the Appellant and as the Respondent did not challenge the admissibility of the appeal, the Panel considers that the Statement of Appeal was filed within the deadline of one month set by C 12.8.2 and C 12.8.3 of the FINA Constitution.
8. Art. R58 of the Code provides:
"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in absence of such a choice, according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled."
9. Such provision was expressly mentioned in the Order of Procedure.

10. The "*applicable regulations*" in this case are those contained in the FINA Rules (in the "*FINA Handbook*" for the period 2002-2005) referred to in 2.1 above.
11. The parties have not expressly or impliedly agreed a choice of law applicable to these proceedings before the CAS. Since the domicile of FINA is in Lausanne, Switzerland (Article C 2 of the FINA Constitution), the Panel shall apply Swiss law.
12. The applicable procedure in this case is the appeal procedure provided for by art. R47 *et seq* of the Code. Pursuant to art. R57 of the Code

"The Panel shall have full power to review the facts and the law."

Accordingly, this Panel is not bound by the findings of or evidence adduced before any other court or body which has ruled on this case.

13. Pursuant to C 12.1 of the FINA Rules "*any member or individual member of a member may be sanctioned*". Even though, strictly speaking, the Appellant is not a member or individual member of FINA (The Appellant is a member of his local swimming club, which, in turn, is a member of the Hellenic Swimming Federation, which is a member of FINA). The fact that C 12.4 makes reference to a "*competitor or a person*" can only be interpreted to mean that (also) a swimmer can be sanctioned by FINA if he or she violates FINA Rules.
14. Furthermore, pursuant to DC 1.2, the rules and the regulations of member federations shall provide that the FINA Doping Control Rules will be directly applicable to competitors. In the absence of counter evidence, one can assume that the Hellenic Swimming Federation Rules restate, incorporate by reference or otherwise comply with the requirements of DC 1.2. and therefore the FINA Doping Control can be deemed directly applicable to the Appellant.
15. The Appellant contends that the review of his case by the FINA Doping Panel was contrary to DC 12.5 and C 19.7.
16. As a matter of principle, the power of international federations to secure the application of their rules by review of decisions taken at the national federation's level or by an appeal body has been confirmed on many occasions (CAS 2001/A/337, B. v/ FINA, p. 13ss; CAS 1996/156, F. v/ FINA).
17. In the F. case, the CAS stressed that:
"If the international federations were not given this opportunity, there would be no safeguard against a national federation from "overlooking" a national doping case in order to allow its athlete to compete in an international competition. The Panel does not therefore consider the fact that an international federation takes up a case of doping of its own accord to constitute, in principle, a breach of the principle forbidding double jeopardy. In each case, it will however depend upon the rules of the federation."
18. As DC 12.5 provides for such review, the Panel is vested with the task of determining whether FINA correctly applied the rule.

19. In accordance with DC 12.5, a review by the FINA Doping Panel can be ordered by the Executive if it “believes” that the member federation has not followed the FINA Rules.
20. The requirement for such review is the belief that an erroneous application of the FINA Rules has, firstly, been committed and, secondly, that the erroneous application was committed by the member federation.
21. Concerning the belief of an erroneous application of the FINA Rules, the Panel holds that such an evaluation lies within the sole judgment of the FINA Executive and that the Panel has no authority to review the Executive’s exercise of such judgment. Therefore, the referral to the FINA Doping Panel by the FINA Executive shall be deemed valid and not open to review.
22. Concerning the member federation, the Supreme Sports Arbitration Council is, in the view of the Appellant, the external appellate body recognized by the Hellenic Swimming Federation. It should, therefore, be considered as having the authority to reverse or amend decisions of a member federation and to substitute its own decision. As the Council’s decision was rendered within the jurisdiction of the Hellenic Swimming Federation, a “Member Federation” within the meaning of DC 12.5, the FINA Executive acted correctly in referring the Council’s decision to the FINA Doping Panel for review.
23. On 26 September 2002, the FINA Doping Panel held that the Appellant committed a doping offence and therefore suspended him for four years commencing on 6 September 2001. Moreover, it cancelled all results achieved by the athlete during the period from 1 March 2001 to 25 September 2002 .
24. DC 2.1.a) and DC 9.1.7 provide:
"Doping offences are:
a) the finding of a prohibited substance within a competitor's body tissue or fluids."
"The finding in a competitor's body tissue or fluids of a prohibited substance shall constitute an offence, regardless of whether the competitor can establish that he or she did not knowingly use the prohibited substance."
25. Under the FINA Doping Policy, an offence has therefore been committed as soon as it has been established that a prohibited substance was present in the athlete's tissue or fluids. There is thus a legal presumption that the athlete is responsible for the mere presence of a prohibited substance.
26. The burden of proof resting on FINA is limited to establishing that a prohibited substance has been properly identified in the athlete's tissue or fluids. If the FINA is successful in proving this requirement, there is a legal presumption that the athlete committed an offence, regardless of the intention of the athlete to commit such offence.

27. The CAS has held in numerous awards that this legal presumption and the allocation of the burden of proof is legally valid and enforceable, notwithstanding the fact that disciplinary sanctions in doping cases are similar to penalties in criminal proceedings in which the prosecutor normally bears the burden of proving not only the factual elements of an offence, but also the presence and degree of guilt on the part of the accused. On many occasions, the CAS has had the opportunity to confirm this strict liability rule in athletic competition (F. v/ FINA 1996/156, p.42; C. v/ FINA 1995/141, published in Digest of CAS Awards 1986-1998, Stämpfli Editions, Berne, p. 215 ff; G. v/ FEI 1992/63 published in Digest of CAS Awards 1986-1998, Stämpfli Editions, Berne, p 115 ff, confirmed by the Swiss Supreme Court ATF March 15, 1993 published in Digest of CAS Awards 1986-1998, Stämpfli Editions, Berne, p. 561 ff; FCLP v/ IWF 1999/A/252, in addition to other decisions).
28. In the case at hand, the first issue to be addressed is whether FINA demonstrated and proved the existence of a doping offence or, stated differently, whether the condition provided for in DC 9.1.7 -- "*findings in a competitor's body tissue or fluids of a prohibited substance*"-- is fulfilled.
29. DC 1.2 provides that the rules and the regulations of member federations shall affirm that the FINA Doping Control Rules will be directly applicable to competitors.
- As the Hellenic Swimming Federation is a member of FINA, it has provided for the application of the FINA Doping Control Rules to its members.
30. DC 2.1 and DC 3.1 A provide as follows:
- "Doping offences are:*
a) the finding of a prohibited substance (DC 3.1) within a competitor's body tissue or fluids;"
- "Except as set forth in DC 3.5, the following classes of substances shall be prohibited in competition:*
(...)
and the following classes of substances shall be prohibited at all times:
- A. Anabolic agents*
(...)"
31. DC 8.3.2 provides that the analysis of all samples shall be done in laboratories accredited by the IOC.
32. As such, the laboratory findings of the Laboratoire du Dépistage du Dopage in Tunis are sufficient to ground a sanction on the Appellant based on the foregoing FINA Doping Control Rules:
- Pursuant to DC 1.2 of the FINA Handbook, the FINA Doping Control Rules were applicable to the Appellant.
 - Pursuant to DC 8.3.2, the reports of the Laboratory, which is an IOC-accredited laboratory, are presumed to be scientifically correct.
 - Pursuant to DC 2.1 and DC 3.1 of the FINA Handbook and based on the findings of the laboratory, the Appellant committed a doping offence.

33. FINA has thus met its burden of demonstrating and proving that, in proper test procedures, a prohibited substance was found in the athlete's urine. Pursuant to DC 9.1.7 of the FINA Handbook this constitutes an offence. The requirements for the legal presumption have been met.
34. As the Respondent has demonstrated that a prohibited substance has been found in the athlete's fluids the burden of proof shifts to the Appellant to prove that either the sampling procedure was not correctly carried out, the Laboratory was remiss in applying proper custodial procedure, the quantity of nandrolone found in his urine was under the threshold or that he had no intention to resort to doping.
35. The basis for the rebuttal of the presumption is provided for in the FINA Doping Control Rules. DC 9.1.7. It states as follows:
- "The right to a hearing related to an offence under DC 9.1 can involve only:*
- a) Whether the correct body tissue or fluid has been analysed;*
 - b) Whether the body tissue or fluid has deteriorated or been contaminated;*
 - c) Whether the laboratory analysis was correctly conducted;*
 - d) Whether the minimum suspension for a first offence should be exceeded;*
and
 - e) Whether a minimum sanction can be lessened in accordance with DC 9.10."*
36. DC 9.10 provides:
- "Where the rules impose a minimum term suspension, the minimum may be lessened if the competitor can clearly establish how the prohibited substance got into the competitor's body or fluids and that the prohibited substance did not get there as a direct or indirect result of negligence of the competitor. Every competitor has the personal responsibility to assure that no prohibited substance shall enter his or her body and that no prohibited method be used on such competitor's body, and no competitor may rely on any third party's advice in this respect."*
37. The Appellant in his Statement did not challenge the positive finding of nandrolone and lidocaine in his body fluids.
38. With regard to his coach, the Appellant stressed his "*absolute trust in his skills, in his reliability.*"
39. The Appellant, in his oral statement, postulated that the prohibited substance entered into his body as a result of the injections of food supplements such as "*Actovegin*" and/or "*Creatine*". The Appellant admitted that he himself purchased certain substances in a pharmacy in Athens prior to his departure to Tunis. These substances had been recommended by his doctor. The injection of these substances could not be injected by his physician, however, as his physician would not be attending the competition in Tunis. The injection was to be administered by his coach.

40. The Panel takes note and wishes to emphasize that, on the basis of the written statement submitted by Professor Dimitrios Har. Mourtzinis, the drug Actovegin is not included in the official National Formulary 2000 of the National Drug Organization. His statement continues:
- "Therefore its use is forbidden in Greece, as indeed this occurs in the rest of the countries in the European Union. Its composition is not known, nor its partial contained chemical combinations. None of the therapeutic effects mentioned has been impartially proven, its pharmaco-kinetics is unknown, and long lasting repercussions over the users as well. For these reasons this drug is extremely dangerous. Should this circulated in Greece it is illegal."*
41. This statement was confirmed by the oral statement of Dr. Martial Saugy in the oral session before the Panel. Moreover, Dr. Saugy emphasized the danger of food supplements as their composition is very unclear and as they often contain nandrolone precursors. According to Dr. Saugy, the IOC and the sports federations are aware of these problems and have warned the athletes of the risks involved in ingesting such food supplements.
42. DC 9.10 sets down clear and compelling language regarding the responsibility of the athlete: The athlete bears the responsibility to assure that no prohibited substance enters his body. In the case at hand, the Appellant was found with a prohibited substance in his body fluids. He explained that his coach, on the recommendation of his physician, was probably the cause of the positive findings. The coach injected him with food supplements during the competition.
43. Taking into account the Appellant's own statements and those of the experts Professor Dimitrios Har. Mourtzinis and Dr. Saugy, the Panel is unable to draw a final conclusion regarding the origin of the prohibited substances found in the Appellant's body fluids, but does not exclude the possibility that the injection administered by his coach was the cause. Having said that, however, the Panel takes the position that the Appellant clearly acted with negligence in not specifically queried both his physician and his coach regarding the identity of the substances which were administered to him. As Dr. Saugy stated in his testimony, athletes have been placed on notice that the engesting of food and vitamin supplements carries risk. The Appellant should not have ignored this risk, not only at the time he purchased the illegal substances in an Athens pharmacy just before leaving for Tunis, but especially when such substances are injected by the coach and not his physician on the eve of a competitive event.
44. If an athlete who competes under the influence of a prohibited substance in his body is permitted to exculpate and reinstate himself in competition by merely pleading that he has been made the unwitting victim of his or her physician's (or coaches) mistake, malfeasance or malicious intent, the war against doping in sports will suffer a severe defeat. It is the trust and reliance of clean athletes in clean sports, not the trust and reliance of athletes in their physicians and coaches which merits the highest priority in the weighing of the issues in the case at hand. If such a defense were permitted in the rules of sport competition, it is clear that the majority of doped athletes will seek refuge in the spurious argument that he or she had no control over the condition of his or her body. At the starting line, a doped athlete remains a doped athlete, regardless of whether he or she has been victimized by his physician or coach.

45. Having proved the violation of DC 9.1.1. and having established that the defenses set forth under DC 9.1.7 are not available to the Appellant in the case at hand, the issue which remains to be addressed is whether the length of the suspension is fair and just.

46. Pursuant to DC 9.1.1 of the FINA Handbook, the sanctions for the first doping offence involving an anabolic agent are:

"a minimum of four years' suspension; plus a retroactive sanction involving cancellation of all results achieved in competitions during the period prior to the date the suspension takes effect and extending back to six months before the collection of the positive sample, shall be imposed."

47. On the basis of the laboratory results, the Appellant was tested positive on 17 September 2001 for 19-norandrosterone and lidocaine. These findings represented a second offence. He had already tested positive on 12 May 2001 for caffeine and was suspended on 19 June 2001 by the Hellenic Swimming Federation for a period of fifteen days.

48. Pursuant to the FINA decision of 26 September 2002, the athlete was never officially notified of the caffeine offence and the suspension ordered by the decision of 19 June 2001. Even the FINA Doping Panel doubted the enforceability of the sanction imposed by the Hellenic Swimming Federation for the caffeine offence.

49. The issue which emerges is whether the Panel should qualify the caffeine offence as a first sanction with the consequence that, pursuant to DC 9.1.5, the positive test of 17 September 2001 must be deemed a second offence. This would inevitably result in a lifelong ban pursuant to DC 9.1.1.

50. In determining whether the Panel has the authority to go beyond that which was decided by the FINA Doping Panel, the CAS in the case at hand has full power to review the facts and the law pursuant to art. R57 of the Code.

51. Under Swiss law, the applicable rule on this issue is the defense of *reformatio in pejus*.

52. This principle states the following:

"C'est le principe de la prohibition de la reformatio in pejus, selon lequel la juridiction de recours ne peut modifier le jugement attaqué qu'à la mesure de l'intérêt de l'auteur du recours, jamais à son préjudice."

(G. Piquerez, "L'Interdiction de la Reformatio in Pejus en Procédure Civile et en Procédure Pénale", in *Mélange Assista Genève* 1989, p. 495ss)

and can be translated:

"According to the principle of the prohibition of the reformatio in pejus, the appeal body can modify the decision that is contested only in the interest of the appellant, without prejudice for him."

53. The justification of this principle is the following:

In any judicial proceeding, the decision which concludes the litigation generates a myriad of effects on the parties. The parties must be able to rely on the absence of error in the evaluation of facts and in the application of the law. It is, therefore, incumbent upon the system to allow the parties the opportunity to request a further review of the subject matter of their dispute in order to minimize the risk of injustice.

54. There are many exceptions to this principle; the Panel will refer to two exceptions mostly relevant for the instant case :
 - If the appeal body must rule on the application of statutory laws, applicable *ex officio*, that body will be bound to deliver a decision which complies with the applicable law. The decision which is rendered might result in more prejudice to the appellant than the one which was rendered by the first instance judge.
 - If the respondent lodges a counter-appeal, then the appeal body is bound to consider the claims of the respondent which, if they are granted, may result in even more prejudice to the appellant.
55. In the instant case, the provisions contained in the FINA Doping Control Rules may not be considered as statutory laws. They are enacted by a Sport Federation and find application to its members. No appeal body is obligated to apply these provisions *ex officio*.
56. Concerning the second exception, the Panel notes that FINA did not file a counter-appeal against the decision of its Doping Panel. It asked merely for a confirmation of the suspension of the Appellant for a term of four years.
57. None of the exceptions to the defense of *reformatio in pejus* have been met. In consequence thereof, the Panel does not consider itself to have the authority to rule on the application of DC 9.1.5. Therefore, the four-year suspension and the six months retroactive period are deemed to be justified and shall continue to stand.
58. Pursuant to the Copenhagen Declaration on Anti-Doping in Sport, the participants to this conference have :
 - recognized the role of, and support, the World-Anti-Doping Agency (WADA);
 - support the World Anti-Doping Code (“WADC”) adopted by the WADA Foundation Board at the World Conference on Doping in Sports (Copenhagen, 3-5 March 2003).
59. At the time of drafting this decision, numerous countries have signed the Copenhagen Declaration. In addition, several of the international sports federations have already adopted the World Anti-Doping Code.
60. On the basis of the statements made by the representative of the Respondent in the oral hearing on 13 March 2003 in Lausanne, the adoption of the WADC will be addressed at the next FINA Congress to be held in Summer 2003. In response to the questions posed by the Panel, it was stated by the Respondent that the issue of transitional rules should also be addressed during this Congress.

61. The Panel wishes to note with all due emphasis that the currently governing sanctions of the Respondent, in particular, the minimum four year term of ineligibility to compete for a first doping offence involving anabolic agents pursuant to DC 9.1.1 does not comply with the shorter sanction to be imposed under the WADC. The latter provides for only a two- year term of ineligibility for a first violation of Article 2.1 (Presence of Prohibited Substance).
62. The Panel has no authority to compel the Respondent to address the prevailing discrepancy between the ineligibility sanctions now posed by the WADC and the current FINA Doping Control Rules, but wishes to draw the attention of the Respondent to the fact that any adoption of the WADC by FINA will require the implementation of transitional rules addressing situations such as the one posed by the case at hand.
63. It is the opinion of the Panel that the four year term of ineligibility now being served by the Appellant must be shortened within the framework of such transitional rules to harmonize with the shorter sanctions under the WADC rules. If, on the date upon which the WADC rules become effective, the remaining term of ineligibility of an athlete sentenced under the former FINA rules exceeds two years, FINA must carefully review whether any time served by the Appellant under the former FINA penalty should be credited to the term he would serve, if he had been sentenced under the new WADC rules.

The Court of Arbitration for Sport hereby rules:

1. The appeal filed by D. on November 25, 2002 is dismissed.
2. The decision of the FINA Doping Panel dated September 26, 2002 is confirmed.
3. (...)