



MEDIA RELEASE

SWIMMING – ANTI-DOPING

CAS DECISION IN THE MATTER WORLD ANTI-DOPING AGENCY (WADA) v. SUN YANG AND FÉDÉRATION INTERNATIONALE DE NATATION (FINA)

Lausanne, 22 June 2021 - The Court of Arbitration for Sport (CAS) has issued a new decision in the the appeal arbitration procedure brought by the World Anti-Doping Agency (WADA) against the Chinese swimmer Sun Yang and the Fédération Internationale de Natation (FINA) in relation to the decision issued by the FINA Doping Panel dated 3 January 2019 (the Challenged Decision) whereby Sun Yang was found not to have committed an Anti-Doping Rule Violation (ADRV) following an out-of-competition doping control.

Further to the decision of the Swiss Federal Tribunal of 22 December 2020 to remove the previous President of the Arbitral Panel, the other Panel members (the First Panel) stepped down and an entirely new panel was appointed, composed of Dr Hans Nater (Switzerland), President, Prof. Jan Paulsson (France) and Prof. Bernard Hanotiau (Belgium) (the new Panel). The new Panel conducted a hearing with the parties by video-conference on 25, 26 and 27 May 2021.

The new Panel found to its comfortable satisfaction that Sun Yang committed the following ADRVs when an unsuccessful attempt was made to collect blood and urine samples from him at his residence on 4-5 September 2018:

- Article 2.3 of the 2021 FINA Doping Code (2021 FINA DC) (“Evading, Refusing or Failing to Submit to Sample Collection by an Athlete”).
- Article 2.5 of the 2021 FINA DC (“Tampering or Alleged Tampering with any Part of Doping Control by an Athlete or Other Person”).

The new Panel found Sun Yang to have acted recklessly in particular when he refused to allow the blood samples to leave with the Sample Collection Personnel, causing the abortion of the out-of-competition anti-doping control of 4-5 September 2018. Like the First Panel, the new Panel found that the appropriate sanction for such ADRV alone should be a 4-year period of ineligibility, in accordance with the 2021 FINA DC. In view of the fact that Sun Yang committed an ADRV in June 2014 for which he received a 3-month period of ineligibility, the present violations constitute his second ADRV.

It is to be noted that the new FINA DC came into force on 1 January 2021, i.e. 10 months after the first CAS award was issued. This development reflects the promulgation of the 2021 edition of the WADA World Anti-Doping Code. The 2021 FINA DC affords considerably greater flexibility in connection with the consequences to be drawn from a finding of multiple ADRVs.



In relation to second or third ADRVs, the 2021 FINA DC states as follows:

10.9.1.1 For an Athlete or other Person's second ADRV, the period of Ineligibility shall be the greater of:

(a) a six (6) month period of Ineligibility; or

*A period of Ineligibility in the range between:
the sum of the period of Ineligibility imposed for the first anti-doping rule violation plus
the period of Ineligibility otherwise applicable to the second anti-doping rule violation
treated as if it were a first violation, and*

*twice the period of Ineligibility otherwise applicable to the second anti-doping rule
violation treated as if it were a first violation.*

*The period of Ineligibility within this range shall be determined based on the entirety of
the circumstances and the Athlete or other Person's degree of Fault with respect to the
second violation.*

This provision in the 2021 FINA DC represents a newly flexible approach. In the past, panels applying the FINA DC were bound to impose a unique sanction corresponding to twice the period of ineligibility applicable to the second ADRV, i.e. the harshest possible sanction. Under the 2021 rules, however, panels may select from a range based on their assessment of the “entirety of the circumstances”.

The new Panel considered that the circumstances surrounding the sample collection of 4-5 September 2018 merited a period of ineligibility at the lower end of the range: namely the addition of the 3-month period (from 2014) to the 4-year ban applicable in this second case.

Consequently, the Panel concluded that a period of ineligibility of 4 years and 3 months (i.e. 51 months) commencing on 28 February 2020 is to be imposed on Sun Yang.

The Arbitral Award will be published on the CAS website in the coming days.