



FINA Doping Panel 01/15
15 July 2015

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FINA Doping Panel

comprised of

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In the proceedings against

the Water Polo player **Niksa DOBUD** ("the Athlete or
the Player")
affiliated to the Croatia Water Polo

represented by:

Mr. Kruno Peronja, attorney from
Primorac and Partners in Split

I THE PARTIES

1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing the sport of Aquatics. FINA has established and is carrying out, inter alia, a doping control program, both for in-competition as well as out-of-competition testing.

1.2. The Croatia Water Polo is a member of FINA. The Croatia Water Polo is required to recognize and comply with FINA's anti-doping rules, which are set out in the FINA Doping Control Rules ("FINA DC"). The FINA DC is directly applicable to and must be followed by

Competitors, Competitor Support Personnel, coaches, physicians, team leaders, and club and representatives under the jurisdiction of the Croatia Water Polo.

1.3 The Athlete was a member of the Croatian Water Polo team which participated in a preliminary round VIII match against Montenegro in the Water Polo World League on 20 March 2015 in Budva, Montenegro ("Competition"). He submitted to a doping test after the match in Budva at 19:10 pm. Upon completion of the test, the Athlete initially stated that he remained in Budva as he had missed the team bus back to Croatia. At the hearing before the FINA Doping Panel he stated that he returned to Dubrovnik in Croatia through his own means after having stayed out in Dubrovnik partying with friends.

1.4 The Athlete was born on [REDACTED] and has been an international water polo Player for Croatia for some years. He was a member of the Croatian team which won the Olympic Gold medal at the London Olympics in 2012. He has won bronze medals in the FINA World Championships in Rome 2009, Shanghai 2011 and Barcelona 2013. He also participated in capturing the gold medal at the 2010 European Water Polo Championships in Zagreb, Croatia.

II. NATURE OF THE CASE

2.1 Mr. Dobud provided his whereabouts for the month of March 2015 and stated that he would be home for the whole month. On 21 March 2015, a Doping Control Officer (hereafter DCO) presented himself along with an assistant at the door of Mr. Dobud's residence in Dubrovnik and subsequently filed a report pertaining to circumstances under which the Athlete evaded or refused to submit to sample collection.

The report stated the following:

"At 6:44am we rang at doorbell of Niksa Dobud and women ZB [REDACTED] open the door. I represent myself and told that I am looking for Niksa Dobud. I ask her is it Niksa Dobud at home?

She told that she will wake him up because he return yesterday late from travel.

At 6:45am man came out at the door (Niksa Dobud , I and assistant know him from previous testing) and I told him : Niksa Dobud my name is [REDACTED], I am DCO from IDTM and I notified you in name of FINA for Out of competition testing. I show him my DC

O card. After I represent myself Mr. Dobud told us that he will return in one minute. I tray to follow him inside his home but he return me back and told that he will came in one minute. I told him that after notification I must be with him all time. He just close door and enter the house. After 3-4 min we rang at the doorbell one more time because he have not return back after one minute. Mr.Dobud open the door and told us that has not yet passed 5 minutes and that he have right for 5 min after notification. I told him that this is not in accordance with the rules and that I must be with him all time after notification. He just told 5 minutes and close the door. After that I contact people at IDTM : BC [REDACTED] and JG [REDACTED]. After that we have been in phone contact all the time until the end. I received information from IDTM to stay there and try to reach Mr. Dobud and try to explain him about how this is serious situation. If I reach him to gave phone to him and they will tray to speak with him. We rang and knock at the door but nobody open the door. I was not able to call athlete because he have not provide his phone number in WA. At 7:59 am women open the door and told us that he is with child and with her brother inside house and she was spoken with Mr.Dobud over phone and that he will come in two days because he had a match yesterday. She told us one more time that she is alone with child and with her brother at home and that we stop to harassing her and she than close the door. I told everything to IDTM and received information to stay there and tray to find out phone number of Mr. Dobud. We waited in front of door and rang and knocking at the door but nobody open. About 9am women came out

and told us that she will call the police or a lawyer if we don't stop rang at the doorbell. I ask her whether she can give us phone number of Mr. Niksa Dobud. She did not want to answer my question and the whole time she spoke that Niksa not at home and that we stop harassing because they will call the police. Than entered the house. After that I call IDTM and received information to wait inside a car for phone call. After couple minutes BC [REDACTED] call me and told us to finish testing of Niksa Dobud and write UAF and everything what happened. Then we finished testing of Niksa Dobud.

III. PROCEEDINGS

3.1 By letter dated 30 March 2015, Mr. Cornel Marculescu, FINA Executive Director informed Mr. Dobud that pursuant to a report submitted by FINA testing agency International Doping Tests and Management (hereafter IDTM), it would appear that he had committed an anti-doping rule violation as per FINA Doping Control Rules 2015 (FINA DC) rule 2.3, pursuant to which evading sample collection, or without compelling justification, refusing or failing to submit to Sample collection after notification as authorized in the anti-doping rules constitutes an anti-doping rule violation.

3.2 On the same date, the FINA Executive Director, informed the Croatia Water Polo of the same.

3.3 By letter dated 8 April 2015 to FINA, the Player stated the following:

"Dear Sirs,

At the beginning, let me express regret because of the whole situation that seems to be a big misunderstanding and let me explain what had actually happened.

On the 20th March 2015 we played the FINA World league match against Montenegro in Budva, Montenegro. Since my name was drawn out for the

doping control (in competition) I stayed in Budva after my team left, because I wasn't able to provide the sample right away. That is also the reason why I hadn't changed the whereabouts data in ADAMS about the following morning, because simply there was no time to do it. Since the control finished really late and I had no transportation to go back home, I decided to sleep over in my friend's house in Budva and return home the following day.

When FINA doping control officer showed up at my doorstep the following morning, for the Out-of-competition control, my wife opened the door. She was at home with our 8 months old baby and her brother who came to help her while I was away. My wife told me she'd said to DCO that she'll try to reach me and after that her brother showed up at the doorstep as well. DCO obviously thought that was me. He told him to wait for a few minutes, so they'll try to reach me, but DCO told him he's not supposed to close the door, continuing to act as he was me. My wife came out again saying she couldn't reach me and asked them to leave. They continued to ring the doorbell and after a while, my wife said she would call the police because of harassment after which they went away.

I can assure you that I would never try to avoid the doping control because I'm an athlete with deeply implanted anti-doping attitude. Moreover, after providing a sample just a few hours before, what reason would I have to avoid it few hours afterwards? I already had 3 doping controls this year.

I have 4 eyewitnesses who can confirm I was not at home on the morning in question.

I have informed my Federation about the whole situation, so they are aware what's going on.

Hoping this clarifies the matter.

Best Regards

(...) signature"

3.4 By letter dated 13 April 2015, Mr. Dobud was informed by FINA Executive Director of his provisional suspension with effect as of 13 April 2015 from participating in all competitions, events or other activities that are organized, convened authorized or recognized by FINA, the Croatia Water Polo or any other FINA Member Federation.

On the same date, the matter was referred to the FINA Doping Panel for due consideration

3.5 On 22 April 2015, the FINA Doping Panel Chairman wrote to Mr. Dobud informing him of the fact that this body would be handling the matter and provided him with a deadline to 29 April 2015 for him to request a hearing, or waive his right thereof.

3.6 By letter dated 27 April 2015, Mr. Dobud wrote the following:

"In response to your inquiry confirm (within which you specify) that want to be interviewed, which means that I want to give statement in front of you (FINA Doping Panel) and convince you that I am an athlete who does not take any prohibited substances, athlete whose biggest mistake was failing to report a change of residence for a period of 21.05.2015.

I want to deal with a person who claims to who I opened the apartment door, which for now does not want to be interpreted as something malicious.

I'm free to ask me the date of the call to leave the hearing 15 days in order to arrange arrival and the legal professional help.

With expressions of esteem, Niksa Dobud"

3.7 By email dated 7 May 2015, the Athlete requested the possibility of having a hearing on Thursday or a Friday, as well as due notice to organize an interpreter. He also wished to ascertain if the language would be English or French.

3.8 By letter dated 8 May 2015, the FINA Doping Panel Chairman informed Mr. Dobud that a hearing would be convened for Friday 29 May 2015 at 10 am in Lausanne and that the DCO would be summoned to the hearing. He also provided the Player with the composition of the Panel.

3.9 By letter dated 13 May 2015, the Chairman of FINA Doping Panel wrote to the DCO [REDACTED] and requested his presence for 10:30 am on 29 May 2015 in Lausanne for the hearing.

3.10 By email dated 15 May 2015, the Athlete informed the FINA Doping Panel he would be represented at the hearing by Mr. Kruno Peronja, attorney from Primorac and Partners in Split.

3.11 IDTM, the testing agency informed FINA that the DCO could not attend the hearing in Lausanne on 29 May 2015, but that he could be available to answer questions through a Skype connection during the hearing.

3.12 The hearing was held on 29 May 2015 in Lausanne (SUI) before the undersigned members of the FINA Doping Panel. The DCO was questioned by the FINA Doping Panel and the Athlete's attorney. During the hearing, the DCO [REDACTED] was asked to identify the Player. He had difficulty and hesitated.

3.13 FINA was represented at the hearing by Ms. Katarzyna Jozwik.

3.14 After the hearing, due to various factual questions which arose, including the hesitation of the DCO in identifying Mr. Dobud, the FINA Doping Panel decided to address the IDTM on 29 May 2015 and request a written report from the assistant who has accompanied the DCO on the date of the visit to Mr. Dobud's residence. A deadline was set to 5 June 2015 to file this report. Mr. Dobud was informed that upon receipt of any information, he would be given a deadline to make any response or comment any information could warrant from him.

3.15 On 2 June 2015, the DCO sent to the FINA Doping Panel the following report accompanied by photographs:

"Dear Mr. Fox

I would like to give accurate information for which I was not sure during my testimony regarding NIKSA DOBUD hearing 29 May 2015.

1) *I received request 10.3.2015 from Key Account Manager from IDTM.*

2) *Reason why I rang at this door. After my testimony I watch photos I taken that day (I have send them also with my report to IDTM) and I sow that at mailbox next to door writing NIKSA DOBUD and ZB [REDACTED].*

This was the reason way we rang at this door and way name of ZB [REDACTED] stays into my report.

3) *20.3.2015 I have send information to Key Account Manager from IDTM that athletes have match day before mission.*

I have received answer:

We have to work according to the athlete's WA because that's the info we have.

4) *Photos was taken 7:35 am when I sow that athlete trying to avoid testing.*

I will attach photos what I already send to IDTM and you can see the mailbox next to the door and name at mail box: NIKSA DOBUD ;ZB [REDACTED].

I still don't remember other door next to it (probably because I saw name of Niksa Dobud at mailbox next to the door and when I rang women confirm that Niksa Dobud is at home and later Niks Dobud open the door.)

I have used only information from ADAMS and names from mailbox in my report.

I was there very long time at the door because I received instruction from IDTM to stay there and tray to collect urine sample if is possible, tray to speak with athlete or find-out phone number and explain to the athlete how it is serious situation.

I finished my attempt to tray to test this athlete when I received instruction from IDTM to terminate this attempt.

I also would like to told that I am Doping Control Officer for IDTM 12 years and that I already know athlete Niksa Dobud from previous testing. If you have any question don't hesitate to contact me. Best regards, (...) signature.”

3.16 On 1 June 2015, the attorney of Mr. Dobud wrote an email to the Chairman of the FINA Doping Panel stating:

“Dear Mr. Fox,

As the Chairman of the panel and an esteemed colleague, I would like to express my gratitude for your latest email and the treatment we received during the hearing.

When we are granted the opportunity to comment on the rendered decision, we will attend to it in the shortest possible period.

Please allow me to refer several questions regarding the procedure:

Would it be possible to obtain the recording from the hearing because we believe that there were many inconsistencies and inauthentic data in the testimony of the [DCO] █████ (he was unable to exactly identify Nikša Dobud for several minutes, he was unsure if it was in fact Mr. Dobud or the attorney), and we would like you to verify the authenticity of the claims made by the [DCO] █████ with reference to the frozen image at the beginning of the hearing and we would like to be given the opportunity to verify them for ourselves.

Is this procedure considered confidential and are we allowed and to what extent inform the Croatian sport public thereof?

Yours sincerely,

(...) signature”

3.17 On 3 June 2015, IDTM sent the following report from the person who had accompanied the DCO to the residence of Mr. Dobud:

“At 6:40 am in the morning [DCO] █████ and I came to the Mr. Dobud home adress. On this mail books next to door said Niksa Dobud and ZB █████. At 6.44 am, we rang the bell at the gate. The door was opened by a woman. [DCO] █████ was legitimized the agent IDTM and to seek Mr. Niksa Dobud. [DCO] █████ asked whether Mr. Dobud at home. Woman said she would wake him up because he came late to travel.

At 6:45 in the morning at the door come Mr. Dobud. At that moment he presented [DCO] ██████████ to Mr. Dobud. He showed him his DCO card. After that Mr. Dobud said that returns for one minute. [DCO] ██████████ he wanted to follow him inside the house but he came back [DCO] ██████████ and said that he was returning for one minute.

[DCO] ██████████ told him that after the notification has to be with him all the time. Mr. Dobud just close door and enter the house. After 3 to 4 minutes, [DCO] ██████████ ringing through the same door as Mr. Dobud not come back after a minute, he said. Mr. Dobud opened the door and said he did not go 5 minutes and is entitled to 5 minutes after notification. [DCO] ██████████ told him that it was not by the rules, and to be with him all the time after notification. Mr. Dobud said it has the right to 5 minutes after notification and then shut the door.

After that [DCO] ██████████ goes call people at IDTM in mobile phone. [DCO] ██████████ with mobile phone is the informed as the situation goes. We rang and knock again but nobody open the door.

At 7:59 in the morning the woman open the door and says it's at home with a small child and with his brother and that she talked with Mr. Dobud over the phone and he was coming home in two days because a match yesterday. She repeat one more time dat she was alone at home with a small child with his brother and that he stop harassing and close the door. [DCO] ██████████ is through mobile phone informed as the situation goes. An attempt was still ringing and knocking on the door but nobody opened.

About 9am in the morning on the door comes a woman and says that if we do not stop ringing and knocking on the door was going to call the police and lawyer. [DCO] ██████████ asked her whether he could give a number of Mr. Dobud. She said she would not answer questions and that Mr. Dobud not at home and that we stop harassing they we call police and lawyer. Then entered the house.

After that, [DCO] ██████████ discussed this on a mobile phone with people IDTM. After some minutes, [DCO] ██████████ answered the phone and told me that we finished testing Mr. Dobud.

Mr. Dobud I know because I was already present some times during his testing. During the whole situation I was right near [DCO] ██████████.”

3.18 On 8 June 2015, the Chairman of the FINA Doping Panel wrote to the legal representative of Mr. Dobud and set a deadline to 12 June 2015 to respond to the new evidence filed and also informed him that it was not practice of the Panel to provide the recording of the hearing, but that this document would remain on record in the file.

3.19 On 11 June 2015, Mr. Dobud’s attorney responded and wrote the following:

“Dear Mr. Fox,

As a lawyer, I have the utmost respect for your work and your position, and precisely due to that I have to emphasise that there is no need to send the correspondence pertaining to this case to Mr. Nikša Dobud, but to me, since I was granted the power of attorney by Mr. Nikša Dobud. Hoping that the said matter will be rectified in the future, I, as Mr. Dobud’s attorney-at-law hereby deliver my response as follows:

I accept the information concerning the usual practice of the Doping Panel, but I nevertheless have to express my regret that I am unable to have the recording at my disposal which shows [DCO] ██████████ lengthy procrastination in identifying Nikša Dobud and his lawyer.

Precisely because [DCO] ██████████ has practised this duty for 12 years, I find any unprofessional behaviour unacceptable, and there was plenty of evidence thereof in his conduct. We have long believed that he would demonstrate some degree of self-criticism and at least allow a possibility that a mistake was made, if not confess to one, but now it is evident that no such thing is going to occur, therefore we reserve the right (because he is a Croatian national, the event took place in Croatia and at the detriment of another Croatian national, and this is a matter of enforcement of the Croatian criminal law and the competence of regular Croatian courts) to file a criminal complaint against [DCO] ██████████ on account of several criminal offences, including false testimony (even though we respect your stand that inquiries into [DCO] ██████████ personal life are prohibited, we have nevertheless collected many facts

and pieces of evidence which support our claim that the testimony of the said gentleman is simply not plausible.

I fail to understand why a professional such as [DCO] ██████████ in his correspondence from 2nd June 2015 would state "from previous testing" just as the other person whose identity was not disclosed to us ("I was already present some times during his testing") – how are we supposed to present an effective defence if we are prevented from disclosing data about the persons whose testimonies we find questionable, even more if we are denied data about the other person in question (if I may state my observation, it would be logical if they would both dispose of data such as photographs, which they do not).

As a lawyer I must emphasise that the testimony of [DCO] ██████████ from the hearing held on 29th May 2015 differs from his written statement from 2nd June 2015 where he now states that at the said floor of the house there was only one apartment door, while at the hearing he was unable to answer my question as to why he did not ring the other doorbell (on the left) as well, which means that he implicitly knew that there are two apartments at that floor, each with its own entrance door. Proof: recording from the hearing held on 29th May 2015.

The issue raised now is why [DCO] ██████████ subsequently claims that there was the surname DOBUD on the mailbox. Due to the said issue, the defence insisted on the name of ZB ██████████, and we wanted to know in what way the DCO made a connection between her and Mr. Nikša Dobud. However, [DCO] ██████████ failed to provide a proper response to the defence question. Proof: recording from the hearing held on 29th May 2015.

We need to emphasise once more that these two apartments are merely 2 metres away, at the same address and the same house number, which means that Mr. Nikša Dobud complied with the regulations stated in his whereabouts in terms of where he should be at the said date. Only piece of evidence in the case against Mr. Nikša Dobud is the word of [DCO] ██████████ and his assistant who supports his statement against Mr. Dobud, which is normal and logical since they are colleagues. The fact is that it would be easy to synchronise the DCOs' stories and testimonies after a certain amount of time has passed. Why was not the said assistant examined at the hearing on 29th May 2015 with [DCO] ██████████? What are the alleged testings from which the assistant

recognises Mr. Nikša Dobud? Due to the aforementioned claims, there is a crucial issue whether Mr. Nikša Dobud was denied the right to a valid defence when [DCO] ██████ assistant was not heard at the hearing on 29th May 2015. As an authority conducting the procedure, can you please inform us whether you requested any further evidence which would corroborate the validity of Mr. Dobud's claims as to the company he was with in Montenegro; if restaurants and bars mentioned by Mr. Nikša Dobud were indeed open on the said night in Budva and Dubrovnik; if our claim was correct regarding the fact that the translation of the Croatian Water Polo Federation was not compliant with the first written response sent by Mr. Dobud to our Federation, which was subsequently forwarded to you; if you requested photos of MB ██████ ██████, the man we claim was at the door on the said occasion, and not Mr. Dobud? If [DCO] ██████ testimony was to be taken into account, did the esteemed Panel find it necessary to request from the Croatian police the excerpt from criminal records to see if [DCO] ██████ had any complaints filed against him or any prior convictions in the Republic of Croatia? In that case you would probably receive the official record which states that he had a domestic violence complaint filed against him, which is one of the most severe offences in any country!

Honourable Chairman of the Panel, I state all of this simply to demonstrate that we have an unreliable and questionable witness on the one hand, and a respectable athlete on the other hand who is the pride of the entire country and the Croatian sport. In this case, besides living, reputation and career of Mr. Nikša Dobud, the entire reputation is at stake of the Croatian sport, Croatian water polo national team and all Olympic athletes who all stand by their award-winning athlete."

3.20 On 18 June 2015, the Chairman of the Doping Panel wrote to Mr. Dobud's attorney and provided him a deadline to 22 June 2015 to respond and comment on evidence which was filed before the Doping Panel by FINA. This evidence was two emails exchanged between the IDTM and FINA at the time the DCO was present in front of the Athlete's residence.

The first email dated Saturday 21 March 2015 at 08:15 am stated:

"Hi Johan,

We currently have a DCO at Niksa Dobud's house and he answered the door and our DCO confirmed that it was him and notified him and he shut the door in his face and said "one minute." He did not come back right away, but came back a little later and said our DCO needed to wait. Our DCO told him he needed to be under observation, but he refused to let our DCO in and closed the door.

Then a little later a woman came to the door and said that Niksa was not there and it was a misunderstanding and that was actually Niksa's brother, but it is Niksa. Our DCO confirmed it with him when he answered the door and he looked at a picture of the athlete and it is him.

Our DCO is still there trying to get the athlete to do the test. He has been talking through the door and letting him know the possible consequences of his actions, but so far no luck.

We have told our DCO to stay there and see if he tries to leave, but if you have any instructions or actions you would like our DCO to take please let me know asap.

Best regards,"

The second email, from the same day at 09:10 am:

"Hi again Johan,

I spoke with our DCO again and the woman who was coming to the door now threatened to call the police and their lawyer so we have told our DCO that he has done all he can and to leave.

One clarification with my first email is that the man that came to the door did not acknowledge that he was Niksa, but just said "one minute" and closed the door. Came back later and then said to wait longer and refused to let our DCO in. The woman then came to the door and said that the man was Niksa's brother, but our DCO looked at pictures of the athlete and his brother and the man at the door was the athlete. The man would not come to the door anymore and they would not give the phone number of the athlete so our DCO could call him. No phone number is provided in ADAMS.

Our DCO will do a full report and I will send that to you as soon as we have it.

Best regards,”

3.21 The Athlete’s attorney replied on 22 June 2015 with the following correspondence:

*“Honourable Chairman of the Panel and esteemed Panel members,
I would hereby like to express my gratitude for presenting me with the possibility to comment on your previous correspondence which shows the communication between the DCOs and their superiors on 21st March 2015. The person I represent (Nikša Dobud) is a world-renowned athlete who has never in his career been subjected to doubt, let alone something more serious in terms of doping, i.e. prohibited substances. He is the sole bread-winner in his family, and, together with his wife and a small child, is currently in a stressful anticipation of the resolution which would hopefully lift the burden of intentional evasion of the doping control off his shoulders. All correspondences sent to us thus far contain the term “his brother” (i.e. Nikša’s brother), and the defence never used that term since Nikša does not have a brother, but we were referring to his wife’s brother (we delivered his certified statement as evidence during the hearing); the same correspondences mention the alleged photographs by which [DCO] ██████ was able to identify Mr. Dobud and “his brother”, none of which have hitherto been presented to me as Mr. Dobud’s attorney. We would like to know how and where [DCO] ██████ examined the alleged photographs of Mr. Dobud’s brother, when Mr. Dobud has no brother, and [DCO] ██████ claimed at the hearing that he does not use the Internet for any athlete-related information (when asked why he had not searched Mr. Dobud’s mobile phone number online), but is exclusively bound by ADAMS system. Here we have another false and inaccurate claim at my client’s detriment.
There are too many gaps in the witnesses’ testimonies for any panel to consider them dependable and trustworthy.
Unfortunately, I have to state that the DCOs have conducted their task extremely unprofessionally.
Please take into consideration the following situation:*

FINA's DCOs on the said date (21st March 2015) instantaneously and swiftly via Internet established the difference between Mr. Nikša Dobud and „his brother“ (who does not exist) and now subsequently claim that they do indeed use the Internet, although, according to [DCO] ██████████ testimony, that is not their usual practice.

Furthermore, [DCO] ██████████ was not at all certain at the hearing as to who Mr. Nikša Dobud was. If I, as his attorney, were of a slightly more corpulent stature or if there were a third person, e.g. an athlete similar in stature to Mr. Dobud, I assure you that there would be public shaming on [DCO] ██████████ part. As evidence thereof, you can measure the amount of time it took for [DCO] ██████████ to identify Mr. Dobud at the hearing and respond to your key question “is this Nikša Dobud” with “it should be”, which is our key evidence. Even if there were a slightest degree of uncertainty, and that degree in this specific case is substantially greater because in every correspondence from the hearing onwards there are so many false claims, incongruities and gaps in the DCOs' testimonies, it would be impossible to convict someone without a single material evidence. The entire case which is worrisome to the entire Croatian sports public is based on circumstantial evidence, and that is simply too insufficient for such a grave accusation against a man who has always had an immaculate sports career. The DCOs failed to perform their duty at the professional and required level; therefore I believe that FINA should raise further issues concerning their liability on account of unlawful conduct.

As a lawyer and a professional (which I am sure the honourable Chairman of the Panel will understand as a lawyer) I find no evidence, continuity of action in the said period, no intent or criminal activity which would prove that Mr. Nikša Dobud evaded doping control.

I would not want to go into potential motives that might explain such unprofessional conduct of the DCOs or their false claims, or even the fact that there are gaps in almost all of their claims which have been rebutted with solid and verifiable arguments by the defence, I only want to believe in your expertise and professionalism in restoring a renowned athlete's reputation, career and living and demonstrating that FINA is an honourable and independent institution which does not deliver decisions under the pressure of its DCOs who have failed to prove intent or deliver any material evidence

which would be considered plausible by the Panel, and the more we respond to their claims, the clearer it becomes that the entire case is based solely on circumstantial evidence.

Finally, allow me to express my professional opinion as a lawyer that all of the aforementioned is really insufficient to destroy the life and career of a renowned athlete who is the pride of our entire country. “

IV. JURISDICTION AND APPLICABLE RULES

4.1 The jurisdiction of the FINA Doping Panel arises out of the following provisions of the FINA Rules: C 22.8, C 22.9 and FINA DC 8.1.

4.2 The applicable Rules in this case are the FINA Doping Control Rules in effect since 1 January 2015 (approved in November 2014 at the FINA Extraordinary Congress in Doha, Qatar).

V. MOTIONS AND CONTENTIONS

A. Mr. Dobud's CONTENTIONS

5.1 a) In his initial letter sent to FINA, as well as by letter dated 27 April 2015 (in which he states: *"I am an athlete who does not take any prohibited substances, athlete whose biggest mistake was failing to report a change of residence for a period of 21.05.2015"*), the Athlete contended that after the Water Polo match between Montenegro and Croatia, he stayed on for a doping test, which started at 19:10 pm, but concluded at 20:33 pm, too late for him to be able to take the bus with the rest of the team, hence he remained in Budva.

b) At the hearing, he changed his initial version and stated that he returned to Dubrovnik with friends, but stayed on for drinks in this city. He had called his wife previously and told her that he would not be returning, due to the doping control to which he would be submitted. She told him that there would be no problem as her brother and his wife would be staying there with her.

He explained that after having initially gone out in Budva, he returned to Croatia and got to Dubrovnik around 3:30 am in the morning. He went to have drinks. He got home late at around 5 am in the morning and in order not to awake his baby child, he slept in an adjacent apartment which is situated at the same address and the same house number. Questioned as to the reasons of the change in his story, Mr. Dobud stated that it was on the initiative of the Croatian Federation that he had written the initial email to FINA dated 8 April 2015.

c) He provided written testimony from his wife, ZB [REDACTED]. Mrs. Dobud testified that her child was sick and was with her brother and his wife who was helping her. She was frightened when she saw unknown men at her door looking for her husband. She insisted on the fact that she was frightened due to her child's illness and was appreciative of the support provided by her brother and his wife, who is a doctor. She felt that her concern for her child was the reason for her not handling the situation properly.

d) The Player also provided written testimony from AB [REDACTED] which described the home of the Dobud family and confirmed that there are several apartments in the house, two of which are on the ground floor. One of the apartments is leased by Mr. Dobud, where he lives with his wife and child. The other apartment next door is usually vacant outside the season and she stays there with her

husband when they come to visit. She added that such was the case on this occasion, as her husband and herself were on a family visit, especially to provide medical advice and care to the baby. She added that during the night, the baby became febrile and Mrs. Dobud panicked and called AB [REDACTED] and her husband to help her. Somewhere around 5 or 6 am they were in the apartment from which Mr. Dobud was absent. Very early in the morning, she heard a doorbell, ignored it and let Mrs. Dobud and MB [REDACTED] handle it. They told her that there were men looking for Mr. Dobud, who had not yet returned. She finally stated that when the people left, she learned that Mr. Dobud went in the next-door apartment in order not to disturb or wake up the baby by coming in late.

e) MB [REDACTED] confirmed the description of the apartments provided by his wife. He also confirmed that his wife and himself stayed at the adjacent apartment and were called to the apartment occupied by Mrs. Dobud due to baby becoming febrile at around 5 am. He testified that at around 6:45 am he heard a doorbell and through a slightly opened door he saw two unknown men. He testified that he was so frightened by seeing someone at that hour that he immediately closed the door. He was completely unaware of what they wanted of him and the others. His sister explained that they were looking for Mr. Dobud who was absent from the apartment. MB [REDACTED] later learned that Mr. Dobud had returned somewhere around 6 am and had gone to sleep next door because he had not wanted to disrupt his family's sleep. MB [REDACTED] also testified that the people at the door were persistent and stayed in front of the door for some time. They left after his sister threatened to call the police. MB [REDACTED] testified that the person who went to the door was not Mr. Dobud, but himself and he confirmed that he was willing to be confronted with them for recognition to determine a mistake and rectify an injustice caused to Mr. Dobud. In his opinion, the men could not have determined the

identity of the man behind the door, because he had only slightly opened the door in fear and immediately closed it.

f) Finally, a fourth written testimony was provided by the Athlete of BI [REDACTED], a certified architect who confirmed that the building where Mr. Dobud lives has three storeys. The entrance to the ground floor apartment is on the south side right below a covered approach where one enters the storey and the entrance door is even more set back on the inside the building. This written testimony also stated that based on the performed inspection and data provided by the meteorological institute for that specific date (21 March 2015) and time (6:30-7:00) for the Dubrovnik area, the visibility in front of the entrance door to the apartment and slightly opened door of the apartment was rather poor at that time and place which resulted in increased possibility of mistaken identity of the person rearing his/her head behind the entrance door.

g) Mr. Dobud also provided the FINA Doping Panel with photographs of the premises.

h) The Athlete considers that the DCO was not at all certain at the hearing as to who Mr. Nikša Dobud was. For him, in every correspondence from the hearing onwards there are so many false claims, incongruities and gaps in the DCOs' testimonies that they should not be considered as proper testimony of the events which took place.

VI. LEGAL DISCUSSION

A. THE FACTS AND FINDINGS OF THE PANEL

The FINA Doping Panel has found that the following facts were established in this case:

6.1 The Athlete was a member of the Croatian Water Polo team which participated in a preliminary round VIII match against Montenegro in the Water Polo World League on 20 March 2015 in Budva, Montenegro ("Competition"). He submitted to a doping test after the match in Budva at 19:10 pm. This test was negative and finished too late to allow him to take the transportation back to Croatia with the team, hence he returned to his home country on his own.

6.2 The FINA Doping Panel also considers that the Athlete was at his home at the time of the visit by the DCO and accepts the report filed by the IDTM DCO for the following reasons:

a) The version of the report is corroborated by the report which was requested by the FINA Doping Panel pursuant to the hearing from the DCO's assistant. In addition, both reports accord and are consistent with the expected behaviour of a DCO given the scope of his responsibilities and the limits of his authority;

b) The written report is also consistent with the email exchanges between IDTM and FINA; these email exchanges were "*live*" and concurrent to the events which were taking place at the residence of the Athlete;

c) All of the versions presented before the FINA Doping Panel are consistent in regards to the fact that the Athlete's wife was tending to a child, and that her brother was present, which are details which lend credibility to the report of the DCO and his assistant;

d) The FINA Doping Panel considered the Athlete's contention that the DCO was unable to immediately and properly identify him during the hearing. The FINA Doping Panel is troubled, to say the least, by the fact that the Athlete filed a letter on 8 April 2015 and on 28 April 2015 after he learned of the matter in which he stated facts that he completely changed at the hearing. This mere fact gave reason to the FINA Doping Panel to question the credibility of Mr. Dobud himself, as he changed his story during the affair. As it will be examined below, the FINA Doping Panel however considers that the IDTM DCO went to the correct address, which the Athlete had provided in his whereabouts. Mr. Dobud was present at the premises, regardless of there being two different apartments, as they are at the address provided to FINA by the Athlete.

e) The FINA Doping Panel also considers discrepancies in the version that was finally given by the Player: according to him, he returned home between 5 am and 5:30 am. He had previously told his wife that he had missed the bus and would not be coming home. Regardless of the issue with her child, which the FINA Doping Panel can understand would be stressful for a young mother, it is inexplicable that the Athlete's wife would state her husband was sleeping at home rather than merely reply to the DCO that her husband was not at home, especially when according to the Athlete, she did not know that he was there. Secondly, Mrs. Dobud's brother and his wife testified that they were occupying the adjacent apartment, where Mr. Dobud alleged he was residing unbeknownst to everyone. The FINA Doping Panel considered the time at which the Athlete stated he arrived at his home (between 5 and 5:30 am), the time as of which they were at the Athlete's wife's apartment ("*somewhere from 5 am*") the time at which the DCO arrived (6:44 am) and considered that by a balance of probability, it is highly unlikely that Mrs Dobud's brother and sister could

have been unaware of the presence of Mr. Dobud at the adjacent apartment.

f) The Doping Panel was unimpressed to say the least with the manner in which Mr. Dobud attempted to discredit the DCO and even less so by such a drastic change in his story between the initial two letters he wrote to FINA and the Doping Panel on 8 and 28 April 2015 and what he alleged at the hearing.

g) Ultimately, the FINA Doping Panel considers that an anti-doping rule violation has been established to its comfortable satisfaction. It appears an undisputed fact that Mr. Dobud was present at the residence and address he provided and that he failed to take a doping control test. The fact that the DCO mistook him for his brother-in-law is irrelevant to this fact, as there is no evidence that the apartment next door in which Mr. Dobud states he was sleeping has a different address to the apartment he usually occupies.

B. THE LAW

6.3. FINA DC 2 defines various Anti-Doping Rule violations. The purpose of FINA DC 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Athletes or other persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included in the prohibited list.

Pursuant to FINA DC 2.3, Evading sample collection, or without compelling justification, refusing or failing to submit to Sample collection after notification as authorized in these Anti-Doping Rules or other applicable anti-doping rules.

6.4 Pursuant to FINA DC 3.1, FINA and its Member Federations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FINA or the Member Federation has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability

6.5 According to FINA DC 10.3, the period of Ineligibility for anti-doping rule violations other than as provided in DC 10.2 shall be as follows, unless DC 10.5 or 10.6 are applicable: FINA DC 10.3.1 for violations of DC 2.3 or DC 2.5, the ineligibility period shall be four years unless, in the case of failing to submit to Sample collection the Athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined in DC 10.2.3), in which case the period of ineligibility shall be two years.

6.6 FINA DC 10.2.3 defines the notion of "*intentional*" as meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

6.7 FINA DC 10.5 is relevant to the reduction of the period of ineligibility based on no significant fault or negligence. FINA DC 10.5.1 is inapplicable in this matter as it only applies in cases where there is a

violation of DC 2.1, 2.2 or 2.6.

FINA DC 10.5.2 is also inapplicable under the present circumstances, as FINA DC 10.5.2 may be applied to any anti-doping rule violation except those rules where intent is an element of the anti-doping rule violation or an element of a particular sanction or a range of ineligibility is already provided in a rule based on the athlete's degree of fault (cf. FINA DC comments on 10.5.2).

VII. DOPING OFFENCE AND SANCTION

7.1 After evaluating the circumstances in this case, FINA Doping Panel considers that the Athlete was present at his residence and therefore correctly filed his whereabouts in the ADAMS system. Regardless of the fact that the DCO hesitated in identifying the Athlete at the hearing, whether he mistook Mr. Dobud's brother-in-law for Mr. Dobud himself, it remains that the test which was to take place at the Athlete's residence could not be completed properly. There is therefore at least a failure to submit to sample collection or at worst an intentional evasion thereof.

7.2 The Doping Panel considers that to fail to test is an anti-doping rule violation pursuant to FINA DC 2.3 which was committed. Pursuant to the strict liability principle which governs anti-doping, the Athlete failed to submit to a doping test, as he was supposed to. The two issues which the FINA Doping Panel must examine are: a) whether there was compelling justification to fail to submit to the test and b) the intentional nature of the behavior of the Athlete. In other words, does the evidence point to conduct by the Athlete which he knew constituted an anti-doping rule violation or knew that there was a significant risk

that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

7.3 As observed in the case of WADA v CONI & Ors (CAS 2008/A/1557) at para 80, the use of the word “*compelling*” in Article 2.3 “*underscores the strictness with which the justification needs to be examined*”. Moreover, in the case of CCES v Boyle (SDRCC, 31 May 2007) at para 53, the tribunal rejected the submission that, if a player was taken violently and horribly ill, this would afford compelling justification for refusing or failing to submit to a test: “*to be compelling her departure would have had to have been unavoidable*”.

7.4 a) The Doping Panel considers that the circumstances argued by the Athlete do not constitute compelling justification for failing to submit to the doping test. His explanation is that he was sleeping and that his family did not know of his presence on the premises, but that he was next door. The FINA Doping Panel is aware that anti-doping rules place great responsibility on athletes. This includes the care with which they choose and ingest various products. The anti-doping rules are just as stringent on the care with which they announce whereabouts and the manner in which their entourage must behave when confronted with a DCO seeking to conduct a test. Just as Mr. Dobud alleged he was careful to call his wife initially to state he would not be coming home, nothing prevented him from leaving a note or a message to say he was next door. The FINA Doping Panel therefore holds that there is no compelling justification in the present circumstances for failing to test, were it to follow the Athlete’s version of events. The FINA Doping Panel however considers that the Player’s wife knew he was home and there is on a balance of probability that a young child’s illness would not be sufficient to make her forget the absence of her husband from home.

b) In addition, it is not the burden of the DCO to investigate the circumstances which may lead the Athlete to be in another part of the premises, were such the case, once the address given is the correct one. It is for the Athlete to ensure that he is available at all times for testing and ensuring that there is no room for mistake to going to the correct premises. The stakes in the event of a mistake are too high. Had Mr. Dobud been absent from the address he had provided, this matter would have been merely an issue regarding a violation of properly providing his whereabouts. This is however not the case, as the DCO did not go to a wrong address and Mr. Dobud admitted his presence on the premises. If there are more than one apartment at the same address, it is the Athlete's burden to provide information and sufficient indications to avoid any mistake.

7.5 Did he behave intentionally to avoid testing? The answer to this question is delicate. If in fact the only persons with whom the DCO interacted were the Athlete's brother-in-law and wife, and it were to acknowledge that these two persons were acting on a false appraisal of the facts on hand, it would be impossible to establish intent on behalf of the Athlete. However, the Panel ultimately considers that a DCO's report is important material and is reliable. The report is corroborated not only by a second report, but by two emails exchanged between IDTM and FINA during the events in front of Mr. Dobud's premises. All these point unequivocally to the presence of an Athlete who is resisting testing whilst being confronted with a DCO. The evidence points to conduct by Mr. Dobud which he knew created significant risk that it might constitute or result in an anti-doping rule violation and he manifestly disregarded that risk.

VIII. SUMMARY OF THE DECISION

8.1 Mr. Niksa Dobud receives a 4 (four) year period of ineligibility commencing on 13 April 2015 and ending at the conclusion of 12 April 2019 for his first anti-doping rule violation in accordance with DC 10.3.1.

8.2 All results obtained by Mr. Dobud on or after 21 March 2015 and through and including the date of this decision are disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

8.3 All costs of this case shall be borne by the Croatia Water Polo Federation in accordance with FINA DC 12.3.

8.4 Any appeal against this decision may be referred to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of this judgement (FINA Rule C 12.11.4 and DC 13.7).

Robert Fox
Chairman

Fari Ben Belkacem
Member

Raymond Hack
Member

Signed on behalf of all three Panel Members

A handwritten signature in black ink, appearing to be 'R. Fox', written over a horizontal line.

Robert Fox