Arbitration CAS 2007/A/1413 World Anti-Doping Agency (WADA) v. Fédération Internationale de Gymnastique (FIG) & Nadzeya Vysotskaya, award of 20 June 2008

Panel: Mr Martin Schimke (Germany), President; Mr Quentin Byrne-Sutton (Switzerland); Mr Denis Oswald (Switzerland).

Gymnastics
Doping (furosemide)
Time limit to appeal a decision according to the WADA Rules
Doping offense and intended purpose for using the prohibited substance
Minor athletes and elimination or reduction of the fault or negligence

1. **Provisions set out in the rules governing sports associations may derogate to Article 75 of the Swiss Civil Code. In particular, they may provide for a different statute of limitations or they may provide that the time limit starts to run when the decision has been formally notified to the appellant. In this respect, the mere fact that a press release was posted on the FIG's website is in itself not sufficient to impose a good faith obligation on WADA to enquire about a decision issued by such federation.**

2. **In accordance with Article 2.1.1 of the FIG Antidoping Rules, the presence of a prohibited substance, such as furosemide, in the bodily specimens of a gymnast is sufficient in itself to constitute a doping offence. In this respect, the intended purpose for using the substance is irrelevant.**

3. **The fact that a gymnast was a minor at the time s/he was tested does not constitute either a circumstance eliminating or reducing his/her fault or negligence. The FIG Antidoping Rules do not anticipate a different regime for minors. There is no automatic exception based on age. Such an exception is not spelled out in the Rules and would not only potentially cause unequal treatment of gymnasts, but could also put in peril the whole framework and logic of anti-doping rules, not least in the light of the fact that in gymnastics (like in other sport) it is not uncommon to have minors compete at the highest level.**

The World Anti-Doping Agency ("the Appellant" or WADA) is a Swiss private law Foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA is an international independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.

The Fédération Internationale de Gymnastique (FIG) is the international federation governing gymnastics. Its seat is in Moutier, Switzerland.

Ms Nadzeya Vysotskaya ("the Gymnast" or "Ms Vysotskaya") is a Belarus gymnast, affiliated to the Belarus Gymnastic Federation, itself a member of the FIG.

In May 2006, Ms Vysotskaya participated to the artistic gymnastics world cup in Ghent, Belgium.

On 15 May 2006, she underwent a doping test, which returned positive results to Furosemide. The tests were performed by DoCoLab at the University of Gent, a WADA-accredited laboratory.

On 12 September 2006, the FIG Disciplinary Commission provisionally suspended the Gymnast.

On 11 October 2006, the General Secretary of the Belarus Gymnastics Federation signed the following declaration, on FIG's letterhead:

> *"I, Andrey Fedorov, General Secretary of the Belarus Gymnastics Federation herewith confirm, that I have spoken to our gymnast Nadzeya Vysotskaya by telephone and that she has declared:*
>
> *1. Not to want to be present or represented at the hearing of the FIG Disciplinary Commission in Geneva, 11th November 2005;*
>
> *2. Not to have requested an analysis of the B sample;*
>
> *3. Not to have requested a TUE exemption for the use of Furosemide;*
>
> *4. To have written an explanation of the case, which can be used as statement for the FIG Disciplinary Commission".*

In her explanation letter, which is dated 5 August 2006, Ms Vysotskaya stated the following:

> *"I am writing this letter in response to the official letter about my doping test results that were taken on 13th May 2006 during the World Cup competition in Ghent (Belgium).*
>
> *I was sincerely shocked by the results of the doping control. I would like to declare with all the responsibility that I have never taken any prohibited medicine during my whole sports career. While preparing to the competition I thoroughly controlled my diet and any taken medicine, because I know the importance of that competition to my sports career.*
>
> *I realized that I could have neglected the storage conditions of sports drinks during the competition. I ask that you kindly take into consideration my inexperience and lack of competence. I would like to state once again that I have never taken any forbidden substances in my whole life. I would never consciously do it as I truly believe and have always thought doping to be totally unacceptable.*
>
> *I ask you to treat this situation with understanding. I can only promise that I will pay painstaking attention not to make such mistakes in future and that it was a severe lesson for me".*

On 12 November 2006, the FIG Disciplinary Commission issued the following decision against Ms Vysotskaya ("the Decision"):

> *"Vu les articles 2.1.1 et 10.5.1 du Code Mondial Anti-Dopage de l'AMA, la Commission disciplinaire décide de suspendre mademoiselle Nadzeya Vysotskaya (BLR) à partir du 13 mai 2006 jusqu'au 31 décembre 2007".*

On 20 September 2007, the FIG sent an email to WADA, apologizing about the fact that the former forgot to communicate to the latter a copy of the Decision:

> *"Il semble que j'avais oublié de vous faire parvenir une copie de la décision de la Commission Disciplinaire concernant le cas susmentionné, et je vous prie de bien vouloir m'en excuser.*
>
> *Cette décision a été ratifiée par le Bureau Présidentiel FIG".*

On 27 September 2007, WADA sent an email to the FIG stating that WADA intended to appeal the Decision and requesting a copy of the complete file relating to the matter.

The Decision, as well as the file, were sent by the FIG to WADA by email dated 16 October 2007.

On 6 November 2007, WADA appealed the Decision by filing a Statement of Appeal with CAS.

On 6 November 2007, the Appellant filed a statement of appeal against the Decision, with supporting exhibits. It made the following prayers for relief:

> *"1. The Appeal of WADA is admissible.*
>
> *2. The decision of the FIG Disciplinary Commission dated November 12, 2006 in the matter of Nadzeya Visotskaya is set aside.*
>
> *3. Nadzeya Visotskaya is sanctioned in accordance with articles 10.2 of the FIG Anti-Doping Rules with a two-year period of ineligibility, starting on the date on which the CAS award enters into force. Any period of ineligibility (whether imposed to or voluntarily accepted by Nadzeya Visotskaya) before the entry into force of the CAS award shall be credited against the total period of suspension to be served.*
>
> *4. All competitive results obtained by Nadzeya Visotskaya from December 31, 2007 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.*
>
> *5. WADA is granted an award for costs".*

On 7 December 2007, the FIG filed a Statement of Response, together with supporting exhibits. In its submission, it made the following prayers for relief:

> *"1. The Appeal is rejected.*
>
> *2. The decision of the FIG Disciplinary Commission dated 12 November 2006 must be confirmed on the basis of Article 10.5.2 of the FIG Anti-Doping Rules.*
>
> *3. FIG is to be granted an award for costs".*

A hearing was held at CAS premises in Lausanne on 18 March 2008.

During the hearing, the FIG mentioned that WADA should have known about the Decision, as information concerning the same had been posted on the FIG's website and was therefore publicly available. The Panel requested the FIG to produce documents, if any, supporting this contention.

On 2 April 2008, the FIG produced copies of three press releases, concerning (1) the provisional sanction imposed on the Gymnast, (2) the suspension ordered by the FIG Disciplinary Commission, and (3) the fact that the Decision had not been appealed and that the case was therefore closed. When producing these documents, the FIG stated the following: *"Please find herewith all the documents, which were posted on our official Internet website during two months regarding this case. For your information, those documents were also transmitted to all the sports journalists and authorities' addresses that are available in our database"*.

LAW

CAS Jurisdiction

1. Article 13.2.1 of the Rules reads as follows:

   "In cases arising from competitions in an international event or in cases involving international level gymnasts, the decision may be appealed exclusively to the Court of Arbitration for Sport (CAS) in accordance with the provisions applicable before such court".

2. In the present case, the Decision was issued following positive testing during an international event, namely the artistic gymnastics world cup in Ghent, Belgium.

3. Therefore, CAS has jurisdiction to entertain the appeal filed by the Appellant.

4. The Panel notes the parties have expressly confirmed the jurisdiction of CAS by signing the Order of procedure of 8 February 2008.

Applicable Law

5. As the seat of CAS is in Switzerland, this arbitration is subject to the rules of Swiss private international law ("LDIP") governing international arbitration. According to Article 187(1) LDIP, the arbitral tribunal decides in accordance with the law chosen by the parties or, in the absence of any such choice, in accordance with the rules with which the case has the closest connection.

6. According to Article R58 of the Code:

   "The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

7. In the present case, the parties have not chosen any law as the law applicable to the merits of the dispute. The FIG, which issued the Decision, has its seat in Switzerland. The Panel shall therefore apply Swiss law, in addition to the Rules.

Admissibility of the Appeal

8. Article 13.5 provides the following:

"The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision (registered letter with acknowledgement of receipt) by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings having lead to the decision subject to appeal:

a) Within ten (10) days from notice of the decision, such party/ies shall have the right to request from the body having issued the decision a copy of the file on which such body relied;

b) If such a request is made within the ten-day period, then the party making such request shall have twenty-one (21) days from receipt of the file to file an appeal to CAS".

9. In the present case, the Appellant was not a party to the proceedings having led to the Decision. However, it is entitled to appeal the Decision, in accordance with Article 13.2.3. Therefore, Article 13.5(a) and (b) are applicable to the present matter.

10. It is undisputed that WADA first received notice of the Decision on 20 September 2007. On 27 September 2007, i.e., within the ten-day time limit set out in Article 13.5(a) of the Rules, WADA requested from the FIG Disciplinary Commission a copy of the file on which the commission relied to issue the Decision. The file was sent to WADA on 16 October 2007.

11. The Statement of Appeal was filed on 6 November 2007, i.e., within the 21-day time limit set out in Article 13.5(b) of the Rules.

12. The appeal is therefore *prima facie* admissible.

13. However, the Panel notes that the appeal is being formed almost one year after the Decision has been issued and communicated to the Gymnast, and almost fourteen months after Ms Vysotskaya was provisionally suspended by the FIG. It was filed less than two months before the end of the 19.5-month suspension that was ordered by the FIG. In addition, the award in these proceedings is issued after the Gymnast has served that suspension.

14. Since the applicable rules, set out above, provide that the time limit for the filing of an appeal by WADA only starts to run once the relevant decision has been notified to WADA, appeals could, theoretically, be filed at any time, depending on when, and whether, decisions are notified to WADA. This causes uncertainty for all parties involved, as well as for sport in general.

15. The question therefore arises whether there should be a certain limit of time after which appeals should become inadmissible, although they are formally filed within the time limit set out in

Article 13.5 of the Rules. In particular, the Panel must determine whether in the circumstance of this case, there are legal reasons which should lead the Panel to consider the appeal inadmissible.

16. The CAS case law has already dealt with this issue, namely in case CAS 2006/A/1153.

17. Under Swiss law, in cases of appeals against decisions issued by associations pursuant to Article 75 of the Swiss Civil Code (SCC), the *dies a quo* of the time limit for the filing of the appeal is not when the decision has been made, but when the party appealing the decision has been notified of such decision. More precisely, the time limit starts to run when the appellant has become aware of the decision. It is not necessary that the decision be formally notified to him by the decision-making body; it is sufficient if the appellant knows of the decision (see, e.g., HEINI/SCHERRER, Basler Kommentar, Zivilgesetzbuch I, p. 498 f.).

18. According to certain commentators, based on good faith principles, the time limit for the filing of the appeal should already start to run if the appellant had the possibility to know, and should have known, about the decision (OSWALD D., La relativité du temps en relation avec l'art. 75 CC, to be published in Mélanges SSJ, Basel 2008; HEINI/SCHERRER, Basler Kommentar, Zivilgesetzbuch I, p. 498 f.; DONZALLAZ Y., La notification en droit interne Suisse, Staempfli Editions SA, Berne 2002, p 574 and cases cited).

19. The moment when a person becomes aware of a decision depends on the circumstances of the case. It may be, for example, when the decision is made if that party participates to the relevant assembly or meeting, it may be when it receives the minutes of the relevant meeting, or when it receive formal notification of the decision. In addition, based on good faith principles, the time limit may start to run before the appellant acquires actual knowledge of the decision, if, in the particular circumstances of the case, the party should have enquired about the decision, for example in cases where that party knew that a decision was to be made, or has been made.

20. The question arises whether these principles should also apply to appeals made before CAS, in particular appeals based on Article 13.5 of the Rules.

21. According to CAS case law, provisions set out in the rules governing sports associations may derogate to Article 75 SCC. In particular, they may provide for a different statute of limitations or they may provide that the time limit starts to run when the decision has been formally notified to the appellant (see, e.g., CAS 2002/A/432, in REEB M., Rec. II, p. 419 ff.; CAS 2002/A/399, in REEB M., Rec. III, p. 383 ff.; CAS 2005/A/487; see also RIGOZZI A., L'arbitrage international en matière sportive, Helbing & Lichtenhahn, Basle 2005, p. 541; see, however, RIEMER H.M., p. 359 f.).

22. In the present case, Article 13.5 provides that the time limit to appeal a decision starts to run when the appealing party has received the decision, by *"registered letter with acknowledgement of receipt"*. However, concerning parties which were not a party to the proceedings, Article 13.5 of the Rules provides that the *dies a quo* of the time limit is the *"notice of the decision"*.

23. In the matter at hand, it is undisputed that the Appellant only received notification of the decision on 20 September 2007.

24. The question remains whether WADA should have enquired about the decision based on good faith principles. Whether or not the clear wording of Article 13.5 of the Rules leaves room for the above-referenced principles relating to Article 75 SCC, the Panel finds there are no elements on record that would warrant such finding. Also it is somewhat contradictory, not to say abusive, for the FIG to contend WADA's appeal is late when at the time, on 20 September 2007, the FIG excused itself to WADA for the late notification. In this respect, the Panel notes that the Respondent did not submit until the hearing that WADA should have known about the decision before it was notified to them on 20 September 2007.

25. At the hearing, the FIG stated that information about the suspension of the Gymnast had been widely publicized, since it was posted on the FIG's Internet website. Following a request from the Panel, the FIG produced copies of three press releases, that it indicated were *"posted on [its] Internet website during two months"* and were also *"transmitted to all the sports journalists and authorities' addresses that are available in [its] database"*. The FIG neither specified to which authorities the press releases were addressed, nor who is included in its database for such purpose. There is in particular no indication, nor allegation, that the press releases were sent to WADA.

26. In addition, the Panel considers that the mere fact that a press release was posted on the FIG's website is in itself not sufficient to impose a good faith obligation on WADA to enquire about a decision issued by such federation. Indeed, this would defeat the purpose of Article 13.5 of the Rules, which specifically provides that the time-limit to appeal the decision only starts to run after notification of the same. It would also, in the Panel's opinion, impose an unreasonable burden on WADA, which would have to constantly monitor federations' websites to avoid the risk of losing its right to appeal decisions. One can expect from the FIG that it notify its decisions to WADA, in accordance with its own Rules. Furthermore the FIG is responsible for Results Management in accordance with article 15.3 of the World Anti-Doping Code.

27. Therefore, the Panel considers that the appeal is admissible.

Merits

28. Article 2.1 of the Rules provides the following:

> *"2.1.1 It is each gymnast's personal duty to ensure that no prohibited substance enters his or her body. Gymnasts are responsible for any prohibited substance, its metabolites or markers found to be present in their bodily specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the gymnast's part be demonstrated in order to establish an anti-doping violation under Article 2.1.*
>
> *2.1.2 Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity of a prohibited substance, its metabolites or markers in a gymnast's sample shall constitute an anti-doping rule violation.*

2.1.3 As an exception to the general rule of Article 2.1, the Prohibited List may establish special criteria for the evaluation of prohibited substances that can also be produced endogenously".

29. Concerning prohibited substances, Article 4.1 of the Rules further provides the following:

"The FIG Anti-Doping Rules include the Prohibited List, which is published and revised by WADA as described in Article 4.1 of the Code. Any and all changes made to the WADA Prohibited List will be automatically and immediately applied to the FIG List, except in atypical cases, at which time the FIG will notify the National Federations. The List is available to the National Federations on the WADA (www.wada-ama.org) or FIG websites. Each National Federation shall ensure that the current Prohibited List is available to its members".

30. In the present case, it is undisputed that the Gymnast sample's was tested by a WADA-accredited laboratory and that the test returned positive results to Furosemide.

31. Furosemide is mentioned (and was mentioned at the time of the test) on WADA's Prohibited List and is therefore a "prohibited substance" within the meaning of Article 2.1 of the Rules.

32. It is undisputed that the Gymnast did not request testing of the B sample and did not request a TUE exemption.

33. The Gymnast disputes neither the manner in which the sample was taken and tested, nor the results of the test.

34. The Respondents contend that Furosemide has no doping effects in the world of gymnastics and that its only purpose is loss of weight for aesthetic reasons. The Panel is not convinced this allegation necessarily corresponds to reality since being a diuretic Furosemide can be used as a masking agent for other doping products and can be used to lose weight in sports where athletes need to fit into weight categories. However, in this case that issue can be left open since the intended purpose for using the substance is irrelevant. Indeed, in accordance with Article 2.1.1 of the Rules, the presence of a prohibited substance, such as Furosemide, in the bodily specimens of the Gymnast is sufficient in itself to constitute a doping offence.

35. Therefore, the Panel finds that Ms Vysotskaya committed a doping violation under Article 2.1 of the Rules.

36. Article 10.2 of the Rules provides that the period of ineligibility imposed for a violation of Article 2.1 shall be two years for a first violation. This provision contains an exception for substances that are identified in the Prohibited List as substances which are particularly susceptible to unintentional anti-doping violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. However, Furosemide is not such a substance.

37. Article 10.2 *in fine* states that *"the gymnast or other person shall have the opportunity in each case, before a period of ineligibility is imposed, to establish the basis for eliminating or reducing this sanction as provided in Article 10.5".*

38. Article 10.5 sets out circumstances in which the two-year suspension period may be reduced or eliminated, as follows:

"10.5.1 If the gymnast establishes in an individual case involving an anti-doping rule violation under Article 2.1 (presence of Prohibited Substance or its Metabolites or Markers) or Use of a Prohibited Substance or Prohibited Method under Article 2.2 that he or she bears no fault or negligence for the violation, the otherwise applicable period of ineligibility may be eliminated. When a prohibited substance or its markers or metabolites is detected in an gymnast's specimen in violation of Article 2.1 (presence of Prohibited Substance), the gymnast must also establish how the prohibited substance entered his or her system in order to have the period of ineligibility eliminated. In the event this Article is applied and the period of ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of ineligibility for multiple violations under Article 10.2, 10.3 and 10.6.

10.5.2 This Article 10.5.2 applies only to anti-doping rule violations involving Article 2.1 (presence of Prohibited Substance or its Metabolites or Markers), 2.2 (Use of a Prohibited Substance or Prohibited Method) or 2.8 (administration of a Prohibited Substance or Prohibited Method). If a gymnast establishes in an individual case involving such violations that he or she bears no significant fault or negligence, then the period of ineligibility may be reduced, but the reduced period of ineligibility may not be less than one-half of the minimum period of ineligibility otherwise applicable. If the otherwise applicable period of ineligibility is a lifetime, the reduced period under this section may be no less than 8 years. When a prohibited substance or its markers or metabolites is detected in a gymnast's specimen in violation of Article 2.1 (presence of Prohibited Substance), the gymnast must also establish how the prohibited substance entered his or her system in order to have the period of ineligibility reduced.

10.5.3 The FIG disciplinary body may also reduce the period of ineligibility in an individual case where the gymnast has provided substantial assistance to the FIG which results in the FIG discovering or establishing an anti-doping rule violation by another person involving possession under Article 2.6.2 (Possession by Athlete Support Personnel), Article 2.7 (Trafficking), or Article 2.8 (Administration to an Athlete). The reduced period of ineligibility may not, however, be less than one-half of the minimum period of ineligibility otherwise applicable. If the otherwise applicable period of ineligibility is a lifetime, the reduced period under this Article may be no less than 8 years".

39. According to the above provisions, the primary conditions for becoming eligible for the reduction or elimination of a sanction is for the athlete to establish how the prohibited substance entered her/his system.

40. In the present case, Ms Vysotskaya simply declared that she never took *"any forbidden substances"* and that she could have neglected the storage conditions of sports drinks during the competition.

41. The Panel considers that this mere statement by the athlete is far from sufficient to establish how Furosemide entered her body since in essence her defense is limited to a speculative suggestion that her drink could have been spiked, without any evidence of any such action.

42. For the above reason alone, the conditions of article 5.2 of the Rules are not met and it is unnecessary to examine the question of fault and negligence.

43. That said, the Panel would like to point out that an important goal and consequence of the anti-doping regulatory framework is to make athletes responsible for their own actions. This includes the duty to personally manage and control their dietary and medical needs in a responsible manner in light of anti-doping rules. In that relation, Ms Vysotskaya's has offered no evidence that she took any particular measures of care and, on the contrary, states that she may have neglected the storage conditions of sports drinks during the competition.

44. The fact that the Gymnast was a minor at the time she was tested does not constitute either a circumstance eliminating or reducing her fault or negligence (see also CAS 2006/A/1032, para. 132 ff. and CAS 2005/A/830, para. 10.11 with further references). The Rules do not specifically refer to minors when defining their scope of application and those parts of the rules which define liability do not provide for a special regime for minors. On the contrary, the Rules state that they apply *"to all participants in FIG activities"*.

45. More specifically, with respect to the gymnasts duty of care in ensuring that they do not ingest any prohibited substance, and to the regime of sanctions that applies if they do and the conditions under which they can establish *"no fault or negligence"* or *"no significant fault or negligence"*, there is no wording in the Rules indicating that the responsibility of younger gymnasts, notably minors, should be assessed by a different yardstick. The Rules, therefore, do not anticipate a different regime for minors.

46. In these circumstances, the Panel considers that there is no automatic exception based on age. Such an exception is not spelled out in the Rules and would not only potentially cause unequal treatment of gymnasts, but could also put in peril the whole framework and logic of anti-doping rules not least in the light of the fact that in gymnastics (like in other sport) it is not uncommon to have minors compete at the highest level.

47. As a consequence, the Panel finds that the conditions set out in Article 10.5 for elimination or reduction of the ineligibility period are not fulfilled.

48. The Panel further considers that the Respondents' argument that, because an average career of a female gymnast is between three and four years, a two-year period of ineligibility has a much more significant effect on a gymnast than in sports where careers are traditionally longer, is legally irrelevant. Indeed, it is the rules of the FIG, which by definition are intended to apply to gymnasts, which provide for a minimum period of ineligibility of two years in case of a first violation. In addition, the Panel points out that WADA has ruled out the possibility to take the said element into consideration in its current and former comments to Article 10.2 of the WADA-Code.

49. The Panel therefore rules that Ms Vysotskaya must be sanctioned with a two-year period of ineligibility.

50. Article 10.8 of the FIG Rules, which governs the commencement of ineligibility periods, provides the following:

"The period of ineligibility shall start on the date of the hearing decision (or, if the hearing is waived, on the date suspension is accepted or imposed). Any period of provisional suspension (whether imposed or voluntarily accepted) shall be credited against the total period of ineligibility to be served. Where required by fairness, such as delays in the hearing process or other aspects of doping control not attributable to the athlete, the FIG or anti-doping organisation imposing the sanction may start the period of ineligibility at an earlier date commencing as early as the date of sample collection".

51. In the present case, the sample collection was made on 15 May 2006. Ms Vysotskaya was provisionally suspended on 12 September 2006 and the Decision was issued on 12 November 2006, pronouncing a final suspension from 13 May 2006 to 31 December 2007, i.e. representing a total period of 19 months and 18 days. In reality the foregoing sanction was only in effect for 15 months and 18 days between the date of the provisional sanction (12 September 2006) and the end of the final FIG sanction (31 December 2007).

52. In that relation, the Respondents allege the athlete voluntarily withheld from competing after 13 May 2006 and that, as a result, she missed a number of competitions. However, they offered no evidence to support such contention.

53. Consequently and because the purpose of the provisional sanction was to prevent her from competing, the Panel considers that on the balance of probabilities it is not established that Ms Vysotskaya voluntarily refrained from competing before being provisionally suspended on 12 September 2006.

54. Accordingly, the Panel finds that a period of 15 months and 18 days of already served suspension needs to be deducted from the total period of ineligibility of 2 years decided by this Panel. That means that the period of ineligibility still to be served represents 8 months and 12 days.

55. Considering that the FIG neglected its Decision to WADA for nearly a year and that with a timely notification the present award could have existed prior to the end of the FIG sanction, thereby enabling the two-year sanction to run its course and end by 12 September 2008, the Panel finds it fair for the athlete that the remaining 8 months and 12 days of sanction begins to run retroactively on 1st January 2008, with the consequence that the period of ineligibility will end on 12 September 2008.

56. For the same reasons, any results obtained by the athlete between 31 December 2007 and the notification of this award shall be disqualified and any medals, points and prizes forfeited.

The Court of Arbitration for Sport rules:

1. The decision of the FIG Disciplinary Commission of 12 November 2006 is set aside.

2. Ms Nadzeya Vysotskaya is sanctioned with a two-year period of ineligibility, starting on 12 September 2006 and ending on 12 September 2008.

3. All results achieved during the foregoing period of ineligibility are disqualified and any medals, points and prizes obtained are forfeited.

(…)

6. All other prayers for relief are dismissed.