



Arbitration CAS 2021/A/8031 Uzbekistan Swimming Federation (USF), Vladislav Mustafin, Aleksey Tarasenko, Khurshidjon Tursunov, Eldorbek Usmonov & Adilbek Yusupbaev v. Fédération Internationale de Natation (FINA), award of 3 March 2022 (operative part of 5 July 2021)

Panel: Mr Jordi López Batet (Spain), President; Mr Andrés Gurovits (Switzerland); The Hon. Michael Beloff QC (United Kingdom)

Aquatics (swimming)

Decision to invalidate the results of competitions

Competence of CAS to decide on its own jurisdiction

Failure to exhaust internal legal remedies

1. A CAS panel has the authority to decide on its own jurisdiction pursuant to article 186 of the Swiss Act on Private International Law, which reflects the principle *Kompetenz-Kompetenz* extensively recognized in international arbitration and in the CAS jurisprudence. This principle is also reflected in article R55 of the CAS Code (*“The Panel shall rule on its own jurisdiction”*).
2. In accordance with Rule C12.13.3 of the FINA’s Constitution, the decisions of the FINA Bureau referred therein are appealable to the CAS, but by contrast not those of the FINA Executive. FINA Executive decisions imposing sanctions can be appealed in accordance with Rule C12.13.1 of the FINA Constitution, but to the FINA Bureau, not to the CAS. If this internal appeal is not successful, the FINA Bureau decision may be then appealed to the CAS pursuant to Rule C.12.13.3 of the FINA Constitution. In other words, in accordance with Rule C12.13 of the FINA Constitution, an internal legal remedy (appeal of the FINA Executive decision before the FINA Bureau) shall be exhausted prior to the recourse to the CAS.

I. PARTIES

1. Uzbekistan Swimming Federation (the “USF”) is the national association governing the sport of swimming in Uzbekistan. It is based in the city of Tashkent and is a member of the Fédération Internationale de Natation.
2. Messrs Vladislav Mustafin, Aleksey Tarasenko, Khurshidjon Tursunov, Eldorbek Usmonov and Adilbek Yusupbaev are swimmers affiliated to the USF (the “Swimmers”).
3. USF and the Swimmers will be jointly referred to in this award as the “Appellants”.

4. Fédération Internationale de Natation (“FINA” or the “Respondent”) is the governing body for the sport of swimming worldwide and has its seat in Lausanne (Switzerland).

II. BACKGROUND FACTS

5. The elements set out below are a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the exhibits produced with them in the course of the proceedings. Additional facts and allegations may be set out, where relevant, in connection with the ensuing legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, in its award reference is made only to the submissions and evidence the Panel considers necessary to explain its reasoning.
6. From 23 to 29 November 2020, the Uzbekistan Open Swimming Championship 2020 took place in Tashkent (the “2020 Championship”).
7. From 12 to 17 April 2021, the Uzbekistan Open Swimming Championship 2021 took place in Tashkent (the “2021 Championship”).
8. Both the 2020 Championship and the 2021 Championship were qualifying competitions for the Tokyo Summer Olympic Games.
9. The Swimmers on the face of the results met the qualification time for the Tokyo Summer Olympic Games in the events in which they competed in the 2020 and 2021 Championships: Messrs Mustafin and Tursunov in the 2020 Championship and Messrs Tarasenko, Usmonov and Yusupbaev, in the 2021 Championship.
10. After the referred competitions, FINA got aware of several complaints and accusations of results’ manipulation in the 2020 and 2021 Championships concerned with the time calculation in those events.
11. On 27 April 2021, the FINA Executive decided the following:

“UZB- alleged result’s manipulation

1. *Results coming from Uzbekistan for the November 2020 (concerning only swimmers from Uzbekistan) and April 2021 (concerning all participant swimmers) events shall not be recognized by FINA, namely those times used for the Swimming Olympic qualification for Tokyo 2020.*
2. *UZB NF top-officials (President, Secretary General, international relations director, chief referee, starter, and other technical officials) should be referred to the Ethics Panel so that further measures can be investigated”.*

12. On 9 May 2021, the Secretary General of the Asia Swimming Federation (“ASF”) sent an email to FINA asking if the results for the 2020 and 2021 Championships were both invalidated.

13. On 11 May 2021, FINA replied to the ASF’s request as follows:

“[...] it was decided by the FINA Executive that the results coming from Uzbekistan for November 2020 and April 2021 shall not be recognized by FINA, namely those times used for the swimming Olympic Qualification for Tokyo 2020. Following the decision, the results from these competitions are currently being reviewed by FINA. If the results be recognized by FINA following this review, they will be uploaded on our website”.

14. On 19 May 2021, the ASF Secretary General informed the USF Secretary General Mr. Alisher Ganiev by WhatsApp message about the FINA Executive decision not to recognize the results of the 2020 and 2021 Championships. The text of this message reads as follows:

“Dear Alisher,

I have inquired about your matter and was told that the FINA Executives decided that the results coming from Uzbekistan for November 2020 and April 2021 shall not be recognized by FINA, namely those times used for the swimming Olympic Qualification for Tokyo 2020.

Following the decision, the results from these competitions are currently being reviewed by FINA. If the results are recognized by FINA following this review, they will be uploaded on the website.

As for your attendance to the Congress, if you did not receive any notice of suspension of FINA, you can still attend all FINA events.

I hope this clarifies your inquiries”.

15. On 24 May 2021, the FINA Ethics Panel (“the Ethics Panel”) sent an email to the USF informing them that the FINA Executive had referred to the Ethics Panel the matter of a possible fraud in the results reported in the 2020 and 2021 Championships and asking USF for some information.

16. On 2 June 2021, the USF sent a letter to FINA asking to be provided with explanations for the invalidation of the results of the 2021 Championship and the deletion of the results of the 2020 and 2021 Championships from the Qualifying Rankings and Results section of FINA’s website. Additionally, the USF requested from FINA the minutes, reports or documents related thereto. The letter, in its pertinent part, reads as follows:

“The Uzbekistan Open Summer Swimming Championships took place between 12 to 17 April 2021. This competition was for us a big success, with outstanding results from many swimmers. We certainly encountered a few issues with the timing, but the technical problems have been solved in due time. At the end, the competition was fair and the results are reliable.

This competition was a qualifier for the upcoming summer Olympics and certain swimmers met the qualification criteria during this event.

On the official website of FINA in the list of Qualifying Competitions, it is now specified that the Uzbekistan Open Summer Swimming Championships 2021 had been invalidated. Further, the results achieved by athletes from different countries at this competition were deleted from the Qualifying Rankings and Results section. We are greatly surprised, and concerned, that FINA decided to invalidate this competition without prior consultation with us.

Apart from that, while the Uzbekistan Open Swimming Championships 2020 held between 23 to 29 November 2020 remains as valid in the list of Qualifying Competitions, the results achieved by athletes from different countries at this competition were deleted from the Qualifying Rankings and Results section too. This finding was a great surprise for us too.

We find it very unfair not to have been associated anyhow in the decision process as we organized the events at stake.

Obviously, FINA's decision creates significant issues as it will affect the eligibility of certain swimmers for the Tokyo Olympic Games since both events are the Qualifying Competitions.

In view of the above, we respectfully ask you to provide us with your explanations as to the invalidation of the Uzbekistan Open Summer Swimming Championship 2021 and the deletion of the results of the Uzbekistan Open Summer Swimming Championship 2020 and 2021 from the Qualifying Rankings and Results section. Furthermore, we would be very grateful if you could provide us with any minutes, reports or documents related thereto.

In light of the Olympic Games that will start soon, this matter is urgent and we would highly appreciate to receive an answer within five days upon receipt of the present letter”.

17. On 5 June 2021, the Ethics Panel, in light of the absence of a response to its previous email of 24 May 2021, sent another email to the USF reminding its duty to contribute to clarifying the facts relating to the possible violations, and warning it that in the absence of any response, the Ethics Panel would judge the matter solely on the basis of the material already available.
18. On 5 June 2021, the USF replied to the Ethics Panel stating that the Ethics Panel's previous emails were stored in the spam folder and the USF had not seen them.
19. On 7 June 2021, FINA replied to the USF letter of 2 June 2021 stating that, as informed by the Ethics Panel, the results of the 2020 and 2021 Championships were under investigation and that in light thereof, FINA Executive had decided not to recognize them, and also reminded the USF of its obligation to collaborate in the investigation.
20. On 8 June 2021, the USF sent an email to each of the Swimmers updating them on the latest exchanges of correspondence between FINA and the USF on the invalidation of the results. Those emails were replied to respectively by each of the Swimmers, who expressed their disappointment with that situation.

21. On 11 June 2021, the USF replied to FINA's letter of 7 June 2021 in the following terms:

"Thank you for your email dated June 07, 2021 referred to our letter dated June 02, 2021.

We are unpleasantly surprised to learn that the FINA decided not to recognize the results of 2 Olympic Qualifying competitions (the Uzbekistan Open Summer Swimming Championships 2020 and 2021) even before the FINA Ethics Panel concluded its investigations. Further, we had not been provided with any opportunity to express our position before the FINA reached such decision and we were not involved in the decision making process at all.

We also note that neither our Federation nor the athletes who were qualified to participate in the Tokyo Summer Olympic during these 2 events were officially notified of such FINA's decision.

After receiving such a notification from you, we immediately sent a notice to the athletes about this and in response the athletes sent us letters indicating that they are extremely sorry about this situation and they are very outraged and depressed (see the attachments). The athletes expressed their dissatisfaction with the fact that such a notification from FINA came to them so late and FINA failed to notify them directly, as they lost a lot of time during which they could begin to prepare for participation in other qualifying competitions and they could use their additional chance to show their high results and qualify for the Olympic Games Tokyo 2020!

Considering the above, we would appreciate if you could indicate the reasons why the official notification was not made in a timely and prompt manner.

We respectfully ask you to clarify whether the decision of the FINA not to recognize the results the Uzbekistan Open Summer Swimming Championships 2020 and 2021 is final? Will the results of the competitions be reinstated if the FINA Ethics Panel reaches the conclusion that there was not fraud in results reporting?

In our letter of 2nd June 2020 (sic) we also requested to provide us with any minutes, reports or other documents related to this situation, but we did not receive your answer. Would it be possible to disclose them?

Once again, we express our respect and look forward to a quick response".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 14 June 2021, the Appellants filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against FINA with respect to its decision to invalidate the results of the 2020 and 2021 Championships (the "Appealed Decision"). In its Statement of Appeal, the Appellants appointed Dr András Gurovits as arbitrator, requested the procedure be conducted in an expedited manner, proposed a procedural calendar to such purpose and submitted the following prayers for relief:

I. *The appeal is upheld.*

II. *The decision issued by FINA to invalidate the results of the Uzbekistan Open Summer Swimming Championship 2020 and 2021 is annulled.*

- III. *The results achieved by Vladislav Mustafin, Aleksey Tarasenko, Khurshidjon Tursunov, Eldorbek Usmonov and Adilbek Yusupbaev on the occasion of the Uzbekistan Open Summer Swimming Championships 2020 and/or 2021 are recognized by FINA, with the consequence that these athletes have met the qualification criteria for the Tokyo 2020 Olympic Games.*
- IV. *The Fédération Internationale de Natation shall be ordered to bear all arbitration costs and to reimburse the Appellants the minimum CAS Court Office fee of CHF 1,000.*
- V. *The Fédération Internationale de Natation shall be ordered to pay the Appellants a contribution towards the legal and other costs incurred in the framework of these proceedings in an amount to be determined at a later stage or at the discretion of the Panel.*
23. On 15 June 2021, the Appellants requested that CAS ask FINA to disclose the following documents (“the Documents”):
1. *Any documents or reports supporting the decision to invalidate the results of the 2020 and 2021 Uzbekistan Open Summer Swimming Championships;*
 2. *Any minutes related to any meetings during which the decision to invalidate the results of the 2020 and 2021 Uzbekistan Open Summer Swimming Championships was taken;*
 3. *Any evidence in the hands of FINA supporting the existence of a possible fraud in the results reported in the 2020 and 2021 Uzbekistan Open Summer Swimming Championships”.*
24. On 16 June 2021, the CAS Court Office invited the Respondent to (i) inform the CAS whether it agreed with the request for expedited procedure made by the Appellants, (ii) appoint an arbitrator and (iii) comment on the Appellants’ request for disclosure of the Documents. In the same letter, the CAS Court Office informed the Parties that the costs of this arbitration procedure had to be paid by them and that they would be shortly invited to pay an advance of costs.
25. On 21 June 2021, FINA sent a letter to the CAS agreeing with the Appellants’ request for an expedited procedure but not with the precise timetable proposed by them and stating that that it would discuss such timetable with counsel for the Appellants. At the end of its letter, FINA stated that *“for the avoidance of doubt, nothing in this letter should be interpreted as an admission of the CAS’ jurisdiction in this matter and of the admissibility of the appeal. FINA reserves all rights in this respect”.*
26. On 24 June 2021, the Respondent requested a 7-day extension of the deadline previously granted to comment on the Appellants’ request for production of the Documents, which was granted by the CAS Court Office the same day.
27. On 24 June 2021, the Appellants filed their Appeal Brief with the same requests for relief referred to in para. 22 above, informed the CAS that the Parties had agreed that FINA would file its Answer no later than 4 July 2021 and requested the CAS to issue the operative part of the award on 5 July 2021 no later than 5pm CET, given that FINA was required to enter the

eligible athletes for the Tokyo Summer Olympic Games no later than 5 July 2021. In the Appeal Brief, the Appellants reserved their right to file an additional submission responding to the disclosure of the Documents to be made by FINA.

28. On 25 June 2021, the CAS Court Office sent a letter to the Parties noting that they agreed that FINA would file its Answer no later than 4 July 2021 and inviting them to (i) further agree on the deadlines regarding the request of production of the Documents and (ii) inform the CAS, in view of the urgency of the matter, whether they intended to submit the case to a Sole Arbitrator or to a Panel of three arbitrators.
29. On 25 June 2021, the Respondent sent a letter to the CAS informing it that the Parties would inform the CAS on 28 June 2021 on whether they agreed on the appointment of a Sole Arbitrator and in the event that no agreement was reached, the Respondent would then nominate one. In the final part of the letter, the Respondent asserted that *“this letter shall not be considered as any acceptance by FINA of the standing to sue or standing to be sued of either party, or of the jurisdiction of CAS or the admissibility of the appeal. FINA reserves the right to make further submissions in fact and in law on any of these aspects, including of course the merits of this case”*.
30. On 28 June 2021, the Respondent informed the CAS Court Office that the Parties could not agree on a Sole Arbitrator and nominated Hon. Michael J. Beloff MA QC as arbitrator in these proceedings. Consistently with its previous letters, the Respondent stated that *“this letter shall not be considered as any acceptance by FINA of the standing to sue or standing to be sued of either party, or of the jurisdiction of CAS or the admissibility of the appeal. FINA reserves the right to make further submissions in fact and in law on any of these aspects, including of course the merits of this case”*.
31. On 29 June 2021, the Respondent submitted its comments on the Appellants request for production of the Documents and asked the Panel to reject it as the request was unnecessary and redundant as well as too broad and unspecific. In addition, the Respondent objected to the Appellant’s reservation of rights to file additional submissions responding to the disclosure of the Documents. Once again, the Respondent emphasised the fact that *“this letter shall not be considered as any acceptance by FINA of the standing to sue or standing to be sued of either party, or of the jurisdiction of CAS or the admissibility of the appeal. FINA reserves the right to make further submissions in fact and in law on any of these aspects, including of course the merits of this case”*.
32. On 30 June 2021, the Appellants complained about the Respondent’s refusal to disclose the Documents requested and the Respondents’ rejection of their request to comment briefly on the Documents that they had expected FINA to file.
33. On 2 July 2021, the Respondent informed the CAS Court Office, *inter alia*, that *“in view of the obvious lack of jurisdiction and the non-admissibility of the Appeal, FINA is not willing to pay any share of the advance [of costs] requested”*.
34. On 2 July 2021, on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute had been constituted as follows:

President: Mr. Jordi López Batet, attorney-at-law in Barcelona, Spain.

Arbitrators: Dr. András Gurovits, attorney-at-law in Zurich, Switzerland.

Hon. Michael J. Beloff MA QC, Barrister in London, UK.

35. On 2 July 2021, the Panel resolved the Appellants' request for production of the Documents as objected to by the Respondent as follows:

- a) *To grant a deadline to FINA **until tomorrow at 14h CET** to produce the documents referred to in paras. 1 and 2 of the Appellants' letter of 15 June.*
- b) *To grant a deadline to the Appellants **until Sunday at noon CET** to file an additional submission restricted to comment on the documents produced by FINA.*
- c) *To grant a deadline to FINA **until Sunday at midnight CET** to respond to the additional submission filed by the Appellants on the documents produced by FINA”.*

36. On 3 July 2021, FINA filed its Answer, in which it submitted the following requests for relief:

1. *To declare that CAS has no jurisdiction to hear this case;*
2. *In the alternative, to declare the Appeal inadmissible.*
3. *In the alternative, to dismiss the Appeal and to confirm the Appealed Decision;*
4. *In any event, to order Appellants to bear all costs of these proceedings and to pay an amount of CHF 10,000 as contribution to the costs and expenses incurred by FINA”.*

37. In the letter accompanying the Answer, the Respondent made *inter alia* the following comment on the aforementioned request and order for production of the Documents:

“As anticipated by FINA, all the requested documents form part of the Exhibits filed together with this Answer. Specifically, the requested documents under no. 1 and 2 of Appellants' Production Request are exactly the Exhibits to FINA's Answer”.

38. On 4 July 2021, the Appellants filed their Reply.

39. On 4 July 2021, the Respondent filed its remarks on the Reply earlier filed by the Appellants on the same day.

40. On 5 July 2021, the CAS Court Office communicated the operative part of this award to the Parties.

41. On 29 July 2021, the Appellants filed unsolicited submissions in which they waived their right to obtain a reasoned award, claimed that the dispute at stake is of disciplinary nature and that

there should be no arbitration costs in light of article R65 of the CAS Code, and requested the Panel to issue a decision on costs, so that the advance of costs be fully reimbursed to the Appellants, subject to the CAS Court Office fee of CHF 1,000.

42. On 30 July 2021, the CAS Court Office reminded the Parties that the evidentiary proceedings were terminated, that the operative part of the award was issued on 5 July 2021 and that, accordingly, the Appellant's submission of 29 July 2021 was inadmissible.

IV. SUBMISSIONS OF THE PARTIES

43. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each contention put forward by them. However, in considering and deciding upon the Parties' claims, the Panel, has carefully considered all the submissions made and the evidence adduced by the Parties, even if there is no specific reference to those submissions in this section of the award or in the legal analysis that follows.

A. The Appellants

44. The Appellants' submissions, in essence, may be summarized as follows:

a. Jurisdiction

45. This dispute should be adjudicated by the CAS pursuant to Rules C12.13.3 and C26 of the FINA Constitution. The Appealed Decision is not the outcome of a disciplinary procedure against the Appellants and thus FINA cannot properly claim that an appeal against it should have been filed before the FIFA Bureau pursuant to Rule C12.13.1 of the FINA Constitution. Not being this case a disciplinary one, the FINA Bureau was not the proper forum to deal with this dispute.

46. FINA's position on CAS lack of jurisdiction is at odds with its stance in the proceedings to date and makes illusory its agreement to have the dispute adjudicated promptly by CAS.

b. Admissibility

47. The Appealed Decision was never notified to the Appellants. FINA merely indicated on its website that the 2020 and 2021 Championships' results were invalidated. In spite of it and out of an abundance of caution, the Appellants considered that the 21-day time limit to file the Statement of Appeal before the CAS commenced on 24 May 2021, the date on which the Ethics Panel by email communicated to the USF the possibility that the results reported in the 2020 and 2021 Championships were tainted by fraud, even if the USF only became later aware of the invalidation of those results. In addition, the Swimmers were never themselves notified by FINA of these matters so in consequence their appeal cannot have been filed too late.

48. Accordingly, the appeal was timeously filed and meets the remaining prerequisites established in the CAS Code. Hence the appeal is admissible.

c. Merits

49. FINA has no grounds not to recognize the results achieved by the Swimmers in the 2020 and 2021 Championship, and is relying wrongly on complaints and defamatory allegations about results manipulation put forward by a swimmer who was himself disqualified from the 2021 Championship as well as on other evidence which fails to meet the appropriate threshold of credibility (such as amateur videos or statements made by persons who did not participate in either of the two events).

50. Even if there were some technical issues with the scoreboard displaying the results of the two events at hand, these issues did not affect the time calculation in the lanes for those events. The times of the participating swimmers were calculated automatically with the appropriate technical equipment as well as manually by the events' referees. The results were automatically printed as special slips by the equipment used, and these slips cannot be modified.

51. The results of the 2020 and 2021 Championships are therefore reliable. Moreover, no protests were made about them at the time of the events. Such results are accordingly final and binding both for FINA and generally.

52. Some national associations (Afghanistan and Turkmenistan) whose representatives attended the 2020 and 2021 Championships have confirmed that no results manipulation took place at them so corroborating the assertions of the USF officials and the technicians working at those events.

53. In summary, FINA, which bears the burden of proof, has not established that the alleged irregularities actually took place.

54. The Appealed Decision is discriminatory, inasmuch as it only invalidates the results of Uzbek swimmers participating in the 2020 Championship, but not those obtained by non-Uzbek swimmers.

55. The legitimate expectations of the Swimmers to participate in the Tokyo Summer Olympic Games, far from being protected, were frustrated with the decision of FINA made in bad faith to invalidate the aforementioned results.

B. FINA

56. FINA's submissions, in essence, may be summarized as follows:

a. *Jurisdiction*

57. CAS does not have jurisdiction to deal with this appeal. The Appealed Decision was issued by the FINA Executive and consists of a sanction (cancellation of results). Pursuant to the FINA Constitution, such a decision cannot be directly appealed before the CAS, but must first be appealed before the FINA Bureau, as established in Rule C12.13.1 of the FINA Constitution. Only a decision of the FINA Bureau may be then appealed before the CAS.
58. Therefore, the Appellants omitted a mandatory step required by the FINA Constitution so that the prerequisite of exhaustion of the prior legal remedies set out in article R47 of the CAS Code has not been satisfied.
59. Additionally, the provisions invoked by the Appellants to ground the CAS jurisdiction are not applicable to the case at hand. Rule C.12.13.3 of the FINA Constitution refers to appeals against decisions of the FINA Bureau (not of the FINA Executive) and Rule C26 solely applies to disputes other than appeals, which is also not the case at hand.

b. *Admissibility*

60. The appeal is also late. The Appellants became aware of the results' non-recognition by FINA on 19 May 2021, when the ASF Secretary General informed the USF Secretary General on it by WhatsApp message. Therefore, the 21-day deadline to file the appeal before the CAS expired on 9 June 2021, whereas the Statement of Appeal was filed only on 14 June 2021. Therefore, even if (quod non) CAS has jurisdiction to entertain this appeal, it should be rejected as inadmissible.

c. *Merits*

61. The results achieved by the Swimmers in the 2020 and 2021 Championships are clearly fabricated as appears from the video materials produced to the file, and are simply incredible given the Swimmers' previous performance which fall so far short of them, and could therefore not have been achieved without serious manipulation.
62. The fact of this manipulation is corroborated by several statements from whistle-blowers received by FINA and the IOC and by other correspondence also corroborating the manipulation.
63. The position of the USF is manifestly contradictory: it is claiming the removal of the results' annulment but at the same time, it is requesting FINA to approve two athletes based on Universality Places (which are available for national federations without any athletes who have achieved an Olympic Qualifying Time).
64. The letters of the Swimming Federations of Afghanistan and Turkmenistan produced by the Appellant provide no evidence that manipulation did not occur in the 2020 and 2021 Championships and lack any probative value.

65. The time slips of the 2020 and 2021 Championships provided by the Appellants are erroneous, incomplete and do not evidence the results allegedly achieved by the Swimmers.
66. The fact that no protests were made in the 2020 and 2021 Championships does not limit the power of FINA to evaluate and ascertain the eligibility of athletes for the Olympic Games and the genuineness of the results that are a prerequisite for such eligibility.
67. The Appealed Decision is not discriminatory and does not violate any legitimate expectation of the Appellants.
68. No violation of the Appellants' right to be heard has taken place in the matter at hand and in any event, the CAS appeals proceedings enable a full *de novo* review of the case that could cure any flaw, if any, that occurred at the first instance.

V. APPLICABLE LAW

69. Article R58 of the CAS Code reads as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

70. In their submissions, both the Appellants and the Respondent agree on the applicability of the FINA Rules and Regulations and Swiss law to the present dispute. The Panel concurs on this issue, taking into consideration the circumstances of the case and in particular, the fact that the Appealed Decision has been issued by a FINA body.
71. Therefore, the present dispute must be resolved according to the FINA Rules and Regulations. Where necessary, the Panel will apply Swiss law subsidiarily.

VI. JURISDICTION

72. In light of the objection to the CAS jurisdiction filed by the Respondent with its Answer, the Panel shall address this matter first and only if it considers that the CAS is competent to deal with the case at hand, will it then deal with the objection to the admissibility of the appeal filed by FINA and if it is able to do so, with the merits of the case.
73. The Panel has the authority to decide on its own jurisdiction pursuant to article 186 of the Swiss Act on Private International Law (“PILA”), which reflects the principle *Kompetenz-Kompetenz* extensively recognized in international arbitration and in the CAS jurisprudence (among others, CAS 2004/A/748, CAS 2005/A/952, CAS 2006/A/1190 or CAS

2011/A/2363). This principle is also reflected in article R55 of the CAS Code (*“The Panel shall rule on its own jurisdiction”*).

74. Article R47 of the CAS Code reads as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. [...]”

75. In its analysis of the competence of the CAS to deal with this dispute, the Panel notes that:

- (i) The Appealed Decision was taken by the FINA Executive, a circumstance that the Appellants knew at the time of filing the appeal as both the ASF (even if not in the most orthodox manner -WhatsApp message-) and the Ethics Panel had so informed the USF.
- (ii) Pursuant to and subject to Rules 12.1 and 12.3 of the FINA Constitution, the FINA Executive can impose sanctions (including expressly the cancellation of results) in case of violation of the FINA rules.
- (iii) From the very beginning of these proceedings, the Respondent made it clear that none of its letters and submissions could be considered or understood as an acceptance of CAS jurisdiction, so the Panel cannot share the Appellant’s view that FINA’s position on the jurisdiction issue has been contradictory. It is, and must logically, always be open to a respondent to object to CAS’s jurisdiction and to invite CAS to rule on its objection without such invitation being construed as an acceptance of the very jurisdiction to which it has objected; a fortiori when it has consistently, as here, reiterated its objection.
- (iv) The Appellants, in their submissions (see paras. 9 and 10 of the Statement of Appeal and para. 14 of the Reply), ground the CAS jurisdiction in these proceedings in the two following provisions of the FINA Constitution (emphasis added by the Panel):

“C 12.13.3 An appeal against a decision by the Bureau (including a decision on appeal pursuant to FINA Rule C 12.11.1), may only be filed to the CAS. The CAS shall also have exclusive jurisdiction over interlocutory orders and no other court or tribunal shall have authority to issue interlocutory orders”.

“C 26 Disputes other than appeals, which are exhaustively regulated in FINA Rule C 12.13 above, between FINA and any of its Members or members of Members, individual members of Members or between Members of FINA may be referred for arbitration by either of the involved parties to the Court of Arbitration for Sports (CAS), Lausanne. Any decision made by the Arbitration Court shall be final and binding on the parties concerned”.

76. After examining the aforementioned FINA Constitution provisions invoked by the Appellants, it is the Panel's view that none of them makes CAS competent to deal with this appeal: Rule C.12.13.3 of the FINA Constitution refers to appeals to CAS against decisions of the FINA Bureau, not to appeals against decisions of the FINA Executive as it is the case herein, and Rule C26 of the same regulations refers to the possibility of submitting to the CAS disputes "*other than appeals*" while the dispute referred to the CAS by the USF and the Swimmers in the present proceedings is precisely an appeal against a decision of the FINA Executive.
77. The Panel additionally stresses in this context that in accordance with article R47 of the CAS Code, for a FINA Executive decision of the kind involved herein to be appealable to CAS, the statutes or regulations of FINA must so provide. However, this is manifestly not the case here.
78. In accordance with Rule C12.13.3 of the FINA's Constitution, the decisions of the FINA Bureau referred therein are indeed appealable to the CAS, but by contrast not those of the FINA Executive. FINA Executive decisions imposing sanctions can be appealed in accordance with Rule C12.13.1 of the FINA Constitution, but to the FINA Bureau, not to the CAS. If this internal appeal is not successful, the FINA Bureau decision may be then appealed to the CAS pursuant to Rule C.12.13.3 of the FINA Constitution.
79. In other words, in accordance with Rule 12.13 of the FINA Constitution, an internal legal remedy (appeal of the FINA Executive decision before the FINA Bureau) shall be exhausted prior to the recourse to the CAS, and this did not happen in the case at hand: the USF and the Swimmers decided to appeal the FINA Executive decision of reference directly to the CAS.
80. In summary, given that the conditions foreseen in article R47 of the CAS Code are not met for the reasons mentioned above, the Panel considers that the Court of Arbitration for Sport has no jurisdiction to deal with this case. In consequence, the Panel will neither deal with the admissibility issue raised by the Respondent nor with the merits of the case.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Court of Arbitration for Sport does not have jurisdiction to rule on the appeal filed on 14 June 2021 by Uzbekistan Swimming Federation (USF), Vladislav Mustafin, Aleksey Tarasenko, Khurshidjon Tursunov, Eldorbek Usmonov and Adilbek Yusupbaev.
2. (...).
3. (...).
4. All other and further claims or prayers for relief are dismissed.