



SWIMMING

THE COURT OF ARBITRATION FOR SPORT (CAS) LIFTS THE SUSPENSION OF ALBERT SUBIRATS

Lausanne, 25 August 2011 - The Court of Arbitration for Sport (CAS) has upheld the appeal filed by the swimmer Albert Subirats (Venezuela) against the decision of the International Swimming Federation (FINA) to suspend him for one year following three failures to notify whereabouts information. The CAS has ruled that Albert Subirats was not guilty of any anti-doping rule violation as he did not receive any failure notice before the third whereabouts filing failure.

Since 2006 Albert Subirats has always submitted his whereabouts forms to the Venezuelan Swimming Federation (VSF), which has always, until 2010, forwarded his forms to FINA on time. For the first quarter of 2010, the fourth quarter of 2010 and the first quarter of 2011, the VSF did not forward the swimmer's forms. During that period, he committed thus 3 filing failures. FINA notified the athlete's filing failures to VSF in writing, requesting VSF to inform him about the failures. However, VSF forwarded the three FINA letters to Subirats for the first time on 2 February 2011, i.e. only after the third violation had already occurred. No failure notification was ever sent directly by FINA to the athlete. By decision of 21 June 2011, the FINA Doping Panel imposed a one-year period of ineligibility on Subirats for failure of having provided his whereabouts information.

The CAS has ruled that when the anti doping organization chooses as recipient of the failure notices a third party, even if such third party is the one chosen by the athlete to make his or her filing, and that third party failed to comply with the applicable requirements, the athlete has a valid objection to an allegation of non-receipt of one or more failure notices.

Since it was undisputed that Albert Subirats did not receive any failure notice before the third whereabouts filing failure, the existence of a second and a third violation could not be reproached to him. As a consequence, the appeal was upheld, the FINA Decision overturned, the second and third filing failure for the fourth quarter of 2010 and the first quarter of 2011 cancelled and the swimmer's results obtained after 3 January 2011 reinstated.

The CAS award is published in the section "jurisprudence" on www.tas-cas.org.