FINA DISCIPLINARY PANEL

The Disciplinary Panel (hereinafter called “the Panel”) sitting in the following composition-

- Chairperson: Mr. R Duiven
- Members: Mrs. N Onyango
  Mr. W. Clarke

Date: 20 April 2022

DECISION

MR. EVGENY RYLOV (RUSSIA)

1. REFERRAL

1.1 On 22 March 2022, the Chair of the FINA Disciplinary Panel (“Panel”) received a referral from the FINA Executive Director regarding a potential breach of the FINA Rules by Evgeny Rylov (“Mr. Rylov”) stemming from his attendance at an event held at the Luzhniki Stadium in Moscow on 8 March 2022 (referred to in this decision respectively as the “Event” and “Referral”).

1.2 The Referral requested the Panel to investigate and adjudicate on whether Mr. Rylov has committed a violation of Article C12.1.3 of the FINA Constitution (i.e. bringing the sport of Aquatics and/or FINA into disrepute) and/or Article 2 (a) of the FINA Code of Conduct (i.e. acts of misbehaviour) and/or any other violation of the FINA Rules by participating at the Event in the manner alleged.

2. PROCEDURE

2.1 On 22 March 2022, the FINA Executive resolved to refer the case of Mr. Rylov for investigation and adjudication, pursuant to Rule C 23.4 of the FINA Constitution.

2.2 On 23 March 2022, the Panel commenced the investigation and adjudication of the Referral and took note of the documents and information submitted in the Referral:
(a) Referral to the Disciplinary Panel;
(b) Picture of Mr. Rylov at the Rally [Exhibit 1]; and
(c) Screenshots of the Swimming Community’s condemnation [Exhibit 2].

2.3 By letter dated 23 March 2022 to Mr. Rylov (“Referral Notice”), he was informed that:

(a) the Panel had received the Referral and that a three-member panel would be formed to investigate and adjudicate on the allegations made against him;

(b) the substance of the Referral is an allegation that he has violated C 12.1.3 of the FINA Constitution and/or Article 2(a) of the FINA Code of Conduct;

(c) if he is found to have violated those rules, he will be subject to sanctions set out in C 12.2 of the FINA Constitution, each of which were specified;

(d) he has a right to submit a defence and respond to the allegations set out in the Referral and directed that it be provided no later than 29 March 2022; and

(e) he also has a right to seek a hearing in front of the Panel, to be represented by legal counsel and call and question witnesses.

2.4 On 28 March 2022, the Chair of the Panel received an email from Mr. Artem Patsev:

(a) Informing the Panel that he has been engaged by Mr. Rylov as his legal counsel in relation to the Referral Notice;

(b) Noted that “Exhibit 1” appeared to have been omitted and requested that it and any other pertinent information be provided\(^1\);

(c) requested an extension of the deadline to 3 April 2022\(^2\); and

(d) informed the Panel that Mr. Rylov had waived his right to a hearing.

3. FINA RULES

3.1 Mr. Rylov is alleged to have violated C. 12.1.3 of the FINA Constitution and Article 2(a) of the FINA Conduct of Conduct. The Panel deems it is accepted and not in dispute that Mr. Rylov is bound to these rules.

(a) The FINA Constitution:

\[C12.1 \text{ Any Members, member of a Member, or individual member of a Member, as well as Continental organization, may be sanctioned:}\]

\[(...)\]

\[C12.1.3 \text{ for bringing the Aquatics sport and/or FINA into disrepute.}\]

\(^1\) Exhibit 1 was provided to Mr. Patsev the same day.
\(^2\) This request was granted.
(b) The FINA Code of Conduct:

Article 2 Application of Code

The following incidents or offences shall be subject to the application of this Code:

a) acts of misbehavior including but not limited to abusive, violent conduct in a disturbing, ugly or provocative manner, unjustified interference including disobedience with obstruction of the orderly conduct of any sporting event within or outside of the venue(s), malicious alteration, damage or destruction of property or infliction of physical or mental harm on others.

4. MR. RYLOV’S DEFENCE

4.1 The Panel received and reviewed the following documents submitted by Mr. Patsev and Ms. Antseliovich on behalf of Mr. Rylov (“Rylov First Response”):

(a) Letter from CleverConsult, dated 3 April 2022;

(b) Mr. Rylov’s Affidavit dated 31 March 2022 [Exhibit 1];

(c) Screenshot of a text message from the Russian National Swimming Team Manager [Exhibit 1.1];

(d) English version of President Vladmir Putin’s speech during the Event [Exhibit 1.2];

(e) Audio Message from the Russian National Swimming Team Manager [Exhibit 1.3];

(f) Screenshot of Audio Message from the Russian National Swimming Team Manager [Exhibit 1.3];

(g) Group photo of athletes in Luzhniki [Exhibit 1.4]; and

(h) Screenshot of Viktoriya Zeynep Gunes’s Instagram Story [Exhibit 2].

4.2 The Panel has thoroughly and carefully considered Mr. Rylov’s defence which can be summarized as follows:

(a) His participation was neutral: He was of the understanding and belief that he was attending a “Crimean Spring” concert that had nothing to do with any military action or war in Ukraine. As far as he was concerned, his role at the Event was “limited to presenting his Olympic medals and greeting Russian fans who were unable to attend the Olympic Games in Tokyo 2020.”

He did not express any political views at the Event because he did not say anything. By comparison, the International Chess Federation considered public statements made by the chess player Sergei Shipov on the conflict in Ukraine and found that his statements were not “clearly provocative and, accordingly, did not damage the reputation of [chess]” and found find him not guilty of violating its Code of Ethics.
Furthermore, the remarks of the well-known chess player Magnus Carlsen regarding FIDE’s ban on Russian chess player Sergey Karjakin proves Mr. Rylov’s point that a sanction is unwarranted.

A number of photos from the Event featuring Mr. Rylov and other Russian athletes as well the other evidence listed in paragraph 4.1 were submitted in support of Mr. Rylov’s argument.

(b) **Punishment would be a violation of the principles of fairness and the Fundamental Principles of Olympism enshrined in the Olympic Charter, European Convention on Human Rights (“ECHR”) and International Covenant on Civil and Political Rights (“ICCPR”):** Even though he expressed no political views, punishment would violate Mr. Rylov’s enjoyment of the rights and freedoms in the Olympic Charter, ECHR and ICCPR because it means he is being discriminated against on the basis of political or other opinion, national or social origin, or other status.

(c) **Double Jeopardy:** Punishment would violate the rule against double jeopardy (the *ne bis in idem* principle). Mr. Rylov has already been punished by the decision made by FINA on 23 March 2022 not to allow Russian athletes to participate in the 2022 FINA World Championships. The parties in relation to that decision, FINA Bureau and Mr. Rylov (who is detrimentally affected), are the same.

5. **FINA RESPONSE**

5.1 The Panel received and reviewed the following documents submitted by FINA in response to Mr. Rylov (“FINA Response”):

(a) FINA’s Response to Mr. Rylov’s defence;

(b) A picture of attendees waving flags with the symbol “Z” at the Event [Exhibit 1];

(c) A picture of the athletes (including Mr. Rylov) on stage at the Event with a sign in the background that has been translated from Russian “for a world without Nazism” [Exhibit 2];

(d) A picture of one of the athletes, Mr. Alexander Bolshunov, on stage with Mr. Rylov at the Event, but who is not wearing the “Z” symbol on his uniform [Exhibit 3];

(e) The decision *FIDE v Sergey Karjakin and Sergei Shipov* [2022] [Exhibit 4];

(f) Screenshot of Mr. Rylov’s Instagram Post regarding his withdrawal from the 2022 FINA World Championships [Exhibit 5];

(g) FINA’s Press Release dated March 23, 2022 regarding the Russian and Belarusian athletes [Exhibit 6]; and

(h) International Federation of Gymnastic’ Press Release regarding Ivan Kuliak’s disciplinary proceedings [Exhibit 7].

5.2 The Panel has thoroughly and carefully considered FINA’s response which can be summarized as follows:
(a) The Court of Arbitration for Sport has previously adjudged that “Article C12.1.3 of the FINA Constitution is breached when public opinion of the sport is diminished as a result of the conduct of an athlete”. FINA alleges public opinion in relation to the sport of swimming and FINA was diminished on 18 March 2022 by the conduct of Mr. Rylov.

(b) Mr. Rylov’s profile as a “national and international swimming hero” made his attendance at the Event- an event watched by thousands of people- widely publicized. He has tarnished aquatic sport and FINA because he wore his Russian Swimming team uniform and medals prominently displaying a symbol- the letter “Z”- on his clothing. Mr. Rylov stood on the same stage on which Russian President, Vladimir Putin, gave a speech and this has been perceived by the public as an obvious sign of support for the war in Ukraine. Mr. Putin’s speech from the same stage referred to Russia’s military action to stop “neo-Nazis and extreme nationalists” in Ukraine committing “genocide”.

(c) The symbol “Z” in the Russian and international context is widely understood to symbolise support for the Russian invasion of Ukraine and is not a protected form of political rights and freedom of speech.

(d) As a result of Mr. Rylov’s conduct, public opinion of aquatics sport and FINA is negatively affected. Any organization seen as supporting this action is subject to extensive public condemnation.

(e) In response to arguments submitted on behalf of Mr. Rylov, FINA submits:

i. the nature of the event:

- Mr. Rylov’s attempt to assert that the event was not a pro-war rally is grossly misleading.

- that Mr. Rylov accepted the invitation to attend and chose to ignore obvious signs that it was a pro-war rally. He should have realized the disruptive, ugly, and disrespectful nature of the Event when he arrived onsite and saw the crowd waving flags with the symbol “Z” and a sign displayed on stage that reads “for a world without Nazism.” The event also featured speeches intended to rally the country behind the current invasion of Ukraine.

- Mr. Rylov’s decision to prominently display the “Z” symbol on his chest was voluntary as Mr. Alexander Bolshunov was not wearing the “Z” symbol on stage. This, FINA argues, makes it clear that the display of the symbol was not a requirement imposed by the Event’s organizers.

- Mr. Rylov has tried to downplay the impact of his action by asserting that he did not say anything during the rally, so he is absolved from his wrongdoing.

ii. his freedom of thought and freedom of expression:

- These rights are subject to limitations.

- The opinion of a chess player, Mr. Magnus Carlson has no legal or factual bearing on Mr. Rylov’s actions or this procedure.

(f) Mr. Rylov’s actions are not protected by the legal principle of ne bis in idem: The legal principle does not apply in this case. FINA’s decision not to invite the Russian athletes to

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3 FIDE v Karjakin and Sergei [2022], par. 7.18 and 7.19
the 2022 FINA World Championships was based on the need to protect the safety and health of all participants on an event-by-event basis. The decision was not a collective ban on the Russian and Belarusian athletes. Also, the current proceeding only concerns Mr. Rylov and his actions at the Event. Notwithstanding this, the Russia Swimming Federation itself withdrew from the 2022 FINA World Championships.

(g) Mr. Rylov posted on Instagram stating that he has chosen to withdraw from the 2022 FINA World Championships, prior to FINA’s announcement regarding the participation of Russian athletes at the 2022 FINA World Championships.

(h) The International Federation of Gymnastics has initiated a similar disciplinary proceeding against a Russian athlete who displayed the pro-war “Z” symbol at an event.

(i) FINA suggests that Mr. Rylov should be suspended from all FINA sanctioned competitions and activities for 6 to 12 months which is aligned with a decision made by the FIDE panel regarding Mr. Sergey Karjakin for similar behaviour.

6 RYLOV SECOND RESPONSE TO FINA

6.1 The Chair of the Panel forwarded the FINA Response to Mr. Patsev and Ms. Antseliovich, counsel for Mr. Rylov, on 12 April 2022 and requested a response for consideration by the Panel by 17 April 2022. A response was received within time on 17 April 2022.

6.2 The Panel has thoroughly and carefully considered Mr. Rylov’s second response (“Rylov Second Response”) which can be summarized as follows:

(a) FINA has substantially added/changed its charge by alleging for the first time that Mr. Rylov used the “Z” symbol in “direct support of the military operation in Ukraine.” This has made it unclear to Mr. Rylov what allegation he faces: his appearance at the concert (the original allegation); his appearance at the concert with the “Z” symbol or just wearing the “Z” symbol on his uniform. As a result, he does not know which of these actions is alleged to have brought the sport into disrepute.

(b) The rule against “bringing the Aquatics sport and/or FINA into disrepute” is too broad and vague.

(c) The “Z” symbol is not a pro-war symbol, rather it represents the idea of a world free of Nazism: “…Mr Rylov, too, like millions of people around the world - and even more as an ethnic Gypsy himself - shares the idea of "For the world free of Nazism". Supporting the opposite would have been reprehensible. That is why he had absolutely no thoughts of refusing to wear the “Z” symbol, as an indication of the fact that he supports the idea of "For the world free of Nazism".

(d) The FINA allegation against Mr. Rylov lacks particularisation and lacks procedural fairness. This argument picks up on that summarised in paragraph 6.2(a).

7 ANALYSIS and COMMENT

7.1 The Panel extends its thanks and appreciation to Mr. Patsev and Ms. Antseliovich, counsel for Mr. Rylov, and the FINA Executive Director for providing helpful and detailed submissions. These have been of great assistance to the Panel in its work.
7.2 The Panel has considered in great depth the arguments made on behalf of Mr. Rylov and FINA and the evidence tendered in support of each.

**Mr. Rylov’s participation was neutral, “Z” symbol is not pro-war - a sanction breaches his rights**

7.3 The Panel will consider these arguments together because they are related in our view.

7.4 The Panel is not persuaded that Mr. Rylov’s attendance at the Event and his affixing the “Z” symbol to his jacket can be properly described as a neutral act. We also do not accept Mr. Rylov’s assertion that the symbol is merely a demonstration of support for a “world free of Nazism” and not in support of the war in Ukraine. The “Z” symbol carries with it a very clear and strong signal of support for Russia’s invasion of Ukraine and the message that the invasion is intended to “de-Nazify” Ukraine. The Panel takes notice of video footage and photographic images contained in many international and Russian media reports in which the “Z” symbol is painted or affixed to Russian tanks, trucks and soldiers in Ukraine - that symbol is synonymous with the invasion.

7.5 Although Mr. Rylov did not say anything at the Event, the signal and message that the symbol “Z” represents was clear and strong. The Panel notes that symbolic gestures - such as the raising of a fist on a medal podium, the wearing of an arm band and the display of a symbol - are a powerful and clear demonstration of support and belief in what it represents; words are not necessary. The “Z” symbol is well understood both inside and outside of Russia and Mr. Rylov affixing and displaying that symbol on the front of his national team jacket sent a very clear message of support for Russian military action in Ukraine.

7.6 We also note that Mr. Rylov did not directly address the issue of the “Z” symbol in the Rylov First Response, electing instead to highlight the fact of his verbal silence (discussed above). The Rylov Second Response does seek to address this issue (as discussed in paragraph 7.4 above), but purports to do so couched in an argument that the importance of the “Z” symbol was not made clear in the Referral. This is related to another Rylov argument that the Referral lacks particulars. The Panel disagrees and dismisses this argument because there were sufficient particulars in the Referral to make the particulars of the allegation very clear to Mr. Patsev and Ms. Antseliovich. The Panel concludes that the Referral made it very clear that the allegation centres on Mr. Rylov’s attendance at the Event and his wearing the “Z” symbol on his uniform and rejects the argument that this was unclear.

7.7 Of particular note to the Panel are the photographs tendered as exhibits in the FINA submission and Mr. Rylov’s submission. Exhibit 1.4, titled “Photo Luzhniki”, was tendered by Mr. Rylov and shows him together with a number of other Russian athletes inside what appears to be a holding area prior to the Event. The Panel takes note of the fact that all of the athletes do not have the “Z” symbol affixed to their jackets in that photo. It is also noted that Mr. Rylov is seen wearing a white jacket that is mainly obscured.

7.8 However, Exhibit 1 of the Referral and Exhibit 2 of the FINA response show some of the same athletes with the same jackets worn in “Photo Luzhniki”, but this time with the “Z” symbol affixed. Mr. Rylov is clearly shown with his Russian National Swimming team jacket with the “Z” symbol prominently displayed. The Panel can only conclude that Mr. Rylov put on his jacket with the “Z” symbol attached, and the other athletes affixed the “Z” symbol to their jackets, before going out on the stage. This, and the fact Mr. Alexander Bolshunov was not wearing the “Z” symbol on his jacket, makes it clear to the Panel that Mr. Rylov’s actions were deliberate and voluntary; Mr. Rylov intended to send a clear signal of support at the Event.
The Panel does not accept as credible Mr. Rylov’s evidence that he believed he was simply attending a concert. The photographic evidence submitted by FINA makes it very clear to us that the prevalence of flags bearing the “Z” symbol and signage referring to “de-Nazifying” and anti Nazism would have left Mr. Rylov in no doubt about the purpose of the Event. Only wilful blindness would explain Mr. Rylov’s understanding and belief if it was genuinely held (which the Panel does not).

We are also satisfied that Mr. Rylov’s high profile, both within Russia and internationally, means his actions reflect on aquatics sport and FINA’s reputation. Just as Mr. Rylov’s high profile can be used to positively reflect on and promote the cause of swimming, the opposite is also true. This is especially true when the actions committed took place while Mr. Rylov was wearing a national team jacket and Olympic medals and was standing in solidarity with other high-profile Russian athletes. In this respect, the very sport which is symbolic of his notoriety is directly associated with his actions.

The Panel must consider whether Mr. Rylov’s action in affixing the “Z” symbol at the Event has the effect of bringing the sport of swimming and FINA into disrepute. The Panel’s regrettable conclusion is that it does. This is reinforced first by the evidence of social media condemnation submitted by FINA. It is also affirmed by the international condemnation that has followed the invasion of Ukraine as seen in the UN General Assembly resolution condemning it, the sanctions imposed on Russia by the USA, European Union countries such as Germany, France and Italy, sanctions imposed by the United Kingdom (to name but a few) and Russia’s recent expulsion from the UN Human Rights Council. Mr. Rylov’s public display of the “Z” symbol can only be understood to be in open defiance and disregard of that condemnation and punitive action. This damages the reputation of the sport of swimming in general, and FINA specifically, by being seen to support the Russian invasion. Both swimming and FINA’s reputation are tarnished and they are brought into disrepute because of Mr. Rylov’s actions.

We also do not accept Mr. Rylov’s submission that sanction for his actions would breach his fundamental rights to political expression and free speech. Like all rights, these are subject to limitations such as when their exercise breaches the rights of others; this is plainly the case here when considered in relation to the rights of affected Ukrainians to be free of war and bloodshed. This arguably goes further because of public condemnation by international organisations such as the United Nations that the invasion is a breach of international law and Ukraine’s sovereignty and territorial integrity. With the utmost of respect to Mr. Rylov and Mr. Patsev, the Panel is of the view that likening Mr. Rylov’s actions to an exercise of political rights and freedom of expression mischaracterizes and minimizes what he did.

**Double Jeopardy**

The Panel is well aware of the principle of ne bis in idem. but concludes that it does not apply in this case. At its most basic sense, this principle reflects the tenet that no person should be tried and punished twice for the same matter or crime. That is not the case here. The allegation against Mr. Rylov is only in relation to his open support for the invasion of Ukraine by the affixing and prominent display of the “Z” symbol on his Russian Federation Swimming Team jacket at the Event. It is completely unrelated to FINA’s decision in relation to the Russian swimming team’s participation at the 2022 FINA World Championships. The Panel understands very well that the FINA decision affects the Russian swimming team and Russian competitors at that event. We also note that Mr. Rylov, along with the entire Russian National team, has recently announced his decision that he will not compete at that event because of the decision. The Panel respects Mr. Rylov’s decision and makes clear that this has not affected our evaluation of his case in any way.
8. PANEL’S FINDING

8.1 Mr. Rylov faces an allegation of having violated C. 12.1.3 of the FINA Constitution and Article 2(a) of the FINA Conduct of Conduct. Without in any way making an adjudication on the scope of Article 2(a) of the FINA Conduct of Conduct, the Panel finds that it is of no application to the facts of Mr. Rylov’s case.

8.2 However, the Panel finds that Mr. Rylov’s actions as described above constitute a violation of C. 12.1.3 of the FINA Constitution.

9. SANCTION

9.1 The Panel notes that FINA has suggested that a suspension from all FINA sanctioned competitions and activities for 6 to 12 months is an appropriate sanction.

9.2 In determining the appropriate sanction, the Panel has considered Mr. Rylov’s young age and his decision not to exercise his right to a hearing. The latter has avoided a lengthy process and Mr. Rylov has been given credit for that.

9.3 The Panel determines that Mr. Rylov be suspended from all FINA competitions and activities organized or sanctioned by FINA, including any International Competition on the FINA World Aquatic Calendar as defined in Article BL12 of the FINA By laws, for a period of nine (9) months. For the avoidance of doubt, Mr. Rylov is allowed to train with the Russian Swimming Federation during his suspension. The suspension commences from the date of this decision.

9.4 The period of suspension reflects the seriousness of Mr. Rylov’s actions and the damaging impact it has had and will have on the Aquatics sport and FINA. Mr. Rylov’s high profile in Russia and internationally has only come about because of his great success in international swimming competition and it was only natural and inevitable that his actions at the Event would tarnish the sport and FINA.

9.5 The suspension is also intended to send a clear message to others that such actions have serious consequences and will be dealt with.

9.6 This decision can be appealed to the Court of Arbitration for Sport pursuant to Article C12.13.2 of the FINA Constitution.

Dated this 20th day of April 2022.

Chairman – Mr. R. Duiven

Member – Mrs. N Onyango

Member – Mr. W. Clarke