

DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS ZITA KOSAČ

INTRODUCTION

1. World Athletics has established the Athletics Integrity Unit (“**AIU**”) whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code (“the “**Code**”). World Athletics has delegated implementation of the World Athletics Anti-Doping Rules (“**ADR**”) to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Ms Zita Kosač (“the **Athlete**”) is a 35-year-old Lithuanian road runner¹.
3. This decision is issued by the AIU pursuant to Rule 8.5.6 ADR, which provides as follows:

“8.5.6 In the event that the Athlete or other Person either (i) admits the violation and accepts the proposed Consequences or (ii) is deemed to have admitted the violation and accepted the Consequences as per Rule 8.5.2(f), the Integrity Unit will promptly:

- (a) issue a decision confirming the commission of the violation(s) and the imposition of the specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed);*
- (b) Publicly Report that decision in accordance with Rule 14;*
- (c) send a copy of the decision to the Athlete or other Person and to any other party that has a right, further to Rule 13, to appeal the decision (and any such party may, within 15 days of receipt, request a copy of the full case file pertaining to the decision).”*

THE ATHLETE’S COMMISSION OF AN ANTI-DOPING RULE VIOLATION

4. Rule 2 ADR sets out that the following shall constitute an anti-doping rule violation:

*“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample
[...]”*

5. On 23 April 2023, the Athlete provided a urine Sample, In-Competition, at the ‘Kaunas Marathon’ held in Kaunas, Lithuania (“the **Competition**”), which was given code 1127354 (the “**Sample**”).
6. On 26 May 2023, the World Anti-Doping Agency (“**WADA**”) accredited laboratory in Warsaw, Poland (the “**Laboratory**”) reported an Adverse Analytical Finding in the Sample (the “**AAF**”).

¹ <https://worldathletics.org/athletes/lithuania/zita-kosac-15087439>

for the presence of Methasterone (and its metabolite 2 α ,17 α -dimethyl-5 α -androstane-3 α ,17 β -diol), Mestanolone (and its metabolite 17 α -methyl-5 α -androstane-3 α ,17 β -diol) and metabolites of Oxymetholone (specifically, 2 ξ -hydroxymethyl-17 α -methyl-5 α -androstane-3 α ,17 β -diol, 18-nor-2 ξ ,17 β -hydroxymethyl-17 α methyl-5 α -androst-13-en-3 α -ol, 18-nor-17 β -hydroxymethyl-17 α -methyl-2 α -methyl-5 α -androst-13-en-3-one, 17 α -methyl-17 β -hydroxy-5 α -androstane-3-one, 17 α -methyl-5 α -androstane-3 α ,17 β -diol)² (together, “the **Prohibited Substances**”).

7. Oxymetholone, Mestanolone, and Methasterone are Prohibited Substances under the WADA 2023 Prohibited List under the category S1.1 Anabolic Androgenic Steroids (“**AAS**”). They are Non-Specified Substances prohibited at all times.
8. The AIU reviewed the Adverse Analytical Finding in accordance with Article 5 of the International Standard for Results Management (“**ISRM**”) and determined that:
 - 8.1. the Athlete did not have a Therapeutic Use Exemption (“**TUE**”) that had been granted (or that would be granted) for the Prohibited Substances found in the Sample; and
 - 8.2. there was no apparent departure from the International Standard for Testing and Investigations (“**ISTI**”) or from the International Standard for Laboratories (“**ISL**”) that could reasonably have caused the Adverse Analytical Finding.
9. On 26 June 2023, the AIU notified the Athlete of the AAF in accordance with Article 5.1.2.1 of the ISRM, including that the Adverse Analytical Finding may result in anti-doping rule violations pursuant to Rule 2.1 ADR and/or Rule 2.2 ADR.
10. On 25 July 2023 and in subsequent exchanges, the Athlete provided her explanation to the AIU, which is summarized below:
 - 10.1. On 25 January 2023, the Athlete bought a common nutritional supplement with expiry date 18.08.24 (“the **Supplement**”) from a sport nutrition shop and used it either daily or every two days (2 tablets after training) until the day before the Competition on 23 April 2023³.
 - 10.2. Following notification of the AAF, the Athlete obtained a sealed container of the Supplement (from a different batch) and, with the approval of the AIU, the Athlete sent the open bottle of the Supplement (that she was using at the time of the Competition) and the newly obtained sealed bottle of the same supplement to the Warsaw Laboratory on 26 September 2023 for analysis.

² Methasterone and Mestanolone can also be metabolites of Oxymetholone.

³ The Athlete provided (i) a written statement from her boyfriend confirming that they had visited the nutrition shop together and that he had paid by credit card and (ii) a credit card statement to corroborate that purchase. Furthermore, the Athlete also confirmed that her declaration on her Doping Control Form referred to the Supplement that she had taken.

- 10.3. The Supplement was found to contain the Prohibited Substances at different concentrations by the Warsaw Laboratory⁴.
- 10.4. The Athlete therefore asserted that the Supplement was the source of the Prohibited Substances and that her ingestion (as declared on her DCF and further explained to the AIU) explained the AAF.
11. Following a detailed review and assessment of the circumstances of the case (as explained in further detail below), on 6 February 2024, the AIU wrote to the Athlete stating that it remained satisfied that she had committed anti-doping rule violations pursuant to Rule 2.1 ADR and proposed Consequences that it considered to be appropriate.
12. On 7 February 2024, the AIU received an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form signed by the Athlete.

CONSEQUENCES

13. This is the Athlete's first anti-doping rule violation.
14. Rule 10.2.1 ADR provides that the period of ineligibility to be imposed for the Presence of a Prohibited Substance shall be determined as follows:

*“ 10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method
[...]*

10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility shall be four years where:

- (a) *The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
- (b) *The anti-doping rule violation involves a Specified Substance or a Specified Method and the Integrity Unit can establish that the anti-doping rule violation was intentional*

10.2.2 If Rule 10.2.1 does not apply, then (subject to Rule 10.2.4(a)) the period of Ineligibility will be two years.”

15. Oxymetholone, Mestanolone, and Methasterone are classified as 'Non-Specified Substances'. Rule 10.2.1 ADR specifies that an anti-doping rule violation for a 'Non-Specified Substance'

⁴ According to the test report of the Warsaw Laboratory dated 27 October 2023, Oxymetholone, Methyl-1-testosterone, Dehydrochloromethyltestosterone, Metandienione, Mestanolone and Metylotestosterone were detected in the open container of the Supplement that the Athlete had been taking and Mestanolone was also detected in the sealed container.

carries a 4-year period of Ineligibility unless the Athlete establishes that the violation was not intentional⁵.

16. Having reviewed the Athlete's explanation and taken independent steps to verify it (including by verifying the pharmacokinetics with an independent scientific expert), the AIU accepts that the Athlete has established (on the balance of probabilities) how the Prohibited Substances entered her system and that the anti-doping rule violation was not intentional.
17. The period of ineligibility to be imposed in the Athlete's case is therefore two (2) years, subject to a potential reduction pursuant to Rule 10.5 ADR (No Fault or Negligence) or Rule 10.6 ADR (No Significant Fault or Negligence) based upon the Athlete's level of Fault⁶.

NO FAULT OR NEGLIGENCE

18. Rule 10.5 ADR (No Fault or Negligence)⁷ is manifestly inapplicable in the Athlete's circumstances. There are no exceptional circumstances that exist in this case and the Athlete failed to exercise utmost caution, both of which are conditions to the application of Rule 10.5 ADR⁸.

⁵ Under Rule 10.2.3 *"As used in Rule 10.2, the term 'intentional' is meant to identify those Athletes or other Persons who engage in conduct that they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition will be rebuttably presumed to be not 'intentional' if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition will not be considered 'intentional' if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance."*

⁶ *"Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Rule 10.6.1 or 10.6.2."*

⁷ Under the ADR, an Athlete bears No Fault or Negligence if he/she can establish *"that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been Administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered their system."*

⁸ In addition, according to the Comment to Rule 10.5, *"No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement [...]"*.

NO SIGNIFICANT FAULT OR NEGLIGENCE

19. For the reasons set out below the AIU accepts that Rule 10.6 ADR (No Significant Fault or Negligence) applies to the Athlete's case.
20. Rule 10.6.1 ADR provides as follows in relation to the application of No Significant Fault or Negligence for an anti-doping rule violation involving a Contaminated Product:

“ 10.6.1 Reduction of the period of Ineligibility based on No Significant Fault or Negligence

10.6.1 Reduction of sanctions in particular circumstances for violations of Rule 2.1, 2.2 or 2.6

*All reductions under Rule 10.6.1 are mutually exclusive and not cumulative
[...]*

(b) Contaminated Products

In cases where the Athlete or other Person can establish both No Significant Fault or Negligence for the anti-doping rule violation(s) alleged against them and that the Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility will be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete or other Person's degree of Fault.”

21. If the Athlete can establish (i) No Significant Fault or Negligence and (ii) that the Prohibited Substance(s) came from a Contaminated Product, then the period of Ineligibility of two (2) years may be reduced based on her level of Fault. A Contaminated Product is defined under the ADR as a *“product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search”*.
22. The Warsaw Laboratory has confirmed the presence of the Prohibited Substances in the Supplement used by the Athlete and that a batch of the same supplement from a different batch also contained a separate Prohibited Substance. The Prohibited Substances are not disclosed on the Supplement's product label nor in information that is available from doing a reasonable internet search on the Supplement.
23. The AIU therefore accepts that the Athlete has provided sufficient evidence to establish that the Supplement is a Contaminated Product as defined in the ADR.
24. However, the Athlete must also establish No Significant Fault or Negligence to benefit from the application of Rule 10.6.1(b) to her case.
25. The definition of No Significant Fault or Negligence is set out in the ADR:

“No Significant Fault or Negligence: The Athlete's or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Rule 2.1, the Athlete must establish how the Prohibited Substance entered their system.”

26. According to this definition, it is a condition precedent that the Athlete must establish (on the balance of probabilities) how the Prohibited Substances entered her system⁹.
27. As described above, the Athlete's explanation is that the Prohibited Substances entered her system via the Supplement.
28. The AIU obtained an independent expert scientific opinion which confirmed that the concentrations of the Prohibited Substances in the Sample are consistent with the Athlete's explanation.
29. The AIU therefore accepts that the Athlete's explanation and evidence is sufficient to meet the condition precedent to establish how the Prohibited Substance entered her system in order to establish No Significant Fault or Negligence.
30. A plea of No Significant Fault or Negligence is assessed taking into account the criteria for No Fault or Negligence, i.e., by considering how far the Athlete departed from their duty under the ADR to use *“utmost caution”* to ensure that they would not ingest any prohibited substances or otherwise do anything that might constitute or result in the commission of an anti-doping rule violation.¹⁰ *“The difference between the two [...] is one of degree: to establish No Fault or Negligence, the athlete must show that he took every step available to him to avoid the violation, and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant”*.¹¹ The definition of Fault in the ADR makes clear that the first question is how far the Athlete departed from the duty of utmost caution (i.e., objective fault) and the second question is whether there is any acceptable explanation for that failure (i.e., subjective fault).
31. The AIU has assessed to what extent the Athlete's behaviour constituted a departure from the strict duty of care/standards of behaviour expected from her (objective analysis) and if there are any specific, legitimate reasons that might justify why she failed to exercise that duty of care or to meet the standards expected of her, including to take all steps required to avoid ingesting a Prohibited Substance (subjective analysis).
32. The Athlete's level of Fault must also be determined to establish the appropriate period of Ineligibility within the range of 0-2 years. The AIU has adopted the same approach as that

⁹ The Athlete is not a Protected Person or Recreational Athlete as defined in the ADR.

¹⁰ See for example Kutrovsky v. ITF CAS 2012/A/2804, para. 9.49; FIFA & WADA, CAS 2005 /C/976 & 986 paras 73-75.

¹¹ IBAF v Luque, IBAF Anti-Doping Tribunal Decision dated 13 December 2010, para 6.10.

taken by the Court of Arbitration for Sport (“CAS”)¹² to do so in this case. In particular, the AIU has undertaken a detailed assessment of the Athlete’s objective level of Fault to determine within what category her level of Fault should fall (i.e., “normal” which would result in a period of Ineligibility in the range over 12 months to 24 months, or “light” which would result in a period of Ineligibility between 0 months and up to 12 months) and the Athlete’s subjective level of Fault in the circumstances to determine where within the applicable range the Athlete’s period of Ineligibility should be established.

33. As recognised by CAS jurisprudence *“[i]t has been a known and widely publicised fact for several years that food supplements can be - and sometimes intentionally are -contaminated with products which are prohibited in sports. An athlete who ignores this fact, does so at his/her own risk [...] The athlete’s negligence lies in the fact that he/she uses food supplements which include a generally known risk of contamination. The extent of the precaution taken to reduce the risk of contamination may have a bearing on the extent of the sanctions.”*¹³
34. As to the objective steps that are identified in *Cilic*, the AIU accepts that the Athlete would not have been alerted to any contamination of the Supplement by reading the label, by cross-checking the ingredients with the Prohibited List or by making an internet search of the Supplement¹⁴.
35. Moreover, the AIU also notes that the Supplement is a commonly/routinely used supplement and that nothing on the face of the Supplement (i.e., its packaging or advertising, either on the product itself or online) suggests that it is in any way “performance enhancing”.
36. However, the Athlete still failed to consult with any third party (including any expert) and to instruct them diligently before consuming the Supplement.
37. The AIU therefore considers that on an objective assessment, the Athlete’s degree of Fault falls within the “light” range¹⁵.
38. Per the reasoning of the CAS Panel in *Errani*, the “standard light” degree of Fault leads to a 6-month period of Ineligibility, and as set out in *Cilic*, subjective factors can be used to move the Athlete up or down within that category.
39. The AIU therefore starts from the position that the Athlete’s level of Fault is one of a “standard light” degree, subject to the determination of any subjective factors which might move the Athlete up or down from that point within the applicable range.

¹² See the cases concerning Tennis players Marin Cilic ([CAS 2013/A/3327](#) & [CAS 2013/A/3335](#)) and Sara Errani ([CAS 2017/A/5301](#)).

¹³ CAS 2002/A/385 (para. 50).

¹⁴ The AIU could not find any information available publicly that the Supplement (or any supplements produced by the same manufacturer) had been previously found to be contaminated. The AIU also notes that, upon notification of the AAF, the Athlete contacted the manufacturer who assured her that there was no possibility of contamination with their products.

¹⁵ In a case of “light” degree of Fault, the applicable sanction lays between 0 and up to 12 months depending on the application of any subjective criteria (see para. 194, [CAS 2013/A/3335](#)).

40. In relation to the subjective assessment of the Athlete's Fault, the AIU first considers that the Athlete is not an elite athlete; the Athlete is inexperienced (she has had no formal anti-doping education) and had never been tested before the Kaunas Marathon. The Athlete considers running a hobby as opposed to a career and this is borne out by her competitive results. According to World Athletics' records, the Kaunas Marathon (which the Athlete ran in a time of 2:54:43) was the Athlete's first ever road race. These are subjective factors that weigh in the Athlete's favour in determining the period of Ineligibility to be imposed.
41. However, the Integrity Unit also notes that, notwithstanding her inexperience and lack of formal anti-doping education, the Athlete stated that she was aware of the risk of contamination of supplements (such that she consciously avoided "*pre-workout and fitness slimming products*" for that reason).
42. Overall, the AIU has determined that the Athlete's level of Fault, when viewed in the totality of the circumstances of the case, justifies the imposition of a period of Ineligibility of 6 months.
43. The Athlete has accepted a period of Ineligibility of 6 months by signing an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form on 7 February 2024.

DECISION

44. On the basis that the Athlete has admitted the anti-doping rule violation under Rule 2.1 ADR, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:
- 44.1. a period of Ineligibility of six (6) months commencing on 25 July 2023¹⁶; and
- 44.2. disqualification of the Athlete's results on and since 23 April 2023, with all resulting Consequences, including the forfeiture of any titles, awards, medals, points prizes and appearance money.
45. The Athlete has accepted the above Consequences for her anti-doping rule violation and has expressly waived her right to have those Consequences determined by the Disciplinary Tribunal at a hearing.

PUBLICATION

46. In accordance with Rule 8.5.6(b) ADR, the AIU shall publicly report this decision on the AIU's website.

¹⁶ In accordance with Rules 10.2.1, 10.6.1(b) and 10.13.1 ADR. The Athlete shall receive no credit for the period of Provisional Suspension served since 26 June 2023 under Rule 10.13.2(a) due to her participation in the 'Rimi Vilnius Marathon' on 10 September 2023 in breach of the prohibition on participation during Provisional Suspension. However, in the specific circumstances of this case, the AIU has exceptionally agreed to backdate the commencement of the Athlete's period of Ineligibility to the date of her first explanation for the AAF (i.e., 25 July 2023) based on the application of Rule 10.13.1 ADR (Delays not attributable to the Athlete).

RIGHTS OF APPEAL

47. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
48. Further to Rule 13.2.3 ADR, WADA and the Lithuanian Antidoping Agency have a right of appeal against this decision to the CAS in Lausanne, Switzerland, in accordance with the procedure set out at Rule 13.6.1 ADR.
49. If an appeal is filed against this decision by WADA or the Lithuanian Antidoping Agency, the Athlete will be entitled to exercise her right of cross-appeal in accordance with Rule 13.2.4 ADR.

Monaco, 16 February 2024