

DECISION IN THE MATTER OF YELENA ARZHAKOVA (“ATHLETE”)

1 FACTUAL BACKGROUND

- 1.1. On 16 July 2016 and 9 December 2016, Prof. Richard McLaren published two reports into allegations of a systemic doping scheme in Russia (the First¹ and Second McLaren Reports², together the “McLaren Reports”). In the McLaren Reports, Prof. McLaren made findings with respect to the scheme and concluded that Russian athletes had been protected over the course of years. In other words, a vast number of positive samples had been officially reported as negative. The three main counter-detection methodologies which were used in Russia, at least between 2011 and 2015, were the so-called (i) Disappearing Positives Methodology (“DPM”)³, (ii) the Sample Swapping Methodology⁴ and (iii) Washout Testing⁵.
- 1.2. On 30 October 2017, the World Anti-Doping Agency (“WADA”) Intelligence & Investigations Department (“WADA I&I”) secured from a whistleblower a copy of the Laboratory Information Management System (“LIMS”) data of the Moscow Laboratory for the years 2011 to August 2015 (the “2015 LIMS”).
- 1.3. The LIMS is a system that allows a laboratory to manage a sample through the analytical process and the resultant analytical data. Conceptually, the LIMS is a warehouse of multiple databases organized by year. The most relevant anti-doping data within the LIMS are those related to sample reception, analysis, and the actions of users within the system. This pertinent data is housed in key tables including: “bags”, “samples”, “screening”, “found” (or “scr_results” prior to 2013), “confirmation”, “MS_data” (or “Pro_4” prior to 2013) and “pdf”.

¹ <https://www.wada-ama.org/en/resources/doping-control-process/mclaren-independent-investigation-report-part-i>.

² <https://www.wada-ama.org/en/media/news/2016-12/wada-publishes-independent-mclaren-investigation-report-part-ii>.

³ Where the initial testing procedure of a sample revealed a Presumptive Adverse Analytical Finding the athlete would be identified and the Russian Ministry of Sport would decide either to “SAVE” or to “QUARANTINE” the athlete in question. The instruction would typically be sent by email; however, at times, “SAVE” instructions were also known to be given by other means than email, e.g., orally or by text message and certain athletes were automatically protected without the need for any instruction. If the instruction was “SAVE”, the analysis of the sample would stop and the Moscow Laboratory would report the sample as “negative” in ADAMS.

⁴ The Sample Swapping Methodology involved the replacing of “dirty” urine with “clean” urine by removing and replacing the cap on sealed B sample bottles. This was facilitated by the establishment and maintenance of a “Clean Urine Bank” at the Moscow Laboratory.

⁵ The Washout Technique was developed in order to determine whether the athletes on a doping program were likely to test positive. Even when the samples screened positive, they were automatically reported as negative in ADAMS. See page 23 and 72 of the Second McLaren Report.

- 1.4. Subsequently, as part of the reinstatement process of the Russian Anti-Doping Agency (RUSADA), WADA required *inter alia* that authentic analytical data from the Moscow Laboratory for the years 2012 to 2015 be provided. Access to the Moscow Laboratory was therefore given to a team of WADA-selected experts, who were allowed to remove data from the Moscow Laboratory, including another copy of the LIMS data for the relevant years (the “2019 LIMS”) as well as the underlying analytical PDFs and raw data of the analyses reported in the LIMS (the “Analytical Data”). The analytical PDFs are automatically generated from the instruments and contain the chromatograms, which demonstrate whether a substance is present or not in a given sample.
- 1.5. Further investigations were conducted by WADA I&I in collaboration with forensic experts from the University of Lausanne on the data retrieved from the Moscow Laboratory and evidence of manipulation of the 2019 LIMS was uncovered, in particular, to remove positive findings contained in the LIMS. On that basis, WADA I&I concluded that the 2015 LIMS was reliable (and the 2019 LIMS was not). WADA I&I also identified evidence of deletions/alterations of Analytical Data to remove evidence of positive findings prior to WADA’s retrieval mission in January 2019.⁶
- 1.6. In the present case, the 2015 LIMS data and the Analytical Data show that a number of the Athlete’s samples contained prohibited substances and were not reported as positive as part of the Russian manipulation scheme. More particularly:
- 1.7. **Sample 2674309**
 - 1.7.1. On 11 June 2012, the Athlete was subject to an in-competition urine doping control. The 2015 LIMS indicates that ostarine was found in this sample. The sample was subject to a successful confirmation procedure according to the 2015 LIMS.
 - 1.7.2. Ostarine is a selective androgen receptor modulator (“SARM”) prohibited under S1.2 of the 2012 WADA Prohibited List.
 - 1.7.3. The sample was reported as negative by the Moscow laboratory.
- 1.8. **Sample 2673559**
 - 1.8.1. On 20 June 2012, the Athlete was subject to an out-of-competition urine doping control. The 2015 LIMS indicates that ostarine was found in this sample.
 - 1.8.2. The sample was reported as negative by the Moscow laboratory.

⁶ See in particular CAS 2020/O/6689, para. 614: “*The Panel finds that, prior to the Moscow Data being retrieved by WADA in January 2019, and during its retrieval, it was subjected to deliberate, sophisticated and brazen alterations, amendments and deletions. Those alterations, amendments and deletions were intentionally carried out in order to remove or obfuscate evidence of improper activities carried out by the Moscow Laboratory as identified in the McLaren Reports or to interfere with WADA’s analysis of the Moscow Data*”.

1.9. Sample 2729640

- 1.9.1. On 17 July 2012, the Athlete was subject to an out-of-competition urine doping control. The 2015 LIMS indicates that a T/E ratio of 8.3 was found in this sample⁷.
- 1.9.2. This sample was recorded on the London Washout Schedules (EDP0019) with the following text:

8884	2729640	f	17.07.2012	Moscow	T/E = 8 (<i>also EPO was ordered, no results yet</i>)
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- 1.9.3. The sample was reported as negative by the Moscow laboratory. The T/E reported into ADAMS was 2.3.

1.10. In addition, there is evidence that the Athlete was a protected athlete:

- 1.10.1. The Athlete's name "Аржакова" appears next to a sample in the LIMS.
- 1.10.2. The Athlete's name appears in a Clean Urine Bank issued in 2015 (EDP0757) next to the codes X107 and X108.

2 PROCEDURAL BACKGROUND

- 2.1. On 17 December 2021, the Athlete was notified of the potential anti-doping rule violations and of her right to provide explanations by 14 January 2022 or to admit the potential anti-doping rule violations *inter alia*.
- 2.2. The Athlete did not respond to the 17 December 2021 letter.
- 2.3. As a result, on 25 March 2022, the AIU noted that the Athlete had not provided any explanations within the deadline and maintained its assertion that she had committed anti-doping rule violations. The Athlete was granted an opportunity to request a hearing by 8 April 2022. The Athlete was specifically informed that, if she failed to request a hearing, she would be deemed to have waived her right to a hearing and to have accepted the asserted anti-doping rule violations, and that the AIU would render a decision confirming the imposition of the consequences set out in the letter.
- 2.4. The Athlete did not respond to the 25 March 2022 letter.
- 2.5. On 11 April 2022, exceptionally, the AIU set a final deadline of 14 April 2022 for the Athlete to request a hearing, failing which the AIU would render a decision confirming the imposition of the consequences set out at section 4 of the attached Notice (i.e., a period of Ineligibility of 2 years and disqualification of results from 29 January 2015 onwards).

⁷ The T/E value was confirmed at 8.7 according to the 2015 LIMS.

2.6. The 11 April 2022 email similarly remained unanswered.

3 REASONED DECISION

A) Applicable Rules

3.1. Pursuant to Rule 1.7.2(b) of the 2021 World Athletics⁸ Anti-Doping Rules (“**WA ADR**”), anti-doping rule violations committed prior to 1 January 2021 shall be governed by the substantive Anti-Doping Rules in effect at the time the alleged anti-doping rule violation occurred and, with respect to procedural matters, by the 2016-2017 IAAF Competition Rules (the “**2016 IAAF Competition Rules**”) for anti-doping rule violations committed prior to 3 April 2017.

3.2. As the Athlete’s anti-doping rule violations occurred in 2012, they are governed by the rules at the time of their commission, viz. the 2012-2013 IAAF Competition Rules (the “**IAAF Competition Rules**”), subject to the application of the principle of *lex mitior*.

B) Anti-Doping Rule Violations

3.3. Per Rule 32.2(b) of the IAAF Competition Rules, the Use of Prohibited Substances constitutes an anti-doping rule violation. The provision adds the following:

“(i) it is each Athlete’s personal duty to ensure that no Prohibited Substance enters his body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

“(ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an antidoping rule violation to be committed.”

3.4. Use within the meaning of Rule 32.2(b) of the IAAF Competition Rules can be established “*by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, experts reports, documentary evidence, conclusions drawn from longitudinal profiling and other analytical information*” (Rule 33.3 of the IAAF Competition Rules).

3.5. In the present case, the 2015 LIMS data and underlying Analytical Data, as well as the EDP evidence, show that ostarine and testosterone or its precursors were detected in samples collected from the Athlete in 2012. This clear and reliable evidence shows that the Athlete used Prohibited Substances in 2012 in breach of Rule 32.2(b) of the IAAF Competition Rules.

⁸ Previously the International Association of Athletics Federations (“**IAAF**”)

- 3.6. In addition, the AIU notes that, when confronted with the anti-doping rule violations, the Athlete did not challenge them and is therefore deemed to have accepted them.
- 3.7. In view of the above, it is clear that the Athlete committed anti-doping rule violations in breach of Rule 32.2(b) of the IAAF Competition Rules in 2012.

C) Applicable Consequences

- 3.8. By way of background, the AIU notes that the Athlete was previously sanctioned with a period of Ineligibility of two years from 29 January 2013 until 28 January 2015 (with Disqualification of results from 12 July 2011) for a violation involving her athlete biological passport (the “**First Violation**”).

a. Period of Ineligibility

- 3.9. Per Rule 40.7(d)(i), “[f]or the purposes of imposing sanctions under Rule 40.7, an anti-doping rule violation will only be considered a second violation if it can be established that the Athlete or other Person committed the second anti-doping rule violation after the Athlete or other Person received notice pursuant to Rule 37 (Results Management) or after reasonable efforts were made to give notice of the first anti-doping rule violation; if this cannot be established, the violations shall be considered together as one single first violation and the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6).”
- 3.10. In the present case, the Athlete committed the 2012 anti-doping rule violations prior to her notification of the First Violation on 14 January 2013. As a result, the 2012 anti-doping rule violations cannot count as a second violation for the purposes of Rule 40.7(d)(i) and shall be considered as a single first violation together with the First Violation.
- 3.11. To determine the applicable sanction, the applicable rules indicate that, where multiple violations are to be considered together, “the sanction imposed shall be based on the violation that carries the more severe sanction”.
- 3.12. As set out above, the 2012 anti-doping rule violations shall be considered as a first violation together with the First Violation. In this respect, Rule 40.2 of the IAAF Competition Rules sets out that “[t]he period of Ineligibility imposed for a violation of [...] 32.2(b) (Use or Attempted Use of a Prohibited Substances or Prohibited Method) [...], unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows: First Violation: Two (2) years’ Ineligibility.”
- 3.13. Pursuant to Rule 40.6 of the IAAF Competition Rules, if it is established that “aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the

Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.”

- 3.14. Examples of aggravating circumstances include the following per Rule 40.6(a) of the IAAF Competition Rules: *“the Athlete or other Person committed the antidoping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation.”*
- 3.15. In the present case, a number of aggravating circumstances are present:
- 3.15.1. First, the 2012 anti-doping rule violations were committed as part of the most sophisticated doping and anti-detection scheme in history, specifically aimed at ensuring that athletes who were using prohibited substances would escape any sanction. The fact that the Athlete was protected by, and benefitted from, the scheme is further confirmed by (i) the fact that her name was explicitly mentioned in the LIMS data, which is highly improper as laboratory analyses are meant to be anonymous (see art. 9.3.3 of the 2012 WADA International Standard for Testing), and (ii) the fact that her name appears on a clean urine bank. In addition, one of the Athlete’s sample featured on a London Washout Schedule.
- 3.15.2. Second, the Athlete’s violations involve multiple Prohibited Substances, namely ostarine and testosterone or its precursors.
- 3.15.3. Third, Rule 40.6 sets out that *“the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)”*. Here, the Athlete committed the First Violation, which is a separate anti-doping rule violation independently established and therefore an additional aggravating circumstance as such.
- 3.15.4. Fourth, it is noteworthy that these violations were committed in the lead-up to the 2012 Olympic Games, i.e. one of the most important events in the sport of Athletics, for which the Athlete was monitored as part of the London Washout Schedules.
- 3.16. In view of all the above, it is clear that a number of aggravating circumstances are present with respect to the Athlete’s 2012 anti-doping rule violations and that the maximum sanction of four years of Ineligibility under Rule 40.6 of the IAAF Competition Rules is therefore warranted and proportional to the serious offences committed. As

the Athlete already received a two-year sanction for the First Violation, only an additional two-year period of Ineligibility shall be imposed.

- 3.17. In view of all the above, the Athlete is imposed an additional two-year period of Ineligibility for the present anti-doping rule violations.

b. Disqualification

- 3.18. Per Rule 40.8 of the IAAF Competition Rules, “[i]n addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money.”

- 3.19. In the present case, the first evidence of the Athlete’s anti-doping rule violations was on 11 June 2012. As a result, per Rule 40.8 of the IAAF Competition Rules, all results obtained by the Athlete from 11 June 2012 until the date of this decision shall in principle be disqualified. The AIU sees no reasons of fairness justifying otherwise given the severity of the violations and the number of violations committed by the Athlete over the course of years. In addition, the Athlete has not even sought to argue that the fairness exception should apply.

- 3.20. However, as noted above, the results obtained by the Athlete from 12 July 2011 until 28 January 2013 included were already disqualified, and the Athlete was moreover Ineligible from 29 January 2013 until 28 January 2015 as a result of the First Violation. Therefore, only the remaining results, i.e., from 29 January 2015 onwards, shall be disqualified.

D) Dispositive

- 3.21. In view of all the above, the following decision is hereby rendered (with binding effect on all Signatories to the World Anti-Doping Code, in all sports and countries as per Code Article 15):

3.21.1. The Athlete is found to have committed anti-doping rule violations under Rule 32.2(b) of the IAAF Competition Rules;

3.21.2. The Athlete is imposed an additional period of Ineligibility of two years starting from the date of the present decision;

3.21.3. All competitive results obtained by the Athlete from 29 January 2015 until the date of this decision are disqualified, with all of the resulting consequences, including forfeiture of any medals, titles, points, prize money and prizes.

3.22. The disposition of the matter will be Publicly Disclosed in accordance with Rule 43 of the 2016 IAAF Competition Rules.

3.23. This decision is subject to appeal under Rule 42 of the 2016 IAAF Competition Rules.

Monaco, 11 July 2022