

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF  
WORLD ATHLETICS**

Before:

Despina Mavromati (Chair)  
Janie Soublière  
Paul Ciucur

**BETWEEN:**

**World Athletics**

**Anti-Doping Organisation**

and

**Marina Arzamasova**

**Respondent**

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**DECISION OF THE DISCIPLINARY TRIBUNAL**

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**A. INTRODUCTION**

1. The Claimant, World Athletics ('WA'), formerly the International Association of Athletics Federations ('IAAF'), is the International Federation governing the sport of Athletics worldwide. It has its registered seat in Monaco. Pursuant to Art. 1.2 of 2019 IAAF Anti-Doping Rules ('ADR'), WA has delegated authority for results management and hearings of all cases brought under the ADR to the Athletics Integrity Unit ('AIU').
2. The Respondent, Ms Marina Arzamasova ('the Athlete') is a 32-year-old athlete from Belarus.

**THE INDEPENDENT EXPERTS**

3. The Athlete has been charged with an Anti-Doping Rule Violation ('ADRV') involving the presence and use of LGD-4033, which is not in dispute. The AIU submits that because the Athlete has not established the origin of LGD-4033 to the required standard of proof, her ADRV can only be concluded to be intentional. The Athlete, however, submits that her ADRV cannot be found to be intentional because it was caused by a contaminated supplement. As a result, she argues that she can only be found to have No Fault or Negligence or No Significant Fault or Negligence for the ADRV for which she has been charged.
4. The Disciplinary Tribunal ('the Panel') was convened pursuant to Art. 8.5 ADR. Pursuant to Art. 8.9.2 ADR, this document constitutes the Panel's Decision. The Panel considered the entirety of the materials put before it even where this decision does not explicitly refer to a particular point, document or submission.

## **B. FACTUAL AND PROCEDURAL BACKGROUND**

5. This is a summary of the undisputed factual and procedural background.
6. On 29 July 2019, the Athlete underwent an Out-of-Competition doping control in Yuhnovka, Belarus. The Athlete provided a urine sample coded 3137977 ('the Sample').
7. The WADA-accredited laboratory in Seibersdorf, Austria ('the Laboratory') analysed the Sample and reported an Adverse Analytical Finding ('AAF') of LGD-4033.
8. LGD-4033 is a Selective Androgen Receptor Modulator ('SARM') and is expressly listed in S1.2 (Other Anabolic Agents) of the 2019 Prohibited List. It is a non-specified substance and it is prohibited at all times in athletics.
9. On 22 August 2019, by way of a Notice of Allegation, the AIU notified the Athlete (on behalf of World Athletics) of the AAF and imposed a Provisional Suspension effective immediately. The Athlete was also *inter alia* informed of her right to exercise her right to the analysis of her B Sample and invited to provide an explanation for the AAF.
10. On 28 August 2019, the Athlete responded to the Notice of Allegation stating that she did not use any Prohibited Substance and requested the analysis of her B Sample as well as her A and B Sample Laboratory Documentation Packages (the 'LDP').

11. On 19 September 2019, the Athlete attended the opening of her B Sample, accompanied by her representative Ms Sviatlana Pradun from the Belarusian Anti-Doping laboratory in Minsk (the 'BADL'). On 20 September 2019, the Laboratory reported that the B Sample analysis had confirmed the A Sample result and the Athlete was informed accordingly by the AIU on 24 September 2019.
12. On 1 October 2019, the AIU provided the Athlete with the LDPs for her A and B Samples and gave her an opportunity to provide a final explanation by 13 October 2019.
13. On 4 October 2019, the Athlete requested the agreement of the AIU in order for the AIU to send her supplements to the Laboratory for analysis. She also informed the AIU that testing conducted by the BADL had already found traces of LGD-4033 in some of her supplements.
14. On 11 October 2019, the AIU granted the Athlete's request, indicating that the Athlete could send her supplements to the WADA-accredited laboratory in Lausanne, Switzerland (the 'Lausanne Laboratory').
15. On 4 October 2019, the Athlete was requested to provide the AIU with the name of the supplement in which the BADL detected LGD-4033 along with the test report. On the same day, the Athlete provided the name of the allegedly contaminated supplement as BCAA 2:1:1 Mango Orange by Epic Labs ('BCAA 2:1:1').
16. On 8 October 2019, the Athlete provided a report from the BADL regarding the analysis of the BCAA 2:1:1 as well as other supplements. The report indicated, *inter alia*, that out of testing 6 samples of nutritional supplements, LGD-4033 was found in three samples of nutritional supplements (see Epic Labs BCAA samples 1-4 in the table below).

<b>N°</b>	<b>Description</b>	<b>Estimated consumption</b>	<b>Estimated amount of LGD-4033 detected by BADL (ng/g)</b>	<b>Estimated amount of LGD-4033 detected by LAD (ng/g)</b>	<b>BADL Code</b>
<b>1</b>	Epic Labs BCAA 2:1:1 (exp. 09/2023) Mango Orange	70 g consumed <i>Opened sample; content in the package before admission to BADL: less than half the package</i>	65.6	30-55	0009a/2019

<b>2</b>	Epic Labs BCAA 2:1:1 (exp. 08/2021) Mango Orange	178 g consumed <i>Opened sample Less than half the package before admission to the BADL</i>	0.5	Not submitted for analysis to the LAD	0008a/ 2019
<b>3</b>	Epic Labs BCAA 4:1:1 (exp. 09/2021) Strawberry	30-36 pg/mg <i>Opened sample; content in the package upon admission to BADL: less than half the package</i>	1.5	Not submitted for analysis to the LAD	0011a/ 2019
<b>4</b>	Epic Labs BCAA 2:1:1 (exp. 09/2023) Mango Orange	New (sealed product)	40-116	30-35	0014a/ 2019
<b>5</b>	Epic Labs BCAA 2:1:1 (exp. 09/2023) Mango Orange	New (sealed product bought in Minsk)	Not submitted for analysis to the BADL	30-36	NA

17. On 10 October 2019, the Athlete explained that three bottles of BCAA 2:1:1 were given to her by a former teammate and friend of her coach at the European Games in Minsk on 23 June 2019 and she used the three bottles (one scoop twice a day) in parallel from the beginning of July until two or three days prior to the doping control on 29 July 2019.
18. On 14 October 2019, the Athlete provided pictures of the supplements that she was sending to the Lausanne Laboratory, explaining that the bottle of BCAA 2:1:1 labelled 0009a/2019 was the one she had been using in July prior to the doping control, the one labelled 0014a/2019 was sent to the BADL sealed and the third one was a new sealed bottle.
19. On 21 December 2019, the AIU informed the Athlete that the Lausanne Laboratory had found LGD-4033 in the three bottles of BCAA 2:1:1 as per the table above and gave the Athlete an opportunity to provide a final explanation by 8 January 2020.
20. On 30 December 2019, the Athlete provided a more detailed explanation regarding her use of BCAA 2:1:1 and how she had obtained the supplement. According to her statements, a person by the name of Denis Sinutko had bought three bottles of the supplement through an online shop on 7 June 2019 while residing in Russia and delivered them to her when he visited Minsk for the European Games.

21. The Athlete was interviewed by the AIU on 18 February 2020 ('the First Interview') and on 30 April 2020 ('the Second Interview') in order to clarify her explanation.
22. On 12 March 2020, the Athlete informed the AIU that the two requested bottles had been returned by the BADL nearly empty and that she was now unable to locate them.
23. On 1 May 2020, the Athlete informed the AIU that the medical examination had actually taken place on 29 July 2019, i.e. the same day as the Sample collection and she provided photos of three related medical documents. On 4 May 2020, the Athlete confirmed that the last intake of BCAA was on 28 July 2019, i.e., the day before the Sample was collected.

### **C. PROCEDURAL HISTORY AND EXCHANGE OF SUBMISSIONS**

24. On 28 July 2020, the AIU issued the Athlete with a Notice of Charge for violations of Art. 2.1 ADR and Art. 2.2 ADR under Art. 8.4.2 ADR. In this letter, the AIU indicated that it was its position that the Athlete had not established how the Prohibited Substance entered her body as she was unable to provide any proof of purchase for the alleged contaminated supplement and that the use of the said supplement described by the Athlete could not account for the finding in her Sample.
25. On 4 August 2020, the Athlete's Counsel, Mr. Sergei Mishin, informed the AIU that he was representing the Athlete together with Mr Sergei Lisin and requested the disclosure of the expert opinions referenced in the Notice of Charge. On 7 August 2020, the Athlete's Counsel requested a hearing before the Disciplinary Panel.
26. On 10 August 2020, the AIU explained the consultation process it had undertaken and attached the expert opinion of Prof. Christiane Ayotte. The Athlete was requested to provide a summary of the Athlete's case in accordance with Art. 8.4.4 ADR by 14 August 2020.
27. On 12 August 2020, the Athlete wrote to the AIU that she had "requested a hearing of this case on the premise that she: (i) is not satisfied with the conclusion contained in the expert opinion furnished so far by AIU, and (ii) believes to have established how the Prohibited Substance entered her body."
28. On 13 August 2020, Dr Despina Mavromati was appointed as Chair of the Panel to determine the matter. A Preliminary Meeting was scheduled on 20 August 2020 and the Chair issued Procedural Directions for the determination of this matter ('the Directions').

29. The Parties filed their respective submissions in accordance with the procedural calendar established by the Directions, after two short deadline extensions granted by the Panel following the Parties' requests.
30. On 9 September 2020, Ms Janie Soublière and Mr Paul Ciucur were respectively appointed as members of the Panel.
31. Following the Athlete's submissions, which included several untranslated documents in Russian, the Panel requested and obtained the certified translations of these submissions from the Athlete on 20 October 2020.
32. The AIU was granted a deadline until 27 October 2020 in order to submit its reply or rebuttal brief but informed the Panel on that same day that it would deal with any point arising from the Athlete's Brief at the Hearing.

## **D. HEARING BEFORE THE DISCIPLINARY PANEL AND PROCEDURAL REQUESTS**

### **1) The Hearing**

33. On 12 November 2020, a Hearing took place pursuant to Art. 8.8 ADR and by Zoom video conference call. At the outset of the Hearing, the Parties confirmed that they did not have any objections as to the composition of the Panel.

34. The hearing was attended by the following persons:

Sport Resolutions (UK) (Secretariat to the Disciplinary Panel):

- Joshua Ingham-Headland, Case Manager

For WA:

- Mr Adam Taylor, WA Counsel
- Ms Laura Gallo, AIU

Expert Witnesses called by WA:

- Prof. Martial Saugy, Director of Research & Expertise in antidoping Sciences (REDS) and former Director of the WADA Accredited Laboratory in Lausanne, Switzerland. Prof. Saugy provided a testimony with respect to the source of the LGD-4033 in the Sample.

For the Athlete:

- Ms Marina Arzamasova (the Athlete)
- Mr Sergei R. Lisin, the Athlete's Counsel

- Mr Sergei A. Mishin, the Athlete's Counsel

Witnesses called by the Athlete:

- The Athlete, Ms Marina Arzamasova, who described how she obtained and consumed the contaminated supplement that allegedly caused the AAF.
- Mr Alexander Trutko, husband of the Athlete's coach. Mr Trutko provided a testimony in relation to the ordering and purchase of the BCAA supplement through Mr Sinutko.

Observers: - Ms Narges Keshavarz, Assistant to Dr. Despina Mavromati

35. The hearing followed the timetable essentially agreed between the parties and was recorded.

36. The Panel heard opening and closing submissions and evidence from:

- a) the AIU and
- b) the Athlete.

## **2) Procedural and Evidentiary Requests**

37. One day prior to the hearing, Counsel for the Athlete informed the Panel that one of the witnesses initially called by the Athlete, Mr Sinutko, would not attend the hearing due to personal reasons. Counsel for World Athletics stated during the hearing that an adverse inference should be drawn by the non-presence of such witness at the hearing and that his witness statement provided by the Athlete should not be given any evidentiary weight, to the extent that WA was not in a position to challenge his statement. The Panel noted the objection but specified that under Rule 7.5 of the Disciplinary Tribunal Rules, because Mr. Sinutko is not a party to these proceedings an adverse inference could not be drawn from his absence. Rather his absence would have a bearing on the weight given to his written testimony in the Panel's deliberations.

38. During the closing arguments, Counsel for the Athlete filed several requests for post-hearing submissions, including: a request for re-translation of certain disputed parts of the Athlete's interviews; a request to call the Athlete's coach as a witness; and finally, a request to be allowed to provide the evidence of some allegedly late-discovered WhatsApp messages between Mr Trutko and Mr Sinutko. The AIU explicitly objected to the admission of all these requests. By a letter sent to the parties on 13 November 2020, the Panel dismissed the late requests for production and the reasons for this are further explained below.

39. With respect to the Athlete's request to provide a new translation of certain disputed parts of the Athlete's interviews with the AIU, the Panel notes that it was the Athlete herself who validated the transcript of these interviews. Even if the Athlete was not represented at the time she validated the translation, the Athlete's Counsel had plenty of time and opportunity to adduce their corrections to such translation along with the Athlete's submissions; this is reinforced by the fact that one of the Athlete's Counsel is also a certified translator into English, who could have spotted any inconsistencies or inaccuracies in such translations. The Panel further notes the objection raised by World Athletics as to the admissibility of such a late request.
40. For the same reasons the Panel decided not to entertain the possibility of the Athlete filing a post hearing brief adducing testimony from a new witness, namely the Athlete's coach, who was referred to as a possible witness for the first time during the Athlete's closing statements. She had ample time and opportunity to call the witnesses of her choice during the evidentiary proceedings and chose only to call Mr Sinutko – who could eventually not testify for personal reasons – and Mr Trutko, the coach's husband. Such a request, filed at this late stage of the proceedings, could not be accepted by the Panel.
41. Furthermore, the Athlete's Counsel requested to admit the production of some allegedly newly discovered WhatsApp messages. These could allegedly establish the discussions between Mr Sinutko and Mr Trutko regarding the order of the nutritional supplements Epic Labs from Russia. The Panel refers to its aforementioned analysis for its refusal to accept this – manifestly late – production of evidence to the file. Moreover, this request was submitted shortly after the evidence of Mr Trutko: when the latter was asked by the Panel whether he had kept any messages from his correspondence with Mr Sinutko, he specifically answered that he was expecting this question but did not keep track of any calls or messages on his phone. Again, the Athlete's Counsel had ample opportunities to explore and adduce similar evidence during the evidentiary procedure, knowing that this constitutes a crucial element for the veracity of the Athlete's allegations. There were no apparent exceptional circumstances to justify the late discovery of such messages. Therefore, and in view of World Athletic's objection in this respect, all requests for post-hearing submissions were dismissed by the Panel.
42. At the end of the hearing, both parties confirmed that they had no objections with the conduct of the proceedings, with the conduct of the hearing and with their right to be heard.



## THE SUBMISSIONS OF THE PARTIES

### 1) World Athletics

43. World Athletics submits that it has established that the Athlete has committed an ADRV pursuant to Art. 2.1 ADR (and Art. 2.2 ADR) by virtue of her B Sample analysis, confirming the finding of an AAF for LGD-4033 in her A Sample. LGD-4033 is classified as a non-specified substance under the WADA Prohibited List.
44. World Athletics further submitted that according to Art. 7.3 ADR, the Athlete did not reveal the existence of a valid Therapeutic Use Exemption ('TUE') that would justify the presence of LGD-4033 in the Sample. There were further no apparent departures from the International Standard for Testing and Investigations ('ISTI') or International Standard for Laboratories ('ISL') that could have caused the AAF.
45. World Athletics' position can be summarized as follows:
- 45.1 The Athlete's Sample returned an AAF for LGD-4033, a non-specified substance prohibited at all times, which was confirmed by the B Sample analysis and further to which the Athlete admitted the ADRV.
- 45.2 The Panel should be comfortably satisfied that the Athlete has committed violations of Art. 2.1 and Art. 2.2 ADR.
- 45.3 The consequence of such ADRV should be an Ineligibility period of four years pursuant to Art. 10.2.1 ADR, since the LGD-4033 is a non-specified substance and the Athlete could not establish that the use of the Prohibited Substance was not intentional.
- 45.4 The Athlete failed to satisfy her burden that the ADRV was not intentional, to the extent that she could not establish, on the balance of probabilities, the origin of the substance. According to well-established CAS case law, establishing the origin of the substance is a condition in order to demonstrate that the violation was not intentional.
- 45.5 World Athletics supports that the Athlete must present sufficient evidence in order to establish not only that a scenario is merely possible (or present mere speculation), but leave the Panel actually "satisfied (albeit not comfortably so) that the Athlete's defence is more likely than not (to be) true."
- 45.6 The Athlete failed to meet her burden through her allegation that the AAF occurred following the ingestion of a contaminated supplement Epic Labs BCAA.
- 45.7 First, the Athlete failed to mention such supplement even though she meticulously listed a number of other medication and supplements she had been taking up prior to the

Sample collection; second, the Athlete failed to provide proof of purchase of the said supplements, such as the order confirmation or other.

45.7.1 To the contrary, the explanation provided by the Athlete lacks credibility: there is no valid reason why an Athlete would seek to purchase a “basic” supplement from abroad and through third party intermediaries, all the more since such supplement was available at the time in Minsk.

45.7.2 Third, the amount of LGD-4033 found in the Athlete’s Sample is not consistent with the contamination scenario described by the Athlete and could not have caused the AAF according to the experts called by AIU, namely Prof. Ayotte and Prof. Saugy.

45.7.3 Even the BCAA product with the highest concentration of LGD-4033 and the maximum quantity taken by the Athlete daily would not lead to the Adverse Analytical Finding, namely a finding of LGD-4033 at a concentration of 30 ng/mL (or anything near that value).

45.7.4 Moreover, as noted by Prof. Ayotte, “the parent compound at 30 ng/mL is consistent with a recent ingestion of a significant (as opposed to traces) dose of LGD-4033”.

45.7.5 WA submits that it is not sufficient to establish that a supplement is contaminated with the Prohibited Substance found in the Athlete’s Sample in order to establish the origin of the substance; what is needed rather is to demonstrate that it was the ingestion of the contaminated product that was at the origin of the AAF.

45.7.6 Finally, WA submits that contaminated supplements by Epic Labs were found to be the source of an LGD-4033 finding in another case involving a Russian athlete in proceedings before the Russian Anti-Doping Agency shortly before the Athlete’s positive test. The Athlete sent the same supplements as the Russian athlete for laboratory analysis, despite not disclosing them on the Doping Control Form, and was represented by the same lawyer.

45.8 Should the Panel find that the Athlete has met her burden of establishing the origin of the LGD-4033 in her Sample on a balance of probabilities, she should still not benefit from a finding of No Significant Fault or Negligence or, by extension, an application of Art. 10.5.1 (b) of the ADR (contaminated products). No Significant Fault or Negligence can only apply in exceptional circumstances that are not met in the present case.

46. WA's requests for relief are as follows:

“(i) to rule that the Panel has jurisdiction to decide on the subject matter of this dispute.

(ii) to find that the Athlete has committed ADRVs pursuant to Art. 2.1 ADR and Art. 2.2 ADR;

(iii) to impose a period of Ineligibility of four years upon the Athlete, commencing on the date of the Panel's Award. The period of Provisional Suspension imposed on the Athlete from 22 August 2019 until the date of the Panel's Award shall be credited against the total period of Ineligibility, provided that it has been effectively served by the Athlete.

(iv) to order the disqualification of any results obtained by the Athlete between 29 July 2019 and 22 August 2019 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Art. 10.8 ADR.

(v) to award World Athletics a contribution to its legal costs in relation to this matter.”

## **2) The Athlete**

47. The Athlete's position can be summarized as follows:

47.1 The Athlete submits that she has always used BCAA-type supplements but does not use a particular brand. Her only requirements are that the ratio is of 2:1:1, that it has a citrus taste and come from a good manufacturer and there is no previous doping case involving the supplement.

47.2 Prior to the 2019 European Games, the Athlete informed her long-time coach, Ms Dukhnova, that she was running out of BCAA supplements. Her coach arranged to order the BCAA supplements through Mr Denis Sinutko, a resident of Russia, as there was a better choice of supplements in Moscow.

47.3 Mr Sinutko has ordered the product via an online shop, PitProfi, and paid cash upon receipt of the package. There are no traces of this transaction.

47.4 The Athlete supports that she obtained the 3 supplements from Mr Sinutko in Minsk on 23 June 2019 (see samples n° 1, 2 and 3 from the table above). She says that she had checked the integrity of the package and the ingredients list.

47.5 According to the Athlete, in the month leading up to the Doping Control (July), she was using the three bottles of BCAA supplements in parallel. One bottle was stored in her apartment in Minsk, another in her country house and the third was either with her

when she was travelling or left in her car. However, she does not remember exactly which bottle was stored where.

47.6 The Athlete was using the BCAA supplements since approximately 28 June 2019 and until 28 July 2019, in general as follows: twice a day, 1 spoon (10 g) around training and 1 dose (10 g) before going to bed, using the BCAA both on her competition days and on her training days.

47.7 The Athlete submits that she may have ingested around 440 g of the supplements from 1 July until 28 July 2019. This is in line with the residual amounts of the supplements, that show the Athlete has likely consumed larger amounts of the Bottles 2 and 3 (see the table above).

47.8 Following the Out-of-Competition Doping Control, the Athlete indicated six medications and two sport supplements containing caffeine on her Doping Control Form. The Athlete admits having omitted the BCAA supplement in the Doping Control Form because she was tired and she considered that proteins and amino acids were basic nutrition supplements; furthermore, she was not aware of any cases of their contamination, focusing on medications she had used prior to the Sample collection.

47.9 After the receipt of the Notice of Allegation in August 2019, the Athlete submitted all the nutrition supplements in her possession to the Belarus Anti-Doping Laboratory in Minsk (BADL) for testing. Additionally, the Athlete purchased a sealed bottle of the Epic Labs BCAA 2.1:1 (expiry date 09.2023) and sent it to the BADL. In total, the Athlete submitted samples 1, 2, 3 and 4 for testing by the BADL (see the table above). According to the Athlete, Epic Labs was not available for purchase in Belarus when she first ordered the supplement through Mr Sinutko.

47.10 The Athlete eventually sent supplements n° 1, 4, and 5 (see table above) to the WADA-accredited laboratory in Lausanne (LAD) for additional analysis.

47.11 The Athlete supports that she successfully demonstrated, on a balance of probabilities, the origin of the substance that caused the AAF as follows:

47.11.1 The purchase of the BCAA supplements through Mr Sinutko (evidenced by Mr Sinutko and Mr Trutko).

47.11.2 The use of the BCAA supplements asserted by the Athlete in her witness testimony, which was analysed by the AIU during the two interviews.

47.11.3 The presence of LGD-4033 in the BCAA supplements confirmed by the analysis performed by both the Minsk and the Lausanne laboratories (see table above).

47.11.4 The fact that the BCAA supplements by Epic Labs are still available for sale from the same online shop in Moscow.

47.11.5 That when a person places an order with PitProfi.ru by calling one of their numbers, the carrier would bring the order and leave no proof of purchase if paid in cash, as was the case with another online shop evidenced by the Athlete's Counsel.

47.12 On the concentration levels found by the AIU experts to be insufficient to lead to the AAF the Athlete submits that the alleged maximum concentration of 55 ng/mL may be misleading, since there has been at least one proven case of a much heavier contamination of the Epic Labs BCAA supplement with LGD-4033 – involving the same product BCAA 4:1:1 (Strawberry) in the case of a Russian athlete heard by the Russian Anti-Doping Agency ('RUSADA') in 2019.

47.13 Furthermore, the value is inaccurate since the bottle was almost empty when delivered to the laboratory. The Athlete suggests that these supplements are rarely homogenized, therefore there must have been a higher concentration of the Prohibited Substance in the supplement used and that Epic Labs BCAA supplements appear to be systematically contaminated, as was confirmed by BADL and National Sanitation Foundation (NSF) independent laboratories when they analysed the two more Epic Labs BCAA 4:1:1 supplements purchased online by the Athlete's representatives.

47.14 The Athlete questions why the AIU did not ask the Athlete to procure a new sealed 4:1:1 BCAA supplement and submit it for testing, all the more since the AIU conducted a very lengthy investigation in the Athlete's case and must have been aware of the Russian athlete case investigated by RUSADA in 2019.

47.15 Therefore, the Athlete submits that she should be found to bear No Fault or Negligence for the presence of LGD-4033 in her Sample, since she has established that she "could not reasonably have known or suspected even with the exercise of utmost caution that she had used or been administered the Prohibited Substance...".

47.16 According to Art. 10.4 ADR, this finding should lead to the elimination of the Ineligibility period based on No Fault or Negligence, pursuant to the objective and subjective elements developed by CAS case law. More specifically:

47.16.1 The Athlete was not aware of any doping cases involving contaminated supplements and RUSADA had published no alerts on their website with respect to Epic Labs BCAA.

47.16.2 A search on the RUSADA online database for any Epic Labs supplements would return no results.

47.16.3 She never attended any educational programs organized by AIU / WA or ADOs in Belarus or Russia. However, this is an obligation for ADOs according to the WADA Code.

47.16.4 The Athlete showed utmost care by checking the label for any Prohibited Substances and relying on the “good” manufacturers, with her limited possibility to investigate any further due to her poor command of English. Mr Sinutko, however, had checked the clients feedback and comments on the Epic Labs supplements at online shops before ordering the supplement.

47.16.5 The Epic Labs BCAA supplements appear to be perfectly legitimate in Russia and Belarus, to the extent that there is a valid Russian certificate confirming the origin of the supplement at a government website.

47.17 Alternatively, relying on Art. 10.5.1 ADR, if the Panel does not find that the Athlete bears No Fault or Negligence, the Athlete submits that she should be found to bear No Significant Fault or Negligence for the ADRV

47.18 The Athlete submits that she should be found to have a light degree of fault considering, in particular, the following:

47.18.1 The Athlete did check the ingredients of the supplement on the label.

47.18.2 The Athlete did not search for Epic Labs on the internet, but such search would have shown no alarming information in the Russian search engines.

47.18.3 The Athlete had complete trust in her coach and knew Mr Sinutko personally, applying the appropriate standard of care for the situation.

47.18.4 Consulting experts prior to the purchase of the BCAA supplements would be excessive and unreasonable under the circumstances.

47.18.5 These elements should be assessed based on the information available in Russia and Belarus at the time, all the more since the AIU / WA and the relevant ADOs have apparently not fulfilled their education duties to the athletes with respect to these supplements.

47.19 The Athlete's requests for relief are as follows:

"In light of the above, the Panel is asked:

53.1. to find that, there is no fault on the part of the Athlete, or, alternatively;

53.2. to find that, there is insignificant fault on the part of the Athlete; and

53.3. to award the Athlete a contribution to her legal costs in relation to this matter".

## **E. JURISDICTION AND APPLICABLE RULES**

48. The jurisdiction of this Panel to hear this matter arises from Art. 1.2, 1.4, 1.6 and 8.1 ADR and was explicitly agreed by both Parties during the Preliminary Meeting dated 20 August 2020, along with the fact that the Provisional Suspension remain in force.

49. The applicable rules are the 2019 ADR, to which the Athlete was subject on 29 July 2019 and which apply to athletes who are members of a National Federation and to all athletes participating in competition organized, convened, authorized or recognized by World Athletics.

## **F. MERITS**

### **1) The Applicable Regulations and the commission of an ADRV**

50. Art. 2 ADR specifies the circumstances and conduct that constitute ADRVs. According to Art. 2.1 ADR:

"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is each Athlete's duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an ADRV under Article 2.1."

51. It is each athlete's personal duty to ensure that no Prohibited Substance enters their body. Athletes are strictly responsible for any Prohibited Substance or its Metabolites or Markers found in their samples and it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated to establish an ADRV.

52. Art. 2.1.2 ADR provides as follows:

"2.1.2 Sufficient proof of an ADRV under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample

where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle."

53. The presence of a Prohibited Substance or its Metabolites or Markers in an athlete's sample is therefore sufficient to establish that an athlete has committed an ADRV pursuant to Art. 2.1 ADR.

54. Art. 2.2 ADR also provides the following:

"Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an ADRV for Use of a Prohibited Substance or a Prohibited Method."

55. It is each athlete's strict personal duty to ensure that no Prohibited Substance enters their body or is used. Accordingly, it is not necessary for WA to demonstrate intent, Fault, negligence or knowing Use by the Athlete in order to establish that an ADRV has occurred. An athlete is therefore strictly liable for the presence of any Prohibited Substances.

56. In the current case, the analysis of the Sample showed an AAF for LGD-4033, which was confirmed both in the A and B Sample analysis. LGD-4033 is a non-specified substance, prohibited at all times under S1.2 of the 2019 WADA Prohibited List. This is not contested by the Athlete.

57. Art. 10.2 ADR provides:

"10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility imposed for an ADRV under Article 2.1, 2.2 or 2.6 that is the Athlete or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

(a) The ADRV does not involve a Specified Substance, unless the Athlete or other Person establishes that the ADRV was not intentional. (...)



10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct that he knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk. An ADRV resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition (a) shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that it was Used Out-of-Competition; and (b) shall not be considered "intentional" if the Substance is not a Specified Substance and the Athlete can establish that it was Used Out-of-Competition in a context unrelated to sport performance."

58. LGD-4033 is a non-specified substance, meaning that the period of Ineligibility should be four years, unless the Athlete can establish that the ADRV is not intentional.

59. Finally, according to Art. 10.5.1 (b) ADR, "In cases where the Athlete or other Person can establish No Significant Fault or Negligence **and** that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the degree of Fault of the Athlete or other Person." (emphasis added).

## 2) Was the ADRV non-intentional?

60. In order to satisfy the burden of establishing a non-intentional ADRV, WA submitted that an athlete needs to establish how the substance entered his or her body. WA referred to CAS case law, including – but not limited to – CAS 2016/A/4377, *WADA v IWF & Alvarez*, para. 51, whereby:

"The Athlete bears the burden of establishing that the violation was not intentional (...), and it naturally follows that the athlete must also establish how the substance entered her body. The Athlete is required to prove her allegations on the "balance of probability".

61. The Panel does not agree with this position. While the definitions of "No Fault or Negligence" and "No Significant Fault or Negligence" at Art. 10.4 and 10.5 explicitly require the athlete to establish the origin of the substance to benefit from an elimination or reduction of the otherwise applicable sanction, by contrast, Art. 10.2 does not contain a similar requirement.

62. There is therefore the possibility for an athlete to establish a non-intentional ADRV under Art. 10.2 without needing to establish the origin of the substance, subject to the Athlete meeting the burden of proof (on the balance of probabilities) that the ADRV was not intentional.

63. In order to do this, the Athlete cannot rely on simple protestations of innocence or mere speculation as to what must have happened but must adduce concrete and persuasive evidence establishing, on a balance of probabilities, a lack of intent (CAS 2020/A/6978 & CAS 2020/A/7068; CAS 2017/A/5369; CAS 2016/A/4919; CAS 2016/A/4676; CAS 2017/A/5335).

64. In any event, the Panel acknowledges that, apart from the fact that it is difficult to prove a negative fact, it is indeed difficult to establish a non-intentional ADRV if the Athlete fails to establish the origin of the substance. Furthermore, the Panel considers that in order to establish the non-intentional ADRV, it is necessary to establish (on a balance of probabilities) not only the existence and intake of a (contaminated) supplement, but also the causal link between the ingestion of such supplement and the AAF.

### **3) Has the Athlete established that the ADRV was unintentional?**

#### **a) The purchase – and intake of the contaminated supplement**

65. In the particular circumstances of this case and based on the evidence submitted, the Panel finds that the Athlete has not established on a balance of probabilities that the ADRV was unintentional. The reasons for this finding are set out below.

66. First, the Athlete needed to submit sufficient evidence to meet the required standard of proof. Overall, the Panel was not persuaded, on the balance of probabilities, that the Athlete indeed took the contaminated supplement and, even if that was the case, that the AAF could have been caused by the intake of said contaminated supplement.

67. The first thing that the Athlete must establish by adducing concrete and persuasive evidence in support is that she took a contaminated nutritional supplement that she allegedly ordered through a third person from Russia. It is then, and only then, that the Panel can consider, always based on the balance of probabilities, whether the alleged intake of this supplement could have led to the AAF thereby allowing the Athlete to discharge her burden of proof.

68. The Panel finds that the Athlete failed to meet her burden at both stages.

69. First, and even though the Panel accepts that the specific supplements sent for analysis to the BADL and the LAD were found to be contaminated, it notes that other than her word, the Athlete has not brought forth any compelling evidence or proof that she ever used these specific supplements.

70. The Athlete failed to indicate the allegedly taken supplements in her Doping Control Form (DCF) despite the fact that she declared supplements on numerous previous occasions. The Panel is not satisfied by the Athlete's justification that she was simply too tired and forgot to mention them in her DCF on the evening of the test. The initial justification given in her interview, that she believed that she only needed to declare medication, and not supplements on her DCF is further undermined and contradicted by the fact that she had previously declared BCAA amino acids on her DCF on numerous other occasions and notably also late in the evening, when she would have arguably been as tired as the evening in question.
71. There is further no proof of purchase of the supplements, despite the fact that they were purchased from an online store. The Panel finds particularly critical the fact that it was not possible for the Athlete and her Counsel to adduce any concrete piece of evidence – either email confirmation or cash receipt apart from the Athlete's and Mr Trutko's allegations – that this transaction ever took place.
72. During the hearing, the Athlete's Counsel argued that this lack of evidence is due to the fact that the Athlete was not assisted by her current lawyers from the start, in which case they would have asked her to collect and document any piece of evidence needed in this respect. Furthermore, it would be unfair to request this evidence more than one year after the AAF. The Panel is not convinced by these arguments. As she certainly comes across as an intelligent individual, considering the Athlete was notified of the AAF only a couple of weeks after the Doping Control, she could and should have sought out additional information on the supplement as soon as possible and certainly as soon as she suspected it might have been the cause of the AAF. Considering what was at stake, it was incumbent on her to do so.
73. Asked during the hearing, the person that allegedly ordered the supplements for the Athlete (Mr Trutko) confirmed that there was no record of communication between Mr Sinutko and himself even though they regularly communicated through messages and calls.
74. The Panel further notes the absence of any evidence given from the Athlete's coach, even though she was a central figure in this scenario. It is also telling that the most important person in this chain of alleged events, namely Mr Sinutko, failed to present himself at the hearing and give evidence that could be challenged by the other party. The Panel has thus given little weight to such an unchallenged witness statement, particularly

due to the fact that the reasons given for Mr. Sinutko's absence were neither specific nor convincing.

**b) Could the intake of the contaminated supplement have led to the AAF?**

75. As mentioned above, and even if the Panel were satisfied that the purchase of the supplement did occur as the Athlete suggested and the Athlete was taking the contaminated supplement as indicated in her submissions during the hearing (i.e. approximately 20 grams per day), the Athlete would still need to establish a more plausible than not causal chain between the intake of such supplement and the AAF.
76. Indeed, in order to benefit from a lower sanction according to either Art. 10.2 ADR (lack of intent) or even Art. 10.5.1 (b) ADR (No Significant Fault and contaminated product), the Athlete would need to establish, again by a balance of probabilities, that the AAF can come from a contaminated product. The wording of Art. 10.5.1 (b) ADR is clear in that a reduction of Ineligibility following the intake of a contaminated supplement follows only if the Athlete establishes "No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product".
77. The Panel does not consider that this intake, as established by the written and oral evidence brought before it, was likely to have caused the AAF. The Panel is supported in this conclusion by several reasons. First, the expert reports filed by the AIU but also the expert testimony of Prof. Martial Saugy during the hearing, where he confirmed the findings of his expert reports and answered to a large number of questions raised by the Panel and by the parties.
78. Importantly, Prof Saugy confirmed that one of the advantages of LGD-4033 (a selective androgen receptive modulator), apart from being a good recovery product after hard training, is the rapid excretion time - since 90% of this substance is excreted in 24 hours.
79. In his expert report, Prof. Saugy proceeded to an analysis of the concentration of LGD-4033 in the urine taking into account the most favourable scenario for the Athlete, which was 800 ml of urine excretion, 50 mg of the supplement with the highest concentration found according to the LAD (namely 55 ng/g). This scenario would result in a maximum of 3.4 ng/g in the Athlete's Sample, which was way below the concentration levels found in the AAF (30 ng/g), i.e. the AAF concentration level was ten times higher than the scientifically realistic scenario put forward by Prof. Saugy.

80. The Panel accepts that, according to the LAD report on the analysis of the three samples submitted by the AIU, the effects of cumulative doses, as it was the case in the present procedure, have not been evaluated in the scientific literature. However, the same report was clear to conclude that the concentration levels of LGD-4033 found in the Athlete's Sample were not consistent with a contamination scenario.
81. Furthermore, answering to the question of whether the longitudinal effects of the LGD-4033 could plausibly lead to such a concentration level in the Athlete's urine, Prof. Saugy responded that, notwithstanding the lack of clinical reports on the specific substance, this would be highly unlikely considering the rapid excretion rates and the fact that the parent compound is excreted to 90% only 24 hours after intake.
82. With respect to the arguments raised by the Athlete relating to the lack of homogenization of the supplements that could potentially lead to a much higher concentration of LGD-4033 in the supplements (and therefore explain the concentration levels in the Athlete's sample), Prof. Saugy said that this would equally be unlikely to lead to the AAF in view of the fact that the analysis was performed on three aliquots of each containers, taken at three different positions of the canister; one in the upper part, one in the middle part and one in the lower part of the powder.
83. Furthermore, according to Prof. Saugy, and even though the parent compound was excreted very rapidly, the concentration levels of the metabolite were much higher, which would by no means justify the high concentration levels found in the Athlete's Sample. Prof. Ayotte's report echoes the same stating that, "the parent compound at 30 ng/mL is consistent with a recent ingestion of a significant (as opposed to traces) dose of LGD-4033".
84. The Panel notes that the Athlete did not produce any counterevidence to this effect and thus, both Profs Saugy and Ayotte's conclusions remain unchallenged.
85. During the hearing, the Athlete's Counsel held that the AIU failed to request Prof. Saugy's opinion exploring the possibility of other factors that could have led to the AAF, including a specific analysis on the potential cumulative effect of LGD-4033. However, Prof. Saugy did answer with respect to the cumulative effect and it would be for the Athlete to adduce evidence as to any other potential reasons that could have caused the AAF. The Athlete's Counsel seems to disregard the fact that WA does not hold the burden of establishing the lack of intentional use. This burden lies with the Athlete.
86. The evidence put forward by the Athlete's Counsel pertaining to another matter (heard before the Russian Anti-Doping Agency in 2019) is of no help to the Athlete's case

because the supplements allegedly used in that case cannot be relied upon in the matter at hand. Another BCAA supplement, without corresponding batch or lot number, cannot be compared to the ones in the context of the present proceedings simply because the expiry date is similar or identical.

87. Other arguments raised by the Athlete, e.g. that she used the strawberry supplement the most (as a result such supplement was nearly empty) further undermine her case, to the extent that it was precisely that supplement that was found to have one of the lowest concentration of LGD-4033 (1.5 ng/ ml) by the BADL and it would be practically impossible to lead to the AAF. (The second supplement, Epic Labs BCAA 2:1:1 Mango Orange (exp. 08/2021) was found to contain 0.5 ng/ml.)
88. For the reasons above, the Panel finds that the intake of the contaminated supplement could not have led to the AAF based on the balance of probabilities. To the extent that this was the only explanation advanced by the Athlete, as forthright and distressed as she may seem, she simply has not brought forth sufficient evidence in order to establish to the required standard that her ADRV was unintentional.

#### **4) The Athlete's degree of Fault and / or negligence**

89. In view of the Panel's finding that the Athlete failed to establish that her ADRV was not intentional, there is no need to examine the Athlete's degree of Fault and / or Negligence as Art. 10.2.1 does not foresee any possibility of reducing a sanction based on an assessment of Fault where an Athlete does not first establish lack of intention.

#### **5) The Consequences**

90. Pursuant to Art. 10.2.1 (a) ADR, the applicable period of Ineligibility to be imposed on the Athlete is of four years.
91. Pursuant to Art. 10.8 ADR, all other competitive results of the Athlete obtained from 29 July 2019, the date the Sample in question was collected to the date of this award, shall be disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and prize and appearance money).
92. Pursuant to Art. 10.10.2 (a) ADR, any period of Provisional Suspension served by the Athlete shall be credited against the total period of Ineligibility of 4 years to be served by the Athlete.

93. Pursuant to Art. 10.10.2 (c) ADR and considering there have been substantial delays in the hearing process not attributable to the Athlete (this procedure was not formally referred to the Disciplinary Tribunal until 7 August 2020, 12 months after the Athlete was Provisionally Suspended and has fully cooperated throughout), the Panel finds that the period of Ineligibility should be backdated to 29 July 2019, the date of Sample collection.

## **H. COSTS**

94. Rule 8.9.3 ADR provides:

“8.9.3 The Disciplinary Panel has the power to make a costs order against any party, where it is proportionate to do so. If it does not exercise that power, each party shall bear its own costs, legal, expert and otherwise. No recovery of costs may be considered a basis for reducing the period of Ineligibility or other sanction that would otherwise be applicable.”

95. The AIU sought a contribution to its legal costs in relation to this matter.

96. The Panel notes the significant costs incurred by the Athlete in connection with these proceedings. We therefore consider it proportionate to make an order for costs in amount of USD 500 that the Athlete shall pay to the AIU.

## **I. RIGHT OF APPEAL**

97. This decision may be appealed to the CAS in accordance with Art. 13 ADR.

98. Pursuant to Art. 13.7.1 ADR, the deadline for filing an appeal to the CAS is 30 days from the date of receipt of the decision by the appealing party.

## **J. DECISION**

99. For the reasons set out in this Decision the Panel:

- a) finds that the Athlete, Ms Marina Arzamasova, committed an Anti-Doping Rule Violation in contravention to Article 2.1 of IAAF ADR 2019;
- b) imposes a period of Ineligibility of four (4) years upon the Athlete for the ADRV, commencing on 29 July 2019 and concluding at midnight on 28 July 2023;
- c) orders the disqualification of any results obtained by the Athlete between 29 July 2019 and 22 August 2019 with all resulting consequences, including the forfeiture of any titles,

awards, medals, points and prize and appearance money pursuant to Article 10.8 of the ADR;

- d) orders the Athlete to pay USD 500 to WA as a contribution of its costs incurred with respect to these proceedings.



Dr Despina Mavromati (Panel Chair)

On behalf of the Disciplinary Panel

27 November 2020

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