

## DECISION IN THE MATTER OF ROMAN SEMAKIN (“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 First<sup>1</sup> and Second McLaren Reports<sup>2</sup>, together the “McLaren Reports”). These reports are based on the evidence collected by Prof. McLaren during his investigations, as retrieved primarily from the hard-drive of whistleblowers (so called “EDP Evidence”). 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”)<sup>3</sup>, (ii) the Sample Swapping Methodology<sup>4</sup> and (iii) Washout Testing<sup>5</sup>.
- 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”.
- 1.4. Subsequently, as part of the reinstatement process of the Russian Anti-Doping Agency (“RUSADA”), WADA required that *inter alia* authentic analytical data from the Moscow

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

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

<sup>3</sup> 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, eg. 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.

<sup>4</sup> 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.

<sup>5</sup> The Washout Technique was developed in order to determine whether the athletes on a doping program were likely to test positive. The results of the Washout Testing were at times recorded in documents, such as the London Washout Schedules in the lead-up to the 2012 London Olympic Games. Even when the samples screened positive, they were automatically reported as negative in ADAMS. See page 23 and 72 of the Second McLaren Report.

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.<sup>6</sup>
- 1.6. In the present case, the 2015 LIMS data and the Analytical Data show that a sample of the Athlete contained a prohibited substance and was not reported as positive as part of the Russian manipulation scheme. More particularly:

#### Sample 2729439

- 1.6.1. On 4 July 2012, the Athlete was subject to an out-of-competition urine doping control. The 2015 LIMS indicates that ostarine was found in this sample.
- 1.6.2. Ostarine is a Selective Androgen Receptor Modulator (SARM) prohibited under S1.2 of the 2012 WADA Prohibited List.
- 1.6.3. The sample was reported as negative by the Moscow laboratory.

## 2 PROCEDURAL BACKGROUND

- 2.1. On 30 June 2022, the Athlete was notified of the potential anti-doping rule violation and of his right to provide explanations by 10 July 2022 or to admit the potential anti-doping rule violation *inter alia*.
- 2.2. The Athlete did not respond to this letter.
- 2.3. As a result, on 4 November 2022, the Athletics Integrity Unit (“AIU”) noted that the Athlete had not provided any explanations within the deadline and maintained its assertion that he had committed the anti-doping rule violation. The Athlete was granted an opportunity to request a hearing by 18 November 2022. The Athlete was specifically informed that, if he failed to request a hearing, he would be deemed to

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<sup>6</sup> 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*”.

have waived his right to a hearing and to have accepted the asserted anti-doping rule violation, 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 this letter either.
- 2.5. On 5 January 2023, exceptionally, the AIU set a final deadline of 9 January 2023 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 5 of the 4 November 2022 letter (i.e., an additional period of Ineligibility of 2 years and disqualification of results from 4 July 2012 until any period of provisional suspension or Ineligibility is imposed on the Athlete for the present violation, excluding those already disqualified by way of the Athlete's previous sanction).
- 2.6. The 5 January 2023 email remained unanswered as well.

### 3 REASONED DECISION

#### A) Applicable Rules

- 3.1. Pursuant to Rule 1.7.2(b) of the 2021 World Athletics<sup>7</sup> 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 violation occurred in 2012, it is governed by the rules in force at the time of its commission, viz. the 2012-2013 IAAF Competition Rules (the "**IAAF Competition Rules**").

#### B) Anti-Doping Rule Violation

- 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.”*

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<sup>7</sup> Previously the International Association of Athletics Federations ("**IAAF**").

- 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 shows that ostarine was detected in a sample collected from the Athlete in 2012. This clear and reliable evidence shows that the Athlete used a Prohibited Substance in 2012 in breach of Rule 32.2(b) of the IAAF Competition Rules.
- 3.6. In addition, the AIU notes that, when confronted with the anti-doping rule violation, the Athlete did not provide any explanation for them. In addition, having failed to request a hearing, the Athlete was deemed to have accepted the anti-doping rule violation.
- 3.7. In view of the above, it is clear that the Athlete committed an anti-doping rule violation 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 4 March 2014 to 3 March 2016, with disqualification of results from 26 February 2014 until 3 March 2014, for a violation involving ostarine committed on 26 February 2014 (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 violation (on 4 July 2012) prior to his notification of the First Violation which was committed on 26 February 2014. As a result, the 2012 anti-doping rule violation 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 present anti-doping rule violation 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 present anti-doping rule violation was committed as part of the most sophisticated doping and anti-detection scheme in history, aimed at ensuring that Russian athletes who were using prohibited substances would escape any violation or sanction.
  - 3.15.2. Second, 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.
- 3.16. In view of the above, it is clear that aggravating circumstances are present with respect to the Athlete’s present 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 proportionate to the serious offences committed. As the Athlete already received a two-year sanction for the First Violation, an additional two-year period of Ineligibility shall be imposed.

#### b. Disqualification

- 3.17. 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.”
- 3.18. In the present case, the evidence of the Athlete’s anti-doping rule violation was on 4 July 2012. As a result, per Rule 40.8 of the IAAF Competition Rules, all results obtained by the Athlete from 4 July 2012 until 4 March 2014 (i.e. until the start of his period of Ineligibility for the First Violation) - excluding the results already disqualified by way of his First Violation from 26 February 2014 until 3 March 2014 - must be disqualified. The AIU sees no reasons of fairness justifying otherwise given the severity of the violations. In addition, the Athlete has not even sought to argue that the fairness exception should apply.

#### D) Dispositive

- 3.19. 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):
- 3.19.1. The Athlete is found to have committed an anti-doping rule violation under Rule 32.2(b) of the IAAF Competition Rules in 2012;
  - 3.19.2. The Athlete is imposed an additional period of Ineligibility of two years starting from the date of this decision;
  - 3.19.3. All competitive results obtained by the Athlete from 4 July 2012 until 4 March 2014 are disqualified (excluding those results already disqualified by way of the Athlete’s previous sanction), with all of the resulting consequences, including forfeiture of any medals, titles, points, prize money and prizes.

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

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

Monaco, 25 May 2023