

## DECISION IN THE MATTER OF BOGDAN PISHCHALNIKOV (“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 drives 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 three 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 2729631**

- 1.7.1. On 15 July 2012, the Athlete was subject to an in-competition urine doping control. The 2015 LIMS indicates that dehydrochloromethyltestosterone (“DHCMT”) was found in this sample.<sup>7</sup>
- 1.7.2. DHCMT is an exogenous anabolic steroid prohibited under S1.1.a of the 2012 WADA Prohibited List.
- 1.7.3. The sample was reported as negative by the Moscow laboratory.

**1.8. Sample 2729711**

- 1.8.1. On 15 July 2012, the Athlete was subject to an out-of-competition urine doping control.<sup>8</sup>
- 1.8.2. This sample was recorded in a London Washout Schedule with the following text (EDP0019):

8728	2729711	m	15.07.2012	Podolsk	oral-turinabol 25000
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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”.

<sup>7</sup> In addition, a T/E ratio of 4.1 was reported.

<sup>8</sup> The 2015 LIMS indicates that a T/E ratio of 4.1 was reported.

1.8.3. DHCMT<sup>9</sup> is an exogenous anabolic steroid prohibited under S1.1.a of the 2012 WADA Prohibited List.

1.8.4. The sample was reported as negative by the Moscow laboratory.<sup>10</sup>

#### 1.9. Sample 2728381

1.9.1. On 29 July 2012, the Athlete was subject to an out-of-competition urine doping control.

1.9.2. This sample was recorded in a London Washout Schedule with the following text (EDP0025):

9400	2728381	m	29.07.2012	Podolsk	oral-turinabol 20,000
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1.9.3. DHCMT<sup>11</sup> is an exogenous anabolic steroid prohibited under S1.1.a of the 2012 WADA Prohibited List.

1.9.4. The sample was reported as negative by the Moscow laboratory.<sup>12</sup>

## 2 PROCEDURAL BACKGROUND

2.1. On 12 July 2022, the Athlete was notified of the potential anti-doping rule violations and of his right to provide explanations by 21 July 2022 or to admit the potential anti-doping rule violations *inter alia*.

2.2. The Athlete did not respond to this letter.

2.3. As a result, on 28 October 2022, the 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 violations. The Athlete was granted an opportunity to request a hearing by 11 November 2022. The Athlete was specifically informed that, if he failed to request a hearing, he would be deemed to have waived his 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 this letter either.

2.5. On 15 November 2022, exceptionally, the AIU set a final deadline of 21 November 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 5 of the 28 October

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<sup>9</sup> Oral Turinabol is a commercial synonym for DHCMT.

<sup>10</sup> In addition, as part of the Russian cover-up scheme and following an observable protection pattern, the underlying analytical data relating to this sample appear to have been manipulated.

<sup>11</sup> Oral Turinabol is a commercial synonym for DHCMT.

<sup>12</sup> In addition, as part of the Russian cover-up scheme and following an observable protection pattern, the underlying analytical data relating to this sample appear to have been manipulated.

2022 letter (i.e., a period of Ineligibility of 4 years and disqualification of results from 15 July 2012 onwards).

2.6. The 15 November 2022 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>13</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 violations occurred in 2012, they are governed by the rules in force at the time of their commission, viz. the 2012-2013 IAAF Competition Rules (the “**IAAF Competition Rules**”).

#### 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 EDP Evidence show that DHCMT was detected in samples collected from the Athlete in 2012. This clear and reliable evidence shows that the Athlete used Prohibited Substances in breach of Rule 32.2(b) of the IAAF Competition Rules.

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<sup>13</sup> 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 provide any explanation for them. In addition, having failed to request a hearing, the Athlete was deemed to have accepted the anti-doping rule violations.
- 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.

### C) Applicable Consequences

#### a. Period of Ineligibility

- 3.8. The present anti-doping rule violations constitute together the Athlete's 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.”
- 3.9. 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.”
- 3.10. 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.”
- 3.11. In the present case, a number of aggravating circumstances are present:
  - 3.11.1. First, the present anti-doping rule violations were 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. The EDP Evidence shows that the Athlete was specifically protected by the Russian scheme.
  - 3.11.2. 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, a number of the Athlete’s samples were found to contain a Prohibited Substance.

3.11.3. Third, 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.

3.12. 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.

#### b. Disqualification

3.13. 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.”

3.14. In the present case, the first evidence of the Athlete’s anti-doping rule violations was on 15 July 2012. As a result, per Rule 40.8 of the IAAF Competition Rules, all results obtained by the Athlete from 15 July 2012 until the date of this decision must be disqualified. The AIU sees no reasons of fairness justifying otherwise given the severity of the violations committed by the Athlete. In addition, the Athlete has not even sought to argue that the fairness exception should apply.

#### D) Dispositive

3.15. 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):

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

3.15.2. The Athlete is imposed a period of Ineligibility of four years starting from the date of this decision;

3.15.3. All competitive results obtained by the Athlete from 15 July 2012 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.

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

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

Monaco, 20 March 2023