



Anti-Doping Rules

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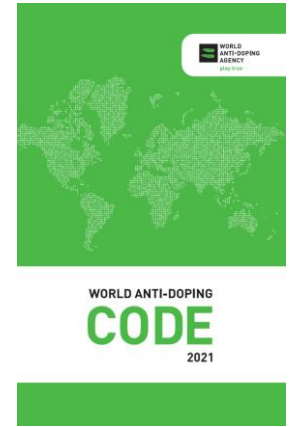
1. WADA and WADC

World Anti-Doping Agency (WADA)



- WADA was established in 1999. It has been authorized by UNESCO International Convention against Doping in Sport.
- World Anti-Doping Code (WADC) has been drafted by WADA with consultation processes.
- WADC is adopted by International Sport Federations (IF) and National Sport Federations (NF) as their anti-doping rules. The anti-doping rules all over the world has been harmonized by the adoption.

1. WADA and WADC



- WADC is regularly revised every six years.
- Eleven circumstances or conducts which constitute anti-doping rule violations (Art.2). They can be categorized into three groups.

(1) Prohibited Substance or Method etc.

- Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample (2.1)
- Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method (2.2)
- Possession of a Prohibited Substance or a Prohibited Method by an Athlete or Athlete Support Person (2.6)

1. WADA and WADC



(2) Tempering etc.

- Evading, Refusing or Failing to Submit to Sample Collection by an Athlete (2.3)
- Whereabouts Failures by an Athlete (2.4)
- Tampering or Attempted Tampering with any Part of Doping Control by an Athlete or Other Person (2.5)

1. WADA and WADC

(3) Trafficking etc.

- Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method by an Athlete or Other Person (2.7)
- Administration or Attempted Administration by an Athlete or Other Person to any Athlete In-Competition of any Prohibited Substance or Prohibited Method, or Administration or Attempted Administration to any Athlete Out-of-Competition of any Prohibited Substance or any Prohibited Method that is Prohibited Out-of-Competition (2.8)
- Complicity or Attempted Complicity by an Athlete or Other Person (2.9)
- Prohibited Association by an Athlete or Other Person (2.10)
- Acts by an Athlete or Other Person to Discourage or Retaliate Against Reporting to Authorities (2.11)

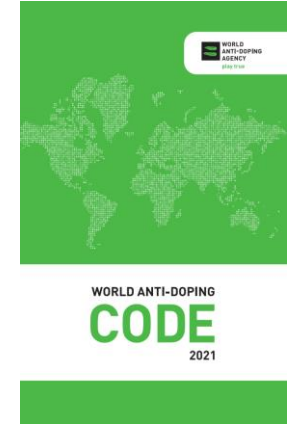


1. WADA and WADC



- Additionally, there are eight Supplemental Documents (*International Standards*) annexed to WADC, which are frequently revised, including the Prohibited List revised every year.
- Each athlete must agree to the application of the anti-doping rules when he or she join the IF or the NF.
- Each athlete also must agree to the application of the anti-doping rules when he or she entry in each sport competition.

2. Sanctions



<Typical Cases>

- One or more Prohibited Substances are found in the Athlete's sample.
- If the Prohibited Substance is a non-specific substance → 4 years in principle
- If the Prohibited Substance is a specific substance → 2 years in principle
- Additionally, there is a room to reduce the sanctioned period if the Athlete acted with no fault or negligence or no significant fault or negligence.

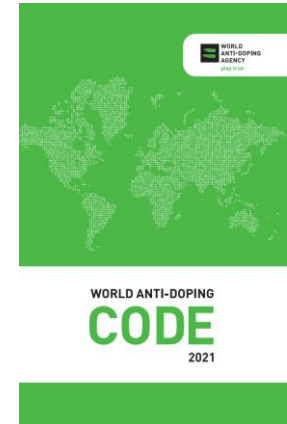
3. Decision Making Bodies

- The anti-doping rules have an arbitration clause:

IFs: (1) IF's Anti-Doping Disciplinary Panel;
(2) CAS

NFs: (1) National Anti-doping Disciplinary Panel;
(2) Local Sport Arbitration Institution;
((3) CAS only by WADA)

- Each athlete agrees to the application of the arbitration clause when he or she join the IF or the NF and when he or she entry in each sport competition.



3. Decision Making Bodies



- As the first-tier decision making body, Anti-Doping Disciplinary Panel constitutes the hearing panel for each case.
- Each Hearing Panel is constituted with a legal expert, a medical expert and a sport expert. Each panelist is automatically selected from the three different pools of experts who have enough knowledge and experiences on anti-doping.
- All the decisions of each Anti-Doping Disciplinary Panel has been in public in English and shared by the Panels all over the world.
- Legal experts have to always learn recent revisions of the anti-doping rules and recent trends of anti-doping decisions all over the world.

2. Decision Making Bodies



- As the second-tier, An athlete and/or an anti-doping agency can appeal to CAS (IF level) or a local Sport Arbitration Institution, e.g. JSAA (NF level).
- Under the CAS Arbitration Rules, parties can choose its party-appointed arbitrator from the CAS Arbitrator List, which has more than 400 candidates.
- Most of the local Sport Arbitration Institutions have the same system.
- But JSAA recently prepared another Arbitrator List only for anti-doping cases. Why?

3. Decision Making Bodies

Court of Arbitration for Sport (CAS)



- CAS was established in 1983 by IOC. It has started its operation since 1984.
- International Council of Arbitration for Sport (ICAS) was established in 1994 as a governing body. Since then, CAS has been independent from IOC.
- CAS is located at Lausanne, Switzerland. Since the seat of arbitration of all the CAS decisions is Switzerland, Courts of Switzerland have jurisdiction over the setting-aside proceedings of all the CAS decisions.
- An arbitration agreement between the parties is necessary as a precondition.
- International-level athletes are mainly targeted by CAS.

3. Decision Making Bodies



- R40.2 Appointment of the Arbitrators

...the Claimant shall nominate its arbitrator...The Respondent shall nominate its arbitrator ... the two arbitrators so appointed shall select the President of the Panel by mutual agreement...Failing agreement within that time limit, the President of the Division shall appoint the President of the Panel.

- Precondition:

An arbitrator has to be appointed from the CAS List of Arbitrators.
There are more than 400 candidates in the CAS List of Arbitrators.

3. Decision Making Bodies



- Two different appointing systems co-exist:
 - The 1st tier: Anti-doping experts will be automatically appointed.
 - The 2nd tier: Possibility of the cases where an arbitrator, who does not have enough knowledge and experiences on anti-doping, will be appointed.
- Phenomenon:
 - There are different tendencies between the 1st tier decisions and the 2nd tier decisions due to the nature of decision-makers.

4. Actual Cases of CAS on Anti-Doping

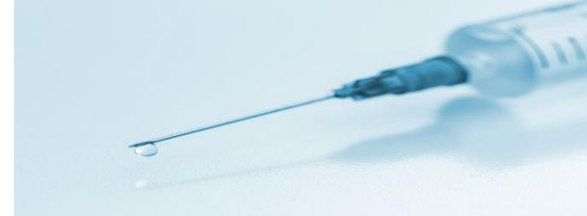


[Intravenous infusions in CAS 2008/A/1452]

- Vitamin B1 was injected to a professional football player by the team doctor in 2007.
- Anti-Doping Committee gave him a sanction due to the infringement of Anti-Doping Rules of the professional football league.
- The athlete appealed to CAS.
- The CAS panel issued a decision, considering precedents, as follows:

4. Actual Cases of CAS on Anti-Doping

[The CAS Panel Decision]



“Under the applicable 2007 WADA Code ..., the prohibited method is described as *Intravenous infusions are prohibited, except as a legitimate medical treatment.* “

“In such circumstances, there is no need to decide if there has been a violation because it is not a case where any sanction should be imposed on the Player whose conduct is not deserving of any sanction... a Player who bears no fault should not be sanctioned even he had committed an anti-doping violation by using a prohibited method.”

4. Actual Cases of CAS on Anti-Doping

[A problem of the CAS Decision]



- The Panel cited and considered previous decisions and concluded. But each previous decision was issued based on the prohibited list at the time of each case.
- The prohibited list has been revised every year, including the part of *Intravenous infusions*. The previous decision based on different rules should not have been considered.

4. Actual Cases of CAS on Anti-Doping



[Intravenous infusions in the Prohibited List]

- 2006 version: *“except as a legitimate acute medical treatment”*
- 2007 version: *“except as a legitimate medical treatment” (time of the case)*
 - The word *“acute”* has been removed from the paragraph on *intravenous infusions*, since the legitimate use of this method for medical purposes should be left to the judgement of the acting physician.

4. Actual Cases of CAS on Anti-Doping

[Intravenous infusions in the Prohibited List]



- 2008 version:

“In an acute medical situation where this method is deemed necessary, a retroactive Therapeutic Use Exemption will be required.”

- Based on comments from stakeholders, the wording was additionally changed in order to clarify that the method can be used only in an acute medical situation. The intervention has to be objectively justified by obtaining a retroactive Therapeutic Use Exemption (TUE).

4. Actual Cases of CAS on Anti-Doping

[Intravenous infusions in the Prohibited List]



- In this case, *the Prohibited List 2007* version has to be applied.
- 2007 version: *“the legitimate use of this method for medical purposes should be left to the judgement of the acting physician”*
- If the CAS Arbitrators correctly understood the rules to be applied in 2007, no infringement of the rules should have been declared without touching the Athlete’s degree of fault.

4. Actual Cases of CAS on Anti-Doping

[Kissing Defense in CAS 2009/A/1926 CAS 2009/A/1930]



- A prohibited substance was found in the sample of a professional tennis player. IF's Anti-Doping Disciplinary Panel concluded he infringed the anti-doping rules. He appealed to CAS.
- The CAS Panel decided: “the Player had acted with no fault or negligence ...no period of ineligibility should be imposed on the Player” because the Prohibited Substance came from a woman who had used cocaine and had kissed the Player at a Night Club.
- “The question is ... is it the intention of ... the WADA Code to make a reproach a player if he kissed an attractive stranger whom he met the same evening .. ?”

4. Actual Cases of CAS on Anti-Doping



[Another *Kissing Defense* in the CAS 2017/A/5296]

- Another athlete appealed to CAS using *Kissing Defense* as well.
- The CAS Panel decided: “*the Athlete could never have envisioned that kissing his girlfriend of three years would lead to an adverse analytical finding for trace amounts of a banned substance that he was not familiar with*”.
- “*the Athlete acted without fault or negligence.*”

4. Actual Cases of CAS on Anti-Doping

[Supplement]



- Supplements: No legal obligation to display included components
But there are many cases where Prohibited Substances was found
- WADA and national anti-doping agencies frequently made a serious caution to all the athletes about the danger of Supplements.
- But many athletes do not avoid using too much Supplements.
- As a result, there are many *Supplement Cases*.

4. Actual Cases of CAS on Anti-Doping

[*Supplements* in the CAS 2016/A/4676]



- A professional football player was sanctioned by European Football Federation because a prohibited substance was found in his sample.
- The Athlete appealed to CAS.
- The Period of Ineligibility shall be FOUR years unless the Athlete can establish that the Anti-Doping Rule Violation was NOT *Intentional*.
- The term “*intentional*” ... requires that the Athlete engaged in conduct which he or she knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

4. Actual Cases of CAS on Anti-Doping

[*Supplements* in the resent CAS 2016/A/4676]

- The Athlete used many kinds of *Supplements*.
- No prohibited substance was found from another bottle of the *Supplements*.



- The CAS Panel decided: “*he had no intention to use stanozolol and was, therefore, not a cheater, thus ... a two year period of suspension” even if he could not establish of the source of the prohibited substance in the Player’s body.*

5. Anti-Doping Rules vs. Commonsense of Lawyers



- Anti-doping Rules adopts “Presumed Guilty.”
- An athlete has responsibility to prove how the prohibited substance entered his or her body if the substance is found in his or her sample.
- On the other hand, commonsense of lawyers is “Presumed Innocent”
- In the ordinary sport disputes, decision-makers can reach a reasonable conclusion if he or she relies on his or her commonsense.
- But, in the anti-doping disputes, the conclusions may be different from the consequence of correct application of the anti-doping rules if he or she relies on his or her commonsense.

5. Anti-Doping Rules vs. Commonsense of Lawyers

- Unfortunately, not all the (more than 400) arbitrator candidates listed in the CAS Arbitrator List always study recent revisions of the anti-doping rules and recent trends of anti-doping decisions all over the world.
- If the arbitrator do not sufficiently check the recent revisions of the anti-doping rules or the recent trends of anti-doping decisions all over the world and only relies on his or her commonsense, the conclusion could be different from the consequence of correct application of the anti-doping rules.



- Additionally, an Athlete can strategically choose a person who tends to only rely on its own commonsense as its party-appointed arbitrator.

6. Final Remarks

- As a countermeasure, WADA has tried to revise WADC to diminish a room of interpretation by CAS as far as possible.



- In the Valieva Case in 2022, the CAS Panel issued a decision that it was not necessary to issue a provisional suspension against minors even if the prohibited substance (non-specific substance) had been found in their samples and the anti-doping rules did not have an apparent exception clause.

6. Final Remarks



- WADA immediately made a statement:

“... lift the mandatory provisional suspension on the athlete was not in line with the terms of the World Anti-Doping Code (Code). WADA is therefore disappointed by today’s ruling of the CAS Ad Hoc Division. While WADA has not received the reasoned award, it appears that the CAS panel decided not to apply the terms of the Code, which does not allow for specific exceptions to be made in relation to mandatory provisional suspensions for 'protected persons', including minors”.
- A New Attempt by JSAA: A different list of arbitrators for anti-doping cases.
- By the special list, arbitrators, who must have enough knowledge and experiences on anti-doping, are always selected for anti-doping cases.



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