Doping in Sport: Regulation and Challenging Decisions

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Key Topics

- Rise of Anti-Doping Cases
- World Anti Doping Agency
- Framework for Anti-Doping Regulation
- Court of Arbitration for Sport
- Anti-Doping Appeals
- Case Studies
High profile cases on the rise

- Russian doping scandal continues
- WADA appeal of Sun Yang case to be held in public (second in history, following Pechstein)
- Chris Froome case, and the need for pharmacokinetic studies
- Rise of doping in eSports
Introduction to Anti-Doping Rules and Regulation
Recent History of Anti-Doping Regulation in Sport

• July 1998 - "Festina Affair"
• February 1999 - World Conference on Doping in Sport convened by International Olympic Committee (IOC)
• 4 February 1999 - Lausanne Declaration on Doping in Sport
• 10 November 1999 - World Anti-Doping Agency (WADA) established under IOC
WADA Structure - Overview

• Foundation Board – 38 members
• Executive Committee – 12 members
• Various other committees (e.g. Athletes, Education etc.)
• Funding - 50% Olympic Movement, 50% governments
WADA Code - Overview

• Entered into force 1 January 2004
• Current version – 2015 World Anti-Doping Code (WADA Code)
• Primary aims
  • Consistency and formalisation of rules
  • Clarification of stakeholder responsibilities
• Annual Prohibited List
• Monitoring programme to detect patterns of possible misuse
Current Framework for Anti-Doping Regulation

- WADA Code - Over 660 signatories, including National Anti-Doping Organisations (NADOs)
- Signatories undertake 3 steps to be compliant
  - Acceptance
  - Implementation
  - Enforcement
- Key role of NADOs and sports governing bodies remains
UK Anti-Doping Regime

• UKAD = UK Anti Doping
• Non-Departmental Public Body, but funded by government
• Rules on doping - 2015 Rules amended in October 2019
• Broadly similar to WADA Code, including 10 ADRVs (6 of which apply to athlete support personnel)
USA Anti-Doping Regime

- **USADA =** US Anti-Doping Agency
- **USADA was result of recommendations made by the United States Olympic & Paralympic Committee’s “USOPC” Select Task Force on Externalization.**
- **Non-profit organization, headquartered in Colorado Springs, Colorado and recognized by US Congress as official anti-doping organization for Olympic, Paralympic and Pan American sports.**
- **It is not an office or branch of the US Government, but an independent organization.**
Recent Developments in Anti-Doping Rules and Regulations
WADA Code Review

• WADA Code review process
  • Regular amends (2009, 2015, 2019)
  • Latest version due 2021

• Suggested revisions to Code include:
  • Article 20.7.7 - Anti-Doping Charter of Athlete Rights
  • Article 2.11 - Protection for Individuals Reporting Violations
  • Article 10.2.3 – Definition of Intentional
  • Article 10.6.1.2 – Sanctions for contaminated products
2019 Amendments to UKAD Rules

- Article 1.4.2(b) - Retirement
- Article 7.2.2 – Review of Adverse Analytical Findings
- Article 13.7.3 – Appeal Procedure
- Amendments to Definitions
  - Atypical Finding
  - Domestic Pool
  - National TUE Pool
US Anti-Doping Developments

- Rodchenkov Anti-Doping Act of 2019
- Currently sits with US Senate after passing House vote. Senate referred to committee.
- Would impose criminal sanctions on certain persons involved in international doping fraud conspiracies, to provide restitution for victims of such conspiracies, and to require sharing of information with the United States Anti-Doping Agency to assist its fight against doping, and for other purposes.
Permanent CAS Anti-Doping Division (ADD)

- Introduced in January 2019
- First-instance authority
- Composition - President, Deputy President, Arbitrators, Court Office
- Specialist Arbitrators
Anti-Doping Appeals
Standard Appeals Process

• First-instance decision - NADO (e.g. UKAD or USADA)
• Ordinary appeals – sport/national-level appeal body (e.g. FIFA Appeals Committee or AFL Appeals Tribunal)
• Appeals involving International-level athletes - exclusively to CAS
• Who holds the right of appeal?
• WADA involvement
  • WADA has a right of appeal against any decision rendered under the Code
  • WADA not required to exhaust other remedies
Jurisdiction of Court of Arbitration for Sport (CAS)

CAS Code R47 Appeal:

• The seat of CAS is Lausanne
• Time limit - 21 days from receipt of decision appealed against
• CAS jurisdiction requires
  • Decision of a federation, association or sports-related body
  • Express grant of jurisdiction
  • Appellant exhausted all legal remedies
Panel finds no express reference in rules so no jurisdiction

WADA v Pakistan Cricket Board & Akhtar & Asifu (2006)

1 November 2006
Banned for 2 and 1 years for committing a doping offence

5 December 2006
Committee decides the players did not commit an offence and set aside sanctions

12-19 October 2006
Shoaib Akhtar and Muhammed Asif tested positive for doping

November 2006
Players appeal decision to the Anti-Doping Appeals Committee

21 December 2006
WADA files an appeal with CAS

28 December 2006
PCB disputes CAS's jurisdiction to entertain the Appeal

29 June 2007
Panel finds no express reference in rules so no jurisdiction
Appeals Process – Case Study 2

WADA v AFL, ASADA 34 players of Essendon Football Club

- Australian Sports Anti-Doping Authority (ASADA) takes action against players of Essendon, in Australian Football League (AFL) – self reported use of Thymosin Beta-4
- Essendon seek to judicially review the legality of the AFL/ASADA joint investigation – application is dismissed
- AFL Tribunal clears players of wrongdoing – no physical evidence (e.g. samples)
- WADA appeals to CAS
- CAS upholds appeal – sufficient evidence of use
Appeals Process – Case Study 3

WADA v FIFA & José Paolo Guerrero

• FIFA sanctions Peruvian football player with one year ban – tested positive for a cocaine metabolite from cup of tea
• FIFA Appeals Committee reduces ban to 6 months
• Footballer appeals but WADA also cross appeals
• CAS increases ban to 14 months – player responsible for some degree of fault or negligence
• Swiss Federal Tribunal temporarily suspend CAS decision for World Cup
Conclusion

- Severity of Sanctions—athletes need to be aware of what they ingest
- Increasing number of disputes referred to CAS
- More pressure on decisions made by sporting bodies
- Cost considerations
- Referring to CAS in sporting agreements and statute/regulation of bodies
- Sponsorship of athletes
- Reputational angle
- Importance of robust compliance and governance programmes to protect integrity of sports, events, clubs and brands
Any Questions?