

THE IMPLEMENTATION OF THE WADA CODE IN GREECE THROUGH LAW 4791/2021

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Abstract: *The World Anti-Doping Code (hereinafter: WADC) was first adopted by the World Anti-doping Agency (hereinafter: WADA) in 2003 and entered into force in 2004. In Greece, anti-doping rules came into force through their adoption by the Parliament of the UNESCO Anti-Doping Convention under Law 3516/2006 and have been applied as International Sports Law. The revised 2021 WADC which is effective as of 1st January 2021 was transposed in Greece by the Greek Law 4791/2021, which established the National Organization for Combatting Doping (hereinafter: EOKAN). Therefore, the WADA Prohibited List is an integral part of Law 4791/2021 and shall go into effect under Law 4791/2021 three (3) months after publication of the prohibited list by WADA, without requiring any further action by the HADA (Article 4.1. of Law 4791/2021 with the title “Prohibited List”). A violation of a doping rule does not automatically result in a sanction. According to Article 10 of Law no. 4791/2021, the athlete may eliminate or reduce the period of ineligibility based on no significant fault or negligence by appeal in the Supreme Council of resolution of Sports Disputes and in some special cases in CAS.*

Highlight that the NADOs should provide to athletes a domestic dispute resolution framework which promotes independence, efficiency and cost effectiveness, as well as consistency and procedural fairness at all levels.

Keywords: *Sports Law, Doping, Sports Disputes, World Anti-Doping Code, CAS.*

Introduction

The World Anti-Doping Code (hereinafter: WADC) was first adopted by the World Anti-doping Agency (hereinafter: WADA) in 2003 and came into effect

in 2004¹. It was binding on the international sports movement; however, it is not binding on states. Domestic sports federations are obliged to comply with the WADC².

In Greece, anti-doping rules came into force through their adoption by the Parliament of the UNESCO Anti-Doping Convention under the Law 3516/2006 and have been applied as International Sports Law. The revised 2021 WADC which is effective as of 1st January 2021, was transposed into Greek Law by Law 4791/2021.

According to the Article 128 Law 2725/1999, the National Council for Combatting Doping (hereinafter: ESKAN) was established in Greece, which consisted of nine (9) members with a three-year term. Pursuant to the Article 11 of Law 4049/2012, the National Organization for Combatting Doping (hereinafter: EOKAN), successor of ESKAN, was established as a legal person under private law by presidential decree. The international term for the National Anti-Doping Organization of Greece is Hellenic Anti-Doping Agency (hereinafter: HADA)³.

1. Greek Anti-Doping Rules – LAW 4791/2021.

1.1. Definitions.

By virtue of the Article 1(A)(b) of Law 4791/2021 with the title “Definitions – Scope”, *“Athlete is any person who competes in sport at the international level (as defined by each International Federation) or the national level (as defined by each National Anti-Doping Organization). An Anti-Doping Organization has discretion to apply anti-doping rules to an Athlete who is neither an International-Level Athlete nor a National-Level Athlete, and thus to bring them within the definition of “Athlete”.*

1.2. Prohibited List.

The WADA Prohibited List is an integral part of Law 4791/2021 and shall go into effect under the Law 4791/2021 three (3) months after publication of the prohibited list by WADA without requiring any further action by the HADA (Article 4.1. of Law 4791/2021 with the title “Prohibited List”).

1. World Anti-Doping Code (2021). Available at: https://www.wada-ama.org/sites/default/files/resources/files/2021_wada_code.pdf

2. Panagiotopoulos, D. P., & Kallimani, Z. (2018). Implementation of WADA code in the Greek sports legal order. 87–91. https://oa.upm.es/49460/1/Congreso_dopaje_INEF_vdef2018.pdf

3. History of HADA. (n.d.). EOKAN. Retrieved July 2, 2022, from <https://www.eokan.gr/lang/en/history>

1.3. Strict liability.

According to the Article 2.1.1. of Law 4791/2021 with the title “Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample”, *“2.1.1 It is the athletes’ personal duty to ensure that no prohibited substance enters their bodies. 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 to establish an anti-doping rule violation under Article 2.1”*.

Therefore, an anti-doping rule violation is committed without regard to an athlete’s fault. This rule has been stated to in various Court of Arbitration for Sport (hereinafter: CAS) decisions as the principle of strict liability and has consistently been upheld by CAS jurisprudence⁴.

1.4. Burdens and Standard of Proof.

As stated by the Article 3.1 of Law no. 4791/2021 with the title “Burdens and Standards of Proof”, *“The Anti-Doping Organization have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt”*.

1.5. Mandatory Provisional Suspension after an Adverse Analytical Finding or Adverse Passport Finding.

In case an adverse analytical finding or an adverse passport finding upon completion of the review process is received for a Prohibited Substance or a Prohibited Method, other than a Specified Substance or Specified Method, the HADA shall impose to the athlete a provisional suspension promptly upon or after the review and notification required (Article 7.4.1. of Law 4791/2021 with the title “Mandatory Provisional Suspension after an Adverse Analytical Finding or Adverse Passport Finding”).

A mandatory provisional suspension may be eliminated if the athlete demonstrates to the hearing panel that the violation is likely to have involved a contaminated product, or the violation involves a substance of abuse, and the athlete establishes entitlement to a reduced period of Ineligibility (Article 7.4.1. of Law 4791/2021 with the title “Mandatory Provisional Suspension after an Adverse Analytical Finding or Adverse Passport Finding”).

4. Article 2.1.1. of the World Anti-Doping Code Edition 2021

1.6. Results Management - Right to a fair hearing and notice of hearing decision.

For any person who is asserted to have committed an anti-doping rule violation, the HADA shall provide a fair hearing within a reasonable time by a fair, impartial and operationally independent hearing panel in compliance with the WADA International Standard for Results Management (Article 8 of Law 4791/2021 with the title “Results Management - Right to a fair hearing and notice of hearing decision”).

HADA set up a hearing panel consisted of nine (9) members (first instance disciplinary hearing panel) which is competent to deal with doping cases, issue decisions and sanction athletes for anti-doping rule violations (Articles 8.1.1.1. & 8.1.1.4. of Law 4791/2021 with the title “Fair Hearings”). At the end of the hearing, the First Instance Disciplinary Committee of HADA issues a reasoned decision explaining the period of ineligibility imposed, the disqualification of individual results and the right to appeal the decision (Article 8.2 of Law 4791/2021 with the title “Notice of decisions”).

Nevertheless, anti-doping rule violations asserted against international-level athletes, national-level athletes or other persons may, with the consent of the athlete or other person, the HADA with Results Management responsibility and WADA, shall be heard in a single hearing directly at CAS (Article 8.4. of Law 4791/2021 with the title “Single Hearing Before CAS”).

1.7. Automatic disqualification of results.

An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes (Article 9 of Law 4791/2021 with the title “Automatic disqualification of individual results”).

1.8. Sanctions on individuals.

The period of ineligibility shall be four (4) years or two (2) years. More specifically, the period of ineligibility shall be four (4) years (i) if the anti-doping rule violation does not involve a specified substance or a specified method, unless the athlete or other person can establish that the anti-doping rule violation was not intentional or (ii) the anti-doping rule violation involves a specified substance or a specified method and the HADA can establish that the anti-doping rule violation was intentional (Article 10.2.1. of Law 4791/2021 with the title “Sanctions on individuals”). If Article 10.2.1 does not apply and the athlete can not establish that any ingestion or use occurred out-of-competition and was unrelated to sport performance, the period of ineligibility shall be two (2) years (Article 10.2.2. of Law 4791/2021 with the title “Sanctions on individuals”).

1.9. Elimination of the period of ineligibility where there is no fault.

Pursuant to Article 10.5. of Law 4791/2021 with the title “Elimination of the Period of Ineligibility where there is no fault”, “*If an athlete or other person establishes in an individual case that he or she bears no fault, then the otherwise applicable period of ineligibility shall be eliminated*”.

1.10. Contaminated products.

In cases where the athlete or other person can establish both no significant fault 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 (2) years ineligibility, depending on the athlete or other person’s degree of Fault (Article 10.6.1.2. of Law 4791/2021 with the title “Contaminated products”).

1.11. Results management – Appeals.

Decisions made under the WADC or under the Law 4791/2021 may be appealed. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise. In case an athlete is an international-level athlete the CAS has the exclusive jurisdiction for deciding the appeal against the decision of disciplinary panel of HADA (Article 13.2.1. of Law 4791/2021 with the title “International-Level Athletes - Appeals”). Although, in case an athlete is a national-level athlete the Supreme Council of Dispute Resolution in Sport (hereinafter: ASEAD) has the exclusive jurisdiction for deciding the appeal against the decision of disciplinary panel of HADA (Article 13.2.2. of Law 4791/2021 with the title “Appeals concerning other athletes or other persons”).

In any event, where WADA has a right to appeal and no other party has appealed a final decision within HADA’s process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in the HADA’s process (Article 13.1.3. of Law 4791/2021 with the title “WADA not required to exhaust internal remedies”).

1.12. Automatic binding effect of decisions by signatory anti-doping organizations.

A decision of an anti-doping rule violation made by a signatory anti-doping organization, an appellate body or CAS shall, after the parties to the proceeding are notified, automatically be binding to the parties, the HADA and each national sport federation in Greece (Article 15.1.1. of Law 4791/2021 with the title “Automatic binding effect of decisions by signatory anti-doping organizations”).

II. CAS 2018/A/5651 for Combating Doping⁵

Given the fact that no decision has been published regarding a doping case after the issuance of Law 4791/2021, we will present the last published decision of the CAS for a Greek athlete to which Law 4373/2016 was applied.

On 02.07.2016, during the Panhellenic Track and Field Championship for Persons with Disabilities, the athlete underwent an in-competition doping control. The analysis of the A Sample revealed the presence of LGD-4033, which is a non-specified substance always prohibited under the 2016 WADA Prohibited List.

On 14.02.2017, the Board of Directors of ESKAN imposed a four (4) year ineligibility period on the athlete starting from the date of sample collection.

The athlete appealed the decision to the Supreme Judicial Appeal Body (ASEAD⁶). ASEAD underlined that the athlete was an international-level athlete and therefore the CAS had the exclusive jurisdiction for deciding the appeal against the decision of ESKAN. On 08.03.2018, ASEAD dismissed the appeal due to lack of jurisdiction.

On 28.03.2018, the athlete filed his Statement of Appeal against the decision of ESKAN with the CAS. The Sole Arbitrator found that the athlete has not met his burden of proof, the anti-doping rule violation must be deemed to be intentional, and the athlete must therefore be sanctioned with a four-year (4) period of ineligibility under the Article 11.2.1. of the Greek Anti-Doping Rules.

The appeal filed by athlete against the decision of the ESKAN was dismissed and the decision rendered by ESKAN was upheld.

Concluding Remarks

It is extremely difficult for an athlete to prove no fault or negligence for an anti-doping rule violation and the arbitral award CAS 2017/A/5296 WADA - Gil Roberts is one of the rare cases in which it has been proven⁷. Athletes have attempted to challenge the fairness strict liability regime over the years, and it should be noted that the strict liability principle has evolved in recent years,

5. CAS 2018/A/5651 G. K. v. Hellenic National Council for Combating Doping (ESKAN), award of 31 October 2018

6. According to Gr. Law 2725/1999 as in force, The ASEAD is a Supreme Judicial Appeal Body for the resolution of Sports Disputes within the framework of the Greek Lex Sportiva area. After the ASEAD decision, interested party depending on the nature of disputes can commence proceedings before the civil or Administrative court.

7. Mitten, Matthew J., A Brief Review of CAS Doping Jurisprudence Issues, 61 Santa Clara L. Rev. 307 (2021).

primarily to ensure fairness⁸. More specifically, criteria for the determination of the intentionality of an anti-doping rule violation have been examined in various cases by the competent judicial bodies such as the CAS, i.e. the relative experience level with the sport and the relevant anti-doping rules, the general anti-doping education or lack thereof, the level of awareness of previous cases involving the same prohibited substance and the motivation to consume the product containing the prohibited substance⁹.

A violation of a doping rule does not automatically result in a sanction. According to the Article 10 of Law no. 4791/2021, the athlete may eliminate or reduce the period of ineligibility based on no significant fault or negligence. The principle of strict liability seems harsh; however, doping is an extreme problem and thus extreme measures must be taken to overcome it. As a result, it is critical that all athletes understand the anti-doping regulations and the consequences of anti-doping rule violations¹⁰.

Finally, given the fact that CAS is not considered a practical option for many athletes, due to challenges of access to justice and affordability, NADOs should provide to athletes a domestic dispute resolution framework which promotes independence, efficiency and cost effectiveness, as well as consistency and procedural fairness at all levels¹¹.

8. Cisneros, B. (2021, December 24). Strict Liability. Jus Mundi. Retrieved July 2, 2022, from <https://jusmundi.com/en/document/wiki/en-strict-liability>

9. CAS 2019/A/6249 Roman Balandin v. Association Russian Anti-Doping Agency (RUSADA), award of 13 September 2019

10. Niel Du Toit. (2011). Strict Liability and Sports Doping - What Constitutes a Doping Violations and What Is the Effect Thereof on the Team? *The International Sports Law Journal*, 3–4, 163–164. https://www.doping.nl/media/kb/2044/20131023T040659-ISLJ_2011_3-4%20-%20163-164%20Niel%20du%20Toit.pdf

11. Star, S., Kelly, S. A level playing field in anti-doping disputes? The need to scrutinize procedural fairness at first instance hearings. *Int Sports Law J* 21, 94–117 (2021). <https://doi.org/10.1007/s40318-020-00176-6>