



## **Recommendation on basic principles for disciplinary phases of doping control (98/2)**

The Monitoring Group of the Anti-Doping Convention, under the terms of Article 11.1.d of the Convention,

Considering that under Article 3 of the Anti-Doping Convention the Parties undertake to co-ordinate the policies and actions of their government departments and other public agencies concerned with combating doping in sport;

Considering that under Article 7 of the Convention the Parties undertake to encourage their sports organisations to harmonise their doping control procedures and notably, in Article 7.2.d; their:

"disciplinary procedures, applying agreed international principles of natural justice and ensuring respect for the fundamental rights of suspected sportsmen and sportswomen; these principles will include:

- the reporting and disciplinary bodies to be distinct from one another;
- the right of such persons to a fair hearing and to be assisted or represented;
- clear and enforceable provisions for appealing against any judgement made";

Being of the opinion that these principles could also provide a reliable and solid basis for the conclusion of bilateral and multilateral agreements in the fight against doping between organisations, agencies and countries Party to the Convention;

Being of the opinion that this would also encourage other countries and sports organisations to seek common standards;

Convinced of the need to establish common principles for disciplinary phases following doping control;

Being of the opinion that these common principles would ensure the fair and equitable treatment of athletes;

Recalling the Recommendation No. 1/95 of the Monitoring Group of the Anti-Doping Convention to Parties;

Recalling the Recommendation No. 1/97 of the Monitoring Group of the Anti-Doping Convention to Parties;

Having studied the International Olympic Committee's Medical Code and relevant disciplinary procedures adopted by the international sports federations;

Having examined this Recommendation with International and European sports organisations;

Recommends that Parties to the Anti-Doping Convention include, or where appropriate, strongly urge the national sports bodies concerned to include, in their Anti-Doping Regulations or other appropriate texts, *Basic principles for disciplinary phases of doping control* based on those appended to the present Recommendation.

## Appendix

### Basic principles for disciplinary phases of doping control

#### A. Anti-doping commission

##### **A.1 Description of powers, competence and composition of the "Anti-Doping Commission" and similar bodies in national agencies**

1.1 An independent body, either within the sport organisation or in national agencies, should be set up for the management of doping control results. This could be an "Anti-Doping Commission" or a similar body and responsible for organising all doping related matters except legal decisions which should be dealt with by a disciplinary panel. The members of the "Anti-Doping Commission" should be different from those who serve on the latter.

1.2 The Commission should be the body authorised to receive all laboratory results and athlete signature forms, and to review these on a confidential basis.

1.3 The decision to initiate disciplinary proceedings because of a breach of the anti-doping regulations - including a refusal to submit to an official control - should be taken by the Anti-Doping Commission.

1.4 The Commission should have members with competence in the following fields: law, medicine, pharmacology, analysis, as well as an experience in sports. Members should not be associated with the laboratory conducting the analyses.

## **A.2 Description of the role of Anti-Doping Commission when the A sample is positive**

2.1 All A-sample test results confirmed at the laboratory as analytically positive should be sent confidentially to the Anti-Doping Commission and to the other national or international authorised body or persons. The Commission should review the results to ensure that the collection process, chain of custody and collection of the data were respected.

2.2 The athlete is notified by the Commission or relevant sport organisation and given a document describing the procedures that will be followed and his/her rights during these procedures, the possible sanctions, and information on the procedure for appeals.

2.3 The athlete has the right to submit an explanation for the presence of a banned substance or method. In the case of a control during competition, the Anti-Doping Commission, as well as the national anti-doping agency, may interview the athlete.

2.4 On the basis of the interview, the Commission may consider relevant facts and circumstances in deciding whether the positive sample constitutes a doping offence and may decide not to have the B sample analysed.

2.5 If the athlete admits his/her offence, disciplinary procedures may be taken on the basis of the A sample.

2.6 The athlete has the right to be present or to be represented during the analysis of the B sample.

2.7 The Commission and relevant sport organisation will make every effort to have sample B analysed as quickly as possible and in any event within 21 days after the athlete is notified.

2.8 Sample B is analysed in order to protect the athlete's rights. This process allows the athlete to witness the opening of the B sample, to confirm both the coding and the integrity of the bottle, and for the duplication of the results from the A-analysis (in the case of a full analysis) or for confirmation (in the case of a screen).

2.9 On the basis of a report by the Anti-Doping Commission, the relevant sport organisation may provisionally or temporarily suspend the person concerned from competition until the B sample is analysed and/or disciplinary proceedings are initiated.

2.10 A result is declared positive only when both the A and B-samples are positive or when the A-sample is positive and the athlete concerned waives the requirement that the B-sample be analysed.

## **B. Disciplinary panel**

## **B.1 Description of powers, competence and composition of Disciplinary Panel**

**1.1 An analytically positive result from sample B and/or a documented refusal to submit to an official control shall always lead to the initiation of appropriate disciplinary procedures.**

1.2 A disciplinary panel should have the task of judging, as a court of first instance, all doping cases within the relevant sport organisation.

1.3 The name of the accused person should not be released until such a decision is taken (cf. B.2.7).

1.4 The disciplinary panel may impose such sanctions as are appropriate for the case. These sanctions should be clear and published beforehand. If the accused person appeals against the conviction and sanctions, the latter, including any suspension, should remain in force until the appeal body overturns them. The appeal proceedings, therefore, should be organised with due expedition to avoid any potential incorrect suspension.

1.5 The disciplinary panel should be a body independent from the Anti-Doping Commission. Its members should be different from those who serve on the Anti-Doping Commission. The panel should be composed of experts with medical, technical and legal knowledge in anti-doping questions.

## **B.2 Procedures ensuring a fair hearing**

2.1 Following the provisions of the Convention for Protection of Human Rights and Fundamental Freedoms of the Council of Europe, in particular in Article 6.3, the possibility of a fair hearing and the defence of the rights of the individual suspected of an offence must be guaranteed. Every athlete shall have the right to a hearing before the relevant disciplinary body in advance any decision on sanctions is reached. This hearing should take place as soon as possible, and under normal circumstances, not later than three months after the final laboratory analysis.

2.2 The right to be heard includes the right to be acquainted with the charges and the right to appear personally, to be represented, to bring forward evidence, including witnesses, or to submit a defence in writing.

2.3 The accused person should be informed of the initiation of proceedings and the case against him or her in writing; the charge, and all other relevant documentary evidence and material which form the basis of the charge should be communicated to the accused person beforehand in good time.

2.4 The date of each stage of the disciplinary process should be duly determined. The accused person should be given reasonable time to prepare their defence.

2.5 The proceedings should be thorough and impartial.

2.6 Any measure or sanction shall be communicated in writing to the accused person or any other parties concerned.

2.7 The Disciplinary Panel and its members shall maintain in strict confidentiality the results of all testing and the identities of everyone involved in the doping control proceedings (cf. B.1.3). The violation of the professional secrecy should be sanctioned.

2.8 Disciplinary Panels should adopt **rules of procedures**, which are clear and enforceable, based on the principles set out in this chapter to ensure a fair hearing.

### **B.3 Guidelines for sanctions**

3.1 Countries or sport bodies concerned should provide in their regulations for imposition of sanctions against doping offence. The sanctions should be sufficient for the offence proved, based on the severity of the infraction, and not encourage disregard for the regulations.

3.2 These sanctions should be consistent (i.e., having similar effects) both between different sports in one country and between International Federations.

3.3 Appropriate sanctions should also be planned and imposed to any refusal or failure to report or refusal to provide a sample.

3.4 Disciplinary panels should always investigate how the athlete concerned breached the regulations. They may take account of any mitigating factors.

3.5 Violations of anti-doping rules involving the supplying, administration and trafficking of doping substances should be regarded as serious offences. The sanctions levied for these actions should appropriately reflect even more severe sanctions than those provided for the cases of doping offences.

3.6 The sanctions applied to an individual found guilty of a doping infraction in one event or sport, should apply fully with regard to participation in all other events and sports and be respected by other authorities or sports for the length of the penalty period.

3.7 Appropriate sanctions should also be applied to any members of the athlete's entourage involved in the doping offence such as officials, doctors, veterinary doctors, coaches, physiotherapists and other officials or accessories associated with infringements of the anti-doping regulations. (Recommendation No. 1/97 on disciplinary measures to be taken with regard to members of the athlete's entourage and protection of minors, in application of Article 7.2.e of the Convention).

### **C. Appeals**

## **C.1 Provisions for appeals**

1.1 Sports organisations should ensure maximum respect for human rights and the principles of fair and impartial justice in the application of disciplinary procedures, particularly by respecting the distinction between the judicial and the executive power, and hence the independence of bodies concerned, so as to guarantee the right to defence, the right to be heard, and the right to appeal.

1.2 In accordance with this principle any person found guilty of a doping infraction should be informed of the judgement and of his/her right of appeal to a body empowered to hear such appeals, and the method for lodging such an appeal.

Such an independent body could be constituted within the sports system – at national and/or international level. This body may also be the arbitration body (cf. C.3).

The Appeal Board members should be different from those who serve on the Disciplinary Panel. These members are to be knowledgeable in anti-doping procedures and are to be experienced in the field of anti-doping in sports.

The Appeal Board should have the authority to review completely the decision taken by the Disciplinary Panel and to modify the sanctions imposed. This body should ensure that the original hearing and examination are in accordance with the principles of natural justice as set out in B.2.

The principles of a fair hearing as outlined at B.2 above should also apply to the proceedings within the appeal process.

## **C.2 Appeal Boards**

2.1 The principles set out in B.1 and B.2 above should be adapted for Appeal Boards. As the Anti-Doping Commission is completely separate in powers and composition from the Disciplinary Panel, so the Appeal Board should be completely separate from the Disciplinary Panel as well.

## **C.3 Provisions encouraging the use of sports arbitration in cases of dispute**

3.1 Sports organisations could provide the possibility to submit disputes concerning the application of their doping control rules to an independent sport arbitration body.

3.2 The arbitration body could be constituted within the sports system - at national and/or international level.

D. Other

## **D.1 Provisions under which the athlete accepts authority if it conforms to the above principles and common standards**

1.1 Sports organisations should provide in their regulations the signature of a declaration by athletes showing that they are informed of the anti-doping regulations and that they agree to abide by them, that they will take part in any doping control activity organised by an appropriate body, including any authorised or official doping control at any time, and that they are aware of the possible consequence of any infraction.

## **D.2 Provisions enabling sports organisations and anti-doping agencies to adapt anti-doping regulations quickly in cases of necessity (e.g., adoption of new lists of banned substances and methods)**

2.1 Sports organisations should adopt anti-doping regulations in conformity with the national anti-doping policy and with the principles of the relevant international sports organisations. These regulations should be regularly revised and updated to adapt them to current circumstances and knowledge.