
Recommendation CM/Rec(2022)14 of the Committee of Ministers to member States on general principles of fair procedure applicable to anti-doping proceedings in sport

(Adopted by the Committee of Ministers on 20 April 2022 at the 1432nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1),

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Reaffirming its strong determination to fight against doping in sport while ensuring full respect for human rights and fundamental freedoms;

Convinced that the effective recognition and observance of the rights and freedoms proclaimed by the Universal Declaration of Human Rights and upheld by subsequent international conventions are of paramount importance for the protection and promotion of clean sport;

Acknowledging the relevance of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), in particular its guarantees of the right to a fair hearing (Article 6), and the case law of the European Court of Human Rights in preventing and remedying human rights violations in sport, combating arbitrariness and ensuring proportionality of possible sanctions imposed in sport or anti-doping-related matters;

Having regard to the standards contained in the Anti-Doping Convention (ETS No. 135);

Keeping in mind Recommendation T-DO/Rec(2017)01 on ensuring the independence of hearing panels (bodies) and promoting fair trial in anti-doping cases, adopted by the Monitoring Group of the Anti-Doping Convention on 20 February 2017;

Recalling the International Declaration on Human Rights and Sport ("Tbilisi Declaration") adopted at the 15th Council of Europe Conference of Ministers responsible for Sport in 2018 and Resolution No. 2 on human rights in sport adopted at the 16th Conference in 2020;

Recognising the wide diversity of legal systems among the States Parties to the Anti-Doping Convention and of anti-doping procedures being used by their competent bodies;

Stressing nonetheless the common strong commitment to the rule of law in sport and the ensuing need to guarantee effective access to justice and a fair trial in the context of anti-doping proceedings required by national legislation and international law, including the UNESCO International Convention against Doping in Sport and the World Anti-Doping Code;

Recognising that the removal of obstacles to effective access to justice is a key element in securing equal opportunities for all athletes, regardless of gender;

Recalling furthermore the States Parties' obligation to co-ordinate their anti-doping policies and to harmonise the related disciplinary procedures in line with the principles enshrined in the Anti-Doping Convention;

Recognising the importance of the implementation of the World Anti-Doping Code, whose purpose is to advance the anti-doping effort through universal harmonisation of core anti-doping elements;

Bearing in mind that the World Anti-Doping Code, which was “drafted giving consideration to the principles of proportionality and human rights”, requires anti-doping organisations to provide a fair hearing within a reasonable time by a fair and impartial hearing panel,

Recommends that the governments of member States:

- take into account the principles set forth in the appendix to this recommendation in their law and practice;
- ensure that this recommendation and its appendix are translated and disseminated as widely as possible among competent authorities and stakeholders, including national anti-doping agencies and sports organisations;
- promote the progressive implementation of the principles set forth in the appendix to this Recommendation by member States and all other national and international stakeholders, including anti-doping organisations and sports bodies, ensuring that their regulatory frameworks and practice comply with the applicable laws and fulfil their responsibilities to respect human rights.

Appendix to Recommendation CM/Rec(2022)14

Introductory principles

1. The following principles of fair procedure should apply when allegations of doping are being investigated and when anti-doping proceedings are brought against an athlete, or any other natural or legal person (hereinafter “other person”) alleged to have infringed anti-doping rules. The principles should apply at both the domestic and international levels when such proceedings could lead to temporary or lifetime ineligibility to compete or take part in sporting events, or the imposition of fines.
2. Every athlete or other person against whom anti-doping proceedings are brought should have the right to a fair procedure, within a reasonable time, before an independent and impartial first-instance panel (hereinafter “panel”), with the possibility of at least an appeal before an appeal body. The standards of fair procedure should apply to both bodies.
3. The panel and appeal bodies should be impartial and enjoy independence from public authorities, national or regional anti-doping organisations and national and international sports organisations.

The fair procedure to be observed in anti-doping proceedings should be ensured by implementing the following principles:

a. *Investigations*

4. Investigations into allegations of doping should be carried out by independent investigators, without any interference from internal or external bodies.
5. Investigations should be carried out without delay and respect the presumption of innocence and the rights to private life and data protection of those suspected of infringing anti-doping rules.

b. *Composition of the panel*

6. The panel should be established by law in the sense that it should be governed by relevant legal regulations, or a legal framework, which determine the appointment procedure of its members, their conditions of service and the procedures to be followed by the panel, in accordance with the principles set out in this Recommendation.
7. The panel should be composed of a chair and at least two other members. The chair should be either a judge or an experienced legal practitioner. The other members of the panel should have expertise in relevant disciplines such as law, anti-doping, science, medicine or sport.
8. Where considered appropriate, having regard to the particular circumstances of the case, the panel may also be composed of a single adjudicator. The adjudicator should be either a judge or an experienced legal practitioner.
9. The members of the panel should be appointed for a fixed term, subject to the possibility of renewal.

c. *Competence of the Panel*

10. In addition to the powers set out in subsequent paragraphs, the panel should be competent to determine all questions concerning admissibility.
11. It should give a reasoned decision on the merits of the case.
12. Where the panel decides that there has been an infringement of an anti-doping rule, it may or shall impose a sanction, as provided for under relevant regulations. The sanction should be proportionate to the infringement, bearing in mind the particular circumstances of the case and all relevant anti-doping rules.

d. Independence and impartiality of the Panel

13. To ensure independence and impartiality, members of the panel should have had no prior involvement in the case and should have no relationship, either personally or professionally, with the parties to the proceedings or to any organisations of which the parties are members.

14. Sufficient guarantees should be put in place to ensure that the panel is protected against any internal and external interference with the conduct of the proceedings.

15. The athlete or other person who is alleged to have infringed an anti-doping rule should have the possibility to request the replacement of members of the panel where legitimate doubts arise as to their independence or impartiality.

e. Right to be heard

16. Every athlete or other person alleged to have infringed an anti-doping rule should have the right to present their case to the panel either in person or by way of a written procedure.

17. The person concerned may seek to waive the right to a hearing. In such cases, the panel should decide on the matter, taking into consideration the public interest involved and whether the right to waive a hearing has been requested unequivocally, of the person's own free will and in full knowledge of the consequences.

18. The principles of a fair procedure set out in this recommendation should also apply, as appropriate, when the case is decided by way of a written procedure or in the context of a case resolution agreement.

f. The public nature of the hearings

19. Panel proceedings should be conducted in public in recognition of the role played by public scrutiny as a means of protecting all parties from injustice and ensuring public confidence in the proceedings and their outcome.

20. At the request of a party, or on its own initiative, the panel may decide to conduct all or part of the hearing in camera if it is in the interests of morals or public order, to protect privacy, including sensitive personal data of persons involved in the proceedings, or the interests of minors, or where, in the particular circumstances of the case, publicity would prejudice the interests of justice. The decision to hold a hearing in camera should take into account the specific nature of anti-doping proceedings. The panel should have a wide margin of appreciation in this regard.

g. Third-party intervention

21. The panel may authorise the intervention of third parties in the proceedings where it considers this to be in the interests of the proper administration of justice. It should decide to what extent the third parties should be granted access to the relevant case file and the right to express an opinion on the case, either in writing or during the hearing.

h. Right to an effective defence

22. Every athlete or other person alleged to have infringed an anti-doping rule should have the following rights:

- the right to the presumption of innocence until the accusations against the athlete or other person have been finally proven. Provisional suspension or the principle of strict liability embodied in anti-doping rules should not be considered as a breach of this provision;
- the right to be advised, defended and represented by a legal advisor of their choice;
- the right to have adequate time to prepare their defence;
- the right to be assisted by an interpreter if necessary;
- the right to request witnesses or experts to be called on their behalf on the grounds that the presence of such witnesses or experts is necessary for their effective defence, except if the panel considers that the presence of such witnesses or experts is not necessary having regard to the interests of the proper administration of justice.

i. Access to documents and evidence

23. All parties should have equal access to the relevant case file.

24. The panel should have the competence to refuse access to particular documents or evidence where, after having heard submissions from the parties, it considers that the interests of the relevant party are outweighed by the public interest in withholding access to such material. In reaching its decision, the panel itself should be able to consult the contested items.

j. Notification of decisions

25. The reasoned decision of the panel should be given within a reasonable time, with due regard to the particular circumstances of the case.

26. The decision should be notified promptly to the parties and any third party.

27. The decision should be made public. The panel may decide to prevent the disclosure of confidential investigative and analytical methods, information or a person's identity if it considers such a measure to be necessary to protect the interests of minors or the privacy or sensitive personal data of persons involved in the proceedings.

k. Resources

28. Adequate resources should be provided for the panel to fulfil its tasks efficiently and with the requisite degree of independence and impartiality.

29. Procedural fees, if any, should be reasonable and proportionate, having regard to the circumstances of the case, and should not prevent parties from having effective access to the panel.

30. Setting up a legal aid mechanism for legal costs and expenses should be envisaged to ensure effective access to justice for all.

l. Right to appeal

31. All parties should have the right to appeal, within a reasonable, defined period of time, against any decision of the panel regarding the law and the facts of the case as well as the sanction imposed.

32. The appeal body should respect all the above-mentioned principles, including those regarding the composition of the panel (principle *b*) and the competence of the panel (principle *c*).

1432nd meeting, 20 April 2022

8 Youth and Sport

8.1 Monitoring Group of the Anti-doping Convention (T-DO)

Recommendation CM/Rec(2022)14 of the Committee of Ministers to member States on general principles of fair procedure applicable to anti-doping proceedings in sport
Explanatory Memorandum

Aim and purpose of the Recommendation

1. The adoption of the World Anti-Doping Code has harmonised the fight against doping in sport and has evolved so as to ensure a fairer procedure for all parties. The Court of Arbitration for Sport (CAS), as a recognised forum for the resolution of disputes in the anti-doping area, also contributed to the development of principles of fair procedure.
2. The aim and purpose of the Recommendation is to reinforce the human rights principles that should govern anti-doping procedures in sport. The principles set out in the Recommendation are drawn from human rights standards and particularly the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights which is applied by all jurisdictions within Europe and provides inspiration even beyond.
3. As indicated in the last line of the Recommendation, it is to be the subject of “progressive implementation”. What is at stake is not only fairness for those accused with anti-doping infringements but ultimately public confidence in sports’ justice and sporting bodies.
4. The fight against doping in sport requires fair proceedings while respecting the need to protect athletes’ private life including reputation and health-related information.
5. The cases that have already been brought before national and European courts illustrate that the fight against doping in sport constitutes a matter of public interest, involving notably public and law enforcement authorities and national jurisdictions and, as such, it can no longer be treated as a purely private matter. Anti-doping rule violations have evolved considerably in recent years and are no longer based solely on biological-related findings. Increasing recourse is made to investigations and other types of non-analytical evidence.
6. The main subjects of the Recommendation are the athletes and support personnel (such as coaches or managers), as well as legal persons such as national and international federations or clubs or companies. Non-athletes are referred to in the text as “other persons”.
7. These principles should not prevent member States or sports organisations from reinforcing the rights guaranteed in anti-doping proceedings and to further protect the human rights of athletes and other persons.
8. The elements below seek to further explain the specificity of certain principles contained in the Recommendation.

Independence

9. Although the concept of “operational independence” is widely referred to in the anti-doping context, it is not commonly used in other judicial activities. It is widely understood, and repeatedly confirmed by national and European jurisdictions, that the judiciary should be independent from the prosecution and the parties to the dispute. This independence should be carefully protected. If one is to strengthen the system of justice in sport, the concept of independence should be fully embraced including by the use of appropriate terminology.

10. The notion of independence referred throughout the document should be understood as meaning that those involved in the decision-making process, and particularly members of the panel and appeal body, are independent from internal and external influences and from the parties. They should also present an appearance of independence.

Investigations

11. Investigations should be carried out by persons being part of or designated by institutions, such as national anti-doping organisations, which are independent from the organisation of any sport event. Investigators should operate independently from any external or internal interference.

Presumption of innocence, strict liability and provisional suspension

12. The presumption of innocence protects individuals against arbitrariness and is a fundamental human rights and rule of law principle. It is a relevant concept and an important protection of fairness linked to public confidence in any judicial proceedings including in the disciplinary anti-doping context.

13. The Recommendation specifically indicates that the principle of strict liability and provisional suspension should not be considered in breach of this provision. Presumptions of fact or of law do not impinge upon the fairness of proceedings providing that they are kept within reasonable limits. Provisional suspension is imposed in a limited number of cases and strict liability applies only to certain anti-doping rule violations. Anti-doping proceedings are also based on non-analytical findings.

Panel and Appeal body

14. The term “Panel” in the Recommendation refers exclusively to the first instance jurisdiction.

15. The term “appeal body” thus refers to those jurisdictions that hear appeals against the decisions of the first instance body as indicated in principle j. To reinforce the credibility and the fairness of the proceeding, it is advised that the Appeal body is composed, when appropriate, of an appellate court judge, assisted by two or more members experienced lawyers or experts in anti-doping related issues. It could also be a specialised appeal body within the existing appellate structure.

16. The notion “established by law” reflects the principle of the rule of law. Its purpose is to ensure that the organisation of a judicial system does not depend on the discretion of the executive. In the context of an anti-doping proceedings, this notion requires that legislation or regulation of a legislative nature create the Panel and the Appeal body, organise their functioning and specify the appointment procedure of their members and their renewal. The Panel and the Appeal body could also be integrated into the existing judicial system with the possibility of contesting the final decision before a non-specialised jurisdiction such as a Supreme or a Cassation Court. It has to be noted that the Court of Arbitration in Sport is considered by the European Court of Human Rights as established by law.

17. Anti-doping proceedings are regularly considered by arbitral jurisdictions including at the international level with the Court of Arbitration in Sport. Arbitration jurisdictions should be organised to be independent from the prosecuting body, usually anti-doping organisations or international federations from which they should be structurally and operationally detached. Safeguards should also be in place to protect their members from any internal or external pressure and to ensure that the appointment procedure respects the parity between the parties in the proceedings.

18. The Chair of the Panel and of the Appeal body should, if necessary, be offered training in anti-doping.

19. The principles set out in the Recommendation should apply equally to both bodies and should not prevent from ensuring further guarantees notably in respect to their composition.

Right to be heard

20. Right to a hearing or the right to be heard, often called the right to a court, is a basic requirement of a fair trial. It encompasses several elements. Athletes or other persons accused of having infringed an anti-doping rule should have the right to defend themselves before the Panel. They have the right to be advised, defended and represented by a legal advisor of their choice at their own expense.

21. The right to call witness should be ensured under the control of the Panel which could consider, for example, that the person has called sufficient experts or that the evidence is not pertinent. A similar approach should be taken regarding access to documents and evidence when they might undermine the integrity of the anti-doping process or jeopardise any future anti-doping investigation or where it would reveal the identity of an intelligence source or whistleblower.

22. The right to be heard should not exclude the possibility to have the case resolved directly by the parties through an agreement ("case resolution agreement"). Furthermore, athletes or other persons can waive of their own free will, either expressly or tacitly, the entitlement to the guarantees of a fair hearing. However, such a waiver must be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance. Further, it must not run counter to any important public interest.

Public hearings

23. Public hearings protect litigants against the administration of justice in secret with no public scrutiny and is thus one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, it contributes to the achievement of the aim of a fair hearing, the guarantee of which is one of the fundamental principles of any democratic society.

24. The public hearing is thus an important safeguard in anti-doping proceedings to protect those charged with anti-doping infringements, but also the national anti-doping organisations, national and international federations as well as hearing panels themselves against improper influence. Public hearings can also boost public confidence in the process.

25. The principle of public hearing should not exclude per se that the interests of justice could be served by hearings held in camera. Considering that the proceedings at stake in this Recommendation are of a disciplinary nature, the Panel has a wider margin of appreciation to decide that a part of or the whole hearing be held behind closed doors. In considering this matter, the Panel could take into account the special nature of sports proceedings, the risks to reputation or the necessity to protect health related information. Moreover, the panel should consider the specific circumstances of each case, including, but not limited to, the age of the athlete, sensitive medical information, personal relationships, and addictions, that may be disclosed during the hearing. In considering the matter, the Panel should particularly take into account the expressed wishes of the athlete or of any other person against whom anti-doping proceedings are brought.

26. It should also take into account the interests of the public or of other athletes who may have had their expectations impacted by the alleged doping infringement to favour a public hearing.

27. When considering a request to waive a public hearing or to have to a written procedure, the panel may consider that public scrutiny may be sufficiently served by publication of its reasoned decision.

28. In order to ensure a fair procedure, the parties, including any third party, should be seated separately during the hearing allowing a clear distinction among them.

29. Further, part of or all the proceeding could take place through a written procedure, excluding any public hearing. Considerations such as the right to a hearing within a reasonable time, or proceedings devoted exclusively to legal or highly technical questions may comply with the requirements of a fair procedure in the absence of a hearing. In this context, the Panel or Appeal body should provide a reasoned decision to reject a public hearing request.

Notification and publication of decisions

30. To ensure fair proceedings, the Panel and Appeal body decisions should be appropriately reasoned and promptly notified to parties particularly having in mind their potential consequences on athletes' careers.

31. Decisions should be published and made accessible to the public, with the apposite safeguards where appropriate, to ensure the accessibility and the consistency of the jurisprudence.