

# SCIENTIFIC LIFE

DOI 10.17803/2313-5395.2020.2.14.321-326

## THE IMPLEMENTATION OF THE WADA CODE IN GREECE THROUGH LAW 4373/2016

***Dimitrios P. Panagiotopoulos***<sup>1</sup>

*University of Central Greece, Greece  
panagiod@otenet.gr*

***Konstantinos Konstantinidis***<sup>2</sup>

*National and Kapodistrian University of Athens, Greece*

***Zografenia Kallimani***<sup>3</sup>

### Introduction

With winning being the sole motive of top level sport competitions, athletes tend to exhibit anti-athletic behavior by using prohibited performance-enhancing substances to reach their goals.<sup>4</sup> Such actions not only harm contestants' health, but also devastate the concept of sport ethics and values.<sup>5</sup> Doping is forbidden as contrary to the fundamental principles of Olympic spirit, fairness and medical ethics.<sup>6</sup> The World Anti-Doping Code since its very first edition in 2003 aims to organize and contextualize the fight against this growing phenomenon by

---

<sup>1</sup> Professor of Sports Law.

<sup>2</sup> Candidate Dr. of Sports Law, School of Physical Education and Sport Science.

<sup>3</sup> Postgraduate Student in Sports Law.

<sup>4</sup> Cox, N. Victory with Honour or Victory at All Costs: Towards Principled Justification for anti-Doping Rules in Sport. Dublin ULJ, 22, 19. (2000).

<sup>5</sup> Dimitrios Panagiotopoulos. *AthlitikoDikaio I*, Athens: NomikiVivliothiki (2005).

<sup>6</sup> Dimitrios P. Panagiotopoulos, Zografenia Kallimani. Implementation of WADA Code in the Greek Sports Legal Order. IV:1-2e-Lex Sportiva Journal 135–131 (2016).

obliging national sport bodies to comply with its provisions. To the same way, the UNESCO member states of at the 33rd Session on October 2005 agreed to comply with the Code and ensure its effectiveness.<sup>7</sup> In the Greek legal order the first legislative action was taken with the Greek Sport Law 2725/1999, the provisions of Law 3057/2002 and the ratification of the UNESCO convention by virtue of the provisions of the Greek Law 3516/2006. This paper examines the implementation of the WADC (World Anti-Doping Code) and its harmonization through the provisions of the recent Greek Law 4373/2016. For the purposes of the study, there is an analysis of exemplary decisions that were delivered from national sports jurisdiction bodies after the adoption of Law 4373/2016.

### **Doping and Strict Liability**

WADA (World Anti-Doping Agency) defines doping as a criminal act of possession, manipulation, use or attempted use of substances and methods as defined and prohibited by WADA, as well as behaviors that obstruct or violate the sampling and control procedures prescribed by the Code, and any possible complicity or association with persons accused of doping.<sup>8</sup> From this perspective, the principle of strict liability<sup>9</sup> that is established in Article 1(g) Law 4373/2016 is implemented as follows: “The rule stipulating that, pursuant to Articles 2.1 and 2.2, in order to establish an anti-doping rule infringement does not need to be demonstrated by the ESKAN the fault of use by the Athlete.” (ESKAN is the Hellenic National Council for Combating Doping listed in the anti-doping organizations complied by WADA). Moreover, according to Article 11.2.1 Law 4373/2016, the preeminent sanction for doping

---

<sup>7</sup> International Convention against Doping in Sport (2005, 19 October). URL: <http://www.unesco.org>.

<sup>8</sup> Article 2 of the WADA World Anti-Doping Code 17–21 (2015).

<sup>9</sup> Strict liability: The principle of strict liability is applied in situations where urine/blood samples collected from an athlete have produced adverse analytical results. It means that each athlete is strictly liable for the substances found in his or her bodily specimen, and that an anti-doping rule violation occurs whenever a prohibited substance (or its metabolites or markers) are found in bodily specimen whether the athlete intentionally or unintentionally used a prohibited substance or was negligent or otherwise at fault. (URL: [www.wada-ama.org](http://www.wada-ama.org)).

violation is a four years period of ineligibility with the possibility of eliminating or reducing the exclusion period due to non-compliance with fault or negligence.

## **Doping Cases in Greece**

### **1. ESKAN Decision No 2/2017 – CAS 2017/A/5357**

The athlete tested positive in the metabolitesbenzylecgonin (“BZE”) and methylecgonine (“EME”) of cocaine after underwent an in-competition anti-doping control at the end of the Women’s Greek Basketball Cup Final game on March 2017. According to the Greek Law 4373/2016, the competent authority dealing with doping cases in Greece is ESKAN, and thus, the First Instance Disciplinary Committee of the ESKAN provisionally suspended the athlete. Specifically, in July 2017 the ESKAN First Instance Disciplinary Committee held a hearing, where the athlete claimed that the provisions of Articles 11.4 and 11.5 of Law 4373/2016 should be applied in the case at hand. These provisions predict the elimination of the ineligibility period where there is no fault or negligence (Article 11.4) and reduction of the period of ineligibility based on no significant fault or negligence (Article 11.5). Athlete’s request was based upon her allegations that the findings came from a passive contamination of the substance the afternoon before the game. In order to deliver the decision the ESKAN Disciplinary Committee took the following under consideration:

a) Article 1 (32) (33) Law 4373/2016, which defines when an incident is considered “in-competition”,<sup>10</sup>

b) Article 11.2.3 Law 4373/2016, according to which anti-doping rule violation (ADRV) resulting from an adverse analytical finding of a substance which is only prohibited “in-competition” shall be rebuttably presumed to be not “intentional” if the substance is a specified substance and the athlete may establish that the prohibited substance was used “out-of-competition”,

c) The provisions of Article 1 and Article 5.2.2 Law 4373/2016, according to which for the application of Article 11 which states that

---

<sup>10</sup> “In-Competition” means the period commencing twelve hours before a Competition in which the Athlete is scheduled to participate through the end of such Competition and the Sample collection process related to such Competition. (WADA Code, p. 135).

the anti-doping rule violation does not involve a specified substance, unless the athlete or other person can establish that the anti-doping rule violation was not intentional, then the ineligibility period is between zero to two years,

d) Article 11.4 Law 4373/2016, which establishes that if an athlete or other person establishes in an individual case that he or she bears no fault or negligence, then the otherwise applicable period of ineligibility shall be eliminated, and

e) Decision No 34912/2011 of the Greek Minister of Health and Social Solidarity – Culture and Tourism, Chapter B: Prohibited Substances and Methods “in-competition”, and the WADA Code International Standard Prohibited List of January 2017, in which cocaine is included in substances the use of which is punishable only if “in-competition”.

The Disciplinary Committee also pleaded the anti-doping control result of the athlete’s both samples that reported the existence of “cocaine”, which according to the WADA S6 list of is stimulant and forbidden. Moreover, the athlete filed an expert opinion on toxicology, where it is stated that the result of the sample analysis shows that only metabolites from the substance were located and not the substance itself, and thus there has been at least 15 hours gap between the use and the doping test. According to this opinion, the use was “out-of-competition”. Furthermore, it is presented that a person could be exposed to this substance as a passive contaminator in case a third person smokes the substance. In any case, the athlete claimed to never consume cocaine (active contamination). In the light of the foregoing, the Disciplinary Committee took under consideration the fact that cocaine is identified as a specified substance and that the use was “out-of-competition” and unintentional, overturned the decision which imposed on the athlete the penalty of exclusion from competitions.

Related to Article 14.1.3 Law 4373/2016, “WADA does not have to exhaust its internal remedies when it has itself a right of appeal under Article 14 and no other party has appealed against the final decision of the ESKAN First Instance Disciplinary Committee proceedings. In this case, WADA may appeal the decision directly to the CAS.” As a result, WADA filed a statement of appeal to the CAS, against ESKAN and the athlete. Subsequently, FIBA asked to intervene. Upon submissions, all the parties and chiefly the arbitration panel accepted the application

of the Greek Law 4373/2016 in the case at hand and develop their argumentation upon its provisions. By these means, this case was dealt by the CAS and upon the incapability of the athlete to prove her innocence, the ESKAN decision was reversed and the athlete was banned from competitions for four years.

This case is the example of the implementation of the WADA Code through Greek Law 4373/2016, not only at the Greek level but also at the international one, since WADA, Fédération International de Basketball (FIBA) and Court of Arbitration for Sport (CAS) accepted the application of the Greek Law in the abovementioned case. However, at the second instance delivered the decision based on the provisions of the Greek Law 4373/2016.

## **2. ASEAD Decision No 14/2018 <sup>11</sup>**

The athlete tested positive to LGD — 4033 after a doping control that took place two days after her participation in an international competition in France, where she qualified for the upcoming Olympic Games in Rio and was notified of the results of the test a month later, while she was already in Rio. For the above violation the ESKAN First Instance Disciplinary Committee banned the athlete from competitions for four years. According to Article 14 Law 4373/2016: “Decisions which are issued pursuantly to the Code may be subject to appeal”, furthermore par. 2 of the Article mentions that decision of doping violations, or related to the imposition or not of penalties can be subject to appeal according to the provision of the Law. Thus, the athlete appealed the ESKAN decision of to ASEAD. However, Article 14 Law 4373/2016 also states “Appeals for international level athletes or international sporting events, when participating in international sporting events or in cases of international level athletes, are dealt exclusively before the CAS” (Article 14.2.1). Therefore, as the athlete is an international level athlete if she was competing international sporting events regardless where the doping control took place ASEAD rejected the appeal and consider the appeal as inadmissible, since the competent body in the second instance for international athletes is CAS.

---

<sup>11</sup> According to Article 124 Law 2725/1999 as it is in force, ASEAD is the High Council for Sports Disputes Resolutions in Greece.

### **3. ASEAD Decision of No 34/2018**

In this case, the athlete tested positive to LGD — 4033 after a doping control that took place at the National Para-Athletics Championship. The ESKAN First Instance Disciplinary Committee banned the athlete from competitions for four years. The athlete appealed the decision to ASEAD to overturn or amend the decision according to Article 14 of the Greek Law 4373/2016. The Disciplinary Committee dismissed the appeal filed by the athlete because according to Article 14.2.1 Law 4373/2016 the only competent jurisdictional body to deal with cases where the involved parties are international level athletes is CAS.

### **Concluding Remarks**

The above study reveals that the decisions of the Lex Sportiva jurisdiction bodies system, such as ESKAN and ASEAD in the Greek legal order and CAS internationally, mostly work in its favor. The decisions of the abovementioned bodies show that the legislator of the applied regulations of Lex Sportiva, as well as the provisions of the Greek Law 4373/2016, have been rendered mainly according to sport contest and its ultimate moral dimension, which at one point is totally reasonable, putting in the center of the judicial review the strict liability of the participating athlete. However, the sport bodies mentioned above seem to be incapable — in doping cases — to examine fairness from the angle of the controlled part, which is the athlete, who has the right to prove its innocence regardless strict liability doctrine. This gap is filled by jurisprudence and primarily by the implementation of the rules of law, namely the principle of counter-evidence, in order to bend the strict liability of the involved party, and proves either his innocence or his guilt. Therefore, there is a need for the creation of a systematic regulatory framework for the fight against doping with implementation of substantive and procedural principles of law, for the true “fair trial”, not only for the moral idealization of the games, but also for the satisfaction of those involved, in the sporting and athletic action, sense of justice.