SHORTCOMINGS OF THE MODERN ANTI-DOPING SYSTEM

Article

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The Doping Cases of Jannik Sinner and Iga Swiatek: Issues of Balance of Interests and Fair Adjudication in the Modern Anti-Doping System

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Abstract: The adoption of the World Anti-Doping Code (Code) at the beginning of the twenty-first century was a key step towards the harmonization of anti-doping rules at the international level. While the Code provisions have been regularly updated and improved, the basic legal mechanisms chosen by its drafters, including the principle of strict liability, as well as their practical application, continue to generate debate about the standards of fair and impartial adjudication of anti-doping rule violations and the proportionality of sanctions. In 2024, major doping scandals, which forced the public to discuss the shortcomings of the anti-doping system, have affected the tennis with the doping cases of Jannik Sinner and Iga Swiatek, the first-ranked players in men's and women's international professional tennis tours. As a result of a complex study of the Code provisions, it was established that the anti-doping system based on the principle of strict liability contains a combination of procedural and substantive legal mechanisms that lead to the public

perception that the system is unfair, allowing unequal treatment of athletes and failing to respect the balance of interests. Based on the findings, the authors propose measures aimed at improving the process of adjudication of anti-doping rule violations.

Keywords: World Anti-Doping Code; anti-doping rule violation; principle of material (objective) truth; doping; fairness; justice; balance of interests; standards of proof; strict liability; adjudication

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Contents

I. Introduction

For the tennis sports community, the year 2024 was marked by major doping scandals: banned substances in low concentrations were found in the samples of athletes Jannik Sinner (Italy) and Iga Swiatek (Poland), who were the world number one players in the men's and women's professional tennis tours.[1]

[1] Independent tribunal rules "No Fault or Negligence" in case of Jannik Sinner. Available at: https://www.itia.tennis/news/sanctions/independent-tribunal-

The public relevance of these cases, in addition to the high status and impressive achievements of the accused athletes, was also given by the actions of the International Tennis Integrity Agency (ITIA) that is authorized to conduct results management on anti-doping rule violations against international-level tennis players. Until the final decisions in the cases, the ITIA, in accordance with the Tennis Anti-Doping Programme, did not disclose that the top-players in the men's and women's professional tours were prosecuted for anti-doping rule violations. The sanctions imposed on the athletes by the ITIA were minor: in Jannik Sinner's case, no period of ineligibility was imposed at all, since no fault or negligence was established; in Iga Swiatek's case, the period of ineligibility was reduced to one month based on no significant fault or negligence.

Subsequently, the World Anti-Doping Agency (WADA) announced that it would not appeal the decision in Iga Swiatek's case, while in Jannik Sinner's case the WADA filed an appeal to the Court of Arbitration for Sport (CAS).[2] However, then the WADA announced that the parties had reached a case resolution agreement in accordance with Art. 10.8.2 of the World Anti-Doping Code (Code) instead of continuing the CAS proceedings with independent arbitrators.[3] Article 10.8.2 of the Code allows the parties to enter into an agreement to resolve the case with imposing such sanctions as the WADA and the adjudicating anti-doping organization (i.e., the ITIA) find applicable in their sole discretion. In accordance with the case resolution agreement, Jannik Sinner was sanctioned with a three-month period of ineligibility.

rules-no-fault-or-negligence-in-case-of-italian-player-jannik-sinner/ [Accessed 15.04.2025]; Polish tennis player Iga Świątek accepts one-month suspension under Tennis Anti-Doping Programme. Available at: https://www.itia.tennis/news/sanctions/polish-tennis-player-iga-swiatek-accepts-one-month-suspension-under-tennis-anti-doping-programme/ [Accessed 15.04.2025].

[2] WADA will not appeal in case of tennis player Iga Świątek. Available at: https://www.wada-ama.org/en/news/wada-will-not-appeal-case-tennis-player-iga-swiatek [Accessed 15.04.2025]; WADA appeals case of tennis player Jannik Sinner. Available at: https://www.wada-ama.org/en/news/wada-appeals-case-tennis-player-jannik-sinner [Accessed 15.04.2025].

[3] WADA agrees to a case resolution agreement in the case of Jannik Sinner. Available at: https://www.wada-ama.org/en/news/wada-agrees-case-resolution-agreement-case-jannik-sinner [Accessed 15.04.2025].

Such decisions made by the ITIA and the WADA have drawn criticism from the tennis community, who have highlighted the unfair treatment of athletes of different levels by the anti-doping system,[4] noted the double standards[5] and favouritism,[6] and described adjudication of cases as a "parody of justice."[7] Comparisons have been made with other famous tennis players, including the case of Simona Halep (Romania), also the former world number one player, who had a low concentration of a prohibited substance in the sample. Her case lasted about a year and a half; the ITIA imposed a four-year period of ineligibility, which the CAS reduced to nine months in March 2024;[8] the information about her provisional suspension was published by the ITIA at the same time as the adjudication of the case began, and the athlete remained supposedly guilty in the eyes of society for a long time and lost her ranking, which is essential to qualify for tournaments.[9] As S. Halep herself described: "Unfortunately, the ITF (ITIA) has postponed my hearing three times. […] Not only they are killing my reputation, but also me as a professional player, and I don't even talk about the consequences on my mental health."[10]

[4] Eccleshare, C. Jannik Sinner's doping case and what players' reaction says about tennis. *New York Times*. Available at: https://www.nytimes.com/athletic/5712885/2024/08/21/jannik-sinner-doping-case-player-reaction-moore-shapovalov-kyrgios/ [Accessed 15.04.2025].

[5] Rouquette, C. Mouratoglou on Sinner-WADA settlement: "There is no clean sport if there is a double standard." *Tennis Majors*. Available at: https://www.tennis-majors.com/atp/mouratoglou-on-sinner-wada-settlement-there-is-no-clean-sport-if-there-is-a-double-standard-809207.html [Accessed 15.04.2025].

[6] Novak Djokovic laments "favouritism" towards Jannik Sinner over doping ban. Available at: https://www.theguardian.com/sport/2025/feb/17/novak-djokovic-laments-favouritism-towards-jannik-sinner-over-doping-ban [Accessed 15.04.2025].

[7] Rouquette, C. Op. cit.

[8] Full decision in the case *Simona Halep v. ITIA* available at: https://www.itia.tennis/news/sanctions/full-decision-in-the-case-of-simona-halep-v-itia/ [Accessed 15.04.2025].

[9] Simona Halep issued provisional suspension under Tennis Anti-Doping Programme. Available at: https://www.itia.tennis/news/sanctions/simona-halep-provisional-suspension/ [Accessed 15.04.2025].

[10] Jacobs, S. "Devastated" Simona Halep slams ITIA — "They are killing my reputation." *Tennis365*. Available at: https://www.tennis365.com/tennis-news/devastated-simona-halep-itia-killing-reputation [Accessed 15.04.2025].

In 2024, controversial decisions on doping cases, which became the subject of the wide public discussion, were made not only in tennis. In January, the CAS finalized the case of Kamila Valieva with the imposition of a four-year period of ineligibility on the athlete due to her inability to prove the non-intentional violation.[11] In April, the media published previously publicly unknown information about the positive doping samples of twenty-three Chinese swimmers submitted shortly before the 2021 Olympic Games. In this case, no charges of anti-doping rule violations were made by the China Anti-Doping Agency (CHINADA), no appeal was filed by the WADA, and the athletes won, among others, gold medals at the Olympic Games.[12] The series of such results management proceedings in the doping cases has once again raised publicly the issue of the fairness of the modern anti-doping system and its effectiveness under the leadership of the WADA.

The European Court of Human Rights (ECtHR) in *Mutu and Pechstein v. Switzerland* case emphasized: "Even appearances may be of a certain importance or, in other words, 'justice must not only be done, it must also be seen to be done.' What is at stake is the confidence which the courts in a democratic society must inspire in the public."[13]

Current research in the field of psychology supports the observation made by the ECtHR: "The existence of anti-doping rules only and an authoritative body to enforce them through legal means, while necessary, is not sufficient for the sustainable implementation of policy. The anti-doping policies will have a sustained effect if the target groups (athletes and their entourage) feel a moral obligation to endorse these policies and believe that these policies are appropriate and fair.

[11] CAS 2023/A/9451 RUSADA v. K. Valieva, CAS 2023/A/9455 ISU v. K. Valieva and RUSADA, CAS 2023/A/9456 WADA v. RUSADA and K. Valieva, award of 29 January 2024.

[12] Schmidt, M. and Panja, T. Top Chinese Swimmers Tested Positive for Banned Drugs, Then Won Olympic Gold Tennis. *New York Times*. Available at: https://www.nytimes.com/2024/04/20/world/asia/chinese-swimmers-doping-olympics.html [Accessed 15.04.2025]; WADA statement on case of 23 swimmers from China. Available at: https://www.wada-ama.org/en/news/wada-statement-case-23-swimmers-china [Accessed 15.04.2025].

[13] European Court of Human Rights, *Mutu and Pechstein v. Switzerland*, 2 October 2018. Available at: https://hudoc.echr.coe.int/fre#{%22itemid%22: [%22001-186828%22]} [Accessed 15.04.2025].

The effectiveness of actions by both legislative and executive anti-doping bodies will be greater if they are perceived by the public as proper authorities vested with the right to regulate" (Bondarev et al., 2021, pp. 104–105).

II. Principle of Strict Liability and Balance of Interests

A clear challenge to the perception of the anti-doping system as a fair one is the principle of strict liability, which implies that the detection of a prohibited substance in an athlete's sample results in the automatic finding of an anti-doping rule violation under Art. 2.1 of the Code, in other words, that any athlete can be "guilty without guilt."

The principle of strict liability was enshrined in the first version of the Code in 2003.[14] The comment to Art. 2.1.1 of the 2003 version of the Code referred to the Olympic Movement Anti-Doping Code and the "vast majority of existing anti-doping rules" that adhere to this principle as the justification. However, based on the data provided by the participant of the study on harmonization of anti-doping rules, the principle of strict liability as a universal principle was new to the anti-doping system at the beginning of the 21st century, as many organizations at both the international and national level had either not yet used such a principle at all or had only just begun to recognize it in their rules (Soek, 2006, pp. 40–41, 55). Accordingly, there has not been sufficient experience in the anti-doping legal system with the application of such rules. It means, in particular, that the principle of strict liability is being tested in practice now, and the system needs to be further adjusted in the light of the relevant latest enforcement experience.

The main pragmatic argument that justifies the introduction of strict liability is that proving athlete's guilt in doping cases (as a mandatory subjective element of the violation) is difficult, especially for sports organizations, which are primarily private law entities and do not have the same powers as public investigative bodies (Soek, 2006,

[14] World Anti-Doping Code (2003 edition). Available at: https://www.wada-ama.org/sites/default/files/resources/files/wada_code_2003_en.pdf [Accessed 15.04.2025].

pp. 118–123).[15] The ideological basis for the principle of strict liability was reflected in the comment to Art. 2.1.1 of the Code 2003: "It appears to be a laudable policy objective not to repair an accidental unfairness to an individual by creating an intentional unfairness to the whole body of other competitors."[16]

However, as J. Soek rightly points out, enshrining the principle of strict liability instead of the traditional principle that guilt must be proven, leads to a diametrical change in the position of the athlete and the anti-doping organization, simply placing the athlete in an unprotected position instead of the anti-doping organization being in a weak position (Soek, 2006, p. 119). If a comparison is made with criminal justice, to which disciplinary anti-doping proceedings are recognized to be closer than to private law justice — also named as a "kind of criminal law" (Soek, 2006, p. 9) — then it can be noted that, from an ideological point of view, the Code's approach directly contradicts the principle of material (objective) truth. This principle means that the main goal of the criminal process is to fully, completely and objectively clarify all the circumstances of the case and proceeds from the consideration that the State, when creating legal proceedings, cannot be guided only by punitive considerations (Golovko, 2021, pp. 440–444). According to N.N. Polyanskiy, the following aphorism is the expression of the principle of material (objective) truth: "It is better to forgive ten guilty persons than to punish one innocent" (Polyanskiy, 1919, p. 34). So, this ideological view is opposite to the above-mentioned statement of the Code.

Thus, the principle of strict liability is not a means of balancing the interests of the participants in legal relations, as it simply changes the positioning of powers, setting a different starting point for an athlete and anti-doping organization. Its introduction into the anti-doping system is based on a tenuous ideological basis, which implies the protection of the anti-doping system as a self-value and an abstract majority to the detriment of each individual athlete. Accordingly, if a balance of

[15] Council of Europe Anti-Doping Convention (T-DO). Compliance by France with the Anti-Doping Convention. P. 5. Available at: https://rm.coe.int/project-on-compliance-withcommitments-respect-by-france-of-the-anti-d/168073ac52 [Accessed 15.04.2025].

[16] World Anti-Doping Code (2003 edition).

interests is to be achieved, the principle of strict liability in the legal system shall be accompanied by additional mechanisms to "mitigate" the unfair premise that all athletes whose samples contain prohibited substances are offenders. Equally, the presumption of innocence, which involves shifting the burden of proof to the investigative authorities, shall be accompanied by a system of state investigation that allows the guilt of criminals to be proven and them to be brought to justice, or otherwise law and order in the State will be impossible. However, by contrast, the anti-doping system incorporates into its design legal mechanisms, both procedural and substantive, which intensify the perception that the system is unfair and treats the athletes differently.

III. Controversial Legal Mechanisms in the Modern Anti-Doping System

III.1. Core Design of Results Management Proceedings and Proofs

Firstly, the results management process of anti-doping rule violation contains elements of adversarial proceeding system (compared to inquisitorial or continental), which appears to be unbalanced in the light of the chosen model of proofs.

So, in the continental model of legal proceedings based on the principle of material (objective) truth, the process of proving carried out, among others, by the court and the investigation, is aimed at establishing all the circumstances of the case, including circumstances testifying in favor of the accused. For example, Art. 20 of the Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic of 1960[17] stipulated that "the court, prosecutor, investigator and interrogator are obliged to take all measures provided for by law for a comprehensive, complete and objective investigation of the circumstances of the case, to identify both incriminating and exculpatory circumstances, as well as mitigating and aggravating circumstances in favor of the accused."

[17] *Vedomosti of the Supreme Soviet of the RSFSR*. 1960. No. 40. Art. 592. Available at: http://pravo.gov.ru/proxy/ips/?docbody=&nd=196029153 [Accessed 15.04.2025]. (In Russ.).

The model of legal proceedings based on the principle of material (objective) truth is compared with the adversarial process model, which is characteristic of the countries of the Anglo-Saxon legal system, where the jury trial is widespread. In the design of the adversarial process, the emphasis is more on the contraposition of the prosecution and defense evidence, where the purpose of the party's proof is to convince the court and unprofessional jury of the truth of its allegations. The prosecution does not so much assist the court in unbiased truth-finding, but rather presents its case and selects evidence that will be more persuasive than the evidence of the defense, while the court in such model acts as a neutral arbiter (Golovko, 2021, pp. 135, 436–438; van Koppen and Penrod, 2003).

Article 12.1.1 of the WADA International Standard for Testing and Investigations 2023 (ISTI)[18] identifies as possible investigative objectives the ruling out the possible violation or involvement in a violation, the developing evidence that supports the initiation of an anti-doping rule violation proceeding in accordance with Art. 8 of the Code or providing evidence of a breach of the Code or applicable International Standard. Article *1*2.2.2 of the ISTI also provides that an anti-doping organization shall ensure that investigations are conducted in a fair, objective and impartial manner.

Despite this declaration, however, the standard of proof in anti-doping rule violation cases is more of an adversarial model. Article 3.1 of the Code establishes: "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."[19]

The standard of proof for an athlete under Art. 3.1 of the Code is the balance of probabilities, meaning that the arbitrators must accept an athlete' s version if they are more inclined to believe in its credibil-

[18] Available at: https://www.wada-ama.org/sites/default/files/2022-12/isti_2023_w_annex_k_final_clean.pdf [Accessed 15.04.2025].

[19] World Anti-Doping Code. 2021. Available at: https://www.wada-ama.org/sites/default/files/resources/files/2021_wada_code.pdf [Accessed 15.04.2025].

ity than to disbelieve it. In numerical terms, the arbitrators' belief in an athlete's version is described as sufficient if it is belief of more than 50 %. This interpretation is set out, for example, in the German Anti-Doping Organization's comment to Art. 3.1 of the German Anti-Doping Code.[20]

In order to be perceived as fair, these elements of the adversarial model require equality between the parties in their ability to prove their case, and not only formally but, if an ideal model is taken, also actually. Accordingly, the greater the difference between the parties' actual ability to gather evidence, the more unfair the system appears to be. Therefore, in a doping case where an athlete is placed in a position, in according with the anti-doping rules, where he must somehow gather evidence of his innocence, while the anti-doping organization under Art. 2.1 of the Code only needs to present an adverse analytical finding, the court's (arbitrators') active position and its assistance to the athlete in fulfilling his burden of proof seem particularly important.

Besides, at the same time, the ISTI contains a number of provisions, which indicate that an anti-doping organization is acting to detect doping. For example, Art. 11.1 of the ISTI requires anti-doping organizations to "ensure they are able to obtain, assess and process anti-doping intelligence from all available sources, to help deter and detect doping, to inform the development of an effective, intelligent and proportionate test distribution plan, to plan target testing, and to conduct investigations as required by Code Art. 5.7." Under Art. 12.2.2 of the ISTI, an anti-doping organization "shall gather and record all relevant information and documentation as soon as possible, in order to develop that information and documentation into admissible and reliable evidence in relation to the possible anti-doping rule violation, and/or to identify further lines of enquiry that may lead to the discovery of such evidence."

Conversely, it is not emphasized that an anti-doping organization must also gather evidence to exonerate an athlete. For example, under Art. 10.4 of the Code, an anti-doping organization may establish aggravating circumstances, but there is no mention in the Code of an

[20] Nationaler Anti-Doping Code (NADC*)*. 2021. Available at: https://www.nada.de/recht/nadc [Accessed 15.04.2025].

anti-doping organization concurrently establishing mitigating circumstances. In doing so, the Code reinforces the role of the anti-doping organization as a prosecutor and does not emphasize its role as an organization seeking to establish the truth and, where appropriate, to bring justice to all those involved in a case. Moreover, an anti-doping organization acts as both investigator and prosecutor before the arbitrators, so there is no institutional separation of investigative and prosecutorial functions. This combination also raises the perception of opposition between athletes and anti-doping organizations, creating the impression that the anti-doping organization will do everything in its power during the hearing to defend the position, which was formed during the investigation.

III.2. Discretion of Anti-Doping Organizations during Results Management Proceedings

Secondly, the anti-doping system retains the discretion of anti-doping organizations, including the one throughout the course of an adjudication process. On the one hand, this discretion gives flexibility, allowing the process to be adapted to the circumstances of a particular case. On the other hand, it can intensify the feeling of inequality, especially if there are no transparent provisions that justifies and clarifies differences between the approaches.

For example, Art. 14.3 of the Code provides that the identity of any athlete who is notified of a potential anti-doping rule violation, the prohibited substance or the prohibited method and the nature of the violation involved, and the decision on whether the athlete is subject to a provisional suspension *may be* publicly disclosed by the responsible anti-doping organization. A public disclosure is a very sensitive issue that can easily provoke public pressure and creation of a negative image of the athlete that can result in significant damage to the athlete's reputation. It seems that it would be fairer if all athletes were treated equally, and in each case the information should be disclosed after a confirmed adverse analytical finding or, conversely, no information should be disclosed before the final decision of a hearing body.

In the cases of Jannik Sinner and Iga Swiatek, the athletes timely challenged the provisional suspension and, since it did not come into force, no public disclosure in accordance with the Tennis Anti-Doping Programme was made. However, a part of the public precepted it as a "cover up" by the ITIA,[21] so it was noted: "Everything has been done by the book. The book appears in need of a rewrite."[22] It should be highlighted that during the preparations of the 2027 edition of the Code, a part of stakeholders also called for the publication of all anti-doping decisions, while the others noted that mandatory publication may conflict with the applicable law on the personal data protection.[23]

III.3. Lack of Separation of Powers and Independent Oversight

Thirdly, another issue is the lack of separation of powers in the anti-doping system, including independent oversight over anti-doping organizations' actions during the investigations, so the above-mentioned discretion can be used contrary to normative rules or in bad faith. While the WADA has taken measures to ensure that anti-doping organizations operate independently, such measures do not preclude the anti-doping organization from acting with a lack of diligence in certain cases, such as failing to actively gather evidence against an athlete and support a charge, or, in other cases, from showing extensive efforts to accuse or defend the athlete.

This situation is also characteristic of criminal proceedings in the continental process model, when the impartiality of the actions of investigative bodies is questioned. However, in the system of the state justice the quality of investigative work is compensated for by a set of control

[21] Rouquette, C. Op. cit.

[22] Futterman, M. Why Iga Swiatek's doping case being kept in secret is bad for tennis. *New York Times*. Available at: https://www.nytimes.com/athletic/5956276/2024/11/29/iga-swiatek-tennis-doping-ban/ [Accessed 15.04.2025].

[23] Stakeholder Comments. 2027 Code and International Standard Update Process: Stakeholder Consultation Phase — World Anti-Doping Code. WADA. Available at: https://www.wada-ama.org/sites/default/files/2024-10/2027%20Code%20%26%20IS%20Update%20Process%20-%20Stakeholder%20Consultation%20Phase%20-%20Code%20Comments.pdf [Accessed 15.04.2025].

mechanisms independent of each other in the general apparatus of state administration (for example, the Prosecutor General's Office of the Russian Federation adopted Order No. 544 of 17 September 2021 "On the organization of the prosecutor's supervision over the procedural activities of preliminary investigation bodies"[24]).

In the anti-doping system, the anti-doping organization holds complex powers to adopt anti-doping rules, to conduct testing and investigations, to constitute a hearing body (subject to operational independence, as it is defined in the Code, but still not entirely separate), to charge, etc. The only supervising body over the actions of anti-doping organizations is the WADA, which, in the event of a violation of the Code or the WADA International Standards, may initiate procedures to declare a signatory non-compliant with the Code. However, there are no legal control mechanisms in relation to the WADA itself, except for the right to appeal its decisions to the CAS (still certain significant decisions of the WADA are not subject to appeal under the Code).

For example, in the case of the Chinese swimmers, the WADA expressly stated that it did not appeal the CHINADA's decision to the CAS to change the finding of "no anti-doping rule violation" to a finding of "violation with no fault or negligence," even though there were legal grounds for doing so: "For largely technical reasons, the WADA did not agree entirely with the CHINADA's approach. However, having determined that it was in no position to challenge the contamination scenario, the WADA decided not to initiate 23 technical appeals to the CAS to effectively replace findings of 'no ADRV'[25] with findings of 'ADRV with no fault or negligence' on the part of the athletes. Such appeals, even if successful, would have changed absolutely nothing in terms of athlete participation at the Olympics or any other event [...]. For reasons of pragmatism and fairness towards the athletes (who would have had to face this legal challenge on the eve of the Olympic and Paralympic Games), WADA decided not to lodge what would have been a largely technical appeal [...]. It should be noted that WADA has never in its

[24] *Zakonnost'*. 2021. No. 12. (In Russ.).

[25] In the cited WADA's documents "ADRV" means "Anti-Doping Rule Violation," "NADO" means "National Anti-Doping Organization," "AAF" means "Adverse Analytical Finding."

history appealed against a finding of no ADRV to convert it into a finding of a violation with no fault. WADA is not aware that any other Anti-Doping Organizations (ADOs) have done this either. Further, when other ADOs have determined in similar circumstances (including cases where multiple athletes from the same team have been subject to food contamination) to close cases with no ADRV (when they should have been 'ADRV with no fault' cases), WADA has not appealed."[26]

However, it seems to be a highly significant issue of whether an athlete has or has not committed a violation, even with no fault or negligence, so the case is not only the matter of possible or impossible participation of actual athletes. It is, among other things, an issue of legality, fairness and principles of equality, a question of consistent practice and equal treatment by the anti-doping system. At the very least, WADA's "pragmatic" approach can be characterized as inconsistent with the principle of legality. In terms of legality, the CHINADA's decision should have been appealed if there were grounds to do so, but there is no mechanism to force the WADA to appeal or to sanction WADA's inaction. The question should be asked: why should some athletes have to go through legal proceedings and proof their versions, while others can benefit from the investigation made already by an anti-doping organization and absence of charges from it?

It should be noted that CHINADA's results management and WADA's inaction in the case of Chinese swimmers was severely criticized in the final report of the independent prosecutor, also by the law expert appointed by him.[27] For example, the appointed expert made the following conclusion: "CHINADA's handling of the case had deviated significantly and fundamentally from the procedures laid down in anti-doping standards, that these deviations were particularly serious given that they had enabled the athletes concerned — in the absence of an ap-

[26] Contamination case of swimmers from China. Fact Sheet / Frequently Asked Questions. P. 5. Available at: https://www.wada-ama.org/sites/default/files/2024-04/2024-04_fact_sheet_faq_chinese_swimming.pdf [Accessed 15.04.2025].

[27] Independent Prosecutor's final report — Cottier Report. Available at: https://www.wada-ama.org/sites/default/files/2024-09/202408_final_cottier_report_english_translation.pdf [Accessed 15.04.2025].

peal by the WADA — to benefit from an absence of an ADRV (as well as an absence of any consequences)…"[28] In response to the expert's comments, WADA further noted that "although it is not usual for a NADO to conduct an investigation following an AAF, given the role is assigned to the athlete, the WADA has already seen this happen."[29] This shows a discretionary difference in approaches that is not based on clear and precise criteria.

Also, the prosecutor pointed out: "Legally, the Investigator can follow the very short explanation from the Agency, in the sense that, formally, there was no rule requiring it to act. On the other hand, given the role of the WADA, the frontline guardian of the fight against doping worldwide, this simple reference to the absence of a rule imposing action is not satisfactory. At the very least, the extraordinary nature of the case (23 swimmers, including top-class athletes, 28 positive tests out of 60 for a banned substance of therapeutic origin, etc.), could have led to coordinated and concerted reflection within the Agency, culminating in a formal and clearly expressed decision to take no action. This criticism does not allow the Investigator to consider that the Agency has favored the 23 swimmers concerned, or that some of its members have sought to do so. The reproach, easy and straightforward to formulate with the benefit of hindsight and an overall vision, concerns a shortcoming, a gap, an absence. However, this cannot be construed as a deliberate intention, nor as WADA's acceptance of CHINADA's handling of the case for the benefit of its athletes, with anti-doping rules taking a back seat."[30]

Another key conclusion of the prosecutor in the light of the present research is as follows: "Nor is it satisfactory for the Agency, despite noting that a national organization has deviated from the procedure, to make no comment on the matter, even when this deviation has had no substantive impact. In this respect, WADA's apparent silence is hardly compatible with its role as worldwide guardian of compliance with procedures, which cannot be limited to issuing and distributing direc-

[28] Independent Prosecutor's final report — Cottier Report. P. 32.
[29] Independent Prosecutor's final report — Cottier Report. P. 37.
[30] Independent Prosecutor's final report — Cottier Report. P. 41.

tives to NADOs and sports federations, without reacting in individual cases."[31]

Apart from the cited observations in respect of the specific case, it should be noted that, in general, the problem with the separation of powers in the anti-doping system was mentioned specially in the 2022 Declaration of Guiding Principles for the Future of Anti-Doping proposed by a group of national anti-doping organizations.[32] It stated, in particular, that "separation of powers through creating a system of internal checks and balances within the anti-doping community must be created, with a broad representative legislative power, as well as both executive and judicial powers which are separate, independent, impartial, apolitical and guarded from being controlled by political interests other than anti-doping and clean sports."

III.4. Judicial Authority as a Guarantor of Rights

Fourth, in criminal proceedings, the rights of suspects are ensured by placing certain decisions within the exclusive competence of the court, as well as establishing the powers of the court to correct the shortcomings of pre-trial procedures that have resulted or could have resulted in the violation of the rights of suspects.

For example, according to Art. 29.2 of the Criminal Procedure Code of the Russian Federation[33] (CPC RF), only a court, including the period during the pre-trial proceedings, has the authority to decide on a preventive measure in the form of detention, house arrest, bail, or prohibition of certain actions. In anti-doping cases, provisional suspensions shall be imposed by the anti-doping organization at its discretion (Art. 7.4 of the Code). Article 165 of the CPC RF provides for a judicial

[31] Independent Prosecutor's final report — Cottier Report. P. 56.

[32] Available at: https://www.inado.org/fileadmin/user_upload/Declaration_of_Guiding_Principles_for_the_Future_of_Anti-Doping.pdf [Accessed 15.04.2025]; Berkeley, G. NADOs call for adoption of "guiding principles" on future of anti-doping. *Inside the games*. Available at: https://www.insidethegames.biz/articles/1124428/nados-call-for-guiding-principles [Accessed 15.04.2025].

[33] Criminal Procedure Code of the Russian Federation of 18 December 2001 No. 174-FZ. Collection of the Legislation of the Russian Federation. 2001. No. 52 (Part I). Art. 4921. (In Russ.).

procedure to obtain a permission to carry out certain investigative actions (in particular, on the inspection of a dwelling in the absence of the consent of the persons living in it, on the search or seizure of a dwelling).

Article 196 of the CPC RF provides for cases where a forensic expert examination is mandatorily ordered, and Article 283 of the of the CPC RF allows the court, on its own initiative, to order a forensic expert examination at the stage of investigation of evidence. In one of the cases, the higher instance overturned the court's decision on the grounds that the court, in violation of Article 196 of the CPC RF, rejected the defendant's request, which was supported by an attorney and a state prosecutor, for the appointment of a forensic psychiatric examination to determine his sanity both at the time of the offences charged and at the time of the court's consideration of the criminal case.[34]

Article 237 of the CPC RF allows the court to return a case to the prosecutor when it is necessary to remove the obstacles to the case consideration by the court that preclude the possibility of a lawful, justified and fair judgement or other final court decision in the case and cannot be removed in court proceedings (for example, if the preliminary investigation was carried out by an improper, unauthorized or a subject to challenge person, or if a preliminary investigation was conducted in an improper form contrary to the law).[35]

Thus, in view of the fact that the court is called upon to implement the principle of material (objective) truth and to establish comprehensively, fully and objectively the circumstances of the case, the court is vested with certain powers that make it possible to guarantee the rights of the participants in criminal proceedings, to prevent arbitrary actions by the investigating authorities and to assist, *inter alia*, the defense in the collection of evidence.

[34] Judgment of the Second Cassation Court of General Jurisdiction from 5 November 2020 No. 77-1979/2020. Available at: https://2kas.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=1048950&delo_id=2450001&new=2450001&text_number=1 [Accessed 15.04.2025]. (In Russ.).

[35] Resolution of the Plenum of the Supreme Court of the Russian Federation of 17 December 2024 No. 39 "On the practice of application by the courts of the norms of the Criminal Procedure Code of the Russian Federation, regulating the grounds and procedure for returning a criminal case to the prosecutor." *Bulletin of the Supreme Court of the Russian Federation*. 2025. No. 2. (In Russ.).

III.5. Logic behind Imposing Sport Sanctions

Fifthly, the manner in which sport sanctions are imposed under the Code is unbalanced. For example, the standard sanction for a presence of a prohibited substance found in an athlete's sample that is not a specified substance is a four-year period of ineligibility under Art. 10.2.1 of the Code. An athlete may establish that he or she acted unintentionally to reduce the standard period of ineligibility to two years (Art. 10.2.1.1 of the Code). An athlete may also bring evidence to show that his or her fault was not significant, in which case the period of ineligibility may be further reduced (Art. 10.6 of the Code).

In this context, close attention should be paid to how the Code defines intentional violation and lack of significant fault or negligence. Under Art. 10.2.3 of the Code, the term "intentional" identifies "those athletes or other persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk." This definition of an intentional violation set out in the Code is close to the direct and indirect intent under Russian criminal law.

Thus, in order to prove unintentional conduct, it may be not sufficient for an athlete to prove, on a subjective side, that he or she did not wish to use the prohibited substance, that he or she did not wish to enhance his or her sport performance, in other words, that he or she lacked direct intent. The athlete shall also prove that he or she was not indifferent to the probability of the prohibited substance entering his or her body — a requirement that immediately raises the burden of proof. Thus, the athlete shall demonstrate that he or she has taken certain actions to prevent any adverse analytical finding.

For example, in Kamila Valieva's case, in addition to the main version on the dessert contamination, the arbitrators also considered defensive scientific evidence and the athlete's statements. The scientific evidence, as the arbitrators concluded, was "entirely equivocal" and could support both intentional consumption and contamination versions. The athlete's witness claim standing alone was not sufficient, although the arbitrators "found her to be an honest, straightforward and

credible witness and her protestations of innocence believable." In the situation, where the athlete cannot find the original source of a prohibited substance, there are very limited means to fulfill the conditions of an unintentional violation, in accordance with the term described in Art. 10.2.3 of the Code.[36]

Then, the Code defines "No Fault or Negligence" as proving that athlete "did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used or been administered the prohibited substance or prohibited method or otherwise violated an anti-doping rule." "No Significant Fault or Negligence" under the Code is proving that "any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation." In both cases, athletes other than protected persons and recreational athletes must establish how the substance entered their bodies.

Accordingly, proving an athlete's unintentional violation under Art. 10.2.1.1 and 10.2.3 of the Code to reduce the standard sanction from four years to two years will also tend to reduce the athlete's degree of fault under Art. 10.6 of the Code based on the criteria for "No Significant Fault or Negligence," as the standard of proof for lack of intent under the Code implies the accidental (unexpected) doping and demonstration of athlete's attentiveness to his or her surroundings, the products consumed, and other circumstances showing that the athlete cares about the any potential risks. In this regard, it is very likely that an athlete who proved a lack of intent under Art. 10.2.1.1 of the Code would be able to simultaneously reduce the sanction under Art. 10.6 of the Code, and the period of ineligibility would be less than two years.

As a result of such a regime, there is a significant gap in the length of the period of ineligibility between the group of cases where the athletes were unable to convince the arbitrators that their actions were unintentional and the group of violations where the athlete did provide some acceptable explanation: four years in one case and up to one month in the other.

[36] CAS 2023/A/9451 RUSADA v. K. Valieva, CAS 2023/A/9455 ISU v. K. Valieva and RUSADA, CAS 2023/A/9456 WADA v. RUSADA and K. Valieva, award of 29 January 2024.

III.6. Discretion of the Judicial Authority in the Imposition of Sanctions

Sixthly, it is left to the full discretion of the arbitrators to decide all matters relating to the imposition of a sanction, in particular in determining the sufficiency of the evidence to prove the unintentional violation. As I.A. Pokrovskiy noted, judicial discretion is a dangerous legal means that can significantly undermine confidence in the judicial power, so the more extensive the discretion of judges (arbitrators), the more fragile the legal system becomes (Pokrovskiy, 1998, pp. 89–106).

The drafters of the Code, in an effort to maintain a balance between the arbitrators' discretion and the precision of the rules, chose to differentiate between violations and sanctions by identifying elements of the objective side and special subjects (e.g., the use of substances of abuse or violations committed by a protected person) in order to cover the widest range of individualized situations possible.

However, at the most sensitive point, the subjective aspect of one of the main groups of cases (the presence of a non-specified substance), the arbitrators' discretion to determine whether the violation was intentional or unintentional and the athlete's degree of fault decides the athlete's fate. Any further differentiation introduced by the Code with respect to the other elements of the violations that are not related to the subjective side of the violation does not enhance fairness when its underlying problem of unequal treatment of similar cases remains unresolved.

The unequal treatment of similar cases can be demonstrated in the cases of Jannik Sinner and Mariano Tammaro.[37] In the case of Jannik Sinner, the athlete claimed that the prohibited substance entered his body as a result of his physiotherapist treating a wound on the physiotherapist's finger with the "Trofodermin" spray containing clostebol and then performing physio-procedures on the athlete. In Mariano Tamma-

[37] ITIA. Independent tribunal rules "No Fault or Negligence" in case of Jannik Sinner. Available at: https://www.itia.tennis/news/sanctions/independent-tribunal-rules-no-fault-or-negligence-in-case-of-italian-player-jannik-sinner/ [Accessed 15.04.2025]; Arbitration CAS 2022/A/9141 Mariano Tammaro v. International Tennis Federation (ITF), award of 7 November 2023.

ro's case, a father used the "Trofodermin" spray on the player without his consent to treat a wound.

The similarities of circumstances are as follows: Jannik Sinner and Mariano Tammaro are both Italian tennis players who had low levels of clostebol in their samples, the clostebol entered their bodies due to the fault of their entourage, and the source of contamination was "Trofodermin." The key differences of cases are as follows: at the time of the sample collection, Jannik Sinner was a top-ranked player, and Mariano Tammaro was a beginning young professional player who participated in his first tournament in the professional tennis tour; the physiotherapist, whose fault led to the contamination of Jannik Sinner's sample, was high-professional and had worked for a professional basketball team for six and a half years prior, and the parents of Mariano Tammaro were not professional; Jannik Sinner chose his staff and assigned the physiotherapist to render medical assistance, and Mariano Tammaro did not choose his entourage and appointed his parents as medical staff; in Jannik Sinner's case, the adverse analytical finding was reported twice, in two samples, and Mariano Tammaro tested positive only once; in Jannik Sinner's case, there was cross-contamination (the spray was used on the physiotherapist's finger and contaminated the player via a skin-to-skin contact), and, in Mariano Tammaro's case, there was a direct use of the spray on the player.

In the case of Jannik Sinner, the ITIA ruled that no period of ineligibility is to be imposed, and then it was agreed on a three-month period of ineligibility. In the case of Mariano Tammaro, the ITIA ruled that two years of ineligibility is to be imposed, and then the CAS reduced the period of ineligibility to 15 months. Such an assessment of the circumstances and the imposition of sanctions appear highly arguable at least. Given the huge difference in the period of ineligibility in the cases (no period at all and two years in the first instance), it appears that the standard of conduct and caution required of a professional athlete and his professional team (Jannik Sinner) are much lower than that required of a 17-year-old beginner professional athlete and his parents (Mariano Tammaro).

Furthermore, the arbitrators emphasised different circumstances. In the case of Jannik Sinner, the arbitrators did not take into account

that the physiotherapist's conduct constituted gross negligence: he had professional experience and knowledge; he could not have been unaware of the possibility of contamination with "Trofodermin," as the contaminating effect of this product on the athletes' samples should be well-known, especially in Italy, where it is widely used (De la Torre et al., 2020); he applied the product while assisting the player and being a part of his team during the tournament; he did not wash his hands before the physio-procedures to prevent contamination, etc. By contrast, in the case of Mariano Tammaro, arbitrators indicated that the player should ask his father what he had applied and how he had made sure that the anti-doping measures were complied with; should carefully examine the bottle of spray and research the term "clostebol," consult his sports doctor and his coach, etc.

However, even if it is cross-contamination in Jannik Sinner's case and direct contamination in the case of Mariano Tammaro, or there are other slight differences in the circumstances of the cases, including the credibility of athletes' versions, a two-year gap of ineligibility simply cannot be fair. It shall be remined that two years of ineligibility also separate intentional anti-doping rule violations (in case of the presence of a prohibited substance in a sample) from non-intentional ones. So, the modern anti-doping system and the Code rules allow arbitrators to make such decisions in very similar cases, in which the difference in sanctions between the two close types of non-intentional conduct is comparable to the difference between intentional and non-intentional violation.

As I.A. Pokrovskiy pointed out on the issue of judicial discretion: "The problem remains a problem, but only it is shifted to the shoulders of individual judges and their responsibility. Where the legislator should have thought more carefully, individual judges must now think [...]. If the theory of free law-making by judges contains in itself an organic and irremovable danger of judicial discretion, if it elevates the uncertainty and vagueness of law to a principle, it obviously runs counter to the interests of the developing human personality. This latter can tolerate many restrictions on its freedom, if they are established by law and if they are clear, but it cannot tolerate dependence on anyone's discretion, even if it be the most benevolent. The desire for strict

legality is as indispensable a feature of the developing civil law as of the developing public law, and no judicial 'transpersonalism' can suppress this desire" (Pokrovskiy, 1998, pp. 104–105).

III.7. Political and Legal Factors Determining the Management of the Anti-Doping System

Seventhly, the political and legal factors determining the way in which the WADA administers the anti-doping system remain important in the context of fairness. Thus, in 2013, a working group established by WADA, with the participation of the first WADA president (Richard Pound), made a report entitled "The Lack of Effectiveness of Testing Programmes."[38]

While the working group identified many individual weaknesses in the anti-doping system, a significant number of these were limited to the low level of interest by all stakeholders in the system, e.g., international sports federations, national anti-doping organizations, athletes, public authorities and others, in conducting and improving anti-doping. The main conclusion of the working group, placed at the beginning of the report, was as follows: "The real problems are the human and political factors. There is no general appetite to undertake the effort and expense of a successful effort to deliver doping-free sport. […]. It is reflected in low standards of compliance measurement (often postponed), unwillingness to undertake critical analysis of the necessary requirements, unwillingness to follow-up on suspicions and information, unwillingness to share available information and unwillingness to commit the necessary informed intelligence, effective actions and other resources to the fight against doping in sport."[39]

The dilemma expressed in the WADA working group report has haunted the anti-doping system since its inception. On the one hand, part of the public voices insists, for various reasons, that the sports community itself must vigorously combat doping in sport: for States, anti-doping becomes a political means of deterring other States from

[38] Available at: https://www.wada-ama.org/en/resources/lack-effectiveness-testing-programs [Accessed 15.04.2025].

[39] Lack of Effectiveness of Testing Programmes. P. 3.

taking unfair advantage in the training of athletes; the medical community worries about the uncontrolled use of potentially dangerous drugs; the mass media have an interest to report high-profile doping stories and, therefore, discuss, from different points of view, the prohibition on doping (Orlov and Gali, 2023; Gali, 2023). On the other hand, not all actors in the anti-doping system, including in the sports community, are willing to equally make the efforts in the fight against doping, nor do they recognize the need for a universal anti-doping system. And, as historical experience shows, the very existence of the anti-doping system is dependent on "doping scandals" that cause a wide public outcry. It can be noted that the rounds in the development of the legal framework for anti-doping are linked to such scandals, for example, the tragic deaths of cyclists in the 1960s led to the birth of anti-doping regulation, and the 1998 Tour de France scandals led to the creation of the WADA and modern anti-doping system (Orlov and Gali, 2023, pp. 291, 303). In a 2013 interview, which marked the 25th anniversary of the Ben Johnson scandal at the 1988 Olympics, WADA's first president, Richard Pound, in response to a reporter's question, unequivocally indicated his hope that sports community would be shaken by a doping scandal (a "seismic shock") because it would bring attention to the need to fight doping in sport.[40] Some time after this interview, in December 2014, a film by Hajo Seppelt was shown,[41] which served as the occasion for the start of a long doping scandal in the Russian sport that, in turn, lead to the series of reforms in the anti-doping system and increased public attention.[42]

These observations may lead to the view that WADA's management of the anti-doping system the way it has been established since the early 2000s is based on the recognition of three political and legal factors: the declining trend in public interest in anti-doping, the need for regu-

[40] Ben Johnson: catching up with a fallen hero. Available at: https://www.cbc.ca/news/ben-johnson-catching-up-with-a-fallen-hero-1.1865773 [Accessed 15.04.2025].

[41] Oltermann, P. Russia accused of athletics doping cover-up on German TV. Available at: https://www.theguardian.com/sport/2014/dec/03/russia-accused-athletics-doping-cover-up-olympics [Accessed 15.04.2025].

[42] Progress of the Anti-Doping System in Light of the Russian Doping Crisis. Available at: https://www.wada-ama.org/sites/default/files/20190122_progress_of_the_anti-doping_system.pdf [Accessed 15.04.2025].

lar doping scandals to sustain such an interest, and the simultaneous maintenance of WADA's legitimacy.

If States and the sports community, which implement the anti-doping policy and are the sources of funding for the WADA, are not sufficiently interested in the fight against doping, there is a risk that the global anti-doping system established at the beginning of the 21st century will begin to break down and that the WADA and its officials will lose influence and resources, including funding.[43]

The principle of strict liability itself ensures that anti-doping organizations will always have doping cases and the athlete will be found guilty, even if there is no guilt. Thus, the risk that the WADA and other anti-doping organizations will be accused by anyone of failing to prosecute anti-doping rule violations, decreases. However, the principle of strict liability can also lead to undesirable consequences for the system, to an excessive number of doping cases that will demonstrate that, despite the funding and support it receives, the WADA is unable to effectively combat doping.

The WADA therefore requires legal tools to flexibly manage the anti-doping system so that doping scandals can be controlled. Such tools, including the ways to ensure confidentiality of sensitive information, have been demonstrated in the cases of Jannik Sinner, Iga Swiatek and the Chinese swimmers.

The Code and the WADA International Standards also contain a number of provisions that allow the WADA and anti-doping organizations to prevent independent arbitration from interfering with a case and avoid unwanted publicity. So, under Art. 12.3.3 of the ISTI, an anti-doping organization may internally decide not to bring forward proceedings against the athlete or other person asserting the commission of an anti-doping rule violation and shall submit that decision to the WADA and international sports federation for them to determine whether they should be appeal against it. If there is no appeal, then the information on the case remains confidential. From WADA's explanations, it seems that this provision was applied in the case of twenty-three Chinese swimmers.

[43] On the problems of WADA legitimacy see also: Bondarev et al., 2021.

Article 10.8.2 of the Code allows the parties, with WADA's involvement, to enter into a case resolution agreement, choosing the applicable sanction. This provision was applied in the case of Jannik Sinner. Under Art. 10.7.1.2 of the Code, the WADA also has the discretion not to impose sanctions when the athlete has provided substantial assistance in the finding of anti-doping rule violations. The WADA may also, in exceptional circumstances, agree on no mandatory public disclosure in response to substantial assistance. Furthermore, for WADA's decisions under Art. 10.7.1.2, 10.8.2 of the Code, it is expressly provided that they are not subject to appeal to an independent arbitration.

Given other advantages that the WADA has by virtue of the Code (the unlimited right to appeal — Art. 13 of the Code, the right to take possession of samples — Art. 6.8 of the Code, the absence of external controls, etc.), it is able to manage the adjudication process at all stages. For example, stakeholders commenting on the 2027 Draft Code also drew attention to a factor that is not mentioned in the Code, but in practice puts the WADA and a number of other anti-doping organizations in an advantageous position, such as the absence of a full and consolidated database of the CAS decisions in anti-doping cases in the public domain.[44] Together with WADA's broad rights in other areas of anti-doping regulation — for example, it is noted in the academic literature that the procedure of adding new substances and methods on the Prohibited List lacks in transparency (Norboeva and Zakharova, 2023) — WADA is able to exert a significant influence on the global anti-doping agenda.

IV. Conclusion

Thus, the Code currently creates a legal system where:

— the principle of strict liability applies;

— independent oversight is insufficient, including judicial oversight, of the actions of the WADA and other anti-doping organizations during the investigation;

[44] Stakeholder Comments. 2027 Code and International Standard Update Process: Stakeholder Consultation Phase — World Anti-Doping Code.

— the role of anti-doping organizations has an accusatory bias, and there is no separation between investigative and prosecutorial functions;

— there is no clear separation of norm-setting powers, executive and judicial powers in the anti-doping system;

— the court (arbitration court) has no task to assist in the establishment of material (objective) truth, including in the collection of evidence;

— an imbalance in the imposition of a period of ineligibility (within the subjective side) creates a serious gap between the sanctions imposed (ranging from one month to four years) for athletes who have met the burden of proof in relation to the non-intentional violation and athletes who cannot meet the high burden of proof;

— there is free discretion of the court to decide whether to impose sanctions and how long the period of ineligibility shall last, taking into account the subjective elements (fault) of the violation;

— the WADA has a broad ability to manage the adjudication process while keeping some of the details of the process inaccessible to the public and avoiding the intervention of an independent arbitration.

In such circumstances, even if the WADA and the anti-doping organizations act with complete independence and impartiality in all circumstances, the fairness of the anti-doping system still would be in doubt because there is insufficient "visibility" of that fairness — there is a lack of legal mechanisms to ensure that the system treats the same cases equally.

In this regard, the World Anti-Doping Program is currently in need of serious improvement. The adjudication of anti-doping rule violation could be improved in the following ways, among other things:

— implementing the principle of substantive (objective) truth;

— requiring courts (arbitrators) and anti-doping organizations to assist the athlete's side in gathering evidence and finding not only aggravating, but also mitigating circumstances;

— strengthening the independent judicial (arbitration) oversight over the actions of an anti-doping organization during the investigation and pre-hearing stages;

— increasing transparency of the results management process in such a manner that will be equal in relation to all athletes and anti-doping organizations so that they could not make unjustified exceptions in favor of certain athletes;

— modifying the regime of sanctions to narrow the gap between similar cases and distinguishing in a fairer manner situations, where (1) the intent is proven, (2) the lack of intent is not proven but the intent also is not proven, and (3) the lack of intent is proven;

— including in the Code clearer criteria for reducing a period of ineligibility; and

— establishing stricter control over the actions of the WADA itself, for example, through creating an independent oversight body or extending the right of stakeholders to appeal against WADA's actions in court (in arbitration).

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