

ANTI-DOPING SYSTEM IN OLYMPIC SPORTS: WADA'S RULING ON RUSADA AND WHAT COMES NEXT AS WE LOOK TOWARDS TOKYO 2020

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The current anti-doping system in Olympic sports has a comprehensive list of prohibited substances to prevent athletes from receiving an unfair advantage, tough penalties for offending athletes and safeguards to help prevent athletes engaged in inadvertent doping offences from receiving unfair penalties.

On December 9, 2019, the World Anti-Doping Agency's ("WADA's") Executive Committee ("ExCo") unanimously endorsed the recommendation of the independent Compliance Review Committee ("CRC") that the Russian Anti-Doping Agency ("RUSADA") be declared non-compliant with the World Anti-Doping Code ("Code") for a period of four years over inconsistencies in anti-doping data discovered during an investigation. The effect of this decision is that Russia will be banned from international sports events for four years, including the summer 2020 Tokyo Olympics.

While Russian athletes will still be able to compete if they can show they are clean competitors, they may not represent the Russian Federation. ExCo's ruling further means that Russia's flag, name and anthem will not appear at the Tokyo Games, and the country may also be stripped of hosting world championships in Olympic Sports.

WADA's Findings

In December 2014, Dr. Grigory Rodchenkov (former director of the Moscow laboratory) made serious allegations of a systematic doping conspiracy in Russian sport. Following these allegations, WADA's ExCo indicated that RUSADA would be added to the list of Code-compliant Signatories, on condition that RUSADA provide the following: (i) an authentic copy of specific analytical data held at the Moscow Anti-Doping Centre by

December 31, 2018; and (ii) related urine samples from storage in the Moscow laboratory by June 30, 2019^[1].

Despite these conditions, the ExCo concluded that the Moscow data was intentionally altered prior to and while it was being forensically copied by WADA in January 2019. In addition, in some cases, system messages were fabricated in order to hamper the work of WADA investigators. The Chair of the CRC mentioned that the requirement to provide an authentic copy was a critical condition for RUSADA to be reinstated to the list of Code-compliant Signatories^[2]. An authentic copy was critical for several reasons including drawing a line under the allegations of a systematic conspiracy to dope Russian athletes, punishing any Russian athletes who had tested positive and ensuring that innocent Russian athletes could be cleared of suspicion.

Ultimately, Russia failed to provide data that was either complete or fully authentic, which led to RUSADA's declaration of non-compliance with the Code.

RUSADA's Appeal to the CAS

On December 20, 2019, RUSADA notified WADA that it wished to dispute WADA's decision and take its case to the CAS pursuant to article 10.4.1 of the International Standard for Code Compliance by Signatories. The ISCCS provides that:

If the Signatory wishes to dispute the asserted non-compliance and/or the proposed Signatory Consequences and/or the proposed Reinstatement conditions, then (in accordance with Article 23.5.6 of the Code) it must notify WADA in writing within twenty-one days of its receipt of the notice from WADA. WADA shall then file a formal notice of dispute with CAS, and the dispute will be resolved by the CAS Ordinary Arbitration Division^[3].

No sanctions will be imposed on Russia until the CAS rules on RUSADA's appeal. While it is difficult to predict what the outcome of the decision will be, what is certain is that the legal fallout from the WADA ruling at the CAS will dominate preparations for the Tokyo Olympics, which open July 24, 2020. The CAS will render a decision on the large-scale Russian doping case between February-March 2020.

[1] Compliance Review Committee, "CRC Recommendation in Relation to RUSADA," at p 1. <https://www.wada-ama.org/en/media/news/2019-12/wada-executive-committee-unanimously-endorses-four-year-period-of-non-compliance>.

[2] World Anti-Doping Agency, "WADA Executive Committee unanimously endorses four-year period of non-compliance for the Russian Anti-Doping Agency," <https://www.wada-ama.org/en/media/news/2019-12/wada-executive-committee->

unanimously-endorses-four-year-period-of-non-compliance.

[3] World Anti-Doping Agency, International Standard for Code Compliance by Signatories, art. 10.4.1.

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