

IMPLEMENTATION OF A DECISION BY A NON-SIGNATORY CONCERNING MS CARINA HORN

INTRODUCTION

1. World Athletics has established the Athletics Integrity Unit ("**AIU**") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code ("**WADA Code**"). World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("**ADR**") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. This matter concerns the implementation by the AIU (on behalf of World Athletics) of a decision taken by a body that is not a Signatory to the WADA Code, in accordance with Rule 17.3 of the ADR.

IMPLEMENTATION

3. On 14 July 2023, the AIU was informed that the Basque Minister of Culture and Language Policy had rendered a decision dismissing an appeal filed by Ms Carina Horn ("the **Athlete**") against a resolution dated 13 March 2023 of the Director of Physical Activity and Sports of the Department of Culture and Language Policy of the Basque Government, and thereby confirming that the Athlete was sanctioned with a period of ineligibility of 6 (six) years from 13 March 2023, with disqualification of the Athlete's results obtained in the VI Gran Premio Ordizia - Jose Antonio Peña International Meeting on 18 June 2022, for the commission of a second anti-doping rule violation¹ (the "**Basque Decision**").²
4. Rule 17 of the ADR provides, in relevant part, as follows:

'17. Implementation of Decisions

[...]

17.3 Implementation of decisions by body that is not a Signatory

An anti-doping decision by a body that is not a Signatory to the World Anti-Doping Code must be implemented by World Athletics, the Integrity Unit and Members, if the Integrity Unit finds that the decision purports to be within the authority of that body and the anti-doping rules of that body are otherwise consistent with the Code.

¹ In August 2021, the Athlete admitted to a first anti-doping rule violation under the ADR for the Presence of the Prohibited Substances LGD-4033 and Ibutamoren, for which she served a 2-year period of Ineligibility from 13 September 2019 to 12 September 2021.

² The AIU notes that the Basque Decision does not deal with the disqualification of all other competitive results obtained by the Athlete, as required by Rule 10.10 of the ADR. The AIU will refer this issue to the Athlete's National Anti-Doping Organisation, pursuant to the Comment to Rule 17.3 of the ADR.

[Comment to Rule 17.3: Where the decision of a body that has not accepted the Code is in some respects Code compliant and in other respects not Code compliant, World Athletics, the Integrity Unit and Member Federations should attempt to apply the decision in harmony with the principles of the Code. For example, if in a process consistent with the Code, a non-Signatory has found an Athlete to have committed an anti-doping rule violation on account of the presence of a Prohibited Substance in the Athlete's body but the period of Ineligibility applied is shorter than the period provided for in the Code, then World Athletics, the Integrity Unit and Member Federations should recognise the finding of an anti-doping rule violation and the Athlete's National Anti-Doping Organisation should conduct a hearing consistent with Rule 8 to determine whether the longer period of Ineligibility provided in the Code should be imposed. World Athletics' or other Signatory's implementation of a decision, or their decision not to implement a decision under Rule 17.3, is appealable under Rule 13.]'

5. The Basque public authorities are not a Signatory to the WADA Code.
6. The question therefore for the purposes of Rule 17.3 of the ADR is whether the AIU finds that (i) the Basque Decision purports to be within the authority of the Basque public authorities, and (ii) Law 12/2012, of 21 June, against Doping in Sport of the Autonomous Community of the Basque Country ("**Basque Anti-Doping Act**") upon which the Basque Decision was based is otherwise consistent with the WADA Code. If the AIU finds in the affirmative, the Basque Decision must be implemented by World Athletics, the AIU and Member Federations.
7. The AIU shall first assess consistency of the Basque Anti-Doping Act with the WADA Code, before turning to consider the authority of the Basque public authorities to issue the Basque Decision.

A. Consistency with the WADA Code

8. The Basque Anti-Doping Act '*aims to harmonise Basque anti-doping legislation with the principles proclaimed in the [WADA Code] and to enhance the effectiveness of the fight against Doping in Sport.*'
9. Article 23 categorises violations as '*very serious*' or '*serious*'. Article 23.1(a) and (b) define presence and use violations as '*very serious*' in the following terms, '*(a) Failure to comply with the obligations set forth in Article 22.1 of this Act, resulting in the detection of the presence of a Prohibited Substance or its metabolites or markers in an Athlete's bodily Specimens. (b) The use or consumption of substances or methods prohibited or not authorised in sport.*'
10. Article 22 imposes strict liability on Athletes and incorporates criteria from the WADA Code in determining the Athlete's responsibility, '*1. Athletes shall ensure that no Prohibited Substance enters their system and shall be responsible in any case where a Prohibited Substance is detected in their system. The extent of responsibility shall be determined by the disciplinary and administrative sanctioning regime set out in this chapter. 2. The criteria set forth in the World Anti-Doping Code shall be followed in determining the Athlete's responsibility.*'
11. As regards establishing and proving a violation, the following provisions of the Basque Anti-Doping Act are relevant:

- 11.1. Article 13.12 provides that, *‘Any of the following shall be sufficient evidence of an anti-doping rule violation: (a) The presence of a Prohibited Substance or its metabolites or markers in the Athlete’s A Sample when the Athlete waives the analysis of the B Sample, and the B Sample is not analysed. (b) Where the Athlete’s B Sample is analysed, and the analysis confirms the presence of the Prohibited Substance or its metabolites or markers found in the A Sample.’*³
- 11.2. Article 13.13 provides that, *‘The anti-doping body shall bear the burden of proving that an anti-doping rule violation has occurred. For this purpose, analytical methods or decision limits approved by the World Anti-Doping Agency that have been subject to external review and consultation with the scientific community shall be presumed to be scientifically valid.’*
12. Chapter III of the Basque Anti-Doping Act deals with Disciplinary and Administrative Sanctions for Doping and provides in relevant part as follows:
- 12.1. Article 28.4 provides that in principle the period of ineligibility for a *‘very serious’* violation in relation to a non-Specified substance shall be four years, *‘4. The criteria for applying a period of Ineligibility of two to four years for very serious violations shall be as follows: a) The period of Ineligibility imposed for the first very serious violation, where it relates to substances qualified as non-Specified, shall, in principle, be four years. The Person may only be sanctioned with a two-year period of Ineligibility if the Athlete can establish that the violation was not intentional.’*
- 12.2. Article 24 bis deals with *‘Sanctions for repeated violations’* and provides that *‘1. In the case of a second anti-doping rule violation, the period of Ineligibility shall be the greater of: a) A six-month period of suspension or Ineligibility; or b) A period of suspension or Ineligibility in the range between: (I) The sum of the period of suspension or Ineligibility imposed for the first anti-doping rule violation plus the period otherwise applicable to the second violation treated as if it were a first violation; and (II) Twice the period of suspension or Ineligibility otherwise applicable to the second violation treated as if it were a first violation. The period of suspension or Ineligibility shall be determined based on the entirety of the circumstances and the offender’s degree of Fault with respect to the second violation.’* The AIU notes that Article 24 bis is substantively consistent with Article 10.9.1.1 of the WADA Code, which deals with multiple violations.
- 12.3. Article 30 provides for additional consequences, including forfeiture of prizes or medals and the disqualification of results, *‘1. In individual sports, violations of this chapter shall result in the forfeiture of prizes or medals, the cancellation of individual results and the Athlete’s disqualification from the Event or Competition in question and from the championships in which he/she is a participant or to which the Event or Competition is connected. 2. In addition to the automatic disqualification of results obtained in the competition during which the Adverse Finding occurred, all other results obtained from the date the Sample was collected or from the date another anti-doping rule violation*

³ The Athlete provided a urine Sample on 18 June 2022, In-Competition, at the VI Gran Premio Ordizia - Jose Antonio Peña International Meeting, which was analysed by the WADA-accredited laboratory in Barcelona, Spain, which detected the presence of Clenbuterol below 5ng/mL in the A Sample. Analysis of the B Sample confirmed the finding of Clenbuterol below 5ng/mL in the A Sample.

occurred shall be invalidated, with all consequences thereof, including forfeiture of all medals, points and prizes, until the commencement of any Provisional Suspension or period of Ineligibility, except for reasons of fairness.'

- 12.4. Article 31.1 sets out that '*The imposition of sanctions related to doping in sport constitutes a case of impossibility to obtain or exercise the rights derived from sports licenses issued under the current regulations on sport in the Basque Country, and, especially, to participate in sports competitions.'*
13. Based on an analysis of the above provisions, the AIU finds that the Basque Anti-Doping Act is otherwise consistent with the WADA Code in all its material aspects.

B. Authority to issue Basque Decision

14. The AIU now turns to consider the authority of the Basque public authorities to issue the Basque Decision.
15. Article 21 of the Basque Anti-Doping Act sets out the scope of application of the administrative sanctioning regime and provides that, '*The doping offences and sanctions regime contained in this Act shall apply, as appropriate, to actions or omissions that take place in any sporting activities, whether of a competitive or non-competitive nature, that take place in the territorial scope of the Autonomous Community of the Basque Country, without the existence of special relationships of subjection required.'*
16. Furthermore, Article 36.1 of the Basque Anti-Doping Act provides that '*The exercise of the sanctioning power of an administrative nature in matters of repression of doping will correspond to the Public Administration of the Autonomous Community of the Basque Country'*.
17. On 18 June 2022, the Basque Anti-Doping Agency collected a sample In-Competition from the Athlete while she was competing in the VI Gran Premio Ordizia - Jose Antonio Peña International Meeting. On the Doping Control Form, the Athlete signed a notice acknowledging that she consented to submit to doping control. The Meeting was organised by the Txindoki Athletics Club and took place in Altamira estadioa, a stadium located in the district of Altamira, which is in the Basque Country. The Athlete never challenged the jurisdiction of the Basque public authorities nor the application of the Basque Anti-Doping Act. The Athlete is therefore subject to the provisions of the Basque Anti-Doping Act and its sanctioning regime.
18. Based on the foregoing, the AIU finds that the Basque Decision purports to be within the authority of the Basque public authorities.
19. Pursuant to Rule 17 of the ADR, the AIU finds that (i) the Basque Decision purports to be within the authority of the Basque public authorities, and (ii) the provisions of the Basque Anti-Doping Act are otherwise consistent with the WADA Code in all material aspects.
20. Accordingly, the Basque Decision as set out in paragraph 3 above must be implemented by World Athletics, the AIU, and Member Federations.

RIGHTS OF APPEAL

21. The AIU notes the Comment to Rule 17.3 of the ADR which provides that, '*World Athletics' or other Signatory's implementation of a decision, or their decision not to implement a decision under Rule 17.3, is appealable under Rule 13*'.

Monaco, 2 August 2023