

Doping: Argentina's new anti-doping law

On 13 November last year, Argentina passed Law 26912, aimed at preventing doping in sport. Rodrigo Ortega Sanchez, an Abogado with Estudio Beccar Varela in Buenos Aires, examines the provisions of the new law, assessing whether they are suited to its aims.

The objective of this paper is to comment briefly on the different points of the Law 26912, enacted on 13 November 2013 by the Congress of Argentina. The law is primarily aimed at preventing doping in sport, the fight against doping in sport on the basis of the principle of fair play and protecting the health of athletes who participate in competitions.

Application to the national sports federations

The national federations must accept and incorporate these anti-doping policies directly, or by reference in their statutes and regulations. As a condition for financial or other support from the state, national sports federations, must adjust to this new regime; apply sanctions to those who violate the law; and must respect the authority of the National Anti-Doping Commission - which has the power to carry out drug testing - and cooperate with that authority and its disciplinary regime. With the adoption of this system in their statutes and sports rules, national sports federations must also submit all athletes under its jurisdiction to these anti-doping rules.

Application to people

This legal regime for the Prevention and Control of Doping in Sport applies to all persons who are members of a national sport federation, irrespective of place of residence or the place where they are located.

Obligations of athletes and supporting staff

- To be informed about the anti-doping rules and regulations applicable according to the World Anti-Doping Code, and to obey said rules and regulations;
- To be available to take samples;
- To be responsible regarding what athletes take or use in the context of anti-doping.

Doping definition

Doping is defined as the commission of one or more anti-doping rule violations in accordance with Articles 8 to 15 of this scheme.

Distinction between sport violations and criminal violations

Sport violations are those mentioned in Article 6° and judgment shall be rendered and punishment shall be applied according to the regulations of this law; Criminal violations are those contemplated in Articles 110 and 111 of the Penal Code and judgment shall be rendered and punishment shall be applied according to the regulations of Criminal Law and the corresponding codes of procedure.

Offences

- Presence of a prohibited substance or its metabolites or markers in an athlete's sample.
- Use or attempted use of a prohibited substance or a prohibited method.
- Refusing without compelling justification to submit to a sample.
- Violation of requirements regarding athlete availability for out of competition controls.
- Falsification or attempted forgery of any part of the doping control procedure.
- Possession of prohibited substances or methods in a competition, both by the athlete and their assistants.
- Trafficking or attempted trafficking of any prohibited substance or prohibited method.
- The administration or attempted administration during competition or checks made because of it, to an athlete of a prohibited substance or prohibited method, or assisting, encouraging, aiding, abetting, covering up or participation in the implementation of an infringement of an anti-doping rule provided for in this law.

Proof of doping

- The burden of proving that there has been a violation of an anti-doping rule falls to the Anti-Doping Organisation. The degree of proof must be such as to which the organisation must convince the court intervening, considering the seriousness of the allegation which is made.
- The facts relating to anti-doping rule violations may be proved by any means lawfully obtained, including athlete confession.

List of prohibited substances and methods

The list of Prohibited Substances identifies substances and methods prohibited at all times, both during and outside of competition. The National Anti-Doping Commission shall publish the list of prohibited substances in the Official Gazette of Argentina. This publication is periodical and the list's appearance in this should occur when changes are made to the list of prohibited substances and methods published by the World Anti-Doping Agency.

Retirement from sport activity and annulment of results

A violation of an anti-doping rule during an individual sport competition automatically leads to annulment of the results of that competition, which involves the loss of all medals, points and prizes.

Individual sanctions: first offence

The sanction for the first offence constituting first use, attempted use, or possession (Art. 8, 9, 13) is two years' suspension, except if requirements are met to cancel or reduce the period of suspension (Arts. 26-31). The periods of suspension for violations other than those reflected in Article 24 of this scheme of doping rules are:

- Two years for refusing without compelling justification to submit to a sample, or falsification or attempted forgery of any part of the doping control procedure (Art. 10, 12) , except if the requirements of Arts. 27, 30, and 31 are fulfilled.

- Minimum of four years up to a lifetime's suspension for trafficking or attempted trafficking, administration or attempted administration of any prohibited substance or prohibited method.
- Minimum of two years regarding athlete availability for out of competition control checks.

If an athlete or other person can demonstrate how a prohibited substance has entered his body, or demonstrate why he is in possession of a specific substance and that it was not intended to enhance sport performance - or mask the use of a substance designed to improve performance - and it is his first offence, the penalties range from a warning and no suspension to a two-year suspension.

If an athlete demonstrates in an individual case that there was no wrongful or negligent conduct on his part, the applicable period of suspension must be cancelled. If the athlete can demonstrate that there was not significant negligent behaviour on his part, the suspension can be cut in half.

If an athlete or other person voluntarily admits having committed an anti-doping rule violation before having received notice of the need to submit a sample, the suspension may be reduced for a term not less than half the mandated period of suspension that would have otherwise applied.

Aggravating circumstances

If the anti-doping organisation demonstrates an existing aggravating circumstance that justifies the imposition of a greater period of suspension, the suspension can be increased to a maximum of four years, unless the offender can demonstrate that they did not intentionally violate the doping rule. Also, the athlete or other person can avoid the application of this Article by admitting violation of the rules.

Individual sanctions: second offence

One to four years' suspension

- This is applied where a reduced sanction has been imposed, yet a second infraction is committed which should be sanctioned with the same penalty.
- Where the location of the athlete is not indicated, or a 'missed test' sanction has been imposed and a second infraction is committed that attracts a reduced sanction.
- Where a reduced sanction has been imposed because there is no significant fault or negligence and a second offence is committed that should attract a reduced sanction for specified substances.

Two to four years' suspension

- Where a reduced sanction has been imposed due to the use of prohibited substances and a second offence is committed by failing to indicate the location of the athlete or a failure to carry out the required number of tests is committed.
- Where a reduced sanction has been imposed due to the use of prohibited substances and a second offence is committed, that should attract a reduced sanction for specified substances.
- Where a standard sanction (Art. 24, 25) has been imposed and a second infraction is committed that should attract a reduced sanction for specified substances.

Four to five years' suspension

Where the athlete or other person to which an aggravated sanction has been imposed commits a second offence which attracts a reduced sanction for specified substances.

Four to six years' suspension

Where the athlete or other person to which a reduced sanction has been imposed for the use of specific substances commits a second offence, that is punished with a standard sanction.

Four to eight years' suspension

- Where a person has been sanctioned for not indicating the location of the athlete or for missing tests, and the same infraction is committed.
- Where a person has been sanctioned for not indicating the location of the athlete or for missing tests, and a second infraction has been committed that should be sanctioned with a reduced penalty, because there is no significant fault or negligence.
- Where a reduced sanction has been imposed due to lack of significant fault or negligence and a second infraction has been committed for not indicating the location of the athlete or for missing tests.
- Where a reduced sanction has been imposed due to lack of significant fault or negligence and a second infraction is committed that should be sanctioned with a reduced sanction for the same offence.

Eight to ten years' suspension

Where an athlete or other person to whom a reduced sanction has been imposed for the use of certain substances, and a second violation punishable as an aggravated sanction is committed, this offence shall be punished by suspension of between eight to ten years.

Six to eight years

- Where a sanction has been imposed for not indicating the location of the athlete or for missing tests, and a second infraction that should be sanctioned with a standard penalty is committed.
- Where a reduced sanction has been imposed due to lack of significant fault or negligence and a second infraction is committed that should be punishable with a standard sanction.
- Where a standard sanction has been imposed and a second infraction is committed for not indicating the location of the athlete or for missing tests.
- Where a standard sanction has been imposed and a second infraction is committed that should attract a reduced sanction due to lack of significant fault or negligence.

Eight years to life suspension

- Where a standard sanction has been imposed and a second infraction is committed which would attract the same penalty.
- Where a sanction for trafficking and administration has been imposed and a second infraction is committed that should attract a reduced sanction.

Ten years to life suspension

- Where a reduced sanction has been imposed and a second infraction is committed for trafficking and administration of illegal substances.
- Where a sanction for not indicating the location of the athlete or for missing tests has been imposed and a second infraction is committed that should be sanctioned with an aggravated penalty.
- Where a reduced sanction has been imposed due to lack of significant fault or negligence and a second infraction is committed that should attract an aggravated sanction.
- Where an aggravated sanction has been imposed and a second infraction is committed for not indicating the location of the athlete or for missing tests.
- Where an aggravated sanction has been imposed and a second infraction is committed that should attract a reduced sanction due to lack of significant fault or negligence.

Life suspension

- Where a sanction for not indicating the location of the athlete or for missing tests has been imposed and a second infraction is committed for trafficking and administration of illegal substances.
- Where a reduced sanction has been imposed due to lack of significant fault or negligence and a second infraction is committed for trafficking and administration of illegal substances.
- Where a standard sanction has been imposed and a second infraction is committed that should attract an aggravated sanction.
- Where a standard sanction has been imposed and a second infraction is committed for trafficking and administration of illegal substances.
- Where an aggravated sanction has been imposed and a second infraction is committed that should attract a standard sanction.
- Where an aggravated sanction has been imposed and a second infraction is committed that would attract the same penalty.
- Where an aggravated sanction has been imposed and a second infraction is committed for trafficking and administration of illegal substances.
- Where a sanction has been imposed for trafficking and administration of illegal substances, and a second infraction is committed by not indicating the location of the athlete or for missing tests.
- Where a sanction has been imposed for trafficking and administration of illegal substances and a second infraction is committed that should attract a reduced sanction due to lack of significant fault or negligence.
- Where a sanction has been imposed for trafficking and administration of illegal substances and a second infraction is committed that should attract a reduce sanction.
- Where a sanction has been imposed for trafficking and administration of illegal substances and a second infraction is committed that should attract an aggravated sanction.
- Where a sanction has been imposed for trafficking and administration of illegal substances and a second infraction is committed that would attract the same penalty.

Third offence

Committing a third anti-doping rule infraction leads to life ban, unless the infraction meets the conditions for eliminating or reducing the period of suspension. In addition to the annulment of the results obtained during a competition where a positive sample has been detected, all other results obtained in competition

from the date on which the sample is collected, in or out of competition, are cancelled, resulting in the withdrawal of all medals, points and prizes up to the commencement of any provisional suspension or suspension, except for reasons of equity.

Beginning of the suspension period

The suspension period begins on the date the final resolution regarding disciplinary proceedings is issued, or if this procedure be waived, on the date on which the suspension was accepted or imposed.

Immediate confession

If the athlete immediately confesses to the offence after having been notified by the relevant anti-doping organisation and before the athlete competes again in any sporting event, the suspension period can start from the date of sample collection. The athlete or other person who has been suspended may not, during the period of suspension, participate in any competition or activity authorised or organised by a signatory to the World Anti-Doping Code. These signatories include member organisations, including national sports federations or member clubs, and competitions include those organised or authorised by a professional league, or international competitions. Activities connected to education and rehabilitation are exempted from this. The rules also mandate that the financial support of those who violate an anti-doping rule should be fully or partially suspended.

Sanctions applicable to teams

If more than one member of a team has been notified of an adverse analytical finding in the context of an event or competition, the agency in charge must carry out a controlled analyses of the team during the period in which the event takes place. If more than two team members have committed an anti-doping offence during the period an event or competition takes place, the organising body shall apply sanctions ranging from the loss of one or more points obtained in a competition to disqualification from that competition, in addition to other individual consequences pursuant to these regulations, that will be imposed on the athletes who have committed said violation.

Decisions subject to appeal

Decisions taken in accordance with this regulation may be appealed. The decisions appealed shall remain in effect during the appeal procedure, unless the appellate body decides otherwise. Before the appeal procedure begins, all possibilities for review of the decision established by the regulations of the anti-doping organisation must have been exhausted.

The following decisions can be appealed:

- Those regarding an offence against the anti-doping rules;
- Those that impose consequences as a result of a breach of the aforementioned rules;
- Those which establish that no offence has been committed;
- Those under which a procedure started due to an offence cannot continue for procedural reasons, including the statute of limitations;
- Those which are adopted under Article 59 of this law;
- Those which establish that the national anti-doping disciplinary tribunal has no jurisdiction to rule over an alleged offence or its consequences;

- Those taken by a national sports federation and which consist of the failure to process an adverse analytical finding or an anomalous result regarding an offence against the anti-doping rules. Alternatively, not continuing to process an offence against said regulations after a supplementary investigation into a possible offence; and concerning the imposition of a provisional suspension after a preliminary hearing, or a suspension for an offence of the principles applicable to provisional suspensions.

Roles and responsibilities of the anti-doping organisations

National Anti-Doping Organisation

The national anti-doping commission, which shall act within the scope of the Ministry of Sport, is established. It will dictate the anti-doping rules, manage sample collection and performance management; manage the national register of sports sanctions imposed for violations of this law; promote anti-doping research; publish the list of prohibited substances and methods; etc.

Sports institutions are responsible for accepting and incorporating these anti-doping rules in their statutes and regulations. They must also undertake performance management during national sports competitions; enforce the sanctions provided for in this regime; avoid public disclosure or communication of abnormal results and adverse analytical results while preserving the privacy of the athlete, and spread among the various levels of each entity basic preventive content on doping in sport.

Failure to comply with the provisions of this scheme by sports institutions will result in the following penalties, depending on the seriousness and circumstances of the case:

- a warning and suspension of three months to two years, and two to four years for repeat offenders;
- the sanctions will remain in force until the respective sports institution recognises them as spent and will be implemented by the Ministry of Sport's Ministry of Social Development. They can be appealed pursuant to the National Administrative Procedures Act 19,549 and its regulations.

The national anti-doping commission is responsible for preparing a test distribution plan and the implementation of it. Controls can be performed by members of the national anti-doping commission, the Secretary of Sport at the Ministry of Social Development or other qualified persons authorised by the national anti-doping commission. They must be in accordance with the International Standard for Testing in force at the time the controls are conducted.

Blood tests or other controls different to urine testing can be used to detect prohibited substances or methods, due to research processed or through use of a longitudinal haematological profile, also called the 'biological passport'. The National Anti-Doping Commission may decide at its discretion which blood parameters are to be measured in the sample.

The national anti-doping commission must identify a testing group registered for controls and publish the standards by which athletes are included in that group as well as a list of athletes who accomplish the standards for the period in question. The standard for inclusion in the registered group and membership controls should be reviewed periodically. Every athlete in the group must inform the committee about his whereabouts quarterly, and must update the information as necessary. Each national federation shall report to the national anti-doping commission the records, names and addresses of athletes whose performances match the standards to join the group.

The failure of an athlete to notify WADA of their whereabouts is considered an omission of information. The failure of an athlete to be available for controls, as their registration has informed doping control officers as to their whereabouts, is considered a missed test

The athlete who has been identified by the national anti-doping commission for inclusion in the control group registered remains subject to these rules at least until the athlete gives written notice to the said commission, is removed or no longer meets more standards for inclusion in this group and has been informed of this by the Commission.

The athlete who has given notice of retirement to the national anti-doping commission may not resume competing unless he notifies the committee at least twelve months before the expected time of return to competition, and is available for out of competition testing without notice. The controls under these anti-doping rules may be applied to children only if a person with legal responsibility for the minor has given their prior consent, which is a necessary condition for the child's participation in sport.

Doping Arbitral Tribunal

The Secretary of Sport will facilitate the organisation of an Anti-Doping Arbitral Tribunal, which will act as arbiter of law. The appeal deadline is 21 days following the notification of the relevant decision of the Tribunal. The appeal must be filed by before that Tribunal.

The award rendered by the Arbitral Tribunal Doping is binding and final and produces the same effects as *res judicata*. The only appeals that can stand against the award rendered by the Arbitral Tribunal are the clarification of doping resources and annulment founded on fundamental fault of the procedure, or if the arbitrators have failed to meet the deadline or have made uncommitted points. The competent body to file an appeal for annulment against the award or clarification is the *Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal*.

Results management

The management of the results of the doping controls conducted by the national anti-doping commission; those carried out by WADA in compliance with an agreement with said commission and those conducted by the national sports federations shall be carried out according to the regulations of the Best Practices Model for the National Anti-Doping Associations approved by WADA.

Management of the results of a violation that involves an athlete of another jurisdiction

The management of results and the holding of a preliminary hearing regarding the violation of anti-doping rules arising from a control carried out by the national anti-doping commission or a national sports federation which involves an athlete that is not a national, resident or the title holder of a licence or member of a national sports association shall be managed according to the rules of the international federation involved.

National Anti-Doping Disciplinary Tribunal

The National Anti-Doping Disciplinary Tribunal's mission is to understand and resolve all matters that are generated in relation to a doping case under this scheme.

Initiation of proceedings

If, as a result of the results management process described in Articles 94 and 95, there is the commission of an offence, the national anti-doping commission or the national federation that is in charge of results must give the results to the Disciplinary National Anti-Doping Tribunal, for it to decide on the existence of such breach and, if so, determine the appropriate consequences.

An athlete or other person may renounce a procedure, stating that fact in writing, by recognising that they have violated an anti-doping rule, accepting the automatic disqualification of individual results and the appropriate penalty.

Procedures

The national anti-doping commission or the national federation in charge of results management must submit a report on anti-doping rules infringement cases and provide all evidence relating to the case. That report must be presented to the person concerned, who can answer and provide proof of their rights.

Testimonial, confessional and all other evidence that, in the opinion of the court are relevant evidence, are admissible for the procedure. The omission of the person concerned to fulfil any requirement or direction of the court does not stop the procedure, but may be taken into consideration.

The National Anti-Doping Disciplinary Tribunal has the power to appoint an expert to assist or advise when it deems necessary. The deliberations of the tribunal must be private, however this can be appealed under Article 69 of this scheme. The court's decision shall be communicated to the parties involved, WADA, the international sports federation concerned, the national anti-doping commission and national sports federation.

Information about drug testing

The national anti-doping commission must immediately report any therapeutic use exemption granted to an athlete; to the national federation of the athlete and WADA, except in cases where those athletes are part of a recorded control group. The national anti-doping commission must report on all controls in competition and out of competition as soon as possible.

The national anti-doping commission, the national anti-doping organisation athlete and any national federation, the National Anti-Doping Disciplinary Tribunal or any other person must not disclose or publicly report the identity of Athletes whose samples have resulted in an adverse analytical finding, or the identity of the persons who are presumed to have committed a violation of an anti-doping rule, until the administrative review process and initial review has been completed.

Offences related to doping in sport

Shall be punished with imprisonment between one month to three years, if it does not lead to a severely punishable offence, who, being a member of the support staff to athletes by any means:

- Falsifies or attempts to falsify a part of the doping control procedure.
- Traffics or attempts to smuggle a prohibited substance or prohibited method.

- Administers or attempts to administer to an athlete a prohibited substance or prohibited method, during competition or checks made out of competition.

If the substances with which the offence is committed are drugs, the penalty shall be between four and 15 years.

Conclusion

Undoubtedly, this law has great merit. Legislators have taken into account the problem of doping in Argentina. From my point of view they have carried out a very complete job. It is also interesting to see the mechanism of conflict resolution through the arbitration tribunal. It is also important that therapeutic use of a prohibited substance is recognized. It will be interesting to see how this law develops in practice.

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