

# OLYMPIC LAW TODAY

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establish an IOC Athletes' Commission. That decision clearly entails that the athletes are no longer just individuals who must obey the rules and decisions of the sport's governing bodies, thus they should be given a voice through the IOC Athletes' Commission. In 1972, at the venue of the Olympic Winter Games at Sapporo, the Austrian downhill racer Karl Schranz who was the expected to win the gold medal, was excluded from the Games by a personal decision of the IOC president and had no choice but to fly home because no legal remedies were available.

These two essential concepts: (1) identical rules for all sports globally, and (2) respect for the rights of the athletes, must be balanced by the sets of rules governing the exercise of sport. Sport is basically private activity exercised in the framework of private associations, federations, or other private entities under rules and regulations established by those private entities.

Such genuine sports law includes the rules adopted by the private bodies which govern various sports worldwide. Because the Olympic Games of Modern Age are still the most important sports event with a global audience and possesses a certain political standing, the IOC, as laid down in the OCh, claims to lead all Olympic sports worldwide. Hence, according to the IOC, the OCh represents the basic "Charter" for all sports worldwide. The OCh formulates the assertive claim that it regulates all Olympic matters exclusively without the interference of the governments and domestic law of the States. When awarding the Olympic Games to a Host City like Beijing for 2022 as well as Paris for 2024 and Los Angeles for 2028,<sup>2</sup> the IOC emphasized the universal and supreme validity of the OCh and its implementing legal instruments, including the regulations of the International Federations governing their sport ("IFs") over State law.

Conflicts between sports law and domestic law of the States occur on many occasions, including, but not limited to, the holding of Olympic Games or, on an almost day-by-day basis, wherever the global anti-doping law is applied, forming an essential part of the "Olympic Law."

In view of the 2028 Los Angeles Olympic Games, some areas of potential conflict will be mentioned. However, this essay mainly attempts to explore the manifold and close interrelationship between the OCh, the World Anti-Doping Code, and the Code of Sports-Related Arbitration based on a comprehensive examination of the legal statutes in the regulations

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1. Int'l Olympic Comm. [IOC], Olympic Charter in Force as from 17 July 2020, at 15, <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General%20Information/Olympic-Charter.pdf>

2. Discussed in Section I.2.



boycott of the 1980 Moscow Olympic Games by many Western States due to the invasion of Afghanistan by the Soviet Union in December 1979, the 1984 Los Angeles Olympic Games were the last Games that suffered from a political boycott due to foreign politics.

However, repercussions from global politics may affect the Olympic Games in Paris 2024 or, perhaps, Los Angeles 2028. Russia's armed attack on Ukraine and the Iranian government's repression against the protests in 2022 make it seem possible or even likely that, by way of a reverse boycott, States will be excluded by the IOC from participating in the 2024 Games in their entirety or by individual IFs for the sports competitions under their auspices. If such





- to prohibit any discrimination with regard to a country or person on whatever grounds;
- to protect and respect human rights consistent with international agreements and laws as well as "internationally recognized human rights standards and principles applicable in the Host Country";
- to refrain from fraud or corruption inconsistent with any international agreements, laws and standards applicable in the Host Country;
- to carry out all activities foreseen under the contract "in a manner which embraces sustainable development and contributes to the UN Sustainable Development Goals."

More specifically, paragraph 20 of the HCC 2024 provides that the Olympic Identity and Accreditation Card (OIAC), issued by the IOC, confers on its holders the right to take part in the Games and that the Host City, the Host NOC, and the Organizing Committee

"are responsible to ensure, in cooperation with competent Host Country authorities, that, together with a passport or other official travel document, the OIAC allows its holders to enter and remain in the Host Country and perform Games-related activities for the duration of the Games, including for a period of at least one month before the scheduled commencement of





a Human Rights Advisory Committee and received, in 2020,

General operates. The awards are final and binding, and enforceable as true international awards under the New York Convention.

On the basis of the CAS Code, the CAS provides full remedies against decisions of sports bodies and, thus, legal protection of the athletes' rights with procedural guarantees respecting all rule of law requirements as equivalent to state courts.<sup>23</sup> The CAS with its globally accepted jurisdiction represents the institution essential for the independence of the Olympic Law and sports law in general.

During the 1996 Olympic Games at Atlanta, for the first time, an Ad hoc Division of the CAS was present at the venue of Olympic Games in order to resolve disputes arising in connection with that edition of the Olympic Games in an expedited procedure within twenty-four hours. Since then, at every edition of Olympic Games and Olympic Winter Games an ad hoc Division of the CAS was present.

The Olympic ad hoc divisions are governed by specific Arbitration Rules<sup>24</sup> that form an integral part of the general CAS Code. The ad hoc divisions consist of a special list of twelve arbitrators chosen from the list of CAS arbitrators, a president, and a vice-president as well as a Court Office. Their legal seat is in Lausanne, Switzerland, the location of the CAS headquarters, and they operate under Chapter 12 of the Swiss Statute on International Private Law<sup>25</sup>, which governs international arbitration in Switzerland. While the first ad hoc division in 1996 settled six cases, the ad hoc division set up for the Olympic Games Tokyo 2020 (which was held in 2021) dealt with more than twenty disputes.

The ad hoc divisions have jurisdiction to hear any dispute covered by Rule 61 of the OCh, insofar

“as they arise during the Olympic Games or a period of ten days preceding the Opening Ceremony.”

Thus, all disputes arising “on the occasion of, or in connection with, the Olympic Games” shall exclusively be submitted to the CAS. That broad definition is specified by Article 1 of the Arbitration Rules for the ad hoc division which includes, but not to a jurisdictional limit, to “decisions pronounced by the IOC<sup>26</sup> (i)11.2 (d)12.9 4.2 (ni)6.9 -1.18Oins (ni)6.9 -6 (C)3.9 (92.

This provides access to arbitration to all individuals participating in the Olympic Games and to all sports organizations involved in the Games as appellants against decisions taken by other such entities. With the Organizing Committee, at least indirectly, the Host City and other public authorities are captured. As paragraph 51 of the HCC 2024 does not pertain to the Host Country<sup>26</sup>, it is advisable to enter into an arbitration agreement for the determination of disputes between the IOC and the Host Country related to the Candidature Commitments made by the Host Country.

The Arbitration Rules for ad hoc divisions provide an expedited procedure with full guarantees of procedural rights, such as the right to be heard, to be represented, to provide evidence, and to have a hearing. The panel or sole arbitrator shall rule on the dispute pursuant to the OCh, the applicable regulations that term refers to the statutes and regulations adopted by the IFs and other sports governing bodies “general principles of law and the rules of law, the application of which it deems appropriate.”

The disputes are heard by a panel of three members or a sole arbitrator; the arbitrators can be challenged; preliminary relief can be granted; the

The WADA Code, in its 2021 version, has been considerably amended. In response to the doping-related events during the 2014 Olympic Winter Games in Sochi, the monitoring and sanctioning of the code compliance by the antidoping organizations of sports was reinforced in order to capture and sanction doping-related misconduct of sports organizations. Generally, the various procedures available under the WADA Code have been improved and met the rule of law requirements. As a unique feature, the States committed themselves to the WADA Code through an international treaty, i.e., the UNESCO Convention against Doping in Sport.

The WADA Code provides identical rules with global application for all sports, and together with settled case-law—mainly made by the CAS, constitutes a self-contained regime of genuine sports law applicable inside and out of the Olympic Games. That is emphasized by the fact that, as of 2016, the CAS, in addition to the ad hoc divisions, is present at the Olympic Games with an Anti-Doping Division (ADD) to hear doping-related disputes at the venue, as demonstrated at Beijing 2022.

## II. THE OLYMPIC CHARTER—THE HUB OF INTERNATIONAL SPORTS LAW

The OCh aims at regulating all aspects of the Olympic Games and, therefore, applies to all activities and institutions related to the organization of and participation in the Olympic Games. To that end, in recent years, based upon the OCh as a constitution of sports, many implementing or complementing regulations such as the Ethics Code were adopted by the IOC and other major sets of rules and regulations such as the WADA Code, were included by reference.

As determined by Rule 1 of the OCh, the IOC

“is an international non-

It follows that the IOC enjoys the status of a private legal person under Swiss law and, thus the OCh is to be considered a private statute with no capacity to issue binding rules outside its own membership or otherwise establish binding effect.

#### 1. Scope of application: Olympic Movement

Rule 1 of the OCh defines the scope of application of the OCh through the intermediary term "Olympic Movement" and the role of the IOC, in particular:

"Under the supreme authority and leadership of the [IOC], the Olympic Movement encompasses organisations, athletes and other persons who agree to be guided by the [OCh]."

According to that provision, the application of the OCh arises from agreement and, under that condition, also extends to individuals such as athletes and their support personnel.

The Olympic Movement includes the IOC, the International Federations (IFs), the National Olympic Committees (NOCs), and the Organizing Committees for the Olympic Games (OCOGs) as its "main constituents" as well as

"the national associations, cl

serves as statutes for the IOC, and “defines the main reciprocal rights and obligations of the three main constituents of the Olympic Movement,” the IOC, the IFs, the NOCs, and the OCOGs “all of which are required to comply with the Olympic Charter.”

“Such scope of application, claimed by the IOC, is reiterated in the OCh on various occasions and is eventually accepted by the IFs, the OCOGs, and others by way of their recognition or confirmation. Paragraph 7 of the Fundamental Principles generally stipulates that belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC.

## 2. Olympic Charter: Rules, Bylaws, Regulations, Codes and other rules adopted by the IOC

Narrowly, the proper law of the IOC consists of the Rules of the OCh and the bylaws within it. The Bylaws mainly implement the rules they are attached to by setting forth more detailed provisions. These bylaws are legally binding.

Furthermore, the IOC has the capacity to adopt, by way of its respective decisionmaking bodies, “regulations of the IOC.” According to Rule 19.3.10 of the OCh, the IOC Executive Board has general and extensive power to issue

“regulations of the IOC, which are legally binding, in the form it deems appropriate, such as, for instance, codes, rulings, norms, guidelines, guides, manuals, instructions, requirements, and other decisions, including, in particular, but not limited to, all regulations necessary to ensure the implementation of the Olympic Charter and the organization of the Olympic Games.”

A number of major significant regulations have been adopted by the Executive Board and form part of secondary IOC law. Significant examples include the IOC Anti-Doping Regulations applicable specifically to each of the editions of the Olympic Games.<sup>34</sup> The authority to amend the OCh and to adopt and amend the Athletes’ Rights and Responsibilities Declaration,<sup>35</sup> however, in accordance with Rule 18.2 OCh is reserved for

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33. Id. at 12.

34. Int’l Olympic Comm. [IOC], Anti-Doping Rules applicable to the Games of the XXXI Olympiad, in Rio de Janeiro, in 2016, at 3 (Aug. 6, 2015).

35. Int’l Olympic Comm. [IOC], Athletes’ Rights and Responsibilities Declaration (Oct. 9, 2018) (adopted by the IOC Session, Preamble inspired by the Universal Declaration of Human Rights and other internationally recognized human rights standards, principles and treaties [the IOC] outlines a common set of aspirational rights and responsibilities for athletes within the Olympic Movement and under the jurisdiction of its members.

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- The Basic Universal Principles of Good Governance of the Olympic and Sports Movement
- Olympic Movement Code on the Prevention of the Manipulation of Competitions

and with regard to the Olympic Winter Games 2022:

- Rules for the Application during the XXIV Olympic Winter Games Beijing 2022 of Articles 7 to 10 of the Code of Ethics and of Olympic Movement Code on the Prevention of the Manipulation of Competitions.

However, the IOC Ethics Code does not include the doping rules as some IFs chose to do in overarching "Integrity Rules". As a forerunner, the IAAF (also known as World Athletics (WA) since 2019) adopted its World Athletics Integrity Code of Conduct 2019 which procedurally overarched the doping offences under the World Athletics Anti-Doping Rules and delegated its power to oversee these matters to an Athletics Integrity Unit and a Disciplinary Tribunal.<sup>36</sup> Also in 2019, the International Biathlon Union (IBU) adopted its Integrity Code.<sup>37</sup> The IBU Integrity Code combines provisions to prevent and sanction both unethical misconduct and doping in the same code. Both Integrity Units and the WA Disciplinary Tribunal are created as structurally independent.<sup>3.3 (pp2t)6.3 1 (e)14.2 (a)36o3t24.6 (i)-4.6 (r</sup>

the “signatories” of the Code, the IOC was bound to implement the WADA Code within its legal instruments.

Therefore, today, Rule 40 of the OCh provides that

“[t]o participate in the Olympic Games, a competitor, team official or other team personnel must respect and comply with the Olympic Charter and the World AntiDoping Code.”

More generally, beyond the eligibility of individuals to compete in the Olympic Games, Rule 43 of the OCh sets forth that

“[c]ompliance with the World AntiDoping Code and the Olympic Movement Code on the Prevention of Manipulation of Competitions is mandatory for the whole Olympic Movement.”

## 5. The IOC AntiDoping Regulations

As of the entry into force of the 2003 WADA Code before the Torino Olympic Winter Games in 2006, the IOC adopted AntiDoping Regulations applicable to each edition of the Games. These AntiDoping Regulations incorporate the substantial and procedural provisions of the WADA Code with adaptations necessary to meet the particular conditions of the Olympic Games.<sup>41</sup>

The IOC AntiDoping Regulations exclusively apply to a specific edition of the Olympic Games, for example, the IOC Anti-Doping Rules applicable to the XXIV Olympic Winter Games Beijing 2022. These Rules are based on the Model Major Events Organizations AntiDoping Code<sup>42</sup> issued by the WADA.<sup>43</sup> The IOC AntiDoping Rules implement the whole of the WADA Code with, however, some remarkable specific features which are in line with the requirements of the WADA Code.

While the IOC remains the AntiDoping Organization responsible under the WADA Code, in 2018, for the first time, it delegated some of its responsibilities related to doping control to the predecessor of the “International Testing Agency” (ITA) which itself became fully operational in 2019.<sup>44</sup> According to a contract between the IOC and the ITA, the

Furthermore, in case an antidoping rule violation is asserted, the ITA will file an application to the Antidoping Division of the CAS (ADD) in the name of the IOC. The CAS ADD also became operational in 2019 and will be present at the venue during the Games.

With those features, the IOC acts as the forerunner of a new policy in the fight against doping. With the establishment of the ITA and, in parallel, the creation of the CAS ADD by the ICAS (both initiated by the IOC) independent institutions were made available to conduct all aspects of doping control, including result management, and to serve as the first instance doping hearing panel, according to Article 8 of the WADA Code in lieu of the respective IOC and IFs.

#### 6. Dispute Settlement by the CAS, Code of Sport-Related Arbitration

Also the Code of Sport-Related Arbitration<sup>46</sup> is included in the realm of Olympic Law. Rule 61.2 of the OCh provides:

“Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sport-Related Arbitration.”

IOC regulations, in particular the Antidoping Regulations, more specifically establish the CAS as a dispute settlement institution, either as second instance appeals arbitration or, only recently, as first instance adjudication.<sup>47</sup>

#### 7. Other instruments issued by the IOC

For each edition of the Olympic Games, the IOC constantly issues a

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### 9. Extension of the IOC law to non-Olympic matters

As the Olympic Games represent a major event in world sports, the rules and regulations established by IOC are a matter of fact, also in the non-Olympic framework. It would not make sense to exercise sports and organize events outside Olympic Games, by the IFs, under different rules and conditions.

### III. THE WORLD ANTI-DOPING CODE

The WADA Code constitutes the second pillar of international sports law. The four (he)9.2Sn

The WADA Code, although mandatory for the signatories, is not directly applicable; it does not establish rights and obligations for the athletes and other individuals. It rather obliges, according to Article 23.2.1, the signatories to implement the Code within the statutes and regulations governing their particular realm of sports-related activities. The signatories are bound to enact "Code-compliant" anti-doping rules for their particular areas of responsibilities. Only those anti-doping regulations directly apply to the athletes and other persons concerned under jurisdiction of each of the signatories. In accordance with Article 21.1.1 of the WADA Code, it is the athlete's responsibility "to be knowledgeable of and comply with all applicable anti-doping policies adopted pursuant to the Code."

That provision clearly refers to the anti-doping rules adopted by the signatories in accordance with Article 23.2.1 of the Code.

As a result, the IOC, the IFs, and other sport governing bodies abandoned their individual anti-doping rules in favor of almost uniform Code-compliant anti-doping regulations which mainly copy the rules of the WADA Code with organizational adaptations necessary to meet the

“Part One of the Code sets forth specific doping rules and principles that are to be followed by organizations responsible for adopting, implementing or enforcing doping rules with their authority....”

These Anti-Doping Organizations (ADO) include the IOC, the IPC, the IFs, the NOCs, the NPCs, Major Event Organizations (MEO), and the National Anti-Doping Organizations (NADOs).

Part One on “Doping Control,” which constitutes the core of the WADA Code in Articles 1 through 17, (i) provides the definition of the

- Art. 2.11: threatening or intimidating another person by an athlete or other person in order to discourage or retaliate against reporting to authorities.

In the meantime, the various elements of these doping offences are clarified by the abundant case law of the CAS and other adjudication bodies.<sup>59</sup>

Parts Two, Three and Four of the Code contain provisions on doping-related education and research, on the roles and responsibilities of the signatories of the Code and the athletes and other persons concerned as well as the governments, and on acceptance, compliance, modification, and interpretation of the Code.

Most of the articles of the Code are annotated by comments which, according to Article 26.2 of the Code, "shall be used to interpret the Code."

#### b. The International Standards

For different doping-related technical and operational areas, the WADA adopted International Standards (IS). They aim at harmonization amongst the ADOs in execution of the WADA Code. According to the introduction to the WADA Code, "adherence to the International Standards is mandatory for compliance with the Code."

This means that through the intermediary of the Code, the IS are legally mandatory. The IS are intended to complement particular rules of the Code in more detail. In contrast to the Code itself, the IS are adopted



(1) The WADA Prohibited List

The most wellknown IS is the Prohibited List<sup>64</sup> which, according to Art. 4.1 of the WADA Code, is published at least annually and must be given effect by the ADOs under their adopting regulations. The Prohibited List identifies the prohibited substances and the prohibited methods classified by different categories, and thus forms the core of the various anti

which must prove that such departure did not cause the positive result. According to Article 3.2.3 of the WADA Code, the same mechanism applies to departures from any ~~not~~ IS.

The 2021 edition of the ISL<sup>64</sup>, which is referred to in Articles 6.4, 6.6 and 6.7 WADA Code, sets out technical and logistical requirements for laboratories in order to produce valid results. To that end, the ISL also includes the conditions for ~~winning~~, maintaining, or revoking the WADA accreditation and operating standards for the laboratory operation. In particular, the ISL includes the requirements for security and ~~the A-B~~ sample confirmation as well as a code of ethics. Further details ~~are outlined~~ in related Technical Documents<sup>65</sup>.

#### (4) International Standard for Therapeutic Use Exemptions (ISTUE)

Also of pivotal importance for an ~~antidoping~~ rule violation related to prohibited substances or methods is the possession ~~or possession~~ of a therapeutic use exemption (TUE). According to Art. 4.4.1 of the WADA Code, no ~~antidoping~~ rule violation based ~~on~~ prohibited substances or methods is given if the situation is consistent with the provision of a TUE and refers to the ISTUE. The ISTUE<sup>66</sup> ensures that the process of granting TUEs is harmonized across sports and countries and provides for rules on applying ~~for~~ and obtaining a TUE as well as for the recognition of a TUE and the review of TUE decisions by the WADA.

#### (5) International Standard for the Protection of Privacy and Personal Information (ISPPPI)

The ~~antidoping~~ law and procedures have a deep impact ~~on~~ privacy and personal data of the athletes and other persons concerned. Art. 14 of the WADA Code provides detailed rules related to collecting, storing, processing, and disclosing personal information and, in Art. 14.6, refers to the IS, in general, and, ~~specifically~~, to the ISPPPI. Regarding the “Whereabout” information to be delivered by the athletes, Art. 5.6 of the WADA Code refers specifically to the ISPPPI. To comply with the General Data Protection Regulation of the EU, the 2021 edition of the ISPPPI<sup>67</sup> was seriously amended. The ISPPPI focuses on proportionate data processing,

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64. World Anti-Doping Agency, World Anti-Doping Code (n. 52, 2017) (WADC) (p. 147) (4:37, 6:2, 12:5, 13:9, 14:10, 15:11, 16:12, 17:13, 18:14, 19:15, 20:16, 21:17, 22:18, 23:19, 24:20, 25:21, 26:22, 27:23, 28:24, 29:25, 30:26, 31:27, 32:28, 33:29, 34:30, 35:31, 36:32, 37:33, 38:34, 39:35, 40:36, 41:37, 42:38, 43:39, 44:40, 45:41, 46:42, 47:43, 48:44, 49:45, 50:46, 51:47, 52:48, 53:49, 54:50, 55:51, 56:52, 57:53, 58:54, 59:55, 60:56, 61:57, 62:58, 63:59, 64:60, 65:61, 66:62, 67:63, 68:64, 69:65, 70:66, 71:67, 72:68, 73:69, 74:70, 75:71, 76:72, 77:73, 78:74, 79:75, 80:76, 81:77, 82:78, 83:79, 84:80, 85:81, 86:82, 87:83, 88:84, 89:85, 90:86, 91:87, 92:88, 93:89, 94:90, 95:91, 96:92, 97:93, 98:94, 99:95, 100:96, 101:97, 102:98, 103:99, 104:100, 105:101, 106:102, 107:103, 108:104, 109:105, 110:106, 111:107, 112:108, 113:109, 114:110, 115:111, 116:112, 117:113, 118:114, 119:115, 120:116, 121:117, 122:118, 123:119, 124:120, 125:121, 126:122, 127:123, 128:124, 129:125, 130:126, 131:127, 132:128, 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(8) International Standard for Results Management (ISRM)

The most recent IS is the ISRM adopted in November 2019 by the WADA Executive Committee and became effective as of January 1, 2021, together with the 2021 WADA Code. The ISRM is an example for the law

That process, according to the definition contained in Article 3.1 of the

respect to the scheduling and conduct of the hearing, the ISRM grants more rights and options than before to the athletes.

Furthermore, Article 5.2 of the ISRM establishes requirements applicable to typical findings such as when the laboratory results need further investigation, or to other potential doping offences, such as whereabouts failures or findings on the athlete's biological passport. Article 6 of the ISRM provides detailed requirements for the notification of the mandatory provisional suspension or related to an optional or voluntary suspension.

If, after receipt of an explanation by the athlete or after the expiry of the deadline to provide such explanation, the RMA maintains that a doping offence was committed, the RMA shall promptly charge the athlete with that antidoping rule violation. Article 7.1 of the ISRM sets out the elements of such letter of charge in details, in particular regarding the right to a hearing.

#### (b) Adjudication phase

The adjudication phase of the results management process consists of the hearing process and the decision emanating thereof. Compared to the sparse rules in Article 8 of the 2015 WADA Code on the right to a fair hearing, Article 8 of the 2021 WADA Code and the implementing rules of the ISRM establish detailed provisions on the first instance hearing process which considerably improves the process and takes into consideration the rights of the athletes. Ultimately, the conditions set forth in the ISRM related to the adjudication phases significantly develop and enhance the legal standards of resolving doping-related disputes from the first-instance adjudication and onward.

#### The ADOs

“shall confer jurisdiction on hearing panels to hear and determine whether an athlete ... has committed an antidoping rule violation and, if applicable, to impose the relevant consequences.”

Hereafter, the RMA acts as a party to the proceedings and the ADO may delegate that task to a third party, such as the IATA.

The hearing panels must consist of a wider pool of panel members with “anti-doping experience, including legal, sports, medical and/or scientific expertise.” The relevant rules of the ADOs

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74. World Anti-Doping Agency, World Anti-Doping Code: International Standard Results Management, *supra* note 72, at 31; discussed in Section III.3.d.

“shall provide for an independent person or body to determine in their discretion the size and composition of a particular hearing panel to adjudicate an individual case.”

This provision, at least, opens the avenue for a regime where the particular panels were to be appointed by an independent third person or institution. However, according to the comment to Article 8.2, “the independent person may be a designated chairperson of the pool.” Such a system seems to be the one regularly chosen by the ADP. Upon appointment, the designated panel members must sign a declaration of independence and the parties may challenge an appointment.

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hearing, to be provided a schedule for the course of the hearing, and the right to request a public hearing.<sup>79</sup>

Furthermore, the ISRM, in Article 9, stipulates that, in the panel decision, the following issues must be addressed and determined: the panel's jurisdiction and the applicable law, the factual background, the anti doping rule violation committed, the applicable consequences, and the appeal routes and deadlines. The decisions shall be promptly notified by the RMA to the athlete or other persons concerned and other ADOs with a right of appeal (the WADA in particular) and reported to the Doping Administration and Management system of the WADA (ADAMS).

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Rules for the NOCs, the IFs, the Major Event Organizers and NADOs.



2022]

In accordance with the definition of Testing Authority attached to the WADA Code, ISTI and ISRM, the ADOs

“may authorize a Delegated Third Party to conduct testing pursuant to the authority of and in accordance with the rules of the ~~Anti~~ Doping Organization. ... The ~~Anti~~ Doping Organization remains the Testing Authority and ultimately responsible under the Code to ensure the

For that purpose, the IOC Executive Committee delegated its power to decide upon any violation of the WADA Code arising on the occasion of Olympic Games, based on Rule 59.2.4 of the OCh, as a first instance authority. Consequently, the CAS ADD had jurisdiction to apply the Anti Doping Regulations of the IOC. This occurred in the more general context of removing the anti-doping activities from the IOC, the IFs, and other sports bodies, thus transferring them to independent institutions.

These temporary anti-doping divisions were replaced by a permanent CAS ADD<sup>96</sup> which became operational as of 2019. It exercises its

#### 4. The Role of Governments in Anti-Doping policies

In the fight against doping in sports, a remarkable and unique cooperation between the sports governing bodies and State governments has evolved. That cooperation reflects the delimitation of responsibilities between the world of sports and their primary regulatory autonomy, and the overall political responsibility of the State governments. The IOC and the UNESCO joined forces on their way to a global anti-doping policy.

The UNESCO has instituted itself as the global intergovernmental forum responsible for Olympic and level sports since its World Conference of Ministers Responsible for Physical Education and Sports (MINEPS) 1976 in Paris. The IOC convened the World Conference on Doping in Sport which, in its final Declaration of Lausanne of February 2, 1999, called for a worldwide convention against doping. That Declaration led to the foundation of the WADA on November 10, 1999 and, in December 1999, the third MINEPS Conference put anti-doping convention on the agenda of the UNESCO.

After the Additional Protocol to the European Convention against Doping of November 16, 1989 of the Council of Europe was adopted on September 12, 2002<sup>101</sup> and the second World Conference on Doping in Sport convened by the IOC and the WADA had approved the WADA Code on March 5, 2003, the fourth MINEPS Conference in December 2004 decided to draw up an international convention. As soon as October 19, 2005, the General Conference of the UNESCO unanimously adopted the

Accordingly, Article 22 of the 2003 WADA Code stated,

“each government’s commitment to the Code will be evidenced by signing a Declaration ... to be followed by a process leading to a ~~code~~... to be implemented as appropriate to the constitutional and administrative contexts of each government.”<sup>103</sup>

As of its 2009 versions, Article 22 of the WADA Code establishes a direct link to the UNESCO Convention which already had become effective in 2007:

“Each government’s commitment to the Code will be evidenced by its signing the Copenhagen Declaration ... and by ratifying, accepting, approving or acceding to the UNESCO Convention.”<sup>104</sup>

Article 22 goes on and expresses the expectations of the ~~code~~ that

“Each government should take all actions and measures necessary to comply with the UNESCO Convention....

Each government should respect arbitration as the preferred means of resolving doping-related disputes, subject to human rights and fundamental rights and applicable national law....

Each government should respect the autonomy of a National ~~Doping~~ Organization.”<sup>105</sup>

Finally, Article 22.10 of the WADA Code provides that

“Failure by a government ... to comply with the UNESCO Convention as determined by the UNESCO, may result in meaningful consequences by UNESCO and WADA as determined by each organization”<sup>106</sup>

and Article 23.4.1 of the WADA Code stipulates:

“Compliance with the commitments reflected in the UNESCO Convention will be monitored as determined by the Conference of Parties to the UNESCO Convention following consultation with the State Parties and WADA.”<sup>107</sup>

According to that provision, WADA is involved in the surveillance of compliance by governments with the UNESCO Convention as far as it “reflects” i.e., incorporates, the WADA Code.

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103. World Anti-Doping Agency, 2003 World Anti-Doping Code art. 22 [https://www.wada-ama.org/sites/default/files/resources/files/wada\\_code\\_2003\\_en.pdf](https://www.wada-ama.org/sites/default/files/resources/files/wada_code_2003_en.pdf)

104. World Anti-Doping Agency 2009 World Anti-Doping Code art. 22.

105. World Anti-Doping Agency World Anti-Doping Code 2021 <sup>supra</sup>note 54, arts. 22.1, 22.6, 22.8.

106. *Id.*

107. *Id.* art. 23.



In conclusion, throughout the WADA Code and related legal inst

Pursuant to Article paragraph 2, the States shall “encourage” the sport organizations to adopt measures to prevent and to restrict the use and possession of prohibited substances and methods by athletes. Article 9 extends these obligations beyond the athletes to athletes’ support personnel.<sup>12</sup>

c. National antidoping legislation

Based upon the general commitment set forth in articles 3, 4, and 5 and the specific obligation under Article 8 of the UNESCO Convention, the States are required and legally bound to enact national antidoping legislation. In its explanatory statement to the German Federal Doping Statute of 2015,<sup>13</sup> the German government stated that Germany is bound to