

MONITORING GROUP (T-DO)

ANTI-DOPING CONVENTION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 20 February 2017

T-DO/Rec (2017) 01

**Recommendation on ensuring the independence of
hearing panels (bodies) and promoting fair trial in
anti-doping cases**

**Adopted by the Monitoring Group on 20 February
2017 by written procedure
T-DO Verbal Note / Note verbale 2017-01**

Recommendation on ensuring the independence of hearing panels (bodies) and promoting fair trial in anti-doping cases

The Monitoring Group of the Anti-Doping Convention of the Council of Europe, under the terms of Article 11.1.d of the Convention,

Having regard to Article 3.1 of the Convention, which obliges States Parties to co-ordinate the policies and actions of their government departments and other public agencies concerned with combating doping in sport;

Recalling its continuous and strong determination to fight against doping and to protect clean sport;

Having regard to Article 7.2.d of the Convention, which requires States Parties to encourage their sports organisations to harmonise their disciplinary procedures, applying agreed international principles of natural justice and ensuring respect for the fundamental rights of suspected sportsmen and sportswomen; these principles including:

- (i) the reporting and disciplinary bodies to be distinct from one another;
- (ii) the right of such persons to a fair hearing and to be assisted or represented;
- (iii) clear and enforceable provisions for appealing against any judgement made;

Acknowledging the fact that all States Parties to the Anti-Doping Convention signed the Copenhagen Declaration on Anti-Doping in Sport (2003) and/or are bound by the International Convention against Doping in Sport (UNESCO, 2005), and are therefore concerned by the measures required by the World Anti-doping Code;

Taking into consideration the Article 8 of the World Anti-doping Code (2015) and in particular its point 1, which strongly recommends the Anti-Doping Organisations with responsibility for result managements to “*provide, at a minimum, a fair hearing within a reasonable time by a fair and impartial hearing panel*”;

Taking into account the provisions of the Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, which states that “*everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal*”;

Bearing in mind the Recommendation of the Monitoring Group of the Anti-doping Convention on basic principles for hearing phases of doping control (98/2) and in particular its Appendix B.2 on procedures ensuring a fair hearing;

Taking into account the large variety of legal systems and jurisdictions amongst its States Parties;

Committed to promote equal rights for athletes by harmonising working methods and enhancing quality of judgments of hearing panels (bodies) responsible for hearing doping cases at national level;

Recalling that the Monitoring Group is responsible for assessing the measures taken by the States Parties in order to comply with the provisions of the Convention;

Recommends States Parties to the Anti-Doping Convention to:

1. Establish an independent, impartial and centralised panel (body), apart from the national sport federations, in charge of all hearing proceedings in anti-doping cases.
2. Ensure that the anti-doping proceedings respect athletes' right to a fair trial, by implementing the following principles:

- a) Operational independence of the hearing panel (body)

The hearing panel (body) should be operationally independent from the Government, national federations, the National Olympic Committee, National Paralympic Committee and the National Anti-Doping Organisation. There should be no interference from these actors on decisions made by the hearing panel (body) and on the conduct of the hearing proceedings.

- b) Composition of the hearing panel (body) and impartiality of its members

The hearing panel (body) should be composed of at least a chair and two members. The chair should have a legal background and experience of practising law, but in all cases at least one member of the hearing panel (body) should be a person with a legal background. The other members of the hearing panel should provide a collective expertise in relevant fields, such as science, medicine or sport. [They should be appointed for at least a renewable 4-years terms of office.]

Members of the hearing panel (body) should have no direct or indirect relation, both personally and professionally, with the parties to the proceedings or any organisations of which the parties are members. They also should have no prior involvement in the case.

The athlete or other person who is asserted to have committed an anti-doping rule violation should be authorised to request the replacement of a member of the hearing panel (body) in case of doubts on his/her impartiality.

- c) Right of access to a hearing

Each athlete or other person who is asserted to have committed an anti-doping rule violation should have an effective access to a hearing panel (body) to present his/her case, in person or in writing.

Procedural fees should not prevent a person from accessing to the hearing.

When necessary, States Parties should consider establishing a legal aid mechanism in order to ensure this access.

- d) Right to effective defence and equality of arms

- (i) Each athlete or other person who is asserted to have committed an anti-doping rule violation should have a right to defend him/herself and to

present his/her arguments. The athlete or other person shall have a right to be represented by a legal advisor and assisted by an interpreter.

- (ii) The athlete should have the right to request for witnesses or experts. The hearing panel (body) shall have complete discretion regarding the admissibility and appreciation of the evidence, depending on the circumstances of the case.
- (iii) Sanctions should be imposed in a proportionate manner depending on the circumstances of the anti-doping rule violation and in accordance with international anti-doping rules, such as the World Anti-Doping Code.
- (iv) All parties to the hearing should have access to the relevant documents and evidences.

e) Third-Party intervention

When the case is not brought to the panel by the National Anti-Doping Organisation, the latter should participate in the hearing.

Representatives from the World Anti-Doping Agency, the International Federation and the National Federation should also be authorised to participate in the hearing, where appropriate.

These third-parties should have the right to express an opinion and present relevant information about the athlete. They should have access to the files, in accordance with the international legislation on data protection.

f) Right to appeal

The athlete or other person shall have the right to appeal any decision of the hearing panel (body) before an impartial body to get a full review both of the law and the facts of the case.

Other relevant stakeholders (e.g. the National Anti-Doping Organisation, the World Anti-Doping Agency, the National Federation, the International Federation, the International Olympic Committee and the International Paralympic Committee) shall also have a right to appeal.

g) Public nature of the hearing

The hearing should be public unless otherwise decided by the hearing panel (body).

h) Notification of the decision

The decision together with an explanation should be issued within a reasonable time, taking into account the circumstances of the case, and notified promptly to the athlete and other person/organisation with a right to appeal.

3. Provide adequate resources to ensure that the hearing panels (bodies) are able to fulfil their tasks efficiently and independently.

4. Arrange the hearings with appropriate regard to advisory materials such as the Results Management, Hearings and Decisions Guidelines of the World Anti-Doping Agency by hearing panels.