



Tribunal Arbitral do Desporto

PORTUGUESE COURT OF ARBITRATION FOR SPORT

NECESSARY ARBITRATION IN DOPING MATTERS

A) ANTI-DOPING DISCIPLINARY COLLEGE (CDA)

The Disciplinary Anti-Doping College (CDA) is one of the national anti-doping bodies, pursuant to Article 17 of the Law no. 81/2021 (Law of Anti-Doping in Sport that revokes the Law no. 38/2012).

According to Article 37 of the Law no. 81/2021, the CDA is an independent technical-judicial commission, with competence to decide on disciplinary offenses resulting from violations of anti-doping rules, enjoying full jurisdiction in disciplinary matters.

➤ Rules of Procedure & Description of Processes

According to Article 71 of the Law no. 81/2021, the existence of indications of an anti-doping rule violation automatically determines the opening of a disciplinary procedure by the ADoP (Anti-doping Portuguese Authority).

The instructor responsible for the procedure is appointed by the ADoP President, with possibility of delegation, pursuant to Article 72 of the aforementioned Law.

After analysing the evidence brought to the case, the instructor chooses to promote the agent's preliminary hearing or to bring charges. (no. 4 of Article 72).

The preliminary hearing must be brief and quick, guaranteeing the agent an opportunity to be heard, in writing or verbally. (no. 5 of Article 72).

The accusation must contain the facts imputed to the agent and the circumstances of time, mode and place of infraction. (no. 6 of Article 72). Notified of the accusation, the agent may present, within 10 working days, a written defence and a request for evidence (no. 7 of Article 72).

The agent may, at any stage of the procedure, constitute and be assisted by a tutor, companion or person responsible for parental authority (no. 8 of Article 72).



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At the end of the defence phase, the instructor prepares a final report to be sent by ADoP to CDA for a decision (no. 9 of Article 72), which is the competent body for the instruction of the disciplinary procedures (no. 1 of Article 74).

The CDA receives the process instructed by the ADoP, which is sent confidentially to the president. The president of CDA, within 48 hours following the receipt of the process, constitutes the subcommittee, notifies the rapporteur and sends him/her the process. (no. 1 and 2 of the Article 75).

If the subcommittee needs to carry out additional evidence steps, for the purpose of substantiating its decision, it must refer the case back to ADoP, specifically identifying the evidence steps it deems relevant (no. 3 of the Article 75).

The subcommittee has 30 days, after receiving the process or the result of the additional evidence provided for in the previous number, to prepare and notify the decision to the ADoP, the sports practitioner or other person, his representative, the national sports federation, WADA and the international federation, and these entities must keep the decision confidential, until the time of publication provided for in paragraph 4 of article 90. (no. 4 of Article 75).

The subcommittee deliberates by simple majority. The subcommittee's deliberations always focus on matters of fact and law, and the evidence is presented in the investigation phase, before the ADoP.

Decisions regarding the violation of the period of suspension or preventive suspension must be sufficiently reasoned, including, where appropriate, the reasons that justified the non-application of the maximum sanction.

In the communication to WADA and to the international federation provided for in paragraph 4, the CDA must send, in addition to a copy of the decision, a brief summary of the same and the respective reasoning, in English or French. (no. 7, 8, 9 and 10 of Article 75).

According to no. 1 of Article 76, the final decisions of the disciplinary proceedings issued by the CDA can be challenged, within 10 days, to the Court of Arbitration for Sport, without prejudice to the provisions of paragraph 3 of Article 76, which states that decisions arising from violations committed by a sports practitioner of international level, or in international events, are contestable by the parties, by the respective international federation, by WADA and, in the case of a foreign sports practitioner, with a foreign sports license or



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with official residence abroad, by the national anti-doping authority of the respective country, for the CAS, in accordance with the World Anti-Doping Code.

In the absence of a challenge to the Court of Arbitration for Sport, WADA may directly challenge the decisions referred to in no. 1 of Article 76 to the CAS, under the terms set out in the World Anti-Doping Code (no. 4 of Article 76).

Without prejudice to the provisions of paragraph 1, the deadline for filing an appeal from the WADA to the Court of Arbitration for Sport or to the CAS is the last one, among the following deadlines:

- a) 21 days after the end of the appeal period for any of the other parties;
- b) 21 days from the date of receipt by WADA of the complete documentation relating to the decision.

➤ **Public/private hearing**

The athlete or other person has the right, in any case, before any sanctions is applied, to be heard in order to present their arguments in order to try to eliminate or reduce the sanction to be applied, under the terms of the Article 83 of Law no. 81/2021, pursuant to Article 82.

According to no. 5 and 6 of the Article 75, it is up to the subcommittee coordinator to schedule the date for the hearing provided for in article 82, **which may be public, at the request of the athlete, another person or the ADoP**, which requires the written consent of the athlete or another person.

The coordinator of the subcommittee may determine that the hearing is not public, invoking reasons of a moral or public nature, reasons related to national security, the interests of minors or the protection of the private life of the parties that harm the normal functioning of the subcommittee. hearing or based on legal rules.

➤ **Written procedures**

The procedures are in writing and have secret nature, pursuant to no. 1 of Article 72 of the Law no. 81/2021.



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B) PORTUGUESE COURT OF ARBITRATION FOR SPORT (TAD)

The Law no. 74/2013, amended by Law no. 33/2014, establishes the creation of TAD, with specific competence to administer justice in relation to disputes concerning sports legal system or related to the practice of sport. Also, it approves the so-called TAD Law, establishing the nature, competence, organization and services rendered by TAD as well as rules for arbitration and mediation processes to be submitted to TAD.

The Article 5 of the Law no. 33/2014, titled "Necessary arbitration in doping matters" establishes that it is incumbent upon TAD to hear the appeals of decisions taken by disciplinary bodies of sports federations or by the ADoP in matters of violation of anti-doping rules, under the terms of Law no. 81/2021 (Law of Anti-Doping in Sport).

The initiation of an appeal in doping matters at the TAD has suspensive effect on the contested punitive decision (Article 53 no. 2).

➤ Rules of Procedure & Description of Processes

The Chapter II of the TAD Law, regulates the Necessary Arbitration Jurisdiction Processes, which is the case of doping matters.

According to Article 54 of TAD Law, the instance is constituted with the **presentation of the Initial Request** and this is considered presented with the reception of the same in the secretariat of the TAD or with the remittance of the process, in the cases where this is foreseen in the civil procedural law.

i. Initiation of the procedure and submissions phase

The **Initial Request** must contain, in particular:

- a) The identification of the applicant and the defendant and any other interested parties, as well as the indication of their respective addresses;
- b) Indication of the address where the applicant must be notified;
- c) The exposition of the facts and the legal reasons that serve as the basis for the request, as well as the synthetic but precise presentation of the claims;
- d) Reference to the evidence presented or to be presented;



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- e) Indication of the value of the claim;
- f) Appointment of the referee.

The Initial Request must be accompanied by the payment of the arbitration fee, under penalty of not being admitted, if the omission is not corrected within three days.

Once the Initial Request has been received, the Respondent is summoned to **contest/respond** and present evidence within 10 days, with no place for counterclaim. The **Response** must contain, in particular:

- a) The complete identification and the address at which it must be notified;
- b) Exposition of the legal and factual reasons for opposing the Claimant's claim;
- c) Evidence of the alleged facts;
- d) Indication of possible counter-interested parties;
- e) The appointment of the arbitrator.

With the Response, the Respondent must promote the payment of the arbitration fee, under penalty of being considered not presented. (Article 55 of TAD Law).

Once the Response has been received, the Claimant is summoned, who may respond, within a period of 10 days, only to the exceptional matter. Any counter-interested parties are also mentioned to appoint an arbitrator and, if they wish, to comment on what they consider convenient, within a period of 10 days, and they must be informed of the Initial Petition, the Response and the documents that accompany them.

With the indictment, the counter-interested party proceeds to the payment of the arbitration fee, under penalty of not being admitted.



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The lack of pronouncement of the counter-interested parties does not have a punitive effect, and the Court must decide on the basis of the elements contained in the process. (Article 56 of the TAD Law).

ii. Hearing and debate phase

Once the procedural documents are presented, the parties are notified to appear at the TAD in order to proceed with the investigation of the case and the allegations. The investigation of the case has as its object the relevant facts for the examination and decision of the case.

After the production of evidence, the parties are invited to present oral arguments, but if the parties agree on the presentation of written arguments, they must, within 10 days, proceed with the respective presentation. Until the submission of the allegations, the parties may add opinions.

After the acts provided for in the previous numbers have elapsed and any steps determined by the Arbitral College have been carried out, the latter declares the debate closed. (Article 57 of the TAD Law).

iii. Decision phase

The final decision is rendered, except for a different period agreed by the parties, within 15 days from the closing date of the debate, which must be joint, in fact and in law.

The presiding arbitrator of the college has a casting vote.

The president of the TAD, at the reasoned request of the arbitration college and after hearing the parties, may extend the period of decision rendering.

In cases where the decision is of particular urgency, and after the debate has been closed, the Arbitral College may issue and communicate the operative part of its decision, and the grounds for the decision must be communicated within the deadline established, and in this case, the decision will take effect on the date of communication to the parties, but the period for any appeal or challenge only starts from the date of communication of the reasons.



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Once the decision has been rendered, the parties are immediately notified of it, by sending the respective copy by the TAD Secretariat. (Article 58 of TAD Law).

iv. Appeals: Administrative Central Court (TCA) and Board of Appeals

According to Article 8 of TAD Law, the decisions of the Arbitration Colleges are subject to appeal to the **Central Administrative Court (TCA)**, unless the parties agree to appeal to the Board of Appeals, expressly waiving the appeal of the decision that may be rendered. The provisions of the Code of Procedure in the Administrative Courts regarding urgent cases shall apply to the appeal to the Central Administrative Court, having the same merely devolution effect and must be decided within 45 days. The Central Administrative Court of South is competent to hear the appeal. The challenge of the arbitration decision by any of the means provided for in paragraphs 1 and 4 of Article 8 of TAD Law does not affect the sporting effects determined by such decision and carried out by the competent bodies of sports federations, professional leagues and any other sports entities.

The appeal to the **Board of Appeal** provided for in paragraph 1 of article 8 of TAD Law, must be lodged within 10 days, accompanied by the respective allegation and the express declaration, by both parties, of waiver of the appeal of the decision that come to be delivered.

Once the appeal has been received, it will be immediately submitted to the president of the TAD, so that he can comment, within a period of three days, on its admissibility and follow-up, as well as on the effect that should be attributed to it.

The decision of the president of the TAD that does not admit or does not proceed with the appeal, as well as the one that establishes the effect of the appeal, can be appealed, to be presented within a period of three days, to a Conference of three judges of the Board of Appeal designated by draw, which must also decide the claim within three days.

If the appeal is accepted and must follow, the president of the TAD will promote the appointment, within three days and by drawing, of a rapporteur, who has not been part of the abovementioned Conference, and will order the notification of the Respondent(s) to plead within 10 days.



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After the Respondent or Respondents' allegations is joint, or at the end of the 10 day-period referred previously, the appeal must be decided within 15 days. (Article 59 of TAD Law).

The decision of the Board of Appeal is subject to appeal to the Supreme Administrative Court when it is in contradiction, as regards the same fundamental question of law, in the field of the same legislation or regulation, with a judgment handed down by the Central Administrative Court or by the Supreme Administrative Court (Article 8 of TAD Law).

➤ **Public/private hearing**

Although there is no express rule in the TAD Law that regulates the publicity or confidentiality of the hearings, they are private.

However, the decision of the cases are published, as a fundamental principal of the Arbitration Process, pursuant to point f) of Article 34 of TAD Law.

➤ **Written procedures**

The point d) of Article 34 of TAD Law establishes that the parties must be heard, orally or in writing, before a final decision is rendered.

As referred above, after the production of evidence, the parties are invited to present oral arguments, but if the parties agree on the presentation of written arguments, they must, within 10 days, proceed with the respective presentation, pursuant to Article 57 of the TAD Law.

For the all above, after the submissions phase, there is a clear flexibility provided by the TAD Law, in proceeding in writing or orally, depending on the parties' will.

C) DISCIPLINARY PROCEDURES FOR ENGLISH-SPEAKING ATHLETES

Regarding the **Law of Anti-Doping in Sports**, Article 72, the language of the proceedings is Portuguese.



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In the communication of sanctions applied by *res judicata* decisions, to the respective international sports federation, to the WADA and, in case of foreign sports practitioners, with a foreign sports license or with official residence abroad, to the relevant national anti-doping authority, the ADoP shall send, with the copy of the decision, a brief summary of the decision and its grounds in English or French (point 13 and 14 of Article 90).

Regarding the **TAD Law**, Article 35, Portuguese is used in all proceedings taking place at the TAD, without prejudice to the arbitrators being able, after hearing the parties, to accept statements and documents in a foreign language, and it is up to them to decide whether the respective translation is necessary or not.

D) THERAPEUTIC USE EXEMPTIONS (TUE) PROCEEDINGS: competent bodies for TUEs proceedings and competent bodies for appeal.

The Therapeutic Use Exemption is defined in point d) of Article 2 of the Law no. 81/2021 (Anti-Doping Law in Sport) as the "permission granted by the Commission for Authorization of Therapeutic Use (CAUT) to the athlete suffering from a medical condition to use a prohibited substance or method, in accordance with the criteria and rules defined in terms of Article 4.4 of the World Anti-Doping Code, in conjunction with the WADA International Standard on Therapeutic Use Authorizations.

The Article 13 of the Law no. 81/2021 refers to the **therapeutic use authorization procedure** and establish as follows:

1 – The criteria and rules defined in the World Anti-Doping Code and in the International Standard on Therapeutic Use Authorizations apply for the granting of a therapeutic use authorization decision, and the ADoP is responsible for, through CAUT, to receive, analyse and approve requests for authorization for the therapeutic use of prohibited substances and methods, in relation to national sports practitioners, and to the respective international sports federation, in relation to international sports practitioners.

2 – WADA may review all CAUT decisions, in accordance with the provisions of the World Anti-Doping Code, on its own initiative or following a request submitted by a person with standing to do so.



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3 - The athlete has the right to appeal the decisions of the CAUT and the respective international sports federation, in accordance with the principles defined in the World Anti-Doping Code and the WADA International Standard on Therapeutic Use Authorizations.

4 - The processing of the appeal must respect the following principles and rules:

- a) Hearing in a timely manner;
- b) Impartiality and independence;
- c) Speedy decision, duly substantiated and in writing.

5 - The **appeal referred to in the previous number is addressed to the president of the ADoP**, who, within a maximum period of 48 hours, must promote the constitution of a tripartite commission with the following composition:

- a) An element appointed by the Ordem dos Médicos (Portuguese Medical Bar), who presides;
- b) An element designated by CAUT;
- c) An element designated by the athlete.

6 – The commission mentioned in the previous number must decide on the appeal within a maximum period of two days from its constitution.

The **competence and composition of Commission for Authorization of Therapeutic Use (CAUT)** is established in Article 29 of the Law no. 81/2021:

1 - CAUT is the body responsible for analyzing and approving authorizations for therapeutic use.

2 - It is incumbent upon CAUT to:

- a) Analyze and approve therapeutic use authorizations;
- b) Issue opinions, when requested by ADoP;



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c) Ensure the other functions assigned to it by law.

3 - The CAUT is composed of five elements with a degree in Medicine, with relevant services in the area of combating doping in sport and in sports medicine.

4 - The graduates in Medicine referred to in the previous number are proposed to the president of the ADoP by the executive director and appointed by the member of the Government responsible for the area of sport, who also designates its president.

5 - The CAUT decides in accordance with the criteria and rules defined in the WADA's international therapeutic use authorization standard.

6 - The term of office of the members of CAUT lasts for three years, renewable for equal periods.