

Msc Aleksandra Buza

Department of Forensic Science, Faculty of Law and Administration, University of Warsaw
ORCID: 0000-0003-3468-8766

CONTEMPORARY PROBLEMS OF DOPING PHENOMENON IN SPORT AT THE PROCEDURAL AND EVIDENCE LEVEL

Summary

Doping has been a feature of sport since its inception. The use of illegal substances is considered unethical and violates the most important rule – fair play. This article deals with the problem of doping at both the evidentiary and procedural levels. The study presents current trends in doping, the process of doping control, the problems that may arise when carrying out controls, the procedure before the competent body, and the dilemmas that may arise when amending the current anti-doping rules. Attention was also drawn to the ongoing dispute between the Sports Arbitration Court of the Polish Olympic Committee and the Polish Anti-Doping Agency, which has arisen as a result of an amendment to the doping legislation governing the appeal procedure against decisions of individual trial bodies.

Keywords: sport, doping, doping control, disciplinary liability

Introduction

This article deals with the topic of doping in sports; in it, I pay particular attention to procedural and evidentiary issues in doping proceedings. It would seem that in the modern world, the characteristics of the use of doping have been reliably developed, which has led to the implementation of appropriate and effective mechanisms both to combat this phenomenon, to prove the guilt of the athlete before the relevant body, and to ensure that the athlete has adequate rights throughout the procedure. However, the law is constantly changing, and various modifications are being made, which more than once raise many controversies and problems that are difficult to solve. To give an idea of the characteristics of the practice of doping substances, I will cite the results of my own research, which I did for my master's thesis – an interview with Dr. n. pharm. Andrzej Pokrywka and the compilation of individual data presented in the Annual Reports of the Polish Anti-Doping Agency. The study was intended to systematize as well as expand knowledge regarding the practice of doping substances.

History of doping

The use of doping is nothing new in the world of sports – its history goes back to the beginning of sports itself. Initially, stimulants such as strychnine were used for this purpose, which was mainly administered to horses before or during competitions. On the other hand, it seems that some of the earliest uses of doping among humans date back to ancient times, when participants in the Olympic games, looking for some unnatural boosters, turned to stimulants and alcohol, as well as the colonial era, when the Dutch took an infusion of various roots and herbs, adding gunpowder. Currently, doping is considered “the use of substances, stimulants, intended to artificially and unfairly increase the performance of an athlete during competition”¹.

The first numerous problems related to the use of doping substances appeared in the second half of the 19th century. The group of athletes who most often tested positive for a banned substance were cyclists – Arthur Linton (1896), Knut Jensen (1960), Tom Simpson (1967), athletes – Thomas Hicks (1904), Dorando Pietri (1908), Ben Johnson (1988), weightlifters – Mitko Grablew (1988), Angel Guenchev (1988). However, in addition to individual cases, it is worth noting specific countries that were characterized by particularly high numbers of anti-doping violations compared to others. In 2016, the head of Russia’s anti-doping laboratory testified to police authorities about numerous violations in Russia in the run-up to the Sochi Olympics. However, it soon became apparent that the Russians had been engaging in illegal doping practices not only before the aforementioned Games but also four years earlier while preparing for the London Olympics and the 2013 World Championships in Moscow. As a result of the prolonged practice, Russia was banned not only from fielding its representatives in disciplines such as athletics and weightlifting at the Rio de Janeiro IO but also from fielding any athlete intended to represent Russia’s colours at the 2016 Paralympic Games and the Winter Olympics in Pyeongchang two years later. Only athletes who did not raise doubts or suspicions of doping were allowed to compete under the Olympic flag².

There have also been anti-doping violations in Poland’s history. The first examples are the disqualification of weightlifter Zbigniew Kaczmarek (1976) and discus athlete Danuta Rosani (1976) at the Montreal IO. Subsequently, positive doping control results were received by: hockey player Jaroslaw Morawiecki (1988), canoeist Adam Seroczyński (2008), skier Kornelia Marek (2010), bobsledder Daniel Zalewski (2014), two weightlifters – Tomasz and Adrian Zieliński (2016), and cyclists Marcin Polak (2021), Michał Ładosz (2021)³.

¹ M. Donike, S. Rauth, *Dopingkontrollen*, Sport und Buch Strauß, ed. 2, Köln 1996, after: R. Gruzca, A. Pokrywka, *Historia dopingu*, in: W. Granowska (ed.), *Doping zabija sport. Skutki i przeciwdziałanie*, Oficyna Wydawniczo-Poligraficzna „ADAM”, Warsaw 2006, p. 7–8.

² A. Pokrywka, *Rys historyczny*, in: A. Pokrywka, M. Bujalska-Zadrożny, A. Mamcarz, *Doping w sporcie*, PZWL Wydawnictwo Lekarskie, Warsaw 2020, pp. 9–10.

³ The official website of the Polish Anti-Doping Agency, <https://www.antydoping.pl/newsletter-nr-8-polada-2021/> (accessed: 24.08.2022).

All of the aforementioned individuals tested positive for doping controls during the Olympic Games. This is a top-ranking sporting event in which only a small group of athletes with the best sporting results participate. It should be noted that there are many more examples of anti-doping violations – prohibited substances are also used by athletes who are not subject to doping controls, for example, because they do not achieve high results or compete in lower-ranking competitions.

Modern doping trends

Numerous cases of doping substance use are also observed outside of sports. Dr Pharm. Andrzej Pokrywka, a scientific consultant for the Polish Anti-Doping Agency, as well as an anti-doping consultant from the Central Center for Sports Medicine, points, for example, to groups of students, philharmonic musicians or medical profession workers, surgeons. This is a problem that occurs so widely and frequently that a separate term has been coined to describe “workplace doping”⁴. This is a challenge that needs to be paid attention to, especially as it is starting to occur more and more among younger people, not only at work but also in the world of sports.

Tab. 1. Prohibited substances detected during anti-doping controls in Poland in 2017–2019

	Anabolic steroids	Diuretics	Stimulants	Kanabinoids	Narcotics	Antagonists and hormone modulators	Hormones	Beta2-agonists
2017	30	19	9	1	1	11	0	4
2018	54	18	9	4	0	14	3	2
2019	67	35	6	8	0	19	0	2

Source: A. Buza, *Doping in professional sports – forensic analysis*, unpublished master’s thesis, Warsaw 2022, p. 20.

Table 1 shows the types of doping substances detected in Poland in 2017-2019 based on statistical data found in the Annual Reports of the Polish Anti-Doping Agency. In light of the statistics presented, the most commonly detected types of doping substances are anabolic-androgenic steroids (almost 50% of all substances detected in 2019) and diuretics (25%). One can also see a gradual, yearly increase in the detected substances mentioned above. The source of this phenomenon can be attributed to both the increase in the number of athletes using banned substances and the ongoing process of modernizing the equipment used to detect doping substances.

⁴ A. Buza, *Doping in competitive sports – forensic analysis*, unpublished master’s thesis, Warsaw 2022, p. 79.

It should be emphasized that not all doping violations are intentional and planned in advance by athletes, and under current sports law, an athlete is considered guilty even if they break the rules unknowingly, such as by consuming contaminated products without being aware that they contain banned substances. It also happens that manufacturers adulterate supplements – when writing down the composition of a given product, they intentionally list a banned substance, but for safety's sake, under a different, lesser or unknown name. On the other hand, under anti-doping regulations, it is the athlete's responsibility to ensure that doping substances do not enter his body in any way. It can be said that, contrary to appearances, the law is very strict and consistent, and the player himself, in some situations, is sometimes punished for his ignorance.

Also important is the open-ended nature of the List of Prohibited Substances and Methods, published and updated annually by the World Anti-Doping Agency. Andrzej Pokrywka points to this problem, saying that even people who work with athletes every day (e.g., a private doctor or trainer) cannot unequivocally classify certain substances as prohibited. In some situations, even though they are not listed in the WADA list, they may be considered prohibited during a hearing before the relevant disciplinary body, which will result in serious consequences for the athlete and, thus, a finding of guilt⁵.

Tab. 2. Doping violations by discipline in Poland in the years 2018–2019

	Football	Bodybuilding	Rugby	Rowing	Weightlifting	Fitness	Powerlifting
2018	0	9	8	1	4	4	3
2019	11	10	6	4	3	2	2

Source: A. Buza, op. cit., s. 38.

Nowadays, it is believed that anti-doping substances are most often used by athletes training in strength sports – bodybuilders and weightlifters. Table 2 shows the number of anti-doping rule violations by discipline based on statistics found in the Annual Reports of the Polish Anti-Doping Agency. The above information confirms speculation about the disciplines among which athletes are most likely to receive positive doping control results – in both 2018 and 2019, the highest number of doping violations was recorded among bodybuilders. In 2019, on the other hand, a large increase in the number of violations among football players can be noted as

⁵ Ibid, p. 84.

a result of events among the players of the club Pogoń Siedlce, as reported to the Polish Anti-Doping Agency by the club nurse⁶.

A significant problem is so-called unconscious doping, i.e. the consumption of adulterated, contaminated dietary supplements, nutritional supplements or other products, passive smoking or the use of drugs, the components of which in the subsequent process of biotransformation may be detected by anti-doping tests as prohibited substances. It can be said that an athlete must be careful at all times and thoroughly vet all the products he takes, which is not always fully possible.

Adulterated dietary supplements or nutritional supplements are a fundamental problem that, more than once in the history of doping cases, has resulted in negative consequences for the athlete as a result of positive doping control. Falsification occurs on several levels; examples can be enumerated:

- “Adding another ingredient to a supplement that is cheaper or of lower quality,
- removal of the main ingredient affecting nutritional value,
- replacement of essential nutrients with other ingredients that are unnecessary or even harmful to the human body,
- intentional actions to adulterate the true composition of a product or its properties, which causes negative consequences in terms of the interests of the buyer or its safety”⁷.

Nowadays, products designed for use by athletes can be found in most popular stores or drugstores, so due to their widespread availability and ubiquity, it is believed that they are not harmful to health, and there is no obligation for manufacturers to hold a patent on their manufacture. There are also no regulations in place to govern the production process, standardization or quality control of these products. As a result of the lack of any control over the athletic products being put into circulation, it is easy here for them to be contaminated or even intentionally adulterated⁸.

In reference to the issue of contamination of supplements, it is worth mentioning the high-profile case of Polish athlete Konrad Bukowiecki, in whom the presence of higenamine - a substance with similar properties to WADA-banned methylhexanamine – was detected in a sample tested in 2016. As a result of the violation, only a reprimand was imposed on Bukowiecki, while in such a case, it is very difficult for athletes to prove the unknowing consumption of a banned substance, which often

⁶ K. Wolnicki, *Draconian punishment for soccer players. Four years for doping!*, “Sports Review”, 20.01.2021, <https://przegladsportowy.onet.pl/pilka-nozna/inne-ligi/doping-pilkarze-pogoni-siedlce-skazani-na-cztery-lata-dyskwalifikacji/p2f0req> (accessed: 22.08.2022).

⁷ S. Kowalczyk, *Prawo czystej żywności. Od Kodeksu Hammurabiego do Codex Alimentarius*, ed. 2., Oficyna Wydawnicza SGH, Warsaw 2017, after: I.I. Bak-Sypien, A. Karmańska, B.T. Karwowski, *Adulteration in the market of functional foods and dietary supplements and its potential impact on health*, “Farmacja Polska” 2019, vol. 75, no. 9, s. 519.

⁸ D. Kwiatkowska, *Zanieczyszczenie odżywek środkami zabronionymi w sporcie*, in: W. Gradowska (ed.), op. cit., p. 49–50.

results in the ruling of a term suspension. “I was hoping for an acquittal because I didn’t do anything wrong. I made no mistake. I bought a good conditioner from a good reputable company. I checked the composition. There was nothing forbidden there,” Bukowiecki repeatedly emphasized⁹.

Also worth mentioning is the case of French tennis player Richard Gasquet, who managed to prove his innocence. A sample taken from the athlete detected the presence of cocaine, which Gasquet explained by kissing a woman who had previously taken the substance. The Lausanne-based Court of Sport acquitted the tennis player, saying he was not negligent and, thus, did not commit a crime¹⁰. Such decisions by trial authorities show that if a prohibited substance was indeed unintentionally and unknowingly found in the athlete’s body, they could avoid disciplinary responsibility.

A significant risk is posed by the consumption of products of plant or animal origin, which can also result in the detection of undesirable substances. Few athletes are aware that in addition to dietary supplements or nutrients, they should reliably select the products they consume every day, such as meat, corn, honey, cooking oils or even Easter poppies¹¹. Morphine, cocaine and tetrahydrocannabinol (THC) were most commonly detected in anti-doping tests. The currently established permitted level of tetrahydrocannabinol concentration in an athlete is at such a high level that even after drinking tea, the test result will be negative.

It is worth noting the aforementioned poppy seed cake. This is because poppies contain numerous psychoactive compounds, such as morphine and codeine, which can be detected in the sample of a person consuming poppy products. Common law prohibits the marketing of confectionery poppies, which are characterized by high levels of morphine, and they cannot be cultivated – there have been cases in the history of an athlete consuming a poppy seed made from high-morphine poppies, resulting in a positive doping control. A. Pokrywka at the Department of Antidoping Research conducted analyses to check the concentration of morphine in people who consumed the same amount of poppy seeds bought under the Marymont Hall and poppy seeds purchased at the Marymont Hall, legitimized with the appropriate certificate. The study showed that participants who consumed poppies bought under the Marymont Hall had morphine concentrations as much as several times higher than those who consumed certified poppies¹².

Today, more and more institutions are taking steps to promote sports among young people. However, it happens that many young athletes choose to take doping

⁹ Bukowiecki only reprimanded. “This proves that he took the banned agent unknowingly”, “Sports Review”, 7.12.2016, <https://przegladSPORTOWY.onet.pl/lekkoatletyka/doping-konrad-bukowiecki-z-nagana/cfkm3td> (accessed: 23.08.2022).

¹⁰ S. Nakrani, *Richard Gasquet escapes ban after CAS clears him over positive cocaine test*, “The Guardian”, 17.12.2009, <https://www.theguardian.com/sport/2009/dec/17/richard-gasquet-cocaine-cas-ban> (accessed: 23.08.2022).

¹¹ B. Frączek, J. Krzywański, H. Krysztofiak (eds.), *Dietetyka sportowa*, PZWL Wydawnictwo Lekarskie, Warsaw 2020, p. 849.

¹² A. Buza, op. cit., p. 85.

substances without being aware of the later consequences. Depending on the substance, tolerance and individual factors, ingestion of some contaminated supplements can result in subtle changes that are difficult to associate with the effects of doping at first, such as a rash or allergy. While in some cases, in addition to diarrhoea and vomiting, the consequences can even be anaphylactic shock or death¹³.

Characteristics of the anti-doping control process

Only a few of all athletes who compete are subject to anti-doping controls; only groups of top-performing athletes and high-scoring athletes in high-ranking sports competitions are covered, so the system cannot detect all athletes who use illegal enhancers. Top-performing athletes participate in the *Whereabouts* program; the essence of the program is to collect specific locations where the athlete has been or will be at a certain time for doping controls. Sometimes it happened that the competitor deliberately avoided the control, giving, for example, a hard-to-reach place in the hope that the controllers would not be able to reach it, while in fact, he stayed completely elsewhere¹⁴. Such situations, i.e. intentionally avoiding control, refusing to give a sample or failing to show up for a test, are tantamount to anti-doping violations.

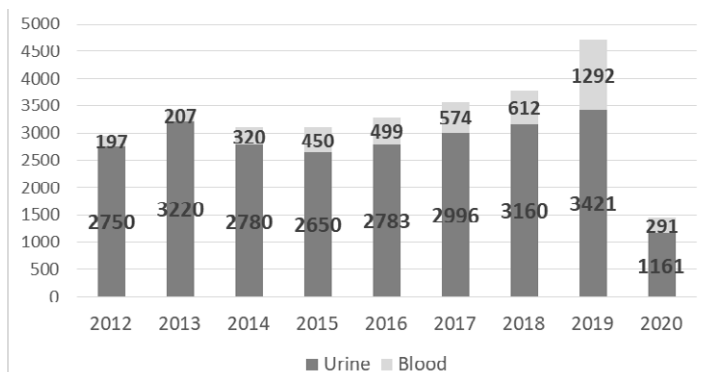
The next point in the doping control process is the selection of specific athletes to be screened. When a competitor is selected, a scrutineer is sent to them, who, after all, formalities, proceeds to conduct the inspection. The material most often collected for testing is urine. After donating the sample, the athlete pours the test material into two containers labelled "A" and "B" the corresponding protocol is signed, and then the samples are transported to a WADA-accredited laboratory with the appropriate transport temperature¹⁵.

Fig. 1. Number of samples taken during anti-doping controls in Poland between 2012 and 2020

¹³ Food Allergy and Anaphylaxis Public Declaration. European Academy of Allergy and Clinical Immunology (EAACI), 2013, after: I.I. Bak-Sypien, A. Karmanska, B.T. Karwowski, op. cit., p. 520.

¹⁴ A. Buza, op. cit., s. 80.

¹⁵ The official website of the Polish Anti-Doping Agency, <https://anty doping.pl/kontrola/przebieg-kontroli-anty dopingowej/> (accessed: 25.08.2022).



Source: A. Buza, op. cit., s. 42.

In the past two years, since the outbreak of the pandemic caused by the Covid-19 virus, sampling has been significantly hampered due to the reduction of direct contacts. Based on data from the Annual Reports of the Polish Anti-Doping Agency, shown in Figure 1, there is a large decrease in the number of doping controls conducted in 2020. (by 30% compared to a year earlier). Wanting to find the best solution, a few months after the pandemic broke out in Europe, the United States and Germany proposed a new way of conducting inspections that had not been used before, thus avoiding direct contact. The process consisted of sending a properly prepared set to the selected athlete with instructions on how to give a sample (blood), then the athlete, supervised online, pricked his finger with a special instrument. Then, after collecting the material, he would properly secure the sample, put it in an envelope and send it to the designated agency, which would direct the sample to the laboratory¹⁶.

The most commonly collected material for the test is urine. Blood is taken less frequently, while recently, materials such as saliva, hair and fingernails have also been considered. Andrzej Pokrywka says that of the materials mentioned above, hair is the most commonly used for testing. Saliva, as a doping test material taken some time after the violation, seems not particularly reliable as a result of the continuous purification of substances in the mouth. Nevertheless, relevant research in this area is still ongoing. On the other hand, in the case of choosing hair as the material to be collected in routine doping control, one must consider that some athletes (mainly men) do not have it, which also causes some problems¹⁷. Research on the aforementioned types of materials, which can serve in the future as reliable evidence in a trial for anti-doping violations, is ongoing, but at present, it seems that only blood or urine can testify to an athlete's use of prohibited substances.

¹⁶ A. Pokrywka, B. Skibińska, *Przestępczość farmaceutyczna w okresie pandemii COVID-19*, ZOZ CENTER UMEA SHINODA-KURACEJO, Warsaw 2021, p. 85–86.

¹⁷ A. Buza, op. cit., p. 83.

Evidentiary proceedings

At the stage when an athlete receives a positive anti-doping test result after the evidence is properly reviewed by the Commission for Combating Doping in Sport, a temporary suspension penalty shall be immediately imposed on the athlete. The athlete then awaits a preliminary hearing, which should take place as soon as possible¹⁸. In anti-doping violation proceedings, all evidence against an athlete is collected by the said commission. It is worth noting that independent evidence in the case can even be a confession by the player himself, which will result in a conviction.

The presence of the competitor at the preliminary hearing is not mandatory, so his absence is not equivalent to the interruption of the hearing of the people adjourned. An important privilege of the player is the opportunity to be questioned, which is the first attempt to prove innocence by stating your position and describing the whole situation. The hearing of the athlete should be held as soon as possible but no later than three months after the completion of laboratory tests. Within 14 days of being informed of the date and details of the hearing, the athlete may resign from participation in the hearing and may also admit to the alleged act and agree to carry out the punishment proposed by the relevant Polish sports association¹⁹.

There are situations in which players voluntarily admit to breaking the rules, hoping to receive a less severe punishment. An example is the cooperation of a football player of the club Pogoń Siedlce, who was the only one of the seven players with a positive audit to admit to a specific action, so that, like the other players, he received a penalty of four years of disqualification, but unlike the others – half suspended²⁰. In addition to cooperating to obtain a lighter punishment, the athlete would have to demonstrate the absence of any negligence on his part in connection with the entry of the banned substance into his body, such as providing convincing evidence that the specific product that was consumed is indeed contaminated, as well as explain and prove how the banned substance found its way into his body²¹.

It is worth noting that anti-doping regulations apply to all athletes, regardless of disease, discipline, age or gender. It may seem that the most vulnerable to anti-doping rule violations are the youngest people, who have not had time to familiarize themselves with the current anti-doping rules. They are unable to care for and control their environment adequately, and the only people who become the first and often closest trustworthy source of information for them are, for example, a parent or coach. Sometimes, however, it happens that these people may not have adequate knowledge or

¹⁸ Polish Anti-Doping Agency Regulations 2021, Articles 7.4, 8, <https://anty doping.pl/wp-content/uploads/2021/04/Przepisy-Antydopingowe-POLADA-2021-wersja-1.2..pdf> (accessed: 25.08.2022).

¹⁹ D. Jagiełło, *Ramy odpowiedzialności i postępowanie dowodowe w związku z podejrzeniem stosowania dopingu w sporcie*, in: D. Jagiełło, T. Gardocka (eds.), *Problemy prawne na styku sportu i medycyny*, C.H. Beck Publishing House, Warsaw 2015, p. 9–10.

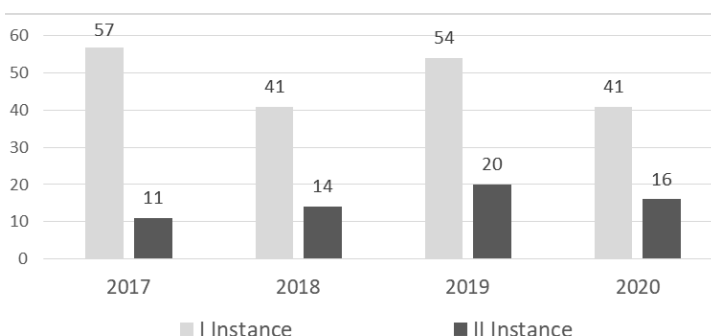
²⁰ K. Wolnicki, *op. cit.*

²¹ M. Rynkowski, *Disciplinary proceedings in doping cases – international and comparative legal issues*, unpublished doctoral dissertation, University of Warsaw, Warsaw 2019, pp. 121–124.

qualifications in the aspect of anti-doping, as well as awareness of the consequences that the use of prohibited substances causes. However, in reality, despite the strict sports law in force, the judge often grants the young man's request, treating his age or little experience as mitigating grounds²².

To test for anti-doping substances, a sample is taken from the athlete, which is later separated into two containers. The sample signed with the letter "A" is taken for testing first. In a situation where the test result is positive, the competitor may request that the B sample be tested, but they will be charged for the remaining steps, starting with the request for the second sample.

Fig. 2. Number of hearings held in 2017–2020 with breakdown by instance



Source: A. Buza, op. cit., s. 57.

Figure 2 shows the list of proceedings before the Disciplinary Panel of both the first and second instances in 2017–2020. It was prepared on the basis of information contained in the Annual Reports of the Polish Anti-Doping Agency. The data presented shows that there are far fewer appeal (second instance) proceedings. This may be related not only to proving the player's innocence (as I mentioned, it is not an easy task) but also to the costs he has to pay. This is because you have to pay up to several thousand zlotys for the B sample alone²³. The financial aspect is a big problem and creates a barrier for the athlete, who may indeed be innocent, but does not have enough opportunities to prove it.

The procedure of doping cases and the resulting problems

Disciplinary liability is the final and key element of the ongoing process between the authority competent to adjudicate such cases and the athlete who has committed an anti-doping rule violation. It is mainly regulated by two documents – the World Anti-Doping Code and the Anti-Doping Regulations of the Polish Anti-Doping Agency. The punishment may be financial (e.g., reimbursement of costs associated with

²² Ibid., p. 117.

²³ A. Buza, op. cit., p. 84.

anti-doping rule violations), invalidation of sports performance, and temporary or lifetime disqualification²⁴. However, not every trial results in a decision to impose disciplinary responsibility – to prove their innocence, players can appeal the decision of a previous instance.

Competitors can already prove their innocence at the laboratory testing stage, for example, by targeting the laboratory with allegations that its actions went beyond certain rules included in the International Standard for Laboratories, which significantly impacted the positive test result²⁵. Suppose the athlete proves the absence of negligence on his part and thus the absence of guilt. In that case, he will not incur any penalty, and all other penalties or interim measures applied, such as the cancellation of sports results, will be revoked. It is worth noting that the statute of limitations expires eight years after a finding of an anti-doping rule violation – no proceedings or investigations can be initiated to prove the guilt of the offender²⁶.

Disciplinary responsibility can be ruled not only against an individual player but also against a sports team. Such a situation occurs only when at least two athletes are proven to have violated anti-doping rules at a sporting event. Subsequently, the scores and points obtained by the team during the sporting event at which the rule violation was detected are revoked, the group is also banned from competing, and the cups it won are confiscated²⁷.

In addition to disciplinary liability, a player or other persons in exceptional situations where the elements of a crime are apparent may also face criminal liability. Examples include administering a doping substance to a minor or administering it to an adult without his knowledge. Such action is punishable by up to three years in prison. It is also worth noting that in this situation, the culpability lies with the perpetrator of the act, not the competitor²⁸. Civil law liability is also possible, imposed when an athlete fails to fulfil his obligations to the relevant entities, such as not competing in competitions, because he is prevented from doing so by the temporary suspension penalty imposed on him. Civil liability, in such situations, is often financial²⁹.

Proceedings before the Disciplinary Panel begins with the delivery to the body of the necessary documents when the result of sample B taken from the athlete turns out to be the same as the positive result of sample A. A date for a hearing is set, the athlete against whom the proceedings are pending may take an active part in it – make

²⁴ Anti-Doping Regulations of the Polish Anti-Doping Agency 2021, Articles 9, 10, <https://anty doping.pl/wp-content/uploads/2021/04/Przepisy-Antydopingowe-POLADA-2021-wersja-1.2..pdf> (accessed: 24.08.2022).

²⁵ D. Jagiełło, *op. cit.*, p. 9.

²⁶ Model Anti-Doping Rules for National Anti-Doping Organizations, Article 16, 10. https://pzts.pl/pliki/anty doping_modelowe_reguly_2011.pdf (accessed: 25.08.2022).

²⁷ D. Jagiełło, *op. cit.*, p. 10.

²⁸ Law of April 21, 2017 on combating doping in sports (Journal of Laws 2019.1872), Article 48.

²⁹ M. Rynkowski, *op. cit.*, p. 77.

explanations, demands or motions, and may also have, at his own expense, two attorneys (in this role may be a legal counsel or attorney³⁰).

In addition to the right to seek the assistance of an attorney or legal counsel under current regulations, the athlete also has the right to:

- consideration of the case by a fair and impartial court,
- obtain information about the charges as soon as possible,
- statements, commenting on the allegations made,
- to present evidence, including calling witnesses and asking them questions,
- having and using an interpreter,
- obtain, as soon as possible, a written decision of the procedural authority, with the reasons and recital of the sentence imposed³¹.

The athlete does not have to participate in the trial – even before it begins, he can waive this right and accept the punishment inflicted. If during the conducted hearing, the Panel finds that there was a violation of the rules, the results that the athlete obtained in the selected competitions are invalidated, while the information about the violation of the rules is made public³². If the athlete decides to appeal the final decision issued by the trial authority, then, depending on the class he holds, he will submit it to the appropriate trial authority.

In light of the Anti-Doping Regulations of the Polish Anti-Doping Agency, in effect until January 2021, the appeal route is determined by the athlete's class and the rank of the competition in which he competed. When an anti-doping violation was committed by an international class athlete or a participant in an international event, the proceedings began at the level of the First Instance Disciplinary Panel. The athlete could then appeal the decision of the first instance Panel to the second instance Disciplinary Panel and ultimately to the highest instance, which was the Court of Arbitration for Sports (CAS) in Lausanne. And if a national-class athlete or others broke the rules, the proceedings also began at the level of the Panel of First Instance, and then an appeal could be made to the Panel of Second Instance, while the final, highest instance in this situation was the Court of Arbitration for Sport at the Polish Olympic Committee³³. Both the Lausanne-based Court of Arbitration for Sport and the Tribunal at the Polish Olympic Committee hear all incoming appeal cases de novo, disregarding previous decisions or judgments by lower bodies³⁴.

³⁰ Regulations of the Disciplinary Panel at the Polish Anti-Doping Agency, Article 12, <https://anty doping.pl/wp-content/uploads/2021/02/Regulamin-Panelu-Dyscyplinarnego-przy-POLA-DA.pdf> (accessed: 25.08.2022).

³¹ D. Jagiełło, op. cit., pp. 9–10.

³² Anti-Doping Regulations of the Polish Anti-Doping Agency 2021, Article 8.1, Article 10.15, Article 8.3, <https://anty doping.pl/wp-content/uploads/2021/04/Przepisy-Anty dopingowe-POLADA-2021-wersja-1.2..pdf> (accessed: 25.08.2022).

³³ Anti-Doping Regulations of the Polish Anti-Doping Agency 2017, Articles 13.2.1, 13.2.2, <https://anty doping.pl/wp-content/uploads/2017/07/Przepisy-Anty dopingowe-POLADA-1.pdf> (accessed: 24.08.2022).

³⁴ J. Smorawiński, M. Rynkowski, *Udział Komisji do Zwalczenia Dopingu w Sporcie w egzekwowaniu odpowiedzialności dyscyplinarnej w sprawach dopingowych*, in: A.J. Szwarz (ed.),

Under the New Regulations, which came into force at the beginning of 2021, the appeal route for both national and international class players has been modified. In light of the current Article 13.2.1 of the Anti-Doping Rules of the Polish Anti-Doping Agency, international class athletes and participants in international events have been deprived of the possibility to appeal to the Disciplinary Panel of the second instance - the appeal route has been shortened by one instance, as they appeal against the Panel's decision directly to the Court of Arbitration for Sport in Lausanne. On the other hand, the appeal route for national class players and other participants was shortened by the last instance - they were deprived of the opportunity to appeal to the Court of Arbitration for Sport at the Polish Olympic Committee. As a result of this modification, they also lost the ability to appeal to an independent, independent court³⁵.

It would seem that under anti-doping regulations, the Disciplinary Panel should be "sufficient" because it is an impartial and independent body. However, in reality, one may have doubts about this due to the dependencies between the Panel and other institutions - the members of the Panel are selected periodically by the Minister of Physical Culture, and the body's activities themselves are financed by funds obtained from the Polish Anti-Doping Agency, which allows for constant, in-depth control of the body and its staff. In addition, it seems paradoxical to consider an independent and independent body that issues decisions at the level of two separate instances.

The motivation behind the modification of the Polish Anti-Doping Regulations was the need to bring them in line with the relevant regulations of the World Anti-Doping Agency, which were intended to indicate the need to speed up anti-doping processes, as well as to raise the standard of implementation of proceedings in these cases. The director of the Polish Anti-Doping Agency explained the modification of the appeal path by years of experience and observations of the course of disciplinary hearings, which yielded conclusions indicating that the appeal path for doping cases was too long. "We have also often witnessed outright persistent prolongation of the case. And at a certain stage of the hearing, appeals simply no longer have the right effect. Such actions do not benefit the athletes"³⁶.

However, in light of Art 13.2.2. of World Anti-Doping Code, such treatment is a violation of the athlete's right to a fair trial before an impartial adjudicating body that is independent of other institutions. Controversy may arise over the shortening of the appeal route for national-class athletes, who, under the New Rules, cannot appeal to the highest and independent body, which was the Court of Arbitration for Sport at the Polish Olympic Committee, while international-class athletes will still be able to

Sportowa odpowiedzialność dyscyplinarna z tytułu dopingu w sporcie, Nauka i Innowacje, Poznań 2017, p. 41.

³⁵ Polish Anti-Doping Agency Regulations 2021, Articles 13.2.1, 13.2.2, <https://anty doping.pl/wp-content/uploads/2021/04/Przepisy-Antydopingowe-POLADA-2021-wersja-1.2..pdf> (accessed: 24.08.2022).

³⁶ *Changes to POLADA's Anti-Doping Regulations. New regulations from January 2021*, 22.12.2020, <https://anty doping.pl/zmiany-w-przepisach-anty dopingowych-polada-nowe-regulacje-od-stycznia-2021/> (accessed: 24.08.2022).

appeal to an independent body, which is the Court of Arbitration for Sport in Lausanne. One may wonder why the appeal route for all players has not been modified in the same way, for example, so as to deprive them of the possibility of appealing to the second instance of the Panel.

As a result of the above modification, numerous athlete appeal letters to the PKOL Arbitration Tribunal gradually began to be withdrawn on the grounds that such action is inconsistent with the current Anti-Doping Regulations. Cases that began before the new regulations came into force are also revoked, as well as those in which proceedings have already begun after the new regulations came into force, even though a violation was found earlier. POLADA's decision to shorten the appeal route has been criticized by the Court, which, citing Article 24.7 of the Polish Anti-Doping Regulations, argues that such proceedings have a right to be resolved according to the rules previously in force - athletes should be able to appeal the decision of the 2nd instance Panel to the Court³⁷.

A dispute is currently underway between the Court of Arbitration for Sport at the Polish Olympic Committee and the Polish Anti-Doping Agency. In this situation, attention should be paid first and foremost to the well-being of the athlete, as his avenue of appeal, to which he is entitled under the current rules, has been blocked, and the athlete himself is not only feeling increasingly anxious about this, in addition, the waiting time for the next hearing or final ruling is getting longer and longer.

Conclusion

Despite the gradual popularization of healthy competition among athletes, the principle of fair play, and advances in anti-doping laboratory testing, the phenomenon of doping is still a major problem. Particular attention must be paid to the open nature of the List of Prohibited Methods and Substances, which shows that even if an athlete diligently follows all anti-doping rules and controls his environment and the products he consumes, it may turn out that a substance not listed by WADA may be considered prohibited by WADA due to its similar chemical structure. On this level, the sports law is very strict. It seems that in light of Article 2.1 of the Polish Anti-Doping Regulations, a positive result of an anti-doping test is indisputable, and the athlete has no real opportunity to prove his innocence since one of his duties is to ensure that no prohibited substance enters his body.

Suppose the competitor has already obtained a positive result in light of Article 13.2.2. of The World Anti-Doping Code should be guaranteed the right to a fair trial before an independent trial body. Today, on the other hand, we have a situation in which, as a result of the interpretation of the world anti-doping law, Polish athletes were deprived of the chance to prove their innocence before a fair, independent and independent body, which was the Court of Arbitration for Sport at the Polish Olympic Committee.

A significant problem also seems to be a financial issue on the level of conducting evidence – the athlete has to pay for the B-sample test on his own to prove his innocence, which makes many athletes choose not to apply for such an action because of its cost.

³⁷ Resolution of the Council of the Arbitration Tribunal for Sport at the Polish Olympic Committee dated 14.01.2022.

They must, therefore, bear disciplinary responsibility, even though the testing of the B sample could, in some situations, nevertheless fail to show the presence of a banned substance.

Recapitulation

Doping has been a feature of the sport since its inception. The use of illegal substances is considered unethical and violates the most important rule – fair play. This article deals with the problem of doping at both the evidentiary and procedural levels. The study presents current trends in doping, the process of doping control, the problems that may arise when carrying out controls, the procedure before the competent body, and the dilemmas that may arise when amending the current anti-doping rules. Attention was also drawn to the ongoing dispute between the Sports Arbitration Court of the Polish Olympic Committee and the Polish Anti-Doping Agency, which has arisen as a result of an amendment to the doping legislation governing the appeal procedure against decisions of individual trial bodies.

Bibliography

Literature

- Bąk-Sypień I.I., Karmańska A., Karwowski B.T., *Zafalszowania na rynku żywności funkcjonalnej i suplementów diety oraz ich potencjalny wpływ na zdrowie*, „Farmacja Polska” 2019, 75, nr 9.
- Buza A., *Doping w sporcie wyczynowym – analiza kryminalistyczna*, niepublikowana praca magisterska, Warszawa 2022.
- Frączek B., Krzywański J., Krysztofiak H. (red.), *Dietetyka sportowa*, PZWL Wydawnictwo Lekarskie, Warszawa 2020.
- Granowska W. (red.), *Doping zabija sport. Skutki i przeciwdziałanie*, Oficyna Wydawniczo-Poligraficzna „ADAM”, Warszawa 2006.
- Jagiello D., Gardocka T. (red.), *Problemy prawne na styku sportu i medycyny*, Wydawnictwo C.H. Beck, Warszawa 2015.
- Pokrywka A., Bujalska-Zadrożny M., Mamcarz A., *Doping w sporcie*, PZWL Wydawnictwo Lekarskie, Warszawa 2020.
- Pokrywka A., Skibińska B., *Przestępczość farmaceutyczna w okresie pandemii COVID-19*, ZOZ OŚRODEK UMEA SHINODA-KURACEJO, Warszawa 2021.
- Rynkowski M., *Postępowania dyscyplinarne w sprawach dopingowych – zagadnienia prawnomiędzynarodowe i prawnoporównawcze*, niepublikowana rozprawa doktorska, Uniwersytet Warszawski, Warszawa 2019.
- Szwarc A.J. (red.), *Sportowa odpowiedzialność dyscyplinarna z tytułu dopingu w sporcie*, Nauka i Innowacje, Poznań 2017.
- Uchwała Rady Trybunału Arbitrażowego ds. Sportu przy Polskim Komitecie Olimpijskim z dnia 14.01.2022 r.
- Ustawa z dnia 21 kwietnia 2017 r. o zwalczaniu dopingu w sporcie (Dz.U.2019.1872).

Online sources

- Bukowiecki tylko z naganą. „To dowód, że wziął niedozwolony środek nieświadomie”, „Prze-
gląd Sportowy”, 7.12.2016, <https://przehladsportowy.onet.pl/lekkoatletyka/doping-konrad-bukowiecki-z-nagana/cfkm3td> (dostęp: 23.08.2022).
- Modelowe reguły antydopingowe dla krajowych organizacji antydopingowych, https://pzts.pl/pliki/antydoping_modelowe_reguly_2011.pdf (dostęp: 25.08.2022).
- Nakrani S., *Richard Gasquet escapes ban after CAS clears him over positive cocaine test*, „The Guardian”, 17.12.2009, <https://www.theguardian.com/sport/2009/dec/17/richard-gasquet-cocaine-cas-ban> (dostęp: 23.08.2022).
- Oficjalna strona Polskiej Agencji Antydopingowej, <https://antydoping.pl/kontrolle/przebieg-kontroli-antydopingowej/>, [dostęp: 25.08.2022 r.].
- Oficjalna strona Polskiej Agencji Antydopingowej, <https://www.antydoping.pl/newsletter-n-r-8-polada-2021/>, [dostęp: 24.08.2022].
- Przepisy Polskiej Agencji Antydopingowej z 2017 r., <https://antydoping.pl/wp-content/uploads/2017/07/Przepisy-Antydopingowe-POLADA-1.pdf> (dostęp: 24.08.2022).
- Przepisy Polskiej Agencji Antydopingowej z 2021 r., <https://antydoping.pl/wp-content/uploads/2021/04/Przepisy-Antydopingowe-POLADA-2021-wersja-1.2..pdf> (dostęp: 24.08.2022).
- Regulamin Panelu Dyscyplinarnego przy Polskiej Agencji Antydopingowej, <https://antydoping.pl/wp-content/uploads/2021/02/Regulamin-Panelu-Dyscyplinarnego-przy-POLADA.pdf> (dostęp: 25.08.2022).
- Wolnicki K., *Drakońska kara dla piłkarzy. Cztery lata za doping!*, „Przełąd Sportowy”, 20.01.2021, <https://przehladsportowy.onet.pl/pilka-nozna/inne-ligi/doping-pilkarze-pogoni-siedlce-skazani-na-cztery-lata-dyskwalifikacji/p2f0req> (dostęp: 22.08.2022).
- Zmiany w Przepisach Antydopingowych POLADA. Nowe regulacje od stycznia 2021*, 22.12.2020, <https://antydoping.pl/zmiany-w-przepisach-antydopingowych-polada-nowe-regulacje-od-stycznia-2021/> (dostęp: 24.08.2022).

Conflict of interest

None

Source of funding

None