



**WORLD CONFERENCE
ON DOPING IN SPORT**
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SESSION 4

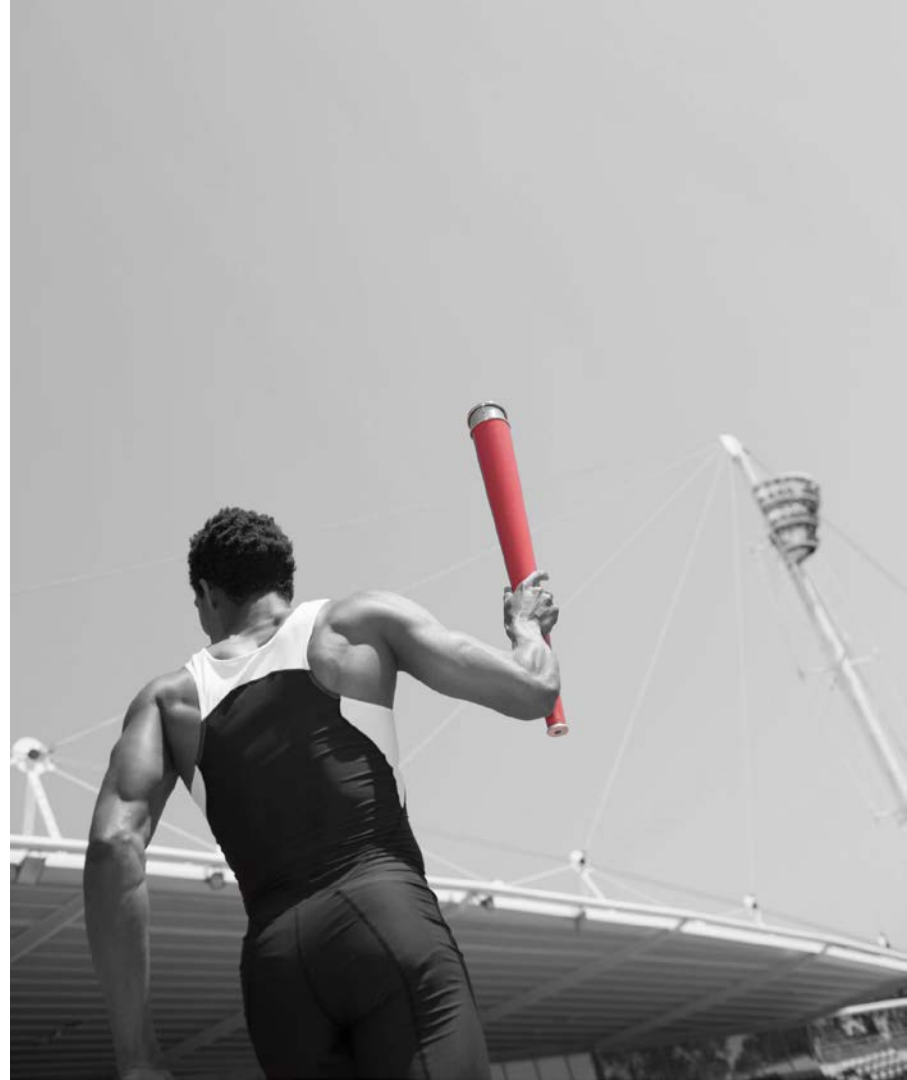
Legal Opinion on the 2021 Code

Jean-Paul Costa, Former President,
European Court of Human Rights



Purpose of the opinion

- Compliance of the revised World Anti-Doping Code with international human rights' norms





New jurisprudential and doctrinal context

New jurisprudential and doctrinal context



- **Before 2018**, little or no case law on this compliance

- **Since 2018**, two important European Court of Human Rights (ECHR) judgments
 - FNASS v. France (18 June 2018)
 - Mutu and Pechstein v. Switzerland (2 October 2018)

New jurisprudential and doctrinal context (Cont'd)



- **The FNASS v. France decision**
 - The Court recognized a broad consensus in favor of the fight against doping in sport and considered that the World Anti-Doping Code is the main instrument in this fight.

- **The Mutu and Pechstein v. Switzerland decision**
 - The Court considered that the use of arbitration in sports matters is legitimate as long as the guarantees of a fair trial are provided for.

New jurisprudential and doctrinal context (Cont'd)



- The Court held that the right to a fair trial is applicable from a civil (and not a criminal) perspective in sports matters.
- The Court also found that the Court of Arbitration for Sport (CAS) generally provides for these guarantees.
- In the Pechstein case, only one guarantee was not provided for – Ms. Pechstein asked that the hearing be public and it was not.
- Therefore, the new jurisprudential (and doctrinal) context is favorable to WADA, the Code and CAS



Compliance of the 2021 Code

Compliance of the 2021 Code provisions with international norms (response to WADA's questions)

- On several points, the Code draft was modified to take my opinion into account
- The interaction and these amendments were satisfactory



Compliance of the 2021 Code (Cont'd)



A. The sanctions for prohibited association are compliant with international norms

- A comment to Article 2.10 could mention that an athlete who should have known that the association was prohibited is subject to this prohibition; and the "Athlete Support Personnel" list on the WADA website could be mentioned

Compliance of the 2021 Code (Cont'd)

B. Reporting to authorities and its consequences (article 2.11) is compliant

- Modified wording is satisfactory



Compliance of the 2021 Code (Cont'd)

- C. The concept of protected persons is compliant**
- Clarifications provided on who these persons are in Appendix I
 - This modification is satisfactory



Compliance of the 2021 Code (Cont'd)



D. Aggravating circumstances (Article 10.4) are compliant

- Examples are provided in Appendix I
- These modifications are satisfactory

E. Multiple violations and F. New concept for calculating the suspension period are compliant, taking into account the new wording of Articles 27.1 to 27.4

- The modifications are satisfactory

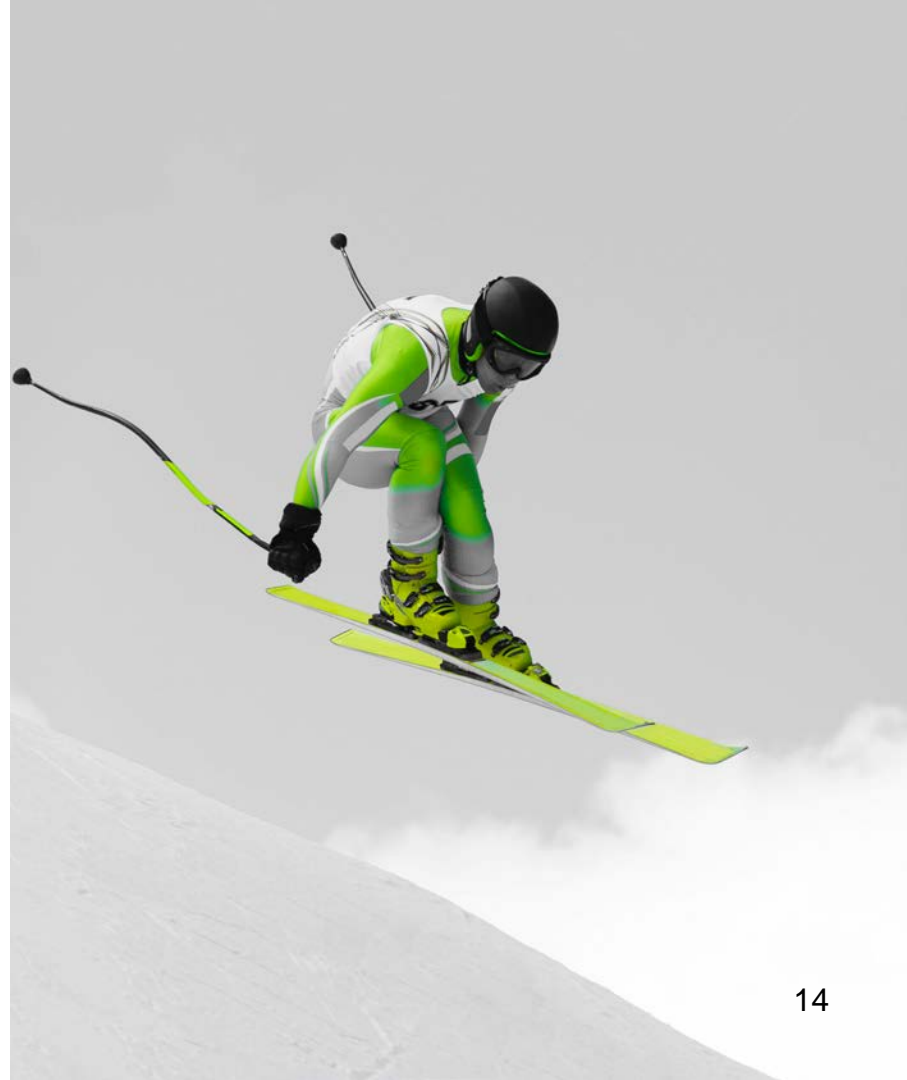
Compliance of the 2021 Code (Cont'd)

- F. "Widening of the net " is compliant, taking into account the (satisfactory) modification of the wording of Articles 20.1.7, 20.3.4, 20.5.10, 20.6.5 and 20.7.10



Compliance of the 2021 Code (Cont'd)

- G. Automatic recognition (*erga omnes* effect) is compliant**
- Access to justice is compliant (role of CAS)



Compliance of the 2021 Code (Cont'd)



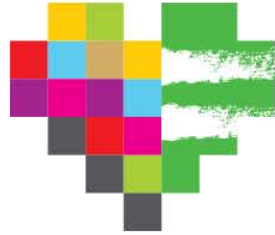
- H. Differences in tests of independence and impartiality between internal bodies and disciplinary bodies on one hand and CAS on the other hand are compliant because CAS is a court of " full jurisdiction "**

- I. Introductory paragraph to Article 20 on the obligations of delegated third parties who are not signatories to the Code is compliant**

Conclusion

- The fight against doping and respect for human rights must be reconciled
- Overall, the 2021 Code does so
- Therefore, my opinion is favorable





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