



Arbitration CAS 2015/A/4024 E. v. Turkish Athletics Federation (TAF) & World Anti-Doping Agency (WADA), award on jurisdiction of 17 November 2015

Panel: His Honour James Robert Reid QC (United Kingdom), President; Mr Jeffrey Benz (USA); Ms Andrea Carska-Sheppard (Czech Republic)

Athletics

Doping

CAS jurisdiction

Control by the International Federation of the jurisdictional system of one of its national federations

- 1. If the rules of a national association do not provide jurisdiction to CAS or to an independent and impartial arbitration court, this cannot as such create a CAS jurisdiction by default. There must be a specific jurisdiction clause in the national federation's statutes and regulations as this is reflected under R47 of the Code.**
- 2. If an International Federation finds that the jurisdictional system of one of its national federations does not comply with its statutes, it will need to take the necessary measures towards the national association in order for the latter to introduce a valid jurisdiction clause in favour of CAS and/or establish an arbitration court which meets the International Federation's criteria on independence and impartiality. In the meantime, it will be a matter of domestic law, to decide whether a party concerned by a decision issued by national federation's body has the right to appeal against such decision before a competent state court.**

I. PARTIES

1. E. (the "Appellant") is an athletics coach who coached and trained athletes in Turkey. E. is not an International-Level Athlete as defined by the rules of the International Association of Athletics Federations ("IAAF") nor is he support personnel for an International-Level Athlete as defined.
2. The Turkish Athletics Federation ("TAF" or "First Respondent") is the body governing and regulating the sport of athletics in Turkey.
3. The World Anti-Doping Agency ("WADA" or the "Second Respondent") is the independent international anti-doping agency, constituted as a private law foundation under Swiss Law with its seat in Lausanne, Switzerland, and having its headquarters in Montreal, Canada. Its aim is to promote and coordinate the fight against doping in sport internationally.

II. BACKGROUND FACTS

4. Between January and August 2013, samples provided by 41 Turkish athletics athletes (the “Athletes”) were found to contain substances listed under the World Anti-Doping Agency’s Prohibited List. Disciplinary cases were then launched against these athletes and each athlete was sanctioned with a two-year period of ineligibility in accordance with the IAAF Anti-Doping Rules and the Turkish Anti-Doping Code. None of the athletes sanctioned was coached by the Appellant.
5. Following the TAF’s investigation into the widespread doping violations and proceedings against various other athletes and trainers, the TAF launched disciplinary proceedings against the Appellant. On 4 July 2014, the TAF Disciplinary Board sanctioned the Appellant with a lifetime period of ineligibility on the basis that he had supplied his athletes with prohibited substances and trafficked the same.
6. This decision was appealed before the Arbitration Board of the Sports General Directorate Appeals Body of Turkey (the “Appeals Tribunal” or “the SGD Arbitration Board”) on 10 July 2014, and the challenged decision was reversed by a decision dated 7 August 2014 on the basis that the TAF Penal Code was wrongly applied since the correct regulations to take into account were contained in the Turkish Anti-Doping Code.
7. The TAF Disciplinary Board then re-considered the case and by a decision dated 19 September 2014 came to the same conclusion and again imposed a period of lifetime ineligibility under the Turkish Anti-Doping Regulations (“TADR”).
8. The Appellant asserts that although *“after three months silence, the TAF has unofficially informed the Appellant that the same sanction was decided”* the written decision (the “Appealed Decision”) was only notified to his counsel on 18 March 2015. It is from the Appealed Decision that the Appellant now appeals to the Court of Arbitration for Sport (“CAS”).
9. The First Respondent asserts that the Appealed Decision was notified on 2 October 2014 and was appealed to the SGD Arbitration Board. The Appeals Tribunal initially rejected the appeal on 30 October 2014 on the grounds that the relevant voucher or receipt for the application fee had not been filed in time but on 27 November 2014 on objection by the Appellant reviewed that decision and determined to consider the appeal on its merits. By a decision dated 4 December 2014 the SGB Arbitration Board approved the Appealed Decision.

III. CAS PROCEEDINGS

10. On 8 April 2015, the Appellant filed an appeal against the Appealed Decision with the CAS in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the “Code”) and nominated Mr. Jeffrey Benz, attorney-at-law in Los Angeles, California and London, UK as arbitrator.
11. On 4 May 2015, the Second Respondent filed its request to participate in this appeal as an interested party in accordance with Article R41.3 of the Code.
12. On 19 May 2015, the CAS Court Office, in the absence of any objection from the Appellant and First Respondent, confirmed the participation of the Second Respondent in this appeal on

behalf of the President of the Appeals Arbitration Division in accordance with Article R41.3 of the Code.

13. On 20 May 2015, the Appellant filed his appeal brief in accordance with Article R51 of the Code.
14. On 27 May 2015, the Second Respondent filed its objection to Admissibility and CAS Jurisdiction. In doing so the Second Respondent requested that its objection be decided upon as a preliminary matter.
15. On 3 June 2015, the First Respondent filed its answer in accordance with Article R55 of the Code. The Second Respondent's deadline to file its answer was duly suspended in accordance with Article R32 of the Code.
16. On 8 June 2015, the Appellant filed his response to the Second Respondent's objection to CAS jurisdiction.
17. On 3 August 2015, the CAS Court Office confirmed with the parties that the Panel appointed to decide this appeal was as follows:
President: His Honour James Robert Reid QC, retired judge, West Liss, Hampshire, United Kingdom
Arbitrators: Mr Jeffrey G Benz, attorney-at-law, Los Angeles, USA and London, United Kingdom
Ms Andrea Carska-Sheppard, attorney-at-law, Slovak Republic
18. On 21 August 2015, the Appellant was invited to supplement his response to the Second Respondent's objection to Admissibility and CAS Jurisdiction within seven (7) days.
19. On 1 September 2015, the Appellant filed a supplemental submission on Admissibility and CAS Jurisdiction.
20. By letters dated 2 and 15 September 2015, the CAS Court Office confirmed the parties' preferences that the Panel decide the preliminary issue of Admissibility and CAS Jurisdiction as a threshold matter, based solely on the parties' written submissions without a hearing.
21. On 2 October 2014, the CAS Court Office informed the parties that the Panel was sufficiently well informed to render a preliminary decision on Admissibility and CAS Jurisdiction based on the parties' written submissions, without a hearing.

IV. THE PARTIES' SUBMISSIONS ON ADMISSIBILITY AND JURISDICTION

A. The Appellant's Submissions

22. The Appellant's submission on Admissibility and CAS Jurisdiction may be summarized as follows:
23. The Appellant is not considered to be an "International-Level Athlete" according to the definitions in the IAAF Competition Rules (the "IAAF Rules") (and World Anti-Doping Code).

24. Rule 42.4 of the IAAF Rules, which covers appeals which do not arise from International Competitions or involve International-level Athletes (or their support personnel), entitles the Appellant to appeal against the Appealed Decision to “*an independent and impartial body in accordance with rules established by the Member*” (i.e. Turkey in this case). Rule 42.4 provides that:
- The Rules for such appeal shall respects the following principles;*
- *a timely hearing;*
 - *a fair and impartial hearing panel;*
 - *the right to be represented by counsel at the Person’s own expense;*
 - *the right to have an interpreter at the hearing at the Person’s own expense; and*
 - *a timely, written, reasoned decision.*
25. The TADR provide that the decision of the Disciplinary Board may be appealed before the Appeals Tribunal in Turkey. This provision is also set out at the end of the decisions being appealed. These rules do not make a distinction between International and non-International Level Athletes similar to the rules of IAAF.
26. The Sports General Directorate is not a body that ensures independence, impartiality and equal representation to Athletes or their Athlete Support Personnel for several reasons, the first of which is that the TAF is governed both administratively and also financially by the Sports general Directorate.
27. The IAAF Rules make a distinction between International-Level Athletes and non-International Level Athletes regarding the appeal procedure under its rule 42.3 and 42.4. In particular, under to Rule 42.3, International-Level Athletes (and their support personnel) are entitled to appeal against the first instance decisions before CAS. However, under Rule 42.4, non-International Level Athletes and their support personnel are entitled to appeal against the first-instance decisions before an independent and impartial body at national level provided that it respects and safeguards the above-mentioned principles.
28. In the Appellant’s case, there is a clear absence of an independent and impartial body at national level. Therefore, the Appellant can no longer be considered within the scope of Rule 42.4 but instead Rule 42.3, which entitles him to appeal against the Appealed Decision before CAS.
29. Further, the Appellant also wished to highlight that the Second Respondent has the power and duty to ensure that its rules are respected and applied in all cases.
30. As to the timing of the appeals, the Appellant has produced the covering letters under which the signed decisions were sent to the Appellant’s counsel on 18 March 2015. It was not notified to the Appellant himself. Therefore the statement of appeal lodged on 8 April 2015 was in time.
31. So far as relates to Admissibility and CAS Jurisdiction, the Appellant requested that CAS rule that it does have jurisdiction in the appeal.

B. The First Respondent's Submission

32. The First Respondent's submission on Admissibility and CAS Jurisdiction may be summarized as follows:
33. There are three preconditions for an appeal to CAS: (1) there is an arbitration provision in the regulations of the relevant sports organisation; (2) there has been a decision taken by that sports organisation; and (3) all appeal remedies must have been exhausted within the judicial mechanism of the sports organisation. The TADR in force at the relevant time, in parallel with the WADA regulations, provided that incidents relating to international athletes or arising due to participation in international events may be appealed to CAS within 21 days of the date of the decision. In other circumstances (similar to IAAF Rule 42) appeals might be submitted to the SGD Arbitration Board. Only the IAAF, IOC or WADA may appeal the decision of the SGD Arbitration Board at national level to CAS. The decision of the SGD Arbitration Board is otherwise final and cannot be appealed. The Appellant had no international status, the incident was at national level and as there is no arbitration agreement CAS has no jurisdiction.
34. In any event the Disciplinary Board imposed a period of lifetime ineligibility on the Appellant which was notified to him on 2 October 2014. The decision of the SGD Arbitration Board was notified on 4 December 2014 and the appeal notice was therefore out of time.
35. In its Answer, the First Respondent asserted the following request for relief as it related to Admissibility and CAS Jurisdiction:

Firstly, as CAS has no jurisdiction, the appeal should be dismissed

Secondly, even if CAS has jurisdiction, as the appeal was not submitted in the legal time limit, the appeal should be dismissed.

C. The Second Respondent's Submission

36. The Second Respondent's submission on Admissibility and CAS Jurisdiction may be summarized as follows:
37. There is no CAS arbitration agreement. The Appellant seeks to establish CAS jurisdiction on the basis of Rule 42.4 of the IAAF Competition Rules which reflects art. 13.2.2 of the 2015 World Anti-Doping Code and is also implemented at art. 13.2.2 of the TADR. This provides for an appeal to a national-level appeal body in doping cases which do not involve International-Level Athletes and their support personnel and do not arise from International Competitions. It was not accepted that the IAAF Competition Rules (as opposed to the TADR) are applicable to these proceedings. Neither Rule 42.4 of the IAAF Competition Rules nor its equivalent under the TADR contains any reference to CAS, still less an arbitration agreement in favour of CAS.
38. Article R47 of the Code provides that an "*appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement [...]*". There is no applicable regulation which entitles the Appellant to appeal to CAS and there is no specific CAS arbitration agreement between the parties. Therefore CAS lacks jurisdiction. Indeed, CAS case law has confirmed that, in accordance with Article R47 of the Code, "*in order for CAS to have jurisdiction to bear an*

appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognise CAS as an arbitral body of appeal” (see paragraph 7.2 of CAS 2006/A/1190).

39. The argument that, notwithstanding the lack of an arbitration agreement, the CAS should assume jurisdiction on the basis that the Arbitration Board of the SGD does not meet the requirement of impartiality and independence referred to in Rule 42.4 of the IAAF Competition Rules is misconceived.
40. Even assuming for the purposes of the argument that the SGD Arbitration Board is not impartial and independent, this would not give CAS jurisdiction by default. As set out at paragraph 23 of CAS 2010/A/2171, “*if the rules of a national association do not provide jurisdiction to CAS or to an independent and impartial arbitration court, this cannot as such create a CAS jurisdiction by default. There must be a specific jurisdiction clause in the national federation's statutes and regulations as this is reflected under R47 of the Code*”. The argument that CAS should accept jurisdiction (notwithstanding the absence of an arbitration agreement) on the basis of an alleged lack of impartiality and independence of the designated national appeal body lacks any basis in law and has been dismissed by previous CAS Panels.
41. The Appellant asserts that he was not notified of the appealed decision because his attorney was notified and then only on 19 March 2015, several months after it was issued and that he appealed directly to CAS. If this were factually accurate (which is disputed) the Coaches failed to appeal to the SGD Arbitration Board and therefore failed to “*exhaust the legal remedies available to [them] prior to the appeal*” within the meaning of Article R47 of the CAS Code.
42. The regulation cited by the Coaches as the basis for the CAS jurisdiction reflects the system of appeals instituted by the World Anti-Doping Code. This provides that national anti-doping appeals be heard by a national appeal body. Only WADA, the International Federation and, in certain circumstances, the International Olympic Committee and the International Paralympic Committee may appeal against the decision of the national appeal body.
43. The appealed decisions were issued by a national body in respect of a national case and on the basis of the national anti-doping regulation. The applicable regulations within the meaning of Article R58 of the Code are the TADR. Under art. 13.7.1 of the TADR, appeals must be filed with CAS within 21 days of notification of the decision. Under art. 13.7.2 of the TADR, appeals to the Arbitration Board of the SGD must be filed within ten days of receipt of the decision. Even if the Appellant’s attorney was notified of the Appealed Decision on 19 March 2015 as is claimed, with CAS only on 8 April 2015 - well outside any deadline provided for by the applicable TADR for appeal to the SGD Arbitration Board and so is inadmissible.
44. In its submission, the Second Respondent made the following requests for relief:
 - (i) *a ruling that CAS does not have jurisdiction in respect of the appeal against the Appealed Decision;*
 - (ii) *on a subsidiary basis that the appeal be dismissed;*
 - (iii) *that the appellant bear the entirety of the arbitration costs for these appeal proceedings; and*
 - (iv) *that the Appellant bear substantially all of the Second Respondent’s legal costs.*

V. ANALYSIS ON JURISDICTION

45. For the purposes of considering these preliminary issues only, and making no findings on the point, the Panel assumes that the Appellant has an arguable case for asserting that the SGD Arbitration Board does not fulfil the requirements of Rule 42.4 of the IAAF Competition Rules as being a “*fair and impartial hearing panel*”.
46. CAS is an arbitral tribunal and as such has only such jurisdiction as the parties have conferred on it. By Article R47 of the CAS Code:

An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.
47. In the present case, the Appellant was sanctioned with a lifetime period of ineligibility by the TAF Disciplinary Board for anti-doping rule violations under the TADR. Those regulations are a local adoption of the WADC.
48. Under those rules, as is common ground between the parties, there is provision by which the Appellant, as a support personnel for national-level athletes, could appeal the decision of the TAF Disciplinary Board to the SGD Arbitration Board. It is also common ground that there is no express provision for an appeal to CAS except in cases arising from participation in an International Event or in cases involving International-Level Athletes (or their support staff). The Appellant concedes that he is not “International” related for purposes of the relevant anti-doping rules.
49. However, the Appellant seeks to draw support from IAAF Rule 42.4. This provides that in the case of appeals which do not involve International-Level Athletes or their Support Personnel, “*the decision of the relevant Member [in this case TAF] may [subject to an exception not relevant here] be appealed to an independent and impartial body in accordance with the rules established by the Member*”.
50. The Appellant’s argument, based on the proposition that the SGD Arbitration Board is not an independent and impartial body, is that it follows from the absence of a national-level appeal body which satisfies the requirements of IAAF Rule 42.4 that the Appellant must be treated as “International-Level Athletes or their Athlete Support Personnel” and so afforded an appeal direct to CAS under IAAF Rule 42.3 and its equivalent in the TADR which provides that in cases arising from participation in an international event or in cases involving International-Level Athletes the decision may be “*appealed exclusively to CAS in accordance with the provisions applicable before such court*”.
51. This argument proceeds on the assumption that there must be a right of appeal which satisfies the provisions of IAAF Rule 42.4 and that if there is not, then there must by default be an appeal to CAS.
52. The argument is fallacious. There is no logical or jurisprudential reason why the Appellant (or for that matter any national level athletes) should be treated as being of international level because the

appeal tribunal provided for them does not meet the requisite criteria. That defect, if such it be, cannot convert national level athletes and support staff into International-Level Athletes. Further there is no basis for saying that CAS should be treated as a default appeal tribunal. There is nothing in the TADR which provides that the Appellant's appeal can be filed with CAS nor is there any specific arbitration agreement giving CAS jurisdiction.

53. As the Panel observed at paras 23 and 24 of CAS 2010/A/2170:

23. Therefore, if the rules of a national association do not provide jurisdiction to CAS or to an independent and impartial arbitration court, this cannot as such create a CAS jurisdiction by default. There must be a specific jurisdiction clause in the national federation's statutes and regulations as this is reflected under R47 of the Code.

24. If FIFA finds that the jurisdictional system of a national federation does not comply with article 63 of its statutes, it will then take the necessary measures towards the national association in order for it to introduce a valid jurisdiction clause in favour of CAS and/or establish an arbitration court which meets FIFA's criteria on independence and impartiality. In the meantime, it will be a matter of domestic law, Greek law in the present case, to decide whether a party concerned by a decision issued by a HFF body has the right to appeal against such decision before a competent state court.

54. In this case, if the Turkish rules do not comply with the requirements of the IAAF it is for the IAAF to take the necessary steps to ensure that TAF does whatever is needed to comply with IAAF's rules. In the meantime, it is a matter of domestic Turkish law to decide whether the Appellant has a right to appeal against the penalties imposed on them before the competent state court.

55. In these circumstances, it is unnecessary for the Panel to consider the preliminary question of whether, if CAS did have jurisdiction, the appeals would have been timely. Even if the appeal were filed within the time limits, this Panel would be precluded to hear the appeal because of lack of jurisdiction. The determination whether the appeal was filed on time would have involved further factual investigation of the rival contentions as to what notice of the decisions of 19 September 2014 and when it was received, and in the circumstances the Panel does not find it necessary to consider the issue further.

VI. CONCLUSION

56. In the light of the foregoing, the Panel finds that it has no jurisdiction to hear the appeal brought by the Appellant against the decision of 19 September 2014. As a result, the Panel does not need to address the issue of timeliness of the appeal or any other issues raised by any party herein.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport has no jurisdiction to decide upon the appeal brought by Mr E. against the decision of the TAF Penal Board dated 19 September 2014.
- (...)
4. All other claims and/or requests for relief are dismissed.