

ANTI-DOPING SANCTIONS AND DATA PROTECTION UNDER EU LAW – A COMPARISON OF THE ADVOCATES GENERAL’S OPINION IN THE *NADA* CASES

by *Stefano Bastianon**

ABSTRACT: This paper explores the tension between transparency and data protection in the context of anti-doping enforcement, focusing on the General Data Protection Regulation - GDPR - and its application to the public disclosure of athletes’ personal data. The aim of this paper is to provide a comparative analysis of two Opinions delivered by Advocates General Capeta (2023) and Spielmann (2025) in two distinct but closely related cases before the Court of Justice of the European Union. Although the earlier case was dismissed on procedural grounds, both Opinions deal with fundamental legal questions concerning, inter alia, the applicability of the GDPR to national anti-doping rules, the qualification of doping-related data as “data concerning health” under Article 9 of the GDPR, and the lawfulness and proportionality of national laws mandating publication of anti-doping sanctions in the light of the principle of data minimisation. The paper critically evaluates the contrasting approaches of the two Advocates General, situating them within broader debates on privacy, transparency, and the autonomy of sport, while reflecting on the implications for future regulatory practice both within and beyond the European Union’s boundaries.

Il presente contributo analizza la tensione tra trasparenza e protezione dei dati personali nell’ambito della lotta al doping, con particolare attenzione all’applicazione del Regolamento generale sulla protezione dei dati (GDPR) alla divulgazione pubblica delle sanzioni inflitte agli atleti. L’articolo propone un’analisi comparata di due Opinioni formulate dagli Avvocati Generali Capeta (2023) e Spielmann (2025) in due casi distinti ma strettamente connessi. Sebbene il primo caso sia stato dichiarato irricevibile per motivi procedurali, entrambi i pareri affrontano questioni giuridiche centrali, quali l’applicabilità del GDPR alle norme nazionali antidoping, la

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qualificazione dei dati sul doping come “dati relativi alla salute” ai sensi dell’art. 9 del GDPR, e la compatibilità dell’obbligo di pubblicazione con i principi di liceità, proporzionalità e minimizzazione dei dati. L’articolo valuta criticamente i due approcci, mettendoli in relazione con i più ampi dibattiti su privacy, trasparenza e autonomia dello sport, evidenziandone le implicazioni per la futura prassi regolatoria sia all’interno che al di là dei confini dell’Unione europea.

Keywords: *GDPR – Data Protection – Anti-Doping – Transparency – Proportionality.*

GDPR – Protezione dei dati – Antidoping – Trasparenza – Proporzionalità.

SUMMARY: 1. Introduction – 2. The Factual Background – 3. The Applicability of the GDPR to National Anti-Doping Rules – 4. The Classification of Anti-Doping Data as “Data Concerning Health” – 5. Lawfulness and Proportionality of Public Disclosure Obligations – 6. The Requirement of a Case-by-Case Proportionality Review – 7. Normative Evaluation and Broader Implications – 8. Concluding Remarks

1. Introduction

The *NADA* case,¹ currently pending before the Court of Justice of the European Union (the Court of Justice), arises from a dispute involving the processing and publication of athletes’ personal data by a national anti-doping authority under national legislation implementing anti-doping rules.

At the heart of the case is the question of whether such processing – in particular the mandatory publication of the names, suspension periods, and reasons for sanctions imposed on professional athletes – complies with the requirements of the General Data Protection Regulation (GDPR).²

This paper analyses and compares two Opinions of Advocates General (AGs) relating to the application of the GDPR in the context of national anti-doping rules.³ The two Opinions, authored respectively by AG Capeta in 2023

¹ ECJ, *NADA Austria and Others*, Case C-474/24.

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4 May 2016, 1. See O. MACGREGOR, R. GRIFFITH, D. RUGGIU, M. MCNAMEE, *Anti-doping, purported rights to privacy and WADA’s whereabouts requirements: A legal analysis*, *Fair Play*, *Revista de Filosofía, Ética y Derecho del Deporte*, 2013, vol. 1, issue 2, 13-38.

³ On the GDPR see, in general, C. KUNER, L.A. BYGRAVE, C. DOCKSEY, L. DRECHSLER (eds.), *The EU General Data Protection Regulation (GDPR): A Commentary*, 2020, Oxford University Press; C. KUNER, L.A. BYGRAVE, C. DOCKSEY, L. DRECHSLER, L. TOSONI, *The EU General Data Protection Regulation: A Commentary*, 4 May, 2021, Maastricht Faculty of Law Working Paper, available at SSRN: <https://ssrn.com/abstract=3839645> or <http://dx.doi.org/10.2139/ssrn.3839645>.