

Doping In Sports and The Law

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Abstract- This unique and interdisciplinary legal and interdisciplinary published volume contains an analysis of the legal impact of doping regulations by eminent and well-known experts in the legal fields of sports doping regulations and various legal fields which are intrinsically important areas to consider in the sports landscape of doping. These are extended reflections thought out by experts on theory and politics and how they interact with the right in the context of doping in sports. It is the first book to examine the topical and contentious area of sports doping from a variety of different but very relevant legal perspectives which impact the stakeholders in sport at both professional and grass roots levels. The World Anti-Doping Code contains an unusual mix of public and private regulation which is of more general interest and fully explored in this work. Each of the 14 chapters describes doping from a legal perspective, including tort, business management, labour law, human rights law, and scientific disciplines. Legal fields are generally considered from an international perspective, not from a national perspective. Issues including fairness, logic and the likelihood of compliance are explored.

I. THE MYTH OF THE LEVEL-PLAYING FIELD IN SPORTS

This chapter focuses on the fundamental values of sports like individual perfection and integrity, which are vital to their artistic and profitable significance. It also undermines doping's competitive integrity, impedes the perception of fairness, and threatens the appeal and profitable value of sports. WADA acts on behalf of the sports community because doping is contrary to the core values that are established on ethical conduct, fair competition. Doping bans are intended to promote fair competition and allow the stylish athletes to win on their gifts. The legal governance for anti-doping, regulated by the World Anti-Doping Code, embodies both aspects of contract law and transnational agreements.

The athletes struggle to conform with the provisions of the Code as the Code is complex, and therefore, its enforcement is also complicated. The current testing

methods have limitations and, therefore, make it challenging to catch every instance of doping. The commercial interests have shaped the anti-doping system, with stakeholders seeking to maintain a "clean" image of sports. The Code is a key piece in the overall legal framework for the regulation of doping, but it is not the only one as various laws and regulations play complementary roles.

II. REVISING THE WORLD ANTI-DOPING CODE

This chapter discusses the World Anti-Doping Code of 2015. The 2015 World Anti-Doping Code was adopted in 2013 but only entered into force on 1 January 2015. But there was a limit on substantive changes despite broad consultation with 315 stakeholders and an avalanche of amendments. Athletes smoking cannabis have stirred debate over whether the plant is an illegal substance. This is the result of an imperfect realization of the Prohibited List, which contains performance-enhancing, health-damaging, and sport-undermining substances with different rule implementations for in-competition and out-of-competition periods. The code applies a four-year sanction for intentional infringements and a two-year sanction for non-intentional infringements. Athletes may receive lower sanctions if they can establish "No Significant Fault" in their conduct or if they can prove that they consumed contaminated products.

The Code emphasizes the Athlete Support Personnel (ASPs), introduces mechanisms to prevent prohibited links, and presses such inquiries into ASPs involved in doping. Some limited options for judicial protection are available, especially in relation to WADA decisions, focused on arbitration at the Court of Arbitration for Sport (CAS). The Code changes from the quantitative to the qualitative, emphasising risk analysis and intelligence collection.

III. 'DO WHAT I SAY, NOT WHAT I DO': IS THIS THE 'PLAY TRUE' REALITY OF THE WORLD ANTI-DOPING CODE?

The World Anti-Doping Agency was created in November 1999 to fight doping within sport at the behest of the International Olympic Committee and most of the world's governments. On March 5, 2003, the World Anti-Doping Code came into place, with the progress focused on integrity and a level playing field in the game. This sentence draws WADA's values of fair play and ethics and is similarly missing a better description in the Code. Despite a lack of proof of the athlete's improper conduct, even punishment can come for an overage of an outlawed drug in the body.

Australian Sports Anti-Doping Authority (ASADA) gets its authority from 2013 legislation that provides ASADA with the power to compel the athletes to come in for interviews and hand over documents, causing some apprehension regarding civil rights. The Australian

Crime Commission (ACC) report indicated towards the use of performance-enhancing drugs across athletics, and further scrutiny and the enactment of legislation. It was reasonably argued by the critics that ASADA's authority infringes on athletes' rights and could result in excessive penalties.

There are serious issues about the treatment of young athletes in doping investigations, including intrusive testing that was carried out without parental consent. This quasi-criminal line of questioning raised legitimate concerns about potential abuses of justice and abuses of the power of government. Athletes are at great risk, with reputational and professional consequences of anti-doping investigations. The fans demand a reconsideration of anti-doping policy to ensure it aligns with the values of justice and fairness.

IV. THE WORLD ANTI-DOPING CODE AND CONTRACT LAW

The World Anti-Doping Code 2015 was established and came into existence on 1st January 2015. The Code operates primarily as a contract binding signatory. A number of international sporting

organizations and over 100 governments have adopted the Code. The Code outlines the sanctions for signatories who have violated the terms of the Code. The non-signatory sporting organizations may still be bounded by the Code through national legislation. The athletes are bound by the Code through contracts established by their sporting organizations.

The Code must be interpreted independently of national laws, as specified in Article 24.3 of the Code. The Code focuses on the intentions of the parties and the natural meaning of the words used. The unique nature of the Code may lead to difficulties in interpretation by unfamiliar courts or tribunals. A consistent and accessible library of Court of Arbitration of Sports (CAS), awards is necessary for uniform interpretation. The 2015 Code is intended for worldwide application, requiring modifications to traditional contract interpretation principles.

V. HUMAN RIGHTS AND THE ANTI-DOPING LEX SPORTIVA - THE RELATIONSHIP OF PUBLIC AND PRIVATE INTERNATIONAL LAW, 'LAW BEYOND THE STATE' AND THE LAWS OF NATION STATES

The International Anti-Doping Regime is a system constituted by multiple public and private actors and is designed to eliminate doping in sports. This regime engages with various human rights, including the rights to work, fair trial, non-discrimination, and other rights, and raises concerns on proportionality and due process. Most of the rules of the regime are codified under private law and thus cannot be interpreted directly as per the human rights norms. The United Nations Educational, Scientific, and Cultural Organization (UNESCO) Convention complements the efforts of states to adopt the World Antidoping Code as a guide for their legislative and administrative measures and to engage in anti-doping activities.

The Court of Arbitration for Sports (CAS) is "a key player" whose decisions in respect of the World Anti-Doping Agency are treated as arbitral awards under Swiss law and international law. WADA does engage with human rights, in commissioning opinions and integrating human rights standards into the Code. The legitimacy or effectiveness of the Code will be

determined by whether it is certified as involving no more than necessary infringements on fundamental human rights. The regime has substantively and strategically internalised human rights standards.

VI. ISSUES IN THE GATHERING AND USE OF NON-ANALYTICAL EVIDENCE TO PROVE ANTI-DOPING RULE VIOLATIONS

The anti-doping organizations are maximising the use of non-analytical evidence to establish anti-doping rule violations (ADRVs). The World Anti-Doping Code of 2015 highlights the collecting and using of non-analytical evidence, including the witness testimony and documents. The Australian Sports Anti-Doping Authority Amendment Act 2013 grants ASADA significant powers to collect the non-analytical evidence. The athletes and athlete support personnel are required by the way of contract to cooperate with investigations, aid in evidence collection.

The ASADA can issue a disclosure notice mandating the individuals to attend interviews or produce documents and imposing penalties for non-compliance. The ASADA may struggle to compel those individuals to appear, who are not contractually bound to appear at ADRV hearings. ASADA's statutory powers and contractual obligations of sporting bodies work together to gather non-analytical evidence. The exercise of these powers presents challenges, particularly regarding the scope and legality of evidence collection.

VII. HEARING ANTI-DOPING CASES IN NEW ZEALAND

This chapter discusses the workings of New Zealand's Anti-Doping Hearing System, which operates under the protection of Article 8 of the World-Anti Doping Code and aims to provide fair hearings and timely decisions. The decision-making process is open, and even though you must be a victim to participate in the sentiment, one shouldn't be excluded from the process because they don't possess sufficient funds or doesn't have access to information.

Anti-Doping Rule Violations are considered by the Sports Tribunal through the Sports Anti-Doping Act 2006. The tribunal of sports consists of members possessing considerable experience in sports, such as lawyers, in order to have an informed decision-making.

The Tribunal has developed rules of procedure that encourage only fair, expeditious, and inexpensive determinations, with a focus on the precepts of natural justice. The Anti-doping proceedings should be completed within three months and the decisions must be taken immediately after the hearing. The 2015 Code highlights the investigation of intentional doping, which can make proceedings more complicated and require more detailed examination of the evidence. The Tribunal is recognized for its fair and efficient processes and is vital and necessary for dealing with a more sophisticated anti-doping environment.

VIII. DOPING IN SPORT: WHAT ROLE FOR ADMINISTRATIVE LAW

This chapter discusses judicial review in Commonwealth jurisdictions. It primarily focuses on the requirement that decisions are to be made by an "Officer of Commonwealth". This term is yet to be defined by the High Court. In the case of Essendon Football Club v. CEO of ASADA, the Federal Court dismissed a judicial review application against an investigation by the Australian Sports Anti-Doping Authority (ASADA) into doping violations. This established the investigation's authorisation to do so under the ASADA Act.

Those applying for a judicial review must not fail to identify the grounds for a review. An example of this is a breach of procedural fairness without which the right to a fair and just trial would not be possible. The roles of bodies like ASADA, the Administrative Appeals Tribunal (AAT) and the Court of Arbitration for Sport (CAS) in doping scandals have been elaborated on to see their effectiveness. Further, the challenges that come with involving administrative law principles in doping cases have been brought to light. Advocacy for accountability in doping-related decision-making is required to prevent injustice.

IX. MODERN-DAY GLADIATORS: THE PROFESSIONAL ATHLETE EMPLOYMENT RELATIONSHIP UNDER THE WORLD ANTI-DOPING CODE

This chapter of the book explores the employment relationship between sports organisations like regulatory and supervisory international organisations and clubs with professional athletes in the context of doping scandals. The author has made great use of hypothetical scenarios to display the legal responsibilities of sports clubs, athletes and the implications of doping.

Another focus is the difference between the Australian and the North American doping policies, with the former being strict and the latter being less rigid. This strict Australian system results in harsher penalties for Australian athletes than North American athletes with the same scandal. Emphasis has been put on the club's responsibility to prioritise the health of their athletes as they are considered their employees. Points such as club liability, informed consent, safety procedures, potential liability of clubs for the actions of coaches and medical advisers, a safe working environment etc. must be considered in detail.

X. DOPING AS TORT: LIABILITY OF SPORT SUPERVISORS AND THE PROBLEM OF CONSENT

The chapter discusses the legal and ethical implications of sports supervisors advising athletes to take performance-enhancing substances. Such supervisors owe a duty of care that must be maintained at all times. It is vital that risks associated with the substances are clearly and plainly informed to the athlete, and consent must be true in the sense that the athlete understands what they are taking and does so without pressure.

Tortious liability of coaches and supervisors is also shed light on. The athletes are responsible for any prohibited substances found in their bodies regardless of intent or knowledge.

XI. GOVERNANCE AND ANTI-DOPING: BEYOND THE FOX AND THE HEN HOUSE

The structure of governance and disputes regarding accountability within the World Anti-Doping Agency (WADA) is the main focus of this chapter. It stresses the lack of guidance on compliance and monitoring of doping, the need for improved internal accountability and the veiled appointment processes for board members of the organisation. The governance model of WADA consists of a Foundation Board and an Executive Committee.

WADA's current system is opaque and challenges arise at every level due to tension between its various stakeholders. It is advisable that a two-tier board approach will increase accountability, transparency and effectiveness. The chapter concludes that without strong governance and compliance systems, the risk of doping will persist, undermining the integrity of sports.

XII. THE CHIMERA OF COMPLIANCE WITH THE WORLD ANTI-DOPING CODE

The current system's sole reliance on organisational compliance to ensure individual compliance in doping is flawed. The health of the athlete should be put first instead of punishment. This could lead to the sports clubs and the athletes being more forthcoming voluntarily. The system in place presently relies heavily on fear, sanctions and bans, which have more disadvantages than advantages.

The Australian Football League's policy shows that combining harm minimisation with legalistic prohibition can reduce drug-related harms. Despite this, concerns still remain that hybrid approaches like this may serve more as public relations strategies.

This chapter emphasises the disparity between institutional compliance and individual compliance, and the need for better education and support tailored to the specific contexts of different sports.

XIII. THE JURIDIFICATION AND CRIMINALISATION OF DOPING: TIME TO REVIVE THE SPIRIT OF SPORT?

The justification and criminalisation of doping in sports has been on the rise. The World Anti-Doping Agency (WADA) and the Court of Arbitration for Sport (CAS) define "juridification" as the process through which legal principles influence the regulation of doping which leads to a more formal legal approach in sports law.

The chapter presents two contesting views: one implies that excessive juridification will only hamper efforts to prevent doping, and the other argues that harmonised legal standards are required to dodge costly litigation. The influence of commercial pressures, varying labor relations and more must be taken into consideration for evolving doping regulations and procedures.

Examples have been made of the Xenon doping case and the Biogenesis scandal in Major League Baseball to further highlight complexities that are likely to occur during doping investigations and legal issues the athletes may face.

The author of this chapter is of the opinion that for anti-doping policies to be effective, a certain degree of criminalisation is required. Therefore, there must be a balance between the legal framework and the very spirit of sports.

XIV. THE COMMERCIAL RATIONALE OF THE WORLD ANTI-DOPING CODE

An examination of the development of anti-doping regulations in sports with a special emphasis on the pivotal role played by the International Olympic Committee (IOC) and the World Anti-Doping Agency (WADA) is shown in this chapter of the book.

It brings us back to how the IOC reacted to the Festina scandal of Tour de France 1998. After the scandal, the organisation's objective was to regain control over regulations for doping so that its reputation and financial interests could be safeguarded. The Olympic Movement Anti-

Doping Code (OMADC) and the World Conference on Doping in Sport in 1999 were monumental in this process. This also led to WADA's establishment.

The IOC's weighty influence over WADA and its governance model allows it to put its commercial interests first. While the aim of WADA is to uphold the spirit of sport and ensure a fair and level playing field to all, it cannot be denied that it is heavily driven by commercial interests and motivation.

The author of this chapter opines that acknowledging the commercial rationale behind the anti-doping Code could enhance transparency and confidence in its administration. One need not be substituted for the other. The IOC wishes to maintain its "pure" image but it must do so without causing hurt.

STRENGTHS OF THE BOOK

1. The field of sports is not only based on physical strength but also relies on values promoted by the World Anti-Doping Code, like fairness, integrity and ethical conduct. This commitment is vital for the future of a reputable and attractive sport.
2. It provides a detailed overview of judicial review principles and their application in sports doping cases.
3. The Code's focus on Athlete Support Personnel (ASP) responsibilities creates a broader perspective on the nature of doping, as it recognizes that the environment of an athlete is a significant factor in whether or not doping occurs.
4. It provides a critical analysis of WADA's governance structure and accountability issues, highlighting important areas for improvement. It also suggests practical solutions, such as a two-tier board approach, to enhance governance and oversight.
5. It acknowledges evidence types outside the realm of analysis, including witness statements and documents, provides a more complete method for demonstrating ADRVs, an important consideration when conventional testing can be misleading.

WEAKNESSES OF THE BOOK

1. The book lacks illustrative examples or case studies to clarify complex concepts. The dense legal language may be challenging for non-legal readers.
2. The document may not provide specific legal precedents or case studies to support its claims, which could enhance understanding.
3. There are limitations in current testing methods that can make it difficult to detect every case of doping. This undermines the effectiveness of the anti-doping system.
4. The powers granted to organizations such as ASADA to compel athletes to provide evidence can raise concerns around civil rights and the potential for overreach, especially in cases pertaining to young athletes.
5. The book lacks depth in discussing referenced legal precedents, leaving readers wanting more detail. Some sections may be overly technical, potentially alienating non-legal audiences.