

## On the governance of doping in sport

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### Abstract

Bad governance in sport and all the political involvement poisoning it have recently led to numerous negative headlines in the press. Not a week goes by without hearing about doping, corruption, violence, competition-rigging, or player trafficking, and that is only the tip of the iceberg. This is damaging to the sporting ethics in dissociable from good sporting governance. Without any doubt, these ethical issues will be at the center of the concerns and challenges to come for the International Olympic Committee and all the other national sports federations.

### Introduction

#### *Doping: an account of the most publicized scandals*

In relation to doping problems in particular, cycling was, rightly or wrongly, the first to attract a good deal of attention. It began in 1998 with the Festina scandal and the Tour de France. Three days before the start of the tour in Dublin, Willy Voet, the Festina soigneur, was stopped in his car by French customs. The customs officers found an unbelievable haul of doping agents, indicating that doping was being organized in the leading team of the time. The shock wave was immense. The Festina team was expelled from the competition. Under the pressure of questioning, some riders admitted their guilt and were suspended. Willy Voet received a fine and a 10-month suspended sentence, as did the Festina Sports Director Bruno Roussel. In the wake of the scandal, the World Anti-Doping Agency (WADA) was established in November 1999, followed by the biological passport and the Anti-Doping Administration and Management System, an online management tool that aids anti-doping activities.

After surviving testicular cancer, Lance Armstrong returned in 1999, and it was hoped that cycling could start afresh. But he in turn was suspected of doping when he tested positive to corticosteroids on July 4 after the first stage. A doctor from the UCI, the world governing body of cycling, covered for the American using a medical certificate made out after the fact. From 1999 onwards, Armstrong enjoyed unrivalled domination of the Tour de France, a reign that ended in January 2013 with his admissions about doping practices in American teams (US Postal and Discovery Channel) during an interview with Oprah Winfrey. The Texan was stripped of the seven titles he had won on the Tour de France.

During the 2006 Tour de France, cycling was again in the spotlight. To begin with, seven riders were expelled from the competition on the day before the Tour's official start from Strasbourg, including, notably, Jan Ullrich because of his involvement along with other riders in Operation Puerto. During the same tour, Alexandre Vinokourov was thrown out along with his team, the highly controversial Astana, which was taking part in its first Tour de France. The same thing happened to the Cofidis team, whose Italian rider

Cristian Moreni tested positive for testosterone. And lastly, there was the disqualification of Floyd Landis, holder of the yellow jersey when he arrived on the Champs-Élysées. After 14 months of legal proceedings, Landis was stripped of his title and suspended two years after he had tested positive for testosterone. In 2007, the former yellow jersey Rasmussen was disqualified three days before the Tour's arrival in Paris for failing to appear for a surprise anti-doping test.

Yet even though cycling has attracted much attention, it is of course not the only sport implicated. Operation Puerto is certainly one of the scandals that best illustrate the weaknesses of sporting bodies in fighting doping. Operation Puerto was an investigation by Spanish police that resulted in the discovery of a vast network of blood doping. Some cyclists were implicated at the time, but so were footballers from the most prestigious teams in Spain. The names of some male tennis players were also mentioned. However, 10 years after the scandal came to light, few and light have been the penalties handed down to the protagonists. Governed by a multitude of supervisory powers and rules, the sporting bodies' complicated organization has made it more difficult to punish transgressors. Rule breakers are not criminals, so the courts have no interest in them. Hence the regulatory system has faced difficulties in defining the actions that it is supposed to punish. A few convictions were obtained in Operation Puerto, but only following complicated, cumbersome procedures by using the same ploys that the transgressors themselves had been using up to then.

In the US, the BALCO scandal hit American sport in the spring of 2003. The scandal started with a then anonymous telephone call from an athletics trainer called Trevor Graham, during which the American accused athletes of using an undetectable substance called THG (tetrahydrogestrinone). He named the director of the BALCO laboratory, Victor Conte, as the man organizing its distribution. A police search carried out at the head office of the laboratory led to the discovery of an entire arsenal of doping agents, as well as a list of clients that included the names of baseball players, athletes (Dwain Anthony Chambers, Marion Jones, and Tim Montgomery), boxers, and American football players.

The owners of the laboratory avoided trial by reaching a financial settlement. Nevertheless, the sprinter Marion Jones was given a 6-month jail sentence in 2007 for perjury, as was the cyclist Tammy Thomas. The International Association of Athletics Federations (IAAF) then became mired in scandal. A program on German television station ARD and an article in the British newspaper the Sunday Times appeared three weeks before the Beijing world championships in August 2015, revealing information that had been kept secret by the IAAF itself. The information pertained to a list of 12,000 blood tests conducted on 5,000 athletes between 2001 and 2012. This investigation by journalists reported that more than 800 test results were abnormal, clearly suggesting doping similar to that which marred cycling in the 80s and 90s. Among the countries implicated were Russia and Kenya.

Lastly, institutionalized doping in Russia has shaken world sport in recent times. The scandal was revealed at the beginning of this year by the whistle-blower Yulia Stepanova and by the admissions of Grigory Rodchenkov, the director of the Moscow anti-doping center who has now taken refuge in the US. The sporting world learned with stupefaction that athletes competing in the Olympic Games and different world championships were involved in organized doping in which the Russian sporting bodies and Russian secret services had also taken part. Those in charge of the Russian anti-doping agency were forced to resign. Curiously, two of those who resigned died within seven days of each other, officially of heart attacks. These revelations led to the establishment of the

McLaren report, which confirmed that the Russian state organized, at the highest level, and with the aid of its secret police, repeated manipulation of urine test results.

Tongues have started wagging about doping and the former Soviet Union states. The New York Times has cited documents implicating the Russian doctor Sergei Portugalov. Since 1983, any Soviet athlete likely to win a medal has benefited from his reprehensible services with the stated aim, according to the documents brought to light by the newspaper, of achieving victory whatever the cost. With this Russian doping scandal the International Olympic Committee has once again shown its weaknesses and failings in governing sport. Instead of banning the Russian Federation from the Rio Olympics as requested by WADA, it dodged the issue and did not assume its responsibilities, appealing to the international federations to decide themselves whether Russian athletes should or should not be disqualified from all Olympic competitions.

This lack of governance embittered the spirit of the Rio Olympics, not in terms of doping but on a political and human level. The athletes accused each other whenever they lost or whenever a competitor won a medal that was, to their mind, undeserved. This happened to Yulia Efimova, cleared by the Court of Arbitration for Sport three days before the opening of the games. She was booed by American spectators and was in tears on the podium alongside two American swimmers (who said they were clean, so of course they must have been). There was also the French swimmer Camille Lacourt, who, having lost and being frustrated, accused the bronze medalist, a Chinese swimmer, of doping. Are the Chinese doped? Are the Russians? Perhaps, but not a word is said about the Americans, who are all clean – American puritanism needs it to be so!

#### ***The ploy of therapeutic use exemptions***

A group of hackers known as the "Fancy Bears" gained access to confidential data, namely the therapeutic use exemptions (TUEs), used by some sportspeople during significant sports competitions. The data was published in several waves. More than 100 sportspeople who participated in the recent Olympic Games used these products as doping agents with the indulgence of WADA. They will not be penalized for doping since everything was done above board. In 2015, WADA issued 1330 TUEs, 48% more than in 2014. Anyone would think that sport leads to illness, whereas in fact it plays a protective role in preventing chronic, non-transmissible diseases.

Of these TUEs, it ought to be recognized that some of these medical prescriptions have been dubious. Serena Williams, for example, was authorized to treat a cold with a five-day course of 40mg of oral prednisone – a large dose of cortisone – on the eve of the final at Roland Garros, which she won against Lucie Safarova. She had received a similar authorization for the tournaments of Miami and Rome that she won in 2014.

Her sister Venus also benefited from the indulgence of WADA doctors, using prednisone in 2012 for her victory in the London Olympics doubles competition and for Wimbledon.

Another American star with a troubling TUE was Simone Biles, the three-time winning gymnast at the Rio Olympics. In her case, it was an amphetamine treatment to take care of a hyperactivity disorder, a very common diagnosis in the US, even though insufficient physical activity has generated an obesity epidemic. Travis Tygart, head of the US Anti-Doping Agency, indicated that the sportswoman had acted correctly and in accordance with the rules when she obtained authorization to take these drugs.

The most unsettling case brought to light by the Fancy Bears involves Bradley Wiggins, another controversial Tour de France winner, like many of his predecessors. The 36-year-old cyclist, who has won five Olympic gold medals, obtained six TUEs during his career. Three were requested while he was riding for the Garmin team enabling him to use

inhalants to treat his asthma. The other three were obtained while he was riding in Sky's colors. These involved intramuscular injections of long-acting depot corticosteroid solutions on the eve of the Tour de France in 2011 and 2012, as well as on the day before the Giro d'Italia in 2013. The Sky team has always vaunted its transparency about doping. With the Wiggins case we find ourselves in an extremely borderline area that has cast doubt on the methods used by Sky to improve its riders' performance levels. Strangely, since Wiggins' switch back to track cycling, he has not requested any other TUE. It is as if all the allergies behind his requests had magically disappeared.

An identical TUE was granted to Christopher Froome in 2014 and in 2017. TUEs are systematically exploited by some athletes and even form an integral part of a doping program. The examples mentioned in this chapter are without doubt confirmed doping cases approved by often Anglo-American specialists and made legal by the granting of TUEs.

In the cyclist's case, members of the Mouvement Pour un Cyclisme Credible (MPCC) would not have accepted that any of their racers receiving such a treatment take part in a competition. The Sky team, like the Russian teams, have not signed the MPCC Charter.

The TUEs granted to the Williams sisters, to Higgins, to Froome, and to Simone Biles were done so abusively.

## **Discussion**

Governance, particularly in the area of sport, may be defined as the establishment of national sporting agencies and non-governmental sporting organizations that work together and independently on the basis of specific internal legislation, policies, and rules to promote sporting activities in a democratic, ethical, effective, and transparent fashion.<sup>1</sup> This definition of governance is specific to sports and differs from governmental entities, which can, however, create laws in this area. This is particularly true for doping. The circulation of products within state-funded organizations that are illegal and potentially harmful for the athletes' health puts into question the possible relationship between sportspeople and established rules and standards. This sporting standard is often undermined by another factor, the "realities of business," and business has its own dictates.<sup>2</sup>

Moreover, most countries, particularly in Europe, possess a general law on sports, and some have even included sports in their constitution. We have also seen internal regulation with the establishment of WADA and its world anti-doping code, which are instances of a self-regulation initiated by the international sports movement itself.<sup>3</sup>

These factors play a role in the fight against doping, which aims to resolve doping problems and better counter this phenomenon. But depending on whether we define sportspeople as citizens or competitors, they may be bound by the applicable laws of their country or by the sports regulations of their federation. This may give rise to varying, or even contradictory, rights and responsibilities. Alejandro Valverde during Operation Puerto is a case in point: He could not be brought to court in Spain given that there were no anti-doping laws in Spain when the scandal came to light, whereas he was punishable by the UCI.<sup>2,4,5</sup>

To continue to promote ethical and transparent sporting activities, sporting governance must, in the area of doping, pursue the development of self-regulation mechanisms and increase cooperation with stakeholders, particularly national governments.<sup>2</sup> Government regulation alone cannot accomplish as much in determining sportspeople's ethical behavior. The sporting world must establish rules of good conduct and instill a culture of fair-play. This will naturally lead to promoting the development of good governance.

These conditions must be met so that investment may be made in the future of sport in general.

National governments have a major part to play in spurring sports federations on to good governance. They are their main source of funding. They shape the sporting world.

The federations must in return work closely with governments. Instead of striving after victory at all costs so as to promote a political system, they must ensure good governance in terms of ethics and probity.<sup>6</sup> The best governance in sports in general, and in the fight against doping in particular, is achieved by working together with reliable partners.

## **Conclusions**

Sports viability is at stake. The latest Olympic Games in Rio de Janeiro dealt a disastrous blow to the reputation of sport, since it showed so well how politics had won out over sporting and ethical considerations. The revelations about state-organized doping in the ex-Soviet Union from the 1980's to the present day have fatally damaged the credibility of sporting performances during those competitions. TUEs granted in an overly indulgent manner with the approval of sports medicine bodies have damaged the world anti-doping code by highlighting its failings. Both grassroots-level and elite sports depend entirely on the trust of the fans who watch and admire the athletes' exploits live or on television. These fans will not put up with a worsening of sporting governance in the future. The doping way has no future, neither in sport nor with the public. The media will make the cheats see this sooner or later by deserting the stadiums or turning off the television screens.

## **References**

1. Chaker AN. *The Road to Better Sports Governance: A European Survey*, Council of Europe Publishing. 2004.
2. Soule B, Lestrelin L. *Reguler le dopage? Les failles de la gouvernance sportive*, *Revue Européenne des sciences sociales*. 2012; 50; 127-159.
3. Kornbeck J. *Anti-doping governance and transparency : a European perspective*. *Int Sports Law J*. 2016; 16; 118-122.
4. Kornbeck J. *The EU, the Revision of the World Anti-Doping Code and the Presumption of Innocence*. *Int Sports Law J*. 2016; 15; 172-196.
5. Freeburn L. *The Union Cycliste Internationale: a study in the failure of organisational governance of an International Federation*.
6. *Int Sports Law J*. 2013; 13; 71-81.
7. Camporesi S, McNamee MJ. *Performance Enhancement, Elite Athletes and Anti-Doping Governance: Comparing Human Guinea Pigs in Pharmaceutical Research and Professional Sports*. *Philos Ethics Humanit Med*. 2014; 9; 1-9.