

26 October 2017 - iNADO Update #88



INSTITUTE OF NATIONAL
ANTI-DOPING ORGANISATIONS

iNADO Athlete and Leader Symposium (Oct. 30 -31)

iNADO is pleased to welcome over 85 elite athletes, National Anti-Doping Organisation (NADO) leaders and anti-doping experts to a two-day Athlete + Leader Symposium dedicated to "Making Anti-Doping Better."

This unprecedented gathering will be hosted by Berlinger Special AG, at the factory at which it makes its world-leading doping control equipment. The [dozens of athletes attending \(see profiles here\)](#) include many national and world champions, and Olympic and Paralympic medalists, from a wide range of able-bodied and para-sports. The athlete commissions of the World Anti-Doping Agency (WADA), the International Olympic Committee and the International Paralympic Committee will be represented. The leaders of over thirty-five NADOs will be present.

The [programme](#) includes a wide-range of topics, including the prevalence of doping, its impact on individual athletes, the role of former dopers in anti-doping, technological innovation, protection of athlete privacy, an Athlete Charter of Rights, changes for the next version of the World Anti-Doping Code, and current policy issues in anti-doping

The Legal Basis for Excluding Federations and Athletes from PyeongChang Games

As we await the [reports of the IOC Commissions](#) reviewing evidence of individual and of institutionalised doping, it is useful to review the Court of Arbitration for Sport (CAS) decisions that are the legal basis for excluding federations and their athletes from the PyeongChang Games. Those decisions can be summarised under three basic points:

1. The exclusion of sport federations, and therefore the athletes who are members of those federations, from the PyeongChang Games is certainly correct legally.

This has been established by CAS in a number of recent decisions, for example: [CAS OG 16/09, Russian Weightlifting Federation v International Weightlifting Federation](#), award of 5 August 2016; [CAS 2016/A/4745 Russian Paralympic Committee v. International Paralympic Committee](#), award of 30 August 2016; [CAS 2016/O/4684 Russian Olympic Committee & Lyukman Adams et al. v. IAAF](#), award of 10 October 2016 (operative part of 21 July 2016). Any Russian legal challenges to those awards have been rejected.

In [Russian Paralympic Committee v. International Paralympic Committee](#), CAS says at paragraphs 83 - 84:

- "83. The decision of the IPC to suspend the RPC was within its power, has a proper legislative basis and was not irrational, or perverse, or outside the margin of discretion open to it. The Decision was not evidently or grossly disproportionate. It was a unanimous decision of the IPC's Governing Board, which included six Paralympians and representatives from around the world. The IPC explained that it made the decision as it viewed suspension as the only way to ensure that the system, and systematized doping, in Russia no longer continued. Suspension cannot be said to be evidently or grossly disproportionate in view of the overwhelming evidence of the IP [McLaren] Report and the information that followed that directly affected Paralympians in Russia, including in the Sochi Paralympic Games.
- "84. The IPC contends, in effect, that it was a legitimate aim to send a message that made clear the lack of tolerance on the

part of the IPC to such systemic failure in a country. At the time of making that decision, there was no sufficient evidence before the IPC that such failure had been remedied. The concern that clean athletes, inside and outside of Russia, have confidence in the ability to compete on a level playing field, and the integrity and credibility of the sporting contest, represent powerful countervailing factors to the collateral or reflexive effect on Russian athletes as a result of the suspension. This represents an overriding public interest that the IPC was entitled to take into account in coming to the Decision.”

In [CAS 2016/O/4684 *Russian Olympic Committee & Lyukman Adams et al. v. IAAF*](#), CAS says at paragraph 131:

- “The Panel finds that the effect (ineligibility to compete at International Competitions) on the athletes registered with a national federation suspended by IAAF is a proportionate consequence of the national federation’s suspension for its failure to put in place an adequate system to protect and promote clean athletes, fair play and integrity of sport. In fact, in the Panel’s opinion, eradication of doping in sport, protection and promotion of clean athletes, fair play and integrity are undeniably legitimate objectives of extreme importance for the viability of sport at any level, and
 - i. the measure taken by IAAF, and the effect it produces, is capable of achieving those objectives, as it prevents athletes under the jurisdiction of the suspended national federation (for having failed to promote a doping-free environment) from competing with athletes registered with federations that have not been the subject of an exclusion;
 - ii. the measure taken by IAAF is necessary to reach the envisaged goal: if the IAAF could not take a step having the mentioned effect, the suspension of the Russian federation would have no meaningful impact; and
 - iii. the constraints which the affected athletes, including the Claimant Athletes, will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal, which outweighs them, and do not go beyond what is necessary to achieve it.”

2. Reliance on the evidence of the McLaren Reports as a basis for suspending sport federations, and therefore the athletes who are members of those federations, is now well-established as a matter of fact and of law.

In [Russian Paralympic Committee v. International Paralympic Committee](#), CAS says at paragraph 85:

- “As was confirmed in CAS OG 16/09, *Russian Weightlifting Federation v International Weightlifting Federation*, an international federation may, in appropriate circumstances and in accordance with its Rules, suspend a member federation based on a breach of its Anti-Doping Policy and based on the “reliable information” of the IP [McLaren] Report. In the present case, there has been a breach of the IPC Anti-Doping Policy and the RPC duties and obligations in this respect. Furthermore, the IPC had before it reliable information from Professor McLaren in the IP Report as well as the subsequent information provided by him to the IPC as set out in the McLaren Affidavit.

3. The McLaren Reports (including evidence from Grigory Rodchenkov) are also a basis for sanctioning individual athletes.

In [CAS 2017/O/5039 *International Association of Athletics Federation \(IAAF\) v. Russian Athletic Federation \(RUSAF\) & Anna Pyatykh*](#), award of 18 August 2017, CAS says at paragraphs 114 and 115:

- “114. The Sole Arbitrator is willing to accept that the Athlete took part of a State-dictated doping plan or scheme, stressing that (i) the Second IP [McLaren] Report concludes that an “*institutional conspiracy*” existed within Russia (see page 1 of the Second IP Report), (ii) the Second IP Report identifies the Athlete’s name on the Washout Schedule, and (iii) the Athlete used a number of Prohibited Substances found in the “Duchess” cocktail.
- “115. The Sole Arbitrator is also willing to accept that the Athlete knowingly participated in a State-dictated doping plan based on the Second IP Report conclusion that all pre-competition samples in the Washout testing were collected only “under the table” in unofficial containers (see the Second IP Report page 84). Accordingly, the Sole Arbitrator finds that the Athlete’s samples in the Washout Schedule, dated 6, 17 and 25 July 2017 must have been collected (“under the table”) in unofficial containers and this could not have been done without the knowledge of the Athlete.”

[CAS 2017/A/4968 *Alexander Legkov vs FIS*](#), award of 31 August 2017, deals with the athlete Alexander Legkov’s provisional suspension by FIS pending the conclusion of the Oswald Commission. In his defence the athlete argued that the practices alleged in the McLaren Report do not suffice to demonstrate individual guilt adequate to justify his suspension by FIS. However in the Merits about the McLaren reports the CAS Panel says in paragraphs 235, 236 and 238:

- “(235) Although the Appellant has strongly challenged the credibility of Dr. Rodchenkov, the Panel observes first of all that the testimony of persons guilty of wrongdoing themselves can be decisive in establishing the guilt of others, and that the extent of their own culpability may even add to their value, since it is likely to be the result of their extensive involvement, at high levels, in the unlawfulness being examined. Secondly, the Panel notes that Professor McLaren, after intensive inquiries, including an experimental verification that a previously unheard-of method of manipulation described by Dr. Rodchenkov was indeed

feasible, came to the conclusion that he was a credible witness.

- “(236). It may be that an examination of individual cases, such as the present ones, will lean to exoneration of the Appellant on the grounds that, irrespective of this troubling background, the evidence ultimately uncovered does not meet the standard of proof that is necessary for sanctions to be pronounced (i.e., that irrespective of the proof of systemic wrongdoing, individual guilt in particular cases is not established to that standard). But at this stage, the context just described leads the Panel to the conclusion that individual connecting factors and inferences which might emerge meet the test of "reasonable possibility" of success, and therefore justify the provisional suspension.”

Note that pending the findings of the Oswald Commission, the Panel also said:

- “(238) (...) The Panel appreciates the unusual magnitude and complexity of cases awaiting Mr. Oswald's attention. It cannot however endorse an indefinite and indeterminable suspension as proportionate. Noting the Appellant's reasonable entitlement to legal certainty, the Panel accordingly deems it appropriate and just that the current provisional suspension expire after 31 October 2017, at which time it will be for FIS to consider whether or not to seek a further suspension justified by new developments and within the framework of the FIS ADR. This approach is entirely in accord with Article 7.9.3.2, particularly point (c), as in the Panel's view to impose a longer suspension in all the present circumstances would be clearly unfair.”

Anti-Doping Norway publishes Handbook on Doping and Public Health

To support those working with users of prohibited substances with the necessary knowledge, Anti-doping Norway has compiled a range of scientific research in "[Doping and Public Health](#)", an educational book to guide ADOs, Educators, and the general public on following topics:

- Prevalence
- The endocrine system
- Doping substances
- The users' universe
- Dietary supplements
- Prevention

The handbook covers the most important groups of substances associated with doping, and discusses on both primary and adverse effects.

Polish Anti-Doping Agency and other leading NADOs provide Training to RUSADA

One of the most important policy topics in international anti-doping is the rehabilitation of the Russian Anti-Doping Agency (RUSADA). All NADOs (and their athletes) have an interest in a credible and effective RUSADA. WADA's reporting of RUSADA's technical compliance with the "roadmap" is encouraging, including RUSADA's restructuring, re-staffing and re-financing as an independent agency.

iNADO applauds NADO assistance in the rebuilding of RUSADA. This is being provided by WADA and by leading iNADO Members: UK Anti-Doping, the Lithuanian ADA, the Finnish Centre for Integrity in Sport, NADA Germany, and the Polish Anti-Doping Agency (POLADA). WADA's support in this effort has been central.

For example, representatives of POLADA and its Disciplinary Panel in collaboration with the World Anti-Doping Agency have organized and provided training for the Russian Anti-Doping Agency on doping results management, organization and conduct of disciplinary procedure in doping cases.

The session on 17-18 October was led by Michał Rynkowski, Acting Director of POLADA, attorneys Aleksandra Łysuniak-Strauch and attorney Tomasz Rutkowski chairs of POLADA Disciplinary Panels. Also participated Ieva Lukosiute-Stankuniene and Peter Nicholson, WADA experts, Yuriy Ganus RUSADA General Director, members of RUSADA disciplinary panel, and RUSADA staff.

International Ice Hockey Federation prepares Qualified Teams for Pre-Olympic Tests

To implement an effective anti-doping programme during the next Winter Olympic Games, the [International Ice Hockey Federation](#) (IIHF) has reached out to all 13 National Ice Hockey Federations qualified to compete about the anti-doping rules during PyeongChang and the work of the Anti-Doping Task Force.

The IIHF is working closely with National Anti-Doping Organizations (NADO's) of the 13 competing nations to develop a joint Test Distribution Plan and clarify responsibilities.

Some of the recommendations provided by the Task Force to the qualified teams include:

- Together, the IIHF and National Anti-Doping Organizations are recommended to test all athletes on "final teams" competing in PyeongChang 2018
- Working with the 13 National Federations, NADOs are to test the athletes which are most likely to make the final team roster
- Testing can begin at any time with the players most likely to make the final team roster.
- Testing of the listed Olympic Game Athlete nominees during National League play from early October through to the end of January 2018 will count towards the number of tests per athlete
- NADOs shall work together for international players playing in another country's national league

NADOs and National Federations are reminded to seek a balance of in-competition and out-of-competition testing of the Athlete nominees. The IIHF on its part, will include a selection of listed Olympic Game Athlete nominees in its Registered Testing Pool (RTP) to test athletes out-of-competition

OCALUDS Bulletin No. 10 (2017)

iNADO Member, Organisation Camerounaise de Lutte contre le Dopage dans le Sport (OCALUDS), provides details of the activities of the agency in its [OCALUDS Infos \(Bulletin No. 10\)](#). You will find in [French and English](#):

- A report of doping controls tests and reach out campaigns at different events
 - A summary of the capacity building seminar for sport managers at national federations in collaboration with UNESCO
 - The outcomes of the meeting of the RADO Africa IV in Cameroon
-

Play the Game 2017 Conference: Status of Governance of National Sports Federations

The Erasmus+ project the '[National Sports Governance Observer](#)' (NSGO) is comprehensive study of 42 international federations investigating the performance on indicators of transparency & public communication, democratic processes, checks & balances and solidarity.

The preliminary results of the National Sports Governance Observer will be revealed at Play the Game 2017, taking place in Eindhoven, 26-30 November. Review here the [conference programme](#) and [click here to register](#) (iNADO Members receive a 20% discount).

The project covers at least eight sport organisations from eight countries across Europe. The group of researchers involved has identified the most relevant sports and indicators in order to create a benchmarking tool that assesses the level of good governance in national sports federations.

The project builds on the experiences and knowledge gained the Sports Governance Observer, which analysed the level of Good Governance of International Federations.

All partner countries are reviewing their respective national federations of football, handball, swimming tennis and athletics.



DOPING.nl
THE ANTI-DOPING KNOWLEDGE CENTER

New at the Anti-Doping Knowledge Center

- [CAS 2017_A_4968 Alexander Legkov vs FIS \(Non Analytical / provisional suspension upheld\)](#)

Legkov is under investigation by the IOC Oswald Commission following the evidence provided in the McLaren investigation. With this resolution the CAS Panel upholds his provisional suspension (ordered by FIS since December 2016) until Oct. 31, 2017. However, the Panel appreciates the unusual magnitude and complexity of cases awaiting Mr. Oswald's attention. Therefore, it cannot endorse an indefinite suspension as proportionate.

- [IOC 2016 IOC vs Anna Chicherova \(Testosterone/ suspension upheld\)](#)

This relates to the dismissal by CAS of the appeal of the Russian Athlete on 6 October. Previously the Athlete was sanctioned by the IOC on 4 October 2016 after reanalysis of her samples provided at the Beijing 2008 Olympic Games.

- [CAS 2016_A_4707 Alex Schwazer vs IAAF, NADO Italia, FIDAL & WADA \(Anabolic agents / 8 year-sanction\)](#)
- [IOC 2012 IOC vs Alex Schwazer \(Growth hormone / 4 year-sanction\)](#)

The Athlete was previously sanctioned in August 2012 for testing positive for RhEPO prior to the London 2012 Olympic Games (June 2016). Shortly after, he evaded a control test on July 30, 2012 and tested again positive on January 1, 2016. Three doctors from the IAAF, and the Italian Athletics Federation are under process for aiding and abetting to the violation of the anti-doping rules.

iNADO is the Institute of National Anti-Doping Organisations. It promotes best practices by NADOs and RADOs, and is their collective voice.



iNADO Website

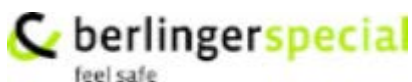


iNADO on Facebook



iNADO on YouTube

iNADO Partners



DOPING.nl
THE ANTI-DOPING KNOWLEDGE CENTER





Copyright ©2017, iNADO, All rights reserved.

