

Recommendation on disciplinary measures to be taken with regard to members of the athlete's entourage in application of Article 7.2.e of the Anti-Doping Convention (96/1)



(adopted by the Monitoring Group of the Anti-Doping Convention at its 7th meeting, Strasbourg, 30-31 May 1996)

Part 1: Explanatory memorandum

1. In Article 7, Paragraph 1, of the Anti-Doping Convention, "the Parties undertake to encourage their sports organisations and through them the international sports organisations to formulate and apply all appropriate measures, falling within their competence, against doping in sport."

2. In Paragraph 2 of the same Article it is stated that "To this end, they shall encourage their sports organisations to clarify and harmonise their respective rights, obligations and duties, in particular by harmonising their: [...]

"e. procedures for the imposition of effective penalties for officials, doctors, veterinary doctors, coaches, physiotherapists and other officials or accessories associated with infringements of the anti-doping regulations by sportsmen and sportswomen;"

3. For the purposes of the present draft Recommendation it is assumed that the group of persons (referred to throughout as the "athlete's entourage") includes team officials, medical and paramedical practitioners acting either for the team or for the individual athlete, and any other person who is acting, at the time of the commission of a doping offence, in a capacity of care or authority in relation to the athlete concerned. The category therefore includes parents or other relatives, friends or acquaintances who fulfil this condition, although it is obviously difficult to envisage how appropriate jurisdictions can be made to cover some people within this group.

4. Doping case-law to date shows that the imposition of sanctions on such persons is very much rarer than the sanctioning of athletes, a state of affairs which may not necessarily reflect the true situation. The reasons are easy to understand:

- dope-testing programmes, both in and out of competition, are focused on athletes;
- the doping offence is relatively clearly definable, and the test is - in theory at least - a black-and-white matter based on the notion of strict liability;
- establishing the involvement of persons other than athletes in the commission of a doping offence would, on the other hand, depend on the results of an investigation procedure for collecting evidence, implying a disciplinary procedure which would be adversarial in nature;
- anti-doping agencies and sports governing bodies are already required to devote a major part of their resources to the judicial and quasi-judicial consequences of positive findings with respect to athletes, and could have difficulty in assuming the additional burden implicit in investigating and if appropriate sanctioning other people as well - even if in some cases this proves to be inevitable.

5. Nonetheless, increased attention to the involvement of others in doping offences is justified and necessary:

- if the use of performance-enhancing substances and methods is wrong, then it is obviously wrong to incite or condone it, or to incite or condone related offences such as refusal to submit to an anti-doping control;
- morally, such conduct is doubly wrong in circumstances where officials are in a position of responsibility and authority in relation to young people, and the competent authorities might wish to consider such offences as more serious, particularly from the point of view of sentencing (Two recent cases involving swimmers under the age of majority emphasise the need to take measures in this area.);
- insofar as members of the athlete's entourage also have a duty of care in respect of the athlete's health, their involvement in doping offences is equally condemnable.
- strategically, the imposition of sanctions on members of the athlete's entourage involved in doping offences may prove a more effective means of combating doping than limiting sanctions to athletes, who represent the end of the chain;
- finally, however much stress the relevant regulations may rightly place on the athlete's personal responsibility to his sport and himself, one may question the fairness of a system whereby, to all intents and purposes, athletes are the only ones to undergo - frequently severe - sanctions whilst responsibility for the offence may well be more widely shared.

6. The Legal Issues Working Party of the Monitoring Group of the Anti-Doping Convention considered the issue of persons other than athletes involved in the commission of doping offences, initially on the basis of a discussion paper presented by the Canadian delegation. The Working Party made a number of observations concerning the legal and practical problems raised by the matter:

- provisions for sanctioning doping-related offences other than doping or refusal to test were dealt with in a variety of ways in different countries and depending upon the circumstances of the offence. For example, it was inevitable that many such offences would come under criminal law as well as constituting breaches of disciplinary codes or codes of professional ethics, and the procedures in each domain, as well as the rules regarding the burden of proof, could be different;
- means of encouraging participation in identifying offenders (promises of leniency, etc) could be socially divisive and had to be handled with care; there was also a danger of frivolous or malicious denunciations, requiring provisions in the procedure to discourage them;
- the specific social conditions prevailing in sporting milieux could result either in "conspiracies of silence" whereby people protect their own, or alternatively in false accusations in fulfilment of grudges. It is unreasonable to suppose that bodies responsible for enforcing rules of this kind will have either time or the resources to conduct sophisticated investigations. It follows that the rules of evidence have to be kept simple and thus easy to manage.

7. In general it should be stated that the difficulty of establishing guilt - which is acknowledged should not in itself be a barrier to the adoption of a Recommendation on the subject. One important role of a Recommendation is to make it clearly known to members of the athlete's entourage that they bear a share of responsibility for doping offences committed by sportspersons in their charge, and that in certain circumstances they may be held accountable. The deterrent effect of rules is, by force of circumstance, more important than any gain realised by catching and punishing people.

8. The responsibility of people in the athletes' entourage is an important factor in the doping problem, and it is necessary in the interest of the fairness and effectiveness of anti-doping activity that more effort be dedicated to implementing the Convention's provisions in this regard.

9. A number of practical measures can be used to this end:

- adequate investigation, as soon as a positive sample test is found, of the circumstances surrounding the commission of the offence. This, if incorporated in anti-doping regulations, could have a deterrent effect;

- criminal proceedings under existing legislation on illegal possession or transfer of drugs and restricted substances, including legislation in accordance with the Monitoring Group's Recommendation 2/94 on measures to restrict the availability of anabolic steroids, should be brought as a matter of course in cases where grounds exist;

- regulations should make it clear that sanctions will be applied under anti-doping regulations even if the relevant provisions of professional and other applicable codes of conduct differ with regard to the offence established;

- Chapter VIII (Trafficking in Drugs) of the International Olympic Committee's Medical Code should be referred to or incorporated into sports organisations' anti-doping regulations.

Part 2:

Recommendation No. 1/96 to Parties on disciplinary measures to be taken with regard to members of the athlete's entourage in application of Article 7.2.e of the Convention

Under the terms of Article 11.d of the Convention;

Recalling that, in Article 7 of the Convention, the Parties "undertake to encourage their sports organisations and through them the international sports organisations to formulate and apply all appropriate measures, falling within their competence, against doping in sport", and that to that end, to harmonise (among other things) their "procedures for the imposition of effective penalties for officials, doctors, veterinary doctors, coaches, physiotherapists and other officials or accessories associated with infringements of the anti-doping regulations by sportsmen and sportswomen";

Welcoming, in this regard, Chapter VIII of the Medical Code of the International Olympic Committee on trafficking in drugs;

Considering that persons in the entourage of sportsmen and women, such as team managers, coaches, trainers, medical practitioners and any other person who occupies an equivalent position of responsibility towards them may be implicated in doping offences of which the sportsmen or women may be found guilty;

Convinced that the responsibility of people in athletes' entourages is an important factor in the doping problem, and that it is necessary in the interest of the fairness and effectiveness of anti-doping activity that more effort be dedicated to implementing the Convention's provisions in this regard;

Considering therefore that action should be taken to sanction any such persons who are found to be implicated in the commission of an offence;

Bearing in mind that the imposition of effective penalties may be dealt with in a variety of ways in different countries according to their respective legal traditions (applicability of criminal law, disciplinary or professional codes, rules concerning the burden of proof, quality of evidence etc.) and depending upon the circumstances of the offence,

RECOMMENDS to the States Parties that effective regulations in the matter of involvement of persons other than athletes in doping offences, irrespective of the legal framework in which they are established, should be based on the following elements:

1. the definition of offences consisting in inciting or deliberately condoning either:

- the use of prohibited substances or methods as defined in the Convention (including the procurement or supply of prohibited substances); or

- the contravention of anti-doping regulations including the avoidance of controls;

2. the designation of the persons who are in a position to be involved in the commission of a doping offence, and the assurance that all relevant persons are subject, either by contract or under the terms of an appropriate disciplinary code, to an obligation not to commit or be a party to such offences;

3. the establishment of appropriate mechanisms for the investigation of allegations related to such offences and of the circumstances surrounding positive sample tests;

4. the provision of appropriate sanctions either by way of legislation or through the regulations of sports organisations (e.g. withdrawal of

recognition or licence (to be applicable throughout sport) or banning from relevant premises, etc. for an appropriate period) to be imposed on those found guilty of such offences;

5. the establishment of an independent mechanism to review decisions taken by the competent bodies in respect of such offences or to hear appeals against them.