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Anti-doping control and public health: limits to the exposure of human health to risk in the name of sporting glory

Regulação antidoping e saúde pública: limites à exposição humana ao risco sanitário e a glória desportiva

ABSTRACT

Given the current regulatory environment surrounding doping in the world, and in view of the recurring scandals linking leading athletes in a variety of sports with doping, this paper aims to provide some thoughts on the relationship between doping and public health, taking as base reference the risks doping poses to health and considering the regulatory options that have been adopted by the international community and the sports federations to control and supervise this unsporting and risky practice. The text seeks to reflect on the necessary balance between sport and health, as well as on the role of the state in preserving this balance.

DESCRIPTORS: Doping in Sports, legislation & jurisprudence. Performance-Enhancing Substances, contraindications. Sports. Public Health. Health Legislation.

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INTRODUCTION

Sport affects people's physical and mental health and encourages values that are fundamental to life within society, such as teamwork, respecting the rules of the game, solidarity and concentration. At the same time, it represents an instrument capable of helping individuals, groups or governors in their private, social, political or economic interests. Sport occupies a privileged position in modern society and is part of the fabric of society, reaching all age groups and all levels of society, in many cases representing the chance for social and economic advancement.[2]

The competitiveness of professional athletes is a direct effect of the complex role of sport in today's globalized world. For the athletes, there is psychological, social, cultural and political pressure to achieve victory and glory – at any cost and by any means.

The international community has acted to avoid doping in sport and seeks to keep alive the sporting spirit recalled by Coubertin in drawing up the first Olympic oath, read in 1920 in Antwerp.[a] Significant results of this activity can be seen in the area of regulation, beginning with the changes made to the Olympic oath itself, prepared for the Sydney summer Olympics in 2000, which expressly included the athletes' commitment to sport without doping or drugs.

Doping is considered to be the use of substances or methods capable of artificially enhancing sporting performance, those that are potentially harmful to the athlete's or their opponent's health or those that run counter to the spirit of the game.[b] There is a strong relationship between doping and protecting the individual athlete's health and that of their opponents, as well as with the harmful effects that the use of certain substances by famous athletes may have on the general population, especially the young and those who play sport. Due to its strong connection with health, sport is intimately connected to public health policies.[3,5]

The risks associated with doping are fundamental issues in the field of health, as health is recognized as a basic human right and the duty of the State. The State should adopt measures to reduce the risk of disease and other health problems. They should encourage healthy practice of sport and control sporting practices to ensure they pose no risk to professional athletes due to use of performance enhancing substances or to the dangers inherent in certain sports.[c] The relationship between public health and sport has a component that is strongly related to risks posed to health,[4] inherent to both professional and amateur sport. These inherent risks can be minimized through appropriate regulation, imposing limits, duties and responsibilities on the sportsman and on those around him (businessmen, the food industry, the medication industry and the sporting equipment industry, among others), without losing sight of the beauty and challenge of human triumph through sport.

International efforts to reduce the risks doping represents for public health have increased since the beginning of the new millennium and were consolidated in the regulation by the International Convention Against Doping in Sport,[d] which took place in Paris on October 19, 2005. This convention was the driving force behind tightening the rules and control against doping in sport.

In view of the worldwide actual situation surrounding doping and of the recurrent scandals linking top sportsmen in various fields with doping, this study aims to present some reflections on the relationship between doping and public health. As a reference, the risks to health posed by doping were studied and, as an horizon, the regulatory alternatives adopted to control and supervise this dangerous and unsportsmanlike practice. The balance between sport and health, as well as the role of the State in maintaining this balance was considered.

LEGAL BACKGROUND, OBJECTIVES AND STRATEGIES OF INTERNATIONAL ANTIDOPING REGULATION

Greater control over the use of performance enhancing substances has been sought since the end of the Second World War. However, it was an attention grabbing case of doping involving the *Tour de France* at the end of the 20th century that really made the international community take notice and take serious action, creating international anti-doping regulation, capable of resolving operational issues and of standardizing the concepts related to worldwide control of doping in various areas of sport.

[a] Coubertin P. Juramento dos Jogos Olímpicos. Antuérpia: Jogos Olímpicos de Verão; 1920.
[b] Rose EH, Aquino Neto FR, Levy R. Informações sobre o uso de medicamentos no esporte. 9. ed. Rio de Janeiro: Comitê Olímpico Brasileiro; 2010.
[c] World Health Organization. WHO Constitution. Geneva; 1946 [cited 2013 Oct 28]. Available from: http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf
[d] Brasil. Decreto nº 6.653, de 18 de novembro de 2008. Promulga a Convenção Internacional contra o Doping nos Esportes, celebrada em Paris, em 19 de outubro de 2005. *Diario Oficial Uniao*. 19 nov 2008:49.
[e] World Anti-doping Agency. A brief history of anti-doping. Montreal; 2010 [cited 2012 Oct 28]. Available from: http://www.wada-ama.org/en/About-WADA/History/A-Brief-History-of-Anti-Doping

The 1st Worldwide Anti-doping Symposium opted to create the World Anti-Doping Agency (WADA) in 1999,[e] with headquarters in Lausanne, Switzerland, composed of ministers of Sport and representatives of the Olympic movement and international sporting federations.

The 2nd Worldwide Anti-doping Symposium, which took place five years later during the World Conference on Doping in Sport, in Copenhagen, approved the WADA World Anti-Doping Code.[f] This code contains specific legislation to control doping and sets international standards to undertake this control. The United Nations Educational, Scientific and Cultural Organization (UNESCO) approved the International Convention Against Doping in Sport, in 2005,[d] which was a driving force behind the emergence of a comprehensive set of anti-doping standards in international law in the field of self-regulation by different sporting bodies and the countries' domestic laws.

In the preamble to the Convention, among the considerations, the member States stated that they were "aware that sport should play an important role in protecting health, in moral, cultural and physical education and in promoting international understanding and peace", as well as stating the "need to encourage and coordinate international cooperation aiming to eliminate doping in sport". The bold objective was to "encourage the prevention of and tackle doping in sport, aiming at its eventual elimination". By signing up to the objective of eliminating doping, the member States made evident their rejection of the practice of doping, for the sake of health or the sake of sport.

The member States committed themselves to the following strategies in order to achieve the objectives they had signed up to: take measures and to encourage forms of international cooperation aiming to protect athletes and sporting ethics; to share the results of research; to cooperate internationally with the main sporting organizations in combatting doping in sport, and specifically to cooperate with the WADA.

Although the international legislation represented important ammunition for the various responsible bodies, tackling doping is carried out in a way that is institutionally fragmented and in terms of applicable rules. In addition to international legislation, which recommends specific types of sanctions applicable to those athletes who use doping, there are also sanctions which can be set internally by the State or the sporting federations, which are autonomous and self-regulating.

DOPING AND SANCTIONS: APPLICATION OF INTERNATIONAL LAW, SPORTING LAW AND CRIMINAL LAW

When the World Anti-Doping Code was approved in 2003, this represented a significant international effort to harmonize the concepts and strategies aimed at controlling doping. The code has three types of sanctions: for individuals, for teams and for sporting bodies.

Among the sanctions that can be applied to an individual or to a team are: disqualification from the competition in which they are participating, being banned from official sporting events for a certain period of time and the loss of results and records obtained in competitions that took place after the doping. These sanctions can be more or less harsh, depending on the circumstances involved.

In light of the traditional sanctions included in civil and penal areas, the sanctions included in the World Anti-Doping Code are reasonable and are only applied after due legal process and the right to defense. Such sanctions, which affect athletes, teams and organizations that make use of or benefit unduly from the use of banned substances, are in harmony with the general principles of responsibility and ethics required in sporting practice.

A country's domestic laws and the rules set by self-regulating sporting federations may contain other types of sanctions. In Brazil, in addition to the sporting sanctions contained in international legislation, doping may also result in civil sanctions if it injures third parties (fines and compensation for moral or material damages), or even in penal sanctions, when fraud[g] or the use of illegal drugs[h] is involved.

In addition to controlling doping in professional sportsmen, it is necessary to control the indiscriminate use of substances aimed at improving sporting performance, which can be extremely harmful to health. This phenomenon is a significant public health problem and requires that effective public health policies be developed and carried out. Policies to control the use of drugs and illicit substances, developed in the fields of criminal justice and health monitoring combine to avoid the commercialization of products that pose a

[f] World Anti-doping Agency. World Anti-doping Code. Montreal; 2009 [cited 2012 Oct 28]. Available from: http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/WADA_Anti-Doping_CODE_2009_EN.pdf

[g] Brasil. Decreto-Lei 2.848, de 17 de dezembro de 1940. Código Penal. *Diario Oficial Uniao*. 31 dez 1940:2391 [cited 2013 Oct 28]. Available from: http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm

[h] Brasil. Lei 11.343, de 23 de agosto de 2006. Institui o Sistema Nacional de Políticas Públicas sobre Drogas - Sisnad; prescreve medidas para prevenção do uso indevido, atenção e reinserção social de usuários e dependentes de drogas; estabelece normas para repressão à produção não autorizada e ao tráfico ilícito de drogas; define crimes e dá outras providências. Diario Oficial Uniao. 24 ago 2006:2 [cited 2013 Oct 28]. Available from: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11343.htm

risk to public health and are contraindicated for use in humans because of the health risks they pose. Anti-doping campaigns and the strong message against this practice by international sporting legislation have the educational effect of discouraging doping in athletes and amateur sportsmen.

Although such regulatory strategies are justifiable and balanced, the repression and the use of these practices have had the collateral effect of the appearance of a sporting underworld, where a vigorous black market in performance enhancing drugs and substances. This market affects both professionals and amateurs. It is there where drugs and nutritional supplements, not illegal but prohibited in sport, are traded, as well as drugs and nutritional supplements that are legal in other countries but not in Brazil. In short, a myriad of substances that can pose a variety of risks[1] to health. Care is needed when dealing with this topic, without abandoning the premise that the use of such substances may represent a health risk and an unacceptable attack on sporting ethics.

EXPOSURE TO HEALTH RISKS, LIABILITY AND ETHICS AND PROMOTION AND PREVENTION ACTIONS

The international community and the sporting federations have tried to limit admissible risk in professional sportsmen's quest to improve their results. This tightrope between personal risk and sporting glory, inherent in sport, should be walked with caution. We cannot condemn our athletes to function as human guinea pigs for the most varied types of pharmaceutical and nutritional experiments aimed at improving human performance in various sports.

The current sanctions included in international legislation are an important sign that responsibility and ethics do exist in sport. Only in this way sport can really play its role in protecting health and in the moral, cultural and physical education of human beings. These anti-doping controls represent important goalposts in the fields of sport and public health, so that sport continues to benefit the individual and society, avoiding it becoming an instrument that violates human dignity and corrupts the political, cultural and moral values of society.

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