



Doping

A LESSON to the moralizers

Doping is a serious problem and very few people manage to grasp its great complexity. Some observers have expressed their disappointment after the recent World Conference on Doping in Sport in Lausanne, because they thought that a solution to the problem of doping would be found or that it would at least be able to be controlled. It is surprising how naive people are. As long as there are human beings on this earth, there will always be cheaters in all realms of society. In fact sport deals with this widespread phenomenon much better than others, whether they be students preparing for exams, politicians conducting electoral campaigns, industries negotiating or artists in concert or composing. In fact, it is the only milieu that sets rules, tests and punishes.

Incidentally, and whatever some media have said, the World Conference on Doping in Sport made a significant step forward for the following reasons :

- It provoked a general reflection on the phenomenon and strengthened the will to fight it.

For the first time, it brought together all the parties involved in this fight, including governmental representatives, to enter into a dialogue with the aim of encouraging all sports organizations and public authorities to cooperate with each other on this issue.

- The definition of doping, which up to now was represented by a mere list of products, was augmented with a measure which will enable products not appearing on this list to be seized. Furthermore, the list will be updated more frequently.

- The new anti-doping code also provides the possibility of imposing punishments – which may be extremely harsh – on the athlete's entourage

by Denis Oswald*



and on traffickers and providers of doping products.

The system of sanctions has been strengthened and improved.

All the parties concerned decided to reinforce preventive measures by providing more information, particularly to young people, and developing the notion of ethics.

Several interesting proposals were presented which it may be possible to implement. I am referring in particular to the signing of an oath by every athlete taking part in competitions and the creation of a "health check" card.

The parties concerned will soon create an international anti-doping agency which should enable the action taken in this field to be intensified and better coordinated.

Moreover, greater financial means will be devoted to the fight against doping.

- The sports movement has declared itself united in its determination to fight against doping.

Some members of the press have particularly attacked the issue of sanctions, claiming that their flexibility strips them of all credibility. They do not recognize that federations should be granted the right to exercise their powers of discretion. For those journalists, only a fixed sanction of two years in all sports should be allowed. Some ministers have also expressed this point of view. However, their governments have been trying in vain for years to achieve harmonization on legislation with other countries, for example within the European Union.

It is now two hundred years since the penal justice system abolished the system of fixed penalties and imposed the rule that in each case, the penalty should be individualized, based on the personal liability of the defendant. In doping, too, the sanction cannot be the same for everyone, since each case is different. A young athlete aged 15, influenced by his entourage, who on one occasion takes a doping product cannot be condemned as severely as a mature athlete aged 30 who has already taken part in two Olympic Games and who systematically dopes, knowing full well what he is doing.

At present, each country has its own system of prosecution and punishment. The penalty for a similar murder case varies between 15 years imprisonment in Switzerland, life imprisonment in France and the death penalty in parts of the US, without anybody complaining that these judicial systems are not credible because they are different from one another. So why is there so much fuss being made about there not being the same sanc-

tions in football, cycling, judo and archery, when these sports are so different from each other? Furthermore, a two-year ban does not have the same significance in a sport which is very physically demanding and where careers are short, as it does in sports such as shooting or dressage, where it is possible to be a top-level athlete for thirty years. Equality is often only an illusion of equity.

It should not be forgotten that this is also a matter of simultaneously harmonizing the "legislation" of 200 National Olympic Committees from different horizons and 34 International sports Federations, also in some cases having to take into account national laws. The task is therefore a lot more difficult than politicians and journalists think.

With this in mind, the government representatives who came to Lausanne to

moralize to sports leaders seem to have totally forgotten that until now, the majority of them have done absolutely nothing. It was in fact paradoxical to hear certain ministers such as Otto Schily, the German Minister of the Interior, wanting a fixed sanction of two or even three years, when it is precisely the ordinary courts in his country which are the first to throw such a severe penalty out of court because it deprives an athlete of his right to work. The Krabbe case, amongst others, is there to remind us of this. Sports sanctions are subject to state legislation and sports associations would be irresponsible to mete out penalties that are not in conformity with ordinary law.

As for the Federation of which I am president, it has, for a long time now, made a policy of imposing a life ban on athletes convicted of doping,

already for their first offence. We do this despite the knowledge that such a sanction would not withstand an ordinary legal trial. We are nevertheless prepared to take the risk for philosophical reasons, but we also completely understand that the same attitude cannot be adopted by other sports where the financial gains at stake are different.

It is the national courts that oblige the sports world to moderate these penalties, when that same sports world wants to give harsher punishments. In 1994, several Federations agreed to apply a four-year sanction and it was these national courts which ruled that such an extensive work ban was inadmissible. So let's not accuse the sports world of being too lenient!

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THE LEGAL POSITION of Germany

The Declaration by the Association for German and International Sports Law (Vereinigung für deutsches und internationales Sportrecht), based on a document by the Constance Working Group on Sports Law concerning the Lausanne Declaration on doping in sport, is highly significant. The executive board and advisory board of the Association have adopted a position in the debate over responsibilities and sanctions in proven doping cases.

The decisions of the World Conference on Doping in Sport in Lausanne are welcomed. They essentially correspond to national and international established case law and the long-standing judicial practice of the independent international Court of Arbitration for Sport in opposing an across-

the-board minimum ban of two years and in advocating a sanction which corresponds to the degree of individual fault.

This attitude corresponds, moreover, to the anti-doping outline proposals developed and applied by the German Sports Federation (DSB). They provide for a competition ban of up to 12 months for a first offence. The text reads: "In determining the competition ban, the individual degree of fault and the possible period of further competition sports activity must be taken into consideration".

This recommendation was made by a legal commission set up by the DSB with the aim of making the bans imposed by federations "court-proof". The basis for the recommendation was

thus the provisions of constitutional law and the legal situation as it pertains to the law governing associations. In the meantime, most (German) sports federations have incorporated into their statutes the recommendation made the DSB's outline proposals. So, when applying sanctions in a first doping case, an individually-adapted, flexibly managed competition ban of no more than one year is the usual standard.

The executive board and advisory board of the Constance Working Group recommend, on the grounds of constitutional law and the law governing associations, following the concept of the DSB's outline proposals, i.e. differentiating the framework of the sanction according to the individual degree of fault and the possible period of compe-