

## A PERSPECTIVE REGARDING DOPING IN SPORT AND THE THERAPEUTIC USE EXEMPTIONS

### O perspectivă privind dopajul în sport și scutiile pentru uz terapeutic

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#### Abstract

*Background.* People may see the norms and rules as social constructs made to facilitate the cooperation between individuals. In this framework, the World Anti-Doping Agency has the role of ensuring a good function of the rules, including those which regulate the use of substances to enhance physical abilities. The difficulty consists in detaching the cases of doping from those which allow the administration of prohibited substances under the justification of therapeutic needs. Some athletes and coaches perceive the Therapeutic Use Exemptions as legal doping, a comparison which is the basis of the requirement to reduce the permissivity in using treatments during competitions for those who have certain medical problems.

*Objectives.* The purpose of this study is to show that the tightening of the rules for those athletes who have medical problems is not desirable. Moreover, the research emphasizes that a reconsideration of prohibited substances is necessary, encouraging a greater permissivity in using them.

*Methods.* Two methods are used to argue this claim: the first one, based on bibliographic research, will show that the interdiction of some substances has not a stable foundation, denouncing, at the same time, an arbitrary character; the second method will show that the equality principle and the respect for other competitors are not infringed by the athletes who are using prohibited substances for medical purposes.

*Conclusion.* The research will lead to the conclusion that the possession of therapeutic use exemptions is not morally problematic. Moreover, it will emphasize the reasons why the World Anti-Doping Agency should not punish the athletes who accidentally break the anti-doping rules.

**Keywords:** doping, therapeutic use exemption, rules

#### Introduction

In 2012, cyclist Lance Armstrong, the winner of seven consecutive titles in the Tour de France, became the main character in a controversial problem. The United States Anti-Doping Agency (USADA) accused him of systematic doping. In this context, Armstrong confirmed that he used blood transfusions and testosterone injections to improve his physical abilities. Two years later, producer Bryan Fogel decided to be the subject of an experiment designed to identify irregularities in the anti-doping test systems. Given that, Bryan met Grigory Rodchenkov, the then Director of the Anti-Doping Laboratory in Russia. Rodchenkov had the role of helping Bryan follow a doping program without being exposed during the tests on the harvested samples. In 2015, Rodchenkov revealed to the producer that he was investigated by the World Anti-Doping Agency (WADA) as a result of charges made on the German ARD broadcaster.

At the same time, the International Olympic Committee (IOC) launched an investigation, concluding that charges made were well founded and that at the Sochi Winter Games in 2014, most of the Russian athletes followed a state-sponsored doping program. Rodchenkov, fearing for his life, left Russia, moved in the United States and revealed the mechanisms behind the doping program for the New York Times. Thus, the original experiment of Fogel gained new dimensions and materialized in the documentary "Icarus" appeared in 2017 whose protagonist is Rodchenkov. The effects of the disclosures of the former Director of the Anti-Doping Laboratory in Russia are currently visible, with the Russian team being suspended by IOC from the current Winter Olympics in Pyeongchang.

During the investigation, WADA faced new problems, the *Fancy Bears* hacking group succeeding, in 2016, to enter an agency base and publish the medical files of several athletes. The files brought to the forefront the cases of athletes who consume substances considered illicit, justifying the need for their use through the existence of therapeutic use exemptions (TUEs), appeared as "an extensive program that enables an athlete to be treated by a physician with a prohibited substance and still compete" (Catlin, Fitch & Ljungqvist, 2008). Among the athletes concerned was the Danish swimmer, Blume Pernille, freshly gold medalist at the Rio Olympics, in the samples collected from

her detecting a forbidden substance (Terbutaline). The swimmer said she suffers from asthma, her medication requiring the inclusion of substances that contradict the forbidden list.

In this context, the contrast of the two cases generated the cataloging of therapeutic use exceptions as *legal doping* and the requesting towards WADA to reconsider these situations and to tighten up the rules. The evoked argument relied on the advantage given to the athletes concerned, to the detriment of other competitors, by the use of substances.

### Objective

The purpose of this paper is to show that the tightening of rules for athletes who have medical problems is not desirable, believing that these cases are not morally problematic. At the same time, I will emphasize in the paper the reasons why rethinking and diminishing the list of prohibited substances are necessary. To support this, I will propose two ways to address the issue: the first model will highlight that the ban on certain substances is arbitrary, without a solid foundation; the second method will show that the equality principle and the respect for other competitors are not infringed by the athletes who are using prohibited substances for medical purposes.

### *The first argument*

In 2000, gymnast Andreea Răducan obtained an individual gold medal in the all-around at the Sydney Olympics. However, her title was withdrawn by the International Olympic Committee, following doping controls which found that the harvested samples from gymnast contained a banned substance at the time- *pseudoephedrine*. The above substance was in the form of a pill administered to treat fever and other symptoms associated with flu. In 2003, the members of the WADA Executive Committee decided that pseudoephedrine does not contribute to the improvement of physical capacities and they withdrew the substance from the prohibited list. Nevertheless, IOC refused to reinstate the medal to Andreea Răducan, and her case became another reason why the exigence of the World Anti-Doping Agency was interrogated. At the same time, the case highlights a problem that WADA fails to manage: the ambiguity of doping definitions.

In "*The ethics of doping and anti-doping*", Verner Møller begins by denouncing the association of several cases with doping based on arbitrary criteria: "Doping is simply defined as infringement of WADA's doping regulations. In other words, doping is whatever WADA at any moment assesses it to be" (Møller, 2010, p.4). The request for tightening the rules would thus be manifested by integrating more substances in the prohibited list, whether justified or not. This requirement would be problematic in at least two points of view. On the one hand, competitors who have medical problems should either abandon practicing professional sport or continue to participate, interrupting treatments and taking great risks. On the other hand, athletes would be deprived of many means constantly used in contemporary society to improve physical or mental capacities, being constrained to follow unadapted rules for nowadays. It is a prevailing belief that doping, in a global sense, is immoral. At the same time, the use of substances that improve the student's memory or concentration, for example, seems unproblematic. The source of this dual approach may be the fear for the popularization of the substances that increase the human body's abilities, associated with the health risks. In this respect, Bennett Foddy and Julian Savulescu brought a counter-argument.

In the article entitled "*Ethics of performance enhancement in sport: Drugs and gene doping*" the two authors say not only that the rules should not be tightened, but that "we should remove anti-doping legislation to permit safe performance enhancement" (Savulescu & Foddy, 2006). Their claim is based precisely on the fact that athletes continue to use prohibited substances despite the existence of an official regulation restricting their administration. In the attempt not to be detected, some competitors resort to methods that represent a threat to their health. Furthermore, over time, there have been accusations that coaches are exhausting their athletes with the purpose to get them sick. Then, coaches obtained for their competitors a therapeutic use exemption for some prohibited substances that improve physical capabilities. Starting from the suggestion of the two authors, we can say that the existence of too harsh rules has generated absurd situations like the one previously mentioned.

At the same time, it is important to mention the criteria to which WADA relates in the process of analyzing and banning substances: "First, it must have the potential to increase sporting performance. Second, it must represent an actual or potential risk to the athlete's health, and third, its use must be contrary to the <<spirit of sport>>" (Savulescu & Foddy, 2006). As we previously noticed, the second criterion has a weak foundation. At this point, the metaphor of children who eat concealed sweets in order not to be caught by their parents can be an analogy of the relationship between WADA, forbidden substances, and athletes. The existence of the list of prohibited substances makes the athletes risk their health in an attempt to deceive the system. Moreover, note Foddy and Savulescu, the first criterion is not enough to ban an element because there are substances (such as coffee) that improve capabilities but whose use is not restricted. Therefore, the first two criteria are embedded in the third one, with WADA considering that the respect for the "*spirit of sport*" is imperative.

### ***The second argument***

In an attempt to clarify and define the "spirit of sport" notion, WADA has developed a list of concepts that would be involved in meeting this criterion. In their article, Foddy and Savulescu also evoked these concepts: "ethics, fair play and honesty, health, excellence in performance, character and education, fun and joy, teamwork, dedication and commitment, respect for rules and laws, respect for self and other participants, courage, community and solidarity" (Savulescu & Foddy, 2006). Their designation is important because many of the terms used are not in contradiction to doping. Therefore, the key terms will focus on the respect for other competitors, manifested by the suppression of the impulse to gain advantages to their detriment.

The case evoked at the beginning of the paper outlined the usefulness of terbutaline for athletes who are diagnosed by doctors with asthma. Thus, it is denounced that the use of this substance not only results in the normalization of respiratory capacity, but also gives a significant advantage over other competitors. Therefore, the main argument against the use of such substances is based on breach of the principle of equality by those who possess a therapeutic use exemption. In fact, however, this equality can be an idealistic, intangible criterion. It is desirable to reduce the discrepancies generated by inequalities, but their total elimination remains unrealistic. This desire to reduce disparities is one of the reasons why the detection of diseases generates permissiveness for those athletes. Factors that go beyond human control also generate significant discrepancies. Compared to them, the eventual benefits athletes gain from using their treatments may be negligible. In this sense, Sigmund Loland elaborated an ample analysis of the relationship between inequalities in "*Fair play in sport- A moral norm system*". Loland, examining the factors that lead to inequalities in sports competitions, believes that "if we are talking of inequalities that are not due to voluntary choices, for instance, certain outcomes of the natural genetic lottery that cannot be influenced by an individual, we cannot properly hold people responsible for them" (Sigmund, 2002). Genre, age, and physical constitution are the examples Loland offers to facilitate understanding of natural inequalities, and their remediation is trying to be done in sports through classification.

In the above-mentioned type of natural inequalities may be framed the medical affections. In this case, their diminishing is temporarily made by WADA through the therapeutic use exemptions. The eventually gained advantage for athletes under treatment would be analogous, in this situation, to the imprecision of the division and classification of athletes.

### **Conclusions**

The purpose of this paper was to highlight the necessity of the therapeutic use exemptions. The study also encourages and emphasizes the reasons why the World Anti-Doping Agency should not punish the athletes who accidentally break the anti-doping rules. Furthermore, the diminishing of the list of prohibited substances may become an inexorable requirement in the context of general progress in the contemporary world.

For the time being, I consider that Foddy and Savulescu's requirement to eliminate the whole anti-doping legislation is too strong and can cause problems that will be out of control. However, I support a rethink of anti-doping rules so that they do not themselves become the source of injustice.

The main persons blamed in doping cases are athletes, circumventing the implications of a whole system that generates these situations. The pressure placed on athletes by coaches and sponsors, political involvement in the sport and the existence of substantial awards are factors that should be considered by sports community while doping cases. Moral accountability should perhaps be broadcast and attributed to those who facilitate the existence of these factors.

The recent case of the state-funded doping program highlights a problem hard to manage by the World Anti-Doping Agency. This situation reminds that sport has led either to an improvement in relations between states or has exposed dramatic conflicts (for example, the conflict between Palestine and Israel, manifested even at the 1972 Olympics).

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