

Strasbourg, 13 mars 2008

P-PG/Ethics(2007)5rev3

## **EXPERT COMMITTEE ON ETHICAL ISSUES AND PROFESSIONAL STANDARDS**

**Opinion on drug testing at school and in the  
workplace**

**Experts Committee on ethical issues and professional standards: introduction to the work of the Committee**

The Pompidou Group's Platform on ethical issues and professional standards, in line with the other Group's platforms, is made up of experts delegated by member States. Its work is done under the Group's programme of activities adopted every four years during a Ministerial Conference.

The majority of this work is made up of experts' opinions and positions on given subjects and, as such, to be used by decision makers, where appropriate, when drawing up national policies. They are submitted to Permanent Correspondents during their regular meetings but are not meant to be formally adopted or to become formal recommendations to the member states.

During the ministerial conference of November 2006, the work on drug testing at school and at the workplace undertaken by the Committee since the adoption in 2003 of the latest programme of activities, has been presented to the Ministers. The reports and studies written by different experts have also been distributed in the form of a CD-Rom. Since then, the Committee has finalised this work (March 2008) by adopting an Opinion.

These documents are now available on the Group's website ([www.coe.int/pompidou](http://www.coe.int/pompidou)). They also have been published at the end of 2008.

For further information, please contact: [sabine.zimmer@coe.int](mailto:sabine.zimmer@coe.int)

The members of the Pompidou Group's platform on ethical issues and professional standards wish first and foremost to point out that Article 8 of the European Convention on Human Rights (1) safeguards everyone's right to respect for private and family life. It states that there may be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society (...) for the protection of health or the protection of the rights and freedoms of others.

As all European countries have signed the 1961 United Nations' Convention on Narcotic Drugs and all the ensuing treaties (2), they are committed to combating the illicit trade in a number of psychoactive substances commonly termed "drugs" and to limit the trade for research or medical reasons.

European countries have necessarily enacted national legislation to pursue this aim. In some countries it is forbidden to possess even small quantities of these illegal drugs. In other countries, possession of these drugs for personal use is tolerated.

Although Article 17 of the European Convention on Human Rights states that "*nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention*", the authorities in many European countries allow law enforcement bodies (such as the police and the judiciary) to interfere with their citizens' private and family lives in the name of the fight against drug trafficking, which is justified by the need to protect public health. Our national laws work within the limits set by international instruments on the protection of privacy and by the relevant case-law to establish the framework within which this interference may operate.

In all countries representatives of the authorities are allowed, even if legislations in this regard differ, to submit drivers to drug and alcohol testing.

Systematic drug and alcohol testing for airline pilots to ensure that air and passenger safety is respected is now common practice. This testing may be justified by the principle of proportionality as it is carried out with the aim of reducing the danger of accidents which may put lives at risk.

As the consumption of certain legal or illegal psychoactive substances can affect the consumer's behaviour or alter some of his/her physiological parameters, it is also ethically acceptable for a doctor who has to make a diagnosis to conduct a drug test in an emergency. It seems equally acceptable in ethical terms that a doctor who suspects drug addiction in a patient with whom he/she is unable to establish a dialogue on the subject should carry out a drug test to determine the reasons for the deterioration in the patient's health. The health professional is of course required to keep the results secret, to make the best use of them and not to communicate them to any third party.

The platform on ethical issues and professional standards takes note of the following requirement of the European Convention on Human Rights: with the exception of the law enforcement agencies, in the specific context in which the law empowers them to act, and certain health professionals, to the exact extent that obtaining this confidential information is essential to enable them to take appropriate action in their patients' interests, no public authority or private individual has any right to impose on anyone's private or family life, and even less so to carry out or order drug testing in anyone.

The platform members nevertheless find that in some European countries, school authorities take the liberty of drug testing their pupils (3). They also find that drug testing is practised at the pre-employment stage or in the workplace without the confidentiality of the results always being protected by law (4).

As regards both school, pre-employment and workplace drug testing, the question is therefore to determine whether a higher ethical value can be invoked to authorise infringements of respect for private and family life as safeguarded by the Convention for the Protection of Human Rights. Only the precautionary principle could justify this. The platform has therefore endeavoured to analyse the protective impact of the use of drug testing kits on the incidence of drug consumption and the future lives of consumers.

Over and above the effort to identify the beneficence that might stem from the introduction of drug testing at school and at work, we note that with an eye to a “drug-free world”, drug testing kits came onto the market in the late 1980s. They provide substantial profits for those who market and promote them (5). People do buy them, since they hold out the prospect of enabling anyone to easily detect whether anyone else has consumed illicit drugs, so they awaken every individual’s latent policing tendencies. Rather than closely monitoring their children’s emotional, social and intellectual development through dialogue based on trust, it is simpler for anxious parents to use a drug testing kit to confirm that their children are “clean”. Yet one is entitled to wonder how useful testing is if a drug is found to have been used, since on the basis of that finding the parents concerned will have to pluck up the courage to embark on dialogue, unless it is too late.

If psycho-educational science makes it very clear that “family” use of detecting devices is no substitute for dialogue with a growing child who needs guides, not policing, can it be otherwise at school?

And regardless of educational aims, if pre-employment or workplace testing shows that an adult has consumed drugs, can this be a valid starting point for establishing dialogue between peers or with the employer, in the case of a white or blue-collar worker in difficulties?

It should also be recalled that the accuracy of the results obtained is far from guaranteed (see 5)

## **1. Drug testing in schools**

Those who practice drug testing justify it as a dissuasive method for preventing the consumption of illicit drugs, and particularly for preventing any abuse which may cause health and social problems. It is claimed to be a means of swiftly establishing that a pupil uses drugs and is therefore in danger, and allegedly makes it easier to direct such pupils to a support service before they definitively fail at school.

This assertion derives from the belief that all drug consumption reflects malaise in young people and exposes them to risks in the medium or long term. It masks the fact that the consumption of some substances such as cannabis or certain psychoactive substances is widely spread and sometimes proves that these young people are in tune with their times. It also ignores the fact that it is impossible to force help on anyone who does not feel the need for it.

In practice, despite the goodwill of some school heads and teachers, when a young person is proved to have consumed an illicit substance he/she is often expelled from school, either to set an example or to prevent him/her from having a harmful influence on other pupils.

Whether these pupils are directed to a support service against their will or directly expelled, discovering by testing that they have used drugs is of no benefit to them in either case, and it therefore seems difficult to justify drug testing at school in terms of the precautionary principle, at least where the tested pupil is concerned.

Some take the view that the organised detection of each drug consumption might have the indirectly beneficial effect of deterring other pupils. From a scientific viewpoint however, there is nothing to indicate this.

Rather than a means of preventing drug abuse, testing therefore seems to be practised to reassure teachers' and pupils' parents, who are, moreover, exposed to pressure from strategies for marketing testing kits and from some government authorities, by proving to them that the school is concerned about illicit drug consumption and identifies consumers, the sub-text being that certain problems encountered by pupils at school are the outcome of their drug use. In this sense, school testing acts as a screen. It serves to mask the social and cultural problems that are often the cause of pupils' difficulties at school, and the difficulty teachers have in suggesting to their pupils that they are entitled to a future (6).

The platform on ethical issues and professional standards also wishes to point out that drug testing techniques fall into the category of policing techniques and conflict with the tasks assigned to those working in schools. On the contrary, teachers are supposed to broaden and deepen their pupils' skills both in terms of the extent of their knowledge and in terms of their future citizenship. Teachers' educational responsibilities do indeed require them to be concerned about malaise in any of their pupils, to establish a constructive dialogue with such pupils in the event of a visible problem and, where appropriate, to suggest that they seek help if the teacher feels he/she has run out of solutions.

Like parents, teachers are supposed to guide pupils so that they learn to make responsible choices in order to achieve their full potential. In so doing, they are highly likely to prevent excessive consumption of both legal and illegal drugs among their pupils.

The platform consequently finds that the precautionary principle does not provide any arguments justifying infringement of pupils' private lives and interference with the school's vocation by drug testing. Testing actually undermines the pupil-teacher relationship and the psycho-social climate in schools, which has been proven by research to have a protective function.

This should come as no surprise if we refer to the World Health Organisation's findings on the subject. In 2002, the WHO found that prevention methods centring on damage limitation rather than abstention seemed to yield better results, particularly where alcohol consumption was concerned (7).

## **2. Drug testing in the workplace**

It is a fact that consuming an excessive amount of alcohol or any other psychoactive substance can substantially reduce a worker's vigilance and fitness for work. Depending on the type of work assigned to a worker, it might therefore prove useful, for his/her safety and that of third parties, to practise drug and alcohol testing.

The platform on ethical issues and professional standards nevertheless notes that many other factors can reduce a worker's vigilance and that it therefore seems insufficient, in the name of the precautionary principle, to confine oneself to checking whether workers assigned tasks that are highly dangerous to themselves or others have consumed a psychoactive substance. In order to protect workers and any third parties who might sustain injury as a result of a worker's deficiencies, the platform proposes that in some sectors (e.g. pilots, lorry drivers, train drivers or operators of heavy machinery such as cranes) work should be organised in such a way as to allow peers or superiors to observe, before work starts, that a worker is not advocating maintaining respect for in the best state to perform his/her job that day.

The ethics platform notes the fact that most European countries fail to define these "high-risk jobs" (8). It suggests that these high-risk jobs should be more clearly defined so that employers, employees and concerned third parties can be protected. It also notes that in this area, except in the case of pilots (but only to check that they are not drunk), there are no international regulations defining protocols for assessing whether workers are fit to do their jobs properly on a particular day.

It recommends that if there are doubts as to a worker's fitness for the job, he/she should be referred to an occupational physician who will determine whether or not the worker is fit to perform his/her duties that day. The reasons for which the doctor finds the worker unfit for work must obviously remain confidential. While the ethics platform considers that regardless of the worker's job, the precautionary principle always warrants referring him/her to the occupational physician if there are doubts as to his/her fitness for work, it nevertheless the worker's private life in relation to any third parties not bound by professional secrecy.

In this connection, it regrets the fact that not all European countries have legislation on occupational medicine which guarantees the confidentiality of the results of medical examinations undergone by workers (see 4).

### **3. Pre-employment testing**

Drug testing is practised in several European countries when workers are recruited (see 4).

It is an undisputable infringement of private life and of the "right to work" recognised in Europe by the European Social Charter of 18 October 1961 (9).

Here too, the question for the ethics platform is to assess whether this infringement of private life and this discrimination in terms of the right to work are justified by the precautionary principle.

Clearly, finding that a job applicant sometimes uses illicit drugs or tends to drink alcohol regularly does not entitle an employer to forecast that the worker will one day come to work under the influence of a psycho-active substance.

If the worker concerned proves to be unsuited to his/her job because of genuinely problematic alcohol or drug consumption, or even because he/she is found to be a drug addict, most employment contracts provide for probationary periods and the employer can therefore refuse to take on the worker beyond the first few months (10)

In this case, however, he/she is a person with disabilities and European Directive 2000/78 of 27/11/2000, which prohibits "*any direct or indirect discrimination based inter alia on*

*disability*', does not allow the contract to be terminated on the grounds of disability unless it is proven that this disability is incompatible with the requirements of the position.

On the other hand, a decrease in output may also be used as justification to terminate a contract, provided, that is, that economic output is considered a legitimate aim. The fact remains, however, that the person in question has the right to work, like any other person with a disability, and it is therefore up to the government to ensure that he/she finds work.

Workplace drug testing cannot therefore be justified by a precautionary approach regarding the worker's possible unfitness to do his/her job without endangering his/her health or that of third parties.

The only justification for pre-employment drug testing seems to be a moral one. Some European employers, like their American counterparts, might deny drug users the right to work, in breach of the European Charter. In European countries which do not prohibit drug use, there can be no justification for such an attitude in ethical terms. In countries where drug use is prohibited, the question is whether it is for employers, in matters relating to private life, to check whether their workers comply with the statutory provisions. As employers have not officially been assigned policing tasks, their intrusion into job applicants' private lives appears unacceptable, particularly as it is likely to result in job discrimination.

It remains to discuss the effectiveness of these practices as drug abuse prevention policies.

While the consumption of certain drugs is a matter of fashion, the abuse of psychoactive substances is known to be more closely linked to disadvantaged socio-economic situations. Idleness, the lack of social gratification and the lack of prospects for self-fulfilment are factors affecting the consumption of both legal and illegal psychoactive substances. As a preventive policy, excluding drug users from the labour market does not therefore appear productive – quite the reverse, at any rate for the person excluded. This observation does not mean, however, that excluding drug users in this way cannot have an indirect protective effect on others. Knowing that recreational use of a drug is likely to result in exclusion from the labour market might encourage some people to refrain from any form of drug consumption, so it cannot be denied that drug testing might have an indirect preventive function. However, insofar as nothing to date demonstrates that such a policy really has an indirect protective function with regard to drug abuse, and knowing that excluding drug users from the labour market can be harmful to them, the ethics platform considers that the precautionary principle cannot on any account serve to justify pre-employment drug testing, which is an infringement of private life.

In the platform's view, for reasons also deriving from the precautionary principle, it would on the contrary be advisable to ban pre-employment drug testing in order to safeguard the ethical principles enshrined in the European Convention on Human Rights. The platform believes that legislation should be enacted on the subject, particularly to prevent certain foreign firms located in Europe to take the liberty of practising drug testing directly or through the private insurance schemes they offer (11)

## **Conclusion**

In the opinion of the platform on ethical issues and professional standards, drug testing is acceptable only if it is carried out by health professionals bound by confidentiality requirements who wish to refine their diagnosis or if it is performed in response to a request from a law enforcement or judicial body, in the precise framework of what is authorised by law. It should be borne in mind, however, that the result of these tests require confirmation.

All other testing procedures in schools or the workplace pose an ethical problem founded on international, universal and absolute rights. It would be appropriate to take steps to prohibit such procedures, and to seek to achieve the same ends by means that show greater respect for privacy, family life and the fundamental rights of every individual and are more appropriate for such purposes, in particular for preventing young people from developing drug addiction and adults in high-risk jobs from causing accidents

- 
- (1) The Convention for the Protection of Human Rights and Fundamental Freedoms was drawn up within the Council of Europe and was opened for signature in Rome on 4 November 1950. It entered into force in 1953
  - (2) The Single Convention on Narcotic Drugs - 1961 (amended by the Protocol of 25 March 1972), the Convention on Psychotropic Substances – 1971, and the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances – 1988
  - (3) see report by Margareta Nilson (P-PG/Ethics(2004)4 in Appendix A n°1)
  - (4) see report by Lourenço Martins and Joaquim Rodrigues (P-PG/Ethics(2006)4 in Appendix B n°1)
  - (5) see report by Claire Ambroselli (P-PG/Ethics(2006)6 in Appendix B n°2)
  - (6) see report by Micheline Roelandt (P-PG/Ethics(2006)1rev2 in Appendix B n°3)
  - (7) see the WHO review “Prevention of Psychoactive Substance Use. A Selected Review of What Works in the Area of Prevention”, Geneva, 2002.
  - (8) see contributions of Behrouz Shanhandeh and Tom Mellish to the Seminar on “Ethics, professional Standards and Drug Addiction”, February 2003, p.25 and 33
  - (9) The European Social Charter was adopted by the Council of Europe in 1961 and revised in 1996. The European Committee of Social Rights (ECSR) is the body responsible for monitoring compliance in the states party to the Charter.
  - (10) In some countries, civil servants may be recruited and appointed immediately after passing competitive or other examinations. They do not necessarily undergo a probationary period. As their performance has been assessed by means of examinations, it can be assumed that they are not drug abusers.
  - (11) The platform will consider drug testing by insurance companies at a later date.