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Anti-Doping Convention (T-DO)

Follow up Report

*by Finland on the implementation of recommendations of the Evaluation visit
on 15-18 November 2004*

Introduction

Background

1. Aim of the Convention

The parties with a view to the reduction and eventual elimination of doping in sport, undertake within the limits of their respective constitutional provisions, to take the steps necessary to apply the provisions of this convention.

Recommendation

→ [a] The evaluation team suggests that the Ministry considers using the present consensus and availability of resources in order to process a clear legal provision guaranteeing the preconditions for antidoping activities. This provision would reflect legally the present political commitment and preserve the principle of autonomy of sport. Such a process may also help to clarify the ways to fulfil these needs in the future.

In accordance with long-standing tradition, the Finnish State Budget is divided into two sources: budget funds and national lottery funds. In the 2007 State Budget, the share of budgeted funds is €40.4 billion and the share of money from the national lottery is €398 million. The amount of money from the lottery is considerably smaller, but with regard to the sports sector, and anti-doping activities within it, significant (€1.4 million). Finland committed itself to tough anti-doping action when it ratified both the Council of Europe and the UNESCO Anti-Doping Conventions. The fact that financial support allocated to anti-doping comes from the national lottery has no practical significance. If income from the national lottery were to decrease, this change would have no effect on government support for anti-doping, as budget funds can also be allocated to this important sphere of operations that has been guaranteed with international treaties.

2. Definition and scope of the Convention

1 For the purposes of this Convention:

- a “doping in sport” means the administration to sportsmen or sportswomen, or the use by them, of pharmacological classes of doping agents or doping methods;
- b “pharmacological classes of doping agents or doping methods” means, subject to paragraph 2 below, those classes of doping agents or doping methods banned by the relevant international sports organisations and appearing in lists that have been approved by the monitoring group under the terms of Article 11.1.b;
- c “sportsmen and sportswomen” means those persons who participate regularly in organised sports activities.

2 Until such time as a list of banned pharmacological classes of doping agents and doping methods is approved by the monitoring group under the terms of Article 11.1.b, the reference list in the appendix to this Convention shall apply.

Recommendation

- [b] The evaluation team recommends checking whether section 8 of the Finnish Anti-Doping Code should be clarified in order to avoid possible conflicts of rules between section 8(1) and 8(3).
- [c] The Evaluation Team recommends that the future legal provision on anti-doping should state clearly that the target groups of the fight against doping include (at least) all persons who regularly participate in organised sports activities. A broadening of the anti-doping policy requires the involvement of other actors (public health, municipalities). The development of such a wider anti-doping policy would require defining the competences of the concerned partners.

After the World Anti-Doping Code (WADC) has been revised, any amendments to the Finnish anti-doping rules will accommodate any comments from the evaluation team, and all decisions in the matter will be made exclusively on the basis of WADA's Prohibited List.

In Finland, doping control is based on existing legislation and supervision by authorities as well as self-regulation by the sports sector. Legislation and supervision by authorities are directed at the availability of doping agents, while self-regulation by the sports sector is directed mainly at preventing the use of doping agents and methods. Finland has ratified the Council of Europe Anti-Doping Convention. The central Finnish sports organisations and the FINADA have committed to following the World Anti-Doping Code.

In Finland, banning the use of doping and other anti-doping rule violations in sports, as well as the consequences specified for them, are based on sport-relevant international and national sets of rules. Finnish anti-doping rules are based on the World Anti-Doping Code.

According to the Finnish anti-doping rules, all persons participating in international and national competitive sports are subject to doping control. These persons include those who have acquired a competition license or who belong to the member organisations of national sports federations.

According to sports regulations, anti-doping is not only directed at top-level sports, but concern all those participating in organised sports activities. Therefore, the rules and regulations of Finnish sports correspond to the requirements of the Council of Europe Convention within the Finnish sports system.

3. Domestic co-ordination

1 The Parties shall co-ordinate the policies and actions of their government departments and other public agencies concerned with combating doping in sport.

Recommendation

- [d] In order to bring about better co-ordination, the evaluation team considers that Finland should set up a permanent inter-ministerial co-ordination board for the exchange of information at the national level between the Ministries of Education, Health, Justice, Interior (police and customs). FINADA could be involved (as an independent body). Municipal sports structures should also be involved in co-operation with FINADA
- An enhanced co-ordination should be beneficial to information and educational programmes, in particular toward general public, especially young people. It would help to broaden some aspect of anti-doping policies from the top-athlete level to the recreational level of organised sport. Such a co-ordination board would be able to pay due consideration to the issue of gyms, which are in some circumstances beyond the scope of any legislation and regulation.
 - It would also help to share experience and to extrapolate successful activities. For instance, a training plan similar to the course for customs officers could help to build capacities against trafficking of doping substances, for example with the systematic implementation of regular training plans for police forces as well as for prosecutors. Other categories of civil servants like veterinary doctors and inspectors (medicinal, pharmaceutical, market, tax) could also be involved through improved co-ordination.

An annual inter-ministerial meeting is organised and chaired by the Ministry of Education and assisted by active participation of FINADA. When needed, meetings are arranged more frequently. Health authorities have funded ongoing research into the use doping agents in gyms. Finnish Customs have been provided with several expert opinions in connection with doping rule violations.

2 They shall ensure that there is practical application of this Convention, and in particular that the requirements under Article 7 are met, by entrusting, where appropriate, the implementation of some of the provisions of this Convention to a designated governmental or non-governmental sports authority or to a sports organisation.

Therefore, the evaluation team concluded that art. 3.2. is implemented.

4. Measures to restrict the availability and use of banned doping agents and methods

1 The Parties shall adopt where appropriate legislation, regulations or administrative measures to restrict the availability (including provisions to control movement, possession, importation, distribution and sale) as well as the use in sport of banned doping agents and doping methods and in particular anabolic steroids.

Recommendations

- [see recommendation 'd'] The coordination mentioned under Art. 3 would be particularly relevant in order to improve the fight against trafficking.
- [e] The evaluation team recommends moving away from the issue of the burden to prove intent to disseminate doping substances in sport. The evaluation team considers that it should be possible to allow possession for personal use, while defining this personal use in terms of amount and circumstances (e.g. medical prescription).

- [f] The evaluation team recommends not to enact every substance concerned in a decree, but rather, for instance, to classify substances in order not to allow dealers to circumvent the rules.
- [g] Finally the evaluation team considers that the custom authorities should continue to give a high level of priority to the fight against smuggling and trafficking doping substances and could increase international co-operation to help other countries to establish procedures for controlling smuggling of doping substances

Finland has not deemed it necessary to criminalise the use of doping agents (with the exception of those agents classified as narcotics). The exclusion of doping use from the Penal Code has been explained by the fact that putting one's own health at risk or damaging oneself has not in general been criminalised, and that the use of doping agents cannot be equated to the use of narcotics.

The use of doping agents is not punishable on the basis of the Penal Code. If the possession of doping agents for personal use was to become punishable, the use of doping agents would also be criminally punishable because such use in other than exceptional cases in practice presumes possession. The key task of penal provisions in doping-related crime is a possible intervention in doping agent imports and sales. Effective intervention in marketing doping agents requires that the possession of doping agents should be punishable to a certain degree. Possession of large quantities of doping agents implies that they are being sold. In the Finnish Penal Code, the possession of doping agents becomes punishable when the motive of the possessor is an apparent attempt to distribute doping agents illegally. Possession of large quantities of doping agents could be considered as evidence of intent to sell. In these cases, there would be no further need for evidence of smuggled or stolen goods – and intervention in criminal activities would be possible in all cases.

In addition, the Penal Code allows intervention in small quantities of doping agents on the basis of Penal Code provisions in such matters as the handling of illegal imports when the foreign origin of the agents in question is undeniably evident from the packages.

In Finnish Criminal Law, the determination of doping agents is based on a two-tier system. The Penal Code generally determines which substances are considered doping agents. In order to avoid interpretative difficulties, a lower-level provision comprehensively lists all substances that are considered doping agents from the standpoint of criminal legislation. A clear-cut definition of doping agents corresponds to a demand for the penal principle of legality in Section 8 of the Constitution. From the point of view of criminal legislation, the list of substances that are considered doping agents is less comprehensive than the list of prohibited substances and methods based on sports codes.

Finland participates actively in the development of doping control and international co-operation with legislators. The development of international co-operation between legislators with regard to the illegal trafficking of doping agents has not thus far been active. In addition to the development of international co-operation, Finland is currently examining possibilities to promote co-operation in the Baltic region as a part of already-established co-operation between police and customs authorities.

2 To this end, the Parties or, where appropriate, the relevant non-governmental organisations shall make it a criterion for the grant of public subsidies to sports organisations that they effectively apply anti-doping regulations.

Therefore, the evaluation team concluded that art. 4.2 is not only reflected in the legal provision as a potential threat, but has also been implemented in reality.

3 Furthermore, the Parties shall:

- a assist their sports organisations to finance doping controls and analyses, either by direct subsidies or grants, or by recognising the costs of such controls and analyses when determining the overall subsidies or grants to be awarded to those organisations;
 - b take appropriate steps to withhold the grant of subsidies from public funds, for training purposes, to individual sportsmen and sportswomen who have been suspended following a doping offence in sport, during the period of their suspension;
 - c encourage and, where appropriate, facilitate the carrying out by their sports organisations of the doping controls required by the competent international sports organisations whether during or outside competitions; and
 - d encourage and facilitate the negotiation by sports organisations of agreements permitting their members to be tested by duly authorised doping control teams in other countries.
- 4 Parties reserve the right to adopt anti-doping regulations and to organise doping controls on their own initiative and on their own responsibility, provided that they are compatible with the relevant principles of this Convention.

Recommendation

- [see recommendation 'a'] The evaluation team recommends giving a more secure legal and financial background to the anti-doping policy.

See answer in article 1.

5. Laboratories

1 Each Party undertakes:

- a either to establish or facilitate the establishment on its territory of one or more doping control laboratories suitable for consideration for accreditation under the criteria adopted by the relevant international sports organisations and approved by the monitoring group under the terms of Article 11.1.b; or
- b to assist its sports organisations to gain access to such a laboratory on the territory of another Party.

2 These laboratories shall be encouraged to:

- a take appropriate action to employ and retain, train and retrain qualified staff;
- b undertake appropriate programmes of research and development into doping agents and methods used, or thought to be used, for the purposes of doping in sport and into analytical biochemistry and pharmacology with a view to obtaining a better understanding of the effects of various substances upon the human body and their consequences for athletic performance;
- c publish and circulate promptly new data from their research.

The requirements of Article 5 of the Anti-Doping Convention of the Council of Europe are fulfilled. Further clarification on analyses not performed when a TUE has been given could take place within the relevant framework (World Anti-Doping programme).

6. Education

1 The Parties undertake to devise and implement, where appropriate in co-operation with the sports organisations concerned and the mass media, educational programmes and information campaigns emphasising the dangers to health inherent in doping and its harm to the ethical values of sport. Such programmes and campaigns shall be directed at both young people in schools and sports clubs and their parents and at adult sportsmen and sportswomen, sports officials, coaches and trainers. For those involved in medicine, such educational programmes will emphasise respect for medical ethics.

Recommendations

- [see recommendation 'c'] co-operate with health care institutions in order to reach a broader public.
- [h] The evaluation team recommends considering a more active involvement of all young people in education campaigns, possibly at school, taking into account the spreading of doping substances at gyms as reported by customs and police.

FINADA has created links with medical education and communications. In accordance with educational strategy, focus is on the education of recreational sports and healthcare experts, through which the various target groups in healthcare can best be reached. The Finnish Government supports the development of an extensive coach training programme, in which FINADA participates actively in order to ensure that anti-doping activities have an important role in the training programme. An information stand in the Stadium Marketplace of the 2005 IAAF World Championships in Helsinki was aimed specifically at the general public.

In its educational strategy, FINADA has asserted it is responsible for educating top and young athletes. Extensive information and training materials have been created for the Internet, and approximately 100 lecture events are organised annually for these target groups. In addition, athletes are regularly informed about current issues through sports federations.

According to FINADA educational strategy, the main responsibility for children and young people adopting the rules of fair play lies with sports organisations. A fair play programme has been created in collaboration with Finnish sports organisations, in which anti-doping activities play a part. The programme obligates all sports federations, and its implementation is assessed in conjunction with state funding for the sports federations. With regard to schools, the main emphasis has been on regular and active lecturing in sport schools and institutes.

A system has been drawn up in collaboration with the Finnish Sports for All Association according to which gyms can apply for an anti-doping certificate, and thus commit to anti-doping activities.

2 The Parties undertake to encourage and promote research, in co-operation with the regional, national and international sports organisations concerned, into ways and means of devising scientifically-based physiological and psychological training programmes that respect the integrity of the human person.

Recommendation

→ [i] In order to offer an opportunity for other partners to benefit from results of such projects, the evaluation team recommends making an index of State-supported projects available for national and, to a certain extent, international sports organisations.

6.2 FINADA has listed all its training materials in WADA's digital library. On the basis of its experience, FINADA has also actively participated through co-operation with WADA, the Council of Europe, and the Nordic countries in the development of educational programmes. The programmes have been presented in meetings, seminars and international competitions. The most extensive single project was the 2005 IAAF World Championships in Helsinki, where FINADA presented antidoping programmes to athletes in the athletes' residential village (in collaboration with WADA) and to the general public in the Stadium Marketplace. Furthermore, FINADA has an extensive outreach programme which is being implemented in domestic and international competitions organised in Finland.

7. Co-operation with sports organizations on measures to be taken by them

1 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.

Therefore, the evaluation team concluded that art. 7.1 is successfully implemented in Finland.

2 To this end, they shall encourage their sports organisations to clarify and harmonise their respective rights, obligations and duties, in particular by harmonising their:

- a anti-doping regulations on the basis of the regulations agreed by the relevant international sports organisations;
- b lists of banned pharmacological classes of doping agents and banned doping methods on the basis of the lists agreed by the relevant international sports organisations;
- c doping control procedures;
- d disciplinary procedures, applying agreed international principles of natural justice and ensuring respect for the fundamental rights of suspected sportsmen and sportswomen; these principles will include:
 - i the reporting and disciplinary bodies to be distinct from one another;
 - ii the right of such persons to a fair hearing and to be assisted or represented;
 - iii clear and enforceable provisions for appealing against any judgment made;
- 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;
- f procedures for the mutual recognition of suspensions and other penalties imposed by other sports organisations in the same or other countries.

Recommendations

- [j] The evaluation team recommends reforming the disciplinary procedure in order to guarantee a strict separation between the reporting and disciplinary bodies. The evaluation team would prefer that the Supervisory Group should only introduce the case to the sports organisation in question and stick to the role of reporting body. The disciplinary body should be in charge of establishing if there is an offence or not. Such an ordinance would allow the disciplinary body to fully play its role. It would contribute to giving responsibilities and a neutral position to the sports organisations. It would also strengthen the athlete's right as a different body from the one connected to the investigation body. Such a body could find out and take into account circumstances in favour of the athlete which have not been brought forward by the athlete him/herself. In such a case, the speed, rigour and compliance of the decisions with the applicable rules would be guaranteed by the right to appeal of the reporting body (Supervisory Group). Alternatively, if the commitment and the capacities of the federation could not be ensured for this purpose, the evaluation team would recommend considering the setting-up of a single independent disciplinary chamber for all sports. In the latter case, the evaluation team would suggest considering to embed such a disciplinary body in the Finnish Sport Federation, because it should be strictly independent from FINADA as long as FINADA is in charge of reporting.
- [k] The evaluation team recommends setting up rules in order to guarantee a higher independence of the Supervisory Group (nomination process and incompatibility with professional and elected positions in Sport Organisations). The evaluation team believes that this Group should not act as the TUE Committee.
- [l] The evaluation team recommends clarifying the inconsistency between the English and the Swedish text of the Anti-Doping Rules so as to make sure that the enacted solution guarantees the right of athletes to appeal.

FINADA has separated the procedure in anti-doping rule violations, which were previously the responsibility of the supervisory group, and matters pertaining to TUEs. From 1 June 2007, there are two separate supervisory groups, one of which deals with TUEs and the other with anti-doping rule violations, while also deciding whether an individual committed to the sports code has committed an anti-doping rule violation. The independence of the supervisory group dealing with anti-doping rule violations has been ensured by provisions on jurisdiction included in the code, as well as the requirements for the qualifications of supervisory group members and general provisions on disqualification in accordance with the Associations Act.

National proceedings in anti-doping rule violations and the position of the supervisory group and sports federations in the processing of anti-doping rule violations will be reviewed with regard to the challenges posed by the revised World Anti-Doping Code in early 2008. At the same time, the need to reform the appeal procedures and expand upon the provisions pertaining to them will be assessed within the framework of the Finnish Constitution and international obligations.

3 Moreover, the Parties shall encourage their sports organisations:

- a to introduce, on an effective scale, doping controls not only at, but also without advance warning at any appropriate time outside, competitions, such controls to be conducted in a way which is equitable for all sportsmen and sportswomen and which include testing and retesting of persons selected, where appropriate, on a random basis;
- b to negotiate agreements with sports organisations of other countries permitting a sportsman or sportswoman training in another country to be tested by a duly authorised doping control team of that country;
- c to clarify and harmonise regulations on eligibility to take part in sports events which will include anti-doping criteria;
- d to promote active participation by sportsmen and sportswomen themselves in the anti-doping work of international sports organisations;
- e to make full and efficient use of the facilities available for doping analysis at the laboratories provided for by Article 5, both during and outside sports competitions;
- f to study scientific training methods and to devise guidelines to protect sportsmen and sportswomen of all ages appropriate for each sport.

Recommendations

- [m] FINADA and the sports organisations should consider ways to actively involve athletes in designing and implementing anti-doping activities in balance with the “top-down” implementation process of the Convention and of the WADC with due consideration to the needs and opinions of the most important target group.

Athletes are educated annually at various events organised in collaboration with sports federations, the Finnish Olympic Committee, and sport schools. Lecturers are certified by FINADA and trained on a regular basis. In addition, training materials have been created for the Internet, which can be used in schools and sports clubs.

FINADA has its own national outreach programme that is being implemented in conjunction with competitions, where athletes can be reached to receive information on anti-doping activities. In addition, the amount of information provided to athletes in connection with doping tests has been increased. Within the ISO 9001:2000 quality system, a customer satisfaction survey was conducted to athletes in 2005.

8. International co-operation

1 The Parties shall co-operate closely on the matters covered by this Convention and shall encourage similar co-operation amongst their sports organisations.

2 The Parties undertake:

- a to encourage their sports organisations to operate in a manner that promotes application of the provisions of this Convention within all the appropriate international sports organisations to which they are affiliated, including the refusal to ratify claims for world or regional records unless accompanied by an authenticated negative doping control report;
- b to promote co-operation between the staffs of their doping control laboratories established or operating in pursuance of Article 5; and

c to initiate bilateral and multilateral co-operation between their appropriate agencies, authorities and organisations in order to achieve, at the international level as well, the purposes set out in Article 4.1.
3 The Parties with laboratories established or operating in pursuance of Article 5 undertake to assist other Parties to enable them to acquire the experience, skills and techniques necessary to establish their own laboratories.

The article 8 is fully implemented.

Recommendations

→ [n] Finland is advised to ratify the Additional protocol ETS188.

Having ratified the UNESCO Anti-Doping Convention in December 2006, the Ministry of Education has started preparations for ratification of the Additional protocol.