

The impact of the suspected doping involving IAAF athletes

Dr. Gregory Ioannidis, Senior Lecturer in Law at Sheffield Hallam University, Academic Associate at Kings Chambers, *World Sports Law Report* editorial board member and a sports lawyer with internationally recognised expertise in anti-doping litigation, discusses the allegations of suspected doping involving International Association of Athletics Federations ('IAAF') athletes and argues that the conclusion of this matter may determine not only the future of the IAAF and the International Olympic Committee ('IOC'), but that of the self-regulatory regime of world anti-doping.

Introduction

The world watched in awe when the latest revelations with regards to the allegations of a possible cover-up of suspected anti-doping tests broke on the morning of Sunday 2 August 2015.

The allegations concerned test data from IAAF leaked documents which indicated blood tests with 'abnormal values.' According to *The Sunday Times* and the German broadcaster ARD/WDR, many of the results of 12,000 blood tests from 5,000 track and field athletes raised suspicion of doping, as the values of such results were 'abnormal.'

The allegations are serious. More serious, however, is the outcome of such allegations: if proven, the anti-doping regime adopted by the IAAF can never be the same again and self-regulation will have received a major blow.

The allegations

The Sunday Times and ARD/WDR used two scientists, Robin Parisotto and Michael Ashenden, to review the data contained in the leaked

documents. The two scientists discovered the following:

- The data concerns anti-doping tests conducted from 2001 to 2012 during the Olympics and World Championships.

- The data concerns 12,000 blood tests from 5,000 track and field athletes.

- According to the scientists, one in seven of those athletes had recorded results that were "highly suggestive of doping or at the very least abnormal."

- 146 medals (55 gold) were won by athletes (in endurance events) who recorded suspicious results in the aforementioned tests.

- 10 medals in the London Olympics were won by athletes who recorded such abnormal tests.

Analysis

The above interpretation suggests that there may be malpractice by athletes and officials from the relevant governing bodies. Such malpractice, however, needs to be established with corroborated evidence. In the premises, it is submitted that the above information does not constitute proof of doping and it is highly unlikely it would stand before a disciplinary panel of an appropriately constituted tribunal.

Any such information would have to be analysed, evaluated and examined by expert witnesses and, from my experience in similar cases, the analysis of such data usually tends to be extremely subjective. Of course, for such data to be examined by a relevant panel of judges, it first has to be admissible. In the premises, it is submitted that before such information could be examined, preliminary submissions would have to be produced as to the admissibility of the evidence (if any) and its probity. In addition, similar submissions would also need to be made as to the rights of

the individuals affected, including, but not limited to, submissions on human rights, proportionality and the balance of interests between the parties and those of the sport.

The legality of the evidence, as well as any limitations on the procedural economy of any disciplinary panel, could both be avoided, if the relevant sporting bodies decide to deal with the matter internally. Initially, that should be the case. Given the seriousness of the allegations, however, and the rights of the individuals that could be affected, questions could be raised as to the competence, ability and willingness of the relevant sporting bodies to become the investigators, prosecutors, judges and executioners of a matter which very much impacts the future of their very own existence.

The timing of some of these tests in question indicates that, other than the IAAF, responsibilities may exist in relation to the IOC and the World Anti-Doping Agency ('WADA'). The information leaked suggests that several of these tests were conducted during the Olympics, in which case, it is the IOC which assumes responsibility not only for the organisation of the Games but also for the relevant anti-doping tests. Similarly, if any of the aforementioned tests were conducted with the assistance of WADA, the data should have also been analysed by the world's anti-doping body.

Although the seriousness of the allegations cannot be underestimated and dismissed at face value, reference must also be made to the consideration that just because some of these tests show 'abnormal' values, does not necessarily mean that the athletes in question were cheating.

I recall back in 2004-2006, when I acted as Counsel for the Greek sprinters Kenteris and Thanou



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before the Court of Arbitration for Sport ('CAS')², the IAAF and the IOC³ had attempted to introduce 'evidence' of 'abnormal values' in the sprinters' previous anti-doping tests, although the sprinters did not have charges of positive anti-doping tests against them. During the first hearing at CAS in February 2005, the IAAF (with the assistance of WADA) attempted to introduce as 'evidence', previous anti-doping tests of the two sprinters which showed 'abnormal values' in their red blood cells. The IAAF attempted to introduce an expert witness to give emphasis to the data of these tests. The expert witness, (who is still a well-known scientist that usually assists WADA), failed, under cross-examination, to establish with certainty, the consistency and reliability required for corroboration of such 'evidence'. Our expert witness had managed to dismiss, one by one, the insinuations produced by such 'evidence' and was able to show that such 'abnormal values' were not the result of systematic doping. Subsequently, the CAS Panel had to dismiss and reject such 'evidence' as inconclusive.

It follows, therefore, that any investigation into the allegations of suspected doping involving IAAF athletes and the subsequent evaluation and analysis, must be done with emphasis on certainty, clarity and consistency. Those prosecuting must ensure that the probity of the evidence is such that it does not allow for any doubts as to its force and reliability. Any panel of judges would need to be persuaded to the 'comfortable satisfaction of the tribunal'⁴ and certainly above the civil standard of proof. The handling of this matter, therefore, requires appropriate methods and strong evidence.

Finally, one important consideration works in tandem

The IAAF (and the IOC for that matter) has an enormous responsibility to ensure the application of transparency and fairness

with the current trends of the increased commercialisation and profit maximisation principles of modern sport. As I suggested in my Sky News interview, any subsequent investigation into the matter, will probably inflate further issues, such as the involvement of sponsors, the re-distribution of medals and prize money (if this can be recovered in civil actions), as well as the recognised statute of limitations, which currently stands at 10 years (in the regulatory framework of the relevant sporting bodies). Such actions are lengthy, time consuming and extremely uncertain. One thing is certain, however, and that is that the present situation constitutes a huge blow to international athletics.

Conclusion

Given the enormous publicity this matter has generated, it is submitted that the relevant bodies must now work swiftly to ensure that fairness and transparency are present and applied. If the allegations are proven, there are a number of innocent athletes who have missed out on potential earnings as well as the enormous glory and publicity that come with the occupancy of one of the three stands on the podium.

The IAAF, primarily, and the IOC, subsidiarily, have a moral and legal duty to ensure that no questions remain unanswered. I am aware of the meticulous zeal applied by the IAAF when it comes down to suspicion of anti-doping violations. In the last 12 years, I have been acting continuously for athletes facing charges of anti-doping violations. The IAAF in such cases left no stone unturned in an attempt to ensure the suspicions were confirmed and the allegations were proven. The same cannot be said for the IOC. It is time, therefore, that the IAAF ensures that the same zeal and

thoroughness is applied to the present allegations against it.

The IAAF (and the IOC for that matter) has an enormous responsibility to ensure the application of transparency and fairness. It must immediately investigate this matter (if it has not done already) and must take the appropriate action. If the allegations are proven, I would expect certain individuals to resign immediately and cooperate with the authorities.

This is a big moment for international athletics and a crucial time for the unreliable self-regulation of sport. In my personal and humble opinion, this is the time where the rulers need to rule upon themselves.

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1. According to the scientists Robin Parisotto and Michael Assenden.
2. IAAF v. SEGAS, Kenteris and Thanou CAS 2005/A/887 [unreported].
3. The prosecuting authorities in this matter.
4. CAS jurisprudence explains that such standard is below the criminal standard of proof, but above the civil standard of proof, CAS 2010/A/2229.