

Selected Case Law Rendered Under the World Anti-Doping Code

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Introduction

It is with great pleasure that we have accepted the invitation of Mr. Antonio Rigozzi to contribute to this edition of the *Jusletter*. We take advantage of the opportunity to present certain issues from the case law under the [World Anti-Doping Code](#) (the Code). We undertake this task with greater conviction knowing that it is often difficult for interested parties (federations, athletes, attorneys, etc.) to “get their hands on” the case law on anti-doping. We offer as evidence the numerous requests we receive for case law, and which can’t all be satisfied, as the majority of decisions are unfortunately unreported.

The Code was formally adopted by the [World Anti-Doping Agency \(WADA\)](#) on March 5, 2003, in Copenhagen at the World Conference on Doping in Sport. At this Conference, a [Resolution](#) recognizing the Code was unanimously accepted by the 1,200 or so participants. It was also agreed that the Sporting Movement would have until the first day of the Olympic Games in Athens in August 2004 to bring its rules and regulations into compliance with the provisions of the Code, and that governments would benefit from an extension until the Torino Games to do the same.

Since Copenhagen and the World Conference, the great majority of international federations (IF) have effectively transcribed the Code into their rules and regulations. This transposition has, generally speaking, been done relatively satisfactorily and the fundamental principles of the Code have been reproduced in the rules of most IFs. Since the second half of 2004, there has been an abundance of case law rendered both by the Court of Arbitration for Sport (CAS) and by independent courts of the IFs (nearly 230 decisions in 2005). We will not consider all this case law exhaustively here, but rather focus on a number of recurring themes, in particular:

- The athletes’ duty of diligence in their relationship with their medical personnel;
- The problem of specified substances and the necessity that athletes establish there was no intention to enhance their performance;
- The issue of proportionality.

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I) The Physician's Fault: A Truly Exceptional Circumstance?

Narrow application of article 10.5 of the Code

The presence of a prohibited substance or its metabolites or markers in an athlete's body is a violation of the anti-doping rules (*strict liability*) that is sanctionable. In order to eliminate or reduce the period of their suspension, athletes sometimes invoke a physician's error to attempt to convince the hearing body (panel) that they have committed no fault or no significant fault. The comment on article 10.5 of the Code indicates however that this provision only applies if the circumstances are truly exceptional, and certainly not in the large majority of cases.

This narrow application is easily justified since a different, more permissive, approach would open the door to abuse: the athletes in question could hide behind their physician's error to escape any sanction. Such a situation would in no way be conducive to an effective anti-doping effort and would prejudice the interests of numerous athletes. The necessity of following this narrow line has been confirmed by the case law in the following terms: "*At any rate other than in the most exceptional cases, for the purposes of determining whether a no-fault defence succeeds, the fault of an adviser such as a physician must be attributed to the player even if the player is not personally at fault: otherwise the fight against doping in sport would be seriously undermined.*"³ Similarly, in the [Torri Edwards award](#),⁴ the CAS stated: "*It would put an end to any meaningful fight against doping if an athlete was able to shift his/her responsibility with respect to substances which enter the body to someone else and avoid being sanctioned because the athlete himself/herself did not know of that substance.*" A reduced sanction would in fact only be justified in exceptional circumstances and if the athlete succeeds in showing that he or she took all the necessary precautions.

Conditions for the application of article 10.5 of the Code

a. Origin of the prohibited substance

To benefit from the elimination or reduction of the period of suspension, athletes must first establish how the substance entered their system. In order to be able to invoke the physician's error, athletes must prove that they did in fact receive medical treatment. They must therefore produce a medical file that justifies the drug prescription containing the detected substance, its dosage and duration. The validity of the diagnosis and prescription may be reviewed, as needed, by an expert who can also assess whether the prescribed treatment is adequate in light of the pathology. If this is not the case, and if a doping substance was prescribed

³ ITF Independent Anti-Doping Tribunal, *ITF v. Koubek* (18.01.2005).

⁴ [Torri Edwards, CAS OG 04/003](#), c. 5.12

with no therapeutic justification, then no exceptional circumstances can be invoked. In addition, one must ensure that the product was used in accordance with the prescription. If this is not the case, the athlete will not be able to hide behind the practitioner's error.

b. No fault or negligence, or no significant fault or negligence

Secondly, and as defined in the Code,⁵ it will only be possible to eliminate or reduce the period of suspension where the athlete satisfactorily establishes *that he or she did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had been administered the Prohibited Substance* by a physician. As for a reduction in the duration of the suspension, this will not be possible unless the athlete *establishes that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation.*⁶

We note, in accordance with the principle of strict liability, that athletes are responsible for what they ingest whether or not it is as part of a medical treatment: *"It is each athlete's personal duty to ensure that no prohibited substance enters his or her body."*⁷ Athletes must therefore convince the hearing body that they did everything in their power in the context of the medical treatment to avoid a positive test result. The standard is particularly high, as the case law confirms: *"The reasonableness of the athlete's conduct is no longer the applicable criterion. The criterion is now use of the "utmost caution", a very high standard which will only be met in the most exceptional cases."*⁸ Athletes must therefore show that they exercised a very high degree of diligence or "extreme prudence".

Factors in assessing the fault or negligence

This *"utmost caution"* which athletes must exercise is not time-limited. It must be shown at each of the stages of the treatment process which the athlete undergoes: choice of physician, information provided to the physician, general conduct of the athlete during and even before the treatment, etc. *"(...) The player could have reasonably known or suspected that he might be using a prohibited substance if he had made the disclosures to his doctor, made his own inquiries or used some caution to find out the nature of the substance for which he had been*

⁵ See the definitions of the expressions *"No Fault or Negligence"* and *"No Significant Fault or Negligence"* in the Code.

⁶ Note that personal circumstances such as the athlete's age, consequences of a possible suspension on his/her career, etc., are not taken into account under any circumstances. Only the circumstances relevant to assessing the degree of fault must be considered by the hearing body: *"(...) age does not fall within the category of "exceptional circumstances"* (CAS 2003/A/447, *Stylianou v. FINA*).

⁷ Article 2 of the Code.

⁸ ITF Independent Anti-Doping Tribunal, *ITF v. Koubek* (18.01.2005).

given a course of treatment."⁹ For example, as we will see below, it is not sufficient for athletes to place their trust in their team physician if the athletes have an opportunity to verify at a later time by themselves whether the prescribed drug does not contain prohibited substances.

While the CAS has noted the obvious, that it was negligent for an athlete to use a drug without consulting a physician,¹⁰ taking this precaution alone is insufficient to consider that the athlete has acted with diligence. Athletes are responsible for choosing their medical personnel, and this choice entails certain obligations. The degree of diligence that they must exercise in their relationship with the practitioner will depend firstly on the qualifications and skills of the chosen professional. Thus, the relationship that athletes build with their physicians, in particular the trust that they may legitimately place in them, will not be the same where the physician is a recognized specialist in sports medicine, where he or she holds the position of official physician of the athlete's national delegation at the Olympic Games, or where he or she is merely a family physician or physician consulted in the emergency department of a public hospital. The hearing body must therefore take this into account in assessing the athlete's responsibility. In particular, the information the athlete provides to the physician is essential. The athlete is required to inform the physician that he or she is an athlete subject to the applicable anti-doping regulation: *"The incomprehensible part of his conduct is not explaining that he was a professional athlete and that he was subject to an Anti-Doping Program."*¹¹

The duty of diligence was judged for example to have been sufficiently met and the athlete exempted from suspension in a case in which she limited herself to following the advice of the team physician at the Olympic Games: *"(...) she just followed the advice of her team doctor in order to combat her medical condition."*¹² As the athlete had not chosen her physician, who was "imposed", as it were, by her national Olympic committee, she had been unable to exercise diligence in choosing her practitioner, and her responsibility was therefore diminished. The competent authority moreover found that the athlete had followed her team physician's advice in good faith. On the other hand, the physician was suspended for four years.¹³ Finally, since the stimulant that was detected did not appear explicitly on the List of Prohibitions, but fell within the category of *"other substances with a similar chemical structure or similar*

⁹ [ATP Anti-Doping Tribunal, ATP v. Vlasov](#) (24.03.2005).

¹⁰ *"(...) the Panel is of the view that it is indeed negligent for an athlete willing to compete in a continental or world events to use a medical product without the advice of a doctor (...)"* ([CAS 2005/A/830, Squizzato v. FINA \(15.07.2005\)](#)).

¹¹ [ATP Anti-Doping Tribunal, ATP v. Vlasov](#) (24.03.2005).

¹² Anti-Doping Hearing of FISA, *FISA v. O.* (09.02.2005).

¹³ Note that an offending physician can only be sanctioned if the anti-doping rules apply to him or her. If so, the sanction must take into account the disastrous consequences of his error for the athlete (and/or his team), whose results will invariably be annulled, which is a sanction in itself, particularly in case of a victory at the Olympic Games or in a major competition.

*biological effect(s),*¹⁴ the athlete would have had no means of personally ensuring that the prescribed drug was in compliance, even by comparing the packaging label with the Prohibited List: *"She had no possibility of knowing that she was taking a prohibited substance and that she had no reason to trust her doctor."*

On the other hand, a hearing body described an athlete as negligent who consulted a physician in the emergency department of a public hospital without informing him of his status as a professional athlete:¹⁵ *"Yet he knew the doctor was not sports medicine doctor. He also knew that he had not told his doctor that he was a professional athlete who plays tennis under the ATP Anti-Doping Program."* The hearing body took into account, in particular, the fact that the athlete could easily have had another physician do a verification: *"He knew enough to contact a sports medicine doctor who was at the Olympic Games in Athens at the time. He was cognisant of the need to consult specially trained medical personnel (...) He had also the leaflet from the medicine he was using which contained a warning (...). The player did nothing in the three weeks period of the treatment to determine what it was he was taking."*

This duty of verification by the athlete, which is a direct consequence of this heightened duty of diligence, was confirmed by the CAS in the [Squizzato Affair](#), even though, in this specific case, the error was not due to a physician but to the athlete's mother: *"(...) she failed to abide her duty of diligence. With a simple check she could have realised that the cream was containing a doping agent, as clostebol is indicated on the product itself both on the packaging and on the notice of use."*¹⁶

In determining the athlete's degree of diligence, it is also relevant to consider any questions he or she may have asked the physician: *"The player asked some question of whether the injection could cause any difficulty with doping;"*¹⁷ or gauge the general interest which the athlete showed for the doping problem, his or her general conduct, and whether or not he or she consulted other information sources in case of doubt: *"He could have cross-checked with other sources of medical advice (...). He could have checked with the (...) Anti-Doping Committee. He could have contacted the sources named on the wallet card and he could have telephoned the hotline."*¹⁸ Finally, it is up to the athlete to check the information appearing on the product¹⁹ and compare this information with the list of prohibited substances.

¹⁴ See Prohibited List.

¹⁵ [ATP Tour Anti-Doping Tribunal, ATP v. Vlasov](#) (24.03.2005)

¹⁶ [CAS 2005/A/830, Squizzato v. FINA \(15.07.2005\)](#).

¹⁷ ITF Independent Anti-Doping Tribunal, *ITF v. Koubek* (18.01.2005).

¹⁸ ITF Independent Anti-Doping Tribunal, *ITF v. Koubek* (18.01.2005).

¹⁹ [Torri Edwards, CAS OG 04/003](#), c 5.9, [Lund, CAS OG 06/001](#), c.3.5 and 4.11

Conclusion

We have observed that the degree of diligence shown by the athlete must be assessed in light of all the circumstances of the particular case to determine the athlete's degree of fault or negligence at all stages having lead to a positive test result. Henceforth, athletes will know that a violation of the anti-doping rules can be committed involuntarily, without any intention to cheat.

The Code places a personal responsibility on athletes to ensure that any medical treatment received in no way violates the applicable anti-doping rules. Even if athletes are not directly responsible for the physician's fault, they are bound to choose the physician with care and inform themselves with respect to his actions and omissions, as well as those of his entourage.

II) Specified Substances: Applicability

General

The specified substances are prohibited substances. However, the Code provides for less severe sanctions in article 10.3 for athletes who test positive to these so-called specified substances. The Prohibited List expressly identifies these specified substances due to the fact that they are particularly susceptible to result in an unintentional violation of the anti-doping regulations because of their general availability in medicinal products, or are less likely to be successfully abused as doping agents.

Where athletes wish to benefit from this more lenient scale of sanctions, they must however satisfy two conditions. The first is of course that the substance detected in their body must in fact be included in the category of specific substances; the second is that the athletes be able to establish, to the satisfaction of the hearing body, that they did not use this substance with the intention of improving their sport performance. This second condition conceals a third: the athlete's obligation to establish how the prohibited substance got into his or her system. Even if the Code does not expressly refer to this condition, it seems obvious that to be able to prove that the substance was not consumed for the purpose of improving performance, it is necessary to explain under what circumstances it was taken.

Notion of "intention to enhance sport performance"

This notion has been considered in a large number of cases. For example, the Swiss Olympic Disciplinary Chamber for doping infractions did not hesitate to impose a two-year suspension on an athlete who tested positive to cannabis. Since the athlete in question never responded to the numerous letters from this body and never attended the hearing, the Chamber properly found that

[translation] *"it must be concluded that the accused has not shown that the use of this specified substance was not intended to enhance his performance."*²⁰ Article 10.3 of the Code could not therefore be applied. The burden of proof is on the athlete regardless of the specified substance concerned.

In another case judged by the Swiss Olympic Chamber,²¹ an athlete tested positive to salbutamol. As a beta-2 agonist, this substance is considered to be specified if it is taken by inhalation. The athlete explained that he suffered from asthma and submitted the appropriate medical file justifying the use of this substance, as well as a medical prescription. The hearing body firstly found that the athlete was in fact guilty of a violation of the anti-doping rules since no application for a therapeutic use exemption was submitted in advance. As this was a specified substance, the hearing body then considered the issue of the intention to enhance sport performance and found that [translation] *"while it is not disputed that the accused suffers from asthma, it should be noted that his physician only prescribed one to six inhalations of salbutamol per day for him (...). However, it has been scientifically proven that the concentration of salbutamol found (...) corresponds to a substantially higher dose."* The hearing body therefore concluded that the athlete had not adduced the necessary evidence, and, therefore, had not established that the use of salbutamol had not been intended to enhance his performance. Article 10.3 was therefore held not to apply, and the athlete was given a two-year suspension.

Thus, we observe that the notion of intention is crucial. While this issue may be easy to resolve in some cases, it is much more complex in others. The independent Anti-Doping Tribunal of the ITF held in particular that the main issue centred on the player's motivation at the time he decided to take the prohibited substance: *"It does not matter whether the prohibited substance actually enhanced the player's performance or not, or whether it was by nature apt or likely to do so. The issue relate to the player's state of mind when he ingested the prohibited substance."*²²

Another particularly interesting interpretation of the notion of the player's motivation was made by the FIBA Appeals Commission:²³ *"(...) the player must convince the sanctioning authority – to a certain degree – of the presence of the inner fact, namely that he did not intend to enhance his performance (...). Although it must be admitted that the Respondent is right in that inner facts are not events which can be perceived externally and cannot therefore be proven directly, the legal system considers inner facts as legally significant in many areas (...). Such facts can, in state proceedings in any event, be established by establishing circumstances which according to experience allow one to conclude the presence of facts to be established (...). Of course, admitting circumstantial evidence for (indirectly) proving inner facts also involves imponderables. However*

²⁰ Disciplinary Chamber for doping infractions, *FSB v. C.* (24.01.2005).

²¹ Disciplinary Chamber for doping infractions, *FSR v. M.* (24.02.2005).

²² ITF Independent Anti-Doping Tribunal, *ITF v. Koubek* (18.01.2005).

²³ FIBA Appeals Commission, *WADA v. FIBA & M.* (22.06.2005).

– state law – takes these imponderables sufficiently into account by means of the rule of freedom in the assessment of circumstantial evidence and by means of the standard of proof and the burden of proof if the fact cannot be proven. In the Panel's opinion, these principles developed for state proceedings also apply to the present internal proceedings of an association (...)" .

Finally, a factor to be taken into account in assessing this intention (or not) of the athlete to enhance his or her performance is the nature of the product and its characteristics: "(...) A player is obviously more likely to intend to enhance his sport performance by taking a substance capable of doing so than one not capable of doing so."²⁴

The special case of cannabis

We take advantage of this chapter on specified substances to consider briefly the problem of cannabis. While, in numerous decisions, athletes "admit" having consumed this substance a few days before the competition "during a party between friends," they sometimes try to justify it by alleging that they were passively contaminated during an evening in which people were smoking "joints".

This explanation is scientifically irrelevant. This is because the threshold ratio set by WADA in the laboratories for this substance is 15 ng/ml, and current scientific knowledge rules out the possibility that passive exposure to cannabis smoke could lead to a higher result than this threshold except in extreme circumstances, such as exposure to the smoke of several smokers consuming cannabis continuously for several hours in an unventilated space equal to the size of the inside of a passenger car. At this level of exposure, any person would, moreover, experience the effects of this psychotropic substance, as well as the consequences of exposure to particularly dense smoke, i.e. irritation of the nasal membrane and eyes. In other words, any case of cannabis reported by a WADA-accredited laboratory excludes *per se* the possibility of passive contamination.

III) The Proportionality Principle

The proportionality of the sanctions imposed for a violation of the anti-doping rules is certainly the subject which has gotten the most press since the Code was put in place. Proportionality has been recognized for a long time by the case law of the CAS and the Swiss Federal Tribunal as a general principle of law applicable to everyone, and particularly to disciplinary sanctions.²⁵

²⁴ ITF Independent Anti-Doping Tribunal, *ITF v. Koubek* (18.01.2005).

²⁵ Antonio Rigozzi, *L'Arbitrage international en matière de sport* (International Arbitration in Sports), Helbing & Lichtenhahn, Bâle, 2005, n.1278

The proportionality principle was certainly not ignored by the drafters of the Code. This principle was incorporated, on an intentionally restrictive basis, into the mechanism of article 10.5 of the Code. Pursuant to this article, a sanction, set in principle at two years, can be reduced at most to one year in a case where there was no significant fault or negligence, and to no sanction in a case of no fault or negligence. In particular, article 10.5 limits the circumstances that may be taken into account to "*circumstances [that] are truly exceptional and not in the vast majority of cases;*"²⁶ i.e. to circumstances dealing with the degree of the athlete's fault as opposed to the athlete's personal circumstances such as age or professional situation.²⁷

Concerned with ensuring that the fight against doping is effective and egalitarian in all sports, and therefore with resolving this issue of proportionality, WADA requested the former President of the Swiss Federal Tribunal, Justice Claude Rouiller, for an opinion on the compatibility of the sanctions provided for in the Code with Swiss law and with the proportionality principle. This legal opinion is published *in extenso* [in this special "doping" edition of JusLetter](#), and it is therefore not necessary to summarize it here.

It is important to note however for the reader who is pressed for time that this legal opinion confirms in many respects what the case law has held to date, and, in particular, the fact that associations have the power to adopt rules of disciplinary law and that an athlete who **adheres** to a federation that is a signatory to the Code [translation] "*agrees, in a deliberate manner, that he or she may be the subject of an abrupt sanction*".

Recent case law through several decisions of the CAS has recognized that article 10.5 of the Code (transposed into the rules of the sporting organizations concerned) effectively represents the implementation of the proportionality principle in regard to doping.²⁸ The case law has also properly admitted that the proportionality principle has been applied more restrictively since the new rules of the Code were implemented, since this restriction is fully justified by the very purpose of the Code, whose aim is the harmonization of the fight against doping and equality of treatment among the different athletes and sports. In this regard, the CAS noted in particular in the [Knauss award](#) that:²⁹ "*[...] the purpose of introducing the WADC was to harmonize at the time a plethora of doping sanctions to the greatest extent possible and to un-couple them from both the athlete's personal circumstances (amateur or professional, old or young athlete, etc...) as well as from circumstances relating to the specific type of sport (individual sport or team sport, etc.)*." The CAS also noted in the [Hondo award](#)³⁰ that: [translation] "*A more flexible interpretation of the said system that would,*

²⁶ Code commentary, article 10.5.

²⁷ CAS 2003/A/447, *Stylianou v. FINA*

²⁸ [CAS 2005/A/847, Knauss v. FIS \(20.07.2005\)](#), in particular c. 7.2 ss.; [CAS 2005/A/922,923,926, Hondo v. UCI, Swiss Olympic and WADA \(10.01.2006\)](#), in particular c. 135.

²⁹ [CAS 2005/A/847, Knauss v. FIS \(20.07.2005\)](#), c. 7.5.2

³⁰ [CAS 2005/A/922,923,926, Hondo v. UCI, Swiss Olympic and WADA \(10.01.2006\)](#).

for example, allow for the mitigation of the sanction even in the absence of the specific circumstances provided for in articles 264 and 265 RAD [article 10.5 of the Code (was not considered in the decision)] could jeopardize the uniform application and effectiveness thereof."

The issue of the degree of fault or negligence is therefore doubly important since, as the panel noted in the [Knauss award](#),³¹ this will determine whether the sanction must be reduced or not and, if so, the degree of the reduction. The explanatory notes of the Code can assist the panel in assessing the spirit in which the Code was written. It is however the role of the case law to define the bounds thereof more precisely. In the *Knauss award*, the panel noted in particular that *"the higher the threshold is set for applying the rules, the less opportunity remains for differentiating meaningfully and fairly within the range of sanction. But the low end of the threshold for the element "no significant fault" must also not be set too low; for otherwise the period of ineligibility of two years laid down in article 10.2 FIS rules would form the exception rather than the general rules."*³²

There is no doubt, as we noted in considering the theme of error by the physician, that exceptional circumstances, in the spirit of the Code, can only be admitted restrictively in order to ensure true equality of treatment among athletes. The case law of the CAS seems to have admitted that this approach³³ is not contrary to the proportionality principle, based in particular on a case rendered by the Swiss Federal Tribunal on March 31, 1999,³⁴ which found that a two-year sanction for doping does not constitute injury to personality that is out of all proportion to the conduct it sanctions.

In the [Squizzato award](#)³⁵, the panel, in a kind of *obiter dictum*, admittedly raised the hypothetical possibility that a panel might, in light of the circumstances, go below this minimum of one year (the minimum in the case of a non-specified substance where the athlete is unable to show that he committed no fault or negligence). One cannot help but note, however, in this case, and despite these statements, that the panel was of the view, even in a case such as *Squizzato* where the athlete had admittedly committed a fault, but where the fault did not appear to be significant in view of the circumstances, that such a measure was not required on the basis of the proportionality principle. The panel therefore imposed a sanction of one year.

To the question as to whether a panel can go below the limits set by the Code, which the *obiter dictum* in the [Squizzato award](#) seems to answer in the

³¹ [CAS 2005/A/847, Knauss v. FIS \(20.07.2005\)](#).

³² [CAS 2005/A/847, Knauss v. FIS \(20.07.2005\)](#), c.7.3.5.

³³ See [CAS OG 04/003, Edwards v. IOC \(17.08.2004\)](#), [CAS 2004/A/690 Hipperdinger v. ITF \(24.03.2005\)](#), [CAS 2005/A/847, Knauss v. FIS \(20.07.2005\)](#), [CAS 2005/A/922, 923, 926, Hondo v. UCI, Swiss Olympic and WADA \(10.01.2006\)](#), [CAS 2005/A/830, Squizzato v. FINA \(15.07.2005\)](#).

³⁴ Excerpt published in the 1998-2000 Digest of CAS Awards, Kluwer, p.767 ss.

³⁵ [CAS 2005/A/830, Squizzato v. FINA \(15.07.2005\)](#), c.10.26.

affirmative, Justice Rouiller gives the following opinion:³⁶ [translation] *“Would it not be possible, in certain exceptional cases, to set the penalty at something less than the absolute one-year limit in order to take the personal situation of the offender into account, just as a criminal judge should do? This way of looking at the matter is seductive. But it fails to take account of a number of factors. The Code’s aim is to completely eradicate doping, which is acknowledged as potentially fatal for the future of large sports competitions. Even if deterrence does not justify every means, the punitive system, which also takes on a general preventative role, must be in keeping with what is at stake. If the athletes themselves think, rightly, that this system is appropriate and necessary, that hardly leaves any room for criticizing it from the angle of proportionality as such, as ultimately embodied in article 27 SCC.”* We note here that quite a number of athletes, some even in the form of an open letter, have expressed their support for a regime of sanctions that is even stricter than that implemented by the Code. It therefore seems that the answer to this question is clearly no. The scale of sanctions has been accepted by all and applies to all. Therefore, it must be complied with in the interests of the athletes themselves and to ensure an effective fight against and deterrence of doping.

³⁶ Legal opinion of October 25, 2005, given by Claude Rouiller, p. 36-37.