

INTERNATIONAL CONTROL IN FIGHT AGAINST DOPING IN SPORTS

Barabanova Elena A.¹

Klimovskaya Lenara R²

Valeev Revol M³

Abstract: This article explores the mechanisms of international control in the field of fight against doping. International legal control is one of the means of ensuring the fulfillment by the states of their obligations and is important in achieving the effectiveness of the implementation of legal norms. The paper analyzes the relevant provisions of two international legal acts that constitute the legal basis in anti-doping activities: The Anti-Doping Convention of the Council of Europe and the International Convention against Doping in Sport. In accordance with the provisions of international legal acts, special monitoring bodies are established to monitor the implementation by the states of their obligations through online questionnaires. The focus is on the

activities of these specialized agencies. At the same time, the nature of international legal control is not limited only to checking the behavior of states, but also is expressed in the prevention of violations of the international law. In this regard, it is needed an element that establishes the responsibility of states for failure to fulfill their international obligations. Such a mechanism would be the document Operational Guidelines and System of Consequences for Non-Compliance with the Regulations Adopted as Annex to the International Convention against Doping in Sport.

Keywords: doping, sport, international law, international control, World Anti-Doping Agency, Council of Europe, UNESCO.

¹ Kazan Federal University.

² Kazan Federal University.

³ Kazan Federal University.

Introduction

The active development of sports and, as a consequence, the increased importance of sports victories became a catalyst for the emergence of some problems in this area. Since the early 1960s, the use of doping substances by athletes has attracted the attention of the international community. Doping not only undermines the values of sports, but also causes irreparable harm to health. As a result, the fight against doping requires equal participation of both the sports movement and the states. In addition to the Olympic Movement, anti-doping activities are carried out by the Council of Europe, UNESCO, WHO, Interpol and others. Within the framework of the Council of Europe and UNESCO, the international legal acts (the Anti-Doping Convention and the International Convention against Doping in Sport) have been developed and adopted, which constitute the legal basis in this area.

The study examined the main provisions of these Conventions related to the obligations of member states, and the authors pay special attention to the international control mechanism in the

fight against doping, expressed in the verification of compliance by the states with their contractual obligations by special bodies.

Among Russian international scientists, the international control issues were addressed in the works of R.M. Valeev, I.I. Lukashuk, A.N. Talalaev, B.R. Tuzmukhamedov, O.N. Khlestov et al. [1-5]. However, there is no study of international control in the fight against doping in the domestic scientific literature at present. The results of this work can be used to conduct a subsequent analysis of control mechanisms in the international sports law.

Methods

In carrying out this study, we used general scientific and private scientific methods, such as formal legal, problem theoretical, logical, etc.

Results and discussion

The development of international legal regulation of the fight against doping in sports has led to the conclusion of two multilateral treaties

and the adoption of numerous acts by the intergovernmental organizations in the form of resolutions, recommendations and action programs. The Council of Europe was the first intergovernmental organization to create a special committee to combat doping in 1963, as well as to adopt a resolution on doping in 1967⁴. The resolution emphasized that doping jeopardizes the health and dignity of those who use it, as well as offends the spirit of fair play, which is important for all sports. At the same time, it was recommended to the member states of the Council of Europe to condemn the use of doping and apply measures, if sports federations do not act effectively, as well as do not apply sanctions to violators for three years.

Over the following years, the Council of Europe pursued an active anti-doping policy: adopted recommendations, interacted with the International Olympic Committee, developed and approved the European Anti-Doping Charter in 1984⁵. The

Charter was not a legally binding document, but served as a reference text for the intergovernmental organizations, including the Commission of the European Communities, the World Health Organization and UNESCO⁶. The measures taken gave rise to the development and adoption of the Anti-Doping Convention (hereinafter - the European Convention) on November 16, 1989.⁷ Despite the fact that the Convention is regional in nature, it is open for signature by the non-member states of the Council of Europe. Currently, 52 states are parties to the Convention, including Australia, Belarus, Canada and Tunisia. It should be noted that the adoption of this Convention was a major breakthrough and showed the willingness of the states to commit themselves to the fight against doping in sports.

The European Convention consists of the Preamble and 19 articles that define doping and establish

⁴ Resolution No. (67) 12 on the "Doping of Athletes", 29 June 1967.

⁵ Recommendation No. R (84) 19 of the Committee of Ministers to member states on the "European Anti-Doping Charter for Sport".

⁶ Explanatory Report to the Anti-Doping Convention // European Treaty Series – No. 135. Strasbourg, 16. XI. 1989.

⁷ Anti-Doping Convention ETS N 135 (Strasbourg, November 16, 1989) // GARANT System.

obligations for the states. These obligations can be divided into 2 groups:

1) directly taken measures to coordinate anti-doping policy (including legislative, informative, educational and administrative measures to limit the availability of drugs prohibited in sports and their use) and international cooperation;

2) measures aimed at encouraging national sports organizations to take actions to fight against doping in sports, in particular, to develop anti-doping rules, lists of substances and methods prohibited in sports; to carry out disciplinary procedures and to apply sanctions against managers, doctors, trainers and other accomplices of violations of anti-doping rules by athletes; to carry out doping control not only during competition, but also without warning at any convenient time, etc.

To ensure proper implementation by the parties to the Convention of their obligations, it was created an Action Review Group (hereinafter - the Monitoring Group, the Group), consisting of representatives of the member states. The group is

entrusted with monitoring functions, which include monitoring the provisions of the Convention, preparing reports on the implementation of the Convention, and organizing advisory and evaluation visits to the states. It is worth noting that consultation visits are organized to assist the states in implementing the policies and programs necessary to comply with the provisions of the Convention. There are also study visits organized, as a result of which the evaluation reports are published. At the same time, the Group makes recommendations on measures to implement the Convention and consults with the relevant sports organizations. In turn, each member state submits an annual report to the Monitoring Group through an online questionnaire on the steps it is taking to implement the provisions of the Convention.

The Monitoring Group is convened by the Secretary General of the Council of Europe and meets twice a year. To address issues related to its various fields of competence, the Group has specialized advisory groups for

compliance with the Convention, education, legal issues and science⁸.

In 1999, with the active participation of the Council of Europe, the World Anti-Doping Agency (WADA) was created. In this regard, at the 9th Conference of European Ministers Responsible for Sport, held in May 2000, the Committee of Ministers was recommended to ensure the participation of the Council of Europe and the Monitoring Group in the WADA's work and to support the Group for effective cooperation with the Agency⁹. As a result of changes that arose, it was necessary to amend the Convention aimed at creating a mandatory mechanism for doping control and mutual recognition of doping control in other countries. As a result, the Additional Protocol to the Convention was developed and adopted on September 12, 2002¹⁰.

According to the provisions of the Protocol, the Parties mutually recognize the competence of sports or national anti-doping organizations in matters of doping control on their territory of athletes arriving from other member states to the Convention. At the same time, the participants shall recognize the competence of WADA, as well as other doping control organizations operating under its leadership, to carry out inspections of their athletes outside of competitions on their territory. The Additional Protocol entered into force on April 1, 2004, but did not receive much attention from the states¹¹. The reason was the World Anti-Doping Code (hereinafter - the WADA Code), which entered into force the same year and regulates the doping control procedure¹².

During the 14th European Conference of Ministers Responsible for

⁸ The Monitoring Group of the Anti-Doping Convention URL: http://www.coe.int/t/dg4/sport/Doping/tdomg_en.asp#TopOfPage (date of application: 03.06.2019).

⁹ Resolution No. 1/2000 on the fight against doping URL: http://www.coe.int/t/dg4/sport/Resources/texts/spres00.1_en.asp#TopOfPage (date of application: 02.06.2019).

¹⁰ Additional Protocol ETS N 188 (Warsaw, September 12, 2002) // GARANT System.

¹¹ The additional protocol was ratified by 26 states (including Tunisia), and signed by 10 states (including Belarus and Canada). The Russian Federation has not signed the Additional Protocol.

¹² World Anti-Doping Code 2003 URL: <https://wada-main-prod.s3.amazonaws.com/resources/files/wa>

Sport, held in November 2016, participants asked the Monitoring Group to study the feasibility of revising the Convention and making appropriate recommendations. Due to the fact that the Convention was adopted in 1989, before the creation of WADA, some of its provisions are outdated, in our opinion. For example, the Convention defines doping as the introduction to athletes or use of doping drugs and doping methods by them, while doping is understood much more broadly and includes refusal to take a test, falsification, distribution, prohibited cooperation, etc. At the time preparing this article, the question of amending the Convention remains open and is subject to discussion by the member states.

A review of the activities of the Monitoring Group allows making a conclusion that its control functions are not limited only to monitoring the provisions of the Convention and verifying compliance of the states' actions concerning fulfillment of the obligations assumed, but are also

expressed in the relevant requirements for eliminating violations, as well as providing advisory services and recommendations.

Another multilateral treaty forms the international legal framework for the fight against doping in sport. During the 33rd session of the General Conference of UNESCO on October 19, 2005, the International Convention against Doping in Sport (hereinafter - the UNESCO Convention) was adopted.¹³ This Convention entered into force on February 1, 2007, and the number of states that acceded to it have reached 188 at the time of writing this study. Such a number of member states to the UNESCO Convention shows the enormous importance of the problem, and the desire of these states to take obligations to eliminate it. The UNESCO Convention provides for the implementation by the states of anti-doping measures at the national level, international cooperation, activities in the field of education, training and research. However, the Convention

[da_code_2003_en.pdf](#) (date of application: 03.06.2019).

¹³ International Convention against Doping in Sport (Paris, October 19, 2005) // Official

Gazette of the Russian Federation. - 2007. - No. 24. - Art. 2835.

supports the implementation of the Code and the international standards developed by WADA¹⁴.

The states are taking measures to limit the availability of prohibited substances and methods, in particular to combat the proliferation of prohibited substances and methods, and to control their production, movement, import, distribution and sale. The states shall also encourage manufacturers of food additives to label products appropriately, including information on the chemical composition of their products and quality assurance. In addition, the states shall financially support testing or doping control programs, and provide assistance to WADA and other anti-doping organizations. Doping control procedures, sports sanctions applied by any anti-doping organization in accordance with the WADA Code are recognized on a reciprocal basis. Certain provisions of the Convention enshrine the states' obligation to develop educational programs and facilitate anti-doping research.

It should also be noted another objective of the UNESCO Convention, namely the support of the WADA Code. This is expressed in the fact that the states shall to take appropriate measures at the national and international levels that are consistent with the principles of the WADA Code. These principles form the basis for government action in the area of regulatory, policy or administrative practice.

The supreme body of the UNESCO Convention is the Conference of the Parties, whose sessions are held every 2 years. The Conference of the Parties reviews the reports of the member states on measures they have taken to fulfill their obligations, as well as the results of monitoring compliance with the Convention. At the same time, it determines the directions and mechanisms of cooperation between the member states and WADA, requests a report from WADA to study how the provisions of the Code are implemented. To monitor national reports, a special Anti-Doping Logic system (hereinafter -

¹⁴ Paul Marriott-Lloyd International Convention against Doping in Sport URL:

<http://unesdoc.unesco.org/images/0018/001884/188405r.pdf> (access date: 02.06.2019).

the ADLogic) and its online questionnaire are used.

The state has its own benchmark for each issue. If the state has not reached the minimum value of the benchmark, then it is considered that it does not comply or does not fully comply with the relevant provision of the UNESCO Convention. As a result of monitoring, it turned out that there is a lack of clear understanding among the states of how to integrate the WADA Code with the Convention, who shall be involved in the fight against doping and how to use the skills of various stakeholders to implement the provisions of the Convention; and there are also no opportunities within the government.¹⁵ In 2017, at the sixth session of the Conference of the Parties, it was decided to develop operational guidelines for the Convention and a system of sanctions for non-compliance with the provisions of the Convention.¹⁶ In this regard, a working group was established to

develop the draft Operational Guidelines and the System of Consequences for Non-Compliance with the Regulations Adopted as Annex to the International Convention against Doping in Sport¹⁷. This project clarifies the provisions of the UNESCO Convention, explains the role of the main participants, describes the monitoring process of the Convention, using the ADLogic system, the consequences for the states failed to reach the implementation level of the essential articles of the Convention. The draft Operational Guidelines and the System of Consequences for Non-Compliance with the Provisions of the International Convention against Doping in Sport are to be finalized and will be submitted for approval to the Seventh Session of the Conference of the Parties in 2019.

Summary

The international legal control in the fight against doping in sport is carried out

¹⁵ Evaluation of UNESCO's International Convention against Doping in Sport / IOS/EVS/PI/161.REV.2. 2017, p. 21.

¹⁶ Resolution 6CP/5 URL: https://unesdoc.unesco.org/ark:/48223/pf0000259298_rus (application date 03.06.2019).

¹⁷ First meeting of the Working Group for the development of Operational Guidelines and a framework of consequences for non-compliance with the International Convention against Doping in Sport URL: <http://unesdoc.unesco.org/images/0026/002627/262712E.pdf> (date of application 03.06.2019).

by special bodies created by the states to verify compliance with obligations under the Conventions. Thus, the Anti-Doping Convention of the Council of Europe provides for the establishment of an Action Review Group, and the International Convention against Doping in Sport regularly convenes representatives of the member states in the form of the Conference of the Parties. These two monitoring bodies are composed of representatives of the states and are convened by the Secretary General of the intergovernmental organization (Council of Europe, UNESCO). Each member state submits a report to the supervisory authority through a dedicated online questionnaire on the measures it is taking to implement the provisions of the Conventions. In addition, the Conference of the Parties develops the system of consequences for the states failed to reach the implementation level of the substantive articles of the International Convention against Doping in Sport.

Conclusions

As practice shows, the problem of doping in sport is so acute that its solution requires joint efforts of the states and the development of a unified

policy. In this regard, the international legal agreements on the fight against doping have been developed and adopted within the framework of the intergovernmental organizations; for example, the 1989 Anti-Doping Convention adopted by the Council of Europe, and the 2005 International Convention against Doping in Sports (UNESCO). However, the prohibition of doping in sports by the international legal acts as such is only one element of the control mechanism in this area. That is why it was especially important to create and implement such control elements as WADA, the WADA Code in the future, as well as the special ADLogic system for monitoring the reports of the member states in the field of compliance with the obligations undertaken.

In our opinion, the control mechanism in this area shall consist not only of the regulatory legal acts and regulatory bodies. It is needed an element that establishes the responsibility of states for failure to fulfill their international obligations. This will be (after approval and adoption) the Draft Operational

Guidelines and the System of Consequences for Non-Compliance with the Provisions of the International Convention against Doping in Sport. It can be assumed that the international mechanism for doping control in sports will be the most effective in this form.

Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

Bibliography

Valeev R.M. Control in modern international law. – Kazan, 2003.

Lukashuk I.I. International law: Common Part. – M. Walters Clover, 2008.

Talalaev A.N. The law of international treaties: operation and application of treaties. – M., 1985.

Tuzmukhamedov B.R. Issues of international control // Klimenko B.M. (Ed.), Comprehensive International

Security: International Legal Principles and Norms. Directory. – M., p. 108-113, 1990.

Khlestov O.N. Forecasts of the development of international law in XXI century // Moscow Journal of International Law. – No. 2. – p. 24-38, 2001.

Kotlyarov I.I. Legal issues of monitoring compliance with the international obligations // International Cooperation and International Law. – M., 1977.

Blokker N., Muller S. (ed.) Towards More Effective Supervision by International Organizations. Essays in Honour of Henry G. Schermers. – Dordrecht, 1994.

Butler W.E. (ed.), Control over Compliance with International Law. – Dordrecht, 1991.

Cox, Thomas Wyatt. The International War Against Doping: Limiting the Collateral Damage from Strict Liability. Vanderbilt Journal of Transnational Law, Vol.47, No.1, January. 2014.

Harris D.I. Cases and materials on International Law. London, 1998.

Houlihan B, Garcia B. The use of legislation in relation to controlling the production, movement, importation, distribution and supply of performance-enhancing drugs in sport (PEDS). Loughborough, Institute of Sport and Leisure Policy. - 2012.

Houlihan, B. Achieving compliance in international anti-doping policy: An analysis of the 2009 World Anti-Doping Code, Sport Management Review. 2013.

Myjer E.P.J. Supervisory Mechanisms and Dispute Settlement// Dahlitz J. (ed.), Avoidance and Settlement of Arms Control Disputes. – UN. – New York and Geneva, pp. 149-169. 1994