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# A Literature Review on the Uneven Legal Impact of the World Anti-Doping Regime on Athletes in Developed and Developing Countries

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**Abstract:** The regulation of international sport and the role of the World Anti-Doping Agency (WADA) are often regarded as an excellent example of how successful harmonisation has been achieved within international sports law. The creation of a single set of rules and sanctions that apply to all countries in the world is intended to create fairness, integrity, and equality in competition regardless of jurisdiction. However, the growing body of scholarly work related to the intersection of law, governance and regulation raises questions as to whether the existence of formal uniformity of anti-doping regulations actually results in the same material regulatory outcomes in the various socio-legal contexts of the numerous countries that have adopted the World Anti-Doping Code (the code). This literature review attempts to use the existing literature regarding sports law, governance, Compliance Theory and Regulatory Legitimacy in order to demonstrate how the socio-political and economic disparities between the developed and developing countries affect the functioning of the anti-doping regulatory system and that the factors of Uneven Implementation, Resource Asymmetry and Limited Contextual Accommodation impact on the effectiveness of the anti-doping regulatory system as well as the rights of athletes, Procedural Fairness and the perceived legitimacy of Global Sports Regulation. This literature review also discusses how placing anti-doping law within the broader context of Equality and Regulatory Justice highlights the gaps at both the doctrinal and empirical level as well as the need to recalibrate the discourse around the harmonisation of International Sports Law.

**Keywords:** - International Sports Law, WADA Governance, Regulatory Legitimacy, Uneven Implementation, Equality and Regulatory Justice

## INTRODUCTION

Anti-doping regulation is among the most complex and invasive regimes of transnational sports governmentality. Through its hybrid construction of private norm-setting, international coordination, and domestic legal integration, the Code works as a kind of quasi-constitutional text in international sports law regulating the conduct of athletes across borders. Through the contractual inclusion of the Code within federation statutes and agreements with athletes, as well as through arbitral mechanisms of dispute resolution, the Code exerts binding effect that often displaces domestic sporting rules.

In the mainstream scholarship in sports law,

harmonization is usually treated as a normative virtue. The assumption here would be that uniform rules enhance fairness, integrity, and equality of opportunity by making athletes compete within similar regulatory conditions irrespective of their nationality. This assumption underpins WADA's foundational narrative and finds reflection in the Code's insistent resort to the metaphor of "level playing fields".

Nonetheless, comparative and transnational legal theory advises that formal equality of rules does not automatically ensure equality of outcomes. The literature on global regulation has generally suggested that harmonizing can at times prefer

coherent regulation to distributive justice, especially if the transnational values are applied to highly institutionally, economically, as well as legally inequitable national settings (Foster 2003; Duval 2013). In such circumstances, an equal rule can produce inequitable outcomes.

Thus, in focusing on anti-doping, it is necessary to see beyond its technical and policy aspects and recognize it as a problem of regulatory justice. The discussion would seek to explore whether it is possible for a formally equal system on matters of anti-doping to maintain its legitimacy in circumstances where its implications for developed and developing states are not equal in reality. Through an attempt to synthesize existing bodies of scholarship, it is necessary to locate regulation on anti-doping within related conversations on equality and rights-based governance in transnational regimes.

### **Methodology of Review**

This article applies a doctrinal and thematic narrative literature review methodology, consistent with the approaches widely adopted in international sports law and transnational regulatory scholarship. The review does not attempt to generate empirical data, but rather to critically analyse, synthesise, and systematise extant legal, policy, and governance literature with respect to the structure, implementation, and effects of the Code.

Sources were included based on relevance to the topics of regulatory harmonization, compliance, athlete rights, and legitimacy. The review draws from peer-reviewed sports law journals, interdisciplinary governance and regulatory theory literature, CAS-focused doctrinal analyses, and authoritative institutional materials issued by WADA. Technical biomedical studies were only considered insofar as they informed legal justification or enforcement debates.

Analytically, the review is informed by compliance and implementation theory, which disaggregates formal rule adoption from effective legal operation (Houlihan & Hanstad 2018; Gray 2019), and which, moreover, is particularly suited to the evaluation of transnational regimes reliant on domestic implementation by actors with unequal capacity. The overweight of Western-centric scholarship is not treated as a limitation but rather as an indicator of epistemic imbalance within sports law research itself, reinforcing the need for greater attention to developing-country contexts.

### **Historical Foundations of Anti-Doping Regulation**

History has shown that performance enhancement has been around for quite some time before the development of sport as we know it. History documents that stimulants, herbs, and analgesics were being taken in ancient times in a bid to seek performance enhancement (Yesalis, 2002). With

advancements in pharmacology, performance enhancement rose to greater sophistication (Müller, 2009).

López Frías (2014) has described this process as an “evolution” that occurs over various “generations” of doping, which go all the way from natural substances to chemical boosters, hormonal manipulation, to modern biotech interventions. Every generation has presented its own set of challenges to sport institutions that test the limits of acceptability.

The adverse health impacts caused by performance-enhancing drugs have been well-documented in medical literature, including cardiovascular harm, disruptions to hormonal balance, psychological illnesses, and an elevated risk of premature death (Perera et al. 2013). While the justifications for regulation had been firmly grounded in health concerns, with time, the legal justification for anti-doping regulation in sporting events shifted from protecting health to issues of sporting integrity and equal opportunities.

Unfortunately, doping proved a persistent problem in the wake of major scandals, in what became known as the Festina affair in professional cycling, among others, but demonstrates the lack of deterrence in the pre-harmonisation period due to weak enforcement in the pre-harmonisation phase (Christiansen, 2005).

### **Pre-WADA Fragmentation and the Crisis of Regulatory Legitimacy**

Anti-doping regulation before the creation of WADA can be described as a situation characterized by institutional pluralism and fragmentation of regulation. There were disparate regulation systems and practices among international sports federation associations, as well as countries and their governments (Hunt et al. 2012). In these instances of fragmentation of regulation systems, deterrence is not equal.

Though deaths among professional athletes in the 1960s highlighted more regulations, initiatives were unconnected in terms of procedures and discipline, as well as oversight (Ljungqvist 2017). In regard to sports law studies, these times are characterized by the legitimacy crisis within regulations that saw sport participants treated unfairly and fans doubting the legitimacy of sport competition outcomes.

These issues of legitimacy furnished the driving force for the process of harmonisation, but they also perpetuated a structural presumption, namely, the presumption that equal outcomes could be achieved automatically through common rules. This presumption has been called into question by subsequent scholarship.

### **WADA, the World Anti-Doping Code, and *Lex Sportiva***

Since its creation in 1999, WADA has marked the

beginning of a new development in the way that anti-doping laws are understood and applied throughout international sport (Kayser, 2018). As part of its efforts to eliminate drug use in sport, WADA created the Code and established several International Standards that provide a consistent and uniform approach to anti-doping across all sporting disciplines regardless of the country or location of the athlete. Legal scholars view the Code as a significant form of *lex sportiva*, which is entered into through contract and enforced through the arbitration process (Houlihan, 2004). An examination of CAS decisions demonstrates that the CAS has clearly determined that the Code supersedes all sporting rules, thereby giving the CAS a central role in providing the official interpretation of sporting regulations worldwide (Beloff, Kerr & Demetriou, 2012; Mitten et al., 2020). Furthermore, the international adoption of the UNESCO Convention Against Doping in Sport has increased the significance of this CAS role. As a consequence of this convention, the distinction between private regulations and public international law has ceased to exist.

Nevertheless, there is an emerging trend to distinguish between normative integration and functional equivalency. Though rules and penalties are alike, their application and procedural validity differ considerably among legal systems (Hanstad, Skille & Loland 2010). There are fears about equal treatment under transnational regulations due to such differences.

### **Enforcement, Effectiveness, and the Limits of Detection**

Empirical research shows that there is a discrepancy between the number of anti-doping rule violations found and the prevalence estimates. Although the official data shows a low number of adverse analytical findings, indirect surveys pinpoint a higher prevalence of doping use in elite athletes (De Hon, Kuipers, & Van Bottenburg, 2015; Ulrich et al., 2018). Legally speaking, this discrepancy questions the presumption that enforcement by detection is or could ever be synonymous with effective regulation. There are reports from WADA that discrepancies in respect for and enforcement of regulations remain (World Anti-Doping Agency, 2022 & 2023). Major institutional failures in doping programs that are supported by governments draw attention to the weakness in the regulation process in respect to detection.

Regime effectiveness, according to regulatory theorists, should be judged in the transnational sphere not only by the outputs of enforcement, but also by its validity, fairness, and equality of impact (Black, 2008). Overemphasis on test data statistics might mean that effective enforcement becomes confused with actual compliance.

### **Strict Liability, Proportionality, and Athlete Rights**

At the normative core of anti-doping law, there is the doctrine of strict liability. In this regard, there have been descriptions by CAS panels of strict liability as basic to protecting sports integrity. The idea of strict liability eliminates intent in order to simplify enforcement. In this case, there is enhanced deterrence.

However, there is an argument that strict liability disproportionately impacts sportspersons operating under less-resourced conditions, whereby there may be limited access to anti-doping education resources, supplements, and legal advice (Waddington & Møller 2019). There is a likelihood that sportspersons from certain countries may be at a high risk of inadvertent doping offenses due to certain conditions such as contamination.

The question of proportionality and procedural justice is made even more problematic by systems such as whereabouts, which are seen to effectively invade privacy and autonomy (Waddington 2010; Valkenburg, de Hon & van Hilvoorde 2014). While CAS does accept proportionality as a mitigating factor in a case (Puerta v ITF, CAS 2006/A/1025; Cañas v ATP Tour, CAS 2005/A/951), it is difficult to say to what extent this is possible.

#### **A. CAS Jurisprudence and Equality in Transnational Sports Law**

The Court of Arbitration for Sport (CAS) has been instrumental in constitutionalizing the Code in *lex sportiva*. By virtue of its case law, the CAS has reinforced the principle of strict liability, and at the same time, the principle of proportionality has been evoked.

Increasingly, the CAS is viewed as a "constitutional court of sport" that has quasi-public power but lacks the overt guaranties of equality found in constitutional adjudication (Latty 2011; Gardiner et al. 2012). The rationale of the CAS relates closely to discourse on substantive or formal notions of equality found within constitutional law comparisons. Equality is guaranteed uniformly, but reduction is contingent on an individual's ability to access resources.

Both empirical research and doctrinal research have brought to attention the existence of considerable financial, linguistic, and institutional obstacles that condition access to CAS proceedings, which particularly concern athletes from developing countries (Rigozzi & Hasler 2013; McLaren 2016). This is such that harmonization is variably translated by the courts to a condition of equality among equals.

#### **Compliance Disparities and Structural Inequality**

There is also considerable literature that presents uneven adherence to the Code. In developed

countries, there is strong legal infrastructure, scientific facilities, and financial support, whereas in developing countries, the situation is constantly marked by a lack of resources (Houlihan, 2014; Gatterer et al., 2020).

These qualitative research findings point to other structural barriers to compliance that include cultural incongruity, language differences, the risk of agricultural contamination, and other competing state interests, as identified by Read et al. (2023) and Star (2023). From the perspective of regulation theory, these inequities can be characterized as indirect discrimination that arises when formally identical regimes systematically disadvantage actors differentially with respect to the task of compliance (Young 2011; Gray 2019).

### **Regulatory Legitimacy, Athlete Trust, and Governance Outcomes**

Inconsistent implementation leads to direct implications for sporting justice and trust in sporting bodies. Sportspersons who operate under demanding regulatory frameworks face increased scrutiny and due process, and contrastingly, others play under more lenient regulatory circumstances (McNamee, 2013).

In the absence of education and deterrents as effective measures, doping can become institutionally embedded, especially among junior athletes, thus intensifying challenges to integrity (Backhouse et al. 2014). The legitimacy approach contends that if inequality is perceived, along with the perception of an absence of procedural fairness, compliance and thus legitimacy will be diminished, supporting the necessity of equality as a functional component necessary for proper regulation (Suchman 1995; Tyler 2006).

### **Conclusion: Recentring Equality in Global Sports Law**

This literature review illustrates that the international doping control regime is just one example that exemplifies the traditional difficulty in the realm of transnational law that is posed by the relationship between harmonisation and equality. Despite the Code being a major step forward in international sports regulation, there is clearly an inequality being generated in the currently unequal socio-legal contexts in which these standardised regulations apply.

The review also uncovers the fact that a large body of sports law scholarship is still rule oriented, with a concern for consistency and deterrence, and little concern for questions of substantive equality or disparate impact. Although non compliance and a lack of implementation are frequently noted, this is more symptom of a more pervasive issue of inequality within sports governance on global level. The CAS has not been thoroughly analysed through

an Equality/right based perspective, and that analysis should also look specifically at the Equality of Access to Justice and Procedural Inequities faced by Athlete's from Developing Nations.

These areas of Gap are an opportunity for future research. The current lack of comparative doctrinal analyses of Anti-Doping Norms interacting with Domestic Legal Systems in various Jurisdictions (with an emphasis on Developing Nations) presents an opportunity for greater research development in these areas. More Empirical & Qualitative Research into Athlete Experience's is needed to fully understand how Burdens from Compliance, Monitoring of Athletes and Judicial Protection are distributed throughout the World of Sport.

Sustained analysis of the Case Law of the CAS using Comparative Constitutional Frameworks can help further develop our understanding of how Proportionality and Equality work within a Transnational Sports Judging System. It is vital that future sports Law Scholars expand their focus from a Rule Based Harmonized Approach to one that takes into consideration context and equality and there is a need for more research designed to develop equality based solutions to enable the Anti-Doping Regime to retain its legitimacy and ensure that it meets its foundational commitment to fair play in International Sport.

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