

Anti-Doping Investigations in Italy – Football and the 2006 Turin Olympic Games

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1. Doping in Football

Years ago, when we began to take an interest in doping in sport, and particularly in football, the football authorities indicated to us that doping was not a real problem in that sport. Quite the contrary came out: the Coni Antidoping Laboratory in Italy had carried out thousands and thousands of tests on football players' urine samples without finding any trace of performance-enhancing drugs. Inspections, questioning of witnesses and seizures during 1998 led us to an astounding result: performance-enhancing drugs, such as anabolic steroids, were not found in the urine of the players for the simple fact that nobody was looking for them. We notified that the International Olympic Committee (IOC) and the activities of the Coni Antidoping Laboratory were suspended for a long period. Not surprisingly, when the Coni Antidoping Laboratory began his work again under a new guise, performance-enhancing drugs such as Nandrolone were identified in the urine samples of several football players.

2. Inconsistency of national laws and practices

We ask ourselves the question: do current international standards offer effective means of protecting sporting values and of pursuing the fight against doping? A comparison between the various countries unfortunately leads us too far from reassuring a conclusion: there is no law against doping that is at least broadly consistent. It suffices to say that doping can only constitute an offence in certain countries.

This discrepancy leads to highly negative effects. We need only to consider that doping often constitutes a phenomenon with deep and widespread international ramifications. It is therefore easy to understand that, during most prosecutions for the crime of doping, it has been necessary to carry out actions in other countries for the success of the investigation. Therefore we have sent formal written requests to foreign legal authorities for communication and notification purposes and also for the purposes of evidence-gathering. The outcome of these requests has unfortunately often been disappointing, even in Europe. In some cases the response was inadequate, in others it was late – even years later – and in other cases, no response was received at all.

Something else that we also considered to be equally counter-productive is the virtual absence of coordination between courts operating in different countries and, in this context, the lack of an exchange of information on case law built up on the subject of doping in different countries. The newspapers often give an account of criminal investigations brought to trial in this or that country. But it is then virtually impossible to find out the outcome of the proceedings instigated as a result of those investigations. In such cases it instead would be very useful to exchange procedures and, in particular, judgements handed down in the field of doping by judges around the world.

3. Our experiences in the field of doping

Our judicial experiences in the field of doping could be a useful point to consider. Doping is a crime twice over in Italy. It is a crime because an act of 1989 punishes anyone with imprisonment who carries out fraudulent acts with the aim of achieving an outcome other than that arising as a result of the proper and fair conduct of a competition. It is also a crime because a subsequent law of 2000 punishes anyone with imprisonment who procures for others, administers, takes or in any way encourages the use of biologically or pharmacologically active drugs or substances included in the stated categories, as well as anyone who trades with them.

Numerous legal proceedings have been held and are being held in Italy as a result of these laws. I believe that we can learn a great deal from these judicial experiences.

4. The Winter Olympic Games in Turin (2006)

During the 2006 Winter Olympics in Turin, a dedicated, fully-equipped, efficient laboratory carried out tests on hundreds and hundreds of blood and urine samples taken from athletes. Despite this tremendous effort, only one athlete was tested positive for the drug Carphedon.

Meanwhile, an extraordinary thing happened at the same time. Naturally, some had hoped that the application of the Italian law on doping would be suspended for the entire period of the Olympics in order not to scare off athletes taking part in the 2006 Winter Olympics, particularly because it was organised in a city like Turin. However, the Prosecutor's Office confounded expectations by carrying out a thorough investigation with the full support of the World Anti-Doping Agency (WADA) and the IOC, and also by virtue of an agreement with these organisations. The hosting athletes were raided by the Judicial Police on the orders of the Prosecutor's Office and seizures were

made. The facts that are alleged by the prosecution to have emerged from these searches are the subject of a criminal trial pending before the Court of Turin against athletes and non-athletes for infringement of the 2000 law on doping. Disciplinary procedures have also been brought by the competent sporting authorities against athletes and non-athletes as a result of these searches and seizures.

We learn two valuable lessons from this affair. The first is that cooperation between judicial authorities and sporting authorities, even at international level, is the best way to foster and develop effective measures to protect the health of athletes. Such cooperation is still, however, a largely unmet need. It suffices to say that problems such as a higher-than-expected mortality rate due to Amyotrophic Lateral Sclerosis (ALS) among football players, revealed by an epidemiological study in Italy and sponsored by the judicial authorities, seem to have passed unnoticed by international sports organisations. A second lesson is that the fight against doping can't be combated simply by taking and testing samples of urine or blood. Two basic methods should be and actually are deployed in certain countries (such as Italy, for example, but not only in Italy). The first is the ordinary justice system, which is conducted by criminal judges. The second method concerns the sports justice system, which is conducted by sports bodies. There can be no doubt, however, that the importance of ordinary justice is essential: both because it is founded on crucial guarantees of autonomy and independence and also because it alone possesses particularly penetrating investigative powers. Whether we like it or not, we must search, seize, and intercept telephone conversations. Without the tools of criminal justice, the fight against doping is a lost cause.

In Turin, during the 2006 Winter Olympics, it took only one night of raids to collect items that a thousand tests carried out by a renowned laboratory on athletes' urine and blood samples had failed to bring to light. Added to that, a criminal conviction was handed down by a court over the case of a sample taken from an athlete at the request of the Prosecutor's Office, which was tested positive for Carphedon.

5. Off-label use of drugs

On 29 March 2007, criminal proceedings brought against an officer and a doctor who was employed by a football club were completed before the Italian Supreme Court of Cassation. As the judgment handed down by the Court of Cassation states, the defendants were accused, in particular, of "being in collusion with one another with the aim of achieving an outcome other than that arising as a result of the proper and fair conduct of sporting competitions organised by the Italian Football Federation, *Serie A* football championship and

Coppa Italia, and of having carried out a number of related and substantial fraudulent acts [...] in obtaining and administering medicinal products outside the indications authorised by the Ministry of Health to footballers with the aim of enhancing their performance”.

While stating that the crime had expired due to the statute of limitations, the Italian Supreme Court of Cassation gave a particularly interesting analysis of the case: “The Territorial Court stated that ‘there is no doubt that the challenged conduct, with reference to medicinal products that are not specifically banned, was perpetrated against the players [...]. The trial records indeed provide ample evidence [...] that from 1994 to 1998 administration of the drugs in question actually took place and was often carried out off label, in other words outside the scope of authorisation identified by the Ministry of Health or in non-permitted forms’. ‘As a consequence’, continued the Territorial Court, ‘with regard to this aspect of the indictment [...], there can be no room for any acquittal formula, other than that arising out of the impossibility of applying the rules laid down in Law No. 401 of 1989 to the case in question’. [...]. This court, by contrast, held that the conduct of the accused amounted to the crime described in Article 1 of Law No. 401 of 1989.”

We may derive from this an enlightening insight that goes beyond this specific case: in other words that it is also punishable by law to use medicinal products that are included in ATC (anatomical-therapeutic-chemical classification) classes other than those included in the list of banned performance-enhancing substances, but which are still used because their off-label use can bring about primary or secondary actions. For example, neurological and cardiological agents that perform actions similar to those of substances illustrated in the IOC classes.

Nor do we think that such an approach would expose operators to discretionary interpretations. The offences punishable under the 2000 law are fraudulent. The perpetrator of these crimes is therefore punishable because he acts with awareness and intent to procure for others, administer, take or otherwise encourage the use of drugs or substances, or to adopt or submit to medical practices that are not justified by pathological conditions and are designed to alter mental, physical or biological conditions with the aim of altering the competitive performance of the athlete, or with the aim of altering the results of controls on the use of such drugs or substances or the use of such practices. An awareness and intent that is mostly characterised by the purpose of altering the competitive performance of the athlete.

6. From the sale of performance-enhancing drugs to the sale of supplement?

Our legal experience on the subject of doping has also taught us another lesson. What is at stake not only protecting the health of top athletes, of the privileged individuals that make up the sporting elite? What is at stake first and foremost protecting the health of the many people, young and not so young, who practice any sport or go to fitness clubs?

It is a fact, for example, that our young people can buy products that are labelled as ordinary dietary supplements but actually contain anabolic substances, in shopping centres or even over the Internet. And it is a fact that such a market is not sufficiently controlled. To give you an example, I remember that we had to order the seizure throughout Italy of a product based on branched-chain amino acids produced in the United States and freely sold in Italy, because this product – when analysed by an authoritative institute in Cologne – revealed the presence of the steroids androstenedione, norandrostenedione and dehydroepiandrosterone (DHEA), which can cause the metabolites of nortestosterone, better known by its trade-name of nandrolone, to show up in urine samples.

In the same context, numerous investigations and judgements have thrown light on the criminality of the trade in performance-enhancing substances, even if the trader has no intention of altering the competitive performance of athletes. This situation is exemplified by the trade directed at users who do not take part in competitive activities even though they attend fitness clubs or take part in sporting activities.

7. Methods of investigation against doping

The fact is that good legislation alone is not enough to combat doping. It is important that these laws are being respected and enforced. In this regard, I have drawn up some operational guidelines based on my experiences in the field over recent years.

Operational Proposals

1. Specialisation of magistrates (prosecutors and judges), searches and wiretaps
2. Immediate appointment of expert witnesses with a view to their active participation in preliminary investigations

3. Presence of expert witness reports in the records: inspections, searches, summary information, analysis of telephone conversations and interviews
4. Establishment of an ongoing relationship with expert witnesses: regular joint meetings with expert witnesses in the various subjects, e.g. medicine, chemistry and pharmacology, to request information and guidelines to help conduct investigations, to understand the evidence required, to guarantee consistency and the exchange of information, to speed up the filing of expert witness reports (and if necessary of interim reports)
5. Participation of the Public Prosecutor of First Instance in the appeal
6. Exchange of investigation protocols and experiences acquired between prosecutors' offices
7. Ongoing relationship with Judicial Police bodies
8. Joint training opportunities for magistrates and inspectors: technical subjects, interpretation of rules and activities of the Judicial Police