

FIGHT AGAINST DOPING



Article

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Anti-Doping Rules as a Unique System of Legal Relations: Background and Regulatory Issues

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Abstract: Coordinated efforts of the States and sports organizations to eliminate doping in sport all over the world have formed a unique legal model that stands out for high uniformity in its implementation and enforcement despite differences in national regulations, and this legal model continues to evolve. Erosion of the principles of amateurism, growing governmental interest in sport, concerns about the health of athletes have affected the shape of the modern anti-doping legal system. This study analyzes the key historical stages in the development of anti-doping rules and regulations, as well as the prerequisites for the formation of its modern legal principles and methods. The study details the first anti-doping rules adopted by the Jockey Club at the beginning of the 20th century and describes the legal activities of the International Olympic Committee, States and intergovernmental organizations on creating anti-doping rules and legislation before the adoption of the UNESCO Convention in 2005. Special emphasis is placed on the explanation of ideological and political influence on the development of anti-doping rules and assessing the roles of the main actors in the anti-doping system.

Keywords: sport; doping; anti-doping regulation; anti-doping rules; international law; World Anti-Doping Code; World Anti-Doping Agency; International Olympic Committee; UNESCO

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Contents

I. Introduction	282
II. Anti-Doping Rules Evolution	284
II.1. First Anti-Doping Rules of the Jockey Club	284
II.2. Early Steps in the Fight against Doping Among Athletes (1920–1950s) ...	288
III. International Olympic Committee and its Anti-Doping Regulations (1960–2000s)	291
IV. Intergovernmental Efforts on Anti-Doping Regulation (1960–2000s)	296
IV.1. First Intergovernmental Steps in the Anti-Doping System Development (1960–1980s)	297
IV.2. Further Anti-Doping Harmonization and the International Convention against Doping in Sport (1990–2000s)	302
V. Discussion	306
VI. Conclusion	311
References	312

I. Introduction

Historical researches show that the use of performance-enhancing drugs among athletes has been practiced since ancient times (Boje, 1939; Yesalis and Bahrke, 2003). However, the idea of fighting against doping among athletes using legal instruments has evolved since the 1960s. The current system of anti-doping regulation based on the World Anti-Doping Code (the WADA Code) attained a relatively complete form only in the early 2000s. Anti-doping regulation continues to develop. The World Anti-Doping Agency (WADA) has regularly undertaken reforms

over the last twenty years since the first version of the WADA Code was adopted in 2003.¹

The use of performance-enhancing drugs by athletes is a philosophically and ethically controversial phenomenon. As there was no consensus on the prohibition of doping practises in the early days of anti-doping, there is nowadays an opinion, shared also by professional athletes, that performance-enhancing drugs should not be banned (D'Angelo and Tamburrini, 2010; Lee, 2006).² It has been argued in the literature that the idea of anti-doping itself runs counter to the ideological underpinning of professional sport, and this inherent contradiction prevents the total cease of doping (Gleaves, 2011; Gleaves and Llewellyn, 2014).

When ideological foundations of the anti-doping movement were weak and the medical abilities and sports governance systems were not yet sufficiently robust to ensure the effectiveness of anti-doping measures, coordinated efforts of the sporting community and intergovernmental organizations to formalize the fight against doping were particularly significant. The interaction between States and the sporting community has created a unique modern system of anti-doping rules. The uniqueness of the anti-doping legal model lies in the binding force of the elements of the World Anti-Doping Program implemented through the activities of a non-governmental organization (WADA) and the achievement of almost full uniformity in regulation across the world.

Determining the history and problems in the development of the modern system of legal anti-doping regulations introduces the research interest and it should contribute to the enforcement of effective anti-doping policies in the future.

¹ WADA is reforming both its anti-doping rules and its governance structure. See, for example: WADA Foundation Board unanimously approves final round of governance reforms. Available at: <https://www.wada-ama.org/en/news/wada-foundation-board-unanimously-approves-final-round-governance-reforms> [Accessed 23.03.2023].

² In "Cyclingnews" (2018) Westra admits using tramadol and caffeine as performance enhancers. Available at: <https://www.cyclingnews.com/news/westra-admits-using-tramadol-and-caffeine-as-performance-enhancers/> [Accessed 23.03.2023]. In the editorial "Fear of Regulation" of the newspaper "Economic and Political Weekly" (2004) it was also suggested that, without global anti-doping regulation and fear of sanctions, athletes, coaches and sports bodies would continue to "resort to unfair means."

II. Anti-Doping Rules Evolution

II.1. First Anti-Doping Rules of the Jockey Club

Researchers of the history of doping in sports note that the first significant legal steps in counteracting performance-enhancing practices were taken in horseracing (Gleaves and Llewellyn, 2014). Stewards were the most active in putting a stop to doping, as drugging horses allowed for the manipulation of race results and betting.

Striking developments of doping practices in horseracing, which prompted the racing community to introduce the first anti-doping rules from 1902 onwards, began, according to newspapers, around 1900 in America.³ Doping practices in horseracing involved the use of not only drugs, but also of other mechanical appliances that allowed horses to accelerate.⁴

Although the problem of doping was often discussed, it did not provoke a response from the governing bodies of horseracing in Britain in 1900–1902.⁵

At the same time, an active fight against doping of racehorses began in America. On 13 December 1902, a newspaper reported that the New York Jockey Club adopted the first rule banning doping and other extraneous aids to speed in horseracing.⁶

The significance of this step is designated by the fact that previously legally indifferent relations were subjected to normative regulation. A normative prohibition was initiated by the sporting community. It

³ Sport and Athletics (1900). *The Cardiff Times*. 29 December; “Doping” Racehorses (1900). *South Wales Echo*. 20 November; “Dope” Evil of the Turf (1903). *The New York Times*. 19 October.

⁴ Doping (1900). *South Wales Daily News*. 15 November; By the Way (1900). *Evening Express*. 20 November.

⁵ Sport of the Day (1900). *Evening Express*. 5 November; Sport of the Day (1900). *Evening Express*. 13 November; “Doping” Racehorses (1900). *South Wales Echo*. 20 November; “The Bard’s” Gossip (1902). *Evening Express*. 4 October; Bennets for Horses (1901). *The Cardiff Times*. 10 August; Official Scratchings (1902). *Evening Express*. 13 December; Sport of the Day (1903). *Evening Express*. 4 June.

⁶ Official Scratchings (1902). *Evening Express*. 13 December. According to the press, the rule stated, “Anybody administering a drug to a horse internally or hypodermically prior to racing or using any electrical or mechanical appliances, except the whip or spur, shall be ruled off the club’s courses.”

substantiated unlawfulness of artificial influence on competition results as well as the consequences for non-compliance with the rules. A specific structure of the basic and cornerstone legal rule against doping in sport was established.

The use of any aids that could alter the horse's behavior during a race was prohibited, irrespective of the actual consequences of the usage and with the only one punishment (exclusion). Prohibited practices were defined on the principle of "anything not permitted is prohibited."⁷

Thus, doping in horseracing was perceived as a very unacceptable practice, with no leniency for offenders and no tolerance for the destructive conduct. There was neither indication of permissible practices nor requirement to establish the actual effect of the drug on the horse or race results. No alternative penalties were introduced (e.g., a warning, disqualification of results or a fine). The degree of fault did not affect the severity of the penalty.

On 16 May 1903, the *New York Times* reported the death of a horse called Dr. Riddle as the first case involving the use of drugs since race officials banned the use of doping.⁸ During the race, Dr. Riddle's unusual behavior attracted the attention of the racing staff. A veterinarian managed to examine the horse before it died. Based on the veterinary report, the stewards' meeting ruled that the entries of J. Gardner, in whose name the horse had raced, and Dr. Riddle should be refused and the trainer W. Howell's license should be suspended.

The case was referred to the Stewards of the Jockey Club and at the Stewards' meeting, on 23 May 1903; they decided that the trainer W. Howell should be ruled off the turf under the provisions of the new Rule 162 prohibiting doping. As the trainer accepted full responsibility for the use of doping, J. Gardner, a newcomer as an owner of racehorses, was acquitted.⁹

⁷ It differs from the modern model, in which only specified substances and methods are prohibited. The model of prohibition adopted is an important one. Some researchers point out that the current system based on a negative list is not effective in terms of social perception (Bird and Wagner, 1997).

⁸ "Doped" Race Horse Died (1903). *The New York Times*. 16 May.

⁹ Horse Drugger Ruled Off (1903). *The New York Times*. 23 May.

Subsequently, on 19 October 1903, the *New York Times* published a summary article on American practices against doping in horseracing.¹⁰ The emphasis of the article was that there were no effective ways of identifying the doping and only the death of the animal in *W. Howell case* allowed the stewards and experts “to make a clean conviction.”¹¹ In addition, the lack of the anti-doping rule was cited as having only one negative consequence (exclusion). The issue of doping was submitted to the Society for the Prevention of Cruelty to Animals (SPCA) for discussion. The SPCA also had data “concerning the effects of the stimulants most commonly employed.” The authors also expressed the hope that the problem of doping would be called to the attention of the legislature who would introduce a legislative regulation in the field.

Similar attempts to fight against doping were made in other countries. In 1903, the British press claimed that the Jockey Club had imperative duty to take immediate steps to prevent doping practices, stop ignoring the problem and adopt a prohibiting rule.¹² It was announced that on 30 September 1903 a new Rule would be added by the decision of the Jockey Club.¹³ The British rule differed from the American rule only in that it did not include the use of mechanical appliances in doping practices explicitly, although the list of methods remained open-ended. The British rule also added the wrongful purpose (affecting on the speed of a horse) as an element of the rule.

On 28 September 1903, it was reported that the doping was so widespread in France that the national governing body for racing

¹⁰ “Dope” Evil of the Turf (1903). *The New York Times*. 19 October.

¹¹ However, on 22 August 1903, a British newspaper published details of several other cases of exclusion due to doping in America. Sport of the Day (1903). *Evening Express*. 22 August. In 1900, newspapers also stated that there should be an experienced veterinary surgeon to identify a drugged horse. Sporting Items (1900). *South Wales Echo*. 21 December.

¹² Sport of the Day (1903). *Evening Express*. 4 June; [No title] (1903). *Evening Express*. 2 April. P. 3.

¹³ “Doping” to be dealt with (1903). *Evening Express*. 11 September. According to the press, the Rule stated “If any person shall be proved to have administered, for the purpose of affecting the speed of a horse, drugs or stimulants internally, by hypodermic or other methods, every person so offending shall be warned off Newmarket Heath and other places where these rules are in force.”

appointed a veterinary committee. The veterinary committee was authorized to investigate not only the immediate effect of doping upon the animals, but also its influence upon horses raised for their stud purposes.¹⁴ On 15 December 1903, a committee of the French Jockey Club adopted the rule prohibiting doping in the first reading, and later French stewards were authorized to examine any suspicious horse for three hours before and after a race.¹⁵

The French practice demonstrates that further legal measures were taken immediately to implement the prohibition of doping, including the introduction of a doping control rule.¹⁶

In 1905, it was mentioned that the horseracing bodies of the Russian racing lacked cohesion on doping issues, as the suspended trainer was reinstated in Warsaw and Moscow, but still without the license of St. Petersburg Jockey Club.¹⁷

It is likely that the active opposition of the sporting community had the desired effect, and attention to doping problems began to fade in 1904–1905.¹⁸ In summer 1914, an American newspaper called the period of the early 1900s as a “Crusade” against doping in horse racing, emphasizing that it had been 14 years since doping was last public discussed.¹⁹

However, horse doping was not eliminated completely. According to newspapers, the American federal laboratory improved the method of testing the horse saliva. Due to the doping prevalence in horse racing, in 1936 States of America requested that doping tests be made.²⁰ In 1960–

¹⁴ The “Doping” of Horses (1903). *Evening Express*. 28 September.

¹⁵ Doping Horses (1903). *Evening Express*. 16 December; Chips of News (1903). *The Aberdare Leader*. 26 December.

¹⁶ In 1904, the press reported also on the unusual use of doping (electrical stimulation) in Germany, upon detection of which a race participant was disqualified. Sport of the Day (1904). *Evening Express*. 16 June.

¹⁷ [No title] (1905). *Evening Express*. 27 July. p. 3.

¹⁸ Sport of the Day (1904). *Evening Express*. 12 October; Sport of the Day (1904). *Evening Express*. 13 October; Sport of the Day (1905). *Evening Express*. 20 October.

¹⁹ Some illegitimate ways of doping racehorses and of bringing up athletes also (1914). *Fergus County Democrat*. 27 August.

²⁰ Rule Bars U.S. Act in Horse Doping (1936). *Washington Times*. 6 October.

1963, the press published news about “British Scandals” in horseracing, according to which Scotland Yard and the Jockey Club investigated the cases when doping was used.²¹ It was, in particular, stated that, unlike the previous practices, when anyone associated in any way with doping was barred from the tracks, the Jockey Club offered an amnesty for anyone shared information.²²

Besides, the American article in 1961 mentioned that the participants involved in the doping offense were suspended under different rules defining that:

- a trainer is responsible for the condition of the horse regardless of acts of a third party (trainer);
- there shall be no failure to protect a horse (assistant trainer);
- there shall be no possession of illegal drugs and hypodermic needle (hot walker at track).²³

However, it was suggested that trainer’s and assistant trainer’s suspension could be lifted immediately if hot walker who possessed hypodermic needle admits the violation. Moreover, trainer offered a high reward for information

II.2. Early Steps in the Fight against Doping Among Athletes (1920–1950s)

The idea that athletes should not be allowed to use performance-enhancing drugs during competitions had different reasons and was legislatively developed much later than anti-doping rules in horseracing.

As the authors point out, the birth of the concept of anti-doping in human competitions was linked to the rise of the ideology of “amateurism” in the early 20th century (Gleaves, 2011; Gleaves and Llewellyn, 2014). Amateurism, introduced from Britain and promoted by the upper and middle classes, was described as participation in sports

²¹ Veteran Jockey, 3 Others Jailed in British Scandal (1960). *Evening Star*. 1 November; British Bookies Offers Big Reward to Curb Doping Syndicate (1961). *Evening Star*. 25 November.

²² Doping Scandal threatens Britain: Relko Mentioned (1963). *Evening Star*. 18 July.

²³ Stable Hand is Hunted in Doping Case (1961). *Evening Star*. 17 February.

for spiritual raising. It was opposed to professional sport that generated income and was perceived as an occupation for the lower social classes. Stimulation used to win competitions was not seen as unethical if it allowed participants to earn more money. The growing socio-cultural division in the 1900s led to the emergence of anti-doping ideas among amateurs as a way to distinguish amateur and professional sports. The revival of the ancient Olympic Games was a continuation of the desire to organize amateur sports following the British model. Such games were designed to affirm the beauty of the human body and spirit (Gleaves, 2011; Gleaves and Llewellyn, 2014; Merkel, 2003).

However, it cannot be denied that the doping among athletes was a cause for essential concern. In 1913, for example, the Official Bulletin of a leading French athletics clubs contained a strong warning against the practice of administering artificial stimulants; the attention of the football organization was called to the fight against doping.²⁴ In 1914, an American newspaper reported that although the doping among athletes had never attracted much attention, American athletics authorities were concerned about the use of strychnine in sprint races.²⁵

Such concerns, however, did not translate into forceful legal activity of the sporting community. The lack of active opposition meant that the public did not perceive the use of doping by athletes as a genuine problem.

The first prohibition of performance-enhancing drugs among athletes was intended as a further stable point for the ideals of amateurism that refrained from artificial stimulation because it conflicted with the high “spirit of sport” (Gleaves and Llewellyn, 2014). It is not surprising, therefore, that the legal prohibition of doping in 1928 emanated from the amateur sports organization, the International Amateur Athletic Federation (IAAF).²⁶

²⁴ Drugged Footballers (1913). *The Cambria Daily Leader*. 8 December.

²⁵ Some illegitimate ways of doping race horses and of bringing up athletes also (1914). *Fergus County Democrat*. 27 August.

²⁶ World Athletics, (2006). A Piece of Anti-Doping History: IAAF Handbook 1927–1928. Available at: <https://worldathletics.org/news/news/a-piece-of-anti-doping-history-iaaf-handbook> [Accessed 23.03.2023].

The first IAAF rule was the same in substance as the first rules of the Jockey Club.²⁷ However, there is no information available that further action was taken by the IAAF, including introduction of rules regulating doping control or establishing commissions to identify the influence of doping practices.

The intensification of doping activities within sporting community in the late 1930s was associated with the further erosion of the principles of amateur sports and the fight against “pseudoamateurism.” The 1936 Berlin Olympic Games raised concerns about the possible existence of government programs to train and fund athletes that contravened the amateur rules of the International Olympic Committee (IOC). The 1936 Olympic Games probably demonstrated for the first time that governments were continuously interested in sport and success of their athletes, especially in the context of growing political confrontation (Beamish, 2013; Gleaves and Llewellyn, 2014).

By 1937, the head of the IOC had written an essay on amateurism that raised the issue of the ideals of amateur sports and, in particular, the essay dwelled on the issue of doping. His work stimulated the IOC’s work on the problem of doping, and, subsequently, in documents of 1937–1938, doping was declared by the IOC as dangerous to health and inconsistent with the “spirit of sport.” However, there were no specific proposals for anti-doping measures (Gleaves and Llewellyn, 2014).

In 1938, the IOC adopted ten resolutions on amateur status that were published as part of the 1946 Olympic rules (Gleaves and Llewellyn, 2014). The first resolution (Examination of the question of nationalization of sports for political aims) explicitly stated that the Olympic movement regards as a danger to the Olympic ideal that the amateur Olympic Games caused a national exultation based on the success achieved, rather than implementation of a harmonious objective that is the essential Olympic rule. The sixth resolution (Doping of

²⁷ The Rule stated, “Doping is the use of any stimulant not normally employed to increase the power of action in athletic competition above the average. Any person knowingly acting of assisting as explained above shall be excluded from any place where these rules are in force or, if he is a competitor, be suspended for a time or otherwise from further participation in amateur athletics under the jurisdiction of this Federation.”

Athletes) determined that the use of drugs or artificial stimulants of any kind must be condemned most strongly, and no one who accepts or offers dope, no matter in what form, should be allowed to participate in amateur sports meetings or in the Olympic Games. In the Olympic rules of 1950, the provisions of the resolutions were designated as “Decisions Regarding Amateur Status.”²⁸

III. International Olympic Committee and its Anti-Doping Regulations (1960–2000s)

Researches of the history of doping have often linked the intensified IOC fight against doping to the two tragic deaths of cyclists in 1960 and 1967 (Gleaves and Llewellyn, 2014).²⁹

In 1962, the IOC established a medical working group.³⁰ It should be noted how much time passed from the first doping prohibition by the IOC to the establishment of an authorized medical structure and implementation of anti-doping rules as compared with the actions of the stewards at the beginning of the 20th century.³¹ It is also characteristic that the basic Olympic rules regarding doping changed rather slowly.

In 1956, the wording of the prohibition on doping in the Olympic rules no longer referred to amateurism and the prohibition itself was no longer bound with amateurism ideology, although it did not differ substantively from the wording approved in the Olympic Rules of 1946. The six resolutions were no longer entitled “Decisions regarding Amateur Status” but simply “Decisions of the IOC.”

²⁸ All IOC main Olympic rules are available at: https://library.olympics.com/default/olympic-charter.aspx?_lg=en-GB [Accessed 23.03.2023].

²⁹ IOC has taken a similar position. IOC. *1967: Creation of the IOC Medical Commission*. Available at: <https://olympics.com/ioc/1967-creation-of-the-ioc-medical-commission> [Accessed 23.03.2023].

³⁰ IOC. *1967: Creation of the IOC Medical Commission*. Available at: <https://olympics.com/ioc/1967-creation-of-the-ioc-medical-commission> [Accessed 23.03.2023].

³¹ Although a number of international federations, e.g., IAAF or Union Cycliste Internationale (UCI), worked also in the forefront on the anti-doping rules adopting and conducting testing, their activities lie beyond this research.

In the 1964 Olympic rules, the provision on doping was one of the eligibility rules for the Olympic Games. The separation of consequences for individual and team sports appeared in the 1966 Olympic rules. The doping of one athlete should result in the disqualification of the whole team in that sport.

In 1967, the Medical Group was transformed into the IOC Medical Commission. Alexandre de Merode, a Belgian nobleman, was appointed as the chairperson of the Medical Commission that was requested to set up a medical testing service.³² In 1968, the IOC introduced the first athletes' testing for stimulants and narcotics (Gleaves and Llewellyn, 2014; Meier and Reinold, 2018).

In the 1971 Olympic rules, an athlete was held liable for the failure to attend for the control. A fairer differentiation of penalties for teams was in place in the event of an athlete doping.³³ In the 1973 Olympic rules, a number of provisions were added to the Eligibility Code that contained a prohibition on doping:

- the authority of the Medical Commission to propose sanctions;
- enforcement of elimination by the International Federations (IFs) from Olympic Games on proposal of the Medical Commission;
- forfeiture of the competition in question by the team if sole athletes were doping;
- the right for teams to provide explanations if athletes were doping and to hold the discussion with IFs before the team's disqualification from the Olympic games;
- withdrawal of medals by the IOC Executive Board;
- authority of IFs to apply further sanctions.

In the 1975 Olympic rules, the anti-doping provisions were separated from the Eligibility Code. They formed specific provisions for the Medical Code (Rule 27) and they were supplemented with the following rules:

- the power to set up a Medical Commission to implement the Medical Code; its members were forbidden to act as team doctors;

³² Medical Commission Fonds list, IOC (2015).

³³ A team is excluded if it benefited from usage of doping; if disqualification of one athlete resulted in the inability of the team to compete, team members were permitted to compete individually.

- the right of the Medical Commission to pass by-laws to the Rule on Medical Code;
- the authority of the IOC to prepare a list of prohibited drugs;
- the obligation of all Olympic competitors to subject themselves to medical control and examination under the rules of the Medical Commission.

In the 1976 Olympic rules, it was noted that IOC Medical Controls brochure was deemed to be a by-law to Rule 27. The brochure also contained the lists of prohibited classes of substances and methods.³⁴

The 1978 Olympic Charter recommended the National Olympic Committees (NOCs) to strive against deviations from sporting principles and particularly against all forms of doping or any improper athletes' manipulation. It is noteworthy that the 1968 Model Constitution for NOCs made no explicit reference to the prohibition of doping.

The 1980 Olympic Charter stated that the IFs' proposals concerning the selection procedure and the number of athletes for doping control were subject to the approval of the IOC. The 1982 Olympic Charter, as a part of Guidelines to Eligibility Code for the IFs, stipulated those persons who, in the practice of sports and in the opinion of the IOC, manifestly contravened the spirit of fair play in the exercise of sports, particularly due to the use of doping or violence, could not participate in the Olympic Games.

In the 1987 Olympic Charter, the wording of the Medical Code was taken away from the main rules of the Olympic Charter and included in its by-laws. Rule 29, as revised, specified that all competitors must comply with the IOC Medical Code. The by-laws also added that if any person other than the athlete was involved in the doping offence, that person could have been subjected to the action comparable to that taken against the athlete. Thus, the scope of the IOC anti-doping prohibition was explicitly extended over other persons who participated in the doping offences. Moreover, it was added that further sanctions could be implemented not only by IFs, but also by NOCs.

In 1991, a major update of the IOC main rules on doping in the Olympic Charter took place. One of the IOC's roles under Rule 2 of

³⁴ Medical Commission Fonds list, IOC (2015).

the Olympic Charter 1991 was to lead the fight against doping in sport.³⁵ Rule 48 of the Olympic Charter 1991 stipulated that the IOC contained the Medical Code that was, among other things, to provide for the prohibition of doping, to establish the lists of the classes of prohibited medicaments and procedures, to provide for the obligation for competitors to submit themselves to medical controls and examinations, and to make provision for sanctions to be applied in the event of a violation of the Medical Code. The Medical Code also included provisions relating to the athletes' medical care and applied to all Olympic Games participants. Compliance with the IOC Medical Code was one of the eligibility conditions under the Eligibility Code (Rule 45).

The by-laws to Rule 48 of the Olympic Charter 1991 contained three sections: the Medical Commission, establishment and implementation of the Medical Code, and provisions against the trafficking of prohibited drugs. The IOC President appointed the Medical Commission to be responsible for the elaboration and implementation of the Medical Code.

Rules regarding doping control athletes' and teams' offences, consequences of a violation in the Olympic Charter 1991 remained in the substantive part the same, although they were slightly edited to clarify the procedures.

However, another significant change should be rather designated, namely, that the offences related to distribution of doping were included in the Olympic Charter. By the decision of the IOC Executive Board, any person committing such an offence was subject to sanctions that might extend to life exclusion from all forms of participation whatever in the Olympic Games or in any other competitions organized under the authority or patronage of the IOC. The attempted conduct was deemed as a punishable act under those provisions. The violations under consideration included:³⁶

³⁵ The Olympic Charter 1991. Available at: https://stillmed.olympic.org/Documents/Olympic%20Charter/Olympic_Charter_through_time/1991-Olympic_Charter_June91.pdf [Accessed 22.05.2023].

³⁶ These violations would later be more clearly separated by the WADA Code 2003, with addition the rule regarding availability of out-of-competition testing.

— manufacture, possession, transporting, preparation, commercialization, acquisition and distribution in other manner of substances prohibited by the Medical Commission without prior authorization from the IOC;

- taking any measures for such purpose;
- funding or intermediation to finance such measures;
- inducing the consumption or use of such forbidden substances, or revealing means of procuring or consuming them;
- involvement in procedures forbidden by the Medical Commission without prior authorization from the IOC.

Ignorance of the nature, composition and effect of prohibited substances and procedures did not constitute extenuating circumstances (a defense) and could not render the act as permitted.

However, the relevant provisions did not apply to medical professionals when the act in question was necessary for them within the strict limits of *exercising the art of healing*, nor to persons performing acts in the course of the lawful exercise of their professional activities.³⁷

In 1994, the IOC negotiated the Medical Code with the IFs to uniform the rules (Meier and Reinold, 2018, p. 6).³⁸ Consequently, the Olympic Charter 1995 no longer contained by-laws to the Medical Code and definitions of unacceptable conduct and consequences. Only the first provisions relating to the appointment of the Medical Commission and the adoption of the Medical Code remained in the Olympic Charter 1995, with the addition that members of the Medical Commission could also not participate in discussions concerning non-compliance if members of their NOCs were involved.

In the beginning of 1999, when the WADA was in the process of foundation, the Olympic Charter included previous provisions for IOC

³⁷ The provisions regarding the inadmissibility of members of the Medical Commission to act as support personnel, the consequences for teams, and the right of the IFs to impose additional sanctions and IFs authority to propose a selection of athletes for doping control for approval by the IOC were retained.

³⁸ However, in 1997 the press reported that IOC acknowledged that agreement 1994 did not work, so IOC brought new proposal to harmonization IFs anti-doping rules based on Medical Code. The Spokesman-Review, (1997). IOC Seeks Uniform Drug Code. Available at: <https://www.spokesman.com/stories/1997/sep/01/ioc-seeks-uniform-drug-code/> [Accessed 23.03.2023].

approval of the Medical Code. However, it already had rules to make the Olympic Movement Anti-Doping Code (OMAC) binding on the Olympic Movement. Thus, for the IFs to be recognized and admitted by the IOC and for the sport to be included in the Olympic Programme, two conditions had to be fulfilled: the OMAC application and the performance of the out-of-competition testing. Notably, the athlete's solemn oath during the Olympic Ceremony included words that the athletes committed themselves to the sport without doping. In the later version of the Olympic Charter, the rules on the Medical Code were deleted and replaced by the OMAC.

It is noteworthy to mention that literature stated at this time that need for international collaboration between the IOC, governments and sports federations is the most important area for change (Mottram, 1999, p. 9). The trend towards making the anti-doping rules mandatory for the entire Olympic Movement continued at the beginning of the 21st century and, finally, in 2003 a provision stipulating that the WADA Code was obligatory for the whole Olympic Movement was introduced in the Olympic rules.

IV. Intergovernmental Efforts on Anti-Doping Regulation (1960–2000s)

The relevance of the anti-doping campaign is also associated with the emergence of politicization of sports reflected in the increased interest of States in the development of sports to demonstrate the State's success on the international stage. Indeed, the endeavors of the IOC might not have been sufficient to intensify anti-doping efforts if the States had not become involved in that struggle in 1960s. It is clear that, for example, laboratories and the widespread system of medical analyses, researches and education, as well as many other anti-doping elements can only be set up with the State support. States' efforts to regulate doping in sport were very significant and they probably determined the success of anti-doping activities.

The first participation of the Soviet Union in the 1952 Olympic Games and the further development of the political confrontation between several world powers during the Cold War are deemed to have

had a particular impact on States. The containment of the political confrontation in sport that might have entailed the use of doping, along with concerns for the welfare of the athletes and the population, may explain the interest of States in regulating the field of doping in the second half of the 20th century (Beamish, 2013, pp. 217–219; Meier and Reinold, 2018, p. 7).

Belgium and France passed first anti-doping laws in 1965. In 1970s, other countries also engaged themselves with drafting laws on doping issues.³⁹ It is noteworthy to emphasize that during the debate in the French National Assembly in late 1964, a rapporteur drew attention to the fact that the reason for the introduction of the draft anti-doping law was not only the spread of doping among adult or professional athletes, which might have had little impact, but also among young athletes.⁴⁰ Thus, it was reiterated that the mere fact of doping by professional athletes did not seem to be a real problem.

Initially, since the problem of doping was most acute in the context of international sports competitions that became a platform for international power competition between States, it was at the international level where the ideas about anti-doping began to be discussed in a coordinated way.

IV.1. First Intergovernmental Steps in the Anti-Doping System Development (1960–1980s)

The modern system of anti-doping regulation was developed by the Council of Europe in the 1960s and 1980s in close co-operation with the IOC.⁴¹

³⁹ UNESCO Study on the technical and legal aspects of the desirability of developing a new international instrument to combat doping in sport, covering education, prevention, co-operation and information 27 C/43 (1993) Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000095299> [Accessed 23.03.2023].

⁴⁰ Anti-Doping Convention (T-DO) Project on the Compliance with Commitments Compliance by France with the Anti-Doping Convention Available at: <https://rm.coe.int/project-on-compliance-with-commitments-respect-by-france-of-the-anti-d/168073ac52> [Accessed 23.03.2023].

⁴¹ Detailed politic steps of the international community on fight against doping in 1960–1980s are outlined in Explanatory Report to the Anti-Doping

In 1967, when the IOC appointed the Medical Commission, the Committee of Ministers of the Council of Europe adopted the first international act in this field, namely, Resolution No. (67) 12 on the Doping of Athletes.⁴² It outlined the philosophical, ethical and sociological aspects of anti-doping, presenting doping as a means that jeopardized the health and dignity of those who resorted to it and offended against the spirit of fair play essential to all sport.

The Member States were recommended to persuade the national sports associations and federations:

- to take action if necessary with their international federations; and
- to issue a regulation condemning the use of doping, penalizing offenders by prohibiting them to participate in sports, applying to any person who, in another Member State, has been penalized.

The study carried out by Alexander de Merod, devoted to the Conference of European Ministers responsible for Sport in 1978, demonstrated that the available international and national rules had significant discrepancies and were inefficiently implemented. By the end of the 1970s, only three IOC-approved laboratories were in place to serve twenty-two states.

In 1978, European Ministers adopted a Resolution in charge of Sport on Ethical and Human Problems in Sport that formed the basis of Recommendation No. (79) 8 concerning Doping in Sport.⁴³ Member States were recommended:

- to encourage sport community to take the steps necessary for the simplification and harmonization of the anti-doping regulations;
- to develop, in co-ordination with the governing bodies of sport, an educational campaign;
- to set up systems for the control of the use of artificial stimulants in sport;

Convention. In this study, in Section IV, we refer to this report, highlighting only aspects relevant to the formation of the law. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cb349> [Accessed 23.03.2023].

⁴² Resolution of the Committee of Ministers on the Doping of Athletes. 67/12.

⁴³ Resolution of the European Ministers in charge of Sport on Ethical and Human Problems in Sport. 78/3; Recommendation concerning Doping in Sport. Rec (79) 8.

— to encourage as a priority the creation of suitable laboratories for the comprehensive testing and control.

In particular, member states should consider the establishment of a national anti-doping committee that could consist of representatives of sports organizations and governmental administration responsible for sport and public health.

In 1984, the European Anti-Doping Charter for Sport was drawn up by the expert group of the Committee on the Development of Sport (CDDS) chaired by Alexandre de Merode which substantially consolidated all the previous Council of Europe acts.⁴⁴ The first part of the European Anti-Doping Charter set out the requirements for States, the second part included the requirements that States were obliged to impose on sports organizations within their jurisdiction. Thus, States shall:

— ensure implementation of anti-doping rules, for example by making it obligatory to adopt and apply them or making it a condition for receiving public subsidies;

— mutually cooperate to reduce the availability of doping and ensure that doping controls can be conducted;

— set up laboratories;

— provide research, information on anti-doping policy and funding for anti-doping policy, help with the publication of the results of research.

States shall also encourage sports organizations:

— to harmonize anti-doping rules and procedures based on the international acts of the IOC and the IAAF, and ensure that anti-doping rules provide adequate protection of the rights of participants who are charged with an anti-doping rule violation;

— to ensure that the lists of prohibited substances were uniform based on the IOC lists;

— to make efficient use of the facilities available for doping control;

— include in their rules as an eligibility condition a provision that the athlete agree to submit at any time to doping control decided on by an official authorised by that federation or its superior federation;

⁴⁴ Recommendation of the Committee of Ministers to Member States on the “European Anti-Doping Charter for Sport.” Rec (84) 19.

— to agree on similar and substantial penalties for anti-doping rules violation.

It was then necessary to make the achievements of the Council of Europe accessible to the rest of the nations and activities began to expand anti-doping practices.

In 1984, Otto Jelinek, a former Olympian, was appointed Canadian Minister responsible for Sport. Jelinek made a great effort to put Canada at the forefront of the anti-doping movement (Beamish, 2013).⁴⁵ Thus, Canada's efforts may have helped move anti-doping activities beyond the Council of Europe.

In 1986, European Ministers formulated a resolution welcoming the proposals made, *inter alia*, by the Canadian Minister responsible for Sport on future action to widen the impact of the European Anti-Doping Charter for Sport, and accepting his offer to collaborate with the Council of Europe member states. Resolution No. (86) 4 invited the Committee of Ministers to ask the CDDS to present proposals for involving more countries in the fight against doping.⁴⁶ During 1988, European officials concluded that a binding convention should be adopted to allow non-member states of the Council of Europe to join the anti-doping activities of European states.⁴⁷

The international legal work carried out over two decades resulted in adoption of the first significant international act in the field of fight against doping in sport, namely, the Anti-Doping Convention, adopted within the Council of Europe in Strasbourg on 16 November 1989 (ETS No. 135; Strasbourg Convention). The Strasbourg Convention was open for signature by non-member states and it was binding on the parties.

The development of the anti-doping policy was also undertaken by other members of the international community. By this time, the International Conference of Ministers and Senior Officials Responsible

⁴⁵ It may be interesting how Jelinek's views on the communism and sport affected his efforts to eliminate doping (Beamish, 2013, p. 223).

⁴⁶ Resolution of the European Ministers in charge of Sport on Doping in Sport. 86/4.

⁴⁷ On 21 June 1988, the Council of Europe also issued a Recommendation on the Institution of Doping Controls without Warning outside Competitions to introduce out-of-competition doping control procedures. At this time, out-of-competition doping control was seen as an important part of the anti-doping policy success.

for Physical Education and Sport (MINEPS) and the Intergovernmental Committee for Physical Education and Sport (CIGEPS) were functioning within UNESCO. The UNESCO International Charter of Physical Education and Sport was adopted in 1978. It defined in broad terms the principles of sporting activities.

In 1985, the Nordic Anti-Doping Convention was adopted. It enshrined an agreement on cooperation and harmonization of the rules on doping tests during competitions and training (Sweden, Norway, Denmark, Finland and Iceland). The American-Soviet agreement containing joint procedures with a view to reciprocal testing during training was signed in 1988. In 1990, co-operation agreement was also signed between Australia, Canada and the United Kingdom.⁴⁸

In 1988, the first World Anti-Doping Conference was held in Ottawa. It brought together 85 individuals (government officials, physicians and leaders of sport federations) from 27 nations, including China, the Soviet Union, East Germany and South Korea. They met to approve the draft International Anti-Doping Charter that was intended to be presented to the IOC during the Seoul Olympic Games (Cart, 1988).

In November 1988, the MINEPS II discussed also the problem of doping. The attention of participants was linked to:

- the proposal made by leaders of Socialist countries on establishment permanent doping control commission at their previous meeting (IOC expressed the intention to support this proposal);
- the possibility of adopting within UNESCO an international anti-doping instrument (however, there was also an objection that doping control is a matter for voluntary sports movement);
- the approval of coordinated efforts based on the International Anti-Doping Charter.⁴⁹

⁴⁸ UNESCO Study on the technical and legal aspects of the desirability of developing a new international instrument to combat doping in sport, covering education, prevention, co-operation and information 27 C/43 (1993) Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000095299> [Accessed 23.03.2023].

⁴⁹ Physical education and sport in the cause of humanism; final report Conference, International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport, 2nd, Moscow, 1988. Pp. 10, 40. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000082899> [Accessed 23.03.2023].

IV.2. Further Anti-Doping Harmonization and the International Convention against Doping in Sport (1990–2000s)

During 1990s, the international community and the Council of Europe, continued its legal activities and adopted a number of instruments forming the basic provisions establishing the principles of “fair play,” including prohibition of doping. The European Sports Charter and Code of Sports Ethics “Fair Play — The Winning Way” acting as a complement to it were the most significant instruments adopted 1992.⁵⁰ The Monitoring Group of the Strasbourg Convention adopted also a number of recommendations which reflect the content of the later WADA World Anti-Doping Program.⁵¹

The background for further changes in the organization of global anti-doping enforcement was provided by the events of 1997–1998. Allegations of doping affected athletics, football, swimming and cycling (Wilson, 1998).

In 1997, W. Franke and B. Berendonk published an article on the use of doping in the East Germany (GDR), accusing the state authorities in the use of drugs in high-performance sport based on several secret documents (Franke and Berendonk, 1997). In August 1998, the first court sentence was passed in Germany for the use of doping. The court held that coaches and doctors of swimming teams from the former East Germany administered anabolic steroids and hormones to swimmers without their knowledge, causing detriment to the girls’ health.⁵²

⁵⁰ Actual versions: Recommendation CM/Rec(2021)5 of the Committee of Ministers to member States on the Revised European Sports Charter; Recommendation CM/Rec(2010)9 of the Committee of Ministers to Member States on the revised Code of Sports Ethics.

⁵¹ E.g., Recommendations on: blood sampling for doping medical controls (Rec (98) 3); basic principles for disciplinary phases of doping control (Rec (98) 2); standard operating procedures at doping control laboratories [procedures for non-analytical phases] (Rec (98) 1); disciplinary measures to be taken with regard to members of the athlete’s entourage in application of Art. 7.2.e of the Convention (Rec (96) 1); Standard Urine Sampling Procedures for Doping Control in and out of Competition (Rec (95) 1).

⁵² BBC, (1998). *Sport East German officials fined for doping*. Available at: <http://news.bbc.co.uk/2/hi/sport/154808.stm> [Accessed 23.03.2023].

The 1998 Tour de France was also affected with unprecedented doping cases involving numerous athletes and officials from different teams. The cycling races were accompanied with constant arrests, protests and seizures of banned substances (Wilson, 1998).

These events, as well as a number of other doping incidents, resulted in public criticism of the actions of the IOC (Meier and Reinold, 2018, p. 11). It is noteworthy to emphasize that, at the end of 1990s, sports participants assumed that the sport community was not unanimous on doping and some disciplines found doping is a part of sport (Wilson, 1998). Anti-doping principles, introduced from amateurism, were still in conflict with the mind-set of professional sport.

In summer 1998, the IOC held a meeting where four points were formulated to be discussed at the forthcoming World Anti-Doping Conference:

- protection of athletes;
- the political and legal position, the definition of doping, and government cooperation;
- ethics, education and prevention;
- financial stakes and the relationship between doping and money.

Responsibility of each IFs for out-of-competition testing, for which the IFs lacked funds, was declared as one of the key problems. To address this problem, it was proposed to create a new agency that would be responsible for out-of-competition testing and that could receive sufficient funding. It was expected that IOC would use television revenues to pay for the agency.⁵³

In early 1999, the World Conference on Doping in Sport was held. It resulted in the Lausanne Declaration on Doping in Sport adopted by representatives of governments and sports organizations. The OMAC was adopted as the basis for the fight against doping. It also announced that an International Anti-Doping Agency should be created for the 2000 Olympic Games. The IOC, international and national sports organizations maintained their respective competence and responsibility to apply anti-doping rules in accordance with their own procedures, but

⁵³ BBC news, (1998). Sport “We will never eliminate doping.” Available at: <http://news.bbc.co.uk/2/hi/sport/155056.stm> [Accessed 23.03.2023].

they should cooperate with the International Anti-Doping Agency. The recognition by IOC, the IFs and the NOCs of the jurisdiction of the Court of Arbitration for Sport, established in 1984 as the court of last resort for sports disputes, was one of the most important steps.

In December 1999 in Europe, the Community support plan to combat doping in sport was issued. It shaped the framework of new organization of the anti-doping system highlighting that over-commercialization of sport caused the doping problem and opting for a three-layer approach in this field: to assemble the experts' opinions on the ethical, legal and scientific dimensions of doping, to contribute to preparing the World Anti-doping Conference and collaborate with the Olympic movement on the WADA creation, to work further on the European international instruments. Constitutive Instrument of Foundation of WADA (WADA Statutes) was an its annex.⁵⁴

Based on this framework, an Additional Protocol to the Strasbourg Convention was adopted in 2002. The Additional Protocol updated certain aspects of joint anti-doping activities of member states, called on states to recognize the competence of the established WADA, ensured certification of the national anti-doping organization (NADO) in accordance with the requirements of applicable international standards, and strengthened the control mechanism of the Strasbourg Convention.

In 2003, WADA finally adopted the WADA Code. Stakeholders signed the Copenhagen Declaration on Anti-Doping in Sport that supported the changes that had taken place.

At the same time, since the beginning of 1990s, UNESCO had undertaken actions to prepare a new international instrument.⁵⁵ In 1993, it was stated that the UNESCO General Conference should decide whether the fight against doping should become the subject matter of a

⁵⁴ Communication from the Commission to the Council, the European parliament, the Economic and Social Committee and the Committee of the regions — Community support plan to combat doping in sport COM(1999)643 Commission of the European Communities. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1999:0643:FIN:EN:PDF> [Accessed 23.03.2023].

⁵⁵ UNESCO Desirability of adopting an international instrument to combat doping in sport 26 C/35, (1991). Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000089424> [Accessed 23.03.2023].

new international instrument and in what form such instrument could be adopted:

- in the form of convention in order to give it the force of law and made it binding on the States;
- in the form of recommendation in order to summarize guiding principles and standards and invite States to apply them at the national level;
- in the form of declaration as a formal, solemn instrument in order to specify the universal principles to which States agree to accord their widest authority.⁵⁶

UNESCO initiated the process of drawing up an international instrument against doping in sport in the form of convention in January 2003, at the same time with the WADA Code adoption within Olympic movement. The Council of Europe has been taking an active part in the drafting process and reported in preparation for MINEPS IV in 2004 on the UNESCO's work emphasizing the importance of a number of significant legal issues concerning new instrument. In this regard, it seemed important from the perspective of the Council of Europe:

- to ensure that the standards under the new draft international instrument conform to the purposes of the WADA Code;
- to promote compatibility between commitments under UNESCO Convention and the commitments under existing instruments;
- to clarify the relationship between the draft instrument and its annexes and the WADA Code and its International Standards.⁵⁷

So, the Council of Europe supposed that the WADA Code should be the core document, and the UNESCO Convention was intended to made the anti-doping system included in the WADA Code binding on the States.

⁵⁶ UNESCO Study on the technical and legal aspects of the desirability of developing a new international instrument to combat doping in sport, covering education, prevention, co-operation and information 27 C/43 (1993).

⁵⁷ Information on progress in UNESCO's work on the draft international anti-doping convention. Council of Europe. Ministers' Deputies. Notes on the Agenda. CM/Notes/905/8.1. 30 November 2004. Available at: <https://rm.coe.int/09000016805db854> [Accessed 23.03.2023].

On 9 October 2005, the UNESCO adopted the International Convention against Doping in Sport, the most successful convention in the history of UNESCO in terms of the speed of its ratification by States after adoption and the second most ratified of all the UNESCO conventions (191 States Parties).⁵⁸

V. Discussion

A brief look at the major milestones in the development of anti-doping regulation shows the importance of legal cooperation between States and the sporting community concerning joint elaboration of rules and policies for prohibiting doping among athletes.

One of the earliest examples of doping prevention in sport demonstrates that the outlines of modern legal fight methods were established by the sporting community when doping was perceived as a real issue. The actions of the racing community lead us to the following conclusions:

- active opposition was provoked by significant interference of doping in the normal course of competitions and its unpredictable effects on competition results, stakes and the health of horses;
- the initiative to prevent doping came from the sporting community that regulated the industry independently at its own discretion and it also adjudicated cases when the rules were violated; governmental involvement was negligible;
- as supplements to the main anti-doping rule, satellite provisions were established to enforce the rule, including rules enshrining doping-control and good care;
- the lack of clear criteria for the concept of doping has not hindered enforcement rules;
- the primary and only sanction chosen was the exclusion of an offender from the sporting community;
- the sporting community could not always demonstrate the uniformity in the execution of the imposed punishment.

⁵⁸ UNESCO. International Convention against Doping in Sport. Available at: <https://en.unesco.org/themes/sport-and-anti-doping/convention> [Accessed 23.03.2023].

It was important to highlight the practice of anti-doping in horseracing in order to demonstrate the differences in anti-doping between the racing community and the athlete community. Thus, when the IOC only created a first medical group, the racing community had already recognized the need for standardized testing, public financial support and cooperation with prosecuting authorities, and applied rules encouraging whistleblowers. Moreover, it implemented a strict liability, so a trainer or assistants can be subject to sanctions in any case where a horse suffers from doping, regardless of whether they were guilty and actually used the stimulants or were involved in other way in the offence. The case of horseracing shows that the problem with the first anti-doping rules for athletes in 1920s and 1950s was associated not with the lack of objective enforcement capacity and the uncertainty of the concept of doping, but probably with the lack of a real need to enforce them. Despite the absence of sufficiently advanced medicine and a specific definition of doping, the Jockey Club and stewards across the world were still able to effectively implement anti-doping rules and suspend the offenders.

The IOC's attempts to define the illegality of doping during this period were associated both with the refusal to involve sport in the public interest, which discredited principles of amateurism, and with the detrimental effects that doping could have on the health of athletes. The ban on doping among athletes was intended to preserve the ideals of amateur sport rather than to serve the suppression of doping. However, the illegality of doping was not apparent to the sporting community, and according to the Boje (1939, pp. 439–441), despite the widespread use of doping in sport, public debate continued over the ethical and medical aspects of the problem. These debates presume that the community was not fully prepared to oppose doping among athletes by the mid-twentieth century.

The change in attitudes towards doping among athletes can be explained by politicization of sport, which is reflected in the increased interest of States in the sporting success of their athletes. International competitions, especially the Olympic Games, have become an arena for demonstrating the political and economic power of States. Stimulants, including steroids, could be a means of political confrontation on all

sides in such circumstances. It is pointed out that one of the reasons for prohibiting doping is that the society says it should be banned (Lee, 2006, p. 55), but it should rather be highlighted that the States also want doping among athletes to be banned.

In the light of the above, it seems understandable that it was States, rather than members of the sporting community, that began the coordinated and concerted legal work to uniform the anti-doping rules and made them binding to all sports. It is observed not coincidentally that the current anti-doping system favors complete suppression and is similar to the fight against drugs carried out by public authorities (Kayser and Smith, 2008). A blanket and general prohibition on doping for all states was able to contain political confrontation, put states shared an equal footing when it came to international competition and protection of public health. The anti-doping regulation development mostly through the efforts of states may also show that the researchers are right to argue that the modern failure to eliminate doping stems from the mind-set and objectives of professional sport.

Thus, it can be seen that between 1960s and 1980s, the most intense legal activity took place at the level of intergovernmental organizations, while the IOC faced with scientific and administrative deficiencies and doubted whether the IOC should take a leadership in doping control instead of IFs (Dimeo, Hunt, and Bowers, 2011). The documents of the Council of Europe have shaped the principles and guidelines of international anti-doping policy, including:

- recognition of the demand for coordinated government assistance in the fight against doping, especially as it relates to forcing the universal binding power of anti-doping rules and ideology, financial support and establishment of laboratories with the development of adequate technical standards;

- clear separation of powers, terms of reference and responsibilities between state authorities and sports organizations, as well as states' acceptance of the legitimacy of anti-doping rules issued by the sporting community;

- states' mutual recognition of doping procedures, adjudicational process and sanctions imposed by sports organization or other states

if anti-doping violations take place in order to harmonize their enforcement;

— recognition of the demand for forcing science and use of scientific knowledge in organizing anti-doping activities and education.

The Council of Europe also outlined the responsibilities of each actor involved in anti-doping activities. States were tasked with coordinating, enabling the development of anti-doping policy, and persuading participants to take adequate steps to eradicate doping; international sports organizations were tasked with ensuring uniformity of anti-doping practice, including through the development of anti-doping rules; national sports organizations were tasked with the direct implementation of anti-doping rules and raising an atmosphere of no tolerance to doping.

The development of the IOC's anti-doping rules demonstrates that the Olympic Movement anti-doping rules changed rather consistently, responding to current needs and resources of sports community. The IOC first articulated the prohibition of doping as an ideological benchmark for amateur sport. Compliance with the anti-doping rules then regarded as a condition of eligibility for the Olympic Games, which led to the formation of an independent corpus of rules consolidated as the Medical Code. The IOC implemented prohibited list and made the independent Medical Commission responsible for proposing sanctions, while retaining the ability for the IFs to take additional measures. An original ban on the use of doping was supplemented with a duty to participate in doping controls, the non-compliance of which constituted a separate offence. Later condemnation of the distribution and promotion of prohibited practices was also added in the Olympic rules. The scope of persons subject to liability and consequences of the anti-doping rules violations, including individual and team disqualification, forfeiture of results, withdrawal of accreditation and awards, expanded also by the IOC successively. So, the core and substantive parts of modern anti-doping system are based on the principles adopted by the IOC from the 1960s to the 1990s step by step.

The Strasbourg Convention that was binding on the member States has put an intermediate point in the development of the anti-doping system. The certain completion of governmental legal activities and

the creation of the infrastructures necessary for the implementation of anti-doping rules has allowed a greater focus on the enforcement of the Olympic movement cohesion and on the content of the anti-doping rules. In 1990s, the Monitoring Group of the Strasbourg Convention implemented basic principles on doping control (sample collection, disciplinary proceeding, etc.). Since 1990, the IOC's anti-doping regulations began also to undergo their most significant changes and they laid the basis for the future WADA Code.

At the end of the 20th century, anti-doping had developed into a broader field, extending beyond the Olympic Games. The anti-doping mechanism had to take into account the coordination of sporting organizations and nations, the medicine improvement, monitoring of athletes, management of control procedures, adjudication of cases, imposition of sanctions and other legal aspects. Placing the primary responsibility on the IOC to develop system of anti-doping regulation was likely to place a significant burden on the IOC.

In this connection, at the beginning of the 21st century, WADA was established as a separate non-governmental body, with the IOC assuming the role of organisation enforcing uniformity and binding nature of the anti-doping rules across international sport and its participants, as reflected in the provisions of the Olympic Charter in later 1990s and early 2000s. The main objective of the IOC at this point was to harmonize rules within the all Olympic sports and form the basis for hierarchic regulations for WADA to be able to function uninterrupted.

In early 1990s, the discussion on the need the international anti-doping instrument continued within UNESCO, and some doubts remained among the UNESCO States in the connection with further intergovernmental regulation. However, organizational changes in the anti-doping system at the beginning of the 21st century predetermined the updating of international legal instruments. The Strasbourg Convention adopted by the Council of Europe was only a regional international treaty and it no longer fully corresponded to the current legal reality. The international sporting community needed legal instruments that, at the global level, would have established the binding nature of the

changes in the system of anti-doping regulation, in particular, the WADA competency, the fundamental role of the WADA Code, the duties of equal funding of the WADA, etc. The UNESCO Convention has fulfilled these objectives.

VI. Conclusion

Twenty years after the adoption of the first version of the WADA Code, the Olympic Movement achieved considerable uniformity. WADA adopted, inter alia, the model rules for IFs, major events organizations, NOCs, NADOs. It was authorized to exercise the exclusive powers of oversight. International Testing Agency (ITA) was established under WADA and IOC control.⁵⁹ The IOC intended, through the creation of an independent organization, to reduce the risk of conflicts of interests that could arise when IFs conduct testing at competitions under their jurisdiction.⁶⁰

Thus, the current system of provisions runs the risk of monopolizing doping control and reducing transparency of the regulation. In 2022, 13 NADOs signed the Declaration of Guiding Principles for the Future of Anti-Doping, calling for development of the anti-doping system.⁶¹ The Guiding Principles declared separation of powers concentrated within WADA and NADOs, transparent division of the roles and responsibilities among the legislative, executive and the judiciary functions protected from being controlled by political interests, attention to the voices of athletes and the equal participation in science.

⁵⁹ As a significant development, the UCI, one of the main IFs for anti-doping, that it hands over its anti-doping activities to the ITA from 2021. Cyclingnews. (2020). *UCI to shift anti-doping away from CADF in 2021*. Available at: <https://www.cyclingnews.com/news/uci-to-shift-anti-doping-away-from-cadf-in-2021/> [Accessed 23.03.2023].

⁶⁰ The International Olympic Committee, (2015). Olympic Summit supports next steps in implementation of Olympic Agenda 2020. Available at: <https://olympics.com/ioc/news/olympic-summit-supports-next-steps-in-implementation-of-olympic-agenda-2020> [Accessed 23.03.2023].

⁶¹ Sport Information Resource Centre, (2022). *Group of NADOs Proposes Declaration of Guiding Principles for the Future of Anti-Doping*. Available at: <https://sirc.ca/news/group-of-nados-proposes-declaration-of-guiding-principles-for-the-future-of-anti-doping/> [Accessed 23.03.2023].

However, harmonization and increased anti-doping WADA and IOC budgets (Burke, 2022a; Owen, 2022) have not led to a solution to the problem of doping. In addition, not all participants of the global sporting community really implement regulations uniformly and consistently, as, for example, approximately 90 % of American athletes remain beyond WADA control.⁶² The problem also exists with the unannounced tests among young Norwegian athletes because of the national legislation (Burke, 2022b). Besides, literature reports about systemic issues in the implementation of the WADA Code in India (Star, 2022).

In this regard, the effectiveness of activities aimed at harmonization of the anti-doping regulation remains debatable. Since efforts taken during 1990s and 2000s focused on harmonization, it is likely that the global community now needs to address its disadvantages and evaluate critically the methods of the regulation used to eliminate doping in sport.

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⁶² WADA statement on the U.S. Office of National Drug Control Policy report to Congress. Available at: <https://www.wada-ama.org/en/news/wada-statement-us-office-national-drug-control-policy-report-congress> [Accessed 23.03.2023]; TASS. (2022). WADA reacts to possible suspension of Norway from the Olympics. Available at: <https://tass.ru/sport/15517967> [Accessed 23.03.2023]. (In Russ.).

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