

THE COUNCIL OF EUROPE'S ANTI-DOPING CONVENTION AND ITS RELEVANCE TO INTERNATIONAL ANTI-DOPING POLICY¹

АНТИДОПІНГОВА КОНВЕНЦІЯ РАДИ ЄВРОПИ ТА ЇЇ ЗНАЧЕННЯ ДЛЯ МІЖНАРОДНОЇ АНТИДОПІНГОВОЇ ПОЛІТИКИ

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The article considers certain legal aspects of international cooperation in anti-doping activities. There is no doubt that over the past few decades we have seen a constant struggle for quality in sports. As has been pointed out many times in international forums, one of the most significant battles is taking place in the legal field and relates to doping. On the international level, including in terms of how sports are organized, European countries cooperate with each other, among other things, within the framework of the Council of Europe. There is no doubt that the process of anti-doping policy development has been carried out in many ways, and one of the most important roles in this field has been played by the Council of Europe. Within its structures, the first international legally binding instrument to combat doping – the Anti-Doping Convention – was adopted, which was undoubtedly the turning point of communitisation on the anti-doping systems of the signatory countries. In this day and age of anti-doping policy development, it seems important to analyse the significance of this act in the international field and the question of its legal nature. The article defines the role of the Council of Europe in ensuring the international cooperation in the fight against doping in sports. The impact of the Anti-Doping Convention on the reduction and eradication of doping from sports through the most integrated legal measures is analyzed. The authors research the obligations of the signatories to take joint action to reduce and, in the future, eliminate doping in sports. Particular attention is focused on the issue of implementing, in cooperation with relevant sports organizations and the mass media, educational programs and information campaigns highlighting the dangers of doping.

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Key words: doping, sports law, Council of Europe, anti-doping convention.

У статті розглядаються окремі правові аспекти міжнародного співробітництва щодо антидопінгової діяльності. Протягом останніх кількох десятиліть ми спостерігаємо постійну боротьбу задля забезпечення якості у спорті. Як неодноразово наголошувалося на міжнародних форумах, одна з найбільш значущих суперечок точиться в правовому полі і стосується питань допінгу. На міжнародному рівні, в тому числі з питань щодо організації спорту, країни Європи співпрацюють одна з одною, зокрема і в рамках Ради Європи. Безперечно, процес розробки антидопінгової політики впродовж років здійснювався різними способами, і одну з найважливіших ролей у цій сфері відіграла Рада Європи: було прийнято перший міжнародний юридично обов'язковий документ, що став інструментом боротьби з допінгом – Антидопінгову конвенцію, яка, безсумнівно, стала поворотним моментом у комунікації антидопінгових систем країн-підписантів. У наш час розвитку антидопінгової політики видається важливим проаналізувати значення цього акту в міжнародній сфері та питання його правової природи. В статті визначається роль Ради Європи у забезпеченні співробітництва держав в боротьбі з допінгом у спорті. Аналізується вплив Антидопінгової конвенції на зменшення та викорінення допінгу зі спорту за допомогою найбільш інтегрованих правових заходів, а також значення Додаткового Протоколу до Конвенції для аналізу та тлумачення її цілей і норм. Також наводяться певні недоліки окремих положень міжнародного акту, зокрема, що стосується визначення поняття «допінг у спорті». Авторами досліджуються зобов'язання країн підписантів вживати спільних заходів для зменшення, а в майбутньому й повної ліквідації допінгу в спорті. Окрема увага приділяється питанню запровадження у співпраці з відповідними спортивними організаціями та ЗМІ освітніх програм та інформаційних кампаній, що висвітлюють небезпеку допінгу.

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Ключові слова: допінг, спортивне право, Рада Європи, антидопінгова конвенція.

Introduction. Despite many measures and many attempts to eliminate doping, doping in sports is still a significant problem, affecting the distortion of sports competition, as well as shaping the image of individual countries in the international arena. On the international level, including in terms of how sports are organised, European countries cooperate with each other within the framework of the Council of Europe. There is no doubt that the process of anti-doping policy development has been carried out in many ways, and one of the most important roles in this field has been played by the Council of Europe. Within this organization, the first international legally binding instrument to combat doping – the Anti-Doping Convention – was adopted [1], which was undoubtedly the turning point of communitisation on the anti-doping systems of the signatory countries.

The purpose of the article. This publication focuses on the importance of this act in international anti-doping policy,

which laid the foundation for the systemic fight against doping, as well as on its legal nature.

Presenting main material. One of the first international organisations to take up the fight against doping in sports and which played a significant role in this field in the second half of the 20th century was the Council of Europe. According to its charter, its main goal is to *achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress* [2]. Thus defined, this organisation will realise its purpose through its organs by discussing common problems, by concluding agreements and acting together in economic, social, cultural, scientific, legal and administrative matters, as well as by respecting and developing human rights and fundamental freedoms [2].

The Council of Europe, which has no legislative powers, is an intergovernmental organisation, which means that

¹ As the considerations in this article are closely related to the issues raised in the publication: *Konwencja Antydopingowa Rady Europy oraz Światowy Kodeks Antydopingowy w systemie prawa UE*, and the issue concerning the importance of the Convention in the international anti-doping policy, I allowed myself to directly quote excerpts from the indicated book, see: R. Kopczyk, *Konwencja Antydopingowa Rady Europy oraz Światowy Kodeks Antydopingowy w systemie prawa UE*, Oficyna Prawnicza, Wrocław 2020

its members are countries whose representatives are their governments. It is a regional and general organisation, where the level of integration between activists is not very high. It also seems important at this point to point out that the Council of Europe has had legal capacity since its inception, and the ability to take legal action, which is essential in terms of unfettered international action.

As sports should play an important role in the field of health care, in moral and physical education and in promoting international understanding [1] and is a field that is important to the Council of Europe and is treated as a common heritage, the organization presented solutions to this problem as early as 1960. The next step was the resolutions and recommendations issued by the Council of Europe [3]. In 1989, the Anti-Doping Convention was drawn up, which provided an instrument to harmonise international co-operation in action against doping in sports. It was a trigger for the international anti-doping community and set in motion the mechanisms that caused an increase in interest in this issue [4, p. 85].

The Anti-Doping Convention, drawn up on November 16, 1989 in Strasbourg, represents a kind of obligation for the government bodies of its signatories. It is not a document designed to solve the complex technical problems that accompany the fight against doping – its goal is to reduce and eliminate doping from sports through the most integrated legal measures and international co-operation structured on this ground [5, pp. 669-693]. The Convention has a framework character and is open for signature by member states of the Council of Europe, other states – parties to the European Cultural Convention and non-member states participating in the elaboration of the Convention, if they are ready to undertake the obligations that flow from the content of this act.

The goal that guided the creators of the Convention was to achieve harmonisation of anti-doping activity at the national and international levels [6, p. 216]. The goal was to make it more difficult to acquire and use substances such as anabolic steroids, among others. It was decided to support funding for anti-doping tests, regular anti-doping checks during and outside sports competitions. The Convention stresses that “sports should play an important role in health care, in moral and physical education, in promoting international understanding.” The Convention obliges signatories to take joint action to reduce and, in the future, eliminate doping in sports. The realisation of the goal thus defined is to be carried out on two levels, intra-state and international. At the national level, these are national anti-doping organisations, while at the international level they are sports federations. At the level of intra-state coordination, the efforts of states-parties should, in accordance with the provisions of the Convention, be aimed primarily at reducing in their own area the availability and use of prohibited drugs and the use of doping methods.

In Article 5, the Convention obliges states-parties to organise or assist in organising doping control laboratories on their territory that meet the criteria adopted by the relevant international sports organizations and approved by the Anti-Doping Convention Monitoring Group, as well as to assist sports organizations located on their territory in gaining access to laboratories on the territory of another state party.

Under the provisions of Article 6 of the Convention, states-parties are also obliged to educational activities. They were charged with developing and implementing, if necessary, in cooperation with the sports organizations and mass media concerned, educational programs and information campaigns highlighting the dangers to health of doping and the damage it does to sports ethical values.

Article 10 of the Convention also stipulates a separate body called the “Convention Monitoring Group” to carry out its objectives. The role of the Group is to oversee the implementation of the provisions of the Convention by states-parties. The Group, under the provisions of the Convention, approves lists of prohibited classes of pharmacological agents and doping

methods, and has the legitimacy to verify the Convention's findings. In addition, it can also formulate proposals for necessary amendments to the Convention, as well as recommendations to countries on the correct implementation of the provisions of the Anti-Doping Convention of the Council of Europe or the implementation of state policy in the area of combating doping in sports. These tasks are carried out with the help of working teams established within the Group's structure, including Research (T-DO SCI) and Legal Affairs (T-DO LI).

Following the establishment of WADA, the Council of Europe, in view of the loss of significance of the Monitoring Group, decided to establish a new body that would be responsible for coordinating the policies of the state's party to the Anti-Doping Convention of the Council of Europe in view of policies and standards created by WADA. An *ad hoc* WADA Committee for WADA was established, “CAHAMA” in short, which works closely with the Council of Europe's Anti-Doping Convention Monitoring Group [5, pp. 672–673]. It is responsible for coordinating the positions of all parties to the European Cultural Convention on WADA issues. Ordinary meetings of the committee shall be convened immediately before or immediately after the meetings of the Anti-Doping Convention Monitoring Group and, if possible, at least one week before the ordinary meetings of the Founding Council and the Executive Committee of the World Anti-Doping Agency.

In analysing the provisions of the Convention, it is also worth noting that the Convention has defined doping in sports, and several measures have been introduced to combat it, such as the refusal to approve world records or local records without the presentation of a reliable negative anti-doping test result. Nevertheless, according to the wording of Article 2, “doping in sports” means the administration to or use by athletes of pharmacological classes of doping agents and the use of doping methods. This definition does not take into account behaviours that are treated as anti-doping violations as of today, which are the scourge of our time².

The Additional Protocol to the Convention, adopted on July 3, 2002 by the Committee of Ministers of the Council of Europe, is relevant to the analysis of the issue and interpretation of the Convention's objectives [7]. It introduced two important elements to bring the Convention in line with the new international anti-doping reality. First, in an effort to harmonise anti-doping policy, it implies mutual recognition by its parties of anti-doping controls carried out by ISO-certified laboratories. The need to regulate this issue was dictated by the lack of a unified approach to bearing responsibility for doping, which resulted, in extreme situations, in circumventing regulations in countries that did not recognize the sanctions of other countries.

Secondly, and of utmost importance, the parties have pledged to similarly recognize the competence of the World Anti-Doping Agency, as well as other doping control organisations acting on its behalf and conducting inspections of athletes of both sexes outside of competitions, both on their own territory and in other territories [7]. In other words, the protocol sanctions WADA's activities and, most importantly, gives it the ability to conduct reciprocal inspections within European countries that have signed the Anti-Doping Convention, without the need for additional agreements.

Conclusions. November 16, 1989. The historical significance of this date would dictate that it be regarded as a seminal moment in the shaping of anti-doping policy, a kind of ground zero in the world history of the fight against doping. For there is no doubt, as has already been emphasized several times in this publication, that this was the first instrument of international law of such significance in the field of fighting doping in sports. The Convention is a framework and a kind

² This primarily involves tampering with doping controls, or trafficking in banned substances.

of catalogue of obligations on the part of its signatories to take the directional actions specified in its content. It is also the first instrument of this scale to harmonise international co-operation in the fight against doping in sport. In contrast, it is not a document whose role would be to solve the complex technical problems that accompany the fight against doping in sports. It must be emphasized that this act never revealed the ambition to regulate in detail aspects of the fight against doping. As the Council of Europe points out, the purpose of the Convention was to establish rules for the co-ordination of internal anti-doping activities by states and to define general principles for international cooperation.

The Convention contains anti-doping rules of a general nature, which are not, in principle, directly applicable, and which, for such application, require the adoption of specific solutions in national legislation. It creates a series of positive and negative obligations for state parties, the implementation of which requires the implementation of such solutions. However, this does not change the fact that it is a source of universally applicable law for the states party to it [8, p.12].

The document would seem to represent a common value of European anti-doping efforts. It creates a set of criteria to which systems should conform in order to be considered one that embodies the ideas of doping-free sport. In reality, however, given the direction and dynamics of the development of international sports structures, and WADA in particular, as well as changes in the approach of individual sports associations to the subject of doping, the Anti-Doping Convention is within the sphere of significant influence of the WADA Code. The very role of WADA and its code reinforced by international action is the most visible evidence of the Swiss law foundation's formal influence in coordinating the fight against the use of prohibited drugs in sports. Nevertheless, it must be emphasized once again that the aim of the Council of Europe's Anti-Doping Convention was to reduce and eliminate doping from sports through the most integrated legal measures and international cooperation structured on this ground. Has this goal been achieved? In my opinion, in a way, yes. It has certainly allowed the development of international anti-doping policy.

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