

How Russian doping could lead to Rio 2016 ban

Written by David Thorpe, Senior Lecturer in Sports Law, University of Technology Sydney

The Russian Olympic team could be banned from competition at the Rio 2016 Games after revelations of widespread state-sponsored doping of its athletes. Described as the [Disappearing Positive Methodology](#), the doping scheme had officials swap dope-contaminated urine for another athlete's non-doped sample to later render a clean test result.

According to [an independent report](#) resulting from an investigation by respected sports lawyer Richard McLaren on behalf of the International Olympic Committee (IOC), the scheme involved the Russian Ministry of Sport and the Russian Federal Security Service, a successor to the KGB.

The IOC will decide shortly whether all Russian athletes should be excluded from the Rio Games, or more specifically, whether the Russian Olympic Committee will be expelled – thereby banning all athletes on the Russian team.

How would it work?

Teams enter the Olympic Games via a contractual arrangement with the organising authority, in this case the IOC. Expulsion is a legal matter.

To expel a team without an acceptable reason would involve a breach of contract and potentially expose the IOC to lawsuits that could involve damages in the billions of dollars. From the Russian perspective, media and television rights, sponsors and supporters have all paid large amounts to follow the Russian team – not to mention the sacrifices of individual athletes.

So before there can be a ban the IOC must first identify a legal right to expel Russia from the Games. Under the [Olympic Charter](#), the Executive Board of the IOC may:

take appropriate decisions for the protection of the Olympic Movement in the country of an NOC [National Olympic Committee] including suspension or withdrawal of recognition from ... a NOC if the constitution, law or other regulations in force in the country concerned, or any act by any

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governmental or other body cause the activity of the NOC or the making or expression of its will to be hampered.

The second step requires proof of an offence; the McLaren report provides this. The third step requires the party facing expulsion to be informed of the reasons supporting the potential penalty. In part, this has been provided through the publication of the McLaren report.

As a matter of natural justice, the expelled party must then be given an opportunity to answer a charge. A decision must be made by the Executive Committee without bias and with regard to the “protection of the Olympic Movement”.

The Court of Arbitration for Sport (CAS) [yesterday upheld a decision](#) by the International Association of Athletics Federations (IAAF) [to exclude 68 Russian athletes from its Association](#)

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Without membership of the IAAF, a country’s athletic team cannot, under Olympic rules, compete at Rio. The IOC seemed to have made a tough decision to exclude the Russian athletic team, but in reality it was made by the numbers.

To exclude the whole Russian team is a different and more complicated exercise.

Of course, there are broader issues here. To exclude an entire team is unfair to those athletes who did not dope; there can be no argument about that. Western legal systems abhor collective punishment – the sins of the parents are not visited upon the children.

But there are other competing issues, not the least of which is to protect the health of athletes by discouraging governments from undue interference in sporting affairs.

Not the first time

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There is an unfortunate catalogue of governmental manipulation of sports and athletes, [led by communist East Germany](#) where, for a period of nearly 30 years, athletes – mostly young girls – were “supplemented” with a cocktail of steroids that ultimately led to heart disease, multiple organ damage, birth defects and male-like features in women, to name just a few effects.

In the 1990s, communist China [doped many athletes](#), particularly female swimmers, with steroid-based substances that distorted their bodies.

Sometimes, governments interfere in other ways. A string of reports record that Uday Hussein (son of Saddam) [tortured Iraqi soccer players](#) after the team missed World Cup qualification in the 1990s.

And just this year, the Kuwait Olympic Committee was [suspended from the Rio Olympics](#) because of undue governmental interference, one act of which was to cancel the visa of an Israeli official from judging in the Asian shooting championship in Kuwait City.

One can imagine many Russian athletes coerced into a doping program they wished to avoid. Of course, others may have willingly embraced what was offered.

In either case, the only control exerted over some governments is the risk of expulsion of their team from a sporting tournament. Governments and politicians unanswerable to the rule of law should have no part in sport. For this reason – unfortunate as it may be for Russian athletes – their team must be excluded.

To re-test dopers after a banned substance and its metabolites have passed through their system is useless. Known dopers cannot compete alongside legitimate athletes and were this to occur, retribution is on the cards.

There is scope for clean Russian athletes to compete as “neutral athletes”. But as the CAS noted in the IAAF decision, acceptance is unlikely as a “sufficiently long period for the athlete to have been subject to other (fully adequate) anti-doping systems outside of the country of his/her

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National Federation”.

Meeting such criterion will be beyond many Russian athletes.

David Thorpe does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond the academic appointment above.

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