

**Elite level athletes' duty to provide information on their whereabouts:
Justifiable anti-doping work or an indefensible surveillance regime?**

Keywords:

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Abstract

In this article we explain and reflect critically upon the athlete whereabouts reporting system in top-level sports initiated by the World Anti-Doping Agency (WADA). This system makes it compulsory for athletes who are in a registered testing pool in their national and/or international federation to submit information about their whereabouts. In this way, athletes are required to be accessible for no advance notice doping tests all year round. If such information is not submitted, or if the information provided is incorrect and athletes cannot be found when a no advance notice test is supposed to be taken (a missed test), they may be given a warning. In most sports and national anti-doping regulations, three such warnings within 18 months may be regarded as a violation of the doping regulations and may lead to exclusion from sport for a period of between three months and two years. The system is controversial. In this article we will examine the key objections to the system and, more specifically, objections connected to ideas of justice and athletes' autonomy and right to self-determination. The argument will be a practical ethical one informed by a survey on attitudes towards the whereabouts system carried out among 236 athletes belonging to the registered testing pool in Norway. We conclude that if the basic principles of anti-doping work are

accepted, WADA's whereabouts system represents nothing other than an efficient extension of this work.

Introduction

The struggle against doping has intensified over the last decade. Anti-doping organisations are constantly in pursuit of more effective tests and test regimes. Surveillance of top-level athletes is also becoming tighter and more effective. In 2003 the World Anti Doping Agency (WADA) adopted a new compulsory reporting system that requires top-level athletes in targeted groups to provide information on their whereabouts all year around, including home address, place and time of training, training camp and other plans to travel. The goal is that all athletes should be available for unannounced testing both within and outside of competition seasons. The WADA premise is that the system will detect more doping rule violators and deter athletes from doping.

In parts of the sporting community and among the general public, however, the system is controversial for several reasons. It presents a practical challenge for many athletes, and it raises fundamental questions relating to athlete privacy, autonomy and right to self-determination.

In this article we will examine whether this system is justifiable and a necessary part of anti-doping work, or whether it represents a surveillance system that cannot be defended on principled grounds. Before turning to the principled discussion we describe the background of the compulsory whereabouts system in more detail, and list some of the main objections to the system with the help of results from a survey of attitudes to anti-doping work among Norwegian elite athletes.

Doping controls – a background

The first doping controls were carried out in the 1960s following several suspicious deaths in sports, including for examples those during the summer Olympics in Rome 1960 and the Tour de France 1967 (Verroken & Mottram, 2005). The justification for controls by the International Olympic Committee (IOC) and other sports organisations was to protect the health of the athletes. This is still stated as a key justification, together with the concern for fair play and equal opportunity to perform (WADA, 2003). The intention of the control itself is to reveal those who are perceived to cheat, but the tests are also intended to deter athletes from doping and constitute one element of several preventive measures in anti-doping work.

In the 1970s and 1980s, doping tests were unsystematic and not very reliable (Waddington, 2000; Houlihan, 2002; Verroken & Mottram, 2005). Tests to reveal the most common doping substance, anabolic steroids, were used for the first time in the 1970s (Todd & Todd, 2001). Eight athletes were disqualified for using anabolic steroids during the summer Olympics in Montreal in 1976, but Robert Voy, former medical chief of the American Olympic committee, has pointed out that doping tests were not very effective before 1983 because the technology was primitive and unreliable. According to Voy the war against doping was conducted with unloaded weapons (Voy, 1991).

The situation is somewhat different today. The number of tests has doubled from 90,000 to 180,000 over the last decade (Mottram, 2005; WADA, 2006a), the methods for analysis have improved and more nations and sports are doing anti-doping work. Yet in spite of these developments, there are still many challenges facing the authorities. For instance, traditional blood-doping, which can enhance performance in endurance sports by up to ten percent (Berglund & Eklund, 1991; Birkeland et al., 2000), is difficult to trace. The same can be said of the use of erythropoietin (EPO), a substance that stimulates the production of red blood cells and consequently improves oxygen transportation and endurance. It is also

impossible to trace more than a few days after it has been administered (Stray-Gundersen et al., 2003).

The anti-doping movement aims for policies and testing regimes in which doping controls can be carried out at any time and in any place. To carry out such tests, the doping control officers must know where the athletes are. The establishment of the WADA in 1999 was, among other things, a result of 'the doping scandal' before and during the 1998 Tour de France cycle race. The doping regimes, revealed the French police and customs, was seen by politicians and the general public as just more proof that sport could not manage the doping problems on its own (Waddington, 2000). Massive criticism of the IOC, and in particular of President Juan Antonio Samaranch, brought about an invitation to sport- and public authorities to a world conference on doping in sport in Lausanne in 1999. At this conference, the IOC suffered scathing critique from representatives from several governments and it became increasingly clear that there was a requirement for an anti-doping organisation which was independent of sport organisations (Hanstad, Smith & Waddington, 2008). The WADA was given primary responsibility for anti-doping work globally, as well as for the development and coordination of anti-doping work nationally and in various sports (Houlihan, 2002). The ratification of a World Anti-Doping program in 2003 increased the harmonisation and standardisation through three main elements; the Code, International Standards, and Models of Best Practice. The Code is the fundamental and universal document upon which the World Anti-Doping Program is based. International Standards are different technical and operational areas within the program which is developed by the signatories and governments and approved by WADA. Models of Best Practice is providing state of the art solutions in different areas of anti-doping and recommended by WADA (WADA, 2003a).

Whereabouts information

According to The Code (article 5.1.1) international and national sports federations have to establish a Registered Testing Pool of elite athletes and carry out in-competition and out-of-competition testing (WADA, 2003a). In International Standards (WADA, 2003b) and Models of Best Practice (WADA, 2004), WADA leaves it to the individual anti-doping organisation (ADO) to define procedures and systems for

‘... collecting, maintaining and monitoring sufficient whereabouts information to ensure that sample collection can be planned and conducted at no advance notice for all athletes in the registered testing pool’ (WADA, 2003b, art. 4.4.1, p. 13).

As a minimum WADA demands that the ADOs collect the following athlete information: a) name, b) sport/discipline, c) home address, d) contact phone numbers, e) training times and venues, f) training camps, g) travel plans, h) competition schedule, and i) disability if applicable, including the requirement for third party involvement in notification. (WADA, 2003b, art. 4.4.2, p. 13)

An earlier study (Hanstad & Loland, 2005) has shown that there are great variations between ADOs in the way the system is implemented. Among such differences are the criteria for selecting athletes to registered testing pools, details in the information the athletes submit, procedures when this information is to be changed, and requirements to be available for testing. In the United States the athletes in the testing pool have to be available for testing practically 24 hours a day, in the United Kingdom the availability is set to one hour five days a week (Monday – Friday), while Norwegian athletes have to make themselves available for testing one hour a day all year round (Antidoping Norge, 2007).

There are sanctions attached to non-compliance with these requirements. The current Code (2003 version) states that

‘...the period of ineligibility shall be at a minimum 3 months and at a maximum 2 years in accordance with the rules established by the Anti-Doping Organization whose test was missed or whereabouts requirement was violated.’

(WADA, 2003a, art. 10.4.3, p. 29).

More specific definitions of violation are defined in Guideline for Athlete Whereabouts Information (WADA, 2004). Article 6.4 stipulates that an athlete with three warnings for

‘failure to provide accurate whereabouts information in a rolling period of 18 months or a combination of failure to provide whereabouts information and missed tests, may be subject to an anti-doping rule violation.’ (WADA, 2004b, art. 6.4, p. 10)

Criteria have been established for each of the three warnings that vary between the different ADOs (until the revision of the Code by 1 January 2009). In Norway the athlete automatically receives a sms after three days of not submitting any information. On day four without any information a warning letter that the athlete has to reply to is sent out. Lack of response or an explanation that is not credible will result in one warning.

Some countries have implemented the whereabouts system and the first sanctions have been imposed. As of August 2007, in Great Britain four athletes have been sanctioned for missed tests, and they have been suspended for between three and 12 months (Knight, 2006). In the US four athletes have been suspended, while Norwegian sport authorities announced their first suspension in April 2007, when a wrestler was excluded for six months. The most high profile exclusion for missing athlete information occurred when the Greek sprinters Katerina Thanou and Kostas Kenteris were excluded from the summer Olympics in 2004.

Formally they withdrew from the Games, but later accepted anti-doping rule violations of three missed tests between 27 July and 12 August 2004 and a failure to provide urine and blood sample on 12 August 2004 (IAAF, 2006).

Athlete reactions

Until the summer of 2007, the compulsory reporting system on whereabouts information had not been the subject of much media attention. This changed during the Tour de France. It was revealed by a Danish TV station (DR) that the Danish cyclist Michael Rasmussen had received two warnings from both his international federation (the International Cycling Union) and his national anti-doping Agency (Anti-Doping Denmark). According to his own team Rabobank, Rasmussen had not been honest about his whereabouts prior to the race. As the man in the yellow jersey, he was sacked by Rabobank after the 16th stage (Wyatt, 2007). One year later he was sanctioned by the Monaco Cycling Federation for a period of two years ineligibility for combination of failure to provide whereabouts information and missed tests (Ferdinand, 2008). The case is under appeal by the rider.

However, a Google search and a number of English language newspapers yielded a limited number of hits on athlete reactions. One reason for the lack of attention might be that the system is generally accepted, which is suggested by statements from, among others, the athletes' committee in WADA (WADA, 2006b). However, another explanation might be that the system is new and that the consequences for the athletes have only been revealed in a few countries in which the system is fully implemented. In Norway, several athletes, among them Olympic champions such as Kjetil André Aamodt and Lasse Kjus (alpine skiing) and Gunn-Rita Dahle Flesjå (mountain biking) have expressed strong criticism of the system (Lund, 2004a and 2004b, NTB, 2006). Their argument is that the system is unfair because only a few countries in the world have implemented it and many athletes can train and compete without

the stress of constantly submitting information. A second argument is that it is a violation of individual privacy, autonomy and right to self-determination.

To explore the extent to which these are representative views or not, a survey was carried out among elite athletes on attitudes towards current anti-doping work in general, and the compulsory whereabouts reporting system in particular. In the autumn of 2006, 236 athletes out of the 292 belonging to the registered testing pool of Anti-Doping Norway (ADN) responded to a questionnaire (response rate 80.8%). The sample constituted Norway's most successful athletes within their disciplines. Explanations for the high response rate may be that the invitation to take part in the survey was sent by email from the Chief Executive officer of ADN, who introduced it as a survey carried out by the Norwegian School of Sport Sciences, and that the chair of the Athletes Committee and head coaches in special sport federations motivated the athletes to participate in the survey. In addition, three reminders were sent. Necessary approval was received from Norwegian Social Science Data Service. In this article we launch a practical argument on the challenges to a justification of the whereabouts system. A full report on the empirical study will be presented in a separate article

The general impression is that top-level athletes have trust in and support anti-doping work. Hardly anyone fears that whereabouts information is treated in an irresponsible way or is abused. Athletes' trust is approximately on the same level as the general population's trust in the use of personal information in the public health system (Ravlum, 2005). But when athletes are asked about the justification of the whereabouts system, they report considerable scepticism and raise a number of objections, in particular that the system is not implemented for all athletes and therefore is unfair, and that the system requires information about their

whereabouts every day all year around and this is seen as an intrusion and violation of individual privacy.

WADA dismisses the criticism and claims that the system is the price athletes have to pay for a clean and just sport (Sundbø, 2006). WADA's Director for Standards & Harmonization, Rune Andersen, has commented:

We fully understand that it *can* be a burden for athletes to submit as detailed information as the compulsory reporting system requires. At the same time athletes have to ask themselves what they see as an acceptable price to pay in order to stop those athletes that are using drugs. Does this price include the willingness to be tested any time and anywhere? Are they willing to inform where they are so that effective tests can be carried out? WADA considers this an acceptable and justifiable price to pay in order to compete on a level playing field (research interview, June 2007).

This view is that athletes who choose to engage in elite sports must accept the rules of the activity. The WADA view is that if this is considered unreasonable, in principle every athlete is free to withdraw. This, however, is not a justification of the whereabouts system as morally sound. There is a need to take a closer and more systematic look at these arguments.

Justice and fairness

Top-level sport involves intense competition where small margins often have a decisive outcome. There is a fundamental premise in such competition that no-one should have exclusive advantages. The ideal of equal opportunity for performance is strong. Sport should be fair. Another aspect of discussions on justice and fairness has to do with the relationship between performance and reward and rule violation and penalties (Loland, 2002). Violation of

the reporting system is given equal status to doping offences. Is this reasonable? One athlete clearly felt that this was not the case. He reported:

That athletes can risk exclusion because of this system, is reprehensible. If you are caught using drugs or in any other way bring disrepute to sport, then reactions should follow. Not because some of us are absent-minded and forget to report changes in our daily plan.

Another athlete reported:

You have to separate between “oversights” of updating whereabouts information and actual doping cases. I have received written warnings for forgetting to update twice, and felt, after I received the letter, almost like a doping sinner.

WADA unambiguously rejects such arguments. Compulsory reporting makes it easier to control every top-level athlete, and, in particular, those who are under suspicion. According to WADA’s regulations, so-called target testing should be undertaken in line with article 5.1.3 (WADA, 2003a). For athletes who take drugs it has become much more difficult to hide, and WADA argues that the system has been introduced to protect clean athletes.

One problem which concerned some athletes is that some nations run stricter anti-doping programs than others. This is, however, not a new phenomenon. The whereabouts system is implemented in only a minority of the 205 national Olympic Committees and of the 35 international federations included in the Olympic program. And among those nations and federations, there are great variations in requirements and guidelines (Hanstad & Loland, 2005).

In the survey one respondent reported:

Athletes must compete on equal terms. Anti-doping work should be a tool to secure just that, fair competition. The athlete information system must be put into effect with all athletes independent of nationality. It is particularly de-motivating when those nations that statistically are worse when it comes to doping sentences are not subject to those procedures that were meant to be universal.

This hardly provides a strong argument for ADOs with rigorous programs to reduce the quality of their work. Some Nordic and Northern European countries, as well as Canada and Australia, have had thorough and systematic anti-doping work for decades and are considered to be models of best practice (Houlihan, 2002). This gives international prestige and provides elite sports with socio-cultural legitimacy. To claim that strong anti-doping nations should become more lenient with their doping regulations because others are more lax, has a parallel in the argument that corruption in international business is acceptable since some of the competitors are corrupt and may get advantages from it. Although it is true that inequalities in the implementation of rules are unfair, this is obviously not a strong argument against the whereabouts system in principle.

The view that violations of the whereabouts system should not be considered a doping violation is also problematic. To refuse to be tested, or to deliberately avoid testing, has been considered a doping offence for a long time and is the established practice. However, it is problematic that sanctions do not seem to correspond with athletes' sense of justice. When confronted with the statement that three warnings within 18 months should lead to a possible doping-conviction, a large majority of the athletes completely rejected this.

Such replies suggest that athletes may be governed more by emotion than reason. A couple of examples can illustrate the apparent necessity of some kind of whereabouts system for anti-doping to be efficient. Before the winter Olympics in Salt Lake City in 2002, the cross-country skier Johann Mühlegg made himself unavailable to doping control for a long period of time by training in secret places, as well as by entering into agreement with hotel hosts who made sure doping inspectors did not come close to him. If compulsory reporting had been in place at that time, this would not have been possible, and the Olympic cross-country competitions would not have ended as a farce. A parallel can be found in the incident with the Greek sprinters Katerina Thanou and Kostas Kenteris a year and a half later. Their last warning came when they allegedly decided to go on a motorcycle ride just before the opening of the summer Olympics in Athens 2004. It seems to be the case that they tried to escape after being summoned for a doping test. The compulsory reporting system had however been introduced by this time, and even though there was no positive test, the two were penalized because they did not make themselves available for testing (IAAF, 2006).

For athletes who are sceptical about these sanctions, WADA's latest initiative is bad news. In the revised version of the Code, which will come into force 1 January 2009, the minimum sentence for violating the whereabouts system is increased to one year, with two years as the upper limit (WADA, 2008a). The revision of the Code has resulted in comprehensive changes. Many elements that were recommendations in the earlier Code are now mandatory in the revised Code. Regulations regarding Registered Testing Pool and Whereabouts Information is detailed in the International Standard for Testing (WADA, 2008b)

Does the compulsory reporting system violate athlete autonomy?

The discussion on fairness and justice is also connected to questions regarding principles of autonomy and the right to self-determination. Even if elite athletes accept strict rules in anti-doping work, it seems clear that the compulsory whereabouts system is pushing the limits in terms of athlete privacy. A Norwegian Olympic medallist reported in our study:

It is a system that is based on everyone being sinners. It is created by people with good intentions and a decent goal, but they miss completely and abuse their power in a way that in no other democratic organ than sports would ever achieve approval. Systems like these belong in very different political systems than that which is called democracy.

Another athlete called it an encroachment and considered the system an infringement on their right to move freely and live a spontaneous life. In the Norwegian study, one out of four athletes responded that the joy of elite sport is reduced by anti-doping surveillance and measures such as this one. One athlete went further and claimed that after the new restrictions it will be a relief to quit. And every fourth athlete strongly supported the claim that this was a “Big Brother system”. Such a perception is strengthened by the system not only affecting the individual’s life as an *athlete*, but also their *whole lives*, as athletes are monitored all year round, also in leisure and holidays. In an interview with the newspaper *Expressen*, the Swedish Olympic heptathlon champion, Carolina Klüft, said that the system is turning her into a nervous wreck: “...it is bloody uncomfortable to know that my sloppiness and my spontaneity can make me equivalent to someone who uses drugs” (Roos, 2006). Half jokingly, she suggested having a data chip implanted into her body so that the doping controllers could monitor her at all times!

The reactions to the compulsory reporting system as unacceptable surveillance and infringements on privacy and autonomy seem more cogent than the criticism about justice. Athlete frustrations are understandable. The life of a high profile athlete is one of intense pressure, characterised by routines from morning to evening. They are part of a team where each individual athlete has to relate to the support system that can consist of coaches, managers, physiotherapists, masseurs, nutritional experts, psychologists and technologists. Furthermore, the media and sponsors require their attention. Athletes' quest for some privacy in their spare time is not unreasonable. But again there is a need for clarification on ideas of autonomy and the right to privacy and self-determination.

The understanding of human beings as autonomous is fundamental in the Western world and a central theme in fields such as political philosophy, law and ethics (Beauchamp 1991). The understanding is based on Kantian thoughts of the human being as a potentially free and rational being who can choose without external force and consequently be held responsible for his or her own choices. The human being is viewed as a moral agent.

To claim autonomy as a moral agent in various contexts is however accompanied by a duty to allow other human beings the same autonomy and status. The consequences of acknowledging all human beings as moral agents will often lead to regulation of behaviour and limitations of individual choice. For example, every liberal, democratic society has more or less tight safety nets to safeguard autonomy and the right to self-determination for individuals in vulnerable situations: chronically ill, unemployed, people with different kinds of disabilities. In most of our social institutions and practices we find a number of limitations on individual choices. Whether we are talking about traffic regulations, surveillance in the public sphere, or anti-doping regulations in sport, an important part of the justification is to look after all individuals' freedom of choice; their autonomy.

However, the need to regulate can go too far. In modern societies, surveillance regimes have increased in scope and complexity. In the globalised, high-technological Western world, each individual leaves a large number of electronic traces every day. Internet use and email can be tracked, card companies know when and where we shop, the telecommunications companies possess detailed information about phone conversations and public video surveillance and automatic toll recorders register our movements.

These developments are controversial and are criticised. Foucault's work on surveillance and punishment forms one critical approach to this system of surveillance. For Foucault the panoptic prison appears as a model for the development in Western society (Foucault, 1977). The philosopher Jeremy Bentham drew towards the end of the 1700s the model prison Panopticon, designed to keep prisoners under constant visual surveillance. The intentions were good, in that punishment was no longer to be seen as revenge and banishment to dark cells, but rather should build on humanity and serve the good of society. But Foucault points to the opposite consequences. Constant surveillance brings far more subtle, disciplining and "normalising" processes that more effectively than ever reduce the individual's opportunity for autonomy and right to self-determination.

As such, it is a paradox that a study from 2005 shows that the Norwegian population in general is hardly worried about abuse of personal information of this kind (Ravlum, 2005). This may be due to minimal knowledge of how extensive this control actually is, but it may also reflect the fact that everyday surveillance of individuals takes a passive form (Fornyings- og administrasjonsdepartementet, 2006).

The reactions are stronger where the surveillance is obvious or where it demands an active contribution from the person under surveillance. One example is electronic 'tagging' of prisoners. In some countries prisoners can serve their sentence in their home by carrying an electronic ankle bracelet that makes it possible to track all movement. In Norway draft

legislation proposes that violent stalkers can be equipped with electronic devices that give an alarm if the person approaches a potential victim (Justis- og politidepartementet, 2006).

Another example is compulsory reporting, which demands an active contribution from the person being watched. There are, in particular, two groups who have such obligations: some convicted felons who are to be controlled before or after the serving of their sentence, and top-level athletes.

Initially, athletes have committed no crime or rule violation but have to meet the demands of compulsory whereabouts reporting just because they might violate the rules. This is without doubt unusual. Our survey results also indicate that some athletes see the compulsory reporting as even more problematic than the surveillance of everyday life. But the comparison brings forth two significant differences from everyday surveillance that might be cited in support of the whereabouts system. First of all, athletes themselves have to submit all the information about where they are, and secondly violation of the regulations is followed by clearly defined consequences. This can hardly be described as a *Big Brother*-system where the athletes are being watched covertly. The whereabouts system is clearly detectable and open, and all athletes know the consequences of violation. There is a difference here between the criminal being electronically monitored as well since athletes can withdraw from the surveillance. The point argued by, among others, Rune Andersen of the WADA, of sport as a voluntary practice in this fundamental sense is a relevant one.

On these grounds it is difficult to claim that the system involves any violations of the athletes' autonomy and right to self-determination. Quite the opposite: compulsory reporting of whereabouts will make the anti-doping work more effective. If anti-doping work in general protects the athletes' autonomy and right to self-determination, the whereabouts system will strengthen these values.

Concluding comments

We started by asking whether WADA's compulsory reporting system can be defended on moral grounds. Our answer is conditionally affirmative. The arguments against the WADA-system do not seem powerful enough to reject it. Everyday surveillance of individuals is far more extensive, it is concealed and also more problematic. The WADA system is described in detail both when it comes to its contents and consequences, and it requires active participation from the person being watched. Hence, the system does not seem to involve undue violations either on principles of justice or on athletes' autonomy and right to self-determination.

However, our acceptance of the compulsory reporting system is conditional. The practical costs for the athletes should be a concern for the anti-doping organisations. It is important that the system can easily be complied with and that the systems are completely reliable. Furthermore, principled objections against the system have a more universal relevance that has to be taken seriously. Questions of justice, autonomy and right to self-determination are first and foremost challenging when it comes to anti-doping work in general. Several scholars, among them Brown (1990), Black and Pape (1997) and Tamburrini (2000), hold the view that the actual idea of anti-doping among grown up athletes violates such principles and are deeply problematic. They argue that the idea behind competitive sport is precisely that the athletes and teams take responsibility for their own development and achievements. Use of drugs in top-level sport is a professional risk just like hard training and risk of injuries in hard competition. Thus, the doping rules are seen as paternalistic and cannot be defended because they reduce the athlete's status as a free and responsible moral agent.

Such a discussion is more challenging than many anti-doping organisations tend to believe, but fall outside of the frameworks of our discussions here. Given that we accept the principal and moral basis of anti-doping work, the compulsory reporting system constitutes

nothing more than a logical and effective extension of its methods. To use the earlier metaphor of Voy, WADA is gradually moving from doing anti-doping work with unarmed weapons to shooting with live ammunition.

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