


# NEWS SECTION

## Switzerland

### DOPING SANCTIONS SYSTEM

 Disciplinary procedures; Drug abuse; Sportspersons; Switzerland

**Facts/Held:** Two Swiss “sports heroes”, Oscar Camenzind, cycling world champion of 1998, and Brigitte McMahon, triathlon Olympic gold medallist in Sydney, both recently tested positive for Erythropoietin (“Epo”). They both pleaded guilty and consequently both had imposed on them a period of ineligibility for two years by the Swiss Olympic Association (“SOA”) disciplinary chamber for doping cases.

**Comment:** Based on these cases making the headlines in Switzerland, the authors will briefly outline the doping sanction system applied in Switzerland and recent legislation discussions on this topic.

There are two categories of doping sanctions: (1) those imposed by bodies of sports organisations, and (2) those imposed by public authorities. Depending on the offence committed, an athlete may be sanctioned by one authority or both. Oscar Camenzind and Brigitte McMahon have been punished by the competent body of the SOA, but not (yet) by the public authorities.

- (1) The doping statute of the SOA is based on the World Anti-Doping Code and applies to all athletes and their support personnel being members of, or licensed by, one of the 81 Swiss sports organisations affiliated with the SOA. Testing has been centralised with the anti-doping commission of the SOA. The above-mentioned cases proved that this commission is not afraid of big names. Offences committed against the SOA doping statute are tried before the SOA disciplinary chamber for doping cases and may be appealed to the Court of Arbitration for Sport in Lausanne, Switzerland. First-time violations are usually sanctioned with a period of ineligibility for two years.
- (2) The public law, stated in the Federal Act on the Advancement of Sports of 2002, however, is applicable to everyone, but the application of its criminal provision is limited by the required intention to commit the violation of the law for the purpose of doping and within regulated competition sports. Offences are investigated by ordinary criminal prosecutors and tried by public courts with a possibility for appeal according to the local criminal procedure ordinances. Sanctions can range from imprisonment of between three days and three years to a fine of up to CHF100,000 (approximately €65,000).

The requirements of an intention to commit the violation of law for the purpose of doping as well as of the use only within regulated competition sports have proven to be a problem for the prosecution. Even though substantial amounts of prohibited substances can be detected, mainly upon importation into Switzerland, the intention and the use in regulated competition sports mostly cannot be proven. A survey among the prosecution officers of the Swiss cantons showed that these two factors are the reason why there have not yet been many criminal convictions based on the Federal Act on the Advancement of Sports.

The characteristics of the provisions in the rules of the SOA correspond in some aspects with the ones of the criminal law provision of the Federal Act on the Advancement of Sports. Both juridical systems, for example, sanction the soliciting, distribution, prescribing and delivery of prohibited substances or the application of prohibited methods on third persons. Other characteristics differ strongly. For example, contrary to the rules of the SOA, the Federal Act on the Advancement of Sports does not declare the presence of prohibited substances in an athlete's body, the use of a prohibited substance or method by an athlete, or the possession of prohibited substances punishable.

This main difference between the two juridical systems has so far allowed Oscar Camenzind and Brigitte McMahon to avoid punishment according to the criminal law provision, as the only offence proven with regard to them was the presence of Epo in their bodies. They were not accused of any other action that would have triggered an indictment and a public court case. Many other athletes found guilty of doping offences face the same consequences, not falling under the scope of the criminal law provision.

This limitation of scope of the criminal provision in the Federal Act on the Advancement of Sports has led to various discussions among lawyers and politicians. One motion in Parliament requested the extension of the criminal provision to athletes using doping on themselves (as this was qualified as sports fraud by the authors of the motion). This was denied, however, as the competent commission of the Parliament as well as the Minister of Sports were of the opinion that the system presently used to sanction anti-doping violations was more efficient than the extension of the scope of the criminal provision now facing the limitations, as discussed above, in its application. However, the criminal law provision will be revised anyway in the course of the current full revision of the Federal Act on Advancement of Sports, which will ultimately lead to an in-depth evaluation of the limitations mentioned so that all aspects of anti-doping efforts can be discussed at once.

The future of Swiss Federal anti-doping provisions remains to be seen—it will be interesting to see in which direction the Parliament will decide to go.

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