

# The problem of the obligation of a child athlete to comply with the provisions of the anti-doping legislation of Ukraine

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## ABSTRACT

Individuals of the sports school can be children and young people who have no medical contraindications for sports. Once the athlete gets enrolled in a sports school after successfully completing the required documentation process, a written letter is provided by the director of the school. Followed by this, the child acquires the corresponding status and, from that moment, he or she has a number of rights and responsibilities. Most of the sports schools prohibit the substance abuse once youth or children become part of their organization. After getting enrolled in a sports school, a child has certain responsibilities, including the obligation not to use prohibited substances and methods. In this article, the authors examine the legality of imposing this obligation on a child. The authors concluded that the child is obliged to comply with the anti-doping rules of sports organizations, but at the same time he/she has no right to buy medicines and choose a doctor on his/her own, and these things must be done by parents according to the legislation of Ukraine.

## KEYWORDS

Doping; Youth Sports; Sports; Anti-doping Rules

## 1. INTRODUCTION

One of the major consequences regarding the use of prohibited substances in the field of sports is the legal action against the users or the persons or organizations encouraging its use. As per the

reports of WADA, there is no international sports competition which is held without the use of substances (prohibited in the athlete's test materials) by the participants.

Children's and youth sports schools and clubs have initiated their efforts by organizing extracurricular physical education activities of students, allowing the children to realize their needs in the field of sports. Most of the schools have prohibited the substance abuse once the youth or a child enters and becomes the part of their organization. In the present study, the researchers examined the legality of imposing this duty on a child and discusses the need to introduce educational anti-doping programs in sports organizations.

The obligation of an athlete to comply with anti-doping legislation and the problem of the use of prohibited substances and methods in sports were studied previously by Chebotarev (2018), Akulenko (2021) and Rudenko (2014). However, these researchers did not study the responsibility of child athletes if they did not comply with anti-doping legislations. Hence, the present study was conducted with the purpose of studying the problem of the obligation of a child athlete to comply with the provisions of the anti-doping legislation of Ukraine.

## **2. METHODS**

In the present research, the researchers used systematic, dialectical, formal-logical and structural-functional methods. Furthermore, the authors used special legal methods: comparative law and formal law. Also, the methodological basis of the study was theory cognition, with its general method of materialist dialectics.

## **3. FINDINGS AND DISCUSSION**

From the past decades, physical culture and sports have occupied one of the central places in the society. Nowadays, sports industry has become so multifaceted and powerful that sometimes it also has great influence on the political and economic zones of a country across the globe. Physical culture, as a social institution, is an important part of the general concept of "culture", which performs specific functions aimed at preserving, maintaining and improving the physical and mental health of a person, at the possibility of self-realization of human's spiritual and physical abilities. It is aimed at spiritual and physical development of a human being, who is not only a subject, but also an object of cognition, evaluation and transformation in its sphere. The physical culture is an integrating element in the culture, having great potential for developing the person as a whole. The key functions

of physical culture include; the development of physical, moral, aesthetic qualities of a person, Encouraging the participation of individuals in various general health related activities without taking into account the age factor, and disease prevention.

Sport is most often understood through the point of view of competitiveness, preparation and participation in games/competitions. Sport is termed as “sport” in the English language, which is actually an abbreviation of the term “disport”. In French it is termed as “sport”, in Spanish as “deporte”, in German and Portuguese language as “sport”, in Italian language “esporte;”. Sport is a multidimensional and polysemic concept, representing a part of the sphere of human culture and an integral part of social life. It also occupies some space in the politics, media, as a component of physical culture. It acts as an important source of physical education, preparation and holding competitions, as a means of improving health, providing moral and material satisfaction for those, striving for perfection and glory (Soloviev, 2010).

Hence, the sport carries the same functions, inherent in physical culture (the concept of sport is covered by the concept of physical culture). It also has the competitive function, i.e. the identification, analysis of the capabilities of the humans’ and spirit in the preparation and conduct of competitions. Having similar functions, the meaning of "physical culture" and "sport" do not coincide. The concept of "physical culture" is an integral part of the concept of "culture”. The concept of "sport" is absorbed by the concept of "physical culture," but not every "physical culture" is a "sport. "Physical culture" has different social functions than "sports," which affects their definition in the laws and the areas of legal regulation.

The right to take part in physical education and sports consists of two interrelated but independent rights (1) to take part in physical education and (2) to take part in sports competitions. In the first case, the primary goal of an individual is to maintain his or her health to an optimum level by making all efforts at an independent level. Various sports authorities and organizations take the initiative for conducting competitions at various levels along with the training of individuals for better outcomes in such competitions.

On this basis, it is possible to engage in sports through participation in competitions. As per the statement included in the article 49 (part 4), Ukraine states that the government very well cares about the development of physical culture and sports. The provisions related to physical culture and sports can also be found in other norms of the Basic Law of Ukraine. Article 85, 116, 119, 138, and 143 as also included the statements in context of the authority of the government regarding the adoption, implementation and monitoring of national and regional programs of social and national-cultural development.

Article 3 of the Law of Ukraine, "On Physical Culture and Sports" establishes the right of people to engage them in the physical culture and sports activities regardless of any factors. The people of the nation can establish their rights when they have choice to participate in the physical culture and sports based on their interests, accessibility and safety of physical culture and sports, when there is protection of the rights and legitimate interests of citizens, provision of more opportunities and high level training in their regional areas, and association of citizens in public associations of physical culture and sports orientation, getting special education and carrying out relevant professional activities (part 2 of Article 3 of the Law of Ukraine "About Physical Culture and Sports").

Vladimir Zhuravlev further added certain points and adds to this list the following rights: They stated that individuals should have free disposal of their sports abilities, access to the sports facilities, individuals should be offered and provided with the membership in sports associations, to participate in spectator events, individuals should be free to migrate, to realize the right to work in sports, they should be allowed to practice professional sports and to receive physical education in educational institutions. They should be provided with the medical care facilities with guarantee of not to use prohibited substance, they should be ensured safety at personal and professional levels. They should be free to promote physical education and sports of disabled persons by movement around the country, travel outside the country to satisfy sports interests, they should be provided assistance from the sponsors and state protection and access to justice (Zhuravlev, 2012).

Any legal relation consists of three components i.e. the subject, the object and the content of the legal relation. The legal relation itself is a peculiar superstructure over the social relation. A social relation will refer to a legal relation only after it is regulated by a normative-legal act. Any subjective right in this or that legal relation will be correlated with the corresponding obligation of the counterparty. Consequently, the right of physical training is the right of a person to lead an active, healthy lifestyle. The right of an individual to engage in sports will include the right to prepare and participate in competition. The right of an individual to engage in sports includes, the right of the individuals to prepare themselves and participate in various competitions. However, there are certain obligations pertaining to aforementioned rights, recommended by Vladimir Zhuravlev. These obligations can be established either in legal acts or in the codes/rules of international/national sports organizations.

The right of the children to do sports and the children's obligations in exercising of this right. The legal status of a child is a person until he or she reaches the age of majority. A "minor" person is a child falling below the age of fourteen. A "juvenile" is a child falling within the range of fourteen

years to eighteen years (Article 6 of the Family Code of Ukraine). In the article 31 of the Ukrainian Civil Code, it has been stated that the minors have the right to perform minor household transactions. The powers of minors are somewhat expanded. Thus, children from 14 to 18 years have the right to perform independently in minor household transactions, they can independently exercise their right to the results of intellectual activity protected by law, can independently dispose of their earnings, scholarship or other income, they can be a participant (founder) of legal entities, unless this is prohibited by law or by the constituent documents of the legal entity, they can independently conclude a bank deposit (account) agreement and dispose of the deposit made in their name (funds in the account) (Analysis of the Law of Ukraine "On the Rights of Minors"). Other transactions can be done by the minors following their consent from the parents or guardians. (part 2 of Article 32 of the Civil Code of Ukraine). A child has an equal right to engage him or her in the physical education or sports, to lead an active lifestyle, to prepare and participate in the competitions only with the consent of his or her parents or persons in loco parentis.

This consent shall be given by the parent or caregiver at the time of enrollment of their child in a sports organization under minor category. Thus, parents need to submit a set of documents at the time of enrollment in a youth sports school. The documents include a written statement of the parents or persons in loco parentis, a medical certificate stating that child is fit to get enrolled for sports related training in the respective organization, copy of a birth certificate or passport copy, copy of an identification code of the applicant.

After successfully completing the required documentation process, a written letter is provided by the concerned authorities (the Director of the Children's and Youth Sports School) of the organization. Followed by this, the child acquires the corresponding status and, from that moment, he or she has a number of rights and responsibilities, which are established by the constituent documents of the organization. For example, trainees of a sports school are entitled to get a certificate of completion of sports related training from the respective sports school, a copy of a personal athlete card, a form of which is approved by the central executive authority in the sphere of physical culture and sport, voluntary choice of selecting a sport of their interest, training in accordance with training programs for sports under the guidance of a coach under absolutely safe and harmless conditions for training, use of material and technical and other sports facilities, the sports equipment for individual use, sports related apparels, food and accommodation during training camp and sports competitions, transportation facility to the venue of competitions, training meetings, medical and pharmaceutical services, awards, valuable gifts, certificates, diplomas and other forms of encouragement for achievements in sports, representation in the local or self-government bodies of the sports school,

protection from any form of exploitation, mental and physical violence, from the actions of school employees who violate their rights.

Sports schools must collaborate in classroom training of the enrolled students with the training in a secondary educational institution, in order to achieve the better outcome in their sports events. It may also help in improving their sports skills, cross cultural communication, standards of moral and ethical conduct. The following rules should be considered: The established sports regime and personal hygiene rules, to participate in competitions and training camp provided by the individual and calendar plans, comply with the requirements of medical control and undergo twice a year medical examination, starting with training in groups of previous basic training, to protect the state, public and personal property, to comply with the requirements of the constituent document of the organization of the rules of conduct of pupils of a sports school, and to comply with the provisions of anti-doping laws or rules.

From the moment of enrollment of a child in the sports school, he or she must comply with the provisions of anti-doping legislation. The main legal act of the anti-doping legislation of Ukraine is the Anti-Doping Rules of the National Anti-Doping Center of Ukraine (NADC). Under NADC rules, an athlete is any person who participates in a sports event at the international level (as defined by each International Federation) or the national level (as defined by each National Anti-Doping Organization). However, the Anti-Doping Organization shall have the discretion to apply the anti-doping rules to Athletes who are not International-Level Athletes or National-Level athletes, modifying the definition of "Athlete" to include them. It is the personal responsibility of Athletes to ensure that no Prohibited Substance enters their system. Athletes are held responsible, in case there is use of any Prohibited Substance, its metabolites or markers found in any sample collected from them. Athletes or other persons should have complete information on the substances and methods on the Prohibited List and the consequences of anti-doping rule violation.

The consequences of violation of anti-doping rules can be: 1) Disqualification, i.e. the annulment of the results achieved by an athlete in a particular competition or sporting event, with all the ensuing consequences, such as the forfeiture of any medals, points and prizes. 2) Suspension, i.e. prohibition of an athlete or other person for an anti-doping rule violation from participating in any competition or other activity and termination of his/her funding for a specified period of time. 3) Provisional Suspension, i.e. the athlete or other person is suspended temporarily from participating in any competition or activity till final decision is made at the hearing. 4) Financial Consequences, i.e. the financial sanction which is imposed for an anti-doping rule violation or to recover the costs of an

anti-doping rule violation. 5) Public Disclosure, i.e. anti-doping rules apply to both athletes and protected persons.

In accordance to the civil law, a minor under the age of 14 years has the right to carry out only minor domestic transactions. After enrollment of the minor in the sports organization, he or she abides to the anti-doping legislation of Ukraine. A child under the age of 14 years becomes responsible for what goes into his body and how, and is obliged to follow the composition of all medications that the doctor prescribes to him with the consent of his parents. But the child has no right to independently choose the methods of treatment. The treatment will be given per the recommendation from the doctor. A doctor cannot provide treatment to the minor without taking consent from the parents or persons in loco parentis (article 284 of the Civil Code of Ukraine). Is this the right thing to do? It seems that it is not, but according to the statutes of the Children Youth Sports School or any other sports organization, parents are not required to comply with the anti-doping legislation.

In the article 150 (part 2) of the Family Code of Ukraine, it has been mentioned that parents are obliged to take care of the health of their children and their overall development in terms of physical and spiritual development. This obligation aims to provide favorable conditions with respect to the life, such as providing a healthy environment with no harmful effects on a child's health, to provide an educational environment that meets the requirements of sanitary standards for the implementation of measures aimed at preserving and strengthening the health of children, to promote a healthy lifestyle for the child, to provide primary therapeutic and prophylactic care, including medical consultation, simple diagnosis and treatment of basic common diseases, injuries and poisonings, preventive measures, as well as specialized and highly specialized care ensuring that the child undergoes a medical examination (Yevko, 2016).

According to article 31 of the Civil Code of Ukraine, all transactions that go above and beyond the household limits for a minor are made by parents or persons in loco parentis. In accordance with the NADC Anti-Doping Rules, one of the parents of the child is the support personnel of the child-athlete, who stands equally responsible in case of ingestion of a prohibited substance or drug by the athlete, for distributing or attempting to distribute any prohibited substance to the athlete, for prescribing or attempting to prescribe the prohibited substance to the athlete during the competition. In all aforementioned cases, one of the parent gets suspension for the whole life (clause 10.3.3 of the NADC Anti-Doping Rules). It seems that it is not necessary to prescribe in the statutes of sports organizations the obligation of children under 14 years of age to comply with the anti-doping laws or rules.

According to the Article 284 (paragraphs 2-3), of the Civil Code of Ukraine, an individual who has reached the age of 14 and who has applied for the provision of medical care, also has the right to choose a doctor and the choice of treatment in accordance with his recommendations. Providing medical assistance to a natural person who has reached the age of fourteen is subject to his or her consent. In the case of a minor athlete, the right to choose a doctor under the anti-doping rules is transformed into an obligation to choose a doctor and treatment methods.

In the usual practice, it has been observed that both children and their parents get to know regarding the doping, its consequences and regarding the prohibited substances only when banned substances, its metabolites, or markers get detected in a child's sample. The NADC Anti-Doping Rules also establish the responsibility for violation of these rules for the athlete and all other persons, which include the coach, one of the parents, the doctor, and any other person who helps the athlete in the preparation phase or during the competition itself. However, there is almost no outreach and educational activity about the inadmissibility of doping, and about the list of banned substances among children and their parents. It has also been found that the training coaches are at times unfamiliar with these prohibited substances and methods.

There is a strong need to conduct in-person and online anti-doping education programs for athletes by NADC. Unfortunately, there is lack of such training programs. We have researched the education programs of the leading universities in the country that train coaches, athletes, and future physical education teachers, and none of these universities provide anti-doping education. Therefore, building a system of anti-doping education should be the main focus of the managers and specialists of all sports organizations, at all levels.

#### **4. CONCLUSIONS**

Children have equal right to participate in physical education and sports. Physical education implies leading a healthy lifestyle, while sports implies training and participating in competitions. Parents are obliged to create all the necessary conditions for a healthy and active lifestyle for their child. A child under the age of 14 may participate in sports only after obtaining the written consent from their parents. Parental consent is given in writing in the form of an application to a sports school or club. From the moment a child is enrolled as a student athlete, the child and parents must comply with the Anti-Doping Rules of NADC. Very few efforts have been made by the sports organizations to educate the athletes and their parents regarding the doping, its consequences and the prohibited substances or its by-products. Children over 14 years of age have the right to choose their own medical services and treatments and to buy their own medicines. However, they do not sign a



statement saying that they are aware of the List of Prohibited Substances and Methods and that they are committed to comply with anti-doping rules. There is a strong need to conduct in-person and online anti-doping education programs for athletes by NADC. Unfortunately, there is lack of such training programs. The education to comply with anti-doping rules should be conducted at all levels: sports schools, clubs, universities that train future coaches, and central authorities responsible for sports development.

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