

Research on the Protection of Rights of Minor Athletes in Doping Cases

-- Taking "The Valieva Case" in the Beijing Winter Olympics as an Example

Ying Hu

Central China Normal University, Wuhan, Hubei, China

Abstract

The doping case of Russian figure skater Kamila Valieva in Beijing Winter Olympics has highlighted the current strengthening and improvement of the protection of minor athletes in the field of anti-doping. CAS ruled against reinstating the Provisional Suspension, citing Valieva as a protected person as one of the main reasons, demonstrating a protective attitude towards juvenile in the field of international sports anti-doping. Combined with British and American practice, in order to realize the substantive justice, China still needs to create a flexible anti-doping environment for minor athletes by means of education as well as science and technology, and directly clarify the rigid special protection of minor athletes from the sports legislation. Giving minor athletes the right to tilt does not reduce their anti-doping obligations.

Keywords

Anti-doping; Juvenile protection; Rights tilt.

1. Minor Protection System in Doping-related Events

1.1. Overview

Anti-doping is a particularly important work in the international sports, and is one of the main means to ensure a clean and fair competition. However, the anti-doping work, such as casual inspection, is extremely easy to cause infringement on athletes and compress the individual legitimate rights of athletes. The doping-related cases are subject to the principle of strict liability and the degree of punishment is heavy, which directly affects the sports life of athletes. In view of the importance of anti-doping work and taking into account the protection of athletes' legal rights, it is necessary to improve the relevant rules in the field of anti-doping, break the inertia of anti-doping awareness, relax the extrusion of athletes' rights, and even follow the principle of common but differentiated to give tilt protection to some athletes, such as minor athletes, in order to achieve the balance between anti-doping and rights protection.

The statistical data of athletes' age in the 2020 Tokyo Olympic Games display that the youngest athletes are only 12 years old. More minor athletes go to the sports arena. Based on the short professional life of athletes in competitive sports and the particularity of school sports, there are a certain proportion of minor athletes in competitive sports and school sports. Inevitably, these minor athletes should also be tested for stimulants. So how should anti-doping work be carried out for minor athletes with such behavior? How to tilt its protection to achieve substantive justice in the field of anti-doping? What rights can minor athletes enjoy? These problems of minor athletes in doping events need to be clarified and solved.

1.2. Commentary on the Doping Case of Valieva

1.2.1. Facts of the Case

On December 25, 2021, during the Russian National Figure Skating Championship, Valieva received doping control tests and provided urine samples. However, on February 7, 2022, the doping control laboratory in Stockholm, Sweden released an adverse analysis result (AAF), claiming that trimetazidine containing 2.1 ng/ml was detected in the sample of Valieva submitted on December 25, 2021. According to the doping test results, Valieva was declared a temporary suspension by the Russian Anti-Doping Agency (RUSADA) on February 8, 2022, and the temporary suspension was cancelled by RUSADA on February 9.

The disclosure time of AAF is precisely during the Beijing Winter Olympic Games. Whether Valieva takes stimulants or not and whether the Russian anti-doping testing agency's decision to revoke the temporary ban is correct or not is crucial for the athletes involved, the relevant team, the host country and the whole Olympic Games. In response to the decision to lift the temporary ban, three major international sports organizations, the World Anti-Doping Agency (WADA), the International Olympic Committee (IOC) and the International Skating Union (ISU), appealed to the International Sports Arbitration Tribunal (CAS) from 11 to 12 February to resume the decision on the temporary suspension on Valieva.

1.2.2. CAS Ruling Results

After convening a hearing, CAS ruling dismissed the appeal, allowing Valieva to continue to compete. Through the award released by the CAS, one of the reasons why the CAS made this award cannot be ignored is that Valieva is a juvenile and belongs to the "protected person" stipulated by the World Anti-Doping Regulations. As a highly controversial case during the current Winter Olympics, the doping-related case of Valieva was reflected in the special protection of minor athletes in its ruling, demonstrating the positive attitude of international sports towards the preferential protection of minor athletes in the doping-related field. However, at the same time, due to the fact that neither WADA nor Russia has made specific provisions on the temporary suspension of minor athletes, the relevant international treaties still need to be improved for the protection gaps and legislative gaps of minor athletes.

2. Current International Initiatives

Sports are beyond national boundaries. The improvement of the protection system for minor athletes in the field of sports will promote the better development of world sports. In the field of anti-doping, there are countries with prominent tilt protection for minor athletes in the UK and the US. At the same time, WADA explicitly provides for the protection of minors as Protected Person in its statutes. Absorbing the experience of other countries and drawing lessons from international practices can further improve the improvement of domestic sports and promote the integration of domestic sports with the world.

2.1. The UK - Special Protection for Minor Athletes

The Child Protection in Sports Unit is set up to provide promptly and effective relief for the rights and interests of minor athletes in the whole process of sports activities. This sports group 24 hours to render service, to ensure timely access to the rights and interests of minor athletes damaged information, provide efficient relief.

In response to anti-doping measures, the UK has issued relevant documents, such as the British Anti-Doping Child Protection Policy and the British Anti-Doping Child Protection Procedure, which clarify the rights and obligations of minor athletes in anti-doping procedures and regulate child protection policies in anti-doping work. Anti-doping child protectors were set up in anti-doping agencies.

The UK Anti-Doping has developed different testing procedures for minors. Most of the testing process is consistent with adult athletes, but some modifications have been made to ensure that minors are protected throughout the testing process. For example, no matter when the test is conducted, underage athletes should always be accompanied by another adult.

2.2. The US - More Protection for Student Athletes

School sports participants are more juvenile. In view of the problems exposed in the field of school physical education, the US further standardizes the doping inspection procedures of student athletes.

The 4th Amendment to the US Constitution provides that citizens' personal and property shall not be subjected to unreasonable search. The extraction and analysis of athletes' urine and blood samples in the process of doping detection are violations of individual rights, especially against the protection of privacy. For the relatively vulnerable group of minor athletes, doping test is easy to exceed the necessary limit, which constitutes illegal search and violates the Constitution.

In view of the special situation of student athletes in doping testing, the US mainly makes protective provisions for student athletes from the types and collection methods of doping samples. In terms of the types of samples, blood samples contain more biological information than urine samples, which is more likely to cause privacy information leakage. Therefore, the courts generally prohibit the collection of blood samples from student athletes for doping detection. In the way of sample collection, the collection procedure must be legitimate and reasonable, and be tested in professional testing institutions to fully protect the privacy of students.

2.3. WADA - Protected Person

The "protected person" is an athlete or other natural Person who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen years; (ii) has not reached the age of eighteen years and is not included in any Registered Testing Pool and has never competed in any International Event in an open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation. The tilt right of Protected Person in the World Anti-Doping Regulations mainly 3 aspects, includes the burden of proof, the range of punishment and the protection of privacy.

2.3.1. Burden of Proof

Athletes in general want to support their claims, the proof of evidence should reach the Balance of Probability. According to CAS precedent, the Balance of Probability implies that the appellant must prove the source of the prohibited substance by providing factual evidence rather than mere speculation. The burden of proof of protected person can be established as long as the evidence reaches Reasonable Possibility, which is a proof standard significantly lower than the Balance of Probability. And protected person is exempted from the burden of proof to prove how stimulants enter the body.

2.3.2. Range of Penalties

The period of Ineligibility shall be in a range between a maximum of 2 years and, at a minimum, a reprimand and no period of Ineligibility, depending on the Protected Person's degree of Fault. The anti-doping penalties of ordinary athletes can be more than two years of suspension or even life-long suspension. Mainly combined with minor athletes' self-protection ability is weak, the use of stimulants may be tricked, fraud and even forced situation, for its punishment adhere to education, punishment moderate down.

2.3.3. Protection of Privacy

The World Anti-Doping Regulations provide that any optional Public Disclosure in a case involving a Minor, Protected Person shall be proportionate to the facts and circumstances of the case. To protect juvenile legitimate rights and to provide them with the necessary mental health care, optional Public Disclosure should be adapted to the facts and realities of the case.

3. Protection of Minor Athletes in China

At present, from Anti-Doping Regulations, Sports Law to Criminal Law, domestic anti-doping management is more severe and integra. However, the parties involved in doping cases are not distinguished, and the protection of juvenile as a special subject is not clear. On the one hand, minor athletes have a shallow understanding of anti-doping rules, on the other hand, it is more difficult to achieve self-protection and access to relief when they fall into doping disputes. Therefore, in the whole process of anti-doping work, it is necessary to give certain tilt rights to minor athletes in order to realize substantive justice in the field of anti-doping.

3.1. Domestic Regulations

At the legislative level, Law of the PRC on the Protection of Minors guides the protection and rights protection of juvenile in general principles. The judicial interpretation of the supreme people's court defines the act of forcing, inducing and deceiving minors to use stimulants as ill-treatment. However, the Anti-Doping Regulations, the Sports Law and other relevant legislations have not made clear provisions on the protection of minor athletes in doping-related work. Only the Anti-Doping Management Measures and Anti-Doping Rules formulated by the General Administration of Sport of China provide for the mitigation punishment and personal information protection of minor athletes in doping-related incidents.

In practice, China's minor athletes and adult athletes in accordance with the same procedures and standards to participate in anti-doping work, only in the sampling process applicable adult appropriate intervention system. And in the annual violation information disclosure of China Anti-Doping Agency, do privacy protection for the names of minor athletes.

3.1.1. Appropriate Intervention by Adults

Special population considerations in the doping sample collection process announced by the China Anti-Doping Centre state that juvenile athletes are formally notified to undergo inspection after being accompanied by inspectors to find adult representatives. Adult representatives must be accompanied throughout the course and must not leave midway. When minor athletes collect doping test samples, they should be accompanied by adults throughout the whole process, and accompanying adults should also respect the privacy of the minor athletes.

3.1.2. Protection of Privacy

In the annual illegal information disclosure, the name of minor athletes is not disclosed. Strengthening the protection of juvenile privacy and not disclosing personal information can better avoid the pressure from public opinion and affect the mental health of juvenile.

3.1.3. Reduce Penalties

According to Article 39 of the Measures for the Administration of Anti-Doping, where a minor athlete commits a doping rules violation, the punishment of the juvenile athlete may be appropriately reduced, as appropriate, and the punishment of the responsible auxiliary personnel may be increased. At the same time, the punishment of minor athletes is reduced, education is given priority to, and punishment is supplemented, so as to better protect the rights of minor athletes and save excellent minor athletes.

3.2. The Necessity of Tilt Protection

The doping-related incidents of minor athletes have been concentrated in China for a period of time, and have occasionally occurred in recent years. According to the data on the number of cases of doping used in competitive sports in the past five years published by China Anti-Doping Agency in 2020, 245 cases of doping were found, and 41 cases were juvenile. Minor athletes generally have a relatively longer sports career, and greater sports development potential. The use of stimulants not only damages their own health, but directly undermines the purity of sports and blocks their own sports development. Therefore, it is necessary to seriously treat doping-related incidents in minor athletes and clarify their rights and obligations, not only reflecting zero tolerance for stimulants, strengthening the management of stimulants for minor athletes, but also giving appropriate tilt protection to minors to prevent the compression of athletes' rights.

3.3. Feasible Measures

In view of the particularity of psychological and physiological conditions of minor athletes, China should strengthen the tilt protection of minor athletes in doping-related events, mainly from the "soft" and "hard" two aspects to promote, create a flexible anti-doping environment, and a rigid protection mechanism for minors.

3.3.1. Soft Measures--Create an Anti-Doping Flexible Environment

The doping problem is not only limited to competitive sports, but also exists in school sports, especially in sports enrollment examination. In China, anti-doping education and propaganda are paid more attention to in competitive sports. On the contrary, doping education is absent or insufficient in school sports where the participants are mainly minors. Therefore, it is necessary to increase the anti-doping education of student athletes through school education to enhance their understanding of doping and self-protection, self-resistance. In order to achieve the best effect of anti-doping education, sports schools can carry out educational activities such as anti-doping courses, display boards and knowledge competitions in combination with the actual situation of school athletes.

On the basis of accurately grasping the nature of stimulant compounds and clarifying the list of stimulant standard substances at home and abroad, not only the accurate detection of athletes' stimulant samples should be done, but also the food-borne stimulant detection should be done in the environment of concentrated diet of minor athletes to prevent the intake of stimulant substances.

Currently doping detection for student athletes cannot be generally carried out, and sampling method is basically adopted. The data of the test results are scattered and scattered. At present, it is necessary to strengthen the data collection and analysis of the doping situation of minor athletes throughout our country. Through the data, the key sports projects and key areas of minor athletes using stimulants are intuitively reflected, so as to carry out targeted key education and regulation.

3.3.2. Hard Measures - Providing Rigid Protection for Minors

At present, the special protection of minor-related stimulants in China has not yet risen to laws and regulations, but the information protection of minors and the reduction of economic penalties are clearly defined in the relevant departmental regulations on anti-doping. A chapter of Sports Law about anti-doping is added to show the importance of anti-doping work in sports. In this chapter, it is also proposed to strengthen the relevant content of anti-doping in school education and improve students' awareness of anti-doping. In fact, minor athletes should not only start from the athletes themselves, but also strengthen the protection from the outside. From the practice of other sports powers and the consensus of the international community, it

is necessary to clarify the positive attitude towards the tilt protection of minor athletes involved in doping work in the Sports Law or other legislative documents.

Combined with the existing measures in China, the burden of proof and the range of punishment can also be reduced. Taking into account the relatively weak ability of juvenile in obtaining and summarizing evidence, the obligation of proof can be appropriately reduced, such as moderately extending the time of proof and reducing the standard of proof. For minor athletes who do use stimulants, according to the degree of fault, they can adhere to the priority of education, reduce the period of Ineligibility or limit the maximum punishment.

4. Summary

The doping-related case of Valieva in the Beijing Winter Olympics, CAS's decision not to resume the Provisional Suspension on Valieva as one of the main reasons for being protected demonstrated the protection attitude of minors in the field of international sports anti-doping. Combined with the practice in the UK and the US and the data on domestic doping incidents, it is necessary to apply the principle of tilt protection, which is widely implemented in the field of social law, to the anti-doping field of sports law. At present, China still needs to create a flexible anti-doping environment for minor athletes through education and science and technology, and directly clarify the special protection of minor athletes from the sports legislation level. Giving minor athletes the right to tilt does not reduce their anti-doping obligations. In order to achieve pure and fair playgrounds, it is necessary to balance the rights and obligations of minor athletes in doping work so as to prevent excessive tilt and overcorrection of rights.

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