



# Criminalization of Doping – Input Presentation

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# Structure

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# I. Introduction



## Overview

### Private Law

World Antidoping Program  
(Code and Standards)

Swiss Olympic Doping Statute,  
Implementing Provisions

Disciplinary Chamber of Swiss  
Sport (DC), Swiss Sport Integrity;  
Suspension

International Law

Legal basis in  
Switzerland

Sanctioning body;  
Sanction

### Public Law

- UNESCO-Convention
- Council of Europe Convention on Anti-Doping

SpoPA, SpoPO, FISSA

State Court;

- Custodial sentence
- Monetary penalty



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## II. Criminalization of Doping in Switzerland



## Definition of Doping

- Art.19 (1) SpoPA  
«Misuse of substances and methods to increase physical performance in sport»
- Art. 74 SpoPO  
➔ Prohibited substances and methods are regulated exclusively in the annex of SpoPO



## Sport Promotion Act – Art. 22

### - Art. 22 Criminal provisions

<sup>1</sup> Any person who manufactures, acquires, imports, exports, conveys, distributes, sells, prescribes, markets, administers or possesses doping substances under Article 19 paragraph 3 or applies methods under Article 19 paragraph 3 to third parties is liable to a custodial sentence not exceeding three years or a monetary penalty.

basic offence

<sup>2</sup> In serious cases, a custodial sentence not exceeding five years may be imposed; a monetary penalty shall be combined with the custodial sentence.

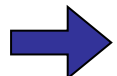
serious case

<sup>3</sup> A case is considered serious in particular if the offender:

- a. acts as a member of a group formed to pursue the activities set out in paragraph 1;
- b. seriously endangers the health or the life of athletes in an action listed in paragraph 1;
- c. distributes, sells, prescribes or administers substances under Article 19 paragraph 3 to children and young people under 18 years old or uses methods under Article 19 paragraph 3 on these persons;
- d. makes a large turnover or a considerable profit from commercial trade.

<sup>4</sup> If the manufacture, acquisition, import, export, conveyance or possession of doping substances are exclusively for personal consumption, the person is not liable to a penalty.

Self-doping



**Self-doping is not subject to prosecution!**



## Sport Promotion Act – Art. 22 (1)

<sup>1</sup> Any person who manufactures, acquires, imports, exports, conveys, distributes, sells, prescribes, markets, administers or possesses doping substances under Article 19 paragraph 3 or applies methods under Article 19 paragraph 3 to **third parties** is liable to a custodial sentence not exceeding three years or a monetary penalty.

### **Criminal act:**

Manufacturing, acquisition, import, export, conveyance, distribution, sale, prescription, market, delivery or possession of any doping substances

➡ To third parties

### **Misdemeanour:**

Custodial sentence not exceeding three years *or* monetary penalty

### **Exception:**

not punishable if exclusively for personal consumption = self-doping





## Sport Promotion Act – Art. 22 (2) and Art. 22 (3)

<sup>2</sup> In serious cases, a custodial sentence not exceeding five years may be imposed; a monetary penalty shall be combined with the custodial sentence.

<sup>3</sup> **Serious case**, if the offender

- a. acts as a member of a **group** formed to pursue the activities;
- b. seriously **endangers** the health or the life of athletes in an action listed in paragraph 1;
- c. distributes, sells, prescribes or administers doping substances to children and young **people under 18 years** old or
- d. makes a **large turnover** or a **considerable profit** from commercial trade.

### **Felony:**

Custodial sentence not exceeding five years *and* a combined monetary penalty



## Legal Interest?

- **Integrity of Sport competition («Lauterkeit des sportlichen Wettbewerbs»)**
  - Object of legal interest = competition
  - Maintaining fairness and equal opportunities for all athletes
- Protection of athlete's health?
- Protection of national health?



## Criminalization of Self-doping?

- **Swiss Federal Council's report** from 10. December 2021
  - Analyses significance of doping in Swiss sport and society
  - Answer to **Postulate Dobler** 19.4366 from 27. September 2019
    - ❖ Demands consumption of doping products to be criminalized
    - ❖ Report about pro and cons of criminalization of self-doping
    - ❖ Comparison with other European countries
- The criminalization of self-doping enables compulsory measures
  - ➡ Status quo: only in serious cases compulsory measures are possible



## Swiss Criminal Code

Third person's conduct: **Common assault** (art. 123 CC)

- Basic offence only prosecuted on complaint
- Consent to the invasion?

Athlet's conduct: **Fraud** (art. 146 CC)

- Legal interest = protection of assets
- Where lies the financial loss?
- Who is deceived?



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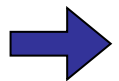
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## IV. Summary and Outlook



## Summary

- **Sport Promotion Act as an important legislation**
  - However: Self-doping is not criminalized yet
  - Criminalization of doping enables compulsory measures
  - Protected legal interest?
- **Swiss Criminal Code not suitable to effectively combat doping**



Status quo insufficient

**Ideas?**



## Outlook

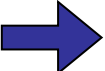
### 1. Criminalization

- Criminalization of self-doping
- Specific doping crime (e.g. doping-fraud)

### 2. «Kronzeugenregelung» = special agreement for sanction's suspension

- 10.7.1 WADC: Substantial Assistance in Discovering or Establishing Code Violations
- § 4a AntiDopG (Germany)

### 3. Centralized prosecution authority

 Combination of different measures



**Thank you for your attention!**