

ANTI-DOPING LEGISLATION IN THE NETHERLANDS

I – Introduction

The Kingdom of the Netherlands does not have a specific law against the misuse of drugs in sport. Existing legislation, such as the Netherlands Penal Code, the 1928 Opium Act the 1958 Medicines Act, as well as statutory disciplinary law, does however, have some bearing on the issue of doping control.

II – The 1928 Opium Act

Considering the misuse of drugs in sport, the 1928 Opium Act is only relevant insofar amphetamines and cocaine (stimulants) and/or narcotics (for example heroine (diamorphine) and morphine) are involved. Since these substances are in the Netherlands, in general, regarded as substances with an unacceptable high risk, they have been brought under the jurisdiction of the Opium Act. The 1928 Opium Act does not apply to all substances belonging to WADA's list of prohibited substances and methods.

Under article 2, section 1, heading A, B, C and D, the Opium Act prohibits both import into and export out of the territory of the Kingdom of the Netherlands, as well as the preparation, the manufacturing, the processing, the selling, the delivering, the distribution or transportation and the possessing of substances brought under the jurisdiction of this act.

Those who violate this article by importing into and/or exporting out of territory of the Kingdom of the Netherlands, as well as manufacturing of, distributing of and/or having available amphetamines and/or narcotic analgesics, commit an offence against the Opium Act and will be subject to criminal proceedings attracting possible penalties of fines or imprisonment. The unauthorised import or manufacturing of amphetamines and/or narcotic analgesics could for example lead to a maximum of six months of imprisonment or a fourth category fine (11.250 Euro).

These penalties can be increased substantially if article 2 has been violated intentionally. The term of imprisonment could be raised to four years or a maximum of twelve years and the fine to a fifth category fine (45.000 Euro).

Persons trying to obtain substances under the jurisdiction of the Opium Act by providing a pharmacist with a false or falsified prescription, will be punished in the same way. The enforcement of the Opium Act is the responsibility of the police, customs and the Ministries of Justice and the Interior.

III – The 1958 Medicines Act

The purpose of the 1958 Medicines Act is to ensure the quality of medicinal products with regard to their safety and effectiveness. To ensure that the marketing of medicinal products is properly regulated, a product licence is needed to market or import a medicine. According to article 2, section 3, only licensed pharmacists are allowed to manufacture and deliver a licensed medicinal product.

Article 3, section 5, heading 1 and 2, prohibits both import and marketing of unlicensed medicinal products or licensed medicinal products which licenses have been revoked, as well as, having unlicensed medicinal products available.

Concerning the misuse of drugs in sport, the 1958 Medicines Act is relevant since it applies to anabolic androgenic steroids, as well as erythropoietin and growth hormone. Those people who are not licensed pharmacists and who do not act according to article 2, section 3, and/or article 3, section 5, heading 1 and 2, commit offences against the

Medicines Act. Offences would be subject to criminal proceedings attracting possible penalties of fines up to a maximum of 2.250 Euro (second category fine) or imprisonment up to a maximum of six months.

The application of the Medicines Act with regard to the misuse of drugs in sport is however limited since the Act applies only to those kind of anabolic steroids registered as licensed medicinal products. Another obstacle is caused by the fact that having licensed medicinal products, such as anabolic steroids, in possession for so-called self medication is not prohibited according to the Medicines Act. Enforcement of the Act is the responsibility of the Ministry of Health, Welfare and Sport (VWS) and the Ministry of Justice.

Various convictions have been obtained in cases concerning the illegal marketing and selling of anabolic steroids and other licensed medicinal products.

A more recent development is that of legislation concerning the illegal production and trade of medicinal products. The Dutch government has created legislation to increase the possibilities of the Justice Department and the Police to undertake action against the illegal production and trade of medicinal products. Due to the fact that the majority of substances on WADA's Prohibited List are medicinal products this new legislation also has influence on the production and trade of doping.

The new law that has been created makes a connection between the 1958 Medicine Act and the 1950 Economical Offences Act. This will make it possible for the Justice Department and the Police to use the privileges and possibilities of the investigation services mentioned in the 1950 Economical Offences Act when a violation of the 1958 Medicine Act is suspected. The connection makes it able to mobilise powers of investigations necessary to track down possible production, trade and distribution of medicinal products, and thus also of doping. Possible penalties are a fines up to a maximum of 45.000 Euro (fifth category fine) or imprisonment up to a maximum of six years.

This legislation has become effective in September 2001.

IV – The Penal Code

The Netherlands Penal Code does not have a direct bearing on the issue of doping control. Some articles in the Penal Code however, can be made applicable to certain instances of selling and/or distributing banned classes of substances belonging to WADA's list of prohibited substances and methods.

If the sale of doping substances to an athlete would lead to the athlete's death, article 307 Sr. could apply. Article 307 Sr. applies to cases of "wrongful death". In case the athlete would get ill and would need treatment, article 308 Sr. could apply. Article 308 Sr. applies to cases of "wrongful injury".

If someone would sell so-called doping substances to an athlete, knowing the harmful nature of these goods for life or health, without informing the athlete about this, he could also be charged with violating article 174 of the Penal Code. Article 174 Sr. applies to cases of "selling goods, knowing their harmful nature for life or health, but choosing not to inform the buyer of this". Offences against article 174 Sr. could lead to imprisonment up to a maximum of fifteen years or a fine of the fifth category (45.000 Euro). According to article 304, section 1 Sr., the term of imprisonment or the fine could be raised by one third if article 174 Sr. was in fact violated by selling goods harmful to life or health. If an offence against article 174 Sr. would lead to someone's death, a life-long imprisonment or imprisonment up to twenty years or a fifth category fine (45.000 Euro), would also be possible. According to article 421 Sr., these penalties could all be raised by one-third if

the person who committed the offence against article 174 Sr., did commit certain related offences during the previous 5 years.

If one is not actively involved, but knows that goods, harmful to life or health are being sold, delivered or distributed, to a buyer or recipient, ignorant of the harmful nature of these goods, but chooses not to warn that buyer or recipient, one could commit an offence against article 175 of the Penal Code for not having warned that buyer or recipient of the harmful nature of these goods. This article would be applicable to gym-owners who know that anabolic steroids are being sold in their gyms but choose not to do anything about it.

Offences against article 175 Sr. could be punished by imprisonment up to six months or a fine of the fourth category (11.250 Euro). If someone dies because the offender choose not to warn the buyer or recipient of the harmful nature of the goods, penalties could be increased to one year imprisonment or a fine of the fourth category (11.250 Euro).

Lastly, a lot of so-called doping substances are being sold on the black market. Most of the times buyers are provided with substances which are not the doping substances they have asked for. However, someone who sells foodstuffs, beverages or medicinal products, knowing they have been falsified but not telling his customers or the recipients about it, commits an offence against article 330, section 1, of the Penal Code. Offences against article 330 section 1 Sr. will be punished with two years imprisonment or a fine of the fifth category (45.000 Euro). Article 421 Sr., which raises the penalties by one third is also applicable in this case.

V – Individual Health Care Professions

In 1997 the Individual Health Care Professions Act was instated to replace the Medical Disciplinary Law. The 1997 Individual Health Care Professions Act lists acts that are only to be performed by qualified people. Examples are medical doctors and pharmacists (articles 1 and 3 section 1). In the case that these persons violate the rules that are valid for them they can be disciplinary prosecuted and punished (article 47 and 48).

Also the 1997 Individual Health Care Professions Act forbids any other person than those whose privileges are stated in this act to perform those acts professionally. The importance of these regulations is found in the fact (1) that they mention only the medical doctor and the physiotherapist as legally allowed to perform medical guidance professionally for athletes, (2) that they contain guidelines for the actions performed by these persons and (3) that violations of these regulations can be prosecuted under criminal law (article 96, section 1). The maximum penalties for violations are a fine of the third category (4.500 Euro) and/or a jail sentence of one year.

VI – (Statutory) Disciplinary Law

The publication of NeCeDo's study "*Met of Zonder? Een onderzoek naar de positie van de arts bij het gebruik van dopinggeduide middelen en de wenselijkheid van gedragsregels*" addressing the position of the (sports)physician in case of drug use in sports and the desirability of guidelines, started a process within the Netherlands Association of Sportsmedicine (VSG) to introduce guidelines for professional conduct for physicians working in sport. In March 1996, the VSG completed it's "*Guidelines for professional conduct of physicians working in sports*" (Richtlijnen voor artsen omtrent het sportmedisch handelen). These guidelines also address the issue of doping and explicitly ban the prescription of pharmacological classes of banned substances to athletes for doping purposes. Violation of these guidelines is sanctioned through the disciplinary law of the Royal Dutch Medical Association (KNMG), the umbrella organisation of physicians in the Netherlands.