

Will 'Roda' Replace WADA in 2021?

Criminal legislation against sports cheating is currently in the limelight, given the Court of Arbitration for Sport's (CAS) effective rollback of sanctions against Russia for the Sochi doping scandal, and the World Anti-Doping Agency's (WADA) decision not to pursue harsher sanctions. Some nations already have laws on the books and haven't hesitated to prosecute offenses within their borders. And two defendants caught in Operation Aderlass – physician Michael Schmidt and cyclist Stefan Denifl – were recently sentenced to prison terms for their roles as blood doping facilitator (Schmidt) and participant (Denifl).

And as of December 4, 2020, the first comprehensive and internationally-reaching national doping and sporting fraud criminal legislation was signed into United States' law: Bill HR.835, otherwise known as the [Rodchenkov Anti-Doping Act](#) – ironically named after the mastermind of [the Russian program](#) and one of its eventual whistleblowers (along with [Yuliya and Vitaly Stepanova](#)), Grigory Rodchenkov. This new law creates a criminal investigation framework for doping and sports cheating that in many ways supersedes WADA and CAS purview. It could potentially involve some of the most powerful arms of the U.S. Government, and on a scale similar to other successful laws like the [Foreign Corrupt Practices Act](#) (FCPA).

It is now conventional wisdom that scientific or medical enablers can keep athletes a step or two ahead of the Athlete Biological Passport (ABP) and in-competition testing, but the consequences fall disproportionately on the athlete once they are caught. On paper at least, the Rodchenkov Act represents a seismic shift, because it puts facilitators – like medical professionals, financiers, and potentially politicians – legitimately at risk of jail time and career-ending sanctions.

Athlete testing remains USADA's mission, but now the Department of Justice (which includes the Federal Bureau of Investigation and the Drug Enforcement Agency) as well as the Department of Health and Human Services (which includes the Food and Drug Administration and federal-level medical accreditation oversight) are now empowered to open cases and prosecute individuals at their discretion.

The Outer Line reached out to two anti-doping leaders for their insights to better understand how the Rodchenkov Act might change the situation going forward. [Michael Ask](#), the CEO of Anti-Doping Denmark and Chairman of the International Association of National Anti-Doping Organizations (IANADO), as well as [Travis Tygart](#), CEO of the U.S. Anti-Doping Agency weighed in on the potential impacts.

The intent of the Rodchenkov Act was driven by its origins. Ask says that the Russian doping affair outcome exposed WADA's lack of power to enforce the sanctions that it handed down. He elaborated this in [a guest blog for Inside The Games](#), highlighting the fact that key members of WADA are not independent, and often have government positions or ties to the International Olympic Committee (IOC). Similarly, the Chairman of the CAS Board, John Coates has a conflict of interest as a vice president of the IOC. "...we have the sport movement, led by the IOC, represented in all three powers of the governance structure of the anti-doping system," writes Ask, "Sport organizations now wield huge influence in making the rules, carrying them out and casting the verdict when some of their sport friends break the rules."

Tygart has been much more direct, and says, "Russia robbed clean athletes and it exposed how coaches and administrators are systematically able to break the rules. WADA's code is too restricted to just the athletes, and this Act will bring the enabler role into a clearer and criminal focus. The new Act will cover the often more critical co-conspirators who collude to cheat and personally benefit from those crimes."

The Rodchenkov Act broadens investigative reach and power. The new legislation mobilizes resources and capabilities across multiple U.S. governmental agencies – and with international implications similar to the [2015 DOJ indictments](#) of FIFA's power brokers. "RodA policy can dovetail on

the success of the FIFA example, in which multiple prosecutions were built on violations of the U.S. Foreign Corrupt Practices Act,” says Tygart, who uses “RodA” as a rhyming colloquial to WADA in conversation. “The FIFA actors were trading massive bribes in multiple schemes, which came under U.S. jurisdiction when those payments happened in U.S. territory or affected U.S. businesses.” And true to his roots, Ask – who was formerly the head of Denmark’s equivalent of the FBI – says that law enforcement’s role as a component of anti-doping in the future “is a good thing.”

It broadens investigative cooperation. A key feature of the Rodchenkov Act, similar to the FCPA’s reach, will be the extraterritorial jurisdiction capabilities of the U.S. justice system. Ask and Tygart both point to the investigative framework which was leveraged during the Armstrong investigation. “When USADA got evidence on Armstrong and USPS, we went to our DOJ contacts and also Interpol and WADA,” says Tygart of that effort. The investigative coordination across national jurisdictions accelerated evidence discovery and led to a stronger overall case against Armstrong and his contemporaries, according to Ask.

[Although the DOJ eventually exited the case](#), the evidence became integral in the Reasoned Decision, and future cases may not suffer from the same gray areas and lack of legal precedents. “My prediction is that this kind of multi-agency cooperation across the board will increase over the next few years,” adds Ask.

It provides incentives and protections for whistleblowers. Russian doping scandal whistleblowers faced mortal danger by coming forward. The Stepanovas, who originally exposed the coerced doping of Russian athletes, have been on the run and hiding ever since. Rodchenkov had to flee Russia under immediate threat, and his former boss died under [mysterious circumstances](#). The new legislation – by assigning jurisdiction to powerful U.S. agencies – provides strong witness protection privileges.

Says Tygart, “I hope the witness protection potential will incentivize whistleblowers in the future. It finally formalizes witness protection coverage for these kinds of cases as an obligation to the athlete, provided they bring their testimony forward to the right authorities. Nothing prohibits a law enforcement branch from opening an investigation if they get wind of evidence implicating enablers, and protecting the athlete if repercussions for that testimony were imminent.”

It creates a real deterrent against enablers. The WADA code has always placed athletes under explicit career jeopardy, whether holding them accountable for knowing the entire and massive list of prohibited substances and metabolites, or for keeping up-to-the-minute with the ADAMS unannounced testing whereabouts system. The prospect of felony jail time or permanent license revocation may similarly give doctors, sponsors, sports officials, and financiers pause to reconsider their actions. (Unfortunately, as demonstrated by Dr. Michele Ferrari after his USADA sports-limited sanctions, his notoriety and [clandestine demand](#) for his services possibly increased.)

“RodA also gives countries that lack effective anti-doping laws an avenue to send evidence to U.S. authorities for prosecution here,” says Tygart of the new legal frontier. An example of this model could apply directly to cycling: if the winner of the Tour de France were caught doping, the U.S. broadcaster’s economic investment and the interests of U.S.-based team and race sponsors would fall under the RodA umbrella.

Will the Rodchenkov Act make a difference for cycling and make it a cleaner and fairer sport? No, and yes. In the short term, little will change day-to-day in the sport as we know it. The arms race triggered by the ABP at the elite level has placed anti-doping at a disadvantage for years – the scientists tailoring their athletes’ doping programs simply know their clients better than the testers. A smaller name in the pro ranks (or many no-names in the Masters and Gran Fondo ranks) will still occasionally get busted.

Also, the new investigative framework will demand greater investments – in both people and technology. “We anticipate an increased commitment that we might not have resources to immediately support,” Tygart admits. Technical advancements have strained anti-doping research budgets, and a high-profile doping legal case can cost a million dollars or more to adjudicate. Federal-level funding sources could bring rapid change but with pandemic-related economic priorities driving the new U.S. administration, it may be a year or more before structural changes take place.

However, the Rodchenkov Act is a significant step forward in anti-doping – albeit one which comes decades later than it was really needed. There has been a legal gray area between doping and doping facilitation as a sporting vs. a criminal matter since WADA began, and this new law empowers criminal prosecution as a first option with or without anti-doping involvement. The sport might look much different today had this legal framework been in place prior to Operacion Puerto. The nuances of Spanish law which protected the scheme’s participants and led only to a slap on the wrist for Dr. Eufemiano Fuentes would have likely had a different outcome in a U.S. Federal Court. And perhaps Lance Armstrong and key figures in the USPS program would have faced much harsher punishment based on criminal statutes of organized drug diversion and distribution alone.

Time will tell if RodA gradually replaces WADA as the force promoting greater integrity in sports. Former WADA founder and President [Dick Pound](#) criticized the law as an “evangelistic act,” with the U.S. essentially granting itself excessive sovereignty overreach. Current WADA leadership has [already condemned](#) the legislation, claiming it will undermine anti-doping “by jeopardizing critical partnerships and cooperation between nations,” and that it may create a legislation arms race with other nations, “...subjecting U.S. citizens and sports bodies to similar extraterritorial jurisdictions and criminal sanctions, many of which may be political in nature or imposed to discriminate against specific nationalities.” As if on cue with WADA’s response, [China recently passed](#) a similar RodA law.

One thing is certain: for sports like cycling, where sponsor image is at a premium and drives overall economics, this change may help to finally cast off the shadow of doping. Until the Rodchenkov Act, only athletes were served career-ending bans while facilitators and profiteers of the doping maintained their professional accreditations and stations, able to jump from one team or program to the next without hindrance. Meaningful and severe criminal consequences could help deter doping behaviors to reinforce public trust in pro cycling and lead to greater fan engagement, stronger financial prospects – and ultimately benefit everyone who participates in the sport.

Written by Joe Harris, February 10th, 2021