

## Editorial

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### Health-enhancing doping controls

During the second week of January the Danish media reported that the political party The Social Democrats (which has been in opposition for nine years) is proposing a bill that will make doping controls compulsory in all commercial Danish gyms. The Government supports the proposal, and we can therefore expect that the bill will be passed in the near future. Thus, Danes who want to get rid of the additional winter pounds in the local gym must accept the possibility of a perfect stranger accompanying them to the toilet to stare at their genitals while urinating. So far, only the Conservatives and Liberals (who are in government) have expressed such wishes, but now the Social Democrats have also realised that there are easy votes to be won with a strict doping policy. The fact that the system is both unreasonable, works against its own intentions and constitutes a potential violation of the European Convention for Human Rights (ECHR) seems to bother no one.

With the act that is presently in force Denmark has the world's tightest control regarding drug use in the gym environment. Under the act, Anti Doping Denmark "shall endeavour to enter into collaborative agreements on doping control"<sup>1</sup> with commercial gyms. Those gyms that wish to join the scheme pay a fee of approx. DKK 12,000 (1,600 €) and in return Anti Doping Denmark will perform doping control on an average of four members per year, typically divided between two visits. The statistics from the last couple of years show that approximately 1 in 4 tests are positive. The idea is to eliminate or

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<sup>1</sup> [Danish] Act on Promotion of Doping-Free Sport, §9.

minimize the use of performance and image enhancing drugs because of their harmful adverse effects. Whether the prevalence of i.e. the use of anabolic steroids in the general population has decreased after the law was introduced in 2005 nobody knows. Gyms' participation in the testing scheme has so far been voluntary, but when the Social Democrat's bill is passed this will change.

A fundamental problem with the legislation is that it is bound to the guidelines for drug-testing as laid out in the WADC. But while WADA's rules are designed to achieve fair play in global elite sport, doping control in gyms has the objective of securing the health of the exercising population. These are two very different objectives that cannot be achieved with the same weapons. According to the act, doping controls must be performed in accordance with the WADC guidelines for sample collection and sanctioning. A young man who tests positive for the use of steroids is therefore not only subject to a two-year suspension from his gym, and from all other Danish gyms, but from all organized sports in Denmark. It thus is not just bodybuilding, but also badminton and bowling he is excluded from. If one recognises the importance of sport and exercise for public health the sanction seems to work in just the opposite direction. If he refuses to be tested, it counts – as in elite sport – as a positive test.

But the peculiarities do not stop here. One might expect that an act that is designed to ensure people's health, would allow testing for all hazardous drugs used in gyms. This is not the case. A consequence of the act's adherence to the WADC is that testing recreational athletes in gyms is done in accordance with the regulations for out-of-competition testing. Therefore stimulants, such as ephedrine, amphetamine and cocaine that in the context of elite sport are only rational to use in competition, are not tested for. But in the gym these substances, whose harmful effects are no less than steroids, are occasionally used by young women who want to quickly burn off fat. This means that the act's purpose of securing the health of the athletes, in reality only means securing the health of male athletes. That no one has paid any attention to this discrepancy is probably due to the fact that a man with big muscles who shouts and sweats while lifting weights, appears more intimidating to other customers in the gym, than the girl who quietly topples on the treadmill after having swallowed four Thermapower pills. She does not disturb in the same way.

Finally there is the actual testing procedure. It must also be performed in exactly the same way as for elite athletes. The chosen gym customer must undress in front of the doping control officer. The person is asked to roll down their trousers to the knees and lift the T-shirt up to the waist, making the genitals clearly visible, thus ensuring "an unobstructed view of the *Sample*

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leaving the *Athlete's* body".<sup>2</sup> When the new act is adopted none of Denmark's approx. 500,000 gym members can refuse this treatment. If a person rejects to endure the humiliation he or she is excluded from all sport for two years. If on return from the two-year sentence, the person once again declines to bare him- or herself before the foreign doping officer, the WADC requires that the person is excluded from sport for between 8 years and life.

This test form, that some gym customers have experienced as indecent exposure, appears even to be inconsistent with the ECHR, Article 8, concerning the right to respect for privacy. This article says that, "there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary [...] for the protection of health or morals."<sup>3</sup> According to the chairperson of Anti Doping Denmark, Professor of Law, Jens Evald, it follows from this that, "the state may only encroach on citizens' privacy, if there are substantial reasons for doing so, and at the same time there must be *proportionality* between the nature of the interference and the aim pursued."<sup>4</sup> It is clear that the control itself *is* an encroachment of a citizen's privacy. But that the interference is proportionate to the objective – to secure gym customers' health – is however not obvious. We have not seen a decline in the number of steroid users after the act was introduced five years ago; the act does not take the drugs women use into consideration; and it has not been shown that health is improved because users who test positive are excluded from all sport for two years. The question of whether the Danish legislation complies with ECHR Article 8 can only become more pertinent with the Social Democrats' proposed tightening, where gyms (and hence their customers) are forced into the system.

The paradox is that the interventions and the act rest on a premise of improving public health. But virtually no efforts in Denmark focus on actively minimizing the health risks facing steroid users. Yet, there are positive experiences with such harm reduction strategies in England. They focus on the health of the user and not the healthy image of the gym business. The idea is to reduce the risks taken by steroid takers using a variety of tried and tested methods. But that obviously works less well as political profiling than the punitive approach chosen in Denmark.

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<sup>2</sup> WADC, International Standards for Testing (2009), p. 78

<sup>3</sup> European Convention for the Protection of Human Rights Article 8 – Right to respect for private and family life. [Homepage on the Internet]: <http://conventions.coe.int/treaty/EN/Treaties/html/005.htm> [visited: 2009, Dec].

<sup>4</sup> Jens Evald (2009), p. 82 in "Retlige grænser for dopingkontrol". ("Legal boundaries for doping control"), pp.71-88, in ed. Ask Vest Christiansen *Kontrolsport – Big Brother blandt atleter og tilskuere* (Control Sports – Big Brother among athletes and spectators), University of Southern Denmark Press.

The sad thing about the tightening of the legislation is that it is probably to no avail. For if the bill is adopted, the most likely outcome is that the steroid users, at whom the bill is targeted, will be driven into informal clubs in murky basements where the use of steroids can take place in peace and completely out of control. Although from a political perspective this may also offer opportunities, as there will then be a new problem for journalists to investigate and politicians eager to improve their profile among the electorate can propose yet more legislation.