

VISTA

Fair play? Play it fair?

Rules differ from time to time, from place to place...

- What advantages are unfair and, at the other end of the problem, what is to count as a level playing field
- What is considered unfair today was acceptable in the old days (doping)





Cas 2008/A/1480
Pistorius v. IAAF 16
May 2008

Unlawfully discriminatory?



- *Claim Pistorius*: “In finding Pistorius **ineligible in all IAAF sanctioned events** without attempting to seek any alternative solution modification or adjustment that might permit him to participate in such events on equal basis with able bodied athletes, the IAAF **has denied Mr Pistorius fundamental human rights ...**”

- Panel: ... As counsel for IAAF rightly mentioned, if this panel finds that Mr Pistorius Cheetah Flex Foot prostheses provide **no advantage** to mr Pistorius, **he will be able to compete on an equal basis with other athletes**. If the Panel concludes that Mr. Pistorius does gain an advantage, the Convention (UN: on the rights of persons with disabilities) would not assist this case.
- IAAF: Use of Cheetah Flex Foot device contravenes IAAF-rule: *“Use of any technical devices that incorporates springs, wheels, or any other element that provides the user with advantage over another athlete not using such a device”*
- IAAF could not prove that the model Cheetah Flex Foot prostheses provide him with an overall net advantage...

- The ruling **has no application to the eligibility** of any other amputee athletes... it is the IAAF responsibility to review circumstances on a **case by case basis**... in the context of up-to-date scientific knowledge at the time of such review...
- **WHEN IS A RULING FAIR?**
- => what about all other amputee athletes that use exact the same Cheetah Flex Foot prostheses? Is a case by case approach fair?
- => What is the difference between doping and using technical devices?
- => Is Pistorius playing the same game as his opponents without protheses?

The other way around? Classification boosting

- Misrepresenting functional abilities during the process of classification => athletic fraud



Friday, 24 November, 2000, 22:23 GMT

Spain in Paralympics scandal

A Spanish gold medallist has accused the nation's Paralympic team of fielding athletes with no disabilities in order to win medals.

Carlos Ribagorda, a member of Spain's victorious basketball team, believes that nine team-mates did not undergo any tests to check for their eligibility.

"Of the 200 Spanish athletes at Sydney at least 15 had no type of physical or mental handicap - they didn't even pass medical or psychological examinations," Ribagorda said in the magazine Capital."

Fraud in paralympics sports

- The Spanish team was ordered last month to return its medals after the Spanish Paralympic Committee concluded that only 2 of the 12 players on the team had mental disabilities.
- The International Paralympic Committee cited serious problems regarding the determination of eligibility of athletes in making its ruling. It said all athletes with an intellectual disability will be barred from I.P.C. activities.
- The I.P.C. also suspended the International Sports Organization for Athletes with an Intellectual Disability. That organization's president, Fernando Martin Vicente, was suspended from the I.P.C.'s ruling executive committee.



- **BBC 2017** The classification system puts athletes into groups depending on the level of their impairment to try to ensure fair competition - and the IPC is responsible for classification for all international Paralympic athletes.
- In Para-swimming, for example, the IPC has previously warned that intentional misrepresentation - where athletes pretend to be more disabled than they are to compete in a more favourable class - was in "grave danger of undermining the credibility of the sport".
- World Para-swimming is in the process of reviewing its system, with British Swimming telling the BBC it is "supporting" that work.
- **But it is notoriously difficult to prove to the legal standard of "beyond reasonable doubt" - a recent IPC report found no clear evidence of "intentional misrepresentation" after analysing 80 cases.**
- Domestically, after the issue flared up again before the Rio 2016 Paralympics, a UK Athletics review found "a wide consensus" that the system for classifying British track and field Para-athletes "could be abused" and some concern it was "open to exploitation".

Unsportsmanship ...?



Inclusion or exclusion and talking about fundamental human rights?



- In March/April 2018, the IAAF cancelled its “Hyperandrogenism Regulations”, ... and replaced them with the DSD Regulations establishing new requirements governing the eligibility of women with DSD for the female classification in race events from 400m to 1 mile (the “Restricted Events”) at international athletics competitions.
- **The DSD covered by the Regulations are limited to athletes with “46 XY DSD” – i.e. conditions where the affected individual has XY chromosomes. Accordingly, individuals with XX chromosomes are not subject to any restrictions or eligibility conditions under the DSD Regulations.**

- By majority, the CAS Panel has dismissed the requests for arbitration considering that the Claimants were unable to establish that the DSD Regulations were “invalid”. **The Panel found that the DSD Regulations are discriminatory but the majority of the Panel found that, on the basis of the evidence submitted by the parties, such discrimination is a necessary, reasonable and proportionate means of achieving the IAAF’s aim of preserving the integrity of female athletics in the Restricted Events.**

- Strict divisions between men and women to create a level playing field still socially acceptable.
- But society is drifting apart from the strict distinctions between men and women.
- Sport is struggling to come up with fair rules.
- *But if it were you, how would it feel when a world-wide public is questioning your sexuality?*

How do we make competitions as fair as possible?

- => In a way isn't everybody competing at the highest level to the enjoyment of the public is "special".
- Because they do things we are not capable of doing ... BUT some anomalies are completely acceptable and others contested ...
- => What's next? A distinction between competitions between Ethiopians and ? A distinction between those who have access to money/sportfacilities and those who have not?

From Inclusion to exclusion?

Marjolijn Buis:

Top 8 Wheelchair Rankings since 2010 won medals at the paralympic Games London 2012 and Rio de Janeiro 2016



New classification rules:

- ITF is committed to compliance with the IPC Classification code (which is a condition of IPC membership)
- Due to new classification-rules she is no longer eligible to play and no longer able to compete in international disability tennis

Should fair play be more important than fairness?

- What advantages are unfair and, at the other end of the problem, what is to count as a level playing field.
- What we need is
 - **Categorisation** based on scientific evidence and ethical consideration
 - **Transparent** procedures
 - Rules that are **necessary, reasonable and proportionate**
 - Which acknowledge differences and issue punishments **in a spirit of tolerance**
- We need to entangle fundamental issues not via legal professionals (only) but working close together with other professionals (medical, ethical, etc.)

Social responsibility

- Developing a more ethical sport system means also addressing tough issues like (sexual) harassment.

Report finds widespread bullying, intimidation and abuse in Dutch cycling

More than a quarter of riders have said they've felt unsafe

[Cycling News](#) May 16, 2018 12:45pm

A Dutch flag on the side of the road(*Tim de Waele/TDWSport.com*)

Almost two-thirds of top Dutch riders have endured one or more 'unpleasant' experiences within their team in the past year, and more than a quarter have said that they have not felt safe, according to a report published by the Dutch Cycling Federation (KNWU). A third of amateur riders also said that they had suffered 'unpleasant' experiences, and on average one person cited four such experiences over the past year.

The report claims that as many as one in three have been the victim of physical or verbal violence in the past year. Of those who said they felt unsafe, many said that they felt most threatened by other athletes, followed by trainers or coaches.

Article Continues Below Advertisement

Some 13 per cent said that they had been on the receiving end of inappropriate sexual behaviour, including 'touching' and comments. The report stated that perpetrators tended to be men, but there was one woman involved in the instances reported.

Some 41 per cent of riders said that they had felt coerced or blackmailed into doing something. Excessive control over private life was the highest noted type of coercion, constraint or blackmail, with losing weight the second. Other respondents said that they had been forced to pay out money to the team in order to remain part of it or to be included or gain selection. The occurrences of this increased when it came to amateur-level riders.

The investigation was undertaken by criminologist Anton van Wijk and Professor Marjan Olfers. In a report that spanned more than 20,000 words, the KNWU detailed their findings and the measures that would be put into place in light of them. The KNWU has said that they will work with the Dutch riders' association, the VVBW, to ensure better conditions.

"We intend to start a campaign in the short term to discuss intimidation," the KNWU said in a statement issued at the same time as the publication of the report. "The norm is a safe and pleasant sports environment, not one of reviling and belittling.

"Specifically, the subject of weight and nutrition plays a major role in this. Young people and women form an extra vulnerable group. With regard to the weak employment position of professional cyclists and riders, we are in consultation with the VVBW to improve the employment position of these athletes."

- Athletes are dependent => the concept of power => intense and time consuming working relationship
- But (also) other athletes are abusing other athletes
- Increased risks disabled athletes

- Nowadays Internet (sexting, grooming)

- => we need (more) specific research with regard to each sports discipline (and disability)

- **8 Safeguards**

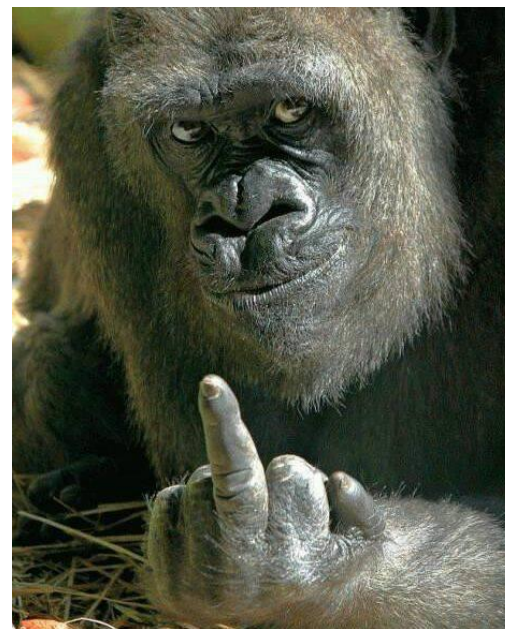
- 01 — Developing your policy
- 02 — Procedures for responding to safeguarding concerns
- 03 — Advice and support
- 04 — Minimising risks to children
- 05 — Guidelines for behaviour
- 06 — Recruiting, training and communicating
- 07 — Working with partners
- 08 — Monitoring and evaluating

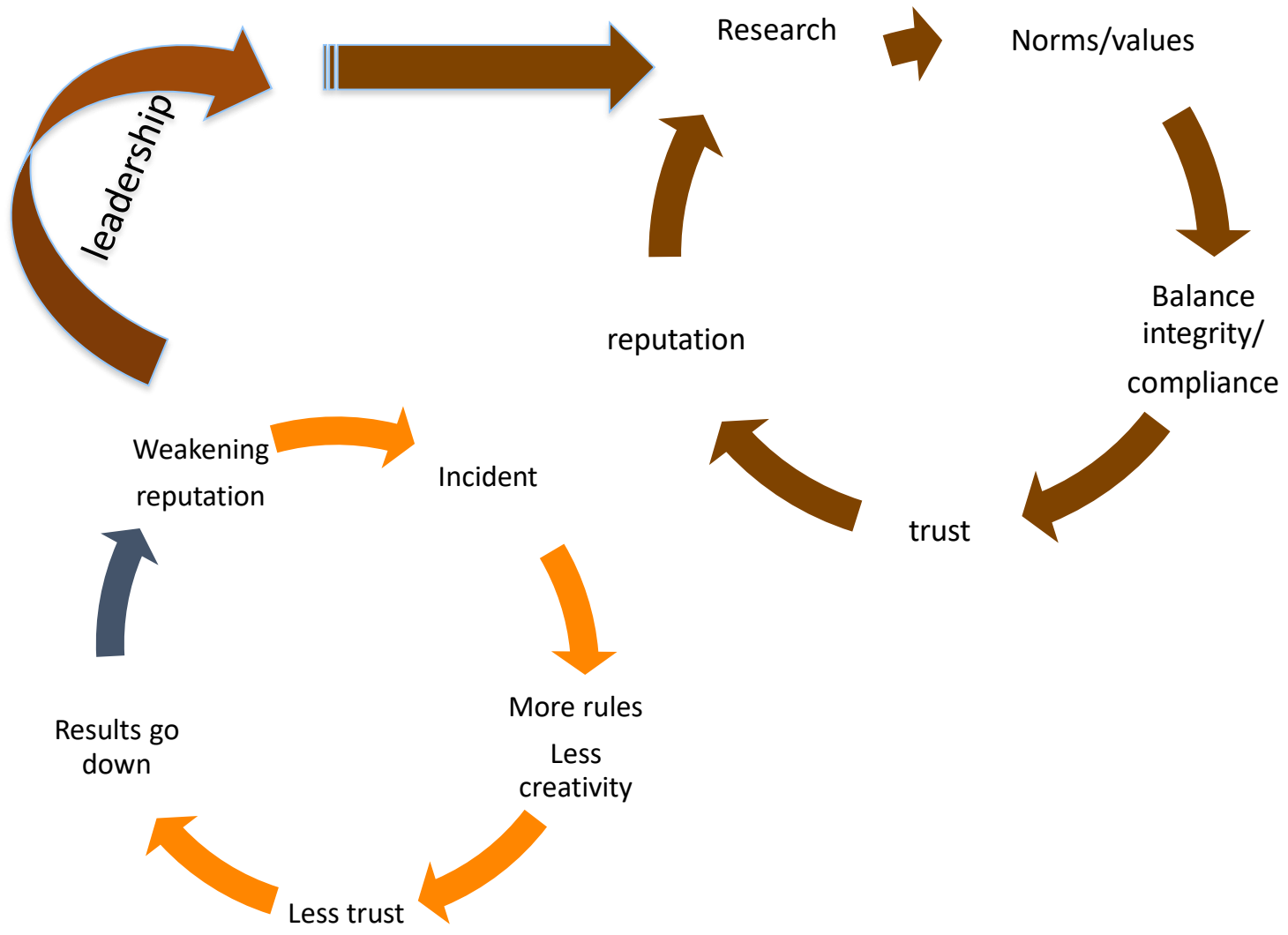
Chapter 3.15 – IPC Policy on Non-Accidental Violence and Abuse in Sport

- The IPC considers that every individual is entitled to live and work in an environment that is free from embarrassment, discomfort, intimidation or humiliation arising from acts of non-accidental violence and abuse, including those perpetrated knowingly and deliberately (acts of commission) or negligently (acts of omission), that undermine both the mental and physical health of the individual and the integrity of sport. (...)

- Non-accidental harms, including sexual abuse and assault, financial abuse, bullying and emotional abuse, hazing, neglect, physical abuse and child exploitation are violations of human rights, regardless of cultural setting, that damage both individual and organisational health. Every member of the Paralympic Family shares the responsibility to identify and prevent non-accidental harms, and to develop a culture of dignity, respect and safety within the Paralympic sport community.
- 3.3 The IPC encourages and supports any possible positive action that aims at raising awareness of the negative impact, and at reducing and eliminating non-accidental harms in sport.
- 3.4 The IPC calls upon its member organisations, all individuals involved in leadership, all (sport) officials and all athletes associated with the IPC to exemplify equitable, respectful and ethical leadership, to observe and respect the cultural differences and promote the rights, the well-being and protection of all individuals at all levels of the Paralympic Movement.
- **3.5 Non-accidental harms are a breach of the IPC Code of Ethics and will be investigated and sanctioned accordingly.**

Tone at the top





RULE OF LAW

- Strong rule of law
 - people uphold law not out of fear but because they deeply support the system.

- But ... a crime-free society will never exist

Challenges

- Business as usual, focus on the long term
- Rules, rules, more rules
- Lack of support for changes
- Cultural and ethical sensitive topics

***“We can more easily forgive cheaters
than spoil-sports”***

Johan Huizinga, proeve ene spelbepaling der natuur, 1955.



How do you act when you see “unfairness”

And you? How do you act?

Cheater, (breaks the rules: doping, hidden motor in cyclo-cross)

Spoilsport (they shatter the play, and destroy the illusion of play => whistleblower), or

Game-changer (make a new sport)