

**Football Association of Wales v. UEFA: only dopes don't cheat**

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## Football Association of Wales v UEFA

### Only Dopes don't cheat

Thursday May 13<sup>th</sup> 2004 should be remembered as yet another bad day for those involved in the fight against cheating, (through the use of illicit drugs), in sport. This was the day that Wales lost their case at the Court of Arbitration for Sport where they were appealing against a Uefa, (the governing body of football in Europe), decision not to throw Russia out of the 2004 European Football Championships after one of their players Egor Titov failed a routine drugs test following the first leg of their victorious playoff against Wales.

Last year, Wales and Russia were drawn to play one another in a two legged playoff to decide who would go through to the 2004 European Football Championships in Portugal. If Wales had won, it would have been the first major football tournament that they had qualified for since 1958 when they won through to the quarter finals of the World Cup. The first leg was played in Moscow where Wales achieved a very creditable 0-0 draw. The player in question, Egor Titov was a non-playing substitute in that particular match. After the match, Titov was randomly drug tested and his test showed a positive reading for the prohibited stimulant *bromantan*<sup>1</sup>. He then played 59 minutes of the return leg held four days later in Cardiff, which Russia won 1-0, thus taking them through to the European Championships in Portugal at the expense of Wales. Titov was selected to be tested under the authority of the Article 7 of the Uefa Doping Regulations which states<sup>2</sup>:

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<sup>1</sup> Bromantan is listed in Appendix A of the Uefa doping regulations edition 2004 under the heading "Prohibited substances". This list is taken straight from the World Anti Doping Authority List

<sup>2</sup> Uefa Doping Regulations, Edition 2004, Article 7, (7.01)

Two players plus one reserve from each team are drawn by lot to undergo a doping control at every match where doping controls are being conducted

As is common with just about all other sports, a doping offence where a match is played under the auspices of Uefa is an offence of strict liability.

Article 2 states<sup>3</sup>:

The following constitute anti-doping rule violations:

- a) The presence of a prohibited substance or its metabolites or markers in a player's bodily sample
  - It is each player's personal duty to ensure that no prohibited substance enters his body. Players are responsible for any prohibited substance or its metabolites or markers found to be present in their bodily specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the player's part be demonstrated in order to establish an anti-doping violation.

Any doping offence is dealt with under the Uefa Disciplinary Regulations.

These regulations<sup>4</sup> state:

1. Any player who voluntarily or negligently uses banned substances or methods is suspended:
  - a) for 12 months for the first doping offence;
  - b) for two years for the first instance of recidivism;
  - c) for more than two years or indefinitely for the second instance of recidivism
2. The suspension can be combined with a fine
3. The Regulations governing doping controls at UEFA competition matches and list of banned substances and methods are authoritative.
4. **Implicated associations, clubs and individuals are called to account for being accomplices or abettors** (emphasis added).

Subsequent to his failure, Titov was banned for twelve months and fined in accordance with the regulations for a first offence. However, the Football Association of Wales, (FAW), were unable to make any progress in their

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<sup>3</sup> Uefa Doping Regulations, Edition 2004, Article 2, (2.01a)

<sup>4</sup> Uefa Disciplinary Regulations (edition 2002), article 12 – Doping

attempt to suggest that the Football Union of Russia, (FUR), were in any way culpable in the abuse practised by Titov. Therefore they were unable to bring the FUR within regulation 1(4).

It is important to understand the stated rationale of Uefa for its doping regulations. The preamble to their doping regulations states<sup>5</sup>:

Doping has become a constant preoccupation of international sports organisations and national governments.

The fundamental aims of UEFA's doping controls are:

- To uphold and preserve the ethics of sport.
- To safeguard the physical health and mental integrity of football players.
- To ensure that all competitors have an equal chance.

Doping controls were introduced to ensure that the results of the matches in UEFA's competitions are a fair reflection of the strength of the contenders.

Quite clearly, as the following section will show, Titov would have gained a considerable advantage had he played in the match after which he had tested positive, (he was a non-playing substitute). Additionally, the effects of Titov's drug would be particularly important in aiding performance in a situation where matches are played in close proximity to one another as was the case with the playoff matches.

Titov was found guilty of taking the banned stimulant *bromantan*. This particular drug first came to prominence during the 1996 Olympic Games in Atlanta. During those Games, three Russian athletes and two sports officials were banned, with a further two Russian athletes being stripped of bronze

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<sup>5</sup> Uefa Doping Regulations, Edition 2004, preamble

medals that they had won. The drug clearly contributes greatly to enhancing an athlete's performance. Concerning the effects of *bromantan*, Lajis writes<sup>6</sup>:

As a stimulant, it is generally accepted that bromantan may enhance athletic performance by allowing athletes to feel more alert and combat fatigue brought on by prolonged exertion. Stimulants also generate a feeling of well-being, aggression and self-confidence. The International Olympic Committee (IOC) has described the effect of bromantan as equivalent to that of mesocarb. Mesocarb is known to possess anti-depressant and anti-psychotic properties... The IOC has also described bromantan as a dangerous cocktail of steroids, stimulants and masking agents. According to an Olympic official, bromantan was first manufactured by the Russian army to increase their soldiers' physical endurance during long and strenuous military exercises. Then Russian athletes got hold of it. It was reported that those who were on bromantan could compete to their maximum capacity without feeling exhausted.

These are quite obviously just the kinds of effects that any participant, (or indeed an implicated governing body) would be looking to promote in a situation where players must take part in two highly strenuous, crucial matches within the space of four days. In an event where a tiny percentage increase in performance may be the difference between success and failure, any such performance enhancing stimulant would prove to be of crucial importance.

Following the second leg in Cardiff, where Titov played 59 minutes, the FAW submitted to Uefa to have the 1-0 result declared void and a 3-0 victory for Wales to be substituted in its place. The proposal failed leading to a further

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<sup>6</sup> [www.prn2.usm.my/mainsite/sun/1996/sun.html](http://www.prn2.usm.my/mainsite/sun/1996/sun.html) - Abdul Razak Lajis "The Battle Rages On"

written appeal by the FAW. In rejecting the appeal, Uefa cited as their reasons<sup>7</sup>:

‘in reviewing the case the Uefa Control and Disciplinary Body made reference to the FAW’s failure to provide evidence that the player was under the influence of a prohibited substance in the second-leg match’  
‘in addition, and according to Uefa regulations in the case of a doping offence, the punishment anyway only applies to the player himself and not to the team’  
‘This is further backed-up by the World Anti-Doping Code which states that in the event of one member testing positive for a prohibitive substance in team sports it is the individual and not the team member that is liable’.

This statement released by Uefa in the wake of the rejection of the FAW submission is far from clear. We have already seen how implicated associations may be called to account, and therefore the section of the statement which states quite clearly that only individuals may be punished is not altogether true and is actually somewhat misleading. In addition the World Anti Doping Agency, (WADA) Code is far less categorical than the Uefa statement implies. Article 11, (Consequences to teams), of the WADA, World Anti Doping Code<sup>8</sup> states:

Where more than one team member in a Team Sport has been notified of a possible anti-doping rule violation...The team shall be subject to Target Testing for the Event. If more than one team member in a Team Sport is found to have committed an anti-doping rule violation during the Event, the team may be subject to Disqualification or other disciplinary action. In sports which are not Team Sports but where awards are given to teams, Disqualification or other disciplinary action against the team when one or more team members have committed an anti-doping rule

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<sup>7</sup> <http://newsvote.bbc.co.uk>

<sup>8</sup> World Anti-Doping Code, World Anti Doping Agency, Article 11, “Consequences to teams”

violation shall be as provided in the applicable rules of the International Federation.

It is under this authority that the British men's 4 x 100 metres relay squad lost their silver medals following Dwaine Chambers positive drugs test at the recent World Athletics Championships. From the perspective of the FAW, this particular article does however remain unsatisfactory. Future target testing of the Russian team achieves nothing for Wales, (who are of course the team who have directly suffered due to the use of the performance enhancing stimulant) . It is even debatable as to whether the Russian team will face any further target testing. The playoff matches were at the end of the qualifying session, (the Event), and it is conceivable that the Championships proper being held in Portugal may be considered to be a brand new event and hence new procedures will be applied, leaving the notion of further target testing redundant. The punishment enforced by Uefa was not in any event restricted to Titov. In addition, his football club, Spartak Moscow were fined for his failed test, but curiously, particularly as it was an International match, the FUR remained unpunished.

Following this decision, the FAW decided to take its case to the Court of Arbitration of Sport, under authority granted by Article 18 of the Uefa Doping Regulations, which states<sup>9</sup>:

18.01 The Court of Arbitration of Sport (CAS) shall have exclusive jurisdiction to deal with any challenge against a decision under civil law (of a pecuniary nature) of the disciplinary bodies. Any such challenge must be made at CAS within 10 days of the notification of the decision which is challenged.

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<sup>9</sup> Uefa Doping Regulations, Edition 2004, Article 18, "Legal challenge to decisions of the disciplinary bodies"

18.02 A decision of the disciplinary bodies of a sporting nature, or any part or parts of a decision that is of a sporting nature, may not be challenged in civil law.

18.03 A civil law challenge through CAS may only be brought after UEFA's official internal procedures have been exhausted.

18.04 There shall be no recourse to legal action in the ordinary courts of law in relation to such matters.

Despite these submissions in their own regulations, Uefa contended that the CAS had no jurisdiction in the case, (the submission was rejected). However, the CAS also rejected the case put by the FAW. The major point lay in their failure to prove that the FUR were implicated in Mr Titov actually taking the drug, (it does seem strange therefore that Titov's club were fined), and due to this failure to implicate the FUR, the punishment remained targeted at the individual rather than at the Federation and indirectly through them the Russian team.

In a postscript to the case, it was reported on the BBC website<sup>10</sup>:

Spartak Moscow captain Titov, who was banned for a year by European soccer's governing body in January, has always maintained his innocence, saying he was given the banned substance bromantan as medication by mistake.

Spartak's former chief doctor Artyom Katulin said last month that one of his aides had prescribed Titov a food supplement containing bromantan without the player's knowledge.

Katulin was fired by the club shortly after Titov was banned.

It seems that sports participants are unable to understand the nature of strict liability – and indeed this is not surprising when governing bodies consistently apply the principles inconsistently! With every single case that comes into the spotlight, participants attempt to justify the presence of drugs in their systems

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<sup>10</sup> <http://bbc.co.uk/go/pr/fr/-/sport1/hi/football/internationals/wales>



by claiming they were the innocent victims of wrongly prescribed drugs or of unknown contamination of vitamin supplements or indeed of cold remedies. It is no wonder that these excuses continue to be given when application of disciplinary procedures and principles is so inconsistent<sup>11</sup>. With the success of the FAW in establishing that the CAS actually do have jurisdiction in this area, it is to be hoped that this will force all national associations to revisit their disciplinary procedures and cooperate in producing a single standard which can be applied consistently worldwide.

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<sup>11</sup> Note the Greg Rusedski affair, issues involving Rio Ferdinand, Jaap Stam, Edgar Davids, Dwaine Chambers, several US Track and Field stars, and others - NB Man City player