

Intentional Misrepresentation of abilities in Paralympic sport: a conceptual, ethical and legal analysis.

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Abstract

Classification is one of the distinctive features of Paralympic sport. Despite the existence of classification rules and a well-defined classification process, some Paralympic athletes intentionally misrepresent their abilities to classifiers in order to be allocated to a lower performing competition class, in which they secure an unfair advantage over other athletes. Such deception undermines the integrity of the competition by exploiting a vulnerability in the classification process. Such manipulation is hard to mitigate and harder still to prove that an athlete had; intentionally misrepresented their abilities or; failed for innocent reasons to make maximum efforts during the classification or; had acted under coercive pressure from others in their entourage or environment. These challenges are compounded in the case of Paralympic athletes that have an intellectual impairment or who are accompanied by a parent/guardian who acts as a proxy, rendering evaluations as to responsibility even more complex. This article presents a conceptual analyses of intentional misrepresentation of abilities in Paralympic sport, and the differentiation of responsibility for offense thereupon, as stipulated in the draft of the International Standard for Intentional Misrepresentation, accompanying the new 2025 Athlete Classification Code (IPC, 2024). Drawing on philosophical and legal analysis we (i) set out existing shortcomings associated with Paralympic classification; (ii) articulate the range of potential intentional misrepresentational acts with respect to classification manipulation; and (iii) articulate the range of negative effects on the integrity of Paralympic sport.

Key words: cheating, intentional misrepresentation, paralympic sport, sport integrity

1. Introduction

The Paralympic Games takes its place to celebrate the athletic excellence of Para-athletes. It comprises 22 summer and six winter sports, sanctioned by the International Paralympic Committee (IPC, 2022a, para. 2). The main distinguishing feature of Paralympic sports, as opposed to able bodied sport, is the classification of eligible impairments resulting from an underlying health condition. According to the IPC, "classification aims to minimize the impact of the impairment on athletes' performance so that the sporting excellence determines which athlete or team is ultimately victorious" (IPC, 2022b, para. 4). Classification processes are well understood in disability sport practice and research from disparate fields (Burns, 2020; Howe, and Jones, 2006; Howe and Jones, 2007; Mann et al, 2021; Tweedy, 2002; Tweedy et al, 2017), though there is a paucity of research of the experiences of Para-athletes themselves (Howe, 2008; Howe and Kitchin, 2017). They may be considered analogous to the better known anti-doping rules and regulations in that they attempt to ensure fair equality of opportunity to contest victory (Loland & Hoppeler, 2012). They have been designed to ensure Paralympic athletes are allocated into classes with athletes with similar impairment in order to have meaningful comparisons, establish winners, and produce ranking in terms of athletic excellence. Nevertheless, despite the presence of clear rules and a structured system, there are many challenges to Paralympic classification that can undermine the integrity of the sport competition itself. Our aim in this paper is to critically discuss one of these ethical challenges, namely, the intentional misrepresentation of abilities (hereafter IM).

The popularization of Paralympic sport and its subsequent commercialization has developed alongside growing professionalization and increased revenues (Bundon, Ashfield, Smith & Goosey-Tolfrey, 2018). In pursuing prize money, careers and sponsorships, some athletes try to distort their actual physical and cognitive abilities in order to be allocated to a class for athletes with impairments that cause more significant activity limitations than their own, and where they will have an unfair advantage over other athletes. The notion of IM is well known in the practice communities of Parasports, but has rarely been commented on in the scholarly literature (Deuble et al, 2016; Powis and Macbeth, 2020) and never analyzed in terms of its conceptual, ethical and legal dimensions.

Classification in Parasport is the intellectual property of the sport, or more specifically, the respective International Sport Federation (e.g. Virtus, the International Federation for athletes with Intellectual Impairment, ITF [International Tennis Federation] for wheelchair tennis players, WPA [World Para Athletics] for track and field athletes). It is worth noting that, to become a Paralympic sport and be part of the Summer or Winter Paralympic Games, the sport (i.e. the International Sport Federations) *must* comply with the IPC Classification Code (IPC, 2015). This maneuver is analogous to the International Olympic Committee's requirement that International Federations adopt the World Anti Doping Code¹). This gives the IPC a powerful position, determining which athletes can participate, i.e. are eligible, in the specific sports and modeling the classification process which ultimately leads to athletes' allocation into competition classes. In case of controversy or dispute in the classification outcome, it is the International Sport Federation who take ultimate responsibility for such allocations.

The IPC Classification Code defines IM as an attempt to mislead classifiers (IPC, 2015). In addition, the Code provides sanctions for such violations and specifies the scope of persons to whom they apply. Despite the existence of precise regulations and heavy potential sanctions, the problem persists in national and international competition. Controversies abound over athletes when those with significantly lesser impairments compete in the same class as athletes with much greater impairments while remaining apparently compliant with IPC policy (Powis and Macbeth, 2020). The presence of this problem exemplifies the vulnerability of Paralympic classification at a fundamental level. Invalid

classification poses a significant threat to Paralympic sport, and placement in the wrong class not only undermines competition integrity (McNamee, 2015) but casts doubt on the legitimacy of competition results and their consequences in terms of funding, status, and national prestige (Connick, Beckman, Deuble & Tweedy, 2016). In addition to anti-competitive consequences, the placement of any athlete in the wrong class can pose a threat to both the professional sports career of both the incorrectly and correctly classified athletes, their motivation, and indeed the subsequent mental health of athletes.

Examples of cases where an athlete's guilt in relation to IM has been proven are rare. In October 2021, a Sitting Volleyball athlete was caught committing an offence during classification. The athlete was suspended by the independent World ParaVolley Judicial Commission. The decision was supported by a complex chain of evidence, including video evidence illustrating the player's performances in competition as well as during classification and testimony provided by the player and the player's delegation (WPV, 2022). The recent IM-case of India's Para athletics athlete Vinod Kumar, sanctioned by the Board of Appeal of Classification of World Para Athletics with a suspension for two years, is the most recent example of impairment simulation. All results that Kumar obtained at the Tokyo 2020 Paralympic Games have been struck from the record (WPA, 2022).

Despite the longstanding nature of this problem, in April 2024 the IPC published a draft version of the International Standard for IM, which is planned for implementation in January 2025 for summer sports and July 2026 for winter sports. This article explores the issue of IM of abilities in Paralympic sports through an interdisciplinary study of the interacting conceptual, ethical and legal dimensions of the problem and aims to develop recommendations for reducing the vulnerability of the Paralympic classification system by (i) nuanced analysis of the concept of IM; (ii) critical ethical evaluation of the current mechanism to counter such behaviors; and (iii) proposing a revision to the legal aspects and sanctions enforced by the IPC. We conclude by presenting recommendations for the revision of the IPC policy on the regulating of IM, which have not fully been taken into account in the published IPC May 2024 draft (IPC, 2024).

2. Conceptual Analysis of Intentionality in Intentional Misrepresentation

The IPC applies a clear definition of IM, provides punishment for its commission, and also determines the circle of persons subject to punishment. The IPC Athlete Classification Code defines IM as follows: "a deliberate attempt (either by fact or omission) to mislead an International Sport Federation or National Body as to the existence or extent of skills and/or abilities relevant to a Para-sport and/or the degree or nature of Eligible Impairment during Athlete Evaluation and/or at any other point after the allocation of a Sport Class" (IPC, 2015, p.18). Moreover, in section 2.3 of the draft version of the International Standard for IM (July 2023 version), when defining the concept of IM, the IPC does not provide a clear definition of intentional action, while imposing on the wrongdoer the responsibility for committing IM - regardless of whether they knew their actions were wrongful or not (IPC, 2023).

Currently there are plans to amend the IPC Code. Already 17 May 2024 the IPC Extraordinary General Assembly approved the new 2025 IPC Classification Code, including an International Standard for Intentional Misrepresentation. It is worth noting some points by which the IPC intends to define IM and intentionality. In the draft version of the International Standard a participant does not need to know that their conduct will constitute a violation of Article 51.1 (i.e. what constitutes IM) for their conduct to be intentional (IPC, 2024). This amendment does not define the concept of intentionality in any way and appears to be an attempt by the IPC to bypass the debate surrounding the definition of intent when an athlete commits an IM.

Despite this regulation, the commission of IM is still difficult both to detect and to prove. In order to have an idea of the extent of the threat of this issue, its consequences - both for the athlete and athlete's support personnel, as well as for other participants in the competition - it is first necessary to understand the precise meaning of this concept. We first set out an analysis of intentionality and then proceed to articulate what role it plays in the context of the entire offense.

The concept of "intention" has been the object of discussion in various fields within philosophy and law. These analyses open up the possibility to identify actions falling under this concept more objectively. The *locus classicus* of modern philosophical analysis is found in the work of Anscombe (1958) who importantly distinguished the genus of intentional action from one of its species – premeditation. The manner in which one intends something is not reducible to a simple essence or essential meaning. Since then, the philosophical literature reveals a plurality of meanings: intending as doing; intention in action; intentions as plans; intention as belief (Setiya, 2018). Furthermore, the philosophical position that considers intentions as states in which the agent is thought to be "set to act" might also be taken into account (Raz, 2017). Each of these aspects captures a form of intentional action in practice, prioritizing different elements or dimensions, which condition our understanding of the various acts that we call intentional. The IPC definition, by contrast, assumes the pre-Anscombe understanding of intention as a premeditated plan, translated into action or enacted by omission, in which an athlete hopes to achieve their goal of qualifying for Paraspport competition and/or allocating to a class for athletes with impairments that cause greater activity limitations than their own.

Legal discourses, though varying between different national systems, accept Anscombe's distinction while adding their own nuances. A widespread understanding of intentionality within Common Law is that "a person is considered to intend the consequences not only if his conscious objective is to cause that consequence, but if he acts with knowledge that the consequence is virtually certain to occur as a result of his conduct" (Ochi, 2013, p.934). Following Anscombe, then, this legal conception is not limited to premeditation. More subtle distinctions are to be found in criminal law, following Raz's broader account of being "set to act", where distinctions between intentional actions into direct (purpose intent) and oblique intention (foresight intent) exist. In the former intent is considered when the accused is considered to have had direct intention when they aimed at a *particular* consequence of the unlawful voluntary act. Furthermore, to prove the guilt of the accused in criminal law, it is necessary to establish a motive for committing a crime (*mens rea*). This, lawyers typically hold, is distinct from the physical act itself (*actus reus*). Despite a relatively clear idea of intention in law, separate from the belief or mental state, philosophers argue that phenomena like intentional action can be captured through the creation of distinctions that are not tied to pragmatic purposes such as legal ones. Donnelly-Lazarov (2017: 461) sets out a position consistent with Raz when she argues that: "criminal law conceives of intentional action in terms that are far too narrow". She argues that we cannot always distinguish what is done from the way it is done. Putting the bar so high as premeditation – where one clearly decides upon a course of action for specified reasons in advance of the act - obscures the possibility of calling acts intentional when our knowledge of the consequences of our action are readily aware to us, even though not the *direct object* of our purposeful action.

Projecting these approaches onto the IPC's conception of IM, it turns out that the intention is expressed in the action or omission of an athlete (in the deception of classifiers, or in an attempt to simulate an impairment or the level of that impairment) with the pursuit of a specific goal, while the intention can be characterized as a direct (purpose) intent since the goal is to obtain the desired Paralympic class. In the definition of IPC, the concept of "intention" is specified by the words "deliberate attempt", which carries the meaning of direct intent. In this case, it should be taken into account that the reasons for the emergence of such intentions and the motives for committing an

offense can be different. We consider cases now that illustrate the need for an appreciation of such conceptual nuances for the purposes of policy critique and development.

Case 1

A Para-athlete, while being classified, unconsciously hides or downplays their true level of ability due to psychological factors such as anxiety, self-doubt, or some other pathological mental state. Athletes with intellectual impairment might not fully understand the classifier's instructions and the non-sport-specific classification tasks and environment is not very helpful in this respect.

The eligibility process for athletes with Intellectual Impairment (II) involves a two-step procedure: first, VIRTUS conducts a thorough assessment based on clinical psychologist reports, IQ tests, and evidence of adaptive behavior. The second step evaluates the impact of II on sport performance through generic cognitive tests, sport-specific assessments, and competition observations. While non-eligibility based on step two results is rare, this may be due to the frequent confirmation of eligibility by the impact measure (IM) or potentially non-stringent criteria in the generic cognitive tests. This case highlights the role of cognitive tests in confirming eligibility, suggesting the need for further research into the criteria's adequacy to ensure fair competition.

This case also raises the philosophical question of whether it is acceptable for an athlete to be penalized for unintentional misrepresentation and the legal question of whether subjective experiences and motivations should be taken into account when determining intent.

Case 2

Athletes may be vulnerable in different ways under the classification system. For example, all minors are thought in medical or healthcare contexts to be vulnerable in virtue of their incompetence to give consent. What if a minor did not competently understand commands issued by the classifier; e.g. the request to perform to the maximum of their capacity? Would underperformance necessarily constitute an act of IM? Equally, suppose an athlete with physical impairments does not have a perfect command of a foreign language (e.g. English) which is being used by the classifier (often not native English speaking) to issue instructions for the purposes of classification. Suppose, also, that due to the financial restrictions of their National Paralympic Committee, no interpreter is present. Technically, such actions may fall under the IM rules, even though the action does not fall under any of the above definitions of intention since, in this case, the intention to deceive the classifiers is entirely absent. We might think of the athlete here as having a contingent or constructed vulnerability. Were the classification carried out in their native language they would have no such vulnerability.

In both cases question arises about the application of intentionality, the ethical dimension associated with IM as well as determining the appropriate legal or regulatory response(s). What are we to make of them?

The IPC Classification Code and International Standard for Athlete Evaluation mention the assignment of the Paralympic class based on the extent to which athletes are able to perform specific tasks during the classification process (IPC, 2015). All athletes must make maximal efforts during the classification process. Thus, when athletes produce the best effort, classifiers can most accurately determine the degree of influence of the athlete's impairment on performance, as well as assess the influence of other factors such as age and fitness level. It is evident that methods for determining the extent to which a given body structure or function has been impaired are required for valid classification. Nevertheless, it is impossible to determine the degree of loss accurately since baselines are impossible to establish for every athlete. Thus, impairment must be determined by measuring existing structures or functions of the body (Beckman, Connick, Tweedy, 2017). Thus, it is possible to start only from those values of the present impairment, which the participant of the classification has at the time of its passage. Therefore, the classifiers can only evaluate the current impairments and

the degree of their influence on the results in the absence of an understanding of the athlete's maximum capabilities.

The difficulty for classifiers lies in determining what constitutes maximal voluntary effort (MVE) for each athlete and how to detect it. This problem is mirrored in athletes also: which of us knows our absolute limits? Can the extent of our abilities even be revealed in non-competitive contexts such as a classification episode? The idea of MVE depends directly on the degree of cooperation of the athlete with classifiers, which makes these assessments vulnerable to the production of deceptive submaximal effort (DSME) or IM (Paix, Tweedy, Connick & Beckman, 2021). It is essential for classifiers to be well aware of the maximum capabilities of athletes since an athlete might perform much better in competition than he or she performed during classification. Such cases may cause classifiers to review the athlete's status and may also raise the suspicion of IM. Therefore, DSME or IM should be distinguished from a “naturally” occurring submaximal effort. In that respect, the influence of some psychological and physical factors on the athlete's performance, such as excitement, the psychological state of the athlete, unfamiliar surroundings, the noise of the fans in the arena should be taken into account. These factors may well influence the difference between classification results and results in competition. The main difference between DSME and “natural” submaximal effort will be the intention to deceive classifiers in order to gain an unmerited advantage in, or access to, a particular class. Thus, MVE is a variable that depends on many factors, which determine its volatility. Without knowing the value of MVE, it is difficult to talk with precision or validity about the discovery of IM facts.

We conclude this section by noting two facts and posing one question. First - as noted above - successful prosecution of IM is rare. There are no straightforward statistics, but many articles and testimonies of cheating on social media and other channels exist. Consider, for example, at least one authoritative source. As reported in an Australian Broadcasting Corporation news documentary “Paralympics in crisis as international and Australian athletes game the system”, in which Xavier Gonzales, the IPC CEO from 2004-2019, confirmed that cheating the classification system existed and was a clear threat to the Paralympic brand. (Cohen, et al, 2023) Secondly, the IPCs IM policy requires – somewhat vaguely – that the athlete *deliberately* misleads the classifier. Is the former causally related to the latter? The concept of deliberation speaks to premeditation, yet as we have shown this need not be present for IM proper. We conclude at this point that a clearer specification of the range of athletes’ intentionality is required.

3. The Ethics of Intentional Misrepresentation

To be clear IM is a form of cheating. In a general sense, cheating is the process of rule violation in order to gain advantages for the rule breaker even though philosophers have disputed the utility of this generalized understanding (Russell, 2013). At the same time, intentionally committed violation of the rules from a moral point of view is more challenging since the person who commits this violation has some freedom of the choice to do so or to act otherwise (Loland, 2005). Cheating can also be seen as a violation of rules that undermines the pursuit of the desirable results of a competition (MacRae, 2019). While Russell (2013) has argued that, the concept of cheating is too indeterminate for regulatory purpose, we adopt the commonly accepted notion that acts of cheating are those deceptive violations of established rules in order to obtain an unfair advantage.

Paralympic classification is built around the idea of fair competition, specified by philosophers as Fair Equality of Opportunity (Rawls, 1970), where athletes must compete on reasonably equal conditions. This recognizes that there can be no realistic possibility of equalizing all conditions among

competitors. In the case of Paralympic Classification, classifiers seek to group athletes whose functional performance impairments are sufficiently similar. In keeping with our common sense understanding of cheating and its utility, we focus on the features of the Paralympic classification since IM is explicitly directed towards the violation of the established classification rules that apply to all Paralympic athletes equally. In doing so we bypass disputes about classifier errors, strategic fouls due to their inapplicability, or incomplete applicability to Paralympic classification.

Taking into account that IM is based on the athlete's intent to wrongfully gain an unfair advantage through manipulation during classification, this offense can profitably be compared with doping. Today, doping is the most well-known form of cheating in sports and has also become the subject of sophisticated regulation in the form of a global code, rules and international standards. The WADA Anti-Doping Code defines doping "as the occurrence of one or more of the anti-doping rule violations set in the Code" (WADA, 2021, p.19). The similarities of these two offenses also lies in the fact that they undermine fair equality of opportunity for the purpose of obtaining certain benefits through misconduct. Finally, in addition to their general natures, these offenses attract similar punishments.

An essential difference between doping and IM is the principle of "Strict Liability". The essence is that an anti-doping rule violation is committed without regard to an athlete's intentionality (WADA, 2021; McNamee and Tarasti, 2010). While people talk of guilty athletes who have doped this is *strictu sensu* inaccurate. No guilt (*means rea*) needs to be established for an Anti-Doping Rule Violation (ADRV). The only time it may be considered by doping authorities concerns the levels of sanctioning, and typically in pleading mitigation. Thus, both offenses might use deception to achieve goals, and this is a typical example of the conceptual claim that cheating includes deceit (Loland, 2005). Thus, for example, athletes have been rumoured both to take medication immediately prior to or even during the classification process. Equally, stories circulate of athletes exhausting themselves physically prior to the classifier's arrival with significant deleterious effects on their physical functions such as coordination, motor control, or strength. One control for this is the existence of classification after observation during competition but this is hardly a foolproof method. This is one critical difference between doping and IM cheating methods. The concept of *intentional* wrongdoing, however, since it incorporates deception contrasts with doping where unintentional ingestion of prohibited substances not uncommon, such as with contaminated supplements. As we shall show, the application of the concept of deception is vital in terms of describing the complexity of the process of proving the guilt of a Paralympic athlete who has committed an IM.

Even where this conceptual necessity is accepted it remains difficult to determine such deception because of the presence of a number of evidentiary challenges. According to their own data for the period 2015-2016, the IPC reviewed the individual files of more than 80 suspected athletes from 24 countries across six sports, but not a single case was proven due to the lack of conclusive evidence (IPC, 2016c). It should be noted that annual official statistics of cases or potential cases of IM are not available in the open sources of the IPC or international federations. Nevertheless, the large-scale work of the IPC, carried out in 2016, clearly reveals the difficulty of proving the widely accepted fact of deception by athletes.

The difficulty in proving IM, as well as the lack of up to date official statistics for, or even estimates of, its prevalence, indicates that the characteristics of this phenomenon are hopelessly unclear. What is to be made of this? On the one hand, from the lack of confirmed violations, one might generously conclude that the use of simulation tactics by athletes in classification is rare and/or that the classification system is highly efficient. On the other hand, it might be thought to be evidence of the inability to regulate the phenomenon by the IPC and IFs. Taking into account the specificity and difficulty of proving deception in classification, the second option seems more reasonable to infer.

4. Regulations of Intentional Misrepresentation of abilities

We propose that new regulation must be the basis for both clarifying and streamlining the relationship between classifiers and athletes. First, however is important to understand the definition of the concept of regulation as it operates in international sport. The context of Paralympic sport regulation is based on the authority of sports governing bodies, which is expressed in the establishment of regulatory rules and norms capture in its Code. The Code govern all legal relationships arising from the classification process between international Paralympic sports governing bodies and key stakeholders such as athlete, athlete's support personnel, NPCs and national federations. The main document regulating IM is the IPC Athlete Classification Code, which (i) defines IM; (ii) differentiates key actors; and determines responsibility for its commission. It should be noted that IFs should comply with the IPC Code in order to participate in IPC sanctioned events, including Paralympic games. The chief purposes of the regulation is to ensure that the classification is correct and fair. In the context of IM, the goal is to protect the classification system from intentional actions of the athlete and/or athlete's support personnel (as well as others, who may be involved to some extent), whose aim is to intentionally misrepresent the degree of athletes' impairment.

The operant definition of IM reveals it as a deliberate attempt to mislead the official body (IPC, 2015). In this definition, the wording 'deliberate attempt' already entails the intentionality of the actions undertaken. The word "deliberate" describes an action that has been deliberated over; is the product of careful thought or consideration. This may or may not be accompanied by full awareness or consciousness of the consequences of such action (see OED, 2022d). Such deliberation supports the attribution of an intentional action. This is important when we begin to consider the associated concept of moral responsibility for the ensuing action. So much for the concept of deliberate action, what of the concept of misrepresentation? While everyday usage points to wrongful or false representation legal uses of everyday concepts may alter in meaning, and – given the regulatory context of the present discussions – it is worth noting that the Fraud Act 2006 (as it applies, for example, in England, Wales, and Northern Ireland) denotes the following conditions: the provision of false representation; dishonestly; knowing that the representation was or might be untrue or misleading; with the intent to make a gain for himself or another, to cause loss to another or to expose another to the risk of loss (Fraud Act, 2006). This definition comes very close to the definition of IM in Paralympic sports and clearly indicates, in addition to the presence of intent, the consciousness of the offense committed, which would allow for greater clarity in cases of IM by athletes with e.g. intellectual impairments.

While this is all clear and relatively easily comprehended, its application to the contests of IM in Paralympic sport is far more challenging. In order to critically evaluate the adequacy of the current regulation of IM, challenges arise in particular to (i) underage athletes; (ii) athletes who do not speak specific/foreign languages, (iii) athletes with "intellectual impairments"; and (iv) athletes who commit such a violation under duress. It makes no sense to talk about the "direct intention" as if this were a paradigm of deception of classifiers. If classifier(s) record an underperformance attempt, which is then confirmed by the results of testing an athlete, then the classifier(s) must report to the *ad hoc* department after which - according to paragraph 6.5 of the Code - disciplinary proceedings are initiated in relation to this athlete by the IFs, and the athlete may be suspended from all competitions until the end of the proceedings (IPC, 2015).

Yet, as is noted previously, not all underperformances are the result of IM. The challenge here is to distinguish the conditions necessary to establish intentionality in such a case. At present, the only method used is to compare performance during classification versus competition, observing the athletes' impairment profile in executing the technical components of a specific sport. If the

performance is significantly better during competition, this may be suspicious. But such a crude evaluation is not helpful when attempting to establish intentionality. Until an athlete's intentions and motives are established, they are merely labeled as a "suspect" in a violation committed intentionally. We note in passing that this sounds redolent of accusatory bias, since it may, to one degree or another, may contradict the presumption of innocence of the Paralympic athlete. It might also negatively affect the future career if the innocence of the athlete is established. Nevertheless, it is an unavoidable first step in the efforts to undertake proper evaluation of the claim of suspicion of IM.

5. Responsibility for Intentional Misrepresentation

The rules and regulations of the IPC and other Paralympic sports governing bodies allow not only regulation of processes related to the Paralympic classification process, but also impose on their participants a certain responsibility, for example, in relation to the specific sanctions that could be imposed for non-compliance with those regulations.

First, the concepts of "responsibility", moral and otherwise, which are employed extensively in different areas of sport policy must be understood in context. In order to have a more precise understanding, both philosophical and legal analyses are presented. There are several approaches to the concept of moral responsibility in philosophy, which have different views on the causes of human behavior, the emotions and consequences of actions. The use of the concept of moral responsibility is understood as attributing certain powers and capacities to that person and considering the behavior of this person as a consequence of the fact that the person has, and has exercised, these powers and capacities. Moreover, the possession of these powers qualifies the agent as morally responsible in a general sense, that is, as someone who can be morally responsible for specific actions (Talbert, 2019). A person held morally responsible may thus be held guilty when their actions transgress moral norms.

The fundamental understanding of the concept of responsibility in legal discourse is the presumption that people are responsible for what they do because they act voluntarily (Baron, 2019). There are some exceptions in Criminal Law, under which a person may be exempted from responsibility. For example, if a person does not realize the wrongfulness of his or her actions, or in some cases if the offense is committed under the threat of life and health, then their responsibility may be diminished or set aside. In general, law follows the Kantian dictum that "ought implies can". That is to say, one ought to be held responsible for those things one can (without hindrance) do and not where one cannot or one can only under the threat of some significant negative consequence.

What does all this mean for offences such as IM in relation to Paralympic sports? The notion of responsibility is considered in the Classification Code (Chapter 6) where it provides for the roles and responsibilities of both the athlete and athlete support personnel. These include the following important considerations: to be knowledgeable of and comply with all applicable policies and rules adopted pursuant to the Code; to cooperate with any investigations concerning classification rule violations; to actively participate in the process of education and awareness and classification research, through the exchange of personal experiences and expertise (IPC, 2015). Thus, the Paralympic athlete, as well as relevant athlete support personnel, being a participant in legal relations linked to the classification, jointly assume the responsibility to comply with the norms of the Code. Moreover, prior to classification, athletes consent to the use of personal data collected, acknowledging their awareness the rules and conditions of the classification. This, in effect, binds in responsibility for their participatory efforts during the classification process.

In terms of the protection of the classification system, the existence of an order of imposition of responsibility can be effective if IM is directly or deliberately intended by the athlete. Here it performs a similar function as the 'strict liability' principle in anti-doping. It is necessary, however,

to return to the discussion of atypical examples of invalid or imprecise classification that classifiers encounter. The example of passing the classification by a juvenile athlete (i.e. a legal minor), who, due to their age and associated capacity for comprehension, cannot fully bear full responsibility for their actions will be considered in detail. As in other areas of ethics (eg. research), any consent form cannot lawfully be signed by a legal minor, rather they may merely (and indeed should be enabled to) assent to the process. The documents must be studied and signed by a lawful proxy. In such cases diminished responsibility of a minor athlete is presumed. In addition, a third party is involved in the process, and, by signing the relevant consent documents on behalf of the athlete, agrees to bear responsibility for the IM attempt. Again, with reference to anti-doping, such athletes fall under the “protected person” category of the WADA code. In this sense, the incapacity of the minor has direct consequences for the lesser attribution of responsibility, or indeed the acceptance of no responsibility for the violation (see, with respect to doping, Campos, Parry & Martínková, 2022). We do not here comment on the adequacy of that provision, merely observing that such provision is made.

6. On the case of a minor accused of Intentional Misrepresentation

Imagine a situation where a young athlete committed an IM violation, having attempted to mislead the classifiers. Who is at fault? Who ought to be held as the responsible agent? In addition to the presence of an athlete's direct intention, there may be cases where the legally authorized representative may not have explained the requirements of the classifiers to the young athlete or not completely explain them, which could lead to an IM attempt. Also, this third party could deliberately induce to commit such an offense, using their controlling influence over the young athlete. We will proceed to analyze the potential scenarios and evaluate them in turn.

First, consider the instance when a young athlete commits IM solely of their own free will. In this case, a situation arises when, formally, the legally authorized representative is still under the terms of the Code involved in the offense. Yet, in terms of moral responsibility, this person did not commit any unethical act. In turn, the athlete, as the key actor who has deliberately attempted to deceive the classifiers, should not escape of responsibility, since according to the IPC Code, knowledge of the rules and norms of classification is mandatory for all athletes (IPC, 2015a).

Secondly, consider a case where the controlling adult has directed the IM. The boundaries of responsibility now begin to blur. Although the IM has formally been committed by the athlete themselves, the third party has contributed to the prohibited action. In terms of moral responsibility, the actions of an athlete may be diminished due to the dependent position and the possible lack of choice to act otherwise, since agents deserve praise or blame only if their actions belong to them (O'Connor & Franklin, 2022). In terms of legal responsibility (that is, responsibility according to the IPC rules), however, it is likely that athletes themselves will be held responsible for acts committed under this scenario. This is because the Code clearly defines the persons responsible for IM, these are the athlete and athlete support personnel (coach, trainer, manager, interpreter, agent, team staff, official, medical or para-medical personnel working with or treating athletes participating in or preparing for training and/or competition) (IPC, 2015). This means that the authorized representative of the athlete – i.e. the proxy who may well be the parent or guardian - is *not* included in the circle of persons to whom responsibility applies, despite their influence on the minor athlete. Even if he or she fell under the concept of athlete support personnel, it is not clear what policy-related responsibility this person should bear besides moral responsibility. As a result, even though both the athlete and a third party were involved in the prohibited act, only the athlete will be responsible under the IPC code, which, from the point of view of justice is clearly problematic.

Thus, in both cases, a high probability of punishing the athlete remains. In the second case, there is a certain tension between moral and legal responsibility (i.e. regulatory responsibility - according to the IPC standards) according to the allocation of blame or guilt. Therefore, when allocating responsibility, it is important to take into account the existence and nuances of such relationships as well as any relevant socio-economic dimensions. It is possible, despite their inherent vulnerability, that it is the direct intention of the athlete to deceive that played a decisive role in the act and therefore the allocation of responsibility. Here the legally responsible person is absolutely not at fault, yet, if part of the athlete support personnel, may be held responsible in regulatory terms. In this case, everything comes down to the correct identification of intentionality, which we have already argued is a very difficult task not only from a psychological, but also from legal, medical and philosophical perspectives.

It is possible that in each individual case, during the investigation, the competent authorities will determine the degree of responsibility of such entities, however, in order to impose a fair punishment, it will be necessary for the IPC and Paraspport organizations to establish an appropriate regulatory mechanism.

Based on the above examples, it is quite clear that there is a lack of clear and robust regulation over the liability of some athletes (here: minors) and third parties involved in IM. Under the current version of the IPC Classification Code (IPC, 2015), only the Athlete and the Athlete Support Personnel are considered to be the key actors who can be prosecuted. One possible future policy development therefore might be to consider adopting a broader definition of “athlete support personnel” such as that of the World Anti-Doping Agency: “any coach, trainer, manager, agent, team staff, official, medical, paramedical personnel, parent or any other person working with, treating or assisting an athlete participating in or preparing for sports competition” (WADA, 2021, p.166). The expansion of the concept of “athlete support personnel” will make it possible more fairly to allocate the distributed responsibility (and thus the accountability) of individuals for committing or assisting in IM. In turn, this may require the IPC and other sports governing bodies to take a firmer stance on the issue of IM in order to harmonize national laws and extend responsibility to those not directly involved in Paralympic sport. The planned amendments to the IPC Code regarding the addition of a parent are a positive step towards a more precise definition of Athlete Support Personnel (IPC, 2024).

7. Sanctioning for Intentional Misrepresentation

After the proper allocation of responsibility under the Code, consideration must be given to how blameworthy acts ought to be punished. It is, necessary, therefore, to consider what sanctions can serve a proportionate punishment for the intentional attempts to deceive the classifiers.

Punishment, in its nature, should involve imposing something both burdensome and reprobative on the perpetrator for the alleged crime (Hoskins & Duff, 2022). The punishment provided in the IPC Code can be divided into two types: i) for those who committed IM for the first time (punished with a ban of up to two years); and ii) for athletes who have committed IM on more than one occasion (punished with a lifetime ban) (IPC, 2015). The wording in paragraph 6.7 of the Code “more than one occasion” allow for later discovery of relevant IM facts (retrospective detection). It is quite possible to assume that as science progresses and new methods for detecting IM are developed, the process of proving will become easier and by looking at the videos and the results of the previous classifications of an athlete, it will be possible to speak with confidence about the guilt of a person. This means that in case of detection of facts of repeated IM by an athlete in the past, the punishment must necessarily be applied to this athlete, regardless of limitation period. This logic is confirmed by the fact that in the current version of the Code there is no such concept as the “statute of limitations”

for a committed offense. This is in contrast to Criminal Law, where a statute of limitations for certain crimes typically exists, and which is justified by the degree of danger to the public. It follows from the existing wording that IM is so serious an offense for Paralympic sport that no statute of limitations apply. Although, the imposition of penalties for past IMs should also provide for an annulment procedure, which should be appropriately reflected in the IPC Code for uniform application by other International Sports Federations (IFs).

A final word with respect to sanctioning is necessary. One of the main principles of punishment is the principle of proportionality, which is that punishment ought to be severe enough to preserve the civil order but not more severe than is necessary for it to preserve that order (Deigh, 2014). Thus, when imposing punishment, IFs must strike a balance between maximal and minimal sanctions in a way that takes into account several features such as the severity of the offence, the manner and extent of deception, whether it is a coordinated effort, whether it is a one-off act or one that has been repeated, and so on.

In the case of IM, a two-year disqualification for a first offence is immediately followed by a lifetime ban for a subsequent occurrence. It is obvious that two years of ineligibility for any Paralympic athlete is a substantial period. For proportionality to be respected sentencing must take into account the four-year cycle of the Paralympic games, which is the highest level of International Paralympic competition. Therefore, a situation arises when an athlete can commit an IM and retain a chance to participate in the next Paralympic games after serving a two-year suspension. By comparison, in cases of doping, the punishment varies depending on the significance of the violation and can include a punishment of up to four years, in which case the athlete is ineligible to compete at the next Olympic Games. The second IM immediately elicits a lifetime ban, the severity of which reflects the seriousness of this offense. When compared with doping sanctions for repeat offenders, the WADA system seems more flexible and – potentially at least – proportionate. The application of punishment depends on the type and severity of the offense committed, and this seems apt in the case of IM where there are so many potential influences beyond the athletes themselves. The draft version of the International Standard for IM intended to introduce a more flexible system of sanctions for IM and to consider the implementation of a mechanism for reducing the period of ineligibility. Yet the present measures do not fully enable the construction of a balanced or proportionate system of penalties. In some cases, to mitigate a punishment, the principle of "Substantial Assistance" may be used to accuse a clean competitor of possible IM, making it difficult for the accused to prove otherwise (IPC, 2024).

Finally, it might be found that a minor athlete committed IM against their free will being under the control, direction or duress from e.g., a legally authorized representative (e.g. a coach, or a physiotherapist, or a team manager). In addition to the need to assign responsibility, the question arises as to the application of mitigating or aggravating circumstances in specific individual cases. Given the diminished responsibility that applies properly to the minor, they should not be punished equally. This would not be proportionate. The investigation, therefore, should take into account the degrees of pressure exerted on the athlete, if, for example, the athlete or athlete's health was in danger, then it is quite possible to allow exemption from liability, however, if the juvenile athlete was unduly psychologically influenced by e.g. a coach, or their parent(s), or if the pressure was in the form of a possible reduction in funding from their National Paralympic Committee, then the competent sports authorities must consider mitigating or aggravating circumstances when imposing a sentence. The IPC code should be revised to specify this proportionate treatment, facilitating flexibility in sentencing.

In relation to planned changes the new draft of the International Standard, a default four-year period of ineligibility for IM is now specified, which can be increased up to a lifetime ban or reduced if there are mitigating circumstances which it specifies: youth, inexperience, and diminished

responsibility due to impairment. Voluntary admissions or substantial assistance in identifying other IM violations can further reduce the period. Substantial assistance, which results in an IM against another Participant opens the way to possible unfounded IM accusations of other clean athletes. (IPC, 2024).

Conclusion

Modern Paralympic sports cannot be feasibly organized without a classification system, that aims to assure fair equality of opportunity therein. Currently, the professional athlete's career, material well-being, the integrity of the competition, as well as the development of Paralympic sports depend on the classification system. Like any other selection system, the Paralympic classification is not perfect and has its own specific vulnerabilities. Despite the existing regulatory framework, issues related to the integrity, transparency, and fairness of the classification continue to arise both at the national and international levels.

We have attempted to provide a more nuanced and ethically justifiable conceptualization of the regulation of responsibility for an athlete committing the offence of IM, in the absence or presence of various degrees of in/direct intentionality with or without deliberation, with or without assistance, direction or duress. We have shown how the Code does not adequately define the responsibility of third parties, in particular, such as parents, relatives, legally authorized representatives of the athlete, as well as organizations. The lack of full regulation in this direction, in turn, does not allow for the proper determination of the full extent of persons responsible for the subsequent imposition of punishment on them even where their guilt is not at issue. At the same time, punishment should not be the only instrument of influence. Due to the difficulty of proving the guilt of athletes in committing IM, the sanctioning system is rarely used. Therefore, it is essential to train athletes and improve the professionalism of classifiers.

Based on these considerations, we therefore conclude that: (i) The term IM should be defined more precisely. The IPC needs to clarify its understanding and application of the concepts of "intention" and "intentionality", and to be sensitive to the more nuanced application of these terms beyond premeditation. Due to the different uses of these concepts, there are significant obstacles to the determination of the guilt of an athlete in committing IM. These modifications will remove or diminish inaccuracies in the wording of the offense, enabling more consistent by all IFs, as well as facilitating a more accurate or nuanced determination of the degree of guilt of an athlete; (ii) The IPC should expand the definition of "athlete support personnel" to cover the responsibility of third parties who may (in)directly influence or assist an athlete in an IM. This measure may require a stronger position of the IPC on the issue of IM, as responsibility issues may affect a number of persons not subject to the regulation of the IPC and IFs; (iii) In order to ensure the uniform application of sanctions by IFs against athletes found guilty of IM, the IPC should review the current version of the Code in order to develop a more flexible and proportionate system of punishment, taking into account the nature and severity of the offense committed; (iv) It follows then that, concurrent with revisions to sanctions, the education of athletes and coaches and other ASP should take on a more significant role than has hitherto been the case. Therefore, IPC and IFs should intensify their work and explain to athletes, and coaches, the core of IM, the ranges of action that can be understood as intentional, their dangers, detrimental consequences, and possible punishments; and (v) Armed with a more nuanced understanding of intentionality and IM, the IPC and IFs should also seek to further develop the expertise of classifiers, with specific attention to this critical ethical problem.ⁱⁱ

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ⁱ This is not the only analogy that might be drawn of course. One reviewer called our attention to a disanalogy between doping in elite sport and classification cheating in Paraspport, suggesting an intuition that greater willingness to accept transgressions in the latter. This intuition is reasonable and may well be correct, though there is no substantive empirical evidence to support it. And there is little doubt that marketing in Paralympic sport fuels a certain admiration based on pathos and overcoming life's vicissitudes. Nevertheless, a cautionary note should be added: it is often the case that the viewing public – being largely non-disabled – often adopts an approach of pitying Para-athletes along the lines of a tragic narrative. Such condescension, even when apparently well intended, is indeed ethically problematic. See Smith, B. (2009).

ⁱⁱ We would like to express our gratitude to the two anonymous reviewers for their helpful suggestions and criticisms.