

Strasbourg, 31 May 2021

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Enlarged Partial Agreement on Sport (EPAS)

Forum on Sport and Human Rights

Tuesday, 1 June 2021
9:00 – 12:30

Video-conference
(KUDO technology)

Background on the topics addressed

1. Fair Trial

Sport is characterised by a high degree of autonomy and self-regulation powers of the governing bodies. Within these bodies, particular procedures have been established with arbitration as the preferred means of dispute settlement. Such proceedings do not necessarily guarantee the same human rights protection as ordinary courts. At the same time, there is a growing recognition of the relevance of the European Convention on Human Rights (ETS No 5), (in particular its guarantees for fair hearing, Article 6, and the European Court of Human Rights' case-law), with regards to preventing and remedying human rights violations in sport, and furthermore in combating arbitrariness and ensuring proportionality of possible sanctions imposed in sport-related matters.

This issue is particularly prevalent in the area of anti-doping in sport. Doping is one of the scourges which undermines sports ethics and destroys the image of sport and of athletes. When an anti-doping rule violation is established, it may result in a temporary or life-time ban depending upon the offences. Upon discovering an athlete's participation in doping activities, one possible outcome is a ban for a limited time or completely from sport. Considering the impact of such disciplinary measures on athletes' careers, there is a need for fairness, due process, and proportionality. The right to fair trial is viewed as one of the main tenets of law and the dispensation of justice, as enacted by the Council of Europe Anti-Doping Convention. Since 2017, the Monitoring Group of the Anti-Doping Convention has been working on the issue aiming to ensure that every person against whom anti-doping proceedings are brought has a right to a fair procedure before an independent and impartial panel.

The ECtHR has already decided several cases concerning fair trial in sport (*Mutu and Pechstein v. Switzerland*, *Bakker v. Switzerland*, *Platini v. Switzerland*, and *Ali Riza v. Turkey*) of which not all are doping-related. Other applications are currently pending before the Court.

Concerned Monitoring and Intergovernmental Bodies

ECtHR
T-DO

2. Data protection

Data protection with regards to anti-doping practices is a major concern for athletes, data protection advocates, lawyers etc. Modern day anti-doping legislation incorporates a number of requirements pertaining to the sharing, collection, and processing of athletes' personal data, sometimes without their direct knowledge. Such data can and is used in a number of different areas including:

- law enforcement investigations pertaining to matters of doping

- whereabouts requirements for anti-doping testing
- analysis and assessment of human bodily fluids for anti-doping measures etc.

In this way a number of different pieces of information pertaining to athletes are collected, including time, locations and dates of training or vacations, urine and blood samples etc. Current anti-doping legislation does not allow athletes to refuse to have this information collected or processed and doing so would result in an anti-doping violation. As such, given the potential impact of this data, it is also vital that such data is protected in an appropriate manner. While anti-doping is one of the primary areas where data protection issues in sport can be seen, it is not the only area.

Issues include:

- The collection of performance and health data
- Therapeutic Use Exemptions
- Contract details
- Consent for usage of images and video recording etc.

Overarching questions include: who has access to this data, how is it protected, how is it shared, who can it be shared with, what rights do athletes have to access this data, and what rights do athlete have to refuse to provide such data.

Whilst data protection in anti-doping is a key is, issues of data protection in sport goes far beyond just anti-doping. Topics or importance include:

- Those in the field of safety, security, and service at sports events
- Management of and the identification of risk and/or banned supporters (e.g. through facial recognition technology)
- The use of CCTV devices
- The exchange of police intelligence and information between national football information points (NFIPs), etc.

Concerned Monitoring and Intergovernmental Bodies

T-PD

ECtHR

T-MC (+Group of Copenhagen)

T-DO

T-RV

T-S4

3. Media freedom in sport

The news media is a key link in the sport economy as they connect sports competitions with the public at large. The news media is also a major medium for revealing misbehaviour and scandals that may affect athletes and sports organisations alike. Sports journalists have a mission to provide information to the public and should not be seen as mere communication officers of the competitions or competitions organisers. It is important that journalists enjoy media freedom and not be subject to discrimination or pressure because of their reports. Central to media freedom is the need for news organisations to have necessary access to sport event venues to allow journalists to fulfil their role as witnesses and critical observers; similarly they should not face restrictions on how news content is created and disseminated. This is of particular importance for the interest of the public and wider society, as it is necessary to communicate issues which are in the public interest such as sport. Additionally, journalists, if subject to pressure, discrimination, or threats, would be less inclined to investigate matters of public interest and as such information sharing and transparency suffer as a result. In particular, when integrity issues are addressed, investigative journalists should have the right to protect the sources of their information which has, in many instances, been jeopardised. Even in sport, journalists should be protected from violence, intimidation, harm, discrimination, or (self)-censorship.

Concerned Monitoring and Intergovernmental Bodies

CDMSI

Platform for protection of Journalists

European Audio-visual Observatory

T-RV

T-S4

4. Young migrant athletes and human trafficking

Every year, hundreds of young footballers, leave their families for the hope of a better life in Europe. Some of these young people are forcibly displaced from their homelands due to violence, war, poverty etc. These young athletes can be led by false promises of glittering careers with top clubs, in the hope of becoming the next big sporting star. Upon arrival at their destination, they may quickly realise they have been misled and abandoned; left to fend for themselves, their money taken, and the promises broken. These young athletes are either dumped or in server cases may even be subjected to slavery, prostitution, and/or drug dealing – some may even end up as victims of sexual exploitation. These are extreme cases, a more “legitimate” method of exploitation can take place when an agent signs a player to a club but controls the player’s mobility and makes money from an exploitative contract. Athletes rights are abused by the fact that they are bound by the terms of the contract. Governments and sport organisations have adopted an arsenal of international treaties and legislations to deter human trafficking of

children, but despite this, the practice continues. In 2012, the Committee of Ministers adopted its recommendation on the subject in order to promote integration opportunities and to measure the impact of sport in the integration process of refugee and migrants by proposing methodology and relevant indicators for use by authorities and civil society.

Concerned Monitoring and Intergovernmental Bodies

GRETA

Special Representative of the Secretary General on migration and refugees

Steering Committee for the Rights of the Child (CDEF)

5. Economic and social rights of athletes, with a focus on the right to health

The aim of sports is to bring people together without denying their social or economic rights. The traditional way in which athletes are represented within the sports movement is challenged by the commercialisation of sports activities. With regards to right to health, the issues particularly relate to contact sports e.g. rugby, American football, martial arts etc. A very real risk in any sport is the possibility to be injured or even killed. As such, it is important that athletes are aware of these risks and all steps are taken to attempt to reduce or remove the threats to health. One particular focus of this issue in recent years is that of concussion. Numerous sporting organisations have taken steps to reduce the likelihood of concussion and serious brain injury in their sports. It is important to discuss to what extent a right to health in such sports should be further developed.

Moreover, recent research has demonstrated that the current generation will be first in human history which has an expected lifespan shorter than their parents' generation. This has a major impact on economic and social elements of human society, and it has been said that this is a result of a worrying trend of a reduction in human physical activity. As such, it is important to explore the notion of these elements as they relate to a right to health. The WHO's constitution mentions "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.". More than this the 1948 Universal Declaration of Human Rights more indirectly refers to a right of health part in Art. 25 'adequate standard of living'. The role health plays in human life is not something which can be overstated.

Article 11 of the European Social Charter also provides that everyone has the right to benefit from any measures enabling them to enjoy the highest possible standard of health attainable. In light of this, sport should be seen as a vector of health. At the same time sport should be also considered from the perspective of risk of harm; that is to say

consideration should also be given to the notion of protection against potential adverse consequences for a person's health (especially children, e.g., in respect to high risk, violent or contact sports).

The European Social Charter also addresses various employment and social security issues. From the perspective of professional sportspersons' rights, it requires provision of all employment related rights (including obligation to provide safe and healthy working conditions, collective rights, social security, etc.). Specific attention should be paid to issues of equal pay for equal work and work of equal value.

Furthermore, all participants in a given sport event have the right to health and safety while inside the sport venue. The event organiser/manager has the duty to ensure the necessary physical and management conditions are provided in order to protect the health and safety of all participants. As such, the organiser/manager has a special duty of care towards her/his employees. Similarly, public bodies have the same duty towards their employees working inside and outside the sport venue (police, firefighters, medical and ambulance staff, etc.). In particular, the European Social Charter's Article 3 provides the right to safe and healthy working conditions and furthermore stipulates a positive obligation of states to "improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment".

Concerned Monitoring and Intergovernmental Bodies

European Court of Human Rights
European Committee of Social Rights
T-RV
T-S4

6. Racism, hate speech and other types of discrimination in sport

Racism in sport has been a prevalent issue over the course of human history worldwide. It has been highlighted on several occasions by the Human Rights and Equal Opportunity Commission (HREOC), the Council of Europe (CoE) and the European Union (EU). Considerable examples and research exist demonstrating that racist abuse, including hate speech, and racial discrimination are still prevalent today in international sports throughout the world. Racist incidents and abuse are frequently reported in a number of sports, in particular in team sports such as football. In a similar manner, antisemitism has also been an issue of concern. Research has shown that examples of this have been on the rise in recent years, one example being antisemitic displays at sports events. Racial discrimination in sport can also be less obvious and evident than racist fan behaviour; for example, although minority groups may be well represented as athletes in certain sport disciplines, they have been under-represented among management, administrative and coaching staff.

Equal treatment, diversity, and inclusiveness of all participants in a sporting event are key to ensure a safe, secure, and welcoming event. Managers, workers, athletes, and spectators should represent as much as possible the diversity of society, so as to ensure a safe and secure environment at sports venues. Special attention should be addressed by sport organisers to minorities and vulnerable groups, in terms of physical conditions of the venue and the operation of the event, so as to ensure that the event is inclusive and all participants are treated equally and in a respectful manner.

Concerned Monitoring and Intergovernmental Bodies

ECRI

CDADI - Hate speech

T-RV

T-S4

7. Gender equality in sport

The ratio of males to females in the earth's population is approximately equal, but despite this there is a disproportionate media focus on male sports, a disproportionate spread of opportunities for men and boys in sport, and a persistent lack of equality in sport decision making and governing bodies for females and female athletes. Despite the progress and the existence of international, national, and regional standards focusing on the principle of gender equality and the right for everyone to participate in sporting activities, gender gaps in sport still exists to this day. Sexism and discrimination towards women and girls, especially those who come from disadvantaged groups e.g. minorities, disabled athletes etc., are still apparent. These inequalities encompass a variety of areas including: access to sport; participation at the highest levels of sport, participation in decision-making bodies; access to sporting resources, inequalities in remuneration, education and physical activities; access to sports facilities; media coverage of female athletes and women's sport; and gender-based violence, including harassment and abuse.

Concerned Monitoring and Intergovernmental Bodies

GREVIO

GEC