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**THEME 2**

**HUMAN RIGHTS IN SPORT**

prepared by

### Human rights and sports policies: are they relevant to each other?

The short answer is “yes”.

As in society in general, all rights enshrined in the European Convention on Human Rights may, in one way or another, be at stake in the context of sport. It is not difficult to find examples of human rights issues related to doping and manipulation of sports competitions, to the functioning of sports organisations, the training and working conditions of athletes, the way in which sport competitions are organised, the management of supporters’ behaviour, interference with people’s private lives as well as violations linked to inter-personal violence, discrimination and abuse within the practice of sport.

The question of sport and human rights is at its peak on the international sports policy agenda, including that of the sports movement. This increased interest reflects the universal nature of human rights, and the major role that sport plays in the lives of a large part of the world’s population.

Since sport is mostly organised in an autonomous way by private organisations enjoying the freedom of association, national and international jurisdictions only intervene in a limited way in sporting affairs. This does not mean, however, that there are not questions to be asked, particularly when it comes to, for example, protecting the fundamental rights of those involved in sport.

Instilling a culture of human rights in sport at all levels will enhance the credibility of organised sport. But it will also help to consolidate the framework conditions necessary for sport to fully deliver benefits such as health, inclusion and education.

### Compliance with human rights: is it getting better or worse?

In 2018, at the 15<sup>th</sup> Council of Europe Conference for Ministers responsible for sport (Tbilisi), the topic was first addressed focusing on three dimensions:

- human rights in sport;
- the impact of sporting events on human rights;
- the right to sport for all

Among the principles that emerged in the context of sport, respect for human rights is one which will certainly be enshrined in the revised European Sports Charter. In recent years, the importance of the global impact that private organisations have had in the world of sport has given rise to a debate on the responsibility of companies and business with regard to human rights. Sports organisations, which represent a considerable amount of the activity, including major sports events that have great impact on people at national level, are no exception to this expectation: freedom of the media, the fight against discrimination, the right to privacy, freedom of expression, freedom of assembly and association, the right to health, to name just a few. Most rights and freedoms can be threatened in the field of sport.

Child protection against abuse	Economic and social rights of athletes	Hate speech and racism	Fair trial
Media freedom	Rights of intersex people in sport competitions	Rights of young migrant athletes	Gender equality
Personal data protection	Freedom of expression	Right to health	Freedom of association

## Does this mean that the number of human rights compliance issues is growing?

In general, and since the last Conference of Ministers in 2018, the number of sport-related applications to the European Court of Human Rights is steadily increasing, for example with alleged violations of right to fair trial and right to respect for private and family life.<sup>1</sup>

To help counteract this growth, international sports organisations and NGOs seem fully mobilised to take action. The IOC continues to work on human rights and has confirmed its commitment to develop a comprehensive and cohesive human rights strategy encompassing responsibilities both in its own operations and as leader of the Olympic movement.<sup>2</sup> The MoU signed in 2018 between FIFA and the Council of Europe focuses on several main areas of co-operation encompassing, among others, the promotion of human rights, good governance and integrity in and through football. Its co-operation plans for the years 2020 and 2021 are bringing children's rights to the fore. The recently established multi-stakeholder NGO, the Centre for Sport and Human Rights, has a mission to fully align the world of sport with the fundamental principles of human dignity, human rights, and labour rights. Its involvement in the 2026 FIFA World Cup project to introduce a new human rights Scorecard which will assess host cities' human rights "preparedness" is an important step forward.

But in addition to risks associated with normal sports activities, one cannot ignore the effect that the confinement measures implemented in member states and beyond during the COVID-19 pandemic have had on human rights, including in the field of sport.

"The virus is destroying many lives and much else of what is very dear to us. We should not let it destroy our core values and free societies,"

*Council of Europe Secretary General, Marija Pejčinović Burić*

The main conversations in the sports media during this pandemic were dominated by elite sport – how and when will it be safe for major sports tournaments and leagues to "get back to normal"? Is the health and safety of athletes, workers and fans sufficiently being taken into account when making such decisions? Is there a threat that the first matches or tournaments to be held after lockdown will result in a flurry of match-fixing activity and corrupt behaviour?

The postponement of the 2020 Olympic Games and other major sporting events to 2021 may give elite athletes time to train and be ready for the competitions, but what complicates this process is the financial gap created by the suspension of economic and social activity at national level and all over the world.

And if sports activities entail their share of risks to human rights, the lack of physical activity also bears its dangers. Let's not forget grassroots sport and how children and young people have been affected during these unprecedented times. With regard to children and youngsters at home (for example, those in vulnerable situations) a rise in domestic and intra-familial violence during confinement was noted. Sports clubs, like schools, have always played a crucial role in picking up signals of violence, neglect, etc. Will sports clubs have the resources to come back better and stronger, with an even healthier community spirit in place for an activity that is so important to so many?

What is clear, is that promoting the values of sport, a healthy lifestyle for society and the right for everyone to practice physical activity, is required now more than ever. And this process should be driven by a concern for the protection of human rights.

<sup>1</sup> See "Sport and the European Convention on Human Rights", factsheet published by the ECHR Press Unit [https://www.echr.coe.int/Documents/FS\\_Sport\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Sport_ENG.pdf)

<sup>2</sup> <https://www.olympic.org/news/ioc-continues-working-on-human-rights-and-takes-first-steps-on-a-strategy>.

## Time to seek guidance and inspiration

We have seen the diversity of human rights issues facing sport, including racism and discrimination, economic and social rights, media freedom, rights of intersex athletes, child protection (e.g. against abuse or protection of migrant athletes, gender equality, personal data protection, freedom of expression, right to health, freedom of association and right to fair trial).

These rights are enacted in international standards. The protection of most of these rights is ensured by Council of Europe monitoring mechanisms and the activities provided by them to provoke remedies, for example, country visits, collective complaints, country reports, collection of data, hearings, etc.

Bodies such as the European Committee of Social Rights, the European Commission against Racism and Intolerance (ECRI) and the Lanzarote Committee (Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse) are just a few instances that have the specialist know-how in areas that could be of benefit to sport.

In addition, the European Social Cohesion Platform (PECS) was set up to reinforce the intergovernmental component of the Secretary General's strategy to enhance the Council of Europe's work in the area of social cohesion, in particular through the promotion of the European Social Charter and its collective complaints procedure in order to ensure equal and effective access to social rights. Here again, sport can gain immense inspiration from the work of the European Committee on Social Rights and its examination of new trends and challenges.

However, the specific situation of sport is often overlooked by these monitoring systems or seems to be "off the radar". Although the knowledge and culture of human rights in sport has been promoted by EPAS in recent years via good practice handbooks, Committee of Ministers' recommendations, an online HELP training course and other supporting initiatives, there is an abundance of information gathered by the Council of Europe's specialised human rights bodies during monitoring exercises which could be used to guide, inspire and shed light on sports practices. This would help public authorities and the sports movement become more aware of human rights issues and how they could be better addressed in sports policies. The flip-side to this, is that there is also visibly a need for sport to return the favour by promoting and sharing its experience with the human rights monitoring bodies.

This debate can be illustrated by examples such as the right to physical integrity of children, the right to a fair trial in disciplinary proceedings and the protection of economic and social rights in sport.

### Safeguarding children's rights in sport

#### The issue:

Harassment and abuse occur in all sports and at all levels, including child and youth sports. Harassment and abuse have devastating effects on a person's well-being undermining human dignity, the integrity and the positive values of sport. To prevent harassment and abuse in sport, a multi-pronged approach has to be implemented: raise awareness, develop/ improve adequate standards, policies, procedures and programmes.

#### What monitoring can do:

When monitoring how states ensure that children are protected against sexual abuse in the circle of trust, the Lanzarote Committee has highlighted that all persons involved in sport activities (for leisure or for competition) fall within the child's "circle of trust". It has therefore underlined that special safeguarding measures should be in place in the sports sector to ensure that no trainer exploits the trust, authority or influence over children to abuse them, including sexually. Trainers and children practising sports should be informed of the risks of sexual exploitation and abuse in the specific sector of sports and should be empowered to report instances of sexual violence. Reporting mechanisms should thus be in place and be

made known. The Lanzarote Committee has also encouraged Parties to add, as an aggravating circumstance, in their legislation on corporate liability, the fact that a case of sexual abuse is committed in the child's circle of trust and has, in this connexion, drawn attention also to the sports sector in particular.

Voluntary pledges for safeguarding measures of relevant stakeholder organisations, the development of safeguarding indicators including reporting mechanisms has the potential to boost prevention efforts and the promotion of safe and healthy sport environments (free from harassment and abuse). The long-term impact of such measures could be enhanced and strategies targeted (including policies, procedures, and programmes, such as those promoted by [Start to Talk](#) and Child Safeguarding in Sport) leading to a reduction of the prevalence rate of cases of harassment and abuse in sport.

#### References:

Tine Vertommen et al., Interpersonal violence against children in sport in the Netherlands and Belgium, October 2015

European Commission, [Study on Gender-Based Violence in Sport](#), Brussels, 2016.

### **Right to fair trial**

#### The issue:

Doping is one of the scourges undermining sports ethics and destroying the image of sport and of sportsmen and women. When an athlete's doping is made public, it results in a temporary or life-time ban depending upon the offence. Considering the impact of such disciplinary measures on athletes' careers, there is a need for fairness and proportionality. But are disciplinary proceedings in anti-doping cases compliant with the right to fair trial?

#### What monitoring can do:

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's Anti-Doping Convention. Since 2017, its Monitoring Group (T-DO) has been working on the issue around the independence of hearing panels, which is key to ensuring fair trials that are free of conflicts of interest.

In 2019, the T-DO created, in co-operation with the International Olympic Committee (IOC), a drafting group to prepare a document that would establish, for the future, a set of minimum human rights principles that should govern anti-doping procedures in sport. In the course of its work, the group highlighted that the fact that cases that have already been brought before both the ECtHR and national courts illustrates that the fight against doping in sport constitutes a matter of public interest and, as such, it can no longer be treated as a purely private matter (as has been the case for a long time). Also, anti-doping rule violations have evolved considerably in recent years and are no longer based solely on the analysis of blood and urine samples. Recourse to investigations and other types of non-analytical evidence is increasing, thus requiring different approaches and procedural guarantees if public confidence is to be maintained. What is at stake is not only fairness for those charged with anti-doping infringements but ultimately public confidence in sport justice and sporting bodies.

These observations led to the development of principles drawn from the ECHR and the caselaw of the ECtHR (which is applied by all jurisdictions within Europe and even beyond) and, once adopted by the Committee of Ministers of the Council of Europe, will be subject to the progressive implementation into the policy and practice of sport bodies.

These guidelines wish to address the issues of real or perceived lack of independence of the sport judicial bodies and stress that, with a view to strengthening the system of justice in sport and aligning it with the relevant ECHR principles, the concept of 'independence' should be fully embraced using the terminology

employed consistently by the ECtHR and national courts. As repeatedly confirmed by both the ECtHR and national courts, the judiciary should be independent from the 'prosecution' and the parties to the dispute and that this independence should be carefully protected.

The guidelines developed by the T-DO also particularly insist on the need to ensure the public nature of hearings in anti-doping cases (with exceptions possible for specific cases where, for example, interests of minors have to be protected) and thus, by rendering the administration of justice visible, they contribute to the achievement of the aim of Article 6 § 1 of the ECHR, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society. The intention to introduce limits on the use of closed hearings should protect litigants against the administration of justice in secret with no public scrutiny and is thus one of the means whereby confidence in the courts can be maintained.

Finally, the human rights awareness of members of the disciplinary panels and sport arbitration bodies still appears too insufficient to prevent and avoid systemic failures that challenge the organisation of sports justice. This lack of awareness and understanding of the relevance of the human rights standards to dispute resolution in sport is one of the major factors that slows down the reform of the justice system in sport.

#### References:

[Mutu and Pechstein v. Switzerland](#) (Press release on the case which concerned the lawfulness of proceedings brought by professional athletes before the CAS)

[Ali Riza and Others v. Turkey](#) (Press release on the case which concerned football disputes)

Monitoring Group Recommendation on ensuring the independence of hearing panels (bodies) and promoting fair trial in anti-doping cases ([T-DO/Rec\(2017\)01](#))

Draft general principles of fair procedure applicable to anti-doping proceedings in sport, prepared by the T-DO for adoption by the CM.

EPAS handbooks: [Good practice handbook n° 5](#) (for use by the sports movement); [Good practice handbook n° 6](#) (for use by judicial authorities)

## Economic and social rights in sport

### The issue:

Sport has become, over the past few years, more and more commercialised and professional. As a result, new issues such as transfer windows, image and sponsorship rights, which have an impact on the economic and social rights of athletes, are coming to the fore. Many athletes do not fully enjoy or have access to all of the work-related and other relevant rights enshrined in the European Social Charter. For instance, according to a report prepared by Fifpro, a majority of footballers receive their salary with delay, are transferred to other clubs against their will and put into situations of forced labour. The risk of concussion in sports and issues such as doping underline the importance of athletes benefiting from the right to safe and healthy working conditions. As far as collective bargaining is concerned, different sports organisations have adopted different approaches; however, there seems to be a general reluctance on their part to engage in discussions with players associations or trade unions, which are established to protect the rights of athletes. Finally, women's football revealed the existence of a large gap between the remuneration of men and women athletes and illustrated the significant difference between the prize money awarded to women's and men's football teams. This also applies to other sports, not just football.

### What monitoring can do:

The European Committee of Social Rights could pay attention to sport in its monitoring of how the right to health is protected under the European Social Charter.

Conduct of a study on what the European Social Charter could provide to sport, both for people who are involved in sport on the basis of an employment contract, and those who are in it solely for leisure or pleasure.

Conduct of a study on the situation of top athletes and how social dialogue is ensured in the field of sport.

Explore readiness to promote a Right to Sport as a social right.

References:

The [European Social Charter](#)

### Should sport be affirmed as a right?

“The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.”

*Olympic Charter*

Some may argue that sport is a human right, yet it is not protected legally as a universal human right nor mentioned in any international declaration or convention devoted to human rights which have legal status for all ratifying countries.

The emergency measures taken in the context of the COVID-19 epidemic have brought home the extent to which physical activity is a vital need, recognised in many countries as one of the few reasons for leaving the home during confinement, despite restrictions on movement. This recognition underlines the emergence of a genuine right to sport which could be achieved on a continental scale through a resolute implementation of the revised European Sports Charter.

Enacting sport as a human right requires the insurance of proper conditions for everyone, irrespective of sex, gender, sexual orientation, ethnic or social origin, disability, religion or belief. The inclusiveness of sport and its alignment with human rights is non-negotiable if sport is to be a right in itself.

### Round Table discussions

Heads of Delegation are invited to take the floor on this theme, taking inspiration from the following “food for thought” questions:

- ▶ What are the main threats to human rights in sport?
- ▶ How can one raise more awareness of human rights in sport?
- ▶ How can one further promote sport as a right for everyone?