

The CESCR Committee Takes on the Right to Take Part in Sports

Abstract

The United Nations Covenant on Social, Economic, and Cultural Rights (CESCR) lacks a dedicated provision on the right to access sports. However, the CESCR Committee has consistently regarded this right as an offshoot of the right to participate in cultural life. Despite this recognition, the Committee has historically avoided references to the right to access sports in its monitoring tool. A departure from this trend is observed in the Committee's recent concluding observations for Palestine and France. This is a pivotal development that challenges established notion of sports autonomy and has the potential to reshape perspectives on sports within the framework of human rights.

Keywords: right to health, sports autonomy, Olympics

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1. Introduction

The inception of the “sports for all” movement in the 1960s successfully reframed access to sports as an inherent human right, leaving an indelible mark during the formulation of several charters and two pivotal United Nations (UN) core international human rights instruments.¹ A pioneering stride occurred in 1975 with the Council of Europe’s Sports for All Charter, articulating that “every individual shall have the right to participate in sport”.² Building upon this momentum, the United Nations Educational, Scientific and Cultural Organization (UNESCO) Charter on Physical Education and Sport (1978) underscored that “every human being has a fundamental right of access to physical education and sport, which are essential for the full development of his personality”.³ Furthermore, the Olympic Charter explicitly declared “the practice of sport is a human right” in 1996.⁴ Beyond these influential yet non-binding charters, the right to access sports finds its place in two United Nations core conventions: articles 10 and 13 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) and article 30 of the Convention on the Rights of Persons with Disabilities (CRPD) (2006).⁵ Human rights charters and conventions not only serve as sources of legitimacy but also act as catalysts, creating “small openings” for broader changes.⁶

The debates on sports and human rights have, to date, mainly been concerned with the use of rights in international development assistance, as well as with human rights violations in the organisation of elite sports.⁷ But they are widening. Notably, Pérez González requested “UN monitoring bodies to take central stage” in the effective application of international human rights standards in the sporting domain in 2022.⁸ These bodies, through individual communications following complaints, general comments, and periodic recommendations to State Parties (in the so-called “concluding observations”), can take an authoritative stance on the right to access sports for all.

The latter monitoring procedure has in particular attracted scholarly attention. The process involves the submission of a periodic report by the State Party to the treaty body, followed by the issuance of a “list of issues” (LOI) by the treaty body.⁹ Subsequent to the state’s written responses, a constructive dialogue ensues, culminating in the issuance of concluding observations by the treaty body. In 2021, Masdeu Yelamos, Carty and MacLachlan studied

¹ E. Zorba, *The Perception of Sport for All in the World and in Turkey*, in 1(4) *The Online Journal of Recreation and Sport* 2012, p. 26.

² Council of Europe (Committee of Ministers), Resolution on the Principles for a Policy of Sport for All, Resolution (76) 31 Appendix, para 1 (1975).

³ UNESCO, *International Charter on Physical Education and Sport*, UN Doc. SHS/2012/PI/H/1 REV. (1978), art. 2.2. The androcentric bias in this provision is unfortunate.

⁴ International Olympic Committee (IOC), Olympic Charter (1996), fundamental principle 8. See IOC, Olympic Charter (2023), fundamental principles 4 and 6.

⁵ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 UNT.S. 13; Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 993 UNT.S. 3.

⁶ K. Tsutsui, C. Whitlinger and A. Lim, *International Human Rights Law and Social Movements: States’ Resistance and Civil Society’s Insistence*, in 8 *Annual Review Of Law And Social Science*, 2012, pp. 369-370.

⁷ Eg B. Schwab, *Celebrate Humanity’: Reconciling Sport and Human Rights Through Athlete Activism*, in 28(2) *Journal of Legal Aspects of Sport*, 2018, p. 170; W. Rook, S. Jain and D. Heerdt (a cura di), *The Routledge Handbook of Mega Sporting Events and Human Rights*, Milton Park, Routledge, 2023.

⁸ C. Pérez González, *The Effective Application of International Human Rights Law Standards to the Sporting Domain: Should UN Monitoring Bodies Take Central Stage?*, in 22 *The International Sports Law Journal*, 2022, p. 152.

⁹ Some State Parties are in a pilot project in which they receive a “list of issues prior to reporting” (LOIPR) before submission of the state party report, based on previous Concluding Observations.

references to sport, physical activity and physical education in State Party reports, LOI and concluding observations of the CEDAW Committee and of the CRPD Committee.¹⁰ Afterwards, they undertook a similar exercise, in collaboration with Carney, for the Committee that monitors the UN Convention on the Rights of the Child (CRC).¹¹ While the CRC does not explicitly encompass a right to access sports, the Committee interprets access to sports as a derivative right, primarily emanating from children’s entitlement to engage in play and recreational activities (article 31 CRC) and their right to education (article 29(1)(a) CRC), as articulated in General Comment 17.¹² More recently, Veal has delved into the examination of State Party reports submitted by European Union Member States to the Committee that monitors the UN Covenant on Social, Economic, and Cultural Rights.¹³ This burgeoning interest in monitoring procedures reflects a shift toward integrating sports-related considerations into the broader human rights discourse.

This perspective article contributes to the identified literature. It aims to examine how the CESCR Committee itself – which was established in 1985 – approached the right to access to sports throughout the years.¹⁴ The analysis is grounded in a scrutiny of the CESCR Committee’s general comments, “list of issues” (LOI), and concluding observations. It is determined that only recently, at the end of 2023, the CESCR Committee tackled the right to access to sports in its concluding observations, challenging the historical autonomy that sports organisations have maintained to safeguard their inherent values from external influences.

All relevant documents were sourced from the UN Treaty Body Database on 13 October 2023.¹⁵ First, the CESCR Committee has adopted 26 general comments to date. Second, a collection of all available LOI (including LOI in the absence of a State Party report), spanning from 23 May 1997, onwards, was retrieved, totalling 333 documents. Third, the concluding observations, numbering 534 documents dating back to 18 April 1980, were also examined. (The older concluding observations contain requests to State Parties.) Whenever available, the English version of these documents was utilized for analysis. Following a methodology akin to that of Masdeu Yelamos and their co-authors, the study involved coding the occurrences of the terms “sport(s)” or “sporting,” along with the correlated concepts of “physical education” and “physical activity” within these documents.¹⁶ This systematic approach provides a comprehensive overview of how the CESCR Committee has addressed the right to access sports over time.

¹⁰ G. Masdeu Yelamos, C. Carty and M. MacLachlan, *Assessing and Improving the National Reporting on Human Rights in and Through Physical Education, Physical Activity and Sport (PEPAS)*, in 29 *Revista de Psicología del Deporte*, 2020, p. 36-44.

¹¹ Convention on the Rights of the Child, Nov. 20, 1999, 1577 UNT.S 3; G. Masdeu Yelamos, S. Carney, C. Carty and M. MacLachlan, *A Thematic Analysis of the UN Convention on the Rights of the Child (CRC) State Party Reporting Mechanisms Related to Physical Education, Physical Activity and Sport*, in 29 *The International Journal of Children’s Rights*, 2021, pp. 765-794.

¹² CRC Committee, *General Comment No. 17 on the Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts (art. 31)*, UN Doc. CRC/C/GC/17 (Apr. 17, 2013), para. 13.

¹³ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 UNT.S. 3; A. J. Veal, *Sport and Human Rights: Assessing the Performance of Nation States in Assuring the Right to Sport Participation*, in 20(2) *European Journal for Sport and Society*, 2023.

¹⁴ UN Economic and Social Council, Res. 1985/17 (1985) UN Doc. E/RES/1985/17.

¹⁵ Office of the High Commissioner of Human Rights, *UN Treaty Body Database*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en (last visited Dec. 16, 2023).

¹⁶ Masdeu Yelamos, *supra* note 11, paras. 767 and 773.

This article is structured as follows. An examination in Section 2 shows that the CESCR Committee originally regarded the right to access sports as a derivative of the right to health (article 12 CESCR). Section 3 delves into the Committee's predominant consideration of the right to access sports as a derivative of the right to participate in cultural life (article 15(1a) CESCR), particularly evident in General Comment 21 on the Right to Cultural Life (2009).¹⁷ While this connection is most explicitly articulated in this specific General Comment, the Committee made similar assertions intermittently between 1991 and 2013 in its LOI. After a hiatus of a decade, the Committee resumed this practice in its LOI of early 2023, concentrating specifically on discriminated groups, notably individuals with disabilities and minors experiencing (intersectional) discrimination. Section 4 explains that the Committee ultimately referred to the right to access sports in its concluding observations to Palestine and France for the very first time at the end of 2023.¹⁸ This marks a significant departure from previous practices. Lastly, in Section 5, I argue that this development is significant, as it challenges traditional concepts of sports autonomy. In so doing, it symbolizing a pivotal stride towards fostering inclusivity and safeguarding the right to access to sports for all.

2. Right to Health

The CESCR Committee made its inaugural request concerning the right to access sports in 1989. This pivotal moment occurred when the Committee posed an inquiry to France, seeking clarification on “whether sporting and recreational facilities were adequately developed and accessible for everyone” under article 12 CESCR on the right to the highest attainable standard of health.¹⁹

At the time of the Committee's pronouncement, the correlation between the right to access sports and the right to health was not firmly established, which might seem surprising given the current landscape.²⁰ Presently, the evidence supporting the physical and mental health benefits of sports is robust and widely recognized, surpassing the evidence for the impact of sports on social and community development involving cultural life as well as recreation.²¹ Sports play a crucial role in alleviating anxiety and depression, as well as preventing and managing noncommunicable diseases, similar to other forms of physical activity.²² Physical inactivity causes an estimated 6 percent of the burden of disease from coronary heart disease, 7 percent of type 2 diabetes, 10 percent of breast cancers, and 10 percent of colon cancers.²³ (It is important, however, to adopt a nuanced perspective when discussing the health benefits of sports, acknowledging potential risks such as doping and female athlete triad.²⁴)

¹⁷ CESCR Committee, *General Comment No. 21, Right of Everyone to Take Part in Cultural Life (Art. 15, para 1a of the Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/21 (2009), para. 13(a).

¹⁸ CESCR Committee, *Concluding Observations: France*, UN Doc. E/C.12/FRA/CO/5 (Oct. 30, 2023), para. 61; CESCR Committee, *Concluding Observations: Palestine*, UN Doc E/C.12/PSE/CO/1 (Nov. 1, 2023), para. 14.

¹⁹ CESCR Committee, *Report on the Third Session*, UN Doc. E/1989/22 E/C.12/1989/5 (Feb. 6-24, 1989), p. 35

²⁰ Anonymized.

²¹ UNESCO, “Impact Investment in Sport” (2023) <https://doi.org/10.54678/SYRK9240>, p. 17.

²² Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, UN Doc. A/HRC/32/33 (Apr. 4, 2016), para. 64.

²³ I.M. Lee, E. Shiroma, F. Lobelo et al., *Effect of Physical Inactivity on Major Non-Communicable Diseases Worldwide: An Analysis of Burden of Disease and Life Expectancy*, in 380(9838) *The Lancet*, 2012, p. 219.

²⁴ P. Raimondo and L. Zambelli, *Profili Generali Della Lotta Al Doping*, in 1(2) *Diretto Dello Sport*, 2020, p. 1; S. Torashima, M. Samukawa, M. Sakamaki-Sunaga, *The Necessity of Female Athlete Triad Education for Postpartum Women: a Case Study on Insufficient Health Education*, in 181(12) *Edizione Minerva Medica*, 2022, p. 992.

In recent years, the intrinsic connection between the right to access sports and the right to health has gained increasing recognition. Notably, Dainius Pūras, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standards of physical and mental health, published a report on the right to access sports in 2016.²⁵ Despite this evolving understanding, the CESCR Committee has not referred to the right to access sports as a derivative of the right to health since 1989. Only one reference was made to “physical activity” in 2018. The CESCR Committee then requested Belarus to “describe the measures taken to promote physical activity as an essential component of a healthy lifestyle, such as public awareness-raising and the enhancement of infrastructure for all, particularly children”.²⁶

3. Right to Cultural Life

Rather, the CESCR Committee usually derives the right to sports from the right to take part in cultural life (article 15(1a) CESCR). Until 2023, the CESCR Committee only referred to this right in its requests to State Parties. In its 1991 inquiry to Sweden, the Committee questioned the existence of government policies subsidizing sports and the availability of specialized educational institutions offering sports instruction under article 15 CESCR.²⁷ In a 2002 instance, Brazil was similarly asked to elucidate how sports and games are encouraged as “an expression of Brazilian *culture*, and as an essential factor in the holistic development of the person”.²⁸ In 2000, the Committee questioned the alleged disproportionate allocation of funding favoring elite sports over community-level sports and leisure participation projects by the Australian government under article 15 CESCR, rebuking the tendency of governments to privilege elite sports – characterized by more spectacular features and medal fever – over the more grounded sports for all.²⁹

More generally and more recently, in its General Comment 21 (2009), the Committee determined that the right to take part in cultural life (article 15(1)(a) CESCR) “encompasses, inter alia [...] sport and games”.³⁰ The concept of culture is expansively defined, encompassing all manifestations of human existence, recognizing its dynamic nature with a past, present, and future.³¹ The Committee pinpointed the rights of two traditionally discriminated groups: indigenous people and individuals with disabilities.

First, General Comment 21 set out that indigenous people “have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their (intellectual property over) cultural heritage, traditional knowledge and traditional cultural expressions, as

²⁵ Human Rights Council, *supra* note 22.

²⁶ CESCR Committee, *LOI: Belarus*, UN Doc. E/C.12/BLR/QPR/7 (Nov. 14, 2018).

²⁷ CESCR Committee, *Report on the Sixth Session*, UN Doc. E/1992/23 and E/C.12/1991/4 (Nov. 24 – Dec. 13, 1991), p. 58. (Note that the right to access sports was not considered as an element of the right for education by the CESCR Committee, contrary to other interpretations, most notably in article 10(g) CEDAW.)

²⁸ CESCR Committee, *LOI: Brazil*, UN Doc. E/C.12/Q/BRA/1 (Jun. 5, 2002) (emphasis added), para. 51.

²⁹ P. Donnelly and B. Kidd, *Two Solitudes Grass-roots Sport and High-Performance in Canada*, in R. Bailey and M. Talbot (a cura di) *Elite Sport and Sport-for-All*, 2015, p. 64. Note that while the CESCR Committee clearly referred to leisure and recreation in *LOI: Australia*, UN Doc. E/C.12/Q/AUSTRAL/1 (May 23, 2000), paras 35 and 37, it has not considered this right as a basis for its pronouncements on the right to sports, as the CRC Committee has done. The right to leisure is included in article 7(d) CESCR, but this article considers this right exclusively in the context of employment relations.

³⁰ CESCR Committee, *supra* note 17, para. 13(a). See CESCR Committee, *LOI: Congo*, UN Doc. E/C.12/COG/Q/1 (June 4, 2012), para. 45; CESCR Committee, *LOI: Ukraine*, UN Doc. E/C.12/UKR/Q/6 (Dec. 19, 2013), para. 35.

³¹ *Id.* para 11.

well as the manifestations of their sciences, technologies and cultures, including ... sports".³² This provision was copied from article 31(1) of the UN Declaration on the Rights of Indigenous Peoples (2007).³³ The Declaration added that in conjunction with indigenous peoples, states shall take effective measures to recognize and protect the exercise of these rights. In its request to Australia, the CESCR Committee also expressed concerns about disparities "between indigenous Australians and other minorities and the wider community" in access and resource allocation to sporting facilities, including the "provision of access to public facilities".³⁴

Second, General Comment 21 explained that State Parties should encourage and promote the participation, to the extent possible, in recreational, leisure and sporting activities of people with disabilities.³⁵ The General Comment referred to article 30 CRPD on "participation in cultural life, recreation, leisure and sport" which stresses in its fifth paragraph that "States Parties shall take appropriate measures to enable persons with disabilities to participate on an equal basis with others in recreational, leisure and *sporting* activities".³⁶ This article is based on the UN General Assembly's Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993).³⁷ While there were two distinct rules on culture (Rule 10) and on recreation and sports (Rule 11), the CESCR Committee's General Comment 5 on persons with disabilities (1994) connected culture with sports in paragraph 36.³⁸ It explained that State Parties should promote the accessibility to and availability of places for cultural performances and services. The CESCR Committee noted that "the same applies to places for recreation sports and tourism" in General Comment 5. Even though the CRPD Committee is now consistently monitoring access to sports for people with disabilities, the CESCR Committee made requests for information on policies and measures to provide accessible sports facilities to persons with disabilities and to promote their participation in sports (competitions) to Malawi in 2023.³⁹ Similar requests were made to Rwanda and the United Kingdom in 2023.⁴⁰

The CESCR Committee did, however, not refer to CEDAW in General Comment 21. This is unfortunate, as discrimination against women in sports is endemic.⁴¹ The UN also has formally committed to gender mainstreaming since the adoption of the Vienna Declaration and Programme of Action in 1993.⁴² While the concept of "culture" has often been used to deny women their rights,⁴³ it has been a driver for inclusion in sports. In fact, CEDAW was the very first UN core international human rights instrument to categorise a right to access to sports for women as an element of the right to take part in cultural life in the 1970s. Article 13(c) CEDAW determines that "States Parties shall take all appropriate measures to eliminate discrimination against women" to ensure, on a basis of equality of men and women, the same rights, in

³² *Id.* para 37.

³³ UN General Assembly, Res. 61/295, UN Doc. A/RES/61/295 (2007).

³⁴ CESCR Committee, *supra* note 29, para. 36 and 37.

³⁵ CESCR Committee, *supra* note 17, para. 31.

³⁶ Emphasis added.

³⁷ UN General Assembly, Res. 48/96, UN Doc. A/RES/48/96 (1993).

³⁸ CESCR Committee, *General Comment No. 5 on Persons with Disabilities*, UN Doc. e/1995/22 (Dec. 9, 1994), para. 36.

³⁹ CESCR Committee, *LOI: Malawi*, UN Doc. E/C.12/MWI/Q/1 (Mar. 22, 2023), para. 28.

⁴⁰ CESCR Committee, *LOI: United Kingdom*, UN Doc. E/C.12/GBR/Q/7 (Mar. 23, 2023), para. 41; CESCR Committee, *LOI: Rwanda*, UN Doc. E/C.12/RW/Q/5 (Apr. 3, 2023), para. 41.

⁴¹ D. Heerdt and N. Bernaz, *Elements for FIFA's Feminist Transformation: The Case for Indicators on Football and Women's Rights*, in 20(1) *International Journal of Constitutional Law*, 2018, p. 304-305.

⁴² World Conference on Human Rights, *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23 (June 25, 1993).

⁴³ G. Binion, *Human Rights: A Feminist Perspective*, in 17(3) *Human Rights Quarterly*, 1995, p. 521.

particular “the right to participate in recreational activities, sports, and all aspects of cultural life”. This omission is, however, not surprising. The CESCR Committee has, according to its former member Heisoo Shin, often been blind to gender issues and achievements of the feminist movement.⁴⁴ Only one exception could be identified. In its 2000 request to Australia, the CESCR Committee requested this State Party to comment on “disparities” between men and women “in access access and resource allocation to sporting facilities”.⁴⁵

Three other forms of discrimination in access to sports were also addressed in requests of the CESCR Committee to State Parties (that were not mentioned in General Comment 21). First, it made requests regarding differences in access to sport (events) on the basis of location (in rural or remote areas as well as in deprived urban areas).⁴⁶ Second, in the 2023 request to the UK the CESCR Committee also referred to access to sports, sports facilities and competitions for transgender persons with disabilities.⁴⁷ In so doing, the Committee took an intersectional perspective which acknowledge that many people’s disadvantage is multifactorial.⁴⁸ The experiences of a transgender person with disabilities cannot be reduced to “just one working of power”.⁴⁹ Third, the CESCR Committee requested information on minors.⁵⁰ In 2023, it also added an intersectional lens to such requests. The CESCR Committee requested “information on measures implemented to promote access to sports, sports facilities and competition for children and youth, *including those of ethnic and national minorities and those with disabilities*”.⁵¹ It also referred to minors with disabilities in the three other 2023 requests to Malawi, Rwanda and the United Kingdom mentioned above. The CESCR Committee should continue expanding its perspective to explicitly consider access to sports for elderly people through an intersectional lens in the future.⁵²

4. CESCR concluding observations

Despite the reported requests to State Parties in the aforementioned sections, the CESCR Committee exhibited a persistent reluctance to provide commentary on sports or the right to access sports itself. Until recently, the Committee limited its consideration of sports in its concluding observations to a singular context: assessing the impact on the right to housing for individuals displaced or evicted due to the organization of mega sporting events, such as the Olympic Games or the African Cup.⁵³

⁴⁴ H. Shin, Gender and Human Rights at the Seoul National University International Course on Human Rights and Asia (Jan. 16, 2018).

⁴⁵ CESCR Committee, *supra* note 29, para. 37.

⁴⁶ *Id.*; CESCR Committee, *LOI: Cambodia*, UN Doc. E/C.12/KHM/Q/1 (Jan. 8, 2009).

⁴⁷ CESCR Committee, *supra* note 40 (United Kingdom), para. 41.

⁴⁸ K. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics* in 1 *University of Chicago Legal Forum*, 1989, p. 139.

⁴⁹ AJ Stone Jonathan, *Informing Intersections*, *Berkeley Journal of Gender, Law & Justice Under Deconstruction*, 2023.

⁵⁰ CESCR Committee, *supra* note 29, para. 37. para. 28.

⁵¹ CESCR Committee, *LOI: Croatia*, UN Doc. E/C.12/HRV/Q/2 (Mar. 27, 2023), para. 37 (emphasis added).

⁵² CESCR Committee, *supra* note 29, para. 36 vaguely refers to NGO research that indicates “disparities ... between younger and older Australians persist in access and resource allocation to sporting facilities”.

⁵³ E.g. CESCR Committee, *Report on the Twelfth and Thirteenth Sessions*, UN Doc. E/1996/22 E/C.12/1995/18 (May 1-19, 1995; Nov. 20 - Dec. 8, 1995), para. 77; CESCR Committee, *Concluding Observations: Angola*, UN Doc. E/C.12/AGO/CO/3 (Dec. 1, 2008), para. 32(d). See also CESCR Committee, *General Comment No. 7: The Right to Adequate Housing (art. 11(1) of the Covenant): Forced Evictions*, UN Doc. INT/CESCR/GEC/6430/E paras 7 and 20; CESCR Committee, *Concluding Observations: United Kingdom*, UN Doc. E/C.12/GBR/CO/5 (Jun. 12, 2009), para. 30.

However, the Committee undertook a groundbreaking shift by incorporating references to the right to access sports for both elite and amateur athletes in its concluding observations to Palestine and France at the close of 2023.⁵⁴ In alignment with its well-established practice, the CESCR Committee continued to view the right to access sports as a derivative of the right to participate in cultural life.

Firstly, in addressing Palestine, the Committee underscored the significance of ensuring that companies awarded public contracts do not unjustly raise prices, thus negatively impacting individuals' ability to afford "cultural activities, including sports".⁵⁵ The Committee referred to its General Comment 24 on state obligations in the context of business activities (2017).⁵⁶

Secondly, when addressing France, the Committee urged the nation to ensure that the rules governing the organization of the Olympic Games in Paris in 2024 respect and align with "the right to cultural life, including sports," as outlined in General Comment 21.⁵⁷ Furthermore, the Committee recommended that France exercise reasonable human rights due diligence in the organization of the Olympic Games, encompassing the rules and regulations of each sport, to identify and mitigate risks to economic, social, and cultural rights.⁵⁸ Finally, the Committee emphasized that all athletes, irrespective of racial or ethnic origin, religion, sexual orientation, and gender identity, should be able to participate and compete in the Olympic Games safely and without discrimination.⁵⁹ The onus lies on France to oversee this matter to the extent of its capacities as the hosting country.⁶⁰ Of particular concern to the Committee was the prohibition on athletes of the French team wearing a hijab from competing, while foreign athletes are permitted to do so.⁶¹ The Committee also expressed regret that it received insufficient information from France regarding the adherence to due diligence in the organization of the Olympic Games to mitigate risks to the enjoyment of economic, social, and cultural rights.⁶²

5. Autonomy of sports

The CESCR Committee thus long hesitated before addressing the right to access sports – which it has long viewed as primarily derived from the right to cultural life – explicitly in its concluding observations in 2023. So far, this development might not seem so strange (even though other UN treaty bodies have long considered the right to access sport in their concluding observations). Various human rights issues escape the attention of UN treaty bodies. Yet, there is more below the surface. Krüger aptly wrote that as an expression of culture, sports is "subject to the manifold constraints from politics culture, and society".⁶³

⁵⁴ CESCR Committee, *supra* note 18.

⁵⁵ CESCR Committee, *supra* note 18 (Palestine), para. 14.

⁵⁶ CESCR Committee, *General Comment 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, UN Doc. E/C.12/60/R.1 (Jun. 23, 2017).

⁵⁷ CESCR Committee, *supra* note 18 (France), para. 61(a).

⁵⁸ *Id.*, para. 61(c).

⁵⁹ *Id.*, para. 61(b).

⁶⁰ *Id.*

⁶¹ *Id.*, para 60.

⁶² *Id.* referring to articles 2 and 15 CESCR.

⁶³ M. Krüger, *Physical Education and Sport Between Human Rights, Duties, and Obligations – Observations from Germany* in 11(4) *Societies* (2021), p. 10.

Traditionally, the “autonomy” of sports safeguarded the integrity and values inherent in sports.⁶⁴ This system, rooted in International Olympic Committee regulations and endorsed by various intergovernmental organizations, shields sports from external intrusion. In its overview on “sports and human rights” of 28 November 2023, the Court of Arbitration for Sport (CAS) again stressed that “Sports organisations are generally private-law entities with the consequence that human rights laws are not directly applicable to them”. Yet, the direct application of human rights to sports organisations may result from self-commitments by sports organisations through regulations adopted on the basis of the *autonomy* of sports organisations”.⁶⁵ Following this reasoning, the International Olympic Committee’s Strategic Framework on Human Rights (2022) can be considered as such “self-commitment”.⁶⁶

The principle of autonomy is rooted in the idea that sports, as a distinct and unique social phenomenon, should have the freedom to set their own rules, policies, and structures without severe constraints from governmental bodies or other external entities.⁶⁷ In return, sports organizations guarantee “the responsibility for ensuring that principles of good governance be applied”.⁶⁸ Over the years, sports have been positioned as a vehicle for equal treatment and non-discrimination, transcending geographic and political boundaries.⁶⁹

With the new concluding observations, the CESCR Committee does, however, join other institutions that are increasingly challenging the “sacred house” status of sports autonomy. There is growing recognition, both within and outside the sports community, that sports autonomy should not be absolute and unchecked. Calls for stronger synergies between sports regulations and human rights protection have emerged, highlighting the need for accountability and respect for fundamental rights within the realm of sports. This evolving perspective suggests that the autonomy of sports should coexist with a commitment to upholding broader societal values, including human rights and inclusivity. Notably, after positively asserting that the right to access sports is “grounded in” the right to participate in culture, the former UN High Commissioner for Human Rights Ra’ad Zeid Al-Hussein and Davis stressed the expectation that sports bodies “will increasingly be expected to also respect international human rights standards” to continue enjoying their autonomy privileges in their 2020 report to the International Olympic Committee.⁷⁰ They noted that this autonomy is already dependent upon “good governance”.⁷¹ They stressed that the International Olympic Committee “has a responsibility to use its leverage to engage its national partners on the need to prevent and address the root causes of discrimination affecting participation in sports, not just its

⁶⁴ J.L. Chappelet, *Autonomy of Sport in Europe* (2010), <https://rm.coe.int/autonomy-of-sport-in-europe/168073499f> (last visited Dec. 15, 2023), p. 83.

⁶⁵ Court of Arbitration for Sport, *Sport and Human Rights* (2023), https://www.tas-cas.org/fileadmin/user_upload/CAS_Human_Rights_in_Sport__November_2023_.pdf, p. 1 (emphasis added).

⁶⁶ IOC, *IOC Strategic Framework on Human Rights* (2022), <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Strategic-Framework-on-Human-Rights.pdf> (last visited Dec. 15, 2023). See Antoine Duval, *IOC Adds Human Rights Punch to the Lex Olympica*, *Verfassungsblog* (2022), <https://verfassungsblog.de/ioc-adds-human-rights-punch-to-the-lex-olympica/> (last visited Dec. 15, 2023).

⁶⁷ Council of Europe (Committee of Ministers), *Recommendation to Member States on the Principle of Autonomy of Sport in Europe*, CM/Rec(2011)3, para 1 (Feb. 2, 2011).

⁶⁸ IOC 2023, *supra* note 4, fundamental principle 5.

⁶⁹ For example, UNHRC, Res. 75/18 (2011), UN Doc. A/HRC/RES/75/181, p. 2.

⁷⁰ Z. Ra’ad Zeid Al-Hussein and R. Davis, *Recommendations for an IOC Human Rights Strategy* (2020), https://stillmedab.olympic.org/media/Document%20Library/OlympicOrg/News/2020/12/Independent_Expert_Report_IOC_HumanRights.pdf (last visited Dec. 15, 2023), p. 16.

⁷¹ *Id.*

manifestations during Games-time”.⁷² Similarly, the Court of Justice of the European Union (EU) reinforced the supervised nature of sport autonomy under EU law in its 2023 judgements *Superleague*, *International Skating Union* and *Royal Antwerp*.⁷³

The principle of autonomy was born out of sports as an exclusively non-governmental non-profit-making endeavour, but today’s reality is very different.⁷⁴ The current reality reflects a diverse array of sports providers from the public, market, and voluntary sectors, raising questions about autonomy in an era of heightened commercialization.⁷⁵ The CESCR Committee’s concluding observations to Palestine raise pertinent points about the commercial dimension of sports and the risks associated with increased costs by referring to General Comment 24 on state obligations in the context of business activities. Prior to the CESCR Committee, other UN bodies – such as the UN General Assembly and UNESCO – made similar pronouncements with reference to the UN Guiding Principles on Business and Human Rights.⁷⁶ While the IOC committed to the UN Guiding Principles, the CESCR Committee’s concluding observations to France did not refer explicitly to the economic dimensions of sports.⁷⁷ Perhaps the Committee wanted to indicate that human rights risks in sports are not exclusive to commercial activities but are inherent in the day-to-day practices and culture of sports, much like in other societal realms?⁷⁸

6. Conclusion

Despite the recognition of the intrinsic link between sports and health, the United Nations Committee on Economic, Social, and Cultural Rights has historically considered sports as an element of the right to participate in cultural life. In tracing the trajectory of the interpretation of the right to sports access within the CESCR Committee a recent paradigm shift emerges, signifying a turning point in the global dialogue on human rights and sports. The CESCR Committee now challenges traditional notions of sports autonomy. Sports autonomy, once viewed as a shield against external influence, should not exempt sports organizations from accountability and adherence to human rights principles. This perspective aligns with emerging global expectations for sports bodies to respect international human rights standards while

⁷² *Id.*, p. 21.

⁷³ Judgment of 21 December 2023, *European Superleague Company SL v. Fédération Internationale de Football Association (FIFA)*, Union of European Football Associations (UEFA), C- 333/21, ECLI:EU:C:2023:1011; Judgment of 21 December 2023, *International Skating Union v. Commission*, C-124/21, ECLI:EU:C:2023:1012; Judgment of 21 December 2023, *SA Royal Antwerp Football Club v. Union royale belge des sociétés de football association ASBL (URBSFA)*, C-680/21, ECLI:EU:C:2023:1010; B. García, *Down with the Politics, Up with the Law! Reinforcing EU Law’s Supervision of Sport Autonomy in Europe*, in *The International Sports Law Journal*, 2024.

⁷⁴ Chappelet, *supra* note 64, 49-50.

⁷⁵ K. Hallmann, S. Feiler and C. Breuer, *Design and Delivery of Sport for All Programmes: Should It Be Market, Non-profit or State-run*, in *International Journal of Sport Policy and Politics*, 2015, p. 566.

⁷⁶ J. Ruggie, Rep. of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, UN Doc. A/HRC/17/31 (Mar. 21, 2011); UNHRC, Res. 17/4 (2011), UN Doc. A/HRC/RES/17/4; UNESCO, *Kazan Action Plan, The Ministers Meeting at the Sixth International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS VI), held in Kazan (13-15 July 2017)* (2017), UN Doc. SHS/2017/PI/H/14 REV, main policy area III; UNHRC, Res. 75/18 (2020), UN Doc. A/HRC/RES/75/18, para. 17. See also Ra’ad Zeid Al-Hussein, *supra* note 70, p. 11.

⁷⁷ IOC, *supra* note 66, 12.

⁷⁸ Notably, the World Health Organization emphasizes a human rights-based approach in *The Global Action Plan on Physical Activity (2015-2030)*, p. 22. See W. Rook, T. Prado and D. Heerdt, *Responsible Sport: No Going Back*, in 23 *The International Sports Law Journal*, 2023, p. 94.

enjoying their autonomy privileges and sets the stage for continued discourse on the intersection of human rights and sports.