

## The Right to Access Sport for All

*The right to take part in sport can be considered as a ‘stand-alone’ right or as a derivative of other rights. Traditionally, this right has been considered as closely connected to the rights to culture, education and leisure in the United Nations core international human rights instruments and the Council of Europe’s non-binding Sports for All Charter which pioneered a right to participate in sport for all in 1975. Yet, this right is increasingly being coupled with the right to health too in the United Nations and the Council of Europe. Notably, the 2021 revised European Sports Charter even connects the stand-alone right to access sport in the first place to the right to health. This dimension is more important than ever. Noncommunicable diseases and loneliness that can be prevented by increased physical activity and sport are bogging down public health systems in Council of Europe member states. While requiring considerable resources, investing in the right to access to sport is ultimately more beneficial than not doing so. Relevant positive state obligations of the right to access sport for all, and the role of sports providers — whether privately, publicly or voluntarily organized — are discussed.*

### Introduction

‘The idea of sport as a human right’ is understudied in the literature on sport as well as the literature on human rights.<sup>1</sup> Sport can be defined as ‘all forms of physical activity that contribute to physical fitness, mental well-being and social interaction’.<sup>2</sup> The connection between sport and health might then seem straightforward. Yet, this is not the case in international and European human rights discourse. On the one hand, the right to access sport is expressly coupled with other rights — the rights to cultural life, leisure and education — in two core international human rights instruments: the United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) and the Convention on the Rights of Persons with Disabilities (CRPD) (2006).<sup>3</sup> On the other hand, the Council of Europe’s Sports for All Charter framed sport first and foremost as ‘an aspect of socio-cultural development’ when it expressed for the first time that ‘every individual shall have the right to participate in sport’ in 1975.<sup>4</sup>

The ‘sport for all’ social movement — which created openings for sport in the said legal instruments — recently achieved new heights. This time around, the right to health takes center stage.<sup>5</sup> This fits with the growing attention of other fields to noncommunicable disease prevention, including nutrition, in human rights discourse.<sup>6</sup> At the international stage, Pūras, UN Special Rapporteur of everyone to the enjoyment of the highest attainable standards of physical and mental health (Special Rapporteur on health) discussed the right to sport in a 2016 report.<sup>7</sup> This followed after the Committee that monitors the Convention on the Rights of the

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<sup>1</sup> S. Pearce, “Disability Discrimination in Children’s Sport,” *Alternative Law Journal* 42 (2017), p. 145 rejects the right to sport; A. J. Veal, “Sport and Human Rights: Assessing the Performance of Nation States in Assuring the Right to Sport Participation,” *European Journal for Sport and Society* 20/2 (2023), p. 144.

<sup>2</sup> UN Inter-agency Task Force on Sport for Development, *Towards Achieving the Millenium Development Goals* (Geneva: UN, 2003), p. 2.

<sup>3</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180 (1979), arts. 10(g) and 13(c); Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2006), art. 30(5).

<sup>4</sup> CM, Resolution on the Principles for a Policy of Sport for All, Resolution (76) 31 Appendix (1975), arts. 1 and 3. See also CM, Revised European Sports Charter, Recommendation No. R (92) 13 Rev (2006), art. 13.

<sup>5</sup> S. Messing, M. Krennerich, K. Abu-Omar et al., “Physical Activity as a Human Right?,” *Health and Human Rights Journal* 23/2 (2021), p. 202.

<sup>6</sup> E.g. anonymized-Kn.

<sup>7</sup> Human Rights Council (HRC), Report of the UN Special Rapporteur on Health, UN Doc. A/HRC/32/33 (2016).

Child (CRC) addressed sport in its General Comment 15 on the right to health (2013).<sup>8</sup> Awareness of the importance of physical activity and sport surged in Europe following the restrictions of movement imposed during the COVID-19 pandemic.<sup>9</sup> The Council of Europe now also considers the right to access sport instrumental in the exercise of the rights to ‘health, education [and] culture’ in the revised European Sports Charter (2021).<sup>10</sup>

I have two interconnected aims in this paper. I demonstrate (i) that the connection between the human right to access sport and the right to health is recent at the international stage and in the Council of Europe and (ii) that a fairly detailed framework of positive obligations relating to the right to access sport has emerged. While negative obligations require states to prevent from interfering with individuals, positive obligations require steps to ensure human rights enjoyment.<sup>11</sup> Positive obligations are traditionally more controversial because they are often perceived as having a too far-reaching impact on the way in which governments allocate their scarce resources. But, I argue that the physical and mental consequences of an overly inactive population tax public health systems too much in the Council of Europe. People in Europe are increasingly living sedentary lives due to convenient transport options, increased use of technology for work and leisure and increased academic demands.<sup>12</sup> While collecting data on levels of physical activity is notoriously difficult,<sup>13</sup> progress in increased activity in Europe is too slow according to recent estimates from the World Health Organization (WHO).<sup>14</sup> Adult people in Cyprus, Germany and Portugal are the least active in the Council of Europe.<sup>15</sup> 40 per cent of German men and 51 per cent of Cypriote women do not get 150 minutes of moderate-intensity aerobic physical activity or at least 75 minutes of vigorous-intensity aerobic physical activity per week. This has inadvertently made physical activity more of an option than a way of life. Participation in sport has, therefore, never been as important as it is today. But access is undervalued.

For this paper, I studied UN and Council of Europe legal instruments that contain a right to participate in sport. Their drafting history was considered. Furthermore, I analyzed references to the right to access sport in General Recommendations/Comments and Concluding Observations (addressed to individual state parties) of the treaty bodies that monitor CEDAW and CRPD.<sup>16</sup> 39 General Recommendations and 631 Concluding Observations of the CEDAW Committee and 8 General Comments and 135 Concluding Observations of the CRPD Committee were studied. Finally, I analyzed references in the 27 General Comments and 620 Concluding Observations of the CRC Committee, and 26 General Comments and 540 Concluding Observations of the Committee that monitors the International Covenant on Economic, Social and Cultural Rights (CESCR) (1966).<sup>17</sup> While the CRC does not explicitly contain a right to participate in sport, the CRC Committee has interpreted access to sport as a

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<sup>8</sup> Convention on the Rights of the Child, G.A. Res. 44/25 (1989); CRC Committee, General Comment No. 15, UN. Doc. CRC/C/GC/15 (2013), para. 59.

<sup>9</sup> L. Zambelli and F. Pegreff, “EU Health Co-Design Policies to Counteract the Covid-19 Pandemic Effect Promoting Physical Activity,” *International Journal of Risk and Safety in Medicine* (2022), p. 138.

<sup>10</sup> Committee of Ministers (CM), Revised European Sports Charter, CM/Rec(2021)5 (2021), art. 10(1) (emphasis added).

<sup>11</sup> S. Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: Oxford University Press 2008), 1.

<sup>12</sup> WHO, *Physical Activity Strategy for the WHO European Region 2016–2025* (Geneva: WHO, 2016), p. 3.

<sup>13</sup> WHO, *WHO Guidelines on Physical Activity and Sedentary Behaviour* (Geneva: WHO, 2020), p. 22.

<sup>14</sup> WHO, *Global Status Report on Physical Activity 2022 Country Profiles* (Geneva: WHO, 2023).

<sup>15</sup> *Ibid.*, pp. 134, 210 and 346. No data were recorded for Council of Europe member states Albania, Azerbaijan, Iceland, Liechtenstein, Monaco, Montenegro, North Macedonia and San Marino.

<sup>16</sup> The documents were retrieved on 10 June 2024.

<sup>17</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966). The documents were retrieved on 13 October 2023 and updated on 10 June 2024.

derivative right, primarily emanating from children's entitlement to engage in play and recreational activities (article 31 CRC), as articulated in General Comment 17 of 2017.<sup>18</sup> In general human rights law, the provision most relevant is the right to cultural life (article 15(1)(a) CESCR), according to the CESCR Committee.<sup>19</sup> This is an appropriate methodology. Although the treaty bodies are not empowered to make binding interpretations of treaties, their position as the primary monitoring bodies gives their interpretations considerable legal weight.<sup>20</sup> This output of treaty bodies can be considered under the general rule of interpretation of Article 31 of the Vienna Convention of the Law of Treaties.<sup>21</sup> The General Comments are considerably stronger while the weight of Concluding Observations depends on the specificity and 'concordance' with other Concluding Observations or General Comments.<sup>22</sup>

The structure of this paper is as follows. I first introduce how the right to access sport is formulated in binding instruments in the UN and the Council of Europe. I explain that CEDAW, CRPD and the Council of Europe's Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (2011) (Istanbul Convention) connect the right to access sport for women and people with disabilities to the rights to cultural life, leisure and education.<sup>23</sup> By extension, the right to access sport for all can be derived from these rights. But, the right to sport for all can also be derived from the right to health. I discuss positive obligations in Europe in the final section of this paper, demonstrating that such obligations, while requiring resources, are ultimately more beneficial than stalling them. I explain the need for special incentives for private sector support as well as the application of the UN Guiding Principles on Business and Human Rights to sport providers.<sup>24</sup> Additionally, I examine the attributes of the right to access sport for all through the European Sports Charter and an analysis of the output of the UN treaty bodies.

### **Stand-alone right in binding instruments**

After introducing the emergence of the 'sport for all' movement in the 1960s, I discuss the right to participate in sport in the following binding instruments: CEDAW, CRPD and the Istanbul Convention.

#### *'Sport for all' movement*

Modern sport developed from traditional games and activities, which often featured prize money or goods.<sup>25</sup> At the turn of the 20<sup>th</sup> century, sport was decisively amateurish, with a strong discriminatory dimension.<sup>26</sup> While working classes have in practice always engaged in sport

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<sup>18</sup> CRC Committee, General Comment No. 17, UN. Doc. CRC/C/GC/17 (2017), p. 6.

<sup>19</sup> E.g. CESCR Committee, General Comment No. 21, UN. Doc. E/C.12/GC/21 (2009), para. 13(a).

<sup>20</sup> Cf. N. Peleg, *The Child's Right to Development* (Cambridge: Cambridge University Press 2019), 92.

<sup>21</sup> See further N. Lott, *The Right of the Child to Play* (London/New York: Routledge 2023), 91–96 referring to Art 31(3)(b) Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 and International Law Commission, Draft Conclusion on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, A/CN.4/L/907 (2018), paras. 22 and 175–176.

<sup>22</sup> Lott (see note 21), 96.

<sup>23</sup> Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Council of Europe Treaty Series (CETS) No. 210 (2011), art. 14.

<sup>24</sup> HRC, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc. A/HRC/17/31 (2011).

<sup>25</sup> M. van Bottenburg, "Why are the European and American Sports Worlds so Different? Path-dependence in European and American Sports History," in A. Tomlinson, Ch. Young and R. Hold (eds), *Transformation of Modern Europe: States, Media and Markets 1950-2010* (London/New York: Routledge 2011), p. 214.

<sup>26</sup> B. Kidd and P. Donnelly, "Human Rights in Sports," *International Review for the Sociology of Sport* 35/2 (2000), p. 135.

activities,<sup>27</sup> sport was mainly meant to bring socialization and relaxation to able-bodied men in upper-class heteronormative circles.<sup>28</sup> After the Second World War, sport re-emerged as a discipline oriented on endurance, competition and standardization.<sup>29</sup> While there were few professional athletes, sport was only for the very best amateurs.

The ‘sport for all’ movement reacted to this exclusionary interpretation and framed the right to access sport as a human right for everyone. This movement aimed to legally ‘change people’s hearts and minds’ in order to secure the right to access sport for those who were traditionally not the strongest or best sportmen.<sup>30</sup> Social movements often employ legal frames to give meaning to events or incidents, ultimately shaping experiences and guiding both individual and collective actions.<sup>31</sup> Legal frames involve the explicit utilization of the law and provide a profound source of symbolic resources, discourses and institutionalized scripts.<sup>32</sup> Accordingly, law serves as a language that constantly requires translation from other languages.<sup>33</sup> Vice versa, legal language is translated into the diverse languages that constitute the broader societal context, encompassing domains such as sport, culture, education and health.<sup>34</sup>

The ‘sport for all’ movement emerged in Europe, with the Council of Europe already confirming the frame that sport for all, benefiting as many people as possible, promotes cultural development in 1966.<sup>35</sup> But this movement was global in nature from the start. It overlapped, amongst others, strongly with the US civil rights movement.<sup>36</sup> Sport for all also mirrored communist sport initiatives ‘in their explicit definition of sport as a right of the people and the charge that governments support projects designed to extend access to sport’.<sup>37</sup>

Cuba was, in particular, an ally for the ‘sport for all’ movement.<sup>38</sup> Around the time that many countries reopened relations with Cuba to learn from its more inclusive sporting success, Cuba constitutionalized the right to ‘physical education, sports and recreation’ in 1976 (following in the footsteps of Article 126 of the Constitution of the Soviet Union).<sup>39</sup> After the Cuban revolution of 1959, Fidel Castro — once a promising baseball player himself — had placed ‘extraordinary emphasis on sports’.<sup>40</sup> Castro saw sport as a means to unify people, improve

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<sup>27</sup> J. Walvin, *The People’s Game: The History of Football Revisited* (2nd ed, Edinburgh and London: Mainstream Publishing 2000), p. 1.

<sup>28</sup> HRC (see note 7), para. 50; Kidd and Donnelly (note 26), p. 135.

<sup>29</sup> G. Zarotis and W. Tokarski, “Change of Society Values and the Effects on ‘Sports for All,’” *Journal of Advances in Sports and Physical Education* 3/5 (2020), p. 74

<sup>30</sup> Cf. K. Henrard, “Positive State Obligations Regarding Fundamental Rights an ‘Changing the Hearts and Minds,’” *Erasmus Law Review* 13/3 (2020), p. 2.

<sup>31</sup> D. Snow, E. B. Rochford, S. Worden and R. Benford, “Frame Alignment Processes, Micromobilization and Movement Participation,” *American Sociological Review* 51/4 (1986), p. 464.

<sup>32</sup> N. Pedriana, “From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women’s Movement in the 1960s,” *American Journal of Sociology* 11/6 (2006), pp. 1272–1273

<sup>33</sup> J. White, “Imagining the Law,” in A. Sarat and T. Kearns (eds), *The Amherst Series in Law, Jurisprudence, and Social Thought* (Ann Arbor: University of Michigan Press 1994), p. 55.

<sup>34</sup> H. Schoenfeld, “Mass Incarceration and the Paradox of Prison Conditions Litigation,” *Law and Society Review*, 44/3–4 (2010), p. 735.

<sup>35</sup> CM (1975, see note 4), para. 5; Zarotis et al. (see note 29), 74.

<sup>36</sup> S. Janaka Biyanwila, *Sports and the Global South* (New York: Springer, 2018), p. 285.

<sup>37</sup> A. Yoder, “Sport Policy and Political Regimes in Latin America,” in G. Bravo, R. López de D’Amico and Ch. Parrish (eds), *Sport in Latin America: Policy, Organization and Management* (London/New York: Routledge 2016), p. 71.

<sup>38</sup> See *ibid.*

<sup>39</sup> Art. 126 Constitution of the Soviet Union (1936); Art. 52 Cuban Constitution (1976); A. Di Marco, “Conceptualizing the Right to Sport: Why Should Trivial Participation in Sport Be Regarded as a Human Rights?,” in V. Boillet, S. Weerts and A. Ziegler (eds), *Sports and Human Rights* (Cham: Springer 2018), p. 318.

<sup>40</sup> JM Bunck, “The Politics of Sports in Revolutionary Cuba,” *Cuban Studies* 20 (1990), pp. 111 and 114.

military and labor forces, determine how leisure time should be filled in and use ‘athleticism’ to fuel Cuba’s international prestige.<sup>41</sup> A right to take part in sport was also included in the Portuguese Constitution in 1976 and in the Spanish Constitution in 1978.<sup>42</sup>

A stand-alone right to access sport has also successfully been included explicitly in the Convention on the Elimination of All Forms of Discrimination against Women (1979) (and — more recently — in the CRPD (2006) and the Istanbul Convention (2011)). Before I turn to the discussion of the relevant legal obligations in the remainder of this section, it is useful to stress that (intersectional) gender-based discrimination in sport ‘cannot be divorced from the discrimination they face in society more broadly’.<sup>43</sup>

Sport reflects stereotypes that exist in patriarchal societies.<sup>44</sup> The patriarchy is the privileging of male interests in social relations: it is ‘an invisible but allpervasive, political and socially constructed system of male and masculinist domination’.<sup>45</sup> This concept allows us to ‘connects the dots’ between different tangible and intangible aspects of women’s experiences (including and specifically also the experiences of intersex, transgender women and girls) and connect these experiences to wider social structures and institutions.<sup>46</sup> Women’s right to access sport is impacted due to their disproportionate access to resources (including money and time), caused by the lower value placed on women’s sport, the gender pay gap and a disproportionate share of household responsibilities and care work.<sup>47</sup> Girls already have to do a disproportionate amount of domestic chores, which impacts their access to sport.<sup>48</sup> Chant captured the multifactorial nature of ‘poverty’ in the concept ‘feminisation of poverty’.<sup>49</sup> Other barriers to sport are stereotypes that woman are physically and mentally weak and not able to ‘handle’ sport like man do,<sup>50</sup> constraining the empowerment of women and gender equality.<sup>51</sup> Patriarchal norms sometimes even indicate that women cannot exercise in public spaces.<sup>52</sup>

It is also well-established that the study of patriarchal norms is part of a wider analysis that explores how these norms *intersect* with each other and other dimensions of inequality.<sup>53</sup> People’s disadvantage is composed of multiple and interlocking systems of power. There are many markers of difference that intersect to disproportionately and structurally exclude some people from sport. For example, women with disabilities are disproportionately affected and face

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<sup>41</sup> Ibid., 112.

<sup>42</sup> Di Marco (see note 39), 318; Art. 76 Portuguese Constitution (1976); Art. 43 Spanish Constitution (1978).

<sup>43</sup> HRC, Intersection of Race and Gender Discrimination in Sport, UN Doc. A/HRC/44/26 (2020), para. 7.

<sup>44</sup> CEDAW Committee, General Recommendation No. 36, UN. Doc. CEDAW/C/GC/36 (2017), para. 62; M. Messner, *Taking the Field: Women, Men and Sports* (Minneapolis: University of Minnesota Press, 2002), p. xxii.

<sup>45</sup> J. Grant, “Experience,” in L. Disch and M. Hawkesworth (eds), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press 2016), p. 229.

<sup>46</sup> V. Bryson, *The Futures of Feminism* (Manchester: Manchester University Press, 2021), p. 50.

<sup>47</sup> HRC (see note 43), para. 6; CEDAW Committee (see note 44), para. 62; F. Banda, “Article 10,” in M.A. Freeman, C. Chinkin and B. Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford: Oxford University Press 2012), p. 269.

<sup>48</sup> CRC Committee, General Comment No. 20, UN Doc. CRC/C/GC/20 (2016), para. 27.

<sup>49</sup> S. Chant, “The Feminisation of Poverty and the Feminisation of Anti-poverty Programmes: Room for Revision?,” *Journal of Development Studies* 44 (2008), p. 166.

<sup>50</sup> E. Anderson, “‘I Used to Think Women Were Weak’: Orthodox Masculinity, Gender Segregation, and Sport,” *Sociological Forum* 23/2 (2008), p. 271.

<sup>51</sup> CEDAW Committee (see note 44), para. 62.

<sup>52</sup> HRC (see note 7), para. 72.

<sup>53</sup> K. Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” *University of Chicago Legal Forum* 1 (1989).

heightened risks to not enjoy their right to access sport.<sup>54</sup> The previous paragraph already referred to intersex, transgender women and girls. Other markers than gender, disability and age include, amongst others, ethnicity, sexual orientation, religion, adverse childhood experiences and socio-economic status.

#### *CEDAW and Istanbul Convention*

CEDAW considers the right to access sport in the context of cultural life as well as education. On the one hand, article 13(c) CEDAW stresses that state parties shall take all appropriate measures to eliminate discrimination against women to ensure women's right 'to participate in recreational activities, sport and all aspects of cultural life'. During the negotiations of CEDAW, Guyana originally proposed 'leisure and cultural activities' as an aspect of non-discrimination in employment (article 11 CEDAW) in October 1978.<sup>55</sup> Cuba then requested to explicitly mention sport. It suggested changing the wording to 'recreational activities, sports and all aspects of cultural life'.<sup>56</sup> Cuba's proposed amendment to article 11 CEDAW was adopted, but the connection to employment was removed in November 1978 by the Working Group that drafted CEDAW, making explicit that the right to take part in sport should not only be afforded to formally employed women.<sup>57</sup> On the other hand, article 10(g) CEDAW links sport to the field of education. Article 10(g) CEDAW innovated by setting out that state parties shall take all appropriate measures to eliminate discrimination to ensure that women get the 'same opportunities to participate actively in sport and physical education'. This provision was based on the UN Declaration on the Elimination of Discrimination against Women (1967) which did not refer to sport.<sup>58</sup> The reference to sport was included following another amendment proposed by Cuba. The wording was slightly changed, as Cuba originally proposed to include the 'same opportunities to participate actively in sports, physical education and the enjoyment of these activities'.<sup>59</sup> All the Council of Europe member states have ratified CEDAW and Ireland removed the reservation that it made upon accession to article 13(c),<sup>60</sup> and no Council of Europe member states have made reservations to article 10(g).

The discussed articles in CEDAW served as inspiration for a binding positive obligation on sport in the Council of Europe's Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (2011).<sup>61</sup> Article 14 of this Convention refers to education on issues such as equality between women and men, non-stereotyped gender roles and mutual respect. It requires state parties to include such issues in national curricula and 'in informal educational facilities, *as well as in sport*, cultural and leisure facilities and the media'.<sup>62</sup> This focus is important. Sport sociologist Messner uncovered how stereotyped masculinist perspectives cultivate violence against women in sport through two processes:

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<sup>54</sup> CRPD Committee, General Comment No. 3 UN Doc. CRPD/C/GC/3 (2016), para. 21. See also HRC (see note 43), para 18.

<sup>55</sup> G.A., Draft Convention on the Elimination of Discrimination against Women, UN Doc. A/C.3/33/L.47 (1978), para. 126; B. Rudolf, "Article 13," in Freeman et al. (see note 47), p. 352; L.A. Rehof, *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination against Women* (Leiden: Brill 1993), p. 150;

<sup>56</sup> General Assembly (see note 55), para. 127; Rehof (see note 55), p. 150.

<sup>57</sup> *Ibid.*

<sup>58</sup> Banda (see note 47), p. 257; General Assembly (see note 55), para. 48; G.A. Res. 22/2263 (1967).

<sup>59</sup> Rehof (see note 55), p. 120; G.A., 'Draft Convention on the Elimination of Discrimination against Women. Cuba: Amendment' UN Doc. A/C.3/33/WG.1/CRP.5 (1978).

<sup>60</sup> CEDAW Committee, Combined Fourth and Fifth Periodic Reports of States parties Ireland, UN Doc. CEDAW/C/IRL/4-5 (2003), p. 102.

<sup>61</sup> Katarzyna Sękowska-Kozłowska, "Article 14: Education," in S. De Vido and M. Frulli (eds), *Preventing and Combating Violence Against Women and Domestic Violence: A Commentary on the Istanbul Convention* (Cheltenham: Edward Elgar 2023), p. 239.

<sup>62</sup> (emphasis added).

misogynist language and the suppression of empathy toward women.<sup>63</sup> Regardless, eight Council of Europe member states have not ratified the Istanbul Convention.

#### CRPD

Article 30(5) CRPD specifies that state parties shall take appropriate measures with a view to enabling persons with disabilities to participate on an equal basis with others in ‘recreational, leisure and sporting activities’. This article was inspired by Standard Rule 11 on the Equalization of Opportunities for Persons with Disabilities (1993).<sup>64</sup> Like this rule, Article 30 CRPD considers the right to participate in sport in the context of cultural life and recreation. Article 30 CRPD has the heading ‘participation in cultural life, recreation, leisure and sport’. Article 30(5) CRPD contains various positive obligations. Amongst others, state parties shall take appropriate measures to ensure that people with disabilities get access to sporting, recreational and tourism venues and services (article 30(5)(c) and (e)). Furthermore, this article contains obligations for inclusion in mainstream sports, as well as disability-specific sport. On the one hand, state parties shall ensure that people with disabilities get the opportunity to participate in, organize and develop disability-specific activities. Thereto, article 30(5)(b) stresses that states parties should ‘encourage the provision, on an equal basis with others, of appropriate instruction, training and resources’. In such activities, people with disabilities can compete ‘fairly and safely’.<sup>65</sup> On the other hand, state parties shall ‘encourage and promote the participation... of people with disabilities in mainstream sport activities at all levels’ (article 30(5)(a)).<sup>66</sup> It has often been stressed that shared sport experiences ‘benefit non-disabled people’s understanding of human diversity’.<sup>67</sup> Sport can be beneficial to learn ‘valuable lessons about non-discrimination and inclusivity ... challeng[ing] stereotypes, which helps us to break down barriers in society’.<sup>68</sup> Yet, such consideration need to be nuanced.<sup>69</sup> Discrimination does not stop on the football pitch or stands but is often magnified there requiring specific safeguards.<sup>70</sup>

Article 30(5)(d) CRPD contains an explicit intersectional dimension. It singles out ‘age’ as a marker of difference that intersects with disability. Children with disabilities are a vulnerable group because their self-confidence and independence can be impacted disproportionately due to discrimination during critical developmental stages.<sup>71</sup> Article 30(5)(d) sets out that state parties shall take appropriate measures ‘to ensure that children with disabilities have equal access with other children to participate in play, recreation, leisure and sporting activities, including those activities in the school system’. Equal opportunities to participate in

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<sup>63</sup> Messner (see note 44), p. 60.

<sup>64</sup> G.A., Standard Rules on the Equalization of Opportunities for Persons with Disabilities, UN Doc. A/RES/48/96 (1993), rule 11; I. Bantekas, P. C. S. Chow, S. Karapapa and E. Polymenopoulou, “Art.30 Participation in Cultural Life, Recreation, Leisure, and Sport,” in I. Bantekas, M. A. Stein and D. Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford: Oxford University Press 2018), p. 912.

<sup>65</sup> In the context of children’s rights: CRC Committee, General Comment No. 9, UN Doc. CRC/C/GC/9 (2006), para. 72.

<sup>66</sup> Ibid.

<sup>67</sup> CM, Recommendation on the Council of Europe Action Plan to Promote the Rights and Full Participation of People with Disabilities in Society 2006-2015, Rec(2006)5 (2006), para. 3.4.1.

<sup>68</sup> Commonwealth Forum of National Human Rights Institutions, “Sport and Human Rights” <https://web.archive.org/web/20200814104240/https://cfnhri.org/human-rights-topics/sport-and-human-rights/>.

<sup>69</sup> Ibid.

<sup>70</sup> HRC (see note 43), paras. 22 and 52; anonymized-FRA.

<sup>71</sup> D. Anderson, “Adolescent Girls’ Involvement in Disability Sport: Implications for Identity Development,” *Journal of Sport and Social Issues* 33/4 (2009), 437–438; 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,” *International Journal of Children's Rights* 29/3 (2021), pp. 765–794.

mainstream and disability-specific sport activities ‘must be viewed as both medium of expression and medium of realizing self-satisfying, quality of life’.<sup>72</sup> State parties should ensure that support people are available, but also that more ‘innovative forms of support’ are established.<sup>73</sup> This can, for example, include the use of digital tools for creating shared sport experiences. All Council of Europe member states bar Liechtenstein have ratified the CRPD.

Specific protection continues to be important as (intersectional) discrimination continues to exist in society as a whole. Sporting activities are not yet accessible on an equal basis to those who suffer from discrimination. The WHO 2022 status report on its Global Action Plan on Physical Activity (2018–2030) — which takes a human rights-based and intersectional approach — clearly outlines a gender gap in the Council of Europe member states.<sup>74</sup> In most member states women are less physically active. The status report furthermore highlights the lack of data collection on sport for people with disabilities.<sup>75</sup> The positive obligations outlined in article 30(5) CRPD are far from reality. This is not in line with the comprehensive vision of inclusion of the UN Educational, Scientific and Cultural Organization (UNESCO) Kazan Action Plan (2017).<sup>76</sup> This plan links sport policy to the UN sustainable development goals (2015), which also emphasize that sport can promote tolerance and respect.<sup>77</sup> Eliminating direct and indirect (intersectional) discrimination requires temporary special measures accelerating de facto equality to make sport accessible.<sup>78</sup> Temporary special measures can ‘accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour’ in the areas of sport.<sup>79</sup> Such measures are needed as long as necessary to provide available, accessible, acceptable and qualitative sport for all.

### **Do the rights to cultural life, recreation, education and health include a right to sport?**

The right to access sport for all is not generally accepted. During the preparation of the 2021 revision of the influential European Sports Charter, scholar di Marco said that the right to sport does not exist.<sup>80</sup> Similarly, during the negotiations of the CRPD, the European Union emphasized that there is no right to sport.<sup>81</sup> However, the right to access to sport for all is fairly established in the UN as well as the Council of Europe. Even the Olympic Charter itself underlines that ‘the practice of sport is a human right’ since 1996.<sup>82</sup> This section explains that this right has most notably been connected to the rights to cultural life, leisure and education, just as in the CEDAW, CRPD and the Istanbul Convention. In addition, the right to access sport is also increasingly being linked to everyone’s right to health.

First, the right to access sport is inherently linked to the right to cultural life in CEDAW, CRPD and the Istanbul Convention. It has been explained above that ‘Article 13(g) CEDAW refers to ‘recreational activities, *sports* and all aspects of *cultural life*’, while Article 14 Istanbul Convention requires state parties to include issues such as equality between women and men,

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<sup>72</sup> CRC Committee (note 65), para. 28.

<sup>73</sup> CRPD Committee, General Comment No. 5, UN Doc. CRPD/C/GC/5 (2017), paras. 76 and 94.

<sup>74</sup> WHO (see note 14).

<sup>75</sup> *Ibid.*, xi.

<sup>76</sup> UNESCO, Kazan Action Plan (2017), policy area I.

<sup>77</sup> G.A., Transforming Our World: the 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1 (2015), para. 37.

<sup>78</sup> HRC (see note 43), para. 20; art 3(1) CEDAW; art 5(4) CRPD.

<sup>79</sup> E.g. CEDAW Committee, General Recommendation No. 25, UN Doc A/59/38 (2004), para 38.

<sup>80</sup> Council of Europe Enlarged Partial Agreement on Sport (EPAS), Seminar on Human Rights in Sports Report, EPAS(2019)76 (2019), p. 10.

<sup>81</sup> Bantekas et al. (see note 64), p. 909.

<sup>82</sup> International Olympic Committee (IOC), *Olympic Charter* (Geneva: IOC, 1996), fundamental principle 8; IOC, *Olympic Charter* (Geneva: IOC, 2023), fundamental principles 4 and 6. The Olympic Charter is binding on ‘any person or organization belonging... to the Olympic Movement’ IOC (2023, *Ibid.*), Rule 1.4. The autonomy of sport is further discussed in the last section of this paper.



amongst others, in ‘*sport, cultural and leisure facilities*’.<sup>83</sup> Article 30 CRPD has the heading ‘participation in *cultural life, recreation, leisure and sport*’.<sup>84</sup> The CRPD Committee stresses furthermore in its General Comment 5 on living independently and being included in the community (2017) that ‘accessible ... sports facilities, serve both social and ‘*cultural purposes*’.<sup>85</sup> The connection between sport and access to cultural life finds its roots in the activism of the ‘sport for all’ movement that emerged alongside the wave of pop art, pop music and other manifestations of popular culture, signalling the integration of popular culture into the domain of sport in the 1960s.<sup>86</sup> Can a broader right to access sport for all also be derived from the right to cultural life? The former UN High Commissioner for Human Rights Al Hussein and Davis answer affirmatively noting that the right to access sport is ‘grounded in’ this broader right in their recommendation to the International Olympic Committee.<sup>87</sup> The CESCR Committee also emphasized that the right to take part in cultural life (article 15(1)(a) CESCR) ‘encompasses, inter alia [...] sport and games’ in its General Comment 21 (2009).<sup>88</sup> It did this again in its first references to the right to participate in sport in Concluding Observations issued to France and Palestine in 2023. Amongst others, the Committee underscored the significance of ensuring that companies awarded public contracts in Palestine do not unjustly raise prices, thus negatively impacting individuals’ ability to afford ‘cultural activities, including sports’.<sup>89</sup> According to the CESCR Committee, the expression ‘cultural life’ is ‘an explicit reference to culture as a living process’.<sup>90</sup> Sport is a specific part of the heritage of various communities and groups. Greece has ‘pangratioti’ and the Netherlands has ‘korfbal’. At the same time, sport is a dynamic and evolving concept. Nowadays, sport’s power to express identity online is stronger than ever.<sup>91</sup>

Second, the right to access sport is connected to recreational activities in CEDAW, CRPD and the Istanbul Convention. It has been explained above that ‘Article 13(g) CEDAW refers to ‘*recreational activities, sports and all aspects of cultural life*’, while Article 14 Istanbul Convention requires state parties to include issues such as equality between women and men, amongst others, in ‘*sport, cultural and leisure facilities*’.<sup>92</sup> Article 30 CRPD has the heading ‘participation in cultural life, *recreation, leisure and sport*’.<sup>93</sup> The CRC Committee also explicitly considers the right to access sport as an element of children’s right to engage in play and recreational activities (article 31 CRC) in its General Comment 17.<sup>94</sup> From its inception, the ‘sport for all’ movement considered sporting as a means of pleasure, regardless of good results or high performance.<sup>95</sup> There are no rules, apart from the rule that exploring, experimenting and actively participating are encouraged. Can a broader right to access sport for all be derived from the right to recreation or leisure? This position is reflected in the non-binding UNESCO International Charter of Physical Education and Sport of 1978, which

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<sup>83</sup> (emphasis added).

<sup>84</sup> (emphasis added).

<sup>85</sup> CRPD Committee (see note 73), para 39 (emphasis added).

<sup>86</sup> B. Vanreusel, “Sport is Not for All: Toward a Renewed Future of ‘Sport for All’ as a Right,” in Y. Vanden Auweele, E. Cook and J. Parry (eds), *Ethics and Governance in Sport* (London/New York: Routledge 2016), p. 129.

<sup>87</sup> Z.R. Al Hussein and R. Davis, “Recommendations for an IOC Human Rights Strategy, Independent Expert Report” (2020), p. 16.

<sup>88</sup> Art 15(1)(a) CESCR; CESCR Committee (see note 19), para. 13(a).

<sup>89</sup> CESCR Committee, Concluding Observations: Palestine, UN Doc. E/C.12/PSE/CO/1, para. 14. See also CESCR Committee, Concluding Observations: France, UN Doc. E/C.12/FRA/CO/5 (2023), para. 61(a); anonymized-forthcomingb.

<sup>90</sup> CESCR Committee (see note 88), para 11.

<sup>91</sup> V. Ehrlén and M. Villi, “‘I Shared the Joy’: Sport-Related Social Support and Communitarity on Instagram,” *Visual Studies* 35/2–3 (2020), 260.

<sup>92</sup> (emphasis added)

<sup>93</sup> (emphasis added)

<sup>94</sup> CRC Committee (see note 18), p. 6.

<sup>95</sup> Zarotis et al. (see note 29), p. 75; Vanreusel (see note 86), p. 129.

explains that sport provides ‘wholesome leisure’.<sup>96</sup> The right to leisure is also included in article 7(d) CDESCR, but this article considers this right exclusively in the context of employment relations.

Third, the rights to access sport and education are inherently linked in CEDAW and the Istanbul Convention. It has been explained above that article 10(g) CEDAW sets out that women should get the same opportunities to participate actively in sport and physical education, while article 14 Istanbul Convention is titled ‘education’. While the CRC Committee’s General Comment 1 on education (2001) does not refer to access to sport,<sup>97</sup> the CRC Committee has often emphasized that the right to education under article 29(1)(a) CRC entails sport.<sup>98</sup> The foundation for sport practice is built in youth.<sup>99</sup> More broadly speaking, everyone has a right to education under Article 13 CDESCR.<sup>100</sup> Education is a means to pursue self-realization and expression.<sup>101</sup> Arguably, the UNESCO Charter on Physical Education and Sport of 1978 makes this connection most clear. This Charter already explicated 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’.<sup>102</sup> The 2015 update explains that ‘every human being has a fundamental right to physical education, physical activity and sport without discrimination’.<sup>103</sup>

Enjoying culture, leisure and recreational activities and education through sport help to preserve health.<sup>104</sup> Yet, a more direct connection between the right to access sport and the right to health is not embedded in any of the international human rights conventions. While well-being and quality of life have always been central to the ‘sport for all’ movement, health was initially also not its central focus.<sup>105</sup> Nevertheless, two Charters of the 1970s already alluded to the connection between sport and health benefits. The Council of Europe’s Sports for All Charter (1975) framed sport first and foremost as ‘an aspect of socio-cultural development’ but noted that it shall be related to ‘education, *health*, social service, town and country planning, conservation, the arts and leisure services’.<sup>106</sup> Similarly, the UNESCO Charter of 1978 emphasized that sport was ‘an essential dimension of education and culture’ but referred to the advantages of sport for the ‘maintenance and improvement of health’, ‘physical well-being’ and ‘well-balanced development of the human being’.<sup>107</sup>

Nowadays there is more recognition that sport (especially in groups) — above other forms of physical activity — plays an essential role in health, reducing symptoms of depression and anxiety and enhancing well-being and cognitive functioning.<sup>108</sup> It also plays an important role

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<sup>96</sup> UNESCO, International Charter on Physical Education and Sport, SHS/2012/PI/H/1 REV. (1978), art. 2.2.

<sup>97</sup> CRC Committee, General Comment 1 UN Doc. CRC/GC/2001/1 (2001).

<sup>98</sup> E.g. CRC Committee (see note 18), para. 27; CRC Committee, Concluding Observations: Greece, UN Doc. CRC/C/15/Add.170 (2002), para. 67(f); CRC Committee, Concluding Observations: Albania, UN Doc. CRC/C/ALB/CO/5-6 (2023), para. 38(f). See Masdeu Yelamos et al. (see note 71).

<sup>99</sup> A.-N. Chaker, *Étude des Législations Nationales Relatives Au Sport en Europe* (Strasbourg: Éditions du Conseil de l’Europe 1999), p. 58.

<sup>100</sup> CDESCR Committee, *Report on the Sixth Session*, UN Doc. E/1992/23 and E/C.12/1991/4 (Nov. 24 – Dec. 13, 1991), p. 58

<sup>101</sup> Bantekas et al. (see note 64), p. 874.

<sup>102</sup> UNESCO (see note 96). Note the androcentric bias in this provision.

<sup>103</sup> UNESCO, International Charter on Physical Education, Physical Activity and Sport, SHS/2015/PI/H/14 REV. (2015), art. 1.1.

<sup>104</sup> Rudolf (see note 55), p. 352.

<sup>105</sup> Zarotis et al. (see note 29), p. 79.

<sup>106</sup> CM (1975, see note 4), arts. 1 and 3 (emphasis added). See also CM (2006, see note 4).

<sup>107</sup> UNESCO (see note 96), preamble and 2.

<sup>108</sup> HRC (see note 7), para. 10; P. Jansen and K. Dahmen-Zimmer, “Effects of Cognitive, Motor, and Karate Training on Cognitive Functioning and Emotional Well-Being of Elderly People,” *Frontiers in Psychology* 40 (2012), 6; M. Hamer, E. Stamatakis and A. Steptoe, “Dose-response Relationship

in the prevention and treatment of substance use disorders.<sup>109</sup> In young people, it ensures healthy growth and development.<sup>110</sup> While play is especially (or even more) important in the early years, sport gets more important as children grow up.<sup>111</sup> All these benefits come ‘on top of’ other benefits of all forms of physical activity (such as gardening and walking). It contributes to preventing and managing noncommunicable diseases such as type 2 diabetes, some types of cancer and cardiovascular diseases.<sup>112</sup> It improves levels of high-density cholesterol, reduces blood pressure, and improves blood glucose level control among people with overweight.<sup>113</sup> Of course, a nuanced approach is required when discussing the health benefits of sport. The risks of sport — including doping, drills (especially in schools and the military) and relative energy deficiency in sport (RED-S) — have been studied in both the human rights literature and the sport literature.<sup>114</sup>

In more recent years, the CEDAW and CRC Committees (but not the CRPD and CESCR Committees) have sporadically connected the right to health to sporting in their General Comments and Concluding Observations. To begin, the CEDAW Committee wrote in its General Recommendation 36 on education (2017) that equal opportunities should be available to enjoy the ‘health and psychological benefits’ from engaging in freely chosen areas of physical activity and sport.<sup>115</sup> Previously, the CRC Committee addressed sport in its General Comment 15 on the right to health (2013). It wrote that ‘[i]nformation and life skills education should address a broad range of health issues, including ... sports’.<sup>116</sup> Similarly, this Committee’s General Comment 25 on children’s rights in relation to the digital environment (2021) explains ‘for older children, ... team sports and other outdoor recreational activities can provide health benefits’.<sup>117</sup> Similar references can be found in the Concluding Observations of the CEDAW and CRC Committees. The CEDAW Committee recommended the Marshall Islands to ‘develop a healthy lifestyles strategy that ... focuses on sports and other recreational activities ... to combat diabetes’.<sup>118</sup> The CRC committee has linked access to sport for children with disabilities to health in many Concluding Observations since 2002.<sup>119</sup> It usually considers sport as an element of ‘basic health and welfare’.<sup>120</sup> In 2006, the CRC Committee expressed concerns regarding the relation between the lack of implementation of ‘the right to sport and leisure’ and ‘the increase of child obesity’ in Mexico.<sup>121</sup> In 2010, concerned about adolescent health in Nicaragua, this Committee recommended prioritising promoting healthy lifestyles,

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Between Physical Activity and Mental Health: the Scottish Health Survey,” *British Journal of Sports Medicine* 43/14 (2008), 1112–1113.

<sup>109</sup> UNESCO (see note 76), policy area II.1

<sup>110</sup> Ibid.

<sup>111</sup> Lott (see note 21), 32-34; CRC Committee, General Comment 25, UN Doc CRC/C/GC/25 (2021), para. 109.

<sup>112</sup> UNESCO (see note 76), 3.

<sup>113</sup> HRC (see note 7), para. 8.

<sup>114</sup> E.g. Ibid, para. 11; P. Leggat and D.R. Smith, “Military Training and Musculoskeletal Disorders,” *Journal of Musculoskeletal Pain* 15 (2007); P. Raimondo and L. Zambelli, *Diritto delle Attività Motorie e Sportive* (Bologna: Bologna University Press 2022) App. 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,” *Edizione Minerva Medica* 181/12 (2022).

<sup>115</sup> CEDAW Committee (see note 44), para. 62.

<sup>116</sup> CRC Committee (see note 8), para. 59.

<sup>117</sup> CRC Committee (note 111), para. 109.

<sup>118</sup> CEDAW Committee, Concluding Observations: Marshall Island, UN Doc. CEDAW/C/MHL/CO/1–3 (2018), para. 39b.

<sup>119</sup> E.g. CRC Committee, Concluding Observations: The Netherlands Antilles, UN Doc. CRC/C/15/Add.186 (2002), para. 47(b).

<sup>120</sup> E.g. Ibid.; CRC Committee, Concluding Observations: Belgium, UN Doc. CRC/C/BEL/CO/5–6 (2019), para. 30(b).

<sup>121</sup> CRC Committee, Concluding Observations: Mexico, UN Doc. CRC/C/MEX/CO/3 (2006), para. 58.

including leisure and sport activities.<sup>122</sup> It also noted with appreciation ‘the promotion of physical health through healthy food and sports activities’ for all children in Palau in 2018.<sup>123</sup> In 2023, the CRC Committee noted that ‘mental health programmes ... should also include the adults surrounding children, such as their ... sports coaches’ in Liechtenstein.<sup>124</sup>

Other UN bodies have also referred to the role of sport in the promotion of health over the years.<sup>125</sup> Notably, the Human Rights Council considered physical activity and sport ‘among all segments of [states’] population’ as factors contributing to the protection and promotion of the right to health in 2014.<sup>126</sup> This body also specifically requested the Special Rapporteur on health to study ‘sport and healthy lifestyles as contributing factors to the right to health’.<sup>127</sup> In the resulting report A/HRC/32/33, the Special Rapporteur name-checked the ‘sport for all’ movement recommending states to ‘take steps to secure participation in sport *for all* and the adoption of healthy lifestyles’.<sup>128</sup> Referring to the CESCR’s General Comment 14 on the right to health (2000), he wrote that this right is ‘not confined to the right to health care’, but also includes ‘a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life’.<sup>129</sup> The Special Rapporteur used the well-established ‘respect, protect and fulfil’ prism to explain state obligations regarding sport and healthy lifestyles and the right to health.<sup>130</sup> The obligation to *respect* requires that states refrain from interfering in the enjoyment of human rights. An obligation arises for state parties to attempt to reduce the extent to which individuals adopt unhealthy or risky lifestyles, even if they cannot directly influence individual behavior.<sup>131</sup> States should, amongst others, promote the right to sport for all, by disseminating educational and awareness-raising information on sport and healthy lifestyles.<sup>132</sup> The obligation to *protect* requires that states ensure that non-state (private) parties do not violate the human rights of individuals. States should, amongst others, supply training and materials on the adoption of rights-based approaches to health in the sporting context to sport providers.<sup>133</sup> Regarding the obligation to *fulfil*, states should take action to ensure that sufficient resources and infrastructure are devoted to enabling people to access and participate in sport and physical activity. Apart from education, it involves national planning and progressive implementation, expansion and improvement of goods, facilities, services and information provision relevant to sport and healthy lifestyles, subject to resource constraints.<sup>134</sup> States must, amongst others foster recognition of factors favoring positive health results, and support people in making informed choices about their health.<sup>135</sup>

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<sup>122</sup> CRC Committee, Concluding Observations: Nicaragua, UN Doc. CRC/C/NIC/CO/4 (2010), para. 65(c). See also CRC Committee, Concluding Observations: Madagascar, UN Doc. CRC/C/MDG/CO/3–4 (2012), para. 52; CRC Committee, Concluding Observations: Republic of Korea, UN Doc. CRC/C/KOR/CO/5–6 (2019), para. 39.

<sup>123</sup> CRC Committee, Concluding Observations: Palau, UN Doc. CRC/C/PLW/CO/2 (2018), para 50.

<sup>124</sup> CRC Committee, Concluding Observations: Liechtenstein, UN Doc. CRC/C/LIE/CO/3–4 (2023), para 32(b).

<sup>125</sup> E.g. G.A., Sport as a Means to Promote Education, Health, Development and Peace, UN Doc A/RES/66/2 (2003), para. 36

<sup>126</sup> HRC, The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health: Sport and Healthy Lifestyles as Contributing Factors, UN Doc. A/HRC/RES/26/18 (2014), para. 3.

<sup>127</sup> *Ibid.*, para. 7.

<sup>128</sup> HRC (see note 7), para. 101(f) (emphasis added).

<sup>129</sup> *Ibid.*, para. 25 referring to CESCR Committee, General Comment No. 14, UN. Doc. E/C.12/2000/4 (2000), para. 4.

<sup>130</sup> UN Economic and Social Council, Report on the Right to Adequate Food as a Human Right submitted by Asbjørn Eide, Special Rapporteur, UN Doc E/CN.4/Sub.2/1987/23 (1987), paras. 67–69.

<sup>131</sup> HRC (see note 7), para. 12 referring to CESCR Committee (see note 129), para 9.

<sup>132</sup> HRC (see note 7), para. 40.

<sup>133</sup> *Ibid.*, para. 20.

<sup>134</sup> *Ibid.*, para. 25.

<sup>135</sup> *Ibid.*, paras. 13, 37 and 40.

Finally, the right to access sport has been linked directly to the right to health in the revised European Sports Charter (2021). In 1992, the European Sports Charter of the Committee of Ministers (CM) was born out of the 1975 Sports for All Charter.<sup>136</sup> Like the Sports for All Charter, the 2021 revision again emphasizes that there is a stand-alone right to access sport for everyone.<sup>137</sup> But, the 2021 revision — further discussed below — also places the right to health at the forefront, noting that the right to access sport is ‘instrumental in the exercise of the rights to *health*, education, culture’.<sup>138</sup> The right to enjoy the highest possible standard of health attainable is embedded in article 11 Revised European Social Charter (1996), which has been ratified by all Council of Europe member states bar Armenia.<sup>139</sup>

### **Positive obligations**

I showed thus far that the right to access sport has traditionally been considered as a derivative of the rights to culture, leisure and education, and that it has more recently also been considered as a derivative of the right to health for all. While more analysis is required below, I also referred already briefly to the positive obligations formulated in article 30(5) CRPD and in report A/HRC/32/33 by the UN Special Rapporteur to health. This section first argues that positive obligations are entirely warranted when considering the right to access sport in the context of health in the Council of Europe. I argue that such obligations entail resources, but that stalling them is more costly. While creating time and space for the right to access sport is *not* limited to ‘directing’ money to sport providers,<sup>140</sup> there need to be ‘special incentives for private sector support’ (as noted by the CEDAW Committee in its Concluding Observations to France at the end of 2023).<sup>141</sup> Any funds provided to sport providers that respect good governance and human rights should — according to the principle of autonomy of sport — be free from disproportionate obligations and external constraints. Yet, this does not mean that autonomy can be used as an excuse to disrespect rights. The UN Guiding Principles on Business and Human Rights are increasingly applied to sport providers (even when they are not-for-profit providers). After explaining this matter, I conclude this section by discussing the attributes of the right to access sport. Thereto, I analyze the positive obligations in the European Sports Charter and the output of the UN treaty bodies. I explain that the Council of Europe institutions and the UN treaty bodies have barely referred to each other’s pronouncements. But this might change in the future.

### *Resource obligations in the context of health*

The Special Rapporteur on health Pūras defended positive obligations relating to the right to access sport forcefully by clarifying that removing barriers to participating in sport, rebukes the ‘troubling tendency’ to view engagement in physical activity as a personal or moral obligation.<sup>142</sup> This perspective tends to portray a sedentary lifestyle as a personal failing that should be overcome through sheer willpower. Pūras acknowledged the presence of ‘social and structural determinants’ that dictate such lifestyles.<sup>143</sup> Social contexts — as Fredman argues — play a pivotal role in shaping the choices available to individuals, limiting their options in pursuing ‘the good’ for themselves.<sup>144</sup> The state, as a medium through which the community operates, ‘creates the conditions for valuable autonomy’ of individuals.<sup>145</sup> States’ inaction can impede

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<sup>136</sup> CM (1975, see note 4), CM (2006 see note 4).

<sup>137</sup> CM (see note 10), art. 10.

<sup>138</sup> *Ibid* (emphasis added).

<sup>139</sup> EPAS (see note 80), p. 10 referring to European Social Charter, 529 U.N.T.S. 89 (1961), art. 11.

<sup>140</sup> Cf. Lott (see note 21), 140.

<sup>141</sup> CEDAW Committee, Concluding Observations: France, UN Doc. CEDAW/C/FRA/CO/9 (2023), para. 40(d) (and 39(c)). See also CEDAW Committee, Concluding Observations: Jamaica, UN Doc. CEDAW/C/JAM/CO/8 (2023), para. 35(d).

<sup>142</sup> HRC (see note 7), para 13.

<sup>143</sup> *Ibid*.

<sup>144</sup> Fredman (see note 11), p. 23.

<sup>145</sup> *Ibid*.

people's freedom as much as state interference can.<sup>146</sup> Consequently, safeguarding individual freedom goes beyond shielding individuals from state interference; it necessitates a 'positive duty on the State' to ensure the provision of various options, public goods, and a framework for flourishing human relationships.<sup>147</sup>

Positive obligations remain more controversial than negative obligations because they are thought to entail a far-reaching impact on how governments spend their resources.<sup>148</sup> Subsidies and funds are required to bring 'cultural goods and services within the reach of all'.<sup>149</sup> As such there are serious questions about 'how far' such rights go. Article 30(5)(b) CRPD — discussed above — explicitly refers to resource requirements and positive obligations. Similarly, Pūras wrote – as also discussed above – that state parties need to facilitate the the use of sporting goods, services, information and facilities.<sup>150</sup> A state might intervene directly, including by providing subsidies, waiving taxation and training and sensitizing personnel at sporting facilities, or financially partner with private or other entities to build facilities to improve availability.<sup>151</sup> As will be discussed below, the UN treaty bodies as well as Article 10(1) revised European Sports Charter also often referred to resources that need to be spent on sport.

But it is increasingly clear that stalling such investments is even more costly in the Council of Europe. Economic development, along with modern conveniences and advancements in transportation and technology, has inadvertently made physical activity more of an option than a way of life there.<sup>152</sup> This, in turn, resulted in extreme healthcare costs and social expenses. Excluded and marginalized people, particularly those facing intersecting forms of discrimination, are disproportionately impacted. The economic burden of physical inactivity is significant. While positive obligations have a budgetary impact (and increased participation in sport increases the risk to sport injuries and related costs), such obligations seem not unreasonable in the Council of Europe. WHO estimates that the Council of Europe member states spend an average of US\$ 338.456.652 GDP at purchasing power parity of direct healthcare costs on new and preventable cases of noncommunicable diseases and mental health issues associated with physical inactivity.<sup>153</sup> Physical inactivity furthermore leads to loss of productivity in the workplace and reduced employability.<sup>154</sup>

These financial resources can and should be re-channeled to prevention. The Kazan Action Plan sets out that there are strong indications that investment in sport and physical activity generates a competitive return on investment (within one to two years).<sup>155</sup> Therefore, WHO is currently developing methods to provide guidance on the cost-effectiveness of policy actions recommended in its Global Action Plan on Physical Activity.<sup>156</sup> Such guidance should engage with 'the ways in which the State does and should actively infuse a particular kind of morality into the lives of individuals' from a human rights perspective.<sup>157</sup> Before I discuss the positive obligations in the European Sports Charter and analyze the pronouncements of the UN treaty

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<sup>146</sup> Ibid., p. 25.

<sup>147</sup> Ibid., p. 18

<sup>148</sup> Anonymized-2017.

<sup>149</sup> Bantekas et al. (see note 64), p. 876.

<sup>150</sup> HRC (see note 7), para. 31.

<sup>151</sup> Ibid., paras. 31 and 36

<sup>152</sup> WHO (see note 12), p. 3.

<sup>153</sup> WHO (see note 14).

<sup>154</sup> Katarzyna Iskra, "Sport" (2023) <https://web.archive.org/web/20230304065624/https://www.europarl.europa.eu/factsheets/en/sheet/143/sport>.

<sup>155</sup> UNESCO (see note 76), Annex 2 Action 2.

<sup>156</sup> WHO, "Investing in Physical Activity" <https://web.archive.org/web/20240517223538/https://www.who.int/activities/investing-in-physical-activity>

<sup>157</sup> Fredman (see note 11), p. 23.

bodies, it is required to explain the ever-developing principle of the autonomy of sport to understand the role of sport providers.

#### *Autonomy of sport*

Traditionally, the autonomy of sport safeguarded the values inherent in sport.<sup>158</sup> This framework, grounded in the regulations of the International Olympic Committee and supported by the UN and the Council of Europe, protects sport from external interference.<sup>159</sup> The principle of autonomy is based on the notion that sport organisations, as private initiatives, should be free to establish their own rules, policies, and structures without significant constraints from governmental or other external influences.<sup>160</sup> This principle originated from the view of sport as an exclusively non-governmental, non-profit endeavor.<sup>161</sup> In exchange for this autonomy, sport organizations are entrusted with the responsibility of ensuring the application of ‘principles of good governance’.<sup>162</sup> Over time, sport has even come to be seen as a facilitator of equal treatment and non-discrimination, capable of crossing geographic and political borders.<sup>163</sup>

While the principle of sport autonomy continues to be vehemently defended by some actors,<sup>164</sup> its sacrosanct status is increasingly questioned because human rights are not always respected in the worlds of sport. The UN High Commissioner for Human Rights (OHCHR) wrote that ‘[i]n accordance with their obligations under international human rights law, States should ensure that non-State actors, including sport governing bodies, respect human rights in their own regulatory regimes and are accountable for breaches’.<sup>165</sup> The Human Rights Council should ‘consider remaining apprised of these issues, and, in particular, consider a review of the interactions between private and public law in sports, with due regard for the independence of sporting providers and the pre-eminent duty of States to respect, protect and fulfil rights’.<sup>166</sup> The Special Rapporteur on health said that ‘sports are as subject to international human rights law as any other activity undertaken within a State’s jurisdiction’.<sup>167</sup> Similarly, the CM stressed that ‘the sport movement is in principle better placed to organise itself within its own autonomous structures’.<sup>168</sup> But that does not mean, that ‘there are not questions to be asked, particularly when it comes to, for example, protecting the fundamental rights of those involved in sport’.<sup>169</sup>

Such questions are often asked in the context of the heightened (awareness of) commercialization of sport. Some people regret this development as a ‘capitalistic interpretation of a socialistic idea’.<sup>170</sup> But, the reality is more nuanced. Sport providers from

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<sup>158</sup> F. Hendrickx, “Rules of Law in the Business of Sport” in B. Segaert, M. Theeboom, C. Timmerman and B. Vanreusel (eds), *Sports Governance, Development and Corporate Responsibility* (New York/London: Routledge 2012), e-book.

<sup>159</sup> CM (see note 10), preamble; IOC (2023, see note 82), fundamental principle 5; G.A. Res. 75/18 (2020), para. 15.

<sup>160</sup> Hendrickx (see note 158).

<sup>161</sup> CM, Recommendation on the Principle of Autonomy of Sport in Europe, CM/Rec(2011)3 (2011), para. 1.

<sup>162</sup> IOC (2023, see note 82), fundamental principle 5. See also CM, Recommendation on Good Governance in Sport, CM/Rec(2018)12 92018), p. 6.

<sup>163</sup> E.g. G.A. (see note 159), p. 2.

<sup>164</sup> E.g. 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](https://www.tas-cas.org/fileadmin/user_upload/CAS_Human_Rights_in_Sport__November_2023_.pdf), p. 1.

<sup>165</sup> HRC (see note 43), para. 53. See also HRC (see note 7), para. 19.

<sup>166</sup> HRC (see note 43), para. 65.

<sup>167</sup> HRC (see note 7), para. 24.

<sup>168</sup> CM (see note 161), preamble.

<sup>169</sup> EPAS, Human Rights in Sport, MSL16(2020)08rev1, p. 2.

<sup>170</sup> Zarotis et al. (see note 29), p. 80.

the public, market and voluntary sectors co-exist and complement each other nowadays.<sup>171</sup> In addition, Rook and their co-authors aptly explain that ‘while the interventions of States on [sports governing bodies’] operations have been mostly limited to their economic activities, one cannot say that it is only the commercial aspects of sport that pose human rights risks’.<sup>172</sup> Rather, ‘sport, as any other “organ of society”, should respect human rights across the board’.<sup>173</sup>

The OHCHR wrote that the UN Guiding Principles on Business and Human Rights (2011) are a key framework for understanding the nature and scope of state obligations and non-state actor responsibilities with respect to human rights, including in sport.<sup>174</sup> The Kazan Action Plan also stated that the human rights of everyone involved in sport must be protected, respected and fulfilled in accordance with the Guiding Principles.<sup>175</sup> Article 5 European Sports Charter (2021) explains that governments should promote endorsement of the Guiding Principles when engaging with representatives of corporate and professional sectors such as ‘the organisation of activities, events or competitions; the manufacturing of sports goods; sports nutrition; construction of facilities; service provision; and the media’.<sup>176</sup> The Guiding Principles are thus applicable to sport providers, whether they operating for profit or not.

The UN Guiding Principles on Business and Human Rights integrate existing standards under international law and are organized around three pillars: the state’s duty to protect human rights, ‘corporate’ responsibilities to respect human rights and access to remedies for rights abuses.<sup>177</sup> In light of their distinct obligations and responsibilities, ‘states and sporting bodies should establish a process to review rules, regulations, contracts and agreements to ensure their compliance with international human rights norms and standards’.<sup>178</sup> Accordingly, all sport providers need to take specific steps to publicly respect human rights and put in place transparency and due diligence monitoring capacity to assess negative impacts, tracking and responding to reports of discrimination and abuse.<sup>179</sup> They need to ‘know and show’ that human rights are respected.<sup>180</sup>

#### *Positive obligations according to the Committee of Ministers*

This sub-section discusses positive obligations in the European Sports Charter (2021) embedded in CM Recommendation CM/Rec(2021)5. This analysis is presented here separately, because this is a European instrument that contains a ‘stand-alone’ right to access sport for all. Article 10 of this Charter notes that ‘access to sport for all is considered to be a fundamental right’.

The CM expanded positive obligations relating to the right to access sport substantially in the 2021 revision of the European Sports Charter. A major goal of this revision was to provide ‘further guidance on how to advocate the right to access to physical activity and sport for all’.<sup>181</sup> It was the explicit ambition to strengthen the “‘right to sport” as an entitlement’ and ‘a standard

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<sup>171</sup> J. Skinner, D. Zakus and J. Cowell, “Development through Sport: Building Social Capital in Disadvantaged Communities,” *Sport Management Review* 11 (2008), p. 272.

<sup>172</sup> W. Rook, Th. Prado, D. Heerdts and S. Jain, “Rules of Law in the Business of Sport” in J. Zajda and Y. Vissing (eds), *Discourses of Globalisation, Human Rights and Sports* (Cham: Springer 2023), p. 104.

<sup>173</sup> *Ibid.*

<sup>174</sup> HRC (see note 43), para. 36 referring to HRC (see note 24).

<sup>175</sup> UNESCO (see note 76), policy area III.

<sup>176</sup> CM (see note 10), art. 5(1)

<sup>177</sup> HRC (see note 24).

<sup>178</sup> HRC (see note 43), para. 58

<sup>179</sup> *Ibid.*, para. 61(a–b).

<sup>180</sup> HRC (see note 24), Commentary to Guiding Principle 15.

<sup>181</sup> EPAS, A European Approach to Sport Policies: The Revision of the European Sports Charter, MSL16(2020)07rev1 (2020), p. 2.



to which member states and sport organisations should look for guidance and inspiration'.<sup>182</sup> There was a level of confusion regarding the extent to which the right to access sport already exists. While a 2019 document of the Enlarged Partial Agreement on Sport (EPAS) (which prepared CM/Rec(2021)5) correctly states that, 'there is a modesty to refer directly to a right to sport justiciable by international treaties',<sup>183</sup> EPAS later erroneously alleged that sport is 'not protected legally as a universal human right nor mentioned in any international declaration or convention'.<sup>184</sup> EPAS then saw a role for the Council of Europe and the European Sports Charter in 'the emergence of a genuine right to sport'.<sup>185</sup> On the day of the adoption of CM/Rec(2021)5, the CM said that it 'strongly emphasises the concept of sport for all' and 'formulates the principle of a "Right to Sport" that everyone should enjoy'.<sup>186</sup>

Article 10(1) revised European Sports Charter now stresses that 'all human beings have an inalienable right of access to sport in a safe environment, both inside and outside school settings, which is essential for their personal development'. This article — like the previous versions of the Charter — goes on to emphasize the principle of non-discrimination in sport (article 10(2)). This provision also formulates positive obligations for everyone according to their ability in a non-discriminatory fashion, including additional measures that need to be taken for people with disabilities and other disadvantaged individuals or groups (article 10(3)(d)). Three other positive obligations link the right to access sport to the right to education in article 10(3)(a, b, c). To safeguard and promote this right, states have to 'ensure that access to the development of physical, intellectual and ethical competencies through physical education and sport is guaranteed, both within the educational system and in other aspects of social life' (article 10(3)(a)). It is necessary to 'make sure that everyone has ample opportunities to benefit from physical education and practice sport, develop physical literacy and physical fitness, acquire fundamental movement skills and attain a level of achievement in sport which corresponds to their abilities' (article 10(3)(b)). Particular emphasis is added to the rights of older people (article 10(3)(c)). While the right to access sport for all in the Council of Europe has never been limited to children of school age, this life-course approach to this right is more explicit in the 2021 revision. A final obligation is added to the 2021 revision. It is necessary to 'guarantee that local sport clubs have a suitable legal status and framework conditions to offer affordable access to sport for all' (article 10(3)(e)).

While CM Recommendations are non-binding, they can guide change and indicate that there is a definite trend toward a right to access sport. Positive obligations in human rights instruments have a 'proactive function' to guide political and executive decision-making.<sup>187</sup> De Vel and Markert — practising lawyers in the Council of Europe — find that '*the main principles* of a state governed by the rule of law contained in the Recommendations are binding for states on the basis of their having acceded to the Council of Europe Statute'.<sup>188</sup> Even former European Court of Human Rights judges Guerra and Tulkens argued that CM Recommendations cannot

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<sup>182</sup> Ibid.

<sup>183</sup> EPAS (see note 80), p. 10.

<sup>184</sup> EPAS (see note 169), p. 7.

<sup>185</sup> Ibid.

<sup>186</sup> Council of Europe, "Committee of Ministers Adopts Recommendation on the Revised European Sports Charter" (October 13, 2021) [https://search.coe.int/directorate\\_of\\_communications/Pages/result\\_details.aspx?ObjectId=0900001680a42814](https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a42814).

<sup>187</sup> Fredman (see note 11), p. 33

<sup>188</sup> G. de Vel and T. Markert, "Importance and Weakness of the Council of Europe Conventions and the Recommendations addressed by the Committee of Ministers to Member States," in B. Haller, H.C. Krüger and H. Petzold (eds), *Law in Greater Europe: Towards a Common Legal Area* (The Hague: Kluwer 2000), pp. 352–353 (emphasis added) referring to Statute of the Council of Europe, CETS No.001 (1949), arts. 15 and 1(a–b).

be reduced to non-binding soft law.<sup>189</sup> CM Recommendations are not entirely without obligation due to their democratic nature. The key element in determining how hard positive obligations in soft law instruments are is considering whether they are the result of democratic choices which aspire full and equal participation.<sup>190</sup> The revised European Sports Charter was adopted unanimously during the CM's 1414th meeting in 2021 without debate. One delegation made an interpretative statement and another delegation disassociated themselves from one article of the Recommendation.<sup>191</sup> We do not know until 2032 whether the two delegations targeted article 10 of the Charter, due to the confidential nature of the meeting records. Yet, unanimity has never been required to determine a definite trend toward a right in the Council of Europe, neither for conventions nor for CM Recommendations.<sup>192</sup> Another element speaking for such a trend is that another democratically controlled body, the Council of Europe's Parliamentary Assembly, said in a 2017 resolution that 'sport is perceived as a fundamental right of everyone' and 'everyone should have equal right to engage in physical activity and sport'.<sup>193</sup> It has done so with 120 votes in favor, no votes against, and four abstentions. The main question is whether the observed trend has already crystallized. From a top-down perspective, the length of the process seems to be important.<sup>194</sup> It may be argued that the time has come because the Sports for All Charter — upon which the European Sports Charter is based — already stressed five decades ago that 'every individual shall have the right to participate in sport'. From a more conservative point of view, it can be argued that there has not been sufficient interaction with binding instruments — the CEDAW, CRPD and even the Istanbul Convention — to conclude that the soft law character of the Charter has been altered.<sup>195</sup> While EPAS made some limited references to the Istanbul Convention,<sup>196</sup> the CM and EPAS have barely referred to the sport provisions in CEDAW, CRPD and the output of the UN treaty bodies. The following sub-section contains pronouncements of UN treaty bodies that are relevant and can be used to advance the right of access to sport for all (if desired).

#### *Positive obligations according to the UN Treaty bodies*

The relatively extensive positive obligations described in article 30(5) CRPD are fairly recent. The CRPD, adopted in 2006, is the most recent UN core international human rights instrument. Yet, the Committee that monitors CRPD as well as the CEDAW, CRC and CESCR Committees have also formulated various positive sport obligations in their General Comments/Recommendations and Concluding Observations. To structure these obligations, I use the 'availability, accessibility, acceptability and quality' framework, four interrelated and essential elements of the right to health that were formulated by the CESCR Committee in its

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<sup>189</sup> L. López Guerra, "Soft Law y Sus Efectos En El Ambito del Derecho Europeo de los Derechos Humano," *Teoría y Derechos* 11 (2012), 157; F. Tulkens, S. Van Drooghenbroeck and F. Krenc, "Le Soft Law et la Cour Européenne des Droits de l'Homme. Questions de Légitimité et de Méthode," *Revue Trimestrielle des Droits de l'Homme* 91 (2012) referring to *Demir and Baykara v. Turkey*, ECtHR, application no. 34503/97, judgment of November 12, 2008.

<sup>190</sup> López Guerra (see note 189), p. 157. See also Fredman (see note 11), p. 32; *M.C. v. Bulgaria*, European Court of Human Rights (ECtHR), application no. 39272/98, judgment of December 4, 2003, para. 162.

<sup>191</sup> CM, Synopsis Meeting of October 5, 2021, GR-C(2021)CB5-rev (2021), 5.

<sup>192</sup> *Demir and Baykara v. Turkey* (see note 189), para. 86; *Magyar Helsinki Bizottsag v. Hungary*, ECtHR, application no. 18030/11, judgment of November 8, 2016, para. 145.

<sup>193</sup> European Parliament, Resolution of February 2, 2017 on an Integrated Approach to Sport Policy: Good Governance, Accessibility and Integrity, 2016/2143(INI), para. AC.

<sup>194</sup> *Oliari and others v. Italy*, ECtHR, application nos 18766/11 and 36030/11, judgment of July 21, 2015, 165–166.

<sup>195</sup> See generally A. Boyle and C. Chinkin, *The Making of International Law* (Oxford: Oxford University Press 2007), p. 213.

<sup>196</sup> E.g. EPAS, "Breakfast Roundtable: Focus on Combating Gender-Based Violence in Sport" (March 8, 2023) <https://www.coe.int/en/web/sport/-/breakfast-roundtable-focus-on-combating-gender-based-violence-in-sport>.

General Comment 14 on health.<sup>197</sup> As will be repeated below, special temporary measures are often required.

First, availability refers to ‘functioning public health and health-care facilities, goods and services, as well as programmes, ... available in sufficient quantity within the state party’.<sup>198</sup> It entails the provision of activities, infrastructure, facilities and spaces.<sup>199</sup> This requires targeted and responsive budgeting to include everyone.<sup>200</sup> People tend to practice close to where they live. Therefore, the UN treaty bodies determine that such provisions need to be made throughout the country’s territory, including in rural areas, with reference to the size of the population in each locality.<sup>201</sup>

Second, accessibility entails that ‘health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party.’<sup>202</sup> Accessibility has four overlapping dimensions: non-discrimination, physical, economic and information accessibility.<sup>203</sup> To begin, ‘health facilities, goods and services must be accessible *to all*, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination’.<sup>204</sup> It requires adopting legislation and temporary special measures.<sup>205</sup> In addition, ‘health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups’.<sup>206</sup> It includes adequate access to venues for persons with disabilities.<sup>207</sup> It also entails the obligation to outline steps ‘to develop support services as well as making existing, as well as new, general services inclusive for persons with disabilities’.<sup>208</sup> Third, the UN treaty bodies echo article 10(3)(e) European Sports Charter’s affordability requirement. Facilities, goods and services ‘whether privately or publicly provided’ ‘must be affordable to all’ ‘including socially disadvantaged groups’.<sup>209</sup> Payments have to be ‘based on the principle of equity’, demanding that those who are poor are not disproportionately burdened with health expenses for, amongst others, renting

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<sup>197</sup> CESCR Committee (see note 129), para. 12.

<sup>198</sup> *Ibid.*, para. 12(a).

<sup>199</sup> E.g. CRC Committee (see note 18) title VIII; CEDAW Committee (see note 44), para 53(i); CRC Committee (see note 48), para 75; CRC Committee, Concluding Observations: Finland, UN Doc. CRC/C/FIN/CO/5–6 (2023), para. 37(a); CRPD Committee, General Comment No. 4, UN Doc. CRPD/C/GC/4 (2016), para. 58.

<sup>200</sup> E.g. CEDAW Committee (see note 44), para. 62; CEDAW Committee, Concluding Observations: Serbia, UN Doc. CEDAW/C/SRB/CO/4 (2019), para. 40(c); CRC Committee, Concluding Observations: Republic of Serbia, UN Doc. CRC/C/SRB/CO/1 (2008), para. 64; CRPD Committee, Concluding Observations: France, UN Doc. CRPD/C/FRA/CO/1 (2021), para. 61(b). See also HRC (see note 43), para 52.

<sup>201</sup> E.g. CEDAW Committee (see note 44), para. 63(j); CEDAW Committee (see note 79), para. 38; CRC Committee (2023, see note 199), para 37(a); CRC Committee, Concluding Observations: Yemen, UN Doc. CRC/C/YEM/CO/4 (2014), paras. 73 and 74; CRPD Committee, Concluding Observations: El Salvador, UN Doc. CRPD/C/SLV/CO/2–3 (2019), para. 57.

<sup>202</sup> CESCR Committee (see note 129), para. 12(b).

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.* (added emphasis).

<sup>205</sup> E.g. CRC Committee (see note 18) title VIII; CEDAW Committee (see note 79), para. 38; CRC Committee (2023, see note 199), para. 58. See also HRC (see note 43), para. 54(b); L. Zambelli, “Il Futuro del Welfare Attraverso le Attività Motorie, Tra Rinnovo Degli Impianti e Dei Servizi Sportivi” in L. Dimasi and S. Marzot (eds), *Welfare State: Scenari Futuri e Criticità Irrisolve delle Politiche Sociali e Socio-Sanitarie in Italia* (Bologna: Bologna University Press 2024), p. 67.

<sup>206</sup> CESCR Committee (see note 129), para. 12(b).

<sup>207</sup> E.g. CRPD Committee (see note 73), para 39. See Lott (see note 21), 123–124.

<sup>208</sup> CRPD Committee (see note 73), para 39.

<sup>209</sup> CESCR Committee (see note 129), para. 12(b).

of materials, access to facilities and transport costs.<sup>210</sup> This requires financial support.<sup>211</sup> The ‘feminisation of poverty’ and financial barriers for others facing (intersectional) discrimination thus need to be taken into account. Finally, accessibility includes the right to seek, receive and impart information and ideas concerning health issues.<sup>212</sup> A diversity of age-appropriate communication modes is needed to raise awareness of sport for all and the benefits that it entails, including through the media.<sup>213</sup> Such communications should address and not promote stereotypes.<sup>214</sup>

Third, acceptability means that ‘[a]ll health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned’.<sup>215</sup> For example, ‘indigenous children have access to culturally appropriate services in the areas of ... sports’.<sup>216</sup> Acceptability is ‘temporally subjective’.<sup>217</sup> Yet, cultural stereotypes cannot deny people their right to access sport.<sup>218</sup> Rather, public education campaigns can counter stereotypes.<sup>219</sup> Coverage of women’s participation in sport stereotypically considered to be more ‘masculine’ — such as basketball, weightlifting and boxing — and is also more likely to be accompanied by examples of interconnected gendered and racist commentary.<sup>220</sup> Gender segregation in children’s sport activities needs to be combatted.<sup>221</sup> For children it also involves, age-appropriate sport activities and infrastructure that are not ‘occupied’ by adults.<sup>222</sup> Similarly, ‘fear of and hostility towards adolescents’ in public spaces can inhibit their access to sport.<sup>223</sup> Think for example about sports like skateboarding and parkour.<sup>224</sup>

Finally, ‘health facilities, goods and services must also be scientifically and medically appropriate and of good quality’.<sup>225</sup> Like the European Sports Charter, the CRC Committee emphasizes that sport needs to be played in safe environments.<sup>226</sup> Participants should be protected against smoke and (gender-based) violence (including harassment, exploitation and ill-treatment) in these environments.<sup>227</sup> Criminal legislation and access to effective remedies

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<sup>210</sup> Ibid.

<sup>211</sup> E.g. CRC Committee (see note 8), para. 59; CRPD Committee (see note 75), para. 94. See HRC (see note 43), para. 8;

<sup>212</sup> CESCR Committee (see note 129), para. 12(b).

<sup>213</sup> E.g. CRC Committee (see note 111), para. 51; CRPD Committee (see note 201), para. 57; CEDAW Committee, Suggestions and Recommendations: Belgium, UN Doc. A/51/38 (1996), para. 192. See also HRC (see note 7), para. 40.

<sup>214</sup> E.g. CEDAW Committee (see note 44), paras. 62 and 63(i).

<sup>215</sup> CESCR Committee (see note 129), para. 12(c).

<sup>216</sup> CRC Committee, General Comment No. 11, UN Doc. CRC/C/GC/11 (2009), para. 25.

<sup>217</sup> Lott (see note 21), 125.

<sup>218</sup> Cf. *ibid.*, 126.

<sup>219</sup> E.g. CEDAW Committee (see note 44), para. 62–63(i).

<sup>220</sup> E.g. CEDAW Committee (see note 118), para. 38. See HRC (see note 43), para. 16.

<sup>221</sup> E.g. CRC Committee, Concluding Observations: Sweden, UN Doc. CRC/C/SWE/CO/6–7 (2023), para. 41.

<sup>222</sup> E.g. CRC Committee, Concluding Observations: Ukraine, UN Doc. CRC/C/UKR/CO/3–4 (2011), para. 71.

<sup>223</sup> CRC Committee (see note 48), para. 75.

<sup>224</sup> L. Grace, “Communities of Risk, Identity, Youth and Civil Disobedience: Parkour, Skateboarding, Skywalking as Rebellious Play,” *Proceedings of the 57<sup>th</sup> Hawaii International Conference on System Sciences* (2024), p. 2707.

<sup>225</sup> CESCR Committee (see note 129), para. 12(d).

<sup>226</sup> E.g. CRC Committee (2023, see note 199), para. 37(a).

<sup>227</sup> E.g. CRC Committee (2023, see note 199), para. 23(g); CEDAW Committee, General Comment No. 35, UN Doc. CEDAW/C/GC/35 (2017), para. 20; CEDAW Committee, Concluding Observations: Iceland, UN Doc. CEDAW/C/ISL/CO/9 (2023), para. 36(a); CRC Committee, General Comment No. 13 (2011), UN Doc. CRC/C/GC/13, para. 42(i)(b); CRC Committee, Concluding Observations: Costa Rica,

and reparations need to be established.<sup>228</sup> Sport providers should protect athletes' right to remedy by not restricting their access to justice mechanisms (abusing the principle of autonomy of sport). Skilled medical personnel is required according to General Comment 14 on health.<sup>229</sup> In the sport context, it concerns trained and motivated sport staff.<sup>230</sup> Furthermore, it requires engaging and empowering individuals and communities to actively participate in the development of solutions.<sup>231</sup> Women, people with disabilities, children and others facing (intersectional) discrimination (and their representative organizations) need to be included in law-making, decision-making, planning, design, development, implementation and monitoring.<sup>232</sup> Very young children and some children with disabilities, who are unable to participate in formal consultative processes, should be provided with particular opportunities to express their wishes.<sup>233</sup> Diversity can potentially be beneficial to improve quality. Involving a critical mass of diverse people from all walks of life does not 'automatically' increase viewpoint diversity and the quality of sport.<sup>234</sup> But, it can facilitate informal conversations about varied circumstances and life patterns. Ultimately, the ambition is that such conversations can be internalized by everyone involved in the provision of and participation in sport.

While the treaty bodies have teased out various positive obligations relating to available, accessible, acceptable and qualitative sort, arguably these pronouncements (and their budgetary impact) are still relatively modest. For example, there have been no references to digital developments or menstrual awareness that might advance the right to take part in sport.<sup>235</sup> Regardless, the precise application of these elements also depends on the conditions in each state.<sup>236</sup>

## Conclusion

Counterintuitively, the right to access sport for all has only fairly recently been coupled to the right to health. Since 2013, the UN treaty bodies and the UN Special Rapporteur on health have increasingly acknowledged the role of sport in promoting healthy lifestyles and protecting the right to health. Furthermore, the 2021 European Sports Charter expresses that health is a particular concern to advance the right to take part in sport for all. This new avenue opens up new debates on positive obligations. Positive obligations linked to the right to access sport can be more easily dismissed when considered as a derivative of the rights to cultural life, leisure or education. However, from a health perspective, it needs to be acknowledged that serious investments to realize the right to access sport — which provides a mental and physical break from the stressors of daily life — save healthcare systems in Council of Europe member states

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UN Doc. CRC/C/CRI/CO/5–6 (2020), para. 42; CRC Committee, Concluding Observations: Germany, UN Doc. CRC/C/DEU/CO/3–4 (2022), para 35(a); CRC Committee, Concluding Observations: Estonia, UN Doc. CRC/C/EST/CO/5–7 (2024), para 23(1). See also HRC (see note 43), para. 8.

<sup>228</sup> E.g. CEDAW Committee (see note 227), para. 36(a); CEDAW Committee, Concluding Observations: Albania, UN Doc. (2023), para. 24; CRC Committee, Concluding Observations: Andorra, UN Doc. CRC/C/AND/CO/3–5 (2023), para. 23(f). See also HRC (see note 43), para. 54(d) and 62.

<sup>229</sup> CESCR Committee (see note 129), para. 12(d).

<sup>230</sup> E.g. CRC Committee (see note 18), para. 32; CRC Committee, Concluding Observations: Dominican Republic, UN Doc. CRC/C/DOM/CO/3–5 (2015), para. 59; CRPD Committee, Concluding Observations: Venezuela, CRPD/C/VEN/CO/1 (2022), para 53.

<sup>231</sup> Cf. Lott (see note 21), 126.

<sup>232</sup> E.g. CEDAW Committee (see note 44), para 62; G.A. (see note 64) Rule 11.5. See also HRC (see note 43), para. 60.

<sup>233</sup> CRC Committee, General Comment No. 12, UN Doc CRC/C/GC/12 (2009), para. 115.

<sup>234</sup> Cf. anonymized-forthcoming.

<sup>235</sup> E.g. S. Zipp, S. Sutherland and L de Soysa, "Innovative Approaches to Menstrual Health and Sport for Development," in M. McSweeney, P. Svensson, L. Hayhurst and P. Safai, *Social Innovation, Entrepreneurship, and Sport for Development and Peace* (London/New York: Routledge 2022), e-book; L. Zambelli, "Telemedicina e Attività Motoria. Problematiche di Integrazione tra Servizi Sportivi e Sanitari," *Sanità Pubblica e Privata* 1 (2024), pp. 30–37

<sup>236</sup> CESCR Committee (see note 129), para. 12

more substantive resources. Council of Europe member states should commit to strategic planning at the governmental level and require public as well as private and other providers to adopt policies that are compatible with human rights standards to make sport available, accessible, acceptable and of high quality for all in a non-discriminatory way. Such positive obligations are notably outlined in the CRPD, the European Sports Charter and the General Comments and Concluding Observations of the treaty bodies. Even though these positive obligations are relatively modest, they can make a big difference when implemented diligently.