
SPORTS *and* LAW

Finding a Balance
Between the Game and the Rules



Suzana Kraljić & Cocou Marius Mensah
— editors —



University of Maribor

Faculty of Law

Sports and Law

Finding a Balance Between the Game and the Rules

Editors

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Foreword

SUZANA KRALJIĆ, COCOU MARIUS MENSAH
Editors

The scientific monograph »Sports and Law: Finding a Balance between the Game and the Rules«, represents an important contribution to the development of sports law as an increasingly recognized interdisciplinary field. The scientific monograph brings together authors from various countries (Slovenia, Türkiye, Azerbaijan, United States, Croatia, Slovakia, Bosna and Herzegovina) and offers an in-depth insight into the relationship between sport as a dynamic social phenomenon and law as the system of rules governing it.

The central idea of the scientific monograph is to seek a balance between the spontaneity and competitiveness of sport on the one hand, and formal legal norms on the other. The contributions address a wide range of contemporary issues, from the protection of vulnerable groups of athletes (e.g., children, older adults) and contract law to dispute resolution, the commercialization of sport, and the impact of artificial intelligence. Attention is also devoted to the relationship between *lex sportiva* and national as well as supranational legal systems, including selected questions of protection of human rights in sport.

The scientific monograph covers a broad temporal scope, from historical foundations, including Roman law, to the challenges of the modern digital era. It not only provides analysis but also offers critical reflection on the development and challenges of sports law, while emphasizing the importance of ethical values such as fairness, equality, and fair play. As such, it represents a valuable resource for legal scholars, sports professionals, and the wider public, and opens new perspectives for the further development of this important field.

Foreword

ILKA ŠTUHEC

Alpine skier, two-time World Champion in downhill (2017, 2019), Maribor, May 2026

Sport has always been governed by rules. From the moment a child first kicks a ball, puts on skis, or steps onto a competitive track, an invisible architecture of norms, expectations, and regulations guides every movement, every decision, and every result. For most of my life, I have lived within that architecture, not as a lawyer, but as an athlete who has felt both its weight and, at times, its freedom.

I gladly and proudly accepted the invitation to write these introductory words, as the subject matter, its relevance, and the undeniable need for such a monograph deeply resonated with me. This monograph comes at a time when sport and law intersect with unprecedented urgency. The questions it raises concerning the rights of young athletes, the fairness of disciplinary proceedings and arbitration, and the protection of fundamental human dignity within competitive environments, are not abstract legal dilemmas. They are part of the everyday reality of children, women, and men who devote their bodies, time, and life energy to sport.



Photo:
Laura Švarc.

The authors gathered in this monograph come from different countries and legal systems (Slovenia, Türkiye, Azerbaijan, Slovakia, Croatia, Bosnia and Herzegovina, and the United States), bringing diverse national and international perspectives. They examine sport as it truly is: not merely as a game, but as a complex social and legal institution. From Roman traditions of sport and responsibility to contemporary challenges such as the prevention of the manipulation of sports competitions, the protection of personal data, and children's rights in sport, the monograph addresses questions that are at once academic and deeply human, everyday issues faced by athletes, clubs, and other stakeholders in sport.

It is a great honour for me to write the introduction to this monograph dedicated to sport and law. I sincerely congratulate the editors and the authors, and above all, the athletes, whose experiences give sport its true meaning, something we all value, admire, and cherish.

SOME ASPECTS OF SPORT AND SPORTS INJURIES IN ANCIENT ROME

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The author discusses some of the characteristics of sport in ancient Rome. In addition to recreational sports, he also mentions the spectacles that entertained Roman audiences as well as competitions in Greek athletic disciplines. While there were no major competitions in recreational sports, which mainly included ball games, other sports were marked by intense competition. In particular, chariot races and gladiatorial combats, and probably also athletic competitions, were mass spectacles that attracted huge crowds. In relation to combat sports, the author also discusses the issue of liability for injuries that occurred during competitions and training. In general, Roman lawyers rejected claims for damages if the injury was not caused by a violation of the rules. As long as the competition or training took place according to the rules and at the designated location, it was considered that the perpetrator could not be held liable for damages in the event of injury.

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1 Sport in Roman Antiquity

Although the definition of a notion is the basis of any discussion about it, we must admit that there is no generally accepted definition of sport. The Cambridge dictionary of English defines it as “a game, competition, or activity needing physical effort and skill that is played or done according to rules, for enjoyment and/or as a job” or as “all types of physical activity that people do to keep healthy or for enjoyment”.¹ Webster’s Encyclopedic unabridged dictionary² contains several definitions of sport. According to the most general one sport is “an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing, hunting, fishing, etc.” The Encyclopedia Britannica³ defines sports as “*physical contests pursued for the goals and challenges they entail. Sports are part of every culture past and present, but each culture has its own definition of sports. The most useful definitions are those that clarify the relationship of sports to play, games, and contests*”. Britannica AI defines sports as “physical contests pursued for their inherent goals and challenges”. Determining whether an activity qualifies as a sport often depends on the definition used.⁴

In its Recommendation on the revised European sports charter, the Committee of ministers of the Council of Europe gives the following definition of sport: “*‘Sport’ means all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels*”.⁵ Since the Recommendation excludes non-physical activities from the concept of sport, several non-physical activities claim recognition as so-called *mind sports*.⁶ At this point, we can find an interesting parallel with ancient Rome. There, too, (sports) spectacles included drama (*ludi scaenici*), which, according to this classification, with some effort could be categorized as a mind sport.

¹ Cambridge Dictionary, n.d.

² Random House, 1996.

³ Britannica, n.d.

⁴ It quotes three definitions. Common definition: “*A physical activity engaged in for pleasure. Sociological definition: Institutionalized, structured, and sanctioned competitive activity beyond play. It involves physical exertion and relatively complex athletic skills. Philosophical definition: A game of skill, especially physical skill, with a wide following and institutional stability.*”

⁵ See Article 2, 1, a of the Council of Europe, Committee of Ministers, Recommendation No. R (92) 13 rev on the revised European Sports Charter.

⁶ The SportAccord World Mind Games launched in 2011 is a multi-sport event centered on the gymnasium of the mind, highlighting the great value of the Mind Sports. On the program of the SportAccord World Mind Games are five mind sports: Bridge, Chess, Draughts, Go, Xiangqi. See SportAccord, n.d.

This introductory clarification was necessary to determine whether it is possible to talk about sport in Roman antiquity. Many authors, especially those who only have gladiatorial combats and other spectacles in mind, deny this. Nevertheless, there were a number of physical activities in Roman times whose purpose was not to entertain the masses but to provide recreation and strengthen body and spirit. In modern terminology, such physical activities must be defined as (recreational) sports. In addition to recreational sports, other types of sports also existed in Roman antiquity.

Physical exercise was an important part of education in Rome, in accordance with the principle of *mens sana in corpore sano*.⁷ Young people prepared for a military career by training in horse riding, javelin throwing, swimming, wrestling, etc. In gymnasiums and thermal baths, young men strengthened their bodies and learned discipline and competitiveness. In this respect, we can talk about sport as an essential element of Roman tradition.

2 Ball Games

When discussing Roman sports, we must bear in mind that the need for physical activity in ancient times was different from what it is today. It was largely determined by the fact that in Roman times all work was physical and performed by people or animals, while today most of the heavy work is done by machines. With the exception of young men who wanted to strengthen their bodies and gain skill, and soldiers, who had to maintain their physical condition through physical exercise, it is possible to assume that ordinary people who had to do a lot of physical labor did not have a particular desire for additional physical exercise. Therefore, they participated in sports mainly for fun and for social reasons. Collective and social sports served this purpose in particular.

⁷ See Juven. *Sat.* 10, 356: ... You should pray for a healthy mind in a healthy body (... *orandum est ut sit mens sana in corpore sano*). The maxim was already known to the pre-Socratics. Thales of Miletus is quoted as saying: "What man is happy?" "He who has a healthy body, a resourceful mind and a docile nature." (Lives of the Eminent Philosophers by Diogenes Laërtius, published in the Loeb Classical Library, 1925, I, Thales, 37).

Ball games were the ideal form of such sporting activities.⁸ The fact that no special equipment and, at least at the beginner level, no special skills were required made them accessible to all social classes and ages. Since most ball games did not require physical strength, children could also participate in them.⁹

In fact, it appears that initially ball games were entertainment for children and young people, but over time they spread to adults as well.¹⁰ Ball games brought people of different ages together. One such example describes Petronius:

Meantime in our gala dresses, we began to stroll about, or rather to amuse ourselves by approaching the different groups of ball-players. Amongst these we all of a sudden catch sight of a bald-headed old man in a russet tunic, playing ball amid a troupe of long-haired boys (*videmus senem calvum, tunica vestitum russea, inter pueros capillatos ludentem pila*).¹¹

One of the most accomplished medical researchers of the antiquity Claudius Galenus (129-216 A.D.) recommended ball games to older people as a useful and enjoyable pastime.¹² In addition to socializing and entertainment, ball games also provided a form of recreation that helped people stay in shape. This was probably especially true for wealthier people who otherwise did not engage in much physical activity.

⁸ More on this, see Tanyeri & Tanyeri, 2026.

⁹ Mart. *Epigr.* 14, 47: Retire to a distance, young men; tender age suits me; with the bladder it befits only boys and old men to play (*Ite procul, iuvenes: mitis mihi convenit aetas: / Folle decet pueros ludere, folle senes*); English translation: Martial, *Epigrams*. Mainly based on Bohn's *Classical Library* (1897). Retrieved from: https://www.tertullian.org/fathers/martial_epigrams_00eintro.htm Petron (accessed: February 28, 2026). See also Alf. D. 9, 2, 52, 4. The jurist discusses the question of whether it is possible to claim compensation from someone who, while playing ball, pushed a little slave boy who wanted to catch the ball, causing him to fall and break his leg.

¹⁰ See Plin. *Epist.* 3, 1, 8: ... When he is told that the bathing hour has come - which is the ninth hour in winter and the eighth in summer - he takes a walk naked in the sun, if there is no wind. Then he plays at ball for a long spell (*deinde movetur pila vehementer et diu*), throwing himself heartily into the game, for it is by means of this kind of active exercise that he battles with old age (*exercitationis genere pugnat cum senectute*). Translated by Firth, J. B. (1900). Retrieved from: <https://www.attalus.org/pliny/ep3.html> (accessed: February 25, 2026). Pliny speaks about the Roman senator and consul Titus Vestricius Spurinna (c. 24 – after 105 AD). See also Sidonius Appollinaris, *Epist.* 1.7, 8: ... old fellows play ball and young fellows hazard (... *student pilae senes aleae iuvenes*).

¹¹ Petron. *Satyr.* 5, 27. English translation: Allison, A. R. (1930). Retrieved from: <https://www.sacred-texts.com/cla/petro/satyr/sat06.htm> (accessed: February 25, 2026).

¹² See Claudii Galeni *librum de parvae pilae exercitio ad codicem Laurentiani Parisini Marciani auctoritatem edidit Johannes Marquardt*, Gustroviae apud Opitzium, 1879. Bilingual edition: Galen Hygiene. Volume II: books 5-6. Thrasybulus on Exercise With a Small Ball, edited by Johnston, 2018. For the main points of Galen's views see Ball Games in Ancient Rome, p. 27.

A good example of this is Emperor Augustus, about whom Suetonius writes:

Immediately after the civil war he gave up exercise with horses and arms in the *Campus Martius*, at first turning to pass-ball and balloon-ball, but soon confining himself to riding or taking a walk, ending the latter by running and leaping, wrapped in a mantle or a blanket.¹³

Ball games were widespread. They were played more regularly and systematically in the Field of Mars and in areas designated for playing ball known as *sphaeristeria*¹⁴ (ball-courts), which were prepared for this purpose in villas and public baths.¹⁵ Playing on the public sport ground was considered a right of Roman citizens. Anyone that prevented someone from doing so could be sued with the action for injury (*actio iniuriarum*).¹⁶

It can be assumed that people, especially children, mostly played with the ball elsewhere (children perhaps even anywhere), e.g., on the city streets,¹⁷ in the fields,¹⁸ etc. Especially playing in the streets could be much to the annoyance of the passersby. Sometimes it was disruptive and even dangerous. From Ulpian's fragment, we can get a sense of the problems that could arise from playing with a ball in the street:

Further, Mela writes that, when some people were playing with a ball, one of them hit it hard and it knocked the hands of a barber with the result that the throat of a slave whom the barber was shaving was cut by the jerking of the razor. In which of the parties does the fault lie? For it is he who is liable under the *lex Aquilia*. Proculus says the blame is the barber's, and surely, if he was doing shaving in a place where people customarily played games (*ex consuetudine ludebatur*) or where

¹³ Suet. Aug. 83: *Exercitationes campestres equorum et armorum statim post civilia bella omisit et ad pilam primo folliculumque transiit mox: nihil aliud quam vectabatur et deambulabat, ita ut in extremis spatiis, subsultim decurreret segestria vel lodicula involutus* ... English translation: https://droitromain.univ-grenoble-alpes.fr/Anglica/Suetonius2_engl.gr.htm (accessed: February 25, 2026).

¹⁴ See Plin. *Epist.* 2, 17, 12; 5, 6, 27. See also Suet, *Vesp.* 20. For details, see Mathieu, 2021. See also Gallus, pp. 406 s.

¹⁵ See e.g., Sen. *Epist.* 6, 56, 2.

¹⁶ Ulp. D. 43, 8, 2, 9.

¹⁷ See e.g., Plaut. *Curculio* 2, 3, 17: And then those servants of your dainty townsmen, who are playing at catch-ball in the road, both throwers and catchers, all of them I'll pitch under foot (*tum isti qui ludunt datatim servi scurrarum in via, et datores et factores omnis subdam sub solum*). English translation by Riley, H. Z. Retrieved from: <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0099%3Aact%3D2%3Ascene%3D3> (accessed: February 25, 2026).

¹⁸ See e.g., Hor. *Serm.* 1, 6, 126: I flee the field and the ball game (... *fugio campum lusumque trigonem*).

there was much going to and for, the blame will be imputed to him; but it is no bad point in reply that if someone entrusts himself to a barber who has his chair in a dangerous place he has only himself to blame for his own misfortune.¹⁹

From this fragment, we can learn that playing ball in the street was something usual, as was common practice that the barber was shaving his clients on the street and not in his dark and stuffy shop. This is probably the main reason why Ulpian had so much understanding for the barber who while shaving on the street, could not completely avoid the dangers of a thrown ball or a passerby bumping into his hand. Ulpian's words that a slave who entrusted himself to a barber who was doing his work on the street should blame himself if something happened to him are therefore not surprising. The client saw or could have seen the danger and, in a way, assumed the risk. It also should be pointed out that before discussing the case, the question, why the slave went to this particular barber, should be answered first. It is not certain that this was his and not his master's decision. It is conceivable that the master also decided when the slave had to go to the barber.

Ball games were popular among all classes of Roman society. Many Romans had the same attitude towards them and devoted themselves to ball games with the same enthusiasm that we can see among modern-day soccer fans.²⁰ In Rome, participating actively in ball games was something completely normal for anyone. It was not at all improper when a consul, or a general exercised his body and mind with the game of ball or other kinds of gymnastics.²¹ One of the rare exceptions in this regard seems to have been Cicero:

How then can I justly be blamed or censured, if it shall be found that I have devoted to literature a portion of my leisure hours no longer than others without blame devote to the pursuit of material gain, to the

¹⁹ Ulp. D. 9, 2, 11 pr.: *Item Mela scribit, si, cum pila quidam luderent, vehementius quis pila percussa in tonsoris manus eam deiecerit et sic servi, quem tonsor habebat, gula sit praecisa adiecto cultello: in quocumque eorum culpa sit, eum lege Aquilia teneri. Proculus in tonsore esse culpam: et sane si ibi tondebat, ubi ex consuetudine ludebatur vel ubi transitus frequens erat, est quod ei imputetur: quamvis nec illud male dicatur, si in loco periculoso sellam habenti tonsori se quis commiserit, ipsum de se queri debere.* See also fn. 96. English translation of Digest fragments in this article: The Digest of Justinian. Translation edited by Watson, A. More on this text, see Gamauf, 2014, pp. 301 seq.; Wacke, 1991, p. 363 s.

²⁰ See Sidonius Appollinaris, *Epist.* 2, 2, 15; 5, 17, 6 (... you know that book and ball are my twin companions); 8, 11, 8 (... Hazard was a weariness, the ball game a delight). The English translation Sidonius Apollinaris, *The Letters of Sidonius*, translated by Ormonde Maddock Dalton (1866-1945), Clarendon Press, Oxford 1915, a work in the public domain nobly placed online by Roger Pearse at Tertullian.org: urn:cts:latinLit:stoa0261.stoa002

²¹ See Gallus, p. 398.

celebration of festivals or games, to pleasure and the repose of mind and body, to protracted banqueting, or perhaps to the gaming-board or to ball-playing?²²

Among prominent personalities who are said to have played ball sources mention Cato,²³ the famous jurist Publius Mucius Scaevola,²⁴ Caesar,²⁵ Augustus,²⁶ Maecenas,²⁷ Emperor Severus Alexander,²⁸ and many others. Some were said to be obsessed with the ball and devoted all their time to it:

It would be tedious to mention all the different men who have spent the whole of their life over chess or ball or the practice of baking their bodies in the sun.²⁹

²² Cic. *Pro Arch.* 6, 13: *Qua re quis tandem me reprehendat, aut quis mihi iure suscenseat, si, quantum ceteris ad suas res obeundas, quantum ad festos dies ludorum celebrandos, quantum ad alias voluptates et ad ipsam requiem animi et corporis conceditur temporum, quantum alii tribuunt tempestivis conviviis, quantum denique alveolo, quantum pilae, tantum mihi egomet ad haec studia recolenda sumpsero?* English translation by Watts, N. H. (1928). Retrieved from: <https://www.attalus.org/cicero/archias.html> (accessed: February 26, 2026).

²³ Sen. *Epist.* 104, 33: ... for they report that on the very day when Cato was defeated at the elections, he played a game of ball (... *eodem quo repulsus est die in comitio pila lusi*). English translation Mott Gummere, R. Retrieved from: https://en.wikisource.org/wiki/Moral_letters_to_Lucilius/Letter_104 (accessed: February 26, 2026).

²⁴ Cic. *De oratore* 1, 217: ... pretend that to play well at ball or *duodecim scripta* is a part of the knowledge of civil law, because Publius Mucius was skilled in both ... (*licet ista ratione dicamus pila bene et duodecim scriptis ludere proprium esse iuris civilis, quoniam utrumque eorum P. Mucius optime fecerit*). English translation: <https://www.attalus.org/cicero/deoratore1C.html>; *Duodecim scriptis* was a game played with counters on a board, moved according to throws of the dice. See also Val. Max. 8, 8, 2: As for Scaevola, just as he was the most trustworthy witness of their relaxation, so he himself was a skillful ball player ... (*Scaevola autem, quiet<is> et remissionis eorum certissimus testis, optime pila lusisse traditur, ...*). English translation adapted from the translation by Speed, S. (1678). Retrieved from: <https://www.attalus.org/translate/valerius8b.html> (accessed: February 25, 2026).

²⁵ Macrobi. *Sat.* 2, 6, 5: When C. Caesar ordered that L. Caecilius and the others who had been playing ball with him be given a hundred sesterces, and that L. Caecilius alone receive fifty, he said, "What? Do I play with only one hand?" (*L. Caecilius, cum C. Caesar aliis qui secum pila lusitabant centena sestertia, illi uni quinquaginta dari iussisset: Quid? ego, inquit, una manu ludo?*).

²⁶ Suet. *Aug.* 83. See above.

²⁷ Horat. *Sat.* 1, 5, 48: Maecenas is off for sport, Virgil and I for sleep:/ Those ball-games are bad for sore eyes and stomachs. (*Iusum il Maecenas, dormitum ego Vergiliusque;/ namque pila lippis inimicum et ludere crudis.*) English translation by Kline, A. S. Retrieved from: https://www.poetryintranslation.com/PITBR/Latin/HoraceSatiresBkISatV.php#anchor_Toc98155622 (accessed: February 25, 2026).

²⁸ See: *Historia Augusta*, Sev. Alex. 30: After his reading he would devote himself to exercise, either ball-playing or running or some mild wrestling (*post lectionem operam palaestrae aut sphaeristerio aut cursui aut luctaminibus mollioribus dabat*). English translation: *Historia Augusta* published in the Loeb Classical Library, 1924. Retrieved from: https://penelope.uchicago.edu/Thayer/L/Roman/Texts/Historia_Augusta/Severus_Alexander/2*.html (accessed: February 28, 2026).

²⁹ Sen., *De brev. vit.* 13, 1: *Persequi singulos longum est quorum aut latrunculi aut pila aut excoquendi in sole corporis cura consumpsere vitam.* English translation by Basore, J. W. Retrieved from: https://en.wikisource.org/wiki/On_the_shortness_of_life/Chapter_XIII (accessed: February 24, 2026).

As far as we know there were no major competitions in ball games comparable to public games. They were mainly played for the entertainment of the players themselves and those standing around.

The Romans knew several types of ball games.³⁰ They were distinguished by the way the ball was thrown, the type of ball and by the number of participants. The ball could be thrown into the air and caught by the thrower or by another player. Two or more players could throw the ball to each other (*datatim ludere*),³¹ whereby it was important to throw the ball (*dare, mittere, iactare*), catch it skillfully (*excipere*), and throw it back (*remittere, repercutere*). In one of the games the ball was thrown to the ground with force or against a wall so that it bounced back and could be repeatedly bounced with the flat of the hand. Another way of returning the ball was called *expulsim ludere*.³² It seems that the term was used to describe striking the ball, similarly to today's volleyball or maybe the Italian *gioco del Pallone*. The player who bounced the ball the longest without grounding it or who prevented the opponent from returning the ball probably scored a point. The points were counted aloud by a ball-counter (*pilicrepus*).³³ We do not know how long the game lasted or how many points were needed to win.

Probably the most common game was similar to Seneca's description:

I wish to use Chrysippus's simile of the game of ball, in which the ball must certainly fall by the fault either of the thrower or of the catcher; it only holds its course when it passes between the hands of two persons who each throw it and catch it suitably. It is necessary, however, for a good player to send the ball in one way to a comrade at

³⁰ More on this: Ball games in ancient Rome. See also Mathieu, 2021; McDaniel, 1906; Marquardt & Mommsen, 1879, pp. 819 sqq.; Gallus, pp. 398 sqq.

³¹ See e.g., Plaut., *Curculio* 296.

³² Non. Marc. II (Müller 145): *Expulsim* said from frequent striking. Varro to Serapus: you must know that you have been properly purified, when you will see boys in Rome playing ball on the forum before the butchers' stalls striking it back. (*EXPULSIM, dictum a frequenti pulsu. Varro Serapi: reite te purgatum scito, quom videbis Romae in foro ante lanienas pueros pila expulsim ludere.* Noni Marcelli Compendiosa doctrina. Emendavit et adnotavit Lucianus Mueller, Pars I. Lipsiae 1888.

³³ See Petron. *Satyr.* 5, 27: while the other counted the balls, not those that were in play and flying from hand to hand, but such as fell on the floor (*numerabat pilas, non quidem eas quae inter manus lusu expellente vibrabant, sed eas quae in terram decidebant*) English translation: Allison, A. R. (1930). Retrieved from: <https://www.sacred-texts.com/cla/petro/satyr/sat06.htm>; Sen. *Epist.* 6, 56, 1s: ... I have lodgings right over a bathing establishment. So picture to yourself the assortment of sounds, which are strong enough to make me hate my very powers of hearing! ... Then, perhaps, a professional comes along, shouting out the score; that is the finishing touch. English translation by Mott Gummere, R. Retrieved from: https://en.wikisource.org/wiki/Moral_letters_to_Lucilius/Letter_56#cite_note-1 (accessed: February 26, 2026); see further sources quoted by Gallus, pp. 400 sqq.

a long distance, and in another to one at a short distance. So it is with a benefit: unless it be suitable both for the giver and the receiver, it will neither leave the one nor reach the other as it ought. If we have to do with a practised and skilled player, we shall throw the ball more recklessly, for however it may come, that quick and agile hand will send it back again; if we are playing with an unskilled novice, we shall not throw it so hard, but far more gently, guiding it straight into his very hands, and we shall run to meet it when it returns to us.³⁴

All in all, it is likely that the Romans did similar things with balls as we do today - from throwing to kicking and striking.

One of the advantages of ball games was their flexibility in terms of the number of players. One player could juggle one or more balls, two or more players passed the ball to each other, etc. Of the group games, there were three main types: *trigon*, *paganica* and *harpastum*. Although none of these games can be fully reconstructed, we can draw some conclusions about how they went.

*Trigon*³⁵ was a throwing, batting and catching game played by three players³⁶ standing in a triangular formation. A special ball called *pila trigonalis* was used in this game. It was approximately the size of a modern baseball and was tightly stuffed with materials such as hair or feathers. If the players played with a single ball it circulated among them. Therefore, it seems likely that better players played with more (probably up to three) balls. The game of *trigon* became particularly dynamic when it was played with several balls simultaneously. In such a case, the player had to quickly return the ball he received in order to catch another one reaching him at about the same time. To do this, he had to be good at throwing and catching the ball with both hands. A skillful player would bat or catch the ball also with his left hand.³⁷

³⁴ Sen. *De benef.* 2, 17: *Volo Chrysippi nostri uti similitudine de pilae lusu, quam cadere non est dubium aut mittentis uitio aut excipientis; tum cursum suum seruat, ubi inter manus utriusque apte ab utroque et iactata et excepta uersatur. Necesse est autem lusor bonus aliter illam conlusori longo, aliter breui mittat. Eadem beneficii ratio est: nisi utrique personae, dantis et accipientis, aptatur, nec ab hoc exibat nec ad illum perueniet, ut debet.* Translated by Stewart, A. M. A., 1887. Retrieved from: https://en.wikisource.org/wiki/On_Benefits (accessed: February 28, 2026).

³⁵ See Ball Games in Ancient Rome, pp. 29 sqq. See also Radke (n.d.). *Trigon*, RE VII A, 1, p. 139.

³⁶ See Isidorus, *Etymologiarum sive originum libri XX* (Orig.), 18, 69, 2: *Trigonaria* is so named because it is played by three players (*Trigonaria est qu[i]a inter tres luditur*). English translation: The Etymologies of Isidore of Seville, translated with introduction and notes by Barney et al., 2006, p. 488 (4th printing 2014, p. 371).

³⁷ See Mart. *Epigr.* 7, 72, 9 ... award you the palm in the warm triangular game at ball, and not bestow greater praise on the left-handed strokes of Polybus (*sic palmam tibi de trigone nudo unctae det fauor arbiter coronae nec laudet Polybi magis*

The players tried to impress with various acrobatic feats and extravagances. A special extravagance was playing with a ball made of glass. An inscription mentions a man named Ursus who is quoted as being the first Roman to play with his fellow players with a glass ball (*vitrea pila*) never dropping it. The people approved his mastery with greatest applause (*laudante populo maximis clamoribus*).³⁸ Ursus must have played a catching game, possibly *trigon*, which was, as the inscription reads, played in the baths of Trajan, Agrippa and Titus, and frequently in Nero's baths.

Another recreational ball game was the so-called *paganica*. It is assumed that the term *paganica* came from the fact that the entire village (*pagus*) participated in this game.³⁹ The players used a ball stuffed with down or feathers.⁴⁰ It was bigger than *pila* and smaller than *foliis*. At first it was played in the country, but it gradually spread from the countryside to the city. We do not know what the rules of this game were.

It can be assumed that the third game, called *harpastum*, was similar to modern rugby.⁴¹ In *harpastum* the ball appears to have been thrown high into the air so that the thrower could possibly catch it again himself. To prevent this, all the players crowded together and eagerly fighting over the ball knocked each other over and made a tremendous noise.⁴² For this game a small, hard and relatively heavy ball was used. *Harpastum* was played on a rectangular field marked with boundary lines and divided by a central line. Teams consisted of five to twelve players. Roman soldiers helped spread this game throughout the Roman Empire. They played it for entertainment and as a form of physical training.

Roman balls had special names, such as *trigon*, *pila*, *foliis*, *paganica* and *harpastrum* depending on their size and use. They were made of different materials. Bouncing balls, like the *foliis*, were made from pig's bladder wrapped in leather or from animal tendons wound into a ball and covered with leather for protection. The players wore

sinistras). McDaniel (1906, p. 126) sees no reason for supposing that the left hand was principally used by the best players.

³⁸ See Edward Champlin, *The Glass Ball Game*. The author quotes the inscription CIL VI 9797 (= 33815a) = ILS 5173 = CLE 29 and its English translation. See also Schmidt, 1999.

³⁹ So *Handbuch der römischen Althertümer*, p. 819.

⁴⁰ See Mart. *Epigr.* 7, 32, 7 ... No ball, no bladder, no feather-stuffed plaything prepares you for the warm baths ... (*Non pila, non foliis, non te paganica thermis/ prae parat ...*); Mart. *Epigr.* 14, 45, 1: This ball, stuffed with feathers, difficult to manage, is not so soft as a bladder, nor so hard as an ordinary ball. (*Haec quae difficili turget paganica pluma,/ Folle minus laxast et minus arda pila*). More on the *paganica* see Ball Games in Ancient Rome, p. 31.

⁴¹ See Ball Games in Ancient Rome, p. 27. Extensive information about this game can be found in Schneider, n.d., with references to Roman and Greek sources. See also Marindin, 1890, Mart. *Epigr.* 4, 19, 6; 7, 32, 10 and 14, 48.

⁴² See Ball Games in Ancient Rome, pp. 31 sqq.

a guard on the right arm, with which they struck the ball, as in the Italian *gioco del pallone*.

Other balls were made from chopped sponges or linen and hair. These materials were wrapped with string and cloth, and often covered with shaped and sewn pieces of cloth. This type of balls did not bounce. Therefore, they were probably used for catching games, in which the players were throwing and intercepting the balls.

In team ball games, injuries were likely to occur. We have no specific data on this. This is why Alfen's fragment, mentioned above, is so interesting:

Take this case of some people playing ball. One of them pushed a little slave boy when he was trying to pick up the ball, and he fell and broke his leg. When I was asked if I thought his owner could sue the person who had pushed him over, I replied that he could not, as it seemed to me to be a purely accidental injury (*casu magis quam culpa videretur factum*).⁴³

We do not know what kind of ball game it was in this case. It is very likely that it was not a catching game, but rather a game in which several players were chasing the ball. This must have caused quite a bit of jostling.

It is possible to imagine that, in Alfenus's opinion injury in sports was a matter of accident, unless there was evidence to the contrary, i. e. if it was not possible to prove guilt, which also included violation of the rules. This stems from his formulation *casu magis quam culpa* (more by chance than by fault). Later, we will see that this was more or less the generally accepted position of Roman lawyers.

3 'Ludi'

Unlike ball games, where the goal was primarily physical training and entertainment of the players and the role of the audience was secondary, the roles of the audience and the performers in Roman spectacles were completely different and separate.

⁴³ Alf. D. 9, 2, 52, 4. The old translation of Samuel Scott is more accurate. It reads: I answered that he could not, as this seemed to have been done rather through accident than through negligence. More on this text Wacke, 1991, p. 365 seq.

The distinctive feature of Roman *ludi* (which makes them similar to modern sports spectacles), was that they served solely and exclusively to entertain the public. This is why the question arises whether it is appropriate to discuss sport in this context. Another characteristic feature of Roman *ludi* was that the performers were, as a rule, trained professionals. Their strength, skill, and training far exceeded those of ordinary citizens.

In this respect, too, there are striking parallels between Roman *ludi* and modern professional sports.

If we examine these forms of public entertainment from the perspective of how its users perceived it, it would be difficult to call them sports. Sport (if we accept the assumption that we can talk about it) served as a means of entertainment for the public, who cheered and celebrated the winners, but was more or less passive in relation to its own physical activities. Today, too, many sporting events resemble the Roman *ludi*, where on one side there were professional athletes and on the other, from the perspective of physical activity, a completely passive audience. Like in Rome, the people who go to Super Bowl, football matches etc. expect and want spectacle. As a rule, they understand engaging in sport as watching sporting competitions rather than participating in any physical activity themselves.

Nevertheless, the fundamental question remains should the events built around staged violence (e.g., gladiatorial combats) and other forms of *ludi* be considered forms of sport. In this regard, it should be particularly emphasized that the Romans perceived no categorical difference between gladiatorial combat and Greek athletic contests held in Rome from the second century BC onwards.

A basic difference between Greek and Roman tradition was that Greek competitors were free, typically high-status males whereas in Roman spectacles competitors were either slaves or freed slaves. In such spectacles respectable Roman citizens played the role of spectators.

Despite these qualitative differences between Roman *ludi* and modern sports, obvious parallels can be found. It is therefore possible to speak of sports also in this case. It should be noted that this aspect of sport was a factor in the urban development of Rome and an element in the Romanization of the empire. At a much

smaller scale and with local variations sport outside of the city of Rome was profoundly influenced by what took place in Rome itself.⁴⁴

The mass events that could be considered sporting events in today's sense were called *ludi* (games) or *spectacula* (something that must be seen, things worth seeing) by the Romans.⁴⁵ Initially, public games (*ludi*) were parts of religious festivals. They were counting as religious rites just as much as sacrifices and processions.⁴⁶ They had spectacular character and were of different nature. Some were organized by the state, on particularly solemn occasions, and were arranged by magistrates (*aediles curules*, later, from the end of the Republic on, by *praetors*⁴⁷) who were charged with the *cura ludorum* (*sollemnium*). The days on which public festivities (*ludi publici*)⁴⁸ took place were considered holidays (*dies festi*). During the late republic there were 57 days devoted to *ludi* in Rome. This number increased to 77 in the early 1st century AD and to 177 in the mid-4th century AD.

There were three types of *ludi*: *ludi circenses*,⁴⁹ *ludi scaenici* and *munera*.⁵⁰ *Ludi circenses* consisted of chariot racing, held in the circus in the *Campus Martius* and later in the *Circus Maximus* which could seat 150.000 people.⁵¹ The chariot-races were the earliest and arguably the most popular and frequent mass sport in the Roman world.⁵² The audience at the chariot-races was divided into four groups. They were named after the colors of the teams that participated in the races. The fans were divided between supporters of the Red (*factio russata*), the White (*factio albata*), the Blue (*factio veneta*), and the Green team (*factio prasina*). Their rivalries were so intense that they often led to riots.⁵³ Although they cannot be compared to gladiatorial combat in terms of brutality, horse races could also be deadly and bloody.⁵⁴ Roman

⁴⁴ For a comprehensive overview of Roman sports in the territory of present-day Slovenia see Stemberger Flegar, 2025.

⁴⁵ More about this Kyle, 2006.

⁴⁶ See the Oxford Dictionary of the Classical World (edited by Roberts, J.) 2005, s. v. *ludi*.

⁴⁷ See Berger, 1953, s. v. *ludi*. Extraordinary public festivals were the so-called *ludi saeculares*. They were organized by priests (*duoviri sacris faciundis*) for the celebration of the end of a *saeculum* (century) and the beginning of a new one, and were combined with religious ceremonies.

⁴⁸ General information about this topic: Habel, *Ludi publici*; see also Tagliafico, 1994.

⁴⁹ See Regner, n.d.; Tagliafico, 1994.

⁵⁰ The word *munus*, pl. *munera*, has several meanings. It means "a service, office, post, employment, function, duty", but also "a public show, esp. a show of gladiators". In this case it is synonymous with *ludus* or *spectaculum*.

⁵¹ During the chariot races but also during other *ludi*, the city was practically deserted. "On such occasions Augustus stationed guards in various parts of the city, to prevent it from falling prey to footpads because of the few people who remained at home" – Suet. Aug. 43, 1. More about maintaining order during games, especially among fans of different groups at chariot races, see Gamauf, 2014, pp. 291 sqq.

⁵² For a comprehensive overview, see Ribič, 2025.

⁵³ See e.g., Tacitus' description of a brawl between the inhabitants of the colonies of Nuceria and Pompeii, at a gladiatorial show – Tac. *Ann.* 14, 17.

⁵⁴ See Banducci, 2014.

charioteers wrapped the reins round their waist, and steered using their body weight. With the reins tied around their waists, they could lean from one side to the other to direct the horses' movement while keeping their hands free so that they could wield the whip more easily. If they crashed, they could be dragged to death unless they managed to cut the reins with a curved knife (*falx*) which they had with them for this purpose. Although they wore helmets and other protective gear, accidents were frequent and deadly.

Successful charioteers (*agitators*) were as popular as today's sports champions.⁵⁵ Like athletes, they were exempt from the praetor's edict on infamy, which affected stage actors.⁵⁶ Among the charioteers there were also free-born persons. Nero's grandfather, L. Domitius Ahenobarbus, excelled as a charioteer in his youth.⁵⁷ Under Caligula, men of senatorial rank competed as charioteers in the Circus.⁵⁸

Ludi scaenici were performances that consisted of mime and pantomime. Since they can not be considered a sport, we will not discuss them in detail.

Munera were gladiatorial fights given to the people by the magistrates, and generally by the *aediles*, as an expression of gratitude for the honorable office to which they had been elected.⁵⁹ Before the afternoon event⁶⁰ of gladiatorial duels as the main

⁵⁵ One of the most famous among them, Flavius Scorpis, is said to have earned extraordinarily large amounts of money and accumulated 2,048 victories – CIL VI 10048. See also Marc. *Epigr.* 10, 53: O Rome, I am Scorpis, the glory of your noisy circus, the object of your applause, your short-lived favourite ... (*Ille ego sum Scorpis, clamosi gloria Ciri, / Plausus, Roma, tui deliciaeque breves, ...*) English translation Bohn's Classical Library (1897). Retrieved from: https://www.tertullian.org/fathers/martial_epigrams_book10.htm (accessed: March 9, 2026). Scorpis died when he was twenty-seven years old.

⁵⁶ Ulp. D. 3, 2, 4 pr.: ... On the whole, the general and, it appears, the correct view is that theater musicians, athletes, charioteers, those who sprinkle the horses with water, and all the others who work in the contests run by the state should not be held to incur *infamia* (... *et generaliter ita omnes opinantur et utile videtur, ut neque thymelici neque xystici neque agitadores nec qui aquam equis spargunt ceteraque eorum ministeria, qui certaminibus sacris deseruiunt, ignominiosi habeantur*).

⁵⁷ Suet. Nero 4, 1. Nero himself was also enthusiastic about chariot racing and even appeared as a driver in the Circus Maximus – Suet. Nero, 22, 2.

⁵⁸ Suet. Caligula 18, 2.

⁵⁹ Gladiatorial fights originated from combats, held at the funerals of dead warriors in Etruria. They were introduced to Rome in 264 BC at the funeral games in honor of Decimus Junius Brutus Pera, where three pairs fought against each other. The gladiators, that fought at the funeral of Decimus Junius Brutus Pera (the gladiators, that fought at a funeral pile in honor of the dead were called *bustuarii*) were prisoners of war. They had to fight to the death. For basic information about gladiators, see Oxford Dictionary of the Classical World, s. v. *gladiators, combatants at games*, as well as the article *Gladiator* at Livius.org – <https://www.livius.org/articles/concept/gladiator/> (accessed: March 9, 2026). The officers of the imperial cult were obliged to provide a *munus* as part of their duties. For this reason, the emperor Marcus Aurelius and his co-emperor Lucius Commodus promulgated the *SC de sumptibus ludorum gladiatorum minuendis* to reduce the costs of presenting gladiatorial *munera*. The decree sought to lower the overall value of gladiators. More on this Michael Carter, *Gladiatorial Ranking and the "SC de pretiis gladiatorum minuendis"*. On the leasing and purchasing gladiators, see Gai. 3, 146.

⁶⁰ Standard format of the Roman games (*ludi*) was: animal hunts in the morning session, followed by the executions of criminals sentenced to death around midday, with the afternoon session reserved for gladiatorial combats and recreations of famous battles.

attraction of the games, hunting and killing of wild animals (*venationes*) were organized.⁶¹ Exotic wild beasts⁶² from all over the empire were to fight the hunters (*bestiarii*). Hunting and gladiatorial fights were initially staged in the Forum, the *Saepia Iulia* in the *Campus Martius*, from 29 BC in the amphitheater of Statilius Taurus, and from AD 80 in the Colosseum (called *Amphitheatrum Flavium* - Flavian Amphitheatre) which could seat 50.000 spectators.⁶³

Gladiatorial combat held a special position, and gladiators enjoyed a certain status due in large part to the strong military ethos that characterized Roman society. Many Romans saw their games, and particularly gladiatorial fights, as an expression of Roman martial virtue.⁶⁴ In a way, the barbarity of the Roman arena became synonymous with Roman sport. That is why contemporary pop culture focuses on gladiators and overlooks chariot-racing, which was much more popular and attracted more visitors than gladiatorial combats. Despite their inherent violence, gladiatorial combats were structured and carefully supervised encounters that typically did not end with the death of either of the combatants. Combats were overseen by a referee and ended when one of the combatants was dead, incapacitated or submitted by raising his index finger or dropping his shield.⁶⁵

In addition to professional gladiators some convicts also had to fight as gladiators. Perpetrators of certain serious crimes could be sentenced to gladiatorial combat (*in harenam*) and fights with wild beasts (*ad bestias*).⁶⁶ Condemnation to gladiatorial combat (*ludi gladiatorii*) was practically the same as the death penalty since weak and unexperienced convicts generally lost their lives in the fights. If a convict was fortunate and strong enough not to succumb in battle, he could even, after five years,

⁶¹ Basic information about staged animal hunts (*venationes*) and about the staged naval battles (*naumachiae*) see in Vamplew, McClelland & Dyreson, 2021, Vol. I, p. 18.

⁶² Because of their religious importance to the Romans, wolves were not displayed in the *venationes*.

⁶³ During the inaugural games of Colosseum about 9.000 animals were killed. See Pliny, *Nat. hist.* 8, 20: Q. Scaevola, the son of P. Scaevola, when he was curule aedile, was the first to exhibit at Rome a combat of a number of lions; and L. Sylla, who was afterwards Dictator, during his praetorship, gave the spectacle of a fight of one hundred lions with manes. After him, Pompeius Magnus exhibited six hundred lions in the Circus, three hundred and fifteen of which had manes; Caesar, the Dictator, exhibited four hundred. *Nat. hist.* 8, 25: The same emperor (Augustus) was the first person who exhibited at Rome a tame tiger on the stage. This was in the consulship of Q. Tubero and Fabius Maximus, at the dedication of the theatre of Marcellus, on the fourth day before the nones of May: the late Emperor Claudius exhibited four at one time. See also Mart. *Spect.* 18.

⁶⁴ See Concannon, 2014, p. 197 with further literature in fn. 13.

⁶⁵ See Vamplew, McClelland & Dyreson, 2021, Vol. I, p. 18.

⁶⁶ According to Paul. Sent. 5, 23, 4 (also Coll. 1, 7, 2) An individual of the lower class (*humilior*) who struck another person during a quarrel and caused his death could be sentenced to fight wild beasts. It was disputed whether such a person immediately became a slave (*servus poenae*) – Ulp. D. 48, 19, 8, 11 and 12. According to Ulpian (D. 28, 1, 8, 4), those who were condemned to be beheaded (*ad ferrum*) or to fight with wild beasts (*ad bestias*) or to the mines (*in metallum*) lost their freedom and their property was forfeited to the state. They also lost their *testamenti factio*.

be restored to freedom, while, on the expiration of three years, he was permitted to receive his discharge from the gladiatorial games.⁶⁷

It is possible to imagine that vulgar displays of violent bloodlust and barbarity at the games mainly thrilled the primitive masses. Cultured people probably found it repulsive. From Cicero's letter to M. Marius, we can conclude that he (but in certain cases also the audience) found the fights with wild animals particularly senseless. Among other things, Cicero writes:

There remain the wild-beast hunts, two a day for five days - magnificent; there is no denying it. But what pleasure can it possibly be to a man of culture, when either a puny human being is mangled by a most powerful beast, or a splendid beast is transfixed with a hunting-spear? And even if all this is something to be seen, you have seen it more than once; and I, who was a spectator, saw nothing new in it. The last day was that of the elephants, and on that day the mob and crowd were greatly impressed but manifested no pleasure. Indeed, the result was a certain compassion and a kind of feeling that that huge beast has a fellowship with the human race (*quin etiam misericordia quaedam consecuta est atque opinio eiusmodi, esse quendam illi beluae cum genere humano societatem*).⁶⁸

Not only Cicero, but also Pliny the Elder mentions that the crowd was not enthusiastic about the aimless killing of elephants. Their suffering moved it:

When, however, the elephants in the exhibition given by Pompeius had lost all hopes of escaping, they implored the compassion of the multitude by attitudes which surpass all description, and with a kind of lamentation bewailed their unhappy fate. So greatly were the people affected by the scene that, forgetting the general altogether, and the munificence which had been at such pains to do them honor, the whole assembly rose up in tears, and showered curses on Pompeius, of which he soon afterwards became the victim.⁶⁹

⁶⁷ Coll. 11, 7, 4.

⁶⁸ Cic. *Ad fam.* 7, 1. This letter was written in 55 B.C. on the occasion of the dedication of Pompey's theatre and the temple of *Venus Victrix*, where Pompey, now in his second consulship, exhibited shows of unparalleled magnificence. English translation: Cicero, *The Letters to his Friends* with an English translation by Williams, W. G. M. A. in three volumes, London: Cambridge Mass., 1952, Vol. II, p. 7.

⁶⁹ Plin. *Nat. hist.* 8, 7. English translation: Pliny the Elder, *The Natural History* John Bostock, M.D., F.R.S., H.T. Riley, Esq., B.A., Ed. available on:

Today we read with considerable disapproval about the crowds that enthusiastically watched gladiatorial combat, slaughtering of animals etc. We tend to forget that even today, many people enthusiastically watch virtual violence in various action films and participate in it virtually in video games. Unfortunately, in some places there is also a lot of enthusiasm for actual violence, such as bullfighting, cockfighting, dogfighting, kickboxing, cage fighting, and other violent sports. Therefore, it is to be feared that modern consumers are in no way morally superior to average representatives of the Roman mob.

Over time gladiatorial combat was met with disapproval by the rulers. Emperor Constantine banned it in 325:

Bloody spectacles in times of civil peace and domestic quiet are not pleasing, for which reason We prohibit gladiators from existing completely.⁷⁰

Gladiators are hardly ever mentioned in Roman legal sources. When discussing the proper disinheritance of a son by his father, Ulpian also mentions that it is valid if the father in his will indicated his son with an insult such as “robber” or “gladiator”.⁷¹ From this, it can be concluded that gladiators, despite the popularity of some among them, did not enjoy a good reputation.⁷²

In this regard, too, a parallel with modern professional sports can be drawn. Not only are professional athletes often referred to as modern gladiators, but they are also popular as long as they win and score goals. If they get sick or injured, the audience quickly forgets them and usually does not feel sorry for them.

<https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0137%3Abook%3D8%3Achapter%3D7> (accessed: March 9, 2026).

⁷⁰ Const. C. 11, 44, 1: *Cruenta spectacula in otio civili et domestica quiete non placent. quapropter omnino gladiatores esse prohibemus*. English translation: The Codex of Justinian. In the older version of the same constitution published in the Theodosius Code (C.Th. 15, 12, 1), the emperor decreed that convicts who had previously been sentenced to fight in the arena should henceforth be sent to work in the mines “so that they will assume the penalty for their crimes without shedding their blood.” Constantine also forbid soliciting soldiers or those endowed with any palatine rank to hire themselves out as gladiators - Const. C.Th. 15, 12, 2.

⁷¹ Ulp. D. 28, 2, 3 pr.

⁷² More on legal position of gladiators see Beggio, T., *Auctoramentum e traditio gladiatorum*. Profili privatistici della gladiatura nell’antica Roma. See also Reid, 2011, chapter 8: Seneca’s Gladiators.

4 Greek Athletic Contests

Greek athletic contests (called *athletae*)⁷³ were first shown to the Roman public in the second century BC.⁷⁴ Roman general and a great enthusiast for Greece and its culture Marcus Fulvius Nobilior organized the first display of a Greek athletic contest in 184 BC.⁷⁵ However, Greek athletic competitions did not immediately catch on in Rome. When Pompey organized them in 55 BC they were not met with particular enthusiasm.⁷⁶ They only became more popular during the reign of Augustus, or rather during the Principate. In his autobiography (*Res gestae Divi Augusti*), Augustus states that he organized them twice in his name and a third time in the name of his grandson; he adds that he organized games (*ludos*) many more times.⁷⁷

Greek Style athletic contests (*athletae*) included the full array of gymnastic competitions held at the Olympics,⁷⁸ especially: 200 meter sprint, 400 meter run, long distance footrace, pentathlon including the long jump, the javelin throwing, the discus throwing, the short foot race, and wrestling, boxing, four-horse chariot-race, and all-in wrestling.

At first, the Romans were not too keen on the Greek style of athletic competitions. We can only speculate why they were at first unimpressed by them. It is possible that they initially rejected them just as they rejected Greek culture and other novelties which were unknown to Roman tradition. Probably the fact that the competitors competed naked also played a role in the rejection of Greek athletics.⁷⁹ For a

⁷³ For general information on this, see Reisch, n.d., pp. 2049-2058.

⁷⁴ See Mann, 2002, pp. 136 sqq.

⁷⁵ Liv. *Ab U. c.* 39, 22: These were followed by the Games which M. Fulvius had vowed in the Aetolian war and were exhibited for ten days. Many actors from Greece came to do him honour, and athletic contests were witnessed for the first time in Rome. Translation: From the *Founding of the City* (1905) by Livy, translated by Canon Roberts, available on: https://en.wikisource.org/wiki/From_the_Founding_of_the_City.

⁷⁶ Cic. *Ad fam.* 7, 1: ... As to the athletics, why should I suppose that you are sorry to have missed them - you, who treated the gladiators so contemptuously? And on them Pompey himself admits that he wasted both toil and oil (*Nam quid ego te atletas putem desiderare, qui gladiatores contempseris? in quibus ipse Pompeius confitetur se et operam et oleum perdidisse*).

⁷⁷ *Res gestae Divi Augusti*, 22: Twice in my own name I furnished for the people an exhibition of athletes gathered from all parts of the world, and a third time in the name of my grandson. Four times I gave games in my own name; as representing other magistrates twenty-three times (*Bis atletarum undique acitorum spectaculum populo praebui meo nomine et tertium nepotis mei nomine. Ludos feci meo nomine quater, aliorum autem magistratum vicem ter et vicinis*). English translation: The Deeds of the Divine August 0-39, translated by Shipley, F. W. available on: https://lexundria.com/aug_anc/0-39/ship

⁷⁸ For the program of events at the ancient Olympic games, see *A cultural History of Sport*, Vol. I, p. 11.

⁷⁹ So Mann, 2002, pp. 125, 135, 143, 147 sqq. See also Thuillier, 1988.

respectable Roman it was unthinkable to appear naked in public, even at a sporting event. We can imagine that the nudity of competitors caused a certain amount of discomfort among traditional Romans.

As we have already mentioned, Greek-style athletic competitions became popular during the Principate. Besides Augustus, among the emperors that organized them, Nero and Domitian were the most notable.

According to Suetonius, Nero was the first “to establish at Rome a quinquennial contest in three parts, after the Greek fashion, that is in music, gymnastics, and riding, which he called the *Neronia*.”⁸⁰ Domitian also established a quinquennial contest in honor of Jupiter Capitolinus of a threefold character, comprising music, riding, and gymnastics.⁸¹ Hadrian supported the Greek athletic tradition by funding the gymnasium at Smyrna, allowing the athletic guilds to establish headquarters at Rome etc. His successor Antoninus Pius founded a new Greek-style competitive festival in his honor, the *eusebeia* at Puteoli.⁸²

Unlike gladiators, successful athletes enjoyed unblemished legal status and also certain privileges. They were, above all, not considered stage performers and were not branded with infamy. Sabinus and Cassius, quoted by Ulpian, justify this by stating that their object was to display their valor (*virtutis enim gratia*), and that all those who work in the Sacred Games (*qui certaminibus sacris deserviunt*) should not be held to incur *infamia*.⁸³

Among the privileges enjoyed by athletes was the exemption from tutelage and civic services. However, these privileges were reserved only for the best athletes. Modestinus, quoting Ulpian, says that only athletes who had won a prize in the Sacred Games (*qui sacris certaminibus coronati sunt*) could be exempted from tutelage.⁸⁴

⁸⁰ Suet. Nero 12, 3.

⁸¹ Suet. Domit. 4, 4.

⁸² Golden, 2004.

⁸³ Ulp. D. 3, 2, 4 pr. See also Paul. D. 11, 5, 2: A Decree of the Senate forbids playing for money, except when one is competing at spear or javelin throwing, or in running, leaping, wrestling, or boxing, for the purpose of displaying courage and address. Marc. D. 11, 5, 3: In these cases, under the *lex Titia*, *lex Publicia*, and *lex Cornelia*, one can also make a *sponsio*; but under other laws one cannot do so when it is not a contest of strength (*pro virtute certamen*).

⁸⁴ Mod. D. 27, 1, 6, 13.

The dispensation from civic services could only be given to athletes who have had impeccable and successful sporting careers, i. e. who “have competed through their whole life, having been deservedly awarded, without corrupting or purchasing their rivals, with no less than three crowns for a sacred competition, including at least once in one held at Rome or in old Greece”.⁸⁵

Diocletian's rescript clearly highlights the problem of corruption that plagued competitive sports in ancient times and, alongside doping, is probably still a major issue today.

Most likely it was quite common for competitors to try to bribe their fellow competitors and sometimes even the judges. But it is impossible to say in general terms how those who decided on the exemption from civic services could check the validity or invalidity of the achievements of a specific athlete or how an athlete could prove the irreproachability of his sporting accomplishments.

5 Roman Wrestling and Boxing (*colluctatio, pancratium, pugilatio*)

Not all the disciplines of Greek athletics were harmless. Greek and Roman combat skills mainly consisted of a mixture of wrestling and boxing.⁸⁶ It was normal for one or both competitors to be injured during the competition in these martial arts.

Pancratium (παγκράτιον, meaning "all of power") was an unarmed combat sport introduced into the Greek Olympic Games in 648 BC. The athletes used boxing and wrestling techniques but also others. It was a dangerous sport, in which everything was permitted except biting, stabbing with a finger in opponent's eye, nose or mouth, and attacking the genitals.⁸⁷ Kicking, holds, joint locks, and chokes on the ground were used regularly, making it similar to modern mixed martial arts. Some idea of what techniques the competitors usually used we can learn from Quintilian, who describes what a martial arts coach ought to teach his students:

⁸⁵ Diocl./Maxim. C. 10, 54, 1: *Athletis ita demum, si per omnem aetatem certasse, coronis quoque non minus tribus certaminis sacri, in quibus vel semel Romae seu antiquae Graeciae, merito coronati non aemulis corruptis ac redemptis probentur, civilium munerum tribui solet vacatio*. For more on corruption in ancient sports, see Weiler, I., *Korruption und Kontrolle in der antiken Agonistik*. On the problem of corruption at the Olympic Games in ancient Greece, see Frass, 2010, esp. pp. 162 sqq (on the value of victory).

⁸⁶ For more about this, see Poliakov, 1987. See also Rudolph, 1965, pp. 8 sqq (Faustkampf), pp. 29 sqq (Ringkampf), pp. 63 sqq (Pankration). See also Lopez, 2010.

⁸⁷ See Zimmermann, 1996, p. 1003 s.

if he undertakes to train a pancratiast, he will not merely teach him how to strike with his fists or his heels (*pugno ferire uel calce*), nor will he restrict his instructions to the holds in wrestling, giving special attention to certain tricks of this kind, but will train him in every department of the science.⁸⁸

Also from Propertius' elegy it is evident that bruises and wounds were common in this type of combat. Propertius refers to the training of Spartan girls, but it is certain that this type of sport was even more brutal among men at Rome.⁸⁹

The sport had two main phases. During the first contestants had to fight upright. As the main goal was to knock down the opponent, punches, kicks and all kinds of lethal blows were usually performed. The second phase started when a competitor fell on the ground of some of the competitors. Here grappling, joint locking, and even strangulation was used as more effective methods of fighting on the ground. A fight ended either by submission (the opponent would raise his index finger as a sign of being defeated) or by death.⁹⁰

Also *pugilatio* (boxing with the *cestus*) was characterized by extreme brutality. The fighters were wearing fighting gloves, i. e. hard leather strips that protected the fist and lower arm. Sometimes *cesti* were fitted with studs or spikes to inflict more serious injuries. *Cestus* fighters took part also in gladiatorial combats where they had no other armor, apart from the *cestus*. It can be assumed that this type of fight often resulted in fatalities.⁹¹

The audience encouraged the fighters with loud cheers further spurring their determination.⁹² The popularity of boxing among Romans is evidenced, among other things, by Suetonius' account of Emperor Augustus' interest in this sport:

⁸⁸ Quint. *Inst. orat.* 2, 8, 13.

⁸⁹ Prop. *Eleg.* 3, 14, 8: ... and suffers wounds in the hard wrestling (*et patitur duro vulnera pancratio*). Seneca (*De benef.* 5, 3, 1) writes that the Lacedaemonians forbid their young men to contend in the *pancratium*, or with the *caestus*, because in these games the defeated party has to acknowledge himself beaten. ... Since the Lacedaemonians thought to be of great importance that their countrymen should be considered invincible, they kept them away from those contests in which victory was assigned, not by the judge, or by the issue of the contest itself, but by the voice of the vanquished begging the victor to spare him as he fell. More on this: Mauritsch, 2011.

⁹⁰ See the Rules of Pankration on: <https://www.worldhistory.org/pankratio/>.

⁹¹ Brophy & Brophy, 1985, with further literature.

⁹² Polyb. *Hist.* 27, 9, 4: ... They cheer him on, and back him up enthusiastically; and if he manages to touch his opponent's face, and gets in a blow that leaves any mark, there is at once again the greatest excitement among them

He was especially given to watching boxers, particularly those of Latin birth, not merely such as were recognized and classed as professionals, whom he was wont to match even with Greeks, but the common untrained townspeople that fought rough and tumble and without skill in the narrow streets.⁹³

Images of fighting boxers often show competitors of different ages and statures. It is possible to assume that despite its brutality the combat had to proceed according to the rules and was supervised by a referee.⁹⁴

In Roman legal sources we find an interesting fragment which mentions a case in which a competitor in this sport was killed or injured:

If a man kills another in the *colluctatio* or in the *pancratium* or in a boxing match (provided the one kills the other in a public bout - *in publico certamine*), the *lex Aquilia* does not apply because the damage is seen to have been done in the cause of glory and valor (*gloriae causa et virtutis, non iniuriae gratia*) and not for the sake of inflicting unlawful harm; but this does not apply in the case of a slave, because the custom is that only freeborn people compete in this way. It does, however, apply where a son-in-power is hurt. Clearly, if someone wounds a contestant who has thrown in the towel (*si cedentem vulneraverit*) the *lex Aquilia* will apply, as it will also if he kills a slave who is not in the contest (*non in certamine*), except if he has been entered for a fight by his master; then the action fails.⁹⁵

all. English translation available on: https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Polybius/27*.html. See also: Papakonstantinou, 2015.

⁹³ Suet. Aug. 45, 2. English translation available on: https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Suetonius/12Caesars/Augustus*.html.

⁹⁴ See Zimmermann, 1996, p. 1004. More about the rules and referees see Ebert & Siewert, 1999.

⁹⁵ Ulp. D. 9, 2, 7, 4: *Si quis in colluctatione vel in pancratio, vel pugiles dum inter se exercentur alius alium occiderit, si quidem in publico certamine alius alium occiderit, cessat Aquilia, quia gloriae causa et virtutis, non iniuriae gratia videtur damnum datum. hoc autem in servo non procedit, quoniam ingenui solent certare: in filio familias vulnerato procedit. plane si cedentem vulneraverit, erit Aquiliae locus, aut si non in certamine servum occidit, nisi si domino committente hoc factum sit: tunc enim Aquilia cessat.* For a detailed exegesis of the text, see Gamauf, 2014, pp. 298 sqq.; Wacke, 1997, pp. 282 s; Wacke, 2013, pp. 224 sqq.; Wacke, 1991, pp. 369 sqq. See also Zimmermann, 1996, p. 1003 s.

From Ulpian's fragment, we can conclude that killing an opponent in a competition was not considered a crime, and above all it was not regarded as *occidere* according to the *lex Aquilia*. Therefore, no compensation could be claimed from the person who did it. Ulpian also cites the conditions under which this applied:

- the competitor had to be killed in a public bout;
- he had to be killed in pursuit of fame and valor (*gloriae et virtutis causa*) and the competitor who killed him was not motivated by a desire to inflict unlawful harm;
- the competitor had to be a free man because only free people could compete for honor and glory;
- the fight was conducted according to the rules; if a competitor killed his counterpart who had surrendered, he would be liable because, in addition to violating the rules, he could be accused of intentionally causing the death of his opponent.

Ulpian's fragment opens the question of the assumption of risk. By entering the match, the competitor assumed the risk, i. e. he voluntarily accepted the possibility that he would be injured or even killed. According to a general rule of Roman law there was no *iniuria* when the victim consented.⁹⁶ In the case of a sports injury, he did not consent to the injury itself, but he accepted the possibility of being injured. Therefore, it was not possible to claim compensation from a competitor who injured or even killed an opponent, provided that he did not violate the rules, of course.

Since in ancient times there was no possibility of a competitor winning on points, each competitor strove to crush his opponent. Due to the nature of combat sports and the ferocity of the fighters the possibility of injury or even death was high. The motto of the fighters was "victory or death."⁹⁷ The tombstone of Telemachus, who killed his opponent at the Olympic Games, reads: "I killed a very powerful man of the Tyrrhenians, as he was willing (to fight to the death)".⁹⁸ We can say with certainty that fights in the Roman ring were no less dangerous. The goal of the competitors was to become famous and show courage. The way to achieve this was to defeat

⁹⁶ Ulp. D. 47, 10, 1, 5:... *quia nulla iniuria est, quae in volentem fiat*.

⁹⁷ Nenova (2016) quotes the case of Arrhichion of Phigalia. He won a Pankration competition at the Olympic Games literally dying in the ring. He was locked in a tight chokehold and had to break the ankle of his opponent in order to loosen the deadly clutch. At the same moment, though, when his competitor raised a finger for submission, Arrhichion fell dead. Nevertheless, he was honored as a winner.

⁹⁸ See Brophy & Brophy, 1985, p. 173.

their opponent. What they wanted was victory, for which they were willing to sacrifice everything, and not merely injury to the opponent.

In the case of sports injuries or deaths during competitions it was therefore not possible to speak of liability under the *lex Aquilia*. A competitor was killed in pursuit of fame and valor (*gloriae et virtutis causa*) which meant that it was not a case of unlawful conduct (provided, of course, that the competitor had not broken the rules) but rather an unfortunate incident. Three fragments from Justinian's Institutes provide a very illustrative explanation in this regard:

2. A person kills wrongfully when he kills without justification (*nullo iure*). ...

3. Even one who kills by accident (*casu*) escapes liability under the Act if not at fault (*si modo culpa eius nulla invenitur*); malicious intent or fault (*ex dolo quam ex culpa*) form the basis of the liability. 4. So, if someone engaged in sport or practice with javelins transfixes your slave, a distinction has to be taken. Suppose first that it was done by a soldier and in a field where it was usual to practise. Here there is no fault on his part (*nulla culpa eius intellegitur*). Suppose some other person does the same thing. He is guilty of fault. It is the same with the soldier if the act is done in some place other than one designated for military exercise (*in alio loco, quam qui exercitandis militibus destinatus est*).⁹⁹

As we can see, exclusion of liability for damage was only applicable if the harmful case occurred during a competition or training session. This, of course, presupposed that the training or competition took place at the location designated for this purpose.¹⁰⁰ This is particularly understandable in the case of javelin throwing, as the distance between the thrower and the target may be great, and at the same time, it is difficult to hear the javelin flying.

If the damage occurred outside of a competition or training but rather when they were throwing javelins for fun, the usual liability under Aquilian law applied. According to jurist Paul “playing games by way of amusement should be classed as

⁹⁹ Inst. 4, 3, 2-4. English translation: Justinian's Institutes.

¹⁰⁰ See e.g., Paul. D. 9, 2, 28 pr.: People who dig pits to catch bears and deer are liable under the *lex Aquilia* if they dig such pits in a public place and something falls in and is damaged, but there is no such liability for pits made elsewhere, where it is usual to make them (*ubi fieri solent*).

fault”.¹⁰¹ It did not apply if the damage occurred by accident or due to the victim's own negligence.

But if a slave is killed by people throwing javelins for amusement (*per lusum*), the Aquilian action is applicable. On the other hand, if when other people were already throwing javelins in a field a slave walked across the same field, the Aquilian action fails, because he should not make his way at an inopportune time across a field where javelin throwing is being practiced. However, anyone who deliberately aims at him is liable under the *lex Aquilia*.¹⁰²

We can see that the javelin thrower was not liable even in a case where several people were throwing javelins in a place that was not a regular training ground. For a passerby it was not difficult to notice such group and the danger of its activity, as it was an open space. A passerby should have been more careful. The victim, who crossed the field while javelins were being thrown, could therefore be blamed for negligence. Ulpian's position follows the same logic as his opinion regarding a client who let himself be shaved by a barber working on a street where people were playing ball.

Even in team sports, sports injuries were considered to be the result of chance, which meant that the perpetrator, who had not broken any rules or acted intentionally, was not liable under Aquilian law:

Take this case of some people playing ball. One of them pushed a little slaveboy when he was trying to pick up the ball, and he fell and broke his leg. When I was asked if I thought his owner could sue the person who had pushed him over, I replied that he could not, as it seemed to me to be a purely accidental injury (*cum casu magis quam culpa videretur factum*).¹⁰³

As we know, pushing, shoving and thronging is quite common in ball games. For this reason, jurist Alfenus denies the possibility of Aquilian action, since the injury occurred during the game. Otherwise, the injury would of course be a normal case of injury under the *lex Aquilia*.

¹⁰¹ Paul. D. 9, 2, 10: *nam lusus quoque noxius in culpa est*.

¹⁰² Ulp. D. 9, 2, 9, 4. More on this fragment, see Wacke, 1991, p. 361 s.

¹⁰³ Alf. D. 9, 2, 52, 4.

Regarding the *actio legis Aquiliae* which was originally intended to deal with damage to property (slaves, grazing animals, inanimate things and *res se moventes*),¹⁰⁴ it is worth mentioning that a free person could use it for an injury to himself as an *actio utilis*; He could not have a direct action.¹⁰⁵

In terms of fatalities, Roman combat sport can be compared to modern combat sport. Although it is possible that the rules of modern boxing and MMA competitions are stricter than those in Roman times, competitors die today as well.

According to the study Incidence Of Injury In Professional Mixed Martial Arts Competitions¹⁰⁶ (in the US) in total of 171 MMA matches involving 220 different fighters there were a total of 96 injuries to 78 fighters. Of the 171 matches fought, 69 (40.3%) ended with at least one injured fighter. The overall injury rate was 28.6 injuries per 100 fight participations or 12.5 injuries per 100 competitor rounds. The study showed that older age is associated with a significantly higher risk of injury. The most common conclusion to a MMA fight was a technical knockout followed by a tap out.

Unfortunately, we do not have MMA data for the rest of the world. However, we do have data for professional boxing. The Manuel Velazques Boxing Fatalities Collection listed 1,465 fatalities by November 2007.¹⁰⁷

In conclusion, we can generally say that despite big differences, there are also many amazing similarities between modern and Roman sports.¹⁰⁸

¹⁰⁴ More on this Zimmermann, 1996, pp. 957 sqq and pp. 114 sqq.

¹⁰⁵ Ulp. D. 9, 2, 13 pr.: For an injury to himself a freeman has on his own account an *actio utilis* after the manner of the Aquilian action. He cannot have the direct action under the *lex* because no one is deemed to be the owner of his own limbs. ... (*Liber homo suo nomine utilem Aquiliae habet actionem: directam enim non habet, quoniam dominus membrorum suorum nemo videtur...*)

¹⁰⁶ Available on: <https://pmc.ncbi.nlm.nih.gov/articles/PMC3863915/>.

¹⁰⁷ See Death under the Spotlight: The Manuel Velazquez Boxing Fatalities Collection at: https://ejmas.com/jcs/jcsart_svinth_a_0700.htm. Manuel Velazquez (1904-1994) was an American anti-boxing activist who kept meticulous files on boxing-related deaths and also on boxing injuries. As a result he began to oppose the sport. See https://en.wikipedia.org/wiki/Manuel_Velazquez. See also Svinth, 2007.

¹⁰⁸ For more on this, see Reid, 2010.

6 Conclusion

Roman sporting activities can be divided into three categories: recreational non-competitive sports, which mainly include ball games; competitive athletic sports modeled on the Greek Olympic Games; and sporting spectacles, which include chariot-races and gladiatorial games. While recreational sports were practiced by individuals who engaged in sports for physical fitness, socializing, and enjoyment, other athletes were professionals whose social standing depended on their competitive success. Gladiators formed a special category, as they were generally slaves and at the same time competed for survival and for victory.

Even a brief glance at Roman sports reveals striking similarities with modern sports. Even today, we could see a similar division into three categories, except that today there is probably more competitiveness in recreational sports than in ancient Rome. Although teams competed against each other in some ball games in Rome, we have no records of major competitions, such as those that were common in athletics or chariot-racing.

And although injuries and deaths also occur in modern combat sports, they are more unfortunate accidents than the normal outcome of a fight. For Roman gladiators, death was one of the possibilities, while in athletic combat sports it was less likely, although still possible and maybe even common.

A comparison between Roman sports and modern sports reveals another surprising similarity. This is not just about the relationship between competitors and the spectators at major sporting events, where the public participates only as passive spectators and cheering fans. What is more surprising is the similarity in the attitude towards competitors. Just as charioteers, gladiators, and probably athletes were, so to speak, consumable goods, so too are professional athletes today only interesting as long as they achieve results. Because they face unnaturally high levels of strain, sooner or later their health fails them, which also ends their sporting careers. Therefore, we could say that the only really significant difference between Roman and modern sports is doping, which was unknown in Roman antiquity but is now a plague that destroys both the sporting spirit and the bodies of athletes.

Regarding sports injuries, we see the same approach in Roman times as we do today: as long as injuries occurred during competitions and the perpetrators could not be accused of breaking the rules, they were not liable for the consequences.

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SAFEGUARDING CHILDREN'S RIGHTS IN SPORT: FROM LEGAL STANDARDS TO EVERYDAY PRACTICE

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Safeguarding children's rights in sport has become an increasingly important legal issue. While sporting environments offer significant developmental benefits, they may also expose children to risks such as abuse (e.g., sexual, physical, neglect). Today, international legal standards and national legal frameworks impose clear obligations on states and sports organizations to protect children and their rights. This article examines the gap between formal legal requirements in sports and how they are implemented in practice. It also explores the selected international cases and the Slovenian criminal law framework, and relevant Slovenian case-law relevant to the abuse of children in sports.

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1 Introduction

Sport today represents an indispensable part of our lives, both as individuals and as a society at large. Therefore, it is not surprising that it also carries a special significance for the Republic of Slovenia. Sporting activities, top achievements, and the diversification of sports activities are integral to the Slovenian identity and promote the Republic of Slovenia globally.¹ At the same time, sport is intertwined with numerous areas where cooperation is mutually beneficial. Sport is recognized as an element that, through various forms of participation, contributes to an individual's resilience, which in turn is also reflected in the resilience of the entire society and the country to help minimize health risks, since each chain is only as strong as its weakest link. The sports activity of individuals is of key importance for achieving a better quality of life for the population and reducing the burden of disease in society.² Today, we view sports as an important activity, especially for children that enables healthy development, cooperation, and personal growth in individuals.

The United Nations Convention on the Rights of the Child³ (UNCRC) is today one of the most comprehensive and widely accepted international instruments that protects children's rights. However, numerous violations of children's rights still occur all around the world. From neglect and exploitation to psychological and physical violence - violations take many forms. Violations of children's rights do occur, unfortunately, also in the field of sport. The special characteristics of the sports environment are reflected in the importance of the relationship between coach and athlete (e.g., trust in the coach), the intensity of the sport, the complexity of the competitions, the interest of the media, the time spent on training, preparation and competitions, the culture of sports, the procedures for recruiting young (talented) athletes, often also in the distance from the family or home or school environment, the risk of injuries, etc. Therefore, it is not surprising that children involved in sports, particularly in the sports environment, which should represent

¹ For example, Tina Trstenjak and Andreja Leški (judo), Tadej Pogačar and Primož Roglič (cycling), Janja Garnbret (climbing), Luka Dončić (basketball), Nika Prevc and Domen Prevc (ski jumping), Žiga Zagoranski (taekwondo, kickbox), Tim Gajser (motosport), Jasmina Keber (crossminton) and many others.

² Resolucija o nacionalnem programu športa v Republiki Sloveniji za obdobje 2026–2035 (ReNPŠ26-35): Uradni list RS, št. 55/25. Retrieved from: https://www.olympic.si/datoteke/07b_Resolucija%20NPŠ%202026-2035.pdf (accessed: 24 September 2025); tako tudi Yabe et al., 2019, p. 249.

³ Convention on the Rights of the Child, adopted by General Assembly Resolution 44/25, 20 November 1989. Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (accessed: November 14, 2025).

safety, happiness, voluntary participation, and satisfaction for them, are often exposed to numerous human rights violations and children's rights abuses. It is precisely because of these special characteristics of the sports environment that they are particularly vulnerable, sensitive, and at risk of various forms of neglect as well as physical, sexual and emotional abuse. The article analyses selected aspects of child rights violations in sports.

2 Foundations of Olympism⁴

The founder of the modern Olympic Games, the French Baron Pierre de Coubertin, is also one of the most important educators. He recognized the importance and use of psychophysical activities, typical of the ancient Olympic Games, for the general education of young people. He believed that by engaging in psychophysical activities, such as sports, the highest level of achievement could be attained, including the improvement of character, moral qualities, and exemplary physical movement in youth.⁵ Moreover, he even referred to sport as a "*religio athletae*". He saw it as a religion, but not in a theological sense, but in a cultural, psychological, and ritual sense.⁶

Even if we examine his first vision of sport, we can conclude that it has come true. For children, sport is important from several aspects - such as health, exercise, socializing, meeting friends, accepting and following rules, and learning about ethical and other values. Sport can provide an especially important outlet for children who belong to vulnerable groups (e.g., children from war zones, girls, disabled children, children of minorities, children who face domestic violence), because sport can allow them to integrate into the wider social environment while also providing them with the opportunity to forget, at least for a few moments, the horrors they face or the possibility to withdraw from such an environment.

⁴ The word 'olympionism' comes from the Greek: 'Olymp' = Ὀλυμπος / Olympos - refers to Mount Olympus, the mythical home of the Greek gods, and also the location associated with the ancient Olympic Games; -ism' = ισμός / -ismós - a suffix used in Greek to denote a doctrine, system, ideology, or practice (Etymonline.com, n.d.).

⁵ Lenk, 2015, p. 17.

⁶ See more about *religio athletae* Lenk, 2014, p. 24; Krüger, 1993; Mechikoff & Sullivan, 2008.

The Olympic Charter⁷ is today the fundamental constitutional document of the International Olympic Committee (IOC). The Olympic Charter is used as:

- a) the Constitution of the Olympic Movement, as it defines the principles of the Olympic Movement and the rights and duties of the members of the IOC;
- b) the founding statute of the IOC, as an association under Swiss law;
- c) the general regulations for the Olympic Games outline the main rules, supplemented by secondary legislation adopted by the IOC.⁸

The Olympic Charter, as the fundamental document of modern sport, sets out the fundamental principles of Olympism. Olympism is thus a philosophy of life that elevates and unites the qualities of body, will and spirit into a balanced whole. By combining sport with culture and education, Olympism strives to create a lifestyle based on the joy of effort, the educational value of a good example, social responsibility and respect for internationally recognized human rights and universal fundamental ethical principles within the framework of the Olympic movement. Olympism aims to place sport at the service of the harmonious development of humanity, promoting a peaceful society that values the preservation of human dignity.⁹

The Olympic Charter also explicitly states that the practice of sport is a human right. Everyone should have access to the practice of sport without discrimination of any kind (such as race, skin color, sex, sexual orientation, language, religion, political or other beliefs, national or social origin, assets, birth or any other status), in accordance with internationally recognized human rights within the framework of the Olympic Movement. The Olympic spirit requires mutual understanding in a spirit of friendship, solidarity and fair play.¹⁰

The Olympic Charter is a 'living document', as it constantly responds to the continuous evolution of sport and the challenges that new developments bring. The text of the Olympic Charter thus also represents a response to the various threats

⁷ Olympic Charter (2025) was adopted by International Olympic Committee (in force as from 25 January 2025). Retrieved from: <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/IOC-Publications/EN-Olympic-Charter.pdf> (accessed: October 1, 2025).

⁸ Latty, 2024.

⁹ Olympic Charter, 2025, Fundamental principles of the Charter, p. 8, para. 1 and 2.

¹⁰ Olympic Charter, 2025, Fundamental principles of the Charter, p. 8, para. 3 and 6.

that sport faces (e.g., doping, competition manipulation, corruption, sexism, terrorism, racism).¹¹

In light of the numerous positive attributes of sport, it is surprising that the Olympic Charter fails to explicitly mention children. However, based on the Olympic Charter's statement that "*every individual must have access to the practice of sport, without discrimination of any kind /.../*" the latter suggests that children are also included, despite not being explicitly mentioned or defined as athletes.

3 Sport Through the Prism of Children's Rights

Based on Article 1 of the UNCRC, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".¹² Because children represent a particularly vulnerable group in everyday life, it is not surprising that they are also entitled to special protection in light of general human rights and, in particular, children's rights, the foundation of which is laid out in the UNCRC.

Children in sport therefore consist of all children who participate in any form of physical education, physical activity, and sport, including those who aspire to become professional athletes or officials (e.g., referees), and those who play sports or participate in other aspects of sport for leisure, recreation, and exercise (e.g., ball handlers).¹³

Although the UNCRC does not explicitly mention sport, most of its essential articles can be linked to sport or to the impact on children who engage in sport. Sport is of exceptional importance to children. As we have already established, the Olympic Charter explicitly emphasizes that engaging in sport is a human right and that every individual must have access to engaging in sport without any form of discrimination. Therefore, engaging in sport is also a child's right, which must be guaranteed without any discrimination. This is particularly true for children from vulnerable groups. For example, consider the case of children with special needs. Sports organizers must

¹¹ Latty, 2024.

¹² This definition of a child can also be found in Article 5 of the Slovenian Family Code (in Slovenian Družinski zakonik- FC): Uradni list RS, št. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C, 200/20 – ZOOMTVI, 94/22 – odl. US, 94/22 – odl. US, 5/23, 34/24 – odl. US. Glej tudi Kraljić, 2019, pp. 61-63.

¹³ Japan Committee for UNICEF, 2018, p. 5.

take measures to provide sports activities for children with disabilities or adapt sports activities so that children with special needs can also participate in sports activities together with children without special needs (e.g., design of sports facilities that allow access for people with disabilities; appropriate support from officials, coaches and other support staff; adaptation of sports rules; adaptation of equipment so that athletes with special needs may participate (e.g., sports wheelchairs)).¹⁴

Even the General Commentary on Article 31 of the UNCRC, which only briefly addresses sport, emphasizes that the issue of sport is important in its own right.¹⁵ Article 31, paragraph 1, of the UNCRC provides, “States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts”. Further, States Parties shall also respect and support the child's right to participate fully in cultural and artistic life and encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational, and leisure activities (Article 31, para. 2, of the UNCRC). The right to play also has an economic, social, and cultural character, as through play, children learn to participate in the community and accept the rules and value systems of the society in which they live and learn.¹⁶ We can conclude that play and sport, like education, can have a positive impact on children's lives not only during childhood but after they reach adulthood.

Participation in sports is widespread in human culture and is based on voluntary participation.¹⁷ Although the benefits to the child are prioritized, it should not be ignored that a child's participation in sports can also have a positive impact on other family members or the entire family. Respect for the time children spend with their families must also be considered, as this ensures their right to family life. Therefore, participation in sports should be balanced. How sports activities are implemented, i.e., the type, intensity, and methods of teaching sports, should be appropriate to the child's age and development. Sports should not have a negative impact on the physical and mental health of children, including the potential for exhaustion due to excessive training.¹⁸

¹⁴ Japan Committee for UNICEF, 2018, p. 7.

¹⁵ See General Comment no. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31), para. 6, p. 3.

¹⁶ For more see Kraljić, 2024, p. 87; Mrnjauš, 2014, p. 218.

¹⁷ Japan Committee for UNICEF, 2018, p. 4.

¹⁸ Japan Committee for UNICEF, 2018, p. 13.

Based on Article 12, para. 1, of the UNCRC, States Parties shall guarantee to the child who is capable of forming their own opinions the right to express those opinions freely in all matters affecting them.¹⁹ The weight of the expressed opinions shall be assessed in accordance with the age and maturity of the child. This right of the child also extends to sport. Children may thus freely express their views on all matters affecting them in sport, including their willingness or unwillingness to participate in competitions and training, in accordance with their age and maturity. The rights and interests of the child should be prioritized, as sport should provide an environment in which the child wants to participate, enjoys, relaxes, socializes with peers, acquires new knowledge and skills, and improves their health, among other benefits. These principles apply not only to children who want to become professional athletes but also to children who wish to enjoy sports as a leisure and recreational activity alike.²⁰ Despite the explicit provision in Article 12 of the UNCRC, and despite major shifts and changes in its substantive areas (e.g., courts, schools), sport remains an environment where children are still rarely consulted, even in matters that directly affect them. Instead, parents are consulted, because they have the dominant role in decision-making for their children.²¹

To ensure maximum benefit, children should be provided with sufficient opportunities to participate in sports, as well as learning, play, leisure, and recreational activities appropriate to their age, and to freely participate in cultural and artistic activities.²² Despite the positive effects associated with sports activities, sports environments do not always provide a safe environment for children.

4 Protection of Children From All Forms of Violence and Negative Impacts on Their Rights

Children are a vulnerable social group that is guaranteed protection from all forms of violence and abuse, and the negative impact of same on their rights. The latter is also necessary in the field of sport, as sport must represent a safe environment for children. Though it is true that the UNCRC does not explicitly mention sport, the scope of its Article 19 nevertheless extends to sport.²³ As previously mentioned,

¹⁹ Več o tem glej Kraljić & Drnovšek, 2022, pp. 101-116.

²⁰ Japan Committee for UNICEF, 2018, p. 7.

²¹ Aina et al., 2021, p. 4.

²² Japan Committee for UNICEF, 2018, p. 9.

²³ Article 19 of the UNCRC states: »1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment

sport plays a crucial role in the development of children, shaping their character and ensuring their physical, mental, and social well-being. Abuse in sport, therefore, negatively affects all the above and consequently constitutes a violation of children's rights.

Despite its many benefits, sports nevertheless often present potentially hazardous environments for children. Namely, sport defines specifications, such as the direction towards success and victories, the existence of hierarchical structures, the need for physical contact, and the intensity of the relationship between coaches and athletes, which is further strengthened by the significant time spent in training and competitions.²⁴ It is precisely because of these special characteristics of the sports environment that children are particularly vulnerable, sensitive, and at risk in various forms:

- i) physical (e.g., injuring, overtraining, pushing, shoving, shaking, throwing objects, spitting, kicking, pulling hair or ears, punishing 'bad' play, denying food, fluids, sleep, medical care);
- ii) sexual (e.g., inappropriate sexual contact, inappropriate exposure, penetration, payment for sexual favors, explicit sexual comments, jokes or gestures, sexual advances, sexist jokes and comments, intrusive sexual glances, sexually charged communication, rape, sodomy, sexual exploitation, exposure to pornographic material, etc.);
- iii) emotional abuse (e.g., withholding attention or support (e.g., deliberately ignoring an athlete due to poor performance), insulting, shouting, belittling, threatening, humiliating, scapegoating, ignoring, harassing, ridiculing, isolating, manipulating, encouraging eating disorders, etc.);
- iv) or neglect (failure to provide care (e.g., withholding food, forcing them to train or compete despite injury), inadequate care or treatment of injuries, failure to provide necessary supervision, inadequate equipment, allowing bullying or torture by teammates, failure to meet basic needs (e.g., water, food, sleep)).²⁵

or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.»

²⁴ Gaedicke et al., 2021, p. 2.

²⁵ Gattis & Moore, 2022, p. 3; Rulofs et al., 2022, p. 1.

The athlete's relationship with coaches is particularly significant. The coaches must be persons whom both the child and the parents' trust. Parents entrust the care of their child not only to coaches, but also to officials, development workers, assistants, and other adults, whom they may not know well themselves, during training, competition, transportation to events, etc. The coaches are the ones who teach the child the ethical and sporting rules of the individual sport, techniques, and exercises during training, provide instructions during competition, and offer guidance on nutrition, among other aspects. During training, close contact between the coaches and the child may occur while learning techniques (e.g., in judo as a martial art). However, since sports are very different, touching that is acceptable or even necessary in one sport may be unacceptable in another. For example, in sports such as gymnastics, observation or other forms of physical intervention by the coaches with the athlete may be an essential element of safety during training. A coach often understands that the purpose of physically touching an athlete during a scrimmage is to catch and protect them from injury. This form of contact may be specific to a particular sport, but it is not necessary in other sports, such as football. Stevens, therefore, warns that the "trend toward a no-touch policy," whose sole purpose is to avoid misperceptions, may be counterproductive for sports where guarding or physical manipulation is necessary to ensure the athlete's safety.²⁶ Athlete safety must still be the priority.

Some sports also require equipment that is tight-fitting (e.g., gymnastics) and minimalist (e.g., swimming). Parents, coaches, or other adults may also help with transportation to and from practice for younger children. Moreover, older children travel to competitions and practice in remote locations with relatively little supervision. Parents have the best interests of their children in mind when they encourage their child to participate in sports and may allow a coach who claims that their child has an exceptional talent or ability almost unlimited access. Unfortunately, however, parents often fail to distinguish between a dedicated and inspiring coach who takes a personal interest in their child and a potential abuser. An abused child is in a challenging position with many conflicting emotions and loyalty.²⁷

²⁶ Stevens, 2025, S. 129.

²⁷ MacAuley, 1996, p. 275.

The child sometimes spends more time with the coach than with their peers and parents. In such cases, the coach is often a very important person for the child, as they can serve as a mentor, confidant, father/mother figure, or authority figure. Children can also observe how their parents respond to their coaches' requests and often bow to them, which may lead children to perceive coaches as a higher authority than their parents.²⁸ We should also highlight an additional dangerous aspect if children view the coach as a key authority. Children can learn aggressive behavior by observing it in others - in our case, the coach. This is especially dangerous if the coach they admire behaves aggressively and violently, and the coach is successful in his work.²⁹ Children can adopt such behavior and continue and build on it (e.g., towards peers, family members, partners, and later even their own children).

We would also like to draw attention to something called "grooming". These are strategies that abusers consciously use to persuade children to engage in sexual activities. In sports, this is reflected in the building of trust between athletes and their coaches. Trust is a key factor in grooming. Groomers choose the most vulnerable victims.³⁰ A Japanese study even showed that children who were victims of corporal punishment at home were more tolerant of such behavior by sports coaches than children who were not subjected to corporal punishment.³¹ Every child is at risk, but the risk is greater for children who live in unstable family situations or living circumstances. Children who crave attention, validation, or acceptance (which is exactly what a coach can offer) can more easily fall victim to groomers who are interested in them.³² A coach builds trust with his victims, which later makes it difficult for the athlete victims to recognize that the coach has crossed a line. This includes, for example, compliments and gifts from coaches, phone calls, highlighting the athlete's notable successes, isolating the athlete from others, secrets shared by the coach and the athlete with the coaches. The characteristic of grooming is also reflected in the normalization of sexual harassment and abuse, as coaches gradually overstep personal boundaries in their relationships with victims. Coaches often extend grooming, i.e., the process of gaining trust, to other people within the sport (e.g., parents, other coaches, team members).³³ Coaches thus develop social capital to increase their status in the community and build protection against potential

²⁸ Stevens, 2025, p. 96; MacAuley, 1996, p. 275; Alexander, Stafford & Lewis, 2011, p. 10.

²⁹ Takahashi, Ozawa & Harizuka, 2020, p. 6.

³⁰ Players Health, 2022.

³¹ Takahashi, Ozawa & Harizuka, 2020, p. 3.

³² Players Health, 2022.

³³ Gaedicke et al., 2021, p. 10.

accusations. Consequently, it is precisely for this reason that it is difficult for an athlete to report on a coach who crosses boundaries without jeopardizing their credibility and sports career.³⁴

The coach plays an extremely important role for young athletes, as they can significantly influence the child's future sports career, both positively and negatively. Often, their influence extends beyond the sports environment, also affecting family life, relationships within the athlete's family, school, and free time. Coaches often represent not only professional authority but also a person who has a direct influence on the athlete's future (e.g., their competitions, national team selections, and sports scholarships). Such an environment has the potential to develop emotionally manipulative relationships. Violence not only affects the body, but also deeply affects the very feeling of value, freedom, and security. This is precisely why mechanisms that resemble dependence can develop in a relationship where forms of violence and abuse are present.³⁵

When abuse is perpetrated by individuals who have a significant position in relation to a child's hopes and dreams in sports (e.g., a coach), the child finds themselves in a serious dilemma. Should the risk be taken to prevent or stop the abuse, or should the abuse be endured to have the promised and desired sports career? Many studies have shown that the love for sports is often extinguished precisely because of experiences with abuse during training or competitions.³⁶

When a person who is important, influential, and authoritative (i.e., a coach) does something that children recognize as wrong, a major emotional conflict occurs. In most cases of child abuse, the victim feels guilty that, in some way, they are to blame. And because children often perceive coaches as a higher authority than their parents, they find themselves in a difficult position. Parents, as guardians who are supposed to protect and care for their children's well-being, send them to an environment where abuse occurs. Not infrequently, parents are even aware of the abuse but justify

³⁴ Owton & Sparkes, 2015; p. 732 ff; Gaedicke et al., 2021, p. 10.

³⁵ Center za socialno delo Celje, 2025.

³⁶ Tuakli-Wosornu et al., 2023, p. 7. The latter is also clearly indicated by the case of *Brown v. USA Taekwondo* (483 P.3d 159 (2021)), where USA Taekwondo (USAT) was accused of failing to protect underage athletes from harm caused by taekwondo coach Marc Gitelman, who sexually abused several athletes during meetings, injury check-ups, and car rides to competitions. For example, in 2007, he invited one of the fifteen-year-old athletes to his hotel room to watch a movie, but then sexually abused her. In 2008, he took a fifteen-year-old athlete to a competition and sexually abused her during the drive. The abuse continued until 2010, when the athlete stopped competing in taekwondo (Keating, 2024; Stevens, 2025, p. 103).

it with excuses that it is "the coach's harsher methods that lead to good results". However, in doing so, they completely overlook the child and their rights and safety. The interests of others very quickly come to the forefront, which overrides the interests and well-being of the child. Sport and the sports environment can very quickly become an environment where children's rights are abused and trampled. To ensure success in sports now or in the future, training and competitions become environments that are permeated with various forms of violations of children's rights.³⁷

Children must be provided with a safe and secure environment in which to practice, compete, and participate in sport. A safe environment also encompasses providing children when traveling to sporting activities with safe and adequate transportation of suitable quality, as well as appropriate accommodation and meals. Ensuring the elimination of violence does not only apply to, for example, coaches, but also to peers and others who perpetrate violence via social media. We must not forget the media, which should respect the ethical codes of journalism in sports events in which children participate, especially in the case of failure or poor results, and in this way also protect children from possible negative consequences.³⁸

Sport is also often associated with negative events that undermine the principles of Olympism. These include incidents involving various aspects of fraudulent conduct (e.g., match-fixing, corruption, and manipulation). Children, as a vulnerable social group, may be more exposed to such inappropriate conduct. Consequently, persons, including coaches, who have the authority to decide whether to allow children to participate in competitions, should be prevented from receiving financial or other rewards that could influence their decisions, thereby ensuring fairness and transparency. Children should be provided with a sporting environment that is free from fraudulent conduct. Sport should also be an environment where children are protected from all forms of exploitation, including political, social, and economic.³⁹

³⁷ Japan Committee for UNICEF, 2018, p. 10.

³⁸ Japan Committee for UNICEF, 2018, p. 10.

³⁹ Japan Committee for UNICEF, 2018, p. 10.

5 High-Profile Cases of Child Rights Violations in Sport

Violations of children's rights occur not only in the field of sport but also in areas related to sport itself. For example, prior to the 2012 London Olympics, violations of children's rights were detected, as a company in China used children as young as 12 years old to produce Olympic mascots for the Olympic Games.⁴⁰ Sport or the sports environment should be an environment where all forms of physical or psychological violence, abuse (including sexual), injuries, excessive training, harassment (sexual and physical), bullying, torture, neglect, negligent treatment, abusive treatment, exploitation, excessive rules and/or punishment, and human trafficking must be eliminated.⁴¹

The case that represents a turning point in the history of sexual exploitation in sport is referred to as the so-called "Hickson case". Paul Hickson, the former British Olympic swimming coach, was convicted in 1995 of sexually assaulting teenage swimmers who were in his care over a period of twenty years. He was sentenced to seventeen years in prison, which at the time was the longest sentence for rape imposed by an English court.⁴² In recent years, however, we have witnessed numerous revelations in sports in general, as well as in cases involving children. The following will present selected international high-profile cases marked by violations of children's rights, as well as cases that occurred in Slovenia.

5.1. USAG Scandal

The world of sports and gymnastics has been rocked by the revelation that Simone Biles, the most successful female gymnast of all time, was the victim of years of sexual abuse by Larry Nassar, the former doctor for the US gymnastics team (USA Gymnastics = USAG).⁴³ For over two decades, Nassar sexually abused underage gymnasts, including Simone Biles and Gabby Douglas.⁴⁴ He did so while exploiting his position as a doctor and the trust of the athletes. After a trial in which 156 victims

⁴⁰ Aina et al., 2021, p. 4.

⁴¹ Japan Committee for UNICEF, 2018, p. 10.

⁴² See more about the "Hickson Case" in Brackenridge, 2004; Brackenridge, Bringer & Bishopp, 2005; Alexander, Stafford & Lewis, 2011, p. 10.

⁴³ The first report of abuse by Larry Nassar was made in 2015 by gymnast Maggie Nichols. After Maggie Nichols reported the abuse to USAG, she and her parents were advised to remain silent, not to tell anyone, and that USAG would handle the matter. Maggie Nichols reported the abuse on June 17, 2015, and after the 2016 Olympic qualifiers, she was not selected for the 2016 Olympic team, which many have linked to this report (Stevens, 2005, p. 101).

⁴⁴ Stevens, 2025, p. 93.

spoke out about sexual abuse, Nassar was sentenced to 40 to 175 years in prison for sexually abusing athletes and patients.⁴⁵

Simone Biles' revelation is considered crucial and of extraordinary importance and impact, as it revealed to the public that such abuse occurs even in the most elite athletes, who have remained silent for many years due to fear of retaliation and loss of careers. Biles, who later became a leading voice in the fight against systemic abuse, strongly criticized both USAG and the US Olympic Committee for not taking action despite receiving warnings.⁴⁶ The case of Larry Nassar and USAG, or Simone Biles, led to a global debate on the importance and need to implement child protection in sports, on systemic failures, the culture of fear, and the need to ensure that appropriate mechanisms are in place for reporting, handling, and monitoring sports organizations. It is therefore not surprising that on 14 February 2018, just a few days after the latest conviction on 5 February 2018, the "Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017" or "Act 115-126" for short, also known as (hereinafter) the "SafeSport Act", was passed in the United States. The goal of the "SafeSport Act" is to protect minors and amateur athletes from sexual abuse by requiring the immediate reporting of sexual abuse to law enforcement. The "SafeSport Act" also established the "United States Center for Safe Sport" (hereinafter: SafeSport Center), whose mission is to promote a safe environment in sports that is free from abuse, including emotional, physical, and sexual abuse, of all amateur athletes – especially children. The SafeSport Center investigates reports of sexual, emotional, or physical violence and other forms of inappropriate behavior in sports. It also takes disciplinary action against coaches, athletes, or other members of sports organizations who violate the "SafeSport Act."⁴⁷

5.2. Japan – Physical Violence as Coaching Technique?

Despite Japan's complete ban on corporal punishment (known as "taibatsu"), physical violence as a coaching technique has a long tradition in Japanese sports and is often seen as necessary for achieving excellence in competition and in shaping

⁴⁵ Levenson, 2018.

⁴⁶ Shabad, 2021.

⁴⁷ Stevens, 2025, p. 108 ff.

character.⁴⁸ It is therefore not surprising that in Japan, coaches, parents, and even some athletes cling to the belief that physical violence has its own value in sport. This dangerous tradition makes it even more challenging to eradicate physical violence in sports and, as a result, children continue to suffer.⁴⁹

Japan was rocked by the suicide of a 17-year-old basketball player from Osaka in 2012. He committed suicide after being repeatedly physically abused by his coach. Following this, Japan then adopted the Declaration on the Elimination of Violence in Sport in 2013 (a written statement calling on sports organizations to monitor abuse of athletes and establish systems for reporting victims) and in 2019, the Codes of Governance for National Sports Federations and Other Sports Organizations, which are intended to establish guidelines for all sports bodies. The downside is that these are not binding documents, and none of them specifically address the abuse of child athletes.⁵⁰

6 Child Abuse in Sport in Slovenia

In a 2025 survey conducted in Slovenia, in which 352 members of the Slovenian Olympic Committee participated, participants reported that 54% had experienced emotional abuse (insults, shouting, ignoring, threats), 51% physical violence, 47% neglect, and 18% sexual abuse, even forced sexual intercourse.⁵¹

We find that Slovenia is also facing child abuse in the field of sports. Some abuses have already had their epilogue in criminal proceedings. The Slovenian Criminal Code⁵² (CC-1) specifies two criminal offenses for which perpetrators have been convicted of child abuse in sports.

⁴⁸ These violent acts include strikes to the face, kicking, beatings with objects such as sticks or bamboo kendo sticks, water deprivation, strangulation, whipping with whistles or rackets, and sexual abuse and harassment (Benque, 2020).

⁴⁹ Human Rights Watch, 2020.

⁵⁰ Human Rights Watch, 2020.

⁵¹ Center za socialno delo Celje, 2025.

⁵² Criminal Code (in Slovenian *Kazenski zakonik* – CC-1): Uradni list RS, št. 50/12 – uradno prečiščeno besedilo, 54/15, 6/16 – popr., 38/16, 27/17, 23/20, 91/20, 95/21, 186/21, 105/22 – ZZNSPP, 16/23, 107/24 – odl. US.

6.1 Criminal Offense "Sexual Assault on a Person Younger than Fifteen Years of Age" (Article 173 of the CC-1)

Article 173 of the Criminal Code defines the criminal offense »Sexual Assault on a Person Younger than Fifteen Years of Age«:

»1) Whoever has sexual intercourse or performs any other sexual act with a person of the same or opposite sex under the age of fifteen years shall be sentenced to imprisonment for between three and eight years.

(2) Whoever commits an act referred to in the preceding paragraph against a vulnerable person under the age of fifteen or by threatening him or her with a direct attack on life or body, or, by acting in such manner, commits the aforementioned act against another person, shall be sentenced to imprisonment for between five and fifteen years.

(3) A teacher, educator, guardian, adoptive parent, parent, clergyman, doctor or any other person who through the abuse of his or her position has sexual intercourse or performs any other sexual act with a person under the age of fifteen that has been entrusted to him or her for teaching, education, medical treatment, protection or care shall be sentenced to imprisonment for between three and ten years.

(4) Whoever in the circumstances referred to in paragraphs one, two or three of this Article violates the sexual integrity of a person under the age of fifteen years shall be sentenced to imprisonment for up to five years.

(5) The act referred to in paragraph one of this Article shall not be unlawful if it is committed with a person of comparable age and if it is appropriate to that person's mental and physical maturity.«

In the case at hand, the convicted person groped the breasts and buttocks of the eleven-year-old victim, namely, he grabbed her breasts with his hand, held them and squeezed them for a while, and then grabbed her buttocks, held his hand there and squeezed them as well, and therefore, in the case at hand, it is not a light or superficial touch of the victim's body.⁵³ It was found that the groping and squeezing of the victim's breasts and buttocks lasted for quite some time, half a minute, which means that it was not a fleeting touch of the victim's body. The court emphasized that short-term physical contact of low intensity, when it is more about touches, and even if these are light, fleeting, or superficial, for example, on a bus, can be considered as an infringement of sexual integrity, since the definition that it is a sexual act is not justified. Therefore, the court concluded that, given all other legal signs, including the elements of a criminal offense, such conduct can be defined as a privileged form

⁵³ Different VDSS sodba in sklep Pdp 78/2016, 1 December 2016: *»The court-appointed expert concluded that the majority of the games, activities, and conduct employed by the plaintiff which involved physical contact or touching, as such, complied with the standards of the pedagogical profession, were appropriate to the children's age, and were consistent with the specific circumstances of the introductory (adaptation) period in kindergarten. The psychiatric expert opinion further established that the plaintiff did not associate his conduct with sexuality; however, it also indicated that he may have demonstrated insufficient critical awareness regarding the need for physical closeness or interference with the children's personal integrity. Nevertheless, this does not imply that the plaintiff breached his obligations arising from the employment relationship intentionally or through gross negligence, ...«*

of the criminal offense of sexual assault on a person under the age of fifteen under the fourth in connection with the first paragraph of Article 173 of the CC-1.⁵⁴

6.2 Criminal Act "Violation of Sexual Integrity Through Abuse of Authority" (Article 174 CC-1)

Article 174 of the CC-1 defines the criminal offense "Violation of Sexual Integrity Through Abuse of Authority":

»1) Whoever, by abusing his or her authority, induces his or her subordinate of the same or different sex who depends on him or her to have sexual intercourse with him or her or to perform or submit to any other sexual act, shall be sentenced to imprisonment for up to five years.

2) A teacher, educator, guardian, adoptive parent, parent or any other person who through the abuse of his or her position has sexual intercourse or performs any other sexual act with a person above the age of fifteen whom he or she is entrusted to teach, educate, protect or care for, shall be sentenced to imprisonment for between one and eight years.«

This criminal offence is committed by anyone who abuses their position (superiority) and thus induces a person of the opposite or same sex, who is subordinate or dependent on them, to engage in sexual intercourse, or to commit or suffer any other sexual act. Such an act is punishable by imprisonment for up to five years.

A karate coach is indeed not an explicitly stated person who can commit the criminal offense under consideration, the criminal offense of "Violation of Sexual Integrity through Abuse of Authority" under Article 174, Paragraph 1 of the Slovenian CC-1. However, a coach can be counted among the "other persons" who are envisaged as a possible perpetrator of this criminal offense under Article 174, Paragraph 2 of the CC-1. A coach is undoubtedly one of the 'other persons' envisaged by the CC-1 as a possible perpetrator of the criminal offense under Article 174, Paragraph 2 of the CC-1. This must be a person who, by abusing their position, has sexual intercourse or commits some other sexual act with a person over the age of fifteen who is entrusted with under their teaching, upbringing, protection, and care. The court further emphasized that a violation of this Article may occur even if only one of the educational activities is present (i.e., that the person is entrusted with teaching, upbringing, protection, and care) and that cumulative fulfillment of all four is not necessary. In the case in question, the injured party, a karate student, was entrusted

⁵⁴ VSRS sodba I Ips 30092/2016 of 24 January 2019. Also VSRS sodba I Ips 13370/2010 of 11 January 2018.

to the defendant, a karate coach, for individual training. The defendant coach abused his position when the victim was subordinate to him as a karate student in premises intended for sports practice. In the case at hand, the court emphasized that the convicted person's conduct constituted an independent criminal offense, as the subsequent conduct did not maintain, renew, or strengthen the unlawful state of the previous conduct. Still, after the commission of the first act, the prohibited consequence ceased. Upon the commission of the second act, it was a completely separate act by which the convicted person again realized the prohibited consequence.⁵⁵

7 Final Thoughts

The Simone Biles case is a key example in the field of child abuse in sport. It has opened doors that had long been closed. Sport must represent a safe environment for children, where they can develop their abilities and fulfill their desires. When we are dealing with children in sport, it is critical to bear in mind that it is the child's best interests – not the coaches, other assistants or even the parents – that are paramount. However, since children can be exposed to various kinds of pressure in sport, such as excessive training demands, inappropriate coaching methods, emotional or physical violence, and even violations of their right to education and leisure, we must pay special attention to the education and training of personnel working in the field of sport and to raising awareness of the purpose of sport. Sport must not represent an environment in which children's rights are overlooked due to the desire for results, reputation, financial gain or simply as a way to please the child's parents. Sport must primarily enable children to develop healthily, participate in, and grow as individuals. Therefore, appropriate monitoring mechanisms must also be provided that will ensure that children's rights are respected in the field of sport. If violations do occur, they must be identified, addressed, sanctioned, and further violations must be prevented.⁵⁶

Legal Sources, Case-law

Brown v. USA Taekwondo (483 P.3d 159 (2021)).

⁵⁵ VSRS sodba I Ips 46401/2022 of 30 October 2022; see also Furlan Rus, 2025.

⁵⁶ The latest high-profile cases of child abuse in sports involve a horse-riding coach and a judo coach. The latter case will certainly attract global attention, as it involves a Slovenian judo coach of international renown.

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THE RIGHT TO PLAY VERSUS EARLY PROFESSIONALISATION: A CHILDREN'S RIGHTS PERSPECTIVE ON YOUTH SPORT

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This paper adopts a children's rights perspective to examine the tension between children's right to play and the growing trend of early professionalisation in youth sport. It traces the evolution of the right to play in international law and documents how intensive training regimes and early specialization can compromise children's health, education, and rest. The analysis highlights how commercialized youth sports environments often infringe upon multiple child rights and conflict with the best interests of the child. The paper proposes a child rights-based framework for youth sport governance that balances the right to play with early professionalisation in sports. The analysis situates early professionalisation within the normative framework of the United Nations Convention on the Rights of the Child, with particular attention to Article 31 – the right to play. This approach places youth sport into a legal accountability framework, which requires these practices to be assessed against binding child rights standards.

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1 Introduction

Youth sports exist in a very interesting space between play and work. On the one hand, every child is entitled to rest, leisure and play as fundamental rights enshrined in international law;¹ on the other hand, modern trends show children being placed in highly structured, adult-style sports programs from ever-younger ages. In elite football academies, for example, children as young as six are recruited for multiple weekly training sessions, with formal club registration by age nine.² This is often referred to as ‘premature professionalisation’ of youth sport and it raises questions about the impact on children’s welfare.

From a theoretical perspective, this study is grounded in international children’s rights law. The primary normative framework we examine is the UN Convention of the Rights of the Child. As such, it views the phenomenon of early professionalisation as a rights-relevant structural practice that intersects with multiple child rights. The main focus of the study is Article 31 of the Convention, interpreted in conjunction with the best interests of the child and the interdependence of rights relating to education, health, and protection from exploitation. This approach places youth sport into a legal accountability framework – therefor requiring these practices to be assessed against binding child rights standards.

This article explores the tensions between the right to play and the early professionalisation of youth athletes from a children’s rights perspective. It examines the evolution of the right to play in international law, defines what early professionalisation entails, and analyzes how intensive, specialized sports training at a young age may infringe upon various rights of the child - including the rights to play, rest, education, health, and protection from exploitation. It also considers the interests of parents, coaches, sports federations, and sponsors, and how they sometimes conflict with the best interests of the child. Finally, the article reviews regulatory responses and offers recommendations for aligning competitive youth sport with a child-rights based approach. This study aims to provoke a rethinking of youth sports models to ensure that children’s rights are protected even as their athletic talents are developed.

¹ United Nations General Assembly, Convention on the Rights of the Child (1989).

² Read et al., 2016, pp. 2295–2302.

The right to play has been progressively recognised as a vital aspect of childhood in international legal instruments. The 1959 UN Declaration of the Rights of the child proclaimed that every child “*shall have full opportunity for play and recreation*”.³ In 1959 the right to play was still viewed as part of the right to education. It was not until 1989, with the adoption of the United Nations Convention on the Rights of the Child (UNCRC), did it become cemented as an independent right of the child. Article 31 of the UNCRC explicitly guarantees the right of every child to rest and leisure, to engage in play and age-appropriate recreational activities, and to participate freely in cultural life and the arts. In other words, play is not a luxury or mere pastime; it is a fundamental right linked to the child’s well-being and holistic development. Under the UNCRC, State parties are obliged to respect and promote opportunities for play and recreation. However, the UN Committee on the Rights of the Child has observed that Article 31 is often undervalued and under-implemented. In its 2013 General Comment No. 17 on Article 31, the Committee expressed concern at the poor recognition of the right to play in many countries, noting a lack of investment in play provisions and weak protective legislation.⁴ When governments or communities do invest in children’s activities, there is a tendency to favor organized sports and structured programs, whereas equal attention is not given to creating time and space for spontaneous, child-directed play. The Committee emphasized that unstructured play is as important as organized activities, and it urged societies to foster attitudes supportive of play for its own sake. It is important to note however, that even the Committee itself tends to neglect the right to play. At the time of writing this study, 646 Concluding Observations have been published. Out of all the Concluding Observations – 646 as of 30 December 2025 – only 132 explicitly mention the right to play.⁵ This number represents just 20%. This statistic reveals a limited focus by States and even by the Committee on the right to play within the broader evaluative framework of the Committee. The relatively low percentage of observations directly addressing the right to play suggests that, although the Committee acknowledges its importance, greater emphasis and a more in-depth examination of this right may be necessary in the context of the comprehensive development and well-being of children. It is noteworthy, that since the adoption of GC 17, the mentions of play have been more frequent than before

³ Principle 7. United Nations General Assembly, Declaration of the Rights of the Child (1959).

⁴ Committee on the Rights of the Child, General Comment No. 17 (2013).

⁵ The author of this study has conducted a detailed qualitative and quantitative review of all of the Committee’s outputs, the numbers mentioned in the article are based on this research.

– in the first six months of 2025 from the 13 Concluding Observations five explicitly mention play. On the surface, this might suggest progress - nearly 38% compared to the historic 20% average. We do have to point out, however, that the mention is fleeting and superficial and the formulation in all five cases has been almost identical with minimal contextual adaptation or legal depth.

In the case of Slovakia, the Committee *“reiterates its previous concluding observations and recommends that the State party strengthen its efforts to guarantee the right of the child to rest and leisure and to engage in play and recreational activities appropriate to the age of the child, including by adopting and implementing play and leisure policies with sufficient and sustainable resources.”* (CRC/C/SVK/CO/6) A nearly identical recommendation appears in the case of Ecuador, with the only addition being a culturally sensitive clause: *“appropriate to the age and the culture of the child”* (CRC/C/ECU/CO/7). Honduras received a similarly worded observation, with a specific reference to children with disabilities - a rare and welcome gesture towards inclusion (CRC/C/HND/CO/6-7). Qatar received slightly more tailored language, as the Committee recommended continued provision of *“safe, accessible and inclusive spaces for play and socialization and public transport to access such spaces,”* with particular attention to children with disabilities and those in marginalised situations (CRC/C/QAT/CO/5-6). Norway was the only State among the five to be evaluated in light of General Comment No. 17, with a recommendation to strengthen measures for the inclusion of *“children with disabilities, children from disadvantaged socioeconomic backgrounds and children belonging to ethnic and religious minority groups”* in age-appropriate recreational and cultural activities (CRC/C/NOR/CO/7). In contrast, eight States - St. Kitts and Nevis, Peru, Gambia, Eritrea, Romania, Iraq, Indonesia, and Brazil - received no mention of the right to play in their respective Concluding Observations, despite evident socio-economic and structural challenges in many of these contexts that are likely to impair children's access to safe, inclusive and accessible play.

So it is clear that even post-General Comment No. 17, the Committee's engagement with Article 31 is sporadic and inadequate. The right to play is acknowledged, but it is rarely examined with the same legal precision or urgency afforded to other substantive rights such as education, protection from violence, or child participation. The absence of qualitative elaboration or child-informed indicators in these observations suggests that the Committee may still view Article 31 as non-essential, or at best as a supplementary right.

The right to play in international law is linked with other rights and principles. Article 31 must be understood holistically alongside the right to rest and leisure (also in Article 31) and the general principle of the best interests of the child (Article 3). Play is foundational for children's physical, mental, social, and emotional development. Through play, children exercise creativity, imagination, and autonomy, and they process the world around them on their own terms. The UNCRC's recognition of this right reflects a global consensus that childhood should include freedom, enjoyment, and participation in age-appropriate activities – a counterbalance to the growing pressures of formal education, work, or other demands.

Significantly, Article 31 defines play broadly. It covers not only informal play (like games with friends) but also organized recreation and sports – insofar as the activity is appropriate to the age of the child and freely chosen. The Committee's General Comment highlights that rapid changes in society, including urbanization, violence, and commercialization, are impacting children's opportunities for play. For many children, especially in disadvantaged communities, child labour, excessive homework, or intense training schedules are encroaching on the time they have to play. This context is directly relevant to youth sports: while sport can be a positive outlet and a realization of the right to play, it can also become a vehicle for denying children a real childhood if it is pursued in a manner akin to work or exploitation.

2 Early Professionalisation in Youth Sport

Early professionalisation in youth sport refers to the phenomenon of children and adolescents engaging in sports training and competition at intensities, specialisation levels, and commercial exposure traditionally reserved for adult professional athletes. Key features of early professionalisation are:

1. Early Specialisation - Children focus on a single sport from a very young age, often to the exclusion of other sports or free play. This model, historically associated with Eastern European sports schools in the 1970s–80s, has spread globally.⁶ For example, youth tennis and gymnastics programs have traditionally pushed specialization before puberty, believing it necessary to achieve elite performance. Early specialization means young athletes might train year-round

⁶ Bailey, 2015.

in one sport, sometimes starting as young as 4 or 5, rather than sampling a variety of activities.⁷

2. **Intensive Training Regimes** - The training volume and intensity for child athletes in professionalised pathways can resemble that of adults. It is not uncommon for pre-teen athletes in elite programs to train 5–6 hours per day, six days a week.⁸ Such schedules leave little time for rest, school, or unstructured play. Travel for competitions and camps further burdens the child's time. In soccer academies, as noted, even 9-year-olds might be in what is effectively a professional training routine with multiple weekly sessions and high expectations.⁹ This intensity is far beyond ordinary extracurricular play and can lead to physical and psychological strain.
3. **Commercialisation and Monetisation** - Early professionalisation often interjects commercial interests into youth sports. This can include corporate sponsorships, media coverage of child prodigies, and the operation of youth academies by professional clubs with significant financial stakes. Some talented children sign contracts or endorsements in their mid-teens, and their market value becomes a consideration.¹⁰ In extreme cases, a 'talent pipeline' develops where children are scouted and even traded across borders for financial purposes.¹¹ The global football industry clearly demonstrates this: elite clubs invest heavily in academies to groom young players in hopes of finding the next superstar, a strategy driven by the economic and reputational currency of developing talent. This financial motive can place undue pressure on children to perform and produce results.

These trends are widespread. Across various sports – from football, basketball and baseball to gymnastics, tennis, and figure skating – there is a trickling down of the professional sports model into childhood. Cultural and economic forces fuel the trend: parents see potential scholarships or careers, coaches seek competitive success, and sports federations view youth programs as talent pipelines. As a result, the traditional notion of sport as play is at risk of being overtaken by a performance-driven mindset even at youth levels.¹² A performance model has crept into youth sports, treating young athletes like professionals in training.

⁷ Jayanthi et al., 2013.

⁸ Sabato et al., 2016

⁹ Sweeney et al., 2021.

¹⁰ Epstein et al., 2024.

¹¹ Centre for Sport and Human Rights, 2022.

¹² Matthews et al., 2026.

Notably, the vast majority of children in such programs will not become professional athletes. The odds of making it are extremely low. In global football, for instance, out of the millions of youths who play, only about 0.04% will ever play in a professional league.¹³ Even those identified as top talents in their early teens often fail to reach elite senior status. Despite this, the early-selection and high-investment approach persists, sometimes justified by the rare cases of prodigies who do become stars. This raises ethical questions: is it justifiable to subject large numbers of children to professional-style regimens for the slim chance of success? The welfare impact on the many who do not reach the top (and even on those who do) must be carefully scrutinized.

Moreover, evidence of harm associated with early professionalisation is accumulating. Paediatric sports medicine and psychology research indicates that intensive single-sport training from too young an age can lead to increased injury rates, burnout, and mental health issues, without clear evidence that it improves ultimate sporting success.¹⁴ Injuries such as overuse damage to growing bones and joints are more common in youth who specialize early, and their athletic careers may actually be shorter on average. Burnout – the loss of motivation and extreme fatigue from chronic stress – has also been observed in young athletes facing adult-like pressure and schedules. These concerns suggest that early professionalisation carries significant risks that implicate children's rights.

3 Impacts on Children's Rights

Paradoxically, while sports are a form of play, early professionalisation can undermine the child's right to play as intended by Article 31 of the UNCRC. The right to play encompasses child-driven, enjoyable, and voluntary activities. When a child's sport becomes a highly regimented job, the element of freely chosen play often diminishes. Training sessions, drills, and competitions orchestrated by adults may crowd out the time for spontaneous play with peers or relaxation. The CRC Committee has warned that an overemphasis on structured activities at the expense of free play is detrimental.¹⁵ A child in an intensive sports academy might spend all afternoon in coached practice and the weekend at competitions, with no chance to

¹³ Haugaasen & Jordet, 2012.

¹⁴ McGuine et al., 2017.

¹⁵ Committee on the Rights of the Child, General Comment No. 17, 2013.

simply mess around with friends or engage in imaginative play. This not only violates the spirit of Article 31 but also can sap the joy that drew the child to sport in the first place. In extreme cases, sport ceases to be play completely and starts resembling work. Numerous child athletes describe their daily routines as exhausting and obligatory, not something they would choose if not pursuing a bigger goal. A professionalised sport schedule can mean a child has no genuine leisure time – no lazy afternoons, no weekends off, few holidays, and constant pressure to train or compete. The loss of leisure time violates Article 31 and can also affect the child's right to rest and sleep, which are crucial for healthy development. Furthermore, when sport becomes highly outcome-oriented, the child's agency in play is reduced. True play involves children's freedom to start or stop an activity, to invent rules, and to participate on their own terms. In contrast, early professionalisation often involves adults setting strict regimens and goals (win this tournament, master that technique, impress those scouts). The child's own voice and preferences can be marginalised, which implicates their right to participate in decisions affecting them (Article 12 of UNCRC). A child rights perspective would argue that the process of sports training must still treat the activity as the child's activity – meaning the child should have a say, and it should contribute to their enjoyment and development, not just serve adult or commercial interests. When this balance is lost, the right to play is not truly being respected, even if the child is technically 'playing sports'.

Besides the right to play, another right that is often impacted regarding professional youth is the right to education. Under Article 28 of the CRC, every child has a right to education, and Article 29 emphasizes that education should develop the child's abilities and potential to their fullest. Early professionalisation can directly interfere with schooling. Children who train many hours a day inevitably lose out on school-based education. Travel to competitions can cause frequent absences. Even when alternatives like homeschooling are provided, the quality and breadth of education may suffer, especially if the focus narrows to sport performance alone. The issue is so significant that child labor laws in other fields have mechanisms to ensure education is not disrupted – for example, child actors in many jurisdictions can only work limited hours and must have on-set teachers, but similar safeguards have often not been applied in sport.¹⁶ In many countries, a teenager could train 30 hours a week for sport with no legal oversight, whereas if they were working that many hours

¹⁶ Centre for Sport and Human Rights, 2022.

in a shop it would violate child labor laws. This inconsistency stems from the perception of sport as inherently good or voluntary, but it leaves a loophole where a child's education can be sacrificed for athletic pursuits without clear accountability. Denying or limiting education for the sake of sport violates the principle that children's growth should be holistic. Even if a young athlete achieves sporting success, an incomplete education can curtail their future opportunities off the field. Philosophers argue that children have a right for their future options to remain as open as possible, and excessive early specialization can narrow those options by excluding normal education and social experiences.¹⁷ As sports ethicist César R. Torres notes, "*education is crucial in keeping children's future open.*"¹⁸ In practical terms, as the statistics mentioned above bear out, very few youth sports prodigies will sustain a lifelong sports career and without adequate schooling they may find themselves with limited skills to pursue other careers. This is neither in the best interests of the child (a core UNCRC principle) nor consistent with their right to develop to their fullest potential (Article 29 of UNCRC) across various dimensions.

Another right that often becomes compromised is the right to health and well-being. Children's rights include the highest attainable standard of health (Article 24 of UNCRC) and the right to safe conditions for growth. Early professionalisation can endanger both physical and mental health. Physically, intense training and competition in growing bodies can cause injuries ranging from stress fractures to chronic joint damage. The culture of elite sport often encourages playing through pain and normalizes injury as part of the game. Researchers describe a culture of risk in sports where young athletes are praised for ignoring pain and continuing to compete.¹⁹ Mental and emotional health is equally at stake. The pressure-cooker environment of professionalised sport – high expectations, competition stress, fear of failure or letting others down – can lead to anxiety and depression in children. A Human Rights Watch Report (2020) on child athletes in Japan documented widespread physical and verbal abuse by coaches – children were slapped, punched, or berated under the guise of discipline, leaving lasting psychological scars (the report's title tellingly was *"I Was Hit So Many Times I Can't Count"*, capturing the routine nature of abuse).²⁰ While Japan's context is specific, similar testimonies of

¹⁷ National Federation of State High School Associations, 2024.

¹⁸ Torres, 2015.

¹⁹ Turkeri-Bozkurt & Bulgu, 2018.

²⁰ Human Rights Watch, 2020.

maltreatment have emerged from youth sports systems in the U.S., UK, Australia, and elsewhere, especially in sports like gymnastics, swimming, and tennis where authoritarian coaching historically went unchecked. This also violates the child's right to protection from violence and maltreatment (Article 19 of the UNCRC) and can cause long-term mental health issues. From a children's rights perspective, the right to health implies that sporting activities should be made as safe as possible and appropriate to the child's evolving capacities. The International Olympic Committee and various medical associations have periodically issued guidelines emphasizing that youth sports should prioritize skill development, fun, and safety over competitive success. For example, the American Academy of Pediatrics released a resolution urging that youth sports programs consider health, integrity, and even doping prevention as critical issues.²¹ The reality, however, is that the drive for early success can overshadow these concerns on the ground. Importantly, some sports governing bodies have started to adjust rules to protect young athletes' health. For instance, minimum age rules prevent children below a certain age from competing at the most elite levels, partly to prevent health risks associated with intense training during critical growth periods. The ultimate goal should be sport for development, not sport at the cost of development.

Perhaps the most striking child rights issue in early professionalisation is the risk of children's economic and commercial exploitation. The UNCRC's Article 32 protects children from economic exploitation and from being made to perform work that is likely to be hazardous or interfere with their education, health or development. At first glance, one might not label playing sports as child labor. Children join sports presumably for enjoyment or talent, not as breadwinners. However, when the conditions of youth sport mirror those of labor – long hours, physical risk, monetization of output, and the dependence of adults' livelihoods on the child's performance – the line begins to blur. A 2022 White Paper on child athletes argued that the work of children in elite sport 'meets the criteria for child labour' as defined in ILO Conventions and the UNCRC.²² Specifically, early specialization, high-volume training, and repeated high-stakes competition at a young age often involve economic exploitation (others profiting from the child's efforts).

²¹ Centre for Sport and Human Rights, 2022.

²² Centre for Sport and Human Rights, 2022, p. 6.

Consider the situation in certain football academies globally. Top European clubs have scouting networks in Africa, Asia, and Latin America, seeking talented kids. Some families (and local intermediaries) see a chance to 'export' a child to a wealthy club's academy as a lucrative opportunity. In worst-case scenarios, this becomes a form of child trafficking for sport. Reports estimate that in West Africa alone, around 15,000 children each year may be taken abroad (often to Europe) with hopes of football success, only to be discarded if they fail to make the cut.²³ Even within one country, the commercialization of youth sport can create exploitative dynamics. Young athletes might generate revenue (through ticket sales, sponsorships, or publicity) that they do not control or benefit from. In the U.S., for example, elite youth tournaments in basketball or football can attract massive audiences and corporate sponsors, yet the minors playing see none of the money. Another layer of exploitation is the loss of autonomy and dignity. When children are seen as investments, they may be pushed beyond safe limits or pressured to compete while injured. They might be denied basic freedoms that other children have, in order to protect the investment – for instance, not being allowed to engage in any outside activities that risk injury or being kept under strict control at training camps.

In summary, early professionalisation can run afoul of children's right to be protected from exploitation in several ways: by effectively using them as economic commodities, by making them work under harmful conditions, and by exposing them to trafficking and abuse. The fact that adults' livelihoods often depend on the work of child athletes (coaches' careers, agents' commissions, sponsors' profits) creates inherent conflicts of interest.

Recognizing these sports situations as potential child labor or exploitation is uncomfortable for many – society often holds an idyllic view of sports. But a children's rights approach demands we confront these realities.

4 Regulatory Measures and Guidelines to Protect Children in Sport

Recognizing the potential impact of early professionalisation on children's rights is the first step. The next one is to implement regulatory measures to protect children in sport. These regulatory responses should allow youth to develop their talents and enjoy competition, while preventing abuses.

²³ Guilbert, 2015.

At the level of national law, the concept of children as athletes is still evolving. Few countries have comprehensive legislation specifically tailored to child athletes. However, general child protection laws, child labor laws, and education laws can and do apply. For instance, many countries have compulsory education until a certain age – this legally requires young athletes to attend school (though enforcement in practice may lag when sports commitments intervene). Child labor statutes often define limits on working hours and hazardous work for minors; theoretically, if training regimens are deemed work-like, those laws could impose limits. Indeed, some jurisdictions have started discussions about classifying intensive sports training as a form of work to bring it under protective regulation. As of now, this remains more of an academic argument than a legal reality, but it's gaining traction. For example, authorities could mandate that any sports program involving minors for, say, more than 20 hours a week must be licensed and monitored for child welfare compliance (similar to how film productions with child actors require permits and tutors).

In certain countries, sports academies are monitored by education or sports ministries to ensure standards are met. Cuba's²⁴ and some European countries' sport schools are integrated into the education system, meaning the State monitors both schooling and training.²⁵ France has regulations on youth football contracts (the 'Aspire' contracts for young players tie training with education and limit commercialization until a certain age).²⁶ In the UK, after some club scandals, the FIFA instituted rules about how far from home very young academy players can be recruited (to avoid kids moving and boarding too early) and ensures clubs provide schooling.²⁷ In the U.S., high school and college sports are governed by associations that maintain amateurism rules – a controversial topic, but one effect was to discourage outright professionalization before age 18 or before finishing college.²⁸ One significant legislative move in the U.S. was the Protecting Young Victims in Sport Act (2018), which mandated reporting of sexual abuse in Olympic sports and effectively created an independent body (the U.S. Center for SafeSport) to handle abuse cases in sport.²⁹ Despite these efforts, many advocates note that sport has

²⁴ Darnell & Huish, 2014.

²⁵ Radtke & Coalter, 2007.

²⁶ Ligue de Football Professionnel, 2024.

²⁷ Professional Football Scouts Association, 2024.

²⁸ Staurowsky, 2014.

²⁹ U.S. Congress, 2018.

lagged behind other sectors in child protection. This indicates a need for more explicit legal frameworks. One proposal is to extend the concept of a 'child performer' to sports – similar to how child actors or musicians are protected by permits and work-hour limitations. Another is to treat elite sports training centers as entities requiring child welfare licensing, subject to inspections for child-friendly conditions.

International bodies such as the United Nations and Council of Europe have also weighed in. The CRC Committee's General Comment No. 17, though not sport-specific, laid out expectations that States create environments for play and protect against over-structuring. The Committee has in some country reviews addressed issues of children in sport, especially around exploitation. The UN Special Rapporteur on Sale and Exploitation of Children in 2015 notably mentioned sports academies as a new realm of concern, referring to cases where children are treated as commodities.³⁰

The Council of Europe passed a resolution in 2018 on fighting sexual violence in sport, and earlier had a recommendation on the migration of young athletes (CM/Rec(2012)10) which urged member States to combat trafficking of young sportspeople, educate them, and regulate agents.³¹ These kinds of high-level instruments, although non-binding, do signal political will. They often result in toolkits or cooperation to address the problems (e.g., FIFA collaborated with the Council of Europe to improve how it monitors minors' transfers, as referenced by a Council report).³²

One promising practice is to both educate and empower the young athletes themselves. Some programs, for example, teach youth athletes about their rights and how to protect themselves from exploitation or abuse. This aligns with Article 12's participation rights and helps counter the imbalance of power. Finally, there needs to be a conceptual shift: treating children in sport not just as future athletes but as children first and athletes second. This is essentially a normative stance. It requires all stakeholders to undergo a bit of a mindset change – to measure success not only

³⁰ de Boer-Buquicchio, 2018.

³¹ Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2012)10 (2012).

³² FIFA (2021), Regulations on the Status and Transfer of Players.

in medals and contracts, but also in whether the child comes out healthy, educated, and happy.

5 Towards a Child Rights-Based Approach in Youth Sport

There is an inherent tension between child welfare and early professionalisation and reconciling this with a child-rights-based approach can be challenging, but achievable. Some *de lege ferenda* recommendations follow from the analysis above. They all aim to ensure that young athletes can pursue excellence in sports, while still enjoying their childhood and fundamental rights.

1. Embedding Children's Rights into Sports Governance - Sports organizations at all levels should formally commit to upholding children's rights. This means integrating UNCRC principles (best interests of the child, right to be heard, non-discrimination, right to development, etc.) into their statutes, rules, and codes of conduct.³³ Sporting rules should be reviewed through a child rights lens, with input from child rights experts and ideally with children consulted as well.
2. Establish Independent Monitoring and Enforcement - there should be independent oversight of youth sports programs, especially elite training centers.³⁴ Governments or cross-sector bodies could create inspectorates that visit academies and high-performance programs to assess conditions – checking on education provision, training hours, health services, and detecting any signs of abuse or mistreatment. Monitoring reports should be transparent, and compliance with recommendations should be mandatory.
3. Empower Young Athletes with Voice - A rights-based approach requires listening to children. Youth athletes should have platforms to express their views and concerns regarding their training and well-being. This can be done by establishing athlete representation in youth academies or national youth teams – for instance, a youth athlete council that meets with academy management. More concretely, every sport program involving minors should have a confidential complaint mechanism accessible to the athletes (and their parents). When complaints are filed, there must be prompt and appropriate action.

³³ Williams, 2006.

³⁴ David, 2004.

4. Prioritize Education and an Open Future Plan - Ensuring that sports training does not come at the expense of education is fundamental. Academies and sports schools must be required to meet minimum education standards. Governments and sports bodies should collaborate to fund and provide qualified teachers or flexible schooling options for elite young athletes – but with accountability for outcomes. The goal should be that every child athlete attains a basic educational certification and life skills. The EU's dual career guidelines can serve as a model to adapt even at secondary school level.³⁵
5. Regulate Training and Competition Intensity by Age - Just as child labor laws limit working hours, sports authorities should set evidence-based limits on training hours, number of competitions, and travel for different age groups. These limits can be created based on pediatric science (for instance, no more than X hours per week of intense training for under-14s, mandatory off-seasons, and at least one rest day per week, etc.).
6. Reinforcing a Culture of Play and Balance - Finally, and most broadly, the sports community should be reminded that children are children, not small adults. This includes resisting the professionalisation creep where unnecessary. For younger age groups, sport should be kept fun, diversified, and child-driven. Initiatives like the “Children's Sports Bill of Rights” proposed by some organizations (which includes the right to have fun, the right to play at a level commensurate with development, the right to qualified care and treatment, etc.) can be popularized to guide parents and leagues.³⁶

These recommendations all can be summarised with one sentence - view youth sports through a child rights prism where success means producing not only champions, but well-rounded young people. This child rights-based approach in sports would benefit not just the children but sport itself – athletes who are healthier and more educated tend to have longer careers and more to contribute back to society.

³⁵ European Commission, 2012.

³⁶ Aspen Institute Project Play, 2021.

6 Conclusion

Without a doubt there has always been a tension between the right to play and early professionalisation in youth sport. On one side stands the ideal of childhood as a time for free play, joy, learning, and growth. On the other side is the reality of modern sports systems that treat children as the next generation of professional athletes, subjecting them to adult-like training and pressures at young ages. This article has examined the legal and ethical implications of that reality. It is clear that early professionalisation can infringe upon children's rights, it can undermine their rights to play and rest, truncate their education, jeopardize their health, and even expose them to exploitation and abuse. Importantly, a children's rights perspective does not imply a death knell to competitive youth sport; rather, it demands that competitive youth sport be reimaged and reorganized with the child at the center. The interests of parents, coaches, and clubs must be harmonized with the child's interests – whenever they are not, the child's interest should be given priority as a matter of both law and morality. A child's sporting journey that enriches childhood can only be achieved if we decide to enforce existing legal standards, like the UNCRC Article 31's promise of play.

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ÄLTERE ERWACHSENE IM SPORT: SENESZENZ, STEREOTYPE UND ALTERSDISKRIMINIERUNG

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Altern ist ein individualisierter und komplexer Prozess, der aber noch immer oft stereotypisiert ist, insbesondere in westlichen postmodernen Gesellschaften. Stereotype über ältere Erwachsene spielen nicht nur eine wichtige Rolle bei der Gestaltung des Denkens über diese Personen und der Art und Weise, wie wir mit ihnen umgehen, aber auch in ihren sportlichen Aktivitäten, sowie bei der Selbstwahrnehmung von Einzelpersonen innerhalb einer bestimmten Gruppe. Die gesellschaftliche Rolle des Sports ergibt sich aus der wissenschaftlich nachgewiesenen Bedeutung des Sports für die öffentliche Gesundheit, die Sozialisation und die Wirtschaft. Die Bedeutung des Sports für ältere Erwachsene und die Veränderungen, die in der Wahrnehmung von Sport und körperlicher Aktivität älterer Erwachsener stattfinden, zeigen sich auch in den Maßnahmen der WHO, die den globalen Aktionsplan für körperliche Aktivität 2018-2030 angenommen hat. Sportliche Aktivitäten älterer Erwachsener müssen jedoch ans Alter, den körperlichen und Gesundheitszustand und die physische Verfassung und an die Fähigkeiten der Teilnehmer angepasst sein. Ältere Erwachsene treiben keinen Sport um der Erwerbstätigkeit willen, sondern ausschließlich für ihre Unterhaltung. Ihre Gründe und Motive Sport zu treiben und körperlich aktiv zu sein und bleiben, sind auch Gegenstand zahlreicher Studien, wie: gesellschaftliche Auswirkungen des Sports, physische Kräftigung und körperliche Aktivität, um die altersbezogenen Veränderungen zu bewältigen.

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OLDER ADULTS IN SPORT: SENESCENCE, STEREOTYPES, AND AGEISM

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Aging is an individualized and complex process; nevertheless, it is often viewed through the lens of stereotypes, particularly in Western postmodern societies. Stereotypes about older adults play a significant role not only in shaping public perceptions and influencing social interactions but also in affecting their participation in sport and their self-perception as members of this age group. The social significance of sport stems from its well-documented contributions to public health, socialization, and economic development. The growing recognition of the importance of sport and physical activity for older adults is also reflected in the initiatives of the World Health Organization (WHO), particularly the Global Action Plan on Physical Activity 2018–2030. However, sports participation among older adults must be tailored to their age, health status, physical condition, and individual capabilities. Unlike professional athletes, older adults generally engage in sport not for employment or financial gain but for enjoyment, health, and personal well-being. Research has identified a range of motivations for maintaining regular physical activity in later life, including enhancing physical fitness, managing age-related changes, promoting healthy aging, and fostering social engagement and overall quality of life.



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1 Einleitung

Altern ist ein individualisierter und komplexer Prozess, aber es wird immer noch oft stereotypisiert, insbesondere in westlichen postmodernen Gesellschaften. Stereotype über ältere Erwachsene spielen eine wichtige Rolle bei der Gestaltung des Denkens über diese Personen und der Art und Weise, wie wir mit ihnen umgehen, sowie bei der Selbstwahrnehmung von Einzelpersonen innerhalb einer bestimmten Gruppe.¹

Mit der Steigerung der Lebensqualität steigt auch die Lebenserwartung. Demografische Daten bestätigen, dass es sich hierbei um einen globalen Trend der Alterung handelt. Die Weltgesundheitsorganisation² prognostizierte, dass die Zahl der älteren Erwachsenen bis 2050 2,1 Milliarden überschreiten wird. Bei den Ältesten wird es ein noch stärkeres Wachstum geben, da sich die Zahl der Menschen ab 80 Jahren bis 2050 voraussichtlich verdreifachen wird. In der Europäischen Union wird erwartet, dass der Anteil der Menschen im Alter von 80 Jahren und älter bis zum Ende des Jahrhunderts von 6,1% auf 15,3% steigen wird, bei einem Medianalter von 50 Jahren.³

Weltweit leben heute rund 830 Millionen Menschen im Alter von 65 Jahren und älter. Laut den neuesten UN-Daten wird diese Zahl bis 2054 voraussichtlich auf 1,7 Milliarden ansteigen. Es ist ein großer Erfolg, dass so viele Menschen länger und gesünder leben. Gleichzeitig wird die Bevölkerung im erwerbsfähigen Alter zwischen 2024 und 2054 nur um 20% wachsen. Die postmodernen Gesellschaften müssen daher Wege finden, die wachsende Zahl älterer Menschen zu versorgen und gleichzeitig die Lebensqualität aller zu verbessern. Laut der veröffentlichten Studie der Vereinten Nationen ist heute jeder zehnte Mensch 60 Jahre alt oder älter; 2050 wird es jeder Fünfte sein, nochmal 100 Jahre später sogar jeder Dritte. Grund dafür ist nach Angaben der UN die weltweit gestiegene Lebenserwartung. Diese beträgt mittlerweile durchschnittlich 66 Jahre, das sind 20 Jahre mehr als noch vor 50 Jahren. Die Gruppe der über 80-Jährigen sei die am schnellsten wachsende Gruppe der älteren Erwachsenen. Auch die Zahl, der über 100-Jährigen wird, den Angaben zufolge, von jetzt 210.000 bis 2050 um das 15-Fache auf 3,2 Millionen steigen.

¹ Horton, 2007.

² WHO, 2025.

³ Eurostat, 2024.

In 50 Jahren werde es laut dieser Studie mehr über 60-Jährige geben als Kinder bis 14 Jahre. Frauen würden immer noch älter als Männer. Frauen hätten ab 60 Jahren noch eine durchschnittliche Lebenserwartung von 20 Jahren, Männer hingegen nur 17 Jahre. Bis 2030 wird die Lebenserwartung bei der Geburt eines slowenischen Mannes voraussichtlich 80 Jahre betragen, für einen amerikanischen Mann 76 Jahre, während eine slowenische Frau voraussichtlich bis zu 86 Jahre und eine amerikanische Frau etwa 81 Jahre alt werden wird.⁴

Die Demografie Europas deutet aber auf eine ausgesprochen niedrige Geburtenrate und eine zunehmend ältere Bevölkerung hin, so dass sich das Verhältnis zwischen erwerbstätiger und nichterwerbstätiger Bevölkerung verändert, was eine Herausforderung für die Sozialsysteme darstellt.

Auch Slowenien ist Teil dieser globalen Trends. Der Anteil, der über 65-Jährigen steigt von Jahr zu Jahr, was zusammen mit der niedrigen Geburtenrate und der Abwanderung junger Familien zum sogenannten Social Ageing führt. Anfang dieses Jahres waren 22,1% der Bevölkerung Sloweniens 65 Jahre alt oder älter, was bedeutet, dass fast jeder fünfte Einwohner älter ist. Unter den älteren Menschen gibt es mehr Frauen als Männer – Frauen machen laut Statistik in Slowenien 56,1% der Bevölkerung im Alter von 65 Jahren oder älter aus. Fortschritte in der Medizin und eine höhere Lebensqualität verlängern die Lebenserwartung, während die Zahl der Geburten zurückgeht. Aufgrund der Veränderungen sind die Folgen im Bereich der Arbeit, der Generationenbeziehungen, des Rentensystems und des Wohlbefindens älterer Erwachsener bereits spürbar.⁵

2 Die Auswirkungen von Seneszenz auf sportliche Aktivitäten älterer Erwachsener

Die Alterung der Bevölkerung hat konkrete Auswirkungen auf das tägliche Leben sowohl der globalen Gesellschaft als auch der individuellen Ebene. Mit dem Wachstum des Anteils älterer Menschen steigt auch das Verhältnis zwischen älteren Erwachsenen und erwerbsfähigen Generationen, was einen größeren Druck auf das Rentensystem bedeutet. Weniger Menschen zahlen Steuer, aber immer mehr sind Rentenbegünstigte. Gleichzeitig bedeutet das intensive Altern einen erhöhten Bedarf

⁴ Kontis et al., 2017, SS. 1323-1335; WHO, 2015; 2016.

⁵ Goriup & Lahe, 2018.

an Gesundheitsdienstleistungen, Langzeitpflege und sozialer Unterstützung, was auch durch Umwelt- und Sozialindikatoren bestätigt wird. Höheres Alter wird häufiger mit:

- chronischen Krankheiten;
- verminderter Unabhängigkeit und
- dem Bedürfnis nach Hilfe in Verbindung gebracht.

Soziale Veränderungen sind ebenfalls eine wichtige Dimension des Alterns. Je mehr ältere Erwachsene allein leben, desto höher ist das Risiko von Einsamkeit und sozialer Isolation, insbesondere für diejenigen, die keinen Zugang zu digitalen Werkzeugen und Dienstleistungen haben.

Zweifelloos wird die Möglichkeit, Sport auszuüben, jedoch durch die Seneszenz (das Altern und die dadurch bedingten körperlichen Veränderungen) beeinflusst, die Kos und Sedej⁶ sowie Fras et al.⁷ als einen allmählichen und komplexen biologischen Prozess beschreiben, der auf zellulärer Ebene stattfindet und das Altern des Organismus verursacht. Die Alterung führt allmählich zu:

- einem Schwächen physiologischer Funktionen im Körper;
- einer erhöhten Empfindlichkeit gegenüber Veränderungen im Körper, und
- einer verminderten Fähigkeit, das Gleichgewicht aufrechtzuerhalten.

Veninšek und Šabovič⁸ weisen darauf hin, dass die Seneszenz ein fortschreitender, allmählicher und unvermeidbarer Prozess ist, der auf physiologischer Ebene eine Störung der Homöostase, asymmetrisches Funktionieren der Organe und eine Verringerung der Fähigkeit zur Regeneration von Verletzungen verursacht. Sie stellen außerdem fest, dass das Altern die Anfälligkeit für die Entwicklung von Krankheiten und die Sterblichkeitsrate erhöht, die Fortpflanzungsfähigkeit des Körpers jedoch verringert.

⁶ Kos, Sedej & Marolt, 2012, S. 118.

⁷ Fras et al., 2023, S. 16.

⁸ Veninšek & Šabovič, 2021, S. 1549.

Dziechciaż und Filip weisen darauf hin, dass im Prozess der Seneszenz auch charakteristische fortschreitende altersbedingte Veränderungen im Stoffwechsel auftreten, die zu beeinträchtigter Regeneration und Selbstregulation sowie zu strukturellen und funktionellen Veränderungen in Geweben und Organen führen, und dass biologisches Altern als natürlicher und irreversibler Prozess erfolgreich, gewohnheitsmäßig oder pathologisch sein kann.⁹ Kos, Sedej und Marolt heben Muskelverlust, erhöhtes Körperfett, verminderte Knochenmineralisierung, neurologische Veränderungen, Veränderungen der Haltung, beeinträchtigte kardiovaskuläre Ausdauer, sensorische Beeinträchtigungen, veränderte Schmerzwahrnehmung und kognitiven Abbau hervor.¹⁰

Dodig-Ćurković, Franić und Boričević Maršanić (2016) kamen zu dem Schluss, dass die Seneszenz heterogen über mehrere Zellen und Gewebe hinweg auftritt und auf genetische, umweltbedingte und zeitliche Faktoren zurückzuführen ist¹¹. Für Veninšek und Šabovič¹² sowie Guo et al.¹³ sind jedoch endogene und exogene Belastungen wie genomische Anomalie, Telomerverkürzung, epigenetische Veränderungen, beeinträchtigte Proteostase, beeinträchtigter Energiestoffwechsel, mitochondriale Dysfunktion, kompromittierte Autophagie, zelluläre Alterung, Stammzelldepletion und veränderte interzelluläre Kommunikation am biologischen Alterungsprozess beteiligt.

Daher betont Chalise, dass es wichtig ist, zwischen normalem Altern, bei dem die körperliche Funktion einer Person aufgrund der funktionellen Reserven der Organe ausreichend ist, und zwischen einer Krankheit, die häufiger zum Verlust der Körperfunktionen führt, zu unterscheiden.¹⁴ Die Unterscheidung zwischen normaler und pathologischer Alterung ist vor allem für die rechtzeitige Diagnose und Behandlung der Krankheit in den frühen Stadien wichtig.

⁹ Dziechciaż & Filip, 2014, S. 835.

¹⁰ Kos, Sedej & Marolt, 2012, S. 11.

¹¹ Dodig-Ćurković, Franić & Boričević Maršanić, 2016, S. 488.

¹² Veninšek & Šabovič, 2021, S. 1549.

¹³ Guo et al., 2022, S. 1.

¹⁴ Chalise, 2019, S. 8.

3 Sport und Theorie des aktiven Alterns

Theorien in der Wissenschaft bedeuten die Erklärung, warum und wie bestimmte Dinge geschehen. In der Sozialgerontologie werden sie als wissenschaftliches Fachgebiet, das sich mit dem Verständnis beschäftigt, wie soziale Faktoren das Wohlbefinden älterer Menschen sowohl auf Makroebene als auch auf Mikroebene der Individuen und ihrer Beziehungen beeinflussen, verstanden.¹⁵

Sportarten älterer Erwachsener tragen je nach verschiedenen Einflüssen sowie persönlichen, sozialen, wirtschaftlichen Determinanten, physischen Umwelt- und Verhaltensfaktoren zur Gesundheit, Teilnahme und Sicherheit bei.¹⁶ Denn Sport ist eines unserer grundlegenden Grundrechte und muss jedem Einzelnen unabhängig vom Alter¹⁷ garantiert werden, da er auch älteren Erwachsenen ermöglicht, die Möglichkeiten für körperliches, soziales und geistiges Wohlbefinden entsprechend ihren Bedürfnissen, Wünschen und Fähigkeiten zu erkennen.¹⁸ Laut Hvalič Touzery¹⁹ verhindert er Einsamkeit, beinhaltet die Verbesserung der Lebensqualität, des Wohlbefindens, der geistigen und körperlichen Gesundheit älterer Menschen und unterstützt aktives, unabhängiges und sozial aktives Leben.²⁰

Das Konzept der Theorie ist sektorübergreifend,²¹ da es den Alterungsprozess nicht im Lichte sportlicher Aktivitäten von früheren Lebensphasen trennt, sondern sie vielmehr aus lebenslanger Perspektive betrachtet und zudem die Bedeutung früher Investitionen in aktives Altern und Lebensqualität im Alter sowie die Bedeutung von Interventionen im späten Alter betont.²² Kart und Kinney fügen hinzu, dass es wichtig ist, so viele Sportarten mittleren Alters wie möglich zu bewahren und verlorene durch neue zu ersetzen.²³ Die Umsetzung des Konzepts des aktiven Alterns hat neben der Verbesserung der Lebensqualität und dem Schutz der Gesundheit älterer Menschen auch positive Auswirkungen auf die soziale Ebene, da

¹⁵ Andersson, 2016, SS. 25-27; Bengtson & Settersten, 2016, S. 2.

¹⁶ WHO, 2002, S. 12; WHO, 2015.

¹⁷ Pavliha, 2009, S. 8; Voljč, 2010, S. 39.

¹⁸ Bryant et al., 2001, SS. 927-941.

¹⁹ Hvalič Touzery, 2014, S. 1.

²⁰ Bryant et al., 2001, SS. 927-941; Lindau et al., 2003, SS. 74-86; Roljić & Kobentar, 2017, S. 6.

²¹ Kenda, 2025.

²² Havighurst, 1961, SS. 8-13.

²³ Kart & Kinney, 2001, SS. 212-214.

auch die Kosten für Gesundheits- und Sozialfürsorge gesenkt werden, fügen Foster und Walker hinzu.²⁴

Nach dieser Theorie sind aktive ältere Erwachsene mit ihrem Leben zufriedener, was wiederum auch das Selbstwertgefühl einer Person beeinflusst.²⁵ Je größer der Verlust an Lebensaktivität, desto geringer das Maß an Selbstwertgefühl und Zufriedenheit.²⁶ Kastenbaum weist darauf hin, dass eine Person, die all die Jahre sportliche Aktivitäten genossen hat, später wahrscheinlicher aktiv im Sport ist.²⁷ Es wird geschätzt, dass junge Menschen sehr wahrscheinlich auch im hohen Alter aktiv im Sport sind. Kaiser²⁸ fügt hinzu, dass Menschen nicht aufgrund ihres Alters ihrer Fähigkeiten beraubt und daher aus der Gesellschaft gedrängt oder an deren Rand gedrängt werden müssen.²⁹

4 Die richtige Sportart für ältere Erwachsene auswählen

Neben dem Spaßfaktor sollten ältere Erwachsene bei der Wahl Ihrer Sportart auch auf Ihre körperliche Verfassung achten. Kontaktsportarten wie Handball, Fußball oder gar Kampfsport beanspruchen die Gelenke sehr stark und können gerade im Alter schnell zu Verletzungen führen. Außerdem kann eine Mischung aus Ausdauer- und Kraftsport einen besonders positiven Effekt auf die Gesundheit der älteren Erwachsenen haben, da hierbei sowohl das Herz-Kreislauf-System als auch stabilisierende Muskulatur trainiert werden. Mitentscheidend sei außerdem der Lebensstil und das Einkommen.³⁰

5 Wie oft und wie lang sollten ältere Erwachsene sportlich aktiv sein?

Beim Sport im Alter sollte die Freude an der Bewegung im Vordergrund stehen. Deshalb sollten sie sich also nicht unter Druck setzen. Ältere Erwachsene sollen regelmäßig bei mäßiger Belastung trainieren, um durch eine kontinuierliche Ertüchtigung positive Effekte am ehesten bemerkbar zu machen. Dabei müssen sie nur auf Ihre körperlichen Grenzen und ihren Gesundheitszustand achten und sich

²⁴ Foster & Walker, 2014, SS. 83–90.

²⁵ Havighurst, 1961, SS. 8–13.

²⁶ Lemon, Bengston & Peterson, 1972, SS. 511–523.

²⁷ Kastenbaum, 1979, SS. 20 und 83.

²⁸ Kaiser, 2006.

²⁹ Andersson, 2016, SS. 247–266; Goriup & Lahe, 2018, S. 142.

³⁰ Mateseser Hilfsdienst, n.d.

nicht überschätzen.³¹ Die Weltgesundheitsorganisation (WHO) empfiehlt älteren Erwachsenen mindestens zweieinhalb Stunden Ausdauersport pro Woche bei mäßiger Intensität. Um dieses Ziel zu erreichen, sollten ältere Erwachsene ihre körperliche Betätigung am besten auf mehrere kurze Einheiten aufteilen. Es darf gerne auch mehr sein, aber – wie immer beim Sport – sollte man vor allem auf seinen Körper hören, denn jeder Mensch ist anders. So wird die empfohlene Dosis körperlicher Aktivität für ältere Erwachsene, die in jüngeren Jahren Laufsport bei hoher Intensität betrieben haben, anders aussehen als bei älteren Menschen, die sich auf regelmäßige Spaziergänge beschränkt haben.³²

Die aktuellen allgemeinen Empfehlungen des American College of Sports Medicine (ACSM) zum Umfang sportlicher und körperlicher Aktivität sind, wie folgt:

- körperliche Aktivitäten sollten mindestens dreimal und nicht mehr als fünfmal pro Woche durchgeführt werden;
- mittlere Intensität 55–70% FSU maximal (maximale Herzfrequenz);
- 20–60 Minuten Bewegung pro Tag, auch mehrere kürzere Intervalle von mindestens 10 Minuten.³³

Und, nicht zuletzt – gewisse Schichten üben nicht nur bestimmte Sportarten aus, sondern können sich auch aufgrund ihres höheren Einkommens besser ernähren, verschiedene Sportaktivitäten ausüben und gesünder leben.

6 Ältere Erwachsene sollen Bewegung im Alltag bewusst nutzen und erkennen, welche Vorteile ihnen die regelmäßigen Körperbewegungen bieten

Da der Alltag der älteren Erwachsenen in der Regel aus Bewegungen besteht, können sie diese auch bewusst als sportliche Tätigkeiten nutzen. Wichtig ist, dass alle Aktivitäten ihrer körperlichen Verfassung angepasst sind und dass sie sich dabei nicht übernehmen. Auch im Bett, am Esstisch oder vor dem Fernseher können sie daraus eine kleine Übung machen. Damit können sie nicht nur das sichere Hinsetzen und Aufstehen trainieren, sondern auch ihre Bein- und Bauchmuskulatur. Auch

³¹ Mateser Hilfsdienst, n.d.

³² Travelletti, 2022.

³³ Mackinnon et al., 2003.

beim Zähneputzen können sie sich von Fuß zu Fuß bewegen, ebenso beim Kochen oder beim Aufhängen der Wäsche. Auch Gartenarbeit bringt sie an die frische Luft und hält sie fit, z. B. Laub harken, Rasenmähen oder Fegen.³⁴ Angemessene Ernährung, psychische Gesundheit und fortschrittliche Erholungsmethoden können dazu beitragen, die sportliche Aktivität zu verlängern und die sportaktiven älteren Erwachsenen körperlich fit zu halten, so lange es möglich ist.

6.1 Vorteile der regelmäßigen Sportaktivitäten für ältere Erwachsene

Körperliche Aktivität senkt das Risiko altersbedingter Krankheiten und erhöht die Lebenserwartung. Sportaktivitäten wirken aktiv:

- gegen Muskelschwund und Übergewicht, senken den Blutdruck und bringen Gleichgewicht;
- das Herz-Kreislauf-System wird durch sportliche Aktivitäten gestärkt;
- ermöglicht schneller mit anderen in Kontakt zu kommen und regelmäßiges Lauftraining verbessert erheblich die räumliche Vorstellungskraft und Konzentrationsfähigkeit der Probanden;
- Sport trägt also zu Gesundheit und Wohlbefinden bei, dies führt zur verbesserten Versorgung mit Sauerstoff und Nährstoffen, was wiederum die kognitive Leistungsfähigkeit und Konzentrationsfähigkeit steigern kann;
- beim Joggen oder Spazieren wird das Gehirn besser durchblutet;
- auch der Geist profitiert vom Sport im Alter.³⁵

Regelmäßiger Sport, insbesondere Ausdauersport, verbessert die Herzgesundheit, erhöht die Lungenkapazität und optimiert den Stoffwechsel. Diese Veränderungen tragen dazu bei, den Alterungsprozess zu verlangsamen und die Lebensqualität zu erhöhen. Sport ist so auch ein effektives Anti-Aging-Tool, das weit über die Verbesserung der körperlichen Fitness hinausgeht. Wichtig ist, dass man ein ausgewogenes Trainingsprogramm wählt, das sowohl Ausdauer- als auch Krafttraining umfasst, um auch die besten Anti-Aging-Ergebnisse zu erzielen.

³⁴ Malteser Hilfsdienst, n.d.

³⁵ Malteser Hilfsdienst, n.d.

6.2 Körperliche Betätigung: Dehnen und Regeneration

Nicht nur beim Yoga sollte das Dehnen der Muskeln für die älteren Erwachsenen ein fester Bestandteil der Sportaktivität sein, denn Dehnübungen bieten eine Menge Vorzüge:

- sie sorgen nicht nur für mehr Beweglichkeit;
- sondern fördern zudem auch die Durchblutung der Muskeln, und
- helfen somit bei einer schnelleren Regeneration.

Ob sich ältere Erwachsene vor oder nach dem Sport dehnen, ist Geschmackssache und teilweise auch abhängig von der jeweils betriebenen Sportart. Bei der Mehrheit der Sportarten spielt der Zeitpunkt eher eine untergeordnete Rolle. So kann es durchaus kontraproduktiv sein, sich vor dem Sport zu dehnen. Einige ältere Erwachsene haben Bedenken mit Sportaktivitäten zu beginnen, aus Angst vor einer Überlastung oder vor Stürzen mit der Folge von Verletzungen. Dabei ist gerade die Bewegung ein gutes Mittel, diese Angst zu überwinden.³⁶

Unabhängig vom Zeitpunkt der Dehnübungen sollten ältere Erwachsene jedoch stets darauf achten, sich maßvoll zu dehnen, um das Risiko von Verletzungen zu minimieren. Dehnen allein reicht aber noch nicht, um die Muskeln und den Körper vollständig zu regenerieren. Deshalb ist es empfehlenswert, sich nach Sporteinheiten auch eine Pause zu gönnen, besonders nach anstrengenden Einheiten auch mal für mehrere Tage den Körper nicht zu sehr zu beanspruchen.

Der physische Abbau im Alter ist Realität und deshalb kann für die richtige Ernährung (mit einem Schwerpunkt auf Protein, Vitaminen und Mineralstoffen wie Vitamin D und B12, alles am besten in mehreren kleinen Portionen über den Tag verteilt) zur Regeneration nach dem Sport eine erhöhte Zufuhr von Proteinen unterstützend sein und auf den Erholungsprozess auswirken. Eine proteinbetonte, mediterrane Diät ist die Ernährung der Wahl. Mit der optimalen Unterstützung möglichst gut funktionierender Muskeln steht dem erfolgreichen Älterwerden nichts mehr im Weg.³⁷

³⁶ Malteser Hilfsdienst, n.d.

³⁷ Malteser Hilfsdienst, n.d.

Spólnicka et al. fanden heraus, dass nicht alle Sportarten den gleichen Einfluss auf die Langlebigkeit haben.³⁸ Sportarten, die eine hohe Intensität und Kraft erfordern, können zu erhöhtem oxidativem Stress und Entzündungen führen, die sich negativ auf die Gesundheit der älteren Erwachsenen auswirken können. Die Forschung hat gezeigt, dass intensive körperliche Betätigung die epigenetische Alterung beschleunigen kann, insbesondere bei älteren Erwachsenen, die mit ihrer Kraft trainieren, um mit pflanzlichen Proteinen den gleichen Effekt erreichen wie mit einem Protein tierischer Herkunft. Doch die älteren Erwachsenen müssen bis zum Doppelten der Menge einnehmen. Mit Proteinen tierischer Herkunft bleibt für ältere Erwachsene daher die gesamte Nahrungsmenge überschaubarer und dadurch ist eine unerwünschte Gewichtszunahme einfacher zu kontrollieren. Und mit Milchproteinen erhält man quasi nebenbei noch anständige Mengen an Calcium, was für das Skelett sehr zu empfehlen ist.

7 Geeignete Sportarten für ältere Erwachsene

Wandern und Gehen ist ab einem gewissen Alter die einfachste Art von körperlicher Aktivität. Es funktioniert überall und in jedem Tempo. Bergwandern ist durchaus für ältere Erwachsene geeignet, wozu aber, bevor sie loswandern oder sich im Winter mit Schneeschuhen auf den Weg machen müssen, immer die nötigen Vorsichtsmaßnahmen zu treffen sind. Dazu brauchen sie gute, bevorzugt knöchelhohe Wanderschuhe, sowie Wanderstöcke für das Gleichgewicht und eine gut vorbereitete Tour. Auf dem Weg sollten sie immer genügend Wasser und ein paar (zuckerhaltige) Snacks mitnehmen, damit sie sich stärken können, falls sie einen Durchhänger haben sollten. Obwohl Unfälle älterer Erwachsener beim Wandern häufig sind, können diese mit den richtigen Vorkehrungen durchaus vermeidbar sein oder sie können ihnen ausweichen und im Flachland auf markierten Wegen wandern.

Nordic Walking als das schnelle Gehen im Flachland ist ebenfalls sehr gut geeignet, um mehr Bewegung in den Alltag zu bringen. Es ist zwar weniger anspruchsvoll als Wandern, aber ebenso effizient. Die zahlreichen Vorteile dieser Sportart werden oft unterschätzt als:

- Verbesserung der Ausdauer und

³⁸ Spólnicka et al., 2018.

- der Herzfrequenz, sowie
- Stärkung des Immunsystems, aber auch Stressabbau.³⁹

Diese Aktivität der älteren Erwachsenen wird mit Wanderstöcken ausgeübt. Das Ziel besteht darin, die Bewegungen von Beinen und Armen aufeinander abzustimmen, während man eine aufrechte Haltung beibehält.

Wassergymnastik ist eine Gruppensportart, die den gesamten Körper auf sanfte Weise beansprucht. Sie kann im Sommer wie im Winter, im Meer, Hallen- oder Schwimmbad, allein oder in der Gruppe ausgeübt werden. Wassergymnastik stärkt die Muskeln und das Herz-Kreislauf-System und erhöht die Atemleistung. Letztendlich ist es so, als ob man Kräftigungs- und Ausdauerübungen am Boden machen würde, aber gegen den Wasserwiderstand. Deshalb ist Wassergymnastik gar nicht so einfach, wie man glaubt, und es kommt schnell zu Muskelkater.

Beim Schwimmen können sich ältere Erwachsene, wie bei der Wassergymnastik, richtig verausgaben, ohne sich zu überanstrengen. Da das Wasser ihrem Körper ein unbestreitbares Wohlfühl vermittelt, steigt dadurch auch ihre Lust, Sport zu treiben. Schwimmen schafft außerdem Linderung ihrer Gelenk- und Muskelschmerzen, reguliert den Blutdruck und fördert die Motorik. So zählt schwimmen zu den am meisten empfohlenen Sportarten für alle Lebensphasen. Es ist eine der besten Sportarten für ältere Erwachsene, da es gelenkschonend und gleichzeitig ein hervorragendes Ganzkörpertraining ist.

Auch spezielle Gymnastikübungen und Muskelaufbau dienen der Verbesserung des Gleichgewichts und sind deshalb für ältere Erwachsene bestens geeignet. Das Training muss jedoch ans Alter und den Gesundheitszustand angepasst werden, um eine zu hohe Stoßbelastung zu vermeiden. Regelmäßig mit ein paar einfachen Yoga-Übungen (z. B. dem Baum) das Gleichgewicht zu trainieren oder einfach zu versuchen, auf einem Bein zu stehen und nach und nach die Arme nach oben zu strecken, wird ebenfalls empfohlen. Ab einem gewissen Alter kommen Gleichgewichtsstörungen häufig vor. Viele an Alter und Gesundheit angepasste Übungen können ältere Erwachsene auch zuhause durchführen.

³⁹ Travelletti, 2022.

Unter den zahlreichen weiteren Aktivitäten, die für ältere Erwachsene geeignet sind, befinden sich auch das Tanzen oder Yoga. In jedem Fall sollten sie sich von Profis begleiten lassen, indem sie Gruppenkurse besuchen, wo sie auch eine gute Möglichkeit haben, neue Freundschaften zu knüpfen oder Sportpartner zu finden und ihre Einsamkeit zu überwinden.

Tanzen bringt (meistens) Schwung ins Leben, da das Tanzen den Menschen angeboren zu sein scheint. Tanzen können (fast) alle älteren Erwachsenen, ob mit oder ohne PartnerIn, in einer Gruppe oder für sich allein. Die Angebote in Tanzschulen, Volkshochschulen oder Sportvereinen sind vielfältig. Sie reichen vom Tango bis zum Volkstanz. In der Regel ist für jeden älteren Erwachsenen etwas dabei.⁴⁰

Yoga hat als ganzheitlicher Sport für ältere Erwachsene nicht nur einen positiven Effekt auf Ihren Körper, sondern zugleich auch auf Geist und Seele. Die unterschiedlichen Übungen mobilisieren Muskeln und dehnen diese, wodurch der Körper gestärkt und die Beweglichkeit gefördert wird. Zudem wird auch die Atmung mit einbezogen, was zu mehr Entspannung und Ruhe führt. Es gibt verschiedene Arten von Yoga und manche sorgen für Beruhigung und Gelassenheit, bei anderen steht die Steigerung der körperlichen Fitness im Vordergrund.⁴¹

Obwohl im Tennis und Badminton der ganze Körper gefordert wird, sind auch Kraft und Ausdauer gefragt, da viele sich wiederholende Intervalle stattfinden.⁴² Der Racketsport verlängert das Leben um fast zehn Jahre, sagt die Studie der Copenhagen City Heart Study, eine dänische Langzeituntersuchung mit über 20.000 Teilnehmern, die zum Ergebnis kam, dass diejenigen, die regelmäßig Tennis spielen, im Schnitt um 9,7 Jahre länger leben. Tennis wirkt wie ein „High-Intensity-Intervalltraining“. ⁴³ Der ständige Wechsel aus Belastung und kurzen Pausen bringt das Herz-Kreislauf-System effektiv in Schwung. Man kann sich nicht ‚verstecken‘ oder phasenweise langsamer machen, und der direkte Ballwechsel zwingt ältere Erwachsene zur Aktivität. Das ist der große Unterschied zu Joggen, Radfahren oder sogar Fußball.

⁴⁰ Travelletti, 2022.

⁴¹ Travelletti, 2022.

⁴² Graf, 2024.

⁴³ Lanz, 2024.

Tennis als „verlängerte Lebenssportaktivität“ wird dicht gefolgt von Badminton (6,2 Jahre), Fußball (5 Jahre), Radfahren (3,7 Jahre) und Joggen (3,2 Jahre). Die Auswirkung dieser Sportarten auf die Lebensdauer eines Menschen erklären sich die Wissenschaftler mit verschiedenen Faktoren.⁴⁴

Für ältere Erwachsene gehören Ballspiele, insbesondere Fußball und Basketball, zu den beliebtesten Freizeitmöglichkeiten, die sie schon seit ihrer Jugend kennen. Neben dem körperlichen Training bringen sie die Vorteile von Teamarbeit, Geselligkeit und Spaß mit, und da sie meist im Freien gespielt werden, befinden sich die älteren Erwachsenen als Teilnehmer sowohl an der frischen Luft als auch im Sonnenlicht. In Ballspielen versuchen sie, die Bewegungskonstanz, das Gleichgewicht, die Genauigkeit, das Passspiel, Fangen und die Berührung sowie Reaktionsgeschwindigkeit zu wahren. Bei diesen Aktivitäten müssen ältere Erwachsene in guter körperlicher Verfassung sein, da bei fast allen Ballspielen auch körperlicher Kontakt stattfindet. Neben Ausdauer müssen sie auch motorische Fähigkeiten zeigen, auf das Gleichgewicht achten und sensorische Fähigkeiten besitzen. Die situative Bewegung mit dem Ball beeinflusst die Entwicklung ihrer Aufmerksamkeit und des situativen Denkens und fördert die Zusammenarbeit.

Während der sportlichen Aktivitäten verliert der Körper Gewicht, auch die Muskelmasse nimmt ab, was den Stoffwechsel, die Blutzuckerregulation und die allgemeine körperliche Leistung beeinträchtigen kann. Weniger Muskeln im Alter bedeuten ein höheres Verletzungsrisiko, eine geringere Mobilität und kein langfristiges Halten des Gewichts. Überraschend wenig ist darüber bekannt, wie Muskeln auf molekularer Ebene auf eine Kombination aus Kaloriendefizit und Bewegung im Alter reagieren.

8 Sport, ältere Erwachsene, Stereotypen und Diskriminierung

Dass Sport im Alter fit und gesund hält, ist längst kein Geheimnis mehr. Sport ist nicht nur eine körperliche Aktivität, er hat auch eine extrem starke soziale Komponente, die im dritten und vierten Lebensabschnitt vielleicht noch wichtiger ist. Aktives Altern steigert die Lebensqualität der älteren Erwachsenen.

⁴⁴ GQ.de, 2023.

Doch wie sieht es aus, wenn dieser Aspekt zur Nebensache wird und die erbrachte Sportleistung als bedeutendes Element der Langlebigkeit in den Vordergrund rückt? Mit dieser Fragestellung setzt sich der folgende Artikel auseinander. In Slowenien ist das Thema Langlebigkeit und Altersdiskriminierung im Sport älterer Erwachsener noch zu wenig erforscht. Altersdiskriminierung, Stereotype, Vorurteile und Diskriminierung von Individuen aufgrund ihres Alters bleiben eine der am weitesten verbreiteten, verwurzelten und unterinformierten Formen von Vorurteilen weltweit. Laut diskursiver Analyse⁴⁵ werden ältere Erwachsene im Sport oft in einen Diskurs des Verfalls und der Belastung gebracht. Berichte, die ältere Erwachsene als verletzbare Gruppe hervorheben, reproduzieren strukturelle Altersdiskriminierung, eine Form der systematischen Marginalisierung, die in Institutionen wie im Gesundheitswesen, in der Politik und in den Medien stattfindet.⁴⁶ Die WHO stellt fest, dass Altersdiskriminierung Menschen jeden Alters betrifft, ältere Erwachsene jedoch besonders anfällig für ihre schädlichen Auswirkungen sind. Wie die Ergebnisse nahelegen, führt das hohe Alter zu schlechterer körperlicher und geistiger Gesundheit, einer verminderten Lebensqualität und sogar einem vorzeitigen Tod. Diese Ergebnisse zeigen die Dringlichkeit von Maßnahmen gegen Altersdiskriminierung und altersdiskriminierende Praktiken, die den sozialen Zusammenhalt und das individuelle Wohlbefinden untergraben.⁴⁷ Stereotype sind unwiderlegbare Mythen oder übertriebene Überzeugungen, die mit einer Kategorie verbunden sind, die weit verbreitet und in mündlichen, schriftlichen und visuellen Kontexten innerhalb der Gesellschaft verwurzelt sind.⁴⁸

Zu den Stereotypen über das Altern gehören Annahmen und Verallgemeinerungen darüber, wie sich Menschen in einem bestimmten Alter oder älter verhalten sollten und was sie wahrscheinlich erleben werden, unabhängig von individuellen Unterschieden oder einzigartigen Umständen.⁴⁹ Jeder Stereotyp über das Altern, einschließlich solcher, die das Altern mit Gebrechlichkeit und Verfall oder das spätere Leben mit Gesundheit und Wohlbefinden gleichsetzen, kann altersbedingte Überzeugungen oder die sogenannte altersbedingte soziale Unterdrückung verstärken⁵⁰, weil sie eine schlechte Gesundheit im Alter als unerwünscht darstellen

⁴⁵ Fairclough, 1995.

⁴⁶ WHO, 2021.

⁴⁷ WHO, 2021.

⁴⁸ Allport, 1966.

⁴⁹ Ory et al., 2003.

⁵⁰ Blytheway, 1995.

und die große Vielfalt unter älteren Erwachsenen nicht anerkennen.⁵¹ Negative Stereotype – zum Beispiel die Vorstellung, dass ältere Erwachsene hilflos und sportlich unfähig sind – senken ihr Selbstwertgefühl, erhöhen ihre Passivität und können die Wirkung selbsterfüllender Vorhersagen auslösen. Die Person beginnt, entsprechend der negativen Erwartungen zu handeln, was die anfänglichen Vorurteile weiter bestätigt.⁵² Außerdem können negative Stereotype dazu führen, dass ältere Erwachsene sich von zuvor alltäglichen Sportaktivitäten zurückziehen. Stereotype verringern das Selbstwertgefühl älterer Menschen, was zu sozialer Isolation und geringerer sportlicher Aktivität führt.⁵³ Ältere Erwachsene, die sich mit jüngeren oder idealisierten Altersbildern im Sport vergleichen, fühlen sich eher minderwertig und einsam.⁵⁴ Vor allem aber wurde bewiesen, dass das negative Selbstwertgefühl älterer Erwachsener die Entwicklung schlechterer körperlicher und geistiger Gesundheit beeinflusst, so Benyamini und Burns.⁵⁵

9 Empirischer Teil

Der empirische Teil des Artikels basiert auf einem geeigneten methodologischen und forschungsorientierten Ansatz, bei dem die quantitative Methodik im Vordergrund steht. Wir haben uns der Technik einer Umfrage bedient, deren Ergebnisse professionell und wissenschaftlich belegt waren. Besonderes Augenmerk wurde auf die Präsentation der Ergebnisse und die Interpretation der gesammelten empirischen Daten gelegt.

9.1 Forschungsfrage

Für unsere Forschung haben wir uns eine Forschungsfrage gestellt, weil uns interessiert hat:

FF: Erleben ältere Erwachsene Stereotype und soziale Diskriminierung bei sportlichen Aktivitäten?

⁵¹ Jolanki, 2004.

⁵² Chang et al., 2020.

⁵³ Dionigi, 2015.

⁵⁴ Beaumont & Kenealy, 2004.

⁵⁵ Benyamini & Burns, 2020.

Wir waren nämlich daran interessiert, ob ältere Erwachsene, die aktiv im Sport sind, Vorurteile, Diskriminierung, negative Stereotype und negative Einstellungen erleben.

9.2 Methoden und Techniken zur Datenerfassung

Für den theoretischen Teil des Artikels verwendeten wir mehrere Forschungsmethoden, mit denen wir Informationen sammelten, Dokumente analysierten, Fakten beschrieben und Konzepte verstanden. Mit der Kompilationsmethode haben wir Informationen aus verschiedenen Quellen verknüpft und gesammelt. Wir verwendeten eine vergleichende Methode, um Theorien, Ansätze und Ergebnisse zu vergleichen und die Literatur slowenischer und ausländischer Autoren mit einer Übersicht über wissenschaftliche und fachliche Literatur zu verwenden. Wir haben es aus verschiedenen Online-Datenbanken wie Cobiss.si, ScienceDirect, PubMed, Google Scholar und anderen bezogen.

In der empirischen Arbeit verwendeten wir zunächst eine quantitative Forschungsmethode mit Hilfe einer Umfrage. Die Umfrage wurde zwischen August und Mitte Oktober 2025 durchgeführt. Die Umfrage wurde unter älteren Erwachsenen 65+ Jahren in ganz Slowenien verteilt.

9.3 Instrumente

Das Instrument für quantitative Forschung wurde gemäß den Forschungshypothesen der Dissertation erstellt. Der Fragebogen wurde im Rahmen des 1ka-Programms erstellt. Die Umfrage bestand aus 21 Fragen, bei denen wir einen geschlossenen und halboffenen Typ sowie eine Likert-Skala verwendeten. Zu Beginn des Fragebogens haben wir den Zweck der Umfrage notiert, dass die Teilnahme freiwillig ist und wir die Anonymität der Befragten sicherstellen.

Mit 4 Fragen erhielten wir einen demografischen Überblick über die Befragten, 14 Fragen mit einer Likert-Skala mit fünf Punkten bezogen wir uns auf die Sporterfahrungen älterer Erwachsener, mit 3 Fragen stellten wir einige Behauptungen mit Vorurteilen, Stereotypen und der Erfahrung diskriminierender Einstellungen aufgrund des Alters.

9.4 Muster

Die Forschung wurde mit einem quantitativen Ansatz durchgeführt. Innerhalb des quantitativen Umfragestichmusters schlossen wir zunächst 663 Befragte im Alter von 65 bis 100 Jahren und älter ein. Wir verwendeten einen Fragebogen, der von 629 älteren Erwachsenen im Alter von 60+ Jahren aus allen statistischen Regionen Sloweniens ausgefüllt wurde. Die Umfragedaten wurden mit dem SPSS 29.0-Programm analysiert, bei dem die Forschungshypothesen mit Hilfe von Tests getestet wurden.

Für demografische Daten wurden die Befragten im Fragebogen nach dem Geschlecht befragt: 348 (55%) der Befragten waren weiblich, und 281 (45%) der Befragten männlich. Die meisten Befragten gehörten zur Altersgruppe zwischen 65 und 69 Jahren (281 bzw. 44%), gefolgt von 264 (42%) im Alter von 70 bis 79 Jahren. Von allen Befragten waren 62 (10%) zwischen 80 und 89 Jahre alt; 16 (3%) der Befragten gehörten zur Altersgruppe 90–99 Jahre; 6 Befragte (1%) waren über 100 Jahre alt.

Von allen Befragten waren 65 (10%) noch beschäftigt, und 564 (90%) waren im Ruhestand. 353 Befragte lebten in einer ehelichen oder außerehelichen Partnerschaft (56%), 140 (23%) waren Witwen oder Witwer, 70 (11%) waren ledig und 66 (10%) waren geschieden.

Davon lebten 280 (45%) in der Stadt, 265 (42%) auf dem Land und 84 (13%) in den Vororten.

9.5 Beschreibung der Datenverarbeitung

In der quantitativen Forschung wurden die gewonnenen Daten mit dem statistischen Programm Jama analysiert, das uns eine einfache Durchführung von Analysen ermöglichte. Verschiedene statistische Tests wie die Spearman-Korrelation, der Kruskal-Wallis-Test, der Binomische-Test und der Wilcoxon-Test wurden verwendet, um die Hypothesen zu testen. Nach den gewonnenen Daten beantworteten wir die Forschungsfrage und überprüften die Forschungshypothesen.

9.6 Analyse der empirischen Daten

Für die Zwecke der Forschungsarbeit stellten wir drei Forschungshypothesen auf, wodurch wir annahmen:

Hypothese 1: dass Soziale Stereotype über das Altern zu negativen Einstellungen gegenüber dem Sport beitragen.

Um die Hypothese zu testen, stellen wir zunächst die Null- und Alternativhypothese auf. Wir fügten jeder Hypothese Gleichungen hinzu, um die Ergebnisse der Pearson-Korrelation zu interpretieren. Wir haben also in:

H1/0: angenommen, dass gesellschaftliche Stereotype über das Altern nicht zu negativen Einstellungen gegenüber Sport im Alter beitragen ($\rho = 0$); und in

H1/1: angenommen, dass gesellschaftliche Stereotype über Sport im Alter zu negativen Einstellungen zum Alter beitragen ($S. \neq 0$).

Die Analyse der Daten ergab den Wert des Pearson-Korrelationskoeffizienten ($r_{\min} = 0,404$; $r_{\max} = 0,818$), der die Differenz zwischen positiver und hoher positiver Korrelation der Angaben anzeigt, da bilaterale Pearson-Korrelationen verwendet wurden und alle Sig.-Werte $0,001 <$, was ebenfalls $< 0,05$ entspricht. Basierend auf diesen Daten lehnten wir H1/0 ab und bestätigten H1/1, dass soziale Stereotype und negative Einstellungen gegenüber Sport im Alter zusammenhängen. Wir kommen zu dem Schluss, dass soziale Stereotype und negative Einstellungen gegenüber Sport im Alter bei älteren Erwachsenen statistisch signifikant positiv korreliert sind.

Hypothese 2: wir nahmen an, dass das vorherrschende gesellschaftliche Verständnis älterer Menschen im Sport, das als negativ wahrgenommen wird, alle älteren Erwachsenen zu einer einzigen Gruppe vereint. Aus den Daten:

H2/0: sind wir davon ausgegangen, dass es keine statistisch signifikanten Unterschiede in den Sportaktivitäten unter älteren Erwachsenen in der Gesellschaft gibt, da sie den Sport als am wenigsten respektvoll empfinden – das heißt, er beeinflusst nicht die Wahrnehmung älterer Erwachsener in Sportaktivitäten als eine einzige Gruppe ($\rho = 0$); und

H2/1: stellten wir dabei die Hypothese auf, dass der Vorrang des als negativ wahrgenommenen Sportverständnisses älterer Erwachsener einen statistisch signifikanten Einfluss auf ihre Wahrnehmung als einheitliche Gruppe hat – die Benennung beeinflusst die Bildung von Einstellungen ($q \neq 0$).

Tafel 1: Bewertung der Begriffe für ältere Erwachsene in Sportsaktivitäten

	Welchen Begriff für ältere Erwachsene empfinden Sie im Sportaktivitäten am wenigsten respektvoll?	N	Mean Rank
Wie bewerten Sie die Begriffe im Sport?	Älter	156	291,41
	Seniors	56	394,40
	Ältere Erwachsene	50	288,66
	Seniors	43	253,98
	Gealterte	283	283,63
	Gesamt	588	
Wie bewerten Sie den Begriff „ältere Erwachsene“ im Sport?	Älter	156	287,46
	Seniors	56	306,14
	Ältere Erwachsene	50	317,76
	Seniors	43	329,09
	Gealterte	283	286,71
	Skupaj	588	

Quelle: Eigene Forschung

Auf Grundlage der gewonnenen Daten schließen wir, dass der Begriff "Gealterte" von den Befragten am negativsten bewertet wird (MR = 394,40), was ihre negative Einstellung zu dem Begriff bestätigt. Die Durchschnittswerte unterscheiden sich auch bei anderen Gruppen.

Hypothese 3: wir haben angenommen, dass die Mehrheit der im Sport aktiven Befragten bereits Gerontophobie erlebt hat.

Der Hypothesenverifizierungsprozess wurde mit dem Binomialtest durchgeführt. Zuerst formulierten wir die Null- und Alternativhypothese und ordneten dann jeder Hypothese Gleichungen zu. Innerhalb der Hypothese gaben wir an, dass eine Mehrheit der Befragten eine Behauptung definieren muss, weshalb wir einen Wert von 0,5 für den Testpopulationsprozentsatz verwendeten. Der Test wurde verwendet, um zu prüfen, ob mehr als 50 % der Befragten bereits Gerontophobie erlitten hatten.

H3/0: wobei wir davon ausgingen, dass die Mehrheit der Befragten und Sportaktiven noch keine Gerontophobie erlebt hatte ($S. \leq 0,5$); und

H3/1: bei der wir annahmen, dass die Mehrheit der Sportbefragten bereits Gerontophobie erlebt hatte ($S. > 0,5$).

Tafel 2: Erfahrung der Gerontophobie bei sportaktiven älteren Erwachsenen

	Gruppe	N	Observed Prop.	Exact Sig. (2-tailed)
Haben Sie jemals ein Gefühl von Gerontophobie bei sportlichen Aktivitäten erlebt?	1	449	,68	<,001
	2	213	,32	
	Gesamt	662	1,00	
Wie oft haben Sie das Gefühl, dass ältere Erwachsene in Sportaktivitäten negativ dargestellt werden?	1	398	,60	<,001
	2	264	,40	
	Gesamt	662	1,00	
Halten Sie die Verwendung von Sprache bei Sportaktivitäten älterer Erwachsener für wichtig für die angemessene Wahrnehmung älterer Erwachsener?	1	570	,89	<,001
	2	71	,11	
	Gesamt	641	1,00	

Quelle: Eigene Forschung

Wir fanden statistisch signifikante Unterschiede zwischen den Gruppen ($H = 27,929$; $S. < 0,001$), was bedeutet, dass die Befragten Gerontophobie unterschiedlich erlebten.

Die Bewertung des Begriffs "Gerontophobie bei Sportaktivitäten älterer Erwachsener" unterschied sich jedoch nicht signifikant zwischen den Altersgruppen ($H = 4,820$; $p = 0,306$), weil diese Begriffe von den Befragten einheitlicher wahrgenommen wurden. Auf Grundlage dessen lehnten wir das H_0 für den Begriff "Gerontophobie bei Sportarten älterer Erwachsener" ab und bestätigten H_1 , dass die negativ wahrgenommene Benennung der Gerontophobie im Sportaktivitäten älterer Erwachsener die Wahrnehmung beeinflusst. Die Ergebnisse unterstützen H_2 , da sie zeigen, dass die Prävalenz von Gerontophobie insbesondere bei sportlichen Aktivitäten älterer Erwachsener ein wichtiger Faktor für die Prägung der Einstellung gegenüber älteren Erwachsenen ist. Ihre Erfahrungen sind daher nicht neutral und können zum stereotypen Bild älterer Erwachsener im Sport als einheitliche Gruppe beitragen; d.h. dass die Mehrheit der im Sport aktiven Befragten bereits Gerontophobie erlebt hat.

Die Mehrheit der Befragten schätzte außerdem, dass Begriffe, die sich auf Sportaktivitäten älterer Erwachsener beziehen, häufig oder sehr häufig Gefühle von Schwäche und Abhängigkeit von anderen hervorrufen ($M = 0,32$; $SD = 0,47$). Sie schätzten außerdem, dass ältere Erwachsene in sportlichen Aktivitäten oft negativ dargestellt werden, weil das Altern in der Gesellschaft negativ repräsentiert wird ($M = 0,40$; $SD = 0,49$). Der höchste Durchschnittswert wurde jedoch auf der Bedeutung der Sprache in den Medien für die Wahrnehmung älterer Erwachsener im Sport festgestellt, was bedeutet, dass die überwiegende Mehrheit der bis zu 89% der Befragten schätzte, dass Sprache eine Schlüsselrolle bei der Prägung sozialer Einstellungen gegenüber älteren Erwachsenen spielt ($M = 0,89$; $SD = 0,31$).

10 Gesellschaft, ältere Erwachsene und Sportaktivitäten

Sport ist ein Grundrecht jedes Menschen, egal ob Kinder, Jugendlicher, Erwachsener oder ältere Erwachsene; innerhalb dieser Gruppen auch für alle mit besonderen Bedürfnissen. Sportliche Aktivitäten sind wichtig für das Wohlergehen jeder Gesellschaft. Aufgrund der Auswirkungen auf die Entwicklung älterer Erwachsener und der eng verbundenen Entwicklung eines gesunden Lebensstils sowie des Erwerbs sozialer Kompetenzen stellt die sportliche Aktivität der älteren Erwachsenen einen wichtigen Bestandteil des nationalen Sportprogramms sowie ihrer regelmäßigen Sport- und Freizeitaktivitäten dar, die nicht aufgrund sozioökonomischer Diskriminierung beeinträchtigt werden dürfen. Die Verflechtung sozialer Rollen bedeutet nicht, dass Sport nur mit verschiedenen sozialen Bereichen verbunden ist: Gesundheitswesen, Bildung, Wirtschaft, Umwelt, Tourismus, Kultur, Finanzen, Transport usw., sondern auch mit verschiedenen Generationen. Also auch mit älteren Erwachsenen.

Alterungsprozesse und die Sportbedürfnisse älterer Erwachsener sollen in alle nationalen Entwicklungspolitiken und Programme einbezogen werden. Altersaspekte sollen auch in die Genderpolitik eingebracht werden und Genderaspekte in die Sportpolitik, um damit die besonderen Bedürfnisse älterer Frauen und Männer zu berücksichtigen.

Wir müssen durch die Förderung gesunder Lebensstile, Sportaktivitäten, Bildung und Sportmöglichkeiten sowie soziale Sicherungssysteme in die älteren Erwachsenen investieren, denn dadurch können wir das Leben der älteren Erwachsenen positiv beeinflussen. Flexible Sportmöglichkeiten und ein aktives

lebenslanges Lernen sollten gefördert werden, um die Integration gegenwärtiger älterer Erwachsenengenerationen ins Sportleben zu verbessern.

Eine rechthebasierte Kultur des Alterns mit einer neuen Haltung gegenüber dem Altern und älteren Erwachsenen soll in der Gesellschaft entwickelt werden, damit diese nicht mehr als Empfänger von Fürsorgeleistungen, sondern als sportaktive Mitglieder der Gesellschaft wahrgenommen werden. Dies verlangt, neben anderen Maßnahmen, die Entwicklung internationaler Sportinstrumente und deren Umsetzung in die nationale Gesetzgebung, Maßnahmen gegen Diskriminierung sowie die Anerkennung älterer Erwachsener in verschiedenen Feldern des Sports als (noch immer) autonome Subjekte.

Für alle älteren Erwachsenen müssen ihre Sportaktivitäten in Würde und Sicherheit stattfinden. Durch soziale Rettungsböden und andere soziale Investitionen muss der Zugang zu einer Basissportversorgung, zu sportlichen Dienstleistungen und zu einem Mindesteinkommen gesichert werden, um Autonomie und Unabhängigkeit älterer Erwachsener im Sportbereich zu erweitern, Armut im Alter zu verhindern und zu Sportaktivitäten beizutragen. Diese Politik sollte auf einer Langzeitvision aufbauen und durch einen starken politischen Willen mit ausreichenden Budgets abgesichert sein, um negative Auswirkungen von Krisen und politischen Veränderungen zu minimieren. Hierfür ist die Verbesserung des Problembewusstseins, die Stärkung nationaler und lokaler Handlungsfähigkeit und die Entwicklung sportlicher und politischer, wirtschaftlicher und sozialer Reformen notwendig.

Unbestritten sind Sportaktivitäten der älteren Erwachsenen Kernelemente individueller Gesundheit und Lebenszufriedenheit älterer Erwachsener. Doch in dem Masse, in dem sie sich wohlfühlen, wuchs der Widerspruch zwischen konzeptionellem Anspruch und physischen Möglichkeiten. Die Balance von freier Entfaltung der Sportaktivitäten und Eigenverantwortung jedes einzelnen und der gesellschaftlichen Verantwortung und Solidarität ist eine permanente Gestaltungsaufgabe, die ein konsensfähiges Verständnis von sozialer Gerechtigkeit erfordert und dieses als gesellschaftspolitische Handlungsperspektive auf ältere Erwachsene operationalisieren muss. Dabei wird „Teilhabeberechtigung“ in verschiedene Zieldimensionen ausdifferenziert: Zugang zu den verschiedenen Sportarten, Inklusion in den Sportwelt, soziale Kohäsion, Generationengerechtigkeit und Vermeidung von Diskriminierung gefragt.

11 Schlussfolgerung

Sport für ältere Erwachsene kann als Sport- und Freizeitaktivität von Menschen 65+ Jahren definiert werden. Dies ist meist die Zeit, in der Menschen in den Ruhestand gehen, und durch das Altern verändern sich einige biologische Eigenschaften des menschlichen Organismus, sodass ältere Erwachsene eher krank werden. Für die Gesellschaft ist der Sport für ältere Erwachsene ein wichtiges Mittel zur Reduzierung der Gesundheitsausgaben, da die Auswirkungen von qualitativ hochwertiger körperlicher Bewegung die Morbidität verringern. Für den Einzelnen bedeutet regelmäßige Sportaktivität in dieser Lebensphase ein qualitativ hochwertiges und unabhängiges Altern, die Erhaltung der körperlichen, geistigen, emotionalen und sozialen Gesundheit, soziale Inklusion, die Reduzierung der Behandlungskosten und die Erhaltung kreativer Lebensenergie (NP športa v RS 2014-23). Sportliche Aktivitäten älterer Erwachsener stellen eine Fortsetzung der sportlichen Freizeit ab dem Erwachsenenalter dar, wobei sich die Fähigkeiten des Einzelnen entsprechend den Alterungsprozessen anpassen. Die Ergebnisse zeigen jedoch, dass auch bei Menschen, die erst im hohen Alter mit dem Sport begonnen haben, bei regelmäßiger Bewegung positive Veränderungen zu erwarten sind. Der Anteil älterer Erwachsener, die Sport treiben, ist in den letzten zehn Jahren auf 38% gestiegen, liegt jedoch deutlich unter der Altersgruppe von 55-64 Jahren mit 62,3%.⁵⁶ Am frühesten starben jene, die nie Sport getrieben hatten. Was nicht ganz überraschend ist. Zum einen, wie wichtig die sozialen Interaktionen der älteren Erwachsenen durch Sportaktivitäten neben der körperlichen Betätigung ist. Zum anderen, dass Tennis als hochintensives Intervalltraining einen Vorteil gegenüber einer gleichförmigen Bewegung wie etwa beim Jogging hat.⁵⁷ Ältere Erwachsene können ihre eigene Gesundheit erfolgreich stärken:

- mit gesunder und regelmäßiger Ernährung, ohne Mängel;
- mit dem richtigen Verhältnis zwischen Arbeit und Ruhe;
- mit dem Gleichgewicht zwischen körperlicher und geistiger Anstrengung;
- mit aufrechterhaltenden körperlichen und geistigen Leistungsfähigkeiten;
- mit echtem Kontakt zur Natur, und nicht zuletzt
- durch regelmäßige sportliche Aktivitäten.

⁵⁶ Sodržnik, 2015.

⁵⁷ Graf, 2024.

Mit regelmäßigen Sportaktivitäten können ältere Erwachsene erreichen, dass ihr Alter von hoher Qualität ist, da es in erster Linie von ihrer eigenen Aktivität und Sorgfalt abhängt, wie sie den Herbst ihres Lebens erleben und verbringen. Regelmäßige körperliche Aktivität wird deshalb auch im Alter empfohlen, da sie hilft, die körperlichen Fähigkeiten und Fertigkeiten für alltägliche Aufgaben zu erhalten, Muskeln zu stärken, gesunde Knochen zu fördern, den Rückgang der psychophysischen und funktionellen Fähigkeiten des Körpers zu verringern, Stress und Depressionen zu reduzieren, soziale Fähigkeiten, Selbstwertgefühl und Selbstvertrauen zu verbessern, das Immunsystem zu stärken und die Schlafqualität positiv zu beeinflussen.

Eine wichtige Erkenntnis unserer Forschung ist aber der relative Mangel an Literatur, die systematisch die Sportaktivitäten älterer Erwachsener, insbesondere in der slowenischen Sprache, behandeln würde. Während die Themen Altern, Altersdiskriminierung, Gerontophobie und soziale Darstellungen älterer Erwachsener in der soziologischen, psychologischen und gerontologischen Literatur häufiger behandelt werden, bleibt die Frage der Sportpräsentation und der angemessenen Benennung älterer Erwachsener weniger erforscht. Slowenische wissenschaftliche Arbeiten enthalten meist individuelle Reflexionen oder umfassendere Analysen von Gerontophobie und Altersdiskriminierung, seltener jedoch tiefgehende Studien, die sich mit den Auswirkungen sportlicher Aktivitäten auf die Erfahrung und soziale Stellung älterer Erwachsener befassen.

Wir sind uns der Einschränkungen der Umfrage bewusst, da die Stichprobe nicht repräsentativ für die gesamte Bevölkerung ist und die Antworten subjektiv und an die Erfahrungen der älteren Erwachsenen gebunden sind. Dennoch bieten die Ergebnisse wertvolle Einblicke in die Erfahrungen älterer Erwachsenen mit sportlichen Aktivitäten und schaffen Raum für weitere Forschung und professionelle Arbeit im Bereich älterer Erwachsener im Sport und Altern. Wir sind überzeugt, dass wir mit einer respektvollen Haltung gegenüber älteren Erwachsenen, die auch sportlich aktiv sind, einen wichtigen Beitrag zur Verringerung von Diskriminierung und zur Stärkung der Würde älterer Erwachsener in der modernen postmodernen Gesellschaft leisten können.

Sport ist ein wichtiger Teil der Kultur jeder Nation, und für ältere Erwachsene wird er zu und bleibt ein notwendiger Teil eines gesunden und positiven Lebensstils.

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SOME CIVIL ASPECTS OF AI IN SPORT: NEW CHALLENGES

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Artificial intelligence (AI) is increasingly embedded in modern sport, shaping athlete performance analysis, injury prevention, refereeing, talent identification, and fan engagement. While AI-driven systems promise efficiency and competitive advantage, their deployment raises complex legal and ethical challenges, particularly regarding civil liability, data protection, transparency, and fairness. This paper examines the main applications of AI in sport and analyzes their legal implications under European Union law, with a particular focus on the General Data Protection Regulation (GDPR) and the EU Artificial Intelligence Act (AI Act). Special attention is devoted to liability for damage caused by AI errors in sport, including bodily injury, economic loss, and non-material harm. The research yielded results that sport constitutes a high-risk environment for AI use and demonstrated the need for special regulations for liability for damage caused by AI use and a governance framework that integrates legal regulation with ethical principles.

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1 Introduction

Artificial intelligence (AI) is quickly entering into sports science and practice, giving researchers and practitioners new ways to optimize performance, to improve rehabilitation, and to prevent injuries, to identify talent and recruit, and to bolster fan engagement and business.

Integrating artificial intelligence into sport represents one of the most significant transformations in sports practice and science. AI systems are now used to analyze performance data, predict injuries, support refereeing decisions, identify athletic talent, personalize fan experiences etc. These technologies increasingly influence not only sporting outcomes but also athletes' health, career prospects, and economic interests.

Sport occupies a unique normative position in society. It combines elements of economic activity, cultural and national identity, and physical integrity, while relying heavily on principles of fairness, equality of opportunity, and public trust. Despite its many beneficial uses, the use of AI in such a sensitive domain raises legal and ethical questions that extend beyond technical efficiency. This paper explores the implications of AI in sport from a legal perspective, focusing on EU law, and pays particular attention to the issue of liability for damage caused by AI-related errors.

The paper is based on analysis of EU and national legislation, regulatory proposals and policy documents, relevant academic literature, and selected practical examples from professional sport.

2 Applications of Artificial Intelligence in Sport

Artificial Intelligence is transforming sports in almost every area – from athlete performance and coaching to influence on fans engagement and business operations.¹ There are different ways how AI is being used across the sports industry:

¹ Ravindran, 2022.

2.1 Performance Analysis and Training (Player Development)

AI-driven performance analysis systems process huge amounts of data collected through GPS trackers, wearables, and video analytics. These systems enable highly individualized training programs and tactical optimization. While they enhance efficiency, they also entail continuous monitoring of athletes, often involving biometric data.²

AI helps coaches and athletes make data-driven decisions by analyzing performance metrics. They track heart rate, speed, fatigue, and motion in real time.³

AI uses computer vision – video analysis tools identify movement patterns, technique errors, or tactical positioning (e.g., in football or tennis). AI analyzes and predicts injuries by detecting changes in motion or workload.⁴

Examples are tools like Catapult Sports or STATSports that use AI to analyze player load and prevent overtraining.

2.2 Injury Prevention and Health Monitoring

Predictive models identify patterns associated with fatigue, overuse, and injury risks. AI can detect early signs of fatigue or biomechanical stress.⁵ It makes motion capture analysis and identifies risky movement patterns, monitors rehab and AI-driven physiotherapy tools adjust exercises in real time. AI creates predictive injury models combining medical, training, and genetic data to forecast risk.

Such systems may significantly reduce injury rates and prolong athletic careers. However, they operate at the intersection of performance optimization and medical decision-making, triggering heightened legal protection for health-related data.

The best examples are NBA teams, which use AI to monitor player workload and minimize injury rates.

² Hamill et al., 2021; Bennett et al., 2019; Stetter et al., 2020.

³ Pickering & Kiely, 2019; Guelmami et al., 2023.

⁴ Kellmann et al., 2018; Garcia-Aliaga et al., 2023.

⁵ Adam, 2024.

2.3 Talent Identification and Recruitment

AI-based scouting systems assess athletes' potential by analyzing historical and real-time data. While efficient, these systems may reinforce existing biases, exclude atypical development paths, and indirectly discriminate against certain groups of athletes. Algorithms predict player potential based on performance data rather than reputation alone. AI uses video scouting: computer vision systems automatically analyze match footage to rate skills. AI also makes market value predictions: machine-learning estimates transfer values and contract risks.

Example is club Brentford FC in the English Premier League, which uses AI scouting to find undervalued players.

2.4 Tactics and Strategy

AI models analyze large amounts of match data to suggest optimal strategies using pattern recognition in order to identify tendencies in opponents' play (e.g., where a basketball player prefers to shoot), makes simulations because AI can run virtual matches to test tactical plans and can therefore provide valuable information to assist coaches in making in-game decisions and substitution recommendations. Born et al. tested the You Only Look Once (YOLO) AI model's ability to identify opposing players' locations in Australian Rules Football, using data from 17 matches in the 2019 AFL season. The model achieved high accuracy (mAP = 0.94; precision = 0.95; recall = 0.97; F1-score = 0.96), with minimal error in player position estimates compared to GPS data, indicating YOLO's utility for tracking opponents and enhancing tactical preparation.⁶

There are many examples, especially in football, where clubs like Liverpool FC and Manchester City use AI-driven analytics for tactical planning.

2.5 AI-assisted Refereeing and Officiating

Technologies such as goal-line technology and video-assisted refereeing aim to improve accuracy and fairness in competitions, particularly in sports governed by organizations such as FIFA. AI assists referees and ensures fairness in competition

⁶ Born et al., 2024; Zhou et al., 2025.

with VAR & Goal-Line Technology (computer vision confirms key decisions), automated Line Calls (often used in tennis - e.g., Hawk-Eye system), Fairness Checks (detects match-fixing patterns).

Despite their benefits, these systems raise concerns regarding algorithmic transparency, accountability, and the erosion of human discretion.

2.6 Fan Engagement and Experience

AI personalizes how fans interact with their favorite teams. Chatbots and Virtual Assistants handle ticketing, news, and fan queries. AI recommends highlights or stats tailored to individual fans (personalized content). Virtual Reality (VR) and Augmented Reality (AR) are also used, and they enhance viewing experiences with real-time stats overlays.

For example, the NBA app uses AI to create custom highlight reels for each user.

2.7 Business and Operations

AI improves stadium management, ticket sales, and sponsorship. It adjusts ticket prices based on demand and opponent quality (dynamic pricing), makes security and crowd analytics: AI-driven cameras detect unusual behavior. In sponsorship it measures brand exposure on broadcasts.

3 Legal Framework Governing AI in Sport

The law often struggles to keep up with technological progress, which is not always an easy task.⁷ With the development of artificial intelligence systems, there has been a need to try to ensure legal protection in the most effective possible way.⁸

An artificial intelligence system is not just a 'robot' that a person controls with various remote controls. Although the AI system is given initial algorithms, going forward it does not act in a static way. Instead, it evolves because it is intelligent, learns and decides on its own. At some point, it can start making wrong decisions,

⁷ Cwik et al., 2024.

⁸ Najjar, 2023.

possibly even violating fundamental human rights, which in turn can cause liability and resulting damage. For example, it can put someone in a discriminating position.

There are some examples of companies which used an AI algorithm for making hiring decisions and gave up because it was discovered that it gave preference to candidates whose CV included the words ‘execute’ or ‘take’, which were more often written by male candidates. In 2021, a WHO and UN report stated that applying AI revealed the so-called ‘digital ageism’, when AI made the wrong decision depending on the applicants’ age.⁹

In some cases, AI has led to racial and gender discrimination. This is very important in all aspects of sport, especially in performance analysis, player development and in injury prevention and rehabilitation.

Although existing legislation provides some protection, it is not sufficient to address the specific challenges that artificial intelligence systems pose. The EU has adopted a legal framework for the lawful and safe use of artificial intelligence by adopting the AI Act Regulation (EU) 2024/1689, which Member States are obliged to implement in national law and have the option of elaborating legal protection in detail. The EU AI Act is the first-ever legal framework on AI worldwide, which addresses the risks of AI and positions Europe to play a leading role globally.

3.1 The EU Artificial Intelligence Act

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024, which laid down harmonised rules on artificial intelligence (Artificial Intelligence Act or AI Act), constitutes the first comprehensive and legally binding regulatory framework for artificial intelligence at the global level. The explicit objective of the AI Act was to establish harmonised rules governing how artificial intelligence systems would be developed, integrated into the market, and used within the European Union. Having entered into force on 1 August 2024, the Regulation will be phased in over time. It will be fully applicable in 2026, thereby enabling both public authorities and private actors to adjust to its substantive and procedural requirements. From a normative standpoint, the AI Act represents a decisive shift away from soft-law instruments and voluntary ethical guidelines towards enforceable

⁹ Parlov et al., 2025.

legal obligations that directly affect the deployment of AI technologies in the sports sector. By imposing mandatory requirements relating to risk management, transparency, human oversight, and the protection of fundamental rights, the Regulation redefines the legal limits within which artificial intelligence may be integrated into sport. In doing so, it establishes a new paradigm of regulatory accountability, positioning binding law (rather than ethics alone) as the central mechanism for governing the societal, economic, and fundamental-rights implications of artificial intelligence in sport and beyond.

The AI Act introduces a risk-based regulatory framework (detailed in Chapter 4). Certain AI systems used in sport may qualify as high-risk, particularly when they affect health, safety, or access to professional opportunities. Obligations include risk management, human oversight, technical documentation, and accountability mechanisms.

3.2 Data Protection and the GDPR

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation or GDPR). constitutes the cornerstone of the European Union's data protection framework and stands at the heart of how artificial intelligence systems in the sports sector are deployed. As a directly applicable regulation, the GDPR establishes binding obligations concerning the lawful, fair, and transparent processing of personal data, including data-intensive and automated decision-making systems based on artificial intelligence.

From a normative perspective, the GDPR plays a crucial corrective and rights-protective role in the context of AI-driven sports technologies, particularly where the processing of sensitive categories of data (such as health data, biometric data, or performance-related metrics of athletes) is concerned. By enshrining fundamental principles such as purpose limitation, data minimisation, accuracy, storage limitation, and accountability, the GDPR imposes substantive legal constraints on the use of AI systems that rely on extensive data collection and profiling. The GDPR classifies biometric and health data as special categories of personal data, subject to strict processing conditions. In sport, lawful processing typically relies on explicit consent, medical necessity, or substantial public interest. Sports organizations must

implement strong safeguards, including data minimization, purpose limitation, and transparency.

Moreover, the GDPR introduces specific safeguards against the risks associated with automated decision-making and profiling, notably through Article 22, which limits decisions producing legal or similarly significant effects based solely on automated processing. In the sporting context, this provision is of particular importance where AI systems are used for player selection, performance evaluation, injury prediction, or contractual and disciplinary decisions. Consequently, the GDPR reinforces the requirement for meaningful human involvement and procedural fairness, thereby complementing the risk-based regulatory approach of the Artificial Intelligence Act.

Taken together, the GDPR and the AI Act establish a cumulative and mutually reinforcing legal framework, in which data protection law functions not merely as a compliance obligation, but as a normative instrument to safeguard human dignity, autonomy, and fundamental rights in the increasingly data-driven and algorithmically governed domain of sport.

4 Sport as a High-Risk AI Environment

4.1 Levels of Risk

Sport represents a particularly sensitive environment for AI use due to its impact on physical integrity, career opportunities, and public trust. Competitive pressure and commercialization increase the risk of misuse, making robust legal and ethical governance indispensable.

The AI Regulation defines four levels of risk for AI systems: unacceptable risk (prohibited risk), high risk, limited risk and minimal or no risk.

‘High risk’ are cases of AI use that may pose a serious risk to health, safety or fundamental rights. ‘Limited risk’ are cases where there is a specific obligation related to transparency, e.g., when using AI systems such as chatbots, people should be aware that they are interacting with a machine to be able to make an informed decision. ‘Minimal or no risk’ applies to most AI systems currently used in the EU e.g. applications such as AI-enabled video games or spam filters.

In addition to the sanctions prescribed by the Regulation on Artificial Intelligence, when risks are realized and damage occurs, the person harmed has the right to compensation for damages.¹⁰ Although the AI Act does not establish civil liability rules, it indirectly reshapes liability by imposing mandatory obligations. Non-compliance may function as evidence of negligence or as a basis for presumptions of fault in civil proceedings.

4.2 Fundamental Rights Impact Assessment (FRIA)

A Fundamental Rights Impact Assessment (FRIA) is a mandatory, pre-deployment process under the EU AI Act for organizations using high-risk AI systems. FRIA is a methodology which identifies the risks and, according to the result, determines the organizational and technical measures to be applied. Before deploying a high-risk artificial intelligence system referred to in Chapter III, Article 6, para. 2. of the AI Regulation (with the exception of high-risk AI systems intended for use in the area referred to in point 2 of Annex III.), public bodies or private entities providing public services and deploying an AI system, as well as entities deploying high-risk AI systems referred to in point 5, subpara. (b) and (c) of Annex III, are required to assess the impact that the use of such a system may have on fundamental rights. AZOP (Agency for the Protection of Personal Data) recommends using the methodology developed by the Data Protection Authority of Catalonia (ADPCAT).

This methodology is combined with a personal data protection impact assessment, in such a way that the FRIA as a human rights impact assessment is performed at the stage of introducing a high-risk AI system (it is recommended to apply the FRIA even if there is no high-risk AI system because at some point, even if the system is not high-risk, processing activities may occur that would be classified as high-risk, and this is sometimes unpredictable), while the data protection impact assessment must be performed at the very beginning, i.e. before starting to develop the AI system.¹¹

¹⁰ Parlov et al., 2025.

¹¹ Parlov et al., 2025.

5 Ethical Challenges of AI in Sport

AI poses three specific groups of ethical challenges as applied in sport:

1. Fairness and non-discrimination. AI systems may reproduce or amplify structural inequalities present in training data, undermining the principle of equal opportunity that lies at the heart of sport.
2. Transparency and explainability. The opacity of complex AI models limits the ability of athletes and coaches to understand and challenge AI-driven recommendations, weakening informed decision-making.
3. Human autonomy and dignity. Excessive reliance on AI risks reducing athletes to data points, potentially undermining their autonomy and human value.

AI in sports is using sensitive data such as athletes' health metrics, performance statistics and biometric data and there is significant risks of unauthorised access, misuse and discrimination.¹² For example, biometric data – such as injury risk predictions or physiological stress markers - could be used by teams or sponsors to exclude athletes from competition or contracts, even in the absence of clinical symptoms or athlete consent, thereby compromising athletes' privacy and autonomy.¹³ Recognising these challenges, the Olympic AI Agenda¹⁴ highlights the broader ethical and privacy issues associated with AI, including data security, accountability, fairness, job displacement and environmental impact. These concerns underscore the importance of the need to implement robust frameworks to ensure responsible and transparent AI deployment in sports.¹⁵

Existing frameworks such as the Organisation for Economic Co-operation and Development (OECD) AI Principles¹⁶ and the European Commission's Ethics Guidelines for Trustworthy AI¹⁷ offer foundational guidance on fairness, transparency and accountability, while regulations like the GDPR provide legal standards for data privacy and protection.¹⁸

¹² Stahl & Wright, 2018; Petersen et al., 2025.

¹³ Najjar, 2023; McNamee et al., 2021.

¹⁴ International Olympic Committee, 2024.

¹⁵ Zhou et al., 2025.

¹⁶ Organisation for Economic Co-operation and Development, 2024.

¹⁷ European Commission, 2019.

¹⁸ Zhou et al., 2025.

In the sporting context, frameworks from organisations such as the World Anti-Doping Agency (WADA) also offer sport-specific data governance insights.¹⁹ Building on these, implementing robust data governance frameworks with clear guidelines on data access and retention supports responsible handling of athletes' private data.²⁰ Advanced encryption and anonymisation further protect data by reducing risks of unauthorised access.²¹ Ethical review boards²² can evaluate AI projects for biases, while educating athletes on their data rights empowers them to make informed decisions.²³

6 Liability for Damage Caused by AI Errors in Sport

6.1 Types of Damage

Damage caused by AI systems in sport may consist of ordinary damage (for example, injuries caused by flawed training recommendations), loss of profit (such as loss of income due to incorrect officiating), or non-material damage (violations of personality rights including reputational harm or privacy violations). The complexity of AI systems complicates traditional causal analysis.

6.2 Attribution of Liability

Determining liability involves multiple actors, including sports clubs and federations, coaches and medical staff, AI developers and providers, and data controllers and processors. AI systems blur the line between human decision-making and technological autonomy, challenging traditional liability models.

6.3 Fault-based Liability and Duty of Care

Under fault-based regimes, liability is contingent on a breach of the applicable standard of care. In AI-supported sport, this includes failure to critically assess AI outputs, over-reliance on automated systems, and lack of adequate human oversight. The standard of care increasingly entails a duty of informed and responsible AI use.

¹⁹ World Anti-Doping Agency, 2024.

²⁰ Orlando, 2022.

²¹ Najjar, 2023.

²² Guelmami et al., 2023.

²³ Qi et al., 2024; Zhou et al., 2025.

It is important to emphasize that the possibility of strict liability (i.e., liability without fault – neither intentional conduct nor negligence) when applying AI systems is high. The question is whether it should be strictly prescribed and for which cases. AI may pose different types of risks, in particular physical risks (called ‘safety risks’) and social risks (called ‘fundamental rights risks’). While the social risks posed by AI may be the most important and the ones primarily deserving legislative attention, strict liability for AI should be limited to cases resulting in the manifestation of physical risks (like death, personal injury or property damage, including damage to data and digital environments as well as psychological harm that amounts to a recognised state of illness). Strict liability for immaterial harm and its economic consequences has been advanced by the European Parliament in the context of AI liability, because it is problematic as the range of situations where compensation is due is potentially endless.²⁴

When an AI system is given a high level of autonomy, it can potentially interrupt the causal link between an act and any damage which could result from it, creating uncertainty regarding who should, at least in principle, be held liable. AI algorithm acts alone, resulting in a responsibility gap which has to be avoided.²⁵

The European Commission’s Proposal for an AI Liability Directive: In September 2022, the European Commission presented the Proposal for a Directive on adopting non-contractual civil liability rules to artificial intelligence (commonly referred to as the AI Liability Directive). The proposal aimed to address structural shortcomings of existing civil liability regimes when applied to damage caused by AI systems, particularly the difficulties faced by claimants in proving fault and causation in complex, opaque, and autonomous technological environments.

The Directive was conceived as a complementary instrument to the EU Artificial Intelligence Act and the revised Product Liability framework. Rather than introducing a new, uniform liability regime, it sought to adopt national fault-based liability systems by introducing targeted procedural mechanisms designed to rebalance evidentiary asymmetries between injured parties and AI system operators or providers.

²⁴ Wendehorst, 2020.

²⁵ Cappiello, 2022.

A central feature of the proposal was that it introduced a rebuttable presumption of causality. Where a claimant could demonstrate (1) fault in the form of non-compliance with a relevant duty of care – such as obligations laid down in the AI Act – and (2) a reasonably likely causal link between that fault and the damage suffered, courts would be entitled to presume that the AI system caused the harm. The defendant would retain the possibility to rebut this presumption. This mechanism was designed to mitigate the ‘black box’ problem inherent in many AI systems.

In addition, the proposal introduced judicial disclosure obligations, empowering courts to order providers or users of AI systems – particularly high-risk AI systems – to disclose relevant technical documentation, logs, or system information necessary to substantiate liability claims. This addressed the informational imbalance that typically prevents injured parties from accessing evidence needed to establish causation.

Although the proposed Directive did not establish strict liability, it significantly lowered the practical barriers to enforcing existing fault-based claims. Importantly, it preserved Member States’ autonomy in defining substantive liability rules while harmonizing key procedural aspects relevant to AI-related harm.

In February 2025, the European Commission formally withdrew the proposal due to insufficient political consensus among Member States. Despite its withdrawal, the AI Liability Directive remains highly influential in academic discourse and policy debates. Its conceptual framework – particularly the adjustment of the burden of proof and the linkage between regulatory non-compliance and civil liability – continues to inform discussions on the future of AI liability in the EU.²⁶

In the context of sport, the rationale underlying the proposed Directive is especially compelling. AI-driven training systems, injury-prediction tools, and officiating technologies involve high-risk decision-making with direct consequences for athletes’ physical integrity, economic interests, and professional careers. The difficulties in proving causation between AI-generated outputs and resulting damage mirror precisely the problems the proposal sought to resolve. Even in the absence of binding EU-wide rules, the principles articulated in the AI Liability Directive

²⁶ Wendehorst, 2020.

provide valuable guidance for national courts and legislators when addressing AI-related damage in sport.

Fault-based liability requires proof that a person acted intentionally or negligently and thereby caused damage. In the sporting context, this may apply to coaches, physicians, clubs, or competition organizers who rely on AI systems but use them inappropriately or contrary to professional standards.

Example 1 (case): A coach of a professional football club uses an AI system to monitor players' workload and assess injury risk. The system warns that a particular player is at high risk of muscle injury, but the coach ignores the recommendation and includes the player in a full-intensity match. The player is injured and must remain sidelined for several months. In this case, the liability of the coach and the club may be based on fault (negligence), since they consciously disregarded relevant data provided by the AI system.

Example 2 (case): A coach of a professional football club uses an AI system to monitor players' workload and assess injury risk. The system doesn't warn that a particular player is at high risk of a muscle injury. However, the coach believes the AI made an obvious mistake and nevertheless includes the player in a full-intensity match. The player is injured and must remain sidelined for several months. In this case, the liability of the coach and the club may be based on fault (negligence).

Conclusion: Liability depends on who made the decision and how the AI system was integrated into the decision-making process. If the coach or the club used an AI tool but ignored other relevant data or failed to verify the recommendations, they may be liable for negligence. If the AI system was defective or improperly designed, the developer or manufacturer of the system may bear liability for a defective product. In some cases, liability could be shared, depending on the specific contractual arrangements and professional standards.

In any case, it is crucial to establish a causal link between the AI recommendations and the injury that occurred, and to assess whether the damage was foreseeable and could have been avoided through the exercise of due care.

6.4 Strict Liability (Liability without Fault)

Strict liability does not require proof of fault; it is sufficient that damage occurred in connection with a dangerous activity or a dangerous object. In the context of artificial intelligence, certain autonomous systems may be regarded as sources of increased risk.

Example (case): At a professional tennis tournament, an autonomous AI-based officiating system is used (e.g., an automated line-calling system). Due to a technical malfunction, the system incorrectly awards a point in a decisive game, causing one player to lose the match and a significant monetary prize. Although the organizer did not act negligently, strict liability could apply because the damage arose from the use of high-risk technology in a competitive context.

6.5 Product Liability for Defective AI Systems

Where AI systems qualify as products, defective design, insufficient training data, or unsafe default settings may trigger product liability. The key criterion is whether the system provides the level of safety that users are entitled to expect.

Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC (the Product Liability Directive – PLD) is a legal act of the European Union that regulates liability for damage caused by defective products. Its goal is to ensure that users who suffer damage due to a defective product can claim compensation, and that producers and other economic entities bear responsibility for such damage. The directive modernizes liability rules to cover modern technologies, including software, artificial intelligence and digital products. The term ‘product’ is expanded to include digital elements such as software and AI systems. The directive also provides for a presumption of malfunction when a product does not comply with safety obligations under other EU regulations, making it easier to prove damage. The new rules aim to achieve a higher level of protection for consumers and injured parties in the digital age.

Product liability concerns the manufacturer of an AI solution if the system is defective and such defect causes damage. A defect may lie in the design of the algorithm, in the training data, or in the technical implementation of the software.

Example (case): A club uses commercial AI software for performance analysis and training recommendations. Due to an error in the algorithm, the system systematically underestimates the level of fatigue of a certain type of athlete and recommends excessive workloads. Several players suffer injuries due to overtraining. In this case, liability could rest with the company that developed the AI system, under the regime of liability for defective products.

6.6 Liability for Breaches of Data Protection Rules (GDPR Liability)

Athlete injury caused by AI-based training systems may give rise to liability of clubs, coaches, and AI providers. Incorrect AI-assisted refereeing decisions raise questions of institutional liability and the limits of judicial review of sporting decisions. Unlawful processing of biometric data may result in compensation claims under the GDPR, including non-material damage.²⁷

AI systems in sport often process athletes' personal data, including particularly sensitive data such as health and biometric data. Unlawful processing, inadequate security, or misuse of such data may give rise to liability under the GDPR.

Example (case): A club uses an AI application to monitor players' physiological parameters (e.g., heart rate, stress levels, sleep quality). The data are stored on an unsecured server, and a data breach occurs, resulting in the public disclosure of players' health data. The players suffer reputational and professional harm. The club may be liable as a data controller for breaching GDPR obligations (lack of appropriate technical and organizational security measures).

6.7 Combined Liability and Algorithmic Discrimination

In practice, multiple liability regimes may apply simultaneously, particularly where AI systems produce discriminatory or biased outcomes.

Example (case): A club uses an AI tool to identify talent and to recruit young athletes. The algorithm, trained on historical data, systematically assigns lower scores to candidates from certain socio-economic backgrounds or minority communities. As a result, these candidates are excluded from the selection process. In this case,

²⁷ Koops et al., 2017.

the club may be liable for discrimination and for violating the right to equality, while the developer of the AI tool may be liable for defective algorithm design. If personal data were processed without an appropriate legal basis or transparency, additional GDPR liability may also arise.

8 Conclusion

AI brings many benefits to sports, but it also comes with legal risks and ethical concerns that need to be managed carefully, especially with:

1. Data Privacy & Surveillance - tracking systems collect huge amounts of personal data which can lead to privacy violations if data is misused or leaked. Also, players might feel constantly monitored, creating stress or pressure. An athlete's health data could influence contract negotiations or team selection unfairly.
2. Fairness & Bias - AI systems can reflect biases in their training data, for example scouting algorithms might favor certain body types or playing styles, or gender. This could exclude talented athletes who don't fit the model's assumptions. For example: A recruitment algorithm trained mainly on European players might underrate talent from less-documented regions.
3. Using AI as the sole decision-maker instead of a data provider that informs human judgments - coaches and players could start trusting AI more than human judgment. AI can't always account for the 'human factors' – like motivation, leadership, or emotion – that affect performance.
4. Job Displacement - AI automation in scouting, analysis, and officiating (like VAR or Hawk-Eye) can reduce human roles in these areas. While it creates new tech-related jobs, traditional ones may decline.
5. Impact on the Spirit of the Game – too much technology might undermine the human and emotional aspect of sport. Fans and athletes sometimes feel that constant data analysis or video checks make the game less spontaneous or enjoyable. For example, the use of VAR in football has sparked debates about whether it 'kills the excitement' of live play.

6. Security Risks – AI systems are digital – meaning they can be hacked or manipulated.

7. Unequal Access – Tampering with AI scouting databases, performance models, or biometric trackers could give one team an unfair advantage. Wealthier teams or countries can afford advanced AI tools, while others cannot and this creates a wider performance gap and threatens fairness in competition.

AI in sports must be used responsibly, must protect privacy and fairness, and must be used in conjunction with human expertise rather than replacing it. Artificial intelligence offers substantial benefits for sport but simultaneously poses serious legal and ethical challenges. Existing EU legal instruments provide an essential foundation, yet they must be interpreted and applied in a sport-specific context. Liability for AI-caused damage emerges as a central issue, requiring a balanced approach that integrates fault-based liability, strict liability, product liability, data protection law, and ethical principles. Only through such an integrated framework can innovation in sport be aligned with the need to protect fundamental rights and the core values of sport. Liability rules serve not only compensatory but also preventive functions. Clear allocation of responsibility provides safer AI, meaningful human oversight, and ethical sports governance.

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SPORTS REGULATION IN THE CONSTITUTION OF AZERBAIJAN: RIGHT OR OBLIGATION?

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This article analyzes the constitutional regulation of sport in Azerbaijan, focusing on whether sport is conceptualized as an individual right or as a state obligation. It begins with a clarification of the legal meanings of sport, right, and obligation, supported by statutory definitions and constitutional theory, particularly the notion of human dignity derived from Kantian philosophy. The study then examines the historical development of sports regulation in Azerbaijani constitutional law, demonstrating that earlier Soviet constitutions addressed sport indirectly, primarily within the framework of freedom of association and state policy. The 1995 Constitution, despite its comprehensive rights catalogue, does not explicitly recognize sport as a fundamental right, instead emphasizing state assistance in related social fields. An analysis of the Law on Physical Education and Sport and relevant Constitutional Court jurisprudence highlights the application of proportionality and equality principles in sports-related regulation. The article concludes that, in the absence of explicit constitutional recognition and sustained state support, sport cannot effectively operate as a social right.

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1 Explanation of Terms

In order to answer the question addressed in this article, it would be appropriate to examine the terms right, obligation and sport in legal terminology.

Sport – The equivalent of this word in Azerbaijani Turkish is the Arabic word ‘idman’. Its dictionary meaning is ‘physical movements aimed at developing and strengthening the human body’.¹

According to the legislator, it is part of physical education aimed at regularly developing a person's physical fitness through a complex of various physical movements, participating in competitions at all levels, and achieving high results. This is the definition of sport provided by Article 1.0.2 of the Republic of Azerbaijan's Law on Physical Education and Sports Act², which we will discuss extensively in our research.

The concept of obligation is defined in Black's Law Dictionary as »*a legal or moral duty to do or no do something*«. ³ The concept given by the British refers to an obligation arising from a legal or moral debt. Obligation is the necessary standard of behaviour established by law that a person must fulfil for their own benefit and that of society and the state.⁴ In constitutional law, obligation refers to the responsibilities borne by the individual, society or the state. These responsibilities are actions taken for the general good.

There are two different definitions in legal theory for determining whether a term constitutes an obligation:⁵ The first is that the obligated person has a duty to take active, positive actions for the benefit of the other persons involved in the legal relationship. The second is that the obligation is a duty to refrain from actions prohibited by legal norms. Obligations related to sport are consistent with the first definition. The state has active and positive obligations towards individuals, without which the legal realisation of sport would be impossible.

¹ Əliheydər, 2006, p. 504.

² Bədən tərbiyəsi və idman haqqında, Act. Retrieved from: <https://e-qanun.az/framework/18303>.

³ Garner, 2009, p. 1179.

⁴ Əsgərov, 2011, p. 265.

⁵ Xrapanyuk, 2014, p. 221-222.

The above explanations permit sport to be considered an obligation. Now, however, it is necessary to determine the scope of sport as a right. From a positive perspective, for a right to be a constitutional (human) right, it must be specified in the constitution.⁶ For sport to be considered a human right, it must be substantiated. Therefore, we must consider the issue of substantiating human rights. The Azerbaijani doctrine on this subject is only explained in a translated book on the foundation of human rights. The theories presented in the book are, in order, 'between utility and rights', 'rights' as 'trumps' and 'rights and justice'.⁷ However, as the author points out, these are contemporary theories.⁸ The Azerbaijani constitution, on the other hand, accepts the more fundamental theory of 'human dignity'.

Article 24/I of the Constitution of Azerbaijan⁹ states that 'human dignity is protected and respected'. The fundamental issue addressed in the basis of human rights is 'human dignity'. To explain this issue, we will use Kant's formula for justifying human rights. Kant explains this with three principles: the autonomy of the individual will, the principle of universality, and the prohibition of objectification.¹⁰ Regulations in the field of sport must be voluntary and in accordance with the will of the individual; if coercion is involved, it is not a right. For sport to be a universal right, it must not pose a threat to human health and physical integrity. The realisation of sporting activities must prevent people from being treated as objects. Sport, as a right, must serve a purpose. This purpose can be fundamental to the rights outlined above.

In order for sport to be recognised as a right, it is necessary to determine people's social perspective on sport. When we look at Turkish society, we see that Turkish peoples have been successful in many areas such as horse riding, archery and wrestling. We can cite the Dede Korkut epic,¹¹ which is the common heritage of Turkish societies, as written evidence of this. According to the sociological information in this epic, women had considerable freedom in choosing a spouse.

⁶ Henkin, Neuman & Orentlicher, 2008, pp. 98-104.

⁷ Classical theories: Natural law/natural rights, human nature, human subjectivity, self-ownership, human dignity, freedom of conscience, utility and religion. For detailed information on this subject, see Erdoğan, 2019, pp. 37-57.

⁸ Henkin, Neuman & Orentlicher, 2008, p.103.

⁹ For the official English translation of the Constitution of the Republic of Azerbaijan. Retrieved from: <https://president.az/en/pages/view/azerbaijan/constitution> (accessed: January 28, 2026).

¹⁰ Məhərrəmov, 2024, p. 311.

¹¹ Əlizadə, 2017.

Before marriage, women wanted their husbands to be better at horse riding and wrestling than themselves. They did not marry men who were not good at these sports.

Although sport may be considered a right, it will emerge as a social right at this time. At this time, the state will automatically be faced with increasing positive obligations. We believe that unless the state largely accepts these obligations, it will be impossible for sport to be recognised as a human right. At this time, it will remain merely a right on paper.



Figure 1: The image of a horse race between a woman and a man in the Dede Korkut epic ¹²

In a society with such a background, what is the place of sport in the constitution?

2 The History of Sport in Azerbaijani Constitutional Law

Since becoming a republic in 1918, Azerbaijan has had five constitutions, including the latest one adopted in 1995, before reaching its centenary.¹³ Although four of these constitutions were socialist, they still form our constitutional history. Initially, Azerbaijan was granted a small window of independence. Therefore, when the first constitution was adopted in 1921, it had a different structure. The 1921 constitution

¹² Rza et al., 2000, p. 454.

¹³ We would like to make a brief note here. Many constitutional projects were prepared in Tsarist Russia, but none of them came into force. For drafts on this subject, see: Medushevsky, 2010. The first constitution adopted in Russia dates back to 1906. This constitution applied to the entire Tsarist Empire, meaning it was also applied to Azerbaijan.

had a structure that was outside the common scope of Soviet constitutions. Shortly after Lenin's death, a new constitution was drafted to revoke even the small amount of independence we had.

The 1927 constitution, which had been drafted, removed all windows and created a similar constitution for all Soviet countries. Looking at both the 1921 and 1927 constitutions, we do not encounter any articles related to sport. The same attitude is seen in the Soviet constitutions themselves.

When we come to the 1937 constitution, we encounter a provision relating to sport. According to Article 133 of the constitution¹⁴, in accordance with the interests of workers and with the aim of developing the political activities of the masses through organised initiative, citizens of the Azerbaijan Soviet Socialist Republic are granted the right to join public organisations, trade unions, cooperative associations, youth associations, sports and defence organisations, and cultural, technical and scientific communities. The most active and conscious citizens from the working class and other strata of labourers, as the vanguard of the labourers' struggle to consolidate and develop the socialist order, take their place in the Communist Party of the Soviet Union (Bolsheviks), which forms the core of the management of both social and state institutions.

The 1937 Soviet Constitution, a fundamental document reflecting the political and social structure of the Soviet Union, defined the rights and duties of citizens.¹⁵ In particular, Article 126 guaranteed citizens the right to participate in various public organisations with the aim of protecting the interests of the working masses and strengthening the organisational initiative of the people.

¹⁴ Article 126 of the Soviet Socialist Constitution is slightly different: In conformity with the interests of the working people, and in order to develop the organizational initiative and political activity of the masses of the people, citizens of the U.S.S.R. are ensured the right to unite in public organizations - trade unions, cooperative associations, youth organizations, sport and defence organizations, cultural, technical and scientific societies; and the most active and politically most conscious citizens in the ranks of the working class and other sections of the working people unite in the Communist Party of the Soviet Union (Bolsheviks), which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organizations of the working people, both public and state. For the English text, see Stalin, 1978, p. 231–232.

¹⁵ Towe, 1967, p. 1252.

According to this article, USSR citizens could become members of the following organisations:¹⁶

- Trade unions – associations protecting workers' labour rights and providing social protection.
- Cooperatives – civil society organisations for joint economic and production activities.
- Youth organisations – associations promoting the social and political activities of young people.
- Sports and defence organisations – institutions established for physical education and patriotic activities.
- Cultural, technical and scientific associations – public associations aimed at developing scientific knowledge, technical skills and culture.

This legal framework and structure reflected the Soviet state's policy of encouraging social and political activism. The main objective was to ensure the participation of the working class in the management of society and to support their social, cultural, scientific and physical development. At the same time, Article 126 transformed the active participation of citizens under the leadership of the party, one of the fundamental principles of Soviet ideology, into a legal form.

Thus, Article 126 played a crucial role as a legal framework that both enabled public initiative among citizens and facilitated the development of socialist society.

In Stalin's view¹⁷, the 1937 constitution, considered the most democratic constitution in the world, did not regulate sport as a right but under a different category of rights. As can be seen, sport was not defined as an individual right. When we encounter sports law directly in the constitution, we see it under the scope of freedom of assembly. At this time, practising sport was not presented as a right. In a way, membership of sports organisations was guaranteed.

¹⁶ Towe, 1967, p. 1269.

¹⁷ Although Stalin described the constitution drafted under his leadership as the world's most democratic constitution, it has gone down in history as the first 'fake constitution'. See Oder, 2018, p. 25.

Thus, for the first time in the history of Azerbaijani constitutional law, we encountered the term 'sport'. However, the regulation is so incomplete that it is impossible to say what rights or obligations it entails. What can be understood from the article is that there were sports organisations in the Soviet Union and that people were invited to become members. This is a differently categorised form of freedom of association.

According to Article 24 of the 1978 Constitution, *»The state encourages co-operatives and other public organisations to provide all types of services for the population. It encourages the development of mass physical culture and sport.«*¹⁸ Before explaining this article, it is necessary to explain the technique of constitutional drafting. Although the 1937 Constitution is referred to as the Stalin Constitution, the 1978 Constitution was a more liberal constitution. The constitutional drafting technique used in this constitution, which is still inherited and continued in the Azerbaijani constitution, continues to be used. The constitution is divided into Parts, Sections and Articles. These divisions have no particular significance for implementation, but they are illuminating for the positioning of the articles. They become valuable when systematic interpretation is applied. We will use systematic interpretation below.

The first part of the 1978 Constitution is entitled 'Fundamentals of the Social Order and Politics'. This part includes a section on 'social development and culture'. This section is mentioned in Article 24. In this section, sport is presented not as a right but only as an obligation that the state must fulfil for its citizens.

When we come to the explanation of the article, Article 24 of the 1978 Azerbaijan Soviet Constitution formed an important legal basis for the development of social welfare and public activities during the Soviet period. This article specified the state's obligation to raise citizens' living standards, strengthen social security, and encourage mass physical, cultural, and intellectual activities.

2.1. Development of Social Systems

The fundamental aim of the article was to ensure the development of social institutions supporting citizens' lives (health services, social protection, trade, the service sector, and public services). This approach is considered a manifestation of

¹⁸ Constitution, 1982, p. 22.

the social state principles of the Soviet model. The expansion of the healthcare system, the strengthening of social assistance mechanisms, and the adaptation of daily services to the needs of the people were considered one of the state's fundamental social duties. The article also envisaged the planned development of social infrastructure and the protection of citizens' welfare.¹⁹

2.2. Encouragement of Public Organisations

The Constitution supported citizens' participation in social life not only through state structures but also through public organisations. This article encouraged cooperatives, public service organisations, and other social organisations. This approach aimed to increase citizens' initiative and strengthen the culture of collective action and cooperation. The article also formally recognises the role of public institutions in social and economic life as part of the state's strategy to base its social policy not only on bureaucratic foundations but also on mass foundations.

2.3. Development of Sport and Physical Education

This article also guarantees state support for the development of mass physical education and sport. During the Soviet period, sport and physical education were seen not only as a means of health and recreation, but also as a tool for social cohesion and strengthening national ideology.²⁰ The state promoted mass sport, created sports infrastructure for all age groups, and provided state support for citizens' physical activities. This article recognises that sport and physical education are an integral part of social welfare.

2.4. The Social and Ideological Context of the Article

Article 24 is located in the section on social development and culture and reflects the idea that the state cares about the welfare of the working masses. The article served the ideological goals of communist society by encouraging collective action, public initiatives and mass sports culture, not limited to social security and services. Thus, the development of social systems and the strengthening of public initiatives

¹⁹ Alekseev, 2016, p. 123.

²⁰ Alekseev, 2016, p. 122.

became closely linked. The purpose of the article was not only to ensure individual welfare but also to ensure participation in collective social life.

The practical significance of the article: This article did not remain merely a legal document; it also had a direct impact on daily life and working conditions. Workers' weekly working hours and holiday entitlements raised living standards, while leisure time and sports facilities increased social activity and health. In line with socialist ideology, this article also served to protect the individual welfare and quality of social life of working citizens.

Conclusion: While the 1937 article focused more on political activism and party membership, the 1978 articles emphasised social welfare, service systems and the right to leisure time. These changes demonstrate that the socialist state began to place greater importance on citizens' quality of life and social security.

When we examine the 1995 Constitution, we are faced with a constitution that, in the words of our legal experts, presents the most extensive catalogue of rights. However, the second paragraph of Article 16 of this Constitution 1995 states that 'The Azerbaijani State shall assist in the development of culture, education, health, science and the fine arts, and shall protect the country's nature and the historical, material and spiritual heritage of its people.'²¹ This article is entitled 'Social Development and the State'. Although people's social development is listed, unlike in the Soviet era, sport has been left out of these areas.

Article 49 of the Constitution 1995 defines Freedom of Assembly.²² The article provides a general definition of freedom of assembly. As the definition is very general, there is no obstacle to people coming together to play sports, nor is there any mention of it.

Our constitutional history or constitutional framework has not recognised sport as a right, and if we approach this from a positivist legal perspective today, the absence of a right to sport in the 1995 Constitution indicates that it is not a fundamental right.

²¹ Azerbaijan Constitution, 1995. Retrieved from: <https://president.az/en/pages/view/azerbaijan/constitution> (accessed: January 28, 2026).

²² According to Article 49 of the 1995 Constitution, "Everyone has the right to freely assemble together with others". Azerbaijan Constitution, 1995.

3 Analysis of Sports Regulation in Azerbaijani Law

In Azerbaijani law, the broad regulation of sports is set out in the Physical Education and Sports Act.²³ Naturally, international law also plays a significant role in this area. According to Article 149/II of the Constitution of Azerbaijan, international treaties to which the Republic of Azerbaijan is a party shall be an integral part of the legislative system of the Republic of Azerbaijan. Despite the provision of the Constitution, the examination of the norms of international law in this section will not be discussed as it exceeds the scope of this article.

Article 6 of the Physical Education and Sports Act lists the rights of citizens in this area. The first right mentioned is the right to engage in sport, even professional sport. Another right is the application of freedom of assembly to sport. Any person engaged in sport who experiences health problems is entitled to medical assistance. They have the right to open sports clubs and purchase sports equipment. There are also rights specified in other laws.

Both the state and municipalities have obligations related to sport in the Physical Education and Sports Act. The state's obligations are primarily to prepare the sports strategy, prepare state programmes and find athletes to represent the Republic of Azerbaijan in international competitions.

The responsibilities of municipalities, on the other hand, are more limited and focus on smaller segments of the population.

4 A Sports Incident Referred to the Constitutional Court of Azerbaijan²⁴

The case brought before the Constitutional Court was referred to the Court by the Ombudsman as a matter of normative review. Under Azerbaijani law, students who missed more than 25% of their classes were not permitted to take final examinations. It was reported that this condition was also applied to students who were unable to attend classes for valid reasons (illness, quarantine, and other reasons), and was therefore considered discriminatory and a violation of educational rights. The right

²³ Physical Education and Sports Act, 2009. Retrieved from: <https://e-qanun.az/framework/18303> (accessed: January 28, 2026).

²⁴ Spor Case, 2025.

of student athletes to take final examinations is reserved, regardless of their attendance rate.

The fundamental reason for the public ombudsman's objection is that, according to the regulations, it is impossible for other students who have attended less than 75% of their classes to master the theoretical part of the course, yet this rule does not apply to student athletes. This practice applies not only to students pursuing undergraduate degrees in sports but also to students pursuing degrees in other fields who are athletes. The objection is based on the fact that such a practice causes inequality.

The essence of the Constitutional Court's decision is actually based on the principle of proportionality. *»When there is no objective and reasonable basis for differential treatment, or when there is no reasonable proportionality between the means used and the legitimate aim pursued, such treatment constitutes discrimination. However, the right to equality does not preclude the legislature from granting exceptions and privileges to persons in different categories. Such differences are only considered contrary to the right to equality if they are not reasonable, objective and proportionate.«²⁵*

The Constitutional Court made a call at the end of its decision. In general, the Constitutional Court's decision stated the following:

1. Compulsory Reasons for Accommodation: The Court considered that more appropriate arrangements were necessary to ensure that the educational rights of students unable to attend classes for compelling reasons were not restricted. To this end, alternative measures (e.g., the opportunity to retake the course or participate in online classes) should be considered in cases where attendance is not possible.
2. The Constitutional Court recommends that the Council of Ministers improve the relevant regulations and take appropriate legal measures to safeguard the right to education of students who are unable to attend classes for valid reasons.

²⁵ Spor Case, 2025.

3. The decision emphasises that the application of special exemptions regarding the attendance of student athletes in national teams is not contrary to the legislation. Granting such privileges to student athletes is deemed necessary for them to participate in international competitions and serves the public interest.

4 Conclusion

Today, Azerbaijan hosts major events. Having begun its journey with Eurovision in 2012, it will also host several matches of the upcoming European Volleyball Championship, in addition to events such as the European Games, Islamic Games and Formula 1.

The constitutional regulation of sport has not fared particularly well in Azerbaijani constitutional law. Even now, it is not easy to distinguish whether sport is a right or an obligation. Defining sport as a right means that it is a social right. Therefore, it is impossible for individuals alone to realise this right. Unless the state implements projects in many areas, there will be no significance in recognising sport as a right.

Therefore, even if the law stipulates that the state has certain obligations in this area, this is not sufficient. The state is expected to do more in this regard. In other words, state support for sport is necessary for sport to be accessible as a right. Without state support, it would be impossible for sport to be realised as a right.

At the same time, we must point out that it is not necessary for every right to be enshrined in constitutions. In fact, such a regulation is impossible. For this reason, we believe it would be better to include events that enable more people to engage in sport in the annual programmes of states related to sport. Society should be encouraged to come together through small competitions and to increase the number of events organised within the scope of municipalities.

Legal Sources, Case-law

Azərbaycan Respublikası Nazirlər Kabinetinin 2013-cü il 24 dekabr tarixli 348 nömrəli Qərarı ilə təsdiq edilmiş “Ali təhsil müəssisələrinin bakalavriat və magistratura səviyyələrində, əsas (baza ali) tibb təhsilində kredit sistemi ilə tədrisin təşkili Qaydaları”nın 3.2.23-cü, 2013-cü il 26 dekabr tarixli 354 nömrəli Qərarı ilə təsdiq edilmiş “Orta ixtisas təhsili müəssisələrində kredit sistemi ilə tədrisin təşkili Qaydaları”nın 3.2.24-cü və 2022-ci il 9 mart tarixli 72 nömrəli Qərarı ilə təsdiq edilmiş “Peşə təhsili müəssisələrində yüksək texniki peşə təhsili səviyyəsi üzrə tədrisin kredit

- sistemi ilə təşkili Qaydası”nın 3.2.25-ci yarım bəndlərinin Azərbaycan Respublikası Konstitusiyasının 25-ci maddəsinin I, III–V hissələrinə, 41-ci maddəsinin I hissəsinə, 42-ci maddəsinin I hissəsinə, 71-ci maddəsinin I və II hissələrinə və 149-cu maddəsinin I, III və V hissələrinə uyğunluğunun yoxlanılmasına dair. Constitutional Court of the Republic of Azerbaijan. 22 september 2025. Retrieved from: <https://constcourt.gov.az/az/decision/1481> (accessed: January 28, 2026). (It is abbreviated as a 'Sport Case' in references).
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THE DEATH OF AMATEURISM IN UNITED STATES COLLEGIATE ATHLETICS

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Collegiate athletics, especially men's football and basketball, are extremely popular in the United States. As part of the cultural fabric of the country, these spectator sports have generated billions of dollars annually, far surpassing revenue generated in other major American sports leagues and even Premier League football in England. All those connected with these sports, including athletic directors, coaches, the National Collegiate Athletic Association – which is the governing body – athletic apparel companies, media outlets, etc. have profited from these sports. Everyone that is except for the athletes themselves. Historically, the athletes were considered amateurs and if they received any compensation, they lost their ability to participate in collegiate sports. Recently, in response to a barrage of lawsuits, the federal courts, including the Supreme Court, have held those rules that violated the Sherman Antitrust Act. As a result of these rulings, and legislation passed in most states, college athletes are now able to profit from their names, likenesses and images without losing their amateur status. And as a result of settlements in the litigation college athletes are now also receiving other compensation. The article traces these developments from their inception to the present time.

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1 Introduction

College athletics in the United States started to gain popularity in the 1920's due to expanding media coverage in newspapers, radio broadcasts and later television, all of which brought contests, especially men's football and later men's basketball, to increasing numbers of people.¹ The growth of both football stadiums and public universities also fueled the public interest. Fascination with collegiate sports has continued to increase over the last century and constitutes an important component of the cultural fabric of American life. As of 2025, there are 777 colleges that have field football teams² and there are more than 1,400 college basketball teams at four-year colleges.³

This article traces the growth of collegiate sports in America, and how they have been regulated. Up until the last decade, the bodies that regulate college sports along with the colleges and universities, have steadfastly maintained that student-athletes must remain amateurs, meaning that they could not receive compensation for their services, aside from scholarships. Student-athletes that received such compensation lost their amateur status and consequently the opportunity to compete in collegiate sports. The argument in support of this model was that if student-athletes were paid they would be no different than professional athletes and the public's interest in collegiate sports would wane.

This model started coming under legal attack about fifteen years ago. Student-athletes retained attorneys who began lodging antitrust attacks against the schools and governing bodies. Plaintiffs argued that the longstanding model of the student-athlete-as-amateur constituted an illegal restraint on trade. This article will trace the progression of these legal actions, along with other legislation that was enacted in response to that model. As a result of the legal attacks, which resulted in numerous federal courts, including the United States Supreme Court, ruling that the amateur model violated the Sherman (antitrust) Act, coupled with legislation enacted at the state level, colleges began allowing student-athletes to profit from their so-called Name, Image and Likeness (NIL). The article will discuss the NIL landscape in detail, along with other changes that now will see colleges and universities receiving significant money annually to share among student-athletes at their respective

¹ Sports History Network, 2024.

² Football Foundation, 2025.

³ NCSA College Recruiting, no date.

colleges and universities. The article also will explore the challenges that both colleges and student-athletes will face in the future in view of the demise of the old student-athlete-as-amateur model.

2 Brief History of Collegiate Athletics, Amateurism and Popularity of Athletics in American Culture

Collegiate athletics in the United States began in the mid-1800s. Perhaps surprisingly, the first intercollegiate athletic competition was not in football or basketball but rather was a boat race between Yale and Harvard students in 1852. After the boat race came the first intercollegiate baseball game in 1859 between Amherst College and Williams College followed by the first football game in 1869 between Princeton and Rutgers. In the early 1900s, repeated serious injuries and deaths to college football players led President Theodore Roosevelt to spearhead meetings to try find solutions to these problems, such as making changes to the way the game was played. These meetings led to the formation in 1906, of the Intercollegiate Athletic Association of the United States, which in 1910 took its present name the National Collegiate Athletic Association (NCAA).⁴

For roughly the first one hundred and seventy years of U.S. collegiate athletics, in order for student-athletes to retain their amateur status⁵, they could not receive any form of compensation, as enforced by the NCAA. The model worked as follows. In all the various sports that colleges and universities⁶ have to offer, the sports departments would recruit high school student athletes to come to their institution. I will take football as an example, only because it is by far the largest revenue generator in collegiate sports and is one of the most popular spectator sports in the United States. The top schools, such as Penn State, Texas, Michigan and others, generate tens of millions of dollars in yearly revenue from their football programs.⁷ The major football programs draw millions of fans to their games yearly. The

⁴ The NCAA serves as the legislative and administrative authority for intercollegiate athletics in the US. Its functions include setting and enforcing rules for fair and safe play, establishing eligibility criteria, organizing national championship events across all of the sports, integrating athletics into higher education, among other things.

⁵ Losing amateur status means the collegiate student athlete has to forfeit any further participation in college sports.

⁶ Universities are institutions with larger student bodies, which offer more advanced degrees, which offer a broader range of academic subjects and more extensive research opportunities. Harvard and Stanford are examples of famous universities. Colleges are basically the opposite. They tend to be smaller, offer mainly bachelor's degrees, offer more limited academic programs and fewer research opportunities. Colleges tend to specialize in liberal arts programs. There are many equally great colleges in America. Williams College in Williamstown, Massachusetts and Amherst College in Amherst, Massachusetts are two examples.

⁷ Dosh, 2012.

University of Michigan in Ann Arbor, Michigan, has an iconic football stadium holding over 107,000 seats and those seats are generally packed during the games it hosts.⁸

The NCAA is a \$19 billion industry.⁹ As the following chart from The Economist (2025) shows, for sporting seasons ending 2024, the NCAA generated income from all its various sports (though primarily men's football and basketball) that eclipsed revenue from Major League Baseball (MLB), the National Basketball Association (NBA) and even the wildly popular English Premier League.

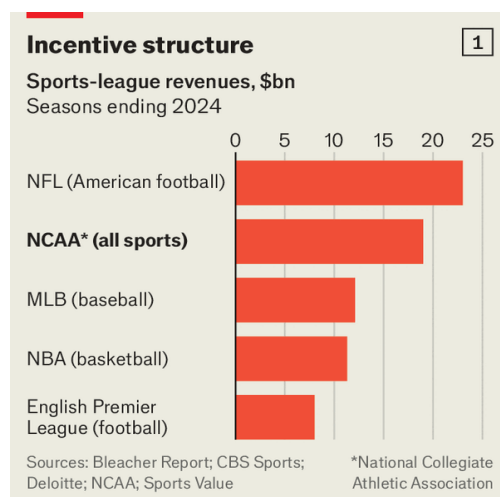


Table 1: Sports-league revenues (The Economist, 2025 / Bleacher Report)

Revenue generated by NCAA athletic departments comes from various sources, with substantial percentages of that revenue derived from ticket sales at their sporting events and media rights. The following chart shows all sources of revenue in 2019.

As of 2025, there were 136 schools competing in the highest level of college football, formally known as the NCAA Division 1 Football Bowl Subdivision. There is and always has been intense competition, especially among the top tier teams, to recruit

⁸ I will return to the University of Michigan later in this paper to tell a striking story of how the recent changes to the traditional model of amateurism has been completely transformed and is working at present. First, we need to walk through both the legislative and legal history of how this metamorphosis occurred.

⁹ The Economist, 2025.

what are believed to be the most talented prospects from the high school ranks, which essentially act as the training grounds for colleges.

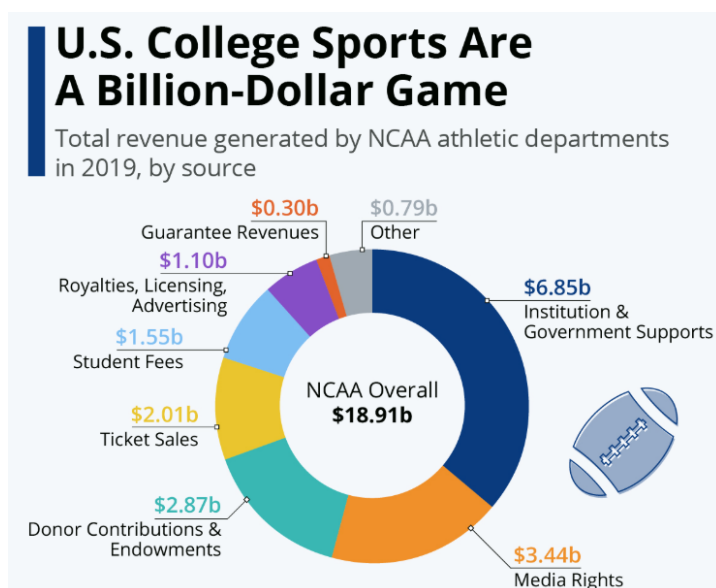


Table 2: U.S. College Sports are A Billion-Dolar Game

Source: National Collegiate Athletic Association.

What did the colleges have to offer these high school student athletes as enticements to attend their school? One primary enticement was scholarships. College education is expensive, now more than ever, and increasingly so, with the average in-state student attending a public 4-year institution and living on campus costing \$27,146 for one academic year. The average private, nonprofit university student spends \$58,628 per academic year living on campus; \$38,421 of it on tuition and fees. Considering student loan interest and lost potential income, investing in a bachelor's degree can ultimately cost in excess of \$500,000.¹⁰

So-called 'full-ride' scholarships included costs of tuition, fees, student housing, books, certain school supplies, tutoring, academic support services, etc. Receiving a full-ride scholarship is certainly no small inducement. Other inducements, of course, include the chance to compete at a high level with each program boasting of having

¹⁰ Hanson, 2025.

track records of success, offering playing time, having fine coaches, playing in front of large fan bases, state-of-the-art athletic facilities, medical services, having a record of sending their players to the NFL or NBA, securing a degree, etc.

But recruiting has never been strictly a gentleman's pursuit. With so much money hanging in the balance, with top coaches being paid exorbitant amounts of money,¹¹ some programs over the years have bent the rules to attract high school talent to their programs. Some schools, or so-called boosters from those schools, have offered high school students cash payments or jobs where they could make money or other items having cash value such as cars, clothing and the like, to entice them to come to their program. The NCAA has had stringent rules prohibiting these activities and has often sanctioned such programs when they have had evidence to do so. Some schools were caught and were sanctioned; others went under the radar. Student-athletes caught violating the rules and forfeited their playing eligibility.

Football and basketball programs¹² have generated enormous amounts of money for everyone and every entity connected with the sport: the university; the conference the university was associated with; the coaches; the NCAA; the television and radio broadcasters; clothing stores that marketed and sold jerseys and other paraphernalia, often which contained the names and jersey numbers of the players etc. Everyone except for the athletes provided audiences with entertainment. Yes, under the old model players did receive something of value for their efforts. And a chosen few would end up going into the professional ranks where they could make substantial money. But, the reality is that what these players received paled in comparison to the revenue streams they generated for others. After all, who is responsible for the \$130 million 10-year football contract that Kirby Smart of the University of Georgia inked? As Bronicel reports: *"The landscape of college football coaching is a dynamic one, where talent, strategy, and leadership are rewarded with monumental salaries. Whether it's securing national titles, developing top-tier talent, or enhancing the prestige of their programs, these coaches exemplify the high stakes and lucrative rewards that define the upper echelons of college football coaching."*¹³ And significantly, as I will discuss next, in exchange for their scholarships, student-athletes were forced to acquiesce in others' use of their NIL for commercial and promotional purposes.

¹² And other sports to a lesser degree.

¹³ Bronicel, 2025.

3 If it Keeps on Raining, the Levee's Going to Break:⁴ History of the Events That Have Led to the Demise of the Traditional Collegiate-Athlete-As-Amateur Model

Ed O'Bannon was a star basketball player at the University of California Los Angeles (UCLA) in the mid-1990s. He was named NCAA Tournament's Most Outstanding Player on UCLA's 1995 national champion team. Afterward he had a long career in the NBA. EA Sports is a division of Electronics Arts, that develops and publishes sports video games. In 2009, upon learning that a photo of him dribbling a basketball in his UCLA basketball jersey had been used in a video game EA Sport's title NCAA Basketball 09¹⁴ without his permission and without receiving compensation, O'Bannon agreed to be the lead plaintiff in a class action lawsuit filed in the United States District Court for the Northern District of California against the NCAA¹⁵ on behalf of the NCAA's Division 1 basketball and football players. The suit alleged that the NCAA's use of athletes' NIL for commercial purposes, without their agreement and compensation, constituted an illegal restraint of trade under federal antitrust laws, specifically Section 1 of the Sherman Antitrust Act.¹⁶ More specifically, the plaintiffs alleged that the NCAA's rules and bylaws constituted an unreasonable restraint of trade because they precluded collegiate football and basketball players from receiving any compensation beyond the value of their scholarships for the use of their NIL in contexts such as video games, live game telecasts, re-broadcasts, and archival footage among others. As mentioned above, any student-athlete that received financial aid in excess of their scholarship had to forfeit their athletic eligibility. The NCAA also had other stringent rules prohibiting any student-athlete from receiving compensation from outside sources based on their athletic skills or ability. They were also barred from endorsing any commercial products or services while they were in school, regardless of whether or not they received compensation to do so. Plaintiffs argued that these rules all restrained competition among schools for high school recruits. The NCAA opposed the

¹⁴ When the Levee Breaks. Song by Rock Band Led Zeplin (1971).

¹⁵ *O'Bannon v. NCAA*, 7 F.Supp.3d 955 (N.D.Cal. 2014). The suit originally also named both Electronic Arts and Collegiate Licensing Company as defendants, but they eventually settled with plaintiffs for \$40 million, which could lead to about 100,000 payments for current and former athletes who had appeared in video games among other things with plaintiffs receiving as much as \$4,000 each in compensation. See, Farrey, 2014.

¹⁶ Sherman Antitrust Act. Pub. L. 51-647, 26 Stat. 209, 15 U.S.C 1. Passed in 1890, this is the seminal federal antitrust law in the US prohibiting monopolistic conduct among businesses and other forms of anti-competitive business practices, such as price-fixing and bid-rigging, designed to promote free competition in commerce, lower consumer prices and higher quality goods. Named after then Senator John Sherman, the Act outlaws any contract, combination, or conspiracy in restraint of trade and is enforced by the US Department of Justice.

lawsuit, contending that paying its student athletes would violate the very concept of amateur athletics that had stood since US collegiate sports' inception.¹⁷

In August 2014, following trial, the District Court judge that heard the case, Claudia Wilken, agreed with the plaintiffs. Judge Wilken issued a 99-page ruling in which she held that the NCAA's longstanding rules barring payments to college athletes violated the Sherman Act.¹⁸ In her detailed written findings,¹⁹ she alluded to one of the NCAA's own expert witnesses that had referred to the NCAA in one of his own economic textbooks as a 'cartel' which he defined as "*a group of firms that impose restraints*".²⁰ Some of her other findings are worth noting here. In support of her conclusion that the NCAA had indeed engaged in unlawful anticompetitive behavior she stated, "*in the complex exchange represented by a [high school] recruit's decision to attend and play for a particular school, the school provides tuition, room and board, fees, and book expenses, often at little or no cost to the school. The recruit provides his athletic performance and the use of his name, image, and likeness. However, the schools agree to value the latter at zero by agreeing not to compete with each other to credit any other value to the recruit in this exchange. This is an anticompetitive effect. Thus, the court finds that the NCAA has the power – and exercises that power – to fix prices and restrain competition in the college education market that Plaintiffs have identified.*"²¹

The NCAA offered numerous justifications for the restraints on trade Judge Wilkin had identified. In particular, it asserted that the challenged restrictions on student-athlete compensation are reasonable because they are necessary to preserve its tradition of amateurism, maintain competitive balance among the upper division football and basketball teams, promote the integration of academics and athletics, and increase the total output of its product.²² Judge Wilkin rejected all of these

¹⁷ It is actually laughable, in my view at least, that for many decades the NCAA and many others had raked in billions of dollars on the backs of these hard-working student athletes, while maintaining the charade that these sports constituted amateurism.

¹⁸ *O'Bannon v. NCAA*, 7 F.Supp.3d 955 (N.D. Cal. 2014). Case no. C-09-3329 CW.

¹⁹ Judge Wilkin entered what are called Findings of Fact and Conclusions of Law (FFCL). These are mandated under Fed.R.Civ.P. 52 following the conclusion of a civil non-jury trial. These are usually very detailed, as they were in the *O'Bannon* case, and are akin to the form of judgment in a civil law country. They are designed to promote transparency. The FFCL are often prepared by the attorneys, reviewed by the Judge, and once the Judge agrees with the content of them, signs them. The reader interested in a more in-depth understanding of the trial testimony, which is fascinating, and the details surrounding Judge Wilkin's ruling, is encouraged to read her FFCL. Space limitations in this paper precludes any such detailed discussion.

²⁰ *O'Bannon v. NCAA*, Findings of Fact and Conclusions of Law, pp. 21–22.

²¹ *Ibid*, pp. 22–23.

²² *Ibid*, pp. 23–24.

arguments.²³ She held that the NCAA's rules prohibiting student-athletes from receiving compensation for the use of their NIL were an unlawful restraint of trade under Section 1 of the Sherman Act. Judge Wilken issued an injunction against the NCAA's rules prohibiting athletes from earning money from the use of the NIL in video games and television broadcasts, rejecting the NCAA's contention that "*its restrictions on student-athlete compensation are necessary to uphold its educational mission and to protect the popularity of collegiate sports*".²⁴ She ordered that schools should be allowed to offer full cost-of-attendance scholarships to athletes, covering cost-of-living expenses that were not currently part of NCAA scholarships. Wilken also ruled that colleges be permitted to place as much as \$5,000 into a trust for each athlete per year of eligibility. She later awarded plaintiff's attorney fees of nearly \$45 million dollars and costs of over \$5 million dollars.²⁵

The case was appealed to the Ninth Circuit Court of Appeals,²⁶ where the three-member panel held that the NCAA regulations are subject to antitrust scrutiny and must be analyzed under the rule of reason standard;²⁷ when those regulations truly serve procompetitive purposes, courts should not hesitate to uphold them; but the NCAA is not above antitrust laws, and courts cannot and must not shy away from requiring the NCAA to play by the Sherman Act's rules. In this case, the Court reasoned, the NCAA's rules have been more restrictive than necessary to maintain its tradition of amateurism in support of the college sports market. Therefore, the court concluded that the Rule of Reason analysis requires that the NCAA permit its

²³ *Ibid.*, pp. 24–43.

²⁴ *Ibid.*, pp. 1–2.

²⁵ In an unpublished opinion the Ninth Circuit Court of Appeals upheld these awards in a memorandum opinion issued June 29, 2018. *See, O'Bannon v. NCAA*, US. Court of Appeals for the Ninth Circuit, No. 16-15803. Under American law, and specifically the so-called 'American Rule' governing issues surrounding the recovery of attorney fees, in most cases each side to litigation must pay for their own attorney fees and most of their costs. However, there are important exceptions to this rule. Contractually, in most cases at least, parties can agree that in the event of litigation the 'prevailing party' can recover their attorney fees. Another principal exception is called fee-shifting by statute. That exception applied in this case because the Sherman Act allows for the recovery of attorney fees by a prevailing party through a related provision in the Clayton Act, 15 U.S.C. §28, which states that a successful plaintiff in a private antitrust action can recover their reasonable attorney fees and costs, and Section 16 which allows a court to award costs and fees to a successful plaintiff seeking injunctive relief. What constitutes a 'prevailing party' so as to trigger these sections is not always clear, although case law has established that to 'prevail' the plaintiff, as was the case here, does not have to prevail on all claims asserted or recover all the damages/relief sought in the case. For more on this topic *see*, Heller, 2018, pp. 45–66.

²⁶ *O'Bannon v. NCAA*, 802 F.3d 1049 (2015).

²⁷ *Ibid.*, at p. 43. The rule of reason in antitrust law is a doctrine used to determine if a business practice constitutes an unlawful restraint of trade by balancing the anticompetitive harm against the procompetitive benefits it provides. Courts consider factors like market power, potential for innovation or efficiency, and overall consumer welfare, rather than outright prohibiting practices. The rule of reason standard is in contrast with the *per se* rule, where certain practices, like price fixing, are automatically illegal. This standard analyzes the actual economic effects of the conduct, acknowledging that not all agreements that restrict competition are necessarily harmful.

schools to provide up to the cost of attendance to their student athletes, but that it does not require more.²⁸ Accordingly, the court vacated the district court's judgment and permanent injunction insofar as they required the NCAA to allow its member schools to pay student-athletes up to \$5,000 per year in deferred compensation, but the court otherwise affirmed the district court's rulings. Plaintiffs appealed to the US Supreme Court, but that court denied certiorari on October 3, 2016.²⁹

The plaintiffs in *O'Bannon* were naturally disappointed with the limited financial relief they ultimately obtained. However, the levee that the NCAA, universities, and others had stood behind for over a century to prevent student-athletes from substantially benefiting from others' use of their NIL – amateurism – had indeed sustained a substantial rupture by the mere virtue of the fact the District Court and then the Ninth Circuit held that the NCAA's longstanding rules were in fact anticompetitive and therefore violative of the Sherman Act. Although the *O'Bannon* decision was a significant initial victory for college athletes, the ruling only applied to video game likeness. As we shall see next, in the ensuing years that levee would completely fracture leaving the NCAA with indeed nowhere to hide.

The next most significant event to strike a significant blow to amateurism in college sports was California's enactment of Senate Bill 206, which came to be known as the Fair Pay to Play Act.³⁰ Signed into law by Governor Gavin Newsom in 2019, this landmark legislation allows student-athletes in California colleges and universities to earn compensation from their NIL. Under this legislation, student-athletes can monetize their personal brand through endorsements, advertising, sports camps, and other commercial opportunities. They are also permitted to hire licensed sports agents to assist them in managing their commercial interests. The law protects them from losing athletic scholarships when receiving NIL compensation. As will be discussed later, California's pioneering legislation, initially opposed by the NCAA, led many other states to adopt similar NIL laws, and eventually influenced the NCAA to create its own NIL policies.

The levee was about ready to rupture, and student-athletes and their army of lawyers could see the collapse coming. They just had to keep the legal (and political) challenges coming; and that they did. Although the US Supreme Court had declined

²⁸ *Ibid*, p. 63.

²⁹ *Cert. denied*, 37 S. Ct. 277 (2016).

³⁰ California Fair Pay to Play Act (SB 206) September 30, 2019.

the invitation to take up the question of whether the NCAA's restrictive rules preventing student-athletes from receiving compensation violated antitrust rules in the *O'Bannon* case, it changed course and accepted the challenge in 2021 in *NCAA v. Alston*.³¹ At issue in *Alston* was the legality under antitrust laws of the NCAA's restrictions on providing student-athletes with non-cash compensation for academic-related purposes, such as computers and internships, which of course the NCAA maintained were to prevent the appearance that the student-athletes were being paid to play or treated as professional athletes. As with the *O'Bannon* case, the *Alston* case also was filed in the Federal District Court for the Northern District of California and was heard again by Judge Wilkin.³²

As in *O'Bannon*, in an exhaustive opinion Judge Wilkin again ruled against the NCAA, finding that its restrictions on so-called 'non-cash education-related benefits' violated antitrust law under the Sherman Act and required the NCAA to allow for certain types of academic benefits beyond the previously-established full scholarships she ordered in *O'Bannon*. These additional benefits included items such as "*computers, science equipment, musical instruments and other tangible items not included in the cost of attendance calculation but nonetheless related to the pursuit of academic studies.*" Her ruling also barred the NCAA from preventing student-athletes from receiving "*post-eligibility scholarships to complete undergraduate degrees at any school; tutoring; expenses related to studying abroad that are not included in the cost of attendance calculation; and paid post-eligibility internships*". The NCAA appealed the ruling to the Ninth Circuit Court of Appeals³³ which affirmed the ruling. The Supreme Court then took up the case.

In one of the most important rulings in American sports history, Justice Gorsuch, writing for a unanimous Court, affirmed the lower court rulings. As we have already discussed, the NCAA has long contended that any restraints in trade caused by its policies toward student-athletes are justified in the name of preserving amateurism in college sports, which, it steadfastly asserted, serves to differentiate the 'pure' collegiate sporting games from the professional. The NCAA has fretted that if college student-athletes are 'paid' then the legions of fans that have long followed its sports - primarily men's football and basketball - (the revenues from which fund the many other men's and women's college sports such as swimming, gymnastics,

³¹ *National Collegiate Athletic Association v. Alston*, 594 U.S. 69 (2021).

³² *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058 (N.D. Cal. 2019).

³³ *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d 1239 (9th Cir. 2020).

hockey, tennis and the like), the public would lose interest in college athletics.³⁴ In a most interesting opinion, Justice Gorsuch first squarely took aim at those assertions, which he points out, are in many ways mythical. Gorsuch recounted many instances over the years of college athletes being paid, such that the lines of amateurism and professionalism often were blurred³⁵? *From the start*,’ Gorsuch asserted, “*American colleges and universities have had a complicated relationship with sports and money.*”³⁶ He offered several examples, which in my view does highlight the hypocrisy of the NCAA’s long-held stance. “*Colleges [historically] offered all manner of compensation to talented athletes. Yale reportedly lured a [football] tackle named James Hogan with free meals and tuition, a trip to Cuba, the exclusive right to sell scorecards from his games – and a job as a cigarette agent for the American Tobacco Company.*”³⁷ ‘Reality,’ Gorsuch continued, “*did not always match aspiration*”.³⁸ Citing a 1929 report on college athletics from the Carnegie Foundation, Gorsuch stated, “[*College athletics*] is sodden with the commercial and the material and the vested interests that these forces have created.”³⁹ Referencing the same report, Gorsuch continued, “Schools from across the country sought to leverage sports to bring in revenue, attract attention, boost enrollment, and raise money from alumni. College football was ‘not a student’s game’; it was an ‘organized commercial enterprise’ featuring athletes with ‘years of training,’ ‘professional coaches,’ and competitions that were ‘highly profitable’.”⁴⁰ As a consequence, in 1948, the NCAA adopted what it called a ‘Sanity Code’, which simultaneously for the first time allowed colleges to pay athlete’s tuition and which also created a ‘new enforcement mechanism’ which allowed the NCAA to sanction offenders.⁴¹ “*To some*,” reports Gorsuch, “*these changes sought to substitute a consistent, above-board compensation system for the varying under-the-table schemes that had long proliferated. To others, the code marked ‘the beginning of the NCAA behaving as an effective cartel,’ by enabling its member schools to set and enforce ‘rules that limit the price they have to pay for their inputs (mainly the ‘student athletes’).*”⁴²

³⁴ As an alum of the University of Michigan myself, I will offer a couple of comments here. The University of Michigan is the winningest college football program of all time. There is a saying there: Football is a religion at the University of Michigan and Saturday (when games are played) is a Holy day of obligation. NIL has now been fully implemented at Michigan and all other colleges. Fans continue to pack Michigan stadium and all other football and basketball stadiums across the country. Fan interest has not waned a single bit in this new era.

³⁵ *NCAA v. Alston*, 594 U.S. pp. 2–8.

³⁶ *Ibid.*, p. 2.

³⁷ *Ibid.*, p. 3.

³⁸ *Ibid.*

³⁹ *Ibid.*, at p. 4, Gorsuch citing Savage, 1929, p. 310.

⁴⁰ *Ibid.*, at p. 4, Gorsuch citing the Carnegie report at p. 87.

⁴¹ *Ibid.*, at p. 5.

⁴² *Ibid.*, at p. 5, Gorsuch citing Zimbalist, A. (1999), *Unpaid Professionals*, p. 10.

Gorsuch went on to track how the NCAA then evolved over the ensuing years, and traced how its rules regarding providing some educational benefits to student-athletes changed as well. Referring to the NCAA as a ‘sprawling enterprise’,⁴³ he continued, “*At the center of this thicket of associations and rules sits a massive business. The NCAA’s current broadcast contract for the March Madness basketball tournament is worth \$1.1 billion annually. Its television deal for the FBS conference’s College Football Playoff is worth approximately \$470 million per year.*”⁴⁴ In concluding his introduction to the Court’s opinion, and its legal analysis, Gorsuch highlighted the fact that those that have long-profited from so-called college amateur sports have stood in stark contrast to the student-athletes that generated those profits, with relatively little returning to them. He pointed out, as examples, that the President of the NCAA earns nearly \$4 million per year; commissioners of the top sports conferences earn anywhere from \$2 to \$5 million; athletic directors at the various schools average more than \$1 million annually; and, annual salaries at some of the major schools for head football coaches approach \$11 million, with many assistant coaches earning more than \$2.5 million.⁴⁵ The players, especially football players, but those in all sports as well, are exposed to a significant risk of injury (some career ending).⁴⁶ Further, practically all of these athletes will not go on to lucrative professional careers, meaning that under the old amateur model they will have generated huge sums of money for everyone except for themselves. In fact, only about 1.6 % of college football players will become a professional in the NFL while only 1.2% of collegiate players make the jump from college to the NBA.⁴⁷ There is a cruel reality at play here: the players compete and expose themselves to risk of bodily injury – traditionally for no compensation – while all those identified above (and others) have profited handsomely at no risk to themselves. Was this a fair system? Fair, someone once explained to me, is what the pigs do in September. Nevertheless, this calculus was about to change.

Justice Gorsuch wrote that the district court’s injunction was consistent with established antitrust principles and that both the lower court and Ninth Circuit properly subjected the NCAA’s compensation restrictions to antitrust scrutiny under the rule of reason analysis. Referring to its prior ruling in *National Collegiate Athletic Assn. v. Board of Regents of Univ. of Okla.*,⁴⁸ where the Court stated that under the

⁴³ *Ibid.*, at p. 7.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, pp. 7–8.

⁴⁶ National Library of Medicine, 2021.

⁴⁷ Rucker, 2023.

⁴⁸ 468 U.S. 85 (1984).

Sherman Act, Congress tasked courts with enforcing a policy of competition on the belief that market forces ‘yield the best allocation’, Gorsuch stated the courts below properly carried out this mission and correctly concluded the NCAA’s compensation restrictions failed antitrust scrutiny under the rule of reason test. The Court therefore affirmed the lower courts’ rulings. However, the Court did not reach the larger issue of whether student-athletes should receive further pay, as that question was not specifically before the Court. And at the end of its opinion, Gorsuch even commented, “*Some will think the district court did not go far enough. By permitting colleges and universities to offer enhanced education-related benefits, its decision may encourage scholastic achievement and allow student-athletes a measure of compensation more consistent with the value they bring to their schools. Still, some will see this as a poor substitute for fuller relief.*”⁴⁹ Gorsuch referred to, and concurred with, a statement made by the Ninth Circuit panel that had reviewed Judge Wilkin’s ruling, when it said, “*The national debate about amateurism in college sports is important. But our task as appellate judges are not to resolve it. Nor could we. Our task is simply to review the district court judgment through the appropriate lens of antitrust law.*” 598 F. 3d. at 1265. *That review persuades us the district court acted within the law’s bounds.*”⁵⁰

Perhaps when Gorsuch commented that some might have thought district judge Wilkin did not go far enough in terms of the breadth of relief granted he was referring to his colleague on the Supreme Court bench Justice Kavanaugh.⁵¹ Kavanaugh wrote a short, but hard-hitting concurring opinion that left no room for doubt where he stood on the issue of the NCAA’s long history of, as he phrased it at the start of his concurrence, “*restrict[ing] the compensation and benefits that student athletes*

⁴⁹ 594 U.S. 35 (2021).

⁵⁰ *Ibid.*, at p. 35. A time-honored tradition of US appellate courts, and particularly the Supreme Court, is that it should act with what is known as ‘judicial restraint’, meaning at a minimum that (1) it generally should issue rulings on the narrowest grounds possible, so that broader rulings can await future cases where the facts and issues are different and so there can be distinct and perhaps more nuanced arguments raised and considered and (2) that they should respect prior precedent and *stare decisis*, the principle that the Court should follow its own prior rulings, except in exceptional circumstances. Judge David S. Tatel was a long-time Judge – and eventual Chief Judge – on the D.C. Circuit Court of Appeals, widely regarded as the second most influential court in America just behind the Supreme Court. Judge Tatel has a compelling story, as he devoted a substantial part of his pre-judge legal career helping to advance civil rights. His story is particularly interesting as he was also blind from an early age and therefore had to read briefs in braille or had them and other materials read to him. Recently retired as a judge, Tatel wrote an interesting book which I recommend entitled *Vision: A Memoir of Blindness and Justice* (2024). In Chapter 18, entitled The Future of Democracy, he bemoans the fact that the current Supreme Court has too often shown a lack of proper judicial restraint not only because it too often fails to decide cases narrowly, but instead makes broad and overly-sweeping pronouncements, but also because it too often ignores precedent and overrules earlier precedents without valid reasons. In this case, the Court did show restraint.

⁵¹ Or perhaps Justice Kavanaugh wondered why plaintiffs’ lawyers had not asked for more expansive relief in their complaints. As we will see from his concurrence, Kavanaugh certainly stood ready to grant such relief.

may receive. And with surprising success, the NCAA has long shielded its compensation rules from ordinary antitrust scrutiny. Today, however, the Court holds that the NCAA has violated the antitrust laws. The Court's decision marks an important and overdue course correction."⁵² Kavanaugh pointed out that the case before it involved "only a narrow subset of the NCAA's compensation rules – namely, the rules restricting *education-related* benefits student athletes may receive, such as post-eligibility scholarships at graduate or vocational schools," but made it fairly clear that he (and probably the Court at large) would have gone further had plaintiffs asked for more robust relief in their complaints when he said, "*I add this concurring opinion to underscore that the NCAA's remaining compensation rules also raise serious questions under the antitrust laws.*"⁵³ The Court held that, as with the more limited NCAA rules that were at issue in the instant case, and which the Court held were properly analyzed for Sherman Act antitrust purposes under the 'rule of reason' test, "*absent legislation or a negotiated agreement between the NCAA and the student athletes, the NCAA's remaining compensation rules should be subject to ordinary rule of reason scrutiny.*"⁵⁴

As if those comments were not enough of a roadmap to his thinking (and presumably most or all of the rest of his Supreme Court brethren, the NCAA, plaintiffs' lawyers and all those involved in the complex web of collegiate sports), Kavanaugh was even more blunt. "[T]here are serious questions whether the NCAA's remaining compensation rules can pass muster under ordinary rule of reason scrutiny. Under the rule of reason, the NCAA must supply a legally valid procompetitive justification for its remaining compensation rules. As I see it, however, the NCAA may lack such a justification."⁵⁵ He then explained why. The NCAA, he pointed out, made three key concessions that in Kavanaugh's view had already sealed its fate. First, it conceded it controls the market for college athletes; second, it conceded that its compensation rules set the price of student athlete labor at a below-market rate; and third, the NCAA acknowledges "*that student athletes have no meaningful ability to negotiate with the NCAA over the compensation rules.*"⁵⁶ Kavanaugh was just getting started, "*The NCAA's business model would be flatly illegal in almost any other industry in American... Price-fixing labor is price-fixing labor. And price-fixing labor is ordinarily a textbook antitrust problem because it extinguishes the free market in which individuals can otherwise obtain fair compensation for their*

⁵² *NCAA v. Alston*, 594 U.S. ____ (2021) (Kavanaugh, J., concurring), p. 1.

⁵³ *Ibid.*, p. 2.

⁵⁴ *Ibid.*

⁵⁵ *Id.*, pp. 2–3.

⁵⁶ *Id.*, at 3.

work. See, e.g., *Texaco Inc. v. Dagher*, 546 U.S. 1, 5 (2006). *Businesses like the NCAA cannot avoid the consequences of price-fixing labor by incorporating price-fixed labor into the definition of the product. Or to put it in more doctrinal terms, a monopsony*⁵⁷ *cannot launder its price-fixing of labor by calling it product definition.*⁵⁸

As if his message to the target audience was not yet clear, he went on the place an exclamation point on it. *"The bottom line is that the NCAA and its member colleges are suppressing the pay of student athletes who collectively generate billions of dollars in revenue for colleges every year. Those enormous sums of money flow to seemingly everyone except the student athletes. College presidents, athletic directors, coaches, conference commissioners, and NCAA executives take in six- and seven-figure salaries. Colleges build lavish new facilities. But the student athletes who generate the revenues, many of whom are African American and from lower-income backgrounds, end up with little or nothing."*⁵⁹ Clearly unpersuaded by the NCAA's arguments he went on, *"[T]he NCAA's business model of using unpaid student athletes to generate billions of dollars in revenue for the colleges raises serious questions under the antitrust laws. In particular, it is highly questionable whether the NCAA and its member colleges can justify not paying student athletes a fair share of the revenues on the circular theory that the defining characteristic of college sports is that the colleges do not pay student athletes. And if that asserted justification is unavailing, it is not clear how the NCAA can legally defend its remaining compensation rules."*

I am spending the time to discuss Kavanaugh's concurrence at some length because his comments and reasoning (as he knew would be the case) were directed to everyone connected to the mega-tentacled collegiate sports industry, as well as to national and state legislators. Though courts are not supposed to give what amount to an advisory opinion, and the concurrence was not quite that, it certainly provided the target audiences with a detailed roadmap of the choices they each faced if they did not act to resolve the problem extrajudicially through negotiated settlements, NCAA rule changes, and legislative actions. Kavanaugh was saying: the levee has broken, there is nowhere to hide, now get to work on developing practical solutions to solve the many thorny problems that lie ahead. Kavanaugh identified some of those problems. *"If it turns out that some or all of the NCAA's remaining compensation rules violate the antitrust laws [and we can assume Kavanaugh thought they did], some difficult policy and practical questions would undoubtedly ensue. Among them: How would paying greater*

⁵⁷ A monopsony is defined as a market situation in which there is only one buyer.

⁵⁸ 594 U.S. (2021) (Kavanaugh, concurring), pp. 3–4.

⁵⁹ *Ibid.*, p. 4.

*compensation to student athletes affect non-revenue-raising sports? Could student athletes in some sports but not others receive compensation? How would any compensation regime comply with Title IX?*⁶⁰ *If paying student athletes requires something like a salary cap in some sports in order to preserve competitive balance, how would that cap be administered? And given that there are now about 180,000 Division I student athletes, what is a financially sustainable way of fairly compensating some or all of those student athletes?*”⁶¹ Kavanaugh suggested that these admittedly difficult issues could be resolved outside the litigation system through legislation, collective bargaining, and/or negotiated settlements.⁶²

As if wanting to leave no doubt that it was time for the NCAA and its members institutions to stop fighting antitrust battles it was bound to lose, and to instead be proactive to find solutions (hard as those may be) to pay student athletes compensation and to stop hiding being the sham of amateurism, Kavanaugh drove the point home one last time with these memorable lines. “Regardless of how those issues ultimately would be resolved, however, the NCAA’s current compensation regime raises serious questions under the antitrust laws.” And while he recognized the old-age traditions of college football and other sports, “those traditions alone cannot justify the NCAA’s decision to build a massive money-raising enterprise on the backs of student athletes who are not fairly compensated. Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate. Moreover, under ordinary principles of antitrust law, it is not evident why college sports should be any different. The NCAA is not above the law.”⁶³

The *Alston* decision was essentially the death knell of the NCAA’s college-athlete-as-amateur model. After years of relentless antitrust litigation, the writing was on the wall. This brings us to our last case, also presided over by the very busy Judge

⁶⁰ Title IX is a 1972 federal law that prohibits discrimination based on sex in any educational program or activity receiving federal financial assistance. Title IX protects students from sex-based discrimination in areas like admissions, academics, athletics, and housing, ensuring equal opportunities for everyone. It has been crucial in expanding women’s rights in sports and all other educational activities. Men’s college basketball raises substantially more revenue than does women’s college basketball (which, however, is still very popular). However, if colleges were to decide to allocate substantially more funds to the men playing basketball only because that sport generates more revenue, would such a decision run afoul of Title IX? As Justice Kavanaugh pointed out in his concurrence, this and many other practical and legal questions will persist.

⁶¹ 594 U.S. (2021) (Kavanaugh, concurring), p. 5.

⁶² *Ibid.*

⁶³ *Ibid.*

Wilken, *Grant House and Sedona Prince v. National Collegiate Athletic Association*.⁶⁴ *House* was a class action suit brought by Grant House, a university swimmer, and Sedona Prince, a university basketball player. Together they sued the NCAA and five major athletic conferences. They sought both NIL damages and an injunction to force the NCAA and the named conferences to lift restrictions on revenue sharing from broadcast rights. In November 2023, Judge Wilken granted class action certification, expanding the parties affected to any Division I athlete who played after 2016 with a four-year statute of limitations. Three classes of student-athletes for the period June 2016 through September 2024 were approved.⁶⁵

On June 6, 2025, Judge Wilkin approved a \$2.8 billion settlement of the case [hereinafter *House* settlement]. The following are the key components of the *House* settlement. The most significant component is revenue sharing. Over the next ten years, all college athletic departments that chose to opt into the settlement agreement will be able to share revenue directly with their student-athletes.⁶⁶ Effective the date of the agreement, each school that opted in will initially receive \$20.5 million per school year. This amount will increase annually. There will be a salary cap placed on the amount each student-athlete can receive from this pot of money.

The second component of the *House* settlement is back pay. College athletic departments and the NCAA will pay \$2.8 billion in back pay to student-athletes who competed in the NCAA from 2016 through the date of the settlement approval. This money will be spread out over ten years, with men's basketball players and football players (by far the largest revenue-producing sports) expected to receive the largest shares. Exactly how these monies will be divided up between the different sports (including both men and women) still remains to be worked out. In his concurring opinion in *Alston*, Justice Kavanaugh presaged that when a settlement was eventually reached there would be many complicated details to work through. He was correct. And indeed, there likely will be substantial future litigation to work these details out.

⁶⁴ *Grant House and Sedona Prince v. National Collegiate Athletic Association, et al.*, Case No. 4:20-cv-03919 CW, 4:20-cv-04527 CW, United States District Court, N.D. California (2020).

⁶⁵ The classes were: the football and men's basketball class, where the student-athlete received a full scholarship and competed for a so-called Power Five school (i.e., the conferences named in the suit as defendants); the women's basketball class; and, the additional sports class, for all other sports, where the student-athlete was declared eligible to compete for any Division I athletic team.

⁶⁶ Colleges that were included within the so-called Power Five Conferences – they were all named defendants in the case and include the vast majority of the large schools that play the major sports – were automatically opted in. Others had the choice to opt in or out. Those that opted in agreed to follow the new roster limits and must participate in the revenue sharing scheme. Schools that opted out are not required to follow the new roster and scholarship restrictions but also are not permitted to pay their student-athletes under the new revenue sharing model.

The third component of the *House* settlement consists of new roster limits and related rules. Colleges no longer will be restricted by what was known as the ‘head count’ scholarship model. Now, colleges and universities that opted in to the *House* settlement are permitted to offer each student-athlete a full, partial, or no scholarship at all, depending on their program’s strategy and funding. Further, each sport now will have a roster cap, which may increase or decrease depending on the sport. For example, football teams will be capped at 105 total roster spots, with scholarships distributed at varying levels. Before, schools could carry rosters of 130 including walk-on players but were limited to offering 85 full scholarships. Men’s basketball rosters will expand from 13 to 15 players.

4 New Rules Governing Name, Image and Likeness

Student-athletes walking on to a college campus spent many long hours of practice to get to that point. College swimmers spent years in pools, both in primary and high schools. Football players spent years working out both in gyms and on the football field, along with film study. In addition, the same holds true for all other college athletes regardless of their sport. Moreover, of course, once admitted onto a college campus in their respective sport, the intensity of that work only continued to grow. The student athletes are specialists. However, as we have seen, aside from some receiving scholarships, they could not profit economically from all this hard work, dedication and sacrifice and despite, as I have shown, often (at least in some sports) generating substantial revenue for many others.

On July 1, 2021, after years of litigation the NCAA introduced new rules finally allowing student-athletes to profit from their NIL rights (NCSA College Recruiting, 2025). The *O’Bannon* and *Alston* rulings, among others, along with the 2019 Fair Pay to Play Act, were major reasons that forced the NCAA’s hand, and persuaded it to abandon its long-held position. The NCAA’s NIL rule has several principal components. The newly formed College Sports Commission will be in charge of enforcing the new rules. The CSC is charged with, among other things, ensuring colleges both follow the new revenue-sharing system and that NIL deals (discussed separately below) are legitimate.⁶⁷

⁶⁷ For more on the role of the CSC and activities permitted and not permitted under NIL deals, along with reporting requirements, see NIL Newsstand, Rules Resulting from House Settlement Finalized and Enforced by College Sports Commission. Retrieved from: <https://www.nilnewsstand.com/updates/college-sports-commission-rules> (accessed: September 14, 2025). Among the more interesting rules set forth in the new NCAA Bylaws relating to

Athletes may engage in NIL activities so long as they comply with applicable state laws where their school⁶⁸ is located. The schools, in turn, have a duty to ensure these activities comply with state law. Athletes in states without NIL laws may still participate in NIL activities without going astray of NCAA rules. Athletes are allowed to seek professional service providers (e.g., agents) to assist with their NIL activities. Student-athletes have an obligation to report NIL activities consistent with state law or school and conference requirements for their school (NCSA College Recruiting, 2025). NIL deals consist of, among others, providing autographs and memorabilia (say jerseys or caps), attending or sponsoring camps and clinics, making personal appearances, sponsoring merchandise, blogging, podcasting, public speaking etc.⁶⁹

According to NCSA College Recruiting, as of May 2025, 33 states had signed NIL legislation into law while seven others had proposed such legislation. Some of those that have legislation under review are following the NCAA's interim policy in the meanwhile.⁷⁰ Additionally, colleges and universities also are creating their own NIL rules. The schools with these rules have oversight over NIL deals and the right to object to a deal if it conflicts with existing agreements. National governing bodies have started to craft their own NIL guidelines for student-athletes to retain their amateur status.⁷¹ The United States Golf Association was the first such national organization do to so.

NIL is not limited to college student-athletes and has extended to high school athletes as well in the vast majority of the states. There are stricter limits on high school NIL opportunities, with the specific rules varying depending on the specific high school governing authority in each state.⁷² Accordingly, some high school student-athletes, at least some of the high-profile students, can start capitalizing on their 'personal brand' even before heading off to college.

NIL are that NIL deals worth more than \$600 must be reported to the CSC and that NIL deals must serve a "*valid business purpose...with compensation at rates and terms commensurate with compensation paid to similarly situated individuals.*" Further, "*Raising money to induce student-athletes to attend or participate in intercollegiate athletics at an institution does not satisfy the valid business purpose rule.*" That is to say, 'Pay-for-Play' NIL deals do not constitute a valid business purpose.

⁶⁸ By school I mean both the student's high school and college/university.

⁶⁹ NCSA College Recruiting, 2025.

⁷⁰ NCSA College Recruiting, 2025.

⁷¹ NCSA College Recruiting, 2025.

⁷² NCSA College Recruiting, 2025.

In this new era of NIL in collegiate sports, what are known as ‘collectives’ are being formed to basically pool money from various sources to compensate the student-athletes at a given educational institution. These independent organizations generate NIL deals for the athletes at a specific school while operating (supposedly at least) independently from the schools themselves. These collectives engage in fundraising activities to secure pools of money from donors, alumni, fans, businesses and the like. The collective then uses its network and resources to connect athletes with potential NIL activities including things such as promoting products or services for businesses, participating in community events and the like. In other words, the student-athletes act as marketers for various businesses either using their NIL and/or making actual physical appearances at events. The collectives often assist the student-athletes to negotiate contracts with the businesses they help promote and manage payments to the student-athletes. Collectives’ main purpose, however, is to provide financial compensation to athletes for their NIL rights and to help ensure the athletes are fairly paid for their time and efforts.⁷³

4.1 An Example of New Model at the University of Michigan

I discussed at the start of this paper revenues generated by the NCAA and briefly mentioned the University of Michigan (UM), promising in a footnote to return to this school later. Having traced the history of the NCAA and college athletics from its humble beginnings to the behemoth it now is, and how the legal system has transformed the long-standing amateur sports model into what is now more of a professional one, I will end this paper by again returning to UM to provide a case example of just how things work under the new model. I chose UM only because I attended UM in the mid-1970s for my undergraduate work and have closely followed the school and its athletic teams for over half a century. UM not only is a top ranked, world renown teaching and research institution, it also has historically excelled across a wide array of sports.

A recent article by Matt Baker in the *Athletic*⁷⁴ provided data on the top college football programs in America, including their three-year average football (only – did not include other sports) revenues and their overall values if these programs were ‘sold’ on the open market. UM ranked fifth, with average annual football revenues

⁷³ Icon Source, 2022.

⁷⁴ Baker, 2025.

generating \$141M and its projected sales price coming in at a whopping \$1.83 billion. The top program, just for comparison purposes, is Texas, with three-year average football revenues at \$183 million and a projected valuation of \$2.38 billion. UM boasts the largest college football stadium in American, with a capacity of 107,601.⁷⁵ Seven other major college football powers have stadiums with a seating capacity over 100,000.⁷⁶ After long-time coach Jim Harbaugh left the program following UM's national championship victory in 2023, capping his nine-year tenure at the helm of UM's football program, UM turned to one of Harbaugh's assistant coaches, Sherone Moore to replace Harbaugh. Moore had a \$6 million salary in 2024. UM's assistant coaches collectively made \$9.384 million in the 2024 season, ranking fifth in the nation.⁷⁷

UM's governing body, the Board of Regents, was very reticent to embrace the modern NIL age. Instead, it wanted the athletic department to make the pitch to high school recruits (and transfers), their parents and coaches that being a student-athlete at UM in and of itself were transformational and not transactional.⁷⁸ In other words, come to UM both because of its combined academic and athletic tradition of excellence. Earn a valuable degree while playing collegiate sports at the highest level. This, they argued, would transform you into a 'Michigan Man or Woman'. This stance was all very aspirational, though one would argue, naïve. Constantly recruiting the top high school athletes and bringing them into the fold is the lifeblood of athletic programs. Professors, as they say, 'publish or perish'. College coaches, in a similar vein, 'recruit or perish'. As soon as the NCAA adopted rules and regulations adopting NIL, most if not all the top athletic programs UM competes with – Texas, Ohio State, Penn State, Notre Dame to name a few – went all in and almost immediately they had put in place systems to take advantage of the new rules. These schools immediately had large 'war chests' of money (in the millions and tens of millions) secured from wealthy donors to lavish on the prized recruits. If UM was going to continue to compete and keep up with their competitors, they had to adapt. Otherwise, its coaches would be recruiting with literally two hands tied behind their backs. Or, as author John U. Bacon, a longtime observer of Michigan athletics wrote, *'It's the new Wild West, man. You compete, or you lose'*.⁷⁸ And adapt and compete UM has.

⁷⁵ Chiusano, 2025.

⁷⁶ Chiusano, 2025.

⁷⁷ Ramsey, 2024.

⁷⁸ Maynard, 2024.

The biggest story in UM athletics in 2024, and one of the biggest certainly in college football, was that of a five-star⁷⁹ high school quarterback from Belleville High School in Detroit, Michigan, then 17-year-old Bryce Underwood. Underwood was the consensus number one ranked player in all of high school football, according to the analyst sites that track these things.⁸⁰ Underwood had initially made a verbal commitment to attend Louisiana State University.⁸¹ This news did not set well with Michigan football faithful. A couple of large donors came to the rescue. Dave Portnoy, the founder of sports and pop-culture media site Barstool Sports, and billionaire Larry Ellison, the co-founder of technology giant Oracle, and whose fifth wife, Jolin, is a UM alum, cobbled together a reported \$12 million deal to persuade Underwood to change his commitment to UM.⁸² Money will often do that. He apparently will receive \$3 million for each year he stays in Michigan.⁸³

Earlier I wrote about collectives. At UM, the name of the official collective that works to provide funds for UM athletes is called the Champions Circle. Its official website⁸⁴ explains its mission as follows, “*The Name, Image, and Likeness (NIL) era has redefined collegiate sports, creating opportunities for athletes to monetize their personal brands. Champions Circle works hard to unite donors, businesses, and alumni to provide career-building opportunities and financial support for student-athletes, ensuring that each of their NIL ventures are meaningful. Champions Circle helps our athletes tap into diverse networks that will drive long-term success and provide stability amid the ever-changing NIL landscape.*” Underwood is hardly the only college football athlete now profiting under the new NIL landscape. On3, a service that analyzes and rates high school football players, also has a website that tracks players and the NIL funds they are receiving. Arch Manning, a quarterback at Texas, receives \$5.5 million and Carson Beck, another quarterback that plays for the University of Miami, reportedly earns \$5.5 million.⁸⁵

⁷⁹ Various analytical sites rank high school football and basketball players using a star ranking system. Some are unranked, but those high school athletes deemed to have the most talent and potential are ranked 2-star through 5-star, with 5-star being the highest in rank. In football there usually are around 30 high school players that achieve 5-star ratings. These are the most highly recruited, though there are many 4-star and 3-star players that also are highly sought after.

⁸⁰ Among college sports fans – especially those following men’s basketball and football – following recruiting is a huge deal and there are many articles, You Tube videos, pod casts etc. that follow recruiting year around.

⁸¹ Maynard, 2024.

⁸² Maynard, 2024.

⁸³ Maynard, 2024.

⁸⁴ See Champions Circle Webpage.

⁸⁵ On3, 2025.

The NCAA had long defended the amateur model on the grounds, among other things, that the public would lose interest in collegiate sports if its athletes were treated as professionals. Perhaps there was a time when this was true. But in this instance as in others, public opinions shift with the times. A recent study by Knoester & Ridpath concluded that while it is true that in the past public opinions largely opposed further compensation for U.S. college athletes, beyond the costs of going to school, now a majority of U.S. adults support, rather than oppose, allowing college athletes to be paid.⁸⁶ This is especially pronounced among Black Americans. Kraft, writing for *Forbes*⁸⁷ wrote, “*Nearly 70% of U.S. adults said college athletes should be able to receive direct compensation from their school when asked in a survey conducted this summer by Sportico and The Harris Poll*” thus squelching the fearmongers that had warned that when student-athletes in 2021 were finally provided the chance to earn money from their NIL that college sport as we have known it would come to a screeching halt. The poll surveyed over 2,000 people nationally and found that 67% agreed college athletes should receive direct compensation from their universities while 74% supported athletes’ ability to profit from NIL opportunities.⁸⁸

5 Conclusion

This decade has ushered in a tidal wave of changes to the traditional model of collegiate athletics. The longstanding model of the amateur student athlete has been upended and turned on its ear. No longer really an amateur, as once understood, many student-athletes leaving high school for college, and many college athletes once ensconced in college are in many ways already professionals dressed in amateur garb. There is no turning back.

There are over 1.2 million attorneys in America. As I discussed in the article, it was not until the *O’Bannon* case that plaintiff antitrust lawyers began to seriously challenge the old student-athlete-as-amateur model in the courts using the Sherman Act as the basis for the challenge. It is somewhat puzzling to me that the plaintiffs’ bar (and there are many plaintiff class action lawyers in America) took up this fight only recently. In any event, the die has been cast. In the aftermath of the *House* settlement and other antitrust victories, student-athletes now will receive direct compensation from their schools and can also make their own deals through

⁸⁶ Knoester & Ridpath, 2020.

⁸⁷ Kraft, 2023.

⁸⁸ *Ibid.*

collectives and brands. While the *House* settlement allows schools to directly pay its athletes through an annual revenue-sharing pool currently capped at \$20.5 million per school, this amount will surely rise over time.⁸⁹ Further, I can safely predict that schools' collectives will continue to amass every-increasing pools of money to use to entice prospects to attend their schools.

This new paradigm is in a constant state of flux which means there will still be more litigation in the courts and more regulations at both the federal and state levels. Open questions include how the pool-shared money available to schools under the *House* settlement will be divided among the athletes in the various sports. I can reasonably predict that the lion's share of the money will go to men's football and basketball teams, with much smaller amounts being divided among the other sports teams. What will the impact of the settlement be on the many non-revenue generating sports? How will Title IX impact revenue sharing? How will the new paradigm impact the competitive balance in college sports? Will there have to be salary caps imposed similar to those employed in professional sports, to create a more competitive playing field? The danger is that the strong, rich schools will have the ability to dominate the rest of the field. Will Congress eventually have to step in to legislate solutions to some of these issues. From the student-athletes' perspective, many are going to require professional expertise at any early age, often in their high school academic career, to steer them through the thicket of rules and regulations that impact their futures. In this respect, the new paradigm will create many new opportunities for attorneys and other sports agents. It will be interesting to see whether new laws and regulations will be enacted to help ensure those agents do not take advantage of the young student-athletes.

Legal Acts, Case-law

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Clayton Act, 15 U.S.C. §2.

Grant House and Sedona Prince v. National Collegiate Athletic Association, et al., Case No. 4:20-cv-03919 CW, 4:20-cv-04527 CW, United States District Court, N.D. California (2020)

⁸⁹ The Detroit Free Press in a June 2025 article by writer Garcia (2025), referencing an anonymous source at the UM, stated that revenue-generating sports at the school will receive the vast majority of the funds. There are 29 varsity sports at the school. The current \$20.5 million is estimated to be divided as follows, per the source of the article: around 70-75% to the football program; 15-20% to the men's basketball program; and the remaining 5-15% to be split amongst the rest of the sports with women's basketball and ice hockey next in the pecking order.

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NEW LEGAL CHALLENGES OF BASKETBALL PLAYERS CONTRACT LAW

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This article examines the evolving legal challenges of professional basketball player contracts in the context of globalization, technological transformation, and cross-border employment. Focusing on international player transfers, salary structures, and emerging payment mechanisms such as cryptocurrencies, the study analyses how traditional contractual frameworks are increasingly exposed to legal uncertainty. Particular emphasis is placed on the role of the Basketball Arbitral Tribunal (BAT) as a specialized dispute resolution mechanism applying the *ex aequo et bono* standard under Swiss arbitration law. By evaluating BAT jurisprudence alongside contemporary developments such as blockchain-based payments and digital market expansion, the article demonstrates how basketball contract law is adapting to new economic and regulatory realities. The study concludes that BAT has developed a coherent and predictable body of principles that strengthens contractual compliance, while technological innovations simultaneously offer efficiency gains and generate new legal risks requiring further regulatory clarification.

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1 Introduction

Basketball now competes with football for worldwide popularity. As professional sports become more global, the transfer of players between teams and countries is becoming increasingly complex. In the rapidly evolving global sports market, transparency is crucial for policymakers and stakeholders aiming to promote fairness and legal certainty between basketball teams and players, as are the variables of actionable legal relationships within this change. Disputes are inherent in human nature. And sport, as merely a human activity, is no stranger to conflict. The complexities surrounding modern sport – its increasing and growing commercial value, the rising number of stakeholders, and increasing public scrutiny – lead to an exponentially growing risk of debate and dispute. Furthermore, the rapid evolution of sports law and the presence of more knowledgeable legal professionals in this field provide fertile ground for conflict to develop in sport. Consequently, dispute resolution, especially in the international context, has become an important element of good governance in sport, requiring governing bodies to have clear and robust procedures to address different debates and reach effective solutions when conflicts arise. One of the main advantages of the arbitration system is that it allows disputes to be resolved quickly and, when necessary, urgently. This is particularly useful in the world of sport, where some disputes of a regulatory nature, such as those related to selection for competition and anti-doping issues, need to be resolved promptly to ensure the fairness and integrity of the competitions. During its approximately ten years of existence, the Basketball Arbitral Tribunal (BAT) has evolved from an innovative, even experimental, mechanism for resolving contractual disputes quickly and cost-effectively into an established international sports tribunal. BAT proceedings make the flexibility of international arbitration under Swiss *lex arbitri* the greatest advantage for users, while the tribunal's decisions, mostly rendered based on *ex aequo et bono* (the principle of equity and fairness), have created a jurisprudence that embodies the principles of equity concerning recurring issues in the context of professional sports contracts.¹

With the internet and the ability to sell goods and carry real-time scores worldwide, things have changed significantly with the possibility of interactive television, digital television, and other technical advancements. Sports leagues are concerned about this rapid expansion of technology and are all trying to protect their intellectual

¹ Hasler, 2016.

property in this new environment. Add to these possibilities the fact that sports leagues now view themselves as global businesses and are not limited to live audiences, television viewers, or even viewers in the United States. The potential audience is currently seven billion people in 197 countries. Consequently, the entry of sports leagues into the global business arena is highly relevant to why there is such a great need for lawyers in all sports leagues.²

2 The Theoretical Foundations of Basketball Player Contracts

Undoubtedly, sports have been among the most prominent and appealing fields both throughout history and in the present day. Competition, strength, endurance, the uncertainty of outcomes, and its close connection with various aspects of social life make sports attractive and lead individuals to engage in this field. However, despite its significant social and economic impact, sports law has not yet received the attention it deserves in Türkiye. The number of scholarly monographic studies on the subject remains quite limited. The foundation of the relationship between an athlete and a sports club is the contract. The rights and obligations of the parties are determined in accordance with this agreement. Furthermore, any disputes arising between the parties must be resolved based on the provisions of such contracts. Both the athlete and the club possess the right to terminate the player contract. The reasons, consequences, and legal standing of such termination in relation to general provisions constitute distinctive features of these agreements. Sports, which attract great public interest and involve significant economic values, remain an area where sufficient academic research has not yet been conducted in the field of law. The negative consequences of this deficiency are reflected in the regulatory framework and in the mechanisms of dispute resolution. Essentially, the legal relationship between the player and the club is established through the contract concluded between the parties. This contract may be terminated either by the player or by the club. Termination, which is a unilateral declaration of intent, is classified as justified or unjustified. The financial consequences of termination also vary in accordance with this distinction.³

² Mishkin, 2001, pp. 449-460.

³ Aydos, 2013, pp. 643-689.

Sports law is not only international; it is also non-governmental, and this distinguishes it from all other forms of law. The rules of sport constitute, in a true sense, a form of 'global law', as they are applied worldwide, encompass both international and national dimensions, and directly affect individuals. This can be observed, for example, in the Olympic Charter,⁴ which is a special law of a 'constitutional nature' adhered to by all States, or in the World Anti-Doping Code⁵, a document that provides the framework for harmonizing anti-doping policies, rules, and regulations both within sports organizations and among public authorities.⁶

In its simplest definition, sports law is the application of fundamental legal principles within the field of sports. Although sports law has increasingly come to be regarded as an independent branch of law, it has in fact emerged through the influence of multiple legal disciplines, including the law of obligations, civil procedure law, private international law, administrative law, competition law, labor law, and immigration law. In legal doctrine, sports law is defined in both narrow and broad senses. In the narrow sense, sports law is the branch of law that regulates the rights and obligations of athletes, the functioning of sports organizations, and the relationships among the various actors within the sports sector. In the broad sense, the scope of sports law includes the right of individuals to engage in sports and to participate in sporting activities, the labor and social security rights of those involved in sports, as well as the rules governing violence in sports, fair play, and disciplinary law. Another classification within sports law is the distinction between national and international sports law. According to this distinction, sporting activities containing a foreign element are considered international sports. The presence of such a foreign element affects not only the competent court or arbitral tribunal for resolving the dispute but also the body of law applicable to the case. Sports law, being a field with its own unique structure, requires legal professionals who possess expertise in and understanding of the realities and specific needs of sports. Particularly in cases involving a foreign element, the resolution of sports law disputes by specialized, impartial, and independent jurists is essential for the development of sports culture. In this regard, various arbitration institutions have been established to ensure access

⁴ Olympic Charter (2025), adopted by International Olympic Committee (in force as from 25 January 2025). Retrieved from: <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/IOC-Publications/EN-Olympic-Charter.pdf> (accessed: October 1, 2025).

⁵ World Anti-Doping Code, retrieved from: <https://www.wada-ama.org/en/what-we-do/world-anti-doping-code> (accessed: December 18, 2025).

⁶ Casini, 2011, pp. 1317-1340.

to justice concerning decisions related to the governance and discipline of sporting activities.⁷

The fundamental question, particularly within the context of an international sports system, is how to effectively address and resolve the inevitable disputes that arise regarding the interpretation of specific rules, whether such rules have in fact been violated, and what the appropriate sanctions should be in the event of such violations. These disputes may also concern the eligibility of certain competitors, issues of corruption involving officials and others, and a range of other potential problems. At the domestic level, there exists a clear and conventional solution: state courts are available and well-established. They can issue orders that are effective within their respective jurisdictions, and the necessary degree of certainty can be achieved at this level. However, the challenges unique to sports include the fact that state courts often lack the specialized expertise required to address sports-related issues effectively. Furthermore, the judicial process is typically not well suited for resolving sports disputes which often demand swift resolution and expedited hearings, sometimes even in the midst of ongoing competitions. In addition, most claimants, namely, athletes often lack the financial resources to pursue costly legal proceedings. On the other end of the economic spectrum, however, there are numerous highly paid professional athletes and wealthy team owners who can easily afford expensive legal representation to defend matters that may, in the end, concern little more than their economic interests.⁸

The ‘law-making’ authority of arbitral institutions has been a recurring topic in international arbitration. It is widely acknowledged that international arbitral tribunals lack a fixed forum and are, therefore, relatively autonomous from the legal systems established by states. Nonetheless, their decision-making power is always constrained by the concept of international (transnational) public policy. Consequently, arbitral institutions generally seek to develop a coherent body of jurisprudence founded upon universally recognized general principles of law. This has also been the case in sports arbitration, where the Court of Arbitration for Sport (CAS) – often referred to as the ‘Supreme Court’ of sport – has developed a set of principles known as *lex sportiva*, which govern transnational sporting competitions.⁹

⁷ Direnisa, 2023, pp. 666-709.

⁸ Pound, 2015, p. 76.

⁹ For illustrative examples from professional basketball practice, see inter alia the *Donald Sterling case*, the 2011 NBA Lockout disputes, and the NBA–Warner Bros. Discovery broadcasting litigation.

Similarly, within the realm of basketball, the BAT, established to resolve contractual disputes in the sport, has exercised a genuine form of 'law-making' authority. The uniqueness of BAT arbitration lies in its potential to articulate the general legal principles governing contractual relationships in basketball. Moreover, the simplified and adaptable procedural framework of BAT provides arbitrators with exceptional control over the arbitral process. Finally, the voluntary nature of BAT proceedings (a feature unparalleled in sports arbitration) and its popularity within the basketball community reinforce the arbitrators' authority to determine what is fair and equitable within basketball contracts. Through this structure, BAT has become a significant presence in the field of sports arbitration and has contributed to the development of contractual standards underpinning global basketball.¹⁰ Similarly, BAT aims to develop a consistent body of case law that will bring a greater degree of certainty for all parties and that will aid in resolving contractual disputes in basketball.

In sports law, arbitration offers not only faster outcomes that would state courts but also has the additional benefit of allowing adjudication by specialized sports law experts. Within this framework, the FIBA BAT, seated in Geneva, provides a cost-effective and expedited mechanism for resolving contractual disputes between players, agents, coaches, and clubs, subject to the parties' consent. Non-compliance with BAT awards may result in disciplinary sanctions imposed by FIBA, underscoring BAT's practical effectiveness and its significance for stakeholders in professional basketball.

BAT arbitration is conducted by a sole arbitrator and may proceed without hearing unless requested by the parties. Under the BAT Rules, awards are generally rendered within six weeks and, where the dispute value is below €30,000, may be issued without reasoning, subject to a party's right to request a reasoned decision within ten days upon payment of the applicable costs. BAT proceedings are governed by Swiss arbitration law, with arbitrators deciding disputes *ex aequo et bono*, based on equity and fairness rather than codified legal rules, while respecting any agreed choice of law. In practice, disputes frequently arise concerning bonuses or incentive payments, particularly where such commitments are not clearly documented.

¹⁰ Radke, 2019, pp. 59–86.

Consequently, clubs must exercise utmost caution in their email communications, as such correspondence may serve as crucial evidence in arbitration proceedings.¹¹

When professional athletes negotiate contracts with sports clubs, substantial sums of money may be at stake. In the American sports industry, player contracts have become lengthier and more lucrative than ever before. Generally, a player contract ensures that an athlete will play for a particular team for a specified period. In addition, the athlete may be required to participate in team-related activities outside the field of play, such as marketing campaigns and media events. Alongside their salary, the player is entitled to access training facilities, equipment, and staff provided by the team. A collective bargaining agreement (CBA) within a sports league may establish a standard player contract, which typically includes general provisions such as applicable laws and arbitration procedures. However, many contracts either modify these general terms or include more specific clauses. For example, a player may wish to protect their rights concerning royalties for products bearing their name or image or seek a guarantee of payment in the event of an injury that prevents them from playing. Given the complexity and potential financial risks associated with these terms, an athlete may engage a manager or even retain a lawyer to assist in negotiating such complex and high-stakes contractual provisions.¹²

The analysis of player transfer agreements draws on game theory, tournament theory, and legal pluralism. These frameworks explain negotiation dynamics, competitive resource allocation, and the interaction of national and international regulatory regimes. Increasing contractual complexity and market globalization have, however, intensified legal uncertainty, particularly in cross-border dispute resolution. International basketball clubs have demonstrated a recurring tendency not to comply with their contractual obligations. Therefore, the establishment of the BAT was essential to safeguard the integrity of the international basketball environment. Interestingly, the inclusion of the FIBA Standard Arbitration Clause in player contracts is not mandatory. However, since BAT was established, nearly all contracts have included this clause:

“Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland, and shall be resolved by a single arbitrator appointed by the BAT President in accordance with the BAT Arbitration Rules. The seat of arbitration shall be Geneva, Switzerland.

¹¹ Direnisa, 2023, pp. 666-709.

¹² Justia, 2025.

The arbitration shall be governed by Chapter 12 of the Swiss Private International Law Act, irrespective of the parties' domicile. The language of arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.”¹³

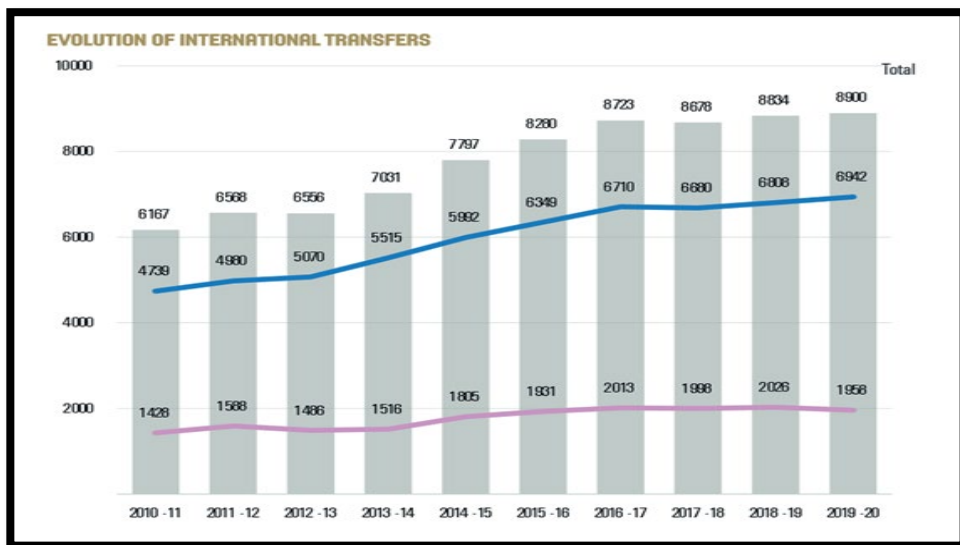


Figure 1: Evolution of international basketball player transfers between the 2010/11 and 2019/20 seasons.

Source: *International Basketball Migration Report 2020*, FIBA and CIES Sports Observatory, 2019.

Retrieved from: <https://assets.fiba.basketball/image/upload/documents-corporate-studies-and-facts-international-basketball-migration-report-2020.pdf> (accessed: January 28, 2026).

As professional sports have become a major business sector, player transfers have emerged as a significant source of revenue at both organizational and individual levels. Transfer agreements typically require individualized negotiations involving clubs, players, and intermediaries. According to the 2020 Basketball Migration Report, the international basketball transfer market has expanded steadily over the past decade, reaching record levels, with 7,371 players involved in at least one international transfer in a single season.¹⁴ Except for the Americas, all FIBA regions have experienced growth in international transfers. Although negotiations traditionally occur during the off-season, transfer activity increasingly continues throughout the competitive season, indicating that contractual negotiations

¹³ Zovko, 2013.

¹⁴ IBA & CIES Sports Observatory, *International Basketball Migration Report 2020*, FIBA, 2020.

constitute an ongoing process. Transfers may be negotiated directly or through intermediaries, reflecting the pursuit of optimal conditions by both clubs and players.

Location	League	Typical/average salary in USD (US \$)	Maximum salary in USD (US \$)
US	NBA	7.7 million	40.2 million
Europe	EuroLeague	65,000-100,000	5 million
Spain	Liga ACB	130,000	5 million
Turkey	BSL	250,000-450,000	2.6 million
Europe	Lower tier leagues	1,000-3,000 per month	-
China	CBA	1 million	3 million
Australia	NBL	60,000-100,000	-
Taiwan	SBL	1,400-2,000 per month	12,00 per month

Table 1: Overseas basketball player salary ranges across selected leagues.

Source: FIBA; EuroLeague Players Association; NBA Collective Bargaining Agreement (compiled by the author).

Negotiations may be conducted directly between the parties, particularly in domestic transfers, or through intermediaries such as agents, managers, or even family members, especially in international contexts. Regardless of the negotiating structure, both clubs and players seek to maximize their respective interests. Clubs focus on a player's skills and attributes as sources of competitive advantage, while players generally aim to secure the most favorable economic terms. Nevertheless, players' priorities may vary according to age, status, and career stage, with factors such as guaranteed playing time or educational opportunities sometimes outweighing purely financial considerations. Negotiation theory emphasizes thorough preparation, including identifying the negotiation problem, clarifying interests, and anticipating the counterpart's position. This process often involves structured negotiation templates and offer-scoring systems to compare multi-issue proposals and support informed decision-making.

Various Multi-Criteria Decision-Making (MCDM/A) methods, also known as MARS, are used to develop negotiation offer scoring systems. However, applying MARS presents challenges, as studies show difficulties in interpreting utility values and comparing offers, particularly in SAW-based models, while AHP-based approaches rely on compensatory trade-offs and are limited to discrete negotiation problems. Furthermore, as seen in the MARS approach, pairwise comparisons can be quite demanding. Finally, the ranking of offers generated using the PROMETHEE II (Preference Ranking Organization Method for Enrichment

Evaluation) method may change completely if new alternatives are added, as this approach is susceptible to the rank reversal phenomenon.¹⁵

3 Signing Bonuses and Salary Caps

One of the key provisions in a player's contract is the signing bonus, a lump-sum payment offered as an incentive for joining a team. For the most talented athletes, a signing bonus can be worth millions of dollars. Although it is typically smaller than the total salary, it represents a significant guaranteed amount paid to the player upfront. Importantly, the bonus may be excluded from the team's salary cap, which limits the total amount of money a team can spend on player salaries each year. The idea behind salary caps is to prevent the wealthiest teams from acquiring all the top talent, thereby preserving competitive balance within the league. Factors determining these caps include not only concerns of fairness but also economic considerations. If fewer fans watch or support teams that are not truly competitive, this leads to lower television ratings, smaller audiences, and reduced overall revenues.

The impact of the salary cap system on team performance and the popularity of professional sports leagues in North America has been a matter of debate since the National Basketball Association (NBA) first introduced its cap in 1983. Salary caps, which act as a price ceiling on player costs for teams, are now widely used across various professional sports leagues in the United States and Canada. While some leagues employ a 'hard' cap one that teams are not permitted to exceed (e.g., the National Football League) the NBA operates under a "soft" cap system, which allows greater flexibility. Under this framework, teams may exceed the cap by paying a luxury tax or penalty fee, enabling them to retain key players or sign high-value free agents while maintaining an element of financial parity across the league.¹⁶ In the doctrine, according to Kesenne's interpretation, a three-dimensional 'salary–market–management' model is proposed to systematically explain how the salary system influences competitive balance. First, salary restrictions theoretically prevent the formation of star monopolies; however, market disparities – such as the commercial attractiveness of large cities – can weaken their effectiveness. Second, market resources determine a team's ability to exceed salary limitations; for instance,

¹⁵ Górecka & Gulak-Lipka, 2021, pp. 83-95.

¹⁵ Pradhan & Leshchinski, 2025.

¹⁶ Pradhan & Leshchinski, 2025.

the NBA's Los Angeles Lakers attract free agents through non-salary advantages. Finally, managerial capability becomes the key factor for the survival of small-market teams, as seen in how the NBA's Oklahoma City Thunder offset their resource disadvantages by accumulating draft picks and renewing waivers. This model reveals the complex interaction between salary systems and competitive balance, providing a theoretical framework for subsequent empirical analysis. Moreover, it highlights the need to optimize league policies from multiple dimensions to ensure the sustainable development of professional sports leagues.¹⁷

3. NBA Salary Rules

In professional sports, star players are key drivers of fan engagement and commercial success, boosting ticket sales, media attention, and league appeal. This effect was clearly illustrated by Lionel Messi's transfer to Inter Miami, which led to sold-out home games and stadium expansion during the 2024 season.

A similar dynamic emerged in the NBA when LeBron James transferred from the Cleveland Cavaliers to the Miami Heat in 2010. Known as 'The Decision', this move highlighted the growing leverage of elite players and reshaped competitive balance while generating substantial economic benefits for both the team and the league. Together with comparable cases, it illustrates the significant influence of star players, whose absence may likewise produce adverse effects. For example, when Messi sustained a leg injury during the 2023 MLS season, he missed five matches, including a highly anticipated fixture against the Chicago Fire, resulting in noticeable declines in both attendance and viewership metrics.¹⁸

3.2 NBA Salary Cap

The NBA Salary Cap refers to the maximum total amount that a team may allocate to player salaries during a given Salary Cap Year, subject to the rules and exceptions set out in the Collective Bargaining Agreement (CBA). The concept of 'Team Salary' extends beyond active player salaries and varies depending on the stage of the NBA calendar. While offseason calculations include items such as free agent cap holds and unsigned draft pick obligations, regular-season team salary generally consists of

¹⁷ Cheng, 2025, pp.1096-1103.

¹⁸ Law & Law, 2025.

current player salaries and certain residual payment obligations. A Salary Cap Year runs from 1 July to 30 June of the following year. The cap is adjusted annually, but may neither decrease from the previous season nor exceed 110% of the prior year's cap. In addition to the salary cap itself, the NBA operates a multi-tiered system including a minimum team salary set at 90% of the cap, a luxury tax threshold fixed at 121.5% of the cap, and two additional upper spending limits known as the first and second aprons. These thresholds, determined by formulas set out in the CBA, play a central role in roster construction and financial regulation within the league. In summary, the NBA's salary cap system and its related tiers can be structured as follows:

1. Salary Floor (Minimum Team Salary): 90% of the Salary Cap;
2. Salary Cap: The official spending limit for teams;
3. Tax Level: 121.5% of the Salary Cap;
4. First Apron Level;
5. Second Apron Level.¹⁹

For instance, during the 2024–25 season, these thresholds were as follows:

- Salary Floor: \$126.529 million;
- Salary Cap: \$140.588 million;
- Tax Level: \$170.814 million;
- First Apron: \$178.132 million;
- Second Apron: \$188.931 million.²⁰

4 Cryptocurrency Applications in the Payment of Basketball Player Salaries

The digital transformation of the sports industry has enhanced efficiency, transparency, and innovation, while exposing the limitations of traditional, intermediary-based transaction models, including centralized control, high costs, and delayed financial processes. Blockchain technology offers an alternative by enabling decentralized, secure, and transparent transactions, reducing dependence on

¹⁹ National Basketball Association & National Basketball Players Association, Collective Bargaining Agreement 2023–2030, NBA, 2023.

²⁰ Orsini, 2025, pp. 5–7.

intermediaries and strengthening trust among stakeholders such as athletes, clubs, and sponsors. Through its underlying infrastructure, cryptocurrencies facilitate faster payments, lower transaction costs, and improved data security, thereby expanding their relevance within professional sports, particularly in relation to financial operations and athlete compensation.

Cryptocurrencies have influenced sports primarily through fan tokens, which leverage blockchain technology to enhance fan engagement. Platforms such as Socios.com enable fans to participate in certain club-related decisions, while NBA teams like the Sacramento Kings have emerged as early adopters of blockchain-based fan engagement models. The team launched its own ‘Sacramento Kings Token’ and utilized blockchain to enhance ticket sales and fan engagement initiatives. By harnessing the power of cryptocurrency, the Kings have succeeded in creating a more secure, transparent, and rewarding experience for their fan base.²¹ The NBA, as a major professional sports league, experienced a significant 12.5% increase in sponsorship revenue during the 2021/22 season, largely driven by partnerships with brands from the cryptocurrency sector. As a result, the league’s total sponsorship income reached 1.64 billion USD.²²

Empirical studies using data mining and regression methods demonstrate that non-contractual factors –such as age, performance, and club status – significantly affect contract values and transfer fees. At the same time, blockchain technology is emerging as a transformative force in professional sports through applications such as smart contracts, tokenized sponsorships, and decentralized ticketing, enhancing transparency, security, and fan engagement. While blockchain’s core features – decentralization, immutability, and transparency – address long-standing issues of fraud and data manipulation, its adoption in sports remains at an early stage. Nonetheless, initiatives such as UEFA’s blockchain-based ticketing at EURO 2020 and NBA Top Shot NFTs illustrate the growing integration of blockchain technology in football and basketball.

Cryptocurrency’s journey into the sports world began not long ago. The first notable instance occurred in 2018, when the Turkish football club Harunustaspor signed player Ömer Faruk Kiroğlu, paying part of his transfer fee – approximately 2,500

²¹ Blockchain Today, 2024.

²² WARC, 2022.

Turkish Lira (£467.30) – in cryptocurrency. This event drew global attention, demonstrating how crypto could be integrated into various sectors to simplify transactions. The trend of using cryptocurrency in payments continued to rise, reaching a milestone in 2021 when Spanish footballer David Barral became the first professional player to be fully transferred using cryptocurrency. By 2022, the practice had become even more widespread; São Paulo FC, backed by its sponsor and crypto exchange Bitso, made headlines by acquiring Giuliano Galoppo for \$6 million USD paid via USDC stablecoin. Beyond player transfers, cryptocurrency companies have also shown great interest in football sponsorships. One of the earliest and most prominent partnerships was between the English Premier League's Arsenal FC and CashBet Coin in 2018, which served as a pioneering example of how the worlds of crypto and football began to converge.²³

The intersection of sports and technology has led many NFL and NBA players to explore cryptocurrencies and use their influence to promote blockchain innovations. From endorsing crypto platforms to adopting them as payment gateways, these athletes are shaping the future of digital finance. Tyrese Haliburton, a professional basketball player who plays as a point guard for the NBA's Indiana Pacers, addressed the connection between cryptocurrency and the NBA, stating, *"The presence of cryptocurrency in the NBA is definitely increasing, especially with the collaboration between the NBA and Coinbase, one of the top cryptocurrency exchanges. I think just having the brand there has led to more conversations recently."*²⁴ BitPay, the world's largest Bitcoin and cryptocurrency payment service provider, has announced that payments with Dogecoin will now be available for both merchants and consumers. As one of the early adopters of cryptocurrency, the NBA's Dallas Mavericks will be the first team to accept Dogecoin. Mavs Fans for Life (MFFLs) can now use Dogecoin to purchase tickets and merchandise online, making Maverick's products more accessible to fans everywhere. The Dallas Mavericks have already been accepting Bitcoin as a payment method for game tickets and merchandise for nearly two years.²⁵

Through Decentralized Autonomous Organizations (DAOs), blockchain enables transparent and inclusive governance by allowing stakeholders to participate in decision-making via token-based mechanisms. In this context, the Dynamic Capabilities Framework (DCF) and the Four Modes of Governance (FMG)

²³ Kariuk, 2025.

²⁴ The Playoffs News Team, 2025.

²⁵ Pinegold, 2021.

framework provide useful analytical tools for identifying emerging trends, implementing smart contracts and DAOs, and adapting governance structures to ensure effectiveness and regulatory compliance. These innovations reflect a broader transformation in how sports organizations engage with fans, manage assets, and organize operations. However, academic research on these developments remains limited, often confined to theoretical analyses or single-sport case studies.

4.1 How Do Crypto Contracts Work?

Receiving payments in cryptocurrency is not as simple as exchanging dollars for Bitcoin through a conventional financial intermediary. Unlike traditional salary payments, cryptocurrency transactions require the use of digital wallets, blockchain-based verification mechanisms, and compliance with platform-specific protocols. The process typically involves the agreement of the parties on the type of digital asset to be used, the payment method and timing, and the selection of a secure blockchain network through which the transaction will be executed. In addition, issues such as transaction fees, exchange rate volatility, and regulatory compliance must be considered in advance. Once these parameters are established, the payment is recorded on the blockchain, creating a transparent and immutable transaction history.

4.2 Why Do Players Want Crypto Payments?

There are several reasons why NBA stars are increasingly opting to receive their salaries in cryptocurrency, reflecting both financial and strategic motivations.

- i) **Investment Potential:** Many players view cryptocurrencies as a way to grow their wealth. Instead of converting their salaries into crypto later, they prefer to receive direct payments in digital assets to potentially benefit from price appreciation.
- ii) **Global Appeal:** For internationally recognized athletes, cryptocurrencies make it easier to manage money across different countries. This allows them to avoid complications related to currency exchange rates and traditional banking systems.
- iii) **Financial Innovation:** Younger players, in particular, are eager to be part of the digital finance revolution. They see cryptocurrency as the future of money and want to be active participants in this transformation.

- iv) Tax Advantages: In some cases, receiving payments in cryptocurrency may provide tax benefits, depending on local laws and regulations.²⁶

For these reasons, crypto payments represent more than just an alternative salary method – they symbolize financial freedom, global accessibility, and an embrace of innovation for many professional athletes.²⁷

Blockchain technology enhances risk management and fraud prevention by reducing issues such as ticket scalping, counterfeit products, and unauthorized access. Smart contracts enable automatic and transparent payments, limiting disputes and operational inefficiencies, while decentralized identity systems support secure verification of athletes and other stakeholders. Through these mechanisms, blockchain integration contributes to more efficient, transparent, and secure governance structures within professional sports organizations. Blockchain technology is revolutionizing sports event management by enhancing value creation, streamlining operations, and increasing stakeholder engagement. The use of tokens and NFTs (non-fungible tokens) by sports organizations has transformed fan engagement, offering digital collectibles that can be bought, sold, and traded on blockchain platforms. These tokens encourage fan participation and loyalty while helping clubs strengthen their financial and strategic positions. NBA Top Shot, for instance, uses NFT-based ticketing and digital collectibles to guarantee authenticity and prevent fraud. The global sports blockchain market is projected to reach 1.4 billion USD by 2030, growing at an annual rate of 8.5%.²⁸

Blockchain has been criticized for commodifying fandom and being associated with gambling-like features. Despite these concerns, the emergence of NFTs and fan tokens has provided sports organizations with new revenue streams and allowed them to play a greater role in the marketplace. Decentralized Autonomous Organizations (DAOs), which operate on a network-based governance and financial model, have become possible by applying blockchain technology in sports transformation processes. Ticketing systems can be developed using blockchain-based platforms, allowing fans to purchase tickets directly from organizers, eliminating the risk of counterfeit tickets, and ensuring fair pricing. Smart contracts

²⁶ OECD, *Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues*, OECD Publishing, 2020.

²⁷ Fans First Sports Network, 2025.

²⁸ Bucea-Manea-Toniș, Antonescu & Mihăilă, 2025.

automate and secure athlete contracts and payments, simplifying contract negotiations and ensuring timely and transparent transactions.²⁹

In the sports context, ‘crypto’ encompasses not only cryptocurrencies but also NFTs and fan tokens, which are used by clubs and athletes to enhance fan engagement. While crypto-based applications offer greater transparency and global accessibility, they also raise significant legal concerns, particularly due to regulatory uncertainty and price volatility. The absence of harmonized legal frameworks exposes both users and operators to legal and financial risks, distinguishing crypto-based sports activities from traditionally regulated systems. On the other hand, in terms of security concerns, while blockchain technology is renowned for its robust security features, crypto betting platforms remain vulnerable to cyberattacks. Hackers can exploit weaknesses in platforms or digital wallets to steal funds or compromise user accounts. Therefore, it is crucial for bettors to use reputable crypto betting platforms and take necessary precautions to secure their funds.³⁰

5 The Role of the BAT in Resolving Disputes Among Basketball Players

The BAT has emerged as one of the most prominent international sports arbitration bodies, ranking second worldwide by case volume. Established to resolve basketball-related contractual disputes in a fast and cost-effective manner, BAT operates under an *ex aequo et bono* standard, through which its awards have developed a coherent body of equitable principles governing recurring contractual issues. Since receiving its first case in 2007, BAT has experienced steady growth, surpassing 1,500 cases within just over a decade, thereby confirming its role as a trusted and efficient dispute resolution mechanism in international basketball. BAT was established largely in response to demands from player representatives seeking a dispute resolution mechanism that would compel parties in player contracts to comply with and respect contractual terms. Resorting to national courts often meant a long and costly process for the parties involved. This situation led to frequent unpunished breaches of contract in international basketball, forcing the aggrieved party to fight for years – often in an unfamiliar legal system and at significant financial cost.

²⁹ Varshney, 2022.

³⁰ College Insider.com, n.d.

To overcome these challenges, the BAT was introduced – largely computer-based, operating with a single arbitrator, and rendering decisions not based on any national legal system but *ex aequo et bono*, that is, grounded in fairness and justice. In doing so, it has effectively helped to develop a genuine *lex sportiva* within the realm of international basketball. Arbitration is a fundamental tool in resolving disputes within professional sports and is valued for its efficiency, confidentiality, and finality. However, the systems employed by professional sports leagues differ significantly in terms of fairness, transparency, and outcomes. While arbitration remains one of the cornerstones of dispute resolution in professional sports, how it is implemented varies widely across leagues, often yielding mixed results concerning justice, transparency, and accountability.³¹ A professional basketball player's employment contract typically sets out salary and, where applicable, performance-based bonuses. However, clubs often fail to pay amounts due because of contractual disputes, unmet bonus criteria, or financial and performance-related concerns, with the sudden suspension of payments having serious legal and professional consequences for the player.

5.1 Basketball Arbitral Tribunal (BAT)

The BAT is an independent body officially recognized by FIBA and included in the FIBA General Statutes. It provides a quick and simple arbitration process for resolving disputes between players, agents, coaches, and clubs. The BAT was established in 2006 (originally as the FIBA Arbitral Tribunal).³² However, the practice goes beyond mere mediation, and the BAT Rules offer an instructive example by adopting a more 'continental' approach that explicitly allows the arbitrator to encourage settlement. Article 12.3 of the BAT Rules states that "the Arbitrator is authorized to assist the parties in reaching a settlement of their dispute". The first point to note is that such a provision is fully consistent with Swiss law³³, which serves as the *lex arbitri* for BAT proceedings under Article 2.2 of the BAT Rules. Beyond this, however, there is little detail provided about the operation of

³¹ Grewal, 2025.

³² Key Features of the BAT: i) Real arbitration under Swiss law; ii) a sole arbitrator appointed by the BAT President; iii) witnesses are heard only upon request; iv) provisional and protective measures are available; v) the arbitrator decides *ex aequo et bono*, meaning based on principles of fairness and justice, without reference to any national or international law; vi) The award is rendered within six weeks after the end of the proceedings (Source: BAT - Basketball Arbitral Tribunal). Failure to comply with a BAT award may result in sanctions imposed by FIBA, such as fines, withdrawal of a FIBA Agent License, an international transfer ban for a player, or a prohibition on registering new players for a club, as provided in the FIBA Internal Regulations.

³³ See in particular Lalive, 2005, pp. 556–564.

this provision. Since the BAT mechanism does not include a separate mediator or conciliation panel, it is clear that the attempt to reach a settlement must be undertaken by the arbitrator themselves. This is confirmed by BAT practice, particularly in cases where arbitrators were expressly invited by the parties to facilitate settlement and accepted to do so (where the arbitrator took such initiative on their own (e.g., *BAT 0468/13 Matic v. Club Sportiv Municipal Targoviste*).³⁴ The vast majority of basketball contracts contain a clause designating the BAT as the competent dispute resolution body for basketball-related disputes. The BAT is an independent arbitral tribunal designed to ensure that all parties to a basketball contract see that the terms of the agreement are respected. It enables players to claim unpaid amounts through a cost-effective and relatively swift legal process. Any sports lawyer who has conducted a thorough review of BAT jurisprudence should be able to predict the outcome of such proceedings with a fair degree of certainty. For example, they should be able to determine whether a club can rely on disciplinary sanctions (such as fines) to offset a player's claim, whether the claim is time-barred, and other such procedural or substantive issues.³⁵

5.2 Ensuring Respect for Basketball Contracts

Contractual compliance has become a persistent issue in globalized basketball, particularly in the post-Bosman era, where players and coaches frequently enter cross-border employment contracts. Differences in legal backgrounds and bargaining power have created structural inequalities, often exploited by clubs to avoid honoring contractual obligations. National legal systems, unfamiliar mandatory rules, and the deterrent effect of costly local court proceedings have further enabled such practices. In response, sports arbitration has assumed a norm-creating role. While CAS has developed *lex sportiva* across sports, the BAT has emerged as a key normative authority in basketball contract disputes. Through its ex aequo et bono standard, procedural flexibility, and cost-effective structure, BAT has contributed significantly to the development of equitable and widely accepted contractual principles, distinguishing its approach from CAS and the FIFA Dispute Resolution Chamber.

³⁴ AKT Todorović & partneri, 2023.

³⁵ BMW, 2023.

Unlike FIFA, FIBA has adopted a largely hands-off approach to basketball employment contracts. FIBA Internal Regulations do not mandate contractual content or dispute resolution mechanisms, leaving the structure of employment relationships to the parties, with FIBA providing only non-binding recommendations. BAT's jurisdiction is based entirely on voluntary consent, with FIBA playing a merely advisory role. Although uncommon in sports governance, this model has proven effective due to BAT's broad acceptance, as evidenced by claims brought not only by players, coaches, and agents, but also by clubs themselves. As Dr. Dirk-Reiner Martens, the visionary behind the BAT, once summarized: *"This is not a court designed to help players; it is a court designed to ensure that both sides respect their contracts."*³⁶

5.3 How Does the Basketball Arbitration Tribunal (BAT) Operate?

Some lawyers may argue that by applying the principle of *ex aequo et bono*, the BAT has the opportunity to act outside the scope of the law, making the outcome of a legal proceeding highly unpredictable. However, this is not the case. The BAT remains bound by fundamental legal principles such as *pacta sunt servanda* (which means 'agreements must be kept') and the principle of good faith. Moreover, over the years, a large number of BAT awards have been issued and published, providing a clear understanding of how the BAT handles specific disputes. If the parties have included the standard BAT arbitration clause in their contracts, the BAT has the authority to resolve disputes between players, agents, and clubs through arbitration. This clause is now mandatory for all international player contracts registered with FIBA. The clause reads as follows:

"Any dispute arising from or related to this contract shall be submitted to the Basketball Arbitration Tribunal (BAT) in Geneva, Switzerland, and shall be resolved by a single arbitrator appointed by the BAT President in accordance with the BAT Arbitration Rules. The seat of arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Private International Law Act, regardless of the parties' domicile. The language of arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono (in accordance with the principles of equity)." (BAT Arbitration Rules, Article 0.3)

³⁶ Radke, 2019, pp. 59–86.

Main Features of the BAT:

- a) True Arbitration under Swiss Law: All arbitration proceedings are based in Geneva, Switzerland. Regardless of the parties' residence, the arbitration is governed by Chapter 12 of the Swiss Private International Law Act (PILA), and the language of arbitration is English.
- b) Single Arbitrator: All disputes brought before the BAT are decided by a Sole Arbitrator appointed by the BAT President (Professor Dr. Ulrich Haas) from a closed list consisting of seven arbitrators.³⁷

5.4 Unilateral Termination of Employment Contracts

The unprecedented success of the (BAT) undeniably stems from its innovative nature. As Ian Blackshaw has noted: “*The BAT is proving to be an effective and therefore popular institution for resolving disputes in the sport of basketball, and perhaps this successful formula or model may also be adopted by other sports organizations for the resolution of their own disputes.*”³⁸ In summary, the mission of the contemporary arbitration model established through the BAT is presented as “achieving a fair outcome by simplifying the dispute resolution system”. This mission is reflected in the BAT Rules, which contain a set of established features designed to facilitate simple, fast, cost-effective, and most importantly, fair dispute resolution. The foundation of BAT’s innovative model lies in Swiss arbitration law. A case-based analysis of BAT jurisprudence shows that the contract always serves as the starting point, and that arbitrators seek to evaluate the parties’ conduct according to the terms they have agreed upon. Such an approach aligns with the prevailing view in Swiss law that, in arbitration based on the principle of *ex aequo et bono*, the arbitral tribunal will first and foremost apply the contract. As clearly stated in BAT case law: “*The principle of pacta sunt servanda is one of the leading principles in BAT jurisprudence, and the tribunal attaches great importance to this principle when assessing the conduct of the parties.*”³⁹

³⁷ Conde, 2020.

³⁸ Blackshaw, 2009.

³⁹ However, the principle of *pacta sunt servanda* does not mean that the arbitrator has no right to depart from the contract under any circumstances. The validity of a contract can always be questioned based on generally accepted defects of consent. As confirmed in one of the BAT awards: a signed contract remains valid and enforceable unless a party i) is fundamentally mistaken about certain facts that should be assessed in good faith as essential to the contract, ii) was induced to enter into the contract by the other party’s fraud, or iii) signed the contract under duress from the other party (Radke, 2019, pp. 59–86).

In addition to filing a claim before the BAT, a basketball player may unilaterally terminate the employment contract, provided that the contractual requirements – such as prior notice of default or waiting periods – are respected where applicable. Even in the absence of an explicit termination clause, a player may terminate the contract for ‘just cause’ if the club commits a sufficiently serious breach of its obligations. Under general principles of contract law and consistent BAT jurisprudence, unilateral termination is justified only where it can no longer reasonably be expected for the terminating party to continue the employment relationship. Minor or isolated breaches are insufficient; termination is regarded as a measure of last resort. Where termination occurs with just cause, the player may claim compensation, subject to the duty to mitigate damages. Conversely, termination without just cause may expose the player to liability for damages or penalties, underscoring the need for specialized legal advice before taking such action.

5.5 Damages – Principle of Full Compensation

Termination of a contract can have serious consequences for both parties. Particular attention should be paid to situations where the club breaches its obligations (e.g., non-payment of salaries) or terminates the contract without just cause (e.g., alleging the player breached the contract), as these are relatively common under BAT jurisdiction. In both scenarios, the non-breaching party may be entitled to compensation and equitable damages. Since the club’s breach causes the termination, it is liable to pay damages. As a general principle, the player may claim damages equivalent to the agreed contractual remuneration. At the same time, consistent with established BAT case law, “the claimant must prove the existence and the amount of the damages claimed”. BAT’s approach to compensation can be summarized as: “*As a rule, and in the absence of a specific provision on damages, the arbitrator awards an amount that puts the injured party in the economic position expected from the contract’s performance.*” Consequently, “*the awarded damages are compensatory rather than punitive and aim to approximate as closely as possible the actual loss suffered.*”⁴⁰

⁴⁰ Haas, 2013.

5.6 Penal Provisions

BAT has frequently addressed contractual penalty clauses, particularly in cases involving late payment sanctions. BAT jurisprudence consistently applies the principle of proportionality, holding that contractual penalties must not exceed what is necessary to secure timely performance.

In line with general legal principles, contractual penalties are subject to review and adjustment where they are deemed excessive. The assessment of excessiveness is left to the arbitrator's discretion and depends on the specific circumstances of the case, with penalties considered disproportionate where they clearly exceed the debtor's principal obligation. Accordingly, BAT evaluates contractual penalties on a case-by-case basis, balancing deterrence with fairness. In determining the appropriateness of contractual penalties, BAT arbitrators have identified several guiding factors:

“(a) The arbitrator accepts that a contractual penalty serves as a reliable deterrent against the intentional delay of due payments;

(b) A fixed fee applied equally to small or large amounts may be problematic and, depending on circumstances, may require adjustment;

(c) A ceiling should be set for the contractual penalty. Only in exceptional cases (e.g., if the default period clearly exceeds one year or the debtor's conduct warrants a higher sanction) should this ceiling exceed the compensation secured by the contractual penalty;

(d) The arbitrator must also take into account the parties' conduct: the obligation of the creditor to mitigate damages may require a reduction of contractual penalties if enforcement proceedings are deliberately delayed.”⁴¹

5.7 Penalties and Sporting Sanctions

Where a basketball club fails to meet its financial obligations, penalty fees may become payable, provided that a penalty clause is included in the contract. Such clauses can effectively incentivize timely payment and are generally upheld in BAT jurisprudence, so long as they are not excessive. However, BAT may reduce the amount awarded, particularly where penalties are disproportionate or where a player delays initiating proceedings solely to increase accrued penalties.

⁴¹ Radke, 2019, pp. 59–86.

5.8 Sporting Sanctions

If a basketball club fails to fulfill its obligations even after a BAT Award has been issued (i.e., if the club is ordered to pay unpaid salaries, bonuses, penalty fees, and/or compensation), a player may request FIBA to impose sporting sanctions on the club. These sanctions can include prohibiting the club from registering new players. Normally, this serves as an effective tool to pressure a club to comply with an award. However, if sporting sanctions prove ineffective, additional steps may be taken to enforce the BAT Award (to our knowledge, such measures have not been necessary since BAT was established).

5.9 Innovations

As is well known, the BAT has simplified the dispute resolution process in 2025 with small but highly effective amendments to the BAT Arbitration Rules (2025 BAT Rules).⁴² These updates to notification procedures, filing deadlines, and payment protocols promise faster resolution of commercial disputes for players, agents, and legal advisors operating in international basketball.⁴³ Second, FIBA has announced an important regulatory change for sports agents. As of 1 July 2025, clubs will no longer be allowed to make any payments to player agents. This eliminates the previous exception that permitted such transactions under certain conditions.⁴⁴

FIBA has prohibited clubs from making payments to agents on behalf of players, with this significant regulatory change taking effect from 5 December 2024. This change, detailed in the former Article 3-297 of the FIBA Internal Regulations and now amended to Article 3-299(b), aims to eliminate conflicts of interest and strengthen the integrity of the agent-player relationship by ensuring that agents are paid solely by their clients.⁴⁵

⁴² BAT Arbitration Rules, as amended in 2025.

Fédération Internationale de Basketball (FIBA), Regulations on Working with Agents, amendment effective as of 1 July 2025.

⁴³ Bolcar, 2025.

⁴⁴ Adviser Armknecht, 2025.

⁴⁵ Fédération Internationale de Basketball (FIBA), Internal Regulations, former Article 3-297, as amended to Article 3-299(b), amendment effective as of 5 December 2024.

The new Article 3-299(b) states:

“[...] A FIBA Licensed Representative (and any legal entity or unincorporated business through which this Representative operates) [...] b. shall not accept payment for its services from anyone other than its client [...].”

Clubs must comply by ceasing direct or indirect payments to agents and adjusting ongoing transactions accordingly. Originally set to take effect on 1 February 2025, the rule was postponed to 1 July 2025 following opposition from some European agents and clubs, allowing a transitional period for clubs to adapt their practices.

One reason for resistance from certain European clubs is that the new rule could, in practice, require clubs to increase overall salaries to cover the ‘extra costs’ related to social security contributions for amounts owed directly to a player’s agent upon the player’s request. Contracts signed under previous regulations before this effective date will not be penalized; however, new or renewed contracts must comply with the new rules, and non-compliance may result in disciplinary sanctions.

FIBA’s rationale behind this change is to maintain high standards of integrity and transparency in basketball. FIBA argues that direct or indirect payments to agents by clubs have long posed a conflict-of-interest risk and could undermine agents’ independence in representing their clients’ best interests. By mandating payments be made solely by clients, FIBA aims to reinforce the impartiality and honesty of the agent-player relationship, ensuring that all stakeholders act in the best interests of the sport and its participants.

In Switzerland, although agent involvement is not mandatory in player transfers, it provides added value in networking and facilitating clubs’ communication with players in the market, especially for international transfers. Registered and authorized agents must have their authority and representation verified by clubs. Under Swiss law (OSE Article 20 and OEmol-LSE Article 3(2)), when an agent is appointed by a player, the maximum commission collectible by the agent is capped at 5% of the first general gross annual salary plus VAT, which overrides FIBA’s allowance of up to 10%.⁴⁶

⁴⁶ Charles Russell Speechlys, n.d.

6 Conclusions

Considering all the points discussed in this brief article, a basketball player has multiple potential courses of action if their club fails to fulfill its (financial) obligations. However, it should be emphasized that arbitration is generally a highly effective solution in disputes between players and clubs. This pathway helps protect the legal rights of the parties, prevents unnecessary costs, and should ensure that the player is not held responsible for unilaterally terminating the contract too hastily, while simultaneously safeguarding the club's interests. The uniqueness of BAT arbitration can be measured in several ways. Undoubtedly, one key aspect is the consistent 'case law' established by BAT, which effectively creates *de facto* authority over the standards of basketball contracts. Before claiming that BAT arbitrators create a coherent body of law, it is important to consider the distinct features of the BAT decision-making process. Given the internal constraints related to international (transnational) public policy, it is likely safer to state that under the *ex aequo et bono* principle, BAT arbitrators do not create law *per se* but rather clarify and apply general legal principles.

As the metaverse and virtual reality technologies continue to evolve, we may also witness the rise of new sports experiences supported by cryptocurrencies. Fans could participate in virtual matches backed by blockchain platforms and currencies, purchase digital products, and even engage in virtual sporting competitions. Cryptocurrencies have tremendous and largely untapped potential to revolutionize the sports industry. By offering secure, transparent, and decentralized platforms for financial transactions, data management, and fan engagement, cryptocurrencies provide athletes, teams, leagues, and fans with previously unimaginable opportunities. In particular, the growing trend of basketball players requesting payments in cryptocurrency signals a significant shift in professional sports. While it brings both opportunities and challenges, it demonstrates how leagues continue to innovate in player compensation. As more players explore this option and teams develop better systems to manage it, cryptocurrency may become a standard feature of basketball contracts. This evolution in player payments reflects broader changes in how we perceive money and value in the digital age. Whether this trend becomes the new normal or remains an option for tech-savvy players, basketball is already leaving a mark on the financial world.

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TERMINATION OF PLAYER CONTRACTS WITH JUST CAUSE IN THE LIGHT OF CAS AND FIFA JURISPRUDENCE

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Legal disputes concerning employment relationships have significantly increased in parallel with the evolution and commercialization of sports. Player contracts establish a complex structure of reciprocal rights and obligations, the violation of which may lead to severe legal and sporting outcomes, including compensation and disciplinary sanctions. The authority to determine the scope of these rights and obligations, as well as the consequences of contractual breaches, primarily derives from the FIFA Regulations on the Status and Transfer of Players and is subsequently shaped through the jurisprudence of the Court of Arbitration for Sport and the FIFA Dispute Resolution Chamber. International disputes are adjudicated before specialized sport-related adjudicatory bodies, whereas domestic disputes may fall under the jurisdiction of national bodies or courts. This article analyses the grounds and consequences of termination with just cause by examining the relevant regulatory provisions and case law, with the aim of contributing to academic literature and providing guidance for legal practice in the development of a consistent framework.

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1 Introduction

In recent years, the regulatory and jurisprudential framework governing employment relationships between clubs and players has been confronted with an increasing number of complex legal disputes. A significant proportion of these disputes arise from player contracts, which constitute the legal foundation of the relationship between clubs and players. Such contracts define a detailed set of reciprocal rights and obligations, the violation of which may give rise to serious legal and sporting consequences, including claims for compensation and the imposition of disciplinary measures.

The determination of the scope, interpretation and legal effects of these contractual rights and obligations is primarily governed by the FIFA Regulations on the Status and Transfer of Players (RSTP). However, the practical application of these regulations is largely shaped through jurisprudence. In this respect, the case law of the Court of Arbitration for Sport (CAS) and the FIFA Dispute Resolution Chamber (DRC) play a decisive role in clarifying the conditions under which contractual breaches may justify termination and in defining the legal consequences flowing from such termination.

Disputes arising from international player contracts are generally resolved before CAS, which functions as an independent and specialised arbitral tribunal for sport-related disputes, or before the FIFA DRC, which exercises jurisdiction over employment-related matters within the FIFA regulatory framework. At the domestic level, disputes may be adjudicated by authorised national dispute resolution bodies, such as the Dispute Resolution Chamber of the Turkish Football Federation, or, where no such authorisation exists, by national courts. This dual structure contributes to a jurisprudence-driven system in which assessing contractual termination is developed predominantly through case-by-case analysis.

This study is structured into two main parts. The first part examines the regulatory framework and the jurisprudential criteria governing the termination of player contracts with just cause, focusing on the legal concept of just cause and the principal circumstances under which termination may be initiated either by the club or by the player. The second part addresses the legal consequences of termination with just cause, including compensation under the FIFA regulatory system, the allocation of

liability depending on post-termination circumstances, the imposition of sporting sanctions, and the player's transition into free status. All analyses are conducted in light of relevant CAS and FIFA jurisprudence, and the study concludes with observations aimed at promoting a more consistent approach to termination with just cause within the existing regulatory framework.

2 Regulatory and Jurisprudential Grounds for Termination with Just Cause

2.1 Fundamental Principles Governing Termination with Just Cause

The termination of a player's contract with just cause must be assessed within the broader regulatory objective of contractual stability, which constitutes a central element of the FIFA transfer system. Rather than recognising termination as a general contractual entitlement, the regulatory structure of the RSTP frames it as an exceptional mechanism, applicable only under specific and serious circumstances. This approach reflects the underlying expectation that validly concluded contracts should, as a rule, be respected throughout their agreed duration.

Within this context, Article 13 RSTP reinforces the binding nature of employment contracts by limiting their termination to expiry or mutual consent, thereby embedding the principle of *pacta sunt servanda* into the regulatory framework governing professional football.¹

Termination with just cause is therefore considered an exceptional remedy, available only where the breach is sufficiently serious to render the continuation of the contractual relationship unreasonable. Article 14 RSTP confirms that a party terminating with just cause is not subject to compensation or sporting sanctions. Jurisprudence requires that termination operate as a measure of *ultima ratio*, and in principle the defaulting party should be given notice and an opportunity to remedy

¹ FIFA DRC, Decision of 14 August 2025, Pereira Garcia Guedes, confirming the enforceability of a liquidated damages clause pursuant to the principle of *pacta sunt servanda*. Retrieved from: https://digitalhub.fifa.com/m/8d709dd90bc25ec/original/Pereira-Garcia-Guedes_14082025.pdf (accessed: December 15, 2025); CAS 2023/A/9606 *Ismaily SC v. Carmelo Algarraz Añez & Always Ready SC*, para. 170, reiterating that the purpose of Article 17 of the FIFA RSTP is to reinforce contractual stability as a deterrent to unilateral termination (see also CAS 2018/A/6017; CAS 2014/A/3735; CAS 2014/A/3573; CAS 2008/A/1519-1520). Retrieved from: <https://jurisprudence.fifa.com/issue-details/141431> (accessed: December 15, 2025).

the breach unless the circumstances are of exceptional gravity.² This section will examine the grounds for just cause termination from the perspectives of both club and player, followed by an analysis of the compensatory consequences under CAS and FIFA case law.

2.2 Grounds for Just Cause Termination Initiated by the Club

A club, as a party to the player's contract, may terminate the agreement where the player commits a breach; however, termination without adverse consequences is only possible if based on just cause. Although the RSTP does not expressly enumerate the grounds for just cause termination by clubs, other than limited reference to improper conduct, these grounds are identified through the Commentary on the RSTP, as well as CAS and FIFA jurisprudence. The most frequently encountered grounds include player misconduct, inadequate performance, long-term injury or medical inability, insufficient participation in official matches, and situations where the player abandons the club.

2.2.1 Abusive Conduct by the Player

Abusive conduct by the player constitutes a recognised ground for termination with just cause within the regulatory framework governing football contracts. Article 14(2) of the RSTP provides that abusive behaviour aimed at compelling the other party to terminate or amend the contractual terms may entitle the affected party to lawfully end the agreement. However, the provision does not define the specific forms of conduct that fall within this concept, leaving its scope to be developed through the Commentary on the RSTP and the jurisprudence of CAS and FIFA. Decisions frequently address conduct such as the use of prohibited substances, drug or alcohol abuse, breaches of club disciplinary rules, violations of internal regulations, or behaviour that disrupts the functioning of the team environment. Such actions may undermine the trust essential for the continuation of the employment relationship and may negatively affect the club's sporting and organisational interests.³

² Lambrecht, 2011, p. 98.

³ FIFA DRC, Decision of 2 March 2023, retrieved from: https://digitalhub.fifa.com/m/67a8e1a545035705/original/022382_02032023.pdf; FIFA DRC, Decision of 21 July 2022. Retrieved from: https://digitalhub.fifa.com/m/50f360b292aa5c63/original/Miletic_14072022.pdf (accessed: December 18, 2025); CAS, Arbitration CAS 2014/A/3864 *Astra v. Laionel da Silva Ramalho and FIFA*,

Assessing whether improper conduct constitutes just cause is inherently case specific and guided by core principles recognised across CAS and FIFA practice. First, proportionality plays a central role; termination must remain a measure of ultima ratio, invoked only when no lesser sanction, such as a warning, suspension or internal disciplinary penalty, would reasonably remedy the breach. Second, evidentiary sufficiency is critical, as the party alleging misconduct bears the burden of proof, and unsupported allegations will not justify termination. Third, panels examine whether the conduct rendered continued cooperation unreasonable, particularly where the behaviour results in reputational harm to the club, disrupts team cohesion or constitutes a serious breach of professional obligations. CAS jurisprudence underlines that the employment relationship in professional football is founded upon mutual trust and responsibility and that when conduct fundamentally damages this bond, termination with just cause may be upheld.

2.2.2 Absence and Abandonment of the Player

A player's abandonment of the club constitutes one of the most significant grounds for termination with just cause initiated by the club. A player's decision to leave the club without authorisation and without a valid reason is generally regarded as a serious breach of contractual obligations.⁴ While the FIFA Regulations do not expressly regulate the procedural steps to be followed in cases of abandonment, these requirements have been developed through CAS and FIFA jurisprudence. In line with the general principles governing termination, the club is expected to invite the player to return to training or match activities and to grant an appropriate period for compliance before proceeding with termination for just cause.⁵

FIFA jurisprudence has recognised that long-lasting and unjustified absences may entitle a club to terminate the employment contract, provided that the club can demonstrate that the player deliberately ceased rendering his sporting services.⁶ At the same time, CAS case law shows that assessing abandonment is highly fact

Award of 31 July 2015. Retrieved from <https://jurisprudence.tas-acas.org/Shared%20Documents/3864.pdf> (accessed: December 18, 2025).

⁴ General principle derived from FIFA DRC and CAS jurisprudence on abandonment and unjustified absence.

⁵ FIFA DRC, Decision of 3 July 2025, Monimon De Louis Florian Yonsian, para. 40, retrieved from: https://digitalhub.fifa.com/m/791a1908dedb5e7f/original/Florian-Yonsian_03072025.pdf (accessed: December 18, 2025).

⁶ FIFA DRC, Decision of 3 July 2025, Monimon De Louis Florian Yonsian, para. 40.

specific. Panels carefully examine whether the absence was in fact unauthorised, whether the player informed the club, and whether the club implicitly or explicitly tolerated the absence. Where a player is able to establish that the absence occurred with the club's consent or was based on a valid and compelling reason, termination by the club has been considered unjustified.⁷ Accordingly, the mere fact of physical absence does not automatically amount to abandonment.

Another decisive element concerns the obligation to issue a prior notice. CAS and FIFA bodies have repeatedly held that termination without first warning the player and granting a reasonable opportunity to return will generally be considered disproportionate.⁸ The absence of such notice often leads to the conclusion that termination was premature. In practice, clubs frequently impose disciplinary sanctions on players who leave without authorisation. However, jurisprudence has also addressed situations in which the club both imposed a disciplinary sanction and subsequently terminated the contract based on the same conduct. In such cases, the principle of *non bis in idem* has been applied, meaning that a player cannot be sanctioned twice for the same behaviour.⁹ Where termination follows a disciplinary sanction for the same act of abandonment, CAS and FIFA have tended to qualify the termination as unjustified.¹⁰

2.2.3 Sporting Performance of the Player

The sporting performance of the player is one of the grounds most frequently invoked by clubs in practice as justification for terminating a football contract. Individual performance is undeniably a key factor in a team's overall success, and player contracts often include clauses addressing performance-related expectations and obligations. Nevertheless, FIFA jurisprudence has consistently held that poor sporting performance, taken in isolation, does not constitute just cause for termination.¹¹ The FIFA has repeatedly emphasised that performance is inherently

⁷ CAS 2023/A/9696, *Dalian Professional Football Club Co. v. Sam Larsson*, Award of 22 February 2022, para. 101, retrieved from: <https://jurisprudence.fifa.com/issue-details/138802> (accessed: December 18, 2025).

⁸ Established CAS and FIFA practice regarding the requirement of prior notice and opportunity to return before termination for abandonment.

⁹ Büyükhatipoğlu, 2025.

¹⁰ Principle of *non bis in idem* as applied in FIFA DRC and CAS jurisprudence in cases involving both disciplinary sanctions and termination based on the same conduct.

¹¹ FIFA Dispute Resolution Chamber (2025). Decision of 19 March 2025, Daniel Cudjoe Mensah Gozar. Retrieved from: https://digitalhub.fifa.com/m/7c541692d0165a8a/original/Mensah-Gozar_19032025.pdf (accessed: December 18, 2025).

relative and subject to numerous external variables, thereby lacking the certainty required to justify early termination of an employment contract.

CAS case law largely aligns with this approach, recognising that contractual clauses purporting to allow termination based solely on insufficient performance are generally invalid or unenforceable, particularly where they lack objective criteria.¹² Performance is influenced by a wide range of factors beyond the player's direct control, including tactical decisions of the coach, team composition, competition level, and the allocation of playing time. As a result, CAS and FIFA decisions have sought to prevent clubs from disguising unilateral terminations as performance-based just cause, thereby safeguarding contractual stability.

However, the categorical exclusion of using performance-related considerations to assess just cause is not without controversy. A purely abstract rejection of performance clauses fails to account for situations in which a player's consistently poor performance is directly attributable to his own negligent conduct. Performance should not be assessed solely by reference to match selection or comparative statistics with other players, but also by examining whether the player has fulfilled his professional obligations to maintain adequate physical condition, mental readiness, and training discipline. Where a sustained decline in performance can be objectively linked to the player's failure to meet these obligations, the contractual imbalance cannot be attributed exclusively to sporting discretion.

Accordingly, assessing performance as a ground for termination must remain case specific. While poor performance alone will rarely amount to just cause, termination may be justified where the player's own culpable conduct demonstrably causes a serious and lasting failure to perform, thereby rendering the continuation of the contractual relationship unreasonable.

2.2.4 Injury and Permanent Incapacity

Players are inherently exposed to the risk of injury while performing their sporting activities. The legal consequences of an injury may vary depending on whether it occurs prior to or during the contractual relationship. Article 18(4) of the RSTP

¹² *CAS 2022/A/8761 Ratchaburi FC v. Sebastien Wutrich*, para. 82. Retrieved from: <https://jurisprudence.fifa.com/issue-details/136359> (accessed: December 18, 2025).

provides that the validity of an employment contract may not be made subject to the outcome of a medical examination. This provision implies that pre-existing injuries are, in principle, assumed by the new club upon the conclusion of the contract and cannot, as such, justify termination.¹³

FIFA jurisprudence has consistently rejected contractual clauses granting clubs the right to terminate a player's contract solely on the basis of an injury sustained during the employment relationship. In a recent decision, the Chamber held that a contractual provision allowing termination in the event of injury was incompatible with the principle of contractual stability and unsupported by long-standing FIFA jurisprudence. Similarly, CAS has emphasised that absences from training or matches caused by injury are, in principle, justified and cannot serve as a lawful basis for termination. Where a club terminates a contract on the grounds of injury-related absence, such termination has been qualified as a breach of contract, particularly where the club failed to act in good faith towards the player after the injury occurred.¹⁴

Considering this jurisprudence, injuries sustained either prior to the contract or during training or official matches generally do not constitute just cause for termination. Moreover, CAS and FIFA decisions indicate that clubs remain obliged to cover medical treatment costs and may not reduce or suspend the player's remuneration solely due to injury. However, injury may have an impact on compensation issues in exceptional circumstances. In rare cases where a player is permanently unable to perform any professional football activity, FIFA bodies have accepted that the club's obligation to continue paying remuneration may cease.

Nevertheless, injury does not invariably operate to the detriment of the club. A player is required to cooperate with reasonable medical treatment proposed by the club and to act in accordance with his professional duties. Where a player refuses treatment without justification, aggravates the injury through negligent conduct, or sustains an injury outside training or matches due to his own fault, termination with just cause may be justified following a case-specific assessment.

¹³ FIFA Dispute Resolution Chamber (2025). Decision of 29 May 2025, Aias Aosman. Retrieved from: https://digitalhub.fifa.com/m/363ee2d4e1c8377a/original/Aosman_29052025.pdf (accessed: December 18, 2025).

¹⁴ CAS 2021/A/8334 *Puskas Football Club Kft v Golgol Tedros Mebrahtu*. Retrieved from: <https://jurisprudence.fifa.com/issue-details/59845> (accessed: December 18, 2025).

2.3 Grounds for Just Cause Termination Initiated by the Player

A breach of contractual obligations by the club may entitle the player to terminate the employment contract with just cause. The grounds for just cause termination are not exhaustively listed and must be assessed in light of the specific circumstances of each case. CAS and FIFA jurisprudence demonstrate that the most frequently invoked ground concerns the club's failure to pay the contractually agreed remuneration in a timely and proper manner. In addition to outstanding salary, sporting just cause, violations of the player's right to work, and other compelling reasons have been recognised as potential grounds for termination with just cause. This section examines outstanding salary and improper payment, sporting just cause, violations of the player's right to work, and other grounds for termination from the player's perspective, with particular reference to CAS and FIFA jurisprudence. Given its practical importance, special emphasis is placed on the failure to pay remuneration in accordance with the contract.

2.3.1 Outstanding Salary and Improper Payment

The obligation to pay remuneration in accordance with the employment contract lies at the very core of the contractual relationship between a club and a player. Persistent or substantial non-payment of salary directly undermines the economic balance of the contract and may render the continuation of the employment relationship untenable for the player. Within the FIFA regulatory framework, such conduct has consistently been recognised as one of the most common and legally significant grounds for termination of a player's contract with just cause.

In response to the recurrent nature of salary-related disputes, Article 14bis of the RSTP establishes a structured mechanism for assessing when non-payment reaches a threshold capable of justifying unilateral termination by the player, while at the same time safeguarding contractual stability through procedural requirements.¹⁵

Article 14bis RSTP links the existence of just cause to the seriousness and persistence of the club's failure to fulfil its financial obligations. Rather than treating any isolated delay as sufficient, the provision introduces a quantitative threshold

¹⁵ FIFA, Regulations on the Status and Transfer of Players (RSTP), Article 14bis.

designed to distinguish minor payment irregularities from breaches capable of justifying termination. In parallel, the requirement for the player to formally put the club in default and to grant a reasonable period for compliance serves to preserve contractual stability by offering the club an opportunity to remedy the breach before termination becomes effective.

Through this structure, Article 14bis seeks to balance the protection of players against sustained non-payment with the need to prevent premature or disproportionate termination of employment contracts.¹⁶

While Article 14bis establishes a structured procedural framework, CAS and FIFA practice demonstrate that its application is not purely formalistic. In cases where a club's conduct reveals a pattern of persistent and substantial non-payment, adjudicatory bodies have been prepared to prioritise the material gravity of the breach over strict adherence to procedural requirements. In such circumstances, the decisive factor lies in whether the club's behaviour has fundamentally undermined the economic basis of the employment relationship.¹⁷

This jurisprudential approach reflects an effort to reconcile the protective purpose of Article 14bis with the broader principle of contractual stability, ensuring that the provision is not applied mechanically, but rather in a manner responsive to the factual realities of each dispute.

CAS panels have further clarified that, for the purpose of calculating overdue amounts, only the contractually agreed due dates are relevant. Advance payments or lump-sum instalments must therefore be considered in full once they fall due, irrespective of the payment structure adopted by the parties.¹⁸ More recent CAS decisions have also addressed disputes where clubs contested whether the outstanding amounts reached the equivalent of two monthly salaries, reaffirming

¹⁶ FIFA Dispute Resolution Chamber, Decision of 15 May 2025, employment-related dispute concerning the player A, para. 35, retrieved from: https://digitalhub.fifa.com/m/1aa03de393a354/original/052511_150525.pdf (accessed: December 18, 2025).

¹⁷ FIFA Dispute Resolution Chamber, Decision of 12 December 2024, Cheick Omar Ouedraogo, paras. 7–12. Retrieved from: https://digitalhub.fifa.com/m/70cd9fc67acb8697/original/Ouedraogo_12122024.pdf (accessed: December 18, 2025); *CAS 2022/A/9000 Giresunspor Kulübü Derneği v. Joseph Champness*, para. 64, retrieved from: <https://jurisprudence.fifa.com/issue-details/147139> (accessed: December 18, 2025).

¹⁸ *CAS 2022/A/9000 Giresunspor Kulübü Derneği v. Joseph Champness*, p. 15.

that Articles 14 and 14bis RSTP must be applied in light of the contractual framework and the actual payment obligations assumed by the club.¹⁹

Considering the jurisprudence, the concept of “monthly salary” within the meaning of Article 14bis RSTP is not limited solely to the basic salary but also encompasses other remuneration components agreed in the contract, such as signing bonuses, guaranteed payments and “performance related bonuses”. Furthermore, CAS and FIFA decisions demonstrate that once the player has formally put the club in default and alleged non-payment, the burden of proof shifts to the club, which must demonstrate that the relevant amounts were duly paid. Concerning the formal requirements of termination, the jurisprudence reveals a flexible approach where the notice of default does not expressly refer to Article 14bis RSTP, provided that the club was clearly informed of the outstanding amounts and granted a reasonable deadline to remedy the breach. In such cases, the player’s good faith and the specific circumstances of the dispute prevail over a strict and formalistic application of the provision.

2.3.2 Sporting Just Cause

Sporting just cause constitutes a specific and narrowly framed exception within the FIFA regulatory system, designed to address situations in which an established player is effectively deprived of meaningful sporting participation over a sustained period. Unlike financial just cause, which is linked to the club’s failure to fulfil its economic obligations, sporting just cause focuses on the sporting dimension of the employment relationship and the player’s legitimate interest in pursuing competitive activity at an appropriate level.

Article 15 of the RSTP reflects this approach by introducing objective criteria intended to distinguish ordinary sporting discretion from situations in which the absence of participation may justify termination. Simultaneously, the provision emphasises that sporting just cause must be assessed on a case-by-case basis, considering the player’s status, the reasons underlying the lack of participation and the broader context of the contractual relationship.²⁰

¹⁹ CAS 2023/A/9696 *Dalian Professional Football Club Co. v. Sam Larsson*, paras. 106–107. Retrieved from: <https://jurisprudence.fifa.com/issue-details/138802> (accessed: December 18, 2025).

²⁰ FIFA, Regulations on the Status and Transfer of Players (RSTP), Article 15.

For the purposes of Article 15 RSTP, sporting just cause is reserved for players who qualify as established professionals and whose participation in official matches remains marginal when assessed over the course of a season. The regulation introduces a quantitative benchmark based on the proportion of official matches in which the player has effectively participated, while simultaneously imposing a strict temporal requirement for the exercise of the termination right following the end of the relevant sporting season.

CAS and FIFA jurisprudence underline that these criteria are not intended to operate automatically. The assessment must consider the reasons for the lack of participation, including whether it results from injury, tactical decisions, or other objectively justified circumstances, as well as the player's overall role within the squad. Accordingly, sporting just causes arise only where the absence of participation cannot be explained by legitimate sporting considerations and instead reflects a sustained deprivation of competitive opportunity.²¹

The applicability of sporting just cause further depends on whether the player qualifies as an established professional within the meaning of the FIFA regulatory framework. Although the Regulations do not provide an autonomous definition of this concept, CAS and FIFA practice have consistently linked its assessment to the player's age and stage of professional development, drawing guidance from the criteria used in the context of training compensation.

In this regard, jurisprudence indicates that the status of an established player cannot be determined in a purely abstract manner. While age constitutes a relevant reference point, it does not operate as an automatic threshold. Instead, the assessment must consider the player's individual sporting trajectory, prior competitive experience and integration within the professional environment. As a result, the determination of established player status remains inherently case-specific and must be evaluated in light of the concrete circumstances of each dispute.

²¹ FIFA, Commentary on the Regulations on the Status and Transfer of Players, referring to RSTP Annex 4 and related jurisprudence.

CAS and FIFA jurisprudence confirm that sporting just cause is a right exclusively granted to players and may not be relied upon by clubs.²² Moreover, the mere lack of sporting participation does not automatically justify termination, as the assessment must consider the reasons for such lack of participation. Where the reduced participation results from injury or other justified circumstances, sporting just cause will not arise.²³ Finally, decisions indicate that a player who validly terminates the contract on sporting grounds may be entitled to compensation, and that prior notice to the club may be considered when determining the amount of compensation awarded.²⁴

2.3.3 Deregistration or Non-registration of a Player

This section examines termination of a player's contract with just cause on the ground of violation of the player's right to work. Within the framework of an employment contract, the club's obligations are not limited solely to the proper payment of remuneration. The club is also required to enable the player to effectively pursue his professional activity. Disputes concerning alleged violations of the player's right to work are typically subject to a full review before the CAS in appeal proceedings, where the panel reassesses both the facts and the law of the case without being limited by the reasoning of the first-instance decision.²⁵ Measures such as deregistration from the A team list, exclusion from the squad, registration with a reserve or B team, or failure to issue the player's licence for the relevant season may constitute a violation of the player's right to work and may entitle the player to terminate the contract with just cause.²⁶

The deregistration of a player, or the failure to issue the player's licence for the relevant season, may have particularly severe consequences within the context of professional football employment. By preventing the player from being eligible to participate in official competitions, such measures may effectively preclude the

²² FIFA Dispute Resolution Chamber, Decision of 2 March 2023, employment-related dispute concerning the player A, para. 53. Retrieved from: https://digitalhub.fifa.com/m/70ed05a7a5311161/original/032377_02032023.pdf (accessed: 18 December 2025).

²³ CAS 2020/A/7370 *Antalyaspor A.S. v. Aatif Chabechoube*, paras. 7, 78–79.

²⁴ CAS and FIFA jurisprudence recognising the relevance of prior notice in the assessment of compensation following termination for sporting just cause.

²⁵ Mavromati, 2023, pp. 23–24.

²⁶ CAS and FIFA jurisprudence on the club's obligation to enable the player to pursue his professional activity.

player from the sporting activity that constitutes the very object of the employment contract.

CAS and FIFA jurisprudence indicate that deregistration may, in itself, amount to serious interference with the player's right to work, particularly where the club is unable to demonstrate that the situation is temporary, reversible or justified by objective sporting or regulatory reasons. In such circumstances, deregistration has been treated as a decisive factor capable of justifying termination of the contract with just cause.²⁷

FIFA DRC decisions consistently hold that deregistration of a player is, in principle, sufficient to justify termination with just cause, as it de facto prevents the player from being eligible to play for the club.²⁸ This conclusion is further reinforced where the club fails to demonstrate that the deregistration can be remedied or where it expressly confirms that the player will not be fielded for the remainder of the season. In such circumstances, the club's conduct is interpreted as a clear lack of interest in retaining the player's services.²⁹

CAS jurisprudence adopts a similar approach, emphasising that deregistration combined with the club's silence in response to the player's legitimate enquiries aggravates the situation and may independently justify premature termination.³⁰ In practice, violations of the right to work may arise through various forms, including relegation to a reserve team without sporting justification, exclusion from collective training sessions, forced individual training, deregistration while the player remains contractually bound, or refusal to issue the player's licence.

When assessing such cases, CAS and FIFA examine whether the club can rely on valid sporting or disciplinary reasons, whether the player notified the club of the violation, and whether adequate professional conditions were maintained despite the exclusion. In this context, established jurisprudence recognises that a player's

²⁷ FIFA decisions recognising the distinction between sporting discretion and unlawful exclusion.

²⁸ FIFA Dispute Resolution Chamber, Decision of 13 May 2024, Keith Nah, para. 41. Retrieved from: https://digitalhub.fifa.com/m/1a619dd9694ea71b/original/Nah_13052024.pdf (accessed: December 18, 2025).

²⁹ FIFA Dispute Resolution Chamber, Decision of 13 May 2024, Keith Nah, para. 42.

³⁰ CAS 2018/A/5771 *Al Wakra FC v. Gastón Maximiliano Sangoy*; CAS 2018/A/5772 *Gastón Maximiliano Sangoy v. Al Wakra FC*, para. 153. Retrieved from: <https://jurisprudence.fifa.com/issue-details/40281> (accessed: December 18, 2025).

fundamental rights under an employment contract extend beyond the timely payment of remuneration to include access to training and a genuine opportunity to compete in official matches, and that measures such as deregistration or exclusion from team activities, even if limited in time, may therefore amount to an absolute bar to competition and constitute a breach of contract capable of justifying termination with just cause.³¹ Unlike other grounds for termination, jurisprudence frequently indicates that prior notice is not a strict requirement in cases involving serious violations of the right to work. Such conduct is often qualified as bad faith behaviour within the meaning of Article 14(2) RSTP.³²

2.3.4 Other Compelling Reasons

In addition to the grounds examined above, CAS and FIFA jurisprudence recognise other compelling reasons which may entitle a player to terminate the employment contract with just cause. These grounds are not exhaustively listed and must be assessed in light of the specific circumstances of each case. In practice, two situations are most frequently encountered: the club's failure to safeguard the player's health and the failure to secure the necessary residence, visa or work permits required for the player to lawfully perform his professional activity.

Within the framework of an employment contract, the club is under an obligation to exercise due care concerning the player's health and to provide appropriate medical treatment where required. CAS jurisprudence has confirmed that a club's failure to ensure adequate medical care, despite being aware of the player's injury, may amount to a breach of contractual obligations capable of justifying termination with just cause.³³ Such conduct undermines the mutual trust underlying the employment relationship and places the player's professional career at risk. However, CAS has also adopted a restrictive approach where the alleged failure to provide treatment does not reach a sufficient level of seriousness. In this respect, it has been held that not every deficiency in medical assistance constitutes a material breach, particularly where the infringement cannot be characterised as severe or systematic.³⁴

³¹ de Weger, 2016, p. 260.

³² FIFA, Regulations on the Status and Transfer of Players (RSTP), Article 14(2), and related jurisprudence.

³³ CAS jurisprudence recognising failure to provide medical treatment as a breach of contractual obligations where the club is aware of the player's injury.

³⁴ FIFA, Commentary on the Regulations on the Status and Transfer of Players, p. 135.

Another frequently invoked ground concerns the club's obligation to secure the necessary administrative authorisations enabling the players to work legally in the relevant country. The provision of residence permits, visas and work permits falls within the club's sphere of responsibility, especially where the player is recruited from abroad. FIFA DRC decisions demonstrate that the failure to obtain or maintain such permits may prevent the player from performing his contractual duties and therefore constitutes just cause for termination. In this context, the Chamber has clarified that the mere issuance of a visa does not constitute conclusive evidence of contractual execution, as visas primarily represent administrative formalities and do not automatically reflect compliance with contractual obligations.³⁵

Considering the foregoing, CAS and FIFA jurisprudence adopt a flexible and case-specific approach when assessing other compelling reasons for termination. The decisive factor remains whether the club's conduct results in a serious and unjustified impediment to the player's ability to pursue his professional activity, thereby rendering the continuation of the contractual relationship unreasonable.

3 Legal Consequences of the Termination with Just Cause

The termination of a player's employment contract with just cause does not merely bring the contractual relationship to an end but also triggers a series of legal consequences under the FIFA regulatory framework.³⁶ These consequences extend beyond the immediate dissolution of the contract and may encompass financial liability, sporting sanctions, and the subsequent professional status of the player.

The nature and scope of these consequences depend on the grounds upon which termination is based, the conduct of the party's following termination, and the specific regulatory provisions applicable to the dispute. As a result, assessing the legal effects of termination with just cause requires a contextual analysis that considers both the regulatory objectives of contractual stability and the factual circumstances of the individual case.

³⁵ FIFA Dispute Resolution Chamber, Decision of 24 July 2025, Joao Pedro Oliveira, para. 44. Retrieved from: https://digitalhub.fifa.com/m/9323d0b67e8620e/original/Pedro-Oliveira_24072025.pdf (accessed: December 18, 2025).

³⁶ FIFA, Regulations on the Status and Transfer of Players (RSTP), Article 17.

Pursuant to Article 17 of the RSTP, the breach of a player contract may give rise to financial consequences in the form of compensation and, in certain circumstances, sporting sanctions. The provision sets out the criteria to be taken into account when calculating compensation for breach of contract and expressly provides that sporting sanctions may be imposed in addition to financial liability.³⁷ In assessing both compensation and sporting sanctions, it is of particular importance to determine whether the player is within the protected period, as this may directly affect the scope and severity of the consequences arising from the termination.

Beyond financial and disciplinary consequences, termination with just cause also results in the player becoming free from his contractual obligations towards the former club. As a result, the player is entitled to register with a new club without the consent of the former club, subject to the applicable registration periods. Accordingly, the legal consequences of termination with just cause extend beyond compensation and sanctions and directly affect the player's contractual status within the football transfer system.

This section therefore examines the legal consequences of termination with just cause, namely compensation, sporting sanctions and the player's free status, in light of CAS and FIFA jurisprudence.

3.1 Compensation Under FIFA Regulations

Within the framework outlined above, Article 17 of the RSTP governs the financial consequences arising from the termination of an employment contract with just cause. FIFA and CAS jurisprudence consistently apply the objective criteria set out in the regulation in order to ensure a proportional and non-punitive assessment of compensation, while preserving the principle of contractual stability within the football transfer system.

In this context, compensation is calculated by reference to the residual value of the contract, the relevance of any subsequent employment concluded by the player, the specificity of sport and the circumstances of the breach, including whether it occurred within the protected period. Where the employment contract contains a

³⁷ FIFA, Regulations on the Status and Transfer of Players (RSTP), Article 17(1)–(4).

clause governing the financial consequences of termination, such provision may serve as a relevant reference point under Article 17, provided that it reflects the true intention of the parties and does not lead to a disproportionate or punitive outcome, as consistently recognised in CAS and FIFA jurisprudence.

3.2.1 Compensation Payable by the Club

3.2.1.1 Where the Player Signs with a New Club

This subsection examines the calculation of compensation payable by the club in cases where the player signs an employment contract with a new club following termination with just cause. Article 17 of the RSTP establishes that compensation shall, as a general rule, correspond to the residual value of the prematurely terminated contract, unless the player enters a new contractual relationship after termination.³⁸ In such cases, the income earned under the new contract must be considered when calculating compensation.

Accordingly, where the player signs with a new club, the compensation payable by the former club is calculated by deducting the remuneration earned under the new contract from the residual value of the terminated contract. This method reflects the principle of mitigation of damages and is commonly referred to in CAS and FIFA jurisprudence as ‘mitigated compensation’.³⁹ The objective is to prevent unjust enrichment while ensuring that the player is compensated only for the actual loss suffered as a result of the contractual breach.

FIFA DRC decisions consistently confirm that, in the absence of overdue payables triggering additional compensation, the residual value of the contract constitutes the starting point for the calculation.⁴⁰ CAS jurisprudence follows the same approach, emphasising that the residual value must be determined on the basis of the amounts contractually due after termination, including fixed remuneration components such as guaranteed salaries and housing allowances. Variable or conditional benefits are

³⁸ FIFA, Regulations on the Status and Transfer of Players (RSTP), Article 17.

³⁹ CAS 2022/A/8859 *Kayserispor A.Ş. v. Harrison Manzala Tusungama*, para. 150. Retrieved from: <https://jurisprudence.fifa.com/issue-details/141894> (accessed December 18, 2025).

⁴⁰ FIFA Dispute Resolution Chamber, Decision of 18 July 2025, *Matheus Alisson Oliveira dos Santos*, paras. 34–36. Retrieved from: https://digitalhub.fifa.com/m/f7f1572d243a137/original/Oliveira-dos-Santos_18072025.pdf (accessed: December 18, 2025).

generally excluded unless their payment was unconditional and contractually guaranteed.

Where termination occurs due to non-payment of remuneration, Article 17 of the RSTP further provides for additional compensation equivalent to three months' salary, which may be increased up to six months' salary in particularly serious circumstances. However, even in such cases, the total compensation awarded may not exceed the residual value of the terminated contract.⁴¹ This approach was confirmed by the CAS and FIFA in several cases, where it was held that the residual value of the contract constitutes the starting point for the calculation of compensation, subject to mitigation through subsequent employment. In particular, the CAS emphasised that income earned under a new contract must be deducted in order to avoid unjust enrichment, while ensuring that the injured party is compensated only for the actual loss suffered.

3.2.1.2 Where the Player Does Not Sign with Any Club

Where the player does not sign an employment contract with a new club following termination with just cause, the method for calculating compensation differs from cases involving subsequent employment. In practice, such situations may arise where termination occurs outside a registration period, where the player continues his career in amateur football, or where the player ceases his professional activity altogether.

In the absence of new employment, FIFA jurisprudence consistently holds that the compensation payable corresponds to the full residual value of the terminated contract. In such circumstances, the remuneration contractually due to the player after the termination date becomes immediately payable and is fully considered for the purposes of calculating compensation. Accordingly, the termination date constitutes the relevant reference point, and all amounts scheduled to be paid thereafter are deemed to have fallen due as of that date.⁴²

⁴¹ CAS 2022/A/8859 *Kayserispor A.Ş. v. Harrison Manzala Tusungama*, para. 151.

⁴² FIFA Dispute Resolution Chamber, Decision of 23 July 2025, Isaac Donkor, paras. 37–38. Retrieved from: https://digitalhub.fifa.com/m/6ac354b0480d2885/original/Donkor_23072025.pdf (accessed: December 18, 2025).

FIFA DRC decisions confirm that, where no mitigating income exists, awarding the full residual value of the contract constitutes a reasonable and justified measure of compensation for breach of contract.⁴³ CAS jurisprudence further clarifies that, although players are subject to a general duty to mitigate their losses, the burden of proof rests with the club to demonstrate that the player deliberately failed to seek new employment or unreasonably refused suitable contractual offers.⁴⁴ Where the club is unable to discharge this burden, the player cannot be penalised for remaining without a new contract, and no reduction of compensation is justified on mitigation grounds.⁴⁵ This position has been consistently upheld in CAS jurisprudence, where panels have ruled that a club seeking a reduction of compensation on mitigation grounds must demonstrate that the player failed to make reasonable efforts to find new employment or rejected concrete and suitable offers. In this context, CAS has also acknowledged that the absence of subsequent employment may result from circumstances other than a lack of diligence on the part of the player, such as the continuation of the career at amateur level or the decision to end professional activity altogether. In the absence of proof establishing a failure to mitigate, the player's entitlement to the full residual value of the contract remains unaffected.

3.2.2 Compensation Payable by the Player

This section examines compensation payable by the player in cases where the employment contract is terminated due to the player's breach. Pursuant to Article 17 of the RSTP, the party found to be in breach of the contract may be ordered to pay compensation to the injured party. Accordingly, where a player terminates the contract without just cause, or where the club validly terminates the contract due to the player's breach, the player may be held liable for compensation. In addition, imposing sporting sanctions is possible; however, these consequences are addressed separately under the relevant heading.

In practice, cases in which players are ordered to pay compensation remain relatively rare. CAS and FIFA jurisprudence demonstrate that such liability arises primarily where the player has unilaterally terminated the contract without just cause,

⁴³ FIFA Dispute Resolution Chamber, Decision of 23 July 2025, Isaac Donkor, para. 38.

⁴⁴ FIFA, Commentary on the Regulations on the Status and Transfer of Players, 2023 edition, p. 184.

⁴⁵ *CAS 2023/A/10016 Future FC v. Taylor Dianisie*, paras. 90–91. Retrieved from: <https://jurisprudence.fifa.com/issue-details/144195> (accessed: December 18, 2025).

particularly during the protected period. In these circumstances, compensation is assessed in accordance with the criteria set out in Article 17 of the RSTP, including the remaining value of the contract, any new employment concluded by the player, the specificity of sport, and whether the breach occurred within the protected period.

CAS jurisprudence confirms that calculating compensation payable by the player does not automatically follow a “positive interest” or transfer-value-based approach. In *CAS 2017/A/4935 FC Shakhtar Donetsk v. Zinchenko*, the Panel emphasised that, in the absence of a liquidated damages clause, compensation must be determined strictly based on the objective criteria contained in Article 17. The Panel rejected attempts to link the player’s alleged market value or subsequent transfer fee to the calculation of compensation and held that training compensation and solidarity mechanisms already serve to reward the club’s investment. As a result, compensation payable by the player must remain proportionate, fact-specific, and aligned with the overarching principle of contractual stability.⁴⁶

3.3 Sporting Sanctions

Sporting sanctions may arise as a legal consequence of terminating an employment contract in breach of contractual obligations. Pursuant to Article 17 of the RSTP, the party found to have breached the contract may be subject not only to an obligation to pay compensation, but also to sporting sanctions, which constitute one of the most severe disciplinary measures within the FIFA regulatory framework.

For players, sporting sanctions take the form of a ban from participating in official matches for a specified period. Under the RSTP, a player who terminates a contract without just cause may be sanctioned with a ban of up to four months, which may be extended to six months in the presence of aggravating circumstances. A key condition for imposing such sanctions is that the breach must have occurred within the protected period. Where the breach is committed outside the protected period, sporting sanctions are generally not imposed, although disciplinary measures may still be applicable under other regulations. If notice of the decision imposing the

⁴⁶ *CAS 2017/A/4935 FC Shakhtar Donetsk v. Olexandr Vladimirovich Zinchenko*, FC UFA & FIFA, award of 19 December 2017, paras. 192–198. Retrieved from: <https://jurisprudence.fifa.com/issue-details/40492> (accessed: December 18, 2025).

sanction is given to the player between the last official match of a season and the first official match of the subsequent season, the ban shall commence from the first official match following the next registration period.

Concerning clubs, Article 17(4) of the RSTP provides that a club found to have terminated a contract without just cause may be sanctioned with a ban on registering new players, both nationally and internationally, for two entire and consecutive registration periods. During this period, the club is prohibited from registering any new players for the first team. Similar to sanctions imposed on players, the effective application of the sanction generally starts from the registration period following the decision, to ensure its practical enforceability.

CAS and FIFA jurisprudence demonstrates that sporting sanctions are applied restrictively and only in exceptional circumstances. In particular, decisions consistently emphasise the importance of assessing whether the breach occurred within the protected period and whether aggravating factors are present. In cases where a club has repeatedly breached employment contracts without just cause, FIFA bodies have not hesitated to impose registration bans in order to safeguard contractual stability within the football system.⁴⁷

3.4 Free Player Status Following Termination with Just Cause

One of the principal legal consequences of terminating an employment contract with just cause is the player's release from contractual obligations, resulting in the player acquiring free status. Whether the termination is affected by the player or by the club, the existence of just cause leads to dissolve the contractual bond and enables the player to negotiate freely with a new club.

As long as a valid employment contract exists, a player cannot be transferred to another club without the current club's consent. This restrictive framework was fundamentally reshaped by the landmark Bosman ruling, which introduced the principle of free movement of players within the European Union and significantly strengthened players' contractual autonomy, thereby permanently altering the

⁴⁷ FIFA Dispute Resolution Chamber, Decision of 3 July 2025, Danilo Moreno Asprilla, paras. 43–45. Retrieved from: https://digitalhub.fifa.com/m/4235f3e63e48b49d/original/Moreno-Asprilla_03072025.pdf (accessed: December 18, 2025).

regulatory landscape of professional football within the EU.⁴⁸ Following the termination of a contract for any reason, including termination with just cause, the player becomes free to conclude a new employment contract and to be registered by the new club.

Where a contract is terminated with just cause, no compensation or sporting sanctions shall be imposed on the terminating party. In practice, once the competent federation is notified of the termination and registered in the FIFA Transfer Matching System (TMS), the player may be registered by a new club without requiring the former club's approval.

A further issue that arises in connection with a player's free status concerns training compensation. Pursuant to Article 20 of the RSTP, training compensation is generally payable when a player is registered for the first time as a professional or when a professional is transferred before the end of the season of their twenty-third birthday. However, an important exception applies where the employment contract has been terminated by the club without just cause. According to established CAS and FIFA jurisprudence, such termination produces the same legal effects as a termination with just cause by the player. Consequently, where a player terminates the contract with just cause and subsequently signs with a new club, no training compensation shall be due, provided that the relevant conditions are met.

Nevertheless, it should be emphasised that the absence of an obligation to pay training compensation does not affect the liability for contractual compensation arising from a breach of contract. In other words, the exemption from training compensation in cases of termination with just cause does not prejudice any claim for damages under Article 17.

4 Conclusion and Recommendations

With the continued globalisation and commercialisation of football, employment contracts have become one of the most significant sources of legal disputes within international sports law. The relationship between clubs and players is governed primarily by the FIFA Regulations on the Status and Transfer of Players (RSTP) and

⁴⁸ Blackshaw, 2017, p. 4.

further shaped by the extensive jurisprudence of the FIFA Dispute Resolution Chamber (DRC) and the CAS. Within this framework, termination of an employment contract with just cause constitutes one of the most sensitive and consequential mechanisms affecting contractual stability.

This study has demonstrated that employment contracts are characterised by their specific and atypical nature, combining elements of employment law with the unique characteristics of sport. Contractual stability represents a cornerstone of the international football transfer system and unilateral termination is therefore treated as an exceptional remedy. FIFA regulations and CAS jurisprudence consistently emphasise that termination with just cause is permissible only where a serious breach of essential contractual obligations renders the continuation of the employment relationship unreasonable. In this context, the principle of *pacta sunt servanda* plays a central role, reinforcing the expectation that contracts must be respected and that early termination should remain a measure of *ultima ratio*.

The grounds for termination with just cause by clubs and players have been developed primarily through jurisprudence rather than detailed regulatory provisions. From the club's perspective, the most frequently encountered grounds include player misconduct, unjustified absence or desertion, and conduct amounting to a serious breach of contractual duties. CAS and FIFA decisions confirm that poor sporting performance, lack of playing time or injury suffered in the course of employment do not, as a rule, constitute just cause for termination. In particular, the subjective nature of sporting performance and the inherent risks associated with professional football preclude their automatic qualification as valid grounds for termination.

Conversely, players may rely on several recognised grounds for termination with just cause. The most prominent among these is the non-payment or improper payment of remuneration as codified in Article 14bis RSTP. Jurisprudence demonstrates that persistent and substantial salary arrears, coupled with prior notice granting the club an opportunity to remedy the breach, generally entitled the player to terminate the contract with just cause. Additionally, sporting just cause under Article 15, violations of the player's right to work, and other compelling reasons, including the failure to provide medical treatment or to secure the legal authorisations required for

employment, have been acknowledged by CAS and FIFA, subject to a case-by-case assessment.

A recurring theme throughout CAS and FIFA jurisprudence is the requirement that termination should follow a proportional and procedural approach. Prior notice, the opportunity to remedy the breach and assessing alternative measures short of termination play a decisive role in determining whether just cause exists. Simultaneously, jurisprudence recognises that in exceptional circumstances where the contractual relationship has irretrievably broken down, immediate termination may be justified without prior notice.

The legal consequences of termination with just cause are primarily governed by Article 17. Compensation constitutes the most significant consequence and is designed to redress the damage caused by the contractual breach while safeguarding contractual stability. Calculating compensation involves a multifactorial assessment including the residual value of the contract, mitigation of damages through new employment, the specificity of sport and whether the breach occurred within the protected period. CAS and FIFA jurisprudence consistently treat breaches committed during the protected period as aggravating factors, reflecting the regulatory objective of enhanced contractual protection during the early stages of the employment relationship.

Sporting sanctions, although provided for under Article 17 of the RSTP, are applied restrictively in practice. Both CAS and FIFA demonstrate a cautious approach, reserving such sanctions for cases involving serious breaches within the protected period and repeated contractual violations. This restrained application underscores the exceptional nature of sporting sanctions and their function as a deterrent rather than a routine consequence.

Finally, termination with just cause results in the player acquiring free status, enabling registration with a new club without the consent of the former club. Jurisprudence further clarifies that the obligation to pay training compensation does not arise in cases of termination with just cause attributable to the club. At the same time, such termination does not preclude the injured party from claiming compensation for breach of contract.

Although CAS and FIFA jurisprudence consistently underline that termination with just cause should remain a measure of *ultima ratio*, the present analysis indicates that an overly formalistic application of this principle may, in certain situations, conflict with the dynamic realities of professional football. In particular, the strict requirement to issue prior notice and allow an opportunity to remedy the breach does not always sufficiently consider the limited duration of registration periods and the time-sensitive nature of clubs' strategic decision-making processes. While the requirement of prior notice undoubtedly serves an important protective function, insisting on its application in every case risk overlooking situations in which the continuation of the contractual relationship can no longer reasonably be expected. In such circumstances, recognising the legitimacy of immediate termination without prior notice would allow for a more realistic and balanced approach, better aligned with both contractual stability and the practical functioning of the football transfer system.

In light of the foregoing analysis, this study concludes that the existing regulatory framework provides a coherent but jurisprudence driven system for assessing termination with just cause. However, the reliance on case law rather than detailed regulatory provisions creates a degree of legal uncertainty. It is therefore recommended that FIFA consider further clarifying the procedural and substantive requirements for termination with just cause within the RSTP, particularly concerning notice requirements and the differentiation between minor and serious breaches. Such clarification would enhance legal predictability while preserving the necessary flexibility to accommodate the unique dynamics of professional football.

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ARBITRATION IN SLOVENIAN SPORTS

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Due to its undeniable advantages, international sports arbitration has become a central mechanism for resolving sports disputes. In Slovenia, however, the legal framework remains limited and fragmented: national legislation regulates arbitration in general terms and sport as a sector, but does not integrate the two, whereas several Slovenian sports federations have recently created or reformed their arbitration mechanisms. The article studies sports arbitration as a multi-layered regime shaped by statutory minimum standards, the regulatory autonomy of sports organisations, and the influence of international federations. It outlines the statutory framework of sports arbitration, analyses the organisational and procedural features of emerging national mechanisms, and highlights practical shortcomings that currently limit the impact of out-of-court mechanisms in sports. It concludes by outlining some conditions under which national sports arbitration could evolve into a credible and effective alternative to ordinary courts while maintaining the legitimate autonomy of sport.

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1 Introduction

Sports organisations have a long tradition of resolving internal disputes autonomously, outside the ordinary court systems. Most of them are private, voluntary associations and are not governed by public authorities exercising statutory powers. As a result, the majority of disputes involving sports organisations are governed by contractual principles, meaning that different legal systems and principles may apply to different sports and athletes.¹ Several reasons explain the preference for a less formal approach in such circumstances. Most importantly, avoiding court often allows for a faster, more cost-effective resolution in matters that can be very time-sensitive and tied to a competition schedule or a relatively short duration of the athlete's career.² Furthermore, out-of-court dispute resolution entrusts decision-making to experts familiar with sports regulations, practices, and institutional relationships, thereby facilitating a more uniform application of sports rules and reducing the risk of unfair or arbitrary treatment of participants from different jurisdictions.³ In recent years, sports arbitration has emerged as the most widely used mechanism for resolving sports disputes, as it enables the issuance of legally binding decisions while ensuring compliance with specific sports norms and rules.⁴

Several international arbitration forums handle disputes with a sporting dimension, including specialised bodies such as the International Basketball Federation (FIBA),⁵ the International Association Football Federation (FIFA),⁶ and the WIPO Arbitration and Mediation Centre.⁷ However, the Court of Arbitration for Sport (CAS), established in Lausanne (Switzerland) in 1984, is now widely recognised as the most important, established and active forum for resolving sports-related disputes. It functions as a *de facto* supreme court for sport, as it is recognised by all international sports federations and organisations within the Olympic movement, and by several non-Olympic federations, as the competent adjudicatory body and the final instance of appeal for international disputes (to the exclusion of national courts).⁸ Its founding purpose was to take international sports disputes out of

¹ McLaren, 2011, pp. 380-381.

² See, for example, Reilly, 2012, pp. 71-74; Kastratović, 2025, p. 33; or Cavalieros & Kim, 2015, p. 239.

³ For more, see Cavalieros & Kim, 2015, pp. 246-250.

⁴ Kastratović, 2025, p. 28.

⁵ For more, see FIBA (n.d.).

⁶ For more, see FIFA (n.d.).

⁷ For more, see WIPO (n.d.).

⁸ Bergant Rakočević, 2020, p. 375; Reilly, 2012, p. 67. See also Cavalieros & Kim, 2015, p. 237.

national courts and provide a highly specialised forum where they could be heard and decided quickly and inexpensively, according to a flexible procedure.⁹ Since its inception, it has registered more than 12,000 cases, averaging 900 cases per year.¹⁰ The CAS operates as an independent tribunal that considers two types of disputes: those that arise out of an arbitration clause contained in a contract or regulations or a later arbitration agreement¹¹ (ordinary arbitration proceedings) and those involving an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies or a specific agreement provide for an appeal to CAS¹² (appeal arbitration proceedings).¹³ During international sports events, the CAS also creates *ad hoc* divisions with the purpose of settling disputes within a very short period of time (e.g., within 24 hours at the Olympic Games).¹⁴ As a single, independent, and accomplished sports adjudication body capable of consistently applying the rules of different sports organisations, minimising the influence of national courts, and preventing legal uncertainty in sports, the CAS is said to be developing universal principles of the so-called *lex sportiva*.¹⁵

Although the importance and prevalence of sports arbitration are also on the rise in Slovenian sports, its significance is not reflected in the national regulatory framework, which notably lacks integrated, directly applicable solutions. The few relevant statutes operate in parallel and have no explicit overlaps. Arbitration as an alternative dispute resolution mechanism is regulated in general terms by the Arbitration Act (*Zakon o arbitraži* – ZArbit),¹⁶ which does not consider the structural particularities of sport, while the Sports Act (*Zakon o športu* – ZŠpo-1)¹⁷ establishes the organisational framework of the Slovenian sports system but contains no references to arbitration. Thus, the approach to sports arbitration in Slovenia is not

⁹ Reilly, 2012, p. 63. See also Kastratović, 2025, p. 29.

¹⁰ CAS (n.d.-a).

¹¹ Contractual disputes usually involve issues such as employment contracts between players, coaches, clubs and national federations, sponsorship, selling television rights, organising sports events and player transfers, while disciplinary disputes involve alleged violations of sporting regulations, such as doping violations, on-field violence, match fixing, violation of ethics rules, corruption and safe sport issues. CAS (n.d.-b).

¹² Disciplinary disputes are usually under appeal, with decisions first handled by a federation or sports body. CAS then acts as a court of last instance to examine the matter and render a final decision. CAS (n.d.-b).

¹³ *Code of Sports-related Arbitration*, Article R27. For more, see also Bergant Rakočević, 2020, pp. 384-388; Coccia, 2013; and Burger, 2000, p. 124.

¹⁴ CAS (n.d.-b). For more, see Bergant Rakočević, 2020, pp. 390-391; Coccia, 2013, p. 34.

¹⁵ E.g., McLaren, 2011, p. 381; Kastratović, 2025, p. 38.

¹⁶ Official Gazette of the Republic of Slovenia, No. 45/08 and 100/25 – ZS-1.

¹⁷ Official Gazette of the Republic of Slovenia, No. 29/17, 21/18 – ZNOrg, 82/20, 3/22 – ZDeb and 37/24 – ZMat-B.

a matter of directly applying general arbitration rules to sports disputes, but a complex interplay between statutory mechanisms that set minimum procedural standards for arbitration on the one hand and the regulatory autonomy of sports organisations, which establish their own normative frameworks and arbitration procedures, on the other. For Slovenian athletes and clubs participating in international competitions, these instruments frequently determine the competent forum and all aspects of procedural rules, standards, and guarantees in matters concerning transfers, registration, qualifications, disciplinary sanctions, doping, remuneration, and other related issues. Rather than serving as the primary source of regulation, Slovenian legislation retains the purpose of determining the minimum procedural requirements and the limits of autonomy in sports, while jurisdiction over sports disputes is ceded to extrajudicial tribunals. However, this does not imply that no institutional solutions exist at a national level to address these issues. Under the influence of international federations, Slovenian national federations have recently begun adopting their own rules on dispute resolution and establishing arbitral tribunals with jurisdiction over disputes arising within a particular sector or sport. These developments are both recent and ongoing, which is why they have received only limited academic attention so far, even though they have the potential to significantly affect access to remedies and procedural protection for athletes and sports organisations involved in sports disputes.

To shed some light on these issues, the article analyses the normative framework and practical considerations of sports arbitration in Slovenia, taking into account the complexity of a multi-layered regime comprising national regulatory schemes, transnational institutional structures, and newly established national forums for dispute resolution. It first analyses the limited but still relevant roles of ZArbit and ZŠpo-1 in facilitating and promoting the use of arbitration in resolving sports disputes. It then examines the organisational aspects of arbitration tribunals and similar mechanisms established by national sports organisations, as well as early cases adjudicated by these authorities. In that regard, the article deliberately focuses on national aspects and largely refrains from discussing the CAS regime, except where attempting to place Slovenian mechanisms within the broader transnational framework. Finally, it evaluates the impact of the emerging trend of national sports organisations establishing their own arbitration tribunals and outlines some normative and practical challenges facing Slovenian stakeholders involved in sports. Due to very modest research efforts and limited academic contributions in this area, the article largely draws from regulatory solutions and publicly available information.

2 Legal Framework for Sports Arbitration in Slovenia

2.1 General Arbitration Framework

The general procedural framework for sports arbitration is provided by the ZArbit, which governs all types of arbitration conducted in the Republic of Slovenia, regardless of whether the parties are Slovenian or foreign citizens or organisations (para. 1 of Article 1 of the ZArbit).¹⁸ Under Article 4 of ZArbit, any pecuniary claim or other claim that is capable of settlement between the parties can be decided in an arbitration procedure, and any natural or legal person, including the Republic of Slovenia and other persons governed by public law, may conclude an arbitration agreement. An arbitration agreement – defined as an agreement by which the parties submit to arbitration all or certain disputes that have arisen or may arise between them in respect of a defined contractual or non-contractual legal relationship – must be made in writing, either as an arbitration clause in a contract or as a separate agreement (Article 10 of the ZArbit). By agreeing to arbitration, the parties renounce the judicial protection that state courts would otherwise provide, while arbitrators obtain their authority to resolve disputes based on mutual consent, and not on the basis of state authority.¹⁹

Even though the parties' consent is the basic prerequisite for arbitration, sports arbitration agreements are rarely the product of free negotiation or true party autonomy in practice. Arbitration clauses are typically pre-drafted and integrated into federation statutes, membership rules, competition regulations or standard contracts. They are therefore generally unavoidable for athletes and other stakeholders who participate in organised sport. For example, the arbitration clause conferring jurisdiction on the CAS most often appears either in a written contract concluded in advance between the participants of a sports event and the sports organisation that organises that event,²⁰ or in the general acts of sports organisations, compliance with which is a condition for membership within the organised structure of sport.²¹ In either case, signing the arbitration agreement is

¹⁸ The rules governing arbitration procedure under the ZArbit are based on the UNCITRAL Model Law on International Commercial Arbitration, and the uniform application of the latter is promoted in interpreting its provisions, alongside the principle of good faith (Article 2 of the ZArbit).

¹⁹ Kastratović, 2025, pp. 36-37. See also Higher Court in Koper order I Cp 64/2022 of 24 February 2022.

²⁰ All contracts that the International Olympic Committee (IOC) now enters contain a clause that disputes will be referred to the CAS for final decision. For more, see Burger, 2000, p. 124.

²¹ Kastratović, 2025, pp. 36-37. See also Bergant Rakočević, 2020, pp. 379-381.

mandatory for all athletes wishing to participate in international competitions sanctioned by international federations, which raises questions as to whether consent is really validly given when the athlete's only alternative is to refuse to sign and consequently bar him- or herself from competing in the relevant sports event. The Swiss Federal Tribunal²² has consistently held that the need for a quick and uniform dispute-resolution system in international sport prevails over an athlete's right to have his or her case adjudicated by ordinary courts, provided that the dispute-resolution system observes the fundamental requirements of due process.²³ More critically, the European Court of Human Rights (ECtHR) emphasised in its judgements that compulsory arbitration clauses are not prohibited, but the arbitral tribunal must afford the safeguards under Article 6 of the European Convention on Human Rights (ECHR),²⁴ in particular those of independence and impartiality.²⁵ At the same time, a judicial review (by the Swiss Federal Tribunal) must satisfy the requirement of a "particularly rigorous examination".²⁶ Another restraint on mandatory arbitration was recently established by the Court of Justice of the European Union (CJEU) in the case of *RFC Seraing v. FIFA*. Where the dispute is linked to the pursuit of a sport as an economic activity within the territory of the European Union (EU), the Member State must not confer the authority of *res judicata* on a CAS award, unless a court in that Member State has first carried out an effective review of whether the award complies with the principles and provisions of EU law which form part of EU public policy, and that court is authorised to make a reference to the CJEU for a preliminary ruling.²⁷ Put differently, every individual – including an athlete – must have the right to effective judicial protection before the ordinary courts of the EU Member States when their fundamental rights and freedoms within the EU legal order are at stake, even if the CAS has already ruled on the matter. While the CAS remains the central body for resolving sports disputes, its authority is expressly conditional on compliance with EU public policy when EU law is engaged.²⁸

²² The Swiss Federal Tribunal is the competent court for appeals against a CAS award.

²³ Reilly, 2012, p. 67.

²⁴ Official Gazette of the Republic of Slovenia – MP, No. 7/94.

²⁵ *Mutn and Pechstein v. Switzerland*, 2018. See also Bergant Rakočević, 2018, pp. 16-18.

²⁶ *Semenya v. Switzerland*, 2025.

²⁷ *RFC Seraing v. FIFA*, 2025.

²⁸ Živić, 2025, pp. 17-18.

Against this backdrop, ZArbit follows the logic of civil procedural law: an arbitral award has the same effect as a final court judgment and is enforceable under the rules on enforcement and security (Article 38 of the ZArbit).²⁹ It may be challenged before a court only by an action for setting aside the arbitral award, which must be brought within three months of receiving the award (Article 40 of the ZArbit).³⁰ In general, courts may act only in a very limited capacity in matters governed by the ZArbit,³¹ reflecting the purpose of the arbitration procedure: to resolve a dispute without court intervention. An arbitral award rendered by a domestic arbitral tribunal may be enforced once the court declares it enforceable (Article 41 of the ZArbit), while an arbitral award rendered by a foreign arbitral tribunal – including those rendered by the CAS – has effect once it is recognised by the court in accordance with the terms of the Convention on the Recognition and Enforcement of International Arbitral Awards from 1958, i.e. New York Convention (Article 42 of ZArbit).³²

ZArbit also provides general procedural rules that apply to the arbitration procedure if the parties have not agreed otherwise, e.g., on the number of arbitrators (Article 13 of ZArbit), the requirements and procedure for their appointment and exclusion (Articles 14-18 of the ZArbit), the conduct of the proceedings, the seat of arbitration, the language (Article 21 to 31 of the ZArbit), the applicable law (Article 32 of the ZArbit), etc. In the context of sports arbitration, however, these provisions are of limited practical relevance, as most institutions, athletes and other participants are

²⁹ The act regulating enforcement and security in the Republic of Slovenia is the Enforcement and Security Act (*Zakon o izvršbi in zavarovanju* – ZIZ), Official Gazette of the Republic of Slovenia, No. 3/07 – official consolidated text, 93/07, 37/08 – ZST-1, 45/08 – ZArbit, 28/09, 51/10, 26/11, 17/13 – odl. US, 45/14 – odl. US, 53/14, 58/14 – odl. US, 54/15, 76/15 – odl. US, 11/18, 53/19 – odl. US, 66/19 – ZDavP-2M, 23/20 – SPZ-B, 36/21, 81/22 – odl. US, 81/22 – odl. US and 100/25 – ZS-1.

³⁰ The court may set aside an arbitral award only if: one of the parties lacked capacity to conclude the arbitration agreement or the agreement is not valid under the applicable law; the party was not properly notified of the appointment of an arbitrator or the arbitral proceedings, or was otherwise deprived of the opportunity to present its case before the arbitral tribunal; the award concerns a dispute not falling within the terms of the arbitration agreement; the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or with the ZArbit; the subject matter of the dispute is not capable of settlement by arbitration; or the arbitral award is contrary to the public policy of the Republic of Slovenia (para. 2 of Article 40 of the ZArbit). See also the Supreme Court of the RS judgement Cp 27/2024 of 19 February 2025.

³¹ Court jurisdiction is stipulated for decisions on the admissibility of arbitration proceedings, the appointment or challenge of an arbitrator, the termination of an arbitrator's mandate, the jurisdiction of the arbitral tribunal, the setting aside of an arbitral award, the declaration of enforceability of domestic arbitral awards and the recognition of foreign arbitral awards. Appeals against the court's decisions in these matters are decided by the Supreme Court of the Republic of Slovenia, while extraordinary legal remedies are not permitted (Articles 8 and 9 of the ZArbit).

³² Official Gazette of the SFRJ - MP, No. 11/81. See Article 42 of the ZArbit and Kastratović, 2025, p. 34. For more on recognition and enforcement of foreign arbitral awards in Slovenia, see also Galič, 2013.

typically bound by special rules established by sports organisations or, in many cases, by the procedural framework under the CAS regime.

Even though ZArbit provides no explicit rules governing sports arbitration, its importance in this area lies in establishing the legal basis for the formal validity of arbitration agreements, the subject matter of arbitration, minimum procedural guarantees, the effect and enforceability of arbitral awards and the (limited) possibility of judicial review. It recognises sports arbitration as a legitimate mechanism for dispute resolution under national law and provides normative solutions when sports rules fail to address particular issues.

2.2 Statutory Framework of Slovenian Sport

ZŠpo-1, which entered into force in 2017, contains no provisions that would directly regulate sports arbitration. Its purpose is to define the public interest in the field of sport, the mechanisms for its implementation, the competent bodies, the conditions for performing professional work in sport, the rights of athletes, public sports facilities and areas for outdoor sport, sporting events, data collections and supervision in the field of sport (Article 1 of the ZŠpo-1). However, it is still worth underscoring its role in improving the institutional protection of athletes and sports professionals by establishing the position of the Athlete's Rights Ombudsman (Article 66 of the ZŠpo-1). When drafting ZŠpo-1, the government recognised that sport can, through inappropriate approaches, lead to inhumane treatment of athletes, such as competing despite injuries, overtraining, unsuitable training methods for young competitors, coercion or incitement to dishonest sporting conduct, physical violence against athletes during training or competition, humiliation or verbal abuse, sexual exploitation, and similar conduct. Because every athlete and every sports professional is entitled to enjoy all the rights and freedoms defined by international treaties and domestic legislation, the Athletes' Rights Ombudsman was charged with the responsibility to protect those rights.³³

The Athletes' Rights Ombudsman considers complaints, comments, proposals and initiatives submitted by athletes or their legal representatives, sports professionals, providers of sports programmes, and, where applicable, by authorities. They also publish examples of good and bad practices in sport on their website and inform the

³³ Proposal for a Sports Act, 2016, p. 68.

public (para. 1 of Article 66 of the ZŠpo-1). Most importantly for this paper, the Ombudsman advises athletes in dispute cases and presents them with options to protect their rights. Depending on the disputing parties' wishes, they can also help them resolve a particular dispute through alternative dispute resolution, especially mediation. The guiding principles of the Ombudsman's work and of the conduct of proceedings are informality, orality, speed, and confidentiality, provided that the nature of the matter allows for this. All proceedings and counselling are free of charge for athletes and sports professionals.³⁴ Otherwise, the Ombudsman does not have decision-making powers. They are appointed by the government for a period of five years and perform their duties on a non-professional basis. In performing these duties, the Ombudsman is independent and autonomous and is required to act honourably, fairly and in good faith (para. 5 and 6 of Article 66 of the ZŠpo-1).³⁵

In 2023,³⁶ the Ombudsman handled 42 different cases concerning various areas of sport. In most instances, these involved providing legal guidance and advice regarding athletes' rights (for example, contractual obligations, transfer compensation, or funding issues), obtaining and forwarding information (primarily concerning entries in the public register of registered and categorised athletes), providing assistance and guidance, as well as considering and issuing initiatives, and similar activities.³⁷ Among the problems identified, the Ombudsman highlighted as the most significant issue the fact that, in Slovenian sport, apart from protection before ordinary courts, no system of alternative dispute resolution is in place. As a result, most disputes are not resolved at all but are instead suppressed or swept under the carpet. He also emphasised that sports organisations resolve disputes from a position of power, derived from their status and financial resources, which are in principle supported by the ZŠpo-1 and the State. Although the Ombudsman has in the past assisted in resolving disputes through mediation techniques, in cases of more serious or complex disputes – particularly those involving financial claims – such methods are often ineffective. The reason is that leading sports officials are aware that proceedings before ordinary courts are lengthy, and the outcome of litigation is highly uncertain due to the lack of expertise in sports matters, the absence of specialised courts for sports disputes, and the scarcity of relevant case

³⁴ GOV.SI (n.d.).

³⁵ See also Rules on the Operation and Financing of the Athletes' Rights Ombudsman (*Pravilnik o delovanju in financiranju varuha športnikovih pravic*), Official Gazette of the Republic of Slovenia, No. 69/17, 94/23 and 53/25.

³⁶ The last published annual report of the Athletes' Rights Ombudsman refers to the year 2023.

³⁷ For more, see Athletes' Rights Ombudsman, 2023, pp. 14-20.

law. In cases involving non-payment of contractual amounts by a sports organisation, there is also little likelihood that an athlete or a sports professional will bring a lawsuit against the federation or the club.³⁸ The Ombudsman's recommendation to establish an independent arbitration body for the resolution of disputes in sport in Slovenia is not a new one, as he has reiterated the need for such a forum in several annual reports since 2018.³⁹

While the ZŠpo-1 failed to regulate arbitration or other alternative methods of dispute resolution, their importance is mentioned in the new Resolution on the National Programme for Sport in the Republic of Slovenia for the Period 2026–2035 (*Resolucija o nacionalnem programu športa v Republiki Sloveniji za obdobje 2026–2035* - ReNPŠ26–35),⁴⁰ which was adopted in July 2025.⁴¹ The National Programme for Sport is a strategic document for the developmental planning of sports policy, which is adopted for a ten-year period. Among other things, it specifies tasks of national and local importance aimed at providing conditions for Slovenian residents to participate more frequently and more effectively in sports and physical activities for the preservation of health (Chapter 1 of ReNPŠ26–35). The chapter on social and environmental responsibility in sport underscores the importance of alternative dispute resolution in sports, emphasising that these are well-established methods of resolving sports disputes, as they allow conflicts to be settled more quickly, suitably, and effectively for sport than proceedings before ordinary courts. It further states that, although various institutional forms of alternative dispute resolution exist worldwide, a public discussion should determine which model is most suitable for Slovenia. The strategic objectives identified are safeguarding the autonomy of sport and the European model of sport, and ensuring an effective system for resolving sports disputes. To this end, the ReNPŠ26–35 proposes the following measures: a public consultation on suitable forms of alternative dispute resolution in sport; conferences and awareness-raising campaigns on the importance of out-of-court dispute resolution for preserving the autonomy of sports organisations; support for the autonomous sports sector in developing a general arbitration clause (Chapter 3.6.5 of ReNPŠ26–35). However, until these measures are realised and pending any

³⁸ Ibid., p. 21.

³⁹ Ibid., p. 23–28.

⁴⁰ Official Gazette of the Republic of Slovenia, No. 55/25.

⁴¹ Succeeding the previous Resolution on the National Programme for Sport in the Republic of Slovenia for the Period 2014–2023.

statutory reform, national sports organisations continue to develop their own mechanisms within the scope of their organisational autonomy.

3 Institutional Landscape

3.1 Sports Arbitration Tribunal at the Slovenian Olympic Committee

The Ombudsman's observation that most sports-related disputes are not resolved in arbitration, but internally within sports federations, if at all, is justified. There is an extreme disproportionality between the number of cases brought before the Ombudsman and the comparatively negligible number of cases initiated before institutional mechanisms. Most sectoral sports federations do not have their own permanent arbitral tribunal and although the Olympic Committee of Slovenia – Association of Sports Federations (OKS-ZŠZ) operates a permanent Arbitration Tribunal OKS-ZŠZ for Sport, the tribunal has adjudicated only a small number of cases despite the fact the OKS-ZŠZ serves as an umbrella organisation for national sport federations, local sports associations, and other sports associations in Slovenia.⁴²

The Arbitration Tribunal OKS-ZŠZ for Sport is an independent and impartial arbitration tribunal responsible for providing dispute resolution in the fields of sports between national and municipal sports federations, their clubs and athletes, and for deciding on the rights the parties may exercise (the concept of *razpolagati* in Slovene), if the parties agree to its competence (Article 3 of Rules on the Arbitration Tribunal OKS-ZŠZ for Sport).⁴³ The OKZ-ZŠZ members are obliged to submit all of their internal disputes (disputes between an OKZ-ZŠZ member and an athlete; disputes between sports clubs that are members of an OKZ-ZŠZ member; disputes between sports clubs that are members of an OKZ-ZŠZ member and athletes), as well as disputes among members and disputes with OKZ-ZŠZ, to the Arbitration Tribunal OKS-ZŠZ, but only after exhausting their internal dispute-resolution procedures and, in any event, before initiating proceedings before the ordinary courts. Arbitrators, who must hold a legal qualification and have experience in the field of sport, are appointed for a four-year term and may be reappointed (Article 77

⁴² See Rules of the Olympic Committee of Slovenia – Association of Sports Federations (*Pravila olimpijskega komiteja Slovenije – Združenja športnih zvez*), Article 1 and the following.

⁴³ The latest version of Rules on the Arbitration Tribunal OKS-ZŠZ for Sport (*Pravilnik o arbitražnem razsodišču za šport pri Olimpijskem komiteju Slovenije – Združenju športnih zvez*) was adopted in 2014.

of the Rules of the Olympic Committee of Slovenia – Association of Sports Federations). Arbitral awards granted by the Arbitration Tribunal OKS-ZŠZ have the effect of final judgments and are thus binding on the parties. They can only be appealed before the CAS (Article 49 of the Rules on the Arbitration Tribunal OKS-ZŠZ for Sport).

In theory, the Arbitration Tribunal OKS-ZŠZ for Sport serves as a forum for resolving disputes among national or municipal sports federations, clubs, and athletes. In practice, however, only a small number of cases have ever been brought before it, which shows that this mechanism is notably underused.

3.2 Football Association of Slovenia Dispute Resolution Chamber

In recent years, some sectoral sports federations in Slovenia have established their own permanent arbitration tribunals. Arguably, the most important example, given the popularity of football, is the Dispute Resolution Chamber at the Football Association of Slovenia (*Nogometna zveza Slovenije* – NZS). FIFA had long encouraged national football associations to establish independent arbitration bodies,⁴⁴ and in December 2018, the constitutive session of the NZS Dispute Resolution Chamber finally took place.⁴⁵ The NZS Dispute Resolution Chamber is set up as an independent and impartial permanent tribunal within the football association, competent to resolve certain types of disputes between football stakeholders, such as contractual disputes between football clubs and players, trainers and football agents, claims for compensation arising from unjustified termination of contracts, and claims for training and development compensation between football clubs (Articles 3 and 5 of Regulations on Dispute Resolution Chamber).⁴⁶

The tribunal operates as a single-instance body, meaning that the arbitral award is deemed final immediately upon communication to the parties and no appeal is allowed within the NZS system (Article 37 of the Regulations on the Dispute Resolution Chamber). The NZS, football clubs, players, trainers, football agents and FIFA match agents are all bound by the arbitration clause, meaning that they must resolve disputes exclusively before the NZS Dispute Resolution Chamber and

⁴⁴ See, for example, FIFA, 2005.

⁴⁵ NZS, 2018.

⁴⁶ The latest version of Regulations on Dispute Resolution Chamber (*Pravilnik o nogometni arbitraži*) entered into force on 1 October 2025.

comply with its decisions, instead of turning to ordinary courts (Article 7 of the Regulations on Dispute Resolution Chamber). Under Article 15 of the NZS Statutes,⁴⁷ the NZS members have the duty to submit disputes relating to the application of the NZS Statutes, regulations, instructions, and decisions to an independent and impartial arbitral tribunal, which shall decide the dispute with final effect, rather than to the ordinary courts, where this is permitted by the legal order of the Republic of Slovenia, and ensure through statutory provisions that their members do the same.⁴⁸ Football clubs must recognise the jurisdiction of such an independent and impartial arbitral tribunal and comply with its decisions (Article 45 of the NZS Statutes).⁴⁹ According to the Higher Court in Koper, an NZS member who voluntarily accedes to an agreement conferring exclusive jurisdiction on the NZS Dispute Resolution Chamber to resolve disputes has, with respect to such disputes, simultaneously and voluntarily waived the right to seek judicial protection before the courts. If they initiate court proceedings nonetheless, the court must – upon the defendant’s objection – decline jurisdiction, set aside the procedural steps taken, and dismiss the action (Article 11 of the ZArbit).⁵⁰

It should be noted that during its first term, the NZS Dispute Resolution Chamber was not yet officially recognised by FIFA, as FIFA did not publish its official principles for the recognition of independent dispute resolution bodies within national associations (the so-called National Dispute Resolution Chambers, or NDRCs) until February 2024.⁵¹ In April and October 2025, the NZS Executive Committee adopted significant amendments to its arbitration rules – largely in response to FIFA’s requirements for national recognition. The amendments included equalising the status of representatives of players, coaches, and clubs, incorporating the principle of acting in good faith, and providing clearer rules on representation in proceedings. The aim was to ensure greater legal certainty and the

⁴⁷ NZS Statutes (*Statut Nogometne zveze Slovenije*).

⁴⁸ They must also recognise the jurisdiction of and the decisions of CAS, as defined in the FIFA Statutes and the UEFA Statutes, for any dispute relating to the application of the statutes, regulations, instructions, and decisions of FIFA and UEFA, and agree to the exclusion of the jurisdiction of the ordinary courts, where this is permitted by the legal order of the Republic of Slovenia, and ensure through statutory provisions that their members do the same; as well as ensure through statutory provisions that disputes in which they or their members are involved, which require resolution by arbitration and concern sporting competitive relationships, are resolved exclusively within the framework of the NZS, UEFA, and/or FIFA, and not before the ordinary courts, except in cases where Slovenian law provides otherwise.

⁴⁹ They must also recognise the jurisdiction of CAS and comply with its decisions, as well as ensure, through statutory provisions, that disputes relating to sporting competitive relationships are, as a first step, resolved exclusively within the framework of the NZS, UEFA, and/or FIFA.

⁵⁰ Higher Court in Koper order I Cp 64/2022 of 24 February 2022.

⁵¹ *National Dispute Resolution Chamber Recognition Principles*, 2024. See also SPINS, 2024a.

international recognition of decisions issued by the NZS Dispute Resolution Chamber, thereby enhancing legal certainty in Slovenian football.⁵²

Under the new rules, the dispute resolution chamber consists of eleven permanent arbitrators, appointed as follows: four arbitrators are appointed by the Slovenian Professional Football Players' Union (SPINS), representing the interests of players and coaches; four arbitrators are appointed by football clubs through the NZS Professional Football Committee, representing the interests of clubs playing in the first division; and three arbitrators (the chairperson and two deputy chairpersons) are appointed by the NZS Executive Committee, with the prior consent of both the Professional Football Committee and SPINS (para. 2 of Article 8 of the Regulations on Dispute Resolution Chamber). Only someone with a university degree in law and the relevant language and experience in the field of sport may be appointed as an arbitrator (para. 1 of Article 10 of the Regulations on Dispute Resolution Chamber).

It should also be emphasised that the NZS Dispute Resolution Chamber does not have jurisdiction over all categories of football-related disputes. The Regulations on the Dispute Resolution Chamber explicitly exclude it from deciding disciplinary disputes or those relating to violations of NZS competition rules and licensing regulations – such matters continue to be handled by NZS disciplinary bodies and commissions in accordance with sports rules. Likewise, the NZS Dispute Resolution Chamber does not have jurisdiction over disputes of an international dimension in which parties belonging to various national football associations appear and where the body of final instance is the CAS, or on cases where FIFA rules stipulate the exclusive jurisdiction of the FIFA Tribunal (para. 4 of Article 5 of the Regulations on Dispute Resolution Chamber). In practice, this means, for example, that international transfer disputes or disputes between foreign players and Slovenian clubs fall under the jurisdiction of FIFA and CAS. The NZS Arbitration Tribunal is therefore primarily focused on domestic football disputes, while the international dimension is covered by supranational mechanisms. Finally, the arbitral tribunal lacks jurisdiction to resolve disputes arising from employment relationships. If a player or a club alleges that an employment contract has been concluded, Article 201 of the Employment Relationship Act (*Zakon o delovnih razmerjih* – ZDR-1)⁵³ applies,

⁵² NZS, 2025a and NZS, 2025b.

⁵³ Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – popr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – odl. US, 22/19 – ZPosS, 81/19, 203/20 – ZIUPOPĐVE, 119/21 – ZČmIS-A, 202/21 – odl. US, 15/22, 54/22 – ZUPŠ-1, 114/23, 136/23 – ZIUZDS and 70/25 – ZUTD-I.

stipulating that employers and employees may agree on arbitration only if such a possibility is foreseen and set out in a collective agreement, which must also regulate, inter alia, the composition of the arbitral body, the procedure, and other issues relevant to the work of the arbitration. As there are currently no such provisions in applicable collective agreements, jurisdiction in the event of a dispute lies with the labour court.⁵⁴

Arbitration mechanisms in football were established in response to concrete problems faced by players and football clubs in Slovenia. One such problem concerned cases in which clubs isolated certain players from the team and forced them to train separately, with the apparent intention of pressuring them to terminate their contracts early and on unfavourable terms. The players' union SPINS described this as mobbing and has documented it at several first-division clubs, such as FC Olimpija, where several players were pressured to terminate their contracts prematurely in this manner. The affected players initiated arbitration proceedings against FC Olimpija, but SPINS noted that neither the complaint to the labour inspectorate nor the criminal charge filed against FC Olimpija had deterred similar practices from continuing at other clubs (FC Rogaška was mentioned in this regard).⁵⁵

Another recurring issue concerns clubs' failure to fulfil financial obligations to players following the termination of cooperation. A case in point is FC Rogaška, which lost its licence to compete in the Slovenian first division for the 2023/24 season due to organisational and financial irregularities and subsequently became involved in multiple disputes with players. One such dispute concerned a foreign player (Croatian), which is why the matter fell within FIFA's jurisdiction rather than the NZS Dispute Resolution Chamber's. FIFA ordered the club to fulfil its outstanding obligations, but as it failed to comply within the prescribed time limit, FIFA arbitration imposed a ban on registering new players for three consecutive transfer periods, unless the debt is paid in full, which is an exceptionally severe sanction.⁵⁶ Disputes with several other players reportedly remain pending before the NZS Dispute Resolution Chamber.⁵⁷

⁵⁴ SPINS, 2025a.

⁵⁵ See, for example, SPINS, 2024b; SPINS, 2024c and SPINS, 2025b.

⁵⁶ SPINS, 2025c.

⁵⁷ SPINS, 2025d.

Although the dispute-resolution mechanisms are still at an early stage and facing a range of challenges, the establishment of an operational arbitration framework within the NZS, which is already hearing cases and delivering results, is a major step forward for the protection of the rights of players, coaches and clubs, and may encourage other sporting disciplines to follow suit. At the same time, however, the SPINS has already voiced concern about the excessive duration of proceedings before the NZS Dispute Resolution Chamber, with cases pending for more than a year. They noted that to ensure effective protection of the status-related rights of football players and coaches, procedures would need to be substantially faster or subject to clear time limits. In SPINS's opinion, this would require either an amendment to the Regulations on the Dispute Resolution Chamber or the establishment of a new and more efficient arbitration mechanism through a collective agreement.⁵⁸ Moreover, the accessibility and transparency of the arbitration system could be improved, as the section on the NZS website intended for publishing arbitration awards remains empty.⁵⁹

3.3 Other Arbitration Tribunals

Several other sports federations have also established their own mechanisms for extra-judicial dispute resolution, albeit with varying degrees of effectiveness. While operating on paper, most of these bodies have handled only a few cases, if any, and thus have had a very modest impact on resolving sports disputes within their respective disciplines.

In 2022, the Basketball Federation of Slovenia (*Košarkarska zveza Slovenije* – KZS) established the national Basketball Arbitration Tribunal (KAR), which was modelled after the international Basketball Arbitration Tribunal (BAT). The key difference lies in adaptation to domestic conditions, particularly in terms of financial accessibility, efficiency in resolving individual cases, and the fact that proceedings are conducted in Slovenian. Players, coaches, clubs, and agents may initiate proceedings before the Basketball Arbitration Tribunal (KAR), provided that their contract contains an appropriate arbitration clause.⁶⁰

⁵⁸ SPINS 2025a.

⁵⁹ As of 20 February 2026, no arbitration awards are published on a dedicated website (<https://www.nzs.si/NZS/Arbitraza/Odlocbe>).

⁶⁰ See, for example, KZS, 2022 and the Rules on the Basketball Arbitration Tribunal (*Pravila Košarkaškega arbitražnega razsodišča*).

Some other examples are the Mediation and Arbitration Commission established by the Athletics Federation of Slovenia (*Atletska zveza Slovenije* - AZS) to resolve sports disputes in athletics;⁶¹ the Arbitration Committee established by the Handball Federation of Slovenia (*Rokometna zveza Slovenije* – RZS) to decide matters specified in the legal acts of the RZS;⁶² and the Arbitration Commission established by the Cycling Federation of Slovenia (*Kolesarska zveza Slovenije*) as a second-instance tribunal to resolve disputes relating to the transfer of competitors from one club or association to another.⁶³

In addition to the dispute-resolution mechanisms established within sports federations, the European Centre for Dispute Resolution (ECDR), an independent arbitration institution, also operates in Ljubljana. Since 2018, ECDR has offered a Permanent Sports Arbitration service for contractual disputes involving players, clubs, coaches, and agents. Its arbitral awards have the same effect as court judgments. Where the parties are not bound by any federation's rules, they may include an ECDR arbitration clause in their contracts, thus opting for a neutral domestic forum rather than international arbitration.⁶⁴

4 Conclusions

Influenced by international models, especially the growing prominence of the CAS and the arbitral mechanisms established by leading international federations (such as FIFA and FIBA), Slovenia has witnessed a noticeable acceleration in the development of sports arbitration in recent years. Several national sports federations have established new arbitral mechanisms or updated existing regulatory frameworks that had previously governed these tribunals. Given the undeniable advantages of sports arbitration (e.g., cost efficiency, procedural speed, expertise of decision-makers, greater consistency in the application of sporting rules, more equal treatment of participants across jurisdictions, etc.), these developments represent an important step towards more effective protection of the rights of athletes, coaches, clubs, and other stakeholders in organised sport. This trend is particularly significant because Slovenian legislation does not provide integrated solutions adapted to the structural

⁶¹ For more, see the Rules on Mediation and Arbitration (*Pravilnik o mediaciji in arbitraži*).

⁶² For more, see the Rules of Procedure of the RZS Arbitration Committee (*Poslovnik o delu Odbora za arbitražo* RZS).

⁶³ For more, see the Cycling Federation of Slovenia Statutes (*Statut Kolesarske zveze Slovenije*).

⁶⁴ ECDC (n.d.). For more, see also the ECDC Rules on Permanent Sports Arbitration (*Pravila ECDC o stalni arbitraži v športu*).

specificities of sports arbitration. Instead, the legal regulation of sport and arbitration remains compartmentalised and generalised; while the ZArbit governs arbitration without considering the particularities of relationships in sport, sports legislation focuses on the organisational aspects of sport without addressing dispute resolution mechanisms. Moreover, although collective agreements could, in principle, be used to establish arbitration procedures in the sports sector, none currently do so. As a result, the establishment and operation of dispute-resolution mechanisms capable of delivering binding decisions largely depend on the autonomous initiatives of the national sports federation.

At the same time, it remains obvious that these federation-specific mechanisms are still in their early stages and, as such, face considerable challenges. Not all sports federations have created arbitral mechanisms, and even where such forums exist, they are often used rarely and inconsistently. Athletes especially appear to be insufficiently informed about their rights and available remedies and tend to turn to other institutions (e.g., the Athlete's Rights Ombudsman). SPINS has raised concerns about the excessive duration of certain arbitral proceedings, which undermines one of sports arbitration's main advantages – its promptness. Furthermore, existing arbitral mechanisms do not always cover the full range of disputes that arise in practice, so certain matters continue to be litigated before ordinary courts (e.g., labour disputes). The question of athletes' right to judicial protection and judicial review also persists, given that participation in organised sport usually depends on accepting pre-drafted arbitration clauses, which are thus *de facto* mandatory.

If domestic sports arbitration is to operate effectively in the future, these (and other) challenges will need to be addressed - either by the legislature or by autonomous regulations of sports organisations. In either case, the objective should be to move from fragmented, sporadically used arbitration mechanisms towards a coherent, standardised framework that can adequately protect the interests of stakeholders in sports while still complying with national legislation and international standards. If procedural fairness, reasonable time limits, institutional independence, accessibility and predictable legal protection are not properly guaranteed, national arbitration mechanisms will remain formally available but will also continue to have limited practical effect.

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EINIGE VERFAHRENSRECHTLICHE PROBLEME IM ZUSAMMENHANG MIT DEM VERFAHREN VOR DEM STREITBEILEGUNGSGREMIUM DES TÜRKISCHEN FUßBALLVERBANDS

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Das Streitbeilegungsgremium nimmt innerhalb der vier erstinstanzlichen Rechtsgremien des Türkischen Fußballverbands eine zentrale Stellung ein und ist für bestimmte Sportstreitigkeiten zuständig. Der Beitrag untersucht zunächst die erstinstanzlichen Rechtsprechungsorgane des Türkischen Fußballverbands und legt dabei einen besonderen Schwerpunkt auf das Streitbeilegungsgremium. Anschließend werden der sachliche sowie der funktionelle Zuständigkeitsbereich dieses Gremiums eingehend dargestellt und die wesentlichen Stadien des Verfahrens vor dem Streitbeilegungsgremium systematisch analysiert. Dabei wird erörtert, in welchen Bereichen das Streitbeilegungsgremium über eine ausschließliche Zuständigkeit verfügt und in welchen nicht. Ferner werden ausgewählte technische und prozessuale Problemfelder erörtert, die im Rahmen der Verfahren vor dem Streitbeilegungsgremium typischerweise auftreten. Darüber hinaus wird auf den Aufbau des Streitbeilegungsgremiums eingegangen; insbesondere werden Fragen der Unparteilichkeit, der Unabhängigkeit sowie der Ablehnung von Mitgliedern untersucht. Abschließend werden die gegen Entscheidungen des Streitbeilegungsgremiums zur Verfügung stehenden Rechtsbehelfe erörtert. Ziel des Beitrags ist es, neben einer strukturierten Aufarbeitung des institutionellen und verfahrensrechtlichen Rahmens auch praxisrelevante Herausforderungen sichtbar zu machen und diese einer vertieften wissenschaftlichen Diskussion zuzuführen.

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SOME PROCEDURAL ISSUES CONCERNING THE PROCEEDINGS BEFORE THE DISPUTE RESOLUTION CHAMBER OF THE TURKISH FOOTBALL FEDERATION

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The Dispute Resolution Chamber (DRS) occupies a central position among the four first-instance judicial bodies of the Turkish Football Federation and has jurisdiction over specific sports-related disputes. This article first examines the first-instance judicial bodies of the Turkish Football Federation, with particular emphasis on the DRS. It then provides a detailed analysis of the DRS's subject-matter and functional jurisdiction, followed by a systematic examination of the principal stages of the proceedings conducted before it. Particular attention is devoted to identifying the areas in which the DRS enjoys exclusive jurisdiction and those in which it does not. The article also addresses selected technical and procedural issues that typically arise in proceedings before the DRS. Furthermore, it examines the institutional structure of the DRS, with particular emphasis on the impartiality and independence of its members, as well as the grounds for their recusal. Finally, the legal remedies available against decisions of the DRS are analysed. The aim of this article is not only to provide a structured analysis of the institutional and procedural framework governing the DRS, but also to identify practical challenges and contribute to a more in-depth academic discussion of these issues.



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1 Einleitung

Das Streitbeilegungsgremium zählt zu den vier grundlegenden erstinstanzlichen Rechtsgremien¹ des Türkischen Fußballverbands und ist für bestimmte Sportstreitigkeiten zuständig. Die rechtlichen Grundlagen dieses Gremiums sind im Gesetz Nr. 5894 über die Gründung und die Aufgaben des Türkischen Fußballverbands (im Folgenden: *Verbandsgesetz*), in der Satzung des Türkischen Fußballverbands (im Folgenden: *Verbandssatzung*) sowie in der Verfahrensordnung des Streitbeilegungsgremiums (im Folgenden: *Verfahrensordnung*) geregelt.

Der Einsatz spezieller Streitbeilegungsmechanismen im Sportrecht beruht auf dem besonderen Charakter sportlicher Streitigkeiten sowie den spezifischen Anforderungen des Sports.² Die Besonderheiten sportlicher Streitigkeiten bildeten zudem den Ausgangspunkt für die Entwicklung des Konzepts der sogenannten *Lex sportiva*.³ Unter dem Begriff der *Lex sportiva* werden im Allgemeinen supranationale Regelwerke verstanden, die auf die Besonderheiten des Sports zugeschnitten sind und insoweit Parallelen zur *Lex mercatoria* aufweisen.⁴

Der vorliegende Beitrag untersucht zunächst die erstinstanzlichen Rechtsprechungsorgane des Türkischen Fußballverbands und legt dabei einen besonderen Schwerpunkt auf das Streitbeilegungsgremium. Im Zentrum der Untersuchung stehen der sachliche sowie der funktionelle Zuständigkeitsbereich dieses Gremiums, deren systematische Darstellung zugleich eine Analyse der wesentlichen Verfahrensschritte vor dem Streitbeilegungsgremium einschließt. Dabei wird insbesondere der Frage nachgegangen, in welchen Konstellationen dem Streitbeilegungsgremium eine ausschließliche Zuständigkeit zukommt und in welchen Fällen eine solche nicht besteht.

Darüber hinaus werden ausgewählte technische und prozessuale Problemfelder beleuchtet, die im Rahmen der Verfahren vor dem Streitbeilegungsgremium typischerweise auftreten und in der Praxis regelmäßig zu Auslegungs- und

¹ Die grundlegenden erstinstanzlichen Rechtsgremien des Türkischen Fußballverbands sind das Streitbeilegungsgremium, die Disziplinargremien, das Klub-Lizenzgremium sowie das Ethikgremium (Artikel 5 Abs. 1 des Verbandsgesetzes).

² Topuz, 2017, S. 1903. Siehe auch Erdal, 2021, S. 351.

³ Özdemir Kocasakal, 2013, S. 38 f.

⁴ Adolphsen, 2002, S. 281 f.

Abgrenzungsfragen führen. Ein weiterer Schwerpunkt liegt auf dem institutionellen Aufbau des Streitbeilegungsgremiums, wobei insbesondere Fragen der Unparteilichkeit und Unabhängigkeit seiner Mitglieder sowie die Möglichkeit ihrer Ablehnung in den Blick genommen werden.

Abschließend setzt sich der Beitrag mit den gegen Entscheidungen des Streitbeilegungsgremiums eröffneten Rechtsbehelfen auseinander. Ziel der Untersuchung ist es, den institutionellen und verfahrensrechtlichen Rahmen des Streitbeilegungsgremiums strukturiert aufzuarbeiten, praxisrelevante Herausforderungen herauszustellen und diese einer vertieften wissenschaftlichen Diskussion zugänglich zu machen.

2 Zuständigkeit des Streitbeilegungsgremiums

Die Zuständigkeit des Streitbeilegungsgremiums unterlag im Laufe der Zeit verschiedenen Veränderungen.⁵ Nach Maßgabe der derzeit geltenden Regelungen ist das Streitbeilegungsgremium - sofern seine Zuständigkeit von den Parteien anerkannt wird - befugt, sämtliche aus fußballbezogenen Verträgen zwischen Vereinen, Fußballspielern, Trainern und Spielervermittlern resultierenden Streitigkeiten zu prüfen und darüber zu entscheiden. Streitigkeiten über sportliche Sanktionen sowie solche im Zusammenhang mit Ausbildungsentschädigungen sind hingegen ausschließlich vor dem Streitbeilegungsgremium zu entscheiden (Artikel 56 Abs. 1 der Verbandssatzung). Die gleichen Grundsätze finden sich in Artikel 2 der Verfahrensordnung des Streitbeilegungsgremiums in inhaltlich übereinstimmender, jedoch terminologisch abweichender Form wieder.

Zusammenfassend lassen sich grundsätzlich zwei Kategorien unterscheiden: einerseits Streitigkeiten mit ausschließlicher Zuständigkeit des Streitbeilegungsgremiums, andererseits solche, bei denen dessen Zuständigkeit fakultativ auf einer Parteienvereinbarung beruht.⁶ Nach Artikel 56 Abs. 1 der Verbandssatzung sind Streitigkeiten über sportliche Sanktionen⁷ sowie Ausbildungsentschädigungen ausschließlich vor dem Streitbeilegungsgremium zu

⁵ Erdoğan & Yeşildal, 2023, S. 20; Topuz, 2017, S. 1903 f. Siehe auch Özdemir Kocasakal, 2021, S. 603 f.; Ekşi, 2021, S. 317 f.

⁶ Erdoğan & Yeşildal, 2023, S. 20; Küçük, 2021, S. 2.

⁷ Zur sportlichen Sanktionen siehe Petek, 2017, S. 241 f.

entscheiden. In diesen Angelegenheiten ist die Zuständigkeit des Streitbeilegungsgremiums zwingend, und der Rechtsweg zu staatlichen Gerichten oder anderen Schiedsgerichten ist ausgeschlossen.⁸ Zwar finden sich in der Literatur vereinzelt abweichende Auffassungen⁹; nach der hier vertretenen Ansicht sind jedoch alternative Streitbeilegungsmethoden, insbesondere solche auf der Parteiautonomie beruhenden außerprozessualen Verfahren wie die Mediation, nicht zwingend ausgeschlossen. Andererseits wird in der Fachliteratur zu Recht kritisiert, dass Streitigkeiten, die ausschließlich vom Streitbeilegungsgremium beigelegt werden sollen, keine ausdrückliche gesetzliche Rechtsgrundlage haben.¹⁰

Neben den ausschließlich zuständigen Fällen entscheidet das Streitbeilegungsgremium auch über alle vertraglichen Streitigkeiten¹¹ zwischen Vereinen, Spielern, Trainern und Spielerberatern, sofern die Parteien ihre Zuständigkeit ausdrücklich anerkannt haben.

Nach Artikel 63 Abs. 3 der Verbandssatzung ist der Türkische Fußballverband für nationale Streitigkeiten zuständig, während bei internationalen Streitigkeiten die FIFA (*Internationaler Verband der nationalen Fußballverbände, die Fédération Internationale de Football Association*) entscheidet.¹² Dies bedeutet, dass das Streitbeilegungsgremium für nationale fakultative Streitigkeiten zuständig sein kann, während bei internationalen Streitigkeiten mit Auslandsbezug eine wirksame Zuständigkeitsvereinbarung zugunsten dieses Gremiums ausgeschlossen ist.¹³

3 Struktur des Streitbeilegungsgremiums

Artikel 5 Abs. 4 des Verbandsgesetzes regelt die grundlegenden Prinzipien der Struktur der erstinstanzlichen Rechtsgremien und bestimmt, dass deren Arbeitsweise sowie Verfahrensgrundsätze in der Verbandssatzung und in den einschlägigen Verfahrensordnungen festzulegen sind.

⁸ Erdoğan & Yeşildal, 2023, S. 20; Küçük, 2021, S. 3.

⁹ So Erdoğan & Yeşildal, 2023, S. 20.

¹⁰ Erdoğan & Yeşildal, 2023, S. 31 f. Siehe auch Topuz, 2017, S. 1903 f.

¹¹ Ekşi, 2021, S. 330 f.

¹² Erdoğan & Yeşildal, 2023, S. 30; Küçük, 2021, S. 156.

¹³ Erdoğan & Yeşildal, 2023, S. 30. Vgl. Küçük, 2021, S. 156.

Das Streitbeilegungsgremium besteht gemäß Artikel 5 Abs. 4 des Verbandsgesetzes, Artikel 55 Abs. 1 der Verbandssatzung sowie Artikel 3 der Verfahrensordnung aus einem Vorsitzenden, sechs ordentlichen und sechs stellvertretenden Mitgliedern, die vom Vorstand des Verbands gewählt werden.

Sämtliche Mitglieder müssen über eine juristische Qualifikation verfügen. Mitglieder dürfen nicht Vereinsangehörige oder Anteilseigner von Kapitalgesellschaften der Fußballvereine sein, die der Rechtsprechung der Verbandsorgane unterliegen. Ebenso sind aktive Profifußballer, Trainer, medizinisches Personal, Spielerberater und Spielorganisatoren von einer Mitgliedschaft ausgeschlossen (Artikel 55 Abs. 1 der Verbandssatzung, Artikel 3 Abs. 4 der Verfahrensordnung).

Darüber hinaus sieht die Verfahrensordnung besondere Qualifikationen vor¹⁴: mindestens zehn Jahre Berufserfahrung als Jurist, keine disziplinarischen Maßnahmen durch die Anwaltskammern, Vermögenserklärung¹⁵ und Vorlage eines Führungszeugnisses (Artikel 3 Abs. 1 der Verfahrensordnung). Einige der in der Verfahrensordnung des Streitbeilegungsgremiums vorgesehenen Voraussetzungen beschränken sich auf eine Wiederholung der unmittelbar zuvor in der Verbandssatzung genannten Anforderungen. In diesem Zusammenhang ist vorgesehen, dass die Mitglieder weder Mitglied eines Vereins, welcher der Zuständigkeit der Rechtsgremien des Verbands unterliegt, noch Gesellschafter, Anteilseigner, Organmitglied oder Aufsichtsratsmitglied von Beteiligungsgesellschaften solcher Vereine sein dürfen. Ebenso dürfen sie weder für ein dem Verband angehörendes Mitglied oder einen Mitgliedsverein tätig sein noch ein Amt im Vorstand des Verbands, in einem ständigen oder vorübergehenden sonstigen Gremium (*ad-hoc-Gremium*) oder im Generalsekretariat ausüben.

Bei der Auswahl der Mitglieder wird bevorzugt, wenn mindestens ein Mitglied Erfahrung im Strafrecht hat, ein Mitglied weiblich ist, ein Mitglied Richter- oder Staatsanwaltserfahrung hat und ein Mitglied als Hochschullehrer im Bereich Rechtswissenschaften tätig ist. Auch wenn der Wortlaut der einschlägigen

¹⁴ Erdoğan & Yeşildal, 2023, S. 25 f.; Küçük, 2021, S. 68 f.

¹⁵ Gemäß Artikel 3 der Verfahrensordnung ist die Vermögenserklärung in einem versiegelten Umschlag bei einem Notar einzureichen; eine Ausfertigung der entsprechenden Empfangsbestätigung ist dem Verband vorzulegen. Auf Verlangen der Rechtsgremien des Verbands oder der zuständigen Stellen ist die Vermögenserklärung dem Verband vorzulegen. Der Vorsitzende oder ein Mitglied, das die Vermögenserklärung nicht einreicht oder dem Verband nicht vorlegt, gilt als von seinem Amt zurückgetreten.

Bestimmung insoweit nicht eindeutig ist, erscheint es sachgerecht, dieses Auswahlprinzip sowohl auf ordentliche als auch auf stellvertretende Mitglieder anzuwenden.

Die Mitglieder treten ihr Amt erst nach einer schriftlichen Erklärung über ihre Unabhängigkeit und nach einem Eid vor dem Vorstand an (Artikel 5 Abs. 6 des Verbandsgesetzes, Artikel 3 Abs. 5 der Verfahrensordnung). Die Amtszeit beträgt vier Jahre, unabhängig von der Amtsperiode des Vorstands (Artikel 5 Abs. 4 des Verbandsgesetzes, Artikel 55 Abs. 2 der Verbandssatzung, Artikel 3 Abs. 3 der Verfahrensordnung). Der Vorsitzende und die Mitglieder des Streitbeilegungsgremiums bleiben - auch nach Ablauf der vierjährigen Amtszeit - bis zum Amtsantritt des neu zu wählenden Vorsitzenden und der neu zu wählenden Mitglieder des Streitbeilegungsgremiums im Amt (Artikel 3 Abs. 3 der Verfahrensordnung). Solange die Mitglieder nicht zurücktreten oder als zurückgetreten gelten,¹⁶ können keine neuen Mitglieder an ihrer Stelle gewählt werden. Wird die Mitgliedschaft aus irgendeinem Grund vakant, wählt der Vorstand des Türkischen Fußballverbands ein ordentliches Mitglied aus den Ersatzmitgliedern. Die gemäß diesem Absatz gewählten Ersatzmitglieder üben ihr Amt für die verbleibende Amtszeit aus (Artikel 3 Abs. 6 der Verfahrensordnung). Sind sämtliche ordentlichen und Ersatzmitglieder des Streitbeilegungsgremiums ausgeschieden oder unterschreitet die Zahl der Mitglieder die vorgeschriebene Mindestzahl, werden die vakanten Mitgliedschaften vom Vorstand für die verbleibende Amtszeit durch neue Mitglieder besetzt (Artikel 3 Abs. 7 der Verfahrensordnung).

4 Unabhängigkeit, Unparteilichkeit und Ablehnungsgründe

Allgemein gilt im Verfahrensrecht, dass die unparteiische und unabhängige Durchführung des Verfahrens von zentraler Bedeutung für die Sicherstellung des Vertrauens in die Justiz ist.¹⁷ In diesem Rahmen ist es erforderlich, dass die

¹⁶ Ein Mitglied gilt ferner als von seinem Amt zurückgetreten, wenn es innerhalb eines Jahres ab dem Beginn der Amtszeit bis zu deren Ende ohne Angabe eines Entschuldigungsgrundes an drei aufeinanderfolgenden Sitzungen oder innerhalb eines Arbeitsjahres insgesamt an sieben Sitzungen nicht teilnimmt. Unabhängig davon gilt ein Mitglied auch dann als von seinem Amt zurückgetreten, wenn es - selbst bei Anzeige eines Entschuldigungsgrundes und Erteilung einer Genehmigung - innerhalb eines Jahres an weniger als der Hälfte der Sitzungen teilnimmt (Artikel 4 der Verfahrensordnung).

¹⁷ Pekcanitez, Atalay & Özekes, 2025, S. 107.

Mitglieder des Streitbeilegungsgremiums unparteiisch und unabhängig sind (Artikel 5 Abs. 5 des Verbandsgesetzes, Artikel 55 Abs. 4 der Verbandssatzung, Artikel 3 Abs. 6 der Verfahrensordnung).

Artikel 5 Abs. 5 des Verbandsgesetzes stellt klar, dass die Mitglieder des Streitbeilegungsgremiums unabhängig und unparteiisch sind und weder Weisungen noch Empfehlungen von außen entgegennehmen dürfen. Auch dürfen sie keine weiteren Funktionen innerhalb des Verbands oder ihm nahestehender Organisationen übernehmen.

Die Mitglieder sind verpflichtet, ihre Unparteilichkeit und Unabhängigkeit auch während der Dauer ihrer Amtszeit zu wahren (Artikel 5 Abs. 5 des Verbandsgesetzes). In diesem Zusammenhang sind der Vorsitzende sowie die Mitglieder des Streitbeilegungsgremiums verpflichtet, sowohl vor Annahme ihres Amtes als auch während des Verfahrens sämtliche Umstände und Bedingungen, insbesondere etwaige Interessenkonflikte, die geeignet sind, Zweifel an ihrer Unparteilichkeit oder Unabhängigkeit zu begründen, schriftlich offenzulegen (Artikel 5 Abs. 7 des Verbandsgesetzes).

Zur Sicherstellung der Unabhängigkeit und Unparteilichkeit sind verschiedene institutionelle Schutzmechanismen vorgesehen.¹⁸ So können Mitglieder beispielsweise nur ersetzt werden, wenn sie zurücktreten oder als ausgeschieden gelten.

Ungeachtet sämtlicher auf die Gewährleistung von Unparteilichkeit und Unabhängigkeit gerichteter Sicherungsmechanismen können Zweifel an der Unparteilichkeit und Unabhängigkeit der Mitglieder des Streitbeilegungsgremiums aufkommen. Vor diesem Hintergrund ist die Frage der Befangenheit oder Ablehnung rechtlich zu würdigen.

Gemäß Artikel 5 Abs. 8 des Verbandsgesetzes sind die Vorsitzenden und Mitglieder der erstinstanzlichen Rechtsorgane verpflichtet, sich unverzüglich aus dem betreffenden Verfahren zurückzuziehen, sofern geeignete Gründe vorliegen, die

¹⁸ Auch im Zivilprozessrecht werden den Richtern wesentliche Garantien eingeräumt, um ihre Unparteilichkeit und Unabhängigkeit im eigentlichen Sinne sicherzustellen. Hierzu vgl. Pekcanitez, Atalay & Özkes, 2025, S. 101; Kuru, Arslan & Yılmaz, 2014, S. 93-94.

ernsthafte Zweifel an ihrer Unabhängigkeit und Unparteilichkeit rechtfertigen. Nach Artikel 8 Abs. 1 der Verfahrensordnung sind auch die Mitglieder des Streitbeilegungsgremiums verpflichtet, sich unverzüglich aus dem betreffenden Verfahren zurückzuziehen, wenn berechtigte Gründe vorliegen, die geeignet sind, ernsthafte Zweifel an ihrer Unparteilichkeit zu begründen.

Bemerkenswert ist, dass die Gründe für den Rückzug aus dem Verfahren und für die Ablehnung in diesen Bestimmungen nicht abschließend (nicht taxativ) geregelt sind. Gleichwohl nennt Artikel 8 der Verfahrensordnung beispielhaft bestimmte Konstellationen, in denen Zweifel an der Unparteilichkeit eines Mitglieds anzunehmen sind. Danach ist ein solcher berechtigter Grund insbesondere gegeben, wenn das Mitglied an der Streitigkeit unmittelbar oder mittelbar - persönlich oder als Organ einer juristischen Person - beteiligt ist; wenn die Streitigkeit einen Verein betrifft, dessen Mitglied das betreffende Mitglied früher war oder gegenwärtig¹⁹ ist oder in dessen Gremien es tätig war oder ist; wenn zwischen dem Mitglied und einer Partei des Verfahrens Verwandtschaft oder Schwägerschaft bis zum (einschließlich) dritten Grad besteht; oder wenn zwischen dem Mitglied und einer Partei oder deren Vertreter eine wirtschaftliche Interessenverflechtung oder eine enge persönliche Beziehung vorliegt.

Zusammenfassend lässt sich festhalten, dass die Gründe für Befangenheit oder Ablehnung (*d. h. die Besorgnis der Befangenheit*) im Gesetz sowie in der Verfahrensordnung (Artikel 8 Abs. 1 der Verfahrensordnung) geregelt sind. Bestehen berechtigte Zweifel an der Unparteilichkeit eines Mitglieds - etwa aufgrund persönlicher oder wirtschaftlicher Nähe zu einer der Parteien - ist dieses verpflichtet, sich unverzüglich aus dem Verfahren zurückzuziehen. Darüber hinaus steht auch den Parteien das Recht zu, ein Mitglied wegen Besorgnis der Befangenheit abzulehnen. In diesem Fall ist die betreffende Partei verpflichtet, den Ablehnungsantrag innerhalb von sieben Tagen ab Kenntnis des Ablehnungsgrundes schriftlich und unter Angabe von Gründen beim Vorsitzenden des Streitbeilegungsgremiums einzureichen. Nach Ablauf dieser Frist bleibt eine von den Parteien erhobene Ablehnung wirkungslos. Unberührt bleibt jedoch die Möglichkeit

¹⁹ Der Teil der Bestimmung, der eine gegenwärtig bestehende Vereinsmitgliedschaft betrifft, kann im Lichte von Artikel 55 Abs. 3 der Verbandssatzung sowie Artikel 3 Abs. 4 der Verfahrensordnung Zweifel aufwerfen. Denn der genannte Umstand stellt bereits ein Hindernis für die Mitgliedschaft im Streitbeilegungsgremium dar.

der Selbstablehnung des betreffenden Mitglieds gemäß Artikel 8 Abs. 3 der Verfahrensordnung.²⁰

5 Rechtliche Natur des Verfahrens

Die rechtliche Natur des Verfahrens vor dem Streitbeilegungsgremium stellt einen zentralen und interessanten Aspekt der vorliegenden Untersuchung dar. Denn ein Rechtsinstitut kann nur dann richtig erfasst werden, wenn seine rechtliche Natur präzise bestimmt ist. Zunächst ist festzustellen, dass das Verfahren vor dem Streitbeilegungsgremium eine Methode zur Streitbeilegung darstellt. Denn diese Methode zielt auf die Lösung von Konflikten bestimmter Kategorien zwischen bestimmten Personen ab.

Das Verfahren vor dem Streitbeilegungsgremium ist als Schiedsverfahren im Sinne von Artikel 5 Abs. 9 des Verbandsgesetzes einzuordnen.²¹ Nach Artikel 5 Abs. 9 des Verbandsgesetzes führen die erstinstanzlichen Rechtsgremien Schiedsverfahren in fairer und unparteiischer Weise durch, unter Wahrung der Gleichheit der Parteien und des Rechts auf rechtliches Gehör. Auf dieser Grundlage kann die vorliegende Streitbeilegungsmethode als Schiedsverfahren angesehen werden.²² Zusammenfassend handelt es sich um ein institutionell ausgestaltetes, jedoch in mehrfacher Hinsicht *sui generis* geprägtes Schiedsverfahren.

Soweit Streitigkeiten der ausschließlichen Zuständigkeit des Streitbeilegungsgremiums unterfallen, liegt eine obligatorische Schiedsgerichtsbarkeit vor; in den Fällen hingegen, in denen die Zuständigkeit auf einer Parteivereinbarung beruht, handelt es sich um eine fakultative Schiedsgerichtsbarkeit.²³ Es handelt sich nicht um ein ad-hoc-Schiedsgericht, sondern um ein institutionelles Schiedsgericht.²⁴ Gleichwohl weist das Verfahren *sui generis* Züge auf und unterscheidet sich in mancher Hinsicht von klassischen Schiedsverfahren.

²⁰ Das im Zivilprozessrecht für die Richterablehnung vorgesehene System weist insoweit Parallelen auf (vgl. hierzu Pekantez, Atalay & Özkes, 2025, S. 114).

²¹ Erdoğan & Yeşildal, 2023, S. 26. Siehe auch und vgl. Küçük, 2021, S. 92 f.

²² Erdoğan & Yeşildal, 2023, S. 26; Küçük, 2021, S. 235.

²³ Erdoğan & Yeşildal, 2023, S. 27. Siehe auch Pekantez & Yeşilirmak, 2025, S. 4537; Topuz, 2017, S. 1903; Ekşi, 2021, S. 330 f. Vgl. Ayanoglu, 2008, S. 43 f. Siehe auch Özdemir Kocasakal, 2021, S. 603 f.; Akyıldız, 2021, S. 60 f.

²⁴ Erdoğan & Yeşildal, 2023, S. 27-28.

6 Ablauf des Verfahrens

Die Arbeitsweise sowie die grundlegenden Verfahrensprinzipien des Streitbeilegungsgremiums sind in der vom Vorstand des Verbands erlassenen Verfahrensordnung geregelt. Das Verfahren wird durch Einreichung eines schriftlichen Antrags eingeleitet, dem der Nachweis über die vollständige Entrichtung der Antragsgebühr²⁵ beizufügen ist. Die Verfahrensordnung regelt detailliert die erforderlichen Angaben und Unterlagen, wie Personalien, Lizenznummer, Adresse, anwaltliche Vollmacht, Streitwert, Begründung und Beweismittel (Artikel 6 Abs. 3 der Verfahrensordnung). Fehlen die zwingenden Bestandteile der Antragsschrift, wird diese dem Antragsteller zur Ergänzung zurückgegeben; werden die fehlenden Bestandteile nicht innerhalb von sieben Tagen ergänzt, gilt der Antrag als nicht gestellt (Artikel 7 Abs. 2 der Verfahrensordnung). Die Erwidierungsfrist für den Antragsgegner beträgt sieben Tage. Die Antragserwidernng, welche die vorgeschriebenen Bestandteile enthält, wird samt ihren Anlagen dem Kläger bzw. - in Fällen der Streitverkündung - dem Dritten zugestellt (Artikel 7 Abs. 6 der Verfahrensordnung). Nach Abschluss des Schriftenwechsels prüft das Streitbeilegungsgremium die Zulässigkeit (*zum Beispiel: die Zuständigkeit, die Fristen*). Grundsätzlich erfolgt die Entscheidung auf Grundlage der Aktenlage; in Ausnahmefällen kann jedoch eine mündliche Verhandlung durchgeführt werden. Gemäß Artikel 17 Abs. 1 der Verfahrensordnung sind die Parteien verpflichtet, die in der Verfahrensordnung festgelegten oder vom Streitbeilegungsgremium bestimmten Fristen einzuhalten.²⁶

²⁵ Bei vermögensrechtlichen Streitigkeiten sowie bei Streitigkeiten über die Aufhebung einer Geldstrafe ist eine Antragsgebühr in Höhe von 3% des Streitwerts im Voraus zu entrichten (Artikel 19 Abs. 1 der Verfahrensordnung). Verfügt die Streitigkeit über keinen bezifferbaren Vermögenswert, ist eine zu Beginn jeder Saison vom Vorstand des Türkischen Fußballverbands festzusetzende Pauschalgebühr zu zahlen (Artikel 19 Abs. 2 der Verfahrensordnung). Das Streitbeilegungsgremium erkennt der im Streit obsiegenden Partei - sofern sie anwaltlich vertreten ist - ein Honorar in Höhe der nach dem amtlichen Gebührentarif für vor den Zivilgerichten erster Instanz geführte Verfahren vorgesehenen Pauschalgebühr zu (Artikel 56 Abs. 2 der Verbandssatzung; Artikel 19 Abs. 4 der Verfahrensordnung). Das Anwaltshonorar darf den zugesprochenen oder abgewiesenen Teil des Streitgegenstands nicht übersteigen (Artikel 19 Abs. 4 der Verfahrensordnung). In seinen Entscheidungen setzt das Streitbeilegungsgremium nach Ermessen fest, welche Partei die Antragsgebühr, die Kosten sowie das Anwaltshonorar in welcher Höhe zu tragen hat; die Verfahrenskosten werden der unterliegenden Partei auferlegt. Die Antragsgebühren werden vom Türkischen Fußballverband als Einnahmen verbucht (Artikel 19 Abs. 3 der Verfahrensordnung).

²⁶ Nach Ablauf der gesetzten und mitgeteilten Frist eingereichte Anträge bleiben unberücksichtigt; in diesem Fall entscheidet das Streitbeilegungsgremium auf der Grundlage der vorhandenen Beweismittel (Artikel 17 Abs. 1 der Verfahrensordnung). Der Vorsitzende des Streitbeilegungsgremiums kann die in dieser Verfahrensordnung vorgesehenen Fristen unter Berücksichtigung der Eigenart des Sachverhalts, des Standes der Akte sowie der besonderen Struktur des Fußballs verkürzen, sofern dies geboten erscheint. In solchen Fällen sind die Änderungen der Fristen den beteiligten Parteien unverzüglich mitzuteilen (Artikel 17 Abs. 2 der Verfahrensordnung).

Nach Artikel 18 Abs. 1 der Verfahrensordnung kann das Streitbeilegungsgremium auf Antrag einer Partei einstweilige Maßnahmen anordnen, sofern eine hohe Wahrscheinlichkeit eines nicht wiedergutmachenden Schadens besteht und die Maßnahme zur unverzüglichen Sicherung der Rechte der antragstellenden Partei erforderlich ist. Zudem muss die Maßnahme erforderlich sein, um die Rechte der antragstellenden Partei unter Berücksichtigung des aktuellen Verfahrensstadiums und der besonderen Gegebenheiten des Fußballs unverzüglich zu schützen. Der hierfür maßgebliche Beweismaßstab ist die Glaubhaftmachung.²⁷ Sofern erforderlich, kann das Streitbeilegungsgremium zudem die Leistung einer Sicherheit in einer Art und Höhe anordnen, die der jeweiligen einstweiligen Maßnahme angemessen ist.

Gemäß Artikel 15 Abs. 1 der Verfahrensordnung wendet das Streitbeilegungsgremium im Laufe des Verfahrens die in der Verfahrensordnung vorgesehenen Verfahrensvorschriften sowie diejenigen Bestimmungen der sonstigen das Verfahren betreffenden Rechtsvorschriften an, soweit sie dieser Verfahrensordnung nicht widersprechen. In der Literatur wird zutreffend darauf hingewiesen, dass diese Vorschrift erläuterungsbedürftig ist.²⁸ Bei dem in der Vorschrift genannten sonstigen Recht handelt es sich um die im türkischen Recht für die nationale (innerstaatliche) Schiedsgerichtsbarkeit geltenden Bestimmungen der türkischen Zivilprozessordnung über das Schiedsverfahren.²⁹

Das Streitbeilegungsgremium entscheidet auf Grundlage des Verbandsgesetzes, der Satzung, der Verfahrensordnung sowie der FIFA- und UEFA-Regeln³⁰ nach türkischem materiellem Recht.

Begründete Entscheidungen sind grundsätzlich innerhalb von vier Monaten zu erlassen; eine Verlängerung der Entscheidungsfrist ist in monatlichen Abschnitten möglich (Artikel 11 Abs. 4 der Verfahrensordnung). Das Fehlen einer Höchstfrist

²⁷ Für die Glaubhaftmachung siehe Kuru, Arslan & Yılmaz, 2014, S. 560-561; Pekcanitez, Atalay & Özkes, 2025, S. 366; Arslan, Yılmaz, Taşpınar Ayvaz & Hanağası, 2024, S. 419; Atalay, 2025, S. 2720 f.; Atalı, Ermenek & Erdoğan, 2022, S. 485; Albayrak, 2013, S. 57 f.

²⁸ Erdoğan & Yeşildal, 2023, S. 20.

²⁹ Erdoğan & Yeşildal, 2023, S. 28.

³⁰ Mit den FIFA-Regeln sind insbesondere die FIFA-Statuten, der FIFA-Disziplinkodex, der FIFA-Ethikkodex sowie das FIFA-Reglement zum Status und Transfer von Spielern einschließlich der einschlägigen Verfahrens- und Entscheidungsordnungen der FIFA-Rechtsprechungsorgane gemeint. Unter den UEFA-Regeln sind insbesondere die UEFA-Statuten, der UEFA-Disziplinkodex, die UEFA-Vorschriften zur Klublizenzierung und finanziellen Nachhaltigkeit sowie die UEFA-Wettbewerbsregulieren für die europäischen Klubwettbewerbe zu verstehen.

für derartige Verlängerungen stellt jedoch einen Systemmangel dar, da hierdurch die Wahrung einer angemessenen Verfahrensfrist im Sinne von Artikel 6 der Europäischen Menschenrechtskonvention gefährdet werden kann. Gleichwohl ist sicherzustellen, dass etwaige Verlängerungen die ursprüngliche Verfahrensdauer nicht überschreiten, um den Grundsatz einer Entscheidung innerhalb einer angemessenen Frist zu wahren.

Die Beratungen werden vom Vorsitzenden geleitet; nach Abschluss der Prüfung und Erörterung erfolgt die Abstimmung in der Reihenfolge der Nachnamen. Der Vorsitzende gibt seine Stimme zuletzt ab. In Abwesenheit des Vorsitzenden und seines Stellvertreters führt das an Lebensjahren älteste Mitglied den Vorsitz (Artikel 9 Abs. 4 der Verfahrensordnung).

Die Beschlussfähigkeit des Streitbeilegungsgremiums setzt die Anwesenheit von fünf Mitgliedern voraus. Beschlüsse werden durch Mehrheitsentscheidung gefasst und Stimmenthaltungen sind nicht zulässig.³¹ Bei Stimmengleichheit ist die Stimme des Vorsitzenden ausschlaggebend (Artikel 55 Abs. 5 der Verbandssatzung, Artikel 3 Abs. 3 und Artikel 10 Abs. 1 der Verfahrensordnung).

Die Entscheidung wird von einem vom Vorsitzenden bestimmten, der Mehrheit angehörenden Mitglied abgefasst und von den an der Entscheidung beteiligten Mitgliedern des Gremiums unterzeichnet; etwaige abweichende Meinungen sind beizufügen. Die Entscheidungen sowie die abweichenden Meinungen sind zu begründen (Artikel 11 Abs. 2 der Verfahrensordnung). Die Entscheidung ist zum Zwecke der Vollstreckung unverzüglich dem Generalsekretariat des Türkischen Fußballverbands mitzuteilen. Zudem wird die Entscheidung durch die Koordinierungsstelle den Parteien zugestellt (Artikel 11 Abs. 3 und Artikel 13 Abs. 1 der Verfahrensordnung).

7 Rechtsbehelfe und Rechtsmittel gegen Entscheidungen

Nach Artikel 5 Abs. 3 des Verbandsgesetzes können Entscheidungen des Streitbeilegungsgremiums vor dem Verbandsschiedsgericht angefochten werden. Eine Partei, die gegen eine Entscheidung des Streitbeilegungsgremiums das

³¹ Ein Mitglied, das sich der Stimme enthält oder keine Stimme abgibt, gilt als unentschuldigt der Sitzung ferngeblieben (Artikel 10 Abs. 2 der Verfahrensordnung).

Verbandsschiedsgericht anrufen möchte, ist verpflichtet, ihren Antrag innerhalb von sieben Tagen nach Zustellung der betreffenden Entscheidung schriftlich einzureichen (Artikel 62 Abs. 1 der Verbandssatzung; Artikel 12 Abs. 1 der Verfahrensordnung). Erfolgt innerhalb einer Frist von sieben Tagen keine Anfechtung, wird die Entscheidung endgültig. Die Entscheidungen des Verbandsschiedsgerichts in Angelegenheiten der Leitung und Disziplin des Fußballs sind endgültig und unanfechtbar. Diese Entscheidungen unterliegen weder der Genehmigung durch Verwaltungs- oder Justizbehörden noch können sie vor Verwaltungs- oder Justizbehörden angefochten werden (Artikel 62 Abs. 3 der Verbandssatzung). Im Ergebnis werden die vom Streitbeilegungsgremium in diesen Angelegenheiten erlassenen Entscheidungen rechtskräftig, sofern sie nicht vor dem Verbandsschiedsgericht angefochten werden, oder mit der Entscheidung des Verbandsschiedsgerichts über die eingelegte Anfechtung (Artikel 12 Abs. 2 der Verfahrensordnung). Rechtskräftige Entscheidungen des Streitbeilegungsgremiums werden vom Türkischen Fußballverband unverzüglich vollzogen (Artikel 12 Abs. 3 der Verfahrensordnung).

Bei fakultativen Streitigkeiten, die nicht die Leitung oder Disziplin des Fußballs betreffen, können Entscheidungen des Verbandsschiedsgerichts im Wege einer Aufhebungsklage vor den zuständigen türkischen Regionalgerichten (Berufungsgerichten) nach Maßgabe der türkischen Zivilprozessordnung angegriffen und gegebenenfalls der Kassation unterzogen werden.³²

An dieser Stelle ist als weiterer zu prüfender Rechtsbehelf die Individualverfassungsbeschwerde in Betracht zu ziehen. Nach Artikel 45 Abs. 3 des Gesetzes über die Organisation und das Verfahren des Verfassungsgerichts ist eine unmittelbare Individualverfassungsbeschwerde gegen Gesetzgebungsakte sowie gegen normative Verwaltungsakte unzulässig; ebenso wenig können Entscheidungen des Verfassungsgerichts oder Maßnahmen, die nach der Verfassung der gerichtlichen Kontrolle entzogen sind, Gegenstand einer Individualverfassungsbeschwerde sein. Gemäß Artikel 59 Abs. 2 der Verfassung der Republik Türkei kann gegen Entscheidungen der Sportverbände über die Leitung und Disziplin sportlicher Tätigkeiten ausschließlich der obligatorische Schiedsweg

³² Erdoğan & Yeşildal, 2023, S. 34. Zur Entwicklung von Rechtsmitteln gegen Schiedssprüche im Allgemeinen siehe Alpaslan & Steiner, 2022, S. 1083-1084; Alpaslan, 2022, S. 1931 f.

beschritten werden. Die Entscheidungen des Verbandsschiedsgerichts sind endgültig; gegen sie ist kein Rechtsweg zu staatlichen Gerichten eröffnet. Mit anderen Worten: Der Rechtsweg ist hinsichtlich solcher Entscheidungen ausgeschlossen. Folglich ist eine Individualverfassungsbeschwerde gegen Entscheidungen des Verbandsschiedsgerichts des Türkischen Fußballverbands, die Angelegenheiten betreffen, für welche das Streitbeilegungsgremium ausschließlich zuständig ist, unzulässig. Dagegen kann gegen Entscheidungen des Verbandsschiedsgerichts des Türkischen Fußballverbands in Angelegenheiten, die in die fakultative Zuständigkeit des Streitbeilegungsgremiums fallen, Individualverfassungsbeschwerde erhoben werden.

Im Ergebnis ist - obgleich es sich hierbei nicht um ein Rechtsmittel im engeren Sinne handelt³³ - in fakultativen Streitigkeiten die Möglichkeit einer Individualverfassungsbeschwerde vor dem Verfassungsgericht besonders hervorzuheben. Hingegen ist eine Individualverfassungsbeschwerde gegen Entscheidungen in Angelegenheiten der Leitung und Disziplin ausgeschlossen, da die Verfassung insoweit zwingend eine obligatorische Schiedsgerichtsbarkeit vorsieht.³⁴

8 Ergebnis

Das Streitbeilegungsgremium ist eines der vier grundlegenden erstinstanzlichen Rechtsgremien des Türkischen Fußballverbands und für bestimmte Sportstreitigkeiten zuständig. Der Grund für die Bereitstellung spezieller Streitbeilegungsmechanismen für Sportstreitigkeiten liegt darin, den spezifischen Charakter und die Anforderungen des Sports zu berücksichtigen.

Das Streitbeilegungsgremium ist ausschließlich für Streitigkeiten über sportliche Sanktionen und Ausbildungsentschädigungen zuständig. In diesen Angelegenheiten ist die Zuständigkeit des Streitbeilegungsgremiums zwingend, und der Rechtsweg zu staatlichen Gerichten oder anderen Schiedsgerichten ist ausgeschlossen; alternative Streitbeilegungsmethoden, insbesondere solche auf der Parteiautonomie beruhenden außerprozessualen Verfahren wie die Mediation, sind jedoch nicht

³³ Alpaslan, 2023, S. 30 f.

³⁴ Alpaslan, 2023, S. 155. Siehe auch Gündoğdu, 2019, S. 154-155.

zwingend ausgeschlossen. Neben den ausschließlich zuständigen Fällen entscheidet das Streitbeilegungsgremium auch über alle vertraglichen Streitigkeiten zwischen Vereinen, Spielern, Trainern und Spielerberatern, sofern die Parteien ihre Zuständigkeit ausdrücklich anerkannt haben. Der Türkische Fußballverband ist für nationale Streitigkeiten zuständig, während bei internationalen Streitigkeiten die FIFA entscheidet.

Das Streitbeilegungsgremium besteht aus einem Vorsitzenden, sechs ordentlichen und sechs stellvertretenden Mitgliedern, die vom Vorstand des Verbands gewählt werden. Darüber hinaus sieht die Verfahrensordnung besondere Qualifikationen vor. Auch wenn die Bestimmung nicht eindeutig ist, erscheint es sachgerecht, sowohl die ordentlichen als auch die stellvertretenden Mitglieder nach diesem Prinzip zu wählen.

Die Mitglieder sind unabhängig und unparteiisch und dürfen weder Weisungen noch Empfehlungen von außen entgegennehmen. Auch dürfen sie keine weiteren Funktionen innerhalb des Verbands oder ihm nahestehender Organisationen übernehmen. Um Unparteilichkeit und Unabhängigkeit zu gewährleisten, bestehen bestimmte Schutzmechanismen. Liegen berechtigte Zweifel an der Unparteilichkeit vor - etwa bei persönlicher oder wirtschaftlicher Nähe zu den Parteien -, muss sich das Mitglied unverzüglich aus dem Verfahren zurückziehen. Auch die Parteien können die Unparteilichkeit eines Mitglieds anfechten.

Das Verfahren vor dem Streitbeilegungsgremium ist als institutionelles, jedoch in mehrfacher Hinsicht *sui-generis* geprägtes Schiedsverfahren einzuordnen. Für die Streitigkeiten, die in die ausschließliche Zuständigkeit des Streitbeilegungsgremiums fallen, handelt es sich um obligatorische Schiedsgerichtsbarkeit; in den Fällen, in denen die Parteien ihre Zuständigkeit anerkennen, handelt es sich um fakultative Schiedsgerichtsbarkeit. Es handelt sich nicht um ein *ad-hoc*-Schiedsgericht, sondern um ein institutionelles Schiedsgericht mit *sui-generis*-Charakter. Das Verfahren vor dem Streitbeilegungsgremium stellt ein besonderes rechtliches Modell dar, das darauf abzielt, ein ausgewogenes Verhältnis zwischen Verbandsautonomie, den Rechten der Parteien und den spezifischen Anforderungen des Sports herzustellen.

Das Verfahren wird durch Einreichung eines schriftlichen Antrags eingeleitet. Die Erwiderungsfrist für den Antragsgegner beträgt sieben Tage. Nach Abschluss des Schriftenwechsels prüft das Streitbeilegungsgremium die Zulässigkeit. Grundsätzlich wird auf Aktenbasis entschieden; es kann jedoch eine mündliche Verhandlung stattfinden. Das Streitbeilegungsgremium kann einstweilige Maßnahmen anordnen. Begründete Entscheidungen sind grundsätzlich innerhalb von vier Monaten zu erlassen; eine Verlängerung der Entscheidungsfrist ist in monatlichen Abschnitten möglich. Gleichwohl ist sicherzustellen, dass etwaige Verlängerungen die ursprüngliche Verfahrensdauer nicht überschreiten, um den Grundsatz einer angemessenen Frist zu wahren.

Entscheidungen des Streitbeilegungsgremiums können vor dem Schiedsgericht des Verbands angefochten werden. Erfolgt innerhalb von sieben Tagen keine Anfechtung, wird die Entscheidung endgültig. Die Entscheidungen des Schiedsgerichts in Angelegenheiten der Leitung und Disziplin des Fußballs sind endgültig und unanfechtbar. Bei fakultativen Streitigkeiten können Entscheidungen des Verbandsschiedsgerichts gemäß der türkischen Zivilprozessordnung im Wege einer Aufhebungsklage vor den zuständigen türkischen Regionalgerichten (Berufungsgerichten) angegriffen und im weiteren Verlauf auch vom Kassationsgericht überprüft werden. In diesem Fall kann auch eine Individualverfassungsbeschwerde eingereicht werden. Hingegen ist eine Individualverfassungsbeschwerde gegen Entscheidungen in Angelegenheiten der Leitung und Disziplin ausgeschlossen.

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SPIELMANIPULATIONEN UND WETTBETRUG IM FUßBALLRECHT

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Die Manipulation von Sportspielen, illegale Wettaktivitäten und die Vergabe unlauterer Vorteile an Sportbeteiligte durch regelwidriges Spielverhalten fallen in den Bereich des Strafrechts. Die grundlegenden Probleme im Sportrecht beschränken sich nicht auf Doping oder Gewalttaten; vielmehr betrifft die Manipulation von Sportspielen zu deren unlauterer Beeinflussung, die Bestechung von Spielern oder Schiedsrichtern sowie illegale Wetten, deren Beihilfe und Förderung die gesamte Gesellschaft. Es handelt sich nicht bloß um eine Frage des Privatrechts, etwa wenn einem Zuschauer das Recht auf ein faires und unvorhersehbares Sportereignis durch sein bezahltes Eintrittsgeld vorenthalten wird. Dabei darf nicht vergessen werden, dass das Strafrecht, neben den beträchtlichen illegalen Gewinnen, auch eine zentrale Rolle beim Schutz des individuellen Rechts auf Selbstverwirklichung und des gesellschaftlichen Rechts auf einen Beitrag zur persönlichen Entwicklung durch Unterhaltung und Sport spielt. In jüngster Zeit hat der Einsatz von Informationstechnologien als Werkzeuge bei diesen Straftaten (illegale Manipulationen) zu einem signifikanten und grenzüberschreitenden Anstieg der in diesem Bereich begangenen Straftaten geführt. Diese umfangreichen illegalen Finanzgewinne ziehen mitunter eine Kettenreaktion neuer rechtlicher Probleme nach sich, die von Terrorismusfinanzierung bis hin zu Geldwäsche reichen.

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MATCH-FIXING AND BETTING FRAUD IN FOOTBALL LAW

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The manipulation of sporting events, illegal betting, and the granting of unfair advantages through rule violations fall within the scope of criminal law. Sports law extends beyond doping and violence to address match-fixing, bribery of athletes, coaches, or referees, illegal betting, and involvement in or facilitation of such activities. These offenses undermine both the integrity of sport and public confidence in sporting competitions, giving them significant societal implications. Their legal consequences are not limited to private law or to spectators being deprived of a fair and unpredictable contest despite purchasing admission. Criminal law serves a broader public purpose by protecting the integrity of sport, safeguarding the public interest, and preserving opportunities for self-realization and personal development through fair competition. In recent years, advances in information and communication technologies have facilitated match manipulation and illegal betting, contributing to a sharp increase in transnational criminal activity. The substantial illicit profits generated by these offenses frequently finance other forms of organized crime, including money laundering, corruption, tax evasion, and, in some cases, terrorist financing.



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1 Allgemein

Um das Thema dieses Artikels aus der Perspektive des türkischen Rechts besser zu verstehen, ist es notwendig, kurz einige historische Informationen und einige konkrete Fälle im Zusammenhang mit illegalen Sport- und Wettaktivitäten zu erwähnen.

Die grundlegendste Voraussetzung für das Überleben des modernen kommerziellen Sports ist die Ungewissheit. Zuschauer kaufen Tickets und abonnieren Übertragungen, solange sie glauben, dass der Ausgang des Spiels nicht vorherbestimmt ist und sich der Kampf auf dem Spielfeld natürlich entwickelt. Dieses Prinzip der „Ungewissheit“ ist im türkischen Fußball – wie auch weltweit, insbesondere in den letzten Jahren – ernsthaft bedroht. Die Zuschauer investieren Zeit und Geld in Spiele, weil sie ein Spiel mit ungewissem Ausgang erwarten, dass von der Mannschaftsleistung und dem Glück abhängen kann. Unfaire Praktiken dieser Art täuschen und verführen jedoch genau diese Erwartungshaltung. Das Konzept der „Integrität des Spiels“ wird durch die Einmischung von Akteuren außerhalb des Spielfelds (Wettunternehmen und Manipulatoren) in das Spiel stark untergraben.

In der Türkei waren Spielmanipulation, Bestechungszahlungen und illegale Wetten bis 2013 nicht als Straftaten im Sinne von Bestechungszahlungen geregelt. Solche Handlungen wurden zumeist durch Disziplinarmaßnahmen und Sanktionen geahndet, sofern sie gegen die einschlägigen Disziplinarbestimmungen verstießen.¹ Seit den 2010er Jahren ist ein zunehmender Trend zur Regulierung dieses Themas als Straftat im technischen Sinne zu beobachten. Im Gegensatz zur Rechtsprechung von Ländern wie Deutschland und der Schweiz² kannte das türkische Justizsystem keine Praxis der Bestrafung von Tätern (selbst wenn solche Handlungen mit Verbrechen wie Betrug oder Vertrauensbruch vergleichbar waren).

In diesem Sinne wurde die erste rechtliche Regelung mit den Änderungen an Artikel 5 des Gesetzes Nr. 7258 über die Regelung von Wetten und Glücksspielen bei Fußball- und anderen Sportwettbewerben vom 29. April 1959 durch Artikel 3 des Gesetzes Nr. 6495 vom 12. Juli 2013 umgesetzt. Nach diesem Datum wurden illegale

¹ Siehe Özocak, 2024, S. 234 ff.

² Vgl. Ünver, 2007, S. 543, 544 und 545; Koch, 2004, S. 15 ff.; Rehberger & Flachsmann, 2004, S. 27 ff.; Günter, 2004, S. 61 ff.

Glücksspielaktivitäten zu einer Straftat, die neben disziplinarischen Sanktionen auch mit Geldstrafen geahndet wird. Kurz nach Inkrafttreten dieses Gesetzes wurden zahlreiche Personen wegen illegaler Glücksspielaktivitäten angeklagt; einige Beispiele werden im Folgenden aufgeführt. Nach Inkrafttreten des oben genannten Gesetzes zur Kriminalisierung illegalen Glücksspiels wurden zahlreiche Strafverfahren eingeleitet, insbesondere in den ersten 15 Jahren. Viele dieser Aktivitäten wurden jedoch anfangs mit traditionellen Methoden durchgeführt. In den letzten acht Jahren hat sich jedoch gezeigt, dass diese Aktivitäten organisiert und grenzüberschreitend stattfinden und Informationssysteme genutzt werden, um ein breites Publikum zu erreichen. Das Problem beschränkt sich nicht mehr nur auf einige wenige Fälle von „disziplinlosen Fußballern“, sondern ist eng mit illegaler Einkommensgenerierung, organisierter Wirtschaftskriminalität und Geldwäsche verknüpft.

Eine weitere Entwicklung, die etwa zur gleichen Zeit stattfand, war die Kriminalisierung von Spielmanipulationen und der Zahlung von Leistungsprämien durch Artikel 11 des Gesetzes Nr. 6222 über die Verhütung von Gewalt und Unruhen im Sport vom 31. März 2011. Zu einem späteren Zeitpunkt wurden einige Absätze des zuvor genannten Artikels 11 aufgrund verschiedener neu aufgetretener Bedürfnisse und insbesondere aufgrund der weit verbreiteten und vielfältigen Art und Weise, wie diese Verbrechen begangen wurden, geändert; dem Artikel wurden zahlreiche Bestimmungen hinzugefügt, die sich nicht nur auf das materielle Strafrecht, sondern auch auf das Strafprozessrecht beziehen. Zwar gab es in den 2010er Jahren auch strafrechtliche Ermittlungen wegen Spielmanipulation und Bestechung, wenn auch in kleinerem Umfang und mit Beteiligung vieler Einzelpersonen und Vereine, doch sind diese Taten heute viel weiterverbreitet, betreffen eine größere Anzahl von Personen auf verschiedenen Plattformen und werden organisiert begangen. Jedes Jahr werden zahlreiche Verfahren eingeleitet, um strafrechtliche Sanktionen festzulegen. Anfänglich stellte die Schwierigkeit, Beweise zu erbringen und zu sichern, ein Hindernis dar. Dank der Zusammenarbeit durch internationale Mechanismen und der rechtlichen Regelung strafrechtlicher Maßnahmen und Ermittlungsmethoden, die den Justizbehörden zur Verfügung gestellt werden, ist die Bekämpfung dieser Verbrechen jedoch effektiver geworden. Zweifellos verhindern diese Entwicklungen nicht, dass diese Verbrechen auf unterschiedliche Weise begangen werden. Probleme in der Wirtschaftsstruktur des Landes, das Streben nach schnellem und einfachem Geld, der Einsatz schwer erkennbarer Software, die mithilfe von Informationstechnologie und Internet-Tools

im Internetumfeld eingesetzt werden kann, sowie die zunehmende grenzüberschreitende Begehung dieser Verbrechen zeigen, dass diese Straftaten weiterhin begangen werden, wenn auch in veränderter Form und ohne Rückgang. Die in diesem Aufsatz behandelten Verbrechen zählen zu den am häufigsten begangenen und organisierten Verbrechen in der Türkei und werden von den Justizbehörden untersucht.

2 Beispiele aus aktuellen Fällen

Etwa fünfzehn Jahren sind vergangen, seit die Spielmanipulationen am 3. Juli 2011 begannen. Mehrere Angeklagte, darunter der ehemalige Präsident des Fenerbahçe-Sportclubs, A.Y., der ehemalige Manager İE., AB. und AÇ., die im Zuge der Ermittlungen festgenommen und vor dem 13. Istanbuler Schwurgericht angeklagt worden waren, wurden am 6. November 2020 vom Vorwurf der Spielmanipulation und der Bestechung mit Prämien freigesprochen. Der Prozess um die Spielmanipulationen im Fußball endete mit den Freisprüchen, die von der 5. Strafkammer des Obersten Berufungsgerichts bestätigt wurden. Obwohl Fenerbahçe sich in der Saison 2011/12 direkt für die UEFA-Champions League qualifiziert hatte, durfte der Verein aufgrund von Ermittlungen wegen Spielmanipulation nicht an europäischen Wettbewerben teilnehmen. Unmittelbar nach dem Ausscheiden in den Play-offs zu Beginn der Saison 2013/14 verhängte die UEFA eine zweijährige Sperre gegen Fenerbahçe für alle europäischen Wettbewerbe.³

Im Herbst 2025 veröffentlichten türkische Medien zahlreiche Berichte, in denen behauptet wurde, dass viele Athleten (vorwiegend Fußballspieler), Manager, Schiedsrichter und Mitglieder anderer Sportvereine, die mehrheitlich türkische Staatsbürger waren, an illegalen Online-Wetten oder Spielmanipulationen beteiligt gewesen seien. Die meisten dieser Berichte betrafen sowohl strafrechtliche Ermittlungen der Staatsanwaltschaften als auch Disziplinarverfahren der Sportverbände (insbesondere des türkischen Fußballverbands). Der Türkische Fußballverband (TFF) hat zum Beispiel in einem Fall über seine Disziplinarkommission für Profifußball die im Rahmen der Wettermittlungen verhängten Strafen bekanntgegeben. Gemäß den Beschlüssen der 22. Sitzung der Disziplinarkommission für Profifußball vom 31. Oktober 2025 wurden 149

³ Siehe Naci Top, 2014.

Schiedsrichter für 8 bis 12 Monate gesperrt. Von den 571 Schiedsrichtern, die an illegalen Wetten beteiligt waren, handelte es sich bei 371 um Schiedsrichter in Profiligen. Laut den Behauptungen sollen einige Schiedsrichter allein über 18.000 Wetten abgeschlossen haben, während 42 Schiedsrichter Wetten auf über 1.000 Fußballspiele platziert haben. 149 Schiedsrichter, denen Wetten vorgeworfen wurden, erhielten Berufsverbote zwischen 8 bis 12 Monaten.⁴

In denselben Monaten berichtete die Presse auch über zahlreiche umfassende strafrechtliche Ermittlungen, sowohl im Bereich der individuellen als auch der organisierten Kriminalität. Um diese kurz zusammenzufassen, wurde zum Beispiel Mitglieder der „Yolyemezler-Bande“, die in vier Provinzen mit Zentrum in Istanbul illegale Wettgeschäfte betrieb, festgenommen. Im Rahmen dieser Ermittlungen der Abteilung für organisierte Kriminalität der Staatsanwaltschaft Bakırköy (Istanbul) führten Teams der Abteilung für Cyberkriminalität Untersuchungen durch. Die Analyse der Verdächtigen ergab, dass sie organisiert agierten, kriminelle Verhandlungen führten, integrierte Systeme mit Wettanbietern einrichteten, illegale Wetten über sogenannte „ausländische Finanzinstitute“ abwickelten und ein Transaktionsvolumen von 1,5 Milliarden Lira aufwiesen. Hinzu wurden im Zuge der Ermittlungen Geldtransfers im Zusammenhang mit illegalen Wetten, kriminelle Gespräche und Kontobewegungen identifiziert. 33 Mobiltelefone, 30 SIM-Karten, drei Festplatten, ein USB-Stick und Speicherkarten, die mutmaßlich bei den Straftaten verwendet wurden, wurden beschlagnahmt. Es wurde festgestellt, dass Erträge aus illegalen Wetten und Wucherkrediten über die O.... Elektronik Para A.Ş. (O.... Electronic Money Inc.) gewaschen wurden. Die Geldwäsche erfolgte über Unternehmen, die mit der in London ansässigen A. Global Holding verbunden sind. Im Zuge der Ermittlungen wurden in zeitgleichen Operationen gegen zehn Verdächtige und sieben Unternehmen Vermögenswerte im Wert von insgesamt 402 Millionen Lira beschlagnahmt. Der türkische Einlagensicherungsfonds (TMSF) setzte einen Treuhänder für die O... Elektronik Para A.Ş. ein.⁵

Übrigens hat ganz neulich *Papara Elektronik Para AG.* (=Papara), das nach Ermittlungen wegen illegaler Wetten unter Zwangsverwaltung gestellt wurde, seine Betriebserlaubnis verloren. Die türkische Zentralbank gab in einer im (offiziellen) Amtsblatt veröffentlichten Mitteilung bekannt, dass *Paparas* Lizenz als Finanzinstitut

⁴ Siehe: Medyascope: <https://medyascope.tv/> (abgerufen am 31. Oktober 2025).

⁵ Siehe: Hurriyet: <https://www.hurriyet.com.tr/> (abgerufen am 24. Oktober 2025).

widerrufen wurde. Verdächtige, darunter der Firmeninhaber A.F.K., wurden festgenommen, da Papara die Begehung des Verbrechens der „illegalen Wetten“ begünstigt haben soll. Mit der Veröffentlichung der Mitteilung im Amtsblatt durch die Zentralbank wurde Papara, die Lizenz als E-Geld-Institut, die ihm durch den Beschluss Nr. 6862 der Bankenaufsichtsbehörde vom 21. April 2016 und gemäß Artikel 15, 18, 2 und 19 des Gesetzes Nr. 6493 über Zahlungs- und Wertpapierabwicklungssysteme, Zahlungsdienste und E-Geld-Institute erteilt worden war, widerrufen. Innenminister A.Y. gab bekannt, dass 32 Verdächtige bei illegalen Wettgeschäften gefasst wurden und dass auf deren Konten Transaktionen im Wert von 524,5 Millionen TL festgestellt wurden.⁶

In der Türkei laufen Ermittlungen gegen mehr als 150 Schiedsrichter und rund 1.000 Fußballspieler. Der Wettskandal im türkischen Fußball hat auch die Provinz erreicht. Der Vorwurf ist illegale Wetten und Manipulation. Viele Spieler wurden gesperrt. Zum Beispiel hat der Viertligist Ağrıspor ein Problem wegen demselben Vorwurf: 20 Spieler sind mittlerweile gesperrt. Die Mannschaft muss nun mit Jugend- und Leihspielern aufgefüllt werden, um den Spielbetrieb aufrechtzuerhalten. Das angestrebte Ziel, der Aufstieg in die dritte Liga, ist in weite Ferne gerückt. Die Mannschaft liegt nach den Turbulenzen der letzten Wochen auf Platz elf, nur wenige Punkte von der Abstiegszone entfernt. Vor kurzem wurde bekanntgegeben, dass drei weitere Spieler für mindestens 45 Tage gesperrt werden.⁷

Nach den jüngsten Medienberichten wurden im Zuge einer Untersuchung des türkischen Fußballverbands (TFF), welche die letzten fünf Jahre umfasst, 510 Personen wegen illegaler Wettaktivitäten zur Einleitung disziplinarischer Maßnahmen an den Disziplinarausschuss für Profifußball (PFDK) verwiesen. Wie aus dieser Überweisungsentscheidung hervorgeht, beschränken sich illegale Wettaktivitäten, die ebenfalls einen Disziplinarverstoß darstellen, nicht auf Fußballer, Trainer und Schiedsrichter, sondern werden auch von anderen Fachleuten, die innerhalb des Fußballverbandes tätig sind, häufig begangen. Laut dieser Entscheidung haben sich 510 Angestellte von Profiligen, die als Physiotherapeuten, psychologische Leistungsberater, Masseure, Gerätewarte, Übersetzer, Ärzte und Ernährungswissenschaftler tätig waren, in den letzten fünf Jahren an illegalen Wetten beteiligt. Da diese Handlungen zweifellos eine Straftat

⁶ Vgl. <https://www.papara.com/> (abgerufen am 12. Dezember 2025).

⁷ Rosch, 2025.

darstellen, obliegt die Durchführung der strafrechtlichen Ermittlungen den Justizbehörden und werden von den zuständigen Behörden geprüft.⁸

Diese Straftaten werden nicht nur in der Türkei, sondern auch im Ausland oder teils im Inland, teils im Ausland (transnational) begangen, unabhängig von der Nationalität der Verdächtigen. Um sowohl die Schwierigkeiten bei den Ermittlungen und der Strafverfolgung als auch die finanzielle Dimension der illegalen Geldwäsche zu verstehen, ist es notwendig, auch die sehr wenigen ausländischen Nachrichtenberichte zu diesem Thema zu berücksichtigen.

Laut Medienberichten wurden auch im Ausland zahlreiche Ermittlungen wegen illegaler Wetten und Spielmanipulationen eingeleitet. Diese Fälle sind längst nicht mehr nur unbedeutende Meldungen in Sportseiten; sie dominieren nun die Schlagzeilen und ähneln oft Nachrichten über das organisierte Verbrechen. Nachfolgend einige einfache Beispiele:

In Bochum (Deutschland) hat der Prozess gegen vier Angeklagte begonnen, die beschuldigt werden, mehr als 30 Fußballspiele in Europa manipuliert zu haben. Den Angeklagten, darunter Türken, drohen bis zu zehn Jahre Haft. Die Staatsanwaltschaft Bochum hatte bereits im vergangenen Jahr Ermittlungen gegen ein Wettnetzwerk in Deutschland eingeleitet. Zunächst beschränkten sich die Ermittlungen auf Deutschland. Im Zuge der Ermittlungen wurde jedoch deutlich, dass der Skandal europaweit reichte, woraufhin internationale Ermittlungen eingeleitet wurden. Den Angeklagten wird vorgeworfen, 17 Spiele in Deutschland und 14 in anderen europäischen Ländern manipuliert zu haben. Laut Anklageschrift beliefen sich die Gesamtwetteinsätze auf die verdächtigen Spiele auf rund 12 Millionen Euro, die Gewinne daraus auf 7,5 Millionen Euro. Den Vorwürfen zufolge wurden insgesamt rund 1,5 Millionen Euro an Schiedsrichter, Spieler und andere Beteiligte gezahlt, um die Spiele zu manipulieren.⁹

Ein anderer Skandal ist der erste große heimische Wettbetrugsfall vor Gericht in Österreich. Lange Zeit wurde in Österreich – wie in vielen anderen Ländern – das Problem der Spielmanipulation nicht als solches identifiziert. Das hat sich inzwischen geändert. Die im Vorjahr aufgeflogenen mutmaßlichen

⁸ Cumhuriyet Spor, 2026.

⁹ Vgl. DW Türkçe (n.d.).

Spielmanipulationen und mehrfachen Wettbetrügereien rund um die Fußball-Profis D.T. (31) und S.K. (36) werden ab Freitag im Grazer Straflandesgericht verhandelt. Die insgesamt zehn Angeklagten im Alter von 26 bis 51 Jahren sollen 18 Spiele manipuliert haben. Unter den Angeklagten finden sich auch die Ex-Bundesliga-Spieler T. und Z. Während T. im Juni vom Fußball-Weltverband (FIFA) lebenslang und weltweit für jegliche Tätigkeit im Fußball gesperrt wurde, fasste Z. eine Sperre für ein Jahr aus. Für die beiden sowie auch für K., der zuletzt Spielerbetreuer war, dürfte die Sportkarriere damit vorbei sein. B. und W. sagen den Kampf an. Angeklagt ist auch noch ein 31-jähriger Profi-Fußballer, der seine Karriere mit dem 1. Januar beendet hat. Bei den übrigen Beschuldigten handelt es sich auch u.a. um einen 33-jährigen Team-Betreuer und ehemaligen Spieler, teilweise sind die Männer aus Serbien, Albanien und Tschetschenien. Gegen die Angeklagten bestehen Vorwürfe der teils versuchten Manipulation von insgesamt 18 Spielen der Bundesliga sowie der Ersten Liga und zwar zwischen November 2004 und Oktober 2013. Interessanterweise werden diese Verbrechen nicht mehr isoliert oder einfach begangen; sie werden jetzt organisiert und manchmal in Verbindung mit anderen Verbrechen verübt. Damit verbunden ist auch der ebenfalls teils versuchte Betrug, wobei diverse Wettanbieter zu Schaden gekommen seien. Weiters besteht der Verdacht der Erpressung. Die Ermittlungsverfahren gegen 15 weitere Beschuldigte wurden ausgeschrieben und werden getrennt weitergeführt. Der Ankläger gliederte die Vorwürfe in mehrere Faktenkomplexe: Wettbetrügereien, Erpressung sowie weitere Delikte, wie etwa Nötigung oder Veruntreuung. In Sachen Wettbetrug haben die Beschuldigten offenbar in unterschiedlichen Konstellationen agiert. Wetten bis zu 300.000 Euro. Dabei flossen Bestechungsgelder in der Höhe von 7.000 bis 40.000 Euro. Die Einsätze bei diesen Wetten waren bei einzelnen Spielen bis zu 300.000 Euro hoch. K. soll an zehn Spielmanipulationen beteiligt gewesen sein, T. an 14. Außerdem wird K., T. und drei weiteren Beschuldigten die Beteiligung an einer kriminellen Vereinigung vorgeworfen. Der ehemalige Gröding-Spieler belastete Ex-Teamspieler K., zwei weitere Verdächtige wurden damals festgenommen. Bis Ende November weitete sich der Skandal auf 30 verdächtige Spieler aus, mutmaßliche Täter wurden u.a. in Deutschland verhaftet und nach Österreich überstellt.¹⁰

Am 1. November 2025 wurde ein Präsidialerlass zum Aktionsplan zur Bekämpfung illegaler Wetten, Glücksspiele und Glücksspiele im virtuellen Raum in der Türkei veröffentlicht. Dieser Erlass weist auf die individuellen und gesellschaftlichen

¹⁰ Laola, 2014.

Gefahren des Problems hin und betont die Notwendigkeit einer umfassenden Zusammenarbeit im Kampf gegen diese illegalen Aktivitäten, insbesondere im Sportbereich.¹¹

Es stellt eine ernsthafte Bedrohung für die Familie und die Gesellschaft dar. Ein wirksamer Kampf ist unerlässlich. Die technologische und finanzielle Infrastruktur sowie ihre internationale Dimension und die rechtliche und administrative Infrastruktur haben sich verändert: internationale Zusammenarbeit ist notwendig. Daher wurde ein „Aktionsplan zur Bekämpfung illegaler Wetten, Glücksspiele und illegalen Glücksspiels im virtuellen Raum“ erarbeitet. Die Behörde zur Untersuchung von Finanzkriminalität wird eine aktive Rolle spielen.

3 Rechtliche Regelungen

Diese Studie untersucht vor allem illegale Wetten und Spielmanipulation als Straftaten; die betreffenden Handlungen stellen jedoch auch Disziplinarverstöße im Sport dar. Sobald solche Vorwürfe bekannt werden, leiten professionelle oder Amateur-Sportvereine und insbesondere Verbände, die mit der jeweiligen Sportart verbunden sind, Disziplinarverfahren gegen die Beteiligten ein. Diese Disziplinarverfahren werden unabhängig vom Verlauf der gerichtlichen Ermittlungen oder dem Ausgang des Gerichtsverfahrens und oft deutlich schneller abgeschlossen. Disziplinarverstöße, die getrennt von strafrechtlichen Ermittlungen behandelt werden, und die von den jeweiligen Verbänden verhängten Disziplinarmaßnahmen haben schwerwiegende Folgen für die Athleten und/oder Sportvereine. Daher werden diese Verstöße, insbesondere im Fußball, nur kurz und vorwiegend im Zusammenhang mit Disziplinarregeln und Sanktionen erörtert.

Da sich diese Studie speziell auf türkisches Recht konzentriert, werden die Regelungen zur Beurteilungs- und Sanktionsbefugnis von FIFA und UEFA, die von den weitreichenden Folgen dieser Problematik unmittelbar betroffen sind, hier nicht behandelt.

¹¹ Siehe Rundschreiben des Präsidenten, Betreff: Aktionsplan zur Bekämpfung illegaler Wetten, illegalen Glücksspiels und illegalen Online-Glücksspiels (2025-2026), Amtsblatt: 1.11.2025 – Nr. 33064. Siehe: <https://www.resmigazete.gov.tr/eskiler/2025/11/20251101-7.pdf> (abgerufen am 10. November 2025).

3.1 Disziplinarverstöße

Obwohl die Disziplinarordnung des türkischen Fußballverbands viele gesetzes- und/oder sportwidrige Verhaltensweisen als Disziplinarvergehen definiert, sind vier davon für unser Thema von direkter Relevanz und Bedeutung.¹²

3.1.1 Artikel 56 von Disziplinaranweisung des türkischen Fußballverbands: (Beeinflussung des Spielausgangs):

(1) Es ist verboten, den Ausgang oder den Ablauf eines Wettkampfs in einer gegen geltendes Recht oder die Sportethik verstoßenden Weise zu beeinflussen. Dies schließt auch die Gewährung von Leistungsprämien ein.

(a) Personen, welche die oben genannten Verstöße begehen, werden dauerhaft von der Ausübung eines öffentlichen Amtes ausgeschlossen.

(b) Werden die oben genannten Verstöße von Vereinsfunktionären begangen, werden die betreffenden Vereine in eine niedrigere Liga absteigen.

(c) Personen, die für den Verstoß verantwortlich sind, können zudem mit einer Geldstrafe belegt werden.

(2) Der Versuch, die in Absatz 1 genannten Verstöße zu begehen, ist verboten.

(a) Bei versuchten Verstößen wird gegen die betreffenden Personen ein Wettkampfsverbot oder eine Disqualifikationsstrafe von ein bis drei Jahren verhängt.

(b) Bei versuchtem Fehlverhalten können die in dieser Richtlinie vorgesehenen Disziplinarmaßnahmen gegen den Verein verhängt werden, dessen Manager die betreffende Person ist. Bei schwerwiegenden Verstößen wird dem Verein ein Punktabzug von mindestens 12 Punkten auferlegt. Die Schwere des Verstoßes wird vom Vorstand nach eigenem Ermessen und unter Berücksichtigung der Umstände des Einzelfalls festgelegt. Stellt sich jedoch heraus, dass die Handlung darauf abzielte, dem betreffenden Manager oder Dritten einen Gewinn aus Wetten zu ermöglichen, so ist der Verstoß zwingend als schwerwiegend einzustufen.

(3) Wird ein Verstoß oder der Versuch eines Verstoßes von einem Schiedsrichter begangen, wird dieser dauerhaft von der Schiedsrichtertätigkeit ausgeschlossen.

(4) Personen, die unter diese Richtlinie fallen und kontaktiert werden, um den Ausgang oder den Ablauf eines Spiels in einer gegen geltendes Recht und die Sportethik verstoßenden Weise zu beeinflussen, oder die im Rahmen ihrer Tätigkeit im Fußball auf irgendeine Weise von einer solchen Handlung Kenntnis erlangen, sind verpflichtet, den türkischen Fußballverband (TFF) unverzüglich zu benachrichtigen.

(5) Es ist Einzelpersonen untersagt, Informationen, die sie aufgrund ihrer Tätigkeit im Fußball erhalten und die nicht öffentlich zugänglich sind, in einer Weise zu verwenden oder an Dritte weiterzugeben, welche die Integrität eines Wettbewerbs beeinträchtigt oder beeinträchtigen könnte.

Diese Regelung, die auch die Vergabe von Leistungsprämien im Rahmen von Disziplinarverstößen umfasst, bestraft nicht nur die Beeinflussung des Ergebnisses eines Sportwettkampfs, sondern auch dessen Ablauf. Voraussetzung für einen

¹² Futbol Disiplin Talimatı: <https://www.tff.org/Resources/TFF/Documents/TALIMATLAR/Futbol-Disiplin-Talimatı.pdf> (abgerufen am 8. Januar 2026).

Disziplinarverstoß ist, dass die untersuchte Handlung gegen geltendes Recht und die Sportethik verstößt. Zudem kann bei solchen Handlungen eine unbefristete Sperre verhängt werden. Je nach Schwere des Vorfalls werden die Disziplinarkommission des türkischen Fußballverbands und dessen übergeordnetes Schiedsgericht den Sachverhalt prüfen. Bei Verstößen oder versuchten Verstößen durch Schiedsrichter wird ein dauerhaftes Spielverbot verhängt. Während für die Täter administrative Geldstrafen vorgesehen sind, droht Vereinen bei Verstößen durch Funktionäre der Abstieg in eine niedrigere Liga, was sich auf die Spielergebnisse auswirkt. Wichtig ist in diesem Zusammenhang, dass die Vollendung des Disziplinarverstoßes keine Voraussetzung für die Verhängung von Disziplinarmaßnahmen ist; selbst wenn sich Art und Umfang der Disziplinarmaßnahme ändern, sind Versuche dieser Handlungen ebenfalls als Disziplinarverstöße strafbar. Zwei weitere Aspekte dieser Disziplinarordnung sind zu beachten. Erstens sind Personen, die unter diese Richtlinie fallen und kontaktiert werden, um den Ausgang oder den Ablauf eines Spiels in einer gesetzes- und sportlich unlauteren Weise zu beeinflussen, oder die aufgrund ihrer Tätigkeit im Fußball auf irgendeine Weise von einer solchen Handlung Kenntnis erlangen, verpflichtet, dies unverzüglich dem türkischen Fußballverband (TFF) zu melden. Zweitens ist es Personen untersagt, Informationen, die sie im Rahmen ihrer Tätigkeit im Fußball erhalten und die nicht öffentlich zugänglich sind, so zu verwenden oder an Dritte weiterzugeben, dass die Integrität eines Spiels gefährdet wird oder gefährdet werden könnte.

3.1.2 Artikel 57 von Disziplinaranweisung des türkischen Fußballverbands: (Wette):

(1) Personen, die unter diese Anweisung fallen,

a) ist es untersagt, direkt oder indirekt Wetten oder ähnliche Glücksspiele auf Fußballspiele und/oder Aktivitäten im Zusammenhang mit Fußball abzuschließen.

b) dürfen weder direkt noch indirekt eine Position oder Beteiligung an einem Unternehmen, einer Organisation oder Einrichtung (ausgenommen öffentliche Einrichtungen und Organisationen) innehaben, die Wetten oder ähnliche Glücksspiele oder ähnliche Veranstaltungen oder Transaktionen im Zusammenhang mit Fußballspielen fördert, vermittelt, organisiert oder durchführt.

2) Zuwiderhandlungen werden mit einem Ausschluss von Wettbewerben oder einer Disqualifikation für einen Zeitraum von drei Monaten bis zu einem Jahr bestraft.

(3) Es ist verboten, für nicht von den zuständigen Behörden lizenzierte Wettbüros in jeglicher Form zu werben oder Werbung dafür zu machen, einschließlich durch die Nutzung von Werbetafeln und anderer Ausrüstung in Stadien. Dieses Verbot umfasst auch die Werbung für diese Organisationen und ihre angeschlossenen Organisationen in einer Weise, die an diese Organisationen erinnert.

Die Nichtbeachtung dieses Verbots hat folgende Konsequenzen:

- a) Für Vereine der Super League: eine Geldstrafe von 2.500.000 TL (=Türkische Lira) für den ersten Verstoß, 5.000.000 TL für den zweiten Verstoß, 10.000.000 TL für den dritten Verstoß und weitere 10.000.000 TL für jeden weiteren Verstoß, zuzüglich eines Punktabzugs von 3 Punkten.*
- b) Für Vereine der 1. Liga: eine Geldstrafe von 1.000.000 TL für den ersten Verstoß, 2.000.000 TL für den zweiten Verstoß, 4.000.000 TL für den dritten Verstoß und weitere 4.000.000 TL für jeden weiteren Verstoß, zuzüglich eines Punktabzugs von 3 Punkten.*
- c) Für Vereine der 2. und 3. Liga: eine Geldstrafe von 250.000 TL für den ersten Verstoß, 500.000 TL für den zweiten Verstoß usw. a) In anderen Ligen wird eine Geldstrafe von 125.000 TL für den ersten Verstoß, 250.000 TL für den zweiten Verstoß, 500.000 TL für den dritten Verstoß und 500.000 TL für jeden weiteren Verstoß sowie ein Punktabzug von 3 Punkten verhängt.*

Diese Regelung definiert Wetten als Disziplinarverstoß und legt fest, dass dieser Verstoß nur von Personen begangen werden kann, die unter diese Disziplinarordnung des türkischen Fußballverbands fallen. Wer diesen Disziplinarverstoß begeht, wird mit einem Ausschluss von Wettbewerben oder einer Disqualifikation für einen Zeitraum von drei Monaten bis zu einem Jahr bestraft. Gemäß diesem Artikel ist es verboten, direkt oder indirekt auf Fußballspiele und/oder jegliche mit Fußball zusammenhängende Aktivitäten zu wetten oder ähnliche Glücksspiele zu spielen. Des Weiteren ist es Einzelpersonen untersagt, direkt oder indirekt Positionen oder Beteiligungen an Unternehmen, Organisationen und Einrichtungen (ausgenommen öffentliche Einrichtungen und Organisationen) zu halten, die Wetten oder ähnliche Glücksspiele oder ähnliche Veranstaltungen oder Transaktionen im Zusammenhang mit Fußballspielen fördern, vermitteln, organisieren oder durchführen. Darüber hinaus ist es untersagt, Werbung zu machen oder zu schalten, die eine Verbindung zu solchen Organisationen suggeriert oder nahelegt. Des Weiteren ist es nicht lizenzierten Wettanbietern untersagt, in jeglichen Medien Werbung zu machen oder diese zu betreiben, einschließlich der Nutzung von Werbetafeln und anderer Ausrüstung in Stadien. Bei einem Verstoß gegen dieses Verbot gelten unterschiedliche Strafen für Vereine der Super League, der 1. Liga, der 2. und 3. Liga sowie für Vereine anderer Ligen, je nachdem, ob es sich um den ersten, zweiten oder dritten Verstoß handelt.

3.1.3 Artikel 58 von Disziplinaranweisung des türkischen Fußballverbands (Nichtteilnahme am Wettbewerb):

(1) Es ist Fußballspielern untersagt, sich der Spielvorbereitung oder der Teilnahme an Spielen zu verweigern oder daran gebindert zu werden, wenn dies gegen geltendes Recht oder die Sportethik verstößt.

(2) Wer gegen das oben genannte Verbot verstößt:

- (a) Fußballspieler werden für drei Monate bis zu einem Jahr von Spielen ausgeschlossen.*
- (b) Vereinsfunktionäre werden für drei Monate bis zu einem Jahr von der Teilnahme an Spielen ausgeschlossen.*
- (c) Offizielle und andere Personen wird der Zutritt zur Umkleidekabine und zur Auswechselbank während der Spiele untersagt oder sie werden für drei Monate bis zu einem Jahr von der Teilnahme an Spielen ausgeschlossen.*

Um den in dieser Studie untersuchten Verstößen entgegenzuwirken, verbietet Artikel 58 der Disziplinarordnung des TFF Fußballspielern die Teilnahme an Spielvorbereitungen oder Spielen in einer gegen geltendes Recht oder die Fairplay-Regeln verstoßenden Weise oder sieht als Strafe die Disqualifikation vor. Die Ordnung legt fest, dass Fußballspieler, Vereinsmanager, Funktionäre und andere Personen, die gegen dieses Verbot verstoßen, je nach ihrem Status bestraft werden können. Die Strafen können ein Verbot des Zutritts zur Umkleidekabine und zur Auswechselbank, eine Spieldisqualifikation oder lediglich eine Disqualifikation umfassen. Der Begriff „andere Personen“ in diesem Artikel ist so zu verstehen, dass er alle natürlichen Personen umfasst, ob aktiv oder inaktiv, die mit Fußball zu tun haben, mit Ausnahme von Fußballspielern, Vereinsmanagern und Funktionären, einschließlich der Mitglieder des TFF-Vorstands, der Vorsitzenden und Mitglieder der TFF-Ausschüsse, der TFF-Mitarbeiter, der Fußballagenten und der Spielorganisatoren (siehe TFF-Disziplinarordnung, Artikel 2/e).

3.1.4 Artikel 59 von Disziplinaranweisung des türkischen Fußballverbands: (Dienstverletzung und Dienstmissbrauch):

- (1) Personen, die dieser Verordnung unterliegen, dürfen ihre Aufgaben nicht zu privaten Zwecken oder zum Erreichen eines Vorteils vernachlässigen oder missbrauchen. Bei einem Verstoß gegen diesen Artikel wird die Lizenz mit einer Freiheitsstrafe von mindestens einem Jahr oder dem Entzug der Lizenz belegt.*
- (2) Spieloffizielle, die ihren Aufgaben nicht nachkommen, werden für 3 Monate bis zu 1 Jahr des Entzugs von Rechten bestraft.*

Gemäß diesem Artikel dürfen sie ihre Pflichten nicht zu privaten Zwecken oder zum Erreichen eines Vorteils vernachlässigen oder missbrauchen. Bei Verstößen gegen die Bestimmungen dieses Artikels droht ihnen eine mindestens einjährige Sperre oder der Entzug ihrer Lizenz. Aktives (Tun) und passives Verhalten (Unterlassung) der unter diesen Artikel fallenden Personen gilt somit als Vernachlässigung oder Missbrauch einer Pflicht und begründet eine entsprechende Verpflichtung für die Betroffenen. Zuwiderhandlungen werden mit Sanktionen geahndet. Des Weiteren werden Spieloffizielle, die ihren Pflichten nicht nachkommen, für einen Zeitraum

von drei Monaten bis zu einem Jahr von der Spielleitung ausgeschlossen. Der in diesem Artikel verwendete Begriff „Spieloffizielle“, insbesondere diejenigen, die dem letztgenannten Ausschluss unterliegen, umfasst Schiedsrichter, Beobachter, Vertreter, Feldkommissare und andere vom TFF ernannte Personen (siehe TFF-Disziplinarordnung, Artikel 2/c).

3.1.5 Darüber hinaus regelt Artikel 60 von der derselben Disziplinaranweisung mit dem Titel „Haftung“ die folgende, mit diesem Thema zusammenhängende Bestimmung:

(1) Wer wegen einer vorsätzlich begangenen Straftat zu einer Freiheitsstrafe von mehr als zwei Jahren verurteilt wird oder wer wegen Verbrechen gegen die Sicherheit des Staates oder die verfassungsmäßige Ordnung und deren Funktionsweise oder die Landesverteidigung oder Staatsgeheimnisse, und wegen Spionage, Veruntreuung, widerrechtlicher Aneignung, Bestechung, Diebstahl, Betrug, Fälschung, Vertrauensbruch, betrügerischem Konkurs, Manipulation von Ausschreibungen, Manipulation der Vertragserfüllung, Geldwäsche oder Schmuggel von aus Straftaten stammenden Vermögenswerten oder sexuellem Missbrauch eines Kindes verurteilt wird, wird mit dauerhaftem Entzug der Rechte bestraft.

(2) Bei vorübergehenden Sperren, die gegen Einzelpersonen wegen Disziplinarverstößen verhängt wurden, kann der Vorstand des TFF auf Antrag der betroffenen Person beschließen, die Folgen der Strafe aufzuheben, wenn seit dem Abschluss der Strafvollstreckung zehn Jahre vergangen sind.

Diese Bestimmung regelt die Folgen einer Verurteilung im Rahmen der Disziplinarordnung des Fußballverbandes, einschließlich bestimmter fußballbezogener Folgen. Diese Folge betrifft nicht nur die strafrechtlichen Folgen einer Verurteilung, sondern auch die fußballrechtlichen Folgen sowie die strafrechtlichen Folgen einer Straftat. Wer wegen einer vorsätzlich begangenen Straftat zu einer Freiheitsstrafe von mehr als zwei Jahren verurteilt wird oder wer der im ersten Absatz dieses Artikels aufgeführten Straftaten für schuldig befunden wird, erhält gemäß Fußballgesetz außerdem ein dauerhaftes Verbot aller Fußballaktivitäten. Der Begriff „Verurteilung“ ist hier als rechtskräftige Verurteilung zu verstehen. Nach türkischem Recht ist für die Rechtskraft einer Verurteilung nicht ausreichend, dass die betreffende Person vor Gericht gestellt wurde; das Urteil muss rechtskräftig sein, unabhängig davon, ob alle Rechtsmittel ausgeschöpft wurden. Bei einem unbefristeten Berufsverbot bleiben die Folgen der Verurteilung bestehen und wirken sich dauerhaft negativ auf die betroffene Person aus. Umgekehrt kann der Vorstand des TFF im Falle einer wegen Disziplinarverstößen verhängten temporären Sperre die Folgen dieser Strafe auf Antrag des Betroffenen nach Ablauf von zehn Jahren aufheben. Voraussetzung hierfür ist, dass eine temporäre Sperre

wegen eines Disziplinarverstoßes verhängt wurde, diese abgelaufen ist und seitdem zehn Jahre vergangen sind. Anschließend muss der Betroffene die Aufhebung der Strafe beim Vorstand des TFF beantragen. Der Vorstand des türkischen Fußballverbandes ist nicht verpflichtet, die Folgen dieser Strafe aufzuheben; er hat das Ermessen, je nach den Umständen zu entscheiden, ob er sie aufhebt oder nicht.

3.2 Gesetzlich geregelte Verbote und Straftaten

Im Gegensatz dazu verfügt das vergleichende Recht über rechtliche Regelungen zum Thema Spielmanipulation, wenn auch mit unterschiedlicher Terminologie. In Italien beispielsweise ist der Betrug bei Sportwettkämpfen, auch bekannt als manipulierte Spiele oder verdeckte Straftaten, ein Straftatbestand, der dort geregelt wird. Die Arbeit an der Regulierung von Spielmanipulationen begann 1989. In diesem Zusammenhang wurde in Italien 1989 das Gesetz Nr. 401 verabschiedet, das den Betrug bei Sportwettkämpfen regelt. In Portugal trat 2007 zunächst das Gesetz Nr. 50 in Kraft, das später zum Gesetz Nr. 390-91 geändert wurde und die Rechtsgrundlage für die strafrechtliche Verantwortlichkeit im Zusammenhang mit sportlichen Aktivitäten schuf. Artikel 8 und die nachfolgenden Artikel dieses Gesetzes stellen Handlungen wie die Manipulation des Ergebnisses eines Sportwettkampfs, die Anstiftung zu solchen Handlungen, passive und aktive Korruption sowie Einflussnahme unter Strafe. Bulgarien regelt solche Handlungen nicht in einem Sondergesetz, sondern im allgemeinen Strafgesetzbuch. In Bulgarien regeln Artikel 301 und nachfolgende Artikel des Strafgesetzbuches diese und ähnliche Handlungen unter dem Begriff „Sportkriminalität“. In Russland befasst sich Artikel 184 des Strafgesetzbuches der Russischen Föderation von 1996 mit dem Straftatbestand der Bestechung von Teilnehmern und Organisatoren professioneller Sportwettkämpfe sowie gewinnorientierter Unterhaltungs- und Wettbewerbe. In Spanien ist diese Handlung als eigenständiges Delikt im Allgemeinen Strafgesetzbuch geregelt. Das Gesetz von 2010 änderte das spanische Strafgesetzbuch von 1995, und Paragraph 286 bis regelt diesen Sachverhalt detailliert. Griechenland erließ ein Sondergesetz zur Gewährleistung der Fairness und Sicherheit von Sportveranstaltungen und zur Bekämpfung von Spielmanipulationen; dieses Gesetz trat 1999 in Kraft. Das griechische Sportgesetz Nr. 27/25/1999 regelt diesen Sachverhalt detailliert; die Artikel 132, 235, 236 und 237 widmen sich diesem Thema. Auch das Vereinigte Königreich enthält Bestimmungen zu diesem Thema, beispielsweise im Bribery Act von 2010, im Fraud Act von 2006 und im Gambling Act von 2005. Insbesondere Artikel 42 des

Gambling Act von 2005 stellt eine detaillierte Bestimmung dar, die diesen Sachverhalt direkt regelt.¹³

Bekanntlich gibt es verschiedene Arten von Spielmanipulationen. Diese werden in Spielmanipulationen zum finanziellen Vorteil (diese Art der Spielmanipulation wird in zwei Kategorien unterteilt: Spielmanipulation durch eine Partei und Spielmanipulation durch einen Schiedsrichter), Transfermanipulationen, Wettmanipulationen und Spielmanipulationen aus Höflichkeit unterteilt.¹⁴

Es ist außerdem zu beachten, dass die Straftat der unzulässigen Anreizgewährung im Vergleich zur Spielmanipulation mit einer geringeren Strafe geahndet wird. Für den Tatbestand der unzulässigen Anreizgewährung muss es sich bei dem gewährten oder versprochenen Vorteil um einen materiellen Gewinn oder um eine Übertragung oder einen ähnlichen Vorteil handeln, der zwar nicht unmittelbar einen materiellen Gewinn darstellt, aber wirtschaftlich gleichwertig ist. Ein weiteres Tatbestandsmerkmal ist das Bestehen einer Vereinbarung zwischen den Parteien über die Zahlung des Anreizbonus. Dieses Verbrechen ist, ähnlich wie Spielmanipulation, ein Verbrechen mehrerer Beteiligten und kann nicht von einer einzelnen Person begangen werden; es erfordert mindestens zwei Personen, die einen Vorteil ausgetauscht oder eine Vereinbarung in dieser Angelegenheit getroffen haben. Allerdings genügt bereits das bloße Bestehen einer solchen Vereinbarung für die Strafbarkeit des Interesses. Ob diese Handlungen als Straftaten reguliert werden sollten, ist Gegenstand juristischer Debatten, zu denen es sowohl Befürworter als auch Gegner gibt.¹⁵

3.2.1 Bestimmungen des Gesetzes zur Verhütung von Gewalt und Unordnung im Sport von 31.3.2011 (Gesetz Nr. 6222)¹⁶

Der dritte Abschnitt dieses Gesetzes mit dem Titel „Verbotene Handlungen und Strafbestimmungen“ regelt zahlreiche Straftaten und verbotene Handlungen. Die für unser Thema relevanten werden im Folgenden erläutert.

¹³ Vgl. Kubiciel & Inci, 2017, S. 64 ff.; Özocak, 2024, SS. 379-390.

¹⁴ Siehe Özocak, 2024, SS. 326-333.

¹⁵ Genç, 1998, S. 102 ff; Gülşen, 2013, S. 231; Özen, 2013, S. 43; Şen & Özdemir, S. 46.

¹⁶ Vgl. Amtsblatt: 14.2.2011, Nr. 27905.

Artikel 11: Spielmanipulation und Leistungsprämien:

(1) Wer einem anderen Menschen einen Vorteil oder sonstigen Nutzen verschafft, um den Ausgang eines bestimmten Sportereignisses zu beeinflussen, wird mit Freiheitsstrafe von einem bis drei Jahren und einer Geldstrafe von bis zu 20.000 Tagen bestraft. Auch derjenige, dem der Vorteil gewährt wurde, wird als Mittäter bestraft. Selbst wenn eine Vereinbarung über die Gewährung des Vorteils oder sonstigen Nutzens getroffen wird, gilt die Strafe als vollendet.

(2) Personen, die gemäß der Vereinbarung zum Ergebnis eines Sportspiels beitragen, wenn sie wissen, dass eine Spielmanipulationsvereinbarung besteht, werden ebenfalls gemäß der Bestimmung des ersten Absatzes bestraft.

(3) Wird ein Versprechen oder Angebot von Gewinn oder einem anderen Vorteil gemacht und kommt keine Einigung zustande, wird die Straftat dennoch bestraft, da sie sich noch im Versuchsstadium befindet.

(4) Wird das Verbrechen in einem der folgenden Fälle begangen, erhöht sich die Strafe um die Hälfte:

a) durch Missbrauch des Vertrauens oder des Einflusses, der durch eine öffentliche Aufgabe verliehen wird,
b) durch die Präsidenten oder Mitglieder der Generalversammlung und des Vorstands von Verbänden oder Sportvereinen und juristischen Personen, die im Bereich Sport tätig sind, technische oder Verwaltungsleiter und Manager oder Vertreter von Vereinen und Athleten,

c) im Rahmen der Aktivitäten einer Organisation, die zum Zweck der Begehung von Straftaten gegründet wurde,

e) um die Ergebnisse von Wettspielen zu beeinflussen.

(5) Wird die Straftat durch die Gewährung oder das Versprechen eines Leistungsbonus begangen, um den Erfolg einer Mannschaft in einem Wettbewerb zu sichern, so halbiert sich die gemäß den Bestimmungen dieses Artikels zu verhängende Strafe.

(6) Die Bestimmungen dieses Artikels gelten nicht, wenn ein Bonus für folgende Zwecke gewährt oder versprochen wird:

a) um den Erfolg von Nationalmannschaften oder Nationalathleten zu gewährleisten,

b) Sportvereine bieten ihren Mannschaftsspielern oder ihrem technischen Personal Schulungen an, um deren Erfolg im Wettkampf zu gewährleisten.

(7) Wird die Straftat zum Vorteil von Sportvereinen oder anderen juristischen Personen begangen, so wird zusätzlich eine Verwaltungsstrafe in Höhe des Betrags der Spielmanipulation oder des Bonus verhängt. Die Verwaltungsstrafe beträgt jedoch mindestens 100.000 Türkische Lira.

(8) Wer dafür sorgt, dass das Verbrechen vor dem Wettbewerb aufgedeckt wird, wird nicht bestraft.

(9) Gemäß Artikel 231 der Strafprozessordnung Nr. 5271 vom 4.12.2004 kann bei Straftaten, die unter diesen Artikel fallen, keine Entscheidung über die Verschiebung der Urteilsverkündung getroffen werden; die verhängte Freiheitsstrafe kann nicht in alternative Sanktionen umgewandelt und die Vollstreckung des Urteils nicht verschoben werden.

(10) Werden die in diesem Artikel definierten Straftaten im Rahmen der Ausführung eines Beschlusses zur Begehung einer Straftat mehrfach und zu unterschiedlichen Zeitpunkten begangen, so wird die Strafe für die Tat, welche die höchste Strafe erfordert, um ein Viertel bis drei Viertel erhöht, und es wird eine einzige Strafe verhängt.

(11) Im Falle einer Verurteilung wegen der in diesem Artikel definierten Straftaten wird der Person gemäß Artikel 53 des türkischen Strafgesetzbuches auch die Tätigkeit in den Leitungs- und Prüfungsorganen von Sportvereinen, Verbänden und juristischen Personen, in denen sportliche Aktivitäten durchgeführt werden, untersagt.

Dieser Artikel stellt Spielmanipulation und die Zahlung von Leistungsprämien unter Strafe und erläutert deren genaue Ausgestaltung. Die Spielmanipulation wird im türkischen Strafgesetzbuch ähnlich wie Bestechung behandelt: es handelt sich um ein nicht ergebnisorientiertes Verbrechen, da es nur mit einer bestimmten Absicht (das Ergebnis eines bestimmten Sportereignisses zu beeinflussen) begangen werden kann und die Erlangung eines Gewinns oder sonstigen Vorteils voraussetzt. Nicht nur derjenige, der den Vorteil erlangt, sondern auch derjenige, der ihn gewährt, wird bestraft. Wie bei Bestechungsdelikten (Artikel 52–54 t-StGB) gilt, dass die Straftat auch dann geahndet wird, wenn eine Vereinbarung über die Gewährung des Vorteils getroffen wurde. Die Person, die den Vorteil erhält, begeht kein anderes Verbrechen; sie wird als Mittäterin für das von der Person, die den Vorteil gewährt hat, begangene Spielmanipulationsverbrechen zur Rechenschaft gezogen. Zweifellos ist Vorsatz seitens der Person, die von der Spielmanipulation profitiert hat, Voraussetzung für deren Verurteilung und Bestrafung. Der Gesetzgeber hat einen radikaleren Schritt unternommen, um Spielmanipulationen entschieden zu bekämpfen. Indem er Beihilfe und Anstiftung wie Täter oder Mittäter bestraft, will er die abschreckende Wirkung der Strafe für diese Taten unterstreichen. Demnach werden Personen, die wissentlich im Rahmen einer Spielmanipulationsvereinbarung zum Ergebnis eines Sportwettbewerbs beitragen, mit denselben Strafen belegt wie der Täter oder Mittäter. Da es sich hier um eine Sonderbestimmung handelt, finden die Bestimmungen des türkischen Strafgesetzbuches bezüglich Beihilfe (Artikel 39 t-StGB) hier keine Anwendung; daher kann dem Täter oder Mittäter keine mildere Strafe wegen Beihilfe auferlegt werden. Der Versuch dieser Straftat ist möglich und strafbar. Wird ein Gewinn oder ein anderer Vorteil versprochen oder angeboten und kommt keine Einigung zustande, gilt die Straftat als Versuch. Daher sind diese elf Artikel, sofern keine abweichende Regelung besteht, zusammen mit Artikel 35 des t-StGB auszulegen und anzuwenden, die versuchten Straftaten unter Strafe stellt und eine geringfügige Strafmilderung vorsieht. Der vierte Absatz des Artikels regelt die Umstände, die eine Erhöhung der Strafe für diese Straftat rechtfertigen, der fünfte Absatz die Umstände, die eine Strafmilderung rechtfertigen, und der sechste Absatz die Umstände, die in bestimmten Fällen keine Strafe vorsehen. Der Artikeltext legt fest, dass Sportvereine oder andere juristische Personen, wenn die Straftat zu ihrem Vorteil begangen wird, ebenfalls mit einer Geldbuße bis zu einem bestimmten Höchstbetrag belegt werden können. Dadurch wird sichergestellt, dass sowohl juristische Personen als auch Sportvereine, unabhängig von ihrer Rechtsform, für diese Handlungen bestraft werden können. Solche Regelungen sind im türkischen Recht außergewöhnlich und ähneln nicht nur dem Fußballrecht, sondern in

begrenzten Fällen auch Bestimmungen des türkischen Strafrechts, welche die Bestrafung juristischer Personen für bestimmte Straftaten vorsehen (vgl. Artikel 20 und 60 t-StGB; Artikel 43/A Übertretungsgesetz). Gemäß dem Artikel, der eine Sonderbestimmung zur wirksamen Reue enthält, wird die Person, welche die Straftat vor Spielbeginn meldet, nicht bestraft (Abs. 8). Um diese Handlungen wirksam zu bekämpfen, eine abschreckende Wirkung auf die Gesellschaft zu erzielen und die Täter streng zu bestrafen, hat der Gesetzgeber die Anwendung dreier wichtiger Institutionen bei diesen Straftaten untersagt (Abs. 9). Demnach kann gemäß Artikel 231 der türkischen Strafprozessordnung die Verkündung des Urteils nicht verschoben werden, und die verhängte Freiheitsstrafe kann weder in eine alternative Sanktion umgewandelt noch zur Bewährung ausgesetzt werden. Absatz 10 des Artikels 11 sieht eine höhere Strafverschärfung bei wiederholter Begehung der Straftat vor und stellt damit eine präzisere Bestimmung dar als Artikel 43 des t-StGB, der die Strafverfolgung von Wiederholungstatbeständen regelt. Schließlich sieht der letzte Absatz desselben Artikels vor, dass der Täter im Falle einer strafrechtlichen Verurteilung wegen Spielmanipulation oder Bestechung gemäß Artikel 53 des t-StGB auch von der Tätigkeit in den Leitungs- und Aufsichtsorganen von Sportvereinen, Verbänden und juristischen Personen, in denen sportliche Aktivitäten durchgeführt werden, ausgeschlossen ist. Hierbei handelt es sich um eine spezielle Regelung hinsichtlich der rechtlichen Folgen einer schwerwiegenden strafrechtlichen Verurteilung, die gemäß den in Artikel 53 des t-StGB festgelegten Verfahren und Grundsätzen anzuwenden ist.

Es ist außerdem zu beachten, dass gemäß der Strafprozessordnung zahlreiche verdeckte strafrechtliche Maßnahmen und Beweiserhebungsmethoden (aufgrund spezieller Vorschriften) zur Untersuchung und Ahndung von Spielmanipulation und Bestechung eingesetzt werden können. Diese lassen sich zusammenfassen, wie folgt: Beschlagnahme von unbeweglichem Vermögen, Rechten und Forderungen (Artikel 128 t-StPO); Durchsuchung, Kopierung und Beschlagnahme von Computern, Computerprogrammen und Dateien (Artikel 134 t-StPO); Aufdeckung, Abfangen und Aufzeichnung von Kommunikationen (Artikel 135 t-StPO); Bestellung von verdeckten Ermittlern (Artikel 139 t-StPO); Überwachung mit technischen Mitteln (Artikel 140 t-StPO).

In der türkischen Rechtslehre wird argumentiert, dass dieses Verbrechen mehrere Rechtswerte schützt. Dazu gehören, wie in Artikel 59 der Verfassung festgelegt, die positive Verpflichtung des Staates im Bereich des Sports und die Maßnahmen zum

Schutz der körperlichen und geistigen Gesundheit jedes türkischen Bürgers; die Neutralität und Gleichbehandlung aller durch den Staat, die einen fairen Wettbewerb bei Sportveranstaltungen gewährleisten; der Schutz des Vertrauens der Sportzuschauer in einen fairen und unparteiischen Wettkampf; die Sicherung des öffentlichen Vertrauens in die Verwaltung; der Schutz wirtschaftlicher Interessen; die Verhinderung unlauteren Wettbewerbs; der Schutz der wirtschaftlichen Interessen von Einzelpersonen und die Gewährleistung des Vertrauens in Glücksspiele und Wetten im Zusammenhang mit Sportveranstaltungen; sowie der Schutz der Eigentumsrechte von Einzelpersonen.¹⁷

Jeder kann Täter der in Artikel 11 genannten Straftat sein; es bedarf keiner besonderen Stellung oder eines besonderen Titels. Diese Straftat ist als besonders vorteilhafte Straftat angelegt und erfordert die Zusammenarbeit mehrerer Täter in der im Straftatbestand festgelegten Weise und zu dem festgelegten Zweck. Als Opfer dieser Straftat gilt im Allgemeinen die Gesellschaft; als Geschädigte gelten diejenigen, die materielle Verluste erleiden.¹⁸

3.2.2 Gesetz zur Regelung von Wetten und Glücksspielen im Fußball und anderen Sportwettbewerben von 24.4.1959 (Gesetznummer: 7258)¹⁹

Artikel 5:

Ohne gesetzliche Befugnis;

- a) Wer Sportwetten mit festen Quoten oder Totalisatorwetten oder Glücksspiele auf Sportereignisse anbietet oder deren Teilnahme ermöglicht oder erleichtert, wird mit Freiheitsstrafe von drei bis fünf Jahren und einer Geldstrafe von bis zu zehntausend Tagessätzen bestraft.*
- b) Wer Sportwetten mit festen Quoten oder Totalisatorwetten oder Glücksspiele auf Sportereignisse, die aus der Türkei ins Ausland gespielt werden, durch Bereitstellung des Zugangs über das Internet oder andere Mittel ermöglicht, wird mit Freiheitsstrafe von vier bis sechs Jahren bestraft.*
- c) Wer die Geldüberweisung im Zusammenhang mit Sportwetten oder Glücksspielen mit festen Quoten ermöglicht, wird mit einer Freiheitsstrafe von drei bis fünf Jahren und einer Geldstrafe von bis zu fünftausend Tagessätzen bestraft.*
- d) Wer andere durch Werbung oder auf andere Weise zum Spielen von Sportwetten oder Glücksspielen mit festen Quoten animiert, wird mit einer Freiheitsstrafe von einem bis drei Jahren und einer Geldstrafe von bis zu dreitausend Tagessätzen bestraft.*
- d) Wer Sportwetten oder Glücksspiele mit festen Quoten spielt, wird von der zuständigen lokalen höchsten Verwaltungsbehörde mit einer Geldbuße von fünftausend bis zwanzigtausend Lira belegt.*

¹⁷ Vgl. Özocak, 2024, S. 337 ff.

¹⁸ Siehe Baba, 2012, S. 54; Zafer, 2012, S. 65 ff.

¹⁹ Offizielle Amtsblatt 9.5.1959, Nr. 10201.

Sämtliche Vermögenswerte, die durch Spielmanipulation, Wetten oder Glücksspiel im Zusammenhang mit Sportwettbewerben erlangt wurden, werden gemäß den Bestimmungen des türkischen Strafgesetzbuches Nr. 5237 vom 26.9.2004 über die Einziehung von Vermögen und Einkommen eingezogen.

Für Straftaten gemäß diesem Artikel werden spezifische Sicherheitsmaßnahmen für juristische Personen verhängt.

Im Zusammenhang mit diesen Straftaten werden Zugangssperurmaßnahmen gemäß dem Gesetz über die Regulierung von Internetveröffentlichungen und die Bekämpfung von Straftaten, die durch solche Veröffentlichungen begangen werden (Gesetz Nr. 5651 vom 4. Mai 2007), angewendet.

Betriebe, die gegen diese Verordnung verstoßen, werden von der zuständigen lokalen Behörde ohne Vorwarnung für drei Monate geschlossen. Die Betriebserlaubnisse der betroffenen Betriebe werden von der zuständigen Behörde innerhalb von fünf Werktagen widerrufen.

Für die in Artikel 1 Buchstabe a), b), c) und d) genannten Straftaten sowie für die Straftaten gemäß Artikel 228 Absatz 3 und 4 des t-StGB gelten die nachfolgenden Bestimmungen der Strafprozessordnung:

- a) Beschlagnahme von unbeweglichen Sachen, Rechten und Forderungen gemäß Artikel 128,*
- b) Überwachung, Abhören und Aufzeichnung von Kommunikationen gemäß Artikel 135,*
- c) Einsatz von verdeckten Ermittlern gemäß Artikel 139, unabhängig davon, ob die Straftat im Rahmen der organisierten Kriminalität begangen wurde,*
- d) Überwachung mit technischen Mitteln gemäß Artikel 140.*

Werden Beweise für Verstöße gegen dieses Gesetz gefunden, kann die Präsidentschaft der Sport-Toto-Organisation Anzeige bei der Staatsanwaltschaft erstatten. Entscheidungen, die besagen, dass kein Tatverdacht besteht, werden der Präsidentschaft der Sport-Toto-Organisation mitgeteilt; gegen diese Entscheidungen kann die Präsidentschaft Berufung einlegen.

In Fällen, die aufgrund von Straftaten eingeleitet werden, übermittelt das Gericht dem Vorstand der Sport- und Wettorganisation eine Kopie der Anklageschrift. Auf Antrag wird der Vorstand der Sport- und Wettorganisation als Nebenkläger in den Verfahren zugelassen.

Der Artikel enthält zahlreiche Straftatbestände, und der Gesetzgeber hat die Arten und die Anzahl der strafbaren Handlungen in diesem Artikel sehr ausführlich geregelt. Wie aus dem obigen Text hervorgeht, werden in diesem Artikel verschiedene Straftatbestände geregelt. Nr. a von Artikel 5 Abs. 1 beschreibt einen Straftatbestand mit mehreren Tatbestandsmerkmalen. Folgende Handlungen genügen für die Begehung dieser Straftat: *„Betrieb oder Bereitstellung eines Ortes oder einer Gelegenheit für andere, Wetten mit festen Quoten oder Totalisatorwetten bzw. Glücksspiele im Zusammenhang mit Sportwettbewerben zu spielen.“* Der Straftatbestand des ersten Absatzes liegt nur dann vor, wenn sich diese Handlungen ausschließlich auf Wetten mit festen Quoten oder Totalisatorwetten bzw. Glücksspiele im Zusammenhang mit Sportwettbewerben beziehen. Der in Absatz 1 Buchstabe b desselben Artikels genannte Straftatbestand ist ein Einzelvergehen. Die strafbare Handlung ist: *„Bereitstellung des Zugangs zur Teilnahme an Glücksspielen aus der Türkei“*. Damit diese Handlung strafbar ist, muss die Handlung des Täters mit Wetten auf feste Quoten oder Totalisatorwetten oder Glücksspielen im Zusammenhang mit im Ausland stattfindenden Sportwettbewerben über das Internet oder auf anderem Wege in Verbindung stehen. Ob der Zugang *„über das Internet oder auf anderem Wege“* bereitgestellt wird, ist für die Erfüllung des Straftatbestands unerheblich. Gemäß Absatz 1 Buchstabe c desselben Artikels stellt die Beihilfe zum Geldtransfer im Zusammenhang mit Wetten auf feste Quoten oder Totalisatorwetten oder Glücksspielen auf Sportveranstaltungen eine eigenständige Straftat dar. Gemäß Absatz 1 Buchstabe d desselben Artikels ist auch die Anstiftung von Personen zur Teilnahme an Wetten auf feste Quoten oder Totalisatorwetten oder Glücksspielen auf Sportveranstaltungen durch Werbung oder andere Mittel als eigenständige Straftat geregelt. Im Gegensatz dazu ist nach Absatz 1 Unterabsatz d dieses Artikels das Spielen von Wetten mit festen Quoten oder Totalisatorwetten oder Glücksspielen, die auf Sportwettbewerben basieren, verboten, wird aber als eine Übertretung (und unterliegt Verwaltungsstrafen) und nicht als Straftat geahndet.

Im Zusammenhang mit Straftaten, die unter diesen Artikel fallen, werden alle Vermögenswerte, die *„für Wetten mit festen Quoten oder Totalisatorwetten oder Glücksspiele im Zusammenhang mit Sportwettbewerben verwendet werden“* oder Gegenstand der Straftat sind, sowie alle Vermögenswerte, die durch die Teilnahme an diesen Spielen erwirtschaftet wurden, gemäß den Bestimmungen des t-StSG Nr. 5237 vom 26. September 2004 über die Einziehung von Vermögen und Erträgen eingezogen.

Für Straftaten, die unter diesen Artikel fallen, werden juristischen Personen besondere Sicherheitsmaßnahmen auferlegt.

Für Straftaten, die unter diesen Artikel fallen, gelten die Bestimmungen des Gesetzes Nr. 5651 vom 4. Mai 2007 zur Regelung von Veröffentlichungen im Internet und zur Bekämpfung von Straftaten, die durch solche Veröffentlichungen begangen werden, hinsichtlich der Zugangssperrung.

Unternehmen, in denen Straftaten gemäß diesem Artikel begangen werden, werden von der obersten lokalen Verwaltungsbehörde ohne vorherige Ankündigung versiegelt und für drei Monate geschlossen. Die Lizenzen von Unternehmen mit einer Gewerbe- und Betriebserlaubnis werden von der zuständigen Behörde innerhalb von fünf Werktagen nach Benachrichtigung durch die oberste lokale Verwaltungsbehörde widerrufen.

Werden Beweise oder Anhaltspunkte für Straftaten gemäß diesem Gesetz festgestellt, kann die Spor-Toto-Organisation direkt bei der Generalstaatsanwaltschaft anmelden. Entscheidungen, die nach Abschluss der Ermittlungen von einer Anklageerhebung absehen, werden der Spor-Toto-Organisation mitgeteilt; gegen diese Entscheidungen kann die Spor-Toto-Organisation beschwerden können.

In Fällen, in denen Anklage wegen Straftaten gemäß diesem Gesetz erhoben wird, stellt das Gericht der Spor-Toto-Organisation eine Kopie der Anklageschrift zu. Auf Antrag gilt die Spor-Toto-Organisation als Nebenkläger beigetreten.

Zusätzlicher Artikel 1:

Das Recht, Gewinne aus der Organisation und Durchführung von Wetten mit festen Quoten und Totalisatorwetten sowie Glücksspielen auf Fußball und andere Sportwettbewerbe einzuklagen, erlischt ein Jahr nach dem Datum der Organisation dieser Wetten und Glücksspiele.

Verbleibende Wettscheine werden nach Ablauf von achtzehn Monaten ab dem Datum der Organisation nicht mehr aufbewahrt. Wettscheine im Zusammenhang mit laufenden Gerichtsverfahren werden jedoch bis zu deren Abschluss aufbewahrt.

3.2.3 Gesetz zur Regelung von Veröffentlichungen im Internet und zur Bekämpfung von Straftaten, die durch solche Veröffentlichungen begangen werden, vom 4.5.2007 (Gesetz Nr. 5651)²⁰

Artikel 8: Entscheidungen zur Entfernung von Inhalten und zur Sperrung des Zugangs sowie deren Umsetzung:

- (1) *Entscheidungen zur Entfernung von Inhalten und/oder zur Sperrung des Zugangs werden hinsichtlich Veröffentlichungen im Internet getroffen, deren Inhalt die folgenden Straftaten darstellt und für die hinreichender Verdacht besteht: a) ..., b) ...*
- c) *Straftaten, die im Gesetz Nr. 7258 über die Organisation von Wetten und Glücksspielen bei Fußball- und anderen Sportwettbewerben vom 29.4.1959 aufgeführt sind.*

4 Einige Entscheidungen der türkischen obersten Gerichte zu diesem Thema

In der Türkei ist es für Wissenschaftler nahezu unmöglich, die begründeten Entscheidungen von Sportverbänden einzusehen. Vor einigen Jahren veröffentlichte der türkische Fußballverband zwar für einen begrenzten Zeitraum von wenigen Jahren einige (nur zwei Bände) seiner Disziplinar- und/oder Schiedsgerichtsentscheidungen,²¹ diese Praxis wurde jedoch nicht fortgeführt. Lediglich kurze, der Presse zugänglich gemachte Entscheidungen der Disziplinar- oder Schiedsgerichte sind öffentlich bekannt. Diese Beschlüsse werden nach jeder Sitzung in kurzen Sätzen auf der Website des jeweiligen Verbandes²² veröffentlicht. Aufgrund dieser faktischen Unmöglichkeit können Entscheidungen von Sportgerichten, die Gegenstand dieser Studie sind, hier nicht dargestellt werden.

Im Folgenden werden einige Beispiele für Entscheidungen angeführt, die an die Justizbehörden verwiesen und von Oberlandesgerichten erlassen wurden. Ziel ist es, Informationen sowohl über die Herangehensweise dieser Gerichte an die untersuchten Straftaten als auch über deren Auslegung und Anwendung normativer Vorschriften im Zusammenhang mit Wetten und Spielmanipulationen zu liefern.

²⁰ Amtsblatt 23.5.2007, Nr. 26530.

²¹ Siehe TFF Tahkim Kurulu Örnek Kararları, 2009.

²² Siehe Türkiye Futbol Federasyonu, n.d.

4.1 Konzeptionell

Laut dem türkischen Kassationsgerichtshof werden heute Sportarten mit ihren wirtschaftlichen und sozialen Dimensionen als sportliche Aktivitäten (Wettkampfsport), die auf das Erreichen von Ergebnissen abzielen, wahrgenommen. Wirtschaftlich gesehen hat sich der Sport zu einem Wirtschaftszweig entwickelt, der zahlreiche Einzelpersonen und Organisationen umfasst, darunter Profisportler, Trainer, Medienunternehmen, Lizenzhersteller, Werbeagenturen, Sportvereine und Unternehmen. Sozial gesehen ist Sport, insbesondere Fußball, dank der Medien zu einer populären Aktivität, die breite Bevölkerungsschichten anspricht, geworden. Da diese beiden Dimensionen ständig miteinander interagieren, steigt das Risiko, dass Sportveranstaltungen unethischen und rechtswidrigen Handlungen ausgesetzt sind. Daher ist es unerlässlich, das Vertrauen der Zuschauer, die Sportveranstaltungen sowohl wirtschaftlich als auch gesellschaftlich unterstützen, zu wahren und sicherzustellen, dass diese nach den Grundsätzen des Fair Play durchgeführt werden. Spielmanipulation und Leistungsprämien gehören zu den Hauptfaktoren, die das natürliche Wettbewerbsumfeld des Sports untergraben und das Vertrauen der Zuschauer schädigen.²³

Die offizielle türkische Sprachvereinigung definiert Spielmanipulation (*=şike*) als „eine Vereinbarung, die im Austausch gegen einen materiellen oder immateriellen Vorteil getroffen wird, um den Ausgang eines Sportereignisses zu beeinflussen“.²⁴ Anreize (*=teşvik*) werden definiert als „eine Belohnung in Form von finanzieller Unterstützung und Rechtshilfe zur Erreichung eines bestimmten wirtschaftlichen oder sozialen Ziels“.²⁵ Im sportlichen Kontext bezeichnet der Begriff „Anreize“ „unfaire Vorteile“, die Spielern anderer Sportvereine gewährt werden, „um deren Erfolg und Sieg in einem Sportereignis zugunsten anderer Sportvereine zu sichern“.²⁶

²³ Türkisches Kassationsgericht, 19. Strafsenat, 16.1.2017, E. 2016/629, K. 2017/248.

²⁴ Memiş Kartal, 2019, S. 87 ff.; Şen, 2017, S. 25 ff.; Yaman, 2024, S. 45 ff.; Gerçeker 2025, S. 396 ff.; Yaşar, 2020, S. 94 ff.; Güngör, 2011, S. 36 ff.; Egemen, 2023, S. 17 ff.

²⁵ Ünver, 2012, S. 151 ff.; Gündoğdu, 2017, S. 99 ff.; Belci, 2021, S. 379 ff.; Koçak, 2022, S. 47 ff.; Tekpınar, 2024, S. 94 ff.; Özen & Yılmaz, 2012, S. 17 ff.

²⁶ Türkisches Kassationsgericht, 19. Strafsenat, 16.1.2017, E. 2016/629, K. 2017/248.

4.2 Konkurrenzen von Straftaten

Eines der Probleme, das sich bei den Entscheidungen der obersten Gerichte in Bezug auf diese Verbrechen ergibt, betrifft die Regeln für Kettendelikten, die eine Art kumulatives Delikt darstellen. Im türkischen Strafrecht ist die Regel der fortgesetzten Straftaten (Artikel. 43 t-StGB) eine der rechtlichen Formen der gleichzeitigen Begehung von Straftaten. Diese Regel ist in den allgemeinen Bestimmungen des türkischen Strafgesetzbuches geregelt und muss, sofern nichts anderes bestimmt ist, auf jedes Verbrechen angewendet werden, wenn die Voraussetzungen erfüllt sind. Diese Regel ermöglicht es unter bestimmten Voraussetzungen, einen Täter, der mehrere Straftaten begangen hat, so zu bestrafen, als hätte er eine einzige Straftat begangen, was in der Regel zu einer geringeren Strafe führt. Umgekehrt wird die Strafe zwar so berechnet, als läge nur eine Straftat vor, jedoch erhöht sich die Strafe für diese eine Straftat aufgrund der fortgesetzten Straftaten um einen gesetzlich festgelegten Prozentsatz. Gerichte zögern, die Regel der fortgesetzten Straftaten auf Delikte wie Spielmanipulation, Bestechung oder illegale Wetten anzuwenden. Zwar wenden sie die Regel in diesen Fällen mitunter korrekt an, doch treffen sie häufig Fehlurteile.

Wenn das Ziel darin besteht, Spiele für verschiedene Mannschaften zu unterschiedlichen Zeiten zu gewinnen, oder wenn der Ausgang einiger Spiele durch organisatorische Aktivitäten und der Ausgang anderer Spiele außerhalb dieser Aktivitäten beeinflusst wird, bleibt die Frage, ob die Bestimmungen zu Kettendelikten oder die Bestimmungen zur tatsächlichen Mitwirkung Anwendung finden, weiterhin ungeklärt. Bei Spielmanipulationen und der Zahlung von Leistungsprämien ist die Einheitlichkeit des Entschlusses zur Begehung der Straftat entscheidend. Ist dies der Fall und sind die übrigen Voraussetzungen erfüllt, steht der Anwendung der Bestimmungen zu Kettendelikten nichts im Wege. Im konkreten Vorfall, der Gegenstand dieses Verfahrens ist, wird davon ausgegangen, dass der Angeklagte die ihm zur Last gelegten Straftaten der Spielmanipulation und des Bonusmissbrauchs in derselben Fußballsaison und im Rahmen der ihm zur Last gelegten Entscheidung begangen hat. Da davon ausgegangen wird, dass die Kette der Entscheidung zur Begehung der Straftat nicht unterbrochen wurde und die Spieltermine miteinander verknüpft waren, ist es rechtswidrig, zu einer Verurteilung zu gelangen, indem die von ihm in den Spielen der Spor Toto Süper Lig begangenen Straftaten der Spielmanipulation und des Bonusmissbrauchs sowie die von ihm im Finale des 49. türkischen Pokals (*Ziraat*) begangene Spielmanipulation

fälschlicherweise als zwei separate Straftaten ausgelegt werden, ohne zu berücksichtigen, dass diese Straftaten eine einzige Kettenstraftat darstellen.²⁷

4.3 Bestrafung von juristischen Personen

Bei Spielmanipulation und Verstößen gegen das Prämienrecht sieht das Gericht neben einer strafrechtlichen Verurteilung nach Abschluss des Strafverfahrens die Verhängung von Geldbußen gegen den Sportverein oder die sonstige juristische Person vor, zu deren Gunsten die Straftaten begangen wurden.

Diese Bestimmung, gemäß Artikel 43/A Absatz 2 des Gesetzes Nr. 5326 über Ordnungswidrigkeiten, regelt die Zuständigkeit für die Verhängung von Geldbußen und ermöglicht die Anwendung von Sicherheitsmaßnahmen im Zusammenhang mit dem Strafverfahren. Voraussetzung hierfür sind der Abschluss des Strafverfahrens und das Urteil. Während der Täter eine natürliche Person ist, ist der Sportverein oder die sonstige juristische Person, zu deren Gunsten die Straftat begangen wurde, ebenfalls Täter. Daher werden die gesetzlich vorgesehenen Strafen gegen die Täter von Spielmanipulationen und Bestechungsgeldern verhängt, während gegen den Sportverein oder die sonstige juristische Person, zu deren Gunsten die Straftat begangen wurde, Bußgelder verhängt werden. Die Person, die diese Straftaten zum Vorteil des Sportvereins oder der sonstigen juristischen Person begeht, muss ein Organ oder Vertreter des genannten Sportvereins oder der sonstigen juristischen Person sein oder, auch wenn sie kein Organ oder Vertreter ist, eine im Rahmen der Tätigkeiten der genannten Institution ausgeübte Aufgabe wahrnehmen und im Einklang mit dem vom Sportverein oder der sonstigen juristischen Person mit der Straftat verfolgten Zweck handeln. Befugnis zur Verhängung von Verwaltungssanktionen: Gemäß dem Wortlaut und dem Sinn der Bestimmung von Artikel 11 Abs. 7 des Gesetzes Nr. 6222 ist, wenn das Gericht, das die Straftaten der Spielmanipulation und der Gewährung von Leistungsprämien einer Person, die der vorgenannten Straftaten für schuldig befunden wird, verfolgt, die Geldbuße zusammen mit dem Urteil die im Gesetz vorgesehene Verwaltungsstrafe gegen den Sportverein oder die sonstige juristische Person, zu deren Gunsten diese Straftaten begangen wurden, verhängt. Damit die in diesem Artikel vorgesehene Geldbuße verhängt werden kann, muss zunächst festgestellt werden, dass die Handlung eine Straftat darstellt und dass diese zum Vorteil eines Sportvereins oder einer anderen

²⁷ Türkisches Kassationsgericht, 5. Strafsenat, 17.1.2014, E. 2013/16791, K. 2014/516.

juristischen Person begangen wurde. In diesem Fall ist Artikel 24 des Gesetzes Nr. 5326 über Ordnungswidrigkeiten zu berücksichtigen. Andernfalls würde die Verhängung von Geldbußen allein aufgrund des Verdachts einer Straftat, ohne zuvor deren Vorliegen nachzuweisen, gegen die Unschuldsvermutung verstoßen.²⁸

4.4 Probleme des Beweises und der Beweismittel

Gemäß Artikel 135/8-a-9 und 140/1-a-6 der Strafprozessordnung dürfen Beweismittel, die zur Aufklärung von Spielmanipulationen und der Ausübung von Leistungsprämienverbrechen verwendet wurden (wie etwa die Überwachung der Kommunikation von Personen mittels Telekommunikation und die physische Überwachung mit technischen Mitteln), nicht als Grundlage für ein Urteil nach Artikel 217/2 der Strafprozessordnung dienen, wenn sie rechtswidrige Beweismittel darstellen. Weitere zu berücksichtigende Aspekte sind der Zeitpunkt des Geständnisses und dessen Freiwilligkeit, das Wissen des Geständigen um die Tragweite seiner Aussage und deren Folgen, die Untermauerung des Geständnisses durch andere Beweismittel oder Indizien, seine Übereinstimmung mit dem üblichen Lebensverlauf sowie ein möglicher Widerruf des Geständnisses, der die Glaubwürdigkeit und Beweiskraft des Geständnisses beeinträchtigt. In Anbetracht dessen, dass der Beweiswert der Aussagen, die das Geständnis enthalten, im konkreten Fall durch Auslegung festgestellt und das Beweisproblem auf diese Weise gelöst werden muss, und unter Berücksichtigung dessen, dass das auf der Grundlage von Kommunikationsüberwachungs- und Observationsberichten erlangte Geständnis nicht als Beweis für die Straftat angesehen werden kann, da es nicht nach den gesetzlich vorgeschriebenen Methoden ermittelt wurde, wurde kein Fehler in der Entscheidung des örtlichen Gerichts hinsichtlich des Freispruchs der Angeklagten von den angeblichen Straftaten der Spielmanipulation und der Bestechung festgestellt, indem die vorhandenen Beweise unter Ausschluss dieser unzulässigen Beweismittel gewürdigt wurden.²⁹

²⁸ Türkisches Kassationsgericht 19. Strafsenat, 16.1.2017, E. 2016/629, K. 2017/248.

²⁹ Türkisches Kassationsgericht, 5. Strafsenat, 20.12.2021, E. 2021/3068, K. 2021/6915. Außerdem siehe Generalversammlung des türkischen Kassationsgerichts für Strafsachen, 24.12.2019, E. 2016/5-1440, K. 2019/719 und Generalversammlung des türkischen Kassationsgerichts für Strafsachen, 26.01.2016, E. 2015/9-669, K. 2016/38.

Da das auf abgehörten Telefongesprächen und Observationen beruhende Geständnis nicht auf rechtmäßigem Wege erlangt wurde, kann es nicht als Beweismittel für die Straftat herangezogen werden. Unter Ausschluss dieses rechtswidrigen Beweismittels und Würdigung der übrigen Beweismittel erwies sich die Entscheidung des Gerichts, die Angeklagten vom Vorwurf der Spielmanipulation und der Bestechung freizusprechen, als rechtmäßig.³⁰

4.5 Werbung und unlautere Geschäftspraktiken

Gemäß Artikel 27 der Verordnung über kommerzielle Werbung und unlautere Geschäftspraktiken, der besagt, dass „illegale Wetten und Glücksspiele in keiner Weise beworben werden dürfen“, sind Anzeigen für illegale Wettseiten durch das Medienunternehmen gemäß der Gesetzgebung ausdrücklich verboten, mit Ausnahme der bestehenden legalen virtuellen Medienhändler, denen die Spor Toto Organisation eine Lizenz erteilt hat. Es wurde festgestellt, dass die während des Champions-League-Qualifikationsspiels der zweiten Runde auf dem Fernsehsender X1 (im Besitz von X1 TV Publishing Inc.) ausgestrahlten digitalen Werbeanzeigen die Neugier der Fußballfans weckten und sie zur Teilnahme an Live-Wetten und Glücksspielen animierten. Diese Werbungen waren so gestaltet, dass sie Zuschauer dazu verleiten konnten, illegale Wettseiten zu nutzen, die im Internet weit verbreitet sind: die betreffenden Werbemaßnahmen verstoßen daher gegen die Artikel 7, 9, 26, 27 und 32 der Verordnung über kommerzielle Werbung und unlautere Geschäftspraktiken sowie gegen Artikel 61 des Verbraucherschutzgesetzes Nr. 6502. Der Werbetreibende, X1 TV-Broadcasting, „wurde daher gemäß den Artikeln 63 und 77/12 des Gesetzes Nr. 6502“ zur Zahlung einer Geldbuße in Höhe von 457.308 Türkischen Lira und zur Einstellung der genannten Werbemaßnahmen verurteilt.³¹

5 Fazit

Spielmanipulation ist eine Straftat. Aber, auch die Zahlung von Leistungsprämien ist (mit einigen Ausnahmen) eine Straftat. Beide Handlungen stellen zudem Disziplinarverstöße gegen die beteiligten Personen dar.

³⁰ Türkisches Kassationsgericht, 5. Strafsenat, 20.12.2021, E.2021/3068, K.2021/6915.

³¹ Entscheidung des Werbeausschusses (=Reklam Kurulu Kararı) 12.10.2021, D. 2021/2319, T. No. 314.

Der durch die Straftatbestände „Spielmanipulation und Leistungsprämienzahlung“ geschützte Rechtsgut besteht darin, das Vertrauen der Öffentlichkeit in fair durchgeführte Sportwettbewerbe zu wahren.

Das subjektive Element dieser Straftaten ist der Sondervorsatz: damit die Straftat vorliegt, muss der Täter *„mit der Absicht gehandelt haben, den Ausgang eines Sportwettkampfs zu beeinflussen“*. Spielmanipulation und die Gewährung von Leistungsprämien fallen unter die Kategorie der Mehrfachtäterdelikte. Der Nutznießer muss weder ein Sportler noch ein Sportverein sein. Spielmanipulation bezeichnet jeden betrügerischen Versuch oder jede Vereinbarung, den Ausgang eines Sportereignisses zu beeinflussen.

Die wichtigen Merkmale der Spielmanipulation:

- Die Absicht muss darin bestehen, den Ausgang des Wettkampfs zu beeinflussen.
- Der Zweck ist die Erlangung eines persönlichen Vorteils.

Die Tat wird von Personen begangen, die direkten Einfluss auf den Sport haben, wie z. B. Athleten, Schiedsrichter, Funktionäre oder Manager.

Gemäß Gesetz Nr. 6222 zur Verhütung von Gewalt und Unruhen im Sport beträgt die Strafe für Spielmanipulation eine Freiheitsstrafe von 5 bis 12 Jahren und eine Geldstrafe.

Darüber hinaus können Sanktionen verhängt werden, die den gesamten Sport betreffen, wie z. B. der Ausschluss von Sportwettkämpfen.

Eine Leistungsprämie ist eine monetäre oder nicht-monetäre Belohnung, die einer Sportmannschaft oder einem Athleten gewährt wird, um deren Leistung gegen eine gegnerische Mannschaft zu verbessern.

Die wichtige Tatbestandsmerkmale des Straftatbestands der Leistungsprämie:

- Sie muss in der Absicht gewährt werden, die Leistung der gegnerischen Mannschaft zu beeinflussen.

- Sie muss im Austausch für einen finanziellen oder nicht-finanziellen Vorteil gewährt werden.

Die Strafe für Leistungsprämien beträgt eine Freiheitsstrafe von einem bis drei Jahren.

Darüber hinaus können Personen, die solche Handlungen begehen, von allen sportbezogenen Aktivitäten ausgeschlossen werden.

Neben den beiden oben genannten Straftaten stellt auch das illegale Wetten nach türkischem Recht eine separate Straftat dar.

Illegale Wetten bezeichnen das Platzieren oder Zulassen von Wetten auf Sportereignisse auf nicht staatlich autorisierten Plattformen.

Die wichtige Tatbestandsmerkmale illegaler Wetten:

- Platzieren von Wetten auf nicht autorisierten Plattformen.
- Sowohl der Wettende als auch die Person, die die Wetten platziert, sind Täter.
- Das Platzieren illegaler Wetten wird mit einer Freiheitsstrafe von drei bis fünf Jahren und einer hohen Geldstrafe geahndet.

Zusätzlich werden alle aus illegalen Wetten erzielten Gewinne eingezogen.

Gegen Personen, die sich persönlich an illegalen Wetten beteiligen, können Strafen, Bußgelder und Verwaltungsanktionen verhängt werden.

Zusätzlich werden alle aus illegalen Wetten erzielten Gewinne eingezogen.

Die Begehung dieser Straftaten „*durch Missbrauch des Vertrauens oder des Einflusses, der durch ein öffentliches Amt verliehen wurde*“, führt zu einer Erhöhung des Strafmaßes.

Die Begehung dieser Straftaten „*durch Präsidenten oder Mitglieder der Generalversammlung und des Vorstands von Verbänden, Sportvereinen oder juristischen Personen im Sportbereich, technische oder administrative Leiter oder Manager oder Vertreter von Vereinen und Athleten*“ führt zu einer Erhöhung des Strafmaßes.

Die Straftaten der Spielmanipulation und der Gewährung von Leistungsprämien, die *„im Rahmen der Aktivitäten einer Organisation begangen werden, die zum Zweck der Begehung einer Straftat gegründet wurde“*, ziehen höhere Strafen nach sich.

Die Straftaten der Spielmanipulation und der Gewährung von Leistungsprämien, *die mit dem Ziel begangen werden, die Ergebnisse von Wettspielen zu beeinflussen, ziehen höhere Strafen nach sich.*

Werden Leistungsprämien an *Nationalmannschaften oder Nationalathleten oder von Sportvereinen an ihre eigenen Spieler oder Trainer* gezahlt, gilt dies nicht als rechtswidrig und führt nicht zu strafrechtlicher Verfolgung.

Die Spielmanipulation gilt als vollendet, *sobald* ein Gewinn oder sonstiger Vorteil erzielt wurde.

Gemäß Artikel 11/1, Absatz 3 des Gesetzes Nr. 6222 ist die Tat jedoch auch dann strafbar, wenn *eine Einigung* erzielt wurde.

Auch der Versuch einer Spielmanipulation ist strafbar, *wenn das Angebot einer Vereinbarung vom Adressaten nicht angenommen wird.* Der Versuch ist gemäß Artikel 35 des t-StGB strafbar.

Dieser Punkt wird insbesondere in Artikel 11/1, Abschnitt 2 des Gesetzes Nr. 6222 hervorgehoben, der besagt: *„Die Person, von der der Vorteil gewährt wurde, wird als Mittäter dieser Straftat bestraft.“* Der zweite Absatz desselben Artikels besagt: *„Wer in Kenntnis einer Spielmanipulationsvereinbarung zum Ergebnis eines Sportspiels gemäß dieser Vereinbarung beiträgt, wird ebenfalls gemäß Absatz 1 bestraft.“* Nach dieser Bestimmung wird nicht zwischen Tätern und Beteiligten an der Straftat unterschieden. Beteiligte werden in gleicher Weise wie Täter bestraft, sofern sie von der Straftat wussten und willentlich gemäß der Vereinbarung zum Ergebnis des Sportspiels beigetragen haben.

Die Regelungen zu den Konkurrenzen von Straftaten können auf beide Delikte angewendet werden.

Darüber hinaus ist die Konkurrenz von Straftaten und Ordnungswidrigkeiten im Zusammenhang mit Spielmanipulation und der Gewährung von Leistungsprämien in Artikel 19 des Gesetzes Nr. 6222 geregelt. Gemäß dieser Bestimmung schränkt die Verhängung gerichtlicher Sanktionen gegen die Täter die Befugnis des Verbandes zur Verhängung verwaltungsrechtlicher Sanktionen nicht ein. Daher ist es zulässig, für ein und dasselbe Delikt sowohl gerichtliche als auch verwaltungsrechtliche Sanktionen zu verhängen.

Diese Straftaten werden heutzutage häufig organisiert und grenzüberschreitend begangen. Internationale Zusammenarbeit ist für die Verfolgung dieser Straftaten, insbesondere der online begangenen, unerlässlich.

Kryptowährungen werden zur Geldwäsche genutzt, indem die aus diesen Straftaten erlangten illegalen Gewinne verwendet werden. Die Beschaffung von Daten von Organisationen im Ausland ist schwierig; diese Herausforderungen müssen bewältigt werden.

Polizei und Staatsanwaltschaft begehen zu viele Rechtsfehler bei Ermittlungen. Diese Rechtsfehler führen insbesondere dazu, dass Beweismittel rechtswidrig werden. Die Justizbehörden müssen vorsichtiger und wachsamer vorgehen.

Justizielle Strafen und milde Disziplinarmaßnahmen allein reichen nicht aus. Nationale und internationale Disziplinarverfahren und -strafen müssen streng sein.

Damit Sport regelkonform ausgeübt werden kann, darf dieser Bereich nicht allein der Zuständigkeit von Sportvereinen oder Verbänden überlassen werden. Der Schutz von Zuschauern, der Öffentlichkeit, Mitwirkenden und insbesondere junger Nachwuchssportler ist die vorrangige Verantwortung des Staates. Der Staat muss in diesem Bereich rechtlich tätig werden, nicht aus Sorge um Steuerausfälle, Vermögensverluste oder die ungerechtfertigte Bereicherung eines in Straftaten verwickelten Vereins, sondern aus Sorge um das Gemeinwohl und die Erfordernisse eines Rechtsstaats.

Die Regeln internationaler Sportorganisationen, insbesondere die Rechtsprechung internationaler Sportgerichte, müssen fortlaufend überwacht und das nationale Recht mit diesen Regeln und der Rechtsprechung in Einklang gebracht werden. Bei Unklarheiten in diesem Bereich ist die Zusammenarbeit aller nationalen und

internationalen Sportorganisationen, unabhängig vom Herkunftsland des Athleten oder Sportvereins, erforderlich.

Organisierte kriminelle Strukturen waschen das Geld, das sie durch den Kauf kleiner Sportvereine und diverse manipulative Wett- oder Korruptionspraktiken erlangen, um es durch den Umlauf auf dem heimischen Markt legal erscheinen zu lassen. Daher ist es notwendig, sowohl Spielmanipulationen als auch die Gewährung unlauterer Anreizzahlungen zur Erzielung illegaler Ergebnisse sowie Spielmanipulation und betrügerische Wetten zu verhindern und in diesen Bereichen strenge Strafen des Strafrechts durchzusetzen. In solchen Fällen unternehmen die Verbände der betroffenen Sportarten zweifellos große Anstrengungen durch Disziplinarregeln. Darüber hinaus leisten Mechanismen wie die FIFA und der FIFA-Sportgerichtshof einen wesentlichen Beitrag zu diesen Bemühungen. Die Bekämpfung von Straftaten jenseits der Disziplinarregeln ist jedoch unabdingbar. Dies dient sowohl der Verhinderung schwerer Straftaten im Sportbereich als auch der Verhinderung der Geldwäsche, Terrorismusfinanzierung und anderer Formen organisierter Kriminalität. Hierbei ist es unerlässlich, dass spezialisierte Gerichte mit Fachkenntnissen im Sportrecht diese Straftaten verfolgen und dass sich auch Polizei, Staatsanwaltschaft und Gerichte entsprechend spezialisieren. Ebenso wichtig ist die Notwendigkeit detaillierter und wirksamer Strafen im materiellen Strafrecht sowie die rechtliche Regelung zahlreicher Verfahrensmaßnahmen und Beweismittel zur Bekämpfung solcher Straftaten durch die Strafgerichtsordnung. Für die persönliche Entwicklung und ein glückliches Leben in einer freien, demokratischen Gesellschaft ist Sport ein ebenso wichtiger Rechtswert wie Gesundheit, vielleicht sogar noch wichtiger, da er die Gesundheit fördert. Es darf nicht einfach als geringfügiger persönlicher finanzieller Verlust im Wettkampf oder als Vertrauensverlust der Zuschauer durch Betrug am Ende des Spiels betrachtet werden; es betrifft die gesamte Gesellschaft. Gerade in der heutigen Zeit, in der viele Länder gemeinsam Veranstaltungen organisieren, spielt das Strafrecht (mit guten Regelungen) eine entscheidende Rolle für eine gesunde Gesellschaft und gesunde Individuen und ermöglicht es jedem Einzelnen, die rechtlichen Werte von Unterhaltung, Sport und Gesundheit vollumfänglich zu erleben. Obwohl der Begründer des türkischen Rechts lange Zeit versuchte, diese Probleme durch Disziplinarmaßnahmen anzugehen und zu verhindern, war er dabei nicht sehr erfolgreich. Insbesondere in den 2010er Jahren, als Art und Anzahl der begangenen Straftaten zunahmen, wurde dieses Thema in Sondergesetzen geregelt. Bestrafung wurde unter anderem für Spielmanipulation, unlautere Anreizzahlungen, unfaire Manipulationen und

Wettaktivitäten, insbesondere im Internet. Legale Wetten sind zweifellos keine Straftat und unterliegen der staatlichen Kontrolle. Im Allgemeinen ist es legalen Wettspielen nicht möglich, Sportwettbewerbe negativ zu beeinflussen. Darüber hinaus erlaubt der Staat die Durchführung legaler Wetten und Glücksspiele über bestimmte Institutionen unter bestimmten Kontrollen und Bedingungen und erhebt Steuern auf die durch deren Verhinderung erzielten Gewinne. Das Problem illegaler Wetten, insbesondere durch die Einführung neuer algorithmischer Software und der Blockchain-Technologie, hat sich jedoch verschärft. Organisierte Kriminelle sind auf schnelle und hohe Gewinne aus und versuchen gleichzeitig, Aktivitäten wie Terrorismusfinanzierung und Geldwäsche durch Wetten zu legitimieren. Daher sahen sich türkische Gesetzgeber gezwungen, nicht nur durch andere Rechtsbereiche, sondern auch durch das Strafrecht einzugreifen. Obwohl der Text dieser Sondergesetze einige mehrdeutige und auslegungsbedürftige Begriffe enthält, ermöglicht die Definition bestimmter Konzepte in den spezifischen Gesetzesbestimmungen sowie in Gerichtsentscheidungen und Verordnungen relevanter Verbände die Lösung eines Teils dieser Probleme durch parallele Auslegungen. Das größte Problem in diesem Bereich, insbesondere in technologieintensiven Gebieten, ist die Schwierigkeit, ausreichend Beweismaterial zu erlangen. Manchmal erweisen sich Aufzeichnungen von Banktransaktionen im Internet jedoch als äußerst nützlich, selbst wenn sie auf Hinweisen, Zeugenaussagen oder anderen Beweismitteln beruhen. Das wichtigste Instrument hierbei ist die Erfassung von Live-Kommunikation und Informationen aus vergangenen, aber abgebrochenen Gesprächen im Internet und auf technischen Geräten; die Möglichkeit, Personen und Finanztransaktionen mithilfe technischer Mittel zu überwachen; das Abhören von Telefongesprächen; und die Beschlagnahme von IT-Geräten zum Zugriff auf bestimmte Daten. Ein weiterer wichtiger Punkt ist, dass die Grenzen des Straftatbestands für die Anwendbarkeit des Strafrechts zweifellos eng und klar definiert sein müssen. Dies ist unerlässlich. In diesem Sinne wird der Charakter des Strafrechts als letzte Instanz nicht verletzt. Um die rechtlichen Bestimmungen durchzusetzen, ist es jedoch notwendig, nicht nach der Unwirksamkeit von Disziplinarregeln zu suchen, sondern technische strafrechtliche Sanktionen anzuwenden, indem sowohl Disziplinarregeln durchgesetzt und disziplinarische Strafen gegen die Beteiligten verhängt als auch strafrechtliche Bestimmungen gemeinsam angewendet werden. Auch wenn es sich nur um eine geringe Anzahl handelt, ist die Regulierung von Straftaten, die aufgrund der Beteiligung bestimmter Akteure als Ordnungswidrigkeiten oder Straftaten im Zusammenhang mit der öffentlichen Ordnung eingestuft werden, ein

entscheidendes drittes Instrument im Kampf gegen diese Straftaten. Verwaltungssanktionen, insbesondere zur Unterdrückung von Straftaten durch Nicht-Sportler und Personen außerhalb von Sportvereinen, erzielen signifikante positive Ergebnisse.

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SPORTS DIPLOMACY AND GOVERNANCE: FOOTBALL AGENTS & FIFA'S REGULATIONS

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Over the past few decades, the regulation of football agents has undergone a significant transformation. From a flexible “intermediary” regime to regulatory responsibility under national associations, the decentralised model has generated legal uncertainty, uneven standards, and concerns regarding transparency and accountability. To address this issue, the Fédération Internationale de Football Association (FIFA) adopted the FIFA Football Agent Regulations (FFAR), reintroducing a mandatory global licensing framework that includes a standardised examination, eligibility requirements, and compliance mechanisms. This chapter examines the legal and regulatory evolution from deregulation to re-regulation and analyses the ongoing legal challenges raised by FIFA’s rules. It argues that the new examination and licensing system, particularly under the 2025 FFAR framework, structures the profession, enhances integrity, and strengthens governance. While contested, the reform represents a necessary step toward professionalisation, regulatory coherence, and the protection of players and market stability in international football.

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1 Introduction

Football has evolved from a locally codified nineteenth-century sport into a global socio-economic system that generates billions of euros annually and shapes cultural identities across continents.¹ This transformation has intensified the need for regulatory coherence, particularly in areas directly connected to the international transfer market. Among the most influential actors in this ecosystem are football agents, who structure players' and coaches' mobility, negotiate contracts, and facilitate international and cross-border transactions.² As financial stakes have increased, so too have concerns regarding transparency, conflicts of interest, protection of minors, and market stability.³

The central problem addressed in this chapter is whether the Fédération Internationale de Football Association's (FIFA) reintroduction of a mandatory licensing and examination system under the FIFA Football Agent Regulations (FFAR)⁴ constitutes a disproportionate restriction on economic freedom, particularly under EU competition law and the freedom to provide services, or whether it represents a legitimate and necessary regulatory response to structural deficiencies created by the previous intermediary regime. The debate is situated within a broader legal context, shaped by the jurisprudence of the Court of Justice of the European Union, notably *Bosman*,⁵ the *Lassana Diarra case*,⁶ and more recent challenges to FIFA's regulatory authority.

The chapter is structured in five main sections. The first situates football within its historical, socio-cultural, and economic context, demonstrating how its global expansion created a need for robust governance mechanisms. The second traces the regulatory evolution from the pre-2015 licensed-agent system to the intermediary model, highlighting the fragmentation, inconsistencies, and accountability gaps that emerged. The third examines the consequences of market liberalisation and the return to regulation under the FFAR, focusing on licensing requirements, the examination process, supervisory structures, and safeguards for minor players. The

¹ Deloitte, 2026.

² Ioannidis, 2019, pp. 154–170.

³ Iskander, 2026.

⁴ FIFA, 2025.

⁵ *Union Royale Belge des Sociétés de Football Association ASBL v. Bosman*, Case C-415/93, Judgment of 15 December 1995, Court of Justice of the European Union.

⁶ *FIFA v BZ*, 2024.

fourth analyses the interaction between these regulatory measures and EU law, assessing their proportionality considering freedom of movement, competition principles, and relevant CJEU jurisprudence, including *Bosman*, *Meca-Medina*, and the *Lassana Diarra case*. Finally, the chapter concludes by reflecting on the extent to which the FFAR restores structural coherence and legal legitimacy to the international football agent market.

Methodologically, the chapter adopts a doctrinal legal analysis grounded in competition principles and sports governance frameworks, complemented by an institutional assessment of FIFA's regulatory evolution.

The chapter argues that, although the FFAR imposes entry conditions and regulatory constraints, these measures are proportionate to legitimate objectives, namely integrity, transparency, player protection and market stability. The findings suggest that the newly imposed licensing examination and centralised supervision do not constitute protectionist barriers but rather serve as instruments of professionalisation in a highly monetised global industry. The proposed solution is therefore not deregulation, but legally calibrated governance: a structured system in which agents are trained, examined, vetted, and subject to effective oversight, ensuring that the commercial success of football remains aligned with ethics, principles of accountability and fairness.

2 The Origins of Football

Football was not invented and played by the aristocracy to entertain crowds at the weekend or to stage World Cups to crown the strongest nation. Quite the contrary, the game now loved by billions across the globe was originally rooted in popular milieus and served as a diversion for people from modest, often rural backgrounds, as Stéphane Beaud underlines in his chapter, “Le football est le sport des classes populaires”.⁷ It emerged in the mid-nineteenth century in Great Britain, but its historical roots extend much further back. Various ball games played in antiquity and the medieval period, such as the French soule, British folk football, and the Italian calcio Fiorentino, shared characteristics that would later define association football, including collective participation, physical confrontation, and limited

⁷ Beaud, 2019, p. 169.

codification.⁸ Though these early practices were often festive and locally organised, they demonstrated a popular attachment to ball games across Europe.

During the nineteenth century, football in Britain evolved from diverse popular traditions into a progressively codified sport. Contrary to earlier historiography that attributed the sport's survival and structure primarily to English public schools, recent scholarship suggests that football culture remained widespread among the general population, independent of elite educational institutions.⁹ These challenges the conventional narrative that presents football as an upper-class invention later appropriated by the working classes.

Debates concerning the social origins of football have become increasingly complex. Traditional accounts portray the game as initially shaped by Victorian "gentlemen" before later becoming professionalised and popularised, whereas revisionist perspectives emphasise football as fundamentally a "people's game" that experienced a period of elite institutionalisation. However, these contrasting interpretations risk oversimplifying a multifaceted historical process shaped by limited archival evidence and differing ideological perspectives.¹⁰

The formal institutionalisation of football accelerated in the late nineteenth century. Professionalism was officially recognised in England in 1885, facilitating the rapid creation of clubs across Europe and South America. The international dimension of sport was consolidated when the Fédération Internationale de Football Association (FIFA) was established in Paris in 1904. The success of football tournaments at the Olympic Games further strengthened its global appeal, culminating in the organisation of the first FIFA World Cup in 1930. Over the twentieth century, football evolved into the world's most popular sport, combining mass participation, commercial expansion, and strong cultural identification.¹¹

Beyond its institutional development, football has consistently reflected broader social, political, and economic transformations. As highlighted by Correia (2020), the sport cannot be reduced to contemporary "football business"; it also embodies popular culture, collective identity, and social struggle. Its origins, therefore, must be

⁸ Dietschy, 2014, pp. 16-32.

⁹ Swain, 2015.

¹⁰ Kitching, 2015.

¹¹ Correia, 2020; Dietschy, 2014, p. 81.

understood not merely as a sporting evolution, but as part of a wider process of cultural continuity and historical love of ball games across different continents, such as Europe and Asia.

3 Socio-Economic and Cultural Significance of Football

Presently, as described in the previous paragraphs, football, as a practice originating in the rural population, has fully transcended into a highly sophisticated, codified sport with profound cultural resonance across the global socio-economic system. In the contemporary era, football functions as a complex global industry shaped by financial, sporty, sportive, organisational, social, and cultural stakeholders operating within an interconnected ecosystem. Yiapanas et al. (2024) emphasise that modern football reflects both international governance norms and distinctive structural features that generate diverse forms of value, economic, sporting, cultural and social, while simultaneously producing tensions within stakeholder relationships. Football, therefore, and sports in general, operate within a multidimensional framework in which financial performance, institutional regulation and social legitimacy are deeply intertwined.¹² This dynamic is evident, based on the sports sector's role as a productive pillar of the knowledge economy, where education, employment, and innovation converge to promote sustainable economic growth and social inclusion.¹³

The commercialisation of modern football is clearly reflected in recent financial data. The 29th edition of the Deloitte Football Money League reports that the 2024/25 season marked a historic milestone, with the top 20 clubs collectively surpassing €12 billion in annual revenue for the first time. Within this financial landscape, commercial income has become the dominant revenue stream, averaging €265 million per club and reflecting intensified sponsorship agreements, global retail expansion, and the strategic diversification of stadium infrastructure. Clubs increasingly exploit their stadiums beyond matchdays by incorporating hotels, restaurants, retail outlets and entertainment facilities, transforming these venues into multifunctional commercial spaces. The financial scale of leading clubs illustrates this transformation. Real Madrid became the first football club to exceed €1 billion in revenue in the 2023/24 season and increased this figure to approximately €1.2

¹² Yiapanas et al., 2024, pp. 552–585.

¹³ Karaiskos et al., 2025, p. 1772.

billion in 2024/25, including €594 million from commercial activities alone. Other European giants reported similarly substantial revenues, including FC Barcelona (€975 million), Bayern Munich (€861 million), Paris Saint-Germain (€837 million), and Liverpool (€836 million). These figures highlight the growing concentration of financial power among a small group of elite clubs and confirm that contemporary football organisations operate as major corporate actors within the global entertainment and media economy.¹⁴ Beyond club-level finances, professional football contributes significantly to national economies. A recent German study highlighted that professional football generated a net fiscal contribution of €4.6 billion to public budgets, exceeding expenditure in certain public policy areas.¹⁵ Moreover, 41% of German citizens identify professional football as an important part of their lives, underlining its integrative and identity-forming role across social divisions. Football thus produces both tangible economic income, employment, taxation, infrastructure development, and intangible social capital through collective experiences and regional affiliation.

In this sense, football cannot be reduced to a commercial spectacle because it embodies popular culture and collective identity, even within an increasingly commercialised environment.¹⁶ The contemporary football industry represents a hybrid sphere where market logic, regulatory governance and socio-cultural attachment converge. While football operates within highly commercialised global markets, it simultaneously retains strong cultural and community significance, creating a complex institutional environment in which economic interests and social identities interact.¹⁷ Its economic weight, global reach, and societal embeddedness explain why regulatory frameworks and the roles of governing bodies carry international diplomatic implications, particularly as global sport organisations increasingly operate within complex political, economic, and regulatory environments. Football's transformation into a "cash cow" of the global economy further underscores the need for structured governance capable of balancing commercial expansion with integrity, accountability and social responsibility, reflecting the growing complexity of managing global sport institutions and their stakeholders.¹⁸

¹⁴ Deloitte, 2026.

¹⁵ DFL, 2024.

¹⁶ Correia, 2020.

¹⁷ Morrow, 2023, pp. 3–8.

¹⁸ Renzi & Taragoni, 2024, pp. 117–118; Bayle, 2025, pp. 7–9.

4 The Role of FIFA

The unprecedented economic magnitude and societal reach of contemporary football inevitably raise questions of governance and regulation, particularly as sport has evolved into a complex global industry attracting growing scrutiny from regulators, policymakers and international institutions.¹⁹ When a sector generates billions of euros annually, shapes national identity, influences public finances, and mobilises millions of supporters across continents, it cannot operate without structured oversight. The commercialisation of elite competitions, the internationalisation of transfers, and the growing complexity of contractual relations have transformed football into a global regulatory space requiring coherent and enforceable rules. As such, football in the twenty-first century and the environment in which it operates have evolved beyond the traditional ways in which the sport has historically been understood and governed.²⁰ The greater the financial stakes, the greater the risks – conflicts of interest, exploitation of young players, opaque financial flows, and competitive imbalances – thereby necessitating institutional supervision. At the same time, technological advancements and digital platforms have expanded the reach of sport organisations, enabling them to engage global audiences and generate additional forms of value through activities such as sponsorship, commercial partnerships and sports betting markets.²¹

The establishment of FIFA in 1904 marked the first step toward global coordination of the sport. Initially created to harmonise rules and facilitate international competition, FIFA progressively evolved into the central regulatory authority of world football. Its competencies expanded throughout the twentieth century, particularly with the creation of the FIFA World Cup in 1930 and the subsequent development of international transfer systems. Over time, FIFA adopted comprehensive regulatory instruments governing player status, transfers, disciplinary matters, ethics, safeguarding and financial transparency.

As football transitioned from a primarily sporting activity into a transnational industry, FIFA's regulatory function correspondingly intensified. The organisation's evolution reflects a broader shift from rule-making for competition to governance

¹⁹ Meier et al., 2023, pp. 692–695; Flanagan, 2025, pp. 1–8.

²⁰ Chadwick, Widdop & Goldman, 2025, pp. 20–22.

²¹ Westerbeek & Karg, 2022, p. 30.

of an economic ecosystem. The regulation of intermediaries, now football agents, must be understood within this trajectory. Agents operate at the heart of the transfer market, negotiating contracts that involve substantial financial resources and cross-border legal implications. In a context where clubs generate many billions annually, and player transfers are at record highs, the absence of structured oversight risks undermining both sporting integrity and economic stability. This concern has long been recognised in European sport governance debates, as illustrated by the Council of Europe's attempt to provide 'an institutional framework for the development of sport at European level', representing an early effort to regulate the governance and economic dynamics of sport markets.²²

As the financial scale and organisational complexity of football have expanded, the need for regulatory mechanisms to supervise key actors within the football ecosystem has become increasingly evident. Thus, the reintroduction of a centralised licensing system under the FFAR represents not merely administrative reform but an institutional response to the economic and social weight of sport. When football functions simultaneously as cultural heritage, an entertainment industry, and a fiscal contributor to national economies, regulatory coherence becomes indispensable. The governance of agents is therefore part of a broader effort to align the commercial expansion of football with principles of transparency, accountability and professional standardisation, ensuring that the global game remains both economically sustainable and socially legitimate.

4.1 Historical Evolution of Football Agent Regulation

A football agent is generally understood as an intermediary who represents players and/or clubs in negotiations over employment contracts or transfer agreements, often providing additional services such as career management, scouting, and assistance with off-field matters.²³ FIFA first introduced regulations governing football agents in 1991, with several revisions over time, including major reforms in 2000/2001 that established national licensing systems, mandatory examinations, and liability insurance requirements. According to Paolo Lombardi, the need for reform at that time was significant due to the growing influence of agents and the lack of regulation in the transfer market.²⁴ The regulations remained in force, with further

²² Sugden, Sheps & Sugden, 2023, p. 476; Siekmann & Soek, 2010, p. 93.

²³ Parrish et al., 2019, p. 3.

²⁴ Lombardi, 2015, p. 22.

amendments in 2008, until their repeal in 2015. Increasing financial flows in the transfer market and rising agent commissions prompted FIFA to reassess the regulatory framework. FIFA identified several key problems within the existing system, including the widespread involvement of unlicensed individuals in transfer negotiations, a lack of transparency in transfer transactions, inconsistencies between FIFA regulations and national laws, and unclear roles for agents who often represented multiple parties. In response, the FIFA Congress initiated reforms in 2009 and, following several years of consultation, adopted the Regulations on Working with Intermediaries (RWI) in 2014, which came into force on 1 April 2015 and replaced the previous agent regulations.²⁵

4.2. The 2015 Reform: From “Licensed Agents” to “Intermediaries”

In 2015, FIFA replaced the licensed agent regime with the “intermediary” system. Rather than requiring a FIFA licence and exam, individuals merely had to register with their respective national association before participating in a transaction.²⁶

Importantly, this was not presented as full deregulation but rather as a decentralisation of oversight. FIFA shifted responsibility to national associations, which were required to:

- a) implement basic registration procedures;
- b) publish lists of intermediaries involved in transactions;
- c) ensure minimal disclosure of remuneration.²⁷

However, no global examination was required, no harmonised professional qualification existed. Regulatory standards varied widely across jurisdictions. The consequences were significant:

- fragmentation of regulatory standards across member associations;
- lower barriers to entry, increasing the number of market participants;
- reduced global supervision, limiting FIFA’s direct control;
- inconsistent enforcement mechanisms, depending on national capacity.²⁸

²⁵ Auberg, n.d.

²⁶ Colucci, 2015, p. 17.

²⁷ Lombardi, 2015, pp. 28–30.

²⁸ Lombardi, 2015, pp. 32–37.

While the reform aimed to simplify governance, it inadvertently produced regulatory asymmetry. Some associations implemented robust systems; others adopted minimal compliance frameworks. This uneven application weakened global coherence.

4.3 Structural Consequences of the Intermediary Model

The absence of a FIFA uniform qualification mechanism resulted in:

- variability in legal knowledge among intermediaries;
- increased disputes concerning representation contracts;
- concerns over conflicts of interest;
- allegations of excessive commissions;
- reduced predictability in international transactions.²⁹

From a governance perspective, the intermediary framework exposed tensions between liberalisation and integrity. The market became more accessible, but the professional structure diminished. In cross-border transfers, where legal, financial, and regulatory complexity is high, the absence of harmonised standards created systemic vulnerabilities. Moreover, FIFA's limited supervisory role restricted its capacity to impose consistent disciplinary measures. Enforcement remained largely national, creating procedural divergence and jurisdictional uncertainty.

By 2017, FIFA initiated consultations with member associations, stakeholders, and agent organisations to reassess the regulatory landscape. The outcome was a recognition that the intermediary experiment had produced instability rather than efficiency. The move toward reintroducing licensing, eventually codified in the FFAR, was therefore not merely a policy reversal, but a structural recalibration. It sought to:

- restore global uniformity;
- reinstate professional qualification standards;
- strengthen transparency and financial accountability;
- centralise dispute resolution mechanisms;

²⁹ Foulkes, 2021, p. 5.

- enhance protection of players and contractual integrity.³⁰

This historical evolution demonstrates a pendulum movement: from strict central licensing, to decentralised registration, and back toward structured global oversight.

4.4 The Return to Regulation: FFAR 2023–2025

The adoption of the FIFA Football Agent Regulations (FFAR), which entered into force on 9 January 2023, marked a decisive return to centralised governance of football agents. This reform followed extensive consultations with member associations and key international football stakeholders, initiated in 2017 and formally approved by the FIFA Council in December 2022 after a comprehensive consultation process led by FIFA since 2018.³¹ Subsequently, the Court of Arbitration for Sport (CAS) confirmed the legality, validity, and proportionality of the FFAR, recognising FIFA's authority to regulate football agents and upholding key provisions, including the service fee cap, the prohibition on multiple representation, and the requirement that only licensed agents may provide agent services. These measures aim to strengthen contractual stability, enhance professional standards, and improve transparency within the international transfer system.³²

The FFAR reintroduced several key regulatory elements:

- a mandatory FIFA licence;
- harmonised eligibility criteria (Article 5 of the FFAR);
- a compulsory examination (Article 6 of the FFAR);
- an annual licence fee (Article 7 of the FFAR);
- centralised oversight by the FIFA General Secretariat (Article 23 of the FFAR).

FIFA's football agent licensing framework is now a centralised system administered via the FIFA Agents Platform (agents.fifa.com). Applicants must comply with the eligibility requirements in Article 5 FFAR, submit a complete application, pass the FIFA Football Agent Exam as required by Article 6 FFAR, and pay the annual

³⁰ Foulkes, 2021, pp. 1-5.

³¹ FIFA, 2023a.

³² FIFA, 2023b.

licence fee under Article 7 FFAR.³³ The FIFA General Secretariat oversees compliance with Article 23 FFAR and may request supporting documentation; failure to cooperate may result in licence rejection or disciplinary action.³⁴ This centralised approach represents a clear shift from prior decentralised national intermediary systems to a globally coordinated licensing model.

The examination consists of 20 multiple-choice questions, completed online within 60 minutes, with a minimum pass mark of 75%.³⁵ It is open book, restricted to official study materials, and conducted under remote invigilation with identity verification to ensure exam integrity.³⁶ Each candidate receives a unique set of questions to maintain fairness and prevent standardised answer sharing.

Exam content draws from multiple core regulatory texts, including the FIFA Football Agent Regulations, FIFA Regulations on the Status and Transfer of Players (RSTP), FIFA Clearing House Regulations, FIFA Statutes, FIFA Code of Ethics, FIFA Disciplinary Code, and the FIFA Guardians Child Safeguarding Toolkit.³⁷ This ensures that licensed agents possess a comprehensive understanding of transfer governance, ethical standards, disciplinary procedures, financial clearing mechanisms, and safeguarding responsibilities within international football.

Overall, the centralisation of licensing, examination, and compliance oversight under the FIFA General Secretariat formalises agents as licensed global market participants. This structure consolidates interpretative and supervisory authority at the international level and promotes consistent professional standards across the football industry).³⁸

4.5 From Market Liberalisation to Structured Governance

The evolution from a liberalised intermediary market to the structured governance put in place by FIFA has enhanced predictability and transparency in national and cross-border football transactions, while ensuring all agents operate with shared regulatory literacy. It is important to note, however, that these new regulations must

³³ FIFA, 2025a.

³⁴ FIFA, 2025a.

³⁵ FIFA, 2025b.

³⁶ FIFA, 2025a; FIFA, 2025b.

³⁷ FIFA, n.d.

³⁸ FIFA, 2025a.

align with and operate within the broader EU legal framework, which guarantees freedom of movement and player mobility under Articles 45 and 56 TFEU, as illustrated by the landmark *Bosman* ruling.³⁹ Recent proceedings in the *Diarra* case⁴⁰ reaffirm that even players under contract retain mobility rights, requiring FIFA regulations to remain proportionate and compatible with EU competition and internal market principles.⁴¹ Within this judicial and regulatory landscape, agents play a central role by negotiating contracts, facilitating international transfers, and managing commercial arrangements, thereby directly influencing the economic dynamics of football. By combining mandatory licensing, examinations, and centralised compliance, the FFAR represents a calibrated response: it does not reinstate unchecked regulatory monopoly but instead seeks to structure a highly monetised intermediary sector within legally defensible parameters, balancing FIFA's governance authority with players' EU-protected freedoms.

5 Conclusion

The reintroduction of mandatory licensing and examination under the FFAR represents a significant step toward restoring regulatory coherence and professionalising the football intermediary market. By establishing uniform global qualifications, harmonised eligibility criteria, compulsory examinations, centralised oversight, and safeguards for minors, FIFA has strengthened transparency, contractual stability, and ethical standards across jurisdictions. The licensing framework, coupled with supervisory mechanisms, ensures that agents operate with baseline regulatory literacy, while compliance with EU principles, particularly freedom of movement and competition law, has been carefully balanced through proportionality considerations, as reflected in *Bosman* and the *Lassana Diarra* case.

FIFA's influence extends beyond sport into international relations, leveraging its economic power, global reach, and governance structure, which includes federations, confederations, and state participation in major events. Although a private law entity, national teams operate as symbols of state identity, legitimised by the support of heads of state.⁴² The growing economic and professional significance of agents is evident in the first fully online FIFA football agent exam in 2025, which

³⁹ *Union Royale Belge des Sociétés de Football Association ASBL v. Bosman*, C-415/93, 1995.

⁴⁰ *Lassana Diarra v. Union Royale Belge des Sociétés de Football Association*, C-650/22, 2024.

⁴¹ *Meca-Medina & Majcen v. Commission*, C-519/04 P, 2006.

⁴² Cazotto, Fronzaglia & Racy, 2022, p. 824.

attracted 16,117 applications, the highest in the exam's history, with Great Britain, France, the USA, Spain, and Brazil leading. By December 2025, 10,525 agents were licensed, reflecting both the increasing demand for professionalised representation and the importance of a robust regulatory framework.⁴³

Despite these achievements, practical and structural challenges remain. Contingency measures for technical disruptions during the exam, such as internet failures, are not clearly defined, and the requirement that all multiple-choice options must be correct to earn a point may not accurately reflect candidates' understanding. Preparatory training is largely provided by private agencies, often at high cost, and no free or accessible programs are currently available through FIFA, national associations, or regional football bodies. Additionally, with only a single exam held in 2025, the frequency and timing may limit access for prospective agents, while newly licensed agents often lack structured support to initiate their careers, including introductions to clubs and networking opportunities.

Addressing these gaps, through accessible training, clarified exam contingencies, reconsideration of scoring methodologies, and structured induction programs, would reinforce the FFAR's effectiveness and enhance both legal legitimacy and practical support. In this sense, while the FFAR has successfully restructured football agent governance, its full potential will depend on complementary measures that support agents' professional development and integration into the global football market.

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⁴³ FIFA, 2025.

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THE RIGHT TO FREEDOM OF EXPRESSION OF ATHLETES: BETWEEN LAW AND SPORTING REGULATIONS

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In this article, the author examines the legal justification for excluding political, religious, and racial expression by athletes. The analysis is grounded in the standards developed by the European Court of Human Rights regarding permissible restrictions on the right to freedom of expression, as well as in the application of a structured test to assess whether interferences with that right are legally justified. The article further provides a case-based analysis of examples that have shaped the scope of athletes' freedom of expression, offering insight into the sanctions imposed on athletes for expressive conduct. Particular attention is devoted to the distinction between prohibited and permissible forms of expression, both at sports venues and within the athlete's private or personal sphere. The article concludes by critically questioning the legal sustainability of a blanket prohibition on ideological expression by athletes at sporting events.

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1 Introduction

The right to freedom of expression is guaranteed both by the European Convention on Human Rights (ECHR)¹ and by the Charter of Fundamental Rights of the European Union.² Within the European continental legal system, this right is typically enshrined at the constitutional level in national legal orders, as it constitutes a fundamental human right and one of the cornerstones of a democratic society.

Freedom of expression is enshrined in Article 10 of the ECHR. This provision states that everyone has the right to freedom of expression and guarantees the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and irrespective of frontiers, while allowing States to impose licensing requirements on broadcasting, television, or cinema enterprises. The ECHR further recognises that the exercise of freedom of expression entails duties and responsibilities and may therefore be subject to restrictions prescribed by law and necessary in a democratic society. Such restrictions may be justified, *inter alia*, by the interests of national security, territorial integrity, or public safety; to prevent disorder or crime; to protect health or morals; to protect the reputation or rights of others; to prevent the disclosure of confidential information; and to maintain the judiciary's authority and impartiality.

At the level of EU law, freedom of expression and information is guaranteed by Article 11 of the Charter of Fundamental Rights of the EU. This provision similarly affirms that everyone has the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers. In addition, the Charter explicitly requires respect for the media's freedom and pluralism. Closely related to this guarantee, the Charter also expressly protects, in Article 10, the freedom to manifest religion or belief, thereby extending the scope of expressive freedom to religious and belief-based expression.

¹ European Convention on Human Rights, 1950.

² Charter of Fundamental Rights of the European Union, 2012.

Furthermore, in the Slovenian legal system, freedom of expression is constitutionally guaranteed under Article 39 of the Constitution of the Republic of Slovenia. This provision ensures freedom of expression of thought, freedom of speech and public appearance, freedom of the press, and other forms of public communication and expression. It further guarantees the right of everyone freely to collect, receive, and disseminate information and opinions.

Within the scope of freedom of expression, individuals are entitled to express messages, information, ideas, opinions, viewpoints, or beliefs. This right also affords legal protection to symbolic expression, including implicit and conclusive forms of conduct. Conversely, restrictions on freedom of expression are permissible only insofar as they are necessary to protect others' rights and legitimate public interests. Accordingly, public authorities may prohibit certain forms of expression where such expression is inherently anti-democratic, expresses support for terrorist activities, or constitutes hate speech, offensive speech, or otherwise incites or instigates violence.³

The most explicit limitations on freedom of expression are set out in the Criminal Code, which criminalises conduct amounting to public incitement to hatred, violence, or intolerance. In this regard, Article 63 of the Constitution of the Republic of Slovenia explicitly prohibits any incitement to national, racial, religious, or other discrimination, as well as the inflaming of national, racial, religious, or other hatred and intolerance. It further provides that any incitement to violence and war is unconstitutional.

These constitutional prohibitions are implemented in criminal legislation through Article 297 of the Slovenian Criminal Code, which defines the offence of public incitement to hatred, violence, or intolerance. Under this provision, anyone who publicly incites or stirs up hatred, violence, or intolerance on grounds such as nationality, race, religion, ethnicity, gender, skin colour, origin, financial situation, education, social position, political or other beliefs, disability, sexual orientation, or any other personal circumstance, and who does so in a manner capable of jeopardising or disturbing public law and order, or by means of threats, verbal abuse, or insults, may be punished by imprisonment of up to two years. The same penalty

³ Teršek, 2019, pp. 375, 378.

applies to those who publicly disseminate ideas on the supremacy of one race over another, provide assistance to racist activities, or deny, trivialise, approve, justify, ridicule, or advocate genocide, the Holocaust, crimes against humanity, war crimes, aggression, or other criminal offences against humanity as defined in the legal order of the Republic of Slovenia.

The Criminal Code further provides for enhanced liability where such acts are committed through mass media or online platforms, by means of coercion or other aggravating conduct, or through the abuse of official authority. It also mandates confiscating materials and objects bearing prohibited messages, as well as of devices intended to produce, reproduce, or disseminate them.

When imposing sanctions for public statements, punitive measures must be directed at the existence of a convincing and pressing necessity to protect another right or freedom, a legitimate interest, or an overriding public interest. According to the established case law of the European Court of Human Rights (ECtHR), restrictions on freedom of expression of a political nature are, as a rule, considered permissible primarily in cases involving the following categories of expression:

1. Expressions of racial intolerance and racial hatred, including deliberate racist statements and hate speech;
2. Endorsing or promoting Nazi ideology;
3. Revisionist views aimed at denying historical facts relating to serious violations of human rights or at negating the historically established facts of the Holocaust;
4. Blasphemous expression;
5. Obscene expression, particularly where restrictions are justified in order to protect public morality and minors' morality;
6. Abusive or offensive speech, as well as incitement and instigation to violence.⁴

In its judgment, the ECtHR established a structured test to assess when the State is justified in enacting measures that interfere with freedom of expression. According to this test, an interference by a public authority must be prescribed by law, pursue one or more of the legitimate aims listed in Article 10(2) of the ECHR, and be necessary in a democratic society.⁵

⁴ Teršek, 2019, pp. 380, 383.

⁵ ECtHR, *Markt Intern Verlag v. Germany*, 1989.

The ECtHR has consistently held that political expression, including expression on matters of public interest and public concern, enjoys a particularly high level of protection under Article 10 of the ECHR.⁶ Although freedom of political debate is not absolute, the limits of acceptable criticism are significantly wider where the criticism is directed at the government or those exercising public authority.⁷

Nevertheless, in the field of sport, specific regulatory regimes apply that may entirely exclude political expression and propaganda. By way of example, Rule 50(2) of the Olympic Charter⁸ provides that “no kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas.” Through this provision, the Olympic Charter restricts the exercise of freedom of expression, a right that is otherwise expressly guaranteed by international legal instruments such as the ECHR and the Charter of Fundamental Rights of the EU.

The primary justification for limiting freedom of expression at sporting venues lies in the need to ensure peace, safety, and the orderly conduct of competitions, while adhering to the principle of political neutrality. Where an athlete’s statements contain political, religious, racial or ideological content that is inconsistent with the regulations of a sporting organisation, disciplinary measures may follow and can be particularly severe. Notably, the Olympic Charter provides for the possibility of disqualification of an individual athlete for a breach of Rule 50(2).⁹ In practice, however, athletes’ freedom of expression is often restricted not only within competition venues but also in their private sphere, particularly when they express opinions through social media, interviews, or public appearances outside sporting venues.

This regulatory framework and its practical application, therefore, raise the fundamental question of the extent to which the rules of sports governing bodies (SGBs) may, if at all, legitimately restrict athletes’ right to freedom of expression.

⁶ ECtHR, *Steel and Morris v. the United Kingdom*, 2005.

⁷ Teršek, 2019, p. 380.

⁸ In force as from 30 January 2025.

⁹ Compare Bye-law to Rule 50.

2 Function of Sports Governing Bodies

SGBs establish rules that apply to athletes who wish to compete under the auspices of such organisations. SGBs operate at different levels, with international organisations constituting the highest level, followed by continental organisations, which are further divided into national bodies. At each level, SGBs may adopt their own competition-related rules. By adopting competition rules and determining disciplinary frameworks, SGBs function as regulators of a particular sport. Although SGBs perform a regulatory function, their acts are subject to compliance with national, transnational, and international legal norms. Consequently, they are required to ensure the protection afforded by hierarchically superior legal rules. Within the scope of their regulatory role, however, they may impose stricter regulation in certain legal areas governing the organisation and conduct of competitions (such as Rule 50(2) of the Olympic Charter).

The monopolistic position of SGB significantly limits athletes' ability to refuse the rules imposed by such organisations, as non-compliance would effectively exclude them from international competition.¹⁰ This structural imbalance has also been emphasised by the ECtHR (case of *Mutu v. Switzerland*). In this respect, the Court observed that an athlete's only realistic choice may be between accepting the regulatory framework imposed by a sports federation and thereby being able to pursue sport professionally, or refusing it and consequently being entirely prevented from competing and earning a living at that level. In light of the severe consequences that non-acceptance would entail for an athlete's professional life, the Court held that such acceptance cannot be regarded as free and unequivocal.¹¹ Consequently, athletes consent to rules that restrict their right to freedom of expression.

3 Cases of Restrictions on an Athlete's Right to Freedom of Expression

3.1 Introductory

The following section presents and analyses selected cases that illustrate athletes' conduct through the prism of the right to freedom of expression as more strictly defined by the rules of individual SGBs. For analytical clarity, these cases may be

¹⁰ Holzer, 2024, p. 61.

¹¹ *Mutu v. Switzerland*, 2018, para. 113-114.

divided into three categories: i) expression without political, religious, or racial propaganda; ii) political, religious, or racial propaganda at competition venues; and iii) political, religious, or racial propaganda outside competition venues. In certain instances, SGBs restrict or prohibit athletes' freedom of expression for commercial or sponsorship-related reasons, in the interest of political neutrality, or on the grounds that the conduct is deemed generally detrimental to the league or competition.

3.2 Expression Without Political, Religious, or Racial Propaganda

3.2.1 Promotional Programmes

UEFA acted as the organiser of the UEFA Euro 2020. During the tournament, Cristiano Ronaldo, at a pre-match press conference, removed two Coca-Cola bottles placed in front of him and subsequently lifted a bottle of water, stating 'aqua'. Similar conduct followed when Paul Pogba (practising Muslim) removed a non-alcoholic Heineken bottle during a post-match press conference, and Manuel Locatelli likewise replaced a Coca-Cola bottle with water.

UEFA's Regulations of the UEFA European Football Championship¹², governing the tournament, provide the legal basis for addressing such conduct. Rule 65.09 of the Regulations of the UEFA European Football Championship stipulates that: "each participating association must support and ensure that its players, coaches, officials and other employees support the commercial programme established by UEFA to exploit the marketing rights to the final tournament, including the promotional programmes run by UEFA and its commercial affiliates."¹³ Disciplinary responsibility is further governed by Rule 53.01, which provides that the provisions of the UEFA Disciplinary Regulations apply to all disciplinary offences. In this context, Rule 6.01 establishes that national associations are responsible for the conduct of their players, officials, members, supporters, and any person performing a function at a match on their behalf. UEFA does not impose fines directly on individual players for such breaches. Instead, it may sanction the

¹² The version of the Rules is edition between 2022 and 2024, as the version applicable during the EURO 2020 tournament is not available; nevertheless, the provisions are substantively identical (compare Moore, 2021).

¹³ The Rule continues beyond this point; however, the remaining part is not relevant for assessing the justification of the conduct.

relevant national football association, which retains discretion as to whether and how to discipline a player who has infringed the tournament's sponsorship-related rules.¹⁴

UEFA's tournament director, Martin Kallen, stated that the primary concern was the athlete's conduct in relation to contractual obligations, while also acknowledging that certain actions may have been motivated by religious beliefs. In such cases, he indicated that players would not be required to have sponsor-branded products placed in front of them. Nevertheless, UEFA did not exclude the possibility of sanctions in the event of repeated or similar incidents, noting that the participating federations had formally accepted the relevant regulations and that financial penalties remained a potential enforcement mechanism.¹⁵

The incident attracted significant public and economic attention, as reports indicated a temporary decline in the sponsoring company's market value (a 1.6% drop in share price, corresponding to an estimated USD 4 billion loss) following Ronaldo's actions. However, it is not possible to state with certainty that a causal relationship existed between the decline in market value and the removal of the sponsor's products. Coca-Cola responded by downplaying the significance of the event, issuing a statement emphasising individual freedom of choice and acknowledging that consumers have differing preferences, tastes, and needs.¹⁶

Although the cases in question did not result in the actual sanctioning of the athlete or in judicial proceedings, they nonetheless clearly demonstrate that even seemingly simple conduct, such as the removal of sponsored products, may constitute a breach of SGB regulations and interfere with the athlete's right to freedom of expression. Particularly noteworthy is the fact that the tournament president emphasised that such conduct was acceptable when motivated by religious ideology. This position effectively introduces political, religious, and ideological considerations into commercial or sponsorship obligations – domains in which such expressions are otherwise strictly restricted within sporting venues.

¹⁴ Moore, 2021.

¹⁵ Evans, 2021.

¹⁶ BBC, 2021 and Garcia, 2021.

3.2.2 Prohibition of Wearing Slogans Under Jerseys

In football, the International Football Association Board (IFAB) acts as the relevant SGB responsible for adopting the Laws of the Game.¹⁷ Law 4.5 comprehensively prohibits the use of political, religious, or personal slogans, statements, or images on players' equipment, including undergarments. This prohibition is subject only to narrowly defined exceptions, such as initiative slogans or emblems promoting the game of football, respect and integrity, as well as advertising expressly permitted by competition rules or by the regulations of national football associations, confederations, or FIFA. Breaches of these rules may result in sanctions imposed by the competition organiser, the relevant national football association, or FIFA.

The regulatory framework applies broadly to all players and team officials. It is interpreted in conjunction with Law 12.4, which requires referees to take disciplinary action in cases of offensive, insulting, abusive, provocative, derisory, or inflammatory conduct. The interpretative guidance to Law 4 further clarifies that, while 'religious' and 'personal' expressions are relatively easy to define, the concept of 'political' expression is less precise. Nevertheless, slogans, statements, or images relating to specific categories are explicitly prohibited, including references to identifiable persons (living or deceased, unless forming part of the official competition name), political parties, organisations or groups at any level, governmental bodies or functions, discriminatory organisations, organisations whose aims or actions are likely to offend a significant number of people, as well as specific political acts or events.

The rules additionally empower competition organisers to impose further restrictions, particularly regarding the size, number, and placement of permitted slogans, statements, or images, and stress the importance of resolving any potential disputes concerning such expressions before a match or competition begins.

This IFAB regulatory framework entered into force on 1 June 2014, and categorically prohibits players from displaying political, religious, or personal messages during matches. Before this date, players were not subject to such comprehensive restrictions. The rationale for the amendment was the pursuit of consistency. As

¹⁷ Laws of the Game apply for the season 2025/2026.

articulated by Jonathan Ford, chief executive of the Football Association of Wales, while there was broad consensus on excluding political and religious statements, the decision to extend the prohibition to personal statements was driven by the view that it was easier to maintain that such expressions have no place in the game.¹⁸

3.2.3 Possession of Weapons

The National Basketball Association's (NBA) disciplinary practice in cases involving firearms illustrates the extent to which athletes' expressive conduct may be restricted under private regulatory regimes, even where such conduct does not constitute a criminal offence. In the case of Ja Morant, NBA Commissioner Adam Silver explicitly framed the player's conduct as an issue of safety and league values rather than legality, emphasising that the applicable standard was a private organisational one grounded in behaviour deemed detrimental to the league's reputation.¹⁹ Morant was first suspended for eight games after live-streaming a video in which he displayed a firearm while intoxicated at a nightclub, and subsequently received a substantially harsher 25-game suspension after again posing with a firearm during a live-streamed video, despite prior commitments to the NBA and public assurances that the conduct would not be repeated.²⁰

This approach is consistent with earlier precedents, including the 2010 suspensions of Gilbert Arenas and Javaris Crittenton following an incident involving firearms in a locker room, where the mere presence of guns in a professional basketball context was deemed incompatible with league values (the suspensions were imposed for 50 and 38 games, respectively). Notably, Morant's 25-game suspension aligns in length with sanctions imposed for performance-enhancing drug violations,²¹ while being slightly more lenient than penalties imposed for other forms of serious misconduct, such as domestic violence, as exemplified by the 30-game suspension of Miles Bridges.²² The financial consequences of Morant's suspension were substantial. Whereas his prior suspension cost approximately USD 669,000 in lost salary, the later sanction resulted in losses exceeding USD 7.6 million, in addition to the indirect

¹⁸ The Guardian, 2014.

¹⁹ ESPN, 2023.

²⁰ Reynolds, 2025.

²¹ ESPN, 2023.

²² NBA, 2023.

consequence of forfeiting eligibility for All-NBA selection and a resulting USD 39 million contractual bonus.²³

Sanctions arise from conduct deemed detrimental to the NBA. The legal basis for such measures is provided by Article 35(d) of the National Basketball Association Constitution and By-Laws,²⁴ which grants the Commissioner broad discretionary authority to impose disciplinary sanctions on players whose conduct or public statements are deemed detrimental to the league's interests. The Commissioner may impose a fixed or indefinite suspension and/or a financial penalty of up to USD 100,000 where, in his assessment, a player has made statements intended or likely to harm the reputation or best interests of basketball, the Association, or its members, or has engaged in conduct that fails to meet standards of morality or fair play, violates applicable laws, or is otherwise prejudicial or detrimental to the Association.

Taken together, these cases illustrate the breadth of authority exercised by SGBs in restricting athletes' expressive conduct – particularly where firearms are involved – on the basis of safety, reputational, and commercial considerations. Crucially, such sanctions have been imposed notwithstanding that the conduct occurred outside competitive venues and team premises, within contexts in which athletes would ordinarily benefit from the protection of freedom of expression. By characterising off-field expressive behaviour as 'conduct detrimental to the league', private regulatory regimes effectively extend their disciplinary reach into athletes' private and social spheres. This approach raises serious concerns regarding the legitimacy and proportionality of such restrictions, particularly where expressive conduct is equated with violations such as the use of prohibited substances or sanctioned at levels comparable to penalties imposed for serious criminal misconduct, including domestic violence.

²³ ESPN, 2023.

²⁴ From 2024.

3.3 Political, Religious, or Racial Propaganda at Competition Venues

3.3.1 Tommy Smith and John Carlos

One of the earliest and most emblematic instances of the sanctioning of political expression in sport dates back to the 1968 Olympic Games in Mexico City. During the medal ceremony for the 200-metre race, two United States of America (USA) athletes, Tommie Smith and John Carlos, stood on the podium and raised black-gloved fists while the national anthem was played. This gesture, later known as the Black Power salute, constituted a silent yet powerful protest against systemic racial oppression in the USA and has since come to represent a defining moment in the history of civil rights activism.²⁵

The International Olympic Committee (IOC) responded swiftly, convening its executive bodies and exerting pressure on the USA Olympic Committee to discipline the athletes, reportedly threatening to bar the entire USA team from further participation should no action be taken. Although members of the USA committee were divided on the appropriate response, the decision to dismiss Smith and Carlos from the Olympic Games was ultimately taken in accordance with the IOC's directive. In its official statement, the USA Olympic Committee expressed 'profound regret' for the athletes' conduct, characterising it as a violation of Olympic principles, good manners, and sportsmanship.²⁶ Both athletes were subsequently banned from national and international competitions,²⁷ thereby illustrating an early and stringent application of the principle of political neutrality in sport and the readiness of SBG to impose severe sanctions on athletes for politically expressive conduct, even in instances where the intensity and duration of such measures, as well as their overall proportionality, may reasonably be questioned.

3.3.2 Fethi Nourine and Amar Benikhlef

During the Tokyo 2020 Olympic Games, Algerian judoka Fethi Nourine and his coach, Amar Benikhlef, publicly announced through the media that, should the competition draw result in Nourine facing an Israeli athlete, they would withdraw

²⁵ Burke, 2023.

²⁶ Sheehan, 1968.

²⁷ Burke, 2023.

from the Olympic Games. Accordingly, Nourine refused to compete against an Israeli opponent on the scheduled competition date of 26 July 2021. Afterwards, the Executive Committee of the International Judo Federation (IJF) initiated disciplinary proceedings against both Nourine and Benikhlef, taking the view that their conduct constituted a breach of Article 50 of the Olympic Charter, which prohibits any kind of political, religious, or racial demonstration or propaganda at Olympic sites, venues, or related areas. The matter was subsequently referred to the IJF Disciplinary Commission at first instance.²⁸

In its decision, the IJF Disciplinary Commission found that the athlete and his coach had deliberately used the Olympic Games as a platform for political and religious protest, thereby committing a serious violation of the IJF Statutes, the IJF Code of Ethics, and the Olympic Charter. On this basis, the Commission concluded that imposing a severe sanction was warranted. Consequently, it imposed a ten-year suspension on each individual, barring them from all events and activities organised or authorised by the International Judo Federation and its affiliated unions for the period from 23 July 2021 to 23 July 2031.²⁹

This case exemplifies the strict enforcement of political neutrality within the Olympic framework and highlights the far-reaching disciplinary consequences that may arise when athletes' expressive conduct is classified as political or ideological propaganda under SGB rules.

3.3.3 Josip Šimunić v. Croatia

An illustrative case concerning the limits of freedom of expression in sport arose following a football match between the Croatian and Icelandic national teams at Maksimir Stadium. After the match was officially concluded, Croatian international footballer Josip Šimunić took a microphone, walked to the centre of the pitch, and repeatedly addressed the spectators by shouting the phrase 'For Home', to which the crowd responded 'Ready!' This exchange was repeated several times, accompanied by a raised-hand gesture. Given the historical and symbolic context, the chant 'For Home – Ready!' constitutes the official salute of the totalitarian

²⁸ Case No. 2021-8 & 2021-9, 2021.

²⁹ Ibid.

‘Ustaša’ regime of the Independent State of Croatia during the Second World War and is widely recognised as a symbol associated with racist ideology, intolerance based on religion and ethnic origin, and the trivialisation of crimes against humanity.³⁰

On 8 December 2015, the Zagreb Minor Offences Court found the player guilty of a minor offence for addressing messages to spectators that incited hatred on the grounds of race, nationality, and religion, imposing a fine of 5,000 Croatian kunas. In subsequent proceedings before the ECtHR, the Court emphasised that, as a well-known professional footballer and a role model for many football fans, the applicant should have been aware of the likely negative and provocative impact of his conduct on spectators and should have refrained from such behaviour. The Court held that the interference with the applicant’s freedom of expression was supported by relevant and sufficient reasons and that, given the modest nature of the sanction and the broader context of the conduct, the domestic authorities had struck a fair balance between the applicant’s right to free expression and the societal interest in promoting tolerance, mutual respect, and the prevention of discrimination at sporting events, acting within their margin of appreciation.³¹

In parallel disciplinary proceedings at the international level, FIFA imposed a ten-match suspension on the player, thereby excluding him from participating in the World Cup. FIFA held that the salute was discriminatory and offended the dignity of a group of persons on grounds including race, religion, and origin, constituting a clear breach of Article 58(1)(a) of the FIFA Disciplinary Code.³² Under this provision, any conduct that offends human dignity, contemptuous, discriminatory or denigratory words or actions concerning race, colour, language, religion or origin entails a minimum suspension of five matches, in addition to fines and potential stadium bans.

This case demonstrates the convergence of national, international sporting, and human rights standards in sanctioning expressive conduct deemed incompatible with the fundamental values of equality, non-discrimination, and respect in sport. At

³⁰ *Šimunić v. Croatia*, 2019, para. 3.

³¹ *Ibid.*, para. 3, 45, 48.

³² FIFA Disciplinary Code from 2011. *The Guardian*, 2013.

the same time, it sends a clear message that expression amounting to a criminal offence is unequivocally prohibited in sporting venues.

3.3.4 Colin Kaepernick Kneeling

Colin Kaepernick, at the time quarterback of the San Francisco 49ers, deliberately refused to stand during the playing of the national anthem as a form of protest against systemic racism and alleged wrongdoing by state authorities against African Americans and other minorities in the USA.³³ At the time, Kaepernick was not formally sanctioned by the National Football League (NFL), as his conduct did not violate any existing league rules and no disciplinary measure was imposed in direct response to the protest itself.³⁴ Nevertheless, in October 2017, Kaepernick filed a grievance under the NFL's collective bargaining agreement, alleging collusion by the league and its club owners to prevent him from obtaining employment in retaliation for his protest and public advocacy for equality and social justice. In the grievance, Kaepernick asserted that the NFL had unlawfully deprived him of employment opportunities due to his leadership in raising awareness of persistent racial inequalities in the USA. The dispute proceeded to arbitration and was ultimately resolved through a confidential settlement between Kaepernick and the NFL.³⁵

This case illustrates how expressive conduct by athletes, even when not explicitly prohibited by formal sporting regulations, may nonetheless give rise to indirect professional consequences, thereby highlighting the complex interaction between freedom of expression, SGB regulatory frameworks, and labour relations in professional sport. In this context, it is notable that following the settlement of his collusion grievance with the NFL, Colin Kaepernick did not play another game in the league.

3.3.5 Symbolic Gestures in Sports

Kneeling as a form of expressing support for raising awareness of persistent racial inequalities has appeared across a wide range of sporting competitions, including the NFL, the NBA, the Tokyo 2020 Olympic Games, UEFA Euro 2020, the FIFA World Cup 2022, and the Premier League, among others.

³³ Wyche, 2016.

³⁴ Compare Bieler, 2017.

³⁵ ESPN, 2019.

Before the start of the Tokyo 2020 Olympic Games, athletes were not permitted to take a knee or otherwise protest against human rights abuses. On the first day of the Games, however, several athletes – including players from the United States, Sweden, and New Zealand – took a knee in protest against racism.³⁶ In response to these actions, the IOC adopted the Rule 50(2) Guidelines - Olympic Games Tokyo 2020,³⁷ which addressed peaceful protest during the Olympic Games Tokyo 2020.³⁸

These guidelines clarified that, during the Olympic Games, athletes are afforded limited opportunities to express their views in specific contexts, including mixed zones, media centres, press conferences, interviews, team meetings, and through traditional or digital media, including social media platforms. Expression was also permitted on the field of play before competition began, such as after leaving the call room or during athlete introductions, provided that such expression complied with the Fundamental Principles of Olympism, did not directly or indirectly target individuals, states, organisations, or their dignity, and was neither disruptive nor otherwise prohibited by the rules of the relevant National Olympic Committee or International Federation. In particular, the guidelines emphasised that expression must not interfere with competition protocols, other athletes' concentration, or public order. Notwithstanding these allowances, the guidelines strictly prohibited expressive conduct during official ceremonies, during competition itself, and within the Olympic Village, thereby reaffirming the Olympic Movement's restrictive approach to political, religious, and ideological expression in core Olympic spaces.³⁹

The use of the OneLove captain's armband has emerged as a visible symbol opposing discrimination and promoting inclusion in professional football. Launched in 2020 by the Royal Dutch Football Association (KNVB) as part of an inclusiveness campaign, the armband targets prejudice based on race, skin colour, sexual orientation, culture, faith, nationality, gender, age, and other forms of discrimination. Its design features a rainbow flag shaped as a heart with the number one in the centre, flanked by the text 'One Love'.⁴⁰

³⁶ The Guardian, 2021a.

³⁷ From 2021.

³⁸ An almost identical document was also published for the Beijing 2022 Olympic Games (see Rule 50(2) Guidelines - Olympic winter Games Beijing 2022).

³⁹ Rule 50.2 Guidelines - Olympic Games Tokyo 2020 (2021).

⁴⁰ Reuters, 2022.

In the context of the FIFA World Cup 2022 in Qatar, the captains of the national teams of England, Wales, Belgium, Denmark, Germany, and the Netherlands announced their intention to wear the 'OneLove' armband as a public expression in support of inclusion and diversity in professional football. The respective national football associations initially indicated their willingness to accept financial penalties in order to allow their captains to display the armband. However, shortly before the tournament started, FIFA announced that it would impose sporting sanctions on any captain wearing the OneLove armband on the field of play.⁴¹ FIFA relied on Article 13.8.1 of the FIFA Equipment Regulations,⁴² which provides that, in FIFA final competitions, the captain of each team must wear the captain's armband supplied exclusively by FIFA.

The controversy surrounding the OneLove armband was closely linked to the broader legal and social context of the host State, particularly the criminalisation of same-sex relations under Qatari law. In response to FIFA's position, the German national team adopted an alternative form of protest by covering their mouths during the official pre-match team photograph, symbolically expressing perceived restrictions on freedom of expression.⁴³ Notably, FIFA did not prohibit players from kneeling before matches as a gesture against discrimination, injustice, and inequality,⁴⁴ thereby revealing a degree of inconsistency in regulating expressive conduct. This episode illustrates the tension between athletes' freedom of expression, the regulatory autonomy of SBG, and potential conflicts with the national law of the state hosting the competition.

In Italy, male football players have also used symbolic gestures to raise awareness of social issues, such as placing red marks on their faces as part of a campaign to combat violence against women.⁴⁵

3.3.6 Non-Participation in Symbolic Gestures in Sport

In recent years, certain symbolic gestures, such as taking a knee and wearing the OneLove captain's armband, have been permitted in sporting venues. In this

⁴¹ Hamilton, 2022.

⁴² From 2025.

⁴³ ESPN, 2022.

⁴⁴ Reuters Fact Check, 2022.

⁴⁵ AP, 2023.

context, a dilemma also arises regarding an individual's freedom to decline to participate in such ideological gestures within the scope of their right to freedom of expression.

In the NBA, Jonathan Isaac was the first player in the NBA bubble to neither kneel for the national anthem nor wear a Black Lives Matter T-shirt over his jersey before a game.⁴⁶ In the Premier League, Wilfried Zaha became the first footballer to refrain from taking a knee, citing his belief that the protest was no longer effective.⁴⁷ Neither player faced any disciplinary action.

Further examples from English football (Premier League) illustrate the possibility the an individual may refuse to participate in symbolic gestures. The captain of Ipswich Town, Sam Morsy, declined to wear a rainbow armband intended to express support for LGBTQ+ inclusion, citing his religious beliefs. The club publicly stated that it respected the player's personal decision while reaffirming its commitment to inclusivity.⁴⁸

Crystal Palace defender Marc Guéhi avoided disciplinary proceedings by the Football Association after wearing a rainbow captain's armband inscribed with the message 'I love Jesus'. The FA's regulatory framework incorporates the IFAB Laws of the Game, which, in Law 4, prohibit the display of political, religious, or personal slogans, statements, or images. In this instance, however, the FA elected to merely remind both the club and the player of the applicable rules rather than initiate formal disciplinary action.⁴⁹

Just as an individual has the right to participate, they should also have the right to refuse to take part in such collective symbolic gestures, since freedom of expression includes not only the right to express oneself, but also the right to abstain from expression.

⁴⁶ Friedell, 2020.

⁴⁷ The Guardian, 2021b.

⁴⁸ The Guardian, 2024.

⁴⁹ Ostlere, 2024.

3.4 Political, Religious, or Racial Propaganda Outside Competition Venues

3.4.1 Muhammad Ali

The controversy arose when Muhammad Ali declared that his Muslim religious convictions prevented him from serving in the Vietnam War. Following his conscription, Ali repeatedly refused to report for military service and was subsequently convicted of draft evasion, sentenced to five years' imprisonment, and fined USD 10,000.⁵⁰ In response, the World Boxing Association suspended him and stripped him of his world championship title, reasoning that his refusal to serve was detrimental to the best interests of boxing. Similarly, the New York State Athletic Commission revoked Ali's licence to compete, a position that was soon adopted by nearly all other boxing commissions across the USA. At the age of twenty-five, Ali was effectively barred from professional boxing.⁵¹

Ali challenged these measures before the federal courts, arguing that revoking his licence was arbitrary and discriminatory, particularly in light of the fact that other boxers who had committed more serious offences were nevertheless permitted to continue competing. The United States District Court of New York held that, while Ali's constitutional rights had not been directly infringed, his claim was well-founded under principles governing private associations, as the New York State Athletic Commission operated as a private regulatory body. Consequently, the court ordered his boxing licence reinstated, thereby restoring his professional status.⁵² Although the dispute was framed primarily in terms of freedom of religion, it also engaged Ali's right to publicly oppose the Vietnam War – an issue of global political significance that was unrelated to the sporting activity he was being sanctioned for.⁵³

He ultimately did not serve a prison sentence; nevertheless, he was still severely sanctioned, as he was barred from competing for three years and stripped of his world championship title. For a professional athlete, such a period represents a substantial portion of a career, with long-term consequences not only for sporting achievements, but also from a financial perspective.

⁵⁰ Klein, 2009.

⁵¹ Yale Bordman, 2007, p. 39; Barber, 2021.

⁵² See in more detail *Muhammad Ali v. Division of State Athletic Com'n*, 1970.

⁵³ Yale Bordman, 2007, p. 39.

3.4.2 Naki v. Turkey

The Turkish Football Federation (Türkiye Futbol Federasyonu, TFF) has imposed disciplinary sanctions in several cases for statements made by football actors outside the field of play, raising significant questions regarding the compatibility of such measures with the right to freedom of expression. In *Naki v. Turkey*, the applicant, a professional footballer, was sanctioned for a message published on social media in which he expressed hope and solidarity and dedicated his team's victory to those who had lost their lives or been injured during ongoing violence in Turkey. The TFF's disciplinary and arbitration boards classified the impugned statements as ideological propaganda unrelated to sport, capable of encouraging violence and misbehaviour in sport and of eliciting protests by supporters. They further considered the statements to constitute conduct tarnishing the image and peaceful nature of sport;⁵⁴ consequently, the TFF Professional Football Disciplinary Committee found that Naki's remarks violated the ban on ideological propaganda and unsportsmanlike statements and imposed a twelve-match ban and a fine of 19,500 Turkish liras.⁵⁵

The ECtHR held that the national authorities had failed to perform an adequate balancing exercise between the applicant's right to freedom of expression and the competing interests relied upon, such as preventing disorder and hostility in the football community. The domestic decisions relied largely on general references to regulatory provisions prohibiting 'anti-sport' statements and ideological propaganda, without concretely assessing the content, context, or actual impact of the applicant's remarks. In particular, the authorities failed to demonstrate that the statements had incited, or were capable of inciting, violence, hatred, or intolerance among supporters.⁵⁶

The Court therefore concluded that the reasons advanced by the domestic authorities were neither relevant nor sufficient and that the sanctions imposed were not necessary in a democratic society nor proportionate to the legitimate aims pursued.⁵⁷ The same reasoning was applied in the related cases of *İbrahim Tokmak v.*

⁵⁴ *Naki v. Turkey*, 2021.

⁵⁵ Gemalmaz, 2024, p. 239.

⁵⁶ *Naki v. Turkey*, 2021.

⁵⁷ *Naki v. Turkey*, 2021.

*Turkey*⁵⁸ and *Sedat Doğan v. Turkey*,⁵⁹ in which sanctions imposed by the TFF on a football referee and a club official, respectively, for comments made on social media and in television appearances were likewise found to be incompatible with Article 10 of the ECHR.

In these cases, the Courts missed an important opportunity to provide a more detailed substantive assessment that would either justify the legitimacy of the interference with the right to freedom of expression or clearly demonstrate its unjustified nature. An even more significant shortcoming lies in the Courts' failure to address the fact that the impugned statements were made outside sporting venues. By overlooking this aspect, the Courts failed to take a clear stance on whether athletes – and other sporting actors – retain an unimpaired right to freedom of expression in their private sphere, notwithstanding their professional status.

3.4.3 Youcef Atal and Anwar El Ghazi

Recent disciplinary actions against professional footballers further illustrate the legal tensions surrounding athletes' freedom of expression in relation to political speech on social media. In France, OGC Nice suspended Algerian international Youcef Atal following a social media post relating to the Israel–Gaza conflict that was characterised by the club and domestic authorities as antisemitic. Although Atal deleted the post and issued a public apology, criminal proceedings were initiated against him. He was subsequently convicted by a court in Nice for provoking hatred on religious grounds and sentenced to an eight-month suspended prison sentence and a €45,000 fine. In parallel, the Ligue de Football Professionnel imposed a seven-match sporting suspension.⁶⁰

By contrast, the case of Dutch footballer Anwar El Ghazi in Germany demonstrates a markedly different legal outcome. El Ghazi was first suspended and later dismissed by Bundesliga club 1. FSV Mainz 05 after publishing social media posts critical of Israel following the Hamas attacks of 7 October 2023. While the club justified the termination on the basis of its internal values, German labour courts held that the dismissal constituted wrongful termination, concluding that the player's statements

⁵⁸ *İbrahim Tokmak v. Turkey*, 2021.

⁵⁹ *Sedat Doğan v. Turkey*, 2021.

⁶⁰ BBC, 2023; Hand, 2023; Woodyatt, Szaniecki & Schlachter, 2024.

fell within the scope of constitutionally protected freedom of expression. In conducting the required balancing exercise, the courts found that El Ghazi's expressive rights outweighed the employer's interests, and that summary dismissal was therefore disproportionate.⁶¹

These cases confirm that in the cases of both legal and sporting sanctions any restrictions on freedom of expression must be carefully scrutinized. It is important to highlight the distinction between the two cases. In the first case (Youcef Atal), the athlete was sanctioned by a SGB. In contrast, in the second case (Anwar El Ghazi) the issue arose in the context of an employment relationship, with sanctions imposed within that framework. Expression that is criminalized is prohibited in both private and sporting contexts. The situation differs, however, when sporting sanctions target an individual whose actions fall within the legitimate scope of freedom of expression. In such instances, SGB and sporting clubs must exercise great caution to avoid unlawfully interfering with this fundamental right.

4 Justification of Restrictions on an Athlete's Right to Freedom of Expression

The analysis of the selected cases demonstrates that, despite the diversity of regulatory frameworks adopted by individual SGBs, several common structural constraints on athletes' freedom of expression can be identified. First, athletes are subject to contractual limitations, most notably obligations arising from commercial and promotional programmes established by SGBs. As illustrated by incidents involving football players' interactions with sponsors' products, such as Coca-Cola or Heineken, a breach of these obligations does not automatically lead to disciplinary sanctions. Rather, whether penalties are imposed depends on the seriousness of the conduct and the motives underlying the breach. This regulatory sphere lies at the intersection of commercial interests and freedom of expression. Notably, the acceptance of exemptions from promotional duties on the basis of religious convictions indicates that, within this framework, elements of freedom of expression and of religion are at least partially recognised and accommodated.

⁶¹ Lobley, 2025; 1. FSV Mainz 05, 2025.

Second, athletes' expressive freedom is constrained by equipment and dress regulations, which generally prohibit political, religious, racial, and, in many instances, personal messages (for example, the blanket prohibition on slogans displayed beneath football jerseys). These restrictions typically derive from SGB rules designed to exclude political, religious, and racial propaganda, as well as demonstrations of a non-sporting nature. However, since these rules do not abolish freedom of expression as such, but merely restrict it by excluding specific categories of expression, extending such prohibitions to personal messages raises questions regarding their legal justification, particularly where such expressions are neither inherently disruptive nor explicitly prohibited by the relevant SGB regulations.

Third, athletes are subject to a general ban against promoting political, religious, and racial propaganda – or non-sporting demonstrations – at competition venues. This is most clearly exemplified by Rule 50(2) of the Olympic Charter and is similarly reflected in the regulatory frameworks of other major international SGBs, including the FIA (Rule 12.2.1(o) of the International Sporting Code),⁶² FIBA (Article 110(b) of the FIBA Internal Regulations – Book 1: General Provisions),⁶³ FIFA (Article 13(2)(c) of the FIFA Disciplinary Code),⁶⁴ FIG (Section I, point 7 of the FIG Code of Conduct),⁶⁵ FINA (Rule C.4 of the FINA Constitution),⁶⁶ FIVB (Rules 8.3 and 8.4 of the Disciplinary Regulations),⁶⁷ the ITF (Article IV(C)(3)(d) of the Code of Conduct for the Men's and Women's ITF World Tennis Tour),⁶⁸ UEFA (Article 11(2)(c) of the UEFA Disciplinary Regulations),⁶⁹ and World Athletics (Rule 3.3.14 of the Integrity Code of Conduct).⁷⁰ Although these rules formally exclude – rather than merely limit – such forms of expression, recent practice reveals an increasing tolerance of certain ideological gestures at sporting events. Examples include individual or collective kneeling, the wearing of rainbow or OneLove armbands, and the use of symbolic markings on athletes' faces. Importantly, athletes have also been permitted, on the basis of their freedom of expression and conscience, to refrain

⁶² From 2026.

⁶³ From 2025.

⁶⁴ From 2025.

⁶⁵ From 2022.

⁶⁶ From 2021.

⁶⁷ From 2023.

⁶⁸ From 2023.

⁶⁹ From 2024.

⁷⁰ From 2023.

from participating in such expressive acts, as illustrated by the conduct of athletes such as Jonathan Isaac, Wilfried Zaha, and Sam Morsy.

The SGB's have not always tolerated these forms of expression. This is clearly illustrated by the case of Tommie Smith and John Carlos, who were suspended from future competitions after performing an ideological gesture during the medal ceremony at the 1968 Olympic Games. Notably, even presently athletes are prohibited from engaging in any type of ideological expression during medal ceremonies. Similarly, contemporary sports regulations continue to aggressively proscribe overt political propaganda. This is exemplified by the previously discussed case of judoka Fethi Nourine, who deliberately used the Olympic Games as a platform for political and religious protest and, as a result, committed a serious violation of the applicable SGB rules, leading to his suspension from current and future professional judo competitions.

By contrast, interferences with freedom of expression are least controversial where an athlete's conduct not only violates SGB regulations but also clearly infringes legally protected interests under international and national law, particularly when such conduct occurs at competition venues (e.g., *Šimunić v. Croatia*). In such circumstances, the restriction of expression cannot reasonably be regarded as a violation of freedom of expression. More complex issues arise where athletes make potentially incriminating statements in their private sphere, most notably via social media. As demonstrated by the case of Youcef Atal, expressions made outside competition venues may nonetheless constitute breaches of SGB rules where they encroach upon legally protected interests or are deemed detrimental to the league or sport's reputation. In these cases, disciplinary measures are typically justified not by reference to the location of the expression, but by its content and its perceived impact on the integrity and public image of the sport. A related, albeit distinct, example is the case of Muhammad Ali, which concerned both the right to freedom of religion and the criminal prohibition of draft evasion. Nevertheless, the sporting sanctions imposed upon him further illustrate the willingness of sports authorities to severely discipline athletes for conduct unrelated to sporting performance.

The divergent outcomes in cases involving athletes' expression in their private sphere – particularly on social media – suggest a degree of arbitrariness and inconsistency in the manner in which prohibitions relating to ideological expression

are interpreted and applied. In this regard, the resolution of the Anwar El Ghazi case is noteworthy, albeit achieved only through judicial intervention. The national court explicitly emphasised the need to balance the individual's right to freedom of expression against conflicting rights and interests. The importance of such balancing is likewise underscored by the judgment in *Naki v. Turkey*, as well as in the related cases of *İbrahim Tokmak v. Turkey* and *İbrahim Tokmak v. Turkey*, in which the ECtHR held that the national authorities had failed to conduct an adequate balancing exercise between the applicants' right to freedom of expression and the competing interests invoked, such as the prevention of disorder and hostility within the football community. However, the Court again missed an opportunity to address explicitly whether athletes retain an unimpaired right to freedom of expression in their private sphere.⁷¹ The mere fact that an individual is a professional athlete cannot, in itself, justify restricting a legally guaranteed fundamental right. From this perspective, the sanctioning of Ja Morant may be viewed as an example of an excessively expansive, potentially arbitrary interpretation of rules prohibiting conduct deemed detrimental to the league's image.

Importantly, SGB rules consistently exclude political, religious, and racial propaganda at competition venues. This is exemplified by Rule 50(2) of the Olympic Charter, for example, which as previously mentioned applies to expressions occurring "in any Olympic sites, venues or other areas". Similarly, Article 13(2)(c) of the FIFA Disciplinary Code prohibits "using a sports event for demonstrations of a non-sporting nature". A similar formulation is found in Article 11(2)(c) of the UEFA Disciplinary Regulations, which sanctions anyone "who uses sporting events for manifestations of a non-sporting nature". Moreover, the guidelines issued under Rule 50(2) of the Olympic Charter for the Tokyo 2020 and Beijing 2022 Olympic Games expressly underlined that athletes are afforded only limited opportunities to express their views, and only in clearly defined contexts, including, *inter alia*, social media platforms.

Against this background, certain SGBs may be criticised for exercising excessively strict control over, and repression of, expression that should otherwise fall within the sphere of individual freedom, including for athletes. Even where no formal breach of SGB rules or legal norms can be established, athletes may still be subject

⁷¹ Compare Lindholm, 2017.

to implicit or indirect sanctions. This is particularly evident in the case of Colin Kaepernick, who, despite engaging in ideological expression not prohibited by league rules, was effectively excluded from the NFL. This case highlights the pressing need to enhance oversight of SGB conduct and to develop coherent and consistent criteria distinguishing protected freedom of expression from permissible restrictions, especially given that athletes must, as a condition of pursuing a professional sporting career, consent to the regulatory frameworks imposed by SGBs.

In assessing whether restrictions on freedom of expression are legally justified, it is appropriate to rely on the standards developed by the ECtHR in its interpretation of the ECHR, which is binding on its Contracting States. Assessing whether a restriction is legally justified requires a two-step approach. The first requires an examination of those categories of expression that the ECtHR has expressly recognised as amenable to restriction, such as racial hatred or intolerance, promoting Nazi ideology, Holocaust denial or other forms of historical revisionism relating to grave human rights violations, blasphemy, obscenity – particularly where protecting public morality or minors is at stake – and speech that is abusive, offensive, or incites violence.⁷²

Because athletes often serve as role models, particularly for younger audiences, it is sometimes argued that placing heightened restrictions on their forms of expression is justified – reflecting heightened 'duties and responsibilities' under Article 10 ECHR – as compared to ordinary citizens.⁷³ Regardless of whether one accepts this position, the decisive question remains whether any restriction of freedom of expression is grounded in legally legitimate reasons recognised under international and national human rights frameworks. In this respect, the analysis ultimately concerns a stricter application of the second para. of Article 10 of the ECHR.

The second step in the analysis requires consideration of the well-established three-part test under Article 10(2) of the ECHR, according to which any interference with freedom of expression must be prescribed by law, pursue one or more legitimate aims listed in that provision, and be necessary in a democratic society. It is precisely

⁷² Teršek, 2019, p. 380, 383.

⁷³ Rietiker, 2024, p. 275.

at this stage that the legitimacy of rules imposing blanket exclusions of political, religious, and racial expression – such as Rule 50 of the Olympic Charter – becomes problematic. Scholarly commentary,⁷⁴ has increasingly argued that Rule 50 fails to comply with these criteria, as the categorical restrictions imposed on athletes' freedom of expression neither clearly pursue a recognised legitimate aim⁷⁵ nor satisfy the requirements of necessity and proportionality. In addition, such restrictions suffer from a lack of clarity and transparency. While it may be possible to justify restrictions in cases of extreme, targeted, or disruptive demonstrations, it is difficult to sustain the argument that all forms of political, religious, or racial expression are incompatible with the requirement of being 'necessary in a democratic society'. Consequently, Rule 50 appears to require repeal or, at a minimum, substantial revision in order to narrow its scope and ensure that freedom of expression is adequately protected based on clear and legally sound justifications.⁷⁶ Although general prohibitions aimed at safeguarding political neutrality may fall short of the standards developed by the ECtHR, a balancing exercise remains unavoidable – between the limited restriction of freedom of expression on the one hand and the safeguards necessary to ensure the safe, orderly, and non-confrontational conduct of sporting competitions on the other. In conducting this balancing exercise, courts must determine the level of restriction, as opposed to outright exclusion, of freedom of expression that is compatible with the legitimate objectives of safety and non-conflictual sporting events.

5 Conclusion

The bipolar nature of sanctioning athletes for expressive conduct – where similar forms of expression are permitted in some cases yet punished in others – while imposing sanctions for statements made outside the competitive environment, even when such statements fall within legally protected boundaries, reveal a pronounced degree of arbitrariness in assessing political, religious, and racial expression, as well as conduct allegedly detrimental to the reputation of sporting competitions. This inconsistency underscores the need to harmonise the standards governing prohibited propaganda.

⁷⁴ James & Osborn, 2024, p. 207; Gemalmaz, 2024, p. 246.

⁷⁵ Gemalmaz, 2024, p. 246.

⁷⁶ James & Osborn, 2024, pp. 207–208.

Particularly, the ECtHR's criteria used to assess the legal justification of restrictions on freedom of expression may serve as an appropriate benchmark. These criteria consist of two complementary components. The first encompasses categories of expression that the ECtHR has expressly recognised as legitimately subject to restriction. The second comprises the well-established three-part test, according to which any interference with freedom of expression must be prescribed by law, pursue one or more legitimate aims listed in Article 10(2) of the ECHR, and be necessary in a democratic society.

Given that blanket prohibitions on ideological expression are fundamentally incompatible with these standards, future regulatory approaches must be grounded in a contextual balancing exercise. Such an exercise should weigh the limited restriction of athletes' freedom of expression, on the one hand, against the safeguards required to ensure the safe, orderly, and non-conflictual conduct of sporting competitions, on the other. Only through such a principled and proportionate approach can legal certainty be enhanced and the risk of arbitrary interference with fundamental rights be meaningfully reduced.

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THE PROTECTION OF PERSONAL DATA IN THE CONTEXT OF MODERN COMPETITIVE DANCES IN SLOVENIA

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This article examines the crossroads of dance, sports law, data protection and human rights. It outlines the data protection framework in Slovenia by analysing not only EU and national legal Acts but also specific regulations adopted by the International Dance Organisation, especially relevant for the dancers, practicing any style or category of the modern competitive dances in Slovenia or elsewhere. While these specific regulations do not provide any additional protection or added value to dancers in comparison to the general and specific laws relevant in this matter, this paper demonstrates the comprehensive and well-established nature of the legal framework that protects dancers' personal data. Principally, the article circles around the actual state dancers' data protection in Slovenia, which is presented through empirical research consisting of a cohort of the Slovenian dance clubs and studios registered under the Slovenian Dance Organisation.

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1 Introduction

This article covers and combines three very specific fields of studies, namely data protection, sports law and modern competitive dances. While the first two of these fields may be quite well-known to lawyers, many of the readers might learn about the central topic of this article – ‘modern competitive dances’ for the first time. But what exactly is dance? Some might say, dance is art¹; yet others may be certain dance is a sport.² Before delving into these particular categories and rules governing data protection of dancers, we must first articulate what ‘dance’ actually is.

Merriam-Webster dictionary defines the word dance as ‘to move one's body rhythmically usually to music’. Mackrell defines it in a thoroughly descriptive manner, saying “dance is the movement of the body in a rhythmic way, usually to music and within a given space, for the purpose of expressing an idea or emotion, releasing energy, or simply taking delight in the movement itself”.³ At the same time, the Cambridge dictionary defines dance in two different ways, ‘to move the body and feet to music’ or ‘to move quickly and lightly’. I, on the other hand, would describe dance as an art enabling one to speak without saying a word, a movement with which each breath has its own purpose and as a form of decompressing and exhausting your body all at the same time. What I am trying to establish here is that dance may have quite many definitions, meaning it is actually undefinable. Therefore, we kind of know what dance is, but we cannot articulate it or define it to detail, as there are too many factors within every choreography, dancers’ personal dance style and dance discipline that could influence each of the given definitions. So, the dilemma arises concerning how to legally regulate something when we do not really know what we are regulating?

There are two significant points. First, dance is delicately categorised in different departments and various disciplines within them, just like law. Meaning, just like we divide law into different branches, like criminal law, civil law, constitutional law, administrative law, company law, EU law and so on, dance is divided into modern competitive dances, rock and roll, standard and Latin American dances, etc. While the constitutional law may address various topics and rules connected to

¹ Whipp et. al., 2025, p. 8.

² Frisby, 2021.

³ Mackrell, 2025.

fundamental human rights and freedoms, the organisation of our government, elections and the national voting system, the modern competitive dances include many dance disciplines, such as jazz, modern, show dance, disco dance, hip hop, break dance, orient, step and more. This article will focus merely on the perspective of the modern competitive dances. Although there is no official definition of this umbrella term, the latter may draw a good-enough picture to understand what it subsumes.

Second, although each country has a national dance organisation, there are many international dance organisations across the world. Principally, all the dance clubs, studios and schools that are officially registered and compete under the national dance organisation at national competitions, do not merely compete for the result there, but also compete to qualify for the European or World championship under that one particular international dance organisation. The Slovenian Dance Organisation⁴ (hereinafter: PZS⁵) is registered under the International Dance Organisation⁶ (hereinafter: IDO).

Additionally, various international dance organisations have different rules. International dance organisations across the world and national dance organisations in each country adopt various regulations and documents that ensure (competitive) dance activities are performed in a safe manner and within a secure environment, where dancers can thrive. Because the national dance organisations are registered under a certain international dance organisation, they usually follow the regulations of the international dance organisation also on the national level. For example, the IDO prescribes strict rules on how 'revealing' the costume of a dancer can be in the kids, junior or adult categories, and the same rules apply for the national competitions under PZS.

Within this complicated scheme of Slovenian dance, this article examines the extent to which data protection is ensured for Slovenian dancers competing under the PZS and IDO within the categories of modern competitive dances. The approach for this research is threefold: theoretical, empirical and quantitative. I start with two, general

⁴ Read more about it here: Plesna Zveza Slovenije, Official website of the Slovenian Dance Organisation. Retrieved from: <https://www.plesna-zveza.si/mtp> (accessed: December 12, 2025).

⁵ PZS is short for »Plesna zveza Slovenija«, which in Slovenian means Slovenian Dance Organization.

⁶ Read more about it here: International Dance Organisation, Official website of the International Dance Organisation. Retrieved from: <https://www.ido-dance.com/> (accessed: December 12, 2025).

hypotheses: 1) data protection of dancers is not adequately ensured; and 2) most of the relevant trainers, club owners or team leaders, do not have the sufficient knowledge on the topic of data protection. In order to test these hypotheses, I sent questionnaires to every Slovenian dance club that practices modern competitive dances and carefully analysed the received data. As the starting point, the article primarily overviews the Slovenian and EU legislation on data protection as a premise on how it should be, and then showcases what standards and situations we actually see in practice.

2 Legal Framework on the Data Protection of Slovenian Dancers: From Broader to More Specific

2.1 The Fundamental Provisions and Bases for Data Protection in EU and Slovenia

Countries in Europe have fairly recently recognised the significance of the right to data protection. The first major legislation was promulgated by the Council of Europe with its Convention 108⁷ and, at the same time, but with a separate approach, the Organization for Economic Cooperation and Development (hereinafter: OECD) that provided guidelines⁸ with a very similar content.⁹ Both individually published their documents in 1981. While the European Convention on Human Rights¹⁰ (hereinafter: ECHR) might not address this right in particular, the decisions of The European Court on Human Rights (hereinafter: ECtHR) have clearly extended the protection of the right to private and family life under the Article 8 ECHR to this specific field as well (e.g., see cases: *Z v. Finland* (1997) app. no. 22009/93, *Y.G. v. Russia* (2022) app. no. 8647/12, *I. v. Finland* (2008) app. no. 20511/03).

⁷ Convention 108 + Modernised Convention for the Protection of Individuals with Regard to of Personal Data, accessible here:

https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2018/09-10/Convention_108_EN.pdf (accessed: January 3, 2025).

⁸ Organization for Economic Cooperation and Development, OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, OECD Publishing, Paris 2002.

⁹ Turnšek, 2025, pp. 314-315.

¹⁰ European Convention on Human Rights (1950) (hereinafter: ECHR).

With the adoption of the Charter of Fundamental Rights of the EU¹¹ (hereinafter: CFR), the EU intentionally uplifted the right to the protection of personal data to the primary EU law, not only in the sense of Article 8 ECHR (or Article 7 CFR), but as an independent right:

- “1. *Everyone has the right to the protection of personal data concerning him or her.*
2. *Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*
3. *Compliance with these rules shall be subject to control by an independent authority.* (CFR, Article 8)

In parallel, the Article 38 of the Constitution of the Republic of Slovenia¹² (hereinafter: URS) delineates identical provisions. Its first paragraph prescribes the right to data protection for everyone; the second one provides that processing of personal data is regulated by law; the third paragraph provides the individual with the right to judicial protection in case of deterioration.

One's right to the protection of personal data is, therefore, a widely recognised right in the EU territory and beyond. This right extends to everyone in general at both the national and EU levels. Moreover, the right is not limited to a workplace environment and employer-employee relationship, public places or to one's domicile. It can be applied to dance competitions, dance practices, physical or mental preparations of athletes, to various sports events etc.

Before the Lisbon Treaty¹³ was implemented, when one asserted their right to data protection, the EU Courts always referred to the ECHR instead of relying upon provisions of the Data Protection Directive¹⁴.¹⁵ Intriguingly, in the following cases, namely *Satamedia*¹⁶ and *Promusicae*,¹⁷ the Court of Justice of the EU (hereinafter:

¹¹ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012.

¹² Ustava Republike Slovenije (URS) Official Gazette RS, no. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a, 92/21 – UZ62a and 98/25 – UZ74a.

¹³ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. Official Journal of the European Union, C 306, 17 December 2007, pp. 1–271.

¹⁴ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31–50 (hereinafter: Data Protection Directive).

¹⁵ González Fuster & Gellert, 2012, pp. 73–76.

¹⁶ *Tietosuojavalitus v. Satakunnan Markkinapörssi OY Satamedia*, 2008.

¹⁷ *Promusicae*, 2008.

CJEU) stressed that the Data Protection Directive protects the broader right to privacy, not the more specific right to data protection, and that the right to privacy is synonymous with data protection.¹⁸

The CJEU's stance did not change until 2007 (for more than ten years after the EU implemented the Data Protection Directive), when the Court finally decided the *Bavarian Lager case*^{19, 20} In its decision, the CJEU held that the General Court erred in applying Article 8 of the ECHR instead of the Data Protection Directive. The predecessor of the relatively young²¹ General Data Protection Regulation²² (hereinafter: GDPR), the Data Protection Directive clearly stipulated that the ECHR should only be applied when or if certain processing of personal data is completed in such a way that it falls outside of the scope of the Data Protection Directive.²³ The Data Protection Directive was therefore first considered to be based on the right to privacy pursuant to the Article 8 of the ECHR, whereas the presently valid GDPR is, deliberately, based on the right to the protection of personal data in accordance to the Article 8 of the CFR. While the GDPR stands on the pillars of this fundamental human right, its applicability is not unconditional but limited to its own scope. Article 2 sets out GDPR's material scope, stating its rules apply only to the processing of personal data (wholly or partly) by automated means and in cases where data is not attached to any automated means; it also applies to the processing of personal data, which form or are intended to form part of a filing system (GDPR, Article 2). Besides its material scope, GDPR provides the territorial scope, which is of significant importance concerning international processing of personal data. Accordingly, GDPR applies to the processing of personal data of the persons who remain at the territory of the EU and are being offered either services or goods or are being monitored by the legal entities, even to the ones established outside of the EU (GDPR, Article 3). The latter (GDPR's applicability to legal entities established outside of the EU) is called an extra-territorial effect, which is a rare characteristic that not many of the EU regulations and directives possess.

¹⁸ Turnšek, 2025, pp. 315-316.

¹⁹ *Case T-194/04, Bavarian Lager v. Commission* from 8 November 2007.

²⁰ Lynskey, 2014, p. 575.

²¹ It was accepted in 2016 and came into force in 2018.

²² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) OJ L 119, 4.5.2016, p. 1–88.

²³ *Bavarian Lager v. Commission*, 2007, para. 62.

Pursuant to the third paragraph of Article 8 of the CFR, in conjunction with the second paragraph of the Article 16 Treaty on the Functioning of the European Union,²⁴ the EU Member States must establish an independent authority to control the processing of personal data. In Slovenia, that body is the Information Commissioner of the Republic of Slovenia. Concerning dance, there is no particular figure within the PZS that is required to control the respect of privacy and data protection of dancers who compete under this organisation. Even at the international level, the protection of privacy is very poorly regulated. While the IDO has this very general Disciplinary and Ethic Committee,²⁵ there is no specific Act nor authority that is committed specifically to protecting dancers' privacy or personal data as such.

2.2 Sector Specific Legislation

2.2.1 Safeguarding and Child Protection Policy

The IDO has adopted the Safeguarding and Child Protection Policy²⁶ (hereinafter: Policy) that in summary prohibits different forms of harassment, discrimination and abuse and promotes the welfare and safety of children or dancers in general. Through four and a half out of six pages all together it lists the types and indicators of different kinds of abuse with a purpose to recognise and report any of such actions. The document indicates that within the process of reporting abuse, the confidentiality is necessary. That is the only part, where confidentiality is mentioned.

While called a Policy, that characterization is perhaps a bit misleading as it is written in a very unconventional way – without a preamble or any articles, and lacking any delineation of primary rights or obligations of dancers or third parties. As noted above, confidentiality is only mentioned within the phase of reporting and nowhere else. The Policy, therefore, is of limited benefit in protecting the privacy interests of dancers, because as written it fails to protect their right to privacy or data protection,

²⁴ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012.

²⁵ Read more: International Dance Organisation, Official website of the International Dance Organisation. Retrieved from: <https://www.ido-dance.com/ido/members-of-the-board/disciplinary-and-ethic-committee/> (accessed: December 16, 2025).

²⁶ IDO, Safeguarding and Child Protection Policy. Retrieved from: <https://www.ido-dance.com/files/ido/downloads/SAFEGUARDING-AND-CHILD-PROTECTION-POLICY.pdf> (accessed: December 8, 2025).

not even in the most serious cases of abuse. Instead, it only protects the confidentiality of the reporting process itself. Seemingly, the structure of this Policy does not adhere to the general legal rules or guidelines on data protection – neither from the national legal perspective nor from the EU law standpoint. This does not really make sense, right?

Two perspectives must be outlined. First, not all organisations are given the same financial resources, attention and support, whether from their foundation, sponsors or the government. In comparison to football or basketball leagues, dance garners much less attention from the media and sponsors, which results in smaller financial input, and consequently fewer organizing staff and resources for the events, less robust legal arrangements and documentation and so on. Accordingly, it is understandable why PZS and other smaller sports organisations have less regulations or professional policies of their own.

The second perspective we should consider is the size of a certain organisation, as smaller systems need less structure and consequently, fewer regulations. Meaning, the mechanism and the legal framework behind a dance organisation should be different with respect to a global organisation that spreads across multiple continents in comparison to the organisation of a national or even regional calibre. The structure, legal framework and indeed the whole system of a global organisation should be organised and well-structured. Consequently, IDO as a global organisation, should be better structured, equipped with professional and meticulously written documents, have more bodies or organs dealing with procedural and substantive violations etc. Publishing policy, such as Safeguarding and Child Protection Policy, with no structure, relevant parts or explanatory provisions is just unsatisfactory.

2.2.2 Code of Conduct

The IDO operates at the international and even global level, yet, it is equipped with poor regulations and rules, mainly providing the rules that only govern competitions themselves. However, there are short rules that are certainly better structured than the rest of their documents of such kind and they succinctly provide the basic values and principles that should be followed by all IDO's members. The Code of

Conduct²⁷ (hereinafter: Code) is supposedly designed to maintain a certain standard of behaviour and to protect individuals' welfare. Although the Code is only two pages long and lists fifteen fundamental values, protected under this organisation, it also addresses protecting privacy and data protection. The second point of the Code provides that *"it is important to treat everyone in a manner that makes them feel valued and respected and act in a way to protect their personal rights and maintains their privacy, dignity, and respect"* (IDO Code of Conduct, point 2). The seventh point of the Code specifically addresses protecting personal data with the following wording *"protection of personal data will be guaranteed to every individual and shall be processed lawfully and fairly"*. Given the organisation's scope and considering the number of dancers competing under it, the Code is necessary to adequately protect dance participants, especially considering the given environment in which they participate (e.g., costumes uncovering a lot of body, numerous pictures taken, mentally challenging environment, special relationships with trainers, parents, co-dancers etc.).

After all, dancers are weaker parties in the equation, especially regarding their relationships with trainers, dance clubs, and event organisers. Especially in cases of the most prosperous dancers, many event organisers want to capitalize on their name, image and likeness, and place it on the cover photo of the event's website to draw in as many competitors, clubs and the top-notch dancers as possible. At every IDO's international competition event organisers engage professional photographers who take pictures of dancers while performing. The idea is that dancers, their parents and others can purchase them. However, some of these photos are put on social media on IDO's, event organisers, or the event's social media – without prior permission or compensation paid. Coincidentally, most of these photos that end up on social media are of the most successful, well-recognised dancers. Coincidence or not? If the IDO as an established organisation itself dares to breach its own code of conduct, what is then the actual purpose of having the Code of Conduct. Similarly, dance clubs like to put their best dancer's photo on posters, brochures and other marketing platforms before the start of the next dance season. Their faces and outstanding results attract the most people. But these dancers do not receive compensation; indeed, the use of their name, image and likeness is too often non-consensual.

²⁷ IDO Code of Conduct (IDO-D-COC-2021-1-08/31), updated 2021-05-10.

When the specific regulation is written as a code of conduct or declaration – meaning, in a form of soft law – the safest option is to refer to the previously examined legal Acts and primary EU or national law. The fact the IDO does not have a specific regulation on dancers’ rights or privacy does not mean they are not entitled to such protections. Dancers are, indeed given the right to data protection, if not by any specific Act of an international or national dance organisation under which they compete that would give them special protection, like in the case of Slovenian modern competitive dances’ dancers, then by the primary and general data protection laws. While Acts of the highest order, for instance the CFR or ECHR, might seem at first blush inapplicable to individuals involved in dance, to the contrary their provisions are applicable and hold a significant weight in court. In particular, examination of the relevant legislation at the EU level demonstrates that not only Articles 7 and 8 of the CFR, but also the rules of the GDPR apply. Slovenian national legislation also enshrines dancers, just like anyone else, with the right to the protection of personal data both under Article 38 of the URS and pursuant to the secondary legislation from this field, particularly by the Data Protection Act²⁸ (hereinafter: ZVOP-2) and the Sports Act²⁹ (hereinafter: ZŠpo-1).

2.2.3 Slovenian Data Protection Act (ZVOP-2)

The concept of ZVOP-2 is as follows. It implements the GDPR into the Slovene legal system, which can be sensed from constant references to the latter. Everything that is addressed, defined or overall regulated by the GDPR, ZVOP-2 does not repeat. Moreover, it particularly addresses the matters that are regulated additionally, differently or even more strictly in comparison to the provisions of the GDPR. One such example of the article that is additionally regulated may be found in the Article 5 of the ZVOP-2, which provides the definitions of certain terms that enable better understanding and easier interpretation of this Act. Article 4 of the GDPR sets forth various definitions and as stated in the first paragraph of the Article 5 of the ZVOP-2, all the listed terms apply. However, ZVOP-2 uses some additional terms that are not defined in GDPR, but need clarifying and these are delineated within the second paragraph of the Article 5 of the ZVOP-2. Further on, Article 8 of the ZVOP-2 sets out conditions applicable to child’s consent in relation to information society

²⁸ Zakon o varstvu osebnih podatkov (ZVOP-2): Official Gazette RS, no. 163/22 and 40/25 – ZInfV-1.

²⁹ Zakon o športu (ZŠpo-1): Official Gazette RS, no. 29/17, 21/18 – ZNOrg, 82/20, 3/22 – ZDeb and 37/24 – ZMat-B.

services and, *inter alia*, provides a different age limit for the child's consent to be valid. This will be further discussed in the third chapter. Last, ZVOP-2 regulates certain questions more strictly than does the GDPR. While the GDPR merely defines the term of biometric data and addresses them within the scope of sensitive or so-called special groups of data that can be processed only if certain conditions in accordance with Article 9 of the GDPR are fulfilled, ZVOP-2 introduces further conditions and rules on methods by which this specific group of data may be processed within the meaning of Articles 80-84 of the ZVOP-2. Based on all the above, ZVOP-2 must be read in conjunction with the GDPR. Given the numerous references ZVOP-2 makes to GDPR, and even considering those instances where a particular matter within the ZVOP-2 is additionally or differently regulated than in the GDPR – whether in a whole Article, in a more limited provision thereof or even in one of the recitals – the GDPR is still the core Act that provides the basis for that particular ZVOP-2's provision.

Although ZVOP-2 touches upon some of the very specific and important questions, such as those concerning biometric data and child consent, a significant shortcoming lies in its failure to address dancers or athletes specifically. Nevertheless, these omissions should not be interpreted to mean that dancers are not protected under its provisions. On the contrary, dancers are a subset of the broader population and accordingly are protected by both ZVOP-2 and GDPR.

2.2.4 Slovenian Sports Act

ZŠpo-1 is a Slovenian legal Act that relates specifically to protecting athletes. Its Article 66 gives the authority to protect athletes' rights to the so-called Ombudsman on Athletes' Rights. Although this position is non-professional, the Ombudsman is selected by the government, works at the seat of the government throughout the time of the mandate, which lasts for 5 years, and is entitled to remuneration and rewards (ZŠpo-1, Article 66, Paras. 5, 6 and 10). When in the course of exercising their duties, the Ombudsman must remain independent and work honourably, fairly and in good faith (ZŠpo-1, Article 66, Para. 5). The Ombudsman deals with different appeals, applications, recommendations and endorsements from athletes, co-workers or staff in sport, legal representatives, those who exercise various sport programmes, public bodies and so on (ZŠpo-1, Article 66, Para. 1). Among other tasks, the Ombudsman publishes examples of good and bad practices in sport, which

is informative for the public and still respectful to the athletes' personal data and privacy (ZŠpo-1, Article 66, Para. 1). While posting such information on the official website, the Ombudsman must comply with the relevant data protection Acts, namely ZVOP-2 and GDPR. ZŠpo-1 mandates another supervisory authority, known as the Inspectorate, who is responsible for sport, and who performs the general supervision necessary to implement the whole Act and other regulations that are issued based on ZŠpo-1's (ZŠpo-1, Article 81, Para. 1).

ZŠpo-1 also regulates the collection of data in the field of sports. The two relevant Articles in this regard are Articles 76 and 77 of the ZŠpo-1. The first paragraph of Article 76 lists the personal data collections that are being managed by the Ministry responsible for Sport. Further on, the Article 76 sets forth four different registries – namely the register of professional athletes; private sports workers; professionally educated and professionally qualified workers in sports; publicly valid training programs; and the register of public sports facilities and outdoor sports areas, which is a record of infrastructure – and lists personal data that may be collected for the people that fall within each of these registries (ZŠpo-1, Article 76, Paras. 2-6). While certain data from these registries are made publicly available (see more: ZŠpo-1, Article 76, Para. 8), some other data (e.g., name and surname, gender, identification number EMŠO, domicile) are connected to the Central Population Register, which is maintained and managed by the ministry responsible for internal affairs, and so remains confidential.

Moreover, the Article 77 ZŠpo-1 relates specifically to the register of *Olimpijski komite Slovenije - Združenje športnih zvez* – OKS-ZŠZ (Eng. Olympic Committee of Slovenia, hereinafter: OKS-ZŠZ). The OKS-ZŠZ, keeps a record of registered and categorized athletes in order to register athletes and classify them into the categorization system (ZŠpo-1, Article 76, Para. 1). The collected data are also forwarded to and can be processed by different organisations, such as the National Branch Sports Schools, the Slovenian Association for Disabled Sports – Slovenian Paralympic Committee, clubs, and to athletes (ZŠpo-1, Article 76, Para. 1). Similar to the previous article, OKS-ZŠZ identifies a list of data that can be collected and with another list of data, which can be made available to the public (ZŠpo-1, Article 77, Paras. 2 and 3).

2.3 Olympic Movement's Acts

2.3.1 Athletes' Declaration

The Olympic Movement's Athletes' Declaration³⁰ (hereinafter: Declaration) is another applicable Act that applies to Slovenian dancers that compete in the category of modern competitive dances, as the PZS is a registered member of the OKS-ZŠZ. Even though this Declaration is just another Act of unbinding nature, its significance lies in the fact that, unlike the IDO documents, the Declaration lists athletes' rights as well as responsibilities. Of the twelve rights listed, the tenth provides "privacy, including protection of personal information", which is specifically connected to dancers' privacy and data protection. Considering the Declaration was written jointly by athletes and Olympic Movement representatives, inclusion of both rights – right to privacy and right to data protection – confirms their overarching importance in sport. Importantly, the Declaration encourages States as well as athletes to take charge and actually exercise the Declaration by the following words "*encouraged to develop mechanisms for effective remedies related to these rights and responsibilities, and athletes are encouraged to make use of these mechanisms*".³¹

2.3.2 Medical Code

Athletes' Declaration goes hand-in-hand with another Olympic Movement's Act called the Olympic Movement Medical Code³² (hereinafter: Medical Code). The Medical Code is a globally used Act, which applies to all the athletes, practicing sports that are registered under the Olympic Committee, and their physicians and other healthcare providers or practitioners (1.1.2 and 1.1.3 of the Medical Code). Inter alia, privacy is one of the fundamental principles on which the relationships between athletes and healthcare providers is based. While the right to privacy and confidentiality is provided as one of the five fundamental rights of the Medical Code,

³⁰ International Olympic Committee. (2018). *IOC athletes' rights and responsibilities declaration*. Retrieved from: https://www.gymnastics.sport/site/pdf/safeguarding/IOC_Athletes_rights_and_responsibilities_declaration.pdf (accessed: December 10, 2025).

³¹ *Ibid.*

³² Olympic Movement Medical Code (2024). Retrieved from: <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/Commissions/Medical-and-Scientific-Commission/Olympic-Movement-Medical-Code.pdf> (accessed: December 10, 2025).

its chapter 1.4 ‘Confidentiality and Privacy – Personal Health Data’ specifically addresses and regulates it.

Article 1.4.1 of the Medical Code defines the scope of athletes’ personal data concerning health in a way to include all data that relate to the health status of a data subject, revealing information concerning the past, current or future physical or mental health status of the data subject. Considering personal data, it refers to the relevant data protection laws – meaning, in our case to the ZVOP-2 and GDPR. Both the athletes’ sensitive health data, and personal data must be protected and kept confidential (Article 1.4.2 and 1.4.4 of the Medical Code). In particular, the Article 1.4.2. of the Medical Code provides: *“The applicable legislation and data protection laws (including, where applicable, the General Data Protection Regulation “GDPR”) concerning the confidentiality and security of personal health data must be respected at all times.”*

Athletes’ data may only be disclosed to third parties if predetermined so by law or the World Anti-Doping Code, or under the precondition that the data subject gave explicit consent (Article 1.4.3 of the Medical Code). In case of the latter, the athlete may withdraw their consent at any time (Article 1.4.3 of the Medical Code). In order for the athletes to be appropriately informed about the data processing, the Medical Code demands a special data protection notice that must be given to them (Article 1.4.6 of the Medical Code). This notice is a comprehensive document that should be written clearly so as to provide an athlete with explicit and specific details of the purposes for processing (Article 1.4.6 of the Medical Code), and which also aligns with data processing principles of the GDPR, namely with the principles of lawfulness, fairness and transparency, data minimisation, purpose limitation and accuracy (Article 5 of the GDPR). Therefore, the notice must include particular details on the data that will be processed, the means and types of processing, the legal grounds for the processing, which is usually consent, but it can also be legal obligation or other bases contained in the Article 6 of the GDPR.

3 Empirical Research “Data Protection of Youth in Modern Competitive Dances in Slovenia”

Having previously established the meaning of ‘modern competitive dances’, defined the dance organisations covered by this article and established the applicable and relevant legislation in this area, we can shift our focus to the empirical part of the

research, examining the actual status of data protection of a particular group of dancers in Slovenia.

Research was conducted in the following way. I sent out 63 emails to my cohort and 33 people responded to the questionnaire – 23 of them being only trainers; seven trainers and owners; one being only an owner and two having some other role in a dance club (one being a leader of a club and the other a president of it, which means we can count them as trainers and owners as they are still in the business of trainer but also have the final word concerning decision-making). Most of the respondents indicated they are working with dancers between the ages of 7-14 (79% of the respondents), which is unsurprising as within this age group fall two of the largest age divisions, the children's category as well as the younger juniors' category³³. In the adult category, which starts at age 17, many of the dancers end their competing dance career, especially the less prosperous ones. Although the respondents that deal (only or also) with young adults at the age of 18 or older comprised a bit smaller number, the percentage of them was still quite high – 59%, that is 19 of the 33 respondents. Importantly, the questionnaires were delivered to all clubs presently registered and competing under the PZS, meaning the percentage of those who completed this questionnaire is high enough to consider the final results as a statistically representative sample.

Questions number 2, 3, 4, 5 and 6, each focused on the consent of publishing content concerning dancers on social media (e.g. photos, videos, videos or photos from competitions). The results of the fifth question in particular were as follows:

Most of the respondents confirmed they usually post pictures or videos as well as the competition results of their dancers on social media. Impressively, 74% of them indicated that before doing so they request written consent from the children's parents.

³³ The age divisions are done in the following way:

- Children's category (encompasses children between ages of 7 and 12),
- Juniors' category is divided between Junior 1 or »younger juniors« (encompasses children between ages of 13 and 14) and Junior 2 or »older juniors« (encompasses children between ages of 15 and 16),
- Adults' category is also divided between the two Adults 1 (encompasses young adults between ages of 17 and 31) and Adults 2 (encompasses adults from 31 onwards).

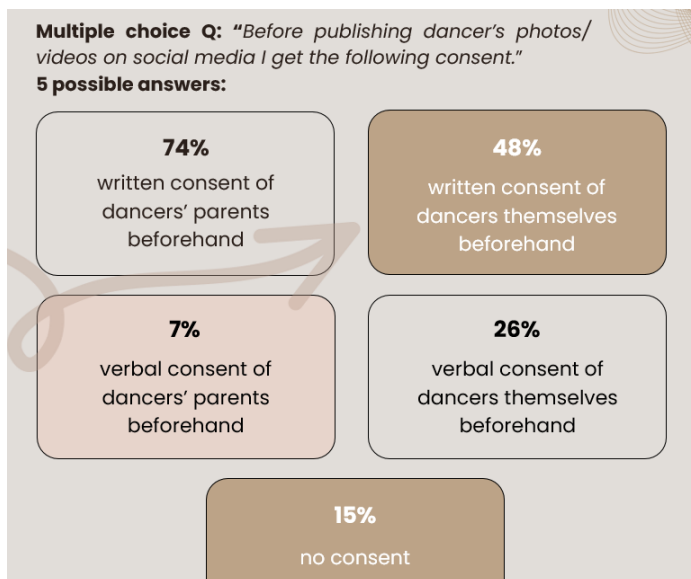


Figure 1: Consent for publishing photos/videos of dancers

Question 5: "Before publishing dancers' photos or videos on social media, I obtain..."

Source: Author's own work, based on the Questionnaire

Moreover, 48% of the respondents indicated they additionally ask for written consent from the dancer before posting such information. In accordance with the ZVOP-2, the consent for the processing of personal data of a child under the age of 15 is lawful only if given by the parent. Accordingly, where a dance trainer or other responsible person seeks and successfully secures the consent from a child that was at the time below the age of 15, such consent would be invalid. A child aged 15 or over may lawfully grant consent pursuant to the Article 8 ZVOP-2.

But still, 48% of the respondents indicated they (only or also) request the dancers' consent before posting their photos on the social media platforms. Maybe such answers were given only by the respondents who work with young adults (as previously indicated, 59% of the respondents work with dancers over the age of 18), or maybe that is not the case at all and some of the respondents who deal with kids below the age of 15 ask them for a consent just as a form of courtesy. Although asking for and receiving permission from a 13- or 14-year-old (or even younger) is nice, it lacks legal power or validity. It is questionable (indeed probably doubtful)

whether a child of such tender years could fully understand and appreciate the possible adverse consequences and damages that that could result from their photos going to the wrong hands, being wrongfully used for child pornography for example, being taken out of the context, being shared on someone else's platforms etc. Children simply lack the mental capacity to comprehend the long-term and far-reaching implications such wrongful acts might have on their lives. Consequently, the law provides them with additional protection.

In Slovenia, once a child reaches the age of 15 the law provides they have a limited legal capacity and correspondingly, they can give a valid consent (ZVOP-2, Article 8). Meaning, the decision-makers believed that starting at age 15 children are cognitively mature enough to be able to comprehend the consequences stemming from their consent to allow their trainers, dance organizers etc. to disseminate their personal data, including videos and photos of them, on social media. Pursuant to the GDPR, the age criterion is even stricter, demanding the child to be at least 16 years of age in order for their consent to be treated as lawful and valid (GDPR, Article 8).

The most troubling aspect of the survey results is that 15% of the respondents indicated they do not gather a consent at all, either from a dancer or a parent. Meaning, they process personal data, without any legal basis, and illegally according to the Article 8 of the GDPR and could be subjected to legal consequences in the form of major fines. For the better picture, when dance trainer or club owner acts in the role of the controller or processor of their dancer's personal data (e.g. when taking their picture and uploading it on social media platforms, putting their pictures on brochures or other marketing platforms), and within this role breaches Article 8 of the GDPR, they can be sanctioned with a fine reaching from 100 € up to 5.000 € in accordance with the Article 96 ZVOP-2.³⁴ In case of having a breach in the sense of processing personal data of a child without a (valid) consent, that would most probably constitute an aggravating circumstance leading to a higher fine. In fact, dance trainers or club owners could be already fined, if they violated the basic principles of processing (e.g. purpose limitation, data minimisation), including the conditions for consent, as set out in Articles 5, 6, 7, and 9 of the GDPR (ZVOP-2,

³⁴ ZVOP-2 prescribes the same sanction for breaching Articles 11., 25.-39., 42. and 43 GDPR. GDPR also prescribes sanctions, but in percentage (4%) of the total worldwide annual turnover of the preceding financial year, meaning its fines can reach a sky-rocketing numbers, but go up-to maximum 20 million € (see more in the Article 83 GDPR).

Article 97, Para. 1). The scope of such breach is set even higher than in the previous example, as the fine stretches from 200 € to 8 000€ (ZVOP-2, Article 97, Para. 1, point 1).

In many situations, these dancers are children under 15 years old. Actors in the dance industry, whether they work as trainers, owners of dance clubs or act as the team leader, have an even greater responsibility to protect the dancers' personal data if the dancers, from whom the personal data are being processed, are minors. These actors are obligated to adequately protect minor children who lack the ability to protect themselves. Because we are dealing with children (indeed a relatively large number of them), any breach of processing personal data circumventing any of the legally prescribed bases pursuant to Article 6 GDPR is considered more egregious and would consequently, in the case of inspection or Information Commissioner's supervision, result in a more robust fine as suggested above.

Importantly, dancers' data protection in particular is not regulated in a specific Act of PZS or IDO. That, however, does not mean that dancers' personal data is not protected at all. As discussed in the second chapter, in Slovenia, the protection of both, the right to personal data and privacy, is guaranteed by the highest domestic legal Act, the URS and further on substantiated with general and many sectoral legal Acts.

The Article 35 of the URS sets out the right to privacy – the right that is, in many cases, associated with private and family life, like in the case of Article 8 of the ECHR or Article 7 of the CFR. In contrast, the right to privacy pursuant to the URS is explicitly associated with personal rights, which is even more optimal for the athletes and their potential claims in these types of matters. Besides protecting the right to privacy, Article 35 of the URS also guarantees the individual's personal rights as well as their physical and moral integrity. It addresses any individual, meaning everyone, including, but not limited to athletes or dancers. The provision is so broad that it *de facto* covers any actions of interference in one's personal sphere, whether that means copying choreography or costumes, watching the training, filming the freestyle choreography on a competition or for example, using dancers' equipment or scenography without permission, etc.

As privacy is considered a broader term in a way, covering data protection merely to a certain degree, data protection is, as an independent right, guaranteed specifically by the Article 38 of the URS. It provides that the right is further on protected by law and given judicial protection. Consequently, Article 38 does not only create a fair and effective system of protection but obliges the government to adopt such laws that will equip individuals with adequate legal remedies to protect those rights. Although this might seem completely common or even obvious, not all countries and governments consider data protection as a right. For instance, in the U.S., the right to personal data is not constitutionally protected. Instead, as summarized by DLA Piper, *“United States privacy law is a complex patchwork of national, state and local privacy laws and regulations. There is no comprehensive national privacy law in the United States. However, the US does have a number of largely sector-specific privacy and data security laws at the federal level, as well as many more at the state (and local) level. In recent years, beginning with California in 2018, states have begun to introduce and enact their own comprehensive privacy laws”* (DLA Piper, n.d.). In contrast, Slovenia was the sixth country in Europe to uphold the right to data protection as a constitutional right³⁵, further on stipulating that the field is regulated by law. Even though many of the EU countries still do not consider the protection of personal data as a constitutional right, like e.g., Italy, they nevertheless apply the CFR and the ECHR, through which they incorporate it as a fundamental human right into their national systems and treat it as such.

Moreover, the legal Act that the Article 38 of the URS points to when predicting the right to data protection should be further regulated within a legal Act at the level of secondary legislation is ZVOP-2. In Slovenia, ZVOP-2 in conjunction with the GDPR covers the field of data protection in general. It does so for all individuals, different kinds of situations and activities – as long as the personal data in question pertains to an identified or identifiable individual. In contrast, regarding certain sports databases and collections, including but not limited to dance organizations or clubs, or respecting the specific protection of athletes’ rights, one must turn to the Sports Act. But how knowledgeable about the Sports Act are the main players in the dance industry, namely the people working with young dancers?

³⁵ Turnšek, 2024, p. 11.

I tried to find a legitimate answer to this question as part of my study. Question number 7 asked respondents whether they knew that processing of personal data based on a child's consent is only valid if the child has already reached the age of 15 years or more. The question was intentionally designed to be a bit provocative. The question also asked respondents to state whether they had already known about this aspect of the law; whether they knew a little about it; or, whether they knew nothing about it. To know about the age limits and consent, I believe one has to have some knowledge on data protection in general – not only in the sense that one has heard about a legal Act from this field, but rather in the sense that one was taught about certain provisions and maybe even concepts from the field of data protection. Interestingly, the results were more positive than I had hypothesized.



Figure 2: Age limits

Question 7: “Did you know that processing of personal data based on child’s consent is only valid if he or she has already reached the age of 15 years or more?”

Source: Author’s own work, based on the Questionnaire

Survey results revealed that 56% of the respondents, a solid majority, indicated that they already knew about the age limits; 40% admitted they only knew a little something about this topic; while only 4% of respondents stated they did not know anything in this connection. So, what conclusions may we draw from these findings? On the one hand, it is disappointing that among people who deal with children daily, only 44 % of them only knew a little something about or nothing about the age limits. Then again, considering the results more positively, a whopping 96% of respondents either knew of the age limits or at least knew something relative to them. This is not only positive in relation to the lawful fulfilment of their legal

obligations, but more importantly, it is beneficial for the children and young adults under their care and supervision.

The survey generated similar findings in connection to the question number 8, which asked the respondents whether they had heard about ZVOP and/or GDPR. In response to this yes or no type of question 4% of the respondents indicated they never heard of GDPR or ZVOP-2. The good news is that 96% of respondents stated they had already heard of either or both GDPR and ZVOP-2.



Figure 3: Familiarization with GDPR/ZVOP
Question 8: “Have you ever heard about the ZVOP-2 and/or the GDPR?”
Source: Author’s own work, based on the Questionnaire

These results indicate that many of the trainers, owners or team leaders of different dance clubs and studios across Slovenia are familiar with the data protection framework in Slovenia.

Furthermore, the last question challenged respondents to assess their familiarity of the substance of ZVOP and/or GDPR on a sliding scale from 1 (not knowing anything about them) to 5 (knowing at least one of the two very well). For instance, ten admitted they know a little something about them and ten of them stated they are familiarized with the parts of the Acts that are relevant for doing their jobs rightfully and lawfully. Surprisingly, three respondents answered they know at least one of these two Acts very well.

Notably, many of the trainers and even dance owners pursued their dance careers from their early ages on and did not continue their studies after finishing high school, or maybe they did, but obviously most did not choose to go to a Faculty of Law, which takes a lot of time, effort and devotion. Considering that ZVOP-2 and GDPR are very difficult legal Acts to understand even for an experienced lawyer, I am not completely convinced that a person without any legal education could fully understand either of the two. I say this for the following reasons: i) ZVOP-2 has many references to the GDPR and must always be read in conjunction with it; ii) as outlined in the introduction of this paper, data protection is governed by many different fields of law and to fully understand such a complicated field, it is beneficial to have training in law; iii) GDPR is a very young legal Act that is not informed by much case law to draw parallels with; and iv) GDPR is like a Pandora box, leaving many unanswered and open questions for the legal community. It also bears noting that it is one thing to actually know the law, and another to think you know the law. The one who thinks he knows the most is usually the one who knows the least, as such a person often does not even know what he does not know. With that, I confirm that the last question was not an objective one and the outcome follows the approach, which is my responsibility.

Critically, to obtain more accurate and objective insights concerning how well respondents know the ZVOP-2 or/and the GDPR, I should compose a series of additional, random questions about these Acts. The responses would provide me with beneficial data which would then allow me to more accurately assess the extent of the actual knowledge concerning the Acts that respondents have. That would, however, demand more than one question and the questionnaire used in my study was intentionally designed to be as short as possible to attract more participants willing to give only a few minutes of their free time to solve it. Despite the shortcomings of my questionnaire, the results that I did obtain still, in my judgment, draw a fair picture about the situation on data protection of dancers, competing in modern competitive dances, in Slovenia.

3.1 Results Summary

To conclude, dance clubs, studios and organizations in Slovenia together with their responsible persons have a certain level of knowledge and awareness about the legal requirements to protect the personal data of dancers, who are still children,

teenagers, and/or young adults. In most cases, at least according to my research results, they do gather the written consents of dancers' parents and in this way, process their personal data lawfully. While a great majority of the respondents chose the most accurate answer, 15% of the respondents indicated they do not secure any kind of consent beforehand, either from the dancers or from their parents. Additionally, when respondents were asked whether they know about the age limit, only 56% could confidently answer with a 'yes'. Others, 40% of the participants indicated they know something about this matter and 4% directly confirmed they do not have any knowledge on this topic. It is upsetting to see that such a high percentage of people working with children on a daily level are unaware of legal requirements that apply to their activities and therefore do not respect the basic principles of data protection and process data unlawfully. Even worse, some are well aware of the legal requirements and consciously decide not to respect them, and in other cases, individuals have (too) little or no knowledge on this matter and do not even know they are violating the law when taking and/or utilizing photos or videos of the dancers. Either way, such behaviour is irresponsible and negligent. Although data protection laws provide for high fines for their breach, violations still occur. And, of course, dancers (and their legal guardians) often are unaware of their rights and so we can safely assume many violations go unpunished. Dancers, especially minors, should always be provided with a safe environment to dance, make friends and grow in. Merely being aware of and understanding the data processing principles would equip the responsible persons with minimum knowledge to process data in accordance with the GDPR. Indeed, the majority of the respondents are aware of the importance of dancers' data protection, yet according to my survey results, many of them have a lot more to learn. The improvement could be achieved simply by educating people from dance industry on the topic of data protection. That could be arranged at the national level by PZS or maybe even at the international level by the IDO. Either organization could offer education on the matter for all registered trainers and/or clubs registered under it. Even individually, interested dance clubs, studios or trainers could acquire an (online) programme or consultation(s) with a lawyer. There are several possibilities, however, the dance industry needs to first show its interest to evolve in the aspect of dancers' data protection.

4 Conclusion

To sum-up, Slovenian dancers, in theory at least, are protected with an army of legal Acts that guarantee the lawful processing of their personal data and connected rights. From the fundamental human rights aspect, Article 8 ECHR, Article 8 CFR and Article 38 URS, provide strong bases for protecting one's personal data. These basic Acts have, in turn, been bolstered through various other legal Acts, both general and specific.

On the one hand, the general data protection regulations are GDPR and ZVOP-2. These Acts are always read in conjunction and together form a comprehensive legal framework on data protection in general. On the other hand, ZŠpo-1 is a more specific Act, touching upon aspects of privacy and data protection, and which applies not only to people in general, but athletes in particular. It provides athletes with an authority that accepts complaints, encouragements and recommendations in connection to their sport, sport activities or sport amenities. The so-called Ombudsman for Athletes' Rights is a significant figure for athletes, especially for those who practice an 'unpopular' sport or a sport with smaller organisation behind it, as they usually cannot provide another authority of such kind within the walls of their own sport. Although PZS falls within the means of smaller organisations, its umbrella organisation IDO does not.

IDO sets out even more specific rules, applicable for the dancers practicing modern competitive dances in particular. Its weakness lies in the fact its regulations are not very robust or detailed and consequently they are largely ineffective in protecting dancers' fundamental rights. We may, however, sense that the awareness to protect dancers from strong violations (e.g., abuse) is present and a positive aim of the decision-makers can be extracted from the text. IDO's Code of Conduct enforces the main principles under this organisation and with that, it enhances the protection of privacy and confidentiality. It also addresses data protection, which I applaud. PZS does not provide any such Act on its own but adheres to these IDO's documents.

In addition, as PZS is one of the registered members of the OKS-ZŠZ, Olympic Movement's Acts apply to the dancers of modern competitive dances as well. While both the Olympic Movement Athletes' Declaration and Medical Code are of

unbinding nature, their utility lies in the fact they set out fundamental principles and rights that should generally apply for athletes. Both documents are unfortunately written in a form of soft law; meaning they lack functional mechanisms (e.g., there is no supervisory authority, sanctions for violations). Athletes' Declaration, however, suggests States Signatories should use and implement them in their national legal system. From my point of view, these documents are great if considered as guidelines. However, when violations occur, secondary legislation, namely GDPR, ZVOP-2 and ZŠpo-1, are the most effective Acts for seeking relief as subsumed within them are the relevant articles of ECHR or CFR and URS.

Concerning practice, based on the empirical part of my research, dancers' protection of their personal data is actually guaranteed in the vast majority of clubs. Therefore, the first hypothesis I have set on the very beginning of my research, '*data protection of dancers is not adequately ensured*', has been refuted. Of course, there are certain individuals that have little to no knowledge on the matter, however, 96% of trainers, club owners and team leaders indicated they have already heard about at least one of the following, GDPR and/or ZVOP-2. Although a slightly higher percentage of those (22%) failed to confirm they ask for the written consent of dancers' parents prior to the processing of their personal data, there are certain factors that could explain this difference. Maybe these trainers work with older dancers, above 15 years of age – when viewed through this prism, obtaining a consent from the dancers directly is completely accurate and in accordance with the law. Considering that, I also conclude the second hypothesis has also been refuted '*most of the relevant trainers, club owners or team leaders, do not have the sufficient knowledge on the topic of data protection*' because more than 50% of the participants chose the correct or most optimal answer in every question posed.

In conclusion, the awareness of data protection laws among Slovenian dance teachers, dance club and studio owners and team leaders is at a surprisingly high level. Of course, there is always room for improvement, and some individuals could (and maybe should) use education on this matter, which would not only be beneficial for dancers and protection of their personal data, but for the dance clubs and club owners as well. Intriguingly, if they were met with inspection or crossed by the supervision of Information Commissioner, any kind such of violation (e.g., processing of personal data of a child without a legal basis, processing of personal

data without a valid consent or unnecessarily processing too many personal data) could earn them a high fine.

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BRIEF REFLECTIONS ON THE PROCESS OF EUROPEAN INTEGRATION THROUGH THE EXAMPLE OF SPORTS LAW

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This article examines the process of European integration through the lens of EU sports law, using sport as a revealing case study of the Union's functionalist and progressive integration model. Although sport was traditionally regarded as a non-economic and socially autonomous activity, its growing economic significance has increasingly subjected it to the rules of the EU internal market and competition law. This paper demonstrates that European integration operates asymmetrically in this field: while the Union's competences remain limited to supporting actions in the non-economic dimension of sport, where sporting activities intersect with economic freedoms, integration is significantly more advanced. Through an analysis of Treaty provisions, EU policy instruments, and the Court of Justice's evolving case law, the study highlights the spillover effect and pragmatic balancing inherent in EU integration. Ultimately, the EU sports law illustrates how integration extends gradually and flexibly into areas initially outside the core competences of the Union.

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1 Introduction

What does integration mean? It is a process of continuous interpenetration, an endless rapprochement among the peoples of Europe; an “ever closer union,”¹ as the preambles of the treaties of the European Union recall. In his celebrated address at the *Salon de l’Horloge* in 1950, Robert Schuman articulated the defining features of this phenomenon: “Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements that first create *de facto* solidarity.”² Everything lies therein: concrete achievements that cause factual solidarity among European nations. All the constituent elements of the internal market³ are those “concrete achievements” that contribute to advancing European integration as they develop.

Sport, *per se*, does not belong to any of these categories. This is entirely logical, for sport is, in principle, a non-market activity that responds to non-economic human needs, much like art, music, or culture. It fulfils essential social functions for diverse populations, particularly the disadvantaged and the youth. Therefore, it constitutes more an instrument of social integration than an economic service in itself and should not be reduced to the legal framework of a predominantly mercantile system established by Union law. Thus, it is unsurprising that the “*de facto* solidarity” generated by sporting activity among the European people developed largely outside the intervention of the European Union.

In the realm of football, for instance, a genuinely European and global sporting space has taken shape, beyond any binding Union regulation, with the FIFA and UEFA⁴, organs not belonging to the EU, as well as in other fields through the International Olympic Committee and a multitude of federations governing disciplines such as cycling, tennis, skating sports, and judo. Although sport produces a formidable integrative effect, it has never constituted a proper competence within the European integration project. Nevertheless, the duality of this activity, which must be viewed not only through its social and cultural dimensions but also through

¹ Treaty on European Union (TEU), consolidated version, 2016, Preamble, para. 13; Treaty on the Functioning of the European Union (TFEU), consolidated version, 2016, Preamble, para. 1.

² See for e.g., Fimister, 2008, p. 192; Palayret, 2022, p. 86; Liargovas & Papageorgiou, 2024, p. 52.

³ The free movement of goods, the freedom to provide services, the movement of capital, the economic freedom of workers, the free movement of persons, free competition, and ultimately European citizenship.

⁴ Kassimeris, 2024.

its economic and commercial aspects, calls for a more nuanced reflection. Indeed, although it is a non-economic activity in principle and theory, it is impossible to overlook the hundreds of billions of euros generated annually by sport, whether directly or indirectly, in the form of income obtained by clubs and athletes or through derivative products, advertising, betting, broadcasting rights, and the sale of accessories of every kind.⁵ Essentially and originally cultural, sport has also become a distinct economic activity, a source of considerable financial revenue that the internal market cannot ignore.⁶

Like many other spheres, such as defence, energy, education, family, childhood, maritime affairs or cinema, which occupy a sort of liminal zone between the economic and the non-economic, sport thus finds itself at the intersection of the competences of the Member States and those of the Union. It is particularly striking that this duality has not produced a dichotomy between a sport subject to the law of integration and a sport wholly immune to it. Quite the contrary: whether one considers sport an economic activity or a cultural and social phenomenon, Europe has taken hold of it in both instances. Much like the sun exerts its gravitational pull upon the Earth as a whole, the law of integration generates its force of attraction not only on sport as an economic activity but also on sport as a playful, non-market phenomenon.

However, the dual nature of sport implies that this Union's gravitational force operates at a differentiated rhythm and with varying intensity upon its two facets, economic and non-economic. Clearly, sport as an economic activity has entered far more rapidly into the orbit of the rules of the market, notably those concerning free movement and free competition, than "pure" sport. Moreover, being at the very core of European integration, the Single Market has produced upon sport-as-economic-activity an attraction effect transforming it into a form of work or a commercial service like any other. Despite its cultural and social specificities, integration has exerted on this matter a strong spillover effect whenever economic freedoms are at stake. As for sport with a capital "S", that is, sport in its non-economic dimension, integration has naturally remained more modest. Only with the Treaty of Lisbon did the Union expressly obtain competence in the field, not to

⁵ According to the latest Eurostat report published on the subject in 2025 (p. 10), in 2019 sport generated no less than 3.37% of GDP across the Union, which corresponds to a figure of 627.5 billion euros.

⁶ See for e.g., Gunther & Mathonnière, 2005, p. 431.

harmonise national regulations but merely to play a supporting role. Nonetheless, a certain number of advances have since emerged, and the European Commission, far from disengaging itself from the subject, has continued to actively involve itself in developing a European sport policy⁷, demonstrating that the process of integration has truly begun.

In sum, sport in all its dimensions has not escaped the reach of Union law in its economic or non-economic forms. This study demonstrates that, like many other domains, sport provides an opportunity to perceive the underlying features of the integration process itself through this constant balancing between the rules of the game and the rules of the Union. In other words, the study of European sports law makes it possible to bring to light the natural principles of that “ever closer union” announced in Schuman’s celebrated address, notably its gradualism and spillover effect. Furthermore, such analysis reveals the flexibility and varying intensity of these characteristics depending on the circumstances. In doing so, this study underscores the *pragmatism* and *functionalism* that animate the entire process of integration, which rests essentially upon “concrete achievements.” It illustrates that no field, by its very nature, escapes European integration, which is not a static reality but an evolving process that, advancing continuously at different speeds across policy areas, draws towards itself and with greater or lesser force depending on the case, all aspects of public life.

The first and most striking characteristic of the integration process is progressivity, which corresponds to the first principle articulated in the *speech at Salon de l’Horloge*, that is, “Europe will not be made all at once.” The very wording implies gradual, step-by-step advancement. The entire historical development of the European Communities, and subsequently of the Union, demonstrates that European integration cannot be conceived as a completed achievement but rather as a continuous, progressive, open-ended, and everchanging process evolving at different speeds across different fields.⁸ Sport is certainly not yet an integrated European policy, nor does it constitute the full-fledged competence of the European Union. However, it is unlikely that it will remain so for long. Though today classified

⁷ See the reports commissioned by the Commission, e.g., Helsinki Report on Sport, 1991, p. 6. In addition, on The European Sporting Model see for e.g., Sennett, Le Gall, Kelly et al., 2022, p. 162 where authors inventorie a list of academic work about emerging EU sport policy.

⁸ See for e.g.,a Dinan, 2025, p. 7.

merely as a supporting competence under the Treaties, it will undoubtedly become one of the new arenas for legislative activity at the Union level. In this field, the EU has already begun to generate a certain *acquis communautaire*, most notably through the formulation of a so-called “European Sport Model.”⁹ This constitutes only the preliminary stage of a process of political integration that will gradually take a clearer shape.¹⁰ Indeed, the very idea of a European legislative corpus on sport, whether sectoral or comprehensive, perhaps even a “European Sports Code” elaborated in coordination with the Council of Europe, continues to gain traction, and its realisation would necessarily presuppose that an integrated European policy in this domain will eventually be established.

The spillover effect, the second major feature of integration, is expressed in the subsequent part of Schuman’s discourse by the notion of “*de facto* solidarity”. In Schuman’s sense, transnational integration in the field of sport, considered one of those “concrete achievements,” already exists outside the Union, notably through the actions of the Council of Europe and the sports committees and federations’ regulatory frameworks. However, as the Court of Justice (CJEU) jurisprudence reveals, European integration could not remain entirely indifferent to such a socio-economic phenomenon. By the natural dynamics of integration, the Union’s competences gradually draw sport into their orbit, as they have done with many other domains that once lay outside the Treaties’ scope.

Having begun with the economy, the Union progressively extended its reach to almost every sphere of public life: yesterday to civil law and public finance, today, health and immigration, and tomorrow, sport. No branch of public life escapes the centrifugal movement of European integration, for the very idea of integration implies not a fixed endpoint but a shared, collective, and continuous advancement of societies seeking to establish an ever-closer union in all economic, political, and cultural dimensions. Just as it is impossible to separate politics from economics or culture, it is also inconceivable to compartmentalise Union competences indefinitely. There exists, by nature, no area forever immune from European competences: those fields in which the Union currently has no formal attributions must progressively

⁹ Bourzat-Alaphilippe & Brocard, 2023, p. 41. See also, Sennett, Le Gall, Kelly et al., 2022, pp. 158-174 for an inventory of academic researches on EU Sport Model. On the same topic find also EU resolutions: Council Resolution, 2021/C 501/01, 2021; European Parliament Resolution, 2021/2058(INI) and subsequent Report, Mittag & Naul, 2021.

¹⁰ In that sense see also Arduin, 2024, p. 10; Miège, 2022, p. 38.

enter its regulatory domain as integration advances. This is precisely the hallmark of this socio-political phenomenon: its capacity to exert a spillover effect on every aspect of public life.¹¹

Accordingly, the CJEU, the judge of integration, encountered sports law issues before the European legislature. Insofar as sport could also be characterised as an “economic activity,” it inevitably became a field of labour for the CJEU. From *Walrave* (1974) to *Bosman* (1995), and most recently *Diarra* (2024)¹², cases that resounded far beyond the judicial sphere into the world of football itself, the CJEU has consistently condemned infringements of Union law arising from state or federation regulations. While recognising the specificities inherent in sporting activity, the CJEU nevertheless drew clear limits to the regulatory autonomy of sports organisations¹³, particularly major federations, which cannot obstruct free movement or undermine the principle of undistorted competition. Thus, the internal market emerged as a normative universe with which the sporting world must be reconciled. As the title of this symposium aptly suggests, the EU law has always required a delicate balance between the rules of the sporting game and those of European integration.

A clear analytical framework emerges from this confrontation between sport and EU law. The balancing exercise between the sport as a socio-economic and cultural activity and European integration is not uniform across contexts. In non-economic settings, where sport is considered in its social dimension or as a field of public policy, its intrinsic characteristics and specific nature are more prominent. Consequently, EU law intervention remains limited, and the progressive dynamic of European integration operates with greater restraint (2). In contrast, when sport is examined at the very core of integration, namely within the economic sphere, its specific character becomes far less visible. On the contrary, sport is subject to a form of normalisation: like any other activity capable of generating economic effects, it is treated as an integral component of the internal market and does not escape the

¹¹ Even if the United States of Europe were ever created, the question of European integration would still persist. Just as it arises within a state, whether federal or unitary, integration will remain the eternal subject of civilized human societies.

¹² *FIFA v. Bg*, 2025; For a commentary see e.g., Ianc & Hömann, 2025, p. 1.

¹³ Geeraert, Alm & Groll, 2014, pp. 282-283. See also Benhammouda, 2024a, p. 18, where the author calls for a clear distinction to be drawn between the concepts of autonomy and independence.

Treaties' requirements. The spillover effect of European integration on sport is significantly more pronounced in this context (3).

2 Moderated Progressivity of European Integration in Non-Economic Sport Regulation

When sport is considered a public policy field, the spillover effect of European integration remains limited and its progressive development is comparatively restrained. In this non-economic context, the balance between sport and the rules of integration tends to favour the Member States. Therefore, sport remains, by its very nature, a predominantly national competence, with the European Union endowed only with a supporting competence designed to assist Member States in the pursuit of their respective policies (2.1). At this stage, the integration process in this field is still in its early phases and has so far resulted in tangible yet cautious advances. Nevertheless, even in its limited form, the continuous progress of this dynamic, combined with the growing interconnection between sport and economic activity, is likely to strengthen the Union's competences in this area, as has occurred in many other policy fields over the course of European integration (2.2).

2.1 The Limited Nature of the European Union's Supporting Competences in Sports

Originally, the Treaties contained no reference to sport¹⁴. It was only with the Treaty of Lisbon in 2007 that Article 165 TFEU expressly acknowledged sport as part of the Union's internal policies and actions.¹⁵ However, even today, the Treaties do not devote a specific title exclusively to sport¹⁶; instead, it is addressed within Title XII, *Education, Vocational Training, Youth and Sport*. Thus, the drafters of the Treaties relegated sport to a set of ancillary or secondary considerations within the integration process, without attributing any particular prominence to it. Therefore, Article 6(e) of the TFEU classifies sport within the Union's supporting or complementary competences, alongside areas such as the "protection and improvement of human health," "industry," "culture," "tourism," "civil protection," and "administrative cooperation." Under this provision, in these fields, "the Union shall have

¹⁴ Blin, 2025, p. 173.

¹⁵ Garben, 2024, p. 1987 and p. 1989.

¹⁶ Blin, 2025, p. 184.

competence to carry out actions to support, coordinate or supplement the actions of the Member States.” Article 2(5) of the TFEU further specifies the scope of such action by stating that the Union support on Member States is exercised, “without thereby superseding their competence in these areas.”

EU law specialists are well aware that the “competence” at issue here, namely, the competence “to support, coordinate, or supplement,”¹⁷ falls within a residual and particularly limited category of Union powers. It is neither an exclusive competence within the meaning of Article 3 of the TFEU, nor even a genuinely shared competence as defined in Article 4 of the TFEU. This merely supportive power does not confer upon the Union the capacity to undertake substantial or far-reaching legislative action. Therefore, it is clear that the Union cannot itself impose a straightforward regulatory framework on the Member States in this field. It is precluded from pursuing any form of harmonisation and, in other words, does not enjoy a positive integration competence.¹⁸ Moreover, leaving no room for doubt on this point, Article 165(4) of the TFEU expressly provides, with regard to sport, that “the European Parliament and the Council, acting in accordance with the ordinary legislative procedure [...] shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States.” The same provision merely authorises the Council of the European Union, acting on a proposal from the Commission, to adopt “recommendations,” which Article 288 of the TFEU expressly classifies among acts devoid of binding legal force. Therefore, from the perspective of EU law, sport as a field of public policy remains primarily a matter of State competence, with the Union limited to assisting Member States in the conduct of their respective actions. This assessment has also been approved by the CJEU. In its recent *European Superleague Company* judgement, the CJEU observed, based on a combined reading of Articles 165 and 6(e) of the TFEU, that “by those provisions, the drafters of the Treaties intended to confer a supporting competence on the Union, allowing it to pursue not a ‘policy’, as provided for by other provisions of the FEU Treaty, but [simply] an ‘action’ in a number of specific areas, including sport.”¹⁹

¹⁷ TFEU, Article 2(5). See e.g., Thiery, 2020, p. 69.

¹⁸ For this notion, see van den Brink, Dawson & Zgliniski, 2025, p. 221.

¹⁹ *European Superleague Company (ESLC) v. FIFA & UEFA*, 2025, para. 99, added in brackets. For a commentary, see e.g., Duboc, 2024, p. 34.

Moreover, this restrictive interpretation of the Union's competences reflects the existing reality at the national level, where, in the field of sports regulation, normative and supervisory powers are primarily exercised by the Member States or by associative and federative bodies. Likewise, at the international level, it is the Council of Europe, rather than the European Union, that has exercised genuine normative authority in the field of sport by establishing a European framework for cooperation in this area: *European Sport for All Charter*²⁰, *European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches*²¹, *Anti-doping Convention*²² and its *Additional Protocols*²³, *Macolin Convention* about the manipulation²⁴, *Saint-Denis Convention* on safety²⁵, are some of the many examples of the Council of Europe's coordination measures on sport law²⁶. Moreover, in 2007 the Council of Europe, through its Committee of Ministers, established the Enlarged Partial Agreement on Sport (EPAS)²⁷, whose institutional structures ensure ongoing and active European intergovernmental cooperation across the various aspects of sports law and contribute to the necessary reforms in this field. In light of this particular dynamism of the Council of Europe in matters relating to sport, Article 165(3) of the TFEU takes care to emphasise that "the Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe." This is precisely the approach adopted by the Union institutions, which have taken the Council of Europe's measures in this field as their primary reference to develop what is commonly described as a "European Sports Model."²⁸ However, even this "Model" has not conferred any genuine supervisory authority in this field upon the Union.²⁹ Therefore, sport has not become an area of autonomous EU competence, even though the Union is not entirely devoid of any powers in this

²⁰ Council of Europe, Committee of Ministers, Res(76)41.

²¹ ETS n° 120.

²² ETS n° 135.

²³ ETS / CETS n° 188.

²⁴ CETS n° 215.

²⁵ CETS n° 218.

²⁶ Many non-mandatory but important other interventions of the Council should be considered, such as the European Sports Charter adopted by the Committee of Ministers in 1992 (Recommendation n R (92) 13 and the Recommendation of the Committee of Ministers on the Revised European Sport Charter, CM/Rec(2021)5, 13 October 2021) and completed by the *Code of Sports Ethics* (Recommendation n R (92) 14 and the Recommendation of the Committee of Ministers to Member States on the revised Code of Sports Ethics, CM/Rec(2010)9, 16 June 2010), or the recent Declaration by the Committee of Ministers on Sport Integrity (Declaration of 27 September 2023, <https://search.coe.int/cm?i=0900001680acb64b>).

²⁷ See <https://www.coe.int/en/web/sport/epas>.

²⁸ Council of the European Union, Resolution, 2023.

²⁹ See <https://www.coe.int/en/web/sport/epas>

respect. Indeed, the absence of a transfer of competences from the Member States to the Union in the field of sport has not prevented the Union from launching a significant number of initiatives. Thus, a genuinely integrated sports action plan has been set in motion by the Union institutions, even though, textually, they are not endowed with any harmonising competence in this area.

2.2 Exercise of the European Union's Supporting Competences in Sport

Article 165 of the TFEU rests on a deliberate compromise between two contradictory considerations. Member States have wished to ensure that the Union does not possess genuine regulatory power in the field of sports. They seek to preserve the existing framework under which national and international sports federations determine the applicable rules within the normative limits fixed by national legislators and international conventions. However, an undeniable need exists for greater integration in a domain that is by nature supranational and particularly vulnerable to social, financial, and moral deviations such as doping, racism, sexism, violence, or corruption. The values intrinsic to sport, fairness, integrity, and equality of opportunity, can be better safeguarded through collective action at the Union level than through individual Member States' fragmentary efforts. Moreover, the various international instruments designed to combat these pathologies are only strengthened when they are supported by a normative and juridical framework as robust as that of Union law. The current European sports policy has positioned itself precisely in this in-between space, between respect for national sovereignty and the necessity of a more integrated regulatory framework.

Although it does not constitute an integrated policy of the Union, a genuine policy of EU in the field of sport exists, and this has been the case for some time. Despite the absence of any harmonising power in the strict sense, the institutions of the Union have unceasingly elaborated a general framework and undertaken concrete initiatives that are shaping a coherent European sports policy.

As early as the 1980s, European principles of sport, such as mutual respect, social equity, integrity, and fair play, began to appear in a series of resolutions of the European Parliament.³⁰ These early parliamentary acts affirmed and promoted

³⁰ European Parliament, 1984, p. 142. See also, the "Adonnino Report", SN/2536/3/85.

questions relating to the fight against racism, violence, doping, corruption, protecting women's rights, and equality of opportunity, which anticipated nearly all of the political orientations later developed at the Union level³¹. At the invitation of the Parliament, the European Commission issued its first Communication on *The European Community and Sport*³² in 1991, which laid the initial groundwork for a Union approach to this sector. However, following the *Declaration on Sport* in 1997³³, the conclusions of the European Council of Nice in 2000 provided the decisive political impetus for the deepening of European action in this area.³⁴ While acknowledging the Union's lack of legislative competence, the Council Presidency invited the institutions to assume a leading role in promoting the social dimension of sport. Subsequently, the Treaty of Lisbon codified this aspiration for "more Europe" in sport. Paragraph 1 of Article 165 of the TFEU now states that "The Union shall contribute to the promotion of European sporting issues, while taking into account the specific nature of sport, its structures based on voluntary activity, and its social and educational function."³⁵ The same provision urges the institutions "to develop the European dimension of sport by promoting fairness and openness in sporting competitions and cooperation between the bodies responsible for sport, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest of them."³⁶

The Commission had anticipated such developments through its 2007 *White Paper on Sport*, accompanied by the *Pierre de Coubertin Action Plan*³⁷, even before the Treaty provisions entered into force. This white paper proposed concrete measures to establish a European sport framework built on three pillars: strengthening the social

³¹ E.g., *EU Community and Sport* (1984 and 1994), *Measures Needed to Combat Vandalism and Violence in Sport* (1985 and 1988), *Women in Sport* (1987), *Sport in the European Community and a People's Europe* (1989), *Poor Snow Conditions in Winter Sports Resorts in Europe* (1990), *Sport and Doping* (1994), *Hooliganism and the Free Movement of Football Supporters* (1996), *Role of the European Union in the field of sport* (1997), *Urgent Measures To Be Taken Against Doping in Sport* (1999).

³² EU Commission, Communication, SEC(91)1438 final, 1991. See also EU Commission, Communication, SEC(89)407, 1989.

³³ Declaration n° 29 annexed to the Final Act of the Treaty of Amsterdam: "The Conference emphasises the social significance of sport, in particular its role in forging identity and bringing people together. The Conference therefore calls on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue. In this connection, special consideration should be given to the particular characteristics of amateur sport."

³⁴ Conclusions of the European Council of Nice, 7-10 December 2000: "Even though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured."

³⁵ TFEU, Article. 165, §1, al. 2.

³⁶ Ibidem, §2 last sentence.

³⁷ EU Commission, Communication, COM(2007) 391 final, 2007, p. 3 and 19.

role of sport, recognising its economic dimension, and reflecting on the organisational structure. The accompanying *Staff Working Document* further elaborated five axes of what it later termed the “European Sport Model”: a pyramidal structure where elite professional and amateur sports mutually reinforce one another; open competitions, accessible to small clubs and resistant to monopolisation by large clubs; the self-governance of sporting movements within balanced public-private partnerships; a voluntary-based system that fosters civic participation; and a dialogue platform, enhancing solidarity among organisers, players and supporters.³⁸

Thus, the Lisbon Treaty’s entry into force consolidated pre-existing European initiatives and endowed them with an explicit legal basis. Since then, the European Parliament, the Commission, the Committee of the Regions³⁹, and the European Economic and Social Committee⁴⁰ have continuously developed a general framework for a European sport policy. Concerning the fight against corruption⁴¹, promoting an integrated governance⁴², or the idea of a “green” European sporting mobility⁴³, the Parliament has repeatedly underlined the need to construct a coherent and integrated European approach.⁴⁴ On diverse societal topics, such as the COVID-19 pandemic⁴⁵, digitalisation⁴⁶, video games⁴⁷, and anti-racism⁴⁸, it has consistently invited institutions, member states, and civil society to coordinate their actions for a virtuous European sports policy. Functioning as a *forum deliberandum*, it has even commissioned in-depth studies to assess the field’s desirable evolutions.⁴⁹

³⁸ EU Commission, Staff Working Document, SEC/2007/0935 final, see §4.1.

³⁹ Committee of the Regions, Opinion, 96/C 337/11, 1996; Opinion 1999/C 374/14, 1999; Opinion 2000/C 317/20, 2000; C/2024/1044, 2024.

⁴⁰ European Economic and Social Committee, 2022/C 290/02, 2022.

⁴¹ Corruption in sport, 2013; FIFA, 2015.

⁴² An integrated approach to Sport Policy: good governance, accessibility and integrity (2017).

⁴³ Effective measures to ‘green’ Erasmus+, Creative Europe and the European Solidarity Corps, 2020. See also European Commission, Sport’s contribution to the European Green Deal, 2023.

⁴⁴ In 2012, the Parliament adopted the Resolution on European dimension in sport, 2012. However, its most notable contribution in this field is its Resolution on EU sports policy: assessment and possible ways forward, 2021.

⁴⁵ The impact of Covid-19 on youth and on sport, 2021.

⁴⁶ Challenges of sports events organisers in the digital environment, 2021.

⁴⁷ Esports and video games, 2022.

⁴⁸ The role of culture, education, media and sport in the fight against racism, 2022.

⁴⁹ Mittag & Naul, 2021. After this study the European Parliament has adopted its Resolution 2021/2058(INI), 2021.

For its part, the European Commission, fortified by the new legal bases introduced by the Lisbon Treaty, announced a comprehensive action programme⁵⁰ reflecting the three pillars identified in the 2007 White Paper: the societal role, the economic dimension and the organisation of sport. Within this framework, numerous concrete actions have been implemented on the basis of successive four-year *Work Plans* initiated in 2011 as well as the Resolutions and Conclusions of the Council and of the Representatives of Member State governments.⁵¹ Under the first pillar, examples include Union acts addressing the fight against doping⁵²; measures concerning online gaming and betting that threaten the integrity of sport⁵³; initiatives for education through sport⁵⁴; mobility programmes such as *Erasmus+ Sport*⁵⁵; and instruments facilitating athletes' career transitions.⁵⁶ Actions to prevent violence in sport⁵⁷, promote physical activity within Member States⁵⁸, encourage volunteering⁵⁹, and fight discrimination against women⁶⁰ and persons with

⁵⁰ Commission Communication, COM(2011) 12 final, 2011.

⁵¹ For each period of Working Plan see, Resolution for 2011-2014 (OJ C 162, 1.06.2011, p. 1), Resolution for 2014-2017 (OJ C 183, 14.06.2014, p. 12), Resolution for 2017-2020 (OJ C 189, 15.06.2017, p. 5), Resolution for 2021-2024 (OJ C 419, 4.12.2020, p. 1), Resolution for 2024-2027 (9771/24).

⁵² Council and representatives of the Governments of the Member States Resolution on a Code of Conduct against Doping in Sports, 1992. The concrete actions of the EU are numerous in this field as it is shown for example by EU technological development framework programme (1994-98) which promotes funding for a research project aimed at developing new methods to detect the use of growth hormones by athletes. However, EU initiatives are currently limited to participation in the legislative and regulatory preparatory work of national and international bodies. See e.g., Council of the European Union Resolution on EU Member States' representation on the WADA Foundation Board and coordination of positions, 2023; Council of the European Union Resolution on the EU Work Plan for Sport (2024-2027), 2024.

⁵³ EU Commission Communication, Towards a comprehensive European framework for online gambling, 2012.

⁵⁴ European Parliament and Council Decision 291/2003/EC, 2003. EU Commission Communication, COM/2005/0680 final.

⁵⁵ Regulation (EU) 2021/817, 2021.

⁵⁶ Council of the European Union and Representatives of the Governments of the Member States, Conclusions, 2013. Also, EU Commission, EU Guidelines on Dual Careers of Athletes, 2012.

⁵⁷ Council Decision 2002/348/JHA, 2002. Council Resolution on the use by Member States of bans on access to venues of football matches with an international dimension (2003). See also, Council Resolution concerning a handbook with recommendations for international police cooperation (2002).

⁵⁸ In addition to The European Week of Sport (<https://sport.ec.europa.eu/european-week-of-sport>) and the EU Sport Awards (<https://sport.ec.europa.eu/initiatives/beactive-eu-sport-awards>), biannual programmes as HealthyLifestyle4All (<https://sport.ec.europa.eu/healthylifestyle4all>) are also available. In the same vein, see Council Recommendation on promoting health-enhancing physical activity across sectors (2013); EU Commission, European Union Work Plan for Sport 2021-2024, COM/2024/73 final, 2024.

⁵⁹ European Parliament and Council Regulation (EU) 2021/888, 2021.

⁶⁰ Council and Representatives of the Governments, Conclusions on women and equality in the field of sport, 2023; High Level Group on Gender Equality in Sport, Towards more gender equality in sport – Recommendations and action plan, 2022. See also, Expert Group on Good Governance, Recommendations on Gender Equality in Sport, 2016: https://ec.europa.eu/assets/eac/sport/library/policy_documents/expert-group-gender-equality_en.pdf. For an early initiative on that matter, see, the 1987 Charter of Women's Rights in Sports adopted by the European Parliament in 1987 (Resolution on Women and Sport doc. A 2-32/87/rev).

disabilities⁶¹ are equally notable. Under the second pillar, oriented towards “evidence-based policy-making”, concrete actions⁶² have involved considering the specificities of sport when assessing anti-competitive practices, State aid regimes, sports betting, and issues linked to the intellectual property.⁶³ Finally, under the third pillar, the Commission established a framework for dialogue and exchange of good practices among Member States⁶⁴, relating to the organisation and governance of sport, while acknowledging the autonomy and independence of national structures.⁶⁵ Under Article 17(1) of the TEU, it has also concluded cooperation agreements with various international sporting organisations.⁶⁶ This European dynamism continues unabated, and initiatives aimed at deepening soft and non-normative integration are multiplying.⁶⁷

Thus, the European Union has succeeded in developing a general political framework and undertaking concrete actions in the field of sport even in the absence of any formal harmonising competence. The issue, of course, transcends the European level: integration through sport concerns civil society at large, national, international, and transnational alike.⁶⁸ However, Europe indisputably occupies a place within this process, and the multiplication of initiatives since the 2010s, alongside the intensification of practical actions across a broad spectrum, reinforces the case for “more Europe” in this domain. The attractive force of integration, even if it has not yet resulted in a complete Europeanisation of the field, continuously calls for new and increasingly significant concrete measures. This is especially so because the moderate progressivity of political integration with respect to sport,

⁶¹ Council of the European Union and Representatives of the Member States meeting within the Council, Conclusions, 2019.

⁶² For example, the creation of the Sport Satellite Account, designed to collect available sports data in Member States.

⁶³ EU Commission, Mapping and Analysis of the Specificity of Sport, 2016. For EU competition rules and sport see e.g., Van der Burg, 2020, p. 135.

⁶⁴ For an interesting example of EU support in this field see e.g., SDE Pro Sport Project and its study by Aumeran, 2024, p. 24.

⁶⁵ See The EU Sport Forum (<https://sport.ec.europa.eu/initiatives/eu-sport-forum>) and The Share Initiative (<https://sport.ec.europa.eu/initiatives/share-20-initiative>). The first European Forum was established in 1991 (Trova, Alexandrakis, & Skouris, 2011, p. 183). For another illustration of the concrete actions of the EU in this field, see Decision 291/2003/EC of the European Parliament and Council, 2003.

⁶⁶ See e.g., EU Commission, Decision C(2022) 257 (final), 2022, p. 1. For a list of cooperations and joint actions on the fields of sport to enhance EU values, see e.g., the *Per Call Evaluation Report* for 2025 of the European Education and Culture Executive Agency. See also many arrangements of the EU with international organizations as UEFA, e.g. EU Commission, Decision C(2022) 3721 final, 2022.

⁶⁷ See e.g., Commission Call for Evidence: Reinforcing European Sports Model (2026).

⁶⁸ An example of the contribution of civil society is The Brighthon Declaration on Women and Sport (2014). For a study: Kluka, 2009, p. 17. See also Jedlicka, 2018, p. 287.

considered in its ludic and non-economic dimension, leaves ample room for a much swifter and deeper integration insofar as sport constitutes an economic activity.

3 Strengthened Spillover Effect of European Integration on Sport as an Economic Activity

Sport, as an economic activity, namely, “an activity consisting in offering goods or services on a given market,”⁶⁹ or one that gives rise to “gainful employment or remunerated service,”⁷⁰ falls within the Treaties’ material scope of application. The rules governing economic freedoms within the internal market, as well as those relating to undistorted competition, apply fully in this context.⁷¹ Moreover, through a spillover effect and as a result of evolving case law in this field, even sport as such, that is, sport in its non-economic dimension⁷², has not been able to escape the normative framework of economic law (3.1). Against this background, the CJEU has refused to infer from Article 165 of the TFEU any special treatment for sport with regard to either the rules on free movement or those on competition, while nevertheless accepting that the specific characteristics of sport may be taken into account on a case-by-case basis.⁷³ Through its review powers, the CJEU has thus retained control over the balancing exercise between, on the one hand, the requirements of economic integration and, on the other hand, the social and cultural functions of sport (3.2).

3.1 Extensive Regulation of Sports through Dynamic Case Law

In its early case law, the CJEU appeared to accept the possibility of entirely excluding any “question of puerly sporting interest and as such has nothing to do with economic activity” from the scope of the Treaties.⁷⁴ Moreover, in its *Delière* judgment of 2000, somewhat echoing the logic underpinning its *Keck and Mithouard* case law of 1993⁷⁵, the CJEU appeared inclined to exclude entirely from the scope

⁶⁹ *MOTOE v. Elliniko Dimosio*, 2008, para. 22.

⁷⁰ *Donà v. Mantero*, 1976, para. 12.

⁷¹ See e.g., Durand & Templé, 2024, p. 258.

⁷² Only the French version of *Donà* case (para. 14) clearly refers to that concept, with the formula “*le sport en tant que tel*” (sport as such). Such a formula does not exist in the English version of the case.

⁷³ On that interpretation of the Article 165 TFEU see above, European Superleague Company, p. 8.

⁷⁴ *Walrave and Koch*, 1974, para. 8. Accordingly, the composition of “national teams” (*ibidem*, loc. cit.), exclusively by athletes holding the nationality of the concerned Member State, was regarded as falling outside the scope of the Treaties.

⁷⁵ *Keck and Mithouard*, 1993.

of the Treaties certain decisions that “naturally”⁷⁶ fall within the competence of sporting bodies, such as the selection of athletes for competitions.⁷⁷ However, the CJEU’s genuine reasoning on this matter is far more nuanced.⁷⁸ As early as the landmark *Bosman* judgement of 1995, the CJEU began to move away from this position by emphasising “the difficulty of severing the economic aspects from the sporting aspects”⁷⁹ of a given sport. It held that the specific characteristics of sport could not justify “to exclude the whole of a sporting activity from the scope of the Treaty.”⁸⁰ Furthermore, the CJEU has never repeated the line of reasoning developed in *Deliège* in its subsequent case law. On the contrary, *Meca-Medina* (2006) decisively confirmed the shift initiated in *Bosman* by setting aside the judgement of the first instance Court holding that, in the strict line of *Walrave and Koch*⁸¹, “purely sporting rules”⁸² such as doping ban in swimming, “cannot (...) fall within the scope (...) of the economic freedoms.”⁸³ Instead, the CJEU opted for a different approach, highlighting that “the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down.”⁸⁴ Following this evolution in the case law, sport “as such,”⁸⁵ including its non-economic aspects, has become an activity that remains potentially subject to the Treaties’ scope of application. In other words, the barrier erected by the *Walrave* and *Donà* has been dismantled: the criterion of “economic activity” has lost much of its distinctive function, and sport has, as a whole, become a field fully subject to the scope of economic integration, encompassing both the free movement provisions and competition law. Accordingly, and adopting a formulation even more far-reaching than that articulated in *Meca-Medina*, the CJEU now holds that “the mere

⁷⁶ *Deliège*, 2000, para. 67.

⁷⁷ In the present case, the CJEU held that the refusal to select a judoka resulted from the exercise of its attributions by a national federation and that “delegation of such a task” was “the arrangement adopted in most sporting disciplines” (para. 68), stemming from “a necessity inherent in the organisation of such a competition” (para. 69). Therefore, it did not constitute, “in itself,” a restriction on the freedom to provide services “in itself” (*ibidem*).

⁷⁸ See also, Benhammouda, 2024b, p. 30.

⁷⁹ In particular, “of football” in that case: *Bosman*, 1995, para. 76.

⁸⁰ *Ibidem*, loc. cit.

⁸¹ *David Meca Medina et Igor Majcen*, 2004 and see note 74. In its judgement, the CJEU of First Instance also refers to para. 14 of *Donà*, see note 72.

⁸² *David Meca Medina et Igor Majcen*, 2004, para. 41.

⁸³ *Ibidem*, loc. cit.

⁸⁴ *Meca-Medina*, 2006, para. 27. On that basis, the CJEU found that sporting regulations establishing an excessively low tolerance threshold for nandrolone in a swimmer’s blood, combined with excessively severe disciplinary sanctions, were capable of producing “negative effects on competition” (*ibidem*, para. 47) in breach of Articles 101 and 102 TFEU. For a critical comment, see Auneau, 2007, p. 361. See also, Podszun & Kirk, 2024, p. 466.

⁸⁵ See note 72 above.

fact that an activity is connected with sport does not preclude the application of the Treaty's rules."⁸⁶ Moreover, it is of little relevance that the activity at issue is performed by a mere non-profit association governed by private law, even where the contested measure results from the exercise of regulatory powers resembling a public authority prerogative. Thus, the refusal by a non-profit motorcycling association – which the CJEU did not hesitate to characterise as an “undertaking”⁸⁷ – to issue a mandatory prior approval, legally required for the organisation of a competition on the roads of a Member State, may constitute either an abuse of a dominant position within the meaning of Article 102 of the TFEU or, alternatively, a breach by the Member State of Article 106 of the TFEU concerning special or exclusive rights, where that consultative power is not subject to any limitation, obligation or effective State control.⁸⁸

It is undoubtedly with the *TopFit* judgement that a further threshold was crossed.⁸⁹ Recalling, in the context of the rights and freedoms attached to the “fundamental”⁹⁰ status of Union citizenship, “the role of sport as a factor of integration in the society of the host Member State,”⁹¹ and relying on a combined reading of Articles 21 and 165 of the TFEU, the CJEU emphasised that “participation in sporting competitions at all levels”⁹² enables a Union citizen “to create bonds with the society”⁹³ of the host State or “to consolidate them.”⁹⁴ Accordingly, regulations adopted by a national athletics federation restricting a Union citizen who has been resident in Germany for a long period from participating in the national long-distance running championships, legitimately to ensure that the national champion is not a foreign national⁹⁵, do indeed fall within the material scope of the Treaties and must be

⁸⁶ MOTOE, 2008, para. 22.

⁸⁷ Ibidem, para 27: “the fact that the offer of goods or services is made without profit motive does not prevent the entity which carries out those operations on the market from being considered an undertaking, since that offer exists in competition with that of other operators which do seek to make a profit.”

⁸⁸ Ibidem, para. 53.

⁸⁹ *TopFit eV*, 2019, para. 53: according to the CJEU’s statement, “the fact that a rule applies solely to sport does not mean that it is automatically excluded from the scope of the Treaty.”

⁹⁰ Ibidem, para. 28. See the CJEU’s reference to its important *Grzelezyk* case of 2001.

⁹¹ Ibidem, para. 33.

⁹² Ibidem, para. 34.

⁹³ Ibidem, loc. cit.

⁹⁴ Ibidem, loc. cit.

⁹⁵ Ibidem, para. 50: “as has been held with regard to the composition of national teams, it appears to be legitimate to limit the award of the title of national champion in a particular sporting discipline to a national of the relevant Member State and consider that nationality requirement to be a characteristic of the title of national champion itself.”

subjected to a proportionality review to assess whether they are compatible with the non-economic rights of that Union citizen.⁹⁶

Even though the classic formulations of *Walrave* and *Donà* are⁹⁷, in absolute terms and as a matter of principle, are still formally maintained in the CJEU's recent case law⁹⁸, and the two examples concerning the composition of national teams and the criteria for selecting athletes continue to be reiterated⁹⁹, no aspect of sporting activity, whether economic or non-economic, now escapes "straightaway"¹⁰⁰ the CJEU's scrutiny under the economic law of integration.

This reinforced spillover effect, developed under the dynamic CJEU case law, can be observed particularly clearly across the various fields of European harmonisation. Across highly diverse areas of European integrated fields of actions, such as trade mark law¹⁰¹, the protection of databases¹⁰², value added tax¹⁰³, exclusive television broadcasting rights¹⁰⁴, and even across public procurement law¹⁰⁵ or consumer protection¹⁰⁶ sport, falls within the Union's normative framework. Its various dimensions, and at times even its very definition, are subsumed within the CJEU's interpretative authority. Thus, in the *Žamberk* judgement, notably the European judge adopted a "strict interpretation"¹⁰⁷ of the concept of "sporting activity" to justify exemptions to VAT.¹⁰⁸ Accordingly, under the VAT directive and as

⁹⁶ In the present case, that review was referred back to the national court, albeit with the clear indication that a total exclusion of Union citizens from the national long-distance running championship would, "in any event, be disproportionate" in light of the specific circumstances of the case. (*Ibidem*, para. 66).

⁹⁷ See notes 72 and 74 above.

⁹⁸ See e.g., *International Skating Union (ISU)*, 2023, para. 92; *European SuperLeague Company (ESLC)*, 2023, para. 84; *Royal Antwerp Football Club*, 2023, para. 54.

⁹⁹ *ISU*, 2023, para. 92; *ESLC*, para. 84.

¹⁰⁰ *Meca-Medina*, 2006, para. 33.

¹⁰¹ See the interpretation of the First Council Directive 89/104 in *Arsenal FC v. Reed*, 2002, para. 62.

¹⁰² See e.g., the application of Directive 96/9 in *The British Horseracing Board*, 2004, paras. 42, 67, and 82, and in *Football Dataco*, 2012, para. 47.

¹⁰³ *Canterbury Hockey Club*, 2008; *Město Žamberk*, 2013; *English Bridge Union*, 2017.

¹⁰⁴ *Šký Österreich*, 2013, para. 42-68, interpreting the Directive 2010/13 on Audiovisual Media Services. See also, on the application of Directive 89/552 (repealed by Directive 2010/13 cited above) concerning the pursuit of television broadcasting activities and Directive 97/36, *UEFA vs. Commission*, 2013, para. 42-45 and 38; *FIFA vs. Commission*, para. 32-39 and 105.

¹⁰⁵ *Federazione Italiana Giuoco Calcio*, 2021, para. 48, on the interpretation of the Directive 2014/24/EU on public procurement.

¹⁰⁶ See *Ave*, 2025, paras. 53, 69-70, 87, paras. 93-95 and 102, interpreting Directive 93/13/EEC on unfair terms in consumer contracts. For a commentary, see e.g. Lagarde, 2025, p. 8.

¹⁰⁷ *Město Žamberk*, 2013, para. 19.

¹⁰⁸ *Ibidem*, para. 17. According to the CJEU, under Directive 2006/112/EC, "The terms used to specify those exemptions are to be interpreted strictly, since the exemptions constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person" (para. 19).

interpreted by the CJEU, while such an activity may be conducted in an amateur context and therefore does not presuppose either “a particular level”¹⁰⁹ or a practice “in a particular way”¹¹⁰ to benefit from the tax exemption, it must not be performed “in a context of pure rest and of amusement.”¹¹¹ Similarly, in the *English Bridge Union* case, the Court held that “the fact that an activity promotes physical and mental health is not, in itself, sufficient to conclude that it falls within the concept of ‘sport’”¹¹² for the purposes of that directive. It is, of course, not a matter of laying down a general definition of sport as such, but rather of a contextual application limited to the VAT Directive’s framework. Nevertheless, the accumulation of this type of litigation concerning the various components of sport will gradually lead the Court to develop an increasingly precise legal framework in this specific area.

Recent case law concerning the mechanism of international arbitration provides a particularly striking illustration of the phenomenon of “Europeanisation” of sports law. Following the path opened by the case law of the European Court of Human Rights¹¹³ and invoking “legitimate interests linked to the specific nature of sport,”¹¹⁴ the General Court had accepted the Court of Arbitration for Sport’s mandatory and exclusive jurisdiction. However, the CJEU set that judgement aside on the ground of an “error of law.”¹¹⁵ According to the CJEU, neither the “specific nature of sport”¹¹⁶ nor the “legal autonomy”¹¹⁷ of international sporting authorities allows one to disregard compliance with the “public policy provisions that EU law contains”¹¹⁸ or with the “principles underlying the judicial architecture of the European Union.”¹¹⁹ Similarly, less than one month after the *Caster Semenya* judgement, in which the European Court of Human Rights held that the proportionality review carried out by the Swiss Federal Tribunal over an award of

¹⁰⁹ Ibidem, para. 22.

¹¹⁰ Ibidem, loc. cit.

¹¹¹ Ibidem loc. cit. Nevertheless, the CJEU softened this strict interpretation, stating that the scope of the VAT exemptions must not be limited to “sporting activities which are engaged in in an organised or systematic manner or aimed at participation in sports competitions” (para. 24).

¹¹² *English Bridge Union*, 2017, para. 24.

¹¹³ *Mutu and Pechstein vs. Switzerland*, 2018; See also, (dec.) *Platini vs. Switzerland*, 2020.

¹¹⁴ *International Skating Union (ISU)*, 2020, T-93/18, para. 156. For a commentary see, Cattaneo, 2021, p. 318. Echoing the reasoning of the *Mutu and Pechstein* judgement of the European Court of Human Rights, the General Court noted that this arbitral body ensured a “quickly and economically” resolution of disputes, as well as “a certain procedural uniformity and (...) legal certainty” (para. 156).

¹¹⁵ *ISU*, 2023, para. 199.

¹¹⁶ Ibidem, para. 188.

¹¹⁷ Ibidem, loc. cit.

¹¹⁸ Ibidem, loc. cit.

¹¹⁹ Ibidem, loc. cit. See also, Blanke, 2024, p. 309.

the Court of Arbitration for Sport failed to meet the “requirement of particular rigour,”¹²⁰ the CJEU ruled in *Seraing*¹²¹ that such a closed arbitral mechanism could not undermine individuals’ right to effective judicial protection as guaranteed by Articles 19 and 267 of the TFEU and by Article 47 of the Charter of Fundamental Rights of the European Union. Accordingly, although the specific characteristics of sport have been recognised both in Article 165 of the TFEU since the Treaty of Lisbon and in the CJEU’s case law since *Walrave* and *Donà*, they have not resulted in the exclusion of this field from the scope of the rules of economic integration. On the contrary, through the succession of cases brought before it, the CJEU has progressively established an increasingly extensive regulatory framework for sport under EU integration law.

3.2 Consideration of the Specific Characteristics of Sport by the CJEU

The spillover effect of European integration on sport should not be understood as implying that the EU courts disregarded the specific characteristics of this field. Undoubtedly, the CJEU has expressly refused to derive any form of jurisdictional immunity for sport from Article 165 of the TFEU in relation to either the free movement provisions or competition law.¹²² As stated in *European Superleague Company* and *Royal Antwerp Football Club*, that provision “is not a cross-cutting provision having general application”¹²³ nor does it amount to “a special rule exempting sport from all or some of the other provisions of primary EU law (...)”.¹²⁴ Accordingly, the rights and freedoms enshrined in economic integration govern sports law in the same way as any other field, without “requiring special treatment”¹²⁵ for it. Nevertheless, from its very earliest judgements the CJEU has consistently acknowledged the specific characteristics of sport when interpreting and applying those rules.

¹²⁰ *Caster Semenya*, 2025, §210-238. For a commentary see e.g., Shahlaci, 2024, p. 871.

¹²¹ *Royal Football Club Seraing*, 2025, para. 95-125. For a first reference to the principle of effective judicial protection in the field of Sports Law, see *Heylens*, 1987, para. 14. For a commentary on *Seraing* see e.g., Bastianon, 2025, p. 38, and cf. Livolsi, 2025, p. 1.

¹²² *European Superleague Company* (ESLC), 2023, para. 100-101; *Royal Antwerp Football Club*, 2023, para. 68-69. See also, *Blin*, 2025, pp. 186-187; Pataut, 2024, p. 3.

¹²³ ESLC, 2023, para. 100; *Royal Antwerp Football Club*, 2023, para. 68.

¹²⁴ ESLC, 2023, para. 101. *Royal Antwerp Football Club*, 2023, para. 69.

¹²⁵ *Ibidem*, loc. cit.

First, after recognising in *Walrave* and *Donà* the specific nature of national teams, whose composition based exclusively on nationality cannot be regarded as contrary to the principle of non-discrimination¹²⁶, the CJEU accepted, in *Bosman*, that the maintenance of “a balance between clubs by preserving a certain degree of equality and uncertainty as to results”¹²⁷ and the encouragement of “the recruitment and training of young players”¹²⁸ may constitute overriding reasons in the public interest. It adopted the same approach in *Lehtonen*, recognising as legitimate the objectives of “ensuring the regularity of sporting competitions,”¹²⁹ “the comparability of results between the teams taking part in [a] championship,”¹³⁰ and “the proper functioning of the championship as a whole.”¹³¹ In *Bwin*, the CJEU likewise accepted that “combating fraud and crime”¹³² could be taken into account, while in *Premier League*, the aim of encouraging “attendance of stadiums by the public” was recognised as a legitimate objective.¹³³

Subsequently, the CJEU has effectively relied on Article 165 of TFEU in the very construction of certain sporting public-interest justifications. Thus, in its first reference to that provision in *Olympique Lyonnais*, it relied on the “educational and social function” of sport, as recalled by Article 165 of the TFEU, to substantiate the legitimacy of measures adopted to promote “young players”.¹³⁴ Similarly, in *Premier League*, relying on the “promotion of the European dimension of sport” referred to in Article 165 of the TFEU, the CJEU accepted that sporting events could be protected, where appropriate, under the heading of intellectual property protection¹³⁵, even though those events themselves could not, according to the CJEU, be regarded as “works” within the meaning of intellectual property law.¹³⁶ The Court’s reliance on Article 165 of the TFEU appears even more forcefully in *TopFit eV*, where, by combining it with Article 21(1) of the TFEU on the free

¹²⁶ *Donà*, 1976, para. 14 see note 72.

¹²⁷ *Bosman*, 1995, para. 106. For a commentary see, Auneau, 1996, p. 101; Weatherill, 2010, p. 480.

¹²⁸ *Ibidem*, loc. cit.

¹²⁹ *Lehtonen*, 2000, para. 53.

¹³⁰ *Ibidem*, para. 54.

¹³¹ *Ibidem*, loc. cit.

¹³² *Liga Portuguesa*, 2009, para. 63.

¹³³ *Premier League*, 2011, para. 123.

¹³⁴ *Olympique Lyonnais vs. Olivier Bernard*, 2010, para. 39-40. For a commentary see e.g., Collucci & Forti, 2010, p. 573. See also *Royal Antwerp Football Club*, 2023, para. 144.

¹³⁵ *Premier League*, 2011, para. 102.

¹³⁶ *Premier League*, 2011, para. 98: “sporting events cannot be regarded as intellectual creations classifiable as works within the meaning of the Copyright Directive. That applies in particular to football matches, which are subject to rules of the game, leaving no room for creative freedom for the purposes of copyright”.

movement and residence of EU citizens, the CJEU relies on the role of sport as a “factor for integration” in order to extend the Treaties’ application to the non-economic freedoms of movement.¹³⁷

Finally, although the CJEU refuses to confer upon Article 165 of the TFEU the function of a safeguard clause, particularly concerning the freedoms of movement and EU competition law, it does not hesitate to rely on the core idea of the specificity of sport underlying that provision. Thus, in *European Superleague Company* and *Royal Antwerp Club*, immediately after emphasising the non-transversal nature of Article 165 TFEU, the CJEU recalls, in accordance with its settled case-law, that “sporting activity carries considerable social and educational importance, henceforth reflected in Article 165 of the TFEU, for the Union and for its citizens,”¹³⁸ that it “undeniably has specific characteristics,”¹³⁹ and that “such specific characteristics may potentially be taken into account along with other elements”¹⁴⁰ in the assessment carried out under the freedoms of movement and competition law. Therefore, the CJEU assesses the restrictive rule considering the specific context of the sport concerned, taking into account, *inter alia*, various elements.¹⁴¹ Accordingly, both identifying a restriction on economic freedoms or competition and assessing that restriction in the light of the principle of proportionality, are grounded in an empirical analysis of the concrete circumstances in which the sport concerned is organised or practised, a feature that has characterised the CJEU’s approach from the outset. This was the case, for example, in *Lehtonen*, where the CJEU was required to assess the risk to the proper conduct of a basketball championship posed by strategically timed player transfers liable to alter a team’s competitive strength at the final stage of the season, thereby distorting the “comparability of results.”¹⁴² This *in-context* analysis is particularly evident in *European Superleague*, where the CJEU examines whether the

¹³⁷ *TopFit e. V. and Biffi*, 2019, para. 33–34. See note 89 above.

¹³⁸ *ESLC*, 2023, para. 102. *Royal Antwerp Football Club*, 2023, para. 70.

¹³⁹ *ESLC*, 2023, para. 103. *Royal Antwerp Football Club*, 2023, para. 71.

¹⁴⁰ *ESLC*, 2023, para. 104. *Royal Antwerp Football Club*, 2023, para. 72.

¹⁴¹ *ESLC*, 2023, para. 105. *Royal Antwerp Football Club*, 2023, para. 73: “the nature, organisation or functioning of the sport concerned and, more specifically, how professionalised it is, the manner in which it is practised, the manner of interaction between the various participating stakeholders and the role played by the structures and bodies responsible for it at all levels, with which the Union is to foster cooperation, in accordance with Article 165(3) of the TFEU.”

¹⁴² *Lehtonen*, 2000, para. 54–55. In the present case, however, the timetable adopted by the authorities did not appear to satisfy the proportionality test because, according to the CJEU, although the final assessment is left to the national court, the application of two different transfer deadlines to players from the European zone and those from outside did not appear to be justified (para. 58–59). This concrete, context-sensitive analysis is also evident in *Deliege*, where sporting authorities exercised selection power for an international judo competition, which was regarded as “a need inherent in the organisation of such a competition” (para. 69).

FIFA and UEFA statutes, which confer on those associations the power to authorise both the organisation of football competitions and the participation of clubs and players therein, subject to the risk of sanctions, may lead those bodies to an abuse of a dominant position prohibited by Article 102 of the TFEU. In addressing this issue, the CJEU begins by emphasising that football “is not only of considerable social and cultural importance in the European Union (...), but also generates great media interest.”¹⁴³ It then enumerates its “specific characteristics”¹⁴⁴ as the multitude of competitions at the national and European levels involving “the participation of very many clubs and also that of large numbers of players.”¹⁴⁵ The CJEU further recalls the knockout nature of matches and the central role played by “sporting merit, which can be guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity.”¹⁴⁶ For all these reasons, and “in the specific context of professional football,”¹⁴⁷ the CJEU concludes that neither the rules at issue nor their implementation by FIFA or UEFA can be regarded, “in terms of their principle or generally,”¹⁴⁸ as constituting an “abuse of a dominant position.”¹⁴⁹ In the same vein, when reviewing the exploitation of rights linked to sporting competitions by FIFA and UEFA,¹⁵⁰ while referring back to the national court the task of assessing the “efficiency gains”¹⁵¹ capable of justifying a derogation from Articles 101 and 102 of the TFEU, the CJEU considers that the specific arguments advanced by the intervening governments and the European Commission “appear, at first sight, to be convincing in the light of the essential characteristics of interclub football competitions organised at global or European level”.¹⁵² In that regard, a wide range of concrete elements linked to the specific nature of interclub football

¹⁴³ *ESLC*, 2023, para. 143.

¹⁴⁴ *Ibidem*, loc. cit.

¹⁴⁵ *Ibidem*, loc. cit.

¹⁴⁶ *Ibidem*, loc. cit.

¹⁴⁷ *Ibidem*, para. 145.

¹⁴⁸ *Ibidem*, loc. cit.

¹⁴⁹ *Ibidem*, loc. cit. The same reasoning applies to the sanctions attached to those rules (para. 146).

¹⁵⁰ *Ibidem*, para. 217. As the CJEU recalls, such rights may cover a wide range of benefits, including, for example, proprietary rights, rights of recording, reproduction, audiovisual broadcasting of matches, multimedia rights, marketing and promotional rights, and intellectual property rights (para. 221).

¹⁵¹ *Ibidem*, para. 232-233.

¹⁵² *Ibidem*, para. 235. In the present case, the interveners referred to the importance of the objective of “social redistribution within football” and to the benefits derived from the centralisation of property rights linked to competitions for the benefit of “various actors within football,” such as “amateur clubs, professional players, women’s football and young players,” as well as “supporters” and “consumers, namely television viewers” (para. 234).

are considered, such as “the interdependence”¹⁵³ binding professional football clubs to one another, the importance of “smaller professional football clubs and amateur football clubs”¹⁵⁴ in contributing to the emergence of talent, as well as the “the solidarity role of football”¹⁵⁵ which contributes to “its educational and social function within the European Union”.¹⁵⁶ In the present case, the judgement expresses reservations to the national court concerning the compatibility of all the rules examined with the Treaties – primarily due to the absence of substantive criteria and procedural safeguards governing them¹⁵⁷ – the consideration given by the CJEU to the specific characteristics of sport in the exercise of its review is therefore beyond doubt. Thus, those specificities play only a limited role as a matter of principle in excluding sporting activity from the material scope of EU law. In most cases, they are merely considered when concretely assessing the compatibility of national, international, public or private sporting regulations with the rules of European integration.

4 Conclusion

The law of European integration remains limited at the level of the Union’s internal policies and actions because of the lack of sufficient legislative competence and the fact that the Union is confined to a supporting competence in this field. Its effect is more substantial concerning the substantive rules governing free movement and undistorted competition, in so far as sport, whether regarded as an economic activity or “as such,”¹⁵⁸ does not escape compliance with EU law. This binary presentation is neither exhaustive nor definitive. First, it fails to account for the variations in the degree of integration within each EU sport law issue group. For instance, with regard to the so-called reduced effect, this characterisation should not obscure the fact that the level of political integration has reached a far more advanced state in certain areas of sporting interest including health, the prevention of violence and racism, gender equality, digitalisation, corruption and anti-doping.¹⁵⁹ Second, both the

¹⁵³ Ibidem, para. 235.

¹⁵⁴ Ibidem, loc. cit.

¹⁵⁵ Ibidem, loc. cit.

¹⁵⁶ Ibidem, loc. cit.

¹⁵⁷ Ibidem, para. 147-152, 178 and for free movement of services see para. 224-255.

¹⁵⁸ See Durand & Templé, 2024, p. 258.

¹⁵⁹ By way of illustration of areas that have not yet been genuinely Europeanised, reference may be made to the regulation of sporting competitions as such, the organisation of the competent authorities and generally rules related to the determination of their respective composition and powers.

Union's competences and the CJEU of Justice's analyses are evolving, the former through Treaty revision or legislative reforms, the latter through shifts in case law. Therefore, sport is not immune to a moving spillover effect, the intensity of which may vary depending on future developments. The analytical framework proposed in this study already highlights that the idea of an "ever closer union" is taking shape with considerable consistency in the field of sport within the EU law. The remaining question is whether, in other areas such as foreign policy or military defence, Europe will be able to progress with the same certainty.

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ON LEGAL BASES AND VALUES UNDERPINNING EU COMPETENCE IN SPORT

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Sport occupies a unique position in European society. It is at once a cultural practice, an economic activity, a tool for social integration, and an increasingly globalised industry. Within the EU, this intersection raises complex questions regarding the scope of EU competence and the normative foundations of EU action in the field of sport. This article examines legal bases and values underpinning EU competence in sport through a three-step analytical framework. First, it sketches the constitutional foundations of EU competence in sport, focusing on the principle of conferral and Article 165 of the TFEU. Second, it clarifies what the EU can or could do in sport within the existing Treaty framework, paying particular attention to the role of internal market law and the jurisprudence of the CJEU. Third, it turns to the normative question of what the EU should do in this field, examining the values that could justify a more active European role in regulating sport.

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1 Introduction

Sport occupies a unique position in European society. It is at once a cultural practice, an economic activity, a tool for social integration, and an increasingly globalised industry. Over the past decade, EU policy makers have increasingly acknowledged the importance of sport, not only for its evident benefits for health and wellbeing reasons, but also for a number of key areas such as social cohesion, innovation and research, territorial regeneration, economic growth or tackling climate change.¹ At the same time, it is an important economic sector in the EU, “with a share in the national economies which is comparable to agriculture, forestry and fisheries combined” and expected to grow.² From grassroots amateur activities to elite professional competitions generating billions of euros annually, sport has become a domain where legal regulation, economic interests, and social values intersect.³ Within the EU, this intersection raises complex questions regarding the scope of EU competence and the normative foundations of EU action in the field of sport.

Unlike many other policy areas, sport entered the EU’s constitutional framework relatively late. For decades, the founding Treaties made no explicit reference to sport, reflecting the perception that sport was primarily a matter for national authorities and private sporting organisations.⁴ Nevertheless, the EU gradually became involved in sport by indirectly applying internal market law. Rules governing the free movement of workers, competition law, and the prohibition of nationality discrimination began to affect the organisation of professional sport across Europe.⁵ This process, driven largely by decisions of the Court of Justice of the European Union (CJEU), transformed the regulatory landscape of European sport long before sport acquired an explicit legal basis in the Treaties.⁶

The Treaty of Lisbon,⁷ which entered into force in 2009, marked a turning point by introducing Article 165 of the Treaty on the Functioning of the European Union (TFEU).⁸ For the first time, the Treaties recognised sport as an area in which the EU possesses competence. However, this competence was defined narrowly: the

¹ European Commission, 2020, p. 5.

² Ibid.

³ See also, e.g. EU Commission White Paper, 2007.

⁴ See e.g., Weatherill, 2018.

⁵ See Weatherill, 2022, p. 112.

⁶ Ibid.

⁷ Treaty of Lisbon, 2007.

⁸ Consolidated version of the Treaty on the Functioning of the European Union, 2013.

EU may only support, coordinate, and supplement the actions of Member States.⁹ The Treaty explicitly excludes harmonisation of national laws in the field of sport.¹⁰ As a result, EU competence remains limited and often ambiguous.

This article examines the legal bases and values underpinning EU competence in sport through a three-step analytical framework. First, it sketches the constitutional foundations of EU competence in sport, focusing on the principle of conferral and Article 165 of the TFEU. Second, it analyses what the EU can or could do in sport within the existing Treaty framework, considering the limits imposed by the principle of conferral, paying particular attention to the role of internal market law and the jurisprudence of the CJEU. Third, it turns to the normative question of what the EU should do in this field, examining values that could have a potential to justify a more active European role in regulating and supporting sport.

By addressing these questions, the article aims to demonstrate that EU involvement in sport is not merely a matter of technical competence. Rather, it should reflect a broader set of values that increasingly shape the European approach to sport governance. Values for the purpose of this contribution are understood as core principles as well as normative ideas governing sport in their ordinary sense, namely those ideals and objectives that individuals and communities generally regard as important in life.¹¹ Accordingly, the concept encompasses both institutional and regulatory principles specific to the sporting context (such as fairness, solidarity, integrity, inclusion, and equal opportunity), and broader social and ethical aspirations associated with sport as a human and cultural practice. Unless stated otherwise, the term “values” is not used here in the specific constitutional sense of Article 2 TEU, that is, the foundational values upon which the European Union is based and which are “common to the Member States”. Nevertheless, there is a significant degree of conceptual overlap between these categories, particularly where sporting values intersect with broader commitments to human dignity, equality, democracy, and the rule of law within the EU legal order.

⁹ See Weatherill, 2022.

¹⁰ Consolidated version of the Treaty on the Functioning of the European Union, 2013, Article 165(4).

¹¹ See e.g. Poel & Royakkers, 2011.

2 EU Competence in Sport

The starting point for understanding EU competence in any policy area is the principle of conferral. According to Article 5(2) of the Treaty on European Union (TEU),¹² the Union may “act only within the limits of the competences conferred upon it by the Member States in the Treaties”. Competences not conferred upon the Union remain with the Member States. This principle constitutes a cornerstone of the EU’s constitutional structure, ensuring that the Union does not extend its powers beyond those expressly granted by the Member States.¹³

EU competences are generally divided into three categories: exclusive competences, shared competences and supporting, coordinating, or complementary competences.¹⁴ Sport falls into the third category.¹⁵ In areas of supporting competence, the Union may undertake actions aimed at supporting, coordinating, or complementing the activities of the Member States, but it may not harmonise national laws or replace national regulatory authority.¹⁶

Determining whether the EU may act in a particular policy field therefore requires the identification of a Treaty provision conferring the relevant competence. In the field of sport, this task is relatively straightforward today, as the Treaty of Lisbon introduced an explicit legal basis in Article 165 of the TFEU.¹⁷ However, this was not always the case. For several decades, the EU engaged with sport in the absence of any explicit Treaty provision addressing the subject.

Sport was entirely absent from the founding Treaties of the 1950s. The Treaty of Rome, which established the European Economic Community in 1957, focused primarily on economic integration and the creation of a common market. Activities such as sport, culture, and education were generally regarded as matters falling within the competence of the Member States and therefore outside the scope of European integration.¹⁸

¹² Consolidated version of the Treaty on European Union, 2016.

¹³ For a general discussion on the competence issue in the EU, see eg Craig de Búrca, 2024, Ch 4.

¹⁴ See Consolidated version of the Treaty on the Functioning of the European Union, 2013 (TFEU), Article 2 et seq.

¹⁵ Consolidated version of the Treaty on the Functioning of the European Union, 2013, Article 6.

¹⁶ Article 2(5) of the TFEU.

¹⁷ For a commentary of this Article, see e.g. Garben, 2024, p. 1987.

¹⁸ See Weatherill, 2018, Ch. 3, p. 51 *et seq.*

Nevertheless, the growing professionalisation and commercialisation of sport gradually brought it within the ambit of EU law. Professional sport became increasingly intertwined with economic activities such as employment relationships, broadcasting rights, sponsorship agreements, and merchandising. As a result, sporting rules began to intersect with EU internal market law, particularly through the jurisprudence of the CJEU, which examined the compatibility of certain sporting regulations with the fundamental principles of the internal market.¹⁹

The important role of sport in European society and its specific nature were recognised in December 2000 in the European Council's Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies (the 'Nice Declaration').²⁰ The Nice Declaration acknowledged the significant "social, educational, and cultural functions" of sport within European society.²¹ It clarified that sporting organisations must exercise their role in organising and promoting sport with due regard to both national and EU law.²² At the same time, it recognises that, "[e]ven though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured."²³ The Nice Declaration thus reflected the recognition by European institutions that sport occupies a distinctive position in society, often characterised by volunteer-based organisational structures and significant contributions to public health, education, social integration, and cultural life.²⁴

The introduction of Article 165 of the TFEU now provides the primary legal foundation for EU action in the field of sport. The provision establishes that the Union shall contribute to the promotion of European sporting issues while taking into account "the specific nature of sport, its structures based on voluntary activity, and its social and educational functions". Article 165 identifies several objectives for EU action, including promoting fairness and openness in sporting competitions, encouraging cooperation between bodies responsible for sport, and protecting the

¹⁹ Ibid.

²⁰ European Council, 2000.

²¹ Ibid, para. 1.

²² Ibid, para. 7.

²³ Ibid, para. 1.

²⁴ European Commission, 2007, pp. 2-3.

physical and moral integrity of sportsmen and sportswomen, particularly young athletes.

Furthermore, Article 165(2) emphasises the development of the European dimension in sport. However, Article 165(4) clearly limits the EU's regulatory powers. While the EU may adopt incentive measures and recommendations, the Treaty explicitly excludes the harmonisation of national laws in the field of sport. Consequently, the EU's role is primarily facilitative rather than regulatory. Examples of EU action within this framework include funding programmes such as Erasmus+ Sport, initiatives supporting cooperation among sports organisations, and platforms promoting policy dialogue among relevant stakeholders. In practice, this means that national governments and private sporting organisations remain the principal regulators of sport.²⁵

The limited scope of EU competence in this field reflects a deliberate political choice.²⁶ Member States have traditionally been reluctant to transfer regulatory authority over sport to the European level. Sporting organisations, including international federations such as FIFA and UEFA, likewise place considerable value on their regulatory autonomy.²⁷ The relatively narrow scope of Article 165 of the TFEU can therefore be understood as the outcome of a political compromise. Sporting bodies gradually recognised that complete autonomy from EU law was not feasible. Rather than seeking full exclusion from the EU legal order, they accepted their inclusion within it while emphasising the distinctive characteristics of sport and the need for a degree of special treatment.²⁸ As a consequence, the EU cannot directly regulate many core aspects of professional sport, including transfer systems, competition structures, or the governance arrangements of sporting federations.

Nevertheless, the Treaty framework does not provide the complete picture of EU involvement in sport. Although Article 165 of the TFEU confers only limited competence, other areas of EU law continue to apply to sporting activities. In particular, internal market law and EU competition law have had a significant impact on the organisation of sport in Europe. Their rules apply to sport insofar as sporting

²⁵ See e.g. García & Weatherill, 2012, p. 238

²⁶ See e.g. García & Weatherill, 2012, p. 238

²⁷ García & Weatherill, 2012, p. 238. See also García, 2007.

²⁸ García & Weatherill, 2012, p. 238. See also García, 2007.

activities constitute an economic activity.²⁹ In addition, sport is subject to other important aspects of EU law, including “the prohibition of discrimination on grounds of nationality, provisions relating to Union citizenship, and the principle of equality between men and women in employment.”³⁰

This observation leads to the second dimension of the analysis: examining what the EU can, and potentially could, do within the broader framework of the Treaties in relation to sport.

3 What the EU Can or Could Do in Relation to Sport

3.1 Sport and the Free Movement Law

Although the EU’s explicit competence in the field of sport is limited, sporting activities have long been influenced by EU law through the application of internal market principles. These include, in particular, the free movement of workers, the freedom to provide services, EU competition law, and the prohibition of discrimination on grounds of nationality.³¹ As professional sport increasingly developed into an economic activity, sporting rules began to intersect with these fundamental principles of EU law, bringing sport within the scope of judicial scrutiny.

One of the earliest cases in which the relationship between EU law and sport was addressed was *Walrave and Koch*.³² In this judgment, the CJEU held that EU law applies to sport insofar as it constitutes an economic activity. Concurrently, the CJEU recognised that certain rules of a “purely sporting”³³ nature may fall outside the scope of EU law where they lack an economic dimension. This distinction between rules governing economic activity and those considered “purely sporting” became an important conceptual framework in early EU sports law. For example, rules relating to the composition of national teams have generally been regarded as purely sporting and therefore outside the scope of EU law.³⁴ By contrast, rules that

²⁹ European Commission, 2007, p. 13.

³⁰ Ibid.

³¹ Weatherill, 2018, Ch 3.

³² *Walrave and Koch v Association Union Cycliste Internationale and Others*, 1974.

³³ Ibid, para. 8.

³⁴ Ibid, para. 8.

affect the employment conditions or mobility of professional athletes may fall within the scope of the Treaties.³⁵

A second landmark judgment that profoundly transformed the relationship between EU law and sport is *Bosman*.³⁶ In this case, Belgian footballer Jean-Marc Bosman challenged rules requiring the payment of a transfer fee for players whose contracts had expired, as well as rules limiting the number of foreign players that clubs could field in European competitions. The CJEU held that these rules were incompatible with the principle of the free movement of workers under (what is now) Article 45 of the TFEU.³⁷ The judgment significantly expanded the CJEU's examination of the relationship between EU law and sport by addressing not only restrictions on free movement but also discrimination on grounds of nationality.³⁸

The consequences of the *Bosman* ruling were far-reaching. First, the requirement to pay transfer fees for players whose contracts had expired was effectively abolished.³⁹ Second, professional footballers who are nationals of EU Member States obtained the right to move freely between clubs within the Union.⁴⁰ In addition, nationality quotas restricting the number of EU players in club competitions were removed.⁴¹ The judgment therefore fundamentally reshaped the organisation of professional football in Europe and demonstrated the significant impact that EU law can have on sporting structures and practices. As has been widely observed in the literature, the *Bosman* ruling effectively 'made EU sports law a live discipline with real practical impact in litigation.'⁴²

While these two judgments constitute landmark decisions in the development of EU sports law, they represent only part of a broader body of jurisprudence addressing the interaction between sporting regulations and EU law. A number of subsequent cases have further clarified the scope and limits of EU law in the sporting context. However, a detailed examination of these additional judgments falls beyond the scope of the present article.

³⁵ See e.g. *ibid*, para. 5.

³⁶ *Union royale belge des sociétés de football association and Others v Bosman and Others*, 1995.

³⁷ *Ibid*, para. 104.

³⁸ Weatherill, 2022, pp. 112 – 140.

³⁹ See e.g. Ericson, 2000.

⁴⁰ See *Union royale belge des sociétés de football association and Others v Bosman and Others*, para. 104.

⁴¹ Gardiner & Welch, 2016.

⁴² Weatherill, 2018, p. 6.

3.2 Sport and Competition Law

Competition law also plays a significant role in the regulation of sport. Sporting organisations frequently operate as monopolistic regulators within their respective disciplines.⁴³ As a result, the rules adopted by such bodies may restrict competition or affect market access for athletes, clubs, and organisers of sporting events.⁴⁴ Consequently, these rules may fall within the scope of EU competition law.

The CJEU addressed this issue in *Meca-Medina and Majcen v Commission*.⁴⁵ The case concerned professional swimmers who challenged anti-doping rules as incompatible with EU competition law. The CJEU held that the mere fact that a rule pursues a legitimate sporting objective does not automatically remove it from the scope of EU competition law. Instead, sporting rules must be assessed in light of their context and effects.⁴⁶ Restrictions may be considered compatible with EU law where they are inherent in the pursuit of legitimate sporting objectives and proportionate to achieving those objectives, such as ensuring fair competition or safeguarding the integrity of sport.⁴⁷

This judgment introduced a more nuanced balancing approach that recognises both the economic and social dimensions of sport. Moving beyond the earlier abstract notion of “purely sporting rules,” the CJEU adopted a more realistic approach, acknowledging that sporting regulations frequently produce economic effects. Accordingly, it emphasised the importance of conducting a case-by-case assessment of the compatibility of sporting practices with EU law.⁴⁸

More recently, the CJEU further clarified the application of EU competition law to sports governance in *European Superleague Company*.⁴⁹ In this judgment, the CJEU examined rules adopted by FIFA and UEFA that granted these organisations exclusive authority to approve new international football competitions. The CJEU found that such regulatory frameworks must comply with principles of transparency,

⁴³ Typical examples are e.g. FIFA and UEFA in football, FIBA in basketball, Union Cycliste Internationale in cycling, International Skating Union etc.

⁴⁴ E.g. *International Skating Union v. European Commission*, 2023.

⁴⁵ *Meca-Medina and Majcen v Commission*, 2006.

⁴⁶ *Ibid*, para. 42.

⁴⁷ *Ibid*, para. 42 et seq.

⁴⁸ Weatherill, 2018, p. 6.

⁴⁹ *European Superleague Company*, 2023.

objectivity, non-discrimination, and proportionality.⁵⁰ In the absence of such safeguards, the exercise of regulatory powers by sporting bodies may infringe EU competition law. Similarly, in *Diarra*⁵¹ the CJEU examined aspects of the international transfer system governing professional footballers. The case challenged certain rules adopted by FIFA that restricted player mobility following the termination of employment contracts. The CJEU held that some of these regulatory mechanisms were incompatible with EU law, as they unjustifiably restricted both competition and the free movement of workers within the internal market.⁵²

Collectively, these judgments illustrate the increasingly significant role played by EU competition law in shaping the regulatory framework of professional sport. While recognising the specific characteristics of sport, the CJEU has consistently emphasised that sporting organisations exercising regulatory powers must comply with the fundamental principles of EU law.

3.3 The “Specificity of Sport”

As Steve Weatherill wrote, ‘sport is special’ – both from the supply and the demand side.⁵³ From the supply perspective, sport depends fundamentally on competition. A central element of its appeal lies in the uncertainty of outcome, which constitutes one of the essential attractions of sporting contests.⁵⁴ Moreover, sports clubs are characterised by a degree of mutual interdependence that differs significantly from the dynamics of ordinary industries.⁵⁵ Clubs must cooperate in order to organise competitions, yet they simultaneously compete against one another within those same structures. This dual relationship of cooperation and competition distinguishes sport from most conventional economic sectors.⁵⁶ On the demand side, a fan cannot just change a club like a supermarket – ‘[s]upporting a club is not consumption, it is passion and it is commitment’.⁵⁷ Moreover, sport is special in its patterns of governance.⁵⁸ Most sports are regulated by a single governing body, which

⁵⁰ Ibid, para. 257.

⁵¹ *FIFA v BZ*, 2024.

⁵² Ibid, para. 159.

⁵³ Weatherill, 2017, Ch 1.

⁵⁴ White Paper, 2007, p. 13.

⁵⁵ See e.g., *European Superleague Company*, para. 235; Weatherill, 2017, Ch 1.

⁵⁶ Weatherill, 2017, Ch 1.

⁵⁷ Weatherill, 2017, p. 1.

⁵⁸ Weatherill, 2017, p. 1.

frequently exercises authority over the organisation of competitions and the adoption of rules, often claiming regulatory competence at a global level.⁵⁹

EU institutions have increasingly acknowledged these unique characteristics. This recognition is commonly expressed through the concept of the “specificity of sport,” which reflects the idea that sport may require certain regulatory arrangements that differ from those found in other economic sectors.

In its 2007 White Paper on Sport, the European Commission distinguished between two dimensions through which the specificity of European sport may be understood.⁶⁰ The first concerns the specificity of sporting activities and sporting rules.⁶¹ This includes features such as separate competitions for men and women, limitations on the number of participants in competitions, and regulatory mechanisms designed to preserve “uncertainty” of results and maintain “competitive balance between clubs” participating in the same competitions.⁶² The second dimension relates to “the specificity of the structure of sport”.⁶³ This encompasses “the autonomy and diversity of sporting organisations, (the) pyramidal structure of competitions (linking) grassroots (and) elite levels, (...) solidarity mechanisms between (...) different (tiers) (...) of sport, the organisation of sport on a national basis, and the principle of a single federation (governing each) sport”.⁶⁴

At the same time, it is important to recognise that ‘sport is not *that* special’.⁶⁵ Despite its distinctive characteristics, sport still shares many features with ordinary economic sectors, particularly where professional sport involves significant commercial activities. The central question therefore concerns how special sport truly is and to what extent it should be granted regulatory autonomy, the so-called ‘sporting autonomy’, within the EU legal order.⁶⁶ Even after the introduction of Article 165 of the TFEU, the concept of the specificity of sport remains somewhat indeterminate. The Treaty refers to the specific nature of sport, yet it does not

⁵⁹ Weatherill, 2017, p. 1.

⁶⁰ European Commission, 2007, p. 13.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Weatherill, 2017, p. 2.

⁶⁶ Weatherill, 2017, p. 7.

provide a precise definition, leaving the concept as a relatively open and evolving notion within EU law.⁶⁷

3.4 The Practical Reality

In practice, the EU's engagement with sport has been driven primarily by applying internal market rules rather than by the explicit competence introduced by Article 165 of the TFEU. Consequently, the development of sports governance in Europe has largely occurred under the "shadow" of EU law.⁶⁸ Sporting organisations are therefore required to ensure that their regulatory frameworks comply with fundamental principles of EU law, particularly those relating to the free movement of workers, the freedom to provide services, and EU competition law.

Concurrently, the influence of the EU in the field of sport has gradually expanded, particularly in response to the increasing commercialisation and globalisation of the sports sector. This evolution is also reflected in the growing number of policy initiatives adopted by EU institutions. One of the most significant policy documents in this area is the 2007 White Paper on Sport⁶⁹ adopted by the European Commission. In its societal chapter, the White Paper emphasised the importance of mobilising specific EU programmes and financial instruments to support initiatives in the field of sport, thereby recognising the broader social and economic role of sporting activities.

Building upon this initiative, the Commission published in 2011 the Communication on Developing the European Dimension in Sport,⁷⁰ which further elaborated the EU's policy approach in this field. The communication highlighted the importance of integrating sport into a range of other policy areas, including education, health, social inclusion, and regional development. It also emphasised that the EU's Structural Funds could support investments related to sport, provided that such investments were consistent with the broader objectives and priorities of the respective funding instruments.

⁶⁷ Weatherill, 2014, pp. 507-525; Meredith & García, 2023, pp. 17 – 44.

⁶⁸ Weatherill, 2022, p. 114.

⁶⁹ European Commission, 2007.

⁷⁰ Opinion of the European Economic and Social Committee, 2011.

Subsequent EU policy initiatives have continued to reinforce the role of sport within the broader framework of EU action. The EU Work Plan for Sport 2011–2014⁷¹ identified several priority areas aimed at strengthening the sports sector, including the sustainable financing of grassroots sport and improved governance structures. Later, the Council adopted conclusions in 2018 acknowledging the socio-economic benefits generated by the sports sector and inviting the European Commission, together with the Member States and other EU institutions, to enhance cooperation in order to maximise the potential of sport to contribute to regional development.⁷²

More recent policy initiatives have also addressed the concept of the European Sport Model. In a 2021 resolution, the European Parliament observed that the EU Work Plan for Sport 2021–2024 placed the European Sport Model within the priority area of protecting integrity and values in sport.⁷³ Continuing this policy trajectory, the EU Work Plan for Sport 2024–2027 identifies as one of its objectives the support and further exploration of the key features of the European Sport Model, while encouraging ongoing discussions among stakeholders regarding its future development.⁷⁴

Taken together, these initiatives illustrate the gradual expansion of EU engagement with sport. Although the Union's formal competence remains limited, EU institutions have increasingly utilised policy coordination, funding programmes, and regulatory oversight through internal market law to shape the development of sport within the EU.

4 What the EU Should Do

4.1 Recent EU Initiatives

The limited competence conferred on the EU by Article 165 of the TFEU raises an important normative question: whether the Union should assume a more active role in the regulation and governance of sport. One of the strongest arguments for greater involvement of the EU in the governance of sport concerns the limitations

⁷¹ Resolution of the Council and of Representatives of the Governments of the Member States, 2011.

⁷² Conclusions of the Council and the Representatives of the Governments of the Member States, 2018.

⁷³ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the European Union Work Plan for Sport (1 January 2021 – 30 June 2024), 2020.

⁷⁴ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the European Union Work Plan for Sport (1 July 2024 – 31 December 2027), 2024, para 15.

and the failure of self-regulation within the sports sector.⁷⁵ Traditionally, sport has been governed by private sporting organisations that exercise significant regulatory autonomy over competitions, disciplinary procedures, and commercial arrangements. However, this model of governance has increasingly been criticised for insufficient transparency and weak accountability mechanisms.⁷⁶ Scholars and policy-makers have therefore characterised aspects of contemporary sports governance as reflecting a model of “poor governance.”⁷⁷

A number of recent controversies have highlighted these concerns. Allegations of corruption within international sporting federations,⁷⁸ instances of financial mismanagement, and opaque procedures surrounding the selection of host cities for major sporting events have drawn attention to structural deficiencies in sports governance.⁷⁹ Broader societal concerns also have emerged. Major sporting events have raised questions relating to the protection of human rights, the welfare of athletes is often inadequately safeguarded, and women remain significantly underrepresented in decision-making positions within many sports organisations.⁸⁰

Against this background, public authorities may need to assume a more active role in ensuring that sport operates in accordance with fundamental principles of fairness, integrity, and good governance. Reflecting these concerns, the Council reaffirmed in 2021 the importance of safeguarding the European Sports Model, highlighting persistent governance shortcomings such as limited financial transparency, increasing commercial influence, and insufficient stakeholder representation within sports organisations.⁸¹

These concerns have continued to shape policy discussions at the European level. In February 2024, European sports ministers adopted a declaration supporting stronger governance standards in sport, emphasising the need for enhanced transparency, democratic accountability, integrity, and broader stakeholder

⁷⁵ Exner, Weatherill & Zgliniski, 2025, p. 4.

⁷⁶ See Exner, Weatherill & Zgliniski, 2025, p. 1.

⁷⁷ See Exner, Weatherill & Zgliniski, 2025.

⁷⁸ Conclusions of the Council and of the Representatives of the Governments of the Member States Meeting within the Council on Combating Corruption in Sport, 2019.

⁷⁹ See e.g., European Parliament, 2022.

⁸⁰ See Exner, Weatherill & Zgliniski, 2025, p. 1.

⁸¹ Resolution of the Council and of the Representatives of the Governments of the Member States Meeting within the Council on the Key Features of a European Sport Model, 2021.

participation.⁸² They emphasised that they ‘promote values in sport and sport organisations, governed in compliance with the principles of democracy, transparency, integrity, solidarity, gender equality, openness, accountability, accessibility, social responsibility and respect for fundamental and human rights’.⁸³ The ministers also invited the European Commission “to reflect on appropriate ways to pursue the 2021 Council Resolution regarding the safeguarding of the openness of competitions, sporting merit, integrity, solidarity and values in sport”.⁸⁴

In this context, several scholars have argued that the time may be ripe for a more comprehensive EU regulatory framework. In particular, Jan Exner, Steve Weatherill, and Jan Zgliniski contend that the current momentum for reform presents an opportunity to strengthen EU involvement in the governance of sport. They have proposed the adoption of a European Sports Act, arguing that the EU may represent ‘the best available actor to regulate the sector,’ given its capacity to coordinate regulatory standards across Member States and to address cross-border issues affecting professional sport.⁸⁵

As it is well known by now, such harmonisation measures are expressly banned by Article 165 TFEU. In exploring potential legal bases for such initiatives, however, these authors suggest that Article 114 of the TFEU could serve as a possible foundation for the European Sports Act. Article 114 of the TFEU, which enables the adoption of measures aimed at the approximation of laws necessary for the functioning of the internal market, has previously been used to regulate sectors characterised by significant cross-border economic activity. Similarly, also the European Parliament, in its 2025 Resolution on the Role of EU Policies in Shaping the European Sport Model, suggests that Article 114 of the TFEU could potentially serve as a legal basis for certain regulatory measures affecting sport.⁸⁶ The following section explores whether there is normative case for such legislative activity underpinned by values governing sport.

⁸² Déclaration des ministres des sports européens pour un modèle sportif basé sur la solidarité, le mérite sportif et l’impact sociétal du sport (8 February 2024). Retrieved from: <https://www.sports.gouv.fr/declaration-des-ministres-des-sports-europeens-pour-un-modele-sportif-base-sur-la-solidarite-le> (accessed: March 8, 2026).

⁸³ Ibid, pt. 1.

⁸⁴ Ibid, pt. 7.

⁸⁵ See Exner, Weatherill & Zgliniski, p. 1.

⁸⁶ European Parliament Resolution on the Role of EU Policies in Shaping the European Sport Model, 2025.

4.2 Values Underpinning EU Competence in Sport

Although the Treaty framework assigns the EU primarily a supporting and coordinating role in the field of sport, the sector nonetheless contributes significantly to the Union's broader strategic objectives, including solidarity, social cohesion, and economic prosperity.⁸⁷ The European Commission has repeatedly emphasised this societal dimension, noting that sport promotes values such as team spirit, solidarity, tolerance, and fair play.⁸⁸ In this way, sport contributes to individual development and fulfilment while encouraging the active participation of EU citizens in society, thereby fostering active citizenship.⁸⁹ At the same time, the Commission has recognised that contemporary sport faces a number of significant challenges, including increasing commercial pressures, the exploitation of young athletes, doping, racism, violence, corruption, and money laundering.⁹⁰

It is agreed that reliance on soft-law instruments alone is unlikely to be sufficient to address these challenges effectively. While policy coordination, recommendations, and funding initiatives remain important tools of EU action, the increasing complexity and commercialisation of modern sport may require more structured regulatory responses. Concurrently, any potential regulatory measures adopted at the European level must remain firmly grounded in the values reflected in the Treaty framework, which emphasise the social and educational functions of sport, fairness and openness in competitions, and the protection of athletes. These Treaty-inspired values therefore provide an essential normative framework for guiding the development of EU action in the field of sport.

These values are reflected in recent EU policy initiatives, including the EU Work Plan for Sport 2024–2027 and the broader concept of the European Sport Model. In 2021, the Council, under the Slovenian Presidency, adopted a resolution on the key features of a European Sport Model. In this resolution, the Council emphasised the importance of a “values-based sport model”, calling for the promotion of solidarity, openness of competitions, priority for sporting merit, and respect for fundamental and human rights. The resolution further highlighted that sport should

⁸⁷ European Commission, 2007, p. 2.

⁸⁸ European Commission, 2007, p. 2.

⁸⁹ See also *TopFit*, paras. 32–34.

⁹⁰ European Commission, 2007, p. 2.

be grounded in values such as good governance, integrity, solidarity, safety, and the health and well-being of athletes.⁹¹

The European Parliament has also addressed the role of the Union in shaping and safeguarding this model. In its resolution on the European Sport Model, the Parliament emphasised several priorities, including strengthening financial solidarity within sport, ensuring transparency and accountability in governance structures, promoting gender equality, particularly in leadership positions,⁹² and safeguarding the health, safety, and welfare of athletes. It further stressed that it is ‘of overriding importance that values-based organised sport preserves the integrity of sport, adheres to good governance principles, respects national, EU and international law and maintains the level-playing field necessary to effectively implement the solidarity values between all actors’.⁹³

Collectively, these initiatives demonstrate that EU engagement with sport, although limited in formal competence, is increasingly guided by a comprehensive framework of normative values reflecting the social significance and growing economic and political importance of sport within the Union. Any expansion of EU involvement in this field must therefore remain grounded in the values reflected in the Treaty framework. As emphasised in the EU Work Plan for Sport 2021–2024, a central objective of EU policy is to strengthen an integrity- and values-based approach to sport within the Union.⁹⁴

A commitment to a broad set of values underpinning European sport has also been reaffirmed within the framework of the Council of Europe, which is another regional organisation in Europe, different from the EU. However, all EU Member States are also members of the Council of Europe. In September 2023, the Committee of Ministers adopted the Declaration on Sport Integrity, which recognises the importance of sport for society and its contribution to promoting the organisation’s core values: human rights, democracy, and the rule of law.⁹⁵ With regard to sports

⁹¹ Press release available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/11/30/sport-council-resolution-stresses-key-features-of-values-based-sport-model/> (accessed: March 8, 2026).

⁹² Equality between women and men is promoted in accordance with Article 157(3) of the TFEU and the Charter of Fundamental Rights.

⁹³ Resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council on the key features of a European Sport Model, 2021, para. 15.

⁹⁴ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the European Union Work Plan for Sport (1 January 2021 – 30 June 2024), 2020, para. 9.

⁹⁵ Declaration by the Committee of Ministers on Sport Integrity, 2023.

governance, the declaration promotes ‘transparency, accountability, democracy and ethical behaviour in sport, including the establishment of robust governance systems, conflict-of-interest policies, whistle-blower protection mechanisms, effective investigation and prosecution of corruption, manipulation of competitions, violence and other infringements of human rights and the rule of law in the sport context.’⁹⁶ The declaration also recalls Recommendation CM/Rec(2021)5 on the Revised European Sports Charter, which promotes a values-based approach to sport and defines sport integrity as encompassing personal, competitive, and organisational integrity, the pursuit of which should involve all stakeholders.

A first core value underpinning European sport is fairness and openness. These ‘guiding principles of interpretation’⁹⁷ are already reflected in Article 165 of the TFEU, which emphasises promoting fairness and openness in sporting competitions (Article 165(2) of the TFEU). Sporting activities should therefore be conducted on fair and transparent terms, ensuring equal opportunities for participants and safeguarding the integrity of competitions. Openness also relates to the accessibility of sporting structures and competitions, including the mobility of athletes within the internal market. Measures designed to safeguard fairness include transparent disciplinary procedures, applying sporting regulations consistently, and protecting athletes’ rights.

In this respect, the jurisprudence of the CJEU has played a crucial role in clarifying the relationship between sporting rules and fundamental principles of EU law. The CJEU has emphasised that sporting rules which restrict economic freedoms may nevertheless be permissible where they are inherent in the organisation of sport and proportionate to legitimate objectives, as confirmed in *Meca-Medina and Majcen v Commission*. These principles closely align with the Union’s broader commitment to equality and prohibiting discrimination, including discrimination on grounds of nationality.

Closely linked to fairness and openness is the principle of cooperation. The governance of sport in Europe traditionally operates through a multi-level structure involving international federations, national sporting bodies, public authorities, and

⁹⁶ Ibid. Retrieved from: <https://www.coe.int/en/web/sport/-/the-committee-of-ministers-adopts-a-declaration-on-sport-integrity> (accessed: March 8, 2026).

⁹⁷ Weatherill, 2010, pp. 11 – 17.

European institutions. EU policy therefore emphasises cooperation among these actors, encouraging coordination between Member States and sporting organisations while respecting the autonomy of sport. This approach reflects the principle of subsidiarity, which seeks to balance national and organisational autonomy with the need for coordination at the European level in areas where common challenges arise.

Protecting athletes and safeguarding their welfare have also become increasingly prominent priorities within EU sports policy. Contemporary sport faces a range of integrity-related risks, including doping, match-fixing, trafficking of young athletes, and various forms of abuse or exploitation. Addressing these risks requires effective regulatory safeguards and coordinated policy responses. EU initiatives therefore increasingly emphasise athlete welfare, ethical governance, and the integrity of competitions.⁹⁸ These concerns are closely connected to the requirement to protect fundamental rights within the EU legal order, including respect for human dignity and the protection of the rights of the child as recognised in the EU Charter of Fundamental Rights (Articles 1 and 24 of the EU Charter). In this context, it has been argued that legal and policy developments in sport should also consider children's rights as articulated in the UN Convention on the Rights of the Child.⁹⁹

Sport also plays an important role in promoting social inclusion, integration, and equal opportunities. Participation in sport enables individuals and communities from diverse social and demographic backgrounds to interact and engage collectively, thereby contributing to social cohesion and well-being. EU policy emphasises that sport should be accessible to all citizens regardless of gender, race, age, disability, religion or belief, sexual orientation, or socio-economic background. The European Commission has repeatedly condemned manifestations of racism, xenophobia, and discrimination in sport, stressing that such practices are incompatible with the fundamental values on which the Union is founded.¹⁰⁰

The jurisprudence of the CJEU has also addressed discrimination in sport. In *Asociația ACCEPT*, statements made by the patron of a professional football club indicating that he would never employ a homosexual player were found capable of constituting discrimination under EU law.¹⁰¹ The CJEU held that discrimination

⁹⁸ European Commission, 2007, p. 7.

⁹⁹ Lee Ludvigsen & Byrne, 2026.

¹⁰⁰ European Commission, 2007, p. 7.

¹⁰¹ *Asociația ACCEPT*, 2013.

may be established even in the absence of an identifiable victim and confirmed that Directive 2000/78/EC applies to recruitment conditions in the field of sport in the same way as in other areas of employment.¹⁰² The CJEU further recognised that non-governmental organisations may have standing to challenge discriminatory practices even where no specific victim has been identified.¹⁰³

Accessibility and inclusion for persons with disabilities represent another important dimension of EU sports policy. Protection against disability discrimination forms part of the Union's broader equality framework. Article 21 of the EU Charter of Fundamental Rights prohibits discrimination on the basis of disability, while Article 26 recognises the right of persons with disabilities to benefit from measures designed to ensure independence, social and occupational integration, and participation in community life, including participation in sport. Moreover, the UN Convention on the Rights of Persons with Disabilities (CRPD),¹⁰⁴ to which both the EU and its Member States are parties, explicitly recognises the right of persons with disabilities to participate in cultural life, recreation, leisure, and sport on an equal basis with others.

To this end, the European Commission encourages Member States and sporting organisations to adapt sports infrastructure and facilities to ensure accessibility for persons with disabilities.¹⁰⁵ Public authorities at national, regional, and local levels are therefore encouraged to ensure that sports venues, training facilities, and related infrastructure are designed in a manner that enables inclusive participation. Such initiatives reflect the EU's broader commitment to equality and social inclusion.

Transparency, accountability, and democratic participation in sports governance are equally essential for maintaining public trust in the organisation of sport. Concerns about financial mismanagement, corruption, and opaque decision-making processes have highlighted the need to strengthen good governance within sporting organisations. EU policy therefore places increasing emphasis on promoting transparency, accountability, and stakeholder participation in sports governance

¹⁰² *Asociația ACCEPT*, 2013, paras. 36-37.

¹⁰³ *Asociația ACCEPT*, 2013, para. 37.

¹⁰⁴ Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> (accessed: March 8, 2026).

¹⁰⁵ European Commission, 2007, p. 7.

structures. These governance principles are widely regarded as essential components of a credible and sustainable European sports system.

Beyond its internal societal role, sport also has the potential to contribute to the Union's external relations.¹⁰⁶ Sport can function as an instrument of diplomatic engagement, development cooperation, and public diplomacy. Through concrete initiatives, sport can support education, public health, intercultural dialogue, development, and peace-building efforts.¹⁰⁷ The EU therefore seeks to integrate sport into broader development and cooperation policies, creating synergies with programmes implemented by international organisations, Member States, local authorities, and private actors. An illustrative example is the memorandum of understanding concluded in 2006 between the European Commission and FIFA, which aimed to promote football as a tool for development in African, Caribbean, and Pacific countries.¹⁰⁸

Environmental sustainability has also emerged as an increasingly important value in the governance of sport. Sporting activities, infrastructure, and major sporting events can generate significant environmental impacts, including greenhouse-gas emissions, energy consumption, waste generation, and pressure on land and water resources. EU policy therefore encourages the adoption of environmentally responsible practices in managing sports facilities and organizing sporting events. European sporting organisations and event organisers are increasingly expected to integrate environmental considerations into their operations in order to ensure that sport contributes to broader sustainability goals.¹⁰⁹

Finally, the CJEU has itself recognised the relevance of these underlying values in the interpretation of EU law as applied to sport. In *European Superleague Company*, for example, the CJEU acknowledged that rules designed to ensure that participation in competitions is based on sporting merit and equal opportunities may pursue legitimate objectives. Moreover, it accepted that rules on prior authorisation may be motivated by the pursuit of legitimate objectives including respect for the principles, values, and rules of the game which underpin professional football.¹¹⁰ Thus, “it may

¹⁰⁶ European Commission, 2007, p. 3.

¹⁰⁷ European Commission, 2007, p. 9.

¹⁰⁸ European Commission, 2007, p. 9.

¹⁰⁹ European Commission, 2007, p. 10. See also, Sport's contribution to the European Green Deal A sport sector playbook Green Sport Expert Group, 2023.

¹¹⁰ *European Superleague Company*, 2023, paras. 143, 144, 176; see also Exner, Weatherill & Zgliniski, 2025, p. 19.

be lawful to act to suppress a competition which is not based on access via sporting merit”¹¹¹, if this is done in a transparent, objective, and non-discriminatory manner.

These developments illustrate that the EU’s engagement with sport is increasingly structured around a coherent set of normative principles, reflecting both the social importance of sport and its growing economic and regulatory significance within the EU. They serve not merely as aspirational objectives but as essential guideposts for any intervention or regulatory measure in the sector.

5 Conclusion

The EU’s engagement with sport demonstrates a juxtaposition between its limited formal competence under Article 165 of the TFEU and the growing economic and societal significance of the sector. While soft-law instruments and funding programmes have traditionally guided EU action, contemporary challenges, including governance shortcomings, integrity risks, and the protection of athletes, highlight the need for a more structured approach that remains consistent with Treaty-inspired values.

These values, i.e. fairness, openness, cooperation, inclusion, and the safeguarding of athletes’ welfare, must underpin any future policy or regulatory measures. Embedding these principles ensures that sport not only contributes to economic and market objectives but also reinforces social cohesion, ethical governance, and the broader mission of the EU.

Legal Acts, Case-law

Asociația ACCEPT, case no. C-81/12, EU:C:2013:275.

Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, pp. 391–407.

Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, pp. 47–390.

Consolidated version of the Treaty on European Union, OJ C 202 7.6.2016, p. 13.

European Superleague Company, case no. C-333/21, ECLI:EU:C:2023:1011

FIFA v BZ, case no. C-650/22, ECLI:EU:C:2024:824.

International Skating Union v. European Commission. case no. C-124/21 P, ECLI:EU:C:2023:1012.

Meca-Medina and Majcen v Commission, case no. C-519/04 P, ECLI: EU:C:2006:492.

¹¹¹ Exner, Weatherill & Zgłinski, 2025; and Political Science, Law School (<https://researchonline.lse.ac.uk/id/eprint/128047/3/ssrn-5235136.pdf>) p. 19.

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SYSTEMS APPROACH TO SPORTS EVENTS: FROM EVENT ANIMATION TO LEGAL REGULATION

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Sports events represent a complex tourism system that includes various interdependent and intertwined relationships between organisers, participants, the local community and legal regulations. The paper researches sports events from a systems-methodological perspective, where sports events are not treated as isolated phenomena, but as dynamic systems with lively relationships between various stakeholders. The paper analyses three dimensions of sports events in tourism: (1) the animation potential of sports activities, (2) the systemic modelling of sports events using the methodology of system dynamics, and (3) the legal and organisational framework that ensures the safety, responsibility and sustainability of sports event tourism. Using qualitative modelling (causal loop diagram (CLD)) and systems thinking, the article proposes a multi-criteria decision model as a concept for planning sports events, while also indicating the possibility of superimposing the model onto a so-called simulation quantitative model.

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1 Introduction

Sports events have become one of the fastest growing segments of the global tourism economy, with significant economic, social and cultural implications for host destinations.¹ As social phenomena, sports events transcend the competitive dimension and establish networks of relationships between various stakeholders – from organisers, sponsors and the media to visitors, the local population and regulatory bodies.²

Contemporary scientific literature increasingly emphasises the need for an interdisciplinary understanding of sports events that combines economic, sociological, legal and organisational perspectives.³ Nevertheless, there remains a lack of systemic-theoretical approaches that comprehensively capture the complexity of sports events like tourism systems. Traditional linear models of planning and management do not take into account the feedback loops, emergent properties and contextual dependencies that are characteristic of all social, soft and technical systems.⁴ The paper addresses the methodological gap by using a systems approach based on the epistemological principles of complex systems theory⁵ and the methodological tools of system dynamics.⁶ The research objectives of the paper are: *to present the animation potential of sports activities* in the context of tourism offerings and *to identify the factors* of successful event animation; *to develop a conceptual model of the system dynamics* of sports events that includes economic, social, environmental and legal dimensions; to provide a legal and organisational framework for sports events; *to propose a systems approach* to the planning and management of sports events in tourism.

Methodologically, the contribution is based on qualitative system modelling⁷, analysis of legal texts⁸ and synthesis of empirical case studies from international literature. The epistemological basis of the research is a constructivist understanding

¹ Getz & Page, 2016; Gibson, Kaplanidou & Kang, 2012.

² Chalip, 2006; Müller, 2015.

³ Horne, 2007; Preuss, 2007.

⁴ Sterman, 2000; Meadows, 2008.

⁵ Capra & Luisi, 2014; Morin, 2008.

⁶ Forrester, 1961; Richardson, 2011.

⁷ Lane, 2000; Wolstenholme, 1999.

⁸ Finnis, 2011.

of systems, which considers the role of the observer in constituting systemic boundaries and relationships.⁹

The paper is divided into eight parts. The second part discusses the theoretical foundations of a systems approach to sports events; the third part presents the animation potential of sport in tourism; the fourth part presents the methodology of system dynamics and develops a conceptual model of sports events; the fifth section discusses the legal and organisational framework; the sixth section presents the practice and proposes a systems approach; the conclusion summarises the findings and areas for future research.

2 Theoretical Framework: a Systems Approach to Sports Events

2.1 Epistemological Foundations of Systems Theory

Systems approach to understanding sports events is based on theoretical insights from general systems theory,¹⁰ cybernetics¹¹ and complexity theory.¹² The central epistemological principle advocated by this perspective is the idea that the whole is not divisible into the sum of its parts, but has emergent properties that only appear at the system level when all parts interact.¹³ In the context of sports events, this means that the "holistic" impact of the event – economic, social, cultural, environmental – is not a simple aggregation of individual components (competition, infrastructure, promotion, etc.) but rather the result of complex interactions between these components and their broader social context.¹⁴ As Jackson (2019) notes, sports events are "complex adaptive systems" that evolve over time and adapt to changing environmental conditions. An important epistemological insight from the constructivist tradition of systems theory is that system boundaries are not objectively given but are constructed by the observer according to their research interest and perspective.¹⁵ This has important methodological implications: different stakeholders (organisers, tourists, local residents, regulators) may define the "system"

⁹ von Foerster, 2003; Maturana & Varela, 1987.

¹⁰ von Bertalanffy, 1968.

¹¹ Wiener, 1948; Ashby, 1956.

¹² Holland, 1995; Kauffman, 1993.

¹³ Checkland, 1999; Jackson, 2003.

¹⁴ Preuss, 2015; Hede, 2007.

¹⁵ Luhmann, 1995; Maturana & Varela, 1987.

of a sports event differently, leading to potentially conflicting interpretations of its purpose, value and effects.¹⁶ In the Slovenian context, this perspective is complemented by dialectical systems theory,¹⁷ which emphasises the law of requisite holism as a fundamental principle for the comprehensive treatment of complex phenomena.

2.2 Systems Complexity of Sports Events

Sports events exhibit several characteristics of complex systems as defined in the literature on complexity.¹⁸ *Diversity of elements*: Sports events involve various elements – physical (infrastructure, venues), organisational (committees, volunteers), technological (information systems, safety equipment), social (participants, spectators, media) and institutional (rules, regulations, norms).¹⁹ *Non-linearity and feedback loops*: Relationships are not only linear cause-and-effect, but also involve positive and negative feedback loops. For example, a successful sports event attracts more visitors, which increases revenue and enables better infrastructure, which in turn increases the attractiveness of the event (positive loop); at the same time, too many visitors can cause congestion, dissatisfaction and environmental degradation, which reduces the quality of the experience and future participation (negative loop).²⁰ *Emergence*: The effects of a sports event – e.g. improved international recognition of the destination, increased sense of community among the local population, changes in the spatial structure of the city – are emergent properties that cannot be predicted from the properties of individual elements.²¹ *Adaptability*: Sports events adapt to changing environmental conditions – economic crises, technological innovations, changes in public values (e.g. greater emphasis on sustainability), public health crises.²² *Contextual dependence*: The effects of sports events are highly dependent on the local context – economic development, political arrangements, cultural norms, existing tourism infrastructure. The same event can have very different effects on different destinations.²³

¹⁶ Getz, 2012.

¹⁷ Mulej, Hrast & Dyck, 2014.

¹⁸ Mitchell, 2009; Page, 2015.

¹⁹ Masterman, 2009; Parent & Smith-Swan, 2013.

²⁰ Dwyer, Forsyth & Jago, 2006.

²¹ Chalip, 2014; Kaplanidou & Vogt, 2007.

²² Parnell, Widdop & Groom, 2021.

²³ Müller, 2015; Smith, 2012.

2.3 Systems Thinking: from Linear to Systems Perspective

Traditional analytical (reductionist) approaches to sports event management are based on Cartesian reductionism: the problem is broken down into smaller components, each component is considered separately, and then the solutions are reassembled into a whole.²⁴ This approach is suitable for problems where the relationships between components are stable, linear and well understood.²⁵ Sports events, which are complex, intertwined systems, present problems where there is no clear definition of the problem, the solution has unexpected side effects, and each intervention changes the system itself.²⁶ Such problems require a systems approach that:

- recognises interconnections: instead of treating individual elements in isolation, it analyses the relationships and mutual influences between elements;
- takes feedback loops into account: recognises the dynamics of the system, that effects feed back on causes, creating changing patterns of system behaviour over time;
- recognises delays: understands that months or years may elapse between an action and its effect, making causal attribution difficult;
- explores unintended consequences: takes into account that interventions in one part of the system can have unexpected effects in other parts;
- thinks in time horizons: distinguishes between short-term and long-term effects and between different time scales.²⁷

3 The Animation Potential of Sports Activities in Tourism

3.1 Definition of Event Animation

Event animation is defined in scientific literature as "a system of activities that encourage the active participation of tourists and improve the quality of their tourist experience".²⁸ Cerovič (2008) distinguishes between three basic functions of

²⁴ Senge, 1990.

²⁵ Rittel & Webber, 1973.

²⁶ Churchman, 1967; Conklin, 2006.

²⁷ Meadows, 2008; Sterman, 2000.

²⁸ Mieczkowski, 1990, p. 459.

animation: recreational (relaxation, entertainment), educational (acquiring new knowledge and skills) and socialisation (establishing social contacts). Event animation is thus defined as a specific form of event animation, where the core activity is sports-related.²⁹ In the context of sports events, event animation can be understood more broadly – not only as organised sports and recreational activities for tourists, but as a whole system of experiences surrounding a sports event and increasing its value for various stakeholders.³⁰ This includes: *Active participation*: direct participation in sports activities – as competitors, recreational athletes or participants in accompanying activities.³¹ *Passive participation*: watching a sports event as a spectator in an environment that allows for an intense emotional experience and a sense of community.³² *Complementary activities*: a variety of accompanying activities – social events, cultural events, gastronomic experiences, educational workshops – that enrich the overall experience.³³

3.2 Typology of Sports Events in Tourism

Sports events in tourism are a phenomenon that requires typological differentiation. Getz (2008) proposes a classification based on size and effects (Table 1).

Table 1: Typology of sports events by size and impact (according to Getz, 2008)

Type of event	Characteristics	Examples	Scope of effects
Mega-events	Global reach, extensive infrastructure investments, and billions of viewers	Olympic Games, World Cup	Geopolitical, long-term structural changes
Hallmark events	Inseparably linked to the identity of the destination, recurring periodically	Wimbledon, Tour de France, F1 Monte Carlo	Heritage building, long-term recognition
Regional and local events	Domestic and regional market, direct effects on the local community	Marathons, cycling races, amateur tournaments	Local economy, social cohesion

Source: own, according to Getz, 2008

Table 1 presents the types of events, ranging from mega to local. *Mega-events*

²⁹ Ivkov-Džigurski, 2012.

³⁰ Funk & James, 2006.

³¹ Green & Chalip, 1998.

³² Wann, 2006; Smith & Stewart, 2007.

³³ Brown et al., 2010.

These are globally resonant sports events with enormous media coverage, billions of viewers and very high infrastructure investments (stadiums, transport, accommodation). Typical examples are the Olympic Games and the World Cup, which often trigger geopolitical debates and lead to long-term structural changes in a city or country (e.g., new transport networks, regeneration of city districts). *Hallmark events* are closely linked to the identity of a particular destination and are repeated periodically, so that they almost become their symbol. These include, for example, Wimbledon, the Tour de France or the Formula 1 race in Monte Carlo. Their main effect is to build sporting and cultural heritage and long-term recognition of a place or region, often through iconic images and tradition. *Regional and local events*: on the other hand, mainly target the domestic and regional market and have a direct impact on the local community (participants, visitors, local providers). Examples include city marathons, smaller cycling races or amateur tournaments. Their impact is reflected in the strengthening of the local economy (spending on accommodation, catering, services) and in the promotion of social cohesion and a sense of community.

An alternative typology is based on the nature of the sport (Table 2).

Table 2: Typology of sports events by nature of sport

Category	Description	Examples
Competitive sports	Professional competition with a clear hierarchy of winners	Championships, cups, leagues
Recreational sports	The primary purpose is participation, not competition	Mass runs, cycling tours, hiking festivals
Extreme/adrenaline sports	Element of challenge and risk	Mountain biking, paragliding, triathlons
Heritage/traditional sports	Preservation and revitalisation of traditional sports practices linked to cultural identity	Folk games, traditional martial arts, historical reenactments

Source: own

Table 2 is based on existing discussions about types of sports tourism and sports events and on the concept of heritage sports events. It presents a typology of sports events according to their primary purpose, form of participation and cultural significance. *Competitive sports*: these are events where the focus is on professional or

highly organised competitions, with clearly defined winners and a hierarchy of results. Typical examples are championships, cups and leagues in various sports. Such events are highly regulated, linked to federations and ranking systems, and aim for sports success, prestige and media visibility. *Recreational sports*: In recreational sports events, the main focus is on participation, experience and a healthy lifestyle, rather than on results or elite competitiveness. These include mass runs, cycling tours, hiking festivals and similar open-type events. Participants come for the socialising, personal challenge and experience of space, making these events key to promoting an active lifestyle and engaging the wider population. *Extreme/adrenaline sports*: these are events whose central element is challenge, risk and intense experience, often in demanding natural environments. Examples include mountain biking, paragliding, triathlons and various adventure race formats. Participants seek an adrenaline-fuelled experience and to test their own limits, while organisers must pay particular attention to safety, environmental impacts and insurance. *Heritage/traditional sports*: these are intended to preserve and revitalise traditional sports and games practices and are often linked to the cultural identity of a place or community. These include folk games, traditional martial arts, historical reenactments, and other practices that have symbolic and heritage significance. Such events contribute to the intergenerational transfer of knowledge, strengthen local identity, and can act as a bridge between tourism, culture, and sport.

3.3 Factors Influencing the Success of Animation at Sports Events

Empirical research identifies several key factors that influence the success of event animation in tourism (Table 3).

Table 3: Factors influencing the success of event animation in tourism

Factor	Description	Sources
Authenticity of the experience	Locally rooted sports experiences, the incorporation of local traditions	MacCannell, 1973; Chalip & Leyns, 2002
Quality of organization	Precise scheduling, clear communication, efficient logistics	Parent & Smith-Swan, 2013
Infrastructure	Appropriate sports facilities, accessibility, safety equipment, and support services	Kasimati, 2003
Competence of animators	Professional knowledge, teaching skills, communication skills, empathy	Jere Lazanski, 2004; Cerović, 2008

Factor	Description	Sources
Inclusion of different groups	Inclusiveness, programme differentiation, accessibility adaptation	Darcy & Dickson, 2009
Connection with cultural identity	Resonance with local culture, integration into the broader story of the destination	Chalip, 2006; Green & Chalip, 2004

Source: own

Based on Table 3, we can identify the factors that contribute to the success of animation in the design of a sports event. Example: for a triathlon in a coastal town, the organising team can use the success factors as a practical framework for creating a fan zone that truly "comes alive" with visitors and the local community. First, *the authenticity of the experience* is essential. Animation is not just a series of universal games that could take place anywhere but must reflect the place and the people. In the fan zone at a triathlon by the sea, this means that the programme includes local sports customs, traditional games or props – for example, children's "mini regattas" with wooden boats, balance exercises related to the fishing tradition, or short stories about local athletes that the entertainers include in their announcements. Visitors should feel that they are getting to know the destination through entertainment, not just "passing the time" during the competition. The second pillar of success is *the quality of the organisation*. Even the most imaginative content loses its power if visitors cannot find their way around or have to wait in illogical queues. The entertainment programme must have a clear schedule, clearly marked venues and an easy-to-understand route: from the entrance to the fan zone, through the points where they can join in the activities, to the rest areas. In triathlons in particular, it is important to coordinate with the rhythm of the competition – the biggest entertainment activities should not "overshadow" key sports moments, but rather support them, for example, with joint cheering, explanations of what is happening on the course, or "warm-up games" before the first competitors reach the finish line. Behind successful entertainment is also the appropriate *infrastructure*. The cheering area must be safely located in relation to the competition routes; clearly separated from the triathlon transition zones, but at the same time close enough for visitors to feel connected to the event. The area should offer shade, seating, drinking water, toilets and accessible routes for all visitors, including those with reduced mobility. Safety equipment for more dynamic games (e.g., obstacle courses, mini-cycling challenges) should not be an afterthought, but a planned part of the setup. All of this creates a sense of professionalism and care, which increases people's willingness to get

involved. The central human factor is *the animators*. At a sports event, they are much more than just "game leaders" – they are the face of the destination, the first interpreters of the event and often the first source of information for visitors. A well-trained animator knows how to explain the rules of the activity, recognise different levels of physical fitness, motivate reluctant guests and recognise when someone is more inclined to observe than actively participate. It is important that they know the basic facts about the triathlon and the destination so that they can answer questions such as "when will the competitors reach the finish line" or "who are the local favourites". Their empathy and communication skills determine whether a family with small children will stay in the fan zone for an hour or five minutes. *Inclusivity* is also an important element of success. Entertainment at a sports event should not be reserved only for "fit" visitors in sportswear. The programme should include easier activities that children, older people, beginners and those with limitations can join in with – for example, slow skill courses, precision games, creative workshops with a sports theme or seated exercises. This way, the fan zone becomes a place where the community meets, not just where more athletic individuals duplicate their training. For quality entertainment, *a clear story* that connects all the elements is also needed. If the triathlon is presented as a "celebration of movement by the sea", each animation point can carry part of this story: from the morning "warm-up with a view of the sea", through children's activities related to waves and wind, to the evening music programme that rounds off the day. When animators and volunteers consistently use the same key motifs and messages, visitors find it easier to understand why this particular event and location are so special. Finally, successful animation also requires *learning*. After the event, the organising team does not just look at the numbers of participants, but listens to the animators, volunteers and local partners: where was it crowded, where was there a lack of information, which activities were oversubscribed and which were left empty. With such a reflective approach, animation gradually develops from "this year's programme" into a recognisable fixture of the sports event – something that keeps visitors coming back, even if they are not competing, but come "for the atmosphere".

3.4 Animation Potential in Sports Events

The entertainment potential of a sports event can be defined as an emergent property of the system that arises from the interactions between several subsystems: the sports content subsystem, the experiential environment subsystem³⁴, the accompanying activities subsystem, the communication and promotion subsystem, the organisation and management subsystem, and the regulatory framework subsystem. These subsystems are interconnected through a multitude of feedback loops. For example, high-quality sports content attracts more visitors, which increases revenue, which enables greater investment in the experiential environment and ancillary activities, which in turn increases the attractiveness of the event (positive reinforcement loop). At the same time, excessive commercialisation can reduce perceived authenticity, which reduces visitor satisfaction, which in turn reduces future visits and revenues (negative balancing loop). These interdependencies are illustrated in more detail in the causal loop diagram (CLD) in section 4.1.

4 System Dynamics of Sports Events

4.1 System Dynamics Methodology

System dynamics, as developed by Forrester (1961) at MIT, is a methodology for studying and managing complex systems that change over time. It is based on conceptual modelling of structural relationships and feedback mechanisms that generate variable system behaviour.³⁵ System methodology has proven particularly useful in tourism research for understanding nonlinear dynamic processes, as demonstrated by Jere Jakulin (2017) and Richardson (2011). The methodology involves several steps: *Problem definition*: clear formulation of the dynamic problem – e.g. "Why has participation in local sports events declined over the years, despite increased marketing efforts?" *Formulation of a hypothesis*: development of a hypothesis about the structural causes of the problem – which feedback loops, delays and nonlinearities are responsible for the observed variable behaviour? *Construction of a causal loop diagram (CLD)*: visualisation of the hypothetical structure of the system

³⁴ Pine & Gilmore, 1998; Schmitt, 1999.

³⁵ Sterman, 2000.

using a causal loop CLD model of loops that shows the essential variables and the relationships between them (positive and negative influences). *Simulation model design*: translation of the CLD model into a formal simulation model that uses differential equations to represent flows and stocks in the system.³⁶ *Model validation*: testing whether the model reproduces the historical behaviour of the system and whether it behaves sensibly under extreme conditions.³⁷ *Policy analysis*: using the model to test different policies and interventions – which policy leads to the desired results? What are the unintended side effects?³⁸ In the context of sports events, system dynamics is particularly useful for understanding the long-term effects ("legacy") of events, the dynamics of participation and satisfaction, the evolution of tourist destinations, and the mutual influences between different stakeholders.³⁹ Figure 1 presents an example of a model within the framework of system dynamics, namely a conceptual CLD of a sports event.

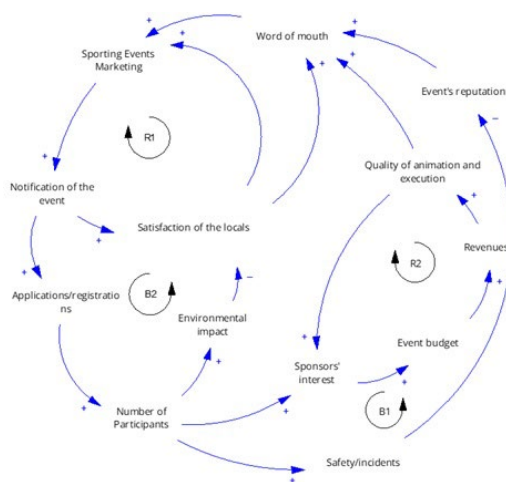


Figure 1: Causal loop model of a sports event in tourism

Source: own

Figure 1 presents a simplified CLD of a sports event, showing the dynamics, interdependence and influences of the elements of a sports event. In order to understand the dynamics that occur in the sports event's environment, we must

³⁶ Pruyt, 2013.

³⁷ Barlas, 1996.

³⁸ Morecroft, 2015.

³⁹ Leopkey & Parent, 2012.

interpret the above model correctly. The marketing of a sports event has a growing (+) impact on awareness of the event, and awareness accelerates (+) registrations for the event. The more registrations there are for the event, the greater (+) the attendance, and the greater the attendance, the greater (+) the possibility of incidents at the event, and incidents or danger reduce the event's reputation. The reputation of the event increases (+) word of mouth, which has a positive (+) effect on the marketing of the event. Since we have one negative (-) loop in this dynamic, we call this loop the B1 balance loop. The second balance loop, B2, is evident in the relationship between environmental pollution and population satisfaction: environmental pollution (-) has a negative effect on population satisfaction (+). The reinforcement loops show the increasing influence between the elements of the event. The more information (+) the local population has about the event, the more satisfied they are, and the more satisfied they are, the greater the word-of-mouth propaganda (+) and the greater (+) the marketing of the event. The second reinforcement loop R2 is evident in high attendance (+), which increases sponsor interest, and with sponsors, the event budget and revenue (+) increase, while at the same time increasing (+) the quality of entertainment events at the event and its execution, which leads to even greater (+) interest from sponsors.

4.2 Dynamics of the Legacy of Sports Events

An important aspect of the system dynamics of sports events is the dynamics of the legacy of the long-term effects of the event on the host destination.⁴⁰ Legacy is not a static result, but a dynamic process that develops through several phases:⁴¹ *Planning and preparation phase* (before the event): initial effects include infrastructure investments, increased employment in construction, improved international recognition of the destination, but also increased public debt and potential emigration of residents due to gentrification. *Implementation phase* (during the event): peak of positive effects – maximum tourist consumption, full employment, sense of pride and community among the local population, global media exposure; but also, peak negative impacts – traffic jams, crowds, increased crime, environmental pressures. *Transition phase* (immediately after the event): "post-event blues" – dramatic decline in tourism activity, unused infrastructure, reduced media attention,

⁴⁰ Preuss, 2007, 2015.

⁴¹ Leopkey & Parent, 2012.

job losses. *Long-term legacy phase* (years after the event): stabilisation of effects – new use of infrastructure, long-term changes in the tourist image of the destination, possible increased tourist flows, but also long-term infrastructure maintenance costs, servicing of public debt. If we think systematically and imagine a CLD model, we could comment that the legacy model of sports events involves several delays: (a) a time lag between investments and effects – infrastructure investments before the event do not have an immediate impact on tourism, but only years after the event;⁴² (b) a delay between negative impacts and reactions – negative impacts can accumulate unnoticed and only manifest themselves years later; (c) a delay between changes in circumstances and the adaptation of organisers.

5 Legal and Organisational Framework for Sports Events

5.1 Complexity of Legal Regulation

The legal regulation of sports events involves the interplay of multiple legal areas and levels of regulation.⁴³ At *the international level*, sports organisations (e.g., the International Olympic Committee, FIFA, UEFA) establish rules that are binding on national federations, clubs, and athletes. This "lex sportiva" acts as a global legal regime that often prevails over national legislation.⁴⁴ At *the supranational level*, e.g. *the EU*, EU law is an important source of legal regulation, influencing sports events through rules on the free movement of workers (athletes as workers), competition law (commercialisation of sports rights), consumer protection and prohibition of discrimination.⁴⁵ At *the national level*, legislation regulates essential areas, including sports law, tax treatment, labour law, health and safety regulations, criminal law (violence at sports events), and the management of public sports facilities.⁴⁶ In the Slovenian legal system, the basic regulations in this area are the Sports Act (ZŠpo-1), which regulates the organisation of sports activities and events, the Public Gatherings Act (ZJZ), which sets out the conditions for organising public events, and the Environmental Protection Act (ZVO-2), which regulates the environmental assessment of the impact of major events. At *the local level*, regulations and decrees

⁴² Baade & Matheson, 2016.

⁴³ Foster, 2006; Gardiner et al., 2012.

⁴⁴ Mitten & Opie, 2010.

⁴⁵ Weatherill, 2011; Parrish, 2003.

⁴⁶ Gardiner et al., 2012.

regulate specific aspects – the use of public spaces, traffic arrangements, opening hours, noise levels, waste.⁴⁷ At *the contractual level*, private contracts between different parties – organisers, sponsors, media, athletes, volunteers – establish specific rights and obligations.⁴⁸

This complexity creates a challenging legal environment where conflicts between different levels of regulation can arise. A systems approach to law and legal regulation requires an understanding of the interrelationships between these different legal regimes and their mutual effects.

5.2 Legal Liability of Organiser

Organisers of sports events bear a wide range of legal responsibilities.⁴⁹ Table 4 summarises the main types of responsibility.

Table 4: Legal liability of sports event organisers

Type of liability	Content	Penalties for violations
Responsibility for safety	Risk assessment, safety plan, medical services, emergency protocols	Civil and criminal liability
Contractual liability	Contracts with contractors, sponsors, media, athletes, and volunteers	Contractual sanctions, damages
Environmental liability	Environmental impact assessment, measures to reduce negative effects	Fines, bans on implementation, and civil lawsuits
Responsibility to the community	Minimising negative impacts on the local population	Ethical and contractual obligations
Anti-discrimination	Equal access regardless of gender, race, age, or disability	Lawsuits, administrative fines

Source: own

In the event of an accident or injury, organisers may be liable under civil law (liability for damages) and even criminal law (in cases of gross negligence). Precedent case law has established the standard of a "reasonably prudent organiser," who is obliged to anticipate reasonably foreseeable risks and take appropriate preventive measures.⁵⁰ Under Slovenian law, the organiser is liable under the general rules of

⁴⁷ Hylton, 2013.

⁴⁸ Beloff, Kerr & Demetriou, 2012.

⁴⁹ Spengler et al., 2009; Cotten & Wolohan, 2012.

⁵⁰ Gardiner et al., 2012.

liability for damages (Obligations Code, OZ) and under the specific provisions of the ZJZ, which prescribes the mandatory provision of safety and order at public events.

5.3 Rights and Protection of Participants

Participants in sports events (competitors, spectators) have several fundamental rights: the right to safety (a safe environment, medical services, protection from violence); the right to information (clear and accurate information about the event, rules, risks, ticket refunds); the right to privacy (in the age of digital technologies and mass video surveillance, organisers must comply with personal data protection rules, in the EU: GDPR); and the right to complain and receive compensation in justified cases.⁵¹

At the same time, participants have an obligation to respect the rules of the event, the instructions of the organisers and to behave respectfully towards other participants and the local community. Violations can lead to exclusion, a ban on future participation or even criminal prosecution (in the case of violence or vandalism).

The legal regulation of sports events can be defined as a systemic process of dynamic balancing between several conflicting objectives: the objective of protecting the public interest versus the objective of enabling private economic activities; the objective of equality versus the objective of sports excellence; the goal of protecting participants versus the goal of self-regulation; the goal of international harmonisation versus the goal of national sovereignty. Legal regulation operates through several regulatory mechanisms (Table 5).

Systems approach to legal regulation recognises that it is impossible to achieve all objectives at the maximum level at the same time – there are compromises and a need for balance. Overly strict safety regulations can narrow the range of possible sports events and limit innovation, while insufficient regulation can lead to accidents and a loss of public trust. It is important to find a flexible balance that adapts to changing circumstances.

⁵¹ Fuller & Drawer, 2004.

Table 5: Legal mechanisms for sports events

Mechanism	Description	Examples
Ex-ante regulation	Preventive mechanisms before problems arise	Permits, standards, insurance
Ex-post regulation	Sanctioning violations after they occur	Civil and criminal liability, fines
Information regulation	Enabling informed decisions by participants	Disclosure obligation, transparency
Self-regulation	Sports organisations' own codes of conduct	Certificates, arbitration mechanisms

Source: own

6 Systems Approach in Practice

Traditional linear approaches to planning and managing sports events are fragmented – different components (marketing, logistics, security, finance) are treated separately, with limited coordination and understanding of the interconnections.⁵² This leads to several problems: sub-optimal optimisation (each sector optimises its own goals without considering the effects on other sectors), unintended consequences (interventions in one sector have unexpected negative effects in others), short-term thinking and reactive management. Systems approach overcomes these limitations by establishing unified management that:⁵³ recognises interdependencies, balances short-term and long-term goals, combines different stakeholder perspectives, and anticipates different effects. We propose a comprehensive, systemic model for sports events that integrates entertainment, economic, social, environmental, and legal aspects (Table 6).

Table 6 presents the phases of the systems approach together with activities, tools and expected results. To support a comprehensive systems approach, we suggest using several analytical tools: CLD diagrams,⁵⁴ stakeholder analysis,⁵⁵ multi-criteria decision analysis – MCDA,⁵⁶ scenario analysis⁵⁷ and simulation modelling using software such as Vensim, STELLA or AnyLogic.⁵⁸

⁵² Parent & Smith-Swan, 2013.

⁵³ Senge, 1990; Sterman, 2000.

⁵⁴ Sterman, 2000; Wolstenholme, 1999.

⁵⁵ Freeman, 1984; Mitchell et al., 1997.

⁵⁶ Belton & Stewart, 2002; Figueira et al., 2005.

⁵⁷ Schoemaker, 1995; van der Heijden, 2005.

⁵⁸ Pruyt, 2013.

Table 6: Phases of the systems approach to sports events

Phase	Activities	Tools	Expected results
1. Systemic diagnosis	Identification of stakeholders, mapping of relationships (cooperation networks), context analysis, and capacity assessment	Stakeholder analysis, CLD, interviews	System map, identified structural causes
2. Vision and objectives	Participatory visioning, definition of measurable goals, and identification of trade-offs	Workshops, MCDA, AHP	Achieved goals, defined compromises
3. System planning	Preparation of a plan for all subsystems, testing with simulations	CLD, simulations (Vensim, STELLA), scenario analysis	Comprehensive event plan
4. Flexible implementation	Implementation with real-time observation, decentralised decision-making	Control panels, indicators	Timely adjustments
5. Evaluation and learning	Economic, social, environmental, cultural evaluation; knowledge sharing	Surveys, data analysis, and comparison with objectives	Insights for future events

Source: own

As a case study, we can use the literature-based example of Triathlon Costa Verde, which is facing declining participation, dissatisfaction among the local community and environmental problems. In the literature, triathlons in coastal cities are analysed through the prism of economic effects, social relations and environmental impacts (coastal ecosystems, traffic, noise), which provides a good empirical background for a systemic diagnosis.⁵⁹ Studies emphasise that triathlons can lead to commercialisation, pressure on local infrastructure, and tensions with the local population, while also having significant economic effects and contributing to destination branding.⁶⁰ The International Triathlon Union and national federations are developing sustainability protocols (certification system, reduction of environmental footprint, stakeholder involvement), which fits well the vision phase, system planning and "green protocol".⁶¹ *Systemic diagnosis*: Due to aggressive marketing, the triathlon in a popular coastal town has become a "must-do" event, with the number of participants growing rapidly, causing congestion, pressure on beaches and the marine environment, more waste and saturation of local infrastructure; local residents experience disturbances (noise, road closures, seasonal

⁵⁹ Avesani, 2023; Chaves-Castro et al., 2025; Pereira et al., 2022; Alguacil et al., 2026.

⁶⁰ Avesani, 2023; Ko & Stewart, 2019; Rinker et al., 2025.

⁶¹ Gray, 2020; Triathlon Canada, 2020; World Triathlon, 2025; Moon et al., 2022.

"overcrowding" of the area).⁶² At the same time, the event is becoming increasingly commercialised (high fees, corporate sponsors), while traditional local participation and volunteering are declining, creating a sense of alienation.⁶³ *Vision and goals:* In coastal cases, participatory approaches are already emerging in which municipalities, tourism stakeholders, athletes and environmental groups are considering reorienting the event towards a "sustainable triathlon" that combines sport, local identity and environmental protection.⁶⁴ Goals such as a 50% reduction in environmental footprint and a 30% increase in local participation can be justified by the triple bottom line concept and recommendations for sports events (environmental, social, economic dimensions).⁶⁵ *Systemic planning:* In practice, tools such as participant limits, sustainable transport, waste reduction, communication with the local community and integration of local providers are already being used in triathlons.⁶⁶ The package of measures (participant limits, green protocol, lower fees for locals, accompanying activities for the community) is in line with trends in green event management in triathlons.⁶⁷ *Evaluation and learning:* Studies point out that making events more sustainable often creates new areas of tension; fewer participants and stricter standards can reduce revenue, requiring innovative ways to find new sources (partnerships, public funding, programme expansion, longer visit durations, etc.).⁶⁸

7 Discussion and Recommendations

7.1 Theoretical Contribution

This paper contributes to the literature on sports events and tourism events in several ways. It provides *epistemological clarification* by presenting the epistemological foundations of a systems approach to sports events, emphasising the constructivist nature of systemic boundaries, the importance of the observer's perspective, and the inevitability of contextual dependence. This goes beyond the predominantly positivist approaches that dominate the literature on event management.⁶⁹ *Integrative theoretical framework:* the literature on sports events is fragmented across disciplines –

⁶² Avesani, 2023; Alguacil et al., 2026; Chaves-Castro et al., 2025.

⁶³ Avesani, 2023; Ko & Stewart, 2019; Rinker et al., 2025.

⁶⁴ Avesani, 2023; Pereira et al., 2022; Pourpakdelfekr & Oboudi, 2022.

⁶⁵ Chaves-Castro et al., 2025; Gray, 2020; Dingle & Mallen, 2023.

⁶⁶ Gray, 2020; Avesani, 2023; Pourpakdelfekr & Oboudi, 2022; Triathlon Canada, 2020.

⁶⁷ Pourpakdelfekr & Oboudi, 2022; Dingle & Mallen, 2023; Rinker et al., 2025.

⁶⁸ Avesani, 2023; Chaves-Castro et al., 2025; Ko & Stewart, 2019; Rinker et al., 2025; Moon et al., 2022.

⁶⁹ Getz, 2012.

economic analyses neglect social and environmental aspects, sociological studies neglect economic logic, and legal analyses are separated from organisational studies. This paper develops an integrative theoretical framework that crosses disciplinary boundaries and shows interconnections. *Methodological novelty*: the use of system dynamics and qualitative causal modelling in the context of sports tourism is still relatively rare. The paper also shows how a systems approach can reveal the structural causes of problems that remain hidden from traditional linear methods. *Definition of animation potential*: the paper offers a new definition of animation potential as an emergent system property, which transcends the traditional understanding of animation as merely a series of organised activities.

7.2 Limitations and Future Research

This paper has several limitations that unlock possibilities for future research. *Empirical validation*: the proposed model is conceptual and needs empirical validation. Comparative studies: sports events in different contexts (different countries, cultures, economic development, types of sport) could reveal which aspects of system dynamics are universal and which are context-dependent. *Quantitative modelling*: the qualitative CLD presented in this paper would need to be upgraded to a quantitative simulation model using empirical data. *Comparative legal analysis*: an in-depth analysis of legal regulations in different countries could identify best practices and innovative approaches in legislation. *Impact studies*: long-term longitudinal studies are needed to systematically monitor the legacy of sports events over several years or decades after the event. *Methodological development*: approaches need to be developed that understand and support systemic modelling by involving different stakeholders, overcoming epistemological conflicts and combining different perspectives, and ensuring the legitimacy of models.

8 Conclusion

Sports events are complex systems whose success stems not only from the excellence of individual elements, but also from the quality of relationships, connections and balance between different subsystems. Traditional fragmented approaches to planning and managing sports events are inadequate for managing complexity and often lead to unforeseen negative consequences – economic losses, environmental degradation, social conflicts, legal disputes. The paper showed how a

systems approach – using conceptual tools from complex systems theory, methodological techniques of system dynamics and an interdisciplinary understanding of economic, social, environmental and legal dimensions – enables a more comprehensive understanding of sports events and more effective management. The proposed causal loop diagram system model (CLD) includes system diagnosis, participatory vision setting, system planning considering feedback loops and delays, adaptive implementation and systematic learning. A key epistemological insight is that there is no single "correct" perspective on a sports event – different stakeholders legitimately construct different "systems" with different boundaries and goals. The task of the systems approach is not to eliminate this plurality of perspectives, but to establish mechanisms for the dialectical integration of different views and the search for sustainable balances that consider the interests of different stakeholders. In an era of increasing global competition for sports tourism events, growing social demands for sustainability and inclusion, and complex legal and regulatory frameworks, a systems approach to sports events is not just an academic curiosity, but a practical necessity. Organisers who embrace systemic thinking and integrated management will have a competitive advantage in creating events that are economically successful, socially responsible, environmentally sustainable and legally compliant.

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Declaration of generative AI in scientific writing

During the preparation of this paper, the author used Grammarly and DeepL Pro to proofread and improve the readability of the text. After using these tools/services, the author reviewed and edited the content as needed and takes full responsibility for the content of the publication.

Legal Acts

Environmental Protection Act (ZVO-2; Zakon o varstvu okolja): Uradni list RS, št. 44/22, 18/23 – ZDU-10, 78/23 – ZUNPEOVE, 23/24, 21/25 – ZOPVOOV, 56/25 – PoZ.

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Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free

movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) (GDPR): OJ L 119, 4.5.2016, pp. 1–88.
Sports Act (ZŠpo-I; Zakon o športu): Uradni list RS, št. 29/17, 21/18 – ZNOrg, 82/20, 3/22 – ZDeb, 37/24 – ZMat-B.

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SOME CRITICAL ASPECTS OF HUNTING AS SPORT

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Hunting has been an integral component of human societies for millennia, initially serving as a primary means of subsistence before evolving into recreational and sport-based practices in many parts of the world. In contemporary conservation debates, hunting remains a controversial yet significant topic, particularly in relation to sustainability and wildlife management. This article explores the concept of hunting as a sport within the framework of sustainable development, examining its ecological, economic and social dimensions. Drawing upon existing literature in wildlife management, conservation biology and environmental policy, the paper evaluates whether regulated sport hunting can contribute to biodiversity conservation and sustainable ecosystem management. The analysis highlights the potential benefits of controlled hunting, including wildlife population management, habitat conservation and the generation of financial resources for conservation initiatives. At the same time, it critically addresses ethical concerns, governance challenges and ecological risks associated with unsustainable hunting practices. The findings suggest that while hunting alone cannot resolve global biodiversity challenges, it can function as a complementary conservation tool when integrated into science-based management systems, supported by effective regulations and inclusive community participation.

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1 Introduction

Human interactions with wildlife have evolved significantly throughout history. Early human societies relied heavily on hunting for food, clothing and tools, making it a fundamental component of survival and cultural identity. With the development of agriculture and urban societies, hunting gradually shifted from subsistence necessity to recreational activity in many regions. Today, hunting is practiced both for subsistence and for sport, and its role in modern conservation frameworks has become a subject of intense debate.

Hunting and gathering was presumably the subsistence strategy employed by human societies beginning some 1.8 million years ago, by *Homo erectus*, and from its appearance some 200,000 years ago by *Homo sapiens*.¹

Sport hunting, often referred to as recreational hunting or trophy hunting depending on context, involves the regulated harvesting of wildlife primarily for leisure, personal consumption or cultural traditions. While critics argue that hunting for sport raises ethical concerns and may threaten wildlife populations, proponents maintain that regulated hunting can contribute to conservation and sustainable natural resource management.²

The concept of sustainability has become central to contemporary environmental policy and conservation strategies. Sustainable use of natural resources refers to managing ecosystems in a way that allows current generations to benefit from them without compromising their availability for future generations.³ Within this framework, wildlife resources are increasingly viewed not only as elements of biodiversity but also as renewable resources that can be managed responsibly.

Many wildlife management programs incorporate hunting as a regulatory mechanism to maintain ecological balance and generate conservation funding. In several countries, revenues from hunting permits, tourism and associated services are used to support wildlife monitoring, habitat restoration and anti-poaching initiatives.⁴

¹ Mckie, 2012.

² Lindsey et al., 2007.

³ Brundtland Commission, 1987.

⁴ Naidoo et al., 2016.

Consequently, hunting has become embedded in certain conservation models as part of a broader strategy for sustainable wildlife use.

However, the relationship between hunting and conservation is complex. Poorly regulated hunting can lead to overexploitation, species decline and ecosystem disruption. Historical examples such as the near extinction of the American bison in the nineteenth century demonstrate how uncontrolled hunting can have devastating ecological consequences.⁵ As a result, contemporary wildlife management systems emphasize regulation, scientific monitoring and ethical guidelines.

This article examines hunting as a sport within the broader framework of sustainability. The study seeks to answer the following research questions:

1. What is the concept of sustainable hunting within modern wildlife management?
2. What ecological and socioeconomic benefits can regulated sport hunting provide?
3. What challenges and ethical considerations arise from hunting as a conservation tool?

Through a review of academic literature and conservation policy frameworks, the article aims to provide a balanced assessment of the role of sport hunting in sustainable development and biodiversity conservation.

2 Historical Development of Hunting

Hunting first appeared three million years ago and has remained with us ever since, alongside other food-producing activities such as farming livestock. In the Middle Ages, hunting was the privilege of nobility, linked with the right to land ownership. After the French Revolution, it was democratised extensively, which led to considerable damage to the forest ecosystem. It has since become mainly a leisure activity and is now governed by strict laws to protect wildlife and its environment.

The first human beings lived a nomadic lifestyle and introduced meat to their diet about 3 million years ago. They first ate recently deceased animals and the larvae and insects found on carrion. Later, as they began to look for prey, they devised hunting

⁵ Isenberg, 2000.

techniques using rudimentary weapons and stratagems.⁶ Agriculture emerged in the Neolithic era and livestock farming relegated hunting to a secondary role. It became part of a defensive practice aimed at protecting farmers' crops from animals that would destroy them. However, hunting out of necessity still exists presently among some tribes in, for example, Southern Africa, Thailand or Indonesia. In these areas it compensates for food shortages when farming conditions are difficult. Hunting as a privilege first appeared in antiquity. While crops and livestock farming covered people's basic dietary needs, hunting offered a wider choice of meat to the privileged classes. It also had a dual symbolic and social significance: The elites in charge of the armies could demonstrate and prove their abilities as warriors through hunting.⁷

The practice of hunting became codified during the Middle Ages. Being invited to hunt with the King was one of the court's great honours. In Europe, laws were devised to regulate hunting on royal territory. During that period, forest planning and the privileges granted for their use engendered a proliferation of animals which were harmful to the peasants' crops. Hunting therefore sought to eliminate such animals to protect the plantations. From the 13th century onwards, theoretical works about wild animals, prey typology and hunting techniques abounded, as did recipes for royal banquets.⁸

Under the reign of Francis I during the Renaissance in France, hunting with hounds became a lifestyle choice. Post-hunt banquets were an opportunity to demonstrate social relationships in court. An example of this was the saving of choice pieces for the guests of honour, thus highlighting the prowess of hunter and cook alike. During this period, hunting became a privilege of nobility, and the right to practise it was directly linked to the right to land ownership. Poaching, which had been relatively well tolerated until then, was now severely punished and non-noble people were formally prohibited from hunting. According to the royal ordinance that came into force in March 1515, hunting was actually seen as a waste of time that should be spent on working the land.⁹

The Revolution abolished this aristocratic privilege and the democratisation of the practice led to a wave of widespread hunting which damaged the forest ecosystem

⁶ Corvol, 2010.

⁷ Corvol, 2005.

⁸ Durantel, 2015.

⁹ Patou-Mathis, 2009.

and caused some species to become extinct in certain areas. To preserve wildlife, permits were introduced under Napoleon I, placing limits on when and where hunting could take place. However, in the 19th century, this permit cost a farm labourer the equivalent of one month's wages, hence hunting became once more the privilege of the affluent classes. This situation encouraged poaching, either for food or selling commodities derived from animals, such as fur.¹⁰

2.1 Early Human Societies and Subsistence Hunting

Hunting represents one of the oldest human activities, predating the emergence of agriculture by hundreds of thousands of years. Archaeological evidence suggests that early humans relied heavily on hunting and gathering for survival, using primitive tools to capture animals for food, clothing and shelter materials.¹¹

In many hunter-gatherer societies, hunting practices were closely tied to ecological knowledge and cultural traditions. Communities often developed systems that limited overexploitation, such as seasonal hunting patterns or spiritual beliefs that emphasized respect for animals and ecosystems. These traditional practices often functioned as informal conservation mechanisms that helped maintain ecological balance.¹²

However, as human populations grew and technological advancements increased hunting efficiency, wildlife populations began to face greater pressure. The introduction of firearms and large-scale commercial hunting during the colonial period significantly altered the relationship between humans and wildlife.

2.2 Commercial Hunting and Wildlife Decline

During the eighteenth and nineteenth centuries, commercial hunting became widespread in many parts of the world. Wildlife species were exploited for meat, fur, ivory and other commodities, often without regulatory oversight. This period witnessed dramatic declines in numerous species, particularly in North America and Africa.

¹⁰ Corvol, 2005.

¹¹ Lee & Daly, 1999.

¹² Berkes, 2012.

One of the most notable examples is the near extinction of the American bison in the late nineteenth century. Once numbering in the tens of millions, bison populations were reduced to a few hundred individuals due to intensive commercial hunting and habitat loss.¹³ Similar declines occurred in many other species, highlighting the ecological consequences of unregulated exploitation.

These crises eventually prompted the development of modern wildlife conservation movements. Governments began introducing hunting regulations, protected areas and wildlife management agencies designed to prevent further species loss.

2.3 Emergence of Modern Wildlife Management

The twentieth century marked the emergence of modern wildlife management systems. Conservation policies increasingly relied on scientific research to determine sustainable harvest levels and ecosystem dynamics.

One influential model was the North American Model of Wildlife Conservation, which established principles such as public ownership of wildlife, science-based management and regulated hunting seasons.¹⁴ This framework helped restore populations of several species, including deer, elk and wild turkey.

Under this model, hunters play a significant role in conservation funding through license fees, taxes on hunting equipment and voluntary contributions to conservation programs. Similar systems have been adopted in other regions, demonstrating how hunting can be integrated into sustainable resource management strategies.

3 Concept of Sustainable Hunting

3.1 Definition and Principles

Hunting is one of the oldest human traditions. It connects us to nature, provides food, and helps maintain healthy wildlife populations. But in today's world, hunting is more than just a way to bring home meat. It is also about protecting the

¹³ Isenberg, 2000.

¹⁴ Geist, Mahoney & Organ, 2001.

environment, preserving species, and respecting the natural world. This is where sustainable hunting comes in. Responsible hunters take only what they need, follow the rules, and make sure their actions support healthy ecosystems. It is essential for a novice hunter to learn sustainable practices in order to become an ethical hunter.¹⁵ The author points out the important Core Principles of Sustainable Hunting:

- Habitat and Environment Stewardship (protecting the ecosystem by minimizing damage to soil and water, and following "Leave No Trace" principles to avoid leaving waste);
- Selective and Responsible Harvesting (targeting specific, abundant species to avoid overexploitation, ensuring population stability and biodiversity);
- Fair Chase Ethics (giving animals a reasonable chance to escape and avoiding unethical methods, such as shooting from uncertain distances or chasing with vehicles); and
- Conservation Support (that includes contributing to the future of wildlife through licensing fees, volunteering, and habitat restoration).

Sustainable hunting refers to the use of wildlife resources at levels that do not threaten long-term population viability. It involves harvesting animals in a manner that allows species populations to remain stable or increase over time while maintaining ecological balance.

According to the International Union for Conservation of Nature (IUCN), sustainable use of wildlife is defined as the utilization of biodiversity components in ways that do not lead to their long-term decline.¹⁶

Several key principles guide sustainable hunting practices:

1. scientific management of wildlife populations;
2. legal regulation of hunting activities;
3. protection of habitats and ecosystems;
4. ethical hunting practices;
5. participation of local communities.

¹⁵ Sottolano, 2025.

¹⁶ IUCN, 2012.

When these principles are applied effectively, hunting can function as a tool for maintaining wildlife populations within ecological carrying capacity. This approach also emphasizes that hunters are responsible for supporting the ecosystems they utilize, promoting a balanced and long-term coexistence between humans and nature through the sustainable use of animal resources, including the meat, hide, and antlers, in order to avoid waste and honor the tradition of the hunt.

3.2 Regulation and Wildlife Management

Effective regulation is central to sustainable hunting systems. Governments typically establish hunting quotas based on scientific assessments of wildlife populations. These quotas determine how many animals can be harvested during a specific hunting season without threatening population stability. Wildlife managers rely on various monitoring techniques, including population surveys, tracking data and ecological modelling, to estimate sustainable harvest levels.¹⁷

Regulatory mechanisms often include hunting licenses and permits, species-specific quotas, seasonal restrictions, designated hunting zones and prohibited hunting methods. Such measures aim to prevent overexploitation while ensuring that hunting activities remain compatible with conservation objectives.¹⁸

3.3 Adaptive Management Approaches

Modern wildlife management increasingly relies on adaptive management strategies. This approach involves continuously monitoring ecosystems and adjusting policies based on new scientific information. Adaptive management recognizes that ecosystems are dynamic and that management strategies must evolve in response to environmental changes such as climate change, habitat loss and shifting species distributions.¹⁹

In the context of hunting, adaptive management allows authorities to modify quotas, hunting seasons and conservation strategies to ensure sustainable outcomes.

¹⁷ Milner et al., 2007.

¹⁸ Hagny, 2025.

¹⁹ Holling, 1978.

4 Ecological Impacts of Sport Hunting

The widespread activity of recreational hunting is proposed as a means of conserving nature and supporting livelihoods. However, recreational hunting – especially trophy hunting – has come under increasing scrutiny based on ethical concerns and the arguments that it can threaten species and fail to contribute meaningfully to local livelihoods.²⁰ But different authors emphasised Key Ecological Impacts of Sport Hunting, such as:

- Population Control and Ecosystem Balance (as hunting is used to manage wildlife populations, such as deer or boar, which can grow rapidly and overeat, harming the habitat for other species. In some cases, reducing these populations can allow vegetation to recover);
- Detrimental Effects on Biodiversity (as overhunting can cause population decline and threaten extinction for some species. It can also create an imbalance in the food chain by eliminating predators);
- Behavioral and Physiological Changes (as different studies have shown that hunting causes animals to become more fearful and shy, and to potentially abandon their natural habitats. This is sometimes referred to as the "ecology of fear");
- Altering Species Structure and Evolution (as sport hunting often targets large, mature animals, which can lead to smaller individuals and accelerated evolution of certain traits. This can result in smaller horn sizes or lower body weight in populations, such as bighorn sheep);
- Disruption of Social Structures (when hunting can impact the social groups and family structures of animals, as well as altering their use of dens and activity patterns);
- Conservation and Funding (when regulated, sport hunting can act as a tool for conservation, generating revenue for protecting animals and their land. However, when unregulated, it can cause severe declines in populations, such as elephants and lions);
- Habitat Management and Other Issues (as we realise that some hunting reserves manage animal populations in ways that can negatively affect other species,

²⁰ Di Minin et al., 2021.

while some practices, like travel for hunting, contribute to high carbon footprints.²¹

Finally, the potential benefits of controlled hunting can contribute to preserving natural habitats and preventing overpopulation. Properly managed hunting also can have positive effects on the conservation status of certain mammal species and it can help reduce the transmission of diseases, such as Lyme disease, by controlling the population of animals that carry ticks.

4.1 Wildlife Population Regulation

One of the primary ecological justifications for regulated hunting is population management. In ecosystems where natural predators are absent or reduced, certain species can become overabundant. Overpopulation can lead to habitat degradation, increased disease transmission and heightened human–wildlife conflict.²²

For example, in many parts of Europe and North America, populations of deer species have increased significantly due to the decline of large predators such as wolves and lynx. High deer densities can result in overgrazing, which negatively affects forest regeneration and biodiversity.

Regulated hunting can help maintain population levels within ecological carrying capacity, reducing pressure on ecosystems.

4.2 Ecosystem Balance

Hunting can influence ecosystem dynamics by affecting predator-prey relationships and species interactions. By selectively removing individuals from wildlife populations, hunting can alter age structures, sex ratios and genetic diversity.

When managed carefully, these impacts can be beneficial. For instance, hunting programs often target older male individuals in species with polygynous mating systems, which has minimal impact on reproductive capacity.

²¹ Di Minin et al., 2021.

²² Côté et al., 2004

However, poorly designed hunting practices can disrupt social structures and lead to unintended ecological consequences.²³

4.3 Habitat Conservation Incentives

In many regions, wildlife habitats are threatened by agricultural expansion, infrastructure development and urbanization. Conservation initiatives often require significant financial resources to protect and manage these landscapes.

Sport hunting can create economic incentives to conserve habitat. Landowners and local communities may choose to preserve wildlife habitats when hunting activities provide financial benefits through tourism, licensing or game management programs.²⁴

For example, private game reserves in parts of southern Africa maintain large tracts of natural habitat partly due to revenue generated from hunting and wildlife tourism.

5 Economic Contributions of Sport Hunting

5.1 Hunting as a Source of Conservation Funding

One of the most frequently cited arguments in favor of regulated sport hunting is its economic contribution to conservation initiatives. Wildlife conservation requires substantial financial investment for activities such as habitat restoration, wildlife monitoring, anti-poaching enforcement and protected area management. In many countries, hunting-related revenues constitute an important funding source for these activities.

Hunters contribute financially through various mechanisms including hunting permits, license fees, equipment taxes, conservation donations and tourism expenditures. In the United States, for example, the Pittman–Robertson Federal Aid in Wildlife Restoration Act introduced an excise tax on firearms, ammunition and hunting equipment. The revenue generated from this tax has funded wildlife conservation programs across all U.S. states since 1937.²⁵

²³ Milner et al., 2007.

²⁴ Lindsey et al., 2007.

²⁵ Organ et al., 2012.

Such funding mechanisms demonstrate how hunting activities can contribute directly to wildlife conservation. The funds generated are often reinvested into wildlife management agencies responsible for population monitoring, habitat management and conservation research.

5.2 Economic Benefits for Rural Communities

Sport hunting also provides economic opportunities for rural communities, particularly in areas where alternative sources of income are limited. Hunting tourism can generate employment in guiding services, accommodation, transportation, equipment provision and wildlife management.

In several African countries, trophy hunting programs have been developed as part of community-based natural resource management initiatives. These programs aim to provide local communities with financial incentives to protect wildlife and habitats rather than converting land to agriculture or livestock production.²⁶

In Namibia, for instance, communal conservancies have successfully integrated regulated hunting into wildlife conservation strategies. Local communities receive revenue from hunting concessions and tourism activities, which has contributed to increased wildlife populations and improved livelihoods.²⁷

Similarly, in parts of Europe and North America, hunting leases and guided hunts generate income for landowners and local businesses. These economic benefits can create incentives for maintaining natural habitats and preserving biodiversity.

5.3 Hunting and Sustainable Tourism

Sport hunting is also considered a form of nature-based tourism. While wildlife viewing tourism has become increasingly popular, hunting tourism continues to attract participants who seek outdoor experiences, cultural traditions and wildlife interaction.

²⁶ Naidoo et al., 2016.

²⁷ Lindsey et al., 2007.

Compared with other forms of tourism, hunting often involves smaller groups of visitors who spend extended periods in remote areas. As a result, hunting tourism can generate relatively high economic returns with lower environmental pressure compared to mass tourism.²⁸

However, the economic benefits of hunting tourism depend heavily on effective governance and transparent distribution of revenue. In some cases, mismanagement or corruption can prevent local communities from receiving the expected economic benefits.

Hunting is a widespread and diverse activity that fulfills many social, economic and ecological functions. It is not just carried out for the purpose of sport or provisioning but is central to cultural and social relations in many communities. Whilst there are clearly cases where species have been overhunted and need protection, hunting and associated management practices can be a force for nature conservation if carried out according to best practice, which must be adapted to recognize local and national objectives and institutions. In some cases, hunting may actually increase the value of quarry species and this can lead to sustainable populations in a more effective way than total protection. There are now effective techniques that can be used to bring hunters and environmentalists together to build consensus on the most effective future policies to support human well-being by recognizing wider ecosystem linkages and protecting the underpinning biodiversity whilst building the capacity of the role of hunting and its culture as stewards of many of our landscapes. Crucial to the success of biodiversity policy objectives in the wider countryside is the engagement of hunters and land managers at an early stage to develop adaptive or co-management strategies consistent with an ecosystem approach.

6 Social and Cultural Dimensions of Hunting

Despite the unpredictable postmodern society, the social and cultural dimensions of hunting are still deeply involved in rooted traditions, community identity, and serve both as a connection to nature and as a mechanism for social cohesion, particularly in rural areas. Hunting often functions as a 'community of practice', passed down through families and social networks, offering identity and fostering collective responsibility and cultural identity and heritage, connection to nature and ethic

²⁸ Lindsey et al., 2007.

codes, and as such has an important role in the postmodern society, especially in building social networks.

6.1 Hunting as Cultural Heritage

In many societies, hunting represents more than a recreational activity; it is deeply embedded in cultural traditions and social identity. Indigenous communities across the world have long practiced hunting as part of their subsistence and cultural heritage. Traditional hunting practices often involve extensive ecological knowledge passed down through generations. This knowledge includes understanding animal behaviour, seasonal migration patterns and ecosystem dynamics.²⁹

For indigenous peoples, hunting may also hold spiritual significance and contribute to community cohesion. Cultural ceremonies, rituals and storytelling frequently revolve around hunting traditions. Recognizing the cultural importance of hunting is essential when designing wildlife management policies. Conservation programs that ignore local traditions risk alienating communities and undermining conservation objectives.

6.2 Recreational Hunting and Social Identity

In many modern societies, hunting continues to serve as a recreational activity that fosters social connections and outdoor engagement. Hunters often view their activity as part of a broader lifestyle associated with nature's appreciation, self-sufficiency and conservation stewardship.

Surveys of hunters in several countries suggest that many participants perceive themselves as active contributors to wildlife conservation. Through participation in conservation organizations, habitat restoration projects and wildlife monitoring initiatives, hunters often engage directly in conservation activities.³⁰

Additionally, hunting may provide opportunities for education about ecosystems, wildlife behaviour and environmental responsibility. Many hunters emphasize ethical hunting practices and respect for wildlife as core values.

²⁹ Berkes, 2012.

³⁰ Organ et al., 2012.

6.3 Hunting and Food Sustainability

Another dimension of hunting relates to sustainable food systems. Wild game meat can represent a locally sourced and environmentally sustainable protein source. Compared to industrial livestock production, hunting typically involves lower greenhouse gas emissions, reduced land conversion and minimal reliance on feed production.³¹

Some proponents argue that consuming wild game harvested through regulated hunting can contribute to more sustainable diets. However, the scale of hunting is generally insufficient to replace industrial meat production, and therefore its contribution to global food systems remains limited.

7 Ethical Debates and Animal Welfare

Ethical debates on animal welfare center on balancing human needs with the moral obligation to minimize animal suffering, largely focusing on sentient beings' capacity to feel pain.³²

7.1 Ethical Criticisms of Sport Hunting

Despite potential ecological and economic benefits, sport hunting remains highly controversial. Critics argue that killing animals for recreational purposes raises serious ethical concerns regarding animal welfare and moral responsibility.

Animal rights advocates contend that wildlife should not be treated as a resource for human enjoyment or economic gain. From this perspective, hunting for sport is viewed as ethically unjustifiable regardless of its potential conservation benefits.³³

Particular controversy surrounds trophy hunting, where hunters seek specific animals with distinctive physical characteristics such as large horns or antlers. Critics argue that trophy hunting prioritizes individual animal death for symbolic rewards rather than ecological necessity.

³¹ Milner et al., 2007.

³² Kiani et al., 2022.

³³ Singer, 1975.

7.2 Animal Welfare Considerations

Animal welfare concerns also focus on the methods used in hunting. Ethical hunting practices emphasize minimizing animal suffering by ensuring quick and humane kills. Regulations often require hunters to undergo training and obtain certification to demonstrate competence with firearms and hunting techniques.

Many wildlife agencies establish guidelines to ensure that hunting methods are consistent with animal welfare standards. These guidelines may include restrictions on certain hunting methods, requirements for appropriate equipment and rules regarding shot placement.³⁴

However, enforcement of these standards varies across regions, and unethical practices can still occur in poorly regulated systems.

7.3 Balancing Ethics and Conservation

The ethical debate surrounding hunting often reflects broader philosophical differences regarding human relationships with nature. Some conservationists adopt a utilitarian perspective, arguing that wildlife can be used sustainably if the overall ecological outcomes are positive.

Others emphasize intrinsic values of wildlife, arguing that animals possess inherent rights that should limit human exploitation.

Reconciling these perspectives remains a major challenge for wildlife management. Many conservation policies attempt to balance ecological sustainability with ethical considerations by promoting responsible hunting practices and strict regulatory oversight.

³⁴ Milner et al., 2007.

8 Governance and Policy Frameworks

8.1 Legal Regulation of Hunting

Effective governance is essential for ensuring that hunting contributes to sustainability rather than ecological degradation. Governments typically regulate hunting through legislation that defines hunting seasons, species protection status and licensing requirements.

Protected species may be completely excluded from hunting activities, while other species may be harvested within specified quotas. Wildlife agencies are responsible for monitoring populations and adjusting regulations accordingly.

International agreements also play a role in regulating wildlife trade and hunting practices. For example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates the international trade of wildlife products to prevent overexploitation.

8.2 Monitoring and Enforcement

Regulatory frameworks are only effective when accompanied by strong enforcement mechanisms. Illegal hunting, often referred to as poaching, remains a significant threat to wildlife populations worldwide.

Law enforcement agencies and conservation organizations employ various strategies to combat illegal hunting, including wildlife patrols, surveillance technologies and community engagement programs.

In some cases, regulated hunting programs have been used as tools to reduce poaching by providing legal economic benefits to local communities.³⁵

³⁵ Naidoo et al., 2016.

8.3 Community-Based Conservation

Community-based conservation approaches have gained increasing attention in recent decades. These strategies emphasize involving local communities in wildlife management decisions and revenue sharing.

By granting communities partial ownership or management rights over wildlife resources, conservation programs aim to align economic incentives with conservation outcomes.

Examples from southern Africa demonstrate that community-managed hunting concessions can contribute to both wildlife conservation and rural development when properly implemented.³⁶

9 Regional Case Studies

9.1 North America

North America provides one of the most widely cited examples of successful wildlife conservation linked to regulated hunting. The North American Model of Wildlife Conservation emphasizes public ownership of wildlife, science-based management and regulated hunting seasons.³⁷ Through this model, populations of species such as white-tailed deer, elk and wild turkey have recovered significantly following earlier declines.

9.2 Europe

In Europe, hunting traditions vary widely between countries. Many European nations maintain strong regulatory frameworks governing hunting activities, including strict quotas, licensing systems and habitat protection measures. Hunting organizations often collaborate with conservation agencies to monitor wildlife populations and maintain ecological balance.

³⁶ Lindsey et al., 2007.

³⁷ Geist, Mahoney & Organ, 2001.

Scotland: Hunting is predominantly carried out on large, privately owned estates, where professional hunters (gamekeepers) are employed to manage wildlife harvests. The principal game species are red deer and red grouse in the uplands, and pheasants and roe deer in the lowlands. Deer and grouse are managed wild game, whilst pheasants are generally reared and released prior to shooting. This case study allowed us to investigate how biodiversity varies under different land management regimes. Key stakeholders include the Game and Wildlife Conservation Trust, the Royal Society for the Protection of Birds, the Scottish Natural Heritage and the British Association for Shooting and Conservation.³⁸

Norway/Sweden: Here, hunting focuses on the non-agricultural wildlands that are comprised of boreal forest and alpine tundra habitats. Hunting rights belong to the landowners who can sell hunting permits but quota setting is closely regulated. Most hunting is focused on wild ungulates, grouse and large carnivores. Scandinavian hunting is motivated largely by the traditional, recreational and meat values of the harvest. Our analyses focus mainly on a number of representative study areas for which we have access to a range of background data and link these to the national and international institutional framework regulating hunting and biodiversity.³⁹

Spain: We focus on two study areas with contrasting situations with respect to biodiversity: Extremadura is a region with renowned biodiversity whereas southeastern Castilla-La Mancha is an area where raptor conservation problems are well known. We have investigated how biodiversity responds under different management practices for gamebird shooting on landholdings in these two areas. Hunting rights belong to landowners who can also invest in a range of related management techniques designed to increase gamebird numbers. Existing databases for biodiversity have been augmented with field surveys. Information on management practices such as predator control, disposal of feeding or water points, game crops has been obtained from land managers and we have collected data on the socio-economic aspects of hunting.⁴⁰

Croatia/Slovenia: The focus here is on the forested landscapes that constitute the border between Slovenia and Croatia. This represents one of the most intact assemblages of large mammals in Europe with wolves, bears and lynx all present,

³⁸ Hunting for sustainability, n.d..

³⁹ Linnell, Solberg & Andersen, 2005.

⁴⁰ Apollonio, Andersen & Putman, 2010.

along with red deer, roe deer and wild boar. Most of the area is subject to hunting. Hunting clubs rent hunting rights to hunt on public land. Our focus will be on large mammals, especially brown bears, which are hunted as a valuable game species in Croatia, and are controlled under a controversial derogation from the habitats directive in Slovenia. Results from this case study provide evidence to inform the debate on the relative merits of hunting and protection for the conservation of brown bears.⁴¹

9.3 Africa

In several African countries, trophy hunting has been integrated into conservation and tourism strategies. While controversial, some studies suggest that regulated trophy hunting can generate revenue for conservation and provide incentives to maintain wildlife habitats.⁴²

Ethiopia: Ethiopia is a country exceptionally high in biodiversity. However, most wildlife are under threat due to a range of causes including habitat loss, bushmeat and subsistence hunting despite the existence of national parks and controlled hunting areas. The human and financial resources for protected area management is low. Two sources of income are from concession fees and trophy fees in the controlled hunting areas. However, reinvestment of hunting revenue into conservation or development is minimal or absent. Here we investigated a) the cultural drivers of hunting behaviour, b) the institutions around benefits sharing and c) the sustainability of trophy hunting of mountain nyala.⁴³

Tanzania: In this case we focus on the role and impacts of hunting in the Serengeti which is recognized as home to one of the world's last intact large animal migrations involving in excess of two million ungulates with the largest and most diverse guild of carnivores in Africa. The Serengeti is zoned into i) protected areas allowing only ecotourism, ii) game reserves allowing only trophy hunting and iii) community-based wildlife management areas allowing both trophy hunting and subsistence hunting. Although income from ecotourism and trophy hunting supports the management of the protected areas, these economic benefits are undermined because the indigenous population, which is ethnically diverse and includes agro-pastoralists, pastoralists

⁴¹ Krofel, Jonozović & Jerina, 2012.

⁴² Lindsey et al., 2007.

⁴³ Evangelista et al., 2007.

and hunter-gatherers, engage in illegal hunting both for subsistence and for commercial sale. We provide some insights to inform more effective policy interventions. The project was built on three important principles. First, the team developed common research frameworks for each discipline that formed the basis for work in each case study. Second, we invested substantial effort in building capacity across the project partners. Third, we recognised the added value of integrating research across a range of disciplines within each case study. These principles facilitated integration and led to novel approaches from which new insights are continuing to emerge, as showcased at the variety of past and forthcoming conferences.⁴⁴

However, the effectiveness of these programs depends heavily on governance quality, transparency and equitable distribution of economic benefits.

10 Hunting and the Sustainable Development Goals

The United Nations Sustainable Development Goals (SDGs)⁴⁵ emphasize the importance of balancing environmental protection, economic development and social well-being. Regulated hunting may contribute to several SDGs, including:

- SDG 15 – Life on Land: conservation of terrestrial ecosystems and biodiversity;
- SDG 8 – Decent Work and Economic Growth: employment in rural tourism sectors;
- SDG 12 – Responsible Consumption and Production: sustainable use of natural resources.⁴⁶

However, achieving these contributions requires effective management systems that prioritize ecological sustainability and social equity.

11 Empirical Part

The empirical part of the paper is a supplement to the theoretical starting points and enables the verification of the set research hypotheses. The methodology of the survey was a quantitative part, with a survey method, using a structured survey

⁴⁴ Sinclair et al., 2008.

⁴⁵ UNDP, n.d.

⁴⁶ United Nations, 2015; IUCN, 2016.

questionnaire consisting of 22 questions. The quantitative part of the research was based on the analysis of respondents' responses to closed-type questions, designed as nominal and ordinal variables and Likert scales. Such a design made it possible to measure attitudes regarding the importance of humane hunting as a sport and to assess its effect on perceived adequacy.

A special methodological feature of the survey was the classification of respondents into generational groups, which made it possible to ascertain the differences between various generations of hunters. Respondents were divided into Generation Veterans (over 80 years old), Baby Boom Generation (61 to 79 years old), Generation X (45 to 60 years old), Generation Y (29 to 44 years old), and combined Generation Z and Alpha (28 years old). These classifications were crucial for testing the research hypotheses related to intergenerational differences in the perception of the importance of human hunting.

Table 1: Correlation between generational affiliation and membership in hunting

		Value	Approximate characteristic
Nominally by	Phi	,864	,000
	Cramerjev V	,499	,000
Number of valid cases		178	

Source: own research, 2025.

By generation, the membership structure varies significantly. The baby boom generation accounts for more than half of all (55.9%) respondents, with veterans accounting for an additional 11 (32.4%) of respondents. This distribution is expected given the age structure of these cohorts and demographic patterns, but it is also worrying. At the same time, the proportion of older members is decreasing.

The obtained empirical results confirm the existence of marked intergenerational differences in how Slovene hunters understand the modern principles of hunting. These differences can be explained by, and are a consequence of broader social, demographic and cultural changes in Slovenian society. The Slovenian hunting membership is burdened with an old population, and the influx of young people is dissatisfied. The strong value of the Cramer coefficient V further confirms that generational affiliation is an important factor in understanding changes in hunting forms. The findings are also important from the point of view of the consideration of the rights arising from membership in a hunting organization, as the change in

hunting forms also changes the scope and possible legal complexity of determining hunting status. The Slovene hunting population is disproportionately older, with relatively few young hunters. Younger hunters also tend to be more critical of certain traditional hunting practices, which they sometimes regard as inhumane or outdated.

The sample in the quantitative part of the research was designed as a non-random sample. The questionnaire was distributed both electronically through the 1KA online platform and in printed form. Appropriately completed questionnaires were included in the analysis. Although the sample is not representative of the entire population due to the way the data was collected, it nevertheless allows for an important analysis of perceptions and attitudes regarding the topic under consideration.

The structure of the sample was analyzed according to age, gender, education level, years of hunting, location of the hunting society and hunting status. The age structure was crucial, as it was the basis for forming the generational groups, which constituted the central comparative category in the verification of our hypotheses.

Table 2: Structure of respondents according to gender

		Frequency	%	Applicable %	Cumulative %
Valid	Woman	39	19,9	20,2	20,2
	Man	254	78,6	79,8	100,0
	Total	293	98,5	100,0	
Missing	Not answered	3	1,5		
	Total	196	100,0		

Source: own research, 2025.

A total of 196 hunters participated in the survey. 193 respondents answered the question about gender, while 3 (1.5%) did not. Valid responses were dominated by men, who accounted for 79.8 % of the sample (154 respondents), while women accounted for 20.2 % (39 respondents). The results indicate a marked gender imbalance in the sample, which should be taken into account when interpreting further findings and generalizing the results to the wider population. This is important because in standard social science, a 4:1 male-to-female imbalance creates a skewed sample. However, within the context of European and North American hunting, women historically make up between 8% to 15% of active hunters. This sample therefore overrepresents women compared to the actual base population. Therefore, if we would generalize our findings to "the general population," the data

is highly skewed toward a male viewpoint; but if we generalize it to "the active hunting community," the sample is highly valid and actually provides an enhanced voice to female hunters.

Table 3: Duration of membership in the hunting association (in years)

	Valid	168
	Missing	28
Arithmetic mean		16,43
Medium		14,00
Mode		3
Standard deviation		12,858

Source: own research, 2025.

The duration of respondents' hunting status is also important for understanding their responses (Table 6.2). The analysis is based on 168 (85.7%) valid answers; 28 (14.3%) respondents did not answer this question. The average duration of membership in a hunting family is 16.43 years, which indicates that there is a relatively high proportion of persons with long-term hunter status in the sample.

Although respondents were divided into five generational groups, the test results did not show statistically significant differences between generations in terms of how they assessed the importance of humane hunting as a form. This conclusion is based on the results of the Kruskal-Wallis test which yielded a score of 1.608, which is a very low value and means that the differences between generations are small. The degree of statistical significance (p) is 0.658, but since it is greater than 0.05, the differences are not statistically significant.

Table 4: Normality test(a)

How important is humane hunting to you?

Hunters	Kolmogorov-Smirnov			Shapiro-Wilk		
	Statistics	df	Sig	Statistics	df	Sig
Generation X	0,385	3		0,75	3	0
Baby boom	0,332	19	0	0,733	19	0
Veterans	0,272	10	0,035	0,802	10	0,015

a. The variable »How important is human hunting to you?« is constant in generation Y. Due to absence of variability, this generation we excluded from analysis.

Source: own research, 2025.

11.1 Verification of the Set Research Hypotheses

For the research part of the task, we established three search hypotheses, which the empirical data we obtained substantiated. Thus, we conclude that:

H1: as we anticipated, the study confirmed respondents agree that poorly regulated hunting can lead to overexploitation, species decline and ecosystem disruption.

The hypothesis was tested on the basis of the answers to questions 13 and 14 from the questionnaire. The first refers to the subjective assessment of the importance of poorly hunting as a form of hunting for the individual, and the second to the degree of agreement with the statement that overexploitation, species decline and ecosystem disruption can lead to overexploitation, and represents an important element of humane hunting. These are similar, but conceptually different dimensions, as the first question emphasizes the individual or experiential level of understanding hunting, while the second emphasizes the normative or systemic level of evaluation of the role of humane hunting.

H2: in line with what we anticipated, that Habitat Management and Other Issues (as we realise that some hunting reserves manage animal populations in ways that can negatively affect other species, while some practices, like travel for hunting, contribute to high carbon footprints) – is confirmed, as the hypothesis assumed that there are no statistically significant differences in assessment between generations and that the quality of the hunting standard affects the understanding of humane hunting and its consequences.

Also, the results of the Spearman correlation showed that there was no statistically significant association between age and the assessment of the impact of Habitat Management and Other Issues of the respondents on the quality of the hunting standard. The correlation coefficient is almost zero ($\rho = -0.022$), which indicates the absence of correlation between the two variables under consideration. The negative direction of correlation is negligible and has no substantive significance.

Table 5: Results of Spearman's correlation analysis between age and Impact of Habitat Management and Other Issues

			Impact of Habitat Management and Other Issues	Hunting internship
Spearman's coefficient of correlation	Impact of Habitat Management and Other Issues	Correlation coefficient	1,000	-,022
		Sig. (bilateral)	.	,905
	Hunter's Age	Correlation coefficient	-,022	1,000
		Sig. (bilateral)	,905	.

Source: own research, 2025.

H3: with which we assumed that Disruption of Social Structures (when hunting can impact the social groups and family structures of animals, as well as altering their use of dens and activity patterns – is partially confirmed.

For ease of interpretation, the Likert scale has been recorded so that a higher value means a higher degree of agreement (1 = disagree at all, 5 = strongly agree). The average approval rating is 4.37, indicating that, on average, respondents strongly agree with the statement. The average is markedly above the neutral value of 3, which means that a high degree of belief or agreement prevails in the sample. A relatively low standard deviation of 0.739 indicates a considerable uniformity of opinions among respondents, as the answers are relatively homogeneous and do not show major differences. Based on this descriptive analysis, we can conclude that the general pattern is dominated by the view that hunting disrupts animal social structures by affecting social groups, family structures dens and activity patterns.

Based on this analysis, we can conclude that Hypothesis 3 is partially confirmed. Both the respondents' general opinions and the surveyed hunters' subjective assessments indicate that disruption of social structures is perceived as having limited importance. This concept refers to the way hunting may affect animal social groups, family structures, den use, and activity patterns.

12 Discussion

Hunting has cultural, institutional, economic and ecological dimensions. Our aim was to develop a better understanding of these components in order to provide insights into the interaction between hunting and biodiversity of relevance to developing sustainable policy and practice. "Biodiversity of relevance" is a contextual concept primarily defined by organizations like the Food and Agriculture Organization (FAO) and the Convention on Biological Diversity⁴⁷ (CBD). It refers to the specific components of biological diversity - genes, species, populations, and ecosystems - that directly interact with, sustain, or are affected by a particular human activity or economic sector. In research framework, it means moving away from a generic definition of nature and focusing strictly on the ecological layers directly intertwined with hunting practices, wildlife stewardship, and habitat alteration.

The relationship between hunting and sustainability is complex and often controversial. While historical examples demonstrate that uncontrolled hunting can lead to severe wildlife declines, modern conservation frameworks increasingly recognize that regulated hunting may provide ecological and economic benefits.

Scientific evidence suggests that hunting can contribute to wildlife management by regulating population sizes, generating conservation funding and encouraging habitat protection. At the same time, ethical concerns regarding animal welfare and recreational killing remain significant sources of public debate.

The effectiveness of hunting as a conservation tool ultimately depends on governance quality. Strong legal frameworks, transparent management systems and community participation are essential to ensure sustainable outcomes.

13 Conclusion

Hunting has evolved from a fundamental survival activity to a complex practice situated at the intersection of culture, recreation and conservation. In the context of sustainability, regulated sport hunting can play a role in wildlife management and conservation when integrated into science-based regulatory frameworks.

⁴⁷ Convention on Biological Diversity, 1992. Retrieved from: <https://www.cbd.int/> (accessed: May 19, 2026).

The potential benefits of hunting include wildlife population regulation, habitat conservation incentives and economic contributions to rural communities. However, these benefits are contingent upon effective governance, ethical practices and rigorous scientific monitoring.

Future conservation strategies should focus on balancing ecological sustainability, cultural traditions and ethical considerations. While hunting alone cannot address global biodiversity loss, it may serve as one component of broader conservation approaches aimed at protecting wildlife and ecosystems for future generations.

Hunting is a widespread and diverse activity that fulfills many social, economic and ecological functions. It is not just carried out for the purpose of sport or provisioning but is central to cultural and social relations in many communities. Whilst there are clearly cases where species have been overhunted and need protection, hunting and associated management practices can be a force for nature conservation if performed according to best practice, which must be adapted to recognize local and national objectives and institutions. In some cases, hunting may actually increase the value of quarry species and this can lead to sustainable populations in a more effective way than total protection. There are now effective techniques that can be used to bring hunters and environmentalists together to build consensus on the most effective future policies to support human well-being. This objective can be achieved by recognizing broader ecosystem linkages and safeguarding the biodiversity that supports them. Another technique is to further strengthen the role of hunting and its culture as a steward of our lands. It is crucial to the success of biodiversity policy objectives in the wider countryside to better engage hunters and land managers at an early stage to develop adaptive or co-management strategies consistent with an ecosystem approach.

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INSTITUTIONAL AND LEGAL FRAMEWORK OF ANTI-DOPING IN BOSNIA AND HERZEGOVINA: BALANCING SPORT INTEGRITY AND THE ATHLETE'S RIGHT TO A FAIR HEARING

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This article examines the institutional and legal framework for resolving anti-doping cases in Bosnia and Herzegovina, focusing on the balance between safeguarding the integrity of sport and protecting athlete's right to a fair hearing. Despite the country's complex constitutional structure, the primacy of international law and explicit provisions in the national Sports Law ensure full compliance with the WADA Code. Particular attention is devoted to the *de novo* review before the CAS, which guarantees a complete reassessment of facts and law in relation to the first instance bodies. The analysis highlights the role of the national Anti-Doping Agency, disciplinary panels and CAS mechanisms, emphasizing procedural safeguards. By situating Bosnia and Herzegovina within an international context, the study demonstrates how coherent governance structures can simultaneously uphold clean sport and protect fundamental rights of athletes.

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1 Introduction

Within the broader framework of global sports law, the regulation of doping stands out as one of the significant areas of concern, underscoring the dual imperative of preserving the integrity of competition while safeguarding the fundamental rights of athletes. Anti-doping frameworks are embedded in a complex international legal order, most prominently through the World Anti-Doping Agency (hereinafter: WADA) Code, the UNESCO International Convention against Doping in Sport (hereinafter: UNESCO Convention), and the procedural guarantees of the Court of Arbitration for Sport (hereinafter: CAS). Bosnia and Herzegovina, despite its intricate constitutional system, has aligned its national legislation with these international standards, thereby ensuring compliance and harmonization.

The purpose of this paper is to examine the institutional and legal framework governing anti-doping in Bosnia and Herzegovina and to situate it within the broader international context. The central research question asks how both nationally and internationally the balance is maintained between preserving sporting integrity and safeguarding athlete's right to fair hearing.

The paper proceeds as follows. First, the institutional framework is analyzed, with attention to the roles of WADA, the Anti-Doping Agency of Bosnia and Herzegovina (hereinafter: ADA BH), and CAS. Second, the international legal framework is outlined, focusing on the WADA Code, the UNESCO Convention, and the CAS Code. Third, the national legal framework is examined, including the division of legislative competences in Bosnia and Herzegovina, the Sports Law, and national anti-doping rules, with emphasis on the primacy of international law. Fourth, the paper addresses procedural safeguards for sport integrity and athletes' fair trial rights in disciplinary proceedings, with particular reference to the jurisprudence of the CAS and the European Court of Human Rights (hereinafter: ECtHR) and the significance of CAS's *de novo* review. Finally, the conclusion situates Bosnia and Herzegovina as a case study of successful harmonization with international standards and its contribution to the broader debate in sports law.

2 Institutional Capacities in Anti-Doping Governance

The architecture of anti-doping governance, embodied in the WADA, CAS and its Anti-Doping Division (hereinafter: CAS ADD), national anti-doping agencies, and both international and national sports federations, serves as a guarantor of the fundamental values of sport. These values, conventionally articulated as the “*spirit of sport*”, comprise respect for legal norms and sporting rules, recognition of fellow competitors, the assurance of fair competition under equal conditions, and the preservation of the ideal of clean sport as a universal good.¹ By implementing programs that translate internationally recognized obligations into practice, these institutions pursue the dual objective of safeguarding athletes’ health and ensuring their participation in sport without recourse to prohibited substances or methods. At the core of this mandate lies the imperative to uphold ethics, fair play, and the integrity of competition.²

WADA, established in 1999 as an independent international agency, was entrusted with leading a coordinated global response to doping in sport.³ Its governance and financing are premised upon an equal partnership between the international sport movement and national governments, thereby ensuring legitimacy and shared responsibility.⁴ The agency’s primary function is the formulation, harmonization, and supervision of anti-doping rules and policies across all sports and jurisdictions. In discharging this function, WADA undertakes scientific and social science research, provides educational initiatives, gathers and analyzes intelligence, conducts investigations, builds institutional capacity worldwide, and monitors compliance with the WADA Code and its associated International Standards.⁵

If the WADA is the institutional pillar responsible for creating rules that safeguard the integrity of sport in the fight against doping, then the CAS is the pillar of their enforcement. Since its establishment in Lausanne in 1984,⁶ CAS has become the

¹ Doping, which may be conditionally defined as the enhancement of athletic performance through the use of prohibited substances or methods, stands in contravention of the spirit of sport and undermines the principle of equality among athletes in the context of sporting competitions. See Pivalica, 2018, pp. 519-520; Labar, 2018, pp. 527-528.

² WADA Code 2021, p. 13.

³ Labar, 2018, pp. 528-529.

⁴ WADA, *Who We Are*.

⁵ WADA, *What We Do*.

⁶ Cf. the historical emergence of CAS, see: McLaren, 2010, pp. 305-315.

central judicial authority in international sport.⁷ Although its jurisdiction spans governance, eligibility, and contractual disputes, its most consequential role lies in adjudicating doping matters. The creation of the CAS ADD in 2019 consolidated this function.⁸ CAS ADD serves as the designated first-instance tribunal to hear and decide doping cases, pursuant to powers delegated by the International Olympic Committee, international federations, and signatories to the WADA Code.⁹ Appeals from CAS ADD rulings proceed to the CAS Appeals Arbitration Division, a structural safeguard that reinforces independence and procedural fairness. Thus, CAS and CAS ADD together embody a specialized institutional mechanism that ensures anti-doping rules are applied coherently and fairly.

ADA BH was established pursuant to Articles 61 and 62 of the Law on Sport in Bosnia and Herzegovina.¹⁰ Article 61 provides the legal foundation for its creation as an autonomous administrative organization tasked with monitoring and implementing international conventions against doping in sport. Article 62 delineates its competences, including systematic monitoring and coordination of anti-doping activities, proposing and enforcing anti-doping measures, ensuring compliance with international conventions and the WADA Code, and overseeing legislative preparations in this field. ADA BH commenced operations in 2009 and remains accountable to the Council of Ministers of BH.¹¹

In accordance with Articles 8 and 13 of the WADA Code¹² and the BH Anti-Doping Rules,¹³ ADA BH has established two adjudicatory bodies: the Hearing Panel and the Appeals Board. The Hearing Panel functions as an independent and impartial tribunal adjudicating alleged anti-doping rule violations, ensuring due process and fairness. The Appeals Committee serves as a second-instance body, reviewing decisions of the Hearing Panel. Together, these institutions embody international best practices, reinforcing impartiality, accountability, and credibility in the anti-doping framework of Bosnia and Herzegovina.¹⁴

⁷ CAS, *The Court*, general information.

⁸ CAS, *ADD Procedural Rules*.

⁹ *Ibid.*

¹⁰ Law on Sport in Bosnia and Herzegovina, Articles 61 – 62.

¹¹ ADA BH, *Nadležnosti*.

¹² WADA Code 2021.

¹³ ADA BH, *Dokumenti agencije*.

¹⁴ Since the entry into force of the World Anti-Doping Code 2021 and the corresponding Anti-Doping Rules of Bosnia and Herzegovina, the ADA BH Hearing Panel has concluded twenty-one proceedings against athletes who tested positive for prohibited substances. Data acquired from ADA BH officials.

3 International and National Legal Framework for the Regulation of Doping Control in Sport

3.1 International Framework

UNESCO Convention¹⁵ constitutes the first universal legally binding instrument in the field of anti-doping regulation. By adopting the Convention, States acknowledged that doping is not merely an issue of sporting discipline, but also a matter concerning public health, ethics, education, and international cooperation.¹⁶ The Convention establishes a comprehensive framework obliging States Parties to adopt legislative, administrative, educational, and cooperative measures aimed at preventing and combating doping in sport.¹⁷

The importance of the Convention is particularly reflected in its relationship with the WADA Code. Although the Code itself represents an instrument of transnational sports governance rather than a treaty under public international law, the Convention effectively provides it with international legal authority. Namely, Article 4(1) expressly states that States Parties “commit themselves to the principles of the Code” as the basis for implementing anti-doping measures under the Convention. This relationship is further reinforced by Article 3(a), which requires States to adopt measures consistent with the principles of the Code, as well as Articles 11(c) and 12, both of which directly refer to anti-doping rules and testing procedures conducted in conformity with the Code. Furthermore, Article 34 establishes a mechanism through which amendments adopted by WADA, particularly regarding the Prohibited List and Therapeutic Use Exemptions, may be incorporated into the Convention framework. Accordingly, the Convention serves as the principal public international law mechanism through which the standards of the WADA Code acquire global legitimacy and harmonized implementation. Bosnia and Herzegovina became a State Party to the Convention on 22 April 2009.¹⁸ Today, the Convention has 192 States Parties, reflecting its near-universal acceptance within contemporary international sports law.

¹⁵ UNESCO Convention, 2005.

¹⁶ Preamble, point 4.

¹⁷ UNESCO Convention, Article 5.

¹⁸ UNESCO Convention, 2005.

WADA Code 2021,¹⁹ together with its International Standards,²⁰ establishes a comprehensive legal framework that integrates substantive prohibitions, procedural guarantees, sanctioning principles, and appellate safeguards. At the heart of this framework lies Article 2, which enumerates the catalogue of anti-doping rule violations. The principle of strict liability is central: athletes are held personally responsible for ensuring that no prohibited substance enters their bodies, and liability attaches irrespective of intent, fault, or negligence. The mere presence of a prohibited substance or its metabolites in a sample suffices to establish a violation (Article 2.1.). This uncompromising standard is reinforced by provisions extending responsibility to the use or attempted use of prohibited substances or methods, even where the attempt fails (Article 2.2.). Proof may be established not only through laboratory analysis but also by admissions, witness testimony, or longitudinal biological data.²¹ Beyond ingestion, Article 2 expands liability to a wide range of conduct: evading or refusing testing (Article 2.3.), repeated whereabouts failures (Article 2.4.), tampering with the doping control process (Article 2.5.), possession of prohibited substances without therapeutic justification (Article 2.6.), trafficking (Article 2.7.), administration (Article 2.8), complicity (Article 2.9.), prohibited association with ineligible support personnel (Article 2.10), and retaliation against whistleblowers (Article 2.11.). Accordingly, these provisions establish a multi-layered regime of responsibility that extends beyond the athlete's body to their conduct, networks, and integrity within the sporting community. Procedural fairness is safeguarded by Article 8, which governs hearings. Athletes are entitled to a fair and impartial process before sanctions are imposed, including timely notification of alleged violations, the right to present evidence, and the opportunity to challenge the reliability of testing or procedural compliance. This ensures that while liability is broadly construed, sanctions are not imposed without due process. Article 10 addresses the determination of sanctions. While liability under Article 2 is strict, the degree of fault or negligence becomes relevant at the sanctioning stage. Periods of ineligibility vary depending on the nature of the violation, the substance involved, and the athlete's degree of culpability. Aggravating factors such as trafficking or administration attract more severe sanctions, while mitigating circumstances, such as no significant fault or negligence, may reduce the sanction. The jurisprudence of the CAS has played a decisive role in clarifying these sanctioning principles. The

¹⁹ WADA Code 2021.

²⁰ WADA Code 2021 *and International Standards*.

²¹ See f.n. 9, comment to Article 2.2. of the WADA Code 2021.

Marin Čilić case²² is particularly significant. In that matter, CAS was called upon to interpret the criteria for determining the length of suspension where the Code prescribed a range of possible sanctions. It articulated a tripartite structure of culpability that has since become a reference point in anti-doping adjudication:

- Significant fault: Where the athlete acted with serious negligence, gross carelessness, or conscious disregard of obligations. The sanction range is 16–24 months, with 20 months regarded as the standard benchmark for significant fault.
- Normal fault: Where the athlete displayed a moderate level of negligence, failing to exercise due diligence but without gross disregard. The sanction range is 8–16 months, with 12 months considered the standard measure.
- Light fault: Where the violation resulted from minor negligence or circumstances that were difficult to foresee, despite some degree of care exercised. The sanction range is 0–8 months, with 4 months treated as the standard sanction.

The tribunal emphasized that while strict liability establishes the violation, the sanction must be tailored to the athlete's degree of fault. CAS articulated a framework that distinguishes between “no fault or negligence” and “no significant fault or negligence,” thereby providing guidance on when a sanction may be eliminated or reduced. In Čilić's case, the tribunal scrutinized the circumstances of ingestion, the athlete's diligence, and the foreseeability of the violation, ultimately setting a precedent for how disciplinary bodies should weigh culpability. This decision has since been cited as a cornerstone in the jurisprudence of sanctioning, ensuring greater consistency and fairness in the application of Article 10.²³

Finally, Article 13 establishes the appellate framework. Athletes and anti-doping organizations may appeal decisions to CAS, which serves as the ultimate arbiter of disputes under the Code. The appellate process ensures uniformity and consistency in the interpretation of anti-doping rules, while providing athletes with an independent forum to challenge adverse decisions. Together, these provisions as well as judicial interpretations embody a comprehensive and balanced regime,

²² *International Tennis Federation (ITF) v. Marin Čilić*, 2014.

²³ See more Đurđević, 2015, p. 477.

reflecting the Code's overarching objective: to protect the integrity of sport through a system that is both uncompromising in its prohibitions and fair in its procedures.

The jurisdiction of the CAS in anti-doping disputes rests on a framework that combines the general provisions of the CAS Code in force from 1 July 2025²⁴ with the specific rules of the CAS ADD applicable as from 10 June 2024.²⁵ Article R27 of the CAS Code sets out the foundation by confirming that the Procedural Rules apply whenever parties have agreed to submit a sports-related dispute to CAS. This agreement may be embedded in contracts, federation regulations, or subsequent arbitration agreements, and it extends to appeals against decisions of sports bodies where their statutes provide for CAS review. CAS ADD functions as a specialized first-instance tribunal. Article A2 of the CAS ADD Procedural Rules makes clear that CAS ADD has jurisdiction to conduct proceedings and impose sanctions when an alleged anti-doping rule violation is filed, provided that a WADC signatory has delegated its powers. Decisions rendered by CAS ADD are recognized under the WADA Code, ensuring their enforceability across jurisdictions. As stated before, CAS ADD provides a uniform and centralized mechanism for adjudicating doping violations, while appeals against its decisions fall under the CAS Appeals Arbitration Division, thereby integrating specialized anti-doping jurisdiction into the broader CAS system.

The right to a hearing is a central guarantee of fairness in both CAS and CAS ADD proceedings. Article R44.2 of the CAS Code establishes that, as a general rule, there shall be one hearing during which the Panel hears the parties, witnesses, and experts, followed by final oral arguments. Hearings are conducted in camera unless the parties agree otherwise, though athletes may request public hearings in disciplinary cases. The Panel retains discretion to limit irrelevant testimony and may conduct hearings via video-conference or tele-conference, reflecting modern procedural flexibility. Witnesses and experts must solemnly declare to tell the truth, underscoring the seriousness of the process. Article A19.3 of the CAS ADD rules mirrors these guarantees, requiring hearings to be held unless the Panel deems itself sufficiently informed. Hearings are also in camera unless the parties agree otherwise, but athletes may request public hearings, subject to limitations in the interests of

²⁴ *CAS Code – Procedural Rules.*

²⁵ *CAS ADD Procedural Rules.*

morality, public order, or justice. CAS ADD further allows witnesses to be exempted from appearing if they have filed written statements, with the Panel assessing the weight of such evidence. In our opinion, these provisions ensure that hearings are accessible, fair, and efficient, while balancing transparency with the protection of sensitive information, such as for example protection of minors.

Appeals to CAS are governed by Article R47, which provides that appeals may be filed against decisions of federations, associations, or sports-related bodies, provided their statutes or regulations allow it, or if a specific arbitration agreement exists. Crucially, appellants must exhaust all available remedies before appealing. R47 also allows appeals against awards rendered by CAS acting as a first-instance tribunal, if expressly provided by the relevant rules. This provision ensures that CAS appeals are subsidiary, respecting the autonomy of sports bodies while providing a final safeguard. The most distinctive feature of CAS appeals is the *de novo* review under Article R57, which empowers Panels to reassess both facts and law in their entirety. Given its significance, the *de novo* procedure will be examined in detail in a separate chapter of this study.

3.2 National Framework

3.2.1 Division of legislative competences in Bosnia and Herzegovina in the field of sport and anti - doping regulation

Bosnia and Herzegovina is a State whose constitutional structure is marked by extraordinary complexity, a direct consequence of the Dayton Peace Agreement. It consists of three entities, the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District. The Federation is organized on federal principles, while the Republika Srpska is a unitary entity. This duality makes Bosnia and Herzegovina an asymmetrical federation, where different models of internal organization coexist under one constitutional framework.²⁶ The Constitution of BH establishes a division of competences between the State and the entities, relying on the method of enumerating state powers while presuming that all other competences belong to the entities.²⁷ In practice, this means that the regulation of sport in general falls under

²⁶ Trnka & Begić, 2025, pp. 343-344, 353-355.

²⁷ Ibid, pp. 377-378

the jurisdiction of the Republika Srpska, the Federation of BH and Brčko District with further decentralization in the Federation of BH to its cantons.²⁸

The Constitution of Republika Srpska explicitly defines the competences of the entity, including the regulation of sport. As a unitary entity, RS exercises authority in this domain, which allows for a coherent and uniform legal framework. The situation in the Federation of BH is considerably more complex. Its Constitution introduces three categories of competences: exclusive competences of the Federation, shared competences between the Federation and the cantons, and cantonal competences. While exclusive and shared competences are explicitly enumerated, cantonal competences are defined residually, with only illustrative examples provided.²⁹ This approach grants cantons broad authority, including in the regulation of sport, so that both the Federation and the cantons exercise jurisdiction in this area. The Federation of Bosnia and Herzegovina has not yet enacted a Law on Sport, although a Draft Law on Sport in the Federation of BiH was prepared in January 2024.³⁰

Such a constitutional arrangement has led to the emergence of internal conflicts of laws of a territorial character.³¹ Each canton in the Federation may adopt its own legislation on sport, which several cantons have, in fact, undertaken, while Republika Srpska maintains a separate framework. The State itself has enacted legislation in this field. This multilayered system produces overlapping and sometimes contradictory norms, a phenomenon typical of federations but particularly pronounced in Bosnia and Herzegovina due to its asymmetry and extreme decentralization. The result is a fragmented legal landscape in which athletes, clubs, and regulatory bodies face difficulties navigating different regimes.

However, the Constitution of BH provides mechanisms for transferring responsibilities to the State level. Article III/5 allows redistribution of competences in three cases: when agreed by the entities, when provided for in Annexes 5 - 8 of the Dayton Agreement, or when necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of BiH. The

²⁸ Ibid, pp. 380 – 382.

²⁹ Alihodžić, 2012, pp. 219 – 221.

³⁰ Parliament of the Federation of Bosnia and Herzegovina. *Nacrt Zakona o sportu (Draft Law on Sport)*.

³¹ Alihodžić, 2012, pp. 223-229.

constitutional text separates these conditions with semicolons, which implies that each condition independently constitutes a sufficient basis for the assumption of responsibility by State institutions. This means that the State can acquire competence in a given field without requiring explicit entity consent, provided one of the conditions is met.³²

On this constitutional basis, the Law on Sport of Bosnia and Herzegovina (hereinafter: LoS BH)³³ was adopted. Alongside this State law, the Law on Sport of Republika Srpska and several cantonal laws in the Federation remain in force. The State LoS BH addresses issues of particular importance, especially those with international implications. Articles 49 and 61 of the LoS BH prohibit doping in sport and establish ADA BH. By centralizing anti-doping regulation, Bosnia and Herzegovina ensures compliance with international standards and safeguards its participation in global sporting events.

3.2.2 Reference to International Instruments and the Primacy of International Law in Bosnia and Herzegovina

Bosnia and Herzegovina's constitutional framework places international law at the very foundation of its domestic legal order. Article III/3b of the Constitution explicitly provides that the general principles of international law are a constituent part of the legal system, which means that the principle of *pacta sunt servanda*, the obligation to respect and fulfill international agreements in good faith, has direct constitutional force.³⁴ The Constitutional Court has confirmed this interpretation, most notably in case U-5/09,³⁵ where it examined the compatibility of the Law on Protection of Domestic Production³⁶ with CEFTA obligations. The Court held that non-compliance with an international commitment simultaneously constituted a violation of Article III/3b, thereby establishing that international law prevails over conflicting national legislation. This jurisprudence underscores that Bosnia and Herzegovina's constitutional order is inseparably linked to its international

³² Alihodžić, Meškić & Duraković, 2019, pp. 157-158.

³³ Official Gazette BH, No. 27/08, 102/09, 66/16.

³⁴ Alihodžić, Meškić & Duraković, 2019, p. 155.

³⁵ U-5/09, Official Gazette, No. 18/10, from 9.3.2010.

³⁶ Official Gazette B&H, No. 49/09, the B&H Constitutional Court repealed the Law.

obligations, and that failure to comply with them is not only a breach of treaty law but also a constitutional violation.³⁷

This principle is particularly evident in the field of anti-doping regulation. Bosnia and Herzegovina has ratified the European Convention against Doping in Sport³⁸ and the UNESCO Convention, thereby assuming binding obligations to harmonize its domestic framework with the WADA Code and related international standards. Acting on these commitments, the ADA BH adopted in November 2020 the *Instruction on the Implementation and Application of the World Anti-Doping Code 2021, International Standards and Anti-Doping Rules in Bosnia and Herzegovina*.³⁹ Entering into force on 1 January 2021, this Instruction explicitly provides that the Code, international standards, and national anti-doping rules apply directly and take precedence over domestic legislative and sub-legislative acts. It further requires the Olympic Committee, the Paralympic Committee, and all sports federations to align their statutes and internal regulations with the Code and to ensure that their members are informed of the new obligations. In this way, international instruments penetrate the domestic legal order and directly shape the governance of doping in sport. The Instruction of the ADA BH illustrates how the State seeks to overcome structural challenges by mandating harmonization not only at the State level but also within the organizational frameworks of sports federations, thereby extending the reach of *lex sportiva* into civil society institutions. Thanks to this alignment, the ADA BH applies the Anti-Doping Rules of Bosnia and Herzegovina, which are fully harmonized with the 2021 WADA Model rules for National anti-doping organizations,⁴⁰ thereby guaranteeing consistency with global standards and ensuring that the State fulfills its international commitments in good faith.

The 2021 Model Rules for National Anti-Doping Organizations were adopted pursuant to the WADA Code and the related International Standards that entered into force on 1 January 2021. Their primary objective is to assist National Anti-Doping Organizations in implementing the requirements of the Code within domestic legal and sporting systems and to ensure harmonization of anti-doping regulation at the international level. The Model Rules therefore represent a

³⁷ Alihodžić, Meškić & Duraković, 2019, pp. 155 – 156.

³⁸ The Convention has been in force in Bosnia and Herzegovina on the basis of succession since 1 February 1995.

³⁹ ADA BH, *Dokumenti agencije*.

⁴⁰ *Model Rules for National Anti-Doping Organizations 2021*.

standardized legal framework intended to facilitate the effective functioning of national anti-doping systems and to promote consistency in the global fight against doping in sport.

The structure of the Model Rules distinguishes between provisions that must be reproduced without substantive modification and provisions that may be adapted to domestic institutional and legal circumstances. Certain clauses identified by the Code are mandatory and must remain materially identical in all national anti-doping regulations.⁴¹ This approach reflects the need to uniformly interpret and apply anti-doping obligations across jurisdictions. At the same time, the Model Rules recognize that limited adjustments may be necessary depending on whether a National Anti-Doping Organization operates through public legislation, governmental policy, or private-law arrangements.

The commentary accompanying the Code also plays an important interpretative role. Although National Anti-Doping Organizations are not obliged to reproduce such commentary in their domestic regulations, the Code requires that the commentary be recognized as having the same interpretative value as within the Code itself.⁴² In this way, the commentary serves as an authoritative guide to apply and interpret anti-doping provisions.

WADA strongly recommended that National Anti-Doping Organizations adopt new anti-doping rules based directly on the 2021 Model Rules instead of merely amending previous regulations. Such an approach contributes to legal certainty, facilitates the correct use of cross-references, and reduces interpretative difficulties for athletes, sports organizations, and disciplinary bodies. The overall purpose of harmonization is to ensure coherent implementation of anti-doping standards throughout the international sporting system.

In Bosnia and Herzegovina, the anti-doping framework is implemented through the Anti-Doping Rules adopted by ADA BH.⁴³ These Rules are adopted in accordance with the responsibilities assigned to ADA BH under Article 20.5 of the WADA

⁴¹ Ibid, pp. 2-3.

⁴² Ibid.

⁴³ *Anti-Doping Rules BH*, pp. 4-5.

Code⁴⁴ and are intended to support the prevention of doping in sport within Bosnia and Herzegovina.

The Rules define themselves as sports regulations governing the conditions for participation in sport and expressly characterize their legal nature as *lex specialis* in relation to criminal and civil legislation. Consequently, they prevail over general national legal standards applicable in ordinary judicial proceedings, while remaining subject to the principles of proportionality and respect for human rights. Courts, arbitral tribunals, and other adjudicative bodies are required to acknowledge the specific character of anti-doping regulations and the fact that these rules implement a globally accepted framework established through the consensus of stakeholders in international sport.

The introductory provisions of the Rules emphasize the objectives of anti-doping programs. Their purpose is to preserve the “spirit of sport,” understood as the ethical pursuit of human excellence through the development of natural talent. Anti-doping measures are therefore intended not only to sanction prohibited conduct but also to protect athletes’ health and safeguard the integrity of sporting competition. Accordingly, the Rules identify values associated with the spirit of sport, including health, ethics, fair play, honesty, respect for rules, dedication, teamwork, courage, solidarity, and respect for other participants.

The institutional role of ADA BH is defined in accordance with the LoS BH, pursuant to which the Agency was established as an independent administrative organization responsible for monitoring, coordinating, proposing, and implementing anti-doping measures. Since commencing operations in 2009, ADA BH has been entrusted with implementing international anti-doping conventions, the WADA Code, International Standards, and the rules of relevant international sporting bodies, including the International Olympic Committee and international sports federations. Although accountable to the Council of Ministers of Bosnia and Herzegovina, ADA BH is required under the Code to maintain operational independence from sports organizations and governmental authorities, particularly regarding decisions and activities related to doping control.⁴⁵

⁴⁴ Article 20.5. of the WADA Code 2021, p. 129.

⁴⁵ Article 20.5.1. of the WADA Code 2021.

The Rules also provide that ADA BH is responsible for all aspects of doping control. Although certain functions may be delegated to third parties, any delegated activities must be conducted in accordance with the Code, the International Standards, and the Anti-Doping Rules. Ultimate responsibility for ensuring compliance nevertheless remains with ADA BH.

The scope of application of the Rules is broadly defined. They apply to ADA BH and its personnel, national sports federations and their affiliated entities, as well as athletes, athlete support personnel, and other persons participating in sport within Bosnia and Herzegovina, irrespective of nationality or residence. This includes athletes and support personnel who are members of national federations, participants in competitions and sporting events organized or recognized by such federations, and persons subject to anti-doping authority through licensing, accreditation, contractual relationships, or other legal connections with sports organizations.⁴⁶

The Rules further extend to recreational athletes under specified conditions, particularly where such individuals have not competed at the international or national elite level within a defined period. In addition, they apply to all athletes who are nationals or residents of Bosnia and Herzegovina, as well as athletes present within its territory for training, competition, or other sporting activities.⁴⁷

Participation in sport within Bosnia and Herzegovina is deemed to constitute acceptance of the Anti-Doping Rules and of the jurisdiction of ADA BH. Persons subject to the Rules are therefore bound by the disciplinary and appellate procedures established therein, including the jurisdiction of disciplinary panels responsible for adjudicating anti-doping matters.

Finally, the Rules determine which athletes are considered athletes of national level for the purpose of applying specific anti-doping obligations. These include athletes categorized under the national classification system, holders of licenses issued by recognized national sports federations, and participants in national championships organized by such federations. However, athletes classified by their international

⁴⁶ *Anti-Doping Rules BH*, pp. 4-5.

⁴⁷ *Ibid.*

federations as international-level athletes are treated accordingly for the purposes of the Anti-Doping Rules BH. Significantly, WADA has adopted the new *Model Rules for National Anti-Doping Organizations 2027*,⁴⁸ and in the forthcoming period national anti-doping agencies will be required to harmonize their regulations with these rules, which are scheduled to enter into force on January 1, 2027.

4 Athletes' Right to a Fair Trial in Anti-Doping Proceedings

4.1 Procedural Safeguards for Sport Integrity and Athletes' Fair Trial Rights in Disciplinary Proceedings

The integrity of sport, in connection with the applicable anti-doping regulations previously discussed, is safeguarded by the principle of strict liability,⁴⁹ pursuant to which an anti-doping rule violation shall be deemed to have occurred whenever a prohibited substance is detected in an athlete's sample.⁵⁰ It is the duty of every athlete to ensure and undertake all necessary measures to prevent any prohibited substance from entering their body, and this constitutes the athlete's personal responsibility.⁵¹ Accordingly, athletes and other persons are obliged to acquaint themselves with the substances and methods included on the annually published List of Prohibited Substances,⁵² from which it follows that ignorance of such regulation cannot serve as a justification. This applies equally to situations involving the use of a contaminated product recommended to the athlete by a coach or club physician.⁵³

While liability under Article 2 of WADA Code and respective Anti-doping Rules is strict, the sanctioning authority calibrates the penalty by reference to the athlete's degree of fault or negligence, which means that a sanctioning regime is both proportionate and individualized. With respect to the duration of the period of ineligibility, the regulatory framework establishes a defined range and an upper ceiling, while the precise sanction is determined in light of various factors, including the nature of the violation, whether the detected substance is specific or non-specific, and the athlete's degree of fault or negligence. Aggravating

⁴⁸ WADA *Model Rules for National Anti-Doping Organizations*, 2027.

⁴⁹ See comment no. 7 to WADA Code 2021.

⁵⁰ Article 2.1. of the WADA Code and Article 2.1. of the respective Anti-doping Rules BH.

⁵¹ Ibid.

⁵² ADA BH *List of Prohibited Substances* 2026.

⁵³ Đurđević, 2015, p. 464.

circumstances, such as trafficking or administration, justify more severe sanctions, while mitigating circumstances, such as the absence of significant fault, may reduce the penalty. In this way, the framework ensures that punishment corresponds to both the seriousness of the violation and the athlete's personal responsibility with the final goal of preserving sport integrity.

Conversely, when a prohibited substance is introduced into the athlete's body, it is essential to determine whether the existing anti-doping rules provide sufficient guarantees for a fair trial. The right to a fair trial is a cornerstone of international human rights law and is particularly relevant in the field of anti-doping regulation. Due to the civil nature of anti-doping cases,⁵⁴ it comprises four essential elements: the right to a fair hearing, the right to an independent and impartial tribunal established by law, the right to a public hearing and the public pronouncement of judgments, and the right to a fair trial within a reasonable time. These guarantees are enshrined in Article 6.1. of the European Convention on Human Rights (hereinafter: ECHR)⁵⁵ and form part of the European principle of the rule of law.⁵⁶ They are also reflected in other international instruments. The UNESCO Convention, in paragraph 2 of its preamble, explicitly refers to existing international instruments for the protection of human rights, thereby situating anti-doping regulation within the broader framework of fundamental rights. The WADA Code 2021 reinforces these principles, particularly in Comment 52, in regard to Article 8.1., which emphasizes that athletes must be afforded a timely, fair, and impartial hearing during the results management process. This provision is not intended to replace the rules of each anti-doping organization but to ensure that all organizations, including national Hearing Panels, provide a hearing process consistent with internationally accepted principles.

The wording of Article 6 of the ECHR,⁵⁷ as well as the jurisprudence of the European Court of Human Rights (hereinafter: ECtHR) confirms the applicability of Article 6.1. to sports arbitration. In *Mutu and Pechstein v. Switzerland*,⁵⁸ the ECtHR held that disputes concerning doping sanctions involve civil rights and obligations,

⁵⁴ Grabenwarter, 2014, p. 107; see also Costa, 2019, pp. 5-6.

⁵⁵ *European Convention on Human Rights*.

⁵⁶ Grabenwarter, 2014, p. 100.

⁵⁷ *Ibid*, pp. 113 – 126.

⁵⁸ *Mutu and Pechstein v. Switzerland*, 2018.

thereby falling within the scope of Article 6.1.⁵⁹ It recognized CAS as a tribunal established by law, independent and impartial,⁶⁰ while noting deficiencies such as the absence of public hearings.⁶¹ This decision, together with *FNASS v. France*⁶² in which the Court held that, although location reporting duties interfere with athletes' private life, they are justified by overriding public interest considerations in combating doping and safeguarding health, so the respondent State achieved a fair balance of interests and no violation of Article 8 was found,⁶³ confirmed the compatibility of the WADA Code, respective international standards, national Anti-doping Rules and CAS Code with human rights standards, provided that fair trial guarantees are respected.

Following the procedural public policy guarantees found in Article 190(2) of Switzerland's Federal Act on Private International Law,⁶⁴ the Swiss Federal Tribunal has repeatedly affirmed the importance of fair trial guarantees in CAS proceedings. In several cases⁶⁵ it confirmed that CAS must respect procedural fairness and that violations of commonly recognized principles create an intolerable contradiction with the sentiments of justice.⁶⁶ In this way, the Tribunal ensures that CAS proceedings remain consistent with constitutional standards. The ECtHR has also recognized that certain rights under Article 6 may be waived, though not all. In *Osmo Suovaniemi v. Finland*,⁶⁷ the ECtHR held that waivers must be unequivocal and consistent with public interest. Besides, athletes often face mandatory arbitration clauses in federation statutes or Olympic entry forms, raising questions about

⁵⁹ Paras. 56 – 59 of the *Mutu and Pechstein v. Switzerland* reads: The Court reiterates that Article 6 § 1 applies only to the determination of “civil rights and obligations or of any criminal charge. As regards application no.40575/10, the Court notes that the first applicant complained about the arbitral award of 31 July 2009, which ordered him to pay damages to Chelsea Football Club. The rights in question are clearly of a pecuniary nature and stem from a contractual relationship between private persons. They are therefore ‘civil’ rights within the meaning of Article 6 of the Convention. As regards application no.67474/10, the Court observes that it is the award of 25 November 2009, confirming the second applicant’s suspension for two years, which is at issue. Here too, as this is a disciplinary procedure before the professional bodies and in the context of which the right to carry on an occupation is at stake, there is no doubt as to the “civil” nature of the rights in question. Article 6 § 1 of the Convention is therefore applicable to the disputes, forming the subject matter of the present case, to which the applicants were parties before the CAS’.

⁶⁰ *Mutu and Pechstein v. Switzerland*, 2018, para. 149. See also: Costa, 2019, pp. 5-6.

⁶¹ *Mutu and Pechstein v. Switzerland*, 2018, para. 183.

⁶² *FNASS v. France*, 2018.

⁶³ *FNASS v. France*, 2018, para. 159 and 191.

⁶⁴ Switzerland's Federal Act on Private International Law, Article 190(2).

⁶⁵ *Guillermo Cañas v. Association of Tennis Professionals World Tour (World Tour ATP)*, 2005 and *Marc Biolley [Representative of A. Sport] v. Association Y. & TAS*, 2008, cited according to Černič, 2014, pp. 7-8.

⁶⁶ *A. and B. v. IOC and FIS (Lazutina)*, 2012; Serb, 2025, p.12.

⁶⁷ *Osmo Suovaniemi v. Finland*, 1996.

whether consent to CAS arbitration constitutes a waiver of access to ordinary courts. Scholars argue that athletes are effectively compelled to accept arbitration, limiting their freedom of choice.⁶⁸

The principle of equality of arms requires that parties have a fair opportunity to present their case without disadvantage.⁶⁹ In *Kress v. France*,⁷⁰ the ECtHR emphasized this requirement. CAS proceedings must respect adversarial principles, allowing parties to comment on evidence.⁷¹ While equality of arms can theoretically be waived through arbitration agreements, the Swiss Federal Tribunal continues to monitor compliance from a procedural standpoint.⁷² A contentious issue in CAS jurisprudence is the burden of proof in anti-doping cases. In the *Contador* case,⁷³ the CAS applied the balance of probabilities standard, requiring athletes to prove the absence of prohibited substances. Critics argue that strict liability undermines fair trial rights, as athletes bear an excessive burden. While proof beyond reasonable doubt may be impractical in doping disputes, scholars suggest adopting a standard requiring substantial grounds for believing an offence occurred. This would balance the fight against doping with procedural fairness.⁷⁴

Article 6 of the ECHR requires tribunals to be independent and impartial. In assessing compliance with this requirement, several factors must be satisfied. Foremost, the independence of a tribunal is evaluated, *inter alia*, on the basis of the manner in which its members are appointed, the duration of their term of office, the existence of safeguards against external influence and the freedom from instructions, as well as whether the body appears to be independent.⁷⁵ CAS's independence was first scrutinized in *Gundel v. FEI*,⁷⁶ where the Swiss Federal Tribunal noted its ties to the IOC and recommended greater autonomy. The creation of the International Council of Arbitration for Sport improved independence by overseeing arbitrator appointments.⁷⁷ Arbitrators serve renewable four-year terms and must declare independence. However, concerns remain about transparency in selection and

⁶⁸ Černić, 2014, p. 9; Serb, 2025, pp. 17-18.

⁶⁹ Grabenwarter, 2014, p. 134.

⁷⁰ *Kress v. France*, 2001.

⁷¹ Černić, 2014, p. 10.

⁷² *Ibid.*

⁷³ *Contador*, 2011.

⁷⁴ Černić, 2014, pp. 10-11.

⁷⁵ Grabenwarter, 2014, pp. 116-117.

⁷⁶ *Gundel v. FEI*, 1992; *Mavromati & Reeb*, 2015, pp. 505-506.

⁷⁷ Serb, 2025, pp. 7.

potential external influence. The Tribunal has held that independence must be assessed case by case, based on objective facts. Impartiality requires absence of bias, assessed both subjectively and objectively.⁷⁸ CAS statutes mandate disclosure of circumstances affecting independence, and arbitrators may be challenged if doubts arise. Even the appearance of bias suffices for removal.⁷⁹ The Swiss Federal Tribunal reviews CAS awards to ensure impartiality, reinforcing the principle that justice must not only be done but be seen to be done.⁸⁰

The question of whether the same rigorous standards of independence and impartiality required of the CAS must also apply to internal disciplinary bodies or first-instance panels is nuanced. Article 13 of the WADA Code 2021 and respective Anti-doping Rules BH, together with the jurisprudence of the European Court of Human Rights, provides useful guidance. The ECHR has consistently held that Article 6 of the ECHR requires a fair trial before an independent and impartial tribunal. However, its case law (for example, *Mutu and Pechstein v. Switzerland*) clarifies that deficiencies at the first level of adjudication do not automatically amount to a violation, provided that the appeal lies to a body with “full jurisdiction.” Such a tribunal must be competent to review both facts and law, thereby curing any shortcomings of the initial body. In this sense, the CAS qualifies as such a tribunal, since it reassesses the merits comprehensively and offers procedural safeguards such as recusal mechanisms and conflict-of-interest rules. According to Costa,⁸¹ internal sporting bodies or disciplinary committees are often structurally embedded within federations, making complete independence difficult to achieve. Their “operational independence” may suffice at the preliminary stage, but it does not reach the same threshold as the CAS.⁸² The risk of bias is inherent in their composition, yet this is mitigated by the availability of appeal to CAS. Thus, international human rights standards do not demand that these first-instance bodies meet the same level of impartiality as CAS, so long as the appellate review is robust.⁸³ While independence and impartiality remain fundamental principles, the ECHR jurisprudence accepts a differentiated approach: internal panels, such as ADA BH Hearing Panel as well as ADA BH Appeals Board, may operate with guarantees provided for in Article 8,

⁷⁸ Grabenwarter, 2014, p. 120.

⁷⁹ See: R33 and R34 of the CAS Code – Procedural Rules.

⁸⁰ Černič, 2014, pp. 10-11.

⁸¹ Costa, 2019, p. 32.

⁸² Ibid.

⁸³ Ibid.

provided that CAS, as a tribunal of full jurisdiction, ensures compliance with the right to a fair trial.

Article 6 of the ECHR also requires tribunals to be established by law.⁸⁴ Legal courts of arbitration with compulsory jurisdiction do also fall within the scope of this article.⁸⁵ In *Zand v. Austria*,⁸⁶ the ECtHR explained that judicial organization must be regulated by law, not executive discretion. CAS, created by the IOC, is arguably not a tribunal established by law in the strict sense, as it functions primarily as an arbitral body.⁸⁷ Nonetheless, its awards carry binding force between parties, and the Swiss Federal Tribunal provides judicial oversight. The hybrid nature of CAS, part arbitral, part quasi-judicial, complicates its classification but does not exempt it from fair trial guarantees.

In terms of public hearing, Article 6 of the European Convention encompasses the right to a public trial and to a publicly pronounced judgment.⁸⁸ The ECtHR in *Martine v. France*⁸⁹ emphasized that publicity prevents secret justice, and contributes to achieving a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention. CAS rules, however, mandate confidentiality, excluding public access unless parties consent.⁹⁰ This raises doubts about compliance with Article 6 of the ECHR. While arbitration traditionally excludes strangers, the lack of public hearings at CAS may undermine perceptions of fairness, even if confidentiality serves practical purposes in sports disputes.⁹¹

4.2 *De Novo* Review Before CAS: Guarantees of Protection against Abuse

The appellate procedure before the CAS, as determined by Article R57 of the CAS Procedural Rules, was first incorporated into these rules in 1994. Since then, the provision has evolved through several amendments, gradually strengthening CAS's

⁸⁴ Grabenwarter, 2014, pp. 115-116.

⁸⁵ Ibid.

⁸⁶ *Zand v. Austria*, 1976.

⁸⁷ Černič, 2014, p. 15.

⁸⁸ Grabenwarter, 2014, p. 145.

⁸⁹ *Martine v. France*, 2000, para. 39.

⁹⁰ R43 of the CAS Code – Procedural Rules reads: "Proceedings under these Procedural Rules are confidential. The parties, the arbitrators and CAS undertake not to disclose to any third party any facts or other information relating to the dispute or the proceedings without the permission of CAS. Awards shall not be made public unless all parties agree or the Division President so decides."

⁹¹ Černič, 2014, p. 17; Kozłowska –Rautiainen, 2020, pp. 142-144.

jurisdiction with respect to the scope of review of first-instance decisions. Beginning in 2003, CAS was granted the authority to issue a new decision replacing the contested one, or to annul the first-instance decision and remit the matter for reconsideration. Further amendments in 2013 introduced the tribunal's discretion to exclude evidence submitted by the parties if such evidence was available to them, or could reasonably have been discovered, prior to the issuance of the contested decision. The expanded scope of review and the possibility of a *de novo* hearing reflect the objective of enabling parties to present their case before an independent arbitral tribunal, given that disciplinary bodies of sports organizations are not required to meet the standards of independence applicable to arbitral tribunals.⁹² Pursuant to Article R57, CAS is empowered to re-examine both factual and legal issues, to conduct a wholly new procedure, and to render a new decision in accordance with the applicable rules. This entails that CAS may admit new claims for relief, new evidence, and new legal arguments, subject to certain limitations - most notably the exclusion of evidence that was available to the parties prior to the contested decision. CAS also possesses full authority to remedy procedural deficiencies arising from the conduct of the first-instance body.⁹³

Article R57 thus provides CAS with three distinct options: (i) to annul and replace the decision of the lower instance with a new ruling; (ii) to partially uphold the appeal and modify the contested decision; or (iii) to annul the decision and remit the matter to the same body for reconsideration.⁹⁴ In practice, the application of Article R57 involves the reassessment of new facts, evidence, legal arguments, and claims for relief.⁹⁵

The admissibility of new facts in CAS appellate proceedings raises questions of procedural economy, particularly where the first-instance decision was rendered by an arbitral body such as the Basketball Arbitral Tribunal (BAT).⁹⁶ Nonetheless, this possibility is justified in cases where a party such as WADA, which did not participate in the first-instance proceedings, seeks to intervene on appeal, especially where the initial panel may have too readily accepted the athlete's explanations.⁹⁷

⁹² Mavromati & Reeb, 2015, pp. 505-507.

⁹³ *Ibid.*, p. 508.

⁹⁴ *Ibid.*, p. 509.

⁹⁵ Rigozzi & Hasler, 2018, pp. 1569 - 1664.

⁹⁶ *Ibid.*, p. 1659.

⁹⁷ *Ibid.*

Article R57(3) expressly permits the introduction of new evidence, whether related to factual assertions made before the first-instance body or to newly raised factual allegations. However, in our view, the potential for abuse is greater in relation to new evidence than to new facts, since the factual background of the dispute, supported by evidence before the first-instance tribunal, may be radically altered or even contradicted by evidence presented before CAS, thereby undermining the first-instance proceedings.

For this reason, the discretion afforded to CAS under Article R57 (3) to exclude evidence that was available to the parties prior to the contested decision is well-founded. This discretion, however, is properly exercised only where the first-instance body constituted a genuine (independent) tribunal.⁹⁸ Given the composition, conditions of establishment, transparency, and the availability of CAS review, we submit that this provision should also apply to decisions of national hearing panels established under the WADA Code and relevant anti-doping rules.

It is important to distinguish the introduction of new evidence from the deliberate presentation of testimony before CAS that directly contradicts testimony given before the first-instance body, which may decisively affect the determination of sanctions.⁹⁹ For example, if a club physician testifies at first instance that he examined the product consumed by the athlete only after the positive test result was received, but later testifies before CAS that he had thoroughly investigated the product prior to recommending it, such conduct constitutes an abuse. In such circumstances, the exclusion of evidence must be carefully reasoned to ensure the integrity of the proceedings.

CAS is also free to decide irrespective of the legal arguments advanced by the parties. Moreover, under Article R57, parties may amend their claims for relief before CAS. However, CAS remains bound by the subject matter of the dispute as defined before the first-instance body.¹⁰⁰ This limitation does not apply in cases of appeals lodged by “third parties,” such as WADA, whose claims CAS may adjudicate even if they

⁹⁸ Ibid, p. 1660.

⁹⁹ Article R 44.2. Reads: »Before hearing any witness, expert or interpreter, the Panel shall solemnly invite such person to tell the truth, subject to the sanctions of perjury.«

¹⁰⁰ Ibid, p. 1662.

extend beyond the scope of the original dispute, particularly where the first-instance body declined to decide fully or partially on the matter.¹⁰¹

5 Conclusion

The institutional and legal framework of anti-doping regulation in Bosnia and Herzegovina illustrates how constitutional fragmentation can be reconciled with international responsibility through the primacy of international law and the central role of the national ADA BH. By embedding the WADA Code and UNESCO Convention into its domestic order, Bosnia and Herzegovina has ensured that athletes are subject to clear substantive obligations while simultaneously benefiting from procedural safeguards. The layered adjudicatory structure: national hearing panels, appellate review, and ultimately *de novo* proceedings before the CAS, provides a coherent mechanism that balances sporting integrity with the athlete's right to a fair hearing.

Although CAS jurisprudence has at times adopted nuanced positions regarding the scope of appellate review, in doping cases its approach is unequivocally *de novo*. This standard is justified by the varying diligence, consistency, and resources of first-instance panels across jurisdictions. *De novo* review protects athletes and institutions alike, enhances harmonization, corrects factual and legal errors, checks extreme outcomes, and ensures that the *lex sportiva* remains coherent and trustworthy.¹⁰² CAS's tripartite framework of culpability further reinforces proportionality and consistency in sanctioning. Bosnia and Herzegovina thus offers a compelling case study of how effective governance in anti-doping requires both robust institutional design and unwavering commitment to fundamental rights.

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¹⁰¹ Ibid, p. 1663.

¹⁰² *WADA v. IWF & Yenny Fernanda Alvarez Caicedo*, 2016.

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CONTRACTS WITH PROFESSIONAL ATHLETES

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The theme of the work is contractual relations with professional athletes in sports law. The article first attempts to define athletes from a legal standpoint. It then proceeds to analyze the various types of contracts that professional athletes engaged in sports activity might conclude when viewed through the prism of the Slovakia Labor Code, the Commercial Code and the Sports Act. It then explores how contracts in connection with the professional performance of sport are impacted by other regulations, both transnational and national. Special attention is given to the analysis of contractual provisions dealing with the termination of the contract on the professional performance of sports, both from the owner's and club's perspective and that of the athlete. Special emphasis is placed on analyzing moral clauses in such contracts as a legitimate reason for terminating the contract.

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1 Introduction

Sports have a unique place in society and the athletes engaged in sports, especially professional athletes, and those engaged in collective team sports, also find themselves in a rather exceptional space. They are what we might call hybrid workers. They have outstanding, individual talents, which set them apart, and in a sense are not your usual “employee” as we might commonly understand that term. Yet, when they are a part of a collective organization – a team – under the control of a club or some other organization, then we do see them more in the role of the traditional employee. As we shall see in this paper, the professional athlete’s unusual place in society has created difficulty in the law. This is particularly true when considering contractual relations between professional sports athletes and clubs and other organizations that retain them. The constant debate about the legal status of the athletes in individual and collective sports has been reflected in the possibility of concluding contracts according to various legal regulations due to the extensive diversity in regulating professional sports.

The unique nature of sports law, especially regarding the relationship between professional athletes and club/organization, has given rise to the existence of several options when concluding professional sports contracts. Indeed, every contractual relationship, even if it is based on contractual types of private law, is influenced by the particularity of sports law. Therefore, it is necessary to analyze contractual relations through the prism of this specialty.

In the Slovak legal environment, there are significantly more of these options for which the legal system might govern the relationship. This is evident from the wording of Act No. 440/2015 Coll. on sports and from the various amendments thereto (hereinafter referred to as the “Sports Act”), which make it clear that such sports contracts may have different characters. For example, they may have elements of a relationship established by labor law according to a contract on the performance of professional sports; they may be based entirely on the basis of labor law relationships; or, they may be based on another contractual relation. Those cases lacking any labor law characteristic will be subject to the provisions of the Act No. 513/1991 Coll. Commercial Code as amended (hereinafter referred to as the Commercial Code). One of the aims of our analysis will be to ascertain the type of professional sports contract that will be governed by the Commercial Code. Further goals are to determine when one of the mentioned types of contracts will be used,

considering the division of professional athletes into individual and collective, but with an emphasis on collective sports, and which other regulations affect the content of the contract between a sports organization and an athlete in collective sports.

However, one aspect that has not received adequate attention in legal literature is the effect of the incorporation of so-called moral clauses into these contracts and their impact on the termination of a professional contract. Here, important questions include how does EU law, FIFA regulations, and national law regulate the termination of professional sports contracts when the athlete supposedly is in breach of a morals clause. Further, what limits do these frameworks impose on contractual autonomy in professional sport and how these provisions are conceived, whether they are governed by regulations, and if presently they are not, is there a need to do so. Further questions concerning moral clauses include whether the grounds that constitute bases for terminating a contract for just cause arising from a breach of a moral clause must be exhaustively listed or does it suffice that such conduct is identified more broadly, for example, as bad manners (or conversely, the athlete “must always act using good manners”).

The article employs a doctrinal legal methodology that mainly focuses on analysing court decisions and legal norms. Particular attention is paid to the Court of Justice of the European Union's jurisprudence on the application of internal market and competition law to professional sports. The article also examines the regulatory framework of international organization and compares them with state regulations under Slovak sports law and regulations of national associations. The article analyses the relationship between public legal regulation and the independent regulatory framework of sport using descriptive, analytical and comparative methods.

2 Definition of an Athlete

International scholarship has long debated how professional athletes should be classified legally. Professional athletes typically meet the requirements for employment, according to Simon Gardiner and Roger Welch,¹ because they perform sport for remuneration while simultaneously being subject to organizational control and subordination by sports organizations. However, scholars like Jack

¹ Gardiner, O'Leary, Welch et al., 2017.

Anderson² contend that professional sport represents a unique labor market requiring specialized legal solutions beyond conventional labor law frameworks due to its peculiarities, including transfer systems, competition regulations, and disciplinary mechanisms.

According to the Sports Act, an athlete is defined as a person who practices sports as a professional athlete, amateur athlete or as an unorganized athlete. The law does not define the status of the athlete and its concept. The division of athletes into professionals and amateurs, for example in football, is based on Article 2, paragraph 2 of the FIFA Regulations on the Status and Transfer of Players,³ which consider professional players to be those who have a written contract with a club and are paid more for their football activity than the expenses they effectively incur. All other players are considered as amateurs. The Sports Act does not specify the term, or the distinction of athletes, but determines the relationships based on which they can practice sports. Our focus will be on the professional athlete, and in particular, the specific type of contractual arrangement under which such professional athlete performs sports:

- a) based on a contract on the professional performance of sports;
- b) based on an employment relationship or a similar employment relationship according to a special regulation in a departmental sports center; or
- c) based on another contract as a self-employed person.

The Sports Act recognizes the mentioned ‘tripartition’ of relations. Which specific legal regulations apply depends on the category the athlete falls into. I will discuss each of these three options later in this paper. The issue of the status of athletes is debatable only in collective sports, or sports organized into clubs, which can also be individual sports, such as club boxing or tennis.

The principal, and mutual, obligations contained in contracts with athletes, regardless of whether they are concluded in any of the ways set forth above, are the obligation of the athlete to perform sports as the main form of their earning activity and the basic source of income and the corresponding obligation of the other contracting party to pay for the athlete’s performance of sports activities. There are,

² Anderson, 2010.

³ FIFA - Regulations on the Status and Transfer of Players, 2025.

of course, many other duties and obligations contained in sports contracts, though the athlete's obligation to perform and the other party's obligation to compensate the athlete for such performance constitute the most fundamental ones.⁴ And it is this sports activity and its subordination to work or business that will determine the athlete's status.

3 Sports Activity and the Labor Code

The exclusive application of the entire Act No. 311/2001 Coll. Labor Code as amended (hereinafter referred to as the Labor Code) without any modification is more complicated and raises more questions and problems than does the application of section § 269 para. 2 of the Commercial Code. According to the character of the sports activity of a professional player, professional player contracts should be governed by the Labor Code, as they meet all the established characteristics of work. Similarly, other authors such as Čorba state that the athlete's undertakings for a sports club mainly consists of repeating certain activities, according to the instructions of the employer, or of a specific superior person, who is usually a coach, at a time and place determined by the sports club, using equipment or tools provided by the club and at its expense. However, from the point of view of the overall spectrum of their activities for the sports club, the athlete lacks meaningful discretion in how to fulfill their duties and instead is largely bound by the instructions of the sports club.⁵ It was necessary to deal with an argument based on a social need and a situation where the Labor Code does not consider the specifics of a sports contract and is even inapplicable to sports contracts.⁶ Institutes of labor law such as working hours, duration of employment or termination of employment are inapplicable in view of customary sports practice.

The Supreme Administrative Court also commented on this in decision no. 2 Afs 16/2011 dated November 29, 2011. The Court stated that "e. g., It is difficult to imagine that a professional athlete could terminate his relationship with his club by unilaterally resigning (i.e. that he could subsequently transfer "for free" to another club, although the previous club raised him or "bought him"), or that the activities of athletes would be all provisions relating to working hours (including overtime) or restrictions established for concluding employment contracts for a fixed period (§

⁴ Kučera, 2012, p. 146.

⁵ Čorba, 2012, p. 71.

⁶ Jurka, 2018, p. 22.

39 of the Labor Code), etc., are applicable."⁷ This is also the case with pre-contractual relationships, where in labor law it is possible to ascertain the employee's state of health after the conclusion of the employment contract but before the employment relationship is established. Yet before the conclusion of the professional sports contract a medical examination is common practice. This is the case because a medical examination is an essential requirement of pre-contractual negotiations. Provisions on business trips are also problematic in the sports field, as it is common for sports activities to be performed in different places not only within the state but also in Europe or the world if clubs or individuals are involved in various European and other transnational competitions. It is therefore possible to determine the place work is performed either narrowly or broadly. The Labor Code assumes that the place of performance of work will be a municipality or an organizational unit but does not rule out that the place of performance of work may also be a place otherwise designated. The parties can mutually agree to a place of work performance, for example a specific workplace and the employer's seat, municipality, region, territory of the Czech Republic, etc.⁸

Although being a professional athlete involves many of the hallmarks of traditional work, yet it is very different in other aspects. The restrictions contained in the Labor Code could often complicate or even make sports activities impossible.⁹ Consequently, although it is true that it is impossible to apply every provision of the Labor Code to sports contracts, because they are not suitable by their nature, this does not mean that its application is absolutely excluded, because some provisions can be used supportively. In essence, it follows from the above that the provisions of labor law *de lege lata* are not suitable for their use in a contract with a professional athlete.

To help resolve this situation, Slovakia adopted special legislation relating to sports relations, which regulates the use of appropriate provisions of the Labor Code. We believe that it would be preferable to resolve this situation by incorporating the regulation relating to sports activities into the Labor Code itself, instead of splitting it into several smaller legal regulations, but basically this is only a theoretical issue.

⁷ Judgment of Nejvyšší správní soud sp. zn. 2 Afs 16/2011, 29 November 2011.

⁸ Judgment of Nejvyšší soud České republiky sp. zn. 21 Cdo 4213/2009, 29 July 2010.

⁹ Maisner et al., 2019, p. 23.

For example, the legal system of the Czech Republic has no sports law or any other type of regulation which allows for the application of the Labor Code. The reluctance to apply the Labor Code is nevertheless understandable, because if the legal relationship between a professional player and a club had to be governed by labor law, in the end it would actually mean an increase in the club's costs per player by 34%, due to the payment of social security insurance premiums and state employment policy, health insurance and pension insurance.¹⁰ Relationships in the performance of sports activities are therefore currently governed by the provisions of the Act No. 40/1964 Coll. Civil Code as amended (hereinafter referred to as the Civil Code) on innominate contracts, which is not optimal. According to the nature of the sports activity of a professional player, their contracts should be governed by the Czech Labor Code, as they meet all the established characteristics of work. Unfortunately, the Czech Labor Code does not consider the specifics of, and it is inapplicable to, sports contracts. Therefore, the subordination of the contractual relationship is left to the contracting parties.

Under Slovak law, relations arising in sports activities were addressed by adopting a special law. The Labor Code then governs the legal relations of professional athletes performing sports based on a contract on the professional performance of sports and to the legal relations of sports experts performing activities based on a contract on the performance of the activities of a sports expert, but only if this is established by a special regulation. A special regulation in this case is the Sports Act. It establishes that a professional athlete performs sports based on a contract on the professional performance of sports, based on an employment relationship or a similar employment relationship according to a special regulation in a departmental sports center or as a self-employed person an active person.

Sports activity, as we have indicated, has all the hallmarks of what we might categorize as traditional work. The Labor Code defines work as activities performed in the context of a relationship where the employer is the superior and the employee is the subordinate, where tasks are performed personally by the employee for the employer, according to the employer's instructions, on their behalf and during the working hours determined by the employer. A contractual relationship established by a contract on the professional practice of sports is considered a different type of labor law relationship. The Sports Act allowed the use of the Labor Code, and this

¹⁰ Chizzola & Radostová, 2012, p. 173.

needs to be emphasized, primarily for team sports, as well as the Commercial Code, especially for individual athletes.

In principle, the employment relationship is concluded in exceptional cases, such as in the National Sports Center, or a similar employment relationship in the Dukla Banská Bystrica Military Sports Center and the Center of the State Sports Representation of the Ministry of the Interior Affairs of the Slovak Republic.¹¹ Otherwise, working relationships in sports activities are not often concluded.

It may seem that research into the inapplicability of the Labor Code to employment relationships between professional athletes and clubs in team sports was only relevant until the Sports Act was adopted, by which the legislator effectively acknowledged the inapplicability of the Labor Code as a whole to regulating the relationship between a professional athlete and a club whose subject is the performing of sports in an employment relationship. However, for a comprehensive overview and understanding of the inapplicability of the Labor Code as a whole, it is necessary to at least present the context of this issue and outline the basic assumptions. And also, if the Sports Act still allows a professional athlete to perform sports on the basis of a contract on professional sports performance as well as on the basis of an employment relationship or a similar employment relationship under a special regulation, in a departmental sports center, it can be assumed that by not combining these two options, the legislator wanted to maintain the difference between a contract under the Sports Act and a contract under the Labor Code or similar regulation.

4 Sports Activity and the Commercial Code

According to the Commercial Code, entrepreneurship is defined as continuous activity carried out independently by an entrepreneur in his own name and on his own responsibility for the purpose of achieving a profit or for the purpose of achieving a measurable positive social impact, if it is an economic activity of a registered social enterprise according to a special regulation. An entrepreneur according to this law is:

- a) a person registered in the commercial register;

¹¹ Gábriš, 2013.

- b) a person who does business based on a trade license;
- c) a person who does business based on a license other than a trade license according to special regulations;
- d) a natural person who carries out agricultural production and is registered in accordance with a special regulation.

Although individual sports activities technically satisfy these criteria so as to qualify as a business, in reality sports activities of athletes who perform sports activities for a club, are less like that. Individual athletes can have the self-employed status and conclude contracts according to § 269 para. 2 of the Commercial Code. However, these will be contracts that will be concluded individually with the organizers of sports events in which the athlete will be interested in starting. In our opinion, such a contract has the elements of a contract for work, although the analogy is both tenuous and debatable. This is the case because if the creation of a work can also have an immaterial character as a result of mental activity, and similarly it can consist of services, i.e., an immaterial form of the work, so also the sports activity of a particular athlete is a kind of result of their mental, immaterial activity.

The question that then arises is whether supporting use of any type of contract is necessary at all. The answer is probably no. It will be sufficient if the contracting parties agree that the athlete will participate, agree on the amount of the compensation, the date when the event will take place and other conditions as determined by the rules of the relevant sports and sports organization.

Regarding the conclusion of innominate contracts with the club, the situation is a little more complicated. Before the law on sports came into effect, utilizing innominate contracts was a common practice, even though sports activities theoretically satisfied the classical characteristics of work. The practice was that clubs concluded innominate contracts with athletes according to § 51 of the Civil Code or § 269 of the Commercial Code, under the fiction that the athlete in collective sports was a self-employed person. The reason is more than obvious and does not need to be explored at length. The clubs were acting to promote their own economic interests by treating the athlete's remuneration as being derived from self-employment. Doing so shifted the burden away from sports clubs to satisfy obligations related to social security, and payment of advance tax on the income of athletes, and directly on to the athlete who became responsible for these

obligations.¹² The result is clear. Innominate contracts have never been suitable for collective athletes.

Yet in the legal system of the Czech Republic, contracts are still concluded as innominate contracts. Nevertheless, the Supreme Administrative Court of the Czech Republic had a different opinion. As mentioned above, in accordance with its previous jurisprudence, the Court stated that in materially assessing whether certain activities constitute work, it is necessary to consider whether the conclusion of the employment relationship should have taken place primarily in the interest of the person who performs this activity. Accordingly, it is not necessary to insist on the conclusion of employment relations, unless there is mutual interest in concluding them. This conclusion is perhaps a little contrary to the concept of banning the use of the legal fiction of self-employment in cases of actual work, even against the will and agreement of the parties involved, which prevailed in the European Union and the USA.¹³

Although the established practice of the courts in the Czech Republic still leans towards concluding professional contracts through innominate contracts, they admit that the signs of entrepreneurship are also weakened. The judgment of the Supreme Administrative Court no. 6 Afs 278/2016 states that a professional athlete in team sports performs their activity consistently and for the purpose of making a profit. Even though sports performing also shows strong elements of dependence on the sports club, its activity regarding the content of professional contracts can be considered as an economically independent activity. Just as in the case of a professional athlete's activity in team sports, the sign of independence is weakened, the two above-mentioned signs are also weakened, but not completely suppressed. The individual characteristics of the trade are therefore not fulfilled in pure form in the case of a professional football player. However, the legislation clearly establishes that the content of the *Activity of operating physical education facilities and organization of sports activities* includes, among other things, the activities of athletes performed independently and for the purpose of making a profit. Importantly, the legislation allows the activity of an athlete based on a trade license, without explicitly differentiating the activity in individual and collective sports.¹⁴ Although the legal regulation allows this possibility, the practice of using innominate contracts under

¹² Čorba, 2012, p. 72.

¹³ Čorba, 2012, p. 73.

¹⁴ Judgment of Nejvyšší správní soud sp. zn. 6 Afs 278/2016 dated 13. jula 2017.

civil or commercial law, at least in team sports, must be clearly rejected, a conclusion shared by Gábriš.¹⁵

However, the use of an innominate contract in individual sports also causes minor difficulties. A fundamental problem with their use is that the courts have failed to interpret them consistently, thus breeding uncertainty. Accordingly, it is therefore necessary to find some indirect contractual arrangements in the contracts. In other words, in the absence of a comprehensive legal framework, the excessively general provisions governing an innominate contract need to be supplemented, for interpretive purposes, by the regulations and rules of sports associations and federations. In professional contracts, this is usually made possible by final clauses, where the parties undertake to exercise mutual rights and obligations in accordance with the regulations of national and transnational associations. A professional athlete is always a member of an institution, sports union, or association of a certain sports sector, which, among other things, organizes and arranges the functioning of sports competitions in the relevant territory where the player receives a remuneration from the sports club for their sports performance.

With their membership, this athlete therefore acquires certain rights and obligations towards this sports institution of the relevant sports sector, or the relevant civil association. Concurrently, they acquire a certain relationship with certain rights and obligations towards the sports club, which, according to the degree of development of the given sports sector, has various internal regulations establishing individual rights and obligations for a professional athlete. An unclear conclusion follows from the above, since it is not possible to say with certainty what kind of indirect contractual arrangements are actually involved. The question remains relevant as to whether the reference in the so-called sports contract under commercial law regime to compliance with the regulations of sports organizations in sports can be considered a reference to trade customs in the given industry, or whether this reference partially includes general terms and conditions, or whether it merely constitutes auxiliary provisions for the interpretive rules in § 266 of the Commercial Code.¹⁶ This interesting question has not been fully answered even with the adoption of the Sports Act. It is difficult to assume that it causes major difficulties

¹⁵ Gábriš, 2013.

¹⁶ Kubiček, 2013, p. 117.

in individual sports, and therefore it can only be left on a theoretical level as a kind of minor issue.

However, it remains true that innominate contracts are unsuitable for athletes engaged in collective (team) sports and for athletes in individual sports who are required to be affiliated with a club. In contrast, they are appropriate for purely individual athletes. However, if, in the exercise of sporting activities in team sports, we refuse to conclude unnamed contracts and not all provisions of the Labor Code can be applied, then truly few options remain at our disposal.

5 Sports Activity According to the Sports Act

In principle, we are then left with only two options, one of which was reflected in the legal order of the Slovak Republic through the Sports Act, specifically the provisions on the contract on the professional performance of sports. It could be said that this contract is a kind of "employment contract" of a professional athlete. It represents a modification of those provisions of the Labor Code, which are used as an argument for the impossibility of managing sports activities under labor regulations.

5.1 Contract on the Professional Performance of Sports and its Classification

The explanatory report to the Sports Act states that a professional athlete and a sports organization are obliged to always use a contract on the professional performance of sports in the contractual arrangement of their relationship, if the sports activity of the athlete, which they perform for the sports organization, has the characteristics of work according to the Labor Code. The provision that this legal relationship established by the contract on the professional practice of sport is considered an employment relationship, i.e. that the sports organization becomes the employer and the athlete becomes an employee within the meaning of the Labor Code, while their rights and obligations in this relationship would be governed only by the Sports Act. Alternatively, the contractual relationship established by the contract on the professional performance of sports is considered a different employment relationship, as stipulated in the Sports Act in § 46 para. 1. The club must sign professional sports contracts with professional athletes, while other contracts will constitute a violation of the sports law. And players with other contracts can subsequently be labeled by the sports unions as players who played in

the competition without authorization, which creates the possibility of disciplinary action against both the players and the clubs themselves.¹⁷ The result is that the athlete becomes an employee of the sports club.

According to the provisions of § 102 para. 4 of the Sports Act, after December 31, 2018, contracts between athletes and sports clubs performing sports in a way that meets the characteristics of work were to be considered as contracts on the professional performance of sports. Here we can see the effort to organize previous relationships according to the Sports Act. However, the provision of § 106d of the Sports Act amended that the contractual relationship between an athlete and a sports organization that was established before February 1, 2020, if the athlete performs sports for a sports organization as a self-employed person, including in a way that meets the characteristics of work, is considered a contractual relationship based on a different contract according to this law than a contract on the professional performance of sports. In such cases, § 102 para. 4 does not apply. And so, despite the effort to transform relationships concluded earlier, it was not possible to successfully reach the intended goal. In principle, this is not such a problem. The important thing is that other contractual relationships with professional athletes in team sports must already be established by a contract on the professional performance of sports as another labor law relationship.

The adoption of the sports law act did not fulfill the thoughts of Dolobáč, who claimed that another option, in addition to developing special contract types for athletes, is to fully legalize the admissibility of atypical contracts in labor law by changing the provision of § 18 of the Labor Code and enshrining the provision similar to the provision of § 51 of the Civil Code. He did not advocate a special adjustment of the sports contract, but instead supported the overall liberalization of labor law, which in his view would ensure the possibility of enshrining the legal status of the athlete, which would simultaneously provide them both with the necessary social and legal protection while meeting the needs of their club.¹⁸ These considerations, regardless of whether we accept them or not, force us to think about the regulation of special contracts in a separate legal regulation or in the Labor Code. The fragmentation of civil law by a number of supplementary and secondary regulations is a non-systematic solution. Therefore, the Civil Code cannot be

¹⁷ Čollák, 2016.

¹⁸ Dolobáč, 2010, pp. 796 – 801.

considered a modern compliant legal regulation. Additionally, by amending special contracts on the basis of which it is possible to perform sports activity, or the status of athletes in other separate legal regulations, ultimately means the same for the Labor Code: fragmentation, non-uniformity and non-systematicity. This does not mean that adjusting these relations is useless and unnecessary. However, the optimal solution would be to make comprehensive, systematic changes to existing legal regulations, in this case undoubtedly the Labor Code, in the interest of maintaining uniformity in one clear legal regulation. Doing so would promote the salutary goals of uniformity and clarity and would avoid the existing ambiguities that continue to foster uncertainty, legal disputes and litigation.

Nevertheless, an important finding remains that this contract must be concluded between a sports organization and a professional athlete when performing sports activities in team sports. Of course, only with exception if the contract is not concluded according to the provisions of the Labor Code, which is concluded only in cases where he is an employee in the resort sports center.

5.2 Contract on the Professional Performance of Sports

The Sports Act establishes the written form and the essential elements of the contract on the professional practice of sports. These include:

- a) name, surname, date of birth, nationality and address of permanent residence or similar residence of the athlete or the athlete's legal representative;
- b) the name of the sports organization, the identification number of the organization, the legal form, the seat, the designation of the relevant register that registered the sports organization, and the registration number, name, surname, address of permanent residence or similar residence and the function of the person authorized to act on behalf of the sports organization;
- c) the duration of the contract, with the fact that a contract on the professional performance of sports can only be concluded for a certain period, the longest being five years from the date of entry into force of the contract, if the regulations of the sports association do not specify a shorter period;
- d) the type of sport to be practiced by the athlete;
- e) wages and wages conditions of the athlete;
- f) use and evaluation of personal rights of the athlete;
- g) amount of leave and method of taking it;

- h) the day of starting to perform sports, which must not be earlier than the date of entry into force of the contract;
- i) date of entry into force of the contract;
- j) place and date of contract signing.

Of course, it is also possible to agree on other conditions that are not fundamentally different from ordinary contracts establishing an employment relationship. Due to the specificity of sports activity, it is possible to consider as interesting sanctions for breach of contractual obligations or the extent of confidentiality. This is because, as already indicated, an athlete's duties pursuant to § 32 of the Sports Act are not typical, such as compliance with certain lifestyle activities agreed upon with the sports organization, such as not performing dangerous activities without the prior written consent of the sports organization, or not participating personally or through a third party on a betting game in the sport performed. Such restrictions are only typical of sports law.

The Sports Act also regulates working hours and rest and leave, as well as obstacles to performing sports, which due to the performance of sporting activities (such as football or hockey) must be adjusted differently from the provisions of the Labor Code. The Sports Act also regulate one more specialty, namely the temporary hosting of an athlete. An athlete who has a professional contract with a sports organization may be temporarily assigned to perform sports for the benefit of this sports organization, based on a written hosting agreement between the athlete, the sports organization with which the athlete has a professional contract, and another sports organization. Even though it is a specialty, it is very similar to the provision of § 58 of the Labor Code on the temporary assignment of an employee, when an employer or a temporary employment agency according to a special regulation can agree in writing with an employee in an employment relationship that they will be temporarily assigned to perform work for the user employer. During the temporary hosting of an athlete, not all conditions, such as salary conditions (they are usually preserved and only their payment, or the salary ratio between the visiting club and the club with which he has a contract for professional sports practice) are negotiated, as in the case of a temporary employee assignment.

5.3 Termination of the Contract on the Professional Performance of Sports According to the Sports Act

When analyzing this contract, it is necessary to pay particular attention to the possibilities of its termination, as it will be related to other considerations of the work. The contractual relationship established by the contract on the professional performance of sports expires *ex lege* upon the expiration of the period for which concluded, by the death of the athlete or his declaration as dead, or upon the dissolution of the sports organization without a legal successor. However, the contractual relationship established by the contract on the professional performance of sports can also be terminated in other ways, which are regulated by § 38 para. 2 of the Sports Act, specifically:

- a) by agreement;
- b) by notice of termination or;
- c) by immediate termination.

Ad a) The agreement on the termination of the contractual relationship established by the contract on the professional performance of sports is no different from the agreement on the termination of the employment relationship according to the Labor Code.

Ad b) The notice of termination must be written and delivered to the other contracting party, and the contract can be terminated by both the sports organization and the athlete. The athlete is entitled to terminate the contract on the professional performance of sports, if the sports organization has violated the basic obligation according to § 33 letter a), c) or letter d) of the Sports Act. This means if it failed to ensure the athlete was consistently prepared for competitions under the guidance of a coach with the required professional competence, failed to create suitable conditions for practicing sports or failed to allow the national sports representative to participate in the sports team. The first two reasons are characterized by a certain amount of vagueness. Neither the law nor the explanatory report specifies what conduct might trigger breach of the club's obligation to provide the athlete with continuous preparation for competition. Basically, under this term, it is possible to imagine a wide range of situations including the failure to provide adequate technical equipment, training facilities or professional care. Therefore, to avoid doubt, these conditions should be specified within the contract. Ultimately, it often becomes

difficult when a dispute arises to prove in what way the sports organization's obligations were violated. In our opinion, such formulated provisions cause unnecessary complications in the future.

Other reasons justifying an athlete to terminate their contract include if the sports organization failed to allow the athlete to practice sports according to the contract on the professional performance of sports for more than two consecutive months, or it failed to allow the athlete to participate in more than 10% of the competitions for the sports organization during the competition period even though he was medically fit to participate.

It will be more interesting for us, for the reasons stated later in this work, to analyze the grounds that sports organizations have to terminate the contracts of athletes on the professional performance of sports. In accordance with § 42 para. 1 of the Sports Act the sports organization is entitled to terminate the contract if:

- a) the athlete does not meet the medical fitness to perform sports for a long time according to the contract on the performance of professional sports; loss of medical fitness is proven by a medical opinion, according to which the athlete may not practice sports for a long time according to the contract on the performance of professional sports;
- b) the athlete violated the basic obligation according to § 32 letter b), e) to n) and at the same time, in the last six months, in connection with the violation of the athlete's basic obligation, he was warned in written form about the possibility of termination;
- c) the sports organization or its part is cancelled;
- d) there are reasons for which the sports organization could immediately terminate the contract on the performance of professional sports with athletes.

Particularly interesting is the violation of obligations resulting from § 32 of the Sports Act. In principle, all the obligations mentioned may seem remarkable, but they have their own logic and justification.

The Sports Act also allows the immediate termination of the contract on the professional performance of sports, both on the part of the sports organization and the athletes. Both parties have the option to immediately terminate the contractual relationship in the case of a serious violation of sports rules, regulations or decisions

of the relevant sports association or general mandatory legal regulations. In addition, the athlete has the option to immediately terminate the contractual relationship established by this contract if the sports organization has not paid the salary according to the conditions established in § 42 para. 2 letter a) of the Sports Act, if the athlete has lost his medical fitness to perform sports, or if the further practice of sports seriously endangers his life or health in accordance with § 42 para. 2 letters c) of the Sports Act.

The sports organization has the legal right to immediately terminate the contractual relationship if the athlete:

- a) violated the basic obligation according to § 32 letter a), c) or letter d), i.e. if he violated his obligations to participate in competitions and events determined by the sports organization, to prepare consistently for the competition according to the instructions of the sports organization, or not to participate personally or through a third person in a betting game in the sport he performs;
- b) participated without the consent of the sports organization in a competition for another sports organization;
- c) has seriously violated sports rules, regulations or the decision of the relevant sports association;
- d) violated the doping ban;
- e) manipulated the course or result of the competition or did not report the manipulation of the course or result of the competition to the sports organization entrusted with the management of the competition or to the law enforcement authority or;
- f) he was sentenced to a unconditional prison sentence.

This detailed analysis of the reasons justifying the termination of the contractual relationship established by this contract will be the starting point for our further considerations. So far, we have analyzed the termination of the contractual relationship only in terms of legal regulations. However, there are grounds other than legal regulations that have an impact on these contractual relations.

6 Other Regulations Affecting the Contract with Professional Athletes

In addition to the provisions of the Sports Act, or other laws, a special regulation found in the regulations of sports organizations shall also be used for contracts on the professional performance of sports. Which specific regulations affect the content of the contract with professional athletes will be best clarified directly by the provisions governing its termination, because those, as already outlined above, will follow the next chapter of this work.

The idea that professional sports are governed by a multi-level governance structure is becoming increasingly prominent in contemporary academia. Antoine Duval¹⁹ argues that international sports federations create a kind of global private regulation by exercising significant regulatory power through transnational regulations that directly affect athletes and clubs. Similarly, Lorenzo Casini²⁰ characterizes the sports regulatory framework as a sophisticated international administrative system in which commercial sports organizations perform governance responsibilities that were traditionally performed by public agencies.

6.1 European Union Law and the Jurisprudence of the Court of Justice of the European Union in Professional Sports Contracts

The contractual relationship between professional athletes and sports organizations extends beyond the scope of national labor law or the internal regulations of sports federations. Within the EU, professional sport is recognized as an economic activity and is therefore subject to EU law.²¹ Specifically, the legal framework for professional sports contracts is shaped by the Treaty on the Functioning of the European Union (TFEU), particularly its provisions on the free movement of workers (Article 45 of the TFEU), the freedom to provide services (Article 56 of the TFEU), and competition law (Articles 101–102 of the TFEU).²²

Key provisions of EU primary law relevant to this context include Article 45 of the TFEU, which guarantees the free movement of workers within the Union; Article 56 of the TFEU, which addresses the freedom to provide services; and Articles 101

¹⁹ Duval, 2013.

²⁰ Casini, 2011.

²¹ See Weatherill, 2013; Parrish, 2003.

²² TFEU, Articles 45, 56, 101–102.

and 102 of the TFEU, which govern competition law. These provisions apply to professional sports when sporting activities are performed as economic activities for remuneration. The Court of Justice of the European Union (CJEU) has consistently determined that athletes engaged in professional sport may be classified as workers or service providers under EU law, and that sporting rules are subject to EU law when they generate economic effects.

6.1.1 Free Movement of Workers and the Bosman Judgment

A decisive milestone in the application of EU law to professional sport is the judgment in *Union Royale Belge des Sociétés de Football Association ASBL v Bosman*.²³ The case concerned transfer rules in professional football that required payment of a transfer fee even after the expiration of a player's contract, as well as nationality clauses limiting the number of foreign EU players that clubs could field in competitions.

According to the CJEU, these regulations restricted workers' freedom of movement, which is protected under Article 45 of the TFEU. According to EU legislation, professional football players who offer services for pay are considered workers, and as such, they are free to travel between Member States without unreasonable limitations.

The CJEU concluded that transfer fees that are due after a player's contract expires limit labor mobility and are not permitted under EU law. The CJEU also ruled that nationality quotas that applied to EU citizens were incompatible with and violated the principle of non-discrimination based on nationality.

The Bosman ruling significantly changed how professional sports contracts are governed by the law. According to Stephen Weatherill,²⁴ the Bosman ruling demonstrated that sporting rules cannot escape the application of EU law when they have significant economic effects. It curtailed the regulatory authority of sports federations when their regulations clashed with essential EU liberties and reinforced the contractual position of players upon the expiration of fixed-term contracts. The Court established that contractual or regulatory procedures limiting a player's

²³ Case C-415/93, *Union Royale Belge des Sociétés de Football Association ASBL v Bosman* [1995] ECR I-4921.

²⁴ Weatherill, 2006.

freedom to seek employment in another Member State must be proportional and objectively justified from the standpoint of contract termination.

6.1.2 European Union Competition Law and the Meca-Medina Doctrine

*Meca-Medina and Majcen v. Commission*²⁵ offered additional clarification on the connection between sporting autonomy and EU legislation. In this instance, professional swimmers contested anti-doping penalties in front of the European Commission, claiming that they violated EU competition rules.

The CJEU rejected the claim that sporting regulations are automatically immune from EU law because they are "purely sporting" rules. Rather, it determined that when sporting restrictions have an impact on the economy, they are covered by Articles 101 and 102 of the TFEU.

The Court established a proportionality-based evaluation that determines whether sporting regulations are compliant with EU competition law based on:

- a) the validity of the goal being pursued;
- b) if reaching that goal will inevitably have limiting implications, and;
- c) if the actions are appropriate.

In European sports law, this method, also known as the Meca-Medina test, has emerged as a key conceptual framework. It requires that EU competition principles must be considered when evaluating sports legislation, especially contractual duties included in professional sports contracts.

The proportionality principle is especially important regarding codes of behavior, disciplinary regulations, and moral clauses in professional sports contracts that could result in penalties or termination. Therefore, any contractual restriction that affects an athlete's economic activity must pursue a genuine sports goal and not exceed what is required to accomplish that goal.

²⁵ Case C-519/04 P, *Meca-Medina and Majcen v Commission* [2006] ECR I-6991.

6.1.3 Protection of Training Investments and the Bernard Judgment

*Olympique Lyonnais SASP v. Olivier Bernard and Newcastle UFC*²⁶ was another significant case involving a teenage football player that was compelled to pay compensation for refusing to sign his first professional contract with the team that trained him. Instead, he signed with a different club in a different Member State.

The CJEU recognized that recruiting and training young athletes is a legitimate goal that can support some limits on free movement. Nevertheless, the CJEU held that compensation plans must continue to be reasonable and restricted to covering real training expenses.

Under Article 45 of the TFEU, compensation systems may represent an unreasonable limitation on the free movement of workers if they place undue financial obligations on athletes or new clubs.

Therefore, the Bernard ruling affirms that contractual provisions intended to safeguard club investments must adhere to the proportionality standard. This logic also applies to clauses in contracts pertaining to unilateral termination of professional sports contracts or damages for breach of contract.

6.1.4 Earlier Rulings and the Economic Nature of Sport

*Walrave and Koch v. Union Cycliste Internationale*²⁷ was the first case to acknowledge that EU law applied to sports. The Court determined that sport is covered by the Treaty to the extent that it is an economic activity. The CJEU recognized that rules of solely sporting interest might not be covered by EU legislation, although this exception is only applicable in circumstances that have no bearing on the economy.

This Court expanded upon this basic holding in other rulings. The Court examined international competition selection standards and quotas in *Delière v. Ligue francophone de judo*²⁸ and concluded that such limitations might rationally be consistent with how sports are organized and therefore are not inherently contrary to EU law. Similarly,

²⁶ Case C-325/08, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC* [2010] ECR I-2177.

²⁷ Case 36/74, *Walrave and Koch v Union Cycliste Internationale* [1974] ECR 1405.

²⁸ Case C-51/96, *Delière v Ligue francophone de judo* [2000] ECR I-2549.

in *Lehtonen and Castors Canada Dry Namur-Braine*,²⁹ the Court examined professional basketball transfer dates and affirmed that non-discriminatory regulations may be illegal under EU law if they unnecessarily limit labor mobility.

6.1.5 Implications of European Union Law for Termination of Professional Sports Contracts

The CJEU's jurisprudence shows that professional sport in the EU functions under a more expansive constitutional framework established by EU law. This case law gives rise to several principles:

- a) According to EU legislation, professional athletes that engage in paid activities may be considered workers or service providers.
- b) EU free movement and competition law applies to sporting regulations and contractual clauses that have an impact on the economy.
- c) Contractual mobility restrictions must meet the proportionality principle and have justifiable goals.
- d) Compensation schemes cannot act as covert obstacles to mobility; instead, they must match actual costs or harms.

These principles severely restrict sports organizations' capacity to rely on widely defined contractual restrictions that limit athletes' economic independence when contracts pertaining to professional sports performance are terminated.

This is especially important regarding moral clauses. Sports organizations may rightfully aim to safeguard integrity, reputation, and ethical standards in sports, but if an athlete's ability to pursue professional activity within the domestic market is disproportionately restricted, termination based on ambiguous or overly broad moral provisions may be illegal under EU law.

As a result, sports federations' customary autonomy must be used within the bounds set by EU legislation. The preservation of fundamental economic freedoms granted by the European Union coexists with contractual stability and sports integrity thanks to the CJEU's jurisprudence.

²⁹ Case C-176/96, *Lehtonen and Castors Canada Dry Namur-Braine* [2000] ECR I-2681.

6.2 Termination of the Contract on the Professional Performance of Sports According to the Regulations on the Status and Transfers of Players of the International Football Federation

The Sports Act provides protection to professional athletes in several areas. As mentioned above, since the termination of the contract regulated in the Labor Code does not apply to sports activities, the Sports Act specifically regulates the conditions under which it is possible to give notice of termination to an athlete. These conditions are based on established reasons, but also follow up or supplement them, contained in the regulations of sports organizations. In football, these are primarily regulations promulgated by the International Football Federation (FIFA), but also those promulgated by sports organizations at the national level. While the legal reasons are an extension of those contained in the Regulations on the Status and Transfers of Players, that does not mean that they are inconsistent or contrary to them.

The termination of contracts between professional players and sports clubs was adopted by FIFA to the Regulations on the status and transfers of players, which were affected by the decisions in the Bosman and Bernard cases. Under the Regulations on the status and transfers of players a contract between a professional player and a sports club can only be terminated upon expiry of the term of contract for which it was concluded and by mutual agreement of the parties.

According to Article 14 of the Regulations on the status and transfers of players, the contract may be terminated by either party without consequences of any kind (payment of compensation or imposition of sports sanctions), if there is a legitimate reason for this, referred to as "just cause". In general, just cause shall exist in any circumstance in which a party can no longer reasonably and in good faith be expected to continue a contractual relationship. Any abusive conduct of a party, the purpose of which is to force the other party to terminate or change the terms of the contract, entitle the counterparty (professional player or sports club) to terminate the contract with just cause. These legitimate reasons include outstanding salaries and sporting just cause.

However, according to Article 16 of the mentioned Regulations on the status and transfer of players, the contract cannot be unilaterally terminated during the season, which means during a competition period. In case that the contract is terminated

without a just cause, consequences are set as a sanction for such termination. The party that violated the contract is obliged to pay compensation, which is calculated according to Article 17 of the Regulations on the status and transfers of players.

In addition to the obligation to pay compensation, any player found to be in breach of contract during the protected period will also be subject to sporting sanctions, which is a four-month restriction on playing in official matches, and in the case of aggravating circumstances, this restriction can last up to six months. These sporting sanctions can also be imposed on a club, not only if it terminates a contract with a professional athlete in breach of the contract and Regulations on the status and transfers of players during the protected period, but also on a player's new club if, having regard to the individual facts and circumstances of each case, it can be established that the new club induced the player to breach the contract during the protected period. These sanctions prohibit the club from registering any new players, either nationally or internationally, for two full and consecutive registration periods.

An acceptable termination of the contract for sporting reasons means that sporting sanctions will not be imposed, but both parties still must agree on financial issues. A player may terminate his contract in this way only within 15 days following the last official match of the club's season. It is unsurprising that the contracting parties typically agree on the amount of compensation in case of breach of contract in advance, due to the difficulty of the rules for determining its actual amount.³⁰

An interesting case of invalid termination of a professional contract was the case no. UKEAT/0660/03 *Wise vs. Filbert Realisations*³¹ (originally Leicester City Football Club) in England. During Leicester City FC's pre-season training, teammates Dennis Wise and Callum Davidson had an incident which resulted in a physical attack. As a result of the punch or punches to the face delivered by Wise, Davidson suffered a broken cheekbone with bruising and swelling around his right eye. This, of course, led to the termination of the contract in accordance with its provisions. Wise exercised his contractual right to appeal to the Football League's disciplinary committee, which conducted a full re-hearing, including calling relevant witnesses. The Disciplinary Committee found that Wise had committed a serious breach but noted that there had been procedural irregularities at the club level, as a result of

³⁰ Hamernik, 2012, p. 46.

³¹ Case no. UKEAT 0660_03_1122 *Wise v Filbert Realisations Ltd.*

which it decided to overturn the termination and impose a fine of two weeks' salary instead of termination. The club appealed the Committee's decision to the Football League Appeals Committee. The main ground of appeal was that having found serious misconduct, the disciplinary committee lacked the authority to find that the termination was inadequate and should have upheld the termination. The Appeals Committee upheld the appeal and confirmed the validity of the termination of the contract, but without re-examining the matter. The Employment Appeal Tribunal held that, given the initial procedural irregularities, the failure to conduct a re-hearing of the Appeals Committee before deciding to set aside the Disciplinary Committee's decision was an unreasonable procedural error and Wise was wrongfully terminated.³² It is possible to see from this procedure that the termination of a contract with a professional player is difficult, not only from the point of view of calculating or determining the amount of compensation for the termination of the contract, but also from a procedural point of view. It is therefore not surprising that unilateral contract terminations are very rare.

6.3 Termination of the Contract on the Professional Performance of Sports According to the Slovak Football Association

In addition to the legal regulations of states and international sports organizations, the field of law in sports is also regulated by the regulations of individual national sports organizations and associations as well. In the field of football in Slovakia, this is the Slovak Football Association (hereinafter referred to as SFZ).

At the national level, the contract on the professional performance of sports and its termination are governed by the Registration and Transfer Regulations of the SFZ. This regulation governs the contents of the contract and its minimum requirements, while it also contains a standardized model of the contract between a player with professional status and a club. These requirements also include the obligations of the club and the player, but they are identical to the obligations in the Sports Act. The requirements of the contract include the method of payment of remuneration or change of the method of remuneration, disciplinary rules, the amount of leave and the method of taking it, etc. The obligations that the contract must contain in the provisions concerning the protection of human rights, namely guaranteeing the player's freedom of expression, the prohibition of discrimination, and the

³² Welch, 2018, p. 5.

commitment of the contracting parties to act against racism and other discriminatory actions in football, are of particular interest and will be discussed later in this article.

According to Article 29 para. 7 and 8 of the Registration and Transfer Regulations, the duration of the contract between the professional and the club can only be terminated after the expiry of the period for which it was concluded or by mutual agreement, and the contract cannot be terminated unilaterally during the competition period. Either party can terminate the contract without consequences, i.e., without the obligation to pay compensation or without the imposition of a disciplinary sanction, if he has a legitimate reason (just cause). Here you can see a slight difference between the Regulations on the Status and Transfers of Players and the Registration and Transfer Regulations. While in the first regulation, an acceptable termination of the contract for sports just cause can result both in the payment of financial compensation and other sports sanctions, in the second regulation it is possible to terminate the contract without consequences, i.e., without the obligation to pay compensation. It would be appropriate to remove this contradiction because it may lead to discrepancy in certain cases. Namely, if the party were to appeal to the FIFA authorities, which ascertains the existence of a sporting legitimate reason on a case-by-case basis, and it confirms its existence, it would also order the payment of this compensation. Therefore, it would be appropriate to adjust the wording of subsequent provisions on compensation for breach of contract with a professional and termination of the contract with a professional without just cause. The calculation of compensation must remain, but in accordance with the Regulations on the status and transfers of players, as described above.

Articles 30 and 31 then regulate unilateral termination of the contract by the club and by the player, respectively. By comparing, we can conclude that they are identical to the obligations stated in the Sports Act, supplemented by delivery provisions and the possibility to terminate contracts within 15 days from the last competition match of the club in the competition season due to the reason contained in Article 31, para. 1 letter c) Registration and transfer procedure with the possibility of applying for compensation. It is necessary to inform the SFZ Registry, which will record the notice of termination and the immediate termination of the contract and will indicate the date of termination of the contract in the Central Register of SFZ members.

7 The Hybrid Legal Character of Professional Sports Contracts

Our analysis confirms that labor law, commercial law, and independent sports regulations fail to provide a sufficient understanding of the contract on the professional performance of sports. Instead, professional sports contracts are fundamentally hybrid in nature and located in a rather strange domain where several normative systems converge. The international regulatory framework of sport is often referred to in international studies as *lex sportiva*. Ken Foster³³ argues that *lex sportiva* is the body of international sports law that has been created by the rules of international federations and the case law of arbitration courts such as the Court of Arbitration for Sport. The contractual relationships between professional players and sports organizations are significantly influenced by this independent regulatory framework. Professional sports are both an economic activity and a deeply ingrained cultural practice, thus this hybridity is not accidental.

7.1 The Professional Athlete as a Normatively Hybrid Subject

The professional athlete simultaneously plays multiple roles that are significant to the law. First, the use of labor law principles is justified since they perform dependent work under conditions of subordination. Second, they work in a marketplace where their athletic achievements have marketable economic value, much like in an entrepreneurial setting. Third, they are governed by private sports associations' regulations, which control contractual stability, discipline, eligibility, and transfers. Lastly, they are a bearer of fundamental rights that are safeguarded by EU and constitutional law.

There is structural strain because of these multiple responsibilities. The athlete is neither a completely independent business owner nor a "pure" employee. They are also more than just a member of a private, voluntary organization. Their legal status results from the convergence of three normative regimes:

- a) state law (labor law, commercial law, constitutional law);
- b) transnational sports regulation (e.g., the regulatory framework of FIFA and national associations);
- c) European Union law, especially the jurisprudence of the CJEU.

³³ Foster, 2006.

Therefore, rather than being a straightforward bilateral private agreement, the professional sports contract must be seen as the result of multi-level governance.

7.2 Three Normative Principles: Stability, Economic Freedom, and Fundamental Rights

In order to arrive at a cogent, theoretical understanding of professional sports contracts, it is first necessary to determine the underlying values that influence such contracts. Contractual regulation must function inside what might be thought of as a "normative triangle" formed by these principles:

- a) contractual stability;
- b) economic liberty;
- c) fundamental rights protection.

Ad a) Predictable team composition and competitive balance are essential to sports competitions. The Regulations on the Status and Transfer of Players include compensation mechanisms, protected periods, and transfer procedures that represent these interests. Both economic planning and athletic integrity benefit from stability.

Ad b) According to EU law, professional sports are considered economic activities. The historic ruling in *Union Royale Belge des Soci. de Football Association ASBL v. Bosman* established that unreasonable mobility restrictions are incompatible with the internal market and that professional footballers are workers under Article 45 of the TFEU. Even justifiable goals, such as training compensation, must meet proportionality requirements, according to later case law, such as *Olympique Lyonnais SASP v. Olivier Bernard and Newcastle UFC*.

Ad c) The freedoms of speech, religion, dignity, and nondiscrimination are still guaranteed to athletes. Both state intervention and, in some cases, the regulatory independence of private athletic organizations are restricted by these rights. In *Meca-Medina and Majcen v. Commission*, the Court rejected the idea of a "sporting exception" and used a proportionality test to examine sporting regulations that have an impact on the economy under EU competition law.

Thus, there is a triangular field of tension surrounding the professional sports contract. Any clause in a contract must be evaluated concurrently in light of all three principles, especially moral and termination clauses. Economic freedom may be violated by excessive rigidity; stability may be threatened by excessive flexibility; and fundamental rights may be violated by overly wide moral control.

7.3 “Just Cause” as an Open Norm and Constitutional Corrective

The hybrid and constitutionalized character of sports contract law is exemplified by the idea of "just cause." Instead of serving as a closed list of reasons for termination, it serves as an open normative clause. Its ambiguity is a reflection of the need to contextually find a balance between conflicting principles rather than just a legal shortcoming.

Accordingly, broad terms like good faith or misuse of rights in private law function similarly to "just cause." It allows adjudicatory bodies, such as FIFA dispute resolution chambers, arbitral tribunals, or domestic courts, to determine whether it is reasonable to anticipate the contractual relationship to continue in light of mutual trust, proportionality, and realistic expectations.

Theoretically, "just cause" functions as a constitutional remedy in the governing of private sports. It acts as a mediator between:

- a) the club's interest in discipline and protection of reputation;
- b) economic freedom and personal autonomy of the athlete;
- c) the systemic requirement for contractual stability.

7.4 Moral Clauses and the Limits of Private Normative Power

A particularly delicate example of this balancing exercise is found in moral clauses. They seek to safeguard sports organizations' reputation, brand value, and social responsibility pledges. But they also expand regulatory supervision into the athlete's private life, transcending athletic performance.

For moral clauses to be accepted under the suggested framework, they must meet at least four structural requirements:

- a) legitimate aim (e.g., to protect integrity, to prevent discrimination, and to preserve reputation);
- b) suitability;
- c) necessity, meaning that there is no less restrictive option;
- d) proportionality, especially regarding termination, which is the most serious contractual consequence.

Terminating a professional sports contract based only on widely defined moral standards runs the danger of disturbing the previously mentioned normative triangle. It might exceed what is legitimately required to preserve athletic integrity while disproportionately restricting economic freedom and fundamental rights.

7.5 Theory of Regulated Contractual Autonomy in Professional Sport

The listed structural factors imply that sports organizations' autonomy is neither complete nor fictitious. It functions as a type of controlled contractual autonomy that is incorporated into a larger constitutional framework. Contractual relationships may be shaped by sports associations to maintain the integrity and balance of competition, although this normative authority is subject to state law and EU norms.

Therefore, it is important to view the contract on professional sports performance as a constitutionally conditioned regulatory tool. Its ability to strike a reasonable and logical balance between stability, market freedom, and fundamental rights is what gives it legitimacy, not just adherence to national sports legislation.

8 “Moral Clauses” as a Legitimate Reason for Terminating a Contract on Professional Performance of Sports?

In both regulations discussed above, we could notice the term – just cause. However, the definition of "just cause", apart from the legitimate reason for non-payment of wages and sports reasons, when a professional player who has played in less than ten percent of the official matches in which his club participated during the season, is nowhere stated, or specified in more detailed way. A vague provision stating that, in general, just cause shall exist in any circumstance in which a party can no longer reasonably and in good faith be expected to continue a contractual relationship, cannot be fully considered a clear specification. It is possible that parties concluding

a professional sports contract can adjust such reasons individually in the contract. Yet what does just cause really mean?

Court of Arbitration (hereinafter referred to as the CAS) for *Sport Erik Salkic v Football Union of Russia & Professional Football Club Arsenal*,³⁴ reveals the problems faced by a player seeking to terminate his contract early and relying on the club's training or selection decisions. Before a player can terminate their relationship with his club, there must have been an action by the club that was serious enough for those who will eventually decide to conclude that the contractual relationship must be severed. The small cracks that may appear at the beginning of a relationship breakup are unlikely to be enough when they only appeared recently.³⁵

The concept of "reasonable cause" has been developed primarily through the case law of the CAS. Ulrich Haas³⁶ has highlighted that CAS panels typically use a contextual and proportionality approach when determining whether it is reasonable to expect a contractual relationship to continue. This interpretative approach has facilitated the gradual introduction of international standards governing contractual stability in professional football.

However, the jurisprudence of FIFA and CAS does not provide a clear answer to stakeholders on how to actually apply the provisions to a sporting just cause,³⁷ although they occasionally offer partial answers. As, for example, when the jurisprudence of the FIFA Dispute Resolution Chamber (hereinafter referred to as the DRC) shows that clubs can invoke just cause if players do not show up for training for a long time or if they violate football or sports regulations.³⁸ Nevertheless, a specific definition of just cause is missing.

Since this precise definition is not found either in individual regulations or in jurisprudence, it is possible to think about what could be included in just cause. This opens the opportunity to approach the issue, the so-called "moral clauses" or moral provisions contained in sporting regulations. If we consider these codes as sports

³⁴ Case CAS 2014/A/3642, *Erik Salkic v Football Union of Russia & Professional Football Club Arsenal*.

³⁵ Banerjee & Anderson, 2015.

³⁶ HAAS, 2012.

³⁷ Gradev, 2009.

³⁸ Auberg, 2020.

regulations, then their violation can be considered as a legitimate reason to terminate the contract on the professional performance of sports.

Morality provisions are primarily designed to promote positive images in society. According to Paul M. Anderson,³⁹ morals clauses are intended to protect sponsors' and sports organizations' reputations by allowing sanctions for athletes who engage in behavior that could damage the organization's reputation. In modern professional sports, an athlete's value extends beyond on-field performance to include public image, conduct, and alignment with organizational values. Both sports organizations and professional athletes strive to achieve this positive image. And it is the moral provisions that serve to ensure that the sports organization, as an employer in collective sports, obliges the athlete as its employee to refrain from such actions throughout the duration of the contract, i.e., while performing sports activities for the club, which could cause harm by damaging the organization's good name or brand. Such provisions, which would order a certain type of behavior or refrain from certain conduct, mostly apply to athletes and not to sports organizations. In case that a professional athlete as a well-known person commits an offense resulting not only from a violation of legal regulations but also from moral failings or social offenses, the negative character associated with such actions also damages the sports club.

8.1 The Athlete's Right to Freedom of Religion and Freedom of Speech in the Context of Moral Clauses

These offenses vary in nature, from non-compliance with lifestyle, drinking alcohol and drug use and subsequent inappropriate behavior under the influence of intoxication, or driving under the influence of alcohol⁴⁰ to various incidents of physical assault or abuse.⁴¹ Such offenses can also include various statements on social networks and for the media, the content of which becomes the subject of interest, especially for publicly known personalities such as athletes. Yet it is precisely in connection with professional athletes that this question becomes highly debated. On the one hand, they sometimes are criticized if they fail to publicly comment on issues such as human rights protection, then paradoxically, they might be punished

³⁹ Anderson, 2011.

⁴⁰ One of the last cases of Joelinton, who was charged with drink-driving. More details BBC, 2023.

⁴¹ For example, even animals, as was the case with West Ham United football player K. Zouma, who kicked his cat, recorded the incident and published it on social media.

for expressing their opinions, often even by the ultimate sanction of having their contract terminated. The sanction measures are taken under the pretext of violating the various sporting codes of individual organizations.

In the environment of professional sports, the most common example of the termination of contracts with professional players for political and religious reasons is the termination of sponsorship contracts. One such case is No. MLG 1695/2019 of *Israel Folau vs. Rugby Australia*. Rugby Australia contended Folau committed a high-level breach of its players' code, including the respectful use of social media, when he posted an image on Instagram warning that "hell awaits" homosexuals and other so-called "sinners." The code requires players to treat everyone equally, fairly and with dignity regardless of gender or gender identity, sexual orientation, ethnic origin, cultural or religious background, age, or disability.⁴² Rugby Australia terminated Folau's contract based on his post, contending the views that he publicly expressed were inconsistent with the Club's values, which included a desire to increase inclusivity. Folau sued the Club for wrongful termination. The case was successfully resolved following mediation.⁴³

A similar case involved American football player Colin Kaepernick, who refused to stand during the national anthem as a silent protest against racial inequality. Kaepernick's actions did not result in his club terminating his contract because Kaepernick chose to terminate his contract after the season. Kaepernick and others that study the league observed that quarterbacks with lesser talent were being drafted from the college ranks instead of signing him to their clubs. Consequently, there was growing suspicion that NFL owners saw him as a "problem" and likely did not want the negative attention that signing him would bring. Kaepernick maintained all along that he wanted to continue to play in the NFL, and on October 15, 2017, he filed a complaint with the NFL, accusing its 32 teams of colluding to keep him out of the league. On August 30, 2018, arbitrator Stephen B. Burbank ruled that Kaepernick's lawyers met the evidentiary threshold to allow the case to be heard at a regular hearing, which would mean a quick conclusion and the athlete's success in the proceedings.⁴⁴ Of course, such league-wide collusion (if indeed there was such collusion) to exclude a player from performing in his profession for having silently and peacefully expressing a view on human rights would be contrary not only to all

⁴² BBC, 2019b.

⁴³ More details BBC, 2019a.

⁴⁴ Boren, 2020.

basic human rights and freedoms but also to the provisions of the Labor Code on pre-contractual relations. It can be assumed that this is also why Kaepernick and the NFL reached a settlement agreement in February 2019, with both parties signing a non-disclosure agreement.⁴⁵

In our opinion, standing in contrast to the codes and clauses on morality are the freedoms of religion and belief, together with freedom of thought and conscience and freedom of expression, which collectively are among the basic human rights and freedoms guaranteed not only by the Constitution of the Slovak Republic but also by the European Convention for the Protection of Human Rights and Fundamental Freedoms and thus also the affected legislation of the Slovak Republic. Therefore, it is appropriate to question whether the provisions in such codes or professional player contracts conflict with the provisions of the above-mentioned regulations. In our opinion, such "restrictions" can be considered as violative of the mentioned legal regulations, which protect athletes in case such clauses interfere with their rights and thus violate the prohibition against discrimination. In principle, the sports organizations in the cases we mentioned understood this reality, which is why they reached settlements with the professional players.

The International Automobile Federation (hereinafter referred to as FIA) chose an interesting approach when it adopted provision 12.2.1.o. in the international sporting code. This establishes that the general making and display of political, religious, and personal statements or comments notably in violation of the general principle of neutrality promoted by the FIA under its statutes, unless previously approved in writing by the FIA for International Competitions or by the relevant organization for National Competitions within their jurisdiction,⁴⁶ will be considered a violation of the rules. Violations of this provision do not result in players having their contracts terminated, but they may suffer penalties or sanctions.

On the one hand, these rules "suppress" freedom of thought and speech, which finds support under the principles of neutrality. However, these rules suppress only a certain kind of freedom of thought and speech, namely that which is contrary to certain current public opinion. The question is whether such "restrictive" provisions must of necessity be included in the various statutes or regulations of sports

⁴⁵ Boren, 2020.

⁴⁶ FIA - International sporting code, 2026.

organizations. Unfortunately, the answer seems to be positive. There is overwhelming evidence that society is increasingly divided and seems to lack the ability to accept opposing points of view. If society is not tolerant, not only under the pretext of accepting a particular ideology or opinion to the exclusion of others (that is: if you do not recognize the same values as me, then you are not tolerant), to avoid further polarization of society, these morality regulations are perhaps appropriate at least for a certain time. The only way to truly ensure the free exercise of basic human rights and freedoms is to try to accept opposing views, even if perhaps without understanding specific opinions or ideas, but without insulting and dishonoring the opposite side. This is where true tolerance lies. We must remember that the basic imperative of law is that where the freedom of another begins my freedom ends. While it is unnecessary for everyone to be uniform and united, they should at least be able to accept each other. These comments, though they might be viewed as somewhat utopian in nature, and perhaps beyond the realm of the topic of this article, yet in a real sense do go to the heart of the matter.

Returning to our legal analysis, it would be reasonable to consider incorporating some kind of opposite moral clause, allowing the athlete, if not to terminate the contract, then at least to establish the right to sanctions, in cases where the sports organization the club or union damages the professional athlete's reputation by a statement that contradicts the athlete's views and whose image is very closely associated with this organization. Understandably, including such a provision will only be considered for very prominent athletes who have, one might say, more popularity than the sports organizations themselves. These reasons might include, for example, discovering that he uses goods from a sponsor that employs child labor or materials harmful to health, issues statements contrary to the principle of neutrality, directly or indirectly supports environmental pollution with his activity, etc.

In conclusion, the athlete's breach of moral provisions of any kind, whether contained in the contract or in sports codes, will not be a sufficient reason to terminate the contract between the sports organization and the athlete. However, it is possible and legitimate to contractually agree upon other sanctions for violations.

8.2 Moral Clauses and Environmental Issues

Professional athletes typically comment on issues of human rights and freedoms that are related to political issues, but relatively little on topics that would raise awareness of environmental problems. We can only assume that this is because these questions resonate less in society. Nevertheless, even environmental issues do not elude sport anymore.

Clubs or other sports organizations use various social responsibility initiatives to create a favorable image of their brand, to engender fan loyalty, and to help sell tickets. Even though environmentally sustainable practices are not yet completely self-evident as a way of operating, environmental practices contribute to the legitimacy of sports organizations. These can lead to improved branding and image, thereby attracting more fans and potential employees. These practices currently are not only acceptable, but expected in the sports industry by stakeholders, including employees, fans, professional bodies, and society at large. Concurrently, efforts towards sustainable development enable sports organizations to reduce the ecological footprint of sports and related activities and to use sports as a means of raising environmental awareness among a wide audience.⁴⁷ In relation to the ecological footprint and sport, we will stop briefly at this connection. The FIFA World Cup in Qatar in 2022 was supposed to be the very first instance of such a major event that would not emit “even the smallest gram” of carbon dioxide (CO₂), according to the organization committee and FIFA. Realistically, it is impossible to accurately estimate the carbon footprint of this World Cup, but it appears that it will be at least double that announced by the organization committee. However, the main criticism lies in the irrationality of organizing such an event in a country whose climatic conditions are ill-suited for the rigors of football, and which lacked the necessary infrastructure, because under normal circumstances, it is practically useless.⁴⁸ The construction of the infrastructure itself carries a certain environmental burden, which makes such statements seem illogical and incomprehensible. Therefore, it is only a matter of time before the athletes start to express themselves on this topic.

⁴⁷ Trendafilova, Babiak & Heinze, 2013, pp. 298-313.

⁴⁸ Mayer, 2022.

And again, the same problems that we outlined earlier can arise. Support for environmental policy can be incorporated into codes of conduct and/or contracts between a sports organization and a professional athlete. We saw an example of this in the Registration and Transfer Regulations SFZ in the case of Article 28 para. 17, which states that the contract must contain the commitment of the contracting parties to act against racism and other discriminatory behavior in football. The reason is clear: sport is a great communicator and platform for social change, which extends to environmental sustainability and pro-environmental behaviours.⁴⁹ Consequently, it is possible to expect that the commitment to act in ways that will improve the environment and that will raise awareness of environmental problems will also be part of future contracts. Alternatively, a situation may arise where the athlete publicly expresses contrary opinions. Nevertheless, we consider this case to be unlikely. On the contrary, the more likely scenario occurs when the athlete wants to publicly raise awareness about environmental problems, in conflict with the sports organization. The International Sports Code of the FIA, mentioned earlier, provides an example. It provides that raising awareness can be considered as making and displaying, if not political, then certainly personal statements or comments that could conflict with the general principle of neutrality. Once again, it is necessary to emphasize that such an action will not be a sufficient reason to terminate the contract between the sports organization and the athlete, but pre-agreed sanctions will be possible for this behavior.

9 Proportionality and Contractual Sanctions in Professional Sports Contracts

Contractual relationships between professional players and sports organizations function within a multi-layered normative environment, as the previous analysis showed. European Union law and international sports regulations, in addition to state laws like the Sports Act, regulate these relationships. The application of contractual consequences, whether monetary, disciplinary, or reputational, cannot be assessed exclusively through the prism of private contractual autonomy in this complicated context.

According to EU law, professional sports are considered economic activities. This was established in the Bosman ruling, which affirmed that professional athletes are

⁴⁹ McCullough, 2023, pp. 813-833.

covered by workers' freedom of movement. The Court of Justice later established in Meca-Medina that rules that are typically thought of as merely sports are subject to EU law when they impact the economy. Therefore, sporting autonomy is not unqualified; rather, it is contingent upon adherence to the concept of proportionality and fundamental liberties.

The legitimacy of contractual sanctions in professional sports must be evaluated using a structured proportionality analysis because they might have a substantial impact on the athlete's financial independence, professional reputation, and fundamental rights. This is true for both sanctions imposed directly under the Sports Act and those resulting from federation regulations, such as FIFA's Regulations on the Status and Transfer of Players.

Thus, the proportionality concept works as a unifying analytical instrument that can harmonize contractual autonomy, *lex sportiva*, and state law.

The proportionality test consists of four cumulative criteria, which are legitimate aim, suitability, necessity, proportionality. The contractual consequence becomes disproportionate and incompatible with higher normative norms if any one of these criteria is not met.

This test enables the methodical assessment of consequences related to termination, monetary compensation, disciplinary actions, and so-called moral clauses in the context of professional sports contracts.

The first step requires identification of a legitimate objective pursued by the sanction. Legitimate aims in professional sports usually consist of protection of sporting integrity (anti-doping, anti-match-fixing), ensuring contractual stability, protecting player training expenditures, preserving the fairness of competition, protecting the reputation and economic viability of the sports organization.

The CJEU in Bernard recognized the validity of protecting training investments and contractual stability. Similarly, maintaining sporting integrity is a fundamental institutional goal of organized sport. But not all reputational issues are inherently significant enough to be considered valid goals. The goal must be related to sport's structural or functional interests rather than just short-term public relations concerns.

The second step examines whether the sanction can accomplish the stated goal. For example, a doping suspension is appropriate for protecting the integrity of the competition since it eliminates the athlete whose behavior compromises fairness. In general, financial compensation clauses are suitable for maintaining contract stability and deterring various breaches.

On the other hand, it may be difficult to prove that a termination based solely on controversial public speech was appropriate. Even after dismissal, there may still be ongoing public debate, and other solutions, including internal disciplinary action or clarification, may be equally effective in addressing reputational issues.

Therefore, a logical relationship between the breach and the stated protective aim is necessary.

The most difficult part of the proportionality analysis is the necessity stage. It demands that no less restrictive action would be equally effective in achieving the same legitimate aim. Concerning athletic misbehavior, it is important to distinguish between serious, deliberate violations (match manipulation or systematic doping) and minor or first violations.

Immediate termination may not meet the necessity criterion if less severe sanctions, such as warnings, fines, temporary suspensions, or conditional measures, could adequately protect the relevant interest. This is especially important regarding moral clauses. Termination will rarely meet the need condition if an athlete's behavior consists of legal expression that does not directly affect athletic performance or regulatory compliance. In terms of the athlete's financial and professional standing, alternative approaches are typically more accessible and less invasive.

The last step requires balancing the severity of the sanction with the importance of the protected interest. Here, the athlete's right to practise a sport profession, economic freedom, contractual mobility, freedom of expression and conscience, and protection of personal reputation must be weighed against the club's financial interests, integrity of the institutions, fairness of competition, and reputational factors.

The sports organization will typically win in situations when the athlete's conduct in question threatens significant risks to sporting integrity, such as doping or match-fixing where, the core principles of competitive sport would be compromised by continued cooperation. However, if the alleged breach involves legitimate political, religious or social expression and there is no evidence of direct operational loss, termination of the contract could represent an excessive burden for the athlete compared to the club's interest in brand management.

Contractual sanctions cannot therefore operate as disguised restrictions on fundamental freedoms thanks to the balancing process. Financial penalties and compensation provisions require special consideration. Such mechanisms must correspond to actual or reasonably expected damage, even though they serve legitimate interests in maintaining contractual stability.

Excessive remuneration conditions increase the potential to act as de facto barriers to mobility, which could be considered contrary to the Bosman principles. Based on the Bernard case, financial mechanisms must be proportionate to the costs of training and legitimate economic interests.

Contractual stability could be transformed into economic coercion through a compensation clause that significantly exceeds the quantifiable damage. Such restrictions threaten the balance between protecting the club's investment and the athlete's right to labor mobility.

When the breach is so serious that fulfilling the terms of the contract would fundamentally contradict the fundamental institutional ideals or rules of the sport, there is normative incompatibility. Such examples may include established doping violations, match manipulation, serious criminal activity that has a direct impact on credibility, persistent refusal to fulfill essential sporting obligations etc.

However, moral incompatibility does not always result from reputational damage, ideological disagreements, or legal expression, unless there is observable structural harm.

This interpretation guarantees consistency between contractual practice and higher normative ideals and harmonizes the idea of just cause with the proportionality principle.

Professional sports contracts cannot be viewed as exclusively private mechanisms, as demonstrated by the application of proportionality to contractual sanctions. They operate within a normative framework that has been constitutionalized, where fundamental rights restrict contractual autonomy, sports autonomy is examined by the courts, state and EU law connect with *lex sportiva*.

Proportionality therefore serves as the primary mechanism for harmonisation. It also prevents sanctions from becoming instruments of excessive control or indirect restrictions on professional freedom, while protecting the legitimate interests of sports organisations.

The concept of proportionality offers a logical framework for assessing contractual penalties in professional sports contracts. It can then ensure that sanctions aim to achieve legitimate objectives, are meaningful in relation to those objectives, are the most effective and least restrictive methods and strike a fair balance between individual rights and institutional integrity.

This framework prevents financial penalties from becoming disproportionate obstacles to mobility, clarifies the idea of just cause and limits moral clauses to objective standards.

Professional sports contracts are embedded in a multi-level normative system where contractual stability, sporting integrity and fundamental rights must coexist in balance. This confirms the inclusion of proportionality in sports contract law.

10 Conclusion

The aim of this article was to determine when one of the mentioned types of contracts will be used, considering the division of professional athletes into individual and collective sports, and with an emphasis on collective sports, which type of contract will be governed by contracts concluded under the Commercial Code. The goal has also been to ascertain which other regulations affect the content of the contract between the sports organization and the athlete in collective sports and the influence of moral provisions on the termination of the professional contract.

First, it was necessary to define the status of the athlete, based on the possibility to divide them into professionals and amateurs. Depending on the type of contract he concludes, according to the Sports Act, the status of athletes as employees or entrepreneurs or, a status based on a contract on the professional performance of sports, even though *de jure* he is an employee, is further developed.

According to the Labor Code, an employment relationship is concluded in collective sports only in exceptional cases in resort sports centers such as the National Sports Center, or a similar employment relationship in the Dukla Banská Bystrica Military Sports Center and so on. Therefore, we concluded that because the provisions of *de lege lata* labor law, as a whole, are not suitable for their use in a contract with a professional athlete, it is necessary to consider other contractual options that the legal order allows for athletes performing outside of resort sports centers.

One such alternative is the conclusion of innominate contracts, that is, ones that do not fit into any specific, legally recognized category, but the practice of using these contracts under civil or commercial law in collective sports must be clearly rejected. These types of contracts are sometimes used in individual sports activities that fulfill the characteristics of business. Individual athletes, for example, can have the status of a self-employed person and thus conclude contracts according to § 269 para. 2 of the Commercial Code. However, these contracts are concluded individually with the organizers of sports events at which the athlete will be participating. The contract will be innominate, and no supporting use of any contract type is required. It will be sufficient if the contracting parties agree that the athlete will start, agree on the amount of the remuneration, the date when the event will take place and other conditions determined by the rules of the relevant sport and sports organization.

Nevertheless, if in team sports, we refuse to conclude innominate contracts and the provisions of the Labor Code as a whole cannot be applied, then we lack many remaining options. Accordingly, it is possible to state that an important finding stemming from our analysis is that the most suitable, and indeed the only type, according to which it is possible *de lege lata* to conclude a contract between a sports organization and a professional athlete when performing sports activities in team sports, is a contract on the professional performance of sports according to the Sports Act.

The relationship between an athlete and an organization is governed not only by the provisions of the Sports Act, or by other laws, but also by a special regulation that is found in the regulations of sports organizations. These can be found in the regulations of the International Football Federation together with those contained within individual national sports organizations. The truth is they mostly echo the regulations of the international organization with additions of various technicalities, etc. We demonstrated this to be the case when we analyzed the provisions on termination of contracts in connection with the difficult question of moral clauses.

Another research goal was to ascertain what influence moral provisions have on terminating professional sports contracts and their relationship to just cause. The precise definition of just cause is not found either in individual regulations or in jurisprudence, but as we analyzed their nature, it is possible to conclude that moral provisions of any kind, whether contained in a contract or in sports codes, will not justify terminating a contract between sports organization and athletes, although it is possible and legitimate to grant pre-arranged sanctions for violations.

Our analysis also demonstrates that the legal regulation of professional sports contracts reflects the unique nature of sports law, which combines elements of labor law, commercial law and autonomous sports regulations. The Sports Act therefore represents an important instrument that attempts to balance the need for legal certainty, social protection of athletes and the flexibility required in professional sport.

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SPORTS AND LAW: FINDING A BALANCE BETWEEN THE GAME AND THE RULES

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The academic monograph “Sports and Law: Finding a Balance Between the Game and the Rules” addresses current and carefully selected topics in the field of ‘sports law’. It represents a significant contribution to the development of sports law, which has been increasingly developed in recent decades as an independent and interdisciplinary legal field. It brings together contributions from authors in Slovenia, Croatia, the U.S., Türkiye, Azerbaijan, and Slovakia. It addresses current issues related to the relationship between sports as a social phenomenon and law as a system of rules governing this field. The central idea of the monograph is the search for a balance between two seemingly opposing worlds: between ‘play’ or ‘sport’, which is based on spontaneity, competitiveness, and the rules of the game, and ‘law’, which introduces formal norms, sanctions, and institutional oversight. Sports law is not a uniform, codified branch of law, but rather an interweaving of various legal fields, such as contract law, labor law, criminal law, and human rights law, among others. The monograph offers an in-depth look at the complex field of sports law and highlights the need for a balanced approach that considers the specificities of sports as well as fundamental legal principles.

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...this scientific monograph succeeds in presenting sport as a complex legal environment where historical traditions, modern regulations, human rights, and dispute resolution mechanisms converge. It is a highly relevant and rigorous contribution to sports law scholarship and will undoubtedly serve as an essential reference for academics, practitioners, and policymakers.

Barbara Janusz Pohl

Adam Mickiewicz University, Poland

The scientific monograph 'Sports and Law: Finding a Balance between the Game and the Rules' is a timely and substantial scholarly contribution that captures the complexity of sports law through an interdisciplinary and comparative approach.

Daniel Brantes

Ambra University, United States of America



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