

SPORTS AND THE VALENCIES OF HUMAN RIGHTS PROTECTION

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Abstract

„Practicing sports is a human right”¹, so „every person should be able to practice sports according to their needs”. Although the European Convention on Human Rights does not officially recognize this right, the European Court of Human Rights has emphasized, through its case law, the importance of respecting fundamental human rights in the field of sports. The decisions of the sports federations challenged before the courts or of the sports arbitration entities, have often serious consequences for the sports actors. That is why it is particularly important to analyze the guarantees granted from the point of view of human rights so that, taking into account also the autonomy of the sports structures, national or international sports federations respect these rights and, at the same time, develop the most appropriate legal mechanisms and instruments.

In this context, the respect for human rights, seen as universal principles, has become a key issue in sports disputes, both for sports organizations and for courts or sports arbitration entities.

Objectives. In the present scientific approach we set out to identify the sources and mechanism of human rights in the field of sports.

Methods. We will use the historical method, we will analyze the sources of human law, and, at the same time, the relevant jurisprudence of the European Court of Human Rights.

Results. As issues in the field of sports are closely linked to non-respect for human rights, we aim to highlight their importance, so that there is a balance between the interests of the parties: the sports structures that draw up their own regulations and the actors of sport.

Conclusion. Sports is closely linked to the protection of human rights because, on the one hand, „practicing sports is a fundamental right of everyone”, and on the other hand, this field, by its essence, implies the existence of fundamental principles.

The knowledge of the sources and mechanisms of protection of human rights in the field of sports will allow sports structures to develop, in accordance with the principle of autonomy, policies of their own regulations, which will maintain an adequate balance of the interests of the parties.

Keywords: *human rights, sports, protection, athletes.*

Introduction

Although the article 8 of the Olympic Charter proclaimed the practice of sport as a fundamental human right, the European Convention on Human Rights did not officially recognize this aspect; however, the jurisprudence of courts has demonstrated the importance of respecting these universal principles.

“Usually understood as inviolable rights to which a person has an inherent right simply because he is a human being”², human rights have been based on many legal instruments: Magna Carta Libertatum-1215, Petition of Rights-1628, Habeas Corpus-1679, Bill of Rights-1789, Declaration of Independence of the United States-1776, US Constitution-1787, Declaration of the Rights of Man and of the Citizen-1789 etc.

At European level, the most important catalog of fundamental rights is the Convention for the Protection of Human Rights and Fundamental Freedoms-1950 (European Convention on Human Rights), supplemented by the European Social Charter-1960.

Although there are currently a large number of legal instruments, human rights can be grouped into three categories:

1. Civil and political rights: the right to life, the right to liberty and security, the right to a fair trial.

¹ Art.8-Olympic Charter.

² Sepúlveda, Magdalena; van Banning, Theo; Gudmundsdóttir, Guðrún; Chamoun, Christine; van Genugten, Willem J.M. (2004); Ghid privind drepturile omului, (ed. 3rd ed. rev.). Ciudad Colon, Costa Rica: Universitatea Peace.

2. Economic, social and cultural rights: the right to education, the right to work, the right to fair working conditions.

3. Collective rights: the right to peace.

Fundamental human rights in the field of sport:

In order to understand the importance of respecting fundamental human rights in the field of sport, we have to approach the principle of autonomy of the sports movement.

European sports has a pyramidal structure, namely all sports clubs are affiliated to a national federation, and this to a regional and international federation for each sports discipline.

Considering this pyramidal structure, the autonomy of the sports movement represents the fundamental legal instrument, which protects the sports structures against the excessive intervention of other authorities, especially the public ones, in the organization, development of sports competitions. At the same time, it represents the monopoly of each international sports federation regarding, on the one hand, the establishment, modification, interpretation of the rules of the games. Also, sports structures are the only entities that have the capacity to create their own legal system that resolves conflicts related to sports activity.

In the context of disciplinary and arbitral proceedings, the issue of protection of fundamental human rights is essential both for sports structures and, especially, for athletes.

By virtue of the monopoly to regulate the statutes or the regulations of each sports, the sports structures insert clauses by which the arbitration becomes obligatory, the athlete being mandatory to give up the settlement of the dispute according to the common law. Thus, the monopoly of sports structures gives them extensive competencies, violating the emphasis on fundamental human rights.

In the field of sports there are a multitude of arbitration mechanisms: International Volleyball/Handball Court etc. At the international level, in 1983, Court of Arbitration for Sport -TAS (Lausanne, Switzerland) was established by the International Olympic Committee. The competence of the TAS is very broad, on the one hand because it concerns the settlement of factual and legal issues, and on the other hand, because the sports federations have included a clause in their statute regarding the obligation of arbitration at the TAS. TAS judgments can be challenged (reviewed) before the Swiss Federal Court. Numerous disputes related to sports activity have highlighted the reviewing of decisions, including the TAS, in terms of non-compliance with fundamental human rights. Also, the constant jurisprudence of the TAS has highlighted the fact that the idea of applying the European Convention on Human Rights directly to sports structures, but rather indirectly to them, as well as to arbitration bodies, is generally rejected.

Regarding sports arbitration tribunals, there is the issue of their impartiality and independence, related to the provisions of Article 6 of the European Convention on Human Rights (Convention): *The right to a fair trial*.

In the Cases Mutu and Pechstein v. Switzerland³ - 40575/10 and 67474/10, by the Judgment of 2.10.2018 [Section III], the European Court of Human Rights ruled, pursuant to Article 6 § 1 of the Convention, on the fairness of the proceedings before the CAS.

Thus, with regard to the independence and impartiality of the TAS, the European Court has held that, although the TAS is a private law entity, factual and legal matters subject to control"; the Swiss Federal Supreme Court ruled that the TAS's decisions were "true judgments comparable to those of a state court". In conclusion, there was the appearance of a "court established by law" within the meaning of Article 6 § 1 of the Convention.

Often, anti-doping measures have infringed the right provided for in Article 8 of the Convention - *the right to respect for private and family life*: "everyone has the right to respect for his private and family life, his home and his correspondence". The purpose of Article 8 of the Convention is to avoid the intervention of any public authority in the rights recognized by the Convention.

³ In fact, in the first application, the applicant was a professional footballer who was obliged to pay a very large sum to his club for the unilateral termination of the contract. The applicant in the second application was a speed skater for whom doping penalties were imposed. These two requests were problematic. For details see the website [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-187214%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187214%22]}), accessed on 07.05.2020.

Mainly, public authorities or institutions have a negative obligation not to infringe the rights recognized and protected by Convention, but there are also situations when they also have positive obligations, so there must be a balance between them.

Health is a sine-qua-non condition of sports performance so all its related elements must be viewed and interpreted from the perspective of the first concept.

Article 3 of the Convention stipulates the prohibition of torture: no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The qualification of the concept of "degrading treatment" is related to the circumstances of the deed, the type of treatment, its effects, consequences etc.

In the field of sports, the concept of "degrading measures" can be associated with testing procedures against doping, overtraining, etc. Sports performance involves very high physical and psychological wear and tear, often the consequences being very serious: injury, abandonment of sports life, of professional life, of education etc.

The category most affected by "inhuman or degrading treatment" are minor athletes, this concept includes all forms of physical violence (threats, insults, etc.), psychological, abuse, ill-treatment, sexual exploitation.

In the Case *Hentschel and Stark v. Germany*-Application no. 47274/15⁴, having as its object the complaint of two football supporters concerning the ill-treatment to which they were subjected by the police following a match and the improper nature of the subsequent investigation, the Court found "that Article 3 (prohibition of inhuman treatment or degrading) of the Convention in respect of the treatment of police applicants, being unable to establish beyond any reasonable doubt that the events took place as described by the applicants.

However, the Court ruled that art. 3 of the Convention as regards the investigation of the applicants' claims. In this regard, the Court noted, in particular, that "law enforcement officers did not wear badges with their individual identification names or badges, but only identification numbers on the backs of their headphones. Therefore, other measures to establish the identities of those responsible for the alleged ill-treatment have become particularly important. However, the difficulties resulting from the absence of identification badges were not sufficiently counterbalanced by other investigative measures. In particular, only excerpts from the videos recorded by law enforcement agencies were transmitted to the investigation unit and no other potentially relevant witnesses were identified and heard"⁵.

One of the rights infringed, including in the field of sport, is provided by Article 10 of the Convention-*Freedom of expression*:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (...).
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

According to the Court's consistent case law, Freedom of expression "is one of the essential foundations of a democratic society and one of the basic conditions for the progress and development of every individual"⁶.

Also, the Freedom of expression has in its content "information, harmless or indifferent ideas, but also those that offend, shock, disturb (...)"⁷.

⁴ For details see the website <http://ier.gov.ro/wp-content/uploads/fise-tematic/FT-Sport-si-CEDO-ian-2018.pdf>, accessed on 07.05.2020.

⁵ Ibidem.

⁶ *Mauvement Raelien Suisse v Switzerland*, 13 July 2012, Application no.16354/06 apud Human Rights Protection in Europe in the context of sports organization disciplinary and arbitration procedures-EPAS-Council of Europe, Good practice handbook no.5-P. Cornu, S.Robert-Cuendat, L.Vidd.

At the same time, the Court pointed out that Freedom of expression is not an absolute right, there are certain exceptions that impose a restrictive interpretation, the public authorities or institutions having a negative obligation not to infringe this freedom, including in relations with individuals; therefore, Article 10 of the Convention has horizontal effect.

In the field of sport, Freedom of expression is related to the specificity of sport: on the one hand, it is necessary to establish the positive and negative obligations of the state, on the other hand it is necessary to ascertain the manner in which the right provided by Article 10 of the Convention has been violated.

In the cases of *Hachette Filipacchi Presse Automobile and Dupuy v. France*-Application no. 13353/05- and *Société de Conception de Presse et d'Édition et Ponson v. France*-Application no. 26935/05⁸, the Court ruled that art. 10 of the Convention was not violated in relation to "the protection of public health, the urgent need to take measures to protect our societies from the scourge of smoking, and the existence of a European consensus on the prohibition of advertising of tobacco products, the Court of found that the restriction of the applicants' freedom of expression in this case met a pressing social need and was not disproportionate to the legitimate aim pursued".

The jurisprudence of the European Court of Human Rights has highlighted that in sports activity other human rights and fundamental freedoms are infringed:

- Article 2 of the Convention: *The Right to Life* - Case *Harrison and Others v. the United Kingdom* (dec.) - 44301/13, 44379/13 and 44384/13-Decision 25.3.2014 [Section IV],
- Article 9 of the Convention: *Freedom of thought, conscience and religion* - Cases *Dogru v. France* (application no. 27058/05) and *Kervanci v. France* (no. 31645/0),
- Article 11 of the Convention: *Freedom of assembly and association* (Case *Association Nouvelle Des Boulogne Boys v. France*-Application no. 6468/09),
- Article 14 of the Convention: *Prohibition of discrimination* - Cases *Hachette Filipacchi Presse Automobile and Dupuy v. France*-Application no. 13353/05, and *Société de Conception de Presse et d'Édition et Ponson v. France* Application no. 26935/05 etc.

Also, the settlement by the Court of disputes having as object the violation of fundamental human rights in sports activities, the sanctioning of sports structures that do not respect the grounded principles, determined the sports movement to approach this category of rights more seriously and, moreover, to incorporate them into the statutes, regulations of international sports federations. In 2017, international sports bodies, such as the International Olympic Committee (IOC) and FIFA, began to incorporate human rights provisions into their statutes and future regulations⁹.

Conclusion

Sports is closely linked to the protection of human rights because, on the one hand, „practicing sports is a fundamental right of everyone”, and on the other hand, this field, by its essence, implies the existence of fundamental principles.

The knowledge of the sources and mechanisms of protection of human rights in the field of sports will allow sports structures to develop, in accordance with the principle of autonomy, policies of their own regulations, which will maintain an adequate balance of the interests of the parties.

We appreciate that the international and national sports movement need, now more than ever, a sustained collective effort in terms of rethinking, reorganizing and repositioning world sport, especially in terms of respect for fundamental human rights and freedoms.

⁷ Axel Springerv v. Germany, 7 february 2012, Application no.39954/08; Gillberg v.Sweden, 3 April 2012, Application no.41723/06 apud Human Rights Protection in Europe in the context of sports organization disciplinary and artitration procedures-EPAS-Council of European, Good practice handbook no.5-P. Cornu, S.Robert-Cuendert, L.Vidd.

⁸ For details see the website <http://ier.gov.ro/wp-content/uploads/fise-tematic/FT-Sport-si-CEDO-ian-2018.pdf>, accessed on 07.05.2020.

⁹ Daniela Heerdt, The Court of Arbitration for Sport: Where Do Human Rights Stand?10th May 2019.

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