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CHILDREN AND SPORTS: THE RIGHT TO ENGAGE IN PLAY AND RECREATIONAL ACTIVITIES

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Abstract

Every child has the right to play. Sports, therefore, play a valuable role in children's development and growth. Starting from Article 31 of the UN Convention on the Rights of the Child, numerous other international, supranational, and national legal sources define children's right to play sports with the purpose of developing their whole personality. Indeed, sports allow children to engage in the exercise necessary for correct psychophysical development; improve children's social inclusion, and aim to offer equal opportunities to all children in promoting their social life. The right to engage in play and recreational activities is an important right of every child, which must be exercised taking into account the right to health, as well as the possibility to rest and the choice "not to become a champion at all costs," likewise other important children's rights that will be analysed in the paper.

It will also reflect on the moment when recreational sports turn into competitive sports, where competitive dynamics make the appreciation of the protection of children's rights much more complex. Considering the central role played by parents and trainers in ensuring that children practice sports in a manner most appropriate to their balanced psycho-physical development, the best interests of child will be considered in relation to the abovementioned demanding dynamics of competitive sport.

The aim of this paper is to investigate whether fundamental rights are respected in sports activities involving children, trying to raise awareness of the position of minor athletes in the world of sports since they are particularly vulnerable and in need of protection.

Keywords: Sport, Children's Rights, Right to Engage in Play and Recreational Activities, Best Interests of the Child, Parental Responsibility.

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1. SOME INTRODUCTORY REMARKS ABOUT CHILD'S RIGHTS AND SPORTS

It is difficult to begin reflections on this topic using a clearer and more powerful sentence than the following quote: "Law and Rights are not concepts that are traditionally associated with either sports or children."¹

In fact, it makes reflect on the fact that neither sports nor children have traditionally been fields covered by the law. This means that unlike other aspects of human life that have been certainly regulated by law for centuries, these two areas are among those that have not been considered for a long time or have been considered marginally. However, at a certain point, it was realized that there was a need to provide specific rules for sports, which are usually considered to be rules included in a (sports) legal system that is independent and distinct from the general legal system. Additionally, there was the need to regulate children's rights with specific and greater attention than with respect to general rules governing private relations. Nowadays, when sports law and children's rights represent two areas of law that are structured in a rather complex way, the question that arises, returning to the quote from the beginning, is: *quid iuris* if these two worlds intersect?

Observing the issue from the point of view of those who deal with children's rights rather than sports law, one wonders whether the protection of children follows exclusively the path of the traditional legal sources established for the protection of minors, or whether the internal rules of sports also pay particular attention to situations in which the athletes in question are children. In essence are there two distinct tracks between which the real protection of minors is dispersed or is it possible to recognize a sensitivity for children's rights that should transversally affect every single aspect of human life, including sports? The question becomes even more complicated when we try to understand which specific children's rights we are referring to and especially what aspect of sports is under consideration. Are we referring to any manifestation of sports or to competitive sports?

First of all, it must be said that the right to play has to be understood in two senses. The first is the right to participate in the game itself, which does not have to be productive.² The sense is the fun of playing it in itself. The other is the realisation of other rights through play, such as the right to health, psycho-physical and emotional development, social inclusion, etc. All these fundamental rights find strong expression when the recreational activity is sport. In other words, when the right to play is identified with the right to sport.

However, it must also be immediately understood that the recreational connotation is lost when it is imposed. It is on this thin thread that all the considerations the author will attempt to offer in this work will actually develop.

Referring back to what was observed earlier, it must be said that sport and the right to

1 Antti Aine, Jatta Muhonen, Virve Toivonen, „Children's right to play sports in a safe and healthy environment," *The International Sports Law Journal* 22, no. 2 (2022): 95, <https://doi.org/10.1007/s40318-022-00217-2>.

2 Margareta Aspán, „Article 31 – The Forgotten Right to Cultural Life and Arts", in *The Rights of the Child, Legal, Political and Ethical Challenges*, ed. Rebecca Adami, Anna Kaldal, Margareta Aspán (Leiden/Boston: Brill Nijhoff, 2023), 184. Quoting the Author: "the childness" is defined by the negations to adult activities, and accordingly established by pleasure, non-productivity, and freedom from obligations."

practise it is certainly a right of all individuals, whether adults or children.³ All persons have the right to engage in physical activity in order to express their personality as individuals, but also within a group. Furthermore, sporting exercise improves the physical and mental health of the individuals, contributing to social inclusion that involves the general well-being of the community as a whole.⁴

2. CHILDREN AND SPORT – AN ATTEMPT TO IDENTIFY THE LEGAL FRAMEWORK

It is necessary to try to systematise the sources of law with the intention of recognising the fundamental rights of children to be protected in sport. First of all, from a family law perspective, the most important global, European and Croatian sources dealing with children will be highlighted. Subsequently, an attempt will be made to highlight those specifically present in the sports legal system, referring to children in sports.

If sports law jurists would proceed in an attempt to understand how to include minors in the rules dedicated to athletes, jurists, on the other hand, who deal with children will first clarify in their reasoning whether and where sport finds a place and foundation among the fundamental rights of children.

Thus, it is important to start from the source *par excellence* when dealing with children: the United Nations Convention on the Rights of the Child (CRC) adopted on 20. November, 1989.⁵

There are numerous articles of the CRC that should be recalled, but since there is a structural relationship between these rights when the child enters the world of sports, they will be addressed in more detail in the next section. It is sufficient now to mention two fundamental ones: Art. 3 and Art. 31. The former deals with the best interests of the child, while the latter, for what concerns here, refers to the right to play.

Surely the right to play is the starting point. Often also referred to as 'the forgotten right' - but more commonly in reference to other activities therein - it recites in para 1: „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.”⁶

The right to play and leisure certainly includes sporting activity. Indeed, very often this right to play is manifested in an organised and collective manner.⁷ In addition, very helpful in the

3 Enrico Lubrano, „Il diritto dello sport come diritto fondamentale in prospettiva anche costituzionale”, *dirittifondamentali.it* 2 (2020): 267.

4 About the importance of social inclusion in particular in situation of child poverty see more in Olja Družić Ljubotina, Marijana Kletečki Radović, “Siromaštvo i djeca”, in *Prava djece. Multidisciplinarni pristup*, ed. Dubravka Hrabar (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016), 267.

5 „UN Convention on the Rights of the Child,” United Nations, accessed May 10, 2024, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>. See an accurate analysis in Olga Cvejić Jančić, “The UN Convention on the Rights of the Child: 25 Years After,” *The Rights of the Child in a Changing World, 25 Years after the UN Convention on the Rights of the Child* ed. Olga Cvejić Jančić (Switzerland: Springer International Publishing, 2016), 7 et seq.

6 Art. 31 United Nations Convention on the Rights of the Child (CRC). In literature see Aspán, „Article 31,” 184.

7 See more in Dubravka Hrabar, “Pravni položaj maloljetnika u sportu,” in *Sportsko pravo*, ed. Hrvoje Kačer (Split:

interpretation of the right to play is the General Comment n. 17 (2013).⁸

As to the European regional level, from a child protection perspective, an important reference should be made to Art. 3 of the Treaty on The European Union (TEU) and Art. 24 of the EU Charter of Fundamental Rights (EU Charter).⁹ Both articles protect children, showing due care for their vulnerability in the growth phase.¹⁰ While from the perspective of the right to sports, Art. 165 of the TEU is noteworthy, which also states in its first paragraph that: "The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function."¹¹ Still, it should be remembered at the European level that the development of sport is the subject of numerous policy documents as well. One of the most important was the White Paper on Sport from 2007, which is certainly one of the European Commission's key inputs to the sport and its importance in the everyday lives of EU citizens.¹²

Staying on the international level and moving to the sources of sports law, several sources are worth mentioning. Indeed, the steps taken in the world of sports to raise awareness about the vulnerability of children and the need to protect their rights are to be commended. Many charters, recommendations, and acts seek to raise responsiveness in the world of sport, particularly at the European level, emphasising that every child has the right to take part in sports regardless of the results and successes they can or want to achieve.

So, without any claim to completeness, reference is made here to the Olympic Charter, which states that the practice of sport is a human right; as well as the International Charter of Physical Education, Physical Activity and Sport. Originally adopted by UNESCO in 1978, it

Sveučilište u Splitu, Pravni fakultet, 2018), 342 *et seq.*

- 8 General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31). The Committee on the Rights of the Child through this commentary aims highlight that the significance of article 31 in children's lives by stating that „play and recreation facilitate children's capacities to negotiate, regain emotional balance, resolve conflicts and make decisions. Through their involvement in play and recreation, children learn by doing; they explore and experience the world around them; experiment with new ideas, roles and experiences and in so doing, learn to understand and construct their social position within the world.“ Available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsqkirkKQZLK2M58RF%2F5F0vFw58qKy0NsTuVUIOzAukKtwGqGgFkAgArTuTdZZUuSZObAaHCoPsdppxu9L6un29TyD4Jyrk0F22kRyLCMeCvM>
- 9 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ C 202/1, 7.6.2016). Charter of the Fundamental Rights of the European Union (OJ C 202/389, 7.6.2016). See Jacopo Tognon, *Diritto e politiche dello Sport nell'Unione europea. Ruolo sociale, dimensione economica e integrità* (Padova: CLEUP, 2016), 40 *et seq.* See also Helen Stalford, *Children and the European Union, Rights, Welfare and Accountability*, Modern studies in European Law (Oxford and Portland, Oregon: Hart Publishing, 2012), 39 *et seq.* See Aleksandra Korać Graovac, "Povelja o temeljnim pravima Europske unije i obiteljsko pravo", in *Europsko obiteljsko pravo* ed. Aleksandra Korać Graovac, Irena Majstorović (Zagreb: Narodne novine, 2013), 25-51.
- 10 About children's rights in the EU framework see Tunjica Petrašević, "Dijete u pravu Europske unije" in *Dijete i pravo*, ed. Branka Rešetar (Osijek: Pravni fakultet u Osijeku, 2009), 273.
- 11 Jacopo Tognon, *Le minacce dello sport moderno, Guida pratica e ragionata alla lotta alla discriminazione, al doping, al match fixing e alla violenza nello sport* (Padova: CLEUP, 2023), 87. Stephen Weatherill, „EU Sports Law: the effect of the Lisbon Treaty,” *Legal Research Paper Series no. 3* (January 2011):11, <http://dx.doi.org/10.2139/ssrn.1747916>.
- 12 White Paper on Sport (COM(2007) 391 final). See Tognon, „Diritto e politiche dello Sport,” 56 *et seq.* Ines Medić, "Pravna zaštita maloljetnih sportaša u kontekstu prava EU", *Zbornik radova Pravnog fakulteta u Splitu*, 52, no. 4, (2015): 1111.

has since been amended several times to meet the new challenges facing the sport. Apart from underlining the health benefits of sports, the importance of this document is shown in the aim to include persons with disabilities, to protect children, to promote development and peace through sports, as well as to protect the integrity of sports from doping, violence, manipulation, and corruption.¹³

As previously mentioned, the right to sport is certainly a right of all persons, adults or children. All individuals have the right to exercise in order to express their personality as an individual, but also within a group. Again, exercise improves the physical and mental health of both the individual and the community. Not infrequently in modern constitutions, the right to sport has been positivised as a right in itself, as well as a means for the realisation of other rights such as the right to health.¹⁴ However, these constitutions do not include the Croatian one.

With reference to the Croatian constitution, the fundamental norm that must be recalled is its Art. 63.¹⁵ It states that "the state shall protect maternity, children and youth, and shall create social, cultural, educational, material and other conditions promoting the achievement of the right to a decent life." Reading this provision certainly shows that children enjoy special protection as a vulnerable group in society. It is also evident that the numerous activities promoted for a decent life include sports, although the word sport is not expressly mentioned.

In the light of the international sources mentioned so far, first and foremost the CRC, it is clear that sport as a recreational and leisure activity is one of the activities that has various functions for children, ranging from educational, leisure enjoyment, to health protection.¹⁶

Nonetheless, apart from the constitutional provision invoked with reference to children, it could be opportune to recall also Art. 70 of the Croatian Constitution, which in its first paragraph states "everyone shall have the right to a healthy life." "The state shall ensure conditions for a healthy environment. Everyone shall, within the scope of their powers and activities, accord particular attention to the protection of human health, nature and the human environment." Subsequently, in the third paragraph, it also refers to human health. The question therefore arises whether this constitutional provision should be interpreted as a provision which promotes health through sport - understood as physical activity.

Without going into disquisitions on the right to health, it must be acknowledged that sport as a healthy practice is certainly among the activities implemented to preserve health.¹⁷

13 UNESCO International Charter of Physical Education and Sport, 21 November 1978, <https://unesdoc.unesco.org/ark:/48223/pf0000216489>.

14 Lubrano, "Il diritto dello sport," 234 et seq.

15 Croatian Constitution (Ustav Republike Hrvatske), Official Gazette no. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 5/14. Branko Smerdel, *Ustavno uređenje Europske Hrvatske* (Zagreb: Narodne novine, 2020), 373.

16 For an accurate historical research see *International documents on children* ed. Geraldine Van Bueren (The Hague/Boston/London: Martinus Nijhoff Publishers, 1998).

17 Dubravka Hrabar, "Prava djece u obiteljskom zakonodavstvu", *Prava djece – multidisciplinarni pristup*, ed. Dubravka Hrabar (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016), 64-66.

See WHO Sport for Health Programme: <https://www.who.int/initiatives/sports-and-health>. The aim of this programme is to rely on the great potential of helping people worldwide lead healthy lives through promoting participation in sports, helping the achievement of the established goal n. 3. of the UN Agenda 2030: „Ensure healthy lives and promote well-being for all at all ages“.

Realistically it must be said that, as will be referenced below, sport is mostly dealt with from a competitive perspective rather than a solidarity perspective, understood as a leisure activity that helps people's physical and mental well-being. Therefore, most of the time the instrumental function of sport, aimed at improving other fundamental human rights, gives way to sport itself, with all its dynamics - especially those of the market nature.

In the end, the Croatian Family Act must be mentioned.¹⁸ Indeed, there are different rules, which starting from the Art. 84, regulate children's rights and parental responsibility.¹⁹ Precisely, Art. 84 begins in the first paragraph by establishing that the child has the right to care for his/her life and health, and then continues in the second paragraph that he/she has the right to receive an education suited to the satisfaction of his needs - physical, psychological, and others.²⁰

Certainly, these rules also regulate the child's right to approach the world of sport, which is understood as an activity aimed at achieving balanced psycho-physical and emotional development. Parents first and foremost, but also the other adults who find themselves interacting with the child in the world of sport, must necessarily act with respect for the child's talents and affinities, but also for his or her needs. This means, as will be seen in the text, that it is always necessary to act in the best interests of the child.

3. RESPECTING THE RIGHTS OF THE CHILD IN THE WORLD OF SPORT: A REALITY OR A CHIMERA?

From the interpretation of the CRC, as well as other international and supranational legal sources, it can be seen that children have the right to play sports with the purpose of developing their whole personality. In light of what was previously observed in reviewing the most relevant sources, first of all it means that sport allows children to practice the exercise necessary for correct psychophysical development. Also, sport stimulates the emotional development of the minors, as well as it improves children's social inclusion and aims to offer equal opportunities to all children in the promotion of social life. It should be reiterated that the Art. 31 of the CRC enshrines the specific right of all children to have rest and leisure, to engage in play and recreational activities proper to their age, and to join freely in cultural life and the arts.²¹ In other words, it means that children's right to engage in play and recreational - sports - activities is an important right of every child. Indeed, sport has an extremely important role in children's development and growth. It is defined as a right of a mixed nature. There is, in fact, a strong connection between motoric and recreational activities, which lead to motoric development and, at the same time, intellectual and psychophysical growth.

Sport must be understood as a right in itself and as a right instrumental to the realization of many other children's rights. The exercise of sports, practiced by a child, requires the exercise of numerous rights of the child. One of these rights is to express their opinion. Precisely, it

18 Croatian Family Act (Obiteljski zakon), Official Gazette no. 103/2015, 98/19, 47/20, 49/23 and 156/23. See more in Hrabar, "Pravni položaj maloljetnika", 347.

19 See in detail Dubravka Hrabar *et al.*, *Obiteljsko pravo*, ed. Dubravka Hrabar (Zagreb: Narodne novine, 2021).

20 Ninoslava Pečnik, "Suvremeno roditeljstvo i prava djeteta", in *Prava djece. Multidisciplinarni pristup*, ed. Dubravka Hrabar (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016), 178-179.

21 See more about art. 31 CRC in Aspán, "Article 31," 184.

must be pointed out that every child right to make the decision independently, and in order to realise this right the minor has the right to be heard (to express their opinion) and – even before that - to be informed.²² For instance, every child-athlete should be very well informed about the possible risks to their health (i.e. risks of accidents).

The opportunity to rest should not be underestimated either. The frenetic rhythms of training are often calibrated for the competitive future of the few, rather than the recreational needs of the many. Once the basic features of this right have been outlined, any subsequent consideration must start from the consideration of the best interests of the child, which in substance, through a case-by-case valuation, leads to making the most appropriate choices to ensure the most serene and balanced physical, psychological, and emotional children's growth. ...“leads to making the most appropriate choices” ... the question is by whom? As will be analysed in the next chapter, the answer would be by all the persons who are involved in the child's life. First of all, child's parents/guardians, but also trainers, physicians, and others.

To return to the right to play - understood in this paper as sport-, it must be clearly underlined that it presumes reflections related to different aspects of the concrete exercise of this right such as: the right to health, also training in a healthy and safe environment; the possibility to rest, the choice “not to become a champion at all costs,” the opportunity to have fun; the right to be treated with dignity and respect without punishment and threats, and finally the at the very end (or better at the very beginning) the freedom to choose a specific sport discipline, change sport, and to experience different sports.²³

On this regard, in stating that the child has the right to choose whether he or she wants to play sport and which sport, this is associated with another fundamental right of the child, namely the abovementioned right to express their view.²⁴ In this regard, it must be remembered that the child's opinion must be taken into account according to their age and maturity.²⁵

As D. Hrabar emphasises, this freedom of choice of the child concerns several aspects, such as the decision to practise sport for leisure or competition; the choice of sporting discipline and to join a sporting organisation; the decision to stop sporting activity.²⁶ It is rightly pointed out in doctrine that the right to express one's opinion is exercised in its totality only when the child is informed in advance about all the circumstances. In sports, this means that in the

22 Cvejić Jančić, “The UN Convention” 19. Aleksandra Korać Graovac, “Pravo djeteta da bude saslušano – Opći komentar br. 12 Odbora za prava djeteta, in *Dijete u pravosudnom postupku - Primjena Europske konvencije o ostvarivanju dječjih prava*: Zbornik priopćenja sa stručnih skupova pravobraniteljice za djecu Gordana Filipović, Davorka Osmak Franjić (ed.). Zagreb: Ured pravobranitelja za djecu Republike Hrvatske, 2012. 117-137.

23 See Maurizio Di Masi, “Diritto sportivo e bilanciamenti dei diritti fondamentali. Alcune questioni attuali”, in *Liber Amicorum per Paolo Zatti*, vol. II (Napoli: Jovene, 2023), 1133 *et seq.*

24 Hrabar, “Pravni položaj maloljetnika,” 343. Quoting the Author: „smatra se da poštivanjem ovog prava poštuje se djetetova osobnost, samosvijest, autonomnost te se dijete uvažava kao subjekt, a ne kao objekt postupanja (odraslih).” / English translation „it is considered that by respecting this right, the child's personality, self-awareness, and autonomy are respected, and the child is respected as a subject and not as an object of actions (of adults)”

25 Dubravka Hrabar, „Prava djece,” 78. Also see Irena Majstorović, “The realisation of the right of the child to express his/her views – How “visible” are children in Croatian family judicial proceedings?”, *Ljetopis Socijalnog rada*, 24, no. 1 (2017): 55-71.

26 About article 12 CRC on children's right to express his or her views see more in Hrabar, “Pravni položaj maloljetnika”, 348.

first place, the parents or guardians, but also the trainers, must make the child aware of the training methods, the rules of the game, and the risks of injury. Criticism is often observed at this stage because, in the competitive game, children who are still too immature to understand it fully on their own are often not informed of the sporting life they may be facing, especially if they are children who aspire (or whose parents aspire) to a professional sporting career. Adults should in this respect advise children in their best interests even when this could lead to the interruption of a sports career.²⁷

As to the choice of sports activity it is opportune to mention briefly also another aspect which could be very problematic and cause many problems in violation of children's rights. It arises when the choice of sports is conditioned because the family does not have the resources for equipment.²⁸ In such cases, relationships with third parties can arise that can lead to future serious risks of economic dependence, disadvantageous contractual ties for the child athletes, and even situations of exploitation or slavery.²⁹

Another aspect related to ensuring a conscious choice is to have the opportunity to measure oneself against people who have the same chance of success.³⁰ This means the same age, but also the same physical capabilities. Not only competitions, but also training must be appropriate to age and psychophysical abilities. Unfortunately, when sporting play becomes competitive, it often happens that children are subjected to the same rhythms as adults. This could lead to serious consequences for children's well-being, such as eating disorders, burn-out syndrome, psychological abuse, but also physical complications, or doping problems.³¹

P. David very appropriately wonders whether such training and competition rhythms should be compared to unacceptable child labour practices.³²

Children, vulnerable because of their non-fullness of maturity and ability to protect themselves, are treated like adult athletes, even if they "are not miniaturized adults!"³³ Children are fragile and that is why even the dynamics of sport have to accept this. Children require special protection and this is exactly the deepest and truest sense of the CRC. Certainly, the sports world is developing an important sensitivity towards child athletes. An example of this is the raising of the age limit for competing in certain sports.³⁴

27 See Paulo David, *Human Rights in Youth Sport. A Critical Review of Children's Rights in Competitive Sport*, (London and New York, 2005), 231 *et seq.*

28 Aleksandra Korać Graovac, "Uzdržavanje kao sredstvo ostvarenja prava djeteta na životni standard", *Prava djece. Multidisciplinarni pristup*, ed. Dubravka Hrabar (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016), 85.

29 See more in Paulo David, *Children's rights and sports, Young athletes and competitive sports: exploit and exploitation*, *The Journal of Children's Rights*, no. 7 (1999): 68-71. It is appropriate to refer to Article 101 of the Croatian Family Law, which expressly deals in paragraphs 3 and 4 with contracts (including sports contracts) involving minors. In particular, in order to protect the child athlete, the legislator expressly provides that such contracts may last until the athlete reaches the age of majority. On this regard see in detail Hrabar, "Pravni položaj maloljetnika," 359 *et seq.* For a different view of this restriction see Blanka Ivančić-Kačer, "Športski ugovori maloljetnika, posebno s aspekta mjerodavnog prava", *Zbornik radova Pravnog fakulteta u Splitu*, 47, 2 (2010): 441-442.

30 Di Masi, "Diritto sportivo e bilanciamenti", 1133.

31 See David, "Human Rights in Youth Sport", 105 *et seq.*

32 David, "Children's rights", 65.

33 Quoting David, "Children's rights", 57.

34 David, "Human Rights in Youth Sport", 39 *et seq.* As to an age limit, there is no a specific one. Indeed, it depends on each International Sports Federation and the rules it states for its sport. The Croatian Sports Act (Zakon o

Sport is (or should be) also a vehicle for increasing social inclusion. This means that sport must guarantee the equality of all children, including those with disabilities.³⁵

As to "not becoming a champion", it seems rather challenging to protect the welfare of talented children who are placed in a system that wants them to be future champions, especially when the very people who should protect them most of all push them in this direction. Three additional aspects must be highlighted here: the possibility to train in line with their age, the opportunity to rest, and also to be treated with dignity and respect without punishment and threats. Needs of synthesis do not allow us to go into as much detail as this aspect would deserve. However, it has to be sadly highlighted that despite the provision of Art.19 of the CRC, the problem of violence in juvenile sports is very much present.³⁶ Precisely, the first paragraph reads as follows: "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 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."

A part from these aspects related to the minor's right to play sports, there are also rights whose exercise, however, is prevented or restricted by sports. The reference is primarily to the right of every child to live with his/her parents, which is compressed when children live in sports camps in retreats (intensive training programmes), away from their parents. The absolute centrality and irreplaceability of the right of every child to live with his/her parents can already be recognised just by reading the most important supranational sources that guarantee it.³⁷

Another right that is greatly affected in particular by competitive sport is the child's right to education, which is often compromised and which should be given appropriate attention.³⁸

Once the attempt to reconstruct the framework of children's rights to be protected in the context of sporting activity has been concluded, it is necessary to proceed to the analysis of the method of protecting the interests of children in the way that is most appropriate. The many facets of the complex concept of the best interests of the child therefore require separate and more in-depth analysis that follows in the next chapter.

4. THE BEST INTERESTS OF THE CHILD(-ATHLETE)

Article 3, para 1 of the CRC states that "in all decisions concerning children, whether taken by public or private welfare institutions, courts of law, administrative authorities or legislative

sportu), Official Gazette no. 141/2022 in its art. 10 defines that professional athlete could be only an athlete minimum 16 years old.

35 See more in Hrabar, "Pravni položaj maloljetnika", 343.

36 Aine, Muhonen, Toivonen, "Children's right to play sports", 94.

37 *In concreto*: Art. 9 of the CRC, the Art. 24 of the EU Charter, but also the Art. 8 of the European Convention on Human Rights (ECHR). In literature see Sandra Winkler, "Obiteljski odnosi", *Europsko privatno pravo* ed. Emilia Mišćenić (Zagreb: Školska knjiga, 2021), 466-467. David, "Children's rights," 79. The Author clearly highlights that "only 5 of 63 of the greatest Olympic athletes have specialized in their sport before the age of 12 (...). The 58 other athletes have experienced several different sports before excelling in one."

38 More about it see in Stalford, "Children," 143.

bodies, the best interests of the child shall be a primary consideration.” From this rule, the central position the best interests of the child take in the legal protection of children clearly emerges in any decision that affects them in any way and with reference to any situation. So it should be in sport, too.³⁹ However, since the CRC does not expressly determine what is meant by ‘best interests of the child,’ often it is not so easy to interpret it *in concreto*. Sometimes the concrete meaning escapes the jurist who has to interpret both the scope of Art. 3 CRC *per se* and the norms that implement it in national legal systems.

Fortunately, the interpreter can rely on the clarification provided by General Comment No. 14 of the UN Committee on the Rights of the Child.⁴⁰ According to this source, the notion of the best interests of the child consists of three aspects. First of all, the best interests of the child must be understood as a genuine right of the child to have their best interests substantially taken into account. Secondly, it would be an interpretative source; finally, a procedural rule in any situation in which a matter concerning a child has to be decided upon.⁴¹

Although this clarification is helpful, it must nevertheless be said that the interpretation necessarily requires a case-by-case assessment because the best interests of the child cannot be built on pre-established objective factors. What may in a certain social context and in a certain historical moment be in the best interest of a child, it is not necessarily so for every child living in the same reality. This means that in the same way what may meet the needs of one child athlete may not be equally suitable for the correct psycho-physical and emotional development of another child athlete. On this regard, Croatian family law doctrine observed that even if the concept of the best interests of the child is not defined, it is definable.⁴²

The identification of the best interests of the child is closely linked to the identification of a specific need of the child that must be met in the most appropriate way. This specific need of the child must be understood as functional to their optimal psychophysical and emotional development. To relate, therefore, to the concrete issue at hand, certainly this same logical-interpretive path must be followed in recognising legal protection for the child athlete. Specifically, when it comes to competitive sports, the question that often arises in doctrine is: “Does the reality of competitive sport always follow the best interests of the child?”⁴³

Art. 3, para 2 CRC provides that “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.” One can hardly imagine a more real and concrete protection of the child’s welfare if not through the proper exercise of parental responsibility.⁴⁴ But there is more. As the CRC guarantees, but

39 See more David, “Children’s rights,” 55.

40 General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)

41 For a detailed and accurate analysis please refer to Dubravka Hrabar, „Obiteljskopравни odnosi roditelja i djece“, in *Obiteljsko pravo*, ed. Dubravka Hrabar (Zagreb: Narodne novine, 2021), 196 *et seq.*

42 Again, Hrabar, “Obiteljskopравни odnosi”, 206 *et seq.*

43 David, “Children’s rights,” 56.

44 Isabelle Roskam, “Psychological Insights. Parent-Child Relationships in the Light of Psychology,” *Adults and Children in Postmodern Societies, A Comparative Law and Multidisciplinary Handbook*, ed. Jehanne Sosson, Geoffrey Willems, Gwendoline Motte (Cambridge – Antwerp – Chicago: Intersentia, 2019), 657 *et seq.*

also reaffirmed by the EU Charter of Fundamental Rights and the Croatian Family Act, all those who are in contact with children must always act in their best interests. This obligation extends to trainers, as well as all other persons involved in the world of sports whose actions may affect the welfare of the child. Recalling the rights set out above, this will be discussed in more detail below.

Finally, Art. 3 para 3 CRC states that “States Parties shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

All these aspects from safety to health have already been discussed at some length above, so there is no need to consider them further. The intention was only to emphasise once again, by pointing out the rule that states the supremacy of the child’s well-being, how easily those aspects can be jeopardised in the world of child sports.

As to children’s well-being, a reference should be made also to Art. 24 of the EU Charter of Fundamental Rights, which states in its first paragraph that “children shall have the right to such protection and care as is necessary for their well-being. They may freely express their opinion. This shall be taken into account in matters which concern them in accordance with their age and maturity.” The second paragraph further states that “in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.” Finally, the third paragraph states that “the child shall have the right to maintain on a regular basis personal relations and direct contact with both parents, unless it is contrary to his or her best interests.” All three paragraphs take up, in concise form, the contents of the CRC, confirming the latter’s extraordinary influence on EU legal sources.⁴⁵ This is an example of the phenomenon of cross-fertilisation by means of which the possible absence of specific precepts concerning children is filled in, affirming conversely the universal scope of the CRC.⁴⁶

The analysis of the concept of the best interests of the child and the assertion of its absolute supremacy in any decision-making process concerning children is certainly a fundamental step in the theoretical discourse conducted in this paper. However, these theoretical efforts will remain vain if this concept would not be connected to the subjects who are called upon to take into consideration the welfare of the child in the concrete situations, that affect him or her in life. Therefore, in the following it is necessary to focus on the role of those subjects who are called upon to respect the best interests of the child.

5. THE RESPONSIBILITY OF PARENTS AND TRAINERS IN PROTECTING THE CHILDREN’S RIGHTS IN SPORT

As already observed, there are many rights of the child to be protected when they enter the

45 More about the art. 24 of the Charter in Irena Majstorović, “Europski obiteljskopравни sustav zaštite djece,” *Prava djece. Multidisciplinarni pristup*, ed. Dubravka Hrabar (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016), 58.

46 Hrabar, “Prava djece u Europskoj uniji – pravni okvir”, 53-71.

world of sport. It is possible to recall them in a few categories. First of all, the right to health, which undoubtedly goes with the right to train in a healthy and safe environment, as well as to rest. A second aspect refers to the enjoyment of this activity. It has already been said that for children, sport is mainly a form of recreation. children should not have to become champions at all costs and should be able to freely choose which sport to practise and according to which training regime. Of course, they should also have the freedom to experience different sports. Finally, hoping that for children the meaning of the sporting game is not the achievement of the result but the game itself, each child has the right to be treated with dignity and respect without punishment and threats.

Why to repeat them? Each of these rights of the child corresponds to a precise obligation on the part of the parents to exercise their parental responsibility in line with the needs, affinities, and talents of their children.⁴⁷

This may seem obvious, yet we too often see pressure from parents who, perhaps by identifying with their children, try to fulfil their own unrealised sporting/agonistic aspirations.⁴⁸ In this respect, the child has the right to avoid psychological pressure from adults, which could generate anxiety about expectations related to sports wins and successes.⁴⁹ Indeed, out of thousands of children who will grow up healthy thanks to sports, only a few will become champions, and perhaps not all of these few by their own choice.⁵⁰

From the perspective of children's rights, it must be understood that sport does not necessarily mean agonism. In other words, it is the parents' duty in the exercise of parental responsibility, as well as the trainers' responsibility to be aware that agonism is not always in the best interests of the child.

As to the central role of the trainer, A. G. Parisi notes that those who train children must not limit themselves to teaching sports techniques.⁵¹ They must, rather, direct the child to practise sport correctly and fairly, respecting the rules and opponents.⁵² In essence, children must be educated in sports by their parents in the first place, but also by the school and sports associations.

Once again, we encounter the conclusion we have already referred to, namely that the recreational dimension of sport is often the one that should carry the most weight in ensuring a balanced psycho-physical and emotional development of the child-athlete.

This certainly takes into account the realisation of the best interests of the child, respecting the child's needs for an optimal psychophysical and emotional growth of the person. Recalling what was previously analysed with regard to the supremacy of the child's well-being, the brief

47 See more in Pečnik, "Suvremeno roditeljstvo" 177 *et seq.* Korać Graovac, "Uzdržavanje kao sredstvo," 83. Annamaria Giulia Parisi, "Sport, minori e responsabilità genitoriale" *Comparazione e diritto civile*, (September 2016) www.comparazionediritto.it, 9.

48 Medić, "Pravna zaštita maloljetnih sportaša," 1106.

49 About "winning at all costs" see Aine, Muhonen, Toivonen, "Children's right," 94.

50 Very indicative numbers can be found in David, "Children's rights", 64.

51 Parisi, "Sport, minori", 8.

52 Such a normative provision could be found in the Croatian Sports Act (Zakon o sportu), Official Gazette no. 141/2022 under the Art. 19, which regulates trainers' position.

reflections in this chapter were intended to emphasise the importance of the role of parents/guardians and trainers in acting in the best interests of each child. Since the child's best interests may vary from case to case, the actions of adults must be such that they respect the needs of each individual child, which means a personalised approach since each child (athlete) is unique.⁵³

6. SOME CONCLUDING REMARKS: SPORT BETWEEN AFFIRMATION AND DENIAL OF CHILDREN'S RIGHTS

The very first conclusion that emerges at the end of this brief analysis is that when looking at the sport from the perspective of children, one has to start from the idea of play and not of competition. The game in fact is not necessarily productive. On the contrary, the *darker* side of sports law when it comes to children is precisely that of competition. We live in a performance-centred culture in every sphere of life, and so also in sports, and this leads to emotional violence. The problem is that sport and its relationship with children is looked at almost exclusively through the eyes of adults. Eyes that see sport only as competition, achievement, prestige, and recognition.

The question is: do children, including those who are talented, see sports in the same way? Everything suggests that the answer is not affirmative.

This paper mainly discusses the problems that arise from agonism: violence, disregard of the child's opinion, separation of children from their parents, health, anorexia, doping, financial issues, and exploitation.

On the contrary, we should ask ourselves about sports at all levels, not only agonism. In fact, more should be done to promote sport and its social function of improving children's health and social inclusion. Many children's problems today range from obesity, through the (worrying) digital way of life, and all the way to poverty, which is often in the background of the existing social divide between children.⁵⁴

Although it all seems so far away, it should be mentioned that the recent Covid pandemic has left behind enormous consequences for children. The impact of Covid-19 was (and still is) harmful for the psychophysical and emotional development of children. The absence of socialization normally associated with school and leisure activities carries a serious risk of damaging the health (especially mental health) of children.

Any future efforts to strengthen the inclusive power of sport should therefore be welcomed and supported. In the author's opinion, sports must serve the development of children who should

53 It is opportune to recall once again art. 31 CRC and the General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31) where stating „Article 31 must be understood holistically, both in terms of its constituent parts and also in its relationship with the Convention in its entirety. Each element of article 31 is mutually linked and reinforcing, and when realized, serves to enrich the lives of children. Together, they describe conditions necessary to protect the unique and evolving nature of childhood.“

54 Reading highly recommended: Grant Jarvie, James Thornton, Hector Mackie, *Sport, Culture and Society – An Introduction* (London and New York: Routledge, 2018), 412 *et seq.*

have the opportunity to grow through the noble rules of sport. It should be inconceivable that it is the children who serve the sport to achieve increasingly unreachable goals and records, whatever the costs in terms of children's well-being. Children must be able to make mistakes, change their minds, realize that the meaning of sport is not always contained in a victory: only in this way they will become champions, but only if they want it.

"Just play. Have fun. Enjoy the game." – Michael Jordan

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