



Children's right to play sports in a safe and healthy environment

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Abstract

According to the United Nations Convention on the Rights of the Child (CRC), every child has a right to practise sports in a healthy, safe environment (art. 19). However, research indicates that child athletes experience various forms of violence in sports. Violence is particularly harmful to children, as the effects may be significant and long lasting. In addition, children often have difficulty identifying and reacting to violence. In this article, we first aim to shed light on the prevalence and implications of violence towards child athletes in sports. By child athletes, we mean athletes under the age of 18 (CRC art. 1). Thereafter, we discuss the following questions: (1) How does the CRC protect children in sports? (2) Can children's rights be effectively protected through sports self-regulation of sports bodies and legal remedies? (3) Who is responsible for safeguarding children's rights in sports? To answer these questions, we employ a multidisciplinary perspective that combines jurisprudence and sport psychology. In summary, we conclude that the CRC unequivocally prohibits all violence against children in all sectors of society, including sports. The responsibility for enforcing this prohibition lies with both member states and sports bodies. It is always the responsibility of adults. The full realisation of children's rights requires action on multiple fronts, including legislation, information, education and resources.

Keywords Child athlete maltreatment · Children's rights · Sports law · Self- and public regulation of sports bodies

1 Introduction

Many children engage in sports. Indeed, at the most fundamental level, children have a right to play sports. According to article 31.1 of the United Nations Convention on the Rights of the Child (CRC), children have a right to rest and leisure, to engage in play and recreational activities and to participate freely in cultural life and the arts.¹ For the most part, this takes place in safe environments under the guidance of responsible adults. As such, sports can have multiple positive effects on children's wellbeing and development.² However, this can only be achieved in a safe and healthy

sports environment. However, research indicates that violence exists in all its forms in sports.³

In this article, the term 'violence' is used in the same sense as it is used in the CRC⁴ and by the United Nations International Children's Emergency Fund (UNICEF)⁵ and Safe Sport International.⁶ Thus, 'violence' is an umbrella term for various activities that may be harmful to children, including maltreatment, neglect, exploitation and abuse. The latter terms denote the form and severity of violence, and the terminology may vary to some extent between disciplines and countries for reasons such as differences in criminal legislation. In the CRC, 'violence' is understood to mean

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¹ This often undervalued and neglected right was recognised as highly important for children in the 1959 UN Declaration of the Rights of the Child (para 7).

² Donaldson and Ronan 2006 and Ploughman 2008.

³ Frederico et al. 2008, Miller-Perrin and Perrin 2012, Price-Robertson et al. 2013 and Miller et al. (2013).

⁴ General Comment No 13 (2011), para 4.

⁵ Brackenridge et al. 2010.

⁶ Brackenridge 2015.

‘all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse’, regardless of the frequency or severity of the harm or intent to harm.⁷

The phenomenon of violence is examined at a general level without focusing on any specific form of violence and from a children’s rights perspective that is deeply rooted in the CRC (hereafter also referred to as ‘the Convention’).⁸ The analysis is based on two premises: that a child has a right to be protected from all forms of violence, as provided in article 19 of the CRC and that a child has a right to effective legal remedies if the child’s right to protection from violence is violated. The most common forms of violence are physical, sexual and emotional violence, and cases of these types of violence can generally be detected across all levels and stages of sports.⁹ In the CRC, physical violence covers all forms of fatal and non-fatal physical violence, including any kind of cruel, inhuman or degrading physical treatment, punishment, physical bullying or hazing by adults or by other children. Sexual violence includes the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity. Emotional violence is often described as psychological maltreatment, emotional abuse or neglect, or verbal abuse and can include belittling a child, insulting a child or isolating or humiliating a child.¹⁰ Past research in the area of sports has primarily focused on physical and sexual violence, perhaps because cases of these types of violence are widely publicised in the general media.¹¹ However, recent research suggests that emotional violence could be the most frequently occurring form of violence in sports.¹¹

In the sports context, coaches, athletes, mentors, parents and administrators can all be perpetrators and victims of violence. In the current article, we focus solely on children as victims of violence and, to some extent, on coaches as the main perpetrators of violence against children. This is due to two factors. First, children’s young age, impressionability and incomplete physical and psychological development mean they are particularly exposed to violence and its effects.¹² Second, research indicates that coaches are the main perpetrators of maltreatment in sports, and most of the scientific literature and research on violence in sports

focuses on interpersonal violence inflicted by coaches.¹³ Coaches hold significant power over children based on several factors, including age, knowledge, resources, authority, control, influence and especially their ability to ‘make or break’ an athlete in a performance-centred sports culture.¹⁴ The focus on performance, success and the idea of ‘winning at all costs’ is an issue in sports culture all over the world and facilitates violence towards athletes. Children are particularly vulnerable in this culture, and they learn to be obedient, accept authority and normalise violent behaviour.

The article is structured as follows: Section 2 sheds light on the prevalence of different forms of violence faced by children in sports and on the effects of these various forms of violence on children. This section is guided mainly by the perspective of sports psychology, while the analysis in Sects. 3, 4 and 5 discusses legal frameworks relating to the topic. Section 3 introduces the CRC as a tool for protecting children’s rights in sports. Section 4 examines in more detail children’s right to engage in sports in a safe, healthy environment and their right to effective, child-friendly legal remedies when their rights are violated. Section 5 discusses the sports regulations and legal protection system in Finland as an example. The article concludes with a discussion and conclusions that extend beyond the national context.

2 Violence against children in sports: prevalence and effects

In recent years, research on athletes’ experiences of violence in sports has increased significantly.¹⁵ This has resulted in a growing understanding of the definitions, nature and forms of violence in sports. This research comes mainly from Canada, the United Kingdom, the Netherlands, Australia and Belgium.¹⁶ One example is a UK study of child athletes ($N = 6000$), which found that 75% of the participating children had experienced emotional violence, 29% had faced sexual harassment, 24% had encountered physical violence and 3% disclosed experiences of sexual violence in sports.¹⁷ In line with these results, a Canadian study revealed that a significant number of current athletes (CA) and retired

⁷ General Comment No 13 2011, paras 4 and 17.

⁸ General Comment No 13 2011, para 59.

⁹ Kerr and Stirling 2019 and Stirling and Kerr 2013.

¹⁰ General Comment No 13 2011, paras 21, 22 and 25.

¹¹ Stirling and Kerr 2008, Roberts et al. 2020 and Alexander et al. 2011.

¹² Kavanagh et al. 2017 and Stirling and Kerr 2013.

¹³ Mountjoy et al. 2016, Parent and Fortier 2018 and Wilinsky and McCabe 2021.

¹⁴ Gervis and Dunn 2004, Parent 2011 and Wilinsky and McCabe 2021.

¹⁵ Gervis and Dunn 2004, Kerr et al. 2019a, Parent et al. 2016 and Stirling and Kerr 2009.

¹⁶ Parent and Vaillancourt-Morel 2021 and Wilinsky and McCabe 2021.

¹⁷ Çetin and Hacisoğlu 2020, Stirling and Kerr 2008, 2013 and Wilinsky and McCabe 2021.

¹⁷ Kerr et al. 2019a, b.

athletes (RA) who participated in a survey (N=1,001) had experienced neglect (CA 67% and RA 76%), psychological violence (CA 59% and RA 62%), sexual violence or harassment (CA 20% and RA 21%) and physical violence (CA 12% and RA 19%) in the course of their sports activities.¹⁷ Similar trends have been detected in Finnish sports environments. The Finnish Child Victim Survey found that 16–29% of the 7409 children who participated in the study were targets of emotional violence during structured leisure activities.¹⁸ Thus, research has shown that violence prevails in various sports environments and societies.

The consequences of violence against athletes are not well documented, and research on child athletes is even sparser.¹⁹ The sporadic research that has been conducted reports similar results to those reported in the general child violence literature, which reveals that the consequences of violence against children can be compared to those of complex trauma and that they encompass a broad range of behavioural, emotional, social, physical and cognitive effects.²⁰ Child violence is consistently linked to mental health problems, such as depression and anxiety, and other negative long-term health effects.²¹ Research on violence against (adult) athletes also indicates that its consequences include both negative and positive training and performance effects, such as decreased performance and enjoyment, and increased motivation.²² Arguably, athletes who perceive the effects of violence positively, think this way only when they are performing/training well and justify the violence as necessary for success.²³ This again demonstrates the problem of performance-centred sports cultures. However, thus far, little is known about child athletes' perceived training and performance effects, or the short- and long-term effects of violence in sports on children's development.²⁴ Although there is a significant lack of research in this area, there is a clear and urgent need to limit and reduce all forms of violence in sports and in all relationships. Children must be ensured a safe, healthy environment in which to play and practise sports. Indeed, children are guaranteed these rights in the CRC (art. 19).

3 The UN Convention on the Rights of the Child and its relevance in sports

In this article, we examine the violence children face in sports from the perspective of *children's rights*. Law and rights are not concepts that are traditionally associated with either sports or children. However, as the downsides of sports have become more and more evident, the debate surrounding the rights and legal protection of children in

sports has become increasingly important. This debate is significantly influenced by the CRC, which entered into force internationally in 1990. Every country in the world is committed to the CRC, except for the United States, which has yet to ratify the Convention. The number of ratifications and the rapid entry into force only a year after its adoption indicate the states parties' commitment to the Convention. At the level of international diplomacy, the world is remarkably unanimous about the importance of children's rights and their protection. However, in practice, realising these rights remains challenging.

Although all human rights treaties apply to children, the CRC has special importance in matters concerning children, as it is the only human rights treaty that is drafted from the child's perspective, and it protects not only general human rights but also special rights of the child. The latter are rights that arise from children's vulnerability and dependency on adults. Thus, they are rights that adults, as less vulnerable and more independent, no longer have. These special rights include a child's right to have his/her/their best interests taken as a primary consideration (art. 3.1), a right to rest and play (art. 31) and—perhaps most important for the purposes of this article—a right to special protection (e.g., art. 3.2).¹⁹ As vulnerable and dependent children are particularly prone to violations of rights (e.g., violence) but also often need help or support from adults to identify and react to violations of these rights. *Children's right to special protection requires an obligation on society to pay special attention to the realisation and protection of children's rights.*²⁰

The ultimate objective of the CRC is to safeguard the overall wellbeing of the child. This is deemed to occur when the rights guaranteed by the Convention are fulfilled.²¹ According to the Convention, the primary responsibility for this lies with the child's parents (CRC art. 7 and 18). This is based on the presumption that parents know what is best for their child and that they act accordingly. Member states are responsible for engaging and supporting parents in their task.²² However, there are multiple situations in which a conflict may arise between the rights of the child and the interests of the parents. In sports, the parents' ambitions in relation to the child's success may prompt parents to ignore or even conceal incidents of violence. Furthermore, parents can be guilty of violence themselves (for example, by pressuring a child to continue playing sports or to play sports while ill). Therefore, the CRC lays the ultimate responsibility for the realisation of children's rights, and thus also for

¹⁸ Fagerlund et al. 2014. See also FINCIS 2020 and Kokkonen 2019.

¹⁹ See also for example, Popov v. France 19.1.2012 (103 §).

²⁰ Tobin 2014, p. 259 and Doek 2014.

²¹ General Comment No 14 2013, para 4.

²² General Comment No. 16 2013, para 56.

children's wellbeing, on public authorities and, thus, primarily on member states.

Internationally, member states are required to submit periodic reports to the UN Committee on the Rights of the Child (the monitoring body of the CRC) and to receive the Committee's observations on the state of children's rights in the state (art. 44). Concluding observations issued by the Committee are aimed at guiding states parties in the implementation of the Convention, as are the general comments of the Committee. The latter contains the Committee's interpretation of the CRC treaty provisions and thematic issues.²³ So far, the Committee has paid regrettably little attention to sports-related issues in either its concluding observations or its general comments. General Comment No 17 (2013) on article 31 (the right of the child to rest, leisure, play, recreational activities, cultural life and the arts) covers sports but only touches on it tangentially.²⁴

For an individual child who has been a victim of violence, periodic reporting is a distant, slow and ineffective mechanism. Therefore, it is important that children's rights and legal protection are secured at the grassroots level, where children spend their time and where violations of rights take place. To accomplish this, the engagement of all sectors of society (i.e., not only public actors but also private actors, such as NGOs, business organisations and sports clubs and federations) is needed. In fact, private actors such as sports clubs have significant capacity to both adversely affect and positively contribute to the implementation of children's rights. Therefore, member states are responsible for nationally regulating and informing and educating the private sector on children's rights. These obligations are set out in articles 4 and 42 of the Convention.

Article 4 obliges member states to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention. In terms of legislation, it requires national law to be 'fully compatible with the contract as a whole'. It follows that states parties must comprehensively review domestic legislation and related administrative guidance and ensure the transposition of contractual obligations into all areas of substantive law, including the private sphere, such as the home (parents) and sports clubs (coaches).²⁵ Article 42 commits member states to make the principles and provisions of the Convention widely known, by appropriate and active means, to all of society, adults and children alike.

The enforcement obligation is absolute concerning guiding principles²⁶ and the civil and political rights guaranteed by the CRC, whereas economic, social and cultural rights must be implemented 'to the fullest extent of available resources'.²⁷ Member states do have some discretion in deciding which implementation measures are appropriate, but actions taken must always contribute to the realisation of children's rights, and implementation must be consistent with all the articles of the Convention.²⁸

4 Children's right to be protected from all forms of violence

4.1 Content, scope and implementation of article 19

Article 19 of the CRC is the core provision that sets out strategies for addressing and eliminating violence against children.²⁹ It obliges states parties 'to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'.³⁰

The concept of violence in article 19 is broad. The term 'violence' is used as a general term for each of the specific forms of harm listed in the article, all of which carry equal weight.³¹ The article is thus based on the fundamental

²³ General comments are not legally binding, as they do not entitle the Committee to issue binding opinions on member states. Strong consensus prevails that general comments interpret and add detail to the rights and obligations of the CRC. International Law Association 2003, paras 16 and 18; Keller and Grover 2012, p. 31.

²⁴ General Comment No. 17 2013, paras 1–3, 6.

²⁵ General Comment No 5 2003.

²⁶ The four guiding principles are non-discrimination (art. 2), the best interest of the child (art. 3.1), the right to life, survival and development (art. 6) and children's right to participate (art. 12). The guiding principles are both independent rights and principles of interpretation that must be considered when interpreting any right enshrined in the CRC. That is to say, every right guaranteed in the Convention must be protected without discrimination, considering the best interests of the child and safeguarding the child's right to life, development and participation.

²⁷ General Comment No 5 2003, paras 6–8 and General Comment No 15 2013, paras 112–116. See also Tobin 2019b, p. 907 and Nolan 2019, pp. 1038–1040.

²⁸ General Comment No. 19 2016, para 18; Tobin 2019a, pp. 109–122.

²⁹ General Comment No 13 2011, para 7.

³⁰ Children are protected from violence by several other human rights treaties (for example, the Lanzarote Convention [The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse], the Istanbul Convention [Council of Europe Convention on preventing and combating violence against women and domestic violence], the ICCPR [International Covenant on Civil and Political Rights], the revised European Social Charter and the Finnish Constitution (s. 7).

³¹ Tobin and Cashmore 2019, p. 691.

assumptions that no violence, however mild, against children is justifiable and that all violence against children is preventable.³² The wording ‘all forms of physical or mental violence’ leaves no room for any level of legalised violence against children, and factors such as form, frequency, the severity of harm or intent to harm are not prerequisites for the definition of violence. Mere exposure to violence is sufficient to constitute violence. In conceptualising violence, the critical starting point and frame of reference is the experience of the child.³³

As with violence, the concepts of care settings and caregivers in the CRC are extensive. Care settings are places where children remain under the supervision of their primary caregiver (such as a parent or guardian) or a temporary caregiver (such as a teacher or a coach) for periods of time, which may be short-term, long-term, repeated or isolated. In addition to family homes, typical care settings include schools, nurseries and leisure, sports and other cultural and recreational facilities. The term ‘caregiver’ covers all those with clear, recognised legal, professional-ethical or cultural responsibility for the safety, health, development and wellbeing of the child. Thus, article 19 protects children while they are in the care of parent(s), legal guardian(s) or any other person who has the care of the child.³⁴

In summary, according to the CRC, there can be no sector in society in which any form of violence against a child is permissible. States parties are therefore under obligation to protect children from violence, including in sports at all levels—national, provincial and municipal.³⁵ Regarding implementation, article 19 is mainly classified as a civil and political right and is, therefore, in principle, subject to an absolute enforcement obligation. However, as the fulfilment of the article requires considerable resources, progressive implementation has been considered permissible to some extent in practice.³⁶ Under no circumstances is this a way out for the state parties; all appropriate measures to protect children from violence must be taken within the scope of available resources, and resource constraints cannot justify a state’s failure to take sufficient measures to protect children.³⁷

States parties must also ensure that laws and regulations are adequately implemented and that those working with and for children have sufficient resources and capacities to apply them (art. 42). To this end, article 19 and the general comment on this article must be disseminated widely and effectively. The general comment should be incorporated into the training of all professionals working for and with children in sports. It is equally important that children be informed of their rights and remedies. States parties should also have in place measures and programmes that are equipped with sufficient means to assess, monitor and evaluate the progress or shortcomings of activities to end violence against children.³⁸

4.2 Children’s right to effective and child-friendly legal protection

Children’s right to legal protection entails ensuring that the rights guaranteed to children by law are properly exercised, that children are protected from illegal activities and that there are proper means to respond to violations of rights (legal remedies). The CRC does not contain a specific article on legal protection, but the requirement is implicit in the Convention because for ‘rights to have meaning, effective remedies must be available to redress violations’.³⁹ It is particularly important to seek to *prevent* violations of children’s rights, as it is often challenging for children to identify and react to such violations. This also applies to article 19. Therefore, all factors examined in Sects. 3 and 4.1 must be in order: National legislation and other regulations must fully comply with the CRC, both adults and children must be adequately informed about children’s rights, and those working with and for children must be sufficiently resourced to safeguard those rights in practice.⁴⁰

However, there is also a need to invest in *ex-post legal protection*, that is, effective legal remedies suitable for children in the case of violations. Effective remedies include

³² Report of the independent expert for the United Nations study on violence against children (A/61/299), para 1. Accordingly, Finland’s national strategy on the rights of the child (published 23.2.2021) is based on a policy of zero tolerance of all forms of violence against children.

³³ Stirling and Kerr 2009, 2013 and General Comment No 13 2011, para 17.

³⁴ General Comment No 13 2011, paras 33–34; Tobin and Cashmore 2019, p. 689.

³⁵ See also Ellingsen and Danielsen 2017, p. 414.

³⁶ Tobin and Cashmore 2019, pp. 705–706.

³⁷ General Comment 13 2011, para 73.

³⁸ General Comment No 13 2011, paras 5, 8 and 32, General Comment No. 17 paras 57 c and 57 g and General Comment No 2 2002. See also Tobin and Cashmore 2019, pp. 704–711.

³⁹ General Comment No 5 2003, para 24. The right to fair trial (art. 6) under the European Convention on Human Rights (ECHR) protects children and adults. Children’s right to legal protection is further supported by article 13 of the ECHR on the right to an effective remedy before a national authority.

⁴⁰ General Comment No 13 2011, paras 5, 8 and 32; General Comment No 17 paras 57 c and 57 g and General Comment No 2 2002 and Tobin and Cashmore 2019, pp. 704–709. See also the International Safeguards for Children in Sport developed by the International Safeguarding Children in Sport Founders Group 2015. The eight safeguards are (1) developing policy, (2) procedures for responding to safeguarding concerns, (3) advice and support, (4) minimising risks to children, (5) guidelines for behaviour, (6) recruiting, training and communicating, (7) working with partners and (8) monitoring and evaluating. Thus, the safeguards rely heavily on the CRC.

ensuring that there are child-sensitive procedures available to children and their representatives. These procedures should consider children's perception of time and include the provision of child-friendly information, advice, advocacy and, if needed, access to independent complaints procedures and to the courts with necessary legal and other assistance. When rights have been violated, there should be appropriate reparations and appropriate measures to promote children's physical and psychological recovery, rehabilitation and reintegration, as required by article 39.⁴¹

Regarding article 19, the Committee has emphasised that as victims of violence, children must have access to legal redress regardless of where the violence took place. Suspected acts must be investigated, and those found guilty of committing such acts must be held liable. Cases of severe violence, including emotional violence, must be referred for criminal prosecution.⁴² For less serious violence, it is often more important than the perpetrator understands the illegality of his/her/their act and the effects of the act on the child and that the activity ceases. In this respect, conflict resolution systems (mediation) are sometimes considered more effective than formal juridical procedures.⁴³ The CRC also applies to mediation and the best interests of the child (art. 3.1) should guide both the choice of procedure (mediation or some other, more formal procedure) and the procedure itself. Under no circumstances should mediation prevent the use of other legal remedies. Mediation in cases of violence carries a risk that the encounter between the perpetrator and the victim may be considered superficial and the victim may experience pressure to reach a compromise.⁴⁴ This may be harmful to the child and may enable the violence to continue.

5 Protecting children in sports: the case of Finland

5.1 Implementation of article 19 in Finnish sports regulation

The realisation of children's rights in sports is affected by, among other factors, the relationship between national sports legislation and self-regulation of sports bodies. It is

a question of how the rights of individuals and the organisation of sports are governed by national law. Two distinct approaches to governing sports can be identified in the legal literature.⁴⁵ An *interventionist* sports legislation model is one that contains specific legislation on the structure and mandate of a significant part of the sports movement. All other sports legislation models are deemed *non-interventionist*. Like most European countries, Finland has a non-interventionist legal system wherein only the basic legal framework concerning athletes' rights and relationships between athletes and sports organisations are defined by law (Sports Act, 390/2015).⁴⁶ The governance of sports is based on the idea of freedom of association guaranteed in the Constitution of Finland (731/1999, s. 13).

In accordance with the non-interventionist model, the Finnish Sports Act includes only general provisions on ways to promote physical activity and elite sports, the responsibility and co-operation of the state administration and the municipality, and state funding in sports. Neither athletes' rights and duties nor the relationships between athletes and sports organisations are defined in the Act. Children are mentioned only in Sect. 2 on the objectives of the law.⁴⁷ This section states that the Act aims to *support children's and young people's growth and development through sports* at all levels (recreational, competitive and elite). Efforts to achieve these objectives should be based on the principles of equality, non-discrimination, social inclusion, multiculturalism, healthy lifestyles, respect for the environment and sustainable development.

Children's rights are thus mainly left to the responsibility of sports clubs and federations, which are self-regulating. In this respect, one can claim that Finland has failed to fulfil its obligation to bring national law into line with the contractual obligations of the CRC in the area of sports. However, the Sports Act (s. 1.1) states that the application of this Act must consider international obligations binding on Finland.⁴⁸ The relevant section refers specifically to international human rights conventions, including the CRC. Used systematically, it could be an effective tool for protecting children and their

⁴¹ General Comment No 5 2003 para 24.

⁴² The provision on assault in the Finnish Penal Code (21: 5) can, in principle, also be applied to emotional violence. However, it is often difficult to prove the causal relationship between the act and its consequences and thus to assess whether the sentencing threshold is exceeded. In practice, this is reflected in the fact that allegations of emotional violence have rarely been made. Fagerlund et al. 2014.

⁴³ General Comment No 12 2009, paras 32 and 51–52 and General Comment No 14 2013, para 27.

⁴⁴ Ervasti and Nylund 2014, pp. 485, 503–506.

⁴⁵ Chaker 2004, p. 112. See also Siekmann and Soek 2011, p. 112.

⁴⁶ Chaker 2004, p. 130; Siekmann and Soek 2011, p. 130.

⁴⁷ Children's rights were also only superficially addressed in drafting the Act, during which the CRC was mentioned but not applied. HE 190/2014 vp.

⁴⁸ The national legal status of the CRC, like that of any other human rights treaty, varies. Finland formally incorporates all major human rights treaties into its domestic law (Constitution, section 95). Most of them, including the CRC, have been incorporated at the same hierarchical rank as an act of parliament (ordinary law). That is to say, their rank is below that of the Constitution but above that of other statutory law. Nevertheless, individuals can refer directly to the Convention, and courts and officials can cite the CRC directly as a basis for their decisions.

rights in sports. So far, however, its application has been mainly limited to assessments of eligibility for state aid in sports and decisions on the amount of aid to be allocated (Sports Act s.10.3 and 12.3). Therefore, its effectiveness depends on how the Ministry of Education and Culture, a major funder of sports in Finland, uses its power. The problem is that the funding model allows for, and thus maintains, a culture of violence because successful sports organisations are generally awarded larger funds than less successful ones.⁴⁹ This creates a vicious cycle in which sports organisations strive for success rather than for athletes' welfare, leaving athletes vulnerable to abuse.⁵⁰ This downside has recently been identified, and 15% of the Ministry's future funding will now be clearly tied to various ethical issues, such as parity, equality and the fostering of healthy, safe sports environments.⁵¹ The effects of this reform remain to be seen.

It is also worth noting that despite the self-regulation system, sports clubs are bound by the disciplinary rules and regulations implemented by sports federations. In the past few years, sports federations have paid increasing attention to ethical and legal issues in sports in Finland, including with regard to children. The Finnish Centre for Integrity in Sport (FINCIS), the Finnish Olympic Committee and a few NGOs have raised such issues, and sports federations have become more active in drawing up their own ethical guidelines. This has not, however, been systematic or exhaustive, and it is unlikely that ethical guidelines, as sources of soft law, alone can safeguard the rights of child athletes. Furthermore, interest in ethical issues may arise from the fact that violence in sports has recently received much publicity, and such interest may decline if publicity wanes. In any case, more research is needed on these guidelines and how they function in practice.

⁴⁹ Kerr and Stirling 2019.

⁵⁰ Burke 2001 and David 2005.

⁵¹ Ministry of Education and Culture 2020. Finland's neighbouring country, Sweden, included in the Swedish Sports Confederation's policy, Sport Wants, the following guideline: 'Sports for children and young people up to 18 years should be conducted from a children's rights perspective and follow the United Nation Convention on Children's Rights'. This amendment was introduced when the Swedish Parliament decided to strengthen regulations governing Swedish sports policy by incorporating a children's rights perspective in accordance with the proposals in a report on state aid for sports in Sweden (SOU 2008, p. 59). In Swedish sports, children's rights are linked almost exclusively to the CRC. In addition, in Norway, children's leisure athletics and sports participation are regulated through rules of sports which is rooted in the CRC and is binding for all Norwegian sports coaches in their work with children up to the age of 13. Ellingsen and Danielsen 2017, p. 412.

5.2 Legal remedies in Finnish sports

Due to Finland's non-interventionist system, the responsibility for legal protection in sports falls on sports federations and sports clubs. Based on the principle of freedom of association, sports federations and other sports associations have extensive ability to regulate their internal activities and govern individual coaches, athletes and officials through disciplinary rules and regulations. The benefit of self-governance is flexibility, whereby the specific features of each context can be taken into consideration.⁵² However, the self-governance model has several weaknesses regarding children.

The first weakness concerns the basis of the sports federations' disciplinary power over coaches, athletes and other individuals, which is typically constructed in two ways. In the construction of the nexus of rules, coaches, athletes and other sports personnel are considered members of sports clubs. The sports club, in turn, is considered a member of a sports federation. The nexus of rules form a solid legal basis for disciplinary proceedings if the rules of both the sports club and the sports federation contain provisions on disciplinary proceedings and their competence to issue disciplinary sanctions on individuals and other entities. If the nexus of rules is unbroken, coaches, athletes and other individuals cannot challenge sports federations' competence to issue disciplinary sanctions. An alternative legal basis for disciplinary proceedings can be constructed by contractual arrangements between a coach or athlete and a sports club. These provisions are typically included in an employment contract whereby a coach or an athlete commits to following and respecting a sports federation's regulations and disciplinary code. Commitment can also be legally constructed in cases where a coach or an athlete purchases a sports licence, which is a precondition for participating in competitions and tournaments.

Regarding legally incompetent children, all constructions are problematic in that they assume that minors can evaluate the content of rules and contractual agreements and their meaning in practice. In addition, children often do not even buy licences themselves, and under no circumstances can children validly consent to rules or contracts that allow violation of their rights. Furthermore, the nexus of rules is broken if the coach has not purchased a sports licence or is not a member of the sports club that he/she works for, which is sometimes the case. In such cases, there is no solid basis for a sports federation to initiate disciplinary proceedings. Recent case law in Finland indicates that coaches may also

⁵² Anderson 2010, pp. 104–110.

seek to challenge the legal basis for disciplinary proceedings to avoid responsibility.⁵³

Another weakness is that sports regulations and disciplinary rules typically cover matches and other sports competitions but not training sessions or other activities where violent incidents commonly occur. Traditionally, all forms of violence have been evaluated in disciplinary proceedings based on a vague concept of unsports person-like conduct. It is evident that offences should be more precisely described in disciplinary codes to fulfil the requirements of legal certainty.

From the perspective of child-friendly justice, the third problem lies in the decision-making system. While individual sports clubs can impose disciplinary sanctions in theory, in practice, disciplinary proceedings are organised by sports federations and their disciplinary boards. These procedures are formal and far from the everyday lives of children in sports. Furthermore, disciplinary measures (for example warnings, reprimands, fines and ineligibility sanctions) may not be suitable or effective in all cases, especially if the aim is to prevent the violence from continuing. A recent case of emotional violence in Finnish football serves as an example: When a 17-year-old female player failed to take over the ball during a match, the coach's feedback was 'f***, what a whore'.⁵⁴ The coach received a three-match steward ban, after which he was permitted to continue coaching. However, after some negative publicity, the club fired the coach. In another example, a Finnish synchronised skating coach was found guilty of systematic emotional violence against child athletes that had lasted for over 20 years. Skating Finland's disciplinary board imposed its harshest punishment at the time and suspended the skating coach from attending competitive events (but not training) for a year. She was also required to make a public apology to the victims and to attend professional guidance counselling. Currently, the coach is still active and can coach children.

In May 2021, Finland established a specialised disciplinary board under the Finnish Olympic Committee. The disciplinary board has a mandate to consider all severe emotional violence and unethical behaviour cases in Finnish sports. The sanctions imposed by the disciplinary board are applicable to different sports. However, for these sanctions to

be valid, sports federations must accept the board's mandate. Accepting the board's mandate is voluntary; therefore, it remains to be seen how many sports federations are willing to change their internal rules. Based on negotiations during the preparation process, it is likely that most sports federations will do so. This would be an important step towards ensuring a safe sports environment for all athletes, irrespective of their age. The downside is that children have not been included in this procedure, even though the CRC obliges member states to involve children and their views in a meaningful way in all activities affecting children, as a dialogue with children has the capacity to ensure that measures taken to tackle violence are effective in a child-friendly way.⁵⁵

6 Discussion

The research reveals failures to fulfil obligations under article 19 in sports in many countries.⁵⁶ According to the CRC Committee, measures to combat violence are generally limited by a lack of knowledge and data and a failure to understand violence against children and its root causes, which include widespread social and cultural attitudes and practices that perpetuate tolerance of violence.⁵⁷ Indeed, the performance-centred culture that dominates sports has been considered the main factor in enabling violence in sports.⁵⁸ Many coaches and sports organisations have justified violence as a requirement for achieving peak performance and success.⁵⁹ For instance, directors of sports clubs have claimed that athletic welfare or the development of a child cannot be the first objective of sports due to the performance-centred nature of sports culture.⁶⁰ Even in popular culture, the sports environment is often presented as an abusive one that glorifies performance.⁶¹

Aside from cultural factors, there are also relationship- and knowledge-related factors that enable violence in sports. First, children are often unable to recognise different forms of violence, and even adults do not always understand what

⁵³ In the spring of 2019, 13 athletes contacted the Finnish Centre for Integrity in Sports and accused an internationally renowned synchronised skating coach of repeated and intentional emotional violence. The coach challenged the mandate of Skating Finland's disciplinary board to consider the case and claimed that she was not bound by the disciplinary rules because the nexus of rule was broken. The coach claimed that she was not a member of the sports club she worked for and that she had not purchased a sports licence.

⁵⁴ Helsingin Sanomat 8.6.2020: <https://www.hs.fi/urheilu/art-2000008035984.html>.

⁵⁵ It remains a constant challenge to turn children's inclusion into a reality. It is still too often assumed that children do not need to be asked about issues related to their lives because they either do not know or do not have the competence to make assessments. General Comment No 5 2003, para 12. See also Doek 2014, p. 213; Ellingsen and Danielsen 2017, pp. 414–415.

⁵⁶ Geeraert 2018, Stirling et al. 2011 and Stirling and Kerr 2014. See also UNICEF 2018.

⁵⁷ General Comment No 13 2011, para 12.

⁵⁸ Kerr et al. 2019a, b.

⁵⁹ Brackenridge et al. 2008, Parent 2011 and Stirling and Kerr 2009.

⁶⁰ Stirling and Kerr 2008, Stirling and Kerr 2010, Gervis et al. 2016, Jacobs et al. 2017.

⁶¹ Kerr et al. 2016 and McCullick et al. 2003.

behaviours can be harmful to a child or how serious the consequences of such harm might be. Research has shown that adults in Finland, for example, do not always think of smacking or flicking a child's forehead as violence, and it is likely that they do not recognise emotional violence towards children.⁶² Second, athletes, parents and all those who work or volunteer within the sports sector might be reluctant to report incidents of violence even if they recognise it.⁶³ This may be due to several factors, such as the power attributed to coaches,⁶⁴ fear of repercussions, normalisation of violence and fear of not being believed.⁶⁵ Indeed, upon entering any sports context, child athletes, their parents and other personnel and volunteers are taught to accept and normalise coaches' decisions and power without question. Such normalisation occurs as these individuals observe older athletes, parents and other personnel tolerating violence without complaining.⁶⁶ Child and para-athletes are especially susceptible to such normalisation of violence because they rely heavily upon other individuals for support.⁶⁷

Within sports organisations, shortcomings originate in part from a lack of accountability and ineffective or unenforced safeguarding policies.⁶⁸ Legal remedies in sports are not particularly designed to deal with cases of violence nor do they secure that violent behaviour will end and the child can continue to play sports safely. As a result of a lack of accountability, directors and managers of sports clubs place the responsibility for protecting children from violence on the parents, whereas coaches argue that athletes (including child athletes) are responsible for their own welfare.⁶⁹ As stated earlier, both assumptions are wrong. In addition to parents, both the public and private sectors of society are responsible for safeguarding the rights of the child. In all circumstances, the responsibility lies with adults.

7 Conclusions

At the beginning of the article, three questions were presented concerning, respectively, the relevance of the CRC in sports, the effectiveness of sports regulation and legal remedies, and the responsibility for protecting children's

rights. These three questions were addressed with a view to preventing violence.

The outcome of the analysis of articles 4 (implementation of the Convention) and 19 (prohibition of violence) of the CRC was clear: Under article 19, member states are committed to eliminating violence against children in all sectors of society, both public and private, and article 4 obliges member states to bring all national legislation and related administrative guidance into line with their contractual obligations under the Convention.⁷⁰ This horizontal dimension of article 4 (binding the private sector) of the CRC is still not always properly understood in member states, nor is the fact that the obligation is judicial and not moral.⁷¹ Unfortunately, human rights are still sometimes seen as moral guidelines—or even, in the case of sports, as a barrier to peak performance⁷²—rather than rights that must be effectively realised in society.⁷³

In accordance with articles 19 and 4, all violence in sports must be unequivocally prohibited by national sports law and in the self-regulation of sports bodies. As stated in Sect. 5.1 Finland has not fulfilled this obligation. The same presumably applies to many other countries and as violent behaviour against child athletes is indeed constantly being exposed around the world. Furthermore, if the child's right to be protected from violence is violated, effective remedies must be available. In addition, to meet the requirements of child-friendliness those remedies need to be adapted to and focused on the needs of the child. In many countries, as in Finland, there is an overall lack of effective, child-friendly legal remedies and, more specifically, legal remedies designed for children in sports or for cases that concern violence in sports. Like many other conflict resolution systems, legal protection in sports seems to be built for adults. When adult-oriented legal systems are used for children, the children are thrown into an intimidating adult world that they cannot understand. At worst, this can be very harmful to a child.⁷⁴

In addition to legislation, information is an important tool in the fight against violence in member states. Indeed, the importance of information and education in changing people's attitudes and shaping sports sub-cultures cannot be over-emphasised.⁷⁵ To this end, member states must meet

⁶² See summary of the Finnish studies Toivonen and Pollari 2021 and Tobin and Field 2019.

⁶³ Stirling and Kerr 2010.

⁶⁴ Burke 2001.

⁶⁵ Jacobs et al. 2017 and Kerr et al. 2019a.

⁶⁶ Brackenridge 2001 and David 2005.

⁶⁷ Burke 2001, MacGregor 2020 and Tuakli-Wosornu et al. 2020.

⁶⁸ Hartill 2016.

⁶⁹ Jacobs et al. 2017.

⁷⁰ General Comment No 5 2003.

⁷¹ See also Mountjoy et al. 2015.

⁷² Ellingsen and Danielsen 2017, p. 416 and David 2005, p. 256.

⁷³ Leviner 2011, pp. 111–112. See also Scordino v. Italy (2006), para 192, in which the European Court of Human Rights states that the Convention (ECHR) is intended to guarantee not theoretical or illusory rights but rights that are practical and effective.

⁷⁴ Wingrove and Beal 2014.

⁷⁵ A Swedish study revealed that both child athletes and adult coaches considered children's rights to be of the utmost importance but had no knowledge of them. Eliasson 2015, p. 1.

the requirements of article 42 and make the principles and provisions of the Convention widely known to adults and children via appropriate and active means. Stakeholders in need of adequate education include, first of all, child athletes and their parents. As stated previously, children and their parents are often unable to recognise or understand all the acts that fall within the concept of violence, and their understanding and awareness of legal protection appear to be inadequate in the area of sports.⁷⁶ Adequate educational measures should empower athletes of all ages to recognise violence in sports, and parents should be able to have discussions with their children regarding related issues, such as coaches' behaviours and their appropriateness.⁷⁷ Second, coaches require education on violence and its effects on children, as well as on communication skills. Many instances of emotional violence by coaches are examples of poor communication skills. Traditionally, coaches have resorted to yelling and intimidation as pedagogical or motivational tools to build mental toughness and elicit peak performance in athletes.⁷⁸ Modern coach education should encourage the use of athlete-centred coaching methods and healthy communication skills,⁷⁹ which should reduce the use of abusive coaching methods.

The responsibility for legislation lies with the member states, but it is up to the private sector to apply it. In recent years NGOs and even sports clubs themselves have paid increasing attention to ethical issues and children's rights in sports. UNICEF and the International Olympic Committee for example have called for more proactive safeguarding measures, such as independent monitoring, especially for child athletes.⁸⁰ Many stakeholders have advocated for active safeguarding by compliance officers responsible for regularly overseeing coaches' behaviour during training and at competitions.⁸¹ In the UK, for example, safeguarding is delivered at the grassroots level by independent athlete welfare officers who are responsible for implementing and monitoring welfare and safeguarding policies.⁸² In Finland, a few sports associations have named individuals responsible for delivering accountability, equality and ethicality in their domains. Although it is unclear how these individuals aim to conduct this work in practice and whether it will be effective, it is nevertheless a step in the right direction.

Moreover, ethical issues and children's rights are becoming increasingly relevant for the granting of state subsidies to national sports organisations and sports clubs. Similarly, sports clubs' sponsors and other commercial actors are becoming more sensitive to ethical issues and are unwilling to cooperate with sports organisations that have a negative public image. Because sports federations and other organisations are often financially dependent on sponsors and commercial partners, this can have a guiding effect in practice.

The responsibility for the child's right to be protected from violence lies with all actors of society. For member states as well as private actors the CRC should provide a legal, analytical and procedural framework for implementing meaningful, lasting change to protect children's wellbeing in sports.⁸³ So far, the CRC Committee has paid regrettably little attention to issues related to sports. As violence against children in sports is indeed a global phenomenon, the CRC Committee should turn its attention to the issue and draft general comment on the subject.

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⁷⁶ Geeraert 2018 and UNICEF 2018.

⁷⁷ David 2020.

⁷⁸ Owusu-Sekyer and Gervis 2016 and Parent and Fortier 2018.

⁷⁹ Parent and Fortier 2018.

⁸⁰ Brackenridge et al. 2010 and Mountjoy 2019.

⁸¹ Jacobs et al. 2017, Kerr and Kerr 2020 and Macur and Allentuck 2020.

⁸² English Institute of Sports 2020 and Lang and Hartill 2015.

⁸³ Eliasson et al. 2017, p. 24, David 2005 and Ellingsen and Danielsen 2017, pp. 413–414.

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