

## A Call for implementing minimum age condition to protect young athletes' human rights

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### ABSTRACT

Sport is considered a favorable activity for children. Through participating in sport, children can acquire several skills and develop character traits like cooperation, teamwork, resilience, and focus. Nevertheless, it has been argued that children's rights might be violated in sport at an elite level, primarily due to the intensive training given at an early age. More specifically, it was reported that approximately 20 percent of children involved in competitive sports may be at risk of abuse, violence, or exploitation, while 10 percent may be at risk of extreme abuse. This paper focusses on the lack of international law provisions to protect children who participate in elite sports and hence argue for a more effective protection. This gives rise to the need for an enforcement mechanism in the International Convention on the Rights of the Child (CRC) specifically for elite-level sports. Thus, the international law could have a positive impact on domestic laws regarding young athletes in competitive sports. As a possible way through, this paper will examine the idea of imposing minimum age limit, including legal examples, as a potential solution to help protect children's rights in sport.

**Keywords:** Elite sport, children's rights, human's rights, international law, Qatar, minimum age, Aspire

### 1. INTRODUCTION

Sport has been and continues to be the language of the generations. Sport is a favorite activity for children.<sup>1</sup> The Universal Declaration of Human Rights is the first international instrument to recognize sport as a human right. Nevertheless, it is arguable that children's rights might be violated by some forms of participating in sports.<sup>2</sup> This applies specifically to elite-level sports, which require demanding and intensive training that seems to start at an early age. For the purposes of this paper, the words "elite level" and "elite" are used to distinguish these highly competitive athletes from recreational athletes. For example, in a sport such as gymnastics, many children participate in schools for a few hours a week. By contrast, athletes who participate at the elite level dedicates her/his life to competing as if it were a full-time job, if they are in clubs or academies that encourage their players to participate in high-level competitions, such as the Olympic Games, the World Cup for football and Wimbledon for tennis.

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1 P David (trs), *Human Rights in Youth Sport: A Critical Review of Children's Rights in Competitive Sports* (Routledge 2004) 4.  
2 *ibid.*

There is a tension and implicit conflict in the concept of children's rights. An under-examined facet of this tension concerns children's participation in competitive sports. Humphrey has argued that participation in sports is one of the defining activities of childhood and adolescence,<sup>3</sup> as children would learn skills and develop traits like cooperation, resilience and focus.<sup>4</sup> However, in the upper echelons of elite-level sports, and in competitive sports broadly, children often have limited autonomy to choose whether they wish to compete. Instead, their participation is encouraged, even coercively, by parents and other responsible adults.<sup>5</sup> While such encouragement is often benign, in elite competitive sports, this influence raises questions regarding children's autonomy and free will, as well as their objective capacity to provide informed consent, and fundamentally the extent to which children's rights are affected by participation in competitive sports.

Farstad has noted that the developmental implications of participation in sports depend on the duration, extent, and intensity of the training involved.<sup>6</sup> Children engaged in intensive training from young age are likely to not only forego other socially or developmentally significant activities but also modify their own internal sense of self and belonging. Being an athlete, thus, can become a constitutive element of a child's identity and persona.

David highlighted the ways in which the world of competitive sports is "plagued by excessive commercialization, doping, corruption, illicit behaviour and blind ambition," before asking whether the precepts of international human rights could apply to youth sports and child athletes.<sup>7</sup> Indeed, increased sports specialization and performance expectations have led coaches and scouts to identify "talent" at increasingly early ages.<sup>8</sup> These children, once selected, are faced with years of stress, rigorous training regimens, and often severe dietary restrictions.<sup>9</sup> Children involved in elite-level sports should in this respect be considered as especially vulnerable, given the intense involvement of adults in their management which exposes a child to be serving as a proxy for an adult's ambitions, either financially or otherwise. David—while noting that there is a marked lack of data—estimated that approximately 20 percent of children involved in competitive sports may be at risk of abuse, violence, or exploitation, while 10 percent may be at risk of extreme abuse.<sup>10</sup>

In the absence of concerted international interest in this subject, David has suggested that international human rights law (IHRL) may be an appropriate medium to establish minimum standards, noting that IHRL is the means through which "obligations, responsibility and accountability ensue, and which provides objective procedural, analytical and management tools."<sup>11</sup> As Levesque notes, the movement for international children's rights is based on the responsibility of governments to protect children by passing such laws.<sup>12</sup> This is done by evaluating not only the ways in which laws affect society in the aggregate (or the family as a whole) but also how such laws have an impact on children as individuals.<sup>13</sup> Brackenridge argued that international standards could begin to improve the current situation for children in competitive sports.<sup>14</sup>

This paper, which is derived from the author's master's thesis *The Impact of Elite Sports on Children's Rights: Protection by Using Minimum Age Conditions* submitted on [3 September 2019] at Queen Mary University of London, School of Law, under the direction of Professor Geraldine Van Bueren, thoroughly discusses all consequences of the absence of international rule that protects children who participate in elite sports, arguing for the need for an enforcement mechanism of the international Convention on the Rights of the Child (CRC) specifically for elite-level sports. This way, international law could stimulate domestic law makers to make a change.

To date, the policy response to the issue of children's participation in ultra-competitive sports has been limited to the so-called education and awareness-raising.<sup>15</sup> While worthy, these efforts do not provide efficient protection to children.

3 JH Humphrey, *Child Development Through Sports* (Taylor and Francis 2012).

4 R Giulianotti, 'Human Rights, Globalization and Sentimental Education: The Case of Sport' (2004) 7(3) *Sport in Society* 355.

5 C Brackenridge, 'Women and Children First? Child Abuse and Child Protection in Sport' (2004) 7(3) *Sport in Society* 322.

6 S Farstad, 'Protecting Children's Rights in Sport: The Use of Minimum Age' (2007) 3 *Human Rights Law Commentary* 1.

7 David (n 1) 1.

8 B Kidd and P Donnelly, 'Human Rights in Sports' (2000) 35(2) *International Review for the Sociology of Sport* 131.

9 *ibid.*

10 David (n 1).

11 *ibid.* 20.

12 RJ Levesque and Geraldine Van Bueren, 'The International Law on the Rights of the Child' (1995) 19(2) *Fordham International Law Journal* 832.

13 Brackenridge (n 5) 328.

14 *ibid.*

15 David (n 1).

Hence, this paper discusses some aspects of the absence of international rule that protects children in elite sports and uses an analytical methodology to examine the potential solution of minimum age limits, including legal examples, to help protect children from harmful practices and safeguard their rights in sport. From a human rights perspective, there is a paradox that, even though this issue is controversial, it is not widely discussed. As such, the CRC provides age limits to protect children in some areas such as education and labor,<sup>16</sup> yet, it neglects sport.<sup>17</sup> Therefore, the paper proposes an analogical-based solution of adopting a minimum age of consent in elite sports. This proposal joins the call of David who argues that such solution may be considered an extension of the generally accepted and understood tenets. Such policy presents an apparently implementable initiative, by limiting children's participation in intensive and specialized training programs until they reach an age to be able to provide full and informed consent.

The discussion in this paper relates to three elements. First, violation of children's rights is linked to early participation in organized intensive training. Second, this paper sheds light on some of many difficulties that hinder the adoption a minimum limit age rule by sports organizations and federations. Third, this paper examines the implications of a minimum age for engaging in organized intensive training. To conclude, this paper reviews the failure of the CRC and Committee on the Rights of the Child to effectively address the impact of elite-level sports on children's lives and offers legal recommendations to remedy this.

## 2. ELITE SPORTS AND CHILDREN'S RIGHTS: FRAMEWORKS AND ISSUES

An elite child athlete, as defined by the International Olympic Committee (IOC), "is one who has superior athletic talent, undergoes specialized training, receives expert coaching and is exposed to early competition."<sup>18</sup> Elite sport goes to a stage where the physical effort is much higher than the effort of the amateur, because it is a source of livelihood and work and for athletes it requires intensive training, effort, and sacrifice.<sup>19</sup> Therefore, Farstad argued that the lack of protection children face when engaged in high-intensity sports training could be remedied by establishing a minimum age of consent for participation in competitive sports.<sup>20</sup>

The CRC requires that states parties to set a minimum age in certain areas. Article 32<sup>21</sup> sets a minimum age for employment, and both art 38<sup>22</sup> and the Optional Protocol to the CRC, on the involvement of children in armed conflict,<sup>23</sup> set a minimum age for recruiting to armed forces. Furthermore, art 40 establishes a minimum age limit for criminal liability under domestic laws.<sup>24</sup> Article 38 is the only provision that sets a specific age for protecting a child who is below 18 years; in that, it states that the member parties should not allow any child aged below 15 years to participate in

16 UN General Assembly, *Convention on the Rights of the Child*, vol 1577 (United Nations, Treaty Series 1989) 3 <[www.refworld.org/docid/3ae6b38fo.html](http://www.refworld.org/docid/3ae6b38fo.html)> accessed 01-09-2019

17 Farstad (n 6).

18 M Mountjoy, N Armstrong, L Bizzini, C Blimkie, J Evans, D Gerrard, J Hangen, K Knoll, L Micheli, P Sangeris and W Van Mechelen, 'IOC Consensus Statement Training the Elite Child Athlete' (2008) 42 *British Journal of Sports Medicine* 163.

19 David (n 1) 53.

20 Farstad (n 6) 2.

21 CRC, Article 32 (2) "States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment."

22 CRC, art 38(3):

"States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest."

23 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts 2000, A/RES/54/263.

24 CRC, art 40 (1):

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

CRC, art 40 (3):

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

any hostilities.<sup>25</sup> In all other cases, the Committee on the Rights of the Child<sup>26</sup> sets minimum age according to the “general principles” in art 3 that concerns the best interests of the child and art 5<sup>27</sup> that considers the evolving capacities of the child.<sup>28</sup> For instance, the Committee recommends the minimum age for employment as being between 15 and 18 years, depending on the level of work that is compatible with international labor law (ILO).<sup>29</sup> It identifies that the minimum age of criminal liability ought not to be below 12 years<sup>30</sup> and sets the minimum age for marriage at 18 years.<sup>31</sup> Different legal minimum age limits are seen as put in place by states in different areas. These include minimum age for legal and medical counselling, for medical treatment without parental consent, for creating or joining associations, for sexual consent, for consumption of alcohol and other controlled substances, and for making complaints and seeking redress or participation in administrative and judicial proceedings.<sup>32</sup> Clearly, some age limits exist in international law and regulate topics that have a connection with children’s rights.

Prospectively, in relation to sport, art 31, regarding the child’s right to rest and leisure, to engage in play and activities “appropriate to the age of the child,” and art 32, on a minimum age for employment, could be relevant to the issue of children in elite sports.

This section discusses the impact on health and economic welfare. Based on the current lack of regulation, this paper will propose an analogy between employment of children and exploitation of children in sports.

## 2.1 Health

According to art 24<sup>33</sup> of the CRC and art 12<sup>34</sup> of the International Covenant on Economic, Social and Cultural Rights (ICESCR), states parties have to secure the highest obtainable level of health. Also, in art 19<sup>35</sup> of the CRC aims to protect the children “from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while they are in the care of any persons who has the care of the child.” In sport, as elsewhere, common types of abuse are physical, psychological, sexual, and neglect. All types can have major negative effects on the health and healthy development of children. While physical exercise in sports might help the individual’s health, intensive and professional training may also have a negative impact. Physical development may be delayed due to intense training, because providing adequate energy to ensure the normal development of the body cannot be provided by the athlete’s body.<sup>36</sup> Furthermore, intensive training has different forms of impact on the child’s health. The focus here will be on two

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25 The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict raises this to 18 years.

26 Set up in accordance with art 43, CRC.

27 CRC, art (5):

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

28 David (n 1) 41.

29 ILO Convention No. 138 on Minimum Age for Admission to Employment 1973, 1015 UNTS 297 and ILO Convention No. 182 on Worst Forms of Child Labour 1999, 38 ILM 1207.

30 Committee on the Rights of the Child, General Comment No. 10, Children’s Rights in Juvenile Justice, 2 February 2007, CRC/C/GC/10.

31 Committee on the Right of the Child, General Comment No. 4, Adolescent Health and Development in the Context of the Convention on the Rights of the Child, 1 July 2003, CRC/GC/2003/4.

32 General Guidelines regarding the Form and Contents of Periodic Reports to be Submitted by State Parties under art 44, para 1(B) of the Convention, 29 November 2005, CRC/C/58.

33 CRC, art 24(1):

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

34 ICESCR, art 12(1): The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

35 CRC, art 19(1):

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment 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.

36 P David, ‘Les Droits de l’Enfant et le Sport. Jeunes Athlètes en Compétition: Exploits et Exploitations’ in Institut Universitaire Kurt Bösch *Un Champion à Tout Prix? Les Droits de l’Enfant et le Sport* (Institut International des Droits de l’Enfant 1999). Farstad (n 6).

forms of impact: (1) injuries due to intensive training, and (2) sexual and physical abuse by trainers. Although there are additional forms of impact, such as self-harm and suicide, the focus here is on those most apparent.

### 2.1.1 Injuries

It is evident that there are a high number of injuries in elite sport due to intensive training.<sup>37</sup> The figures show that the injury rates of younger age groups are higher compared to adults.<sup>38</sup> Also, elite child athletes in some sports can be exposed to the risk of injuries more than other sports. For example, elite child footballers tend to return to play before full recovery from injury, due to financial pressures on football clubs.<sup>39</sup> Sports-related injuries in children are taken to exemplify a significant public health threat.<sup>40</sup> Young athletes who participate in individual sports, such as figure skating, tennis, and gymnastics, and in group sports, such as football, basketball, and volleyball, encounter severe physical and mental stress and demands.<sup>41</sup> They train between six and eight hours every day, incorporating weight and strength training, in addition to practicing their respective sport.<sup>42</sup> As a result, sports injuries in children can harm development mechanisms and may result in long-term harm.<sup>43</sup> However, this is not such a threat to future health if the young athlete's body is given time to recover.<sup>44</sup> This is not necessarily possible, as sports organizations have other factors to take into account, the most important being financial. Furthermore, in the case of young athletes who participate in professional sports, studies suggest that athletes below 18 years can be concussed more quickly than adults, and their recovery might take longer.<sup>45</sup> In 2009, Washington State signed into effect a law, called "Lystedt Law,"<sup>46</sup> that prohibits youth athletes from returning to play without medical clearance to avoid any second injuries that might threaten their life or make the situation worse if the first injury has not healed.<sup>47</sup> The new law became the most comprehensive "return-to-play law" in the United States for athletes below 18 years.<sup>48</sup> However, it has been criticized as easy to manipulate, because clubs can get medical clearance for their players,<sup>49</sup> and doctors are faced with conflicting pressures. One other factor that might limit the chance of this law being adopted by the CRC and the Committee on the Rights of the Child is that the media promotes elite child athletes as heroes, who continue playing while injured, which motivates emulation. Young athletes seem to regard the pain of injuries as normal in their career.<sup>50</sup> One of the most widespread injuries among young athletes is "overuse injury." Rapid changes in physical development make children particularly exposed to these types of injuries.<sup>51</sup> A drawback is that the term "overuse" is not used consistently. It is defined in some analyses as a mechanism causing injury and in others as a diagnostic category.<sup>52</sup> The IOC, nevertheless, acknowledges that there are high numbers of cases of elite child athletes who suffer from overuse

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37 P Donnelly, 'Sport and risk culture' in K Young (ed), *Sporting Bodies, Damaged Selves: Sociological Studies of Sports-Related Injury* (Elsevier 2004).

38 *ibid.*

39 N Maffuli, A Baxter-Jones and A Grieve, 'Long Term Sport Involvement and Sport Injury Rate in Elite Young Athletes' (2005) 90 *Archives of Disease in Childhood* 525.

40 P Friesen, B Saul, L Kearns, K Bachynski and A Caplan, 'Overuse Injuries in Youth Sports: Legal and Social Responsibility' (2018) 28 *Journal of Legal Aspects of Sport* 151.

41 B Kantrowitz, 'Living with Training (Summer '92 Olympics)' (1992) 120(6) *Newsweek* 24.

42 *ibid.*

43 C Shanmugam and N Maffulli, 'Sports Injuries in Children' (2008) 86(1) *British Medical Bulletin* 33.

44 R Biber and A Gregory, 'Overuse Injuries in Youth Sports: Is There Such a Thing as Too Much Sports?' (2010) 39(5) *Pediatric Annals* 286.

45 KM Lowrey and SR Morain, 'State Experiences Implementing Youth Sports Concussion Laws: Challenges, Successes, and Lessons for Evaluating Impact' (2014) 42(3) *The Journal of Law, Medicine & Ethics* 290.

46 KM Lowrey, 'State Laws Addressing Youth Sports-Related Traumatic Brain Injury and the Future of Concussion Law and Policy' (2015) 10 *Journal of Business & Technology Law* 61.

47 *ibid.*

48 *ibid.*

49 T Covassin, RJ Elbin, W Harris, T Parker and A Kontos, 'The Role of Age and Sex in Symptoms, Neurocognitive Performance, and Postural Stability in Athletes after Concussion' (2012) *American Journal of Sports Medicine*, 40(6), 1303–1312. Cited in KM Lowrey, K McGowan and Stephanie R Morain, 'State Experiences Implementing Youth Sports Concussion Laws: Challenges, Successes, and Lessons for Evaluating Impact' (2014) *The Journal of Law, Medicine & Ethics* 290.

50 *ibid.*

51 A Arnold, CA Thigpen, PF Beattie, MJ Kissenberth and E Shanley, 'Overuse Physical Injuries in Youth Athletes' (2017) 9(2) *Sports Health* 139.

52 KG Roos and SW Marshall, 'Definition and Usage of the Term "Overuse Injury" in the US High School and Collegiate Sport Epidemiology Literature: A Systematic Review' (2014) 44(3) *Sports Medicine* 405.

injuries, due to engaging in intensive training and competitions<sup>53</sup> and after continuing training despite injuries.<sup>54</sup>

Despite a heightened awareness of these injuries, there is still a lack of detailed data on the sorts of sports-related injuries experienced by young children.<sup>55</sup> The psychological reasons behind the continuity of these types of injuries are various; it could be that usually elite child athletes follow their trainers' decisions without question, having a fear of being taken off the team or wanting to make their trainers proud of them.

This suggests that the problems continue even when some domestic laws and policies are in place. A recent study that examined the visits to sports clinics by young athletes aged between 5 and 17 years found that 53 percent of them suffered from overuse injuries.<sup>56</sup> It is concluded that overuse injuries are particularly the result of specialization in one sport with at least one year of intensive training.<sup>57</sup> However, evidence elsewhere also shows that early specialization may be both nonessential and harmful in elite sports at an early age.<sup>58</sup> Also, there is no evidence that athletes have to specialize in order to gain elite status,<sup>59</sup> although it is argued that women rhythmic gymnasts have to train at an early age to reach a high level of performance as adults.<sup>60</sup> Nonetheless, a survey of Danish athletes found that the elite athletes who spent less time in training when young found themselves less susceptible to injuries when they became adults.<sup>61</sup> Consistent with this, there has been an observed correlation between early specialization and increased injuries, higher stress, and eventual departure from sports.<sup>62</sup>

Negligence is the general ground of legal liability for sports-related injuries.<sup>63</sup> This position, and the limitations of domestic laws, highlights the international law and the CRC. Thus, art 24 provides children with the highest level of health and art 19 protects children from injury, based on defending their rights. However, an issue in relation to art 19 is that there is no clear explanation of protection in relation to the word "injury."

Similarly, one of the most important reasons for prohibiting child labor is the extent to which the working environment can affect the child's health. By analogy, in the case of the likelihood of young athletes being injured in competitive sports that also harm their health through requiring intensive training, there should be equivalent rules to limit participation. Article 3, para 1 of C138 Minimum Age Convention<sup>64</sup> states: 'The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health of young persons shall not be less than 18 years.' Thus, a minimum age limit for children to participate in sport has to be explicitly written into the CRC to serve the fundamental goal of preventing overuse injuries. This is because injuries are considered preventable.<sup>65</sup> This would be achieved through a very strong and binding mechanism for most countries in the world, such as the CRC, which is straightforward to follow by states

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53 M Mountjoy, N Armstrong, L Bizzini, C Blimkie, J Evans, D Gerrard, J Hangen, K Knoll, L Micheli, P Sanganis and W Van Mechelen, 'IOC Consensus Statement Training the Elite Child Athlete' (2008) 42 *British Journal of Sports Medicine* 163.

54 *ibid.*

55 A Stracciolini, R Casciano, H Levey Friedman, Meehan WP 3rd, Micheli LJ. 'Pediatric Sports Injuries: An Age Comparison of Children Versus Adolescents' (2013) 41(8) *The American Journal of Sports Medicine* 1922.

56 A Stracciolini, R.Casciano, H Levey Friedman, CJ Stein, WP Meehan and LJ Micheli, 'Pediatric Sports Injuries' (2014) 42(4) *The American Journal of Sports Medicine* 965.

57 N Jayanthi, C Pinkham, L Dugas, B Patrick and C LaBella, 'Sports Specialization in Young Athletes: Evidence-based Recommendations' (2013) 5(3) *Sports Health* 251–57; TA McGuine, EG Post, SJ Hetzel, MA Brooks, S Triggsted, DR Bell. 'A Prospective Study on the Effect of Sport Specialization on Lower Extremity Injury Rates in High School Athletes' (2017) 45(12) *The American Journal of Sports Medicine* 2706.

58 JP DiFiori, JS Brenner, D Comstock, J Cote, A Gillich, B Hainline and R Malina, 'Debunking Early Single Sport Specialisation and Reshaping the Youth Sport Experience: An NBA Perspective' (2017) 51(3) *British Journal of Sports Medicine* 142.

59 A Gillich and E Emrich, 'Considering Long-term Sustainability in the Development of World Class Success' (2014) 14(supp) *European Journal of Sport Science* S383; R Vaeyens, A Gillich, CR Warr, and R Philippaerts, 'Talent Identification and Promotion Programmes of Olympic Athletes' (2009) 27(13) *Journal of Sports Sciences* 1367.

60 N Jayanthi, C Pinkham, L Dugas, B Patrick, C Labella. 'Sports Specialization in Young Athletes: Evidence-Based Recommendations' (2013) 5(3) *Sports Health: A Multidisciplinary Approach* 251.

61 K Moesch, AM Elbe, ML Hauge, JM Wikman. 'Late Specialization: The Key to Success in Centimetres, Grams, or Seconds (Cgs) Sports' (2011) 21(6) *Scandinavian Journal of Medicine & Science in Sports* e282.

62 Neeru (n 60).

63 AS McCaskey and KW Biedzynski, 'A Guide to the Legal Liability of Coaches for a Sports Participant's Injuries' (1996) 6 *Seton Hall Journal of Sport Law*, 6, 7-125.

64 C138 Minimum Age Convention, 1973, art 3, para 1.

65 TC Valovich McLeod, LC Decoster, KJ Loud, LJ Micheli, JT Parker, MA Sandrey and C White, 'National Athletic Trainers' Association Position Statement: Prevention of Pediatric Overuse Injuries' (2011) 46(2) *Journal of Athletic Training* 206.



parties as it only needs regular registration of the athletes' birth dates. To determine the effective ages limit system, there would need to be advice from medical sources as ages could vary between different activities. Medical sources can suggest the ideal specific age for each sport based on scientific evidence about the development of children and their tolerance of pain without medical intervention.

### 2.1.2 Sexual and physical abuse

The second impact on child health is the potential for physical and sexual abuse. Due to the intensive training, young athletes can spend more than six hours daily with trainers, and the relationships might develop in competition venues, as they spend months together in hotels away from parental control. The factor that is linked with abuse generally is that trainers have huge power over athletes. This status is alongside the concentration of training on the physique, which may lead to physical abuse or sexual consequences.<sup>66</sup> Physical and sexual abuse by trainers is relatively common and threatens the mental/physical health of young athletes.<sup>67</sup> A study in the United Kingdom, in 2009,<sup>68</sup> estimated that 29 percent of young athletes in all competition levels had been sexually harassed (34 percent of females and 17 percent of males), and 3 percent had been physically abused (5 percent of males and 2 percent of females). In relation to general child abuse, it has been proposed that such intensive and specialized training is in itself child abuse.<sup>69</sup> In relation to sexual abuse, a UK former Olympic coach was convicted of sexually abusing two 15-year-old female players when he was their trainer. At the trial, "the jury heard evidence that the sexual abuse was carried out under the pretense of being part of the young person's training regime." The court justified its sentence of imprisonment because the trainer was in a position of power over the young females and was trusted by their parents. The court stated, "You controlled the victim by using her ambitions as a means of exercising that control." In another case, "the National Governing Body<sup>70</sup> received complaints against the national coach aged in his late twenties, by members of an under 21 national football squad. They alleged the coach was exploiting his position by having sexual relationships with team members. When challenged by the governing body, the coach admitted this, and internal disciplinary action was taken. He was not prosecuted, as all those involved were over 16, and therefore under UK law legally able to consent." This case illustrates a degree of conflict with international law. The legal age of consent to sexual activity in the United Kingdom is 16, and this is compatible with art 4<sup>71</sup> of the CRC and the General Comments by the Committee on the Rights of the Child.<sup>72</sup>

However, this showed a loophole in an UK domestic law,<sup>73</sup> which has to balance with art 19<sup>74</sup> of the CRC, and since the United Kingdom is a state party in the Convention, so its practice must be compatible with CRC aims. The National Governing Body could decline to seek prosecution, by saying that the issue is not considered as sexual abuse, because those players consented to sexual relationships, and their age allowed this in UK law. Nevertheless, the Sexual Offences Act 2003<sup>75</sup> has been criticized for the position that if a child is above 16 years and has sexual relations with his or her coach, this would be permitted under UK law. The United Kingdom has to consider sports coaches, and any person who has a position of trust over the child is to be prevented from having sexual activity with any child aged above 16 years, to close the gap in law, which is otherwise limited only to teachers, leaving open a door for other potential abusers, such as sports trainers.

66 F Skårderud, 'Portrett av Ateleten i Nød [Portrait of an Athlete in Distress]' in S Loland (ed), *Toppidrettens Pris – En Debatt Bok [The Price of Elite Sport – A Debate Book]* (Oslo: Universitetsforlaget, 1998) 82. (As cited in Farstad (n 6)).

67 Les Droits de l'Enfant (Institut International des Droits de l'Enfant 2004). (As cited in Weber, 2009)

68 S Alexander and J Lewis, *The Experiences of Children Participating in Organised Sport* (NSPCC 2011) <[www.nspcc.org.uk/globalassets/documents/research-reports/experiences-children-participating-organised-sport-uk-summary-report.pdf](http://www.nspcc.org.uk/globalassets/documents/research-reports/experiences-children-participating-organised-sport-uk-summary-report.pdf)> accessed 01-09-2019.

69 World Health Organization, *Report on the Consultation on Child Abuse Protection* (World Health Organization 1999).

70 NGBs include organizations such as The Football Association, The Lawn Tennis Association and England Athletics.

71 CRC, art (4):

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

72 UN Committee on the Rights of the Child (CRC), 'General comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child', 1 July 2003, CRC/GC/2003/4.

73 National Society for the Prevention of Cruelty to Children (NSPCC) <[www.nspcc.org.uk/what-we-do/campaigns/close-the-loophole/](http://www.nspcc.org.uk/what-we-do/campaigns/close-the-loophole/)> accessed 30 August 2019.

74 CRC, art 19(1).

75 Sexual Offences Act 2003, s 1(1)(c).

Moreover, the Committee on the Rights of the Child, in a General Comment, has proposed that “[s]exual activities between children are not considered as sexual abuse if the children are older than the age limit defined by the state party for consensual sexual activities.”<sup>76</sup> In that case, this behavior would not be considered as a violation of the right of the child in current international law. Thus, there is a need for new provisions to address this gap that might otherwise result in the violation of the rights of many young athletes. This would apply especially to young athletes aged above 16 years, but also to children below that age. As with other abuse cases, most would be hard to detect by sports federations or parents, as children fear to confess about their trainers, whether they are intimidated by them or sometimes do not have enough knowledge about sexual activities to perceive abuse. Can a minimum age limit reflect an age for each sport, based on the mental and physical ability of the child being strong enough to reject things that might then affect their career? It can be argued additionally that a minimum age limit in the situation of sexual abuse will not be sufficient, as the informed knowledge to identify sexual abuse by young athletes can start from 15 years of age, and if all sports start with consent from this age, sports would become deprived of talented people who participate in sports and need training from an earlier age.<sup>77</sup> Nevertheless, this paper considers that sexual abuse is a complicated issue and is one that needs action beyond following the minimum age limit. A standard based on observations by sports federations on these young athletes would enable the determination of the age limit to be based on sports considerations rather than their knowledge of sexual activity, so as not to deprive talented players of their dreams.

Second, physical abuse in sport might result from the intensive training and the misuse of trust by trainers. The physical abuse can take different forms, but this section will focus on one; the intentional punishment or physical abuse acts by trainers in the highly intensive training that can be harmful to the bodies of young athletes. This is alongside eating disorders, such as anorexia and bulimia, resulting directly from pressure of training. There is obvious physical abuse to the bodies of children, resulting in weakened bones, limited growth, long-term injuries, and mental health problems, and eventual burnout and quitting the sport.<sup>78</sup> Much abuse happens in sports where competitors are evaluated individually by judges, such as gymnastics, diving, and figure skating, and where it has been estimated that 35 percent of the competitors have been physical abused.<sup>79</sup> As an example of a weakness in national law, art 90 of the Romanian Law on the Protection and Promotion of the Rights of the Child states,

“It is forbidden to enforce physical punishments of any kind or to deprive the child of his or her rights, which may result in the endangerment of the life, the physical development of the child, within the family, as well as in any institution which ensures the protection, care and education of children.”<sup>80</sup>

This shows a loophole in the law as it does not cover sports clubs or federations, which can enable certain kinds of coaches to exploit it to escape accountability for physical abuse. Before the killing of the young athlete (Adriana Giurca) by her coach, she went home often with bruises on her body, and she explained this by saying that she fell while training. The truth is that her coach was abusing her when she did not train well or when she did the workout incorrectly.<sup>81</sup> In addition, Adriana’s teammates testified in court that corporal punishment was normal, as they said, “[w]e accepted the beatings and the pain because we were convinced that this would open the door to top performance for us.”<sup>82</sup> This explains that, although there has been progress in challenging the “no pain no gain” culture within sport, the Child Protection in Sport Unit has argued that when it comes to elite sports this culture remains the same.<sup>83</sup> Trainers clearly use this culture and their power on young athletes to achieve their goals. Stirling and Kerr argue that the trainer has enormous power over the athlete, power that often

76 UN Committee on the Rights of the Child (CRC), ‘General Comment No. 13: The Right of the Child to Freedom from All Forms of Violence’, 18 April 2011, CRC/C/GC/13 <[www.refworld.org/docid/4e6da4922.html](http://www.refworld.org/docid/4e6da4922.html)> accessed 22 August 2019.

77 Mike Hartill, ‘Concealment of Child Sexual Abuse in Sports’ (2013) 65(2) *Quest* 241.

78 Eric J Pearson, J Ryan’s Presentation, *Little Girls in Pretty Boxes – the Making and Breaking of Elite Gymnasts and Figure Skaters*. *The Sport Psychologist*. 1996 Dec 1;10(4):412-4.

79 E Cashmore, *Sports Culture: An A-Z Guide* (Routledge 2002) 101.

80 Article 90, Romanian Law on the Protection and Promotion of the Rights of the Child [272/2004].

81 Lisa Lindhorst. “Behind the Mask of Glory: Combating Child Abuse in Olympic Boarding Schools.” *The George Washington International Law Review* 47 (2015): 353.

82 *ibid.*

83 Child Protection in Sport Unit, *Standards for Safeguarding and Protecting Children in Sport* (Child Protection in Sport Unit 2003).



extends to other aspects of an athlete's life such as health, education, and social life.<sup>84</sup> Sports governing bodies need to respond to the power imbalance between athlete and trainer.

There can be cases of children aged between 5 and 17 years old who train six to eight hours a day, six days a week, for which they might receive some money. This would make us question if this practice is a form of child labor! In most countries, labor laws do not allow children to work if they are below a certain age. Marginal exceptions are subject to legal definition and regulation. This is because the child's rights under art 32 of the CRC<sup>85</sup> state as follows: "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." Accordingly, the question is: Should it be considered as child labor when a child is exposed over 30 to 40 hours a week of intensive training, during which violent efforts are frequent, with a risk of physical or sexual abuse and of injury? If such intensive training is recognized as a form of child labor, then sports authorities should adopt strict regulations to comply with existing internationally recognized norms. These are the International Labour Organization (ILO) Convention No 138 regarding the minimum age for access to work,<sup>86</sup> along with art 7 that permits light work for children aged between 13 and 15 years that is not harmful to their health and development.<sup>87</sup> Additionally, as the CRC addresses sports activities alongside labor law provision, then, the suggested analogy supports the solution of specifying minimum age limits in sports, resulting in the protection of children from physical abuse in sports activities. Older children would still be vulnerable to these risks but might well be better able to protect themselves.

To conclude, at present, children can be excluded and protected from harm of employment by minimum age limits, but when harm or abuse is imposed on children in sports activities, international law remains silent!

## 2.2 Economic exploitation

Sport is considered as one of the biggest economic factors in the world. The European Commission calculated that 2 million jobs were created in its member states through sports activities from 1990 to 1999.<sup>88</sup> Thus, as economic exploitation is a main concern when it comes to children's labor, in competitive elite sports, economic exploitation is also serious relevant issue, which must be highlighted, and requires attention of law makers.

The fact that young athletes are not fully aware of the implications of the organized intensive training and competitions makes them vulnerable to exploitation by clubs, coaches, agents, and parents in some cases.<sup>89</sup> For instance, from wealthier countries, trainers or agents of clubs search in poorer countries, such as Brazil, for talented players in football and basketball, and for talented athletes, aged between 11 and 14 years. They offer a \$10,000 contract, which is considered a large sum of money by the families of those young people who live in poverty.<sup>90</sup>

This shows economic exploitation in two ways: (1) by families, as they send their children to participate in professional clubs to be a source of income for the them<sup>91</sup> and (2) by the clubs, as offering young athletes participation in competitions instead of recruiting adults athletes is an extremely lower financial cost/risk for clubs and agents.<sup>92</sup> Children costs less than adults in terms of contracts with clubs, the amount of money these players can get from competition prizes is limited, and anyway the player is dispensable through the transfer system.<sup>93</sup> However, Abdelkarim Hassan argues that when he was 13 years old the Aspire Academy<sup>94</sup> give him a chance to pursue his dream of

84 Ashley E Stirling and Gretchen A Kerr, 'Abused Athletes' Perceptions of the Coach-Athlete Relationship' (2009) 12(2) Sport in Society 227.

85 CRC, art 32(1).

86 ILO, C138 Minimum Age Convention, 26 June 1973 <<https://www.refworld.org/docid/421216a34.html>> accessed 26 August 2019.

87 ILO, art (7)1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is-(a) not likely to be harmful to their health or development.

88 *ibid.*

89 Farstad (n 6) 3.

90 David (n 1).

91 J Coakley, *Sports in Society* (9th edn, McGraw Hill Higher Education 2006).

92 Faraz Shahlaei, 'When Sports Stand Against Human Rights: Regulating Restrictions on Athletes; Speech in the Global Sports Arena' (2017) 38 Loyola of Los Angeles Entertainment Law Review 95.

93 *ibid.*

94 It was an academy that was founded in 2004 with the goal of finding and developing the best elite young male Qatari athletes, with one of the longer-term goals of the Academy that some graduates would represent Qatar at the FIFA World Cup 2022.

becoming a football player, with zero benefit, as the aim of the academy was to invest in youth development.<sup>95</sup> He explains that there is a secure environment for these young athletes. However, this is an example of an ideal academy but is the result of a policy, which is subject to change, and so there is a need for binding international law in that area.

Moreover, sports associations ascribe amateur status to young athletes because they lack a contract with an affiliated body.<sup>96</sup> Even though some clubs offer contracts, this is not considered a permanent salary, but just a reward for hard work.<sup>97</sup> The legal status of the young athlete is not that of employee. The fact that their services are not directly remunerated is decisive.<sup>98</sup>

Article 32 of the CRC<sup>99</sup> states: “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous.” Thus, “economic exploitation” and “performing work” are adjacent and are linked verbally by the conjunction “and” not “or.” This indicates that the article protects the child from economic exploitation that might occur only in the work field.

The question therefore arises if organized, intensive training of young athletes (more than six hours a day with pressure for winning prizes or money), is a sufficient reason to consider elite athletes as being a form of child labor and thus needs protection

According to art 2, para 3 of the ILO Convention, the minimum age set for admission to work—whether paid or unpaid—is 15 years.<sup>100</sup> In any event, the minimum age limit cannot be lower than the minimum age of compulsory schooling.<sup>101</sup> Article 32 of the EU Charter of Fundamental Rights<sup>102</sup> states as follows:

«Block quote»The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation.«/Block quote»

However, there is an exception under art 2, para 4 that permits developing countries to allow children to work at the age of 14 years.<sup>103</sup> Nevertheless, the age limit for child labor can be reduced to 13 or 12 years only for “light work” in developing countries, and work at any age below this is totally prohibited under art 7.<sup>104</sup> About 36 or 42 hours of intensive training per week can hardly be seen as “light work.”<sup>105</sup> Such intensive training is closer to exploitation, especially as children train in work-like conditions. Prize money can be gained, and even though the exploitation might be highly, if not purely, economic in the case of child labor, sports nowadays provide a source of income. Though it is true that sports are practiced not only for generating income but also for talent improvement, nevertheless, children in the field of sports deserve to be protected at least in the same way as they are protected in the field of labor.

The above discussion proves the absence of solidly grounded legal regulations to ensure the protection of the rights of young athletes. Consequently, there are no precedents available to help clarify the issues. The examples above describe the challenges and difficulties young athletes face but in a context without stringent legal regulation.

The further question is how far does the Committee on the Rights of the Child believe that the age limits that are set and managed by sports federations provide sufficient protection? This question guides the paper to consider the role of sports federations and to analyze their existing mechanisms for addressing age limits.

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95 The author interviewed Abdelkarim Hassan, an adult football player of the Qatar national team, regarding his experience when he was a child in one of the academies that concentrated on elite athlete players. The date of the interview was August 10, 2019.

96 David (n 1).

97 *ibid.*

98 Rachele Propson, ‘A Call for Statutory Regulation of Elite Child Athletes’ (1995) 41 *Wayne Law Review* 1785.

99 CRC, art 32.

100 C138 Minimum Age Convention, 26 June 1973, art 2, para 3.

101 *ibid.*

102 European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02 <[www.refworld.org/docid/3ae6b3b70.html](http://www.refworld.org/docid/3ae6b3b70.html)> accessed 29 August 2019.

103 ILO, C138, art 2, para 4.

104 ILO, C138, art 7.

105 Kristin A Hoffman, ‘Flipping and Spinning into Labor Regulations: Analyzing the Need and Mechanisms for Protecting Elite Child Gymnasts and Figure Skaters’ (2015) 25 *Marquette Sports Law Review* 565.

### 3. SPORTS FEDERATIONS AND THE USE OF MINIMUM AGE

Sports federations/organizations are often international governing bodies that are associated with a particular sport: for instance, the International Association of Athletics Federations, the IOC, the Fédération Internationale de Football Association (FIFA), the International Tennis Federation (ITF), and Association of Tennis Professionals. These federations are widely known among professional players.<sup>106</sup>

Since 1970, sports activities have developed rapidly which has had a direct impact on vulnerable young athletes. The change from amateurism to professionalism increased the financial element for sports federations, which has led most organizations, such as the IOC, to mainly focus on success in the tournaments that it organizes, even if this might affect the young athletes' rights.<sup>107</sup> Despite this, David argues that "professionalism has undoubtedly permitted athletes to improve the quality of their preparation and training. But it has also reduced the age of athletes who train for and compete in high-level sports."<sup>108</sup> To illustrate the point, even though the IOC is the highest international sports authority it does not set minimum age limits for participation in competitions such as the Olympic Games. It is left to different international sports federations to set such minimum age limits within each sport and the IOC is under no obligation if they neglect the issue.<sup>109</sup> This shows that there is a gap in laws, internationally and domestically, when it comes to addressing the minimum age issue, even though it is clearly important when dealing with young athletes in the different sports competitions. However, in 1996, the Parliamentary Assembly of the Council of Europe was concerned about the impact on young athletes in competitive sports of their participating in high-level sport at too early an age. Based on that the assembly made a series of recommendations:

«Block quote>that the Committee of Ministers call on governments, in co-operation with sports clubs and federations, to: make a clear policy distinction between sport for young people in general (sport for all) and elite or high-level sport; encourage the drawing up of internationally agreed, gender-sensitive guidelines and appropriate minimum age-limits as regards training methods, rules and restrictions for young people in individual/group sports . . . introduce, in particular, fixed minimum age-limits for participation in international competitions and championships, between 16 and 18 years, depending on the type of sports involved; and draw a clearer distinction between juvenile and adult competition classes. This could be achieved by raising the age-limits for participation in certain competitions to 16 or 18 years, depending on the sport, particularly in international competitions and championships.<sup>110</sup></Block quote>

Based on these recommendations, some sports federations have adopted minimum age limits for young athletes who participate in sports competitions.<sup>111</sup> These include, for instance, the International Gymnastics Federation and the Women's Tennis Association (WTA). The assembly welcomed such moves and encourages the remaining sports federations and the IOC to "review national and international competition systems involving young people with a view to raising minimum age-limits or, where already appropriate, enforcing them."<sup>112</sup> However, it is questionable whether such recommendations are sufficient.

For instance, in 1999, in the case of a 14-year-old Monique Viele, a young elite athlete tennis player, her father threatened to take legal action against the WTA if it did not agree to his daughter playing in the schedule of adult professional tournaments.<sup>113</sup> The case did not reach the court as the ITF responded to that threat by changing their rules and reduced the minimum age limit to allow Monique to participate in the seven ITF tournaments.<sup>114</sup>

Based on that, there are various factors that hinder sports federations from doing their job to protect young elite athletes through the minimum age limit rule for participating in competitive sports.

106 David (n 1).

107 *ibid.*

108 *ibid* 16–7.

109 *ibid* 41.

110 Council of Europe, Parliamentary Assembly, 'Recommendation 1292 on Young People in High-Level Sport' *Report of the Committee on Culture and Education, Document 7459* (Council of Europe 1996).

111 Report of the Committee on Culture and Education, rapporteur: Mr Elo. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 20 March 1996.

112 *ibid.*

113 Eryn M Doherty, 'Winning Isn't Everything...It's the Only Thing: A Critique of Teenaged Girls' Participation in Sports' (1999) 10 *Journals at Marquette Law Scholarly Commons* 127.

114 *ibid.*

This section deliberates upon the difficulties concerning implementation and compatibility and bases its argument on the profound fact that in order to understand the effect of children participating in elite sports on their rights, it is necessary that the researcher prove that the violation of children's rights is linked to early participation in organized intensive training.

### 3.1 The implementation issue

The existence of minimum ages in many sports competitions does not mean they are automatically implemented. One of the widespread sports in the Gulf will illustrate this observation. Camel jockey racing involves a racing competition that happens every year in Qatar, Kingdom of Saudi Arabia, Kuwait, and United Arab Emirates (UAE).<sup>115</sup> In this competition, the organizers constantly use young children as camel jockeys in the races.<sup>116</sup> This shows a clear violation of children's rights under art 19 of the CRC,<sup>117</sup> and in some cases, this includes child trafficking through contracts with agents to bring small children from poor countries to participate, something prohibited under art 33<sup>118</sup> of the CRC. However, these provisions cannot effectively challenge the core of such child participation in sports activities. The response would be that camel racing is a kind of Gulf sporting heritage activity as it not commercial, and there is no provision in the CRC that bans sports activities involving children or addresses a minimum age limit for sports. Moreover, the UAE Labour Law Federal Law No.8 of 1980 prohibits child labor below 15 years of age under art 20<sup>119</sup> and prohibits risky work for child. Then, the relevant child labor law can apply to these vulnerable children by analogy, especially as that competition is not acknowledged in the international sports community, which may justify that it is a form of child labor.

However, from 1980 until 1993, due to international pressure, the UAE applied the labor law. Nevertheless, the continuing use of children in camel racing was totally neglected and there was no compliance with the existing law. In addition, the Camel Racing Association was a UAE-governing body for the camel racing competitions, and prohibited children aged below 14 years and with a weight of less than 45 kg from being camel jockeys. Despite this, the participation of young people was constant until 2005, when the UAE prohibited camel jockey racing by children aged below 18 years with punishment that can reach to imprisonment.<sup>120</sup>

However, a minimum age limit is applied in an inconsistent manner, as it varies among international competitions and does not apply to all international competitions. To support that, age limits in one of the largest competitions in the world, such as the Football World Cup, Olympic Games, or World Championships, cannot prohibit young athletes from participating in other international competitions and competing at an elite level with adults.<sup>121</sup>

This is because it can be a career step to be eligible for the Olympic Games or the World Cup, so it can be an opportunity for young athletes to get a certain status by qualifying for the Olympics. This

115 S M Asghar, S Farhat, S Niazi. *Camel Jockeys of Rahimyar Khan – Findings of Participatory Research on Life and Situation of Child Camel Jockeys* (Save the Children Sweden 2005) 7–23.

116 D Caine and C Caine, 'Child Camel Jockeys: A Present-Day Tragedy Involving Children and Sport' (2005) 15(6) *Clinical Journal of Sport Medicine* 287–89.

117 CRC, art 19(1):

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

118 CRC, art 33:

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

119 Labour Law Federal Law No 8 of 1980, art (20): 'It is prohibited to employ a juvenile of either sex before he/she completes fifteen years of age.'

120 Fikri M Abu-Zidan, Ashraf F Hefny and Frank Branicki, 'Prevention of Child Camel Jockey Injuries: A Success Story from the United Arab Emirates' (2012) 22(6) *Clinical Journal of Sport Medicine* 467–71.

121 Sarah Teetzel, 'Minimum and Maximum Age Limits for Competing at the Olympic Games' In *Proceedings: International Symposium for Olympic Research* (International Centre for Olympic Studies 2010) 340–48.

means that the other international or national competitions, such as the European, American, or Asian championships, might be the bridges for these young athletes to participate in the early future in one these bigger competitions.<sup>122</sup> This shows fundamentally that the sports system is not coherent enough to have one overall effective mechanism without any conflicts with any other mechanisms that can protect these vulnerable children. For instance, the gymnast who is below the age limit, being below 16 years of age, has to participate in a competition called the World Championships, which is held one year before the Olympics, so athletes aged 15 years can participate.<sup>123</sup> However, to be eligible or to qualify for the “World Championships,” the young athletes should have participated at a junior level at the ages of between 11 and 13 years in order to be permitted to participate at the adult elite level.<sup>124</sup> This shows that, even with existing limits on age, in some sports, the concept of minimum age limits is to protect young children from impacts on their health and development. Sports federations have shown minimal understanding of this concept, as it seems to them that the prohibition is just for the specific competition, and hence judgment criteria in sports and training remain the same, which will not make a long-term difference to the child. Sports federations, thus, show limited understanding of the concept and purpose of minimum age limits. If the prohibition is just for specific competitions, while judgment criteria in sports and in training remain the same, this will not make a difference to child health and development.

### 3.2 The compatibility issue

The best way to have an effective mechanism is to make it compatible with all the factors responding to the problem. Thus, the fundamental aim in setting the minimum age limit is to protect children’s rights in sport. As a result, the mechanism should be compatible with the judging criteria in the relevant sport.<sup>125</sup> To illustrate this issue, in an earlier period, there was the criticism of the US gymnastic team after the 1992 Barcelona Olympics,<sup>126</sup> as the number of injuries was high due to events not being compatible with a minimum age limit. Also, there were cases of unrecovered burnout on tennis players such as Tracy Austin, Jennifer Capriati, and Andrea Jaeger. All of these cases had an impact on three federations causing them to change their policies and rules for entrants to international competitions. In the case of Andrea Jaeger, who was one of the best tennis player in the 1980s, her father played a massive controlling role in her life, as he urged her to leave school at the age of 13 years to fully concentrate on highly intensive training.<sup>127</sup> Her professional career ended at the very early age at 21, as she burned out physically and psychologically.<sup>128</sup> Based on that, the WTA has set a new minimum age limit as they increased it to 16 years, and women’s gymnastics and women’s figure skating raised their minimum age for international competitions to 16 years.

However, raising the age limit in gymnastics and figure skating can have a negative impact,<sup>129</sup> without changing the judging criteria in international competitions and establishing new policies and rules for health, injuries, and nutrition that can protect children. Some sport researchers challenge the use of the age limit concept to determine eligibility for different competitive sports.<sup>130</sup> They reject using physiological age, on the basis of children’s unequal development, especially through puberty, despite age identity.<sup>131</sup> They point to differences over a single year, where allowances have to be made in schools for children of the same age in years but born in different months of the same year.<sup>132</sup>

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122 David (n 2) 42.

123 *ibid* 42–4.

124 *Ibid*.

125 BA Johnson, CL Salzberg and DA Stevenson, ‘A Systematic Review: Plyometric Training Programs for Young Children’ (2011) 25(9) *The Journal of Strength & Conditioning Research* 2623–33.

126 ‘From Barcelona to Athens (1992–2004): ‘Juguo Tizhi’ and China’s Quest for Global Power and Olympic Glory’ (2012) 29(1) *The International Journal of the History of Sport* 113–31.

127 DW Galenson, ‘Does Youth Rule? Trends in the Ages of American Women Tennis Players, 1960–1992’ (1995) 22(1) *Journal of Sport History* 46–59.

128 *ibid*.

129 Peter Donnelly, Leanne Petherick, ‘Workers’ Playtime? Child Labour at the Extremes of Sporting Spectrum’, (2004) 7 *Sport in Society* 301–311.

130 M Leglise, ‘The protection of young people involved in high-level sport, Limits on young gymnastics’ involvement in high level sport’ *Committee for the Development of Sports* (Council of Europe 1997).

131 N Maffulli, ‘At What Age Should a Child Begin Regular Continuous Exercise at Moderate or High Intensity?’ (2000) 172(6) *The Western Journal of Medicine* 413.

132 Jochen Musch and Simon Grondin, ‘Unequal Competition as an Impediment to Personal Development: A Review of the Relative Age Effect in Sport’ (2001) 21(2) *Developmental Review* 147–67.

This shows that international federations even with their existing policy on minimum age limits in relevant sports are still not solid enough to withstand various social and commercial pressures, without the evident needed for establishing provision in international law, specifically under the CRC, to determine at least clear guidelines on age limits.

#### **4. MINIMUM AGE FOR ENGAGING IN ORGANISED INTENSIVE TRAINING**

The following two subsections briefly illustrate the previously explained stages, for introducing the minimum age limit as a rule/law for children who engage in organized intensive training.

##### **4.1 National application of child labor standards**

A minimum of appropriate age needs to be set for children undergoing intense, well-structured, or overworking training to protect them, but the problem is how to activate and apply it. Since child labor is not as different from sports in regard to intensive training, authorities should consider international norms relating to labor law to protect children from different acts within sports, especially the ILO, Minimum Age Convention.

The CRC states parties need to meet their obligations to not only ensure that children's rights are preserved by issuing domestic laws which comply with the CRC but also make the nonmember states comply with the rules provided for when they administer their services in a member state. Therefore, if nonmember countries have applied and respected the rules of labor law for children when working in member states, then once a minimum age is also adopted in the field of sports, nonmember states will also have to comply with it when they participate in competitions of a member state.

##### **4.2 Rules set by sports federations and the IOC**

International sports federation, in collaboration with the IOC, could address the issue of the minimum age for engaging in organized intensive training, taking into account a study on the compatibility of subsisting age limits with international child right standards, according to David's proposal in his book, *Human Rights in Youth Sport*.<sup>133</sup> In this respect, it is suited to recall that, more than 10 years ago, the Parliamentary Assembly of the Council of Europe called upon IOC and the sport federation to evaluate the national and international competition systems including young people with prospects to raise the minimum age limits, or the limits that were in force, in order to ensure its implementation.

Acknowledging that the states parties to the CRC undertake the primary responsibility for ensuring adherence with its provisions, the Committee on the Rights of the Child also discerns the responsibilities to respect and ensure the right of the child extends further than the state to nonstate actors such as parents, individuals, legal guardians, and others. This particular aspect of civil responsibility was identified clearly by the Committee on the Rights of the Child in 2002 when a general discussion on the topic of "the private sector as service provider and its role in implementing children's rights" was held.<sup>134</sup>

The committee indicated the General Comment No 14 of the Committee on Economic, Social and Cultural Rights, on the right to attain the highest standard of health, which expresses that, while only states are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society—individuals, including health professionals, families, local community, intergovernmental and nongovernmental organizations,<sup>135</sup> civil society organizations, as well as the private business sector—have responsibilities regarding the realization of the right to health.

#### **5. CONCLUSION**

This paper has demonstrated that international law remains insufficient in protecting elite athletes, especially the CRC that is concerned about all child rights matters, but neither the CRC nor the Committee on the Rights of the Child addresses the minimum age limit of participation of young elite athletes in organized intensive training. Responding to this gap, this paper has examined possibilities and suggested child labor legislation as being the possible appropriate legal base to close the loophole. This examination showed how young athletes can be in exactly the same situations that

<sup>133</sup> David (n 2) 43.

<sup>134</sup> Committee on the Rights of the Child, 'The Private Sector as Service Provider', Day of General Discussion 2002 <[www.unhcr.ch/html/menu2/6/crc/doc/days/service.pdf](http://www.unhcr.ch/html/menu2/6/crc/doc/days/service.pdf)> accessed 01-09-2019.

<sup>135</sup> CESCR General Comment No 14, 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Political Rights', 11 August 2000, E/C.12/2000/4.



child labor laws have to deal with but can be treated unequally by the law, a difference leading to injustice. Furthermore, international law has huge power, as it can influence all domestic laws through one decision, especially if that decision can be made in relation to the most ratified convention (CRC).

The scope should address the impact of organized intensive training on a child's life. International law should prioritize the children who suffer from engaging in intensive training, suffering more than many other children. First, because the activity is still unprotected and, second, the dimensions and consequences of the issue go beyond sport and training. It can ruin the most fundamental rights in the child's life, as described above, which justifies a clear stand from the international community to boost the law. This issue might seem to be dismissed as "it is just sport," but in reality, it often goes beyond that, in a negative way.

Finally, the effective tools of minimum age provisions that are suggested can be sufficient only by establishing international law provisions to control these provisions fairly. The effective protection of our children must always be our aim, and the only fair weapon for them is law and justice.

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