

Protecting Children's Rights in Sport: The Use of Minimum Age

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Abstract

Sport is a popular activity among children and in most cases sport is beneficial to the child. Nevertheless, it can be argued that children's involvement in sport can put them at risk of violation of their human rights. Particularly at risk are children involved in elite sport, where organised intensive training starts at an early age. However, little or no protection is offered to these athletes. In this article the present author examines whether minimum age limits can be used to protect children's rights in sport. The reason for this is that in order to protect children from activities and experience that, while considered acceptable for adults, are seen as harmful for children, the Convention on the Rights of the Child (CRC) proposes the introduction of age limits in certain areas. However, neither the CRC nor the Committee on the Rights of the Child have addressed the issue of setting minimum ages in sports.

1. Introduction

Sport plays a major role in society today and is a popular leisure activity among children. The image of sport is overwhelmingly positive and there is a broad consensus in the public that sport is good for children, in as far as it is considered beneficial for children's health and to give them personal and social benefits.¹ Sport is, moreover, seen as an efficient tool for reconciliation, peace-building and rehabilitation.² Nevertheless, it can be argued that the developmental implications of sport largely depend on the condition under which participation takes place,³ and that some children in sport face situations that have the potential of threatening their human rights.

Children especially at risk are those involved in elite sports where developments over the last 35 years have led to a situation characterised by early talent identification and specialisation and where children from an early age are faced with serious commitments, a high degree of training, pressure and expectations. Although insufficient knowledge and data exist in the field, David estimates that roughly 20% of children involved in competitive sports are potentially at risk of different types of abuse, violation and/or exploitation, and that 10% are victims of some type of violation of their human rights.⁴

Despite these statistics, little or no protection is offered to these athletes. While some countries have passed laws to protect young athletes,⁵ major human rights legislation on behalf of children has still to make an impact on certain sporting practices.⁶ It is also

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¹ Y-Coach Youth, Coaching Information, available at: <http://www.y-coach.com/involve.html>.

² Giulianotti 'Human Rights, Globalization and Sentimental Education: The Case of Sport', (2004) 7 *Sport in Society* 3 at 356.

³ Telama 'Le Sport et l'Enfant: Un Mariage Heureux?' *Un Champion à Tout Prix? Les Droits de l'Enfant et le Sport*, 4e Séminaire de l'IDE, 13-17 October 1998, Institut Universitaire Kurt Bösch, at 13.

⁴ David, *Human Rights in Youth Sports* (London: Routledge, 2005) at 7.

⁵ Ibid. at 44.

⁶ Brackenridge, 'Women and Children First? Child Abuse and Child Protection in Sports', (2004) 7 *Sport in Society* 322.

questionable how well sports bodies observe their own principles and procedures⁷ as regulated in charters, declarations and medical or ethical codes. At the same time, it should be noted that there is a growing recognition that children in elite sports face particular risks that need to be addressed.⁸ The responses proposed so far have focused on awareness raising and education. Even though it is recognised that these are important tools, they require time to create social changes, and they do not offer children currently experiencing violations in the present system enough protection.⁹ It therefore seems pertinent to pursue other avenues to protect elite children's rights, by for example introducing a minimum age for engaging in early organised intensive training. However, by focusing precisely on the early intensive and specialised training required from young elite athletes, it is necessary to first present some issues of particular concern to these children.

2. Violation of Children's Rights Related to Early Organised Intensive Training

Elite sport is by nature a physical activity that is based on training, sacrifice and effort, and there is unfortunately no exception for the youngest athletes.¹⁰ In sports such as tennis, gymnastics, figure skating, diving, ice hockey, basketball or football, some children as young as four years old train frequently. Moreover, by the age of six some children are already engaged in systematic organised intensive training and attend competitions.¹¹ To give some examples, Hong¹² tells us how children in China from five or six years old are selected to go to specialised sports school where the emphasis is on sports training. The training hours are generally six to eight hours per day, whereas almost every child athlete who is on the national or provisional team in athletics, gymnastics, swimming, football, basketball, volleyball, badminton and table tennis daily trains ten to twelve hours per day. Grenfell and Rinehart¹³ describe how ten to twelve year old figures skaters in the United States practice five 45 minutes sessions each day, from Monday to Friday; Cohen¹⁴ tells how competitions for skaters begin as early as age three; and according to Donnelly¹⁵ some ten year old ice-hockey players in Canada play 90 games in a season.

A. Health

According to Article 24 of the United Nations Convention on the Rights of the Child¹⁶ (CRC) 'State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health...'. Physical activity, of which sport is an important component, is essential

⁷ See for example Giulianotti, supra n. 2 at 360.

⁸ See, for example, GA Res. 58/5, Sport as a Means to Promote Education, Health, Development and Peace, 5 November 2003, A/RES/44/5.

⁹ Donnelly and Petherick, 'Workers' Playtime? Child Labour at the Extremes of Sporting Spectrum', (2004) 7 *Sport in Society* 301 at 316.

¹⁰ David, supra n. 4 at 53.

¹¹ Mauffuli, 'At What Age Should a Child Begin Regular Continuous Exercise at Moderate or High Intensity?', (1998) 32 *British Journal of Sports Medicine* at 298.

¹² Hong, 'Innocence Lost: Child Athletes in China', (2004) 7 *Sport in Society* 3 at 338 – 354.

¹³ Grenfell and Rinehart, 'Skating On Thin Ice – Human Rights in Youth Figure Skating', (2003) 38 *International Review for the Sociology of Sports* 79.

¹⁴ Cohen with Maciel, *Fire on Ice - Autobiography of a Champion Figure Skater* (New York: HarperCollins Publishers, 2005) at 18.

¹⁵ Donnelly, 'Child Labour, Sport Labour: Applying Child Labour Laws to Sport', (1997) 32 *International Review for the Sociology of Sports* 393.

¹⁶ GA Res. 44/25, 20 November 1989, A/RES/44/25.

for healthy growth and development. However, in the struggle for success it is not always understood and addressed by adults that early organised intensive and specialised training can have harmful consequences and seriously threaten the physical and mental development of young athletes.¹⁷ One of the most visible effects of sport specialisation is the rising incidence of injury due to overuse. Overuse injuries can occur in any sport that involves intensive training,¹⁸ but particularly at risk are girls in gymnastics and figure skating where the physical skills have become so demanding that they can only be performed by small, thin girls. As put by Richards: ‘subjects of smaller height and slimmer build perform better in the gymnastic activities’.¹⁹ To survive in the sport, girls beat back puberty as breasts and hips slow the spin, lower the leaps and disrupt the clean, lean body lines that judges reward, basically by starving themselves while engaging in intensive training.²⁰

The intensive training and pressure heaped on by coaches, parents and sports officials, the people who should be protecting the children, may result in eating disorders such as anorexia nervosa and bulimia nervosa. This is particularly a problem in sports which are subject to judges’ evaluation like gymnastic, diving and figure skating, where it has been estimated that 35% of the competitors have eating disorders.²¹ It may also result in weakened bones, stunted growth, debilitating injuries and damaged psyches²² or/and it can lead to burn out and early retirement from the sport.

The fact that an elite child is young, and in many cases not yet able to understand the implications of organised intensive training (or even if so, not always in a position to do something about it) makes the child particularly vulnerable to exploitation by competitive parents and coaches. This may result in violation not only of Article 24 of the CRC concerning a child’s right to enjoy the highest attainable standard of health, but also of Article 31 which relates to a child’s right to rest and leisure. In its extremes, organised intensive and specialised training constitutes child abuse as defined by the World Health Organisation (WHO) since it may result in ‘actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power.’²³ In these cases the State has failed to 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’ as required by Article 19 of the CRC.

B. Exploitation

There are many similarities between high-performance sport and child labour. For instance, when a child aged eight trains six hours a day, six days a week, for which he/she might receive money or prizes, might this not be considered a form of child labour that young children should be protected against?

¹⁷ David, *supra* n. 4 at 64.

¹⁸ Coaches’ Infoservice. ‘Specialization in Sport: How Early...How Necessary?’, available at: http://coachesinfo.com/category/becoming_a_better_coach/7/.

¹⁹ Coaches’ Infoservice, ‘Talent Identification in Elite Gymnasts: Why Body Size is So Important’, available at: <http://coachesinfo.com/category/gymnastics/70/>.

²⁰ Ryan, *Little Girls in Pretty Boxes – the Making and Breaking of Elite Gymnasts and Figure Skaters*. (London: The Women’s Press. 1996) at 6-8.

²¹ Cashmore, *Sports Culture: An A-Z Guide* (London: Routledge, 2002) at 101.

²² Ryan, *supra* n. 20 at 7.

²³ WHO, Report of the Consultation of Child Abuse Prevention, 29-31 March 1999, WHO/HSC/PVI/99.1.

According to Article 2 of the International Labour Organisation's (ILO) Convention No. 138,²⁴ work is prohibited for children under the age of 15 years (14 years for developing countries), with the exception of 'light work' that might be carried out by children aged 13 (12 years for developing countries) in accordance with Article 7 of the ILO Convention. 36 hours of intensive training per week can hardly be seen as 'light work'. Such intensive training is closer to exploitation, as described in Article 32 of the CRC since it 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'. Social scientists in Canada and Germany have also argued for over 20 years that involvement of children in high-performance sports may be seen as a form of child labour.²⁵ Children train in work-like conditions; they compete regularly and often generate revenue (directly or indirectly). The receipt of income (by professional athletes), funding, sponsorship and prizes formalise their working status, and it should also be noted that many labour in the expectation of future income. Adults depend on the 'work' of such children for their own employment (coaches) and income (parents).²⁶

Today there are few protections in the form of limits on training time or on the number of competitions a child athlete may take part in. There is no real enforcement of the time young athletes devote to compulsory education, or access to protection under health and safety regulations that govern workers in the workplace.²⁷ Parents may be denied admission to children's training sessions and even to decisions about the child's health and involvement.²⁸ Coaches can more or less treat children as they want and parents can live off their children's earnings. Indeed, in his comparison of child labour law to sport, Donnelly uncovered exploitive practices in sport that never would be tolerated in educational or employment settings.²⁹

C. Education

According to Article 28(1) of the CRC, State Parties recognise the right of the child to education, but there seems to be no real enforcement of the time athletes need to devote to compulsory education. It is also interesting to note that one of the main findings of a recent study carried out by the European Commission was that there was no common strategy for dealing with young elite athletes' educational needs within the European Union (EU).³⁰

It is not easy for young athletes to combine long hours of training with schoolwork, and as a result many drop out of school. Some 'choose' to devote all of their energy and concentration on their training programmes while others try to continue their education by e-learning or correspondence courses. Residential training centres where top athletes live, train and learn are also widely established, but many of them have been criticised for the poor scholastic performance of students as the focus is on improving the athletic not the academic performance.³¹

²⁴ ILO Convention Concerning Minimum Age for Admission to Employment 1973, C138.

²⁵ Donnelly and Petherick, *supra* n. 9 at 311.

²⁶ *Ibid.*

²⁷ Donnelly and Petherick, *supra* n. 9 at 317.

²⁸ Donnelly, *supra* n. 15 at 394.

²⁹ *Ibid.* at 389-406.

³⁰ European Commission Directorate General on Education and Culture, *Education of Young Sportspersons*, August 2004, DG EAC 33/03-Lot 1, Final report.

³¹ David, 'Les Droits de l'Enfant dans le Sport. Jeunes Athlètes en Compétition: Exploits et Exploitations', *Un Champion à Tout Prix? Les Droits de l'Enfant et le Sport*, 4e Séminaire de l'IDE, 13-17 October 1998, Institut Universitaire Kurt Bösch, at 55.

Though fame and fortune may create opportunities for the few who reach the top in the form of big prizes, money, sponsorship or job opportunities, it is worth noting that less than five per cent of children enrolled in intensive training programmes will ever earn a living from sports.³²

Research conducted by Deng Yaping³³ in 2002 provides an interesting example in this regard. With the dream of becoming world table tennis champions some children spend their first 15 years doing nothing but playing table tennis. However, there are nearly 1,000 professional table tennis players in China, but only 20 of them can join the national team and thereby have an opportunity to reach the top. The majority have to retire at the age of 25. Deng Yaping argues that because of their early professional training the players can do nothing but play table tennis, so when they leave the sport and ‘enter’ society they find that nobody wants them and that they are useless.³⁴ Of course this has an adverse effect on the self-esteem and self-confidence of young men and women and although some governments, such as the Chinese, encourage athletes to continue their education after retirement, many athletes find it difficult to catch up because of their inadequate education in early years.

D. Family Life, Rest and Leisure

In the preamble to the CRC it is recognised ‘that the child, for the full and harmonious development of his or her personality, should grow up in a family environment in an atmosphere of happiness, love and understanding’. However, many elite child athletes are denied the opportunity of a ‘normal’ family life as they become residential pupils in sport schools from an early age. Others are able to continue living at home often because the whole family or part of the family has uprooted to be close to the ‘best’ training facilities. It is still worth questioning whether 20–30 hours per week devoted to, for instance skating, for 12 to 14 year olds³⁵ or whether ‘to move between the gym to school and back to the gym 13 hours a day between the two’ at the age of 15³⁶ is really commensurate with a nurturing family environment and promotes harmonious development for children.

Respect for the right to rest as established in Article 31 of the CRC is, moreover, vital for young athletes who train every day. However, young athletes who have to get up early in the morning to train before they go to school and then train again in the evening may find that they have little or no time for themselves and no sufficient time to rest.³⁷

Clearly such intensive training programmes also limit these children’s opportunities to play, go shopping or to socialise with friends. This is in opposition to the right of the child ‘to engage in play and recreational activities appropriate to the age of the child’ as contained in Article 31 of the CRC. The issue is well illustrated by Ryan who describes how Julissa Gomez³⁸ at the age of 15 only knew a few girls outside of the gym because she did not know how to talk to them;³⁹ and Halle⁴⁰ who tells how it was almost unthinkable to go to the movies or be in a room where there were other people that might infect her with a cold. In her book

³² Ibid. at 56.

³³ Olympic champion in table tennis 1992 and 1996.

³⁴ Hong, *supra* n. 12 at 344.

³⁵ Grenfell and Rinehart, *supra* n. 13 at 90.

³⁶ Ryan, *supra* n. 20 at 16.

³⁷ David, *Article 31 The Right to Leisure, Play and Culture* (Leiden: Martinus Nijhoff Publishers, 2006).

³⁸ American elite gymnast who broke her neck competing at age 16 and later died of the injuries that she had sustained.

³⁹ Ryan, *supra* n. 20 at 16.

⁴⁰ Junior world champion in cross country skiing 1991.

‘*Sporet fanger*’⁴¹ she concludes that: ‘it was easier to live isolated.’⁴² To sum up, it is worth asking as Grenfell and Rinehart do in the article ‘Skating on thin ice’, ‘[a]re youth athletes ever allowed to ”mature” at the same rate and to a similar degree as non-participants, or does the fact of adult control over their lives in a sense retard their growth?’⁴³

E. Abuse and Violence

Unfortunately children are also exposed to abuse and violence in sport. Article 19 of the CRC obligates State Parties to 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 is responsible for the care of the child.

(i) Physical, emotional and sexual abuse

The potential for abuse and violence increases in situations where intense relationships exist between children or young people and adults who have considerable influence over them. Such relationships often develop in competitive sports when sports coaches and their students spend long hours together. Much of their time is spent together at conventions and in hotels away from home and away from parental control. This situation combined with the extreme focus on the body, as exists in elite sport, may have sexual consequences.⁴⁴ Stories of physical, emotional and sexual abuse of children in sports thus occasionally hit news headlines. One such example was the case of a UK Olympic Swimming Coach, who in September 1995, was convicted on two counts of rape and eleven indecent assaults on individuals formally under his supervision.⁴⁵ Other stories are described in sports biographies about former athletes. They tell of athletes who were afraid of being kicked off the team if they reported incidents, or those who simply accepted verbal harassment and/or corporal punishment as a normal part of practice. The figure skater Yelena Berezhnaya in the book ‘The Second Mark’,⁴⁶ described, while training in the Moscow Red Army Club at the age of 13, how she was yelled at and hit by her coach: ‘And if that [yelling] didn’t work, well, he [the coach] would use his hand.’⁴⁷ Berezhnaya was, moreover, from the age of 14, regularly hit by her 19 year old skating partner with hardly any interference from others to protect her because, as described by Berezhnaya, ‘everyone was behaving like that in this school. They all just thought it was supposed to be that way’.⁴⁸

(ii) Training with injuries

⁴¹ Halle, *Sporet Fanger* [Trapped in the Track] (Oslo: Forum Aschehoug, 1999) at 39.

⁴² The author’s translation from Norwegian.

⁴³ Grenfell and Rinehart, *supra* n. 13 at 86.

⁴⁴ Skårderud, ‘Portrett av Ateleten i Nød’ [Portrait of an Athlete in Distress], in Loland (ed.), *Toppidrettens Pris – en Debatt Bok* [The Price of Elite Sport – a Debate Book] (Oslo: Universitetsforlaget, 1998) at 82.

⁴⁵ Gray, ‘Swimming and Child Protection’, (1997) 4 *Sports - Law Administration and Practice* at 1.

⁴⁶ Olympic champion in pair skating 2002.

⁴⁷ Goodwin, *The Second Mark* (New York: Simon and Schuster, 2004) at 38–9.

⁴⁸ *Ibid.* at 43–4.

There is also the issue of athletes continuing to train and compete despite being injured. As described earlier, athletes are forced to train longer, harder and start earlier in life in order to succeed in modern sport. They may be rewarded by faster times, better performance and increased fitness, but there is also a downside to the success that is often unknown to the public. Part of the price of such intensive training and of the willingness to continue training and competing despite being injured,⁴⁹ is paid in the form of overuse and injuries. Overuse now constitutes a serious problem in sport, and not only at the adult elite level.⁵⁰ Afraid of being taken off the team, or letting their coach down, young athletes often do not complain or question their coaches' instructions or decisions.

Ryan gives us further insight into this reality in her book 'Little Girls in Pretty Boxes: The Making and Breaking of Elite Gymnasts and Figure Skaters'⁵¹ in which she chronicles the short-lived careers, of among others, American gymnast Kelly Garrison, practising and competing with 22 old stress fractures in her back and Christy Henrich, competing in the World Cup with a broken foot. She also describes how Nadia Comaneci⁵² who once cut her hand on the plastic-and-foam hand guards gymnasts wear to perform on the uneven bars, had blood poisoning in her arm by the time she told anyone about the injury. While it is accepted that adults can consent to the risk of injury, the question arises whether an elite child athlete can, or is, in a position to do so, or if this lack of protection constitutes abuse?

(iii) Combat sports

The issue of children involved in combat sports,⁵³ for example boxing the objective of which is to immobilise or incapacitate the opponent so that he/she is unable to continue the contest,⁵⁴ is also a delicate issue in relation to Article 19 of the CRC. Can children consent to the risk of harm that comes from boxing or other combat sports? Should parents be entitled to give consent for such a risky activity on their child's behalf? Who should protect the interests of those who are deemed unable as yet to protect themselves?

F. Doping

It would be naive to think that children in elite sports are not involved in doping. This is also confirmed by the fact that in many countries and different sports, athletes under 18 years of age have tested positive for taking illegal performance enhancing drugs.⁵⁵ Existing research, moreover, points out generally that between two and ten per cent of young athletes use illicit doping products.⁵⁶ Doping of young athletes exists under diverse forms and for different reasons.⁵⁷ Some child athletes use doping without knowing it (for example they are asked by their trainer to take vitamin pills) or they have been manipulated by their trainers to do so.

⁴⁹ Girls in gymnastic and figure skating also fear jeopardise their careers if they stop the intensive training as they risk growing.

⁵⁰ Waddington, 'Sport and Health: a Sociological Perspective', in Coakley and Dunning (eds), *Handbook in Sport Studies* (London: SAGE, 2002) 415.

⁵¹ Ryan, *supra* n. 20.

⁵² Olympic champion in artistic gymnastic 1976 and 1980.

⁵³ Boxing, karate and other martial sports.

⁵⁴ Schneider and Butcher, 'Ethics, Sport, and Boxing', in Mogan, Meier and Schneider (eds), *Ethics in Sport* (Champaign, IL: Human Kinetics, 2001) 360.

⁵⁵ David, *supra* n. 4 at 103.

⁵⁶ David, *supra* n. 37 at 26.

⁵⁷ David, *supra* n. 4 at 106–9.

Others have decided themselves to take illegal drugs to improve their results or to keep up with the training, often perhaps without being properly informed of the consequences of taking illicit drugs as provided for in Article 17 of the CRC.

When illegal drugs are given to a child by an adult several provisions of the CRC are violated, including Article 33 which states that 'State Parties shall take all appropriate measures...to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant treaties.'⁵⁸ The State has, moreover, failed to protect the child 'from all forms of...abuse, neglect or negligent treatment, maltreatment or exploitation,' (Article 19 of the CRC) and, 'all other forms of exploitation prejudicial to any aspects of the child's welfare' (Article 36 of the CRC). It has also ignored the child's right 'to the enjoyment of the highest attainable standard of health' (Article 24 of the CRC).

G. The Best Interests of the Child?

Children involved in strict training regimes from an early age are either directly or indirectly subject to situations that have the potential of threatening their human rights. It is therefore pertinent to ask whether letting young children undergo organised intensive training is in accordance with the 'best interests of the child' as required by Article 3 of the CRC or whether it is necessary to find other ways to protect children's rights in sport.

3. Minimum Age as a Means of Protecting Children's Rights

Limiting children's access to certain activities or situations by, for instance, using age limits is seen as one way of protecting children. However, as this in practice might imply a restriction of, or lead to a conflict with, other rights granted to the child or currently held by adults, it is a debated tool which needs to be weighted against other rights.

A. The Theoretical Issue: Liberalism v Paternalism

Different theories exist as to whether children and adults ought to have the same rights. Advocates of liberalism claim that the modern separation of the child and the adult world is an unjustifiable and oppressive discrimination. Children should therefore be entitled to all the rights and privileges possessed by adults, most importantly the right to self-determination and freedom. On the contrary, paternalists claim that children should not be seen as self-determining agents since they cannot yet make rational and autonomous choices and they therefore need adults to make choices for them.⁵⁹

The CRC is situated somewhere between these two theories. The CRC contains rights for children that are equal to rights held by adults. It places, for example, considerable emphasis on the right of children to take responsibility for those decisions they are competent to make. Articles 5 and 12-17 are in this vein. The CRC also recognises childhood as a period of entitlement to special protection for children. As a consequence of their relative inexperience and immaturity, the CRC gives children certain protection rights which are not given to adults. For instance, in the Preamble, it is stated that 'the child, by reason of his physical and mental immaturity, needs special safeguard and care'. Article 19 furthermore,

⁵⁸ According to David, *supra* n. 4, most performance-enhancing products used in sports qualify under this provision.

⁵⁹ Archard, *Children, Rights and Childhood*, 2nd edn (London: Routledge, 2004) at 70-7.

‘calls upon States to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse,’ whereas Article 32 accords the child the right to be protected from economic exploitation and from performing hazardous work.

The presumption that children need special protection that adults do not, stems from at least three different perspectives: firstly, it can derive from the fact that even though the activity or experience might have harmful consequences also for adults, he or she should be free to run the risk of being exploited or abused, as long as he/she is participating voluntarily and in full awareness of the dangers. However, the child is not deemed competent to make that same choice. Secondly, it can also stem from the fact that the child would suffer particular or especially serious harm that an adult would not suffer in being subject to the same form of treatment. Thirdly, children require special protection to prevent adults in positions of authority from denying, abusing or exploiting their rights. The involvement of children in elite sport raises considerations from all three perspectives: hence is the child competent to accept the risk related to elite sport? Does the child suffer particularly in elite sport because he or she is a child? Is it necessary to protect the child from potential exploitation by parents, coaches and others in elite sport?

B. The CRC and the Use of Minimum Age

The CRC clearly requires State Parties to set a legal minimum age in some areas. Article 32 requires the introduction of a minimum age for employment, while Article 38 and the Optional Protocol to the CRC on the involvement of children in armed conflict⁶⁰ set up minimum ages related to voluntary enlistment and conscription in armed forces. Lastly, Article 40 requires the establishment of a minimum age below which children lack the capacity to infringe national criminal law.⁶¹

Article 38 is the only provision in the Convention which identifies a specific age below 18 for the protection of children, in as far as it states that children under the age of 15 years should not take part in hostilities.⁶² In all other cases, it is the Committee on the Rights of the Child⁶³ – rather than the Convention – that sets specific minimum age limits according to the principle of the best interests of the child (Article 3 of the CRC) and his or her evolving capacities (Article 5 of the CRC).⁶⁴ In this regard, the Committee has, for instance, recommended that the minimum age for marriage of boys and girls to be 18 years,⁶⁵ that the minimum age for employment should be set between 15 and 18 depending on the type of work in accordance with international labour law,⁶⁶ and that the minimum age for criminal responsibility should not be below 12 years.⁶⁷ The Committee on the Rights of the Child furthermore monitors various legal minimum ages set by the States in different fields,

⁶⁰ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts 2000, A/RES/54/263.

⁶¹ David, *supra* n. 4 at 40.

⁶² The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict raises this to 18 years.

⁶³ Set up in accordance with Article 43, CRC.

⁶⁴ David, *supra* n. 4 at 41.

⁶⁵ 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.

⁶⁶ 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.

⁶⁷ Committee on the Rights of the Child, General Comment No. 10, Children’s Rights in Juvenile Justice, 2 February 2007, CRC/C/GC/10.

including the minimum age for legal and medical counselling, the minimum age for medical treatment without parental consent, the minimum age to create or join associations, the minimum age for sexual consent, consumption of alcohol and other controlled substances and the minimum age for lodging complaints and seeking redress or participation in administrative and judicial proceedings.⁶⁸

However, until now neither the CRC nor the Committee on the Rights of the Child has addressed the issue of setting a minimum age for engaging in early intensive training, for taking part in competitive or professional sports or for competing with adults.⁶⁹ Yet it can be argued that Article 31 of the CRC on the right of the child to rest and leisure, to engage in play and recreational activities ‘appropriate to the age of the child’, as well as Article 32 on a minimum age for employment, could be used as a basis to deal with the issue. The present author can only speculate on the lack of regulation: does the Committee not think that the violation of child rights in competitive sport is a serious problem? Is the Committee of the opinion that children are protected through other indirect efforts pursued by the Committee itself and that age limits are not an effective tool to use in this regard? Or is it because the Committee believes that the age limits currently set by sports federations provide sufficient protection?

C. Sports Federations and the Use of Minimum Age

Many, but not all, international sports federations operate with age classes and minimum ages for participation in international competitions. There are junior competitions and senior competitions, and existing minimum ages also differ depending on the type of competition (for example the World Championship or the Olympics). The International Olympic Committee (IOC) does not set any minimum age for competing in the Olympic Games, but leaves it to international sports federations to deal with the issue within their sport.⁷⁰

Setting minimum ages for participating in competitions is of critical importance in protecting children’s right in sport, since it can reduce the risk of children experiencing violations of their rights. However, in addition to the concern that minimum ages, where they exist, are not necessarily compatible with child rights standards, there are at least three other reasons why a minimum age for participation in competitions does not provide sufficient protection for children in sport: firstly, they are not always implemented; secondly, they are not necessarily seen (or set) in connection with the judging criteria; and thirdly, they do not adequately affect the organised intensive training undertaken by the young athletes in preparation for competitions.

(i) The implementation issue

Minimum ages, where they do exist, are not always implemented. The constant use of children as camel jockeys in camel racing in United Arab Emirates (UAE), Qatar, Bahrain, Kuwait and Saudi Arabia serve as good examples of non-compliance with existing rules. In 1980, UAE passed a Federal Labour Code which banned children from labour and, in 1993, the UAE responded to international pressure and used this law to ban the use of children in the sport. The Camel Racing Association (CRA) also amended their rules to prohibit children

⁶⁸ General Guidelines regarding the Form and Contents of Periodic Reports to be Submitted by State Parties under Article 44, Paragraph 1(B) of the Convention, 20 November 1996, CRC/C/58.

⁶⁹ David, supra n. 4 at 41.

⁷⁰ Ibid.

under 14 years old (and weighing less than 45 kg) from being camel jockeys. However, the practice has continued for years unchecked⁷¹ and only recently, in June 2005, has UAE completely banned children under the age of 18 from racing. The threat of fines and imprisonment seems to have been effective in ensuring camel racing becomes a child free sport.⁷²

Age limits may however be applied in a somewhat incoherent manner, as is the situation when age limits are applied for some competitions and not for others. For instance, the age limits for participation in the Olympic Games, World Championships or World Cups do not always prevent young athletes from competing with adults in other major international competitions.⁷³ In order to qualify for the Olympic Games it may even be a requirement that the athlete has obtained a certain standing in another major international (or national) competition prior to the Olympics.

(ii) The compatibility issue

If minimum ages for competing are to provide protection for children in sport, it is vital that the minimum ages are compatible with the judging criteria in the relevant sport. This problem can be illustrated by a concrete example. Following a period of criticism about the US women's gymnastic team after the 1992 Barcelona Olympics, as well as the exposed burnout of young tennis players such as Tracy Austin, Jennifer Capriati and Andrea Jaeger, three sports organisations changed their rules for entering international competitions. The Women's Tennis Association raised the age for turning professional to 16 years, and both women's gymnastics and women's figure skating raised the minimum age for international competitions to 16 years. However, for gymnastics and figure skating the new age limits may have made the problems worse. Extending the age limits of international competitions without changing the judging criteria as well as introducing new regulations about health, nutrition and bone density may force adolescent girls to attempt to maintain a pre-pubescent body type to an even higher age than before.⁷⁴

(iii) The training issue

In most cases, it is not the participation of an athlete in competitions themselves that cause the greatest concern but, as described above, the implications of the organised intensive and specialised training that is required beforehand from an athlete. According to David,⁷⁵ sports authorities have barely questioned the practice of intensive training among very young child athletes, although they are well aware that it exists and know that it can lead to abuse. However, in November 2005 the IOC Medical Commission examined the issue and identified several issues of particular concern for children undergoing intensive training.⁷⁶ The Commission recommended that coaches, parents, sports administrators, the media and other

⁷¹ Mehmood Asghar, Farhat and Niaz, *Camel Jockeys of Rahimyar Khan – Findings of a Participatory Research on Life and Situation of Child Camel Jockeys* (Save the Children Sweden, 2005).

⁷² Irin Report on the Plight of the Camel Jockey Child, available at: http://www.irinnews.org/report.asp?ReportID=56834&SelectRegion=Middle_East&SelectCountry=UNITED_ARAB_EMIRATES.

⁷³ David, supra n. 4 at 42.

⁷⁴ Donnelly and Petherick, supra n. 9 at 313.

⁷⁵ David, supra n. 4 at 55.

⁷⁶ IOC Medical Commission, 'Statement on Training the Elite Child Athlete', 16 November 2005, available at: http://multimedia.olympic.org/pdf/en_report_1016.pdf.

significant parties should limit the amount of training and competitive stress experienced by elite child athletes.

The question that needs to be asked is whether this is enough. Is it not exploitation by coaches, parents, sports administrators, the media and other significant parties that the elite child athlete needs to be protected against? Could better protection be provided if regulations on minimum ages for engaging in organised intensive training were established externally?

4. Minimum Age for Engaging in Organised Intensive Training

If a minimum age for engaging in organised intensive training was introduced along side correct minimum ages for participation in competitions, young athletes would be given better protection against harmful health consequences and exploitation. Young athletes would, moreover, be less prone to lose out on education and leisure time and they would be able to preserve family bonds, as well as other social ties. To what extent such a minimum age would also protect young people against violence and doping is more difficult to say, but it would expose them to the risks at a later stage, when they perhaps have a greater ability to protect themselves. If the benefits are obvious, the essential question is to know whether it can be justified.

A. Setting Age Limits While Balancing Other Rights of the Child

In accordance with the CRC, children have a right to special protection up to the age of 18. However, this right needs to be balanced with the child's right not to be discriminated against; the child's right to progressive emancipation and autonomy; their right to development; administered under the guiding principle of the best interests of the child.

(i) The non-discrimination principle (Article 2 of the CRC)

Article 2(1) of the CRC provides that 'State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. The issue of 'special protection' can easily be turned into a discrimination issue. Indeed, one might argue that limiting a child's possibility to engage in organised intensive training limits their possibility to take part in elite sports and therefore constitutes a form of indirect discrimination based on age. Hence, by giving children 'special rights' of protection, one does not sufficiently take into account their 'equal right' to participate in elite sport.

Several international instruments⁷⁷ proclaim that every individual shall have the right to participate in sport. However, this is not the same as to say that everybody has a right to participate in elite sport. On the contrary, elite sport is by nature exclusive, in as far as it requires a certain performance to be 'selected'. Nevertheless, it is still a fact that denying children the possibility to engage in organised intensive training gives them a poorer chance of being selected.

⁷⁷ See, for example, the UNESCO International Charter of Physical Education and Sport 1978, and Council of Europe Resolution (76) 41 on the Principles for a Policy of Sport for All, 24 September 1976.

Although Article 2(1) is applicable to all grounds of discrimination (including age), the scope of application is limited in as far as it only protects rights contained in the CRC. Hence, Article 2(1) does not provide an independent right to freedom from discrimination and has to be read in connection with the other provisions in the CRC.⁷⁸ The Convention does not contain any provision directly relating to sports, though it could probably be inferred if it could be said that by denying children access to organised intensive training their development is hindered (Article 6 of the CRC) in so far as he/she has a poorer chance of being selected to participate in elite sport.

However, it is well established that not every differentiation of treatment constitutes discrimination. If the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Convention, there is no discrimination.⁷⁹ The question which then arises is whether a child may suffer especially from intensive training because he/she is a child?

With reference to what has been described earlier, the present author would argue there is a disproportionately higher risk of children being harmed by intensive training. This has also been recognised by the IOC Medical Commission which, as stated above, has identified several issues of particular concern when training the elite child athlete.⁸⁰ Therefore, since children may particularly suffer from intensive training limiting their participation in organised intensive training by using minimum age limits can be seen as a justified measure to protect their vulnerability and therefore does not constitute discrimination.

(ii) Respecting the child's evolving capacities (Articles 5 and 12 of the CRC)

According to Article 12 of the CRC the child has the right to express his or her views freely, and have those views given due weight in accordance with his or her age and maturity. Moreover, it is stated in Article 5 that State Parties shall respect the responsibility, rights and duties of parents 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'. It can be argued that limiting the child's possibility to engage in organised intensive training by introducing age limits would be contrary to the child's right to participate in a decision regarding his or her involvement in elite sport. The conflicting rights therefore have to be weighted against each other.

In the case of sport, the present author believes that in most instances children themselves (sometimes with the assistance of their parents) have chosen whether or not to engage in a sport and also which sports to get involved in. Given the fact that many specialists believe that until the age of 11 or 12 the most important factor of sport for children is pleasure, action, informal games, social interaction, improvement of skills and personal involvement,⁸¹ it is also likely that most children choose a sport because they like it and not because they want to become an elite athlete.

Yet, there are examples of children being enrolled in sports where there seems to have been little consultation with the child and where the goal from the outset seems to have been to produce a champion. The sports factories where young children are picked by talent scouts to become champions forms part of this, but it is also a fact that many parents strongly

⁷⁸ Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (The Hague: Martinus Nijhoff Publishers, 1999) at 72.

⁷⁹ Besson, 'The Non-discrimination Principle in the Convention on the Rights of Child', (2005) 13 *International Journal of Children's Rights*, at 433.

⁸⁰ IOC Medical Commission, *supra* n. 76.

⁸¹ David, *supra* n. 4 at 40.

encourage (or push?) children into training from an early age with the hope of producing a champion.

For example, Shen Xue⁸² was 6 years old when her father became convinced that she had the makings of a champion. To pursue that goal, he took her for extra practice at four o'clock in the morning (before he went to work) in addition to the regular training she had to attend every afternoon. Her father never asked her whether or not she liked skating.⁸³

The early life of Tiger Woods, one of the world's most prominent golfers, might serve as another example of strong parental influence with regard to early training. In a biography written by Londino, it is described how his father (Earl) even from before Tiger was born, knew that he would become a great golfer:

Earl tells of playing in a golf tournament in Lake Shastina in Northern California when his wife, who was pregnant with Tiger, walked along side him on the course. He claims that the "in vitro" Tiger was noticeably agitated in his mother's stomach every place on the golf course except when his mother approached a green. For some unexplained reason, he seemed to stop moving when the players were putting.⁸⁴

Moreover, by the age of 18 months Tiger was accompanying his father to the driving range hitting golf balls.⁸⁵

Although the child may have engaged in a sport because he or she wanted to do so, problems may also arise when, after a while, it is discovered that the child has a special talent that can advance him or her in the sports world. Suddenly the training becomes more serious, physically demanding and time consuming. However, the shared idea between parent/child/coach that the child has the talent and has made the commitment often seems to justify any amount of work and sacrifice required to reach a competitive-related goal.⁸⁶ Halle describes the sudden change in her training, 'I was 12 years old. In the other girls' group we should not play. We should become good skiers'.⁸⁷

To have your talent recognised is surely flattering and encouraging for the child, but do young children have the capacity to understand what it really involves and can they make an informed decision about it? That is a 'decision to dedicate exclusive, full-time attention to sports that are organized, controlled, administrated, coached and run by adults'.⁸⁸ According to Grenfell and Rinehart children do not have an evolved sense of delayed gratification, and they can not foresee the sense of guilt they may feel when they are not able to pay back the financial (or other) sacrifices incurred by the parent. Furthermore, children cannot guarantee the success that coaches want from an athlete.⁸⁹ In a recent study about the evolving capacities of the child, Lansdown pointed out that 'there is evidence suggesting that up to age 16, many adolescents find it difficult to imagine risks and consequences of decisions and recognise the vested interests of others'.⁹⁰ Lastly, personal decisions are never independent of the social structures in which they take place, and such structures limit and constrain the types of choices that people make.⁹¹ Sport has such an enormous power that combined with a

⁸² Bronze medal winner in figure skating in the 2002 and the 2006 Olympics.

⁸³ Goodwin, *supra* n. 47 at 89.

⁸⁴ Londino, *Tiger Woods - A Biography* (Westport, CT: Greenwood Press, 2006) at 2-3.

⁸⁵ *Ibid.*

⁸⁶ Grenfell and Rinehart, *supra* n. 13 at 80.

⁸⁷ Halle, *supra* n. 41 at 11[Author's translation].

⁸⁸ Coakley, 'Ethics in Coaching: Child Development or Child Abuse?', (1994) Dec/Jan. *Coaching Volleyball* 20.

⁸⁹ Grenfell and Rinehart, *supra* n. 13 at 80.

⁹⁰ Lansdown, *The Evolving Capacities of the Child* (Florence: UNICEF Innocenti Research Centre, 2005) at 23.

⁹¹ Donnelly, *supra* n. 15 at 396.

chance to ‘make it’ it can make young people put aside everything else. The reality is that most of them do not reach the top. Some even seem to become trapped by their own choice. As put by a young American skater, ‘I’ve been training for 10 years now, and it is pointless to stop.’⁹²

Parents have an important role towards ensuring a child’s development and happiness. The present author believes that most parents act in accordance with what they perceive to be in the best interests of their child. However the pursuit of short term competitive goals may result in the long term development of their child being forgotten. Instead of restraining children’s seriousness towards sport at an early age, some parents force it. You do not have to be at an Olympic level, nor at a national level, to experience the extreme dedication (with the good and bad consequences that entails) of parents when their child is competing. Whether parents are out on the ski course, or standing on the side of the football field or a swimming pool screaming to their child, it indicates to the athlete that there is an expectation of a better performance. Who would not want to satisfy, or more preferably impress, their own parents? For some children it becomes a vicious circle - good results lead to higher expectations, which result in more intensive training and the improvement of performance before the cycle starts again. The fact that some parents make great sacrifices by sending the child far away to train, mortgaging a home to foot the bills, taking the child out of school so that she/he can train for longer hours, abusing her/him physically or verbally for not performing, or in extreme circumstances giving up guardianship of their child, only adds to the pressure put on the child athlete.⁹³

While there still exists a powerful presumption that children are not forced to participate, but decide to become involved and remain committed to a sport only for as long as they want,⁹⁴ research by Donnelly⁹⁵ indicates that some young athletes have experienced both subtle and overt pressure to remain involved in their sport long after they wanted to leave. A clear implication of Article 5 of the CRC is not only that parents, and other persons legally responsible for the child, should respect the capacities of children to exercise rights on their own behalf, but in addition they should not impose excessive demands on them beyond their capacities.⁹⁶

Interestingly enough, parents of children who succeed in their sport are in most cases praised for their foresight and efforts and consequently labelled ‘good parents’, but when children fail, people raise questions about parents’ actions and characters.⁹⁷ Yet, in all cases described it seems pertinent to ask whether parents really have acted ‘in a manner consistent with the evolving capacities of the child’.

To conclude, children require special protection to prevent adults in a position of authority from denying, abusing or exploiting their rights. Since those who should be responsible for protecting young athletes often fail in this respect, introducing external barriers such as a minimum age limit for engaging in organised intensive training must be considered to be in accordance with Articles 5 and 12 of the CRC. Such actions would prevent children from being exposed to experiences beyond their evolving capacities.

(iii) The right to development (Article 6(2) of the CRC)

⁹² Grenfell and Rinehart, *supra* n. 13 at 84.

⁹³ Ryan, *supra* n. 20 at 130.

⁹⁴ Donnelly, *supra* n. 15 at 396.

⁹⁵ *Ibid.*

⁹⁶ Lansdown, *supra* n. 90 at 31-2.

⁹⁷ Coakley, *Sports in Society: Issue and Controversies*, 8th edn (New York: McGraw-Hill, 2003) at 136.

Article 6(2) of the CRC provides that, 'State Parties shall ensure to the maximum extent possible the survival and development of the child.' According to Nowak,⁹⁸ the Committee on the Rights of the Child perceives the development of children in a holistic context similar to the concept of human development as is defined in Article 1 of the UN Declaration on the Right to Development.⁹⁹ The article states development is, '[a] comprehensive process aimed at the full realization of all civil, political, economic, social and cultural rights of the human being'. The obligation of States who are party to the CRC is to ensure 'to the maximum extent possible' the survival and development of the child, which can be deemed to include the creation of an environment which enables children within their jurisdiction to grow up in a healthy and protective manner, free of want and fear, and to develop their personality, talents and mental and physical abilities to their fullest potential, consistent with their evolving capacities. Hence, when interpreting Article 6 of the CRC, it is necessary to take into account all other human rights enshrined in the Convention - those provisions that promote healthy development must be considered in conjunction with those articles that protect against harmful development. Within this context it has been established that early organised intensive training can have harmful health consequences and lead to exploitation. It can, furthermore, be a hindrance to children's education and their possibility to preserve family bonds and social ties. Lastly, it has also been noted that elite sport may expose children to violence and drugs.

However, whether early organised intensive training of children can also be seen as 'developmental' for children has not been discussed. Would restricting children's possibilities to engage in organised intensive training limit children's possibilities to develop their personality, talents and mental and physical abilities to their fullest potential consistent with their evolving capacities? There is no doubt that many children have physical abilities to engage in organised intensive training or are skilful enough to compete with adults. It might therefore be said that limiting their possibility to do so limits children's possibilities to develop to their fullest potential. However, it is necessary to bear in mind that the psychological and social developments of young athletes may not be commensurate with their physical abilities¹⁰⁰ and in that sense organised intensive training and (adult competitions) are not necessarily consistent with their 'evolving capacities'. Moreover, irrespective of individual children's capacities, children are entitled to protection from experiences that are disproportionately likely to cause them harm because of their youth.¹⁰¹ Since it has already been established that a child is disproportionately likely to be caused harm by intensive training because he or she is a child, limiting children's possibilities to engage in organised intensive training is in accordance with, and not contrary to, the right to development contained in Article 6(2) of the CRC.

(iv) Best interests (Article 3 of the CRC)

Article 3 of the CRC states that, '[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. The provision does not fix any particular duty, nor does it state precise rules. It poses a principle to be applied if rules regarding the minimum age for engaging in intensive training were to be

⁹⁸ Nowak, 'Article 6 – The Right to life, Survival and Development of the Child', September 2005, Lecture given at the Masters of Advance Study in Children's Rights.

⁹⁹ Declaration on the Right to Development, GA Res. 41/128, 4 December 1986, A/RES/41/128.

¹⁰⁰ Grenfeld and Richard, *supra* n. 13 at 93.

¹⁰¹ Lansdown, *supra* n. 90 at 37.

introduced. But what are the ‘best interests’ of the child? According to Zermatten¹⁰² ‘best’ and ‘interests’ put together simply mean that the ultimate goal is the ‘wellbeing of the child’, as defined throughout the Convention.

Clearly, it cannot be considered to be in the best interests of the child to experience violations of his or her rights as set out in the CRC as previously discussed. However, it should be noted that for some children the result of the intensive training might prove to be in his or her best interest in the long run. For some children their sporting success has been the start of a new and better life, as for the Brazilian football player Ronaldo who was born in the slums outside Rio de Janeiro, started to play football at the age of four, joined a local football club at the age of nine and became professional at the age of 16. Having been named by the *Fédération Internationale de Football Association* (FIFA) World Player of the Year three times and European Player of the Year twice he is today, at the age of 30, an icon in the world of football.¹⁰³ Another example is former gymnast Nadia Comaneci who believes that the very tough training regime she undertook at a young age was necessary to reach the top and proved to be in her own best interests.¹⁰⁴ These examples, along with others, show that it is necessary to recognise that children’s involvement in elite sport (and early organised intensive training) at a young age can have a positive outcome.

Yet it is important to remember that ‘best interests’ is, to a large degree, a subjective concept and what is in the best interests of some children is not necessarily in the best interests of others. The best interests consideration shall according to Article 3 be a primary consideration. This means that it is not the only consideration that needs to be made. Hence, the best interests of a child will not systematically take over all other interests, such as over the best interests of other children.¹⁰⁵ It is mostly athletes’ success stories that are told, but it is a fact that the majority of children who engage in early organised intensive training never reach the top despite having undertaken intensive training from an early age with a high risk of experiencing a violation of their human rights. This can hardly be seen to be in children’s best interests.

In conclusion, although there are some children who in the long run might be said to benefit from early organised intensive training most children engaged in early organised intensive training run the risk of experiencing a violation of their rights contained in Articles 17, 19, 24, 28, 31, 32, 33 and 36 of the CRC. Hence, limiting children’s participation in early organised intensive training by introducing a minimum age for access must therefore be seen as being in the child’s best interests.

B. How and By Whom?

Having established that introducing minimum ages for children for engaging in organised intensive training can be considered a justified tool to protect children’s rights in sport, it remains to be examined how this could be done in practical terms.

(i) National application of child labour standards

¹⁰² Zermatten, *The Best Interest of the Child – From the Literal Analysis to Philosophical Scope*. Working Report 3-2003, Institut International des Droits de l’Enfant at 7.

¹⁰³ Mosley, *Ronaldo - The Journey of a Genius* (Edinburgh: Mainstream Publishing, 2005).

¹⁰⁴ Comaneci, *Nadia Comaneci – Letters to a Young Gymnast* (New York: Basic Books, 2004).

¹⁰⁵ Zermatten, *supra* n. 102 at 8.

Given the similarity that exists between elite sports and labour¹⁰⁶ national authorities could seriously consider applying existing international norms that govern child labour to children involved in elite sport, and thereby preventing children from engaging in organised intensive training at too early an age. State Parties to the CRC have a legal obligation to respect and ensure that the rights of children, as stipulated in the Convention, are complied with within their jurisdiction. This includes an obligation to ensure that non-state service providers like sport bodies, operate in accordance with its provisions. Thus, if child labour laws were applied to sports, this would create indirect obligations for sport bodies to comply with and practice in conformity with national and international law.

Within the EU system this issue has already been discussed in so far as the Member States have been urged to examine the application of Directive 94/33/EC, on the protection of young people at work, to sport.¹⁰⁷ Moreover, it has been held that sport organisations should incorporate into their regulations the provisions of Directive 94/33/EC.¹⁰⁸

(ii) General Comments from the Committee on the Rights of the Child

Given the special role and responsibility of the Committee on the Rights of the Child as a guardian for children's rights the issue could be better addressed by the Committee by promulgating the use of minimum ages in sport (for example, participation in adult competitions and engagement in early organised intensive training). As stated above, Article 31 of the CRC concerning the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child, as well as Article 32 on minimum age for employment, could be used as a basis to address the issue.¹⁰⁹ Through a General Comment the Committee could provide State Parties with recommendations for minimum ages in sport like it recently has done in the area of juvenile delinquency by recommending a minimum age for criminal responsibility.¹¹⁰

(iii) Rules set by sports federations and the IOC

International sports federations could, in cooperation with IOC, address the issue of minimum ages for engaging in organised intensive training, alongside a study on the compatibility of existing minimum age limits with international child right standards as already proposed by David in his book 'Human Rights in Youth Sport'.¹¹¹ In this regard it is worth recalling that the Council of Europe's Parliamentary Assembly, more than 10 years ago, called upon the sports federation and the International Olympic Committee to review national and international competition systems involving young people with a view to raising the minimum age limits or, where already in force, ensuring their implementation.¹¹²

Although it is clear that it is the State Parties to the Convention on the Rights of the Child that have the primary responsibility for ensuring compliance with its provisions, the

¹⁰⁶ See part 2, section B.

¹⁰⁷ Council Directive 94/33/EC on the Protection of Young People at Work, 20 August 1994, OJL 216.

¹⁰⁸ See point 19 of the Conclusions by the Working Party concerning the Protection of Young Top-Level Sportsmen and Women at the IXth European Sports Forum, Lille, 26 – 27 October 2000, available at: http://ec.europa.eu/sport/action_sports/dialogue/forum2000/forum2000_conclusions_protjeunes_en.pdf.

¹⁰⁹ David, *supra* n. 4 at 41.

¹¹⁰ Committee on the Rights of the Child, *supra* n. 67.

¹¹¹ David, *supra* n. 4 at 43.

¹¹² Para. 5, Parliamentary Assembly Recommendation 1292 1996 on Young People in High Level Sport, 20 March 1996, Report of the Committee on Culture and Education, Doc. 7459.

Committee on the Right of the Child also recognises that the responsibility to respect and ensure the rights of the child extend beyond the State to individuals, parents, legal guardians and other non-state actors. This aspect of civil responsibility was clearly pointed out by the Committee on the Rights of the Child at the Day of General Discussion in 2002 on the topic: ‘The Private Sector as Service Provider and its Role in Implementing Children’s Rights’.¹¹³ The Committee pointed to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health, which states 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 non governmental organisations, civil society organisations, as well as the private business sector – have responsibilities regarding the realization of the right to health.’¹¹⁴

5. Conclusion

In most cases children’s involvement in sport is beneficial to the child. However, the developmental implications of sport largely depends on the condition under which participation takes place, and it is a reality that some children undertaking early organised intensive training are faced with situations that have the potential of threatening their human rights. From a human rights perspective, the protection currently on offer does not provide sufficient safeguards for these children and it therefore seems necessary to pursue avenues other than education and awareness raising to more efficiently protect children’s human rights in sport.

The introduction of a minimum age for engaging in organised intensive training, along side correct age limits for participation in competitions, would give child athletes better protection against harmful health consequences and exploitation. Young athletes would, moreover, be less prone to lose out on education and leisure time and they would be enabled to preserve family bonds and other social ties. To what extent such a minimum age would also protect young people against violence and doping is more difficult to say, but it is clear that it would expose them to the risks at a later stage, when they perhaps have a better possibility of protecting themselves. Moreover, it can be argued that introducing a minimum age is not contradictory to, but in accordance with other rights held by the child such as the child’s right not to be discriminated against, the child’s right to progressive emancipation and autonomy as well as his or her right to development, under the guiding principle of the child’s best interests.

It remains to be asked how realistic it is to believe that such a change could take place. It is widely accepted that elite sport is positive for children, that it is undertaken on a voluntary basis and that it is quite opposite to labour. From coaches and sports administrators, it has also been argued that the entire system of elite sport would collapse if legal limitations were imposed on training times.¹¹⁵ Lastly, it should not be underestimated that elite sport to a very high degree is driven by commercial interests, as well as by a media which requires outstanding results.

As long as it is assumed that early organised intensive training is necessary to achieve good results, it is difficult to see that an age limit for engaging in organised intensive training

¹¹³ Committee on the Rights of the Child, ‘The Private Sector as Service Provider’, Day of General Discussion 2002, available at: <http://www.unhcr.ch/html/menu2/6/crc/doc/days/service.pdf>.

¹¹⁴ 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.

¹¹⁵ Donnelly, *supra* n. 15 at 396-7.

will be introduced. However, 100 years ago it was also unthinkable that labour laws aimed at preventing children from working at a too early age would ever exist. Moreover, and as pointed out by Donnelly, ‘[t]here is a growing body of evidence which indicates that specialized intensive training and high-level competition at an early age are neither advantageous nor necessary.’¹¹⁶ In fact in the gymnastics World Championship that took place in October 2006, a 31 year old female gymnast¹¹⁷ was placed third in the vault event and ninth in the overall competition. This reality, combined with an increased knowledge about child rights violation in early organised intensive training and a growing recognition of children’s rights, might still offer hope for changes. To conclude, let us hope that sport in the future can be driven more by the best interests of the child and less by the best interests of parents, coaches and sports organisations.

¹¹⁶ Ibid. at 402.

¹¹⁷ Ms Oksana Chusovitina.