

**“Youth Athlete Protection in regard to
the European Sports Charter and the
Code Of Ethics”**

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degree of Master of Law in the Department of Law,
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Declaration

I declare that "*Youth Athlete Protection in regard to the European Sports Charter and the Code of Ethics* " is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Felix von Bothmer

August 2004

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Bibliography:

Appenzeller, T. (2000) *Youth Sport and the Law – a Guide to Legal Issues*. Durham (North Carolina/ USA): Carolina Academic Press.

Bowen, P. "Screening of Personnel, Prevention of Abuse and Harassment Handbook For Sports Clubs and Associations" www.caaws.ca

Brackenridge, C.H. et al (2004) "The Football Association's Child Protection in Football Research Project 2002-2006: rationale, design and first year results" 9 *Managing Leisure* p. 30-46.

Brackenridge, C.H. (2001) *Spoilsports – Understanding and preventing sexual exploitation in sport*. London and New York: Routledge.

Brackenridge, C. / Fasting, K (2000) "An Analysis of Codes of Practice for Preventing Sexual Harassment and Abuse to Women and Children in Sport" presented at the Council of Europe Conference of Ministers responsible for Sport.

Brackenridge, C.H. (1997) "He owned me basically..." 32 *International Review for the Sociology of Sport* 115-130.

Brackenridge, C.H. (1994) "Fair play or fair games? Child sexual abuse in sport organizations" 29 *International Review for the Sociology of Sport* 287-301.

Brackenridge, C.H. / Kirby, S. (1997) "Playing safe? Assessing the risk of sexual abuse to young elite athletes" 32 *International Review for the Sociology of Sport* 407-418.

Bass, S.L. / Daly, R.M. (2000) "Exercise and osteoporosis" 18 *Sport Health* 4-8.

Cense, M. / Brackenridge, C.H. (2001) "Temporal and developmental risk factors for sexual harassment and abuse in sport" 7 *European Physical Education Review* 61-79.

Cense, M. "Red carte or carte blanche. Risk factors for sexual harassment and sexual abuse in sport, summary, conclusions and recommendations" Arnhem: NOC and NSF.

Chaker, A.-N. (1999) *Study on national sport legislation in Europe*, Strasbourg: Council of Europe Publishing.

Coakley J. (2001) *Sport in Society*. Boston et.al.: Mc Graw Hill.

Council of Europe's Work on Sport 1992-1993. I. Legal and Political Texts. Strasbourg: Council of Europe Publishing.

Doherty, E.M. (1999) "Winning isn't everything... it's the only thing: a critique of teenaged girls' participation in sports" 10 *Marquette Sports Law Journal* 127 - 160.

Findlay, H. / Corbett, R "Developing Policies and Procedures"
www.harassmentinsport.com/Handbook?Sec1ch1.html

Foster, K. (2000) "Can Sport be regulated by Europe: an Analysis of alternative Models" in: Caiger, A / Gardiner, S (Eds.) *Professional Sport in the EU: Regulation and Re-regulation*, The Hague (Netherlands): T.M.C. Asser Press

Gardiner, S. et al (1998) *Sports Law*, London, Sydney : Cavendish Publishing Ltd.

Gibbons, M. (2003) "Liability of Recreational and Competitive Sport Organizations for Sexual Assaults on Children by Administrators, Coaches and Volunteers" 13 *Journal of Legal Aspects of Sport* 185-229.

Gray, A. (1999) "Swimming and child protection: the story so far" 2 *Sports Law Bulletin* 8.

Jaksche, J. (1995) *Die juristische Person im internationalen Vergleich*. München: Beck Verlag.

Le Roux, N. / Camy, J. (1999) "An Essay on the French Sports System" in: Heinemann, K. (Ed.) *Sport Clubs in various European Countries*. Schorndorf.

Lumpkin, A. / Stoll, S.K. / Beller, J.M. (2003) *Sport Ethics*. Boston et. al.: Mc Graw Hill

Malkin, K. / Johnston, L. / Brackenridge, C.H. (2000) "A critical evaluation of training needs for child protection in UK sport" 5 *Managing Leisure* 151-160.

McLeod, M. / Saraga E. (1988) "Challenging the orthodoxy: towards a feminist theory and practice" 28 *Feminist Review* 15-55.

Müller, B. (1992) "Report on European Sports Co-operation. Parliamentary Assembly of 15 September 1992. Strasbourg.

Murphy, S.(1998) *The cheers and the tears; A healthy alternative to the dark side of youth sports today* San Francisco: Jossey Bass Publishers.

Nattiv, A. / Lynch, L. (1994) "The Female Athlete Triad" *Physician & Sportsmedicine* 60- 68.

O'Dwyer, J. (2001) "The Female Triad: a Conversation with Dr. Carole Otis" 19 *Sport Health* 31-33.

Panagiotopoulos, D. (1998) "the Legal Aspects of Sports Ethics and the Protection of Fair Play" XXXV *International Journal of Physical Education* 99-105.

Ryan, J. (1995) *Pretty girls in little boxes: the making and breaking of elite gymnasts and figure skaters*. New York et. al.: Doubleday.

Schumacher, A. (1997) "German collection of national legislation in the field of sport"
Bundesministerium des Inneren (doc. CDDS (97) Inf 39)

Siegel, E. (2000) "When parental interference goes too far: the need for adequate protection of child entertainers and athletes" 18 *Cardozo Arts & Entertainment Law Journal* 427 – 467.

Smith, P. (1997) "When sports aren't fun for kids anymore" 9 *Sports Illustrated for kids* 13.

Steiner, U. (1999) "Kinderhochleistungssport in Deutschland – Thesen zur Verfassungslage" *Sport und Recht* 221-224.

Toftgaard Nielsen, J.(2001) "The forbidden zone" *International Review for the Sociology of Sport* 36 (2): 165-182.

Trokarski, W. et.al. (1998) *EU-Recht und Sport*, Aachen: Meyer & Meyer Verlag.

Tokarski, W. et.al. (2004) *Two Players – One Goal? Sport in the European Union*, Oxford: Meyer & Meyer Ltd.

Vieweg, K. (1990) *Normsetzung und –anwendung deutscher und internationaler Verbände* Berlin: Beck Verlag.

Vieweg, K. (2000) "The legal Autonomy of Sport Organisations and the Restriction of European Law" in: Caiger, A / Gardiner, S (Eds.) *Professional Sport in the EU: Regulation and Re-regulation*, The Hague (Netherlands): T.M.C. Asser Press.

Volkwein-Caplan, K. / Sankaran, G. (2002) *Sexual harassment in sport*, Oxford: Meyer & Meyer Ltd.

Walker, G. (1994) "The Council of Europe and Sport" 35 *Sports Information Bulletin* 69-75.

Walker, W.-D. (ed.) (2001) *Kinder- und Jugendschutz im Sport* Stuttgart et al:
Richard Boorberg Verlag.

Wegener, J. (1992) *Sports in the Member States of the European Community.*
Netherlands Sports Confederation.

Websites:

www.legifrance.gouv.fr

www.caawas.ca

www.ausport.au

www.silent-edge.org

www.hockeycanada.ca

www.childsafe.co.uk

www.uksport.gov.uk/images/uploaded/msetg11_ETHICAL_CONSIDERATIONS.pdf

www.harassmentinsport.com/coaches/Codethic.html

www.tenniseurope.org/PDF/women?AEResearch.PDF

www.ue.eu.int

I. Introduction

For many youth athletes¹ sport is an enjoyable activity but not for everyone. Some will have their lives destroyed during those years when they are active in sport. Prevention of the abuse that occurs against children and young people is high on the political agenda in many countries in Europe. Until recently, however, this issue has not received much attention in the sporting arena, probably because sport has been associated by most people with fair play, ethical values and high moral standards. In addition, many sport organisations regarded sport as being on the site of political neutrality. Consequently, they have been slow to embrace the principles of equal rights which are enshrined in other public organisations.

In this paper, the various forms of abuse and maltreatment that may occur to youth athletes during their participation in sporting activities are demonstrated while focusing on the one side on sexually and on the other side on commercially motivated abuse of the youth athletes. After pointing out the most prevalent and disturbing consequences of youth athletes abuse in sport, the paper deals with the obligation to protect the young athletes. In this context, the role of the Council of Europe and the responsibility of its member states as well as the parents of the young athletes are analysed. The focus however, will be on the responsibility of the sport organisations, who hold control over the sports movement, to implement policies and procedures. At the end, different measures which may help minimising the abuse of youth athletes are introduced. However, it is clear that not the implementation of a single measure alone may offer an effective protection of the youth athletes but an implementation of a combination of various measures on different levels may enhance the possibility of success in fighting the abuse and harassment of youth athletes in sport.

II. Youth athletes abuse in Sports

Sports provides many positive opportunities for young people to participate individually or more commonly in groups. This is generally at a recreational level, however increasingly young people are taking part in highly competitive and

¹ For the purpose of this paper, when referring to 'young athlete' 'youth athlete' all individuals considered as minors under the national legislation of each member state of the Council of Europe is covered, according to Article 2 of the Recommendation No. R (95) 16 of the Committee of Ministers to Member States on young People and Sport.

sometimes elite level sport. Children are particularly encouraged to participate in organised youth sports programs because these programs are thought to promote such fundamental values as character, team-spirit, determination and commitment.² But there is an additional dark side of youth sports: sexually abused or harassed young athletes, burnt-out teenage athletes, exploited young athletes, troubled families, young athletes with eating disorders, abusive coaches and officials – all are indicators of various forms of abuse and a deep and continuing problem in youth sports.

1) Sexual harassment/ abuse

One of the most serious violations of the trust which is put in the youth sports system by society is the sexual abuse and harassment of young athletes. Given to the high incidence of child sexual assaults by persons known to the victim, administrators of sport should be aware that their organisations may provide both opportunity and means for child molesters to become acquainted with and assault their victims.³ For years, child molesters have used sport organisations to meet families and molest male and female youth athletes. This is a local, national, and international phenomenon that received world-wide attention on some occasions already.⁴ Several cases of sexual misconduct by sports coaches have challenged long held beliefs in the educational value of sport⁵, i.e. in 1995 the swimming coach of the British team at the 1988 Olympics in Seoul, Paul Hickson, was sentenced for 17 years after being found guilty of two rapes, eleven indecent assaults and two other serious sexual offences⁶; Brett Sutton, appointed national triathlon coach of Australia in 1997, was suspended from the job in October 1997 after being charged with sexually assaulting a 12-year old girl he was coaching between 1985 and 1987; the prominent case of the suicide of the Australian Olympic Bronze medallist of the 1992 Games in

² Murphy, S. "The cheers and the fears" (1998) p. 9.

³ Gibbons, M. (2003) "Liability of Recreation and Competitive Sport Organizations for Sexual Assaults on Children by Administrators, Coaches and Volunteers" 13 *Journal of Legal Aspects of Sport* p. 186.

⁴ Appenzeller, T. (2000) "Youth Sport and the Law – a Guide to Legal Issues" p. 151.

⁵ Cense, M./ Brackenridge, C. "Temporal and developmental risk factors for sexual harassment and abuse in sport" (2001) 7 *European Physical Education Review* p. 61.

⁶ Gardiner, S. et al (1998) 'Sports Law' op. cit. p. 152; Gray, A. (1999) 'Swimming and child protection: the story so far' 2 *Sports Law Bulletin* p. 8.

Barcelona and kayaking coach, Steve Woods, who had a sexual relationship with his 15-year old athlete Jacqui Mengler.⁷

There is no universally accepted definition of sexual harassment. Even though such behaviour may be defined objectively it is important to recognize that it is experienced subjectively thus the personal and psychological impact of the same behaviour may be vastly different depending on the individual child athlete's background and perception. Various sport researchers, from several national backgrounds, adopt different definitions as it is difficult to define the difference between sexual harassment and abuse, not only because of the difference in individual circumstances, but also because of the interpretation varies with culture.⁸

Celia Brackenridge, who produced a significant body of work concerning the causes of abuse in sport, separates sexual harassment and abuse, but defines them as the middle and the extreme points along a continuum toward sexual abuse which starting point marks the general institutional sexual discrimination.⁹ Whereas sexual harassment always consists of some degree of unwanted sexual attention that oversteps the critical boundary of the individual's personal space, it may include:

- written or verbal abuse or threats
- physical contact, fondling, pinching or kissing
- bullying based on sex
- taunts about body, dress or sexuality
- intimidating sexual remarks, propositions, invitations or familiarity
- sexually oriented comments or jokes
- sexually suggestive objects, pictures, video tapes or audio recordings
- flashing or exposing body parts
- watching while athletes get changed or shower...

regardless whether the sexual harassment happens on a conscious or unconscious level.

⁷ Burke, M. 'Obeying until it hurts: coach-athlete relationships' (2001) XXVIII *Journal of the Philosophy of Sport* p. 227.

⁸ Toftegaard Nielsen, J. (2001) 'The Forbidden Zone' 36 *International Review for the Sociology of Sport* p. 167.

⁹ Brackenridge, C.H. (2001) "Spoilsports" p. 32-33; Brackenridge, C.H. 'He owned me basically...' (1997) 32 *International Review for the Sociology of Sport* p. 116-117.

Sexual abuse, then, constitutes a more extreme behaviour and involves:

- any anal or vaginal penetration
- sexual assault
- physical/sexual violence
- forced sexual activity
- indecent exposure
- groping

But sexual abuse in sport is not at all automatically a coerced collaboration in sexual acts. While some risk factors of sexual abuse of children in sports can be identified with risk factors of sexual abuse in society more generally, such as the victim's young age, a low self-esteem and high vulnerability of the victim, others are thought to be specific to the culture of sport.¹⁰

Particularly young elite-level athletes are frequently isolated from normal peer group friendships and their only social contacts are those made through sport itself. The perceived and actual separation from 'normal' life and the exclusion of other routine experiences of growing up increases the reliance, that such elite-level athletes place on support systems inside sport.

But in addition, in sports the coach is afforded the respect of authority and is in a position of almost unquestioned power over the athletes. At the same time, he has not rarely a hold over the parents, who want success for their child and maybe financial benefits for themselves, too and over the administrators, who need the success in their sport for it to flourish. This power is sustained because the coach has the skills and abilities to develop, enhance and maintain success and a strong reputation for the sport. To this extend, then, the coach has a powerful grip over the organization which employs him. This is demonstrated in several statements from athletes who claimed that their organization knew of the coach's behaviour but refused to react as the coach was needed to produce winning results.¹¹ In such a scenario, the athlete becomes an expendable commodity and may therefore prefer to remain silent rather than risk exclusion from sport.

¹⁰ Cense, M. / Brackenridge, C.H. (2001) op.cit. p. 64.

¹¹ see statements in Brackenridge, C.H. (1997) op.cit. p. 120.

In sum, where young athletes already suffer already low self-esteem, then the conditions of social and emotional isolation that may confront them during the preparation for elite sport may make them an easy target for the abuser. It is known that perpetrators in sport are most likely to target lonely children with low self-esteem, weak social contact, poor family bonding or children who generally seek physical and emotional attention.¹² Targeting this group of children, the coach easily becomes an important role model or 'father figure' in the athlete's life. The athlete's fear of losing this contact may ensure the coach the desired secrecy, minimising the risk of them being caught. Due to the athletes' lower age and experience background they do not realise what is going on in time to react, as they are blinded by the knowledge, skill, position and power of the coach. This process of influencing a young athlete by a mixture of discipline and affection is called 'grooming process' within the literature of child abuse¹³.

To Michael Burke, the case of Jacqui Mengler "mirrored the profile of the so-called 'consensually' abused child: both trusting and guilty".¹⁴ Mengler characterized her sporting situation as "like a cult", where her kayaking coach Steve Woods took complete responsibility for the decisions made with respect to her role as an athlete. She describes Woods as an charismatic figure and attractive and personable coach who was devoted to producing excellent performance in his athletes.¹⁵ Also he was the person who, in Mengler's eyes could make her dream come true, a participation at the Olympic Games. To achieve that dream, she trained twice a day, six days a week.

In addition, it may be argued that the fact that the body is exposed so much in sport is a risk factor which does not exist in other settings. For Mengler, her coach had to know her body intimately in order to monitor how his training regimes were working. Mengler was often in a situation of undress, where her body was exposed to others. So, Mengler's socialisation produced in her beliefs that allowed her coach to establish an intimate physical relationship, regardless whether the relationship was sexual. But the physical intimacy which was apparently necessary in coaching

¹² Brackenridge, C.H. (2001) op. cit. p. 35-38.

¹³ Toftgaard Nielsen, J. (2001) op.cit. p. 169.

¹⁴ Burke, M. (2001) op. cit. p. 232.

¹⁵ Burke, M. (2001) op. cit. p. 231.

Mengler was rarely questioned in sport until it was revealed that a sexual relationship between coach and athlete had taken place.¹⁶

In addition, following from Brackenridge¹⁷ Woods and many other coach-abusers, seem to display many of the characteristics of predatory paedophiles: they seek out and enjoy employment opportunities that give them access to children. They communicate well with children as they groom in children a combined sense of trust, guilt and fantasy.¹⁸ So Mengler reported that while her relationship with Steve Woods may have been considered wrong in general society, within their little world it felt alright. And because the outside world would never understand their bond, Woods told her to deny if questioned.¹⁹

2. Physical abuse

Another manifestation of child abuse in sport is physical and emotional harm done intentionally to the young athletes. While sexual abuse and harassment is usually due to the abuser's unnatural predisposition, physical and emotional abuse in sports are often associated with the desire to achieve and to succeed.

Physical abuse generally occurs when a person in position of power and trust purposefully injures or threatens to injure young athlete.²⁰ Naturally this involves²¹:

- use of physical force with ill intention no matter whether the athlete is physically hurt
- threatening to use unreasonable force
- encouraging or allowing someone to physically assault a young athlete

But physical abuse of a young athlete also appears in much more subtle forms as the chronic inattention to or violation of the basic necessities of life including:

- lack of medical care and/or doping
- inadequate nutrition, clothing and equipment

¹⁶ Burke, M. (2001) op. cit. p. 232.

¹⁷ Brackenridge, C.H. (1994) 'Fair play or fair game? Child sexual abuse in sport organizations.' 29 *International Review for the Sociology of Sport* 292; Brackenridge, C.H. (1997) p. 126-127.

¹⁸ McLeod, M. / Saraga, E. (1988) "Challenging the orthodoxy: towards a feminist theory and practice" 28 *Feminist Review* p. 18

¹⁹ Burke M. (2001) op. cit. p. 232.

²⁰ Woodhouse, P. (2000) "Abuse and neglect" www.harassmentinsport.com/Handbook/Sec1ch3.html

²¹ Woodhouse, P. (2000) op. cit.

- inadequate shelter and/or unsafe environment
- over-zealous exercise and/or inadequate rest

2.1. overbearing parents and coaches

There is an obvious trend toward children being younger and younger when they begin to specialize in their Olympic sport. Researchers have found out that it takes about ten years of dedicated practice for athletes to become an expert in their sport.²² Considering the young age of many gymnasts in the women's artistic gymnastics competition at the most recent Olympic Games who were age 16, it is easy to figure out what age these Olympic gymnasts are beginning to practice in order to gain the necessary experience to become a world class athlete by the age of fifteen. But when young children decide to pursue a career as an elite athlete, they will likely face the loss of a normal, healthy childhood. The young athletes train incessantly and forgo a daily education and social life.²³ It would seem that the only children who would choose a life of extreme athleticism and absolute, unquestioned commitment are those so devoted to their sport that they are willing to make these sacrifices. However, many top level child athletes have not necessarily chosen this career for themselves. It is unlikely that seven-year-olds make such decisions, even ten-year-olds may be still too young, yet by this age many gymnasts, for example, are already training at a elite level. Mostly because their parents had decided that their child is meant to be the next generation's world class athlete not rarely supported by a self-promoting coach.

The case of American gymnast and gold medallist at the 1996 Summer Olympics in Atlanta Dominique Moceanu is a sad but clear example of an over-demanding and abusive father. At the age of six month, before Moceanu could even walk, her father Dumitru Moceanu encouraged Dominique to swing from a garden clothesline.²⁴ At the age of three, she began gymnastics lessons. And when Moceanu's father noticed the abilities of his daughter, he contacted Bela Karolyi and tried to enrol Dominique in Karolyi's gym but he refused until Dominique was at least ten years old.²⁵ By 1996,

²² Murphy, S. (1998) op. cit. p. 16.

²³ Ryan, J 'Little girls in pretty boxes' (1995) p. 7.

²⁴ Ryan, J. (1995) op. cit. p. 197 – 205.

²⁵ Bela Karolyi rose to fame as the coach of the 1976 Romanian gymnastics team, which included gold medallist Nadia Comaneci. In 1981 he arrived in the United States and immediately transformed the sport in the USA to resemble the system in the East European Countries. See Ryan J. (1995) op. cit. p. 197–205.

Dumitru Moceanu would have stopped working, choosing instead to live completely off the money of his very successful daughter. In addition, he spent nearly \$ 4,000,000 of Dominique's trust fund to build a 70,000 square foot gym without her permission.²⁶

When the time had come Dominique Moceanu was allowed to experience Karolyi's coaching approach which used to be based on militaristic control before his defection to the United States.²⁷ His gymnasts went through an excessive training program enriched by rigorous conditioning and strengthening exercises. They practiced forty-six hours a week, Sundays off, three days off at Christmas, another on the Fourth of July. Parents paid hundreds of dollars to Karolyi every month. And to protect their investments, they quickly learnt to keep their mouths shut when Karolyi or his assistant Rick Newman insulted their daughters or sent them out of the gym for crying in pain.²⁸ Also,

he rushed the gymnasts back in the gym sooner than doctors recommended, rationalizing that the doctors were simply concerned with (legal) liability...Kristy Phillips, for instance, trained for three years with a fractured wrist as Karolyi did not consider the injury as serious enough to warrant a full rest... Similarly before the 1991 World Championships a Karolyi doctor diagnosed Kim Zmeskal's wrist injury pain as a sprain, leading Karolyi to suggest on national television that the injury was more in Zmeskal's head than in her wrist. It turned out that Zmeskal's problem was a fracture of the distal radius, which is a common injury amongst elite gymnast but one with which Karolyi's doctor was apparently unfamiliar."²⁹

Injuries just had no place in Karolyi's carefully designed formula for producing a star every four years. Therefore, before and during training the athletes in Karolyi's gym took numerous painkillers as physical pain due to insufficient treatment of injuries were omnipresent. Erica Stokes and Elizabeth Traylor took about five to eight painkillers every day during workouts, both Karolyi athletes.³⁰ By then; Elizabeth was eleven years old. Such high doses of painkillers can cause bleeding in the lining of

²⁶ Siegel, E. (2000) "When parental interference goes too far: the need for adequate protection of child entertainers and athletes" 18 *Cardozo Arts & Entertainment Law Journal* p. 440.

²⁷ Ryan, J. (1995) op. cit. p.198-199.

²⁸ Ryan, J. (1995) op. cit. p. 21.

²⁹ Ryan, J. (1995) op. cit. p. 209.

³⁰ Ryan, J. (1995) op. cit. p. 39.

the stomach and lead to kidney diseases.³¹ His coaching methods have become popular because of his success, and unfortunately many coaches have adopted his style.³²

In 1996 Newsweek³³ reported on (then) fourteen year old Dominique Moceanu and described her daily program as follows: "She arrives at the gym from her nearby home by 7:30 for a session that runs more than three hours. She goes home for lunch and taped TV lessons, then does physical therapy, usually massage or ultrasound, for an hour. Dominique is back at the gym by 4 p.m. for another four-hour workout. She then darts home to cram dinner, homework, chores and a little computer play or TV into two hours." Also, Dominique Moceanu was quoted saying that she were not losing her childhood which as she could have a childhood the rest of her life.

However, in 1998 the court declared her independent from her parents as a result of their abusive behaviour. Moceanu has spoken of how much she missed due to her rigorous schedule and how she wished that she was able to spend more time with her friends and less time in the gym. She complains that all of her experiences and conversations with her parents revolved around issues concerning her career. "Her father even admits that he lamented the gymnastics career he never had, and that he vowed that his first child would be a gymnast."³⁴ Moceanu's upbringing exemplifies that she was never given a choice in deciding her life's direction.

3. Psychological abuse

The obvious manifestation of child abuse in sport is clearly sexual and physical harm done to the young athlete. But these forms of abuse are usually preceded or accompanied by a far more subtle form of psychological abuse that can vary from verbal abuse to any form of emotional abuse. Sexual and physical abuse can therefore not be considered without taking cognisance of all other forms of abuse.

³¹ Ryan, J. (1995) op. cit. p. 40.

³² Ryan, J. (1995) op. cit. p. 205.

³³ Starr, M. (1996) "On the beam" 127 Newsweek p. 78.

³⁴ Siegel, E. (2000) 18 *Cardozo Arts & Entertainment Law Journal* p. 459.

Psychological abuse has been defined as a chronic attack by a person in a position of power or trust on a child's development of self and social competence, a pattern of psychological destructive behaviour.³⁵ Psychological abuse involves among others.³⁶

- Isolating, i.e. unreasonable separation from others or exclusion from participation
- Terrorizing, i.e. causing a state of chronic, extreme fear or coerce an athlete by intimidation
- Rejecting, i.e. refusing to acknowledge or support the child's worth or the legitimacy of the child's needs
- Exploiting, i.e. making profit out of the child's abilities or treating the child as one's property
- Ignoring, i.e. failing to provide sensitive, responsive care-giving
- Overtaxing, i.e. overburden the child with unrealistic pressure to succeed
- Insulting, i.e. swearing at the young athlete or making wounding comments on athlete's weight
- Demoralizing, i.e. humiliating the young athlete in front of others due to poor performance

Again, Bela Karolyi's training approach gives clear evidence of psychological abuse beside the physical harm which is done to his athletes. He built his program around the girl with the most talent. But Karolyi constructed a training environment that always kept his star athlete questioning her worth. In selecting five other gymnasts to train with her, he carefully chose each to play a specific role. Perhaps the most unrewarding role was that of the secondary star since she was chosen by Karolyi only to be just talented enough to present a constant threat to the star's status. The remaining gymnasts of the group were chosen not only for their talents but also for their personality traits. Karolyi would chose one of them as his pet. He would do this not because of the chosen girl's gymnastic talents but of the qualities she possessed he wanted to reinforce in his star, i.e. hard work, discipline and stoicism. Karolyi

³⁵ Doherty, E. (1999) "Winning isn't everything... it's the only thing" 10 *Marquette Sports Law Journal* p. 129.

³⁶ Woodhouse, P. (2000) op. cit. p.3.

would praise her lavishly and hold her up as an example, angering the more talented gymnasts as he intended.³⁷

The competition in Karolyi's gym was intense by design. The day after each competition, Karolyi's wife, Martha, also a coach, would stretch the girls in the order in which they placed in the competition. This was "a subtle but clear privilege in a place where privileges were doled out by the teaspoon".³⁸ The message was clear: you are worth only as much as your latest ranking. Karolyi wanted the girls to battle each other every day in the gym. If one girl did not perform a routine to his liking, he often made one of her team mates do extra work, building a climate of resentment among them where only the strongest would survive.

So, Karolyi demonstrates the profile of an abusive, self-promoting coach who combines excessive training and psychological manipulation of the young athletes to push them to their, but also his, maximum success. Whether the young athlete suffers from injuries or physical burn-out due to extreme work-out or from social isolation and emotional burn-out is irrelevant as long as the sporting success is not endangered. Unfortunately, many abuses of young athletes by coaches are condoned by parents, administrators and even by the athletes themselves since various forms of child abuse in sport as extreme training and dietary regimes, for example, are often seen as part of the success.³⁹

However, it is important to note that it is not just very successful athletes who run the risk of being exploited. For every young athlete in every sport who becomes a success story, there are scores of other young athletes who give an equal effort and make equally difficult sacrifices without ever reaching the top level of their sport. And surely, the danger of emotional and physical abuse in form of a success-driven environment and militaristic training regimes on recreational level is not as high as on elite athlete level, still all forms of abuses may occur.

III. Consequences of youth athletes abuse in sport

The consequences of youth athletes abuse of any form are very severe indeed to the individual athlete. The damages to the young athletes range from simple bruises to

³⁷ Ryan, J.(1995) op. cit. p. 211.

³⁸ Ryan, J.(1995) op. cit. p. 22.

³⁹ Brackenridge, C.H. (1994) op. cit. p. 294.

fatal physical injuries or severe psychological damages such as suicidal tendencies, for example, depending on the form and motivation of abuse. Of course, sexual abuse or harassment and many forms of physical abuse will be accompanied by psychological abuse whether this is intended by the abuser or not. But also, a young athlete might get psychological and emotional abuse without being physically hurt directly. But whatever form of abuse might be in question, it will drive the youth off the sport they previously enjoyed playing so much.

1. Sexual abuse/ harassment

Sexual abuse and harassment have a devastating influence on the child's personality, it includes physical and emotional harm, while the psychological damage caused might be the most severe. The symptoms and signs may be "depression that interferes with eating and sleeping patterns as well as normal functioning, undefined dissatisfaction with life, sense of hopelessness and vulnerability, loss of self-confidence with decline in academic performance, feelings of isolation, fear and anxiety, inability to maintain personal relationships, and alcohol and drug dependency".⁴⁰ Furthermore the abuse regularly has negative impacts on family, friends and the sport. But not rarely, the victims of sexual abuse and harassment feel ambivalence about the abusive coach and some even express guilt as they feel they may have hurt him. This reluctance to blame the sexually abusive coach is an indicator of the effectiveness of the grooming process and perhaps also a reflection of the genuine affection which the athlete has built up for the coach previously. Indeed, it is one of the great contradictions of sexual abuse in sport that the abused athlete sometimes feels lasting closeness to the abusive coach.⁴¹

Since the aim of the talented young athletes is to succeed in their chosen sport, they feel virtually powerless to challenge the one individual who can help them to achieve the success they hope for. For this reason, it is suggested that the athletes with potential talent are at higher risk of being targeted for sexual abuse than either the recreational athlete, who can leave the sport or the club to find another, or the already successful athlete, who is not longer so dependent upon the coach. For the

⁴⁰ Volkwein-Caplan, K. / Sankaran, G. (2002) "Sexual harassment in sport" p. 66.

⁴¹ Brackenridge, C.H. (1997) op. cit. p. 123.

athletes on the brink of top level success the stakes are highest of all.⁴² Based on her study in the Netherlands, Marianne Cence⁴³ writes that the risk factors in top level sport are different from those in recreational sport. The risk factors for adult elite athletes are much like the young athletes, but for recreational sport she found that the power relationship had very little to do with sport-related factors. It could more be compared with sexual abuse and sexual harassment in other sectors of society and strongly depends on society's and club's culture.

2. Physical and psychological abuse

In contrast to sexual abuse and harassment which is usually linked to the ill predisposition of the abuser, physical and psychological abuse are rather associated with the desire to succeed. Whereas physical and psychological abuse occur on both, recreational level and elite level, the impacts of physical and psychological abuse on high-level sport are the most severe for the individual athlete.

Without any doubt, there are not too few abusive coaches involved in recreational sport – as well as many abusive officials and parents who participate voluntarily – but their abusive behaviour is mainly due to the coach's lack of competence, may it be on sporting or educational issues, conscious or unconscious. Nevertheless, any form of abuse in recreational sport contributes to the phenomenon of young athletes choosing to drop out of sport.⁴⁴ The two examples given below of the various consequences of abuse are usually associated with athletes involved on high-level sport but it would be wrong to assume that these consequences do not occur in the environment where sport is a recreational activity.

2.1. Burnout

Sport burnout refers to those athletes who demonstrate outstanding skills or potential in their sport already at an early age but drop out of sport before their actual career is at its peak. This may occur for physical, psychological or social reasons.

⁴² Brackenridge, C.H. / Kirby, S. (1997) "Playing safe? Assessing the risk of sexual abuse to young elite athletes" 32 *International Review for the Sociology of Sport* p. 412.

⁴³ Cence, M. "Red carte or carte blanche. Risk factors for sexual harassment and sexual abuse in sport" p. 74.

⁴⁴ Smith, P. "When sports aren't fun for kids anymore" (1997) 9 *Sports Illustrated for kids* p. 13.

One of the most infamous cases of burnout in sports happened in the world of female professional tennis and involved the American Jennifer Capriati. She was an highly-publicised and promising young tennis talent when she turned professional a month before her fourteenth birthday and she was the youngest player who won a match at Wimbledon. In 1992 Capriati won the Olympic gold medal, but less than two years later she was charged with possession of marijuana and later entered a drug rehabilitation program as ordered by the court. She was quoted saying that she was not happy with herself, her tennis, her life, her coach, her parents and her friends.⁴⁵

2.1.1. Physical burnout

Physical burnout includes the impacts of overuse and extreme training at an early age. The overuse syndrome did not occur in youth sports until sport programs began to mimic professional models, including an overemphasis on winning⁴⁶. Unfortunately, injuries from overuse before maturation due to extreme work-outs for a long period plague many young athletes who start their competition careers early. Many aspiring superstars as youth and adolescents have had their dreams shattered by injuries related to overuse.⁴⁷ Young athletes undertaking prolonged and intensive training programs during their growth spurt become particularly susceptible to skeletal overuse injuries. Clearly the risk of injury increases with longer practice time, the degree of difficulty of the routines and the age related vulnerability of the skeletal system.

A 1990 study of Swedish male gymnasts, for example, found they had as many degenerated discs in their spines as the average sixty-five-year old man, leading the researchers to suspect that the spinal damage had occurred during the young athletes' growth spurts.⁴⁸ The muscles of children can develop and strengthen like those of adults, allowing them to perform difficult manoeuvres, but their bones do not keep pace. These findings are even more dire when applied to female gymnasts. Unlike their male counterparts, most female gymnasts reach their peak when they are still children, so the pounding on their still forming skeletal structures can have long term consequences. Some permanently damage their joints and backs. Some

⁴⁵ Doherty, E.M. (1999) op. cit. p. 150.

⁴⁶ Lumpkin, A. / Stoll, S.K. / Beller, J.M. (2003) "Sport Ethics" p. 121.

⁴⁷ Lumpkin, A / Stoll, S.K. / Beller, J.M. (2003) op. cit. p. 122.

⁴⁸ Ryan, J. (1995) op. cit. p. 43.

don't grow to full height. Researchers have seen growth plates in gymnast's arms close up early because of repeated pounding⁴⁹.

So, whenever a sport related goal becomes too important, there is the danger that athlete will train although being injured, sick or fatigued. Thus, the young athletes push (or are pushed by coaches or parents, consciously or not) themselves and their bodies to their physical limits, often causing significant bodily injuries. Eventually, the body refuses to tolerate extreme workouts and breaks down temporarily or even permanently.

2.1.2. Psychological burnout

Psychological burnout may occur when, sometimes unconsciously, extreme pressure is placed upon talented young athletes by parents, coaches, fans, and even the media. Signs of psychological burn-out include agitation, such as sleep disturbances, nausea headaches and muscle tension, depression, such as lack of energy, sadness and particularly loss of interest in competition.⁵⁰

For some, pressure is a challenge to be met, something that energizes and emboldens. It can bring out the athletes' best because they feel most alive when they are risking everything and pushing themselves to the edge of their capabilities. But for most, pressure is an enemy to be beaten back, draining rather than invigorating. To lose a competition is to lose the best part of themselves, the part their parents and coaches reward so lavishly with praise.

The young athletes who train eight hours a day at a sport cannot always distinguish where their individual personality start and the sport ends. So, the athletes' worth as children is gauged on their performance as athletes and the fear of failure is the fear of losing all that is worthy in them. It has been suggested that psychological burnout can be avoided if those involved in the athletes' lives and sporting careers eliminate the stress to win.⁵¹

⁴⁹ Ryan, J.(1995) op. cit. p. 43.

⁵⁰ Doherty, E.M. (1999) op. cit. p. 132.

⁵¹ Doherty, E.M. (1999) op. cit. p. 133.

2.1.3. Social burnout

Usually, sport plays a minor role in a young person's life. Weekly practices and competitions consume few hours and seldom detract from schoolwork, family routines and just being a normal child. This all changes whenever children's skills elevate them into the elite leagues or identify them as potentially world class.

Often the young star athletes who are ripe for burnout have not been allowed to lead a normal childhood or adolescent existence. Their education and social lives are either not existing or are far removed from those of typical teenagers. Many young athletes have to squeeze schoolwork and family life between their training sessions as their lives only revolve around their training and competitive schedules.⁵² They even might have to leave home or the family must move in order to take advantage of top-level coaching.⁵³ Sport skill development at a high-performance level leaves little time for normal friendship and youthful activities as well as ordinary childhood experiences.⁵⁴

Thus, social burnout often occurs when young athletes feel that they lost control over their lives and feel that they cannot explore and develop identities apart from sport. This combination of having no control and having an one-dimensional identity is associated by the young athletes with high levels of stress and a decline in the amount of fun they formerly used to have when doing their sport.⁵⁵

2.2. Eating disorder / Female Triad

As result of the psychological abuse in form of extreme pressure placed on the young athletes by their coaches and parents, the desire to win and to please is ingrained in the athlete's psyche. Especially young females who compete on high level sport tend to be extremely obedient and disciplined and strive for adult approval. Thus, very often the young athletes push their bodies beyond its physical limits in an effort to satisfy the high expectation of the abuser. This physical abuse by the athlete on her own body has been identified as the Female Triad and is associated with substantial

⁵² Lumpkin, A. / Stoll, S.K. / Beller, J.M. (2003) op. cit. p. 126.

⁵³ The American gymnast Julissa Gomez, for example, first moved, together with her family, from San Antonio to Houston to train with Karolyi. Later the family broke up in order to enable Julissa to join the gym of Al Fong in Blue Springs, Missouri. See. Ryan, J.(1995) op. cit. p. 19-20.

⁵⁴ Doherty, E.M. (1999) op. cit. p. 134.

⁵⁵ Coakly, J. (2001) "Sport in Society" p. 88, 89.

morbidity and mortality. It consists of three disorders closely connected with each other: disordered eating, amenorrhoea and osteoporosis.⁵⁶

Disordered eating is normally the start of a vicious circle setting in as a result of the athletes belief that her performance has deteriorated because of her weight or that her performance will be enhanced if she weights less. This belief is normally the result of either indiscreet comments made by a coach or a judge or observations made by the athlete herself.

Disordered eating is defined as the spectrum of abnormal eating behaviour, with poor nutritional habits on one end and anorexia and bulimia at the other.⁵⁷ While anorexia can be described as a self-induced starvation characterized by excessive weight loss and an intense fear of becoming fat, bulimia on the other hand can be seen as a fear of food characterized by fast and repeating consumption of a large amount of food which follows a self-induced vomiting.

The second part of the Female Triad is amenorrhoea, which can be defined as no menstrual periods for six consecutive months or one period or less in a year. While primary amenorrhoea is the failure to start menstruating secondary amenorrhoea describes the interruption of menstruating once it has begun.⁵⁸ The form of amenorrhoea which is mostly prevalent in sport is the secondary amenorrhoea and also mostly a symptom of disordered eating or, if not as a result of disordered eating as such, of low body fat as a result of extreme physical work-outs or exaggerated pre-menarchal practice.

The third part of the Female Triad is osteoporosis and is defined as a "group of diseases typified by the reduction in bone-mass due to bone resorption out pacing bone disposition. "The bone becomes more porous, brittle, and inclined for fracture and"⁵⁹ and is often manifested by multiple stress fractures. Especially females who suffer from amenorrhoea are vulnerable to osteoporosis as it is enhanced by a decreased oestrogen level.⁶⁰

An example of the typical patient is given by Doherty⁶¹:

⁵⁶ O'Dwyer, J. (2001) "The Female Triad: a Conversation with Dr. Carole Otis" 19 *Sport Health* p. 31-33.

⁵⁷ Bass, S.L. / Daly, R.M. (2000) "Exercise and osteoporosis" 18 *Sport Health* p. 4-8.

⁵⁸ Doherty, E.M.(1999) op. cit. p. 146-147.

⁵⁹ Doherty, E.M. (1999) op. cit. p. 147.

⁶⁰ Bass, S.L. / Daly, R.M. (2000) "Exercise and osteoporosis" 18 *Sport Health* p. 4-8.

⁶¹ Doherty, E.M. (1999) op. cit. p. 138-139.

The young athlete is usually driven to excel in her sport and is obsessed with her appearance and with being thin, believing that performance is linked to leanness. She then may begin by restricting food consumption to lose weight and improve the sporting performance. Her basal metabolic rate may be decreased. If she binges on foods she may gain weight, leading to a vicious circle of bingeing, purging, and restricting her food consumption again. Mostly, these behaviours are not discussed with others and are often denied.

The athlete later may develop amenorrhoea and spend months or even years without having a menstruation. Decreased oestrogen levels associated with her amenorrhoea may lead to premature osteoporosis. Untreated the athlete may end up in her twenties having the bone density of a woman in her fifties. With her decreased bone density, she may be at a higher risk for stress fractures and other pathologic fractures. The athlete may also have a multitude of medical and psychological problems associated with her disordered eating that can persist through her adult life if not treated early on.

IV. Obligation to intervene

Obviously, with such woeful problems affecting young athletes participating either on recreational or elite level of sport, necessary efforts have to be made to improve the protection of youth athletes. Involvement and participation in sport among children and young people takes place within a wider social environment. The potential benefits to society and to the individual from sport will only be maximized if youth athletes protection moves from the peripheral position it currently occupies to centre stage. Youth athletes protection must be given the highest priority by all those, who directly or indirectly, influence and promote sporting experience for children and young people. These include:

- Governments
- Sports and Sports-related organisations
- Individuals influencing youth's involvement in sport

1. European Governments

Apart from most governments' own constitutional obligation to provide its citizens, including the children and young people, with the maximum possible protection against physical and mental harm, they agreed on a remarkable convention. The human rights of children and the standards to which all governments must aspire in realising these rights for all children, are most concisely and fully articulated in one international human rights treaty: the Convention on the Rights of the Child. The Convention is the most universally accepted human rights instrument in history – every country in the world except two have ratified it⁶² – and therefore uniquely places children centre-stage in the quest for the universal application of human rights. By ratifying this instrument, national governments have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community.

Built on varied legal systems and cultural traditions, the Convention on the Rights of the Child is a universally agreed set of non-negotiable standards and obligations. It spells out the basic human rights that children everywhere – without discrimination – have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation, and to participate fully in family, cultural and social life. Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care, education and legal, civil and social services. These standards are benchmarks against which progress can be assessed. States that are party to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child. Clearly, the standards set forth by the Convention of the Rights of the Child do not exclude a child's sport participation but have to be applied equally to sport as to other areas.

However, for the Member States of the European Community there is an additional obligation to influence and regulate its sport development and structures. Sport is a main social movement in Europe. It is of special importance as an element that brings people together. The interest and willingness to cross national boundaries is more noticeable in sport than in many other areas of society. This means that sport has often been several steps ahead of political co-operation in the course of the

⁶² The United States and Somalia have not ratified the Convention but have signalled their intention to ratify by formally sign the Convention, see: www.unicef.org/crc/crc.htm

European integration process. This has resulted in a complex system of European organizations in sport. Apart from political mergers namely the European Union⁶³ and the Council of Europe that are part of the European sport system, there exist a large number of institutions of organized sport at pan-European level. They represent European Sports” in institutional terms.⁶⁴

1.1. Council of Europe

The Council of Europe, which is also referred to as the EU summit, is responsible for defining the general direction of Union policy and, as stated in the EU Treaty of Amsterdam, “the impetus required for its development”⁶⁵. It comprises the Heads of State and Government of the Member States and the President of the European Commission. The Foreign Ministers of the Member States and another member of the Commission take part in meetings of the Council of Europe two to three times a year since general guidelines within the framework of the European Union’s Common Foreign and Security Policy are laid down by the Council of Europe.

The Council of Europe is not a body of the European Union, yet it had a great impact on the field of European sports. The statutes of the Council of Europe provide for two bodies: the Committee of Ministers and the Parliamentary Assembly.⁶⁶ Sport was incorporated into the institutional framework of the Council of Europe in 1976 when the Committee for the Development of Sport was set up. The Committee for the Development of Sport, which consists of national governmental and non-governmental officials, is responsible for the European Conference of Sports Ministers that has been held around every three years since 1975. In addition, informal meetings are held by the Sports Ministers at irregular intervals.⁶⁷

The Committee of Ministers represents the European Council’s executive body and decides on its policies. The Foreign Ministers of the Member States make up the

⁶³ The institutional framework of the European Union is complex and has continually been adapted to the changing needs of a Europe that is in the midst of an integration process. The most important bodies and committees of the European Union are the Council of Ministers (or Council for short), the European Commission, the European Parliament, the European Court of Justice and the Court of Auditors. Competency for issues relating to sport within the European Union is incumbent on the General Directorate for Education and Culture. The European Parliament has a Committee for Culture, Youth, Education and Sport. In addition, informal meetings are held by the ministers of the Member States responsible for sport within the framework of the Council of Ministers on a regular basis.

⁶⁴ Tokarski, W. et.al. (1998) ” EU-Recht und Sport“ p. 18-19.

⁶⁵ Article 4.

⁶⁶ Tokarski, W. et.al. (2004) “Two Players – One Goal?” p. 56-57.

⁶⁷ Gardiner et al (1998) op. cit. p. 90.

Committee of Ministers and therefore represent the interests of their own respective governments in the Council of Europe. While each Member State is provided with one vote in the Committee of Ministers, important political decisions have to be taken unanimously. Thus, the Council of Europe has a directorate with the sole responsibility for sport. The Council of Europe's sport policy encompasses identifying potential problems and the deficits in the field of sport, developing certain values and guidelines, formulating relevant demands for sport and in particular, co-ordinating national sport policies at governmental level.⁶⁸ The principle of autonomy and the self-administration of sport as well as the principle of subsidiarity in sport are, however, explicitly acknowledged. The Council of Europe perceives itself as a forum in which the dialogue and co-operation between governmental and non-governmental representatives of sport are fostered.⁶⁹

The areas of sport the Council of Europe have focused on in more than three decades of its commitment in sport are very widespread. The roughly eighty sport-related recommendations, declarations and resolutions issued so far deal, among others, with the themes of health and fitness, sport for all, sport in schools, the promotion of sport for certain target groups, combating hooliganism, doping, fostering environmental protection or co-operation with East European countries. Of the agreements concluded in the past few years, special importance is attached to the European Sports Charter and its Code of Ethics, the Anti-Doping Convention and the European Convention on Spectator Violence and Misbehaviour at Sport Events and in Particular at Football Matches in terms of their significance and scope.⁷⁰

1.1.1. European Sports Charter

The European Sports Charter and its Code of Ethics complete the ethical principles and recommendations contained in several the European Conventions. Both recommendations which were adopted by the Committee of Ministers on the 24 September 1992 and revised at their meeting on 16 May 2001, clearly demonstrate awareness of the serious problems inherent in the involvement of youth in sport.

⁶⁸ Müller (1992) "Report on European Sports Co-operation" The Council of Europe's Work on Sport 1992-1993. Legal and Political Texts p. 5.

⁶⁹ Walker, G. (1994) "The Council of Europe and Sport" 35 *Sports Information Bulletin* p 70-73.

⁷⁰ Trokarski, W. et.al. (1998) op. cit. p. 23.

The European Sports Charter⁷¹ comprises aspects relating to:

- the strategic planning for the basic goals pursued in the field of sport
- organisation and decision-making within the Committee for the Development of Sport
- the role sport plays in today's society
- the state organisation and self-administration of sport
- the subsidiarity principle and the honorary capacity of non-governmental organisations and
- the autonomy of sport

In addition, several Articles of the European Sports Charter directly deal with the phenomenon of youth exploitation and abuse, as for example:

Article 1

Aim of the Charter

Governments, with a view to the promotion of sport as an important factor in human development, shall take steps necessary to apply the provisions of this Charter in accordance with the principles set out in the Code of Ethics in order:

- i. ...
- ii. to protect and develop the moral and ethical bases and the human dignity and safety of those involved in sport, by safeguarding sport, sportsmen and women from exploitation for political, commercial and financial gain and from practices that are abusive or debasing including the abuse of drugs and the sexual harassment and abuse, particularly of children, young people and women.

Article 3

The Sports Movement

⁷¹ Recommendation NO. R (92) 14 REV of the Committee of Ministers to Member States on the revised European Sports Charter.

5. Sports organisations should be encouraged to establish mutually beneficial arrangements with each other and with potential partners, such as the commercial sector, the media, etc, while ensuring that exploitation of sport or sportspeople is avoided.

Article 8

Supporting Top level and Professional Sport

1. Methods of providing appropriate direct or indirect support for sportsmen and women who reveal exceptional sporting qualities shall be devised in co-operation with sports organisations, in order to give them opportunities to develop fully their sporting and human capacities, in the full respect of their individual personality and physical and moral integrity. Such support will include aspects related to the identification of talent, to balanced education while in training institutes, and to a smooth integration into society through development of career prospects during and after sporting excellence.

2. The organisation and management of professional organized sport shall be promoted through appropriate competent bodies. Practitioners engaging professionally in sport should be provided with appropriate social status and protection and with ethical safeguards against all forms of exploitation.

The European Sports Charter is a clear endorsement of the values of dignity, integrity and autonomy that should underpin involvement in modern sport. All forms of exploitation – may it be sexual or commercial – are a violation of these values and an affront to the individual.

1.1.2. Code of Ethics

The Code of Sports Ethics is founded on the fundamental principle that its contents are binding for sport as a whole, including the administration of sport, recreational sport and competition sport. The contents of the Code provide a solid moral framework for the struggle against all the negative phenomena of modern society, which undermine the foundations of sport, which are built on fair play, the sporting

spirit and free individual participation in sports activities.⁷² The Code of Sports Ethics is directed primarily at children and young people as the main target group as it is expressed in its aims:

“The primary concern and focus is Fair Play for children and young people, in recognition that children and young people of today are the adult participants and sporting stars of tomorrow. The Code is also aimed at the institutions and adults who have a direct or indirect influence on young people’s involvement and participation in sport. The Code embraces the concepts of the right of children and young people to participate and enjoy their involvement in sport, and the responsibilities of the institutions and adults to promote Fair Play and to ensure that these rights are respected.”⁷³

While fair play is not only defined by playing with the rules, “it incorporates the concept of friendship, respect for others and always playing within the right spirit. Fair Play is defined as a way of thinking, not just a way of behaving. It incorporates issues concerned with the elimination of cheating, gamesmanship, doping, violence (both physical and verbal), the sexual harassment and abuse of children, young people and women, exploitation, unequal opportunities, excessive commercialisation and corruption.”⁷⁴

In conformity with the Code, the responsibility for promoting and consolidating the principles on fair play lies with: governments, associations, physical education institutions, coaching centres, medical and pharmacological circles, the mass media, as well as any commercial organisations that are connected with sport. As regards natural persons parents, teachers, coaches, sports officials and administrators, journalists, medical doctors, pharmacists and top athletes, all have their own responsibility for the promoting for fair play.

Under the Code, governments have the obligation to encourage the adoption of high moral standards and to motivate and support individuals and organisations to apply such high moral standards in the course of their sport-related activities. In the field of physical and general education, governments should encourage the integration of

⁷² Panagiotopoulos, D. (1998) “the Legal Aspects of Sports Ethics and the Protection of Fair Play“ XXXV *International Journal of Physical Education* p. 103.

⁷³ Recommendation NO. R (92) 14 REV of the Committee of Ministers to Member States on the revised Code of Sports Ethics.

⁷⁴ Recommendation NO. R (92) 14 REV of the Committee of Ministers to Member States on the revised Code of Sports Ethics.

sport and fair play as a basic element of the curricula and support initiatives, which aim at their promotion. They should also encourage research projects at national and international level to improve existing knowledge on complex issues related to the participation of young people in sport.

The Code of Sports Ethics in this respect maybe raises for the first time the issue of the protection of children and young athletes in sport training and competition. And for the first time, the Code of Sports Ethics establishes the principles of fair play as binding principles for European states, aimed at promoting victory during competition in according with ethical rules and not at any cost or sacrifice.

1.2. Governments' regulatory power over the sports movement

However, although most European countries belong the Council of Europe – with the number of member countries totalling 44 when Bosnia & Herzegovina joined in April 2002 it has only very limited powers due to its confederated character. The Council of Europe cannot issue any binding regulations to its member states like the European Union practises by the help of ordinances and directives.⁷⁵ Rather, the Council of Europe relies on the willingness of its members to participate in implementing the agreed policies. The member states are free to ratify an agreement or convention fully, in part, at a later date or perhaps not even to ratify it at all. And in doing so, to subject themselves to the terms and conditions set forth in agreements concluded within the Council of Europe at their own discretion. The Federal Republic of Germany, i.e. has not yet become a party to the European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches due the opposition of the federal state Bavaria.

But not all of the member states have the legal power to influence its sports movement regulatory even if they wish. The embodiment of sport in the constitutions and statues of the member states as well as the legal regulations pertaining to sport establishes a broad variety of different sport systems in the member states of the European Council, ranging from a constitutional embodiment as for example in Spain, an explicit sport legislation as for example in France, or an indirect incorporation of sport by additional legal regulations as in Denmark, to a rather occasional legal regulation of sport which is characteristic for the German and the

⁷⁵ Tokarski, W. (1998) op. cit. p. 46-47.

Austrian sport systems.⁷⁶ Especially in democracies of recent date as e.g. in Portugal and Spain, sport is explicitly embodied in constitutions which then automatically involved a specific legislation pertaining to sport. While constitutions dating further back hardly mention sport at all, due to the fact that the particular social importance of sport has not yet been recognised at that time. So, one difficulty with the harmonisation of European national sports regulation is already that different countries have different approaches towards legal intervention in sport. This results in different degrees of autonomy in the European sports systems that is legally allowed to sport organisations which at the same time limits governmental influence on the sports movement.

1.3. National sports legislation models

The Council of Europe's study on sports legislation of nineteen of its member states⁷⁷ reveals the presence of two major sports legislation models in Europe: interventionist and non-interventionist sports legislation models. While an interventionist sports legislation model is one that contains specific legislation on the structure and mandate of a significant part of the national sports movement, all other legislation models are reckoned to be non-interventionist.⁷⁸ And most of the sports regulations currently effective are rather interventionist legislation models authorising the governments to intervene in the non-governmental sports sector, with Spain probably as the most obvious example where the Higher Sports Council⁷⁹, affiliated to the Department of Education, Culture and Sports, is entitled to dismiss the president and other members of the sport federations.⁸⁰

However, some international European texts, as already seen above, can be introduced as a common point of reference to all member states. The right to freedom of peaceful assembly and to freedom of association with others recognised in the European Convention for the protection of Human Rights and Fundamental

⁷⁶ Wegener, J. (1992) "Sport in the Member States of the European Community".

⁷⁷ Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Italy, Lithuania, Luxembourg, Portugal, Romania, Slovenia, Spain, Switzerland and the United Kingdom, see Chaker, A.-N. "Study on national sports legislation in Europe" p. 13-15.

⁷⁸ Foster, K. (2000) "Can sport be regulated by Europe: an analysis of alternative models" p. 62-63 in: Caiger, A. / Gardiner, S. "Professional Sport in the EU: Regulation and Re-regulation".

⁷⁹ Consejo Superior de Deportes.

⁸⁰ Wegener, J. (1992) op. cit. p. 194-196.

Freedoms⁸¹ is a legal guarantee systematically applied in all member states. More specifically related to sport, all of the legal systems of the member states ultimately respect the principles of subsidiarity and complementarity of state action in sport. These principles appear in Recommendation No. R (92) 13 of the Committee of Ministers to Member States of the European Sports Charter and are included in paragraph 11 of the Recommendation and Article 3 of the European Sports Charter. These texts read as follows:

11. Acknowledging that public authorities should develop reciprocal co-operation with the sports movement as the essential basis of sport, and that in many European States, governmental action in sport is taken in order to be complementary to and support the work of this movement (subsidiarity).

Article 3

The Sports Movement

1. The role of the public authorities is primarily complementary to the action of the sports movement. Therefore, close co-operation with non-governmental sports organisations is essential in order to ensure the fulfilment of the aims of this Charter, including where necessary the establishment of machinery for the development and co-ordination of sport.

The general principles of co-operation and complementarity have been implemented in different ways in the member countries of the Council of Europe. The following three national summaries on this particular issue give an example of the different constructions of legislative framework put into place to delimit government intervention on sport affairs.

⁸¹ Under Article 11.

1.3.1. Spain

After approval of the Spanish Constitution in 1978, the Spanish State became a legal, social, and democratic state⁸² territorially organised in Autonomous Communities, which are granted autonomy for the management of their interests, legislative power and executive power. The Spanish Constitution includes a provision on sport, which reads as follows: "The public authorities will provide health, physical and sports education. They will provide for adequate use of leisure."⁸³

In addition, the basic laws of the Autonomous Communities also refer to the promotion of sport as a specific area of responsibility transferred by the state. The first response to the constitutional duty to encourage sport initially came in the Sports Act of 1980, which was later replaced by the Sports Law of 15 October 1990. This Sports Act of 1990 re-established the Higher Sports Council under the Ministry of Education and Science.⁸⁴ The Council is the body with national responsibility regarding sports matters. The Sports Act of 1990 gives the Council substantially wide jurisdiction over the Spanish sport movement. It has the power to authorise the statutes and regulations of sport organisations, it controls the registration of a national organisations into an international organisation, and it controls the expenditure of the sport organisations and agrees with them on the details of their programmes and financing.⁸⁵ However, the public authorities extensively conduct joint activities with the sport organisations and other sport bodies. Along these lines, the organisation of activities is performed with respect for the respective responsibilities conferred by the legal system. In any case, however the competence of controlling sports activities at a national and international level falls to the public administration and is effectuated by the Higher Sports Council. Obviously, these rules indicate the application of an interventionist sports legislation model. Even more, Spain serves as an example of state supported and controlled organised sport.

⁸² Article 1.1 of the Spanish Constitution

⁸³ Article 43.3 of the Spanish Constitution. This constitutional provision is one of the most comprehensive in Europe as it includes three different key concepts of physical activity: physical education, sport and leisure (sports for all).

⁸⁴ Wegener, J. (1992) op. cit. p. 191.

⁸⁵ Tokarski, W. et al (2004) op. cit. p. 246-247.

1.3.2. France

The Government plays a key role in the French sport model however sport does not appear in the French constitution. The autonomy of the sport organisations does not stem from constitutional principles, but is delegated by non-constitutional law.⁸⁶ Autonomy is widely understood as the authority to set rules and, if needed be, to enforce these rules. It was existing case law that was a determining factor in forging the basic principles of the sport laws, which lead to the regulation of the tasks and powers of the Government and the sports movement by explicit legislation on sport.⁸⁷ The legal text in force today is the Law of 16 July 1984 and its subsequent amendments concerning the organisation and promotion of physical and sporting activities.⁸⁸ The whole area of sport ranging from the organisation of clubs to television rights and the education and licensing of coaches is regulated by the one law. The first article of this law states that the development of physical activity and sports is of general interest. The law then establishes the public service mission of all the sport organisations recognized by the Minister of Sport and defines this mission as being the organisation and development of physical and sporting activities whilst still retaining a certain degree of independence. This qualification of the mission of sports federations forms the basis of the significant intervention of the French state in sport affairs.

The powers of sport federations are defined in Article 16 of the Law of 16 July 1984, which states that sports federations carry out their activities independently. However, this independence is qualified by a series of legislative measures giving significant powers to the state over sport federations.⁸⁹ Article 16 states that if sports federations have adopted statutes according to the guidelines defined by the Council of State Decree, recognised sport organisations are considered to carry out a public service mission. In this capacity, they are responsible for promoting education through physical education and sporting activities.

So, although the French Government has delegated some of its responsibility for sport to sport federations, which are recognised by the state, the Government still

⁸⁶ Vieweg, K. (2000) "The legal Autonomy of Sport Organisations and the Restriction of European Law" p 90, in: Caiger, A / Gardiner, S. (Eds.) "Professional Sport in the EU: Regulation and Re-regulation".

⁸⁷ www.legifrance.gouv.fr

⁸⁸ Law NO. 84-610 of 16 July 1984 relating to the organization and the promotion of sport and physical activity, JO of 17 July 1984.

⁸⁹ Le Roux, N. / Camy, J. (1999) "An Essay on the French Sports System" in: Heinemann, K. (Ed.) "Sports Club in various European Countries" p. 64.

decides on the conditions under which the various federations carry out their responsibility.⁹⁰

1.3.3. Germany

The Federal Republic of Germany is a federation consisting of sixteen constituent states (Länder). This federal structure is reflected in the structure, organisation and division of responsibilities in the field of sport. The German constitution does not contain a specific reference to sport and there is no specific law on sport at the federal level either. However, the Federal Government has, by the very nature of things, an unwritten responsibility for parts of sports promotion. Original jurisdiction for most Government involvement in sport is at the provincial level. However, only five of the sixteen Länder have adopted special laws on sport.⁹¹

Organised sport is primarily a matter pursued by non-governmental sports organisations. The Federal Government, the Länder and local authorities provide a legal and material foundation and support the activities of sport organisations only when the latter's staffing and financial resources are insufficient. The autonomy of the sport organisations is a matter of national law. Sport organisations are protected by Article 9(1) of the German Constitution. All Germans have the right to form associations and societies and also the continued existence of the organisations and its operation of legitimate activities are protected.⁹² On a basic legal level, paragraph 25 of the German civil code forms the central basis of the autonomy of sport organisations.⁹³

In accordance with the federal structure and the constitutional division of responsibilities, public promotion of sports is primarily a responsibility of the Länder. These are responsible for the sports at schools while the Federal Government is primarily concerned with sports issues of national or supra national importance, above all elite sport.⁹⁴

The federal Government has adopted three principles in the implementation of its sport policy: autonomy of the sports movement, subsidiarity, i.e. assistance based on

⁹⁰ Wegener, J. (1992) op. cit. p. 53.

⁹¹ Tokarski, W. et al (2004) op. cit. p. 160-161.

⁹² Vieweg, K. (1990) "Normsetzung und -anwendung deutscher und internationaler Verbände" p. 154.

⁹³ Paragraph 25 states: "The constitution of a club with a legal personality will be determined by the club rules, as long as it is not based on the following regulations."

⁹⁴ Wegener, J. (1992) op. cit. p. 69.

need, partnership and co-operation. The result of the application of this policy is the acceptance of the sport authorities as equals in the promotion of sport. Thus, Germany has adopted a non-interventionist sports legislation model. However, not even the German Sports Confederation⁹⁵, which forms the national umbrella organisation of all the sports federations in Germany is authorised to give instructions to its member federations since they act autonomously just like the German Sports Confederation itself.⁹⁶

1.4. Comparison of the two sports legislation approaches

First of all, it is important to note, that the qualification as interventionist or non-interventionist does not refer to extreme positions of the statutory role of government in sport since the member states of the European Council generally follow the principle of subsidiarity of government action in sport affairs.⁹⁷ Just like the position of “ultra-interventionist” approach to sport regulation vanished from Europe as the existence of dictatorships and totalitarian regimes, the other extreme position of absolute indifferent approach to sport regulation is not-existent in Europe. All the member states clearly acknowledged the state’s vested interest in intervening to some degree in regulating sport activities. Thus, the differences between the two models of legislation applied eventually may seem to relate rather in form than function. However, the different approaches on sport regulation can bring about distinct consequences for non-governmental sport.

The interventionist models offer the possible advantage of regularity in policy and accountability based on statutory provisions. With their roles included in legal rules, the interventionist model can offer a better tool for the accountability and transparency of the government and the sport movement. The non-interventionist sports legislation models, in contrast, can offer the advantage of flexibility. For instance, the German report to the Council of Europe on its national sport regulation claims that one could adjust to the development of sport without having to amend laws, for example, to take into account the emergence of new sports and the

⁹⁵ Deutscher Sportbund.

⁹⁶ Tokarski, W. (1998) op. cit. p. 50-51.

⁹⁷ Chaker, A.-N. (1999) op. cit. p.32-33.

resulting redistribution of the funds available.⁹⁸ The argument of flexibility in policy-making may be a valid one, especially when the particular piece of sports legislation is couched in terms that effectively limit the possibilities of reacting to changes in the sport. However, well-designed provisions in a sports law could ensure the flexibility needed to accommodate new sports disciplines. Legislating is, after all, the business of government. And, as seen in some countries⁹⁹, a state can have a law on sport and still use a rather non-interventionist sports legislation model. But with the advantage of having the legal possibility to implement certain principles, as for example the Code of Ethics' principle of fair play, if the non-governmental sports movement fails or delays to carry out these generally accepted principles.

The non-interventionist sports legislation models, in contrast, may be unable to install sports regulation by legal tools or influence the non-governmental sports movement directly by legislation, thus they are often forced to and indeed use their funding powers to exercise de facto control over sports organisations in great need of such assistance. Such funding policies could easily go as far as imposing a new structure to the sports movement or even making part of the sports movement's mission statement conditional to state funding.

In summary, it may be said, that throughout the European Council there is no single country where the government is not involved in at least one institution which to a greater or lesser extent is responsible for sport however different the structure may be. On the other hand, not a single one of the national governments takes the sole sport responsibility, it usually cooperates with the non-governmental sport sector. So, there is in fact throughout the European Council a shared responsibility for the sports movement which however only works well as long as the governmental and non-governmental sport institutions share the same opinion. However, having an interventionist sports legislation model makes implementing certain principles, such as the Europe's Code of Ethics or the European Sports Charter, much easier when having to overcome non-governmental resistance or reluctance to do so.

Therefore, it may seem that state's responsibility for sport may even be higher when practicing an interventionist sports legislation model. Because it is impossible to blame the reluctance or delay of the non-governmental sector to implement

⁹⁸ Schumacher, A. (1997) "German collection of national legislation in the field of sport" Bundesministerium des Inneren.

⁹⁹ For example: Austria, Lithuania, Switzerland, Finland.

necessary principles when the state is offered the legal tools to respond immediately to the agreements which were made on European level. The state practicing a non-interventionist sports legislation model may therefore be less responsible due to its lack of legal power to transpose European agreements on the sport sector into national law.

2. Sport organisations

There are many obvious reasons why sports organisations should be obliged to protect their athletes from the potential abuse, may it be physical, sexual or psychological.

First of all, sports organisations are strategically best placed to deal with youth protection in sport. Given the high incident of youth athlete abuse by persons known to the victim, administrators of sport organisations should be aware of the fact that their organisations may provide both opportunity and means for abusive coaches or other individuals to become acquainted with the young athlete.¹⁰⁰ Thus, youth protection measures would certainly be most effective if introduced by those who directly control the environment in which youth athletes abuse takes place: sports and sports-related organisations including sports federations and governing bodies, regardless whether governmental or non-governmental.

Furthermore, most European non-governmental sports organisations are morally bound to implement the principles of the Council of Europe's Code of Ethics and European Sports Charter. While some member states of the Council are able to regulate the non-governmental sports sector by legal tools which are prepared by the interventionist approach on sports legislation, the governments and non-governmental sports organisations of those countries with few or no legislation on sport consider sports policy to be an area of shared responsibility. And since the Council of Europe perceives itself as a forum in which the dialogue and co-operation between governmental and non-governmental sports representatives is encouraged, non-governmental representatives also belong to the national delegations in the Committee for the Development of Sport.¹⁰¹ These representatives of the non-

¹⁰⁰ Gibbons, M. (2003) op. cit. p. 189.

¹⁰¹ Tokarski, W. (2004) at 58.

governmental sport sector are members of the umbrella body of sport federations and/or the National Olympic Committee (NOC) of each member country.

Throughout all the member states of the European Council the sport clubs represent the organisational basis. According to the general administrative structures in the different countries, the clubs are hierarchically organised in regional and national federations reaching as far as into the European level. On the national level of the non-governmental sports sector, in each and every country a NOC has been established, which is however not a specific European phenomenon but can be retraced to the specific structure and regulations of the International Olympic Committee (IOC) and thus has been implemented world-wide. Furthermore, in several countries, the NOC joins forces with the umbrella body of sports federations as the NOC*NSF of the Netherlands for instance or the CONI in Italy. In other countries, the NOC and the umbrella body keep separate structures as in British and German sport system for example.¹⁰² In addition, though numbers and purviews of the umbrella bodies may vary there are however sports federations in the countries which act as national representatives of the different sport clubs of a specific sport, whereas there is only one federation per sport.

Regarding another common principle of European sports, which lies in a pyramid-like organisational sports structure, the agreements made within the Committee for the Development of Sport, approved by the representatives of each country's NOC and/or non-governmental umbrella body of the sports federations, would be binding to the various sports federations united under the NOC and the national umbrella body.¹⁰³

Already a large number of resolutions and recommendations of the Committee for the Development of Sport provide expressively for measures that relate explicitly to the sports organisations. And under the Code of Ethics¹⁰⁴, sports and sports-related organisations have the following responsibilities:

- To publish clear guidelines on what is considered to be ethical or unethical behaviour and ensure that, at all levels of participation and involvement, consistent and appropriate incentives and/or sanctions are applied.

¹⁰² Wegener, J (1992).

¹⁰³ Council of Europe (1994) op. cit. p. 9-10.

¹⁰⁴ Recommendation NO. R (92) 14 REV of the Committee of Ministers to Member States on the Revised Code of Ethics.

- To make sure that all decisions are made in accordance with a Code of Ethics for their sport which reflects the European Code.
- To raise the awareness of fair play within their sphere of influence through the use of campaigns, awards, educational material and training opportunities. They must also monitor and evaluate the impact of such initiatives.
- To establish systems which reward fair play and personal levels with achievement in addition to competitive success.
- To provide help and support to the media to promote good behaviour.

And particularly when working with young people:

- To ensure that the structure of competition acknowledges the special requirements of the young and growing child and provides the opportunity for graded levels of involvement from the recreational to the highly competitive.
- To support the modification of rules to meet the special needs of the very young and immature, and put the emphasis on fair play rather than competitive success.
- To ensure that safeguards are in place within the context of an overall framework of support and protection for children, young people and women, both to protect the above groups from sexual harassment and abuse to prevent the exploitation of children, particularly those who demonstrate precocious ability.
- To ensure that all those within or associated with the organisation who have a responsibility for children and young people are qualified at an appropriate level to manage, train, educate and coach them, and in particular that they understand the biological and psychological changes associated with children maturation.

In addition, there is not only a moral duty for the non-governmental sports organisations to protect their athletes but a far more compelling legal motivation to regulate any form of abuse. Most European sports organisations are private-

governing organisations which derive their authority from their own governing documents, including their constitution, objects, by laws, policies and procedures.¹⁰⁵

These rules constitute a form of contract between the organisation and its members, including coaches, athletes, officials, volunteers and other participants. This contract provides the sport organisation with the legal authority to establish rights, privileges and obligations of its members. In addition, a sport organisation has a legal duty to care, i.e. provide a safe environment and to protect participants from harm, which includes physical, sexual and psychological abuse. The duty of the sport organisations arises since their members are in some respect particularly vulnerable and dependent on the sport organisations who, correspondingly, hold considerable power over their members' welfare. Even though harm might be brought on the sport organisation's members by individuals who are acting only in their own interests and not for the organisation, the national law of many member states of the Council has clearly established that the organisation has a duty to act diligently and prudently to prevent such actions and behaviour.¹⁰⁶

The organisation's duty to care for its members and participants not only covers the obligation to intervene without negligent delay if a case of abuse is uncovered, but the duty to take reasonable and necessary measures to prevent any form of abuse. If the organisation fails to provide a acceptable protection by either negligently not intervening in case of an abuse or even by negligent hiring of an individual already known for his abusive behaviour, the sport organisation might be directly or vicariously liable for the damages the abused athlete or participant suffered. The accusation of having failed to provide for a safe environment for the organisation's members and participants however can be minimised if the organisation protects itself by setting up a clear policy dealing with the conduct of members and participants. Such could be a code of conduct and a related disciplinary policy. Without such policies, a sport organisation might have difficulty demonstrating that it has satisfied its legal obligation to provide for a safe environment for its members and participants.

¹⁰⁵ Jaksche, J. (1995) "Die juristische Person im internationalen Vergleich." p. 24-32.

¹⁰⁶ Jaksche, J. (1995) *op. cit.* p. 32-34.

3. Individuals

While governments and sports organisations have the responsibility to set a legal frame for the protection of youth athletes individuals such as the child's parents or coaches, who are in direct contact with the youth athlete, have the duty to constantly examine their sporting commitment concerning the young athlete. Those, who have the duty of care, have the greatest level of responsibility for the welfare of children and young people.

Under The Code of Ethics¹⁰⁷ all individuals, who directly or indirectly, influence and promote sporting experience for children and young people have the responsibility:

- to put as a first priority the health, safety and welfare of the child or young athlete and ensure that such considerations come before vicarious achievement, or the reputation of the school or club or parent or coach.
- to provide a sporting experience for children that encourages a life long commitment to health related physical activity.
- to avoid treating children as simply small adults but be aware of the physical and psychological changes that occur during maturation and how these affect sporting performance.
- to avoid placing expectations on a child unrelated to his or her capacity to meet them.
- to put the enjoyment of the participant as a priority and never place undue pressure which impinges on the rights of the child to choose to participate.
- to take equal interest in the less talented as in the talented and emphasise and reward personal levels of achievement and skill acquisition in addition to more overt competitive success.
- to encourage young children to devise their own games with their own rules, to take on the roles of coach, official and referee in addition to participant; to devise their own incentives and sanctions for fair and unfair play; and to take personal responsibility for their actions.

¹⁰⁷ Recommendation NO. R (92) 14 REV of the Committee of Ministers to Member States on the Revised Code of Ethics.

- to provide the child and young person and child's family with as much information as possible to ensure awareness of the potential risks and attractions of reaching levels of high performance.

V. Measures for youth athlete protection

The dangers facing the young athletes while participating in sport are multiplex. On the one side the young athlete may become a victim of sexual harassment or abuse, which are usually associated with an ill predisposition of the abuser and certainly often including some form of physical and psychological abuse. On the other side the young athlete is endangered by physical and psychological abuse which may be motivated by the extreme desire of sporting and commercial success or just be the lack of sporting and educational competence of the abuser manifested in punishment for lack of discipline or results for instance. There is however not the one single measure which is able to prevent these different kinds of abuse but a combination of various approaches together would help.

1. Sexual abuse and harassment

As far as sexual harassment and abuse is concerned all European countries prohibit any sexual relations as intercourse or any surrogate for intercourse between adults and children under the age of consent¹⁰⁸. Many of them have increased the age of consent to eighteen if the adult is a professional in a position of trust such as a teacher or coach for instance. And this is indeed a very important factor regarding the cases of sexual abuse which were enabled by the grooming process of individuals of trust and authority. However, different jurisdictions have different criminal provisions, but sport organisations, regardless of national laws, should take note of the dangers of grooming and the possibly unpunished manipulation of the young athletes free will. But the criminal prosecution is only the response to an already occurred case of abuse and does not often successfully constitute an inhibition of such cases. In addition, it has to be recognised that not all allegations of the abuse of a young athlete will result in a police charge and conviction may it be due to evidential or other difficulties. But whether or not the police proceed there is

¹⁰⁸ For example in Germany the age of consent is 16 years, in Denmark 15 years.

still the possibility of the child athlete's family to take action under the laws of sport. Indeed, due to the difficulties that may prevent a criminal prosecution proceeding, it still may be appropriate for action to be taken within the sport. Therefore clearly the best preventive measure against sexual harassment and abuse is to stop potential abusers from becoming actual abusers. Arguably, this is done best by the involvement of those who run the sport organisations.

1.1. Code of conduct

One such measure and important part of an overall framework that can guarantee safe and enjoyable sporting experiences is the implementation of policies and procedures by the sport organisations such as codes of conduct and practice.¹⁰⁹ These codes set out expectations and help to delimit the boundaries between ethical and unethical practice.

Unfortunately, except in a few countries such as Canada¹¹⁰ and Australia¹¹¹, child athlete protection is not yet widely recognised as an issue for sport and leisure managers. The UK, however has led international efforts in this field since the mid-1990s and is the only country to have established a dedicated national office and resource centre for child protection in sport.¹¹² The establishment of this Child Protection in Sport Unit (CPSU) in 2001 gave the policy development of child protection in sport a major boost. Prior to the establishment of this Unit, various piecemeal child protection initiatives had been promoted by individual sport organisations, most notably the Amateur Swimming Association, coaching groups such as the coachUK and child welfare organisations such as the National Society for the Prevention of Cruelty to Children (NSPCC).¹¹³ Some anti-harassment and anti-abuse schemes have been introduced elsewhere, such as a website¹¹⁴ for abuse prevention in ice skating, run from the USA, a campaign in ice hockey called 'Speak Out!'¹¹⁵, run in Canada and a police-originated educational workshop in England

¹⁰⁹ Appenzeller, T. (2000) op. cit. p. 154-156.

¹¹⁰ www.caawas.ca

¹¹¹ www.ausport.au

¹¹² Brackenridge, C.H. (2002) "So what...? Attitudes of the voluntary sector towards child protection in sport clubs" 7 *Managing Leisure* p. 104.

¹¹³ Boocock, S (2002) "The Child Protection in Sport Unit" 8 *Journal of Sexual Aggression* p. 101.

¹¹⁴ www.silent-edge.org

¹¹⁵ www.hockeycanada.ca

called 'Child Safe'¹¹⁶. However, Brackenridge regards the 'Child Protection Strategy' by the English Football Association, which was set off in May 2000, as "the largest and most comprehensive initiative in a single sports body."¹¹⁷

It is argued that the most effective code of conduct is that which arises from, and is congruent with, a wider view of values in sport including: human rights, ethics, welfare and quality assurance. According to Brackenridge and Fasting¹¹⁸ a code of conduct should further:

- have a clear policy statement about the need to safeguard and promote the welfare of child athletes, women and those of vulnerable adults as those with disabilities and protect them from sexual activity from those looking after them within a relationship of trust.
- explain how any code of conduct relates to procedures and policies for the welfare and protection of children and women in sport from sexual exploitation.
- explain the responsibilities of those engaged in relationships based on trust and/or power.
- define those who are to be protected by the code of conduct.
- give a clear statement that warns against the development of any sexual relationship or contact between those in a relationship of trust. This should include advice that pre-existing sexual relationships between athletes and their coaches or any other authority figure should preclude them from entering a sport (e.g. coaching) relationship or that the sexual relationship should end before the sport relationship commences (or vice versa).
- include a supporting statement that explains what behaviour is deemed unacceptable within the sport organisation.
- set out clearly that all those within the sport organisation have a duty to raise concerns about behaviour by staff, managers, volunteers, parents or any other that may be harmful to those children or female athletes in their care, and that those reporting such concerns will be protected.

¹¹⁶ www.childsafe.co.uk

¹¹⁷ Brackenridge, C.H. et al (2004) "The Football Association's Child Protection in Football Research Project 2002-2006: rationale, design and first year results" 9 *Managing Leisure* p. 32-33.

¹¹⁸ Brackenridge, C. / Fasting, K (2000) "An Analysis of Codes of Practice for Preventing Sexual Harassment and Abuse to Women and Children in Sport" presented at the Council of Europe Conference of Ministers responsible for Sport.

- state that the principles apply to all, regardless of sexual orientation, race, gender, religion or disability.
- list the procedures that should be put in place and followed in order to protect child and female athletes, including procedures for: recognition and reporting of abuse; suspension, investigation and reinstatement or dismissal; dealing with mistaken or malicious allegations; education of all parties involved; and for minimising the risks of sexual exploitation and abuse of trust arising.
- include a list of sanctions that apply to those who violate the code of conduct together with details of how to ensure that Natural Law is observed (e.g. right to reply, right to defence, right to representation and so forth).

It is argued that it is simply good risk management to deal with abuse and harassment in this manner since it helps keeping participants safe from harm and protecting the sport organisation from liability claims.¹¹⁹ The constitution and rules of a sport organisation normally regulate the relationship between the organisation and the different role-players within the organisation. This is the legal instrument or contract that the sport organisation may use as a vehicle to incorporate risk management policies, including codes of conduct or practice.

Being vigilant to the behaviour of coaches and other staff surrounding children may prevent serious transgressions in the relationship between the coaches and young athletes. Clear definition of personal boundaries and monitoring of boundaries violations will assist in checking the grooming process by which the abuser secures the co-operation of the young athlete. A clear code of conduct is a prerequisite for this and should therefore include an explicit statement of the interpersonal boundaries upheld for each sport. The code of conduct should specify standards of what is acceptable and unacceptable in terms of both physical contact with athletes and issues of dependency and control. By incorporating rules of conduct and limits in the intimacy between coach and athlete in coach education programmes, these standards will become part of every day practice. However, this may only have an effect on coaches who do not want to cross barriers. Codes and written standards of practice are unlikely to make much impact on those with malevolent intentions.

¹¹⁹ Findlay, H. /Corbett, R. "Developing Policies and Procedures"
www.harassmentinsport/Handbook/Sec1ch1.html p.5.

Codes of conduct in and of themselves can never solve the problems of sexual harassment and abuse in sport unless they are accompanied by a raft of other complementary measures.¹²⁰

1.2. Screening of coaches and other staff

One of the often demanded method to contain and perhaps avoid the risk of sexual harassment and abuse in sport is to employ a comprehensive screening process when employing coaches, assistants or volunteers. Screening is a continuum of steps taken over time, designed to identify any person, paid or unpaid, who poses a risk to the young athletes or other vulnerable persons within the sport organisation.¹²¹ The different elements of an effective screening process should not only focus on police record checks but also include profound interviews with the applicants and reference checks, which may even be the most effective screening step during the hiring process. These elements have to be completed by giving proper orientation, employing on probation, supervision and constant evaluation.

But especially the demand for police record checks is partly criticised. Brackenridge¹²² claims that police record checks are both expensive to carry out and susceptible to falsification. Neither do police record checks identify first offenders, nor do they give information about unsuccessful prosecutions or about those abusers who evaded identification. In addition, in many European countries private sport organisations have currently no right of access to official lists for police checking purposes of volunteers due to data protection issues. In Britain, until recently only paid employees who worked with substantial unsupervised access to children were legally required to undergo police record checks. Since end of 2001 however, when the new Criminal Record Bureau became operational, sport organisations are given access to disclosures for any staff or volunteers who come into contact with young people usually assisted by the local authorities who have child protection policies and procedures in place.¹²³ And finally, it is argued that police record checks are not a cost-effective way to deal with the problem as most abusers would be missed simply

¹²⁰ Cense, M. / Brackenridge C.H. (2001) op. cit. p. 72.

¹²¹ Bowen, P. "Screening of Personnel" www.harassmentinsport.com/Handbook/Sec2ch1.html p. 1.

¹²² Brackenridge, C.H. (2001) op. cit. p. 205-206.

¹²³ www.uksport.gov.uk/images/uploaded/msetg11_ETHICAL_CONSIDERATIONS.pdf

because they do have records.¹²⁴ However, the police record checks can be of particular importance in respect of sexual abuse since the abusers show a tendency to repeat their crimes.

1.3. Complementary measures

While most of the work on the role of parents in sport has been focused on the issues of over-involvement, pressure and anxiety, sexual exploitation in sport is often rather linked to the themes of under-involvement, neglect and apathy by parents. In general, parents are far less aware of the risks in sport than they are of risks in their children's homes and social lives.¹²⁵ One way of involving parents in youth sport is to offer them information about the sport and provide advisory checklists about where, and with whom, athletes are training, how to become involved in practices and meetings, and what travel and accommodation arrangements should be adopted. The involvement of parents in the child's sport, both materially, through helping with events and functions, and emotionally, through communicating interest and support, is a defence against the isolation and estrangement that often precedes grooming and abuse.

Another method to contain and minimise the risk of sexual harassment and abuse is to ensure that all role-players are properly educated since only when sports personnel, parents and the young athletes fully understand the behaviours and dynamics involved in abuse they will be able to deal with the problem properly and without delay.

Apart from assigning more than one coach to a team to reduce the omnipotence of the coach also an influx of female coaches and an increase of female committee members might have a positive influence on team and club culture and therefore reduce the risk of sexual exploitation. Since the unequal power balance between men and women in sport may be regarded as a predisposing risk factor for sexual abuse and harassment.¹²⁶ This will only succeed, however, if these women are supported by their male and female peers in challenging exploitive measures. In an

¹²⁴ Malkin, K. / Johnston, L. / Brackenridge, C.H. (2000) "A critical evaluation of training needs for child protection in UK sport" *5 Managing Leisure* p. 152.

¹²⁵ Brackenridge, C.H. (2001) *op. cit.* p. 212.

¹²⁶ Cense, M. / Brackenridge, C.H. (2001) *op. cit.* p. 72.

atmosphere in which sex discrimination and harassment are challenged, it becomes easier for athletes to resist the boundary erosion that might lead to abuse.

2. Physical and psychological abuse

Another form of abuse which has to be regulated is physical and psychological abuse. These forms of abuse often occur since coaches are always attempting to determine the optimal training stress to advance their athletes to better performance. This ideal level of training 'stress' without reaching the level of 'distress' is one of the greatest challenges in coaching. In an attempt to find the preferred training level, the coach should always place the athlete's best interests first. If a coach introduces a training stimulus that causes distress, the coach has already entered on the continuum that starts with punishment moves to harassment and finally may end up as abusive.¹²⁷

2.1. Coaching code of ethics

The danger of over-burden training can be encountered by including the implementation of a coaching code of ethics to the policies and procedures of the sport organisations. This coaching code of ethics should include the principles of respect for participants, responsible coaching, integrity in relationships and the honouring of sport.¹²⁸

While the principle of respect for participants challenges coaches to act in a manner respectful of the dignity of all participants in sport, the principle of responsible coaching carries the basic ethical expectation that the activities of coaches will benefit society in general and participants in particular and will do no harm. Fundamental to the implementation of this principle is the notion of competence since responsible coaching is only performed by coaches who are well prepared and current in their discipline. This includes that coaches have not only the knowledge to understand the biological and psychological changes associated with children maturation but are also trained in recognising the negative impacts sport may have on a young athlete such as burnout or eating disorder.

¹²⁷ www.harassmentinsport.com/coaches/Codethic.html

¹²⁸ www.harassmentinsport.com/coaches/Codethic.html

2.2. Mandatory medical checks

Regarding the severe bodily injuries of the young athletes due to excessive training and the injuries from overuse before maturation and the devastating effects of eating disorder to the young athletes it seems to be logical to demand mandatory medical checks in sport. While this obligation to examine the young athlete's physical constitution may be not necessary for sports on recreational level, it should not be difficult to single out the type of sport that especially endangers the young athlete's physical and psychological integrity more than other sport. This early warning system however would only be successful if independent medical staff is employed with the examination of the athletes since the manipulation and influencing of the persons involved with the medical checks can not be excluded. To ensure the exact carrying-out of the regular medical checks they could be made as prerequisite for the participation at high-level competitions as it is already done by the Women's Tennis Association (WTA).

2.3. Age restriction

Also by limiting the participation age, the danger of physical and psychological abuse by commercial exploitation of a young athlete can be contained. Alternations of the rule structures of sport were generally founded in concerns about over-training, over-exposure to the media and the impact of intense competition for young athletes.¹²⁹ Critiques of competition categories have resulted in some alternations of competitive grading. For example, in swimming the age eligibility for the Olympics was raised from 13 to 14 years for the 1976 Montreal Olympics. Following the Atlanta Olympic Games in 1996, the International Gymnastics Federation raised the age of eligibility for female athletes from 14 to 16 years of age (15 in the pre-Olympic year) and International Figure Skating raised their minimum age from 14 to 15 in 1997 while for sports acrobatics the minimum age was raise to 15 years of age on 1st of January 2003, too.

The Women's Tennis Association has not only barred anyone younger than 15 from participating in the main WTA events, but also enforced a quantity restriction of

¹²⁹ Brackenridge, C.H. / Kirby, S. (1997) op. cit. p. 408.

events an athlete younger than 18 years may compete in.¹³⁰ There is only the sport of downhill skiing which imposes comparable quantity restrictions of events a competitor may compete in.¹³¹ The reasons may be found in the temporal limitation of the competing season to a few months as opposed to a virtually all year round competition calendar in tennis. The official starts is usually in other sports limited to a certain small number¹³² while about 20 to 30 different tournaments are offered in tennis on international level. And finally, not only do young female tennis players have the physical possibility to offer competition to older players but they can make a living of the high financial dividends they earn already at an early age.

In addition to the age eligibility rules and the quantity restriction of international events, the WTA implemented player development requirements for its members:¹³³

- participation in a WTA Tour professional orientation,
- completion of the parent handbook and a written examination by a parent of the young player,
- meeting the minimum educational standards of the player's country of legal residence,
- an annual physical examination,
- and, if demanded by the WTA, the registration of the player's coach with it.

If the athlete is still under the age of 18 years and ranked within the top 100 players, following additional requirements have to be fulfilled which failure to comply with can result in a financial fine and a ban from competition in any tournament of the WTA Tour or ITF Women's circuit for six months.¹³⁴

- completion of a mentoring program,
- participation in any educational programs offered on-site at the tournaments,
- attending a session of advanced media training,
- a meeting of a player's parent with a WTA representative.

¹³⁰ www.tenniseurope.org/PDF/women?AERResearch.PDF

¹³¹ www.tenniseurope.org/PDF/women?AERResearch.PDF

¹³² for example approximately only 10 official starts per season for gymnastics or figure skating or approximately 75 starts for downhill skiers while this also means only 75 days of competition.

¹³³ Doherty, E.M. (1999) op. cit. p. 155.

¹³⁴ Doherty, E.M. (1999) op. cit. p. 156.

However, the WTA has allowed many exceptions to the age eligibility rules as it was threatened by legal action of some of its members. To their opinion, the age eligibility rules constitute a restraint of trade and hamper the young athletes ranking and ability to earn prize money.¹³⁵ Yet, if these restrictions were introduced and kept in place for an extended period of time, the situation would eventually be even for all athletes on the WTA Tour. No athlete would have entered any WTA tournament prior than reaching the age required and all players would have the possibility to participate in the same number of tournaments.

2.4. Training hours restriction

The existence of age eligibility rules, however, does not prevent the young athletes from excessive training. It would be useful to extend the restriction of events an athlete may participate per season to the number of hours an athlete may train. The limits could be set at variables depending on the age of the athlete and increase the permitted training hours the older the athlete gets.

The crucial point however is how to supervise the compliance with a restriction of training hours. The problem is that in many cases those who could positively influence the young athlete not to exaggerate the level of training time – namely the parents and the coaches – are often those who to push the young athlete beyond his or her physical capability. While parents often become so immersed in their child's sport that it becomes their own or realise that the whole family can make a living of one child's sporting success, coaches of top level athletes quickly recognise that their future career and income may depend on the performance of the young athlete. And while they may ostensibly believe that they are working in the best interest of the young athletes in their charge, there are other pressures that may result in decisions that disagree with the welfare of the young athlete and more in favour of the coach's own family and financial circumstances. Clearly, the principle to act only in the athletes' interest and to ensure that all activities are suitable for the age, experience and ability of the athletes is to made part of the code of conduct of sport organisations. But the sport organisations themselves will maybe put pressure on the coaches to achieve results and see their roles as ensuring the future of the sport by

¹³⁵ Doherty, E.M. (1999) op. cit. p. 158-159.

maintaining results that will produce continued funding from governments and sponsors.

Considering young athletes training more than forty hours a week, it seems logical to ask whether the young athletes' commitment for the sport and the high amount of training hours fall within the scope of national labour law and thus being restricted by national legislation. Usually, sport commitment of young athletes is not immediately associated with work, however, modern high-performance sport occurs in a highly work-like atmosphere. The parallel with work is perhaps most apparent when young people are being paid by government, corporate, or other sources for their sporting involvement. Because there is no minimum age limit for the receipt of government funding, it is entirely possible for young athletes with international rankings in sports to be in the apparent employ of the national government.¹³⁶ However, since child labour¹³⁷ in Europe is generally legally forbidden or restricted to so called 'light work' under national legislation the young athletes' obligation to compliance with the coach's or sport organisation's instructions is usually associated with the athletes binding to the association or sport club. Whether such obligation falls within the scope of the national protection of minors in employment will often depend on the design of the young athlete's obligation to fulfil the sport organisation's directives.¹³⁸ In Germany, for instance, the national government is aware of the fact that legal loopholes exist within the field of sport to circumvent national protection of minors in employment but also bares in mind the constitutional right of freedom of action which sets limits to governmental interference in private activities.¹³⁹ It is argued that ratio legis of the legislation on protection of minors in employment is to protect the young person from commercial exploitation and from the own decision to start a sporting career. Whether the young athlete receives an income by prize money, sponsorship deals or government funding should not be crucial if young people start earning money with their hobby.¹⁴⁰ Finally, it is stressed that governmental regulation would not curb the problem, rather it would force the young athletes to leave the country and seek training in other less restrictive countries.

¹³⁶ Donnelly, P. (1997) "Child Labour, Sport Labour" 32 *International Review for the Sociology of Sport* p. 403.

¹³⁷ Child in this context means children under the age of 15 according to Council Directive 94/33/EC Of 22 June 1994 on the protection of young people at work.

¹³⁸ Walker W.-D. (ed.) (2001) "Kinder- und Jugendschutz im Sport" p. 62-65.

¹³⁹ Steiner, U. (1999) "Kinderhochleistungssport in Deutschland – Thesen zur Verfassungslage" *Sport und Recht* p. 222.

¹⁴⁰ Walker, W.-D. (1999) op. cit p. 64.

VI. Conclusion

The various forms of abuse that endanger young athletes during their participation might seriously harm them physically and psychologically and surely will drive them off the sport they used to enjoy. While sexual harassment or abuse are usually associated with an ill predisposition of the abuser and certainly often including some form of physical and psychological abuse, the young athlete is also endangered by physical and psychological abuse which may be motivated by the extreme desire of sporting and commercial success or just be the lack of sporting and educational competence of the abuser, manifested in punishment for lack of discipline or results for instance.

Certainly, the parents usually have the best interests of their children at heart and are normally assumed to have the greatest level of responsibility for the welfare of their children. They play a major role in the protection of the young athletes, however, they often constitute a part of the problem. While sexual harassment and abuse rather occurs to young athletes who have a poor relationship with their parents, thus making the grooming process easier, the reasons for psychological and physical abuse, motivated by the ultimate desire to succeed, can often be found in the over-involvement of parents in their children's sporting career. The first steps towards the protection of young athletes therefore are recognition by the parents that the problem of abuse in sport exists. However, in case of pressuring and over-involved parents it is unlikely that a change in mind will come by themselves. Here, the sport organisation and namely the coach have the duty to influence parents so they do not forget that the athlete has a life not only after sport but also during sport and that the athlete's development always comes first.

In addition to the parents, national governments are constitutionally obliged to provide its citizens, including the children and young people, with the maximum possible protection against physical and mental harm. The Ministers of the member states of the Council of Europe demonstrated particular awareness of the problem of abuse in sport by agreeing in May 2001 on the revised European Sports Charter and the Code of Sports Ethics. Clear recommendations were given by the Committee of Ministers to base the national sports policies, and if appropriate any relevant legislation, on the European Sports Charter and the Code of Ethics and to invite their

national sport organisations to take account of the principles set out in them. But at the same time, the Committee acknowledged the autonomy of the national sport movements and the mere complementarity of public authorities' action to the action of the sport organisations. And some European countries practicing a non-interventionist approach towards sports legislation, such as Austria, Germany or Belgium for instance, are bound to partnership and co-operation with the sport organisations.

Thus, youth protection measures implemented by the sport organisation themselves would not only be most effective since introduced by those who directly control the sports environment, but also be in accordance with the principle of subsidiarity since the measures implemented by the sport organisations would be the minor intrusion into the athletes' rights.

Obviously, the implementation of a code of conduct, applying to anyone participating in the activities of the sport organisation, whether on the sport field or in the administrative sector, promises well if supervising of compliance with the code is guaranteed. However, a code of conduct should be seen as only one step towards the prevention or eradication of abuse of young athletes in sport that requires many other measures.¹⁴¹

- Establishment of an code of ethics and conduct
- Offer of systematic grievance and disciplinary systems
- Investigation into the benefits of registers and criminal record checks
- Making child protection modules compulsory in coach education
- Distribution of information for parents, athletes and coaches
- Establishment of simple contracts between parents, athletes and coaches
- Setting up of an independent helpline outside sport and the sport organisation
- Adoption of athlete-centred and democratic coaching styles
- Strengthening of links with child protection agencies
- Providing of support for the victim and accused
- Dissemination and reward of good conduct

¹⁴¹ Sport organisation action plan for the protection against sexual harassment and abuse in sport, given at Brackenridge, C.H. (1996) "Child Protection in Sport; Policies, Procedures and Systems" p. 13.

- Commissioning the research into child abuse in sport to increase knowledge

The European Council's Declaration at Nice in the year 2000 stressed again its support for the independence of sport organisations and their right to organise themselves.¹⁴² However, it also noted that such support was conditioned upon the sports bodies observing principles of democracy and transparency, solidarity across the sport and observance of the European Sports Charter and the Code of Ethics. The simple message is that sport is entitled to have its specificity recognised but it must earn the status. Otherwise legislators at both national and international level will come under increasing pressure to legislate and courts will apply laws treating sport organisations like any other commercial organisation.

¹⁴² www.ue.eu.int