

**Message of the Special Rapporteur in the field of cultural rights, Ms. Alexandra Xanthaki on the participation of Russian and Belarussian athletes in sports competitions**

**Committee on Culture, Science, Education and Media,  
Parliamentary Assembly of the Council of Europe (PACE)**

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I have repeatedly commented publicly on the illegality of the war in Ukraine and the suffering and human rights violations that this war brings. I have made several public statements, and continue to be very actively involved in commenting the effects this illegal war has both on the cultural heritage in Ukraine and on the cultural identities in Ukraine.

On 14 September 2022, I, jointly with the Special Rapporteur on racism, sent a letter to the International Olympic Committee. In that letter, I expressed serious concern about the recommendation to ban Russian and Belarusian athletes and officials such as judges from international competitions, based solely on their nationality, as a matter of principle. This raised serious issues of non-discrimination.

My interest is part of my wider concern about increasing unjustified restrictions affecting Russian and Belarusian artists, academics and scientists, on the grounds of their nationality not only abroad but in their own countries, since the Russian aggression against Ukraine. The right to participate in cultural life, which is protected under international law includes the right to participate in sports.

I chose to send the letter to the IOC as in September 2022, the International Olympic Committee affirmed through its Strategic Framework on human rights<sup>1</sup> its commitment to respecting human rights within its remit in accordance with the United Nations Guiding Principles on Business and Human Rights. Also Fundamental principle 4 of the Olympic Charter confirms that “the practise of sport is a human right” and establishes that “every individual must have the possibility of practising sport, without discrimination of any kind”. Fundamental principle 6 repeats prohibition of discrimination.

**The continuing blanket prohibition of Russian and Belarussian athletes on the basis of their nationality violates the principles of universality and non-discrimination, two of the most fundamental human rights principles.**

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<sup>1</sup> <https://olympics.com/ioc/news/ioc-approves-strategic-framework-on-human-rights>

Such a ban confuses states behaviours with individuals' behaviour, something that international human rights law prohibits. Punishing individuals solely based on their nationality for the heinous acts of leaders over which they have no control, undermines this distinction.

Further, such blanket prohibition actually undermines peace, rather than promotes it. The practice of sport is an instrument for preventing conflict and promoting long lasting peace and development objectives, as the UN has recognised.<sup>2</sup>

In the face of threats to peace and security, we should resist to being lured to further aggression and we should maintain our checks and balances when it comes to restrictions of human rights. Searching for avenues that allow all athletes who have not committed human rights violations, whatever their nationality, to engage in sports is acting to prevent the further erosion of our common values and promote peace and understanding.

**This does not mean that restrictions of athletes are not allowed under international law.**

International law authorizes limitations or restrictions to most human rights but following specific standards.

Limitations to the right to participate in cultural life including sports must be determined by law, pursue a legitimate aim, be compatible with the nature of the right and be absolutely necessary for the promotion of general welfare in a democratic society. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed.

When restrictions are coupled with a breach of the non-discrimination principle, meaning they are applied to some people only, there is a strong presumption of incompatibility with international law and the test has to be more stringent.

The application here: A blanket ban based solely on nationality is the most restrictive measure, not the least restrictive measure as required by international human rights law. It is disproportionate to the aim that seeks to achieve.

I do not exclude the possibility of a series of escalating measures on a case to case basis and if necessary, depending on how the situation unfolds. However, less restrictive measures must be adopted first, notably exclusions based on *individual conduct*, whatever the nationality.

The relocation or cancellation of events planned in the Russian Federation and Belarus; the recommendation not to display the Russian or Belarussian national flags and not to play the Russian or Belarussian anthems in international sports events, as sanctions that can be considered as legitimate, as they directly target these States or their official representations. Also, the active support of Ukrainian athletes are welcomed measures by the Special Rapporteur as positive measures are allowed in international law to ensure substantive equality.

The discussion therefore only concerns athletes competing as neutral athletes and officials such as judges.

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<sup>2</sup> [GA resolution A/77/L.28](#)

**The concern that sports events become platforms for war propaganda is a legitimate concern.**

International human rights standards provide specific and clear guidance:

Athletes engaging in propaganda for war can be excluded. This in cases would be a legitimate restriction of cultural rights. Article 20 of the International Covenant on Civil and Political Rights states that any propaganda for war shall be prohibited by law. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Athletes engaging in speech that does not amount to propaganda for war as such, but violates the rights of others or public order can also be restricted according to article 19 of the International Covenant on Civil and Political Rights. But the same guarantees have to apply.

In addition, under Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, all incitement to, or acts of, racial discrimination must be eradicated.

Again, as mentioned above, the least restrictive measures must be adopted. In addition, distinction should be kept between freedom of opinion and freedom of expression. While freedom of expression can be subject to restrictions, freedom of opinion is an absolute right and cannot be subject to any exception or restriction. Therefore, any questions by sporting associations about the athletes support of the war would cross that line.

**Security concerns and to protect the safety as well as physical and emotional well-being of Ukrainian athletes:**

I understand the emotional distress caused by the aggression against Ukraine, as well as by the idea that they could compete against Russian and Belarusian athletes if those are allowed to compete.

But a blanket prohibition does not pass the proportionality test.

Many athletes around the world come from conflict areas and may encounter each other during sports competitions. International sports federations are used to adopting protective and mitigating measures in such circumstances. There are already many experiences of tensions, conflicts and natural disasters that the world of sports has faced, from which measures to address the current situation could be taken and adapted.

In my discussions with the IOC, I proposed that if all mitigating measures fail and decision is taken to ban individual athletes, the following criteria should apply:

- The ban should apply to all athletes regardless of nationality / national origin (as well as on any prohibited grounds under international law). No restriction should be applied to any athlete that is not applied to all.
- Be based on an assessment that is transparent, fair and non-discriminatory, with each case assessed on its own merit, including clear provisions for a fair and independent appeal process.
- Consider each situation and individual case on an ad hoc basis, therefore preventing “collective punishment”.

- Rely on standards regarding possible limitations to human rights under international law. This includes in particular:
  - a. Exclusion based on article 20 of the ICCPR
  - b. Exclusion based on article 4 of ICERD
  - c. Exclusion in situations where there are serious and credible allegations of crimes under international law (in particular war crimes, crimes against humanity, genocide, aggression, torture, racial discrimination...)
  - d. Exclusion in case of open support to these crimes or wars in a manner that enables qualification under the above

**About the exclusion of all military:**

In its Recommendation of 28 March 2023, the International Olympic Committee recommended that athletes who actively support the war cannot compete. Athletes who are contracted to the Russian or Belarusian military or national security agencies are considered to support the war and therefore cannot compete.

I am of the view that such recommendation is a step in the good direction. It also corresponds to her view that forced conscription alone, for example, would not be sufficient to deprive an athlete to compete.

I also stress that as the situation unfolds and Russian and Belarussian athletes are reintegrated in sports competitions as neutral athletes, the International Olympic Committee may adopt a series of escalating measures in case this is necessary.

Finally, I urge all CoE states to think of their responsibilities vis a vis international law when it comes to the measures taken for the Olympics. They will have to justify how such measures are compatible with the legal obligations they have undertaken in international human rights law.

Thank you very much. I remain open to further discussion and events.