

## Q & A

### on the participation of Russian and Belarusian athletes in international sports competitions

Special Rapporteur in the field of cultural rights,  
Ms. Alexandra Xanthaki

3 May 2023

#### 1. What is the chronology of the UN Special Rapporteur's involvement with the International Olympic Committee (IOC) decision on the participation of the Russian and Belarusian athletes in sports competitions?

On 14 September 2022, the Special Rapporteur in the field of cultural rights and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance addressed a letter to the International Olympic Committee (IOC) ([AL OTH 90/2022](#)) to express their concerns regarding the recommendation of the IOC Executive Board, on 28 February 2022, to exclude all Russian and Belarusian athletes from sports events.

This recommendation followed a statement made by the Executive Board on [25 February 2022](#), the day after the invasion of Ukraine by the Russian Federation and the breach of the Olympic Truce, recommending to all International Sports Federations

- "to relocate or cancel their sports events currently planned in the Russian Federation or Belarus" and
- that "no Russian or Belarusian national flag be displayed and no Russian or Belarusian anthem be played in international sports events".

On [28 February 2022](#), the IOC recommended that International Sports Federations and sports event organisers

- do "not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions", and
- wherever this was not possible on short notice for organisational or legal reasons, "do everything in their power to ensure that no athlete or sports official from Russia or Belarus be allowed to take part under the name of Russia or Belarus".<sup>1</sup>

---

<sup>1</sup> The resolution points out that Russian or Belarusian nationals, be it as individuals or teams, should be accepted only as "neutral athletes or neutral teams", and no national symbols, colours, flags or anthems should be displayed.

In their letter to the IOC on 14 September 2022, the two Special Rapporteurs noted that some of the decisions taken by the Executive Board – such as the relocation or cancellation of events planned in the Russian Federation and Belarus or the recommendation not to display the Russian or Belarusian national flags and not to play the Russian or Belarusian anthems in international sports events – could be regarded as legitimate, as they directly target the States that are, directly or indirectly, involved in the invasion of Ukraine. However, the recommendation to ban Russian and Belarusian athletes and officials from international competitions based solely on their nationality posed serious concerns in relation to the principle of non-discrimination and the right to take part in cultural life.

In February 2023, the IOC [responded](#) to the concerns of the Special Rapporteurs, explaining the dilemma the IOC had faced – striving to protect the mission of the Olympic Movement as a unifying force but seeing no other solution than excluding Russian and Belarusian athletes - and expressing its willingness to explore ways to overcome it.

## **2. Why should the International Olympic Committee and its members respect human rights?**

The IOC is a not-for-profit independent international organisation. As the leader of the Olympic Movement, the IOC acts as a catalyst for collaboration between all Olympic stakeholders, including the athletes, the National Olympic Committees, the International Federations, Organising Committees for the Olympic Games, the Worldwide Olympic Partners and Olympic broadcast partners. It also collaborates with public and private authorities including the United Nations and other international organisations.

In September 2022, the IOC affirmed in its [Strategic Framework on Human Rights](#) its commitment to respecting human rights within its remit in accordance with [the United Nations Guiding Principles on Business and Human Rights](#) (2012). To meet these expectations in practice, the IOC committed to continue to carry out human rights due diligence: an ongoing risk management process to identify, prevent, mitigate and account for any adverse human rights impacts across its relevant activities. The prohibition of direct discrimination is long considered such an important principle of international law that it applies horizontally, to all entities, public and private.

## **3. What do cultural rights have to do with sports?**

The concern of the Special Rapporteur in the field of cultural rights regarding the exclusion of Russian and Belarusian athletes from sports events is part of her wider concern of on-going unnecessary exclusions of Russian and Belarusian people from participating in cultural life. Artists too have been excluded from cultural events, festivals and other platforms based on their nationality and their artistic freedom tightened.

Sports are one of the many cultural practices through which people develop and express themselves, learn from others and belong to a community. The right to participate in cultural life, which is protected under international law as well as many constitutions across the world, includes the right to participate in sports. This has been affirmed, among other, by the UN Committee on Economic, Social and Cultural rights and previous mandate holders.

In the letter addressed to the IOC, the experts stress that, in accordance with international human rights law, everyone has the right to take part in cultural life. This right is enshrined in article 15 of the International Covenant on Economic, Social and Cultural Rights and article

27, paragraph 1, of the Universal Declaration of Human Rights. References to cultural rights are also included in a wide number of human rights instruments.<sup>2</sup>

In General Comment No. 21 (2009), the Committee on Economic, Social and Cultural Rights observes that “culture is a broad, inclusive concept encompassing all manifestations of human existence” (para. 11) including, inter alia, “sport and games” (para.13). The Committee also observes that the right to participate or take part in cultural life includes three interrelated main components: (a) participation in, (b) access to, and (c) contribution to cultural life. International human rights law prohibits any discrimination in the exercise of cultural rights.

The Olympic Charter expressly recognises, in its Fundamental principle 4, that “the practice of sport is a human right” and provides that every individual “must have the possibility of practising sport, without discrimination of any kind”.

#### **4. Why is the decision of the IOC to ban Russian and Belarusian athletes and officials from international competitions discriminatory and inconsistent with the IOC responsibility to respect human rights?**

Non-discrimination constitutes a basic and general principle relating to the protection of human rights. It is enshrined in the Universal Declaration of Human Rights and virtually all core human rights treaties, including the International Covenant on Civil and Political Rights (article 2, paragraph 1) and the International Covenant on Economic, Social and Cultural Rights (article 2, paragraph 2).

Human rights must be exercised without discrimination of any kind.

“Discrimination” constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly, or indirectly based on prohibited grounds of discrimination which has the intention or effect of nullifying or impairing the equal recognition, enjoyment or exercise of human rights.

Differential treatment based on prohibited grounds will be considered as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with human rights standards and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realised and the measures or omissions and their effects.

#### **5. Under which circumstances can the right to take part in cultural life including sports be limited?**

International law authorizes limitations or restrictions to most human rights but under specific conditions.

---

<sup>2</sup> See for instance art. 5 (e) (vi) of the International Convention on the Elimination of All Forms of Racial Discrimination; art. 13 (c) of the Convention on the Elimination of All Forms of Discrimination against Women; art. 31, para. 2, of the Convention on the Rights of the Child; art. 43, para. 1 (g) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and art. 30, para. 1, of the Convention on the Rights of Persons with Disabilities.

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 strictly 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 must be more stringent.

## **6. How does this apply to the ban against Russian and Belarusian athletes in sports competition?**

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 it seeks to achieve. For this reason, it is contrary to international human rights law, both as restriction to cultural rights and even more so as a measure that creates direct discrimination.

The Special Rapporteur does 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, such as the inclusion of Russian and Belarusian athletes, or at least some of these athletes, under a neutral banner must be adopted first. Notably it is important that exclusions based on *individual conduct*, whatever the nationality, are favoured rather than collective prohibitions, where the threshold of necessity is high. Also, any measure must have a clear effect on the specific aim that it purports to fulfil, such as the maintenance of peace.

## **7. Does international law authorize restrictions to combat hate speech and propaganda for war?**

Ensuring that sports events do not become platforms for war propaganda is a legitimate concern. International human rights standards provide specific and clear guidance.

Athletes engaging in propaganda for war, irrespective of their nationality, can be excluded. This 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.

Furthermore, article 19 of the International Covenant on Civil and Political Rights allows for restrictions to freedom of expression if they are provided by law; necessary for respect of the rights or reputations of others; or for the protection of national security or of public order, or of public health or morals; and if they are proportionate to reach these aims. Therefore, 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 see their freedom of expression and participation restricted.

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.

The UN Special Rapporteur is of the view that implementing the provisions above effectively can go a long way in addressing the concerns that have been behind the blanket ban of Russian and Belarusian athletes. Combined with the banning of the Russian Federation and Belarus and the active support to Ukrainian athletes, this set of measures would give the right message and ensure that human rights prevail over aggression and illegality.

#### **8. Can Russian and Belarusian athletes be asked to sign a form expressing their disagreement with the war in Ukraine?**

A distinction should be kept between freedom of opinion and freedom of expression. While the latter can be subject to restrictions, the former one is an absolute right and cannot be subject to any exception or restriction. In the case of sports, it means that no athlete should be excluded based on their *opinion* about the war, but only with respect to the *expression* of such opinion. Therefore, any questions by sporting associations about the athletes' support of the war would cross that line.

#### **9. Can Russian and Belarusian athletes be banned from sports competition, based on security concerns and to protect the safety as well as physical and emotional well-being of Ukrainian athletes?**

The Special Rapporteur understands the emotional distress caused by the aggression against Ukraine, as well as by the idea that Ukrainian athletes could compete against Russian and Belarusian athletes if those are allowed to compete.

International human rights law authorizes restrictions to most human rights, including the right to participate in cultural life through sports, for security reasons as well as to protect the rights of others. The same standards always apply. Restrictions must be determined by law, be necessary and proportionate to pursue a legitimate aim. As specified above, the least restrictive measures must be adopted first.

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.

#### **10. What could be legitimate criteria for banning individual athletes from sports competitions?**

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

- Any ban or restrictions 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.

- Any restrictions must 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.
- Any measure must address each situation and individual case on an ad hoc basis, therefore preventing “collective punishment”.
- Any decision must rely on standards regarding possible limitations to human rights under international law. This includes in particular:
  - a. Exclusions based on article 20 of the International Covenant on Civil and Political Rights: any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
  - b. Exclusions based on article 4 of the International Convention on the Elimination of All Forms of Discrimination regarding the eradication of all incitement to, or acts of, racial discrimination.
  - c. Exclusions in situations where there are serious and credible allegations of crimes under international law (war crimes, crimes against humanity, genocide, aggression, torture, racial discrimination...)
  - d. Exclusions in case of open support to these crimes or wars in a manner that enables qualification under the above.

#### **11. Should active members of the military, participating in the war, be excluded from taking part in international sports competitions?**

The Special Rapporteur notes that, in its Recommendation of 28 March 2023, the IOC 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.

The Special Rapporteur is of the view that limiting the athletes who will be excluded to those who are career military is a step in the right direction. It corresponds to her view that *forced conscription alone*, for example, would not be sufficient to deprive an athlete of the possibility to compete. Funding by the State also should not be equated with support for the war, in the same way that other athletes from other States are not presumed to support their governments' decisions because of their funding.

The Special Rapporteur also stresses that, as the situation unfolds and Russian and Belarusian athletes are reintegrated in sports competitions as neutral athletes, the IOC may adopt a series of escalating measures in case this is necessary. It is also the responsibility of the IOC to lift restrictive measures when possible, particularly regarding teams of athletes.

#### **12. Does the Special Rapporteur see any human rights violations in the other measures recommended by the IOC regarding the ban of Russia and Belarus from international sports events and the support for Ukrainian athletes?**

No. In their September 2022 letter, the Special Rapporteurs understood the relocation or cancellation of events planned in the Russian Federation and Belarus, as well as the recommendation not to display the Russian or Belarusian national flags and not to play the



Russian or Belarusian anthems in international sports events, as sanctions that can be considered as legitimate, as they directly target these States or their official representations.

The distinction between States and individuals is of paramount importance. Human rights were established and adopted by all nations to protect individuals and groups against the abuse of power from States and against the tyranny of majorities. Punishing individuals solely based on their nationality for the heinous acts of leaders over which they have no control, would undermine this distinction. But banning States from sports events may be a legitimate measure.

Also, measures actively supporting Ukrainian athletes are welcomed by the Special Rapporteur as positive measures, and allowed in international law to ensure substantive equality.

### **13. What about the States who have called for the boycott of international sports competitions if Russian and Belarusian athletes are admitted as neutral athletes?**

In view of the discussion on human rights issues above, States that envisage a boycott of international sports competitions may need to reflect on how such a boycott would be compatible with their human rights obligations. Will such a restriction of the rights of their own athletes be a proportionate response to the participation of some Russian athletes who would fulfil the conditions of neutrality that have been set, even when the aggressor States are excluded? Is this the least restrictive measure these States can think of in order to declare their disagreement with the illegal war in Ukraine or/and the violation of the Olympic truce by the Russian Federation?

The Special Rapporteur urges all States to take part in international sports competitions and uphold the principles of non-discrimination and universality of human rights, principles at the core of our common co-existence as humanity.

### **14. Finally, what does the Special Rapporteur in the field of cultural rights do regarding the on-going violations of cultural rights in Ukraine by the Russian Federation?**

Since the beginning of the invasion, the Special Rapporteur has made several public statements regarding the effects of the war on cultural heritage in Ukraine and the cultural rights of individuals living in or having been forced out of Ukraine because of the war. She has criticised the Russian Federation for violating the right to self-determination and cultural rights of Ukrainians r. She has also criticised the intentional destruction of cultural heritage and has urged cultural rights to be upheld.<sup>3</sup> In this respect, she commends the active and effective support that is given to Ukrainian athletes and the IOC recommendation for such support to continue. Such measures contribute to substantive equality, as upheld by international human rights law.

---

<sup>3</sup> See the Special Rapporteur's address to the Human Rights Council [on 8 March 2022](#) and the press releases issued on [28 February 2022](#), [8 March 2022](#) and [25 May 2022](#), together with other Special Procedures mandate holders.