



Sports, constitutions, and human rights in Latin America

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Accepted: 10 March 2025
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Abstract

Sport is governed by a complex legal framework that includes international, transnational, and national norms. The intersection of sports and human rights highlights the interactions between Sporting Governing Bodies (SGBs), international institutions like the United Nations, and domestic constitutional frameworks. While scholars and advocates have analyzed these relationships, Latin America remains largely absent from these discussions. However, the region offers a valuable case study for alternative approaches to addressing human rights abuses in sports, particularly football. Over the past 40 years, Latin America has undergone major constitutional transformations, which have also influenced sports. Latin American constitutions explicitly recognize the right to practice sports and grant constitutional status to human rights treaties. This has enabled individuals to seek constitutional remedies for sports-related rights violations rather than relying solely on private law. Despite these significant developments, academics and activists have largely overlooked the region's contributions. This neglect stems from a “tip of the iceberg” focus, where human rights and sports research is limited to mega-events, professional sports, and key adjudicatory bodies such as the Court of Arbitration for Sport (CAS), the Swiss Federal Tribunal, the European Court of Human Rights, and the Court of Justice of the European Union. Attention remains centered on international sporting institutions like the International Olympic Committee and FIFA, often overlooking the role of human rights bodies and constitutional frameworks, particularly in the Global South. This paper seeks to address this gap by presenting findings from a review of over 150 constitutional decisions from Latin American Supreme and Constitutional Courts. These decisions establish a constitutional duty for both the State and SGBs to protect human rights in the context of sports. Latin American courts have emphasized a balance between sports autonomy and State regulation. While this does not create an unrestricted right to participate in any sport, it ensures broader constitutional protections than private law and directly obligates SGBs to uphold human rights. Latin American courts have also developed a distinct model for resolving sports disputes, starting with factual analysis, rights recognition, legal provisions, and interpretations by courts and human rights bodies. This approach prioritizes rights and effective enjoyment, placing constitutional principles at the forefront of dispute resolution. In contrast, CAS primarily considers SGB regulations and Swiss public policy, often neglecting international human rights and domestic constitutional law.

Keywords Sports and human rights · Constitutions · Latin America · Horizontal effect

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1 Introduction

Sport is regulated by a web of legal norms. Those norms could be international, transnational, or national. Particularly, the intersection of sports and human rights brings to the forefront the interactions between the norms generated by the Sporting Governing Bodies (SGBs), by international institutions (United Nations and regional) and by domestic constitutional processes. Advocates and academics have devoted time and energy to unpack the relations between these regimes. However, the Latin American experience is absent in most debates and analyses. Latin America presents a compelling case study of the possibilities and limitations of thinking about alternative models to overcoming the continuing human rights abuses in sports, particularly football.¹ Over the past four decades, Latin America has experienced significant constitutional transformations.² Sports, as part of society, has been impacted by these changes, as it received constitutional recognition and has been subject to constitutional litigation and adjudication. However, this shift has not garnered adequate attention from academics and activists at the intersection of sports and human rights.

Latin American constitutional changes led to a conceptual approach to sports disputes that is not necessarily fully equivalent to those applied in Europe and the USA. In particular, Latin American Constitutions recognize a right to practice sports and give an important constitutional status to human rights treaties. These features have granted access to constitutional remedies to protect rights in the context of sports rather than relying almost exclusively on private law.

The oversight of these changes can be attributed to the “tip of the iceberg” problem. Most academic and advocacy efforts in human rights and sports focus on a limited segment of global sports: mega-sporting events and highly professionalized sports. Additionally, these efforts typically emphasize the decisions of four key adjudicatory bodies: the Court of Arbitration for Sport (CAS), the Swiss Federal Tribunal (SFT), the European Court of Human Rights (ECHR), and the Court of Justice of the European Union (CJEU), occasionally extending to other courts, such as those in Germany. The academic and advocacy work predominantly revolves around international sporting governing bodies, particularly the International Olympic Committee (IOC) and FIFA. In this context, contributions of human

rights bodies, such as those within the United Nations³ and other regional systems, often remain overlooked. Similarly, the constitutional framework governing sports and the adjudication of sports disputes, especially in the Global South, tends to be neglected.

This paper attempts to overcome this problem. The article presents the preliminary findings of a review of a database compiling more than 150 constitutional decisions⁴ of all Latin American Supreme and Constitutional Courts⁵ (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico,⁶ Uruguay, and Venezuela).

The inclusion of sports in constitutions has established a constitutional duty for both the State and SGBs to ensure the right to practice sports. This understanding goes beyond the IOC and CAS's interpretation of the Olympic Charter's Fundamental Principle that sports are a human right. It does not grant an unlimited right to participate in any sport without adherence to regulations, nor does it require the State to support all sporting activities. The constitutional recognition balances sports autonomy with State regulation, offering broader constitutional remedies than traditional private law and placing direct responsibilities on SGBs to protect these rights.

Courts have developed a model for resolving sports disputes, beginning with an analysis of the factual situation, rights enjoyment within the sports context, relevant legal

³ One exception is González 2022, pp. 152–164

⁴ The database is not completed, and it is not exhaustive. For instance, the site Derecho Deportivo Colombiano lists 80 decisions of the Colombian Constitutional Court related to sports, <https://www.derechodeportivocolombiano.com.co/content.php?area=sentenciascc> while the database has compiled 25 leading Colombian cases.

⁵ The database includes some decisions from supreme courts (in addition to the constitutional court, such as in Colombia) or provincial/state supreme courts (such as in Argentina) or some courts of appeals. The court/country not included is Cuba and its Supreme Popular Tribunal due to lack of constitutional litigation and the restrictions imposed by the USA embargo on Cuba which makes it extremely difficult to access judicial information from the island. Since the 1976 inclusion of the right to participate in sports in the Cuban Constitution there has been no constitutional litigation on this subject. I thank Professor Karel Pachot for the information provided on Cuba. See particularly, Zambrana 2023, pp. 527–544.

⁶ The database includes Puerto Rico even though it is not an independent State; its Constitution and judicial decisions are subject to the US Constitution and federal courts. See e.g. Gonzales 2005, p. 285 and Gonzales 1988, p. 133. There are two reasons for the inclusion. The first one is that Puerto Rico is recognized by International Olympic Committee. See e.g. Sotomayor 2016, and Wise 2024. The second reason is that Puerto Rico's legal system, as a mixture between civil and common law, could provide contrasting examples of different approaches to sports disputes. See e.g. Velez Torres 2004, p. 67.

¹ As this article deals with sports in Latin America, I use football rather than soccer as the same sport is known in the USA. See e.g. Soccer or football? The discussion over the name of the sport is highly charged : NPR or Football or soccer? It's complicated ... | CNN.

² See generally, Gargarella et al. 2017.

provisions, and their interpretation by courts and human rights bodies. This framework prioritizes rights and their effective enjoyment, followed by the roles of the State and duties of SGBs and private actors. The Constitution serves as the starting point for any dispute.⁷ In contrast, CAS focuses mainly on SGB regulations and, occasionally, Swiss public policy, often overlooking international human rights law (IHRL) and domestic constitutional law⁸ in its analysis and remedies.

The paper is structured as follows: First, it outlines key features of constitutional and international human rights in Latin America, focusing on the region's constitutional transformations over the past four decades. Next, it explores how Latin American case law addresses sports-related disputes, including the right to participate in sports, state responsibilities, and the right to a remedy. The third section provides examples of Latin America's approach to sports disputes due to its constitutional and human rights frameworks. The paper concludes with reflections on the practical implications of Latin American constitutional adjudication in sports disputes. As the first comprehensive overview of Latin American practices, this paper does not delve into a deep analysis of specific cases, which will be addressed in a future article.

2 Latin American constitutional aspects and practices relevant to sports and human rights

Latin America has established a transnational human rights system marked by two key features: a strong regional human rights framework and a distinctive interaction between international and constitutional law.⁹ This development stems from a new approach to constitution-making and adjudication at the national level, coupled with the Inter-American Court of Human Rights' (Inter-American Court) adoption of a broad, constitutionalized interpretation of international human rights law, especially the American Convention on Human Rights (American Convention).

Since the 1980s, Latin American countries engaged in constitution-making processes. Some characteristics of this process are the expansion of the rights catalog, the creation of specialized constitutional tribunals or chambers with clear constitutional review powers, and the design of strong constitutional remedies, and an openness to international law providing international human rights treaties some

constitutional rank.¹⁰ Latin America adopted a concept of “constitutional bloc” that includes both the Constitution and the human rights treaties the country has ratified.¹¹ The Inter-American case law became part of the mandatory repertoire of constitutional interpretation.

The writ of *amparo* (or in other countries, *tutela* or *protección*) became central in this trend. The *amparo* is a simple, prompt, and exceptional remedy action intended to protect constitutional rights, and in most Latin American countries, the rights protected by international human rights treaties. The *amparo* protects everybody, without discrimination of any type. Most Latin American countries extend the scope of the *amparo* to protect against the actions and omissions of both public authorities and private actors.¹² The *amparo* is recognized in Article 25 of the American Convention that grants “everyone [...] the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention.” Article 25 combines the Latin American concept of *amparo* with the traditional right to an effective remedy under the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (European Convention). The American Convention adds that the remedy must be “simple and prompt,” which is not required by the ICCPR or the European Convention. Additionally, the remedy should protect not only rights recognized by international treaties but also those guaranteed by national constitutions or laws.

At the Inter-American level, regional bodies became key spaces for human rights advocacy.¹³ The Inter-American Court, in particular, adopted a constitutional approach to its role, leading to what is called the “invention of an Inter-American Constitutional Court.”¹⁴ Three key features stand out. First, the Court established a broad and detailed reparation system.¹⁵ Second, it ruled that some constitutional provisions¹⁶ and legislation¹⁷ violated the American

⁷ Corte Constitucional (Ecuador) 2014.

⁸ Court of Arbitration for Sport (CAS) CAS 2018a, b/A/6040, para 131, (Paraguayan domestic law relevant to determine the proportionality of the sanction).

⁹ Contesse 2022, p. 313.

¹⁰ Uprimny 2011, p. 1587. Even the Constitution of Puerto Rico, strongly influenced by the US Constitution, includes specific references to “human rights” in its Preamble and in Art. II Sections 5 and 20.

¹¹ Góngora Mera 2014, p. 14

¹² Brewer-Carías 2009

¹³ Abramovich 2009, pp. 6–39.

¹⁴ Dulitzky 2015. See also Burgorgue-Larsen 2014.

¹⁵ Buitrago-Rey et al. 2024.

¹⁶ See e.g. Tzompaxtle Tecpile et al. v. Mexico, Inter-Am. Ct. H.R., 2022, declaring that the Mexican constitutional provision on *arraigo* (pre-trial detention in organized crimes cases) was contrary to the American Convention on Human Rights (ACHR) and needed to be amended.

¹⁷ See e.g. Barrios Altos v. Peru, Inter-Am. Ct. H.R., 2001, para 44 (declaring that Peruvian Amnesty Law “lacks legal effect”).

Convention, declaring them invalid and ordering countries to amend or repeal them. Third, the Court introduced “conventionality control,” requiring national judges to follow Inter-American human rights treaties as interpreted by the Court.¹⁸ International law and constitutional law became intertwined.¹⁹

These dynamics are evident in the adjudication of human rights disputes within Latin America's sports ecosystem. Sports, spanning international to local levels, is a space where differing views on the scope of IHRL and constitutional law shape the balance of State and SGBs' power to protect rights. The next section will examine how these tensions are addressed in Latin American case law.

3 The constitutional recognition of sports

Latin American constitutions recognize sports in three main ways: (1) as a right (either on its own or as part of another right), (2) as a State policy goal and as a State duty to promote and protect, (3) as part of the distribution of power between the branches of government or between central and local authorities. The inclusion of sports in these constitutions means that all lower laws must respect the Constitution, including its provisions on sports, and be interpreted accordingly.

The Constitution's power radiates to all legal areas including those regulated by private and contractual law,²⁰ traditionally associated with sports.²¹ Contractual relations are not a shield against constitutional review.²² Constitutional remedies become relevant when there is inequality in bargaining power and individuals are defenseless to protect their rights.²³ The sports legal system, with its own rules, is not separate from the constitutional order and is not an isolated or lawless zone.²⁴ SGBs are subject to the legality principle, meaning that they should respect the legal order, particularly constitutional norms.²⁵

Constitutional protections extend to all of sports' different modalities, including as recreational activities, as physical education, as amateur or non-competitive, and as professional and Olympic sports,²⁶ or social activities (secured to every person); performance (recognized to those who engaged in competitive and professional sports), and high-performance (particularly related to those athletes participating in national teams and international competitions).²⁷ Some constitutions distinguish between federated and non-federated sports and school sports,²⁸ granting special protection to federated sport (high-performance).²⁹ The constitutional recognition of sports should be integrated across its various disciplines and modalities.³⁰

This broad constitutional protection shows that sports litigation in Latin America goes beyond the cases typically heard by the CAS or those drawing attention in the Global North, which often focus on professional, high-performance, or Olympic sports. Additionally, similar to European tribunals, Latin American courts also handle disputes involving professional sports with international elements, including those related to CAS jurisdiction.

4 Sports as a constitutional right

Seventeen Latin American constitutions (Bolivia, Brazil, Chile, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela) explicitly recognize the right to participate in sports and physical activities. The 1976 Cuban Constitution was the first in the world to explicitly recognize the right to participate in sports.³¹ This right is either an autonomous right or connected to other constitutional rights, such as the right to health, education, culture, children's rights, or the rights of persons with disabilities. All the constitutional texts place the right to practice sports in the section dedicated to economic, social,

¹⁸ *Almonacid-Arellano v. Chile*, Inter-Am. Ct. H.R. 2006, para 124.

¹⁹ *Contesse* 2022, pp. 314–315.

²⁰ See e.g. *De Oliveira* 2017, pp. 101–116.

²¹ *Sentencia T-740-10*, Corte Constitucional (Colombia), 2010.

²² *Id.*

²³ *Id.*, and *Sentencia T-242/16*, Corte Constitucional (Colombia), 2016.

²⁴ *Exp. No. 035 74-2007-PA/TC*, Tribunal Constitucional (Perú) 2007, para 42 and 45.

²⁵ *Sentencia 754-2006*, Sala de lo Constitucional de la Corte Suprema de Justicia (El Salvador) 2007, at 2.a and V.b. See also *Sentencia 519-2014*, Sala de lo Constitucional de la Corte Suprema de Justicia (El Salvador) 2016, at V.c.

²⁶ *Pachot* 2014, pp. 25–58.

²⁷ *Acción de Inconstitucionalidad 107/2023*, Suprema Corte de Justicia de la Nación, Pleno (México) 2023, para 85.

²⁸ *Constitution of Guatemala 1985*, art. 91 and *Corte de Constitucionalidad* (Guatemala), *Exp. No. 15-90*, at Cons. I.

²⁹ *Exp. 6094-2017*, Corte de Constitucionalidad (Guatemala) p. 29.

³⁰ *Id.*

³¹ *Pachot* 2014, pp. 25–58. Not surprisingly some have claimed that a European country, Finland, was the first to legislate on sports as a human right, referring to the Sports Act that came into force only in 1998. See *Giulianotti and McArdle* 2007, p. 3.

and cultural rights (ESCR).³² Colombia also recognizes the practice of traditional indigenous sports.³³

The right to practice sports has a double constitutional dimension: a social one as the right of the community to sports and recreation and the individual right of those who practice sports or wish to.³⁴ The right to participate in sports it is polysemous and multifaceted,³⁵ complex and related with other important rights such as education,³⁶ culture,³⁷ health,³⁸ dignity, free development of the personality,³⁹ rest and leisure, and the right to work,⁴⁰ providing individual and collective benefits.⁴¹ Constitutional courts understand that sports are a key element in the integral development of the human person with dignity.⁴² At the same time, this right to sports promotes constitutional principles such as peaceful coexistence, participation, solidarity, equality, and peace.⁴³ Sports contributes to achieving physical benefits for the body and mind, which in turn has constitutional implications from disease control to promoting greater physical and intellectual capacity for work and helps to deal with social problems such as crime, drug addiction, family crises, and physical and mental health issues.⁴⁴

The right to practice sports is also grounded in other rights such as the rights to a healthy environment and the

right to health.⁴⁵ The Ecuadorian Court considers that requesting SGBs to provide health exams and health insurance for athletes participating in international competitions is a manner of guaranteeing the constitutional right to health.⁴⁶ The relationship with other rights does not mean that they are subsumed in those rights. For instance, the Colombian Constitutional Court considered that the provision of a wheelchair to a professional paralympic basketball athlete is part of his right to participate in sports but not his right to health. While the wheelchair was essential and central for his role as a professional player, it was not part of his basic health besides the side effect that sports have on physical wellbeing.⁴⁷ An important consequence of this distinction is that the National Paralympic Committee, rather than the health insurance company, was mandated to provide the wheelchair. For the Court, the case involved the right to practice sports (and other rights) rather than the right to health. The wheelchair requested is needed to practice sports and only indirectly relates to health as far as it contributes to physical wellbeing.⁴⁸

The right to practice sports is not limited to professional or high-performance athletes but to any person who intends to engage in sporting activities.⁴⁹ The constitutional regulation of sports covers not only those who practice sports but also fans and spectators.⁵⁰ Courts have acknowledged the importance of fans, including the ‘ultras’ (*barras bravas*).⁵¹ The Brazilian Superior Tribunal de Justiça for instance considered that fans are a fundamental element for the development of national sports and deserve to be protected.⁵² Fans have an interest in the integrity of sports and in clean competitions, such as repressing the manipulation of results by

³² Sentencia No. C-226/97, Corte Constitucional (Colombia) 1997. As ESCR, the right to practice sports needs to respect the principle of progressive realization. Sentencia C-/03, Corte Constitucional (Colombia) 2003. Flores Fernandez understands that as an ESCR, the right to practice sports has to comply with the 4A: availability, acceptability, adequacy, and adaptability. Flores Fernández 2014, pp. 105–120.

³³ Sentencia T-242/16, Corte Constitucional (Colombia) 2016.

³⁴ Sentencia No. T-498/94, Corte Constitucional, Sala Tercera (Colombia) 1994.

³⁵ Sentencia T 560-15, Corte Constitucional (Colombia) 2015.

³⁶ Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Perú) 2007, para 14-17; Amparo Directo en Revisión, 5672/2021, Suprema Corte de Justicia de la Nación, (México) 2023, para 180.

³⁷ ADI 3753/SP, Supremo Tribunal Federal (Brasil) (2022).

³⁸ Federación Venezolana de Fútbol, Tribunal Supremo de Justicia, Sala Constitucional (Venezuela), 2015; Exp: 10-011016-0007-CO, Res. No. 015291-2010, Sala Constitucional de la Corte Suprema de Justicia, (Costa Rica) 2010, consid. VI.

INT'L COUNCIL OF ARB. FOR SPORT (ICAS), 2020 ANNUAL REPORT AND FINANCIAL STATEMENTS (2021).

³⁹ Sentencia No. 0113-16-SEP-CC, Caso No. 1388-14-SEP, Corte Constitucional (Ecuador) 2016.

⁴⁰ Aristizábal Botero 2013, p. 63.

⁴¹ Sentencia No. 930, Tribunal Supremo de Justicia, Sala Constitucional (Venezuela) 2016.

⁴² Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Perú) 2007, para 16.

⁴³ Sentencia T-366/19, Corte Constitucional (Colombia) 2019.

⁴⁴ Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Perú) 2007, para 17.

⁴⁵ Exp: 16-000930-0007-CO, Res. No. 01903-2016, Sala Constitucional, Corte Suprema de Justicia, (Costa Rica), 2016.

⁴⁶ Sentencia No. 003-15-SINCC, Caso No. 0011-11-IN, Corte Constitucional (Ecuador) 2015.

⁴⁷ Sentencia T 560-15, Corte Constitucional (Colombia) 2015, and Auto 053/16, Corte Constitucional, Pleno (Colombia) 2016.

⁴⁸ Sentencia T 560-15, Corte Constitucional (Colombia) 2015.

⁴⁹ See for instance, Zacharias c/Cordoba, Provincia de, Corte Suprema de Justicia de la Nación (Argentina) 1998, consid. 9, and Larrosa Luis y otros c/Club Atletico Penarol, Caso 279/2001, Suprema Corte de Justicia (Uruguay) 2001 (both referring to professional and amateur sports and distinguishing between sports as entertainment and sports as spectacle). Similarly, the Constitutional Court of Colombia said that football is competition, a spectacle, a commercial and economic enterprise, and the way to fulfil personal and vocational life. Sentencia No. T-498/94, Corte Constitucional, Sala Tercera (Colombia) 1994; Sentencia T 560-15, Corte Constitucional (Colombia) 2015. See also Castilla 2015, pp. 97–103, 110.

⁵⁰ Federación Venezolana de Fútbol, Tribunal Supremo de Justicia, Sala Constitucional (Venezuela) 2015.

⁵¹ Sentencia T-065/21, Corte Constitucional (Colombia), 2021.

⁵² Recurso Especial No. 2.040.570 – RJ (2022/0078912-6), Superior Tribunal de Justicia (Brasil) 2022.

corrupt referees.⁵³ Similarly, fans have standing to challenge decisions of the sporting jurisdiction deducting points from their football teams.⁵⁴ This broad concession of standing and recognition of fans' rights is unheard of in the case of the international SGBs where in many cases, not even athletes have standing.⁵⁵ Some domestic courts have also accepted fans' standing to sue professional leagues.⁵⁶

The State has a duty to guarantee the principle of equality so everyone has individual and collective access to sports.⁵⁷ The State has a duty to guarantee every person the possibility to play sports in such conditions as to allow the full development of their physical, intellectual, and moral aptitudes.⁵⁸ State duties imply positive obligations to guarantee the progressive realization in the best conditions to enjoy such right.⁵⁹ The broad extension of this duty is such that, for instance, it requires the State to create, preserve or improve spaces where the community can practice sports.⁶⁰ The State's duty is enhanced with relation to children given the special importance of sports and recreation in their development and the State duty to provide special measures of protection to children.⁶¹ The right to practice sports by the elderly is not simply a question of charity, a favor of State altruism but an unequivocal individual and constitutional obligation.⁶² States should guarantee that all sports-related public policies adopt a gender transversal perspective.⁶³ The State has a duty to secure the development of sporting activities consistent with the dignity, integrity, health, and security of athletes.⁶⁴ The State has a duty to maximize

the enjoyment of the right to practice sports by planning, constructing,⁶⁵ and maintaining public spaces for sporting activities.⁶⁶

The constitutional protections extend to professional sports. They present singular particularities given the mix of binding regulations emanating from private entities and the State, encompassing various dimensions such as a spectacle, a labor activity, and an economic activity within diverse personal, social, and financial interests.⁶⁷ Professional sports organized via a complex web of private national and international associations and federations whose interests could and do collide with the rights and interests of professional players.⁶⁸

The State is not the only entity responsible for the effectiveness of the right to practice sports requiring coordination and complementarity with private actors.⁶⁹ SGBs are "auxiliaries" of the enjoyment of the right to practice sports by promoting and regulating the practice of sports in exercise of their right of association.⁷⁰ The SGBs are not excluded from public policies promoting sports,⁷¹ and should respect the essential elements of such right, acting with objectivity, transparency, and impartiality, avoiding the adoption of discriminatory measures.⁷²

The right to participate in sports is not absolute. For instance, the State can regulate the number of permissible professional athletes participating in basketball and football competitions in different ways given that they are two different sports.⁷³ Compliance with reasonable and permissible disciplinary rules adopted by SGBs does not affect the right to participate in sports. Sports requires that regulations exist; compliance with them is a basic tenet for the participation in sports.⁷⁴ Those regulations could come from the State and the SGBs (domestic and international).⁷⁵ The State can regulate and limit the exercise of the right to practice sports based on needs such as providing protection to children.⁷⁶ The State cannot assume a passive, insensitive,

⁵³ Recurso Especial No. 1.664.186 – SP (2016/0307822-5), Superior Tribunal de Justicia, (Brasil) (2016).

⁵⁴ Conflito de Competencia No. 133.244 – R J (2014/0079835-7), Superior Tribunal de Justicia, (Brasil) 2014.

⁵⁵ See e.g., CAS OG 24/12, 2024 (athlete does not have standing to challenge a decision not to include him in the Olympic Games).

⁵⁶ See e.g. *New Eng. Patriots Fans v. Nat'l Football League*, Civil Action No. 16-10659-FDS, 2016 (denying standing to fans to challenge the NFL decision following the "deflagate" scandal).

⁵⁷ Federación Venezolana de Fútbol, Tribunal Supremo de Justicia, Sala Constitucional (Venezuela) 2015.

⁵⁸ Exp: 10-011016-0007-CO, Res. No. 015291-2010, Corte Suprema de Justicia, (Costa Rica) 2010.

⁵⁹ Sentencia No. 0113-16-SEP-CC, Caso No. 1388-14-SEP, Corte Constitucional (Ecuador) 2016.

⁶⁰ Exp: 16-000930-0007-CO, Res. No. 01903-2016, Corte Suprema de Justicia, (Costa Rica) 2016 (public park); Sentencia No. 0113-16-SEP-CC, Caso No. 1388-14-SEP, Corte Constitucional (Ecuador) 2016 (a municipality illegally selling a property where a sporting facility was operating).

⁶¹ Sentencia C-449/03, Corte Constitucional (Colombia) 2003.

⁶² Recurso Especial No. 1.680.686 – R J (2017/0129124-1), Superior Tribunal de Justicia (Brazil) 2017.

⁶³ Amparo Directo en Revisión, 5672/2021, Suprema Corte de Justicia de la Nación (México) 2023, pp. 185–188

⁶⁴ Id., p. 180

⁶⁵ Sentencia C-449/03, Corte Constitucional (Colombia) 2003.

⁶⁶ Sentencia No. 0113-16-SEP-CC, Caso No. 1388-14-SEP, Corte Constitucional (Ecuador) 2016.

⁶⁷ Sentencia No. C-320/97, Corte Constitucional (Colombia) 1997.

⁶⁸ Id.

⁶⁹ Contradicción de Tesis 40/2015, (México) 2016.

⁷⁰ Sentencia No. C-226/97, Corte Constitucional (Colombia) 1997; Sentencia T 242/16, Corte Constitucional (Colombia) 2016.

⁷¹ Amparo Directo 982/2018 (México) 2019.

⁷² Id.

⁷³ Sentencia No. C-320/97, Corte Constitucional (Colombia) 1997.

⁷⁴ Sentencia T-410/99, Corte Constitucional (Colombia) 1999.

⁷⁵ Sentencia T-065/21, Corte Constitucional (Colombia) 2021.

⁷⁶ Sentencia C-449/03, Corte Constitucional (Colombia) 2003 (allowing limitations on where a child can practice skating for safety reasons).

and indifferent attitude when the protection of children is at play.⁷⁷

There are exceptions. Denying State funding for the game of dominoes, a game not recognized as an Olympic sport, does not infringe on the constitutional right to practice sports.⁷⁸ The State maintains discretion on how to allocate public funding to sports.⁷⁹

Latin American constitutional recognition of the right to participate in sports finds its counterpart in the UNESCO International Charter of Physical Education, Physical Activity and Sport (UNESCO International Charter)⁸⁰ and the Olympic Charter.⁸¹ These approaches contrast with other jurisdictions. The question of whether the right to participate in sports is protected under the Constitution has been extensively litigated and consistently rejected by U.S.A. courts;⁸² there is no expressly guaranteed right to sport, play, and recreation.⁸³ It is not a due process, property, or liberty interest.⁸⁴ Some nations' courts have acknowledged the role sports play in education but not granted constitutional protection.⁸⁵ The opportunity to participate in sports is simply a privilege⁸⁶ or a mere expectation.⁸⁷ So, in principle,

constitutional protections, such as freedom of expression, equal protection, or due process, do not apply.⁸⁸

In Latin America, advocates simply need to find an appropriate case and ask courts to apply their well-established jurisprudence extending the constitutional and IHRL protections into the sports ecosystem. Their U.S. counterparts have a much harder route, needing to first convince courts to overturn a long set of precedents establishing that the constitutional remedies do not apply to the sports field in general,⁸⁹ or to amend the Sports Amateur Act in order to create a private cause of action.⁹⁰

5 State policy and duties in the sports field

Latin American constitutions assign a significant role to the State in promoting⁹¹ and regulating sports. States are constitutionally required to prioritize the practice of sports,⁹² provide resources,⁹³ infrastructure, and support for sports development, as well as to regulate⁹⁴ and oversee the operations of sporting organizations. The State also has a duty to intervene in private relations to protect those in vulnerable situations. Protecting the constitutional right to practice sports and promoting sports is part of the constitutional public order.⁹⁵

The practice of sports as constitutional principle and fundamental right requires the State to promote sports and secure that sporting practices are carried out in accordance with constitutional principles.⁹⁶ To discharge these duties, the State must intervene establishing relations between the State and individuals on one hand and between the State and SGBs on the other.⁹⁷ SGBs' autonomy does not prevent the State from exercising its control in order to secure that those SGBs respect the Constitutional and legal order.⁹⁸

⁷⁷ Sentencia T-740-10, Corte Constitucional (Colombia) 2010.

⁷⁸ Federación Panameña de Ajedrez, Corte Suprema de Justicia, 1997. On the recognition of sports in general see, Weston 2024.

⁷⁹ Sentencia TC/0513/17, Tribunal Constitucional (Dominican Republic) 2017.

⁸⁰ Adopted by the UNESCO General Conference at its 20th session, Paris, November 21, 1978.

⁸¹ Olympic Charter in force as July 23, 2024, Fundamental Principle of Olympism, 4. <https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>.

⁸² See generally, Lowery v. Euverard 2007, and DeFrantz v. USOC 1980; there is no federal constitutional right to participate in the Olympic Games and the Amateur Sports Act does not establish any substantive rights to participation that can be enforced through litigation. The Amateur Act does not create any private cause of action to challenge the USOC. See also Long v. Nat'l Football League 1994: U.S. professional sports leagues as private entities are not constrained by the Constitution. Also, NCAA v. Tarkanian 1988: inapplicability of constitutional protection against the NCAA. See also Levine 2024, pp. 1, 9.

⁸³ Ryan v. California Interscholastic Federation-San Diego Section, 2001.

⁸⁴ State ex rel. West Virginia Secondary School Activities Commission v. Hummel, 2015; Angststadt v. Midd-West Sch. Dist., 2003; Ind. High Sch. Athletic Ass'n, Inc. v. Carlberg, 1997.

⁸⁵ Duffley v. N.H. Interscholastic Athletic Ass'n, Inc., 1982; Fla. High Sch. Activities Ass'n, Inc. v. Bryant, 1975.

⁸⁶ Levine, 2024 (a right to participate in sports would run contrary to the idea that the Constitution provides an affirmative right or entitlement forcing the government to provide a benefit).

⁸⁷ Bean v. Wilson Cty. Sch. Sys., 2015; Scott v. Okla. Secondary Sch. Activities Ass'n, 2013; Miss. High Sch. Activities Ass'n, Inc. v. Coleman, 1994; Walsh v. La. High Sch. Athletic Ass'n, 1981.

⁸⁸ Angststadt v. Midd-West Sch. Dist., 2003.

⁸⁹ See for instance, Rowan 2020.

⁹⁰ Koller, 2018.

⁹¹ See e.g. Constitution of Guatemala, art. 91.

⁹² Sentencia No. 930, Tribunal Supremo de Justicia, Sala Constitucional (Venezuela) 2016.

⁹³ The Guatemalan Constitution requires at least 3% of the General Budget (art. 91).

⁹⁴ Demanda Contencioso Administrativa, Corte Suprema de Justicia, Sala de lo Contencioso Administrativo, (Panama) 2000 (the National Sports Institute has the power to regular high-performance sports).

⁹⁵ Federación Venezolana de Fútbol, Tribunal Supremo de Justicia, Sala Constitucional (Venezuela) 2015.

⁹⁶ Sentencia T 242/16, Corte Constitucional (Colombia) 2016.

⁹⁷ Sentencia C-758/02, Corte Constitucional (Colombia) 2002 and Sentencia C-449/03, Corte Constitucional (Colombia) 2003.

⁹⁸ Sentencia T-464/22, Corte Constitucional (Colombia) 2022.

Thus, the Latin American understanding of autonomy⁹⁹ is another brick in the wall of challenging this concept.¹⁰⁰ It provides concrete examples of ‘supervised’,¹⁰¹ ‘responsible’¹⁰² or ‘conditional’¹⁰³ autonomy that advocate for more State supervision of sports¹⁰⁴ and a more collaborative governance model.¹⁰⁵ Similar to some European documents the autonomy of SGBs is only justified as long as it takes responsibility in relation to human rights.¹⁰⁶ Constitutional Courts in Latin America have not been asked to resolve the tension between the State's duty to protect rights in sports and the limits of sports autonomy regarding political interference or control. Given the historically intertwined relationship between sports and politics in the region, future litigation on this issue is likely.¹⁰⁷

A basic State duty¹⁰⁸ is to provide security in and around stadiums, prevent and control violence. This is a shared duty between the State, the teams and the SGBs.¹⁰⁹ This duty is grounded in constitutional norms (such as the protection of life and physical integrity), rather than exclusively on civil, contractual, consumer laws such as liability, or fulfilling a contractual obligation. The due diligence duty requires taking effective measures in prevention of such violence and in response if violent incidents occur.¹¹⁰ The organizers of a sporting event also have a concurring duty to provide security.¹¹¹ This Latin American approach is similar to the European Convention on Spectator Violence and Misbehavior at Sports Events and in particular at Football Matches.¹¹²

Latin American countries have created (constitutionally or legislatively) centralized national sports institutions (NSI)

to regulate sporting activities.¹¹³ Those NSI are usually considered to be decentralized public bodies fulfilling public interest functions; their financial resources are considered investments rather than costs.¹¹⁴ NSIs have a constitutional duty to inspect, oversee, and ensure that SGBs respect constitutional rights. In discharging this role, the NSI should consider and preserve the SGB's autonomy but not limit itself to a mere formal rather than substantive oversight.¹¹⁵ Other countries, such as Mexico, also created a National Sport System (NSS) to promote, plan, and develop sports.¹¹⁶

The State must respect, reaffirm, and promote sports activities within the constitutional boundaries such as human dignity, freedom of association, democratic organization, and social market economy.¹¹⁷ The State cannot promote sporting activities that violate the constitutional rights.¹¹⁸ Specific crimes for sports manipulation are considered part of the State duty to protect sports, its integrity, and the social and ethical values that sports promote.¹¹⁹ The State can consider the particular gravity of certain sexual crimes given that the role of a coach and the position of power it exercises facilitates easy unchecked access to the young athletes under their care.¹²⁰

As part of those duties, the government is allowed to regulate accreditation permitting athletes participating in international competitions to exit their country.¹²¹ There is a constitutional duty to coordinate between the State and the NOC.¹²² Public policies that the State adopts to secure the right to participate in sports should consider benefits that sports bring to the community including citizens' well-being, the recognition of sports' positive influence in developing national identity, and social values.¹²³ However, the State cannot enforce the disciplinary rules adopted by SGBs.

⁹⁹ Of course, the concept of autonomy itself is a contested concept with different possible meanings; see Næss 2022, pp. 23–54.

¹⁰⁰ Donnelly, et al. 2022.

¹⁰¹ Foster 2000, pp. 43–64.

¹⁰² Chappelet 2018.

¹⁰³ Weatherill 2024, pp. 67–82.

¹⁰⁴ Baddeley 2020.

¹⁰⁵ Meier and García 2021, pp. 501–516.

¹⁰⁶ Expert Group on Good Governance 2016, p. 4.

¹⁰⁷ Alabarces 2020, pp. 165–181.

¹⁰⁸ ADI 3753/SP, Supremo Tribunal Federal (Brasil) 2022.

¹⁰⁹ See e.g. Migoya c/Provincia de Buenos Aires y otros, Corte Suprema de Justicia de la Nación (Argentina) 2011, and Recurso Especial No. 2.040.570 – RJ (2022/0078912-6) Superior Tribunal de Justicia (Brasil), and Recurso Especial No. 1924527 – PR (2020/02430092) Superior Tribunal de Justicia (Brasil).

¹¹⁰ See e.g. Mosca c/Buenos Aires, Provincia y otros, Corte Suprema de Justicia de la Nación (Argentina) 2007.

¹¹¹ Id.

¹¹² European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (ETS No. 120), 1985, art. 4 and 6.

¹¹³ See e.g. Demanda Contencioso Administrativa, Corte Suprema de Justicia, Sala de lo Contencioso Administrativo, (Panama) 2000 (regarding the powers of the National Sports Institute).

¹¹⁴ Amparo Directo en Revisión, 5672/2021, Suprema Corte de Justicia de la Nación, (México) 2023, para 175–178.

¹¹⁵ Sentencia T-464/22, Corte Constitucional (Colombia) 2022.

¹¹⁶ Amparo Directo en Revisión 13257/2017, Suprema Corte de Justicia de la Nación, Segunda Sala (México) 2018.

¹¹⁷ Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Perú) 2007, para 18.

¹¹⁸ Id., para 19.

¹¹⁹ C.I.J.D., et al, Sentencia 120/1998, Suprema Corte de Justicia (Uruguay) 1998.

¹²⁰ AG.REG. No Habeas Corpus 230.210 Parana, Supremo Tribunal Federal (Brasil) 2023.

¹²¹ Sentencia No. 003-15-SINCC, Caso No. 0011-11-IN, Corte Constitucional (Ecuador) 2015.

¹²² Id.

¹²³ Amparo Directo en Revisión, 5672/2021, Suprema Corte de Justicia de la Nación (México), 2023, para 183–184.

In such circumstances, the autonomy of the SGBs would be violated by increasing State power.¹²⁴

The Latin American approach recognizes the State as a key player in the sports ecosystem with more duties than merely having positive obligations to secure human rights vis-à-vis the actions of SGBs and other actors. In this respect, in the world of sports it appears that Latin America places broader obligations on the States than the European Court does.¹²⁵

6 Autonomy of sports organizations

One essential element of sports is the respect for their autonomy, meaning the free establishment and control of the rules of sport, determination of their organizational structure and governance, and the right to freely elect their own authorities without outside influence.¹²⁶ For CAS, autonomy requires “significant deference” to SGBs’ decisions “which must be subject to review only in cases such as arbitrariness, misuse of discretionary power, discrimination, breach of any relevant mandatory legal principle, or if the decision entails a violation of the federation’s own statutes and rules.”¹²⁷ In contrast, Latin American courts, while recognizing sports autonomy, have been unwilling to give SGBs such broad deference, understanding that their autonomy does not overrule constitutional protections. The State takes an active role in controlling and regulating SGBs.

The constitutions of Brazil, Ecuador, and Guatemala explicitly recognize the autonomy of sports organizations.¹²⁸ Other constitutions protect this autonomy under the constitutional right of association. Constitutional interpretation has acknowledged the protection of “ample”¹²⁹ sports autonomy but limits it based on the rights of others and the goals of sports. The exercise of SGBs’ autonomy is an expression of the freedom of association and the principle of personal autonomy.¹³⁰ Both SGBs and member teams have rights

and obligations derived from their own autonomy as different legal persons.¹³¹ Autonomy has a double dimension; it constitutes a limit to State intervention in the SGBs’ space but it is also the instrument for protection and realization of fundamental rights, including the right to practice sports.¹³² Thus, the State has a duty to promote organizations and the right of association while respecting the autonomy of such organizations.¹³³ As sports autonomy needs to be understood in light of the State duties, it is constitutional for the National Olympic Committee (NOC) and SGBs to provide precise and adequate information on athletes’ participation in international competitions in order to plan public policies in sports.¹³⁴

The SGBs power to adopt their own regulations that are equated to formal laws,¹³⁵ as an expression of their “ample margin of autonomy”¹³⁶ is protected by constitutional courts.¹³⁷ The Constitution itself, by providing a role for the State, requires some type of public sports regulation.¹³⁸ That regulation could even be heavy-handed, but should respect a minimum of autonomy in order to preserve the efficacy, utility, and physiognomy of SGBs’ private character.¹³⁹ Exceeding such limit would mean colonizing the SGBs.¹⁴⁰ Undue limitations of the regulatory power of an SGB entirely would mean ignoring their autonomy.¹⁴¹

The regulatory power of SGBs should comply with both national legislation and rules adopted by the international SGB.¹⁴² Those international regulations are of “high binding

¹²⁴ Sentencia No. C-226/97, Corte Constitucional (Colombia) 1997 (declaring the creation of a National Sports Tribunal to be unconstitutional).

¹²⁵ See e.g. Shinohara 2022, pp. 332–342; Rietiker 2020, pp. 62–104; Duval and Viret 2022, pp. 279–312.

¹²⁶ International Olympic Charter, Fundamental Principle of Olympism 5. For what it is worth, the principle of autonomy is stated in the Charter only after recognizing the practice of sports as a human right in Principle 4.

¹²⁷ CAS 2022/A/9282, 2023, para 64.

¹²⁸ Corte de Constitucionalidad (Guatemala), Exp. No. 15-90, consid. I (acknowledging that the recognition of SGB autonomy is not a common provision in comparative constitutionalism).

¹²⁹ Sentencia No. C-320/97, Corte Constitucional (Colombia) 1997.

¹³⁰ Exp. No. 035 74-2007-PA/TC, Tribunal Constitucional (Perú) 2007, para 24.

¹³¹ Sentencia No. 171-14-SEP-CC, Caso No. 0884-12-EP, Corte Constitucional (Ecuador) 2014.

¹³² Sentencia C-758/02, Corte Constitucional (Colombia) 2002, and Sentencia T-464/22, Corte Constitucional (Colombia) 2022.

¹³³ Sentencia T-065/21, Corte Constitucional (Colombia) 2021.

¹³⁴ Sentencia No. 003-15-SINCC, Caso No. 0011-11-IN, Corte Constitucional (Ecuador) 2015 (duty to provide information to the Minister of Sports regarding the athletes participating in international competitions).

¹³⁵ Exp. 5224-2022, Corte de Constitucionalidad (Guatemala) p. 18.

¹³⁶ Sentencia T 242/16, Corte Constitucional (Colombia) 2016.

¹³⁷ Exp. 5129-2022, Corte de Constitucionalidad (Guatemala) pp. 16–17, and Exp. 5224-2022, Corte de Constitucionalidad (Guatemala), p. 17, and Exp. No. 035 74-2007-PA/TC, 2007, Tribunal Constitucional (Perú), para 47.

¹³⁸ Sentencia C-287/12, Corte Constitucional (Colombia) 2013, and Sentencia T 242/16, Corte Constitucional (Colombia) 2016.

¹³⁹ Sentencia No. C-226/97, Corte Constitucional (Colombia) 1997.

¹⁴⁰ Id.

¹⁴¹ Demanda Contencioso Administrativa, Corte Suprema de Justicia, (Panama) 2002.

¹⁴² Demanda Contencioso Administrativa, Corte Suprema de Justicia (Panamá) 2005 (the Panamanian legislation and FIFA’s rules must be followed).

importance” to the domestic SGBs.¹⁴³ However, the regulatory power is shared by the State and SGBs.¹⁴⁴

Sports autonomy does not mean that all the rules and actions adopted by an SGB are purely and strictly sporting in nature and thus excluded from proper judicial oversight, especially if they violate constitutional norms.¹⁴⁵ Those regulations might be valid in the private sphere of the sports ecosystem but not if they contradict constitutional provisions.¹⁴⁶ National and international sporting regulations should comply with constitutional principles; in particular they cannot violate constitutional rights.¹⁴⁷ The State must intervene to protect constitutional rights in case SGBs abuse their power or violate principles such as the dignity of the person.¹⁴⁸

SGBs are not immune to legislative regulations within the object and purpose of the constitutional provisions on sports. The SGBs’ autonomy should be protected to guarantee self-governance and discretion on how they discharge their constitutional goals.¹⁴⁹ Autonomy specifically means the possibility of developing all needed activities and adopting specific rules to accomplish the constitutional goals of promoting sports. Thus, they cannot be subject to the direct instructions or control of the Executive branch.¹⁵⁰

Organizing internal elections is part of such autonomy, even if regulated by the NSI.¹⁵¹ Legislatures the NSI¹⁵² can regulate SGB elections and accountability mechanisms,¹⁵³ such as the possibility of reelection¹⁵⁴ or the

conditions surrounding election to an SGB.¹⁵⁵ The legislature could determine whether SGB directors have capacity, probity, and honorability.¹⁵⁶ Those regulations cannot be discriminatory.¹⁵⁷

The power of defining infractions and imposing sanctions for sports violations is part of SGBs autonomy.¹⁵⁸ This autonomy is not violated if the NSI retains the disciplinary power in matters related to violations of national sporting legislation and regulation.¹⁵⁹ Sporting sanctions as part of the exercise of their autonomy run in parallel to State criminal investigations.¹⁶⁰ Disciplinary sanctions due to a reckless and grossly negligent and dangerous action of a football player do not preclude the possibility of bringing civil liability claims in judicial tribunals.¹⁶¹ Constitutional recognition of the SGBs autonomy, allows for the establishment of sporting disciplinary system running in parallel with the labor laws system.¹⁶² The power of the NSI to request SGBs to suspend their directors under disciplinary or criminal investigations does not violate sports autonomy.¹⁶³

Autonomy requires the possibility of the SGBs to administer their economic resources with the only limitation of those imposed generally by legislation controlling public funds.¹⁶⁴ SGBs’ funds derived from its management and obtained from the participation of national teams in international competitions are not part of the public treasury and, therefore, are not part of the community’s assets. Consequently, those funds are not subject to public constitutional oversight but to ordinary jurisdiction.¹⁶⁵ Such financial autonomy is not affected if the law determines that the Sports Confederation should run the lottery in the country as a manner of collecting funds to promote sports.¹⁶⁶ However, the framework would be unconstitutional if the

¹⁴³ Sentencia No. 171-14-SEP-CC, Caso No. 0884-12-EP, Corte Constitucional (Ecuador) 2014 (position of the Ecuadorian Football Federation in relation to FIFA regulations).

¹⁴⁴ Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Perú), para 24.

¹⁴⁵ Equipo Sanjuaneras de la Capital, Metro V.C., LLC v. Federación Puertorriqueña de Voleybol et al, Caso SJ2021CV05725 (Puerto Rico) 2022.

¹⁴⁶ Sentencia No. T-498/94, Corte Constitucional (Colombia) 1994.

¹⁴⁷ Sentencia T-459/05, Corte Constitucional (Colombia) 2005.

¹⁴⁸ Sentencia No. C-226/97, Corte Constitucional (Colombia) 1997.

¹⁴⁹ Exp. 3783-2018, Corte de Constitucionalidad (Guatemala) p. 21.

¹⁵⁰ Id., p. 23.

¹⁵¹ Demanda Contencioso Administrativa, Corte Suprema de Justicia, (Panamá) 2002.

¹⁵² Acción de Inconstitucionalidad, Corte Suprema de Justicia (Panamá) Exp. 284-09, 2015.

¹⁵³ Constitution of Guatemala, art. 91 and Corte de Constitucionalidad (Guatemala), Exp. No. 15-90, at Cons. I, III, IV.a.

¹⁵⁴ Constitution of Guatemala, art. 91 and Corte de Constitucionalidad (Guatemala), Exp. No. 15-90, at Cons. V and Exp. 1803-2003, Corte de Constitucionalidad (Guatemala), consid. II; Exp. No. 2901-2007; Exp. 4080-2008; Exp. 2059-2009; Exp. 2010-2008; Exp. 4043-2011; Exp. 3453-2013 and Exp. 476-2015, Corte de Constitucionalidad (Guatemala).

¹⁵⁵ Exp. 2336-2005, Corte de Constitucionalidad (Guatemala).

¹⁵⁶ Id.

¹⁵⁷ Acción de Inconstitucionalidad, Corte de Suprema de Justicia (Panamá) 1993.

¹⁵⁸ Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Perú), para 48.

¹⁵⁹ Acción de Inconstitucionalidad, Corte Suprema de Justicia (Panamá) Exp. 284-09, 2015.

¹⁶⁰ C.I.J.D., et al, Sentencia 120/1998, Suprema Corte de Justicia (Uruguay) 1998.

¹⁶¹ Pizzo c/Camoranesi, Causa 113.317, Acuerdo 2078, Suprema Corte de Justicia de la Provincia de Buenos Aires (Argentina) 2012.

¹⁶² Sentencia No. 2-13-IN y acumulado/21, Casos No. 2-13-IN y 31-19-IN (acumulados), Corte Constitucional (Ecuador) 2021, para 121.

¹⁶³ Sentencia, T-758/02, Corte Constitucional (Colombia) 2002.

¹⁶⁴ Exp. 3783-2018, Corte de Constitucionalidad (Guatemala) p. 26.

¹⁶⁵ Resolución N° 05578 – 2002, Exp.:02-004613-0007-CO, Sala Constitucional de la Corte Suprema de Justicia (Costa Rica) 2002, para 09:28.

¹⁶⁶ Exp. 503-2005, Corte de Constitucionalidad (Guatemala).

Sports Confederation were to use lottery proceeds for purposes other than funding sports and physical activity.¹⁶⁷ Similarly, the autonomy of the national football federation is not affected by the legislative decision requiring free TV access to the national team's matches, as TV exclusivity is a purely economic and not a sporting interest.¹⁶⁸ The State interest in promoting sports allows granting teams the possibility of transforming their legal nature from not-for-profit organizations into limited liability corporations to secure the economic viability of football clubs, the transparency regarding their financial resources, and to strengthen the State's inspection and accountability duties.¹⁶⁹

Autonomy is not affected if the SGBs' statutes require approval by the National Sports Confederation created by the Constitution.¹⁷⁰ Autonomy does not include allowing SGBs to ban private competitions in their sports. The contractual relations between the SGBs and their members do not cover other institutions who are not members of those SGBs or the rules that they adopt in exercise of their autonomy and in compliance with the international federations and the IOC.¹⁷¹ To exercise autonomy and the right of association has a double dimension. First, as was explained, is the right to form SGBs and to protect their constitutional autonomy. The right of association allows individuals could organize and participate in sporting competitions beyond those specifically run or endorsed by the SGB.¹⁷² Sanctioning an athlete for participating in competitions not organized or endorsed by the SGB would violate his right to practice sports and right of association with others for sporting purposes.¹⁷³ Freedom of association protects the individual right of the athlete and the collective right of the SGB. Fans' right to association is constitutionally protected if they organize themselves in association.¹⁷⁴ The rights and duties of those different associations are not the same, as only the SGBs exercise public functions.¹⁷⁵

The autonomy of SGBs and NOC does not preclude courts from protecting the rights of athletes that were

excluded from an international competition as part of a national team. The Panamanian Court interpreted SGB and NOC rules to decide that the NOC holds the power to make a final decision.¹⁷⁶ SGBs, the NOC, and the NSI are required to follow their own regulations as well as those established by the pertinent international SGB.¹⁷⁷

SGBs' autonomy including a broad deference for the field rules, was not an impediment for the Argentinean Supreme Court to rule in a case of injuries suffered by a child player in a rugby game, requiring parents and particularly coaches and referees should act with due diligence to protect the health and physical integrity of the players, given that the children are under their care. The superior interest of the child should always take priority not only for sporting stakeholders but also for the judges adjudicating disputes arising from such events.¹⁷⁸ The Court had no problem analyzing both the Rugby Rules of the games¹⁷⁹ and the decisions made by the coach and referee during the game.¹⁸⁰

7 International human rights in the sports field

All Latin American constitutions explicitly recognize international human rights treaties. Most Latin American courts consider international human rights treaties to be part of the "constitutional bloc," meaning they have constitutional status and can be directly applied by courts.¹⁸¹ The protected rights in the country are those included in the Constitution as well as in the international treaties ratified.¹⁸² Even if certain documents such as the UNESCO International Charter are

¹⁶⁷ Exp. 148-2005, Corte de Constitucionalidad (Guatemala) (2005), consid. III.

¹⁶⁸ Asociación Uruguaya de Fútbol c. Poder Ejecutivo, caso 244/2020, Suprema Corte de Justicia (Uruguay) 2020.

¹⁶⁹ Sentencia C-287/12, Corte Constitucional (Colombia) 2013.

¹⁷⁰ Exp. 5270-2017, Corte de Constitucionalidad (Guatemala).

¹⁷¹ Sports Alternative Puerto Rico Inc, et al v. Federación Puertorriqueña de Voleibol et al, Caso SJ2018CV11163, (Puerto Rico) (2020) (private sports entities do not require the authorization of the volleyball federation to organize a non-Olympic, non-professional volleyball tournament).

¹⁷² Sentencia T 242/16, Corte Constitucional (Colombia) 2016.

¹⁷³ Id.

¹⁷⁴ Sentencia T-065/21, Corte Constitucional (Colombia) 2021.

¹⁷⁵ Id.

¹⁷⁶ Demanda Contencioso Administrativa, Adela C. de Cardoze, Corte Suprema de Justicia (Panamá) 1998.

¹⁷⁷ Demanda Contencioso Administrativa, Corte Suprema de Justicia (Panamá) 2000.

¹⁷⁸ B.S., J.G. c/Unión Cordobesa de Rugby et al., Corte Suprema de Justicia de la Nación (Argentina) 2012, consid. 8.

¹⁷⁹ In another case, the Supreme Court of the Province of Buenos Aires (Argentina) distinguished between sporting infractions (as part of the assumed risk in a football match) from those that generate civil liability. The court had to analyze the specific foul and surrounding circumstances to determine that the situation was not a simple sport action but a reckless conduct. Pizzo c/Camoranesi, Causa 113.317, Acuerdo 2078, Suprema Corte de Justicia de la Provincia de Buenos Aires (Argentina) 2012.

¹⁸⁰ B.S., J.G. c/Union Cordobesa de Rugby et al., Corte Suprema de Justicia de la Nación (Argentina) 2012, consid. 9.

¹⁸¹ Acción de Inconstitucionalidad, Corte Suprema de Justicia (Panamá) Exp. 284-09, 2015; Sentencia T-740-10, Corte Constitucional (Colombia) 2010.

¹⁸² Acción de Inconstitucionalidad, Corte Suprema de Justicia (Panamá), Exp. 284-09, 2015.

not binding, authorities should consider them as guides or orientation regarding their actions.¹⁸³

Latin American courts routinely apply international human rights norms. Those courts follow the rulings of the Inter-American Court.¹⁸⁴ Most Courts also apply the concept of conventionality control, requiring national courts to ensure that domestic laws and practices conform to ratified international human rights treaties.¹⁸⁵

Constitutional Courts have applied the American Convention and/or the ICCPR to decide questions like voting rights to consider the regulation of elections in SGBs¹⁸⁶ or the prohibition against challenging SGBs' decisions in domestic courts.¹⁸⁷ Courts have relied both on rights provisions to support the right of association and the autonomy of SGBs based on that right.¹⁸⁸

Consider, for example, a disability case involving a child with Down Syndrome and his right to learn to swim. The parents argued with the training facility on whether the child could participate in regular or "adapted" training sessions.¹⁸⁹ The Mexican Supreme Court sided with the child given that the "adapted" sessions responded to an outdated medical model which considers that the person has "deficiencies" to be treated; basically protectionism and paternalism. The Constitution and the Convention on the Rights of Persons with Disabilities¹⁹⁰ promote a "social model" that recognizes

the personality of the individual, their legal capacity, and their rights. The focus is then the person's dignity and their rights, with equality and non-discrimination at the center.¹⁹¹ The State is required to guarantee both formal and substantive equality, ban discrimination based on disability, and adopt reasonable accommodations,¹⁹² to facilitate access, and eliminate barriers,¹⁹³ so that persons with disability are included in the sports ecosystem.¹⁹⁴ This approach is different than CAS awards such as *Pistorius*¹⁹⁵ or *Semenya*¹⁹⁶ where the whole discussion was based on medical debates and potential advantages rather than on the equality and dignity of the athlete.

8 Horizontal effect of constitutional rights and the applicability of constitutional remedies in the sports field

The private character of the SGBs and their regulations, as well as the State actor requirement to apply constitutional or human rights protections have shielded the sports ecosystem from facing accountability for abuses. This restrictive approach is present in the adjudication of the European Court, CAS, the Swiss Federal Tribunal, and in the position of the SGBs themselves. At most, those entities accept the indirect application of IHRL. The European Court explicitly established that SGBs (in this case FIFA and UEFA) are private associations and as such, not directly subject to the European Convention.¹⁹⁷ CAS considers that only State authority and not private parties, such as SGBs, are bound by the European Convention.¹⁹⁸ Rights are directed against the State and involved a vertical relationship between the State and the individual and not intended to apply directly in private relationships.¹⁹⁹ Similarly, the STF ruled that the European Convention protects individuals' human rights vis-à-vis State authorities and, in principle, is inapplicable in disciplinary procedures conducted by private entities as athletes are not the subject of a measure taken by the State.²⁰⁰

¹⁸³ Id., See also, for the use of the Universal Declaration on Human Rights, Exp: 18-008125-0007-CO, Res. No. 011707-2018, Sala Constitucional de la Corte Suprema de Justicia (Costa Rica) 2016, and Exp: 16-000930-0007-CO, Res. No. 01903-2016, Sala Constitucional de la Corte Suprema de Justicia (Costa Rica) 2018.

¹⁸⁴ Habeas Corpus 143988 Espiritu Santo, Supremo Tribunal Federal (Brazil) (2020), p. 12 (citing Inter-Am. Ct. H.R., Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, 2002, Series A No.17 for a case related to physical activity of children in detention); Sentencia No. 047-15-SIS-CC, Caso No. 0057-11-IS, Corte Constitucional (Ecuador) 2015 (citing Inter-Am. Ct. H.R. decisions related to Brazil and Ecuador on the right to an effective remedy).

¹⁸⁵ Exp. 5270-2017, consid. I, Corte de Constitucionalidad (Guatemala).

¹⁸⁶ Constitution of Guatemala, art. 91 and Corte de Constitucionalidad (Guatemala), Exp. No. 15-90, at Cons. V.

¹⁸⁷ Rol No. 56.134-2021, Corte Suprema (Chile) 2021 (citing the American Convention, the ICCPR and the Universal Declaration). Sentencia T-550/16, Corte Constitucional (Colombia) 2016 (citing the Am. Conv. and the ICCPR).

¹⁸⁸ Exp. 6094-2017, Corte de Constitucionalidad (Guatemala) p. 20.

¹⁸⁹ Amparo en revisión, 162/2021, Suprema Corte de Justicia de la Nación (México) 2021.

¹⁹⁰ Id., Section 7.

¹⁹¹ Id., Section 8.

¹⁹² Id.

¹⁹³ Id.

¹⁹⁴ Id., para 29.

¹⁹⁵ Arbitration CAS 2008/A/1480 Pistorius v/ IAAF, 2008.

¹⁹⁶ Mokgadi Caster Semanya v. IAAF, and CAS 2018a, b/O/5794, Athletics South Africa v. IAAF, CAS 2018a, b/O/5798, (2019).

¹⁹⁷ Platini v. Switzerland, App. No. 526/18 (Feb. 11, 2020), para 63.

¹⁹⁸ Id.

¹⁹⁹ Bordeaux v. Fédération Internationale de Football Ass'n, TAS 2012/A/2862, 2013, para 105–07 (translation by the author, internal references omitted); see also Diakite v. Fédération Internationale de Football Ass'n, TAS 2011/A/2433, 2012, para 23 and Eder v. Ski Austria, CAS 2006/A/1102, TAS 2006/A/1146, 2006, para 45.

²⁰⁰ Swiss Federal Judgement, Abel Xavier v. UEFA, 2001, para 2

The STF provides for the indirect application of the ECHR on sports arbitration.²⁰¹ Traditionally, SGBs maintain the same position.²⁰² This position does not mean that those institutions do not recognize indirect human rights obligations, via the positive duties of the State, the application of the United Nations Guiding Principles on Business and Human Rights or the self-assumption of human rights obligations in their instruments.

Conversely, Latin American constitutions extend the applicability of rights protections to private relations. This approach finds a parallel in the case law of the European Union Court of Justice (CJEU). The European Fundamental Charter and European law applies to the private domain. Athletes have rights under EU law that can be effectively enforced by ordinary courts.²⁰³

9 Horizontal effect of constitutional rights

Latin American constitutions extend the effects of constitutional rights to private relations.²⁰⁴ In countries without explicit provisions, judicial interpretation has reached similar conclusions. SGBs are regulated both by the legal order of the country and the rules of the regional and international federations.²⁰⁵ Constitutional review and constitutional remedies²⁰⁶ are intended to secure that public and private power is exercised in accordance with the primacy of the

Constitution over any other norms regardless of whether they emanate from the State or private institutions.²⁰⁷ Constitutional rights extend to private relations and the rules and actions of private entities should conform with the Constitution, particularly with fundamental rights.²⁰⁸ Sporting organizations' power to regulate themselves does not free them from respecting constitutional rights.²⁰⁹

The rationale for extending rights to horizontal relations is to avoid leaving a person without protection against violations from private actors. The Colombian Constitutional Court considered that the Skating Federation banning certain competitions affects a skater's present and future right to participate in international competitions. This power allowed the Court to extend constitutional remedies to protect athletes' rights against the private organization.²¹⁰

Constitutional courts have extended rights such as access to justice,²¹¹ due process,²¹² equality, and non-discrimination,²¹³ freedom of expression,²¹⁴ contractual freedom and free enterprise rights,²¹⁵ and the right to petition²¹⁶ to the sports field. Importantly, the freedom of association of a football team could be violated by a sanction imposed by the SGB in exercise of its autonomy and their freedom of association.²¹⁷ The difference with the European Court approach in

²⁰¹ Geistlinger and Gappmaier 2013, p. 309.

²⁰² Simunic v. FIFA, CAS 2014/A/3562, 2014, para 40 (FIFA argued the inapplicability of the European Convention to CAS proceedings), and Leeper v. Int'l Ass'n of Athletics Fed'ns., CAS 2020/A/6807, 2020, para 182–83 (The European Convention only applies to a States Party and the IAAF is neither a "State Party (nor a public authority of a State Party) and therefore is not bound by any obligations under the ECHR.").

²⁰³ Case C-124/21 P, International Skating Union v Commission, 2023. See generally, Van den Bogaert 2013.

²⁰⁴ The Constitutional Chamber of the Costa Rican Supreme Court appears to be the sole voice rejecting the extension of constitutional protections against the actions of SGBs. The Chamber does not consider the SGBs to be public authorities, nor to exercise such power as requiring the intervention of constitutional mechanisms given that ordinary judicial proceedings or those established by the national and international SGBs are available. See e.g. Resolución N° 12764 – 2009, Exp.: 09-011192-0007-CO, Corte Suprema de Justicia (Costa Rica) 2009, para 14:38; Resolución N° 2013011141, Exp.: 13009093-0007-CO, Corte Suprema de Justicia (Costa Rica) 2013; Resolución N° 05296 – 2005, Corte Suprema de Justicia (Costa Rica) 2005.

²⁰⁵ Sentencia No. 171-14-SEP-CC, Caso No. 0884-12-EP, Corte Constitucional (Ecuador), 2014 (in relation to the Ecuadorian Football Federation).

²⁰⁶ Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Perú), para 38 (explaining that the Peruvian Constitution provides a substantive aspect of extending horizontal effects to rights and a procedural element by creating an *amparo* against private actions).

²⁰⁷ Id., para 8.

²⁰⁸ Id., para 38.

²⁰⁹ Id., para 40.

²¹⁰ Sentencia T-242/16, Corte Constitucional (Colombia), 2016.

²¹¹ Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Peru), (declaring unconstitutional the Peruvian Football Federation rules excluding access to courts to challenge disciplinary sanctions, particularly if the sanctions are due to denouncing a crime).

²¹² Id., para 51 (requiring the written communication of the disciplinary charges and the provision of reasonable time to articulate the right to defense); Sentencia 754-2006, Corte Suprema de Justicia (El Salvador) 2007 (need to have a proper procedure before being sanctioned by an SGB); Apelación de Sentencia en Amparo, Exp. 3939-2008, Corte de Constitucionalidad (Guatemala) 2009 (need to follow due process in SGBs disciplinary actions); Apelación de Sentencia en Amparo, Exp. 1706-2008, Corte de Constitucionalidad (Guatemala) 2008 (due process).

²¹³ Equipo Sanjuaneras de la Capital, Metro V.C., LLC v. Federación Puertorriqueña de Voleibol et al, Caso SJ2021CV05725, Salon 904, Tribunal de Apelaciones Panel VIII (Puerto Rico) 2022 (discrimination against pregnant volleyball players).

²¹⁴ Sentencia, T-302/98, Corte Constitucional (Colombia) 1998 (the national football federation cannot restrict the free expression of footballers).

²¹⁵ Sentencia No. 171-14-SEP-CC, Caso No. 0884-12-EP, Corte Constitucional (Ecuador) 2014 (dispute between football teams and the national federation on TV rights).

²¹⁶ Amparo 655-2017, Corte Suprema de Justicia (El Salvador) 2021 (duty of a sports club to respond to membership applications by the plaintiff).

²¹⁷ Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Perú), para 59.

cases such as *Platini, Mutu* or *Semenya*²¹⁸ (when it imposed direct responsibility on Switzerland) is that a Latin American Court can impose direct responsibility on SGBs.

An example of the horizontal applicability of rights protection is the different results arrived at by Canadian and Colombian courts in similar sex discrimination situations. In the Canadian case, Debbie Bazso, a nine-year-old girl wished to join a boys' baseball team for the playoffs. The Ontario Court of Appeal concluded that the softball association did not provide a service that was generally available to the public. Consequently, the denial of her request to play on the boys' team was not subject to human rights scrutiny.²¹⁹

In contrast, the Colombian Constitutional Court ruled in favor of a girl who was excluded from playing in an all-boys football team.²²⁰ The Court proceeded in a completely different manner than what CAS typically does and how the Canadian Court ruled. The national football federation and FIFA rules were interpreted considering the rights of the girl, the obligation of the State and of the different SGBs involved. For the Court, the question was not whether the SGBs complied with their own rules but rather whether the rights of the girl were violated by the rules of the competition and their application.²²¹ The starting point of the Court was the State duty to protect children and adolescents, paying attention to their superior interest. The Tribunal rejected gender stereotypes in the formation of boys and girls.²²² Then, the decision describes how IHRL, including the International Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention to Prevent, Sanction and Eradicate Violence against Women,

attempt to eliminate such gender stereotypes. Having established this structural problem, the Court devotes its next section to highlight gender discrimination in sports in general and football in particular. At this point, the Court develops and analyzes the constitutional right to practice sports and the right to equality and non-discrimination, discussing the UNESCO International Charter; the Convention on the Rights of the Child, the ICCPR, the American Convention and the Constitution. The Court rules that the constitutional principle of legality and due process are applicable to private entities, particularly when they are in a position of power and exercise disciplinary functions. Their autonomy is not a shield against State intervention if rights are not protected. The Tribunal found no problems in interpreting the regulations coming from the organizing of the tournament and FIFA and did not feel compelled to provide any deference to the SGBs based on their autonomy or the specificity of sports.²²³

10 The applicability of constitutional remedies to sports disputes

Latin American courts established strong constitutional judicial remedies to protect constitutional and human rights, characterized by expediency, informality, and powerful enforcement mechanisms. A key factor in determining the permissibility of constitutional remedies is the plaintiff's subordination to the authority or private actor being sued.²²⁴ The challenge must involve a violation of constitutional rights, not just nonconformity with a decision. Also, ordinary remedies must be ineffective in protecting the rights at stake, and the private actor must have a duty to the plaintiff.²²⁵ The expediency of constitutional remedies militates in favor of their admissibility given professional athlete's short career span.²²⁶ Some Courts have ordered third parties to participate in the remedy, when those third parties are particularly interested in the dispute and may benefit from, or be affected by, the court's decision.²²⁷

²¹⁸ *Platini v. Switzerland*, App. No. 526/18, 2020 (Switzerland has a positive obligation to protect the right to privacy of a person with regard to the actions of FIFA and CAS); *Mutu & Pechstein v. Switzerland*, App. No. 40575/10 & No. 67474/10, 2018 (positive obligation of Switzerland to guarantee due process in CAS proceedings) and *Semenya v. Switzerland*, App. No. 10934/21, 2023 (positive obligation to guarantee the right to an effective remedy and non-discrimination by CAS and World Athletics).

²¹⁹ *Re Ontario Human Rights Commission et al. and Ontario Rural Softball Association* (1979), 26 O.R. (2d) 134, 102 D.L.R. (3d) 303. More modern Canadian cases established that the non-discrimination clause applies in the sports field. *Pasternak v. Manitoba High Schools Athletic Assn. Inc.*, 62 C.H.R.R. D/163; upheld by the Manitoba Court of Appeal in 222 Man.R. (2d) 288 (different treatment of female and female students in school sports) and *Youth Bowling Council of Ontario v. McLeod* (1990), 75 O.R. (2d) 451; upheld by the Court of Appeal for Ontario (1994), 20 O.R. (3d) 658 (lack of accommodation for a bowling athlete with disabilities).

²²⁰ *Sentencia T-366/19*, Corte Constitucional (Colombia), 2019.

²²¹ *Id.*, at 3. Juridical Problem to be Solved.

²²² *Id.*, at ii. Compare with CAS cases such as *Semenya*, where the more than 2/3 of CAS's 163 pages on awards are dedicated to the scientific discussion of what constitutes a woman for athletic purposes. See CAS 2018a, b/0/5794 *Mokgadi Caster Semanya v. IAAF* and CAS 2018a, b/0/5798 *Athletics South Africa v. IAAF*.

²²³ *Id.*

²²⁴ See e.g. *Sentencia T-464/22*, Corte Constitucional (Colombia), 2022 (the Colombian Professional League could be subject to a tutela given their position of power in football).

²²⁵ *Sentencia 519-2014*, Sala de lo Constitucional de la Corte Suprema de Justicia (El Salvador) 2016, at III.1.B (amparo against a sanction imposed by the Salvadorean Taekwondo Federation).

²²⁶ *Sentencia T-740-10*, Corte Constitucional (Colombia), 2010.

²²⁷ *Sentencia T-464/22*, Corte Constitucional (Colombia) 2022 (requiring the participation of a football team and the Ministry of Sports given their contractual relation with the footballers acting as plaintiff and the State role in sports); *Conflicto de Competencia No. 133.244 – R J* (2014/0079835-7), Superior Tribunal de Justicia, (Brazil) (2014) (intervention of the Brazilian Football Federation in a dispute related to disciplinary actions against football teams brought

Courts have allowed the use of these remedies against SGBs' decisions related to the qualifications of athletes,²²⁸ elections within SGBs,²²⁹ disciplinary actions against the President of an SGB,²³⁰ the procedure followed to adopt the budget of the NOC,²³¹ or SGB announcements that some competitions are illegal without their permission.²³² The possibility to develop the constitutional right to practice sports justifies the admissibility of constitutional remedies.²³³ A dispute related to elections within a football federation are a constitutional rather than an electoral matter because the practice of sports is recognized as a right.²³⁴ The risk that the national football team might be suspended due to inappropriate State judicial interference requires the Constitutional Court to intervene to protect individual players' rights as well as the society's collective rights in general.²³⁵ The amparo action was accepted against a football club that banned a fan from entering the stadium given his violent actions in the past. In several countries, the constitutional remedy is available to challenge judicial decisions, including those related to sports disputes.²³⁶ Legal persons, such as football teams, have standing to bring constitutional actions to protect their constitutional rights.²³⁷

As the constitutional remedies, particularly the amparo, are only of an exceptional character, courts reject amparo actions if there are other ordinary remedies,²³⁸ or if the

issues are questions of legality rather than constitutionality.²³⁹ Conversely, given that national and international federations could preclude a professional footballer from playing while there is a transfer right dispute, the amparo or tutela is essential to protect their rights.²⁴⁰ If the sporting mechanism does not offer proper judicial guarantees such as impartiality, lacks proper remedial powers, and requires the payment of certain costs in advance, then the constitutional remedy is appropriate.²⁴¹

Most constitutional courts accept that the definition of authority should not be formal and that the key analysis is whether SGBs exercise power and if so, the constitutional remedy is appropriate.²⁴² Other Courts consider that constitutional remedies should be available given the possibility of an abusive exercise of the economic rights of teams vis-à-vis the constitutional rights of professional players.²⁴³ The Constitutional Chamber of Costa Rica appears to be the lone exception as it does not consider that the constitutional amparo is the proper remedy to challenge decisions of SGBs given that they are not public authorities²⁴⁴ nor do they exercise so much power as requiring the use of this exceptional remedy.²⁴⁵ In those cases, the affected party should activate the regular judicial proceedings or those established in the SGB's regulations.²⁴⁶

One example that illustrates this Latin American approach is a case in which an Ombudsman, using their

Footnote 227 (continued)

by fans); AgInt no Conflito de Competencia No. 165897 – R J (2019/0147801-7), Superior Tribunal de Justicia, (Brazil) (2019).

²²⁸ Acción de Inconstitucionalidad, Acuerdo y Sentencia No. 188, Corte Suprema de Justicia (Paraguay) (dispute related to the results of a skate free dance competition).

²²⁹ Apelación de sentencia de amparo, Exp. 4341-2020, Corte de Constitucionalidad (Guatemala) 2022; Exp. acumulados 821-2022 Y 874-2022, Corte de Constitucionalidad (Guatemala) 2022.

²³⁰ Exp. acumulados 5565-2022 y 5567-2022, Corte de Constitucionalidad (Guatemala) 2023.

²³¹ Exp. 2818-2023, Corte de Constitucionalidad, (Guatemala) 2023.

²³² Sentencia T-242/16, Corte Constitucional (Colombia) 2016.

²³³ Sentencia TC/0513/17, Tribunal Constitucional (Dominican Republic) 2017 (challenging the decision of the NSI not to recognize dominoes as a sport).

²³⁴ Federación Venezolana de Fútbol, Tribunal Supremo de Justicia, Sala Constitucional (Venezuela) 2015.

²³⁵ Federación Venezolana de Fútbol, Tribunal Supremo de Justicia, Sala Constitucional (Venezuela) 2015.

²³⁶ Sentencia No. 171-14-SEP-CC, Caso No. 0884-12-EP, Corte Constitucional (Ecuador) 2014 (challenging a judicial decision related to a dispute on TV rights of football matches).

²³⁷ Sentencia T-550/16, Corte Constitucional (Colombia), 2016.

²³⁸ Exp. No. 13-009093-CO, Resol. No. 2013011141, Sala Constitucional de la Corte Suprema de Justicia (Costa Rica) 2013 (rejecting a challenge against the Costa Rican Football Federation and one team on a contractual dispute); Sentencia T-464/22, Corte Constitucional (Colombia) 2022 (no legality control over the football regulations adopted by the SGB following FIFA directives).

²³⁹ Sentencia AA-334-18, Corte Suprema de Justicia (Honduras) 2020 (rejecting an amparo action questioning the decision of the Honduran Sports Confederation rejecting the participation of the Honduran Federation of Karate-Do in the annual assembly, given that there were other ordinary judicial available recourses).

²⁴⁰ Sentencia No. T-498/94, Corte Constitucional (Colombia) 1994.

²⁴¹ Sentencia T-366/19, Corte Constitucional (Colombia) 2019.

²⁴² Sentencia 754-2006, Sala de lo Constitucional de la Corte Suprema de Justicia (El Salvador) 2007 (amparo against a decision of the Bowling Salvadorean Federation); Contradicción de Tesis 21/2020, Suprema Corte de Justicia de la Nación (México) 2021 (national sporting federations are authorities of amparo purposes).

²⁴³ Sentencia No. T-498/94, Corte Constitucional (Colombia) 1994.

²⁴⁴ Exp. No. 10-0014752-0007-CO, Resol. No. 19206-2010, Sala Constitucional de la Corte Suprema de Justicia (Costa Rica) 2010 (rejecting a challenge against the removal of the President of a football team).

²⁴⁵ Exp. No. 13-009093-CO, Resol. No. 2013011141, Sala Constitucional de la Corte Suprema de Justicia (Costa Rica) 2013 (rejecting a challenge against the Costa Rican Football Federation and one team on a contractual dispute).

²⁴⁶ Resolución N° 05578 – 2002, Exp.: 02-004613-0007-CO, Sala Constitucional de la Corte Suprema de Justicia (Costa Rica) 2002, para 09:28 (dismissing a challenge against the National Football Federation decision to grant bonuses to the players of the national team for their participation in the World Cup); Exp. No. 10-0014752-0007-CO, Resol. No. 19206-2010, Sala Constitucional de la Corte Suprema de Justicia (Costa Rica) 2010.

broad standing granted by the Constitution,²⁴⁷ sought a remedy against a football team President's sexist expressions about women footballers. In the case, the Colombian Constitutional Court took an approach based on human and constitutional rights.²⁴⁸ The remedy was brought against a private person, the President of the team, reflecting the horizontal effects of constitutional rights. The Court considered the team President's particular role as an authority and recognizable public figure when making the sexist comments.²⁴⁹

11 Expansive constitutional remedial orders

Courts, following precedents set by the Inter-American Court have issued expansive and creative remedies when rights violations occur in sports. Examples of these remedies include: a local SGB issued a public apology to a former member of that SGB's Board of Directors in a wide circulation newspaper due to non-compliance with a judicial order mandating his reincorporation to the Board.²⁵⁰ Similarly, in the already mentioned case of gender discrimination in football, the Colombian Constitutional Court ordered that the SGB make a public declaration acknowledging that prohibiting a girl from playing on a football team was contrary to Constitutional principles and values and to state their commitment not to discriminate in the future and to promote gender equality in football.²⁵¹ These orders are modeled on the case-law of the Inter-American Court.²⁵² The Colombian Court ordered, in addition to the right of the team to register for the next competition, a series of symbolic reparations to deal with the structural discrimination. The measures included: mixed football competitions including boys and girls, an activity to repair the harm against the girl (inviting well-recognized professional men and women footballers), the development of an SGB program to promote girl's football, and finally for the SGBs and NSI to develop programs and campaign to raise awareness on gender equality in sports.²⁵³ The Court ordered the President to hold a press conference similar to the one where he made sexist comments. During this conference, he was required to publicly apologize, reference FIFA and Colombian Football Federation regulations banning gender discrimination, and outline measures his team would take to address the issue. Female

players and their associations were allowed to attend and participate. The Court instructed the club to adopt a program, developed with the help of feminist organizations and the female football association, to reduce the gender equality gap between the male and female teams. Additionally, the Football League and the Federation were urged to implement educational programs and campaigns promoting equality and combating gender discrimination. The Ministries of Sports and Education, along with the Advisory Entity for Women's Equality, were called upon to create human rights and equality programs within sports. Finally, the Court recommended that Congress review and update the Sports Law to improve equality guarantees.²⁵⁴

The Colombian Constitutional Court ordered the NSI to carry out its mandate to inspect and oversee footballers' transfers in a stricter manner, specifying very detailed measures on how to do it.²⁵⁵ The Football Professional League was asked to fully comply with its own rules.²⁵⁶ The Panamanian Supreme Court requested the NSI to "act more firmly" in regulating and supervising SGBs' elections.²⁵⁷ The Constitutional Court of Colombia asked sports clubs to include cultural, civic, and psychological training in coaches' and players' education in order to prepare them to represent the country with dignity and fulfill a true role as social examples.²⁵⁸ NSI and the Paralympic Committee were ordered to provide wheelchairs to basketball players with disabilities.²⁵⁹ The Constitutional Court rejected the argument that this order could affect the economic stability of the Paralympic Committee since among its purposes is assisting athletes with disabilities and the possibility of securing funds from the State and other sources.²⁶⁰

12 The economic aspect of sports and constitutional adjudication

Courts recognize that sports serve both physical and economic purposes: promoting physical activity and competition, while also enabling professional athletes to earn a living and contribute to their industry. The State plays a role in regulating sports as an economic activity. The following

²⁴⁷ Id. at para 67.

²⁴⁸ Sentencia T-212/21, Corte Constitucional (Colombia) 2022.

²⁴⁹ Id. at para 1–26.

²⁵⁰ Sentencia No. 047-15-SIS-CC, Caso No. 0057-11-IS, Corte Constitucional (Ecuador) 2015.

²⁵¹ Sentencia T-366/19, Corte Constitucional (Colombia) 2019.

²⁵² Schonsteiner 2007, p. 127.

²⁵³ Sentencia T-366/19, Corte Constitucional (Colombia) 2019.

²⁵⁴ Sentencia T-212/21, Corte Constitucional (Colombia) 2022, pp. 59–60.

²⁵⁵ Sentencia, T-123/98, Corte Constitucional (Colombia) 1998; Sentencia T-740-10, Corte Constitucional (Colombia) 2010.

²⁵⁶ Sentencia T-740-10, Corte Constitucional (Colombia) 2010.

²⁵⁷ Demanda Contencioso Administrativa, Exp. 772-03, Corte Suprema de Justicia (Panamá) 2005.

²⁵⁸ Sentencia, T-302/98, Corte Constitucional (Colombia) 1998.

²⁵⁹ Sentencia T 560-15, Corte Constitucional (Colombia) 2015.

²⁶⁰ Auto 053/16, Corte Constitucional, Pleno (Colombia) 2016.

sections explain economic aspects of sports and protecting athletes' rights as workers.

12.1 Restrictions of rights based on the specificity of sports and the economic aspect of sports

Constitutional courts have admitted that there are some regulations that are permissible given the characteristics of sports and that there are certain specific legitimate goals that may be pursued. State intervention in areas such as taxation to achieve constitutional goals, such as the promotion and development of sports, enjoy deference from the judiciary given the legislature's broad discretionary powers.²⁶¹ The State can also intervene in regulating certain economic activities, like professional player transfers.²⁶²

For instance, the Guatemalan Court accepted the age limitation (players not older than 23) to be inscribed in the second division of the national football federation. The Court understood that the regulation pursued a particular sporting goal (the promotion of young players) that does not contravene the constitutional principle of equality.²⁶³ The Colombian Court allowed minors to play professional football at night or during holidays when work would normally be forbidden as it would constitute abusive child labor.²⁶⁴ The Puerto Rican Supreme Court determined that the ban on naming a horse with a political name was unconstitutional given that the intended goal (the integrity and trust of horse racing industry) was of an economic nature and public interest.²⁶⁵ Similarly, this court ruled that it is illegal to protect purely economic interests by depriving people of the possibility of competition rather than sporting goals.²⁶⁶

Courts intervene to establish a proper constitutional balance recognizing the economic interests at play.²⁶⁷ Constitutions protect the economic aspects of sports under the right to property, contractual freedom, and free enterprise.²⁶⁸ The balance requires that SGBs which organize and profit from

sporting event should also bear the cost for harms produced in the context of such events.²⁶⁹ This approach reflects the specificity of sports regulations but subject to constitutional review, especially if those are exclusively for economic benefits. The limit to those economic interests is always based on the constitutional right to work, to choose one's own profession, and the absolute ban on slavery.²⁷⁰

12.2 Professional athletes as workers and the applicability of labor protections

Courts have consistently determined that professional athletes, particularly footballers, are workers.²⁷¹ Other stakeholders like coaches²⁷² and golf caddies²⁷³ are also workers. The status of football referees²⁷⁴ has divided Latin American courts as some courts consider them employees of the federations²⁷⁵ and others as independent contractors. Even if there is a labor relation between referees and the SGBs, that relationship is not equated to professional players and thus, the special sport labor regime is not applicable.²⁷⁶

The contracts between footballers and teams are labor, not civil ones.²⁷⁷ Professional athletes are dependents and subordinates to the team and should follow their orders and requirements; the services that players provide are on behalf of the team.²⁷⁸

As workers, athletes enjoy all the benefits of labor laws.²⁷⁹ Their labor rights should be protected over the economic interests of the clubs to avoid violation of the freedom to work and to avoid being considered a "thing" rather

²⁶¹ Amparo en Revisión 1356/2017, Suprema Corte de Justicia de la Nación (México) 2018.

²⁶² Sentencia No. C-320/97, Corte Constitucional (Colombia) 1997.

²⁶³ Exp. 5129-2022, Corte de Constitucionalidad (Guatemala) pp. 16–19.

²⁶⁴ Sentencia T-740-10, Corte Constitucional (Colombia) 2010.

²⁶⁵ *Muniz v. Administrador del Deporte Hípico*, Case CC-2000-792, Tribunal Supremo de Puerto Rico (2002).

²⁶⁶ *Parque Ecuestre La Esmeralda, Inc. v. Junta Hípica de la Administración y el Deporte Hípico*, Caso CC-2003-909, Tribunal Supremo de Puerto Rico (2004).

²⁶⁷ See e.g. *Recurso Especial No. 1.953.586 – R J (2021/0111459-4)*, Superior Tribunal de Justiça, (Brazil) (2021) (excluding a professional footballer from a judicial case between a football team and a football representative corporation).

²⁶⁸ Sentencia T-459/05, Corte Constitucional (Colombia) 2005.

²⁶⁹ *Mosca c/Buenos Aires, Provincia y otros*, Fallos 330:563, consid. 10, Corte Suprema de Justicia de la Nación (Argentina) 2007.

²⁷⁰ Sentencia No. T-498/94, Corte Constitucional (Colombia) 1994.

²⁷¹ Exp. López c/Rres. No. 71800000573/2020 del 24 de enero de la Sub-Secretaría de Estado de Tributación, Acuerdo y Sentencia No. 71, 2024, Corte Suprema de Justicia (Paraguay); *Larrosa Luis y otros c/Club Atlético Peñarol*, Caso 279/2001, Suprema Corte de Justicia (Uruguay) 2001; *Olivares Burgoa c/ Club Deportivo Jorge Wilsterman*, Exp. 429/17, Auto Supremo No. 759, Tribunal Supremo de Justicia, (Bolivia), 2018; *Amparo Directo en Revisión 13257/2017*, Suprema Corte de Justicia de la Nación (México) 2018.

²⁷² *Roo Leon, c/Club Nacional de Fútbol*, Caso 596/2017, Suprema Corte de Justicia (Uruguay) 2017.

²⁷³ *Amaral Pimienta c/Asoc. Civil Cantegril Country Club y otros*, caso 1109/2023, Suprema Corte de Justicia (Uruguay) 2023.

²⁷⁴ *Amparo Directo en Revisión 13257/2017*, Suprema Corte de Justicia de la Nación (México) 2018.

²⁷⁵ Resolución No. 00809-2019, Exp. 16-000042-1178-LA, Corte Suprema de Justicia (Costa Rica) 2019.

²⁷⁶ *Id.*

²⁷⁷ Exp. López c/Rres. No. 71800000573/2020 del 24 de enero de la Sub-Secretaría de Estado de Tributación, Acuerdo y Sentencia No. 71, 2024, Corte Suprema de Justicia (Paraguay).

²⁷⁸ *Id.*

²⁷⁹ *Id.*

than a human being.²⁸⁰ The rights approach has moved the Colombian Constitutional Court to criticize language used by sporting regulations when referring to the “transfer” of players.²⁸¹ The references to “transfer” mean that the teams are the “owners” of the player, affecting their dignity, and treating them as things that could be traded rather than humans.²⁸² Language is not neutral, and it has constitutional relevance.²⁸³

The State has a duty to protect worker’s rights, enforce labor laws, and interpret them in the most favorable possible manner for the worker.²⁸⁴ Athletes have the right to pension for disability, and the same social security benefits as any other worker.²⁸⁵ The NSI should be effective in its oversight, control and inspection of SGBs in everything related to the labor rights of professional players.²⁸⁶ Professional paralympic athletes have a constitutionally protected right to work and the paralympic committee should provide them with wheelchairs in order to compete.²⁸⁷

Specialized labor tribunals are the appropriate courts to resolve disputes in the sports field.²⁸⁸ Some courts have found constitutional sports labor disputes going to arbitration.²⁸⁹ The distinction between labor and sporting infractions establishing two parallel systems is constitutional given that it reflects the special situation of professional athletes.²⁹⁰ Professional footballers are both workers and athletes. The

sporting side of their labor should be adapted and comply with national and international sporting regulations, including the disciplinary regime.²⁹¹

The Colombian Constitutional Court decided multiple cases defining the relationship between professional football players and their teams. It had to rule on the so-called *sporting rights* (*derechos deportivos*), defining the economic and non-economic interests at play in the transfer of players. The disputes between who owns the sporting rights of the player, and the possible balance with other competing interests and rights, should be solved first based on the contract between the player and the teams and the rules of the national and international football federations. However, given the other important constitutional rights at play, a proper balance is necessary.²⁹² Among the elements to consider is footballers’ short professional careers.²⁹³ A player’s career could be destroyed if a team refuses to transfer them, resulting in a long dispute. All the norms need to be interpreted in light of the Constitution.²⁹⁴ There are permissible goals such as promoting equal competition and compensating the costs of developing a player.²⁹⁵ The constitutional limits to achieving those goals are ignoring abuse by the teams, the non-recognition of the players’ constitutional rights, and treating the player as a “thing” or property of the club.²⁹⁶ The professional athlete “is not a slave”²⁹⁷ and their human dignity should be respected.²⁹⁸ The State should intervene to reestablish the constitutional balance and protect the dignity and autonomy of the player and their freedom to work.²⁹⁹ The Court distinguishes between two labor relationships: one is between player and team, another is the relationship established under sporting rights. The former relates to the discharge of duties and protecting rights within the labor relationship. The latter relates to the effects of the team’s ownership of the sporting rights with the individual rights of the player.³⁰⁰ The protection of constitutional rights of players also requires that they act in good faith and do not

²⁸⁰ Sentencia, T-302/98, Corte Constitucional (Colombia) 1998.

²⁸¹ Sentencia No. C-320/97, Corte Constitucional (Colombia) 1997.

²⁸² For instance, the FIFA Regulations on the Status and Transfer of Players in addition to referring to “transfers” also uses expressions such as “loan of a player” (art. 10); “ownership of players economic rights” (art. 18) https://www.icsspe.org/system/files/FIFA%20-%20Regulations%20on%20the%20Status%20and%20Transfer%20of%20Players_0.pdf.

²⁸³ Sentencia No. C-320/97, Corte Constitucional (Colombia) 1997.

²⁸⁴ Olivares Burgoa c/ Club Deportivo Jorge Wilsterman, Exp. 429/17, Auto Supremo No. 759, Tribunal Supremo de Justicia (Bolivia) 2018; Sentencia, T-302/98, Corte Constitucional (Colombia) 1998. There are other countries and regions that also grant at least some labor law protections to athletes and professional players. See O’Leary 2017.

²⁸⁵ Sentencia No. 2-13-IN y acumulado/21, Casos No. 2-13-IN y 31-19-IN (acumulados), Corte Constitucional (Ecuador) 2021, para 59.

²⁸⁶ Sentencia, T-302/98, Corte Constitucional (Colombia) 1998.

²⁸⁷ Sentencia T 560-15, Corte Constitucional (Colombia) 2015.

²⁸⁸ Tufino c/Club Deportivo Oriente Petrolero, Auto Supremo No. 269, Tribunal Supremo de Justicia, Sala Social y Administrativa II (Bolivia) 2010; Olivares Burgoa c/ Club Deportivo Jorge Wilsterman, Exp. 429/17, Auto Supremo No. 759, Tribunal Supremo de Justicia (Bolivia) 2018.

²⁸⁹ See for instance, Roo Leon, c/Club Nacional de Futbol, Caso 596/2017, Suprema Corte de Justicia (Uruguay) 2017 (labor dispute of a coach and a football team).

²⁹⁰ Id., para 121.

²⁹¹ Sentencia No. 2-13-IN y acumulado/21, Casos No. 2-13-IN y 31-19-IN (acumulados), Corte Constitucional (Ecuador) 2021, para 103, 165.

²⁹² Sentencia T-464/22, Corte Constitucional (Colombia) 2022.

²⁹³ Sentencia T-740-10, Corte Constitucional (Colombia) 2010.

²⁹⁴ Sentencia No. T-498/94, Corte Constitucional (Colombia) 1994.

²⁹⁵ Sentencia No. C-320/97, Corte Constitucional (Colombia) 1997; Sentencia T-459/05, Corte Constitucional (Colombia) 2005.

²⁹⁶ Sentencia No. C-320/97, Corte Constitucional (Colombia) 1997. On the short career of footballers, see also Sentencia T-464/22, Corte Constitucional (Colombia) 2022.

²⁹⁷ Sentencia, T-123/98, Corte Constitucional (Colombia) 1998.

²⁹⁸ Sentencia T-459/05, Corte Constitucional (Colombia) 2005.

²⁹⁹ Sentencia No. C-320/97, Corte Constitucional (Colombia) 1997.

³⁰⁰ Sentencia T-459/05, Corte Constitucional (Colombia) 2005.

abuse their own rights.³⁰¹ Teams must grant the right to be transferred when the contract between the team and the player expires.³⁰² A team's economic rights can be secured in different ways without affecting the player's constitutional rights.³⁰³

12.3 CAS and sports arbitration in Latin American Constitutional Adjudication

Courts have ruled on cases involving sports arbitration in general and CAS in particular. In their analysis of the sports arbitration those tribunals apply the constitutional framework briefly explained in the previous sections. Arbitration is the most widespread and accepted form of sports adjudication given its several advantages: it provides definitive resolution to the conflict; it is speedier than ordinary legal channels; it offers greater ease for the parties to fulfill what was agreed upon since it arises from a mutual will; it is discreet because, unlike ordinary judicial proceedings, during arbitration only the parties have the right to be present in the process; the specialization of arbitrators; and it has lower costs.³⁰⁴

Sports arbitration in general and CAS jurisdiction in particular, are compatible with the Constitution receiving endorsement from the legislative and judicial branches.³⁰⁵ Any sporting disciplinary and arbitral mechanism discharges a public function.³⁰⁶ Some Latin American constitutions expressly recognize that arbitration is a proper mechanism to decide disputes, including in sports.³⁰⁷ Alternative mechanisms such as CAS operating in parallel to traditional judicial adjudication,³⁰⁸ require delimiting the contours of arbitration and judicial mechanisms.³⁰⁹

Many courts have established clear limits to sports arbitration. Law upholds individuals' right to access national courts and rejects sporting regulations that prohibit such recourse. The Peruvian Constitutional Tribunal understands that sports arbitration does not displace the Judiciary; it

represents an alternative.³¹⁰ Similarly, the Chilean Supreme Court considered unconstitutional the imposition of a sanction against a football team for filing a judicial claim against a decision of the National Association of Professional Football. The prohibition based on the rules of the National Association, CONMEBOL, and FIFA represent an illegal and arbitrary restriction of the right of access to courts.³¹¹ The Colombian Constitutional Court considers it unconstitutional to prohibit acceding the regular justice system to seek protection of labor rights.³¹² SGBs are not allowed to sanction players or teams for seeking constitutional remedies.³¹³

However, it is constitutional to have an arbitral system (not part of the State judiciary) as long as the parties have the option to go to judicial courts and challenge the arbitral award and those arbitral awards are understood to be not judicially enforceable.³¹⁴ The Guatemalan Constitutional Court did not allow sports arbitration in the cases of a widow and of a mother of a player who died during a match. The right to access to courts does not allow those cases to be covered by the arbitration clause of the Football National Federation.³¹⁵

Arbitration cannot operate at the margins of the constitutional public order. Thus, arbitral tribunals should be independent and impartial and protect due process guarantees.³¹⁶ Above all, arbitral tribunals should respect fundamental rights.³¹⁷ If a violation of such rights or principles takes place in arbitration proceedings, the State has a duty to intervene.³¹⁸ In cases such as Brazil, where the constitution itself creates a sports jurisdiction,³¹⁹ the Supreme Court limited the jurisdiction of such tribunal to exclusively sporting questions while all other type of issues are to be dealt with by the ordinary courts.³²⁰ Even questions taking place during a match, such as defamatory expressions by a football player against the referee could be dealt with by the

³⁰¹ Id.

³⁰² Id.

³⁰³ Id.

³⁰⁴ Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Perú), para 29.

³⁰⁵ Equipo Sanjuaneras de la Capital, Metro V.C., LLC v. Federación Puertorriqueña de Voleybol et al, Caso SJ2021CV05725, Tribunal de Apelaciones Panel VIII (Puerto Rico) 2022.

³⁰⁶ Sentencia No. C-226/97, Corte Constitucional (Colombia) 1997.

³⁰⁷ Sentencia No. 2-13-IN y acumulado/21, Casos No. 2-13-IN y 31-19-IN (acumulados), Corte Constitucional (Ecuador) 2021, para 189–190.

³⁰⁸ Exp. No 035 74-2007-PA/TC, Tribunal Constitucional (Perú), para 31.

³⁰⁹ Id., para 32.

³¹⁰ Id., para 35.

³¹¹ Rol No. 56.134-2021, Corte Suprema (Chile) 2021.

³¹² Sentencia, T-302/98, Corte Constitucional (Colombia) 1998 and Sentencia T-464/22, Corte Constitucional (Colombia) 2022.

³¹³ Sentencia T-464/22, Corte Constitucional (Colombia) 2022.

³¹⁴ Sentencia No. 2-13-IN y acumulado/21, Casos No. 2-13-IN y 31-19-IN (acumulados), Corte Constitucional (Ecuador) 2021, para 195, 199 and 206.

³¹⁵ Exp. 269-2005, Corte de Constitucionalidad (Guatemala) 2005 (widow) and Exp. 2088-2005, Corte de Constitucionalidad (Guatemala) 2005 (mother).

³¹⁶ Id., para 36.

³¹⁷ Id., para 36.

³¹⁸ Id., para 37.

³¹⁹ De Quadros and Schmitt 2010.

³²⁰ Recurso Especial No. 1.762.786 – SP (2018/0087018-1), Superior Tribunal de Justicia (Brazil) 2018.

ordinary jurisdiction in addition to the sporting one, as they are beyond the regular manifestations of a game.³²¹

A Puerto Rican Appeals Court rejected the suggestion that female volleyball players challenging the lack of protection for pregnant women should take their case to the CAS in order to protect their constitutional rights. Pursuing the case before a European sports tribunal would be costly and contrary to public policy.³²² Another dispute directly challenged the ban of acceding to domestic courts and the need to use CAS in a case related to compensation for the development of a football player. The Colombian Constitutional Court analyzed the right to access to justice based both in the Constitution and in the ICCPR and the American Convention. Following the Inter-American Court's caselaw, it asserted that access to justice is broader than the mere possibility of filing a judicial action but to have an effective remedy, meaning a decision on the merits of the complaint in a timely manner. This right was extended to a legal person such as a football team in the case. The Constitutional Court accepted that CAS is the last recourse tribunal for sporting disputes and that CAS already decided or processed disputes related to Colombian players.³²³ The Court accepted that this possibility was constitutionally permissible. However, it recognized that the CAS option implied additional cost such as airfare, food, lodging, and legal advice in Switzerland given the need to know the language and the legal regime. All those additional costs constitute obstacles to the constitutional and human right of access to justice. In those circumstances, the Colombian Federation of Football should cover those additional costs.³²⁴

The Colombian Supreme Court had to decide on the enforcement of two arbitral awards—one from the CAS and the other from the Jurisdictional Committee of the Royal Spanish Football Federation. In both cases, the Court upheld the enforcement of the awards, applying the New York Convention and Colombian domestic law to determine their validity. Both awards involved disputes between professional footballers and their representatives. For the CAS award,³²⁵ the Court strictly applied the limited exceptions to enforcing arbitral awards, stating that the New York Convention and Colombian law only allow exceptional challenges against foreign awards. The Court found that CAS did not violate Colombian international public order, as both parties participated in the proceedings, exercised their right to defense,

and the economic nature of the dispute was suitable for arbitration.³²⁶ Regarding the Spanish award, the Court ruled that the tribunal should review the award's compatibility with Colombian international public order *ex officio*, interpreting public order as involving only violations of basic and fundamental principles. The Court took a pro-arbitration and pro-enforcement stance, highlighting the need for speed, specialized knowledge, cost-effectiveness, and timely decisions in sports arbitration, acknowledging that CAS is the most prominent sports arbitration tribunal.³²⁷

A notable finding is that no Latin American court has referred to any “precedent” or award decided by CAS, questioning the idea of CAS developing a *lex sportiva*. This absence contrasts with the routine references to decisions of the Inter-American Court or United Nations human rights bodies. Courts in interpreting sports provisions or solving sports disputes have used decisions of the European Court of Justice³²⁸ or from European countries³²⁹ but not from CAS. Courts have also referred to their counterparts in Latin America, particularly the Colombian Constitutional Court, in what appears to be a nascent cross-regional judicial fertilization.³³⁰

13 Conclusion and practical consequences

The interplay between sports, human rights, and constitutional law in Latin America illustrates the existence of alternative legal frameworks for promoting rights within the sports field. Through explicit constitutional provisions and judicial decisions, Latin American countries seek to ensure that sports are conducted in a fair, inclusive, and

³²¹ *Id.*

³²² Equipo Sanjuaneras de la Capital, Metro V.C., LLC v. Federación Puertorriqueña de Voleybol et al, Caso SJ2021CV05725, Tribunal de Apelaciones Panel VIII (Puerto Rico) 2022.

³²³ Sentencia T-550/16, Corte Constitucional (Colombia) 2016.

³²⁴ *Id.*

³²⁵ CAS 2015/O/4265.

³²⁶ SC2606-2022, Corte Suprema de Justicia (Colombia) 2022.

³²⁷ SC389-2023, Corte Suprema de Justicia (Colombia) 2023.

³²⁸ Asociación Uruguaya de Fútbol c. Poder Ejecutivo, caso 244/2020, Suprema Corte de Justicia (Uruguay) 2020; Sentencia No. 2-13-IN y acumulado/21, Casos No. 2-13-IN y 31-19-IN (acumulados), Corte Constitucional (Ecuador), 2021, and Sentencia No. C-320/97, Corte Constitucional (Colombia) 1997 (citing *Bosman*).

³²⁹ See e.g. *Mapfre BHD, S.A.*, Case SCJ-PS 22-2217, Suprema Corte de Justicia, 2022 (Dominican Republic) (citing the French Cassation Court), *Cohen c/Rio Negro*, Corte Suprema de Justicia de la Nación (Argentina) 2006, *consid.* 5 (citing the French Cassation Court); *B.S., J.G. c/Union Cordobesa de Rugby y otros*, Corte Suprema de Justicia de la Nación (Argentina) 2012, *consid.* 10 (citing different English decisions on injuries during rugby matches); Sentencia No. 2-13-IN y acumulado/21, Casos No. 2-13-IN y 31-19-IN (acumulados), Corte Constitucional (Ecuador) 2021, para 177 (citing a Belgium Court of Justice decision).

³³⁰ *Acción de Inconstitucionalidad*, Corte de Suprema de Justicia (Panamá) 1993, and Sentencia No. 047-15-SIS-CC, Caso No. 0057-11-IS, Corte Constitucional (Ecuador) 2015; Amparo en revisión, 162/2021, Suprema Corte de Justicia de la Nación (México) 2021 (referring to Colombian precedents).

rights-respecting manner. Cases decided by constitutional courts highlight the dynamic relationship between law and sports, addressing issues such as autonomy, regulation, and the protection of athletes' rights.

Sports law in Latin America is strongly influenced by rights lawyers and adjudicators who use constitutional standards and human rights frameworks to drive change within the sports ecosystem. Latin America brings substantive meaning to rights protection in sports, adapting to the specific social, political, and legal contexts in which they operate, while also considering the complex role sports play in society. Sports law is conditioned by its geographic context, including the protection of athletes within the constitutional national and regional frameworks.³³¹

The Latin American constitutional recognition of sports as a right has resulted in the judicial acknowledgment of a duty for the State and SGBs to uphold this right. This does not equate to an unrestricted or unregulated entitlement that allows anyone to participate in any sporting activity without adhering to specific regulations. Nor does it require the State to fund or support every type of sporting activity.

Constitutional decisions reflect an approach to judicial adjudication that prioritizes human rights over the strict application of sports regulations, or focusing solely on rule violations. This framework does not aim to preserve the autonomy of sports at the expense of rights. It rejects undue deference to SGBs and is willing to impose broad reparatory measures on both public and private actors responsible for rights violations.

Many of these cases could be compared to those decided by European (national and regional) courts. The characteristic of the Latin America is that courts consistently ground their decisions in constitutional law, rather than competition law or private liability. They adopt a human rights framework, recognizing a fundamental right to practice sports that applies equally to both SGBs and public authorities. Furthermore, these courts emphasize the duty of both the State and SGBs to protect rights, offering less deference to sports authorities.

This article does not claim that the Latin American approach is unique or completely different, nor that it leads to outcomes entirely distinct from those in other parts of the world, where judgments are based on private, contractual, administrative, or civil law. The paper primarily aims to demonstrate that the often neglected Latin American judicial approaches to the relationship between rights and SGBs contrasts with the approach typically taken by the CAS. Further research is needed to assess whether the European and Latin American approaches provide similar, more, or less protection for athletes' rights and those of other stakeholders

in the sports ecosystem. More detailed case studies could provide further illustrate the practical implications of the Latin American approach.

The overlooked Latin American approach calls for greater attention to the legal and judicial developments in various parts of the world. A Eurocentric lens to sports and human rights obscures the significant contributions made by Latin American courts in protecting rights. It also limits or excludes the potential positive impact of the CAS on the development of a sports constitutional framework in Latin America.

Author contributions The whole article was written by me.

Data availability No datasets were generated or analysed during the current study.

Declarations

Conflict of interest The authors declare no competing interests.

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