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ABSTRACT

Questo lavoro si pone l'obiettivo di contribuire ad accrescere la conoscenza del fenomeno di violenza contro le donne nello sport, ed in particolare di presentare le diverse forme che questo tipo di violenza può assumere. La prospettiva è quella del diritto internazionale. La violenza contro le donne nello sport può apparentemente risultare un fenomeno recente, che è incrementato con la maggiore emancipazione delle atlete. Tuttavia, basti pensare alla loro iniziale totale esclusione dal mondo dello sport e la assenza di alcuni sport femminili (che invece nel mondo sportivo maschile vengono normalmente praticati) per capire le radici passate di questo fenomeno.

Il fenomeno di violenza contro le donne nello sport si configura particolarmente ampio, includendo diverse forme, e questa generalità è rispecchiata dal punto di vista giuridico; infatti, una definizione giuridica manca. Anche da questo aspetto si può evincere che questa sfaccettatura della violenza contro le donne è poco conosciuta ed analizzata. Ad ora, non esistono convenzioni internazionali che affrontino il tema della violenza contro le donne nello sport direttamente; ci si può riferire ad essa solamente attraverso gli strumenti giuridici che trattano di diritti umani o di violenza contro le donne in generale.

Tuttavia, nonostante la presenza di questi documenti (che teoricamente dovrebbero tutelare alcuni degli aspetti che caratterizzano questo fenomeno), casi di violenza contro le donne continuano ad occorrere. Questo sta ad indicare che si è molto lontani dal riuscire ad ottenere un contesto sportivo privo di violenze, e che molta strada deve essere ancora fatta. Se da un lato il diritto, internazionale e non, non ha il potere di sradicare la violenza contro le donne nello sport, dall'altro lato si può assumere che possa comunque avere un ruolo nella riduzione di questo problema. Ad esempio, il semplice fatto di potersi riferire ad un documento specifico nel momento in cui un'atleta subisce una violenza nel contesto sportivo può essere già un buon punto di partenza.

È anche vero che il mondo dello sport, facente parte della cultura generale della società, è uno specchio delle dinamiche, comportamenti ed attitudini che sono presenti al di fuori del campo sportivo. Più il fenomeno di violenza contro le donne è intrinseco nella società, maggiori saranno i casi di violenza nello sport; allo stesso modo, se i casi di violenza contro le donne al di fuori del contesto sportivo sono quasi nulli, la violenza contro le atlete tenderà a non verificarsi.

Questo significa che, se si vuole che lo sport rappresenti un mondo in cui la violenza viene contrastata e non un mondo in cui viene perpetuata, si dovrà affrontare il generale problema di violenza contro le donne nelle varie società. Però, più attenzione dovrà essere posta anche a questo aspetto della violenza contro le donne, evitando che si rischi che qualche contesto in cui tale violenza si manifesta venga tralasciato o posto in secondo piano.

Lo sport rappresenta un potenziale per le donne, poiché può essere uno strumento attraverso il quale le atlete possono emanciparsi, dimostrare la loro forza, non solo fisica ma anche mentale, e dimostrare di non essere inferiori agli uomini, nemmeno in un contesto considerato così maschile.

In questa tesi, quindi, viene trattato anche il fenomeno di violenza contro le donne (non solo nello sport), partendo dalla nozione nel diritto internazionale. Prima di tutto, viene spiegata la definizione di “genere”, che non deve essere confuso ed essere usato come sinonimo di “donna”. La violenza di genere non corrisponde alla violenza contro le donne, ma quest’ultima è una delle forme incluse nella violenza di genere. Inoltre, la violenza contro le donne è una forma di discriminazione contro le donne. Diversi progressi nel diritto internazionale relativo a questo fenomeno sono stati raggiunti. Per esempio, inizialmente la violenza contro le donne era considerato un fenomeno relativo esclusivamente alla sfera privata, ed emergeva solo in casi gravi, come l’uccisione della moglie da parte del marito. Eppure si è arrivati al riconoscimento che questa violenza rappresenta una violazione dei diritti umani, non solo relativamente alla sfera privata, ma anche quella pubblica. Il fatto che la violenza contro le donne trova le sue radici in elementi strutturali, ossia in relazioni di potere storicamente diseguali, è riconosciuto anche dagli strumenti internazionali. Un altro progresso degno di nota è il fatto che, per molto tempo, la violenza contro le donne non è stata considerata come una violazione dei diritti umani, ma, grazie anche agli sforzi di molte attiviste, si è arrivati ad ottenere questo riconoscimento in diversi strumenti giuridici.

Il secondo capitolo si focalizza specificatamente sulla violenza contro le donne nello sport. L’assenza di una nozione che identifichi il fenomeno, oltre alla mancanza di consapevolezza, rappresentano dei seri problemi nell’affrontare questo problema. Infatti, per cercare di ridurre questo fenomeno, si potrebbe partire da questi due elementi: fornire una definizione ufficiale e adottare iniziative per accrescere il livello di conoscenza e

consapevolezza del problema. I limiti delle ricerche in quest'ambito, così come i limiti di questa tesi, partono da questi due fattori sopra menzionati. Nonostante la conseguente scarsità di dati relativi al problema, una serie di numeri e percentuali sono forniti; per esempio, nelle Olimpiadi del 2000, le atlete hanno partecipato solo al quarantaquattro per cento del totale degli eventi sportivi. Le varie forme che la violenza contro le donne nello sport può assumere sono successivamente illustrate: scarsi livelli di partecipazione, vittimizzazione sessuale, sport professionistici e gender pay gap, disuguaglianze per quanto riguarda le posizioni di allenatore e di leadership, discriminazione dei media, violenza contro le giovani atlete e l'intersezionalità. Tutte queste forme di violenza derivano dal fatto che lo sport è ancora un'istituzione altamente mascolinizzata, in cui gli uomini sono visti come la norma, mentre le donne come le eccezioni. Da questa premessa si può spiegare il basso livello di partecipazione di donne atlete, il fatto che non sono considerate professioniste (e il conseguente gender pay gap), il fatto che gli sport femminili vengono trascurati dai media, eccetera.

Nel terzo capitolo il diritto sportivo viene introdotto, sia dal punto di vista internazionale, sia dal punto di vista europeo, oltre al sistema giudiziario sportivo. I principali attori e le loro relative misure che affrontano la violenza contro le donne nello sport sono poi presentati. A livello internazionale, l'UNESCO, le Nazioni Unite, l'International Working Group on Women and Sport ed il Comitato Olimpico Internazionale sono gli organi che hanno maggiormente affrontato il problema. A livello regionale, ci sono soprattutto il Consiglio d'Europa, il Parlamento Europeo, e l'Unione Europea in generale. A livello degli stati membri dell'Unione Europea, diverse tendenze sono state trovate relative al trattamento del problema della violenza contro le donne nello sport. Anche in questo tipo di violenza la dimensione che riguarda i diritti umani è presente. Effettivamente, la sfera dei diritti umani si è ampliata col trascorrere degli anni; inoltre, lo sport sta assumendo una posizione sempre più importante dal punto di vista sociale, culturale, ed economico. L'attenzione negli strumenti di diritti umani in cui la violenza contro le donne può trovare il suo posto è posta principalmente sul diritto all'educazione o all'attività fisica, specialmente quando l'obiettivo è il miglioramento del benessere della persona o lo sviluppo della persona stessa. Ma, nonostante molti credano che il diritto allo sport sia un diritto umano, esso non è protetto giuridicamente come in diritto umano universale, né è menzionato negli strumenti vincolanti dedicati ai diritti umani.

Nel quarto e ultimo capitolo, la prevenzione della violenza contro le donne nello sport è trattata. Il punto di partenza sono gli obblighi degli stati per quanto riguarda la violenza contro le donne in generale. In secondo luogo, si passa alla pianificazione dei prossimi passi che possono essere presi per combattere la violenza contro le donne nello sport: riforme procedurali ed un eventuale protocollo (evidenziandone anche i limiti). La premessa è che per smantellare questo fenomeno, la violenza contro le donne più in generale deve essere affrontata, in quanto lo sport riflette i più ampi comportamenti sociali già presenti al di fuori dei campi sportivi. Successivamente vengono illustrati gli approcci alla prevenzione che sono stati adottati da diversi attori e in diversi livelli. Il migliore approccio alla prevenzione è quello che considera più livelli, che raggiunge diversi attori (non solo gli atleti o gli allenatori) e che riconosce il bisogno di una collaborazione nei diversi livelli della “pipeline” dello sport. I principali attori che promuovono la prevenzione della violenza contro le donne nello sport sono il Comitato Olimpico Internazionale, i Comitati Olimpici Internazionali, i governi nazionali, le federazioni sportive, ed il Comitato Paralimpico Internazionale, i quali cercano anche di tenere in considerazione gli elevati livelli di violenza contro persone LGBTQI nel mondo dello sport. Infatti, è risaputo che le atlete, specialmente quelle che praticano sport considerati maggiormente “maschili”, vengono discriminate in quanto lesbiche. Le iniziative di prevenzione della violenza contro le donne nello sport da cui si può prendere ispirazione sono diverse, e sono soprattutto adottate da organizzazioni sportive. Per il futuro, il miglior metodo di prevenzione sarà collegato al “6Ps framework”, il quale fa riferimento ai quattro pilastri della Convenzione di Istanbul (prevenzione, protezione, prosecuzione, politiche) e che rappresenta uno strumento che può avere efficacia nel combattere la violenza contro le donne nello sport; esso si riferisce a: prevalenza, prevenzione, protezione, prosecuzione, prestazione di servizi, partnership. Vengono poi spiegate le possibili misure future che possono adottare la Commissione Europea, gli stati membri dell'Unione Europea e le organizzazioni sportive. La tesi si conclude con il percorso che ha fatto il calcio femminile in Italia, per infondere speranza per il futuro degli sport femminili: nonostante tutte le difficoltà, il calcio femminile italiano si è sviluppato e ha raggiunto grandi progressi col corso degli anni.

TABLE OF ABBREVIATIONS

CAHVIO: Ad Hoc Committee for Preventing and Combating Violence against Women and Domestic Violence

CAS: Court of Arbitration for Sport

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CESCR: Committee on Economic, Social and Cultural Rights

CoE: Council of Europe

CONI: Comitato Olimpico Nazionale Italiano

CSW: Commission on the Status of Women

DEVAW: Declaration on the Elimination of Violence against Women

ECJ: European Court of Justice

EPAS: Enlarged Partial Agreement on Sport

EU: European Union

FIFA: Fédération Internationale de Football Association

FIGC: Federazione Italiana Giuoco Calcio

GA: General Assembly

GR: General Recommendation

IAAF: International Association of Athletics Federations

ICAS: International Council of Arbitration for Sport

ICESCR: International Covenant on Economic, Social and Cultural Rights

IOC: International Olympic Committee

IWG: International Working Group on Women and Sport

MVP: Mentors in Violence Prevention

NBA: National Basketball Association

NCAA: National Collegiate Athletic Association

SC: Security Council

SDG: Sustainment Development Goals

SP: Special Rapporteur

UN: United Nations

UNICEF: United Nations Children's Fund

VAW: violence against women

WHO: World Health Organization

WNBA: Women's National Basketball Association

WTA: Women's Tennis Association

INTRODUCTION

Violence against women has been widely studied and has been the subject of a great number of studies. Many forms of VAW have been analyzed, mainly sexual and domestic violence. However, VAW in sport does not enjoy the same attention, especially from the point of view of international law. For example, while many definitions have been provided for VAW, also at a judicial level, VAW in sport is not formally identified: it can just be generally included among the definitions of VAW.

The present work aims at drawing the attention on this theme. I am a basketball athlete and I want to try to raise awareness on the topic of VAW in sport; this work aims also at explaining that such violence can take different forms, and not simply the form of physical violence. At the basis of this reflection there is the belief that the perpetuation of the hierarchical structure of gender relationships can be attributed also to the law, or it is reflected in it¹; but, at the same time, the law can represent change and start a new course of attitudes, behaviors, policies, and beliefs. Violence is not an intrinsic characteristic of the human beings, and neither violence nor power are natural phenomena, but rather, they are part of the political and social level of human things, as power is expressed through violence, in this case against women².

Violence becomes a tool by which gender power relations can be manifested, and the world of sport is one of the contexts in which this is reflected. Indeed, the sporting context mirrors the dynamics of the society: on the one hand, if in the wider society VAW is widespread, then also sport represents a means to perpetuate VAW; on the other hand, if respect and equality are at the basis of the society, then sport will reflect this tendency. Sport is a context which is highly sexualized and masculinized, and, as a consequence, VAW frequently occurs, and in many different forms about which almost nobody could think of, such as the simple scarce levels of women's participation or the discrimination by the media against female athletes and female sports.

It is also true that sport can represent also a context through which women's equality and respect can gain prominence and, consequently, have an influence into the wider society. The emancipation of female athletes is positive not only for sportswomen, but for women

¹ S. DE VIDO, *Donne, Violenza E Diritto Internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011*, Mimesis Edizioni, Vol. 1, 2016, p. 23.

² *Ivi*, p. 24.

in general. If the world of sport is highly masculinized, when female athletes manage to emerge, then the basic beliefs for male superiority are silenced. For this reason, often there is the tendency to find excuses when female athletes reach incredible goals, such as attributing the successes to genetic differences that “normal” women would not have, or even a tendency to portray those sportswomen in their family context, or giving them nicknames that reduce or minimize their strength.

Even the probable most important body at the international level, the United Nations, acknowledges that women’s participation in sport is characterized by gender discrimination, which is increased by the stereotypes of women's physical capabilities and social roles³. However, a different set of values, norms, and behaviors can be taught throughout the sport pipeline, supporting the creation of a healthier sport club, but also of a safer community and society for women⁴. Thus, sport can also contribute to end VAW. As Kofi Annan, the former UN Secretary General, acknowledged, “sport is a universal language. At its best it can bring people together, no matter what their origin, background, religious beliefs or economic status”⁵.

However, VAW is so pervasive that it affects the world of sport. And, while sport is not responsible for creating the issue of VAW, it can either reinforce the social forces that contribute to such problem, or become part of the solution to end VAW⁶. Athletes, both male and female, can learn values that help them to become promoters of respectful relationships. If these behaviours become the standard within sport, such culture can be transplanted into the wider society. Sport is a platform for change.

After having generally introduced the concept and the phenomenon of VAW, I would like now to provide a brief overlook of the structure of this dissertation.

In the first chapter, the phenomenon of VAW is introduced, and some data is given. Then, the notion of VAW under international law is tackled; however, before arriving to the definitions given by the different international legal instruments, the term “gender” is

³ N. WADESANGO, S. MACHINGAMBI, G. ASHU and REGIS CHIRESH, *Nature and Effects of Women's Participation in Sporting Decision-Making Structures in the Context of the 2010 FIFA World Cup*, Agenda: Empowering Women for Gender Equity, N. 85, 2010, p. 63.

⁴ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *How Sport Can End Sexual Violence in one generation*, Raliance, November 2017, available at http://www.raliance.org/sport-prevention-center/wp-content/uploads/2017/10/RALIANCE-OverviewReport_WEB.pdf, p. 3.

⁵ United Nations, secretary-general says at launch of international year (SS/SM/9579), 4 November 2004, available at <http://www.un.org/press/en/2004/sgsm9579.doc.htm>

⁶ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 7.

clarified (it must not be confused or identified with “women”). The progress under international law related to the theme of VAW is then exposed, starting from 1945 (when a series of legal instruments tackling VAW started to be adopted) and arriving up to the 2015 Sustainment Development Goals. The roots of this phenomenon are then identified in structural factors; the structural causes of VAW are recognized, among others, within the Beijing Declaration and Platform for Action or in the Belém do Pará Convention. The first chapter concludes with the human rights dimension of VAW, explaining how and when VAW has been recognized as a violation of human rights and which rights it violates.

The second chapter is dedicated to VAW in sport and its forms; it introduces and explains this issue, and then the problem of the absence of a notion under international law is delineated. Another issue related to this phenomenon is then identified: the lack of awareness about VAW in sport (which may be the cause and one of the consequences of the vacuum in international law). However, despite all these problems, to which the problem of the lack of data on the extent of the phenomenon and the problem of the limitations of the studies may be added, some empirical proofs and information on the issue are provided. Subsequently, the description of the different forms that VAW in sport may take is given: low levels of women’s participation; sexual victimization; professional sport and gender pay gap; inequalities in coaching and leadership; discrimination by the media; violence against young girl athlete; and intersectionality, which means more discrimination. Sport seems to be a context in which men’s power and privilege over women is naturalized, and the marginalization of sportswomen only serves to perpetuate male domination over women, also based on the belief of masculine biological and physiological supremacy⁷. For example, the media represent female athletes in the ideal of womanhood and femininity that is radicalized in the society.

In the third chapter, some basic knowledge on sports law, on the international sport order, on the justice system in sport (Court of Arbitration for Sport and International Council of Arbitration for Sport as main references), and European sports law is provided. Then, the actors involved in VAW in sport and the policies that they have adopted are presented; at international level, some of the actors are the UN, UNESCO, the International Working Group on Women and Sport, and the International Olympic Committee, among others,

⁷ A. BERNSTEIN and Y. GALILY, *Games and Sets: Women, Media and Sport in Israel*, Nashim: A Journal of Jewish Women’s Studies & Gender Issues, N. 15, Indiana University Press, 2008, p. 175.

and their relative instruments; at regional level, there are mainly the EU, the Council of Europe, and the European Parliament; lastly, at the EU member state level, the overall tendency related to states' policies is provided. The human right dimension of VAW in sport is analysed, mainly recalling the references to sport or to leisure time in international legal instruments.

The fourth and last chapter will cover the analysis of the prevention of VAW in sport, although, as it will be explained, much more has to be done. The chapter starts with the states' obligations countering VAW (in general) in international law, following with the proposal for the next steps to be taken in international law to combat VAW in sport: namely, procedural reforms and an eventual protocol (always starting from the premise that, to eliminate VAW in sport, the wider phenomenon of VAW in the society must be tackled). The approaches to the prevention that have been used since now are presented, and the actors promoting the prevention of VAW in sport (such as national governments, the IOC, the International Paralympic Committee, and sport federations) will be identified. Subsequently, a series of inspiring initiatives preventing VAW in sport are explained, such as the Fair Game Respect Matters of the Australian Football League, or the Mentors in Violence Prevention, established by the University's Center for the Study of Sport in Society. The 6Ps framework, which recalls the 4Ps framework of the Istanbul Convention, is then defined as a successful tool to combat VAW in sport. The possible future policy measures will be covered, from the level of the European Commission, of the EU member states, and of the sports organizations. To conclude, the path that female football has done in Italy is provided, with all of the difficulties that it has encountered, but also with the great progress that it has achieved, in order to conclude with a sort of hope for the future of female sports.

CHAPTER 1: VIOLENCE AGAINST WOMEN

1.1 Violence against women

Violence against women (VAW) is a widespread phenomenon and it has been widely studied in many different areas of research. It is a universal phenomenon, in the sense that it is not limited to specific contexts or areas⁸. The data of the World Health Organization show that one in three women has been subject to VAW, in the form of physical and/or sexual violence (WHO, 2016). The numbers related to the European Union are very similar; the European Union Agency for Fundamental Rights has carried out a research whose result has been published in 2014: 33 percent of women of the Member states of the European Union has experienced physical and/or sexual violence⁹. Italy follows this trend, with 6 million 788 thousand women who have suffered from these forms of violence (ISTAT, 2015). However, it must be taken into account that there are many cases that women do not report or denounce. It must be deduced that these series of data are just partial, and that the situation is even worse than the one reported by organizations like the WHO or the ISTAT¹⁰.

Moreover, it must be considered that there are many forms of VAW (like the one that I want to analyze in this thesis: VAW in sport), which are even more less likely to be reported. Another characteristic of VAW, besides the multiplicity of its forms, is the intersection of different dimensions of discrimination against women (like ethnicity, class, sexual orientation, religion, etc.)¹¹. Women are subjected to many forms of violence all over the world, and these human rights abuses are important not only because they cause harm and suffering on individuals, but also because they tear at the fabric of entire societies¹².

Discrimination against women is both as a consequence and a cause of VAW, as also the former Secretary-General of the United Nations (UN) Kofi Annan considered in a study

⁸ S. DE VIDO, *Violence Against Women's Health in International Law*, Manchester, Manchester University Press, 2020, p. 1.

⁹ European Union Agency for Fundamental Rights, *Violence against Women: an EU-Wide Survey*, 2014, available at http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-mainresults-apr14_en.pdf, p. 21.

¹⁰ S. DE VIDO, *Donne, Violenza E Diritto Internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011*, Mimesis Edizioni, Vol. 1, 2016, p. 17.

¹¹ S. DE VIDO, *Violence Against Women's Health in International Law*, *op.cit.*, p. 1.

¹² DIVISION FOR THE ADVANCEMENT OF WOMEN/ DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *Handbook for Legislation on Violence against Women*, UN, NY, 2009, foreword.

published in 2006. This means that VAW is based on discrimination against women, but also that discrimination against women is the outcome of VAW¹³.

International law is often considered male-oriented, as women are required to “either (a) equate their experiences to harm normally perpetrated against men, or (b) to justify why their experiences ‘deserve’ the establishment of an exception to the rule”¹⁴ in order to be heard and receive protection. In the international instruments and jurisprudence, the emphasis is usually put on non-discrimination rather than equality, which implies that the standard for the achievement of equality is the male sex (calling for a ‘female-to-male progression’)¹⁵. However, I do believe that international law is needed to pave the way for a change, even though this change must be also (and maybe mainly) social and cultural, as legal instruments influence and are influenced by the cultural context.

1.1.1 The notion under International Law

Before exposing the definitions of VAW in international law, a clarification has to be made. The term ‘gender’ and the term ‘women’ are often wrongly used as synonyms (it follows that gender-based violence corresponds to VAW)¹⁶. However, there is a difference between them. Identifying ‘women’ with the notion of gender means to neglect the power relations between men and women in the society, it means to overlook LGBTI rights and the problematic nature of the concepts of masculine and feminine¹⁷. ‘Gender’ is a socially constructed concept which is influenced by culture: it entails the expected roles of men and women in the society, the relationship between these roles, and the consequent social standing and status¹⁸. The concept of ‘gender’ varies among cultures and over time, reflecting the socially and culturally constructed roles and statuses that are assigned to men and women¹⁹. This means that ‘gender’ is not equal to ‘women’ and they cannot be used as synonyms.

The Rome Statute of 1998 of the International Criminal Court was the first to define the term gender as referring to the two sexes (masculine and feminine) in the societal context

¹³ S. DE VIDO, *Violence Against Women’s Health in International Law*, *op.cit.*, p. 1.

¹⁴ A. EDWARDS, *Violence against Women under International Human Rights Law*, Cambridge University Press, 2011, p. 5.

¹⁵ *Ivi*, p. 175.

¹⁶ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 17.

¹⁷ *Ibid.*

¹⁸ A. EDWARDS, *op.cit.*, p. 13.

¹⁹ *Ibid.*

(article 7, para. 3), and it identified the gender-based violence as a crime against humanity²⁰. However, this definition was criticized as it was too vague.

The Committee on the Elimination of Discrimination against Women has provided a definition of gender:

“the social meanings given to biological sex differences. It is an ideological and cultural construct, but is also reproduced within the realm of material practices; in turns it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision-making and political power, and enjoyment of rights and entitlements within the family as well as public life. Despite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between men and women as a pervasive trait. Thus, gender is a social stratifier, and in this sense it is similar to other stratifiers such as race, class, ethnicity, sexuality, and age.”²¹

The Committee on Economic, Social and Cultural Rights (CESCR) further provides that:

“Gender refers to cultural expectations and assumptions about the behavior, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women. Gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights [...]”.²²

In 2010, the Committee EDAW has provided an explanation of the difference between sex and gender:

“The term gender refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and

²⁰ S. DE VIDO, *Donne, Violenza E Diritto Internazionale. op.cit.*, p. 35.

²¹ UN, *World Survey on the Role of Women in Development*, ix, New York, 1999, CEDAW, General Recommendation No. 25.

²² CESCR, *General Comment No. 16: The Equal Right of Men and Women to the enjoyment of All Economic, Social and Cultural Rights*, para. 14.

environmental factors and can likewise be changed by culture, society and community”²³.

More recently, the Istanbul Convention (adopted on 11 May 2011 and entered into force on 1 August 2014) defines gender as: “the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”. The Explanatory report of the Convention explains that the stereotypes help to reproduce discriminatory practices against women and contribute to make VAW more acceptable²⁴. In other terms, the inequalities between men and women (and the consequent roles that are attributed by the society) help to create the conditions for VAW to take place²⁵.

The differences between the sexes are cultural and, as a consequence, gender does not correspond to women, and gender-based violence is not the same of VAW: VAW is just one of the forms of gender-based violence, but gender-based violence includes also other forms of violence, like violence against men or against LGBTI²⁶.

Also the notion of VAW has been defined in various ways in international law, in instruments with binding and non-binding character (and it has been used as a synonym of ‘gender-based’ or gender-related’ violence)²⁷. Before going into detail with the different definitions, it must be said that VAW is not a crime per se in internal legal systems, but it is mentioned in international and regional legal instruments protecting fundamental human rights²⁸. Moreover, the legal concept of VAW is not limited to physical violence: the different definitions under international law are so general that they include many different forms of violence (verbal, psychological economic violence)²⁹. For the purpose of my analysis, I must say that these last forms of violence are less likely to be reported, as they are less ‘visible’ and more difficult to prevent and repress³⁰.

Going back to the definition of VAW, at the beginning international law and international human rights law did not explicitly mention VAW, and in the Convention on the

²³ Committee EDAW, *General Recommendation no. 28, Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 19 October 2010, CEDAW/C/2010/47/GC.2, par. 4.

²⁴ *Explanatory report to the Council of Europe Convention on preventing and combating violence against women and domestic violence*, Istanbul, 11 May 2011

²⁵ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 31.

²⁶ *Ivi*, p. 36.

²⁷ A. EDWARDS, *op.cit.*, p. 20.

²⁸ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 20.

²⁹ *Ivi*, p. 24.

³⁰ *Ibid.*

Elimination of All Forms of Discrimination against Women (CEDAW), adopted on the 18th December 1979 by the United Nations General Assembly (which was welcomed as the first international legal instrument on women's rights) there were no provisions on VAW³¹. In 1984, the Committee established by the CEDAW, through the General Recommendation n. 19, asserted that VAW is a form of discrimination for the purposes of the Convention³². Only in 1993, also thanks to the efforts of the various civil movements around the world in the 80s and 90s, the United Nations General Assembly adopted a Declaration which defines VAW as “manifestation of historically unequal power relations between men and women”³³. The Declaration on the Elimination of Violence against Women defined VAW as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (article 1). However, the DEVAW definition of VAW is non-exhaustive: first, VAW is defined by a reference to gender-related violence, but it does not define ‘gender’; second, the definition ignores forms of violence other than physical, psychological, or sexual ones, like economic violence³⁴.

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (also known as the Convention of Belém do Pará), adopted in 1994, resumes the DEVAW, and it affirms that VAW can take place both in the public sphere and in the private one (article 1). While the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol, does not include a definition of VAW, but it provides a definition of women, identified as “persons of female gender, including girls” (article 1, letter k). In the preamble of the Maputo Protocol it is highlighted the importance, for the UN, to eliminate every form of gender-based violence³⁵.

More precise in defining VAW is the Council of Europe Istanbul Convention, whose article 3 affirms that VAW is “a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women,

³¹ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, op.cit., p. 28.

³² Committee EDAW, *General Recommendation no. 19*, A/47/38, 1992, par. 1 e par. 7.

³³ Resolution UN GA, *Declaration on the Elimination of Violence against Women*, A/RES/48/104, 20 December 1993, preamble.

³⁴ A. EDWARDS, op.cit., p. 22.

³⁵ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, op.cit., p. 30.

including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. In addition, the Convention identifies gender-based violence against women as a “violence that is directed against a woman because she is a woman or that affects women disproportionately”.

To sum up, VAW is a form of discrimination against women, a form of gender-based violence (as it is based on the fact of women being women), and it is a violation of human rights³⁶. Most importantly, VAW can be considered an ‘umbrella term’, in the sense that it includes a cluster of offences and harmful behaviours³⁷. Therefore, the element of intent (which is a characteristic of the offences in criminal law) is not needed to identify VAW (for this reason it is absent from international and regional legal instruments on VAW), but it becomes necessary just in case of the commission of some specific offenses like rape or stalking, in order to assess individual responsibility³⁸.

States have obligations to protect the human rights of women who are victims or survivors of violence committed by state and non-state actors, and when the states violate these obligations, they are responsible for VAW³⁹. In some cases, states create the conditions that favour VAW (intentionally or not), when the patterns of discrimination that are rooted in the society are encouraged by the system, through policies and laws⁴⁰. Therefore, the absence of the *mens rea* in the notion of VAW implies that the state can be responsible for both actions and inactions: when the state contributes to create conditions for VAW through apparently neutral policies or through the negligent behaviour of the authorities⁴¹. And, to conclude, in 2017, the CEDAW Committee, in its landmark GR no. 35 on VAW affirmed that “the prohibition of gender-based violence against women has evolved into a principle of customary international law”.

Hence, VAW includes a series of crimes which acquire form in the moment in which the norms of the international instruments are incorporated in the legal systems of the member states⁴².

1.2 Violence against women: progress under International Law

³⁶ S. DE VIDO, *Violence Against Women’s Health in International Law*, *op.cit.*, p. 5.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ivi*, p. 5-6.

⁴¹ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 49.

⁴² *Ivi*, p. 50.

VAW was considered a phenomenon related to the private sphere (the family), and it emerged only in severe cases such as the murder of the wife by the husband⁴³. It was only from 1945 that a growing number of binding and non-binding legal instruments on VAW were adopted⁴⁴. In the Sixties, VAW began to become a central issue in the international context, and the UN adopted a series of non-binding acts which recognize and define VAW, recommending also to the states to adopt measures to contrast it. However, looking at practical cases, the progress was much slower: it was only in 1976 that the Italian Court of Cassation condemned a husband for sexual violence against his wife⁴⁵; in the United States, until the Seventies, the adultery of a women was considered a valid justification for the husband to kill his wife; in Great Britain, the infidelity of a women was not considered a justification for the killing only in 2009⁴⁶. Even today more than the half of the countries of the world does not criminalize rape within marriage⁴⁷.

The Nineties represent a sort of watershed: more attention started to be paid to the violations of women's rights at international law level, mainly related to VAW in the context of armed conflict, because in the conflicts in the former Yugoslavia and Rwanda women were continuously abused, raped and incarcerated as part of military strategies to humiliate them⁴⁸. These events represented an incentive for some judicial decisions, like the choice to characterize rape and sexual violence as forms of genocide, torture, and other serious war crimes⁴⁹.

However, before the Nineties, VAW was not considered a major issue and it was seen as an issue for national governments rather than international law⁵⁰. The first international instruments which tackled VAW can be found as early as 1905, and focused on sexual enslavement and the related traffic of white women (with no references to Black women)⁵¹. After the Second World War, more and more international instruments tackled VAW, and rape, prostitution, mental cruelty, physical assault, forced marriage, child marriage, and marriage as a commercial transaction were identified as human rights

⁴³ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 83.

⁴⁴ *Ibid.*

⁴⁵ Cassazione penale, judgment 16 February 1976, no. 12855, Macario.

⁴⁶ S. DE VIDO, *Donne, Violenza E Diritto Internazionale* *op.cit.*, p. 87-88.

⁴⁷ *Ivi*, p. 88.

⁴⁸ A. EDWARDS, *op.cit.*, p. 7.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

violations⁵². Nonetheless, it was only in 1979 that a provision outlawing VAW was included in the CEDAW⁵³.

In 1985, a global women's conference was held, which concluded the UN's Decade on Women (1975-1985), and which delineated the Nairobi Forward-looking Strategies⁵⁴: the strategies are important for the advancement of women and they identify VAW as interconnected with the achievement of peace⁵⁵.

At the 1993 World Conference on Human Rights, women's rights were recognized as human rights and both public and private forms of violence were included. The Vienna Declaration on Human Rights that resulted from the conference called for the draft of a declaration on VAW and the appointment of a special rapporteur on VAW⁵⁶. In the same year, the DEVAW was adopted and the first Special Rapporteur on VAW appointed⁵⁷. The SP is requested to seek and receive information on VAW from governments, treaty bodies and specialized agencies, to recommend measures to eliminate VAW, to work with human rights mechanisms of the Human Rights Council, and to adopt a universal approach to the elimination of VAW⁵⁸.

In 1995, during the Beijing World Conference, VAW was identified as one of the twelve areas of concern, and harms not explicitly mentioned in the DEVAW were highlighted (among them rape, forced pregnancy during armed conflict, sexual slavery, forced sterilization, forced abortion, female infanticide, and pre-natal sex selection)⁵⁹. The Beijing +5 further called for the criminalization of all forms of VAW and recognized the connection between VAW and prejudice, racism, xenophobia, pornography, ethnic cleansing, armed conflict, foreign occupation, religious extremism, and terrorism⁶⁰.

⁵² A. EDWARDS, *op.cit.*, p. 8.

⁵³ *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), GA res. 34/180, 18 December 1979

⁵⁴ See <https://www.un.org/unispal/document/auto-insert-207862/>

⁵⁵ *World Conference on Women, Report and Nairobi Forward-looking Strategies for the Advancement of Women*, UN, 1985.

⁵⁶ *World Conference on Human Rights, Vienna Declaration and Programme of Action*, UN, July 1993, para. 18 and 38.

⁵⁷ Resolution UN GA, *Declaration on the Elimination of Violence against Women*, A/RES/48/104, 20 December 1993.

⁵⁸ United Nations Human Rights' Website:

<https://www.ohchr.org/en/issues/women/srwomen/pages/srwomenindex.aspx#:~:text=Ms.,an%20initial%20three%20years'%20tenure.>

⁵⁹ *World Conference on Women, Beijing Declaration and Platform for Action*, UN, 1995.

⁶⁰ A. EDWARDS, *op.cit.*, p. 10.

By the late 1990s, rape perpetrated by state officials with the aim to interrogate or force a confession from women had been recognized as a form of torture under international law and regional human rights instruments⁶¹.

In 2000, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination issued general comments on the gender-related dimensions of human rights violations, while in 2005, the Committee on Economic, Social and Cultural Rights highlighted that states' obligations to protect the family included taking measures against VAW in the home⁶².

In 2006, the UN Secretary General issued a report on VAW and, in the same year, the UN General Assembly adopted a resolution that called for the increase of efforts to eliminate all forms of VAW⁶³. However, much of the international focus on VAW was centered in the context of armed conflicts; moreover, as the SP acknowledged in 2009, there were no indicators to assess progress on preventing VAW⁶⁴.

More recently, in the 2015 Sustainment Development Goals, the goal to end VAW was included, and in the UN 2030 Agenda for Sustainable Development, which established 17 SDGs and 169 Targets, it is said that “The systematic mainstreaming of a gender perspective in the implementation of the Agenda is crucial” (Paragraph 20)⁶⁵. The 17 SDGs build on the progress made by the UN Millennium Development Goals and they have specified targets, which are intended to have indicators to measure the progress⁶⁶. The SDG number 5 (“Achieve gender equality and empower all women and girls”) is the most relevant on the issue of VAW, and it includes actions that must be taken in order to end all forms of discrimination against all women, eliminate all forms of violence against women in the public and private spheres, ensure women's participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life, undertake reforms to give women equal rights to economic resources⁶⁷.

⁶¹ A. EDWARDS, *op.cit.*, p. 10.

⁶² *Ivi*, p.11.

⁶³ *Ibid.*

⁶⁴ SR-VAW, *Indicators on Violence against Women and State Response*, UN Doc. A/HRC/7/6, 29 January 2008, para. 21.

⁶⁵ S. WALBY, J. TOWERS, S. BALDERSTON, C. CORRADI, B. FRANCIS, M. HEISKANEN, K. HELWEG-LARSEN, L. MERGAERT, P. OLIVE, E. PALMER, H. STÖCKL and S. STRID, *The Concept and Measurement of Violence Against Women and Men*, Policy Press, February 2017, p. 19.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

What emerges from this analysis is that a significant shift from a system that ignored VAW from the international human rights agenda to a system that acknowledges the importance of VAW as a precondition to the enjoyment of other women's rights took place⁶⁸. Despite some incremental improvements to the system, the data related to VAW is still alarming, as it can be seen going back to the beginning of this chapter, and much more improvements can be done. Most of all, economic, social, and cultural rights are still considered a step behind civil and political rights. Many feminists argue that women encounter disadvantages and discrimination mainly in the economic, social and cultural contexts, and therefore the harms related to civil and political rights are not the ones from which women most need protection⁶⁹.

1.3 Structural causes of violence

Several treaty bodies and some preambles of international acts have examined the roots of the causes of discrimination against women. The Women's Committee, already in 1992, recognized that "traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women⁷⁰". The CEDAW contains a number of provisions that impose to state parties obligations to address cultural and traditional practices that contribute to perpetuate VAW⁷¹.

In 1993, the General Assembly recognized that:

"violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men"⁷².

⁶⁸ A. EDWARDS, *op.cit.*, p. 12.

⁶⁹ *Ivi*, p. 59-60.

⁷⁰ CEDAW, *General Recommendation No. 19: Violence against Women*, para. 11, 1992.

⁷¹ A. EDWARDS, *op.cit.*, p. 168.

⁷² *Resolution GA 48/104*, *cit.*, preamble.

Two years later, the Beijing Declaration and Platform for Action similarly acknowledges the structural causes of violence⁷³. Even the Belém do Pará Convention talks about the “historically unequal power relations between women and men” in its preamble⁷⁴. However, in the Maputo Protocol there are no references to the causes of VAW.

The preamble of the Istanbul Convention recalls the 1993 declaration of the General Assembly, but it goes beyond recognizing the “structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”⁷⁵. The adjective “structural” means that it is an intrinsic feature produced by the society; consequently, the choice of recognizing this characteristic of VAW in the preamble of an international instrument (which explains the object and the scope of the instrument itself and persuades the state parties to respect the norms) means to request to the member states to adopt the necessary measures to eliminate unequal power relations between men and women, even if this means to intervene in the private sphere, especially in cases of domestic violence⁷⁶. The traditional distinction between the private and public sphere, according to which the state could not intervene in the domestic context, has been overcome, also thanks to the evolution of international law and human rights courts⁷⁷. We can see this progression already in 2003, in the resolution of the GA on domestic violence: “domestic violence is of public concern and requires States to take serious action to protect victims and prevent domestic violence”⁷⁸. VAW is a violation of the fundamental human rights, and states have obligations of due diligence to prevent and repress this violence⁷⁹.

VAW is a social phenomenon, whose structural roots can be found in “historically unequal power relations” between men and women: this feature is highlighted even in international instruments, in which there are references to the origins of this harmful behaviour⁸⁰.

⁷³ *Beijing Declaration and Platform for Action*, 15 September 1995, para. 118.

⁷⁴ *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women* (Convention of Belém do Pará), adopted the 9 June 1994.

⁷⁵ Istanbul Convention, preamble,

⁷⁶ S. DE VIDO, *Donne, Violenza E Diritto Internazionale op.cit.*, p. 42-43.

⁷⁷ *Ivi*, p. 43-44.

⁷⁸ A/RES/58/147, cit., para. 1, letter c).

⁷⁹ S. DE VIDO, *Donne, Violenza E Diritto Internazionale, op.cit.*, p. 44.

⁸⁰ *Ivi*, p. 41.

1.4 The human rights dimension of violence against women

For a long time VAW was not considered a human rights violation. Women's rights movements have managed to persuade the international community, after decades of struggle, that VAW is a human rights concern and that states must intervene in cases of VAW concerning even the private sphere⁸¹. Several pieces of legislation were developed which acknowledge VAW as a form of discrimination and a violation of human rights⁸². Equality between women and men and the elimination all forms of discrimination against women are fundamental human rights, and the UN included them among its goals since the beginning, with the 1945 Charter of the United Nations, which also promotes the respect of human rights and fundamental freedoms "without distinction as to race, sex, language or religion" (art. 1)⁸³. The 1948 Universal Declaration of Human Rights proclaimed the equal entitlements of women and men to the rights contained in it, without distinctions based on sex⁸⁴.

In 1992, the CEDAW Committee, in the General Recommendation No. 19, stated that VAW constitutes a form of discrimination "directed against a woman because she is a woman or that affects women disproportionately"⁸⁵. The CEDAW Committee identified that VAW violates the following rights: the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; the right to equal protection according to humanitarian norms in time of international or internal armed conflict; the right to liberty and security of person; the right to equal protection under the law; the right to equality in the family; the right to the highest attainable standard of physical and mental health; the right to just and favourable conditions of work⁸⁶.

In the 1993 Declaration of the GA, the preamble recognized that VAW represents "a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms"⁸⁷. The Declaration includes not only civil and political rights, but also economic, social and cultural rights: the right to life, to equality,

⁸¹ United Nations Human Rights' Website: <https://www.ohchr.org/en/issues/women/wrgs/pages/vaw.aspx>

⁸² DIVISION FOR THE ADVANCEMENT OF WOMEN/ DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *op.cit.*, p. 13.

⁸³ UN HUMAN RIGHTS, *Women's Rights are Human Rights*, Geneva, UN, 2014, available at <https://www.ohchr.org/Documents/Publications/HR-PUB-14-2.pdf>, p. 3.

⁸⁴ *Ibid.*

⁸⁵ CEDAW, *General Recommendation No. 19: Violence against Women*, 1992.

⁸⁶ GR No. 19, para. 7.

⁸⁷ Resolution UN GA, *Declaration on the Elimination of Violence against Women*, A/RES/48/104, 20 December 1993, preamble.

to liberty and security of person; the right to equal protection under the law; the right to be free from all forms of discrimination; the right to the highest standard attainable of physical and mental health; the right to just and favourable conditions of work; the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment⁸⁸. The same year, the Vienna Declaration and Programme of Action acknowledged that the elimination of VAW in both the public and private life constitutes a human rights obligation⁸⁹. In the Istanbul Convention, the definition of VAW includes the violation of human rights and of the principle of non-discrimination (article 3).

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights prohibit discrimination based on, among others, sex, and ensure the equal right of men and women to the enjoyment of all rights contained in them⁹⁰. Also the Convention on the Rights of the Child (art. 2) and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 7) prohibit discrimination based on sex, while the Convention on the Rights of Persons with Disabilities (art. 6) acknowledges the multiple discrimination that women with disabilities are subjected to, and requires states to take measures to ensure the development, advancement and empowerment of women in the enjoyment of their human rights⁹¹.

The Belém do Pará Convention recalls the Declaration of the GA, asserting that VAW “constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms”⁹². The Convention lists some of the rights of women: the right to have her life respected; the right to have her physical, mental and moral integrity respected; the right to personal liberty and security; the right not to be subjected to torture; the right to have the inherent dignity of her person respected and her family protected; the right to equal protection before the law and of the law; the right to simple and prompt recourse to a competent court for protection against acts that violate her rights; the right to associate freely; the right of freedom to profess her religion and beliefs within the law; the right to have equal

⁸⁸ Resolution UN GA, *Declaration on the Elimination of Violence against Women*, A/RES/48/104, 20 December 1993, Article 3.

⁸⁹ United Nations Human Rights’ Website: <https://www.ohchr.org/en/issues/women/wrgs/pages/vaw.aspx>

⁹⁰ UN HUMAN RIGHTS, *op.cit.*, p. 4.

⁹¹ *Ivi*, p. 7.

⁹² *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women* (Convention of Belém do Pará), preamble, adopted the 9 June 1994.

access to the public service of her country and to take part in the conduct of public affairs, including decision-making (article 4 of the Belém do Pará Convention). These are just civil and political rights, while economic, social and cultural rights are generally mentioned in article 5: “Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights”. The “right to be free from violence”, contained in article 3, includes the right of women to be free from all forms of discrimination and the right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination, as specified in article 6.

On the contrary, the Maputo Protocol gives more importance to economic, social and cultural rights, and to the so-called third generation of human rights⁹³. Among the civil and political rights that the Protocol cites, there are the right to dignity (article 3), the right to life, integrity and security of the person (article 4), the right to access to justice and equal protection before the law (article 8), the right to participation in the political and decision-making process (article 9). Moreover, there are the economic and social welfare rights, but also third generation rights: among the rights of women, the right to peace, the right to positive cultural context (article 17), the right to a healthy and sustainable environment (article 18) and the right to sustainable development (article 19) are included. These kinds of rights are hardly justiciable in front of national and international courts, but the fact that they have been introduced in a binding legal instrument represents an important progress, which implies the right of women to participate in decision-making processes⁹⁴.

Women’s rights were tackled also in international conferences which produced important commitments to women’s human rights and equality⁹⁵. The 1975 World Conference on the International Women’s Year was held in Mexico City and resulted in the World Plan of Action and the designation of 1975–1985 as the UN Decade for Women; in 1980 Copenhagen hosted another conference on women and the CEDAW was opened for signature; the third World Conference on Women was held in Nairobi, while the fourth was held in Beijing in 1995⁹⁶.

⁹³ S. DE VIDO, *Donne, Violenza E Diritto Internazionale. op.cit.*, p. 45.

⁹⁴ *Ivi*, p. 46.

⁹⁵ UN HUMAN RIGHTS, *op.cit.*, p. 11.

⁹⁶ *Ibid.*

VAW affects all kind of rights, but usually the focus is placed on civil and political rights, namely the right to life, the prohibition of torture, the right to respect for private and family life⁹⁷. However, VAW negatively affects also economic, social and cultural rights, like the right to an adequate standard of living that, in the International Covenant on Economic, Social and Cultural Rights, includes the right to adequate food, clothing and housing, and to the continuous improvement of living conditions⁹⁸.

Despite the impact of VAW (whatever form it might take) on the health of women, only in 2011 a case of violation of reproductive rights of a woman has been analyzed from the point of view of the health, thanks to the entry into force of the Optional Protocol of the CEDAW, which attributed to the UN EDRAW the task to receive individual complaints for the violations of the Convention committed by state parties of the Protocol⁹⁹.

Some pieces of legislation refer specifically to international and regional human rights instruments, such as the 2007 Criminalization of Violence against Women Law of Costa Rica, which affirms that “This Act is designed to protect the rights of victims of violence and to punish forms of physical, psychological, sexual and patrimonial violence against adult women, as discriminatory practices based on gender, [...] in compliance with the obligations undertaken by the State under the Convention on the Elimination of All Forms of Discrimination against Women [...], as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women” (art. 1)¹⁰⁰.

Recently, the international community has started to explore the violations of women’s human rights by analyzing the intersection with other grounds of discrimination: gender, ethnicity, class, social and economic conditions. Legislation or subsidiary legislation should make specific provision for the appropriate treatment of female victims who suffer from multiple forms of discrimination¹⁰¹. Understanding that VAW can be perpetrated across different grounds of discrimination allows to emphasize the aspect of intersectionality¹⁰².

⁹⁷ UN HUMAN RIGHTS, *op.cit.*, p. 11.

⁹⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Resolution 2200A (XXI), 16 December 1966.

⁹⁹ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 47.

¹⁰⁰ DIVISION FOR THE ADVANCEMENT OF WOMEN/ DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *op.cit.*, p. 13.

¹⁰¹ *Ivi*, p. 15.

¹⁰² S. DE VIDO, *Violence Against Women’s Health in International Law*, *op.cit.*, p. 81.

The UN has addressed women's human rights for a long time, but gaps remain and new forms of discrimination against them are regularly emerging¹⁰³. Framing VAW as a violation of human rights implies a conceptual shift, recognizing that VAW does not occur accidentally, but that it is the result of a structural and deep-rooted discrimination¹⁰⁴. Consequently, states have obligations to address VAW, which require legislative, administrative and institutional measures and reforms in order to eradicate gender stereotypes which contribute to the perpetuation of gender-based violence against women¹⁰⁵.

1.5 International and regional legal instruments on violence against women

As already said, international law was considered for a long time male-oriented, and it was only after the Second World War that more and more binding and non-binding instruments tackling VAW were adopted¹⁰⁶. During recent decades, many states have adopted legislation to address VAW, and laws are increasingly criminalizing such violence, prosecuting and punishing the perpetrators, supporting victims, and strengthening prevention; however, significant gaps are still in the system: states fail to respect their commitments to address VAW, many perpetrators are not held accountable, women are re-victimized during the legal process¹⁰⁷. Legislations provide a framework for an effective response to VAW, but they must be enforced, monitored, and personnel and officials in this field must have the abilities to apply the law¹⁰⁸.

Over the last decades, VAW has been recognized as a form of discrimination and a violation of women's human rights, and it is now the subject of a comprehensive legal and policy framework at the international and regional levels¹⁰⁹. In the following subchapters I will analyze the legal instruments contrasting this phenomenon, first focusing on the international level (mainly referring to the UN), then focusing on the

¹⁰³ UN HUMAN RIGHTS, *op.cit.*, p. 1.

¹⁰⁴ United Nations Human Rights' Website:
<https://www.ohchr.org/en/issues/women/wrgs/pages/vaw.aspx>

¹⁰⁵ *Ibid.*

¹⁰⁶ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 83.

¹⁰⁷ DIVISION FOR THE ADVANCEMENT OF WOMEN/ DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *op.cit.*, foreword.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ivi*, p. 5.

regional level, referring to the inter-American and African systems, and lastly focusing on the European level.

1.5.1 The international level

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) was adopted on 11 May 2011, entered into force on 1 August 2014, and it is ratified by 34 states. The Convention has an international character (even if it fills a normative gap at European level) and it was appreciated by the UN SP on VAW¹¹⁰. The states' obligations arising from the Convention can be divided in four pillars: prevention, protection, prosecution and coordinated policies. For what concerns the prevention, it specifically entails states' obligations to adopt measures aimed at modifying social models, promoting schooling programs related to gender issues, and requiring to media to avoid the representation of the woman as an "object"¹¹¹. The Convention further requires state parties to collect administrative and survey data and conduct research on VAW¹¹².

But the adoption of a recent and innovative instrument such as the Istanbul Convention was possible thanks to a long path. We have to go back to 1946 to see the establishment of the Commission on the Status of Women (CSW) by the UN. The CSW was the first international organism to deal with women's rights, and it is the principal body exclusively dedicated to the promotion of gender equality and the empowerment of women¹¹³. Since 1996, the Commission monitors every year the progresses and problems in the implementation of the Beijing Declaration and Platform for Action and of the and the 23rd special session of the General Assembly held in 2000 (Beijing +5), as well as emerging obstacles regarding gender equality¹¹⁴. The Commission had also a key role in organizing the global conferences on women's rights¹¹⁵.

¹¹⁰ Special Rapporteur on Violence against Women, its causes and consequences, Dubravka Šimonović at the Conference on Monitoring the Implementation of the Istanbul Convention: New Synergies, Sarajevo, 20 October 2015,

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16705&LangID=E>

¹¹¹ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 17.

¹¹² S. WALBY, J. TOWERS, S. BALDERSTON, C. CORRADI, B. FRANCIS, M. HEISKANEN, K. HELWEG-LARSEN, L. MERGAERT, P. OLIVE, E. PALMER, H. STÖCKL and S. STRID, *op.cit.*, p. 23.

¹¹³ UN Women's Website:

[https://www.unwomen.org/en/csw#:~:text=The%20Commission%20on%20the%20Status,II\)%20of%2021%20June%201946.](https://www.unwomen.org/en/csw#:~:text=The%20Commission%20on%20the%20Status,II)%20of%2021%20June%201946.)

¹¹⁴ *Ibid.*

¹¹⁵ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 89.

In 1979 the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations GA, and entered into force in 1981. Today, 189 states have ratified the treaty. However, the Convention does not include a definition of VAW, which is instead contained in the 1993 Declaration of the GA and in the General Recommendation No. 19, adopted by the Committee established by the Convention itself¹¹⁶. In the GR No. 19 (1992), the Committee on the Elimination of Discrimination against Women confirmed that “under general international law and specific human rights covenants, States may [...] be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”¹¹⁷. The Committee on the Elimination of Discrimination against Women recommended to States parties to take legal and other measures to protect women against VAW, to ensure that VAW is prosecuted and punished, and that victims of violence have immediate means of redress and protection¹¹⁸. The Committee has also addressed the obligation of member states to enact, implement and monitor legislation to address VAW in its work under the Optional Protocol to the CEDAW¹¹⁹. The 1993 DEVAW requires state parties to condemn VAW, develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to victims, provide access to the mechanisms of justice and to just and effective remedies (art. 4).

The Vienna Declaration and Programme of Action was adopted by the World Conference on Human Rights in Vienna on 25 June 1993. The Conference highlighted the importance of working on the elimination of VAW in the private and public life, of all forms of sexual violence, exploitation of women, of gender stereotypes in the administration of justice, and of the elimination of conflicts that could emerge from women’s rights and the effects of some traditional practices¹²⁰.

At international level, women’s rights were claimed during the four conferences on women which were organized in Mexico City in 1975, Copenhagen in 1980, Nairobi in

¹¹⁶ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 89.

¹¹⁷ Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (1992) on violence against women, para. 9.

¹¹⁸ DIVISION FOR THE ADVANCEMENT OF WOMEN/ DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *op.cit.*, p. 5-6.

¹¹⁹ *Ivi*, p. 6.

¹²⁰ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para. 38.

1985, and Beijing in 1995 (in this last conference, the Beijing Declaration and Platform for Action was adopted)¹²¹. This last document, which represented an important achievement internationally, recognized the globality of the phenomenon of VAW: “In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture”¹²². In this non-binding international instrument, VAW was extensively defined, and it was recognized that violence could become even more radical when gender intersected with the economic and social condition of women, the belonging to a minority, and other conditions of vulnerability¹²³. The Platform identified three objectives related to VAW: to act to prevent and eliminate VAW; to study the causes and the consequences of the phenomenon; to eradicate the traffic of women and assist the victims of violence¹²⁴. The Beijing Platform for Action requires Governments to enact and reinforce sanctions in domestic legislation to punish VAW, to adopt and implement legislation to ensure the elimination of VAW, and to take measures to ensure the protection of women subjected to violence, access to just and effective remedies¹²⁵

The Beijing Conference had four follow-up every five years. In 2015 the Platform Beijing + 20 was adopted and, during the meeting, 91 countries made commitments to implement the Platform of 1995 and achieve gender equality no later than 2030¹²⁶.

The Rome Statute of the International Criminal Court provides the broad statutory recognition of VAW as a crime under international criminal law to date, classifying “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” committed “as part of a widespread or systematic attack directed against any civilian population” as crimes against humanity¹²⁷.

The UN Human Rights Committee, in the General Comment No. 28 (related to the article 3 of the International Covenant on Civil and Political Rights), underlined the different

¹²¹ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 90.

¹²² Beijing Declaration and Platform for Action, *cit.*, para. 112.

¹²³ *Ivi*, para. 116.

¹²⁴ *Ivi*, para. 124 ff.

¹²⁵ DIVISION FOR THE ADVANCEMENT OF WOMEN/ DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *op.cit.*, p. 8.

¹²⁶ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 91.

¹²⁷ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998.

situations of vulnerability for women (like armed conflicts or the publication of pornographic material)¹²⁸.

The CEDAW Committee has underlined that VAW constitutes a violation of the prohibition of discrimination (present in the Convention), through the individual applications that it is allowed to receive since 2000, with the entry into force of the Optional Protocol of the CEDAW¹²⁹. In addition, since 1994, the SP on VAW, its causes and its consequences has had a key role in fighting VAW and, since 2006, the SP reports to the HRC¹³⁰.

What was interesting of the Resolution No. 58/147 of 2003 by the UN GA was the acknowledgment that domestic violence goes beyond the private dimension, as it is a phenomenon of public concern, which requires the intervention of the states¹³¹. The UN GA has routinely addressed VAW through its resolutions; a resolution that called state parties to strengthen their legal frameworks is the resolution 61/143 of 19 December 2006, which calls for the intensification of the efforts to eliminate all forms of VAW, underlines the need to criminalize all forms of such violence, and urges states to revise or abolish the policies that discriminate women¹³².

The Secretary-General launched a multi-year global campaign called UNiTE to End Violence against Women in 2008, which recognizes the power of the law by including in one of its five key objectives the need for countries to adopt and enforce national laws, by 2015, that address and punish VAW, in line with international human rights standards¹³³.

Most recently, the 2030 Agenda for Sustainable Development included the achievement of gender equality and the empowerment of women among its objectives¹³⁴. The same year, the UN GA has adopted the Resolution No. 70/176 “Taking action against gender-related killing of women and girls”. The preamble shows preoccupation related to the terrifying numbers of killings of women and girls based on gender, and the data

¹²⁸ HRC, *General Comment no. 28, Article 3 The Equality of Rights between Men and Women*, 29 March 2000, CCPR/C/21/Rev.1/Add.10, para. 8.

¹²⁹ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 91.

¹³⁰ United Nations Human Rights' Website:

<https://www.ohchr.org/en/issues/women/pages/srwomenindex.aspx>

¹³¹ UN GA, Resolution no. 58/147, para. 1, letter d.

¹³² DIVISION FOR THE ADVANCEMENT OF WOMEN/ DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *op.cit.*, p. 8.

¹³³ *Ivi*, foreword.

¹³⁴ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 91.

demonstrate that half of these women were killed by the partner or by a family member¹³⁵. The GA has underlined the need to eliminate every form of VAW in the public and private sphere, calling for the states to cooperate internationally in order to promote and protect human rights and fundamental liberties¹³⁶.

The UN Security Council intervened in different occasions on the topic “Women and Security” with different resolutions, but recently, with the 2015 Resolution no. 2242, it has underlined the impact of new forms of VAW and girls, like the negative effects of climate change and of international terrorism¹³⁷.

To conclude, the fact that VAW is not diminishing does not depend on the inaction of states and international organizations, as more and more legal instruments trying to combat VAW have been adopted; this means that it depends on the radicalization of forms of discrimination against women in the societies¹³⁸. However, the growing number of documents and resolutions that the UN has adopted is a positive sign, despite the fact that the majority of the international legal instruments are soft law (so, they do not entail obligations for states), because they bring the attention to a phenomenon of public concern and they create the conditions for specific actions at regional level¹³⁹.

1.5.2 The regional level

In Africa and America both binding and non-binding instruments have been adopted to respond to VAW, which reflect the specific characteristics of violence of the regional system¹⁴⁰.

For instance, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) was the first to define the right of women to be free from violence, as an answer to the great number of feminicides in the territories of the Organization of American States, while the Protocol to the African Charter on Human And Peoples' Rights provides the definition of “harmful practices” as “all behaviour, attitudes and/or practices which negatively affect the

¹³⁵ UN GA Resolution no. 70/176, adopted the 17 December 2015, published the 8 January 2016.

¹³⁶ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, op.cit., p. 94.

¹³⁷ UN SC Resolution no. 2242 (2015), 13 October 2015, preamble.

¹³⁸ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, op.cit., p. 95.

¹³⁹ *Ibid.*

¹⁴⁰ *Ivi*, p. 96.

fundamental rights of women and girls” (article 1, letter g), referring to female genital mutilations and other traditional practices¹⁴¹.

The Convention of Belém do Pará is the most ratified instrument in the inter-American system of human rights, and the fact that the inter-American human rights system is at a new era in the protection of the human rights of women paved the way for a series of case decisions and reports published by the Inter-American Commission on Human Rights underlining fundamental principles pertaining to the rights of women¹⁴². The Belém do Pará Convention provides that states must adopt measures to modify social and cultural patterns of conduct to eliminate prejudices, stereotypes, and other practices based on the idea of the inferiority or superiority of the sexes¹⁴³. The Convention requires state parties to apply due diligence to prevent, investigate and impose penalties for VAW and contains detailed provisions regarding the obligations of States to enact legislation¹⁴⁴.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted in Maputo in July 2003 and came into force in November 2005. It is a progressive legal instrument protecting the human rights for women, which covers not only civil and political, economic, social and cultural rights, but also environmental rights. The Maputo Protocol demonstrates the goodwill and commitment of the African Union Member States to invest in the development and empowerment of African women (who represent the majority population in most African countries)¹⁴⁵. The Protocol establishes obligations related to legal reform, requiring states to enforce laws that prohibit all forms of VAW, adopt measures to ensure the prevention, punishment and eradication of VAW, and take all the necessary measures to eliminate harmful practices¹⁴⁶.

¹⁴¹ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 96.

¹⁴² R. M. CELORIO, *The Rights of Women in The Inter-American System of Human Rights: Current Opportunities and Challenges in Standard-setting*, *University of Miami Law Review*, Vol. 65, N. 3, 1 January 2011, p. 820.

¹⁴³ R. M. CELORIO, *op.cit.*, p. 856.

¹⁴⁴ DIVISION FOR THE ADVANCEMENT OF WOMEN/ DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *op.cit.*, p. 9.

¹⁴⁵ Women, Gender and Development Directorate (WGDD) of the African Union Commission, *Maputo Protocol on Women's Rights: A Living Document for Women's Human Rights in Africa*, available at https://au.int/sites/default/files/documents/31520-doc-maputo_protocol_on_womens_rights_a_living_document_for_womens_human_rights_in_africa_submitted_by_the_women_gender_and_development_directorate_wgdd_of_the_african_union_commission.pdf

¹⁴⁶ DIVISION FOR THE ADVANCEMENT OF WOMEN/ DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *op.cit.*, p. 9.

After the adoption of this instrument, African countries introduced innovative laws and policies at national level to advance women's rights. In 2016, the Declaration on 'The African Year of Human Rights with Particular Focus on the Rights of Women' was adopted by the African Heads of State and Government, and it calls the states for an accelerated action to eliminate all barriers that impede the full enjoyment of women's human rights¹⁴⁷.

As regards the Arab system, the Arab Charter on Human Rights shows on the one hand the willingness to respect the human rights treaties ratified by the Arab States and, on the other hand, the loyalty to the traditional Islamic principles¹⁴⁸. This complex interaction is visible in the article 3, in which letter a) affirms a general prohibition to discrimination ("Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability"), while letter c) affirms that "Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instrument"¹⁴⁹.

The Asian system lacks a binding legal instrument on human rights, even if the phenomenon of VAW is widespread in the region. The principle of nondiscrimination is present in many national constitutions, but the most important instrument protecting women's rights is the Declaration on the Elimination of Violence Against Women in the ASEAN Region, adopted in Jakarta (Indonesia) on the 30 June 2004: it is a non-binding instrument which highlights the need to adopt measures against the discrimination against women as an instrument to protect them from violence¹⁵⁰. Since 2010, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (which comprises twenty Representatives of ASEAN Member States) works to protect women's and children's rights¹⁵¹. Women are protected also in the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, adopted on the 21

¹⁴⁷ Women, Gender and Development Directorate (WGDD) of the African Union Commission, *op.cit.*

¹⁴⁸ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 96.

¹⁴⁹ League of Arab States, *Arab Charter on Human Rights*, entered into force on 15 March 2008.

¹⁵⁰ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 97.

¹⁵¹ ASEAN Commission on the Promotion and Protection of the Rights of Women and Children's Website: <https://acwc.asean.org/about/>

November 2015, which obliges member states to take measures to ensure that trafficking is an offence under their respective criminal laws and punishable by appropriate penalties¹⁵².

In the regional systems in which the protection of women is weak, the UN can guarantee a certain degree of protection through the reports of the SP on VAW (referring the situation of women and their rights in that area) or through the findings of the Committee EDAW (on which the Committee becomes aware through the appeals against the member states of the Optional Protocol of the CEDAW)¹⁵³. For instance, the SP has provided a report on India in 2013, acknowledging “the persistence of harmful practices, pervasive gender stereotypes and deeply entrenched patriarchal social and cultural norms”, and calling on states to take measures (however, the report is non-binding)¹⁵⁴.

1.5.3 The European level

In the European Union, there is no reference to VAW neither in the EU treaties, nor in the Charter of Fundamental Rights of the European Union, except for the Declaration 19 annexed to the final act of the Lisbon Conference of 2007, which underlines how the EU will insert the fight to VAW in its policies. However, the Treaty on the EU mentions equality between men and women, the Treaty on the Functioning of the EU mentions the need to eliminate inequalities and to promote gender equality (article 8), and, according to the article 19 of the same document, the Council can take measures to combat the discriminations based, among other grounds, on sex¹⁵⁵.

The Treaty on the Functioning of the EU contains the principle of equal pay for male and female workers in its article 157, but its origins can be traced back to the European Economic Community¹⁵⁶.

On the contrary, the European Parliament took a much stronger position in combating VAW, even if through soft law: already in 1979 (when Simone Veil was president of the Parliament: the first woman in this position) it voted in favour of a creation of an *ad hoc*

¹⁵² DIVISION FOR THE ADVANCEMENT OF WOMEN/ DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *op.cit.*, p. 9.

¹⁵³ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 97.

¹⁵⁴ *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, Addendum - Mission to India, A/HRC/26/38/Add.1, 1 April 2014.

¹⁵⁵ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 98.

¹⁵⁶ *Ibid.*

committee on women's rights¹⁵⁷. The Committee on Women's Rights and Gender Equality aims at creating an EU where women's rights are not only protected but can be utilized to further strengthen the economy: it supports women in the positions of political and economic decision making, fights VAW, and promotes conciliation between professional life and family life¹⁵⁸.

The Council of Europe has always taken actions to combat VAW, since 1990, but the most relevant measure was the Recommendation No. 5 of 2002, adopted by the Committee of Ministers of the CoE, which provides the definition of VAW, presents the different contexts in which it can take place (family, community, armed conflict), and acknowledges the structural nature of the phenomenon¹⁵⁹.

The Parliamentary Assembly of the CoE has adopted numerous resolutions calling the states to adopt preventive and repressive measures on VAW. In 2008, the Committee of Ministers of the CoE gave to the Ad Hoc Committee for Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) the task to draft an international convention on VAW¹⁶⁰. The final text was approved in December 2010 and the Convention on preventing and combating violence against women and domestic violence was adopted by the Committee of Ministers of the CoE in April 2011, and entered into force in 2014¹⁶¹.

Despite the repeated calls in the EU for indicators to measure the phenomenon of VAW, the measurement framework and the data used are poor quality: the EU Presidencies have suggested indicators for VAW in the context of the EU's commitment to the Beijing Platform for Action, and the European Institute for Gender Equality includes VAW in its Gender Equality Index; however, there is an absence of reliable indicators of differences in the rate of VAW between EU member states¹⁶².

The UE has always been active in combating VAW, but its actions were fragmented and did not provide a unique answer to the persistent phenomenon; however, the ratification

¹⁵⁷ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 99.

¹⁵⁸ European's People Party Women's Website: <http://www.eppwomen.eu/femm-committee/>

¹⁵⁹ Recommendation Rec (2002) 5 of the Committee of Ministers to member States on the protection of women against violence, adopted on 30 April 2002, appendix, para. II and III.

¹⁶⁰ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op.cit.*, p. 100.

¹⁶¹ *Ibid.*

¹⁶² S. WALBY, J. TOWERS, S. BALDERSTON, C. CORRADI, B. FRANCIS, M. HEISKANEN, K. HELWEG-LARSEN, L. MERGAERT, P. OLIVE, E. PALMER, H. STÖCKL and S. STRID, *op.cit.*, p. 27.

of the Istanbul Convention by the EU in June 2017 could represent the beginning of a more coordinated action (and the EU law will have to be interpreted in compliance with the Convention)¹⁶³. What is relevant is that the Istanbul Convention sets legally binding standards to prevent VAW, and it has universal aspirations, as it was open to the ratification of non-member states of the CoE and EU.

¹⁶³ S. WALBY, J. TOWERS, S. BALDERSTON, C. CORRADI, B. FRANCIS, M. HEISKANEN, K. HELWEG-LARSEN, L. MERGAERT, P. OLIVE, E. PALMER, H. STÖCKL and S. STRID, *op.cit.*, p. 27.

CHAPTER 2: VIOLENCE AGAINST WOMEN IN SPORT AND ITS FORMS

2.1 Violence against women in sport

Sport is a context which most of the time represents fun, friendship, discipline and achievement; however, sport also reflects the problems of violence that beset all spheres of life – the family, workplace, school and community, and one of these problems is VAW¹⁶⁴.

Indeed, usually sport is considered a masculine area of social life where boys and men learn masculine values and relations: in this context gender diversity is not much tolerated¹⁶⁵. National and international researches that focus on the prevalence of VAW in sport settings has found that sport (especially male-dominated sports) may encourage sexist behaviours, as well as stereotypes of masculinity related to violent and aggressive behaviours against women¹⁶⁶. Factors linked to low women's participation rates in both amateur and professional sport can be identified in both external causes, like discriminatory social norms to reconciling care, work and sport, but also internal aspects of sport, such as the lack of programmes to create safe sporting environments or to address harassment and other forms of VAW in sport¹⁶⁷.

When women enter the world of sport, they have to face a series of challenges: an unsupportive system, lack of appropriate coaches and professionals, lack of financial and social rewards similar to the ones of males, inconsistency of careers of top female athletes¹⁶⁸. Moreover, sexual violence against women is prevalent in many sporting

¹⁶⁴ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *Protecting Children from Violence in Sport. A Review with a Focus on Industrialized Countries*, UNICEF Innocenti Research Centre, July 2010, p. 3.

¹⁶⁵ A. TJØNNDAL, *NHL Heavyweights: Narratives of Violence and Masculinity in Ice Hockey*, *Physical Culture and Sport: Studies and Research*, Vol. 70, Issue 1, 2016, p. 55.

¹⁶⁶ R. LISTON, S. MORTIMER, G. HAMILTON and R. CAMERON, *A Team Effort: Preventing Violence Against Women Through Sport*, Our Watch, Melbourne, 2017, p. 17, available at <https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2019/11/07030344/A-team-effort-Preventing-violence-against-women-through-sport-evidence-guide.pdf>

¹⁶⁷ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Intersection of Race and Gender Discrimination in Sport*, Human Rights Council, Forty-fourth session, Geneva, July 15th, 2020, p. 2.

¹⁶⁸ A. BERNSTEIN and Y. GALILY, *Games and Sets: Women, Media and Sport in Israel*, *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, N. 15, Indiana University Press, 2008, p. 176.

communities¹⁶⁹. This unequal treatment between male and female athletes can be explained by the fact that men's participation in sport has traditionally been viewed as a natural phenomenon, whereas women's involvement is regarded as anomalous¹⁷⁰. Gender differentiation is produced and reproduced in all spheres of society, and sport is no exception; on the contrary, sport often is used to reaffirm male superiority and masculinity¹⁷¹. It follows that women in the world of sport lack the equality and entitlement that men enjoy¹⁷². Among the consequences of patriarchal power relations in society and in sport there are the media's representation of almost exclusively male sports and sports stars (this is connected to the marketability and sponsorship received by male athletes) and the disparity between the earnings of male and female athletes¹⁷³.

In the context of sport, violence may have several facets, and VAW in the world of sport has significant consequences for the realization of women's human rights and their access to legal processes and mechanisms of protection and defence, as these might be more accessible in nonsporting contexts¹⁷⁴. Hence, sport is a gendered experience which may reinforce gender disparities or power relationships between females and males in society¹⁷⁵.

Research concerning women and sports developed in the late 1960s within the context of second-wave feminism, and since then feminists suggest that when women were given the same physical opportunities as men they would prove to be as physically capable as males¹⁷⁶. Studies related to the sexist nature of sport and the view of sport as a patriarchal institution paved the way for further critique of women's exclusion from sport and ideas pertaining to women's roles, cultural ideals of femininity and of women's bodies, all of which had impeded women from entering sports¹⁷⁷. Powerful female athletes have created a sort of "gender disorder" and have challenged the cultural roots of male dominance,

¹⁶⁹ A. MORRONE, *The Right to Play Safely: A Report on Violence against Women in Sport & Recreation*, CASA House, February 2003, p. 1.

¹⁷⁰ A. BERNSTEIN and Y. GALILY, *op.cit.*, p. 176.

¹⁷¹ *Ivi*, p. 177.

¹⁷² C. BURNETT, *Whose Game Is It Anyway? Power, Play and Sport, Agenda: Empowering Women for Gender Equity*, N. 49, Taylor & Francis, Ltd, 2001, p. 72.

¹⁷³ *Ibid.*

¹⁷⁴ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 4.

¹⁷⁵ *Ibid.*

¹⁷⁶ S. J. BANDY, *From Women in Sport to Cultural Critique: A Review of Books About Women in Sport and Physical Culture*, *Women's Studies Quarterly*, Vol. 33, N. 1/2, The Feminist Press at the City University of New York, 2005, p. 247.

¹⁷⁷ *Ivi*, p. 249.

which are based on the apparently natural superiority of men¹⁷⁸. This is because athleticism values masculinity and devalues femininity, and athletic aspirations diverging from gendered norms are sexualized, devalued, and delegitimized¹⁷⁹. Moreover, the serious constraints in women's engagement and success in sport, the lack of status and recognition, and the male hegemony in this social institution undermine women's choices to preserve health¹⁸⁰.

Although some sports are defined as feminine (such as gymnastics, dance, figure skating), even these sports have their dark side, as they emphasize bodily beauty in performance and value qualities of the individual such as suppleness, flexibility, balance, and elegance: "feminine" sports award performances conveying feminine characteristics, which are the basis for success¹⁸¹. Thus, these kinds of sports further contribute to the establishment of sport as a gendered experience.

Sport not only mirrors oppressive gendered practices in the society, but it magnifies them¹⁸². Therefore, this system is structural, in the sense that it represents a resilient system that reproduces a conservative form of gender differences, making sport a powerful gender regime¹⁸³. Despite some progresses in recent decades, gendered patterns persist and sport remains heavily gendered both ideologically and in participatory terms¹⁸⁴.

However, despite the various economic, practical, and structural constraints that prevent women from participation in sports, it must be said that sport for women also has a liberating potential¹⁸⁵.

2.1.1 The notion

After an invitation from the Council of the European Union in 2015, the Directorate-General for Education and Culture asked the Education, Audiovisual and Culture

¹⁷⁸ S. J. BANDY, *op.cit.*, p. 252.

¹⁷⁹ S. BURROW, *Trampled Autonomy: Women, Athleticism, And Health*, International Journal of Feminist Approaches to Bioethics, Vol. 9, N. 2, 2016, p. 67.

¹⁸⁰ *Ivi*, p. 68.

¹⁸¹ *Ivi*, p. 70.

¹⁸² *Ivi*, p. 68.

¹⁸³ E. ANDERSON, "I Used to Think Women Were Weak": *Orthodox Masculinity, Gender Segregation, and Sport*, Sociological Forum, Vol. 23, N. 2, June 2008, p. 269.

¹⁸⁴ K. GREEN, M. THURSTON, O. VAAGE, and K. MORDAL-MOEN, *Girls, Young Women and Sport in Norway: A Case Study of Sporting Convergence Amid Favourable Socio-economic Conditions*, International Journal of Sport Policy and Politics, Vol. 7, N. 4, Taylor & Francis, April 14th, 2015, p. 3-26.

¹⁸⁵ S. J. BANDY, *op.cit.*, p. 253-255.

Executive Agency to conduct a study on the nature and extent of gender-based violence in sport in the EU, to broaden the knowledge about gender-based violence (with special concern on VAW) in professional and grassroots sports. The Education, Audiovisual and Culture Executive Agency commissioned Yellow Window to launch this study¹⁸⁶. One of the conclusions of this study is that the concept of ‘gender-based violence in sport’ is not well known, although certain forms of violence are recognised and addressed in some countries, such as sexual harassment and abuse, and, to a minor degree, violence against LGBTQI people¹⁸⁷. However, there are many other forms of VAW in sport (which I will discuss later), and these are often overlapping categories, not mutually exclusive. This research commissioned to Yellow Window utilized 38 studies at EU member state level, but all the definitions on VAW in sport contained in these studies vary considerably, with no single study using an overarching definition which covers all forms of VAW in sport¹⁸⁸.

The concept of VAW in sport includes several concerns which tend to be addressed distinctly¹⁸⁹. There is remarkable variation in terminology adopted at European and national level policy and research on VAW in sport¹⁹⁰. The result is a lack of a clear idea on what VAW in sport constitutes. And, even if some forms of VAW are addressed in sport, the concept of VAW in sport is not widely used or understood among the sporting community¹⁹¹. The lack of consensus on how VAW in sport is defined renders comparisons across countries and across sports within the same country problematic, and it may also create conflicts between national penal laws and the disciplinary processes of sports organisations, as they may utilize different definitions¹⁹².

Another consequence of the lack of consensus on this notion is that many of the attempts made to measure the extent of VAW in sport have adopted different and, at times, conflicting definitions due to how the topic is understood by researchers and

¹⁸⁶ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *Study on Gender-based Violence in Sport*, Brussels, European Commission, 2016, p. 1.

¹⁸⁷ *Ivi*, p. 12.

¹⁸⁸ *Ivi*, p. 45.

¹⁸⁹ *Ivi*, p. 12.

¹⁹⁰ M. LANG, L. MERGAERT, C. ARNAUT, T. VERTOMMEN, *Gender-based violence in EU sport policy: Overview and recommendations*, *Journal of Gender-based Violence*, Vol. 2, N. 1, February 2018, p. 109.

¹⁹¹ *Ivi*, p. 110.

¹⁹² *Ibid.*

practitioners¹⁹³. And even the widely studied notion of VAW is largely unknown or not widely used in the context of sport¹⁹⁴.

However, to a certain extent, there is some recognition that certain forms of VAW occur in sport settings and must be addressed (mainly sexual harassment and abuse, although the focus mostly is on the protection of children, and harassment and violence on the grounds of sexual orientation)¹⁹⁵. But overall, there is a reluctance to explicitly name unwanted behaviours as forms of VAW in sport settings, focusing mostly on general issues of gender inequality and gender discrimination in sport, avoiding problems related to violence itself; as a consequence of this approach that frames problematic behaviours in sport so broadly, awareness and visibility of the problems that female athletes encounter remain low¹⁹⁶.

To conclude, the notion of VAW in sport remains unknown and poorly understood, and, partly as a consequence of this gap, the problem of gender-based violence in sport is still unrecognised and, thus, data is mostly missing or, where it does exist, is fragmented and partial¹⁹⁷.

2.1.2 Lack of awareness about violence against women in sport

Looking at the policy level, the theme of VAW in sport represents the intersection of several policy domains: sport, youth, welfare, justice, gender and equal opportunities¹⁹⁸. The consequence is that responsibilities are fragmented among many actors and stakeholders, and this helps to maintain the problem of VAW in sport unrecognised and under-addressed. Indeed, the fact that VAW in sport is not solely addressed by the policy domain of sport, but in many countries the policy domains of gender equality and child protection in the context of sport are also taking up the issue, results in a lack of awareness, leadership and ownership of the issue¹⁹⁹.

At the same time, this intersection of different policy domains gives the opportunity to join forces across these policy domains, to learn from each other's expertise, and to

¹⁹³ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 8.

¹⁹⁴ *Ivi*, p. 9.

¹⁹⁵ *Ivi*, p. 8.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ivi*, p. 12.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ivi*, p. 12-13.

establish partnerships, in order to adopt a comprehensive approach to tackle VAW in sport²⁰⁰.

In the above-mentioned study commissioned to Yellow Window, researchers found difficulties in identifying potential interviewees or experts in the field because potential respondents considered themselves insufficiently competent in the area, and this is probably due to the fact that no single specific political structure addresses the topic and, thus, this results in no single person or organization or domain accepting ownership or responsibility for the issue²⁰¹.

Another effect of the lack of awareness on VAW in sport is the lack of meaningful evidence on the extent of the forms of VAW in sport (and the various shapes that VAW in sport may take), due to the fact that many countries still do not acknowledge that VAW occurs in sport²⁰². Taking into consideration this point, and adding the fact that some countries lack data on VAW in the wider society, it is unsurprisingly that there is no data on VAW in sport (and, where the figures on VAW in sport do exist, they underestimate the extent of the problem, as many cases are never reported)²⁰³.

Nevertheless, there is some recognition that certain forms of VAW do occur within sport and there exists some information on specific topics²⁰⁴. But there is still a lack of leadership and responsibility for this issue, and, in this context, campaigns to raise awareness should be fund.

2.2 Empirical data of violence against women in sport

Besides the problem of lack of awareness (or even complete denial) about the existence of the issue of VAW in sport in some countries, the problem of lack of data on the extent of the phenomenon extends to all countries, even those where there is a certain degree of awareness²⁰⁵.

However, the modern Olympic Games give a clear example of discrimination and inequalities between male and female athletes, with women being excluded from the very

²⁰⁰ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 13.

²⁰¹ *Ivi*, p. 10.

²⁰² *Ivi*, p. 53.

²⁰³ *Ibid.*

²⁰⁴ *Ivi*, p. 12.

²⁰⁵ *Ivi*, p. 14.

beginning, and later being marginalized²⁰⁶. The marginalisation of female athletes is evident in the history of their participation in this event: in spite of the increase in the number of events for women from 1908 (when there were none) to 108 in 1996 and 120 in 2000, a significant gap is still evident²⁰⁷.

The International Olympic Committee (IOC) receives many pressures from feminist groups that contest this male hegemony, and, for this reason, the IOC reached the 10 percent target of women in decision-making positions in 1998 (however, women athletes comprised just the 42 percent of participants at those Olympic Games)²⁰⁸. That the IOC does not commit to achieve gender equality became apparent when, in 1996, it accepted 26 countries without any women participants for the Atlanta Games²⁰⁹. This happened in spite of the fact that in 1991, the IOC, in cooperation with the International Sports Federations and the Organizing Committees, decided that any new sport that was included in the Olympic program had to include women's events²¹⁰. More recently, in 2000, at the 27th Olympiad in Sydney, women competed in 25 out of 28 sports and in 132 events, 44 percent of the total²¹¹. For many, the 2012 Olympic Games in London represented a milestone for gender equality in sport, because if we think that Pierre de Coubertin (founder of the modern Olympics in 1896) strongly opposed women's participation in the Olympic Games, more than a century later women represented 44.3 percent of athletes in London²¹². However, despite many progresses, gender equality is still not achieved.

Looking at the participation rates in sport of Black women, numbers are even worse: at the college level, Black women represent 4.7 percent of college athletes in comparison to 17 percent White females, 31.4 percent Black males, and 36.9 percent White males²¹³. Although Black women are highly concentrated in the sports of basketball and track and field, they have very restricted representation in all other sports²¹⁴.

²⁰⁶ C. BURNETT, *op.cit.*, p. 72.

²⁰⁷ *Ibid.*

²⁰⁸ *Ivi.*, p. 73.

²⁰⁹ *Ivi.*, p. 74.

²¹⁰ A. BERNSTEIN and Y. GALILY, *op.cit.*, p. 177.

²¹¹ *Ibid.*

²¹² J. ADRIAANSE, *Gender Diversity in the Governance of Sport Associations: The Sydney Scoreboard Global Index of Participation*, *Journal of Business Ethics*, Vol. 137, N. 1, August 2016, p. 149.

²¹³ A. R. CARTER-FRANCIQUE, M. RICHARDSON, *Controlling Media, Controlling Access: The Role of Sport Media on Black Women's Sport Participation*, *Race, Gender & Class*, Vol. 23, N. 1-2, 2016, p. 9.

²¹⁴ *Ibid.*

With regard to the representation of women in administrative positions in the world of sport, Africa shows a dramatic picture: in 2001, in Benin, only 21 percent of women were in the Executive Board of the National Olympic Committee; in Congo, 10 percent were the women within the executive bodies; in Mali, just 22 percent of decision-making positions were occupied by women; in Swaziland, women held only 29 of the total 108 Executive Positions in the registered sports Associations; in South Africa, only 2 of the 9 members of the National Olympic Committee of South Africa executive were women²¹⁵.

Hence, there is an underrepresentation of women in leadership and decision-making areas in sport. This occurs also in the Western world. For instance, in America, in 2007, while 13.3 percent of the university presidents were women, only 6 were the women among the 120 sports directors in National Collegiate Athletic Association (NCAA) Division IA who oversee football²¹⁶. As regards Europe, the United Nations (2007) notes that women are under-represented on the executive boards of sporting federations, the Olympics Committee and as coaches. In the Czech Republic, for example, women were only 8 percent of the executive boards of sports, only 3 women have ever been members of the executive board of the Czech Olympic Committee, and only 21 percent of elite athletes are coached by women²¹⁷.

The findings of the Sydney Scoreboard, a website that tracks women's presence on sport boards internationally, show that women remain underrepresented as board directors (global mean 19.7%), board chairs (10.8%) and chief executives (16.3%)²¹⁸. In 2016, women's representation on the Executive Board of the IOC was 26.7 percent, and no woman has ever held the position of IOC President²¹⁹.

Regarding sexual victimization in sport, the majority of studies found that females are more likely than males to be victims²²⁰. Research suggests that the prevalence of sexual victimization among young athletes is 2-10 percent, and this is more likely to occur for girls relative to boys (14% of girl athletes and 3% of boy athletes report sexual

²¹⁵ N. WADESANGO, S. MACHINGAMBI, G. ASHU and REGIS CHIRESH, *Nature and Effects of Women's Participation in Sporting Decision-Making Structures in the Context of the 2010 FIFA World Cup*, Agenda: Empowering Women for Gender Equity, N. 85, 2010, p. 63.

²¹⁶ *Ibid.*

²¹⁷ *Ivi*, p. 63-64.

²¹⁸ J. ADRIAANSE, *op.cit.*, p. 149.

²¹⁹ *Ibid.*

²²⁰ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 44.

violence)²²¹. However, sexual violence may be even higher for elite and international athletes: an Australian study with elite and club athletes found that 31 percent of females had been sexually abused, and, of those, 13 percent were abused in the sports environment²²². A recent study found that 17 percent of females from the Netherlands and Belgium had experienced sexual violence while playing sports (compared to 11 percent of males), while, at international level, athletes reported twice the rate of sexual violence in sport during their childhood²²³.

LGBTQI athletes have an even higher risk of experiencing all types of violence in sport than non-LGBT athletes: verbal abuse was reported by high numbers of lesbians (89%), gay men (83%), and heterosexual participants (71%) in Ireland; 20 percent of gay men, 18 percent of lesbians, and 1 percent of heterosexual participants reported experiencing physical violence²²⁴. Likewise, the results from a study in Finland indicate that 5 percent and 22 percent of respondents experienced behaviours that constitute homophobic violence from coaches or peer athletes (like being threatened on the grounds of one's gender or sexuality, or being called names or insulted in a degrading, sexual way)²²⁵.

A demonstration of sexual victimization occurring in sport can be seen thanks to a telephone helpline service (The Helpline for Sexual Harassment and Abuse in sport) that was installed by the Dutch Olympic Committee and Sports Federation in the Netherlands in the late 1990s: from 2001 to 2010 it received reports of 323 separate incidents from 46 different sports (and of course many others have not been reported)²²⁶. Ninety-two percent of these 323 incidents were male and occupied a position of trust and responsibility over the victim (often as a coach)²²⁷.

Media also play a role in discriminating women athletes: coverage of women's sport occupies no more than 5 percent of total sport airtime in countries like Italy, the Netherlands, Sweden and Britain²²⁸. There is a strong underrepresentation of women

²²¹ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *How Sport Can End Sexual Violence in one generation*, Raliance, November 2017, available at http://www.raliance.org/sport-prevention-center/wp-content/uploads/2017/10/RALIANCE-OverviewReport_WEB.pdf, p. 12.

²²² A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 12

²²³ *Ibid.*

²²⁴ *Ivi*, p. 49.

²²⁵ *Ibid.*

²²⁶ *Ivi*, p. 52.

²²⁷ *Ibid.*

²²⁸ A. BERNSTEIN and Y. GALILY, *op.cit.*, p. 179.

athletes in sports generally conceived of as “masculine”, while female competitors playing in “socially acceptable” sports such as swimming, diving and gymnastics are more likely to receive media attention²²⁹.

Therefore, most studies report a higher prevalence of different forms of violence and discrimination among girls and women compared to boys and men, even if there is an absence of reliable data on all forms of VAW in sport, with many studies focusing only on few forms of violence²³⁰. There is a need for strong empirical evidence on the extent of VAW in sport, taking into consideration all forms of violence.

2.3 Limitations of the study

Studying VAW in sport implies many difficulties. First of all, as already said, no data on the magnitude of the problem comprising all the forms that VAW in sport can take exists, and this creates issues in terms of the necessary policy developments²³¹. This gap could be explained by the lack of research in this area, the use of different definitions, the underestimation of the problem, and by the problem of underreporting of acts of VAW in sport²³².

Many researchers encountered obstacles in the data collection because of the limited availability and willingness of the stakeholders to provide information, as there are just few people and organisations that are identifiable as knowledgeable or active on this issue²³³.

Another limitation relates to how VAW in sport is problematised, contextualised and addressed, as there is no well-defined notion on this issue and, for this reason, different countries utilize different connotations to refer to the same phenomenon²³⁴. This further creates obstacles when comparing legal and policy instruments and initiatives among different countries.

The variance in terminology adopted across different countries has an impact in the efforts made to measure the extent of VAW in sport, which further leads to lack of clear

²²⁹ A. BERNSTEIN and Y. GALILY, *op.cit.*, p. 179.

²³⁰ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 49.

²³¹ M. LANG, L. MERGAERT, C. ARNAUT, T. VERTOMMEN, *op.cit.*, p. 11.

²³² L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 11-13.

²³³ *Ivi*, p. 8.

²³⁴ *Ibid.*

understanding and lack of awareness of the phenomenon²³⁵. There are difficulties also in understanding what forms VAW in sport may take. Often the boundaries of VAW are limited to sexual or physical violence, but there are many other ways in which women might be subject of violence and/or discrimination, like creating conditions that limit their participation in sport, or the way female athletes are represented by the media.

Besides the difficulties in understanding what constitutes violence and violent behaviours (like sexist verbal remarks or unwanted touching), the sensitivity of the topic is a key reason for the resistance that researchers encountered in many stakeholders, who were unavailable and sometimes unwilling to provide information, which resulted in the above-mentioned absence of relevant information²³⁶. Moreover, in some countries, such as Slovenia and Lithuania, there still exists a taboo on VAW in general²³⁷.

And, even in the most “explicit” cases of VAW like sexual assaults, there is still a high level of women being reluctant to report such crimes, often due to embarrassment, fear and the expectation that it won’t be dealt with adequately, and, lastly, due to the uncertainties of women about to whom report these incidents²³⁸.

2.4 Forms of violence against women in sport

Existing social norms and values expect the man to be the excellent athlete; consequently, sport is dominated by men in participation, administration, refereeing, and coaching²³⁹. The world of sport becomes a context which is associated with aggression, strength, dominance, and violence, and this results in the devaluation of women, use of social isolation, infliction of pain, and marginalization of nonheterosexuals²⁴⁰.

Moreover, with the pandemic of COVID-19, the sport world is threatened, as it has been forced to cancel or postpone events, schools have closed, and people are staying home²⁴¹. Existing differences between women and men, girls and boys in the wider society, and in the world of sport more specifically, may widen if governments, sport organizations,

²³⁵ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 8.

²³⁶ *Ivi.*, p. 8-9.

²³⁷ *Ivi.*, p. 10.

²³⁸ A. MORRONE, *op.cit.*, p. 17.

²³⁹ S. BURROW, *op.cit.*, p. 69.

²⁴⁰ *Ibid.*

²⁴¹ THE UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *COVID-19, Women, Girls and Sport: Build Back Better*, UN Women, July 7th, 2020, available at <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/brief-covid-19-women-girls-and-sport-en.pdf?la=en&vs=2629>, p. 1.

sponsors, civil society, athletes, and media do not address women's needs recovery plans²⁴².

Several forms of VAW in sport are considered: low levels of women's participation; sexual victimization; professional sport and gender pay gap; inequalities in coaching and leadership; discrimination by the media; violence against young girl athletes; cases of intersectionality. These forms of VAW in sport are not mutually exclusive, but overlapping categories²⁴³.

2.4.1 Low levels of women's participation

Sport provides health benefits and it can empower women, increase their confidence, self-esteem, and wellbeing²⁴⁴. More than that, sport can change gender norms, create social networks for women, and help them move into public places; some studies have also found that sport can serve as factor protecting women from intimate partner violence, as women athletes rejecting traditional gender norms are less likely of experiencing such violence²⁴⁵.

Although the sporting sector has experienced increases in female participation, women continue to experience practices that limit their involvement and empowerment²⁴⁶. Some of the barriers to female participation in sport that have been documented in the literature are: stereotypes and cultural norms that depict sport as an activity for men, and women as too weak to participate; gender discrimination in the selection process for sporting roles; a lack of visible female role models in sport (both as athletes and in leadership roles); intimidating treatment that limits women's continued participation; structural barriers in sporting clubs and recreational centres (such as the lack of separate showers and change rooms, limited schedules that are not conducive to childcare); a shortage of accessible and affordable opportunities in sport for women²⁴⁷.

Thus, limited participation of women in sport and the few opportunities to flourish as athletes are connected to the fact that women are devaluated through feminine and

²⁴² THE UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *op.cit.*, p. 1.

²⁴³ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 9.

²⁴⁴ R. LISTON, S. MORTIMER, G. HAMILTON and R. CAMERON, *op.cit.*, p. 33.

²⁴⁵ *Ibid.*

²⁴⁶ *Ivi*, p. 34.

²⁴⁷ *Ibid.*

masculine biases²⁴⁸. Many forms of participation in the Olympics were denied to women, starting with their total exclusion from the modern incarnation of the Olympics in 1896²⁴⁹. One of the sports in which women encountered more constraints to participate was the Winter Olympics' Nordic Combined (cross country skiing and ski jumping). The first Nordic Combined World Cup for women was held only this year, in the 2020-2021 season²⁵⁰. However, women's Nordic combined did not manage to get included at Beijing 2022, but it is likely the International Ski Federation will try again for the 2026 Winter Olympics²⁵¹.

However, women have to undergo severe efforts if they want to get to the Olympics, because they have diminished ability to excel due to limited access to training or certain competition conditions²⁵². Only through amateur training and competition can women arrive at the Olympics or professional leagues, but they are denied the same training opportunities as men at amateur levels, with women's amateur teams receiving less funding and less promotion²⁵³. And even those women who manage to advance to the highest levels still face restricted conditions: for example, women participating at the FIFA World Cup in 2016 competed on artificial turf, in contrast to the men, who competed on superior natural grass²⁵⁴.

Moreover, women's participation in sport is constrained by the myth of frailty which is present in patriarchal societies and that has shaped ideas about women, gender relations and participation in sport²⁵⁵. Despite the historical gendering of sports participation, there have been improvements in females' relationships with sport in recent decades, with women playing more sport than previous generations²⁵⁶. In addition, although women are over-represented in sports related to "appearance" and "embodiment", they are now increasingly involved in sporting activities associated with masculinity, such as football or martial arts²⁵⁷. However, significant gaps are still visible; for example, the EU and the Council of Europe implemented a joint project called "ALL IN: Towards gender balance

²⁴⁸ S. BURROW, *op.cit.*, p. 75.

²⁴⁹ *Ibid.*

²⁵⁰ Inside the Games' Website: <https://www.insidethegames.biz/articles/1080168/womens-nordic-combined-given-boost-in-olympic-bid-as-creation-of-world-cup-approved>

²⁵¹ *Ibid.*

²⁵² S. BURROW, *op.cit.*, p. 75.

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

²⁵⁵ C. BURNETT, *op.cit.*, p. 71.

²⁵⁶ K. GREEN, M. THURSTON, O. VAAGE, and K. MORDAL-MOEN, *op.cit.*, p. 318.

²⁵⁷ *Ivi*, p. 319.

in sport”, published in 2019. The project collected data in eighteen countries, based on a set of gender equality indicators in six fields: leadership; coaching; participation; gender-based violence; media/communication; and policies and programmes addressing gender equality in sport²⁵⁸. I take four countries as examples. In Croatia, just 20 percent of the members of sports’ clubs are females, and both girls (23%) and women (15%) are less often members of a sport club or federation than boys (77%) and men (85%)²⁵⁹. About three quarters of the sport federations have less than 40 percent female members²⁶⁰. In Israel, three quarters (74%) of the members of sport clubs are males, with girls being just the 29 percent and women the 20 percent in sport clubs²⁶¹. In France, sport is dominated by men (71%), with girls (28%) and women (29%) being less often a member of a sport club than boys (71%) and men (72%), and with the majority of sport federations (78%) having less than 40 percent female members²⁶². Lastly, even in Spain sport is dominated by men (67%), with girls (44%) and women (24%) being less often a member of a sport club than boys (56%) and men (76%), and with three quarters of the federations having less than 40 percent female members²⁶³. Bringing this to an end, although it is true that women have made some progresses in the levels of sport participation, the gap with male is still wide.

A case in which the disparity among men and women in sport participation was dramatic was the women’s ski jumping in the 2010 Vancouver Olympic Winter Games, in which the IOC excluded women from ski jumping at the Olympics on the grounds that too few women athletes participated in the competition (this occurred although men’s ski jumping suffered the same criticism)²⁶⁴. Before the 2010 Games, a coalition of international female ski jumpers filed a lawsuit in Canada against the Vancouver Organizing Committee for the exclusion of a women’s ski jumping event in the Olympic and Paralympic Winter Games, claiming it constituted a direct violation of the Canadian Charter of Rights and Freedoms²⁶⁵. Women lost the suit, as it was found that the decision not to include

²⁵⁸ Council of Europe, Leaflet 2019, Croatia, Gender Equality in Sport, available at <https://rm.coe.int/croatia-gender-equality-in-sport-leaflet-2019-/1680971a5a>, p. 1.

²⁵⁹ *Ivi*, p. 4.

²⁶⁰ *Ibid.*

²⁶¹ Council of Europe, Leaflet 2019, Israel, Gender Equality in Sport, available at <https://rm.coe.int/israel-gender-equality-in-sport-leaflet-2019-/1680971a60>, p. 4.

²⁶² Council of Europe, Leaflet 2019, France, Gender Equality in Sport, available at <https://rm.coe.int/france-gender-equality-in-sport-leaflet-2019-/1680971a5e>, p. 4.

²⁶³ Council of Europe, Leaflet 2019, Spain, Gender Equality in Sport, available at <https://rm.coe.int/france-gender-equality-in-sport-leaflet-2019-/1680971a5e>, p. 4.

²⁶⁴ P. SAFAI, *Women in Sport Policy*, Sport Policy in Canada, University of Ottawa Press, 2013, p. 342.

²⁶⁵ *Ivi*, p. 342-343.

women's ski jumping in the 2010 Olympic and Paralympic Winter Games was made by the IOC, which was not subject to the Charter²⁶⁶. To rephrase it, although the judges felt that the women were being discriminated, the event of the Olympic Games was seen as under the jurisdiction and responsibility of the IOC, and not governed by the Charter²⁶⁷. However, in the past, the federal government has been willing to make political statements related to sport (like boycotting South Africa from international competition during the apartheid era), but now Canadian political leaders remained silent about this decision, accepting such discriminatory policy²⁶⁸.

Now, with the COVID-19 pandemic, the situation for female athletes may worsen. A brief launched by UN Women and the International Olympic Committee in March 2020 which focuses on the impacts of COVID-19 on women in sports acknowledges that once the world will go back to the normal life, many girls will not return to sports practice, as traditional roles will have set in and their contributions to the family will be seen as necessary²⁶⁹. Moreover, sport will not be seen as a priority, as governments and schools will be concerned mainly for children and adolescents to catch up the lost time away from school²⁷⁰. Another problem relates to grassroots organizations, which may not be able to continue offering sport programmes, as governments, donors and/or sponsors may stop or reduce financial support²⁷¹. Lastly, girls belonging to families who lost income due to restrictions to contain the pandemic may stop playing sports due to family's financial problems²⁷².

To conclude, even though women's participation in sport has proved to result in increased self-esteem, psychological and physical well-being, lower prevalence of experiencing intimate partner violence, females are routinely discouraged and prevented from participating in sport at all levels²⁷³.

2.4.2 Sexual victimization

²⁶⁶ P. SAFAI, *Women in Sport Policy*, Sport Policy in Canada, University of Ottawa Press, 2013, p. 344.

²⁶⁷ *Ibid.*

²⁶⁸ P. SAFAI, *op.cit.*, p. 342.

²⁶⁹ THE UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, COVID-19, *op.cit.*, p. 5.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ S. BURROW, *op.cit.*, p. 75.

Practicing sport can be a solution for sexual violence (I refer here to the definition of sexual violence provided by the WHO: “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting including but not limited to home and work”²⁷⁴), but it can also contribute to sexual violence by supporting systems that accept or ignore it²⁷⁵.

In sport systems, authority figures or role models can misuse the athletes’ desire for advancement and approval from senior teammates or a coach, and the vulnerability to sexual violence to which elite athletes are exposed may be explained by this power differential²⁷⁶. Researchers found that male coaches and male peer or senior athletes and other sports staff are likely to be the perpetrators of sexual violence in sports²⁷⁷. Regarding coaches, they often find themselves in a position of power in the eyes of female athletes, and adding this to the competitive “win at all costs” ethos, may contribute to an environment that leads to sexual violence and sexual exploitation of women athletes²⁷⁸. Even cases of consensual sexual relations between a coach and an athlete can result from the misuse of power, given the hierarchical nature of the coach-athlete relationship²⁷⁹. The risk for female athletes is to be exposed to perpetrators who take advantage of a power imbalance in the relationship with the victim, with coaches abusing of their trust and position²⁸⁰. Coaches have been documented to commit acts of emotional and physical violence through coaching methods or the sexual harassment, assault and exploitation of the athlete²⁸¹. Female athletes participating in “masculine” sports are more likely to experience abuse and harassment than women who practice other sports²⁸². Often female athletes begin being victims of abuses since they are young girls, and violence continues throughout their athletic life, usually leading them to stop practicing sport²⁸³. Although abuses by coaches tend to be underreported (also because athletes fear risk losing their chances of advancement), studies highlight the exploitative relationship between the

²⁷⁴ Krug, E.G. et al., eds. (2002). *World report on violence and health*. Geneva, World Health Organization.

²⁷⁵ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 2.

²⁷⁶ *Ivi*, p. 12.

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*

²⁸¹ C. PALMER, *Violence Against Women and Sport: A Literature Review*, Trust for London, 2011, p. 16.

²⁸² *Ibid.*

²⁸³ *Ibid.*

coach and the athlete, with coaches often intimidating or coercing the athlete (it must be said that coaches often completely control their athletes' lives, checking their medical treatment, diet, social life, and even sexual behaviour)²⁸⁴.

For example, the American figure skater Jessica Roos reported her coach because of sexual harassment, while in the Czech sports environment the judgment of the Supreme Court of the Czech Republic found the gymnastic coach M. Simunek guilty of the offense of sexual abuse and he was sentenced to imprisonment for five years following the decision of the Supreme Court Czech Republic²⁸⁵.

Another reason why female athletes report significantly more incidences of rape and attempted rape than non-athletes lies in the socialization with certain peer groups, namely male athletes, who have been shown to be at a higher risk for sexually aggressive behavior²⁸⁶. The perpetration of sexual violence among male athletes appears to be driven by traditional male gender roles regarding male dominance, acceptance of rape myths, hostility toward women, and hypersexuality, and these beliefs are reinforced by other athletes, coaches, and sports media²⁸⁷. This means that female athletes may be at risk of sexual violence because of their proximity to male athletes and the sexist ideologies surrounding athletics²⁸⁸. In 1998 the Australian Sports Commission, after trying to identify the nature of harassment in sport by surveying three hundred athletes and administrators, reported that more than one in two males perceived sexually explicit language as part of sport and one in ten female athletes considered sexual propositions as part of sport and therefore acceptable²⁸⁹. The sporting world creates a vulnerable environment for female athletes as it is characterized by close physical contact, significant emotional relationships, and power dynamics²⁹⁰.

In 2002 members of WomenSport International formed a Sexual Harassment Task Force, which participated at the 2002 World Conference of Women and Sport in Montreal

²⁸⁴ C. PALMER, *op.cit.*, p. 16.

²⁸⁵ Z. SAKÁČOVÁ, *Lawful Solutions for Violation on Women in Sports*, Acta Facultatis Educationis Physicae Universitatis Comenianae, Vol. 55, N. 2, 2015, p. 105.

²⁸⁶ E. BROWN, L. SPILLER, B. STILES and L. KILGORE, *Sexual Coercion Risk and Women's Sport Participation*, Physical Culture and Sport: Studies and Research, Vol. 57, Issue 1, 2013, p. 8.

²⁸⁷ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 16.

²⁸⁸ A. N. MILNER and E. H. BAKER, *Athletic Participation and Intimate Partner Violence Victimization: Investigating Sport Involvement, Self-Esteem, and Abuse Patterns for Women and Men*, Journal of Interpersonal Violence, Vol. 32, Issue 2, 2017, p. 7.

²⁸⁹ A. MORRONE, *op.cit.*, p. 1.

²⁹⁰ *Ivi*, p. 2.

(Canada), where it revealed that female athletes are more frequent victims of harassment and abuse than men athletes, and they are likely to stop playing rather than be subjected to these forms of violence²⁹¹.

In addition, women athletes are becoming more and more widely victims of violence or harassment by their family members²⁹². Many sportswomen emphasise that their fathers (and in some cases also mothers) continually try to take part in the training process, or even interfere with their private life, trying to act as coaches²⁹³. One case in point is the one of the tennis player Mary Pierce and her father Jim Pierce: according to the testimonies of his daughter, she was beaten and humiliated several times during her trainings; Women's Tennis Association (WTA) punished Jim Pierce by banning him entry to the tournaments for a five-year-period²⁹⁴. Another example in which the WTA banned entry to tournaments was the case of the French tennis player Aravane Rezai's father: the father, who trained her daughter, adopted too violent behaviour²⁹⁵. Moreover, in 2005, the WTA penalized the father of the Russian tennis players Jevgenie Linecki by a ban on entry to WTA action for two years, while her coach Joe Giuliano received a lifetime ban entry (the athlete had to be transferred to the hospital during a tournament in San Diego)²⁹⁶. In 2007, after the coach Mikhail Zubkov beat the swimming champion Catherine, his daughter, the International Swimming Federation banned Zubkov's father to train six years²⁹⁷.

Also the public (like fans or admirers) is becoming increasingly violent. For example, in 1993, a fan of the tennis player Steffi Graf stabbed the then world number one Monica Seles several times in the back with a knife (he was later described as mentally disturbed by the court, so he got only a conditional of two years and compulsory psychiatric treatment)²⁹⁸. Even though Monica Seles survived the attack, she had several months of treatment, she had psychological problems and, after returning to the court, she was not the same player as before the incident²⁹⁹. Another case is the one of the Swiss tennis player Martina Hingis, who was victim of a Croat who bothered her, sent her love affairs

²⁹¹ A. MORRONE, *op.cit.*, p. 7.

²⁹² Z. SAKÁČOVÁ, *op.cit.*, p. 105.

²⁹³ *Ibid.*

²⁹⁴ *Ivi*, p. 106.

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.*

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

faxes, letters and flowers, and even went to the hotel where she was staying; the court sentenced him to prison for two years, even though he tried to convince the judge that he was in love with her³⁰⁰.

Even the media have been reported to be perpetrators of violence against female athletes, as in the case of French journalists from the television channel M6, who called Anna Kournikova for an interview and chased her into the hotel, during the WTA tennis tournament³⁰¹.

More and more studies on the prevalence of assault and harassment against women in sport are finding that over 45 percent of female athletes experience assaults from men³⁰². Sport becomes a sexist environment in which verbal abuse is unchecked, in which there are continuous sexual jokes and sexual allusions, and homophobic and sexist attitudes are common and tolerated³⁰³. In sporting environments, violence becomes a means to assert power and dominance, and this is the reason why women practicing more “masculine” sports receive threats of violence or are subject of violence as a means of asserting male superiority³⁰⁴. While training, women may be threatened of violence, hided as a sport technique, such as hitting female boxers harder in the ring³⁰⁵.

In addition to the risk for women to experience violence in the sporting context, they may also risk to be victims of violence as athletic participation may lead to unhealthy behaviors such as eating disorders and alcohol abuse, which are elements that have proven to increase the likeliness of experiencing sexual harassment and victimization³⁰⁶.

The sexual victimization of women athletes is an issue that is too unchecked due to denial and minimization, lack of knowledge and due to the difficulties that may emerge after the disclosure³⁰⁷. However, it should not be underestimated the role that sport may have in protecting women against victimization.

2.4.3 Professional sport and gender pay gap

³⁰⁰ Z. SAKÁČOVÁ, *op.cit.*, p. 106-107.

³⁰¹ *Ivi*, p. 107.

³⁰² S. BURROW, *op.cit.*, p. 83.

³⁰³ *Ibid.*

³⁰⁴ *Ivi*, p. 84.

³⁰⁵ *Ivi*, p. 84.

³⁰⁶ A. N. MILNER and E. H. BAKER, *op.cit.*, p. 7.

³⁰⁷ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 12.

Since the laws regulating professional sport vary from country to country, I will focus on Italy.

A professional athlete is defined as the one who practices sporting activities in favour of a sport club with consideration and with continuity, within the framework of the disciplines regulated by the CONI that have admitted the professional sector³⁰⁸. The reference text for the analysis of professional sport is the Law no. 91 of 23 March 1981, which regulates sports work³⁰⁹. Before this law, there were disagreements in the jurisprudence on whether to consider the sporting work relationship as paid employment, self-employment or an atypical contract; but with the entry into force of this law, the sporting work relationship was classified as paid employment (even though with some exceptions)³¹⁰. What emerges from article 2 is that in order to be qualified as professional athletes, it is important to practicing a sporting activity in favour of a sport club with consideration and with continuity, but what really matters is that athletes must play for those clubs that are affiliated to the sporting Federations to which professionalism has been recognized, pursuant to Law no. 91 of 1981 (while all the other athletes will be considered as amateur athletes)³¹¹. It is here that the right to gender equality and the right to non-discrimination encounter some limitations: the sport disciplines that are classified as professional by the law were six, namely football, basketball, golf, boxe, cycling and motorcycling, but now they have been reduced to four, as motorcycling closed its sector in 2011 and boxe in 2013; however, none of these recognizes a professional sector for women athletes³¹². Female athletes are denied the access to the Law no. 91 of 1981, from which they could benefit of the regulations of the relations with the clubs, of the social security, healthcare, and pension benefits³¹³. Although women play sports with continuity and with a remuneration, they cannot be considered professional athletes, due to the requirements of the Law no. 91, and thus, they cannot enjoy of the protection that the law provides³¹⁴.

³⁰⁸ G. VALORI, *Il Diritto nello Sport: Principi, Soggetti, Organizzazione*, G. Giappichelli Editore – Torino, 2nd edition, 2009, p. 183.

³⁰⁹ *Ivi*, p. 184.

³¹⁰ *Ibid.*

³¹¹ *Ivi*, p. 185-186.

³¹² *Ivi*, p. 193.

³¹³ SportallaRoveschia's Website: <http://www.sportallaroveschia.it/sar5/attualita-nuovi-articoli/non-una-di-meno/900-il-professionismo-sportivo-in-italia-storia-di-una-discriminazione>

³¹⁴ G. VALORI, *op.cit.*, p. 193.

The initiatives adopted by the European Commission and the European Parliament deserve attention, starting from the White Paper on Sport, presented by the European Commission in July 2007: in the section 2.5 it is affirmed that “In the framework of its Roadmap for Equality between Women and Men 2006-2010, the Commission will encourage the mainstreaming of gender issues into all its sports-related activities, with a specific focus on access to sport for immigrant women and women from ethnic minorities, women's access to decision-making positions in sport and media coverage of women in sport” and in the section 4.1 it is affirmed that “Sport activity is subject to the application of EU law. [...] Sport is also subject to other important aspects of EU law, such as the prohibition of discrimination on grounds of nationality, provisions regarding citizenship of the Union and equality between men and women in employment”³¹⁵. In the section 53 of the White Paper on Sport, the European Commission “calls on the Member States to encourage media coverage of women's sporting activities in order to foster the emergence of female role models and overcome gender stereotyping and afford women career opportunities in sport-related areas, including in decision-making positions”.

The European Parliament, in the Resolution on the White Paper on Sport, adopted on 8 May 2008, underlined that “sport plays a particularly important role in European society in terms of health, education, social integration” (para. D) and that “despite some progress having been made in the area of gender equality at European level, inequities between sportsmen and sportswomen persist; [...] Training systems for talented young sportsmen and sportswomen should be open to all and must not lead to discrimination between EU citizens and residents based on nationality or gender” (para. Q)³¹⁶. In another resolution adopted in 2003, the European Parliament “stresses that sportswomen enjoy inalienable rights as regards sexuality and reproduction and calls for any breach of these freedoms to be penalized” (para. 39)³¹⁷.

In Italy, the protection of sportswomen during maternity has been established more recently, when CONI has adopted the “Principi Fondamentali degli Statuti Federali” (approved in February 2007 with resolution no. 1352, then modified with resolution no. 1391 in March 2009), which requires that “Gli statuti delle Federazioni Sportive

³¹⁵ European Commission, *White Paper on Sport*, Brussels, 11 July 2007, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52007DC0391>

³¹⁶ European Parliament, Resolution 2007/2261 on the White Paper on Sport, 8 May 2008

³¹⁷ European Parliament, Resolution 2002/2280 on women and sport, Strasbourg, 5 June 2003, available at <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2003-0269+0+DOC+XML+V0//EN>

Nazionali e delle Discipline Sportive Associate devono garantire la tutela della posizione sportiva delle atlete madri in attività per tutto il periodo della maternità fino al loro rientro all'attività agonistica” and that “Le atlete in maternità che esercitano, anche in modo non esclusivo, attività sportiva dilettantistica anche a fronte di rimborsi o indennità corrisposti ai sensi della vigente normativa, hanno diritto al mantenimento del tesseramento, nonché alla salvaguardia del merito sportivo acquisito, con la conservazione del punteggio maturato nelle classifiche federali, compatibilmente con le relative disposizioni di carattere internazionale e con la specificità della disciplina sportiva praticata” (para. 14)³¹⁸.

However, it is recent news (March 2021) that was spread all over the world on the Italian volleyball player Lara Lugli. Lara Lugli played for the Volley Pordenone in the 2018-2019 season and in March she communicated to the sport club that she got pregnant, and the “contract” was interrupted³¹⁹. The legal problems began when Lugli asked the society the “salary” for the month of February, during which she continued to play, but the sport club refused to. Lugli’s lawyer sent a payment injunction, after which Lara Lugli received a summons for the impairment to the Volley Pordenone sport club because the player got pregnant, even though she had a miscarriage³²⁰. The “contract” between the volleyball player and the Volley Pordenone included the termination of the contract for just cause in case of pregnancy, and the athlete had to avoid all behaviour that could contrast this commitment, otherwise she could have received measures proportional to the seriousness of the breach (in this case the volleyball club says to have been affected by the stop of the athlete for what concerns the decrease of victories and the consequent loss of sponsors)³²¹.

This episode has shed light on the issue of sportswomen, who are all considered amateurs. According to Luisa Rizzitelli, president and founder of the association Assist (which fights for the rights of women in sport), in the sport context there is one of the biggest gender discriminations, that is to impede to female athletes to access to professionalism³²². The definition of “sporting job” dates back to forty years ago, and

³¹⁸ CONI, Principi fondamentali degli statuti delle federazioni sportive nazionali, delle discipline sportive associate, 28 February 2007.

³¹⁹ Il Post’s Website: <https://www.ilpost.it/2021/03/10/cosa-ci-dice-la-storia-della-pallavolista-lara-lugli/#:~:text=La%20vicenda%20di%20Lara%20Lugli,dopo%20ebbe%20un%20aborto%20spontaneo>.

³²⁰ *Ibid.*

³²¹ *Ibid.*

³²² Il Post’s Website: <https://www.ilpost.it/2021/03/10/cosa-ci-dice-la-storia-della-pallavolista-lara-lugli/#:~:text=La%20vicenda%20di%20Lara%20Lugli,dopo%20ebbe%20un%20aborto%20spontaneo>.

now, for the same number of hours in the gym and the same amount of commitment, women are not recognized as professionals.

Discrimination against women in sport extends to unequal pay³²³. According to Forbes, only one woman was ranked among the 100 highest-paid athletes in the world in 2019 (Serena Williams, at No. 63)³²⁴. The basketball player Steph Curry's salary (40 million dollars) is more than three times as much as what every athlete in the WNBA earned in 2019 combined (12.5 million dollars)³²⁵. The gender pay gap makes it almost impossible for women to earn a living as an athlete, and, indeed, the Global Sports Salary Survey counted 137,021 men who played professional soccer in the world in 2017, while women were only 1,287: a ratio of 106 to 1³²⁶. If gender pay gap is present in all the sectors of public life, in a masculinized world such as sport it is even more prevalent. One of the reasons behind the gender pay gap in sport is that men's sports receive more media coverage, television licenses, and sponsorship deals, and these factors contribute to higher revenue, which explains why men athletes enjoy higher salaries (furthermore, men receive more money through endorsements and personal branding initiatives, making the sports pay gap even wider)³²⁷.

Additionally, the future for female athletes is even more uncertain with the economic crisis resulting from the COVID-19 outbreak³²⁸. Due to the slashed revenues, clubs, teams and other organizations may prioritize investments in "traditional" sports, meaning men's sports, with the excuse of this being more profitable in terms of audience, media coverage and sponsorships³²⁹. This may lead female athletes to face even more precarious contracts and conditions of training, salary cuts and, in the worst cases, the extinction of women's teams and leagues³³⁰. Moreover, due to the lack of contracts, the majority of sportswomen cannot access social protection measures provided by governments to the unemployed or benefit from union support³³¹. Due to social distancing measures, sports activities are

³²³ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 4.

³²⁴ ESPN's Website: https://www.espn.com/espnw/story/_/id/28971949/analysis-equal-pay-sports-really-means-fight-goes-us-women-soccer

³²⁵ *Ibid.*

³²⁶ *Ibid.*

³²⁷ Salary.com: <https://www.salary.com/articles/examining-the-gender-pay-gap-in-sports/>

³²⁸ THE UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *op.cit.*, p. 3.

³²⁹ *Ibid.*

³³⁰ THE UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *op.cit.*, p 3.

³³¹ THE UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *op.cit.*, p 3.

interrupted and many workers in the sector are not being paid, and women may be the first to be furloughed or fired when organizations cut staff, bringing women to be even more underrepresented³³².

2.4.4 Inequalities in coaching and leadership

Many scholars have reported several barriers to the inclusion of women in team leadership, including gender and racial stereotypes, homophobia, ageism, sexism, and gendered labor patterns within families³³³. An example of the discouragement of women out of coaching is the case of Kara Lawson, former WNBA player, brilliant basketball mind, and current ESPN commentator, who wanted to coach but she was denied the opportunity to learn by attending NBA trainings because she was considered a distraction to the male players³³⁴. This means that women's path in coaching and leadership positions is constrained by a set of discriminatory beliefs, policies, and practices³³⁵. It is important to have women coaches, because otherwise most girls will never have an opportunity to be coached by a female (and women coached by women are more likely to initiate a coach carrier themselves), because women coaches challenge stereotypes about gender and leadership, and because women coaches provide support to female players to navigate in a male-dominated context³³⁶. Also ageism is an element of discrimination, as men coaches in their 40s, 50s, and beyond are considered to be in their prime, while women coaches are often fired at the same age³³⁷.

Women should be included also in governance because they represent stakeholders who should be taken into consideration (in addition to the fact they will be seen as role models and symbols of opportunity for other women) and their inclusion increases the positive outcomes of the governance³³⁸. However, there is still a low level of representation of women in sport governance and management positions, and most senior positions in the governing bodies are held by men³³⁹.

³³² THE UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *op.cit.*, p 3.

³³³ N. M. LAVOI, *Women Want to Coach*, Contexts, Vol. 16, N. 3, Sage Publications, 2017, p. 15.

³³⁴ *Ibid.*

³³⁵ *Ibid.*

³³⁶ *Ivi*, p. 16.

³³⁷ *Ivi*, p. 17.

³³⁸ J. ADRIAANSE, *op.cit.*, p. 149-150.

³³⁹ *Ivi*, p. 150.

One way of preserving this gender suppression was through the practice of employing the “best person for the job” regardless of gender, with CEOs using the excuse of considering skills more important than gender³⁴⁰. Another way of maintaining gender suppression is the limitation by men directors of the participation and advice of women board members, which often leads women to resign³⁴¹. Gendered power relations and the way in which authority and control are exercised in sport organisations helps understand women's underrepresentation in sport governance, and this happens even though this leads to a loss of potential, to a negative impact on the organisation's performance, and to a loss of different perspectives and sensitivity to the issues³⁴². Indeed, the global average for women chairs in sport organisations is 10.8 percent (men occupy 89.2 percent of these positions) and the one for women chief executives is 16.3 percent (men hold the 83.7 percent)³⁴³.

Moreover, the provision of formal coach education excludes female coaches and tends to be dominated by men³⁴⁴. Coach education has been shown to have high levels of gender discrimination, inappropriate cultural practice, and a preference of male behaviours such as aggression and toughness³⁴⁵. Some examples of gender discrimination are the case of Richard Scudamore (the English Premier League chief of the Football Association), who was forced to apologise for exchanging inappropriate emails with colleagues; the case of Sepp Blatter (FIFA President), who was quoted in 2004 as saying “Let the women play in more feminine clothes like they do in volleyball. They could, for example, have tighter shorts” (BBC, 2004); and the case of Mike Newell (then manager of Luton Town FC 2003-2007), who questioned the presence of a women as the assistant referee, claiming that she should have not be there³⁴⁶. Women experience challenges and difficulties in the coach education systems, such as an intimidating and unconformable atmosphere, inappropriate sexual advances from the participants, the sexist nature of the coach

³⁴⁰ J. ADRIAANSE, *op.cit.*, p. 151.

³⁴¹ *Ibid.*

³⁴² *Ivi*, p. 151-157.

³⁴³ *Ivi*, p. 158.

³⁴⁴ H. J. ANDREWS, C. J. LEWIS and S. J. ROBERTS, 'Why am I putting myself through this?' *Women football coaches' experiences of the Football Association's coach education process*, Sport, Education and Society, Vol. 23, N. 1, 2018, available at <http://researchonline.ljmu.ac.uk/id/eprint/2426/1/Final%20Version%20-%20SES%20-%20Lewis%2C%20Roberts%20%26%20Andrews.pdf>, p. 2.

³⁴⁵ *Ivi*, p. 2-3.

³⁴⁶ *Ivi*, p. 4.

educators and male peers (for example, they receive degrading comments such as “lad”, “boy” or “fella”)³⁴⁷.

Although the exclusion of women from sporting decision-making structures has negative impacts on the advancement of gender equality and women's empowerment, sport organisations are still a dominantly male domain and women are underrepresented in administration, as officials, or coaches³⁴⁸. An example of men's exclusive control of sport can be seen in the total membership of the International Federation of Association Football (FIFA), which is the international governing body of association football and which comprises twenty-four members: all of them are men³⁴⁹.

If women were equally represented in the leadership and decision-making positions of sport organisations, they could develop policies to increase the number of women coaches, decision makers, officials and administrators, addressing the issues of inequalities in their participation and involvement in sport³⁵⁰. The UN (2007) acknowledged that more women in leadership and decision-making positions means more role models and mentors, which encourages women to participate at all levels of sport³⁵¹.

The underrepresentation of women in leadership and decision-making positions in sports organizations has further negative impacts in this period, because the process of assessing the impact of COVID-19 in sport and planning ways out of the crisis may exclude women and girls³⁵². Unless women participate in the creation of solutions and their input are heard, it is likely that their points of view will not be considered, nor their specific needs addressed³⁵³.

Since gender inequalities in coaching and leadership persist, women's presentation in sport governance remains a global issue³⁵⁴.

2.4.5 Discrimination by the media

³⁴⁷ H. J. ANDREWS, C. J. LEWIS and S. J. ROBERTS, *op.cit.*, p. 19.

³⁴⁸ N. WADESANGO, S. MACHINGAMBI, G. ASHU and REGIS CHIRESH, *op.cit.*, p. 62–63.

³⁴⁹ *Ivi*, p. 65.

³⁵⁰ *Ivi*, p. 69.

³⁵¹ *Ivi*, p. 70.

³⁵² THE UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *op.cit.*, p. 2.

³⁵³ *Ibid.*

³⁵⁴ J. ADRIAANSE, *op.cit.*, p. 159.

Another important dimension of VAW in sport which tends to be underestimated is the discrimination by the media, which reflects the patriarchal character and the sexist ideology of sport, from which derives the lack of representation of women's sports on television, newspapers and magazines and the sexist way in which female athletes are represented visually and linguistically³⁵⁵. Media impacts on the social and cultural norms relating to women, but at the same time women's image in the media is strongly influenced by existing social and cultural norms³⁵⁶. The first Conference of the Council of Europe Network of National Focal Points on Gender Equality Amsterdam, held in July 2013, concluded that media's representation of women and the related stereotypes are linked to VAW in everyday life, and that stereotypes and sexist representations violate women's human rights³⁵⁷. Also the UN's Beijing Platform and its subsequent Beijing +5 and Beijing +10 conferences focused on women's representation and leadership positions in the media, and the UN Convention on the Elimination of Discrimination Against Women stresses the need to eliminate discriminatory laws and practices that impede to reach gender equality and that media play a crucial role in combating VAW³⁵⁸. Article 1 of the CEDAW defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"³⁵⁹.

The stereotypes that are continuously perpetuated by the media may have discouraged women from playing sport, as usually the images of women in the media are sexist or physically unrealistic (often models who have never played sport), and qualities such as strength and power are represented in a negative light³⁶⁰. In the magazines, women athletes appear in nude calendars and product-sponsored sports clothing and uniforms, which seem to promote women as sex objects rather than athletes³⁶¹. An example of how it seems necessary to comment sportswomen's appearance is when sport commentators

³⁵⁵ S. J. BANDY, *op.cit.*, p. 249.

³⁵⁶ K. Sarikakis, *Media and the image of women*, Report of the 1st Conference of the Council of Europe Network of National Focal Points on Gender Equality, Council of Europe, November 2013, p. 3.

³⁵⁷ *Ibid.*

³⁵⁸ *Ivi*, p. 16.

³⁵⁹ UN, *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, GA res. 34/180, 18 December 1979.

³⁶⁰ A. MORRONE, *op.cit.*, p. 11.

³⁶¹ *Ivi*, p. 19.

discussed about the length of Serena William's tennis suit, and this is in sharp contrast with the way in which male sports celebrities are spoken about³⁶². The sexualized image of women in sport is linked to a larger issue of women's body image, and this affects the rates of participation of women and girls in sport, as it may create anxiety for the feeling of not measuring up to the "ideal" body and it may perpetuate sexist discrimination both within and outside the sporting environment³⁶³.

When it comes to Black women athletes, the media contributed even more to their marginalized participation in sport, as their almost nonexistent representation in the media explains their limited opportunity to access sport at the structural, political, and representational levels³⁶⁴. The fact that sport media supports the notions of racial supremacy and gendered behaviors and the fact that the system of sport media is a white male-dominated institution is disturbing, because due to the pervasiveness of mass media, it can influence what people think and how people interact³⁶⁵.

Conceptions of gender and gender bias are enacted and legitimated through sport media, which helps to maintain sport as a male domain and devalue female athletes³⁶⁶. The media perpetuate this masculine hegemony in sport through the lack of coverage of female athletes on television, radio and in print, and through stereotyping women athletes³⁶⁷. Often this is excused by the justification that the audience is not interested in women's sport because it is less skillful than men's sport, but the truth is that television producers are not willing to improve the technical quality of women's sport broadcasting (through better editing and camera work, and the use of statistics and replays), or actively build an audience and, consequently, government funding or corporate sponsorship are unlikely to be achieved³⁶⁸.

Some of the elements that emerge from the visual depiction of female athletes are the sexualization of the female body, which occurs by photographing female athletes in provocative or submissive poses and dress, or highlighting the markers of femininity, and the emphasis on heterosexual femininity, which derives from the expectation that

³⁶² A. MORRONE, *op.cit.*, p. 19.

³⁶³ *Ibid.*

³⁶⁴ A. R. CARTER-FRANCIQUE, M. RICHARDSON, *op.cit.*, p. 7.

³⁶⁵ *Ivi*, p. 9-11.

³⁶⁶ K. TOFFOLETTI, *How is Gender-based Violence Covered in the Sporting News? An Account of the Australian Football League Sex Scandal*, *Women's Studies International Forum*, Vol. 30, Issue 5, 2007, p. 428.

³⁶⁷ *Ibid.*

³⁶⁸ *Ibid.*

sportswomen, already seen as deviant, should at least conform to prevailing standards of heterosexual attractiveness, in order to maintain the status quo³⁶⁹.

Another means by which sport media maintain gender hierarchies is through written word and broadcast commentary: it has been shown that the achievements of women athletes are denigrated and devalued in media accounts, which usually refer to them with terminologies such as “unfeminine”, “butch”, “lesbian”, “second rate men” or, alternatively, with infantile terms like “girls”; moreover, sport commentators often underly sportswomen’s role in the family as wife or mother, or make comments on their physical appearance³⁷⁰. Even the UN (2007) acknowledged that the media both marginalizes women's sport and also presents it in a style that reflects and reinforces gender stereotypes³⁷¹. Media sport coverage focuses on women’s attractiveness or grace instead of power or skill, and feminine traits such as beauty and grace are emphasized, also through the language (for example “ladies”, “America’s next sweetheart”, “tennis’s next pin-up girl”)³⁷².

The gender discrimination by sport media affects sponsorship, ticket sales, and other financial sources of access to training; indeed, female athletes receive relatively 4 percent of media coverage in masculine sports, rising to 24 percent coverage in more feminine sports³⁷³.

Some examples of sport media highlighting sportswomen role in the family or their heterosexuality are the Canadian speed skater Catrina LeMay Doan’s ad, which shows her in a skating suit while she is prominently wearing makeup and displaying her wedding ring, or Time magazine’s image of Florence Delorez Griffith Joyner (ranked the fastest runner of all time in the 1980s), which shows her from behind, bent over at the runner’s starting gate with a view between her hamstrings of her glittered long fingernails³⁷⁴.

An interesting case is the one of women basketball in Israel (the only recognized women’s professional sport in the country): the sport gained momentum in the 1990s, when it managed to have unprecedented media coverage, with a peak in 1999, when the Ramat Hasharon team reached the finals of the European Roncetti Cup; this results from several

³⁶⁹ K. TOFFOLETTI, *op.cit.*, p. 429.

³⁷⁰ *Ibid.*

³⁷¹ N. WADESANGO, S. MACHINGAMBI, G. ASHU and REGIS CHIRESH, *op.cit.*, p. 67-68.

³⁷² S. BURROW, *op.cit.*, p. 71.

³⁷³ *Ivi*, p. 75.

³⁷⁴ *Ivi*, p. 82.

years of struggle by the Ramat Hasharon team and the people around it, who have been leading a feminist struggle for women's basketball and women's sport, but they had to wait an international success in order to gain media coverage³⁷⁵. In this context, in June 2004, the Supreme Court issued a verdict concerning the petition filed by the Women's Basketball Association and the Ramat Hasharon Women's Basketball Team, with regard to funding for women's sports³⁷⁶. Justice Eliezer Rivlin highlighted the general bias regarding women's sport, and the court ruled that local councils must allocate 50 percent more funding for female team sports than for male teams³⁷⁷. However, two years after Ramat Hasharon's achievements in the Roncetti Cup, in the 2001/2002 season, among the basketball items published by the national daily newspaper Yedioth Ahronoth only 13.1 percent dealt with the women's league, and in the majority of cases it was just a brief mention³⁷⁸.

Now, with the Covid-19 pandemic, the situation risks worsening: championships, big leagues and the Tokyo 2020 Olympic Games are postponed, but when they will resume, there will be an intense sports calendar and women's events risk to clash with men's, and probably sport media will prefer to cover men's sports, as they guarantee more audience and media attention³⁷⁹. In addition, the crisis may erode women's sponsorship opportunities because sponsors have been deeply hit, and this may lead them to invest limited resources in women's sports³⁸⁰.

2.4.6 Violence against young girl athletes

There is extensive evidence on the benefits of sport on children; among them there are the use of developmentally positive relationships, the development of a sense of responsibility and accountability, increased confidence and character, health, social cohesion, and higher academic and occupational achievement³⁸¹. All of these elements can influence and change the paradigms related to masculinity and aggression in sport³⁸². The United Nations Children's Fund (UNICEF) has long recognized the positive effects of sport in children and, in line with the Convention on the Rights of the Child, it has been

³⁷⁵ A. BERNSTEIN and Y. GALILY, *op.cit.*, p. 188.

³⁷⁶ *Ivi*, p. 188-189.

³⁷⁷ *Ivi*, p. 189.

³⁷⁸ *Ibid.*

³⁷⁹ THE UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *op.cit.*, p. 3.

³⁸⁰ *Ivi*, p. 4.

³⁸¹ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 14.

³⁸² *Ibid.*

a strong advocate of children's right to leisure and play³⁸³. However, recently, it has been acknowledged that sport is not always a safe environment for children, especially for young girl athletes, as violence and abuses occur³⁸⁴. UNICEF and other organizations like Right to Play International and Sports for Development and Peace are including non-discrimination and the inclusion of girls and children with disabilities in sport in their work towards the fulfilment of children's rights³⁸⁵. Indeed, in 2007 the Consensus Statement on Sexual Harassment and Abuse in Sport was adopted by the Committee's Executive Board and, the same year, the UNICEF Innocenti Research Centre hosted a meeting on sport and violence after which it decided to engage in a study on violence against children in sport³⁸⁶.

In 2006, the World Report on Violence against Children was published, which was conducted by the human rights lawyer Paulo Sérgio Pinheiro and supported by the Office of the UN High Commissioner for Human Rights, UNICEF and the WHO; but, even though the report was considered the first attempt to describe all forms of violence against children, very little information about violence against children in sport was provided³⁸⁷. It is only by studying the phenomenon of violence against children and especially young girl athletes that sport can be used and enjoyed properly, considering that every child has the right to play safely.

Even though the Convention on the Rights of the Child establishes that every person under 18 years is entitled of a full range of human rights and protection (including in the sport context), legal and sporting age definitions do not always correspond in different countries, and due to the fact that some sporting careers peak during childhood, the distinction between an adult and a child is often confused in sport³⁸⁸. While in some sports female athletes reach the highest levels when they are adult, in others young girls reach their peak when they are 12 or 13. When young girls athletes are already talented and perform at a high level, they may be given adult responsibilities and treated as adults, or others may expect them to behave as if they were above the age of consent³⁸⁹. However, the Convention on the Rights of the Child establishes that "States Parties recognize the

³⁸³ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. vii.

³⁸⁴ *Ibid.*

³⁸⁵ *Ivi*, p. 1.

³⁸⁶ *Ivi*, p. 3.

³⁸⁷ *Ibid.*

³⁸⁸ *Ivi*, p. 4.

³⁸⁹ *Ibid.*

right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts” (art. 31, para. 1)³⁹⁰. The Convention requires states to “encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity” (art. 31, para. 2). Also the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, has requested specific attention to the sexual exploitation of children in sports, characterized as rife, pervasive and widespread, and unchecked³⁹¹.

But the ‘winning at all costs’ ethos is more and more replacing the involvement in sport for pleasure and satisfaction, with preferences for professionalism and for sport regimes that are controlled by adults aiming to maximize success, overshadowing the pressure that is put on child athletes and the impairment of their rights (an example of the elite child athlete is represented by the 14-year-old Nadia Comaneci in the gymnastics competition during the 1976 Olympic games)³⁹². There is evidence of overtraining, abuse, burnout, dropout and exploitation of young girl athletes, with coaching regarding them as athletes first and children second³⁹³. However, researches on violence against young girl athletes is limited, also because child are unlikely to report problems, due to the inferior power they have if compared to adults. Young girl athletes may be subjected to violence if they do not comply with the wishes of sport authority figures and they are vulnerable to different types of violence that range from bullying to sexual abuse and commercial trafficking³⁹⁴.

Bullying in sport may occur with those who are perceived as “different”, with insulting comments, name-calling, gestures, humiliating, excluding, or refusing to work with others because of differences such as gender, sexual orientation, religion or ethnicity³⁹⁵. There are also concerns about physical violence in sport, which can be related, for example, to injury or death associated with physical preparation, or to the treatment of child athletes by overzealous parents or coaches³⁹⁶. For instance, elite girl runners in

³⁹⁰ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, available at <https://www.refworld.org/docid/3ae6b38f0.html>, p. 9.

³⁹¹ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 3.

³⁹² C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 5.

³⁹³ *Ibid.*

³⁹⁴ *Ivi*, p. 9.

³⁹⁵ *Ibid.*

³⁹⁶ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 10.

China have been reported to be subjected to regular beatings, verbal abuse and other exploitative practices by their coaches³⁹⁷. Coaches can also impose practices to ‘meet weight’ (including food and fluid deprivation, long exposures to saunas and other devices promoting sweating, use of cathartics and prolonged physical exertion), which can result in serious physical illness and even death, or in eating disorders and in the absence of menstruation³⁹⁸.

There is evidence of emotional abuse of young girl athletes, also considering that some form of psychological harm is involved in all physical and sexual violence, and even in insults, name-calling, isolation, rejection, and threats³⁹⁹. Moreover, the attachment of young girl athletes to their parents can create the desire to please, and with the projection of parents’ aspirations onto their children (mostly when success means visibility and commercial rewards), young athletes may be pressured to train harder, often causing emotional harm⁴⁰⁰.

After years of denial, sport organizations have recognized the need to address the issue of sexual violence against children in sport, and have started to publish some data: a study in Denmark found that nearly the 25 percent of sport students either knew about or had experienced sexual harassment by a coach when they were under 18; a study in Canada showed that the 2.6 percent of athletes experienced unwanted sexual touching when they were less than 16 years old; and data from Australia indicate that rates of sexual violence against children in sport may reach the 8 percent⁴⁰¹. Usually the perpetrators of sexual violence against children in sport are authority figures, particularly coaches (the majority of studies found male coaches to be guilty of abusing underage female athletes), but also team doctors, physiotherapists, trainers and counsellors, and sometimes even peers or teammates⁴⁰².

Some instances of harmful practices against young girl athletes can be found in the complaint of harassment and sexual exploitation from the manager of an Indian women’s cricket team against several women players (who also accused him of sending lewd SMSs), or in the case of an eight year-old girl who ran over 2,000 miles to celebrate the

³⁹⁷ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 10.

³⁹⁸ *Ibid.*

³⁹⁹ *Ibid.*

⁴⁰⁰ *Ivi*, p. 11.

⁴⁰¹ *Ivi*, p. 13.

⁴⁰² *Ibid.*

2008 Olympics (her father was accused of child abuse, but he denied the claims, with the excuse that the girl never said to be tired), or the case of the Israeli instructor who was sentenced to fourteen years in prison by the Nazareth District Court for abusing the children he had been instructing (the indictment included thirteen counts of sexual and physical abuse against eleven children)⁴⁰³.

Despite the national and international human rights framework highlighting the importance of participation rights, violence against young girl athletes is ignored.

2.4.7 Intersectionality means more discrimination

“Intersectionality” refers to the consideration of how people experience multiple, intersecting forms of oppression and discrimination⁴⁰⁴. The term was coined by the activist Kimberlé Crenshaw in the late 1980s, referring to the conditions of Black women in US society⁴⁰⁵. The CEDAW Committee, in the GR No. 35, acknowledged that “because women experience varying and intersecting forms of discrimination,” VAW “may affect some women to different degrees, or in different ways, so appropriate legal and policy responses are needed”⁴⁰⁶. In 2000, the Committee on the Elimination of Racial Discrimination issued a GR on the gender-related dimensions of racial discrimination which asserts that racial discrimination does not always affect women and men equally or in the same way⁴⁰⁷. The SP on contemporary forms of racism, racial discrimination, xenophobia and related intolerance identified race as a gatekeeper for elite sport⁴⁰⁸.

Black women in society are placed on the margins, with limited access to participation and professional engagement, besides negative media stereotypes; this is reflected in the sport world, in which Black women are devalued and encounter hindrances due to the intersection of their race and gender, but also social class and sexual orientation⁴⁰⁹. Black athletes are heavily underrepresented due to the participation cost, access, and availability of sports at the youth and high school levels, as they may have grown up in poor socioeconomic areas where they could get limited economic resources and have limited

⁴⁰³ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 8.

⁴⁰⁴ R. LISTON, S. MORTIMER, G. HAMILTON and R. CAMERON, *op.cit.*, p. 9.

⁴⁰⁵ S. DE VIDO, *Violence Against Women's Health in International Law op.cit.*, p. 143.

⁴⁰⁶ GR No. 35 (CEDAW), para. 12.

⁴⁰⁷ CERD, General Recommendation No. 25: Gender-Related Dimensions of Racial Discrimination, para. 1.

⁴⁰⁸ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 4.

⁴⁰⁹ A. R. CARTER-FRANCIQUE, M. RICHARDSON, *op.cit.*, p. 12-14.

choices for sports participation⁴¹⁰. Black women are marginalized also in the media: for example, between 1954 and 1987, Black women received less sport media coverage than their Black male and White female counterparts, with just 16 articles out of 3,723 in Sports Illustrated magazine⁴¹¹. The US gold medalists from the 1960 Rome Olympics, Wilma Rudolph, who was among the first Black female athletes to receive international media coverage, was nicknamed “La Gazzella Negra” by the Italian media, which seemed to devalue her successes⁴¹². The successes of the American tennis players Serena and Venus Williams, who challenged men’s game by demonstrating power and force, were depicted by sport media in essentialist terms as the result of “natural” Black athleticism, which denies excellence in traits such as intelligence and tactical judgment⁴¹³.

Moreover, televised announcing in college basketball is full of racial and gender biases: Black women receive less commentary by announcers than White women and less performance agreement than their White female counterparts⁴¹⁴. Oppression based on the race, gender, and social class can become an obstacle to access and participate in sport, and this is reflected in sport media, which are overwhelmingly dominated by White men and which marginalize Black women through its narratives, imagery, and lack of Black female representatives (like editors, columnists) in the industry⁴¹⁵.

A case of gender and race discrimination in sport is the one of Black women in tennis during the apartheid era in South Africa. They faced barriers like poor and insufficient facilities, poor or no coaching, and the institutionalized poverty and racial discrimination that characterized this period, which constrained their involvement in the sport⁴¹⁶. The exclusive White membership the early tennis clubs forced Black people to form separate clubs in urban areas in the 1880s and 1890s, but African women’s participation in sport was circumscribed by notions of femininity and what constituted an “acceptable” sport for women (and, anyway, sport for African women was never organized in the same extent as men's ones)⁴¹⁷. Traditions of racial segregation and apartheid legislation were

⁴¹⁰ A. R. CARTER-FRANCIQUE, M. RICHARDSON, *op.cit.*, p. 18.

⁴¹¹ *Ivi.*, p. 21.

⁴¹² *Ivi.*, p. 22.

⁴¹³ S. BURROW, A. R. CARTER-FRANCIQUE, M. RICHARDSON, *op.cit.*, p. p. 74.

⁴¹⁴ A. R. CARTER-FRANCIQUE, M. RICHARDSON, A. R. CARTER-FRANCIQUE, M. RICHARDSON, *op.cit.*, p. p. 24.

⁴¹⁵ *Ivi.*, p. 28.

⁴¹⁶ F. KHAN, *Anyone for Tennis? Conversations with Black Women Involved in Tennis during the Apartheid Era*, Agenda: Empowering Women for Gender Equity, N. 85, Taylor & Francis Ltd, 2010, p. 76.

⁴¹⁷ *Ivi.*, p. 77.

used by the government to establish a system of separate, unequal facilities for Black communities; thus, while mainstream tennis bloomed, tennis played by Black communities remained in the periphery, and it was prevented to participate at top level competitions⁴¹⁸. From 1970s, the government started to take small reformist measures in its implementation of apartheid sport, but the South African Council on Sport rejected them, leading to a decrease in the rates of participation in the sport among Black communities, also caused by the financial and infrastructural inadequacies in the tennis sector⁴¹⁹. Hence, Black female players had to face barriers such as the lack of a safe environment, the fear of violence, financial constraints, which made their participation very limited, and, where participation took place, it was limited to middle-class women⁴²⁰.

Even the culture and traditions of some communities can represent a barrier. In Zimbabwe, for example, issues of gender socialization, morals-Hunhu/Ubuntu (according to which the quality of being human manifests itself through various human acts), myths about participation in sport resulting in loss of virginity and sterility (which hold that women that practice sport will have their reproductive organs damaged) have a negative impact on the participation of girls and women in sport⁴²¹. The traditional African Shona society (the dominant group in Zimbabwe) views females as gatekeepers of cultural values and believes that their place is in the home, doing domestic works as preparation for marriage (for which the loss of virginity and infertility are regarded as serious issues)⁴²². Thus, society's stereotypical beliefs, norms, values, and cultural practices hinder female from engaging in sport, as girls and women choose to avoid playing sports because they fear penalties later in life⁴²³.

The intersection between gender and sexual orientation and/or gender identity is another important dimension of VAW in sport. In the sport environment, discrimination in “gender appropriate” performances, masculine-feminine division, the toleration of “anti-gay” epithets and coach/athlete selections based on heterosexual identity have been

⁴¹⁸ F. KHAN, *op.cit.*, p. 78.

⁴¹⁹ *Ivi*, p. 79-81.

⁴²⁰ *Ibid.*

⁴²¹ J. MUDEKUNYE, *Culture and Participation in Physical Education and Sport: The Case of Tertiary Female Students in Masvingo, Zimbabwe*, *Africology: The Journal of Pan African Studies*, Vol. 11, N. 8, June 2018, available at <https://www.jpanafrican.org/docs/vol11no8/11.8-10-JanetM.pdf>, p. 221.1.

⁴²² *Ibid.*

⁴²³ *Ivi*, p. 221.2-221.7.

demonstrated to occur⁴²⁴. Homophobia often takes the shape of bullying: a study of 1,860 students showed that 2.1 percent had experienced homophobic bullying, 3.1 percent were perpetrators of it and 14.7 percent witnessed it, all in the sport context⁴²⁵. Because of their sexual orientation or gender identity, women all over the world experience violence, harassment, discrimination, exclusion, stigmatization and prejudice, which makes LGBT athletes hesitating when they would like to declare themselves⁴²⁶. Among the most widely reported forms of discrimination there are verbal harassment, physical violence and exclusion, and in addition, homophobia can intersect with other forms of harassment, such as discrimination against persons with disabilities, racism and sexism⁴²⁷. LGBT athletes are vulnerable to forms of homophobic abuse such as being subjected to homophobic taunts and forced into homosexual sexual activities in initiation and hazing rituals, experiencing peer violence or stigmatization being subjected to direct discriminatory practices in sport organizations, experiencing financial discrimination, and discrimination by the media⁴²⁸. Homophobia is one of the reasons that explain the limitation of women's representation in sports, as this lesbian fear and/or intolerance contributes to continuous institutionalization of sexism, discrimination and prejudice against women, and to the difficulty in attaining coaching and leadership positions in sports⁴²⁹. Also queer women encounter hostile sport environments, as heterosexism prevent many women from entrance and participation in sport, regardless of their real sexual identity, and defying these norms of heterosexuality would mean to be subjected to harms associated with prejudices against sexuality⁴³⁰. Women's heterosexuality is questioned especially if they participate in "masculine" sports, resulting in a lesbian stigma that subjects women athletes to prejudicial or discriminatory homophobic behaviours⁴³¹. Women who appear "too masculine" are further stigmatized as queer, and this label makes them more vulnerable to sexual assault by other athletes, coaches, and managers; in order to avoid these harms, women athletes accentuate femininity and hide masculine traits⁴³². In addition, women who are stigmatized may have reduced options to

⁴²⁴ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, A. R. CARTER-FRANCIQUE, M. RICHARDSON, *op.cit.*, p. 14.

⁴²⁵ *Ibid.*

⁴²⁶ *Ibid.*

⁴²⁷ *Ivi*, p. 15.

⁴²⁸ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 15.

⁴²⁹ N. WADESANGO, S. MACHINGAMBI, G. ASHU and REGIS CHIRESH, *op.cit.*, p. 64.

⁴³⁰ S. BURROW, *op.cit.*, p. 78.

⁴³¹ *Ibid.*

⁴³² *Ibid.*

compete while tests ascertain if they are actually women; this is the case of Caster Semenya, a South African runner and 2016 Olympic gold medalist, who was suspended between 2009 and 2010 while the International Association of Athletic Federations performed drug tests and gender tests (which rely on sex testing or testing biological features)⁴³³. But if sport organizations excluded people with genetic advantages, then Olympic swimmers Michael Phelps and Ian Thorpe should be precluded to participate, as the first has the Marfan's syndrome, resulting in abnormally long arms, and the second has uncommon large feet: this is to say that genetic differences do not justify the exclusion from sport⁴³⁴. Claims of unfair advantages of trans athletes (who compete in the sex category matching their gender identity and opposite to that assigned at birth) derive from gender normativity biases⁴³⁵.

In the 1990s, the IOC and the IAAF (International Association of Athletics Federations) decided to stop mandatory sex testing of all women and reverted to suspicion-driven testing that targeted women who were perceived as too masculine⁴³⁶. In 2011, the IAAF changed the eligibility rules of women with "hyperandrogenism", restricting the permissible amount of naturally occurring testosterone in female athletes, and requiring them to undergo interventions to lower their testosterone (then the IOC has issued its own version of such regulations)⁴³⁷. However, in 2015, the Court of Arbitration for Sport suspended the IAAF hyperandrogenism regulations on the basis that they were unjustifiably discriminatory, as there was no evidence that hyperandrogenic females have performance advantages (the Court gave two years to the IAAF in order to find additional evidence, failing which the regulations would become void)⁴³⁸. In 2018 the IAAF emanated new eligibility regulations, including variations in sex characteristics to reduce the blood testosterone, which apply only to women with particular variations in sex characteristics⁴³⁹. Three UN human rights experts sent a letter to the Court of Arbitration for Sport related to the 2018 IAAF regulations, raising concerns about the harms related to the new regulations (for example, it seems that women need to be "fixed" through

⁴³³ S. BURROW, *op.cit.*, p. 78.

⁴³⁴ *Ivi*, p. 79.

⁴³⁵ S. TEETZEL, *Transgender Eligibility Policies in Sport: Science, Ethics, and Evidence*, Reflecting on Modern Sport in Ancient Olympia: Proceedings of the 2016 Meeting of the International Association for the Philosophy of Sport at the International Olympic Academy, Parnassos Press – Fonte Aretusa, 2017, p. 161.

⁴³⁶ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 8.

⁴³⁷ *Ibid.*

⁴³⁸ *Ibid.*

⁴³⁹ *Ibid.*

medically interventions with negative health impacts)⁴⁴⁰. Female eligibility regulations deny athletes with variations in sex characteristics an equal right to participate in sports, violates the right to non-discrimination and violate the enjoyment of a set of rights: the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment; the right to work and to the enjoyment of just and favourable conditions of work; the right to the highest attainable standard of physical and mental health; the right to sexual and reproductive health; the right of everyone to be free from arbitrary interference with their privacy; the right to respect for the dignity, bodily integrity and bodily autonomy of the person⁴⁴¹. However, these requirements are a considerable improvement from the IOC's compulsory surgical intervention (which required trans women to remove the testicles, although there was no evidence supporting this intervention as necessary), following the recognition of the problems related to accessibility, expenses, and the risks surgery poses⁴⁴². Researchers noted that even for the requirement to consume hormones there is not enough evidence to either confirm or refute the practice⁴⁴³. There are so many ways in which athletes can gain performance advantages (from over 100 genes to the best coaches and high-tech training gyms) that the testosterone requirement cannot explain the exclusion of trans women⁴⁴⁴.

The intersection between gender discrimination and the discrimination of people with disabilities is another problem of the world of sport. The participation in sport of women with disabilities is a recognition of their fundamental rights and freedoms, and the framework for their protection is given by the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of Persons with Disabilities⁴⁴⁵. Athletes with disabilities can be vulnerable also because of poverty, ill health, infection or injury, lack of safe housing, lack of education, lack of supervision or parenting, or discrimination on the basis of sex, race, sexual orientation, religion, language or a past history of abuse⁴⁴⁶. The relation between the difficulties of people with disabilities and violence in sport needs to be studied in a deeper way, as experts acknowledged that people with disabilities are about four times more likely to be victimized than people without

⁴⁴⁰ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 8.

⁴⁴¹ *Ivi*, p. 8-9.

⁴⁴² S. TEETZEL, *op.cit.*, p. 163.

⁴⁴³ *Ivi*, p. 164.

⁴⁴⁴ *Ivi*, p. 168.

⁴⁴⁵ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 12.

⁴⁴⁶ *Ibid.*

disabilities, and those with intellectual impairments are at the highest risk (risks like physical handling, drug testing, inappropriate touching)⁴⁴⁷. There are too few studies on the connection between disabilities, sport and vulnerability to sexual harassment and abuse, although women have been found to be more vulnerable than boys⁴⁴⁸.

⁴⁴⁷ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 12.

⁴⁴⁸ *Ibid.*

CHAPTER 3: THE INTERNATIONAL AND EUROPEAN LEGAL AND POLICY FRAMEWORK OF VIOLENCE AGAINST WOMEN IN SPORT

3.1 Sports law

Sports law is the set of laws that regulate sports and the athletes; it is not a single legal topic, but it comprehends a variety of domains, including contract, tort, antitrust, labor, sex discrimination, criminal and tax issues⁴⁴⁹. Some laws are applied depending on the status of the athlete, some differ according to the sport, while some others vary for other reasons⁴⁵⁰. For the purpose of my analysis I will not go into details, but I will provide some general information on the international sport order, the justice system in sport, and on the European sports law.

Sport has become increasingly globalized over the years, and this has shifted regulatory control towards private, non-profit and transnational sport governing bodies, whose rules are implemented worldwide⁴⁵¹. The IOC, pursuant to the Olympic Charter, exercises authority over international federations, national Olympic committees and organizing committees of the Olympic Games; then, each international federation has a statute which makes rules binding for national federations and for national Olympic committees, whose participation in international competitions is jeopardized if they fail to comply with the rules of the international federation or of the IOC⁴⁵².

Because states have an interest in having their athletes competing at international levels, they acquiesce to the regulatory “autonomy of sport”; in some states this can be seen by the absence of legislation governing national federations, while in other states this is evidenced by the adoption of a legislation which recognizes the authority of international sport governing bodies over national federations and national Olympic committees⁴⁵³.

Sometimes athletes may be able to make claims related to human rights against sport bodies before domestic courts, but these courts have jurisdiction only over their national federations and national Olympic committees (not over international federations and the

⁴⁴⁹ The Free Dictionary’s Website: <https://legal-dictionary.thefreedictionary.com/sports+law>

⁴⁵⁰ *Ibid.*

⁴⁵¹ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 11.

⁴⁵² *Ibid.*

⁴⁵³ *Ibid.*

IOC)⁴⁵⁴. It follows that domestic courts can provide only domestic remedies (like prohibiting the application of discriminatory international rules at national competitions), but this may put national sport between two opposing forces, the order of the domestic court and the rule of an international federation, which may jeopardize the participation of athletes in international competitions⁴⁵⁵.

The sport system is a sectoral legal system whose autonomy is articulated by the international sport system headed by the IOC; consequently, national sport systems have to adapt to the principles of the international sport system and follow the policies of the IOC⁴⁵⁶. But generally national sport systems are subjected to the supremacy of national governments, so they have to conform also to national laws: for example, in Italy, CONI establishes its organization and the one of national federations, but its norms are valid and legitimate only if they are in compliance with the regulations of the international sport system and with the national laws⁴⁵⁷.

3.1.1 The international sport order

There exists an international sport order, but it is not regulated by treaties or other classic sources of law, except for some specific cases: the 1981 Nairobi Treaty on the Protection of the Olympic Symbol, which has recognized to the IOC the exclusive right to exploitation of the Olympic symbol; the International Convention against apartheid in sports, adopted by the UN General Assembly in 1985, which prohibits to state parties to have sport-related relationships with states in which there is an apartheid regime; the Anti-Doping Convention, adopted in 1989 by the Council of Europe; the 2000 Nice Declaration on Sport by the European Council, which recognized the special characteristics of European sport⁴⁵⁸.

The legal framework of sport activities has been characterized by an international dimension since the beginning, with its origins in the 19th century, and it has been increasingly shaped by a complex variety of forms organized with a pyramidal structure⁴⁵⁹. National sport systems are almost unanimously qualified as proper legal

⁴⁵⁴ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 11.

⁴⁵⁵ *Ibid.*

⁴⁵⁶ G. VALORI, *op.cit.*, p. 7.

⁴⁵⁷ *Ivi*, p. 8.

⁴⁵⁸ S. BASTIANON, F. BESTAGNO, S. M. CARBONE, M. COCCIA, A. COMBA, C. DORDI, L. FUMAGALLI, C. GARBARINO, B. NASCIMBENE, R. SAPIENZA and M. VELLANO, *Diritto Internazionale dello Sport*, G. Giappichelli Editore – Torino, 2005, p. 5.

⁴⁵⁹ *Ibid.*

systems with a high degree of autonomy⁴⁶⁰. There are very few international conventions of sports law, and the norms that regulate the sport activities can be found mainly in the statutes of the IOC and of the international federations, which are private law associations⁴⁶¹. The degree of autonomy enjoyed by the sport associations varies according to the will of the state to govern in a tough or soft way the organization of sport activities (generally, in liberal states like Great Britain there is a tendency of non-intervention in topics related to sport, while in other states, like France, there is a stricter regulation of national sport federations, of their characteristics and their activities)⁴⁶².

In sports law, the modality of norms elaboration is strongly centralized: at the top of the pyramidal structure of the sport system there is the IOC, which acts in accordance with the Olympic Charter and upon which national Olympic committees depend⁴⁶³. The international federations, which have to organize the competitions in which the athletes of the affiliated national federations participate (except for the Olympic Games, for which the IOC has the exclusive organizational authority), are subjected to a sort of control by the IOC and, in turn, these international federations have the authority to supervise the activities of the national federations⁴⁶⁴.

Even though the transnational activity of non-governmental organizations is usually characterized by uncertainties, it is possible to identify the private nature of sport federations and their status as a legal person only for the internal legal systems. But although formally sport federations have no legal personality beyond the national borders and the borders of national legal systems, going beyond the formal level, international federations act as real legal persons of international law⁴⁶⁵. Sometimes international federations may even place themselves at the same level of states: an example is the elaboration of a “sport citizenship” completely detached from state regulations, or the ability to oblige states to modify their legislation with the threat of exclusion of the athletes or of the national federation from international competitions⁴⁶⁶.

⁴⁶⁰ S. BASTIANON, F. BESTAGNO, S. M. CARBONE, M. COCCIA, A. COMBA, C. DORDI, L. FUMAGALLI, C. GARBARINO, B. NASCIMBENE, R. SAPIENZA and M. VELLANO, *op.cit.*, p. 73.

⁴⁶¹ *Ibid.*

⁴⁶² *Ibid.*

⁴⁶³ *Ivi*, p. 74.

⁴⁶⁴ *Ibid.*

⁴⁶⁵ *Ivi*, p. 102.

⁴⁶⁶ *Ibid.*

Focusing on the IOC, which, as already said, is at the top of the pyramidal structure of the sport system, it was founded on 23rd June 1864, at the end of the work of the 1894 Congress for the Re-establishment of the Olympic Games (16-24 June 1864), with the objective of organizing the modern Olympic Games and making the essence of pacific competition and meeting among athletes and populations of different countries regaining strength⁴⁶⁷. According to the Olympic Charter, the IOC is “an international non-governmental not-for-profit organisation, of unlimited duration, in the form of an association with the status of a legal person, recognised by the Swiss Federal Council” (rule no. 15). It has its base in in Lausanne, Switzerland. The IOC goes beyond the national borders and it carries out its activity with reference to a global network of relations with other actors. The IOC has to lead the Olympic Movement in accordance with the Olympic Charter and its decisions are final: any dispute related to their application or interpretation can be resolved only by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport⁴⁶⁸. As the leader of the Olympic Movement, the IOC acts as a catalyst for collaboration between all parties of the Olympic movement (from the National Olympic Committees, the International Sports Federations, the athletes and the Organizing Committee for the Olympic Games to the Worldwide Olympic Partners, broadcast partners and UN agencies), and it ensures the regular celebration of the Olympic Games, supports all affiliated member organisations of the Olympic Movement and encourages the promotion of the Olympic values⁴⁶⁹.

3.1.2 Justice system in sport

In every economic and social environment, for the norms that constitute the system and that regulate its functioning to be effective, the existence of a mechanism of control and of guarantee of compliance of these rules by the actors that are part of the system is necessary⁴⁷⁰.

In the international sport world, a special attention is paid not only to the definition of the rules that regulate the competitions and the structure and functioning of the sport organisations, but also to the ways of the resolution of conflicts related to the sporting

⁴⁶⁷ G. VALORI, *op.cit.*, p. 11.

⁴⁶⁸ INTERNATIONAL OLYMPIC COMMITTEE. (1982). *Olympic charter, 1983*. Lausanne, Comité International Olympique.

⁴⁶⁹ Olympic.org's Website: <https://www.olympic.org/about-ioc-olympic-movement>

⁴⁷⁰ L. COLANTUONI, *Diritto Sportivo*, G. Giappichelli Editore – Torino, 2nd edition, 2020, p. 682.

phenomenon⁴⁷¹. Indeed, the sport is characterized by rules which are applied without borders (for example, the game of football has the same rules in every country of the world). Even Italian law recognizes that domestic rules related to sport derive from a wider system: law no. 220 of 19 August 2003 admits that the Republic recognizes and favours the autonomy of the national sport system as part of the international sport system⁴⁷².

In this context, a key role is played by the Court of Arbitration for Sport (CAS). The CAS can provide a method of resolution of disputes related to the sport system which can be considered as equivalent or substitutive to the exercise of the national judicial functioning⁴⁷³. The necessity to have a sport judicial system arises from the possibility that conflicts could emerge in relation to every norm that regulates the sport system and which can involve every actor that participates directly or indirectly to the organization or to the performance of the sporting phenomenon⁴⁷⁴. The CAS was created by the IOC in 1983 and it started to operate in 1984. The CAS system is based on Code of Sports-related Arbitration (adopted in 1994), which established its responsibility of resolving disputes arising in the context of sport by arbitration and/or mediation, and which established its organization: the CAS is composed by three divisions (the Ordinary Arbitration Division, the Antidoping Division and the Appeals Arbitration Division)⁴⁷⁵. The Code of Sports-related Arbitration regulates the organization of the bodies that contribute to the resolution of sports-related disputes and it contains procedural provisions⁴⁷⁶.

With the Code, another judicial body was established: the International Council of Arbitration for Sport (ICAS). The ICAS is composed by twenty members allocated in three categories: there are the organizational functions (like the adoption and the amendment of the Code or the appointment of the presidents of the CAS), financial functions (it is responsible for the financing of and financial reporting by CAS), and judicial functions (in particular when it decides the challenge or defeasance of the

⁴⁷¹ L. COLANTUONI, *op.cit.*, p. 682.

⁴⁷² *Ivi*, p. 683.

⁴⁷³ *Ibid.*

⁴⁷⁴ *Ivi*, p. 118.

⁴⁷⁵ *Ivi*, p. 124.

⁴⁷⁶ *Ivi*, p. 684.

arbitrators)⁴⁷⁷. Instead, the CAS is responsible to: resolve the disputes referred to them through ordinary arbitration; resolve anti-doping-related matters as a first-instance authority or as a sole instance; resolve through the appeals arbitration procedure disputes concerning the decisions of federations, associations or other sports-related bodies, insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide; resolve the disputes that are referred to them through mediation (art. S12, comma 1).

The fact that the Olympic Charter and the statutes of most international federations provide for the internal resolution of disputes, with appeals permitted exclusively to the CAS, means that the global sports system are protected from regulation by national legal systems, in which human rights are usually protected⁴⁷⁸. The regulations and the statutes of sport organizations do not include human rights norms and standards as binding sources of law for adjudication, and the Olympic Charter and the statutes of many international federations, even though including a commitment to non-discrimination, do not contain a wider commitment to respecting the full range of human rights of the athletes⁴⁷⁹. As a consequence, often human rights norms and standards are not considered in the resolution of sport disputes, but the decisions of the CAS may be appealed to the Swiss Federal Tribunal, only on the ground that there is a breach of Swiss public policy⁴⁸⁰. Also other national courts can refuse to recognize and enforce an arbitral award if it is contrary to the public policy of that State (which may include some human rights), but the decision would be jurisdictionally limited, because it would not suspend the regulations of a sport organization worldwide⁴⁸¹.

Athletes may also bring human rights claims to regional courts, such as the European Court of Human Rights, whose jurisprudence includes several decisions related to sport, but none of them have involved alleged human rights violations against athletes by national or international sport organizations (but in any case, whether and to what extent the European Court could exercise jurisdiction in such cases remains untested)⁴⁸². These gaps in human rights protection and remedy in sport led to calls for a world sports

⁴⁷⁷ S. BASTIANON, F. BESTAGNO, S. M. CARBONE, M. COCCIA, A. COMBA, C. DORDI, L. FUMAGALLI, C. GARBARINO, B. NASCIMBENE, R. SAPIENZA and M. VELLANO, *op.cit.*, p. 124.

⁴⁷⁸ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 11.

⁴⁷⁹ *Ivi*, p. 12.

⁴⁸⁰ *Ibid.*

⁴⁸¹ *Ibid.*

⁴⁸² *Ibid.*

governance agency which should monitor the Olympic system and the world of professional and amateur sport, fight discrimination in sport, and enforce sanctions for non-compliance⁴⁸³. Action 4 in the Kazan Action Plan (adopted in 2017 by UNESCO's Sixth International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport, which marks the commitment to link sport to the 2030 Agenda of the UN) refers to the possibility of establishing a Global Observatory for Women, Sport, Physical Education and Physical Activity that would, among other objectives, invest in women's participation in sport, establish measures to address VAW in sport and monitor progress in achieving SDG 5 (achieve gender equality and empower all women and girls)⁴⁸⁴.

The fact that the relationship between the European Court of Justice and the other EU institutions is crucial for the definition of policies can be seen in sports-related case law: for example, the rulings of the European Court of Justice in *Walrave* (1974) and *Donà* (1976) established that sport was subject to EU law when it is practiced as an economic activity, and these cases were used to widen the scope of the Treaty of Rome⁴⁸⁵. However, these rulings had a limited impact on sport, which remained in a latent regulatory space⁴⁸⁶. What made sport important for institutional agenda for active EU consideration was the *Bosman* case. The more and more significant economic status of sport contributed to the ECJ's ruling which established the sport functional link to the Single Market, with the consequence that now sport operated within an EU regulatory environment⁴⁸⁷. However, the European Court of Justice acknowledged that sport was different to other industries, and, even though it has confirmed that sport is subjected to EU law, it has later constructed separate territories approach, which means that it developed a EU sports law⁴⁸⁸.

Then, in Italy, each sport federation has its autonomous judicial system, specialized in the function of the discipline to which it belongs, but they are necessarily bound in the structure and the content of the decisions to the principles of CONI⁴⁸⁹. Additionally, in order to guarantee more autonomy, independence and impartiality of judgement, in

⁴⁸³ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 13.

⁴⁸⁴ *Ibid.*

⁴⁸⁵ R. PARRISH, *Sports Law and Policy in the European Union*, New York, Manchester University Press, 2003, p. 105.

⁴⁸⁶ *Ibid.*

⁴⁸⁷ *Ivi*, p. 107.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ G. VALORI, *op.cit.*, p. 123.

September 2001 the “Tribunale Nazionale di Arbitrato dello Sport del CONI” was established⁴⁹⁰.

3.1.3 European sports law

The set of norms regulating the sport system has to adapt not only to the national legal system, but also to the one of supranational ones, like the EU. In recent years, due to the transformations of modern sport and due to the progresses of the European integration also in areas not strictly connected to the economic integration, the attention of the EU on the sport system has considerably increased⁴⁹¹. The interest of the European community to sport has developed in two directions: one with a legal character (particularly with the decisions of the European Court of Justice) and one with a political character (European Commission)⁴⁹². The sporting activity does not only involve the economic interests, but also fundamental rights like health, education, culture, integration⁴⁹³. Although at the beginning the sport activity was subjected to the EU law only when it was qualified as an economic activity, with the progresses made over the years, a specific declaration on sport was attached to the Treaty of Amsterdam in 1997, which underlines the sociocultural character of sport and its key role in shaping the identity of people and in facilitating their integration in the society⁴⁹⁴. Then, with the 1999 Helsinki Report on Sport, the European Commission highlights the need to safeguard the structure of sport at national and European level and its social function⁴⁹⁵. In 2000, the European Council adopted the Nice Declaration on Sport, which recognizes the social function of sport and its fundamental independence from sport organisations and their right to self-organization⁴⁹⁶. Moreover, even though the 1957 European Community Treaty does not refer to sport (and so the EU is not constitutionally competent to adopt legislation that regulates sport), sporting practices must comply with the Treaty rules that regulate those aspect of the economy which can comprehend the world of sport, like the provisions of free movement of persons and services or the rules on competition⁴⁹⁷. The European Court has also accepted that there is an area of sport free of interference with

⁴⁹⁰ G. VALORI, *op.cit.*, p. 124.

⁴⁹¹ *Ivi*, p.107-108.

⁴⁹² *Ivi*, p. 108.

⁴⁹³ *Ibid.*

⁴⁹⁴ *Ivi*, p. 115.

⁴⁹⁵ *Ibid.*

⁴⁹⁶ *Ivi*, p. 123.

⁴⁹⁷ S. WEATHERILL, *European Sports Law: Collected Papers*, T.M.C. Asser Press, The Hague, 2007, p. 1.

EU law, and, in *Bosman*, it acknowledged the scope for the promotion of sport's special concerns⁴⁹⁸. Sport federations have a conditional autonomy, an overlap between EU law and “internal” sports law, but within this area of overlap sporting bodies have to show how and why the rules are necessary to adapt to their special concerns⁴⁹⁹. But, at the same time, also EU bodies have to be open to the specificities of sports associations, as stated in the Amsterdam Declaration: “The Conference emphasises the social significance of sport, in particular its role in forging identity and bringing people together. The Conference therefore calls on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue. In this connection, special consideration should be given to the particular characteristics of amateur sport”.

It is only since 2009, with the entry into force of the Lisbon Treaty, that the EU has a clear mandate to implement a coordinated sports policy supported by a specific budget, and to develop cooperation with international bodies in the world of sport⁵⁰⁰. But still, the competence of the EU is limited, as it can only support or coordinate sports policy measures taken by national governments through soft policy tools (such as guidelines, recommendations and funding), with no possibility to adopt a legislation or other legally binding measures⁵⁰¹. The EU involvement in sport is mostly related in tackling transnational issues such as doping, match-fixing, lack of physical activity, and it is more and more engaging in health-related initiatives (for instance, the 2018 European Week of Sport attracted nearly fourteen million people to a series of events across Europe, or the #BeActive Night, introduced in 2018, which encouraged people to discover and try the sports available in their area)⁵⁰². None of this would have been possible without the establishment of a specific budget for sport, for which the European Parliament had a pivotal role, and which contributed to the increased popularity of sport⁵⁰³. Along with this trend, also the Commission increased its plans and ambitions for the greater role of sport in society, as can be seen, for example, by the proposal of the executive for the 2021-

⁴⁹⁸ S. WEATHERILL, *op.cit.*, p. 3.

⁴⁹⁹ *Ivi*, p. 5.

⁵⁰⁰ I. KATSAROVA and V. HALLEUX, *EU Sports Policy: Going faster, aiming higher, reaching further*, European Parliamentary Research Service, September 2019, p. 1.

⁵⁰¹ *Ibid.*

⁵⁰² *Ibid.*

⁵⁰³ *Ibid.*

2027 Erasmus programme, which established a doubling of the amount available for Erasmus, reaching €30 billion and with €550 million dedicated to sport⁵⁰⁴.

Before the 2009 Lisbon Treaty, the EU had an indirect influence on sport: its competence was related to areas such as the single market and competition policy and it developed policies and programmes in fields strictly related to sport, such as education, health, youth or social inclusion; in addition, the European Court of Justice's rulings shaped the EU approach to sport⁵⁰⁵. But since 2009, the EU has the competence to develop implement a coordinated sports policy and provide a dedicated budget for sport, even though this competence is a supporting one, which means that the EU can act only through soft policies⁵⁰⁶.

The inherent characteristics of sport can explain a tailored application of EU law, and this is recognized in the European Council's Declaration on the specific characteristics of sport and in the 2007 White Paper on Sport, which acknowledged that the specificity of European sport is twofold, with the specificity of sporting activities and rules on the one hand, and on the other hand with the specificity of sport's structure⁵⁰⁷.

To sum up, despite the absence of a treaty, the EU has developed a sports policy, mainly after the *Bosman* ruling (before it, the EU sports policy was polarized and fragmented)⁵⁰⁸. The EU has moved from a market model of regulation towards an approach in which the EU recognises the social and cultural characteristics of sport within its regulatory approach (so, even though the EU cannot adopt legislative actions, the sports policy is regulatory in nature), which has led to a more coordinated action of the EU in the sport sector⁵⁰⁹.

Lastly, the Council of Europe has included sport in the institutional framework since 1976, with the creation of the Steering Committee for the Development of Sport, and, in the same year, the European Sport for All Charter was adopted: since then, many recommendations, declarations, resolutions and conventions have been adopted, including the European Convention on Spectator Violence (1985), the Anti-Doping

⁵⁰⁴ I. KATSAROVA and V. HALLEUX, *op.cit.*, p. 1.

⁵⁰⁵ *Ivi*, p. 2.

⁵⁰⁶ *Ibid.*

⁵⁰⁷ *Ivi*, p. 3.

⁵⁰⁸ R. PARRISH, *op.cit.*, p. 5.

⁵⁰⁹ *Ivi*, p. 5.

Convention (1989), the European Sport Charter and the Code of sports ethics (1992)⁵¹⁰. Additionally, in 2007, the Council of Europe established the Enlarged Partial Agreement on Sport (EPAS), which is a platform for intergovernmental sports cooperation between the authorities of its member states, and for dialogue in the consultative committee between these authorities and sports federations and organisations⁵¹¹. The European dialogue on sport is developed also through the annual EU Sport Forum (organized and financed by the European Commission), which provides the opportunity to discuss sports issues⁵¹².

3.2 Actors involved in violence against women in sport and their policies

A crucial aspect of combatting VAW in sport is knowing what general legal framework applies in such cases, while the absence of specific legislation to prosecute cases of VAW in sport, the difficulties in understanding what a sexual act is, or the different terminology used to refer to forms of VAW among different countries can pose some difficulties in handling cases of VAW in sport⁵¹³.

The highest level of mechanisms to prevent violence or impose sanctions are the international legal instruments, and the most accessible mechanisms are those built into national law and organizational constitutions (like codes of conduct and rule books)⁵¹⁴. A person who perpetrates violence against a female athlete may be dealt internally through a particular sport's disciplinary procedures covering complaints, grievances, appeals, suspensions and reinstatement, or through civil prosecutions or criminal investigations⁵¹⁵. But authorities of sport clubs and organizations should understand that they should refer to statutory authorities who may conduct enquiries and make expert judgements with issues that may breach criminal law, and not deal the issue internally⁵¹⁶.

Policies on the prevention and protection from violence in sport mostly focus on children, women and, more recently, on homophobic violence; however, other issues such as the assessment of the magnitude of any form of VAW in sport, or measures to prosecute

⁵¹⁰ I. KATSAROVA and V. HALLEUX, *op.cit.*, p. 4.

⁵¹¹ *Ibid.*

⁵¹² I. KATSAROVA and V. HALLEUX, *op.cit.*, p. 4.

⁵¹³ COUNCIL OF EUROPE, *Gender-Based Violence in Sport*, Yellow Window, November 2016, p. 1.

⁵¹⁴ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 20.

⁵¹⁵ *Ibid.*

⁵¹⁶ *Ibid.*

VAW in sport and to provide services to support victims are less considered in the international and European legal and policy frameworks⁵¹⁷.

Over recent years, VAW in sport has been considered in some policy initiatives at European and international level, and, furthermore, other legal and policy instruments tackling VAW are relevant to sport⁵¹⁸. Complementing the existing legislation, some sport clubs have introduced internal measures to protect their athletes, such as guidelines on how to behave in cases of sexual violence in sport, measures to protect potential victims, or procedures to report incidents⁵¹⁹.

Descriptions of the actors and their legal and policy instruments that tackle VAW in sport at international, European and EU member state level are provided below.

3.2.1 The international level

In 1978, the UNESCO adopted the International Charter of Physical Education, Physical Activity and Sport, whose article 1 recognized that “the practice of Physical Education and sport is a fundamental right for all”⁵²⁰. The Charter, revised in November 2015, recognizes that sport plays a crucial role in preventing VAW (Article 9) and it underlines that safety can be achieved only if the stakeholders eliminate practices (such as homophobia, bullying, or sexual exploitation and violence) that limit or harm the athletes (especially children and women)⁵²¹. The Charter also calls for a collaboration to ensure a coordinated response to all threats to a person’s integrity, including violence (Article 10). The main amendments include strong provisions on gender equality and the need to enforce the rights of and the availability of inclusive and safe opportunities, especially for women and girls, the elderly, people with disabilities and indigenous people⁵²².

The 1995 Beijing Declaration and Platform for Action suggested to governments and other actors to develop prevention, protection and prosecution measures, and particularly it proposes to develop a holistic and multidisciplinary approach to create communities

⁵¹⁷ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 10.

⁵¹⁸ *Ivi*, p. 13.

⁵¹⁹ COUNCIL OF EUROPE, *op.cit.*, p. 2.

⁵²⁰ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 13.

⁵²¹ *Ibid.*

⁵²² HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE, *Final Report of the Human Rights Council Advisory Committee on the Possibilities of Using Sport and the Olympic Ideal to Promote Human Rights for All and to Strengthen Universal Respect for Them*, Human Rights Council, Thirtieth session, Geneva, August 17th, 2015, p. 6.

and states that are free of VAW, recommending to promote a gendered perspective in all policies and programmes, including sport⁵²³.

With regard to children, the Convention on the Rights of the Child was adopted by the UN General Assembly and entered into force in September 1990⁵²⁴. Article 19 states that all member states should take appropriate measures (educational, legislative, administrative, and social) to protect children from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while article 34 calls on state parties to take all possible measures to protect children from all forms of sexual exploitation and sexual abuse⁵²⁵.

Similarly, during the 5th International Conference of UNESCO ministers and senior officials responsible for Physical Education and sport held in 2013, the Declaration of Berlin was created, which acknowledges that an inclusive environment that is free of violence and sexual harassment is essential to increase the quality of sport (furthermore, the ministers called on all stakeholders to punish such practices)⁵²⁶.

The GA, with the resolution 58/5, decided to proclaim 2005 the International Year for Sport and Physical Education, in order to enhance sport as a means to promote education, health, development and peace⁵²⁷. The GA recognized that sport has the potential to contribute to the achievement of the Millennium Development Goals, creating an atmosphere of peace, tolerance and understanding, and it acknowledged that sport can promote cooperation, solidarity, social inclusion and health at the local, national and international levels, as already acknowledged in the outcome document of the high-level plenary meeting of the GA on the Millennium Development Goals⁵²⁸. During the 2002 UN Special Session on Children, Secretary-General Kofi A. Annan convenes an Inter-Agency Task Force on Sport for Development and Peace with the task to review activities involving sport within the UN system (the non-governmental organization Right to Play was the Secretariat of the Task Force)⁵²⁹. One year later, the book “Sport for Development and Peace: Towards achieving the Millennium Development Goals” was published by the Task Force, which highlights the power of sport for advancing the Millennium

⁵²³ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 13.

⁵²⁴ *Ivi*, p. 14.

⁵²⁵ *Ibid.*

⁵²⁶ *Ibid.*

⁵²⁷ HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE, *op.cit.*, p. 5.

⁵²⁸ *Ibid.*

⁵²⁹ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 2.

Development Goals⁵³⁰. Furthermore, the UN adopted several resolutions and reports which appeal for the advancement of peace, diversity, tolerance, mutual respect, gender equality and the struggle against discrimination, racism, social exclusion and marginalization, and it has been continuously requiring member states to create more opportunities for persons with disabilities and to engage more women and girls in sport⁵³¹.

In 2007, the IOC adopted a Consensus Statement which contains the guidelines for the prevention and management of sexual harassment and abuse in sport and which situated gender harassment and homophobia on a continuum of violence, recommending to sport organizations to develop codes of practice, complaint and support mechanisms, and monitoring systems on the issue⁵³². In 2016 the Statement was expanded and it additionally included psychological harassment and abuse, physical harassment, and abuse and neglect⁵³³. However, no mechanism has been established for monitoring whether these recommendations have been implemented, and for sport organizations that fail to meet the recommendations there is no consequence (indeed, it is likely that the majority of sport organization have yet to take action)⁵³⁴.

In 2014, the IOC included discrimination on the grounds of sexual orientation to the Olympic Charter and clarified that the National Olympic Committees (that have to develop and promote the Olympic Movement in their country) have a responsibility to act against discrimination and violence in sport⁵³⁵. Even the Olympic Charter fails to recommend specific consequences for non-compliance and does not explain how and whether the implementation is monitored⁵³⁶.

During the first World Conference on Women and Sport, the International Working Group on Women and Sport (IWG) was formed and the Brighton Declaration on Women and Sport was signed⁵³⁷. The Declaration was a tool to pressure governments and sport organizations to adopt equal rights legislation and to ensure opportunities to play sports to girls and women⁵³⁸. It established equity and equality in sport and in society more widely as one of its core principles, underlying that “every effort should be made by state

⁵³⁰ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 2.

⁵³¹ HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE, *op.cit.*, p. 5-6.

⁵³² M. LANG, L. MERGAERT, C. ARNAUT, T. VERTOMMEN, *op.cit.*, p. 7-8.

⁵³³ *Ivi*, p. 8.

⁵³⁴ *Ibid.*

⁵³⁵ *Ibid.*

⁵³⁶ *Ibid.*

⁵³⁷ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 20.

⁵³⁸ P. SAFAI, *op.cit.*, p. 331.

and government machineries to ensure that institutions and organisations responsible for sport comply with the equality provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the UN Convention on the Elimination of all Forms of Discrimination Against Women” (section B.1, para. A) and that “Equal opportunity to participate and be involved in sport whether for the purpose of leisure and recreation, health promotion or high performance, is the right of every woman, regardless of race, colour, language, religion, creed, sexual orientation, age, marital status, disability, political belief or affiliation, national or social origin” (section B.1, para. B)⁵³⁹.

In 1998, during the second IWG World Conference on Women and Sport, the Windhoek Call for Action was adopted, which called for action in eleven different areas, one of which was related to eliminating all forms of harassment and abuse, violence and exploitation and gender testing by ensuring a safe and supportive environment for girls and women at all levels of sport (Call for Action No. 7)⁵⁴⁰. While the core of the Brighton Declaration were the principles on inclusive sport for women, the Windhoek Call for Action was a call away from statements of principle to action⁵⁴¹.

In June 2014, during the Sixth World Conference on Women and Sport organised by the IWG, the Helsinki Report was created; it recommends to raise awareness about VAW in sport, to educate female athletes about the risks associated with this, and it recommends to sport organizations to implement actions and policies that include preventive measures and support services for victims of VAW in sport and to ensure that gender-safe environments should be provided to coaches and officials⁵⁴².

3.2.2 The regional level

The first reference to sport as an environment where violence occurs was made in the European Sport for All Charter, adopted by the Council of Europe in 1975, even though it did not specifically mention VAW⁵⁴³. The Charter established a line for sport policies across and beyond Europe, mentioning the need to safeguard athletes from exploitation for political, commercial or financial gain, and from abusive practices (Article V)⁵⁴⁴. Two decades later, the Charter was updated and included a reference to specific forms of

⁵³⁹ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 20.

⁵⁴⁰ *Ibid.*

⁵⁴¹ P. SAFAI, *op.cit.*, p. 331.

⁵⁴² *Ibid.*

⁵⁴³ M. LANG, L. MERGAERT, C. ARNAUT, T. VERTOMMEN, *op.cit.*, p. 3.

⁵⁴⁴ *Ibid.*

VAW, namely sexual harassment and abuse, particularly of children, young people and women (Article 1). The Code of Sports Ethics was published alongside the revised Charter and it asserted that physical and verbal violence, sexual harassment and abuse go against the principles of fair play, and recommended to governments to support and protect children and women from sexual harassment and abuse⁵⁴⁵.

However, there is no single European policy that addresses VAW in its entirety in sport; instead, European policies tend to focus on the prevention of VAW in sport and on protective actions, while issues such as measuring the extent of VAW in sport and the provision of services for victims and perpetrators rarely appear⁵⁴⁶. The only documents that underly the need for more research to ascertain the forms of VAW in sport in Europe are the Resolution on the Prevention of Sexual Harassment and Abuse of Women, Young People and Children in Sport (Council of Europe, 2000), the Proposal for Strategic Actions on Gender Equality in Sport (European Commission, 2014), and the Conclusions on Gender Equality in Sport (Council of the European Union, 2014)⁵⁴⁷.

European policies often focus on children and fail to consider that all athletes can be exploited by authority figures like coaches, which results in the marginalization of adult victims⁵⁴⁸. Furthermore, the majority of European policies focus on few forms of VAW (usually sexual harassment or sexual abuse) at the expense of others: for instance, the Resolution on the Prevention of Sexual Harassment and Abuse of Women, Young People and Children in Sport, adopted by the Council of Europe in 2000, calls state parties to define harassment and abuse in sport and raise awareness of these behaviours; similarly, the Resolution on Women and Sport, adopted by the European Parliament in 2002, refers only to sexual harassment and abuse in sport⁵⁴⁹. Also the 2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse is concentrated on sexual exploitation and sexual abuse in sport.

Homophobic violence has been addressed more recently. In 2003, the Parliamentary Assembly Recommendation on Lesbians and Gays in Sport recognized that homophobia in sport should be treated in the same way as racism and, six years later, a report by the European Union Agency for Fundamental Rights acknowledged the difficulties of

⁵⁴⁵ M. LANG, L. MERGAERT, C. ARNAUT, T. VERTOMMEN, *op.cit.*, p. 3.

⁵⁴⁶ *Ivi*, p. 4.

⁵⁴⁷ *Ibid.*

⁵⁴⁸ *Ibid.*

⁵⁴⁹ *Ivi*, p. 5-6.

athletes to identify as LGBTQ, due to the risks of harassment, homophobia or rejection in sport systems⁵⁵⁰. The report called for a cooperation between EU Member States and sports organisations to combat homophobic violence and hate speech at sports events, and for the development of policies covering sexual orientation and gender identity⁵⁵¹. However, European policies still lack references to violence against people in sport on the grounds of their sexual orientation or gender identity⁵⁵².

Recently, in 2018, the EU launched the #BeInclusive sport awards, which recognized the achievements of sport organisations that have most successfully developed projects addressing social inclusion of ethnic minorities, refugees, people with disabilities, or any group facing challenging social circumstances⁵⁵³. The Commission, that is trying to combat gender stereotypes and promote the access of women to decision-making positions in sport, sought to ensure that by 2020 thirty percent of decision-making roles in sport are held by women⁵⁵⁴.

But the body that has contributed the most for a European sports model is the Council of Europe, as it represents an institutional framework in which sport is developed at European level and it has established several legal instruments⁵⁵⁵. The CoE recognizes the role of sport for social integration and tolerance and it tries to develop policies that promote sport as open to everyone, without discrimination, run in a safe and ethical environment⁵⁵⁶. In 1992, it adopted the European Sports Charter, and the Code of Sports Ethics complemented it (which included the sexual harassment and abuse of women and girls)⁵⁵⁷. In January 2015, the CoE issued a set of recommendations on gender mainstreaming in sport, urging state parties to establish and monitor specific programmes and policies to combat VAW in sport and to raise awareness of the issue⁵⁵⁸.

With regard to the EU, the 2009 Treaty of Lisbon brought sport within the remit of the Union. Article 165 states that “The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based

⁵⁵⁰ M. LANG, L. MERGAERT, C. ARNAUT, T. VERTOMMEN, *op.cit.*, p. 5-6.

⁵⁵¹ *Ivi*, p. 6.

⁵⁵² *Ibid.*

⁵⁵³ I. KATSAROVA and V. HALLEUX, *op.cit.*, p. 11.

⁵⁵⁴ *Ibid.*

⁵⁵⁵ R. WEINGARTNER, *Foreword*, Strasbourg, November 2006, available at https://www.asser.nl/upload/documents/4212010_22112CoE%20and%20Sport%20Foreword.pdf, p. 5.

⁵⁵⁶ *Ibid.*

⁵⁵⁷ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 14.

⁵⁵⁸ *Ivi*, p. 15.

on voluntary activity and its social and educational function” (para. 1), and it goes on asserting that “Union action shall be aimed at [...] developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen” (para. 2).

The topic of VAW in sport was often tackled by the Greek Presidency of the Council of the European Union, which ran from January to June 2014: during this year, a conference was organised to better understand the phenomenon of VAW in sport and to discuss the proposals to prevent VAW in sport; there were numerous calls for a better understanding of the magnitude of VAW in sport; this period was also characterized by demands for services to be established for athlete victims of violence in sport (such as support services or telephone helplines)⁵⁵⁹. In May 2014, the Council of the European Union and representatives of state parties adopted the Resolution on the EU Work Plan for Sport Resolution (which focused on good governance and gender equality as key issues to be pursued by Member States and the European Commission) and issued the “Conclusions on gender equality in sport” document (which acknowledged that violence and sexual harassment can occur in sport, it urges states to combat and prevent VAW in sport, and it recommends to sport organizations to develop specific measures to address VAW in sport, such as codes of ethics)⁵⁶⁰.

In 2003, the European Parliament adopted the Resolution on Women and Sport (2002/2280), which calls for the introduction of a gender perspective into policy documents and for the denounce of stereotypes about masculinity and femininity in sport⁵⁶¹. The European Parliament also adopted the White Paper on Sport in 2008, which simply welcomed the inclusion by sport clubs of provisions related to the prevention of violence and respect for fundamental human rights⁵⁶².

During the meeting of the European Commission’s Group of Experts on Gender Equality in Sport held in 2014, the Proposal for Strategic Actions on Gender Equality in Sport was approved (covering the 2014-2020 period), which underlines the importance of

⁵⁵⁹ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 16.

⁵⁶⁰ *Ivi*, p. 16-17.

⁵⁶¹ *Ivi*, p. 17.

⁵⁶² *Ivi*, p. 18.

combatting VAW in and through sport⁵⁶³. Two years later, the Expert Group on Good Governance (established on the instructions of the Council of the European Union) issued the Recommendations on Gender Equality in Sport, which underlined the need of sport organizations of taking action to promote gender equality in sport and which listed key actions to promote gender equality in sport⁵⁶⁴.

In 2007, with a resolution, the CoE established the Enlarged Partial Agreement on Sport (EPAS), which is a platform for intergovernmental sport cooperation between the public authorities of its member states that encourages dialogue between public authorities, sports federations and NGOs, with the objective of creating an inclusive and safe environment in sport⁵⁶⁵. EPAS has prepared different recommendations that were later adopted by the CoE's Committee of Ministers on issues of sports ethics, the protection of young athletes from dangers associated with migration, and gender mainstreaming⁵⁶⁶. EPAS has established activities with the aim to promote diversity in sport, focusing on different groups: ethnic minorities, persons with disabilities, women, children, persons in detention, and migrants⁵⁶⁷. It is increasingly cooperating with the EU with regard to the development of joint projects and the sports movements on different topics, among which gender equality and child protection (particularly the fight against sexual abuse in sport)⁵⁶⁸.

Lastly, the 15th CoE Conference of Ministers responsible for Sports was held in Tbilisi (Georgia) in October 2018, during which the International Declaration on Human Rights and Sport, also called Tbilisi Declaration, was endorsed by the Heads of Delegation around the table⁵⁶⁹. It affirms the commitment of member states to work “towards gender equality and to a policy of zero tolerance for violence and discrimination, paying particular attention to individuals and groups in a situation of vulnerability, such as children, migrants, and persons with disabilities”.

3.2.3 The EU member state level

⁵⁶³ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 18.

⁵⁶⁴ *Ivi*, p. 19.

⁵⁶⁵ COUNCIL OF EUROPE, *Enlarged Partial Agreement on Sport (EPAS): Factsheet*, February 1st, 2020, available at <https://rm.coe.int/10-factsheet-en-epas-2019/16809398bc>, p. 1.

⁵⁶⁶ *Ibid.*

⁵⁶⁷ *Ibid.*

⁵⁶⁸ *Ibid.*

⁵⁶⁹ Council of Europe's Website: <https://www.coe.int/en/web/sport/tbilisi-declaration>

The legislation of most EU member states contains provisions that allow the prosecution of many forms of VAW in sport, but the most common legal provisions are referred to the prevention and protection of children from offenders, while there are few references to forms of VAW in sport, and even fewer references to LGBTQI violence⁵⁷⁰. Few awareness raising initiatives have been organised to sensitize about VAW in sport and few countries have developed specific national policies to address forms of VAW in sport (and where they have been developed, in most cases their implementation is neither mandatory, nor followed up)⁵⁷¹. However, although EU member states have not developed sport-specific legislation to prosecute VAW in sport, most forms of VAW in the sport system may be prosecuted under existing legislation, namely under the criminal or penal codes and/or child protection laws⁵⁷². Where a sport legislation does exist (in nine EU countries: Belgium, Bulgaria, Cyprus, Italy, Latvia, Malta, Portugal, Romania, and Slovenia), it generally condemns all forms of violence and harassment and encourages measures to prevent and combat violence, while in other cases the legislation requires certain actors to implement specific measures, like in Portugal, where the state has the responsibility to implement policies to prevent and punish violence in sport, or in Cyprus, Italy and Malta, where action against violence in sport is assigned respectively to the Cyprus Sport Organisation, the Italian Olympic Committee, and the Maltese Olympic Committee⁵⁷³. Meanwhile, in Slovenia the actor with the legal responsibility for monitoring all forms of abuse related to athletes' human rights is the Slovenian Inspectorate for Education and Sport, and in Romania the measures to prevent and combat violence have been charged to sport federations⁵⁷⁴.

Some forms of VAW in sport can be prosecuted through criminal law, like the criminal or the penal code and, even though the terminology used for acts of VAW varies enormously across EU Member States, generally sexual harassment is considered in the criminal law and other legislative instruments of all EU Member States, except for Bulgaria, Luxembourg, Hungary and Poland; instead, in some states, sexual harassment can be prosecuted through legal articles relating to lewd behaviour, grooming, exhibitionism, or indecency⁵⁷⁵. While in some countries (like in the Czech Republic,

⁵⁷⁰ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 10-11.

⁵⁷¹ *Ivi*, p. 11.

⁵⁷² *Ivi*, p. 12.

⁵⁷³ *Ivi*, p. 22.

⁵⁷⁴ *Ibid.*

⁵⁷⁵ *Ivi*, p. 23.

Estonia and Romania) laws related to sexual harassment are mainly considered in incidents in work settings and professional life, in other countries (Cyprus, Slovakia, Sweden) the law is refers also to education or training environments⁵⁷⁶.

Sixteen EU member states include in their criminal codes specific offences relating to the sexual harassment of minors (Austria, Bulgaria, Croatia, Denmark, Finland, France, Greece, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia, and Spain)⁵⁷⁷. The legislation of all EU Member States covers the sexual abuse of children, except Slovenia, and some EU countries have specific articles that criminalize the sexual abuse of children, while in others the fact the victim is a child is considered as an aggravating factor (and rape is the most commonly criminalised form of gender-based violence across EU Member States)⁵⁷⁸. The EU member states' legislation is too much focused on the sexual exploitation of minors, leaving aside the sexual exploitation committed against adults. While physical violence is covered in the criminal codes of all EU Member States, and in some cases physical violence committed on the grounds of a person's gender, gender identity, or sexual orientation is considered in the legislature as a distinct crime (for example Cyprus, Malta and the UK refer to it as a hate crime), or as an aggravating circumstance (such as in France), emotional or psychological violence can be prosecuted by law in twenty-two EU Member States, and if it is exercised on the grounds of a person's gender, gender identity or sexual orientation, it can be an aggravating factor⁵⁷⁹.

In some countries there are legal provisions which take into account the position of the perpetrator of violence compared to the victim, considering the abuse of trust as a criminal offence in some cases, while in others it is considered an aggravating factor⁵⁸⁰. However, many EU states continue to have a masculine universal language in their legislature, and this can result in bias understandings and interpretations of laws (moreover, laws excluding the female sex do not promote gender equality)⁵⁸¹.

VAW in sport can be addressed by different policy sectors: the sport policy sector, the policy area of gender equality, and the one of child protection. There are explicit

⁵⁷⁶ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 23.

⁵⁷⁷ *Ivi*, p. 24.

⁵⁷⁸ *Ibid.*

⁵⁷⁹ *Ibid.*

⁵⁸⁰ *Ivi*, p. 28.

⁵⁸¹ *Ibid.*

references to forms of VAW in sport (usually sexual violence or sexual harassment) in thirteen EU Member States (in documents which include national programmes or codes of ethics within the policy areas of sport, gender equality, and child protection), while in some states violence in sport is framed as a violation of the ethics and values of sport, or of the principles of fair play (like in Italy), and in some others it is comprehended in the efforts to create a healthy and safe sport environment in which the human rights of athletes are respected⁵⁸².

The European Commission's Proposal for Strategic Actions on Gender Equality in Sport (2014-2020) was achieved only by Austria in 2016, which implemented a national strategy to promote gender equality in sport⁵⁸³. Only Belgium, Croatia, and the Czech Republic have specific measures tackling VAW in sport in their national action plans for gender equality or for combatting VAW, while Belgium, France and Spain developed specific policies focusing on VAW in sport, mainly addressing sexual violence through, among others, raising awareness initiatives and measures to support victims targeting sport organisations (however, the implementation is generally not mandatory)⁵⁸⁴.

Furthermore, governmental actors in Belgium, Cyprus, France, and Italy have engaged in raising awareness initiatives (including campaigns, seminars or conferences on VAW in sport), but most of them were stand-alone initiatives with a short duration, except for Italy, where a 2013 Memorandum of Understanding signed by the Ministry for Equal Opportunities, Sport and Youth Policies and the Italian Olympic Committee established an annual "sport week against gender-based violence in and through sport"⁵⁸⁵.

To sum up, the lack of a single European-level policy addressing all forms of VAW in sport is reflected in the fragmentation of EU Member States' policies⁵⁸⁶. However, even though there is no specific legislation to prosecute cases of VAW in the sport system, the general legal framework of EU Member States can be applied to sport contexts⁵⁸⁷.

However, stand-alone attempts by individual national governing bodies to address VAW in sport are likely to be ineffective: more cooperation among different levels is needed to

⁵⁸² L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 29.

⁵⁸³ *Ivi*, p. 30.

⁵⁸⁴ *Ivi*, p. 31-32.

⁵⁸⁵ *Ivi*, p. 33.

⁵⁸⁶ M. LANG, L. MERGAERT, C. ARNAUT, T. VERTOMMEN, *op.cit.*, p. 6.

⁵⁸⁷ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG *op.cit.*, p. 22.

expand understandings of VAW in sport and to impede to national governing bodies of sport to ignore the issue⁵⁸⁸.

3.3 The human rights dimension of violence against women in sport

The sphere of human rights has increased and their number has expanded, comprehending new areas that were not initially included among the fundamental rights of a person⁵⁸⁹. Nowadays, even though sport is becoming more and more important, there are scattered references to sport among the legal texts, with attention being focused mainly on the right to education or to physical activity, with the aim to maintain or improve the well-being of a person and to contribute to a person's development⁵⁹⁰.

The Universal Declaration of Human Rights of 1948 does not explicitly mention the right to sport, but it includes a reference to leisure: "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay" (art. 24). Here, rest and leisure are conceived as a big container of different activities, which are intended as "no work", and, consequently, sport can be included⁵⁹¹. Similarly, the 1966 International Covenant on Economic, Social and Cultural Rights does not refer to the sporting activity, but it is implicitly comprehended in article 12: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The Convention on the Rights of the Child asserts in a similar way that "States Parties agree that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential" (art. 29) and that "States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts" (art. 31).

Also regional legal instruments of protection of human rights follow this trend. Even though the European Convention on Human Rights remain silent in this regard (due to the choice of favouring civil and political rights), article 16 of the African Charter on

⁵⁸⁸ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG *op.cit.*, p. 41.

⁵⁸⁹ S. BASTIANON, F. BESTAGNO, S. M. CARBONE, M. COCCIA, A. COMBA, C. DORDI, L. FUMAGALLI, C. GARBARINO, B. NASCIMBENE, R. SAPIENZA and M. VELLANO, *op.cit.*, p. 144.

⁵⁹⁰ *Ivi*, p. 145.

⁵⁹¹ *Ibid.*

Human and Peoples' Rights echoes article 12 of the Covenant on Economic, Social and Cultural Rights⁵⁹².

The Fundamental Principles of Olympism of the Olympic Charter affirm that “The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play” (no. 4). Although the Olympic Charter is non-binding, it is explicitly mentioned in some sources of international law, such as in numerous resolutions of the UN GA⁵⁹³. Also the UNESCO is competent of sport, as can be seen from the UNESCO Constitution: “The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations” (art. 1). In 1978, with the resolution 1/5.4/2, the UNESCO adopted the International Charter of Physical Education, Physical Activity and Sport, whose article 1 states that “The practice of physical education, physical activity and sport is a fundamental right for all” and that “Every human being has a fundamental right to physical education, physical activity and sport without discrimination on the basis of ethnicity, gender, sexual orientation, language, religion, political or other opinion, national or social origin, property or any other basis”.

The sporting activity falls within the areas in which the principle of non-discrimination is applied, and this is another aspect that is important for the relation between sport and human rights⁵⁹⁴. Among the legal instruments that prohibit discrimination there are the Universal Declaration of Human Rights, the International Covenants of 1966, the 1979 Convention on the Elimination of all Forms of Discrimination Against Women, the European Convention on Human Rights. All the rights enshrined in these conventions may be at stake in the context of sport. Examples of human rights issues in the sport system can be related to doping and manipulation of sports competitions, the training and working conditions of athletes, the management of supporters' behaviour, interference with

⁵⁹² S. BASTIANON, F. BESTAGNO, S. M. CARBONE, M. COCCIA, A. COMBA, C. DORDI, L. FUMAGALLI, C. GARBARINO, B. NASCIMBENE, R. SAPIENZA and M. VELLANO, *op.cit.*, p. 146.

⁵⁹³ *Ivi*, p. 149.

⁵⁹⁴ *Ivi*, p. 151.

people's private lives, violations linked to interpersonal violence, discrimination and abuse within the practice of sport⁵⁹⁵. The relation between sport and human rights is at its peak on the international sports policy agenda, reflecting the universal nature of human rights and the major role of sport in the society⁵⁹⁶.

The 1995 Brighton Declaration on Women and Sport called for equality in society and sport, for sport facilities meeting the women's' needs, and an increase in the number of women coaches, advisers and decision-makers in sport⁵⁹⁷. Similarly, the IOC's Charter, adopted in 2004, calls for the promotion of women in sport at all levels and in all structures for the implementation of the principle of equality between men and women⁵⁹⁸. The need for the integration of women in leadership positions in all spheres of life is included also in the Beijing Platform for Action (1995) and in the Millennium Development Goals (Goal 3), which recognize the right of women to participate equally with men at all levels of decision-making⁵⁹⁹. However, women are still underrepresented and discriminated in numerous decision-making and leadership positions.

The Convention on the Rights of the Child guarantees the right to equal participation of girls in sport and the protection of the rights of athletes under 18; the CEDAW requires states to ensure to women the same opportunities to participate in sports and to take all appropriate measures to this end; the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of Persons with Disabilities raised concerns that women, particularly those with disabilities, do not fully participate in sports, due to discriminatory stereotypes and prejudices⁶⁰⁰. The 2018 GA's resolution 73/24 on sport as an enabler of sustainable development called for the promotion of gender equality and of human rights in sport⁶⁰¹.

Besides states' obligations, some sporting bodies, like FIFA, have begun to engage with human rights norms; article 3 of the FIFA Statutes reflects the commitment of the Federation to implement the Guiding Principles on Business and Human Rights and to respect all human rights recognized at international level⁶⁰². Moreover, FIFA commits to

⁵⁹⁵ Council of Europe, *16th Council of Europe Conference of Ministers responsible for Sport, Draft Resolution on Theme 2: Human Rights in Sport*, Strasbourg, September 28th, 2020, p. 2.

⁵⁹⁶ *Ibid.*

⁵⁹⁷ N. WADESANGO, S. MACHINGAMBI, G. ASHU and REGIS CHIRESH, *op.cit.*, p. 71.

⁵⁹⁸ *Ibid.*

⁵⁹⁹ *Ivi*, p. 71-72.

⁶⁰⁰ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 5.

⁶⁰¹ *Ibid.*

⁶⁰² *Ivi*, p. 10.

identify and address differential impacts based on gender, to promote gender equality, and prevent all forms of harassment, including sexual harassment, as stated in its Human Rights Policy⁶⁰³.

Many other sport governing bodies, including the IOC, signed the Brighton plus Helsinki 2014 Declaration on Women and Sport, which asserts that governments and sport organizations should provide equal opportunities for women to achieve their sports performance potential and that organizations with elite or professional athletes should ensure the equal provision to women and men of competition opportunities, rewards, incentives, recognition, sponsorship, promotion and other forms of support⁶⁰⁴.

Regarding sexual harassment in sport, the IOC issued a Consensus Statement, which reported that:

“Sexual harassment and abuse in sport stem from power relations and abuses of power. Sexual harassment refers to behaviour towards an individual or group that involves sexualised verbal, non-verbal or physical behaviour, whether intended or unintended, legal or illegal, that is based upon an abuse of power and trust and that is considered by the victim or a bystander to be unwanted or coerced. Sexual abuse involves any sexual activity where consent is not or cannot be given. In sport, it often involves manipulation and entrapment of the athlete. Sexual harassment and abuse occur within an organisational culture that facilitates such opportunities. Indeed, they are symptoms of failed leadership in sport. Gender harassment, hazing and homophobia are all aspects of the sexual harassment and abuse continuum in sport.”

Studies demonstrated how sexual harassment may seriously impact sportswomen, resulting in insomnia, depression, impaired performance at work and in sport, reduced ability to concentrate, sick leave at work and in sports, the negative impact on family life and parenthood, or even complete abandonment of the sports and social activities⁶⁰⁵. Sexual harassment may take even a verbal form, such as jokes, sexually oriented comments, allusions to the appearance of the body, bullying, ridiculing the weaker

⁶⁰³ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 10.

⁶⁰⁴ *Ibid.*

⁶⁰⁵ Z. SAKÁČOVÁ, *op.cit.*, p. 102.

performance, offensive text messages, questions on sexual orientation, insults by the coach, and many other undesired behaviours⁶⁰⁶.

Female athletes have been denied an equal right to participate in sports also due to the implementation of female eligibility regulations, which violates the right to non-discrimination more broadly⁶⁰⁷. The approach of regulating female eligibility can negatively impact athletes' enjoyment of their human rights and may violate the following rights: the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment (the SP on torture and other cruel, inhuman or degrading treatment or punishment recognized that the regulations which require or suggest a medical treatment entail the risk of harm to physical and bodily integrity); the right to work and to the enjoyment of just and favourable conditions of work (since eligibility regulations may represent a limitation to the equal access to work for athletes with variations in sex characteristics); the right to the highest attainable standard of physical and mental health (due to the negative physical and mental health impacts of the treatments); the right to sexual and reproductive health (impaired by the risks of unnecessary medical interventions that affect hormones and reproductive anatomy and capacity); the right of everyone to be free from arbitrary interference with their privacy (which may be violated in case of the publication of women's names and personal details); the right to respect for the dignity, bodily integrity and bodily autonomy of the person (which includes the ability to make decisions about one's life and health)⁶⁰⁸.

For example, the panel of the Court of Arbitration for Sport reviewing Ms. Semenya's case recognized that the requirement of intimate examinations for the determination of the extent of her "virilization" was highly intrusive and could result in psychological harm, and they could also create the risk of unethical medical practice⁶⁰⁹.

The UN funds and programmes, sporting organizations (including the IOC), the civil society and governments pay more attention and devote increasing resources to the development through sport, with the aim to promote youth, education, culture, healthy lifestyles, gender equality, and peace⁶¹⁰. These projects not only give vulnerable

⁶⁰⁶ Z. SAKÁČOVÁ, *op.cit.*, p. 103.

⁶⁰⁷ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 8.

⁶⁰⁸ *Ivi.*, p. 8-9.

⁶⁰⁹ *Ivi.*, p. 9.

⁶¹⁰ HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE, *op.cit.*, p. 6-7.

communities the right to leisure, but also support human rights at large⁶¹¹. Human rights instruments and the Olympic Charter envisage a society without any discrimination. Sport has the ability to combat and overcome social barriers, promote communication about gender and other forms of discrimination, and enhance social cohesion by bringing together men and women⁶¹².

Also media violate women's human rights by emphasizing the participation of men in sport and ignoring the equal right of women to sport. It is fundamental that in every state sport reaches a socially targeted dimension to make it accessible to everyone, and it is in this aspect that media can contribute, by broadcasting sport programmes and events aimed at a broad and different population made up of all rights-holders⁶¹³.

The world of sport has many issues related to gender discrimination: the difference in the distribution of sport sponsorship by gender; media coverage for women's sport; sexual harassment and abuse; the gender wage gap in sport; the underrepresentation of women in leadership and management positions in sporting organizations⁶¹⁴.

Sports organisations are more and more expected to be responsible for the respect of human rights in sport (for instance, the freedom of the media, the fight against discrimination, the right to privacy, freedom of expression, the right to health)⁶¹⁵. However, many rights and freedoms may be threatened in the sport world, which has not been considered part of the human rights filed; this isolation has resulted in the oversight of a range of practices that violate the rights of the athletes and has allowed such practices to continue⁶¹⁶.

Although some argue that sport is a human right, it is not protected legally as a universal human right nor mentioned in any legally binding instrument devoted to human rights⁶¹⁷. However, a human rights frameworks and anti-violence norms within sport have begun

⁶¹¹ HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE, *op.cit.*, p. 7.

⁶¹² *Ivi*, p. 8.

⁶¹³ *Ivi*, p. 17.

⁶¹⁴ *Ibid.*

⁶¹⁵ Council of Europe, *16th Council of Europe Conference of Ministers responsible for Sport, Draft Resolution on Theme 2: Human Rights in Sport*, Strasbourg, September 28th, 2020, p. 2.

⁶¹⁶ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE, *op.cit.*, p. 4.

⁶¹⁷ Council of Europe, *op.cit.*, p. 7.

to develop, and now, with the emergency measures taken against the COVID-19 pandemic, the vital need of physical activity has been recognized by many countries⁶¹⁸.

⁶¹⁸ Council of Europe, *op.cit.*, p. 7.

CHAPTER 4: THE PREVENTION OF VIOLENCE AGAINST WOMEN IN SPORT

4.1 State's obligations countering violence against women in international law

States' obligations in countering VAW have been categorized in different ways, which have not always been clear; particularly the distinction between the international human rights framework "to respect, to protect and to fulfil human rights" and other categories such as obligations of conduct and of result have not been transparent⁶¹⁹. These categories may overlap, but distinctions should be made.

To understand state responsibility, the starting point is the Draft Articles on Responsibility of States for Internationally Wrongful Acts of 2001, which state that "there is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State" (Article 2). This means that an international obligation can consist in an action or in an omission, and its origins are not necessarily identified in a treaty, but they can derive from any legal instrument⁶²⁰.

Since the 1990s, states are responsible also for "private" actions, as the distinction between the private and the public has been disrupted. The first to conceive the structure for state responsibility was the then Special Rapporteur Robert Ago, who distinguished between obligations of conduct (which require the state to adopt a specific conduct, such as enacting laws) and obligations of result (which require the state to ensure an outcome, freely deciding how to achieve it)⁶²¹. However, in the 1990 General Comment No. 3 on Article 2 of the ICESCR elaborated by the CESCR, it was recognized that the simple adoption of measures is non exhaustive of the obligations of member states⁶²².

Another distinction should be made: between positive and negative obligations. Positive obligations refer to the state's intervention and performance of certain actions (with the aim of realizing individual rights and freedoms), while negative obligations require the

⁶¹⁹ S. DE VIDO, *Violence Against Women's Health in International Law*, *op. cit.*, p. 180.

⁶²⁰ *Ibid.*

⁶²¹ *Ibid.*

⁶²² GC No. 3, para. 4.

state to abstain from interfering in the domain of individual rights and freedoms⁶²³. Positive obligations have a key role in international human rights law. Due diligence is particularly important in international law and for women's rights, and it can be considered both an obligation of conduct and a positive obligation. Due diligence is a standard utilized to measure whether the state has taken all the necessary measures to, for instance, prevent a violation of women's rights, or to protect a female victim of violence, or to investigate a violent act; indeed, in human rights law, the due diligence of states means that they have to do everything necessary to avoid human rights abuses, to determine who was responsible for the abuse and take measures against him/her, and provide reparations for the victim⁶²⁴. States' human rights obligations include the application of this principle, pursuant to which states must prevent, investigate and redress human rights abuses committed by others⁶²⁵. The concept of due diligence, indeed, is contained in numerous soft law and hard law legal instruments regarding women's rights: the 1993 DEVAW requires states to exercise due diligence to prevent VAW committed by private individuals; the 1992 GR No. 19 of the CEDAW Committee underlines states' responsibility for acts committed by individuals if they fail to act with due diligence; the GR No. 35 on VAW links due diligence to the obligation of taking all possible measures to eliminate discrimination against women; the CoE Istanbul Convention refers to due diligence in its Article 5(2), which requires states to exercise due diligence to prevent, protect, prosecute and provide reparations for acts committed by nonstate actors⁶²⁶.

In international human rights law, three types of states' obligations have been identified: obligations to respect (which is the only one that can be considered a negative obligation, as the state must abstain from various behaviours), to protect and to fulfil human rights (these two are positive obligations that require the state to take steps to implement human rights)⁶²⁷. The three layers of obligation have the objective to implement economic, social and cultural rights, which have been considered the 'least justiciable' among human rights⁶²⁸. However, it was only the Istanbul Convention of 2011 that adopted a more practical approach regarding states' obligations dealing with VAW. The states'

⁶²³ S. DE VIDO, *Violence Against Women's Health in International Law*, *op. cit.*, p. 183.

⁶²⁴ *Ivi*, p. 184-185.

⁶²⁵ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 10.

⁶²⁶ S. DE VIDO, *Violence Against Women's Health in International Law*, *op. cit.*, p. 186-187.

⁶²⁷ *Ivi*, p. 188.

⁶²⁸ *Ivi*, p. 189.

obligations that it contains can be linked to the obligation of due diligence, which reflects the 3Ps paradigm, but it adds a fourth “P”: prevention, protection, prosecution and policy⁶²⁹.

Regarding the first pillar, prevention, the Convention asserts that states have the obligation to “adopt measures necessary to promote changes in the social and cultural patterns of behaviours of women and men with a view to eradicating prejudices, customs, traditions, and all other practices which are based on the idea of the inferiority of women” (Article 12). States have to eliminate prejudices and traditions based on the inferiority of the women or on the stereotyped gender role models⁶³⁰. Article 13 and 17 contain references to precise measures, such as awareness raising, education, training of professionals, preventive intervention and treatment programmes, and participation by the private sector and the media. The GREVIO Committee, established by the Convention, has the duty to assess whether states have adopted sufficient measures to guarantee the scope of the Convention⁶³¹.

For the second pillar, protection, the Convention requires states “to take the necessary legislative or other measures to protect all victims from any further acts of violence” and to “ensure effective cooperation” among different actors (Article 18). Specifically, states have to provide victims with support services, assistance in individual/collective complaints, the provision of shelters, telephone helplines and support for victims of sexual violence, and protection for children witnessing violence (Articles 20 to 26).

Regarding prosecution, states have the obligation to “take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness” (Article 45). This includes general obligations, such as the obligation to adopt measures necessary to ensure that investigations are carried out without delay, but also specific obligations, such as providing legislation on emergency barring orders, and on restraining or protection orders⁶³².

As regard to policies, states have to “take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies

⁶²⁹ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, op. cit., p. 151.

⁶³⁰ *Ivi*, p. 152.

⁶³¹ S. DE VIDO, *Violence Against Women’s Health in International Law*, op. cit., p. 192.

⁶³² *Ivi*, p. 193.

encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women” (Article 7, para 2). Effective measures on prevention, protection and prosecution require a strong collaboration among agencies, institutions and organisations⁶³³. Therefore, the fourth pillar surrounds and supplements the other three, and it includes among the measures the allocation of appropriate resources, partnership with different actors, data collection and research⁶³⁴.

All these obligations that the Convention includes can be considered positive obligations, even though of a different nature, while the obligation to criminalise a specific behaviour is an obligation of result⁶³⁵. The GREVIO Committee works to evaluate situation reports from states parties to the Convention⁶³⁶.

The GR No. 28 underlines that to “pursue by all appropriate means” a specific policy means to use “means” or a particular course of conduct, which results in state parties having a great deal of flexibility; at the same time, however, each state “must be able to justify the appropriateness of the particular means it has chosen and demonstrate whether it will achieve the intended effect and result”⁶³⁷.

Another crucial framework for understanding the nature and scope of states’ obligations with respect to human rights, including in sport, is the Guiding Principles on Business and Human Rights, which is endorsed by the Human Rights Council in its resolution 17/4 of 2011⁶³⁸. The aim of the Guiding Principles is the implementation of the UN “Protect, Respect and Remedy” Framework, according to which States and enterprises must protect human rights (states achieving this objective through policies, regulation, legislation and effective enforcement), and according to which both states and enterprises have to enable access to and effective remedy through court systems⁶³⁹.

⁶³³ S. DE VIDO, *Donne, Violenza E Diritto Internazionale*, *op. cit.*, p. 172.

⁶³⁴ S. DE VIDO, *Violence Against Women’s Health in International Law*, *op. cit.*, p. 193.

⁶³⁵ *Ibid.*

⁶³⁶ *Ivi*, p. 194.

⁶³⁷ GR No. 28, para. 23.

⁶³⁸ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 10-11.

⁶³⁹ *Ivi*, p. 12.

Furthermore, with regard to non-state actors, there is global consensus that they must exercise due diligence related to decisions about sport, and they should also commit to integrate human rights-based approaches into the operations of sport governing bodies⁶⁴⁰.

To conclude, even though there is no global consensus on an approach to the remediation of human rights abuses in sport (neither in general nor in terms of the specific equal rights of female athletes), states have the obligation to ensure the prevention of violations, the protection and promotion of human rights, and the access to appropriate and effective remedies when rights have been breached⁶⁴¹.

4.2 Planning next steps in international law to counter violence against women in sport

The issue of VAW is gaining a prevalent position in the international (especially in the UN) agenda, and has emerged as a policy priority⁶⁴². Although remarkable work has been carried out, particularly under international humanitarian law and international criminal law, many problems still exist⁶⁴³. How can the international law system be improved? The question is addressed in the following subsections, in which the next stages in the process of countering VAW in sport are identified in procedural and substantive reforms. However, it must be said that first of all that there is no quick solution to the problem, as VAW in the whole society is widespread and structural; second, the UN human rights treaty bodies are just a set of the actors at international level, and for this reason they need to be supported at national level in order to be effective⁶⁴⁴.

Another factor has to be clarified: removing gender-based inequalities in sport requires a wider change in the whole society, which means that sports policies need to adopt a society-level perspective in addressing socio-economic gender disparities (and not individually-oriented approaches)⁶⁴⁵. The trends in sport reflect the changes of the society, of which individual changes may be a consequence: legislation and initiatives that have resulted in women becoming more economically and socially independent

⁶⁴⁰ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *op.cit.*, p. 10.

⁶⁴¹ *Ibid.*

⁶⁴² A. EDWARDS, *op.cit.*, p. 321.

⁶⁴³ *Ibid.*

⁶⁴⁴ *Ivi*, p. 322.

⁶⁴⁵ K. GREEN, M. THURSTON, O. VAAGE, and K. MORDAL-MOEN, *Girls, Young Women and Sport in Norway: A Case Study of Sporting Convergence Amid Favourable Socio-economic Conditions*, *International Journal of Sport Policy and Politics*, Vol. 7, N. 4, Taylor & Francis, April 14th, 2015, p. 29.

appear to have reinforced the egalitarian culture (this happened, for example, in Scandinavian countries, such as Norway)⁶⁴⁶. In that area, skills and values that were previously considered masculine are no longer perceived to be in conflict with general gender scripts, resulting in the acceptance of women's participation in sport⁶⁴⁷.

This means that to prevent VAW there is the need to address the drivers by working to change norms (intended as the most dominant and powerful ideas, values or beliefs in the society), practices (the way in which the norms are put into practice) and structures (the laws and systems that organize and reinforce these norms and practices)⁶⁴⁸. Improvements will be achieved only if the social, cultural, economic and political realities of women's lives beyond sport are taken into account, and only if these conditions beyond sport that limit female involvement in sport are addressed in the agenda for a change⁶⁴⁹. For instance, attention should be paid to factors such as domestic and family responsibilities, lower incomes and higher poverty rates, since these elements contribute to the low rates of female participation in sport⁶⁵⁰.

Even though legislation and policy cannot eradicate discriminatory and patriarchal practices, governments and women's groups can contribute to politicize female sport and to transform sports culture and society⁶⁵¹. Because of the link between the struggle for equality for women in sport and the social and political problems of the everyday life, and because social practices have become social norms, it is crucial to proclaiming and legislating women's rights broadly within the society to transform patriarchal attitudes in sport⁶⁵². Some reforms are proposed below to address the identified problems.

4.2.1 Procedural reforms

The starting point to achieve equality and improve the system is related to women's participation in the treaty body system: states must nominate and elect more women members to international bodies, and in particular to the human rights treaty bodies⁶⁵³. The first step is the necessity for states to take into account the sex balance in the composition of the treaty bodies in all new treaties, as the ECtHR acknowledged that

⁶⁴⁶ K. GREEN, M. THURSTON, O. VAAGE, and K. MORDAL-MOEN, *op.cit.*, p. 30.

⁶⁴⁷ *Ibid.*

⁶⁴⁸ R. LISTON, S. MORTIMER, G. HAMILTON and R. CAMERON, *op. cit.*, p. 14.

⁶⁴⁹ P. SAFAI, K. GREEN, M. THURSTON, O. VAAGE, and K. MORDAL-MOEN, p. 339.

⁶⁵⁰ *Ibid.*

⁶⁵¹ C. BURNETT, *op.cit.*, p. 76.

⁶⁵² *Ibid.*

⁶⁵³ A. EDWARDS, *op.cit.*, p. 323.

inserting such weak language in policy directives (which is the same of a weak language in the treaties) only represents a limit⁶⁵⁴. Even in the cases in which such language was included, that is in the newest international human rights committees, gender parity in their membership has not been reached⁶⁵⁵. A guidance delineating how such targets can be achieved should be included in all treaties and treaty bodies, and training sessions and seminars on women's rights, gender, and feminist theories should be offered to treaty body members⁶⁵⁶. Openness and transparency in the nomination processes must be guaranteed, because it is time for states to fulfill their international treaty obligations or, at least, to take steps to achieve them⁶⁵⁷. Governments should lead the way in putting forward more women for international positions and marginalize those who do not; one way to raise the profile of the issue at national level could be to create a list of qualified women candidates and encourage governments to nominate from among the list⁶⁵⁸.

Furthermore, state party reports should be reviewed, as some treaty bodies have already done with initiatives such as the List of Issues (which is transmitted to member states and which includes questions about women's rights); however, a limit is represented by the fact that state parties may treat the document as static and may update it rarely⁶⁵⁹.

With regard to individual communications, the litigation arm of the UN human rights system is underutilized by women, and this is partly due to the difficulties of the system (like non-binding decisions or long-waiting periods), but also because of the barriers that women face in accessing the system, such as high rates of illiteracy among women, poor political participation and empowerment, lack of legal assistance⁶⁶⁰. Deeper empirical research on the obstacles to women's access is needed, because the system of individual communications remains a crucial element of the process towards the full protection and empowerment of women and for the ending of impunity of states, as jurisprudence developed by treaty bodies (also drawn from individual cases) can influence other international courts and tribunals⁶⁶¹. But, in order to rely on the treaty bodies as a way to achieve justice, more consistent outcomes are needed.

⁶⁵⁴ ECtHR, *Advisory opinion on certain legal questions concerning the lists of candidates submitted with a view to the election of judges to the European Court of Human Rights*, 12 February 2008.

⁶⁵⁵ A. EDWARDS, *op.cit.*, p. 323.

⁶⁵⁶ *Ibid.*

⁶⁵⁷ *Ivi*, p. 323-325.

⁶⁵⁸ *Ivi*, p. 325.

⁶⁵⁹ *Ibid.*

⁶⁶⁰ *Ivi*, p. 326.

⁶⁶¹ *Ibid.*

Lastly, the treaty bodies should begin to collect statistics on how women are filing cases, in relation to which rights, how many pass the admissibility requisite, how many succeed, how many women file claims on their own and how many on behalf of other family members, and the sex of these family members⁶⁶².

I would like to end this subsection with a part of a letter addressed to the Portfolio Committee on Sports and Recreation by Cheryl Roberts, who is a gender activist, sportswoman and commentator on the social positioning of sport. I think this letter gives a strong idea of the situation that women face in sport, and the consequent need for a change, which should start from the procedural reforms mentioned above:

“Amidst the euphoria, nationalism and strong positive feelings for South Africa's beautiful new stadiums and our hosting of Africa's first football World Cup are the hopes, dreams, ambitions of thousands of girls and women in sport, at most times, left shattered, broken and in pieces. And there's no ways I am being dramatic about this state of affairs, I am just being real, honest and feeling hard done by a system of power which controls financial allocation and hence the progress and development of women in sport. [...] So, Mr Butana Kompheia, I am asking you, as chairperson of parliament's committee of sport and recreation, to please intervene, and come to the assistance and rescue and, not only investigate, but come up with concrete, positive, sustainable action. [...] We cannot and should not leave the future of South Africa's sportswomen at the mercy of anyone who does not act responsibly in the interest of eliminating gender inequalities in sport. Major government intervention and support is needed! [...] How can we, as a non-racial, unified, democratic country, applaud and celebrate the successes of our men and then allow our girls and women to struggle, literally with chains around them, and still expect sporting glory from them?”⁶⁶³.

4.2.2 A possible protocol

A further step towards the elimination of VAW in sport could be the agreement of a protocol on VAW in sport, which may be attached to one of the human rights instruments

⁶⁶² A. EDWARDS, *op.cit.*, p. 326.

⁶⁶³ C. ROBERTS, *Government Intervention Needed to Improve Status of Women in Sport*, Agenda: Empowering Women for Gender Equity, N. 85, Taylor & Francis Ltd, 2010, p. 146-147.

or, better, could be a stand-alone treaty⁶⁶⁴. If interpretation is often a corrective and indirect mechanism to fix the errors of the original human rights text, protection from VAW in sport is in this way not recognized as a right in itself, but as something minor than that⁶⁶⁵. The unwillingness to agree on a binding treaty that prohibits VAW in sport supports the idea that women are unequal subjects under the law and in the world of sport, and that the content of the rules of international law privileges men⁶⁶⁶. The absence of an explicit treaty on VAW in sport has the consequence to leave lawyers and decision-makers to engage in an imaginative interpretation of the texts, rather than in a literal reading, relying on the individual predisposition to apply gender reasoning techniques⁶⁶⁷. Many arguments against a protocol on VAW in sport could be raised (and have been raised against a protocol on VAW in general in the past): for example, some argue that a protocol on VAW could devalue an international legal system that protects and advances the human rights of all persons; others argue that identifying VAW as a human rights violation breaches the universality principle by treating such acts differently to other acts perpetrated against other people⁶⁶⁸. However, it is precisely the goal of equal protection contained in international human rights law that makes VAW an imperative of international law, and international human rights law can claim universal protection only if it takes into account the experiences of all persons, not only the privileged ones, paying special attention to the more vulnerable groups, who have been left behind by a patriarchal system⁶⁶⁹.

The need for the creation of a specific criminal law to prosecute cases of VAW in sport is the result also of the lack of consensus on the definition of VAW in sport, which may create conflicts between penal laws and sport justice⁶⁷⁰. A protocol on VAW in sport could contribute to increase the visibility of the issue and prompt action to address such incidences⁶⁷¹.

To conclude, high levels of female participation and a decrease of VAW in sport could be achieved also with the contribution of procedural reforms and with an eventual

⁶⁶⁴ A. EDWARDS, *op.cit.*, p. 338.

⁶⁶⁵ *Ibid.*

⁶⁶⁶ *Ibid.*

⁶⁶⁷ *Ivi*, p. 339.

⁶⁶⁸ *Ivi*, p. 340.

⁶⁶⁹ *Ibid.*

⁶⁷⁰ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 28.

⁶⁷¹ *Ibid.*

protocol. Where these two objectives have been achieved, it has been shown that they were connected to the more general socio-economic status of women and to the diminishing gender gap⁶⁷². Female athletes may stop facing violence when they will have the possibility to take advantage of growing up in a country where standards of living are high, and at a time of greater gender equality, in order to exploit the sporting opportunities increasingly available to them⁶⁷³. In terms of the policy implications, instead of adopting individually oriented approaches, there is the need for sports policies to adopt a society-level perspective that addresses socio-economic gender disparities, because the increase in female participation in sport is linked to the general closing of the gap⁶⁷⁴. Sport depends and reflects more fundamental structures, values and processes, like economic and social structures, but it is also true that sport itself has a role in contributing to the circumstances that help female athletes emerging.

It must be also said that the agreement on a protocol outlawing VAW in sport will not be free from constraints, like the overemphasis in the power of law at the expenses of non-law-based remedies and the reliance on the good faith of the politicians who will uphold it⁶⁷⁵.

4.3 Approaches to the prevention

In order to address and prevent violence in sport, an organizational change through a multi-level approach is required, as it would help to promote gender equitable attitudes and behaviors, build on violence prevention throughout the sport pipeline, improve responses to violence, and develop a healthy and respectful community⁶⁷⁶. Sport provides a multi-level approach that could help to prevent violence, but key sport stakeholders expressed the need for strong messages and for more opportunities for education and training in order to develop a clear understanding of how VAW impacts sport⁶⁷⁷.

The best approach to prevent VAW in sport takes into consideration the need to promote women's participation and opportunities, to challenge gender stereotypes and violence-supportive attitudes, and encouraging equal relationships on and off the field⁶⁷⁸. This

⁶⁷² K. GREEN, M. THURSTON, O. VAAGE, and K. MORDAL-MOEN, *op. cit.*, p. 1.

⁶⁷³ *Ibid.*

⁶⁷⁴ *Ivi*, p. 15.

⁶⁷⁵ A. EDWARDS, *op.cit.*, p. 341.

⁶⁷⁶ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 3.

⁶⁷⁷ *Ivi*, p. 28.

⁶⁷⁸ R. LISTON, S. MORTIMER, G. HAMILTON and R. CAMERON, *op.cit.*, p. 7.

whole-of-sport approach means that sporting organisations aim to address the drivers of VAW by enacting multiple strategies to change structures, norms, practices, and behaviours both within the organisation (like players, coaches, officials, staff) and in the wider sporting community (fans, media, volunteers), and it can be used at different levels, from a peak national body to local organisations⁶⁷⁹.

Some initiatives focused specifically on addressing violence (often sexual violence), while others recognized VAW as a violation of the sport ethics, creating a framework for VAW within the broader measures aiming at an ethical sports environment⁶⁸⁰. For example, the Dutch Olympic Committee and Sports Federation implemented numerous initiatives aimed at promoting integrity and respect in sport, also through a collaboration with the police, the prosecution service, and the Ministry of Justice, which formed a task force on the prevention of inappropriate sexual behaviour in sport⁶⁸¹. Many national sport governing bodies across several EU Member States have started to address VAW in sport as an ethical issue: the ‘Basketball’s Word of Honour’ is a project of the Basketball Federation of Slovenia that followed the sentence to a period of probation of a coach who had inappropriate sexual behaviour towards a youth player during a basketball youth summer camp (the project defines ethical behaviour for all sport stakeholders and prohibits VAW and other forms of violence); in Bulgaria, following the requirements from international and European footballing federations, football organizations adopted codes of ethics for players and managers that outlaw VAW⁶⁸². However, not all EU member states have implemented codes of ethics and, when they do exist, references to VAW in sport is usually generic and included in wider statements prohibiting all forms of violence⁶⁸³.

Most practices include raising awareness and promoting capacity building for preventing VAW among sport organisations and coaches, and usually the tools that are used are promotional materials (like stickers), toolkits, guidelines, conferences, campaigns, training sessions. For instance, in Cyprus, the Cypriot National UNESCO Commission

⁶⁷⁹ R. LISTON, S. MORTIMER, G. HAMILTON and R. CAMERON, *op.cit.*, p. 10.

⁶⁸⁰ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 39.

⁶⁸¹ *Ivi*, p. 40.

⁶⁸² *Ibid.*

⁶⁸³ *Ibid.*

collaborated with the Cyprus Sport Organisation to organize a lecture about the role of sport organisations in the prevention and fight against sexual violence against children⁶⁸⁴.

In order to support these policies that aim to promote ethical behaviours in sport, tools such as official documents (like circulars), or templates of policies that define standards were used (for example, a Basque partnership between the local gender equality structure and the local government created a guideline for sport organisations to develop Action Protocols with the aim of eliminating the sexual harassment of women in sport)⁶⁸⁵. Another type of initiative that has already been adopted is bringing actors together through roundtables, working groups, networks or alliances, in order to raise awareness about VAW in sport and to exchange knowledge and experience; this is the case of the Croatian Network of Coordinators in Counties and National Sports Federations, a network founded by the Croatian Olympic Committee and its Commission on Gender Equality in Sport, and the Ministry of Science, Education and Sport⁶⁸⁶.

Another tool that has been used, even though in a minor extent, are the websites with access to information on VAW in sport, provided to the general sport community (including athletes' parents), such as the online portal of the 'Play by the Rules' project, developed by the South Australian Department for Sport and Recreation, to raise awareness on, among others, sexual harassment and homophobia, and which contains news, events, online training courses⁶⁸⁷.

However, the approaches used by the majority of these initiatives focused only on a specific form of VAW (such as sexual harassment) or specifically addressed violence against children, and, moreover, many of them included VAW as part of broader initiatives⁶⁸⁸. Many practices were implemented with limited funds, or had a short duration, while evidence of efforts and resources to ensure the prolongation of activities should be put into place: starting from the basis of these initiatives, future approaches should take into consideration the needs and expectations of the audience, benchmark tools that have already been used with regard to the issue of VAW in sport, involve all

⁶⁸⁴ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 55.

⁶⁸⁵ *Ivi*, p. 55-56.

⁶⁸⁶ *Ivi*, p. 56.

⁶⁸⁷ *Ibid.*

⁶⁸⁸ *Ibid.*

the actors that could have an interest, monitor and evaluate the initiatives, and ensure human and financial resources⁶⁸⁹.

To conclude, the approach to prevent VAW in sport should be a multi-level response, reaching athletes, coaches, and the culture in which they operate, tackling all the forms of violence⁶⁹⁰. Such an approach cannot simply be directed to the athletes, coaches, or staff who may perpetrate VAW, but also the individuals and structures that tolerate or reinforce this violence⁶⁹¹. There is also the need for more education, in order to demonstrate how sport can be part of the solution to ending VAW, connecting prevention efforts throughout the various levels of the sport pipeline, such as high school, coaches or athletic directors, state athletic organizations⁶⁹².

4.4 Actors promoting the prevention of violence against women in sport

Only recently have international sport bodies introduced explicit measures to protect young and adult athletes from violence, as there was a certain reluctance in acknowledging that violence occurs within the sport system (for this reason, often the focus of the measures was previously centered on spectators or fans)⁶⁹³. However, with the work of critical scholars, journalists and some former athletes, the problem of violence in sport has gained more and more dominance, and the number of initiatives on violence prevention has increased, both focusing on children and on adult athletes⁶⁹⁴. For instance, the FIFA Executive Committee created a regulation protecting minors, which asserts that a subcommittee appointed by the Players' Status Committee has the role of examining and eventually approving every international transfer and first registration of every child athlete who is not a national of the country in which he/she wants to be registered⁶⁹⁵.

Also Governments intervene in the regulation of sport, but with different degrees varying from country to country: in some countries governments operate tightly controlled sport systems, while in others there is a tendency toward a *laissez-faire*⁶⁹⁶. The more sport

⁶⁸⁹ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 57.

⁶⁹⁰ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 13.

⁶⁹¹ *Ibid.*

⁶⁹² *Ivi*, p. 28.

⁶⁹³ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 19.

⁶⁹⁴ *Ibid.*

⁶⁹⁵ Fédération Internationale de Football Association, *Regulations on the Status and Transfer of Players: Protection of Minors*, Circular no. 1190, FIFA, Zurich, 20 May 2009.

⁶⁹⁶ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 20.

represents an important part of the culture of a country (also with an economic and civic status), the more the government is involved in establishing how sport is run through legislation or through incentives (like tax breaks)⁶⁹⁷. In countries in which the prevention of violence is considered as fundamental, it can be included within these regulatory approaches. However, in recent years, in most cases the individual sport bodies are the ones who adopt their own anti-violence measures (it might be a consequence of a change in the national policy governing their sport or a consequence of an initiative by individual members), because few national governments require such measures to be adopted within sport organizations⁶⁹⁸. Anti-violence measures often include the screening of candidates as part of the recruitment practice to avoid unfit people working in sport activities⁶⁹⁹.

At international level, the IOC, and to some extent the Paralympic Committee, are addressing VAW in sport, and these initiatives are fundamental due to their visibility and due to the influence they have on the national committees⁷⁰⁰. The Commission on Women and Sport was founded in 1995 by the IOC to address discrimination and VAW and to increase women's involvement in sport, and it is acting through international awareness-raising campaigns and events (such as conferences and official meetings), which have recognized the urgency of combating VAW in sport⁷⁰¹.

At the national level, especially at EU member state level, countries have used different means to prevent VAW in sport, which may be promoted either within a wider policy framework or accompanied by other initiatives⁷⁰². For example, in Italy, on 11 June 2013, the Memorandum of Understanding was signed by the then Minister for Equal Opportunities, Sport and Youth Policies and the Italian Olympic Committee (CONI), which set up the “sport week against gender-based violence in and through sport”, with the aim to spread knowledge of human rights in the world of sport, especially on the refusal of physical, psychological and oral violence⁷⁰³. But sport organizations are the actors who promote prevention initiatives the most, often targeting coaches. However, these initiatives have been implemented with scarce funds or with a limited duration; the

⁶⁹⁷ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 20.

⁶⁹⁸ *Ibid.*

⁶⁹⁹ *Ibid.*

⁷⁰⁰ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 11.

⁷⁰¹ *Ivi*, p. 35.

⁷⁰² *Ivi*, p. 11.

⁷⁰³ Concluding observations on the sixth periodic report of Italy, Addendum, adopted by the Committee at its forty-ninth session, 11-29 July 2011.

efforts, resources and materials used for the implementation are limited, the visibility is not enough and there is an overall absence of monitoring and evaluating systems related to the effectiveness of these activities⁷⁰⁴. The most important actors at national level to prevent VAW in sport are the National Olympic Committees, who have to promote the Olympic Movement in their country, with the consequent responsibility to develop ethics in sport⁷⁰⁵.

The Olympic Charter, in its Section 27 (2.5), clarifies the responsibility of National Olympic Committees to “take action against any form of discrimination and violence in sport”⁷⁰⁶. For example, Italian and French National Olympic Committees have committed to combat VAW in sport by including specific statements outlawing all forms of VAW in their regulations⁷⁰⁷. Despite their importance, the impact of National Olympic Committees’ commitments alone is minimal. Some other National Olympic Committees have tried to go beyond these limits by concretely leading campaigns or creating tools to prevent VAW: for instance, the Croatian Olympic Committee created the Gender Equality in Sport Commission, which adopts policies and initiatives to VAW in Croatian sport, and has organized conferences and training workshops on the issue⁷⁰⁸. Alternatively, many national sport organisations have taken concrete action to prevent VAW in sport, like awareness-raising campaigns, workshops for coaches and athletes, the establishment of telephone helplines for victims, or the establishment of codes of ethics creating parameters for appropriate sport practices⁷⁰⁹. This is the case of, for example, the Association for Sport and Physical Education, an Austrian sport organisation that created the national Call4Girls/Call4Boys project, which ran from 2006 to 2011: a telephone helpline for men and women who have been victims of sexual harassment in sport⁷¹⁰.

Regarding violence against LGBTQI, in 2014 the IOC issued a recommendation which added the prohibition of discrimination on the grounds of sexual orientation to the

⁷⁰⁴ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 11.

⁷⁰⁵ *Ivi*, p. 36.

⁷⁰⁶ International Olympic Committee, *The Olympic Charter*, 2015, available at http://www.olympic.org/Documents/olympic_charter_en.pdf

⁷⁰⁷ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 36.

⁷⁰⁸ *Ivi*, p. 37.

⁷⁰⁹ *Ibid.*

⁷¹⁰ *Ibid.*

Olympic Charter⁷¹¹. Consequently, Article 6 of the Olympic Charter was expanded to include discrimination on the basis of sexual orientation, and the Charter recognizes the importance of the role of National Olympic Committees in fighting discrimination and violence in sport⁷¹². Although the Olympic Charter does not clarify how the IOC should address sexual harassment and homophobic violence in sport, the IOC organized events for athletes and coaches such as the initiative during the 2014 Summer Youth Olympic Games in China to teach them the prevention of sexual harassment in sport⁷¹³. Even the International Paralympic Committee in 2008 issued the “Position Statement on Sexual Harassment and Abuse in Sports”, whose Principle 1.2 asserts that “every member of the Paralympic family, shares the responsibility to identify and prevent sexual harassment and abuse, and to develop a culture of dignity, respect and safety within the Paralympic sport community”⁷¹⁴. This means that also National Paralympic Committees have the duty to address VAW in sport and they are encouraged to raise awareness of how sexual harassment negatively impacts sport, and to adopt behaviours aimed at eliminating such practices⁷¹⁵.

To conclude, sport bodies and organization are the main actors promoting the prevention of VAW in sport. The IOC, National Olympic Committees, sport federations, confederations, and associations developed prevention practices in the field of VAW, such as guides on preventing sexual harassment in sport or presentations on sexual violence in conferences⁷¹⁶. In some cases ministries and governmental agencies have taken the role of promoters of prevention initiatives (such as legal guides for the prevention of violence and discrimination in sport), while in other cases sport stakeholders (like sport federations or leagues) have been identified to collaborate to raise awareness on the issue (such as campaigns on homophobia in football)⁷¹⁷. Many of these prevention practices have been developed in cooperation with a variety of stakeholders, from sport organisations (like federations or National Olympic Committees) and

⁷¹¹ International Olympic Committee, *The Olympic Charter*, 2015, available at http://www.olympic.org/Documents/olympic_charter_en.pdf

⁷¹² L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 36.

⁷¹³ *Ibid.*

⁷¹⁴ International Paralympic Committee, Chapter 4.2 - Position Statement on Sexual Harassment and Abuse in Sport, 2008, available at https://www.paralympic.org/sites/default/files/document/141113170402987_2014_10_13+Sec+ii+chapter+4_2_Position+Statement+on+Sexual+Harassment.pdf

⁷¹⁵ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 36.

⁷¹⁶ *Ivi*, p. 58.

⁷¹⁷ *Ibid.*

governmental organisations, to academics and civil society organisations (while prevention initiatives promoted at grassroots level have been less frequently adopted)⁷¹⁸.

4.5 Inspiring initiatives preventing violence against women in sport

In this section some examples of promising initiatives that have been adopted to prevent VAW in sport will be presented so as to give an idea of how prevention is being tackled in sport.

The Australian Football League created the Fair Game Respect Matters, a program that aims to promote gender equality and culture change in the world of football clubs as a strategy to prevent VAW⁷¹⁹. The program lasted two years (2008-2009), it was piloted in one Victorian football league, and it was evaluated for future improvements for these kind of programs⁷²⁰. Following studies on the most important areas for the improvement for women-inclusive sport clubs, the program included changes to organisational policies (like codes of conduct for players), an education program aiming to make players understand VAW and how to behave respectfully with women, and a toolkit which included an audit of club policies and procedures (furthermore, posters and brochures with meaningful messages were provided)⁷²¹.

Another interesting initiative is the Mentors in Violence Prevention (MVP), a gender violence prevention and education program established in 1993 and based at Northeastern University's Center for the Study of Sport in Society (US)⁷²². The MVP program targets high school, collegiate and professional male athletes, trying to prevent all forms of VAW, as it considers men athletes as empowered bystanders (and not as potential perpetrators) who can develop leadership skills and learn to mentor younger people on VAW thanks to the opportunities that this program offers⁷²³. Besides the focus on male athletes, the MVP targets also women, helping them to understand how and when to interrupt sexist behaviours by men⁷²⁴. Another branch of the MVP, the MVP Female Student-Athlete project, focuses on making women and girls teams at colleges and universities learn the possibilities as bystanders in cases of VAW⁷²⁵. The basis of the

⁷¹⁸ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 58.

⁷¹⁹ R. LISTON, S. MORTIMER, G. HAMILTON and R. CAMERON, *op. cit.*, p. 33.

⁷²⁰ *Ibid.*

⁷²¹ *Ibid.*

⁷²² C. PALMER, *op. cit.*, p. 18.

⁷²³ *Ibid.*

⁷²⁴ *Ibid.*

⁷²⁵ *Ivi*, p. 19.

program is the “MVP Playbook” which contains possible scenarios of VAW; the participants interact by discussing personal experiences and the potential interventions in such cases⁷²⁶. Graduates of the program participate in forums and classes where they speak about VAW perpetrated by men, as the early awareness about VAW is essential⁷²⁷.

Similarly, the “Respect and Responsibility” program in Australia focuses on violence prevention education and on the raising awareness among professional male athletes, as it represents an effort by the Australian Football League to address VAW and to create an inclusive sport system for women (indeed, the Australian Football League cooperates with the Victorian government’s Department of Health)⁷²⁸. It was launched in 2005 and it aims at: establishing anti-sexual harassment and discrimination procedures; elaborating policies to ensure a safe environment; developing education programs (especially focusing on players education and with the aim of increasing their understanding of VAW); creating standards that can be used at club level⁷²⁹.

Even the IOC is a promoter of an interesting initiative: the educational website on sexual harassment and abuse in sport, implemented since 2012. The website targets at sport organisations, coaches and athletes with the aim of raising awareness about sexual harassment, homophobia and hazing⁷³⁰. It is available in six languages (English, German, French, Spanish, Russian and Chinese) and it contains videos that help to recognize risky situation for sexual harassment in sport, as well as a series of prevention measures⁷³¹.

Many EU member states have adopted initiatives on prevention of VAW in sport. For example, the National Olympic Committee in Croatia issued the National Sports Programme from 2014 to 2020, which focuses on the protection of women and girls from all forms of violence in sport and which is implemented by the Croatian Olympic Committee and its Commission on Care for Women in Sport, the Office for Gender Equality, ministries, the media, and scientific and research organisations⁷³². The Commission on Care for Women in Sport of the Croatian Olympic Committee, with the objective to fight VAW in sport, created a network of coordinators in counties and

⁷²⁶ C. PALMER, *op.cit.*, p. 19.

⁷²⁷ *Ibid.*

⁷²⁸ *Ibid.*

⁷²⁹ *Ivi*, p. 19-20.

⁷³⁰ COUNCIL OF EUROPE, *Gender-Based Violence in Sport*, *op.cit.*, p. 2.

⁷³¹ *Ibid.*

⁷³² L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 60.

national sport federations to address VAW in sport, which meets once a year⁷³³. For instance, during the 7th seminar organised by the network in 2015, in which the key theme was “sport as a safe area for women and girls”, the issues of harassment and abuse of female athletes and the possible measures to counter this problem were addressed, and many recommendations grew out of discussions⁷³⁴.

In Austria, the Karate Federation developed a code of ethics (“Ehrenkodex”) in 2015, trying to achieve a democratic and gender-sensitive culture within sport clubs in order to prevent VAW in sport⁷³⁵. The Code contains provisions on fair play, respect for personal integrity, and protection of children’s rights, and it recognized the responsibility of sport federations to report breaches of the code⁷³⁶. All the members of the Austrian Karate Federation are obliged to sign the code, and in 2016 it was followed by changes to the regulations of the Austrian Karate Association to include the mandatory signing up of the code by all coaches⁷³⁷.

In Germany, the Olympic Sports Confederation led the campaign “Strong Networks against Violence: No Violence against Girls and Women”, which started in 2008 and which is a platform for the prevention of VAW in and through with the aim to empower women’s self-confidence through sports⁷³⁸. Many partners support the campaign, including many martial arts sport federations, local sports clubs, women’s organisations, and victim support groups; indeed, assertiveness and self-defence activities are offered in collaboration with martial arts federations, and the German Olympic Sport Confederation offers written guidelines⁷³⁹.

Regarding homophobia, an inspiring initiative is the Royal Belgian Football Association’s “Captains of Change” project, which tries to create a safe football environment for LGBT people⁷⁴⁰. The Football+ Foundation, a social responsibility organisation within Belgian football, managed the project together with numerous football federations and with the Flemish and federal government; it included a toolkit to

⁷³³ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 61.

⁷³⁴ *Ibid.*

⁷³⁵ *Ivi*, Annex 3, p. 8.

⁷³⁶ *Ibid.*

⁷³⁷ *Ibid.*

⁷³⁸ *Ivi*, Annex 3, p. 12.

⁷³⁹ *Ibid.*

⁷⁴⁰ *Ivi*, Annex 3, p. 8.

help clubs in the elaboration of their LGBT action plan, and a workshop to assist football clubs make their system more inclusive⁷⁴¹.

Regarding children, the “Code of Ethics and Good Practice for Children in Sport” is a promising initiative by the Irish Sports Council and the Sports Council Northern Ireland which safeguards children in sport through the promotion of children’s rights and of a healthy sport system⁷⁴². The Code includes a set of principles, policy and practice guidelines for sport leaders, coaches, officials, organisations, and athletes’ parents; the app “Safe Sport” was created based on the Code, which contains information and guidance for all persons involved in youth sport and in which the child’s journey to sport events can be trackable by their parents⁷⁴³. Even though the implantation of the Code is voluntary, governmental funding varies depending on the number of sports organisations adhering in it, and this financial mechanism was effective in terms of the adoption of the Code by sport organizations⁷⁴⁴.

Sport can be used to achieve the prevention of VAW not only in the sport settings, but also into the wider society. A case in point is the “Coaching Boys into Men”, a direct participation program addressing VAW (first implemented in the US and then spread to different countries) and which aims to modify the ideas behind physical, sexual and psychological violence in intimate relationships through the education by coaches⁷⁴⁵. Coaches, who can be a model for athletes, provide anti-violence messages to change athletes’ attitudes during the training sessions⁷⁴⁶. The program has been evaluated, and it has been demonstrated that it was effective in influencing the behaviours of the athletes and also in improving the likelihood of a coach intervening when witnessing violent behaviours⁷⁴⁷.

4.6 6Ps framework: combatting violence against women in sport

In the most recent convention on VAW, the Istanbul Convention, states’ due diligence obligations are identified in the 4 “P”, namely Prevention, Protection, Prosecution, and Policy⁷⁴⁸. However, I will propose here the “6Ps framework”, an approach already used

⁷⁴¹ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, Annex 3, p. 8.

⁷⁴² COUNCIL OF EUROPE, *Gender-Based Violence in Sport, op.cit.*, p. 2.

⁷⁴³ *Ibid.*

⁷⁴⁴ *Ibid.*

⁷⁴⁵ R. LISTON, S. MORTIMER, G. HAMILTON and R. CAMERON, *op.cit.*, p. 21.

⁷⁴⁶ *Ibid.*

⁷⁴⁷ *Ibid.*

⁷⁴⁸ S. DE VIDO, *Donne, Violenza E Diritto Internazionale, op.cit.*, p. 151.

in some studies on VAW by the European Institute for Gender Equality: it identifies six key areas for action (it is based on the 4Ps framework of the Istanbul Convention): Prevalence, Prevention, Protection, Prosecution, Provision of services, and Partnership⁷⁴⁹.

Prevalence (and incidence) means to estimate the extent of VAW in sport: prevalence is the proportion of a population that is affected by the issue at a given time, while incidence is defined as the number of new cases in a population within a certain period⁷⁵⁰. This quantitative and qualitative data collection (and the consequent understanding of the magnitude of the problem) is useful for the development of a coordinated policy-making⁷⁵¹. For example, self-completion surveys could be used, and all forms of VAW should be taken into account. However, most studies on prevalence data that have been carried out focus mainly on a specific form of VAW in sport, or they were included within broader problems like “unwanted behavior” or “violence against child athletes”; moreover, the different forms of VAW in sport that were studied were operationalized differently across countries, and also the methodological approaches differed⁷⁵². As a result, now no reliable data is available and comparisons among different countries are impossible.

Prevention is identified in the measures promoting social and cultural changes in the behavior of men and women (for example awareness-raising initiatives, the creation of educational materials, the training of professionals). However, there is an overall lack of prevention actions, and this is due to several factors: first, sport is often considered a place where VAW does not occur; second, within sport policy, the attention is placed first on other issues (like doping or spectator violence) or, alternatively, VAW is subsumed within other issues in sport such as fair play or ethical values; finally, VAW in sport remains a taboo in certain countries and, as a result, there is reluctance to establishing initiatives on the problem⁷⁵³.

Protection aims at ensuring the safety and meeting the needs of victims through protective actions for victims of any forms of VAW in sport, and it comprises the report of the occurrence of abuse or harassment (by a coach, a peer, or anyone within the sport

⁷⁴⁹ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 5.

⁷⁵⁰ *Ibid.*

⁷⁵¹ *Ivi*, p. 6.

⁷⁵² *Ivi*, p. 67.

⁷⁵³ *Ivi*, p. 67-68.

system)⁷⁵⁴. One way to achieve Protection could be the assessment of the suitability of those who work with women, the creation of databases of people with a criminal history for VAW, or the adoption by sport organizations of measures to protect sportswomen (like guidelines on how to manage cases of sexual violence in sport or mailboxes to report violence)⁷⁵⁵.

Prosecution (and disciplinary measures) comprises legal proceedings against the alleged perpetrators of violence against an athlete, but also investigative measures and judicial proceedings (like court cases). This means that criminal and civil offences and disciplinary or internal grievance procedures are included. The legal frameworks in place in all EU member states allow the criminal prosecution of many forms of VAW in sport, but some sport organizations have further adopted disciplinary measures for cases of VAW in sport⁷⁵⁶. An example could be the Irish Sport Council's Code of Ethics and Good Practice for Children in Sport, which defines the disciplinary procedures in case of violence against children, or the Dutch Institute for Sport Law, that manages disciplinary cases of sexual harassment in sport⁷⁵⁷.

The Provision of services is defined as the services offered to victims (sometimes also to their families) and perpetrators of VAW in sport, but it also includes the professionals who provide these services (like people involved in specialized training) and the tools used (like learning materials). For instance, some EU member states (Germany, UK, Ireland, the Netherlands) have engaged people within sport organizations with the task of managing disclosures or providing support to those affected by VAW in sport; however, only the Netherlands provides counselling to perpetrators of VAW in sport⁷⁵⁸. Where there is a lack of support services for people affected by VAW in sport, organizations related to VAW, health, psychology, and the law can request assistance⁷⁵⁹.

Partnership means to involve important actors at international, regional and national level (such as governmental agencies, civil society organizations, sport federations), who may collaborate for taking actions to fight VAW in sport. Currently, most partnerships are established at European level and at national level, while regional and local level

⁷⁵⁴ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 6.

⁷⁵⁵ *Ivi*, p. 68.

⁷⁵⁶ *Ibid.*

⁷⁵⁷ *Ivi*, p. 69.

⁷⁵⁸ *Ibid.*

⁷⁵⁹ *Ibid.*

partnerships are less common; many of them include a wide range of actors (governmental, public, private, and civil society organizations) from different sectors (sport, health, education, children, women's and LGBTQI's rights)⁷⁶⁰. These partnerships can work through expressions of commitment to counter VAW in sport, through mandating that organizations implement policies, or through the creation of forums to share experiences⁷⁶¹.

In conclusion, the 6Ps framework, which departs from and expands on the 4Ps framework of the Istanbul Convention, is an effective normative framework based on a holistic approach to counter VAW⁷⁶².

4.7 Possible future policy measures

Future measures should be comprehensive (in the sense that they involve all relevant community members and systems) in order to be effective, and more detailed research should be carried out to contribute to policy developments and debate⁷⁶³. Moreover, there is the need of developing monitoring system related to incidences of VAW in sport, in order to have an accurate picture of the issue (which is useful for the creation of policy measures)⁷⁶⁴. Due to the few studies on the issue of VAW in sport, informing policy debates and practice is hard, and, as a consequence, more policy and research attention needs to be directed towards such issue⁷⁶⁵. The evaluation component should be included in future policy measures, otherwise there are difficulties in assessing the effectiveness of the policy measures, and because it might help during the development of future measures on VAW in sport⁷⁶⁶.

Generally, connections throughout the sport pipeline should be strengthened, different sectors should be aligned to build credibility, and role models in sport could be useful to expand the knowledge on the issue⁷⁶⁷. Even though there exist current policies and practices within the sport pipeline, periodic updates and processes ensuring accountability for their use and enforcement are required, and possibly they should be aligned and

⁷⁶⁰ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 70.

⁷⁶¹ *Ibid.*

⁷⁶² *Ivi*, p. 66.

⁷⁶³ C. PALMER, *op.cit.*, p. 20-21.

⁷⁶⁴ *Ivi*, p. 21.

⁷⁶⁵ *Ivi*, p. 22.

⁷⁶⁶ *Ibid.*

⁷⁶⁷ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 31.

coordinated with community policies⁷⁶⁸. These kind of policy measures cannot transform patriarchal attitudes in sport, but they have the potential of protecting women's rights. For long term goals, such as the elimination of gender inequalities in sport, an integrative approach is needed; while short-term goals can be reached through actions such as the scheduling of events, the creation of woman-friendly facilities, launching awareness campaigns, providing transport and safe environments⁷⁶⁹. Laws specifically regulating the prosecution of VAW in sport have the power to improve the awareness within the world of sport, and the taboo related to VAW in sport could be broken by targeting a wide range of stakeholders (such as sport organisations, their staff, coaches, athletes, fans, sport policy-makers, the media, the public)⁷⁷⁰. However, to address the issue of VAW in sport, it is problematic that a variety of concepts and definitions of different forms of VAW in sport are employed among different countries⁷⁷¹.

4.7.1 The European Commission

The development of an official network of experts by the European Commission would prove beneficial to the world of women's sport, which should lead European member states in their implementation of prevention measures on VAW in sport, and in the intensification of existing legal and policy frameworks⁷⁷². Current measures focus on a specific form of VAW in sport, at the expense of others, and their priority is the promotion of positive attitudes and the prevention of unwanted behaviours (moreover, often initiatives are stand-alone or ad hoc actions)⁷⁷³. For this reason, the European Commission should: establish an online information tool to raise awareness about VAW in sport and to create opportunities for stakeholders to prevent and challenge such violence. The platform should address different actors and give suggestions and references to existing resources on the prevention of VAW in sport, it should promote inspiring prevention initiatives to enhance their visibility and avoid duplication of efforts; finance constant studies using the same definitions, also to make comparisons easier over time; measure the extent of the phenomenon and ensure regular follow up of the data

⁷⁶⁸ A. RAJ, J. YORE, D. S. LEE, L. M. MAPP, S. SUMMERVILLE and A. ROSENBERG, *op.cit.*, p. 31.

⁷⁶⁹ C. BURNETT, *op.cit.*, p. 76-77.

⁷⁷⁰ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 12-58.

⁷⁷¹ *Ivi*, p. 71.

⁷⁷² *Ivi*, p. 13.

⁷⁷³ *Ibid.*

gathered; evaluate the effectiveness of the interventions that address VAW in sport (possibly establishing standard indicators)⁷⁷⁴.

Qualitative research should complement quantitative data on VAW in sport, as it could contribute to unravel the specific socio-cultural problems that drive such phenomenon, as well as give the insights needed to develop effective prevention approaches (while existing data on VAW in sport are fragmented and usually go unrecorded in official registers, or they are “hidden” within codes including a wide range of violent practices)⁷⁷⁵.

Another problem that the European Commission should address is the underreporting of acts of VAW in sport, but it could be overcome by eliminating the barriers that can make victims reluctant to report⁷⁷⁶. The European Commission could also try to eliminate or reduce the phenomenon by preventing convicted offenders and those subjected to disciplinary sanctions for acts of VAW from accessing female sport systems, and, for this purpose, the European Commission should raise awareness about the existence of the European Criminal Records Information System⁷⁷⁷.

4.7.2 EU member states

At the level of European member states, coherent national policy frameworks (such as a national strategy) should be established to combat VAW in sport (however, first of all, the acknowledgment of the world of sport as a setting where VAW occurs is necessary)⁷⁷⁸. The policy framework should be based on empirical knowledge and comprise a legal and policy framework. Moreover, precise action plans promoting gender equality and fighting VAW in sport should be developed in consultation with important stakeholders and under the coordination of the sport policy authorities to support the national policy framework: the action plan should establish measures, timelines, responsibilities and resources to combat VAW in sport, and ensure that governmental actions are accompanied by measures encouraging sport organizations to act⁷⁷⁹.

With regard to the overall underreporting of acts of VAW in sport, specific registers should be created to record the criminal offences referring to certain forms of VAW in

⁷⁷⁴ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 14, p. 74.

⁷⁷⁵ *Ivi*, p. 71.

⁷⁷⁶ *Ivi*, p. 72.

⁷⁷⁷ See more http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index_en.htm

⁷⁷⁸ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 13.

⁷⁷⁹ *Ibid.*

sport, and grievance and protection procedures to manage reports of VAW in sport should be developed by public authorities who are responsible for sport policy and funding (including, among others, complaint and reporting procedures, or the creation of an independent contact point)⁷⁸⁰. To make these mechanisms effective, sport federations should oblige members to implement these procedures (alternatively, EU member states may adopt a legislation that renders the reporting of such incidents mandatory), and non-compliance may be sanctioned by cuts to their funding⁷⁸¹.

The fact that the theme of VAW in sport is an intersecting point among different policy domains (like sport, gender, health, education, justice, etc.) complicates the establishment of a comprehensive policy approach, but it could also be a strength, as the collaboration across different policy areas and sectors could be created (and, to be even more effective, other actors such as women's associations, victim support services, or child protection offices must be involved)⁷⁸². Partnerships comprising a variety of actors from different sectors in the attempt to reduce VAW in sport tend to result in more effective actions, tend to have a greater impact and a greater visibility.

All EU member states should adopt protection provisions which include a requirement (underpinned by law) to have the criminal history of staff interacting with women available and the prohibition for those convicted or subjected to disciplinary sanctions for acts of VAW to work with female athletes⁷⁸³.

EU member states should raise awareness through nationwide campaigns about VAW in sport, underling that such violence has consequences on the athletes' welfare and performance, clarifying that VAW in sport is prosecutable by law, and urging to report acts of such violence⁷⁸⁴.

At EU member state level, preventive approaches should be adapted to the specific sport context, and specific initiatives addressed to offenders and victims of VAW in sport are necessary to avoid recidivism and revictimization. Moreover, support services for victims, their families, and perpetrators should be put in place⁷⁸⁵. European countries

⁷⁸⁰ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 13.

⁷⁸¹ *Ibid.*

⁷⁸² *Ivi*, p. 74.

⁷⁸³ *Ivi*, p. 75.

⁷⁸⁴ *Ivi*, p. 76.

⁷⁸⁵ *Ibid.*

should also commission studies and research measuring the extent of the issue and evaluating the effectiveness of the practices tackling VAW in sport⁷⁸⁶.

4.7.3 Sports organizations

Sport is a setting in which women's participation and opportunities to eliminate VAW are promoted, and it is crucial that sport takes advantage of this influence to advance women's rights on and off the field⁷⁸⁷. Sport settings have the potential to challenge patriarchal attitudes, but, at the same time, they can be places where VAW occurs directly: as a result, they can strengthen problematic culture, or they can promote social change⁷⁸⁸. Sport clubs are workplaces and, as such, they represent a key site for the prevention of VAW.

A technique for violence prevention within sport organizations can be the organizational development, which means modifications in their policies and structures with the aim of preventing VAW in sport, which include, among others, the improvement of women's representation on their board and the creation of gender equitable human resources policies (like hiring, flexible work arrangement options, and leave policies), or the inclusion of VAW prevention within the principles of their codes of conduct, or the explanation of how the organizations manages allegations of such violence⁷⁸⁹. Instead, direct participation programs have the objective to create skills for respectful and non-violent relationships, to establish links with institutions, and to help people to prevent acts of VAW in sport⁷⁹⁰. The technique of mobilizing and strengthening the community aims at addressing VAW in sport, and this can be achieved, for example, through violence prevention initiatives or the implementation of a set of measures in consultation with the local community⁷⁹¹. The communications and social marketing technique uses media to raise awareness of VAW in sport and challenge existing norms through, for instance, hosting themed games, hosting community events, wearing themed uniforms, showing videos at games, or interviewing players⁷⁹².

⁷⁸⁶ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 76.

⁷⁸⁷ R. LISTON, S. MORTIMER, G. HAMILTON and R. CAMERON, *op.cit.*, p. 16.

⁷⁸⁸ *Ivi*, p. 17.

⁷⁸⁹ *Ivi*, p. 20.

⁷⁹⁰ *Ibid.*

⁷⁹¹ *Ivi*, p. 23.

⁷⁹² *Ibid.*

Starting from the point that sport organizations should follow the measures of the national action plan promoting gender equality in sport, sport bodies should create an independent contact point in which victims of violence can contact a person to whom they can disclose violations⁷⁹³. And, since coaches are crucial models for athletes, training and education on VAW in sport should be mandated for coaches while obtaining their coach qualification⁷⁹⁴.

Sport organizations may also establish norms protecting sportswomen, like banning coaches from being left alone with the women, prohibiting them to sleep in the same hotel room, or avoiding physical contact with the athletes⁷⁹⁵. Specific attention should be paid to vulnerable groups, such as ethnic minorities, LGBTQI, or disabled. Moreover, sport organizations are called on to monitoring and evaluating interventions addressing VAW in sport and establishing the related indicators⁷⁹⁶.

Codes of conduct, practice and ethics may be developed by sport organizations, as their aim is to elaborate crucial values related to the prevention of VAW in sport, and to provide a set of principles related to such issue to ensure that all stakeholders recognize and resolve these kind of problems⁷⁹⁷. An effective code of conduct might comprehend a section with aspirational standards including a guidance to help stakeholders to make the right decision in ambiguous situations, and a regulatory section inclusive of rules⁷⁹⁸. For instance, gender quotas policies favouring female recruitment could be implemented, or policies could be required to be updated to adopt a gender-neutral language⁷⁹⁹.

4.8 Hope for the future: the Italian case of female football

In this last section of the thesis there is the explanation of the path of female football in Italy. It represents a practical case of different forms of VAW in sport (tackled in chapter 2): low levels of women's participation, the issue of professional sport, and the discrimination by the media. However, there is a sort of hope, as Italian female football,

⁷⁹³ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op.cit.*, p. 13.

⁷⁹⁴ *Ivi*, 14.

⁷⁹⁵ *Ivi*, p. 74.

⁷⁹⁶ *Ivi*, p. 77.

⁷⁹⁷ C. BRACKENRIDGE, K. FASTING, S. KIRBY and T. LEAHY, *op.cit.*, p. 26.

⁷⁹⁸ *Ivi*, p. 27.

⁷⁹⁹ G. HAMILTON, R. LISTON and S. MORTIMER, *How do Sporting Organisations Conceptualise and Operationalise the Prevention of Violence Against Women?*, Australian & New Zealand Journal of Criminology, Vol. 53, Issue 1, 2019, p. 13.

despite all the difficulties, is gaining more importance (also at governmental level), with different measures being implemented to advance female football.

Although female football has gone through a difficult path in Italy, it represents a respectful movement that is enjoying increasing success during the last years, with a boom in 2019, during the world championship, in which the Italian national team qualified among the best eight teams in the world, after twenty-years absence⁸⁰⁰.

The year 2015 represents a crucial step for female football, as the Federazione Giuoco Calcio adopted a series of initiatives to develop the sector. The Federation has adopted, and is still adopting, a set of measures that help the constant development of the movement, with the aim of launching female football in Italy⁸⁰¹. This program operates within different areas of the Federation, such as governance, national teams, the communication and marketing activities, and youth sporting activities, among others.

Furthermore, in 2015, two fundamental initiatives have been undertaken by the FIGC (Federazione Italiana Giuoco Calcio): starting from the 2015-2016 sport season, the FIGC has established that the professional male clubs which are part of the “serie A” or “serie B” have to enroll at least twenty girls Under 12 (and the number has increased year after year), with the aim of developing a female youth sector and give female athletes the opportunity to compete with other female teams of the same age (subsequently, even the “Lega Pro” was included in this project, and now the FIGC is thinking about the eventual extension to clubs of “serie D” and “Eccellenza”)⁸⁰².

Also in 2015, a rule that allows the transfer of the sporting title was introduced, aiming at incentivizing professional clubs to invest and assess from the beginning the highest levels of female football: football clubs such as the ACF Fiorentina, U.S Sassuolo, Empoli FC, Juventus, Hellas Verona, AC Milan have expanded to include female football during recent years, thanks to the acquisition of the sporting title, with the objective of improving the competitiveness of female football, bringing it at the same level of the best European teams⁸⁰³. The possibility to have female teams within the football clubs must be seen as

⁸⁰⁰ L. COLANTUONI, *op. cit.*, p. 799.

⁸⁰¹ *Ibid.*

⁸⁰² *Ivi*, p. 799-800.

⁸⁰³ *Ivi*, p. 800.

an opportunity, not only from the sporting level, but also from the level of marketing, creating collaborations among the teams of the same club⁸⁰⁴.

From the 2018-2019 season, it is the FIGC itself that directly organizes the female championships of “serie A” and “serie B”, the Coppa Italiana, the Supercoppa, and the “Campionato Primavera”; moreover, at federal level, there are several events that sponsor female football, including the “Danone Nation’s Cup”, “Ragazze in gioco”, “Azzurre per un giorno”⁸⁰⁵.

Despite all this progress, from the legal point of view, women players are considered amateurs and non-professionals, and they can only sign contracts providing the reimbursement of expenses (and not a proper salary), which cannot exceed the amount of 30,658 euros per year⁸⁰⁶. Another consequence of their exclusion from the world of professional sport is that Italian football players have sporting restrictions until 25 years of age (meaning that they cannot play in whatever club they want, as they are tied to their original club, who has the power to decide), with the result of impeding the full development of the Italian female football at national and international level⁸⁰⁷.

At the end of 2019, the “Commissione Bilancio al Senato” has approved the amendment (then included in the 2020 “Legge di Bilancio”) to favour the transfer to professionalism of female sports; however, only the FIGC can decide to change the status of female athletes, as the national provision is only contributive⁸⁰⁸.

From a promotional point of view, after years in which female football was occasionally transmitted on Rai Sport or directly in the streaming provided by the clubs, from the 2018-2019 season, the broadcast rights have been acquired by SKY, which transmits the “serie A” championship, guaranteeing at least one game per week⁸⁰⁹. In October 2019, the FIGC reached an agreement with a two-season duration with TIM, with which the brand “TIM VISION” has become the naming sponsor of the “serie A” championship and of the most important competitions of the Federation⁸¹⁰.

⁸⁰⁴ L. COLANTUONI, *op. cit.*, p. 800.

⁸⁰⁵ *Ivi*, p. 801.

⁸⁰⁶ *Ivi*, p. 802.

⁸⁰⁷ *Ibid.*

⁸⁰⁸ *Ibid.*

⁸⁰⁹ *Ibid.*

⁸¹⁰ *Ibid.*

CONCLUSION

The aim of this work has been that of raising awareness on the issue of VAW in sport and on the different forms that such violence may take: once increased awareness is reached, the problem can be better tackled. However, nowadays there is still a sort of taboo on the issue of VAW, and when sport, which is seen as a place in which people have fun, is taken into account, many stakeholders refuse to face the issue of VAW in such environment.

Sport can represent a context in which women can demonstrate that they are not inferior to men, but as long as they face violence, such emancipation of female athletes will not be achieved. VAW in sport should be tackled (also) separately from VAW in general in international law, because the features of sport are specific, considering also the fact that it is imagined as an almost-exclusive men's world. Such violence is a violation of human rights, even in its "indirect" forms, such as the low levels of participation of sportswomen and the discrimination by the media. This means that it should receive more attention, because women need sport to be a safe environment. The cases of violence illustrated in chapter 2 served as a demonstration of the misappropriations of the sport pipeline for further imposing men's dominance over women. At this point, having established examples of VAW in sport, the international and European legal and policy frameworks are provided; subsequently, the prevention of such issue is explained in the last chapter. It is clear that what has been done since the present days is not enough. Female athletes still face discrimination and unequal treatments. If international law has not the total power of bringing VAW in sport to an end, it does have the power to contribute to change. The first step is raising awareness of this issue, because sport is still wrongly considered an environment free from violence and discrimination.

However, I want to conclude my dissertation with a link to the last subsection, the one of women's football in Italy, with the aim of giving hope, and in the personal expectation that sport will more and more represent a place in which women can emerge and demonstrate their equal status to men. Sport has the power of promoting social integration, tolerance and understanding: it is open to everybody, regardless of age, language, religion, culture, or sex⁸¹¹. Sport represents an opportunity to learn to play by rules, to behave admirably both in victory and in defeat, and to develop the physical being,

⁸¹¹ R. WEINGARTNER, *op. cit.*, p. 1.

but also social and ethical values⁸¹². It contributes to education and to the promotion of human rights. This potential should not be lost by allowing violence to enter this system; this potential should be used efficiently to promote the emancipation of sportswomen, and consequently, of women in general.

This dissertation explores sport as a male domain in which women are marginalized and given inferior status; this can be seen, for example, in the acceptance of female athletes only if based on the exaltation of femininity and heterosexuality⁸¹³. However, these negative aspects of sport are tackled in order to be addressed, with the aim of leaving to sport only the positive potentials that it has, like establishing respectful social structures and patterns of relations. Sport provides women and girls with cultural resources, such as empowerment and social support⁸¹⁴.

On the one hand, sport can support sexist behaviour, but, on the other hand, it can take stand against VAW. The fact that no uniform legal framework exists to address VAW in sport represents a serious challenge to creating a safe sport environment⁸¹⁵. There is the need for more cooperation and collaboration among different actors to address VAW in sport and to strengthen the fulfillment of human rights in sport. Sport, which is a human activity, should be construed and practiced under general human rights provisions and specific conventions⁸¹⁶. One of the objectives of sport should be that of contributing to overcome wider societal issues such as racism, social exclusion and gender inequality⁸¹⁷.

This suggests that sport can contribute to the issue of VAW, but it can also represent a solution by which trying to reduce such phenomenon. Although some actions have been taken to address VAW in sport, the general picture remains one of continuing inequalities in women's sport. However, despite many barriers, female athletes continue to excel in sport and they continue to challenge sport as a male-dominated institution. Indeed, sport represents for women a means by which gender stereotypes can be challenged.

However, the problem of VAW in sport cannot be adequately addressed by focusing only on the institution of sport; instead, efforts to redress the gender inequalities and discrimination in sport should also be directed at the broader society (to which the efforts

⁸¹² R. WEINGARTNER, *op. cit.*, p. 1.

⁸¹³ C. BURNETT, *op. cit.*, p. 73.

⁸¹⁴ A. N. MILNER and E. H. BAKER, *op. cit.*, p. 3.

⁸¹⁵ L. MERGAERT, C. ARNAUT, T. VERTOMMEN and M. LANG, *op. cit.*, p. 16.

⁸¹⁶ HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE, *op. cit.*, p. 5.

⁸¹⁷ I. KATSAROVA and V. HALLEUX, *op. cit.*, p. 2.

to address such violence in the sport environment should be added). Over the years, sport has been a mirror of the society: since violence in the wider society has increased, the violence in sports has also grown⁸¹⁸.

To end this dissertation with a personal comment, as long as every societal context is considered and used as a means to devalue women, all the solutions provided at national, regional and international level will hardly be enough. This is why, in my opinion, also the wider problem of VAW should be better addressed. Moreover, assessing that VAW in sport constitutes a human rights violation could help to face this issue.

To put it in the words of the Australian Sex Discrimination Commissioner, Elizabeth Broderick:

“I believe we currently have an extraordinary opportunity to harness the potential of sport for gender equality. I have faith in our ‘sports-mad’ nation of sportspeople – that together we can build a fairer world – a world where women stand equal and safe both on the sporting field and off”⁸¹⁹.

⁸¹⁸ M. MERCURIO, *op.cit.*, p. 10.

⁸¹⁹ L. Broderick, *Unite to end violence against women in sport: Keynote address to 5th IWG World Conference on Women and Sport*, Sydney, Australian Human Rights Commission, 2010.

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