

Introductory remarks by the UN Special Rapporteur in the field of cultural rights (edited version) in the consultation call with athletes held on Friday, 24 March 2023

Ms. Alexandra Xanthaki was appointed United Nations Special Rapporteur in the field of cultural rights in October 2021. Cultural rights are fundamental for the respect of human dignity, in the diversity of its expressions. Cultural rights protect the rights for each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they give to their existence and their development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. Cultural rights also protect access to heritage and resources that allow such identification and development processes to take place.

This independent expert position was created by the Human Rights Council to:

- *Give greater visibility to cultural rights in the human rights system; and*
- *Foster a better understanding of the severity of their violations, and of the opportunity of their realisation for all.*

The right to take part in cultural life is also understood as protecting the right to take part in sports. To learn more about the mandate and how the implementation of cultural rights is critical for sustainable peace, equality and development, please visit [the website](#).

“Let's focus on the issue at hand. Although we agree, and I agree, that this is an illegal war, the specific obligations of states continue to exist, and prohibition of direct discrimination is one of the most important values of the human rights system. The reason why the whole [of humankind] is shocked at what is going on in Ukraine is because the Russian Federation, at the moment, disregards the common values we, [humankind], have.

For us to disregard another common value that we have, the prohibition of direct discrimination, discrimination just because of someone's passport, will not make human rights better, but will make human rights worse. What I am saying, and what I say to the IOC, is that there has to be a clear distinction between states and individuals. We have to make sure that we do focus on the states. And that's why I think it is absolutely perfect that the IOC [have excluded] the Russian Federation and Belarus. We have to start [by] agreeing that these states are going to be excluded.

The issue is what happens with individuals. We see more and more the wider trend that individual cultural actors, individual artists and athletes are being excluded in various countries for decisions that have been taken by their government.

Within Russia, there are serious violations of human rights, and the human rights space is restricted more than ever before. These individuals, the Russian people who live in the Russian Federation, are already experiencing restriction[s] of their human rights. Why should the international community continue and increase the restriction of their human rights? What is this going to achieve? This discussion about athletes is part of a wider trend that we see: that cultural actors and artists and athletes, as individuals, are excluded.

Direct discrimination is not a grey area of international law. It's a very clear area of international law – it should not exist. It is something that binds all states and all individuals. It is actually so important that prohibition from direct racial discrimination is ‘[a] peremptory norm of international law’. We put it up there together with prohibition of genocide, with prohibition of slavery, prohibition of torture, etc. For

this reason, what I have said to the IOC, and what I'm very open to say to states, is that the blanket prohibition of Russian and Belarusian athletes and artists cannot continue. It is a flagrant violation of human rights.

I have carefully read the article of my German colleague and the letter from the Ukrainian NOC. Although we disagree on the interpretation of the necessity and proportionality of a blanket ban applying to all Russian athletes, I am glad to engage with their views in this discussion, which is an important one. We are trying and we're finally getting into a debate on how to mitigate maybe other issues that do exist in sports, but also in wider cultural events, so that, on the one hand, we exclude the aggressor states, [and] on the [other hand], we are very clear about our support to the victims of aggression and illegal war. This, we all agree on. But at the same time, we have to maintain nuances, and the human rights values that we, [humankind], all have.

This is why I am proposing to allow Russian and Belarussian athletes to compete as neutral athletes under a white flag with no symbols or any recognition of their Russian and Belarussian nationality. They should do so unless there are compelling reasons to exclude any of them, on a case-by-case basis. The criteria, which should apply to all athletes, regardless of their origin, should include the existence of serious and substantiated allegations that they committed propaganda for war (article 20 ICCPR); or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (article 20 ICCPR); or genocide, crimes against humanity, war crimes or crimes of aggression (Rome Statute of the International Criminal Court)."

The issue of security also is important. The first responsibility of States is to protect public order and the security of people before restricting human rights, with all the means at their disposal. Under international human rights law also, it is the least restrictive measures, which have to be proportionate to a legitimate aim, that can be adopted. Careful consideration of each situation must be done.

I'm only going to say that states that boycott or that allow their public bodies to boycott and to perform direct discrimination against individuals are liable under the obligations that they have undertaken under international law. And the United Nations, at least my mandate, would like to hear how they can square this very clear obligation of non-discrimination together with their insistence to boycott. if any Russian athletes participate in athletic events.

For me, the situation is quite important. This is a very important violation of human rights. The United Nations is there, and my post is there, to focus on all violations, and especially the violations of human rights directed at individuals [with whom we] disagree. The human rights idea is not that we're going to recognise rights only to people who are like us, and with whose actions, ideas and behaviour we agree. The idea is that anyone, anyone, has the right not to be discriminated [against] on the basis of their passport. And this is where I'm coming from."