

Sport and human rights: assessing the performance of nation states in assuring the right to sport participation

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Abstract

Participation in sport is recognised as a human right under the terms of United Nations *Universal Declaration of Human Rights* (UDHR), as a component of ‘participation in the cultural life of the community’. It has also been declared a human right in the Council of Europe’s *Sport for All Charter*, the UNESCO *International Charter of Physical Education, Physical Activity and Sport* and the *Olympic Charter*. UN member states which have ratified the legal treaties associated with the UDHR undertake to assure the rights involved and to submit periodical reports to the UN on their progress in doing so. A review of EU member states’ recent progress reports reveals a general failure to recognise the status of sport as a human right or to include data on levels of sport participation. Given the absence of existing guidelines on assessment of national performance in regard to realisation of the right to sport participation, this paper presents a worked example to demonstrate a possible methodology for such a procedure, utilising, for demonstration purposes, the European Commission’s Eurobarometer survey data and taking account of variation in national GDP per capita levels.

Keywords: human rights; sport participation; sport for all; Europe

Introduction

The proposition that sport is a human right has a long and continuing history in a number of international declarations, including the Council of Europe’s *Sport for All Charter*, the UNESCO *International Charter of Physical Education, Physical Activity and Sport* and the *Olympic Charter*, as indicated in Table 1.¹ These sport-specific declarations can be viewed as developments of the 1948 United Nations *Universal Declaration of Human Rights* (UDHR), which includes among human rights: ‘rest and leisure’ and ‘participation in the cultural life of the community’.

INSERT: Table 1. Declarations regarding the right to sport participation

Human rights can be divided into two groups: *civil and political* (CP) rights and *economic, social and cultural* (ESC) rights. CP rights relate to such matters as the right to equal treatment before the law and to participate in political elections, while ESC rights relate to matters such as education, health, work and *cultural participation*. Sport participation is not explicitly mentioned in the UDHR, but it is included among the ESC rights as a component of cultural participation. The latter is defined very broadly by the UN as encompassing:

ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, *sport and games*, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence. (UN Committee on Economic, Social and Cultural Rights (UNCESCR), 2009a, pp.3-4, emphasis added)

The UN's identification of sport as part of 'cultural life of the community' might suggest a downplaying of its other roles, for example its contribution to physical and mental health. However, this does not necessarily undermine its status as a human right. Other items included in the definition of culture, notably food, clothing and shelter, have similar multiplicities of roles and their status as human rights is widely accepted. The relationships between sport, physical activity and health are discussed later in the paper. However, while the general UN human rights documentation deals with sport somewhat indirectly, UNESCO, which is an agency of the UN, unequivocally declares sport participation to be a human right in its sport charter as noted in Table 1.

Human rights are morally and/or legally justified claims or entitlements made for all human beings on the basis of their humanity alone (Donnelly, 2003, p.7). They may be claimed by individuals or groups on their own behalf or by others on their behalf. To be realized, however, human rights must be recognized by others, including individuals, communities and institutions, particularly governments. Rights claims may, of course, be ignored, rejected or resisted. The validity of ESC rights in particular has been questioned by some, as a whole (e.g., Cranston, 1983) or in part (e.g., Nickel, 2007, pp.138-142). Both recognition and securing of human rights are therefore often the focus of debate, campaigns, protest, struggle, frustration and negotiation (Brysk, 2018). However, the UN has insisted that all the rights included in the UDHR are 'universal, indivisible and interdependent and interrelated' (World Conference on Human Rights, 1993, p.I.5) and this is implicitly acknowledged when governments ratify the relevant treaties. The focus of this paper is, however, not focused on philosophical aspects of human rights and public policy, but on exploring the implications of the fact that all but 25 of the UN member states have ratified the relevant UDHR-related treaties.²

Even when rights are formally recognized, little or no effort may be made to secure their practical realization. While national governments ratify rights-based declarations, the question arises as to the extent to which they are held to account in regard to practical implementation of the implied commitments. The idea that a country's record in regard to certain high-profile CP rights should be assessed and compared is familiar through the well-publicised activities of organisations such as Human Rights Watch and Amnesty International. However, in principle, performance in relation to all recognised human rights can be similarly assessed.

Endorsement of international rights declarations by nation states can be seen as an arm of public policy. The focus of policy analysis can be either *for* policy or *of* policy although, as Henry and Ko (2014, pp.3-4) discuss, much policy research serves both functions to varying extents. This is the case with the current study. It can be seen as analysis *for* policy in promoting the recognition of sport participation as a human right and seeking to encourage its incorporation into the human rights system in the spirit of evidence-based policy. This would reflect the sentiments expressed by Kidd and Donnelly (2000, p.135) that those who are 'committed to advancing opportunities for humane sport and physical activity ought to resort more systematically to the strategy of establishing, publicizing and drawing upon the charters, declarations and covenants that enshrine codes of entitlement and conduct'. The study can also be seen as analysis *of* policy, in highlighting

the gap between the rhetoric of governmental endorsement of the principle of the right to sport, viewed as a claim to political legitimacy, and the reality of the general lack of accountability regarding actual delivery of outcomes. This would reflect comments made by David Harvey in regard to the UDHR articles on ESC rights:

What is striking about these articles ... is the degree to which hardly any attention has been paid over the last fifty years to their implementation or application and how almost all countries that were signatories to the Universal Declaration are in gross violation of these articles. Strict enforcement of such rights would entail massive and in some senses revolutionary transformations in the political-economy of capitalism. Neoliberalism could easily be cast, for example, as a gross violation of human rights. (Harvey, 2000, pp.89-90)

The rights set out in the UDHR are reiterated in two 1966 treaties which form part of the system of international law: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). A government which ratifies these covenants agrees to abide by all of their articles and to submit periodic progress reports to the relevant UN committee. The reports might reasonably be expected to reflect the state of the art in monitoring performance in regard to human rights. This can be seen as an example of the application of evidence-based policy principles (Pawson, 2006; Head, 2010) as widely adopted and promoted by governments (e.g., HM Treasury, 2011; European Commission, 2020).

The aims of this paper are: to explore the process by which the right to participation in sport is recognised in principle and in practice; to examine how the realisation of the right is measured, monitored and assessed; and to evaluate current practice in the context of the principles of evidence-based policy.

The paper comprises four main parts. The first addresses the issue of the extent and nature of the treatment of the concept of human rights, and the right to sport participation in particular, in the sport policy research literature. The second considers the nature of the current processes by which states' levels of performance in realising human rights in general are reported and assessed. The third addresses the issue of how sport participation might be measured and assessed on a cross-national comparative basis. The fourth section is in the form of a case study relating to EU member states which, first, considers how performance in relation to the right to sport participation is currently reported on and assessed and, second, using a worked example, demonstrates a possible methodology for assessment reflecting evidence-based principles. Conclusions and implications for the future are presented in the final section.

The right to sport in the sport policy/research literature

Although the Council of Europe's 1976 *Sport for All Charter* did not reference the UDHR, it stated unequivocally that 'Every individual shall have the right to participate in sport' (see Table 1). However, the 1992 version, the *European Sports Charter*, while still supporting the principle of Sport for All, avoided the terminology of rights, instead stating that governments should 'take the steps necessary to enable every individual to participate in sport'. The EU's 2007 *White Paper on Sport*, while including extensive discussion of sport broadcasting rights, referred only briefly to

the right to sport participation. In the context of ‘social inclusion and equal opportunities’ it stated that sport could be included in the ‘new objective’ of the EU to ensure ‘access for all to the resources, rights and services needed for participation in society, preventing and addressing exclusion, and fighting all forms of discrimination leading to exclusion’ (European Commission, 2007, p.16).

This apparent reticence to address sport participation rights directly is reflected in the 2002 volume of accounts of Sport for All policy in 38 countries, by a mix of academic and administrative authors (DaCosta & Miragaya, 2002). In their introduction, the editors attribute the idea of sport for all to the founder of the modern Olympic Games, Pierre de Coubertin, and note that it was taken up in the ‘European Charter’ in the ‘right to citizenship’ (not sport). However, only one of the chapters, that for Belgium-Flanders, makes reference to the charter and the ‘right to participate in sport’ (Vanreusal, Taks & Renson, 2002, p.382), but this is only by way of background history rather than as an explicit influence on current sport policy.

The idea of sport as a human right is relatively neglected in the academic literature on sport. It is generally ignored even in standard texts on sport policy and participation (e.g., Henry & Ko, 2014; Nicholson, Hoyer & Houlihan, 2011). Among critical theorists this stance may be due to the neglect of human rights in the key discipline of sociology which, as Turner (1993) observed, appears to have been based on the suspicions of the concept on the part of Marx, Weber and Durkheim, resulting in resistance to any ‘universalistic human ontology’ (p.249). However, as (Risse, 2009, p.14) has pointed out, the concept of human rights, has ‘become the most common language of emancipation’, which might be expected to be a relevant consideration to critical scholars. Sport-related research and policy do however interact with human rights in a number of ways, although the right to sport participation in the sense of a human right to be enjoyed by all – as reflected in the slogan ‘sport for all’ – is often a background consideration rather than being front and centre to the discourse.

The relationship between human rights and sport has been extensively addressed not in the sense of sport participation as a right in itself, but in the sense of the institutions and practices of sport facilitating or impeding the enjoyment of other rights, such as those related to race or gender (e.g., Giulianotti & McArdle, 2006; Donnelly, 2008; Evans et al., 2020). This treatment has mostly been in the more restricted context of *citizenship* rights related to particular jurisdictions rather than internationally recognised human rights (Houlihan & White, 2002, p.217). Turner (1993, p.496) observed that a sociology of citizenship had ‘functioned as a substitute for a sociology of rights’ but argued that the supra-national concept of universal human rights was more appropriate in an era of globalization (pp.498-499).

An area of sport policy and practice in which the right to sport might be expected to feature is the ‘sport for development and peace’ (SDP) program, given that this initiative promotes sport as a vehicle for pursuing the UN’s ‘Millennium Development Goals’³ (Kidd, 2008; Schulenkorf, Sherry and Rowe, 2016; Holly, 2019). However, although the UN Inter-Agency Task Force on SDP (2003) explicitly discussed the idea of ‘sport as a human right’, it noted that the UN’s Office of the High Commissioner for Human Rights (OHCHR) was ‘not represented on the Task Force’

and its list of 25 international ‘legal/policy instruments supporting sport’ (pp. 26-27) included neither the UDHR or its associated legal covenant on ESC rights. The conclusion of its discussion was as follows.

In spite of these international instruments, the right to sport and play is often denied. In many cases this is because of discrimination, particularly by gender and ability. It is also frequently due to political neglect of the importance of sport in society, exemplified by the decline in spending on physical education and the lack of appropriate spaces and resources necessary for sport.

However, the fact that access to and participation in sport and play are human rights creates the responsibility to ensure that these rights are upheld. It places a duty on Governments, the United Nations system and others to ensure that the opportunity for participation in sport and play exists, allowing all people to enjoy their right to sport and play. OHCHR may wish to look further into these issues and the potential of sport to promote respect for human rights.

(UN Inter-Agency Task Force on SDP, 2003, pp.4-5)

These remarks clearly endorse the idea of sport participation as a human right, but SDP programs have generally been concerned not with promotion of this right *per se*, but with the utilisation of sport as a medium to promote other rights, such as health and education (Holly, 2019).

Furthermore, Coalter (2010) argued that the promoters of SDP programs were often carried away by ‘almost evangelical policy rhetoric’ and that programs were ‘weakly theorized’, over-ambitious and poorly designed and evaluated. More recently, Donnelly (2019, p.141) has observed that: ‘despite the foundational status of human rights, current discussions and analyses of SDP rarely refer to human rights’ and that its further development ‘would benefit in significant ways from a re-focus on human rights’ (p.149).

There is, then, a curious distancing between sport policy-related and academic literature and the idea of the right to sport participation. When human rights do arise, they seem to be related to the role of sport in regard to other ESC rights. While this is commendable, it misses the universal principle involved in the right to sport participation, suggesting that denial of the right to participate is only, or primarily, of concern in regard to certain groups subject to discrimination and exclusion. This is an understandable tendency, but there is also a case for considering the idea of the universal human right to participate in sport at the community level, or ‘sport for all’, which is the particular focus of this paper.

Assessment and reporting on ESC rights performance

In the UN human rights system, CP and ESC rights are treated differently. In the case of CP rights, it is expected that governments should, immediately upon ratifying the ICCPR, seek to ensure that the relevant rights are enjoyed by ‘all individuals within its territory and subject to its jurisdiction’ (UN, 1966a: Art.1). In the case of ESC rights, however, the ICESCR requires governments only to ‘take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant’ (UN, 1966b, Art. 2).

Robertson and Merrill (1996, p.276) use the term ‘promotional’ rights to refer to this feature of ESC rights, but the more commonly used expression is ‘progressive realization’ (Corkery & Saiz,

2020; Fukuda-Parr, Lawson-Remer & Randolph, 2015, Box 2.1; Center for Economic and Social Rights, 2012, p. 15).

The main vehicles by which UN member states assess their performance in regard to ESC rights are individual country reports submitted to the UN every six years.⁴ UN guidance on the contents of these reports is available in two forms: one outlining the required format for the report, discussed in relation to each article of the ICESCR, and the other offering guidance on the development of human rights *indicators*.

The guidelines for *country report content* specify seven categories of information to be supplied, six of which can be seen as input-related, including: national framework laws, policies and strategies; mechanisms to monitor progress in implementing the latter; mechanisms to ensure conformity with international treaty obligations; relevant enabling laws; and ‘structural and other obstacles’ impeding the full realization of covenant rights (UNCESCR, 2009b, pp.3-4). The only information category referring to *outcomes* is the seventh, which requires: ‘Statistical data on the enjoyment of each ... right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years’ (p. 4). No specific mention is made of sport in these guidelines.

The UN guidance on *rights indicators* is very much in the evidence-based policy mould, identifying three types of indicator, two of which are input-related and one output-related:

- *Structural* indicators provide evidence of the extent to which the government has conducted formal activities, such as ratification of relevant international treaties and enactment of related national legislation (e.g., anti-discrimination laws or the establishment and funding of a sports commission).
- *Process-related* indicators refer to on-going actions to enforce and facilitate rights (e.g., maintenance of a human rights commission and a complaints and compensation process).
- *Outcomes-related* indicators refer to evidence of rights being enjoyed (e.g., reduction in poverty levels) (UNOHCHR, 2012, pp.34-38).

The outcomes-related category, which might be expected to refer to the actual level of sport participation achieved, is the focus of interest here.

The guidelines are focussed primarily on what are informally known as the ‘six core social and economic rights’, which are the right to food, education, health, housing, work and social security. Specific guidance and worked examples are presented for these categories. Cultural, including sport-related, examples are either omitted or covered only at a very high level of generality. A full explanation for the neglect of cultural/sporting rights would require more investigation, but possible factors are discussed later in the paper.

The idea of human rights indicators reflects the growing interest in measurement to facilitate cross-national comparison and assessment of compliance with treaty requirements (Landman, 2004). Guidance is therefore also available from non-governmental organisations and academic groups. The OPERA (Outcomes, Policy Efforts, Resources, Assessment) framework, developed

by the Center for Economic and Social Rights (CESR) (2012), endorses the use of indicators but stops short of providing specifications of individual indicators. The Social and Economic Rights Fulfilment (SERF) index, developed by Fukuda-Parr et al. (2015), does spell out specific indicators, but concentrates on the ‘six core social and economic rights’ to compile its composite index. The index therefore excludes cultural rights.

Given the above definitional link with culture, we might look to the field of cultural statistics for possible rights-related indicators. The UNESCO *Framework for Cultural Statistics* includes ‘sports and recreation’ but only as ‘related domains’, since they are ‘not always considered cultural activities’ and are ‘activities that may have a cultural character but their main component is not cultural’ (UNESCO, 2009, p.30).⁵ Sport is not discussed as a human right, with discussion of rights being confined to intellectual property rights. Most of the data identified refer to existing systems of government-collected employment and consumer expenditure data. Time-use surveys are also included and would be suitable for rights-related assessment in the absence of specific sport participation survey data and if the assessment was to be undertaken in the context of other cultural activities.⁶

Apart from the time-use possibility, therefore, it is clear that no guidance currently exists for indicators related to the right to sport participation.

Measuring and assessing the right to sport participation

Two issues arise from the above review. First, how should the level of rights-satisfaction for sport participation be measured? Second, how should the level of rights-satisfaction be assessed in relation to a state’s resources?

Measurement

Individual national governments and sports agencies can and do make their own decisions on how to measure participation in sport. However, for participation levels to be assessed and compared cross-nationally, a common approach should ideally be available. The lack of such a common approach has been noted on numerous occasions (e.g., Gratton, Rowe and Veal, 2011; Hallman and Petry, 2013; Nicholson, Hoyer and Houlihan, 2011; Van Bottenburg, Rijnen and Van Sterkenburg, 2005). Typically, community sport participation surveys have asked a sample of the population how often they participate in sport, but there is a lack of consensus on a number of matters, including: what should constitute ‘sport’, notably which types of non-organised physical activity, such as walking and cycling, should be included; and the minimum frequency of participation criterion to be used (e.g., at least once a year or at least week).

In contrast, in the cognate areas of health and exercise science, researchers and policymakers have succeeded in establishing agreed measurement tools for the concept of *physical activity* (PA). These involve criteria related to: level of physical intensity (moderate and vigorous); duration of activity per week; and specifications of types of activity included. The latter include not only sport and exercise but also non-sporting and non-leisure PA, such as walking and cycling for transport, unpaid house/yard work and PA as part of paid work. This has resulted in the creation and use of

the International Physical Activity Questionnaire (IPAQ) (Craig *et al.*, 2003) and the resultant Global Physical Activity Questionnaire (GPAQ) (World Health Organisation (WHO), 2010). Also involved are associated guidelines, or benchmarks, indicating the duration and intensity of PA required to produce significant health benefits, based on a considerable body of empirical research (UK Chief Medical Officers, 2019; WHO, 2010). For PA viewed as part of the outcomes of health-related policies, therefore, a clear indicator is available: the proportion of the population meeting health-related physical activity benchmarks. Numerous countries include this measure of PA in national health surveys (see Guthold *et al.*, 2018). However, while it might be thought that this indicator, backed as it is by research and international consensus, would feature among health-related ESC rights indicators, the latter tend to concentrate on health *outcomes*, such as life expectancy, rather than lifestyle-related input/preventive factors, such as PA (e.g., see Fukuda-Parr *et al.*, 2015, p.93).

How does PA relate to sport participation? As shown in Figure 1, the two concepts overlap but are not the same. PA classified by health benchmarks *includes* activity which is not sport-related and *excludes* sport activity which does not meet health-related benchmarks. Thus, in Figure 1, the area inside the bold dotted line is PA, while sport participation is indicated by the shaded area, including all of community sport, non-organised physical recreation, such as jogging and cycling, and activity at less than ‘moderate’ intensity. Typically, participation in community sport is defined as taking part at least at a minimum specified frequency level (e.g., once a week), with duration or intensity not necessarily specified.

INSERT: Figure 1. A schema for considering the measurement of participation in physical activity and community sport

Because of the link between sport participation and health, and the significance of the health portfolio for many governments, PA has been adopted in some national sport policy documents as the main community sport participation-related policy indicator, with or without the inclusion of non-sporting activity. Examples include England (Sport England, 2019) and Australia (Australian Government, 2018). However, in such policies, the sporting activity in the shaded areas in the ‘PA partly active’ and ‘PA inactive’ columns in Figure 1 is typically excluded from consideration. This is less than satisfactory for sport policy purposes since, while these categories of activity may not generate ‘significant’ physical health benefits, they can still generate *some* physical and mental health benefits and also some of the social benefits of sport, such as inclusion and connectedness, sometimes referred to as ‘social capital’ (Nicholson and Hoye, 2008) or ‘sporting capital’ (Rowe, 2018). Thus sport for all policies – and related measurement of outcomes – should logically cover all of the activity indicated in the shaded area of Figure 1. The English and Australian examples cited suggest that there is a lack of international consensus among sport policy-makers as to the appropriate measure of participation to use. This may not be a matter for great concern if cross-national comparisons of participation levels are somewhat ad hoc occurrences. However, if sport participation is to be part of a regular process of assessing nation states’ performance in the context of universal human rights, then a standard and systematic approach will be required. This is no easy task, but sport participation is not unique in this regard. Measurement presents challenges across the range of human rights (see Jabine & Claude, 1992; Landman, 2004;

Landman and Carvalho, 2010). The issue of how such a consensus might be arrived at in practice is discussed in the conclusions to the paper.

Assessment

For sport participation there is no benchmark to indicate a ‘satisfactory’ level of participation comparable to the PA/health benchmarks. How then, might levels of rights-satisfaction in regard to sport participation be assessed or evaluated? A cross-national comparative approach is one possibility. Countries achieving the highest levels of participation at a given level of resources (e.g., per capita GDP) could be seen as setting the levels (quasi-benchmarks) against which others in the same per capita GDP range could be assessed in a formative manner. In the sport policy context, but outside of the human rights framework and without reference to resources, this sometimes emerges informally as the *de facto* process in operation. For example, in the early 2000s, the British government, noting the low level of sports participation in Britain compared with other countries, announced an aim to reach the level of participation of the most active country in Europe, which was Finland (DCMS/Cabinet Office Strategy Unit, 2002, p.7). More recently, in characteristically competitive style, the Australian Government (2018, p.3) declared that its aim was for Australia to be ‘the world’s most active, healthy sporting nation’, although it did not quantify this ambition.

The SERF index, mentioned above, is based on a comparative approach in the form of the ‘Achievement Possibilities Frontier’, borrowed loosely from the economics of the firm (Fukuda-Parr et al., 2015, p.42). To establish this for ‘core’ ESC rights, relevant outcome indicators were graphically plotted against per capita GDP, using data from numerous countries over a decade or so. The ‘frontier’ was the plot of the highest levels of the rights indicator at various levels of GDP per capita. It therefore indicated the levels of rights-satisfaction which were possible if efforts were made to allocate suitable resources to the task and to adopt best practice. In the examples provided, indicator plots rose rapidly, almost vertically, when comparing countries at lower GDP levels, then flattened off at higher levels (an inverted hockey stick shape). This curve was then converted into a formula for each ESC right. Applying these principles to sport would involve identifying suitable cross-nationally comparable sport participation data, which is explored in the following worked example.

Worked example: reporting on and assessing the right to sport participation: Methods

The conduct of this worked example proceeded in two stages. The first was to examine current practice in EU member states’ recent reporting to the UN on their performance in assuring the right to sport participation as required by the ICESCR. EU member states were used because of the known availability of data on sport participation from surveys conducted periodically by the European Commission. The findings from the first stage, outlined in more detail below, established that sport featured hardly at all in the reports examined. Consequently, the second stage was embarked upon to demonstrate a possible method for incorporating sport-participation-related assessments in country reports.

Regarding the first part of the exercise, all EU member states have ratified the ICESCR and submitted at least one report to the UNCESCR and these are available on-line.⁷ The reports were reviewed to ascertain the extent to which, and the manner in which, they gave consideration to sport participation.

The second part of the exercise followed the suggestion of the above-cited OPERA framework that measuring the outcomes of human rights policies should comprise three components: a. aggregate levels of rights enjoyment; b. disparities in rights enjoyment; and c. progress over time (CESR, 2012, p.13). The data source and approach to measuring each of these items is discussed in turn below.

a. Aggregate levels of rights enjoyment.

Since 2002, the European Commission has conducted periodic ‘Eurobarometer’ surveys of sport participation in member countries. The most recent, utilised in this study, was conducted in 2017 (European Commission, 2018). The sample size was 1000 adults (15 years and over) for each member state. Survey respondents were asked how often they ‘exercise or play sport’, with frequency categories ranging from ‘5 or more times a week’ to ‘never’. The measure used for this demonstration was the percentage of adults claiming to take part at least once a week.

The most recent versions of the EC survey have included additional questions incorporating PA principles, such as physical intensity and duration of activity and participation in non-sporting and non-recreational physical activity. The surveys therefore offer the possibility of experimenting with a variety of measures of participation. While this has not been possible for this exercise, it could be undertaken in future as part of any process established to work towards consensus on standardised measures of sport participation for human rights assessment purposes. The aim in this exercise has been not to identify the ideal measure but to demonstrate the use of a cross-nationally available measure to illustrate a *process of assessment of performance* in regard to sport as a human right. The process is therefore the main focus, rather than the substantive results, since the latter could vary depending on the measure used.

The principle of progressive realization requires that resources available to a country should be taken into account when assessing performance. The OPERA framework document does not provide specific guidance on measurement of resources, but does appear to endorse the use of gross domestic product (GDP) per capita in references to the SERF index and one of the CESR’s own studies (CESR, 2012, pp. 9,16). GDP per capita is used in the current study, sourced from Eurostat.

b. Disparities in rights enjoyment

As noted above, country reports to the UNCESCR are required to provide data on rights indicators ‘disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status’. The Eurobarometer surveys gather data on: age; gender; education level; poverty; and ‘subjective urbanisation’ of subjects. While the published report on the 2017 survey does not provide these data for individual countries, it is possible to access the Eurobarometer survey data on-line and compile desired tables. For this study, for demonstration purposes, data were extracted relating to

gender, since reducing gender-related differences in sport participation has been a long-standing concern in community sport policy (International Working Group on Women and Sport, 2014).

c. Progress over time

The principle of progressive realization suggests that outcomes should ideally improve over time. The 2017 Eurobarometer survey report (European Commission, 2018, T2) indicates the change in levels of sport participation since the previous, 2013, survey. This was used as an indicator of change over time.

A summary of the data from the above sources is provided in Appendix 1.

Results for stage 1: Existing reporting and assessing of performance in country reports to the UN

The right to cultural participation is stated in Article 15 of the ICESCR and all member-state reports discussed achievements in relation to this article. In theory this should include participation in sport. However, the following features were found.

- Ten reports made no mention of sport at all.
- In reports which did mention sport, it was typically only in passing and related to other topics, such as school education.
- No reports explicitly recognised sport participation as a human right.
- No report included data on levels of participation in sport, despite the availability of EC survey data and, in several states, data from their own national participation surveys (see Van Bottenburg et al., 2005).
- In none of the formal comments from the UNCESCR on EU member states' reports is attention drawn to this absence of data.⁸

It is clear, therefore, that sport participation is substantially missing from the UN system of ESC rights reporting and assessment.⁹ This neglect does not match the rhetoric of the international declarations and treaties which member states have endorsed and/or ratified. A number of factors may provide partial explanations for this, including the following.

- Even though, as noted above, the UN has insisted that all the rights included in the UDHR are 'universal, indivisible and interdependent and interrelated' (World Conference on Human Rights, 1993, p.I.5), in practical and political terms, some rights are treated as more equal than others and so attract more attention and resources.
- When the UN gives consideration to cultural rights (e.g., UNCESCR, 2009a), there is an understandable tendency to give priority to the culture of minority and marginalised groups, rather than majority or mainstream cultural rights (Veal, 2015, p.259).
- Even when majority/mainstream culture is given consideration, the emphasis tends to be on the traditionally understood conception of culture as 'the arts' (Shaheed, 2013; Hansen, 2003), despite the broad 'way of life' definition of culture endorsed by the UN, as noted above.
- While the UNESCO sport charter refers to the UDHR, it makes no specific reference to the relevant article/right concerning the 'cultural life of the community' (Article 27) and therefore

does not associate sport with the related formal performance reporting and assessment processes of the UN.

- It is possible that full recognition of cultural/sporting rights would involve substantial intervention and commitment of resources by governments. If Harvey's above observations regarding the contemporary influence of neo-liberalism are accepted, then resistance to such an expansion of state roles could be expected from some governments.
- The sports research/policy community itself has not engaged in the internal or external conversations which would be necessary to develop appropriate indicators for the right to sport participation. This paper is offered as a contribution to such a conversation.
- The lack of guidance on human rights indicators related to sport participation, as identified above, may be both a cause and effect of the neglect of sport participation in country reports.

Results for stage 2: Assessing the right to sport participation: demonstration of a process

a. Aggregate levels of rights enjoyment

The wide variation in the level of participation shown in Appendix 1 suggests considerable variation in the extent to which the right to sport participation is being realised in EU member states. The relationship between participation levels and resource availability is shown in Figure 2, which plots participation levels against GDP per capita. As the regression line ($r = 0.81$) indicates, the level of participation rises broadly in step with per capita GDP. However, there is considerable variation within each income level.

INSERT: Figure 2. Sport participation by GDP per capita, EU member states, 2017

A possible approach to using this information for performance assessment purposes is to conclude that those countries with participation levels on or above the regression line are deemed to have a satisfactory performance, while those below the line are deemed to require more effort. Overall, Finland and Sweden can be seen as setting the ultimate standard of achievement which others could be expected to follow over time, resources permitting.

The means by which countries above the line, and the Scandinavian countries in particular, achieve their level of success should be of wider interest. Unfortunately, individual country reports to the UN do not provide this information, given the general lack of any discussion of sport at all. While various independent academic studies have sought to document (Van Bottenburg et al., 2005), analyse (Hallman and Petry, 2013) and explain (Nicholson et al., 2011) differential levels of sport participation in relation to sport policies, they have been far from comprehensive and the secret to achieving successful policies remains elusive.

b. Disparities in rights enjoyment

The typical policy aim in regard to sport and gender is to seek to reduce the long-standing gap between male and female sport participation rates, preferably to zero or below. Figure 3 therefore plots the difference between women's and men's participation rates by per capita GDP. It can be seen that the women's participation rate is equal to or above that of men in only three EU member countries: Lithuania, Denmark and Sweden. The correlation with per capita GDP is weak ($r = 0.14$), indicating that, overall, high and middle income countries are no better than lower income

countries at achieving equality of outcomes. Since public policies to improve women's participation levels in sport are common, it might be expected that governments reporting on their performance in regard to sport participation would refer to such policies and their outcomes but, given the lack of consideration given to sport, this is missing from the EU states' reports.

INSERT: Figure 3. Difference between women's and men's sport participation levels by GDP per capita, EU member states, 2017

c. Progress over time

Figure 4 presents changes in the level of sport participation between 2013 and 2017. It shows that eleven states saw an increase in participation or no change in the four years, while fifteen showed a decline. In practice, in reporting such results, states might be expected to draw attention to their apparent success in increasing participation levels or to offer explanations for any decline but, again, this is precluded by the lack of participation data or discussion of sport participation in the EU states' reports examined.

INSERT: Figure 4. Change in sport participation levels: EU member states, 2013-2017

Summary and conclusions

This paper notes that participation in sport is recognised as a human right in numerous internationally ratified declarations and treaties, in particular in the Universal Declaration of Human Rights and its associated legal covenants. In UN documents, sport participation is a component of 'participation in the cultural life of the community', however, culture, and hence sport participation, is not included among the 'core six' ESC rights in the UN system. A review of EU member states' progress reports to the UN indicates that sport participation has not generally featured in the formal reporting system which monitors nation states' performance in regard to realisation of ESC rights. While there are likely to be a number of reasons for this omission, one may be that there is no available guidance on indicators or methodology for assessing national performance in regard to the right to sport participation.

In regard to research *on* sport policy: these findings reveal a lack of attention given to the monitoring of performance related to the realisation of the right to sport participation. This invites scepticism as regards the authenticity of the support offered by nation states, not only to international declarations and treaties on the right to sport participation, but also to the principles of evidence-based policy in this sector.

As a contribution to research *for* sport policy: the paper offers a possible methodology for measuring and assessing the outcomes of nation states' policies for sport participation and demonstrates its use based on data for EU member states. It involves examination of indicators for: aggregate levels of sport participation; the difference between female and male participation levels; and the change in participation levels over time (2013-17) – each related to GDP per capita. This is by no means intended to be the 'last word' in regard to methodology, but is presented as an illustration of what might be possible.

It is unusual for an academic paper to offer ‘recommendations’ but this is appropriate for this paper. The recommendations below are addressed to the policy/research community concerned with sport participation, including global, regional and national governmental agencies and NGOs, and academic/research organisations, including academic organisations.¹⁰ Two recommendations are offered.

1. A consultative process should be established to formulate guidelines for the compiling of indicators for assessing states’ performance in relation to sport participation as a human right. The guidelines would be for use in country reports to the UN Committee on Economic, Social and Cultural Rights (UNCESRC) regarding Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The guidelines would cover assessment of policy *outcomes*, as explored in this paper, but also *structural* and *process-related* indicators as discussed in general terms in the UNCESCR’s own guidelines on indicators. The UNCESCR could be expected to take the lead in initiating this process, although the bulk of the input might be expected to come from specialist organisations that constitute the sport policy/research community.
2. Among specific matters which the process might consider are:
 - a. Seeking consensus on a standardised approach to defining sport and measuring and conducting surveys on sport participation, including the possibility that different measures of participation might be used for different purposes.
 - b. Consideration of how the various roles and functions of sport may be taken into account in the above process and how these might relate to other economic, social and cultural rights set out in the ICESCR (e.g., Article 12 regarding health) and other rights declarations.¹¹
 - c. Consideration of how the above process is likely to relate to the situations of poorer/developing countries. Financial and in-kind assistance from the wealthier parts of the world may be required to facilitate data collection and implementation of the policy development and assessment process. Indeed, Article 2.1 of the ICESCR encourages ‘international assistance and co-operation’. While poorer countries may not see sport, let alone surveys of sport participation, as a priority, the SDP movement suggests that, if material assistance is available, this problem may be overcome.

The purpose of the discussion of the concept of sport as a human right in this paper is to stimulate further discussion of a topic which has been neglected by both the sport policy/research community and the human rights policy/research community.

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INSERT Appendix 1

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Notes

¹ Other UN treaties refer to the right to participate in sport, culture and play on a non-discriminatory basis, including: The Convention on the Elimination of All Forms of Discrimination against Women, 1979; The Convention on the Rights of the Child, 1989; The Convention on the Rights of Persons with Disabilities, 1975/2006; Convention Concerning Indigenous and Tribal Peoples in Independent Countries, 1989; The Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities, 1999. In addition, regional/continental inter-governmental rights declarations exist as do charters, declarations etc. from independent organisations (see Ishay, 2007). Also relevant is the Charter for Leisure of the World Leisure Organisation (WLO, 2020; Sivan & Veal, 2021).

² In 2020, 25 member states of the UN had not ratified the International Covenant on Economic, Social and Cultural Rights, which gives legal expression to the economic, cultural and social rights in the UDHR. Seventeen of these had a population of less than one million, constituting mainly small island states. Of the remaining eight: six had neither signed or ratified the covenant (Bhutan, Malaysia, Saudi Arabia, Singapore, South Sudan, United Arab Emirates), while two had signed but not ratified it (Cuba, USA).

³ Now superseded by the '2030 Agenda for Sustainable Development'.

⁴ 'States parties reports' are, however, often delivered behind schedule. Copies of the reports are available at: www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx.

⁵ These views seem to be inconsistent with UNSECO's own charter for sport (see Table 1).

⁶ An analysis of the 'right to leisure time' using time-use survey data is presented by Veal (2021), but time spent on sport is not separately identified.

⁷ See endnote 4.

⁸ The comments from the UNCESCR are published on-line along with the country reports themselves – see endnote 4.

⁹ Formal analysis of non-EU member reports has not been undertaken, but informal examination of a small sample of such reports suggests that EU countries are not exceptional in this regard.

¹⁰ Examples include: UNESCO; ICSSPE (International Council of Sport Science and Physical Education); Council of Europe; European Commission; MEASURE (Meeting for European Sport Participation and Sport Culture Research) group (see Hallman and Petry, 2013, p.vii); and national sports commissions.

¹¹ See Table 1 and endnote 1.

Table 1. Declarations regarding the right to sport participation

Universal Declaration of Human Rights (UDHR)^a	Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. Article 27: Everyone has the right freely to participate in the cultural life of the community. (United Nations, 1948) ^b
Olympic Charter	Article 1: The practice of sport is a human right. Every individual must have the possibility of practising sport in accordance with his or her needs. (International Olympic Committee, 2010, p.11) ^c
European Sport for All Charter	Article I: Every individual shall have the right to participate in sport. (Council of Europe, 1976)
European Sports Charter	Article 1. Governments, with a view to the promotion of sport as an important factor in human development, shall take the steps necessary to enable every individual to participate in sport. (Council of Europe, 1992) ^d
UNESCO International Charter of Physical Education, Physical Activity and Sport	Article 1: The practice of ... sport is a fundamental right for all. (UNESCO, 1978/2014) ^e
Brighton plus Helsinki 2014: Declaration on Women and Sport	Equal opportunity to participate and be involved in sport and physical activity, whether for the purpose of leisure and recreation, health promotion or high performance, is the right of every woman, whatever her race, colour, language, religion, creed, sexual orientation or identity, age, marital status, ability/disability, political belief or affiliation, national or social origin. (International Working Group on Women & Sport, 2014)
<p>a. UDHR articles 24 and 27 are also re-stated in articles 7 and 15 respectively of the 1966 UN International Covenant on Economic, Social & Cultural Rights (ICESCR).</p> <p>b. The UN definition of ‘culture’ is broad, including ‘sport and games’ (UN Committee on Economic, Social & Cultural Rights, 2009a, p. 4).</p> <p>c. The Olympic Charter is the constitution of the International Olympic Committee, published in various versions since the early 1900s. The right to sport participation was first mentioned in the 1996 version.</p> <p>d. Originally the <i>European Sport for All Charter</i> (Council of Europe, 1976)</p> <p>e. Based on the <i>Declaration on Sport</i> (International Council of Sport and Physical Education/UNESCO, 1964). ‘Sport’ here refers to ‘physical education, physical activity and sport’.</p>	

Categories of PA		PA level			
Broad	Detailed	Active	Partly active	Inactive	
		MPA/VPA ≥ 150 mins/week	MPA/VPA < 150 mins/week	Less than MPA	No PA
Community sport	A Organised sport				
	B. Managed physical recreation				
	C. Informal physical recreation				
Non-recreational PA	D. Transport				
	E Unpaid domestic work PA				
	F. Paid work PA				

Organised sport: club-based
 Community sport. Organised sport - club-based, competitive. Managed physical recreation in public or commercial facilities; Informal physical recreation: individual e.g., jogging, cycling
 PA: Physical activity, subject to health benchmarks

PA = Physical Activity
 MPA = Moderate PA
 VPA = Vigorous PA

Figure 1

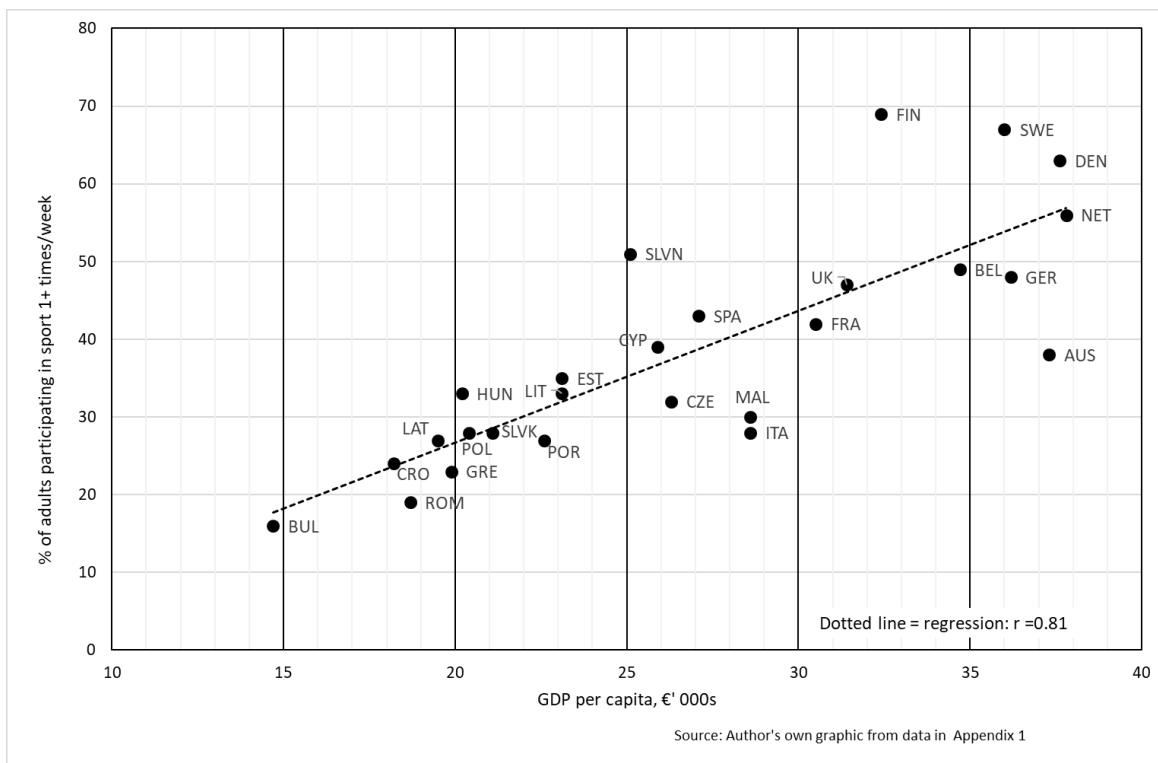
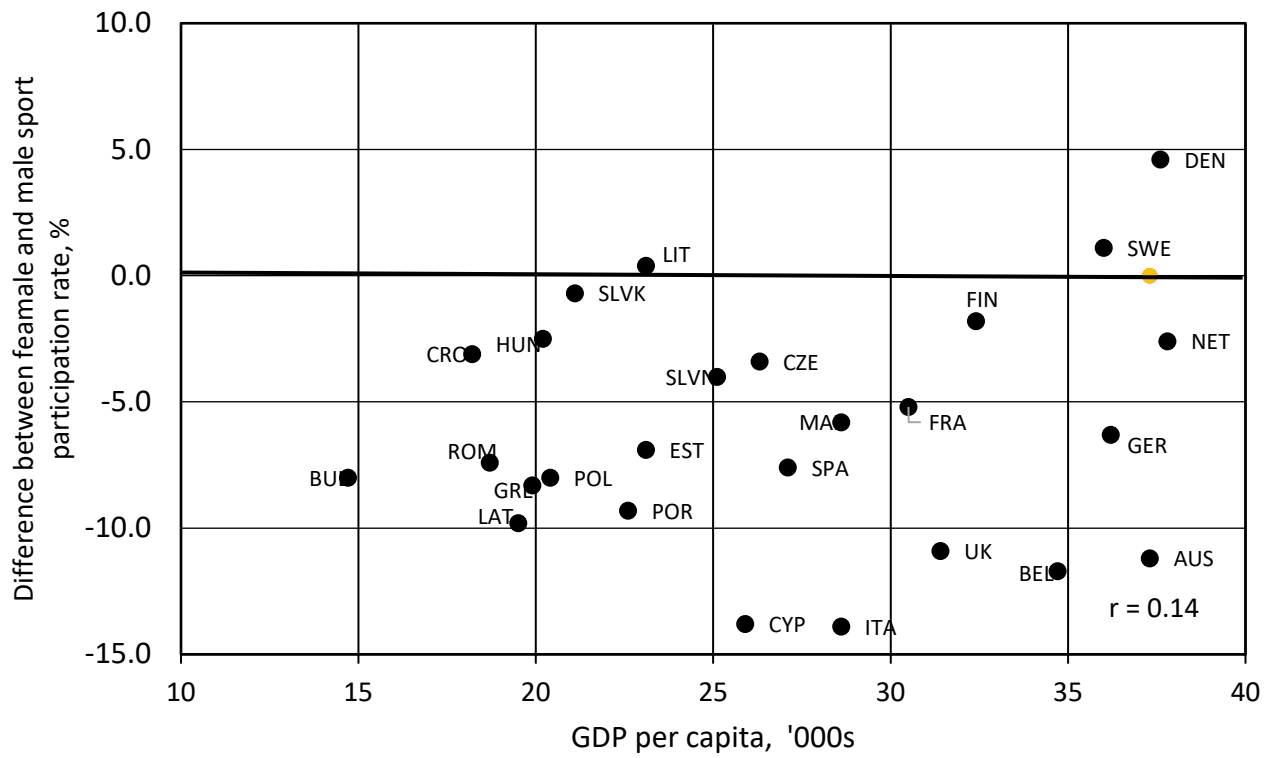


Figure 2



Source: Author's own graphic from data in Appendix 1

Figure 3

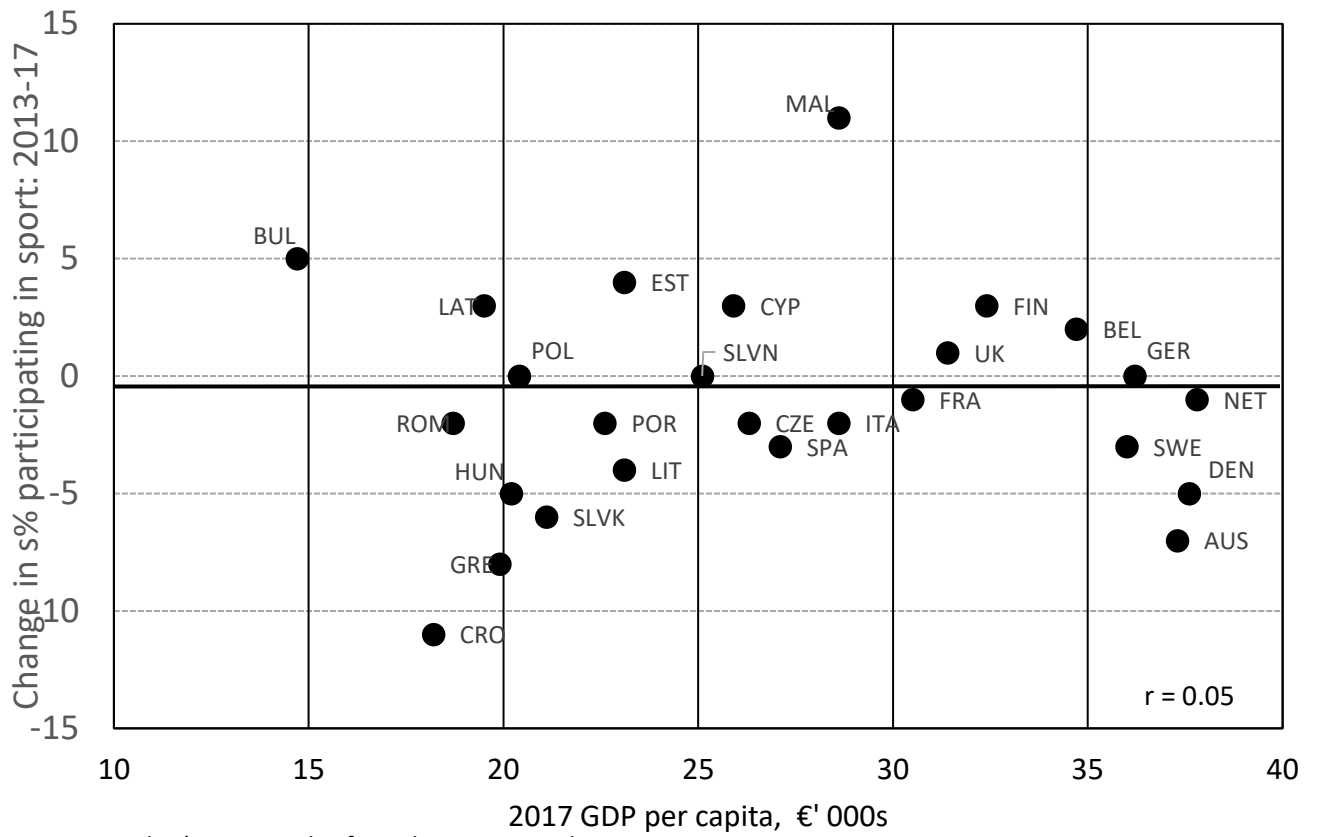


Figure 4

Appendix 1. Participation in exercise/sport and GDP per capita, EU countries, 2017

Country	% participation ¹			GDP per capita, 2017 € '000s
	All adults, 2017	Difference between women & men, 2017	All adults, change: 2013-2017	
Finland	69	-2	+3	32.1
Sweden	67	+1	-3	47.7
Denmark	63	+5	-5	50.7
Netherlands	56	-3	-1	43.1
Ireland	53	-12	+1	61.9 ²
Luxembourg	52	-2	+2	95.2 ²
Slovenia	51	-4	0	20.8
Belgium	49	-12	+2	39.2
Germany	48	-6	0	39.3
UK	47	-11	+1	35.8
Spain	43	-8	-3	25.0
France	42	-5	-1	34.2
Cyprus	39	-14	+3	23.3
Austria	38	-11	-7	42.1
Estonia	35	-7	+4	18.1
Hungary	33	-3	-5	12.8
Lithuania	33	+0.4	-4	14.9
Czech Rep.	32	-3	-2	18.1
Malta	30	-6	+11	24.1
Italy	28	-14	-2	28.7
Poland	28	-8	0	12.2
Slovakia	28	-1	-6	15.5
Latvia	27	-10	+3	13.8
Portugal	26	-9	-2	19.8
Croatia	24	-3	n/a ³	11.9
Greece	23	-8	-8	16.8
Romania	19	-7	-2	9.6
Bulgaria	16	-8	+5	7.4

Sources: Sport participation: European Commission (2018: T2). Gender data via www.gesis.org/en/eurobarometer-data-service/survey-series
GDP per capita: Eurostat.
1 Adults (15+) participating ,1+ times/week.
2 Luxembourg and Ireland GDP inflated by the hosting of expatriate corporate headquarters, so are excluded from subsequent analysis.
3 Croatia was not a member of the EU in 2009.