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PROMOTING FEMALE SPORTING OPPORTUNITIES WITHOUT TITLE IX: THE SPANISH EXPERIENCE

STEPHEN F. ROSS* & MARIA JOSEFA GARCÍA CIRAC**±

INTRODUCTION

A reader unfamiliar with American sports would require an explanation as to why the fifty-year anniversary of Title IX of the Educational Amendments Act of 1972 would be celebrated by a symposium in the *Marquette Sports Law Review*, as opposed to a journal dedicated to women's rights or education law. The statute was amended to contain one reference to sports and is principally about non-discrimination in education.¹ Title IX is worthy of scholarly attention by what is perhaps the nation's premier sports law specialty journal, however, because it operates in the context of our nation's singular commitment to sporting opportunities through high school and college athletic programs. A policy designer, viewing the United States in 1972 and seeking to promote female sporting opportunities, would readily see that the easiest solution is to require high schools and colleges who provided what was seen as an adequate and appropriate level of sporting opportunities for males to provide the same opportunities to females.²

In most of the world, school sports play a far smaller role, in contrast to other public and private opportunities for sports participation. So, as Spanish policymakers have, over time, sought to eliminate discrimination against

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± The *Marquette Sports Law Review* Editorial Board was unable to verify all sources used in this article because of the difficulty of locating foreign sources.

1. Education Amendments of 1974, Pub. L. 93-380, § 844, 88 Stat. 612 (1974) (codified as amended at 20 U.S.C. §§ 1681-1688). See PAUL C. WEILER, ET AL., SPORTS AND THE LAW 913 (6th ed. 2019) (recounting legislative history).

2. Cf. *United States v. Virginia*, 518 U.S. 515, 540 (1996) ("However 'liberally' this plan serves the Commonwealth's sons, it makes no provision whatever for her daughters. That is not *equal* protection.").

women and to positively promote sports opportunities, the solutions are more direct, using the tools of public administration to facilitate and in some cases mandate initiatives for multiple entities to increase sporting opportunities for women and girls.

A review of Spanish institutions and the Spanish experience reveals some aspects of American policy that are often overlooked. By using the framework of non-discrimination, as opposed to affirmative sports policy, Title IX has been quite effective at allowing athletically-gifted elite girls and women to enjoy the sort of opportunities American society has traditionally provided to athletically gifted elite boys and men. In contrast, the Spanish approach focuses explicitly on the social benefits of sports participation for all: boys, men, girls, women, rich, poor, talented, and mediocre. Along with Albariño wine from Northwest Spain and Manchego cheese from southwest Madrid, it is a different approach that warrants consideration for import.

Part I of this essay provides a very brief overview of Title IX, with a specific focus on contrasting its singular and effective impact on equalizing opportunities for elite female athletes with its minimal effect on sports participation for others. Part II introduces the structure of Spanish sports governance and the various tools for implementing Spanish public policies. In Part III, we discuss how the Spanish government and civil institutions have implemented policies to promote both equality between men and women and to positively increase female sports participation to achieve social benefits. Part IV analyzes the differences between the American and Spanish approaches, and it explores how the aspirational objectives for the proposed Spanish Sports Law have greater potential to achieve the social benefits of increased sports participation than the non-discrimination approach implemented in Title IX.³

I. THE UNIQUE BUT LIMITED IMPACT OF TITLE IX IN IMPROVING FEMALE SPORTING OPPORTUNITIES IN THE UNITED STATES

The transformational effect of Title IX on female sporting opportunities in the United States has been well documented elsewhere, and needs no repetition here.⁴ Most commentators attribute the successes of the U.S. National Woman's Soccer Team, the growth of professional leagues in basketball, soccer, and ice hockey, and the explosion on interscholastic and

3. In this collaboration, Professor Ross was principally responsible for Parts I and IV, while Professor García Cirac was primarily responsible for Parts II-III.

4. See Zara Abrams, *Title IX: 50 Years Later*, AM. PSYCH. ASS'N (June 28, 2022), <https://www.apa.org/news/apa/2022/title-ix-landmark>.

intercollegiate sports participation to Title IX and its implementing regulations.⁵ At the same time, Title IX does not have as broad an effect as it could. This is because Title IX simply mandates equal treatment of males and females in school sports, and school sports have traditionally addressed the needs of elite athletes.

American sports are organized in a “dis-integrated” way. Its major, and separate, components feature highly profitable commercial sports at elite levels, amateur sports organized by secondary schools and universities, profitable private clubs where participants compete against each other, and public recreational competitions organized by local park districts. There is little coordination between, for example, the Pittsburgh Pirates, the intercollegiate baseball competitions offered in a range of schools from Penn State (playing Division I baseball as part of the Big Ten conference) and Gettysburg College (playing Division III baseball), high school baseball organized by the Pennsylvania Interscholastic Athletic Association, the myriad private “traveling clubs” in the state for elite teenagers, Little League baseball, and competitions organized by individual local park departments.

Historically, interscholastic and intercollegiate sports provided millions of males with valuable sporting experiences as youths, as well as pathways to a professional game in those sports played professionally. Because of traditional gender roles, only fifteen percent of the participants in interscholastic and intercollegiate sports were female in 1972 prior to the enactment of Title IX.⁶

Prior to 1972, and with funding increases in the latter part of the Twentieth Century, secondary schools and universities sought to increase the quality and quantity of interscholastic and intercollegiate athletic opportunities available to elite athletically talented males. Title IX is a non-discrimination statute. It is not specifically about sports, and it requires no government or other entity to do anything about sports. It simply requires equal opportunities to be provided to males and females.⁷ Title IX therefore required these schools make

5. William E. Thro & Brian A. Snow, *Cohen v. Brown University and the Future of Intercollegiate and Interscholastic Athletic*, 84 ED. LAW REP. 611, 611-12 (1993). See also Alexandra Petri, *With Title IX, Women Made Soccer Theirs*, N.Y. TIMES, Jun. 27, 2022, at A1; Christopher Persley & Pepper Persely, *The Lasting Impact of Title IX On The WNBA*, N.Y. AMSTERDAM NEWS (June 29, 2022), <https://amsterdamnews.com/news/2022/06/30/the-lasting-impact-of-title-ix-on-the-wnba/>; Robert Lipsyte, *Backtalk: Nagano's Legacy: Female Gladiators: Their Ice Hockey Gold Opens a Door, But to Where?*, N.Y. TIMES (Feb. 22, 1998), <https://www.nytimes.com/1998/02/22/sports/backtalk-nagano-s-legacy-female-gladiators-their-ice-hockey-gold-opens-door-but.html>.

6. P. Michael Villalobos, *The Civil Rights Restoration Act of 1987: Revitalization of Title IX*, 1 MARQ. SPORTS L.J. 149, 151 (1990).

7. 20 U.S.C. § 1681 (2022); 44 C.F.R. § 19.100 (2022). See also T. Jesse Wilde, *Gender Equity in Athletics; Coming of Age in the 90's*, 4 MARQ SPORTS L.J. 217, 218 (1994).

available an equivalent quality of interscholastic and intercollegiate athletic opportunities to elite athletically talented females. Because of its focus on the United States' unique use of school sports for elite youth sporting competitions, neither Title IX nor any other statute mandates any obligations to promote female sporting opportunities elsewhere. Neither major commercial sports nor profitable private clubs have any legal obligation to promote women's sports. Public recreational competitions are very sporadic and at a low level. As a result, non-elite recreational opportunities remain low for boys and men, and Title IX's focus on equal treatment for girls and women does not address the same paucity of opportunities for non-elite girls and women.

At non-elite levels, the major form of unequal opportunity in the US is between the affluent and the poor and working poor, not between males and females. Boys and girls who are not talented enough to be selected for their school's varsity roster have little organized opportunity to participate in organized competitive sports.

The approach to intercollegiate athletics at major universities illustrates this phenomenon. The NCAA hails participation in intercollegiate athletics for the many physical, mental, and social benefits that accrue from these programs. However, the programs are limited to elite athletes, and NCAA rules constrain expansion. Without elaborate exemptions, universities participating in Division I may not participate in other divisions.⁸ Consider a student with good but not elite basketball talent who would like the experience of participating in intercollegiate athletics. Zhir⁹ choices are to attend a top research university and forego intercollegiate athletics, or to persuade Zhir's parents to pay the cost of private education at a smaller college where they can be selected to the varsity. Division I universities offer few of the benefits of intercollegiate athletics participation to "club" sport participants. Title IX, to be sure, expanded Division I opportunities for elite women, to match elite men. It does nothing for the rest of the student body.

The current state of American sports is largely attributable to our society's laissez-faire approach to sport. It is seen as largely a private activity, with the exception of federally funded schools and colleges, who are the focus on Title

8. 2022-23 NCAA Constitution & By-Laws, NCAA, at art. 20.01.2, 20.6, 373, 386-88 (Aug. 1, 2022), <https://web3.ncaa.org/lstdbi/reports/getReport/90008>.

9. We adopt this non-binary pronoun to refer to any student. See Carly E. Kupper, Non-Binary Identities: How Non-Binary People Move Through a Gendered World 21 (2021) (Honors Undergraduate Thesis, University of Central Florida), <https://stars.library.ucf.edu/cgi/viewcontent.cgi?article=2002&context=honorstheses>.

IX's regulation. In contrast, sport has been long seen as a public function in Spain, with a much differing governance structure.

II. PUBLIC AND PRIVATE ORGANIZATION OF SPORTS IN SPAIN

Government and public policy are much more involved in Spanish sport than is the case in the United States. In Spain, public authorities are obligated to promote sport, and required to issue guidelines for sports promotion that are binding on both public and private parties. This Part establishes the far greater role that public authorities exercise in the promotion of sport, the significant role played by a government agency, the obligation of sub-national governmental bodies to promote sport, and the control exercised by national and sub-national bodies over private sports federations, leagues, and clubs.

A. The Role of Public Authorities.

Although it is not the object of this work to analyze comprehensively the beneficial effects of sport for the individual and for society, these benefits justify the extensive involvement of the Spanish state and of the legal system in the world of sport. Much of sport in Spain is, therefore, within the scope of public administration and administrative law. The configuration and financing of sports federations, the regulations of sports clubs, the promotion of sports activity in certain social sectors, the financing of facilities, the inspection and control of sports activity, the regulation of the necessary qualification for professions related to sport are, among many other issues, aspects that are considered to matters of public law in Spain, and therefore subject to regulation by the Spanish legal system.¹⁰ As discussed below, sport is also directly affected by the constitutionally established obligation to promote equal treatment and opportunities for women and men, equal opportunities for persons with disabilities, and finally consumer protection.

Notwithstanding the foregoing, the law considers many decisions made by sports organizations to be matters of private law. As such, the part of the Spanish legal system that regulates relations between individuals, such as commercial law (for example, in matters of sponsorship and sports patronage or situations of insolvency of sports companies), comes into play, or Civil Law (activities of the clubs subject to this jurisdiction).¹¹

10. Law 10/1990, of 15 Oct., of Sport (B.O.E. 1990, 25037) (Spain). Before this law, Spain had the General Law of Physical Culture and Sport, 13/1980, of Mar. 31.

11. See Bermejo Vera, *The Legal Framework of Sport in Spain*, 110 J. PUB. ADMIN. 7 (1986), in which he reviews the debate on the public or private nature of sports federations, to conclude with its private

B. Legislation of Reference

1. The Spanish Constitution of 1978.

The principle of equality is one of the basic principles on which the Spanish Constitution is based, standing as one of the highest values of the Spanish legal system. Article 1 of the Constitution explicitly provides: "Spain is constituted as a social and democratic State of law, which advocates freedom, justice, equality and political pluralism."¹² For its part, Article 9.2 establishes that public authorities must promote conditions so that the freedom and equality of the individual and the groups in which they are integrated are real and effective.¹³ The public authorities must also remove obstacles that prevent or hinder their fullness and facilitate the participation of all citizens in political, economic, social and cultural life. When we talk about equality, we cannot settle for formal equality, but we must move towards material equality, hence the fundamental role played by the public authorities. And the paradigm of equality is found in Article 14: "Spaniards are equal before the law, without any discrimination on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance."¹⁴

Somewhat distinctively, while the prior provisions appear in the Preamble and Fundamental Rights sections of the Constitution, the express provisions referring to sport are located in Article 43.3, falling within Part III's "Governing Principles of Economic and Social Policy."¹⁵ Thus, sport is not configured as a constitutionally recognized right. Rather, this article states that "public powers will promote health education, physical education and sport."¹⁶ Although the Spanish Constitution does not include sport as a right, it requires public authorities to promote sport, with the understanding that the term 'promotion' cannot be interpreted just as a simple stimulus. Instead, sport must

character. However, Vera concludes that sports federations are not disconnected from the public authorities, nor the control of their acts or agreements, organizational forms and operation, remain alien and distant from the public dimension (Spain).

12. CONSTITUCIÓN ESPAÑOLA [C.E.], Boletín Oficial del Estado [B.O.E.] n.311, Dec. 28, 1978, art. 1.1 (Spain).

13. C.E., B.O.E. n. 311, Dec. 28, 1978, art. 9 (Spain).

14. C.E., B.O.E. n. 311, Dec. 28, 1978, art. 14 (Spain).

15. C.E., B.O.E. n. 311, Dec. 28, 1978, art. 43.3 (Spain).

16. *Id.* (Spain).

be understood as a framework that brings administrative and organizational benefits.¹⁷

Various articles within the Constitution relate to or make explicit reference to the ‘sport activity,’ but these articles pertain to the administration of the State. These include commercial legislation,¹⁸ labor legislation,¹⁹ civil legislation,²⁰ public safety legislation,²¹ and the regulation of conditions for obtaining academic and professional qualifications.²² The reference to “public authorities” in the Spanish Constitution does not simply refer to the national parliament (the *Cortes*) and national agencies in Madrid. Rather, the Spanish State is organized territorially in municipalities, provinces, and autonomous communities (the latter are the rough equivalent of American states).²³ Following Article 137 of the Spanish Constitution, all of these entities have autonomy for the management of their respective interests.²⁴ Among the many powers given to the autonomous communities is the promotion of sport and leisure. Thus, when addressing the role of public sport organizations in Spain, this role must always consider the competencies of the sport activities at the state, regional, and local levels.

2. The Sports Act of 1990²⁵

Parliament enacted this statute to subject sport to public control through the technique of delegation of public functions of an administrative nature to Spanish sports federations, such as the *Real Federación Española de Fútbol* or the *Federación Española de Baloncesto*. These federations exercise this delegation with oversight by the government, through the *Consejo Superior de Deportes* (Superior Council of Sports, or CSD). The CSD’s president is appointed by the Prime Minister and serves as a Minister of State. The most

17. See generally Javier Manuel Cuchi Denia & Antonio Millan Garrido, *La Constitución y Las Fuentes del Derecho del Deporte* [The Constitution and Sources of Sports Law], MANUAL DE DERECHO DEL DEPORTE [SPORTS L. MANUAL] 81 (2021) (Spain).

18. C.E., B.O.E. n. 311, Dec. 28, 1978, art. 149.1.6 (Spain).

19. C.E., B.O.E. n. 311, Dec. 28, 1978, art. 149.1.7 (Spain).

20. C.E., B.O.E. n. 311, Dec. 28, 1978, art. 149.1.8, 149.1.30 (Spain).

21. C.E., B.O.E. n. 311, Dec. 28, 1978, art. 149.1.29 (Spain).

22. C.E., B.O.E. n. 311, Dec. 28, 1978, art. 149.1.30 (Spain).

23. LYE LIN-HENG ET AL., 3 COMPARATIVE ENVIRONMENTAL LAW & REGULATION § 69:2 (2022). Spain has seventeen autonomous communities and two autonomous cities. See also Marci Hoffman, *Spain-Government*, FOREIGN L. GUIDE, https://referenceworks.brillonline.com/entries/foreign-law-guide/*-COM_325068 (last visited Dec. 30, 2022).

24. C.E., B.O.E. n. 311, Dec. 28, 1978, art. 137 (Spain).

25. Law 10/1990, of 15 Oct., of Sport (B.O.E. 1990, 25037) (Spain).

significant functions these federations exercise include the representation of Spain in international sports governance and in international competitions, the exercise of the sports discipline and the organization of official competitions.

This statute does not contain any explicit reference to women's sport or to policies on equality or gender. We find only one reference to equality in its preamble, when it points out that sport plays a corrective factor of social imbalances that contributes to the development of equality among citizens, but without mentioning equality between men and women.

When the law for the creation of the Administrative Court of Sport was modified, a provision in favor of equality between women and men was incorporated, establishing that in the composition of the Court, "the fulfillment of balanced presence of women and men will be guaranteed, balance for objectively founded reasons, duly motivated."²⁶ A new sports law is currently under consideration by the Spanish Parliament. Current drafts include equality as one of its strategic objectives.²⁷

C. Administrative Organization and Areas of Competence

1. The Spanish State, with Special Reference to CSD

The administrative functions of the State with regard to sport are carried out by the *Consejo Superior de Deportes* (CSD). The Law of Sport 10/1990 established this independent administrative agency.²⁸ Implementing this statute, administrative regulations provide that it is the responsibility of the Ministry of Culture and Sport, through the CSD, to propose and implement any government sport policies.²⁹ As a result of this, the CSD has the authority to, among other duties:

- Authorize, revoke, and approve the constitutional statutes and regulations of the Spanish sports federations.
- Sanction official professional competitions.

26. The conversion of what were the Spanish Sports Discipline Committee and the Board of Electoral Guarantees, through Organic Law 3/2013, of 20 June, on the Protection of the Health of the Athlete and the Fight Against Doping in Sports (B.O.E. 2013, 6732) (Spain).

27. Congreso De Los Diputados, Boletín Oficial De Las Cortes Generales (14 de Enero de 2022), https://www.congreso.es/docu/docum/ddocum/dosieres/sleg/legislatura_14/spl_37/pdfs/1.pdf.

28. Law 10/1990, of 15 Oct., of Sport (B.O.E. 1990, 25037), art. 84.1 (Spain).

29. Royal Decree [R.D.] (B.O.E. 2018, 355) (Spain).

- Promote measures to prevent, control and suppress the use of prohibited substances.
- Act in coordination with the autonomous communities to coordinate the development of the competences outlined in their statutes.
- Authorize the registration of the Spanish sport federations in the corresponding international sport federations.
- Collaborate with public agencies and sport federations in caring for the environment.³⁰

2. The Autonomous Communities

Article 148.1.19 of the Spanish Constitution establishes that the Autonomous Communities may assume powers over “promotion of sport and the proper use of leisure.”³¹ The Autonomous Communities have assumed the competences over sport through their respective Statutes of Autonomy and have also enacted laws of sport and physical activity.³²

Public laws regarding sports are typically assigned to a ministry, under the direction of a member of the provincial government cabinet who is in charge of proposing and executing the Government’s policy on sport. The minister will typically supervise other positions, including a general director or directors of sport. These ministers develop policies with regard to various aspects of sport, including:

- General and strategic planning.
- Collaboration and institutional cooperation and with private sports entities. Legal regime. Approval of federative statutes.
- Training, research and its dissemination.
- Implementation of physical and sports activity programs
- School sport and university sport.
- Promotion of equality in sport between men and women.³³

30. Law 10/1990, of 15 Oct., of Sport (B.O.E. 1990, 25037), art. 8 (Spain).

31. C.E., B.O.E. n. 311, Dec. 28, 1978, art. 148.1.19 (Spain).

32. *See, e.g.*, Organic Law 14/2007, of 30 Nov., Reform of Autonomous Statute of Castilla y León (B.O.E. 2007, 20635), art. 70.33, <https://www.boe.es/boe/dias/2007/12/01/pdfs/A49486-49505.pdf> (Spain).

33. For instance, Royal Decree 15/2022, of May 5, of the Autonomous Community of Castila y León, which establishes the organic structure of the Ministry of Culture, Tourism and Sports, art 1: “It corresponds

3. Local Entities

Local authorities in Spain are municipalities and provinces. Law 7/1985 establishes that the municipalities will exercise powers in matters of promotion of sport and sports facilities and occupation of free time.³⁴ Municipalities with a population of more than 20,000 inhabitants must offer sports facilities for public use.³⁵ There are economic items in the budgets of the different administrations for the promotion and development of sports practice.

In the municipal political organization, these duties are usually under the direction of a local councilor, being in general the following:

- General promotion of physical-sports activity, especially at the grass roots level. We can highlight in this sense the promotion of physical activity and sport for children and young people, which can be carried out through the municipal sports schools. Likewise, sport is promoted for the elderly and for women, among other groups. The promotion of women's sports is one of the main strategic lines of action in many Spanish municipalities.
- Construction, management, and maintenance of sports infrastructures.
- Collaboration and cooperation with public and private sports entities, especially with the sports clubs of the municipality.³⁶

4. The Case of Spanish Universities

As reported in the study *The model of Spanish University Sport* (CSD, 2005), sport in Spanish universities was born in the 1920s due to personal concerns of students and the support of some teachers.³⁷ Subsequently, during

to the Ministry of Culture, Tourism and Sport, under the superior direction of its owner, to promote, project, direct, coordinate, execute and inspect in the field of competence of the Community of Castilla y León”

34. Law 7/1985, of 2 Apr., Reguladora de las Bases del Régimen Local [Regulator of the Bases of the Local Regime], (B.O.E. 1985, 5392), <https://www.boe.es/eli/es/l/1985/04/02/7/con> (Spain).

35. *Id.*

36. See generally Nicolas de la Plata Caballero, *Organización Deportiva del Sector Público* [Public Sector Sports Organization], in EDUARDO GAMERO CASADO, ET AL., MANUAL DE DERECHO DEL DEPORTE [SPORTS L. MANUAL] 156, 157 (2021) (Spain).

37. *El Modelo del Deporte Universitario Español* (2005), <https://www.csd.gob.es/sites/default/files/media/files/2018-09/Texto%20del%20estudio%20en%20PDF...PDF> (last visited Dec. 30, 2022) (Spain).

the Franco dictatorship, the government created the Spanish University Union (SEU), which directs sports activity, organizing the National University Games as the main annual national event.³⁸ In addition, the government mandated Physical Education as a mandatory part of the curriculum of university students.³⁹ Today, the Spanish Committee of University Sport (CEDU) acts, under the CSD's auspices, to organize competitions at the national and international level. As with other sports, university sports are also federated, with competitions at the regional and local level organized by sub-national authorities.

A regulation directs the CEDU to present to the CSD a comprehensive annual plan of competitions and university sports activities of a national nature, as well as the participation in international competitions, provide technical advice to the CSD on university sport, and prepare reports and opinions on this matter.⁴⁰

Relevant here are international associations of reference in university sports. At the European level we find the European Association of University Sport (EUSA), which has an area of Equal Opportunities developing various initiatives, which include the SCORE project, aimed at increasing the number of coaches and volunteers and improving training on gender equality of technical staff.⁴¹

D. Sports Entities of a Private Nature

In Spain, together with the intervention of public authorities in sport, we must consider the role of private organizations, which play a transcendental role, not only in professional sport, but also in the promotion of grassroots sport, as well as in the promotion of women's sport.⁴² Despite their public functions, sport federations in Spain remain private and have their own legal

38. *Campeonatos de España Universitarios (CEU)* [Spanish University Championships], MINISTERIO DE CULTURA Y DEPORTE [MINISTRY OF CULTURE AND SPORT], <http://www.csd.gob.es/es/promocion-del-deporte/deporte-universitario/campeonatos-de-espana-universitarios-ceu> (last visited Dec. 30, 2022) (Spain).

39. *Spüre Deine Neue Leistungsfähigkeit, FIT TO PERFORM*, <https://fittoperform.de/> (last visited Dec. 30, 2022) (Ger.).

40. Order ECD/273/2004, of 3 Feb., Which Regulates the Spanish Committee for University Sports (B.O.E. 2004, 2653) (Spain).

41. *Strengthening Coaching With the Objective to Raise Equality–SCORE*, EUR. UNIV. SPORTS ASS'N, <https://www.eusa.eu/projects/score#:~:text=The%20SCORE%20project%20focuses%20on,gender%20equality%20in%20coach%20education> (last visited Dec. 30, 2022).

42. *The Sport Systems in Spain and Portugal*, SPORT IN THE IBERIAN PENINSULA: MANAGEMENT, ECONOMICS AND POLICY 34-45 (Jerónimo García-Fernández, et al. eds., 2022).

status. Because they are considered a collaborating body of public administration, they exercise public functions by delegation. As a result, the State, through the CSD, exercises control over these federations. The scope of action and jurisdiction of the Spanish sports federations extends throughout the State, and include regional sport federations, sport clubs, athletes, coaches, judges, referees, professional leagues, and other interested groups that promote or contribute to the development of the sport.⁴³

E. Professional Leagues

Professional leagues are associations of clubs that are constituted when they are part of an official professional competition. Under Article 41 of the Law of Sport, professional leagues are made up of all clubs participating in that competition. The leagues are given the authority to (a) organize their competitions, in coordination with the respective Spanish sports federation following the criteria mandated by the CSD, consistent with regulations and agreements that exist with other national and/or international regulations; (b) exercise the functions of guardianship, control, and supervision with respect to its members; and (c) impose appropriate discipline.⁴⁴

Professional leagues possess autonomy in their internal organization and operations, subject to the general competence of the sport federation of which they are part. In Spain, there are two professional leagues: *Liga ACB* (the League of the Association of Basketball Clubs) and *Campeonato Nacional de Liga de Primera División* (generally known as *La Liga*) for soccer. As professional competitions, these are only found in the first and second division in soccer, and the first division in basketball.

In June 2021, the process of professionalizing the Iberdrola Women's Football League (First Division) began. Women's football had practically no visibility until a few years ago. Fortunately, the trend is going to change, and steps are being taken both in football and in other sports practiced by women. In 2021, FIFA published the *FIFA Benchmarking Report Women's Football*, which points out, among other aspects, that the development of women's football begins at the base and, in particular, by the configuration of structures that favor the training of athletes.⁴⁵

43. Law 10/1990, of 15 Oct., of Sport (B.O.E. 1990, 25037), art. 30 (Spain).

44. *Id.* art. 42.

45. *Setting the Pace: FIFA Benchmarking Report Women's Football*, FIFA 5, <https://digitalhub.fifa.com/m/3ba9d61ede0a9ee4/original/dzm2o61buenfox51qjot-pdf.pdf> (last visited Dec. 30, 2022).

The Law of 1990 defines sports clubs as “private associations, who have as their object the promotion of one or more sports modalities within their members, as well as promoting their participation in sport activities and competitions.”⁴⁶ Professional teams participating in official professional competitions take the legal form of a Sport Limited Company. The sports clubs play a fundamental role and offer sports possibilities to the population. They are promoting the practice of women’s sports and equality in sport.

F. Spanish Olympic Committee and the Spanish Paralympic Committee

Finally, two very important sport organizations that are part of the private sector are the Spanish Olympic Committee⁴⁷ and the Spanish Paralympic Committee⁴⁸. The Spanish Olympic Committee was established in 1912 as a private association governed by its own statutes and regulations following the principles and standards of the International Olympic Committee. The Spanish Olympic Committee (COE) is also considered an entity of public utility. Regarding the Spanish Paralympic Committee, it was established in 1995 and has similar functions as the COE, but in the context of athletes with disabilities. The Spanish Paralympic Committee, in collaboration with the CSD, also acts as the hub that coordinates all the initiatives related to sport for people with disabilities in Spain.

III. POLICIES TO PROMOTE SPORTS OPPORTUNITIES FOR WOMEN IN SPAIN

A. A Quantitative and Comparative Approach to Women’s Sport in Spain

According to a November 2021 report from the Francisco de Vitoria University, in Spain there are 3,841,916 sports licenses,⁴⁹ of which a total of 2,940,920 (76.5%) belong to men, and 900,996 (23.5%) to women.⁵⁰ If we apply these figures for the number of licenses on the total population, we can

46. Law 10/1990, of 15 Oct., of Sport (B.O.E. 1990, 25037), art. 13 (Spain). B.O.E. n. 249, Oct. 17, 1990 (Spain).

47. SPANISH OLYMPIC COMMITTEE, <https://www.coe.es/comite/> (Spain) (last visited Dec. 30, 2022).

48. SPANISH PARALYMPIC COMMITTEE, <https://www.paralimpicos.es/> (Spain) (last visited Dec. 30, 2022).

49. *Radiografía Del Deporte Femenino en España [Radiography of Women’s Sport in Spain]*, WOMEN’S SPORT INST. (Nov. 2021), <https://munideporte.com/imagenes/documentacion/ficheros/0381FA85.pdf> (Spain). Under Spanish law, any athlete wishing to participate in any sports competition that is official—that is, organized by a sports federation under the general supervision of the CSD, must have a license issued by the appropriate sports federation. Law 10/1990, of 15 October, of Sport (B.O.E. 1990, 25037), art. 32.4 (Spain).

50. *Radiography of Women’s Sport in Spain*, *supra* note 49.

see that 12.6% of men practice some sport regularly, compared to only 3.7% of women. Following the data of the same study, in the last ten years, the evolution in the percentage of women who are dedicated to the practice of sports has increased by 0.7 points, being the figure stagnant practically since 2017.

For its part, the MAPFRE report, which is reflected in the study taken as a reference, states that, in Spain, the level of compliance with the minimum recommendations for physical activity, according to the WHO, among girls/adolescents from twelve to seventeen years old is not only very low, but it is descending to reach compliance levels of only 20% and 16.4% in the sixteen and seventeen years. However, from the stage of eighteen years, the physical activity of women improves markedly.⁵¹

If we limit the data to the University environment, in Spain, according to the data offered by a 2019 study, of the total number of users of sports services, only 36.67% are women, although this figure increases to 53.05% when it comes to recreational and leisure activities. Important differences are also detected with respect to the modality of the sport practiced, and, above all, in the internal competitions that take place in each University, where the proportion of women who participate is very scarce, in such a way that the ratio is one woman for every ten men. However, in the 2018 Spanish Championship, national collegiate sports competition, the difference was only 44.4% versus 55.6% for men. As for the number of sports in which women participate in international competitions, it has evolved in such a way that it has gone from three sports in 1980 to twenty-seven in 2018, the number of sports coinciding with those in which men participate. However, some differentiating elements can be pointed out. For example, university women compete in 7-on-7 soccer, while more men compete in the 11-on-11 version than in the 7-on-7 version.⁵²

B. Development of Spanish Policies to Promote Women in Sport

In 2015, the United Nations General Assembly approved the *2030 Agenda for Sustainable Development*, incorporating seventeen Sustainable

51. Antonio Luque Casado & Fernando del Villar Alvarez, *Mujer Joven y Actividad Física* [Young Women and Physical Activity], MAPFRE FOUND., https://documentacion.fundacionmapfre.org/documentacion/publico/i18n/catalogo_imagenes/grupo.cmd?path=1101363 (Spain) (last visited Dec. 30, 2022).

52. Maria Jose Camacho-Miñano, Elida Alfaro, Maite Gomez-Lopez, *El Deporte Femenino ese Gran Desconocido* [Gender Equality in University Sport: Current Situation and Actions for Change], UNIV. CARLOS III DE MADRID, at 71-87 (2019) (Spain).

Development Goals. In the text we find the reference to sport in the following terms: “[w]e recognize the growing contribution of sport to the realization of development and peace in its promotion of tolerance and respect and the contributions it makes to the empowerment of women and of young people, individuals and communities as well as to health, education and social inclusion.”⁵³ Given that the Sustainable Development Goals are largely the roadmap for public policies, the reference in Article 3 to the purposes of those public policies “in line with the sustainable development goals and targets that have been established at international level” is consistent with all this.

The 2030 Agenda has targets for sports integration directly referred to in Goal 5: “Achieve gender equality and empower all women and girls”:

Target 5.1. End all forms of discrimination against all women and girls everywhere. Sports can be a powerful platform for advocacy and raising awareness, leading to the abolishment of all forms of discrimination.

Target 5.2. Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation⁵⁴

Target 5.3. Eliminate all harmful practices, such as child, early and forced marriage, and female genital mutilation.

Target 5.5. Ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic, and public life. Women have been underrepresented in leadership and decision-making at different levels in sport. For instance, it’s a very important goal to improve the woman’s representation in board’s federations or clubs.

53. U.N. G.A. Res. 70/1, para 37 (Oct. 21, 2015), <https://sdgs.un.org/sites/default/files/publications/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

54. Law 19/2007, of 11 July, Against Violence, Racism, Xenophobia and Intolerance in Sport (B.O.E. 2007, 13408) (Spain). The sports activity carried out, especially by minors, must be adjusted and proportional, always, to their personal development, and to their physical, mental and emotional capacities. In Spain, the Law Against Violence, Racism, Xenophobia and Intolerance in Sport reflects the incompatibility between sport and any type of violence and expresses the existing concern to “promote the social dimension of sport as an educator in values.” Public authorities and sports organizations should promote joint initiatives to play sports a school of life and tolerance, especially in childhood and adolescence.

Target 5.9. Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels. Sport's legislation can be a good field for improve gender equality. At the same time, federation's rules must include policies about gender equality.⁵⁵

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was approved by the United Nations in 1979, and ratified by 187 countries, including Spain in 1984.⁵⁶ CEDAW was the first instrument that explicitly recognized the conditions of disadvantage and discrimination of women, and it established strategic lines of public policies to eliminate inequality.

Article 3 recognizes the right to participate in leisure activities, sports and in all aspects of cultural life.⁵⁷ Article 10 focuses on the field of education, to indicate that States parties shall take all appropriate measures to eliminate discrimination against women, and in particular to ensure, on an equal footing, equal opportunities between men and women to participate actively in sport and physical education.⁵⁸ A key statute implementing CEDAW in Spain is the 2007 Law of Effective Equality between Women and Men.⁵⁹ The law establishes that public policies must act from the perspective of the principle of equality and the gender perspective. Article 29.1 states that “[a]ll public programs for the development of sport shall incorporate the effective consideration of the principle of real and effective equality between women and men in their design and implementation.”⁶⁰ The statute also directly obliges the Government to promote women's sport and to promote the effective opening of sports disciplines through the development of specific

55. U.N. G.A. Res. 70/1, at 20 (Oct. 21, 2015), <https://sdgs.un.org/sites/default/files/publications/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

56. U.N. G.A., Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>. The Spanish ratification instrument is *available at* [https://www.boe.es/eli/es/ai/1979/12/18/\(1\)](https://www.boe.es/eli/es/ai/1979/12/18/(1)).

57. U.N. G.A. Res. 70/1, art. 3 (Oct. 21, 2015), <https://sdgs.un.org/sites/default/files/publications/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

58. *Id.* at art. 10.

59. Organic Law 3/2007, 23 of Mar., for the Effective Equality of Women and Men (B.O.E. 2007, 6115), <https://www.boe.es/buscar/pdf/2007/BOE-A-2007-6115-consolidado.pdf> (Spain).

60. *Id.* at art. 29.1.

programs for all ages and at all levels, with express reference to the areas of responsibility and decision-making.

The CSD approved the Manifesto for the equality and participation of women in sport, aiming to involve all people, organizations or public or private entities related to physical activity and sport, so that they adhere to and incorporate the proposals to achieve equality. Among other actions, the Manifesto proposes as necessary:

- Use the possibilities that sport offers as a vehicle for training people and as a transmitter of values
- Introduce the principle of equal opportunities within corporate social responsibility
- Facilitating women's access to and promotion in competitive sport
- Support the formation of networks and multidisciplinary teams in the field of sports to promote equality and eliminate barriers
- Encouraging sponsors to support women's sport⁶¹
- Reflect in the media a positive image of women in sport, diversified, free of gender stereotypes and as models of personal, professional, and social success.⁶²

The CSD offers a guide to incorporate equality in the management of sports federations. The guide aims to help the federations to manage its own operations in a manner that guarantees respect for the principle of equality of women and men, distinguishing five axes of action within the framework of its structure and its activity. Without wishing to be exhaustive, let us point out some specific objectives in the different axes:

61. In this sense, as an example, let us highlight the sponsorship of Iberdrola, which has a remarkable commitment to the promotion of equality through sport, supporting, in 2022, more than 100 competitions, more than 600,000 athletes, 32 leagues and 32 competitions. *Iberdrola Suplica en 2022 su Impulso a la Igualdad de la Mujer a Través Del Deporte* [Iberdrola Doubles its Drive for Women's Equality Through Sport in 2022], DEPORTE FEMENINO [WOMEN'S SPORTS] <https://www.iberdrola.com/compromiso-social/deporte-femenino> (Spain) (last visited Dec. 30, 2022).

62. *Manifiesto por la Igualdad y la Participación de la Mujer en el Deporte* [Manifesto for Equality and Participation of Women in Sport], MINISTERIO DE CULTURA Y DEPORTE [MINISTRY OF CULTURE & SPORT] <http://www.csd.gob.es/es/mujer-y-deporte/igualdad-y-participacion-declaracion-de-brighton/manifiesto-por-la-igualdad-y-la-participacion-de-la-mujer> (Spain) (last visited Dec. 30, 2022).

- Organization and internal functioning: incorporate the equality of women and men in the regulations of the federation, increase the participation of women in the management and governing bodies of the federation. A concrete action is the constitution of a specific body to identify the needs of women and channel proposals for improvement.
- Budget management, such as establishing criteria for remuneration of sports personnel that respect the principle of equality, remuneration according to work, without distinction by sex.
- Sports project: guarantee the occupational health of athletes, among other measures. In this way, protocols for the prevention and treatment of sexual harassment can be designed and disseminated, or to prevent and treat vital issues such as eating disorders, for example.
- Training plan: organize seminars and training days on equality, incorporate the gender perspective in the training offer provided.
- Communication plan: implement an inclusive language, eradicate stereotyped and sexist images, and make women visible.⁶³

The different Spanish Autonomous Communities have approved their respective laws for effective equality between men and women. To illustrate, Law 7/2018, of June 28, on equal opportunities between women and men in Aragon, obliges the community's Public Administration to promote physical education and the practice of sport as a social, cultural and health value in women, from girls to adults, and at all levels and areas.⁶⁴ Government agencies and sports entities must guarantee equal treatment and opportunities

63. Silvia Ferro López, *Guía para Incorporar la Igualdad en la Gestión de las Federaciones Deportivas* [Guide to Incorporate Equality in the Management of Sports Federations], MINISTERIO DE EDUCACIÓN, CULTURA Y DEPORTE [MINISTRY OF EDUC., CULTURE & SPORTS] (2012), <https://www.csd.gob.es/sites/default/files/media/files/2021-06/PDF%20GUIA%20PARA%20INCORPORAR%20LA%20IGUALDAD%20EN%20LA%20GESTI%C3%93N%20DE%20LAS%20FEDERACIONES%20DEPORTIVAS.pdf> (Spain).

64. Law 7/2018, of 28 June, of Equal Opportunities Between Women and Men in Aragón (B.O.E. 2018, 11932), art. 24, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-11932#:~:text=A%20tal%20efecto%203A-,1.,discriminaci%C3%B3n%20por%20raz%C3%B3n%20de%20g%C3%A9nero (Spain).

between women and men. The law also establishes that the Public Administrators must carry out actions to raise awareness and disseminate women's sport, and to guarantee the balanced presence of women and men in the management and decision-making bodies in the sports field. On the other hand, "sports programs or activities that establish or promote sexist or discriminatory attitudes may not receive subsidies or public aid from the Aragon's public administrations, being prohibited the realization of those that violate the dignity of women."⁶⁵

C. Implementation by Sports Federations, Leagues, and Sports Clubs

1. The Royal Spanish Football Federation (RFEF)

The RFEF has a commitment to promote women's football. In the federative licenses there is still a huge difference by sex, with seventy-seven percent of the federative licenses given to men and twenty-three percent to women in 2020. It is necessary to regularize the professionalization of athletes, considering issues such as maternity, conciliation, or remuneration. The RFEF has approved a Protocol for the prevention, detection, and action against sexual harassment and abuse, with the objectives of:

- preventing possible situations of sexual harassment and abuse between professionals and federated athletes and other people who provide services for the RFEF,
- establishing a procedure for action in the event of indications of situations of sexual harassment and abuse,
- promoting a social context of rejection and an adequate response to any form of sexual violence against adults and minors.⁶⁶

The RFEF has an Equality Observatory, which promotes practices and projects in the field of equality and formulates recommendations and proposals for the adoption of measures to improve equality both in the RFEF

65. *Id.*

66. *Protocolo de la Real Federación Española de Fútbol para la Prevención, Detección y Actuación Frente al Acoso y Abuso Sexual* [Spanish Football Federation Protocol For the Prevention, Detection, and Implementation Against Sexual Harassment and Abuse], REAL FEDERACION ESPAÑOLA DE FUTBOL, https://www.rfef.es/sites/default/files/pdf/protocolo_prevencion_abuso_y_acoso_federacion_futbol.pdf (Spain) (last visited Dec. 30, 2022).

and in the Territorial Federations. An action plan is being worked on with the Territorial Federations. The RFEF has also created a Commission for Equality between Women and Men, as a body responsible for promoting and ensuring compliance with the principle of equality between women and men within the scope of the RFEF, and the commission must also raise awareness about equality and propose measures for improvement. Among its tasks, the Commission drew up the RFEF Equality Plan.⁶⁷

2. Women's Professional Football League

Only recently has the professionalization of women's football become a reality in Spain. In 2021, the CSD Board of Directors approved the professionalization of women's football,⁶⁸ and almost a year later, in March 2022, it approved the constituent statutes of the new Women's Professional Football League,⁶⁹ which will lead to the professionalism of the First Division from next season. The next step, materialized in the month of May 2022, has been the holding of the elections to elect the president of the new League and its Board of Directors.

Issues of importance for the new entity remain pending, such as coordinating with the RFEF on the calendar, the system of promotion and relegation, arbitrations, disciplinary bodies, the quota of foreigners, and who will own the television rights to be able to broadcast the matches. In the same way, the renegotiation of the *Women's Football Collective Agreement* with the unions is pending. The entry into the field of the professional entails significant changes in the structure of Spanish women's football, which, in its first season, to 2022/2023, is organized as follows:

1st Division (Primera Iberdrola): 16 teams.

2nd Division (1st RFEF): 16 teams.

3rd Division (2nd RFEF): 32 teams (2 groups of 16 teams).

67. *Reglamento de Funcionamiento Interno: Observatorio de la Igualdad* [Regulation of Internal Functions: Equality Observatory], REAL FEDERACION ESPAÑOLA DE FUTBOL, https://www.rfef.es/sites/default/files/pdf/6.1.reglamento_funcionamiento_interno_igualdad_120420_n.pdf (Spain) (last visited Dec. 30, 2022).

68. *See Women's Football to be Given Professional Status in Spain From 14th March*, BESOCER, <https://www.besoccer.com/new/women-s-football-to-be-given-professional-status-in-spain-from-14th-march-1112306> (last visited Dec. 30, 2022).

69. George Williams, *The CSD Board of Directors Approves This Monday the Statutes of the First Professional Women's Soccer League*, SPORTSFINDING (Mar. 13, 2022), <https://sportsfinding.com/the-csd-board-of-directors-approves-this-monday-the-statutes-of-the-first-professional-womens-soccer-league/138680/>.

4th Division (First National): 96 teams (6 groups of 16 teams).

On the other hand, the professionalization of women's football takes the lead in the field of sports professionalization. Women's basketball currently has two official state competitions: Liga Endesa and Liga Femenina 2, of which none is yet qualified as professional.

3. Sports Clubs

We must not lose sight of the applicability of the equality regulations that affect football clubs fully, like any other entity. A 2007 statute established that companies are obliged to respect equal treatment and opportunities in the workplace and, to this end, must adopt measures aimed at avoiding any type of employment discrimination between women and men. One of these obligations is the obligation to have an equality plan for companies with over two hundred and fifty workers.⁷⁰

More recently, a new, comprehensive statute for equal treatment and non-discrimination provides, according to the first of its articles, measures aimed at preventing, eliminating, and correcting all forms of discrimination, direct or indirect, in the public and private sectors.⁷¹ Football and its clubs, as entities with responsibility for athletes and coaching staff, must comply with these new standards.

In the field of promotion, Article 33 of this law indicates that "companies may assume the performance of social responsibility actions consisting of economic, commercial, labor, welfare or other measures, aimed at promoting conditions of equal treatment and non-discrimination within companies or in their social environment."⁷² In addition, the statute creates the "Independent Authority for Equal Treatment and Non-Discrimination," which has sanctioning power and is responsible for compliance with the regulations governing equal treatment and non-discrimination, or to investigate the existence of possible situations of discrimination.⁷³

70. Organic Law 3/2007, of 22 Mar., For Effective Equality Between Women and Men (B.O.E. 2007, 6115), art. 45 (Spain).

71. Law 15/2022, of 12 July, Comprehensive for Equal Treatment and Non-Discrimination (B.O.E. 2022, 11589), art. 15 (Spain).

72. *Id.* at art. 33.

73. *Id.*

Likewise, Royal Decree 901/2020, of 13 October, which regulates equality plans and their registration⁷⁴ and Royal Decree 902/2020, of 13 October, on equal pay between women and men,⁷⁵ are applicable to football clubs.

In the regulatory field of sport, neither the Sport Act of 1980 nor the existing Sport Act of 1990 address issues of equality between men and women. As evidenced in this article, equality in sport is promoted through non-sporting legislation in a strict sense. However, the situation will change in accordance with the provisions of the draft sports law, currently in the legislative process, which does give a fundamental role to equal opportunities.⁷⁶ Thus, sports entities must balance the presence of men and women in their governing bodies, thus complying with the provisions of Organic Law 3/2007, of March 22, for the effective equality of women and men.

The project establishes that the Spanish sports federations will be obliged to make an annual equality report that will be submitted to the CSD and the Institute of Women's and for Equal Opportunities. The CSD will determine the structure and deadline for the presentation of said report. In addition, the Spanish sports federations must have a prevention and action protocol for situations of discrimination, abuse, and harassment by reason of sex and/or authority within them, which must be made available to the sports entities that are members of the federation, for their subscription by them.

In practice, the professional football clubs are making an enormous effort in favor of equality. Let's highlight some examples: The Real Madrid Foundation adopted an Equality Plan, to promote equal opportunities in all its lines of action.⁷⁷ In the same way, Fútbol Club Barcelona, through its Foundation, also works on social inclusion and gender programs to promote equality.⁷⁸ Atlético de Madrid's Equality Plan dates from March 2020.⁷⁹

74. Royal Decree [R.D.] 901/2020, of 13 Oct., Which Regulates Equality Plans and Their Registration and Modifies Royal Decree 713/2010, of 28 May, on Registration and Deposits of Agreements and Collective Labor Agreements (B.O.E. 2020, 12214), <https://www.boe.es/boe/dias/2020/10/14/pdfs/BOE-A-2020-12214.pdf> (Spain).

75. R.D. 902/2020, of 13 Oct., on Equal Pay Between Women and Men (B.O.E. 2020, 12215), <https://www.boe.es/boe/dias/2020/10/14/pdfs/BOE-A-2020-12215.pdf> (Spain).

76. See text accompanying *infra* notes 84-85.

77. *The Real Madrid Foundation Applies its Equality Plan and Becomes a Member of the Excellence in Management Club*, REAL MADRID (Apr. 22, 2022), <https://www.realmadrid.com/en/news/2022/04/22/the-real-madrid-foundation-applies-its-equality-plan-and-becomes-a-member-of-the-excellence-in-management-club>.

78. *Diversity: We Are All Equal Through Sport*, BARÇA FOUND., <https://foundation.fcbarcelona.com/for-diversity> (last visited Dec. 30, 2022).

From a political point of view, the effort is also evident: in February 2022, the CSD called for aid to clubs and Sports Corporations (SAD) participating in the highest female category of football worth sixteen million euros, so that they can undertake the structural improvements necessary for the competition, from the European funds of the Recovery Plan, Transformation, and Resilience. In addition to the fulfillment of its legal obligations as a Sports Corporation around the constitutional principle of equality, this appears as a guide for guidance in the policies that some clubs develop in the social field. An example is the Real Madrid Foundation, which in 2020 offered data on 12,000 girls who had participated in the entity's projects around the world.⁸⁰ It has projects such as the one developed through football in the women's module of the Meco penitentiary center (Madrid). And it offers a high percentage of participation, thirty-five percent, in socio-sports basketball schools, a large volume of female participation in programs such as "Emprendeporte" and the Compañeras project, which supports women victims of abuse with scholarships for their sons and daughters in socio-sports schools.

D. Implementation by Universities

Currently, more than half of the students at Spanish universities are women, after a progressive incorporation, especially since the second half of the twentieth century. However, there are inequalities around the practice of sports between men and women in the university environment. Strictly speaking, we can consider university sports to be carried out by university students, being organized by the different sports services of each university. However, in a broader concept, it would encompass not only the students, but the rest of the university community, teaching and research staff and service staff. Not only does it have a competitive aspect, but it also contemplates recreational sports practice as leisure or in terms of healthy activity.

Women have encountered difficulties in practicing sports, their participation is lower than that of men, and it is limited by various factors, among which are historical issues and entrenched social customs, the greater weight of family obligations for women, influence of gender stereotypes, sports models oriented mostly to the male population, and sports structures and organizations led by men. This has its corollary in the university

79. *Sustainability Report 2020/2021*, ATLÉTICO DE MADRID 59, https://www.atleticodemadrid.com/pdf/20220217_1_V_ATM_Sustainability_Report_2021_WEB.pdf (last visited Dec. 30, 2022).

80. *Over 12,000 Girls Involved in Values-Based Football or Basketball Through Foundation*, REAL MADRID (Aug. 19, 2020), <https://www.realmadrid.com/en/news/2020/08/19/over-12000-girls-involved-in-values-based-football-or-basketball-through-foundation>.

environment, where women's sports practice is also lower than that of men. There is a gender gap in participation and access to university sports, both in terms of leisure and recreation and competitive, although women's sports practice is increasing. We can consider that the significant increase in women among students has been the main driver to incorporate gender equality in university sports. Together with this, of course, is the growing importance of equality as a value in our society, as well as the legislative advances and public policies developed in this area.⁸¹

The Organic Law on Universities⁸² does not make explicit reference to equality in sport. However, Article 90 considers sport as part of the training of students and establishes that sports activity is a good of general interest for all members of the university community. The university has the responsibility of establishing the appropriate measures to favor the practice of sports in the various groups. Spanish universities have a Physical Education and Sports Service, in charge of offering and organizing the sports activity of the members of the university community, the care of sports facilities and the competition activity. Thus, they carry out activities aimed at learning sports disciplines and improving physical condition and health, healthy habits programs, and organization of competitions, among which are championships within the university itself, regional championships, and interuniversity championships of Spain.

Akin to Title IX in the United States, Article 46 of the Act includes, among the rights and duties of students, equal opportunities, and non-discrimination on grounds of sex. In this sense, the universities have an Equality Unit and an Equality Plan, which include the objectives and measures to achieve a balanced presence of women and men in the institution and ensure gender equality and equal opportunities between men and women.

In addition, unlike the American scheme, in Spain, the CSD's Comprehensive Plan for Physical Activity and Sport also incorporates programs for university sports.⁸³ On the one hand, the Physical Activity and Sport at the University program has as one of its objectives that the university

81. Maria Jose Camacho-Miñano, Elida Alfaro, Maite Gomez-Lopez, *El Deporte Femenino ese Gran Desconocido* [Gender Equality in University Sport: Current Situation and Actions for Change], UNIV. CARLOS III DE MADRID 73 (2019) (Spain).

82. Law 4/2007, of 12 Apr., Which Modifies Organic Law 6/2001, of 21 Dec., on Universities (B.O.E. 2007, 7786), art. 90 (Spain).

83. *Plan Integral para la Actividad Física y el Deporte* [Comprehensive Plan for Physical Activity and Sports], CONSEJO SUPERIOR DE DEPORTES [SUPERIOR COUNCIL OF SPORTS] (Nov. 2010), http://www.csd.gob.es/sites/default/files/media/files/2022-03/Plan_integral_de_la_actividad_fisica.pdf (Spain).

and society collaborate to facilitate access to the practice of physical sports activity with special attention to women. On the other hand, the Effective Equality between Women and Men program aims to introduce the gender perspective into sports structures and programs and the visibility and promotion of women's participation in sport.

E. The Sports Law Project

The Sports Law Project is currently under consideration by the Spanish Parliament. One of its strategic objectives is equality between men and women in sport. The Project considers that sport is “an enormously enriching human activity and generator of social welfare,” and therefore, the importance it gives to it as an instrument of social cohesion, as a vehicle for the transmission of values as well as an essential element of economic impulse, is coherent. In this project, physical activity and sport appear as an essential activity and declares that it is a right of all citizens. This project is the first time that sport has been enshrined as a right in state legislation. The action of the public authorities must therefore be oriented towards respect for and exercise of the law.⁸⁴ The normative project sets as objectives the promotion of physical education and sport at all stages of life as a fundamental part of improving the quality of life and the acquisition of healthy habits, both inside and outside the educational system. School sport, university sport, the practice of sports outside the school, and the educational center have a positive impact on the training and health of minors and young people.⁸⁵

The Project explicitly highlights the importance of the principle of equality. Article 4 establishes for the General Administration of the State, within its scope of action, the obligation to develop public policies that guarantee equality in access and the subsequent development of physical activity and sport.⁸⁶ In addition, the General Administration of the State is

84. Olympic Charter in Force as from 8 July 2011, Int'l Olympic Comm., at 10 (July 2011), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Olympic-Studies-Centre/List-of-Resources/Official-Publications/Olympic-Charter/EN-2011-Olympic-Charter.pdf>. Some regional sports laws had already considered it a right, but neither the state law of 1980 nor that of 1990 had enshrined it as such. At the international level, if sport is recognized as a right, the Olympic Charter serves as an example, which in its 2011 text states that “[t]he practice of sport is a human right. Every individual must have the possibility of practicing sport without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.”

85. See Organic Law 2/2006, of 3 May, of Education (B.O.E. 2006, 7899), art. 17.k, 23.k, 33.m (marking as objectives of primary, secondary and baccalaureate education to use physical education and sport as means to promote personal and social development) (Spain).

86. Diana Malo de Molina y Zamora, Maria Josefa Garcia Cirac, Igualdad Efectiva y Medidas Inclusivas y de Proteccion Especial [Effective Equality and Special Inclusive Protection Measures], in

responsible for the promotion of equal integration in the organs of management, government, and representation of sports entities provided for in the law, and compels to do so in accordance with Organic Law 3/2007, of March 22, for the effective equality of women and men. In this way, it is considered feasible to promote actions that ensure the progressive increase in the presence of women both in practice and in sports management, pursuing the balance of the presence of men and women in management bodies, which becomes a requirement.

Further support for the pending legislation comes from European declarations of principle, such as the Brighton and Helsinki Declaration, which has, as their fundamental objective, the development of a sports culture that allows and values the full participation of women in all aspects of sport.⁸⁷ Along with the above, the White Paper on Sport includes the European Commission's commitment to promote the gender perspective in all its "sport-related activities," paying particular attention "to women's access to decision-making positions" and to the coverage of women's sport in the media.⁸⁸

The bill constitutes what will be the roadmap for Spanish sport, and we can see the basic lines on which the impulse and promotion of women's sport in Spain will be based. Effective equality in sport will be achieved through public policies designed in different areas: it is obligatory, therefore with the spirit and purpose of the project, the obligation to respect the international norms and treaties ratified by the State. Among the international references on the subject, we would highlight the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) approved by the United Nations in 1979 and ratified by Spain in 1983, which provides that States parties should ensure equal opportunities for women and men to participate actively in sport and physical education.⁸⁹

Article 4 of the bill provides that effective equality in sport will be realized through public policies designed in various areas:

Eduardo Gamero Casado, et al., *Manual de Derecho del Deporte* [Sports Law Manual] 568-617 (2021) (Spain).

87. Brighton Plus Helsinki 2014 Declaration on Women and Sport, IWG WOMEN & SPORT (June 12-15, 2014) <https://iwgwomenandsport.org/wp-content/uploads/2019/03/Brighton-plus-Helsinki-2014-Declaration-on-Women-and-Sport.pdf>.

88. *White Paper on Sport*, COMM'N OF THE EUR. CMTYS., § 2.5 (Nov. 7, 2007), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391>.

89. U.N. G.A., Convention on the Elimination of All Forms of Discrimination against Women art. 10(g), Dec. 18, 1979, 1249 U.N.T.S. 13, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

- Development of policies that prevent, identify, and sanction the loss of rights or that imply situations of discrimination that may come from sports entities and their link with athletes in labor, administrative, or any other kind of relations. This could include, for example, collaboration through volunteering.
- Development of specific policies to combat violence against women in sport and stereotypes for any reason.
- Obligation of the Spanish sports federations and professional leagues to make an annual report on equality of women and men with respect to the competitions they organize and to have a protocol of prevention and action for situations of discrimination, abuse, and harassment based on sex and/or authority within the federation. The report should be submitted to the Higher Sports Council, the Women's Institute, and the Council for the Elimination of Racial or Ethnic Discrimination.⁹⁰
- Obligation of the Spanish sports federations and the professional leagues to elaborate a specific conciliation plan, with concrete protection measures in cases of maternity and lactation.⁹¹
- Promotion of equality in the visibility of sporting events in the male and female categories in the media. The project adds that it will ensure that the media representation of women is free of sexual objectification and sexist stereotypes.
- Guarantee of equality of prizes between both sexes—provided that sporting events are organized or entrusted to a third party by a Public Administration, or are financed totally or partially through public funds and guarantee the equality of allowances

90. Article 50.5 of the bill regulates the minimum content of the statutes of sports federations and contemplates the existence of gender and inclusive sports commissions.

91. The Explanatory Memorandum of the law rightly states, although with a cumbersome wording, that the legislator could not ignore the situation of helplessness of women athletes in a situation of pregnancy in the face of the reduction of rights that women athletes suffer when they become pregnant, such as the loss of aid and subsidies . . . loss of the right to vote . . . manifest difficulties when it comes to conciliation and return to sporting activity after maternity.

granted when athletes compete with the corresponding national teams.

Spanish policy to sport reflects an active role of government, through its Constitution, statutes, and a sports-specific government agency, the CSD. International agreements, constitutional law, and specific statutes all require the government to prohibit discrimination against women. Spanish policy goes farther, and would go even farther under the proposed Sports Law Project, by recognizing the societal benefits of sports participation, and requiring both government agencies and sports federations that exercise delegated public functions to promote increased opportunities for women in sport.

IV. CONCLUSION: A COMPARATIVE ANALYSIS OF SPORTS OPPORTUNITIES FOR SPANISH AND AMERICAN GIRLS AND WOMEN

History demonstrates the systemic exclusion and unequal treatment of women in many sporting activities. This is a social wrong that demands correction for two distinct reasons. First, the global recognition of the equal status as a universal human right⁹² is inconsistent with the gender-based discrimination with regard to any activity in the public sphere. Second, there are significant and demonstrable physical, mental, and social benefits that accrue from sports participation, and hence, a strong public interest in remedying unequal access to sport for girls and women.

The social benefits from sports participation range from the improved health and educational outcomes for girls participating in amateur sport⁹³ to greater opportunities for women at the professional level. These two are related, in that greater opportunities at the professional level can provide incentives for young people to participate in sport. In addition, there are significant societal benefits that occur when men and women throughout the world rejoice or despair at the successes or failures of their national heroines at the apex of competitive sport, as exemplified by the just-concluding Women's European soccer championships and the upcoming FIFA Women's World Cup.

Title IX has done a remarkable job of addressing—although the task remains incomplete—the formal inequality between males and females in

92. See U.N. G.A., Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

93. See, e.g., Sandra Hanson, *Young Women, Sports, and Science*, 46 THEORY INTO PRAC. 155, 156-61 (2001).

sporting opportunities using the unique American focus on providing these opportunities through interscholastic and intercollegiate sports. However, as noted earlier, Title IX's programmatic success often reflects a two-step process whereby (1) programs are established to accommodate the interests of boys and men, and (2) equality requires equivalent access to these male-centric programs for women.

In the United States, competitive sport for teenagers and adults is typically limited to elite sports. Once American youth become teenagers, their opportunities for organized, well-coached, competitive sports largely consists of interscholastic sports featuring a varsity and perhaps a small junior varsity, and expensive, privately-run "pay-to-play" competitions.⁹⁴ Because Title IX is not a sports-specific statute, but rather a general prohibition on discrimination, its effect is therefore limited to requiring federally-funded schools to provide equal opportunities for varsity and junior varsity participation to a school's most talented girls.

In contrast, the goals and implementation strategies of the Spanish Sports Law Project offer an objective that is more ambitious and socially beneficial than Title IX. In contrast to the U.S., Spanish policy seeks to actively promote sports participation as an end in itself, not simply assure that females receive whatever benefits men receive.

Studies demonstrate the positive effects of athletic participation for American girls.⁹⁵ The NCAA Constitution focuses on the purposes of intercollegiate sport in terms of the promotion of "healthy and safe intercollegiate athletics" by facilitating "an environment that reinforces physical and mental health within athletics."⁹⁶ If these benefits accrue to the twenty-five girls in a high school with the greatest talent for basketball, or to the hundreds of varsity athletes at a Division I major university, there is no persuasive reason that these benefits would not also accrue to the next fifty less talented high school girls, or to the several thousand students and a Division I major university.

94. The one notable exception is basketball, which has its own problems with elite private competitions that are accessible without regard to ability to pay, which are funded by shoe companies and other self-interested backers. See Stephen F. Ross & Miles Gueno, *Solving the Problem of Social Cost Through Legislative Pressure: A Case Study of the Coase Theorem as Applied to the College Basketball Shoe Scandal*, 30 MARQ. SPORTS L. REV. 9 (2019).

95. Tami Videon, *Who Plays and Who Benefits: Gender, Interscholastic Athletics, and Academic Outcomes*, 45 SOCIO. PERSPS. 415, 416 (2002).

96. 2022-23 NCAA Constitution & By-Laws, NCAA, at art. I, § D (Aug. 1, 2022), <https://web3.ncaa.org/lstdbi/reports/getReport/90008>.

The United States provided Spain and the world with an illustration of the potential for interest and success in female sports participation if government intervenes to block discrimination and to facilitate increased opportunities for women and girls. In turn, the proposed Spanish Sports Law Project promises to exemplify the next half-century of progress, where government policy seeks to increase opportunities for non-elite girls (as well as boys) to benefit from the physical exercise, camaraderie, mental discipline, social inclusion, and other benefits of competitive sports.