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## GENDER DETERMINATION IN SPORT

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Many sports distinguish between female and male disciplines. The key reason for such division stems from the physiological characteristics that might give men the advantage over women in specific sports disciplines. Various sex-verification procedures were introduced to ensure fair play, but these were invasive procedures resulting in social stigmatization, gender discrimination and psychological trauma for female athletes. Sex verification was also proven to be unsuitable in the case of deviations from the standard binary concept of gender (e.g., in the case of mutations). For those reasons, critical legal developments have been achieved in this complex field of law, medicine, and sports in recent years.

**Key words:** *transgender, gender determination, gender discrimination, Yogyakarta Principles, Olympic games*

### 1. INTRODUCTION

Sport has always been a part of human life.<sup>1</sup> Humans have always been involved in some form of recreation.<sup>2</sup> Most modern sports developed in the 19th and 20th century, however, their origins often derive from ancient times. The first sport competitions developed in the areas of those skills and abilities that formed an integral, if not essential, part of life. For example, hunting, horseback riding, archery, spear throwing, running, fighting, and other similar activities were present both in the time of peace and during wars. They were necessary for the development and survival of a particular community or society and the individual.<sup>3</sup> Many sports also became entertainments (e. g., gladiators, chariot racing). Some sports have

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<sup>1</sup> Stanković, N. (2015). *Istorija sporta* (Brčko: Europski univerzitet Brčko district), p. 14.

<sup>2</sup> See more Thorpe, D., Buti, A., Davies, C. & Jonson, P. (2018). *Sports Law*, 3rd Edition (Oxford: Oxford University Press), p. 3.

<sup>3</sup> Mikša, P. (2010). Šport na Slovenskem. In: Macura, D., Doupona Topič, M. & Mekinda, B. (ed.) (2010). *Statusna vprašanja slovenskega športa*. Ljubljana: Univerza v Ljubljani, Fakulteta za šport, pp. 139-150.

been in the past also associated with religion, concretely some rituals, which are nowadays rare (e. g., in Japan sumo wrestling as a national sport includes many ceremonies and ritual elements, where for example *rikishi* (*sumo wrestler*) uses the salt purification).<sup>4</sup>

Nowadays, sports are very diverse (e.g., individual–team sports; summer–winter sports; ball games; combat sports...). Every sport has rules that determine participants, the way it is played, duration, how to defeat the opponents or how to win, penalties, as well as facilities and items that players need for a particular sport (e.g., the field, sports clothing, sports equipment (e.g., ball, rack, skis, etc.)) and other aspects. What all sports have in common, however, is that at the conclusion of the game (or the tournament) a winner is declared, i.e., an individual or a team that won according to the pre-determined criteria and thus became the best (e.g., was the quickest, scored the most shots, jumped the farthest, won the most points ...).

Sports, law, and medicine all developed in response to the needs of society. They all can satisfy the needs of both the individual and society as a whole. Therefore, it is not surprising that certain areas of sport, law, and medicine are intertwined, connected, and mutually dependent. The issue of gender definition and sex reassignment indeed represents one such area.

## 2. GENERAL POINTS ABOUT TRANSGENDER AND TRANSITIONING

Slovenian and most other legal systems are based solely on the binary system of gender, namely male and female. In recent years, some states have begun to legally recognize non-binary, or genderqueer, or third gender identities (e.g., Austria, Argentina, New Zealand, Canada, India, Belgium, Nepal). For example, in 2013, Germany became the first European country to allow parents to register their newborns as neither female nor male if a child was born with characteristics of both sexes. Parents may still leave gender designation blank under the new measure. And in 2018, Germany's highest court ruled that binary gender designations are discriminatory and violate guarantees of personal freedom. Based on the court's decision, the legislator changed the law and included a third category of gender, namely ,diverse'.<sup>5</sup>

The Slovenian regulation is still based on the gender binary, which also derives from the Slovenian Civil Registry Act.<sup>6</sup> However, the issue associated with transgenderism is much more than a mere indication in the registry.

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<sup>4</sup> Crowther, N. B. (2007). *Sport in Ancient Times* (Westport: Praeger Publishers), p. XXII.

<sup>5</sup> Eddy, M. (2018). Not Male or Female? Germans Can Now Choose 'Diverse'. *The New York Times*, Dec. 14, 2018, retrieved from: <https://www.nytimes.com/2018/12/14/world/europe/transgender-germany-diverse.html> (21.05.2021).

<sup>6</sup> Zakon o matičnem registru (*Civil Registrar Act*): Uradni list RS, št. 11/11 – uradno prečiščeno besedilo; 67/19.

The term 'transsexual person' was replaced with the term 'transgender person'. The term transsexuality was rejected as obsolete and disrespectful by transgender persons, since it focuses on persons who have realised their sexual identity through medical procedures or wish to do so, but excludes other transgender persons who do not wish to opt for these procedures.<sup>7</sup> *Transgender* is an umbrella term for all types of gender identities that are not *cisgender*, i.e., in which a person's gender identity (which is based on the individual's perception of themselves and their gender) does not match the gender that was attributed to the person at the time of their birth based on their externally identifiable sexual characteristics. The term includes *agender* persons (a person does not identify with any gender), *bigender persons* (a person has two distinct gender identities), *neutrois* (a person with neutral gender identity), *pangender persons* (a person identifies as someone with several or all gender identities), *gender fluidity* (a person's gender identity is fluid and shifting between two or more gender identities), etc.<sup>8</sup> Transgender persons, therefore, are experiencing a discrepancy between their own gender identity and the identity that was assigned to them by society. When personal distress also accompanies this perception, we are talking about *gender dysphoria*, i.e., short- or long-term feelings of discomfort, dissatisfaction and distress resulting from a discrepancy between one's own gender identity and gender that was assigned to the person at birth.<sup>9</sup>

Transgender persons who are experiencing gender dysphoria often opt for a transition, i.e., a process in which a person makes a transition from the gender that was attributed to them at birth to a gender they consider their own. While some transgender people also decide to undergo a *medical transition*, others merely opt for a *social transition* (they adapt their appearance to their sexual identity, e.g., by breast binding, corsets, prostheses, breast pads, hair removal, by changing their name, using personal pronouns for a gender they identify with, etc.)<sup>10</sup>

Medical transition is a process involving psychological evaluation and, depending on the transgender person's wishes, also hormone therapy, surgeries, and other medically assisted procedures. A prerequisite for the initiation of a medical transition process (as well as for legal recognition of gender) in Slovenia is to obtain a diagnosis of gender identity disorder or transsexualism, which is determined by a clinical psychologist on the basis of a psychological examination. A psychological assessment usually takes two years. Its purpose is to assess how strong the desire for the transition actually is. Hormone therapy may accompany surgical procedures,

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<sup>7</sup> For more precise definitions, see for example Koletnik, A., Grm, A. & Gramc, M. (2016). *Vsi spoli so resnični - transspolnost, transseksualnost in cispolna nenormativnost*. Ljubljana: Društvo informacijski center Legebitra, pp. 25-29; also Radišič, J. (2004). *Medicinsko pravo*. Beograd: Nomos, p. 104; Weber, N. (2013). *Sprememba spola v Sloveniji. Pravna praksa* 16-17/2013, pp. 21-23.

<sup>8</sup> For more see Katz, R. S. & Luckinbill, R. W. (2017). *Changing sex/gender roles and sport. Stanford Law & Policy Review*, Vol. 28, pp. 215-243.

<sup>9</sup> Koletnik, Grm & Gramc, 2016, p. 169.

<sup>10</sup> According to the research conducted by the Institute TransAkcija, 33% of transgender persons are in the process of medical transition, 42% are not in the process and 17% are not yet in the process, but intend to be (Koletnik, L. J. (2019). *Raziskava - Vsakdanje življenje transspolnih oseb v Sloveniji: raziskovalno poročilo*. Ljubljana: Zavod Transfeministična iniciativa TransAkcija, p. 23).

but transgender persons may also decide to undergo only hormone therapy, which is mostly reversible. The effects of hormone therapy in transgender persons who identify themselves as women are breast development, decreased libido, decreased or lost erection, fat tissue redistribution, decreased muscle mass and strength, softening of the skin, loss of body hair, decreased fertility and a decreased size of testicles. Effects in transgender persons who identify themselves as men are increased upper-body strength, weight gain, deeper voice, clitoris enlargement, slightly decreased breasts, increased growth of body hair, baldness, increased libido. Surgical procedures for transgender women include surgeries for breast enlargement, modification of genitals (testicle removal surgery (*orchietomy*), vagina construction surgery (*vaginoplasty*), clitoris creation (*clitoroplasty*), inner and outer lips construction (*labiaplasty*) and other surgical procedures such as facial feminization, voice modification, Adam's apple reduction, liposuction, lipotransfer, implants, hair restoration and other surgeries of aesthetic nature. Surgical procedures for transgender men include surgeries for the removal of breast tissue, modification of genitals (the removal of the uterus (*hysterectomy*), the removal of ovaries (*oophorectomy*), the removal of the vagina, urethral lengthening, the creation of scrotum, the placement of testicular prostheses and the construction of a penis) as well as other surgical procedures, such as voice modification, liposuction, lipofiling, Adam's apple augmentation and other surgeries of aesthetic nature.<sup>11</sup>

### 3. GENDER IDENTITY OF FEMALE ATHLETES – BRIEF HISTORICAL OVERVIEW

The first ancient Olympic Games began in 776 BC. From the historical perspective, the sport was the domain of the male gender. Thus, only male athletes participated in the ancient Olympic Games, whereas women were not allowed to compete. But on the other hand, there was a separate festival in honor of Zeus's wife Hera - the co-called 'Hera Games' or 'Hera Festival' or 'Heraean Games'. This festival included foot races for unmarried young girls (Gr. *Parthenoi*). On the other hand, married women were not allowed to participate in the athletic contests of the Hera festival. They were barred on penalty of death from the Sanctuary of Zeus on the days of the athletic competition for boys and men.<sup>12</sup> The priestess of Demeter was the only married woman who has been permitted as spectators at the Olympic games. Their privilege probably derived from an ancient altar and sanctuary of

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<sup>11</sup> Koletnik, Grm & Gramc, 2016, pp. 87 ff.; Koletnik, 2019; Weber, N. (2013). Sprememba spola v Sloveniji. *Pravna praksa* 16-17/2013, pp. 21-23; Ettner, R., Monstrey, S. & Coleman, E. (2016). *Principles of Transgender Medicine and Surgery*, Second Edition. New York: Routledge; Horbach, S. E., Bouman, M.B., Smit, J. M., Özer, M., Buncamper, M. E. & Mullender, M. G. (2015). Outcome of Vaginoplasty in Male-to-Female Transgenders: A Systematic Review of Surgical Techniques, *Journal of Sexual Medicine*, Vol. 12(6), pp. 1499-1512.

<sup>12</sup> PennMuseum (2020). The Women: Were the Ancient Olympics just for Men?, retrieved from: <https://www.penn.museum/sites/olympics/olympicsexism.shtml> (24.05.2021).

goddess Demeter, which was in the middle of the stadium seating area.<sup>13</sup> At that time, young Spartan girls received the same education as their male counterparts, and possibly even took part in the Gymnopaedia or the 'Festival of Nude Youths'. Perhaps it is unsurprising that a majority of the participants of the Heraean Games were Spartan women.<sup>14</sup>

However, Cynisca is referred to as the first woman to win the Olympic Games, namely in 396 and 392 B.C. Cynisca<sup>15</sup>, who did not compete on her own, owned a four-horse chariot and hired a professional driver who won the competition. However, as the chariot's owner was crowned with a laurel wreath and not the driver, Cynisca was considered the winner. Xenophon described her victory as a betrayal of the Olympic ideal since Cynisca's participation was financially supported by Agesilaus in an attempt to discredit the chariot racing competition. In Xenophon's opinion, the victory was achieved by money and not the capability or skills of individual competitors.<sup>16</sup>

In most sports competitions, athletes were (and are still today) divided into male and female categories. The identification of male or female sex characteristics have been or are still based on genetic (XX vs. XY chromosomes), physical (vagina vs. penis), or hormonal (estrogen vs. testosterone) and species are divided (traditionally) into binary categories based upon these identifications.<sup>17</sup> Sport is a social and cultural process in which social structures of masculinity and femininity play a crucial role.<sup>18</sup> However, a fundamental question has been raised which, to this day, has not been adequately answered. Namely, who should be allowed to compete in female sports disciplines? This issue is more pressing than a reverse situation, where a woman would like to compete in male competition because it is usually men who would, due to certain physiological assets, enjoy unfair advantages in female disciplines and not the other way around. A woman who would want to compete secretly in a male discipline would be at a disadvantage compared to her opponents, and no notable cases of this kind could be detected in practice.

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<sup>13</sup> Scanlon, T. F. (2004). Games for Girls. *Archaeology Archive - Ancient Olympics Guide*, April 6, 2004, retrieved from: <https://archive.archaeology.org/online/features/olympics/girls.html> (24.05.2021).

<sup>14</sup> Dasgupta, S. (n.d.). Cynisca and the Heraean Games: The Female Athletes of Ancient Greece. Retrieved from: <https://thewire.in/history/cynisca-and-the-heraean-games-the-female-athletes-of-ancient-greece> (21.05.2021).

<sup>15</sup> From Greek Mythology is also known Atalanta (Gr. *Αταλάντα*), the Arkadian heroine She took part in the voyage of the Argonauts. On this journey, the Argonauts took part in three-day competitions dedicated to the death of Dolonian king Cyzicus. Atalanta was equally involved in competition. She had no worthy opponent in the running event. She was also participated in wrestling and she defeated hero Peleus. She was also the winner in the long jump event at the same Games (Šiljak, V. (2016). *Research in History in Sport*. Beograd: RIS Studio, p. 9).

<sup>16</sup> So and more Kyle, D. G. (2003). The Only Woman in All Greece: Kyniska, Agesilaus, Alcibiades and Olympia. *Journal of Sport History*, Vol. 30(2), pp. 183-203.

<sup>17</sup> Wackwitz, L. A. (2003). Verifying the myth: Olympic sex testing and the category 'woman'. *Women's Studies International Forum*, Vol. 26, No. 6, p. 554.

<sup>18</sup> Baljinder, S. B., Kanwaljeet, S. & Narinder, K. S. (2010). Equality, Equity and Inclusion: Transgender Athletes' Participation in Competitive Sports – a New Era. *Physical Culture and Sport Studies and Research*, Vol. XLIX, pp. 85-88.

Gender-based segregation was based on the *concept of fair play*. Even early on, there were some concerns that men might pose as women in sporting competitions that are restricted to female participation and that some female contestants might have unfair physical advantages.<sup>19</sup> Two components of the biological sex, namely external genitals and later also chromosomes, were used to determine who can compete in female sport disciplines or competitions. The verification of chromosomes and more recent DNA analyses for Y-specific male material were compulsory for all female competitors immediately before sports events approved by the International Olympic Committee (hereinafter: IOC) and several other international and national competitions following the IOC model.

Baron de Coubertin, father of the modern Olympic Games, said that the inclusion of women in sports would be impractical, uninteresting, unaesthetic, and incorrect.<sup>20</sup> The modern Olympic Games started in 1896, but no women were competing. In 1900, the second Olympic Games were held in Paris, where Hélène de Pourtalès of Switzerland was the first woman to compete in the Olympics and became the first Olympic champion as part of a mixed sailing crew. Additionally, Charlotte Cooper from the UK was the world's first female to win an individual gold medal, namely in tennis.<sup>21</sup>

In 1928, women were allowed to participate for the first time in athletics in the Olympic Games. They were only allowed to compete in running events. The initial cases of men masquerading as women (sex fraud) to compete in female sports date back to the early cold war period, an era when athletic achievement became a source of personal and national pride, prestige, and reward.<sup>22</sup> The first sex verification had already taken place in 1936 at the Olympic Games in Berlin, where the sex of the American sprinter, Helen Stephens, who had won the gold medal, had been examined. The second place was won by a Polish athlete, Stanisława Walasiewicz, who later changed her name to Stella Walsh. The Polish news reporters voiced the question of Helen Stephens' femininity. Stephens passed her sex verification. However, this case received additional attention in 1980, when the runner-up, Stella Walsh, died. According to the pathologist's report, Stella had sex chromosome mosaicism and possessed ambiguous sex organs.<sup>23</sup>

Erika Schinegger was the winner of the 1966 World women's downhill skiing competition in Portillo, Chile. In 1967, she was preparing for the 1968 Winter

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<sup>19</sup> Gooren, L. J. G. & Bunck, M. C. M. (2004). Transsexuals and competitive sports. *European Journal of Endocrinology* 151, pp. 425–429; Elsas L. J., Ljungqvist, A., Ferguson-Smith, M. A., Simpson, J. L., Genel, M., Carlson, A. S., Ferris, E. de la Chapelle, A. & Ehrhardt, A. A. (2000). Gender verification of female athletes. *Genet Med*; 2, p. 240.

<sup>20</sup> Katz & Luckinbill, 2017, p. 221.

<sup>21</sup> Smuin, A. (2017). International Women's Day: Female sporting legends. *CEO Magazin 6 March 2017*. Retrieved from: <https://www.theceomagazine.com/lifestyle/health-wellbeing/international-womens-day-female-sporting-legends/> (25.04.2021).

<sup>22</sup> Reeser, JC (2005) Gender identity and sport: is the playing field level? *British Journal of Sports Medicine*, Vol. 39, p. 696.

<sup>23</sup> Ritchie, R., Reynard, J. & Lewis, T. (2008). Intersex and the Olympic Games. *J R Soc Med* 2008: 101, p. 395; Elsas et al., 2000: p. 250.

Olympic Games in Grenoble. The medical examination performed by the IOC showed that Schinnegger has XY chromosomes and internal male genitalia. For that reason, Schinnegger was disqualified. After receiving the examination results, Schinnegger decided to live as a man and later underwent medical transition and changed her name to 'Erik'. The 1966 gold medal was passed on to the runner-up Marielle Goitschel.<sup>24</sup>

Thus, the IOC and World Athletics<sup>25</sup> were forced to ensure that all 'athletes competed on an equal basis considering their physical status'. In 1968, the IOC ordered official sex verification for female athletes (also known as gender verification, gender determination, sex test). Athletes who have passed an official sex verification test have received a passport to participate in athletic competitions. The passport was known as a 'femininity card'.<sup>26</sup> However, an experimental performance of visual observation and gynecological examination has already been taking place in some competitions before the 1968 Olympic Games. The reason for the verification was to prevent 'unfair disguise' of men and women with the intention of achieving a physical advantage. The physical advantage of men was particularly notable in female discipline competitions.

The first attempts at sex verification were extraordinarily unpleasant and humiliating for the contestants. In 1966, female athletes, who were completely naked, were examined by female doctors on the site of the European competition in Budapest, and then in 1967 at the Pan American Games in Winnipeg. These invasive, unpleasant, degrading, and undignified procedures<sup>27</sup> were then abandoned and replaced by universal laboratory genetic tests<sup>28</sup>, namely by y chromatin testing of buccal cells for the inactive X (also called '*Barr Body test*').<sup>29</sup> Laboratory testing was simpler, more objective, and more dignified. Female sports disciplines were thus only open to persons with XX sex chromosomes in 23 pairs of chromosomes.<sup>30</sup>

As early as 1967, the first disqualification occurred due to a laboratory genetic test (*buccal swab*). A Polish sprinter, Ewa Klobukowska, was disqualified from the European Cup and thus became the first woman to be disqualified from sports for failing a 'sex test' (the Barr body test). Based on her genetic test, Ewa Klobukowska had an extra chromosome and internal, male-like characteristics and was inadvertently competing as a male in a female discipline.<sup>31</sup> Eva Klobukowska

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<sup>24</sup> Martinez-Patino, M. J., Mateos-Padorno, C., Martinezvidal, A., Sanchez Mosquera, A., Garcia Soidan, J. L., Del Pino Diaz Pereira, M. & Tourino Gonzalez, C. F. (2010). An approach to the biological, historical and psychological repercussions of gender verification in top level competitions. *Journal of Human Sport & Exercise*, Vol. 5(3), pp. 307-321; Elsas et al., 2000: p. 250.

<sup>25</sup> 'International Association of Athletics Federations' or the IAAF changed its name to 'World Athletics' in October 2019.

<sup>26</sup> Wackwitz, 2003: p. 554.

<sup>27</sup> Also known as 'nude parades' (Ritchie, Reynard & Lewis, 2008; p. 396; Wackwitz, 2003: p. 555).

<sup>28</sup> Elsas et al., 2000: p. 249.

<sup>29</sup> Katz & Luckinbill, 2017: p. 229.

<sup>30</sup> Harper, J. (2015) Race Times for Transgender Athletes. *Journal of Sporting Cultures and Identities*, Vol. 6, Issue 1, p. 1.

<sup>31</sup> Elsas et al., 2000: p. 250; Ritchie, Reynard & Lewis, 2008: p. 397.

was excluded from the category 'woman' in 1967, although she had successfully passed a visual verification test only one year earlier. Ewa Klobukowska was stripped of all her athletic awards, including her two Olympic medals won in 1964. She was also banished from international competitions. It is assumed that she was an intersex woman with XX/XXY mosaicism, and that she was unfairly treated. Despite that Eva Klobukowska conceived and delivered a healthy baby years later, her medals were never returned to her, nor was she ever given an apology.<sup>32</sup>

However, if a female athlete declined to undergo sex verification (e.g., the athletes Tamara and Irina Press<sup>33</sup>), automatic exclusion followed as they were automatically considered male.<sup>34</sup>

The Barr Body Test was abandoned in the 1970s, as it was found unreliable, especially in women with genetic differences affording no unusual physical advantage for sports (e.g., XY females with complete androgen insensitivity). On the other hand, the unreliability of these tests has also been demonstrated in how they did not react to XX men and women with certain medical conditions, such as ovarian tumours producing testosterone or with congenital adrenal hyperplasia.<sup>35</sup> Also, men with Klinefelter's Syndrome<sup>36</sup> (XXY) would be eligible to compete as female due to the presence of the Barr body on cytological analysis.<sup>37</sup>

A key finding was that the actual results of these genetic tests had a negative impact on the lives of women for whom the test reacted positively. For example, such is the story of a Spanish athlete, Marie Patino, who was banned from attending the World University Games in 1985. The reason was that Patino had complete androgen insensitivity. She was subjected to three years of public humiliation. Maria Patino was humiliated in the press, banned for life from competing in the sport she loved, fired from her job, and abandoned by her friends and her boyfriend.<sup>38</sup> Patino was the first female athlete to challenge her disqualification as a result of genetic testing publicly. She was successful in doing so and was later able to compete again.<sup>39</sup>

In August 2009, Caster Semenya (South Africa) track athlete won a gold medal in the women's 800-meter event. Track observers believed Semenya could be hyperandrogenous, meaning her body naturally produces high amounts

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<sup>32</sup> Wackwitz, 2003: p. 556.

<sup>33</sup> Tamara and Irina Press were Russian sister, who won in the 1950's and 1960's a total of 6 Olympic gold medals and set 26 world records.

<sup>34</sup> Martinez-Patino et al., 2010: p. 308.

<sup>35</sup> Elsas et al., 2000: p. 250.

<sup>36</sup> Klinefelter syndrome is also known as 47,XXY is a syndrome where a male has an additional copy of the X chromosome – see more Bonomi, M. et al. (2017). Klinefelter syndrome (KS): genetics, clinical phenotype and hypogonadism. *J Endocrinol Invest*, 40: pp. 123–134.

<sup>37</sup> Ritchie, Reynard & Lewis, 2008: p. 397.

<sup>38</sup> Wackwitz, 2003: p. 556.

<sup>39</sup> Martinez-Patino et al., 2010: p. 308; Wells, T. (2019). Intersex, Hyperandrogenism, Female Athletes: A Legal Perspective on The IAAF Doping Regulations and Where Hyperandrogenic Female Athletes Fit In, Santa Clara J. Int'l L., Vol. 17, Issue 2, pp. 1-18; Elsas et al., 2000: p. 250.



of testosterone, the hormone that helps build muscle, endurance and speed.<sup>40</sup> Therefore, the International Association of Athletics Federations (hereinafter: IAAF) ordered Semenya to undergo gender verification testing to determine whether she was eligible to compete in women's sport. After the gender verification testing she was allowed to compete as a woman.<sup>41</sup>

Female athletes initially welcomed gender testing as a method of preventing 'cheaters'. However, using gender testing, it became apparent that the discrimination against those with Disorders of Sex Development was unfair and detrimental to the sport.<sup>42</sup> The initial sex verification based on external genitalia and on-site genetic testing has been characterised as highly discriminatory and degrading. They have also caused emotional trauma and social stigmatisation for many female athletes who faced intersex.<sup>43</sup> Furthermore, genetic tests were also unresponsive or useless in the event of genetic anomalies. All of the above resulted in serious doubts as to the eligibility of these tests.

#### **4. GENDER IDENTITY OF FEMALE ATHLETES IN CONTEMPORARY VIEW**

It is already known today that we can no longer strictly classify people as just men or women (in our case, male and female competitors), as some people have neither a karyotype 46 XY nor 46 XX. Besides, some were born with type 46 XY, but with mutations, due to which they were assigned female sex at the time of their birth.<sup>44</sup> Therefore, since various deviations are possible from the classical division of people into men and women, or male and female athletes, and since these types of gynecological and later genetic-chromosome tests intended to determine or verify the athletes' sex were discriminatory and constituted an invasive interference with the privacy and dignity of athletes, they were abandoned in 1999. The IOC abolished in 1999 on-the-spot testing of female athletes, which already applied for the 2000 Olympic Games in Sydney.<sup>45</sup>

The abolition resulted from almost a decade's worth of effort of a special expert working group consisting of medical specialists, scientists, and athletes. Following the meetings in 1990 in Monte Carlo and 1992 in London, the following conclusions were reached:

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<sup>40</sup> Gleeson, S. & Brady, E. (n.d.) With rules suspended, intersex athlete to take center stage at Rio Olympics, retrieved from: <https://eu.usatoday.com/story/sports/2016/08/01/testosterone-rules-suspended-intersex-athletes-caster-semenya-dutee-chand-maria-jose-martinez-patino/87787248/23.05.2021>.

<sup>41</sup> Cooky, C. & Dworkin, S. (2013). Policing the Boundaries of Sex: A Critical Examination of Gender Verification and the Caster Semenya Controversy. *Journal of sex research*, 50(2), pp. 103.

<sup>42</sup> Ritchie, Reynard & Lewis, 2008: p. 398.

<sup>43</sup> Elsas et al., 2000: p. 249.

<sup>44</sup> Harper, 2015: p. 1.

<sup>45</sup> Elsas et al., 2000: p. 249.

- a) individuals with sex-related genetic abnormality raised as females have no unfair physical advantage and should not be excluded or stigmatized. This refers to individuals raised as females having non-drug induced masculinization, such as those with 21-steroid-hydroxylase and 5-a-steroid-reductase deficiency, incomplete androgen insensitivity, and chromosomal mosaicism;
- b) gender screening based on finding Y chromosomal material should be abandoned;
- c) only ‘masquerading males’, i.e., individuals raised and living as men, should be excluded;
- d) individuals who had undergone pre-pubertal sex reassignment would be allowed to compete in women-only events;
- e) decisions about post-pubertal transgender cases would be made on an individual basis. The decisions would be made by the appropriate medical committee within the sport involved.<sup>46</sup>

A positive impact of the working group was already evident in the year 1993, during the World University and Commonwealth Games. Of the 34 international federations that participated with their sport on the Olympic programme, only five were conducting on-site sex verification. Sex verification nevertheless continued in selected sports disciplines, namely: lifting weights, shooting, basketball, skiing, and volleyball.<sup>47</sup>

In 1995, UNESCO adopted ‘International Charter of Physical Education, Physical Activity and Sport’<sup>48</sup>, which in Article 1 proclaimed:

*»Every human being has a fundamental right to physical education, physical activity and sport without discrimination on the basis of ethnicity, gender, sexual orientation, language, religion, political or other opinion, national or social origin, property or any other basis.«*

The term transgender defines persons born with a certain gender but identifies with another and lives as a member of the other gender, including persons who have also undergone a sex reassignment process. Aware of the problems that transgender athletes had to deal with, the IOC specifically addressed this subject.

The Athens Olympic Games (2004) set an important milestone as they marked the beginning of the inclusion of transgender and intersex athletes in the international competitions. In 2004, the IOC adopted guidelines and decided for the first time to allow transgender athletes to compete in the Olympic Games (the so-called *Stockholm Consensus on Sex Reassignment in Sports*; hereinafter: Stockholm Consensus). The guidelines were different for transgender people who changed sex

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<sup>46</sup> Elsas et al., 2000: p. 250-251.

<sup>47</sup> Elsas et al., 2000: p. 251.

<sup>48</sup> Available <https://unesdoc.unesco.org/ark:/48223/pf0000235409/PDF/235409eng.pdf.multi> (21.05.2021)

before puberty and transgender people who changed sex after puberty. In the first case, a person/athlete who has changed sex before puberty is considered to be a member of the subsequently determined sex. These persons are also not required to meet additional conditions if they want to compete in the Olympic Games. However, transgender persons who underwent a post-puberty sex reassignment surgery must meet additional requirements for the Olympic Games.<sup>49</sup> Transgender persons who have changed their sex from male to female (M-F) or female to male (F-M) must, therefore, meet the following conditions for competing in the Olympic Games:

- a) surgical anatomical changes have been completed, including external genitalia changes and gonadectomy;
- b) legal recognition of their assigned sex has been conferred by the appropriate official authorities;<sup>50</sup>
- c) hormonal therapy appropriate for the assigned sex has been administered in a verifiable manner and for a sufficient length of time to minimize gender-related advantages in sports competitions (Stockholm Consensus).

In the opinion of the group, eligibility should begin no sooner than two years after gonadectomy. It is understood that a confidential case-by-case evaluation will occur. If the gender of a competing athlete is questioned, a medical delegate (or equivalent) of the relevant sporting body shall have the authority to take all appropriate measures for the determination of the gender of a competitor.<sup>51</sup> Therefore, the IOC may request sex verification only on an individual basis if there is a suspicion of masking and thereby concealing the real sex of the contestant.

Even though the IOC guidelines began to apply immediately, they determined a two-year time period for transgender athletes in the Olympic Games concerning their preparations, which are necessary to compete at the Olympic level, which made it unlikely that any transgender athlete could be ready to compete at the 2004 summer Olympic Games in Athens or 2006 winter Olympic Games in Turin.<sup>52</sup>

Following the Stockholm Consensus, transgender women competed in many sports in the subsequent years, such as golf (Mianne Bagger and Lana Lawless); cycling (Natalie Van Gogh, Michelle Dumaresq, and Kristin Worley); martial arts (Nong Toom and Fallon Fox); basketball (Gabrielle Ludwig). However, none of them managed to achieve top results since their transition. This fact was cited as a

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<sup>49</sup> Englefield, L. (2012). LGBT inclusion in sport – good practice handbooks, no. 4. Strasbourg: Council of Europe; Coggon, J., Hammond, N. & Holm, S. (2008). Transsexuals in Sport–Fairness and Freedom, Regulation and Law, *Sports Ethics and Philosophy*, Vol. 2:1, pp. 4-17.

<sup>50</sup> In Slovenia, the competent doctor in most cases is a psychiatrist of the Interdisciplinary consilium for the confirmation of sexual identity, which is operating within the framework of the Sexual Health Clinic at Mental Health Centre in Ljubljana (Koletnik, Grm & Gramc, 2016, p. 142).

<sup>51</sup> Stockholm Consensus; Coggon, Hammond & Holm, 2008: p. 11; Baljinder, Kanwaljeet & Narinder, 2010: p. 87; Buzuvis, E. E. (2012). Including Transgender Athletes in Sex-Segregated Sport. In Cunningham, G. B. (ed.), *Sexual Orientation and Gender Identity in Sport: Essays from Activists, Coaches, and Scholars* (College Station, TX: Center for Sport Management Research and Education, pp. 23-34.

<sup>52</sup> Coggon, Hammond & Holm, 2008: p. 12.

reliable indicator of fairness in allowing transgender women to compete together or against cisgender women.<sup>53</sup> However, contrary opinions have also been expressed which advocated that transgender women have specific physical characteristics (e.g., body height or arm size<sup>54</sup>) that have not been changed during sex reassignment and that still give them certain unfair advantages over cisgender female contestants.<sup>55</sup>

Guidelines adopted in 2015 (IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism<sup>56</sup>; hereinafter: IOC Consensus 2015) took a step further. As already mentioned, the guidelines of the Stockholm Consensus of 2004 stipulated a requirement of completed surgical anatomical changes, including external changes of genitals and gonadectomy. The latter was contrary to certain national regulations in the field of sex reassignment (e.g., the English 'Equality Act' of 2010; the Argentinian 'Gender Identity Law' (*Ley de Identidad de Género*) of 2012), according to which no sex-change surgery was required for the legal recognition of sex reassignment.

English Equality Act<sup>57</sup> (2010) allows sports competition organizers to exclude transgender persons from participation in 'gender-affected activity' where this is necessary to ensure fairness or the safety of other competitors. Gender-affected activity is defined as, a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons

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<sup>53</sup> Harper, 2015: p. 1.

<sup>54</sup> Isyanova presented the case of Eero Mantyranta, Finnish skier, who has won seven olympic medals, including three gold ones, in the 1960s. Mantyranta had a genetic mutation that resulted in up to 50% more oxygen in his blood. Katz & Luckinbill (2017: pp. 229-231) presented the case of Dr. Richards, whose transition surgery (M-F) occurred in 1975. She continued to play in tennis tournaments as a woman, but she did not tell the organizers that she was a transsexual. She won several tournaments. Later, a discovery became known that she had undergone a sex reassignment surgery. Dr. Richards was subsequently accepted to compete in another tennis tournament, but 25 (of 32) other female players withdrew in protest. They maintained that competing against Dr. Richards was unfair, claiming that she maintained the muscular advantages of a man, and would have an unfair advantage. Dr. Richards argued that she did not have a competitive advantage and that she is legally considered a woman (also with legal documents as a woman). She also argued that the hormones that she had taken resulted in her losing 30% of her muscle mass as well as 40 pounds. She stood 6'2" tall and weighed 142 pounds, a size that was equaled by several other female tennis players at the time. (see Isyanova, D. (2017). Gender verification policies in elite Sports, *Fall 2017*, Vol. 2, pp. 50-62. Retrieved from: [https://www.chapman.edu/law/\\_files/publications/2017-dsj/isyanova.pdf](https://www.chapman.edu/law/_files/publications/2017-dsj/isyanova.pdf) (18.05.2021)). Richards took her case to the New York Supreme Court, and won. The Court stated in: »When an individual such as plaintiff, a successful physician, a husband and father, finds it necessary for his own mental sanity to undergo a sex reassignment, the unfounded fears and misconceptions of defendants must give way to the overwhelming medical evidence that this person is now female.« (Richards v. USTA 93 Misc.2d 713 (1977)).

<sup>55</sup> Harper, 2015: p. 2; Buzuvis, 2012: p. 27; Jones, B. A., Arcelus, J., Bouman, W. P. & Haycraft, E. (2017). Sport and Transgender People: A Systematic Review of the Literature Relating to Sport Participation and Competitive Sport Policies. *Sports Med*, 47: pp. 701–716.

<sup>56</sup> Available: [https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/Medical-and-Scientific-Commission/EN-IOC-Consensus-Meeting-on-Sex-Reassignment-and-Hyperandrogenism.pdf?\\_ga=2.39415971.165105345.1621790291-1479919182.1621590655](https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/Medical-and-Scientific-Commission/EN-IOC-Consensus-Meeting-on-Sex-Reassignment-and-Hyperandrogenism.pdf?_ga=2.39415971.165105345.1621790291-1479919182.1621590655)

<sup>57</sup> Equality Act – available: <https://www.legislation.gov.uk/ukpga/2010/15/contents> (21.05.2021).

of the other sex as competitors in events involving the activity' (Equality Act 2010, section 195(3)).

The Argentinian 'Ley de Identidad de Género'<sup>58</sup> (2012) represents one of the most modern and liberal approaches to regulating the legal issue of sex reassignment. Argentinian regulation does not require verification of whether a surgical procedure for changing genitals, hormonal therapy, or any other psychological or medical treatment has been carried out. It is based on full respect of the right to self-determination of transgender persons.<sup>59</sup>

In April 2015, Malta passed the, *Gender Identity Gender Expression and Sex Characteristics Act*<sup>60</sup> that recognizes a right to bodily integrity and physical autonomy. Maltese law represents the world-first legislation that protects intersex infants and children from non-consensual medical interventions. It is based on *Malta Declaration* (2013), which is the statement of the 3. International Intersex Forum, which took place in Valletta (Malta) in 2013. Malta Declaration also stated, that ,intersex people are able to participate in competitive sport, at all levels, in accordance with their legal sex. Intersex athletes who have been humiliated or stripped of their titles should receive reparation and reinstatement.' Under Article 5(1)(b) of the Gender Identity Gender Expression and Sex Characteristics Act the applicant (just for Maltese citizens) that wishes to change the gender should give by a notary a clear, unequivocal, and informed declaration that one's gender identity does not correspond to the assigned sex in the act of birth. The Notary shall not request any psychiatric, psychological or medical documents to draw up the declaratory public deed (Article 5(2) of the Gender Identity Gender Expression and Sex Characteristics Act). Article 13(2) is dedicated to the antidiscrimination and provides, that ,the public service has the duty to ensure that unlawfulsexual orientation, gender identity, gender expression and sex characteristics discrimination and harassment are eliminated, whilst its services must promote equality of opportunity to all, irrespective of sexual orientation, gender identity, gender expression and sex characteristics.'<sup>61</sup>

Following the first legislation, therefore, IOC Consensus 2015 made a significant step ahead and provided that it is necessary to ensure insofar as possible that trans athletes are not excluded from the opportunity to participate in a sporting competition (Point 1.C of the IOC Consensus 2015). To require surgical anatomical changes

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<sup>58</sup> Ley de Identidad de Género - Ley 26.743. Available: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm> (21.05.2021)

<sup>59</sup> Köhler, R., Recher, A. & Ehrh, J. (2013). Legal Gender Recognition in Europe – Toolkit. TGEU Transgender Europe. Retrieved from: <https://tgeu.org/wp-content/uploads/2015/02/TGEU-Legal-Gender-Recognition-Toolkit.pdf> (16 Januar 2021).

<sup>60</sup> Gender Identity Gender Expression and Sex Characteristics - Act' ACT No. XI of 2015. Available: <https://legislation.mt/eli/act/2015/11/eng/pdf> (23.05.2021).

<sup>61</sup> Slovenia adopted in 2016 the Protection Against Discrimination Act (Zakon o varstvu pred diskriminacijo (Uradni list RS, št. 33/16, 21/18 – ZNOrg). Article 1(1) provides: ,This Act provides for the protection of every individual...against discrimination irrespective of sex, ..., sexual orientation, gender identity and gender expression, ... in various areas of social life, in the exercise of human rights and fundamental freedoms, in the exercise of rights and obligations and in other legal relations in the political, economic, social, cultural, civil or other field.'

as a pre-condition to participation is not necessary to preserve fair competition and may be inconsistent with developing legislation and notions of human rights (Point 1.E of the IOC Consensus 2015). It has also been emphasised that the legal recognition of sex reassignment can be complex in countries where sex reassignment is not allowed. Last but not least, the requirement to carry out surgical procedures to change sex in otherwise healthy individuals could be inconsistent with the development of human rights legislation and concepts.<sup>62</sup> The IOC Consensus 2015 (Point 1.D) indicates that the primary goal of sports is and remains the guarantee of fair competition and that restrictions on participation in competitions are appropriate only when they are necessary and proportionate for the achievement of this goal. A new set of guidelines specified in the IOC Consensus 2015 requires only that transgender athletes who transitioned from the male to the female gender (M-F) declare their gender, that this declaration cannot be changed for four years and at least one year before the competition, and that throughout the period of eligibility they can demonstrate that their total testosterone level has been below 10 nanomoles per liter (IOC Consensus 2015, Point 2.2.). Compliance with these conditions may be monitored by testing. In the event of non-compliance, the athlete's eligibility for female competition will be suspended for 12 months (IOC Consensus 2015, Point 2.4). Athletes who transitioned from the female to the male gender (F-M) are allowed to compete without restrictions (IOC Consensus 2015, Point 1). The new IOC Consensus 2015 guidelines were already in force during the 2016 Olympic Games in Rio, although no openly transgender person competed. Katz & Luckinbill (2017: p. 233) drew attention to the ambiguity of IOC Consensus 2015, as no explanation is provided regarding Point 2.2 and how the alleged competitive advantage resulting from the levels of testosterone in the body can be distinguished from other natural or artificial competitive advantages. To meet the specified levels of testosterone, they must frequently resort to medication or invasive procedures, which relate to the fundamental issues concerning their identity or their gender (such was the case of Caster Semenya and Dutee Chand).<sup>63</sup> Therefore, in their opinion, the burden of proof regarding the necessity and efficaciousness of such procedures should be borne by those purporting to require them.

The new *Yogyakarta Principles Plus 10* of 2017 (hereinafter: Yogyakarta Principles) also addressed the definition of gender in sports. Among the additional obligations that the Act imposes on the states is ensuring that all individuals can participate in sports in line with the gender they identify, subject only to reasonable, proportionate, and non-arbitrary requirements. They must also ensure that all individuals can participate in sports without discrimination based on sexual orientation, gender identity, gender expression, or sex characteristics. To eliminate bullying and discriminatory behavior at all levels of sports, the states have a duty to adopt legislative, policy, and other measures in line with international human rights norms and standards (Yogyakarta Principles, Principle 2, which refers to the right

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<sup>62</sup> Coggon, Hammond & Holm, 2008: p. 10.

<sup>63</sup> For more, see Wells, 2019: p. 13.

to equality and non-discrimination). In the context of additional recommendations, Yogyakarta Principles have also addressed sporting organizations, which were urged to create an inclusive environment for participation in sports and sensitize the sporting community to implement such anti-discrimination laws; to support the participation of all individuals who wish to participate in sports, regardless of sexual orientation, gender identity, gender expression and sex characteristics (without restriction, subject only to reasonable, proportionate and non-arbitrary requirements); to remove or refrain from introducing requirements or policies that force women athletes into undergoing unnecessary, irreversible and harmful medical examinations or procedures in order to participate as women; to take measures to encourage the general public to respect diversity, including measures to eliminate hate speech, harassment, and violence at sports events.

And weightlifter Laurel Hubbard (New Zealand), who competed in men's weightlifting competitions before transitioning in 2013, is set to become the first transgender athlete to compete at an Olympics. Hubbard was effectively guaranteed a spot in the women's super heavyweight category after the IOC approved an amendment to the qualifying system due to disruption caused by the COVID-19 pandemic. Hubbard is eligible to compete in the Olympics since 2015, when the IOC issued new guidelines allowing any transgender athlete to compete as a woman provided their testosterone levels are below 10 nanomoles per liter for at least twelve months before their first competition.<sup>64</sup>

## 5. CONCLUSIONS

Transgender persons have faced many problems in the past. Most societies still distinguish between men and women, reflected in many aspects of people's lives, including sports and sporting events. Female athletes have been subjected to various humiliating and complex sex verifications (e. g., 'nude parades, Body Barr tests...'). Female athletes who failed at such tests (e. g. Patino) have not been banned just from competitions, but also abandoned by the friends, families, and society. They have also been stripped of all their awards (e. g., Klobukowska). Even if they succeeded in the court, which found their rights violated, they were never acquitted. The COVID-19 pandemic prevented the organization of the 32nd Olympic Games, and they were postponed until 2021. The new guidelines on transgender athletes have not been issued either, and the existing IOC Consensus 2015 guidelines remain applicable. The IOC Consensus 2015 represents a significant milestone regarding the right to gender, but it was still hoped that they would be upgraded and would give transgender athletes additional support. The IOC Consensus 2015 assures insofar as possible that trans athletes should not be excluded from the opportunity to participate in a sporting competition. However, unlike the previous Olympics,

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<sup>64</sup> Martin, R. (2021). Olympics-Weightlifter Hubbard poised to become first transgender Olympian – report. *May 05, 2021*, retrieved from <https://www.nasdaq.com/articles/olympics-weightlifter-hubbard-poised-to-become-first-transgender-olympian-report-2021-05> (21.05.2021).

the first confirmed participation of a transgender athlete was occurred at the freshly held Olympic games in Tokyo in 2021. Nevertheless, this is just the beginning. As some countries have already done at the national level, it is necessary to upgrade the existing IOC Consensus (2015) at the Olympic level. The upgrade would make it possible to get even closer to guaranteeing the human rights of athletes who have historically been excluded from sport and pushed to the margins of society.

## BIBLIOGRAPHY

1. Baljinder, S. B., Kanwaljeet, S. & Narinder, K. S. (2010). Equality, Equity and Inclusion: Transgender Athletes' Participation in Competitive Sports – a New Era. *Physical Culture and Sport Studies and Research*, Vol. XLIX, pp. 85-88. DOI: 10.2478/v10141-010-0020-2
2. Bonomi, M. et al. (2017). Klinefelter syndrome (KS): genetics, clinical phenotype and hypogonadism. *J Endocrinol Invest*, 40: pp. 123–134.
3. Buzuvis, E. E. (2012). Including Transgender Athletes in Sex-Segregated Sport. In Cunningham, G. B. (ed.), *Sexual Orientation and Gender Identity in Sport: Essays from Activists, Coaches, and Scholars* (College Station, TX: Center for Sport Management Research and Education, pp. 23-34.
4. Coggon, J., Hammond, N. & Holm, S. (2008). Transsexuals in Sport–Fairness and Freedom, Regulation and Law, *Sports Ethics and Philosophy*, Vol. 2:1, pp. 4-17, DOI: 10.1080/17511320801896091
5. Cooky, C. & Dworkin, S. (2013). Policing the Boundaries of Sex: A Critical Examination of Gender Verification and the Caster Semenya Controversy. *Journal of sex research*, 50(2), pp. 103–111.
6. Elsas L. J., Ljungqvist, A., Ferguson-Smith, M. A., Simpson, J. L., Genel, M., Carlson, A. S., Ferris, E. de la Chapelle, A. & Ehrhardt, A. A. (2000). Gender verification of female athletes. *Genet Med*; 2: pp. 249–254.
7. Englefield, L. (2012). LGBT inclusion in sport – good practice handbooks, no. 4. Strasbourg: Council of Europe.
8. Ettner, R., Monstrey, S. & Coleman, E. (2016). *Principles of Transgender Medicine and Surgery*, Second Edition. New York: Routledge.
9. Gleeson, S. & Brady, E. (n.d.) With rules suspended, intersex athlete to take center stage at Rio Olympics, retrieved from: <https://eu.usatoday.com/story/sports/2016/08/01/testosterone-rules-suspended-intersex-athletes-caster-semenya-dutee-chand-maria-jose-martinez-patino/87787248/> 23.05.2021).
10. Gooren, L. J. G. & Bunck, M. C. M. (2004). Transsexuals and competitive sports. *European Journal of Endocrinology* 151, pp. 425–429.
11. Harper, J. (2015) Race Times for Transgender Athletes. *Journal of Sporting Cultures and Identities*, Vol. 6, Issue 1, pp. 1-9.
12. Horbach, S. E., Bouman, M.B., Smit, J. M., Özer, M., Buncamper, M. E. & Mullender, M. G. (2015). Outcome of Vaginoplasty in Male-to-Female Transgenders: A



- Systematic Review of Surgical Techniques, *Journal of Sexual Medicine*, Vol. 12(6), pp. 1499-1512.
13. IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism. Retrieved from: [https://stillmed.olympic.org/Documents/Commissions\\_PDFfiles/Medical\\_commission/2015-11\\_ioc\\_consensus\\_meeting\\_on\\_sex\\_reassignment\\_and\\_hyperandrogenism-en.pdf](https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf) (26 June 2020).
  14. Isyanova, D. (2017). Gender verification policies in elite Sports, *Fall 2017*, Vol. 2, pp. 50-62. Retrieved from: [https://www.chapman.edu/law/\\_files/publications/2017-dsj/isyanova.pdf](https://www.chapman.edu/law/_files/publications/2017-dsj/isyanova.pdf) (1805.2021).
  15. Jones, B. A., Arcelus, J., Bouman, W. P. & Haycraft, E. (2017). Sport and Transgender People: A Systematic Review of the Literature Relating to Sport Participation and Competitive Sport Policies. *Sports Med*, 47: pp. 701–716.
  16. Katz, R. S. & Luckinbill, R. W. (2017). Changing sex / gender roles and sport. *Stanford Law & Policy Review*, Vol. 28, pp. 215-243.
  17. Köhler, R., Recher, A. & Ehrh, J. (2013). Legal Gender Recognition in Europe – Toolkit. TGEU Transgender Europe. Retrieved from: <https://tgeu.org/wp-content/uploads/2015/02/TGEU-Legal-Gender-Recognition-Toolkit.pdf> (16.05.2021).
  18. Koletnik, A., Grm, A. & Gramc, M. (2016). *Vsi spoli so resnični - transspolnost, transeksualnost in cisspolna nenormativnost*, Ljubljana: Društvo informacijski center Legebitra.
  19. Koletnik, L. J. (2019). Raziskava - Vsakdanje življenje transspolnih oseb v Sloveniji: raziskovalno poročilo, Ljubljana: Zavod Transfeministična iniciativa TransAkcija.
  20. Kyle, D. G. (2003). The Only Woman in All Greece: Kyniska, Agesilaus, Alcibiades and Olympia. *Journal of Sport History*, Vol. 30(2), pp. 183-203.
  21. Martinez-Patino, M. J., Mateos-Padorno, C., Martinezvidal, A., Sanchez Mosquera, A., Garcia Soidan, J. L., Del Pino Diaz Pereira, M. & Tourino Gonzalez, C. F. (2010). An approach to the biological, historical and psychological repercussions of gender verification in top level competitions. *Journal of Human Sport & Exercise*, Vol. 5(3), pp. 307-321.
  22. Mikša, P. (2010). Šport na Slovenskem. In: Macura, D., Doupona Topič, M. & Mekinda, B. (ed.) (2010). *Statusna vprašanja slovenskega športa*. Ljubljana: Univerza v Ljubljani, Fakulteta za šport, pp. 139-150.
  23. PennMuseum (2020). The Women: Were the Ancient Olympics just for Men?, pridobljeno: <https://www.penn.museum/sites/olympics/olympicsexism.shtml> (24.03.2021).
  24. Radišić, J. (2004). *Medicinsko pravo*. Beograd: Nomos.
  25. Reeser, JC (2005) Gender identity and sport: is the playing field level? *British Journal of Sports Medicine*, Vol. 39, pp. 695-699.
  26. Ritchie, R., Reynard, J. & Lewis, T. (2008). Intersex and the Olympic Games. *J R Soc Med* 2008: 101, pp. 395–399.

27. Scanlon, T. F. (2004). Games for Girls. *Archaeology Archive - Ancient Olympics Guide*, April 6, 2004, retrieved from: <https://archive.archaeology.org/online/features/olympics/girls.html> (24.03.2021).
28. Šiljak, V. (2016). *Research in History in Sport*. Beograd: RIS Studio.
29. Smuin, A. (2017). International Women's Day: Female sporting legends. *CEO Magazin 6 March 2017*. Retrieved from: <https://www.theceomagazine.com/lifestyle/health-wellbeing/international-womens-day-female-sporting-legends/> (25.04. 2021).
30. Stanković, N. (2015). *Istorija sporta*. Brčko: Europski univerzitet Brčko district.
31. Stockholm Consensus on Sex Reassignment in Sports. Retrieved from: <https://www.olympic.org/news/ioc-approves-consensus-with-regard-to-athletes-who-have-changed-sex> (26.04.2021).
32. The Yogyakarta Principles Plus 10. Retrieved from: [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf) (16.05.2020).
33. Wackwitz, L. A. (2003). Verifying the myth: Olympic sex testing and the category 'woman'. *Women's Studies International Forum*, Vol. 26, No. 6, pp. 553 – 560.
34. Weber, N. (2013). Sprememba spola v Sloveniji. *Pravna praksa* 16-17/2013, pp. 21-23.
35. Wells, T. (2019). Intersex, Hyperandrogenism, Female Athletes: A Legal Perspective on The IAAF Doping Regulations and Where Hyperandrogenic Female Athletes Fit In, *Santa Clara J. Int'l L.*, Vol. 17, Issue 2, pp. 1-18.

## RODNA ODREĐENOST U SPORTU

Mnogi sportovi razlikuju ženske i muške discipline. Ključni razlog takve podjele proizlazi iz fizioloških karakteristika koje bi muškarcima mogle dati prednost u odnosu na žene u određenim sportskim disciplinama. Uvedeni su različiti postupci provjere spola kako bi se osigurao „fair play“. U prošlosti, to su bili invazivni postupci koji su rezultirali društvenom stigmatizacijom, spolnom diskriminacijom i psihološkom traumom za sportašice. Provjera spola također se pokazala neprikladnom u slučaju odstupanja od standardnog binarnog koncepta spola (npr. u slučaju mutacija). Zbog toga su posljednjih godina u ovom složenom području prava, medicine i sporta ostvareni ključni pravni pomaci.

**Ključne riječi:** *transrodnost, rodna određenost, rodna diskriminacija, Jogjartaska načela, Olimpijske igre*