

TRANSGENDER'S ISSUES IN SPORT COMPETITIONS

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Abstract. *The recognition and development of the rights of transgender people raises various problems, one of which is their possibility to participate in sports. The aim of the article is to identify and analyze the issues of transgenders' participation in sports, reviewing possible ways of solving them. There used such research methods as analysis of new scientific literature and legal documents, qualitative content and comparative analysis, historical analysis. Study showed that international sports organizations and research bodies do not have a unanimous view how to ensure transgender rights to participate in sports with equality and fairness. New scientific researches may help to change this unclear and ambivalent position as well as established legal regulations and a unified policy of states in this area can help to solve such problems.*

Keywords: *gender identity, International Olympic Committee, sport competition, testosterone, transgender.*

Introduction

A transgender is a person whose biological gender does not match a social one. The achievements of medicine and social sciences have made it possible to look at them in a different way and help solve their problems. Also, the development of the rights of transgenders allows us to discuss their opportunities to participate in sports competitions. Many types of sports are differentiated by sex. Also, there are different standards for males and females participating in sports, because women and men have different heights, muscle mass, body build, blood hemoglobin concentration and so on. Transgenders in sport meet many issues related to the most important questions: Could they participate in sports competitions? If, yes, which type: female or male? How to ensure equality and fair competition in sport?

So, following these questions, the aim of the article is to identify and analyze the issues of transgenders' participation in sports, reviewing possible ways of solving them.

Research methods: analysis of new scientific literature and legal documents, qualitative content and comparative analysis, historical analysis.

Review of Literature

In recent years, more scientific articles have appeared related to the topic of transgender opportunities to participate in sports competitions. And it is connected with changes in regulation of their rights to equality, dignity, non-discrimination. For example, a new article, published online 2022 January 18 from the medicine point of view is “Joint position statement of the International Federation of Sports Medicine (FIMS) and European Federation of Sports Medicine Associations (EFSMA) on the IOC framework on fairness, inclusion and non-discrimination based on gender identity and sex variations”(Pigozzi et al., 2022) where authors critically analyze new framework (2021) of the International Olympic Committee (IOC) seeing it only from perspectives of human rights with less consideration for medical/scientific issues.

Another significant article “Competitive Fairness or Inclusion: Balancing Governance and Human Rights Law” is based on analysis of the problems of transgenders where author Lauren McCoy Coffey rises such questions: “What if an international federation or national governing body concludes that transgender athletes should be prohibited or subjected to rigorous conditions for participation? Would those qualifications stand up to legal challenge by an affected athlete? Will some athletes have better legal protection based on the location of their challenge?” (Coffey, 2022).

In the article “Transgender Athletes in Sports Competitions: How Policy Measures Can Be More Inclusive and Fairer to All” (Reynolds & Jahromi, 2021) authors analyze environmental and social barriers to transgender athlete participants as well as biological differences related to athletic performance.

Kerry O’Halloran in the book “Sexual Orientation, Gender Identity and International Human Rights Law” in the context of rights of sexual minorities, includes the topics about transgenders’ rights participating in sports competitions (O’Halloran, 2021).

It should be mentioned other articles: Cesar R. Torres, Francisco Javier Lopez Frias & María José Martínez Patiño “Beyond Physiology: Embodied Experience, Embodied Advantage, and the Inclusion of Transgender Athletes in Competitive Sport”; Joshua D Safer, “Fairness for Transgender People in Sport” (Torres, Frias, & Patiño, 2022); Joanna Harper, “Transgender Athletes and International Sports Policy” (Harper, 2022) etc.

Historical review

Sport for women were prohibited during many centuries for spectators. For example, during the Ancient Olympic games they had to stay at the other side of the river Aplheios. „The only woman to attend the games was the priestess of Demeter. A law stipulated that every other female spectator had to be thrown off a high cliff. For other games, such laws are not known. It is, however, probable that women were also not allowed as spectators of other athletic contests <...> Only once a woman was caught at Olympia. She was one of the daughters of Diagoras of Rhodes - the sources do not agree if it was Pherenike or Kallipateira -, the head of a family of successful athletes. Disguised as a trainer, she brought her son to the games after the death of her husband. When he won the boxing contest, in her joy she jumped over the fence, which separated the trainers from the athletes, and lost her clothes. So it became apparent she was a woman, but out of respect for her father, brothers and son, all Olympic winners, she was not punished“ (Women as spectators, 2012). Later, a law was passed requiring all trainers to come to the games naked. It was considered one of the first rules of knowledge, requiring the determination of true sex.

In the Middle Ages, women were allowed to compete with men, including ball games (Liguori, 2016). Later restrictions have been declined, and women step by step started to participate in different sports: golf, horse riding, sailing, croquet, tennis (from 1900¹).

Problems arose when athletes began to cheat to be of the opposite sex, especially from men to women, or in the cases of being intersex. In 1964 Polish sprinter Ewa Klobukowska, for example, won a bronze running the women's 100 meters distance. Practically, from 1966 in sports games the rule was established, that all athletes must be examined physically (also Ewa Klobukowska was forced to undergo the control and she was recognized as female). Later in 1967-2011 sport control institutions started using chromosome research (after that Ewa Klobukowska failed this testing and was banned from competing as female). From 2011 testosterone testing was established (was regulating from 10 to 5 nmol/L). But the case of the famous runner and winner of many championships, Caster Semenya from South Africa, shows that it could be more complicated (she is female, but she has a high level of testosterone). Some people also had doubts about her being transgender.

The participation of transgender people in competitive sports is related to such names as Renée Richards, Chris Mosier, Lia Thomas, Layshia Clarendon, Laurel

¹ For example the number of women participants in the Olympic Games grew from 2% till 48% (1900-2020 year). See International Olympic Committee, „Gender Equality & Inclusion Report 2021“, available: <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Gender-Equality-in-Sport/2021-IOC-Gender-Equality-Inclusion-Report.pdf>

Hubbard and others (See Morton, 2022). They are always subjects in the way of the protests, legal and scientific discussions.

Legal point of the view

Article 2 of Universal Declaration of Human Rights (UDHR) declares that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. According to the Committee on Economic, Social and Cultural Rights, “a flexible approach to the ground of “other status” is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds in article 2, paragraph 2” (Born Free and Equal. Sexual Orientation and Gender Identity in International Human Rights Law, 2012, p. 40-41). Phrase “other status” should include people with different sexual orientations. In the Article 27 established that “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits“. For example, the Article 10 (g) of the Convention on the Elimination of All Forms of Discrimination against Women (1979) emphasizes: “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:” <...> “The same Opportunities to participate actively in sports and physical education”. These provisions prohibit discrimination based on gender in sports.

European Court of Human Rights stated, that “elements such as gender identity or identification, names, sexual orientation and sexual life fall within the personal sphere protected by Article 8 (X and Y v. the Netherlands, 1985; Van Kück v. Germany, 2003; Schlumpf v. Switzerland, 2009; Beizaras and Levickas v. Lithuania, 2020)”, “the Convention is a living instrument which is to be interpreted in the light of present-day conditions (E.B. v. France [GC], 2008, § 92; Christine Goodwin v. the United Kingdom [GC], 2002, §§ 74-75)”. Transgender rights should be protected also.

More issues are raised when transgenders got rights to participate in sports games. According Kerry O’ Halloran, “this omission has not prevented the emergence in recent years of a good deal of contention as to whether trans people have rights – based on equality and non-discrimination – to compete in sports in accordance with their gender identity, most contentious when that gender rests on self-identification. The debate raises allegations of unfair advantage, segregation,

discrimination and victimization, where physiological differences can be compounded by testosterone and hormonal treatment. There is clearly a balance to be struck between personal privacy and the protection of sport...” (O’ Halloran, 2021, 93).

On 28 October 2003, an ad-hoc committee convened by the IOC Medical Commission met in Stockholm to discuss and issue recommendations on the participation of individuals who have undergone sex reassignment (male to female and converse) in sport. The reasons for this meeting were connected with the lack of legal regulation in the cases of athletes who have competed under one gender and later undergone sex reassignment surgery. The increasing number of cases of sex reassignment affected sports also. This group of experts confirmed that “individuals undergoing sex reassignment from male to female after puberty (and the converse) be eligible for participation in female or male competitions, respectively, under the following conditions: surgical anatomical changes have been completed, including external genitalia changes and gonadectomy; legal recognition of their assigned sex has been conferred by the appropriate official authorities; 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 sport competitions” (Statement of the Stockholm consensus on sex reassignment in sports, 2003). The first requirement has been criticized for changes in the external genitalia, as it is not a reasonable condition to prevent sports. But, according to some authors, it could be a stigma barrier – genitals which are characteristic of the opposite sex are visible (See Reynolds & Jahromi, 2021). In the commission’s opinion, eligibility should begin no sooner than two years after gonadectomy. Later the Executive Board of the International Olympic Committee (IOC) approved the consensus proposed by the IOC Medical Commission.

In 2015 was initiated another document, where “the IOC Consensus Meeting agreed the following guidelines to be taken into account by sports organizations when determining eligibility to compete in male and female competition: 1. Those who transition from female to male are eligible to compete in the male category without restriction. 2. Those who transition from male to female are eligible to compete in the female category under the following conditions:

2.1. The athlete has declared that her gender identity is female. The declaration cannot be changed, for sporting purposes, for a minimum of four years.

2.2. The athlete must demonstrate that her total testosterone level in serum has been below 10 nmol/L for at least 12 months prior to her first competition (with the requirement for any longer period to be based on a confidential case-by-case evaluation, considering whether or not 12 months is a sufficient length of time to minimize any advantage in women’s competition).

2.3. The athlete's total testosterone level in serum must remain below 10 nmol/L throughout the period of desired eligibility to compete in the female category.

2.4. 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 Meeting on Sex Reassignment and Hyperandrogenism November 2015).

So new rules allowed men to transition from female to male to participate in sports competitions without any restriction. But for the women (from male to female) conditions practically were made connecting them with some periods of keeping gender status and testosterone level stable. New rules have received many criticisms from scientific skeptics about the significance of other indicators in sports, such as muscle mass, explosive strength and similar. Many other factors could be significant depending on the type of sport. The requirement to lower testosterone level could be discussed from a bioethical point of view also.

From 2021 rules were changed because the IOC published a new framework on fairness, inclusion and non-discrimination based on gender identity and sex variations (International Olympic Committee, Framework on fairness, inclusion and non-discrimination on the basis of gender identity and sex variations, 2021). It includes such principles as prevention of harm, inclusion, non-discrimination, fairness, no presumption of advantage, evidence-based approach, primacy of health and bodily autonomy, stakeholder-centered approach, right to privacy, periodic reviews (Martowicz et al., 2023). All these principles call for sports organizations and research bodies to cooperation and for the new research in the field of equal and conscientious possibility to participate in sports. And it is necessary to ensure insofar as possible that transgenders are not excluded from the opportunity to participate in sporting competitions.

But still, there are many opinions about transgenders' possibilities to participate in sports competitions: to separate them as a different group; to employ an algorithm that includes all athletes and divides them into categories based on both physiological and social parameters; "open" category ("Male and female sports categories would still be included in this idea but adding an "open" category is more inclusive to all athletes who wish to participate" (Reynolds & Jahromi, 2021). The first opinion could be dangerous because separating them into different groups could raise more discrimination against them (transgender people have gender non-conformity by preferring to be the opposite sex but not the third gender). Also, it could be and recognized the danger to destroy the universally recognized binary sex system. The categorization by social parameters is difficult to measure. "Open" category could destroy fair competition and equality. Some authors mention possibility completing evidence-based research includes establishing control groups. But the same time they

state that “that being a transgender athlete does not automatically qualify an individual as a potential test subject. Most athletes are never enrolled in research studies, and transgender athletes should be afforded the same respect” (James, 2019)

Noteworthy that some international bodies made new rulings against trans athletes in cycling, swimming and rugby (IGLYO, 2022; Kliegman, 2022; De la Fuente, 2022).

So, we can feel that there is a considerable disunity of opinion between experts in sport, medicine and participants of sports competitions. And it is not surprising because different states have different legal regulations regarding transgender’s policies regarding their legal documents, right to private life, right to marriage, right to gender reassignment surgery etc.

For example, in Lithuania, the order control of sportswomen sex of the sports teams still requires physical sex control: “Performing gender control: 1. female athletes are examined gynecologically at the Vilnius Sports Medicine Center; 2. after a gynecological examination, female athletes are referred to the Human Genetics Center of the Vilnius University Hospital "Santariškių Klinikos" for determination of sex chromatin; 3. Athletes arrive at the Human Genetics Center with a referral from the Vilnius Sports Medicine Center and an identity document; 3.4. the result of the examination is recorded in the certificate of the Human Genetics Center of the Vilnius University Hospital "Santariškių Klinikos", which the athletes submit to the Vilnius Sports Medicine Center” (Dėl Lietuvos sporto rinktinių sportininkų lyties kontrolės tvarkos patvirtinimo, 1996). But there is not legal regulation of transgender’s reassignment surgeries in Lithuania.

Conclusions

Historically sport has been done only for males. But since 20th century women have got the right to participate also. In our days, the dividing of people into gender becomes complicated because it does not fit traditional standards. The development of science and the recognition of the rights of transgender people also affected sports competitions, where there recognized a transition from physical gender control, and later chromosome research to testosterone content requirements. And finally, from 2021, it was required to consider such principles as inclusion, prevention of harm, non-discrimination, fairness, no presumption of advantage, evidence-based approach, the primacy of health and bodily autonomy, right to privacy and others. These principles would seem positivist and liberal from a human rights point of view, but they create even more confusion in implementing transgender rights in sports competitions. It also allows each individual sports federation to evaluate its own conditions regarding opportunities for transgenders to participate in sports.

It should be noted that this is a long-term process during which the best options must be sought. According to the author, new scientific research may help to change this unclear and ambivalent position as well as, and established legal regulation and a unified policy of states in this area can help to solve such problems.

References

- Born Free and Equal. (2012). Sexual Orientation and Gender Identity in International Human Rights Law, p. 40-41. Retrieved from: <https://www.ohchr.org/sites/default/files/Documents/Publications/BornFreeAndEqualLowRes.pdf>
- Celebrating Worldwide Trans Athletes Following New Anti-Trans Rulings in Sports. (2022). *Iglyo*. Retrieved from: <https://www.iglyo.com/trans-athletes-2022/>
- Coffey, L. McC. (2022). Competitive Fairness or Inclusion: Balancing Governance and Human Rights Law. *Emerald Insight, Justice for Trans Athletes*. Retrieved from: <https://www.emerald.com/insight/content/doi/10.1108/978-1-80262-985-920221005/full/html?skipTracking=true>
- Convention on the Elimination of All Forms of Discrimination against Women. (1979). *United Nations*. Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>
- De la Fuente, H. (2022). International Swimming Federation votes to restrict transgender athletes from competing in elite women's aquatics competitions. Retrieved from: <https://edition.cnn.com/2022/06/19/us/fina-vote-transgender-athletes/index.html>
- Ewa Klobukowska Biography. (n.d.). *Olympics*. Retrieved from: <https://olympics.com/en/athletes/ewa-klobukowska>
- Harper, J. (2022). Transgender Athletes and International Sports Policy. *Law and Contemporary Problems*. Retrieved from: <https://worldathletics.org/athletes/south-africa/caster-semenya-14330057>
<https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- International Olympic Committee, Gender Equality & Inclusion Report. (2021). Retrieved from: <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Gender-Equality-in-Sport/2021-IOC-Gender-Equality-Inclusion-Report.pdf>
- IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism November 2015. Retrieved from: https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf
- International Olympic Committee. Framework on fairness, inclusion and non-discrimination on the basis of gender identity and sex variations. (2021). Retrieved from: <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf>
- James, I. B., & Lynn T. C. (2019) Transgender Policy in Sport, A Review of Current Policy and Commentary of the Challenges of Policy Creation. *Current Sports Medicine Reports*, 18(6), p. 239-247. Retrieved from: <https://journals.lww.com/acsm->

- csmr/Fulltext/2019/06000/Transgender_Policy_in_Sport,_A_Review_of_Current.10.aspx?fbclid=IwAR2AGlQBfbUmpZBRCLk9PLC0IqA2F7Uu9qkuXslpQrUt0ZxgEjd_etz0DXs
- Kliegman, J. (2022). Understanding the Different Rules and Policies for Transgender Athletes. *SI*. <https://www.si.com/more-sports/2022/07/06/transgender-athletes-bans-policies-ioc-ncaa>
- Lietuvos Respublikos sveikatos apsaugos ministerijos ir Kūno kultūros ir sporto departamento prie Lietuvos Respublikos Vyriausybės 1996 08 21 įsakymas Nr. 434/200 “Dėl Lietuvos sporto rinktinių sportininkų lyties kontrolės tvarkos patvirtinimo. *E Seimas*. Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.30938?jfwid=pyc44xclg>
- Liguori, M. (2016). Women in Sports: 100 Years Hurdles. *Linked in*. Retrieved from: <https://www.linkedin.com/pulse/women-sports-100-years-hurdles-maira-liguori>
- Martowicz, M. et al. (2023). Position statement: IOC framework on fairness, inclusion and nondiscrimination on the basis of gender identity and sex variations. Retrieved from: <https://bjsm.bmj.com/content/bjsports/57/1/26.full.pdf>
- Morton, C. (2022) 25 transgender athletes you should know. *CBS News*. Retrieved from: <https://www.cbsnews.com/pictures/25-transgender-athletes-you-should-know/10/>
- O’ Halloran, K. (2021). Sexual Orientation, Gender Identity and International Human Rights Law. *Routledge Taylor & Francis Group, London and New York*.
- Pigozzi, F. et al. (2022). Joint position statement of the International Federation of Sports Medicine (FIMS) and European Federation of Sports Medicine Associations (EFSMA) on the IOC framework on fairness, inclusion and non-discrimination based on gender identity and sex variations. *BMJ Open Sport & Exercise Medicine*, 8 (1). Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8739444/#R1>
- Reynolds, A. & Jahromi, A. H. (2021), Transgender Athletes in Sports Competitions: How Policy Measures Can Be More Inclusive and Fairer to All. *Frontiers in Sports and Active*. Retrieved from: <https://www.frontiersin.org/articles/10.3389/fspor.2021.704178/full>
- Safer, J. D. (2022). Fairness for Transgender People in Sport. *Journal of the Endocrine Society, Volume 6, Issue 5*. Retrieved from: <https://academic.oup.com/jes/article/6/5/bvac035/6550171?login=false>
- Statement of the Stockholm consensus on sex reassignment in sports. (2003). Retrieved from: https://stillmed.olympic.org/Documents/Reports/EN/en_report_905.pdf
- Torres, C. R., Frias F. J. L., & Patiño, M. J. M. (2022). Beyond Physiology: Embodied Experience, Embodied Advantage, and the Inclusion of Transgender Athletes in Competitive Sport. *Sport, Ethics and Philosophy, Volume 16*. Taylor & Francis Online, p. 33-49. Retrieved from: <https://www.tandfonline.com/doi/full/10.1080/17511321.2020.1856915>
- Women as spectators. (2012). Retrieved from: <http://ancientolympics.arts.kuleuven.be/eng/TD001eEN.html>