

TRANSGENDER WOMEN'S RIGHT TO PARTICIPATE IN SPORT: BALANCING INCLUSION AND FAIRNESS

Summary

The classification of athletes into male or female categories becomes particularly challenging when an individual's biological sex and gender identity do not align. The participation of transgender women in sport gives rise to a tension between two fundamental principles: the principle of inclusion and the right of transgender persons to participate in sport, on the one hand, and the principle of fairness and safe competition for cisgender women, on the other. Given the contemporary significance of this issue and its limited scholarly treatment, this paper provides a comprehensive analysis of transgender women's right to participate in sport. Following the introductory considerations, the authors examine the right to participate in fair sports competition, highlighting the challenges faced by sports organizations in ensuring this right. The central part of the paper analyses the physical characteristics of transgender women that may be relevant to athletic performance and presents the principal arguments both for and against restrictions on their participation in sports competitions, with due regard to the realization of the right to sport as a fundamental human right. In the concluding section, the authors argue that certain anatomical and physiological characteristics of transgender women may raise concerns regarding fairness and safety within female sports categories. At the same time, they contend that it

* PhD Candidate, Faculty of Law, University of Kragujevac, Serbia.

E-mail: stanisavljevicjelena06@gmail.com

ORCID: <https://orcid.org/0000-0001-9467-9613>

** Junior Research Assistant, Institute of Comparative Law, Belgrade, Serbia.

E-mail: djordje2611@gmail.com

ORCID: <https://orcid.org/0000-0001-5238-7292>

is necessary to develop mechanisms that would enable transgender individuals to exercise their right to sport through alternative sports categories classification models.

Keywords: The Right to Sport, Fair Competition in Sport, Transgender Identity, Sex and Gender, International Olympic Committee.

PRAVO TRANSRODNIH ŽENA NA UČEŠĆE U SPORTU: IZMEĐU INKLUZIJE I PRAVEDNOSTI

Sažetak

Svrstavanje sportista u mušku ili žensku kategoriju postaje izazov u situaciji kada se polni i rodni identitet sportiste ne podudaraju. Učešće transrodnih žena u sportu suprotstavlja dva ključna principa: princip inkluzije i pravo transrodnih osoba na učešće u sportu sa jedne strane, i princip pravednosti i bezbednog takmičenja za cis žene sa druge. Zbog aktuelnosti i nedovoljne naučne obrađenosti teme, predmet ovog rada je sveobuhvatna analiza prava transrodnih žena na učešće u sportu. Nakon uvodnih razmatranja, autori objašnjavaju pravo na učešće u ravnopravnom sportskom takmičenju, ukazujući na izazove koje sportske organizacije imaju u ostvarivanju ovog prava. U centralnom delu rada, prikazuju se telesne karakteristike transrodnih žena koje su od značaja za sportske performanse, nakon čega se iznose razlozi pro et contra za ograničavanje njihovog prava na učešće u sportskom takmičenju, vodeći računa o ostvarivanju prava na sport kao ljudskog prava. U završnom delu rada, autori zaključuju da zbog anatomskih i fizioloških karakteristika transrodnih žena, njihovo učešće u ženskim sportskim kategorijama ne bi bilo ravnopravno i bezbedno, ali da je neophodno pronaći mehanizam koji će transrodnim osobama omogućiti ostvarivanje prava na sport kroz alternativne modele klasifikacije sportskih kategorija.

Ključne reči: pravo na sport, ravnopravno sportsko takmičenje, transrodnost, pol i rod, Međunarodni olimpijski komitet.

1. Introduction

The principle of equality constitutes one of the fundamental pillars of the contemporary human rights system. Nevertheless, contemporary society is characterized by numerous forms of differentiation and classification, and few spheres of social life provide genuinely equal opportunities for advancement for all. Although legal doctrine recognizes sport as a domain that should be accessible to everyone, irrespective of age, gender, race, or physical fitness (Pijetlović, 2015, p. 2), in practice, sport is organized in a manner that not only reflects existing differences but also incorporates them into the very structure and governing principles. For example, the literature frequently refers to a view attributed to the founder of the modern Olympic Games, Pierre de Coubertin, who maintained that the participation of women in sport would be impractical, uninteresting, unaesthetic, and inappropriate (as cited in Katz & Luckinbill, 2017, p. 221). Although such views are now widely regarded as outdated and incompatible with contemporary standards of gender equality, the question remains whether sport is genuinely accessible to all individuals on equal terms, irrespective of their personal characteristics.

The subject of this research is the right of transgender women to participate in sport. In various legal sources and in contemporary legal doctrine, the right to sport is recognized as a human right. Among the first authors in Serbian legal doctrine to advocate this position was Dr Stefan Andonović. In his examination of the right to sport, Andonović argued that this right emerged as a consequence of broader developments in civil democracy, the social state, and the rule of law, notwithstanding the fact that sport as a social phenomenon has existed since antiquity (Andonović, 2017, p. 142). Although theoretical discussions concerning the right to sport have gained increasing prominence in recent years, modern sport has retained certain traditional characteristics. It remains one of the few social spheres with a division into male and female categories based on biological sex. In light of this binary classification, sports organizations face the challenge of assigning individuals whose gender identity or gender expression differs from their biological sex to the appropriate category. This raises the question of how transgender individuals can be enabled to participate in sports competition while ensuring that the regulatory framework established by sports organizations continues to safeguard the right to fair competition.

The aim of this research is to systematize existing knowledge concerning the right of transgender individuals to participate in sport and to examine the extent to which a balance can be achieved between the exercise of this right and the fundamental principles governing organized sport. In addition, the research seeks to assess whether the measures adopted by sports organizations may be inconsistent

with the content and protection of human rights that must be respected within the sports context. The significance of this research lies in both the contemporary relevance of the subject matter and the limited attention it has thus far received in Serbian legal doctrine. Sports organizations face a complex challenge: ensuring fair, equal, and safe participation in sports competitions while simultaneously respecting the principle of non-discrimination in relation to all participants. The aspiration of transgender women to compete in female categories further complicates this relationship, rendering these objectives difficult to reconcile in practice. The complexity of this issue requires a comprehensive analysis aimed at systematically examining the problem and identifying the principal arguments both for and against the inclusion of transgender women in women's sport.

2. The Right to Participate in Fair Sports Competition

In analyzing the right to sport, authors frequently refer to a range of international instruments that expressly recognize the right to physical activity and participation in sport.¹ For example, the right to sport is reflected in Article 1 of the International Charter of Physical Education, Physical Activity and Sport and is also recognized in the Revised European Sports Charter. Nevertheless, sport is an organized activity that presupposes compliance with a variety of rules and regulations (see also Vuković, 2019, p. 9). Since sports competition is inherently governed by such rules, access to competitive sport is contingent upon their acceptance (Miiten & Davis, 2022, p. 267). Given that the organization of sport in Europe is traditionally based on a pyramidal model, characterized by the existence of a single international governing federation for each sport, and that the rules governing eligibility and conditions of participation in competitions are established by such federations (Đurđević, 2018, p. 301), it may be concluded that the right to participate in sports competition is, to a significant extent, contingent upon the acceptance of the rules applicable within a specific sports discipline.²

¹ For a discussion of the right to sport in contemporary sports law doctrine, see Jain, 2025, pp. 141–154; Di Marco, 2022, pp. 314–341; Anđelković, 2025, pp. 193–206.

² In legal theory, particular attention has been devoted to critiques of the pyramidal structure of sport in Europe. It has been argued that the influence of clubs and athletes in decision-making process should be strengthened, thereby reducing the degree of centralization characteristic of the existing governance model (Smokvina, 2012). In addition, it has been observed that athletes, through their participation, make the organization of sports competition possible (Šuput, 2015, p. 111). In our view, given the social significance of sport and the institutional structure of sports organizations, athletes should be afforded a more prominent role in the adoption of sports rules.

By adopting rules, sports organizations seek to minimize or eliminate factors that may render sports competitions unequal. Through the establishment of eligibility conditions and participation criteria, sports organizations aim to ensure that competitive outcomes depend primarily on athletes' natural abilities, training, and effort.³ In this context, efforts are directed towards ensuring that all athletes have equal opportunities to achieve competitive success. Consequently, the consistent application of sports rules may exclude individuals who, under the relevant eligibility criteria, are not regarded as equal to other athletes.⁴ As a result of not failing to meet the conditions for participation in competition, an individual's right to participate in sports competition, as well as the right to earn a livelihood through engagement in a particular sport, may be restricted.⁵

Compliance with the conditions for participation in sports competitions is essential for both the realization of athletes' rights and the protection of the public interest. Competitive equality is in the interest of all athletes who participate in such competitions, provided that they meet the established eligibility criteria. If sports organizations did not guarantee equal opportunities for success, individuals would be less likely to engage in sport. Athletes accept participation in competitions on the understanding that they are afforded an equal opportunity to achieve success therein. Furthermore, fair sports competition is also important for the protection of athletes' right to health. Across all sports disciplines, accidents occur in which participants may sustain bodily injuries (Đurđević, 2012, pp. 751–768). The risk of such injuries would not be evenly distributed among athletes if competition were not

³ The Court of Arbitration for Sport has, on several occasions, considered whether the participation of persons with disabilities in the category of non-disabled athletes may confer an unfair competitive advantage to athletes with a disability as a result of the use of various assistive devices. An analysis of Court's jurisprudence, together with the relevant theoretical views, reveals the view that the outcome of sports competitions should depend primarily on athletes' natural abilities, training, and effort (see Shinohara, 2024, p. 530; Shinohara, 2024, pp. 504–537).

⁴ Although there is broad agreement that athletes should be equal with respect to certain criteria, the identification of those criteria remains a matter of considerable controversy. In recent years, theoretical debate has focused on distinguishing between the criteria with respect to which athletes must be regarded as equal and those with respect to which differences may legitimately be tolerated, often referred to as relevant and irrelevant criteria (see, for example, Camporesi & Hämäläinen, 2021, pp. 1492–1499).

⁵ An examination of the case law reveals the approach adopted by the European Court of Human Rights in *Mutu and Pechstein v. Switzerland*. In this case, the Court observed that the applicant was effectively required to choose between accepting an arbitration clause and thereby retaining the opportunity to earn a livelihood through participation in a particular sport, or refusing the clause and consequently being prevented from pursuing that sports activity professionally. See *Mutu and Pechstein v. Switzerland*, Applications nos. 40575/10 and 67474/10, judgment of the European Court of Human Rights, 4 February 2019, para. 113.

conducted on a fair basis. In addition, fair competition enables sports to fulfill various social functions, including the promotion of ethical values. In legal doctrine, the ethical values of sport are understood to encompass the possibility of winning under equal conditions, in compliance with the rules of the game (Mićović, 2020, p. 890). The importance of the right to fair competition is also recognized in the case law of the European Court of Human Rights in several judgments. For example, in *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, the Court held that restrictions on the right to respect for private and family life may be justified for the purpose of protecting the rights of others to participate in a sports competition characterized by fair play and equal opportunities. In addition, in the same case, the Court emphasized that spectators are entitled to expect fair competition (*National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, Applications nos. 48151/11 and 77769/13, judgment of the European Court of Human Rights, 18 April 2018, paras. 164–166).

In sports-law doctrine, the question arises as to how to distinguish between inequalities among athletes that are justified and permissible, and those differences that constitute grounds for sanctioning athletes, or for the justified denial of the right to participate in competition (see Viret, Saugy & Botre, 2023, p. 295). The literature further suggests that certain sports outcomes may be attributable to characteristics over which athletes have no control (Loland, 2020, pp. 585–587), thereby raising broader questions regarding the fairness of competition. For example, some authors emphasize that genetic predispositions have played a decisive role in the success of particular athletes. For instance, literature highlights that the Spanish cyclist Miguel Indurain, during his victories in the Olympics and other major competitions, benefited from inherent physiological characteristics, including a high cardiac output, a low resting heart rate, and exceptional lung capacity (McNamee, 2016, p. 3). Consequently, it is evident that absolute equality among athletes cannot be achieved, given the diversity of genetic predispositions, financial resources, and opportunities for the development of sports skills. However, this raises the critical question of where the line should be drawn in tolerating such inequalities.

Sports organizations have the right to freely establish, amend, and interpret rules appropriate to their respective sport, without undue political or economic influence (as cited in Đurđević, 2018, p. 291). The definition of categories within which sports competition will take place with the aim of ensuring fair competition is also considered an aspect of the autonomy of sports organizations. In accordance with the nature of sport, and in addition to the established sex-based classification, certain sports also operate with additional categories based on differences such as body weight (for example, boxing), age (for example, competitions for athletes under 21 years of age), or the type and degree of disability. The existence of

sex-based categories aimed at ensuring competitive fairness is a feature of almost all sports disciplines. However, the classification of athletes within the traditional male and female categories becomes more complex where individuals whose sex and gender identity do not coincide participate in sports competition.

3. Definitions of Sex, Gender, and Transgender persons

Although they are often used as synonyms in colloquial speech, the terms 'sex' and 'gender' denote two conceptually distinct phenomena. In the case of transgender persons, there is a discrepancy between the sex assigned at birth and gender identity; accordingly, a precise distinction between these categories is of essential importance for the further analysis of the subject matter. Sex is generally understood as a biological construct based on a set of anatomical and physiological characteristics (Johnson & Repta, 2012, p. 19), including external genitalia, secondary sex characteristics, gonads, chromosomes, and hormones (Becker, Chin & Bates (eds.), 2020, p. 20). Although sex is conventionally divided into male and female categories, there are also less common variations of sex chromosomes, often referred to as differences of sex development (DSD) or intersex conditions (Grimstad *et al.*, 2021, as cited in Hunter & Senefeld, 2024, p. 4132).

In contrast to sex, which is grounded in biological characteristics, gender refers to socially and culturally constructed differences between men and women (African Union, 2020, p. 2). Gender is a multidimensional construct that relates to the roles, responsibilities, constraints, and experiences assigned to individuals on the basis of their sex or gender (Johnson & Repta, 2012, p. 21). Therefore, gender builds upon biological sex in order to attribute social meaning to sex differences, categorizing individuals with labels such as woman, man, transgender person, and others (Johnson & Repta, 2012, p. 21). Accordingly, gender identity is defined as an internal and deeply personal experience of one's own individuality as a member of the male or female sex (Reber & Reber, 2001, as cited in Teovanović, 2009, p. 114).

The feminist psychologist Rhoda Unger was among the first scholars to propose the use of the term 'gender' to denote the non-biological, culturally constructed aspects of being a woman or a man, and the term 'sex' to refer to biological characteristics (Bosson, Vandello & Buckner, 2019, p. 32). Gender-related terminology includes, *inter alia*, categories such as woman, man, transgender, and androgynous persons, whereas sex-related terminology refers to categories such as male, female, and intersex persons (Chrisler & Lamer, 2016, p. 1).

According to the definition of the organization Global Action for Trans Equality, the term 'trans' includes individuals whose gender identity or gender expression

does not correspond to the sex assigned at birth (Devor, 2016, p. 1; Galupo, Stuart & Siegel, 2015, p. 549). This phenomenon is often described as a feeling of being ‘trapped in the wrong body,’ reflecting an internal identity that conflicts with a person’s biological characteristics (Davi, 2012, p. 58). Accordingly, ‘transgender person’ is a general term referring to individuals whose gender identity, gender expression, or behavior does not conform to what is typically associated with the sex assigned to them at birth (American Psychological Association, 2014, p. 1; Mitchell & Charlie Howarth, 2009, p. 1).

One of the key issues in this context concerns the participation of transgender persons in sport. More precisely, the right of transgender persons to engage in sport is not itself contested; rather, the central dilemma relates to the category in which they should compete. The key question is whether classification should be based on sex assigned at birth or on gender identity. If it is accepted that transgender women (i.e., persons assigned male at birth but who identify as women) should compete in the female category, the question arises as to whether this may result in a competitive advantage in relation to cisgender women. Specifically, it must be considered whether certain anatomical and physiological characteristics developed under the influence of male sex hormones may affect the physical performance attributes that are decisive for success in sport.

4. Anatomical and Physiological Characteristics of Transgender Women Relevant to Sports Performance

In the professional and activist discourse, a transgender woman is commonly defined as a person assigned male at birth but who identifies as a woman (Vidić, 2020, p. 4; Milanović & Stefanović, 2022, p. 10). However, for the purposes of analyzing anatomical and physiological characteristics relevant to sports performance, it is necessary to take biological sex into account. In this regard, certain aspects of the analysis draw on data traditionally associated with male populations in the scientific literature, bearing in mind that these characteristics are shaped during development under the influence of male sex hormones. The authors do not thereby seek to disregard contemporary approaches to understanding gender identity, nor the use of the concept of ‘sex assigned at birth’ in place of the binary traditional categories of ‘male’ and ‘female’. Nevertheless, for the sake of clarity and consistency with existing literature, traditional terminology has been retained when presenting the findings of other authors.

In the prepubertal period, sports performance of boys and girls is broadly similar. However, significant sex-based differences in athletic performance emerge

in parallel with the onset of male puberty (Nokoff *et al.*, 2023, p. 3). Sports performance is determined by a range of anatomical and physiological factors which, due to genetic differences and the primary influence of androgens, differ significantly between the biological sexes. In this context, testosterone is of particular importance as the principal male sex hormone, produced mainly by the testes and classified as an anabolic steroid (Al-Darawsha, 2023, p. 33; Hunter & Senefeld, 2024, p. 4133). Testosterone is primarily recognized as an anabolic and androgenic hormone associated with the development of muscle strength and mass (Oberlin, 2023, p. 4). Research further indicates that serum testosterone concentration is also correlated with enhanced aerobic endurance, as well as certain psychological advantages (Oberlin, 2023, p. 5). Endogenous testosterone levels in post-pubertal males are reported to be up to fifteen times higher than those in females of any age (Hunter & Senefeld, 2024, p. 4133). Consequently, prolonged exposure to higher levels of this hormone is associated with a performance advantage in male athletes compared with female athletes (Hunter & Senefeld, 2024, p. 4133).

After puberty, men on average exhibit greater body height, longer limbs, increased muscle mass, and musculature characterized by greater contraction speed and strength, as well as a lower percentage of body fat (Nokoff *et al.*, 2023, p. 4). As a result, men, particularly at elite athletic levels, tend to achieve higher speeds over both short and long distances, generate greater muscle strength enabling higher vertical jumps, and demonstrate higher levels of absolute strength compared to women (Hunter & Senefeld, 2024, p. 4130). Men are, on average, stronger than women, and accordingly, tend to hold a significant advantage in competitive sport due to superior physical capacity (Hilton & Lundberg, 2021, p. 201). The biological effects of elevated testosterone levels during puberty are therefore considered a key factor contributing to pronounced differences in athletic performance between men and women (Hilton & Lundberg, 2021, p. 201).

In addition to longer limbs and greater muscle mass, men differ from women in the size of one of the most important organs, the heart. On average, the male heart is up to one quarter larger than the female heart (Pierre, Peirlinck & Kuhl, 2022, p. 3). The male heart is characterized by a greater left ventricular volume and thicker ventricular walls, resulting in higher cardiac output at equivalent heart rates (Oberlin, 2023, p. 4). The synergy of greater muscle mass, larger heart size, and enhanced oxygen transport capacity contributes to higher aerobic potential, which is in turn associated with superior performance in endurance-based sports disciplines (Oberlin, 2023, p. 4). Biological males generally exhibit greater metabolic and cardiorespiratory capacity, which is associated with a consistent performance advantage in sport compared with the female population (Hilton & Lundberg, 2021, p. 200). Consequently, male anatomical and physiological characteristics are

widely regarded as conferring a measurable advantage in sports performance relative to those of females. Evidence of marked sex-based differences in average sports performance between men and women is often cited as a primary argument for restricting the participation of transgender persons in sport (Oberlin, 2023, p. 7).

Taking into account the aforementioned physical characteristics of men, which are widely understood to confer a performance advantage in sports competition compared with women, the question arises as to the justification of including transgender women in female categories. Despite the recognition of the right to gender identity and the increasingly prominent tendency towards the inclusion of transgender women in women's sports categories, such practice gives rise to a number of complex dilemmas. Although gender identity is a matter of personal self-determination, certain biological characteristics defined at birth may persist throughout life. As previously noted, these factors include body size and composition, limb length, muscle mass, lung capacity, and cardiovascular function. To the extent that particular anatomical and physiological attributes are not fully modified by medical interventions, they may continue to confer a lasting competitive advantage upon transgender women over cisgender women in certain sporting contexts. However, it should be noted that some authors have challenged the prevailing assumptions regarding the influence of testosterone on sports. In particular, it has been argued that the relationship between testosterone and athletic performance is frequently treated in biological research as axiomatic, without sufficient empirical verification or adequate evidential support, and that there is no conclusive scientific evidence demonstrating biological advantages of a magnitude that would undermine the principle of fairness in the participation of transgender women in elite women's sport (Canadian Centre for Ethics in Sport, 2022, p. 40). This group of authors argues that any potential performance advantage possessed by transgender women is effectively neutralized through testosterone suppression treatment (Canadian Centre for Ethics in Sport, 2022, p. 26).

However, such a view has been the subject of criticism. Some authors argue that transgender women who have undergone male puberty may retain certain physical advantages over cisgender female athletes even after the testosterone suppression treatment. These advantages are said to be associated, *inter alia*, with anthropometric characteristics such as skeletal dimensions and body proportions, which are largely established during puberty and remain unchanged thereafter (Hilton & Lundberg, 2021, p. 205). Accordingly, it may be concluded that there are arguments suggesting the existence of a potential performance advantage of transgender women in certain sports disciplines. Nevertheless, it is noteworthy that no transgender woman has won an Olympic medal since 2004, when their participation was officially permitted. In part of the literature, this fact is cited

as evidence calling into question claims of a significant or systemic competitive advantage enjoyed by transgender women in sports competition (Canadian Centre for Ethics in Sport, 2022, p. 37).

5. Restricting the Participation of Transgender Persons in Sports Competition: Arguments for and Against

The literature includes arguments that transgender persons should be permitted to participate in sports competitions within the category corresponding to their gender expression. Some authors maintain that the inclusion of transgender persons in sport is essential for the realization of their right to sport and does not compromise competitive fairness. They argue that there is insufficient evidence to support such claims and suggest that such inclusion may help challenge the assumption that sports achievements are necessarily determined by sex-based characteristics (Cunningham, Issard & Melton, 2021, pp. 1–7). In this regard, it has also been argued that success in sports competition is influenced by a range of factors, including an athlete's discipline, the quality of the training process, and adequate psychological preparation (Erdősová *et al.*, 2024, pp. 83–98). In addition, the literature suggests that the exclusion of transgender women from sports competition may have adverse consequences for the mental health of transgender persons, who may experience feelings of rejection and social exclusion, or be deprived of the opportunity to benefit from various functions that participation in sport serves for the individual (Kamis & Glick, 2022, pp. 277–279).

According to some authors, transgender persons represent one of the most vulnerable populations with regard to discrimination, abuse, violence, suicide, and the capacity to enjoy, exercise, and protect human rights and freedoms (Perić, 2019, p. 246). Accordingly, the exclusion of transgender persons from sport, as a social sphere grounded in inclusion, may have a particularly adverse impact on them. Finally, it should also be noted that requiring transgender persons to compete in the category corresponding to their sex may be inconsistent with certain interpretations of the European Court of Human Rights. Through the dynamic and evolutive interpretation of the European Convention on Human Rights, this Court has recognized gender identity as an aspect of the right to respect for private life (Vlašковиć, 2019, p. 223). In this regard, some authors note that, despite the varying conditions governing the exercise of the right to gender identity across European states (see also Simić, 2011, pp. 299–322), developments in the case law of the European Court of Human Rights suggest that it is only a matter of time before hormone therapy ceases to fall within the margin of appreciation of states

as a condition for the recognition of the right to gender identity (Vlašковиć, 2021, p. 207). In this context, the question arises whether preventing transgender women from participating in the female category of sports competition is compatible with the evolving recognition of the right to gender identity, particularly where transgender athletes are required to undergo medical treatment.

The authors believe that a negative consequence of excluding transgender persons from elite-level sports competition would be the inability of transgender athletes to earn income through participation in sport in accordance with their gender expression. In addition, regulations adopted by international sports governing bodies concerning the participation of transgender athletes may adversely affect the exercise of their right to gender identity. Although different states prescribe varying conditions for the exercise of the right to gender identity, sports organizations, owing to their pyramidal structure, tend to establish uniform rules applicable to all athletes, irrespective of their nationality. In this context, sport may be regarded as a social sphere in which the exercise of the right to gender identity differs from that in other social spheres. At the same time, questions arise regarding the legitimacy of decisions made by international governing sports federations restricting personality rights, particularly given that such limitations on the right to gender identity are imposed through rules adopted by sports federations rather than by states.

One of the principal arguments advanced in support of restricting the participation of transgender women in the female category of sports competition is that such participation would undermine the principle of fair competition, which is considered particularly important in the female category. In addition to the arguments already presented in this paper for and against the claim that cisgender women are in an unequal position relative to transgender women, it is further argued that the participation of transgender women may give rise to other adverse consequences. In particular, it is suggested that their inclusion in the female category may lead some cisgender women to withdraw from competition, based on a perception that they are not competing on equal terms. For example, the participation of the transgender tennis player Renee Richards in the female category of competition, following a ruling of U.S. courts, resulted in more than 20 female tennis players withdrawing from competition (Bianchi, 2017, p. 234). The literature identifies a range of challenges faced by women who engage in professional sport (in domestic literature, see Rajić Čalić, 2023, pp. 129–140; Tasić, 2023, pp. 685–700; Mršević, 2016, pp. 19–24); however, one of the issues that women's sport may face is the potential displacement of cisgender women from elite sport (Mršević, 2013, p. 148), thereby undermining the broader social role of sport in contemporary society. In addition, the doctrine reflects views that, in certain sports where the risk of bodily injury is more pronounced, it may be particularly acceptable and justified to

impose eligibility conditions restricting the participation of transgender women in the female category of competition. For example, the decision of the International Rugby Federation to restrict the participation of transgender women in female-category competitions has been the subject of theoretical debate, with the principal justification advanced being the need to ensure the safety of all participants (see footnote 12; see, for example, Pike, 2021, pp. 155–168).

In contemporary international sport, there is no universally accepted approach to addressing the participation of transgender women in sport. One of the most significant efforts to provide guidance to sports federations on this issue has been undertaken by the International Olympic Committee (hereinafter: IOC). In an effort to contribute to the regulation of transgender participation in sports competition, in 2021, the IOC adopted the *Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations* (hereinafter: the *IOC Framework*). Subsequently, in 2026, it adopted the *IOC Policy on the Protection of the Female (Women's) Category in Olympic Sport and Guiding Considerations for International Federations and Sports Governing Bodies* (hereinafter: the *IOC Policy*). The primary objective of the *IOC Framework* is to provide guidance to international federations in the development of regulations governing the participation of transgender persons and persons with sex variations in sports competitions. The Framework is founded on three values inherent in sport: fairness, inclusion, and non-discrimination (Martowiz *et al.*, 2023, p. 26). Five years after the adoption of the Framework, the IOC sought to revise its approach through the adoption of the *IOC Policy*, with the aim of aligning its regulatory framework with contemporary scientific developments across relevant disciplines.

An analysis of the *IOC Framework* indicates that its drafters recognized the possibility of establishing justified eligibility criteria for participation in sex-based competition categories. However, any such restrictions should not be based solely on gender identity or discriminatory considerations; rather, they must be supported by justified reasons that may render competition unequal or unsafe (Martowiz *et al.*, 2023, p. 28). The authority to establish such criteria rests with the sports federation responsible for regulating the rules of the particular sport (IOC Framework – 4.1). When establishing eligibility criteria for participation in sports competitions, sports governing bodies should ensure that rule-making is informed by relevant scientific findings from a range of disciplines, with the dual objective of protecting human rights and preserving fair competition. According to the *IOC Framework*, eligibility criteria for participation in a particular competition category may be adopted for the following purposes: (1) to ensure that no athlete has a disproportionate and unjustified competitive advantage; (2) to prevent the risk of bodily injury; and (3) to prevent potential manipulation of eligibility rules by athletes (IOC

Framework – 4.1). Analysis of the *IOC Framework* has led commentators to argue that the imposition of eligibility criteria for participation in the male or female category should constitute an exception rather than the rule. Furthermore, such criteria should be applied primarily in the context of competition at the highest levels of sports (Martowiz *et al.*, 2023, p. 28). Viewed from this perspective, where restrictions on the right of transgender athletes to participate in sports competition are justified, such individuals would nevertheless retain the opportunity to participate in sport at lower levels of competition, thereby promoting inclusivity within that segment. At the same time, the principle of fair competition in sport constitutes a legitimate interest that may justify certain limitations on individual human rights, particularly in the context of elite-level sports competition.

An analysis of the *IOC Policy* indicates that its drafters sought to place greater emphasis on the protection of the female competition category by providing that participation in women's competitions should be restricted to biological females (IOC Policy, p. 5). In our view, this position of the International Olympic Committee reflects the acceptance of arguments suggesting that competition between cisgender and transgender women may compromise competitive fairness and, in certain sports, may also raise concerns regarding athlete safety. In addition, the *IOC Policy* advances a legal argument in support of restricting the participation of transgender women in the female category of competition. Specifically, it notes that no supranational court has issued a decision holding that the organization of sports categories on the basis of sex-related criteria constitutes a violation of human rights (IOC Policy, p. 4). Bearing in mind that the *IOC Policy* was adopted only in 2026, and that certain positions contained therein depart from the previous approach of the IOC and other sports organizations, it is reasonable to expect that the *IOC Policy* will be subject to critical scrutiny in the coming years. It is also likely that alternative approaches to the regulation of transgender participation in sports competition will continue to emerge and gain support.

6. Concluding Considerations

The analysis of transgender inclusion in sport indicates that the exercise of the right to participate in competition is contingent upon compliance with eligibility criteria established by sports organizations. By adopting such rules, these organizations seek to protect the fundamental principles of sport and sports competition, thereby enabling sport to fulfill its broader social functions. Although this normative activity forms an integral part of their autonomy, it may simultaneously have a restrictive impact on athletes seeking to participate in competition. Given the pyramidal

structure of the sports system, athletes who do not meet the prescribed eligibility criteria may be excluded from competing at the elite level in a particular sport. Although sport regulations evolve over time and are often adjusted in line with developments in human rights law, sports organizations continue to face the challenge of reconciling their regulatory frameworks with contemporary human rights standards. Of particular importance is the issue of sex-based competition categories, which constitute a traditional feature of sport but persist in the contemporary legal context in which the right to gender identity is increasingly recognized as a component of the right to respect for private and family life. The existence of male and female competition categories plays a significant role in protecting the principle of equality in sport and in promoting the participation of both men and women. However, transgender persons, for whom a discrepancy may exist between biological sex and gender identity, may face exclusion where certain sports organizations do not permit participation in the category corresponding to their gender expression.

Sports organizations face the complex task of finding an appropriate balance between protecting fair and equal competition and ensuring the inclusion of transgender persons, with full respect for their gender identity. In our view, transgender women’s right to compete in the female category of sports competitions should be restricted where necessary to protect fair and safe competition. Nevertheless, given its important social functions, sport must remain broadly inclusive, which requires that sporting opportunities be accessible to transgender persons as well. We consider that decisions regarding eligibility for participation in sports competitions must be made transparently and grounded in relevant and empirically verified scientific evidence concerning the potential existence of competitive advantage. Only such an approach can contribute to striking an appropriate balance between competing legal interests. In addition, at the international level, there is a need to continuously monitor the state of human rights in sport, bearing in mind both the social significance of sport in contemporary society and the broad autonomy of sports organizations in rule-making. In this regard, the possibility that certain rules may be inconsistent with evolving human rights standards should not be overlooked, particularly in light of efforts by sports organizations to preserve certain traditional features of sport. Although sport retains numerous traditional characteristics, it is not an isolated social sphere. On the contrary, law plays a central role in shaping the ongoing development of sport, enabling the preservation of its fundamental values while also facilitating adaptation to contemporary social change.

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