

## **VENI, VIDI, VICI GENDER INEQUALITY IN SPORT IN THE REPUBLIC OF SERBIA – DID WOMEN REALLY WIN THIS GAME?**

**Andelija Tasić\***

University of Niš, Faculty of Law, Niš, Serbia

### **Abstract**

Even though there are no international or national documents that would allow or encourage unjustified differences in treatment between women and men, the fact is that some areas of life are still seen as belonging to men. Sports are, certainly, at the top of that ladder. It is considered a predominantly male field, shaped according to men and seen through the eyes of men. However, with the development of human rights and the mechanism for their protection, the awareness of the equality of women and men in sports has increased. The Republic of Serbia made a set of legal rules regarding: (1) discrimination in general; (2) sports; and, finally, (3) discrimination in sports. This paper aims to present and analyse the normative and strategic frame of the protection against discrimination in sports, to examine the current case law in front of the relevant institutions, and to point out the latest tendencies in the field of gender equality and sports.

**Key words:** discrimination, sports, gender equality, anti-discrimination litigation, civil litigation.

## **„ДОЂОХ, ВИДЕХ, ПОБЕДИХ“ ДИСКРИМИНАЦИЈУ НА ОСНОВУ ПОЛА У СПОРТУ У РЕПУБЛИЦИ СРБИЈИ - ДА ЛИ СУ ЖЕНЕ ЗАИСТА ИЗВОЈЕВАЛЕ ПОБЕДУ?**

### **Апстракт**

Иако нема националног ни међународног документа који би допустио или охрабрио прављење неоправдане разлике између мушкараца и жена, чињеница је да постоје неке области друштвеног живота које се и даље сматрају мушким. Спорт је, свакако, на врху те лествице. Сматран доминантно мушким пољем, обликован је према мушкарцима и виђен је кроз њихове очи. Међутим, са развојем људских права и њиховом заштитом, расте и свест о једнакости мушкараца и жена у спорту. Република Србија поставила је нормативни оквир у погледу: (1) дискриминације

---

\* Corresponding author: Andelija Tasić, University of Niš, Faculty of Law, Trg kralja Aleksandra 11, 18105 Niš, Serbia, andjelija@prafak.ni.ac.rs

уопште, (2) спорта и, напослетку, (3) дискриминације у области спорта. Циљ овог рада је да представи и анализира постојећи нормативни и стратешки оквир заштите од дискриминације у спорту, да испита досадашњу праксу пред надлежним телима и да укаже на савремене тенденције у области једнакости и спорта.

**Кључне речи:** дискриминација, спорт, једнакост на основу пола, поступак у парницама за запиту од дискриминације, парнични поступак.

## INTRODUCTION

Woman in sport is not weaker, but simply different.  
(Mršević, 2000)

Some statements regarding women, men and sports can be taken as an axiom: there are more women than men, globally; however, there are more men in sports, including in leadership and decision-making positions. Consequently, there is an unequal allocation of resources for women's sports and sportswomen – the male norm is taken as the norm for society as a whole, including sports. The following claim is made for the United States: the key leadership roles in sports are held by white, non-disabled, cisgender, heterosexual men (Brassil & Lutz, 2020, referred to in Cunningham, Wicker, & Walker, 2021), and even though members of underrepresented, minority groups frequently represent the majority of the players, leadership roles are seemingly reserved for those who have historically held power<sup>1</sup>. However, this pattern can certainly be transmitted to the European professional sports as well.

Women are seen as fragile, less capable and passive, which affects their capability to participate in sports. The participation of women in professional sports is, often, linked to their sexual identity, and this stereotype can influence the willingness of women to take part in sports. Gender based segregation into male and female categories is based on the concept of fair play. However, this concept can be jeopardised by the unequal treatment of women and men.

This paper aims to: (1) research the current normative framework, on both the national and international levels, regarding gender equality in sports; (2) examine the existing national case law, especially the decisions of the Commissioner for Equality; and (3) point out the latest disputable issues on a global level. Aside from the normative, comparative and historical methods, the case study scientific method is also used in this paper.

The following hypotheses are examined: (1) the unequal position of women and men in sports is recognised on both the international and

---

<sup>1</sup> Women hold only 33% of the general managerial positions within the Women's National Basketball Association (Senne, 2016);

the national level; (2) the Republic of Serbia sets the adequate legal framework for overcoming all forms of discrimination, including discrimination in sports based on gender; (3) the Commissioner of Equality does not often act in the cases of discrimination in sports based on gender; (4) however, whenever he/she acts, he/she finds the complaint founded; and, finally, (5) the discrimination based on sex is caused by and founded in deeply rooted stereotypes and prejudices.

For the purposes of this paper, the term ‘sports’ will be used in accordance with the Law on Sports<sup>2</sup>.

Recreational activities (recreational sports, sports for all, mass sports) are the area of sports that includes the voluntary practice of physical exercise, or practice of sports activities with the objective to rest, refresh, have fun, improve health or improve one’s results and to fulfil one’s need for movement, play or socialising, in all segments of the population (Art. 3. Para. 1. P. 3). Top sports are the area of sports that includes sports activities the objective of which is extraordinary (top) results and sports qualities

(Art. 3. Para 1. P. 4)

The Law on Sports also defines the terms ‘athlete’, ‘amateur athlete’, ‘professional athlete’ and ‘top athlete’, as well as the terms ‘promising’ and ‘talented athlete’. All these categories refer both to men and women.

#### *THE NORMATIVE AND THE STRATEGIC FRAMEWORK*

The most significant international legal act regarding the prohibition of discrimination against women is the Convention on the Elimination of All Forms of Discrimination against Women (hereafter: CEDAW)<sup>3</sup>:

CEDAW entitles States Parties to 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.

(Art. 10, Para. 1. P. g)

Furthermore, all appropriate measures should be taken to achieve the right to participate in recreational activities, sports, and all aspects of cultural life (Art. 13. Para. 1. P. c).

---

<sup>2</sup> Law on Sports, “Official Gazette RS”, No. 10/2016;

<sup>3</sup> CEDAW Convention was enacted in 1979, and the Republic of Serbia ratified it in 1981 (“Official Gazette SFRY - International Agreements“, No. 11/81);

The General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, which deals with temporary special measures, reminds State Parties that temporary special measures should also be implemented in the area of sports (Para. 38).

Not much more is said in the Beijing Declaration and Platform for Action<sup>4</sup>, whose measures on developing non-discrimination education and training include providing accessible recreational and sports facilities, establishing and strengthening gender-sensitive programmes for girls and women of all ages in education and community institutions, and supporting the advancement of women in all areas of athletics and physical activity, including coaching, training and administration, and participation at the national, regional and international levels (Art. 83. Para (m)). Similar measures are recommended for strengthening preventive programmes that promote women's health. The actions taken should create opportunities for women and girls to participate in sport, physical activity and recreation on the same basis as they are made for men and boys (Art. 107. Para (f)). It is recognised that women are underrepresented in decision-making positions in the, *inter alia*, area of sports (Art. 183). Finally, eliminating discrimination against girls in education, skills development and training is set up as one of the strategic objectives in the Beijing Declaration and Platform for Action (Art. 280. Para. (d)).

The Brighton Declaration on Women and Sport<sup>5</sup>, passed after the First International conference on women and sport, underlines the unequal position of women and men in sports, especially considering the disproportion in the general population between women and men:

The Brighton Declaration sets up a few goals: ensuring that all women and girls have the opportunity to participate in sports in a safe and supportive environment which preserves the rights, dignity and respect of the individual; increasing the involvement of women in sport at all levels and in all functions and roles; ensuring that the knowledge, experiences and values of women contribute to the development of sport; promoting the recognition of women's involvement in sports as a contribution to public life, community development and in building a healthy nation; promoting the recognition by women of the intrinsic value of sport and its contribution to personal growth and healthy lifestyle.

(Art. 2)

---

<sup>4</sup> Beijing Declaration and Platform for Action, the Fourth World Conference on Women, 1995;

<sup>5</sup> Only the Serbian Softball Federation is a signatory of the Brighton Declaration on women and sport, Brighton Signatories: Europe | IWGIWG ([iwgwomenandsport.org](http://iwgwomenandsport.org)), accessed 16.4.2023;

On the regional level, the Council of Europe missed the opportunity to emphasise the importance of gender equality in the Revised European Sports Charter in 2021<sup>6</sup>. Even though the Charter contains Article 10, named “The Right to Sport”, it refers only to equal access to sports facilities or to sports activities. However, the Council of Europe did pass the Recommendation on gender mainstreaming in sport (CM/Rec(2015)2), which recognises the gap that still exists between male and female participation in sports, caused by the way that each society treats men and women, and followed by stereotypes that lead to the unequal representation of women and men in sport, including leadership and decision-making positions.

The European Parliament resolution on women and sport<sup>7</sup> is significant because it stated several important pieces of information: whereas in the European Union, 29.5% of men, as opposed to 16% of women, and 63% of young men ages 15 through 24, as compared to 37% of young women of that age, say that they regularly take part in physical or sporting activities; and, whereas participation by female athletes in international competitions has increased, technical and medical staff, as well as referees and officials, are still primarily men (at the Sydney Olympic Games women accounted for 38% of the athletes, 8% of the technical staff, and 4% of the medical staff).

The European Charter for Equality of Women and Men in local life appreciates the role of sports and recognises that women and men might have different attitudes toward sports, as a result of gender-stereotyped attitudes. That is why it encourages women and girls, men and boys to take part in various activities, even those predominantly seen as related to the opposite sex. Further, it calls on sports societies to fight against stereotypical views of men and women.

The Republic of Serbia created an adequate legal framework regarding the prohibition of discrimination (discrimination in sports included). The prohibition of discrimination represents one of the fundamental human rights, raised to the rank of basic principles by the Constitution of the Republic of Serbia<sup>8</sup> (2006, Art. 21). Sex, as one of the protected grounds, is particularly mentioned in the aforementioned Article. Moreover, the State shall guarantee the equality of women and men and develop an equal opportunities policy (Art. 15). Article 20, Paragraph 2 foresees that the achieved level of human and minority rights cannot be reduced. The prohibition of discrimination is elaborated in the Law on Prohibition of Discrimination<sup>9</sup>, as an umbrella law,

---

<sup>6</sup> Revised European Sports Charter based on Recommendation CM/Rec(2021)xx of the Committee of Ministers to Member States on the Revised European Sports Charter;

<sup>7</sup> 2002/2280 (INI);

<sup>8</sup> “Official Gazette RS”, No. 98/2006 and 115/2021;

<sup>9</sup> “Official Gazette RS”, No. 22/2009 and 52/2021;

which, among other personal grounds, prohibits discrimination based on sex, gender, and gender identity (Article 2, paragraph 1, point 1), and provides an entire range of prohibitions related to discrimination in the field of sex:

Discrimination shall be considered to occur in the case of conduct contrary to the principle of the equality of the genders; that is to say, the principle of observing the equal rights and freedoms of women and men in the political, economic, cultural and other aspects of public, professional, private and family life. It is forbidden to deny rights or to grant privileges, be it publicly or covertly, pertaining to gender or gender change. It is forbidden to practise physical violence, exploitation, express hatred, disparagement, blackmail and harassment pertaining to gender, as well as to publicly advocate, support and practise conduct in keeping with prejudices, customs and other social models of behaviour based on the idea of gender inferiority or superiority; that is, the stereotyped roles of the genders.

(Art. 20)

The Law on Gender Equality<sup>10</sup> dedicates one Article to the prohibition of discrimination of women in relation to sports:

Gender equality in the field of sports includes: 1) promoting sports, recreation and healthy lifestyles that maintain and improve the health of women and men, girls and boys; 2) ensuring a balanced representation of the sexes and equal opportunities for engaging in sports activities, as well as implementing the fertility procedure when financing these activities. Special measures implemented in the field of sports include: 1) support for sports programs financed from public funds that contribute to the promotion of gender equality and the deconstruction of gender stereotypes; 2) establishment of a balanced representation of the sexes in the management and supervision bodies in the field of sports that these bodies have; 3) ensuring a balanced representation of the sexes in positions in organizations in the field of sports. Public authorities take extraordinary measures to ensure a balanced representation of the sexes in management bodies and positions in organizations in the field of sports, while respecting the specificities arising from this area of social life.

(Art. 45)

The Law on Sports defines the terms ‘direct’ and ‘indirect’ discrimination and prohibits discrimination of athletes, sports professionals, sports organisations, and other persons participating in the sports system, including hate speech, on any grounds, in an open or hidden manner, based on some actual or supposed personal attribute (Art. 4)<sup>11</sup>. The Law

<sup>10</sup> “Official Gazette RS”, No. 52/2021;

<sup>11</sup> The Commissioner on Equality gave some suggestions on the Draft on the Law on Sports, mostly regarding terminology (Regular Annual Report, 2015);

on Sports sets the goals of increasing the participation of children, young, women and disabled persons in sports activities, popularising women's sports organisations, and giving equal significance to women and disabled persons in sport (Art. 4). Contracts that contain discriminatory provisions are null and void, and the athlete is entitled to indemnification for the damage suffered due to acts of discrimination of an organisation in the area of sports (Art. 11). Furthermore, Serbia founded a National Fund for Sports Development intended to support the promotion of sports recreation, and the promotion and stimulation of practising sports in all citizens of the Republic of Serbia, and especially in children, women, youth and disabled persons (Art. 111). In Article 142, the Law on Sport stipulates the obligation of the State to pass the National Strategy on Sports Development for a ten-year period.

The latest, but also the last Strategy on Sports Development in the Republic of Serbia<sup>12</sup>, was passed for the period between 2014 and 2018. Among others, it sets the following goal: including more women both in playing sports and in management work in organisations in sports, which includes the participation of at least one-quarter of women in administrative bodies and bodies of organisations in the field of sports. The satisfactory outcome regarding this goal would be the increased number of women engaged in sports activities by 10 to 15% by 2018. However, it is hard to follow measures taken to reach this goal, because the last Report on conducting this Strategy was published for the year 2017. This Report, *inter alia*, stated that the Secretary of the Autonomous Province of Vojvodina opened a public call "Affirmation of Women in Sport" and financially supported it with 2 500 000 RSD<sup>13</sup>. The same report indicates that the number of women experts in sports increased, but there is still a huge gap between male and female experts – 929 compared to 10,819. The particular goal – the achievement of sex and gender equality in the military service was reached by two seminars and one event with 42 participants. The Olympic Committee of Serbia also encouraged the promotion of gender equality, through its programme regarding the Tokyo 2020 Olympics. When the duration of the Strategy ended, the Analyses of the Results were presented. They stated that, if the representation of women in managerial positions is taken into account for positions in the field of sports in the period between 2015 and 2018, data shows that a positive growth trend was achieved, and that in 2018, at the municipal level, there were 14% of managerial positions were occupied by women, whereas that share is somewhat lower (11%) at the level of cities. However, despite the positive trends recorded at all levels, the percentage of women in mana-

---

<sup>12</sup> "Official Gazette RS", No. 1/2015;

<sup>13</sup> <https://www.mos.gov.rs>, accessed on 30/4/2023;

gerial positions is low and there is still a lot of space for improvements to achieve the goal of a minimum of 25% of women in managerial positions in sports organisations. If the participation of women among qualified sports experts is taken as an indicator of gender equality in the field of sports, data shows that, in the period between 2015 and 2018, a negative trend was recorded, and the percentage of female experts decreased. Also, it should be noted that the share of women among sports experts is relatively low in the overall observed period, i.e. only one in ten qualified experts was a woman. Based on the data presented, it can be concluded that the participation of women in various fields of sports is at a deficient level, and that it is necessary to develop multiple support programmes for the development of women's sports, recreational sports for women, and training and improvement of sports skills for experts.

Some other researchers came to similar findings. The findings presented in *Women and Men in Serbia* (2020) show that men, more than women, have free time for their activities, including sports. Results of another research conducted for the purposes of the development of The index of gender equality in the Republic of Serbia (2018) concluded that, when it comes to leisure activities (sports, culture, etc.), the share of working men engaged in these activities daily or several times a week is slightly higher than the share of working women (13.9% vs. 11.5%, respectively). The conclusion that The Index came to is that the data unequivocally indicates that the care of others, whether they are members of the household (through household work) or the community (through voluntary and humanitarian activities), is unequally distributed, so that women deal with these activities in greater numbers, which takes time away from those activities that are focused on personal development and well-being, such as sports, cultural activities, etc.

The National Strategy on Gender Equality for the period between 2021 and 2030 does not deal with the issue of sport as a separate topic. It emphasises the importance of sports in the context of accessibility and quality of health protection, and proposes measures that include informing and educating the population about the importance of health protection, disease prevention, and improving the quality of life by leading a healthy lifestyle, and practicing sports and recreation.

The results of the research conducted on a sample of around 8,000 schoolchildren, ages 11 through 12, from Serbia showed that a statistically significant difference was determined between the participation of boys and girls in sports activities. One half of the girls included in the sample had never taken part in sports, which is 20% more in comparison with the boys (Petrović, Momčilović & Pelemiš, 2022). The Commissioner for Equality made a similar statement, and claimed that not enough has been done to encourage girls to participate in sports activities, and that less



than 25% of women take part in recreational activities or sport (Regular Annual Report, 2016).

#### *LEGAL PROTECTION AGAINST GENDER INEQUALITY IN SPORTS*

Aside from the anti-discrimination protection in criminal proceedings, which will not be the subject of this paper, protection against discrimination can also be offered in front of the Commissioner for Equality and in civil proceedings.

The Commissioner for Equality, an independent state body entitled to protect from discrimination, among other jurisdictions, receives and reviews complaints pertaining to violations of the provisions of the Anti-Discrimination Law, provides opinions and recommendations in specific cases, and passes measures in accordance with the provisions of Article 40 of the Anti-Discrimination Law. When the Commissioner receives a complaint, he/she forwards the complaint to the person against whom it has been filed. Having received a complaint, the Commissioner shall establish the facts of the case by reviewing the evidence submitted, and by taking statements from the person who filed the complaint, the person against whom the complaint was filed, and other persons if necessary. The Commissioner gives his/her opinion on whether there has been a violation of the provisions of this Law within 90 days of receiving a complaint, of which he/she informs the person who filed the complaint and the person against whom the complaint was filed. If a violation of the provisions of this Law has occurred, the Commissioner issues a recommendation to the person against whom the complaint was filed, suggesting a way of redressing the violation in question (Art. 35 – 39 Anti-Discrimination Law).

It can be seen from the Regular Annual Reports that complaints in the field of culture, art and sport are rare in comparison with the other areas of life, and amount to 0.7% (2022), 2.8% (2021), 1.2% (2020), 1.5% (2019), and 0.7% (2018) of all complaints.

According to the Regular Annual Reports and the decisions available on the official website of the Commissioner, there were only seven cases related to gender discrimination in sports between 2010 and the present moment. Considering the small number of complaints, they will be presented and analysed using the case-law method.

The first case (1)<sup>14</sup> deals with the issue of gender discrimination by the Recreation Centre. In the complaint, it is stated that the Recreation Centre has two appointments (on Tuesday and Thursday), which can be exclusively used by women. In its response, the Recreation centre did not

---

<sup>14</sup> 07-00-561/2018-02 (24/7/2018);

deny this fact, but explained that those appointments are set aside for women who are victims of domestic violence. Having in mind that the act is justified by a lawful objective, and that the means of achieving that objective are appropriate and necessary, the Commissioner denied the complaint and found no discrimination in this case.

The second case (2) deals with the difference in financing male and female soccer and basketball teams in the same competition rank (Regular Annual Report, 2015). The case of alleged discrimination was made on account of the different scores of the male and female teams in pursuit of the same outcome. Even though it was explained that a difference in scoring actually leads to equality in financing, having in mind the different number of games during one season, the Commissioner found that the goal reached was not the one prescribed by the Regulations, and that there is no proportionality between the means taken and the potential goal. The Commissioner found the act discriminatory and issued a recommendation.

The next case (3) was about the difference in rewarding male and female chess players at the same tournament and in the same competition rank, as well as the use of gender-sensitive language<sup>15</sup>. Even though the claimant stated that the Serbia Chess Federation discriminated against women, the Commissioner actually found that the difference in the rewarded amount is an affirmative measure toward the inclusion of more women in sports. The prescribed prize is the additional one, whereas men and women are entitled to the same primary prize, regardless of gender.

A couple of parents filed a claim (4) against Ice Hall "T", stating that the conditions for the preparation of girls for training are unacceptable and different in comparison with the conditions for boys and men also training in this Ice Hall<sup>16</sup>. However, the Commissioner found that there was no discrimination, because one group was in no less favourable position compared to the other through any act, action or omission.

The next complaint (5) was filed against a branch of the Serbian Volleyball Association, because of their decision to forbid the participation of pregnant volleyball referees in the period between the fourth month of pregnancy and the sixth month after the birth of the baby, at the least<sup>17</sup>. In the complaint, it was stated that this obligatory pregnancy leave is more extended than is the case on the international level, and that this period, together with the after-birth period, put women in an unequal position regarding their advancement to a higher rank and their improvement. In their response, the branch of the Volleyball Association stressed: that the reactions of players, coaches and the audience to referee deci-

---

<sup>15</sup> 07-00-/2021-02 (10/9/2021);

<sup>16</sup> 07-00-577/2019-02 (27/1/2020);

<sup>17</sup> 07-00-112/2013-01 (22/7/2013);

sions are very often unpleasant and cause stressful situations for every referee, as well as that physical contact with players and the ball during warm-ups and volleyball matches, which often happens during the game, is dangerous for a pregnant woman; that no one can compensate the mother and the baby for the period of mutual separation, and that the Volleyball Association does not want to deprive the baby of its natural urge to be with its mother, nor does it want to take responsibility for the consequences of the separation of the mother from the baby due to the refereeing of a volleyball game; and that, during the period of breastfeeding, the mother cannot control the excess milk, nor can this natural phenomenon be hidden by the wardrobe, so if there is an excretion of excess milk during the match, it would be unpleasant for the referee and others in the hall. After examining all the facts, the Commissioner found that denying the right of female volleyball referees to judge in a certain period due to pregnancy and parenthood violated the provisions of the Law on Prohibition of Discrimination.

In the claim filed against the Football Association of Serbia (FAS) (6), it was stated that the FAS committed discrimination by not refunding the amount of money invested in the development of the female players, in comparison with the money invested in the development of the male players<sup>18</sup>. Although the FAS explained that female football is amateur in nature, the Commissioner, while finding discrimination, stressed the popularity of football and the importance the Football Association of Serbia has in our society. Furthermore, the Commissioner recommended that the FSS take care that it acts in accordance with the principle of equality, and that its actions promote non-discriminatory practices when adopting, amending, interpreting and applying the general acts of the FAS in the future.

The last claim (7) was filed against the institution entitled to determine the dates of basketball matches for girls and boys<sup>19</sup>. It was stated that the institution discriminates against the female teams by not giving them appointments during the weekend, and by constantly giving those appointments to the male teams of the same rank instead. However, the Commissioner found no discrimination, and stated that the claim was, among other reasons, filed against the wrong (legal) person.

What do the results of this research show?

Firstly, without doubt, the cases regarding discrimination in sports, and, more significantly, discrimination in sport based on gender, are sporadic. Furthermore, only one claim was filed because of the potential discrimination against one specific person, and all other claims were filed

---

<sup>18</sup> 404/2011, (5/4/2011);

<sup>19</sup> 07-00-00735/2021-02 (12/8/2022);

because of the discrimination against a group of people, usually a team or an organisation. Contrary to the previously set hypothesis, the Commissioner's decisions on whether discrimination was present or absent were almost equal in number.

Except for dealing with complaints, the Commissioner is also entitled to warn against discriminatory acts. This type of warning was made against a soccer coach who made stereotypical offensive statements against a female sport reporter. The soccer coach expressed, in an extremely offensive and verbally abusive way, the typical gender stereotype that women's place is in the kitchen and not in the so-called male world of sports. (The Regular Annual Report, 2018). The Commissioner further made a statement regarding an act of violence toward a young female soccer player, committed by one of the soccer club officials.

The other mechanism of protection against discrimination is civil law protection. A special civil procedure was created in order to protect the victims of discrimination – a person or a group – and it contains special rules different from the rules of governing regular civil procedures (Tasić, 2016, Boranijašević, 2017). Those rules are related to, *inter alia*, the issues of parties, interim measures, the burden of proof, and legal remedies. However, the available data shows that only one case was brought in front of the court, which is in compliance with findings that state that women are less willing to participate in court proceedings (Tasić, 2020). The lawsuit was filed against the FAS, because it did not act in accordance with the recommendation of the Commissioner regarding the investment in female players. The Court found that discrimination was committed.

#### WHAT IS NEXT?

This article did not deal with issues of sexual harassment and sexual abuse of (primarily) sportswomen<sup>20</sup>. However, the fact is that, even in elite sport, sportswomen are exposed to harassment which influences both their physical and mental health, and makes them less competitive.

Meanwhile, the latest preoccupation in the contemporary world of sports is the position of transgender people.

---

<sup>20</sup> One of the latest cases was the sexual abuse of USA gymnastics by the USA women's national gymnastics team doctor Larry Nassar. He was accused of sexually abusing more than 150 women and girls under the guise of medical treatment (among them is Simone Biles, one of the most successful gymnastics of all time). He is sentenced to decades in prison after pleading guilty to seven counts of criminal sexual conduct (<https://www.theguardian.com/sport/2018/jan/15/simone-biles-larry-nassar-sexual-abuse-allegations-usa-gymnastics>, <https://www.pbs.org/newshour/nation/larry-nassar-loses-last-appeal-in-sexual-assault-scandal>, accessed on 5.4.2023);

The case revolving around the world-famous Olympic Runner Caster Semenya raised the questions of sex, gender and the fight against discrimination. The double Olympic Gold medallist missed the Olympic Games in Tokyo in 2021 because she refused to undergo medical testing in accordance with the rules of the World Athletics. World Athletics Eligibility Regulations for Transgender Athletics<sup>21</sup>, effective as of 1 October 2019, state that in order to be eligible to participate in the female category at an International Competition, or to set a World Record in the female category in any competition that is not an International Competition, a transgender female athlete must meet the following requirements: (a) she must provide a declaration, issued in the appropriate form, that her gender identity is female; (b) she must demonstrate the prescribed concentration of testosterone in her serum for one year; and (c) she must keep the serum for the expected period. It is emphasised that the procedure is voluntary, and that the legal recognition of the athlete's gender identity as the athlete's sex or the surgical anatomical changes is not expected.

Even though this procedure is seen as more humane than the humiliating sex verification procedure from 1960, which expected women to stay naked and be examined by female doctors (Kraljić & Drnovšek, 2022), this latest test is seen as no less discriminating, having in mind the impact the results have on the personal life of athletes.

FINA (International Swimming Federation) announced a policy that will only allow athletes who have transitioned before the age of 12 to take part in any of the elite international swimming competitions<sup>22</sup>. The statement emphasises that “without eligibility standards based on biological sex or sex-linked traits, we are very unlikely to see biological females in finals, on podiums, or in championship positions” (Para A).

### CONCLUSION

Sports was traditionally, and still is in many aspects, a male domain. Women still face specific challenges in accessing, participating in and benefiting from sports (Recommendation CM/Rec(2015)2 of the Committee of Ministers to member States on gender mainstreaming in sport – Explanatory Memorandum, 2015).

Through the thorough examination of the different international and national legal documents regarding (1) discrimination, (2) sport, and (3) discrimination in sports, the first hypothesis – that (gender) discrimination in sports is recognised and prohibited is confirmed. Furthermore, by analysing different normative acts – laws and strategies, it can be seen

---

<sup>21</sup> Version 2.0, approved by council on 23 March 2023, and coming into effect on 31 March 2023;

<sup>22</sup> Policy on eligibility for the Men's and Women's Competition categories.

that the Republic of Serbia sets the adequate normative and strategic framework for gender equality in sports. Moreover, the Commissioner for Equality, an independent state body, rarely deals with cases of discrimination in sports, and the share of cases considering sport, culture and art is low in the overall number of cases brought before the Commissioner. However, opposite to the expected results, the Commissioner found discrimination only in half of the filed claims. As seen in one of the claims, stereotypes are still deeply rooted.

Ultimately, it can be concluded that women walked a long path to finally reach even apparent equality in the field of sports, and it would take even more to reach actual equality. While acting to do so, they have to remember that “champions keep playing until they get it right” (Billie Jean King), even though this ‘game’ is combating discrimination, and its prize is equality without boundaries.

**Acknowledgement.** *This paper is the result of the project “The legal and social context of responsibility”, supported by the Faculty of Law, University of Niš (2021-2025).*

#### REFERENCES

- The Analysis of the Realization of the expected outcomes defined by the Strategy for the development of sports in the Republic of Serbia for the period 2014-2018. Boranijašević, V. (2017). *Sudska građanskopravna diskriminacija na osnovu pola. Teme. 4* (2017). 917 – 934.
- Brassil, G. R., and Lutz, E. (2020). *30 Years, Little Progress for U.S. Sports Leagues on Leadership Diversity*. New York: New York Times.
- The Beijing Declaration and Platform for Action, the Forth World Conference on Women  
The Brighton Declaration on women and sport
- Cunningham, G., Wicker, P., & Walker, N. (2021). *Editorial: Gender and Racial Bias in Sport Organizations*.
- Constitution of the Republic of Serbia, “Official Gazette RS”, No. 98/2006 and 115/2021.
- Convention on the Elimination of All Forms of Discrimination against Women  
“Official Gazette SFRY - International Agreements”, No. 11/81.
- European Parliament resolution on women and sport (2002/2280(INI)).
- The European Charter for Equality of women and men.
- FINA Policy on eligibility for the Men’s and Women’s Competiton categories.
- General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women.
- The Index of Gender Equality in the Republic of Serbia*. 2021. Belgrade. Statistical Office of the Republic of Serbia.
- Kraljić, S., Drnovšek, K. (2022). Gender Determination in Sport. *Zbornik radova Pravnog fakulteta u Splitu*. 1 (2022). 41 – 58.
- Law on Gender Equality, “Official Gazette RS”, No. 52/2021.
- Law on Prohibition of Discrimination, “Official Gazette RS”, No. 22/2009 and 52/2021.
- Law on Sports, “Official Gazette RS”, No. 10/2016.

- Men and Women in the Republic of Serbia.* (2020). Belgrade. Statistical Office of the Republic of Serbia.
- Mršević, Z. (2000). Žene i sport: ugrožena ženstvenost. *Mapiranje mizoginije u Srbiji: diskursi i prakse.*
- The National Strategy on Gender Equality for 2021 – 2030.*
- Petrović, J., Momčilović, V., Pelešić, V. (2022). Gender as a determinant of parents and children's attitudes towards the inclusion of sport branches into the elementary school curriculum. *Teme.* 4 (2022). 851 – 867.
- Commissioner for the Equality. *Regular Annual Report.* (2022).
- Commissioner for the Equality. *Regular Annual Report.* (2021).
- Commissioner for the Equality. *Regular Annual Report.* (2020).
- Commissioner for the Equality. *Regular Annual Report.* (2019).
- Commissioner for the Equality. *Regular Annual Report.* (2018).
- Recommendation CM/Rec(2015)2 of the Committee of Ministers to member States on gender mainstreaming in sport – Explanatory Memorandum,* 2015.
- Senne, A. J. (2016). Examination of Gender Equity and Gender Participation in Sport. *U.S. Sport Academy.* www.thesportjournal.org.
- Strategy on Sports Development in the Republic of Serbia, "Official Gazette RS", No. 1/2015.
- Tasić, A. (2020). Pravo na pristup sudu – rodna perspektiva. *Teme.* 2 (2020). 621-635.
- Tasić, A. (2016). *Postupak u parnicama za zaštitu od diskriminacije – doktorska disertacija.* Pravni fakultet Niš.
- World Athletics Eligibility Regulations for Transgender Athletics,* Version 2.0, approved by Council on 23 March 2023, and coming into effect on 31 March 2023.
- <https://www.mos.gov.rs>
- <https://www.pbs.org/newshour/nation/larry-nassar-loses-last-appeal-in-sexual-assault-scandal>
- <https://www.theguardian.com/sport/2018/jan/15/simone-biles-larry-nassar-sexual-abuse-allegations-usa-gymnastics>

## **„ДОЂОХ, ВИДЕХ, ПОБЕДИХ“ ДИСКРИМИНАЦИЈУ НА ОСНОВУ ПОЛА У СПОРТУ У РЕПУБЛИЦИ СРБИЈИ - ДА ЛИ СУ ЖЕНЕ ЗАИСТА ИЗВОЈЕВАЛЕ ПОБЕДУ?**

**Анђелија Тасић**

Универзитет у Нишу, Правни факултет, Ниш, Србија

### **Резиме**

Иако нема националног ни међународног документа који би допустио или охрабрио прављење неоправдане разлике између мушкараца и жена, чињеница је да постоје неке области друштвеног живота које се и даље сматрају мушким. Спорт је, свакако, на врху те лествице. Истраживања показују да су, од најранијег периода, дечаки више укључени у бављење спортом од девојчица, те да чак и у женским спортским организацијама мушкарци заузимају претежан број руководећих места. Стога је овај рад био усмерен на анализу важећих законских, подзаконских и стратешких докумената на међународном и националном нивоу који се тичу (1) дискриминације уопште, (2) организовања спортских активности и (3) дискриминације у спорту на основу пола. Да би се установило у којој мери постављени нормативни оквир заиста и служи заштити од дискриминације, анализирана је доступна пракса Повереника за заштиту равноправности како у погледу мишљења и препорука донетих на поднете

притужбе, тако и у погледу изјава и саопштења која је Повереник издао. Такође, констатовано је да је, од почетка важења Закона о забрани дискриминације, Закона о равноправности полова и Закона о родној равноправности, поведен само један судски поступак који се тиче дискриминације у спорту на основу пола. Напоследку, уочени су и представљени нови изазови у погледу дискриминације у спорту на основу пола и рода, а који се тичу положаја трансродних особа.