



AURORA VESTO

CIVIL LAW FRAMEWORK ON GENDER IDENTITY AND COMPETITIVE SPORT: THE SEXUALISATION PROCESS, TRANSEXUALISM, TRANSGENDERISM, AND INTERSEXUALITY

Gender identity, as an expression of personal identity, constitutes a fundamental right that is presupposed, recognised, and protected under the Constitution. The legal process of gender reassignment amends the identity recorded in the civil status registers, thereby introducing a discontinuity with the natural fact of birth. Within this legal context, the sexualisation process is conceptualised as a juridical fact in the strict sense, independent of the will of the individual, thereby advancing a legal and cultural framework that endorses gender reassignment even in the absence of surgical intervention modifying or extinguishing primary sexual characteristics.

Recent jurisprudential developments from the European Court of Human Rights in Strasbourg, coupled with competitive events at the Paris Olympic Games, underscore the necessity to reconcile the competing interests of athletes, ensuring respect for their dignity and fundamental rights while maintaining sector-specific regulatory rationality to safeguard fair competition. This legal balancing act seeks to protect both cisgender athletes and those who are trans or intersex.

The International Olympic Committee (IOC), through successive regulatory frameworks, has delineated specific provisions governing the participation of trans and intersex athletes in competitive sports. Initially, the IOC adopted testosterone levels as the determinative criterion for eligibility in competitive events. However, since 2021, the IOC's approach has shifted towards more inclusive regulatory policies, affirming genuine "gender self-determination" and opposing the discriminatory effects perpetuated by previous regulatory practices. Notwithstanding this shift, ongoing media discourse continues to question the perceived failure to observe fairness principles, particularly in instances where cisgender athletes compete against transgender or intersex athletes.

This entire issue must be viewed in light of recent constitutional amendments recognising sport as a fundamental human right. Accordingly, sport, like other social formations, is entrusted with performing a "socializing", "educational" and "health-promoting" function, irrespective of an individual's physical or mental conditions. In this regard, sport must serve as a vehicle through which individuals may express their personality, personal identity, and, more specifically, their gender identity.