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Moral and legal dilemmas regarding determining sex in sport

ABSTRACT

The aim of this paper is to present an issue that still creates a moral dilemma in determining sex. It includes some anthropological differences of men and women, the problem of ensuring fairness of competition and on the other side the right of preserving privacy, which is an inalienable human right. The paper cites the meaning of a sex and gender identity and the examples and consequences of not specifying the assessment and determination of the sex and the opens the polemics about the effects of media pressure on unproven assumptions regarding the sports results.

Key words: sex, anthropological differences, sex, gender, sexual identity, media, law.

Introduction

Social phenomenon of sport, which is today omnipresent, has at its beginning been a privilege of males, and in the process of gaining equality it has been adapting and is now divided into a male and female sport.

This is the source of misapprehensions which generate a problem and require a more thorough approach in determining sex.

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Biological definition of sex and sex boundaries

In nature there are three possible categories which participate in biological reproduction. There are two basic sexes, male and female with separated reproductive roles and hermaphroditic with the ability of self-reproduction. There is a way of reproduction called asexual (cell division and cloning which may be natural – plant, bacteria... and unnatural – human influence – cloning) but not in human.

Nowadays, sex can be changed through hormonal therapy and surgery. However, the genetic difference remains (male has a Y chromosome) and this is what sexual identity is related to.

There is also a category of socially constructed sex, which is called gender. We can define SEX as the totality of physiological and psychological characteristics which differ male from female among individuals within the same species.

GENDER is the individual construct of personal identity, expression which confirms, negates and surpasses socially given and formed sex and gender roles of men and women, as well as the whole bipolar basis of male and female. Related to this are identities related to sex and gender.

Sexual identity implies personal sexual self-image which is not necessarily dependent on sex defined by birth. Sexual identities include a woman, a man, a transsexual person, and intersexual person, as well as identifying according to sex.

Gender identity replies personal gender self-image, not necessarily related to sex attributed at birth, and these include, female, male, transgender and identifying according to gender.

The reality imposes some other non-defined categories which do not belong to the field of already stated biological divisions, but are products of biological and social anomalies (degeneration). They are a part of our everyday life which we should, in the context of basic human rights and freedoms, accept as normal. Reality also imposes a different dimension as a justified counter-balance, intolerant, selective dimension, dimension of instinctive behavior. Instinct makes us reject any anomalies which disturb the evolutionary rule of the selection of "the best", "the strongest", "healthy", "clean" and "right" genetic code and isolation of something that does not belong into that category.

Some specific differences between males and females

Sport is still divided only into men and women sports, but not according to gender. Important morphological and functional differences between men and women are genetically preconditioned. The structure of female chromosome is of xx type, and male xy. Depending on the type of chromosome, the bigger or smaller amount of female and male chromosomes discharge, which defines secondary characteristics of the sex, as well as the built and functional abilities of the organism. Anthropological differences between women and men are an objective factor which justifies the division on the basis of sex which seriously influences the final result in sport in which most women have incomparably worse results.

Anthropological and bio-psychological differences:

- Women are in average 13 cm shorter and 16 kg lighter than men (Wilmore and Costill, 1997)
- Ratio of longitudinal dimensionality of torso to legs is greater, shoulders are narrower and less developed, hips are wider (Medved, 1987)
- Lumbal lordosis more frequently occurs on women's vertebra
- Women are more flexible
- Muscles are less developed in women and they consist of 33%, and 40% at men.
- Maximum oxygen intake is 8-12 % less for women (Wilmore and Costill, 1997).
- While menstruating, the amount of iron in blood serum reduces.
- When women undertake long term activities they oxidize more lipids, and less carbohydrates (Tarnopolsky, 2000)
- Men show a greater level of extrinsic motivation, while women show a greater level of intrinsic motivation. (Johansson and Nordenhall, 1988).

Differences between motor and functional abilities:

- Research of the effects of physical exercise on a female organism has removed any doubts on harmful effect of physical activities on the reproductive and other organs.
- When testing the strength, women fall quite behind men in results, particularly regarding the upper body strength (relative in ratio to their weight, women have shown 46% less strength in bench press, 92% in leg press, and 65% in snatches):
- In sports requiring aerobic endurance, the increase in results for women is evident. This is in favor of the presumption that in the future the time needed for

the same distance to be run will be equal for both men and women (Drinkwater, 2000). Surveys carried out on ultra marathon runners confirm this hypothesis.

- Studying of equally trained men and women has established that when it comes to distances which are greater than 42.2 km, the difference between sexes becomes irrelevant, and when it comes to distances greater than 70km or 90km, women might achieve better results than men.

These differences create a series of dilemmas, one of which regards the determination of sex

Sex determination

The Olympic Games have strongly influenced the development of the results quality, as well as the medical protection of the athletes. Sports medicine with the aim of protecting athletes health faced new problems after the WW2, and those included sex determination and taking stimulant substances. Sex determination, at first glance a routine procedure, faced the unpredictable and complicated problems at the European Athletic Championship (Oslo, 1964), which are still present. Two "women athletes" declared, after winning medals, that they were, in fact, men. For organizers this was an unplanned oversight and a fiasco. This resulted in measures which prohibited males to compete in women's categories. The first method of sex verification was the introduction of a gynecological exam, and later a method of microscopic mouth lining scrapings. Today, methods of genetic testing, testing for the presence of unnatural amount of hormones of the other sex, etc. are used, but the anomalies of chromosomes can mislead and provide wrong results.

Dilemma when determining sex, primarily with women, has always presented a problem at sports competition. Although this occurs rarely and is registered and presents problem mostly at the highest level competitions, it still severely disrupts moral dimension in sport. The problem is triggered at the moment when the defeated individual or a team suspects the honorable victory and warns about the authenticity of the sex based on looks (butch), moves, deep voice, above-averagely suspicious result.

Pressure to expose women in some sports to sex determination tests and in this way set a regulation, comes from women athletes who have been defeated, and believe their defeat to have been dishonorable and unequal precisely because of those doubts. By implementing control and sex determination, many women athletes withdraw from the competition before it even starts, some whose sex was questioned have later become mothers. As opposed to males, females are during the sex determination forced to undergo unpleasant, insulting and vulnerable tests.

Frauds and moral sides

Human beings have in their nature a series of inborn conscious and unconscious instinctive systems which ensure the survival and reproduction. So, they are continually, more or less, in some kind of a conflict with the possible competition so it is unavoidable that throughout life they have to, either physically or mentally, confront – fight. Sooner or later they are forced to be exposed to confrontation regardless of the result, with the aim of self-protection, or even better, victory. If a human being is in a position in which his or her possible defeat would signify the end of his or her survival he or she is justifiably forced to select any means which justify the survival, as the basic life goal, of himself as an individual or his group. He or she can achieve this as an individual, but also as a smaller, bigger or ideologically big group – e.g. region, nation, country.

A person has reached, as a social being, his civilized state by establishing certain social norms based on his or her attempts to survive, which has in everyday life been regulated by a legal system. Nevertheless, a legal system, which is not inviolable neither always just, is not always able to have all the survival relations under control. On the contrary, it is becoming more and more difficult and complicated.

Unfortunately, in the world of sport, due to difficulties which may come up while determining sex boundaries, frauds and injustice which disturb and degrade basic ethical principles and generate injustice and frustration have appeared. The problems of sex determination is obviously quite a complicated procedure, particularly when it surpasses boundaries of medical sex determination, and when it is reduced to egos of particular interest groups through media and wider public. One of the reasons are sports organizations, i.e. professional federations, which have never specified when a woman becomes a man and the other way around.

Although this occurs rarely and is registered and presents problem mostly at the highest level competitions, it still severely disrupts moral dimension in sport. Naturally, being a man and present oneself as a woman in order to win, constitutes a fraud, impersonation. This leads to possibilities of new frauds which would shake the grounds of seemingly established system of ethics in sport. The problem is triggered at the moment when the defeated individual or a team suspects the honorable victory and warns about the authenticity of the sex based on looks (butch), moves, deep voice, above-averagely suspicious result.

The history of sport states a series of intentional or unintentional cases in which women athletes' results were disputed because of the suspicions regarding their fe-

male sex. The following six examples will give the breadth and possibility of frauds but also wrong judgments regarding sex determination.

Example 1. (Jolanda Balaš and Fanny Blankers-Koen)

These women athletes who were winning convincingly, were under strong suspicion regarding their sex. At the end of their careers, they became pregnant and mothers. This is the example of unsuccessful misleading based on exceptional results and suspicious appearance.

Example 2. (Stanislawa Walasiewicz)

This winner at the 1932 Olympic Games in Los Angeles at the 100m race was a confirmed male, which was accidentally discovered during the autopsy after her tragic death in 1980. The Athletic Federation has never erased her achievement.

Example 3. (Santhi Soundrajan)

This athlete has been stripped of her silver medal won at the Asian Games at the women's 800m race, but a gender verification test identified her as a male. This has had serious psychological consequences which resulted in her attempt to commit suicide in 2007 by trying to poison herself.

Example 4. (Herman Ratjen)

This athlete wins fourth place at the 1936 Berlin Olympic Games, but in a female category under the name of Dora Ratjen. He took the responsibility for the fraud and confessed it after more than ten years and tried to justify on the basis of the pressure in the name of the superior race.

Example 5. (Ewa Klobukowska)

This woman athlete has been known as the first one to have failed the gender verification test. At 1964 Tokyo Olympic Games she won the gold medal in the women's 4x100 and the bronze medal in the women's 100m. A year later she set a world record in the 100m sprint. At the 1966 European Championship she won two gold medals in the 100m sprint and the 4x100m relay and the silver medal in the 200m sprint. In 1967 she failed gender test and IAAF stripped her of all medals and erased all her results. A few years later she gave birth to a son which threw a great deal of suspicion on the IAAF's decision and the applied method of sex determination.

Example 6. (Caster Semenya)

At the young age of 18 she won gold in the women's 800m at the 2009 World Championship in Berlin. She underwent sex determination test following the semi-final race because of her appearance. The results were inconclusive and she won the final race. Her female sex has been disputed even though the test results have still not been publicly published, but she has been banned from competitions until their publication.

This last example, related to a young South African female middle-distance runner, has become in a short period of time very complicated. The complications have arisen from the engagement of legal experts who have built the protection of dignity and privacy of the young athlete, as well as her right to her result. The International Association of Athletic Federations (IAAF) has also hired a team of lawyers who wanted to defend the boundaries of determining female sex and credibility of the result, while trying at the same time to respect the privacy of the young athlete.

Chronological timeline of certain developments and statements.

The International Association of Athletic Federations (IAAF) stated that it had required a gender verification test for Caster Semenya just before the beginning of the final race, which provoked negative reactions in South Africa and worldwide.

The case of Caster Semenya was covered by some papers in sensation-seeking manner and with harsh headlines, showing no humanity nor dignity, which brought public to her side, regardless of her sex.

"Our sports lady" was just one of the signs that were waiting for her.

The Minister for Women Children and Persons with Disabilities said: "Thank you for hoisting our flag high. Thank you for bringing South Africa back to the map of the world."

Semenya's legal team had reached an agreement with the IAAF's legal team to keep her medal and the prize money, which proved the involvement of legal dialectics. IAAF's secretary general refused to comment the test results, but did comment that it is "clear that Semenya is a woman, although perhaps not 100%". "It should be seen if she has had any profit related to her intersexuality."

Athletics South Africa (ASA) president Leonard Chuene admitted that he did have the gender verification test results (he resigned). The team physician Harold Adams advised Semenya to withdraw from the race based on the test results, but Chuene made the decision not to do it. Reasons can only be speculated. But they definitely do not belong to the category of morality.

Conclusion

The chronology of developments between the IAAF and ASA, which has so far brought forward many dilemmas in a seemingly simple case, is evident. Legal structures were involved, human rights were questioned, a dead race without results took place. This case has not yet been closed, but we have to be brave and respond that the biggest losers, apart from the silver medal winner athlete, are disrupted moral norms which have been established in sports ethics, and sport itself.

Many athletes, perhaps the majority, have victory as the basic aim of their competitions. Victory brings glory, respect, admiration, and every word uttered by a winner suddenly becomes significant and as important as the achieved result. In sport, the winner wins money, a lot of material values, expensive cars, kilograms of gold, privileges, a small wealth. Is the aim to leave that to somebody else? Contemporary civilization wants victory at any cost. What are doping and frauds if not evidence that the victory is the only aim. How sweet is victory, and how bitter (and a source of negative stress) defeat?

The other side of the medal tells as that victory is an imposed material value because above victory there is an immaterial victory, a victory to remember. Sports result has a time limited value which lasts as long as the continuity of good results of a team, or successful career of an athlete or a sports result.

By combination of circumstances, to turn one's back to the victory, to be stronger than the victory with the purpose of preserving and promoting personal ethical views and showing high moral, human characteristic at the brink of victory and glory often has more strength than the sports result itself.

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