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*Female and gender discrimination in professional or amateur sports****

ABSTRACT

In this essay, the authors face gender discrimination issues upon entry into sports championships. In the first part, the focus is mainly on transgender and queer transgender people with particular reference to the need by sports fields to disregard the social or legal identity currently centered on the psychological-character gender. In the second part, the authors deal with the issue of whether the lack of professional-category protection for Italian female athletes amounts to a form of gender discrimination, or whether instead constitutes a natural consequence of the legal principles, according to which, the Italian legal system differentiates practicing sport between professional sports and amateur sports. Undeniably, in the last twenty years there has been an evolution of the phenomenon in the direction of greater gender equality in terms of sports participation, as well as greater consideration by the media and interest attributed to the competitive performance of women athletes. However, the essay concludes that in Italy acknowledgement of women's professional football, seems to relate more to issues of economic sustainability, than to discrimination.

KEYWORDS

Transgender – Discrimination - Gender gap - Women's soccer - legal rights - Protection of gender rights - Freedom of science and the manifestation of thought

1. Transgender and sport: a paradox? - 2. Sexual cataloging in sport as exclusively aimed at reserving the balance of competitions. - 3. Gender gap and women's soccer - 4. Discrimination between professional and amateur sports in Italian law - 5. Changing views on people who work in sports – 6. Sport and re-evaluation of the culture of difference

1. Transgender and sport: a paradox?

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The condition of transgender people in sport leads to paradoxical outcomes, as sport, which is traditionally a very inclusive phenomenon opposed to any form of discrimination, may end up mandating excessively narrow forms of classification for transgender people.

Indeed, a very important value of sport is its inclusivity: it's an always-open door for everyone. Sport's traditional role has precisely been to free people from situations of subordination and vulnerability.

Sport has helped breaking through barriers of race and citizenship. Sport has also played a paramount role in overcoming subcultures such as racism and discrimination. Indeed, sport features a universal character: it is communication through gestures that are the expression of a unique dimension, a non-sizeable human heritage. Here the reference may go to Bausinger¹, but I prefer recalling the movie masterpiece "Escape to victory", where the characters understand that they save themselves by playing the game and not by running away².

The assertion of such values is amplified in magnitude when it involves high-media impact sports.

During the Tokyo Olympics just recently concluded, 185 athletes came out of the closet, self-identifying as LGBTQ³.

But precisely in relation to a numerous part of this community, sport's capacity to overcome barriers and discriminations seems problematic, especially considering gender dysphoria⁴.

The last Olympics have also been at the centre of a heated controversy regarding a transgender weightlifter (the New Zealander Laurel Hubbard), born a man and later self-identified a woman without changing primary sexual features. It was the first time in the history of the Olympic Games that a transgender took part in the competitions⁵.

Trans-genders are those identifying themselves in the opposite sex without however feeling any incompatibility with their primary sexual features, sometimes not even with their secondary ones. We can also include those who do not identify with neither the female nor the male gender, the so-called gender queers⁶.

Such situations clash with the need for fair competition, which seems to be protected exclusively within a sexual-binary system.

We refer to a sexual dualism that for the most features a correspondence between gender identity and biological sex, however modified following surgical or hormonal treatment.

The international Olympic committee holds dear such criterion, establishing that membership to one category or the other must follow hormonal data. So, competitors in male categories must have male hormones (especially, testosterone) above a certain threshold notwithstanding gender identity from a social or legal point of view, both of which, nowadays rather than the biological data, take

¹ Exemplary, Bausinger 2008 (Pisa): 129; Id. 2008 (Roma): 154. We remember also Carrington, 2001: 141.

² A. Murray Scott, "Escape to Victory - Still the greatest football movie ever made", in *thelab.bleacherreport.com*, 30 Sep 2020. For legal literature see Cappuccio 2019: 15.

³ "At least 186 out LGBTQ athletes were at the Tokyo Summer Olympics, more than triple the number in Rio", in *outsports.com*, 22 September 2021, specifying that «at least 185 publicly out gay, lesbian, bisexual, transgender, queer and nonbinary athletes were in Tokyo for the Summer Olympic Games, more than triple the number who participated at the 2016 Rio Games» with the list and the specialties of all 185 self-declared athletes belonging to the lgbtq movement.

⁴ Dworking-Messner 2001: 17.

⁵ "Weightlifter Laurel Hubbard will be first trans athlete to compete at Olympics", in *Theguardian.com* 21 June 2021: «Hubbard's selection has already sharply divided opinion, with some noting that it has meant that the 21-year-old Tongan weightlifter, Kuinini Manumua, who would have otherwise qualified, has missed out on the Olympics. Hubbard, who lived as a male for 35 years, did not compete in international weightlifting until transitioning. Since then, however, she has won several elite titles».

⁶ We can remember Connel 2005; Butler 1993 and 2004; Fausto-Sterling 1985; Rogers 2000; Jordan-Young 2011. All of them agree that gender identity is increasingly linked to psycho-relational perception and is independent of sexual features.

into account the gender perceived at the psychological-relational level without imposing any surgery, in many countries not even merely hormonal ones⁷.

The resulting effect is that people acknowledged as women in their countries might end up competing amongst men, or vice-versa. Would it be discriminatory? Would it be gender boundary?

At first sight, it seems so, as sport would sometimes compel athletes to discard their gender identity and to compete in the other category⁸.

2. Sexual cataloging in sport as exclusively aimed at reserving the balance of competitions.

However, from a functional point of view, conclusions may differ.

Indeed, discrimination scales back if sport categories are intended as purporting exclusively to fair competition. Keeping in mind, for instance, the categorizing effect of weight in boxing, we see that hormonal data are relevant exclusively in order to balance the fairness of the competitions⁹, rather than to constrain people in specific gender identities. Sport knows no sexual duality as it has traditionally been conceived in legal systems to distinguish roles within either families or societies.

Rather sex enters sport only to ensure fair and well-balanced competitions. In other words, it is a problem that must be faced and solved on a strictly biomedical level in order to establish the characteristics of physical power¹⁰.

Sport regains its (traditional) values of inclusivity, struggle against discrimination, protection of the most vulnerable ones, and can contribute to posing the foundations for a cultural shift, in which sex-biology data must not pose any obstacle to finding and affirming one's own gender identity.

However, one problem seems insurmountable: according to scientific evidence, the mere equality of hormonal data (especially testosterone) does not guarantee fair competitions if some people's genetic histories are imprinted with other level of masculine features. This is the debate in which the recent controversy about the New Zealander weightlifter occurred¹¹.

Perhaps because of the conundrum, perhaps because of the disagreement amongst the various countries, the international Olympic committee in the recent games has decided to let countries decide

⁷ The legal change of sex is independent of any modification of the sexual characteristics in the State of New York and in other countries of the western area; for a comparative review, Serio 2018: 473; Fontanarosa 2018: 709. As far as Italy is concerned, the orientation according to which the modification of the primary sexual characteristics is not necessary, but the modification of the secondary sexual characteristics through hormonal treatments is still required: Cass., 20.7.2015, n. 15138, *Corriere giur.*, 2015, 1355, with comment of Bartolini F., *Rettificazione del sesso e intervento chirurgico: la soluzione in un'interpretazione "costituzionalmente orientata"* and also *Dir. famiglia*, 2015, 1279, with critical comment of Cavana P., *Mutamento di sesso o di genere? Gli equivoci di una sentenza* (this A. deems the orientation incongruous, deeming it necessary to modify the primary characters as well). On this point, the Constitutional Court also intervened in an adhesive sense to the Cassation: C. cost. 5.11.2015, n. 221, *Famiglia e dir.*, 2016, 646, with comment of Spangaro A., *Anche la Consulta ammette il mutamento di sesso senza il previo trattamento chirurgico* and also *Nuova giur. civ. comm.*, 2016, I, 589 with comment of Caricato C., *Rettificazione di attribuzione di sesso e modificazione dei caratteri sessuali all'esame della Corte costituzionale*.

⁸ Already underlines the issue Matteo 1986: 417.

⁹ In this regard, let us recall the analysis conducted by Donnelly P.- Donnelly M.K., *The london 2012 olympics: a gender equality audit*, 2013, in www.sportpolicystudies.ca

¹⁰ Ljungqvist - de la Chapelle - Ferguson Smith - Genel - Carlson - Ehrhardt - Ferris, 1993: 305.

¹¹ Reeding more in "Weightlifter Laurel Hubbard will be first trans athlete to compete at Olympics", in *Theguardian.com* 21 June 2021, stating that «*the IOC's decision has recently come under fire after scientific papers were published which said that people who have undergone male puberty retain significant advantages, including in power and strength, even after taking medication to suppress their testosterone levels*».

their own categorization criteria¹², thus assuming a different position from that taken in past editions¹³.

This was a dangerous decision, which calls into question the above-mentioned universal value of sport. Sport must have the power to overcome potential sub-cultures spread or endemic to each country (suffice it to think of Afghanistan), it cannot abdicate its role by leaving each country the decision on sensible values, such as people's self-actualization.

However, so far in all cases involving trans-genders, federations have applied the criterion of hormonal thresholds (*in primis*, testosterone). Therefore, it is necessary to understand the actual relevance of such decision by limiting its value to the purpose of ensuring fairness in competitions.

Such approach can be useful to overcome discriminatory treatments that sometimes occur in sport between male and female genders.

A reconstruction is emerging according to which sexual cataloging, in sport, has an exclusively biological and natural value that is correlated to the bodily and primordial dimension in which the sporting phenomenon necessarily continues to pose, but which has nothing to do with the cultural and social dimension¹⁴. Therefore, just as the forms of social, cultural, and legal classification that today preside over the juridical organization of coexistence between people remain unaffected, it makes no sense to pose a problem of discrimination or of cultural backwardness. The only aspect on which the fairness judgment must be conducted is whether or not the fairness of the competition is ensured.

The superior arguments also lead us to reflect on the issue of so-called «discrimination» between men and women. It is a question of whether the different classification of the relative disciplines has to do with the distinction between men and women - which instead, as we have seen, has an exclusively natural character - or depends on other factors. The following paragraphs will discuss the latter hypothesis.

3. Gender gap and women's soccer.

For much of human existence, sport has been synonymous with male sport: in fact, female athletes have encountered many obstacles in accessing and finding recognition in competitive competitions for the first part of the twentieth century, entering it starting from the 1936 Olympics.

The separation of the sexes within competitions was founded on what was then (and still is) considered as a fundamental principle of competitive justice. The very essence of XX century sport was based on the assumption that people can be classified in the two male/female categories and that men had significant biological advantage over women in sport.

In the last twenty years, there has been an evolution of the phenomenon in the direction of greater gender equality in terms of sports participation (also in typically male activities), consideration by the media and interest attributed to the competitive performance of female athletes.

The binary construction of genders, based on the male/female division, in the name of the cardinal principle of sport. However, the current competitive balance shows its limits in encountering subjectivities that challenge this construction of gender, highlighting the arbitrariness of the categories used to distinguish masculine and feminine¹⁵.

The postmodern era, in fact, broke with the traditional representations of masculinity and femininity, and proposed to overcome dualisms and opposition in the name of an alternative synthesis

¹² Pavitt M., *IOC acknowledge current transgender guidelines out of date with new framework to be revealed*, in *insidethegames.biz*, 31 July 2021.

¹³ See for example Dabholkar 2013: 55.

¹⁴ In the same perspective, D'Aloia A., *Il terzo sesso*, in *www.confronticostituzionali.it*, 26 april 2014.

¹⁵ Reale-Tuselli 2020: 349.

of opposites. The crisis of traditional categories questions the sex-gender system, based on precise meanings of masculine and feminine. The conceptual crisis of patriarchy (as a totalizing system, not at all flexible and strongly dichotomous) allows us to see the overcoming of that system of androcentric explanation in which "[...] men have been assumed as humanity (people) in general"¹⁶.

On these premises, nowadays we see that contemporary Western society on the one hand continues to construct gender as polarized and well defined on the basis of biological difference; on the other hand, through de-differentiating processes, it tends to underline the multiple possibilities of deconstruction of gender identities. Shifts, hybridizations, androgynous models are nowadays admitted, as well as the possibility of expressing oneself as masculine women and feminine men without feeling marginalized; the opportunity to express attitudes, behaviors and traits of both genders is realized, in roles that were previously considered to be the exclusive competence of the opposite gender.

With specific reference to female football, although it has experienced several controversial issues¹⁷, it should be noted that it is currently the team sport most played by women throughout the world, both on a professional and amateur level. In fact, membership in Italy has grown over the last ten years by 40 percentage points¹⁸. Considering the steady increase in women's participation in Italian soccer and the ensuing media attention¹⁹, along with an increasing number of successful matches²⁰, it is surprising that legal rights and financial compensation are not yet comparable to male counterparts athletes. To this day, female athletes still experience significantly less and different media coverage than their male counterparts²¹ and women remain under-represented in the decision-making bodies of sports institutions, both at a local and national level, and at a European level and worldwide²².

The fact that women have not been able to qualify as professional athletes raises various issues in ensuring proper pensions and insurance, besides the lawful termination of the contract in case of

¹⁶ Hearn 1992: 1.

¹⁷ Interest in women's soccer began to grow on the football fields in Scotland and England with impressive numbers: in 1920 in England there were approximately 50,000 spectators present for the match played by Dick, Kerr's Ladies (which was a team made up of factory workers who were responsible for making munitions for the First World War to raise funds for wounded soldiers) Nevertheless, for about 50 years the Football Association opposed this movement and prohibited the English, and those affiliated with them, from allowing their fields to be used for women's soccer matches. This opposition was based on the statement that the game, as played by the women athletes, was unappealing.

¹⁸ In *www.figc.it* from 1985 to 2017 the number of women soccer players, official members of European Soccer Federations, increased by five times, from approximately 239,000 to 1,365,000 women players, and women's soccer has now become the most important team sport, played in 40 percent of European countries, over double the 19 percent of Volleyball, putting it into second place.

¹⁹ The support of Italian fans for the National women's team has been confirmed by the high ratings for the World Cup FIFA 2019, 20.8 million viewers and a media share of 27.03% between Rai 1 and Rai 2 television channels for the five matches in France. Record numbers on the web and social media as well - from a study carried out by Polk & Union on data from Talkwalker, a social media analytics and monitoring platform, the movement, in just days from its launch about the National women's soccer team, on social media, gained over 151 thousand mentions with the hashtag #ragazzemondiali (#worldcupgirls) and, considering only the three major social media networks, a reach of approximately 191.9 thousand single accounts, generating over 72.2 million impressions/views.

²⁰ Since June 8th, 2018, the National women's soccer team qualifies for the World Cup FIFA 2019 in France, twenty years after the last time for the Italian National Team (Azzurre) in the World Cup. Italy, at the end of the Championship, will earn a place, for the first time, in the semi-finals, winning their round, beating Australia and Jamaica, passing over China, to then lose to Holland who was destined to go on to the finals, losing to the USA.

²¹ Scheadler T. - Wagstaff A., Exposure to Women's Sports: Changing Attitudes Toward Female Athletes, The sport journal, 2018, in *www.thesportjournal.org*.

²² European Institute for Gender Equality, *Gender equality in sport*, 2017, in *www.eige.europa.eu*.

pregnancy²³. In this difficult situation, some Italian athletes attempted to find a partial solution to the problem by enlisting as military athletes, as those enjoy a guaranteed salary, rights to a pension and leave pay (TFR), rights to maternity leave, and a secure future once they finish their competitive sports careers.

Instead, in other legal systems, relevant laws have been passed to protect the rights and conditions of athletes, thereby encouraging Italian players to go abroad²⁴. In France, for example, the National Football Federation has put all professional women athletes from their Division 1 Feminine on equal standing with male athletes. Most recently, even the Spanish Superior Council of Sports has decided to consider the women's major league on the same level as professional championships starting with the 2021/2022 sport season. Poland allowed rights to a full salary for its athletes during pregnancy and 50% of their salaries for the first six months of the child's life. Whereas in Hungary, newspapers are now required to give women's sport its own section²⁵.

4. *The distinction between Professional and Amateur Sports in Italian law.*

The preliminary issue is whether the failure to recognize women's soccer as a professional sport (and failure to recognize subsequent rights) constitutes gender discrimination, or, rather it is nothing else than the application and enforcement of the current laws and regulations regarding professional and amateur sports. The answer must start from Italian legislative decree from the 23rd of March 1981, no. 91. In this law, detailing the full requisite for professional athletes, as well as other sport professionals such as coaches, sport managers and athletic trainers²⁶.

After stating the principle of freedom to practice sport activities in all ways and at all levels, the Italian legislative decree from 23rd March 1981, no.91 distinguishes analytically in Sec. 2 the application of said law in each sector, depending on the specific sport figure it is referring to. The exact wording of Section 2 of this law states that *"Those who are to be considered professional athletes are those athletes, coaches, sports managers and athletic trainers who practice the sports activity in question in return for payment, on a long-term career basis, following disciplinary regulation established by CONI, having acquired the qualification from the National Sports Federation according to established rules and observing the specifications made by CONI distinguishing professional sports from amateur sports"*.

The legislator has therefore, made the attainment of the status of professional athlete subject to both objective and subjective conditions. Regarding the objective requirements, the legislator has made the identification of the specific contract, and the specific responsibilities of the player, with particular regard to financial compensation and the length of the contract, with the exception of individual cases of temporary sports services, such as that of freelance work or for a particular sporting event for a short period of time (Sec.3, comma 2)²⁷. Regarding the subjective requirements, the legislation states that the Sports Federation has the unique power of determining which athletes, sports managers or athletic trainers fall under this category based on their affiliation with particular football clubs that have professional status as part of CONI. It has, therefore, been delegated to the

²³ In March 2021 the volleyball player Lara Lugli sued the Pordenone Volleyball Club, where she played for the 2018/2019 season in the minor league (B1). The athlete had informed the club in March 2019 of her pregnancy and therefore the impossibility of her continuing with the season, terminating her contract on good terms. However, after two years, she received an order to pay damages as she *"had not honoured her contract"*.

²⁴ Scraton-Flintoff 2001: 66.

²⁵ Muscarà 2017: 85.

²⁶ Pasqui M.I., *Tra dilettantismo e professionismo di fatto: le diseguaglianze nello sport*, in www.figc.it, 4.

²⁷ Liotta-Santoro 2020: 163.

National Sports Federation to determine whether a particular sport, which they represent, qualifies as professional or amateur. In this respect, it is important to note the regulation that CONI has called “*Basic Principles of the Statutes of the National Sports Federations, Sports Associations and Non-Profit Organizations*”, which clearly states the requirements necessary for the Federation in order to be able to qualify a particular sport with professional status: “*notable financial relevance of the sport in question*” and “*recognition of such sport by the respective international Federations*”. The first requisite, in particular, regards the underlying connection between such sport and the opportunity for financial gain, which inevitably results in the unlikely that hood the Federation gives professional status to a sport which does not attract great interest in the sport market.

According to the general consensus, relevance is given to the individual sport and the financial compensation given for that particular sport activity, without any specific reference to the qualification given to the athlete by the Federation. The European Court of Justice has, in fact, stated numerous times that sport activity is subject to EU legislation only if the sport is played for financial gain, based upon section 2 of the Rome Treaty of 25th March 1957 (Institutional Treaty for Economic treatment in the EU)²⁸. For European law therefore, financial gain (rather than qualification by the Federation as a professional or amateur sport²⁹) is the only condition necessary for a sport to benefit from EU legislation. In one particular case regarding Judo, which had been considered an amateur sport by the Federation, the Court of Justice emphasized the irrelevance of the qualification given by the Federation, stating that the “*mere fact that a Federation or Association has given amateur status to an athlete does not preclude them from practicing that sport for financial gain, according to section 2, TCE. In fact, it is necessary to verify if the particular sports activity is part of an organization or service for profit, ex. Sec. 49 TCE*”³⁰.

On the one hand, it is necessary to recognize that according to law 91/1981, initially, the status of professional athlete was granted based upon a system similar to the one applicable to the general work force (health insurance, social security, and other employment rights and benefits). On the other hand, the lingering question is how the lawmakers established the initial criteria for professional and amateur athletes (justified only in part by the elaborate parliamentary proceedings which re-stated the fundamental basis for establishing the criteria)³¹.

A statute draft discussed in the Senate in July of 2015 proposed to refer specifically to women (using appropriate grammar gender specification) in sport categorization, as stated in section 2 of legislative decree no. 91 of 1981: “*To be qualified as professional athletes are the following: male athletes and female athletes, male coaches and female coaches, male sports managers and female sports managers and male and female athletic trainers*”.

Most recently, it is to be noted that on February 28th, 2021 the Italian Cabinet approved five legislative decrees (law no. 36,37,38,39 and 40) stated in sections 5 through 9 of the legal code, 8th August 2019, no. 86 in the complete reform of Italian sports law³².

²⁸ CGCE, 12.12.1974, C-36/74, *Walrave e Kock* against *Union Cycliste Internationale*, in *Racc.*, 1974, 1405; CGCE, 14.07.1976, C-13/76, *Gaetano Donà* against *Mario Mantero*, in *Racc.*, 1976, 1333; CGCE, 15.12.1995, C-415/93, *Union Royale belge des sociétés de football association ASBL* e altri against *Jean-Marc Bosman*, in *Foro.it*, 1996, IV, c. 1, and in *Racc.*, 1995, I-4921.

²⁹ Musumarra 2005: 42.

³⁰ CGCE, 11.04.2000, C-51/96 and C-191/97, *Christelle Delière* against *Ligue francophone de judo et discipline associées ASBL, Ligue belge de judo ASBL, Union européenne de judo*, in *Racc.*, 2000, I-2549.

³¹ Bianchi D’Urso-Vidiri 1982: 5; Duranti 1983: 711; Bertini 1998: 759; Spadafora 2012: 79.

³² Section 5 of the legal code attempted to reach various aims, such as: the recognition of the principles of specification of sports categories and sports work conditions; the conditions regarding equal opportunity, even for those with disabilities; the classification of the sports figure in the work sector; health benefits and the safety of minors who practice sports activities; the promotion of sports training and work events; and reforms for sports using animals.

Lawmakers, besides executing laws regarding section 38 of legislative decree 36/2021, that “*the qualification of a sport as professional must be given without any gender discrimination*” preserved, as for section 2 of Italian law 91/1981, the authority to make the distinction between professional and amateur sports with the “*National Sports Federations and the associated sports associations according to legal codes from these groups, with the utmost respect to the regulations and criteria established by CONI for the distinction between professional and amateur sports in accordance with international sports laws*”. With the institution of this law, section 39, funds have been created to ease the transition to professional sports with an extension of funds for work benefits for women’s sports to add to the independent budget from the highest levels of the Italian Cabinet, starting with 2.9 million euros in 2020; 3.9 million euros in 2021; and 3.9 million euros in 2022. Moreover, according to the legal code, section 40, it falls upon the Regions, the independent states/provinces and CONI that are responsible for the promotion of gender equality at every level and in every sector, to give special attention to the employment of women in managerial roles and within the sport organizations.

On the one hand, there has been great support for the adoption of these new reforms and a modification of previous legal codes. On the other hand, some view the changes as an unsustainable hinderance to financial gains. Some also view these reforms as posing the problem of isolating various sports from the world of sport Federations and CONI. From the encouraging facts we have mentioned of creating funds for an easy transition into professional sports and the promotion of gender equality, one can clearly understand that great strides have been made but unfortunately, even these improvements do not guarantee a stable and secure future for women in sports³³.

5. Our ever-changing ideas of the Sports figure in the work sector.

It is important to realize that although great strides forward have been made for women’s soccer in Italy making their way into professional sports, above all in light of the recent legislative decree from February 28th, 2021, no. 36, there are still existing struggles, more so in regards to economic sustainability than to gender discrimination and a lack of rights and protections. In fact, the statement that “*the discrepancy between male and female athletes and their rights and protections is huge and not legitimate as they infringe upon national and international principles*” as well as the idea that “*amateur status is imposed*” by sports authorities in our country is, simply, unfounded.

In support of this, we must first look at the fact that to this day, in Italy, the authority to decide on whether a sport is to be considered and officially qualified as professional, has been exercised only by six Federations who have classified the sports of soccer, basketball, boxing, cycling, motorcycle racing and golf as professional sports within their organizations, alongside the counterpart category of amateur sports. Among these, however, two Federations, the Italian Motorcycling Federation (FMI) and the Italian Boxing Federation (FPI) have changed their statutes to state that their affiliates may exclusively be amateur sports clubs and associations. Said changes to the statutes, and requirements for amateur sports clubs as affiliates, presumably depend on economic convenience tied to the financial benefits that are given to amateur sports clubs and associations.

Specifically in this regard, we should recall the CONI regulation called “*Basic Principles of the Statutes of National Sports Federations, Sports Associations and Non-Profit Organizations*”, mandating that in order to give professional standing a sport, the Federation must follow, the “notable

³³ True gender equality cannot mean an out-dated perspective towards female's quota required for sports management; rather, it is necessary to demand that equal competitive conditions between genders be guaranteed, aiming at a rebalancing of the wage gap and a welfare system that allows women to devote the same energies to their career as their male colleagues, making the choice between family or work unnecessary.

economic relevance of the sport activity in question”; as well as section 38 of legislative decree 36/2021 on Sport Reforms and the authority to make the distinction between professional and amateur sports.

At the same time, it is also to be noted that the decree on Sports Reforms made reference to all those working in the sports sector which today include those working in the amateur field (consequently over-riding the legal code from March 23rd, 1981, no. 91, which clearly made employment a requisite for “professional standing”)³⁴. In fact, once section 25 of legislative decree 36/2021 decided to accept all those working in sports, amateur as well as professional, notwithstanding the qualification given by the Federation and without gender discrimination, they effectively put an end to the division into “two worlds” of those working in sports, guaranteeing pension and insurance benefits³⁵.

In any case, one cannot overlook the fact that the excessive broadening of the sector including “*de facto* professionalism” or “fake amateurism” presents the risk of validating sports figures as professional when they actually are not. One could think of the person who works in a field which is totally foreign to the sports world, but who practices a sport on a true amateur level and therefore with a true competitive spirit³⁶, with discreet, if not excellent achievements, both on a competitive and financial level³⁷. This systematic entrance of the new figure of the person working in sports into the amateur world poses, therefore, a serious problem of economic sustainability as well as the risk that sports practices exercised by the Federations and CONI will eventually be pushed out or completely eliminated, especially considering the emergency situation of the Covid-18 pandemic which has put a stop to the income flow for sports clubs with regard to sponsorships, merchandising, television broadcasting rights and stadium tickets³⁸.

The fact remains that in this time of great socio-economic change, it has been the sport culture, in many ways, that has absorbed the majority of issues, in the logic of “show business” and, in a similar way, with greater attention to the professional-entrepreneurial role of sport stars. We also cannot ignore the value of sport in itself and the social importance that it holds in our society, in some ways guaranteed under the Constitution, as sport is to be considered a social phenomenon, fundamental to human interest, that is an integral part of our upbringing and educational experience (both on an individual and collective level)³⁹.

6. Sport and re-evaluation of the culture of difference

A fact that the above reflections have in common is that sexual difference has implications in sport that neither gender orientation nor anti-discrimination policies can rewrite, with the exception of the “female quota” in management⁴⁰, which have very little to do with the facts of the field, indeed in some way they contradict with it. Sport relies on strength and skill, but it certainly detaches itself from the brute natural law of the prevalence of the strongest and is fully registered in cultural phenomena with very significant educational value. Sport then lends itself to contribute to the debate

³⁴ Pittalis 2019: 134.

³⁵ Santoro L., *La disciplina della professione di agente sportivo contenuta nel d.lgs. 28 febbraio 2021, n. 37, nel quadro della regolamentazione vigente*, in www.rivistadirittosportivo.coni.it, 5.

³⁶ Agrifoglio G., *Prime osservazioni sulla riforma in materia di lavoro sportivo (d.lgs., 28 febbraio 2021, n. 36)*, in www.rivistadirittosportivo.coni.it, 8-9.

³⁷ Liotta 2009: 427.

³⁸ Torrisi 2020: 62-83.

³⁹ Mauceri 2014: 3-4.

⁴⁰ On the non-usefulness of the “female quota”, see the references in footnote 33.

on sexual and gender differences. Debate which, as is well known, does not take place in a serene and democratic way between radical positions that accuse each other of subtle belonging and ulterior motives⁴¹. In particular, the consideration of sports dynamics suggests taking into consideration those who criticized the thesis according to sexes are socially constructed and believe that sex is a biological reality, with medical and, precisely, sports implications⁴². In these researches, attention was also drawn to the need to control the risk of confusion in the growth of children and to protect the privacy and modesty of people, especially children, when they are in the changing rooms of gyms, swimming pools and sports facilities in general⁴³. It can also be considered that it is a point of view and not an absolute truth. But all the points of view of a constantly evolving theme must be respected; especially if we do not receive reliable scientific evidence from medical and psychosocial science: just think of the controversial issue of homosexual parenting - in the Italian legal system considered not on par with heterosexual parenting⁴⁴ - or the issue of hormonal interventions on adolescent children. A debate in which the mere fact of asking new questions or take different points of view causes the suspicion of sinister conservatism or transphobia to fall on the author with the consequence of being opposed by public opinion is not a democratic confrontation⁴⁵. In other words, sport lends itself to bringing the debate back into the classic canons of the exercise of a freedom and the boundaries it encounters in the exercise of the freedom of others⁴⁶. The general matter, now despised by many, must be taken into consideration, whether the freedom of transgender and queer people to be recognized as such should meet the limit of the right of the youngest to form their own identity, in the delicate phase of youth, within certain data of the difference between two sexes as a biological truth⁴⁷; truth that may be gives certainty and solidity to their path of insertion in the models of social cataloging, as happens when entering the sports world. In any case, the consideration of the sports field can give life to a debate that risks being suffocated by a single thought that does not admit different points of view and gives rise to intolerable witch hunts against the unfortunate person who has allowed himself to support them⁴⁸.

Summing up, as regards the analysis of the terms of the problems, the sporting field requires to precisely identify and keep distinct two different types of questions: the first question is whether there is discrimination caused by the difference in sex between males and females, and the research on professional football shows that this problem does not exist and rather it is a different treatment linked to the different economic regime and the different media visibility (*supra*, § 5); 2) another problem is whether we must overcome the distinction of sex, the system of sexual binaryism, because it causes suffering for some by accepting a gender fluid vision in which sex differences have no importance, and in this regard sport constitutes a test bench of the importance instead of the distinction and not only from the point of view of competition as noted above but also with reference to the profile of

⁴¹ About Ryan T. Anderson's book removed from Amazon, see J. Taylor, "The Book Amazon does not want you to read", February 25, 2021, <https://www.thegospelcoalition.org/blogs/justin-taylor/the-book-amazon-does-not-want-you-to-read/>

⁴² Stock 2021: 61-75.

⁴³ Stock 2021: 182.

⁴⁴ Corte Cost., 23 ottobre 2019, n. 221. On the limits of the legal foundation of the Italian right to gender identity with particular reference to the Constitution, see already Amato, 1985: 158.

⁴⁵ About the violent attacks suffered by the scientist Kathleen Stock for having supported (with a wealth of arguments) ideas that are not in line with the transgender theories, Cécile Ducourtieux, «Certaines de mes conférences ont dû être protégées par des agents de sécurité»: les universités britanniques confrontées à la bataille du genre, *Le Monde*, 3 décembre 2021. This shameful story that happened to the scientist, an active feminist who has long declared herself a lesbian and is author of many important gender studies, also requires us to reflect on the supposed configurability of one, united LGBTQ community.

⁴⁶ Nirta 2021: 225.

⁴⁷ Anderson 2019; Stock 2021.

⁴⁸ In support of the ethics of doubt and the dialectical confrontation as a guarantee of cultural processes and democracy in general Zagrebelsky 2008: 163-165.

safety and protection of modesty (just think of young girls who felt they had to put in the changing rooms with young kids⁴⁹).

In conclusion, sport claims its value as a universal language which, without being traversed by the crises and struggles that tear one's time apart, re-proposes the classic themes of the virtuous challenge with others and above all with oneself and one's own limits and boundaries, first of all the biological sexual identity.

⁴⁹ With reference to the controversial issue of the placement of transgender people in prisons Szuminski 2020: 477.

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