

Strasbourg, 20 September 2021

EPAS(2021)22

Enlarged Partial Agreement on Sport (EPAS)

Diversity Conference 2021

Protecting and promoting the human rights of intersex and transgender athletes in sport competitions

Monday, 20 September 2021
9am – 12.45pm

Press conference:
1-2pm

Video conference

Paris office, Council of Europe
55, avenue Kléber – 1st Floor
F - 75784 Paris Cedex 16

Factsheet and programme

Background information

Most high-level as well as amateur sporting competitions are organised in sex-specific categories, which were established when female competitors began entering the field, once almost exclusively reserved for males. This approach led to the establishment of clear-cut physiological criteria to split competitors into male or female categories. Such an approach de facto excludes intersex¹ people (who are born with sex characteristics that do not fit typical binary notions of female or male bodies). Moreover, it denies the gender dimension and excludes transgender people, whose gender identity doesn't align with what has culturally been associated with their sex assigned at birth. Recent decisions and judicial rulings question the potential discriminatory approach by competition organisers and the gender inclusivity of sport.

Within this conference EPAS wants to address this specific issue and consider it also in the context of the broader range of discriminations and barriers that prevent Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people from participating in sport.

Council of Europe activities in this field

In 2012, EPAS chose tackling homophobia in sport as its diversity theme and co-organised a conference in Utrecht (Netherlands) entitled "United against homophobia in sports: the contribution of policy-makers, researchers and sports movements", with support from the European Gay & Lesbian Sport Federation (EGLSF).

In November 2019, "How to tackle discrimination against LGBTI people in sports competitions?" was one of the subjects debated in Strasbourg during the Human Rights in Sport seminar organised by EPAS.

EPAS has also published a good practice handbook containing practical and concrete examples of projects that show commitment by Council of Europe member states in their fight against homophobia in sport, and which hope to inspire others to do the same.

General instruments

Common values and principles of the Council of Europe's intergovernmental co-operation are enshrined in the European Convention on Human Rights. The Convention obliges contracting parties to guarantee everyone within their jurisdiction fundamental human rights such as the right to life, the prohibition of torture, the right to respect for private and family life, freedoms of expression, assembly and association. The Convention includes an open-ended list of prohibited grounds of

¹ Intersex/variations in sex characteristics.

discrimination (Article 14). This is the starting point for the Council of Europe's work on the human rights of lesbian, gay, bisexual and transgender people: human rights are universal and apply to all individuals without discrimination on any ground. The Court confirmed in 1999 that sexual orientation is a prohibited ground of discrimination (case *Mouta v. Portugal*) covered by Article 14.

Also of crucial importance is the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity which is the only instrument worldwide dealing with SOGI discrimination. This Recommendation states that:

Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

Specific instruments in sport:

- The Council of Europe adopted in 1992 and revised in 2001 the European Sports Charter. Article 4 (§1) of the Charter states: "*No discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, shall be permitted in the access to sports facilities or to sports activities.*"
- The Code of Sports Ethics demands that sport and sports-related organisations "*ensure that safeguards are in place within the context of an overall framework of support and protection for children, young people and women, both to protect them from sexual harassment and abuse (...)*".
- In 2000, at the 9th Conference of European Ministers responsible for Sport, the Council of Europe issued the Resolution on the prevention of sexual harassment and abuse of women, young people and children in sport (3/2000). The Resolution sets out a series of actions to be taken by Council of Europe member States. Several measures relate to the commissioning of research and data collection at national levels to ascertain the scale of sexual harassment in sport and to help prepare national policy that would, among others, define procedures and sanctions to address this form of gender-based violence.
- Also in 2000, the Council of Europe's Parliamentary Assembly adopted a Recommendation on lesbians and gays in sport (1635(2003)). It acknowledged that homophobia in sport among participants should be treated in the same way as racism and other forms of discrimination.
- In April 2011, the Council of Europe adopted the Convention on preventing and combating violence against women and domestic violence (also known as the Istanbul Convention), which entered into force on 1 August 2014. The Convention recognises that perpetrators of gender-based violence may cross European borders, and calls on

parties of the treaty to take the necessary steps to prevent, prosecute and eliminate violence against women and domestic violence in informal educational facilities, as well as in sports, cultural and leisure facilities and in the media (Article 14).

- In January 2015 the Council of Europe issued a Recommendation on gender mainstreaming in sport (CM/Rec(2015)2). This encouraged member States to establish and monitor specific programmes and policies to combat gender-based violence in sport (Appendix I, Points 15 and 16) so as to raise awareness of the issue (Appendix I, Point 27), and to implement policies and adopt codes of conduct in sport that clearly specify grievance procedures, disciplinary actions, and the appeals process (Appendix I, Point 33).

Questions to be raised:

- What are the roles of sports governing bodies and public authorities in safeguarding intersex and transgender athletes' rights?
- What forms of discrimination do transgender and intersex athletes experience in sport?
- Is there a legal ground for the exclusion of intersex or transgender individual athletes or couples in sports (e.g. dancing) or can this be combated through European non-discrimination law?
- What might the Council of Europe's approach be to combating discrimination in sports against intersex and transgender athletes?
- Is there another way to organise competitions and to design categories that are not binary: male and female?
- Could we consider that the differentiated treatment given to intersex athletes is objectively and reasonably justified, that it pursues a legitimate aim and employs means which are reasonably proportionate to that aim? In other terms, should fairness and equal opportunities to succeed in sports competitions for all have precedence over inclusivity?
- What is being done to address this?
- What should be done?
- Would you expect the Council of Europe to take steps to address this issue? If so, how?
- Which other factors impacting on the wider LGBTI community in sport might we wish to address further?

Objectives

Overall, it appears that the majority of transgender and intersex people have a negative experience in sport and sport-related physical activities. Accessibility to sport-related activities needs to be improved.

Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation, gender identity or expression, and sex characteristics. The following objectives, amongst others, might be looked into further depending on the recommendations made at the end of the conference:

- to work with transgender/intersex people and relevant civil society bodies to create a Sport Gender and Sex Inclusivity Guidelines within Council of Europe member states;
- to train sports educators on such an Inclusivity Guidelines, thus improving their skills in supporting transgender/intersex people in sport;
- to target improvements in social inclusion and equal opportunities across different transgender/intersex sport settings;
- to identify other awareness-raising tools;
- to look into supporting the abolition of compulsory but medically unnecessary intersex surgeries on babies and infants across member states;
- to consider supporting studies into data collection on intersex and transgender athletes along with other apposite organisations.

Draft programme

8.30-9am	Welcome speakers/registration
9am -10 am	Opening session
9am-9.15am	Introductions <i>Roxana Maracineanu</i> , Minister responsible for sport (France) <i>Snežana Samardžić-Marković</i> , Director General of Democracy, Council of Europe
9.15am-10am	Discussion between high-profile athlete <i>Annet Negesa</i> and <i>Dr Payoshni Mitra</i> academic expert Moderator: <i>Olga Sviridenko</i> Followed by Questions and Answers session
10am-10.45am	Roundtable 1 – Biology, gender, sex and sport The following topics will be discussed: <ul style="list-style-type: none">• History of sport relating to intersex and transgender athletes• Shortcomings of biological definitions• Sport regulations currently in force/ Status quo of intersex/transgender athletes• Recognising gender identity in sport Panel: Sport history - <i>Dr Sonja Erikainen</i> Biology, competitive advantage - <i>Dr Alun Williams</i> Transgender athlete's point of view – <i>Chris Mosier</i> <i>Hugh Torrance</i> - Co-president, European Gay and Lesbian Sport Federation (EGLSF) Moderator: <i>Eleni Tsetsekou</i> - Head of SOGI Unit (Sexual Orientation and Gender Identity), Council of Europe
10.45am-11am	Break
11am-11.45am	Roundtable 2 – Protecting human rights while ensuring fair competition rules The following topics will be discussed: <ul style="list-style-type: none">• Human rights concerns/ equal treatment of intersex/transgender athletes;• Human rights and anti-discrimination concerns in line with fair competition rules. Panel: IOC, <i>Dr Richard Budgett OBE</i> FIFA, <i>Dr Andreas Graf</i> World Players Association, <i>Florian Yelin</i> Human Rights Watch – <i>Kyle Knight</i> WomenSport International - <i>Dr Carole Oglesby</i> Moderator: <i>Francine Raveney</i> , EPAS Deputy Executive Secretary, Council of Europe

**11.45am-
12.15pm**

Examples of good practice from:

- **European University Sport Association** - *Andrej Pisl, EUSA*
- **The situation of intersex athletes from Asia and African countries** - *Dr Payoshni Mitra*
- **Representative from Football v Transphobia** – *Natalie Washington*
- **Athletics and inclusion** – *Pierre-Jean Vazel*
- **A Charter for Gender Diversity in Sport** - *Conny-Hendrik Schällicke, Seitenwechsel Sports Club for WomenLesbiansTransInter & Girls Berlin, Germany*

Moderator: *Michael Trinker*, Project Manager, EPAS, Council of Europe

**12.15pm-
12.45pm**

Recommendations and closing session

Stanislas Frossard, EPAS Executive Secretary, Council of Europe

1pm-2pm

Press conference (press only)

Payoshni Mitra, Chris Mosier, Annet Negesa, Pierre-Jean Vazel, Natalie Washington and Benjamin Lang

Moderators: *Olga Sviridenko* and *Francine Raveney*