

# Sexual harassment and abuse in sport: some legal and criminological considerations

*“Instead of being protected, I was humiliated, I was in trouble,  
and brainwashed into believing that I was the problem  
(Athlete A 2020, 1 h. 25 min.)”*

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**Abstract.** Sexual harassment and sexual abuse are not uncommon in the world of sports. Many athletes, especially female athletes, have been victims of violence, intimidation and abuse. For many years, victims remained silent and hid their experiences for fear of condemnation by society and the media, but recent trends show that the situation is improving. More and more athletes are speaking out against sexual harassment and abuse in the world of sport. From a legal point of view, the main feature of sexual harassment cases is that the burden of proof can be shifted to the accused. In criminal law, this mechanism raises concerns about a possible violation of the presumption of innocence. However, as international sports federations apply a lower standard of proof in disciplinary cases, this procedural feature is viewed favourably. At the same time, it should be noted that a lower standard of proof does not in any way mean that sexual harassment and abuse cases can be investigated with less responsibility or sensitivity. On the contrary, the legal and criminological specificity of this phenomenon implies that the boundaries between sexual abuse, sexual harassment, unprofessional conduct,

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and mere flirting must be clearly defined. Appropriate delimitation ensures, on the one hand, that perpetrators do not escape responsibility, even if it is relatively minor, and, on the other hand, protects the innocent against unfounded accusations.

**Key words:** sexual harassment, sexual abuse, legal responsibility, the burden of proof

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## Seksualinis priekabiavimas ir prievarta sporte: kai kurie teisiniai ir kriminologiniai aspektai

**Santrauka.** Seksualinis priekabiavimas ir seksualinė prievarta yra neretas reiškinys sporto pasaulyje. Daug sportininkų, ypač sportininkių, yra tapę smurto ir prievartos aukomis. Daugelį metų aukos tylėjo ir slėpė savo patirtį, bijodamos visuomenės ir žiniasklaidos pasmerkimo, tačiau pastarojo meto tendencijos rodo, kad padėtis gerėja: vis daugiau atletų(čių) kalba apie seksualinį priekabiavimą ir prievartą sporte. Teisiniu požiūriu pagrindinis seksualinio priekabiavimo bylų bruožas yra tas, kad įrodinėjimo našta gali būti perkeliama kaltinamajam. Baudžiamojoje teisėje šis mechanizmas kelia abejonių dėl galimo nekaltumo prezumpcijos principo pažeidimo. Tačiau kadangi tarptautinės sporto federacijos drausminėse bylose taiko žemesnį įrodinėjimo standartą, ši procesinė ypatybė vertinama palankiai. Kartu būtina pažymėti, jog žemesnis įrodinėjimo standartas jokiū būdu nereiškia, kad seksualinio priekabiavimo ir prievartos bylos gali būti tiriamos ne taip delikačiai ar atsakingai. Atvirkščiai, šio reiškinio teisinė ir kriminologinė specifika implikuoja, kad būtina aiškiai nustatyti ribas tarp seksualinės prievartos, seksualinio priekabiavimo, neprofesionalaus elgesio ar tiesiog flirto. Atitinkamas ribų nustatymas, viena vertus, užtikrina, kad kaltininkai neišvengtų atsakomybės net jei ji santykinai nedidelė, antra vertus, apsaugo nekaltus asmenis nuo nepagrįstų kaltinimų.

**Reikšminiai žodžiai:** seksualinis priekabiavimas, seksualinė prievarta, teisinė atsakomybė, įrodinėjimo našta.

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## Introduction

Sexual harassment (SH) and sexual abuse (SA), also referred to sexual harassment and abuse (SHA), violate personal rights and may have severe and long-term physical, psychological, social, and performance-related consequences. Despite no universal definition, there is a general agreement that SHA is based on a subjective experience of a situation as uncomfortable, asymmetric in terms of power, and unwanted in terms of actions (Sylvberg et al. 2022). The results of in-depth investigations into SHA in sports suggest that it is a widespread problem that affects all sport in all regions of the world. Due to a mix of structural, environmental, and behavioural factors that make it

easy for SHA to happen, the sport sector is especially vulnerable to it. The basic idea of autonomy in sport governance means that there is not much outside control or oversight of sport organisations. Because of this, many people make choices with a lot of discretion and without being transparent about what they are doing. They also resist calls for real change. So, it is not surprising that many organizations have not set up good ways to avoid, find, and report abuse within their own walls (Transparency International 2022).

Harassment and abuse are known to have a negative impact on a person's mental, physical and social health. Suffering from SHA can lead to a deterioration in an athlete's performance and make him or her want to quit the sport. People affected by sexual harassment and abuse are more prone to self-harm and suicide. In order to cope with the abuse, or as a consequence of the abuse, some athletes may also engage in obsessive-compulsive training, potentially leading to symptoms of burn-out. As a result of the athlete's risk-taking, self-harm, and/or excessive training, the physician may notice unexplained injuries that do not make sense or are never seen to resolve (Marks et. al. 2011). To protect athletes from harassment and abuse in sports, the International Olympic Committee (IOC) has developed initiatives to help athletes and sports organisations. In terms of concepts, it can be noted that sexual abuse is more associated with physical violence, while sexual harassment is more associated with psychological violence in sports. With that in mind for the purpose of simplicity and clarity, the following definitions are presented:

Sexual abuse is any form of unwanted sexual contact obtained without consent and/or through the use of force, threat of force, intimidation or coercion.

Sexual harassment is unwanted verbal, written or physical abuse of a person of a sexual nature, where such abuse is motivated by the intention or effect of the conduct to violate a person's dignity, in particular by creating an intimidating, hostile, degrading, humiliating or offensive environment.

It can be seen that the key term for both forms of violence is "unwanted". "Unwelcome" is one of the possible synonyms for this term. This seems to be one of the slippiest elements of the whole concept, especially in cases where there is ambiguity as to whether the relationship is considered a (romantic) affair or a potential abuse. For instance, the recent sexual harassment scandal in the sport of chess has sent shockwaves through the sporting community, as the suspect is a well-known womaniser (C-Squared Podcast 2023). Due

to the fact that the investigation is ongoing, this article will not examine this particular case in detail. For a general understanding, it is sufficient to note that the alleged harasser is a charming former coach of the United States women's chess team who allegedly harassed both adult and underage women and girls. Similar sorts of people are often able to "sell" themselves like a commodity to a hesitant buyer. Often, in such cases, the word *unwanted* is magically transformed into *doubtful* or *not strictly against*. Naturally, in such situations, the context of the harassment must be carefully evaluated: the victim's age, the harasser's relationship with the victim, the vulnerability of the victim, whether the victim was compelled to drink alcohol, etc. It is possible that what once appeared to be a romantic relationship, when viewed from a broader perspective and taking into account other contextual factors (in particular alcohol), is eventually recognised as abuse (Gaedicke et al. 2021).

It should not come as a surprise that it is challenging to prove either sexual abuse or sexual harassment, but this is especially true when discussing the latter. To address that, adjudicating bodies have created certain evidentiary strategies, which are further discussed in this article. The text also analyses certain criminological aspects such as the manifestation of SHA and the risk factors contributing to a culture indifferent to SHA. The unifying thread of the whole article can be described as follows: the text seeks to shed light on the challenges faced in curbing the phenomenon of SHA, and on the ways or strategies that could be used to mitigate the respective challenges.

The subject matter was examined by working with academic papers, case studies, and interviews. The author has conducted five qualitative semi-structured interviews with the members of the Lithuanian cycling community. The interviews were done anonymously in 2020 with four female cyclists and one whistleblower, massage therapist E. Tutkus, who is likely the only one within the Lithuanian sporting scene willing to talk openly about SHA. The interviews lasted approximately 30 minutes; due to the subject's sensitive nature, the conversations were not recorded, and the author handwrote the respondents' answers.<sup>1</sup> Regarding the analysis of the cases, first of all, the

<sup>1</sup> It should be noted that the insights drawn from this approach cannot be statistically generalised. The method in question simply assisted in the interpretation of the athletes' actions in their own environment, taking into account the meanings they themselves assigned to their actions, empathising with the athletes' situation, and selecting data from the semi-structured interviews that most authentically and humanely represented the social phenomenon in question.

International Court of Arbitration for Sport (CAS) precedents were selected, as well as those cases of sexual harassment that have reached the public in Lithuania. Of course, in this fashion, the research is inevitably limited, and it is primarily aimed at a legal audience, for whom the criminological components should aid in understanding the problematics of legal proceedings and the variety of concepts.

## 1. Manifestations of sexual harassment and abuse in sport

A survey carried out in Germany found that around 37% of athletes in organised sports have experienced situations of sexual violence, ranging from sexist and/or insulting jokes to rape, and 11.2% reported having experienced a severe form of sexual violence; being both more likely to be experienced by women and non-heterosexual athletes (Ohlert et. al. 2018).<sup>2</sup> The 2022 Transparency International Report on sextortion (sexual abuse from a position of power) in sport calls to attention the lack of organisational structures to prevent and act against abuse inside sport organisations, to the detriment of the physical and psychological well-being of athletes, and particularly mainly female athletes, LGBT+ athletes and disabled athletes (Transparency International 2022). In cases of sexual abuse, research has identified that the culture of sports organisation presents a series of barriers to the revelation of the events, as well as for the organisational response to abuse allegations. Sports managers, coaches and decision-makers other than the perpetrator of abuse were found to hold beliefs and attitudes that translated into questioning the victim. Some were found to be inclined to partially blame the victim for the abuse, and others unsure to believe a certain profile of victim, more likely to believe a perpetrator – coach, manager – before the athlete victim, and fearing false accusations. In general, all of these beliefs led to inaction on behalf of the organisation, which is an enabler for the development and continuation of abuse (Parent 2011). Women's basketball in Mali is one of the most serious illustrations of the previously stated insights. In the Integrity

<sup>2</sup> The study aimed to assess the prevalence rates of sexual violence among a representative sample of German elite athletes. Overall, 1,529 elite German athletes over the age of 16 from 128 different sports participated in an online survey.

Officer's Report it is stated that an institutionalised acceptance of the abuse of players exists within the Mali Basketball Federation and neither action nor effort has been attempted to recognise or correct this (The Report of the Independent Integrity Officer 2021, p. 25).

With that in mind, it can be stated that sexual harassment and abuse are closely related to other forms of violence and human rights violations within sports: bullying, extortion, exploitation, inappropriate jokes, sexism, institutionalised discrimination, etc. In addition, the boundaries between psychological and physical violence are fluid, and one form of violence can easily turn into another, or have mixed elements of both. This is especially true in sports, where quite a bit of the human body is on display and athletes are continuously exposed to various forms of physical contact from coaches, doctors, massage therapists, etc. (Brazilian Olympic Committee 2020). The next subsection is about one of these sports.

### *1.1. Manifestation of sexual harassment: the example of US gymnastics*

US sports were rocked by a sexual abuse scandal in which Larry Nassar, a doctor for the national gymnastics team, sexually abused hundreds of girls. Nassar was sentenced to 40 to 175 years in prison in 2018. The trial includes more than 330 victims in total, the most famous being multiple Olympic champion Simone Biles. The USA Gymnastics sexual abuse scandal involves the sexual abuse of gymnasts, primarily minors, over two decades in the United States, starting in 1990. More than 368 people have alleged that they were sexually abused by gym owners, coaches and staff working in gymnastics programmes across the country. Larry Nassar, a long-time USA Gymnastics (USAG) national team physician, has been specifically named in hundreds of lawsuits filed by athletes who allege that Nassar engaged in sexual abuse for at least 14 years under the guise of providing medical treatment. The scandal was first reported by The Indianapolis Star. In September 2016, more than 265 women accused Nassar of sexual assault. It is considered the biggest sexual abuse scandal in sports history (IndyStar 2022).

A nine-month investigation by The Indianapolis Star found that the abuse was widespread, as predatory coaches were allowed to move from gym to gym, unnoticed by lax oversight systems, or dangerously outsourced to USA

Gymnastics. In addition to Nassar, other coaches in Michigan, Pennsylvania, California, Rhode Island, Indiana, and elsewhere were implicated in the scandal (IndyStar 2016).

What sticks out most from Nassar's story is the ultimate empowerment of former victims. This dimension is particularly highlighted in the documentary *Athlete A*,<sup>3</sup> where women and girls who have experienced Nassar's harassment end up not being afraid to say what really happened, and at the same time no longer afraid of their own authentic voices. The perspective of empowerment is also emphasised in (radical) feminism studies, which view sexual harassment initially through its social aspect – the intrusive dominance of patriarchy – rather than its physical aspect (Haynes 2023). One of the most sensitive testimonies is as follows:

*“US Gymnastics and US Olympic Committee did not provide a safe environment for me and my teammates and my friends to train. We were subjected to Dr. Larry Nassar at every national training camp which occurred monthly at the courtly ranch. Up until now, I was identified as Athlete A by US Gymnastics, the US Olympic Committee, and Michigan State University. And I want everyone to know – he did not do this to Athlete A. He did that to Maggie Nichols.”* (Athlete A 2020, 1 h. 25-27 min.).

### *1.2. Manifestation of sexual harassment: the example of the Lithuanian volleyball*

In August 2020, a press release published by journalist M. Laurinaitis (2020) cast a shadow of sexual harassment on one of Lithuania's best-known volleyball coaches, J. A. At the time, the 69-year-old specialist from Vilnius was accused by a number of his former pupils, who stressed that the whole volleyball community was talking about this behaviour. The girls handed in their complaint to the management of Mykolas Romeris University (MRU) on 14 January 2020.

<sup>3</sup> The film reveals how the sports system failed to safeguard the athletes and tolerated Nassar to commit abuses for decades. It describes how he abused his power and trust to sexually abuse young athletes and how the allegations lead to his arrest. It highlights the culture of silence and cover-up within USA Gymnastics. The film explores the aftermath of the scandal, including criminal investigations, litigation, and changes in the United States Gymnastics Federation.

After this complaint, the coach lost his job at Mykolas Romeris University, where he had been working for only a few months. Prior to that, the coach worked for 13 years at Vilnius Gediminas Technical University (VGTU), from which he was dismissed in 2018 – for the same reason, allegations of sexual harassment. “The coach was dismissed for unethical behaviour incompatible with pedagogical activity,” project manager of public relations at VGTU, told the media portal tv3.lt. (Laurinaitis M. 2020). After his dismissal, J. A. appealed to the State Labour Disputes Commission, and eventually the story reached the court, where VGTU won the case. The coach denied his guilt throughout the trial, stating, “At that moment, it was the easiest thing to make me guilty” – this is how the coach singled out the wave of the #MeToo movement which was trending at the time. The first accusations against the coach reached the police back in 2012, but these allegations did not make it to trial. Over the past decade, all complaints of unethical behaviour by coaches have focused on their behaviour in training, touching girls in intimate places, texting and verbal harassment. The Lithuanian Volleyball Federation did not publicly denounce any of the coach’s misconduct. “Personally, I have not heard any complaints about the coach’s behaviour or working methods. I don’t tend to believe rumours in life. The accusations sound serious, and the guilt should be established by the relevant authorities,” president of the Lithuanian Volleyball Federation, told tv3.lt.

This case shows several things: firstly, it is good that the coach has at least been given some legal responsibility. However, it is worth noting that the responsibility did not come from the sports organisations but from academic institutions. If the sporting world itself had not tolerated this sort of thing for a long time, responsibility would probably have come earlier. Naturally, nearly all national federations are susceptible to similar issues. In Lithuania, efforts are being made to eradicate such culture of “tolerance” which could also be called indifference. For instance, the Lithuanian Athletics Federation is attempting to establish a mechanism for reporting SHA, as well as standard reporting forms and investigation commissions. In fact, the European Athletics already requires to adopt these measures (European Athletics 2022).

### *1.3 Manifestation of sexual harassment: the example of the Lithuanian cycling*

Serious accusations were also levelled against Lithuanian cycling. Former employees of the federation and several female athletes have spoken to the media, alleging that A. J. who has coached the national track team for years, sexually harassed students, including minors. The coach himself blamed these accusations on an attack by his enemies.

Nonetheless, it appears that the coach's position is merely a primitive defensive strategy. Several former cycling employees and two cyclists who have retired contacted the media (i.e. tv3.lt). They were the first to agree to testify about their work with A. J. and the accusations against him. All of the sources who contacted tv3.lt wanted to remain anonymous and not reveal their names. Meanwhile, tv3.lt was unable to contact A. J. himself by calls and messages for more than a month before he responded. "I don't contact journalists now, I've heard all sorts of things about myself now. There are such rumours going around, everyone who was an enemy is now a joke. Former enemies are gathering such things that there is nonsense, I am disgusted with Lithuanian democracy. All the best," A. J. quickly concluded the first interview, only later agreeing to comment a little more on the accusations against him. The first of the cyclists, Milda (the name is changed), worked with A. J. for about ten years and remembers them as a nightmare. "He treated us as animals, as second-class people. I didn't hear any nice words about myself, only insults. He was a tsar and a god, and we were all rubbish," said the woman.

"There were also requests to run away, to go to the countryside. He used to come and hug me. The filth is complete. I don't think there was a single one he didn't cling to. He lived with sportswomen too, it was no secret. Nobody wants to confirm it and nobody wants to remind the girls who lived with him. I don't think they would be pleased either. I think they would all confirm that he used to get close to everybody, but that he lived with two of them...", – continued the woman, who has won many important victories for Lithuania. According to her, A. J. would not allow his pupils to communicate with boys and had strange demands. "He wouldn't let us lock the door of the room," the former cyclist recalled. – You go to camp, you wake up, and find him sitting by the bed. When he wanted to, he would come into the rooms. There couldn't be any friends, nothing. After all, there were representatives of all sports at the sports

school. You meet them to talk, you become a whore. He felt like a sultan with a harem. Nobody could touch his girls, nobody could talk to them. He used to drink every night during camps or championships abroad” (Laurinaitis 2019).

The Lithuanian example is, obviously, somewhat rudimentary. It is a whole showcase of factors that contribute to criminal behaviour: isolation of the victim, the display of power, abuse of trust, alcohol, impunity, etc. In 2020, female cyclists in Lithuania were interviewed and recounted similar stories. One of the respondents also pointed out that psychological violence was applied to all the girls without exception, while physical violence was applied more to those who were more vulnerable. For example, those from poorer social backgrounds, those without a father, without social contacts, etc (Zaksaite 2020). In Lithuania, these issues have not been addressed by the law enforcement authorities: coach A. J. was punished for other offences, such as possession of doping, but this was not directly related to sexual harassment. There are more principled decisions in foreign practice, and some of them reached CAS. For example, in CAS 2019/A/6388 the life ban was imposed on the former president of Afghanistan’s soccer association Mr Keramuddin Karim who committed offenses that violated basic human rights and damaged the mental and physical dignity and integrity of young female players, i.e. lack of protection, respect or safeguard (violation of articles 23 para. 1 FCE); Sexual harassment (violation of articles 23 para. 4 FCE); Threats and promises of advantages (violation of articles 23 para. 5 FCE); Abuse of position (violation of article 25 FCE, para 231).

What stands out, in this case, is the rudeness of the harassment demonstrated by the appellant. This case is notable for its cynical cruelty. One of the survivors was literally raped, and the Appellant also made threats and insinuations that the “disobedient” girls were lesbians (which is a huge cultural stigma in Afghanistan). The testimony of one of the witnesses is as follows:

*“Yes, I said to him, you have made a mistake, Mr Keramuddin Karim, I am not such a girl, but he smiled and said to me: you are my friend, you have to sit next to me, and things like that. I tried to get a distance from him but he made it even with more power and hugged me. Then, he tried to kiss me on the lips, I cried, I shouted. He said it is alright, don’t make a noise.” (CAS 2019/A/6388, para 165, witness statement).*

## 2. Risk factors contributing to a culture indifferent to SHA

Actually, it might be said that theoretically SHA is not so much different than other crimes, and to this type of behaviour the well-known crime triangle from the Routine activity theory applies.<sup>4</sup> In the light of this theory, SHA occurs within a sports culture where three conditions are present: the presence of an individual with a propensity or motivation to harass or intimidate, the absence of adequate protection mechanisms within the sports culture, such as prevention policies and reporting channels, and the high vulnerability of athletes and other potential victims (Brazilian Olympic Committee 2020). However, what makes sports unique are the specific subculture and risks that may be absent in other fields. Identifying risks is therefore essential for combating harassment and abuse in sports.

As far as risk factors are concerned, it is important to note that the sport subculture is a double-edged sword, where seemingly the same factors can, on the one hand, contribute to the highest performance; on the other hand, they can encourage various abuses of athletes' rights. The fact that sport is essentially a separate "Republic", where everything is very closely interlinked – training, competition, living together, physical contact – means that it is sometimes up to morality alone to ensure that certain limits are not crossed. The constant confusion between the *sacrum* and the *profanum* also does not contribute to the sharpness of what may and may not be permissible. The following concepts (which can exacerbate the risk of harassment) will be explored in this subsection: the role of coaches, power, and floating boundaries.<sup>5</sup>

**Coaches** play a key role in the development, promotion, and protection of athletes, especially in children's and youth competitive sport. Research on coach-athlete interactions has shown that a performance-enhancing, motivating

<sup>4</sup> This theory, originally formulated by Lawrence Cohen and Marcus Felson, states that predatory crime occurs when a likely offender and a suitable target meet without a capable guardian being present (Cohen and Felson 1979).

<sup>5</sup> There are, of course, several more risk factors for sexual harassment in sports. This article mainly summarises previous studies (Gaedicke et. al. 2021; Sabaliauskas and Poteliūnienė 2010; Sand et. al. 2011; Stirling and Kerr 2009; Prewitt-White 2019; Fasting et. al. 2018) and examines some of the major factors.

climate is based on mutual commitment, trust, sympathy, and participative decision-making. Relationships between coaches and young athletes are often characterised by a strong emotional bond and social closeness. Intensive relationships between coaches and athletes seem to be a prerequisite for the success of young athletes in sport. On the one hand, distance is necessary to prevent (sexual) abuse in sport, on the other hand, close, trusting relationships between coaches and athletes are necessary (Gaedicke et. al. 2021).

It would be impossible to imagine the training of an athlete without the relationship between the athlete and the coach, which is established in order to achieve common goals. The coach's understanding and fairness towards the athlete, motivation and encouragement, constructive communication are all important components of the relationship. These elements lead to an excellent psycho-emotional training environment and atmosphere and team cohesion, and consistent and cohesive communication between the coach and the athlete is one of the main and most important factors contributing to the athlete's success (Sabaliauskas and Poteliūnienė 2010).

The development of high-performance athletes takes place in a specific socio-cultural environment with an individual relationship between the trainer and the trainee. Athletic performance is influenced not only by the athlete's personal qualities and abilities, but also by the educational context. Researchers emphasise the importance of the coach's personality in the development of a favourable educational environment and climate within the team, which has a significant impact on the effectiveness of coach-athlete interaction. The sport science literature describes coach-athlete interaction as a dynamic, multidimensional interpersonal phenomenon based on feedback. At the same time, the coaching process is not a straightforward one, with a number of potential challenges: tension between the athlete and the coach; the difficulty of reconciling the methodologies of several coaches; poor communication; lack of application of psychological and pedagogical innovation; pressure on the athlete; and the dominant, overly powerful coaching style. The latter aspect is discussed below (Sabaliauskas and Poteliūnienė 2010).

**Power** in the coach-athlete relationship can be understood as a relationship of dominance and submission between coach and athlete. In a systematic review of the literature on sexual violence against athletes, the authors find that a typical characteristic of perpetrators is that they have power and

influence over their victims. It highlights that the coach-athlete relationship is characterised by an imbalance of power in favour of the coach (Gaedicke et. al. 2021).

Power is a key concept, both psychologically and sociologically, to understand the emergence of sexual violence in the coach-athlete relationship. The sociological perspective highlights the relevance of unequal gender relations, which are analysed as gender power relations in sport (Sand et. al. 2011; Sherman et al. 2000; Fejgin et al. 2001). Coaching roles are frequently held by men, while women coaches are underrepresented, and this unequal gender distribution in coaching positions could be interpreted as a general risk (or, at the very least, a warning sign) of sexual violence, paving the way for male coaches to abuse their positions (Stirling and Kerr 2009).

**Role ambiguity and “floating” boundaries.** Another relevant topic for understanding sexual harassment in the coach-athlete relationship is the notion of role, or more specifically, role ambiguity. Athletes who have been sexually abused by coaches report blurred boundaries in the coach-athlete relationship (Prewitt-White 2019). While the role of mentor and expert in coaching and sport seems relatively clear, athletes often attribute a number of different roles to their coaches that are not related to sport coaching (e.g. father, mother, friend, partner). This understanding is consistent with that of the girls interviewed within Lithuanian cycling (Zaksaitė 2020), who stated that sexual abuse in its physical form was more likely when the girls were more vulnerable, had fewer social contacts, and fewer social resources, and that the coach in this instance occupied in their imagination the roles of a parent, a friend, or a supporter. In this regard, the perspective of intersectional feminism is relevant. This theory emphasises the importance of considering the intersection of different forms of oppression, such as gender, race, social class, and sexual orientation. Within the context of #MeToo, intersectional feminism emphasizes that women of different races, ethnicities, social classes, and backgrounds face distinct forms of SHA, with their experiences influenced by their multiple identities (Onwuachi-Willig 2018; hooks 2015, p. 119-123).<sup>6</sup>

<sup>6</sup> Individuals who have (already) experienced some type of social injustice, on the other hand, may be more vulnerable and hence more inclined to view some questionable behaviour as harmful. It is especially vital in this scenario to distinguish between sexual harassment and unprofessional behaviour, as will be noted later.

Thus, the existence of an atmosphere characterised by “floating” boundaries makes it feasible to exert significant influence over one’s public as well as private image. To put it another way, and using Goffman’s terminology, the environment is perfect for playing games (or “playing” with various identities, as Intersectional Feminism describes) that take place behind the scenes (Zaksaite 2019). In a setting such as this, it is easy to become confused about acceptable and inappropriate behaviour, particularly for a child or a person who is easily swayed by others’ views.

It is clear that in a similar context, the roles and expectations attributed to coaches go well beyond the sporting spectrum of activities. These different roles attributed to coaches can make it difficult for coaches and athletes to determine when “close” is “too close”. Moreover, athletes have noticed that often their coaches slowly overstep the boundaries. Slow boundary crossing and role ambiguity are key aspects of the grooming process. Thus, a combination of mindful communication and self-reflection can be considered one of the possible tools to cope with role ambiguity in coach-athlete relationships (Gaedicke et. al. 2021).

Coaches consider that the role of a professional coach requires a certain distance from the athletes and the avoidance of close personal relationships with the athletes (Fasting et. al. 2018). The different roles and expectations of coaches can lead to role ambiguity. On the one hand, coaches want to advise and motivate, but on the other hand, they also want to maintain professional distance. Coaches mention the importance of setting clear boundaries in their relationships with athletes (Fasting et. al. 2018). Regarding this role conflict between (physical and emotional) proximity and distance, some coaches adhere strictly to written club guidelines to avoid false accusations (Gaedicke et. al. 2021).

### 3. Peculiarities of legal regulation and proving SHA

It is important to keep in mind that SHA is a multidisciplinary field that is regulated by several branches of law, including criminal law, CAS jurisprudence, and even constitutional law. This section will provide examples from the pertinent disciplines of law. Lithuanian experience with criminal and constitutional law as well as another example from CAS will be discussed. The convergence of several branches of law is a defining feature of sports law; this is how the respective field progressively evolved from *sports and law* to *sports*

law (Siekmann 2011). In addition, it should be emphasized that there are (only) a few examples of sports law in this specific field because final decisions regarding SHA are frequently redacted, anonymised, or not made public at all.

In Lithuania, criminal liability for sexual harassment was introduced in 2003 through the application of EU directives. It should be noted that the norm of sexual harassment is contained in Chapter XXI of the Criminal Code of the Republic of Lithuania, which criminalises offences against the freedom and inviolability of human sexual self-determination. However, the actual criminal procedure is problematic. For instance, it is particularly challenging for a victim of sexual harassment to substantiate the fact that she/he was harassed because she/he is the one who is supposed to prove it.

The most difficult elements of the subjective element of this offence to prove are culpability and specific intent. Successful introduction of sexual harassment into our criminal justice system would require a change in the procedural characteristics of proving sexual harassment. An example that works well is the US legal framework, where the burden of proof is shifted to the accused by applying the “reasonable woman” standard. On the one hand, such a provision in the legal system of the Republic of Lithuania would be inconsistent with one of the most important principles of criminal procedure – *in dubio pro reo* (all doubts must be treated in favour of the accused), the presumption of innocence etc. On the other hand, in the US, the subjective elements of harassment are not essential, which makes sexual harassment much easier to prove and results in a large number of cases. The presumption is that the courts must first look at sexual harassment from the perspective of the victim, and that the burden of proving innocence lies with the employers accused of harassment. However, not all courts have applied this standard (Veršekys 2008).<sup>7</sup>

<sup>7</sup> Men are often concerned about the ambiguity and relativity of what women consider to be sexual harassment. This question of what constitutes sexual harassment is being addressed by an emerging criterion by which the courts and the general public can judge sexual harassment cases. It is known as “the reasonable woman standard.” This criterion considers how a “reasonable woman” would interpret the behaviour and how a “reasonable woman” would react to the behaviour in assessing whether or not it constitutes sexual harassment. It is worth noting that the criterion does not define a “reasonable person.” In mentioning “woman,” the standard acknowledges that men and women may have different perceptions of what is objectionable and harassing. Men on a jury in a sexual harassment case should thus exercise the essential component of empathy; that is, they must put themselves in the shoes of the woman and try to imagine how they would feel if they were the alleged victim (Goodman 1995).

As stated previously, Lithuanian criminal law (and sometimes criminal law in general) may not be the best place to find innovative ideas. Instead, it is prudent to investigate other areas of the law, especially keeping in mind that the criminal standard of proof (i.e. beyond reasonable doubt) often hardly can be met in SHA cases. For example, the Constitutional Court of the Republic of Lithuania has clarified that to establish the facts of harassment, it is not necessary that the person who is being harassed expressly and categorically objects to such conduct, where it is clear that the conduct was unacceptable to that person. In assessing whether certain conduct could constitute harassment, it is necessary to ascertain the perception of the person who was harassed. It is not even necessary that the person who harassed the person had such an intention. Furthermore, it is not possible to rule out the existence of harassment simply because the alleged harasser denies it (2017 December 9 Conclusion of the Lithuanian Constitutional Court No. KT20-II/2017). After examining the circumstances of the case and interviewing 6 witnesses, the Constitutional Court of the Republic of Lithuania found that K. Pūkas communicated with his secretaries at work and with applicants for this position in job interviews in an incorrect and disrespectful manner, and did not shy away from intimate, disturbing and sexual questions unrelated to the direct duties as Secretary of the Seimas (*ibidem*, para 59).

Naturally, there are cases favourable to defendants as well. For example, in the case of table tennis, sexual harassment was not proven and, consequently, no sanctions were imposed on the Appellant (Mr Sen). Mr Cyril Sen was a Malaysian table tennis umpire and umpire trainer and evaluator. Even though some of the Appellant's phrases may have appeared questionable, the crucial point, in this case, was that there was no evidence of abuse of position. In particular, the question arose as to whether an invitation to come to the room to explain exam mistakes could be considered sexual harassment. CAS found no sexual harassment since *the Sole Arbitrator was not comfortably satisfied that Mr Sen was using his "specific situation of power" to "intimidate the umpires" as argued by the Respondent* (CAS 2018/A/5641, para 80). CAS also stated that the language employed by Mr Sen to drop by his room and the context in which these words were used do not support that his conduct constituted a form of harassment. According to CAS, in the case at hand, Mr Sen was asked by Dr Malik and Mrs Rato about the questions they got wrong during the exam. To reply to this request, he offered to explain the rules they

got wrong but needed his computer to do so and offered to do so in several different locations (one being his room). The conversation and interaction as described by the Appellant and confirmed by two credible and reliable witnesses did not have the purpose or effect of interfering with [Dr Malik's] performance, damaging [her] reputation, dignity, and morale. CAS stated that it did not create an intimidating, hostile, or offensive environment either (CAS 2018/A/5641, para 79).

## Concluding remarks

Practice shows that sexual harassment and abuse are part and parcel of the world of sport, but recent trends show that this is improving. Athletes are speaking out more and more about sexual harassment and abuse in the world of sport, and the IOC is organising various prevention campaigns and seminars about it. A persistent problem is the cover-up and concealment of problems by the sports federations, where the fear of public condemnation prevents the right action from being taken against the guilty coaches, doctors and athletes themselves.

In legal terms, the main feature is that the burden of proof in sexual harassment cases can be shifted to the accused. In criminal law, this mechanism raises some concerns about the presumption of innocence, but given that international sports federations apply a lower standard of proof in disciplinary cases,<sup>8</sup> this procedural feature is considered positively. In fact, this progressive strategy has been applied in international sports law in other situations as well, namely in cases involving the manipulation of sport competitions (Ibarrola 2017). In this area, a seemingly paradoxical term has been coined: assumed match-fixing. However, it is crucial to emphasise that such an innovative evidentiary strategy also places a heavy burden on sports federations: investigations in such cases should only be carried out by highly experienced and discreet investigators who respect both general legal

<sup>8</sup> For example, in sports disciplinary law, there is no such right as remaining silent. If a participant refuses to cooperate with an investigation, and/or to answer questions before the hearing panel, an inference may be drawn that they have something to hide/ that their answers would hurt their defence. The duty to cooperate with disciplinary institutions is widely recognized and applied in international sports law. This concept is intended to protect the right of the sports organisation to establish the facts (Boss 2020).

and ethical principles. For example, it can be crucial to distinguish when inconsistencies in victims' testimonies are indicative of misjudgement, and when they are just the result of nervousness, stress, several different interviews and interviewers, the subtleties of translation, etc. It is vital to bear in mind that traumatic experiences may impact an individual's ability to recall the incident and the details of the abusive behaviour, and it is then necessary to determine whether the testimony has been fully accurate (Ankura Podcast 2023).<sup>9</sup> It might also not be easy to distinguish between sexual harassment and unprofessional behaviour, especially in cases where there is just one witness. Therefore, while cases like Nassar's appear to imply only a straightforward "zero tolerance" policy, the reality calls for many more subtle and complex approaches.<sup>10</sup>

In addition, the anonymity of witnesses and victims often means that the accused can be denied access to certain details of the case – but if this procedural feature is abused by the prosecution, it can have really bad consequences for the entire sports legal system. Thus, there is a risk of secondary victimisation and traumatising of an athlete or other person if the investigation is conducted incompetently. Noting that even one of the most professional investigation teams was accused of failing to safeguard witnesses (Burke 2021) begs the question: what to say of (national) federations in which similar investigations are conducted sporadically, on a voluntary basis, without proper remuneration, etc.

It is also important to note that there is something to be learned from Karim's decision. Despite Karim's disagreement, the CAS granted an anonymity

<sup>9</sup> The recommendation that naturally follows is that the interviewer should avoid re-asking the same piercing questions since telling the same story hurts (Play the Game 2017).

<sup>10</sup> As a result, it would be useful if future research focused on such marginal aspects of SHA. This is comparable to research in match-fixing, where it is critical to distinguish between tactics, disciplinary offence, and crime. There is an even more paradoxical insight: sometimes, in the absence of "hard" evidence, the investigation of a more serious offence leads to the conviction of a less serious one. This strategy is particularly likely in sports federations with small budgets and few human resources. It is therefore necessary to conceptualise seemingly minor infringements, as the lack of appropriate definitions may make it impossible to tackle serious infringements (Zaksaitė 2021). On the other hand, in order to avoid false accusations, it is necessary to draw a line between minor disciplinary offences, flirtation, and (morally) inappropriate behavior.

order, permitting the witnesses to testify with the assistance of an interpreter and audio-visual technology (specifically, a voice scrambler). Although the CAS acknowledged that Article 6 of the European Convention on Human Rights (ECHR) and Article 29(1) of the Swiss Constitution recognize the right to a fair trial, it concluded that the witness anonymity safeguards utilised in this case did not violate Karim's right to a fair trial. In this regard, the CAS outlined stringent requirements for invoking witness anonymity safeguards, namely: (i) witnesses convincingly justify their request to remain anonymous; (ii) the court has the ability to see the witnesses; (iii) witnesses would face a risk of retaliation by the party they are testifying against if their identities were revealed; (iv) witnesses are questioned by the court, which must verify their identities and the veracity of their statements; and (v) witnesses are cross-examined via an audiovisual protection system (Haynes 2023).

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