

# The Caster Semenya Award: Could it Affect Football?

CAS | Cases | International



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On 30 April 2019, CAS decided, apparently by majority of the three members of its Panel, that the requests of the athlete Caster Semenya and the Athletics of South Africa against the IAAF "Eligibility Regulations for Female Classification (Athlete with Differences of Sex Development or DSD)" are to be dismissed.

This crucial case for athletics cannot pass unnoticed by sports lawyers in general but as football practitioners we should think about its implication in our sport. Semenya and her federation were seeking a decision against the DSD Regulations and that CAS declares them "invalid and void", due to its discriminatory and disproportionate frame, among other issues.

The Panel was convinced that the Regulations were indeed discriminatory but found them "necessary and proportionate" in order to "preserve the integrity of female athletes". This is a bit like the positive action that is also discriminatory, in a sense, but it is used in order to establish a certain order on the rights of people that were discriminated previously.

But this is sport and the *Altius, Citius, Fortius* that Baron Pierre de Coubertin made the trademark of Olympic Games is discriminatory per se, as the best of the participants will always win... or not?

This is the question, and the words "to preserve the integrity of female athletes" are the motto that we all should follow. The legendary Martina Navratilova was against the arrival of transgender and transsexuals to tennis and when asked about the Semenya's issue, she said that "allowing transgender athletes to compete in women's sport is insane and cheating" but just after the award was issued, she contradicted herself by saying that it was "unfair" for Semenya and that "transgender issue remains unsolved".

So, we see that things are becoming more and more complex. But, what about football? FIFA's Regulations on "Gender Verification" are from 2011, so a long time from nowadays and basically it says that men compete in FIFA's men competition and women do the same in their own... Easy to say as it seems that football has not attained yet the problems that those issues will certainly bring to our sport in the near future.

FIFA's Regulations state that the associations are the ones to deliver the veracity on the gender and only if somebody protests (mostly the player or the association, as well as some Medical Officers), it has to prove that the registration in a competition of a certain man/woman is not acceptable as for his/her gender. A procedure goes on and "physical examination" is made, together with the medical history, the sex hormone level, a diagnosis, the treatment and some "current findings" (I still wonder what that means).

An expert panel will decide on this, but as you can see, there is no such DSD Regulations as for IAAF, so I am pretty sure that a new field for football lawyers can appear soon.

A final thought: "Sport has extra rules to keep the competition fair?" as a young female sprinter said last February after losing to two transgenders in an indoor track championship. Football is a sport of individual skills and tactics but also a physical one... Door is open for discussion!