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Caster Semenya Loses Case to Compete as a Woman in All Races

By Jeré Longman and Juliet Macur

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Female track athletes with naturally elevated levels of testosterone must decrease the hormone to participate in certain races at major competitions like the Olympics, the highest court in international sports said Wednesday in a landmark ruling amid the pitched debate over who can compete in women's events.

The decision was a defeat for Caster Semenya, a two-time Olympic champion at 800 meters from South Africa, who had challenged proposed limits placed on female athletes with naturally elevated levels of the muscle-building hormone testosterone.

At a time when the broader culture is moving toward an acceptance of gender fluidity, the ruling affirmed the sports world's need for distinct gender lines, saying they were essential for the outcome of women's events to be fair.

"The gender studies folks have spent the last 20 years deconstructing sex and all of a sudden they're facing an institution with an entirely opposite story," said Doriane Lambelet Coleman, a law professor at Duke and an elite 800-meter runner in the 1980s who served as an expert witness for the track and field's world governing body. "We have to ask, 'Is respecting gender identity more important or is seeing female bodies on the podium more important?'"

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Semenya's biology has been under scrutiny for a decade, ever since she burst on the scene at the 2009 world track and field championships and was subjected to sex tests following her victory. In South Africa, leaders complained of racism. The issue of whether a rare biological trait was causing an unfair advantage for Semenya and a small subset of women quickly morphed into a battle about privacy and human rights, and Semenya became its symbol. She has said little publicly about her specific biology other than stating that God made her the way she is.

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In issuing its ruling the Swiss-based Court of Arbitration for Sport addressed the complicated, highly charged question involving fair play, gender identity, biology and human rights that track and field has been grappling with for decades: Since competition is divided into male and female categories, what is the most equitable way to decide who can compete in women's events?

In a 2-to-1 decision, the court ruled that restrictions on permitted levels of naturally occurring testosterone were discriminatory but that such discrimination was a “necessary, reasonable and proportionate means” of achieving track and field's goal of preserving the integrity of female competition.

It was a victory, though not a complete one, for track and field's world governing body, the International Association of Athletics Federations. The federation said it was “grateful” for Wednesday's ruling.

The I.A.A.F. had argued that athletes classified with “differences of sexual development,” also known as intersex athletes — particularly women who possess testes and natural testosterone levels in the male range — gain an unfair advantage in women's events ranging from 400 meters to one mile because they have additional muscle mass, strength and oxygen-carrying capacity.

But the sports court expressed some “serious concerns” on Wednesday about the fairness and practical application of testosterone limits. These concerns include the potential inability of athletes to remain within permitted limits even with hormonal treatment and the “practical impossibility” of compliance some athletes may face because of the treatment's side effects.

The court also expressed concern about a lack of concrete evidence that athletes with differences of sexual development gain a significant advantage at longer race distances — 1,500 meters and the mile. The panel asked that the I.A.A.F. consider deferring application of its testosterone rule beyond 800 meters “until more evidence is available.”

Semenya, 28, issued a statement through her lawyers, saying: “I know that the I.A.A.F.'s regulations have always targeted me specifically. For a decade the I.A.A.F. has tried to slow me down, but this has actually made me stronger. The decision of the C.A.S. will not hold me back. I will once again rise above and continue to inspire young women and athletes in South Africa and around the world.”

[Read more about Semenya's early life, and what she means to South Africa.]

Her lawyers said they might appeal Wednesday's decision, arguing that “her unique genetic gift should be celebrated, not regulated.” Semenya can appeal to the Swiss Supreme Court on narrow grounds.

The I.A.A.F. accepts athletes with differences of sexual development as legally female. For competitive purposes, though, it effectively considers them biologically male. The I.A.A.F. has said this is necessary to provide a level playing field in races that can be won by a hundredth of a second. To do nothing, it has said, risks “losing the next generation of female athletes.”

If Semenya wants to keep participating in her specialty, the 800 meters, at major international competitions, she faces some hard choices: take hormone-suppressing drugs and reduce her testosterone levels below five nanomoles per liter for six months before competing, and maintain those lowered levels; compete against men; or enter competitions for intersex athletes, if any are offered. Otherwise, she would not be allowed to run the 800 at prestigious competitions like the Olympics.



Caster Semenya and her lawyers arrived for a hearing at the Court of Arbitration for Sport. Harold Cunningham/Agence France-Presse — Getty Images

Most women, including elite female athletes, have natural testosterone levels of 0.12 to 1.79 nanomoles per liter, the I.A.A.F. said, while the normal male range after puberty is much higher, at 7.7 to 29.4 nanomoles per liter. No female athlete would have natural testosterone levels of five nanomoles per liter or higher without differences in sex development or tumors, the I.A.A.F. has said.

Paula Radcliffe of England, the world-record holder in the women's marathon, said Wednesday that she respected the court's decision "for ruling that women's sport needs rules to protect it."

But Semenya and her supporters challenge the notion that biological sex is so neat and binary. Semenya has called the I.A.A.F. rule, which was introduced a year ago, medically unnecessary as well as "discriminatory, irrational, unjustifiable" and a violation of the rules of sport and universally recognized human rights.

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Madeleine Pape, a former Olympian from Australia who has raced against Semenya, said she had changed her thinking that Semenya should be prohibited from competing in certain women's events.

"I think it's hard to draw a biological line around the female athlete category," said Pape, now a Ph.D. candidate in sociology at the University of Wisconsin. "I want to make sure people understand the complexities and relate to these women as real people."

Athletes should be allowed to compete based on their preferred gender "and we see what that looks like," Pape said, adding, "I'm not saying it's a solution, but I think it's a start."

Francine Niyonsaba of Burundi, who finished second to Semenya in the 800 meters at the 2016 Olympics in Rio de Janeiro, publicly confirmed last month that she also had naturally elevated levels of testosterone. She called the I.A.A.F.'s proposed rule to restrict hormone levels discriminatory.

"It doesn't make sense," Niyonsaba said in an interview with The Olympic Channel. "I didn't choose to be born like this. What am I? I'm created by God."

The World Medical Association on Wednesday called on doctors around the world not to implement the I.A.A.F.'s rule. Its president, Dr. Leonid Eidelman of Israel, said in a statement: "We have strong reservations about the ethical validity of these regulations. They are based on weak evidence from a single study, which is currently being widely debated by the scientific community."

A group of scientists has charged that the I.A.A.F. relied on faulty data in trying to establish the precise advantages of athletes with elevated testosterone levels. Semenya's lawyers and other supporters have argued that science has not conclusively shown that elevated testosterone provides women with more of a significant competitive edge than factors like nutrition, access to coaching and training facilities, and other genetic and biological variations.

The ruling by the arbitration court was also watched closely by transgender athletes and by officials of the International Olympic Committee as they prepared to set guidelines for participants in the 2020 Summer Olympics in Tokyo.

Transgender athletes are no longer required to have reassignment surgery to participate in the Olympics, and those transitioning from female to male can compete without restriction.

Athletes transitioning from male to female must declare that their gender identity is female and, for sporting purposes, cannot rescind that declaration for four years. The athletes must also suppress their testosterone level below 10 nanomoles per liter for a year before becoming eligible for the Olympics.

Wednesday's ruling in the Semenya case, though, could prompt the I.O.C. to recommend that Olympic sports adopt the more restrictive cutoff of five nanomoles per liter.

Pape, the former Australian Olympian, said she believed that Wednesday's court ruling, and the I.A.A.F.'s rule limiting testosterone levels, ultimately comes down to "people's fears and misconceptions about trans women competing."

But Coleman, the law professor, said that in sports "distinguishing people on the basis of their biology actually matters a lot."

"It matters because if we failed to do it, we will lose the capacity to isolate the best females on the planet," she added. "We would never see a female body on the podium."

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