ON AN EQUAL FOOTING

Jasper Doomen

Athlete Caster Semenya's successes have, in conjunction with her appearance, led to an inquiry. She appeared to have high levels of testosterone; it was decided that she had to reduce them if she wanted to race against other women. I argue that the recognition of the difference between Caster Semenya and her competitors should not result in this outcome: similar differences exist (in all sports), which are accepted as such. It would be inconsistent to focus on this advantage if one disregards others, while the alternative to realize an outcome in which all differences are removed would yield absurd results.

On an Equal Footing

Athlete Caster Semenya has celebrated successes as a middle-distance runner. Given her appearance and the exceptional results she has demonstrated, a sex verification test was used to determine whether she was female, which was deemed important given the fact that on that basis the question whether she would be allowed to participate as a female athlete could be answered. The test provided no reason not to let her compete against (other) female athletes. Very high levels (for a woman) of testosterone were found, but that given was initially no reason to take special measures, at least not in the wake of the similar case of Dutee Chand.[1]

On 1 May 2019, however, the Court of Arbitration for Sport (CAS) ruled that Semenya had to reduce her testosterone levels drastically. The pertinent rule (article 2.3 of the IAAF

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Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development)) reads:

> To be eligible to compete in the female classification in a Restricted Event at an International Competition, or to set a World Record in a competition that is not an International Competition, a Relevant Athlete must meet each of the following conditions (the Eligibility Conditions):
>
> (a) she must be recognised at law either as female or as intersex (or equivalent);
> (b) she must reduce her blood testosterone level to below five (5) nmol/L for a continuous period of at least six months (e.g., by use of hormonal contraceptives); and
> (c) thereafter she must maintain her blood testosterone level below five (5) nmol/L continuously (i.e., whether she is in competition or out of competition) for so long as she wishes to maintain eligibility to compete in the female classification in Restricted Events at International Competitions (or to set a World Record in a Restricted Event at a competition that is not an International Competition).[2]

To what extent the hormones have contributed to Semenya's triumphs is difficult to assess, but that is not the issue on which I will focus, presuming, rather, for the sake of argument, that a significant difference results from this factor.

Admittedly, in the case of the testosterone levels, it may be argued that an advantage exists in that in this respect the position of a male athlete is approached (male athletes generally having higher testosterone levels than do female athletes). The question where the demarcation line between female and male athletes should be drawn (and

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what the rationale for such a demarcation line in sports may be in the first place) is not unrelated to the issue under discussion,[3] but one I will not explore here, keeping the focus of the specific case under discussion in mind. Still, even if the comparison with male athletes is disregarded, it is not hard to point out certain difficulties with the policy that has been adopted. For example, there are differences not just between the leg lengths of male and female athletes, but also (albeit to a lesser extent) between those of female athletes, and they may even differ to such an extent that, arguing along the same lines as does the CAS, those with exceptionally long legs (for a woman) should resort to certain measures lest they not be allowed to run against other female athletes.

It is clear that the latter scenario would raise serious questions. If the demand were imposed, certain athletes would have to undergo surgery, a measure that would, presumably, generally be deemed unacceptable (as well as, one may well imagine, the athletes themselves). Still, *principally* the two cases do not differ. In the case of the testosterone levels, the desired results may be realized relatively easily and without significant side-effects,[4] but that just means that the measures are less objectionable in the first case than they are in the second, an issue that is not to be confused with the issue of the justification of imposing any measure on someone in the first place. The fact that the measures in this case may be imposed without seriously harming the athlete in question only means, in other words, that the necessary condition to impose them consisting in the absence of inflicting serious harm is met, not that the sufficient condition to impose them in the first place is provided.

If one indeed takes a principled stance here, difficult questions readily emerge. One of these is the demarcation line: to what extent should testosterone levels be reduced? This means that one asks whether all female athletes should have (approximately) the same levels. For practical reasons, a certain range may be allowed here, just as

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boxers do not have to have exactly the same weight when they face each other, the only demand being that they be in the same weight class.

That does not answer the principled question, though. First of all, in the case of Semenya, there are only two 'classes', namely, male and female (while the former is, presumably, not even relevant). Second, the testosterone levels are simply part of who she is, just as the length of her legs and other factors that enable her to perform as well as she does.[5]

Crucially, it is the differences between individuals that decide who will be able to succeed as an athlete. A failure to acknowledge this given results, if one argues consistently along the lines of the CAS ruling, in the following outcome. Whenever someone stands out to such a degree that those with whom he or she competes have little chance to win in a fair competition, certain handicaps are to be installed. An athlete who is liable to run faster than her rivals need not undergo something as radical as surgery, which was already dismissed as a viable option, but perhaps certain weights may be attached that burden the athlete. This should be done, in fact, with all the athletes except for the one who is likely to finish last in a competition without obstacles for anyone. Obviously precise calculations must be made: the athlete who will probably finish second will have to carry slightly lighter weights than the fastest one, the weights for the third athlete will be even lighter, and so on. The facts that, first, it is not invariably the same athlete who normally finishes first and, second, the differences between the finishing times are sometimes minute complicate matters.

It is clear that what has just been presented is an absurd situation. Kurt Vonnegut, in his short story *Harrison Bergeron*, paints a similarly nonsensical picture, sketching a future in which no exceptional talents are allowed to be shown, ballerinas dancing with (*inter alia*) sash weights in order to diminish the gracefulness of their movements. Such a situation would effectively remove all differences in – and

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consequently, arguably, meaning of – competitive sports. This *reductio ad absurdum* is not the result of an attempt of mine to misconstrue the facts but rather of a consistent line of reasoning with the CAS ruling as a starting point. Whatever value – except for possible health benefits – one attributes to competitive sports, the decision in the case of Caster Semenya adds nothing to it.

Jasper Doomen is Assistant Professor of Constitutional Law, The Open University. jasperdoomen@yahoo.com

Notes

[1] CAS 2014/A/3759: Dutee Chand v. Athletics Federation of India (AFI) & International Association of Athletics Federations (IAAF), 24 July 2015. The CAS observed in that case:

> According to the evidence reported by the IAAF, the competitive advantage that men have over women is approximately in the range of 10 to 12% while that the one enjoyed by hyperandrogenic athletes over other women would be between 1 and 3%. This advantage is not sufficient to justify a separation in the category of female athletes since many other factors such as nutrition, coaching, other genetic and biological variations have an impact on athletic performance.

[2] This decision was appealed before the Swiss Federal Tribunal, which has yet to rule on the issue; it has temporarily suspended the IAAF rule in question.

[3] The Court of Arbitration for Sport itself refers, in that respect, to the view of the International Association of Athletics Federations, remarking that: 'There is no dispute that there should be a separate classification for female athletes – a binary divide between male and female.'

[4] I use this phrasing as it is not justified to say that there are no side-effects altogether.

[5] It is not necessary to discuss the issue here whether a significant distinction may be made between an athlete's biological factors and the factor or factors on the basis of which

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an athlete decides to participate and finds the stamina and discipline to compete. Whether the latter may be reduced to the former is irrelevant for the present discussion.

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