

The Regulation of Gender in Global Sport: Do Human Rights and Remedies Apply?

Guest Speaker: Michele Krech

ASSIGNED READINGS

1. Read the following sections of the CAS Award in [Semenya v IAAF](#):

- Overview of the Case (paras. 1-5)
- Jurisdiction and Applicable Law (paras. 416-424)
- Merits: introduction, legal issues, and conclusion (paras. 454-469 and 539-626)

2. Skim the following responses to the “Female Eligibility Regulations” at issue in that case:

- [Special Procedures of the UN Human Rights Council](#): “The eligibility criteria and the procedures for their implementation set forth in these regulations appear to contravene international human rights norms and standards including the right to equality and non-discrimination, the right to the highest attainable standard of physical and mental health, the right to physical and bodily integrity and the right to freedom from torture, and other cruel, inhuman or degrading treatment and harmful practices ... we would like to urge the IAAF to withdraw its Eligibility regulations for the female classification (athletes with differences of sex development).”
- [Office of the UN Commissioner for Human Rights](#): “Sport governing bodies should protect athletes’ right to remedy by not restricting their access to justice mechanisms. Moreover, they should act to ensure effective forms of redress that conform with international human rights law and that are equally accessible to all athletes regardless of resources and geographic location ... Sport governing bodies should review, revise and revoke eligibility rules and regulations that have negative effects on athletes’ rights, including those addressing athletes with intersex variations.”
- [Human Rights Watch](#): “Sex testing violates a range of internationally protected fundamental rights including to privacy, dignity, health, non-discrimination, freedom from ill-treatment, and employment rights. These punitive regulations push them into unnecessary medical procedures that are conducted in coercive environments in which humiliated women are forced to choose between their careers and their basic rights. The policies also put physicians, sporting bodies, and governments in precarious positions of being implicated in violations of privacy, dignity, health, and nondiscrimination protections.”
- [World Medical Association](#): “The World Medical Association has called on physicians around the world to take no part in implementing new eligibility regulations for classifying female athletes ... the WMA demanded the immediate withdrawal of the regulations. It said they constitute a flagrant discrimination based on the genetic variation of female athletes and are contrary to international medical ethics and human rights standards.”
- [Athlete Ally & Women’s Sports Foundation](#): “the IAAF’s most recent regulation likely violates human rights laws of numerous countries around the world. With policies in place that violate the fundamental human rights of women and prevent them from competing, you are dismantling, not “protecting,” women’s sports and also hampering worldwide efforts to create a safe and inclusive environment for future generations of girls and women. Once again, we urge you to rescind this discriminatory policy.”
- [IWG, WSI & IAPESGW](#): “We believe that affected athletes are being penalised for their biological traits, over which they have no control, and that such penalty enforces gender inequality, because it does not apply to male athletes. We believe that this infringes their human rights.”

ADDITIONAL / OPTIONAL

3. Skim FIFA's [Gender Verification Regulations](#), which are currently under review as explained in the following article published in The Guardian last year:

Fifa to review its gender eligibility regulations in wake of Fina ruling

Fifa has confirmed it is reviewing its gender eligibility regulations as world sports governing bodies seek to establish policies that will make their competitions fair and inclusive across the board.

The inadequacy or absence of existing gender policies was brought into sharp focus on Sunday when Fina, swimming's governing body, [voted to bar transgender women](#) from elite female competitions if they have experienced any part of male puberty. In addition, Fina promised to create a working group to establish an "open" category for trans women in some events as part of its new policy.

"Fifa is currently reviewing its gender eligibility regulations in consultation with expert stakeholders," a spokesperson said. "Fifa thereby takes guidance from many stakeholders [medical, legal, scientific/performance and human rights] as well as the November 2021 IOC framework on fairness, inclusion and non-discrimination on the basis of gender identity and sex variations.

"Due to the ongoing nature of the process, Fifa is not in a position to comment on specifics of proposed amendments to the existing regulations.

"Should Fifa be asked to verify the eligibility of a player before the new regulations will be in place, any such case will be dealt with on a case-by-case basis, taking into account Fifa's clear commitment to respect for human rights."

The Football Association's chair, Debbie Hewitt, has also acknowledged the difficulties in establishing a policy that would ensure the sport remained fair and safe while also respecting the rights of all those who wish to compete. "It is a really tricky subject," she said. "We talk about inclusive but it has to be inclusive for everybody and it has to be fair, that's the line any sports administrator has to think about."

4. Consider FIFA's (current or revised) Gender Verification Regulations in light of:

- Sections 2 to 4 of the [FIFA Statutes](#)
- FIFA's [Human Rights Policy](#)
- The [IOC Framework on Fairness, Inclusion and Non-discrimination on the basis of gender identity and sex variations](#)
- Any other relevant (national or international) legal standards?