



***Dutee Chand***

***v***

***Athletics Federation of India  
and  
International Association of Athletics Federations CAS  
2014/A/3759***

**Case Overview:**

**Background**

The IAAF has always taken the view (alongside many other sporting organisations) that in order to encourage and protect female participation in the sport, and to ensure meaningful competition, separate male and female competition categories are necessary.

However, problems with previous methods of policing eligibility to compete as a female athlete and the growing recognition that the biological sex is not binary (i.e. that there is, in fact, a variety of presentations of biological sex) led the IAAF to reconsider its approach to determining eligibility. The IAAF's primary concern was that relying solely on legal sex or gender might mean that individuals who were legally female may have some of the natural, physiological and athletic advantages associated with typical males and, therefore, an unfair advantage over 'typical' females. In an attempt to address this concern and to provide an objective basis for determining eligibility, the IAAF (relying on a growing scientific consensus of the significant role that testosterone plays in the development of the male 'athletic advantage') introduced regulations that prevented females with testosterone levels higher than 10nmol/L from competing in the female category. Those Regulations were colloquially known as the Hyperandrogenism Regulations, and were introduced in 2011.

This case concerned a challenge to the Hyperandrogenism Regulations by Ms Dutee Chand, an Indian athlete who had been prevented from competing by the Athletics Federation of India as a result of the application of Hyperandrogenism Regulations



## **Arguments of *Dutee Chand***

Ms Chand's arguments primary arguments were (1) that the Hyperandrogenism Regulations discriminated unlawfully against females (they did not apply to males) and against athletes who possess natural traits they were born with; (2) they were based on flawed assumptions (rather than convincing scientific evidence) about the relationship between testosterone and athletic performance; and (3) they were disproportionate in their effect to any legitimate aim being pursued.

## **The Panel**

The key issues that the Panel had to consider were as follows:

1. *Whether the Hyperandrogenism Regulations were discriminatory*
2. Whether the Hyperandrogenism Regulations were invalid on the basis of insufficient scientific evidence that; either (i) natural testosterone improves athletic performance in female athletes; or (ii) that the limit of 10nmol/L was a an appropriate threshold based on the scientific evidence
3. If they were discriminatory, were they lawful because they were proportionate to the legitimate aim of trying to ensure fair competition in the female category.

In reaching its decision that the regulations should be suspended the CAS panel determined that:

1. The Hyperandrogenism Regulations were, on the face of it, discriminatory on the basis of sex and a natural physiological trait.
2. There was sufficient scientific evidence that testosterone **was** a key material factor in increased athletic performance and therefore provided an appropriate objective marker by which eligibility to compete in the female category could be policed.
3. The Regulations were not justified or proportionate given that there was insufficient scientific evidence about the actual performance advantage conferred by a testosterone level of above 10nmol/L. In particular, the panel thought that to be proportionate and



justified it would be necessary to provide evidence that demonstrated the performance advantage 'accorded' with the competitive advantage enjoyed by the typical male over the typical female.

In suspending the Regulations, the CAS panel gave the IAAF the opportunity to produce further scientific evidence of the magnitude of the performance advantage.

### **Discussion points:**

- The importance of the legal concept of proportionality in decision making
- Balancing of rights: the rights of 'typical' female athletes to have a chance of winning vs right to have an individual's legal sex and gender identity respected.
- Individual Human rights vs the interest of sport
- Civil and Common Law systems grant sports bodies a margin of appreciation in determining necessity and proportionality regarding legitimate objective and significant freedom in creating regulations deemed to be in the interest of that sport
- How do governing bodies use scientific information to implement/create sporting regulations
- The limitations faced by the CAS Panel – whilst recognizing the ethical, scientific and regulatory issues raised in the decision, the role of the Panel is a judicial one and limited to, and framed by, the need to come to a final determination of the disputed legal issues before them.

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