



HEEL AND TOE ONLINE

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SPECIAL EDITION: COURT RULES AGAINST WOMEN 50K-ERS

The Court of Arbitration for Sport (CAS) has just published its 3rd February 2020 decisions in which it ruled against women athletes in the 2020 Olympic 50km Race Walk Event. The decisions can be accessed on the CAS website at https://www.tas-cas.org/fileadmin/user_upload/CAS_Award_6225_internet.pdf and https://www.tas-cas.org/fileadmin/user_upload/CAS_Award_6274_internet.pdf. Paul F. DeMeester, the attorney who litigated the gender discrimination claims in CAS, has provided the following commentary on the decisions. Heel and Toe salutes the courageous athletes who took the fight to the International Olympic Committee (IOC).



*The IOC in 1896: Women Need Not Apply
(Photo by Albert Meyer - in public domain)*

From Coubertin to Bach: the Olympic Champions of Sexism

By Paul F. DeMeester

On August 7, up to 60 male athletes will vie for gold in the 50K Race Walk Event at the 2020 Olympic Games in Japan. Women 50K walkers, however, are excluded from Olympic competition, rendering the race the only track and field event still subject to sex discrimination.

On March 31, 2019, seven women athletes and one male athlete filed the first of two suits in the Court of Arbitration for Sport (CAS), based in Lausanne, Switzerland, to remedy this situation. They were not asking for anything new. The 50K Race Walk has been on the Olympic program since 1932, save one. All they asked for was that women be included in the event.

The Olympic Charter, which serves as the constitution of the Olympic Movement, guarantees gender equality and prohibits sex discrimination. Women 50K race walkers want the same opportunity that female marathon runners finally obtained in 1984: to contest their event at the Olympics just like the men do.

The world governing body for track and field, now called World Athletics but until recently known as the International Association of Athletics Federations (IAAF) requested the International Olympic Committee (IOC) to live up to the gender equality provisions of its own Charter and include women in the 2020 Olympic 50K Race Walk, just like the IAAF had been successfully doing in its own World Championships since 2017. But the IOC said “no.” Hence, the legal challenge.

The CAS Court, often dubbed the “world supreme court for sport,” added insult to injury on February 3, 2020. In their just published decisions – after sitting on the case for six months beyond their own self-imposed deadline – the Court held that it did not have personal jurisdiction over the athletes who brought the claim. Never mind that the Olympic Charter assigns any dispute arising in connection with the Olympic Games exclusively to the CAS Court.

The CAS Court set up a perfect catch-22 in upholding the IOC’s sex discrimination: because a woman 50K race walker is not an Olympic athlete – by virtue of being excluded, of course – she is out of luck. Let’s put it another way: the CAS Court told these women athletes that because they are women, they are not allowed to ask the Court to order the IOC to follow its own constitution. The CAS Court decisions are prime examples of gender discrimination.

The CAS Court cited four of its prior cases as precedent. None of them is on point, as lawyers would say. One of those cases involved the interpretation of the terms of the Code of Ethics, an issue irrelevant to our case. Three other cases dealt with individuals who had been passed over for selection to represent their countries at the Olympics. Other athletes had been selected instead. The Olympic Charter gives discretion to national sports bodies to decide whom to select. The overlooked athlete may quail with the subjective decision of her or his national federation, but this does not implicate the IOC and does not rise to the type of dispute that involves the wholesale exclusion of more than half the world’s population from an Olympic event based on their gender, an issue that strikes at the heart of the Fundamental Principles of Olympism.

The CAS Court admitted that it has subject-matter jurisdiction. In other words, the Court ruled it could properly decide the exclusion of women at the Olympics but a woman 50K athlete cannot bring a case because she is not an Olympic athlete. Of course, she is not! That’s the whole point of the case. That’s like telling women who are deprived of the vote based on their gender that they cannot claim unconstitutional gender discrimination in court because they are not voters.

Perhaps it should come as no surprise that the CAS Court ruled as it did. It was created by the IOC, and a prominent IOC member serves as its President. The two lawyers for the IOC in the discrimination case had previously served as CAS arbitrators (judges, really). The Court and the IOC are mere blocks away from each other in the same small, Swiss city of Lausanne.

The IOC is a peculiar institution. It was founded in 1894 by a Frenchman, Pierre de Coubertin, who handpicked a committee of men to be the IOC. Ever since, those committee members select who their new colleagues will be. Coubertin was the epitome of a sexist. He wanted women excluded from sport. His legacy lives on, albeit in a more subtle fashion. While the current IOC President, German Thomas Bach, goes around collecting “gender equality” awards from well-meaning organizations, behind their back, he stabs women athletes in the back, figuratively speaking (Bach was an Olympic fencing gold medalist).

The IOC is undemocratic. The large world governing bodies in sports, like World Athletics or FIFA (soccer), regularly elect the members of its governing council and its executive leadership. The voting is based on one vote per national member federation. Think of it as similar to a vote in the United Nations General Assembly. Back in December of 2018, democratically elected IAAF Council members voted to request inclusion of women in the 2020 Olympic 50K Race Walk. The internally handpicked IOC denied the request.

This dynamic points to a larger issue in sports. The IOC demands adherence to its rules and wishes before allowing any sport, discipline or event to be on the Olympic program. International sports federations are happy to oblige, because ever since the commercial success of the 1984 Los Angeles Olympics, the Olympic Movement has generated a giant cash cow for the IOC. Part of that largesse is distributed by the IOC to the various federations. The money flow creates a dependency, whereby international federations are quick to give in to Olympic demands. This way, the IOC will end up writing all the sports rule books. It was not always so. Before this monetary dependence started, the IAAF organized its first World Championships in 1976 just for the Men’s 50K Race Walk Event, courtesy of the IOC having axed the event at that year’s Montreal Olympics. One Olympiad later, the 50K was back.

More recently, in 2017, the IOC once again wished to rid the Olympics of the 50K. Too long, the IOC said. Not enough broadcast interest, they said. And get this, not gender equal. But when the IAAF remedied the latter, the IOC did not want gender equality in the event. Why not? Because gender equality would most likely result in the survival of the 50K as an Olympic event.

The real reason the 50K is a thorn in the Olympic eye is that the event does not bring revenue into the Olympic coffers. Attending Olympic race walk events is free to the public. And fair enough, having Usain Bolt on the track sells tickets. But not so much for Matej Tóth. Who? Hence, staging this four-hour-plus event costs the IOC money in logistical arrangements. Being sexist about the 50K race walk is the IOC’s way to look out for their financial bottom line. Forget gender equality, forget sports, forget the Olympic Charter, forget justice. This is all about the almighty Swiss franc.

The time has come to scrutinize the corporate governance structures and finances of the IOC. Maybe the CAS Court ruling, as bad as it is, may help with that. Athletes may instead turn to their own nations’ courts to combat Olympic ills. Antitrust law and European competition rules may come into play. With the next two Olympics after Tokyo being held in Paris (2024) and Los Angeles (2028), courts in those locales may not be as solicitous of the IOC as the CAS Court has proven to be. Perhaps athletes will turn to their legislatures and demand accountability, transparency and democracy from the IOC, the National Olympic Committees and the Local Olympic Organizing Committees.

Unfortunately, all of that will come too late for those women athletes whose quest for an end to sexism was turned down by the CAS Court because of one jurisdictional defect: they are women.

Paul F. DeMeester was the attorney for the eight walkers who brought these cases to the CAS Court: Inês Henriques (Portugal), Claire Woods (Australia), Paola Pérez (Ecuador), Johana Ordoñez (Ecuador), Magally Bonilla (Ecuador), Ainhoa Pinedo (Spain), Erin Taylor-Talcott (USA) and Quentin Rew (New Zealand).

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