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CAS arbitration and human rights: *Semenya v. Switzerland* (ECtHR)

Analysis of the ruling and its implications for judicial review of CAS sports arbitration awards

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KEY ASPECTS

- On July 10, 2025, the European Court of Human Rights (**ECtHR**) delivered its final ruling in the case of Semenya v. Switzerland.
- The ruling concludes that Switzerland violated Article 6 § 1 of the European Convention on Human Rights (**ECHR**) because the Swiss Federal Tribunal (*Schweizerisches Bundesgericht*) failed to exercise, with the rigor required by the circumstances of the case, the corresponding judicial review when deciding on the action for annulment brought by the applicant against the arbitral award issued by the Court of Arbitration for Sport (**CAS**).
- This ruling may mark a turning point at the intersection of human rights and sports arbitration, especially with regard to the right of access to judicial remedy and a fair trial; and it certainly represents a watershed moment for sports arbitrations based in Switzerland.
- Below, we analyze this ruling, its background, and its implications.

Background of the case

Mokgadi Caster Semenya ("**Semenya**" or the "**Applicant**") is a South African international athlete, Olympic champion (800 meters) at the London (2012) and Rio de Janeiro (2016) Olympic Games. She has a physiological condition known as hyperandrogenism, which is characterized by higher than usual levels of androgens.

In June 2018, she filed a request for arbitration with the CAS against the International Association of Athletics Federations ("**IAAF**")— currently World Athletics—, an association incorporated under the laws of the Principality of Monaco and the governing body of athletics worldwide, requesting the invalidation of a new sports regulation enacted by the IAAF.[1] The Applicant considered that this regulation was discriminatory and disproportionate, as it required her to undergo medical treatment to reduce her testosterone levels to compete, which caused side effects that affected her athletic performance. Following the corresponding CAS arbitration in Lausanne, Switzerland, the CAS dismissed her claims in April 2019.[2]

In May 2019, the Applicant sought to have the award set aside before the Swiss Federal Court—which had jurisdiction because the seat of the CAS arbitration was in Switzerland—arguing that the award was contrary to public policy (*ordre public*), based on the grounds for annulment provided for in Article 190(2)(e) of the Swiss Private International Law Act ("**PILA**"). The Court dismissed the annulment in August 2020.[3]

In February 2021, the Applicant approached the ECtHR requesting a declaration that Switzerland had violated Article 6 § 1 of the ECHR (right to a fair trial), Article 8 of the ECHR (right to respect for private and family life)—either alone or in conjunction with Article 14 of the ECHR (prohibition of discrimination)—and, finally, Article 13 of the ECHR (right to an effective remedy) due to the limited review conducted by the Swiss Federal Court in annulment proceedings. The application was allocated to the **Third Section of the Court**, which found that there had been a violation of Articles 13 and 14 of the ECHR in its judgment delivered in July 2023.[4] Following the ruling, the Swiss government requested that the case be referred to the Grand Chamber of the ECtHR in accordance with Article 43 of the ECHR.

Finally, the Grand Chamber of the ECHR handed down its judgment **on July 10, 2025**, and concluded that Switzerland had violated Semenya's right to a fair trial (Article 6 § 1 of the ECHR).[5]

Analysis of the Grand Chamber of the ECtHR

This judgment is set in a particular context, given that the case was first decided by the Third Section of the ECtHR and, subsequently, in a different sense, by the Grand Chamber of the ECtHR. Only this second judgment of the Grand Chamber of the ECtHR is final (Article 44 of the ECHR). Our analysis focuses on the reasoning behind the Grand Chamber's judgment, which provides a detailed explanation of the various issues, largely justified by the need to clarify the reasoning and conclusions reached, which differ from those of the Third Section, as well as by the intervention of third parties in the proceedings.

Semenya's case fell within Switzerland's jurisdiction under Article 1 of the ECHR

Article 1 of the ECHR establishes the obligation of the States party to the convention ("**Contracting States**") to secure to everyone **within their jurisdiction** the human rights recognized in Section I of

1 Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development).
2 CAS 2018/O/5794 *Mokgadi Caster Semenya v. International Association of Athletics Federation.*
3 Decision of the Swiss Federal Court, joined cases 4A_248/2019 and 4A_398/2019, of August 21, 2020.
4 Judgment of the ECtHR (Third Section), *Semenya v. Switzerland*, of July 11, 2023.
5 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025.

the ECHR. This Section includes Articles 6, 8, 13, and 14 of the ECHR invoked in the Applicant's appeal.

Therefore, the ECtHR first had to decide whether the Applicant's case effectively fell within Switzerland's jurisdiction in relation to the alleged violations of the ECHR.

In general, jurisdiction within the meaning of Article 1 of the ECHR exists when the acts complained of by the applicant have taken place in the territory of the Contracting State against which the application is brought (general territoriality principle of the ECtHR).[6] In this regard, the Grand Chamber notes that the only link between Switzerland, the Applicant (a South African national) and the IAAF regulations in question, adopted by a private-law association with its seat in Monaco, lies in the fact the applicant lodged a request for arbitration with the CAS, a non-state body with its seat in Switzerland, and that the Swiss Federal Court was the competent judicial authority (in view of the seat of the arbitration proceedings before the CAS) to hear and decide on the action for annulment of the award.[7]

The Grand Chamber examined this issue and **concluded that the appeal lodged by the Applicant with the Swiss Federal Court Federal created a sufficient jurisdictional link under the ECHR.** This entailed an obligation for Switzerland to ensure respect for the Applicant's rights, protected by Article 6 of the ECHR.[8]

First, the Swiss government did not dispute that the application fell within Switzerland's jurisdiction in so far as it concerned Article 6 § 1. As is well known, this provision recognizes "procedural rights" that Contracting States must guarantee for a trial to be considered fair. In the case at hand, Switzerland accepted jurisdiction over the Applicant for the purposes of **Article 6 § 1 of the ECHR**.[9]

Second, with respect to Articles **8, 13, and 14 of the ECHR**, Switzerland argued that it lacked jurisdiction, on the understanding that the Swiss Federal Court had no power of review the merits of the CAS award, being confined to the question whether the award is compatible with public policy, and that it had not had and could not have had any influence or control over an alleged violation attributed to a legal entity whose domicile and seat was located in the Principality of Monaco.[10]

In its July 2023 decision, the Third Section of the ECtHR dismissed Switzerland's objection, as it considered that the Applicant was subject to the jurisdiction of Switzerland regarding all the cited violations.[11] However, the Grand Chamber of the ECtHR disagrees with that conclusion and upholds Switzerland's objection with respect to Articles 8, 13, and 14 of the ECHR. It considers that the approach adopted by the Third Section was not appropriate, emphasizing that there is no case law to support it and that it would not be justified in this case to exempt the application of the ECHR's general territoriality principle.[12]

On that basis, the ECtHR concluded that **the fact that the CAS is based in Switzerland and that the Swiss Federal Court had heard the appeal to annul the award were not, in themselves, sufficient to establish Switzerland's jurisdiction** over the alleged violations of substantive rights (Articles 8, 13, and 14 of the ECHR). This is not the case with regard to the **procedural rights** recognized in Article 6 of the ECHR, in respect of which the ECtHR affirms the Applicant's submission to the jurisdiction of Switzerland.

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6 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, paras. 119-121.
7 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, para. 98.
8 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, para. 133.
9 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, paras. 100, 112.
10 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, paras. 101-107.
11 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, paras. 112-113.
12 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, paras. 140-153.

Inadequate review of the CAS award by the Swiss Federal Court and consequent violation of Article 6 § 1 of the ECHR

With regard to the right to a fair trial, the Grand Chamber of the ECtHR concluded that Switzerland had violated Article 6 § 1 of the ECHR by failing to ensure that the Swiss Federal Court carried out a sufficiently rigorous judicial review of the CAS award, given the circumstances of the case, the rights at stake, and the arguments presented by the Applicant within the annulment proceeding.[13]

In its judgment, the Grand Chamber of the ECtHR refers to the restrictive interpretation of the concept of substantive public policy adopted by the Swiss Federal Court within the meaning of Article 190(2)(e) PILA. In particular, the judgment reasons that the Federal Court's review was limited to the question of whether the CAS award was "unjustified." On that basis, the ECtHR understands that, despite the Federal Court having expressed doubts as to the "**proportionality**" of the regulation adopted by the IAAF, the Swiss court conducted only a limited review of this aspect of the award, despite it being fundamental to the Applicant's case. Consequently, **the judgment upheld the applicant's appeal and declared that Switzerland had violated Article 6 of the ECHR**.

However, despite criticizing the rigor with which the Swiss Federal Court analyzed the annulment sought in this case, the Grand Chamber also **clarifies that the decision's impact is limited to mandatory sports arbitration administered by the CAS ("compulsory arbitration"** in the terminology used by the ECHR), which, as we will see below, has its own idiosyncrasies.[14]

It appears, therefore, that the Grand Chamber's judgment does not inherently expand the concept of substantive public policy in Swiss law or the obligations of the Swiss Federal Court regarding annulment of awards in consensual international arbitrations (i.e., arbitrations that do not follow the model of compulsory arbitration of the CAS sports jurisdiction).

This distinction between commercial arbitration and sports arbitration is key to understanding the judgment. It is worth recalling the case of ***Mutu & Pechstein v. Switzerland***,[15] in which the Third Section of the ECHR **concluded that sports arbitration administered by the CAS is effectively compulsory**, given that the submission of disputes to arbitration **is not based on the genuine consent by both parties**—which is the cornerstone of international commercial arbitration—but rather that **athletes are essentially forced to accept the arbitration clauses imposed by the federations in their statutes and regulations to practice their sport professionally and fully develop their sporting careers**.[16]

In the case at hand, the Grand Chamber of the ECtHR clarifies that the violation of Article 6 § 1 of the ECHR has occurred in the context of compulsory sports arbitration, in which the Swiss Federal Court is the competent body to hear the annulment of the CAS award and in which the civil human rights of an athlete with the status of Fundamental Rights are being decided. In these cases, the ECtHR concludes, **Article 6 § 1 of the ECHR requires a particularly rigorous review in annulment proceedings by the courts of the Contracting States to the ECHR**.[17]

Conclusions

The ECtHR has concluded that Switzerland violated Article 6 § 1 of the ECHR in the case of *Semenya v. Switzerland*. In particular, the Grand Chamber considers that the Swiss Federal Court, when hearing the Applicant's appeal for the annulment of a CAS award, did not conduct a sufficiently rigorous analysis of that award, given that the case arose from a context of compulsory arbitration in which fundamental human rights were at stake. It should be noted that the ECtHR made a significant effort

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13 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, para. 238.
14 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, para. 226.
15 Judgment of the ECtHR (Third Section), *Mutu and Pechstein v. Switzerland*, of October 2, 2018.
16 Judgment of the ECtHR (Third Section), *Mutu and Pechstein v. Switzerland*, of October 2, 2018, paras. 92-115.
17 Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, paras. 199-239.

to focus and limit the scope of this ruling to the field of compulsory sports arbitration before the CAS and the review of CAS awards by the Swiss Federal Court.

Moreover, this ruling must be considered in relation to the case pending before the CJEU in the ***Football Club Seraing case (Case C-600/23)***, which is expected to be decided in August 2025. In this case, Advocate General Ćapeta's **conclusions** suggest that participants in the EU sports sector, subject to the dispute resolution systems of their respective federations (and therefore to CAS on appeal and the judicial review of the Swiss Federal Court on annulment) should have **direct access to and full judicial review** by a court of the EU Member States that **covers all rules of Union law, without a final CAS award being an obstacle to this**.

The judgment given in the case of *Semenya v. Switzerland* could reasonably lead to a tightening of the Swiss Federal Court's standard of review when hearing appeals against arbitral awards rendered in compulsory arbitration proceedings before the CAS, so that its review is aligned with the right of access to judicial remedy and to a fair trial.

In its reasoning, the ECtHR highlights that Chapter 12 of the PILA (which includes Article 190 PILA) applies equally to the different types of international arbitration based in Switzerland. This means that the same legal provisions govern compulsory sports arbitration and commercial arbitration alike.[18] The ruling, while not directly calling for changes in Swiss legislation, suggests that subjecting commercial and compulsory sports arbitration (which are essentially different) to the same rules for judicial review prevents the Swiss Federal Court's oversight of CAS sports arbitration awards from being rigorous enough for the purposes of Article 6 of the ECHR as required by the ECtHR (when assessing, among other things, potential violations of public policy).

The implementation of the judgment undoubtedly raises important questions as to how Switzerland might incorporate the ECtHR's conclusions into its legal system and apply a "more rigorous" judicial review of sports arbitration awards.

In any case, this precedent shows that **human rights are also relevant in the context of private dispute resolution systems**, particularly regarding **the right to a fair trial within the framework of the judicial review of a CAS award rendered in a unique arbitration such as sports arbitration**.

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[18] Judgment of the ECtHR (Grand Chamber), *Semenya v. Switzerland*, of July 10, 2025, para. 237.