

**THE ECtHR'S RULING IN THE SEMENYA V. SWITZERLAND CASE
WHAT IS NEXT FOR INTERNATIONAL SPORTS ARBITRATION
AND ATHLETES' HUMAN RIGHTS?**

by *Stefano Bastianon**

ABSTRACT: The paper aims at offering a first reading of the recent ruling by the European Court of Human Rights (ECtHR) in the Semenya v. Switzerland case. The Author's effort is mainly focused on the analysis of the different outcomes of this case before the Court of Arbitration for Sport (CAS), the Swiss Federal Tribunal (SFT) and the ECtHR as well as on the potential implication of the ruling in the wider context of international sports arbitration.

Il contributo si propone di offrire una prima lettura della recente sentenza della Corte Europea dei Diritti dell'Uomo (Corte EDU) nel caso Semenya c. Svizzera. L'Autore si concentra principalmente sull'analisi dei diversi esiti di questa vicenda davanti al Tribunale Arbitrale dello Sport (TAS), al Tribunale Federale Svizzero (TFS) e alla Corte EDU, nonché sulla potenziale implicazione della sentenza nel più ampio contesto dell'arbitrato sportivo internazionale.

Keywords: *Athletes' human rights – Sex discrimination – International sports arbitration – Court of Arbitration for Sport (CAS) – Swiss Federal Tribunal.*

Diritti umani degli atleti – Discriminazione sessuale – Arbitrato sportivo internazionale – Tribunale arbitrale per lo sport (TAS) – Tribunale federale svizzero.

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1. Introduction

On 11 July 2023, in the case *Semenya v. Switzerland* the European Court of Human Rights (ECtHR) held, by a majority (4 votes to 3), that there had been a violation of Art. 14 (prohibition of discrimination) taken together with Art. 8 (right to respect for private life) of the European Convention on Human Rights (the Convention), and a violation of Art. 13 (right to an effective remedy) in relation to Art. 14 taken together with Art. 8 of the Convention.¹

The ECtHR found, in particular, that the athlete had not been afforded sufficient institutional and procedural safeguards in Switzerland to allow her to have her complaints examined effectively, especially since her complaints concerned substantiated and credible claims of discrimination as a result of her increased testosterone level caused by differences of sex development (DSD). To substantiate its finding, the ECtHR observed that:

- (a) the CAS’s analysis does not refer in any way to Art. 14 of the Convention, nor to the ECtHR’s case law;
- (b) the very limited control exercised by the SFT cannot be justified in the field of arbitration in sport, where individuals are confronted with sports organizations that are often very powerful;
- (c) the CAS did not suspend the DSD Regulations, as it had done in the *Dutee Chand* case, despite the serious concerns clearly expressed by the CAS panel;
- (d) the SFT did not attempt to dispel the doubts expressed by the CAS regarding the practical application and the scientific basis of the DSD Regulations;
- (e) the SFT did not carry out a full examination of the complaint based on the discriminatory treatment, nor an appropriate balancing of all the relevant interests at stake, as required by the Convention.

¹ Available at <https://hudoc.echr.coe.int/eng?i=001-225768>.