

Semenya v. Switzerland: Grand Chamber of the European Court of Human Rights Judgment

Joint press release of the third-party interveners

Today, 10 July 2025, in a pivotal judgment, the Grand Chamber of the European Court of Human Rights (ECtHR) ruled in the case of *Semenya v. Switzerland*. The Court overturning its Chamber judgment of 11 July 2023 found a violation of Article 6 § 1 (right to a fair hearing) of the Convention, but held that there was no territorial link between Switzerland and Caster Semenya in respect of her other complaints under Articles 8 (right to respect for private life), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the European Convention on Human Rights, declaring them, therefore, inadmissible.

The Court found, within the meaning of Article 1, that Semenya did not fall within Switzerland's jurisdiction in respect of Articles 8, 13 and 14, on the grounds that the applicant is a South African national and the sports federation in question (World Athletics) has its seat in Monaco. The Court only acknowledged Switzerland's jurisdiction as it applies to Article 6.

Impact of the Grand Chamber's decision

We welcome the Grand Chamber's finding of a violation of Article 6 § 1. A majority of judges concluded that Semenya had not benefited from the safeguards provided for in Article 6 § 1 to ensure her right to a fair hearing. The Court found that the Swiss Federal Supreme Court failed to undertake the required rigorous judicial review in light of the seriousness of the personal rights at stake in the case, namely the impact of the contested "Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development)" ("DSD Regulations") on Semenya's bodily and psychological integrity and identity, right to self-determination and right to exercise her professional activity.

We regret that the Court has failed in its obligation to protect fundamental rights by choosing not to examine the merits in question of Semenya's claims of violations of her rights as guaranteed by Articles 8, 13 and 14 of the Convention. We highly welcome the partly dissenting opinions of judges Bošnjak, Zünd, Šimáčková and Derenčinović, who state that it is "inconceivable that domestic courts, ruling within the territory of Europe, should disregard international fundamental rights obligations in area of protection of bodily integrity, equality and human dignity".

As highlighted by judges Bošnjak, Zünd, Šimáčková and Derenčinović in their partly dissenting opinion, "The Court's role is to protect fundamental rights. In choosing not to examine on the merits the question of the applicant's rights as guaranteed by Articles 8 and 14 of the Convention, the Court has failed to fulfil its role in the present case." The four judges, however, fully endorse the view of the Chamber and the majority of the Grand Chamber that Switzerland cannot be held responsible for the content of the DSD Regulations, since it played no part in their adoption. However, they state that positive obligations under Article 8, taken alone and in conjunction with Article 14, include an obligation to put in place both a legal framework to protect private life against interference by private persons and a remedy capable of providing sufficient protection.

We are further encouraged by Judge Šimáčková partly concurring opinion in which she states, "In conclusion, I should like to emphasise that the applicant was at a disadvantage vis-à-vis the IAAF, not only as a professional athlete, for the reasons set out in the present judgment, but also because she is a woman, she is black, and she is from the Global South". These are significant considerations that the Grand Chamber seems to have disappointingly overlooked.

If national courts of States such as Switzerland which house major international sports governing bodies, including the International Olympic Committee, and many major international sports federations, do not have a positive obligation to uphold fundamental rights, specifically with respect to the present case vis-a-vis Articles 8, 13, and 14 of the Convention, then we ask, who does?

ICJ Africa Director, Kaajal Ramjathan-Keogh, stated, "The ICJ is deeply disappointed by the outcome of this case. Our joint intervention submitted that the DSD Regulations fall foul on sex characteristics as a ground for discrimination without 'particularly weighty and convincing reasons' by way of justification and, as a result, impermissibly discriminate against intersex athletes under Article 14. We urged the Grand Chamber to uphold the findings in the Chamber judgment establishing sex characteristics as a prohibited ground under Article 14 of the Convention. Sadly, the Grand Chamber has elected not to do so".

"It is deeply disappointing that the Grand Chamber judgment fails to fully uphold the rights of intersex athletes," says Dan Christian Ghattas, Executive Director of OII

Europe, “The Court did not recognise that Semenya was excluded from her profession in application of blatantly exclusionary, invasive and discriminatory regulations, which are not backed by any solid evidence that could justify this difference in treatment. This is especially concerning in light of the Chamber decision of 11 July 2023, which had acknowledged this reality. However, we hope that the case will be reopened before jurisdictions in Switzerland, echoing Caster Semenya’s own words that this will hopefully pave the way for all athletes and inspiring young women to be and to accept themselves in all their diversity”.

“It is concerning that the Court fails to address the essential issues of discrimination that intersex athletes continue to face under the ‘DSD regulations’, whose impacts trickle down to grassroots level sports, limiting the ability of all intersex people to participate freely in sports, including at amateur level where the majority of sports participation lies”, says Urs Vanessa Sager, OII Europe Consultant on sports.

Katrin Hugendubel, ILGA-Europe Advocacy Director, says, “In finding that the Swiss Federal Court failed to conduct a rigorous judicial review of her case, the Court has clarified that the right to a fair trial indeed extends to sports arbitration - this is an important result, and we urge the Swiss court system to act swiftly and in line with international human rights standards.”

Facts of the case:

Caster Semenya – a South African international-level middle-distance athlete – was forced to stop participating in elite-level competitions following the International Association of Athletics Federations’ (now *World Athletics*), “Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development – the DSD Regulations)” requirements, which would have forced Semenya to undergo hormone treatment to decrease her natural testosterone level in order to qualify for the female category. Semenya refused this. Her failure to comply with the regulations directly resulted in her being barred from competing at the international level. In 2020, the Court of Arbitration for Sport (CAS) and the Swiss Federal Court had dismissed her requests for arbitration, concluding that the DSD Regulations were “a necessary, reasonable and proportionate means of achieving the IAAF’s aims of ensuring fair competition”.

Following these developments, in February 2021, Semenya filed an application with the ECtHR. In its judgment of 11 July 2023, the Court held, by a majority, that there had been a violation of Article 14 (right to freedom from discrimination) taken together with Article 8 (right to family and private life) of the European Convention on Human Rights. The Court found that Switzerland had failed to provide institutional and procedural safeguards enabling an effective examination of Semenya’s complaints before domestic authorities, who failed to properly examine Semenya’s

well-founded and credible claims of discrimination on the basis of her sex characteristics.

In 2023, Switzerland requested that the case be referred to the Grand Chamber of the ECtHR. In January 2024, OII Europe, ILGA-Europe and the International Commission of Jurists (ICJ) [filed a joint third-party intervention](#) to assist the Grand Chamber in its determination of the case. The submission focused on the place of intersex athletes in competitive sports, analysing World Athletics' constantly evolving rules, which – due to their strict prerequisites – effectively limit and/or prevent the participation of intersex athletes in international sporting competitions.

Find the ECtHR press release [here](#)

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