



10 July 2025

*Semenya v. Switzerland*¹ Q&A

This Q&A – prepared for the media on the occasion of the delivery of the Semenya v. Switzerland judgment – does not bind the Court.

Who is the applicant?

The applicant is a South African international-level athlete, specialising in middle-distance races, who lives in South Africa. Among other achievements, she was the women's 800 m gold-medal winner at both the London and Rio de Janeiro Olympic Games², and is also a three-time world champion over that distance³.

What was her complaint to the Court about?

She complained about a set of regulations (the Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development) – “the DSD Regulations”) issued by World Athletics⁴ (an international sports federation based in Monaco), and about the rejection, first by the Court of Arbitration for Sport and subsequently by the Federal Supreme Court, of her legal actions challenging those regulations.

Why was she challenging the DSD Regulations?

Under the DSD Regulations, she was obliged to lower her natural testosterone level in order to be allowed to take part in the female category of international competitions.

Why did she apply first to the Court of Arbitration for Sport?

In international sports-related appeals, recourse to arbitration and referral to the [Court of Arbitration for Sport](#) (CAS) are generally imposed on sportspersons by the governing body responsible for their particular discipline; this is what happened in the present case.

Is the Court of Arbitration for Sport a Swiss court?

The CAS, which has its seat in Lausanne, is a sports arbitration body. It is an entity overseen by a private-law foundation, the International Council of Arbitration for Sport.

It is therefore neither a domestic court nor another institution of Swiss public law.

Why did the applicant appeal to the Federal Supreme Court after the CAS issued its decision?

In the area of international arbitration, Swiss law provides for the possibility of challenging the decisions (which are called “awards”) of arbitral tribunals which have their seat in Switzerland before the Federal Supreme Court, including where they are “incompatible with [substantive] public policy”⁵.

¹ Application no. 10934/21. For more details, see the press release.

² Olympic Games in London (2012) and Rio de Janeiro (2016).

³ Berlin 2009, Daegu 2011, and London 2017.

⁴ Formerly known as the International Association of Athletics Federations (IAAF).

⁵ Section 190(2)(e) of the Federal Act on Private International Law.

Since the CAS is based in Switzerland, the applicant lodged a civil-law appeal with the Swiss [Federal Supreme Court](#), attempting to have the CAS award set aside.

What specific complaints did she submit to the European Court?

The applicant argued that the Federal Supreme Court's review of the CAS award had been excessively limited. Among other provisions, she relied on Article 6 (right to a fair hearing) of the Convention.

She further submitted that the DSD Regulations had affected her psychological integrity and identity, her right to self-determination and her right to exercise her professional activity, and that they had led to discriminatory treatment. She relied in that connection on Articles 8 (right to respect for private life) and 14 (prohibition of discrimination) of the Convention.

Did the applicant fall within Switzerland's jurisdiction, thus conferring jurisdiction on the Court to examine her complaints?

▪ **The principle of territoriality**

The States Parties to the Convention have accepted the obligation to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention⁶.

For the purposes of Article 1, the jurisdiction of a State is essentially territorial. In principle, the facts complained of by applicants before the Court must have taken place on the territory of the State in question.

Exceptional circumstances, assessed in the light of the particular facts of a case, may, however, lead the Court to conclude that a State has exercised its jurisdiction outside its national territory.

▪ **In accordance with this principle, the applicant did not fall within Switzerland's jurisdiction**

The applicant, who is a South African national and resides in South Africa, did not submit that she has a personal link with Switzerland. Moreover, Switzerland played no role in the drafting or application of the DSD Regulations, which were issued by World Athletics, a Monegasque private-law association. Furthermore, the applicant did not argue that she had been prevented from taking part in an international competition organised in Switzerland because of those Regulations. She did not therefore fall within the territorial jurisdiction of the respondent State.

▪ **By way of exception to that principle, the applicant fell within Switzerland's jurisdiction with respect to her complaint under Article 6 (right to a fair hearing) of the Convention**

As an exception to the principle of territoriality, where a person brings a civil action in the courts of a member State, and the domestic law recognises a right to bring an action, and the right claimed is one which possesses the characteristics required by Article 6 of the Convention, then that person falls within the State's jurisdiction with regard to respect for the rights guaranteed by that provision, even if the events giving rise to the application occurred outside its territory.

Those conditions had been met in the present case: the applicant's appeal to the Federal Supreme Court, following on from the CAS's award, had created a jurisdictional link with Switzerland, entailing an obligation for that State to ensure respect for the rights protected by Article 6 of the Convention in the proceedings which were conducted before the Federal Supreme Court.

On what grounds did the Court find that there had been a violation of the right to a fair hearing?

The Court began by specifying that respect for a sportsperson's right to a fair hearing required a "particularly rigorous examination" of his or her case where:

1. the CAS's mandatory and exclusive jurisdiction was imposed on the individual by a sport governing body (with the result that the Swiss Federal Supreme Court had jurisdiction to hear a civil-law appeal against the CAS award);
2. the dispute between them concerned one or more of the sportsperson's "civil" rights, within the meaning of Article 6 § 1; and
3. that or those "civil" rights corresponded, in domestic law, to fundamental rights.

It then found that the review of the applicant's case by the Federal Supreme Court had not satisfied the requirement of particular rigour.

Specifically, it noted that the CAS had expressed serious concerns about the potential difficulty faced by the athletes in question to maintain their level of testosterone below the maximum level permitted by the contested regulations. However, although this issue was at the heart of the applicant's detailed argument and also decisive for the outcome of the dispute brought by her, the Federal Supreme Court had conducted only a limited review of the CAS's decision.

The CAS had left open other questions, about which it had nevertheless expressed concerns; the Federal Supreme Court had not, however, sufficiently acted on the doubts expressed. One of those questions related to the decision, which the applicant complained was arbitrary, to include the 1,500 m and 1 mile events in the list of events covered by the contested regulations. The other related to the fact that the DSD Regulations could result in the status of female athletes with a difference of sex development being made public.

In still other respects, the review carried out by the Federal Supreme Court had not reached the required level of rigour. The Court noted in particular that the Federal Supreme Court had rejected, without thorough examination, the applicant's argument comparing the situation in her case with that in a previous case, in which it had found a CAS award to be incompatible with public policy.

In consequence, the Court concluded that the applicant had not benefited from the safeguards provided for in Article 6 § 1 of the Convention.

Is this the first case in which the Court has examined the DSD Regulations?

Yes, the Court has not previously examined a case concerning the DSD Regulations.

Is the judgment final?

Yes, judgments delivered by the Grand Chamber of 17 judges are final.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.