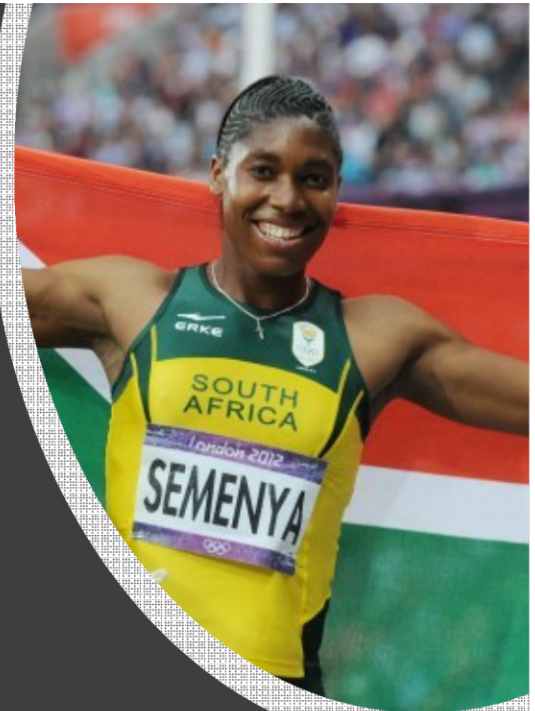


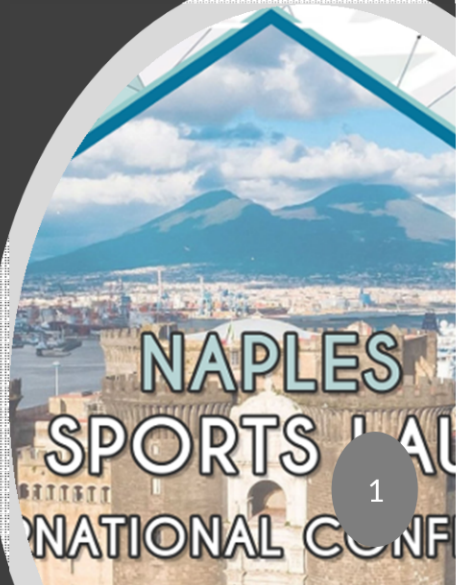
EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME



CAS
L ARBITRA
F ARBITRA

Sports arbitration and judicial
review after *Semenya v.
Switzerland* — ECtHR Grand
Chamber 10 July 2025

Prof. Stefano Bastianon



Some Key Points



GRAND CHAMBER
JUDGMENT
DELIVERED IN JULY
2025



FOCUS: INTERACTION
BETWEEN SPORTS
ARBITRATION &
FUNDAMENTAL
RIGHTS



PROCEDURAL
QUESTION: DID
SWITZERLAND
ENSURE ARTICLE 6
GUARANTEES?



NOT A RULING ON
FAIRNESS IN
WOMEN'S ATHLETICS

Regulatory Framework & Key Facts

World Athletics' DSD
Regulations: 46XY DSD
athletes

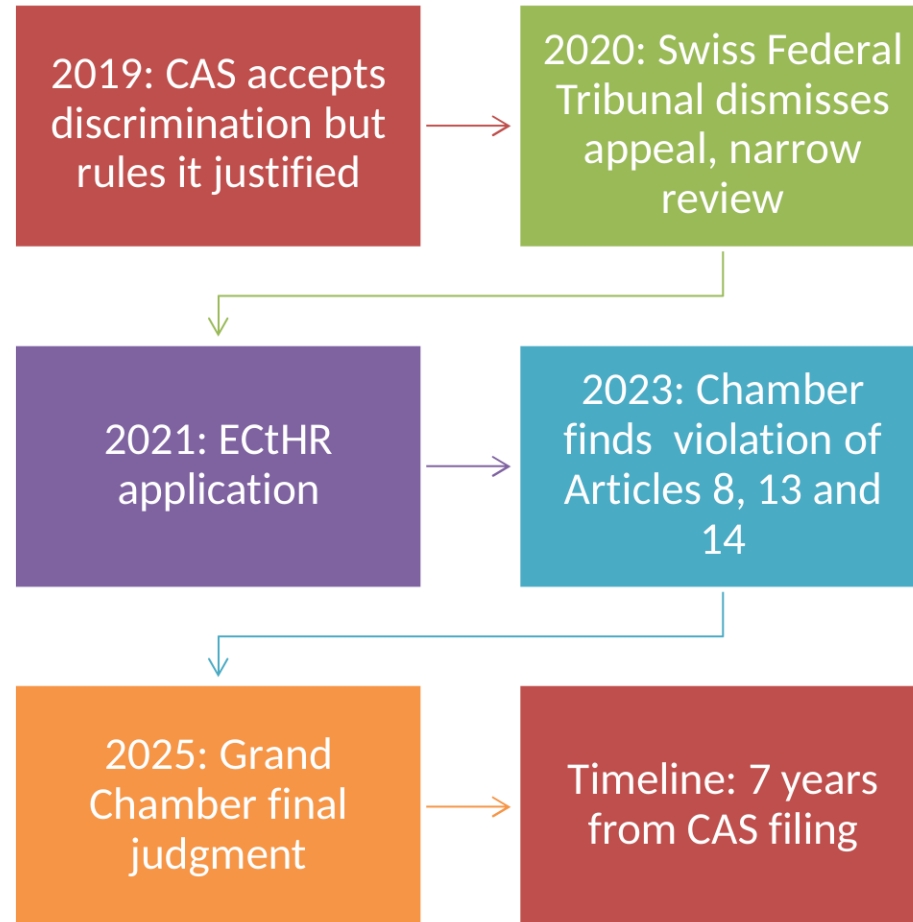
Require hormone
treatment for
participation in some
women's events

Semenya refused
medical intervention

Challenge raised issues
of bodily integrity,
privacy, dignity, non-
discrimination

Arbitration before CAS
is mandatory for elite
athletes

Procedural Path



Grand Chamber Ruling

Switzerland
violated Article 6 —
right to a fair
hearing

Violation:
insufficient judicial
review of CAS
award

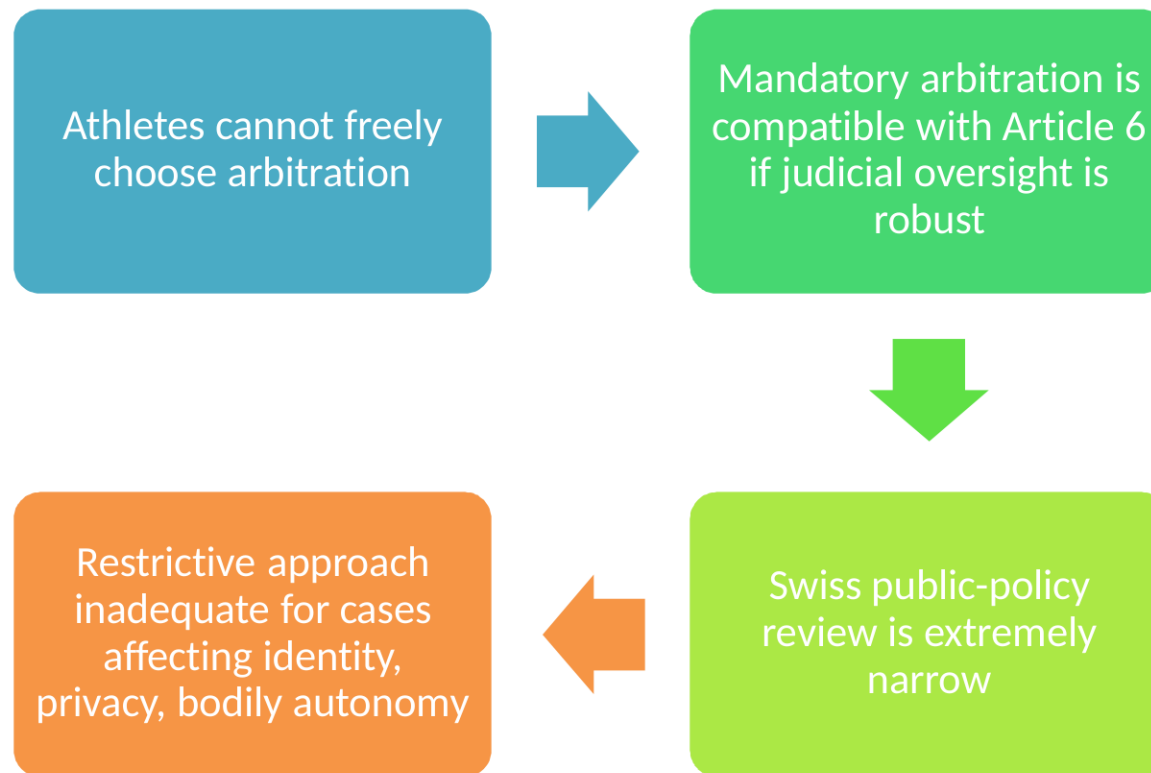
Duty of
“particularly
rigorous” review

Mandatory
arbitration

Rights implications:
dignity, identity,
bodily integrity,
discrimination

Swiss Tribunal used
minimalist
approach

Why Judicial Review Matters



Areas of Inadequate Scrutiny



INSUFFICIENT
REVIEW OF FACTUAL
& SCIENTIFIC BASIS
OF DSD
REGULATIONS



LACK OF SCRUTINY
ON ARBITRARINESS
OF REGULATORY
DESIGN



PRIVACY AND
MEDICAL
IMPLICATIONS NOT
MEANINGFULLY
ADDRESSED



FOCUSED ON
THEORETICAL GOALS,
NOT REAL
CONSEQUENCES FOR
ATHLETE

Practical Implications

Procedural victory for Semenya;
DSD Regulations not struck down

Switzerland/CAS must reconsider
handling of athlete-rights cases

CAS panels may improve reasoning
and evidentiary support

Opens avenues for challenging
judicial review adequacy

Broader European Arbitration Context



MANDATORY
ARBITRATION NOT
INCOMPATIBLE WITH
ARTICLE 6 (MUTU,
PECHSTEIN)



STATE MUST ENSURE
RIGOROUS REVIEW
WHEN
FUNDAMENTAL
RIGHTS AT STAKE



RESTRICTIVE PUBLIC-
POLICY REVIEW
INSUFFICIENT FOR
NON-COMMERCIAL
STAKES



IMPLICATIONS
EXTEND BEYOND
SPORTS:
EMPLOYMENT,
MEDICAL ETHICS,
DISCRIMINATION
CASES



Key Takeaways

Substantive debate on testosterone regulations remains open

Grand Chamber clarified procedural obligations under Article 6

Judicial review must be engaged, consequence-oriented, and factually rigorous

Shift in balance: sports arbitration vs. human-rights oversight