

Caster Semenya wins at the European Court of Human Rights regarding the right of athletes to a fair hearing during disputes between individual athletes and their sport governing bodies

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In the case of *Semenya v Switzerland*, the European Court of Human Rights held that when athletes complain to their sport's governing bodies regarding regulations that undermine their human rights, which such bodies claim are compatible with substantive public policy, the arbitration or reviewing bodies must rigorously – and not restrictively – examine the breaches of the athletes' fundamental rights before deciding a case. This decision should result in important changes to the governance of international sport.

Keywords: Caster Semenya, European Court, human rights, women athletes, sex differences, unfair treatment, World Athletics, eligibility regulations, successful appeal, important changes

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On 10 July 2025, the Grand Chamber of the European Court of Human Rights^[1] delivered an important judgment by 15 votes to 2 regarding the right of individual athletes to a fair hearing in disputes with their sport governing bodies.^[1] The European Court, however, dismissed Ms Semenya's other claims for 'just satisfaction'.^[1] Her legal team was led by Gregory Knott and Patrick Bracher of Norton Rose Fulbright from South Africa (SA), assisted by James Bunting and Carlos Sayao of Tye LLP from Toronto, Canada, and with counsel Schona Jolly KC and Clare McCann of Cloister's Chambers, London, UK.^[2]

The European Court upheld Ms Semenya's claim that she was denied a fair hearing by the Swiss Federal Supreme Court, which had confirmed the International Association of Athletics Federations (IAAF)'s decision on eligibility regulations concerning women athletes. The regulations require female athletes with levels of testosterone that are higher than those that usually occur in women to reduce their testosterone through hormone treatment to within the upper level of what usually occurs in women.^[1]

The European Court held that the Swiss Federal Court had limited its review of Ms Semenya's complaints to the compatibility of the Court of Arbitration for Sport (CAS)'s award with substantive public policy, and had interpreted the concept very restrictively instead of conducting a rigorous examination of her complaints.^[1] The European Court unanimously awarded her costs of EUR80 000 to cover her legal costs and expenses, plus any charge that may be levied against her as tax.^[1]

Duties of doctors regarding the administration of drugs to reduce natural physical advantages of athletes

I submitted a medicolegal and ethical opinion to support Ms Semenya's claims against the CAS and IAAF as part of her legal team's submissions,

and the substance of the opinion was subsequently published in *SAJBL*.^[3] The article stated that the CAS's confirmation of the decision by the IAAF requiring hyperandrogenic female athletes such as Caster Semenya to reduce their testosterone levels to compete in certain races had been widely condemned.^[4] The article mentioned that the World Medical Association (WMA) had warned doctors not to assist in implementing the decision, as it would be unethical.^[4] The article also indicated that the same warning was implied in the Health Professions Council of SA (HPCSA)'s rules of professional conduct.^[5] In any event, treatment to reduce naturally occurring higher testosterone levels in elite athletes is 'futile' in medical terms, as it does not serve the purpose of providing healthcare as defined by the WMA.^[3] Therefore, doctors should lawfully refuse to prescribe it. The decision by the CAS affirming the decision of the IAAF was a violation of Ms Semenya's constitutional rights, and would be regarded as unethical should doctors comply with it. However, the prescription of such drugs would not be unlawful if Ms Semenya gave informed consent to risk the unpleasant side-effects when asking to take the drugs. Such consent, however, would not be a defence to a disciplinary hearing on unprofessional conduct. It would be a good defence to any legal action arising from such unpleasant side-effects – provided such side-effects were disclosed to her beforehand.^[3]

Meaning of healthcare and medical treatment

The article mentioned that 'healthcare' has been defined as 'the maintenance or improvement of health via the prevention, diagnosis, and treatment of disease, illness, injury, and other physical and mental impairments in people'.^[3]

The article pointed out that the definitions of 'medical treatment' focus on being linked to curing or preventing illnesses, diseases or disorders, or to relieve symptoms. In terms of such definitions, the administration of testosterone-reducing drugs for reasons other than to maintain or improve health; prevent, treat or manage an illness; or preserve mental or physical wellbeing, would not constitute 'healthcare'. It would also not qualify as 'medical treatment' designed to cure a disease or disorder or relieve symptoms.^[3] Ms Semenya and her sister athletes, such as Dutee Chand of India,^[6] who are naturally hyperandrogenic do not suffer from illnesses, disorders or symptoms that require care for their mental or physical wellbeing.

Were Ms Semenya's South African constitutional rights violated?

The SA Constitution^[7] provides everyone with the right to bodily and psychological integrity, including the right 'to security in and control over their body' and 'not to be subjected to medical or scientific experiments without their informed consent'.^[8] The Constitution also states that nobody may be unfairly discriminated against.^[7]

The article emphasised that for Ms Semenya to defend her Olympic and world championship titles in the 800 m athletic event, she would have to lose her right to security and control over her body by having to take testosterone-lowering drugs.^[3] Her consent would not be valid, as it was made under duress and not freely and voluntarily, because had she refused to consent, she would not be allowed to compete. In addition, it could be argued that she would be subjecting herself to a 'medical or scientific experiment' under duress, as it has been reported that the scientific study relied on by the IAAF and CAS was 'weak' and did not accord with several other studies on the subject.^[3]

The article clearly stated there was unfair discrimination against female athletes with enhanced physical advantages, such as having abnormally high testosterone levels, when compared with male athletes who have abnormally high testosterone levels or other physical advantages.^[3] The article gives the example of Michael Phelps, the multi-gold winning Olympic swimming champion, who has been described as a 'wondrous marvel', because he has a 'disproportionately vast wingspan ... double-jointed ankles that give his kick an unusual range ... and produces half the lactic acid of a typical athlete – and since lactic acid causes fatigue, he's simply better equipped at a biological level to excel in his sport'.^[3] My opinion mentioned that male athletes such as Michael Phelps were not required to increase their lactic acid production 'to level the playing field'.^[3]

Ethical considerations

The article mentions that the WMA, of which SA is a member, had strongly condemned the decision of the IAAF and CAS, and warned doctors worldwide not to implement the eligibility regulations because such conduct would be 'contrary to [several] key WMA ethical statements and declarations'.^[9] The WMA called for 'their immediate withdrawal' because doctors must always act in the best interests of their patients, and provide them with 'medical care of good quality' and respect their dignity.^[10] The article states that the HPCSA ethical rules of conduct rules also require doctors to act 'in the best interests' of their patients.^[11] In addition, the article points out that while a medical practitioner who refuses a patient's request for the administration of a testosterone-reducing drugs is undermining their patient's right to autonomy, such a right is not absolute.^[3] It may

be limited if the patient asks a doctor to do something illegal or unethical, as happened in the Michael Jackson case.^[12] In any event, doctors should not administer futile treatment.^[13]

In a press release after the European Court judgment, Ms Semenya said:

'I have waited 15 long years for this judgment. Today, my patience in this journey has been rewarded with a result that will pave the way for all athletes' human rights to be protected. I have given up what I wanted in the hope that others may have what they need. I hope that this victory will inspire young women to be and accept themselves in all their diversity. There is still much work ahead to achieve justice for women in sport and I will continue to support this effort and fight for young women athletes'.^[2]

Conclusion

The European Court of Human Rights has held that when athletes complain to their sports governing bodies regarding regulations that undermine their human rights, which such bodies claim are compatible with substantive public policy, the arbitration or reviewing bodies must rigorously – and not restrictively – examine the breaches of the athletes' fundamental rights before deciding a case. As was said in the press release:^[2] the court's conclusions that an athlete's fundamental rights must be rigorously examined in a dispute with a sport's governing body should result in important changes to the governance of international sport.

Declaration. This article is based on a medicolegal and ethical opinion the author submitted to Ms Semenya's legal team to support her claims against the CAS and the IAAF.

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