THE ALEX SCHWAZER CASE: WHAT COULD CHANGE AFTER THE ECTHR JUDGMENT IN SEMENYA CASE?

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Abstract: *This paper examines the intersection between sports justice and state justice through the emblematic case of Italian race walker Alex Schwazer, in light of the landmark 2023 Semenya v. Switzerland judgment of the European Court of Human Rights (ECtHR). The study analyses how supranational jurisprudence is reshaping the autonomy of the international sports justice system by asserting the primacy of fundamental rights. It argues that the Semenya ruling—recognising deficiencies in the Court of Arbitration for Sport (CAS) framework concerning fairness, impartiality, and protection against discrimination—could have significant repercussions on Schwazer's pending case before the ECtHR and, more broadly, on the structure of sports arbitration. The paper explores the implications of recognising a "public function" in private sporting bodies, the limits of judicial review in Swiss law, and the need for effective remedies consistent with Articles 6, 8, and 13 of the European Convention on Human Rights. Ultimately, it calls for reform of the lex sportiva to ensure a genuine equilibrium between the fight against doping and the protection of athletes' fundamental rights.*

Keywords: *Alex Schwazer; Semenya case; sports justice; human rights; Court of Arbitration for Sport; European Court of Human Rights.*

Introduction.

The relationship between sports justice and state justice, concerning the protection of athletes' fundamental rights, has long been the subject of intense debate among scholars and lawyers. The growing professionalisation of sport and its social and economic significance have led to a progressive institutionalisation of rules and procedures within sports organisations, as they assert their autonomy from state legal orders. Their aspiration to full autonomy, however, increasing clashes with athletes' demands for the protection of their fundamental rights, focusing on the right to a fair trial, the presumption of innocence, and the prohibition of discrimination.

The case of Alex Schwazer, an Italian race walker and Olympic champion, is truly emblematic. His legal saga unfolded at the intersection of sports justice and state justice, highlighting the criticalities of a system that, in pursuing objectives such as the fight against doping and sports fraud, ends up compromising the individual guarantees of athletes. More specifically, the provision for mandatory arbitration before the Court of Arbitration for Sport (CAS) and the difficulty in obtaining an effective review of arbitral awards raise questions about the com-

patibility of such mechanisms with the European Convention on Human Rights (ECHR).

The recent judgment of the European Court of Human Rights in the *Semenya* case[1] represents a turning point in this debate. The Court recognised that the system of sports justice, as currently structured, may fail to guarantee an effective remedy against discrimination and may violate the right to a fair process, thereby paving the way for greater attention to human rights within the sporting sphere.[5] This jurisprudential precedent could have a significant impact on the *Schwazer* case and, more generally, on the future evolution of international sports justice.[6]

A decisive watershed in this debate is marked by the ruling of the European Court of Human Rights in the *Semenya* case (2023). Through this judgment, the ECtHR acknowledged the deficiencies of the sports justice system both in respecting the tenets of a fair trial and in providing protection against discrimination, thereby initiating a new phase of external (public) scrutiny over the operations of sports institutions. It is a precedent of a disruptive nature, which has not only opened new scenarios in the assessment of the *Schwazer* case but also foreshadows the potential necessity of reforming the entire architecture of international sports justice. This reform must be guided by a necessary balance between private autonomy and the protection of human rights.

This essay aims to analyse this evolution, examining how supranational jurisprudence is progressively eroding the autonomy of the sports order, in favour of establishing the primacy of fundamental rights as an inviolable limit to its autonomy.

1. The Alex Schwazer Case: Chronology and Legal Trajectory

The case of Alex Schwazer represents one of the most emblematic examples of the tensions between sports justice and state justice, as well as of the difficulties athletes may face in having their fundamental rights protected. Schwazer, an Italian race walker and gold medallist at the 2008 Beijing Olympics, was involved in two separate disqualification procedures for doping, which had radically different outcomes depending on the jurisdiction involved.

In 2012, Schwazer tested positive for erythropoietin (EPO) during a surprise anti-doping control, an event which led to an initial ban from both Italian and international sports justice bodies.[2] 2016 was a decisive year in his sporting career.

1. European Court of Human Rights (2023). *Semenya v. Switzerland* (Application no. 10934/21). Judgment of 11 July 2023.

2. IOC (2012). *IOC executive board decision regarding Alex Schwazer born on 26 December 1984*, London 10 August 2012; Media Release TNA, 23 April 2013 (available at the link https://www.coni.it/it/news/antidoping-tna-squalifica-alex-schwazer-per-3-anni-e-6-mesi.html).

On 1 January, the athlete underwent an out-of-competition anti-doping control. While an initial screening of the 'A' sample returned a negative result, subsequent, more sophisticated chromatographic analysis of the same sample revealed the presence of exogenous testosterone metabolites.[3] This subsequent analysis formed the basis for a confirmed adverse analytical finding.

Following these findings, the International Association of Athletics Federations (IAAF) imposed a provisional suspension on the Italian race walker with immediate effect on 8 July. Schwazer filed an appeal against this provisional measure for which the CAS Ad Hoc Division convened a hearing on 8 August at the Olympic venue in Rio de Janeiro, under the expedited arbitration procedure of the Court of Arbitration for Sport (CAS). The CAS panel, however, found the evidence of the anti-doping rule violation to be compelling and dismissed the appeal. In its subsequent final award, the CAS panel confirmed a period of ineligibility of eight years, effectively ending his competitive career at the highest level.[4] Thus, Schwazer's sporting legal affairs can be considered concluded with the CAS arbitration, issued in Rio de Janeiro in 2016.

Parallel to the sports proceedings, the ordinary Italian criminal justice system initiated an investigation. In a decisive turn of events, the Judge for Preliminary Investigations of the Tribunal of Bolzano dismissed the criminal case in February 2021.[5] The judge's ruling found it 'highly credible' that the urine samples had been tampered with to fabricate a positive result and damage the athlete. This outcome underscored a fundamental schism: the sports system, prioritising expediency and a stringent approach to anti-doping, clashed with the state system's commitment to robust procedural guarantees and the pursuit of material truth.[6]

The dismissal of the criminal proceedings seemed to reopen Schwazer's legal

3. For the official documentation of the anti-doping rule violation, see the related CAS award: CAS 2016/A/4707 *Alex Schwazer v. International Association of Athletics Federation (IAAF), Italian National Anti-Doping Organization (NADO Italia), Federazione Italiana di Atletica Leggera (FIDAL) & World Anti-Doping Agency (WADA),* award of 30 January 2017 (operative part of 11 August 2016), especially paras 6-25.

4. The eight-year sanction was mandated as Schwazer was considered a repeat offender, having previously served a ban for a 2012 violation. This is in accordance with Article 10.9.1 of the World Anti-Doping Code. The full legal reasoning for the sanction is set out in the final CAS award: CAS 2016/A/4707, paras 92-93.

5. Tribunale di Bolzano, Giudice per le Indagini Preliminari, Ordinanza di archiviazione, 24 February 2021 (N. 1409/2016 R.G.N.R.), p. 32.

6. About the difference between sports legal systems and state legal systems see *amplius* Ken Foster, (2012*) Is there a Global Sports Law?*, in Robert C. R. Siekmann and Janwillelm Soek, eds. (2003), *Lex Sportiva: What is Sports Law?*, The Hague, T.M.C. Asser Press, pp. 35-52; Anna Di Giandomenico (2023). *The Overlap Between State Law Systems and Sports Law Systems. The Case of Doping,* in M. Imbri ević (ed.) (2023),*Sport, Law and Philosophy. The Jurisprudence of Sport*, Abingdon, Oxon, Routledge, pp. 40-55.

troubles in the sporting arena, and he filed an appeal for review of the CAS ruling in order to have the remainder of his disqualification overturned. The arbitral tribunal rejected the request, affirming that the procedure accepted by the parties did not allow for further expert reports or technical investigations. A subsequent appeal to the Swiss Federal Supreme Court was also dismissed, on the grounds that the procedural rules accepted in the arbitration could not be called into question *ex post*.[7]

This development prompted Schwazer to lodge an application with the European Court of Human Rights. The application alleges that the Swiss Federal Supreme Court, by refusing to substantively review the CAS award in light of compelling new evidence, failed in its positive obligation to ensure his right to a fair trial under Article 6(1) ECtHR.[8] At this juncture, Schwazer and his legal counsel decided to lodge an application with the European Court of Human Rights. They alleged a violation of the right to a fair trial (Article 6) by the sports justice system and the Swiss Federal Supreme Court, which had rejected the appeal without examining the new evidence on its merits. The application, which has passed the preliminary admissibility assessment (under Article 27 ECTHR), places at its core the issue of the compatibility between the rules of international sports justice and the fundamental principles enshrined in the Convention. A further procedural step involved the recent service upon the parties of a list of questions, which will form the substantive basis for the forthcoming adversarial hearings.[9]

7. Schweizerisches Bundesgericht, *A. v. World Athletics*, Case No. 4A_248/2021, Judgment of 10 August 2021.

8. European Court of Human Rights, Application no. 28626/22, *Schwazer v. Switzerland* (lodged 28 April 2022). The application specifically argues that the Swiss Federal Supreme Court's excessively deferential review, limited to the narrow grounds of Article 190 of the Swiss Federal Act on Private International Law (PILA), violated his rights under Article 6 § 1 of the Convention. This legal argument is grounded in the precedent set by *Semenya v. Switzerland* [GC], no. 10934/21, 11 July 2023, where the Court held that " the specific characteristics of the sports arbitration to which the applicant was subject, entailing the mandatory and exclusive jurisdiction of the CAS, required an in-depth judicial review – commensurate with the seriousness of the personal rights at issue – by the only domestic court having jurisdiction to carry out such a task. The review of the applicant's case by the Federal Supreme Court, not least owing to its very restrictive interpretation of the notion of public policy, which it also applied to the review of arbitral awards by the CAS, did not satisfy the requirement of particular rigour called for in the circumstances of the case. In these circumstances, the Court concludes that the applicant did not benefit from the safeguards provided by Article 6 § 1 of the Convention." (§ 112). Schwazer contends that the Swiss court's refusal to engage with the merits of the new evidence from the Italian criminal investigation constitutes a similar failure.

9. https://hudoc.echr.coe.int/eng?i=001-244862.

2. The European Court of Human Rights (ECtHR) Judgment in the Semenya Case.

The case concerning Caster Semenya, the South African middle-distance runner and double Olympic champion at 800 metres, is a turning point in the evolving jurisprudence of international sports law and athlete rights.[10] This legal saga commenced in 2018 when the International Association of Athletics Federations, now World Athletics, promulgated the 'Eligibility Regulations for the Female Classification' targeting athletes with Differences of Sex Development.[11] These contentious regulations effectively mandated that affected athletes, including Semenya, pharmacologically suppress their naturally occurring testosterone levels to retain eligibility for international competition in women's events between 400 metres and the mile (para 3.2).

Challenging the regulations as fundamentally discriminatory and scientifically unsound, Semenya initiated proceedings before the Court of Arbitration for Sport.[12] Her legal team contended that the rules constituted a disproportionate intrusion upon her right to private life and a violation of the core principle of non-discrimination. In its 2019 award, the CAS panel, whilst expressly acknowledging the regulations' "discriminatory nature," ultimately determined that such discrimination was "necessary, reasonable, and proportionate" to uphold the integrity of female athletic competition (para 626). This ruling was subsequently endorsed by the Swiss Federal Supreme Court, which, in a highly circumscribed review, confined its analysis to issues of procedural public policy, declining to engage with the substantive human rights arguments pertaining to discrimination.[13]

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10. *Ex pluribus*, see Jonathan Cooper, (2023) "Semenya v. Switzerland (European Court of Human Rights), No. 10934/21, July 11 2023", *Entertainment and Sports Law Journal* 21(1). doi: https://doi.org/10.16997/eslj.1490; Id. (2025), "Intervention: Semenya v Switzerland (European Court of Human Rights, Grand Chamber), No. 10934/21, July 10, 2025", *Entertainment and Sports Law Journal* 23(1). doi: https://doi.org/10.16997/eslj.1985; Pieter Cannoot, Cathérine Van de Graaf, Claire Poppelwell-Scevak, Ariël Decoster, and Sarah Schoentjes (2024). Hormonal Eligibility Criteria in Women's Professional Sports Under the ECHR: The Case of Caster Semenya v. Switzerland (October 20, 2022), in Véronique Boillet, Sophie Weerts and Andreas R. Ziegler (eds)(2024). *Sports and Human Rights. WSHR 2022. Interdisciplinary Studies in Human Rights*, vol 10. Springer, Cham. https://doi.org/10.1007/978-3-031-56452-9_5; Tsubasa Shinohara, (2024) Human Rights in Sports Arbitration: What Should the Court of Arbitration for Sport do for Protecting Human Rights in Sports?. *Liverpool Law Rev*iew, 45, 185–207. https://doi.org/10.1007/s10991-023-09352-8

11. IAAF. (2018). *Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development)*.

12. *Caster Semenya v. International Association of Athletics Federations*, CAS 2018/O/5794, Award of 30 April 2019.

13. Schweizerisches Bundesgericht, *Caster Semenya v. IAAF*, Case No. 4A_248/2019, Judgment of 25 August 2020, consid. 5.3.

Having exhausted all possible levels of sporting judgement, Semenya has appealed to the European Court of Human Rights, alleging violations of Article 8 (right to respect for private life), Article 13 (right to an effective remedy), and Article 14 (prohibition of discrimination) of the Convention.[14] The ECtHR's Grand Chamber delivered a landmark judgment on 11 July 2023, finding a violation of Article 13 in conjunction with Article 14. The Court held that the structure of legal remedies available to Semenya in Switzerland—specifically, the CAS process followed by the limited judicial review of the Swiss Federal Supreme Court—had failed to provide her with an effective means of challenging the alleged discrimination.[15]

The European Court underscored that, within the framework of mandatory sports arbitration, the CAS did not directly apply Convention standards, thereby leaving fundamental questions regarding the scientific justification and proportionality of the DSD regulations inadequately addressed (para 224). Moreover, the ECtHR found that the Swiss Federal Supreme Court, in its supervisory capacity, had not conducted a substantive review of Semenya's discrimination claims, offering only a formalistic assessment that failed to constitute the "effective remedy" required by the Convention (para 217).

The *Semenya v. Switzerland* ruling therefore represents a landmark in case law, establishing the imperative that the autonomous realm of international sport is not exempt from the binding principles of human rights law. By asserting that states party to the Convention bear responsibility for ensuring that compulsory arbitration systems provide effective recourse against discrimination, the ECtHR has irrevocably altered the landscape of sports governance. This precedent not only reinforces the justiciability of fundamental rights in sports regulation, but also has important implications for pending cases, such as that of Alex Schwazer, where similar issues relating to due process and the effectiveness of remedies are at the forefront.

3. Legal Issues.

The judgment in the *Semenya* case, together with the initial communications from the ECtHR in the *Schwazer* proceedings, highlight several legal issues, that warrant careful consideration.

Firstly, there emerges the issue related to the inherent conflict posed by compulsory arbitration in sport and its compatibility with the fundamental guarantee of a hearing before an impartial tribunal. This legal issue arises from the imposi-

14. European Court of Human Rights, Application no. 10934/21, *Semenya v. Switzerland* (lodged 18 February 2021).

15. European Court of Human Rights [GC], *Semenya v. Switzerland*, no. 10934/21, 11 July 2023, paras 191, 238.

tion of mandatory arbitration upon athletes as a *conditio sine qua non* for their participation in international competitions.[16]

These are agreements frequently entered into without any possibility of negotiation, thereby raising serious doubts as to the voluntary nature of the consent given and their compatibility with the right to an impartial tribunal established by law under Article 6 of the ECTHR.[17] Legal scholars emphasised that while sports arbitration offers benefits of expeditiousness and specialised expertise, it carries a significant risk of unduly compromising athletes' procedural safeguards.[18] This is particularly the case where the Court of Arbitration for Sport (CAS) operates as the sole forum for the resolution of disputes.

The *Semenya* judgment highlighted how the absence of any realistic alternative to arbitration, coupled with the lack of full-scope review by state courts, can result in a violation of the right to an effective remedy and a fair trial. In the *Schwazer* case, this issue emerges in the rigidity with which new evidence was treated and the lack of any possibility for a substantive review of the arbitral award.[19] These developments seem to suggest that the jurisprudence of the ECtHR may evolve towards greater scrutiny of arbitral mechanisms, imposing more stringent standards of impartiality and independence, and ensuring athletes have real and substantive access to justice.

A further legal issue concerns the lack of merits review and limits of judicial oversight, namely, the limited possibility for state courts to review the merits of sports arbitral awards. This is particularly evident within the Swiss legal system

16. In this sense see, among several, Marjolaine Viret (2015). *Evidence in Anti-Doping at the Intersection of Science & Law*, TheHague, T.M.C. Asser Press, especially pp. 123-124, 148-150.

17. The right to a "fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" is enshrined in Article 6(1) of the European Convention on Human Rights. The European Court of Human Rights has consistently held that any waiver of this right must be established in an "unequivocal" manner. The nature of these arbitration clauses in sports governance, where the athlete's choice is effectively to accept the terms or be excluded from competition, challenges the validity of such a waiver. In this way, see *Deweer v. Belgium*, Application no. 6903/75, 27 February 1980, para. 49, and more recently, the principles affirmed in *Semenya v. Switzerland* [GC], cit., which scrutinised the effectiveness of remedies available against compulsory arbitration.

18. In this sense read Matthew J. Mitten, and Timothy Davis, T. (2008). *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities*. Virginia Sports & Entertainment Law Journal, 8, especially p. 71, where the authors argue that the "take-it-or-leave-it" nature of eligibility rules, which include mandatory arbitration clauses, places athletes in a position of profound inequality, potentially undermining the fundamental fairness of the process.

19. Just recall that the ECtHR in its communication to the parties asks: “Le refus du Tribunal fédéral d’admettre la révision de la sentence arbitrale du TAS en date du 30 janvier 2017 pour les raisons indiquées dans son arrêt du 28 septembre 2021, constitue-t-il une limitation au droit d’accès à un tribunal au sens de l’article 6 § 1 de la Convention?“

where the CAS is seated. Indeed, the Swiss Federal Supreme Court intervenes almost exclusively on grounds of public policy, without ever engaging with the technical or factual assessments underlying the arbitral tribunal's findings.[20] In practice, this results in a gap in the legal protection of athletes, particularly when new evidence emerges or when issues relating to potential violations of fundamental rights are raised.

In the *Schwazer* case, the Swiss Federal Supreme Court dismissed the appeal without examining the new evidence on its merits, confining itself to a formalistic review of procedural correctness. The court itself criticised such approach, reaffirming, in the *Semenya* case, the need of a substantive, rather than a purely formal, judicial review capable of guaranteeing the effective protection of fundamental rights, even in the context of sports arbitral awards (paras 175-178). In the absence of an effective review on the merits, an athlete may be left without protection, particularly in the event of procedural errors or abuses by the arbitral tribunal.

Furthermore, the requirement for expeditious arbitral proceedings, often justified by the need to ensure certainty in sporting results and the regular continuation of competitions, cannot legitimise the curtailment of essential procedural guarantees or the renunciation of comprehensive judicial oversight.[21] Consequently, as highlighted in legal scholarship, there is a demonstrable need to introduce mechanisms that permit an effective and thorough review of arbitral awards, particularly where the fundamental rights of athletes are at stake.[22]

Finally, a crucial issue concerns the extent to which the principles of the European Convention on Human Rights apply to private sporting bodies, such as

20. Article 190 of the Swiss Federal Act on Private International Law (PILA) exhaustively lists the grounds for setting aside an international arbitral award in Switzerland, which are limited to issues such as the improper constitution of the tribunal, a lack of jurisdiction, a decision *ultra petita*, or a violation of public policy. The Swiss Federal Supreme Court is thus precluded from reassessing the evidence or the arbitrators' application of the law.

21. This reflects a core principle of procedural fairness: while efficiency is a legitimate aim, it cannot override the fundamental requirements of a fair trial. The European Court of Human Rights has consistently held that the right of access to a court, inherent in Article 6 § 1 ECtHR, may be subject to limitations, but these must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. In addition to the aforementioned *Semenya* ruling**,** see, *inter alia*, *Ashingdane v. the United Kingdom*, no. 8225/78, 28 May 1985, para. 57.

22. This critique is well-established in legal scholarship. Antonio Rigozzi has extensively analysed the limitations of the Swiss Federal Supreme Court's review, arguing that the current system fails to provide a sufficient remedy for fundamental rights violations In particular, see Antonio Rigozzi (2010). *Challenging Awards of the Court of Arbitration for Sport*. Journal of International Dispute Settlement. 1. 217-265. 10.1093/jnlids/idp010. See also Matthew J. Mitten, (2009). *Judicial Review of Olympic and International Sports Arbitration Awards: Trends and Observations*, *Pepperdine Dispute Resolution Law Journal*, 10, 1, 51-67.

international federations and the CAS.[23] Traditionally, these bodies have been regarded as entities governed by private law and, as such, not directly bound by the obligations of the ECHR. However, more recent European jurisprudence, and in particular the *Semenya* judgment, has recognised that such bodies, by virtue of exercising regulatory and disciplinary powers with significant consequences for athletes' lives and careers, perform functions of a quasi-public nature.

Another legal issue is that regarding the applicability of the principles of the European Convention on Human Rights to sports proceedings, particularly those concerning doping and differences of sex development. The ECtHR criticised this approach: in the *Semenya* case reaffirmed the necessity of a substantive, rather than a purely formal, judicial review capable of guaranteeing the effective protection of fundamental rights, even in the context of sports arbitral awards.

This recognition opens innovative scenarios, suggesting that human rights protection could find direct application even within the context of anti-doping rules and sports disciplinary proceedings, which are often characterised by presumptions of guilt and onerous burdens of proof placed upon the athlete.[24]

Looking forward, the recognition of the "public" nature of the functions exercised by private sporting bodies could lead to these entities being held to a greater degree of accountability and to a broader, more direct application of ECHR principles to their activities. In parallel, the growing focus of European jurisprudence on protecting athletes' fundamental rights may compel international federations to review and amend their own regulations and disciplinary procedures to better align them with the principles of the Convention and to prevent potential condemnations by the Court.[25]

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23. This engages the complex legal doctrine of the horizontal effect of human rights treaties. While the ECHR formally creates obligations for states, the European Court of Human Rights has developed the concept of "positive obligations," requiring states to protect Convention rights even in disputes between private parties. For a foundational analysis of this issue in the sports context, see the aforementioned Mitten, M. J., & Davis, T. (2008). *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities*.

24. This prospect directly challenges the principle of strict liability, as stated by the WADA Code (Article 2.1.1), and the subsequent shifting of the burden of proof to the athlete to establish how a substance entered their system (Article 3.2.1). The European Court of Human Rights has previously held that presumptions of fact or law in criminal proceedings (a category which includes doping sanctions due to their punitive nature) are not in themselves incompatible with Article 6, but must remain within reasonable limits and not shift the entire burden of proof onto the defence. See *Salabiaku v. France*, no. 10519/83, 7 October 1988, § 28. The application of this principle could necessitate a re-evaluation of whether the current structure of anti-doping rules, as applied in compulsory arbitration, respects the athlete's right to a fair trial and the presumption of innocence.

25. Faced with the risk of successful applications to the ECtHR and subsequent judgments against member states that endorse their decisions, federations like World Athletics and FIFA have a strong incentive to conduct a *ex ante* review of their regulations. The goal would be to

4. Final remarks.

The *Schwazer* case could represent the first substantive test of the consequences for the international sports justice system flowing from the ECtHR's judgment in the *Semenya* case, particularly concerning the protection of the fundamental rights of athletes involved in disciplinary and anti-doping proceedings. This case brings into sharp relief the tensions and critical issues that exist between the imperative to preserve the integrity and credibility of sport and the necessity of upholding internationally recognised procedural guarantees, especially within the context of an increasingly regulated and globalised sporting world.[26]

On the one hand, it is undeniable that the fight against doping constitutes one of the indispensable priorities of the international sports movement. Ensuring fair and transparent competitions, safeguarding the health of athletes, and guaranteeing equitable treatment for all participants are essential objectives, necessary to maintain public trust and the very integrity of sport.

This tension originates in the fundamental difference between sports legal orders and state legal systems. The *Grundnorm*, or basic norm, of the former is the principle of fair competition: they are structured and organised to ensure a level playing field, elevating this concept to an absolute principle that treats individual rights as secondary or derivative. Indeed, the *Grundnorm* of the latter can vary, though it may be posited that, generally—at least within democratic societies—it is the principle of equality among citizens. From this foundational norm derives a series of constraints placed upon the State, designed to protect individual liberties. Thus, state legal systems are fundamentally structured around the protection of the individual from the power of the state (*Rechtsstaat* or the rule of law). This generates a network of inalienable rights and procedural guarantees.

Hence, an inevitable friction arises between the two legal systems when the integrity of sporting competition is the value being assessed. The *Schwazer* case is emblematic in this regard, as it manifested a direct clash of juridical philosophies: the Italian criminal court's focus on individual justice and procedural rights fundamentally conflicted with the sports justice system's prioritisation of the finality and integrity of its own disciplinary process. This case perfectly il-

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ensure compliance with fundamental rights, particularly concerning procedural fairness in disciplinary matters, the proportionality of sanctions, and the non-discriminatory nature of eligibility rules, thereby mitigating future litigation risks.

26. Indeed, the Schwazer proceedings, involving allegations of procedural irregularities and new exculpatory evidence from a national criminal court, directly engage with the ECtHR's requirement for "full jurisdiction" and an "effective remedy" in the context of de facto compulsory arbitration. The outcome will significantly illuminate the extent to which the autonomous lex sportiva must now accommodate external human rights scrutiny, potentially compelling a recalibration of the balance between regulatory efficiency and fundamental fair trial rights in anti-doping enforcement.

lustrates the "clash of *Grundnorms*." The Italian court, operating within a constitutional framework that prioritises individual rights and the search for material truth (as evidenced by its dismissal based on a "highly credible" hypothesis of evidence tampering), reached a conclusion diametrically opposed to that of the CAS. The CAS, bound by the procedural and substantive rules of the *lex sportiva* which prioritise regulatory efficiency and the integrity of the competition, was unable to integrate this finding from the state jurisdiction, resulting in a stark legal contradiction for the athlete.

An initial effect of the *Semenya* judgment can be discerned in the direct communications from the ECtHR to the parties, aimed at verifying several key legal points. These inquiries seek to establish: whether there has been compliance with the right of access to a tribunal, as enshrined in Article 6 § 1 of the ECHR; whether a violation of the right to respect for private and family life under Article 8 § 1 has occurred, with particular regard to the right to reputation and the right to exercise one's profession; and, critically, whether an effective remedy was available, pursuant to Article 13, to assert the alleged violation of Article 8 of the Convention.

One of the most delicate aspects concerns the necessity of guaranteeing an effective equilibrium between the efficacy of the fight against doping and the protection of athletes' fundamental rights. The jurisprudence of the ECtHR suggests that the pursuit of the expeditiousness and specialisation characteristic of sports justice cannot occur at the expense of essential procedural guarantees, nor of the possibility of an effective and substantive judicial review. In this sense, it appears necessary to revise and amend the mechanisms of compulsory arbitration by introducing procedural instruments that allow for a review on the merits of arbitral awards, and by recognising the "public" nature of the functions exercised by private sporting bodies, thereby subjecting them to more rigorous oversight and stronger accountability.

Furthermore, the growing focus on human rights in sport could stimulate international federations to revise their internal regulations and disciplinary procedures, promoting a culture of legality and respect for the individual even within a traditionally self-referential context such as that of sporting competitions. Although this reform process is complex and requires a delicate balance of competing interests, it now appears inevitable, not only in light of jurisprudential developments, but also considering pressures from civil society, international human rights bodies, and the academic world.

There is the awareness that this would represent a paradigm shift. Recognising a "public function" for the purposes of human rights law would directly challenge the long-held doctrine of contractual autonomy in sports. This could lead to the application of stricter standards of procedural fairness, proportionality, and non-discrimination directly to the rule-making and adjudicative processes of bodies like World Athletics and FIFA. And the outcome in *Schwazer v. Switzerland* will serve as a critical indicator of the extent to which external legal

pressure can compel this internal transformation, or if sports bodies will seek to maintain the existing paradigm with only minimal, cosmetic adjustments.

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