

# Athlete Trapped Between Arbitration and Courts

On February 26, 2014, the Regional Court of Munich rejected the lawsuit of the well known German speed skater Claudia Pechstein. Although the Regional Court decided that arbitration clauses for athletes are invalid because athletes are “forced” to sign them if they want to participate in sport competitions, she nonetheless dismissed the case on the merits, reasoning that the CAS award has *res judicata* effect.

A translation into English of the German press release concerning this interesting decision has been kindly provided by Franz Kaps, Research Fellow of the Max Planck Institute Luxembourg.

## **Press Release 03 /14**

### **Case law of the Regional Court of Munich I in Civil Matters**

#### **No compensation for speed skater after doping suspension**

In today’s decision the Regional Court of Munich I (Case Number 37 O 28331/12) rejected the suit of a well-known German speed skater. The claimant had requested the declaration that the doping suspension imposed on her was unlawful, as well as the payment of approximately € 3.5 million in damages, a reasonable compensation for personal suffering of € 400.000, and the acknowledgement to reimburse future damages. The defendants were the German (defendant 1) and the International Skating Union (defendant 2) .

#### **The background:**

In 2009 the claimant was suspended for 2 years by the Disciplinary Commission of the defendant 2, after discovering elevated reticulocyte counts in her blood. The claimant had signed with both defendants athlete’s agreements in which an arbitration agreement was included. The claimant appealed to the Court of Arbitration for Sport (CAS) and the CAS confirmed the lawfulness of the suspension.

#### **The reasoning of the court:**

The appeal before the Regional Court of Munich was not prevented by the arbitration plea of the defendants based on the agreements signed by the athlete: the arbitration clauses concluded between the parties were considered to be invalid, as they had not been voluntarily accepted by the claimant. At the time of the conclusion of the arbitration agreements there was a structural imbalance between the claimant and the defendants; the latter being in a monopoly position, the claimant had no other choice than to sign the arbitration agreements – otherwise, she would not have been allowed to participate in competitions and would thus have been hampered in the exercise of her profession.

However, a decision of the court on the question whether the doping suspension was unlawful was prevented by the *res judicata* effect of the decision of the International Court of Sport (CAS). The 37<sup>th</sup> Civil Chamber of the Regional Court could not and was not allowed to determine whether the doping suspension was lawful. The *res judicata* of the arbitration award had to be recognized, as at the time of the referral to the CAS there was no structural imbalance between the parties anymore. The competition was over and in the proceeding before the CAS the claimant was represented by lawyers. The alleged errors in the composition of the arbitral tribunal or the selection of the arbitrators were not raised in the proceedings before the CAS. A correlating complaint would have been required and reasonable. The invalidity of the arbitration agreement does therefore not preclude the recognition of the arbitral award: despite her knowledge about the lack of voluntary conclusion of the arbitration agreement, the claimant appealed to the CAS and did also not reprimand this defect. In addition, the decision by the CAS does not violate fundamental constitutional principles.

The alleged damages and pain and suffering claims were not subject in the proceedings before the CAS. To this extend the lawsuit was admissible. These claims were unfounded, because in order to determine whether such claims actually exist, it would be necessary to assess whether the doping suspension was justified, but with respect to this question the court is bound by the observations of the CAS and therefore had to assume that the suspension was lawful without any further inquiry.

**(Judgment of the Regional Court of Munich I, Case Number: 37 O 28331/12; the decision is not final)**

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Ruhwinkel – spokeswoman.