



**STATEMENT OF THE COURT OF ARBITRATION FOR SPORT (CAS)  
ON THE DECISION MADE BY THE OBERLANDESGERICHT MÜNCHEN  
IN THE CASE BETWEEN CLAUDIA PECHSTEIN AND THE INTERNATIONAL  
SKATING UNION (ISU)**

*Lausanne, 27 mars 2015* – The Court of Arbitration for Sport (CAS) has noted the ruling of the Appeals Court of Munich/Germany in relation to the case between Claudia Pechstein and the ISU. It has noted that, according to the Appeals Court, the fact that the decisions of the CAS and of the Swiss Federal Tribunal (SFT) were final in Switzerland did not prevent the athlete from bringing a claim for damages before the German courts, in the light of the principles of German competition law which forms part of German public policy. However, the CAS has also noted that the Appeals Court did not consider that making the athletes' participation in competitions contingent on their agreement to arbitration in general was an abuse of a dominant position. The Appeals Court also mentioned that CAS arbitration does not breach Article 6 para. 1 of the European Convention for Human Rights and recognized the need to have a specialized international tribunal, instead of state courts, ensuring the uniform adjudication of sports-related disputes.

Claudia Pechstein had a fair trial, not only before the CAS Panel but also before the SFT, and the judgment of the SFT, which remains in force, should have settled this matter definitively in 2010.

Claudia Pechstein, who was represented by a team of lawyers, decided voluntarily to refer her case to CAS and neither challenged the CAS jurisdiction, nor the President of the CAS Appeals Division, nor the arbitrators comprising the arbitral Panel, although she could have done it if she had any doubt about the independence of the CAS or its arbitrators at that time. Later, as she was unhappy with the outcome of the arbitration, she appealed twice before the SFT which confirmed the validity of the CAS award. Proper procedures were applied and followed at all times.

The CAS notes that the findings of the Munich Appeals Court are based on the CAS rules and organization in force in 2009, when Claudia Pechstein appealed before CAS, and do not take into account the changes leading to the current organization, with amended procedural rules regarding the nomination of arbitrators, development of the legal aid program and the appointment of new ICAS Members not active in or connected to sports-bodies.

If, like in the Pechstein/ISU case, arbitration agreements were to be considered as invalid by state courts, even when not challenged at any stage during the arbitration, then the basic principles of international arbitration would be compromised.



The CAS and international arbitration generally provide for the only system capable of international applicability and consistency for international sport. The CAS is the body identified by the World Anti-doping Agency (WADA) for the final resolution of anti-doping disputes. The fact that State courts would reopen cases involving their national athletes endangers the international effectiveness and the harmony of the decisions rendered in disciplinary matters related to sport. Decisions related to disciplinary matters could take many years after the actual competition to become final, while all the numerous legal remedies are being exhausted. The risk of contradictory decisions would be also higher with athletes being able to compete in certain countries but not in others. This would affect the credibility of sport more generally. It must be emphasized that, also in Germany, various state courts have previously recognized and upheld the jurisdiction of the CAS.

The CAS was created to answer a need of all the stakeholders of international sport. It handles more than 400 cases per year. It has its seat in Switzerland and has performed the necessary work to make CAS arbitration compatible with the requirements of the Swiss Constitution and of the jurisprudence of the SFT. In Switzerland and other countries, the CAS is officially recognized as a true independent and impartial arbitral tribunal, after several reforms over the years. However, the CAS cannot prevent a foreign court contradicting the decisions of the Swiss Supreme Court. The CAS is active in almost all countries around the world and adapting its system and procedures to accommodate each national jurisdiction is not feasible. It is always prepared to listen and analyze the requests and suggestions of its potential users i.e. the athletes, sports federations and other sports entities, in order to continue its development with appropriate reforms. However, such consultation must be independent of individual interests related to an existing dispute. The CAS will continue to improve and evolve with changes in international sport and best practices in international arbitration law.

In Germany, the CAS has started discussions with the Deutsche Olympische Sportbund (DOSB, the National Olympic Committee of Germany) and has contacted the representatives of its athletes' commission in order to explain the CAS operation and procedures. On 18 March 2015, the CAS Secretary General presented the CAS system to the Sports Commission (Sportausschuss) of the German Parliament (Bundestag) in connection to the discussion related to the draft anti-doping law in Germany which currently provides that the resolution of disputes occur through arbitration.