

Sports Arbitration Court Ruling Against German Speedskater Claudia Pechstein Is Upheld

By Rebecca R. Ruiz

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Order in international sports dispute-resolution was preserved Tuesday, as Germany's highest civil court ruled against a speedskater who had challenged the monopolistic authority of the Court of Arbitration for Sport, the body that for decades has had the final word on sports disputes around the world.

Germany's Federal Court of Justice said Tuesday that Claudia Pechstein, Germany's most decorated Winter Olympian, had received a fair hearing by the arbitration court in 2009, when she challenged a two-year suspension imposed on her by the global governing body for speedskating.

Ms. Pechstein's blood had shown abnormal levels of immature red blood cells, a possible indicator of doping; she maintained that her irregular test results stemmed from a congenital blood disorder and not from the use of banned substances.

Even after she served the associated two-year suspension, Ms. Pechstein continued to challenge the ruling and, fundamentally, the supreme power of the arbitration court.

In order to compete, Olympic federations require athletes like Ms. Pechstein to sign arbitration clauses that bind them to the sports court and waive their rights to bring cases in their home countries.



Pechstein competing in a 3,000 meter race in February at the world championships in Kolomna, Russia. Sergei Ilmitsky/European Pressphoto Agency

As Ms. Pechstein's case has wended its way through the legal system — with a favorable ruling from a lower court in Germany last January — it has quietly threatened the autonomy of the sports court, which is headquartered in a chateau with traditional green shutters in Lausanne, Switzerland.

(The arbitration court's decisions can be overruled by the Swiss Federal Tribunal if there has been a procedural error; following an appeal by Ms. Pechstein, the Swiss court upheld the arbitration court's decision.)

In her suit, Ms. Pechstein took issue with the way that athletes were forced into arbitration agreements, claiming the athletes were not guaranteed fair trials because the sports court was not truly independent of sports federations and the International Olympic Committee, which created the court in 1984.

The sports court's governing body — which selects the roughly 350 approved arbitrators around the world — includes I.O.C. members, and the court relies on money generated by the Olympics.

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In its decision, the German federal court said that Ms. Pechstein had entered into the arbitration agreement willingly. Had the German court ruled in favor of Ms. Pechstein, she could have inspired other athletes to pursue similar suits seeking damages for wages lost during suspensions.

Thomas Summerer, a lawyer for Ms. Pechstein, said on Tuesday that she planned to move the case to a German constitutional court. He called the idea that she had signed the arbitration agreement voluntarily “ridiculous,” noting that it was a condition of competition.

“We are disillusioned that all athletes dispose of equal rights,” Mr. Summerer said. “It is a black day for all athletes in Europe.”

FIFPro, the global soccer union, publicly supported Ms. Pechstein in her case. In a statement Tuesday, the organization called for a continued push for “a more inclusive, impartial and fair arbitration system for athletes,” calling her suit an illustration of “structural and procedural deficits” of universal concern to athletes.

Ian Blackshaw, an international sports law expert, said the Pechstein case was not over, noting it was also pending before the European Court of Human Rights in Strasbourg, France. “Her consent to arbitration was not a true and free one,” Mr. Blackshaw said.

The Court of Arbitration trumpeted the decision out of Germany as a validation of its supreme authority.

“The German courts have no jurisdiction,” the sports court said in a statement Tuesday, adding that the decision set “a very significant precedent and emphasizes more than ever the need to have the Court of Arbitration for Sport as the world’s highest sports tribunal.”

In an interview in the Lausanne chateau earlier this year, Matthieu Reeb, secretary general for the arbitration court, said he thought it was unlikely that there would be a significant number of similar suits. “I don’t think every athlete in the world can afford this kind of marathon,” he said, referring to Ms. Pechstein’s seven-year legal battle. “We have already changed all kinds of things between 2009 and today.”

Mr. Reeb said that the court had enacted a new legal-aid system, providing pro bono representation should an athlete require it, and that it had sought to diversify its governing body, with stronger representation from outside the sports world, focused on recruiting legal and arbitration experts.

That ruling body has not, however, dissolved its Olympic ties. Just last week, Tricia Smith, a member of the sports court’s governing body, was named an I.O.C. member, joining at least five others with links to both the I.O.C. and the sports court.