



MEDIA RELEASE

STATEMENT OF THE COURT OF ARBITRATION FOR SPORT (CAS) ON THE DECISION
MADE BY THE EUROPEAN COURT OF HUMAN RIGHTS (ECHR) IN THE CASE
BETWEEN CLAUDIA PECHSTEIN / ADRIAN MUTU AND SWITZERLAND

THE ECHR RECOGNIZES THAT CAS FULFILS THE REQUIREMENTS OF INDEPENDENCE AND IMPARTIALITY

Lausanne, 2 October 2018 - The Court of Arbitration for Sport (CAS) has noted the ruling of the European Court of Human Rights (ECHR) in relation to the cases between Claudia Pechstein (speed skating / Germany), Adrian Mutu (football / Romania) and Switzerland. Both athletes filed appeals at the ECHR in 2010 against judgments of the Swiss Federal Tribunal (SFT) which confirmed the decisions rendered by CAS in these matters. The ECHR has dismissed all claims, except one concerning the right to a public hearing. The ECHR judgment, published on its website, determines that:

- The ECHR considers that there is an interest in allowing the disputes arising in professional sport, in particular those with an international dimension, to be submitted to a specialized jurisdiction, able to rule on such cases in a quick and inexpensive manner. (...) The recourse to an international arbitral tribunal, unique and specialized, facilitates a certain procedural uniformity and strengthens the legal certainty. That is all the more true when the awards of that arbitral tribunal may be appealed before the supreme court of a single country, i.e. the Swiss Federal Tribunal, which renders final judgments.
- The ECHR recognizes that a non-State dispute resolution mechanism of first and/or second instance, with a possible appeal, even limited, before a State court, as a last instance, is appropriate in this area (of international sport).
- Considering the particular nature of the CAS arbitration system, with mandatory arbitration clauses inserted in the regulations of sports federations, such arbitration shall offer the guarantees provided by Article 6 § 1 of the European Convention on Human Rights.
- As far as the funding of CAS by sports entities is concerned, the ECHR emphasizes that State courts are always financed by governments and considers that this aspect is not sufficient to establish a lack of independence or impartiality of these jurisdictions in disputes between



citizens and the State. By analogy, it is not possible to establish a lack of independence or impartiality of the CAS based on its funding system.

- The ECHR does not see any relevant grounds to overturn the consistent jurisprudence of the Swiss Federal Tribunal stating that the system of a mandatory list of arbitrators complies with the constitutional requirements of independence and impartiality applicable to arbitral tribunals and that the CAS, when it acts as an appeals authority external to international federations, is similar to a judicial authority independent from the parties.
- The public nature of the judicial procedures is a fundamental principle of Article 6 § 1 of the European Convention on Human Rights; such principle is also applicable to non-State courts ruling on disciplinary and/or ethics matters. In the case of Claudia Pechstein, the CAS should have allowed a public hearing considering that the athlete had requested one and that there was no particular reason to deny it.

The ECHR judgment is another confirmation, this time at a continental level, that CAS is a genuine arbitration tribunal and that such sports jurisdiction is necessary for uniformity in sport. The SFT already came to the same conclusion in 1993 and 2003; the German Federal Tribunal as well in 2016.

While these procedures were pending before the ECHR (8 years), ICAS, the governing body of CAS, has regularly reviewed its own structures and rules in order to strengthen the independence and the efficiency of the CAS year after year. ICAS is now composed of a large majority of legal experts coming from outside the membership of sports organizations and has achieved an equal representation of men and women. The list of arbitrators has been increased and the privilege reserved to sports organizations to propose the nomination of arbitrators on the CAS list has been abolished. Furthermore, ICAS has already envisaged the possibility of having public hearings at its newer and much larger future premises at the Palais de Beaulieu in Lausanne.

CAS was created in 1984 to provide dispute resolution services to the sports world. For over 35 years, it has settled disputes involving athletes, coaches, federations, sponsors, agents, clubs, leagues and organizers of sports events from almost every country in the world through arbitration and mediation procedures. It handles over 550 cases each year.