

Swiss Supreme Court dismisses challenge by underage Russian athlete against CAS award

by *Practical Law Arbitration*, with *Schellenberg Wittmer Ltd*

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In *Decision 4A_136/2024*, the Swiss Supreme Court dismissed a challenge against a Court of Arbitration for Sport (CAS) award, brought by an underage Russian athlete who had argued that the CAS lacked jurisdiction, as she had not consented in writing to the arbitration clause, and the award violated public policy.

Anya George (Partner) and Alain Grieder (Senior Associate), Schellenberg Wittmer Ltd

In a recently published decision, the Swiss Supreme Court dismissed a Russian underage figure skater's challenge to a Court of Arbitration for Sport (CAS) award.

In December 2021, the then 15-year-old athlete tested positive for doping. In January 2024, an arbitral tribunal of the CAS Appeals Division ordered a four-year suspension and stripped her of her results following the positive test.

The athlete challenged this award before the Swiss Supreme Court, arguing that:

- The CAS lacked jurisdiction as she had not consented in writing to the arbitration clause contained in article 15.2 of the Russian Anti-Doping Rules (RAR).
- The award violated public policy because the tribunal failed to take account of her young age when imposing the sanctions.

Rejecting the challenge, the Supreme Court held, referring to the European Court of Human Rights' decision in *Mutu and Pechstein v Switzerland* (discussed in *Legal update, CAS procedures compatible with right to a fair trial except for refusal of public hearing (European Court of Human Rights)*), that compulsory arbitration in sports disputes is valid, provided the guarantees of independence and impartiality enshrined in article 6(1) of the European Convention on Human Rights are met. Further, article 178(4) of the Swiss Private International Law Act recognises arbitration clauses contained in statutes. Therefore, athletes could be bound by arbitration clauses in the statutes of a federation of which they are a member, even where they did not sign a membership form.

The Supreme Court also pointed out that it was contrary to good faith for the athlete to challenge the jurisdiction of the CAS Appeals Division given that she had, in earlier appeals proceedings before the CAS Ad Hoc Division, expressly relied on article 15.2 of the RAR, and argued that the dispute ought to be submitted to the CAS Appeals Division. This showed that she considered herself bound by the arbitration clause in the RAR.

The Supreme Court also dismissed the argument that the award violated substantive public policy. The court could only review the decision of an arbitral tribunal exercising discretionary power if the outcome was manifestly unfair or shockingly unjust. In this case, there was no reason to impose a more lenient punishment on an underage athlete, where an intentional violation of anti-doping rules was established. In any event, the arbitral tribunal had taken into account the young age of the athlete when assessing her case.

Case: [Decision 4A_136/2024 \(Swiss Supreme Court\)](#) (5 September 2024).

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