



Sports Jurisdiction and Arbitration

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Abstract

Decisions are made, in sports, some of which are subject to legal review. While the factual decisions of the referees generally cannot be challenged, appeals against rule violations are possible. In principle, a judicial review is first conducted within the association. The intra-federation sporting jurisdiction in Germany is based on §§ 25 et seq. of the German Civil Code, which is based on Art. 9 para. 1 of the Basic Law, the German Constitution. Accordingly, sports associations and federations can establish their own jurisdiction for disputes falling under sports law on the basis of the federation's code of conduct. As decisions within the associations are not final, it is possible to take legal action either before state courts or before an arbitral tribunal. In exceptional cases—such as interim relief or doping cases—an (arbitration) court can also be called upon directly.

Learning Outcomes of the Chapter

1. You will learn the difference between intra-federation sports jurisdiction and arbitration.
2. You will understand the advantages and disadvantages of arbitration proceedings.
3. You will understand different jurisdictions.
4. You will understand which requirements for genuine arbitral proceedings exist in accordance with the German Code of Civil Procedure.

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1 Introduction

There are many different sports, with different rules, different sporting requirements and different public interests.¹ Of course, there are also differences of opinion in sports that need to be resolved. Due to this diversity, it is advisable that, if possible, differences of opinion are decided by people who are familiar with the sport and the particularities of the rules and regulations. State judges often have—if at all—only basic knowledge of the sport, without knowing the corresponding rules and practiced customs. State courts are also already heavily burdened without adding numerous sports disputes, and sports often require quick decisions, for example, about exclusion or admission to a competition.

Against this background, various sports federations have developed their own intra-federation jurisdiction, which is as versatile as the sports themselves. There are association and federation courts as well as arbitration courts, which deal with differences of opinion. This chapter provides an overview of sports jurisdiction, in particular arbitration. The special features of handball will be taken into account, and a presentation of specific decisions will provide insight into case law considerations.

2 Sports Jurisdiction

Numerous decisions are made every day in sports. Many of these decisions result from the rules and regulations of associations and federations. These can take place directly in the competition, but also in preparation or afterwards.

For example, think about a handball match. A common situation in a handball match involves the referee supposedly failing to take appropriate action against an obvious infringement by the opposing team, or supposedly imposing unjustified sanctions on a team. Often the spectator's assessment is not objective, but because it is necessary to make quick decisions during the match, referees do sometimes make wrong decisions. Since these decisions can have considerable sporting (e.g. suspensions) and/or economic consequences (progress in tournaments, etc.), the question quickly arises of whether legal action can be taken against the referee's decision (► Sect. 4.2.1). In addition to decisions made by referees, there are also decisions made at association or federation level (► Sect. 4.2.2).

A legal review—as far as permissible—can be processed through association and federation courts (► Sect. 4.2.3), or through state courts (► Sect. 4.2.4).

This chapter presents various instances in handball (► Sect. 4.2.5) and some exemplary case law from practice (► Sect. 4.2.6).

¹The following information is mainly based on the legal foundations in Germany, to which reference is also made in the text. Due to different country-specific legal regulations, there may be differences in the countries concerned.

2.1 Legal Review of Decisions Made by Referees

In most sports federations, the competition rules make a distinction between factual decisions and violation of rules, including the German Handball Federation (DHB) (Fechner et al. 2014; Pfister 2014a). Section 55 (1) of the DHB's legal regulations (RO-DHB²) stipulates that decisions made by referees on the basis of their fact-finding or assessment are final, whereas violations of the rules by the referees according to paragraph 2 may lead to a replay if the consequences are decisive for the match. Factual decisions are more common than violations of rules.

A *factual decision* is made when the referee decides on the basis of their observations during the match. Even if the referee subsequently realises, for example, by means of television recordings, that their decision was wrong, the factual decision is usually incontestable (Fechner et al. 2014; Pfister 2014a). However, most sports federations make one exception. A factual decision can be appealed if it is an obvious error on the part of the referee. The decision is erroneous, if the error was immediately and without error perceptible and provable for every spectator (Arnold 2012; Fechner et al. 2014).

In contrast, there is a *violation of rules* if the referee correctly perceives what is happening but incorrectly applies the sports rule provided for this situation (Fechner et al. 2014).

The DHB, like many other sports federations, stipulates that an appeal may be lodged against a violation of a rule if the violation was decisive for the match (Fechner et al. 2014; Pfister 2014a). This is the case, for example, when a match is being drawn and the referee awards a 7-m throw to a team in the last few seconds of that match, although there was no justifiable reason to do so, and a decisive goal is scored as a result.

2.2 Legal Review of Other Association/Federation Decisions

A distinction is made between penalty rules and sanction rules. The effect of penalty rules does not go beyond the competition. These are regularly imposed by a referee in a running match, for example, the decision of a referee to award a free throw due to a foul. Sanction rules, on the other hand, go beyond the competition itself. These are no longer regularly imposed by the referee, but at the level of the association or the federation. A sanction rule exists, for example, if a player is not only suspended for the rest of the match, but also for other matches. The enforcement of penalty rules is not usually contestable, whereas sanction rules can, in principle, be legally reviewed (Fechner et al. 2014). The following list is not exhaustive, but is intended to give a brief overview of which decisions in handball can be legally reviewed.

²RO-DHB: The abbreviation refers to the legal regulations of the German Handball Federation (DHB).

- In handball, the decisions of the Disciplinary Commission (*Spielleitende Stelle*), the administrative bodies (governing bodies, committees, commissions) and the Anti-Doping Commission, with the exception of match schedules and referee appointments, are subject to review. In addition, action may be taken against the scoring of a match if the playing surface, arena, match ball, other playing equipment or match clothing is defective; if the referee, timekeeper or secretary has violated the rules that are decisive for the match; or if a player who is not entitled to play, or who is not entitled to participate, has participated.
- Disqualifications may also be partially appealed; however, in the event of an appeal based on incidents during a match, care must be taken that the reasons for the appeal are noted in the match report. If this does not happen, no appeal can be lodged against the decision (§ 34 RO-DHB).
- The imposition of a fine can also be challenged (§ 35 RO-DHB).

2.3 Verification by Federation Courts

A legal review of decisions is primarily possible at association and federation level, where sports courts exist in every sports. Often there are even several instances, for example, in handball. Sports courts are also known as legal committees, executive committees, arbitration/federation courts or commissions. Caution is required with regard to the terms used, however. Despite its name, it is not usually an arbitration tribunal in the legal sense (see ►Sect. 4.3), but only an internal body.

The question arises: can sports associations and federations simply establish their own jurisdiction alongside the state courts?

In Germany, the Civil Code regulates the autonomy of associations and federations; for instance under §§ 25 et seq., which is guaranteed by Article 9 para. 1 of the Basic Law (*Grundgesetz* (GG)). Autonomy ensures that the associations and federations are free and independent in the organisation of their own affairs. This also includes the right to determine their own jurisdiction for the enforcement of rights, as competent to address internal differences of opinion within the association/federation. The prerequisite is that this extraordinary jurisdiction is based on the respective statutes of the association or federation.

It is crucial, however, that these internal bodies do not rule out recourse to the state courts or equivalent arbitral proceedings. In this respect, they are not arbitral tribunals in the legal sense (►Sect. 4.3). A final decision can be reviewed by a state court or arbitral tribunal after a dispute has passed through all instances of the federation (Lachmann 2008).

2.4 Verification by the State Courts

Although the state courts are in principle available to review the decisions made by federations, they are limited in this ability due to the autonomy of federations, secured in the Basic Law.

Admissibility of an Action

In the context of admissibility, the court must first examine whether it has jurisdiction *ratione materiae* and *ratione loci*. The general rules of the German Code of Civil Procedure apply here.

The court also determines whether the intra-federation legal recourse is exhausted. If this is not the case, the action can usually be dismissed as inadmissible. It is only in exceptional cases that an athlete or sports organisations cannot be ordered to first take legal action within the federation. Such exceptional cases exist if the internal proceedings of the federation are considered unreasonable for the athlete or sports organisation, or if effective legal protection cannot be obtained as a result (Fechner et al. 2014).

Merits of an Action

Due to the autonomy of the federation granted by the Basic Law, the state court may not make its own new decision, but must confine itself to establishing the legality or illegality of the decision of the federation (Fechner et al. 2014). The latter is the case if procedural requirements have been violated, for example, if the person affected by the measure is not at all subject to the power of the association. The decision of the association or federation must also not be arbitrary or grossly unfair and must not violate any law or public policy. The result is only a limited examination of the merits of the case; however, a distinction must be made between decisions by federations with and without a monopoly.

In the case of a decision by a federation, which does *not* have a monopoly, the state court will examine the following points:

- Does the regulatory authority of the federation extend to the athlete or sports organisation?
- Is there an effective legal basis for the sanction in the statutes?
- Were there severe procedural errors which were causal for the decision?
- Were the general procedural principles observed?
- Does the decision violate the law (e.g. is it contrary to public policy/discriminatory)?
- Are there errors in the facts of the case?
- Is the measure arbitrary or grossly unfair? (Pfister 2014a; Schöpflin 2017)

More often, the final decision is taken by a federation with a monopoly position, since all federations have a monopoly position at national level in Germany. Where a federation does hold a monopoly position, the state court must not only examine whether the measure is arbitrary or grossly unfair, but also whether the content of the rules is appropriate. There must be an appropriate balance between the interests of the federation or sports organisation and those of the athlete; however, the court must take into account that the federation has some discretion with its assessment due to its autonomy (Pfister 2014b). Otherwise, the court will also examine the above-mentioned points in these proceedings.

2.5 Legal Authorities in Handball

The jurisdiction of the federation is regulated in the legal order of the DHB (RO-DHB). These are not real courts of arbitration, as they do not replace the state jurisdiction, but only precede it.

The structure of the sports jurisdiction of the DHB is shown in ● Table 4.1 (§§ 27, 28, 30 legal order of the DHB):

Table 4.1 Structure of the sports jurisdiction of the DHB

Legal cases	1st instance	2nd instance	3rd instance
Playing within a federation, Alt. 1	Legal instance of the federation	Appellate body of the federation	Appellate body (on points of law) of the federation
Playing within a federation, Alt. 2	Legal instance of the federation	Appellate body of the federation	Federal court as appellate court (on points of law)
Inter-federation competition, Alt. 1	Legal instance of the disciplinary commission of the match	Appellate authority of the disciplinary commission of the match	Federal court as appellate court (on points of law)
Inter-federation competition, Alt. 2	Legal instance of the disciplinary commission	Federal sports court 1st chamber as appeal instance	Federal court as appellate court (on points of law)
DHB match mode	Federal sports court 1st chamber		Federal court as appellate court (on points of law)
Between DHB and federations	Federal sports court 1st chamber		Federal court as appellate court (on points of law)
Between federations	Federal sports court 1st chamber		Federal court as appellate court (on points of law)
Proceedings against bodies of the DHB	Federal sports court 1st chamber		Appellate court (on points of law)
Appeals against decisions of the administrative authorities or of the disciplinary commission of the DHB which are open to appeal	Federal sports court 1st chamber		Federal court as appellate court (on points of law)

(continued)

Table 4.1 (continued)

Legal cases	1st instance	2nd instance	3rd instance
Operation of the league federations	Federal sports court 2nd chamber		Federal court as appellate court (on points of law)
Appeals against decisions of the administrative authorities or the officials of the league federations, which may be appealed against	Federal sports court 2nd chamber		Federal court as appellate court (on points of law)

2.6 Judgements of the Federal Sports Court and the Federal Court of the DHB

The following section presents a small selection of decisions by the Federal Sports Court and the Federal Court of the DHB. The aim is to convey a feeling for what can be important in individual cases and which pitfalls can exist in the legal review of decisions.

For the sake of clarity, the decisions were anonymised. The composition of the panels and their jurisdiction are briefly explained.

Numerous other judgments are available on the DHB's Website at <https://dhb.de/der-dhb/service/satzung-und-ordnungen.html>.

2.6.1 Federal Sports Court

The chambers are composed of a chairperson and six assessors, with the chambers deciding in the composition of the chairman with two assessors. The chairperson must be qualified to hold the office of judge (§ 46 Statutes of the DHB, as of 28 October 2017).

First Chamber

The first chamber is responsible for all legal cases according to the RO-DHB with the exception of legal cases concerning the operation of the league federations (§ 46 Abs. 1 a) Statutes of the DHB as of 28 October 2017).

Decision BspG 1K 02/2016—Appeal Against the Result of a Match Rejected as Inadmissible

A match of the 3rd League Men South ended with only a one-goal advantage. The defeated team claimed to have scored a goal two seconds before the end of the match. The referees had allowed this goal, but then, after consultation with the timekeeper, did not recognise it because the match had already ended. In the match report, only the words “Appeal announced, the team which lost appeals against the scoring of the match; reasons will follow” were given.

The first chamber of the Federal Sports Court rejected the appeal as inadmissible. § 34 para. 4 RO-DHB stipulates that an objection to the scoring of a match

may only be lodged if the appellant alleges a disadvantage and it is reported to a referee immediately after the match and noted in the match report. The mere announcement (objection filed, reasons will follow) does not constitute such a note in the match report. Such a note must contain entries relating to the alleged infringement, such as “because of events in the last seconds of the game” or “because of the missing equaliser”. It cannot even be inferred from the match report, however, that the referees first gave an equaliser and then disallowed it (decision of the first chamber of the Federal Sports Court of the DHB of 27 April 2016—BSpG 1K 02/2016).

Judgement BSpG 1K 01/2016—Appeal Against the Scoring of a Match and the Disqualification of a Player—Admissible, but Only Partially Well-Founded

A match of the 3rd League Men West ended with only a one-goal difference. The winning goal was scored as a result of a 7-m penalty by Player 1 of Team A (1A). The referees decided that a 7-m penalty had to take place because they assumed in the course of the match that Player 1 of Team B (1B) had torn down Player 2A from behind after a throw on the empty goal from the centre line. Player 1B was disqualified.

Team A appealed against the score of the match to the first chamber of the Federal Sports Court, since it was not Player 1B who tore Player 2A down from behind, but Player 2B. The ball had also been fended off by Player 3B at the 6 m line in accordance with the rules. A goal chance had therefore not existed despite the empty goal.

The referees stated that they had actually accidentally disqualified Player 1B instead of Player 2B; however, the 7-m penalty was still justified because Player 3B bounced in the goal area to defend the ball.

The first chamber of the Federal Sports Court upheld the appeal with regard to the disqualification, but rejected it in all other respects. The reasons given by the Federal Sports Court for this decision were as follows.

The referees’ decision on a 7-m throw is a factual decision. According to § 55 RO-DHB, decisions made by the referees on the basis of their fact-finding or assessment are incontestable. Also, the disqualification represents a factual decision, which is incontestable. However, the incontestability is limited to the course of the match, the result of the match and the penalties within the match. The error of the referees therefore does not lead to a change in the score of the match. However, the disqualification was lifted retroactively, as it could be the basis for further penalties from the Disciplinary Commission (judgement of the first chamber of the Federal Sports Court of the DHB of 8 April 2016—BSpG 1K 01/2016).

Second Chamber

The second chamber is responsible for legal cases concerning the match operations of the league federations (§ 46 Para. 1 b) Statutes of the DHB, status: 28 October 2017).

Judgement 2.K 02–2015—Appeal Against the Decision of the Disciplinary Commission of the League Federation Rejected

A then-17-year-old player, and her parents as legal representatives, signed an employment contract with a first league (*Bundesliga*) club. When the player turned 18, she played three matches for the Bundesliga club without being eligible to play in adult matches. The third match ended 26:24 for the 18-year-old's club. The Disciplinary Commission judged the third match as lost for the club with 0:2 points and 0:0 goals, on the grounds that § 66 S. 2 of the Rules of Play of the DHB (*Spielordnung—SpO-DHB*³) was applicable. The rule states that adult players without a contractual commitment may be used by their club in a maximum of two Bundesliga championship matches per season.

According to § 19 para. 1 h) RO-DHB, a match for the club in which ineligible players have participated as players shall be regarded as lost with a goal ratio of 0:0. Ten days after the Disciplinary Commission's decision, the club applied for the 18-year-old player's eligibility to play. In the context of this application, there were discrepancies as to whether the player was contractually bound to the club. The reason for this is that under § 32 para. 1 S. 2 of the SpO-DHB, a contract for the adult level in a Bundesliga team can only be concluded with a player of at least 18 years of age. Although the sportswoman had already concluded the employment contract at the age of 17, this contract was ultimately accepted and she was granted eligibility to play.

The club also appealed against the decision of the Disciplinary Commission that, due to a lack of contractual obligation, a player without eligibility had played and that the match was therefore lost. Among other things, the club took the view that the player had conclusively confirmed her employment contract by continuing to play for the club as an adult. In any event, there was an effective employment contract between the player and the club. The club had not achieved an unacceptable competitive advantage through the use of the player. The Disciplinary Commission had not raised such concerns before the game. The player was not eligible to play for adults, but the prerequisites for the granting of such an eligibility were given. For these reasons, the club requested the annulment of the Disciplinary Commission's decision and thus the affirmation of the original match result.

The Bundesliga Women's Handball Association took the view that the decision of the Disciplinary Commission was correct, as this was a consequence of the lack of eligibility to play. The club itself was obliged to check the eligibility of its players, not the Disciplinary Commission.

The second chamber of the Federal Sports Court ruled that the decision of the Disciplinary Commission was correct. On the one hand, it was extremely questionable whether an employment contract existed at all, as § 32 para. 1 S. 2 SpO-DHB was intended to prevent the player's parents having power over the decision about which club the player binds themselves, and for how long. An

³SpO-DHB: The abbreviation refers to the play regulations of the German Handball Federation (DHB).

athlete's career is relatively short in comparison with a normal employment relationship, so that third parties (the parents) should not have influence over the athlete's choice of club beyond the age of majority. On the other hand, there was no eligibility to play, so that at least according to §§ 10, 66 para. 1 SpO-DHB the player participated in the match as a non-authorized person. The application for, and verification of, eligibility to play is the sole responsibility of a club and not the Disciplinary Commission. At the time of the match, eligibility to play had not even been applied for (judgment of the second chamber of the Federal Sports Court of the DHB dated 24 May 2015—2.K 02–2015).

Judgement 2K 04/2015—Appeal Against a Match-Deciding Rule Violation by the Referees Admissible and Well-Founded

The dispute concerns the rescheduling of a quarterfinal of the DHB Cup. In the last seconds of the match, the two teams were drawn. Three seconds before regular playing time ended, a player of the applicant team did not put the ball down properly. This delayed the goalkeeper's goal clearance for the opposing team. The player was disqualified, and the opposing team was awarded a 7-m penalty. The opposing team scored a goal and won the match with one point. The applicant took the view that the decision in favour of a 7-m penalty was a decisive violation of the rules by the referees, and therefore, the match had to be rescheduled. The referees and the technical delegate, who were invited to clarify the facts of the case, also stated that the decision was recognised as incorrect from their point of view.

The second chamber of the Federal Sports Court shared the applicant's view and considered it necessary to repeat the match. There was a rule change, which said that in case of illegal behaviour in the last 30 s of a match, a decision for a 7-m penalty is generally justified; however, this was not officially announced. The rule change was only tested in the championship matches of the 2015/2016 season. The Cup matches do not count as championship matches, so that the rule was not applicable here (judgment of the second chamber of the Federal Sports Court of the DHB of 19 December 2015—2K 04/2015).

2.6.2 Federal Court

Decision BG 2/2016—Appeal Against a Judgement of the Hessian Handball Federation is Rejected as Inadmissible

The court of the Hessian Handball Federation had imposed a temporary ban and a fine on a player after a match. The player concerned and their club appealed against this decision. The appeal was rejected by the Court of Hessian Handball Federation, which was appealed against to the Federal Court. However, they transferred part of the required advance on expenses to the Hessian Handball Federation instead of the DHB. According to § 47 Abs. 1 RO-DHB, the timely receipt of the advance payment is a prerequisite for admissibility. Since only a part of the advance on expenses was received, the Federal Court rejected the appeal as inadmissible (decision of the Federal Court of the DHB of 27 May 2016—BG 2/2016).

Judgement BG 4-2016—Revision is Admissible and Well-Founded

A player hit an opposing player so hard with his fist into his stomach during a handball match that an ambulance had to be called. The player was disqualified by the referees after 59 min match time. The Disciplinary Commission imposed a ban of five more matches and a fine, and only stated the following facts of the case:

“Particularly ruthless, particularly dangerous, intentional or fraudulent actions against players, team officials and other persons. Reference is made to the entry in the match report”.

The player appealed against this decision. The sports court of the Saar Handball Federation rejected the appeal as unfounded. An appeal to the court of the Saar Handball Federation was also unsuccessful.

The Federal Court considered the appeal to be admissible and well-founded. The Federal Court stated that the decision of the Disciplinary Commission lacked the necessary certainty. The person concerned must know what he is accused of, so it must be clear what exactly is being sanctioned. A mere reference to the match report is not sufficient since the athlete concerned does not know the match report. The match report should have been sent to the athlete at least with the decision of the Disciplinary Commission. The Federal Court therefore overturned the decision of the Disciplinary Commission as well as the judgement of the court of the federation and ordered the amendment of the judgement (Federal Court of the DHB—judgement of 20 June 2016—BG 4–2016).

3 Arbitration

Several questions arise: What is the difference between the legal instances of the federation and genuine arbitration proceedings? What are the advantages of arbitration proceedings? Are there any disadvantages, and, ultimately, how do arbitration proceedings work?

3.1 What Are Genuine Arbitration Proceedings?

The following section outlines the requirements for “genuine” arbitration proceedings, which are governed by §§ 1025 et seq. of the German Code of Civil Procedure. It follows from this that the courts of associations and federations described above, even if they are sometimes referred to as “arbitration”, are not genuine arbitration proceedings. The following prerequisites must be fulfilled.

Exclusion of State Jurisdiction

Genuine arbitration proceedings effectively exclude the state court jurisdiction. Article 47 of the DHB's statutes states in this respect:

- (1) Doping offences shall be decided by a court of arbitration to the exclusion of the internal instances of the federation as well as the ordinary jurisdiction (*ordentliche Gerichtsbarkeit*).

Arbitration is a genuine substitute for the state courts, as the court of arbitration ultimately replaces them. It must therefore be clear from the statutes of the federation or from the direct arbitration agreement with the athlete that the right of access to state courts is waived (Lachmann 2008). This waiver must be voluntary. High demands must be given, since the right of access to the state courts safeguarded by the Basic Law itself is waived (Article 101 (1) sentence 2 of the Basic Law).

Whether a waiver is really voluntary if an athlete has no other choice than to accept the rules of the federation—including the arbitration clause—in order to participate in competitions is legally controversial. On the one hand, it was argued that the athlete does not voluntarily waive this right, as they must in fact agree to an arbitration agreement if they wish to participate in competitions. The Federal Court of Justice has nevertheless regarded this as a voluntary arbitration agreement, at least for doping disputes at the CAS. It is true that the federation has a monopoly and can in fact force an athlete to sign an arbitration agreement by only admitting the athlete to the competition after signing it; however, a mutual contract is characterised by the fact that one's own positions are abandoned and contractual conditions are accepted, which do not correspond to one's own will but to that of the contracting party. Furthermore, it is not only the federations that benefit from a sports arbitration court, but also the athletes, as they are dependent on fair competition conditions (Federal Court of Justice (BGH), ruling of 7 June 2016, Ref.: KZR 6/15, recital 55, 62 (Pechstein)).

The European Court of Human Rights (ECHR) opposed this rather artificial view in its Mutu/Pechstein decision (Mutu and Pechstein v. Switzerland, complaints no. 40575/10 and 67,474/10, judgment of 02.10.2018).⁴ The Court stated that it was impossible to believe that Pechstein's submission to the arbitration clause was voluntary and unambiguous. Rather, consent to CAS arbitration takes the form of “forced” consent. There is a de facto structural dependence of the athletes who, in view of the monopolistic concentration of competitions at the ISU, were dependent on integration into the federation. In order not to lose their professional livelihood in the future, they also had to agree to the conclusion of the arbitration clause, which was required for participation in competitions organised by the ISU.

⁴The proceedings were based on complaints by speed skater Claudia Pechstein and soccer player Adrian Mutu, who appealed against decisions of the Swiss Federal Supreme Court, which had confirmed that a corresponding arbitral award handed down by the Court of Arbitration for Sports (CAS) in Lausanne was unobjectionable from the point of view of the rule of law. The arbitral proceedings concerned disciplinary measures taken by the International Skating Union (ISU) against Claudia Pechstein and the *Chambre de Résolution des Litiges* (CRL) of the International Federation of Football Association (FIFA) against Adrian Mutu. The applicable rules of the federation provide for the possibility of an appeal against disciplinary decisions taken at the CAS (*procédures d'appel*), which had, however, dismissed both complaints as unfounded in substance.

Consequently, the ECHR convincingly concluded that submission to the jurisdiction of the CAS must be qualified as compulsory arbitration in the case of the ISU. It follows from this that the procedural guarantees of Art. 6 para. 1 of the European Convention on Human Rights (ECHR) had to be observed.⁵

Independence and Impartiality

A genuine court of arbitration must be independent and impartial. This must be viewed critically in the context of the composition of sports courts of arbitration, as federations could potentially exert significant influence.

Independence and impartiality requires that the arbitral tribunal may not consist solely of representatives of the federation, and that no organs of the association may form the arbitral tribunal; otherwise, the arbitrators would be acting as judges on their own case (Lachmann 2008; Pfister 2014a).

The federation must also not have any decisive influence on the composition of the court of arbitration (Pfister 2014a). The independence and impartiality of the court of arbitration must be written down in the statutes of the federation (Lachmann 2008; BGH, judgment of the 27th May 2004, Az.: III ZB 53/03). In this respect, § 47 (7) of the statutes of the DHB provides:

[...]

(7) The court of arbitration is **not a body of the DHB**. The members of the court of arbitration are **independent and not bound by instructions**.

The Court of Arbitration for Sport (CAS), for example, is a genuine court of arbitration (cf. the recognition of the CAS by the DHB in § 48 of the statutes). The CAS has a list of between 150 and 200 arbitrators. This list was compiled by the International Council of Arbitration for Sport (ICAS). The ICAS consists of 20 members. Of these 20 members, four are appointed by international sports federations. The international federations thus have minimal influence on the composition of the body that compiles the list of arbitrators.

The German Federal Court of Justice (BGH) regarded the CAS as an independent and neutral body, since both parties could choose an arbitrator from the closed list of arbitrators, and the international federations had no direct influence. Furthermore, according to the statutes of the CAS, the arbitrators must disclose to the parties any circumstances which could possibly affect their independence. It should also be noted that, especially in the campaign against doping, the athletes and the federations do not pursue different interests (BGH, judgement of 7 June 2016, ref. no.: KZR 6/15, para. 27ff. (Pechstein)).

⁵Art. 6 - Right to a fair trial.

(1) Every person shall have the right to a fair and public hearing, within a reasonable time, by an independent and impartial court of arbitration established by law, of disputes relating to their civil rights and obligations or to a criminal charge against them. The judgment shall be pronounced in public; however, the press and the public may be excluded throughout or from the proceedings if this is in the interest of morality, public order or national security in a democratic society, if the interests of juveniles or the protection of the private life of the parties to the proceedings so require or, if the court considers it absolutely necessary, if, in special circumstances, a public hearing would prejudice the interests of the administration of justice.

The European Court of Human Rights (ECHR) also considered the CAS arbitrators to be independent and impartial, which Pechstein denied (*Mutu and Pechstein v. Switzerland*, complaints no. 40575/10 and 67,474/10, judgment of 2 October 2018). In particular, the ECHR took into account the provisions on the appointment of arbitrators, the length of their mandate, the existence of protective mechanisms against external undue influence and the question of whether the court appears to be independent. As a result, Pechstein's objections failed because the ECHR found that she had not submitted any specific facts that would raise doubts about the independence and impartiality of the specific arbitrators. The mere fact that those organisations, which might be involved in disputes with athletes before the CAS, exercised influence on the appointment of arbitrators at the time did not allow the conclusion that it was solely because of this influence that the list of arbitrators, possibly only by a majority, consisted of arbitrators, who individually, objectively and subjectively could not have been regarded as independent and impartial vis-à-vis the organisations mentioned.

Requirements of Rule of Law

According to the Basic Law, Germany is a state under the rule of law. This means that the constitution legitimises the actions of a government, legislation or administration and safeguards against arbitrary state action through law and order. This also includes the fundamental rights of justice (*Justizgrundrechte*), which include the right to the statutory judge (Article 101 (1) sentence 2 of the Basic Law) and the right to a fair hearing (Article 103 of the Basic Law). Fundamental rights of justice thus guarantee the possibility of legal protection and the observance of certain procedural principles.

The exclusion of state jurisdiction is therefore only possible if the legal protection of a court of arbitration is in no way inferior in quality to that of a state court. It must be ensured in arbitration proceedings that both parties are heard and have the same rights. In addition, the arbitrators must be independent and impartial and parties must have access to legal representation by an attorney (Pfister 2014a).

Insofar as these legally stipulated principles (§ 1042 (1) and (2) German Code of Civil Procedure and the inverse conclusion of § 1036 (1) Code of Civil Procedure) are observed, the German legal system recognises courts of arbitration as party-intentioned alternatives to state jurisdiction.

3.2 Advantages of Court of Arbitration

Quicker Decisions

Quick decisions are necessary, especially in sports. Sometimes decisions have to be made during an ongoing competition or immediately before a competition. Arbitral tribunals can decide very quickly in such proceedings by planning their capacities accordingly.

It should also be noted that an athlete's exercise of professional sports is often limited to a few years (Adolphsen et al. 2012). State courts proceedings may take

years if various instances are used. The state courts can only make quick decisions in summary proceedings (Pfister 2014a). For example, in 2008, the Regional Court of Frankfurt decided on the Olympic nomination of the triple-jumper Charles Friedek (with the result that he was not nominated) in summary proceedings (OLG Frankfurt, judgment of 30.07.2008—4W 58/08; LG Frankfurt, decision of 22.07.2008—2—19 O 210/08). However, a decision in summary proceedings is only a provisional legal protection. This means that no final decision has yet been made and that such a decision is still outstanding. The judgment may not become final until years later. At this point in time, the actual objective of legal protection (e.g. admission to a competition) can no longer be achieved, so that at most a decision on compensation for damages will be made (Pfister 2014a).

In arbitration proceedings, there is often only one instance, which can speed up the proceedings. In handball and in most other sports in Germany, it is possible for the Court of Arbitration for Sport to review the judgement of the German Arbitration Court in an appeal (§ 48 Paragraph 2 of the Statutes of the DHB). In spite of this, arbitration proceedings usually lead to a quicker decision than state courts.

3.3 Proximity of the Judges

The relative speed also depends to a large extent on the arbitrator's previous knowledge of the matter in dispute.

In most cases, a state court judge must first become acquainted with the subject matter of sports law, since they know neither the sports-specific structures nor any relevant statutes. For this reason, experienced lawyers or other persons familiar with the applicable rules and regulations of the federation are usually used as arbitrators in arbitration proceedings. Due to their previous knowledge and their own experience, the arbitrators are much closer to the subject matter than state court judges (Pfister 2014a). It is therefore easier to make a proper assessment of the dispute, which does not ignore the realities of practice.

Freedom of Arbitral Procedure

The parties can influence the procedure of arbitration proceedings to a larger extent than in state court cases.

A great advantage is already noticeable at the beginning of the proceedings because the parties may choose the arbitrators themselves. In contrast, the state court makes a schematic allocation. Third parties may also be involved as parties in the arbitration if the other parties agree (Pfister 2014a). In state courts, only the claimant and the respondent are provided for as parties. The involvement of third parties is only possible within narrow limits.

The parties and the arbitral tribunal have more liberty in the further proceedings. For example, agreements on further procedure can be reached. Arbitral tribunals are also not bound by the rigid German procedural code and can therefore find flexible solutions for individual cases. This can range from purely written procedures to the use of video conferencing to very tight deadlines for speeding up proceedings and can encompass a variety of measures.

Uniformity of Case Law

Sports decisions should be internationally uniform. This is the only way to ensure the equal treatment of athletes in court decisions. A problem arises if state courts develop different decision-making practices, or different legal systems become applicable. The international sports federations strive to enable uniform jurisdiction, and therefore, they try not to make the jurisdiction of a court of arbitration dependent on the place of residence of the athlete, the place of competition or similar, but to establish a uniform international jurisdiction. For example, the CAS, based in Lausanne (Switzerland), provides the court of arbitration during the Olympic Games (Lachmann 2008).

A German Sports Arbitration Court has existed since 1 January 2008, which is administered by the German Arbitration Institute (DIS) (German Sports Arbitration Court 2018a). The DIS has drawn up a list of lawyers connected to sports and sports law (Pfister 2014a), whereby the parties—unlike in the CAS—may also appoint other arbitrators. This German Sports Arbitration Court only has jurisdiction, however, for federations that have provided for the arbitration court in their statutes. These include, among others, the German Speed Skating Association (DESG), the German Basketball Federation (DBB) and the German Tennis Federation (DTB); but not the German Handball Federation (DHB).

Jurisdiction can also be duly given to an arbitration clause, where the advantages of these administered arbitration proceedings are to be used for a variety of disputes. This also includes contractual or commercial disputes (e.g. sponsoring contracts), corporate disputes (e.g. granting or withdrawing licences or rights of participation) or disputes arising under association or federation statutes (e.g. disciplinary disputes, in particular violations of anti-doping regulations).

Increased Confidentiality

State court hearings are generally open to the public. This means that anyone can attend the court hearing as an observer. In contrast, arbitration proceedings do not have to be public, and nor does the arbitral award have to be published. If the award is not published, however, it may appear as if the court of arbitration does not want to face public criticism. This also prevents a uniform decision-making practice, as precedents are not available.

It should be noted that the public is very interested in many of the decisions made by sports arbitration courts (Pfister 2014a). Many spectators follow sporting events live on location or on television, particularly in professional sports. These spectators naturally also want to be informed about offences committed by athletes and their sanctions. For these reasons, many judgments are published, for example, in the journal *Sport und Recht* (Sports and Law). Some of the judgments of the CAS are publicly available on the Internet site www.tas-cas.org.

It is also possible that the hearing could take place via video feed, which is only possible in very exceptional cases in the state procedure.

3.4 Disadvantages of a Court of Arbitration

Some of the advantageous points are ambiguous as their impact can be either advantageous or disadvantageous.

No Legal Aid

It is possible to apply for legal aid for state courts. Legal aid can be granted if a party is not able to pay the costs of the proceedings due to their economic and personal circumstances, or if they are only able to pay them in part or in instalments. This possibility does not exist in principle in arbitration proceedings (Pfister 2014a). This can lead to the situation in which a destitute party has de facto no legal protection; however, the athlete may apply to the German Sports Arbitration Court of the DIS for legal aid in anti-doping disputes (German Sports Arbitration Court 2018b).

Involvement of Third Parties Only with the Consent of All Parties Involved

Third parties may be involved in the proceedings in state jurisdiction. Third parties do not become parties to the dispute, but the decision at the end of the dispute may be binding on them. The third parties are referred to as interveners, or side interveners.

In proceedings at a sport's court of arbitration, a third party may be involved in the proceedings only if all parties agree, or if the rules of procedure provide for a corresponding possibility (Pfister 2014a). If this is the case, the degree of involvement as an additional party, as an intervener or of an individually chosen mixed form, can be agreed relatively freely.

Few Instances

Decisions of the courts of arbitration can only be reviewed to a limited extent.

As a rule, arbitration is deliberately limited to only one instance. In doping-related matters, there are usually two instances of sports arbitration, but that is fewer than in state jurisdiction, where there are usually three instances.

State courts can only correct the awards of a court of arbitration to a very limited extent in the case of fundamental violations of the law. This is explained in detail in ►Sect. 4.3.9.

3.5 Arbitration Clause

It is a precondition for the jurisdiction of a court of arbitration that an arbitration agreement or clause exists (Fechner et al. 2014). An arbitration agreement is concluded in a written form between the parties, for example, all participants in the Olympic Games must commit themselves to referring any dispute to CAS (Adolphsen et al. 2012). In contrast, an arbitration clause is part of a statute. It applies to all members of the federation or association who have submitted to the statutes (Fechner et al. 2014).

3.6 Arbitration Procedure

The procedure of arbitral proceedings is not uniform. In principle, the parties can determine how the proceedings will be conducted; however, in sports, there are often rules of procedure, which determine the organisation and conduct of arbitration proceedings.

Also, in the case of a doping offence in handball (§ 47 statutes of the DHB, 28 October 2017):

Here, the court of arbitration is composed of three arbitrators and the chairperson at least must be qualified to hold the office of a judge, that is, be a fully qualified lawyer.

Party (A) wishing to submit a dispute to the court of arbitration shall send a registered letter to the other party (B). The facts of the case must be briefly stated in this letter, and an arbitrator must be appointed. The other party (B) then has ten days to appoint an arbitrator themselves. The two appointed arbitrators shall agree on a chairperson within ten days of the appointment of the second arbitrator. If an arbitrator is unable to act, their successor shall be chosen in the same way as their predecessor. Once the court of arbitration has been fully constituted, the actual hearing on the merits can begin.

Arbitral proceedings are regularly closed by an arbitral ruling (award) or an order (§ 1056 para. 1 Code of Civil Procedure). Unless the parties have agreed otherwise, the court of arbitration shall also decide on the costs of the proceedings (§ 1055 German Code of Civil Procedure). The arbitral award shall have the effect of a final judgment among the parties (§ 1055 German Code of Civil Procedure) and may therefore also be declared enforceable by state courts (Pfister 2014a). Of course, the parties in arbitration proceedings can also reach an amicable settlement.

3.7 Arbitration Decisions in Handball

In German handball, doping offences are decided by a court of arbitration under exclusion of the internal instances of the federation, as well as the ordinary jurisdiction (§ 47 para. 1 statute of the DHB).

In handball, arbitration courts are called upon not only in the case of a doping offence. The Handball Bundesliga concludes an arbitration agreement for licensing procedures with each member prior to a season.

For example, the following disputes from the Handball Bundesliga have been submitted to arbitral proceedings for decision in recent years.

HSV Hamburg

The Bundesliga club HSV Hamburg had not proven its economic ability, so the club was not granted a licence for the 2014/2015 Bundesliga season. In order to obtain a licence, HSV Hamburg took advantage of the possibility of arbitration proceedings (Frankfurter Allgemeine Zeitung 2014). The court of arbitration granted the club the licence under certain conditions. For example, it had to prove

to the Handball Bundesliga that a liquidity gap amounting to millions of euros was covered until 1 July 2014 (Spiegel 2014).

When HSV first obtained the licence, it had to file for bankruptcy. At the same time, it was discovered that the club had submitted untruthful and incomplete documents in order to obtain a licence. As a result, the club's playing licence was ultimately revoked (Frankfurter Allgemeine Zeitung 2016, Liqui Moly Handball Bundesliga 2016). The players became contract-free and were allowed to change teams immediately. The second team, which moved up to the third Bundesliga, played as the first team of HSV Hamburg in the following season.

HC Leipzig

The women's Bundesliga club HC Leipzig was denied a licence for the 2017/2018 season due to debts and a failed financial restructuring concept. In order to defend itself against this, HC Leipzig appealed to the DHB arbitration court. The court decided that the women's Handball Bundesliga had to grant the licence on condition that the club's equity capital was increased by €600,000 by the 14 July 2017. All salaries outstanding until June 2017 were to be paid, but this was not linked to the granting of the licence as a condition. The club was not able to raise a further €600,000 as equity capital. Instead, an application for insolvency was filed at the Local Court of Leipzig after the deadline had expired. This meant a forced delegation to the third league for HC Leipzig (Nößler and Köster 2017).

3.8 Appeal Against the Decision of an Court of Arbitration

There is usually only one instance in arbitration proceedings; however, in doping cases, where the German Sports Arbitration Court is the first instance, an appeal may be lodged to the CAS (Pfister 2014a). The DHB also recognises the CAS as an appeal instance (§ 48 para. 2 of the statutes of the DHB).

The CAS in Lausanne was founded in 1984 and is administered by the International Council of Arbitration for Sports (ICAS). During the Olympic Games, the CAS is the competent arbitration court and decides on disputes arising during the Olympic Games within 24 h. The CAS has already been recognised as a genuine court of arbitration by several state courts, such as the Federal Court in Switzerland, the Court of Appeal of New South Wales in Australia and the Federal Court of Justice in Germany. The ECHR has also recognised the CAS as a court but has stated that it had to meet the requirements of Art. 6 ECHR.

An action for revocation may be brought before the Swiss Federal Supreme Court against the decisions of the CAS. If both parties are domiciled in Switzerland, it is also possible to appeal to the cantonal court for a declaration of nullity. An appeal is also possible if the requesting party subsequently learns substantial facts or finds substantial evidence. For example, Claudia Pechstein appealed to the Swiss Federal Supreme Court in 2010, although the appeal was unsuccessful (Adolphsen et al. 2012).

3.9 Review by Ordinary Courts

If an agreement exists under which a genuine court of arbitration takes the place of state jurisdiction (arbitration agreement, arbitration clause), an action before a court of general jurisdiction shall be dismissed as inadmissible.

This presupposes that the respondent raises their objection to arbitration in timely order (§ 1032 (1) German Code of Civil Procedure). An arbitration clause is therefore not automatically observed by the court, but the parties are free to waive the rights and obligations arising from the arbitration clause by mutual agreement at this point in time.

State courts do not review the content of an arbitral award after arbitration proceedings. In rare cases, it may overturn the decision on the request of the losing party. This ensures, among other things, that the procedural principles, which allow the recognition of arbitration as an alternative to state proceedings, are observed. Reasons for setting an award aside include (Pfister 2014a):

- Missing or ineffective arbitration agreement;
- Arbitration proceedings on a non-arbitral object (e.g. arbitration cannot be agreed with the athlete's club for labour disputes, as arbitration is excluded in Germany for this purpose) (§ 101 para. 3 German Labour Court Law);
- Breach of the right to be heard, of the equal treatment of the parties or of any other overriding procedural requirement;
- Errors in the formation of the court of arbitration (in the case of a breach of the impartiality of an arbitrator there is no award) and
- Arbitral awards whose recognition or enforcement would violate public policy or other fundamental principles of German or European law.

4 Cases

High-profile cases are also decided outside handball.

4.1 Dieter Baumann

The athlete Dieter Baumann tested positive for the substance Nandrolone on 19 October 1999 and on 12 November 1999 in two unannounced doping tests. The substance is a prohibited doping drug. Dieter Baumann explained that he had not taken any doping substances and could not explain the positive doping tests. On the 19th November 1999 the Anti-Doping Commission of the German Athletics Association (DLV) decided to suspend Dieter Baumann with immediate effect (OLG Frankfurt, judgement of the 18 May 2000—13W 29/00).

During a house search, a toothpaste tube was found containing the doping substance. Dieter Baumann filed a criminal complaint against unknown persons because he was of the opinion that someone wanted to harm him by doing so. Shortly thereafter, a second toothpaste tube of another brand, but with the same doping substance, was found on the 17 December 1999.

On 22 January 2000, the DLV Presidium ordered a continuation of the suspension. Dieter Baumann submitted an urgent motion to the Legal Committee of the DLV with the aim of lifting the suspension. This was rejected on 25 February 2000. In response, he applied to the Regional Court of Darmstadt for an interim injunction against the suspension; however, the Regional Court also refused to lift the suspension due to their suspicion. The Higher Regional Court Frankfurt/Main as second instance did not lift the suspension either (Higher Regional Court Frankfurt, judgement of 18 May 2000—13W 29/00). On the 30 May 2000, the public prosecutor's office declared that its investigations had remained unsuccessful.

The DLV Legal Committee acquitted Baumann on 13 July 2000. It came to the conclusion that Baumann “did not knowingly use doping, but was made to appear positive by an unknown third party on the occasion of a competition in order to shake the credibility of an uncomfortable fighter of doping”. In addition, there had been default in connection with the collection, storage and transport of the two positive urine samples. The IAAF Council considered the acquittal to be a wrong decision and initiated arbitration proceedings at the competent Arbitration Court of the Federation. On 18 September 2000, the judgement was announced; Dieter Baumann was suspended retroactively for two years. The CAS, the court of last instance in sports arbitration, also regarded the suspension as lawful.

Dieter Baumann filed a lawsuit against the IAAF for damages, as well as, in a further proceeding, for a national starting permit to be granted in German state courts. In the appeal hearing on 18 April 2001, the Higher Regional Court of Frankfurt/Main rejected Baumann's application for the granting of a national starting permit. He did not receive the right to start competing again until 5 December 2001 from a commission of the IAAF Council. In April 2002, the District Court dismissed the claim for damages (Dreis 2002).

4.2 Claudia Pechstein

Claudia Pechstein was subjected to a blood doping test on 7 February 2009 at the World Speed Skating Championships in Hamar, Norway. The blood samples showed increased reticulocyte values. The International Skating Union (ISU) attributed this to illegal doping. The ISU relied on indirect evidence because it considered fluctuating blood levels to be an indication of doping. Later, international haematologists proved that Pechstein's reticulocyte values were due to an inherited anomaly. Due to the increased reticulocyte values, Claudia Pechstein was suspended retroactively from 7 February 2009 for two years by the decision of the ISU Disciplinary Commission on 1 July 2009, her competition results of the 7 February 2009 were cancelled, and the points, prizes and medals were withdrawn.

The German Speed Skating Association (DESG) informed her in writing on the 19 July 2009 that due to the suspension, she was also excluded from training measures and her status as a member of the squad of the Olympic Winter Games 2010 was suspended.

The DESG and Claudia Pechstein appealed to the CAS. The CAS rejected the appeal, although the beginning of the ban was postponed to the 8 February 2009.

Claudia Pechstein filed an appeal against the award with the Swiss Federal Supreme Court; however, the appeal was rejected by a judgment on 10 February 2010. An appeal lodged by Claudia Pechstein was also rejected by the Swiss Federal Supreme Court on 28 September 2010. On 11 November 2010, she brought an action before the European Court of Human Rights against Switzerland (Pechstein v. Switzerland (No. 67474/10), Duve and Rösch 2014). The Court recognised the possible dependence of the arbitrators on the associations, however, without specific indications, a bias could not be assumed. The CAS's refusal of oral proceedings alone was unlawful, and Pechstein was awarded compensation in the amount of €8000.

In addition to her efforts to legally challenge the original ban, Pechstein brought an action before the Regional Court of Munich seeking a declaratory judgment that the doping ban was unlawful and seeking payment of damages and compensation for pain and suffering. Although the Regional Court regarded the arbitration clause as ineffective due to the lack of voluntary submission, it dismissed the action in a judgment dated on the 26 February 2014. A decision by the court on the question of whether the ban on doping was unlawful was precluded by the legal force of the CAS's decision.

Claudia Pechstein appealed against the dismissal to the Higher Regional Court of Munich. On 15 January 2015, the Munich Higher Regional Court decided that the appeal regarding damages and damages for pain and suffering was admissible. The Higher Regional Court, however, also considered the arbitration clause to be invalid, as it violated mandatory antitrust law. According to the provisions of the German Act Against Restraints of Competition (GWB), dominant companies are prohibited from demanding terms and conditions of businesses that deviate from those that would most probably result from effective competition. However, the appeal regarding the determination of the illegality of the imposed doping ban was dismissed. Although the CAS's award was denied recognition on the grounds of a violation of German public policy (*ordre public*), the court did not make a more far-reaching decision on the merits of the case, as it intended to wait for a ruling by the Federal Court of Justice (BGH) first.

The ISU now appealed to the German Federal Court of Justice. The BGH rejected Claudia Pechstein's entire appeal on the grounds that the arbitration agreement was effective because the CAS was a genuine court of arbitration within the meaning of the German Code of Civil Procedure. The arbitration agreement would completely exclude ordinary jurisdiction. The action before the Regional Court of Munich was therefore inadmissible (BGH, judgment of 7 June 2016, file no.: KZR 6/15; LG Munich I in SchiedsVZ 2014, 100). Claudia Pechstein has lodged a constitutional complaint against the ruling of the Federal Court of Justice

because she is of the opinion that the ruling violates her fundamental rights of justice, freedom to choose an occupation and the right to a statutory judge (Krämer 2016). A decision of the Federal Constitutional Court (BVerfG) is still pending (as of July 2019). Based on to the decision of the European Court of Human Rights, a successful constitutional complaint would be a surprise.

4.3 Katrin Krabbe

In 1992, a doping test showed that the former German sprinter Katrin Krabbe had taken Clenbuterol. Although this drug was not on the doping list at the time, the DLV Legal Committee suspended her for 12 months due to an unfair and unsportsmanlike use of medication with the sole aim of improving her performance. The International Association of Athletics Federations (IAAF) also imposed a two-year ban, which meant that Katrin Krabbe was banned for a total of three years. She filed a lawsuit with the Regional Court of Munich I. She requested a finding that the suspensions were illegal, as well as damages (Nolte 2012; Spiegel 2001).

On 17 May 1995, the Regional Court of Munich I ruled that the additional two-year suspension of the IAAF was invalid and that the sprinter was entitled to a claim for damages in an amount not yet quantifiable (judgment of the Regional Court of Munich I 7 Chamber for Commercial Matters of the 17 May 1995—7 HKO 16,591/94).

The Munich Higher Regional Court confirmed this judgment by arguing that a three-year suspension in total constituted a particularly intense interference with the athlete's freedom to choose an occupation, since a sprinter could only exercise this occupation for a short period of time (Nolte 2012, judgment of the Munich Higher Regional Court of 28 March 1996—U (K) 3424/95).

In its judgement of the 27 June 2001, the Regional Court of Munich I awarded the sprinter a claim for damages against the IAAF for lost profits (judgement of the District Court of Munich I 7th Chamber for Commercial Matters of the 27 June 2001—7 HKO 16,591/94, Spiegel 2001). The IAAF appealed against this. During the appeal, the parties reached a settlement (Frankfurter Allgemeine Zeitung 2002). Since the damages were lost profits, Katrin Krabbe would have had to pay tax on them; however, she failed to do so and was therefore sentenced to a fine for tax evasion in 2008 (Schweriner Volkszeitung 2009).

Comprehension Questions

Why may sports associations and federations have their own jurisdiction in addition to the state courts?

Which requirements must genuine courts of arbitration fulfil in accordance with the Code of Civil Procedure?

What are the advantages and disadvantages of arbitration proceedings?

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