

## Swiss Federal Tribunal upholds CAS decision banning Patrick Sinkewitz for doping offense

Dr. András Gurovits, TAS-CAS Arbitrator, September 2, 2014, [www.nkf.ch](http://www.nkf.ch) / [www.sportslawcircle.com](http://www.sportslawcircle.com).

On 27 February 2011, the German cyclist Patrick Sinkewitz participated at the Grand Prix of Lugano, an international cycling event organized under the auspices of the Union Cycliste Internationale (UCI). The analysis of a blood sample taken from the athlete revealed the use of human growth hormone which is a prohibited substance in accordance with the UCI Anti-Doping Regulations. As a consequence, the German Anti-Doping Agency (*Nationale Anti-Doping Agentur NADA*) filed a claim with the German Institution for Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit DIS*) requesting a sanction for multiple violations of the anti-doping rules, as in December 2007, the arbitration court of the German Cycling Federation (*Bundessportgericht des Bundes Deutscher Radfahrer*) had already imposed a one year ineligibility sanction on the athlete for use of forbidden substances.

By decision of 19 June 2012, the DIS, however, dismissed NADA's claim explaining that the use of prohibited substances had not appropriately been proven. The NADA filed an appeal against the DIS' decision with the Court of Arbitration for Sport (CAS) which, on 21 February 2014, decided in favor of the NADA and imposed an eight years ineligibility sanction on Patrick Sinkewitz for multiple violations of the anti-doping rules. On 20 March 2014, the athlete filed an appeal with the Swiss Federal Tribunal requesting the Federal Tribunal to annul the decision of CAS.

In accordance with article 190 of the Swiss Federal Act on Private International Law (PIL), a party may file an appeal against a decision of the CAS with the Swiss federal Tribunal if at least one party's domicile is not in Switzerland (international arbitration), unless, in cases where no party is domiciled in Switzerland, the parties have excluded any recourse to the courts. In case of domestic arbitration, an appeal with the Swiss Federal Tribunal would be possible pursuant to the Swiss Civil Procedure Act. Article 190 of the PIL, however, allows an appeal for some limited grounds only, including lack of jurisdiction, violation of the right to be heard, violation of the principle of equal treatment or violation of public policy. In the matter at hand, the athlete argued that the CAS had not been competent and, further, that the CAS had violated the principle of equal treatment, the right to be heard and the public policy. The Swiss Federal Tribunal, however, came to the conclusion that the appeal was unfounded and that the CAS had not violated any of the rights invoked by the athlete. It, thus, dismissed the appeal and upheld the CAS' decision. As a result, the eight years ineligibility sanction imposed on the cyclist is now final and binding.