CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

DECISION

Application no. 38250/03
by Larisa Yevgenyevna LAZUTINA and Olga Valeryevna DANILOVA
against Switzerland

The European Court of Human Rights (First Section), sitting on 3 July 2008 as a Chamber composed of:

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *Judges,*

and Søren Nielsen, *Section Registrar*,

Having regard to the abovementioned application introduced on 26 November 2003,

Having regard to the Court's decision to examine the admissibility and merits of the case together, as permitted by Article 29 § 3 of the Convention,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Larisa Yevgenyevna Lazutina and Ms Olga Valeryevna Danilova, are Russian nationals who were born in 1965 and 1970 and live in Odintsovo and Aleksandrov. They were represented before the Court by Mr Anatoliy Grigoryevitch Kucherena, a lawyer practising in Moscow. The Swiss Government ("the Government") are represented by its Deputy Agent, Mr A. Scheidegger.

The facts of the case, as submitted by the parties, may be summarised as follows.

The two applicants are cross-country skiers. As members of the Russian Ski Federation, they represented the Russian Federation in different international competitions and participated in the Salt Lake City Winter Olympic Games (United States of America) in 2002.

On 8, 14, 22 December 2001, at the international cross-country ski competitions in Italy, Switzerland and Austria, which were organised by the International Ski Federation (FIS), the first applicant underwent anti-doping tests which revealed the presence of a prohibited substance in her body, darbepoetin. Tests carried out on the applicants on 21 February 2002, during the Salt Lake City Olympic Games, led to the same result and consequently, the launch of a disciplinary investigation against them.

On the basis of the investigation's findings, in a decision of 24 February 2002, the Executive Board of the International Olympic Committee (IOC) disqualified the two skiers from the event in which they had taken part, withdrew the gold medal that the first applicant had won and the certificate that the second applicant had obtained, and declared that the two athletes were barred from competing in the Winter Olympic Games 2002. The file was then sent to the FIS so that it could amend the result of the event concerned and take appropriate action.

During the FIS Council's sitting of 3 June 2002, the two skiers were banned from taking part in international competitions for a period of two years, as from 8 December 2001 for the first applicant and as from 21 February 2002 for the second.

The two applicants lodged an appeal against the decisions taken by the IOC and the FIS.

Ruling on 29 November 2002, the Court of Arbitration for Sport (CAS) made four awards, dismissing the appeals and upholding the decisions taken by the IOC and FIS against the applicants.

The applicants separately lodged public law appeals with the Federal Court, under section 191 of the Federal Law on Private International Law and section 85(c) of the Federal Judicature Act, as in force at the relevant time, in order to have the awards concerning them quashed. They submitted, as their main argument, that the CAS was not an independent court in a dispute to which the IOC was a party. Relying on section 190(2)(a) of the Federal Act on Private International Law (PILA), in conjunction with Article 6 § 1 of the Convention, they sought the quashing of the two awards in the proceedings to which the IOC had appeared as a party. According to them, the defect affecting those awards also extended to the two other awards concerning the FIS, on the grounds that the four cases had been dealt with together by the same arbitrators.

By a single judgment of 27 May 2003, the Federal Supreme Court rejected the two appeals.

COMPLAINTS

1. Relying on Article 6 § 1 of the Convention, the applicants complained that the CAS was not an "independent and impartial" court. They submitted that it did not offer adequate guarantees of independence and impartiality from the IOC. In their opinion, the structure of the International Council of Arbitration for Sport (ICAS), the method of appointment of the arbitrators, as well as the organisation, financing and functioning of the CAS, created ties that were too close between the permanent arbitration institution and the supreme authority of the Olympic movement.

2. Furthermore, the applicants questioned the independence of three arbitrators constituting the panel which made the four awards in issue. According to them, the fact that the arbitrators travelled to the place where the Olympic Games were taking place in order to sit in the *ad hoc* chambers of the CAS, created amongst them such close personal and professional relationships that their independence was vitiated when they subsequently took up, in different capacities, a case submitted to the CAS, one as a panel member, the other as a lawyer, or a lawyer's associate, acting for one of the parties.

3. Again under 6 § 1 of the Convention, the applicants alleged that they had not been given a fair hearing before the CAS on the grounds that it did not respect the principle of equality of arms. In particular, according to them, the court should have complied with their request to take evidence from Professor H., a medical toxicology specialist. In this connection, the applicants also argued that the panel had not considered the argument that they had not been able to familiarise themselves with the voluminous witness statements from the two IOC witnesses, comprising three hundred pages, until only a few days before the start of the hearing.

In addition, the applicants criticised the fact that the CAS had not complied with their request to dismiss the witness statements filed by the FIS, on the grounds that those statements had not been signed.

Lastly, they complained that the witnesses had been allowed to attend the hearing before giving evidence and that they could have been influenced by the previous witnesses, the parties' statements and the course of the proceedings.

THE LAW

The Court would immediately observe that it is not necessary to examine further the case brought by the applicants for the following reasons.

By a letter of 12 October 2007 the applicants informed the Registry that they no longer wished to pursue their application before the Court.

By a letter of 1 November 2007 the respondent Government asked the Court to strike out the case.

In the light of the foregoing, the Court concludes that the applicants no longer intend to pursue their application, within the meaning of Article 37 § 1 (a) of the Convention.

Furthermore, under Article 37 § 1 *in fine*, the Court is satisfied that no circumstances involving respect for the rights defined in the Convention and the Protocols thereto require the examination of this application. This case should therefore be struck out of the Court's list.

For these reasons, the Court, unanimously

Decides to strike the application out of its list of cases.

Søren Nielsen
Registrar

Christos Rozakis
President