

Disciplinary Commission

Case No. 2022-01

25.05.2022

Final Decision
In the matter of

Single & Pair Technical Committee (S&PTC), c/o International Skating Union,
Avenue Juste-Olivier 17, 1006 Lausanne,

- Complainant 1-

and

Charles Z. Cyr, Sports Director Figure Skating, c/o International Skating Union,
Avenue Juste-Olivier 17, 1006 Lausanne,

- Complainant 2-

against

Mr Akos Pethes,

- Alleged Offender -

and

Hungarian Figure Skating Federation,
Istvánmezei út 3-5, 1146 Budapest

- Interested ISU Member-

Regarding the Violations of the Duties of Judges and the ISU Code of Ethics

I. History of the Procedure

- [1] On April 6, 2022, the Complainants filed a complaint against the Alleged Offender, together with 7 exhibits. On April 8, 2022, the Alleged Offender and the Interested ISU Member were invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint.
- [2] The Alleged Offender filed a statement of reply on April 29, 2022.

II. Procedural Matters

- [3] According to Article 25, Paragraph 1 of the ISU Constitution 2021, the ISU Disciplinary Commission serves as a first instance authority to hear and decide all charges referred to it by an ISU authority against an Alleged Offender accused of a disciplinary or ethical offence.
- [4] In the “Declaration for Competitors and Officials entering ISU Events” signed on July 2, 2021, the Alleged Offender confirms:

I/we, the undersigned,

I) accept the ISU Constitution, which establishes an ISU Disciplinary Commission (Article 25) and recognizes the Court of Arbitration for Sport (CAS), in Lausanne, Switzerland as the arbitration tribunal authorized to issue final and binding awards involving the ISU, its Members and all participants in ISU activities, excluding all recourse to ordinary courts (Articles 26 & 27);

VI) am familiar with the ISU Code of Ethics (ISU Communication 2215 or any update of this Communication).

- [5] According to Article 25 Paragraph 6 a) of the ISU Constitution 2021 complaints must be filed with the Disciplinary Commission within one year of learning of the facts or events, which constitute a disciplinary or ethical offence. The Statement of Complaint arrived at the ISU Disciplinary Commission via e-mail on April 7, 2022, and respects the one years’ time limit according to Article 25 Paragraph 6 a) of the ISU Constitution 2021.

III. Facts

- [6] The Alleged Offender is listed as an ISU Judge for Single & Pair Skating for the season 2021/22 (ISU Communication No. 2420). He served as a Judge on the Pairs' Panels for both Segments, Short Program and Free Skating, at the ISU European Championships 2022 (see Results of these Championships, published on www.isu.org).
- [7] In its evaluation of the Officials' performance in accordance with the Rules of Procedure for Officials Assessment Commission (ISU Communication No 2423) and based on the materials mentioned in paragraph D) 1. therein, the Officials' Assessment Commission (OAC) considered the Alleged Offenders' marking of the performances of the Hungarian Pairs, Ioulia CHTCHETININA / Mark MAGYAR and Maria PAVLOVA / Balazs NAGY in the Short Program as well as in Free Skating to reflect national bias (Exhibits 3 and 4). The respective report of the OAC caused Complainant 1 to undertake a profound analysis of the Alleged Offender's marks which analysis revealed and confirmed that in both Segments of the ISU European Championships 2022 the Alleged Offender had acted with serious national bias.

Alleged Offender's submissions

- [8] The Alleged Offender admits that he committed huge mistakes in marking at the European Championship in Tallinn in both parts of the Pair Skating Event. He realized it first right after the event during the Judges' meeting when checking and discussing some elements with repeated video replay. He saw the deviations in his marks compared to the official results. The Alleged Offender is of the opinion, that the "unknown" couple Pavlova-Nagy was a bit undermarked by the other judges. It is just proved by the referee's marks, who gave them more than 2,5 points higher marks than he. The other Hungarian couple (Chtchetinina-Magyar), who has qualified for the Olympic Games did their programs almost flawlessly in both parts of the competition. The Spanish and German couples, who generally skate at the same level were undermarked by him, but on the contrary other judges might have overmarked them based on previous competition results and performances during training sessions in Tallinn.
- He admits he may have overmarked the Hungarian skaters within an accepted range, he should have given them more attention to some GOE marks.
- Taking everything into account he totally refuses the accusation of acting unethically concerning national bias. He promises that in the future he will be more careful in the cases of judging national skaters.

IV. Law

- [9] It is questionable whether the Disciplinary Commission can review the Alleged Offender's marks from the European Figure Skating Championships 2022.

[10] Article 25 Paragraph 8 c) ISU Constitution 2021 rules:

“Performance evaluations of Officials, including Assessments, warnings, criticisms, letters of advice and other evaluations issued by the Technical Committees and the Council, and the appointment or removal of ISU Officials, are not disciplinary but technical decisions. Accordingly, they are not subject to the jurisdiction of the DC. Complaints alleging incompetence, carelessness, lack of proper attention to duty, deficient performance, error or faulty judgment, are therefore not subject to the jurisdiction of the DC and shall be referred to the relevant ISU Official or body for performance evaluation and resolution.”

[11] Article 25 thus follows the "field of play" doctrine applicable to sports law. In its award of 28 June 2018 - CAS 2017/A/5373 - the Court of Arbitration for Sport summarises the doctrine:

The principles stated in CAS jurisprudence regarding the Field of Play (FOP) doctrine include the following: (i) a referee’s decision affecting the result of a race or game cannot be reviewed on appeal absent proof of bias, malice, bad faith, arbitrariness or legal error; (ii) thus, if such a decision is made under the correct race or game rules, it can only be reviewed on appeal if there is sufficient evidence of prejudice for or against a competitor.

In the case Korean Olympic Committee (KOC) / International Skating Union (ISU) - CAS ad hoc Division (O.G. Salt Lake City) 02/007 - CAS decided that, as a rule, the evaluation of a judge cannot be challenged, but that this rule is waived in exceptions:

CAS Panels do not review “field of play” decisions made on the playing field by judges, referees, umpires, or other officials, who are responsible for applying the rules or laws of the particular game.

Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each of those phrases, such as “arbitrary”, “breach of duty” and “malicious intent”, means that there must be some evidence of preference for, or prejudice against, a particular team or individual. CAS accepts that this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision.

[12] The decision of CAS OG 16/028 refers to the "field of play doctrine". In this decision OG 16/028, para 37, CAS rules as follows:

Furthermore, for a CAS Panel to overturn a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. In other words, “there must be some evidence of preference for, or prejudice against, a particular team or individual. The best example of such preference or prejudice was referred to by the Panel in [CAS OG 00/013], where they stated that one circumstance where the CAS

Panel could review a field of play decision would be if a decision were made in bad faith, e.g. as a consequence of corruption (see Para 17). The Panel accepts that this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision” (CAS OG 02/007).

- [13] It follows that only in serious cases can the decision of a judge be challenged. At the ISU Congress 2018, a proposal of the ISU Council was accepted to amend Article 25, paragraph 8 c) as follows:

However, in case a performance evaluation at the same time reveals a violation of the ISU Code of Ethics, such violation is, apart from the performance evaluation, also subject to disciplinary sanctions and to the jurisdiction of the DC.

- [14] A violation of the Code of Ethics occurs when the judge acts in bad faith. According to the CAS principle of “play of field”, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each of those phrases, such as “arbitrary”, “breach of duty” and “malicious intent”, mean that there must be some evidence of preference for, or prejudice against, a particular team or individual. The judge must have acted with the direct intention of favouring his or her own skaters and disadvantaging the other skaters. It is not enough that the judge's scores differ from the scores of the other judges because of differing opinions about the skaters' performance. A violation of the Code of Ethics and acting in bad faith must be obvious and serious.

- [15] In the present case, the marks of the Alleged Offender were reviewed by the Officials Assessment Commission (OAC). Above all, it is the task of the OAC to evaluate the marks of the judges. Article 23 Para a) ISU Constitution reads:

The OAC shall evaluate

a) evident anomalies and suspected (national) bias in the Judges' scores identified based on predetermined criteria, including mathematical criteria, confirmed by the Council.

- [16] Rule 440 of the Special Regulations & Technical Rules for Single & Pair Skating and Ice Dance 2018 describes the functions of the OAC Commission as follows:

2. Evaluation of anomalies in the Judges scores at ISU Events (and Olympic Winter Games, Winter Youth Olympic Games and Olympic Qualifying Figure Skating Competitions)

a) The OAC members shall prepare a report for each competition including the identification of those anomalies and suspected (national) bias in the Judges scores (as per Article 23 of the Constitution and the related Rules of Procedure published in an ISU Communication), that in the opinion of the OAC members,

must be considered as errors or (national) bias warranting an Assessment. This report shall be made available without delay to the respective Technical Committee through the ISU Secretariat.

- [17] The procedure to be followed by the OAC is described in the ISU Communication No. 2271, Rules of Procedure for Officials Assessment Commission:

D) Evaluation Procedure and Report, 5. c)

The report shall include observations of irregularities in the scores of individual judges which the OAC members consider to indicate violations of the ISU Code of Ethics, in particular bias, lack of impartiality, neutrality and honesty, manipulation of the competition by using unfair strategies.

- [18] The Panel has reviewed the report of the OAC of the Pair's event at the ISU European Figure Skating Championships 2022. The OAC considered the Alleged Offenders' marking of the performances in the Short Program as follows:

Numbers of Anomalies: 9

Recognized Errors: 6."

In the Free Program:

"Numbers of Anomalies: 3

Recognized Errors: ."

V. Application to this case

- [19] The ISU Disciplinary Commission follows the report of the OAC. The OAC is the appropriate expert body for the assessment of judges' marking. It is not the role of the Disciplinary Commission to overturn a field of play decision without evidence, which generally must be direct evidence, of some type of bad faith.
- [20] The Alleged Offender's marks were examined by the OAC Commission and their report provided as Exhibits 3 and 4. The OAC noted a number of anomalies, but did not conclude that they were influenced by National Bias. The panel relies fully on the outcome of the OAC regarding the presence of National Bias.
- [20] In addition, no evidence of the referee challenging the Alleged Offender's scores on the basis of national bias has been received. Hence, it can be inferred that the judge's evaluations were not so obviously "national bias", otherwise they would have been noticed by the referee and the OAC.
- [21] The OAC notes a number of anomalies in the GOEs given by the defendant. The Panel notes that all the anomalies relate to the Pairs elements of twist lifts, lifts and death spirals.

[22] The Alleged Offender admits the anomalies and provides a consistent explanation, citing a lack of experience in judging Pair skating.

[23] Unlike some of the earlier cases considered by the ISU Disciplinary Commission, no evidence has been provided of any history of earlier, similar concerns in the Alleged Offender's marking, nor that he has received a letter of warning.

[24] It is not enough that scores differ from those of the other judges because of differing opinions (or competency) about the skaters' performance. A violation of the Code of Ethics and acting in bad faith must be obvious and serious. That threshold has not been reached in this case.

[25] However, the ISU DC panel did not miss the fact that the marks and judging of the Alleged Offender at the ISU European Figure Skating Championships 2022 seem like a sophisticated handling of marks in the evaluation of the Hungarian pairs and their main competitors. Although this assessment, after the in-depth analysis of Complainant 1, acts as a hidden preference for the Hungarian pairs, it remains only at the level of suspicion. It lacks evidence of intentional "national bias", hence is absent proof of bias, malice or bad faith. For this reason, the ISU Disciplinary Commission adhered to the principle of Roman law "*in dubio pro reo*" and to the principle of "Field of Play".

[26] Based on the above considerations, the ISU Disciplinary Commission rules as follows:

VI. Decision

1. The Complaint is dismissed.
2. The parties bear their own costs.



Volker Waldeck



Dr. Allan Böhm



Susan Petricevic

The present decision is subject to appeal to the Court of Arbitration for Sport, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland, within 21 days upon receipt of the decision, in accordance with Article 25 Paragraph 12 and Article 26 of the ISU Constitution 2021.