

**CAS 2005/A/961 Janet Elizabeth Garden; Britta Lindgren & Sally-Anne Stapleford v/
International Skating Union**

AWARD

rendered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Dr Stephan **Netze**, Attorney-at-Law, Küsnacht-Zurich, Switzerland

Arbitrators: Mr Jean-Philippe **Rochat**, Attorney-at-Law, Lausanne, Switzerland
Mr Mark **Baker**, Attorney-at-Law, Houston, USA

Ad hoc Clerk: Dr Alexandra **Zeiter**, Attorney-at-Law, Küsnacht-Zurich, Switzerland

in the arbitration between

JANET ELISABETH GARDEN, Toronto, Canada,

BRITTA LINDGREN, Umea, Sweden,

SALLY-ANNE STAPLEFORD, London, England,

Represented by Messrs Steven K. Hazen, Los Angeles, USA, Jonathan Taylor, London, England,
and Urs Isenegger, Zurich, Switzerland,

Appellants

and

INTERNATIONAL SKATING UNION, Lausanne, Switzerland,

Represented by Mr Jean-Cédric Michel, Attorney-at-Law, and Mr Gerhardt Bubník and James L.
Hawkins, ISU Legal Advisors, Lausanne, Switzerland,

Respondent

I. FACTS

A. The Parties

1. *Appellants*

1. The Appellants are Janet Elizabeth Garden, Britta Lindgren and Sally-Anne Stapleford.
2. Appellant Janet Elizabeth Garden, resident in Toronto, Canada, has been nominated from the Canadian Figure Skating Association which is a member of the ISU. She acted as a judge or referee ("ISU Official") in 1975, and then reached the position of a referee for ISU Championships in ice dancing and a judge for ISU Championships in figure skating (singles/pairs). She served as a judge in twelve ISU Championships, including six ISU World Figure Skating Championships as well as in 33 other international events and 21 national championships in Canada.
3. Appellant Britta Lindgren, resident in Umea, Sweden, has been nominated from the Swedish Figure Skating Association which is a member of the ISU. She acted as an ISU Official in or about 1972, and then reached the position of a referee for ISU Championships in figure skating (singles/pairs). She served as a referee in three Olympic Winter Games (incl. Salt Lake City Games in 2002). Furthermore, she served as a member of the ISU Figure Skating Technical Committee from 1988 to 2002.
4. Appellant Sally-Anne Stapleford, resident in London, England, has been working for more than fifty years in figure skating. She began as a competitor, then, from 1972 on, she continued as an official, administrator, referee and judge. Also in 1972, she started to serve as a judge for ISU events (singles/pairs) and subsequently as a referee. In this position, she served in four Olympic Winter Games (1992, 1994, 1998 and 2002). Furthermore, she served as a member of the ISU's Figure Skating Technical Committee from 1988 to 2002, and as its chairwoman from 1992 to 2002. Presently, she is the elected president of NISA (National Ice Skating Association of the U.K., Limited).

2. *Respondent*

5. The Respondent is the International Skating Union ("ISU"), an association formed under Swiss Law according to Article 60 et seq. of the Swiss Civil Code (Article 1 para. 6 of the ISU Constitution), with its seat at Chemin de Primerose 2, 1007 Lausanne. ISU is the

International Federation recognized by the IOC for the sports of figure skating and speed skating.

B. The Events Leading to Arbitration before the CAS

6. The event which stands at the very beginning of this arbitral proceeding was an initiative to form a new organization named "World Skating Federation" ("WSF"). The WSF was intended to replace the ISU as the sole organization governing and promoting international figure skating.
7. The key promoters of the WSF were Ronald T. Pfenning and Jon A. Jackson.
8. On 10 January 2003, WSF was incorporated in the US State of Nevada as a non-profit organization. The President was Ronald Pfenning. Jon Jackson acted as its Secretary. It was admitted that the plan was to transfer the activities of the WSF to a Swiss association which was still to be established.
9. The Appellants were members of the "planning committee" of the WSF. Each of them provided a CV which was temporarily posted on a website promoting the WSF initiative.
10. On 25 March 2003, during the ISU World Figure Skating Championships in Washington D.C., the formation of the WSF was announced at a press conference held in Washington D.C. Appellant Sally-Anne Stapleford attended the conference and made a speech. Appellant Britta Lindgren attended as well, but did not speak. Appellant Janet Garden did not attend the conference. At that conference, among other written materials and documents, a WSF Constitution was presented.
11. Earlier the same day, Ronald Pfenning had sent a fax message to the IOC President in Lausanne, Switzerland, in which he criticized the ISU and its leadership. He informed the IOC President that a new world governing body for figure skating, the WSF, would be announced at a press conference that day. He asked further for a meeting with the IOC and expressed his expectation that the WSF would soon become a member of the Olympic family.
12. On 9 April 2003, the ISU General Secretary sent a letter to each of the Appellants, informing them that participating and supporting formation of the WSF was a breach of the principles and policies of the ISU and of the ISU eligibility rules. As a result, they had become ineligible to act as ISU officials or to participate in activities and competitions under the jurisdiction of the ISU. The Appellants were given a 60-day period for

presentation of their explanations and informed that thereafter the ISU Council would make a final ruling.

13. On 10 April 2003, Ronald Pfenning wrote to all ISU Members that the time had come for the WSF to take control of figure skating, to share all revenues generated through figure skating events solely with figure skating athletes and members, and to split figure skating and speed skating. He added that the purpose of WSF was to govern and promote figure skating throughout the world.
14. On 29 May 2003 and on 6 June 2003 respectively, the Appellants objected to the decision of the ISU General Secretary. They denied the charges and stated that the ISU Constitution and General Regulations did not support the claim of breach of eligibility rules. They argued that the decision of the ISU General Secretary violated the ISU Constitution and Rules. Furthermore, they demanded a hearing before the ISU Council. After several postponements, the hearings of the Appellants eventually took place before the ISU Council on 1 February 2005 in Geneva. Appellants Stapleford and Lindgren appeared in person before the ISU Council with their counsels; Appellant Garden did not appear at the hearing.
15. On 1 April 2005, the ISU Council upheld the decision of the ISU General Secretary and ruled that each of the Appellants had breached the ISU eligibility rules and that as a consequence they had lost their ISU eligibility ("Council Decisions").
16. On 21 April 2005, the Appellants jointly appealed against the Council Decisions to the ISU Appeals Commission.
17. On 30 August 2005, a hearing before the Appeals Commission was held. None of the Appellants appeared personally. They were all represented by their counsels Steven Hazen and Urs Isenegger. On 31 August 2005, the ISU Appeals Commission dismissed the appeal and upheld the Council Decisions ("AC Decision").
18. The present appeal before the CAS is directed against this AC Decision.

C. Proceedings before the CAS

19. On 21 September 2005, the Appellants filed a joint Statement of Appeal to the Court of Arbitration for Sports (CAS). They requested that a sole arbitrator be appointed.
20. On 3 October 2005, the Appellants filed their Appeal Brief.

21. On 4 October 2005, the Respondent refused the Appellants' request for a single arbitrator panel and nominated Mr Jean-Philippe Rochat as its arbitrator.
22. On 26 October 2005, the Respondent filed its answer.
23. According to the letter of 4 November 2005, the parties agreed on a panel of three arbitrators. The Appellants nominated Mr Mark Baker as their arbitrator.
24. On 6 December 2005, the CAS informed the parties that the panel would be composed of Mr Stephan Netzle (president), Mr Mark Baker (arbitrator) and Mr Jean-Philippe Rochat (arbitrator).
25. On 28 February 2006, the hearing took place in Lausanne, Switzerland. The Appellants were represented by their counsels Jonathan Taylor, Steven K. Hazen and Urs Isenegger. The Respondent was represented by Dr Gerhard Bubník and ISU's council Jean-Cédric Michel.

D. The Parties' Respective Requests for Relief

1. *Appellants*

26. In the Statement of Appeal of 21 September 2005, confirmed in the Appeal Brief of 3 October 2005, the Appellants submitted the following requests for relief:

"(a) reversing and vacating the AC Decision;

(b) dismissing the charges laid against the Appellants of breach of the ISU Constitution and General Regulations;

(c) declaring that the Appellants remain eligible within the meaning of the ISU Constitution and General Regulations;

(d) ordering the Respondent to pay to the Appellant the costs of these proceedings, including the filing fees and the fees and expenses of professional advisers that the Appellants have been forced to incur in relation to this matter; and

(e) requiring the Respondent to issue a Communication pursuant to Article 21 of the ISU Constitution, announcing the ruling of CAS on this Appeal."

2. Respondent

27. In its Answer of 26 October 2005, the Respondent requests that the CAS

- *"dismiss the appeals in their entirety;*
- *decides that the Appellants bear all arbitration costs."*

28. The Parties' arguments in support of their requests for relief will be discussed to the extent necessary in the context of the following considerations.

II. LEGAL DISCUSSION

A. Jurisdiction of the CAS

29. Pursuant to Article 23(1) of the ISU Constitution¹, the Appellants can appeal against any decision of the Appeals Commission to the CAS within 21 days from the date of communication of the decision to the party.
30. The AC Decision dated 31 August 2005 confirms the Appellants' right to appeal against the AC Decision to the CAS.
31. The parties agreed on the jurisdiction of the CAS by submitting their declaration of Appeal/Appeal Brief and Answer Brief to the CAS.
32. The Appellants signed and returned the Order of Procedure dated 1 February 2006. While the Respondent did not return the order of procedure, by letter dated 1 February 2005, it basically agreed on the order submitted, but requested that the order includes a specific clause obliging the Appellants to personally attend the hearing. At the hearing, the Respondent's counsel confirmed the ISU's agreement to the jurisdiction of the CAS.
33. From all of the above, CAS has jurisdiction to rule on this appeal.

B. Applicable Law

34. Under Article R58 of the Code of Sports-related arbitration (edition 2004, hereinafter referred to as "the Code"), "[t]he Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association of sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel seems appropriate. In the latter case, the Panel shall give reasons for its decision."

¹ These proceedings have been opened under the edition 2002 of the ISU Constitution and General Regulations. These documents have been changed and amended 2004 (edition 2004 of the ISU Constitution and General Regulations). The events leading to the legal proceedings took place during the term of the 2002 edition of the ISU Constitution and General Regulations. Therefore, all references to articles of the ISU Constitution and General Regulations are meant to refer to the 2002 edition.

35. In the present matter, the parties refer exclusively to the ISU Rules. They have not agreed on the application of any other particular law.
36. Therefore, the ISU Constitution and the ISU Rules (edition 2002) shall primarily apply and Swiss law shall apply complementarily.

C. Admissibility

37. The Appellants filed a joint Statement of Appeal and Appeal Brief to the CAS. Therefore, the CAS treats the present appeal as one case and the Appellants' case will be subject to a single arbitral award.
38. Pursuant to Article 23(3) of the ISU Constitution (and to Article R49 of the Code) the appeal has to be filed to the CAS and the ISU secretariat within 21 days from the date of communication of the decision to the party having the right to appeal.
39. According to the Appellants' statement, the AC Decision was received to them by fax on or about 1 September 2005 and by registered mail on or about 8 September 2005. The Statement of Appeal was submitted to the CAS on 22 September 2005 according to the internal seal of the CAS. The Appeal Brief was submitted on 3 October 2005. Regarding the fact, that the last day of the time limit of ten days (Article R51 of the Code) fell on a non-business day, the Respondent's Answer was delivered in due time (Article R32 of the Code).
40. According to the correspondence by the CAS, the Respondent's Answer was delivered in due time as well. It follows that the Appeal is admissible, which is undisputed.

D. Summary of the Facts

41. The facts are largely undisputed. There are no doubts about the fact that the Appellants actively participated in the foundation of the WSF. Likewise, there is no question about the purpose of the WSF: The WSF's aim was to assume control over figure skating currently controlled by the ISU and to obtain IOC recognition as the competent International Federation for figure skating. Finally, the fact that the WSF held a press conference in Washington D.C. and the issues discussed at this conference are not controverted.
42. By actively and publicly supporting the foundation of WSF the Appellants accepted the establishment of a competing organization to the ISU and a separation of figure skating from the ISU. Self-evidently, the Appellants accepted that the ISU would have been forced to give up a substantial part of its activities if WSF would have been successful.

43. The fact that speed skating would have remained with the ISU is not decisive. Figure skating constitutes one of the two pillars of the ISU and the foundation of the WSF would have led to a significant financial loss for the ISU.
44. The question whether the WSF had been legally founded as a Swiss association is irrelevant. As a matter of fact, the promoters of WSF had already established an association with the same name and purpose in Nevada, USA. In any event, the establishment of a Swiss association was a rather uncomplicated task which could be executed at any time. The intention was not any particular legal form of the WSF but the attempt to deprive the Respondent from one of its two strategic and financially remunerative activities.
45. Similarly it is not relevant that the initiative to separate figure skating from the ISU eventually failed. The foundation of the WSF was a serious and a real project, as made clear in the Washington D.C. press conference, which the Appellants actively supported and promoted.
46. Finally, it is of no importance that the Appellants could not become formal members of the WSF since the membership was reserved to national associations.
47. What is, however, relevant, is the fact that the Appellants participated in certain activities which would have been detrimental and harmful to the Respondent if such activities had been successful (cf. CAS 2005/A/874 Miller v/IBAF, E. 4.28).
48. It is understandable that an organization does not accept that its constituents are engaging in activities outside the organization, which are aimed at the impairment and may even destroy that organization. Still, the question remains *how* the organization responds to such activities and whether such response was in line with the applicable rules and regulations of that organization.

E. The Issues

49. The Respondent chooses to declare the Appellants ineligible to act as ISU Officials in activities and competitions under the sponsorship of the ISU. The main issues to be decided upon are the following:
 - a) Did the Respondent have proper jurisdiction to declare the Appellants ineligible to act as ISU Officials?

- b) Did the Respondent comply with the due process requirements in its appeal procedures?
- c) Is there a sufficient legal basis in the rules and regulations of the ISU to declare the Appellants ineligible?

F. Discussion

1. *ISU's Jurisdiction*

- 50. Membership at the ISU is restricted to national associations and thus legal entities (cf. Article 6 ISU Constitution). The Appellants could never be formal members of the ISU and were not able to obtain such a membership pursuant to the ISU Constitution and Regulations. However, when the ISU General Secretary informed the Appellants of their eligibility, the Appellants held positions either as ISU Office Holders or Officials.
- 51. Thus, the question is under what circumstances does the ISU have jurisdiction over individuals who hold an office in the ISU but who are not members of the ISU. According to the precedents of CAS, the jurisdiction of an international federation over an individual official does not depend on the fact whether such official is a formal member of the association (cf. CAS 2005/A/874, Miller v/IBAF, E. 4.5 et seq.). As a matter of fact, in the case of federations, whose members are associations or other federations, the officials are rarely formal members of that organization.
- 52. A person who agrees to act as an official in an association accepts at the same time the constitution and regulations of the association (CAS 2005/A/874, Miller v/IBAF, E. 4.5). The agreement does not have to be explicit but results from the person's voluntary willingness to hold an office in the association. By this agreement, the individual submits to the regulations and constitution of the association regardless of whether a formal or personal membership exists or not. The acceptance of the association's rules and therefore, of the association's jurisdiction, results from that voluntarily assumed contractual commitment to participate in the association (RIEMER, Berner Kommentar, Bern 1990, No. 142 to Article 70 of the Swiss Code of Civil Law (*ZGB*)).
- 53. The Panel concludes that the Respondent had the competence to decide upon the eligibility of the Appellants as officials in the ISU.

2. *Due process*

54. The Appellants assert that during the entire proceedings before the ISU they were not given proper notice of the case brought against them, that they were not informed about the concrete provisions of the ISU Constitution and General Regulations they had supposedly breached, nor about the activities said to amount to such breach. They also maintain that the decisions of the ISU Council and of the ISU Appeals Commission are based on an insufficient legal basis and on unsubstantiated facts and violate the principles of a due process. According to the Appellants, a further violation of these principles consists in the fact that the decision of the ISU Appeals Commission is partly based on a different legal basis than the decision of the lower instance. Finally, it is contended that the decision against the Appellants is a disciplinary sanction pursuant to Article 21 of the ISU Constitution.
55. In the letters by the ISU General Secretary of 9 April 2003, the Appellants were accused of having breached the main objects of the ISU, set out in Article 7(1)(a) and (b) of the ISU Constitution and in Rule 102(1)(a), by having acted as WSF founding members and as participants in the foundation of the WSF, all or any of which would lead to the loss of eligibility. The Appellants were given a deadline to answer. Upon receipt of the Appellants' answers the ISU Council made a decision based on the legal principles already stated in the charge letters. The Appeals Commission, based its decision additionally on Article 1 of the ISU Constitution and on Rule 102(1)(a)(ii).
56. Whether the loss of eligibility is considered a disciplinary sanction in the meaning of Article 21 of the ISU Constitution or not, is irrelevant here since the regulations of the Respondent contain specific eligibility rules, including rules about the loss of eligibility and the respective proceedings. Such specific rules will prevail even if the loss of eligibility could also be defined as a disciplinary sanction. Also from a procedural point of view, the procedural distinction is irrelevant since both decisions, the ISU Council's decision (concerning eligibility issues) and the disciplinary commission's decision (concerning disciplinary sanctions), are aimed at preserving the due process rights of the parties and are subject to appeal to the Appeals Commission (Article 22(6)(a) and 22(6)(c) of the ISU Constitution respectively) which has unrestricted power to review the facts and the law (Article 22(10) of the ISU Constitution). Finally, the decisions of the Appeals Commission with regard to eligibility and disciplinary sanctions can both be appealed to the CAS (Article 23(1)(a/c-e) and Article 23(1)(b) of the ISU Constitution respectively).

57. Under Article R57 of the Code, the Court of Arbitration has full power to review all the facts and the legal basis of prior determinations. Based on the jurisdiction of the CAS, a possible procedural error or irregularity committed by a prior instance is cured by the appeal to the CAS (CAS 2005/A/874, *Miller v/IBAF*, E. 4.24; CAS 94/129, *USA Shooting & X. v/International Shooting Union (UIT)*, Digest of CAS Awards I (1986-1998), p. 187 et seq.; TAS 2000/A/290, *Abel Xavier & Everton F.X. v/UEFA*, Digest of CAS Awards II (1998-2000), p. 556 et seq.).
58. In the CAS proceedings, the Appellants had ample opportunity to present their factual and the legal positions in written and in oral form. Eventually, at the end of the CAS-hearing, the representative of the Appellants explicitly confirmed that all arguments had been brought forward and there was nothing to add. Based on its authority to hold a trial de novo (Article R57 of the Code), the Panel decides autonomously and independently of the lower instances on the breach of eligibility. Accordingly, the charge that the trial before the ISU-bodies involved procedural irregularities therefore becomes moot.

3. *Declaration of Ineligibility*

a) **Legal Basis for the Decision**

59. The legal basis for eligibility can be found in Rule 102 of the ISU Regulations:

1. Eligibility Status

- a) The eligibility Rules of the ISU are based upon the principles that:

i) a person has the privilege to take part in the activities and competitions under the jurisdiction of the ISU only if such person respects the principles and policies of the ISU as expressed in the ISU Constitution and Regulations and fulfils those obligations on the basis of which the ISU functions and governs all its activities;

ii) the condition of eligibility is made for the adequate protection of the economic and other interests of the ISU, which uses its financial revenues for the administration and development of the ISU sport disciplines and for the support and benefit of the Members and their skaters.

- b) an eligible person is one who elects to take part only in international competitions which are: (i) sanctioned by the Member and/or the ISU; (ii) conducted by ISU recognized and approved Officials, including Referees, Judges, Starters, Competitors Stewards and others; and (iii) conducted under ISU Regulations;

c) a skater wishing to take part in ISU activities should not be placed at a disadvantage by reason of the necessity to prepare for and participate in ISU Events, the Olympic Winter Games, and all international competitions, exhibitions and tours properly sanctioned by the ISU or a Member. Accordingly, a skater may receive payments for appearances, endorsements and exhibition performances and still remain eligible, provided: (i) such skater complies with conditions established by the respective Member of which such skater is a member concerning such appearances, endorsements and exhibition performances, including all financial arrangements, (ii) payments or other benefits to be received by such skater for any Skating appearance are made through the respective Member of which such skater is a member or at least with full information on such payments or benefits given by such skater to the Member and (iii) such skater complies with all other provisions of this Rule 102;

- d) it is the responsibility of each Member to establish the basis for the receipt of payments by such skater for appearances, endorsements and exhibition performances. Members may share

such payments in consideration of past and present support of such persons, but with not more than 10%. Members shall monitor their skaters to ensure that they do not participate in competitions that would render them ineligible.

2. Definition of an ineligible person

A person becomes ineligible to participate in ISU activities and competitions by:

- (i) skating or officiating without the prior express authorization of the respective Member, in any capacity in a Skating competition, exhibition or tour in any of the sport disciplines of the ISU;
- (ii) skating or officiating in a competition conducted by Officials (Referees, Judges, Starters, Competitors Stewards, etc.) not on the approved list of the respective Member or on the ISU approved list;
- (iii) skating or officiating in an event not sanctioned by a Member and/or the ISU; or
- (iv) otherwise violating this Rule 102.

3. Participation of eligible persons

Only eligible persons, including skaters, are permitted to take part in ISU Events, the Olympic Winter Games and other international competitions. Eligible persons may take part in exhibitions and tours which may include ineligible skaters, only if such exhibitions and tours are sanctioned by a Member and/or the ISU. Eligible persons may participate in ISU approved Open International Competitions that include invited ineligible skaters as approved by the ISU.

4. Restricted eligibility

Eligibility rights are restricted as follows:

- a) A person (although not otherwise ineligible under other provisions of this Rule) who receives remuneration from ownership or management of an ice show or skating exhibition tour may not be a Referee, Assistant Referee, Technical Controller, Technical Specialist, Competitors Steward, Judge or Starter in ISU Events, the Olympic Winter Games or any other international competitions sanctioned by a Member or the ISU, and such persons may not be a member of the ISU Council, a Technical Committee, or the Appeals Commission, or a delegate to an ISU Congress;
- b) paid employees of ISU Members and their affiliated clubs, and remunerated coaches, may not be a Referee, Assistant Referee, Judge, Starter or Competitors Stewards in ISU Events or any other international competitions sanctioned by a Member or the ISU, and such persons may not be a member of the ISU Council, a Technical Committee, or the Appeals Commission. However, such persons may attend ISU Congresses subject to the Procedural Provision of the Constitution, paragraph 13, but without the right to vote. Such persons may also act as Technical Specialist or Technical Controller in ISU sanctioned competitions.
- c) a person may not serve as a member of the Coaches Commission or as a leader of an ISU seminar or course if such person participates after July 1, 1998 as an Official in the administration of events defined in Rule 102, paragraphs 2 (ii) and (iii).

5. Payments

[...]

6. Trademarks

[...]

7. Loss of eligibility

- a) The consequence of a breach of the eligibility rules shall be the loss of eligibility. The status of a person disqualified or suspended under other applicable Rules, does not affect the eligible status of such person, but it limits, according to the terms of the applicable disciplinary sanction, the right of such person to participate in the competitions and activities of the ISU;
- b) the ISU Council, upon the presentation of such evidence as it considers sufficient at its sole discretion, may rule upon an alleged breach of the eligibility rules, whether or not any protest has been made against an individual's eligible status in skating;
- c) before a ruling is made by the Council, both the Member and the person concerned shall be notified and the person concerned shall be given the opportunity to furnish an explanation of the alleged breach (which may be in writing). If the person concerned does not avail himself of such opportunity within fifteen (15) days of receipt of such notice, his right to furnish an explanation shall be waived.

8. Matters concerning eligibility not otherwise foreseen in the ISU Rules shall be considered by the Member concerned in a manner consistent with the spirit and intent of the ISU Rules.

60. Pursuant to Rule 102(1)(a), the eligibility Rules of the ISU are based on the principles that (i) a person has the privilege to take part in the activities and competitions of the ISU "only if such person respects the principles and policies of the ISU as expressed in the ISU Constitution and Regulations" and only if such person "fulfils these obligations on the basis of which the ISU functions and governs all its activities". The Appellants dispute the normative character of Rule 102(1)(a). In their view, Rule 102(1)(a) is only a statement of principle to guide interpretation of the further parts of Rule 102. According to the Appellants, Rule 102(1)(a) cannot constitute a sufficient legal basis to declare ineligibility.
61. Although admittedly Rule 102 is not a model of draftmanship, the Panel does not share this opinion which emphasizes one part of the sentence ("based upon") instead of the meaning and the context of the entire rule. The title to Rule 102(1) indicates that this provision shall describe the requirements to be eligible, i.e. the "Eligibility Status". To be eligible to take part in the activities of an association, one must respect the principles and policies of that association. This is how an ordinary volunteer participating in the ISU would understand Rule 102(1)(a) and there is no need to specify this fundamental rule any further. Any addressees of Rule 102(1)(a) will undoubtedly conclude that the eligibility rules of the ISU *comprise* the principles which are referred to in that article and do not simply announce them. This principle is reflected also in Article 7(1)(a) of the ISU Constitution²:

Article 7

1. Obligations of Members

a) Members of the ISU, their affiliated clubs, their individual members and/or all other persons claiming standing as participants in the international activities of a Member or of the ISU are bound by this Constitution and the Regulations, and are subject to decisions of the Council concerning all international matters.

62. In short, the Panel is not ready to read Rule 102(1)(a) so that it creates the rather odd conclusion that a person may take part in the activities of the ISU *without respecting the principles* of the federation. Under these circumstances it can be left open whether Rule 102(1)(a) is necessary at all or whether an association has already an inherent right to

² The Appellants' objection that Article 7(b) of the ISU Constitution, which obliges the ISU members to preserve the integrity of the ISU as well as to support the objectives, is not applicable in the present case is correct. The Appellants rightly point out that Article 7(b), unlike Article 7(a), speaks exclusively of the members of ISU.

declare a person ineligible if such person is not respecting the principles of that association.³

63. Pursuant to Rule 102(1)(a)(i), an eligible person has to respect the principles and policies of the ISU as expressed in the ISU Constitution and Regulations. Thus, Rule 102(1)(a)(i) itself has no independent meaning but must be completed by a provision that sets out the respective principles and policies. Thus, in connection with such principles and policies, Rule 102(1)(a)(i) defines the concrete obligation of conduct of an eligible person in sufficient detail to make it a normative rule.
64. The legal consequence of a breach of such principles and policies would already result (*e contrario*) from Rule 102(1)(a). In addition, Rule 102(2)(iv) explicitly allows for the loss of eligibility if a person "otherwise violates Rule 102". Rule 102(1)(a) and Rule 102(2) constitute therefore a normative provision, consisting of a proviso (namely to comply with the principles and policies set out in the ISU Constitution and Regulations) and a sanction (namely to lose the privilege to participate in the activities and competitions of the ISU).
65. The crucial question is whether the ISU Constitution and Regulations contain principles and policies the Appellants have breached with their activities and their behaviour.
66. When the Appellants supported actively the plan to separate figure skating from the Respondent, they challenged the fundamental principles embodied in Article 1 and Article 3 of the ISU Constitution.

Article 1

1. Name, Constitution and Legal Status

The International Skating Union (herein called the "ISU"), founded in 1892, is the exclusive international sport federation recognized by the International Olympic Committee (IOC) administering Figure Skating and Speed Skating Sports throughout the world. The ISU is composed of the individual national associations (herein called "Members") who administer these Sports at the national level and who recognize that all international matters are under the sole jurisdiction and control of ISU. The national associations have agreed to this Constitution and will respect its provisions.

[...]

³ The duty of allegiance is a general principle of the Swiss law of associations (Article 60 et seq. of the Swiss Code of Civil Law (*ZGB*)) and must be respected whether or not it is contained in the written statutes of an association (cf. also Decision of the Federal Court (*BGE*) 131 III 97 et seq., 101; cf. RIEMER, Berner Kommentar, Bern 1990, No. 41 to Article 63, No. 149, 189 et seq. to Article 70 of the Swiss Code of Civil Law (*ZGB*) with further references, and No. 508 of the systematic Part). It is applicable not only for formal members, but for everyone who is active within an association (cf. RIEMER, Berner Kommentar, Bern 1990, No. 149 and No. 189 et seq. of Article 70 of the Swiss Code of Civil Law (*ZGB*) and No. 515 of the systematic Part). From this duty of allegiance emerges every single person's duty to act loyally towards the association as well as according to its interests.

Article 3**1. Objects**

The objects of the ISU are the regulation, control and promotion of the sports of Figure and Speed Skating and their organized development on the basis of friendship and mutual understanding between sportsmen. The ISU shall work for broadening interest in Figure and Speed Skating sports by increasing their popularity, improving their quality and increasing the number of participants throughout the world. The ISU shall ensure that the interests of all Members are observed and respected.

67. Pursuant to Article 1 of the ISU Constitution, the ISU is the only association worldwide recognized by the IOC to administer figure skating. Pursuant to Article 3(1) of the ISU Constitution, the defined and clearly specified object of the ISU constitutes the regulation, control and promotion of figure skating. Activities aiming at the separation of figure skating from the Respondent were immediately directed at the core of the Respondent's "raison d'être". The Appellants accepted that if they would have only partially been successful, there could have been two separate organizations for figure skating, which would have made international competitions and championships very difficult. The Appellants also accepted that if their project would have been successful that the Respondent would have lost its main activities and suffered a substantial financial loss. The Panel finds therefore that the Appellants were engaged in considerable activities which violated the basic principles of the ISU as the international governing body of figure skating as reflected in Article 1 and 3 of the ISU Constitution by acting outside the organization.

68. The protection of economic and other interests is also explicitly addressed by Rule 102 (1)(a)(ii).

1. Eligibility Status

a) The eligibility Rules of the ISU are based upon the principles that:

i) [...]

ii) the condition of eligibility is made for the adequate protection of the economic and other interests of the ISU, which uses its financial revenues for the administration and development of the ISU sport disciplines and for the support and benefit of the Members and their skaters.

69. A person who infringes upon the economic or other interests of the ISU may lose his or her eligibility respectively. The protected interests encompass all activities aimed at the foundation of competing or parallel associations and thus can inflict not only financial but also other damage on the ISU. The Panel finds that Rule 102(1)(a)(ii) constitutes an independent legal base to determine the eligibility of an individual, at least with regard to the "protection of economic interests".

70. By actively participating in the foundation of the WSF, the Appellants clearly infringed upon the protected interests of the ISU. The existence of WSF would have not only had

substantial financial consequences for the ISU, but would have caused the ISU to lose a part of its members. The Appellants jeopardized their eligibility also with regard to Rule 102(1)(a)(ii).

71. The Panel concludes that by actively participating in a project outside the ISU, which had as its goal the separation of figure skating from the ISU, the Appellants violated the fundamental principles of the ISU as set out in Article 1(1) and 3(1) of the ISU Constitution. They also necessarily contemplated that a substantial economic harm of the Respondent as a consequence of their activities. These violations led to the loss of eligibility as provided in Rule 102(1)(a) and 102(2)(iv).

b) Proportionality

72. Finally, the Panel reviewed whether the removal of the Appellants' eligibility conflicted with the Appellants' moral rights (Article 28 et seq. of the Swiss Code of Civil Law (*ZGB*)) and the principle of proportionality. These rights and principles may be violated if the Appellants would have been declared indefinitely ineligible irrespective of the kind of the violation and the degree of fault.

73. The Appellants are undoubtedly considered internationally reputed referees and were, therefore, appointed to the most important and prestigious competitions of the ISU. The decision of the Appeals Commission may well lead to damage to Appellants' reputation. Conversely, the Appellants clearly breached the principles and policies of the ISU. In their functions as officials and as office holders in the service of the ISU and therewith as persons officially representing the ISU, they are particularly obligated to protect the interests of the ISU and to act loyally towards the ISU. Furthermore, it must be considered that the loss of eligibility does not affect the Appellants' economic progress since there is no contention that they made their living by their activities at the ISU.

74. In addition, it has to be taken into consideration that the Appellants have chosen to promote the reformation of figure skating by way of a veritable "coup d'état" instead of developing their ideas and attract further supporters within the procedures provided by the ISU Constitution. It is the historical fate of the failed revolutionaries that they depend of the mercy of the victors.

75. The Panel reminds the parties of Rule 103 which allows a person declared ineligible to submit a request to regain eligibility. Thus, the decision of the ISU Appeals Commission

does not have lifelong effect. Based on these considerations, the decision of the Appeals Commission is not disproportionate.

76. The Appellants' defence that the appealed decision is disproportionate because the Respondent did not deny eligibility to others involved in the foundation of the WSF is not persuasive, unlike the Appellants, some of the parties involved in the foundation chose not to appeal the decision of the Respondent, others apologized to the Respondent for their actions. There is no indication that the Appellants would have been treated differently if they had decided to dissociate from the WSF-project at an earlier stage.

G. Costs

77. Article R65.1 of the Code provides that, subject to Article R65.2 and R65.4 of the Code, the proceedings in disciplinary cases of an international nature ruled in appeal shall be free.
78. Under Article R65.2 of the Code, upon submission of the statement of appeal, the Appellants shall pay a minimum Court Office fee of CHF 500 without which the CAS shall not proceed and the appeal shall be deemed withdrawn. The CAS shall in any event keep this fee. The Appellants have paid such minimum CAS Court Office fee.
79. As this is a dispute of an international nature ruled in appeal, these proceedings shall be free, except for the minimum CAS Court Office fee, which is retained by CAS.
80. Under Article R65.3 of the Code, the costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In any final award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.
81. Thus, the Appellants' appeal is entirely dismissed. Considering the circumstances of the present dispute and the allegations of limited financial resources of the Appellants which were not contested by the Respondent, the Panel concludes that the Respondent is entitled to a reduced contribution towards its legal and other costs incurred in connection with this arbitration in the amount of CHF 6000 to be borne in equal shares by the three Appellants.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed by Janet Elisabeth Garden, Britta Lindgren and Sally-Anne Stapleford, on 21 September 2005 is dismissed.
2. The Award is pronounced without costs, except for the Court Office fee of CHF 500 already paid by the Appellants and which is retained by CAS.
3. The Appellants shall pay to the Respondent a contribution towards its legal and other costs incurred in connection with this arbitration in the amount of CHF 2,000 each.

Done in Lausanne, 17 May 2006

THE COURT OF ARBITRATION FOR SPORT

Dr Stephan Netze

President of the Panel

Jean-Philippe Rochat

Arbitrator

Mark Baker

Arbitrator

Dr Alexandra Zeiter

Ad hoc Clerk