

INTERNATIONAL SKATING UNION

HEADQUARTERS ADDRESS: CHEMIN DE PRIMROSE 2 - CH 1007 LAUSANNE - SWITZERLAND
TELEPHONE (+41) 21 612 66 66 TELEFAX (+41) 21 612 66 77 E-MAIL: info@isu.ch

Case No. 2013-03

February 1, 2014

Decision of the ISU Disciplinary Commission

Panel:

- Volker Waldeck, Chair
- Dr. Egbert Schmid
- Susan Petricevic.

In the matter of

International Skating Union,
Chemin de Primrose 2, 1007 Lausanne, Switzerland,
represented by its Legal Advisor, Dr. Béatrice Pfister,

- Complainant -

against

Ms. Sandra Ristivojević,

- Alleged Offender-

and

Serbian Skating Association,
Deligradska 27, 11000 Belgrade, Serbia,

-Interested ISU Member-

Concerning alleged violation of the ISU Anti-Doping Rules

I. History of the procedure

On December 16, 2013, the ISU filed a complaint against the Alleged Offender, together with four exhibits. On December 18, 2013, the Alleged Offender and the Interested Member were invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint. The Alleged Offender filed a brief on December 29, 2013, the Interested Member on January 4, 2014. The President of the Serbian Skating Association moved to dismiss the complaint, because the statement of complaint was filed from the ISU Legal Advisor to the Disciplinary Commission 80 days after the alleged incident and not within the time limit of 30 days.

On January 3, 2014, the DC posed some additional questions for the parties which were answered by the Sport Director of the ISU on January 9, 2014 and by the Alleged Offender on January 13, 2014.

The Complainant moves:

1. To find the Alleged Offender guilty of violation of the ISU Anti-Doping Rules.
2. To impose upon the Alleged Offender a two years ineligibility period.
3. To declare disqualification of the result obtained by the Alleged Offender at the 2013 Nebelhorn Trophy (35th rank).

The Alleged Offender waived the right of an oral hearing.

II. Procedural Matters

According to Article 24, Paragraph 10 of the ISU Constitution 2012 and Article 8.1.1 of the ISU Anti-Doping Rules 2012 the Disciplinary Commission has jurisdiction in anti-doping cases arising out of ISU Testing or Testing at International Events or Competitions. The present case arises out of testing at the 2013 Nebelhorn Trophy, i.e. of testing at an ISU International Event. Therefore the ISU Disciplinary Commission has jurisdiction to hear and decide this case.

III. Facts

The Alleged Offender is a 17 years old Member of the Serbian Skating Association who competed in the 2013 Nebelhorn Trophy which took place in Oberstdorf from September 25 to September 28, 2013.

Prior to this event, on July 1 and 31, 2013 the skater and her parents had signed the "Declaration for Competitors and Officials entering ISU Events"

At the accreditation both the skaters and the team leaders received general information about the event, including an "Anti-Doping Notification" for the Nebelhorn Trophy 2013.

On September 27, 2013, the Ladies Free Skating Event of 35 competitors started at 18:00 hours. With starting number 5 the Alleged Offender finished her performance at 18:42 hours. The event was finished at 23:41 hours.

After her performance the Alleged Offender first went to the restaurant around the ice rink and then went back to the "Hotel garni Hölting", Lorettostrasse in Oberstdorf, within a walking

distance of 5 to 10 minutes to the skating rink.

The Alleged Offender was selected for Anti-Doping testing which she failed to attend, because she had left the ice rink before ensuring that she had not been selected. Thus, the Alleged Offender failed to submit to sample collection.

In her statement of reply, called "Complaint", of December 29, 2013, the skater alleges that she fell ill after returning to the hotel, that she had a temperature of 38.9° and that she fell asleep after having taken an anti-pyretic medicine. Her mother, the team leader, felt ill too and could not go to the ice rink to inform the doping control team about the illness of her daughter. The team leader alleges that there was no information at the hotel about time schedules, telephone numbers of the organizer or doping control panel. She could not call a person of the doping control team, because she had no contact information. The organizers on the other hand did contact neither the team leader nor the skater.

The skater alleges that she had a valid reason for not attending the doping control test because she was ill. She presented a health certificate issued by the Moscow City Health Department – without date -, with the diagnosis of "Acute Sinusitis" from 23/09/2013 till 07/10/2013 and a body temperature rising up to 37.8°.

In the second response of January 13, 2014 by the team leader and mother of the Alleged Offender, she admitted that she did not attend the team leaders meeting prior to the competition, because she was ill. At the accreditation already she tried to explain that she was ill, but the conversation was in English and she does only speak Russian and Serbian.

The team leader explained that she and her daughter went to the ice rink in the morning after the competition, on September 28, 2013, and talked to the doctor who was in charge of the doping control team. The team leader alleges:

"At the request of the medical assistance we were offered drugs. Any other medical care was not provided to my daughter. The documenting of provided medical care was not carried out.

The representative of one of the teams translated our problem. Then we turned to one of the organizers who was near the judging panel. After talking with us she promised to help us, contacted the organizers of the competition. However, the positive results were not achieved. We asked to allow us to pass a doping test with skaters-men after their performances, but we got the refusal.

We came to the room where they took tests for doping control and turned to the persons authorized to conduct doping control. But we also got the refusal. The refusal was motivated by the absence of permission from the administration of the competition organizers."

On September 28, 2013, at 17:00 hours, the President of the Interested ISU Member informed the Chair of the ISU Sports Directorate, Mr Peter Krick, that according to the Alleged Offender's mother (who was at the same time team leader of the Serbian team at the 2013 Nebelhorn Trophy) the Alleged Offender had gotten sick with elevated temperature and had gone to the hotel immediately after the competition. Only in the morning thereafter she learned about having been drawn for anti-doping testing. Her mother has asked somebody of the Organizing Committee and also someone of the doping control team to solve the problem, but they referred her to the "ISU". Therefore the President of the Serbian

Skating Association asked the Sport Director Mr. Krick, whether the skater could perform the doping test as long as she stays in Oberstdorf.

However, on October 29, 2013, Mr. Krick in an e-mail addressed to Ms Cardis stated, that the doctor in charge was not contacted by anyone of the Serbian team.

In his response of January 9, 2014, the Complainant, represented by the ISU Sport Director Mr. Peter Krick, stated that the team leaders' meeting was scheduled on Wednesday September 25, 2014. During this meeting he had explained the doping control procedures as to ISU Communication 1800.

The ISU Sport Director could not remember, whether the Serbian team leader attended the meeting or not.

The Sport Director further stated that he was informed by the Anti-Doping Controlling Official after the ladies event at around 1:00 a.m. in the morning of September 28, 2013, that the Serbian skater, drawn for control, had not appeared. The rink was already empty and nearly everyone – except the doping control group – had left the stadium.

It was not possible to reach the skater at the hotel, where the Serbian team stayed. The “Hotel Hölting” is a bed and breakfast hotel. During the night it was not possible to contact the hotel or the guests.

After having received the email of the President of the Serbian Figure Skating Federation of September 28, 17:00 hours, (Exhibit 3), the Sport Director wrote an email to the Chair of the ISU Medical Commission, Mrs. Dr. Jane Moran, and to the ISU Director General, Mr. Fredi Schmid:

“The facts are described by the lady from Serbia. No need for me to amend anything. The Anti-Doping test persons are aware of the situation and will report to you accordingly.”

(It is unclear, why the email of Mr. Krick is dated on 8:32 a.m., as it is the response to the first email from the Serbian President from 5:00 p.m., and the request to Dr. Moran, who answered at 9:12 p.m.)

Dr. Moran answered at 21:12 hours,

“it would be good to see if they can test her if they are still there. Also do they have any indication or record that they were seen by the medical staff for her illness. A record of her illness would be helpful.”

Mr. Krick answered to Dr. Moran at 22:39 hours:

I have not seen any documents of illness, but I told her to contact the Anti-Doping Control people.

At the time of Dr. Moran's message, which arrived at 21:12 hours, the Anti-Doping Control people had left already the skating center.

The ISU Sport Director admitted, that

“Mrs. Ristivojevic had contacted me personally in my office and asked what to do. I told her to try to meet the Anti-Doping Control people. I cannot remember at what time she was in my office.”

IV. Law

1. The Statement of Complaint is admissible.

1.1. The Complaint was filed from the ISU Legal Advisor to the Disciplinary Commission within 80 days. The time frames of 60 days according to Article 24 Paragraph 6a) of the ISU Constitution and General Regulations 2012, or the former time frame of 30 days as stated in Article 8.1 of the ISU Disciplinary Commission Rules of Procedure do not apply to this case. According to Article 24 Para 6b) of the ISU Constitution the 60 day deadline does not apply to filing of charges for violation of an Anti Doping Rule.

2. The Statement of Complaint is justified.

According to Article 2.3 and 2.3.1 of the ISU Anti-Doping Rules, failing to submit to sample collection and leaving the ice rink after the event in which a skater has participated without first ensuring that he or she has not been selected for Anti-Doping testing constitutes an Anti-Doping Rule violation. According to Article 10.3.1 para 1 the sanction for failure to submit to sample collection is an ineligibility period of two years, unless the conditions provided in Art. 10.5 or Art. 10.6 are met.

Article 10.5.1 states:

If a Skater establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated.

It is uncontested that the skater did not attend the anti-doping testing after the final event. It is the fault of the skater that she left the ice rink after her performance and did not return in order to make sure who has been drawn for the anti-doping testing. The skater and her mother, the Serbian team leader, were sufficiently informed about the anti-doping testing procedures. According to the “Declaration for Competitors and Officials entering ISU Events” Paragraph VI (see Exhibit 7) the skater has to be familiar with the ISU Anti Doping Rules.

At the accreditation the organizer of the event has delivered information both to the skaters and to the team leaders about the testing procedure (see Exhibit 8). The team leader was also provided with this information in her post box at the rink. All information was written in English. If the team leader had no sufficient knowledge of English, she should not be assigned as team leader at an ISU event.

The skater alleges that she fell ill after returning to the hotel, that she had a temperature of 38.9° and that she fell asleep after having taken an anti-pyretic medicine. That would have been the reason why she could not return to the ice rink for the doping test. The panel impeaches the credibility of this statement, as the skater went to the rink next morning, a few hours after a temperature of 38.9°. The health certificate issued by the Moscow City Health Department – without date -, with the diagnosis of “Acute Sinusitis” does not prove, that the skater has been ill on September 27/28, 2013, because this certificate has no date and was written in Moscow at an unknown time after the event in Oberstdorf.

The team leader admitted that she did not attend the team leaders meeting prior to the competition, because she was ill. After the ladies event the team leader alleges that she was also ill and could not return to the ice rink. The panel challenges her explanation because at the time between the team leaders meeting and the ladies final she was obviously healthy.

The team leader cannot complain about the lack of information at the hotel. In Oberstdorf no hotel is big enough to accommodate all competitors, team leaders and coaches of the Nebelhorn Trophy. All information for the participants of the event would be delivered at the ice stadium. The walking distance from the "Hotel garni Hölting" to the ice rink is 5 to 10 minutes. If the team leader could not reach someone from the testing team by phone she could have walked to the ice rink.

The alleged reasons why the skater and the team leader could not attend the anti-doping test after the ladies event at night September 27/28, do not convince the panel and do not exonerate the skater as requested in Article 10.5.1 ISU Anti Doping Rules.

What happened next morning on September 28 is unclear. The skater alleges that she has asked to be tested by the doping control team as long as they were present to test the competitors of the men's event, which finished before 15:00 hours. But they refused to test her unless it was authorized by the event organizer. But the control panel allegedly did not get the permission to collect the sample. On the other side the ISU Sport Director admitted that the skater has contacted him personally and he told her to meet the Anti-Doping Control Team, but the Sport Director could not remember at what time the skater was in his office. It remains unclear for the panel why the Alleged Offender was not tested by the control team together with the competitors of the men's event, although she was present and the ISU Sport Director has given his permission to test her.

In the afternoon of September 28 at 17:00 hours, the President of the Serbian Skating Association repeated the request by email to perform the test as long as the skater was present in Oberstdorf. But the test was not executed although the ice dance free skating event was still ongoing and a test of the Alleged Offender together with the dance couples would have been possible.

At night, at 21:00 hours, when Dr. Moran, Chair of the ISU Medical Commission, proposed in her email, to test the Alleged Offender if she were still there, it was too late. The Anti-Doping Control team had already left the competition.

It is the opinion of the panel, that the Alleged Offender has offered to be tested, but it remains unclear, why the test was not performed on September 28, 2013.

Because of these exceptional circumstances the panel applies Article 10.05.2 ISU Anti Doping Rules which states:

10.5.2 No Significant Fault or Negligence

If a Skater or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable.

The regular suspension of two years therefore is reduced to one year.

According to Article 10.9 the period of Ineligibility shall start on the date of the decision of the Hearing Panel providing for Ineligibility. Thus the ineligibility starts on February 1, 2014 and ends on January 31, 2015.

According to Article 9 the violation of the ISU Anti-Doping Rules automatically leads to Disqualification of the result obtained in that competition with all resulting consequences, including forfeiture of any medals, points and prizes. Therefore the competitive results of Sandra Ristivojević, obtained from September 26, 2013 (Short Program) to September 27, 2013 (Free Skating Program), at the Nebelhorn-Trophy 2013 in Oberstdorf, Germany, are disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.

V. Costs

According to Article 12.2 of the ISU Anti-Doping Rules 2012 the ISU Member shall be obligated to reimburse the ISU for all costs (including but not limited to laboratory fees, hearing and travel expenses) related to a violation of these Anti-Doping Rules committed by a skater affiliated with that member. Therefore the costs of these proceedings have to be borne by the Serbian Skating Association.

The skater has to bear her own costs.

Based on the above considerations the ISU Disciplinary Commission rules as follows:

Decision

1. Sandra Ristivojević is declared responsible for an Anti-Doping violation, committed on September 27, 2013, at the Nebelhorn-Trophy 2013 in Oberstdorf, Germany.
2. A period of ineligibility of one year, beginning on February 1, 2014 and ending on January 31, 2015, is imposed on Sandra Ristivojević.
3. The competitive results of Sandra Ristivojević, obtained from September 26, 2013 (Short Program) to September 27, 2013 (Free Skating Program), at the Nebelhorn-Trophy 2013 in Oberstdorf, Germany, are disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.
4. The Serbian Skating Association has to reimburse the ISU for the costs of these proceedings.
5. The skater bears her own costs.

February 1, 2014



Volker Waldeck



Dr. Egbert Schmid



Susan Petricevic