

INTERNATIONAL SKATING UNION

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

Case No. 2010-01

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,
- Complainant -

against

Mr. Walter Toigo,
Italy,

- Alleged Offender -

and

Federazione Italiana Sport del Ghiaccio (FISG Figura), Via Piranesi 44/B, I-20137 Milano,

- Interested ISU Member -

Concerning alleged Violations of the Duties of Judges and the ISU Code of Ethics.

I. History of the Procedure

1. On October 19th 2010 the ISU filed a complaint against the Alleged Offender together with exhibits.
2. On October 25th the Disciplinary Commission invited the Alleged Offender and the Interested ISU Member to file their statements of reply within 21 days upon receipt of the Complaint. The Alleged Offender received the statement of complaint together with the exhibits and the order of the Disciplinary Commission on November 9th 2010.
3. Between October 24th and November 7th 2010 the Disciplinary Commission received 4 letters from witnesses at the event in Courchevel; three were written in French and one was in English.
4. On November 21st 2010 the Alleged Offender received a further order of the Disciplinary Commission together with the 4 letters of witnesses to the event in Courchevel. By the said order the Alleged Offender was invited to file a statement of reply regarding the statement of complaint and the testimonies of the witnesses within 21 days.
5. On November 23rd the Alleged Offender asked for translations of the three French testimonies into English. The translations were sent to the Alleged Offender by order of the DC on November 25th inviting him to reply to the statement of complaint and the 4 testimonies within 14 days.
6. On December 6th 2010, in due time, the Alleged Offender filed his statement of reply together with 10 exhibits.
7. On December 21st the Disciplinary Commission sent a further letter from a witness, written in French and translated into English, to the Alleged Offender for his information.

II. Procedural Matters

1. According to Article 24 paragraph 1 of the ISU Constitution and General Regulation 2010 the Disciplinary Commission (“DC”) serves as an authority of first instance to hear and decide all charges referred to it against ISU Officials accused of a disciplinary or ethical offence.
2. The present case arises out of an ISU International Figure Skating Competition in Courchevel (France) where the Alleged Offender has participated as a judge and is accused of disciplinary and ethical offences. Therefore, the DC has jurisdiction to hear and decide the present case.
3. The present case is governed by the ISU Special Regulations and Technical Rules for Single and Pair Skating and Ice Dance 2010, the ISU Code of Ethics 2006 (ISU Communication 1433) and the ISU Disciplinary Commission Rules of Procedure (ISU Communication 1419).

III. Facts

1. The Alleged Offender is listed as an ISU Judge and International Referee for Single and Pair Skating for the season 2010/2011 (ISU Communication 1635) for the member federation Italy. In this capacity he was assigned as a judge for both the Junior Men's and the Junior Ladies Categories at the Junior Grand Prix of Figure Skating in Courchevel, France, from 25th-28th October 2010. In the Junior Ladies event the Alleged Offender acted as judge No. 8, in the Men's event as judge No. 4. The Referee of the Men's event was Mr. S, and the Technical Controller Ms. Z.

2. A group of French chaperons and a German journalist were sitting behind the judges' stands during both the Ladies and the Men's events. They were seated at a distance of two to five meters behind the Alleged Offender. The German journalist, Mr. K., is the author of articles for the German skating magazine "Pirouette" and has an in-depth knowledge of ice figure skating and the new international judging system. The French spectators and witnesses were Ms..., Ms., Mr. and Mr.. The French chaperons and Mr. K noticed the Alleged Offender constantly looking to the left and right at the computer screens of his neighbouring judges while he was judging the events. They found his behaviour so peculiar that they decided to videotape him. The witness Ms. recorded a video ("video 1") focused on the Alleged Offender during the free skating program of the Romanian skater Zsolt Ksoz. Ms. recorded a second video ("video 2") of the Alleged Offender taken just before the performance of the French skater Romain Ponsart. On August 30th 2010 the witness Mr. uploaded the two video clips to the internet site YOUTUBE, where they are published under <http://www.youtube.com/watch?v=0Ihor45Ivc0>. The videos were also uploaded to the site <http://www.blazingblades.com/>. The first video lasts 3 minutes 37 seconds and has been viewed over 8,597 times on YOUTUBE; the second video lasts for 1 minute 37 seconds and has been viewed over 7,326 times.

3. The Complainant accuses the Alleged Offender of having looked at a neighbouring judge's screen while serving on the judge's panel of the above mentioned events. The Alleged Offender is accused of having waited until a neighbouring judge entered his marks for a specific skater and of having looked at those marks before entering his own marks. The Complainant is of the opinion that the Alleged Offender did not only violate his duties to mark independently according to Rule 409 Para 2 of the ISU Special Regulations and Technical Rules Single and Pair Skating and Ice Dance, but also disregarded his obligation to exemplify the highest standard of honesty, respect, truth, fairness, ethical behaviour and sporting attitude under point 4a) and f) of the ISU Code of Ethics.

4. The Complainant moves to impose on the Alleged Offender a sanction in accordance with Article 24 Para 9a of the ISU Constitution 2010.

5. In his statement of reply of December 6th 2010 the Alleged Offender submits that the Statement of Complaint does not comply with the 60 days time limit according to Article 24 Para 6a) of the ISU Constitution. The evidence upon which the complaint is based (4 letters of testimony provided by alleged spectators) were written long after the 60 day expiry term (the letters are dated 7th November 2010; 27th October 2010; 29th October 2010, and 24th October 2010); therefore, if the Statement of Complaint is based upon these letters, its date of issue was November 21st, when the Alleged Offender was informed about this evidence, i.e. 3 months after the date of the contested events, which took place on August 25th -28th 2010. The Alleged Offender rejects the admissibility of the letters as evidence, as they were written after the date

by which the Statement of Complaint was to be issued (i.e. by the 60 day term limit) and submits that therefore the Disciplinary Commission should not take the letters into account and cannot ground its decision upon these letters.

6. The Alleged Offender further submits that the time limit of fourteen days (commencing 25th November 2010) permitted for his response to the letters was too short to allow him to collect additional documents in his support.

7. The Alleged Offender submits that the video footage is unreliable because the camera records a view of the event and judges' panel that alters the true angles and perspective. The video was filmed from an angle such that the camera does not frame the real object of observation, the skater, but frames the judge. Therefore, what he appears to be looking at is a distortion and a consequence of an altered perspective. The Alleged Offender asserts that he did not look at the marks on the other judge's screen before entering his own. In addition to this, from the distance of 1.5 meters between one judge and the next, he submits that it is impossible to make out details on another judge's screen.

8. The Alleged Offender contests the credibility of the four authors of the letters. In his opinion the witnesses went at the competition with the specific intention of concocting an accusation against him. Some of these witnesses, such as Mr., do not want their names to be disclosed publicly. This is submitted as an indication that the authors of the letters went to the competition with an intention over than just to watch the athletes.

9. Attached to his Statement of Reply the Alleged Offender has filed 9 letters / emails and a compilation of his assignments as an ISU judge between the seasons 2003 and 2010.

The Referee of the Juniors Men's event, Mr S., wrote in his email of 2nd December 2010 that he had watched the video many times and that all he could say concerning the matter was that had not noticed anything "suspicious" as a Referee during the actual event.

The Technical Controller of the Junior Men's event, Mrs Z., wrote in her email of November 24th that while she was on the Technical Panel she did not really have a view of the Alleged Offender. She could only see him in the few moments when she was nearly standing up watching a skater's element, but did not really see anything either way as to what the Alleged Offender was doing.

In the letters of Mr. P. (Counsellor and Responsible for the staff of judges of the Italian Figure Skating Federation), Ms. L., (Italian judge), Ms. M. (Italian Judge), Ms. T. (Italian judge), Ms. M. (Italian coach), the Alleged Offender is described as an experienced and knowledgeable judge who would not need to look at his neighbours' screens to copy their marks.

10. The Alleged Offender asks the Disciplinary Commission to reject the motions (1) to find him guilty of violation of the duties of judges; and (2) to impose a sanction.

IV. Law

1. The Statement of Complaint is admissible.

1.1. The Complaint was filed to the Disciplinary Commission within the time limit of 60 days according to Article 24 Paragraph 6a) of the ISU Constitution and General Regulations 2010. The 60 days deadline started from the date when the Complainant became aware of the facts or events which constitute the disciplinary offence. The Complainant was verbally informed about the existence of the videos on YOUTUBE at its Council meeting in Munich, 15th-17th October 2010. Therefore the time limit started on 15th October and expired on 15th December 2010. The Statement of Complaint reached the Disciplinary Commission in due time on 21st October 2010.

The Alleged Offender contested the violation of the 60 days time limit because he was informed about the 4 letters of the witnesses on 21st November which in his opinion was out of time because it was three months after the event in Courchevel. This interpretation of Article 24 Paragraph 6a) is wrong in law. The time limit of 60 days does not start with the date of the event but with the knowledge of the alleged offence. As mentioned above the Complainant learned about the alleged offence at the Council meeting on October 15th 2010. Therefore, the time limit of 60 days started from this date.

According to Article 24 Para 6a) the Complaint must be filed with the Disciplinary Commission. It is not crucial at what date the Complaint has been received by the Alleged Offender nor is it of any importance at what time the witness statements reached the Alleged Offender.

1.2. Additionally the Alleged Offender submitted there was a violation of his right of defence because the time limit set for his reply was too short. The Alleged Offender received the Statement of Complaint from the Disciplinary Commission on 9th November 2010, with the invitation to reply within 21 days. On November 21st the Chair of the Disciplinary Commission handed over to the Alleged Offender the 4 letters of the witnesses and a new order with a new deadline of 21 days for an answer to the Complaint and the 4 testimonies. On this occasion the Alleged Offender was asked whether he could read and understand three of the letters written in French. The Alleged Offender agreed with the French originals but on November 23rd he asked for English translations. On November 25th the Disciplinary Commission sent the 3 English translations of the letters and set a new deadline of 14 days for the Alleged Offender to reply to the Complaint and to the testimonies i.e. by December 9th 2010.

Therefore, the Alleged Offender received a period from 9th of November to 9th of December 2010, i.e. 30 days, to reply to the Complaint, and 14 days to provide his defence to the witness statements. The two set time limits were sufficient and did not violate the Alleged Offender's right of defence.

2. The Statement of Complaint is justified.

2.1. According to Article 7 Paragraph 1a), Article 37 Paragraph 2 and Article 38 Paragraph 1 of the ISU Constitution 2010 the Alleged Offender is bound by the ISU Statutes, especially by the ISU Special Regulations for Figure Skating and by the ISU Code of Ethics.

2.2. Rule 409 Paragraph 2 of the ISU Special Regulations and Technical Rules for Single & Pair Skating and Ice Dance 2010 states – *inter alia* – that a judge must adhere fully to the ISU Code of Ethics and that judges must mark independently and shall not converse with one another whilst judging.

2.3. The ISU Code of Ethics 2006 (Communication 1433) Paragraph 4a) obliges an ISU judge to exemplify the highest standard of honesty, respect, truth, fairness, ethical behaviour and sporting attitude. According to Paragraph 4f) the performance and conduct of an ISU judge should stimulate trust and confidence among the skaters, officials, media and the public at large.

The Alleged Offender has given the impression to the spectators seated behind him during the Ladies and Men's event in Courchevel that he was looking alternately to the left and right screens of the neighbouring judges with the intention of getting to know the marks of his colleagues or even of copying their marks. This behaviour would be a kind of “unidirectional conversation” and prove that the Alleged Offender did not mark independently. Regardless of whether the Alleged Offender actually copied his neighbouring judge's marks or let him be inspired by them, the simple fact of looking at his neighbours' screens gave the appearance to the spectators of not marking independently and of manipulating the independent evaluation of the skater's performance.

Additional evidence of the conduct of the Alleged Offender is seen on the video footage filmed by Ms. and uploaded to YOUTUBE. The Panel allows the video evidence in this case. Contrary to the Arbitration of CAS in the case Korean Olympic Committee vs. ISU (CAS OWG 2-2007) the videos of the event in Courchevel are not used to review a “field of play” decision, but to show the behaviour of an official while he is acting as a judge during a competition.

The Disciplinary Commission examined the two videos provided. Part of a judge's panel can be seen in each video. The seating order of the judges and referee filmed and the announcements and soundtrack heard in the clips are consistent with both having been filmed during the Junior Men's event at Courchevel. The Alleged Offender was judge number 4.

Video 1 is consistent with showing the latter part of the Men's Free Skating program of skater Zsolt Ksoz at the Junior Grand Prix in Courchevel in 2010. The judges can be seen entering marks onto their computer screens as the skater performs, likely the Grade of Execution marks. The Alleged Offender appears to look at his right hand neighbour's screen (Judge 5) repeatedly throughout the skater's performance. On several of these occasions the Alleged Offender's line of sight is inconsistent with that of the other judges following the skater's progress.

Video 2 is 1:36 minutes in length and shows the same partial panel of judges. This video commences after a skater's music has finished. Some applause and announcements can be heard indicating that it follows the Free Skating program of Japanese skater Ryuju Hino.

Some definition of the computer screen layouts can be seen. Video 2 records the Alleged Offender and his neighbour to the right, Judge 5. Judge 5 appears to be entering Component marks for approximately 40 seconds. The Alleged Offender does not enter any marks over that 40 second period, but does look to the right in the direction of Judge 5's papers/screen on several occasions. When Judge 5 finishes entering the marks, the Alleged Offender starts to enter his marks.

The Panel is aware that a camera can only show what it views from the particular angle filmed. A different camera angle might have altered perspective. Therefore the Panel did not rely solely upon the video footage but also on the testimonies of the spectators present at the event when evaluating the evidence.

The Disciplinary Commission has supplemented and checked the video evidence by locating the author of the video footage in order to obtain his testimony of the incident in Courchevel. It turned out that several people had observed the Alleged Offender during the competition and five of them have written down their observations and sent them to the Disciplinary Commission. According to Article 12 Paragraph 1 the Disciplinary Commission may at its own discretion supplement the complaint and adduce evidence by its own initiative.

The Alleged Offender contests the credibility of the witnesses. In his opinion the French chaperons have started a campaign of libel and slander against him to damage his reputation and have even declined to have their own names published. The Disciplinary Commission considers the testimonies credible. The witnesses are supporters who have followed the sport of ice figure skating for years and have travelled from different parts of France to Courchevel to watch the Junior Grand Prix Competition. They have seen many competitions, are familiar with the judging system and know that judges are obliged to mark independently. A judge who was constantly looking to the left and right at the screens of his neighbouring judges must have attracted their attention. The Disciplinary Commission deems it appropriate that the witnesses recorded the conduct of the Alleged Offender on video and – due to modern means of publication – uploaded the video onto YOUTUBE. There is no sign of a slander campaign against the Alleged Offender. The fact that some of the witnesses wished not to be named in public does not depreciate their testimonies. It is to their discretion whether they wish to be named in public or not.

The witness Mr. K. is not only a chaperon but a journalist specializing in reporting figure skating events. For many years he has written articles for the German skating magazine “Pirouette”. In his role he watches most of the ISU Junior and Senior Grand Prix competitions and ISU championships. He has in-depth knowledge of the new ISU judging system and is familiar with all the statutes of the ISU. Mr. K. was so upset by the behaviour of the Alleged Offender that he mentioned the incident in his article about the Junior Grand Prix Competition Courchevel, “Pirouette” issue September 2010, even before the videos had been published on YOUTUBE. Mr. K. had never before written about the behaviour of judges in one of his articles but this time it was such a striking experience for him that he had to release it in the skating magazine, without publishing the name of the Alleged Offender but only describing him as a “southern European judge”. For the Disciplinary Commission the credibility of the witness Mr. K. is beyond doubt.

The Alleged Offender has presented nine letters of testimonies for his exculpation. The letters of Mr. P., Ms. L., Ms. M., Mr. S. and Ms. P. are not admitted into evidence, because none of these persons were present at the event in Courchevel.

The Referee of the Junior Men’s event, Mr. S., was present. In his email of December 2nd 2010 he wrote: *“I have been watching this video many times and all I can say concerning this matter is that during the actual event I have not seen anything "suspicious" as a Referee”*.

It is understandable that the referee does not focus his attention on one specific judge because he has to follow the performance of the skaters and to judge them too. The testimony of the referee does not unburden the Alleged Offender.

Also present was the Technical Controller of the Junior Men's event, Ms. Z., who cannot exculpate the Alleged Offender. In her email of November 24th 2010 Ms. Z. admits that although present she did not really notice the Alleged Offender because he was sitting out of her view. It was only when she was standing up to watch a skater that she could see the Alleged Offender but did not really see what he was doing. Her testimony does not disburden the Alleged Offender.

Also present at the event in Courchevel was the Italian skating coach Ms. M.. In her testimony of December 6th 2010 she wrote: *"I was astonished at seeing this people shooting the judges instead of watching skating performance. I firmly confirm that Walter Toigo's behaviour was correct. I watched at him carefully because I saw he was filmed. I was very surprised behaviour of this for people."* Her statement, that the behaviour of the Alleged Offender was correct, is contrary to the testimonies of the four French witnesses and of the German journalist as well as to the videos. The Disciplinary Commission considers Ms. M. as an interested witness who does not exonerate the Alleged Offender.

Based on the above considerations the Disciplinary Commission finds the Alleged Offender guilty of misconduct and of violation of the duties of judges and the ISU Code of Ethics. The sanction of a two years suspension is appropriate taking into consideration the incalculable damage to the public image of the ISU and to the integrity of the group of judges that has been suffered. The incident has not only been recognised by a few spectators at the skating rink but by more than eight thousand users on YOUTUBE and the readers of the skating magazine "Pirouette".

V. Decision

1. Walter Toigo is guilty of misconduct and of violation of the duties of judges and the ISU Code of Ethics.
2. A two years suspension from participation in all ISU activities as an ISU Judge / International Judge and International Referee is imposed on Walter Toigo beginning with the legal effect of this decision.
3. Each party shall bear its own legal and other costs.

January 10th 2011



Volker Waldeck (Chair)



Dr. Egbert Schmid



Susan Petricevic