

Case No. 2023-01

Date: 29 August 2023

Final Decision of the ISU Disciplinary Commission

Panel: - Sue Petricevic, Chair
- Eugen Larasser
- Dr. Keith King

In the matter of

Mag. Hermann Filipic

ISU Competitors' Steward

Austria

- Complainant I

and

Österreichischer Eisschnellauf-Verband,

Austria

- Complainant II

against

Nathalie Lambert,

Chair of the ISU Short Track Speed Skating Committee

- Alleged Offender

Represented by Prof. Dr. Michael Geistlinger,

Legal Representative of the Alleged Offender

Regarding Alleged Violations of the ISU Statutes and Code of Ethics

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I. History of the Procedure

- [1] The Complainants filed a Complaint against the Alleged Offender, together with 12 Exhibits and one accompanying letter. This was received by the ISU Disciplinary Commission (the DC) on 27th April 2023.
- [2] On 7th May 2023, the Alleged Offender was invited by the ISU Disciplinary Commission in Order No. 1 to file a statement of reply within 21 days upon receipt of the Complaint.
- [3] The Alleged Offender filed a Statement of Reply, together with 41 Exhibits, on 26th May 2023. The Alleged Offender was now represented by her legal representative, Prof. Dr. Geistlinger.
- [4] On 1st June 2023, the Complainants sent further documents to the DC. This second filing was not accepted by the DC, pursuant to Article 11 Para. 1 S. 1 ISU Disciplinary Commission rules of procedures (ROP). Additionally, the preconditions of Article 11 Para. 1 S. 2 ROP were not met in the present case.
- [5] On 26th June 2023, by Order No. 2, the DC declined the Alleged Offender's request for a hearing, pursuant to Art. 3 Para. 2 S. 2 ROP. Neither of the Complainant Parties I or II had requested a hearing.

II. Procedural Matters

- [6] According to Art. 25, Para. 1 S. 2 of the ISU Constitution 2022 (ISU Constitution), the DC 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.
- [7] The Alleged Offender is the Chair of the ISU Technical Committee for Short Track Speed Skating, and therefore an ISU Office Holder. In this capacity, she shall comply with any applicable statutes, cf. Rule 125 Para. 4 S. 1 of the ISU Constitution. According to the caption of Rule 125 Para. 4, this covers (any) ISU Rules and the Code of Ethics (COE). According to Rule 125 Para. 4 S. 2 of the ISU Constitution, she is subject to sanctions (and therefore the jurisdiction) by the DC in case of non-compliance with S. 1, in connection with Art. 25 of the ISU Constitution.
- [8] According to Article 25 Para. 6 a) of the ISU Constitution, 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 27th, 2023, and respects the one years' time limit according to Art. 25 Para. 6 a) of the ISU Constitution.

III. Facts

- [9] The Alleged Offender is Ms. Nathalie Lambert, the Chair of the ISU Short Track Speed Skating Committee. Complainant I is Mr. Hermann Filipic, ISU Competitors Steward and also General Secretary of Complainant II, which is the Austrian Speed Skating Association ÖESV.

[10] The ISU Disciplinary Commission (DC) evaluated the admissible and extensive submissions by both parties in detail with regard to relevance for the present case, which results, after careful review, in the following decision-relevant facts of the case:

[11] Through the 58th ISU Congress (held from June 6th to June 10th, 2022, in Phuket, Thailand) an amendment was made to Rule 298 of the Special Regulations & Technical Rules for Short Track Speed Skating (SR 2022), introducing the testing of a “Zero-False-Starts”-Rule to be conducted at several ISU Events. Subject to at least four successful tests at ISU World Cup Competitions in Season 2022/2023, by decision of the ISU Council upon reporting on the tests and their evaluation by the ISU Short Track Technical Committee (TC), this procedure was to be set into force at all ISU (Short Track) Events, cf. Rule 298 Para. 4 lit. a) SR 2022. The (alternative) procedure is described in Rule 298 Para. 16 SR 2022, with reference to the previous Paragraphs. A detailed description of the testing procedure, as well as the designated events for the testing (first four ISU World Cups Short Track Speed Skating in 1. Montréal, 2. Salt Lake City and 3. + 4. (so 2x) Almaty) were published accordingly in ISU Comm. 2506 and 2510. The first testing event (Montréal) started on October 28th, 2022; the last testing event (4th World Cup in Almaty) finished on December 18th, 2022. According to the Statement of Complaint, the Alleged Offender was involved into two of these testing events (2nd World Cup in Salt Lake City and 4th World Cup in Almaty) as TC Representative.

[12] During spring/summer 2022, a working group consisting of different stakeholders with regard to Short Track Speed Skating (29 persons, both inside - including ISU Vice President Speed Skating, ISU TC, Sports Technical Director SS, ISU Referees, Coaches, Athletes' Commission Member, Media Team and others - and outside, including TV Commentators from different channels, as well as a FIFA Referee & Assistant Video Referee) created the substantial content of a presentation named “*New Short Track Racing Rules Guidance Summer 2022*” (Exhibit 9), which was finalized in online meetings of the TC on 24th and 28th August 2022 (cf. Exhibit 34 by the Alleged Offender). The Guidance was presented, including in an ISU Officials' Virtual Seminar for Referees on Sept. 3rd, 2022 (Exhibit 35 by the Alleged Offender) and to Coaches at a Coaches Workshop on Sept. 17th and 18th, 2022.

[13] On December 29th, 2022, the Alleged Offender sent an e-mail (Exhibit 12¹) to Short Track Speed Skating Officials, delivering a mid-season update which also included a recapitulation of the then ongoing Season 2022-23 so far. In this e-mail, she stated inter alia that:

[...] For Starters:

As you know, the testing period for the 0 false Sta[r]t is over. The TC has submitted a report to the council and expect a favorable decision shortly. This means that the 0 false start will be applied for all remaining ISU Events of the season and also for next season. Thank you to all the Starters that officiated in the events because without your full support and collaboration on this, it would not have been such a success.

For your information, we had very comparable number of Penalties for False Start as when we had the 1 false start. Not more. We have eliminated about [...] False Start per events. The general feedback is that everyone is more focus and in control at the start. Referees are less stressed having to always catch up in time. The target for each event was to have

¹ Exhibits with no additional description are exhibits filed by the Complainants

[...] or less Penalties for False Start. This was achieved. The target is still the same for the remaining events of the season. [...]

[...]

For both Starters and referees: *What has been applied with all the teams the new guidance and concept shared in the seminar and in workshops, of “Clear & Obvious” for both what you see and also the outcome on the race. We have the goal to reduce the overall number of long review and also penalties.*

For Referees: *We do have the yellow box, all video lead referees are familiar with it now. The referees also had a target of less than [...] overall penalties (this included the false start). We have been very successful in reaching that for ALL Fall Events. We are looking for consistency throughout the season. You will have the same target.” [...]*

[...]

As an attachment, the e-mail contained the Starters’ Report of the Short Track World Cup 4 (Almaty), which was the last of the above-mentioned testing events. The Report was issued by acting Short Track Event Officials on site, and included the following statements:

[...]

a. The 0 false start in itself

For the skaters it is at least the 4th competition under these (test)rules (The Europeans didn’t compete in the 4 cont.). It looks like they have adapted the circumstances quit[e] good. That can be observed on the following:

- They come more concentrated to the start;*
- They are able to stand still very good;*
- They are not as jumpy as it was under the “old rule”;*
- The number of 1st false starts under old rules has reduced drastically.”*

[...]

e. Conclusion

We, the starters of the World Cup 4, agree that the 0-false start procedure is a good development in improvement of shorttrack and making the starting procedure better understandable for the spectators. What is necessary is that all the starters must be aware of the words “clear and obvious”.

It has never been so important that these guidelines are in the mindset when you go to a competition.

So as we see it there is no reason not to go on with the project and make the way clear for the actual rule change.”

[14] A complete evaluation report about all testing events was handed in to the ISU Council by the TC as well.

- [15] On January 10th, 2023, the ISU published Communication No. 2532 (signed by the ISU President and the ISU Director General), which states:

“[...] The Evaluation report prepared by the Technical Committee, concluding that the criteria for a successful testing had been achieved, was submitted to the ISU Council on December 30, 2022. By decision of the ISU Council the testing of the new procedure has been confirmed as successful, with the consequence that the new procedure (“Zero False Starts”) will be applied for all remaining ISU Events in the season 2022/23 and in the season 2023/24. [...]”

- [16] On February 1st, 2023, the Alleged Offender sent another e-mail (Exhibit 1) to a group of ISU Short Track Event Officials, including the Complainant I (Mr. Hermann Filipic), who were appointed to serve at the ISU Short Track Speed Skating World Cup in Dresden on February 3rd – 5th, 2023.

In this e-mail, amongst other things, the Alleged Offender informed the recipients that the “Zero False Starts” – Rule has now been accepted (see above). Furthermore, she stated:

“...As with every team of Starters this season, to contribute in achieving our goal to lower the overall number of penalties, you will have a target of [...] penalties for False Starts (as mentioned in my previous email a month ago). This is a target, not an obligation, but it gives you an idea.

[...]

For both Starters and referees: What has been applied with all the teams of officials with a lot of success is the concept of “Clear & Obvious” for both what you see and also the outcome on the race. This applies also to the starts.”

[...]

Additionally, the e-mails contained guidelines and recommendations (*“...It is OK NOT to give a ...”, “...Ideally, we try [...]”, “...This can be achieved by keeping the same consistency as your predecessors on [...]”*) on the assessment of certain situations within or surrounding the race, as well as the general process of the Event Officials’ duties, and the use of technical utilities. When writing both of the aforementioned e-mails, the Alleged Offender acted in her function as Chair of the TC. Related guidance and information were issued in the previously mentioned power point presentation, “New Short Track Racing Rules Guidance Summer 2022” (Exhibit 9, see above).

- [17] On Feb. 27th, 2023, and March 2nd, 2023, Complainant I responded to this e-mail (Exhibits 2 and 3), raising concerns about the content of the aforementioned e-mails by the Alleged Offender, and stating his view on potential effects and/or negative consequences (from his point of view) through the guidelines given out by the Alleged Offender in her function as Chair of the TC. He addressed his attached response letter to the ISU President, ISU Vice President Speed Skating, an ISU Representative, and to the STSS TC Members and the Sports Director Speed Skating. On March 16th, 2023, he directly addressed a letter about this topic together with a set of 18 “open questions” to the Alleged Offender (Exhibit 5). She replied to Complainant I on March 31st, 2023 (Exhibit 8). The offer to have a discussion on

the raised topics via video call with the Alleged Offender was declined by Complainant I (Exhibit 7).

- [18] Additionally, on April 19th, 2023, the Complainants sent a letter to the ISU Council (Exhibit 11), requesting amongst other matters to receive a copy of the TC's evaluation report on the testing period (World Cups 1 – 4, regarding the Zero-False-Start-Rule), and furthermore requesting the ISU Council to deliver detailed information about how and if the Council was "*informed about the fact, that the testing was set up and held ceteris paribus*". Furthermore, they requested information from the Council on if the Council was informed by the Alleged Offender about the above-mentioned targets and guidelines as laid down in her e-mail from Feb. 1st, 2023. In case the Council hadn't received this information, the Complainants' request under passage 3. was "*to immediately annul*" Communication No. 2532 and the incorporated decision (approval/incorporation of the Zero-False-Start-Rule). In the following passage, 4., the Complainants asked the Council "*in any other case*" (so also in case the Council had been properly informed about the targets/guidelines and the aforementioned doubts by the Complainants), to consider annulment of Communication No. 2532 and the incorporated decision as well.
- [19] In their Statement of Complaint (dated on April 25th, 2023, received by the DC on April 27th, 2023), the Complainants claim that "[...] *It was her (i.e. the Alleged Offender's, comment by the Undersigned) clear and obvious goal to put the alternative procedure in effect for all ISU events [...]*". Furthermore, the Complainants claim that the Alleged Offender, through her actions, has "[...] *influenced, manipulated and falsified the test results by propagating (officially non-binding in Enclosure 1/, Enclosure 12/) maximum numbers of false starts in seminars and in e-mails to ISU officials, even specifying the means by which these goals could be achieved. Both the target and the means are not covered by ISU Rules. At the moment there is no evidence that she informed ISU Council about this [...]*". They plead that the targets/guidelines/principles, which the Alleged Offender "*propagates*", are neither part of, nor covered by the current ISU Rules / Communications. In this way, the Alleged Offender, according to the Complainants' averment, exceeded her competences and accepts "*an increase in the risk potential for the athletes*" and "*a big influence on the distance classifications*". Additionally, the Complainants claim that "*[a]fter the "successful" "test", she celebrated the in that way enforced rule change in an email to various ISU officials, who helped her nolens volens. It is clear and obvious that an objective result ceteris paribus was not intended by her from the beginning*".
- [20] According to the Complaint, the Alleged Offender therefore acted "*against the ISU rules and against the written order of congress and council*", which, however, "*[m]aybe [...]* happened not in bad intention". However, according to the Complainants, the documents presented by them indicate, regarding the Alleged Offender, "*at least grossly negligent ignorance of the rules of the ISU and thus a violation of Art 7/7c ISU Constitution, whereby a special duty of care will have to be applied to the chairperson of one of the essential organs of the ISU*". According to the Complainants, the Alleged Offender is "*Endangering the Sport of Short Track Speed Skating as an Olympic discipline*" and causes a "*loss of confidence*". They see a "*Lack of compliance with general sporting rules and expectations for fairness*", and state that the "*targets for Judges introduced by Nathalie Lambert also go beyond the ISU rules and contradict all considerations, including those of the public, regarding safety and fairness in sports*". Through all this, the Alleged Offender, according to the Complaint, caused

“inevitable damage to the ISU's reputation”. The alleged *“repeated violation of ISU rules is disciplinary”*, according to the Complainants.

- [21] Furthermore, the Complaint states that the Alleged Offender committed *“forbidden interference with duties of other Officials”* as a Representative of the Technical Committee, when sending the e-mail concerning the preparation for the ISU World Cup in Dresden (Exhibit 1).
- [22] The Complainants allege violations of the ISU Statutes (Art. 3, Art. 7 Para. 7 lit. c), Art. 35 Para. 2, Art. 39 Para. 1 ISU Constitution, Rule 288, 297, Rule 298 Para. 8 lit. c) and 9 lit. b) of the SR 2022), the decision of the ISU Council published in ISU Communication 2510 and the ISU Code of Ethics (Art. 3, Art. 12 Para. 1 COE), committed by the Alleged Offender. Furthermore, a short excerpt of a responding statement of the Alleged Offender to the previous letter of Complainant I in Exhibit 8 (*“insulting not only me but also other ISU Officials and Office Holders”*) is said to be a violation of the COE, however not specifying of which provision of the COE exactly.
- [23] Additionally, the Complaints request the suspension of the Alleged Offender, as well as the taking of disciplinary sanctions against her.

Alleged Offender's submissions

- [24] In her Statement of Reply (dated on May 24th, 2023, and received by the DC on May 26th, 2023), through her Legal Representative, the Alleged Offender requests to dismiss all motions and prayers for relief of the Complainants, and furthermore asks for a statement that she has not committed any of the alleged disciplinary or ethical offences which the Complainants have submitted to the Disciplinary Commission.
- [25] Specifically, the Alleged Offender submits that she never had *“any other intention than to act accurately per the ISU Statutes and to the best interests of the sport of Short Track Speed Skating and the ISU”*. She offers several witnesses, including ISU Office Holders and Event Officials from the Short Track Speed Skating Branch, to deliver testimony about the above-mentioned Guidance/Guidelines from a Referee's/Starter's point of view, about the E-Mail-Communication (Exhibits 1 and 12), as well about the integrity of the testing of the *“Zero-False-Starts”*-procedure.
- [26] With regard to the allegations in the Complaint, she *“considers it important to read her letters in their context and that they are reflecting prior extensive discussions and decisions of her Committee, of Ad Hoc Working Groups, and of teams with the ISU Office Holders [...]”*, which she considers to have been misunderstood by the Complainants. *“As a sport technician and given all her multiple tasks and responsibilities she could not submit her emails and letters to a lawyer's pre-screening before issuing them. With all what she did she wanted to act in good faith and in the best interests of her Technical Committee, the respective Sports Director and Sport Technical Director, the Vice President Speed Skating as well as the sport of Short Track Speed Skating and the ISU as a whole”*.

- [27] Furthermore, she points out that the Complaint *“singles her out as an Individual, but in all her incriminated actions she feels covered by the applicable rules as applied in practice by common sense of all persons involved, the respective ISU Office Holders and Officials, but also Coaches, other Team Officials and Skaters. The Complainants, too, are part of the group, had their share in establishing the practice by common sense and showed well aware of this practice, its legal basis and the principles, they now consider as illegitimate, illegal and unconstitutional.”*
- [28] Additionally, the Statement of Reply contains extensive rebuttal evidence of the whole averment of the Complainant. It includes describing the proceedings, steps and actions taken in connection with the introduction of the “Zero False Starts” – Rule, describes the content, background and historical development of the contested principles/Guidance (e.g. “Clear and Obvious”, “Shared Responsibility”, “PNC” etc.) including existence of some of the contested principles/concepts in previous seasons, an averment towards the set-out targets and also the circumstances in connection with the ISU Short Track Speed Skating World Cup in Dresden from February 3rd – 5th, 2023.
- [29] There are also facts/averment and exhibits included in the submissions of the parties, which are not explicitly mentioned above or below. The DC also includes these unmentioned facts/averment/exhibits into the extent, scope and decision of the case whenever necessary for the present decision. Any further and/or unmentioned facts/averment/exhibits are considered irrelevant for the decision of the present case.

IV. Law

- [30] The Disciplinary Commission has jurisdiction with regard to certain parts of the Complaint. The parts which are not within the scope of the DC are marked as “Obiter Dictum”, which means:
- Connected to the present case, but either,
1. not relevant for the decision of the present case, and / or
 2. outside the jurisdiction of the DC.
- [31] According to Rule 125 Para. 4 of the ISU General Regulations, eligible Officials participating in any ISU activity shall comply with any applicable statutes, ethical declarations and codes of conduct prescribed by the Council. The Alleged Offender is Chair of the ISU Short Track Speed Skating Technical Committee, which makes her involvement within the above-mentioned procedures an ISU activity, in which she is bound by the ISU Statutes and Provisions.
- [32] According to Rule 125 Para. 5 of the ISU General Regulations, Officials who can be proven to have acted against the spirit of the ISU Statutes or otherwise improperly, may be sanctioned.
- [33] According to Article 39 Para. 1 of the ISU Constitution, the ISU Code of Ethics, adopted by the ISU Council, forms part of the ISU Statutes.

- [34] In the above-mentioned context, the Alleged Offender acted within her role as Chair of the TC and, therefore, represented the TC through all her actions and communications.
- [35] According to Art. 17 Para. 1 lit. f) ISU Constitution, monitoring of the activities of ISU Bodies or Office Holders such as those of the Alleged Offender lies within the competence of the ISU Council. Therefore, the DC has no jurisdiction over violations of ISU Statutes, unless these violations amount to a disciplinary or ethical offence, or jurisdiction by the DC is given elsewhere (for example through the applicable statutes). In general, a disciplinary or ethical offence consists of any violation of any material ISU disciplinary or ethical rule and of any other conduct which can be deemed disciplinary or ethical by nature (for example violations of the ISU Code of Ethics or the ISU Anti-Doping Rules).

Discussion

- [36] No violations of even non-disciplinary or non-ethical ISU Statutes/Provisions can be discerned in the allegations made by the Complainants.
- [37] Regarding the testing and the implementation process of the “Zero-False-Starts”-Rule, the Complaint includes no substantiated averment or proof of any violations of the relevant Rules and Procedures included in the ISU Statutes, and as decided by Congress and/or published in the relevant ISU Communications. In this regard, the Complaint includes only unfounded speculation and allegations, and in some parts, incorrect facts.

The Complainants state (see above also):

“[...] It was her (i.e. the Alleged Offender’s, comment by the Undersigned) clear and obvious goal to put the alternative procedure in effect for all ISU events [...]”. Furthermore, the Complainants claim that the Alleged Offender, through her actions, has “[...] influenced, manipulated and falsified the test results by propagating (officially non-binding in Enclosure 1/, Enclosure 12/) maximum numbers of false starts in seminars and in e-mails to ISU officials, even specifying the means by which these goals could be achieved.”

- [38] Regarding the sending of the above-mentioned e-mails (Exhibits 1 and 12 = *Enclosure 1/, Enclosure 12/, etc.*), the averment by the Complainants already contradicts basic rules of logic. These e-mails to the ISU Officials, through which the Alleged Offender is said to have influenced the testing and implementation process (Exhibits 1 and 12), were sent out on December 29th, 2022 and February 1st, 2023. The testing period for the new procedure (“Zero-False-Starts”), however, had already been completed with the conclusion of World Cup 4 in Almaty on December 18th, 2022; therefore, there is no basis for the assumption that there was any potential influence on the events or the implementation procedure through these later-sent e-mails.
- [39] Other alleged acts of manipulation or falsification, such as through seminars in Summer/Autumn 2022 (Exhibit 9), are not substantiated; the fact that one (or more) seminars were held, which included Guidance or similar content, does not result in a disciplinary or ethical offence. The averment of the Complaint, therefore, is already completely unsubstantiated. There is no substantiated averment, as to which exact persons (by name) are alleged to be affected by any potential improper influence, and how exactly these persons made decisions which could be deemed as being against their best

knowledge and belief, and resulting from any potential improper influence on them solely by the Alleged Offender, nor how these decisions then could have had an influence on the events within the testing phase and finally then on the implementation of the new Zero-False-Starts rule, and all of this by circumvention of the ISU Council.

- [40] After diligent assessment, the DC holds that actually the opposite is the case. Exhibit 9 shows that a multitude of people were involved into the above-mentioned seminars/working groups, including the ISU Vice President Speed Skating, Mr. Tron Espeli (who is also a Council Member, cf. Art. 16 Para. 1 ISU Constitution), cf. page 4 of Exhibit 9 (he was part of "Working Group Guidance Communication Phase 2").
- [41] Therefore, the allegation that the Alleged Offender manipulated, influenced and falsified (all, or any part of) the testing or implementation process of the new rule (on her own, and by circumvention of the ISU Council, cf. the Complaint: "*At the moment there is no evidence that she informed ISU Council about this [...]*") is not only lacking any ground and completely made in the dark, it is even more obviously wrong. The ISU Vice President Speed Skating was a member of the Working Group for the contested Guidance, see above.
- [42] These facts should and must have been obvious to the Complainants (provided they conducted proper and diligent procedure), as Exhibit 9 was handed in by the Complainants themselves, along with the above-mentioned e-mails (Exhibits 1 and 12).
- [43] Regarding the Complaint, that (at least part of) the information or documents in this context were kept in an "inner circle", cf. the Complaint: "*Contact to lead to a Sanction*" defined in the "*New Short Track Racing Rules Guidance Summer 2022*" circulated unofficially among insiders [...]", this averment ("*among insiders*") is not only unsubstantiated, but also factually wrong. The document containing this information is Exhibit 9. Numerous persons (including the ISU Vice President Tron Espeli) were included in the creation of or in relation to this document; additionally, a wide range of (factual and potential) addressees were given. The DC agrees with the Statement of Reply by the Alleged Offender in this regard:

"The Guidance was presented to the ISU Officials' Virtual Seminar for Referees on 3 September 2022 (Exhibit 35) and to the Coaches at a Coaches Workshop on 17-18 September 2022. Both presentations were identical. Austria's Coach [...] was registered for this online seminar, [...]. The Guidance 2022 was presented on 18 September 2022 and every seminar participant could download it. [...] Altogether 100 registered Referees had access to this Guidance as had 150 Coaches and Team Leaders already in September 2022 and who else approached Ms Lambert, the ISU Office or any member of the Short Track Speed Skating Technical Committee, was provided with the Guidance. [...]"

- [44] The list of registered participants in the Coaches Workshop on 17-18 September 2022 alone (Exhibit 37 filed by the Alleged Offender) numbers 149 participants (not counting any ISU participants), from approximately 40 Countries. It includes a participant from Austria.
- [45] The DC holds, therefore, that also in this regard, the averment of the Complaint contradicts the real facts. The number of persons included, as described above, proves that this information was not circulated solely within a group of "*insiders*".
- [46] In this regard, the Complaint is furthermore contradictory. On the one hand it makes allegations of influencing and manipulation such as through e-mails and seminars (which

indicates systematic procedure on multiple channels on a large scale, even though the averment concerning the seminars is unsubstantiated). On the other hand, the documents and information which are included as support for these allegations are then said to have (only) been “*circulated unofficially among insiders*”.

- [47] Other parts of the Complaint are contradictory as well. The Complaint includes reprehending the Alleged Offender for not having responded completely or satisfactorily to “*the always constructive and serious concerns of Hermann Filipic, since 23 years ISU Championships Competitor Steward, [...]*” as contained in “*Enclosures /2, /3, /5 and /7*”; but at the same time, the Complaint argues that these questions (and therefore, necessarily, also their answers) go beyond the powers and competence of the TC (and therefore also of the Alleged Offender):

“Due to nature and contents of these questions, the topic goes far beyond the competence of the Technical Committee and will in any case only have to be decided by the Congress. Nevertheless Technical Committee is obliged to take these questions into consideration.”

- [48] The Complainants filed a Starters’ Report of the Short Track World Cup 4 in Almaty (Exhibit 12); this also shows no sign of improper influence and there are no remarks which could indicate such an assumption. Instead, it includes an assessment of the effects of the potential rule change by three ISU Event Officials who are not TC members and who issued the report. The content of this report displays overall positive feedback, listing certain improvements made through the new rule.

- [49] In this report, certain parts of the above-mentioned principles/Guidance are also mentioned, but not in any way that can be described as improperly influencing the Event Officials or leading to pressure on them or to manipulating them in their decisions. The targets for maximum number of penalties, which is a subject of the Complaint, are not even mentioned here or in the other parts of the report which are not replicated here. This shows that the impact of these targets (at least for the three Starters issuing the report) was not considered as having a central impact or being a central factor influencing the test event.

- [50] Therefore, the averment of the Complaint in this regard is also arbitrary and completely unfounded.

- [51] There is no substance or logic supporting the Complainants’ allegations. The detailed response and evidence filed by the Alleged Offender demonstrates the correctness of the testing and implementation process of the new rule. It also shows that the ISU Council was additionally informed about the contested Guidance by the Alleged Offender at their meeting from 9 – 12 October 2022 in Geneva (cf. also Exhibit 36 filed by the Alleged Offender), so no further assessment is needed on this point.

[Obiter Dictum]:

The DC holds that in the Complaint, there are no facts visible which might put the implementation of the Zero-False-Starts-Rule into question (both in general, and also from a disciplinary or ethical point of view).

However, Decisions about validation and implementation of the rules (or potential reviews) are within the competence of the ISU Council.

The DC considers that furthermore, that the Complainants, have tried to abrogate and undermine, by any means, the Zero-False-Starts-Procedure which, together with the programmed testing procedure, was decided by ISU Congress with a clear majority of votes – 46 votes in favour and only 2 votes against. This becomes especially apparent through Exhibit 11, where the Complainants asked the Council to consider annulment of Communication No. 2532 and the incorporated decision (the Zero-False-Starts-Rule) ***“in any other case”*** (even when no procedural mistakes can be found in the testing and implementation procedure of the new rule, according to their previously listed information requests and annulment demands in their letter, see above – Exhibit 11).

Therefore, the present Complaint, in most places, is an abuse of process or attempt by the Complainants to use the ISU Disciplinary Commission to circumvent regular procedure and reach their (sport)political aims. Furthermore, this line of action by the Complainants shows grossly willful ignorance of the decision made by the ISU Congress. Regarding the Complainants' statement that it was *“her clear and obvious goal to put the alternative procedure in effect for all ISU events [...]”*, the DC holds that it was not the goal of “her”, but the goal of the TC, of the ISU Council and of the ISU Congress 2022, to put the alternative procedure into effect, in the above described way and according to the decision made by the ISU Congress 2022.

The procedure for implementation, as laid down by Congress and also later described in detail within the ISU Communications, was followed. The evaluation report by the TC was handed in, and after evaluation by Council, the respective decision was issued in ISU Communication No. 2532.

There are no facts presented that could raise any doubts about the procedure, including the assessment of the evaluation by the ISU Council. The Complaint is, in this regard, solely based on unfounded allegations, averment in the dark and, in certain parts, even wrong facts. The allegation of the Complaint that the Alleged Offender acted *“against the ISU rules and against the written order of congress and council”*, is not only speculative, but objectively wrong.

When requesting the above-mentioned information about the testing procedure (e.g. reception of the evaluation report issued for the ISU Council, cf. Exhibit 11), the Complainants even seem to adopt the position of a supervisor of the ISU Council. This is neither their duty, nor within the power of the Complainants (the same applies to potential supervisory actions of the Complainants towards the TC or the Alleged Offender). Assessment of the evaluating report regarding the testing period, and drawing the respective conclusions from it, is solely the duty (and therefore also solely within the power) of the ISU Council, cf. Rule 298 Para. 4 lit. a) SR 2022 as well as the above-mentioned ISU Communications; according to these provisions, the evaluation report was issued for the attention of the ISU Council (and not for any other party). The respective assessments and a decision were made by the ISU Council and released as well as legally put into force through issuing ISU Communication No. 2532.

If this action by the Complainants was not meant to be an act of supervision, then it must be assessed as an illicit investigation, or “fishing” for evidence. That, that especially within the ongoing procedure, would illustrate again that the Complainants themselves recognized

an insufficient factual base for their Complaint, at least with regard to the above-mentioned sections.

In this connection, the ISU Disciplinary Commission draws the attention of both Complainants to Art. 7 Para. 1 lit. a) - c) of the ISU Constitution.

[End of Obiter Dictum]

- [52] Regarding an alleged violation of Art. 35 Para. 2 ISU Constitution, the averment of the Complaint is purely speculative; no substantiated proof or averment (e.g. e-mail(s), witnesses, or concrete facts/statements) is presented in connection with an alleged violation of this rule. The DC is not an investigative body and, therefore, does not conduct further investigations. Furthermore, the DC considers this rule to be a procedural statute, so a violation of this rule, e.g. through negligence (which is not even the fact in the present case), does not automatically result in a disciplinary or ethical offence according to Art. 25 Para. 1 S. 2 ISU Constitution. Conditions or circumstances, under which this might be the case, are not presented by the Complainants; in fact, the Complainants only deliver averment in the dark, which includes (at least partly) wrong facts.
- [53] For the above reasons, no violation of Art. 39 Para. 1 ISU Constitution is found, nor are Art. 3 or Art. 7 Para. 7 lit. c) ISU Constitution violated by the Alleged Offender.
- [54] The preconditions and facts allegedly leading to a violation of Rule 297, Rule 298 Para. 8 lit. c) and 9 lit. b) SR 2022, and of the ISU Council decision published in ISU Communication 2510, are not substantiated in the Complaint, therefore, after carefully evaluating the relevant facts, not given (see above).
- [55] Regarding an alleged violation of Rule 288 Para. 1 SR 2022 by writing the e-mail of February 1st, 2023 (Exhibit 1), the DC holds that there is no violation of this rule, as the preconditions or elements of this rule are not fulfilled. The rule prohibits interference with the Event Officials' duties under these rules by the Representative of the Short Track Speed Skating Technical Committee (TC) on site. However, the Alleged Offender was not TC Representative for the World Cup in Dresden regarding writing the above-mentioned e-mail on Feb. 1st, 2023; this role for this World Cup was held by Wim De Deyne, cf. Exhibit 1 (which was filed by the Complainants themselves). The reference by the Complainants to Short Track World Cup 2 (USA) and 4 (KAZ), where the Alleged Offender, according to the Complaint, was TC Representative and, according to the averment in the Complaint, "*presumably under the same circumstances and targets*" (probably meaning that the same guidelines/targets were allegedly given out by her at those competitions as well), doesn't constitute a violation of Rule 288 Para. 1 SR 2022 either. The complaint is merely speculative (the Complainants themselves add the description "*presumably*"); no substantiated explanation or facts are presented (e.g. e-mail(s) as proof, or concrete averment towards these two other events), the averment is solely made "*presumably*" and in the dark.

[Obiter Dictum]:

Even if the same e-mail had been written before these two other events, it would not constitute a disciplinary or ethical offence according to Art. 25 Para. 1 ISU Constitution.

The targets, guidelines and principles set out by the Alleged Offender do not include commands or binding directives. They are only non-binding recommendations. The contested e-mails do not contain any orders or recommendations such as to assess or evaluate actions of some skaters differently to those of others. No manipulation or improper influence is seen apparent, as these guidelines etc. affect every participant and the whole competition in the same way.

Recommendations in the e-mails aim at harmonization in decision-making by recommending common standards for use on site in an event. If applied at all events, this could ensure the same baseline for all events to which increases the overall fairness when comparing competitions throughout the season, as (significant) deviations from one Panel to the next could be prevented, or at least attenuated. No reasons can be seen in this for increasing danger in the races (or reducing safety for athletes) when assessing the statements of the Complaint, since, Event Officials are not prohibited from calling more than the targeted number of penalties. So, if any Event Official comes to the conclusion that a certain action (or an early / false start) has to be penalized, the Event Official can still do this (or even has to do this) even when a targeted number of penalties / false starts has been reached, or exceeded. The Alleged Offender explicitly points out that the maximum number of penalties is a target, and not an obligation (see above); therefore, she doesn't impede or prevent the Event Officials from deviating from the targeted maximum numbers.

The DC points out that Field of Play decisions in competitions are made solely by and through the acting Event Officials, according to their best knowledge and conscience. The respective ISU provisions regulating the Duties and Powers of ISU Event Officials are distributed to the respective group of Officials (e.g. Referees, Starters, Judges etc., cf. the respective rules). The Event Official(s) already needs/need to make decisions and sanctions according to the rules and principles applicable, even if the targeted number of penalties / false starts has already been reached, or exceeded. Hence, there is no increased danger to the athletes resulting from the set-out targets, as any actions which are to be sanctioned (according to the above-mentioned rules and principles) should still be sanctioned.

[End of Obiter Dictum]

- [56] The Complainants' request for (further) "*ex officio*" – investigations by the DC was declined. The DC is a decision-making body, according to Art. 4 Para. 1 ROP, and rules on the Complaint brought before it. It is not an investigative unit. Additionally, with regard to material presented by these Complainants, there was no evidence, and no other circumstances described out of which even only an initial suspicion towards any of the alleged rule violations could be aroused.
- [57] There is no evidence apparent that the Alleged Offender acted out of bias, malice, bad faith, arbitrariness or by mistake of law. There is also not the slightest indication of any other negligent acts by the Alleged Offender. In fact, the evidence shows that the Alleged Offender acted professionally and diligently throughout, and within her competence and duties. The fact that the Alleged Offender didn't explicitly point out in her e-mails that Field of Play decisions in competitions are made solely by and through the acting Event Officials does not result in a violation of this principle or in an attempt at manipulation. The Alleged Offender clearly stated, that the mentioned targets were not binding, respected this principle

and therefore did not violate the allocation of duties and powers according to the SR 2022 (cf. Rule 298 Para. 4 ff.) or the ISU Constitution. Furthermore, the Field of Play principle does not require constant repetition to be in effect. Giving out guidelines and supporting Event Officials in the preparation for an event is one of the essential duties of the TC chaired by the Alleged Offender, and does not constitute a disciplinary or ethical offence.

[58] Regarding the principle of “Clear and Obvious” (as well as the other contested principles or systems for applying rules in the present case), the DC notes that it is not within its jurisdiction to assess or give the reasons for implementation / application (or non-application) of such principles regarding competition-related rules; furthermore, it is not within the jurisdiction of the DC to assess or evaluate the interpretation (or possibilities of interpretation) of certain sport specific rules which focus on assessment/review of Field of Play situations, as long as potentially wrong applications in a competition do not amount to a disciplinary or ethical offence, or jurisdiction by the DC is given otherwise (e.g. through the applicable statutes). In the present case, there are no indications or substantiated averment which constitutes a disciplinary or ethical offence committed by the Alleged Offender.

[59] Furthermore, the Complainants argue that the Alleged Offender, through her actions violated Art. 12 Para. 1 of the ISU Code of Ethics. This rule states:

“Persons subject to this Code of Ethics shall refrain from any action or attempt to improperly influence or manipulate the course and/or results of any Skating event under the jurisdiction of the ISU in any manner that is contrary to sporting ethics and sporting conduct or the principle of fair play.”

[60] Contrary to the averment of the Statement of Reply, the DC finds that the Alleged Offender falls within the scope of this rule, since she is a person subject to the COE, due to her status as ISU Office Holder, cf. Art. 125 Para. 4 of the ISU Constitution (see also the caption of this rule). Art. 12 Para. 1 COE refers to “persons” and therefore includes a wide range of persons involved in ISU activities; it does not limit the application of this rule to only Referees or other Event Officials, cf. the wording in the rule. Therefore, in the opinion of the DC the Alleged Offender falls within the scope of application of the COE and this rule, cf. also Art. 2 Para. 1 COE.

However, as already mentioned above, there is no evidence of any action or attempt by the Alleged Offender to improperly influence or manipulate the course and/or results of any Skating Event. Therefore, there is no violation of Art. 12 Para. 1 COE committed by the Alleged Offender.

[61] For the same reasons, there is no violation of Art. 3 COE. The Complaint does not include any substantiated averment that might put the conduct of the Alleged Offender into question (according to the standards/code of conduct as set out by Art. 3 COE). The statement of the Alleged Offender in Exhibit 8 (*“insulting not only me but also other ISU Officials and Office Holders”*) is a response and personal feeling of the Alleged Offender, which resulted out of the previous approach by Complainant I towards her. This expression of a personal feeling is, with regard to the circumstances and the wording used in Exhibit 8, not a violation of the COE.

- [62] On the contrary, the fact that the Complainants claim that the Alleged Offender, through her actions, has “[...] *influenced, manipulated and falsified the test results*”, without the slightest reasonable indication or base of proof for this allegation, would need further assessment with regard to Art. 3 COE, as this averment is not a judgmental expression, but describes concrete actions on a factual base that can have an impact on the reputation of a person (depending on if, and then, towards whom else these or comparable accusations which are lacking any ground were (also) made).
- [63] As the facts and proof presented by the Complainants do not deliver the slightest indication of a disciplinary or ethical offence (Art. 25 Para. 1 ISU Constitution) committed by the Alleged Offender, no oral hearing was found to be necessary in the present case.

V. Sanction

- [64] According to Article 25 Para. 9 lit. a) ISU Constitution, the ISU Disciplinary Commission (DC) may impose sanctions ranging within the mentioned subsections i) – v). In the present case, the DC holds that on the basis of the presented facts, and on the legal evaluation in this decision, there is no ground for any sanction against the Alleged Offender, but rather potentially against the Complainants. Many of the allegations brought forward by the Complainants are either obviously wrong, or completely speculative and unfounded (cf. the explanations above). In particular, the allegations of competition manipulation and falsification against the Alleged Offender by the Complainants are lacking any grounds, and are based on either incorrect or unsubstantiated and speculative averment; those allegations were, at least in part, also submitted to third parties like the ISU Council.
- [65] At this juncture, this could potentially be considered to be defamatory and therefore violating the general personal rights of the Alleged Offender, respectively provisions of the COE.
- [66] However, according to the wording of Article 25 Para. 9 lit. a) ISU Constitution, sanctions may only be imposed on a party who is an Alleged Offender specified in a Complaint. Therefore, the DC will not examine this further or consider imposing any sanctions against the Complainants in the present case, as that is not covered by the current provisions. The non-imposition of sanctions, however, is only limited to the present case, in which Complainants I and II act as complaining party.
- [67] The Alleged Offender, Ms. Nathalie Lambert, is not guilty of any rule violation as alleged in the Complaint.
- [68] After careful review and assessment of the relevant proceedings and facts, the DC holds that in fact, within the scope and facts of this decision, she fulfilled her duties according to the best of her knowledge and conscience, acted thoroughly and constantly within the scope of her position. She acted within a framework that did not violate the ISU Code of Ethics or any other material ISU Rule which could lead to even a suspicion of a disciplinary or ethical offence according to Art. 25 Para. 1 ISU Constitution. She also included the Technical Committee, the Speed Skating Sports Director and the Council (represented e.g. through the Vice President, and also through the above mentioned presentation) in the contested material, as laid down by the respective provisions. The remaining alleged rule violations are also lacking any foundation. Therefore, there is no basis for taking any disciplinary sanctions against her.

[69] The Complainants requested her suspension in their Complaint, which could have deprived her of her elected status. In addition, the Alleged Offender was required to obtain legal representation in this case.

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

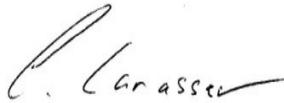
VI. Decision

1. No disciplinary or ethical violations are found to have been made by the Alleged Offender.
2. The Complaint is dismissed in its entirety.
3. The Complainants I and II bear the costs of this procedure as joint debtors, including the costs of the Alleged Offender's Legal Representative.

Date : 29-08-2023



Sue Petricevic



Eugen Larasser



Dr Keith King

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 Para. 12 and Article 26 of the ISU Constitution 2022.