

Disciplinary Commission

Case No. 2021-03

28.07.2021

**Final Decision
in the matter of**

Single & Pair Technical Committee (S&PTC), c/o International Skating Union,

- Complainant 1-

and

Charles Z. Cyr, Sports Director Figure Skating, c/o International Skating Union,

- Complainant 2-

against

Ms. Ch.

- Alleged Offender-

and

Georgian Figure Skating Federation,

-Interested ISU Member-

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

I. History of the Procedure

- [1] On May 20, 2021, the Complainants filed a complaint against the Alleged Offender, together with 7 exhibits. On May 21, 2021, the Alleged Offender and the Interested ISU Member were invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint.
- [2] The Alleged Offender and the Interested ISU Member filed statements of reply on June 8, 2021.

II. Procedural Matters

- [3] According to Article 25, Paragraph 1 of the ISU Constitution 2018, the ISU Disciplinary Commission serves as a first instance authority to hear and decide all charges referred to it by an ISU authority against an Alleged Offender accused of a disciplinary or ethical offence.
- [4] In the “Declaration for Competitors and Officials entering ISU Events” signed on March, 2, 2021, the Alleged Offender confirms:

I/we, the undersigned,

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

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

- [5] The disciplinary/ethical offences the Alleged Offender is accused of occurred during the ISU Figure Skating World Championships 2021 which took place in Stockholm, Sweden, from March 25 to 27, 2021.
- [6] According to Article 25 Paragraph 6 a) of the ISU Constitution 2018 complaints must be filed with the Disciplinary Commission within 60 days 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 May 20, 2021 and respects the 60 days’ time limit according to Article 25 Paragraph 6 a) of the ISU Constitution 2018.

III. Facts

- [7] The Alleged Offender is listed as an ISU Referee and ISU Judge for Single & Pair Skating for the season 2020/21 (ISU Communication No. 2273). She served as Judge No. 5 on the Men’s Panels for the Short Program and Judge No. 7 for the Free Skating at the ISU Figure Skating World Championships 2021.
- [8] The referee of the Men’s event did not assess the marks of the Alleged Offender as “National Bias”.

[9] The Officials' Assessment Commission (OAC) considered the Alleged Offenders' marking of the performances of the Georgian Skater, Morisi KVITELASHVILI in the Short Program as follows:

"Marks awarded, especially components. On this day show bias."

[10] Regarding the Free Program the OAC commented:

"Though in the corridor - evaluation of the elements and Program Components are consistently higher."

[11] The Alleged Offender had received a Letter of Warning on April 30, 2020, due to the suspicion of National Bias in her marks at the European Figure Skating Championships and the Youth Olympic Games 2020.

IV. The Parties' Submissions

Complainants' submissions

[12] The Complainants have analysed the marks of the Alleged Offender and conclude that the Alleged Offender has acted with serious national bias. The Complainants accuse the Alleged Offender that not only did she give higher marks for 'her' skater Morisi KVITELASHVILI than most other Judges, but she also gave lower marks than the majority of all other Judges to that Skater's strongest Competitors.

[13] In the Short Program of this event, the Alleged Offender as Judge no. 5 awarded the highest total of GOE's (39.84 points) to this Skater. Some other Judges had a similar total of GOEs for this Skater, but the decisive point is that the Alleged Offender was the only Judge to award the 16th highest number of GOE points to Morisi KVITELASHVILI while the official result ranked him in 23rd place.

[14] For Program Components, the Alleged Offender, awarded the Skater the 9th highest score (41,75 points) while the official result placed him 19th. Whilst the total score of the Alleged Offender for the Skater (81,59 points) put him in 12th place, the official result had him in 21st place.

[15] In Free Skating, too, the Alleged Offender's judging was heavily influenced by national bias: With her total score the Alleged Offender evaluated "her" Skater's Free Skating in overall 8th place. She was again alone in this judgement; the overall placements by the Panel put him in 12th place.

[16] For Program Components in Free Skating, the Alleged Offender's total points (84,00) for "her" Skater was the 9th highest score while the official placement by the Panel ranked him 16th.

[17] The above-mentioned facts prove that the Alleged Offender unduly favoured the Georgian Skater at the ISU World Championships 2021. She did not accidentally give too high marks to one specific skater who happened to be of the same geographic origin. By "upgrading" "her" Skater's GOEs as well as his Component marks in Short Program and in Free Skating on one

hand, and “downgrading” all marks of his strongest Competitors on the other, she demonstrated a systematic preference for the Skater from her own nation, i. e. national bias.

[18] The Complainants move

1. To find the Alleged Offender guilty of violations of the Duties of Judges according to Rule 430, General, e) and f) of the ISU Special Regulations and Technical Rules of Single and Pair Skating and Ice Dance and the ISU Code of Ethics.
2. To impose on the Alleged Offender a sanction in accordance with Article 25 Para 9a of the ISU Constitution.

Alleged Offender’s submissions

[19] Regarding the Short Program, the Alleged Offender explains that the difference in marks for Total Element Scores awarded by her to Morisi Kvitelashvili (GEO), and other skaters mentioned in the Statement of Complaint, can be explained by the fact that the base value of the elements performed by Morisi Kvitelashvili in the Short Program was much higher compared to the other skaters referred to in the Statement.

[20] In the Short Program her total component score was 41.75. All of them were in the gold range and defined by her as very good as well as by Judges number 3, 8 and 9.

[21] In Free skating she made no mistakes, as stated in the OAC Report, and ranged within the majority of the Judges Panel for evaluation of the execution of the elements. The difference in Total Element Scores awarded by her can be explained by the fact that the base value of the Free Program of Morisi Kvitelashvili (GEO) is higher compared to other skaters listed in the Statement.

[22] The deviation of +6.83 in her marks is mostly due to the marks (- 36.1) of the judges No. 4, 6 and 7 and the impact that resulted on the average scores of the panel. The above mentioned judges placed Morisi Kvitelashvili in 27, 23 and 25 place respectively.

[23] Regarding the free program, judges No. 1 and 5 awarded overall points of (-25.2) to Morisi Kvitelashvili. This impacted the average scores of the panel and total segment score. The above-mentioned judges placed that skater in the lowest, 16th position.

[24] Conclusion: There was no deliberate preference for the competitor, representing the country Georgia, over competitors from other countries. She based her marks on performances on those days, and judged what she saw at that moment. She was trying her best to act according to ISU Regulations, Technical Rules, ISU Communications, Handbooks and ISU Code of Ethics. She neither had intention to act in bad faith nor unethically, had no intention to discredit ISU by her actions as an Official and member. Her work has always been in favour of promoting and driving forward our sport.

Interested ISU Member's submission

- [25] The Interested ISU Member, Georgian Figure Skating Federation (GFSF) confirms that the Alleged Offender during her 15 year career as a Judge of Figure Skating, with 10 years as an ISU Judge for Single and Pair Skating and 12 years as an ISU Judge for Ice Dance, has shown the best example of a professional approach to her work, has outstanding working ethics and has always followed her duties of being an ISU Official per Rule 430, General Regulations.
- [26] Having been a Single Skater (1981-1999 years) and by representing Georgia on National, International and ISU Events, she has learned by herself how important it is for skaters to be evaluated by the Judges based on their performance at "that exact day" and not to be influenced by reputation or any past performances.
- [27] This approach and her work ethic helped her during all those years to always remain completely impartial, neutral and to complete her duties as a Judge with full awareness and accordance to the ISU Special Regulations and Technical Rules, ISU Communications and ISU Code of Ethics without any anomalies, warnings or assessments until April 30, 2020, when she received her first Warning Letter.
- [28] In regards to this case, the Georgian Figure Skating Federation has not noticed any unethical or biased behaviour of the Alleged Offender towards any skater. She has always acted in good faith and has always followed all the stated ISU Rules, Communications and especially ISU Code of Ethics, as are strictly observed by all the members of the GFSF.

V. Law

- [29] It is questionable whether the Disciplinary Commission can review the Alleged Offender's marks from the World Figure Skating Championships 2021.
- [30] Article 25 Paragraph 8 c) ISU Constitution 2018 rules:

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

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

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

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

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

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

[32] The Complainants cite the decision of CAS OG 16/028 and refer to the "field of play doctrine". In this decision OG 16/028 , para 37, CAS rules as follows:

Furthermore, for a CAS Panel to overturn a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. In other words, “there must be some evidence of preference for, or prejudice against, a particular team or individual. The best example of such preference or prejudice was referred to by the Panel in [CAS OG 00/013], where they stated that one circumstance where the CAS Panel could review a field of play decision would be if a decision were made in bad faith, e.g. as a consequence of corruption (see Para 17). The Panel accepts that this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision” (CAS OG 02/007).

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

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

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

judges because of differing opinions about the skaters' performance. A violation of the Code of Ethics and acting in bad faith must be obvious and serious.

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

The OAC shall evaluate

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

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

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

a) The OAC members shall prepare a report for each competition including the identification of those anomalies and suspected (national) bias in the Judges scores (as per Article 23 of the Constitution and the related Rules of Procedure published in an ISU Communication), that in the opinion of the OAC members, must be considered as errors or (national) bias warranting an Assessment. This report shall be made available without delay to the respective Technical Committee through the ISU Secretariat.

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

D) Evaluation Procedure and Report, 5. c)

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

- [38] The Panel has reviewed the report of the OAC of the Men's event at the World Figure Skating Championships 2021. The OAC considered the Alleged Offenders' marking of the performances of the Georgian Skater, Morisi KVITELASHVILI in the Short Program as follows:

Marks awarded, especially components. On this day show bias.”

In the Free Program:

“Though in the corridor - evaluation of the elements and Program Components are consistently higher.”

[39] The Complainants have compared the present case with the case 2018-02, in which the Disciplinary Commission suspended a judge due to “national bias”. That case is comparable to the present case. In both cases the marks of the judges were examined by the OAC Commission and the OAC concluded that their marks were influenced by National Bias.

[40] The ISU Disciplinary Commission follows the report of the OAC. The OAC is the appropriate expert body for the assessment of judges' marking. It is not the role of the Disciplinary Commission to overturn a field of play decision without evidence, which generally must be direct evidence, of some type of bad faith. The Alleged Offender’s marks were examined by the OAC Commission and the OAC concluded that they were influenced by National Bias. Therefore, the panel relies fully on the outcome of the OAC regarding the presence of National Bias.

[41] By her marking the Alleged Offender disregarded her duty not to show bias for or against any competitor and to be completely impartial and neutral at all times according to Rule 430, General, f) 2 of the ISU Special Regulations and Technical Rules Single and Pair Skating and Ice Dance.

[42] She also violated Article 3 of the ISU Code of Ethics 2020 with her obligation to exemplify the highest standards of honesty, fairness, fair play, ethical behaviour, and sporting attitude and not to act in any manner which might damage the reputation of the ISU or the ISU sports.

[43] She violated Article 11 of the ISU Code of Ethics 2020

by manipulating the course and/or result of a skating event (Art. 11.1)

by not acting in a neutral manner and conduct in a manner free from bias, including but not limited to national bias (Art. 11.3.)

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

VI. Decision

1. Ms. Salome Chigogidze is found guilty of a violation of the duties of judges and the ISU Code of Ethics 2020 at the World Figure Skating Championships 2021.
2. A period of exclusion from all ISU activities of one year, starting from August 1, 2021, is imposed on Salome Chigogidze.
3. Salome Chigogidze bears her own costs.



Volker Waldeck



Dr. Allan Böhm



Susan Petricevic

The present decision is subject to appeal to the Court of Arbitration for Sport, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland, within 21 days upon receipt of the decision, in accordance with Article 25 Paragraph 12 and Article 26 of the ISU Constitution 2018.