

INTERNATIONAL SKATING UNION

Communication No. 1356

ISU APPEALS COMMISSION RULES OF PROCEDURE

(This Communication replaces ISU Communication No. 1198)

PART I

Fundamental Provisions

Article 1

Jurisdiction of the Appeals Commission

1. The Appeals Commission is a body of the International Skating Union (hereinafter referred to as the "ISU"), whose members are elected by the Congress of the ISU in accordance with the ISU Constitution (hereinafter referred to as the "Constitution"). The Commission serves as an appellate body to hear and decide appeals of final decisions as specified in Art. 22, paragraph 6 of the 2004 Constitution.
2. A Party objecting to the lack of jurisdiction of the Appeals Commission must object immediately in the Appeal or in case of the Respondent in its Reply and neither Party shall be permitted to object later. Such objection must give reasons on which it is based.
3. The Appeals Commission decides on its jurisdiction and the impartiality of its members, as well as on objections as to the lack thereof. If the Appeals Commission arrives at the conclusion that the matter is not within its jurisdiction, it shall terminate the proceedings by issuing an Order of Termination.

Article 2

Decision-taking

1. The Chair of the Appeals Commission (hereinafter referred to as "the Chair") and all four members of the Appeals Commission shall take part in the review of any appeal made to the Commission, if possible.
2. If any member of the Appeals Commission, including the Chair, cannot take part in the review of any appeal due to absence, illness or conflict of interests, the Appeals Commission shall still review and decide the case provided that a minimum of three members take part. If the Chair cannot take part in the review, the member of the Appeals Commission who has received the highest number of votes at the last election of the Appeals Commission by the Congress shall serve as the Chair.

3. Every member of the Appeals Commission, including the Chair, shall be and remain independent of and impartial to the Parties to the appeal and shall immediately disclose any circumstance likely to affect his/her independence and/or impartiality with respect to any of the Parties. Such disclosure shall be made available to the Parties to the appeal.
4. Conflict of interests due to which a member of the Appeals Commission, including the Chair, cannot take part in the review of any particular appeal occurs when:
 - (i) the appeal directly or indirectly involves such member,
 - (ii) the member resigns from the review since the member feels that he/she cannot be independent or impartial,
 - (iii) the member is excluded from the review by the remaining members of the Appeals Commission upon an objection raised by a Party to an appeal in accordance with paragraph 10 of this article.
5. The Appeals Commission may arrive at its decisions by correspondence, telephone conference calls and teleconferences between the members or at hearings at which a minimum of three members of the Appeals Commission are present, provided that if any Party requests a hearing the Appeals Commission shall only arrive at its decision following such hearing.
6. The Final Decision on an issue shall be adopted if the majority of the members of the Appeals Commission taking part in the review have voted in favor thereof. When there are four members of the Appeals Commission taking part in the review and there are an equal number of votes for and against the proposed Decision, the vote of the Chair shall be decisive.
7. The members of the Appeals Commission involved in the review shall vote on the issues involved in the Final Decision and neither the result (the number of votes) thereof, nor the dissenting opinion of any member voting against the Final Decision, shall be published.
8. Summary minutes of the Appeals Commission's sessions and/or hearings shall be recorded in writing and a copy thereof, signed by all members of the Appeals Commission involved in the review, shall be forwarded by the AC Chair to the ISU General Secretary* (hereinafter referred to as the "General Secretary*") following the completion of any review. Such minutes shall be kept by the General Secretary* at the Headquarters of the ISU.
9. In case of further appeal against the decision of the Appeals Commission, the Parties and the appellate body may receive copies of the minutes.
10. A Party to an appeal may raise objections of prejudice against any member of the Appeals Commission provided such objection is made without delay after the Party has learned the circumstances on which the Party bases its objection. Such objection must give reasons on which it is based and the remaining members of the Appeals Commission shall decide on the objection.

PART II
Proceedings - General Provisions

Article 3
Place, Language, Records and Administration

1. The AC Chair shall determine, in consultation with the General Secretary*, the place at which the Appeals Commission's sessions or hearings shall be held as required primarily to suit the convenience of the Appeals Commission and of the Parties and with due regard to the costs.

2. All proceedings, memoranda, pleadings, minutes and all correspondence of the Parties shall be in English. If a Party to an appeal or a witness to be called by a Party at the hearing of an appeal does not understand/speak English sufficiently and in the circumstances such Party wishes to bring to the hearing of the appeal an interpreter, at such Party's expense, such Party shall so inform the Chair immediately after having received the Notice of hearing. In such circumstances, the Chair may appoint an official interpreter, whose interpretation of the evidence and proceedings at the hearing shall be final and conclusively binding upon the Parties to the appeal.
3. The General Secretary* and the Secretariat shall deal with the administrative requirements associated with the activities of the Appeals Commission including, in particular, notifying the members of the Appeals Commission and any involved Parties of any pertinent matters, making all necessary arrangements for the hearing of any appeal, keeping of all necessary files and permanent records of the Appeals Commission and its hearing/reviews, and notifying the members of the Appeals Commission involved in any review if any Final Decision of the Appeals Commission is appealed to the Court of Arbitration for Sport in Lausanne, Switzerland (the "CAS"), and in such latter event, providing the Appeals Commission members with a copy of any Final Decision of the CAS in such matter and/or any settlement of any appeal to the CAS in respect of such matter.
4. The proceedings are generally based upon the written submissions of the Parties. However, the Panel at its sole discretion may decide to hold a hearing. Hearings may be held also by telephone or video conference.
5. Rules of evidence applicable in Court are not applicable in Appeals Commission proceedings.
6. These rules of procedure apply except in doping cases and when other rules are provided for by the ISU Anti-Doping Rules and ISU Anti-Doping Procedures.

Article 4 **Legal Basis of Decision-taking**

1. The Appeals Commission shall decide the appeal according to the applicable provisions of the Constitution, the General Regulations, the Special Regulations, other special rules, including the ISU Code of Ethics, ISU Anti-Doping Procedures, these Rules of Procedure, and other decisions of the ISU Council made in accordance with Article 17 of the 2004 Constitution and communicated and published in accordance with the provisions of Article 20 of the 2004 Constitution. If recourse to civil law is necessary or helpful, the applicable civil law shall be exclusively the Swiss law.
2. An issue may also be decided *ex aequo et bono* (according to equity and good conscience), only, however, if all Parties to the appeal have explicitly authorized the Appeals Commission so to do.

Article 5 **Parties and Representation Thereof**

1. The Parties to the appeal proceedings are:
 - a) the Offender or Alleged Offender in the case of an appeal against a decision of the Disciplinary Commission or of the Disciplinary Commission Chair in the case of Article 21, paragraph 11 of the 2004 Constitution,

- b) the concerned Member in case of an appeal against a decision of the Council imposing any penalty or suspension of membership against a Member,
 - c) the person declared ineligible in case of an appeal against any decision of an ISU body declaring ineligibility of a skater, Official, Office Holder or other participant in ISU activities,
 - d) any Party in case of a decision taken by the Disciplinary Commission or of the Disciplinary Commission Chair under Article 21, paragraph 11 of the 2004 Constitution,
 - e) the ISU,
 - f) the Complainant or any other participant admitted by the DC as a Party under Art. 5, paragraph 1 of the DC Rules of Procedure.
2. The Party filing the appeal shall be designated as „Appellant“ and the Party opposing such appeal shall be designated as „Respondent“.
 3. Any Party to the proceedings may be represented by an attorney-at-law, legal or other advisor whom such Party authorizes so to do. Ordinarily, the Council shall be represented by the Legal Advisors of the ISU.

Article 6

Notifications and Communications

1. All notifications and communications from the Appeals Commission and from the Parties shall be given by registered mail or by fax or by e-mail, except otherwise specifically provided for by these Rules. All communications from the Parties to the Appeals Commission shall be made to the ISU Secretariat.
2. If notification is decisive for any period of time to start with, the day of receipt of such notification by fax or by email is the day of receipt of such notification regardless of a hard confirmation copy received by mail at a later time.
3. In case that a Party is represented by a legal counsel, all notifications, communications and documents shall be sent to such counsel only.

Article 7

Confidentiality

1. Proceedings under these Rules of Procedure are confidential.
2. The Parties and the members of the Appeals Commission undertake not to disclose to any third Party any facts or other information relating to the dispute or the proceedings other than as set forth in any Final Decision or final disposition of the Appeals Commission.

Article 8
Commencing Appeal and Timing Provisions

1. An appeal shall be commenced in the manner and within the time specified in paragraph 8 of Article 22 of the 2004 Constitution.
2. The Appeals Commission may extend the time within which all corresponding documents, which are to accompany an appeal, pursuant to the provisions of paragraph 8 of Article 22 of the 2004 Constitution, are forwarded to the Chair.
3. Official holidays and non-working days are included in the calculation of time limits. The time limits fixed under the ISU's Coda shall be respected if the communications by the Parties are sent before midnight on the last day on which such time limits expire. If the last day of the time limit is an official holiday or a non-business day in the country where the notification has been made, the time limit shall expire at the end of the first following business day.
4. Upon application on justified grounds, the Chair may extend the time limits provided under these Rules including time limit for filing a full Statement of Appeal (Art. 8, paragraphs 3, 4 and 5 below), if the circumstances so warrant. However, the time limit for filing an appeal (the Notice of Appeal) may not be extended.

Article 9
Contents of Appeal

The Appellant shall submit to the ISU Secretariat an Appeal containing:

1. the signature of the Appellant, with postal address, telephone number, fax number and e-mail address, if any, of the Appellant,
2. a copy of the decision being appealed or at least such particulars of the decision by which the decision can be sufficiently identified,
3. facts and legal arguments giving rise to the appeal not exceeding 15 pages, together with all documents, exhibits and specifications of other evidence upon which the Appellant intends to rely.
4. the Appellant's request for relief,
5. designation of documents, if any, to be tendered as evidence and designation of persons, if any, the testimonies of whom the Appellant is proposing to tender as evidence; documentary evidence shall be attached to the appeal, or the terms on which such evidence is to be submitted must be given,
6. designation of the Appellant's attorney-at-law, legal or other advisor authorized to represent the Appellant, with postal address, telephone number, fax number and e-mail address, if any, of such person,
7. notification that the Appellant and/or a witness for the Appellant does not understand/speak English sufficiently and in the circumstances the Appellant wishes to bring to the hearing of the appeal an interpreter, at the Appellant's expense, and the name, postal address, telephone number, fax number and e-mail address, if any, of the Appellant's interpreter,
8. notification that the Appellant wishes the issues involved in the appeal to be decided also *ex aequo et bono* (according to equity and good conscience) if the Respondent agrees.

Article 10
Reply

1. Within 15 days from the receipt of the Appeal, the ISU Secretariat shall deliver or cause to be delivered the Appeal to the Respondent and to the Chair and all members of the Appeals Commission.
2. The Respondent shall have the right to deliver or cause to be delivered within 21 days from the receipt of the Appeal a Reply to the ISU Secretariat, to the Appellant and to the Chair and all members of the Appeals Commission.
3. The Reply of the Respondent shall contain:
 - a) a statement of defense,
 - b) any defense of lack of jurisdiction,
 - c) any exhibits or specification of other evidence upon which the Respondent intends to rely,
 - d) designation of the Respondent's attorney-at-law, legal or other advisor authorized to represent the Respondent, with postal address, telephone number, fax number and email address, if any, of such person,
 - e) in the event that the Appellant has indicated, in his or her Appeal, that the Appellant wishes the issues involved in the appeal to be decided also *ex aequo et bono* (according to equity and good conscience), a statement whether or not the Respondent is in agreement.
4. If the Respondent fails to submit its Reply by the given or extended time limit, the Appeals Commission may nevertheless proceed with the review and deliver its Final Decision.
5. The burden of proof for showing compliance with the time limits rests on the Party whose compliance or non-compliance with a time limit has been questioned.

Article 11
Documentary Determination

1. As a general rule, the exchange of writs shall consist of an Appeal, as described above, and one Reply, as described above. Together with their written submissions, the Parties shall produce all written evidence upon which they intend to rely and, if a hearing has been requested, shall specify all witnesses and experts which they intend to call and state any other evidentiary measures which they request.
2. Unless upon the request of a Party, the Chair orders otherwise on the basis of exceptional circumstances, the Parties shall not be authorized to supplement their argumentation, nor to produce new/additional exhibits, nor to specify further evidence on which they intend to rely after the submission of the Appeal and of the Reply.
3. The Appeals Commission has the right to request any of the Parties to the proceedings to complement their submissions in writing as well as to produce additional documentary evidence.
4. Should the Appeals Commission decide that the issue is ready for partial or full review the Chair shall order a hearing, if a hearing has been requested by any Party or if the Appeals Commission decides to hold a hearing in its own discretion.

Article 12
Hearing

1. Notice to the Parties of the place and date of the hearing shall be forwarded by the General Secretary*, at the direction of the Chair, to the Parties by facsimile or similar means of electronic transmission of messages at least 15 days in advance of the date fixed for the hearing.
2. Should a duly notified Party fail to appear at the hearing without prior excuse acceptable to the members of the Appeals Commission, the Appeals Commission may act and proceed with the hearing despite the Party's absence.

Article 13
Providing Evidence

1. The Appeals Commission shall have full power to review the facts and the law. The AC Chair shall conduct the hearing and ascertain that the statements made are concise and limited to the subject of the written Presentations of the Parties, to the extent that the presentations are relevant.
2. The Parties may call to be heard by the Appeals Commission such witnesses and experts as they have specified in their written submissions. The members of the Appeals Commission shall have the right to question Parties during the hearing as well as witnesses and experts who have voluntarily appeared. The Appeals Commission may also call witnesses or experts whom the Parties have not proposed. The Parties and/or their attorneys shall have the right to examine and cross-examine any witness or expert. It is each Party's responsibility to ensure the appearance of a witness or expert called by such Party.
3. Before hearing any person who intends to testify, the AC Chair shall solemnly instruct such person to tell the truth, pointing out the importance of the testimony for the decision of the Appeals Commission.
4. As a general rule, if a hearing is requested, there shall be only one hearing during which the Appeals Commission shall hear the Parties, the witnesses and the experts, as well as the Parties' final oral arguments, although if required, such hearing may take more than one day. If so required in order to provide further evidence, the AC Chair may adjourn the hearing to such other time, date and/or place as it may select.
5. The Appellant shall present the Appellant's case first, followed by the Respondent. Each Party shall be allowed at least one Rebuttal response. The Appeals Commission shall fix the time limits.
6. In the course of the hearing the Appeals Commission shall duly note the written evidence submitted. Once the hearing is closed, the Parties shall not be authorized to produce further evidence or pleadings, except if the Appeals Commission so orders.

Article 14
Evidentiary Proceedings ordered by the Appeals Commission

1. A Party may request the Appeals Commission to issue an order that the other Party produces documents in its custody or under its control. The Party seeking such production shall demonstrate that the documents are likely to exist and to be relevant.
2. If it deems it appropriate to supplement the presentations of the Parties, the Appeals Commission may at any time order the production of additional documents or the examination of witnesses, appoint and hear experts, and proceed with any other procedural act.

Article 15
Final Decision

1. The review by the Appeals Commission shall be terminated:
 - a) when the appeal is withdrawn by the Appellant,
 - b) if the issue, which is the subject matter of the appeal, is settled by mutual agreement of the Parties,
 - c) when the Appeals Commission issues its Final Decision based on the merits of the appeal.
2. The decision shall be, within the ISU, final and binding on all the Parties (herein referred to as the “Final Decision”).
3. The Chair shall announce the Final Decision at the conclusion of the hearing or notify the Parties that they will receive a copy of the Appeals Commission’s Final Decision.
4. The Final Decision shall be determined by a decision of the majority of the Appeals Commission, shall be written, dated and signed by the members of the Appeals Commission and shall briefly state the facts and the reasons for the Final Decision.
5. The Final Decision shall contain a statement that there is no further appeal within the ISU from such decision and that, only in cases specified in Article 23, paragraph 1 of the 2004 Constitution an appeal may be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland within 21 days following the receipt of such decision.
6. The Appeals Commission may decide, in accordance with Art. 22, paragraph 12 of the 2004 Constitution, that an appeal shall no have postponing effect.
7. A copy of any Final Decision of the Appeals Commission on each matter appealed to it shall be mailed by the General Secretary* within 10 days of such decision being executed and signed by the Appeals Commission to the Parties involved in the appeal and/or according to the terms of the Final Decision.
8. Publication of the Final Decision in an ISU Communication shall be made in accordance with Article 20, paragraph 2 of the 2004 Constitution. The Council may for serious reasons decide that only the holding of the Final Decision will be published.

PART III
Concluding Provisions

Article 16
Costs of Proceedings and Parties' Expenses

1. Each and every Party to the proceedings shall bear their own costs, including all costs of witnesses and experts called by such Party.
2. Costs related to the participation of witnesses and experts invited at the Appeals Commission's own discretion and the costs related to the Appeals Commission's interpreter, if any, shall be borne by the ISU.
3. The Appeals Commission, if it thinks fit at its own discretion, may award the Party, which was successful in the proceedings, the right to partial or full reimbursement of out-of-pocket expenses, related to the Party's, witnesses' and expert's participation in the proceedings, including the Party's legal representation, against the other Party.

Article 17
Effective Date of the Rules of Procedure

These Rules of Procedure were amended following changes to Article 22 of the 2004 ISU Constitution accepted at the 2004 ISU Congress and were approved by the ISU Council in accordance with Article 22, paragraph 10 of the 2004 Constitution. They shall become effective when communicated to Members by this ISU Communication.

** = after the 2006 Congress the reference to the General Secretary will be replaced by the Director General*

Milano
November 15, 2005
Lausanne

Ottavio Cinquanta, President
Fredi Schmid, General Secretary