

INTERNATIONAL SKATING UNION

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Disciplinary Commission

Case No. 2016-02

23.05.2016

Decision of the ISU Disciplinary Commission

Panel: - Volker Waldeck, Chair
- Dr. Allan Böhm
- Susan Petricevic

In the matter of

Koninklijke Nederlandsche Schaatsenrijders Bond (KNSB)

,

- Complainant -

against

Mr. Christian Gijtenbeek, NL

- Alleged Offender -

Regarding the alleged violation of ISU Rules and the ISU Code of Ethics

I. History of the Procedure

On February 24, 2016 Koninklijke Nederlandsche Schaatsenrijders Bond (KNSB) filed a complaint against the Alleged Offender together with one exhibit. On February 25, 2016 the Alleged Offender was invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint.

On March 15, 2016 the Alleged Offender, represented by his attorney at law, filed a statement of reply including 5 attachments.

On April 6, 2016 KNSB put forward a response and on April 28, 2016 the Alleged Offender filed a final statement.

On May 11, 2016 the referee of the event Senior Men at the Sarajevo Open 2016 answered questions that he has been asked for by the ISU Disciplinary Commission.

II. Procedural Matters

1. According to Article 24, Paragraph 1 of the ISU Constitution 2014 the Disciplinary Commission serves as a first instance authority to hear and decide all charges referred to it by an ISU authority or party against any Skater, Official, Office Holder or other participant in ISU activities (Alleged Offender) accused of a disciplinary or ethical offence.

2. The Alleged Offender skated in the Senior Men's event at the Sarajevo Open 2016, which is an ISU event (see ISU General Regulations Rule 100 Paragraph 3). He is alleged to have violated Rule 102 and Rule 115, paragraph 5, of the ISU General Regulations 2014 and the ISU Code of Ethics by entering this competition without formal appointment by the KNSB.

According to Rule 125 Paragraph 5

“sanctions may be imposed by the Disciplinary Commission in accordance with Article 24 of the Constitution against any Skater ... who can be proved to have acted against the spirit of the ISU Statutes” ...

3. The Complaint is admissible. The ISU Disciplinary Commission has jurisdiction in this case.

III. Facts

1. The Alleged Offender is a figure skater at Senior level, from the Netherlands. He belongs to the ISU member federation KNSB. He skated his Short and Free Skating Programs at the Sarajevo Open 2016 (February 5, 2016) during the Senior Men's event.

2. KNSB complains that the skater was not entered through KNSB but directly through his relationship with the organizer of the event, the Bosnian Herzegovinian Federation. The organizer allowed him to skate “out of competition” and his start was approved by the Referee of the Senior Men's event. The Alleged Offender was permitted to skate both his Short Program and Free Skating in the same warm-up group as the entered Senior Men, thereby adding to the impression he was officially entered. His programs were judged and marked by both the Technical Panel and the Panel of Judges. His results do not appear in the official protocol of the competition, however were shown on a results website produced by the Alleged Offender and his brother, who served as Data/Replay Operator in the competition.

The Bosnian Herzegovinian federation had asked the Technical Controller of the event, for permission for the “out of competition entry” prior to the Senior Men’s event. However, permission had already been granted by the Referee and the Bosnian Member. The fact that the Technical Controller did not explicitly deny this request, can’t be taken as granting permission by the federation for the Alleged Offender to “enter out of competition”. As Technical Controller of the event had no such authority or duty.

KNSB complains a violation of ISU Rule 102, Rule 115, paragraph 5 and the ISU Code of Ethics.

3. The Alleged Offender replied to the complaint as follows:

“I did not enter for the Sarajevo Open competition. Skating my programs was offered to me as compensation for a different (cancelled) competition for which entry by my federation was not required. Beforehand approval was asked and given by Mr. P., the Technical Controller of the event. Mr. P. was not only the Technical Controller but is a paid functionary of the KNSB and member of the committee that handles all requests that involve skaters performing at international competitions. He was asked to approve in this capacity, not because he was the Technical Controller. It is clearly stated in our national guidelines for competing internationally that prior consent of my federation for participation in international events that are not listed on the ISU calendar (BIH nationals is not on the ISU calendar) is not required and that my skating club is authorized to handle all administrative matters concerning. Even though I did not enter and intend to skate in the Sarajevo Open still Mr. P. was consulted and asked approval for the out of competition skating to make sure there would be no misunderstanding and therefore no problem with my federation.”

4. KNSB responded that there was no formal approval by Mr. P. given to compete, even “out of competition”. This approval should have been asked for and given in writing from the Selection Committee Figure Skating of the KNSB well before the competition, clearly not on the site of the actual event, or verbally by the secretary of the BIH federation. The Alleged Offender never asked Mr. P. directly for permission to compete. Mr. P. was confronted on the spot with a decision already made by the organizers and by the Referee that the Alleged Offender was allowed to enter “out of competition”. So he accepted that and concentrated on fulfilling his duties as Technical Controller. Mr. P. was fulfilling his duties as ISU Technical Controller and was not acting in the capacity of Interim Figure Skating manager of the KNSB, nor as chair of the Selection Committee. Even if assuming he was acting in his capacity as Interim Figure Skating manager, he would not be able make a decision alone regarding the skater’s potential entry, as approval would need to be given by both the Selection Committee and the Sports Director of KNSB. This was because the skater did not fulfil the criteria set out by the Selection Committee. None of these parties were informed about the skater’s intention to compete. Hence, the entry must be seen as a violation of Rule 115 para. 5 and Rule 102 para. 2.

5. The Technical Controller of the Senior Men’s event, Mr. P., wrote as follows in his report to the ISU:

“The secretary of the BIH federation told me of the request of Christian Gijtenbeek and also that the BIH federation and the Referee already gave their permission to let Christian Gijtenbeek skate “out of competition”. I was invited to act as a Technical Controller to the event so not officially in a position to deny the request. However, I felt confronted and embarrassed on the spot with this and I replied that it is fine with me since the organizers and the Referee accepted the request. The president of the BIH federation, ... thanked me for my willingness to cooperate (!?), commenting that BIH federation is doing this in thanks to the support of the Gijtenbeek family, also for supporting in another competition (Skate Helena in Belgrade) and because he needed the 35points.

Christian Gijtenbeek took part in the Senior Men “out of competition”. Even though not in the official competition, the organizers let him warm up together with the 5 Senior men in the actual competition both in the SP and in the FS. The result of Gijtenbeek did not appear in the Competition details of this event but it appeared in the web application www.3a-result.com. ”

6. The Disciplinary Commission Panel has asked the Referee of the Senior Men’s event the following questions, to which he has responded,

1. Question: Did Christian Gijtenbeek compete at the Sarajevo Open 2016 in the category Senior Men?

Answer: No. He did not participate in the official competition. See the official protocol, category senior men final results - http://static.isu.org/media/291460/sarajevo-open-2016_protocol.pdf. He „competed“, performed SP and FP out of official competition.

2. Question: Who entered the skater Christian Gijtenbeek in the competition in category Senior Men?

Answer: I do not know. This issue was not discussed. Please, ask the representatives of organizing committee.

3. Question: Have you been asked to let Christian Gijtenbeek skate in the short and free program “out of competition” and what was your answer?

Answer: Yes. The representative of the organizing committee asked me. I answered with a question: You, Do you agree too. After the positive answer, I gave my agreement, Christian Gijtenbeek to participate “out of competition”

4. Question: Did the Technical Controller Mr. P., agree or disagree with the entry of Christian Gijtenbeek?

I do not know. I’m not talking on this matter with Mr. P. because I have no reason for this. Something more, I guess that Mr. P. was informed (from organizers) of the situation in advance (It is my assumption). If there were problems, the initiative for reaction should be his. ”

IV. Motion

The Complainant has not filed a special motion but has asked for the complaint to be taken very seriously and that the necessary steps be taken to reprimand the Alleged Offender.

V. Law

1. The Complaint is justified.

2. The Alleged Offender entered the Senior Men’s competition at the Sarajevo Open 2016. The Alleged Offender denies he entered and competed in the Sarajevo Open, but admits that he skated “out of competition”. The Panel regards this explanation as a sophistry and misleading. It is uncontested that the Alleged Offender was part of the warm-up group and skated his Short and Free Programs with the other competitors in the Senior Men’s event. There is no ISU Rule which permits a skater to start “out of competition”. This kind of start, which is outside the ISU Rules, must not occur and is even worse where skaters do not fulfill the requirements of the announcement of the event. With a start “out of competition” all ISU Rules regarding the formal entry to a competition could be avoided. The Panel therefore evaluates the start of the Alleged Offender as a start “within the competition”.

3. According to ISU General Regulation Rule 109 Paragraph 1, International Competitions may be entered only by competitors who belong to a Member and for whom the entry can be made only through the respective Members.

It is uncontested that KNSB did not enter the skater into the Sarajevo Open 2016 competition. Mr. P. was acting as Technical Controller of this event and not in the capacity of Interim Figure Skating Manager of KNSB. It was the organizer of the event, the Skating Federation of Bosnia and Herzegovina (BIH) who entered the skater without prior consent of KNSB.

4. The Alleged Offender and BIH also violated Rule 111:

“A Member may not communicate directly with Skaters belonging to another Member, concerning participation in the competition....”

5. The procedure for entries of Singles, Pair Skating and Ice Dance is prescribed in Rule 115 Para 5:

“Entries must be made by the Member concerned and must be forwarded in writing or electronically submitted to the body or person within the time limit (closing date) designated in the Regulations and/or in the Announcement for the competition. Receipt of Entries must be confirmed immediately in writing by the Organizer to the Member...”

KNSB did not enter the Alleged Offender into the competition and the Organizer BIH did not inform KNSB of the entry of the skater. This is another violation of the Rules, by the Organizer.

6. The violation of the above mentioned Rules is also an infringement of the ISU Code of Ethics 2012 Paragraph 4 e).

7. The Panel comes to the conclusion that the Alleged Offender has violated the ISU General Regulations 2014, Rule 109 Paragraph 1, Rule 111, Rule 115 Paragraph 5 and the ISU Code of Ethics 2012 Paragraph 4 e) by entering the Senior Men’s Competition at the Sarajevo Open 2016. Therefore a sanction must be imposed against the Alleged Offender.

8. Evaluating the degree of fault of the skater, the Panel has taken into consideration that the skater asked Mr. P. to approve his start in the competition. The skater knew Mr. P. and his position in the Dutch Federation KNSB, and allegedly asked him in his function as an official of the KNSB and not in his function as the ISU Technical Controller of the event. Mr. P. states he did not agree or disagree with the skater, but that the skater misjudged the reaction of Mr. P. as his approval. This misunderstanding, in the view of the Panel, mitigates the fault of the skater.

9. It is important to note that it is not only the skater who is accountable for this violation of the ISU Rules. The organizer BIH, who entered the skater into the competition by allowing him to start “out of competition”, which does not exist under ISU Rules, was primarily at fault. However, the complaint of KNSB was addressed only against the skater, not against the organizer.

10. For these reasons, only a reprimand is imposed on the skater.

VI. Decision

1. Christian Gijtenbeek has violated the ISU General Regulations 2014, Rule 109 Paragraph 1, Rule 111, Rule 115 Paragraph 5, and the ISU Code of Ethics 2012 Paragraph 4 e) by entering the Senior Men's Competition at the Sarajevo Open 2016.
2. Christian Gijtenbeek is reprimanded and warned to not engage in similar conduct in the future, as it will attract a more severe penalty.
3. The provisional suspension from participating as a skater in ISU Events is repealed.
4. Each party shall bear its own costs.

May 23, 2016



Volker Waldeck



Susan Petricevic



Dr. Allan Böhm

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 24 Paragraph 12 and Article 25 of the ISU Constitution 2014.