

INTERNATIONAL SKATING UNION

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Case No. 2016-03

November 25, 2016

Decision

of the

ISU Disciplinary Commission

Panel:

- Volker Waldeck, Chair
- Albert Hazelhoff
- Jean-François Monette.

In the matter of

International Skating Union, Avenue Juste-Olivier 17, 1006 Lausanne, Switzerland,
represented by its Legal Advisor, Dr. Béatrice Pfister,

- Complainant -

against

Yelim KIM,

Korea

- Alleged Offender -

and

Korea Skating Union,

-Interested ISU Member-

Concerning the alleged violation of the ISU Anti-Doping Rules.

I. History of the procedure

On October 4, 2016, the ISU filed a complaint against the Alleged Offender, together with two exhibits. On October 7, 2016, the Alleged Offender and the Interested Member were invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint. The complaint and the exhibits were delivered by DHL at the Korea Skating Union office against signature on October 10, 2016. Neither the Alleged Offender nor the Interested Member, Korea Skating Union, filed a statement of reply.

II. Procedural Matters

According to Article 25, Paragraph 10 of the ISU Constitution 2016 and Article 8.1.1 of the ISU Anti-Doping Rules 2015 the Disciplinary Commission has jurisdiction in anti-doping cases arising out of ISU Testing or Testing at International Events or Competitions.

The present case arises out of testing at the ISU Junior Grand Prix of Figure Skating in Yokohama which took place on September 8 – 11, 2016, i.e. of testing at an International Event.

Prior to this event, on August 9, 2016 the skater, represented by her parent, had signed the “Declaration for Competitors and Officials entering ISU Events” for the season 2016/2017. This Declaration states:

“I, the undersigned,

I) accept the ISU Constitution, which establishes an ISU Disciplinary Commission (Article 24) 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 25 & 26);

VI) am familiar with the ISU Code of Ethics (ISU Communication 1717 or any update of this Communication) as well as ISU Anti-Doping Rules (ISU Communication 1765 & 1800 or any update of these Communications) and also with the current List of Prohibited Substances and Methods and I declare that I will fully comply with such Rules.”

Therefore, the ISU Disciplinary Commission has jurisdiction to hear and decide this case.

As the Alleged Offender and the Interested Member failed to submit a statement of reply by the given time limit the Panel renders its final decision on the record without further hearing.

III. Facts

The Alleged Offender is a 13-year-old member of Korea Skating Union who competed in the Ladies event of the ISU Junior Grand Prix of Figure Skating in Yokohama and finished 5th.

On September 11, 2016, the Alleged Offender was selected for Anti-Doping testing after completion of the Ladies event at 3.30 p.m. Neither the Doping Control Officer nor the chaperone could find her on the ice rink. Since an attempt to call her in her hotel failed because the line was busy, the Doping Control Officer, the chaperone and OC staff went to the hotel

where they found the skater and could finally notify her of the Doping Control selection at 4.15 p.m. The results of the test which was completed at 5.35 p.m. were negative.

IV. Motions

The Complainant filed a motion as follows:

1. To find the Alleged Offender guilty of violation of the ISU Anti-Doping Rules.
2. To issue a reprimand against the Alleged Offender.

The Alleged Offender and the Interested Member did not file a motion.

V. Law

According to Art. 22.1.2 of the ISU Anti-Doping Rules (ADR), skaters must be available for sample collection at all times.

Article 22.1.7 of the ISU Anti-Doping Rules 2015 reads as follows:

“It is the responsibility of the Skater to make sure that he/she has not been selected for Testing.

If the absent Skater nevertheless gains knowledge of having been selected for Testing, he/she must return to the Doping Control Station immediately, at the latest before the testing procedures for the competition in which he/she participated are completed.

A Skater who fails to receive notification for sample collection due to not reporting at the Doping Control Station at the end of each segment of the Event in which he/she has participated to confirm whether he/she has been selected for Testing is subject to (...) disciplinary sanctions.”

It is uncontested that the Alleged Offender failed to report at the Doping Control Station at the end of the event. She did not check whether she had been selected for Anti-Doping Testing.

The Alleged Offender being a minor of the age of 13, the Panel, with no representation from the Alleged Offender, voluntarily examined whether Anti-Doping Rules are applicable to minors in general and to this case in particular. The Panel observes that the rules contained in the ISU Anti-Doping Rules do not specifically deal with the issue of age.

The Panel is nevertheless of the view that, in order for an athlete to be bound to anti-doping rules, the issue of age is in principle of no relevance. Accordingly, the fact that the Alleged Offender was very young at the time of the anti-doping control (13 years old) is in this respect irrelevant. If a young athlete enrolls to compete in organized sport she must do it in accordance with the rules of the game, including the rules whose violation entails disciplinary consequences. This is especially appropriate in figure skating, where athletes tend to emerge onto the international scene at ever younger ages. After all, subjection to rules and to sanctions is not unknown to minors. For instance, when minors are in school, they must comply with school rules and be prepared to undergo disciplinary consequences – even harsh ones, such as the expulsion from the school or the repetition of the same school year – if they don't. If a young athlete is deemed by his parents mature enough to participate in an international event, she must be deemed mature enough to understand the applicable anti-doping rules. In addition, the Panel remarks that anti-doping rules are aimed at protecting the vested interest of all participants in a fair competition. The principle of a level playing field is a cornerstone of sports law in general and of anti-doping law in particular. This principle notably aims at protecting the

Athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes. In order to protect this fundamental right, it is indispensable that all athletes be subjected to the same rules, particularly those aiming at protecting equality of arms and, thus, at avoiding that some competitors may benefit from an unfair advantage over other competitors. The qualification of an athlete as a minor is, therefore, not a circumstance that could exempt him from being submitted to the anti-doping regulations in the same way as all the other participants to the competitions. A different approach would lead to intolerable consequences. One of the consequences would be that while some of the participants in a competition (i.e. those who have attained the majority) would be subjected to a certain set of rules, minors would have to obey to less stringent rules or to no rules at all. This would result, in particular, in young athletes being allowed to use doping substances and doping methods, as they could rely on a substantial immunity from the imposition of sanctions. This is incompatible with the idea of a level playing field and would be contrary to the protection of the health of minors, as the awareness of impunity would have the inevitable consequence of encouraging the use of doping. All of this cannot be accepted. Therefore, the Alleged Offender is responsible for a violation of the ISU Anti-Doping Rules.

For a first-time violation, the sanction is from a reprimand to a period of up to one year suspension from competing at ISU Events. The skaters mistake is regrettable. However, considering her very young age, her lack of experience in Anti-Doping matters at ISU Events and the fact that it is her first violation, the Panel is of the view that a reprimand is the adequate sanction.

VI. Decision

1. Yelim KIM is declared responsible for an Anti-Doping violation, committed at the ISU Junior Grand Prix of Figure Skating in Yokohama on September 11, 2016.
2. Yelim KIM is reprimanded and warned to not engage in similar conduct in the future, which conduct will incur a more severe sanction.
3. Korean Skating Union has to reimburse the ISU for the costs of these proceedings.
4. The skater bears her own costs.

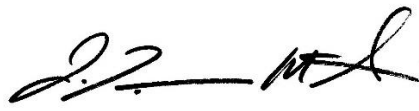
November 25, 2016



Volker Waldeck



Albert Hazelhoff



Jean-François Monette

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 2016.