

INTERNATIONAL SKATING UNION

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Disciplinary Commission

Case No. 2018-01

05.02.2018

Final Decision in the matter of

ISU Technical Committee Ice Dance,
acting through its Chair Mrs. Halina Gordon-Poltorak,
represented by ISU Legal Advisor, Dr. Béatrice Pfister,

- Complainant –

against

Ms. Ece Esen, Turkey

- Alleged Offender -

and

Turkish Ice Skating Federation

- Interested ISU Member -

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

I. History of the Procedure

On January 9, 2018, the ISU Technical Committee Ice Dance, represented by ISU Legal Advisor, Dr. Béatrice Pfister, filed a complaint against the Alleged Offender together with 2 exhibits. On January 9, 2018, 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. By Order No. 1 the ISU Disciplinary Commission provisionally suspended the Alleged Offender in her function as an International Judge for figure skating and ice dance pending the final decision in this case.

II. Procedural Matters

According to Article 25, Paragraph 1 of the ISU Constitution 2016 the 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.

In the “Declaration for Competitors and Officials entering ISU Events” the Alleged Offender confirmed on August 29, 2017,

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);

The disciplinary/ethical offence the Alleged Offender is accused of is about her behavior in her function as a Judge at the ISU Challenger Series of Figure Skating Golden Spin held in Zagreb, Croatia, on December 7 - 10, 2017. Complainant gained knowledge of the Alleged Offender's misbehavior through the Report of the Referee for the Ice Dance competition of the event, dated December 13, 2017. The present statement of complaint respects the 60 days' time limit according to Article 25 Paragraph 6 of the ISU Constitution.

The ISU Disciplinary Commission has jurisdiction to decide this case.

The Complaint is admissible.

III Facts

The Alleged Offender is listed as International Judge for Ice Dance and for Single & Pair Skating for the season 2017/2018 (ISU Communication No. 2111). She served as judge No. 7 on the panel of judges at the Free Ice Dance panel for the Senior category at the 2017 ISU Challenger Series Golden Spin International Competition in Zagreb.

The referee of this Ice Dance event, Ms. Leslie Keen, has reported her observations during the Free Dance as follows:

“During the first warm-up group, I observed that Judge #7, Ms. Ece Esen (TUR), had a folder underneath her personal judging papers on the stand.....

The contents of her folder included her personal judging papers and the Judges Details per Skater from the Senior Short Dance as well as a print out of the Senior Dance event competitors

(including substitutes). On this list of event competitors, there is what appears to be pre-prepared PC marks as well as placements for teams from 1 to 10, with a 3rd place listed for the team from Turkey.

At the conclusion of the Free Dance event, I spoke privately with Ms. Esen and asked her about the PC marks and placements written on the Event Competitors list from her folder. She stated that she had written these marks and placements following the first practice (note that on this document there are also marks and a placement listed for a team not present at the competition, but a substitute entry)....

She continued to state that if I looked at the marks for the Short Dance, her marks for the event would be the same as those she had written in advance on the event competitors sheet. On analysing the Short Dance results, there is an alignment between these pre-prepared marks and those she ultimately awarded. Based on her comment as well as the analysis, one can assume that she was referencing this document with her pre-prepared marks for the Short Dance (which I did not directly observe). She also brought this same sheet with pre-prepared marks to the judges stand in her folder for the Free Dance."

After the competition the Alleged Offender has sent an e-mail to the ISU Vice President Figure Skating, Mr. Alexander Lakernik, explaining the conversation with the referee and the papers which she had taken with her to the judges stand. The Alleged Offender wrote:

"After the competition I went and ask (the referee) if I can have my file because all my marking papers are inside, and she said yes you can take your file, but I took one page from it and I want to talk to you. She took the paper without my permission or without asking me of course she is a referee she can look check but what she is trying to do is as I felt was a bit to disturb me, we go to the room she show me which page she took, that was the page list of skaters which was with me during the short dance practice that I took some notes near the names of skaters with my own hand writing, I supposed to make up my mind not to mix the skaters because there were 20 couples and its sometimes difficult for me to remember while judging its more practice to grouping them but there were only 5 or 6 skaters the first group I mean, and I told her this is for the short dance and you can check my marks for short dance you will see it they are totally same and this paper is nothing it's just my paper and my own notes?!"

In her statement of reply of January 29, 2018, the Alleged Offender explained:

During Free Dance, Ms. Esen was present at the panel with "the folder" provided by ISU Organisation Committee at the very beginning of the Competition. There was no additional paper or non-ISU documents with her. She was taking out "the marking sheets of the respective couples" in order of their presence and upon her evaluation she was putting her marking sheets away and closed (upside down) as it has to be.....

There are no observations under the Report which evidences or states that Ms. Esen is USING PAPERS OTHER THAN THE MARKING SHEETS, OR HER FOLDER IS OPEN.....

Then after during the ice resurfacing, the Referee, with considerably threatening approach, took the folder; reviewed the folder page by page together with Ms. Esen. Upon such review and Mrs. Keen's request, Ms. Esen also took "yellow papers" out of the folder, teared them in front of her and threw them in to trash.....

The Referee finally took her folder in full, to look at the papers within the folder in detail...

On the subject list, which was submitted as an evidence, there were notes taken by Ms. Esen during the first official practice, there is nothing to do with this paper, or has no help neither during the Free Dance nor the short dance.”

The Alleged Offender concludes that there is no evidence that proves she had prepared marks and that she used such marks during the performances. The evident thing is that she accidentally forgot the " paper in question" (the paper with notes of her from the official practice) in her folder given by the organising committee.

The Complainant is convinced that the explanations of the Referee in her Report as well as the Alleged Offender's own statements strongly suggest that she used her pre-prepared marks and rankings while judging. But in the opinion of Complainant this question is ultimately not decisive. By the simple fact of bringing the list of participants with pre-prepared marks and placements to the judge's stand, the Alleged Offender in any event gave the appearance of unethical behaviour and lack of fairness in the sense of Article 4f of the ISU Code of Ethics.

The Interested Member, the Turkish Skating Federation, and the Turkish Disciplinary Commission, have carried out an overview of this case in a manner of providing a diligent response. As per the results of investigations and analysis of the situation within the scope of above mentioned observations, the Federation has reached a consensus that the presence of the “referred paper” in the file during the competition is an inappropriate situation and a behavioural mistake conducted by the Alleged Offender. However, the observations also point out that this mistake has been carried out in an unconscious manner without pursuing any intention of being used during competition and effecting the judging of the performance of the competitors.

IV. Motion

The Complainant moves an adequate action.

The Alleged Offender moves to dismiss the Complaint.

V. Law

The legal basis to decide this case is

- ISU Special Regulations & Technical Rules Single and Pair Skating and Ice Dance 2016, Rule 430, General, letter f) “- *Officials must base their marks and decisions only on the performance and not be influenced by reputation or past performance;*”
- Rule 430, Paragraph 2 “*do not to use previously prepared marks;*”
- ISU Communication 1540 Figure Skating - Use of papers/documents by Figure Skating Judges during competitions.

The Panel does not apply Article 4f of the ISU Code of Ethics, because Rule 430 of the ISU Special Regulations has priority over the general clause of the Code of Ethics.

It is uncontested that the Alleged Offender has written some component marks on a yellow sheet of paper which was included in the folder issued by the organizer of the Golden Spin 2017. On this sheet the competitors of the ice dance event were listed as applied by their federations, including the substitutes. The Alleged Offender pretends to have written the component marks while watching the practise of the ice dance couples. But that does not explain why she had written marks also behind the names of substitutes who did not compete in this event and were not present at the practise session. The Panel presumes that the Alleged Offender has prepared the marks based on former competitions or on the basis of the ISU Season's World Ranking for Single & Pair Skating and Ice Dance.

It is contested if the Alleged Offender has used these previously prepared marks. The referee has not noticed the paper with handwritten marks exposed on the desk of the Alleged Offender besides the Judges Marking Sheets. Following the report of the referee and the reply of the Alleged Offender the referee has searched the folder of the Alleged Offender, issued by the organizer, and has found the yellow paper with the list of competitors and the handwritten marks of the Alleged Offender. The question arises whether the Alleged Offender has used the prepared marks while this paper was within her folder and not exposed on the desk. The panel holds that preparing the marks only does not fulfil the element of the Rule 430, Paragraph 2, which requires the use of prepared marks.

In ISU Communication 1540 the ISU Council has given a guideline to limit the number of papers and documents which Judges may take to their places on the Judges' stand during competitions. The Judges receive shortly before the commencement of the segment the "Judges Marking Sheets". In addition to the "Judges Marking Sheets", the Judges may also take to their places the Rule books, the latest pertinent ISU Communication(s) including the guidelines for the Grade of Execution (GOE) and Program Components and summary of deductions/reductions. For Compulsory Ice Dance segments, a copy of the relevant dance pattern is also allowed on the Judges stand. According to Communication 1540 no other papers should be taken to the Judges' stand. The Alleged Offender did not follow this guideline when taking the prepared sheet and the "Judges Details per Skater" from the Short Dance with her to the stand, even if these papers were closed in her folder.

Rule 430, General, letter f) states that judges must base their marks and decisions only on the performance and not be influenced by past performances. The Alleged Offender pretends that the marks for the Program Components written on her paper do not match with the marks she has given at the Free Dance competition. But regarding the couple Bobrova / Soloviev (placed 1 in Free Dance) a comparison between the handwritten marks and the "Judges Detail per Skater" shows, that Judge No. 7, the Alleged Offender, has given congruent Program Component Marks between 9,50 and 9,75.

The Panel holds that the prepared marks were based on previous competitions or results and that the Alleged Offender was influenced by them. The Alleged Offender has violated Rule 430, General, letter f) ISU Special Regulations & Technical Rules Single and Pair Skating and Ice Dance 2016 and did not follow the guideline as prescribed in ISU Communication 1540.

VI. Decision

1. Ms. Ece Esen has violated the duties of a judge as stated in Rule 430, General, letter f) ISU Special Regulations & Technical Rules Single and Pair Skating and Ice Dance 2016.
2. Ms. Ece Esen is suspended in her function as International Judge for Ice Dance and for Single & Pair Skating from January 9, 2018 (date of the provisional suspension) till June 30, 2018.
3. All parties bear their own costs.



Volker Waldeck



Dr. Allan Böhm



Albert Hazelhoff

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.