

**Disciplinary Commission**

Case No. 2020-02

01.08.2020

**Final decision  
in the matter of**

**Ice Dance Technical Committee (IDTC),**  
c/o International Skating Union,  
Avenue Juste-Olivier 17, 1006 Lausanne,

**Complainant 1**

and

**Charles Z. Cyr,** Sports Director Figure Skating,  
c/o International Skating Union,  
Avenue Juste-Olivier 17, 1006 Lausanne,

**Complainant 2**

against

**Ms Michela Cesaro**

**Alleged Offender**

and

**Federazione Italiana Sport del Ghiaccio**

**Interested Member**

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

## I. History of the Procedure

- [1] On May 4, 2020, the Complainants filed a complaint against the Alleged Offender, together with 19 exhibits. On May 4, 2020, 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. The complaint and 13 exhibits were delivered to the Alleged Offender by DHL Express on May 6, 2020, 13:46 h.
- [2] The Alleged Offender filed a statement of reply on May 21, 2020.
- [3] The Panel has asked the Complainants to send the reports of the referees and the OAC Commission of the European Championships and the Junior Worlds in which the defendant worked as judge in the ice dance competitions. The Complainants delivered the reports on May 27, 2020 to the Panel.

## II. Procedural Matters

- [4] 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.
- [5] In the “Declaration for Competitors and Officials entering ISU Events” signed on June 24, 2019, 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).*

- [6] The disciplinary/ethical offences the Alleged Offender is accused of occurred during the ISU European Figure Skating Championships 2020 which took place in Graz, Austria from January 20 to 26, 2020 and the ISU Junior World Figure Skating Championships 2020, held in Tallinn, Estonia between March 2 and 8, 2020.
- [7] 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.
- [8] The Alleged Offender officiated as judge in the free dance event of the European Championships on January 26, 2020. The marks of the judges of this event were published immediately after the event was finished. This point in time is decisive for when the Complainants were able to take note of the defendant's alleged national bias. It is irrelevant that the Complainants only analyzed the marks of the judges in the European Championships on 27 March and again later at a session on 3 April 2020. The decisive point is that the complainants were already able to take note of the defendants' marks when the notes were published in Graz on 26 January 2020. The period of time

from 26 January to the receipt of the complaint on 4 May 2020 is 99 days. Consequently, the 60-day deadline for filing the complaint has not been met. The time limit for making a complaint about marks given the defendant at the European Championships in Graz has expired; therefore, this part of the complaint is inadmissible.

- [9] The admissibility of the complaint concerning the Junior World Championships in Tallinn must be assessed differently. The free dance event took place on 7 March 2020. The complaint was received on 4 May 2020. The period between these dates is 58 days. Thus, the complaint regarding the Junior World Championships was received in time. The complaint in regard of the defendant's alleged actions at the Junior World Championships is admissible.

### **III. Facts**

- [10] The Alleged Offender is listed as an ISU Referee and ISU Technical Controller for Ice Dance for the season 2019/20 (ISU Communication no. 2273). The Alleged Offender served as a Judge on the Panel for the Rhythm Dance at the ISU Junior World Figure Skating Championships 2020 (Exhibit 4. See Results of these Championships, published on [www.isu.org](http://www.isu.org)).

### **IV. The Parties' Submissions**

- [11] The Panel has only considered the parties' submissions regarding the Junior World Championships 2020, not submissions in relation to the European Championships. The following is a summary to assist in the reasoning of what follows, rather than a comprehensive repetition of all that was submitted.

#### **Complainants' submissions**

- [12] The Complainants' main submissions may be summarized as follows:

- [13] CASE: Portesi/Chrasteky (ITA) ISU Junior World Figure Skating Championships 2020, Rhythm Dance

The Alleged Offender as judge no. 8 evaluated this couple 13<sup>th</sup>, however their placement after the Rhythm Dance was 16<sup>th</sup>. The Alleged Offender's total Program Component Score was the highest awarded (27.60) and was the 12<sup>th</sup> highest awarded amongst the judges. It should be noted that the Alleged Offender was not drawn to judge the Free Dance of this event.

- [14] Further comparison between the French couple, Terreaux/Perron and the Alleged Offender's preferred couple, Portesi Peroni/Chrasteky is clearly shown in the Total Score comparison with the Referee's judging and the Total Scores of the Panel. The below comparison (based on Exhibit 11) clearly shows overmarking by the Alleged Offender in the Total Components Score (TCS) and in the Total Segment Score (TSS) in the Rhythm Dance. The chart below also shows that the Alleged Offender undermarked Terreaux/Perron in the Total Segment Score (TSS). The Alleged Offender evaluated Portesi Peroni/Chrasteky (ITA) overall in 13<sup>th</sup> place (14<sup>th</sup> place for Total Elements Score and 12<sup>th</sup> place for Total Components Score). The

couple finished in 16th place in the Rhythm Dance.

	Alleged Offender	Referee	Scores of Panel
	TES/TCS/TSS	TES/TCS/TSS	TES/TCS/TSS
Terreaux /Perron (FRA)	29.02/25.40/54.42	31.41/27.60/59.01	29.55/25.89/55.44
	Final placement: 18	Final placement: 11	Final placement: 15
Portesi Peroni /Chrastecky (ITA)	29.80/27.60/57.40	27.08/21.20/48.28	28.84/25.58/54.42
	Final placement: 13	Final placement:21	Final placement:16

[15] The overmarking was further revealed by the further comparison of the Total Program Component Score evaluated by the Alleged Offender and the Scores of the Panel (Exhibit 8). The Exhibit 8 shows that the Alleged Offender evaluated the Italian couple in 12<sup>th</sup> place whilst the Total Program Component Score of the Panel evaluated them 17<sup>th</sup>.

[16] No marks awarded by the Alleged Offender were highlighted for OAC Evaluation (per ISU Communication No. 2271) but the in-depth analysis showed that the Alleged Offender was supporting her own nation to the detriment of their nearest rival.

[17] In order to verify the indication of national bias, the Complainant 1 evaluated the Rhythm Dance (from video footage, Exhibit 16, 17) of the two couples and assessed an acceptable range of marks for each element's GOE (based on Exhibit 18) and for each Program Components (based on Exhibit 19). The chart below presents the acceptable range for Complainant 1 with the Alleged Offender's marks. Unacceptable marks assessed by the Alleged Offender are highlighted:

<b>ISU Junior World Figure Skating Championship 2020 Rhythm Dance</b>		
Terreaux/Perron FRA (RD)	Acceptable Range	Alleged Offender
Element: 1	0/1	0
2	½	1
3	½	1
4	2/3	1
5	1/3	1
SS	6.00-7.00	6.5
TR	6.25-6.75	6.25
PE	6.75-7.25	6.25
CO	6.75-7.50	6.5
IT	6.75-7.50	6.25

Portesi Peroni/Chrastecky ITA (RD)		
Element: 1	½	1
2	½	2
3	1	1
4	-1/-2	-1
5	0/1	2
SS	4.75-5.75	6.75
TR	5.50-6.00	7
PE	5.50 -6.00	6.75
CO	5.75-6.00	7
IT	5.00-6.25	7

[18] By her marking the Alleged Offender not only disregarded her duty to not show bias for or against any competitor and to be completely impartial and neutral at all times according to Rule 430, General, f) and 2 of the ISU Special Regulations and Technical Rules Single and Pair Skating and Ice Dance, but she also violated several provisions of the ISU Code of Ethics: her obligation to exemplify the highest standards of honesty, fairness, fair play, ethical behavior, and sporting attitude and not to act in any manner which might damage the reputation of the ISU or the ISU sports, (Art. 3), her obligation not to use unfair strategies and not to manipulate competitions, her obligation to inspire internal and public confidence in the fairness, honesty and integrity of the ISU, the ISU sports and all who act under the auspices of the ISU sports and her duty to refrain from any action or attempt to improperly influence or manipulate the course and/or results of any Skating event (Art. 11.1), her duty to maintain absolute independence and not to show favoritism for or prejudice against, any Skater or ISU Member (Art.11.2) and to act in a neutral manner and conduct herself in a manner free from bias, including but not limited to national bias (Art. 11.3)

### **Alleged Offender's submissions**

[19] The Alleged Offender's main submissions can be summarized as follows:

[20] The Alleged Offender was judge No.8 in the Rhythm Dance Event. She scored the French Couple Terreaux/Perron in the Grade of Execution (GOE) as follows:

Element n.1	GOE 0	range 0/1
Element n.2	GOE +1	range 0,5
Element n.3	GOE +1	range 0,5
Element n.4	GOE +1	range 2/3
Element n.5	GOE +1	range 1/3

[21] The only highlighted issue is for element No.4, Midline Step Sequence, where the acceptable range is indicated from +2/3 and the defendant marked with a +1 GOE. This element received two +2 and seven +1 GOEs (one of which is her mark). Only the Referee marked this element with a +3 but her mark is absolutely in line with the majority of the panel.

[22] The Alleged Offender's Total Component Score is 25,40 and the median of the panel is 25,89. Her marks were not lower than the rest of the panel.

[23] The Alleged Offender compared the French Couple with the Italian couple Portesi Peroni/Chrasteky in the Grade of Execution (GOE) as follows:

Element n.5	GOE +2	range 0/1
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[24] She justifies the difference between her rating and the average of the panel with three positive features: the element enhances the choreography and the character of the chosen music – double value - and the element reflects nuances in the music

[25] Program Components

[26] The Alleged Offender's program component scores for the Italian couple are higher than those of the panel, but she was not the only judge who put the Italian couple ahead of the French couple. Two other judges did the same. The French and Italian couple are similar and in a Junior World Championship, with 29 couples, some differences in placing may occur without any programmed plan to do it. She confirmed to have honestly judged what she saw during the event.

## V. Motions

[27] The Complainants moved:

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.

[28] The Alleged Offender made no motion but confirmed that none of her judgments were made in bad faith. She points to her commitment and dedication to skating activity, especially in Ice Dance, and has always followed the ISU regulations and the Code of Ethics in which she firmly believes,

## VI. Law

[29] It is questionable whether the Disciplinary Commission can review the Alleged Offender's marks from the Junior World Championships 2020.

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.*

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.*

[30] 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:

1. *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.*

2. *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.*

[31] 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:

*37. 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).*

It follows that only in serious cases, such as corruption, can the decision of a judge be challenged.

[32] 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.*

[33] 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.

[34] In the present case, the marks of the Alleged Offender were not obviously “national bias”. The marks of the judges were reviewed both by the event's Referee and by the Officials Assessment Commission (OAC).

[35] Above all, it is the task of the OAC to evaluate the marks of the judges.

Article 23 Para 2 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.*

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.*

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.*

[36] The Panel has reviewed the reports of the referee and the OAC that are available on the ice dance event at the Junior Worlds Competition. Neither the referee nor the OAC have challenged the Alleged offender's scores nor determined “national bias”. So the judge's evaluations were not so obvious “national bias”, otherwise they would have been noticed by the referee and the OAC.

[37] The Complainants have compared the present case with the case of the judge Feng Huan, (Case 2018-02), in which the Disciplinary Commission suspended the judge for 2 years due to “national



bias". But that case is not comparable to the present case. The marks of the judge Feng Huan were examined by the OAC Commission and the OAC had sent a letter of warning to the judge:

*The appointed Officials Assessment Commission members and the Single and Pair Technical Committee have reviewed the scores awarded by you in the above-mentioned competition. They jointly concluded that though the general quality of your work is good, a clear support for the two Chinese Pairs without any objective reasons either in elements and in components and this has been evaluated as national bias.*

[38] In the present case neither the Referee nor the OAC have challenged the Alleged Offender's scores nor determined "national bias". Since both the Referee and the OAC have evaluated the marks, but have not challenged them the ISU DC panel has no evidence of "national bias".

However, the ISU DC panel did not miss the fact that the marks and the judging of the Alleged Offender at the ISU Junior World Figure Skating Championships 2020 in Tallinn seems like a sophisticated handling of marks in the evaluation of Italian and French couple. Although this assessment after its in-depth analysis acts as a hidden preference of the Italian couple, it remains only at the level of suspicion without evidence of intentional "national bias", hence is absent proof of bias, malice or bad faith. For this reason, the ISU Disciplinary Commission adhered to the principle of Roman law "*in dubio pro reo*" and to the principle of "Field of Play".

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

## VII. Decision

1. The Complaint is dismissed.
2. The parties bear their 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.