



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2013/A/3227 Ukrainian Figure Skating Union (UFSU) v. International Skating Union (ISU)**

**ARBITRAL AWARD**  
rendered by  
**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Mr. Conny Jömeklint, Chief Judge, Kalmar, Sweden  
Arbitrators: Ms. Alexandra Brilliantova, Attorney-at-law, Moscow, Russia  
Mr. Beat Hodler, Attorney-at-law, Berne, Switzerland

in the arbitration between

**UKRAINIAN FIGURE SKATING FEDERATION, Kyiv, Ukraine**

Represented by Mr. Mykhailo Spasov, Attorney-at-law, Vox Legum Law Firm, Kyiv, Ukraine

- Appellant -

and

**INTERNATIONAL SKATING UNION (ISU), Lausanne, Switzerland**

Represented by Ms. Béatrice Pfister, Attorney-at-law, Muri b. Bern, Switzerland

- Respondent -

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 2

**I. PARTIES**

1. The Ukrainian Figure Skating Federation ("UFSF" or "Appellant") is the National Federation for figure skating in the Ukraine and a member of ISU. In this capacity the UFSF has nominated Ms. Kruglova as a Judge in accordance with Rules 410 and 411 of the ISU Special Regulations and Technical Rules Single & Pair Skating and Ice Dance for the season 2012.
2. The International Skating Union ("ISU" or "Respondent") is the international governing body of - amongst others - figure skating. ISU is constituted as a Swiss association in accordance with article 60 and following of the Swiss Civil Code. Its seat is in Lausanne, Switzerland. The ISU oversees competitive winter sports events internationally, including the administration of the ISU "Cup of Nice" held in October 2012.
3. Ms. Natalia Kruglova is an ISU Judge for single and pair skating from Ukraine. She served as Judge for pairs and seniors in the event "Cup of Nice" held from 24 to 28 October 2012 in Nice (France). In its Statement of Appeal and Appeal Brief counsel for the UFSF named Ms. Kruglova as "First Appellant". Subsequently Ms. Kruglova did not provide a written confirmation of such a representation and therefore abstained from being a party to the present arbitration.
4. The UFSF and the ISU are collectively referred to as the "Parties".

**II. FACTUAL BACKGROUND**

5. The following outline of the factual background is taken from the written submissions of the parties and from the challenged decision, the latter insofar as it has not been contested by the parties. The Panel will consider further details of the factual background in the discussion on the merits of the case (Chapter V) to the extent as they are relevant for its decision.
6. Ms. Natalia Kruglova was appointed by ISU as a Judge for pairs and seniors in the event "Cup of Nice" held from 24 to 28 October 2012 in Nice (France).
7. On November 20, 2012 the ISU Vice President for Figure Skating, Mr. David M. Dore, and the Chair ISU Sport Directorate, Mr. Peter Krick, filed a complaint against Ms. Natalia Kruglova with the Disciplinary Commission of ISU (DC). The complaint was based on a report submitted to them by the Event Referee of the "Cup of Nice", Mr. Jeroen A. Prins, on October 30, 2012, accusing Ms Natalia Kruglova of having committed a violation of the duties of a Judge and the ISU Code of Ethics.
8. The report of the Event Referee was based on a statement received from Ms. Diana Stevens, an ISU Judge from Great Britain, who had served on the same Seniors Pairs Judge Panel in the Cup of Nice 2012 as Ms. Kruglova. Allegedly Ms. Stevens had been

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 3

approached by Ms. Kruglova in the café of the ice rink in Nice asking her to give a higher mark to the Ukrainian couple so that they would reach the required level for qualification.

9. The ISU DC initiated an investigation and by Order of November 29, 2012 invited Ms. Kruglova (at that time called the "Alleged Offender") to reply to the complaint. In this Order, ISU named UFSF as "Interested ISU Member". According to the Respondent this was based on article 5 of the ISU Disciplinary Rules of Procedure (ISU Communication No. 1419), which defines as "Parties" i.a. "*any ... other participant in ISU activities having a personal legitimate interest*" and was appropriate in view of the provisions regarding the imposition of costs. UFSF was served with the complaint against Ms. Kruglova and invited to respond. UFSF was also provided with all further correspondence between the ISU Disciplinary Commission and Ms. Kruglova, including the order to appear at the hearing of February 13, 2013.
10. On December 21, 2012 UFSF, through his Secretary General, Ms. Anastasiya Makarova, sent an e-mail to the ISU Director General with the statement of reply of Ms. Kruglova and a letter dated December 19, 2012 signed by the President of the UFSF, Mr. Evgeniy Larin, saying "*We hope that Mrs. Kruglova gave satisfactory explanation of the alleged problem and she will remain as ISU Judge*".
11. The complainants were of the opinion that this statement did not exonerate Ms. Kruglova and requested an oral hearing and the examination of Ms. Diana Stevens as a witness. By an order issued on December 24, 2012 the DC provisionally suspended Ms. Kruglova in her function as ISU Judge until a final decision was rendered.
12. On January 7, 2013 the DC appointed an oral hearing to be held on February 13, 2013 in Frankfurt/Main (Germany) at which Ms. Diana Stevens was to be heard as witness. With the same order Ms. Kruglova was summoned to participate in the hearing. On January 11, 2013 she acknowledged receipt of the invitation. Due to financial reasons she proposed to conduct the hearing by video conference. The DC rejected this request as a video conference would not allow for an in person hearing with all parties and witnesses being present. On January 21, 2013, Ms. Kruglova asked for a separate invitation so as to be able to apply at the German Embassy in the Ukraine for a visa. Upon receipt of an e-mail with the invitation attached she immediately replied that she needed an original for the visa application. On February 5, 2013 she informed the DC that the German Consulate in Kiev had rejected her application as she had not been able to present an original of the invitation. On February 11, 2013 she informed the DC that she was ill and would not attend the hearing on February 13.
13. The DC decided to hold the hearing despite the absence of Ms. Kruglova. The DC heard Ms. Diana Stevens as witness and Mr. Peter Krick as representative of ISU. Minutes were taken of their depositions. Neither the UFSF did participate in the hearing.
14. Following this hearing, the DC submitted the minutes to Ms. Kruglova inviting her to file a statement of reply which she did on March 2, 2013, also explaining the reasons why she was unable to participate in the hearing. The DC then offered her the choice for another

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 4

oral hearing or to waive the right of such a hearing. By mail of March 19, 2013 Ms. Kruglova renounced to a further hearing.

15. The DC rendered its decision ("the challenged decision") on May, 30 2013. Based on the testimony of the witness Ms. Diana Stevens and further information gathered on the judging of Ms. Kruglova at the "Cup of Nice", in particular the Juniors Ladies event, the DC found Ms. Kruglova guilty and imposed on her a two year suspension from participation in all ISU activities. The costs of the hearing were imposed on the UFSF. In detail the decision reads as follows:

1. *Natalia Kruglova is guilty of misconduct and of violation of the duties of judges and the ISU Code of Ethics 2012.*
2. *A two years suspension from participation in all ISU activities as an ISU Judge is imposed on Natalia Kruglova, beginning on December 23, 2012 (date of the provisional suspension) and ending on December 23, 2014.*
3. *The Complainants and Ms. Kruglova shall bear their own costs.*
4. *The costs of the hearing (room and travel expenses of the panel and witnesses) are imposed on the Ukrainian Figure Skating Federation.*

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

16. On June 26, 2013 the Court Office of the Court of Arbitration for Sport ("CAS") received a Statement of Appeal (not dated) filed by Mr. Mykhailo Spasov, Attorney-at-law in Kiev and signed as "Representative of Ms. Natalia Kruglova and Ukrainian Figure Skating Federation" with respect to the decision rendered by the DC of ISU on May 30, 2013, which according to counsel of the Appellants was received by Ms Kruglova on June 7, 2013.
17. On July 1, 2013 the CAS Court office acknowledged receipt of the Statement of appeal and invited Ms. Kruglova and UFSF to submit an Appeal Brief within the time limit of 10 days following the expiry of the time limit for the appeal (pursuant to R51 of the Code). The Appeal Brief was filed on July 5, 2013.
18. In the Statement of Appeal the Appellants submitted the following request for relief:

*Ms. Natalia Kruglova and Ukrainian Figure Skating Federation don't find Ms. Kruglova guilty in the abovementioned charges. Furthermore, Ukrainian Figure Skating Federation doesn't find it justified to bear cost of the hearing of the ISU Disciplinary Commission. Thus, Ms. Kruglova and Ukrainian Figure Skating Federation ask CAS to reconsider the Decision of ISU Disciplinary Commission dated May 30, 2013 (Case No. 2012-10) and discard the abovementioned charges.*

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 5

In the Appeal Brief the requests for relief were worded as follows (see IV. Conclusions, point 3):

*Therefore, we ask CAS to replace the Decision of ISU Disciplinary Commission dated May 30, 2013 (Case No. 2012-10), and issue a new decision finding Ms. Natalia Kruglova not guilty of the abovementioned charges and cancelling imposition of the costs of the hearing (room and travel expenses of the panel and the witness) of the ISU Disciplinary Commission on Ukrainian Figure Skating Federation.*

19. On July 9, 2013 the CAS Court Office forwarded the Appeal Brief to the Respondent inviting ISU to submit an answer within 20 days (pursuant to R55 of the Code).
20. Notice of Formation of a Panel was communicated to the parties on July 26, 2013. The Deputy President of the CAS Appeals Arbitration Division has appointed:  
President: Mr. Conny Jörneklint, chief judge in Kalmar, Sweden  
Arbitrators: Ms. Alexandra Brilliantova, attorney-at-law in Moscow, Russia  
Mr. Beat Hodler, attorney-at-law in Berne, Switzerland
21. On July 29, 2013 the Respondent filed its Answer and Statement of Defence with the following request for relief:  
*For all these reasons the Appeal is to be dismissed and the attacked Decision to be confirmed.*
22. In its answer the Respondent pointed out the fact that Mr. Spasov had signed the Statement of Appeal as representative of Ms. Kruglova and of the UFSF, the Appeal Brief however only as representative of UFSF with a written confirmation signed by UFSF only. The Respondent concluded:  
*In the absence of an Appeal Brief filed by herself or on her behalf by a duly authorized representative availing of a power of attorney (Code art. R 30) within the time limit Ms Kruglova's Appeal shall be deemed withdrawn (Code art. R 51).*

The Respondent further submitted:

*The finding of Natalia Kruglova being guilty of misconduct ... as well as the two years suspension imposed on her according to points 1 and 2 ... of the decision of the ISU Disciplinary Commission of May 30, 2013, is personal to her and does not affect Appellant 2. The Ukrainian Figure Skating Federation is affected only by point 4 which imposes upon it the costs of the hearing (...). Consequently, taking into consideration point 3 above [first quote in this para.], the review of the CAS is limited to this point 4 of the challenged decision.*

23. Upon receipt of the Respondent's answer the CAS Court office asked the parties whether their preference was for a hearing to be held or for the Panel to issue an award based on the parties' submissions. Ms Kruglova and UFSF were furthermore asked to provide the

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 6

CAS Court office with a power of attorney in favour of Mr. Spasov. Whilst the Respondent gave preference to an award without hearing, Mr. Spasov informed the CAS Court office in a letter of August 14, 2013 as follows:

*Due to situation that Ms. Natalia Kruglova is currently out of contact under strange circumstances, thus we can't provide you with power of attorney signed by her. Please be informed, we have had an oral agreement to represent her interests in this case before filing relevant statement of appeal.*

...

*UFSF has taken all necessary and available steps in order to contact Ms. Kruglova but failed to do so.*

He left it open to the Panel to decide whether to hold an oral hearing or not, as he could not guarantee the presence of Ms. Kruglova if such a hearing should take place.

24. Following this correspondence the Panel decided to plan for a hearing and in an order of August 27, 2013 called the Parties to appear on October 1, 2013 in Lausanne.
25. In its letter of August 30, 2012 the Respondent confirmed its availability and named the persons who would represent ISU and as witnesses to be heard Mr. Jeroen Prins and Ms. Diana Stevens.
26. Counsel of the Appellants on the other hand informed the CAS Court office in his letter of September 3, 2013 as follows:

*With reference to your letter dated August 27, 2013 I can inform you that me, undersigned, Mr. Mykhailo Spasov will attend the hearing of CAS on behalf of the Ukrainian Figure Skating Federation.*

*Furthermore please note that representative of UFSF informed us that Ms. Natalia Kruglova will not attend the hearing due to personal circumstances.*

*It is worth mentioning that UFSF has taken all necessary and available measures in order to convince Ms. Kruglova to attend hearing but failed to do so.*
27. On September 5, 2013 the CAS Court office asked the parties, if they would like a hearing to be held even in the absence of Ms. Kruglova or if, under the circumstances, they would prefer the Panel to issue its decision on the basis of the CAS file with the possibility, upon request of one of the parties, to submit final written submissions.

At the same time the Appellants were invited to establish, by September 12, 2013 that the statement of appeal and the appeal brief were also filed on behalf of Ms. Kruglova. Ms Kruglova and UFSF were informed "that in the absence of an evidence of the power of representation of Ms. Kruglova, it may be considered that she is not involved in the present procedure".
28. In its letter of September 5, 2013 the Appellant left it to the Panel to decide whether to hold a hearing and mentioned that it "has taken all necessary measures in order to convince Ms. Kruglova to attend hearing but failed to do so." On September 9, 2013 the

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 7

Respondent reiterated its opinion "that the file is complete and the case ready for decision", this "even more as the Appellant 1 is refusing to appear at the oral hearing".

29. Counsel of the Appellants confirmed in his letter of September 11, 2013 that the UFSF was unable to convince Ms. Kruglova to attend the hearing and that he was unable to "provide you with any written confirmation that the statement of appeal and the appeal brief were filed on behalf of Ms. Kruglova. As I have mentioned in previous letters, UFSF had an oral agreement with Ms. Kruglova, but at the moment she declines to sign any documents to this regard."
30. In a communication to the Parties of September 10, 2013 the CAS Court office informed the parties that in view of the absence of Ms. Kruglova the hearing scheduled on October 1, 2013 was cancelled and that the Panel therefore would issue a decision without holding a hearing.
31. Following the aforementioned exchange of correspondence the CAS Court office on September 25, 2013 wrote to the Parties on behalf of the Panel:

*In application of Article R30 of the Code of Sports-related Arbitration, Counsel of Appellants is invited to submit, by fax and within two weeks, a duly signed power-of-attorney (or a written confirmation to that effect) establishing that the Statement of Appeal (undated) and the Appeal Brief (dated July 5, 2013) were filed by the Ukrainian Figure Skating Federation (UFSF) and by Ms Kruglova and not only by the UFSF.*

*Falling such a confirmation within the time limit set, the Panel will consider the Appeal of Ms Kruglova as not being receivable.*

*Should such document not be provided by Ms Kruglova, the UFSF is then invited to let the Panel know, also by fax and within two weeks, if it maintains or withdraws any of its requests for relief.*

32. In his answer of September 26, 2013 Counsel of the Appellants referred again to an oral agreement with Ms. Kruglova prior to filing the Statement of Appeal to CAS but continued to say:

*Unfortunately, after this, Ms. Kruglova informed the UFSF with a letter that even though she is not considering herself guilty, she is not going to appeal against the Decision of ISU Disciplinary Commission ... and participate in any relating hearings, because of her poor financial and health conditions.*

*Nevertheless, especially in such situation Ukrainian Figure Skating Federation doesn't find it justified to bear the cost of the hearing of the ISU Disciplinary Commission and asks the CAS to reconsider the Decision of ISU Disciplinary Commission dated May 30, 2013 ... and cancel imposition of costs of the hearing (room and travel expenses of the panel and the witness) of the ISU Disciplinary Commission on Ukrainian Figure Skating Federation.*

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 8

33. The CAS Court office acknowledged this letter on October 4, 2013 saying:

*I note that Ms Kruglova is not appealing the Decision issued by the Disciplinary Commission on 30 May 2013 ("the Decision"). Consequently, and on behalf of the Panel, you are advised that the appeal allegedly filed on her behalf by Mr Spasov on 26 June 2013 is inadmissible and that Ms Kruglova is not a party to the present CAS procedure.*

*Furthermore, I understand that the UFSF is not requesting anymore the cancellation of the whole Decision, but only point 4 of its operative part. If my understanding is incorrect, please inform the CAS Court Office accordingly by fax on or before 8 October 2013.*

34. In its reply of October 8, 2013, the Appellant reiterated its previous statements regarding the oral agreement with Ms. Kruglova and the her decision not to appeal against the decision and continued by writing:

*Nevertheless, UFSF still [recte: is] of the position that Ms. Kruglova is not guilty of the charges and requests the CAS to reconsider points 1-3 of the Decision.*

He also maintained his prayer for relief regarding point 4 concerning the imposition of costs.

35. On October 22, 2013 the CAS Court office on behalf of the Panel informed the Parties that the Appellant maintained all its requests for relief and offered both parties the opportunity to submit within 10 days their final observations, which should also address the consequences of the inadmissibility of the appeal allegedly filed by Ms. Kruglova.
36. On October 31, 2013 the Appellant confirmed his requests for relief aiming at an entire reformation of the contested Decision. Further arguments were brought forward questioning the credibility of Ms. Diana Stevens' testimony before the DC as well as the credibility of the statements of Referee Mr. Jeroen Prins and of the complainants, in particular Mr. Peter Krick. Furthermore the Appellant reiterated the opinion that the UFSF was not aware of the proceedings before the ISU DC and that Ms. Makarova, UFSF Secretary General, when forwarding the answer of Ms. Kruglova "just performed mechanical procedure ... on behalf in respect of Ms. Kruglova".
37. Also on October 31, 2013 final written observations were submitted by the Respondent confirming the motion to dismiss UFSF's appeal, Ms. Kruglova's appeal having already been declared inadmissible. ISU maintained the position that points 1 to 3 of the contested Decision were personal to Ms. Kruglova and did not affect the Appellant, who therefore had no standing to appeal against these points. The Respondent considers the letter of the Appellant of September 26, 2013, which explicitly only referred to the costs of the hearing of the ISU DC, as an "unambiguous withdrawal of Appellant 2's appeal against points 1 - 3 of the challenged Decision". Therefore, according to the Respondent, the review of the CAS should be limited to point 4 of the challenged decision. In case the Panel should nevertheless decide to review points 1 to 3 the Respondent maintains that the findings against Ms. Kruglova have to be confirmed for the reasons set out in the Answer and



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 9

Statement of Defence. The ISU went on to comment on the question of cost and pointed out to the fact that point 3 ("The Complainants and Ms. Kruglova shall bear their own costs") was never challenged by the Appellant.

38. On November 15, 2013 the CAS Court office submitted to the Parties an Order of Procedure in which the Parties agree to refer the present dispute to the CAS and to declare the Swiss Private International Law (PILS) to be applicable to the exclusion of any other procedural law. The Order furthermore states:
- that the jurisdiction of the CAS is not contested by the Respondent;
  - that the language of the arbitration is English;
  - that the parties confirm that their right to be heard has been respected and
  - that Panel is sufficiently informed to decide the matter without the need to hold a hearing.
39. The Appellant returned the signed Order of Procedure on and dated with November 15, 2013. The Respondent's Order was signed and returned to the CAS Court office on November 25, 2013.
40. On December 4, 2013 the CAS Court office asked the Parties to provide to the Panel the amount of costs of the proceedings before the ISU DC which were imposed on the Second Appellant.
41. On December 6, 2013 the Respondent submitted to the CAS Court office a listing of the costs of the hearing held on February 13, 2013 in Frankfurt. The costs amount to CHF 5'376.47 (travel expenses CHF 3'350.93, hotel & meals CHF 628.99, meeting room & various CHF 1'396.55). On the same day the Appellant informed the CAS Court office that the UFSF had so far no knowledge of the costs "but regardless of the amount of such costs, UFSF finds it unjustified to bear them".

#### IV. CAS JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

##### **A. CAS jurisdiction**

42. Article R47 of the Code of Sports-related Arbitration ("CAS Code") provides, in part, as follows:

##### **Article R47 Appeal**

*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.*

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 10

43. Article 24.12 and Article 25 of the ISU Constitution and General Regulations 2012 provide that Appeals against decisions of the Disciplinary Commission may be filed with the Appeals Arbitration Division of the CAS. With their signature on the Order of Procedure the Parties have explicitly accepted the jurisdiction of the CAS. The Panel therefore has jurisdiction to consider the Appeal insofar as it has been upheld.

**B. Inadmissibility of the Appeal of Ms. Kruglova**

44. Article R30 of the CAS Code on "Representation and Assistance" provides, in part, as follows:

*The parties may be represented or assisted by persons of their choice. ...  
Any party represented by an attorney or other person shall provide written confirmation of such representation to the CAS Court Office.*

45. The Statement of Appeal and the Appeal Brief were allegedly filed by Mr. Mykhailo Spasov as representative of Ms. Kruglova as well as of UFSF. A confirmation of representation signed by the President of the UFSF was presented. Subsequently Counsel of the UFSF was unable to submit such a power or a confirmation to that effect signed by Ms. Kruglova and based his power on an oral agreement with her only. In his answer of September 26, 2013 to an order of the CAS Court office of September 25, 2013, he informed the Panel that Ms. Kruglova abstains from appealing against the Decision of the ISU DC (see para. 32).
46. The Appeal allegedly filed on her behalf on June 26, 2013 is therefore inadmissible based on Article R30 of the CAS Code, respectively considered as withdrawn, based on Article R51 of the CAS Code. The CAS Court office has informed the parties and their Counsel accordingly on October 3, 2013. Ms. Kruglova was hence force not a party to this procedure (see para. 33).

**C. Admissibility of the Appeal of the UFSF**

47. For the Appeal Statement and the Appeal Brief of June 26 respectively July 5, 2013 Counsel of UFSF submitted a letter of the President of this Federation dated June 26, 2013 entrusting him with the representation before the CAS.
48. The appeal was furthermore filed within the deadlines provided by the ISU Rules. It complied with all other requirements of Article R48 of the CAS Code, including the timely payment of the CAS Court office fee of CHF 1'000 by the Appellant. It follows that the appeal is admissible, insofar as it has been submitted by the UFSF.
49. UFSF was summoned by the USI DC to the proceedings as the "Interested ISU member". The costs of the proceedings before the Commission were imposed on it. It therefore has a particular interest worth of protection to have the challenged Decision reviewed in an arbitration procedure at least regarding the imposition of costs. The question, whether UFSF has an interest to also review the findings of the ISU DC with respect to the conduct

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 11

of Ms. Kruglova and the two year suspension is not relevant in view of the admissibility of the Appeal. This will have to be considered later under the merits of the appeal.

#### **D. Applicable Law**

50. Article R58 of the CAS Code provides as follows:

##### Article R58 Law Applicable

*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

51. In the case at hand the "applicable regulations" within the meaning of this provision are the Statutes of the ISU and the Rules and Regulations derived there from, in this particular case the ISU Special Regulations and Technical Rules for Single and Pair Skating and Ice Dance 2012 (section "Regulation for Officials in Single & Pair Skating and Ice Dance"), the ISU Code of Ethics 2012 (ISU Communication No. 1717) and the ISU Disciplinary Commission Rules of Procedure (ISU Communication No. 1419). There is no dispute as to the applicability of the ISU Rules.
52. The ISU having its seat in Lausanne, Switzerland, and the seat of the CAS also being in Lausanne, Switzerland, the Panel will, in the absence of a choice of law by the parties and where the ISU Rules are mute, apply Swiss material law and the procedural law for international arbitration as set out in the Swiss Private International Law (PILS).

#### **V. MERITS OF THE APPEAL**

##### **A. Appeal against the sanctions imposed on Ms. Natalia Kruglova**

53. Even after the decision of inadmissibility of the appeal allegedly filed by Ms. Kruglova, UFSF maintains its requests for relief and asks the CAS to reconsider the entirety of the challenged decision including points 1 to 3. The Respondent on the other hand argues that the sanctions imposed on Ms. Kruglova are personal to her and do not affect the Appellant, wherefore the review of the CAS should be limited to the issue of costs, e.g. point 4 of the challenged decision.
54. The Panel has thoroughly examined the question, whether the Appellant had standing to sue with respect to points 1 to 3 of the challenged decision. At first sight one might follow the view of the Respondent. A sentence pronouncing a person guilty of misconduct and of a violation of ethical rules certainly affects only the person concerned and has "a priori" no

negative side effect on the National Federation concerned or its officers. The same goes to some extent for the suspension of two years, although one might argue that the National Federation thereby loses one of its ISU Judges and is compelled to nominate a replacement, a process which might last for several months, possibly with the consequence that the Federation has one ISU Judge less for one whole season.

55. For the following reasons however the Panel comes to the conclusion that UFSF has standing to appeal even against points 1 to 3 of the challenged Decision:

The ISU DC has summoned the UFSF as "Interested ISU member". According to Article 5 of ISU Disciplinary Commission Rules of Procedure the parties to the proceedings before the DC are the Alleged Offender, the ISU, and also "*any Complainant or other participant in ISU activities having a personal legitimate interest if such interest may be directly affected by the proceedings or by the Decision to be rendered by the DC; ...*". UFSF did not request to be admitted as a party but became a party to the proceedings without having applied for that quality or even shown an interest more than assisting Ms. Kruglova in her defence by forwarding her response to ISU DC and supporting it in its letter of December 19, 2012 (see supra para. 10). The Respondent justifies the calling of the UFSF by quoting Rule 411 para. 2 (ISU Regulation for Officials in Single & Pair Skating and Ice Dance) which "*imposes upon its Members the obligation to exercise the utmost care to nominate as Officials only individuals, who are competent, reliable, trained, tested and impartial. The ISU Member Federations thus bear responsibility for assuring that their nominated ISU judges live up to the high degree of integrity and ethical behaviour requested by its rules*".

The Panel is of the opinion that it was correct by the ISU DC to invite UFSF to the proceedings according to Article 5 of ISU Disciplinary Commission Rules of Procedure. Hence the UFSF became a party of the proceedings before ISU DC.

By declaring Ms. Kruglova guilty of misconduct and violation of the Code of Ethic implicitly the ISU DC implies, that the UFSF has not exercised the required care when nominating Ms. Kruglova as an ISU Judge. Therefore the Appellant has a legitimate interest to have the sentencing of Ms. Kruglova reviewed.

Furthermore the ISU DC justifies the imposition of all of the costs of the proceedings onto the Appellant merely with the fact, that Ms. Kruglova was found guilty. Should the CAS Panel come to the conclusion, that the sanction against Ms. Kruglova was unjustified, the basis for an imposition of costs onto the Appellant would vanish. Finally, the Panel underlines, that contrary to the Respondent, it does not consider the Appellant's letter of September 26, 2013 as an unambiguous withdrawal of the appeal against points 1 to 3 of the challenged decision and this is especially the reason why the Appellant was granted the possibility to clarify this point, which it did within the set time limit (see supra para. 33 to 35).

For all these reasons the Panel finds that the Appellant has standing to challenge the entirety of the challenged Decision.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 13

56. The Panel "has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance" (Article R57 of the Code).

57. In the present dispute the testimony of the main witness, Ms. Diana Stevens, stands against the word of Ms. Natalia Kruglova. The Panel has offered to hold a hearing with the purpose of confronting the witness with the alleged offender and by that to obtain a direct and more profound insight into the conversation that took place before the Seniors Pairs Competition of the "Cup of Nice" on October 25, 2012.

Such a hearing became obsolete since Ms. Kruglova informed the UFSF in a letter, that even though she did not consider herself guilty, she would not appeal against the Decision of the ISU DC and would not participate in any related hearing (see supra para. 32). There is no request from the side of the Appellant to summon Ms. Kruglova as a witness.

The Panel therefore must consider the history of this case on the presentation of the facts in the written submissions and in their exhibits.

58. The complaint filed with the ISU DC by Mr. David M. Dore (ISU Vice President for Figure Skating) and Mr. Peter Krick (Chair ISU Sport Directorate) was based on a report submitted by the ISU Judge Ms. Diana Stevens to the Referee of the event in Nice and a subsequent report of the Referee to the Complainants. Ms. Stevens wrote on October 25, 2013:

*Competition International Cup of Nice Senior Pairs Competition*

*On entering the Ice Rink Cafe I was invited by Natalia Kruglova (UKR) to join her table. No one else was present. I was then asked of when judging the Senior Pairs Competition would give the Ukraine couple Julia Lavrentleva & Yurty Rudyk a "+1" instead of a "0" "as they need as many points as possible to qualify". I am not aware for what.*

*I was distressed to have been approached in the manner. I see it as a slight on my integrity and corruption of the judging system.*

*Diana Stevens*

*Judge at the above event*

59. In the hearing before the ISU DC of February 13, 2013 Ms. Diana Stevens confirmed the content of her report. She described the events in the Ice Rink Cafe in more detail saying:

*When I was getting my soup suddenly Natalia Kruglova asked me: 'Diana, come and sit with me!' Behind me all the tables were full but in front of me they were all empty. If she hadn't said that to me I would have gone to one of the other tables. As I was having my soup Natalia bent over to me and touched my arm and just said: 'O Diana I have something to ask you. Please, when you are judging my couple this afternoon, you know they need every mark they can get. So please will you, when you think of giving them a Zero, please give them a Plus, because that will help them.'*

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 14

She recounted how she felt and how she went on to speak with the Referee in confidence after the competition.

60. Ms. Kruglova did not appear at the hearing but submitted a written Statement of Reply. Regarding the encounter with Ms. Diana Stevens in the Ice Rink Cafe she said:

*I was in a state of shock when I've got ISU statement of complaint where I am the Alleged Offender in corruption of the judging system.*

*I really have had lunch on October 25, during the International Cup of Nice-2012 on the ice rink before SP pair skating. Few minutes later Ms. Diana Stevens, GBR came to this cafe and asked me about a free place at my table. Of course, she was invited, but I was not looking forward to meet her on purpose before SP, After SP, before FS, after FS. We were talking about figure skating in general and that skaters are now travelling from competition to competition trying to earn min. technical score. But I did not mean to improve the marks for Ukrainian pair. It's very pity that any conversation between the judges can be interpreted as a conspiracy or pressure.*

*And what was the point for me to ask her to push the plus instead of a zero?*

She then went on to expose the current standing of the Ukrainian pair and the fact that they already had the minimum technical score for the European Championships and for the World Junior championships while even a +1 or +2 would not allow them to earn the necessary points for the World Senior Championships as they did not execute the required 3TW and 3 solo jumps. She also submitted that her marks for the other pairs in the SP event showing, that she had given equally positive scores for all of them in accordance with the ISU Rules.

61. When confronted with the reply of Ms. Kruglova at the hearing Ms. Stevens said:

*I can't believe the statement. I am shocked totally. She called and beckoned me, Diana, come and sit with me! It is my custom to never talk about a competition with anyone before the event." She went on to say: "I was shocked and surprised. In all the years of judging no one has asked me to do anything like that. I was upset and horrified. I have been judging since 1972." and further: "I did not know her personally but it's funny she befriended me during the time" and further: "It is totally false that I asked her to sit down at my table. I vaguely knew her. I never had any relationship or any confrontation with her in the past."*

62. In the Appeal Brief and in the final submission of October 31, 2013 the Appellant challenges the credibility of the witness Ms. Diana Stevens as well as the credibility of the Event Referee Mr. Jeroen Prins and of the complainant Mr. Peter Krick, who was also heard at the hearing of February 13, 2013 in Frankfurt.

63. As to the credibility of Ms. Diana Stevens the Appellant questions the testimony of the witness pretending she did not know Ms. Kruglova personally and substantiates this plea

by referring to the ISU World Junior Figure Skating Championships 2012 where both were ISU Judges and had had personal conversations.

This plea was not raised before the ISU DC. The fact that two ISU Judges were on the panel of the same event does not per se allow the conclusion that they have had personal contacts in the sense of a personal relationship. To "know" one another, to greet one another by politeness or to exchange casual words, as this would be usual amongst Judges serving on the same panel, does not mean that one knows a person "personally". The Panel therefore has no reason to question Ms. Stevens' credibility because she said that *"she did not know her personally"*.

64. The Appellant also challenges the credibility of the Event Judge Mr. Jeroen Prins and considers him as having been prejudiced against Ms. Kruglova.

Mr. Prins was not a witness before the ISU DC. He merely reported the incident to the ISU Officials and provided the written statement of Ms. Diana Stevens in his Referee's Report on the Seniors Pairs Skating Event. The Panel will nevertheless consider the pleas brought forward against Mr. Prins as the ISU DC has to large extent relied on his Report.

65. In the substance the pleas against Mr. Jeroen Prins aim in three directions:

a) Mistake in the Referee's Report:

The Appellant cites the Report of the Referee for Single & Pair Skating at the "Cup of Nice", in which Mr. Prins stated that Ms. Stevens had been approached by Ms. Kruglova *"in the judges' room"*, whilst instead the witness had testified that she was invited to the table of Ms. Kruglova in the cafe. It concludes from this erroneous statement that Mr. Prins' credibility as a whole must be questioned and that the Referee was prejudiced against Ms. Kruglova.

In fact it is undisputed that Ms. Kruglova and Ms. Stevens met in the cafe whilst having lunch. The Referee added in copy the written report of Ms. Stevens. There from it clearly derives that the conversation took place in the cafe. Insofar the report contains an obviously unintended mistake which however is not significant in the context of the incident reported by the Referee.

The Panel cannot follow the Appellant's argument that such a mistake jeopardises the credibility of the Referee or of Ms. Stevens. This plea must be dismissed.

b) Violation of ISU Rule 432, Special Regulations & Technical Rules 2012 and judging mistakes

A further plea refers to an alleged violation of ISU Rule 432 by Mr. Prins because in his report he only provided *"compare statistics of the skaters, but not the general quality of skating"*.

He quotes the following from what Mr. Prins has written *"in his report"* (point 7):

*Mr. Jeroen A. Prins has also written in his report: "I know we should not add up or compare in this way, but this is to illustrate the fact that to me this judging*

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSP v. ISU - Page 16

*looks like a national bias. Also in the round table she was really fighting and pushing for this skater".*

This quotation is not, as the wording of the Appeal Brief might suggest, taken from the report on the Seniors Pairs Event but from a report on the Juniors Ladies Event (see lit. c below). This second report was not submitted to the Panel but it is undisputed that Mr. Prins was also the Referee to the Juniors Ladies Event and the author of this report.

The Appellant goes on to say that Mr. Prins made mistakes in judging in the Senior Men Event at NRW Trophy in Dortmund (Germany) on December 5 to 9, 2012. To substantiate this plea ISU Communication No. 1724 and the "Judges Details per Skater" at that event were submitted. According to the Appellant these mistakes could not be considered as "simple errors" but "*shall be subject for Mr. Jeroen A. Prins' credibility to be questioned*".

Neither the quality or completeness of the Referee's report nor the quality of Mr. Prins' judging at a previous event or the question whether Mr. Prins acted in accordance with the ISU Rules are at stake in this disciplinary procedure. Mr. Prins simply fulfilled his task to report an incident, which had been reported to him by one of the Judges. It was also not his duty to hear the alleged offender at this stage. He reported so that the ISU officials could evaluate, if the case should be submitted to the ISU DC for further consideration.

The Panel therefore cannot follow the Appellant and doesn't see any circumstances in the way Mr. Prins reported the incident, which could raise doubts as to his credibility. The plea is unfounded and must be dismissed.

**c) Alleged prejudice of Mr. Prins**

The third plea raised by the Appellant again relates to the Juniors Ladies Event and not the Seniors Pairs Event. The Appellant cites as follows:

*According to Mr. Jeroen A. Prins "in the round table discussion Ms. Natalia Kruglova was really fighting and pushing for the Ukrainian skater. That indicates that Ms. Kruglova not only has tried to influence the witness but that she herself has favored skaters from the Ukraine unjustified"*

As a preliminary remark the Panel notes that this quotation does not reflect a statement of Mr. Prins or an extract from his Referee Report but a conclusion of the ISU DC.

The finding of the ISU DC was based on a statement made by Mr. Peter Krick, Chair of ISU Sports Directorate, at the hearing of February 13, 2013. Mr. Krick had drawn the attention to the DC that the Referee to the Ladies Junior Event had put in his Report:

*Ms. Kruglova favoured her own skaters enormously and she pushed at the round table discussion very heavily in favour of her skaters.*

The relevant passage from the respective Referee's Report is cited in the challenged decision as follows:

*Judging of Ms. Kruglova (UKR):*

*Short Program: the component marks for Ukrainian skater are the highest she gave in the competition. The skater finished 6<sup>th</sup> on components in this segment.*



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 17

*Free skating: based on her total score for components, she would have placed the Ukrainian skater 5<sup>th</sup>. The skater finished 12<sup>th</sup> on components in this segment. ... to me this judging looks like a national bias. Also in the round table she was really fighting and pushing for this skater."*

*(Report of the referee of the Juniors Ladies event, of November 5, 2012).*

The Appellant holds that Mr. Prins has violated ISU Rule 432 whereas judges are "encouraged to express their opinion".

The Panel rejects this plea as well. As Referee to the Seniors Pairs Event he had to report on all the relevant events (Rule 433 para. 1 of ISU Special Regulations & Technical Rules). In no way could he have ignored the allegations made by Ms. Diana Stevens, all the more that he was handed a written account of the incident by the Judge concerned, which he added in copy to his report.

In summary all the pleas submitted by the Appellant regarding the credibility and the alleged prejudice of Mr. Jeroen Prins must be dismissed.

66. The Appellant also challenges the credibility of Mr. Peter Krick. The pleas go in two directions:

a) Prejudiced report at the hearing of February 13, 2013

According to the Appellant, Mr. Krick has shown prejudice in the way he made allegations at the hearing of February 13, 2013 "on the basis of the report of Mr. Jeroen A. Prins, namely 'Ms. Kruglova favored her own skaters enormously and she pushed at the round table discussion very heavily on favor of her skaters'".

This quote is taken from the Minutes of the Hearing of the ISU DC. The ISU DC heard Mr. Krick not as a witness but as one of the complainants. Mr. Krick drew the attention of the ISU DC to a passage from the Referee's Report on the Juniors Ladies Event. It was his duty to inform the ISU DC on all the aspects which might be relevant to establish and evaluate the facts surrounding the judging at the "Cup of Nice", in particular with regard to the judging of Ms. Kruglova.

The Panel cannot see any prejudice or "misrepresentation of facts" - as alleged by the Appellant - in the way Mr. Krick as a complainant put "his case" before the ISU DC. The plea must therefore be dismissed.

b) Misinterpretation of ISU Rules by Mr. Krick

In its Appeal Brief the Appellant quotes from the challenged Decision which refers to the statement of Mr. Krick whereas "the Ukrainian couple needed to reach 28 points on the short program and 45 points in the free program for a qualification, which they could easily reach if the judges would increase the Grade of execution of the 8 elements in the short and 13 elements in the free program".

The Appellant draws the attention of the Panel to Rules 520 and 521 of the Special Regulations & Technical Rules 2012 which provide that a Short Program for Pairs consists of 7 (and not 8) required elements and that a Senior Well Balanced Program must contain

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 18

a maximum of 12 (and not 13) elements. The Appellant is of the opinion that *"such a misinterpretation of the Rules by Mr. Krick shall be valued as prejudice towards Ms. Kruglova, and his credibility shall be questioned"*.

The Respondent doesn't contest that the figures mentioned by Mr. Krick were not those of the 2012 Rules. Mr. Krick inadvertently overlooked that these figures were lowered in 2008 respectively in 2010. However, according to the Respondent the indication of wrong numbers of elements does not change anything about the relevant part of his statement.

In view of the Panel, in the context of the dispute at hand, the figures mentioned by Mr. Krick - whether right or wrong - are not of significance. One cannot derive from the error made by Mr. Krick that he was prejudiced against Ms. Kruglova or that his credibility is to be questioned.

The Panel therefore concludes that this plea of the Appellant is not substantiated and must be dismissed.

67. The Appellant puts forward the fact that Ms. Kruglova had given high marks to every couple and to the single skaters in the Ladies Junior Event and that her marks were in the "corridor" of the panel's marks and therefore within the ISU Rules. The Appellant also invokes an oral statement of Mr. Prins at the Round Table Discussion of the Judges whereas all the Judges had done well with their duties.

Furthermore in her Statement of Reply submitted to the ISU DC (with the letter of UFSF dated December 19, 2012) Mr. Kruglova had explained that the Ukrainian pair already had the necessary minimum technical score to qualify for the European Championships and the World Junior Championships, but could not earn the necessary points for the World Senior Championships even if the pair would receive +1 or +2 for all their elements. Therefore in the view of Ms. Kruglova the interpretation of her conversation with Ms. Stevens was based on a misunderstanding.

The ISU DC has given full consideration of this Statement of Reply. The marking of Ms. Kruglova in the Seniors' Pairs and the Ladies' Junior Event was not determinant for the imposition of a sanction but merely a further element to assess the credibility of Ms. Stevens testimony.

The oral statement of Mr. Prins was made immediately after the competition at the Round Table Discussion. It was of a general nature and it cannot be expected that the Referee had already made an in depth analysis of all the marks at that point of time.

The ISU DC had all the elements and the specific expertise to compare the marks while the Panel neither has the expertise to re-evaluate the submitted records of the Judges' marking nor received any further proofs that the rationale of the ISU DC was erroneous.

It followed the conclusions of the Referee and the complainants that the marking of Ms. Kruglova at least gave an indication regarding the favouring of the Ukrainian skaters.

The Panel is of this opinion and finds that the arguments brought forward by Ms. Kruglova, even if they were founded, would in any event not be sufficient to

- counterbalance the evidence provided against Ms. Kruglova, who for the reasons mentioned below, justified the imposed sanction.
68. The essential point in this dispute is the testimony of Ms. Diana Stevens at the Hearing of February 13, 2013 where she confirmed her report to the Referee of the event and exposed in more detail the events that led her to inform the Referee about the conversation she had with Ms. Kruglova. Evidently her depositions are countered by the written Statement of Reply Ms. Kruglova had submitted to the ISU DC. A confrontation of the witness with the alleged offender was not possible, as Ms. Kruglova was unable to attend the meeting.
- The ISU DC diligently weighed the testimony of Ms. Stevens against the submissions of Ms. Kruglova. It came to the conclusion that Ms. Stevens' testimony was credible and that she had no reason whatsoever to accuse Ms. Kruglova in an unjustified manner.
69. The Panel has offered both Parties to hold a hearing with the aim to gain a personal impression of the witness as well as of the alleged offender and to be in a position to evaluate the credibility of the controversial statement. For the reasons set out above (see para. 27 to 30) such a hearing in the presence of both the concerned Judges was not possible. Evidently it would have been to no avail to hear for a second time only Ms. Stevens as a witness.
70. In the Arbitration before the CAS the Panel has "*full power to review all the facts and the law*" (Article R57 of the CAS Code). This rule is understood to give the Panel the right to consider the subject matter of the dispute "*de novo*", evaluating all of the facts and the application of the law and to issue a new decision. The Panel is not limited to assessing the correctness of the previous procedure and decision and even has the duty to make its independent determination of whether the Appellant's contentions are correct (CAS 2008/A/1574 para. 20, 30 and 31; CAS 2007/A/1394, para. 21, CAS 2009/A/1880-1881, para. 146).
71. However this implies that the Panel is given the opportunity to review the evidence on which the decision of the first instance was based, in particular to rehear the witnesses and the parties and if relevant the experts. If this, as in the present case, is not possible, and new evidence has not been submitted to the Appeal Tribunal, the Panel has to rely on the findings of the first instance. It can only review the Decision if it has reasons to assume that the facts do not reflect the relevant elements of the case, the evidentiary proceedings before the first instance were incomplete or that the first instance drew erroneous legal conclusion from the facts established through the evidentiary proceeding. As long as the first instance has exercised its discretion correctly the Panel will not intervene (see CAS 2010/A/2090 para. 7.21, 7.30 and 7.32).
72. The ISU DC has interrogated the witness Ms. Diana Stevens and has found her testimony trustful. In the hearing of February 13, 2013 the witness was confronted with the Statement of Reply and she replied to various questions of the DC. The DC found her to be very sincere, believed her description of the incident with Ms. Kruglova and saw no reason why the witness should accuse Ms. Kruglova in an unjustified way.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 20

73. As Ms. Kruglova failed to, at least validly, appeal and refused to appear before the Panel, and as the UFSF did not call her as a witness, the Panel cannot but rely on the findings of the ISU DC and the written submissions of the Parties with the exhibits produced. In view of the Panel the ISU DC has exercised its discretion correctly in the way it balanced the depositions of the witness against the arguments in defence submitted by Ms. Kruglova.

The prayers for relief of the Appellant regarding points 1 and 2 of the challenged Decision therefore shall be dismissed. The Decision of the ISU DC regarding the misconduct and the violation of the duties of judges and the ISU Code of Ethics 2012 and the suspension of two years as an ISU Judge imposed on Ms. Kruglova shall be upheld.

74. The Appellant also maintained its request to reconsider point 3 of the challenged Decision. Point 3 of the challenged decision reads: *The Complainants and Ms. Kruglova shall bear their own costs.*

75. The ISU DC has applied article 15 point 1 of the ISU Disciplinary Commission Rules of Procedure (Answer and Statement of Defence, Exhibit 23) which reads:

1. *Unless otherwise decided by the DC, each Party involved in the proceedings shall bear their own costs, including all costs of witnesses, experts and interpreters called by such party.*

The Appellant has not substantiated to what extent it has incurred costs in connection with the Hearing of February 13, 2013. It has not participated in the Hearing nor has it called any witnesses or experts. Its part in the proceedings seems to be limited to the forwarding of Ms. Kruglova's Statement of Reply.

For lack of substantiation the Panel also dismisses this request for relief.

#### **B. Appeal against the imposition of costs of the ISU DC Hearing**

76. The challenged Decision imposes the costs of the Hearing held on February 13, 2013 before the ISU DC entirely and exclusively on the Appellant (point 4 of the challenged Decision).
77. Upon request of the Panel, the Respondent has submitted a summary of these costs. They amount to CHF 5'376.47 (travel expenses of panel members and witness CHF 3'350.93, hotel & meals CHF 628.99, meeting room & various CHF 1'396.55).
78. The ISU justifies the imposition of all of the costs onto the Appellant, e.g. the "Interested ISU Member" summoned to the proceedings as a party, with reference to article 15 of the ISU Disciplinary Commission Rules of Procedure.

This article reads as follows:

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 21

Art. 15 - Costs of Proceedings and Parties' Expenses

1. *Unless otherwise decided by the DC, each Party involved in the proceedings shall bear their own costs, including all costs of witnesses, experts and interpreters called by such party*
2. *Unless otherwise decided by the DC, costs related to the participation of witnesses, experts and interpreters invited at the DC's own discretion shall be borne by the ISU*
3. *As part of its Final Decision, the Panel may decide upon who shall bear or share the costs involved in the proceedings, hearings and/or to the participation of witnesses, experts, interpreters and legal representations and assess those costs accordingly. Costs may be assessed against any Party as deemed just by the DC in the circumstances.*

79. The Appellant was called to the proceedings of the ISU DC as "Interested ISU Member". UFSF has not participated in the Hearing of the ISU DC nor has it submitted a Statement of Reply to the ISU DC but merely forwarded through UFSF General Secretary Ms. Anastasiya Makarova the reply of Ms. Kruglova accompanied with a two-line letter signed by its President. The Appellant pretends not having been aware of the proceedings. Ms. Makarova *"just performed mechanical procedure of sending email on behalf and respect of Ms. Kruglova"* (see para. 36).
80. In its Answer and Statement of Defence, the Respondent exposes the reasons, why the UFSF was called to the proceedings of the ISU DC as "Interested ISU Member" and recalls the responsibility of the ISU Member Federations to exercise the utmost care when nominating officials and hence taking responsibility for their integrity. The UFSF therefore had *"a personal legitimate interest which may be directly affected"* in the sense of article 5 para. 1 of the ISU Disciplinary Commission Rules of Procedure.
- The Respondent however goes to say quite frankly that the calling of the UFSF as party *"was justified exactly because of the possibility of imposing the costs upon Appellant 2"*.
81. The Panel notes a certain contradiction in the arguments of the Respondent. On the one hand the Respondent considers the National Federation to have a legitimate interest when a case of misconduct is investigated by the ISU DC - because of its responsibility for the integrity of the person concerned - on the other hand ISU contested the standing of the Appellant to appeal against the disciplinary sanctions imposed on the Official it had nominated.
82. The Respondent even explained that it had called the Appellant as party only with the purpose to possibly impose costs on it.
83. The Appellant was evidently only a very passive Party to the proceedings against Ms. Kruglova. Throughout the entire proceedings it remained mute. In the centre of the proceedings stood Ms. Kruglova and her behaviour.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSF v. ISU - Page 22

84. Article 15 para. 3 of the ISU Disciplinary Commission Rules of Procedure gives the ISU DC a broad discretion when deciding on the bearing of costs. The DC "may" decide upon who shall bear the costs. The costs may be assessed against any Party "as deemed just" taking into account "the circumstances".
85. The ISU DC obviously imposed all the cost on the "Interested ISU Member" for a very practical reason in view of the settlement of its claim. The Panel considers this not to be a "just" decision which takes into account all the circumstances of the case at hand. Using its discretion the ISU DC should have imposed a part of the costs onto the offender and a part onto the "Interested ISU Member", if deemed appropriate declaring both sides - or only the Federation - to be jointly or severally liable. This would have given the Appellant a possibility to reclaim part of the costs from Ms. Natalia Kruglova in case the ISU would have collected all the costs from the Federation.
86. Within its power to review all the facts and the law (Article R57 of the CAS Code) the Panel therefore partly admits the request for relief of the Appellant and reforms point 4 of the challenged decision in the sense that only half of the costs of the Hearing before the ISU DC are to be imposed on the UFSF.

VI. COSTS

87. Pursuant to Article R65 of the CAS Code, the present appeal which is directed against a decision which is exclusively of a disciplinary nature and which was rendered by an international federation shall be free, except for the CAS Court Office fee already paid by the Appellant.
88. Article R65.3 of the Code provides that the parties shall pay for the costs of its own witnesses, experts and interpreters. The Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.
89. Having taken into account the outcome of the present procedure, as well as the conduct and financial resources of each of the parties, the Panel deems that each party shall bear its own costs.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2013/A/3227 UFSP v. ISU - Page 23

### ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal allegedly filed on behalf of Ms. Kruglova is inadmissible.
2. The appeal filed by the Ukrainian Figure Skating Federation against points 1 to 3 of the challenged decision is dismissed and points 1 to 3 of the decision issued by ISU on May 30, 2013 are therefore confirmed.
3. The appeal filed by the Ukrainian Figure Skating Federation against point 4 of the challenged decision is partly admitted.
4. Point 4 of the decision issued by ISU on May 30, 2013 is reformed as follows:  
"Half of the cost of the hearing (room and travel expenses of the panel and the witness) are imposed on the Ukrainian Figure Skating Federation"
5. This award is pronounced without costs, except for the Court Office fee already paid by the Appellant, to be retained by the Court of Arbitration for Sport.
6. Each party will bear its own costs.
7. All other requests for relief are rejected.

Seat of arbitration: Lausanne, Switzerland

Date: 21 January 2014

### THE COURT OF ARBITRATION FOR SPORT



Guy J. Feldlin  
President of the Panel