

INTERNATIONAL SKATING UNION

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To: ISU Members

1. Appeal by Sonia Bianchetti against the Council decision rejected by both the ISU Appeals Commission and the CAS

As published in ISU Communication No. 1217, the Council decided to withdraw the award of ISU Honorary Referee from Mrs. Sonia Bianchetti as a result of her role in the formation of, and ongoing association with the World Skating Federation. Mrs. Bianchetti filed an appeal with the ISU Appeals Commission.

The ISU objected to the jurisdiction of the Appeals Commission on the grounds that the case did not fall under Article 22, paragraph 1 of the ISU Constitution.

On November 7, 2003 the Appeals Commission rendered a decision rejecting the appeal of Mrs. Sonia Bianchetti as "not admissible to the jurisdiction of the ISU Appeals Commission." Mrs. Bianchetti then filed an appeal with the Court of Arbitration for Sport (CAS).

The ISU opposed the jurisdiction of CAS on the grounds that the case did not fall under Article 23, paragraph 1 of the ISU Constitution and filed a motion that the appeal be dismissed without hearing the case on its merits.

On February 16, 2004 the President of the CAS Appeal Arbitration Division rendered an Order in which he ruled that the CAS has no jurisdiction to hear the appeal filed by Sonia Bianchetti on 11 December 2003.

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2. Appeals by Judit Fürst-Tombor and Janet E. Garden rejected by the Appeals Commission

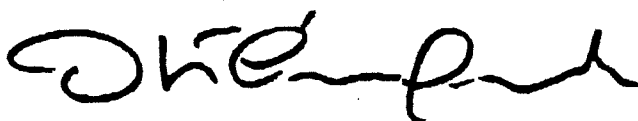
In June 2003 the Technical Committees, acting under the powers granted to them by Article 19, paragraphs 3b, (ii) of the ISU Constitution and due to the fact that the ISU had been informed that these persons had resigned from their positions as ISU Referees/Judges, did not include Mrs. Judit Fürst-Tombor nor Mrs. Janet E. Garden within the List of Referees and Judges. The Council then approved this List which was subsequently published in Communication No. 1223.

Following an exchange of correspondence between the persons concerned and the ISU Secretariat, on December 16, 2003, both Mrs. Judit Fürst-Tombor and Mrs. Janet E. Garden filed two identical appeals with the ISU Appeals Commission against the above actions of both the Technical Committees and the Council.

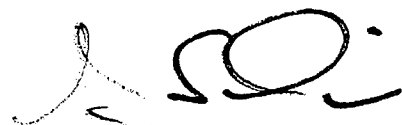
The ISU objected to the jurisdiction of the Appeals Commission on the grounds that the case did not fall under Article 22, paragraph 1, of the ISU Constitution.

On January 29, 2004 the Appeals Commission rendered two decisions rejecting the appeals of both Mrs. Judit Fürst Tombor and Mrs. Janet E. Garden as "not admissible to the jurisdiction of the ISU Appeals Commission."

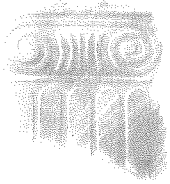
With kind regards,



Ottavio Cinquanta
President



Fredi Schmid
General Secretary



Tribunal Arbitral du Sport
Court of Arbitration for Sport

ORDER

pronounced by

**The President of the Appeals Arbitration Division
of the Court of Arbitration for Sport**

in the arbitration between:

Sonia **BIANCHETTI GARBATO**, Milan Italy

Appellant

and

INTERNATIONAL SKATING UNION (ISU), Lausanne, Switzerland

Respondent

In view of the statement of appeal filed by Sonia Bianchetti on 11 December 2003 against the decision pronounced by the Appeals Commission of the International Skating Union (ISU), which has been notified on 27 November 2003;

In view of the request for a stay of the execution of the decision challenged included in the statement of appeal;

In view of the appeal brief filed by Sonia Bianchetti on 27 December 2003;

In view of the reply and objection to jurisdiction filed by the ISU on 7 January 2004, including a request for dismissal of the appeal for lack of jurisdiction;

In view of the answer to ISU's objection to jurisdiction dated 19 January 2004 and filed by Sonia Bianchetti;

In view of art. R37, R47, R48 and R52 of the Code of Sports-related Arbitration (Code);

The President of the CAS Appeals Arbitration Division hereby considers:

1. On 11 December 2003, Sonia Bianchetti filed a statement of appeal against the decision rendered by the ISU Appeals Commission dated 27 November 2003 in which the ISU Appeals Commission confirmed "the decision of the ISU Council to withdraw from her the award of ISU Honorary Referee".
2. In her statement of appeal, Sonia Bianchetti requests the immediate stay of execution of the decision rendered by the ISU Council and requests CAS to order provisional measures requiring the ISU Council to issue a formal communication "announcing that the Council decision is under appeal and is therefore stayed pending completion of such appeals proceedings".
3. In a statement dated 7 January 2004, the ISU filed an objection to the jurisdiction of the Court of Arbitration for Sport in this matter, considering "that it is apparent at the outset that there is manifestly no agreement or provision in the ISU Constitution which permits Sonia Bianchetti to arbitrate the claim stated in her appeal before the

CAS". The ISU considers that the conditions provided by art. 22 § 2 and 23 § 1 of the ISU Constitution does not allow CAS to entertain the present appeal as no sanction of either suspension or exclusion from any ISU activity is involved. In conclusion of its objection to jurisdiction, the ISU formally requests that the President of the CAS Appeals Arbitration Division "orders that the CAS has no jurisdiction". Furthermore, the ISU states that it does not agree with the request for a stay of the execution of the appealed decision.

4. In her answer to the objection to CAS jurisdiction, the Appellant puts forward that CAS has jurisdiction over the matters raised in the appeal and considers that the President of the CAS Appeals Arbitration Division "has authority under the CAS Code of Sports-related Arbitration to make a ruling in response to the objection of jurisdiction that the CAS Appeals Division has jurisdiction over the appeal". The Appellant submits that the ISU Appeals Commission implicitly accepted its jurisdiction to hear the Appellant's first appeal, which prevents the ISU to challenge the jurisdiction of CAS in the present case.
5. In accordance with art. R37 of the Code, it is for the President of the CAS Appeals Arbitration Division, or his deputy, to decide on a request for interim measures. Considering the objection to CAS jurisdiction raised by the ISU, it is necessary to decide the jurisdiction issue first, as requested by both parties. This is consistent with the CAS case law (see CAS 98/202 Peristeri A.C. v/FIBA, published in Digest of CAS Awards II, Kluwer Law Editions, pp.750-751); in this previous case, the Deputy President of the CAS Appeals Arbitration Division, who had to decide on a request for a stay, ruled on the jurisdiction issue as a preliminary matter.
6. Pursuant to art. R52 of the Code, unless it is apparent from the outset that there is manifestly no agreement to arbitrate referring to the CAS, the CAS shall take all appropriate actions to set the arbitration in motion.
7. Both parties have based their arguments regarding the CAS jurisdiction on art. 23 § 1, first sentence of the ISU Constitution: "In a case in which the Appeals Commission decided on suspension or exclusion of a person from an ISU activity, the aggrieved party or the ISU Council may appeal the decision to the Appeals Arbitration Division of the Court of Arbitration for Sport (CAS), Lausanne, Switzerland".

8. The jurisdiction of CAS shall be determined on the basis of such clause and does not depend on the fact that the ISU Appeals Commission may have erroneously accepted its jurisdiction, as it is alleged by the Appellant.
9. In her statement of appeal, the Appellant indicates that she is a former Member of the ISU Council and a former Member and Chairman of the figure's skating Technical Committee of the ISU. In view of the ISU's written submission, the Appellant has become the acting Vice-president of the World Skating Federation which is a sports body separated from the ISU.
10. It appears that the Appellant is not anymore affiliated to the ISU and does not have any relationship with this federation, with the exception of the title of Honorary Referee which is the object of the present dispute. It is therefore doubtful that the ISU Constitution would be applicable to persons without any connection or relationship with the ISU. However, this issue may remain undecided as the ISU itself initiated a procedure in the present case.
11. In accordance with the ISU Constitution, a decision by the ISU Council on appeals from decisions of ISU Officials and the Technical Committees that involve a disciplinary case may be further appealed to the ISU Appeals Commission whose decision respecting such appeal shall be final and not subject to further appeal to the Court of Arbitration for Sport (CAS), except in cases that involve the suspension or exclusion of the aggrieved party from an ISU activity (art. 22 § 1 of the ISU Constitution). This provision is consistent with art. 23 § 1 of the ISU Constitution mentioned above.
12. In its decision, the ISU Appeals Commission inserted the following paragraph: "Against this decision, there is no further appeal within the ISU. Art. 23 § 1 of the Constitution (Appeal to the Court of Arbitration for Sport) is not applicable, because topic of the case is not a suspension or an exclusion from an ISU activity. Reference is given to art. 22, § 2, second sentence of the Constitution".
13. The issue to resolve here is to determine whether the present case involves the suspension or exclusion of the aggrieved party from an ISU activity.

14. The Appellant was awarded the title of Honorary Referee of the ISU by the ISU Council on 21 June 1997. According to the ISU, the title of ISU Honorary Referee "carries with it no functions, duties, entitlements, emoluments or privileges, and neither entitles to nor requires any activities by the person holding the title, but is simply a titular honour bestowed in the discretion of the Council for past service (see ISU objection § 8). The Appellant admits that this submission is correct (see Appellants' answer to ISU objection § 19 b).
15. According to the Webster's revised unabridged dictionary, edition 1996, 1998, "honorary" means holding a title or place without rendering service or receiving reward. In the French dictionary "Petit Robert", 1993 edition, "honorary" is an adjective applicable to a person who, without performing the function, holds an honorific title (qui, sans exercer la fonction, en a le titre honorifique).
16. In view of the above, the title of ISU Honorary Referee implies unequivocally that the person holding this title does not have to perform any particular function or to exercise any activity within the ISU.
17. Therefore, the jurisdiction of CAS in the present matter cannot be based on art. 22 and/or art. 23 of the ISU Constitution.
18. In view of art. R52 of the Code, it appears that there is manifestly no agreement to arbitrate referring to the CAS. As a consequence, the CAS cannot entertain the appeal filed by Sonia Bianchetti.

ON THESE GROUNDS

The President of the Appeals Arbitration Division of the Court of Arbitration for Sport rules:

1. The CAS has no jurisdiction to hear the appeal filed by Sonia Bianchetti on 11 December 2003.
2. The arbitration procedure CAS 2003/A/532 shall be deleted from the CAS roll.
3. The present order is rendered without costs.

Thus done in Lausanne, 16 February 2004



Thomas BACH
President of the
Appeals Arbitration Division