



Arbitration CAS 2012/A/3041 Irina Deleanu v. Federation Internationale de Gymnastique (FIG), award of 12 June 2013

Panel: The Hon. James Robert Reid (United Kingdom), President; Mr Jose Juan Pinto (Spain); Prof. Denis Oswald (Switzerland)

Gymnastics

Disciplinary sanctions against an official for anti-sport behaviour

Limits to the right of expression of a personal opinion

Verbal attack during a TV programme and Article 3 of the FIG Disciplinary Code

Allegation that an athlete's participation in the Olympic Games had been obtained by the payment of money

Right of the FIG to suspend a person elected within one of the FIG bodies for one or more functions

- 1. The right to express a personal opinion based on a person's own expertise cannot serve as an excuse for allegations of serious impropriety against other persons. The right to freedom of expression is not absolute and that freedom does not exempt a person from the consequences of making defamatory assertions attacking the human dignity and integrity of another.**
- 2. Verbal attack during a TV programme which was sufficiently widely viewed to have come to the attention of the attacked athlete is of sufficient gravity and may constitute a behaviour subject to a sanction under Article 3 of the FIG Disciplinary Code.**
- 3. The making during a TV show of an allegation that an athlete's participation in the Olympic Games had been obtained by the payment of money of itself necessarily damages the athlete, the sport and the sport's governing body. To suggest that the TV show was purely local does not detract from the fact that damage is caused by such an allegation. It is no defence to say that the facts might also have led to other proceedings in the civil or criminal courts. Such words spoken in the TV interview plainly amount to "anti-sport behaviour" and such behaviour can also take place out of the course of a game or competition.**
- 4. Article 43.2 of the FIG Disciplinary Code enables the suspension for one or more functions of a person elected within one of the FIG bodies and/or a continental union for one given or unspecified duration.**

Parties

1. Mrs Irina Deleanu (“Mrs Deleanu” or the Appellant) is the President of the Romanian Federation of Rhythmic Gymnastics (“RFRG”) and is a recognised FIG judge (category III). She had been appointed a member of the Technical Commission of the Union Européenne de Gymnastique (“UEG”) for a term expiring on 31 December 2013 and is the Romanian national coach.
2. Federation International Gymnastique (“FIG” or “the Respondent”) is an association governed by Swiss Law with its registered headquarters in Lausanne, Switzerland. It is the international governing body for all kinds of gymnastics. Its objectives are to govern the sport of gymnastics internationally, to organise FIG official events, to fight against all forms of sports injustice and to further the ideals of the Olympic movement.

Other Relevant Federations and Persons

3. The Cyprus Gymnastics Federation (“CGF”) is the national body governing all types of gymnastics in Cyprus.
4. The Romanian Gymnastics Federation (to as “RGF”) is the national governing body governing all kinds of gymnastics in Romania. CGF and RGF are members of FIG.
5. RFRG is a body which exercises regulatory, supervisory and disciplinary functions over its clubs, regional associations, officials and athletes. It is not a member of FIG but its statutes provide “*Relationships with [FIG] will be held in close collaboration through [RGF]*”.
6. Both CGF and RGF are members of the UEG which is the continental governing body of the sport.
7. Chrystalieni Trikomitis is a Rhythmic Gymnast from Cyprus. Her father, Mr Trikomitis, is the Vice President of CGF.
8. Alexandra Piscupescu is a Rhythmic Gymnast from Romania. She is trained by Mrs Deleanu.

The Facts

9. There were two qualifying competitions for Rhythmic Gymnasts for the right to participate in the London Olympic Games in 2012. The first qualifying competition was the World Championships held in Montpellier, France, on 19 to 25 September 2011. Neither Miss Trikomitis nor Miss Piscupescu qualified on that occasion. The second was on the first day of a Test Event held in London on 16 to 18 January 2012. Mrs Deleanu was the Head of Delegation for the Romanian Team at the Test Event.
10. In that second qualifying competition Miss Trikomitis qualified for the London Olympics but Miss Piscupescu did not.
11. At the final of the Test Event Miss Piscupescu wore a black armband to signify her disapproval of the decision of the jury which had led to Miss Trikomitis qualifying but her not doing so.

12. On 24 January 2012 during an interview in a TV programme in Romania, in which Mrs Deleanu and Miss Piscupescu participated, Mrs Deleanu made comments about the Test Event, Miss Trikomitis and her father. According to a translation (the accuracy of which is not challenged) she said, amongst other things, the following: "... *We started the year with a war We declare wars. ... We're fighting the International Federation of Gymnastics.... it's about a gymnast in Cyprus, in short, her name is Chrystalleni Trikomitis, she is a gymnast, I have nothing against her as a person, she is a wonderful child, a very good girl, but she has nothing to do with rhythmic gymnastics. She can start training any other sport. ... Yes, so the problem is that she isn't a child who can perform rhythmic gymnastics, she can do something else. ... Someone, meaning her father, thought she could become Paris Hilton over night and bought the place at the Olympics, that's what happened briefly*".
13. By a letter to the FIG dated 29 February 2012, CGF referred to the TV interview and asked FIG and the UEG to take all the appropriate measures against Mrs Deleanu. On 18 March 2012, CGF formally by email requested FIG to open a disciplinary procedure against Mrs Deleanu.
14. After consultation with the President of FIG, the Secretary General of FIG commenced the disciplinary process on 21 March 2012, and sent the letter and the email from CGF to the appointed members of the Disciplinary Commission together with a translation of the TV interview given by Mrs Deleanu.
15. On 5 April 2012, Mrs Deleanu sent a letter to Savvas Matsas, the President of the CGF, in which she wrote: "*It has never been my intention, through my actions, to offend neither the Cypriot nation nor the Cyprus Gymnastics Federation, which I deeply respect. Taking this into consideration, if an inappropriate and completely unintended interpretation has created this unfortunate situation, I deeply regret it and I kindly ask you to receive the expression of my highest considerations*". By a letter dated 6 April 2012, the CGF declared that it could not accept the letter as an apology.
16. On 9 April 2012, Mrs Deleanu participated in a further edition of the same TV show in which she repeated that it had not been her intention to offend either the Cypriot nation or CGF.
17. On 18 April 2012, the Disciplinary Commission comprising Mr Paul Engelmann as President and Mr Raohed Gharbi and Mr Marc Schoenmakers as Members summoned Mrs Deleanu to a hearing scheduled for May 1, 2012.
18. By an email to the Disciplinary Commission on 25 April 2012, FIG set out its position. It identified what it saw as attacks on the Judges at the London event, the black armband protest and what it described as the attacks against Miss Trikomitis and her father.
19. On 18 April 2012, the Disciplinary Commission summoned Mrs Deleanu to a hearing on 1 May 2012. The letter described the hearing as being "*RE; Misconduct and attacks against Cyprus Gymnastics Federation, Gymnast Chrystalleni and FIG on Romanian TV Interview*". It made specific reference to Article 3, bullet points 1, 5, 6, 9 and 10 of the FIG Code of Discipline but did not specifically mention article 3 bullet point 4.
20. On 23 April 2012, an e-mail was sent on behalf of Ms Deleanu stating that she wished to be present at the hearing but was unable for medical reasons to attend on 1 May 2012. A medical certificate was provided. On 24 April 2012 the Disciplinary Commission informed Mrs Deleanu that the decision whether to postpone the hearing on 1 May would be taken on that day.

21. On 30 April 2012, a written submission was made to the Disciplinary Commission on behalf of Mrs Deleanu by her lawyers.
22. On 1 May 2012, and in the absence of Mrs Deleanu or any representative on her behalf, the Disciplinary Commission heard evidence from Ms Maria Szyszkowska, President of the FIG Rhythmic Gymnastics Technical Committee, relating to the judging of the event in London, but then decided to postpone the hearing.
23. On 3 May 2012 Mr Marc Schoenmakers stood down from the Disciplinary Commission Member owing to health problems. He was replaced by Mr Nihad Hagverdiev.
24. The Disciplinary Commission, now comprising Mr Engelmann as President and Mr Gharbi and Mr Hagverdiev as Members, held a hearing on 18 June 2012 at which Mrs Deleanu attended and was represented by her lawyer.
25. On 20 June 2012 the Disciplinary Commission unanimously decided:
 - *“That it is proven that Mrs. Irina Deleanu is guilty to the infringements as described in the Code of Discipline, art. 3, bullets 1, 4, 5, 9 and 10;*
 - *To suspend Mrs. Irina Deleanu from her member position of the Rhythmic Gymnastics Technical Commission of the UEG from the date of the decision until 31 December 2016, as per Statutes, art. 43.2, point i;*
 - *To direct a part of the costs of the Disciplinary Commission procedure to be borne by Mrs. Irina Deleanu, fixed at CHF 5'000.-.*
 - *To publish the decision on the FIG website and the FIG Bulletin”.*
26. Mrs Deleanu has appealed against this decision and requested the Appeal Tribunal 1) to adopt an award fully dismissing the Disciplinary Commission’s decision and thus acquit her from any guilt annulling the sanction imposed, or 2) alternatively, to adopt an award dismissing the Disciplinary Commission’s decision and change the sanction applied to the Appellant for an official warning, and 3) to condemn the Disciplinary Commission to the payment of the whole procedural fees.
27. The Executive Committee of FIG appointed an Appeal Tribunal Panel comprising Mr Thore Brolin, Mr George C. Stewart and Mr Jacques Rey to hear the appeal. The parties informed the Panel that they did not wish to have an oral hearing but would rely only on their written submissions. The Panel then considered the written representations of the parties.
28. In its decision rendered in writing on 5 December 2012 the Panel noted that:

“The Disciplinary Commission has sentenced Irina Deleanu regarding the black armband worn by Alexandra Piscupescu at the Test Event final. However, in the subpoena from the Disciplinary Commission on April 18,2012, the case was said to be regarding the misconduct and attacks on Romanian TV interview. As mentioned by the FIG in its submission to the Appeal Tribunal, an accused person must be informed of the accusation, i.e. the facts which constitute the misdemeanour. What happened during the Test Event is not mentioned by the Disciplinary Commission in its notice of hearing. And the FIG also underlines in its submission to the Appeal Tribunal that the proceeding before the Appeal Tribunal is about the TV interview of January 24, 2012.

As Irina Deleanu has not been summoned regarding what happened during the Test Event, the Disciplinary Commission was not entitled to examine what happened there. Therefore, and also if this has not been requested by Irina Deleanu, the appealed decision shall be invalidated in that part. A consequence of this is that the Appeal Tribunal does not consider the hearing of Maria Szyżkowska, who gave information only to what happened at the Test Event, or what the parties have mentioned regarding the judging at that event”.

29. As a consequence of this finding the Panel determined:

“As argued by the FIG, the case-law invoked by Irina Deleanu cannot be compared to her own infringements. However, she shall not be sanctioned for what happened at the Test Event in London. The suspension time must therefore be shortened. The fact that Irina Deleanu is suspended only from her position in the UEG RG TC is also noted. The Tribunal finds that the time for sanctions shall be shortened by one year”.

30. The Panel considered and rejected the various other points of appeal raised on behalf of Mrs Deleanu and unanimously ruled, following on from their findings set out above, that Mrs Deleanu’s appeal be *“granted only to the extent granted that the sanctions stop on December 31, 2015”*. Her remaining requests were rejected. The panel further directed that CHF 1,000 of the deposit of CHF 5,000 she had paid on lodging her appeal be paid back to her and each party bear its own costs of the proceedings.

Proceedings before CAS

31. On 18 December 2012, Mrs Deleanu lodged and appeal before CAS against the decision issued by the FIG Appeal Tribunal on 5 December 2012.
32. By letter dated 31 December 2012 the President of the Appeal Division of CAS granted Mrs Deleanu until 15 January 2013 to file her appeal brief.
33. On 15 January 2013 counsel lodged an appeal brief on her behalf. By her appeal Mrs Deleanu seeks the following relief:

“In principal, to adopt an award by means of which the Decision of 5 December 2012 adopted by the FIG Appeal Committee, is set aside and Mrs. Irina Deleanu fully acquitted of any disciplinary infringement and sanction.

In subsidiary, to change the Decision of 5 December 2012 adopted by the FIG Appeal Committee, and sanction the Appellant with a warning or a blame pursuant to article 43.2 para, a) and b) of the FIG Statutes.

In subsidiary, to change the Decision of 5 December 2012 adopted by the FIG Appeal Committee and reduce the sanction imposed over the Appellant until November 2013, this is, until the end of her mandate as an elected member of the UEG TC-RG.

An Order that the Respondent pays all costs of the arbitration as well as all legal costs and defense fees incurred by Mrs Irina Deleanu”.

34. By an answer dated 11 February 2013, FIG requested that the appeal be dismissed in its entirety, that the decision of the FIG Appeal Tribunal be upheld, that Mrs Deleanu bear the costs of the

arbitral proceedings subject to R65.2 of the Code of Sports-related Arbitration, and that Mrs Deleanu contribute an amount to the legal costs of FIG.

35. Mrs Deleanu nominated Mr Jose Juan Pinto as arbitrator. FIG nominated Mr Denis Oswald as arbitrator. His Honour James Robert Reid QC was nominated as President of the Panel to hear the appeal.
36. By letter dated 14 March 2013, Counsel on behalf of Mrs Deleanu submitted further jurisprudence he wished to have taken into account at the hearing of the appeal. The Panel determined it would permit reference to the further jurisprudence.
37. By an amended Order of Procedure dated 2 April 2013 signed and agreed to by the parties the hearing was fixed for 29 April 2013 in Lausanne, Switzerland.
38. At the hearing the Panel heard Counsel for Mrs Deleanu and for FIG and heard oral statements from Mrs Deleanu and from Mr Andre Gueisbuhler, Secretary General of FIG. At the closing of the proceedings the parties confirmed that they were satisfied as to how the hearing and proceedings had been conducted.

Parties' submissions

39. On behalf of Mrs Deleanu it was, in summary, argued that:
 - The conduct of which FIG complained did not constitute an infringement of the FIG Statutes, regulations, decision or directives.
 - If it did, as FIG itself described the conduct, it was only “misdemeanour”, that is to say, a minor offence or infringement.
 - She could not be sanctioned for the infringement both of article 3 bullet point 1 (“not abiding the FIG Statutes, regulations, decision and directives”) and of the rest of the bullet points of this same article since this would constitute a double sanction for the same facts.
 - The document of 18 April 2012 which summoned Mrs Deleanu for a hearing to be held in relation with the possible infringement of article 3 bullet points 1, 5, 6, 9 and 10 of the FIG Code of Discipline, did not mention article 3 bullet point 4. She was thus unable to defend herself against the charge under that bullet point.
 - There was no evidence as to how the image of gymnastics, FIG, or its members, had been damaged by her statements made in a local entertainment and variety daytime TV show in Romania, and thus no infringement of article 3 bullet point 4. In any event she was on the show in her capacity as President of the RFRG and as a person who had coached Miss Piscupescu and not in any capacity relating either to FIG or EUG and she could not therefore properly be charged with offences relating to the FIG rules.
 - If there had been any damage it would have been sufficiently made good or mitigated by her expressed apologies by a personal letter to CGF, on a later edition of the same TV show, and during the hearing of 18 June 2012. The fact the apologies were not accepted was irrelevant, and the fact that none of Mr Trikomitis, the Athlete herself or the CGF never filed a claim

against Mrs Deleanu in the civil or criminal courts showed that no real damage was ever caused to them by Mrs. Deleanu's words.

- Neither the Statutes of FIG nor the CAS case law define the meaning of “anti-sport behaviour” referred to in bullet point 5. “Anti-sport behaviour” should be construed as applying only to conduct during the course of a game or a competition, and not to something said in a TV show after a competition. Since the interview was not conducted in the course of the competition and could not affect the outcome of the competition it could not amount to “anti-sport behaviour”.
- There was no infringement of Article 3 bullet point 9: “Behave in an offensive way towards the FIG members, gymnasts or FIG officials”. During the TV interview Mrs Deleanu did not make any comments regarding CGF or any other FIG member or FIG. She simply exercised her right of freedom of speech, giving her personal opinion with regards to the capacities and performances of Ms Trikomitis, and her discontent at the event results.
- FIG used partial extracts of the interview in order to give a tendentious and out-of-context interpretation of her words which should have been interpreted in their context, taking account of the occasion on which they are spoken. The words could not be properly interpreted by simply reading the transcript, as FIG had done.
- Mrs Deleanu never had the intention to offend Ms Trikomitis or the FIG. She made clear that she had Miss Trikomitis: the fact that she was of the personal opinion that “*she (the Cypriot athlete) has nothing to do with rhythmic gymnastics. She can start training in any other sport*” could not be considered an offence, being only a value judgement.
- The words used did not (as the Secretary General of FIG suggested) “*seriously damage the dignity of Mr Trikomitis*”, the athlete's father, but Mr Trikomitis is not a FIG official. Consequently Mrs Deleanu should not be punished for words spoken about him. He could have filed a civil or criminal complaint against Mrs Deleanu if he wished.
- Mrs Deleanu was entitled to state her personal opinion, based on her own substantial experience and knowledge that the judges' commission in London did not apply the same strict conditions as the commission in Montpellier.
- In any event, Mrs Deleanu returned to the TV Show on 24 January 2012 to clarify and (if needed) apologise in case she had been misunderstood, saying: “*I had at no moment intention to insult by my commentaries any nation, such as the Cypriot one, a Gymnastics Federation and even less an Olympic Sport, which I respect. Thus, my commentaries were totally... I mean I think they were wrongly interpreted*”.
- Even if the Panel was not convinced by Mrs Deleanu's arguments, the penalty was disproportionate. In resolving the conflict between the “right to freedom of expression” and the “right to a reputation”, the Panel should determine whether the information had a public interest and respect a fair balance between the protection of the freedom of expression and the protection of the reputation of a person. The sanction applied shall be proportional to the gravity of the case as the European Court of Human Rights had made clear sanctions which restrict the right to expression are not justified except in exceptional cases (of which this was not one).

- Even if the Panel considered that Mrs Irina Deleanu exceeded the limits of her right to freedom of expression, only a minimum sanction should be imposed, given that the consequences were minimal and Mrs Deleanu had already apologised in public.
 - As to the alleged infringement of Article 3 bullet point 10: “*Seriously damage the dignity of a person or a group of persons, in any way, in particular due to the color, the race, a handicap, the sex, the religion or the ethnic origin*”. The provision is aimed at serious cases of racism, homophobia, etc, which is obviously not the case here.
 - The sanction imposed was in any event “*ultra vires*”. It was purportedly imposed under Article 43.2 point i of the FIG Statutes, which provides for “*The suspension for one or more functions of a person elected within one of the FIG bodies and/or of a continental Union for one given or unspecified duration*”. This does not give no power to impose a sanction exceeding the period for which Mrs Deleanu was elected for the UEG RG-TC, which expires in December 2013. If the aim of the penalty was to limit her capacity to stand for re-election, a different sanction could have been imposed under Article 43.2 of the Statutes , i.e. “the exclusion of any participation in the FIG activities and other international events for one given or unspecified duration”.
 - The imposed sanction violated the principle of equal treatment: the sanction applied to Mrs Deleanu a disproportionate sanction when considered in the light of previous decisions: reference was made to CAS 2008/A/1595 and CAS 2001/A/340.
 - Accordingly the appeal should be allowed and Mrs Deleanu cleared of all charges, or at most subject to a very minor penalty, such as a reprimand. For what at worst was a very minor breach of the rules.
40. On behalf of FIG it was, in summary, argued that:
- The words used in the TV interview were grossly defamatory of Ms Trikomitis, her father, the judges at the London event and FIG. They clearly violated the FIG statutes.
 - There was no question of Mrs Deleanu being punished twice for the same offence. She was shown to have committed serious breaches of the FIG Code of Discipline in a number of different respects arising from the same facts and was punished accordingly. The sanctions imposed were proper sanctions for the matters found proved.
 - The assertion she did not have the chance properly to defend herself against the allegations made because the letter of 18 April 2012 did not specifically mention bullet point 4 of article 3 of the FIG Code of Discipline was unfounded. She was informed of the factual allegations made and it was for the tribunal to determine which (if any) of the provisions of the Code were broken by the facts established. In any event she had full knowledge of the “bullet point 4” both before the appeal panel and before CAS and any formal defect was cured by those appeals both being occasions when she was able to call any further evidence and make any further submissions on which she wishes to rely.
 - The allegation made in the interview, alleging corruption, was serious. Mrs Deleanu could not escape liability merely by asserting that she made the allegations in a private capacity or in some capacity not connected with FIG. It could not be said that FIG treated the offence as slight simply because on one occasion the word “misdemeanour” was used. The fact

that neither civil nor criminal proceedings had been issued against her was irrelevant. In fact Mr Trikomitis had had to be persuaded to allow the matter to be resolved through sporting channels rather than the civil or criminal courts.

- The offences were not mitigated by the supposed apologies which amounted to no more than a disclaimer of intention to offend and an assertion that she apologised if she had been misunderstood. Neither in the second television show nor at any later stage had she offered anything which could be regarded as genuine apology. In any event the mere making of an apology could not absolve her from responsibility for what she had done.
- The penalty appealed against was within the powers of the disciplinary panel and of the appeal panel. It was not excessive and it could not be said that it was disproportionate in comparison with any other case. Neither of the two cases referred to bore any similarity to the present case.

Admissibility and Jurisdiction

41. By Article 21 of the Statutes of FIG:

“Any decision made by the Appeal Tribunal may be submitted exclusively to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland which will resolve the dispute definitively in accordance with the Code of Sports-related Arbitration. The time limit for appeal is 21 days after the receipt of the decision of the Appeal Tribunal”.

42. Article 43.2 of the Statutes of FIG provides:

“Disciplinary measures which can be imposed amongst others on a federation or an individual:

- a) the warning, which can possibly be the object of a publication in the FIG bulletin;*
- b) the blame;*
- c) the suspension of the federation or the person concerned for one or more official FIG events and other international events;*
- d) the proscription to take part in the FIG events and other international events for one given or unspecified duration;*
- e) the exclusion of any participation in the FIG activities and other international events for one given or unspecified duration;*
- f) the demotion of functions;*
- g) the cancellation of the brevets or diplomas awarded;*
- h) the financial fine;*
- i) the suspension for one or more functions of a person elected within one of the FIG bodies and/or of a continental Union for one given or unspecified duration;*
- j) the suspension of the federation for one given or unspecified duration;*
- k) the exclusion of a federation for one given or unspecified duration on decision of the Congress;*

- l) the exclusion of an FIG person*
- m) the cancellation of results of a competition;*
- n) the obligation to restore the financial benefits and prices received;*
- o) the disciplinary measures resulting from the anti-doping regulations;*
- p) all the sanctions taken can be the subject of a publication in the FIG bulletin or in any other official FIG publication*
- q) or any other sanction which could be proposed by the Disciplinary Commission”.*

43. Article 3 of the FIG Code of Discipline provides:

“Any infringement of the Statutes and Regulations, as well as of the principles of integrity and sports fairness by the FIG member Federations, gymnasts, officials (judges, coaches, medical staff or others) or by members of the FIG Authorities is liable to sanctions provided for by the Statutes and this Code.

These principles are infringed should someone:

- Not abide by the FIG written Statutes, regulations, decisions and directives;*
- Violate the Doping Rules;*
- Commit any act of active or passive corruption or of attempted active or passive corruption;*
- Damage the image of gymnastics, the FIG or its members through his/her behaviour, his/her words or his/her deeds;*
- Demonstrate anti-sport behaviour;*
- Seriously violate the verbal or written instructions and directives given by the FIG officials;*
- Act in such a way so as to influence the course or the result of the competitions in an improper way;*
- Use the FIG, its name, its funds or its infrastructure for aims harmful to gymnastics;*
- Behave in an offensive way towards the FIG members, gymnasts or FIG officials;*
- Seriously damage the dignity of a person or a group of persons, in any way, in particular due to the colour, the race, a handicap, the sex, the religion or the ethnic origin;*
- Contravene Swiss Criminal Law;*
- Violate his/her contractual obligations towards the FIG”.*

44. Article 33 of the FIG Code of Discipline provides:

“Article 33: Appeal to the CAS

An appeal against any decision of the FIG Appeal Tribunal, or other decision if provided otherwise in a specific provision, may exclusively be lodged to the Court of Arbitration for Sports in Lausanne (Switzerland), within 21 days from the notification of the decision of the FIG Appeal Tribunal.

The Parties to an appeal to the FIG Appeal Tribunal and the FIG itself, in any case, shall be authorised to appeal to the CAS.

The rules of the Code of Sports-related Arbitration with regard to sport apply for the proceedings to the Court of Arbitration for Sports”.

45. Mrs Deleanu lodged her appeal to CAS within 21 days. FIG accepts that she lodged her appeal within the time limited and accepts that CAS has jurisdiction to entertain this appeal

Applicable Law

46. Article R58 of the Code of Sports-related Arbitration (“the Code”) provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and 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”.

47. FIG is domiciled in Switzerland. The parties have not objected to the application of Swiss law and the Panel will therefore apply the FIG Regulations, and Disciplinary Code (which itself provides for the application of *“the general principles of Swiss law, and principles acknowledged internationally”*).

Merits

48. The TV interview about which complaint was made took place a week after the London qualifying competition. By that time, Mrs Deleanu should have been able to regain her composure and conduct herself with decorum. The words she used made clear allegations of serious impropriety against the father of another athlete and against the judging panel at the London event, quite apart from being insulting to the athlete. Although it was submitted that the words used were taken out of context and had been misunderstood, no argument was addressed which demonstrated how it was said the words had been taken out of context or what other meaning they supposedly bore. In her statement to the Panel, Mrs Deleanu stated that she had had to explain to the audience and for the benefit of the sponsors who had backed Miss Piscupescu how it came about that she had not qualified for the London Olympics. Whilst her disappointment and frustration at her athlete’s failure is natural, it cannot justify an outburst such as took place during the interview.
49. Her suggestion that she was merely expressing a personal opinion based on her own expertise as to the comparative abilities of the two athletes is untenable. Similarly her suggestion that she could not be disciplined for what she said because to do so would infringe her right of freedom of expression is without substance. The right to freedom of expression is not absolute and that freedom does exempt a person from the consequences of making defamatory assertions attacking the human dignity and integrity of another. The words used plainly identified the athlete, criticised her alleged lack of ability and asserted that her participation in the Olympic Games had been procured by payment made by her father, the Vice-President of CGFU. Indeed Mrs Deleanu persisted in her criticism of the athlete relying in her appeal case on the fact that the athlete had finished 19th out of 24 in the Olympics.
50. It was notable that at no stage did Mrs Deleanu offer anything which could properly be regarded as a genuine apology. The extent of her apology was to suggest that her words had been

misunderstood and to express regret if they had been misunderstood. She also sought to minimise the gravity of what she had done by referring to the TV programme (on which she was a frequent guest) as being only a light hearted local morning programme in which people expected to be entertained. However, the attack she chose to make in that programme was anything but light-hearted and the programme itself was sufficiently widely viewed to have come to the attention of the athlete and her father almost immediately.

51. Mrs Deleanu was described as wearing many hats in connection with rhythmic gymnastics. The suggestion that she could escape liability because on the TV show she was speaking in her capacity as President of RFRG and as coach of the Romanian athlete and not in any capacity connected with FIG is not tenable. She was, and remains, a recognised FIG judge (category III) and a member of the Technical Commission of UEG. As such she was at the time of the interview subject to the jurisdiction of FIG and liable to sanctions under Article 3 of the Disciplinary Code.
52. So far as the individual matters complained of are concerned: under bullet point 1, the language used in the TV interview, as both the Disciplinary Panel and the Appeal Panel found, showed a lack of respect for the human rights and dignity of Miss Tricomitis. As such it was a clear breach of the requirement under the FIG Code of Ethics which provides that the respect for human rights and dignity is a fundamental requirement during all activities of the sport of gymnastics on a national and international level.
53. As to the complaint that she had no opportunity to defend herself because bullet point 4 was not expressly mentioned in the document of 18 April 2012, she was informed of the factual allegations made and it was for the tribunal to determine which (if any) of the provisions of the Code were broken by the facts established. In any event any formal defect was cured by the appeal and by her ability at the hearing before this Panel to call any further evidence and make any further submissions on which she wished to rely in full knowledge of all that was said against her.
54. The assertion that the offence under bullet point 4 had not been made out because there was no evidence of damage to the image of gymnastics, the FIG or its members is unsustainable. The making of an allegation that an athlete's participation in the Olympic Games had been obtained by the payment of money of itself necessarily damages the athlete, the sport and the sport's governing body. To suggest that the fact that the TV show was purely local does not detract from the fact that damage is caused by such an allegation. It is no defence to say that the facts might also have led to other proceedings in the civil or criminal courts.
55. The words spoken in the TV interview plainly amounted to "anti-sport behaviour" and as such a breach of bullet point 5. The submission that "anti-sport behaviour" could only take place in the course of a game or competition is incorrect. If that were the case conduct such as doping by an athlete out of competition in order to enhance his training capability would not be "anti-sport behaviour". Such a proposition cannot be supported.
56. So far as the complaint under bullet point 9 is concerned, the allegation made that the Cypriot athlete had obtained her qualification for the Olympic Games by the payment of money by her father can only be regarded as offensive towards both her and the FIG officials whose decision resulted in her qualification.

57. Similarly the complaint under bullet point 10 that her conduct seriously damaged the dignity of the persons concerned (i.e. Miss Trikomitis, her father and the relevant judges) is made out. The bullet point is in general terms. It refers to “*damage ... in any way*” though it then particularises some ways in which seriously damage might be caused: “*in particular due the colour, race, a handicap, the sex religion or the ethnic origin*”. It does not limit the manner in which a person’s dignity may be seriously damaged to the specific examples set out, and an allegation that an athlete had achieved a particular goal as the result of payment of money could be just as harmful as, for example, an insult to an athlete on the basis of their religion.
58. Mrs Deleanu’s complaint that the proceedings brought against her were in breach of the rule against double jeopardy is unfounded. The facts alleged against her were capable of amounting to infringements under various of the bullet points set out in Article 3 of the Disciplinary Code. She might have had grounds for complaint if separate penalties had been levied against her in respect of each of the matters alleged, but this was not the case. A single penalty reflecting the overall seriousness of the matters established was imposed.
59. As to the submission that the penalty imposed was *ultra vires*, the provision of Article 43.2 i) enables “*the suspension for one or more functions of a person elected within one of the FIG bodies and/ or a continental union for one given or unspecified duration*”. It was argued that such a sanction could not extend beyond the end of the term for which Mrs Deleanu has currently been elected to the Technical Commission of the UEG (i.e. 31 December 2013) because thereafter she would not hold that post.
60. This argument ignores the possibility of re-election. The sanction does not prevent Mrs Deleanu from standing as a candidate for re-election to the Rhythmic Gymnastics Technical Commission of the UEG for a further term. It does however mean that if re-elected her ability to exercise the function would remain in limbo until the end of the period of suspension on 31 December 2015. In practical terms of course this might well affect her prospects of being re-elected, but that is a different matter. The penalty imposed was one which was tailored to the specific offences and offender, given in particular the functions which a member of the Technical Committee has or may have in relation to juries judging particular events. It is incorrect to suggest that if the Appeal Committee had wished to achieve this objective it should have done so by imposing a penalty proscribing Mrs Deleanu from taking part in FIG events or other international events for a given duration. Such a penalty would have had a wider effect than the carefully tailored penalty imposed which impacts only on Mrs Deleanu operating in one particular capacity.
61. As to the suggestion that there was inequality of treatment in the penalty handed down in comparison to two other cases in the past, the Panel is unable to see any real similarity between the present case and either of those to which attention was drawn. Each case is specific to its own facts and it is quite impossible to say that the penalty in this case was outside the appropriate boundaries for the offences charged and proved against Mrs Deleanu.

Conclusions

62. In the judgment of the Panel none of the matters raised by Mrs Deleanu have any real substance and the appeal must therefore fail on all grounds.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal lodged by Mrs Irina Deleanu on 20 December 2012 against the decision rendered by the FIG Appeal Tribunal on 5 December 2012 is dismissed.
 2. The decision issued by the FIG Appeal Committee on 5 December 2012 is confirmed.
- (...).