

# World Sailing

Proceedings before the Panel appointed in terms of regulation 32.7 in respect of:

Ali Hulki Oruz IJ  
Costas Tsantilis IJ  
Kamen Fillyov IJ  
Oleg Ilyin IJ  
Christoph Zeiser IJ



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## First Decision in terms of Regulation 32.8 and 32.9

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### Introduction and jurisdictional aspects

- 1        These proceedings are conducted under regulation 32 regarding alleged inadequate performance or incompetence of five race officials, being Ali Hulki Oruz, Costas Tsantilis, Kamen Fillyov, Oleg Ilyin (sometimes spelt Ilen) and Christoph Zeiser (the “officials”). A written report dated 8 November 2016 (the “Report”) was made by two race officials, being the vice chairman of the International Judges Sub-Committee and the vice chairman of the Race Officials Committee. This Report satisfies the requirements of regulation 32.2. (See Constitution Committee interpretation 002-16 Q&A 4)
- 2        The Report was considered by the office of the Chief Executive Officer in the person of Mr. Jon Napier, who had delegated authority to deal with all matters in terms of regulation 32 on behalf of the Chief Executive Officer (the persons acting on behalf of the CEO will be referred to as the “CEO”). This delegated authority is confirmed by the current CEO in an email to Lance Burger dated 24 August 2016. The CEO decided that further action was needed and referred the matter to the Chairman of the Race Officials Committee and a Vice-President, who placed the Report in Category B in terms of regulation 32.3.
- 3        The CEO by letters dated 4 February 2016 informed the five race officials of the Report and attached a copy of the Report to them.

4 The letter of 4 February 2016 reads as follows:

"The Chairman of the Race Officials Committee has asked me to write to you on his behalf.

World Sailing has received a report concerning your attendance at the 2015 420 & 470 European Youth Championships in Bourgas, BUL as a member of the International Jury. A copy of that report is attached.

The alleged facts in the report are that you were a World Sailing International Judge on the International Jury at a World Championships at which there was:

- 1 A failure to apply the rules correctly in a port/starboard incident.
- 2 A DNE penalty applied under rule 2 without stating any facts to support such a penalty.
- 3 An incorrect procedure used when changing a previous decision
- 4 Improper conduct of a rule 69 hearing.
- 5 An inability to control and defuse a junior competitor's behaviour in the protest room.

Under Regulation 32, the report has been reviewed by the Chairman of the Race Officials Committee and the Vice President responsible for ISAF Race Officials and they consider that the report is categorised as Category B under Regulation 32.5. This states:

"32.5 Where a report or complaint is categorized as Category B, the ISAF Race Official concerned shall receive an allegation based on the report. The Race Official can either accept the allegation or request an investigation. If the Race Official accepts the allegation, the Chairmen of the Race Officials Committee and all its Sub-committees shall make a decision in accordance with Regulation 32.9. If the Race Official requests an investigation, formal action by ISAF shall be taken."

Therefore I must ask you if you accept the allegations above are correct or if you require an investigation to establish the facts to be undertaken. Please note it is not necessary to require an investigation if you accept the facts but wish to explain them to the Chairmen identified above before they make their decision. Any such explanation should accompany your acceptance of the facts.

Please let me know your decision whether you require an investigation into the facts to take place no later than Monday 15 February 2016.

If you have any questions concerning the procedures to be followed, or require any further information, please do not hesitate to contact me directly by email."

5 These letters satisfied the requirements of an "allegation" in terms of regulation 32.5. The "allegation" is contained in the five numbered paragraphs in the quoted letter above. None of the other possible inadequate performance mentioned in the Report forms part of the allegations, but may be considered when deciding whether any instances of inadequate performance are isolated. This may affect any appropriate sanction.

- 6 None of the five race officials accepted the allegations although in an individual response dated 17 February 2016, Christophe Zeiser acknowledged some procedural errors in Cases 7 and 11. As such, formal action was required by Regulation 32.5.
- 7 The Chairman of the Race Officials Committee appointed the panel, being Lance Burger (chairman) (member of Racing Rules Committee), John Doerr (member of the Race Officials Committee and vice chairman of the Racing Rules Committee) and Ricardo Navarro (a member of Race Officials Committee and a member of the Race Management Sub-committee, a sub-committee of the Race Officials Committee), to conduct an investigation and make recommendations in terms of regulation 32.7 and 32.8. The composition of the panel complies with the requirements of regulation 32.7.

### **The allegations**

- 8 The allegations to be considered by the panel are the following (for ease of reference the Protest numbers from which these allegations arise are added in brackets):
- 1 A failure to apply the rules correctly in a port/starboard incident. (Protest 22)
  - 2 A DNE penalty applied under rule 2 without stating any facts to support such a penalty. (Protest 7)
  - 3 An incorrect procedure used when changing a previous decision (Protest 11)
  - 4 Improper conduct of a rule 69 hearing (Case 21A).
  - 5 An inability to control and defuse a junior competitor's behaviour in the protest room (Case 21)

### **Procedural history**

- 9 A review of all the decisions and previous correspondence related to this matter reflect indications of inadequate performance in other matters as well, particularly in Protests 3, 7 and 15. As some of these do not form the subject of the formal allegations they will not be considered further, except in a limited sense that will be dealt with later.
- 10 All the relevant documents were provided to the officials and they were invited to respond to the allegations and report, and to make submissions.

11 On 30 June 2016 the officials were invited to make representations and specifically asked the following:

1. Case 3: The website does not reflect any facts found or conclusion on the website, but the records of the OA do reflect facts found and conclusion. What was the process by which the decisions were captured for the website? Was it done by a member of the jury? Did any member of the jury check that the website correctly reflected the decisions of the jury?
2. Case 7: Should the protest committee have found as a fact that ESP 55005 was on the course of the start line at or before the start signal? Is there any further explanation why the decision was made to score ESP DNE at this time (although subsequently corrected in Case 11)? Did the jury consider whether RRS 2 (as opposed to RRS 69) is applicable to conduct in the protest room? What was the reasoning why RRS 2 or RRS 69 applies?
3. Case 11: When the protest committee realized it made a significant error in Case 7, why did it not reopen the hearing in Case 7? What facts and conclusion were there to change the score of ESP? Please explain, if the protest committee decided not to reopen the hearing, how it could rely on RRS 66 to change the score?
4. Case 21A: The letter in terms of RRS 69 states: "by accusing the members of the jury for not making the right conclusion and decision in case 15, and also for a gross breach of good manners and behaviour towards a member of the international jury." Is the letter adequate? Is the mere statement that the jury made an incorrect decision, without more, misconduct)? Is the letter adequate in alleging gross breach of manners and behaviour towards a member of the jury, without stating what the conduct is? Similarly, are the facts found (without giving any detail) adequate to justify the conclusion?
5. Case 22: The facts found as written are very difficult to understand, in particular how the boats could collide if ISR was above the lay line and GRE had rounded mark 1. The diagram submitted by ISR shows that ISR was on a course to pass some 1½ boat lengths below the mark. Is the finding of fact that ISR was "over the layline" correct? Did ESP break any rule? Did the protest committee consider protesting ESP under RRS 60.3(a)(2) and hear the two protests together? If considered, why was it not done? If not considered, why not? If it was necessary for GRE to bear away to avoid ESP, which resulted in the collision with ISR, why was GRE not exonerated under rule 21(a)?
6. Do you want to supplement your answers to the information previously sought in respect of each of the individual cases 3, 7, 11, 15, 21A and 22? If so, please supplement.
7. Having had more time to reflect and consider the allegation, do you still consider that the conduct of each of you individually as members of the jury is "adequate conduct and demonstrating the expected level of competence" in respect of each of the cases referred to?
8. Are there additional documents that the Panel should consider? If so, please provide copies of these.
9. Is there any further investigation that the Panel should do before making a recommendation in terms of regulations 32.8 and 32.9? If so, what investigations?

Please provide me with the responses by 22 July 2016 for forwarding to the Panel.

- 12 The Panel received the following identical responses from each of the five officials on 22 July 2016 and thereafter:

Hello Madeleine,  
Thank you for your mail dated June 30th.  
We have fully noted the contents of your mail and as we consider in this case that the investigation concerns the international jury and not the individual members we consider appropriate to reply collectively.

Despite our several demands to Jon Napier we haven't been able to receive copies of the documents presented to the investigating panel. Regulation 32 clearly states that the investigation should be based on a written report and we haven't been able to see or receive that report. So we all believe that at this point the primary part of Regulation 32 is not fulfilled and hence this investigation should be considered invalid.

Now we have been asked to supply any additional documents at this stage but since we don't know which documents the panel received we are not able to choose what to send. We believe that we are entitled to ask for a copy of that initial report according to Regulation 32 so that we know what we have to answer.

This has been going on much too long time now and you would appreciate that we all have our businesses to attend, events to attend and we cannot go on in circles answering questions that we already have. At this stage we would like to be in direct contact with the investigating panel, or at least receive the questions in cc directly from them and giving our answers send also a copy directly to them so that we have in our documentation what has been sent and what hasn't.

We will need time till end of August 2016 so that all those jury members are back from their events or holidays and have time to concentrate on their answers which means remembering actions of nearly a year ago.

We look forward to your reply and also if any, receiving a copy of that initial report which was confirmed in Lynne Beal and Peter Schrubbs letter dated November 8<sup>th</sup>, 2015 sent to Jon Napier, as two verbal reports, totally against the requirement of Regulation 32 stating written report

- 13 On the 31 July 2016 the CEO sent the following email to the officials on the instructions of the Panel:

The panel has instructed me to respond as follows:

- 1 The investigation is against each of you individually. Responding collectively might prejudice you and is not helpful to the panel to assess each of you individually as the panel is obliged to do. The assertion that "the investigation concerns the international jury and not the individual members" is incorrect.
- 2 The panel has received only the following documents:
  - 2.1 Report dated 8 November 2015.
  - 2.2 Email 1 - from JN to Jury 2015-10-07.eml
  - 2.3 Email 2 - from Jury to JN 2015-10-12.eml
  - 2.4 Email 3 - from JN to Jury 2015-10-23.eml
  - 2.5 Email 4 - from Jury to JN 2015-11-04.eml
  - 2.6 Review of the Jury - 420 and 470 European Youth Championships final.docx
  - 2.7 Youth European Championships protest review.xlsx

- 2.8 Email and letter to each official dated 4 November 2016, enclosing the report
- 2.9 Email to Jon Napier dated 13 February 2016
- 2.10 Letter from Christoph Zeiser dated 17 February 2016
- 2.11 Letter and email from Jon Napier dated 15 March 2016
- 2.12 Files received from Organising Authority in April 2016:
  - 2.12.1 Protest 3. 420-470 Junior Europeans.pdf
  - 2.12.2 Protest 7. 420-470 Junior Europeans.pdf
  - 2.12.3 Protest 11. 420-470 Junior Europeans.pdf
  - 2.12.4 Protest 15 420-470 Junior Europeans.pdf
  - 2.12.5 Protest 21. 420-470 Junior Europeans.pdf
  - 2.12.6 Protest 22. 420-470 Junior Europeans.pdf
- 2.13 Email from Karlo Hmeljak dated 15 April 2016
- 2.14 Email from Organising authority dated 13 May 2016 with:
  - 2.14.1 Protest 11. 420-470 Junior Europeans.pdf
  - 2.14.2 Protest 21a. 420-470 Junior Europeans.pdf
- 2.15 Files received from Organising Authority on 6 June 2016:
  - 2.15.1 Protest 3. 420-470 Junior Europeans - notes 1.pdf
  - 2.15.2 Protest 3. 420-470 Junior Europeans - notes 2.pdf
  - 2.15.3 Protest 22. 420-470 Junior Europeans – notes.pdf

Other than item 2.13 I believe you have received all these documents before.

If you have not received any of these documents before please let me know and I will send them to you again. I will send you item 2.13 by separate email.

The chairman of the panel has informed me that this email has not come to the notice of the panel before due to his oversight.

He further informs me that you need not deal with this issue as the panel is of the view that the allegation cannot be sustained in light of the lack of first-hand evidence of this allegation.

3 The written report as required by regulation 32.2 is the written report by the Vice-Chairman of the International Judges Sub-Committee and the Vice-Chairman of the Race Officials Committee dated 8 November 2015. This report was sent to you on 4 February 2016. Your assertion that "the primary part of Regulation 32 is not fulfilled and hence this investigation should be considered invalid" is therefore not correct.

4 The panel shares your concern that this matter has taken much too long. The panel will endeavour to complete its work as soon as possible, but needs your co-operation to do so.

5 The assertion that all five of you are busy and could not respond within the three weeks given, and requires another six weeks, is not persuasive. The panel extends the deadline to noon UTC on 15 August 2016 for each of you individually to respond to the panel's questions as set out in the email of 30 June 2016. The panel will then make a decision.

6 As to your request to communicate directly with the panel: It is the policy of World Sailing that communications of this nature is conducted through the Executive Office for record purposes. There does not appear to be good reason to depart from this policy.

14 On 15 August 2016 the officials responded as follows:

Thank you for your mail dated 31st July 2016

When forwarding to the panel please attach also and again our mail dated 4 th November 2015 to Jon Napier (you can find it also below) in which all explanations regarding the questions of your mail dated 30 th June.

1) As all the decisions, based on the facts found and conclusions, have been made collectively and unanimously without any objections from any of the jury members, we believe that this concerns the international jury as a body and we feel that panels' assumption for the investigation concerns the jury members individually is incorrect. If the complaint is to a member of the jury then we should have the written report about this complaint and the person concerned can then answer individually. The individual

members of an international jury cannot decide on their own, the composition and appointment is clearly defined in RRS appendix N and procedures in N.3

2) We have received probably all these documents in time, some just this week, one year after the event. We don't recall having received copies of the mails from Organizing Authority. Nevertheless this whole file should have been available to us in one lot, which was not the case.

Regarding the mail from Karlo Hmeljak dated 15th April 2016, we don't find any declaration leading to allegations but simply supporting the good attitude of the international jury.

3) Vice-Chairman of the International Judges Sub-Committee and Vice-Chairman of the Race Officials Committee are the governing bodies of WS race officials.

Regulation 32.2 states who can make the written report ("A report may be submitted by a race official, competitor, technical delegate, Member National Authority or authorized member of the organizing authority or class association") or the CEO may decide to accept any other source.

Since there was only verbal reports to base the letter from Vice-Chairman of the International Judges Sub-Committee and Vice-Chairman of the Race Officials Committee, was there an approval from CEO of WS to consider this as a written report to start an investigation based on Reg 32.

In negative case we still insist that primary part of Reg 32 is not fulfilled.

4) This matter is taking too much of our time and being summer time, most of us spends a lot of time in judging in different regattas, some of us being in Rio Olympic Games, also working for some us is the busiest period.

5) For these reasons the assertion that all of us are busy is based on facts and we do not find unreasonable to ask for more time, specially bearing in mind that the event was one year ago and we have to force our minds to remember and go through the documents.

6) The only reason to communicate with the panel was that we were not sure what documents the panel had and if these were the correct ones. As you can see from item 2, we still are not sure if we have all the document copies.

7) As you will kindly attach our mail dated 4th November 2016 to Jon, we do not feel that it's necessary to repeat all those mentioned. If there is need for more detailed explanations, please let us know and we will do that for the cases mentioned on that mail. Please kindly let us know whether the panel is satisfied with our response. If they need to clarify any matters, we are at their disposition.

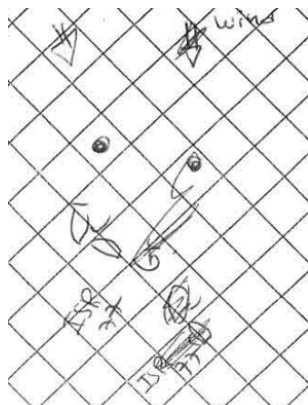
- 15 The panel has considered the documents, including the identical responses of the officials dated 4 November 2015, 22 July 2016 and 15 August 2016.

**Allegation 1 (Protest 22: port/starboard incident) (Read with 23): This allegation concerns only judges: Hulki Oruz (Chairman), Oleg Ylin and Costas Tsantilis (scribe):**

- 16 The allegation is that the judges failed to apply the rules correctly in a port/starboard incident.
- 17 The protest form reflects the following:

Protest by 470 Woman ISR 77 Isaf Zamef against 470 Woman GRE 21 Bozi Maria.  
Time and place of incident: First upwind, 25 m before the mark. Witness ITA 20  
Description of incident: In the first upwind in the 10<sup>th</sup> race. 25 meters before the first mark. We sailed on starboard. GRE 21 were on reach and crushed to us.  
We lost a lot of places. We immediately yelled protest.

Diagram:



- 18 The protest information on the internet reflects the following decision:

**Facts Found:**

At the first leg of race 10 ISR77 was approaching mark 1 on SB over the lay line and GRE21 had rounded mark 1 sailing on SB towards mark 2. A ESP boat was also approaching mark 1 on P in collision course with GRE 21 and over the lay line. ESP didn't react and GRE21 bore away in order to avoid a contact with ESP, resulting a collision with minor damage with ISR 77. When GRE21 saw ISR77 the distance between the two boats was diagonally approx 2 boats length and the wind about 15 knots. No penalty was taken from any boat.

**Conclusion and Rules applicable:**

GRE21 failed to keep clear of ISR 77 and broke RRS 11. There was contact between the two boats and ISR77 failed to take the correct avoiding action to prevent collision braking RRS 14.

**Decision:**

GRE21 and ISR77 are DSQ in Race 10.

- 19 The CEO, posed the following questions to the members of the jury on 7 October 2015:

**Protest 22**

The decision of the International Jury for Protest 22 posted on the website for the event is attached. Please provide further information about this decision, as follows:

4.1 Please provide a copy of the protest form and any diagram that was submitted for this protest.

4.2 Please provide an official diagram that demonstrates the facts of this incident. If a diagram was not endorsed at the time of the hearing, please prepare the diagram now.

4.3 Please provide further information that explains the conclusions and decision in this protest, based on the facts found.

4.4 Please provide further facts to support the conclusion that "ISR 77 failed to take the correct avoiding action to prevent collision".

4.5 Please describe the damage that resulted from the collision.

4.6 Please explain why the International Jury did not find that GRE 21 on port broke rules 10 or 14.

4.7 Did the International Jury hear any other protest in addition to protest 22 with regard to this incident? If so, please indicate which protest number, and any reason why it was not heard with Protest 22. If the decision for that protest is not on the regatta website, please provide a copy of the facts, conclusions, rules applicable and decision.



- 20 The officials collectively gave the following response on 4 November 2015:
- Protest 22 in the attached file.  
A diagram was endorsed but no possibility to provide as the original files are given to the OA.  
Jury decided from competitors and witness statements that prior to incident ISR 77 had time and opportunity to avoid contact.  
The damage was chipped gel coat on GRE 21 boat  
Rule 10 is N/A as both boats were on starboard, hence rule 11  
Protest no 23 was about request for redress from ISR 77 for same incident and was found inapplicable.  
Protest 22 and 23 attached.
- 21 The Report states the following in part about Protest 22:
- From the facts found and the conclusions of the jury, it is surprising that the jury did not address the actions of ESP. She was on “port in collision course with GRE 21” who “bore away in order to avoid contact with ESP”. They did not address rule 10 between these two boats, or whether the actions of ESP on port was responsible for the contact between the two boats on starboard and should have been disqualified. They did not address whether the two starboard tack boats should have been exonerated under rule 64.1(a) for the contact that resulted from port's actions. Without consideration of rules 10 and 64.1(a), the jury's conclusions and decisions do not follow from their facts.
- 22 The officials chose not to respond to the substance of this criticism.
- 23 The Panel is of the view that the decision is inadequate in the following respects:
- 23.1 There is no explanation why there were only three people on the panel. If acting under RRS N1.4(b) it should have been so stated. (This issue was not raised in the Report, however, and will not be considered further).
- 23.2 Although the Panel does not have a record of the evidence, it is difficult to understand how ISR 77 could have been above the layline and why this was found as a fact.
- 23.3 The facts found states that “GRE21 bore away in order to avoid a contact with ESP.” There is no explanation why GRE21 was not exonerated under RRS 64.1(a) or why further facts were not found that prevented such exoneration.
- 24 The inconsistencies in this case demonstrate a level of competence below that expected of international judges.

**Allegation 2 (Protest 7): A DNE penalty applied under rule 2 without stating any facts to support such a penalty. (Christoph Zeiser (Chairman) Aylin Suntay (scribe), Costas Tsantilis, Oeg Ilyn, Kamen Fillyov).**

**Allegation 3 (Protest 11): An incorrect procedure used when changing a previous decision (Protest 11). (Hulki Oruz (Chairman), Oleg Ilyn, Costas Trantilis, Kamen Fillyov, Chirstopher Zeiser (scribe)).**

25 As these two allegations and protests are closely related they will be dealt with together.

26 The protest form in Protest 7 reflects that it is a request for redress for Race 3 and states the following as the description of the incident:

"In the race 3. Just 4 minutes before the starting signal I took bearing and position of the pin and boat. The Race Committee moved pin and boat within the procedure preparatory signal appox between 3 and 4 minutes before the start. For that reason I reject my worse in this race. I was scored UFD in this race."

27 The protest information on the internet reflects the following decision for Protest 7:

Facts Found: On the third race for 420 Blue Fleet Uniform flag was used at the start. Pin end Race Committee was already anchored from the orange flag. ESP 55005 was declared OSC by the Race Committee. No omission of the Race Committee was found. ESP 55005 stated that the Pin-End-Boat moved backwards with 4 min to the start, which was observed by his coach.

Conclusion and Rules applicable:

By his testimony, accusing the RC having made an improper action through no observation of his own stated in the protest form and during the hearing ESP 55005 did not act in compliance with recognized principles of sportsmanship and fair play, thus infringed RRS 2.

Decision:

ESP 55005 was DNE from race 3

28 The protest form in Protest 11 reflects the following description of the incident:

We requested the reopening of hearing and request for redress on case 7. When applying yesterday 11/08/15] the request for redress because the boat ESP55005 believed it was an improper action or omission of the race committee. Because they had the pin end boat in a position which we thought it was not appropriate (a party in a hearing is entitled to request and ..."

The rest of the description was apparently on a further page and was not available to this panel.

29 The protest information on the internet reflects the following decision for Protest 7 and protest 11:

Protest 7:

Facts found:

On the third race for 420 Blue Fleet Uniform flag was used at the start. Pin end Race Committee was already anchored from the orange flag. ESP 55005 was declared OSC by the Race Committee. No omission of the Race Committee was found.

Conclusion:

By his testimony in the protest form and during the hearing ESP 55005 did not act in compliance with recognized principles of sportsmanship and fair play, thus infringed RRS 2.

Protest 11:

Facts found:

ESP 55005 claimed, he has a video and the testimony of his coach as new evidence to the case. ESP 55005 stated that he was unable to find the media at the 11th Aug.

Conclusion:

The evidence ESP 55005 wanted to present was available at the time of the hearing. Based on rule 66 the decision of DNE in Race 3 was reviewed by the Jury and found inappropriate.

Rules applicables: RRS 66

Jury Decision: The hearing will not be reopened. DNE will be replaced by the original score UFD.

30 The CEO posed the following questions to the members of the jury on 7 October 2015:

Protest 7:

The decision of the International Jury for Protest 7 posted on the website for the event is attached.

Please provide further information about this decision, as follows:

1.1 What were the competitor's behaviours that led to the conclusion that "ESP 55005 did not act in compliance with recognized principles of sportsmanship and fair play"? Please provide a copy of the facts found that supported that conclusion and decision.

1.2 How did the International Jury come to penalize ESP 5505 in the course of this hearing, given that there was no protest against him and that rule 60.3(a) applied to any proceeding that the Jury might initiate?

1.3 How did the International Jury respond during the hearing to gain control of the competitor's behaviour and to potentially defuse the issue?

Protest 11

The decision of the International Jury for Protest 11 posted on the website for the event is attached. Please provide further information about this decision, as follows:

2.1 The decision does not indicate which protest was requested to be re-opened.

Was this Protest 7?

2.2 Please provide a copy of the facts found in the International Jury's decision to refuse the reopening of this hearing under rule 66.

2.3 Given that the International Jury decided not to reopen the previous hearing, please explain how the Jury came to the conclusion that, "Based on rule 66 the decision of DNE in Race 3 was reviewed by the Jury and found inappropriate" and to the decision that, "DNE will be replaced by the original score UFD"? Please explain the reasoning that led to the conclusion that the scores could be changed without reopening the hearing.

31 The officials collectively gave the following response on 4 November 2016:

Protest 7 & Protest 11

On protest no.7, ESP 55005 based his case on observations of his coach and not his own. Accused the race committee for an error on UFD but jury found neither omission nor mistake of the race committee. ESP 55005 was persistent to defend his case by accusing the race committee for an error hence he was found breaching rule 60.3(a) and rule 2.

On Protest no.11 for the reopening, there was no new evidence to reopen the case but the competitor was briefed during the reopening that the jury, after reviving his case internally found that challenging the race committee's decision was not exactly an act of bad sportsmanship and that the decision of the Protest no.7 is reviewed and original score of UFD will be reinstated.

Since there was a reopening request, jury didn't find any necessity to make a separate reopening and found sufficient to inform the competitor on the same case about the score change.

Both cases are in the attached files.

32 The Report stated as follows in respect of Protests 7 and 11:

Decisions of the International Jury

Protest 7 involved a request for redress from ESP 55005 with regard to their Uniform flag disqualification in race 3. The jury found facts with regard to the uniform flag disqualification.

The jury then made conclusions about the competitor's behavior, decided that the competitor broke rule 2, and changed his score in that race from UFD to DNE. When asked about this decision, the jury members reported that the competitor was "persistent to defend his case by accusing the race committee for an error".

Protest 11 was ESP 55005's request to re-open Protest 7. The jury found facts with regard to the type of evidence that the competitor wished to bring to a re-opening. The jury concluded that the evidence was available at the time of the hearing. Their decision was to deny the re-opening. Despite deciding not to re-open the hearing, the jury reviewed their decision of scoring the boat DNE in Protest 7, and they concluded that was inappropriate. They then replaced the DNE score to the original UFD score.

When asked about this decision the jury reported that there was no new evidence to reopen the case but that after reviewing the case internally the jury found that challenging the race committee's decision was not exactly an act of bad sportsmanship. With their review, they reinstated the score of UFD.

Reviewers' Comments:

Rule 60.3(a) permits the protest committee to protest a boat, but not as a result of information arising from a request for redress. The competitor's behavior was separate from the allegations in the request for redress.

The jury found no facts with regard to the competitor's behaviour. Therefore, their conclusion and decision to give the penalty of DNE does not follow from the facts. In addition, to address the competitor's behaviour, the proper procedure would have been for the jury to complete the request for redress hearing, and then file a separate protest against the competitor under rule 2, and hold a new hearing. It is possible that the outcome would have been the same; to find the competitor in breach of rule 2.

It is surprising that the competitor's persistent defense of his case by accusing the race committee of making an error was considered to be a breach of rule 2 – (competing in compliance with recognized principles of sportsmanship and fair play). The jury apparently came to this conclusion, either after closing his hearing or during the hearing of the request to reopen. That led them to rescind the Rule 2 penalty of DNE given in Protest 7. This was done without reopening the hearing for Protest 7 and without initiating their own request to reopen under rule 66.

The procedures used in these two hearings fall short of the requirements in the RRS.

The decision that the competitor's behavior was a breach of rule 2 is surprising to the reviewers, just as the jury themselves later concluded. Without using proper procedures the jury gave the rule 2 penalty, and then later came to a reasonable decision that they would remove the rule 2 penalty.

33 The conduct of the four officials Christoph Zeiser, Costas Tsantilis, Oleg Ilyn, Kamen Fillyov in respect of Protest 7 is inadequate performance and displays inadequate competence in the following respects:

- 33.1 There was no protest of the competitor and as such the competitor could not be scored DNE. This issue was raised in the letter of the CEO dated 7 October 2015 in paragraph 1.2 under Protest 7. The officials were given an opportunity to respond to this but did not do so. An allegation should have been made against the officials in respect of this inadequate performance and competence, but was not. For this reason a formal decision will not be made in this regard.
- 33.2 Conduct at a hearing could not be a breach of RRS 2 (but might be a breach of RRS 69).
- 33.3 No facts were found to support the conclusion that the competitor broke RRS 2.

34 The conduct of the five officials Hulki Oruz, Oleg Ilyn, Costas Trantilis, Kamen Fillyov and Chirstopher Zeiser in respect of Protest 11 is inadequate performance and displays inadequate competence in the following respects:

- 34.1 The officials appear to have disregarded RRS A5 and made a scoring change without a hearing.
- 34.2 The officials failed to re-open the hearing when they realised that they made a significant error in Protest 7.
- 34.3 The conduct of the individuals involved in each of the two protests is beyond mere inadequate performance and is a strong indication of inadequate competence. This conduct is serious. No explanation for this inadequate competence has been given. Christoph Zeiser acknowledged on 17 February 2016 'we made a significant error in not following the correct process'. However, since that communication Christoph Zeiser has refused to make individual submissions and has joined with the other judges in their responses that do not address the matters raised. The failure of the officials to recognize

their failures in this regard indicates that they fail to appreciate the seriousness of their conduct and reflects a disrespect for following proper procedures.

**Allegation 4: Improper conduct of a rule 69 hearing (Case 21A) (Hulki Oruz (Chairman), Aylin Suntay, Christoph Zeiser, Costas Tsantilis (scribe), Oleg Ilyn).**

35 The protest documents reflect the following letter in terms of RRS dated 14 August:

HEARING UNDER RRS 69

Mr. Vasic Stepancic

The International Jury of the 420 – 470 Junior European Championships from its own observation believes that you as a competitor may have broken 69.1(a) by accusing the members of the jury for not making the right conclusion and decision on case 15, and also for gross breach of good manners and behaviour towards a member of the International Jury.

You are invited invited to present yourself at the Jury Room immediately after the end of racing of Friday 14 August 2015 for a hearing. You are entitled to be escorted by your coach as observer.

For the International Jury

/s/

Hulki Oruz IJ/TUR

Jury Chairman

36 The competitor's coach signed a document indicating that he was an observer.

37 The Jury Decision in Protest 21A reads as follows:

Facts Found:

The International Jury found that Domen Vasic Stepancicpol have broken 69.1(a) by accusing the members of the jury for not making the right conclusion and decision on case 15, and also for a gross breach of good manners and behaviour towards the member of the International Jury who was chairing the panel at case 21.

Conclusion and Rules applicable:

Domen Vacic Stepancic by his actions and behavior committed a gross misconduct.RRS 69.1(a)

Decision:

SLO 21 to scored DNE in Race 6.

38 The following letter was sent to the member national authorities after the hearing:

420 – 470 Junior European Championships

To: Slovenian Sailing Federation

Bulgarian Sailing Federation

Burgas 15 August 2015

International Jury Report on RRS 69

The International Jury of the 2015, 420 – 470 Junior European Championships, in accordance with RRS 69.2(d), reports that the Slovenian sailor Domen Vasic Sepancic

skipper of 470/SLO 21, has been penalised with a DNE on race 6 for breach of rule 69.1(a).

The International Jury found that Domen Vasic Stepancic has broken 69.1(a) by accusing persistently the members of the jury for not making the right conclusion and decision on case 21, and also in addition for a gross breach of good manners and behaviour towards the member of the International Jury who was chairing the panel at case 15 by accusing him to give the penalty because he was Slovenian.

For his good behaviour and apologizing conduct, International Jury was contended to give him a penalty only for the race concerned and inform the related MNA's.

For the International Jury

/s/

Hulki Oruz IJ/TUR

Chairman

39 The CEO asked the following questions from the officials on 7 Oct 2015:

Rule 69 hearing

The IJ report filed from this regatta indicates that the international jury held a rule 69 hearing with a competitor, as attached. Please provide further information about this hearing, as follows:

5.1 Please provide the statement of allegations provided to the competitor and the written decision from that hearing.

5.2 Please provide the date on which the decision from the rule 69 hearing was communicated to the MNA of the competitor and of the organizing authority of the event. Please provide a copy of that notification.

40 The officials responded as follows on 4 November 2015:

#### Protest 21

On Protest no.15, SLO 21 behavior was rude against the jury members during his defense on the case where he was found in breach of rule 16.1, he spoke vulgarly in Slovenian and was warned by the panel Chairman that he understood some Slovenian and also accused Kamen Fillyov IJ-BUL Panel Chair of prejudice against him being Bulgarian and not liking Slovenians.

Although it was clearly an act leading to rule 69, Panel Chair was kind not to react and reported the incident to full jury.

On Protest no.21, during the reopening, no new evidence was found to reopen the case but as the competitor repeatedly said "I am accusing the jury for not taking the right decision" he was warned by the jury members for his bad behavior. Since nothing changed the jury decided to take further action on rule 69.

His coach was called to jury room and given information about the gravity of the competitor's behavior and the coach apologized on competitor's behalf explaining that he was not their regular coach, was there only for that event and that he will talk to the competitor. He was informed that the decision of the hearing on rule 69 will depend on his behavior.

During the rule 69 hearing, competitor seemed more calm and he even apologized for his previous behavior, that is why the penalty given was kept to a minimum considering that SLO21 learned from his mistakes.

Protest 15, Protest 21 and Rule 69 hearing, letter to the National Authorities attached.

#### Rule 69 Hearing

SLO 21 and his coach as observer were present at the hearing.

All related papers attached (invitation to hearing, decision and letter to national authorities)

41 The Report states as follows:

Rule 69 hearing

Decisions of the International Jury:

The international jury presented written allegations to SLO 21 that, “by accusing the members of the jury for not making the right conclusion and decision on case 15, and also for a gross breach of good manners and behaviour towards a member of the International Jury”.

The jury held a hearing under rule 69. They found as fact that SLO 21 “have broken 69.1(a) by accusing the members of the jury for not making the right conclusion and decision on case 15, and also for a gross breach of good manners and behaviour towards the member of the International Jury who was chairing the panel at case 21. Their decision was that the competitor, by his actions and behaviour committed a gross misconduct, rule 69.1(a). Their decision was to score SLO 21 DNE in race 6.

When asked about this decision, the jury gave this explanation: During the hearing of Protest 15 the jury found that the behavior of SLO 21 was rude toward jury members. He spoke vulgarly in Slovenian and accused the Bulgarian panel chairman of prejudice against him because he was Slovenian. In protest 21 the same competitor repeatedly accused the jury for not taking the right decision. The jury warned the competitor for his bad behaviour. Since nothing changed, the jury decided to take further action on rule 69.

Reviewers' Comments:

Rule 69 involves gross misconduct, include a gross breach of a rule, good manners or sportsmanship or conduct bringing the sport into disrepute. The facts as written by the jury are not specific enough to evaluate whether or not the competitor's behaviour was indeed a gross breach of good manners. The decision that the competitor did break rule 69.1(a) therefore is surprising.

It is also surprising that in these two hearings the jury was unable to take control of the competitor's behaviour to avoid the escalation that led to the allegation of gross misconduct.

42 Rule 69.2(a) requires the letter to inform the competitor of the “alleged breach”. A letter stating a conclusion that a competitor committed “gross breach of good manners and behaviour towards a member of the International Jury” without supporting facts is inadequate. Similarly the statement of: accusing the members of the jury for not making the right conclusion and decision on case 15” is inadequate as well. The mere fact that a person states that a protest committee made a wrong decision is not gross misconduct, without further facts alleging the circumstances or the manner in which it was stated.

43 The written notice is an important procedural step to inform the competitor exactly what the allegation is that he has to defend against and so that he can prepare for the hearing.



- 44 The conduct of the officials in the Rule 69 hearing (including the preliminary procedure and subsequent actions ) was inadequate in the following respects:
- 44.1 The written notice should have been more specific regarding the actions that caused the protest committee to conclude that an act of gross misconduct may have occurred.
- 44.2 The facts found do not support the conclusion of gross misconduct. There is no finding of fact that the competitor accused a panel member of national bias and nor are there any facts relating to language used by the competitor, for example. These facts are critical as mere disagreement with the decision of a jury panel is not grounds for finding gross misconduct.
- 44.3 For the same reasons as in 44.2, the report to the MNA's is inadequate in that it does not accurately and in detail reflect what the misconduct of the competitor was so that the MNA can make a proper decision whether to take further action.
- 45 This performance, below the level expected of an International Jury, is serious due to the nature of rule 69. While the performance of juries handling rule 69 cases is often less than ideal, this conduct was particularly poor.
- Allegation 5 (Protest 21) An inability to control and defuse a junior competitor's behaviour in the protest room;**
- 46 The Panel has attempted a further investigation by contacting the coach and the competitor involved.
- 47 In light of the lack of first hand detailed evidence of what happened at the hearing the Panel finds that this allegation is not proved.

## Summary of findings on allegations

48 The following finding adverse to the officials are made:

	Hulki Oruz	Costas Tsantilis	Kamen Fillyov	Oleg Ilyin	Christoph Zeiser
Allegation 1	Inadequate performance	Inadequate performance		Inadequate performance	
Allegation 2		Serious inadequacy and incompetence	Serious inadequacy and incompetence	Serious inadequacy and incompetence	Serious inadequacy and incompetence
Allegation 3	Serious inadequacy and incompetence	Serious inadequacy and incompetence	Serious inadequacy and incompetence	Serious inadequacy and incompetence	Serious inadequacy and incompetence
Allegation 4	Serious inadequacy	Serious inadequacy		Serious inadequacy	Serious inadequacy

## Delay

49 This decision is made more than a year after the event. This is undesirable. The reasons for this delay are the following:

- 49.1 The Report was made on 8 November 2015 following an initial review that sought the views and information from the officials. The officials at that early stage failed to adhere to dates set for responses and sought to object to the proceedings instead of dealing with the substance of the issues.
- 49.2 There appears to have been an unreasonable delay from 4 November 2015 until the appointment of the Panel in March 2016. The Panel does not know the reason for this delay and whether there is good reason for such delay. This delay does appear excessive.
- 49.3 The officials concerned failed to adhere to dates set for responses and either replied late or on the last day, not with substantive responses, but with an apparent effort to further delay matters.
- 49.4 Due to unforeseen circumstances (serious illness, which required a member of the Panel to fill in an exponential amount of work for Worlds Sailing not foreseen, followed by a serious family illness) one of the members was not available to work on this matter for long periods of time. As the Panel has to make the decisions jointly this delayed the proceedings.

49.5 There has been an administrative delay in communications through the office of the CEO, which the CEO should address.

50 The officials recently sought to delay these proceedings further until the middle of September. They have all sent the same representations (with exactly the same words) making vague allegations that they are busy. They have had since 30 June 2016 to answer these allegations. As of the date of this report (November 2016) no further representations were made and the officials have never dealt in a meaningful way with the allegations regarding their inadequate performance and competence.

51 The Panel is of the view that the officials have not been prejudiced in their defence of the allegations by the delay . The officials have made it clear that they do not intend to address the issue of their performance or competence.

#### **Officials' contentions regarding the validity of these proceedings**

52 The officials contend that these proceedings are invalid as the initial verbal reports (referred to in the first sentence of the Report) was not in writing and was not provided to them. This contention has been made repeatedly.

53 This regulation requires a written report. A written report was made. What precipitated the written report is irrelevant to these proceedings. The purpose of the requirement for a written report is that an official has to know the case it has to meet. The prior verbal reports are not part of the case that the officials have to meet and does not appear to have played any part in the making of the Report. The reference to the two verbal reports was simply to explain the process that precipitated the investigation and Report.

54 The officials were informed on 31 July 2016 that their assertion in this respect is incorrect. In spite of this, the officials still refuse to deal with the substance of Report made and provided to them.

55 The Constitution Committee in Interpretation 002-16 in Question and Answer 04 subsequently confirmed that the report was valid for the purposes of this investigation.

### **Conduct of the officials in these proceedings and prior investigation**

56 The individual officials refuse to deal with the allegations separately. They sought to delay the initial investigation prior to the Report and they have sought continually to delay these proceedings inordinately (at the same time complaining that it has taken too long). They repeat the incorrect contention that these proceedings are invalid. They refuse, however, to deal with the issue of substance, being their inadequate performance and competence, particularly as regards Allegations 2 and 3, or recognize this.

57 The conduct of the officials in this regard is disappointing and unbecoming of race officials. This is not, however, an allegation that is the subject of these proceedings. This conduct might only be taken into account in deciding an appropriate sanction, as it indicates that the lack of judgement reflected in allegations 2 and 3 was not an isolated incident, and that it also indicates that the officials do not have an understanding that their conduct is inadequate.

### **Formal Decision**

58 The Panel finds inadequate conduct and competence of the official Hulki Oruz IJ in respect of the following:

58.1 Allegation 1: Inadequate conduct.

58.2 Allegation 3: Inadequate conduct and competence of a serious nature.

58.3 Allegation 4: Inadequate conduct and competence of a serious nature.

59 The Panel finds inadequate conduct and competence of the official Costas Tsantilis IJ in respect of the following:

59.1 Allegation 1: Inadequate conduct.

59.2 Allegation 2: Inadequate conduct and competence of a serious nature.

59.3 Allegation 3: Inadequate conduct and competence of a serious nature.

59.4 Allegation 4: Inadequate conduct and competence of a serious nature.

60 The Panel finds inadequate conduct and competence of the official Kamen Fillyov IJ in respect of the following:

60.1 Allegation 2: Inadequate conduct and competence of a serious nature.

60.2 Allegation 3: Inadequate conduct and competence of a serious nature.

61 The Panel finds inadequate conduct and competence of the official Oleg Ilyin IJ in respect of the following:

61.1 Allegation 1: Inadequate conduct.

61.2 Allegation 2: Inadequate conduct and competence of a serious nature.

61.3 Allegation 3: Inadequate conduct and competence of a serious nature.

61.4 Allegation 4: Inadequate conduct and competence of a serious nature.

62 The Panel finds inadequate conduct and competence of the official Christoph Zeiser IJ in respect of the following:

62.1 Allegation 2: Inadequate conduct and competence of a serious nature.

62.2 Allegation 3: Inadequate conduct and competence of a serious nature.

62.3 Allegation 4: Inadequate conduct and competence of a serious nature.

#### **Direction regarding further conduct**

63 The Panel directs that the officials shall have until 12:00 UTC on 25 November 2016 to make representations as regards the sanction to be recommended in terms of regulation 32.8 and 32.9.

Lance Burger (Chairman)  
John Doerr  
Ricardo Navarro  
3 November 2016