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

Second Decision in terms of Regulation 32.8 and 32.9 and Recommendation

Introduction

1. The Panel's decision on 3 November (the “First Decision”) found inadequate conduct and competence by the officials listed above. The Panel directed that any representations regarding sanctions were to be made by 12:00 UTC on 25 November 2016. Each of the officials made representations, which will be discussed below.

2. The Panel therefore must decide on the appropriate recommendation in terms of regulation 32.8 and 32.9, being that no further action be taken, that sanctions shall be imposed or that a report shall be made to the CEO for disciplinary action.

3. The nature of the inadequate conduct and competence has been fully dealt with in the First Decision and will not be repeated here. The First Decision must be considered with the recommendation made herein.

Policy Considerations regarding sanction

4. The primary objective of regulation 32 is to ensure that race officials provide a quality service to competitors. Regulation 32 sets out procedural safeguards for officials and provides, inter alia, for sanctions to be imposed. The fact that sanctions may be imposed does not mean that the purpose
is to punish race officials. The sanctions imposed on officials should be the minimum that may be imposed to ensure that race officials will perform adequately in future.

The Panel recognises that officials mostly act unpaid on a voluntary basis. Some of the officials have served the sport well over many years. This service to the sport must be recognized, but this does not mean that the sanctions recommended can be less than is necessary to protect competitors from inadequate performance or competence in future.

Representations

The officials were given an opportunity to give explanations for their conduct and performance before the Report was made in 2015 and again before the First Decision was made. The officials sought to delay matters and at the same time persisted with the contention that the investigation was technically flawed in terms of the regulations, in spite of being informed that it was not so.

The officials (other than Mr. Zeiser who did so in a half-hearted way) have not previously recognised their shortcomings, but sought to deny their inadequate performance. It is only now that they seek to deal with the merits of the complaints against them and give explanations, which should have been done when they were first given the opportunity to do so.

It is only after a finding was made in paragraphs 56 and 57 of the First Decision that their conduct in these proceedings was disappointing, and that their failure to understand their inadequate conduct might be taken into account as regards an appropriate sanction, that there is a belated admission of their inadequacy. There is no explanation as to why these admissions were not made before.

Large parts of the representations were copied and pasted from each other. Each of the representations need to be considered separately as each officials is entitled to be judged on his own conduct and circumstances.
Although there are facts contained in these representations that assist the Panel in understanding the circumstances, there is nothing in the representations to indicate that our findings in the First Decision are wrong. The Panel has considered these representations in full. In the discussion below the Panel will only deal with those representations that might affect the severity of the sanction imposed.

Representations: Hulki Oruz

In respect of Allegation 1 it is stated: “During the hearing we all felt that ISR77 hit GRE21 on purpose. As we didn’t have proof 100% stating as a fact on the form without taking further action on rule 2 or rule 69, we decided to DSQ both.” This indicates that the panel based a decision on a fact they did not find. The degree of proof is never 100% as stated, it is normally balance of probabilities for protest cases and to the comfortable satisfaction of the protest committee for RRS 69. This raises further concerns regarding Mr. Oruz’s competence.

As regards Allegation 3, Mr. Oruz acknowledges an incorrect procedure. He justifies this on the basis that it was done used to save time. There is no recognition by Mr. Oruz that ‘saving time’ is no justification for this procedure.

As regards Allegation 4, Mr. Oruz states that he does not understand what the mistake was. He further indicates that all of the misconduct by the sailor was not stated so as to lessen the consequences for the sailor. This indicates a lack of understanding of the duties of a judge, that is: to find facts on the evidence available (to the required degree of proof) and to record these facts, and not to omit relevant facts to achieve a desired outcome. The facts found should have been written down. It was open to the international jury to recommend no further action to be taken, but it is not appropriate to manipulate facts. This conduct prevents a national authority from making a proper decision.
Mr. Oruz further points out that he has served as a race official for a long time. He further submits that, as chairman of the jury, only he should be sanctioned, and that the sanction should be at most a formal warning in terms of regulation 32.9(a).

**Representations: Costas Tsantilis**

In respect of Allegation 1 the submission is the same as Mr. Oruz. The same remarks apply to him as well in this regard.

As regards Allegation 2 Mr. Tsantilis acknowledges that more detailed facts should have been found. He does not acknowledge that the decision was simply wrong (although such an acknowledgement is implicit in the reversal of the decision). Mr. Tsantilis does not explain or recognise the serious mistake in disqualifying a competitor in the absence of a protest.

The explanation regarding Allegation 3 is the same as that of Mr. Oruz. What is stated above in respect of Mr. Oruz applies to Mr. Tsantilis as well.

The response regarding Allegation 4 as the same as that of Mr. Oruz. What is stated above in respect of Mr. Oruz applies to Mr. Tsantilis as well.

The Panel found in the First Decision that Allegation 5 was not proven. In spite of this Mr. Transtilis gives a long explanation dealing with the merits of this allegation. This indicates a lack of understanding of procedures. This lack of understanding is a concern for someone who is an international judge.

Mr. Transtilis then makes the same submissions as Mr. Oruz regarding long service and that states that the sanction should be a formal warning at most.
Representations: Kamen Fillyov

21 As regards Allegation 2 Mr. Fillyov acknowledges the shortcomings in not putting the facts to support the decision. He does not acknowledge or explain the serious mistake in disqualifying a competitor in the absence of a protest.

22 Mr. Fillyov now acknowledges the incorrect procedure followed as regards Allegation 3. There is no recognition by Mr. Filyov that ‘saving time’ is no justification for this procedure.

23 Mr. Fillyov states that he has served a race official for many years. He also submits that the sanction should be a formal warning at most.

Representations: Oleg Ilyin

24 Dr. Ilyin's submission regarding Allegation 1 is similar to that of Mr. Oruz, except that his submission does not reflect the same misunderstanding regarding the degree of proof required. The criticism that a decision was made without facts found still remains.

25 As regards Allegations 2 and 3 Dr. Ilyin does not acknowledge the shortcomings in not recording facts found. He does not acknowledge or explain the serious mistake in disqualifying a competitor in the absence of a protest.

26 As regards Allegation 4, Dr. Ilyin insists that the conduct of the protest committee was correct. He only acknowledges that there should have been a finding of the rude words used. This indicates a lack of understanding that mere criticism of a jury decision is not misconduct. The facts found not only failed to quote the rude words, but also did not have any reference to rude words. He contends that the mistake is in not giving a heavier penalty, but does not acknowledge that the facts found do not support a breach of rule 69.1.

27 Similarly to Mr. Trantiis, Dr. Ilyin deals at length with Allegation 5, which was not proven. This similarly indicates a lack of understanding of procedures and is a concern.
Dr. Ilyin points out that he has been an international judge for 20 years and has officiated at high level events, including four Olympic Games.

**Representations: Christoph Zeiser**

29 As regards Allegation 2, Mr. Zeiser acknowledges that it was incorrect to disqualify a boat without a protest against it.

30 Mr. Zeiser acknowledges the significant error in not following the correct procedure.

31 Mr. Zeiser acknowledges the shortcomings regarding Allegation 4.

32 Mr. Zeiser further points out that he continuously seeks to improve himself and seeks feedback. He is a relatively young and inexperienced international judge who only became an international judge in 2012. He expresses a willingness to learn.

33 Although Mr. Zeiser does not say so, it is likely that being a relatively inexperienced judge he was guided by the much more experienced and older judges on the panel. For this reason he might have hesitated expressing his disagreement with the decisions made. This should be considered in deciding an appropriate sanction.

**Possible sanctions**

34 The first option, recommending that no further action be taken, is not appropriate here. The findings of inadequate conduct and competence is such that it cannot be regarded as trivial. Taking no action might well result in the officials performing similarly in future to the detriment of competitors. In that case the status of race officials in general will also be harmed by further inadequate performance.
The third option, making a report to the CEO for disciplinary action, is not appropriate either. This is not a case of dishonesty or such serious misconduct that would require a further formal process with a published decision.

This leaves us with the question as to what sanction to impose, which will ensure a proper service to competitors in future at events where the officials might serve as race officials.

Should different officials receive a different sanction?

The performance of each official must be judged separately with his individual circumstances to decide on an appropriate sanction. To judge all the officials collectively will not be appropriate, as it might result in some officials receiving an unduly harsh penalty.

It should also be considered that in respect of one official (Mr. Fillyov) only two allegations were proved, whereas in respect of others four allegations were proved. We also note that Mr. Zeiser has now acknowledged his shortcomings and expressed not just a willingness but also a desire to learn and be educated. The fact that he is young and probably adversely influenced by the other much more senior judges should also be taken into consideration.

Appropriate sanction in this case

The Panel has considered the nature of the inadequate performance as set out in the First Decision as well as the officials' lack of recognition of their shortcomings. A formal warning or reprimand is not appropriate. There has now been a partial recognition of their shortcomings. The failure to acknowledge these shortcomings until now does not indicate a willingness to learn and improve.

The Panel has considered whether the goal of protecting competitors can be achieved by requiring supervision. Such a sanction will be cumbersome to administer and will require continuous monitoring by various people to ensure that the supervision is adequate. It will also require significant extra work and responsibility by another international judge. In light thereof that the
inadequate performance and competence relates to a core function of an international judge, being the hearing of protests, and that it will be difficult to supervise this aspect of the officials’ work effectively considering their shortcomings. The position of Mr. Zeiser is a bit different as limited supervision would be required. The Panel considered imposing a sanction of supervision on Mr. Zeiser. After some debate the Panel decided against it as supervision without providing copies of the First Decision and this Recommendation would be ineffective, and providing copies of to supervising jury chairmen would needlessly embarrass all five officials.

41 The question is how to remedy the lack of competence without simply terminating their appointment, which is undesirable considering the long service by some of the officials. The conclusion is that the officials must be educated and tested to ensure that they comply with the minimum standard for international judges for a first appointment. The officials shall therefore be given a reasonable opportunity to prove that they meet this standard.

42 The exception to this is Mr. Zeiser, who has attended the seminar relatively recently and passed the test for first appointment. A different sanction will be imposed on Mr. Zeiser.

43 The Panel has also considered whether Mr. Fillyov should be given a lesser sanction in light thereof that only two allegations were proven against him and that he now mostly acknowledges his shortcomings. There are, however, serious indications findings of inadequacy and incompetence and Mr. Fillyov has not previously acknowledged the shortcomings. Under the circumstances the Panel is of the view, for the benefit of the competitors at events where Mr. Fillyov might officiate in future, to impose the same sanction on him.

44 The Panel has considered that a sanction to attend further training and an examination will probably result in the race officials having to incur expenses. This is unfortunate, but cannot be avoided, if this sanction is imposed.
The Panel has considered whether it would be sufficient for the officials to only pass the international judge renewal test. The renewal test does not sufficiently test the particular skills lacking in this instance. Although the international judge test for first appointment does test some of the skills, the Panel is of the view that re-attendance at an international judge seminar is also required for the majority of the officials to refresh their skills to the standard one would expect from international judges.

**Recommendation on sanction**

The Panel therefore recommends the following sanction:

46.1 Each of Ali Hulki Oruz IJ, Costas Tsantilis IJ, Kamen Fillyov IJ, and Oleg Ilyin IJ individually (the “officials”) shall attend an international judges seminar and pass the international judges test for first appointment by 31 December 2017.

46.2 Each official individually shall not accept an appointment to be the chairman of an international jury, nor chair a panel of an international jury until he has met the requirement in paragraph 46.1 above.

46.3 Failure to comply with either 46.1 or 46.2 will result in termination of the appointment of those who do not comply as provided for in Regulation 32.

46.4 The Chairman of the Race Officials Committee may extend the deadline of 31 December 2107 by up to one year on good cause shown.

The Panel therefore recommends the following sanction in respect of Mr. Zeiser:

47.1 Christoph Zeiser IJ shall pass the international judges test for first appointment by 31 December, 2017,

47.2 Christophe Zeiser shall not accept an appointment to be the chairman of an international jury, nor chair a panel of an international jury until he has met the requirement in paragraph 47.1 above.

47.3 Failure to comply with either 47.1 or 47.2 will result in termination of his appointment as provided for in Regulation 32.
47.4 The Chairman of the Race Officials Committee may extend the deadline of 31 December 2107 by up to one year on good cause shown.

Lance Burger (Chairman)
John Doerr
Ricardo Navarro
15 December 2016