



Gymnastics Ethics Foundation
Fondation d’Ethique de la Gymnastique

DECISION

rendered by the

GEF Appeal Tribunal Panel

on 13 September 2022

in the matter of Mr. Ivan Kuliak **APPELLANT**, against the decision rendered by the Disciplinary Commission of the Gymnastics Ethics Foundation issued and notified on 17 May 2022, relating to the disciplinary proceedings opened against Mr. Ivan Kuliak, Ms. Valentina Rodionenko and Mr. Igor Kalabushkin (Case No. Appeal GEF 2022/13 RUS).

Appellant

Mr. Ivan Kuliak, (RUS)

represented by Mr. Daniil Gabdrakhmanov and Mr. Alexei Panich, Attorneys-at-Law

vs.

Respondent

International Gymnastics Federation, based in Lausanne, Switzerland

represented by Mr. Vincent Jäggi and Mr. Riccardo Coppa, Attorneys-at-Law, Kellerhals Carrard

The Panel

President: Ms. Valérie Horyna (SUI)

Members: Ms. Jane Bickerstaff QC (GBR)

Prof. Edgardo Muñoz López (MEX)

I. Parties

1. The Appellant in these proceedings is:

Mr. Ivan Kuliak, (**Appellant**)

The Appellant is represented by Mr. Daniil Gabdrakhmanov and Mr. Alexei Panich, Attorneys-at-Law

2. The Respondent in these proceedings is:

International Gymnastics Federation (**Respondent** or **FIG**)

Avenue de la Gare 12A, 1003 Lausanne, Switzerland

The Respondent is represented by Mr. Vincent Jäggi and Mr. Riccardo Coppa, Attorneys-at-Law, Kellerhals Carrard

3. The Appellant and the Respondent are collectively referred to as the “Parties” and individually as a “Party”.

II. Facts of the Case

4. Pursuant to the requirements applicable to disciplinary decisions under Article 23 FIG Code of Discipline (CoD), the facts relevant to this case are stated in section A, par. 1-5 of the appealed GEF Disciplinary Commission (DC) Decision and shall be deemed hereby reproduced for all legal purposes. In addition, the FIG CoD empowers the Gymnastics Ethics Foundation Appeal Tribunal Panel (AT Panel) to consider new factual and expert evidence in deciding the merits of an appeal.¹

III. Summary of the proceedings before the Appeal Tribunal

5. On 17 May 2022, the GEF DC notified its decision relating to the disciplinary proceedings opened against the Appellant (**DC Decision**).

¹ FIG CoD, Chapter IV Common Procedural Rules, Arts. 9 – 27, relating to the taking of evidence applicable to both the DC and AT proceedings.

6. An appeal was filed on 7 June 2022 by the Appellant, against the GEF DC Decision (**Appeal**).
7. On 10 June 2022, the AT Panel was appointed by the GEF and the AT Panel was notified of the Appeal.
8. On 17 June 2022, the AT Panel communicated the Notice of Appeal and Panel Appointment to the Parties. In this communication, the AT Panel invited the Respondent to submit a Reply Brief on the merits of the Appeal on or before 8 July 2022.
9. On 27 June 2022, the AT Panel informed the Parties that the hearing in the matter would be held on 15 or 17 August 2022. Also, the AT Panel invited the Parties to express their preferences for any of those two dates on or before 4 July 2022.
10. On 4 July 2022, the Respondent replied that it believed a hearing was not necessary in this matter, since the facts giving rise to this dispute had already been established. Notwithstanding the above, the Respondent confirmed that they would be available on both proposed dates.
11. On 5 July 2022, the AT Panel informed the Respondent that the Appellant requested a hearing in his notice of appeal of 7 June 2022 and that the deadline for submission on the merits of the appeal would expire on 8 July 2022.
12. On 7 July 2022, the Respondent requested an extension of deadline until 13 July 2022 to file the answer due to concurrent commitments. On the same day, the AT Panel granted the request for a deadline extension until 13 July 2022.
13. On 8 July 2022, the Appellant insisted on his right to a hearing, although the AT Panel had granted such, addressing the Respondent's opposition in its communication.
14. On 13 July 2022, the FIG submitted its answer to the Appeal with exhibits (**FIG Response**).
15. On 19 July 2022, the AT Panel informed the Parties that the online hearing in the matter would be held on 15 August 2022.

16. On 21 July 2022, the Appellant requested permission to file an additional reply to the Respondent's position, under the premise that the latter relies "*upon new arguments that were not raised during the first instance proceedings.*" The following day, the AT Panel granted the Appellant the opportunity to file a response to the Respondent's submission until 29 July 2022. Further, the FIG was invited to provide its final response by 5 August 2022. At the same time, the FIG was invited to state any objections to the final submission of the Appellant by no later than 27 July 2022.
17. On 26 July 2022, the Respondent objected to this request since it considered the exchange unnecessary and not based on valid reasons.
18. On 27 July 2022, the Appellant requested the AT Panel to maintain its previous order and allow for a second exchange of briefs.
19. On 29 July 2022, the AT Panel maintained its position to allow for a further exchange of submissions by the Parties with the above deadlines.
20. On 29 July 2022, the Appellant submitted his reply to the Respondent's answer (**Appellant's Additional Position**).
21. On 5 August 2022, the FIG filed its final response on the Appeal (**FIG's Final Position**).
22. On 11 August 2022, the AT Panel requested the Appellant to specify who would be attending the hearing and in which role. Upon confirmation, the AT Panel provided the hearing agenda on 12 August 2022.
23. On the same day, the Appellant informed the AT Panel that the persons who would attend the hearing on behalf of the Appellant were: Mr. Alexei Panich and Mr. Daniil Gabdrakhmanov, counsels for the Appellant, Mr. Vsevolod Salomatov, Head of International Relations Dept. of the Russian Gymnastics Federation, as an observer, Ms. Valentina Rodionenko as the Appellant's witness and Mr. Alexander Shishkin as an interpreter.

24. On 15 August 2022, the hearing was held by videoconference, where representatives of all Parties were present and had an opportunity to address the AT Panel on the merits of the Appeal.
25. At the end of the hearing, the Parties' counsel confirmed that their right to be heard had been provided and fully respected.

IV. The Parties' Submissions

26. The following summary in this section does not purport to include every single contention put forth by the Parties at these proceedings. However, the AT Panel has thoroughly considered, in its discussion and deliberations, any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.

A. The Appellant

27. Bearing in mind the above, the Appellant's main arguments put forward can be summarised as follows:

- 1. The GEF DC failed to take into consideration the events preceding and directly causing the incident**

- The GEF DC ignored that the Appellant's behaviour was provoked "*by an unlawful demand of Mr. Mickevic, the President of the FIG Men's Artistic Gymnastics Technical Committee, who insisted that the Appellant must eliminate the emblem of the Russian Olympic Committee*", which was in contradiction with the FIG's decision of 26 February 2022, that only provided for a ban of the Russian flag and anthem and by the "*offensive behaviour*" of the Ukrainian gymnasts against the Russian delegation.

- 2. The GEF DC mischaracterised the meaning of the "Z" symbol and the Appellant's intentions**

- The GEF DC materially mischaracterised the meaning given to the letter “Z” by the Appellant with its own interpretation suggesting that the Appellant associated the letter “Z” with the ongoing military operation in Ukraine and that this became a symbol of the ongoing military action in Ukraine. However, the Appellant had explained in his post-competition interview and in his witness statement to the GEF DC that the letter “Z” was “for Peace” and “to Strive for a Sporting Victory” and there was no act of aggression as wrongly asserted by the GEF DC.
- The Appellant’s only intentions behind this conduct was his wish to emphasise that he was a Russian athlete.

3. The GEF DC’s decision was disproportionate

- The Appellant refers to the International Chess Federation (FIDE) decision in which the athlete Mr. Karjakin was also charged with alleged public support of the military operation in Ukraine. Although Mr. Karjakin’s statements were far more explicit, he received a much more lenient penalty.
- The GEF DC failed to take into account any mitigating circumstances, such as his age (only being 20 years old on the date of the conduct), his lack of experience at international adult competitions, the lack of ethical education from FIG, never having committed any violation of the FIG’s rules before and that the incident took place in the heat of the moment.

4. The GEF DC improperly calculated the duration of the ban

- The GEF DC wrongly linked the disciplinary sanctions imposed on the Appellant with the current protective measures prohibiting Russian and Belarussian athletes from participating in the FIG competitions, which is currently pending at CAS. The current protective measures not allowing Russian and Belarussian athletes to compete must be qualified as “*discriminatory measures*” and the disciplinary sanctions by the GEF DC are “*undefined*”.
- According to the GEF DC Decision, the Appellant is not allowed “*to participate in any FIG sanctioned event or competition organized by an*

affiliated FIG member federation” for one year as of the date of its decision. According to the “*discriminatory measures*”, Russian and Belarussian athletes and officials are not allowed “to take part in FIG competitions or FIG-sanctioned competitions” from 7 March 2022 until further notice. The GEF DC Decision prevents the Appellant from participating in domestic competitions, while the discriminatory measures allow him to compete in domestic gymnastic competitions.

- Also, the discriminatory measures are indefinite and thus the current sanction being linked to them is not legal and predictable.

5. The GEF DC did not correctly apply the FIG’s Regulations

- The GEF DC sanctioned the Appellant without any valid legal basis, by applying “*FIG’s regulations which are not applicable to the present case*”. The Appellant’s conduct does not fall under Art. 3 FIG CoD, the IOC Code of Ethics does not apply and his conduct did not constitute any type of harassment or abuse.

Requests for relief

- i.) To annul the decision notified on 17 May 2022 by the DC of the GEF;
- ii.) Alternatively, if the Appellant is found guilty, to take into account all mitigating circumstances and limit the sanction issued by the DC of the GEF to the suspension for the period less than one (1) year starting from the date of the challenged decision (without disqualification from the Doha competition);
- iii.) Alternatively, if the Appellant is found guilty, but no mitigating circumstances are applied, to limit the sanction to suspension only starting from the date of the challenged decision (without disqualification from the Doha competition);
- iv.) To be allowed to keep the bronze medal;
- v.) The FIG shall bear the entirety of the procedural costs;
- vi.) To order the FIG to reimburse entirely to the Appellant the costs incurred from these proceedings;
- vii.) The FIG’s costs shall be borne by the FIG;
- viii.) To keep the decision of the GEF AT confidential or publish only the operative part of the Decision.

28. The more detailed arguments made by the Appellant in support of his written submission are set out below as far as they are relevant.

B. The Respondent

29. The FIG's submissions may be summarised as follows:
- Regarding the argument that Mr. Mickevic's unlawful conduct allegedly provoked the incident, provocation cannot be considered as an exonerating or mitigating circumstance to escape disciplinary sanctions. Further, Mr. Mickevic's conduct was far from "unlawful", but rather consistent with the IOC EB recommendations dated 28 February 2022.
 - As to the mischaracterisation of the letter "Z", the FIG argues that the real meaning of the symbol "Z" worn by a Russian athlete shortly after the Russian military invasion of Ukraine, cannot seriously be questioned. Therefore, the Appellant's explanations that the letter "Z" was for "*Zasport*" (i.e. a local manufacturer) or "*Za sportivnuyu pobedu*" ("for sporting victory") are not credible as already confirmed by the GEF DC. Also, the Appellant's intentions behind his behaviour are strictly irrelevant.
 - As to the legality of the sanctions imposed on the Appellant, there are several legal bases which justify the imposition of disciplinary sanctions on the Appellant. Therefore, the GEF DC's assessment, which recognised that the Appellant's conduct breached Art. 3 FIG CoD, Arts. 2.1 d) and 3 a) FIG CoC as well as the FIG Code of Ethics, which refers to the IOC Code of Ethics, is applicable.
 - The sanctions imposed by the GEF DC on the Appellant are not disproportionate as claimed by the latter. Concerning the proportionality of the sanctions imposed on the Appellant, the AT Panel should not take into account the jurisprudence rendered by another international federation, which applies different sets of rules to materially different facts. Further as to the argument of the Appellant that the GEF DC did not take into account any mitigating or aggravating circumstances, the FIG refers that the GEF DC has taken into account all circumstances when taking its decision, which is

reflected in its grounds of the decision. Further, the FIG points out that the following aggravating circumstances are to be taken into account: (i) the Appellant never apologised or showed any regret for his conduct; (ii) the Appellant tried to mislead the Panels about the real meaning intended behind the symbol “Z” worn on his uniform; (iii) and the Appellant’s conduct has been echoed by other athletes and by the general public exhibiting the “Z” symbol.

- The GEF DC’s decision linking the sanctions imposed on the Appellant to the protective measures concerning the Russian athletes is correct. From the GEF DC’s decision the sanction is clearly defined both materially and temporally as the GEF DC decided that “*if the protective measures (...) are still in place*” on 17 May 2023, the ban will continue to last for 6 months after the removal of said measures. If the “*protective measures*” are lifted before 17 May 2023, then the Appellant’s ban will last “*at least one year from the date of the decision*”, i.e. the sanction will run in any event until 17 May 2023. This is actually favourable to the Appellant, since the GEF DC decision reduces the sanction to six months if the “*protective measures (...) are still in place on 17 May 2023*” or if those measures are lifted before 17 May 2023, the disciplinary sanction will in any case last actually less than one year (as those measures are currently in place).

Requests to the AT Panel

- i.) To dismiss in its entirety the Appeal filed by the Appellant;
- ii.) To confirm the appealed GEF DC decision;
- iii.) To order the Appellant to bear the full costs of these proceedings, if any;
- iv.) To order the Appellant to make a contribution to FIG’s legal costs;
- v.) To publish the full decision of the AT Panel.

IV. Considerations by the Appeal Tribunal Panel

30. In view of the circumstances of the present matter, the AT Panel first decided to address some key procedural aspects (A), before entering into the substance of the case (B).

A. Procedural Aspects

1. Competence of the GEF Appeal Tribunal and admissibility of the Appeal

31. Pursuant to Article 19 FIG Statutes, the FIG entrusts GEF with the running of disciplinary proceedings independently, in accordance with its constitution and operational rules and following the provisions set out in the FIG CoD. GEF is also entrusted with the election of the members of the DC and the AT.
32. Under Articles 30 and 33 FIG CoD and Article 4.2 GEF Operational Rules, the AT has jurisdiction to hear and decide the appeals lodged by parties directly involved in disciplinary proceedings against any decision of the GEF DC.
33. In accordance with Article 43.2 FIG Statutes, the AT is the authority generally qualified and competent to impose disciplinary measures concerning appeals.
34. The AT Panel makes this decision in accordance with the requirements set forth in Article 23 FIG CoD and related provisions applicable to this case.
35. This having been established, the AT Panel acknowledged that:
 - i. The decision of the GEF DC was notified on 17 May 2022;
 - ii. The Appellant submitted his reasons for the Appeal and the proof of payment of the appeal fee on 7 June 2022;
 - iii. The GEF received the appeal fee.
36. In view of this, the AT Panel held that the requirements of Art. 30 of the FIG CoD have been met and therefore declared the present appeal admissible. In addition, the AT Panel notes that the Respondent does not dispute the admissibility of the present Appeal.

2. Applicable Law

37. This proceeding is governed by the FIG CoD subject to other specific rules and policies of the FIG. In the absence of a specific provision in the FIG CoD or in other disciplinary provisions of the FIG rules, the AT Panel will rule according to the general principles set out in the FIG CoD and according to the general principles of justice, fairness and

equality; it shall apply the general principles of Swiss law, and principles acknowledged internationally (Art. 1 FIG CoD).

38. The AT Panel has the power to automatically conduct the necessary investigations (Art. 30 FIG CoD). Any incomplete procedural rules or queries in their implementation shall be determined by the President and communicated to the Parties (Art. 33 FIG CoD).
39. Pursuant to Article 18 FIG CoD, the infringement of FIG Statutes and regulations may be established by various types of evidence such as written statements, audio or video recording, confession or others; the Appellants bear the burden of establishing that an infringement has occurred and the standard of proof in all matters shall be the ‘balance of probabilities’, *i.e.* a standard that implies that on the preponderance of the evidence it is more likely than not that an infringement has occurred, and; the admissibility of evidence shall be determined by the AT Panel at its discretion and the latter shall not be bound by any enactment or rule of law related to admissibility of evidence before a court of law or statutory tribunal (Article 18 FIG CoD).
40. The AT Panel may consider new factual and expert evidence in deciding the merits of an appeal.² The FIG CoD does not limit the AT Panel’s role to reviewing the application of the law and principles by the GEF DC; the AT Panel may admit and assess new and old evidence and arguments, under a *de novo* review.
41. The AT Panel decides the issues of this case in accordance with the specific provisions and general principles set out in the FIG CoD, other disciplinary provisions of the FIG, the general principles of justice, fairness and equality, the general principles of Swiss law, and the principles acknowledged internationally (Article 1 FIG CoD).
42. This being established, the AT Panel subsequently analysed the merits of the present case.

² FIG CoD, Chapter IV Common Procedural Rules, Arts. 9 – 27, relating to the taking of evidence and sanction’s power applicable to both DC and AT proceedings. See in particular, Art. 30 FIG CoD “The Appeal Tribunal may automatically conduct the necessary investigations”.

B. Merits of the Case

43. The AT Panel has listened to the Parties and considered all their allegations, arguments and the evidence relied upon, in accordance with their right to be heard under Article 19 FIG CoD. The references in this section are not exhaustive and any missing point, including any allegation, argument or evidence, should not be understood to mean that the AT Panel did not consider it but only that the AT Panel did not regard it as sufficiently relevant to the case and/or sufficiently material to its outcome.
44. In light of the Appellant's allegations, the AT Panel considered that in order to decide this Appeal the following five questions are to be answered:
- i. Did the GEF DC fail to take into consideration the events preceding and directly causing the incident?
 - ii. Did the GEF DC mischaracterise the meaning of the "Z" symbol and the Appellant's intentions?
 - iii. Did the GEF DC correctly apply the FIG's Regulations?
 - iv. Is the sanction imposed on the Appellant by the GEF DC proportionate?
 - v. Is the ban on the Appellant wrongly calculated by the GEF DC?
- i. Did the GEF DC fail to take into consideration the events preceding and directly causing the incident?*
45. First and foremost, the AT Panel referred to the allegations made by the Appellant that the GEF DC failed to take into consideration the events and proceedings directly caused the incident.
46. The AT Panel does not find that the GEF DC failed to take into consideration the events preceding and directly causing the incident when assessing the Appellant's sanction. In any case, the AT Panel wishes to emphasise, that during its hearing further circumstances as to the event came to light, which supported the reasoning of the first instance decision of the GEF.
47. Firstly, the Appellant referred to Mr. Mickevic's demand as unlawful as it was not based on any decision of the FIG Executive Committee.

48. During the AT Panel's hearing, the Appellant described the circumstances leading up to taping the "Z" letter on his shirt to cover the ROC emblem on such. In particular, he mentioned that the day before the competition, the Russian Head of Delegation informed all the gymnasts about the demand to remove any symbols that would identify them with their nationality. Since the Appellant allegedly joined the team at short notice, he was the only one that did not have a neutral uniform and only had a uniform which still had the ROC emblem imprinted. According to the Appellant's statement during the hearing, he found this decision unfair and wanted to show that he is Russian when competing. According to his statement at the hearing, the Appellant never met Mr. Mickevic and only received said instructions by the Russian Head of Delegation.
49. Further, the Appellant argued that the Respondent did not file a witness statement from Mr. Mickevic to explain his interactions with the Russian delegation and the Appellant during the competition. In this regard, the AT Panel wishes to point out that the burden of proof to assert that there was a direct provocation by Mr. Mickevic that would trigger the Appellant's action would lie on the Appellant and that he failed to make any efforts to provide such evidence. Further and as mentioned above, the AT Panel refers to the statement of Mr. Kuliak at the hearing and, as mentioned by the Appellant, assumes that the latter never met Mr. Mickevic in person.
50. In this context, the AT Panel points out that it is irrelevant whether the order of Mr. Mickevic, was rightful or not. Even more so, since the Appellant, according to his own testimony, never met Mr. Mickevic in person, but only received the instructions from his own Head of Delegation the day before the competition. What is relevant, and as correctly pointed out by the GEF DC, is the fact that the Appellant wore a letter "Z" on his uniform, which symbolised his connection to Russia.
51. Furthermore, the Appellant argued that there was offensive conduct of Ukrainian nationals at the competition that led him to react this way. In this regard, the Appellant could not provide any evidence that such conduct would make him react the way he did at the competition and the AT Panel is also not aware of any complaint lodged with the FIG or GEF as to the behaviour of the Ukrainians at the competition.

52. In view of the foregoing, the AT Panel concluded that the GEF DC duly took into account all considerations as to the events preceding the incident and rightfully assessed that the Appellant breached the FIG's regulations based on his action of taping the letter "Z" on his uniform while competing and at the medal ceremony.

ii. Did the GEF DC mischaracterise the meaning of the "Z" symbol and the Appellant's intentions?

53. The AT Panel analysed the GEF DC's interpretation of the meaning of the "Z" symbol and the Appellant's intention by covering his ROC emblem on his uniform with the "Z" letter.

54. The AT Panel agrees with the GEF DC's findings that, in March 2022, at the time of the incident, the letter "Z" had been painted on Russian military vehicles in the days before and during Russia's invasion into Ukraine. It is clear to the AT Panel, that the use of this symbol, which was known to the international public in the context of the Russian's military invasion into its neighboring country Ukraine, is a political statement and shows support of such.

55. The AT Panel is convinced that the Appellant knew that it had been used as such and chose it because it had become a symbol of support for the war. As the Appellant admitted that creating a link with Russia was his goal when taping the letter "Z" on his uniform, it is established to the AT Panel's satisfaction that he knew what the letter stood for in those days and circumstances. Therefore, the AT Panel dismisses all the Appellant's arguments that the letter should be associated with something other than Russia's invasion of Ukraine.

56. Finally, the AT Panel refers to a repeated argument made by the Appellant, according to which "*in law and life the context is everything*"³. Therefore, wearing publicly the "Z" letter at a time when this symbol is associated by the public as a reference to Russia's military invasion into Ukraine is clearly a political statement in favour of such action.

³ Par. 31 of the Statement of Appeal.

57. As a result, the AT Panels is fully satisfied with the GEF DC's analysis of the meaning of the "Z" symbol at the time of the incident and therefore considered that the said Commission had correctly interpreted its meaning.

iii. Did the GEF DC correctly apply the FIG's Regulations on the Appellant?

58. The AT Panel noted that the GEF DC found that the Appellant is in breach of Art. 3 FIG CoD, Arts. 2.1 d) and 3a) of the FIG CoC as well as Art. 1 of the IOC Code of Ethics, which is included in the Preamble of the FIG Code of Ethics.
59. In this regard, the AT Panel concurs with the GEF DC's conclusion that the improper behaviour of the Appellant as to his political statement during an international competition, "*damaged the image of gymnastics and the FIG*" as he "*demonstrated anti-sport behaviour*" by violating the verbal instructions given by a FIG official and thus behaving "*in an offensive way towards the FIG members, gymnasts or FIG officials*". Therefore, these principles, engrained in Art. 3 of the FIG CoD, have been clearly breached.
60. Further, the AT Panel also agrees that Arts. 2.1 d) and 3a) of the FIG CoC have been breached by the Appellant's behaviour as his political statement can be understood as a form of aversion or violence towards the Ukrainian people. His argument that the incident was "*not directed towards anyone. His only intention was to emphasise that he was a Russian athlete*"⁴ and thus the above articles are not applicable is to be dismissed, given that he was competing at an internationally televised gymnastics event standing in the spotlight of dozens of cameras pointing at him while competing and while standing on the podium.
61. Finally, the AT Panel confirms that the Appellant also breached the FIG Code of Ethics, which refers to the IOC Code of Ethics and in particular the "*political neutrality of the Olympic Movement*". As an Olympic sport, all athletes of gymnastics must thus abstain from any political message or propaganda in sport.

⁴ Par. 60 c of the Statement of Appeal.

62. In light of the foregoing, and having concurred with the appealed decision in the fact that the Appellant breached Art. 3 FIG CoD, Arts. 2.1 d) and 3a) of the FIG CoC as well as Art. 1 of the IOC Code of Ethics, the AT Panel continues to analyse whether the sanction imposed by the GEF DC was proportionate.

iv. Is the sanction imposed by the GEF DC on the Appellant proportionate?

63. The AT Panel noted that the Appellant requests that the GEF DC Decision be set aside and, alternatively, for application of mitigating circumstances in reduction of the sanction, as well as for him to retain the bronze medal.

64. In this regard, and it having been established, for the reasons explained above, that the Appellant had breached the relevant provisions of the FIG CoD, the FIG CoC and the FIG Code of Ethics, the AT Panel subsequently wished to analyse the proportionality of the sanction imposed on the Appellant in the GEF DC Decision.

65. Firstly, and with regard to the comparison made by the Appellant as to the FIDE and FINA decisions, which had a much lower sanction, the AT Panel agrees with the GEF DC's conclusion that sanctions imposed on athletes by other sporting federations are irrelevant for the assessment of the present case. Therefore, the AT Panel will not enter into the analysis of this argument any further in order to assess the proportionality of the given sanction issued by the GEF DC.

66. Secondly, the AT Panel analysed whether the GEF DC should have taken into account any mitigating circumstances when assessing its sanction. In particular, the Appellant points out his young age, the lack of ethical education from FIG, that he has not previously committed any violation of the FIG's regulations and that the incident took place in the heat of the moment.

67. The AT Panel turned its attention to Mr. Kuliak's age of 20 years and his argument that his young age should be taken in account when determining the sanction. As correctly pointed out by the GEF DC, the Appellant is a leading gymnast in his country and internationally. It might be true that he has not competed in many international adult competitions before the incident at Doha, however, Mr. Kuliak confirmed himself at the

AT hearing that he has competed numerous times in junior competitions and stood several times on podiums in the public spotlight. Therefore, the AT Panel agrees with the GEF DC that his age is not a mitigating factor in this circumstance.

68. Based on the above and his competitive experience as an international gymnast, the Appellant cannot argue that since the FIG did not provide him with any ethical education, he was unaware about his ethical duties during competitions. The Appellant argues, at the same time, that he has not previously committed any violation of the FIG's regulations and therefore must be well aware of what is ethically allowed and not during international competitions.
69. In addition, and as to the argument made that the incident took place in the heat of the moment, the AT Panel refers to its previous submissions above under point i) and that the events preceding and directly causing the incident are neither proven by the Appellant nor relevant for this incident.
70. Finally, the AT Panel wishes to emphasise that Mr. Kuliak has not shown any expression of regret or apology during the GEF DC or the AT proceedings, which could have been made on a voluntary basis and potentially been considered as a mitigating factor.
71. Against such background, and in view of the violations of the FIG Regulations committed by the Appellant, the AT Panel unanimously decided that the sanction imposed on the Appellant is not disproportionate, keeping in mind the deterrent effect that the sanction must have on such reprehensible behaviour to avoid similar unacceptable conduct in the future.

v. Is the ban on the Appellant wrongly calculated by the GEF DC?

72. As a preliminary remark, the AT Panel highlights that it agreed with the length of the sanction of a one (1) year ban imposed on the Appellant by the GEF DC as of the date of its decision. Subsequently, it will analyse the scope of the ban, according to which the Appellant "*shall not be allowed to participate in any FIG sanctioned event or competition organized by an affiliated FIG member federation for one year*" and that "*If the*

protective measures keeping Russian athletes from competing are still in place by 17 May 2023, the ban shall continue and expire six months after the removal of said measures.”

73. In this regard, the AT Panel notes that the protective measures that have been applied to Russian and Belarussian athletes and officials do not allow them to take part in FIG competitions or FIG-sanctioned competitions from 7 March 2022 until further notice.
74. On the other hand, according to the GEF DC’s Decision, the Appellant is additionally not allowed “to participate in any FIG sanctioned event or competition organised by an affiliated FIG member federation” for one year as of the date of the decision. Therefore, the scope of applicability differs in the two decisions. The GEF DC’s Decision has a wider application than the protective measures, as the Appellant is banned from participating in domestic competitions according to the GEF DC decision vs. only FIG competitions or FIG-sanctioned competitions according to the protective measures.
75. Therefore, the AT Panel sees the two sanctions differently and independent from each other, with different consequences for the Appellant. As one scope is wider than the other, the two sanctions should not depend on one another. The ban in the appealed decision will keep him from competing domestically for longer than one year if the protective measures continue beyond a year, potentially extending a disciplinary ban indefinitely (while other athletes subject to the protective measures may potentially compete in competitions organized by an affiliated FIG member federation). The AT Panel considers that this was likely not intended and could ultimately lead to a disproportionate sanction given its open-ended nature.
76. In conclusion, the GEF DC’s Decision on the ban of the Appellant shall be amended so that he shall not be allowed to participate in any FIG sanctioned event or competition organised by an affiliated FIG member federation for one year as of the date of the GEF DC decision, i.e. from 17 May 2022 until 16 May 2023. This decision applies irrespective of whether the protective measures keeping Russian athletes from competing are still in force on 17 May 2023.

C. Conclusion

77. Bearing in mind the foregoing, the AT Panel holds that the Appeal lodged by the Appellant is partially upheld and the decision taken by the GEF DC on 17 May 2022 is partially confirmed.
78. Finally, the AT Panel decides that the decision can be published in full once final and binding (i.e. after the deadline of an appeal to CAS has expired). According to Art. 23 of the FIG CoD: *“Final decisions shall be published in full, partly or in short on the FIG website or in the FIG official publication, or even in other media”*. In any event, the AT Panel also points out, that in the instant case the Parties have rather extensively communicated to the media about the process.

D. Costs

79. The Appellant has requested the AT Panel to order the Respondent to bear the entirety of the procedural costs incurred by the proceedings. In addition, the Appellant has requested the AT Panel to order the Respondent to compensate the Appellant’s costs incurred within the framework of these proceedings and that the Respondent’s costs shall be borne by itself.
80. Article 27 FIG CoD gives to the AT Panel full discretion to decide whether the costs of the Appeal shall be borne entirely or partly by the sanctioned Party, shared by the Parties at a percentage or borne by the GEF. The result of this appeal proceeding is that the Appellants’ relief sought has been partially rejected. Accordingly, the AT Panel decides that the Appellant shall bear the CHF 5,000 advance to the GEF for the costs of the Appeal. As stated in Article FIG 30 CoD, this amount shall be kept by the GEF if an appeal is considered inadmissible or is fully or partly rejected.
81. In addition, Article 27 FIG CoD sets forth the principle that the Parties shall bear their own expenses and costs (costs of the Party and the lawyer); although the AT Panel has discretion to depart front this principle and to decide that the unsuccessful Party shall pay to the successful Party a fair contribution to or all the expenses. The AT Panel decides that each party covers their own expenses and costs, including the cost of legal

representation. The AT Panel sees no circumstance that entails departing from the general principle on this issue.

V. Decision of the Appeal Tribunal Panel

82. In light of the accepted facts, the reasons explaining the findings and the sanctions taken, as well as the determination of the costs of the proceedings, the AT Panel makes the following decision:

1. The appeal filed by Mr. Ivan Kuliak is partially upheld;
2. The decision issued on 17 May 2022 by the Disciplinary Commission of the GEF is confirmed, save for Item 3 of its operative part which is amended as follows:
“Mr. Ivan Kuliak shall not be allowed to participate in any FIG sanctioned event or competition organised by an affiliated FIG member federation for one year as of the date of the GEF DC’s decision, i.e. from 17 May 2022 until 16 May 2023.”
3. Mr. Ivan Kuliak shall bear the cost of the appeal in the amount of CHF 5000, which is covered by the advance payment to the GEF, which shall retain it;
4. Each party shall bear its own expenses and costs, including costs of legal representation;
5. This decision can be published in full once final and binding (i.e. after the deadline of an appeal to CAS has expired);
6. All other prayers for relief are dismissed.

Lausanne, 13 September 2022

The GEF Appeal Tribunal Panel



Ms. Valérie Horyna
President



Ms. Jane Bickerstaff QC
Member



Prof. Edgardo Muñoz López
Member

Legal Action

Decisions of the GEF Appeal Tribunal may be appealed within 21 days to the Court of Arbitration for Sports in Lausanne (FIG Statutes Articles 20 and 43.2 and the FIG CoD Article 34).