DECISION

rendered on 22 November 2023

by the GEF Appeal Tribunal

in the matter of Ms. Irina Viner's **APPEAL**, against the decision rendered by the Disciplinary Commission of the Gymnastics Ethics Foundation notified on 6 March 2023, and the **CROSS APPEAL** filed by GEF against the same decision on issues of costs, and liability of the Artistic Gymnastics Federation of Russia.

Appellant or Ms. Viner
Ms. Irina Viner

vs.

Respondent and Cross-Appellant or GEF
Gymnastics Ethics Foundation

vs.

Respondent or AGFR
Artistic Gymnastics Federation of Russia

The Panel

President- Prof. Edgardo Muñoz López (Mexico)
Members- Ms. Valérie Horyna (Switzerland)
Mr. Rafael Resende (Brazil)

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Abbreviations

AGFR	Artistic Gymnastics Federation of Russia
Art.	Article
Arts.	Articles
AT	Appeal Tribunal
CEST	Central European Summer Time
CHF	Swiss Franc
CoC	Code of Conduct
CoD	Code of Discipline
CoE	Code of Ethics
DC	Disciplinary Commission
e.g.	*Exempli gratia* (for example)
et seq.	*et sequens* (and the following)
FIG	International Gymnastics Federation
GEF	Gymnastics Ethics Foundation
i.e.	*id est* (this is)
IOC	International Olympic Committee
Ms.	Miss
Mr.	Mister
p.	Page

pp.	Pages
para.	Paragraph
paras.	Paragraphs
Protective Measures	Pursuant to these measures Russian athletes and officials are prevented from participating in FIG-sanctioned competitions
RGTC	Rhythmic Gymnastics Technical Committee
RRFG	Russian Rhythmic Gymnastics Federation
vs.	Versus

I. The Parties

1. The Appellant in these proceedings is:

   Ms. Irina Viner
   (**Appellant** or **Ms. Viner**, individually**)**

2. The Respondent and Cross-Appellant in these proceedings is:

   Gymnastics Ethics Foundation
   (Respondent and Cross Appellant or **GEF)**

3. The Respondent in these proceedings is:

   Artistic Gymnastics Federation of Russia
   (Respondent or **AGFR)**

4. The Appellant, the Cross-Appellant and Respondent and the Respondent are collectively referred to as the "Parties" and individually as a "Party"

II. The Panel

5. The Members of the GEF Appeal Tribunal (**AT**) in this case are:
   Dr. Edgardo Muñoz López, Chair (Mexico)
   Professor of Law, who hereby declares to be independent and impartial from the Parties.

   Ms. Valérie Horyna (Switzerland)
   Lawyer, who declares to be independent and impartial from the Parties.

   Mr. Rafael Resende (Brazil)
   Lawyer, member of the Brazilian Bar Association, who declares to be independent and impartial of the Parties.

   (**AT Panel**, collectively)

The AT Panel was appointed by GEF on 6 April 2023, in accordance with Article 31 of the FIG Code of Discipline (**CoD**). The Members of the AT Panel are not a direct part of the governance structure of the International Gymnastics Federation (**FIG**) or its authorities (Art. 32 FIG Statutes (2023)).

III. Competence and Applicable Procedural Rules

6. Pursuant to Article 32 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 Disciplinary Commission (**DC**) and the AT Panel.

7. Under Articles 30 and 33 FIG CoD (2021) and Article 4.2 GEF Operational Rules, the AT Panel has jurisdiction to hear and decide the appeals lodged by parties directly involved in disciplinary proceedings against any decision of the DC.

8. In accordance with Articles 32 and 34 FIG Statutes, the AT Panel is the authority generally qualified and competent to impose disciplinary measures concerning appeals.

9. This proceeding is governed by the FIG CoD subject to other specific rules and policies. 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).

10. 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).

IV. Language of the Proceedings

11. The language of the proceeding is English and any Party who used another language than English at a hearing, was responsible for using, at its own costs, the services of a qualified interpreter to be approved by the AT Panel. All documents submitted and correspondence sent by and between the Parties was also in English or translated into that language (Art. 15 FIG CoD).

V. Summary of the proceedings before the AT Panel

12. On 6 March 2023, the DC determined that Ms. Viner had breached: i) the Code of Ethics (**CoE**); ii) CoD; iii) FIG Policy and Procedures and Protecting Participants in Gymnastics (**Safeguarding Policy**), collectively (**FIG Rules**). The DC prohibited Ms. Viner from participating in any international competition for two years after the Proactive Measures of the Russian-Ukrainian War (**Proactive Measures**) had been lifted (**DC Decision**).[1]

13. On 27 March 2023, an appeal was filed by Ms. Viner against the DC Decision (**Appeal**).

14. On 27 March 2023, the GEF cross-appealed the DC Decision, alleging that the DC failed to award the GEF costs and that it erred as it concerns the liability of the Artistic Gymnastics Federation of Russia (**Cross-Appeal**).

15. On 3 May 2023, the GEF filed its response to Ms. Viner's Appeal (**Answer to the Appeal**).

16. On 5 May 2023, Ms. Viner filed her response to GEF's Cross-Appeal (**Ms Viner's Response to the GEF's Cross-Appeal**).

[1] DC Decision, p. 20, paras. 3 and 5.

17. On 5 May 2023, the Artistic Gymnastics Federation of Russia (**AGFR**) filed its response to the GEF's Appeal (**AGFR's Response to the GEF's Appeal**). The AGFR also sent a letter (**AGFR's letter of 5 May 2023**) claiming that pages 20 and 21 of the Cross-Appeal had to be removed alleging that the GEF had made additional submissions to the Cross-Appeal and that this was not allowed since it was not provided either by the CoD nor the AT Panel had requested such submissions.[2]

18. On 12 May 2023, the GEF addressed AGFR's letter of 5 May 2023, stating that the "Appeal Brief" section of the Answer to the Appeal, was included to facilitate the AT Panel the navigation of arguments. The GEF also clarified that it did not have any objection in the scenario where the AT Panel would disregard such a section since it did not raise new arguments.

19. On 19 May 2023, the AT Panel suggested some alternative dates to hold a hearing via videoconference.

20. On 2 June 2023, the AT Panel suggested again some alternative dates to hold a hearing via videoconference.

21. On 5 June 2023, AGFR indicated that it was available to hold a hearing on the 8 of August 2023.

22. On 7 June 2023, Ms. Viner communicated that she and her counsel would be available for a hearing on two dates, 14 August 2023 and 15 August 2023.

23. On 8 June 2023, AGFR communicated that it made the necessary arrangements to be available on 15 August 2023.

24. On 9 June 2023, AT Panel stated that the hearing would be held on Tuesday, 15 August 2023 at 15:00-19:00 CEST by ZOOM.

25. On 9 June 2023, the AGFR confirmed receipt of information concerning the hearing.

26. On 20 June 2023, Ms. Viner sent a letter to the AT Panel requesting it to move the date of the hearing (**Appellant's letter of 20 June 2023**).[3] She informed the AT Panel

[2] AGFR's letter of 5 May 2023, p. 1.
[3] Appellant's letter of 20 June 2023, p. 2.

that she was prevented from attending the hearing *i.e.* 15 August 2023 at 15:00-19:00 CEST because the Ministry of Sport of the Russian Federation had required her assistance as Head Coach of the National Team in a non-FIG international competition, which was going to be held between 13 and 18 August 2023.[4]

27. On 22 June 2023, the GEF objected to Ms. Viner's request to move the hearing, alleging that pursuant to Article 33 CoD and taking into account that it was challenging to find a time when gymnastics competitions were not ongoing, the hearing date had to be confirmed. The GEF argued that Ms. Viner testimony was available to the AT Panel and it contended that Ms. Viner did not have to attend the whole hearing since she could be well-represented by her counsel.

28. On 23 June 2023, the AT Panel acknowledged receipt of Ms. Viner's counsel request to change the hearing date and also of the GEF Director's opposition and request for confirmation of the previously set hearing date or, in the alternative, to reconsider the need for a hearing altogether. The AT Panel invited counsel for Ms. Viner and for AGFR to send their positions regarding the GEF Director's communication on or before 28 June 2023.

29. On 27 June 2023, the AGFR stated that it was content with the postponement of the hearing. The AGFR indicated that, following the Appellant's letter of 20 June 2023, it was available from the 10 to 13 and 20 October 2023. In addition, the AGFR manifested that due process would be respected if all the Parties were present at the hearing.

30. On 28 June 2023, Ms. Viner sent a letter (**Appellant's letter of 28 June 2023**) counterarguing the GEF's objection to move the hearing. Ms. Viner contended that she had the right to be present at the hearing pursuant to Articles 19 and 20 CoD, Article 29(2) Federal Constitution and Article 182(3) Federal Act on International Private Law Act.[5] She reiterated that denying her request would be a violation of due process.[6]

[4] Appellant's letter of 20 June 2023, pp. 1 and 2.
[5] Appellant's letter of 28 June 2023, pp. 1 and 2.
[6] Appellant's letter of 28 June 2023, p. 2.

31. On 5 July 2023, the AT Panel communicated to the Parties that it had been persuaded by the Appellant's arguments that Ms. Viner had the right to request and be present at a hearing under the CoD. The AT Panel reminded the Parties that under CoD, "[t]he President of the panel shall also ensure that the proceedings are conducted as quickly as possible," which means that the AT Panel can reserve its power to fix a date for the hearing or refuse any further postponement as it deems appropriate to comply with the mentioned obligation.

32. On 6 July 2023, the AT Panel suggested new hearing dates and on 14 July 2024 obtained the agreement of all Parties to hold the hearing on Monday, 16 October 2023 at 15:00 – 19:00 CEST by Zoom.

33. On 26 July 2023, the AT Panel made reference to AGFR's letter of 5 May 2023.[7] In such a letter, the AGFR claimed that pages 20 and 21 of the Cross-Appeal had to be removed. The AT Panel indicated to the Parties that it would not refer to them in its final decision and it clarified that this did not mean that it would not consider similar submissions contained in the Cross-Appeal or further submissions.

34. On 28 August 2023, the Appellant requested the AT Panel that Ms. Kuzmina and Mr. Scotney appear at the hearing for examination (**Appellant's letter of 28 August 2023**).[8]

35. On 31 August 2023, the AT Panel acknowledged receipt of Ms. Viner's letter of 28 August 2023.

36. On 1 September 2023, the GEF objected to the proposal to call Ms. Kuzmina and Mr. Scotney (**GEF's letter of 1 September 2023**), it also reserved its position on Ms. Viner giving further oral evidence.[9]

[7] AGFR's letter of 5 May 2023, p. 1.

[8] Appellant's letter of 28 August 2023, p. 1; Article 20 of the FIG Code of Discipline applies in line with Article 33 of the FIG Code of Discipline, which allows application of the procedural rules set forth in Chapter IV to apply to the proceedings with the Appeal Tribunal.

[9] GEF's letter of 1 September 2023, p. 1.

37. On 1 September 2023, the AT Panel invited the Appellant to submit a reply on the above issue on or before 5 September 2023.

38. On 5 September 2023, the Appellant submitted its reply to the GEF objections to the request that Ms. Kuzmina and Mr Scotney appear at the hearing for examination (**Appellant's letter of 5 September 2023)**.[10]

39. On 5 September 2023, the AT Panel confirmed receipt of Appellant's reply on the issue of the cross-examination of Ms. Kuzmina and Ms. Scotney. In addition, the AT Panel invited the GEF to submit a rejoinder on this issue on or before 7 September 2023. The President of the AT Panel also apologized for the oversight in setting the time limits for the Parties to make the submissions on this issue.

40. On 6 September 2023, the GEF requested to reinstate the original deadline to 11 September 2023 to submit its rejoinder since it claimed that its director, Mr Alex Mclin, had a hearing on 7 September 2023 as a sole arbitrator and he had relied that he could submit the rejoinder on 11 September 2023.

41. On 6 September 2023, the Appellant requested the AT Panel to maintain the procedural schedule in order to ensure the equal treatment of the parties.

42. On 6 September 2023, the AT Panel maintained its invitation for the GEF to submit its rejoinder on the issue of the cross-examination on or before 7 September 2023.

43. On 7 September 2023, the GEF submitted its rejoinder on the above issue.

44. On 15 September 2023, the AGFR advised that it had no objection to Ms. Kuzmina and Mr. Scotney being examined at the hearing, as per Ms. Viner's request.

45. On 20 September 2023, the AT Panel issued the Procedural Decision where it dismissed the Appellant's request to summon Ms. Kuzmina and Mr Scotney at the hearing for examination, and where it determined that Ms. Viner had a right to be present at a hearing but should not be allowed to bring facts or evidence not

[10] Appellant's letter of 5 September 2023, p. 1.

previously submitted with the Appeal (**Procedural Decision on the issue of the cross-examination**).

46. On 16 October 2023, Mr McLin, Director of the GEF, informed that hearing documentation previously shared by Ms. Coxova to the Parties and the AT Panel contained internal files that were privileged and not waived as the transmission thereof is obviously accidental. Mr McLin requested all recipients to please destroy any copies (electronic or physical) of the data contained in the subfolder "GEF submissions & emails/ GEF submission cross-appeal 27 03 2023/Bundle - Appeal brief GEF" of any downloaded files and to confirm their destruction by email as soon as possible.

47. On 16 October 2023, the hearing took place. At the start of the hearing, the President confirmed that the AT Panel members had not accessed any of the documentation mistakenly shared by the GEF and suggested that Ms. Coxova should delete the referred files from the common digital folder. At the end of the hearing, Ms. Viner's counsel objected to the fact that Ms. Coxova, who also acted as Ad-hoc secretary of the Panel, had access to work-product or privilege information between the GEF and its counsel.

48. On 18 October 2023, Ms. Viner's counsel argued that on 16 October 2023, while preparing for the hearing, the Appellant was reviewing the hearing Bundle in good faith and found written exchanges between the Ms. Coxova, the Ad-Hoc Secretary of the AT Panel and Mr Weston, counsel for the GEF, that raised profound concerns as to the independence and impartiality of the Secretary. In the same communication, Ms. Viner's counsel 1) reserved all of her rights in relation to this discovery; 2) requested that Ms. Coxova immediately stop acting as the Secretary in this matter and cease any contact with the Panel; 3) requested that the Panel confirms in writing whether or not it has discussed in any way the merits of the case with Ms. Coxova, and whether or not she has been involved in any deliberation of the Panel, and if so how, and; 4) requested that Ms. Coxova confirms in writing whether she had discussed in any way the merits of the case with the Disciplinary Authorities and/or participated in any way in any of its deliberations and/or in the drafting of its decision (**Appellant's letter of 18 October 2023)**.

49. On 19 October 2023, the AT Panel confirmed that its members had not discussed the case's merits with Ms. Coxova, and she had not taken part in our deliberations on the merits of the case.

50. On 19 October 2023, Ms. Coxova confirmed that she had never discussed the case substantively with the Panel nor had she participated in any Panel deliberations regarding the case.

51. On 20 October 2023, Mr. McLin replied to the Appellant's letter of 18 October 2023. He submitted that it is the GEF's position that—in a context where the Tribunal Secretary is necessarily an employee of the GEF and therefore privy to the administration of cases—it is for the panel of the disciplinary authority (in this case the AT Panel) to make sure that its Secretary is independent; that she engages only in the administration of the case, not in the merits. On behalf of GEF, he reiterated its request for confirmation by Appellant's counsel of the destruction of the privileged material as identified in the email of 16 October.

52. On 25 October 2023, the Appellant requested an express confirmation from the AT Panel that Ms. Coxova would stop (or had stopped) acting as the Panel's Secretary and shall cease (or has ceased) all contact with all three members of the Panel. The Appellant also requested Ms. Coxova, the AT Panel ad-hoc secretary, to confirm whether she had: discussed in any way any aspect of the merits of the case with any member of the DC; relayed any information – orally or in writing – from the DC to the GEF's Counsel, Mr. Weston, or vice versa; participated in any way in any of the deliberations of the DC; participated in any way in the drafting of the DC Decision.

53. On 27 October 2023, Ms. Coxova confirmed that she never discussed the case substantively nor participated in any panel deliberations regarding the case, both with respect to the DC and the AT Panel.

54. On 1 November 2023, the AT Panel informed counsel for the Appellant that it had decided to discontinue its reliance on Ms. Coxova's clerical assistance in order to enable it to focus on making a final decision on the case. The AT Panel emphasized that this decision did not imply any mistrust of Ms. Coxova's professionalism and

neutrality and that the AT Panel had not discussed the case's merits with her, nor has she participated in our deliberations.

VI. Issues to be determined

Issue 1. Whether the DC and the AT have jurisdiction to decide on the complaints filed by the GEF against Ms. Viner and the Appeal filed by Ms. Viner.

Issue 2. Whether the DC Commission erred in upholding Complaint 1.

Issue 3. Whether the DC erred in upholding Complaint 2.

Issue 4. Whether the DC erred in upholding Complaint 3.

Issue 5. Whether the Appellant had a legitimate expectation to not receive sanctions for Complaints 1 and 3?

Issue 6. Whether the DC erred in upholding Complaint 4.

Issue 7. Whether the DC erred with regard to the Sanction imposed on the Appellant.

Issue 8. Whether the Sanction must be consecutive to the Protective Measures.

Issue 9. Whether the AGRF is strictly liable for the acts of the Appellant and the RRGF.

Issue 10. Who should bear the Costs of disciplinary proceedings.

VII. The Parties' main arguments and relief sought

55. The summaries in this section are not exhaustive and any missing point, including any allegation, argument or evidence, does not mean that the AT Panel did not consider it but only that it did not regard it as sufficiently relevant to the case and/or sufficiently material to its outcome.

A. Appeal

56. The Appellant alleges that neither the DC nor the AT Panel has jurisdiction since she is not bound by the FIG Rules as it concerns the complaints brought by the GEF against her.[11] Ms. Viner contends that she was not subject to the FIG Rules when she sent private WhatsApp messages to her friend, when she manifested her views in the

[11] Appeal, p. 3, para. 1.6.

media or when she acted as the President of the Russian Rhythmic Gymnastics Federation (**RRGF**).[12] Ms. Viner reserves the right to expand on these objections in additional submissions or at the hearing.[13]

57. The Appellant claims that the DC erred in upholding Complaint 1.[14] Ms. Viner denies having harassed Ms. Kuzmina as defined by Part 1, Article 3 of the Safeguarding Policy,[15] contending that the term "harassment" can signify distinct offenses since it is an umbrella term, therefore, that a complaint for harassment must specify the alleged offense.[16]

58. The Appellant states that also in the scenario where harassment could represent an independent complaint, it shall be dismissed.[17] The Appellant distinguishes between harassment and poor practice.[18] She states that the first one must be committed with intent to hurt whereas the second one can be committed unintentionally.[19] The Appellant states that she and Ms. Kuzmina had been friends for more than 40 years, therefore, when she made the public and private statements her intentions where to stand up for her gymnast and not to hurt Ms. Kuzmina, hence, Ms. Viner reiterates that she did not harass Ms. Kuzmina.[20]

59. The Appellant also denies having bullied Ms. Kuzmina as defined by the Safeguarding Policy.[21] The Appellant states that as it was in the harassment issue, she

[12] Appeal, p. 3, para. 1.7.
[13] Appeal, p. 3, para. 1.8.
[14] Appeal, p. 9, paras. 4.1 to 4.4; Exhibit 3.
[15] Policy and Procedures for Safeguarding and Protecting Participants in Gymnastics, Part 1, Article 3, p. 3: Harassment and abuse can be expressed in many forms which may occur in combination or in isolation. […]
[16] Appeal, pp. 9 and 10, paras. 4.5 to 4.7.
[17] Appeal, p. 10, para. 4.8.
[18] Policy and Procedures for Safeguarding and Protecting Participants in Gymnastics, Part 1, Article 3, p. 4: Behaviours or inaction which may not always be immediately harmful, but which falls below the required standards and/or code of conduct and should be addressed. Some poor practice may lead to suspicions about an individual's motivation, even where no harm is intended e.g. being alone with a child, excessive or inappropriate touching etc.
[19] Appeal, p. 10, paras. 4.9 and 4.10.
[20] Appeal, p. 10, paras. 4.11 and 4.12; Exhibit 3.
[21] Appeal, p. 10, paras. 4.13 and 4.14; Policy and Procedures for Safeguarding and Protecting Participants in Gymnastics, Part 1, Article 3, p. 4: "Intentional behaviour usually repeated over time that hurts another individual or group".

did not intend to bully Ms. Kuzmina, therefore, she cannot be found to have bullied Ms. Kuzmina.[22]

60. The Appellant denies having psychologically abused[23] Ms. Kuzmina as defined by the Safeguarding Policy.[24] The Appellant reiterates that her conduct was not intentionally abusive and that there is no evidence to suggest that the statements she made had the capacity to provoke the alleged psychological abuse since Ms. Kuzmina's testimony was not given weight by the DC.[25]

61. The Appellant claims that the DC failed to address most of her arguments by deciding that harassment did not have to be intentional and that the Safeguarding Policy was infringed; the Appellant emphasizes that no regard was given to the applicable law or reasoning to arrive at the latter conclusions.[26]

62. The Appellant refers to the "International Olympic Committee consensus statement on harassment and abuse (nonaccidental violence) in sport" (the "**IOC Consensus Statement**"),[27] stating that it distinguishes between four types of harassment *i.e.* sexual, psychological, physical and neglect and that it also forms the basis for the content in relation to offenses which is established in the Safeguarding Policy.[28]

63. The Appellant alludes to the definition of psychological harassment/abuse according to IOC Consensus Statement[29] reiterating that she was not deliberately abusive and that such behavior did not target "Ms. Kuzminas' inner life in all its profound scope"

[22] Appeal, p. 11, paras. 4.15 and 4.16; DC Decision, paras. 83 and 84.
[23] Policy and Procedures for Safeguarding and Protecting Participants in Gymnastics, Part 1, Article 3, p. 3: "any unwelcome act including confinement, isolation, verbal assault, humiliation, intimidation, infantilization, or any other treatment, which may diminish an individual sense of identity, dignity and self-worth".
[24] Appeal, p. 11, paras. 4.17 and 4.18.
[25] Appeal, p. 11, paras. 4.17 to 4.21.
[26] Appeal, pp. 11 and 12, paras. 4.22 to 4.24; Exhibit 1, paras. 108, 111, 113 and 141.
[27] Mountjoy M, Brackenridge C, Arrington M, et al. The IOC consensus statement: harassment and abuse (nonaccidental violence) in sport. Br J Sports Med. 2016;50:1019–29.; Art. 3 of the Safeguarding Policy.
[28] Appeal, p. 12, para. 4.25; IOC Consensus Statement, pp. 2 and 3.
[29] Appeal, p. 12, para. 4.26; IOC Consensus Statement: Psychological abuse—A pattern of deliberate, prolonged, repeated non-contact behaviours within a power differentiated relationship. […] The behaviours that constitute psychological abuse target a person's inner life in all its profound scope, apud. Mountjoy, Margo, The IOC Consensus Statement: harassment and abuse (non-accidental violence) in sport, Br J Sports Med Published Online First, available at: https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Protecting-Clean-Athletes/Safeguarding/IOC-Consensus-Statement_Harassment-and-abuse-in-sport-2016.pdf

nor there was a "power differentiated relationship between" them.[30] Additionally, the Appellant contends that no impact on the alleged victim has been demonstrated since Ms. Kuzmina's evidence was given no weight, therefore, the Appellant claims that the DC was wrong to uphold Complaint 1.[31]

64. The Appellant claims that according to the *lex sportiva*, the FIG Rules must be interpreted narrowly and since there is an ambiguity in the Safeguarding Policy as it concerns to the meaning of Harassment, Bullying and/or Psychological Abuse, such ambiguity shall be resolved in favor of the Appellant.[32] The Appellant makes reference to the principle of legality highlighted in the case *Omeragik v. Macedonian Football Federation*[33] and states that in any case, the DC failed to explain the reason why her conduct should qualify as Harassment, Bullying and/or Psychological Abuse, reiterating that Complaint 1 must not be upheld.[34]

65. The Appellant submits that the DC also erred in upholding Complaint 2.[35] The Appellant asserts that as President of the RRGF she was entitled to propose and vote for Ms. Kuzmina's withdrawal.[36] The Appellant further claims that even if the DC

[30] Appeal, p. 12, para. 4.27.
[31] Appeal, p. 12, paras. 4.28 and 4.29.
[32] Appeal, p. 13, para. 4.30.
[33] CAS 2011/A/2670 *Omeragik v. Macedonian Football Federation*, para. 8.13: […] "the "principle of legality" ("principe de légalité") requires that the offences and sanctions must be clearly and previously defined by law and must preclude the "adjustment" of existing rules to enable an application of them to situations or conduct that the legislator did not clearly intend to penalize. CAS awards have consistently held that sports organizations cannot impose sanctions without a proper legal or regulatory basis for them and that such sanctions must also be predictable ("predictability test"). This principle is further confirmed by CAS 2007/A/1363, which holds that the principle of legality and predictability of sanctions requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision. Finally, CAS case law (for example CAS 2007/A/1437 para. 8.1.8) has held that inconsistencies in the rules of a federation will be construed against the federation (contra proferentem principle)"; CAS 2009/A/1768 Hansen v. FEI, para. 17: "We bear in mind, of course, the twin principles that the rules must be constructed contra proferentem i.e. the FEI, see e.g. CAS 2001/A/317 para 18, and that any ambiguity in disciplinary rules must be resolved in favour of the individual who may be made liable under them see e.g. CAS 98/222 para 31. We are also conscious of the classic statement in CAS 94/129 at para 34: "Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorised bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders".
[34] Appeal, p. 13, paras. 4.30 to 4.34.
[35] Appeal, p. 14, paras. 5.1 to 5.4; Exhibit 3; Exhibit 1, para. 141.
[36] Appeal, p. 15, para. 5.5.

was accurate and harassment was not intentional, she cannot be liable for the lawful conduct of her duties as President of the RRFG.[37] Thus, the Appellant alleges that in the case where the DC had found that proposing or voting for the withdrawal of Ms. Kuzmina's candidature was outside of her powers, considering she was President of the RRFG, it failed to explain why such withdrawal constituted Harassment, Bullying or Psychological Abuse.[38]

66. As it concerns the Complaint 3, the Appellant states that the DC erred in upholding it.[39] The Appellant accepts that she made public criticism taking into account that Ms. Kuzmina told her, in a WhatsApp voice note which was sent after the Rhythmic Gymnastics competition at the Tokyo Olympic Games, that "*there is a sense of work against the Russians*".[40] The Appellant alleges that criticism "rooted in truth" cannot be considered neither as negative criticism nor as offensive, therefore, the Appellant states that such defense was not raised to harassment complaints as it was stated by the DC.[41] Thus, the Appellant claims that the DC did not explain how such criticism could be considered as offensive behavior, taking into account Ms. Kuzmina's statements and what happened at the Tokyo Olympic Games.[42]

67. Furthermore, the Appellant states that the DC also erred in upholding Complaint 4.[43] The Appellant alleges that the GEF had no power to perform an investigation since it had opened disciplinary proceedings, therefore, Ms. Viner asserts that she had no obligation to attend any interview and consequently there was no breach of the Safeguarding Policy.[44] The Appellant indicates that she provided a written

[37] Appeal, p. 15, para. 5.6.
[38] Appeal, p. 15, paras. 5.6 to 5.8.
[39] Appeal, p. 16, paras. 6.1 and 6.2.
[40] Appeal, p. 16, para. 6.3; Exhibit 3, para. 5.5; Exhibit 7 paras. 10 and 11.
[41] Appeal, pp. 16 and 17, paras. 6.4 to 6.5; European Convention on Human Rights, Article 10: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. […]; CAS 2015/A/4304 *Andrianova v. ARAF*, paras. 46 to 49; *Mutu and Pechstein v. Switzerland* (2019).
[42] Appeal, p. 17, para. 6.6.
[43] Appeal, p. 18, para. 7.1.
[44] Appeal, p. 18, paras. 7.2; Exhibit 3; Article 28 CoD: "[d]isciplinary proceedings may be opened by the Director of the Gymnastics Ethics Foundation based on the findings of an investigation of a complaint received"; Part 2, Article 1.2 Safeguarding Policy: […] "investigator may require written or oral representations" […].

explanation to the GEF instead of attending the interview.[45] Thus, the Appellant states that contrary to what was stated by the DC, she did cite the FIG Rules and it is undisputed that she set out her position in writing to the GEF as it was confirmed by Mr Scotney.[46]

68. In addition, the Appellant claims that her right to be heard was violated.[47] The Appellant asserts that in the beginning she requested that the issue of sanction had to be dealt by written submissions due to the variety of possible outcomes in relation to the liability.[48] The Appellant states that she set out encompassing submissions in this regard and also her counsel during the hearing, who also responded to GEF's written submissions.[49] Thus, the Appellant states that she reserved the right to make further submissions in relation to the DC's decision as to sanction.[50] The Appellant alleges that in these circumstances the DC issued the Decision without hearing further submissions from the parties concerning such matter.[51] Hence, the Appellant submits that the DC violated her right to be heard and that this may demonstrate how it erred when determining the sanction.[52]

69. The Appellant states that the sanction is manifestly disproportionate.[53] The Appellant claims that the DC: i) made an error of law by considering her previous disciplinary offense as aggravating factor;[54] ii) failed to determine relevant case law and there was undue weight on Delanu v. FIG;[55] iii) failed to perform the balancing test by not taking into account relevant mitigating factors.[56]

[45] Appeal, p. 18, para. 7.3.
[46] Appeal, p. 18, paras. 7.4 and 7.5; Exhibit 1, paras. 121 and 123; Exhibit 3, footnote 47.
[47] Appeal, p. 20, para. 8.1; […] "twin planks of natural justice, nemo judex in causa sua and audi alteram partem [i.e. let the other side be heard] ... should always be observed" as stated in CAS 2014/A/3630 *de Ridder v. ISAF*, para. 110; CAS 2010/A/2162 *Doping Control Centre, Universiti Sains Malaysia v. WADA*, para. 10; CAS 2018/A/5618 *Shabab Al Ahli Dubai Club v. Shanghai SIPG FC*, para. 72.
[48] Appeal, p. 20, para. 8.3; Exhibit 3, Section 16.
[49] Appeal, p. 20, paras. 8.3 to 8.5; Exhibit 5.
[50] Appeal, p. 20, para. 8.5.
[51] Appeal, p. 20, para. 8.6.
[52] Appeal, p. 20, para. 8.7.
[53] Appeal, p. 21, paras. 9.1 and 9.2; Exhibit 1, para. 141, 144 and 145; CAS 2012/A/3041 Deleanu v. FIG.
[54] Appeal, p. 21, para. 9.3(a).
[55] Appeal, p. 21, para. 9.3(b).
[56] Appeal, p. 21, para. 9.4(c).

70. The Appellant alludes to the principle of proportionality by making reference to Swiss law[57], International law[58] *lex sportiva*[59] and Article 25 CoD,[60] stating that the DC failed to analyze this issue.[61] In addition, the Appellant claims that the DC erred by considering a previous disciplinary offense, which was imposed on 27 June 2008, as an aggravating factor since Article 25, paragraph four CoD[62] provides that only prior offenses committed within five years before any sanctioning shall be taken into account.[63] The Appellant submits that the previous offense shall be disregarded, moreover, she as well manifests that the maximum offense that could be imposed is a warning.[64]

71. In the alternative, the Appellant claims that the DC failed to consider the relevant case law and that it placed excessive weight on the *Deleanu* case.[65] The Appellant asserts that, even though public criticism is common in gymnastics, her counsel are aware of only two cases where the FIG took disciplinary action due to public criticism of officials *e.g. Deleanu* case and the matter concerning the Appellant.[66] The

[57] The Swiss Federal Tribunal decision in BGE 129 I 12, para. 10.4
[58] A. Rigozzi, G. Kaufmann-Kohler and G. Maliverni, *Doping and Fundamental Right of Athletes: Comments in the Wake of the Adoption of the World Anti-Doping Code* (2003), p. 41.
[59] CAS 2020/O/6689 *WADA v. RUSADA* in which the panel held, para. 721, that *"Proportionality is a fundamental tenet of natural justice and cannot be excluded without clear words"*; CAS 2018/O/5712 *IAAF v. RUSAF & Galitskaia*, award of 1 February 2019, paras. 269 to 271; CAS 2006/A/1025 *Puerta v. ITF* in which the panel held, paras. 11.7.23 that "*Any sanction must be just and proportionate. If it is not, the sanction may be challenged*" (emphasis added); CAS 2012/A/2807 *Al Eid v. FEI*, paras. 10.24 to 25:
"It is worth repeating at this juncture that in exercising its discretion [...] the key consideration should be the legal principle of proportionality, i.e., the sanction has to be commensurate with the seriousness of the offence, taking into account the underlying objectives of the [applicable rules] and the mischief they are aimed at preventing. Or, in more formal terms, (i) the objectives being pursued must be sufficiently important to justify taking away an offender's right to pursue his or her profession, (ii) the sanction imposed must be rationally connected to the pursuit of those objectives, and (iii) it must go no further than is necessary to meet those objectives. There is therefore a balancing exercise to be done. The Panel must assess (1) the culpability of the offender; and (2) the harm caused or risked by his offence, measured in each case by reference to the objectives of the rules in question and in particular the mischief that they are aimed at preventing. Against that, the Panel should weigh the impact of the sanction on the offender, and any mitigating factors".
[60] Article 25 CoD: […] "The Disciplinary Authority shall set out the type and the scope of the disciplinary sanctions, in accordance with the FIG Statutes and regulations, by considering both the objective and subjective elements of the infringement. The sanctions imposed shall take into account mitigating and aggravating circumstances*".* […]
[61] Appeal, p. 22, paras. 9.5 to 9.8.
[62] Article 25 CoD: […] "Aggravating circumstances shall include in particular, but shall not be limited to, the repetition of an infringement. Each second or subsequent offence must take place within five (5) years after a former final ruling on disciplinary sanction in order to be considered as such*".* […]
[63] Appeal, p. 22, para. 9.9 to 9.11.
[64] Appeal, p. 23, para. 9.12.
[65] Appeal, p. 23, para. 9.13.
[66] Appeal, p. 23, para. 9.14; Exhibit 3.

Appellant indicates that only in *Deleanu* a period of suspension was imposed.[67] Thus, the Appellant manifests that her misconduct is less serious and damaging than misconduct related to apparent fraudulent activity, that was sanctioned with a warning and a fine by the DC.[68]

72. The Appellant alleges that even though the DC distinguished *Deleanu*, it placed excessive weight on it, for the following reasons:[69] i) the suspension imposed was uniquely applied to Ms. Deleanu's position, who was a member of the Technical Committee of the *Union Européenne de Gymnastique* (**UEG**), but not to her as a FIG judge, coach of the Romanian national team or President of the Romanian Federation of Rhythmic Gymnastics;[70] ii) the CAS Panel took into account that Ms. Deleanu was a FIG and UEG official;[71] iii) the comments made by Ms. Deleanu where insulting and also related to an alleged bribery matter;[72] iv) the sanction imposed *i.e.* three-and-a-half-year suspension appears disproportionate since CAS made no reference to any authorities in relation to the sanction.[73] Hence, the Appellant reiterates that a warning is the maximum sanction that could be imposed and that in the scenario where the AT Panel considered a period of suspension, such period ought not to exceed three months.[74]

73. In addition, the Appellant asserts that relevant mitigating factors were not considered by the DC:[75] i) lack of intent, since contrary to Ms. Deleanu's actions the DC did not find that the Appellant had acted vindictively;[76] ii) lack of any evidence of harm, the Appellant asserts that there was no evidence concerning any harm caused by her conduct;[77] iii) statements rooted in truth, the Appellant alleges that the DC erred by

[67] Appeal, p. 23, para. 9.15.
[68] Appeal, p. 23, para. 9.16; Exhibit 3; In addition, the severity of the Appellant's statements is incomparably lower than those having led to comparable sanctions in cases of misconduct/offensive language (for example, in CAS 2008/A/1603 *Shagaev v. AWPI*, Mr Shagaev's statement to the referee: "*I will fucking kill you* [...] *I will kill you, you fucking Serbian piece of shit, I will crucify you")*.
[69] Appeal, p. 24, para. 9.18.
[70] Appeal, p. 23, para. 9.17(a); CAS 2012/A/3041 *Deleanu v. FIG* at para. 60.
[71] Appeal, p. 23, para. 9.17(b); CAS 2012/A/3041 *Deleanu v. FIG* at para. 51.
[72] Appeal, p. 23, para. 9.17(c); CAS 2012/A/3041 *Deleanu v. FIG* at para. 48.
[73] Appeal, p. 24, para. 9.17(d).
[74] Appeal, pp. 24 and 27, paras. 9.18, 9.19, 9.20 and 9.41 to 9.43.
[75] Appeal, p. 24, para. 9.21.
[76] Appeal, p. 24, paras. 9.22 to 9.24; Exhibit, paras. 108, 111 and 141.
[77] Appeal, p. 25, paras. 9.25 and 9.26; Exhibit 1, paras. 83 and 84.

not admitting Ms. Kuzmina' Whatsapp voice note as evidence since such message is mitigating of her culpability;[78] iv) the Appellant's relationship with Ms. Kuzmina, which was a forty-year friendship, and in this context the WhatsApps' voice note was sent;[79] v) in relation to Complaint 4, the Appellant acted on the advice of her lawyers, and she did cooperate by setting out her position in writing to GEF's interview request;[80] vi) the Appellant's stellar contribution to the sport of rhythmic gymnastics, by being one of the most successful gymnastics coaches of all the time as she was recognized with the Olympic Order by the IOC -the first coach of any discipline to receive it-, thus, she has trained several champions *e.g.* olympic medalists, athletes from 29 countries through the implementation of a system and in an unselfish fashion she has shared her experience with colleagues from different parts of the world;[81] vii) the appellants age, taking into account that she is 74 years-old, the Sanction is a lifetime ban, which extends beyond the 2024 Paris Olympic Games *i.e.* likely to end her career.[82]

74. The Appellant states that the sanction must not be consecutive to the Protective Measures.[83] The Appellant alludes to the principle *nulla poena sine culpa*, asserting that a sanction must be proportionate to the misconduct.[84] The Appellant contends that the Proactive measures were imposed due to the Russian-Ukrainian war, which is a matter beyond her control.[85] The Appellant claims that extending the sanction

[78] Appeal, p. 25, paras. 9.27 to 9.29; At the Hearing, the GEF argued for the first time that the WhatsApp voice note and its transcript (which had been filed with the Response on 20 January 2023) should not be admitted as evidence, as it had not been 'officially' translated (i.e. by a professional translator). The Appellant objected on the grounds that (i) the FIG Code of Discipline does not require official translations, (ii) the GEF waited until the last possible moment to raise this argument, notwithstanding it could have done so at the pre-hearing conference held on 30 January 2023, (iii) the GEF raised no issues with any of the other unofficial translations submitted by the Appellant, (iv) the GEF had access to a translator and thus could have provided its own, alternative, translation of the voice note but had not done so, and (v) the Appellant's professional translator who was in attendance at the Hearing had considered the translation of the voice note and considered it to be accurate. There was thus no reason for the voice note, or its translation, not to be admitted as evidence by the Commission; Exhibit 3, para 5.5; Response Exhibit 7, paras. 10 and 11.
[79] Appeal, pp. 25 and 26; paras. 9.30 and 9.31; Response Exhibit 7.
[80] Appeal, p. 26, paras. 9.32 to 9.34; CAS 2015/O/4128 *IAAF v. Jeptoo*, para. 147; CAS 2017/A/4937 *DFSNZ v. Murray*, para. 130.
[81] Appeal, pp. 26 and 27, paras. 9.35 to 9.38; Exhibit 6.
[82] Appeal, p. 27, paras. 9.39 and 9.40.
[83] Appeal, p. 28, paras. 10.1 to 10.3.
[84] Appeal, p. 28, para 10.4; CAS 2005/C/976 & 986 *FIFA & WADA*, para. 136; and TAS 2007/O/1381 *RFEC & Valverde c. UCI*, paras. 30, 61, 77, 78 and 100.
[85] Appeal, p. 28, para. 10.5.

imposed to her by reference to the protective measures is contrary to the principles of proportionality and *nulla poena sine culpa* as recognized by the tribunal in the case *Kuliak v. GEF (2022)*.[86] The Appellant manifests that she is not aware of any case since March 2022 where an individual disciplinary sanction was imposed on a consecutive basis to Russia's sanctions.[87] The Appellant states that she was not aware of any sanction that during the COVID-19 restrictions was considered as consecutive to the lifting of such restrictions.[88] Moreover, the Appellant states that any sanction shall be concurrent to Protective Measures and that taking into account that GEF did not request the sanction to be consecutive to the protective measures, therefore, the Appellant argues that the Decision was *ultra petita* and that in any event it shall be set aside.[89]

75. In relation to the procedural matters, the Appellant requests that a hearing of the Appeal be held before the AT Panel.[90] In this way, the Appellant does not consider the need for any witness to be heard by the AT Panel and relies on the evidence presented before the DC: i) the witness statement of Irina Viner dated 20 January 2023;[91] ii) the witness statement of Dmitry Golovin dated 20 January 2023;[92] iii) the witness statement of Vasily Titov dated 20 January 2023.[93] The Appellant reserves the right to file additional evidence and to call witnesses if necessary, after the receipt of the submissions and evidence from the GEF.[94]

[86] Appeal, p. 28, para. 10.6.
[87] Appeal, p. 28, para. 10.7; CAS 2021/A/7838 *WADA v. ICF & Dyachenko* (9 June 2022); CAS 2021/A/7840 *WADA v. ICF & Dupik* (9 June 2022); CAS 2021/A/7839 *WADA v. ICF & Lipkin* (9 June 2022); CAS 2021/A/8056 *Pestova v. RUSADA* (23 May 2022)*; AIU v. Ivanov* (25 August 2022); *AIU v. Luboslavskiy*; *AIU v. Polyakova*; *AIU v. Strokova*; and *AIU v. Churakova* (all 11 January 2023).
[88] Appeal, p. 28, para. 10.8; See here: *"A ban is about the length of time, it is not dedicated to concrete sports events and if they happen or not. There is no provision in the code for anti-doping organisations to cherry-pick periods of time in which the athlete would have more or fewer events to compete in. While an athlete cannot choose when he or she would like to be ineligible, an anti-doping organisation cannot either".*
[89] Appeal, p. 29, paras. 10.9 and 10.10; CAS 2021/A/8056 *Pestova v. RUSADA,* para. 74.
[90] Appeal, p. 31, para. 11.1; The Appellant reserves the right to withdraw this request following receipt of any submissions by the GEF.
[91] Appeal, p. 31, para. 11.2(a); Exhibit 7.
[92] Appeal, p. 31, para. 11.2(b); Exhibit 8.
[93] Appeal, p. 31, para. 11.2(c); Exhibit 14.
[94] Appeal, p. 31, para. 11.3

76. The Appellant requests to the AT Panel: i) to set aside the DC Decision in full;[95] ii) in an alternative manner, to set aside the DC Decision as it concerns to the sanction;[96] iii) in any case, to sanction the Appellant with a warning and at most with a suspension period, not exceeding three months, from participating in international FIG-sanctioned competitions;[97] iv) to order any sanction imposed to the Appellant to run in a concurrent manner to the proactive measures *i.e.* effective immediately as of 6 March 2023;[98] v) to order the GEF to reimburse the Appellant's legal costs and expenses in relation to the present appeal, as provided by Article 27 CoD.[99] Finally, the Appellant reserves the right to make further submissions in writing and to file evidence as necessary, following GEF's submissions.[100]

B. GEF's Answer to Appeal

77. The GEF states that the Appellant is bound to FIG Codes and Statutes since she signed a declaration on 21 June 2021 and that she admitted in evidence that she was bound to the CoD.[101]

78. In addition, the GEF makes reference to the obligations that the Appellant had to comply with under the FIG Rules.[102] The GEF argues that the Appellant's submission that Harassment is not an autonomous offense and that it must be intentional is without foundation, alluding to Part 1, Article 2 of the Safeguarding Policy and the Part 3 Part A CoD.[103] The GEF explains that there is an ambiguity in the Appellant's arguments since there is a distinction between non-intentional acts and intentional

[95] Appeal, p. 32, para. 12.1(a).
[96] Appeal, p. 32, para. 12.1(b).
[97] Appeal, p. 32, para. 12.1(c).
[98] Appeal, p. 32, para. 12.1(d).
[99] Appeal, p. 32, para. 12.1(e); Article 27 CoD: […] "In principle, the Parties shall bear their own expenses and costs, but the Disciplinary Authority may request the unsuccessful Party to pay to the successful Party a fair contribution to or all the expenses (costs of the Party and the lawyer) incurred". […]
[100] Appeal, p. 32, para. 12.2.
[101] Answer to Appeal, paras. 15 and 16; 6/36/LL24 *et seq*; 6/118;121-122; GEF Submissions on Sanction and Jurisdiction, paras. 3 and 8 to 10 *et seq*.
[102] Answer to Appeal, paras. 17 to 21(d)(iv); GEF Case Summary, paras. 48 *et seq.*
[103] Answer to Appeal, paras. 22 and 23; Part 1, Article 2 Safeguarding Policy: "Harassment and abuse can be expressed in many forms which may occur in combination or in isolation. […] "Non Accidental violence as including all forms of harassment"; Part 3, Part A CoD: […] "harassment free environment and refrain from any behaviours and language that constitutes harassment" […]

acts that have unintended consequences.[104] The GEF contends that the Appellant's acts were intentionally performed as it is proven by the fact that Ms. Viner admitted that she performed such acts, so they were not accidental acts.[105]

79. The GEF emphasizes: i) the FIG Codes and Statutes do not establish that proof of intent is necessary to constitute Harassment and the Appellant accepted it;[106] ii) the FIG Codes and Status state that non-accidental acts may constitute harassment;[107] iii) as it concerns Appellant's arguments alluding to Poor Practice, it is no definition of Harassment but an example of the scenario where it may happen, in this way, Poor Practice is a cause and not a definition of the situation where Harassment may occur.[108]

80. The GEF contends that the Appellant's submissions that she did not act intentionally are not compatible with what she accepted *i.e.* that she sent the messages in a deliberate way and that she made the statements; the GEF states that the DC decision clarifies that the Appellant was evasive as it concerns to why she acted in such a manner; the GEF contends that the Appellant wanted to harm Ms. Kuzmina since she knew the pressure she was putting on her.[109]

81. The GEF alleges that the fact that the Safeguarding Policy establishes that some definitions are based on the IOC Consensus Statement (2016) does not mean that the definitions have to be illustrated by it.[110] The GEF contends that the Appellant's references to IOC Consensus Statement are irrelevant because she was bound to FIG Codes and Statutes.[111] The GEF states that the FIG Codes and Statutes do not require to prove harm to demonstrate Harassment.[112]

82. The GEF contends that the Appellant did not record in an accurate manner the DC Decision since the DC did not state that it would not give weight to Ms. Kuzmina's

[104] Answer to Appeal, para. 23.
[105] Answer to Appeal, para. 24; 6/88/LL23-27; 90/L9.
[106] Answer to Appeal, para. 25(a); Appeal, para. 4.10.
[107] Answer to Appeal, para. 25(b); Safeguarding Policy Part 1 Art 2.
[108] Answer to Appeal, para. 25(c)(i)(ii); Part 1 and Part 2 Safeguarding Policy.
[109] Answer to Appeal, para. 26; 6/48/LL16-33; DC Decision, para. 112.
[110] Answer to Appeal, para. 28.
[111] Answer to Appeal, para. 27.
[112] Answer to Appeal, paras. 29 and 30.

evidence but that it reached the DC Decision without Ms. Kuzmina's witness statement.[113] The GEF asserts that the DC did give weight to Ms. Kuzmina's evidence and that the latter did suffer harm: i) Ms. Kuzmina's response to the abusive WhatsApp message sent by the Appellant, where she stated that was very worried;[114] ii) the Appellant's evidence about her actions which provoked that Ms. Kuzmina cut off contact with her, finishing a longstanding relationship, making a complaint before the GEF;[115] iii) Ms. Kuzmina lost an important position, affecting her prestige and economically;[116] iv) the complaint arose one more time the economic, emotional and psychological harm Ms. Kuzmina had suffered.[117]

83. Alternatively, the GEF states that Ms. Kuzmina's witness statement should have given weight and it should have been admitted as a " hearsay" by the DC because: i) Ms. Kuzmina was willing to give evidence and such was conditional to special proactive measures that she claim she had the right to;[118] ii) there was no counter evidence that proved that the abuse by the Appellant did not cause harm to Ms. Kuzmina.[119]

84. In relation to 'bullying', the GEF makes reference to the Safeguarding Policy,[120] claiming that it is not required to prove harm to demonstrate bullying, thus, the GEF states that through the latter Harassment can be provoked as it is an intentional behavior by being a deliberate act not an outcome.[121]

85. As it concerns to 'Psychological Abuse', the GEF argues that the Appellant misconceived the Safeguarding Policy[122] because the correct approach is the opposite

[113] Answer to Appeal, para. 31; Appeal, para. 4.20; DC Decision, para. 84.
[114] Answer to Appeal, para. 32(a).
[115] Answer to Appeal, para. 32(b).
[116] Answer to Appeal, para. 32(c).
[117] Answer to Appeal, para. 32(d); Complaint para. 70.
[118] Answer to Appeal, para. 33(a).
[119] Answer to Appeal, para. 33(b).
[120] Safeguarding Policy: "The means and methods by which harassment and abuse is carried out include: contact, noncontact, verbal and abuse by means of electronic communications. It may involve deliberate acts as well as failure to act and omissions or may take the form of bullying or hazing which are defined as follows: […]**Bullying** – Intentional behaviour usually repeated over time that hurts another individual or group" […]
[121] Answer to Appeal, paras. 34 to 37; Appeal, paras. 4.13 to 4.16.
[122] Safeguarding Policy (4/82): " Harassment and abuse can be expressed in many forms which may occur in combination or in isolation. […] any deliberate and unwelcome act... which **may** diminish an individual sense of identity, dignity and self-worth" (emphasis added).

meaning of what the Appellant claims to be the accurate definition.[123] In addition, GEF alleges that the potential effect is harm, because stating that a person is biased in their professional work and accusing her of betrayal may cause such effect, hence, the GEF invites the AT Panel to revisit the abusive messages and public statements the Appellant made and the period in which such statements were released.[124] Moreover, the GEF states there is no evidence to the Appellant's argument that FIG Rules are not clear enough, the GEF reiterates that the argument was not advanced before the DC and consequently it has no merit, thus, the GEF states that the Appellant's misconstruction of the FIG Rules does not make them unclear.[125]

86. In relation to Complaint 2, the GEF asserts that the Appellant did pursue a campaign of harassment against Ms. Kuzmina and that the DC Decision made a finding in this regard *e.g.* the Appellant's actions related to the nomination were part of such campaign.[126] Additionally, the GEF states that the Appellant's argument that she had the power to make the nomination and consequently she could not have caused Harassment by the removal of the nomination has no basis since the DC determined that the Appellant's power caused harm to Ms. Kuzmina by what it found on Appellant's oral evidence and the cross-examination of the Ms. Viner, who performed an act of revenge.[127]

87. With reference to Complaint 3, the GEF asserts that it is not disputed whether the Appellant's messages and public statements were negative since she has admitted they were.[128] The GEF reiterates that it is offensive to accuse a person of being biased and to establish that she betrayed her country, and the assertion that it may be true is without merit.[129] The GEF contends that there are no admissions that the judges or Ms. Kuzmina at Tokyo 2020 were biased against Russia and that the Appellant could not support such submissions.[130] In this way, the GEF alludes to Ms. Kuzmina's

[123] Answer to Appeal, paras. 38 to 43.
[124] Answer to Appeal, para. 44.
[125] Answer to Appeal, para. 47(a)(b)(c); Appeal, para. 4.30.
[126] Answer to Appeal, para. 50; Appeal, paras. 5.1 to 5.8; DC Decision, paras. 96 to 102, 109 to 112, 128 and 129.
[127] Answer to Appeal, para. 51.
[128] Answer to Appeal, paras. 51 to 54; Appeal. paras. 6.5 and 6.6; Exhibit 3, para. 7.9.
[129] Answer to Appeal, paras. 55 and 56.
[130] Answer to Appeal, para. 57.

statement,[131] highlighting that she manifested that "*the judges are all proud that they are so independent"*, thus, the GEF argues that the Appellant invented that such a message means that judges were acting in an improper manner towards Russian athletes.[132] In any case, the GEF contends that the appropriate way of resolution is by the submission of a complaint before the GEF and not by public opinion, thus, the GEF states that truth can be offensive in a public and private forum, and it exemplifies that an ugly lawyer would be offended if he is reminded of such quality in a public scenario.[133]

88. In respect of Complaint 4, the GEF alleges that when the Appellant was inquired to be interviewed she declined.[134] The GEF also states that under the Safeguarding Policy[135] its investigators have the faculty to make such a requirement and that there is not a fixed time limit to make it as it was found by the DC.[136] As a consequence, GEF states that contrary to the Appellant's arguments, the opening of disciplinary proceedings does not finish the investigation but such an event may mean new requests for material.[137] Further, the GEF asserts that as conceded by the Appellant, acting on advice is no defense to Complaint 4 and that the AGFR has not challenged this finding.[138]

89. In relation to the Appellant's submission that the DC denied her the right to be heard, the GEF alleges that it is a common cause that the DC did not afford any of the Parties the opportunity to address the DC on sanction after the latter had determined a decision on liability.[139] In addition, the GEF highlights that there is no acceptance that there was a denial of the right to be heard for the following reasons: i) the

[131] *There is a little bit of such a trend that everybody is already tired of the Russians. And there is a new look: you don't know who will win until the end, and good geography is on the podium - all the FIG leadership is satisfied. The judges are all proud that they are so independent. But there is a sense of work against the Russians and against me that we must be removed. To remove, and, you see, everything will be fine!*
[132] Answer to Appeal, para. 58.
[133] Answer to Appeal, paras. 59 and 60.
[134]Answer to Appeal, paras 61 to 63; Appeal, paras. 7.1 to 7.5; Exhibit 3 to the Respondents' Response.
[135] Safeguarding Policy: […] "require written or oral representations from relevant parties, taking special care if interviewing vulnerable witnesses. Failure to co-operate with a request to provide relevant information may itself be considered misconduct".
[136] Answer to Appeal, paras. 64 and 65; DC Decision, para. 121.
[137] Answer to Appeal, para. 66.
[138] Answer to Appeal, para. 67.
[139] Answer to Appeal, paras. 68 to 71; Appeal, paras. 8.1 to 8.7.

Appellant contested all the Complaints she was found to have breached and there was no change in the position from the decision on liability;[140] ii) the Appellant addressed the sanction in a complete manner by the oral and written submissions;[141] iii) the Appellant had the possibility to move to the sanction without hearing more submissions;[142] iv) the DC Decision did record the GEF's submission on sanction, which are not substantially different to the ones stated in the Answer to the Appeal and Cross Appeal;[143] v) the Appellant did adduce evidence in relation to the mitigation before DC;[144] vi) the DC stated to the Parties that the instruction was open so the DC could require more information to the Parties regarding the issue of the sanction.[145] Hence, the Appellant had the opportunity to be heard and that in any case the AT Panel can correct any failure.[146]

90. With regard to the Appellant's argument that the DC imposed a manifestly disproportionate sanction, the GEF argues that there was no error of law.[147] The GEF contends that the Appellant had been sanctioned for making abusive comments in June 2008, and that she was inquired about it since she had manifested to forget this information, but the DC found such evidence unconvincing.[148] Therefore, the GEF alleges that this offense is relevant to the issues presented before the DC because: i) it demonstrates that the Appellant did not have the expectation to be charged due to this kind of offenses;[149] ii) the sanction imposed by the tribunal in that case did not prevent the Appellant to continue offending;[150] iii) it affected the Appellant's credibility showing her as an inaccurate witness.[151]

[140] Answer to Appeal, para. 72(a).
[141] Answer to Appeal, para. 72(b); Exhibit 3 and its Chapter E and the Appellant's submissions Transcript 6/17/LL13-15 and 6/20/LL13 *et seq*.
[142] Answer to Appeal, para. 72(c); Appellant's Response, para. 16.4.
[143] Answer to Appeal, para. 72(d); DC Decision, paras. 76 to 80.
[144] Answer to Appeal, para. 72(e); Transcript 6/34/LL31 *et seq.*
[145] Answer to Appeal, para. 72(f); we would for now leave the instruction open and come back to the parties if we feel that we need some more information or submissions on sanctions. But we haven't really obviously discussed what was presented today. And that's why I think we want to keep it open for now. Well, we'll inform you in due time about whether we feel that there is a need for another submission on sanctions. [Transcript 6/102/LL10-14]
[146] Answer to Appeal, paras. 73 and 74.
[147] Answer to Appeal, para. 75 to 77; Appeal, paras. 9.9 to 9.40.
[148] Answer to Appeal, paras. 78 (a)(b)(c); Exhibit 3, para. 16.5(b); DC Decision, para. 142.
[149] Answer to Appeal, para. 79(a).
[150] Answer to Appeal, para. 79(b).
[151] Answer to Appeal, para. 79(c).

91. Moreover, the GEF also alludes to Article 25 CoD, arguing that contrary to the Appellant's submissions, such provision does not mean that the DC cannot take into account a previous offense of the same type since such provision is not exhaustive and the GEF emphasizes that relevant previous facts shall be considered.[152] Further, the GEF clarifies that the DC did not aggravate the sanction because of the Appellant's previous breach instead the DC determined that a warning was not sufficient and therefore it increased the sanction due to the Appellant's disregard for FIG Rules and the previous warning she had.[153] The GEF reiterates that the Appellant's conduct was more culpable since she had no regard to obligations she had already breached as recognized in the previous sanction and the GEF argues that in any case the DC was entitled to aggravate the sanction.[154]

92. Furthermore, GEF asserts that case law was correctly applied by the DC.[155] In this manner, the GEF states that neither the DC nor the GEF suggested that *Delelanu* was more serious than Appellant's conduct.[156] Such a case was not used in an incorrect fashion taking into account that a more severe case has been considered in which a lesser sanction was imposed.[157] Moreover, GEF clarifies that *Deleanu* was a case before 2012 and that subsequently the FIG Safeguarding Policy was established, in this regard, GEF emphasizes what is stated in its introduction,[158] hence, contrary to the Appellant's arguments, the GEF alleges that the Appellant's conduct was comprised by deliberate acts *i.e.* a campaign of abuse against a FIG Official and other

[152] Answer to Appeal, paras. 81 to 83.
[153] Answer to Appeal, paras. 84 and 85; CAS/A/2807: "The Panel must assess (1) the culpability of the offender; and (2) the harm caused or risked by his offence, measured in each case by reference to the objectives of the rules in question and in particular the mischief that they are aimed at preventing. Against that, the Panel should weigh the impact of the sanction on the offender, and any mitigating factors".
[154] Answer to Appeal, paras. 87 and 88.
[155] Answer to Appeal, para. 89.
[156] Answer to Appeal, paras. 90 and 91; DC Decision, paras. 144 and 145; GEF Submission on Sanction, paras. 13 to 19.
[157] Answer to Appeal, para. 92.
[158] Safeguarding Policy, introduction: "Sport organizations and everyone in sport, have the responsibility to foster a safe, respectful culture so that athletes can thrive without harassment, abuse or violence. As one of the top Olympic sports, the Fédération Internationale de Gymnastique (FIG) is committed to strengthen the support offered to all its members by putting the gymnasts, their safety, well-being and welfare, at the center of everything we do. Everyone in sport has the right to be protected from non-accidental violence, harassment and abuse irrespective of their race, color, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability, physical attributes, athletic ability or other status. Article 19 of the United Nations Convention on the Rights of the Child enshrines the right for all children (defined as anyone under the age of 18) to be safe from violence."

judges for a period of many months which justify the suspension for a substantial period, in other words, a suspension for at least what was established by DC.[159]

93. In relation to the mitigating factors raised by the Appellant, the GEF contends that the DC took into account the Appellant's circumstances and that the DC had the right to take into account the aggravating circumstances which were identified in the GEF's submission, thus, the GEF emphasizes that the sanction does not prohibit the Appellant from domestic activities.[160]

94. The GEF argues that the following Appellant's arguments were not reasonably made: i) lack of intent, since the removal of Ms. Kuzmina's nomination was intentional and also the public statements and abusive messages;[161] ii) harm is addressed as addressed in the previous section;[162] iii) rooted in truth as addressed in the previous section;[163] iv) Appellant's relationship with Ms. Kuzmina is not a mitigating factor due to betrayal;[164] v) lawyer's advice is not a mitigating factor because the Appellant had the choice to follow such advice;[165] vi) the Appellant's record is damaged by her previous offense;[166] vii) age is not relevant.[167]

95. As it concerns the consecutive sanction issue, the GEF states that it is uncontroversial: i) At the time as the Proactive Measures are in place, the two-year suspension sanction from international competition will have no material effect upon the Appellant;[168] ii) the sanction's purpose is punishment and deterrence;[169] iii) the sanction that has no effect means not punishment nor deterrence.[170] In this line of thought, the GEF claims that the DC had the power to impose the sanction.[171] Thus, the GEF asserts that the DC issued such a sanction which ran from the end of the Protective Measures with a

[159] Answer to Appeal, paras. 93 to 96; Appeal, paras. 9.12 to 9.19 and 9.20.
[160] Answer to Appeal, paras. 97 to 99; DC Decision, para. 2.
[161] Answer to Appeal l, para. 100(a).
[162] Answer to Appeal, para. 100(b).
[163] Answer to Appeal, para. 100(c).
[164] Answer to Appeal, para. 100(d).
[165] Answer to Appeal, para. 100(e).
[166] Answer to Appeal, para. 100(f).
[167] Answer to Appeal, para. 100(g).
[168] Answer to Appeal, para. 101(a).
[169] Answer to Appeal, para. 101(b).
[170] Answer to Appeal, para. 101(c).
[171] Answer to Appeal, para. 103; FIG Statutes Arts 43.3 c) to e) [4/42].

"longstop" of 7 years, further, the GEF explains that there are no other mechanisms to prevent the Appellant from participating in international competitions but that it does not mean that the Appellant cannot participate in domestic activities, hence, GEF distinguishes the present case from *Kuliak.*[172]

96. Furthermore, the GEF submits that in addition to the sanction imposed by the DC a fine set to the Appellant would also be appropriate.[173] For the above arguments, the GEF contends that the Appeal against liability and sanction should be dismissed.[174] Finally, GEF invites AT to award its costs.[175]

C. Cross-Appeal

97. In connection with the procedural matters, the GEF states that the case file of the proceedings and the recordings of the hearings held before the DC should become part of the present proceedings.[176]

98. With respect to the Cross Appeal, the GEF requests the AT to amend the DC Decision: i) to find the AGFR liable for the actions and omissions of the RRFG;[177] ii) to find that the Appellant shall bear GEF's legal and investigation costs related to the appealed decision or in any event any substantial proportion taking into consideration the outcome in GEF's favor.[178]

99. The GEF argues that the DC committed an error by missing the intent of Article 4 CoD.[179] The GEF explains that under Article 1 FIG Statutes there is one National Federation per Nation.[180] Notwithstanding that in Russia rhythmic and artistic gymnastics are governed by separate entities, both disciplines are subject to the FIG

[172] Answer to Appeal, paras. 102, 104 and 105; DC Decision, para. 146; Kuliak, para. 74.
[173] Answer to Appeal, para. 106.
[174] Answer to Appeal, para. 107.
[175] Answer to Appeal, para. 108.
[176] Cross-Appeal, p. 2, paras. 2 and 3.
[177] Cross-Appeal, pp. 1 and 2, para. 1.
[178] Cross-Appeal, pp. 1 and 2, para. 1.
[179] Cross-Appeal, pp. 2 and 3; paras. 4 to 8; Article 4 CoD: "The Federations are also liable for the behaviour of their members, gymnasts, judges and officials as well as for any other person assigned by them to officiate during a competition. They are liable
for the implementation of any sanction of the FIG imposed against those persons. Any failure of a Federation to implement any sanction of the FIG may lead to a disciplinary action against the Federation concerned". […]
[180] Cross-Appeal, p. 3, para. 9.

Rules *i.e.* RRFG regulates rhythmic gymnastics in Russia but its representation is through AGFR being the only FIG-recognized member of Russia.[181] As a result, the GEF contends under Article 4 CoD, the AGFR is *strictly* liable, regardless of degree of fault or indeed control, for actions and omissions of their members and officials to the extent they constitute violations of FIG rules. The GEF asserts that the AGFR is hence liable for the actions and omissions of the RRFG and its president regardless of whether it was able to control her actions, otherwise,[182] and the DC's finding gives the possibility for "indirect members" that are federations to abide FIG Rules and as a consequence escape responsibility.[183] In such manner, the GEF clarifies that it is not seeking to modify the imposed sanctions to the Appellant and AGFR but the interpretation of Article 4 CoD, to find the latter liable for RRFG and Ms. Viner's conduct.[184]

100. Moreover, the GEF asserts that it made the request before the DC to order the Appellant and AGFR to cover GEF's costs; nevertheless, the DC Decision was silent on such a matter.[185] Therefore, the GEF states that this oversight can be cured by allowing the Parties to make submissions on this regard.[186]

D. AGFR' Response to GEF's Cross-Appeal

101. The AGFR argues that declaratory relief may only be granted if the requesting party demonstrates the necessary special legal interest as it was in *WADA v. Hardy & USADA*.[187] The AGFR claims that the GEF lacks the required special legal interest

[181] Cross-Appeal, pp. 3, paras. 9 and 10.
[182] Cross-Appeal, p. 3, para. 11.
[183] Cross-Appeal, pp. 3 and 4, paras. 12 and 13.
[184] Cross-Appeal, p. 3, para. 14.
[185] Cross-Appeal, pp. 4 and 5, paras. 15 to 17; Article 27 CoD:"In principle, the Parties shall bear their own expenses and costs, but the Disciplinary Authority may request the unsuccessful Party to pay to the successful Party a fair contribution to or all the expenses (costs of the Party and the lawyer) incurred".
[186] Cross-Appeal, p. 5, para. 18.
[187] AGFR's Response to the GEF's Appeal, p. 4, paras. 2.1 and 2.2; CAS 2009/A/1870 *WADA v. Hardy & USADA*, para. 132: "According to the predominant view the prerequisites for a declaratory judgment are – in principle – threefold. According thereto the party seeking declaratory relief must show a legal interest to do so. The latter presupposes that the declaratory judgement is necessary to resolve a legal uncertainty that threatens the Claimant (TF 17.8.2004 – 4C 147/2004). According to constant Swiss jurisprudence a legal interest is missing if a declaratory judgement is insufficient or falls short of protecting the Claimant's interests (ATF 116 II 196; 96 II 131). The latter is the case – inter alia – if a party must file a further claim or request in order to obtain the judicial relief sought or if there are better or easier ways to pursue and protect the Claimant's legal interests (ATF 123 III 429; 99 II 174). Furthermore, according to the predominant view, the legal uncertainty must relate to the existence or non existence of a claim or a defined legal relationship between the

needed for the declaratory relief since it is not necessary to resolve a legal uncertainty that threatens the GEF, as it is demonstrated by the mere fact that the latter does not pursue sanctions nor consequences in relation to the declaration, consequently, the AGFR contends that the request for declaratory relief must be dismissed as inadmissible.[188]

102. Furthermore, the AGFR asserts that it is not strictly liable for the RRFG as it was determined by the DC by taking into account Article 4 CoD.[189] The AGFR clarifies that the RRGF is not a member, gymnast, judge, or official of the AGFR.[190] Thus, AGFR contends that regard must be had to its degree of control over the RRFG, which is a prerequisite for liability under Article 4 CoD,[191] taking into account that it sets out specific individuals that fall under the jurisdiction of a particular federation, which is required under contract law.[192] The AGFR contends that the GEF cannot alter either the norms of contract law or its own rules to reach what it pretends to achieve.[193]

parties to the dispute (ATF 80 II 366). No declaratory relief may be sought e.g. to solve abstract legal questions or to determine factual circumstances. Finally, there must be a certain urgency to resolve the uncertainty in order to protect the respective party's right, i.e. there must be an immediate interest for solving the uncertainty now" [...]; CAS 2011/O/2574 *UEFA v. FC Sion*, para. 271; CAS 2011/A/2612 *Hui v. IWF*, para. 52.

[188] AGFR's Response to the GEF's Appeal, p. 4, paras. 2.3 and 2.4; Cross-Appeal, para. 13; Were there an immediate threat to the GEF's interests it would, presumably, have sought specific sanctions in connection with the same; The purpose of the narrow criteria for declaratory relief is to avoid unnecessary litigation. The AGFR should not be required to address the question of strict liability, and thus incur legal costs, given it is entirely moot for the purposes of the GEF's case against the AGFR.

[189] AGFR's Response to the GEF's Appeal, p. 5, paras. 3.1 and 3.2; DC Decision, paras. 128, 135 and 136; GEF Cross-Appeal, para. 1; Art. 4 CoD.

[190] AGFR's Response to the GEF's Appeal, p. 5, para. 3.3; The organisation of Russian gymnastics is divided by discipline. There are different national federations for artistic gymnastics (the AGFR), rhythmic gymnastics (the RRGF), aerobic gymnastics (the Federation of Aerobic Gymnastics of Russia), acrobatic gymnastics (the Russian Sports Acrobatics Federation), and trampoline (the Trampoline Federation of Russia). The RRGF is the entity within Russia which directs and organises rhythmic gymnastics within Russia. However, the RRGF is not affiliated to, nor is it a member of, the FIG, whether directly or indirectly. The AGFR is the only Russian gymnastics federation which is a member of the FIG. The RRGF is not a member of the AGFR, and the AGFR has no control over the RRGF. However, the AGFR acts as an intermediary between the various Russian national gymnastics federations (including the RRGF) and the FIG on matters relating to their respective disciplines. AGFR President, Vasily Titov's evidence to this effect (see Exhibit 1) was accepted by the Commission and is not disputed by the GEF; The AGFR's legitimate expectation defence at Section 15A of its Response at first instance (Exhibit 2) is also maintained.

[191] Art. 4 CoD.

[192] AGFR's Response to the GEF's Appeal, p. 5, para. 3.4.

[193] AGFR's Response to the GEF's Appeal, p. 5, para. 3.5. Further, and notably, the GEF did not even name the RRGF as a respondent at first instance, such that it cannot now complain that it was unable to punish the RRGF. Ms. Viner, of course, did not escape liability, such that the FIG rules seemingly do their job.

103. In addition, the AGFR argues that no costs shall be ordered against it, taking into account that the DC determined that the Parties would bear its own legal costs and expenses incurred related to the disciplinary proceedings and that the GEF and Ms. Viner and the AGFR would split procedure's costs.[194]

104. The AGFR contends that it is simplistic for the GEF to allege that the DC Decision was an outcome in its favor as the DC dismissed Complaint 6 and partially dismissed Complaint 9 and that the only sanction issued to the AGFR was a warning.[195] Further, in relation to Complaint 8, the AGFR states that it did decline to be interviewed, following its lawyers advice, taking into consideration that it was under no obligation to offer an interview.[196] The AGFR reiterates that based on the above, any costs ordered to it would be inappropriate.[197]

105. The AGFR requests the AT Panel to: i) dismiss GEF's appeal in full;[198] ii) order the GEF to reimburse AGFR's complete legal costs and expenses incurred in relation to the Appeal, under Article 27 CoD.[199] Finally, the AGFR reserves the right to make additional submissions in writing and to file further evidence as it may be necessary, following receipt of any GEF's submissions.[200]

E. Ms. Viner's Response to GEF's Cross-Appeal

106. Ms. Viner leaves the issue of the AGFR's vicarious liability to be addressed by the AGFR.[201]

107. In respect of the costs issue, contrary to GEF's submissions, Ms. Viner contends that DC Decision is in compliance with Article 27 CoD[202] and that it is clear regarding

[194] AGFR's Response to the GEF's Appeal, p. 5, paras. 4.1 to 4.3; DC Decision, p. 19, para. 5; Article 27 CoD.
[195] AGFR's Response to the GEF's Appeal, p. 6, paras. 4.5 and 4.6; Cross-Appeal, para. 16, the GEF states that it sought a fine of "at least CHF 5000 on each offence". However, this is inaccurate; DC Decision, paras. 125 to 131 and 135 to 138.
[196] AGFR's Response to the GEF's Appeal, p. 6, para. 4.7.
[197] AGFR's Response to the GEF's Appeal, p. 6, para. 4.8.
[198] AGFR's Response to the GEF's Appeal, p. 7, para. 5.1(a).
[199] AGFR's Response to the GEF's Appeal, p. 7, para. 5.1(b); Art. 27 CoD.
[200] AGFR's Response to the GEF's Appeal, p. 7, para. 5.2.
[201] Ms. Viner's Response to the GEF's Cross-Appeal, p. 2, para. 5.
[202] Article 27 CoD.

such matters *i.e.* each party shall bear one-half of the costs of the disciplinary proceedings and also the legal costs and expenses incurred.[203]

108. Ms. Viner argues that there is no legal basis to review such a decision; it was based on DC's discretionary powers; the latter may decide to allocate the costs in a different manner but in the present case it followed the general principle in Article 27 CoD.[204] Ms. Viner asserts that the GEF did make submissions on costs in its submissions on sanction and jurisdiction of 3 February 2023.[205] In addition, Ms. Viner argues that the GEF did not prove that it has requested to make further submissions on costs.[206]

109. Moreover, Ms. Viner indicates that she takes note of GEF's request[207] and she asks the AT Panel to share the recording of the DC proceedings.[208] Ms. Viner requests the AT Panel to: i) dismiss the GEF's request that Ms. Viner shall bear the costs of the GEF related with the appeal of the DC Decision;[209] ii) order the GEF to bear the legal costs and expenses incurred by her related to the appeal proceedings.[210]

110. Finally, Ms. Viner reserves the right to make additional submissions in writing and to file the evidence that may be necessary in response to any GEF's further submissions.[211]

VIII. Main Relevant Facts

111. Pursuant to the requirements applicable to disciplinary decisions under Article 23 FIG CoD, the facts relevant to this case are stated in the appealed DC Decision and shall be deemed hereby reproduced for all legal purposes. In addition, the FIG CoD empowers the AT Panel to consider new factual and expert evidence in deciding the

[203] Ms. Viner's Response to the GEF's Cross-Appeal, p. 3, paras. 7 to 11; Cross-Appeal, para. 1, 17; DC Decision, p. 20, paras. 7 and 8.
[204] Ms. Viner's Response to the GEF's Cross-Appeal, p. 3 and 5, paras. 12 and 13 and 16.
[205] Ms. Viner's Response to the GEF's Cross-Appeal, pp. 3 and 4, para. 14; GEF's Submissions on Sanction and Jurisdiction of 3 February 2023, paras. 19 and 20.
[206] Ms. Viner's Response to the GEF's Cross-Appeal, p. 4, para. 15.
[207] Cross-Appeal, paras. 15 to 18: "case file of the proceedings before the GEF DC, including the recordings of the hearings held before the DC panel, [...] become part of the present appeal proceedings".
[208] Ms. Viner's Response to the GEF's Cross-Appeal, p. 4, paras. 17 and 18.
[209] Ms. Viner's Response to the GEF's Cross-Appeal, p. 4, para. 19.
[210] Ms. Viner's Response to the GEF's Cross-Appeal, p. 4, para. 19.
[211] Ms. Viner's Response to the GEF's Cross-Appeal, p. 5, para. 20.

merits of an appeal, provided that they were timely submitted by the Parties in this appeal proceeding under the CoD rules.[212]

IX. Decisions by AT Panel

112. 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.

A. Evidentiary rules applied by the AT Panel

113. 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 appellant bears the burden of the claims raised in the Appeal 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 or that a defense applies, 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 the admissibility of evidence before a court of law or statutory tribunal (Article 18 FIG CoD).

114. The AT Panel may consider new factual and expert evidence in deciding the merits of an appeal.[213] The FIG CoD does not limit the AT Panel's role to reviewing the application of the law and principles by the DC; the AT Panel may admit and assess new and old evidence and arguments provided that they have been timely submitted with the Parties' statements under the FIG CoD.

B. Substantive norms of law applied by the AT Panel

115. 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

[212] FIG CoD, Chapter IV Common Procedural Rules, Arts. 9 – 27, relating to the taking of evidence applicable to both the DC and AT proceedings.
[213] 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".

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).

C. AT's power to impose sanctions and their type and scope

116. The AT, as one of the GEF's Disciplinary Authorities, is empowered to issue sanctions pursuant to Article 25 FIG CoD.[214] Under the same provision, the disciplinary measures set forth in the FIG Statutes may be ordered by the AT against any natural person or legal entity subject to FIG regulations.

117. Pursuant to Article 4 FIG CoD, a National Federation is liable for the behavior of their members, gymnasts, judges and officials as well as for any other person assigned by them to officiate during a competition.

118. According to Article 4 FIG CoD, a National Federation is liable for the implementation of any sanction imposed against those persons. Any failure of a Federation to implement any sanction of the FIG may lead to a disciplinary action against the Federation concerned.

D. Resolution of issues

119. 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, does not mean that the AT Panel did not consider it but only that it did not regard it as sufficiently relevant to the case and/or sufficiently material to its outcome.

[214] See also Art. 29 FIG Statutes.

Issue 1. Whether the DC and the AT have jurisdiction to decide on the complaints filed by the GEF against Ms. Viner and the Appeal filed by Ms. Viner.

120. The Appellant has relied in the arguments raised before the DC to challenge the latter's and the AT Panel's jurisdiction to hear the initial complaints filed by the GEF and the present appeal.

121. The GEF has similarly relied in the assertions made and evidence adduced during the DC proceedings to uphold the jurisdiction of both the DC and the AT Panel.

122. The AT Panel concurs with the decision made by the DC on the jurisdiction issue. The AT Panel agrees that even though Ms. Viner is not a direct member, official or coach of the AGFR or the FIG, she is still subject to the rules of the FIG, including the jurisdiction of the GEF's disciplinary authorities. As per the DC decision, accepting Ms. Viner's argument would imply allowing gymnastics federations that are not direct members of FIG (due to the "one federation per country" rule) to send their members to international competitions, without being subject to international rules.

123. Furthermore, prior to Ms. Viner challenging the jurisdiction of GEF's disciplinary authorities, she willingly subjected herself to FIG regulations. On the one hand, by signing the coach declaration of 21 June 2021, whereby she accepted to submit to the FIG Rules. On the other hand, and most importantly, throughout her career, Ms. Viner has received benefits from the FIG system, acted as if she were a member of a FIG-recognized federation, and participated in multiple events organized under FIG auspices. Based on the Swiss law contractual principles of reliance and good faith,[215] one could conclude by virtue of her statements and behavior that she has created the appearance of being subject to the FIG regulations. A reasonable person could then, in good faith, understand that Ms. Viner is bound by the FIG Rules, including to the jurisdiction of its disciplinary authorities.

124. Finally, there is a significant contradiction in the Appeal that needs to be pointed out. Ms. Viner argues that she cannot be sanctioned by the GEF disciplinary authorities

[215] Cf. Tribunal federal [TF] [Federal Supreme Court] Apr. 7, 2014, 4A_450/2013, KLUWER LAW INTERNATIONAL ARBITRATION (Switz).

because she is not a member, officer, coach, or part of a FIG-recognized federation. However, her ultimate goal is to be recognized as one of them, so she can participate in the following FIG-sanctioned international events. This contradicts the principles of justice, fairness, and equality. It goes against internationally acknowledged law doctrines such as the venire contra factum proprium and estoppel that prohibit a party from taking inconsistent positions or trying to have it both ways by relying on the contract when it benefits them, but disavowing its obligations when it works to their disadvantage.

* * * * *

125. Based on the previous findings, the AT Panel has concluded that it and the DC have jurisdiction over Ms. Viner regarding the complaints filed by the GEF, as well as the AT concerning the issues that need to be addressed in this appeal decision.

Issue 2. Whether the DC Commission erred in upholding Complaint 1

Harassment

126. The Appellant contends that harassment is not an autonomous offense; it could not be brought as a single complaint; the GEF needed to specify a particular offense.

127. The GEF disagrees pointing out that under the Safeguarding Policy Article 2: *Harassment and abuse can be expressed in many forms which may occur in combination or in isolation.* The same provision that defines *Non-Accidental violence* as including *all forms of harassment …*"

128. The AT Panel concurs with the GEF's stance that "non-accidental violence" is the general conduct that is prohibited by the FIG CoE. This includes harassment in various manifestations as stated in Article 1(d) CoE. Similarly, Part 2, Article 1(d) FIG CoC and Article 2 FIG Safeguarding Policy consider harassment as an autonomous offense covered by the generic "non-accidental violence" prohibition. Therefore, the AT Panel determines that disciplinary proceedings can be initiated against such behavior, regardless of the form in which it is expressed, as specified in Article 3 of the Safeguarding Policy.

129. The Appellant contends that harassment must be committed with the intent to hurt (because "poor practice" is the only negligence-based offense specified in the Safeguarding Policy). The Appellant argues that she did not intend to hurt Ms. Kuzmina.

130. The GEF alleges the Appellant's acts were intentionally performed as it is proven by the fact that Ms. Viner admitted that she performed such acts, so they were non-accidental acts. It also argues that the FIG Codes and Statutes do not establish that proof of intent to harass is necessary to constitute harassment and the Appellant accepted it.

131. Following the DC Decision finding (para. 108), the AT Panel determines that harassment under the FIG Rules can be both intentional or non-intentional. "Non-accidental" violence is a tort that can result from the intent or negligence of the tortfeasor. However, to meet the standard of evidence, the GEF only needs to prove that Ms. Viner intended to commit the act in question, rather than proving that Mr. Viner intended to cause the typified tort, i.e. harassment.

132. The above is supported by the fact that FIG regulations do not require to demonstrate that the defendant had 'specific intent' to bring about a specific consequence through his or her actions, or that he or she performed the action with a wrongful purpose. At most, the GEF would be required to demonstrate that there was a reasonable possibility that Ms. Viner was aware of that her conduct could result in harm, and Ms. Viner has admitted such possibility.[216]

133. In the present case, it is an incontrovertible fact that Ms. Viner dispatched two WhatsApp messages (Exhibits NK-2, NK-3, NK-4 and NK-5) to Ms. Kuzmina, wherein she accused her of "killing Russia" and acting improperly against Russian athletes. Ms. Kuzmina responded by expressing that she was *very worried and sorry*. Additionally, it is established that Ms. Viner was quoted in various publications asserting that Ms. Kuzmina had acted with bias and against Russian gymnasts at the Tokyo Games, and attributing the defeat of Russian athletes her, devoid of any

[216] DC Proceedings, Exhibit 3 para. 7.9.

corroborating evidence (Exhibits KN-7, KN-13, KN-18, KN-47, KN-50, KN-51, KN-54, KN-59, NK-62, KN-67, KN-73, KN-83).

134. Article 3 FIG Safeguarding Policy does not specifically define harassment but exemplifies the different forms it can take. Harassment is however generally defined as the "unwarranted (and now esp. unlawful) speech or behaviour causing annoyance, alarm, distress, or intimidation, usually occurring persistently".[217] Article 3 FIG Safeguarding Policy states that harassment "can include a one-off (one time) incident, or a series of incidents. It may be in person or online". It also provides that "[h]arassment and abuse often result from an abuse of authority, meaning the misuse of power by people in positions of trust, influence, and authority (perceived or actual), against another individual".

135. The AT Panel is convinced that Ms. Viner wrongful conduct was intentional.[218] Ms. Viner may not have intended to harass Ms. Kuzmina, but the result of her actions did. She intimidated Ms. Kuzmina through her private and public statements as evidenced in Ms. Kuzmina's reply. Ms. Viner's conduct was unwelcome, objectively annoying and caused distress to Ms. Kuzmina.

136. The FIG regulations do not mandate evidencing of specific psychological damage to prove harassment. Harassment inflicts moral damages on the victim and can be objectively inferred to have stemmed from wrongful conduct. Since there is no monetary compensation demanded for the victim in this sport disciplinary proceeding, it is unnecessary to determine the precise extent and gravity of harm.

Bullying

137. The Appellant denies bullying Ms. Kuzmina. The Appellant submits that to uphold the complaint of bullying, it must be satisfied that the Appellant intended by her conduct, as alleged in Complaint 1, to hurt Ms. Kuzmina, and that Ms. Kuzmina was in fact hurt by this conduct.

[217] Oxford English Dictionary definition available at https://www.oed.com/search/dictionary/?scope=Entries&q=harassment
[218] See (Exhibits NK-2, NK-3, NK-4 and NK-5 KN-7, KN-13, KN-18, KN-47, KN-50, KN-51, KN-54, KN-59, NK-62, KN-67, KN-73, KN-83).

138. The GEF argues that the FIG Safeguarding Policy's definition of bullying does not require proof of intent to commit bullying. It also submits that there is evidence that Ms. Kuzmina was indeed harmed.

139. Article 3 FIG Safeguarding Policy defines bulling as "[i]ntentional behaviour usually repeated over time that hurts another individual or group".

140. The above definition does not require to demonstrate that the Ms. Viner had 'specific intent' to bring about a specific consequence, i.e. bullying, through his or her actions, or that he or she perform the action with a wrongful purpose.

141. As a form of harassment and "non-accidental" violence, the GEF only needs to prove that Ms. Viner intended to commit the act in question, i.e. the sending of WhatsApp messages and the statements quoted by the press, rather than proving that Mr. Viner intended to bully Ms. Kuzmina.

142. Above, the AT Panel has reached the conclusion that Ms. Viner's reproachable behavior was intentional.[219] Even though Ms. Viner might not have intended to bully Ms. Kuzmina, she still did so. Ms. Viner intimidated Ms. Kuzmina with her private and public statements. Her conduct was unwelcome and has objectively caused harm to Ms. Kuzmina. Ms. Kuzmina's distress is apparent from her anxious replies to Ms. Viner's WhatsApp messages. Ms. Viner's public statements have had an objectively negative impact on Ms. Kuzmina's reputation and sport importance.

143. The FIG Rules do not require proof of specific psychological damage to establish bullying. Bullying causes moral harm to the victim and can be inferred to have arisen from wrongful behavior. Since this sport disciplinary proceedings do not involve any monetary compensation for the victim, it is not necessary to determine the exact nature and severity of the harm.

Psychological Abuse

144. The Appellant denies psychologically abusing Ms. Kuzmina. The Appellant submits that in order to amount to psychological abuse, the Appellant's conduct must have

[219] See (Exhibits NK-2, NK-3, NK-4 and NK-5 KN-7, KN-13, KN-18, KN-47, KN-50, KN-51, KN-54, KN-59, NK-62, KN-67, KN-73, KN-83).

been intentionally abusive of Ms. Kuzmina. However, the Appellant had no such intent, nor Ms. Viner's conduct had the capacity to "*diminish an individual sense of identity, dignity and self-worth*" of Ms. Kuzmina.

145. The GEF submits that Psychological Abuse as it is defined in the FIG Safeguarding Policy does not require an intention to cause the harm. It requires only that there be *any deliberate and unwelcome act… which* ***may*** *diminish an individual sense of identity, dignity and self-worth* (emphasis added). The GEF also asserts that plainly calling a person *biased* in their professional performance, and accusing her of *betraying* their country and to do so repeatedly and publicly may cause the harms within the definition.

146. Article 3 FIG Safeguarding Policy states that harassment may take the form of psychological abuse, which is defined as "any unwelcome act including confinement, isolation, verbal assault, humiliation, intimidation, infantilization, or any other treatment, which may diminish an individual sense of identity, dignity and self-worth."

147. After careful review, the AT Panel has determined that Ms. Viner's actions were intentional, as evidenced by Exhibits NK-2, NK-3, NK-4 and NK-5 KN-7, KN-13, KN-18, KN-47, KN-50, KN-51, KN-54, KN-59, NK-62, KN-67, KN-73, KN-83. While it is possible that Ms. Viner did not intend to cause psychological abuse on Ms. Kuzmina, her actions had that effect nonetheless. Ms. Viner made both private and public statements that were objectively intimidating to Ms. Kuzmina. This conduct was unwelcome and objectively caused harm to Ms. Kuzmina. Ms. Kuzmina's anxiety and distress are evident from her responses to Ms. Viner's WhatsApp messages. Ms. Viner's public statements objectively had and continue to have a negative impact on Ms. Kuzmina's sense of identity, dignity and self-worth without justification and isolated her from the wider gymnastics' community.

148. The rules of FIG do not demand evidence of precise psychological harm to prove psychological abuse. Any wrongful behavior that presupposes moral harm to the victim can be considered as psychological abuse. Since this sport disciplinary

proceeding do not involve monetary compensation for the victim, it is not essential to determine the exact nature and extent of the harm caused.

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149. After analyzing the evidence, the AT Panel has concluded that the DC Decision was correct in upholding Complaint 1. Ms. Viner's actions towards Ms. Kuzmina from 7 August 2021 to 19 April 2022 constituted harassment, bullying, and psychological abuse in violation of several FIG regulations.

Issue 3. Whether the DC erred in upholding Complaint 2

150. The Appellant claims that she proposed and voted for a motion to withdraw Ms. Kuzmina's candidature for the position of President of RGTC because Ms. Kuzmina had not performed well in her previous role as the President of RGTC at the Tokyo Games. The Appellant believes that Ms. Kuzmina's experience could be better utilized as a coach for Russian rhythmic gymnastics. Additionally, the Appellant argues that the DC made a mistake in upholding Complaint 2 as Harassment, Bullying, and/or Psychological Abuse require proof of intent, which the Appellant did not have.

151. According to the GEF, the Appellant's actions regarding the nomination of Ms. Kuzmina as President of the RGTC were part of a campaign of harassment against her. The GEF argues that power can be exercised both fairly and unfairly, and in this case, the DC found that it was exercised unfairly, resulting in harm to Ms. Kuzmina. The DC made this decision based on the oral evidence presented by the Appellant and her witnesses, as well as the cross-examination of them. The evidence shows that the Appellant acted out of revenge against Ms. Kuzmina, with no other justification for the removal of her nomination.

152. In Issue 2 above, the AT Panel determined that FIG Safeguarding Policy does not require a showing that the defendant had 'specific intent' to harass, bully or psychologically abuse the victim. The GEF only needs to prove that Ms. Viner intended to commit the act in question, rather than proving that Ms. Viner intended

to cause harassment, bullying or psychological abuse through her actions or that she performed the action with a wrongful purpose.

153. It is also undisputed that the press reported that the 14 September 2021 withdrawal of Ms. Kuzmina from the nomination for president of the RGTC made by the AGFR was proposed and voted by Ms. Viner (Exhibits NK-8, NK10 and NK11). Ms. Viner has accepted this in the Appeal and her own testimony before the DC. Therefore, the question rests on whether Ms. Viner had wrongly exercised her power to propose and vote for Ms. Kuzmina's withdrawal, taking into account her motivations and context.

154. The AT Panel is convinced that Ms. Viner abused her authority and misused her power and influence at the RRFG and the AFGR to withdraw Ms. Kuzmina from the nomination for president of the RGTC. To reach this conclusion, the AT Panel has considered the context and statements surrounding the withdrawal of Ms. Kuzmina's candidacy. On the one hand, in private, Ms. Viner had made Ms. Kuzmina responsible for the loss of two gold medals arguably deserved by Russian gymnasts (Exhibits NK3, NK4 and NK5). Later on, Ms. Viner publicly identified Ms. Kuzmina as "the reason" for the gold medal of Linoy Ashram (Israel) and hence for Russian Dina Averina's silver medal at the Tokyo Olympic Games. Most important, Ms. Viner has been publicly quoted stating that Ms. Kuzmina "is now preparing for elections, and she needed to show that she cannot do anything for Russia, does not want and should not" (Exhibit NK-7). In other words, Ms. Viner associates Ms. Kuzmina's supposed responsibility for the loss of two gold medals with the latter's desire to be elected as President of the RGTC. This leads the AT Panel to conclude that the decision to withdraw Ms. Kuzmina as a candidate for the position of RGTC president was a punishment in retaliation for events in Tokyo Games 2021. This is confirmed by Exhibit KN-59, where a public interview quotes the Appellant stating "we have withdrawn her candidacy, because without her is better than with her, because no one would dare to do what she did".

155. Ms. Viner's proposal does not appear to be justified by the supposed defective performance of Ms. Kuzmina in her previous role as the President of RGTC at the Tokyo Games. There is no evidence that Ms. Kuzmina failed in her role of President of the RGTC in Tokyo. Exhibit NK-1 shows that "according to JEP analysis at the

Tokyo Games, no judges were qualified as 'Unsatisfactory'. The judging was satisfactory and the judges showed integrity, independent work and correct application of the Code of Points". The FIG also released a Statement confirming that it "has set up strict criteria for objective selection of the most qualified and unbiased judges for the Olympic Games and we are pleased with their work" during the Rhythmic Gymnastics competitions in Tokyo (Exhibit KN-7). Accordingly, it is more likely than not that Ms. Viner's real motivation to withdraw Ms. Kuzmina's candidacy as President of the next RGTC was to punish the latter for her failure to influence the results at the Tokyo Games in favor of Russian athletes. Thus, Ms. Viner's proposal and lobbying to withdraw Ms. Kuzmina's candidacy were part of the same unwarranted revenge scheme Ms. Viner planned against Ms. Kuzmina.

156. Following a meticulous review, the AT Panel has ascertained that Ms. Viner's actions were indeed intentional, as evidenced by Exhibits NK-7, NK-8, NK-9, NK-10, NK-13, and NK-18. Although it is plausible that Ms. Viner did not intend to cause harassment, psychological harm, or bullying to Ms. Kuzmina, her actions, however, had that effect on her. Ms. Viner's lobbying to withdraw Ms. Kuzmina as a candidate to the RGTC's presidency was objectively intimidating and degrading to Ms. Kuzmina as there was no evidence of misconduct from her. This conduct was aggressive and had an objectively harmful impact on Ms. Kuzmina. Ms. Kuzmina's disqualification from the RGTC presidency contest objectively deprived her of economic resources and isolated her from the wider gymnastics' community.

157. It is not necessary to provide evidence of exact psychological harm to prove harassment, bullying or psychological abuse in accordance with the rules of FIG. Any wrongful conduct that presupposes moral harm to the victim can be considered as such. As this sport disciplinary proceeding does not involve monetary compensation for the victim, it is not crucial to determine the precise nature and extent of the harm caused.

* * * * *

158. The AT Panel has analyzed the evidence and has come to the conclusion that the DC Decision was correct in upholding Complaint 2. Between 7 August 2021 and 17

September 2021, Ms. Viner, as the President of the RRGF, abused her position of power and influence by lobbying and voting in favor of a motion to withdraw Ms. Kuzmina's candidature for President of the RGTC without any valid reason. This was an act of revenge and punishment, which objectively caused harm to Ms. Kuzmina and is in violation of different FIG Rules.

Issue 4. Whether the DC erred in upholding Complaint 3

159. The Appellant accepts that she had made public criticism, but maintains that the public statements complained of had been rooted in the truth, given that Ms. Kuzmina had told the Appellant, in a WhatsApp voice note sent shortly after the Rhythmic Gymnastics competition at the Tokyo Games, that "*there is a sense of work against the Russians"* amongst the judges, and thus could not be considered offensive. In addition, Ms. Viner alleges that her criticism of the judging did not amount to an "offensive" behavior, not least given the statements of Ms. Kuzmina herself.

160. The GEF position is that there never was and never has been any admission that the judges or Ms. Kuzmina were biased towards Russia at Tokyo Games, no document says so, no witness says so. The GEF asserts that is not in dispute that Ms. Viner's public statements are negative. The Appellant admitted that they were (see [Exhibit 3 para. 7.9]). The GEF also suggests that accusing a person of being *biased* and/or *betraying* their country or not acting legitimately or causing chaos in the professional role is offensive.

161. Pursuant Article 3 FIG CoD the principles of integrity are infringed and deserve sanctions against those who "[b]ehave in an offensive way towards the FIG members, gymnasts or FIG officials".

162. Part 3 FIG CoC requires "[t]o maintain and enhance the dignity and self-esteem of others by demonstrating respect for others" and "[t]o refrain from any behaviour and language that constitutes harassment, or physical abuse, is offensive, racist, sexist, unwanted, degrading, or malicious".

163. The FIG Policy and Procedures for Safeguarding and Protecting Participants in Gymnastics Part 1 Article 2 and Article 3 and Article 6.4 prohibit all forms of non-accidental violence, which are likely to result, it warns, in disciplinary action.

164. Ms. Kuzmina's private voice message to Ms. Viner, which the latter used as a defense for her public offensive statements against Ms. Kuzmina and other FIG officials, reads as follows:

There is a little bit of such a trend that everybody is already tired of the Russians. And there is a new look: you don't know who will win until the end, and good geography is on the podium - all the FIG leadership is satisfied. The judges are all proud that they are so independent. But there is a sense of work against the Russians and against me that we must be removed. To remove, and, you see, everything will be fine!

165. The AT Panel finds that Ms. Viner's negative public criticism towards Ms. Kuzmina and other FIG officials from 7 August 2021 to 19 April 2022 cannot be justified by the statement above. There is no confirmation of the lack of independence of the RGTC members or judges during the Tokyo Games or otherwise. On the contrary, Ms. Kuzmina confirms that rhythmic gymnastics judges were independent and are proud of it. Ms. Kuzmina indeed states that "there is a sense of work against the Russians and against" her. However, this cannot be taken as evidence of bias from judges or the RGTC members at the Tokyo Games or elsewhere. First, the sense of work against the Russians and Ms. Kuzmina is not attributed to judges and the RGTC members. Until concrete evidence is presented, a 'sense' is merely a 'feeling' rather than a fact. The possibility to 'remove' the 'sense' confirms that there is no concrete issues of lack of partiality or independence in Ms. Kuzmina's view; the sense could be present in other FIG members, not necessarily in the judges or RGTC members.

166. In the present case, it is an incontrovertible fact that the Appellant between 7 August 2021 and 19 April 2022 made public negative criticism of Ms. Kuzmina and/or other officials at Tokyo GAmes and/or behaved in an offensive way towards Ms. Kuzmina

and/or those other officials at Tokyo Games.[220] Ms. Viner asserted that Ms. Kuzmina and/or other officials had acted with bias, against Russian gymnasts and had manipulated the outcome of the Rhythmic Gymnastics competitions at the Tokyo Games (Exhibits KN-7, KN-13, KN-18, KN-47, KN-50, KN-51, KN-54, KN-59, NK-62, KN-67, KN-73, KN-83).

167. Ms. Viner statements in various publications attributing the defeat of Russian athletes to Ms. Kuzmina and other FIG officials, devoid of any corroborating evidence, objectively caused harm to Ms. Kuzmina. She objectively suffered reputational loss and isolated her from the wider gymnastics' community.

168. The AT Panel determines that Ms. Viner's conduct, as analyzed above, violates Article 3 FIG of the CoD, Part 3 FIG of the CoC, as well as the FIG Policy and Procedures for Safeguarding and Protecting Participants in Gymnastics, specifically Articles 2, 3, and 6.4.

* * * * *

169. After analyzing the evidence, the AT Panel has concluded that Complaint 3 was correctly upheld by the DC Decision. The Appellant engaged in negative public criticism of Ms. Kuzmina and other officials at Tokyo Games, and behaved offensively towards them between 7 August 2021 and 19 April 2022. Ms. Viner's conduct violated various FIG Rules.

Issue 5. Whether the Appellant had a legitimate expectation of no sanctions for Complaints 1 and 3?

170. The AT Panel is not convinced that the Appellant had any legitimate expectation for not facing sanctions for her conduct, which included non-accidental actions like harassment and psychological abuse. It is strictly prohibited to engage in these actions as outlined by FIG Regulations; the Appellant must have been aware of their wrongfulness. In recent years, gymnastics has been at the forefront of promoting the safeguarding movement in sports. Various documentaries and scientific studies, such

[220] See Exhibits NK-2, NK-3, NK-4 and NK-5 KN-7, KN-13, KN-18, KN-47, KN-50, KN-51, KN-54, KN-59, NK-62, KN-67, KN-73, KN-83.

as Athlete A and The Weight of Gold, have exposed the detrimental effects of non-accidental violence on sports members' health, well-being, and integrity. Given the Appellant's vast experience and constant involvement in sports, it would be naive to assume that her verbal abuse and harassment towards other sports members would not invite any sanctions. It is also important to note that the Appellant had previously been sanctioned in 2008 for verbal abuse.

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171. In light of the above, Ms. Viner did not have any legitimate expectation that she would not face charges for such offenses.

Issue 6. Whether the DC erred in upholding Complaint 4

172. The Appellant submits that she refused to attend an interview because the GEF has no power to perform investigations after it has opened disciplinary proceedings. The Appellant also contends that she had provided a written explanation to the GEF, instead of attending the interview, such that she had nevertheless complied with the GEF's request for information and thus did not fail to cooperate in breach of the Safeguarding Policy.

173. The GEF asserts that there is no limit of time as to when the requirement to attend an interview is made in the FIG regulations. The GEF further contends that the opening of disciplinary proceedings does not bring the investigation to an end; new material, and new requests for material may arise at any time and fall to be investigated.

174. Article 28 of the Code of Discipline provides that "[d]isciplinary proceedings may be opened by the Director of the [GEF] based on the findings of an investigation of a complaint received".

175. Article 1.2 of Part 2 Safeguarding Policy provides that "[t]he investigator may require written or oral representations from relevant parties, taking special care if interviewing vulnerable witnesses. Failure to co-operate with a request to provide relevant information may itself be considered misconduct."

176. The AT Panel concurs with the DC Decision that by not attending the GEF invitation to interview, Ms. Viner violated the FIG Rules, in particular, Article 1.2 of Part 2 the Safeguarding Policy. The AT Panel is not convinced that Article 28 CoD imposes a time-limit to the investigator's request to provide written or oral evidence from relevant parties. Article 28 CoD grants the GEF Director power to initiate disciplinary proceedings based on investigation findings, without precluding further investigation by the GEF.

177. The AT Panel also considers that submitting a written explanation, as Ms. Viner did to the GEF, does not mean compliance with Article 1.2 of Part 2 Safeguarding Policy. This provision is designed to ensure that investigators acquire relevant information by asking pertinent questions during the interview. The invited individual must do more than provide their own written account of events to fulfill the purpose of this rule.

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178. Based on the information presented, the DC made a correct decision regarding Complaint 4. The Appellant violated the FIG regulations, specifically Article 1.2 of Part 2 Safeguarding Policy, by not attending the interview related to the issues raised in this appeal.

Issue 7. Whether the DC erred with regard to the Sanction imposed on the Appellant

Right to be heard

179. The Appellant submits that, whilst curable by this appeal, the DC violated her right to be heard, which may explain how it fell into error when determining the Sanction.

180. The GEF acknowledges that the DC did not afford to the GEF or to the Appellant the opportunity to address it on sanction after issuing the DC Decision. However, the GEF denies that there has been any denial of the right to be heard mainly because: 1) the Appellant was not prohibited at all from addressing sanction and did so at length both orally before the DC and in the Appellant's Response (see Exhibit 3 and its Chapter E and the Appellant's submissions Transcript 6/17/LL13-15 and 6/20/LL13

et seq); 2) the DC Decision records the submissions on sanction made by the Appellant, and which are in substance not different to those made now (see paras. 76-80 of the Decision); 3) the Appellant adduced evidence relevant to mitigation before the DC [see Transcript 6/34/LL31 et seq); 4) the DC made clear that it may not be necessary to hear further submission on the Sanction, they would only be requested if the DC felt a need for them.

181. The AT Panel has found evidence that the Appellant was given a reasonable opportunity to be heard by the DC regarding the issue of sanctions. The GEF has outlined multiple opportunities to state their case regarding sanctions in the paragraph above, which have been documented in the case file. The DC did not guarantee that the Parties would have a final chance to make submissions on the matter after the hearing. In any event, the AT Panel has rectified any lack of opportunity for the Parties to provide additional submissions on the issue of sanctions.

Proportionality of the Sanction

182. The Appellant argues that the DC made an error of law by treating the Appellant's previous disciplinary offence as an aggravating factor; failed to consider relevant case law and/or placed undue weight on *Deleanu*; and/or failed to properly perform the necessary balancing exercise and, in particular, failed to take account of (alternatively, failed to give sufficient weight to) several relevant mitigating factors, with the result that the sanction imposed was manifestly disproportionate and thus unlawful.

183. The GEF submits that the previous offence was relevant to calculate the sanction because it showed that the sanction imposed by that tribunal of a warning and of a fine had not had the effect of preventing her further offending. The GEF further asserts that Article 25 CoD does not limit the consideration of previous sanctions as aggravating circumstance irrespective of when it happened. The GEF also contends that the DC Decision did not in fact aggravate the sanction imposed on the Appellant because of the previous breach and sanction.

184. Article 25 CoD reads:

"Aggravating circumstances shall include in particular, but shall not be limited to, the repetition of an infringement. Each second or subsequent offence must take place within five (5) years after a former final ruling on disciplinary sanction in order to be considered as such".

185. The AT Panel understands from this provision that only previous offenses that took place within five years may be considered aggravating circumstances. The Appellant was sanctioned with a warning in 2008, i.e. more than ten years ago. Accordingly, AT Panel will not consider such a previous offence in the determination of the Appellant's sanction.

186. It is unclear whether the DC Decision considered Ms. Viner's previous sanction as an aggravating circumstance or simply used the 2008 warning as a benchmark for a more effective penalty. The AT Panel acknowledges that both interpretations from the DC text are possible. However, the AT Panel has considered other aggravating circumstances that also justify the two-year suspension imposed by the DC or higher sanctions. These circumstances will be briefly explained. As stated above (see para. 114), the AT Panel may assess new and old evidence, the FIG CoD does not limit the AT Panel's role to reviewing the application of the law and principles by the DC.

187. The DC's decision to take the *Deleanu* case as a legal reference was appropriate. Although the cases are not similar, the DC Decision considered it as a parameter for the present case. The CAS Panel had imposed a three-year suspension on the Appellant from the relevant role in that case. However, the DC Decision did not impose the same ban in the present case, instead, it found the *Deleanu* case helpful in setting the sanction. This was due to the different nature of the abuse committed by Ms. Viner. The AT Panel considers that the two-year sanction was proportional to the infringement of the more modern disciplinary, ethical, and safeguarding FIG Rules by Ms. Viner. As the FIG regulations do not provide specific sanctions for specific conducts, the GEF Disciplinary Authorities have the discretion to determine the relevant parameter for imposing sanctions, as explained below.

Imposed Sanction

188. The AT Panel decides to maintain the suspension of Ms. Viner for a period of two (2) years for the following reasons.

189. The AT Panel shall set out the type and the scope of the disciplinary sanctions, in accordance with the FIG Statutes and regulations, "by considering both the objective and subjective elements of the infringement" (Article 25 FIG CoD).

190. Article 34 FIG Statutes lists the sanctions or disciplinary measures, from 1 to 17, that may be imposed on an individual or a federation for breach of the FIG Statutes, codes, rules, etc. The sanctions include, but are not limited to, the warning, the blame, the suspension, the proscription, the exclusion, any other sanction which could be proposed by the GEF DC, etc.

191. Within its inherent power to set the type and scope of disciplinary measures under Article 25 FIG CoD, the AT Panel considers that a decisive criterion in determining the sanction is the degree of fault or negligence by the defendant that resulted in the infringement of policies, rules and duties. Fault or negligence is also one of the elements to establish civil liability under Swiss law[221] and in many world legal systems.[222] Accordingly, this criterion follows the general principles of justice, fairness and equality, the general principles of Swiss law, and the principles acknowledged internationally that are applicable to this case (see para. 115 above).

192. In the AT Panel's view, there are usually three degrees of fault or negligence resulting in liability that may be applied to determine the type and scope of sanctions listed in Article 34 FIG Statutes: 1) a significant degree of fault which triggers the more severe sanctions; 2) a normal degree of fault requiring medium level sanctions, and; 3) a light degree of fault, with low level sanctions. This is in line with Article 25 FIG CoD requiring that the sanctions imposed shall consider mitigating and aggravating circumstances and the proportionality principle of sanctions under the *lex sportiva*.

[221] Switzerland Art. 41 CO: "1 Any person who *unlawfully* causes damage to another, whether willfully or negligently, is obliged to provide compensation. 2 A person who wilfully causes damage to another in an immoral manner is likewise obliged to provide compensation".
[222] See for instance Germany § 823 CC; France Art. 1241 CC; United States Restatement on Torts (Second).

193. In order to determine into which category of fault or negligence a particular case might fall, the AT Panel should consider both the objective and the subjective elements of fault (Article 25 FIG CoD). The objective element describes what standard of behavior could have been expected from a reasonable person in the tortfeasor's situation. The subjective element describes what could have been expected from that particular person, in light of her individual capacities. The objective element should be foremost in determining into which of the relevant categories of fault or negligence a particular case falls. The subjective element can then be used to move a particular defendant up or down within that category. In exceptional cases, it may be that the subjective elements are so significant that they move a particular defendant not only to the extremity of a particular category, but also into a different category altogether. However, that would be the exception to the rule.[223]

194. The above standards should also take into account the nature and the importance of the rule, policy, obligation or duty infringed by the respondent.

195. The Appellant's reproached conduct is considered by the AT Panel to be within the normal and significant range of fault.

196. The private messages sent by Ms. Viner to Ms. Kuzmina, which were the subject of Complaint 1, were found to be inappropriate and fell below the expected standard of conduct for someone in Ms. Viner's position. It is expected that individuals in Ms. Viner's position should refrain from harassing, bullying, and verbally abusing others, in particular the head of the RGTC. In this case, there is no evidence of wrongdoing at the Tokyo Games, and Ms. Viner should have known that the grading of gymnasts is a collective responsibility. The judges on the ground and the RGTC work as a team. Ms. Viner's conduct towards Ms. Kuzmina, as evidenced in their WhatsApp correspondence, which was the subject of Complaint 1, was inappropriate and took

[223] These elements are similar to those applied in doping cases under the CAS jurisprudence, cf. Arbitration CAS 2013/A/3327 Marin Cilic v. International Tennis Federation (ITF) & CAS 2013/A/3335 International Tennis Federation (ITF) v. Marin Cilic, award of 11 April 2014 (operative part of 25 October 2013).

advantage of the friendship and admiration that Ms. Kuzmina visibly professed to the Appellant.

197. The abuse of power in removing Ms. Kuzmina's candidacy for the presidency of the RGTC, as stated in Complaint 2, was below the expected standard of behavior for someone in Ms. Viner's position; her fault is fundamental. The AT Panel has concluded that Ms. Viner's actions violated various FIG Rules. Moreover, such infringement is particularly serious since she used her power to seek revenge against Ms. Kuzmina. Ms. Viner believed that Ms. Kuzmina was biased against Russian gymnasts in order to be reelected as RGTC President. Instead of filing a disciplinary complaint before the relevant bodies to investigate further, she took matters into her own hands and retaliated by withdrawing Ms. Kuzmina's candidacy.

198. The AT Panel finds the Appellant to be significantly at fault for the negative public criticism and offensive behavior towards Ms. Kuzmina and/or other officials of FIG that are the basis for Complaint 3 (Exhibits KN-7, KN-13, KN-18, KN-47, KN-50, KN-51, KN-54, KN-59, NK-62, KN-67, KN-73, KN-83). From an objective standpoint, the AT Panel deems it highly inappropriate for someone in Ms. Viner's position to use her power and status to approach various news outlets over the course of several months to publicly attack Ms. Kuzmina and other FIG officials without any evidence of wrongdoing other than her personal views and the misinterpretation of Ms. Kuzmina's voice note.

199. The AT Panel also considers that Ms. Viner's refusal to cooperate with the GEF investigation under Complaint 4 falls below the average standard of conduct expected from someone in her position. As a renowned coach in the FIG system, Ms. Viner has achieved some of her greatest sporting accomplishments through FIG-organized events. Therefore, she was expected to set an example and comply with GEF rules on disciplinary proceedings, including the obligation to cooperate with investigations.

200. In accordance with Article 25 CoD, even "minor cases or of mitigating circumstances" will allow the AT Panel to impose a "**total or partial suspension, for a minimal duration of 1 year and a maximum of 5 years**" (emphasis added).

* * * * *

201. Based on the analysis presented above, the AT Panel concludes that Ms. Viner's suspension for a period of two years is a suitable and proportional sanction for her various violations of the FIG regulations. Her level of fault is considered to be normal to significant. Therefore, the AT Panel decides that Ms. Viner shall be barred from participating or receiving any accreditation for any role at an international competition, including but not limited to acting as coach, head of delegation or other official role at an international FIG-sanctioned competition.

Invoked mitigating factors

202. The AT Panel does not consider that supposed mitigating factors enounced in the Appeal are such. The AT Panel determined that the Appellant's reproved conduct was intentional; the FIG Rules do not require a showing of specific intent to bring about the typified wrongdoing because general intent suffices. The AT Panel also found that the FIG regulations do not require evidence of subjective damage to the victim; objective harm could be presumed from the context and other evidence adduced by the Parties. The Panel concluded that Ms. Viner's private and public statement were not rooted in truth.

203. The AT Panel does not see Ms. Viner's 40-year friendship relationship with Ms. Kuzmina as a mitigating factor. The tone and words used by Ms. Viner when communicating with Ms. Kuzmina via WhatsApp were inappropriate and took advantage of their closeness and mutual respect from any friendship perspective. Refusal to cooperate with an investigation on her lawyers' advice cannot be considered an excuse or a mitigating factor. Treating it as such would make the analysis of FIG rules violations and sanctions dependent on a supposed good faith refusal to comply with said rules.

204. Finally, the AT Panel acknowledges the Appellant's exceptional contribution to the sport of rhythmic gymnastics and congratulates her on her continued service and support to many athletes in Russia and beyond over the years. However, the AT Panel would like to pause for a moment to consider whether her advanced age or her significant contribution this sport should be taken into account as an exception or

mitigating circumstance. Although Ms. Viner is undoubtedly one of the most successful and respected gymnastics coaches of all time, she must be held accountable for any violation of the FIG Rules. Despite her accomplishments, it is vital to maintain the credibility and integrity of the institution and the sport as a whole. First, rules and regulations exist to ensure fairness, safety, and equality for all participants and to maintain the trust of athletes, officials, and the public. Allowing exceptions for highly accomplished individuals creates a dangerous precedent that undermines the essence of these rules. It sends a message that success can excuse misconduct or violations, which erodes the foundation of any institution. No one should be above the rules, no matter their past achievements. Secondly, in spite of the mistakes she committed in this case, Ms. Viner will most likely remain a role model and an example of perseverance and success for the rhythmic gymnastics' community. Her willingness to accept responsibility and face the consequences of her actions can serve as a powerful lesson and a reminder that nobody should be exempt from the standards and expectations set by the FIG community. She can demonstrate to current and future generations of athletes and coaches that integrity and adherence to the rules are fundamental values in sports.

Issue 8. Whether the Sanction must be consecutive to the Protective Measures

205. The DC Decision stipulates (para. 147) that the "sanction shall be enforced after Russia is able to participate again in international gymnastics competitions (i.e. after the FIG protective measures linked to Russia-Ukraine war are lifted), assuming, however, that the FIG protective measures are lifted within five (5) years from the date of the present Decision. Should the FIG protective measures be lifted after five (5) years from the date of the present Decision, then the sanction should be reduced to the amount of time left between the date of the lifting of the FIG protective measures and seven (7) years after the date of the present Decision".

206. The Appellant contends that any sanction must be determined by reference to the conduct of the person being sanctioned; the Protective Measures have been imposed due to matters entirely beyond the Appellant's control, i.e. the Russia-Ukraine war, and which are entirely independent of her conduct. The Appellant also relies on the AT decision in *Kuliak v. GEF* (2022), in which a Russian athlete successfully

appealed against a sanction on the basis that it was wrong for his suspension to be consecutive to the Protective Measures.

207. The GEF submits that there can be no dispute that the DC had the power to impose such a sanction pursuant to Arts 43.3c)-e) and r) FIG Statutes. The GEF also argues that the case of Kuliak is obviously on very different facts because the Appellant could not participate for 2 years in international competition only and there was no prohibition on her domestic activities.

208. The AT Panel decides that Ms. Viner's two-year suspension will begin on 6 March 2023, the date of the DC Decision, and will not run consecutively with the Protective Measures. In the Kuliak case (Decision GEF 2022/13 RUS), the AT refused to uphold any suspension from the DC that could ultimately lead to a disproportionate penalty given its uncertainty and variable length beyond the control of the athlete. In essence, the case is not different here, the Appellant's suspension will vary in length depending on circumstances that are completely beyond her control and are unrelated to the complaints filed before the DC and this tribunal. Therefore, if the AT Panel follows the method of calculating the suspension used by the DC in those cases, equal treatment and predictability of sanctions cannot be ensured.

* * * * *

209. Accordingly, Ms. Viner's suspension shall be for 2 years: from 6 March 2023 to 5 March 2025. This decision applies irrespective of whether the Protecting Measures keeping Russian athletes, coaches or officials from competing are still in force on 7 March 2025.

Issue 9. Whether the AGRF is strictly liable for the acts of the Appellant and the RRGF

210. The GEF argues that the DC failed to consider the AGRF strictly liable for the acts of the Appellant and the RRGF. The GEF alleges that the DC incorrectly assumed that the concept of control or fault was the means by which the AGFR was liable for the acts of the Appellant and the RRGF. The GEF requests the AT to determine that

AGFR is strictly liable for the acts of the Appellant and the RRGF under Article 4 CoD.

211. The AGFR asserts that declaratory relief can only be granted if the requesting party demonstrates a special legal interest, as was the case in WADA v. Hardy & USADA. According to the AGFR, the GEF lacks the necessary special legal interest needed for declaratory relief, since there is no legal uncertainty that threatens the GEF. This is demonstrated by the fact that the GEF does not pursue sanctions or consequences in relation to the declaration. Therefore, the AGFR believes that the request for declaratory relief must be dismissed as inadmissible.

212. The AGFR maintains that it cannot be held strictly liable for the actions of the RRFG as the DC decided taking into account Article 4 CoD. The AGFR clarifies that the RRFG is not affiliated with the AGFR in any capacity, including as a member, gymnast, judge, or official. As such, the AGFR contends that liability under Article 4 CoD is contingent upon the degree of control it has over the RRFG. This control is a prerequisite for liability, as contract law requires that specific individuals fall under the jurisdiction of a particular federation. The AGFR further asserts that the GEF cannot alter either the norms of contract law or its own rules to accomplish its purported objective.

213. The AT Panel finds that it has the power to grant declaratory relief to amend a decision of the DC for the following reasons.

214. Article 30 CoD and 32 FIG Statutes provide that “decisions rendered by the Disciplinary Commission may be appealed to the Appeal Tribunal”. A declaratory relief, regarding the rights, obligations, duties or remedies covered by the FIG regulations, is not excluded.

215. Article 33 CoD does not restrict the type of relief that may be sought with an appeal; it only requires it to contain “the conclusions of the Appellant”. Declaratory relief is thus possible in so far as it is compatible with the rights, obligations, duties or remedies in the FIG regulations.

216. The AT Panel considers that the case of WADA v. Hardy & USADA CAS Award 2009/A/1870 supports the existence of a right to seek declaratory relief in this case. First, the declaratory relief is necessary to resolve a legal uncertainty created by the DC Decision that affects the GEF in its relation with the AFGR and the RRFG and other federations in similar circumstances. Second, the declaratory relief sought by the GEF would ensure that it protects its interests in cases involving non-directly affiliated country federations subject to the FIG regulations. The GEF does not need to file a further claim or request an additional order to ensure such protection: the AT Panel's decision on the correct interpretation of the relevant FIG Rules will suffice. Third, the amendment of the wording of FIG regulations may indeed be a different way to pursue and protect the GEF's legal interest. However, the AT Panel is not convinced that a 'legislative amendment' is easier and better. In some instances, the AT Panel could confirm or clarify the meaning of FIG regulations faster and more accurately than through a legislative or executive process. Fourth, there is legal uncertainty about the relationship between the ARGF and the GEF. Fifth, the question is not abstract; it turns around the obligations that the ARGF has before the GEF for the acts of the Russian federations it represents. Finally, the GEF Disciplinary Authorities' decisions are generally published. The current text of the DC Decision on this matter could create confusion, and there is thus an immediate interest to resolve the uncertainty.

217. On the question of liability, Article 4 CoD states:

"The Federations are also liable for the behaviour of their members, gymnasts, judges and officials as well as for any other person assigned by them to officiate during a competition."

218. The AT Panel's inherent power to interpret a private law document in accordance with Swiss law should be exercised here. In particular, Article 18(1) Swiss CO states that when assessing the terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.

219. Against this legal background, the AT Panel determines that the statement "the behaviour of their members, gymnasts, judges and officials" is an inexact expression which deviates from the true nature of Article 4 CoD and related rules. It is unlikely that the FIG members intended for an affiliated Federation like the AGFR to only be held responsible for the actions of its own gymnasts, judges, and officials. This would mean that the AGFR would not be liable for the actions of a sister federation, such as the RRFG, that it represents under the "one federation per country" rule stated in the FIG Statutes. Instead, the correct interpretation is that Article 4 CoD and its related provisions in the FIG Statutes imply that the leading federation which represents other federations should also ensure that the latter comply with the FIG regulations. Any violations of these regulations can be attributed to both the represented federation and the leading federation. A different interpretation would imply that any FIG-affiliated federation would neglect or be indifferent to the violation of FIG regulations by its sister federation which it represents. Deviating from the true nature of the CoD and the "one federation per country" principle, the last interpretation would not be accurate.

220. Article 4 CoD outlines the strict liability that a federation bears for the actions of the individuals and entities under its representation. The federation is expected to exercise control over them, and it cannot use due diligence, best efforts, or lack of control as a defense. In the event of an infringement related to the FIG regulations, the FIG-registered federation is accountable for the actions of its sister federations and members and may face disciplinary action. However, certain exceptions may apply, such as personal torts or actions outside the scope of the FIG regulations. For example, a federation may not be held liable for the personal torts of its members, including those of represented federations, if they are unrelated to FIG activities or outside the ordinary course of the FIG's and the federation's activities.

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221. The AT Panel declares that the AGFR is strictly liable for the actions of the RRFG and its members. The DC Decision was incorrect in stating that the AGFR was not vicariously liable for the actions of Ms. Viner and the RRFG while under her leadership.

X. The Costs

222. The GEF requests the AT Panel to order the Appellant and the AGFR to bear the entirety of the procedural costs and cost of representation incurred by the disciplinary proceedings, both before the DC and the AT Panel.

223. The Appellant requests the AT Panel to order the GEF to reimburse the Appellant's legal costs and expenses relating to this appeal.

224. The AGFR requests the AT Panel to order the GEF to reimburse all of the AGFR's legal costs and expenses related to this appeal.

225. Article 27 CoD gives to the AT Panel full discretion to decide whether the costs of the appeal shall be borne entirely or partly by the one of the Parties, or shared by the Parties at a percentage or borne by the GEF. The result of this appeal proceeding is that the Ms. Viner relief sought has been dismissed almost entirely, with the exception of the AT Panel's decision regarding the starting date of the two-year suspension. Accordingly, the AT Panel decides that Ms. Viner shall bear the CHF 5,000 advances to the GEF for the costs of the Appeal. As stated in Article 30 CoD, this amount shall be kept by the GEF if the appeal is considered inadmissible or is fully or partly rejected.

226. In addition, Article 27 CoD sets forth the principle that the Parties shall bear their own expenses and costs (costs of the Party and the lawyer). However, the AT Panel has discretion to depart front this principle and decide that the unsuccessful Party pays 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 panel sees no circumstances that warrant departing from the general principle on this issue, as explained below.

227. The AT Panel firmly believes that parties must be given the opportunity to present their case under Article 19 CoD. The right to be heard demands that AT Panel's cost-shifting discretion in Article 27 CoD be utilized only as a rare occurrence in sports law proceedings. Imposing costs on an unsuccessful party may automatically

discourage athletes or sport persons from appealing, and the AT Panel should note this.

228. Accordingly, the cost-shifting possibility under Article 27 CoD should only be exercised when the appeal was clearly without merits. In the case at hand, however, the lodged Appeal contained sufficient evidence and compelling arguments at least to modify the starting date and, thus the length, of the suspension imposed by the DC Decision. In addition, the GEF's cross-appeal against the AGFR has been partly upheld.

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229. In conclusion, the AT Panel decides that Ms. Viner shall bear the CHF 5,000 advances to GEF for the costs of the Appeal and that each party covers their own expenses and costs, including the cost of legal representation.

XI. Dispositive Section

230. In light of the accepted facts and the reasons explaining the findings, the AT Panel makes the following decision:

- The AT Panel decides that the DC had jurisdiction over Ms. Viner regarding the complaints filed by the GEF;
- The AT Panel decides that it also has jurisdiction concerning the issues addressed in this decision;
- The AT Panel determines that the DC Decision was correct in upholding Complaint 1. Ms. Viner's actions towards Ms. Kuzmina from 7 August 2021 to 19 April 2022 constituted harassment, bullying, and psychological abuse in violation of several FIG regulations;
- The AT Panel decides that the DC Decision was correct in upholding Complaint 2. Between 7 August 2021 and 17 September 2021, Ms. Viner, as the President of the RRGF, abused her position of power and influence by lobbying and voting in favor of a motion to withdraw Ms. Kuzmina's

candidature for President of the RGTC without any valid reason. This was an act of revenge and punishment, which objectively caused harm to Ms. Kuzmina and is in violation of different FIG Rules;

- The AT Panel determines that Complaint 3 was correctly upheld by the DC Decision. The Appellant engaged in negative public criticism of Ms. Kuzmina and other officials at Tokyo Games, and behaved offensively towards them between 7 August 2021 and 19 April 2022 and her conduct violated various FIG Rules;

- The AT Panel determines that Ms. Viner did not have any legitimate expectation that she would not face charges for such offenses;

- The AT Panel decides that the DC made a correct decision regarding Complaint 4. The Appellant violated the FIG regulations, specifically Article 1.2 of Part 2 Safeguarding Policy, by not attending the invitation to interview by the GEF related to the issues raised in this appeal;

- The AT Panel decides that Ms. Viner shall be suspended for 2 years: from 6 March 2023 to 5 March 2025. This decision applies irrespective of whether the Protecting Measures keeping Russian athletes, coaches or officials from competing are still in force on 7 March 2025;

- The AT Panel declares that the AGFR is strictly liable for the actions of the RRFG and its members. The DC Decision was incorrect in stating that the AGFR was not vicariously liable for the actions of Ms. Viner and the RRFG while under her leadership;

- The AT Panel decides that Ms. Viner shall bear the CHF 5,000 advances to the GEF for the costs of the Appeal;

- The AT Panel decides that each Party shall cover their own expenses and costs, including the cost of legal representation;

- The AT Panel decides to dismiss all other related Prayers for Relief.

Lausanne, Switzerland. 22 November 2023.

The GEF Appeal Tribunal Panel

Prof. Edgardo Muñoz López
President

Rafael Resende de Andrade
Member

Valérie Horyna
Member

Important: Decisions of the GEF Appeal Tribunal may be appealed within 21 days to the Court of Arbitration for Sports in Lausanne (Article 33 FIG Statutes and Article 34 CoD).