

**BEFORE THE DISCIPLINARY COMMISSION  
OF THE GYMNASTICS ETHICS FOUNDATION**

**DECISION**

**In the matter against**

**Ms Irina Viner-Usmanova (RUS)**

**and**

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

**I. Introduction**

1. Ms Natalia Kuzmina is a Russian citizen and the former President of the Rhythmic Gymnastics Technical Committee (RGTC) of the Fédération Internationale de Gymnastique (FIG). At the time of filing her complaint, Ms Kuzmina was the President of the RGTC.
2. Ms Viner-Usmanova is the President of the Rhythmic Gymnastics Federation of Russia (RGFR) and has since 2001 been the head coach of the Russian Rhythmic Gymnastics Team.
3. The AGFR is a Member Federation of the FIG. In Russia, the interests of Rhythmic Gymnastics are represented by the RGFR. As the FIG only accepts one Member Federation per nation, the RGFR is represented by the AGFR within the FIG.
4. The present proceedings stem from the purported withdrawal, by the AGFR on 17 September 2021, of Ms Kuzmina's nomination for re-election to the Presidency and/or Membership of the FIG RGTC, and the FIG's subsequent removal of her from the list of candidates for the Presidency and/or Membership of the FIG RGTC.
5. By letter dated 21 October 2021, Nataliya Kuzmina filed a complaint with the Gymnastics Ethics Foundation (GEF) against the AGFR and the FIG, requesting that the GEF investigate the conduct of the FIG and the AGFR sought declarations regarding that (alleged) conduct.
6. On 27 October 2021, the GEF opened a disciplinary procedure against the FIG and the AGFR in

relation to their conduct regarding Ms Kuzmina and appointed the same members to the Disciplinary Commission Panel (the "Commission"), which elected Mr Thomas Hayn as its President (the "Disciplinary Proceedings").

7. On 29 October 2021, the President of the Commission granted a superprovisional measure reinstating Ms Nataliya Kuzmina on the list of candidates for the position of President, alternatively Member, of the FIG RGTC, with immediate effect.
8. On 5 November 2021, following a hearing, the Commission annulled the 29 October 2021 superprovisional measure and rejected the request of the GEF Director for the granting of a provisional measure.
9. By letter of 3 August 2022, the GEF requested that Mr Vasily Titov, President of the AGFR, and Ms Viner-Usmanova attend interviews with the GEF, regarding the complaint.
10. On 19 August 2022, Mr Titov and Ms Viner-Usmanova responded to the GEF's request, via their lawyers, to explain that, as the Disciplinary Proceedings had already been opened, the GEF could not require them to attend interviews.

## **II. Procedural history**

11. By submission of 17 November 2022, the GEF set forth nine complaints concerning infringements of numerous provisions of the FIG Statutes, codes and/or policies of the FIG (FIG Rules) by the AGFR and by Ms Irina Viner-Usmanova.
12. On 17 November 2022, the GEF appointed Ms Laurence Burger (President), Dr Despina Mavromati and Mr Thomas Hayn as members of the Commission.
13. On 20 January 2023, the Respondents filed a Response.
14. On 30 January 2023, the Commission and the Parties held a pre-hearing conference call.
15. On 31 January 2023, the Commission circulated an email with the hearing agenda and a summary of the key points decided during the pre-hearing conference call on 30 January 2023.
16. On 3 February 2023, the GEF filed a submission that should have been limited to the rebuttal of Respondents' defense on jurisdiction, together with evidence limited to the same. However, the GEF also filed its position on sanctions. On the same date, the GEF requested the implementation of special measures, namely that (1) Ms Kuzmina only be questioned by the members of the Commission; (2) that counsel for Respondents do not have their camera on during questioning, and (3) that Respondents' counsel undertake formally, on the record, that they are not recording Ms Kuzmina's answers. In addition, the GEF informed that Ms Irina Young was not able to attend the hearing but she was willing

to answer questions in writing prior to the hearing.

17. On 6 February 2023, the GEF requested that the hearing of Ms Kuzmina, which was scheduled for the morning of 9 February 2023, be scheduled for the afternoon, as Ms Kuzmina was currently located on the East Coast of the United States.
18. On 7 February 2023, the Respondents filed an Answer to this submission, requesting that the GEF's written submissions on sanctions be deemed inadmissible; that Ms Kuzmina be heard in the morning before Respondents' witnesses; and that their counsel be able to question Ms Kuzmina, but agreeing to have their camera off and undertaking not to record Ms Kuzmina's answers. They also took note of the absence of Ms Young during the hearing at the same time confirming that they had no written questions for her.
19. On the same date, the Commission circulated its decision on these points. It indicated that the GEF's written submission on sanctions would not be considered, the GEF having been informed on 31 January 2023 that its submission on sanctions shall take place at the hearing only. The Commission changed the time of Ms Kuzmina's testimony to late morning but held that counsel for Respondents would be allowed to question Ms Kuzmina. It took note of the Respondents' undertaking not to record the questions and to keep their camera off during her examination.
20. On 8 February 2023, the GEF sent another email to the Commission requesting again, as special measures, that Ms Kuzmina be questioned by the Commission only and that she be questioned in the afternoon. Counsel for Respondents replied immediately to that email, asking the Commission to deny these requests.
21. On the same date, Ms Kuzmina sent an email to the Commission directly, with copies to the GEF and its counsel. The Commission did not review the contents of this email sent in violation of common procedural practice.
22. The hearing took place on Thursday, 9 February 2023 by video conference.
23. At the outset of the hearing, the Commission informed the Parties that it was upholding its decision of 7 February 2023. At that point, the GEF informed the Commission and Respondents that Ms Kuzmina would not be available for questioning during the hearing.

### **III. The Parties' positions**

#### **A. Summary of Ms Kuzmina's complaint**

24. In her complaint, Ms Kuzmina alleges that she suffered harassment, bullying, psychological abuse, abuse of position, public negative criticism and offensive behavior from Ms Viner-Usmanova, the AGFR and/or the RGFR.

25. This abuse was prompted by the Russian Olympic Committee winning silver (the Bulgarian team winning gold) at the Rhythmic Gymnastics' competition of the Olympic Games Tokyo 2020 (Tokyo Games), in which Ms Kuzmina, as President of the RGTC, was a member of the Superior Jury.
26. On the basis of Ms Kuzmina's original complaint and following its investigation, the GEF set forth the following complaints with respect to infringements by Ms Viner-Uzmanova:
  1. Complaint 1 (violation of FIG Code of Ethics Art. 1 (d), FIG Code of Conduct Art. 1 (d) and Part 3, FIG Policy and Procedures for Safeguarding and Protecting Participants in Gymnastics (FIG Safeguarding Policy) Part 1 Art. 2, Art. 3 and Art. 6.4): between 7 August 2021 and 19 April 2022, harassment and/or bullying and/or psychological abuse by making public statements asserting that Ms Kuzmina acted with bias at the Tokyo Games, acted against Russian gymnasts at the Tokyo Games, had manipulated the outcome of the Rhythmic Gymnastics' competitions at the Tokyo Games, and making a private statement in a WhatsApp message to Ms Kuzmina in which it was alleged that Ms Kuzmina had acted improperly against Russian gymnasts.
  2. Complaint 2 (violation of FIG Code of Ethics Art. 1 (d), FIG Code of Conduct Art. 1 (d) and Part 3, FIG Safeguarding Policy Part 1 Art. 2, Art. 3 and Art. 6.4): between 7 August 2021 and 17 September 2021, harassment and/or bullying and/or psychological abuse and/or abuse of position of power and/or influence as President of the RGFR with respect to Ms Viner-Uzmanova's actions with regard to the motion for the withdrawal of Ms Kuzmina's candidature for President of the RGTC.
  3. Complaint 3 (violation of FIG Code of Ethics Art. 3, FIG Code of Conduct Part 3 C, FIG Safeguarding Policy Part 1 Art. 2, Art. 3 and Art. 6.4): between 7 August 2021 and 19 April 2022, public negative criticism of Ms Kuzmina and/or other FIG officials at Tokyo Games and/or offensive behavior towards Ms Kuzmina and/or those other officials at Tokyo Games by making public statements in which Ms Viner-Uzmanova asserted that Ms Kuzmina and/or other officials had acted with bias at the Tokyo Games, and/or had acted against Russian gymnasts at the Tokyo Games, and/or had manipulated the outcome of the Rhythmic Gymnastics competitions at the Tokyo Games.
  4. Complaint 4 (violation of FIG Safeguarding Policy Part 2 Art. 1.2): between

3 August 2022 and 5 September 2022, refusal to attend or cooperate for the arranging of an interview with the GEF.

27. The GEF set forth the following infringements by the RGFR:

1. Complaint 5 (violation of FIG Code of Ethics Art. 1 (d), FIG Code of Conduct Art. 1 (d) and Part 3, FIG Safeguarding Policy Part 1 Art. 2, Art. 3 and Art. 6.4): between 7 August 2021 and 19 April 2022, harassment and/or bullying and/or psychological abuse by re-posting statements on its Facebook page of Ms Viner-Usmanova and others asserting that Ms Kuzmina had acted with bias at the Tokyo Games and against Russian gymnasts at the Tokyo Games, and had manipulated the outcome of the Rhythmic Gymnastics competitions at the Tokyo Games.
2. Complaint 7 (violation of FIG Code of Ethics Art. 3, FIG Code of Conduct Part 3 Part C, FIG Safeguarding Policy Part 1 Art. 2, Art. 3 and Art. 6.4): same as Complaint 5, plus allegation that the RGFR made public statements by re-posting statements on its Facebook page the suggestion that the judges at the Tokyo 2020 games should 'burn in hell'.

28. The GEF set forth the following infringements by the RGFR/ AGFR:

1. Complaint 6 (violation of FIG Code of Ethics Art. 1 (d), FIG Code of Conduct Art. 1 (d) and Part 3, FIG Safeguarding Policy Part 1 Art. 2, Art. 3 and Art. 6.4): between 7 August 2021 and 17 September 2021, harassment and/or bullying and/or psychological abuse and/or abuse of position of power and/or influence with regard to the motion for the withdrawal of Ms Kuzmina's candidature for President of the RGTC.

29. The GEF alleged the following infringements by the AGFR:

1. Complaint 8 (violation of FIG Safeguarding Policy Part 2 Art. 1.2): between 3 August 2022 and 5 September 2022, refusal to attend or cooperate for the arranging of an interview with the GEF.
2. Complaint 9: the AGFR by effect of FIG Code of Discipline Art. 4 and/or FIG Policy Part 1 Art 6.4 is liable for the conduct alleged and/or established against Ms Viner-Usmanova in Complaints 1, 2, 3, and 4, and/or is liable for the conduct of the RGFR alleged and/or established against the RGFR in Complaints 5, 6, 7 and/or 8; allowed, condoned or ignored the conduct of Ms Viner-Usmanova and/or the RGFR as alleged in Complaints 1, 2, 3, 4, 5, 6, and/or 8.

## **B. Summary of the Respondents' submissions**

30. The Respondents request that the Commission dismiss all the Complaints as further explained below:

### **1) Complaints against Ms Viner-Usmanova**

#### **a) The Commission has no jurisdiction over Ms Viner-Usmanova**

31. Because the FIG Code of Conduct applies only to all Member Federations and their participants, and Ms Viner-Usmanova is not a participant of the AGFR, she is not bound by the FIG Code of Conduct.
32. The FIG Code of Ethics only applies to the officials, gymnasts etc. of the FIG Member Federations. Since Ms Viner-Usmanova is not an official of an FIG Member Federation, she is not bound by the FIG Code of Ethics.
33. Because Ms Viner-Usmanova is not an AGFR coach, she is thus not bound by the FIG Safeguarding Policy.
34. Since the FIG Code of Discipline must be construed subject to the other specific disciplinary rules and as Ms Viner-Usmanova is not bound by the FIG Rules, she cannot be bound by the FIG Code of Discipline and by any of the FIG Rules.
35. In any event, the conduct complained of Ms Viner-Usmanova falls outside of the scope of the FIG Rules, as it relates (only) to her role as RGFR President and not as a coach/official in any FIG activities.

#### **b) Submissions on Complaint 1**

36. While Ms Viner-Usmanova accepts that, during the relevant period, she made public statements in which she asserted that Ms Kuzmina had acted with bias and acted against Russian gymnasts at the Tokyo Games, she denies that she made any public statements in which she asserted that Ms Kuzmina had manipulated the outcome of the Rhythmic Gymnastics competitions at the Tokyo Games.
37. Ms Viner-Usmanova alleges that she was simply voicing her own views and frustrations as to what had happened at the Tokyo Games, genuinely believing that the judges had made the wrong decision.
38. Additionally, Ms Viner-Usmanova admits that she made a private statement out of frustration, via WhatsApp, to Ms Kuzmina in which it was alleged that Ms Kuzmina had acted improperly against Russian gymnasts.
39. Ms Viner-Usmanova considers that the doctrine of legitimate expectations should apply to

Complaint 1 as it represents a more severe, alternatively equivalent, breach of previous charging practice.

40. Based on *The Football Association v. Mourinho* (Case No. FT/TA/18/0404), in which Mr Mourinho successfully argued that a disciplinary violation charged upon him on the basis that he had mouthed swear words in view of a TV camera had to be dismissed as the Football Association (FA) had previously not charged others in similar circumstances, Ms Viner-Usmanova argues that Complaint 1 must be dismissed because (1) the FIG/ GEF has never previously charged anyone with misconduct in respect of the public criticism of officials, and (2) the relevant wording of the FIG Rules provides no indication that public criticism could be considered harassment, bullying and/or psychological abuse.
41. With respect to the violation of the FIG Safeguarding Policy, Ms Viner-Usmanova denies harassing Ms Kuzmina. Ms Viner-Usmanova alleges that in making her public and private statements described above, her intentions were simply to vent her frustration and to stand up for her gymnast. She alleges that she did not intend to hurt Ms Kuzmina and that the private statements were made between friends and in the context of a history of messaging.
42. The same is alleged with respect to the complaint of bullying and psychological abuse.

**c) Submissions on Complaint 2**

43. While Ms Viner-Usmanova accepts that she proposed a motion to withdraw Ms Kuzmina's candidature for President of the FIG RGTC and voted for that motion, she alleges that she did not propose this motion without good cause or reason, or as an act of revenge or punishment.
44. Ms Viner-Usmanova alleges that she proposed the withdrawal of Ms Kuzmina's candidature because she considered that there had been various judging errors at the Tokyo Games, and thus considered that Ms Kuzmina had not performed particularly well in her role as President of the FIG RGTC. Therefore, Ms Kuzmina's experience gathered through working on the FIG RGTC could be best used when coaching the Russian rhythmic gymnastics teams.
45. With respect to harassment, bullying or psychological abuse, Ms Viner-Usmanova alleges that her conduct in relation to the withdrawal does not amount to these charges as she had no intent to hurt or otherwise abuse Ms Kuzmina.
46. Concerning abuse of power and influence, Ms Viner-Usmanova denies that her conduct in relation to the withdrawal was abusive in the terms of Article 1(d) of the FIG Code of Ethics and denies any allegation of abuse of power and misconduct.

**d) Submissions on Complaint 3**

47. Ms Viner-Usmanova accepts that, during the relevant period, she made public statements in

which she asserted that Ms Kuzmina and/or other FIG officials had acted with bias, against Russian gymnasts, and had manipulated the outcome of the Rhythmic Gymnastics competitions at the Tokyo Games.

48. Ms Viner-Usmanova alleges that, consistent with the approach taken in *The Football Association v. Mourinho*, Complaint 3 must be dismissed to avoid breaching her legitimate expectations.
49. Concerning the alleged breaches of the FIG Code of Conduct, Ms Viner-Usmanova admits that the public statements amount to the “*public negative criticism of [...] officials*”, but she alleges that, although the public statements were made intentionally, she did not intend to cause any harm or distress to Ms Kuzmina or any other FIG officials. Moreover, Ms Viner-Usmanova alleges that, given what Ms Kuzmina told her about the FIG judges being “*against the Russians*”, it is her position that the public statements were rooted in the truth and thus cannot be considered offensive to the FIG officials. Ms Viner-Usmanova also denies breaching the FIG Safeguarding Policy.

**e) Submissions on Complaint 4**

50. Ms Viner-Usmanova alleges that there is no violation of the FIG Safeguarding Policy because at the time of the GEF’s request for interview, disciplinary proceedings had already been opened in relation to the subject matter of the proposed interview and there is no power under the FIG Rules for the GEF to perform investigations after disciplinary proceedings have been opened in relation to the same subject matter.
51. Moreover, since Ms Viner-Usmanova provided a written explanation in response to Ms Kuzmina’s complaint by her letter of 19 August 2022, she alleges that she complied with the GEF’s request for information and thus did not fail to cooperate in breach of the FIG Safeguarding Policy.

**2) Complaints against the RGFR**

**a) The Commission has no jurisdiction over the RGFR**

52. The AGFR is the only Russian gymnastics federation which is a member of the FIG.
53. The RGFR is not a member of the AGFR. However, the AGFR acts as an intermediary between the various Russian national gymnastics federations (including the RGFR) and the FIG on matters relating to their respective disciplines.
54. Because the RGFR is not named as a respondent and is not a party in the present proceedings, the Commission has no jurisdiction over the RGFR.
55. Moreover, the Commission has no jurisdiction over the RGFR pursuant to the FIG Code of



Discipline and the RGFR cannot be found to have breached any FIG Rules as alleged.

**b) Submissions on Complaint 5**

56. It is admitted that news articles containing statements asserting that Ms Kuzmina and others had acted with bias and against Russian gymnasts were re-posted on the RGFR Facebook page, however Ms Viner-Usmanova, who is the President of the RGFR, alleges that she did not authorise the re-posting of these statements.
57. The Respondents allege that Complaint 5 cannot be upheld, as to do so would breach the RGFR's legitimate expectations.
58. Respondents allege that the RGFR cannot be held to have committed harassment, bullying and/or psychological abuse, as there is no evidence that the RGFR intended to hurt or otherwise abuse Ms Kuzmina by re-posting the statements.

**c) Submissions on Complaint 6**

59. Respondents allege that the RGFR cannot be held to have committed harassment, bullying and/or psychological abuse, as the RGFR Executive Committee's decision was not taken with any intent to hurt or otherwise abuse Ms Kuzmina, and that such a decision fell within the autonomy of the RGFR as a sports federation and thus cannot amount to harassment, bullying and/or psychological abuse.
60. Respondents deny that the RGFR abused any position of power and/or influence in breach of Part 3 of the FIG Code of Conduct by deciding to withdraw Ms Kuzmina's candidature, as the Withdrawal decision was made for legitimate reasons, such a decision fell within the autonomy of the RGFR as a sports federation and thus cannot amount to an abuse of power.

**d) Submissions on Complaint 7**

61. It is admitted that news articles containing statements asserting that Ms Kuzmina and others had acted with bias and against Russian gymnasts and suggesting that the judges at the Tokyo Olympics should "burn in hell" were re-posted on the Facebook page of the RGFR. However, Ms Viner-Usmanova, who is the President of the RGFR, alleges that she did not authorise the re-posting of these statements.
62. Respondents allege that Complaint 7 must be dismissed to prevent a breach of the RGFR's legitimate expectations.
63. While it is accepted that, in re-posting these news articles, the RGFR acted in breach of Part 3, Article C of the FIG Code of Conduct, insofar as it is alleged that they amount to the "*public negative criticism of [...] officials*", Respondents allege that there is no evidence that these statements were re-posted with any intent to harm or cause any distress to Ms Kuzmina or any

other person.

64. Respondents allege that, in re-posting the statements, the RGFR did not act in breach of Article 3 of the FIG Code of Discipline, insofar as it is alleged that it "*behave[d] in an offensive way towards [...] FIG officials*" and given Ms Kuzmina's comments about the FIG judges being "*against the Russians*", the statements were seemingly rooted in the truth and thus cannot be considered offensive to the FIG officials.
65. Respondents deny any breach of the FIG Safeguarding Policy.

### **3) Complaints against the AGFR**

#### **a) Submissions on Complaint 6**

66. Regarding the AGFR's communication of the decision to withdraw Ms Kuzmina's candidature, the AGFR alleges that it has no control over the RGFR and further that it had no power to accept or reject any motion to withdraw Ms Kuzmina's candidature.
67. The AGFR alleges that its conduct in relation to the withdrawal does not amount to bullying or psychological abuse, as the AGFR had no intent to hurt or otherwise abuse Ms Kuzmina. Moreover, the AGFR alleges that such a decision fell within the autonomy of the AGFR as a sports federation and thus cannot amount to harassment, bullying and/or psychological abuse.
68. The AGFR denies any allegation of abuse of any position of power and/or influence in breach of Part 3 of the FIG Code of Conduct.

#### **b) Submissions on Complaint 8**

69. The AGFR alleges that there is no violation of the FIG Safeguarding Policy because, at the time of the GEF's request for interview, disciplinary proceedings had already been opened in relation to the subject matter of the proposed interview and there is no power under the FIG Rules for the GEF to perform investigations after disciplinary proceedings have been opened in relation to the same subject matter.
70. The AGFR denies that it acted in breach of the FIG Safeguarding Policy. Moreover, the AGFR alleges that, since it provided an explanation in response to Ms Kuzmina's complaint, it complied with the GEF's request for information and has thus not failed to cooperate in breach of the FIG Safeguarding Policy.

#### **c) Submissions on Complaint 9**

71. The AGFR alleges that Complaint 9 cannot be upheld, as to do so would breach its legitimate expectations.
72. Moreover, the AGFR alleges that it is not liable for the misconduct alleged and/or

established against Ms Viner-Usmanova or the RGFR.

73. Because neither Ms Viner-Usmanova nor the RGFR are members, gymnasts, judges, or officials of the AGFR, the AGFR alleges that the vicarious liability provided by Article 4 of the FIG Code of Discipline is of no application here. Moreover, the AGFR has no control over Ms Viner-Usmanova.
74. The AGFR alleges that it did not allow, condone, or ignore the misconduct alleged Ms Viner-Usmanova or the RGFR, because in this case, the AGFR did not consider the relevant conduct of Ms Viner-Usmanova or the RGFR to be harassment or abuse.
75. The AGFR alleges that there is nothing that it could reasonably have done to prevent the alleged harassment or abuse and, thus, it cannot be held to have breached the FIG Safeguarding Policy pursuant to Article 6.4.

#### **4) Submissions on Sanctions**

76. Respondents submit that it would be most appropriate, and in the interests of procedural economy, for the issue of sanction to be addressed after the issue of liability has been determined.
77. The Respondents allege that, in respect of all of the complaints, the alleged misconduct (if any) is significantly less serious and damaging than misconduct which has previously attracted only a warning and/or a fine from the GEF or FIG Disciplinary Commission.
78. With respect to Complaint 3, Ms Viner-Usmanova submits that a warning would be the proportionate sanction (if any) for her public negative criticism of Ms Kuzmina and other officials.
79. With respect to Complaints 4 and 8, the Respondents allege that no sanction can be imposed in respect of any breaches, as to do so would be to sanction the Respondents for having asserted their legal rights (or, alternatively, for having taken a position on the law which was, *at least*, properly arguable) and it would be entirely illegitimate, inappropriate, and grossly disproportionate to punish the Respondents for having acted on the advice of their counsel.
80. With respect to Complaints 6 and 9, no sanction should be imposed since the AGFR had no control over the RGFR or Ms Viner-Usmanova. The Respondents allege that accordingly, any such offence established against the AGFR would be technical only, such that no sanction should be imposed.

#### **D. The GEF's reply on jurisdiction**

81. On 3 February 2023, the GEF filed in writing a reply on jurisdiction. It argues, based on the following provisions:
  - FIG Statutes, Arts. 1.1, 3.1, 4.1 and 4.2;

- FIG Code of Discipline, Arts.1, 3 and 4;
- FIG Safeguarding Policy, Part 1 Art. 5, Arts. 6.3 and 6.4;
- FIG Code of Conduct, Part 1 and Part 3;
- FIG Code of Ethics, Preamble;

that the AGFR, Ms Viner-Usmanova and the RGFR are submitted to the FIG jurisdiction as follows:

- The AGFR is subject to the jurisdiction of the FIG because, among others, it is an Affiliated Member of the FIG.
- Ms Viner-Usmanova signed on 21 June 2021 a declaration as required for FIG coach accreditation and thereby "*agrees to comply and be bound by the FIG Statutes [...] and all of the FIG Rules and Regulations and their amendments*".
- With respect to the RGFR, while it is not a party, its conduct amounts to misconduct as set out above and it has had the opportunity to respond to that allegation. That conduct has been particularised because the AGFR is liable for its conduct.

#### **IV. Legal discussion**

##### **A. Evidentiary issues**

82. The Commission, pursuant to the evidentiary standards provided for under Article 18 of the FIG Code of Discipline, Swiss law and of the *lex sportiva*, is applying the balance of probabilities approach to the appraisal of evidence.
83. The Commission regrets that Ms Kuzmina decided not to attend the hearing and not to make herself available to the questioning of the Commission and to Respondents' counsel.
84. As a result, since Ms Kuzmina's witness testimony could not be tested orally, the Commission has not relied on Ms Kuzmina's Witness Statement to issue the present Decision.

##### **B. Jurisdiction**

###### **1) Jurisdiction over Ms Viner-Usmanova**

85. The Commission is not convinced by the arguments raised by Ms Viner-Usmanova to support her defense of lack of jurisdiction.
86. Ms Viner-Usmanova argues that she is not bound by the relevant FIG Rules, because (1) as per Part 1 of the FIG Code of Conduct, she is not a participant in the AGFR; (2) the

FIG Code of Conduct, as per its Preamble, "only applies to officials, gymnasts etc" (paragraph 4.4 Respondents' Response) and she is not an official; (3) Part 1 Article 5 of the FIG Safeguarding Policy only applies to coaches of the member federations and Ms Viner-Usmanova is not an AGFR coach; and (4) the FIG Code of Discipline must be construed subject to other FIG disciplinary rules, and as Ms Viner-Usmanova is not bound by the FIG Rules, she is not bound by the FIG Code of Discipline; (5) the conduct which is complained about relates only to her role as RGFR President and not as coach.

87. The GEF relies mostly on the application form to become an FIG accredited coach (page 12 of Bundle #5) to argue that Ms Viner-Usmanova is subject to the Commission's jurisdiction.
88. Under the signature line, this document provides that *"through her/his signature, the Coach consents and agrees to comply with and be bound by the FIG Statutes, FIG Technical Regulations and Code of Points, FIG Accreditation Rules and all of the FIG Rules and Regulations and their amendments"*.
89. The Commission is not convinced by Ms Viner-Usmanova's interpretation of the various FIG regulations, as set out at paragraphs 31 *et seq.* and 86 above.
90. The Commission was not convinced by Ms Viner-Usmanova's testimony on this point at the hearing. The Commission felt that Ms Viner-Usmanova avoided answering counsel for the GEF's questions.
91. When signing the application form to become a FIG coach, Ms Viner-Usmanova clearly agreed to be bound by the FIG Rules. Arguing, as she does, that because only the AGFR is a member of the FIG, she and the RGFR are not subject to the FIG Rules, would amount to allowing the gymnastics federations which are not direct members of the FIG because of the "one federation per country" rule to send athletes to the international competitions while not being subject to international rules.
92. The same is to be said of the oral testimony of the President of the AGFR, Mr Vasily Titov.
93. Thus, the Commission reads the provisions of the FIG Code of Ethics, the FIG Safeguarding Policy and of the FIG Code of Discipline as applying to all federations (and their individual members) under the umbrella of the national federation.
94. Consequently, the Commission finds that Ms Viner-Usmanova is subject to its jurisdiction.

## **2) Jurisdiction over the RGFR**

95. To the extent that the GEF has not named the RGFR as party in its Complaints, the Commission finds that it has no jurisdiction over it.

## C. Liability

### 1) Liability of Ms Viner-Usmanova

#### a. Complaints 1, 2 and 3

96. It is the opinion of the Commission that Complaints 1, 2 and 3 stem from the same set of circumstances, which started with Ms Dina Averina not winning the gold and Ms Viner-Usmanova's reaction to this perceived defeat of Russia.
97. This, according to the GEF, led to a pattern of harassment. This harassment arose out of public and private statements about bias, manipulation and acting improperly against Russian gymnasts (Complaint 1), abuse of power in proposing a motion to withdraw Ms Kuzmina's candidature for President of the RGTC (Complaint 2), and negative criticism and behavior in an offensive manner (Complaint 3).
98. The Commission was provided by Ms Kuzmina with two Whatsapp messages sent by Ms Viner-Usmanova (Exhibits NK3 and NK4). In one of them, she is accused of "killing Russia", to which Ms Kuzmina replied that she was very worried and sorry.
99. Thereafter, Ms Viner-Usmanova was quoted in articles as blaming Ms Kuzmina for the defeat (Exhibits NK 5 and NK 6).
100. On 14 September 2021, the Executive Committee of the AGFR decided to withdraw Ms Kuzmina's nomination for President/Member of the RGTC (Exhibit NK 8).
101. The press reported that the proposal for this decision was made by Ms Viner-Usmanova (Exhibits NK 10 & 11).
102. While Ms Viner-Usmanova admits to her statements (whether public or private), to her motion to withdraw Ms Kuzmina's candidature, and to her criticism and behavior, she raises three main lines of defense. First, with respect to Complaints 1, 2 and 3, she argues that sanctioning her for her statements/ criticism and behavior would amount to a breach of her legitimate expectations. Second, with respect to Complaints 1 and 2, she argues that she had no intent to harm or hurt Ms Kuzmina. Finally, with respect to Complaint 3, she argues that her behavior was rooted in truth with no vengeful intent.

#### i. Breach of legitimate expectations

103. Ms Viner-Usmanova relies on the doctrine of legitimate expectations, and in particular in its application in the decision *The Football Association v. Mourinho* (FA Regulatory Commission case no FT/TA/18/0404), in which Mr Mourinho was not charged for mouthing swear words because the FA had previously not charged others in similar circumstances.

104. However, in that decision, the Regulatory Commission held that it could reasonably be inferred that Mr Mourinho was aware that some forms of misbehavior were tolerated by the FA and some were not, and that he acted accordingly, not knowing that the Football Association would change its practice. The Regulatory Commission ruled that charging Mr Mourinho in such a case was unfair.
105. The Commission accepts the GEF's position that this precedent could not be followed in a case where the FIG rules clearly prohibit any form of harassment; accordingly, the Commission finds that the doctrine of legitimate expectations does not shield Ms Viner-Usmanova from liability. The Commission finds the other precedents cited by both the GEF and the Respondents not to be on point.
106. The Commission holds that a finding of liability against Ms Viner-Usmanova, in light of the clear language of the FIG Rules and in particular the FIG Safeguarding Policy, in force since 2018, does not breach Ms Viner-Usmanova's legitimate expectations.

**ii. No intent to harm or hurt**

107. Ms Viner-Usmanova argues that she cannot be found liable because, even though her comments and Ms Kuzmina's candidacy withdrawal were made in genuine indignation and frustration, she had no intent to harm, hurt, or cause distress (see Witness Statement of Ms Viner-Usmanova, paragraphs 14 *et seq.*).
108. The Commission finds the language at Part 1 Art. 3 of the FIG Safeguarding Policy to be the most relevant to decide this issue. Pursuant to these provisions, harassment and abuse can take many forms, including verbal assault. It often results from an abuse of authority. It may take the form of bullying. While it is also provided that harassment may be intentional, unsolicited and coercive, the Policy does not require that harassment be intentional.
109. Ms Viner-Usmanova accused Ms Kuzmina of "killing Russia", an accusation to which Ms Kuzmina replied with distress. This, in the Commission's view, constitutes verbal assault.
110. Thereafter, Ms Viner-Usmanova named Ms Kuzmina several times, in public statements, as the origin of what she considered as a Russian defeat during the Tokyo Games. This repeated finger pointing constituted, in the Commission's view, harassment.
111. Moreover, and more importantly, the definition of harassment as provided in the FIG Safeguarding Policy does not require intent to hurt or distress. Harassment is prohibited in itself. In other words, the FIG Safeguarding Policy is violated when someone commits verbal assault, even if the recipient of such assault did not feel any kind of negative

emotion as a result.

112. During her cross-examination by GEF's counsel, it appeared clearly to the Commission that Ms Viner-Usmanova did not care whether she had caused hurt or distress. She said that she did not find her messages abusive. The Commission found her not to be credible as she avoided answering the GEF counsel's questions. When asked whether she realized that her public statements could upset people, she deflected her answer by referring to Ms Averina.
113. The Commission finds that Ms Viner-Usmanova harassed and abused Ms Kuzmina.

### **iii. Behavior rooted in the truth (Complaint 3)**

114. Ms Viner-Usmanova admits that her public statements amount to the "*public negative criticism of [...] officials*" but she alleges that, given what Ms Kuzmina told her about everybody being "*against the Russians*", it is her position that the public statements were rooted in the truth and thus cannot be considered offensive to the FIG officials.
115. Ms Kuzmina's statement about everybody being "*against the Russians*" was made in a WhatsApp voice note on 7 August 2022, which was transcribed at paragraph 10 of Ms Viner-Usmanova's Witness Statement.
116. At the hearing, counsel for the GEF raised an issue about the translation of this voice note, to which Respondents' counsel answered by objecting against the translations provided by the GEF. The Commission indicated that it would make a determination on such translations at a later point.
117. The Commission finds that it does not need to decide on whether the translation of the voice note is admissible to decide the present point. Furthermore, it finds that the Parties' objections concerning the translations are late, given that they could have been raised prior to the hearing.
118. Again, whether Ms Viner-Usmanova's comments were rooted in truth is not a defense to a claim of harassment. Upon interpretation of the FIG Rules, the Commission does not find an exculpatory defense in any of these provisions.

### **b. Complaint 4**

119. Complaint 4 arises out of Ms Viner-Usmanova's refusal to attend or cooperate for the arranging of an interview with the GEF.
120. Ms Viner-Usmanova argues that she did not breach the FIG Safeguarding Policy because the disciplinary proceedings had already been opened at the time of the request for an



interview and she provided a written explanation (see above paragraphs 50 and 51).

121. However, the Commission has not found any relevant provisions (nor do the Respondents cite one) that indicate a party's duty to cooperate ceases when disciplinary proceedings are open.
122. To the contrary, Part 2 Article 1.2 of the FIG Safeguarding Policy emphasizes the need for the parties to cooperate in proceedings.
123. The Commission is further not convinced by the Respondents' position during the hearing that the Respondents did cooperate by setting out their positions in writing in these proceedings; such conduct falls within the defense of the Respondents and not within Part 2, Article 1.2 of the FIG Safeguarding Policy.
124. Therefore, the Commission finds that by not attending the interview, Ms Viner-Usmanova violated a duty to cooperate and is therefore liable for the violation of Part 2 Article 1.2 of the FIG Safeguarding Policy.

## **2) Liability of the AGFR**

### **a. Complaints 6 and 7**

125. Complaints 6 and 7 rely on the same facts as Complaints 2 and 3 but relate to the AGFR and the RGFR.
126. This Commission is not competent to review complaints against the RGFR and will therefore only address the complaints as they concern the AGFR. Nevertheless, to the extent that parts of Complaint 6 address the AGFR's reaction towards the RGFR's actions, they fall under the Commission's jurisdiction.
127. The AGFR's defense rests (a) on an absence of control on the actions of the RGFR; (b) on an absence of intent to hurt/abuse Ms Kuzmina; (c) on an absence of power/influence on the actions of Ms Viner-Usmanova or the RGFR, and (d) on the autonomy of the AGFR.
128. With respect to the defenses (a), (c) and (d), the Commission is convinced by Mr Titov's evidence both in his witness statement and during the hearing that the AGFR has no control over Ms Viner-Usmanova and the RGFR and finds that the AGFR is indeed autonomous and not vicariously liable for acts done solely by Ms Viner-Usmanova, on which the AGFR had little influence.
129. On the contrary, the Commission accepts that the AGFR did have control over the withdrawal of Ms Kuzmina's candidature to the FIG; however, such conduct cannot fall within the scope of "harassment" to the extent that the AGFR has the power to withdraw any candidature without giving any reason for it.

130. With respect to the defense (b), the Commission finds that the GEF has not sufficiently proven an intent to harm or hurt in the AGFR's actions.

131. Therefore, the Commission finds the AGFR not liable as concerns Complaints 6 and 7.

#### **b. Complaint 8**

132. The GEF argues that the AGFR breached Part 2 Article 1.2 of the FIG Safeguarding Policy by refusing to attend or cooperate for the arranging of an interview with the GEF.

133. In his witness statement, Mr Titov states that he did not cooperate with the GEF on advice of his lawyers.

134. The Commission is not convinced by Mr Titov's defense and finds that the AGFR is liable for a violation of Article 1.2, Part 2 of the FIG Safeguarding Policy for its failure to collaborate.

#### **c. Complaint 9**

135. With Complaint 9, the GEF raises the issue of the vicarious liability of the AGFR for acts of Ms Viner-USmanova and for allowing, condoning or ignoring the conduct of Ms Viner-USmanova.

136. Having considered the testimony of Mr Titov, the Commission is convinced that the AGFR had no control over the actions of Ms Viner-USmanova, and hence it cannot be held vicariously liable.

137. However, the Commission finds that as a sole member of the FIG for Russia, the AGFR has condoned or at least ignored the conduct of Ms Viner-USmanova.

138. With respect to Complaint 9, the Commission finds that the AGFR is liable for condoning Ms Viner-USmanova's actions.

#### **D. Sanctions**

139. In accordance with Swiss law and the principles of *lex sportiva*, any sanction must be proportionate to the misconduct being sanctioned.

##### **1) Sanctions against Ms Viner-USmanova**

140. Having found Ms Viner-USmanova liable for committing what is reproached of her in Complaints 1, 2, 3 and 4, the Commission must now decide what sanction to apply to Ms Viner-USmanova.

141. Given that Ms Viner-USmanova was already warned in 2008, and in light of her disregard of the FIG Rules, in particular of the FIG Safeguarding Policy, the Commission finds that

a harsher sanction than a mere warning is warranted at this time.

142. The Commission was not convinced by Ms Viner-Usmanova's testimony during the hearing that she only remembered that she was cleared of the offense because it happened 15 years ago.
143. In any case, whether Ms Viner-Usmanova remembers or not having been subjected to a warning does not matter for the calculation of the sanction.
144. The *Deleanu v. FIG* decision (CAS 2012/A/3041), which was discussed at the hearing, provides some useful guidance in this respect. In this decision, the CAS confirmed the FIG decision on appeal to suspend Ms Deleanu for a period of 3.5 years. Ms Deleanu was found liable for making defamatory assertions and verbal attacks during a TV show.
145. The Commission finds Ms Deleanu's actions clearly deliberate and even more reprehensible than those of Ms Viner-Usmanova. Consequently, the Commission suspends Ms Viner-Usmanova for a period of two (2) years.
146. As a result, Ms Ms Viner-Usmanova will not be able to participate nor receive 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 competition.
147. Mindful that the sanction shall be proportionate while remaining effective, the Commission holds that this sanction shall be enforced after Russia is able to participate again in international gymnastics competitions (i.e. after the FIG protective measures linked to the Russia-Ukraine war are lifted), assuming, however, that the FIG protective measures linked to the Russia-Ukraine war 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.
148. No monetary fine is imposed on Ms Viner-Usmanova.

## **2) Sanctions against the AGFR**

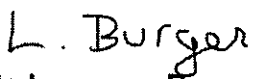
149. Having found the AGFR liable with respect to Complaints 8 and 9, the Commission is of the opinion that a sanction must also be imposed on the AGFR.
150. However, given that the AGFR's offenses are mostly indirect, i.e. stemming out of Ms Viner-Usmanova's own actions, the Commission finds that the proper sanction against the AGFR is a warning.

**For these reasons, the Commission issues the following decision:**

- 1. The GEF Disciplinary Commission has jurisdiction to decide upon the liability of Ms Viner-Usmanova.**
- 2. The GEF Disciplinary Commission has jurisdiction to decide upon the liability of the AGFR.**
- 3. Ms Viner-Usmanova is liable for breach of the FIG Rules.**
- 4. The AGFR is liable for breach of the FIG Rules.**
- 5. Ms Viner-Usmanova is not allowed to participate nor receive 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 competition in any FIG sanctioned event or competition organized by an affiliated FIG member federation for a period two years which shall start one (1) day after the FIG protective measures linked to the Russia-Ukraine war are lifted, assuming that the FIG protective measures linked to the Russia-Ukraine war 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 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.**
- 6. The AGFR is sanctioned with a warning.**
- 7. The GEF, on the one hand, and the Respondents, on the other, shall each bear one half of the costs of the disciplinary proceedings of CHF 5'000.**
- 8. Each Party shall bear its own legal costs and expenses incurred with respect to these proceedings.**
- 9. This decision is to be published.**

Lausanne, 6 March 2023

## Gymnastics Ethics Foundation Disciplinary Commission

  
**Ms Laurence Burger**  
Panel President



**Dr Despina Mavromati**  
Panel Member



**Mr Thomas Hayn**  
Panel Member

### Notice of Appeal

#### Appeal Proceedings before the GEF Appeal Tribunal (Article 30 of the FIG Code of Discipline)

##### "ARTICLE 30 APPEAL

*With the exception of decisions and sanctions rendered in connection with the FIG Anti-Doping Rules and the WADA Code including its international standards, which may be appealed directly to the CAS, and unless provided otherwise in specific provisions, only the decisions rendered by the Disciplinary Commission may be appealed to the Appeal Tribunal.*

*Only the Parties directly involved in the proceedings shall be eligible to lodge an appeal to the Appeal Tribunal.*

*Upon request of a majority of the Executive Committee or of the FIG President, the FIG shall in all cases be eligible to lodge an appeal. The appeal shall be lodged by the FIG Secretary General. Likewise the majority of the Council of the Gymnastics Ethics Foundation or its President shall be eligible to lodge an appeal in all cases. Appeals of the Gymnastics Ethics Foundation shall be lodged by its Director.*

*In order to be admissible, the appeal shall be lodged in writing and contain:*

- the factual argument*
- the reasons for the appeal*
- the submission of any and all means of proof relied upon by the Appellant or an offer to submit any and all means of proof (such as the request for the hearing of witnesses or the request for an independent expert)*
- the request of a hearing if wished so by the Appellant*
- the conclusions of the Appellant*

*If the Appellant wishes to call witnesses or experts, a hearing shall be held.*

*Once his/her statement of the case is submitted, the Appellant shall not be authorised to produce new means of proof unless he/she justifies that he/she has not been able to do so for reasons beyond his/her control or his/her behest. The Appeal Tribunal may automatically conduct the necessary investigations.*

*The appeal shall be signed by the Appellant and sent in writing to the Director of the Gymnastics Ethics Foundation to the attention of the Appeal Tribunal within 21 days from the notification of the decision rendered by the Disciplinary Commission.*

*Should the appeal be submitted by email it shall be admissible provided that it contains an electronic signature officially certified and dated via a secure server.*

*Should the appeal be sent by mail, it shall be delivered to a Swiss post office at the latest by midnight of the last day of the time limit or be delivered at the Office of the Gymnastics Ethics Foundation, at the attention of the Appeal Tribunal during its usual opening hours not later than the last day of the time limit.*

*The Appellant is responsible for showing proof, within a time limit to be determined by the President of the Appeal Tribunal, that his appeal has been lodged in due time, otherwise, the appeal shall be considered inadmissible.*

*In order for the appeal to be admissible, the Appellant shall transfer in advance the expenses of CHF 5,000.- onto the account of the Gymnastics Ethics Foundation at the same time the appeal is lodged or at the latest by the end of the appeal deadline. This amount shall be refunded to the Appellant if his appeal is granted. It shall be kept by the Gymnastics Ethics Foundation if the appeal is considered inadmissible or is fully or partly rejected. The Gymnastics Ethics Foundation is exempt from the obligation to pay the expenses in advance for its appeal."*