

The Presidium

2014 ANNUAL GENERAL MEETING

BUCHAREST, JUNE 15, 2014

***Presidium's Motions Re:
WDSF Disciplinary Code***

MOVED that certain parts of the *Code of the WDSF Disciplinary Council* be amended by adding and deleting words as set out below, as shown below by deletions and coloured highlighting and underlining.



Text of the WDSF DC Code

Article 4 Language

The language in which the Disciplinary Council is acting shall be English. Any document submitted to the Disciplinary Council and any communication must be in English. **Submissions in other languages (including evidence without corresponding translation into English) are not admissible.**

Article 6 Composition and Election of the Disciplinary Council

The Disciplinary Council shall consist of nine (9) WDSF members:

- 1 Chair (or President)
- 2 Vice-Presidents
- 6 Ordinary Members

The **M**embers of the Disciplinary Council are elected by secret ballot by the WDSF Annual General Meeting for a period of **three four years** and are eligible for re-election.

In addition, each Associate Member of the WDSF has the right to nominate up to one (1) Vice President and two (2) Ordinary Members to the Disciplinary Council for a period of **three four** years. **If an** Associate Member decides not to nominate a Vice President it may nominate a third Ordinary Member. Such **M**embers **may** be re-appointed by the respective Associate Member after **three four** years.

Reasons for Proposed Amendments

Recent cases showed that evidence submitted to the WDSF Disciplinary Council (DC) together with a complaint is sometimes written in the language of the complainant's country or internet links used as a part of evidence referred to pages in foreign languages. In cases, in which some Members of the Disciplinary Council do understand the specific language, this is a problem, because some of the Members of the Chamber in Charge do know more than they officially do, but they do not have an official translation as a basis for the complaint. When they begin to translate for their fellow Members of the Chamber in Charge, they do no longer talk about the submission of the complainant, but about their own interpretation.

The suggested amendment makes clear that the DC Members may not regard submissions in other languages than English.

Article 13, paragraph 4 of the WDSF Statutes states that the Presidium is elected by the Annual General Meeting (AGM) every fourth year.

For reasons of stability of the federation, it is advisable not to elect the Presidium and the members of the DC in the same year. If the DC Code was left in the present version, this would be the case in the year 2024. Therefore, the Members of the DC propose to extend their term of office to four years.



Article 8 Chamber in Charge

Each case submitted to the Disciplinary Council will be attributed by the Chair to a "Chamber in Charge", which will consist of an appointed "Chamber Chair" (being either the President or one of the Vice Presidents of the Disciplinary Council) as well as two Ordinary Members.

Article 8a: Direction of the Procedure

Until a case is assigned to a Chamber in Charge, the Chair of the Disciplinary Council has full discretion to control the procedure of the case, provided always that such procedural decisions shall be in writing, and provided further that within 28 days after the Chair takes any such decision, a complainant may demand that an ordinary Chamber in Charge be appointed and that it review, vary or set aside in whole or in part any such procedural decision by the Chair.

The Chamber in Charge may then vary or set aside the Chair's original decision in whole or in part, or may confirm the decision, and any such further decision by the Chamber in Charge in response to such a demand shall be final.

(New article)

Most procedural law knows the power of the Chair of a judicial body to decide matters of remedy before a case is assigned to a Chamber in Charge. (Example: formal mistakes of the complaint and setting of an extended deadline.) This possibility might also prevent that a complainant wires the advance payment (see Article 12 of the DC Code) in vain in cases in which the Chair already identifies formal problems.



Article 10 The Disciplinary Council as Second Instance

The Disciplinary Council shall act as Second Instance in the following subject areas:

- Breach of the WDSF Statutes by a Member Body, athlete or official
- Breach of **WDSF** sports rules **and** regulations **and principles**
- **Breach of any sports rules, regulations or policies which a person or legal entity has expressly agreed to follow**
- **An error by an official in applying any Rule or Regulation of the WDSF.**

It hears and decides upon appeals against any decision of the WDSF Presidium (in globo) or any WDSF Presidium member (acting individually according to its power) against a person as defined under article 5.1.

Before any issues and formal complaints with regard to these subject areas may be submitted to the Disciplinary Council for appeal, a formal complaint must **be** submitted to the WDSF Presidium **~~or a WDSF Presidium Member (as the case may be)~~ unless the WDSF Presidium has already made a decision on the relevant case or issue, in which case the Presidium** must have decided on the issue as a first instance or – should there be no formal decision – has not taken any required actions and/or measures.

Article 13 Time Limits

~~Any complaint submitted to the Disciplinary Council must be made within a time limit of four weeks (28 days) since the alleged misconduct/misbehavior has taken place or since the complainant has been made aware of the relevant incident. The absolute limitation period shall be 12 months (one year).~~

The second alternative of the reasons for an appeal should be written more clearly. Athletes have to know the WDSF Rules and Regulations. If we want them to follow other rules, they have to agree to follow these rules expressly. Otherwise, each athlete, official or member body had to worry about violating a principle formulated somewhere else (for example an IOC principle) without even knowing about the existence of this rule.

As it is suggested further below (Art. 15) that the DC may only declare the annulment of a Presidium's decision, but not to decide reformatively, it is recommended here to allow the DC to assess errors in applying rules and regulations by WDSF officials as a counterbalance.

In its role as Second Instance, the DC only determines the question if decisions of the Presidium were correct. It is reasonable that the Presidium as a whole body decides first if, for example, a single Presidium Member or a Chairman at a competition took the first. But if the Presidium already took the first decision, it seems unnecessary that the appellant submits a complaint to the Presidium again. In these cases, he should be able to go directly to the Disciplinary Council and target the Presidium's decision. This procedure also matches with Article 14, paragraph 2 of the WDSF Statutes.

The wording of Article 13 of the DC Code does fit neither for cases in which the DC decides as First Instance nor for those in which it decides as Second Instance: In doping cases (the most important example for cases in which the DC decides as First Instance) the WADA Code (which is binding for the WDSF) states that action against athletes can be taken within a period of eight years after the date the violation is asserted to have occurred (Art. 17 of the WADA-Code, 10 years in the new WADA Code, in force from 2015 on). If a Presidium's decision is targeted and the DC acts as Second Instance, it is not clear if the time limit of 28 days means the time difference between the misbehavior and the complaint to the Presidium, or if the 28 days start to count with the delivery of the Presidium's decision as First Instance.



Article 13 Time Limits

(New wording)

Article 13.1 Time Limits for cases in which the Disciplinary Council acts as First Instance

In cases of alleged violations of the WDSF Anti-Doping Code, the WDSF Anti-Doping Director shall submit the case to the Disciplinary Council within three (3) months after the date of the alleged violation or the date on which s/he was made aware of the relevant incident (whichever is later), provided always that the absolute limitation period shall be ten (10) years after the date of the alleged violation.

In any other case in which the Disciplinary Council acts in the First Instance, complaints submitted to the Disciplinary Council must be made within four (4) weeks of the date of the alleged violation or the date on which the complainant was made aware of the relevant incident (whichever is later), provided always that the absolute limitation period shall be one (1) year after the date of the alleged violation.

It is necessary to keep apart the cases in which the DC acts as First or Second Instance because the situation is completely different. In cases in which the DC has to decide on doping cases or acts of harassment, the most important question is: "*When did the incident happen?*" Therefore the time limit shall be activated by the issue itself or the knowledge about the issue. As the Anti-Doping Director has to prepare the files for the Disciplinary Council, he or she needs more time than 28 days to collect all relevant data. Therefore, the relative time limit in these cases is three months. The absolute limit must be ten years in order to be compatible with the WADA Code which is in force from 2015 on.

The time limit for other cases that are investigated by the Disciplinary Council as First Instance remained unchanged.

Article 13.2 Time Limits for cases in which the Disciplinary Council acts as Second Instance

In cases in which the Disciplinary Council acts as Second Instance, complaints submitted to the Disciplinary Council must be made within a time limit of four (4) weeks after the date on which the decision of the Presidium was delivered to the appellant, provided always that the absolute limitation period shall be one (1) year after the decision of the First Instance.

In cases in which the DC acts as Second Instance, the relevant question is: "*When did the First Instance decide?*" This should be the date to activate the time limit. The relative limit of one month and the absolute limit of one year remained unchanged.



Article 14 Procedures of the Disciplinary Council

The Disciplinary Council works according to the following general principles:

- The Disciplinary Council normally communicates via Email and conveys decisions in writing, purely based on documentation evidence;

[...]

- **The Chamber in Charge determines the facts of the case based on the submissions of the parties, provided always that the Chamber in Charge is however eligible to may solicit and consider obtain** further evidence, statements and ~~for~~ information from third parties, **and may also require the complainant or respondent to file more evidence within a certain time limit.**

[...].

Article 15 Measures & Sanctions

Based on the impact of the misconduct and the degree of the individual fault and responsibility, the Disciplinary Council is entitled to impose the following measures & sanctions in its role as First Instance:

- Reprimand;
- Ban of a person or persons from participating in any WDSF competition for a certain period of time;
- ~~Ban of a person from organizing any WDSF competition for a certain period of time;~~
- Revocation of any licence or permit issued by the WDSF for a certain period of time;
- Revocation of any licence or permit issued by the WDSF, by granting the possibility to reacquire the respective licence/permit at a later stage in time;
- Final revocation of any licence issued by the WDSF;
- Final revocation of all WDSF licences;
- Prohibition to accept any formal position within the WDSF for a certain period of time or forever;
- Administrative fine up to an amount of CHF 5'000.00, which will be allocated to a special fund supporting the WDSF competitors and athletes in need;

The various measures & sanctions may be combined.

The Members of the Disciplinary Council know the law, but the parties have to be aware that the DC generally decides based on the submitted evidence (except when the DC acts as First Instance, see article 9, last paragraph, above). The proposed amendment leaves a certain range between the principles of party disposition and an inquisitorial system, but makes clear that the Disciplinary Council will not investigate the case on its own, because it is not (and shall not be) a prosecuting authority.

Obviously, the sanctions listed in Article 15 of the DC Code are guided by situations in which the DC acted as First Instance. They fit for doping cases and other misconduct mentioned in Article 9 of the DC Code. But it is not clear what happens if a decision of the Presidium is targeted. It does not help the appellant if the DC reprimands the Presidium. Therefore, the slight amendment in the first paragraph of Article 15 makes clear that the catalogue of sanctions only applies when the DC itself investigates a case as First Instance. As a consequence, the third bullet (ban a person from organizing a WDSF competition) has to be deleted. This is not a suitable sanction for situations mentioned in Article 9 of the DC Code.



**Article 15 Measures & Sanctions
(continuation)**

If it decides that a decision made in the First Instance does not conform with the WDSF Statutes, WDSF's or other Rules or Regulations, or that an official made an error in applying any Rule or Regulation of the WDSF, the Disciplinary Council in its role as Second Instance may only declare the decision of the First Instance to be void and refer it back to the deciding body or person.

The subsequent reconsidered decision of the First Instance may be submitted to the Disciplinary Council for appeal.

In cases in which the First Instance failed to take any action which in the opinion of the Disciplinary Council is necessary, the Disciplinary Council may determine a time limit within which the First Instance must render a formal decision regarding such a matter.

(New amendment to Article 15)

As mentioned above, the DC Code must declare what happens if the DC decides that a decision of the Presidium violates WDSF rules or regulations. But as explained before, the role of the DC as an independent judicial body should not be mixed up with functions of a prosecuting authority. Of course it would be possible to give the DC the power to decide in the case itself and determine the sanction against an individual, but generally, the Presidium and its members are closer to the individual case and know better how to deal with a specific situation. The suggested amendment of Article 15 preserves the separation of powers and only gives the DC the possibility to nullify a decision of the Presidium. The appellant is protected even if the Presidium would decide in the same way again, because its decision would be declared invalid once more and would therefore not enter into force.

For the present document:

Daniel Stehlin, 01 April 2014