



CONSTITUTION COMMITTEE INTERPRETATION

Interpretation Number	Interpretation of Regulation	Relating to	Date of Interpretation
001-14	35.11	Disciplinary Commission	11 February 2014

BACKGROUND

Regulation 35.11 provides as follows in its relevant part:

“35.11 The Disciplinary Commission shall exercise its functions in a fair manner and in accordance with the principles of natural justice. In particular, any respondent has:

...

(b) The right to be present, with or without a representative (who may be a lawyer) at his own cost, throughout any hearing of evidence.

...

(d) The right to call witnesses and to present any relevant evidence, and the right to cross-examine any witnesses. “

The Disciplinary Commission's Rules of Procedure provide for a report to be determined either as a summary case (RoP 10), by way of correspondence (RoP 11.1(a)), a hearing by way of a hearing by electronic means (RoP 11.2) or a hearing where people are physically present.

QUESTIONS

Does Regulation 35.11(b), in particular the requirement *"to be present" "throughout any hearing of evidence"*, allow:

1. A written report received in terms of RRS 69.3(a) be decided by summary procedure on written evidence only?
2. A written report received in terms of RRS 69.3(a) be decided by correspondence only, including the receipt of written statements, without a hearing?
3. A written report received in terms of RRS 69.3(a) be decided by a hearing where the Panel and Respondents are not physically present and are communicating by remote electronic means only?

ANSWER

The answer to all three questions is “Yes”.

Regulation 35.11(b) refers to *“any hearing”* not *“a hearing”*. Therefore, provided the respondent is still permitted the right to be represented, there is no conflict with the Regulation nor a mandated requirement for an oral hearing.

Regulation 35.11(d) refers to the right to call witnesses and to cross-examine those which are called before the Commission. There is no fundamental objection to conducting this process in writing or by electronic means.

The Committee notes the Regulation requires “*The Disciplinary Commission shall exercise its functions in a fair manner and in accordance with the principles of natural justice*”. Therefore the ability of the Commission to use the above methods is conditional on it being satisfied that it is acting fairly and complying with natural justice. There may be occasions when an oral hearing is necessary in order to fairly resolve any case – that is a matter for the Commission to decide on a case by case basis. The Commission must consider what the fairest course of action is in all the circumstances of the case. Given ISAF’s international jurisdiction, there may well be circumstances where calling a personal hearing at location where a respondent cannot attend may be less fair than a longer process conducted on the papers or by telephone.

The Committee notes that this interpretation is consistent with the position for sports disciplinary bodies operating under English law.

ISAF Constitution Committee

11 February 2014