

**BEFORE THE ISAF DISCIPLINARY
COMMISSION**

ISAF CASE 2015_013/DC

**IN THE MATTER OF:
Milica DUKIC (SRB)**

Rule 69.3 PROCEEDINGS BY ISAF



DECISION

1 PROCEDURAL HISTORY

- 1.1 A report was received by the ISAF Chief Executive Officer ("CEO") (as defined in the Disciplinary Commission Rules of Procedure ("RoP")) under RRS 69.2 on 29 January 2015 (the "Report") concerning the Respondent, Ms. Milica DUKIC.
- 1.2 A Panel was appointed on 19 February 2015, consisting of Lance Burger (RSA) (Panel Chairman), Jorge Barreda (PER) and Hirobumi Kawano (JPN).
- 1.3 On instructions of the Panel Chairman the CEO sent a copy of the Report by two emails to Ms. Dukic on 25 February 2015.
- 1.4 The Report was properly served on Ms. Dukic, as set out in paragraphs 3 and 4 of the Directions dated 1 April 2015. The Panel notes that the CEO received an acknowledgement that the two emails were read on 25 and 26 February 2015. The CEO also attempted to communicate with Ms. Dukic by other means as set out in the Directions. Ms. Dukic did not respond or contest the allegations in the Report.
- 1.5 The Directions dated 1 April 2015 recorded that Ms. Dukic had waived the right to a hearing. To ensure that there is no misunderstanding or unfairness to Ms. Dukic, the Directions summarized the substance of the allegations against her and called on her to make representations regarding the allegations and inferences to be drawn. The CEO reported that she received a confirmation that the email with the Directions dated 1 April 2015 were delivered to Ms. Dukic's email address.
- 1.6 Ms. Dukic did not make any representations as invited in the Directions of 1 April 2015.
- 1.7 As such the Panel must now make a decision based on the Report.

2 CAS DECISION RE PROCEDURE

2.1 On 11 December 2014 the Court of Arbitration for Sport handed down a decision in CAS2014/A/3630 Dirk de Ridder v. International Sailing Federation (ISAF). In paragraph 109 thereof is set out what is called “non-exhaustive propositions, germane to this case, which underpin the essential requirements of fairness and ensure that justice is not only done but seen to be done:

1. There should be a clear demarcation line between the roles of Investigator, prosecutor and Adjudicator -in short a legal separation of powers.“

2.2 The RoP were drafted prior to this decision and do not provide for the clear demarcation between the roles of investigator, prosecutor and adjudicator. The RoP provide for an inquisitorial process, where these roles are somewhat blended. This inquisitorial process has been used successfully for many years in Rule 69 hearings under the RRS. In the overwhelming number of cases this process has worked well, although there probably were where the Respondent was prejudiced. In particular, the Panel is acutely aware that, when framing a charge to be put to a Respondent (the written notice provided for in RRS69.2(a), one must be careful not to pre-judge the case. The Panel is of the view that, although “essential requirement” 1 above would be a requirement in a complicated case where the respondent right to a fair procedure would otherwise be infringed, it is not a requirement in every investigation and hearing of misconduct under RRS 69, whether by a protest committee or the Disciplinary Commission after receiving a report under RRS 69.3. To require it to be so is impractical, and would put decisions of misconduct beyond the ability and resources of the vast majority of protest committees. This will result in very few cases of gross misconduct being dealt with, to the detriment of the sport as a whole.

2.3 We have therefore continued with this process as an inquisitorial procedure, as provided for in the RoP, but being careful in making sure that the Respondent is not prejudiced by the lack of complete legal separation of powers.

3 PROCEDURAL ASPECTS OF THE CASE AGAINST MS. DUKIC

3.1 The Report contains a collection of evidence and emails dealing with the allegation against Ms. Dukic. It is not a structured report and nowhere does it state exactly what the

allegation against Ms. Dukic is (as a charge sheet would do). The import of the Report is such, however, that the inference might be drawn that Ms. Dukic stole the mast sections. It is possible that Ms. Dukic might have viewed the Report differently and it is for this reason that the Panel Chairman gave the Directions dated 1 April 2015, in which Ms. Dukic is informed that the inference might be drawn from the contents of the Report that Ms. Dukic stole the mast sections and she is invited to make representations to the Panel.

3.2 Ms. Dukic made no representations in response to this invitation. The Panel must therefore now decide whether the case against Ms. Dukic is proven by the evidence in the Report.

4 FURTHER INVESTIGATION

The Panel considered whether to conduct a further investigation into the case, in particular to investigate the explanation previously offered by Ms. Dukic further. The Panel would have done so, but in light of the failure of Ms. Dukic to communicate with the Panel at all, it was not possible to do a further meaningful investigation.

5 EVIDENCE

The evidence is the following:

- 5.1 Someone stole a new Laser bottom mast section and a new Laser top mast section used by [REDACTED] from the Flemish Sailing Federation on 3 June 2014, the week before the European Laser Championships 7 – 14 June 2014 at Split, Croatia.
- 5.2 The top mast was marked [REDACTED]. The bottom mast section was made in Australia.
- 5.3 Ms. Dukic used these two mast sections during the Championships.
- 5.4 On 13 June 2014 [REDACTED] and [REDACTED] (the coach of the Flemish Sailing Federation) noticed that Ms. Dukic had the two mast sections and demanded the mast sections back. Ms. Dukic returned the two mast sections.
- 5.5 Ms. Dukic gave an explanation that her cousin bought the masts for her. Her explanation was:
 - 5.5.1 Ms. Dukic received the mast sections from a representative (whom she did not know) of the American seller of the mast sections.
 - 5.5.2 Her cousin, [REDACTED], bought the mast sections for her.

5.5.3 Ms. Dukic provided documentation which reflect a PayPal payment of US\$485 to a Merchant Josip Maric at maric.j@gmail.com from [REDACTED]. Further documentation reflect a Paypal document with a Merchant Josip Maric, email address maric.j@gmail.com, shipping address [REDACTED], 1848 Ashley River Rd, Charleston SC, USA, Description "Jarbol Donji+ Gornji Radial" for USD 483.77, which equals €364.00 at an exchange rate of 1.32905 USD / €. This document is dated 16 May 2014.

6 EVALUATION OF THE EVIDENCE

- 6.1 The fact that the mast sections were stolen on 3 June 2014 and were used by Ms. Dukic in the regatta starting four days later is significant. Depending on the circumstances, in the absence of a credible exculpatory explanation, this could lead one to conclude that the person found in the possession of stolen goods shortly after a theft, stole the goods. Leaving aside the issue of the exculpatory explanation for the moment, we are of the view that this inference should be drawn in this case.
- 6.2 We now turn to a consideration of the exculpatory explanation previously offered by Ms. Dukic.
- 6.3 In the first instance we note that Ms. Dukic did not give this evidence to this Panel. If she did so, the explanation could have been properly investigated and considered. This is a factor that counts against the credibility of the version of Ms. Dukic.
- 6.4 The version of events, that Ms. Dukic's cousin bought the sections from a dealer in the USA, who delivered the sections to Split, is highly improbable. The shipping address reflected is "Charlston" (incorrectly spelt), South Carolina, USA, not Split, Croatia. It is not explained how her cousin arranged the transport from Charleston to Split. The shipping address in the USA is also inconsistent with her version (as relayed in the email of Mr. Miroslav Bjelajac of 18 June 2014) that "the equipment was handed over to her at the venue by the a representative of the American seller from who she or her nephew bought it."
- 6.5 The "American seller" would appear to be Josip Maric from the PayPal documentation. The Panel could not find any reference to such a dealer of Laser parts on the internet.

- 6.6 The Panel is of the view that the explanation offered is far-fetched (to say the least) and not credible. Without the co-operation of Ms. Dukic the Panel is not in a position to investigate the explanation properly. The Panel therefore rejects the explanation of Ms. Dukic, without the need to draw the adverse inferences provided for in RoP 12.4.
- 6.7 On receipt of the Report and being advised of the right to demand a hearing and the need to challenge the allegations in the Report, Ms. Dukic chose, having read the emails, not to communicate with the Panel. One would expect a person found in possession of stolen equipment, if the person has an explanation that would exonerate her, to give full co-operation and all information to exonerate herself and co-operate with the Panel. In the circumstance of this case this would include:
- 6.7.1 An explanation why she bought the mast sections from an American supplier, rather than a European supplier.
- 6.7.2 Full details, including telephone number and address of the merchant Josip Maric, to confirm the sale of the spars and to identify the person who delivered the spars to Ms. Dukic.
- 6.7.3 Copies of emails that reflect the sale of the mast sections
- 6.7.4 An explanation as to how she found out that Josip Maric sold Laser mast sections.
- 6.7.5 Identification of the person that delivered the mast sections to her, or at least a detailed description of the person and the circumstance surrounding the delivery of the mast sections.
- 6.7.6 A statement in support of her version from her cousin and the dealer, or an explanation of what steps she took to obtain such statements.
- 6.8 We find that the lack of such co-operation supports the adverse inference that her version is not credible (without the need to rely on the provisions of RoP 12.4).
- 6.9 The same inference can be drawn as provided for in RoP 12.4 due to the failure of Ms. Dukic to make any representations.
- 6.10 The Panel is therefore of the view that the explanation previously offered by Ms. Dukic, but not presented to this Panel, is mostly probably false.

7 FINDING AND DECISION

The Panel therefore finds that, taking into account the facts stated in the Report, including the highly improbable explanation of Ms. Dukic, that it has been proven to the comfortable satisfaction of the Panel, having regard to the seriousness of the the allegation of theft, that Ms. Dukic stole the Laser Mast sections, on or about 3 June 2014 from the Flemish Sailing Federation and used the mast sections in the European Laser Championships 7 – 14 June 2014 at Split, Croatia. As such Ms. Dukic, as a competitor in that Championships, committed gross misconduct by a gross breach of sportsmanship, and bringing the sport in disrepute. She therefore broke Rule 69.1.

8 RECONSIDERATION AND SANCTION

- 8.1 The CEO is directed to forthwith send this decision to Ms. Dukic, and to draw Ms. Dukic's attention to her right in terms of RoP 14.2 to ask for reconsideration within ten days of being notified thereof.
- 8.2 The CEO is further directed to inform Ms. Dukic that she shall also, within the same ten days, present any evidence or representations regarding an appropriate sanction. In particular Ms. Dukic should make representations as to why her competition eligibility should not be suspended for misconduct of this nature.
- 8.3 The CEO shall send the Decision to Ms. Dukic by email, registered mail and ordinary mail. The ten days will be counted from the date of sending the email.

Lance Burger

Panel Chairman

ISAF Disciplinary Commission

24 April 2015