

**CAS 2014/A/3832 Vanessa Vanakorn v. Fédération Internationale de Ski (FIS)**  
**CAS 2014/A/3833 Vanessa Vanakorn v. Fédération Internationale de Ski (FIS)**

**ARBITRAL AWARD**

rendered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Prof Dr Martin **Schimke**, Attorney-at-law, Düsseldorf, Germany

Arbitrators: Mr Patrice **Brunet**, Attorney-at-law, Montreal, Canada

Mr Mark **Hovell**, Solicitor, Manchester, United Kingdom

Ad hoc clerk: Mr Serge **Vittoz**, Attorney-at-Law, Lausanne, Switzerland

in the proceedings between

**Vanessa Vanakorn**, Thailand

Represented by Dr Thilo Pachmann, Attorney-at-law, Zurich, Switzerland and Dr Lucien W. Valloni, Attorneys-at-law, Zurich, Switzerland

- the Appellant -

and

**Fédération Internationale de Ski (FIS)**, Oberhofen/Thunersee, Switzerland

Represented by Dr Stephan Netzle, Attorney-at-law, Zurich, Switzerland

- the Respondent -

## **I. THE PARTIES**

1. Ms Vanessa Vanakorn (hereinafter referred to as “Ms Vanakorn” or “the Appellant”) is a bi-national British and Thai amateur skier who competed in alpine skiing in the 2014 Winter Olympic Games in Sochi (hereinafter referred to as “the 2014 Olympic Games”). She is also a very famous violinist, with album sales reaching several million.
2. The Fédération Internationale de Ski (hereinafter referred to as “FIS” or “the Respondent”) is the governing body for the sports of Alpine skiing, Cross-Country skiing, Ski Jumping, Nordic Combined, Freestyle skiing and Snowboarding at the worldwide level, and has its registered office in Oberhofen/Thunersee, Switzerland.

## **II. THE DECISIONS AND ISSUES ON APPEAL**

3. The Appellant appealed a decision of the FIS Hearing Panel (hereinafter referred to as “the FIS HP”) dated 6 November 2014 (hereinafter referred to as the “FIS HP Decision”), imposing a four-year suspension of any FIS sanctioned events worldwide, following an alleged manipulation of the results of four giant slalom Olympic qualification events held in Krvavec, Slovenia, between 17 and 19 January 2014 (hereinafter referred to as the “Competitions”). In a second appeal, the Appellant contested a Decision of the FIS Council dated 18 November 2014, mainly cancelling the results of the above-mentioned competitions (hereinafter referred to as the “FIS Council Decision”). As a consequence, the FIS Council, in the same decision, also “took note that *Vanessa Vanakorn (THA) who competed in the Sochi 2014 Olympic Winter Games therefore did not qualify and should not have been participating in the Sochi 2014 Games*” and “decided to submit its decision and information, in regard to the qualification and eligibility of the above mentioned athletes to compete in the Sochi 2014 Olympic Winter Games to the International Olympic Committee (IOC), in order that it may take any further action in its competence”.

## **III. FACTUAL BACKGROUND**

4. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the present award only to the submissions and evidence it considers necessary to explain its reasoning.

### **A. Ms Vanakorn’s skiing background and her will to participate in the Olympic Games**

5. The Appellant has been skiing since the age of 4, mainly when she was on holidays. Approximately in 1999, she met her companion, L., who was a ski instructor at that time. She began spending more time in the mountains and started skiing very regularly.
6. During the 2009 Ski World Championships in Val d’Isère, she realised that “exotic” skiers could participate in important international ski competitions.
7. In winter 2013, she met a coach, B., with whom she decided that she would try to qualify for the 2014 Olympic Games as representative of Thailand.
8. The Appellant took part in her first FIS competition on 30 November 2013.

9. Before the Competitions, she earned an average of 231.19 FIS points in her five best competitions.

### **B. The FIS qualification system for the 2014 Olympic Games**

10. In Alpine skiing, the FIS points are calculated and re-calculated throughout an athlete's career as the athlete competes in FIS sanctioned competitions. The points achieved by a FIS athlete are not only used internally by FIS but are also relied upon by outside organisations such as the International Olympic Committee (hereinafter referred to as the "IOC").
11. The FIS qualification system for the 2014 Olympic Games established detailed criteria for athletes to be selected and qualified for this competition. Setting aside the issue of quotas, in order for an athlete to be eligible for the 2014 Olympic Games, he or she had to be ranked within the FIS Points List's top 500 of his or her respective discipline on the cut-off date of 20 January 2014. A secondary qualification standard was also provided for countries whose athletes did not make that top 500 ranking. Those countries were permitted to enter one male and one female competitor (basic quota) only for the Slalom and Giant Slalom events on the condition that those athletes came within a maximum of 140 FIS points (the lower the points, the better the ranking) through competing at sanctioned FIS competitions in the respective events on the Olympic FIS points List published on 20 January 2014.

### **C. The competitions held in Krvavec between 17 and 19 January 2014**

#### *i. The organization*

12. In January 2014, the Appellant instructed her entourage (i.e. her coach and agent) to organise four giant slalom competitions in the very last days before the cut-off date for the inclusion of results calculated in the Olympic Qualifications FIS Points List of 20 January 2014.
13. After an attempt to organise competitions in Serbia, the Appellant's entourage turned to the ski club Alpine Ski Club Triglav Kranj to organise the four giant slalom competitions in Krvavec.
14. The Appellant's entourage succeeded in getting the necessary support of the Thai Olympic Committee to register the Competitions with FIS, which agreed to include the Competitions in the FIS Calendar and published it on its website on 14 January 2014. One of the Competitions was listed as the Thai Junior National Championships although only one participant in that event, Ms Vanakorn, had Thai citizenship and she was aged 35 at the time of the Competitions.

#### *ii. Friday, 17 January 2014*

15. The Competitions were scheduled to start on 17 January 2014.
16. As the weather and snow conditions were marginal (temperatures above 0°C and heavy fog), the races scheduled on that day were postponed to the following day. No race took place on that first day.

#### *iii. Saturday, 18 January 2014*

17. Although the weather and snow conditions were also marginal on that day, two races took place (ref. 6998 and 6999).

18. As some competitors had left Krvavec in view of the weather conditions, only 23 competitors took part in the races on that day.

*iv. Sunday, 19 January 2014*

19. The weather and snow conditions were still marginal on 19 January 2014.  
20. Only 7 competitors took part in the two races on that day (ref. 7000 and 7001).

#### **D. The qualification of Ms Vanakorn for the 2014 Olympic Games**

21. The Appellant managed to achieve just below 140 FIS points during the Competitions, which was the limit for the qualification for the 2014 Olympic Games. Because of these results, she qualified for the 2014 Olympic Games, and was ultimately a participant representing Thailand. Although not central to this arbitration, it is noteworthy to report that she only raced in one event at the 2014 Olympic Games (Giant Slalom), and she finished this race last, almost a full minute behind the gold medallist.

#### **E. The SAS investigation**

22. In March 2014, the executive committee of the Ski Association of Slovenia (hereinafter referred to as the "SAS") instructed the SAS alpine committee to review the circumstances related to the Competitions.  
23. In July 2014, the executive committee of the SAS issued a report in which it was determined that manipulations of the races had taken place at the Competitions (hereinafter referred to as the "SAS Report").  
24. On 11 July 2014, the SAS decided to suspend some of the individuals involved in the organisation of the Competitions, i.e. Messrs Borut Hrobat, Vlado Makuc, Matiaz Goltez and Tugo Martincek of any activity for the SAS, for a period of four years.

#### **F. The proceedings before the FIS**

25. Following the receipt of the SAS Report, FIS conducted an investigation into the activities surrounding the Competitions. As a result of the investigation, FIS appointed the FIS HP and issued notices of charges against the following individuals:

- Mr Borut Hrobat
- Mr Vlado Makuc
- B.
- Mr Uros Sinkovec
- Mr Fabio De Cassan
- Ms Vanessa Vanakorn
- Mr Matiaz Goltez

26. On 6 November 2014, the FIS HP rendered the FIS HP Decision, concluding the following with regard to the Appellant's case:

*Having said that, the Hearing Panel finds that the actions of Ms. Vanakorn and her handlers with respect to this event and the implications it has had upon the other participants and athletes that took place in these four competitions requires a much more severe sanction than the one requested by FIS legal counsel. A manipulation of the results and the actions of Ms. Vanakorn and her handlers cannot be tolerated in an organization such as FIS. She was a FIS athlete for a very short period of time without any concern for the integrity of the organization or for the tens of thousands of other competitors. She, through her representatives, took steps to violate the spirit of the sport and the FIS rules solely for her own personal benefit with total and complete disregard for the integrity of the sport. Accordingly the Hearing Panel hereby sanctions Ms. Vanakorn from any and participation in FIS sanctioned events worldwide for a period of four years effective the date of this Decision.*

27. In its decision, the FIS HP also stated the following:

*As we have found that two or more participants combined to breach the Rules as it relates to the competitions held in Krvavec on January 18<sup>th</sup> and 19<sup>th</sup>, 2014, pursuant to the provisions of Rule 8.4 we hereby refer this matter to the FIS Council and recommend that the results of these four competitions be expunged and that any and all points awarded to any of the athletes participants be deleted.*

28. On 18 November 2014, the FIS Council decided to cancel the results of all the Competitions, took note of the fact that Ms Vanakorn should not have taken part in the 2014 Olympic Games and that the IOC should be informed in order to take further action.

#### **IV. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS**

29. On 1 December 2014, the Appellant filed a statement of appeal before the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) against the FIS HP Decision (case with reference CAS 2014/A/3832), as well as against the FIS Council Decision (case with reference CAS 2014/A/3833), pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS Code”).
30. On 12 December 2014, the Appellant filed her appeal brief in CAS 2014/A/3832 in accordance with Article R51 of the CAS Code. In this submission, she requested to be allowed to supplement her argumentation and file further submissions.
31. On 15 and 16 December 2014, the Respondent requested that the time limit to file its answers be postponed until 19 January 2015, because of the Christmas holidays. In its letter dated 15 December 2014, the Respondent noted that the requested extension of the time limit to file the answers would not affect the Appellant’s sporting career, since she stopped participating in ski competitions as of the previous spring.
32. On 19 December 2014, the Appellant filed her appeal brief in CAS 2014/A/3832 in accordance with Article R51 of the CAS Code.
33. After having consulted the Parties, the President of the CAS Appeals Arbitration Division decided the following:
1. The Respondent’s request for an extension of its time limit for filing the answer(s) was granted, until 19 January 2015;

2. The Appellant's request to supplement her appeals briefs would be decided by the Panel, once constituted.
34. On 30 December 2014, the Parties were informed that the Panel was constituted as follows:  

President: Mr Martin Schimke, attorney-at-law in Düsseldorf, Germany

Arbitrators: Mr Patrice Brunet, attorney-at-law in Montreal, Canada

Mr Mark Hovell, solicitor in Manchester, United Kingdom
35. On 15 January 2015, the CAS Court Office informed the Parties that the Panel had decided to hear the two cases in a conjoint hearing.
36. On 19 January 2015, the Respondent filed its consolidated answer for both CAS 2014/A/3832 and CAS 2014/A/3833.
37. On 26 January 2015, the Parties were informed that the hearing would be held on 3 March 2015, in Lausanne, Switzerland.
38. On 28 January 2015, the CAS Court Office informed the Parties that the Panel had decided to grant the Appellant a ten-day time limit to supplement her appeal brief in relation to the delayed receipt of the underlying FIS case file.
39. On 9 February 2015, the Appellant filed the supplement to her appeal brief. In this submission, the Appellant filed several procedural motions (e.g. the request for a public hearing, witnesses to be heard by state courts; personal appearance of all of Respondent's witnesses; access to the file of the police investigation).
40. On 16 February 2015, the Respondent filed the following procedural motions:
  1. *To deny Appellant's conditional request to have some of the Appellant's witnesses heard by a state court and not at the hearing;*
  2. *To postpone the hearing until at least after the Easter holidays and to reserve two days for the hearing;*
  3. *To grant the Respondent an extension of the time limit to submit its comments to the Appellant's Supplement until 6 March 2015.*
41. On 20 February 2015, the Parties were informed that the Panel had decided the following:
  1. The hearing would not be public, and would take place on 3 March 2015, as previously scheduled;
  2. The Respondent's request for an extension for filing its reply to the Appellant's supplement to the appeal brief was partially granted, until 24 February 2015;
  3. The Panel allowed the examination of some witnesses by video or telephone conference;
  4. All other procedural requests would be dealt with at the hearing.
42. On 24 February 2015, the Respondent filed its consolidated reply to the Appellant's supplement to the appeal brief for both cases.

43. On 3 March 2015, a hearing was held at the CAS Headquarters in Lausanne, Switzerland, which continued on 4 March 2015, at the Hotel Lausanne Palace. On that same date, the Respondent signed the Order of Procedure.
44. On 10 March 2015, the Appellant signed the Order of Procedure and transmitted it to the CAS Court Office.
45. On 16 March 2015, the Parties filed their respective post hearing briefs.

## **V. THE HEARING**

46. As seen above, a hearing was duly held on 3 March 2015 at the CAS Headquarters in Lausanne, Switzerland.
47. Considering the length of the examination of the large number of witnesses, and in order to respect the Parties' due process rights, the hearing was continued on 4 March 2015, at the Hotel Lausanne Palace in Lausanne, Switzerland.
48. The following persons attended the two-day hearing:
  - For Ms Vanakorn: Ms Vanakorn was present and assisted by her counsel, Dr Pachman and Dr Valloni.
  - For FIS: Ms Sarah Lewis, Secretary General represented the Respondent, and was assisted by counsel Dr Stephan Netzle.
49. Mr Christopher Singer, Counsel to the CAS, and Mr Serge Vittoz, *ad hoc* clerk, assisted the Panel at the hearing.
50. The following witnesses gave evidence, either in person, or by video/telephone conference, at the hearing:

*For the Appellant:*

1. Mr Borut Hrobat;
2. Mr Vlado Makuc;
3. G.;
4. L.;
5. Mr Fabio de Cassan;
6. Mr Matiaz Goltez;

*For the Respondent:*

7. E.
8. J.;
9. Z.;

- 10. M.;
- 11. N.;
- 12. P.;
- 13. H. and C. (together);
- 14. S.

- 51. The content of the witness testimonies will be addressed below, to the extent necessary.
- 52. The Parties were also afforded the opportunity to present their case, to submit their arguments, and to answer the questions asked by the Panel. The Parties explicitly agreed at the end of the hearing that due process had been fully observed in the course of the present proceedings, in particular at the hearing.

## **VI. JURISDICTION OF THE CAS, ADMISSIBILITY AND SCOPE OF REVIEW OF THE PANEL**

- 53. In accordance with Switzerland's Federal Code on Private International Law (hereinafter referred to as "PILA"), which is applicable to the arbitration proceedings with its seat in Switzerland, CAS has the competence to decide on its own jurisdiction (Art. 186 PILA).

- 54. Article R47 of the CAS Code provides that:

*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

- 55. Article 9 of the FIS Betting and other Anti-Corruption Violations Rules (hereinafter referred to as the "FIS BAC Rules") of July 2014 reads as follows:

*9.1 The following decisions made under these Rules may be appealed either by the International Ski Federation (FIS) or the Participant who is the subject of the decision exclusively to the Court of Arbitration for Sport (CAS) in accordance with this Rule 9:*

*9.1.1 A decision that a charge of breach of these Rules should be dismissed on procedural or jurisdictional grounds;*

*9.1.2 A decision that a Violation has been committed;*

*9.1.3 A decision that no Violation has been committed;*

*9.1.4 A decision to impose a Sanction, including a Sanction that is not in accordance with these Rules;*

[...]



56. The appeals filed by the Appellant are both directed against a decision that a violation of the FIS BAC Rules had been committed by the Appellant.
57. Based upon the foregoing, the Panel deems that the CAS has, in principle, jurisdiction to deal with the present proceedings, which is not contested.
58. Furthermore, the signature of the Order of Procedure by the Parties confirmed that the jurisdiction of the CAS in the present case was not disputed.
59. The appeals filed by the Appellant both complied with the 21-day time limit set in Article 9.2 of the FIS BAC Rules.
60. Furthermore, both of the appeals fulfil the requirements under Article R47 and R48 of the CAS Code.
61. However, considering the object of the decisions under appeal, the Panel deems that it is necessary to determine whether the Appellant has a legal interest to act against these decisions. The CAS has already clarified in previous decisions that “*if a party does not have a cause of action or legal interest (“intérêt à agir”) to act against the Appealed Decision [such party] would have no standing to appeal on the basis of the well-known general procedural principle that if there is no legal interest there is no standing (“pas d’intérêt, pas d’action”)*” (CAS 2010/A/2091 at para. 13; CAS 2009/A/1880-1881, at para. 152 *et seq.*)
62. Contrary to the Respondent’s position, which stated that the Appellant decided to stop competing in FIS sanctioned competitions, the latter testified at the hearing that she had actually decided to resume her skiing career.
63. The Panel therefore considers that the Appellant’s legal interest in contesting the FIS HP Decision is evident, as she was suspended from competing within the FIS system of competition for a period of four years. In addition, the Panel holds that the Appellant can also avail herself of a legal interest to rehabilitate her reputation which can be deemed tarnished by the FIS HP Decision concluding and declaring that she was either an active or knowing participant in a manipulation.
64. As to the appeal against the FIS Council Decision, there is a legitimate question as to whether the Appellant has any legal interest to have that decision annulled. As stated above, said FIS decision contains three elements: (i) to delete the results of the four races in Krvavec, (ii) to determine that the Appellant, therefore, had not been qualified for the Olympic Games in Sochi, and (iii) to inform the IOC so “*that it may take any further action in its competence.*” However, the 2014 Olympic Games for which the Appellant qualified because of her results in the Competitions are over, and the Appellant neither won any medal nor was she awarded an Olympic Diploma. Therefore, the determination that the Appellant should not have been participating in the Sochi 2014 Games could no longer have any practical relevance in view of the lapse of time. The decision to communicate the findings of the FIS Council to the IOC could also lack an interest in seeking a judgement/decision at this stage. Whether and what the IOC could still decide against the Appellant remains to be seen. If the IOC bans her, for instance, from future Games, the FIS points would obviously not have any relevance, but rather the allegation of manipulation may have some. In any case, she could file a separate appeal against any IOC decision. However, as seen above, the Appellant confirmed at the hearing that she intended to keep skiing at the FIS level and therefore, if the core element of the FIS Council Decision (the deletion of the results in Krvavec) was confirmed, this would definitely affect her status of FIS points which are crucial and the basis for the qualification of future races/competitions.

65. The Panel, therefore, concludes that the Appellant has a legal interest in contesting both decisions.
66. In view of the above, the appeals are both admissible.
67. Furthermore, under Article R57 of the CAS Code, the Panel has the full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the appealed decisions.

## **VII. APPLICABLE LAW**

68. Article R58 of the CAS Code provides the following:

*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

69. The “*applicable regulations*” in the case at hand are the FIS rules and regulations.
70. The Parties have not expressly or implicitly agreed on a choice of law applicable to these proceedings before CAS. Therefore, the rules and regulations of FIS shall apply primarily, and Swiss law, as FIS is domiciled in Switzerland, shall apply subsidiarily.

## **VIII. OVERVIEW OF THE PARTIES’ SUBMISSIONS**

71. The following outline of the Parties’ positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows. The Parties’ written submissions, their verbal submissions at the hearing and the contents of both of the appealed decisions were all taken into consideration.

### **A. The Appellant**

72. The Appellant’s position may be summarized as follows:
  - a) It is undisputed that the Respondent carries the burden of proof.
  - b) Given the seriousness of the allegations, the standard of proof must come very close to the proof of beyond reasonable doubt. Hearsay and indirect proof are not enough. There must be a probability of more than 99% that the Appellant manipulated the results of the Competitions.
  - c) It is accepted standard practice for beginners to lower their points by choosing “easy” races. For the same reasons, it is also accepted standard practice for exotic ski teams to organize their “own” FIS races, tailored to their own needs and even to the need of one individual racer, especially in times when they need more results but there are not enough suitable races on the calendar. It is also natural that those who need the race will pay the expenses of the organizing local ski association or ski club. This is exactly what Ms

Vanakorn and the Thai National Olympic Committee did, one week before the cut-off date for qualification to the 2014 Olympic Games.

- d) This practice is not only common, but is definitely not against the FIS rules and regulations.
- e) Ms Vanakorn never started outside of the starting gate during the Competitions, and never admitted having done so. The Respondent's witnesses in this regard are not reliable and often contradict themselves.
- f) Many witnesses who were present at the Competitions, including the FIS Technical Delegate, confirm that they were not aware of any such irregular start.
- g) The fact that the results of two giant slalom races held on 19 January 2014 included a competitor (N.) who was not present at, and did not participate in those races, is not of the Appellant's responsibility. Besides, there is no reliable evidence of this fact. Neither N. nor anyone else appealed after the race. And none of the race officials was aware of any competitor being included in the race results who did not race.
- h) The fact that E. was placed second in one of the races despite the fact that she fell and lost a significant amount of time and that her time was allegedly adjusted afterwards by more than 10 seconds is not the Appellant's responsibility. More importantly, the adjustment of her time made the race penalty even worse so this was not to the benefit of Ms Vanakorn.
- i) The fact that in the first race the time for at least one of the competitors was only manually measured is not Ms Vanakorn's responsibility and, in any circumstances, manual timing is allowed.
- j) The Appellant neither requested any participant to ski slowly at the Competitions, nor did she ask anybody to request such a thing from other participants. The Respondent's witnesses in this regard are not reliable and often contradict themselves.
- k) The SAS report was possibly a political manoeuvre of certain influential people in the major ski clubs in Slovenia, SK Branik Maribor and OC Vitranc Kranjska Gora, to regain power of the SAS Alpine Committee and wage a political war against another major ski club, the "ASK Triglav".

## **B. The Respondent**

73. FIS's position may be summarized as follows:

- a) The following circumstances must be considered as unusual and highly suspicious, although not a clear rules violation. They show that every conceivable step was taken to twist and turn the applicable regulations to enable the Appellant to achieve the necessary FIS points level required to qualify for the 2014 Olympic Games:
  - i. The Competitions were organised at extremely short notice and posted on the FIS website only three days before the first race was scheduled to take place.
  - ii. Four giant slalom races were organised in a hurry as part of one single event that had to take place before 20 January 2014. Because of the limitation of Art. 4.8.1 of the Rules for the FIS Alpine Points, one of the competitions had to be labelled as "Thai National Championships" and one as "Thai National Junior

Championships”. The only Thai participating in the National Junior Championships, i.e. the Appellant, was 35 years old.

- iii. On both days, the weather conditions were unacceptable for a FIS race. The competitions were still held, despite the risks for the participants.
  - iv. The participant X. (SLO) had not competed for almost two years – and she has not competed thereafter. Because of her injury status, she maintained her very low FIS points. Her presence beneficially contributed to the FIS point calculation. She was paid for her appearance in Krvavec.
  - v. The courses were not changed between the runs and the competitions of the same day. The competitions were rushed through in an extreme hurry.
  - vi. The Official results lists of the first two races as communicated to the FIS indicate a wrong date, namely 17 instead of 18 January 2014.
- b) It was however not enough for the Appellant and her entourage to exploit and stretch the applicable rules to the limits. The intended goal of lowering the Appellant’s FIS points to an average of 140 could only be achieved by cheating and committing several rule violations:
- i. At least two Slovenian participants (E. and J.) were told to “ski slow” before the first run of the first Saturday race (ref. 6998) because the priority was to allow the Appellant to make the FIS points necessary for her Olympic qualification. After the first race (ref. 6999), the winner, N., was criticised for having skied too fast. Mr Hrobat also tried to convince N.’s mother by phone to instruct N. to not ski too fast.
  - ii. Two Finnish participants (M. and A.) with relatively low FIS points in the top five best athletes were listed as “DNF1” (did not finish first run) in the two Saturday races although they had not participated at all. They were obviously listed with the sole purpose to include them into the calculation of FIS points.
  - iii. N. was listed 4<sup>th</sup> in both results lists of Sunday (ref. 7000 and ref. 7001) although she did not participate in any of these two races and was not in Krvavec at all. Nobody else started with her bib but the starting wand was manually triggered without a competitor starting.
  - iv. The Appellant was seen starting from outside of the starting gate at least in the second runs of both competitions of Saturday (ref. 6998 and ref. 6999) and in the second run of the first Sunday competition (ref. 7000). The starting wand had been left open after the prior competitor and then triggered manually while the Appellant was already on the course.
  - v. The fog on the course was so dense that it was not possible to control whether the competitors passed all gates correctly.
  - vi. E. fell during the first run of the second Sunday race (ref. 7001). Her time was at least 10 seconds worse than the one listed in the official results. Her result was admittedly manually adjusted.

- c) These irregularities were not mere administrative errors, but deliberate manipulations by those who were responsible for the correct conduct of the races, with the only goal of lowering the Appellant's FIS points and qualifying the Appellant for the 2014 Olympic Games.
- d) The following violations of the FIS rules and regulations took place:
- i. Violations of Article 3.2. of the Regulations, especially Article 3.2.1: "*Fixing or contriving in any way or otherwise improperly influencing, or being a party to fix or contrive in any way or otherwise improperly influence, the result, progress, outcome, conduct or any other aspect of an Event or Competition.*"
  - ii. In particular, the officials were sanctioned because they disregarded their duties as chief of race, referee, starter, time keeper, technical delegate and also as members of the jury. These officials have not challenged the decision of the FIS HP which has become enforceable.
  - iii. The Appellant did not only profit from these irregularities for which the officials have been sanctioned, but she actively participated in these violations when she started outside the starting gate without triggering the starting wand. She therefore violated Article 3.2 (especially Article 3.2.1) of the Regulations. The irregular start constitutes violations of Article 613 of the International Ski Competition Rules (hereinafter referred to as the "ICR") which regulates the starting procedure, especially Article 613.5. In addition, the Appellant must have known that the way she was "released" to the course was not a correct starting procedure and improperly influenced the timing of her runs. The Appellant cannot rely on her lack of experience with the competition rules because she was obliged to make herself familiar with them (Article 205 ICR).
  - iv. These violations, for which the only goal was the Appellant's Olympic qualification, brought the integrity of sport into disrepute, as specifically addressed by Article 1.1 of the Regulations.
  - v. The field of play doctrine (self-restraint of appellate sports tribunals in reviewing field of play decisions) does not prevent the CAS Panel from adjudicating the incidents at the Competitions, even if no protest was filed after the races.

## **IX. THE PARTIES' REQUESTS FOR RELIEF**

### **A. Ms Vanakorn**

74. The Appellant's requests for relief in the case with reference CAS 2014/A/3832 are the following:

*For the above reasons, the Appellant respectfully applies for the Arbitral Tribunal:*

- 1. to set aside the FIS Hearing Panel Decision of 6 November 2014;*
- 2. to declare that Ms. Vanakorn is not guilty of the alleged infraction as per FIS decision of 6 November 2014;*
- 3. to cancel all sanctions imposed on Ms. Vanakorn by the Hearing Panel;*

4. *to order the FIS to pay Ms. Vanakorn a reasonable contribution towards her legal fees and other expenses and to reimburse her the CHF 1,000 cost advance paid to the CAS.*

75. The Appellant's requests for relief in the case with reference CAS 2014/A/3833 are the following:

*For the above reasons, the Appellant respectfully applies for the Arbitral Tribunal:*

1. *to annul the FIS Decision of 18 November 2014;*
2. *to declare that the results of the four Giant Slalom competitions held in Krvavec (SLO) between 17<sup>th</sup> and 19<sup>th</sup> January 2014 (Race Codex 6998, 6999, 7000 and 7001) are valid;*

*or, subsidiarily,*

*to refer the matter back to FIS, for a new decision by the FIS Council based on the FIS Council's own discretion in application of article 8.4 of the FIS Betting and Other Anti-Corruption Violations Rules (2013);*

3. *to notify the International Olympic Committee (IOC) of its decision, or to order FIS to do so.*
4. *to order FIS to pay Ms Vanakorn a reasonable contribution towards her legal fees and other expenses and to reimburse her the CHF 1,000 cost advance paid to the CAS.*

## **B. FIS**

76. FIS' requests for relief are the following:

1. *The appeal against the FIS Hearing Panel Decision of 6 November 2014 (CAS 2014/A/3832) shall be rejected and the appealed decision shall be upheld.*
2. *The appeal against the FIS Council Decision of 18 November 2014 (CAS 2014/A/3833) shall be rejected and the appealed decision shall be upheld.*
3. *The Appellant shall bear the costs of these arbitrations proceedings and pay an adequate contribution to the Respondent's legal costs.*

## **X. MERITS OF THE APPEALS**

### **A. FIS's competence to hear the case**

77. Article 49.1 of the FIS Statutes states:

*"For infringement of the Statutes, FIS Rules and the decisions of the Congress or the Council, sanctions may be imposed against the Member Associations and their members concerned, as well as against competitors and officials."*

Article 50.1 of the FIS Statutes sets out potential sanctions.

78. The Appellant has never challenged being subject to the FIS rules. In addition, athletes confirm by signing the “FIS’ Athletes Declaration for Registration with the International Ski Federation (FIS)” that: “*I understand and accept that my participation at any event which is part of the FIS calendar is subject to my acceptance of all FIS rules applicable in connection with such event.*” In the absence of indications to the contrary, one can assume that the Appellant has signed such declaration. Therefore, the Panel has no doubt that all FIS Rules can be deemed directly applicable to her.

**B. FIS’s Hearing Panel competence as well as FIS’s Council competence to issue the appealed decisions**

79. Said competences of both FIS-Bodies derive from Article 7.6 of the FIS BAC Rules (FIS Hearing Panel) and Article 8.4 of the FIS BAC Rules (FIS Council). In addition, their competences are also not disputed at all.

**C. Further legal framework applicable to the present dispute**

80. The alleged manipulations of the Competitions are to be adjudicated under the FIS BAC Rules, especially Article 3.2.1, which reads as follows:

*3.2 Manipulations of results*

*3.2.1 Fixing or contriving in any way or otherwise improperly influencing, or being a party to fix or contrive in any way or otherwise improperly influence, the result, progress outcome, conduct or any other aspect of an Event or Competition.*

81. In addition, also Articles 3.2.4, 3.5.2 and 3.5.4 FIS BAC Rules could be applicable in this case:

*3.2.4 Inducing, instructing, facilitating or encouraging a Participant to commit a Violation set out in these Rules.*

*3.5.2 Knowingly assisting, covering up or otherwise being complicit in any acts or omissions of the type described in these Rules committed by a Participant.*

*3.5.4 Failing to disclose to the International Ski Federation (FIS) or other competent authority (without undue delay) full details of any incident, fact or matter that comes to the attention of the Participant that may evidence a Violation under this Rule by a third party, including (without limitation) approaches or invitations that have been received by any other party to engage in conduct that would amount to a Violation of this Rule.*

82. The following provisions may also be taken into consideration:

*3.6 The following are not relevant to the determination of a Violation of these Rules:*

*3.6.1 Whether or not the Participant was participating, or a Participant assisted by another Participant was participating, in the specific Event or Competition;*

3.6.4 *Whether or not the Participant's efforts or performance (if any) in any Event or Competition in issue were (or could be expected to be) affected by the acts or omissions in question;*

3.6.5 *Whether or not the results in the Event or Competition in issue were (or could have been) affected by the acts or omissions in question.*

83. As to the disqualification of the results of a competition, Article 8.4 of the FIS BAC Rules reads as follows:

8.4 *In imposing a Sanction in accordance with this Rule 8.1, the Hearing Panel shall have no jurisdiction to adjust, reverse or amend the results of any International Competition or other Competition. If it finds that two or more Participants combined to breach these Rules in connection with an International Competition, and so tainted the results of such International Competition, it shall refer the matter to the Council, which shall have discretion to disqualify the results, deduct points, or take such other remedial measure as it sees fit.*

#### **D. Requirements for a legal basis**

84. Since, at first, every sanction requires an express and valid rule providing that someone could be sanctioned for a specific offence, in addition and at this stage of its reasoning, the Panel describes general legal requirements for such legal basis in line with CAS jurisprudence.

85. Pursuant to CAS jurisprudence, the different elements of the rules of a federation shall be clear and precise, in the event they are legally binding for the athletes (see CAS 2006/A/1164; CAS 2007/A/1377; CAS 2007/A/1437). Inconsistencies/ambiguities in the rules must be construed against the legislator (here: FIS), as per the principle of "*contra proferentem*" (CAS 2013/A/3324&3369; CAS 94/129; CAS 2009/A/1752; CAS 2009/A/1753; CAS 2012/A/2747; CAS 2007/A/1437; CAS 2011/A/2612).

86. Further, the Panel notes that when interpreting the rules of a federation, it is necessary to consider whether the spirit of the rule (in as much as it may differ from the strict letter) has been violated (see CAS 2001/A/354 & 355; CAS 2007/A/1437; CAS OG 12/02). It follows that an athlete or official, when reading the rules, must be able to clearly make the distinction between what is prohibited and what is not (CAS 2007/A/1437). In CAS 2007/A/1363 TTF, award of 5 October 2007, in line with many CAS awards, the sole arbitrator protected "*the principle of legality and predictability of sanctions which requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision*".

87. However, the internal control upon the rules of the federation is manifestly relativized by the fact that various law, CAS and national court jurisprudence, does not require a strict certitude of the elements provided for disciplinary sanctions of the sports federation, as required by criminal law. Such case law rather recognizes general elements, which constitute the basis for disciplinary sanctions (CAS 2007/A/1437).

88. Therefore, the Panel concludes that there are no basic objections regarding the above mentioned legal basis/disciplinary provisions, but the interpretation of the relevant FIS BAC Rules has to be carried out according to the above mentioned principles.



## **E. Burden of proof, standard of proof and assessment of evidence**

89. According to Article 4.1 of the FIS BAC Rules:

*The International Ski Federation (FIS) or other prosecuting authority shall have the burden of proving that a Violation has occurred under these Rules. The standard of proof shall be whether the International Ski Federation or other prosecuting authority has proved a Violation to the comfortable satisfaction of the Hearing Panel, a standard which is greater than the mere balance of probability but less than proof beyond a reasonable doubt.*

90. There is no dispute between the Parties as to the fact that it is the Respondent who bears the burden of demonstrating that the Appellant violated the above-mentioned provisions of the FIS BAC Rules, or any other applicable regulations, with regard to the alleged manipulation of the results of the Competitions.

91. As to the standard of proof, there is no rule in the PILA, nor in the CAS Code, which defines the applicable standard of proof for CAS arbitrations. Accordingly, two different scenarios can arise in CAS proceedings – cases which involve an express standard imposed by the relevant sports federation, and cases in which no such express standard of proof is specified. With respect to the former, consistent jurisprudence has upheld the validity of a sports-governing body choosing to impose its own concept of the applicable standard of proof (Antonio Rigozzi/Briana Quinn, Evidentiary Issues Before CAS, in: M. Bernasconi (ed.), *International Sports Law and Jurisprudence of the CAS*, Bern 2014, pp. 1-54).

92. In a recent case (CAS 2011/A/2490, at para. 86), a CAS Panel stated the following in this regard:

*There is no universal (minimum) standard of proof for match-fixing offences.[...] While the Panel acknowledges that consistency across different associations may be desirable, in the absence of any overarching regulation (such as the WADA Code for doping cases), each association can decide for itself which standard of proof to apply, subject to national and/or international rules of public policy. The CAS has neither the function nor the authority to harmonize regulations by imposing a uniform standard of proof, where, as in the current case, an association decides to apply a different, specific standard in its regulations.*

93. In the case at hand, the above-mentioned provision provides for the standard to be applied, which is “*greater than the mere balance of probability but less than the proof beyond a reasonable doubt*”. It is the Panel’s task to more precisely determine the standard of proof within this bandwidth given that the application of the typical standard applicable in civil proceedings (“balance of probability”) and of the one applicable in criminal proceedings (“proof beyond reasonable doubt”) can lead to very important different conclusions, depending on the facts, and the available evidence, of a particular case. It appears that the definition of the standard of proof provided for in the FIS BAC Rules is the definition of the standard of proof “comfortable satisfaction” which is widely applied by CAS panels in disciplinary as well as in match-fixing/corruption proceedings, in the absence of any particular standard provided for in the applicable regulations. The CAS Panel in a recent corruption case (CAS 2011/A/2426, at para. 88) indeed stated the following:

*The Panel is of the view that, in practical terms, this standard of proof of personal conviction coincides with the “comfortable satisfaction” standard widely applied by CAS panels in disciplinary proceedings. According to this standard of proof, the sanctioning*

*authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt” (cf. CAS 2010/A/2172 Oriekhov v. UEFA, para. 53; CAS 2009/A/1920 FK Pobeda, Zabrcanec, Zdraveski v. UEFA, para. 85). The Panel will thus give such a meaning to the applicable standard of proof of personal conviction.*

94. Accordingly, the CAS Panel in CAS 2011/A/2490 (at para. 85-87) roundly rejected the player’s arguments that the seriousness of a corruption charge meant it *had* to be proven to the criminal standard (beyond reasonable doubt), or else to the “comfortable satisfaction” standard used in the World Anti-Doping Code, either as a matter of Florida law (the applicable law of the Tennis Uniform Anti-Corruption Programme), or as a result of CAS jurisprudence, or as a matter of national or international public policy.
95. The Panel, therefore, concludes that the standard of proof to be applied in the present proceedings is “comfortable satisfaction”.
96. In its analysis of the present case, the Panel will pay particular attention to general jurisprudence of CAS with regard to the standard of proof and the assessment of evidence. Accordingly, the Panel shall in particular take into consideration the following:
  - “Corruption is, by its nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoings” (CAS 2010/A/2172);
  - “The paramount importance of fighting corruption of any kind in sport also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities” (CAS 2009/A/1920).
97. In view of the above, the Panel considers that FIS has the burden of proof that a violation of its FIS Rules and Regulations, in particular a violation of the FIS BAC Rules, occurred. FIS has to establish such violation to the comfortable satisfaction of the Panel, which will take into account FIS’ restricted powers of investigation and, as such, its difficult position to produce evidence in relation to the offence in question given that acts of corruption are, as a matter of fact, sought to be concealed by the participants to it.
98. Finally, regarding the degree of confidence in the quality of evidence, the Panel refers again to CAS 2011/A/2490 (para. 97) where the Panel stated – though it accepted that the applicable standard of proof in that case was “a preponderance of the evidence” – the following:

*In assessing the evidence the Panel has borne in mind that the Player has been charged with serious offences. While this does not require that a higher standard of proof should be applied than the one applicable to the UTACP, the Panel nevertheless considers that it needs to have a high degree of confidence in the quality of evidence (highlights edited by the Panel).*

**F. SAS report and FIS procedure**

99. The Appellant made numerous allegations in her submissions that the SAS investigation and the SAS Report were driven by political manoeuvres against the members of the SAS who had organised the Competitions.
100. The Panel considers that it was not provided with convincing evidence that this was the case and will therefore not take this element into consideration in its further analysis of the case.
101. The Panel reaches the same conclusion with regard to the alleged influence of the FIS on several persons named as witnesses in the present procedure.
102. The Panel further recalls that according to Article R57 of the CAS Code, it has full power to review the facts and the law and to issue a *de novo* decision. In this regard, the Panel fully endorses CAS jurisprudence which states that proceedings before the CAS cure most of the procedural irregularities which might have occurred in the proceedings before the judicial sports bodies.

**G. Was the Appellant involved in the manipulation of the results of the Competitions?**

103. As seen above, the Respondent considers that the Appellant was either an active and knowing participant in the manipulation of the results of the Competitions or, at the very least, as a FIS competitor she should have known that the events were being manipulated for her benefit. In this sense, she was in breach of the above provisions of the FIS BAC Rules, in particular of Article 3.2. More specifically, Article 3.2.1 stipulates the following:

*3.2.1 Fixing or contriving in any way or otherwise improperly influencing, or being a party to fix or contrive in any way or otherwise improperly influence, the result, progress, outcome, conduct or any other aspect of an Event or Competition.*

*i. The organisation of the Competitions*

104. The Respondent considers that the suspicious circumstances surrounding the organisation of the races give rise to substantial doubts. The Respondent's position in this regard is the following:

*While it is not against the rules to meet the qualification criteria only at the very last moment and to even organise a race to try to achieve this purpose, the Appellant must accept that the circumstances under which she claims having achieved the necessary FIS points were extremely unusual and suspicious: it is only natural for someone familiar with competitive skiing to raise the question how it was possible that a 34-year old ski racing novice without any prior ski or other sport competition history accomplished the qualifying standard for the Olympic Winter Games only a few months after starting with training – notably at an event which was held under extremely adverse conditions.*

105. As to the Appellant, it considers that nothing illegal occurred in the organisational process, and that the Respondent was well aware of this organisation.
106. The Panel first considers that the Competitions were organised by the Appellant's entourage, with the assistance of the Thai Olympic Committee and the local ski club, for the main if not sole purpose of allowing the Appellant to reach the necessary FIS points standard in order to take part in the 2014 Olympic Games.

107. The Panel accepts the Respondent's position that the circumstances surrounding the organisation of the races may appear suspicious, in particular for the following reasons:
- the timing of the organisation of the Competitions;
  - labelling some races as "Thai National Championships" and "Thai Junior National Championships";
  - the allegedly paid participation of a retired competitor with very low FIS points;
  - the holding of the Competitions even though the weather conditions were very poor.
108. However, the analysis of the Parties' position as well as the evidence at its disposal leads the Panel to conclude that nothing in the organisational process, ultimately, violated the rules. The Respondent itself recognised that nothing illegal occurred in the organisational process, although it considers that the way the Competitions were organised in the case at hand are "*definitely against the spirit of sport*".
109. The Panel deems that, if anything has to be blamed in the case at hand, it is rather the system put in place by FIS to organise competitions and not the Appellant for having "used" it for her own benefit.
110. In this connection, the Panel noted in the course of the evidentiary proceedings that close to 5000 FIS races take place per season all over the world. Therefore, in addition to the major competitions which are directly initiated by FIS and covered by the media, a considerable number of local races are organised every year. The Panel learned that it is common that some non-European national federations ask ski clubs or other national federations to organise races for them. Moreover, even in the situation where a race is organised specifically for the benefit of one athlete, as is the case at hand, this is in accordance with the rules and it has occurred before (e.g. the case of the Mexican skier Hubertus von Hohenlohe). These supplementary competitions are usually initiated by persons external to FIS, e.g. national federations. Thus, it seems that it is part of the DNA of the FIS race sanction system that these athletes/authorized sports bodies engage with potential race organisers and pay them to set up specific races. In contrast to most other competitions and sports, where approaching and/or paying organisers may create a suspicion of wrong-doing, in the present case, as the system is built around such possibilities, these simple facts can certainly not be an indication of wrongdoing, let alone conclusive evidence of corruption or illegal activity. The Panel wonders whether the FIS should consider exercising enhanced oversight over such races.
111. Furthermore and accordingly, the Respondent was well aware of the organisation of the Competitions, the labelling of the Competitions and the list of participants, in particular as it was published on the FIS website on 14 January 2014. As the FIS gave its *imprimatur* to the event and the way it was to be organized, it can hardly blame the Appellant for using the existing rules to her advantage. The particular sequence of events which led to the organisation of the Competitions should probably have raised some red flags, but it was for the Respondent to build some safeguards into the running of those "special" Competitions. Certainly, FIS had the authority to withhold its sanction for the event and to ask questions first, notwithstanding the limited timeline it was facing. By failing to do so, it had to rely on the local organisers and on the FIS-appointed Technical Delegate, Mr Fabio de Cassan. The latter confirmed at the hearing that he did not witness any irregularities and although the weather conditions were marginal, it was possible for the Competitions to take place, in

accordance with the rules. As the official FIS delegate, athletes were not only inclined to rely on his authority, but they were compelled to follow his direction.

112. Furthermore, the Panel underlines that except for an amount of EUR 6,055 which was paid by the Appellant to the local ski club for the organisation of the Competitions, which the Panel deems not unreasonable, it was not demonstrated that any money was given or promised to any other individual, be it a competitor or any of the people involved in the organisation.
113. In particular, there is no convincing evidence that X. received any financial compensation for taking part in the Competitions. The Panel would have liked to hear X.'s testimonies at the hearing, but she was unfortunately not called as a witness by the Respondent and therefore could not confirm or deny, the allegations made about her.
114. In view of the above case law and facts, the Panel concludes that there is no clear evidence of any manipulation by the Appellant, neither in the process of organising the Competitions, nor in the decision by the race officials to allow the Competitions to take place, although the weather conditions were marginal. Consequently, none of the types of manipulations set out in Article 3.2.1 passes the test of the factual analysis.
115. Apart from these organisational issues, the Respondent, in essence, submits that the Appellant breached the FIS BAC Rules by:
  - starting outside of the gate/wand on three occasions during the Competitions;
  - endorsing the instructions given to certain competitors to "ski slow", or ordering such an instruction through an intermediary;
  - endorsing the manipulation of the results lists, or ordering such an instruction through an intermediary, i.e. including non-participants as being shown as having taken part in some of the races.

*ii. Irregular starts*

116. The Respondent contends that the Appellant started irregularly at least in the second run of both competitions of Saturday (ref. 6998 and ref. 6999) and in the second run of the first Sunday competition (ref. 7000).
117. The Appellant denies having started any run/race outside of the starting gate, considering that she followed the starter's instruction and that, in any circumstances, the fact of starting outside the gate cannot be considered as result manipulation, but only as a breach of the competition rules.
118. During the hearing, the Panel heard extensive testimonies in this regard, the most relevant being the following:

J.

She testified having started two or three positions after the Appellant in the second run of the first race on Saturday (ref. 6998). When asked about the starting procedure of the Appellant on this particular run, J. stated that the Appellant started inside the starting gate, but that the starting wand was open when she set off, and that the starter closed and reopened the wand approximately five seconds after the Appellant's departure. When asked why it was written in her witness statement that she indicated that the Appellant started outside the gate, J. said

that it was a translation mistake and the Appellant started inside the gate. She also mentioned that the starter told someone near that the timing system was not working properly and that was why the timing was taken by hand.

E.

She remembered that she was told by J. that the Appellant did not start through the starting gate on Saturday, but she did not remember having noticed anything irregular, although she started after the Appellant. On the following day, she witnessed the Appellant's start of the second run of the first race on Sunday (ref. 7000). According to her, the Appellant started "*next to the starting gate*" and the wand had been left open from the previous competitor and closed and re-opened "*a few seconds after [the Appellant's] departure*". She mentioned that at the time of the Appellant's departure, she was standing five metres behind, and already mentally preparing for the run.

P.

She started both races on Saturday. In the second run of the first race (ref. 6998) and in the second run of the second race (ref. 6999), she started after the Appellant. She mentioned that in the second run of the first race the Appellant started outside of the starting gate and that the wand was triggered manually only when the Appellant was already at the second gate, whereas she could not remember for the second race.

119. The Respondent itself recognises that there are inconsistencies in the testimonies related to the Appellant's start in the second run of the race with reference 6998. While, as seen above, J. remembered that the Appellant started from within the starting gate, P. recalled that the Appellant started close to but outside the starting gate. E. referred to a start "*next to the starting gate*".
120. Furthermore, there is no evidence in the file demonstrating that any of the other competitors on that run, or any other person present at the starting area, noticed any irregular start.
121. As to the Appellant, she testified that she never started outside the starting gate. She recognized that she had told FIS that she may have opened the starting wand unintentionally but confirmed that she did not do anything wrong and that she always waited for the starter's instruction. The Panel would have liked to hear Mr Uros Sinkovec's testimony at the hearing, but he was not called by the Respondent as a witness and, although being called as a witness by the Appellant in her appeal brief, did not give any testimony and, therefore, could not confirm, or deny, the allegations made about the Appellant.
122. In view of the above, the Panel considers that there were some important inconsistencies in the above participants' testimonies. Indeed, these participants not only contradicted each other, but they also sometimes contradicted themselves, by modifying their position between the content of their witness statements and their oral testimonies. Furthermore, the absence of any testimony from a key witness such as the starter, Mr Sinkovec, increases the uncertainty of this situation. Therefore, the Panel is not comfortably satisfied that the Appellant committed any irregular start at the Competitions.
123. Consequently, it cannot be positively determined whether questionable actions on the field of play, which may have been contrary to the competition rules, constituted a manipulation of the race itself, or if evidence of manipulation planning and arrangements as alleged above was needed to qualify it as such. In any case, the charges of "*fixing*" and/ or "*contriving*" do not pass the test of factual analysis. In order for the Panel to conclude accordingly, facts would

have been required to establish a certain degree of planning, connections to other persons, prior arrangements, orchestration of meetings and events etc., which has not been proven by the Respondent. Furthermore, the Panel is not convinced that an irregular start could qualify as manipulation in terms of match fixing. This is a field of play matter, for the Technical Delegate to resolve.

iii. *Some participants were requested to “ski slowly”*

124. The Respondent considers that the Appellant also breached the FIS BAC Rules because some participants to the Competitions were requested, at one or several occasions, to ski slowly, allegedly in order to help the Appellant reach a better ranking, which would allow her to score the necessary FIS points to be eligible for the 2014 Olympic Games. According to the Respondent, the repeated instructions to the competitors of the Appellant to ski slowly cannot be justified by any valid reason relating to the sporting competition but had only one goal, namely to make sure that the Appellant would not lose too much time and could therefore make the necessary low FIS points. That is allegedly an obvious perversion of the goal of a sporting competition and constitutes another manipulation of the Competitions.
125. With regard to the alleged instructions to ski slowly, some of the participants gave oral evidence at the hearing, as follows:

J.

She remembered that this instruction was given to her before her start in the second run of the race on Saturday (ref. 6999), by the starter, Mr Uros Sinkovec. She mentioned that she was told to ski slowly because of the dangerous weather conditions and also to not make a bigger time difference. She also indicated that the starter told her to ski slowly in a neutral way but that she heard Mr Sinkovec half-shouting at a girl from his team after the race because she had skied too fast in that run. She also underlined that all this appeared to the athletes as a joke and not a serious competition.

E.

She testified that she was requested to ski slowly in the first run of the first race on Saturday. She did not remember whether it was the starter or anybody else who gave her this instruction. She mentioned that she was also instructed to ski slowly in the first race on Sunday, in order to allow the Appellant to qualify for the Olympics. She also confirmed that she was once told to ski slowly because of the weather conditions and that the Appellant never instructed anyone to ski slowly.

N.

She testified that another competitor, D. was instructed to ski slowly by the starter before the first run of the first race on Saturday. However, the latter did not instruct her to ski slowly in that particular run. After that first run, she was told by X. that she had been skiing too fast. She mentioned that she skied slower in the second race because of the weather conditions but also because she was embarrassed by what X. told her. In the second race on Saturday, she skied slowly because she did not care about the FIS points related to that race.

P.

She testified that she had been told once during the Competitions that she had to ski slowly because it was dangerous. She confirmed that she skied slowly only because of the weather conditions.

126. Considering these testimonies, the Panel concludes that some of the participants were actually told to ski slowly at least on one occasion during the Competitions. However, those testimonies do not allow the Panel to conclude that those instructions were given for the purpose to manipulate the results of the Competitions. There was no evidence to suggest the Appellant gave any instructions personally or through another person.

*iv. Manipulation of the results lists*

127. The Respondent contends that some participants were listed in the results lists of some of the races of the Competitions although they were not present or should have been disqualified. It considers that the mere fact that the results list does not correspond to the actual results is an error which may lead to the disqualification of the results of that competition. Furthermore, the listing of competitors has an immediate impact on the calculation of the FIS Points. According to the Respondent, the evidence shows that the results lists do not reflect what actually happened in the Competitions: N. was listed twice as ranked 4<sup>th</sup> although she was not present and K., A. and M. were listed as DNF (“did not finish”) although they did not start at all. All these “mistakes” had a favourable impact on the calculation of the Appellant’s FIS Points. They were not mere administrative errors but deliberate manipulations by those who were responsible for the correct course of the races, with the only goal of lowering the Appellant’s FIS Points.
128. The assessment of the evidence, in particular the examination of M., N. and E., leads the Panel to conclude that there were actually errors in the results lists.

M.

She testified at the hearing that she and her team mates Y. and A. had planned to compete in Krvavec and arrived there on 17 January 2014. However, because of the marginal skiing conditions caused by the bad weather, they decided to leave and not to participate in the races which were postponed to Saturday but to travel elsewhere for training and other competitions. She learned about the fact that she was included in the results lists of the Competitions immediately after the races through her coach, but she did not file any protest in this regard. Her coach and not herself might have picked up the racing numbers, but she could not exactly remember.

N.

She testified at the hearing that she had left Krvavec on 18 January 2014 and had not returned the following day. She confirmed that she did not take part in the Competitions in the races that were held on Sunday. She learned about her being listed in the results on Sunday evening, but did not contemplate to appeal against the results.

E.

She testified at the hearing that N. did not participate in the races of 19 January 2014. She also indicated that in the second run of the first race on Sunday (ref. 7000) when she was supposed to start right after N., nobody started in N.’s place and the starting wand was manually activated.



129. These particular testimonies, among other elements, demonstrate convincingly that the results lists of the Competitions contain some errors. However, a thorough analysis of the evidence before the Panel does not allow to conclude that these errors are the result of any manipulation by the organisers or the Appellant.

#### **H. Interim conclusion as to the decision of the FIS Hearing Panel**

130. In view of the above, the Panel considers that the Appellant did not breach any provision of the FIS BAC Rules, in particular its Article 3.2.
131. Bearing in mind its consideration of the burden of proof, the standard of proof and the assessment of evidence, the Panel is not comfortably satisfied that the Appellant fixed or contrived in any way or otherwise improperly influenced, or was a party to fix or contrive in any way or otherwise improperly influence, the result, progress, outcome, conduct or any other aspect of the Competitions (Art. 3.2.1 FIS BAC Rules).
132. The Respondent, who bears the burden of proof, has not been able to discharge such burden as it has not provided any convincing evidence of any action by the Appellant, or its entourage, to actually influence any of the organisers or any of the participants to the Competitions.
133. Furthermore, together with prior CAS Awards (CAS 2008/O/1483; CAS 2010/A/2090), the Panel agrees with the Respondent that field of play actions in breach of the applicable competition rules may constitute manipulation/corruption. However, in the case at hand, the Panel concludes that there is no evidence of any manipulation or corruption and that, therefore, the breach of any competition rules which may have occurred during the Competitions should be, or has been, dealt with in accordance with such rules, and not in application of the FIS BAC Rules.

#### **I. Interim conclusion as to the decision of the FIS Council**

134. In its appealed decision, the FIS Council determined that the results of the Competitions should be disqualified, in particular on the following grounds:

*At its Meeting in Oberhofen on 18<sup>th</sup> November 2014, the FIS Council acknowledged the decision of the FIS Hearing Panel of 6 November 2014 and communicated on 11 November 2014 and thereafter decided, in application of article 8.4 of the FIS Betting and other Anti-Corruption Violations Rules (2013) to cancel the results of all four giant slalom races that took place between 18<sup>th</sup> and 19<sup>th</sup> January 2014 at the Krvavec Ski area (SLO).*

135. As seen above, Article 8.4 FIS BAC Rules states in particular that if the FIS HP “*finds that two or more Participants combined to breach these Rules in connection with an International Competition, and so tainted the results of such International Competition, it shall refer the matter to the Council, which shall have discretion to disqualify the results, deduct points, or take such other remedial measure as it sees fit*”.
136. The Panel concluded in the previous section of this Award that it could not establish, on the basis of the evidence before it, any violation of the FIS BAC Rules in relation to the Competitions which could be attributed to the Appellant. The Panel further holds that the FIS HP Decision, albeit rendered in one ruling, contains six separate decisions in relation to each participant of which only the decision regarding Ms Vanakorn is under appeal. Consequently, the five other decisions have become final and binding.

137. Pursuant to Appendix 1 to the FIS BAC Rules, Definitions, Participant means all persons who are registered with or accredited by the FIS within and outside the confines of the competition area. Consequently, the chief of race, referee, starter, technical delegate and chief of timing are deemed to be Participants within the meaning of the FIS BAC Rules. The Panel, thus, holds Article 8.4 of the FIS BAC Rules is fulfilled and the FIS HP rightfully referred the matter to the FIS Council as all five mentioned officials were found to be in breach of these rules and thereby tainted the Competitions, irrespective of whether the Appellant could be found guilty of any wrongdoing.
138. With regard to the FIS Council's discretion to disqualify the results, deduct points or take such other remedial measures it sees fit, the Panel finds that, in light of the findings of the FIS HP in relation to the five officials, the FIS Council did not exceed the limits of such discretion it is vested with. The Panel indeed holds that the competition as a whole, notwithstanding that the Appellant herself is not guilty of any manipulation, is to that extent corrupted and defective that its results and qualification points gained therefrom shall not stand.
139. In view of the above, it is the Panel's conviction that the FIS Council Decision shall therefore stand and the Appellant's requests are dismissed in this respect.
140. Finally, the Panel notes that the IOC is not a party to the present procedure and that, therefore, the Panel is not in a position to notify it of the present award. Furthermore, the Appellant did not provide the Panel with any legal basis allowing the latter to order FIS to notify the decision to the IOC. The Appellant's request for relief in this regard shall, therefore, be dismissed.

## **J. Additional remarks**

141. The Parties have put forward further arguments, in particular with regard to the production of the timing tapes of the Competitions, the fact that no participant lodged any protest after the races, that none of the individuals, except for the Appellant, appealed against the sanctions imposed on them by SAS and FIS and as to the correct calculation of the FIS points which should have been granted to the Appellant.
142. Considering the above reasoning and the conclusions reached, the Panel considers that those arguments can be disregarded as being irrelevant.
143. In conducting its analysis, the Panel could not conclusively determine that there was manipulation, as other scenarios were equally plausible, because of the following variables: the weather conditions, the number of participants and, to a certain extent, the celebrity status of the Appellant the title of the event (Thailand national championships) which may have lacked credibility but was endorsed by the FIS and consequently may not have been taken entirely seriously by the officials from the outset.
144. In fact, it was obvious that the race exclusively served the purpose of allowing the Appellant to qualify for the Olympics at short notice. However, and perhaps surprisingly, the regulations permitted this (as also confirmed by the Respondent in its Post Hearing Brief).
145. The Appellant is a world famous musician. The officials and all participants perhaps allowed themselves to be "smitten" by this. In other words, there may have been a certain peer pressure prevailing to "favour the Appellant", i.e. allow her to qualify for the Olympics. Indeed, none of the officials challenged their sanctions. In any case, such a scenario cannot be excluded.
146. In addition, the Panel notes that the more irregularities on different levels (start, acts or omissions of officials, participants, starter- and result-lists etc.) that have been verified, the

less it seems to be evident that the Appellant was the main actor, let alone the master mind of these occurrences. In other words, if the Appellant were to induce or even orchestrate such irregularities as the Respondent alleges, then the indication of such influence must have been more apparent or obvious, evidence of which the Respondent failed to provide. The increased number of irregularities or unusual events rather also hint to a possible "peer pressure scenario" in which certain participants, voluntarily or involuntarily, favoured the Appellant.

## **XI. GENERAL CONCLUSION**

147. In light of the above, the Panel considers that no infringement of any specific provision of the FIS regulations could be demonstrated by the FIS against the Appellant. The FIS HP Decision shall therefore be annulled, insofar they concern the case of the Appellant, while the FIS Council Decision shall stand.
148. The Panel emphasizes that it fully supports the fight against match-fixing/result manipulation/corruption, which is a major threat to sport, and considers that such fight must be conducted relentlessly by the various sports bodies, at national and international level.
149. However, in the case at hand, there is no reliable and convincing evidence which links the Appellant herself to corruption for having intervened directly (or indirectly) in manipulating the results.
150. The way the organisation and the running of the Competitions were handled exposes itself to criticism. There are some doubts on certain sequences of events, which remain unclear, but for corruption to occur, there must be a deliberate circumvention of the law and illegal acts, which were not demonstrated by FIS to the comfortable satisfaction of the Panel in the case at hand.
151. The Panel therefore considers that the appeal filed by Ms Vanakorn against the FIS HP decision shall be upheld while the appeal against the FIS Council decision is dismissed.

## **XII. COSTS**

152. (...).

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## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed on 1 December 2014 by Vanessa Vanakorn against the decision rendered by the FIS Hearing Panel on 6 November 2014 is upheld (case with reference CAS 2014/A/3832).
2. The decision rendered by the FIS Hearing Panel on 6 November 2014 is annulled in relation to any finding concerning Vanessa Vanakorn.
3. The appeal filed on 1 December 2014 by Vanessa Vanakorn against the decision rendered by the FIS Council on 18 November 2014 is dismissed (case with reference CAS 2014/A/3833).
4. The decision rendered by the FIS Council on 18 November 2014 is confirmed.
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 19 June 2015

## **THE COURT OF ARBITRATION FOR SPORT**

Prof Dr Martin **Schimke**  
President of the Panel

Mr Patrice **Brunet**  
Arbitrator

Mr Mark **Hovell**  
Arbitrator

Mr Serge **Vittoz**  
*Ad hoc* Clerk