



WDSF Disciplinary Council

Final Decision
as of
30 November 2020

regarding

Appeal

submitted by

Estonian Dance Sport Association (EDSA), Tallinn, Estonia

represented by Yvan Henzer, Libra Law SA, Lausanne, Switzerland
Email: info@libra-law.ch

- **the Appellant** -

vs

World DanceSport Federation (WDSF), Lausanne, Switzerland

represented by Marc F. Schaefer, acting WDSF Vice President for Legal Affairs
Email: marc-frederic.schaefer@wdsf.org

- **the Appellee** -

against

**The Decision issued on 15 February 2020
by the WDSF Presidium
downgrading the membership of EDSA from
full member to provisional member, with immediate effect**



The appointed Chamber in Charge of the WDSF Disciplinary Council, consisting of the members Erich Staeldi (Chairman, Switzerland), Dr. Antun Marki (Croatia) and Lars Wallin (Sweden) comes to the following decision **which was taken unanimously**:

1. The decision issued on 15 February 2020 (the "Decision") by the WDSF Presidium downgrading the membership of EDSA from full member to provisional member, with immediate effect (hereinafter "the Decision") **is declared null and void**.
2. EDSA regains its status as a **Full Member** of the WDSF with immediate effect.
3. All rulings, restrictions and actions imposed by the WDSF Presidium against and on EDSA and against and on members and/or officials of EDSA based on the Decision are cancelled and lifted with immediate effect.
4. The fact that EDSA's membership and its membership rights with the WDSF were limited between 15 February 2020 and 30 November 2020 has to result in an appropriate reduction of the respective membership fee. The respective amount can be offset with EDSA's membership fee for 2021.
5. The WDSF Presidium is requested to inform the Estonian National Olympic Committee in writing that EDSA has been and is continuing to be its only member in Estonia. The respective letter has to be co-signed with the president of EDSA.
6. The advance payment of CHF 200.00 which was transferred by EDSA on 10 June 2020 has to be reimbursed. No further costs are levied.
7. The WDSF Presidium is asked not to further interfere in EDSA's internal affairs
8. This decision is binding and final for the parties without the possibility of a further appeal according to Art. 6 of the WDSF Statutes and Art. 7.12.5 of the WDSF Internal Dispute Resolution Code.

The above decisions have been taken based on the following considerations:



1. Procedural

On 8 April 2020 the President of the WDSF Disciplinary Council received a formal Appeal Brief by the Estonian Dance Sport Association (EDSA) submitted by its legal representative Mr. Yvan Henzer, Libra Law S.A. in Lausanne. The Appeal is addressing a decision taken by the WDSF Presidium on 15 February 2020 against the Estonian Dance Sport Association ("the Decision") resulting in a downgrading of EDSA's membership with the WDSF from a Full Member according to Art. 4.1 of the WDSF Statutes¹ to a Provisional Member according to Art. 4.3 of the WDSF Statutes.

The Appellant being a WDSF Member body and being directly affected by the Decision meets the required qualifications and conditions outlined in the WDSF Internal Dispute Resolution Code² (Art. 7.5.1 and Art. 7.6.3) to file an Appeal.

The power of Libra Law SA. to represent the Estonian Dancesport Association is given due to the Power of Attorney dated as of 24 March 2020.

According to Art. 7.8.1 of the WDSF Internal Dispute Resolution Code, an Appeal against a decision of the WDSF Presidium must be made within a time limit of four weeks after the date on which the decision was transmitted. The WDSF Statutes however foresee a time limit of two months to file an Appeal against the decision to suspend some or all of the membership privileges of any Member (Art. 14.1.c and Art. 14.2 of the WDSF Statutes). As the subject of the current Appeal is covered by Art. 14.1.c of the WDSF Statutes, the time limit of 2 months is applicable to file a valid Appeal. This time limit has been respected by filing the Appeal on 8 April 2020.

Before an Appeal may be considered an advance payment of CHF 200.00 must be transferred by the Appellant to the account of the WDSF in favor of the WDSF Disciplinary Council. Such payment was received by the WDSF on 10 June 2020.

Based on the above considerations all formal conditions have been met by the Appellant to file a valid Appeal.

On 26 May 2020 the following members of the WDSF Disciplinary Council have been appointed by the WDSF DC President to act as Chamber in Charge for this Appeal:

- **Erich Staeldi, Chairman** **Switzerland**
- **Dr. Antun Marki** **Croatia**
- **Lars Wallin** **Sweden**

No reservations against the appointed members of the Chamber in Charge were raised by the parties to this Appeal.

¹ WDSF Statutes, Version as of 9 June 2019

² WDSF Internal Dispute Resolution Code, Version 1.1, as of 12 June 2017



2. Background of Facts

The Background of Facts is made by the summary of the main relevant facts, as established on the basis of the parties' written submissions.

Jim Fraser, Member of the Legal Commission and former WDSF Vice President for Legal Affairs outlined³ that WDSF had received information that a number of constituent clubs of EDSA would have been created with no other purpose except to provide additional votes for some persons at the EDSA general meeting. The allegations, according to these information, are that these clubs were in fact "fake clubs". The Legal Commission under the lead of Jim Fraser sent a letter to EDSA asking them to provide WDSF with all the information on the subject of the accusations and requested the member body to adjourn their next general meeting, which was about to occur, and at which elections were scheduled to take place. Jim Fraser informed the participants of the WDSF Presidium Meeting of 15 and 16 February 2020, that *"a reply was received by the then-president of EDSA, Ms. Aune Past, in which she admitted and fully confirmed the existence of such "fake clubs". According to Ms. Aune Past the problem created by these "fake clubs" could only be solved by changing the bylaws of EDSA, but that such action would require approval at the general meeting, at which the "fake clubs" could vote."*

Based on the documents provided by the acting Vice President for Legal Affairs, Marc F. Schaefer the information given to the participants of the WDSF Presidium Meeting of 15 and 16 February 2020 by Jim Fraser is not true and accurate in all aspects. In an email dated 9 December 2019 sent to Nenad Jeffic, Aune Past wrote regarding the existence of "fake clubs" (she is using the term "pseudo clubs"): *"It is difficult to find pseudo clubs, we try hard"*. In a letter dated 17 December 2019 Aune Past writes the following regarding the topic of "pseudo clubs": *"It is very difficult to prove if a club is so called pseudo club. We can only find, if some of members have not fulfilled all the membership requirements."* In a further letter to the Vice-President for Sport dated 20 December 2019 Aune Post is writing: *"We started an investigation to find out if a significant number of our athletes may have registered their own clubs, with voting rights in our association, but in fact those clubs would have few or no athletes and further that the athletes referred to are training not under the new clubs or club. Such clubs hereinafter referred to as "Pseudo-Clubs". It is very difficult to prove, if it is juridically ok"*. In Aune Past's letter to Nenad Jeffic dated 3 February 2020, she is citing a sentence she had received from Nenad Jeffic earlier: *"Our communications to you were very clear and unmistakable, and this is not a complicated problem. Considering our comments in December, your Board or your General Meeting should have solved this problem by now by dissolving pseudo-clubs and creating a fundamentally democratic system in EDSA"*. Aune Past replies to this demand: *"The problem of so-called pseudo-clubs is not easy to solve. Juridically they all are OK. The board voted that by the opinion of most board members we can call some of our member clubs pseudo clubs."*

All these statements made by Aune Past were very vague if such clubs existed and can clearly not be summarized by *"A reply was received by the then-president of EDSA, Ms. Aune Past, in which she admitted and fully confirmed the existence of such "fake clubs"* as Jim Fraser informed the participants of the WDSF Presidium Meeting of 15 and 16 February 2020.

³ e.g. as published in the Minutes of the WDSF Presidium Meeting, Belgrade, 15 and 16 February 2020, Agenda Item 9.2, WDSF Exhibit No. 9



The remark of Nenad Jeftic as cited by Aune Past in her letter dated 3 February 2020 and the statement Aune Past wrote in her letter dated 17 December 2019 to Nenad Jeftic "*Hereby I declare, that EDSA and the board of EDSA is willing to help WDSF to conduct the investigation on find the answers.*" give reason to believe that EDSA is rather in the role of answering questions to an investigation initiated by the WDSF Presidium and not addressing the WDSF Presidium and asking for support needed due to internal problems in Estonia.

As "proof" for the existence of "fake-clubs" within EDSA, the Appellee submitted a document⁴ which is called "Report" but which in fact is not more than a ½ page email sent by Sergey Belyaev, the chair of the WDSF Adjudicators Qualifications Classification Committee, to Jim Fraser consisting of 5 bullet points with nothing more than allegations. He sent a further email on 29 December 2019 to Jim Fraser, Tony Tilenni, Nenad Jeftic, Maris Vainovskis and Guillaume Felli elaborating in more detail what he already wrote earlier, but both emails and the allegations therein are not supported by any evidence.

It is difficult to understand for the Chamber in Charge how such a document can be qualified as "proof" and submitted as a justification for the actions taken.

Let's however assume that there was evidence that so-called "pseudo-clubs" existed in Estonia, for which the Chamber in Charge has not seen any proof not even indications beyond one-sided claims and allegations.

The member federations of the WDSF have always been independent federations with regard to the way they are organized, on how they are structured and operated. We can see a variety of structures and a variety of possibilities how the democratic rights of the members of the member federations are executed.

EDSA is a WDSF Member Federation organized and structured under the laws of Estonia and EDSA is a full member of the Estonian Olympic Committee. The way how EDSA is organized is an internal national affair. It is also its own internal, national business who the members of EDSA are electing as its president or board member. Whether these individuals are the ones the WDSF Presidium would have preferred or not cannot influence the way EDSA is treated as a member of the WDSF. The minutes of EDSA's General Meeting dated 05.02.2020⁵ show that out of the 37 members of EDSA, 22 were present (either in person or with proxy). All results of the votings have been unanimously with 22 : 0, with one exception where the result was 20 in favor with 2 abstentions. Also the agenda item to call back Aune Past as Chairman and Eve End and Annika Kuimet as members of the board was decided, unanimously 22 : 0. To argue that this result was only possible because the members were influenced is not very convincing.

Was this general meeting conducted in compliance with all applicable Estonian laws and EDSA internal rules & regulations? The Chamber in Charge cannot confirm that, but it also has no indications for the opposite and based on the submitted documents also the WDSF Presidium could not get a different view.

But even if there were rumors and/or indications for some irregularities the Chamber in Charge take the view that it is foremost an Estonian Affair and that it is the duty of the

⁴ WDSF Exhibit No. 1 - Report of Sergey Belyaev of 1 December 2019

⁵ EDSA Exhibit No 4



affected national members of EDSA to take legal actions within Estonia to address such irregularities, if any.

3. Conclusions by the Chamber in Charge

As stated above the Chamber in Charge has not seen the slightest evidence that irregularities had occurred within EDSA which would require the WDSF Presidium to downgrade EDSA's membership from Full Member to Provisional Member. At the same time the WDSF Presidium has not been able to explain what potential harm could result for the WDSF from EDSA's activities which would require such a measure.

Whether the downgrading from Full Member to Provisional Member is a pure administrative action or whether it is a sanction is for the Chamber in Charge not that important. Clear however is the fact that such an action must be based on clear grounds and evidence and not purely based on rumors and allegations.

The downgrading to Provisional Membership had further consequences. According to a letter sent by Nenad Jetic as chair of the Membership Commission on 15 February 2020 EDSA was informed that "*the WDSF Presidium **Orders** that the WDSF VP for Sports must approve or disapprove any nomination*". But already before the downgrading took place, representatives of the WDSF apparently had a meeting with the Estonian Olympic Committee (together with the former EDSA President Aune Past) to prediscuss the possibilities of a new Estonian Member⁶ without informing EDSA. The Chamber in Charge finds this approach outrageous and unacceptable.

While the acting Vice President for Legal Affairs, Marc F. Schaefer is right by stating that Art. 72 of the Swiss Civil Code is permitting that the statutes of an association or a federation may permit the expulsion of a member without stating the reasons, he should be aware of the fact that this must be mentioned explicitly in the respective statutes and that this is exactly not the case with the WDSF Statutes, but that Art. 14.1.e is stating that a member can only be expelled for important reasons of which some of these reasons are listed in Art. 14.1.e. It is indeed hard to believe that a (so far only appointed) member of the WDSF Presidium is sincerely making the statement that the WDSF Presidium can cancel the membership rights of a member without any reasons. Remarkable about this statement is, that arbitrariness is used to ensure democratic principles. What a strange interpretation of law is this?

It is furthermore unacceptable that the question raised by EDSA what would be expected from EDSA in order to regain Full Membership again is answered by "*we are still clarifying the situation, so that we are not yet able to name concrete steps to return to a full membership*"⁷. One would assume that the downgrading of the membership is an action the WDSF Presidium is taking after it had analyzed the situation, after clear issues had been identified which are affecting the relationship between the WDSF and the Member Federation based on the Statutes or other relevant rules and regulations and after the respective member had been asked to take appropriate corrective measures and not during the process of ongoing investigations.

⁶ Letter dated 15.02.2020 by EDSA General Secretary to the WDSF Presidium, EDSA Exhibit No. 6

⁷ Letter sent by the WDSF General Secretary to EDSA Secretary General, dated 10 March 2020, EDSA Exhibit No. 8



Withdrawing the membership rights of a Member Federation and put it under a form a guardianship is a severe action and cannot be done simply based on rumors, allegations and personal interests.

Also unclear for the Chamber in Charge remains the role of the Membership Commission under the lead of Nenad Jeffic. Based on the documents submitted, the Chamber in Charge has to qualify the Membership Commissions actions as the ones of an investigation authority, requesting detailed information from a Member Federation which is requested to provide information and evidence in order it can proof that it can remain a member of the WDSF.

According to WDSF's Homepage the purpose of the Membership Commission is

- to promote new membership in all parts of the World
- to recruit and recommend new WDSF Member Federations
- to operate as WDSF Advisory Service which assists Member Federations to communicate with WDSF
- to provide an introduction and methodical, systematic support to new Member Federations for at least two years, after they have been admitted to membership in WDSF, in order to help them to integrate quickly and effectively into WDSF and succeed as DanceSport federation.
- To promote and develop DanceSport in these new Member Federations with direct help, like videos, trainers, information etc.

The Chamber in Charge does not see any of these purposes in alignment with the task of a prosecutor requesting the Member Federations to justify and defend their actions and organizations.

The Chamber in Charge takes the view that its decisions are hereby substantiated in detail.

WDSF Disciplinary Council

Chamber in Charge

Erich Staeldi, Chairman

Dr. Antun Marki

Lars Wallin

Personal remark by the Chairman

My sincerest apologies are expressed for the long time which was needed to close this open case. The reason for this delay is to be found in ongoing and severe health problems I suffered during the past months, which prevented me to drive this case forward in a way this case would have deserved.