

FAI International Appeals Tribunal (January 2015)

Report and Decision

This International Appeals Tribunal was appointed by the FAI Air Sports General Commission (CASI) on the 1st of December 2014, in accordance with FAI Sporting Code General Section Chapter 9, to decide on an appeal filed by France against decisions made by the International Jury of the 2014 World Parachuting Championships in Freefall Style and Accuracy Landing at Banja Luka, Bosnia Herzegovina 18-24 August 2014.

Tribunal Members:

- Eilif Ness (NOR), chair
- Srecko Medven (SLO)
- Ivo Mazzola (SUI)

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The findings and remarks of the International Appeals Tribunal (IAT) have been inserted into the original Appeal text as separate paragraphs, as appropriate.

APPEAL PROCESS

The work of the Tribunal has been carried out in the following steps:

1. The Tribunal's Chair, Eilif Ness, established e-mail contact with the other two Tribunal members and informed them by sending them, on December 1, 2014, the full text of the French appeal and its annexes, as well as the full text of the FAI IAT Manual, inviting their immediate comments and suggestions. It was agreed that the Chair should be appointed secretary to the Tribunal. The Appellant was contacted to obtain a readable image of exhibit 4 of the Annexes.
2. Next, contact was made with the Jury president, the Danish Aero Club, Pia Berggren (Chair, IPC Judging subcommittee), and the Chief Judge at Banja Luka 2014, Ulf Tingnert, and their comments were solicited.
3. On the 18th of December 2014 the IAT called a hearing, scheduled for 17 January 2015 at FAI Headquarters in Lausanne. Attached to the call were four documents: Statements filed by the Jury president, information in respect of the PPP Training Tutorial and a statement by the Danish Aero Club. The relevant parties were invited to submit any additional written material in support of their positions, at the latest on 5 January 2015.
4. By 5 January additional material had been submitted by the Jury president, by the Appellant, by Pia Berggren and by Chief Judge Ulf Tingnert. By 7 January, all this material was distributed to the relevant parties. After examining the new input, the IAT found that there was sufficient supporting material at hand for the IAT to decide on the Appeal without a physical hearing.
5. At this point, the IAT found that the following entities/persons were to be considered as relevant parties to the appeal case:
 - the Appellant,
 - the Banja Luka 2014 Jury president Richard "Buzz" Bennett
 - the Banja Luka 2014 Chief Judge Ulf Tingnert.
6. The IAT informed the relevant parties about this, suggesting that the process proceed on the basis of submitted documents and statements, without a physical hearing. By 10 January, the Appellant and the Jury president had agreed to the IAT finalising its Appeal decision on the basis of the material at hand. No objections were received.
7. The IAT then established a List of Facts as of 10 January 2015, which was distributed it to the relevant parties. Concomitant with the issuing of this list, each relevant party was invited to, if they so desired, to object to any of the facts presented and to suggest corrections. A deadline for such input - in writing (electronically) - was set at at 1200 hrs CET on 17 January 2015.
8. By 17 January, three new submissions were received by the IAT: from France, from Chief Judge Ulf Tingnert and from the Jury President. These inputs were then added to the List of Facts, and the revised list distributed to the relevant parties with the information that the process of establishing the facts of the case was closed, and that the revised list was declared the only basis for the IAT's deliberations and decision.

LIST OF FACTS

As described in the preceding paragraph, a list of Facts was produced and distributed on 10 January by the IAT, in conformity with the requirements of the FAI International Appeals Tribunal Manual of October 2014.

Rules:

- IPC Competition Rules for Freefall Style and Accuracy Landing 2014
- FAI Sporting Code Section 5, 2014
- FAI Sporting Code General Section, 2014

Documents:

- Appeal from France
- Appeal from France, Annexes
- Denmark's statement on the Banja Luka Team Leader
- Info on the PPP Training Tutorial
- Jury president's notes from meeting no. 3, Banja Luka
- Statement from the Jury president 7-12-14
- Statement by the Jury President 28-12-14
- Statement 3 from the Jury president
- Statement 4 from the Jury president
- Statement from John Hitchen
- Statement from Pia Berggren 28 Dec 14 (Chair, IPC Judging subcommittee)
- Statement from Chief Judge Ulf Tingnert
- Attestation Michel Jara
- France second statement

Total 14 documents.

By the time limit of 1200 CET 17 January 2015, three additional submissions were received by the IAT:

- France third statement (15-01-2015)
- Statement by the Jury President 17-01-2015
- Statement 2 (with annexes) by Chief Judge Ulf Tingnert (16-01-2015)

These items were added to the List of Facts, to a total 17 documents. The three new submissions had also been sent directly from the authors to the relevant parties, except for the French third statement which was distributed by the IAT Chair.

The IAT then issued a corrected List of Facts, on which the IAT based its decisions.

The full text of the French Appeal follows below. An initial synopsis by the IAT is inserted before part 3 of the Appeal. The findings and comments of the International Appeals Tribunal (IAT) have been inserted into the original text as separate paragraphs, as appropriate.

THE FRENCH APPEAL

1. INTRODUCTION

The French Parachute Federation, representing parachuting within the CNFAS who owns sporting rights for France, in accordance with paragraph 9.1 of the Sporting Code General Section hereby appeals a decision taken by the International Jury following a Protest at the 33rd FAI World Freefall Style and Accuracy Landing Championships held in Banja Luka, Bosnia-Herzegovina from August 18th to 22nd, 2014.

2. FACTS

On August 18th, Mr. Jiri Blaska, acting as a simple parachutist, made a protest regarding the judging method used by the judges of the Accuracy Landing event (exhibit 1).

The decision of the Jury regarding the protest was to disregard all jumps made up to that point in time and to restart the competition (exhibit 2). The first full round of the female Accuracy Landing event was consequently cancelled and the first round of junior Accuracy Landing was not finished.

On August 21st, the Chinese and Polish Team Leaders filed a protest (exhibit 3) against this Jury decision.

The Jury decision regarding this protest was to deny it; the rule cited by the plaintiffs had no application to the August 18th protest (exhibit 4).

IAT SYNOPSIS OF THE FRENCH APPEAL:

The French Appeal and subsequent additional statements from the Appellant raises five issues in respect of the Jury's handling of the Danish protest:

- I. The validity of the protest on the basis that the person who filed the protest was representing himself, not the Danish team, and/or formalities of signature and procedure.*
- II. The interpretation of IPC Competition rule no. 6.1.1.1, based on the evidence of a web-based tutorial for judging accuracy landing, on an e-mail exchange with Pia Berggren, chair of the IPC Judging subcommittee, and on subsequent statements and documentation from the Chief Judge Ulf Tingnert.*
- III. The actual methods practiced in judging accuracy landing, citing long established practices.*
- IV. The competence and credibility of the Jury, citing procedural irregularities and faulty rules interpretations.*
- V. The cancelling of the scores of the jumps made up to that point and the restarting of the competition, citing that the Jury had other options, which could have been applied with less far reaching consequences.*

Reviewing these five issues, the Tribunal finds Issue No. II, supported by Issue No. III, to be the core issue of the appeal, as it concerns the interpretation of competition rules, thus being a sporting matter of primary importance, which, regardless of whether the IAT finds in favour or against the appeal, will require measures to be taken by the IPC.

Issues No. I, IV and V are, while important in their own right, of a more formal, administrative character, to be dealt with separately from the decision on Issue No. II.

Full text of points 3 and 4 of the French Appeal:

3. REASON FOR THE APPEAL TO THE FAI

A. PROCEDURAL IRREGULARITIES

1) The FFP considers that the protest made by Mr Jiri Blaska was not valid and should not have been accepted by the Jury for the reason that in accordance with GS 5.4.2, only a competitor or a Team Leader may make a protest.

- *IAT finding: The Danish NAC states that Mr. Jiri Blaska served as both Team Leader and Team Coach for the Danish male accuracy team (who had no designated Team Captain) and the one female competitor to the WPC in Banja Luka 2014. The IAT finds that a statement by the FAI Member must override the formalities of form and nominal position, and that consequently Mr. Blaska had the requisite authority to file protests, and that his signature was valid for the signature requirements of the rule. (Note: GS 5.4.2 specifies no signature requirements, but rule SC 5, 5.3.1(1) does).*

2) The jury document (exhibit 1) that was posted on the Notice Board (SC5 5.2.5) of the competition together with the Jury decision is not the same as that produced by the President of the jury (exhibit 5). This latter document has the mention "Danish Team Leader/Coach added by an unknown hand, definitely not that of Mr Jiri Blaska.

- *IAT finding: The document posted was the same as exhibit 5 except for the addition of the words "Team Leader/Coach" which was added by the Jury president's hand to reflect the protestor's authority. The IAT finds this to be within the powers of the Jury president and that consequently it does not constitute an irregularity.*

3) The Jury decision to disregard the jumps in question was protested by the Chinese and Polish Team Leaders (exhibit 3). Can a Jury accept and handle a protest that is against one of its decisions without being both judge and jury? More importantly, SC5 4.7.4 states "decisions made by the Jury are final, without prejudice to the provisions of Chapter 9 of the GS of the Sporting Code" and consequently, the FFP considers that the Jury should not have accepted this jointly signed Protest at all.

However, they could have encouraged the Plaintiffs to exercise their right to appeal. This procedural irregularity proves that the Jury went beyond their duty and does not respect GS 3.9.1 whereby rules may not be changed after they have been approved by the ASC, which is the case of SC5 4.7.4.

- *IAT remarks: the Chinese/Polish protest claimed that SC 5, 5.3.1(5) should have been applied instead of CR 6.1.1.1. The Jury decided, in their decision No. 4, that the Danish protest as well as its own decision at Meeting No. 3 did not concern SC 5, 5.3.1(5), and the Jury therefore denied the protest.*
- *The IAT finds that the Jury decision on this protest was correct, SC 5, 4.7.4 notwithstanding, as the Chinese/Polish protest was a question of whether the correct rule had been applied by the Jury in reaching its decision No. 3, not Jury decision No. 3 itself. The IAT also finds that Jury decision No. 4 was correct.*
- *The IAT remarks that proper follow up of this protest should have been done subsequent to its denial by the Jury, in that one or more of the joint protestors (China/Poland) could have appealed the decision to FAI (which none of them did).*

4) The Chinese/Polish Protest gave several arguments in their protest (exhibit 3) as to why the Jiri Blaska protest should not have been received by the Jury but only one was responded to. Why?

- *IAT remark: This is explained by IAT's findings on 3) above.*

5) In this response, the Jury claims that the Jiri Blaska protest did not concern the evaluation of a jump or a score given by the judges (5C5 5.3.1 (5) but the way in which the judges determined the score. To decide that the way in which the score was determined was not in line with CR 6.1.1.1 is ipso facto to question the score itself which, in any case, is given by an electronic device.

- *the IAT considers this a bridging argument and rejects it. See finding on 3) above.*

The FFP considers that the facts considered contain too many approximations and that the procedural irregularities which concern the way the protests were handled show that the Jury acted irresponsibly both by their interpretation of CR 6.1.1.1 and the non- respect of GS 3.9.1. The decision taken penalises the competitors and not those who are accused of not doing their job properly.

- *The IAT considers this a polemic statement, and maintains its findings concerning the Jury decisions.*

B. BACKGROUND AND FORM

It has to be noted that the reproach formulated by Mr. Blaska in his protest was initially brought up during the Team Leader meeting held prior to the start of the competition. Paragraph 6.1.1.1 of the Competition Rules for Freefall Style and Accuracy Landing establishes that "Three judges at or near the target will indicate and determine by simple majority if the first point of contact of landing is on the AMD". Mr. Blaska declared that the term "indicate" implies a physical sign (i.e. movement of an arm) and he criticised the judges observed during the training jumps for not respecting this point. In his protest, he mentions the presence of a 4th judge, there is no mention of a 4th judge in the rules and none was present in the landing area at the competition in Banja Luka

While one can regret that the Chief Judge did not, during this meeting, sufficiently explain the judging procedure, it should be noted that the judges on site were surprised by this attack considering that they had been judging in the same manner for some time. The President of the IPC Judges Committee (Mrs. Pia Berggren) has confirmed this in a recent correspondence (*piece N°11 email doc.1*) in which she indicates that the judging method had been in place for about 10 years and exhibit 6 clearly shows how judges are trained and what is expected of them. This document is an extract from the Tutorial available on the FAI web site and is accessible by all. This document totally invalidates the interpretation made by the Jury regarding the need for a sign to satisfy CR 6.1.1.1.

- *IAT finding: Exhibit 6 (Power Point Presentation of a Training Tutorial) was removed from FAI web site some months ago. According to new evidence supplied by France, the PPP Training Tutorial existed on the Web on 27 August 2014.*
- *IAT finding: in Pia Berggren's statement to the IAT, she makes it clear that the Tutorial was never an official FAI approved tutorial, but an item under development. Consequently, it cannot be considered as a standard for judging in FAI-IPC accuracy landing competitions.*

The Chief judge, during his audition, confirmed that if there was no discussion regarding where the competitor landed then, in line with the above-mentioned method, no sign or indication was made by the judges. Can one conclude, that all the previous competitions (of which the 2012 Mondial in Dubai and the 2013 World Cup in Cheboksary) are invalid and should have been cancelled?

- *IAT remarks: the practices applied by the judges at the landing target during training jumps, caused comments at the Team Leader's briefing before the start of the competition. It was pointed out that those practices were not in line with the text of CR 6.1.1.1. This indicates that the Chief Judge chose to judge the event in a manner that he knew might raise protest. He could have avoided the protest by taking the comments into account when the competition started, but chose not to do so.*

The FFP considers therefore that the interpretation given by the Jury of article 6.1.1.1 following the protest by Mr. Jiri Blaska, was not theirs to make; that the word "indicate" does not imply an ostentatious sign unless, in accordance with the method, there is an issue with the landing and that consequently, it is clearly the score given by the judges that is being questioned and that this is contrary to paragraph 5.3.1 (5) of SC5.

- *IAT remarks: This point highlights the core issue of the matter: the interpretation of the word "indicate" in rule CR 6.1.1.1. While Exhibit 6 must be disregarded as not being an official document (see finding above), it remains a strong indication that actual judging practices deviate from the written text.*
- *IAT finding: The word "indicate" logically implies some form of visual sign. The various statements made by judges, insist that "no sign" is a sign in itself. The IAT finds that the obvious lack of positive signals between the judges makes communication unreliable and liable to cause misunderstandings, which is untenable in the context of rules.*
- *It appears, however, that the interpretation "no sign is a sign itself" has been allowed to develop and persist. References to numerous occasions in the past, where judging practices have deviated from the written rule, do not constitute reason for continued erroneous practices.*
- *IAT finding: The statements filed by the Jury President and by Jury member and IPC Style and Accuracy Subcommittee member John Hitchen make it clear both that the PPP Training Tutorial and the judging practice during the training jumps and the first part of Round 1 (women) did not conform to CR 6.1.1.1, and that this was made clear to, and known by, all concerned before the competition started.*

The FFP noted that the Jury members made no attempt to investigate the Judging method with either the IPC judges Committee or the Freefall Style and Accuracy Committee even though the means of communication for them to do this were available in Banja Luka. Such an action would have enabled them to obtain a correct and official interpretation of the rule.

- *IAT remark: In view of the findings above, the matter was clear to the Jury, and there was no need to investigate and/or confirm the judging method.*

4. THE CONSEQUENCES

The complete cancellation of the first round of female accuracy landing totally altered the outcome of the competition, which no longer reflected the real performance of the competitors during these World Championships. As is often the case with such a decision, there are winners and there are losers. The jury decision gave an advantage to the competitors who had a bad performance in the first round and a disadvantage to those that did well. Consequently even though not one of them had contested their score, it is the competitors who have suffered from a decision that was meant to sanction the supposed incorrect performance of the judges. For the FFP, this decision is not only unjust but it is an example of unsporting behaviour for which the Jury cannot possibly have measured all the consequences.

- *IAT remark: When Jury made their decision no. 3, they had no knowledge of any competitor scores up to that time. The argument about the decision's effect on final scores is circular – it would work equally both ways.*

Regardless of whether the jury should have accepted the protest or not, other possible solutions could have been found:

- After obtaining the acceptance of all the team leaders since none of the competitors had questioned either their score or the judging method, ask the judges to judge the second round in a different manner;
- ask the competitors if, in spite of the supposed anomaly in the judging method, they accepted their score for the first round and give a rejump only to those who complained (as is the case when there is sudden wind at the target area);
- and probably others, less radical.
- *IAT finding: SC5, 4.7.2.1 states: "It is the responsibility of the Jury to ensure that the provisions of the General Section and Section 5 of the FAI Sporting Code, the Competition Rules, the Official Information Bulletins and the Organiser Agreement are strictly observed."*

Once the Jury concluded that none of the competition jump scores were determined in accordance with the CR 6.1.1.1, it followed that the Competition Rules had not been strictly observed. Thus, all jumps made were invalid because there was no means of ascertaining if the score given was correct or not, as such score had not been determined by following the procedure required by CR 6.1.1.1. The Jury determined that these scores should be stricken from the record, requiring the event to be restarted.

To simply instruct the Judges to adopt the correct procedure from that point on would amount to admitting that the correct procedure was not being used to that point and the Jury would be in violation of its basic responsibility per SC5, 4.7.2.1.

This would allow other Team Leaders to file valid protests on the grounds that jumps were being done and scores were not being determined in accordance with the procedure required by CR 6.1.1.1, as already determined by the Jury.

The IAT finds that re-starting the competition was the Jury's only option under the circumstances.

5. REQUEST OF THE FFP

In this appeal, the FFP requests that:

- 1) a. The jury decision be revoked as the protests should not have been received by them, coming from a person not eligible to make a protest.
 - ***The IAT denies this appeal, as it has been determined that the person was duly authorised by the FAI Member for Denmark.***
- 1) b. Once accepted, should not have been granted since the judging method used by the judges performing in Bantja Luka was strictly in line with the judging method taught to IPC Judges as demonstrated in the WPC judges Tutorial.
 - ***The IAT denies this appeal as invalid, being based on the "WPC Judges Tutorial" which was not an official FAI document, and because the judging procedures illustrated in the Tutorial deviate substantially from the IPC's CR, in particular CR 6.1.1.1.***

2) The cancelled first round of Female Accuracy Landing be reintegrated into the results of the FAI World Accuracy Landing Championships (female event) and that the results and ranking be adjusted accordingly. Tie break jumps no longer being possible, ties should be ranked according to the competition rules.

- ***The IAT denies this appeal, as it finds that the Jury’s decision to cancel all scores made up to that point, and to re-start the competition, was justified.***

3) Deborah Ferrand be awarded a Gold Medal and the French Female Team be awarded the Bronze Medal. These athletes have been unjustly penalised for a fault that was not their own. Attached are the official results (exhibit 7) together with the results as they should have been with the first complete round reintegrated (done by PA[PC Judge Bob King using his Accuracy Landing software) for individuals (exhibit 8) and teams (exhibit 9).

- ***The IAT denies this appeal, as it finds that the Jury’s decision to cancel all scores made up to that point and to re-start the competition was justified.***

CLOSING REMARKS

Referring to the IAT synopsis of the French Appeal as presented on page 4 above, after having duly considered all submitted material, the IAT finds that the essence of the case is that a certain judging practice, which deviates from what the IAT finds is a logical interpretation of rule CR 6.1.1.1 has been allowed to develop and persist.

References to the numerous previous occasions where this has occurred are irrelevant in this context, and do not justify continuation of such practices.

The IAT finds deviating interpretations to be untenable in the context of rules because of the risk that their continued widespread use may, over time, result in lowered respect for the written rules. The situation can only be resolved by eliminating its cause: Either the practice must cease, or the rule must be adjusted to eliminate the possibility of erroneous interpretation.

The other elements of the Appeal, as set out in the IAT synopsis as formal, administrative issues, have been duly considered by the IAT, which finds that none of the formal objections are of such a nature that they invalidate dealing with the core issue as described above.

20th of January 2015.

Eilif Ness (sign.)

Srecko Meven (sign.)

Ivo Mazzola (sign)