

World Triathlon Tribunal Avenue de Rhodanie 54 1007 Lausanne, Switzerland

Tribunal-SafeSport-2021-01 - In the matter of South Korean triathlete Suk-hyeon Choi

DECISION

rendered by the

WORLD TRIATHLON TRIBUNAL

sitting in the following composition:

Chair of the Panel: Barry Lipp (Australia)

Members of the Panel: Monique Houten (Belgium)

Dame Sarah Springman DBE (Great Britain)

in the determination of charges against

The Korean Triathlon Federation

for alleged violations of the World Triathlon Safeguarding Policy Against Harassment and Abuse In Triathlon.

I. PARTIES

1. The Korean Triathlon Federation ("KTF").

II. BACKGROUND FACTS

- 2. The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the evidence obtained during the course of investigations, the written submissions, the exhibits filed and the witness statements produced by the Parties in the course of the proceedings. While the Panel has considered all the facts, allegations, legal arguments and pieces of evidence submitted by the Parties in these proceedings, it refers in the present decision only to those it considers necessary to explain its reasoning.
- 3. On 26 June 2020 Ms Suk-hyeon Choi, a member and athlete of the KTF died by suicide at the age of twenty-two.

- 4. Ms Choi had won a bronze medal in the junior event at the 2015 Asian triathlon championships and had finished fourth in the elite event at the 2016 Korean national championships.
- 5. On 12 February 2020, the KTF became aware that Ms Choi's father had filed a report with both the Gyeongju City Hall and the Gyeongju police against Ms Choi's former coach, Coach Kyu Bong Kim ("Coach Kim"), alleging that his daughter had been the subject of harassment and abuse when she was a member of the Gyeongju City Hall Triathlon Team.
- 6. The reports documented years of physical assaults, and verbal and psychological abuse suffered by Ms Choi at the hands of Coach Kim, two senior teammates and the team's physical therapist.
- 7. In July 2020, following investigations by the Korean Sports and Olympic Committee ("KSOC") Clean Sports Center, the KTF banned Coach Kim and team captain Jang Yunjung for life, and suspended teammate Kim Do-hwan for ten years.
- 8. Since becoming aware of the allegations of harassment and abuse of Ms Choi on 12 February 2020, the KTF has not informed World Triathlon of these matters.
- 9. In the week following the death of Ms Choi, the Ministry of Sports, Culture and Tourism commenced an investigation into the matter, resulting in the findings ("the Sports Ministry Findings") that KTF officials had been negligent, and had failed to undertake investigations when they became aware of the allegations of harassment and abuse of Ms Choi, in accordance with the KTF Protection of Athletes Committee Regulations and the KTF Sports Fairness Committee Regulations¹.
- 10. The Sports Ministry Findings and all other evidential material considered by this Panel in relation to the death of Ms Choi have made no reference to any Safeguarding Policy of the KTF, or the obligations of the KTF to Ms Choi under any such policy.
- 11. On 26 October 2020, the Panel issued a procedural order to the KTF requesting copies of all relevant documents in the KTF's possession in relation to the death of Ms Choi.
- 12. In response to the procedural order, on or about 14 December 2020 the Panel received from the KTF (among other documents) a document entitled Athlete (Safeguarding) Committee Policy. Numerous articles in the policy have no text under their headings, and under the heading "Effective Date", no date is given for the commencement of the policy. These deficiencies give rise to the impression that this policy may be a draft. The metadata for the document indicates that it was created on 1 December 2020.
- 13. On 11 June 2021, members of the Panel conducted an interview by Zoom meeting with Ms Helen Kim, KTF international relations officer, in which Ms Kim stated that she was not aware of the KTF document entitled "Athlete (Safeguarding) Committee Policy".
- 14. On 17 June 2021, the Panel received from the KTF a document entitled "Korea Triathlon Ethic Panel". The KTF informed the Panel that this document was an ethics policy it intended to apply to all members of the KTF, as part of its response to the death of Ms Choi.

¹ A Notification of Request to Censure by the Ministry of Culture, Sports & Tourism of the Korean Government, August 2020

- 15. On 18 June 2021, the Panel (through its secretary) wrote to the KTF by email commending the KTF for its efforts to introduce an Ethics policy, but reminding the KTF that under Article 3 of the World Triathlon Safeguarding Policy every National Federation is required to introduce their own specific safeguarding policy in accordance with:
 - a. their applicable law;
 - b. World Triathlon's Safeguarding Policy; and
 - c. the Safeguarding Policy' Guide provided by World Triathlon,

and asked the KTF to confirm that it would introduce its own safeguarding policy and give a date by which this will be done. No response was received from the KTF.

- 16. A search of the KTF web site shows that the following documents, among others, are available under the heading "Rules of the Korean Triathlon Federation"²:
 - a. Code of Ethics for Athletes, enacted on 22 October 2020; and
 - b. Leader Code of Ethics, enacted on 22 October 2020 and amended on 4 February 2021,
 - c. These documents being different to the "Korea Triathlon Ethic Panel" document provided to the Panel on 17 June 2021.
- 17. No safeguarding policy was found anywhere on the KTF web site.

III. PROCEEDINGS BEFORE THE WORLD TRIATHLON TRIBUNAL

- 18. Following investigation into the death of Ms Choi by World Triathlon's Lead Welfare Officer, the matter was referred to the World Triathlon Tribunal ("Tribunal") in accordance with chapter 8 of the World Triathlon Safeguarding Policy Against Harassment and Abuse In Triathlon ("Safeguarding Policy"), to be dealt with pursuant to the World Triathlon Ethics Panel Rules ("Ethics Panel Rules").
- 19. On or about 15 September 2020, in accordance with Article 13 of the Ethics Panel Rules the Chair of the Tribunal convened an Ethics Panel to adjudicate on potential violations of the Safeguarding Policy and the World Triathlon Code of Ethics ("Code of Ethics").
- 20. The Ethics Panel obtained further evidence by issuing a procedural order to the Party.
- 21. On 9 July 2021, in accordance with Article 13 of the Ethics Panel Rules, the Ethics Panel issued a Notification of Charge to the KTF alleging that it has committed the following violations of chapter 3 of the World Triathlon Safeguarding Policy Against Harassment and Abuse In Triathlon ("the World Triathlon Safeguarding Policy"):
 - a. The KTF failed to introduce its own safeguarding policy, approved by its executive body, in accordance with:
 - i. its applicable law;
 - ii. World Triathlon's Safeguarding Policy; and
 - iii. the Safeguarding Policy' Guide provided by World Triathlon;
 - b. The KTF failed to immediately inform Lead Welfare Officers of World Triathlon of the

² https://www.triathlon.or.kr:453/about/rules/

reported case of harassment and abuse, which happened in its federation.

- 22. The Notification of Charge informed the KTF that any written submissions it wished to make in response to the charges must be received by the Ethics Panel within fourteen days of receipt of the Notification.
- 23. The KTF filed a written submission on the Charges dated 20 July 2021, and a further submission dated 29 September 2021.
- 24. By a letter dated 17 September 2021 the Ethics Panel informed the KTF that it now proposed to deliberate on the Charges and reach a decision without a hearing, unless the KTF requests it.
- 25. In the absence of a request by the KTF that a hearing be held, in accordance with Article 17 of the Ethics Panel Rules, the Chair of the Tribunal determined that the adjudication should proceed without a hearing.

IV. LEGAL ANALYSIS

A. JURISDICTION

- 26. The World Triathlon Tribunal has jurisdiction over this matter under:
 - Article 50.7 of the World Triathlon Constitution ("Constitution"), which provides that: "A panel or a Single Judge is responsible to handle and decide on all cases brought before the Tribunal in accordance with the Constitution, Rules, Regulations and Codes. Ethical issues shall be handled and decided exclusively by an Ethical Panel, not by a Single Judge."
 - Article 8 of the World Triathlon Safeguarding Policy, which provides that "In the event of Harassment and Abuse, as defined in section 2 of this Policy, the Ethical Panel of the World Triathlon Tribunal will be the only relevant body in order to take sanctions to punish any kind of infraction of the World Triathlon Safeguarding Policy";
 - Article I of the Code of Ethics, which provides that "Any interested party shall bring any breach of this Code and its directions to the attention of the ITU Arbitration Tribunal, which will undertake an inquiry and may impose a sanction foreseen under the Procedures and rules of the Arbitration Tribunal";
 - The World Triathlon Ethics Panel Rules ("Ethics Panel Rules"), which state that "The Ethics panel as a part of the Tribunal is an independent judicial body formed to adjudicate upon violations of the Code of Ethics, to impose sanctions for violations of the Code of Ethics".
- 27. Based on these provisions, the Ethics Panel has jurisdiction to adjudicate upon the charges and determine any sanctions.

B. APPLICABLE LAW

- 28. Pursuant to Article 63 of the Constitution, "The governing law of World Triathlon shall be Swiss law". Article 1 of the World Triathlon Disciplinary Rules states that "These rules set out the applicable procedure before the ITU, within the limitations of Swiss law".
- 29. As set out in paragraph 26 above, the World Triathlon Ethics Panel has power to adjudicate

upon and impose sanctions for violations of the World Triathlon Safeguarding Policy and the Code of Ethics.

c. SCOPE OF PANEL'S REVIEW

- 30. Pursuant to Paragraph B of the Ethics Panel Rules, *The Chair of the Tribunal* [and therefore the appointed Panel] *shall have the following powers under the Code:*
 - *ii.* to adjudicate whether violations of the Code have been committed, (other than violations of the Anti-Doping Rules);
 - *iii.* to determine for each proceeding:
 - a) its procedure is in accordance with the Procedural Rules; and
 - b) any other procedural matters that are not set out in the Procedural Rules, in accordance with the rules of natural justice;
 - vii. To impose sanctions for violation of the Code.
- 31. Article 11 of the Ethics Panel Rules provides as follows:

Types of evidence

- 1. The Ethics Panel shall not be bound by rules governing the admissibility of evidence. Facts relating to a violation of the Code may be established by any means deemed by the "Panel" hearing the case to be reliable.
- 2. Types of proof evidence shall include: the investigator's report and other form of evidence such as admissions, documents, oral evidence, video or audio evidence, evidence based on electronic media in any form and any such other form of proof as the Panel may deem to be reliable.

Inadmissible evidence

3. Evidence that obviously does not serve to establish relevant facts shall be rejected.

Evaluation evidence

- 4. The Panel shall have the sole discretion regarding evaluation of the evidence.
- 5. The Panel shall have the sole discretion to accept any facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction, which is not subject of a pending appeal, as irrefutable evidence against the parties to whom the decision pertained of those facts.
- 6. The Panel may draw an inference adverse to a party if the party, after a reasonable request to attend a hearing, answer specific questions or otherwise provide evidence, refuses to do so.

Standard of Proof

7. The standard of proof in all cases shall be determined on a sliding scale from, at minimum, a mere balance of probability (for the least serious violation) up to proof beyond a reasonable doubt (for the most serious violation). The Panel shall determine

the applicable standard of proof in each case.

- 32. Having regard to Article 11 of the Ethics Panel Rules, the Ethics Panel has full power to determine its procedure, determine the admissibility of evidence and evaluate the evidence.
- 33. Having regard to the seriousness of the alleged violations, in accordance with Article 11.7, the Ethics Panel determines that the applicable standard of proof shall be 'a comfortable satisfaction', being greater than a mere balance of probability but less than proof beyond reasonable doubt.

D. DISCUSSION

- 34. The Notification of Charge gave details of the alleged acts and omissions relied upon in support of the charges as follows:
 - a. In June 2021, the KTF, through its liaison officer Helen Kim, confirmed that it did not have a specific Safeguarding Policy. The KTF has failed to respond to this Ethics Panel's request, made on 11 June 2021, to confirm by when the KTF would introduce its own Safeguarding Policy, in compliance with chapter 3 of the World Triathlon Safeguarding Policy.
 - b. In February 2020, the KTF was informed that triathlete Suk-Hyeon Choi had filed a complaint (on 10 February 2020) with the Gyeongju Police against Dohwan Kim, her Gyeongju City Team coach and other team members, alleging harassment, abuse and violence. The KTF failed to immediately inform World Triathlon's Lead Welfare Officers of the harassment and abuse of triathlete Suk-Hyeon Choi and, in fact, never did so prior to her death, on or about 26 June 2020.
- 35. In its submission on the charges dated 20 July 2021, the KTF submitted that it has in fact had a safeguarding policy since 2010, and that the information provided to the Panel by the KTF's liaison officer that the KTF did not have a safeguarding policy was wrong. The KTF provided a copy of this safeguarding policy together with its submission.
- 36. This KTF Safeguarding Policy, which has an effective date of 30 January 2010, bears a striking similarity to the incomplete document entitled Athlete (Safeguarding) Committee Policy, which was provided to the Panel on or about 14 December 2020 in response to the Panel's procedural order.
- 37. Also, the KTF Safeguarding Policy is almost identical (except for its title) to another KTF document, the KTF Protection of Athletes Committee Regulations, which has the same effective date of 30 January 2010.
- 38. During the course of the investigations into the harassment and abuse of Ms Choi, and in the subsequent Sports Ministry Findings, the KTF Protection of Athletes Committee Regulations were often referred to, but the KTF Safeguarding Policy was never mentioned.
- 39. In addition, the Panel notes that the KTF Protection of Athletes Committee Regulations are found on the KTF's web site, in its list of documents under the heading of "Rules of the Korea Triathlon Association", but the KTF Safeguarding Policy is not.

- 40. It therefore appears likely that the policy, which the KTF submits that it has had in place since 2010, is in fact the KTF Protection of Athletes Committee Regulations. Whilst it is a concern to the Panel that the KTF might have submitted the policy with an incorrect title for the purpose of better responding to the charges, the Panel considers that it should look to the substance of the KTF Protection of Athletes Committee Regulations to determine whether it constitutes an answer to the charges.
- 41. Consistent with the World Triathlon Safeguarding Policy, the KTF Protection of Athletes Committee Regulations does relevantly contain provisions for:
 - a. an independent body to whom reports of harassment and abuse can be made (the Rights Center);
 - b. an investigation procedure; and
 - c. a disciplinary procedure.
- 42. However, the KTF Protection of Athletes Committee Regulations does not contain the following provisions, which are described as mandatory content in the World Triathlon Safeguarding Policy Guidelines:
 - a. a definition of harassment and abuse;
 - b. the duties of the officer or body to whom reports are made;
 - c. the procedures for making and handling reports; and
 - d. a confidentiality clause.
- 43. Further, Article 16(4)(2) of the KTF Protection of the Athletes Committee Regulations provides as follows:

municipal/provincial associations shall investigate and remedy issues occurring during the training or competitions of the athletes belonging to the sports teams or athletic clubs under their supervision;

- 44. It is inconsistent with both the World Triathlon Safeguarding Policy and Safeguarding Policy Guidelines that investigation and potential remedy for harassment and abuse of a member of a National Federation be left in the hands of a municipal or provincial association.
- 45. On 12 February 2020, when the KTF first became aware of the allegations of harassment and abuse of Ms Choi, the KTF's officers chose to leave the investigation in the hands of Gyeongju City Hall (Ms Choi's municipal triathlon team) and Gyeongju Police, having regard to Article 16(4) of the KTF Protection of Athletes Committee Regulations (and similar provisions contained within the KTF Sports Fairness Committee Regulations).
- 46. According to the Sports Ministry Findings, there were other provisions within the KTF Protection of Athletes Committee Regulations which did in fact give the KTF power to immediately commence its own investigation.
- 47. Further, inconsistently with the World Triathlon Safeguarding Policy Guidelines, when the KTF became aware of the allegations of harassment and abuse of Ms Choi, it failed to make contact with her to determine whether protection was needed or to care for her wellbeing.
- 48. Having regard to the above, the Panel is comfortably satisfied that the KTF has violated

chapter 3 of the World Triathlon Safeguarding Policy by failing to have a safeguarding policy which is in accordance with the World Triathlon Safeguarding Policy and Safeguarding Policy Guidelines.

- 49. In relation to the charge that the KTF failed to immediately inform Lead Welfare Officers of World Triathlon of the reported case of harassment and abuse, which happened in its federation, in its submission dated 20 July 2021 the KTF lays blame for this failure entirely upon Mr Woo-Kyong Ki who was at the relevant time Business Operations Manager of the KTF.
- 50. The Panel notes that other KTF officers were aware from the outset of the allegations of harassment and abuse of Ms Choi, and that the then President of the KTF was made aware of the allegations within days. Moreover, a failure of the KTF's officers to act in accordance with World Triathlon rules is, in essence, a failure of the KTF.
- 51. The Panel therefore also is comfortably satisfied that the KTF has violated chapter 3 of the World Triathlon Safeguarding Policy by failing to immediately inform Lead Welfare Officers of World Triathlon of the reported case of harassment and abuse, which happened in its federation.

v. SANCTIONS

- 52. Under chapter 8 of the World Triathlon Safeguarding Policy, the Panel may impose the following sanctions and measures for a violation of the policy:
 - a. Financial sanction;
 - b. Loss of the license;
 - c. Competition ban;
 - d. Banishment of any National Federation;
 - e. Prohibition of training.
- 53. Chapter 8 also provides that sanctions and measures must be proportional to the infringement, and the following factors shall be taken into consideration:
 - a. The nature of the violation;
 - b. The severity of the violation;
 - c. The number of the violation (it is one time or several repetitions);
 - d. The abused or harassed person (Young or Adult Athlete);
 - e. The relationship between the abused or harassed person and the abuser or harasser;
 - f. Any other relevant circumstances.
- 54. Chapter 8 of the World Triathlon Safeguarding Policy also provides that violations of the policy are to be dealt with pursuant to the World Triathlon Ethics Panel Rules.
- 55. Under paragraph C of the World Triathlon Ethics Panel Rules, the Panel has power to impose sanctions as follows:
 - (i) to caution or censure;

(ii) to issue fines;

(iii) to suspend a person (with or without conditions) or expel the person from office;

(iv) to suspend or ban the person from taking part in any Triathlon-related activity, including Events and Competitions;

(v) to remove any award or other honour bestowed on the person by the World Triathlon;

(vi) to impose any sanctions as may be set out in specific Rules; and

(vii) to impose any other sanction that it may deem to be appropriate, including community service within Triathlon and/or restitution;

(viii) for any appeals under C16(v) above, to uphold, dismiss or refer back to the Member Federation or Continental Confederation for further consideration and to do so without procedural costs.

- 56. In the circumstances, it is open to the Panel to impose the sanctions listed in both paragraphs 52 and 55 above.
- 57. As noted above, the Panel finds that the KTF has violated chapter 3 of the World Triathlon Safeguarding Policy by failing to have a safeguarding policy which is in accordance with the World Triathlon Safeguarding Policy and Safeguarding Policy Guidelines.
- 58. It is of particular concern that the existing safeguarding policy, the KTF Protection of Athletes Committee Regulations, inappropriately permits the KTF to leave any investigation of serious harassment and abuse of a KTF member to a subordinate municipal or provincial association. It is also of great concern that when presented with reports of serious harassment and abuse to a member of the KTF, the responsible officers of the KTF considered that under the existing policy they were not bound to immediately investigate.
- 59. The Panel therefore considers that the KTF should be ordered to produce a discrete safeguarding policy, approved by its executive body, which is in accordance with:
 - a. its applicable law;
 - b. World Triathlon's Safeguarding Policy; and
 - c. the Safeguarding Policy' Guide provided by World Triathlon.
- 60. It is also of particular concern that in violation of its obligations under the World Triathlon Safeguarding Policy, the KTF did not ever inform World Triathlon's Lead Welfare Officer of the alleged harassment and abuse of Ms Choi, even after her death.
- 61. Whilst the KTF Protection of Athletes Committee Regulations provides that any reports of harassment or abuse may be made to its Rights Center, it is not apparent that the Rights Center was ever informed or involved in dealing with Ms Choi's harassment and abuse. The matter was left in the hands of KTF officers, who failed to properly investigate or have regard to the protection and welfare of Ms Choi or report the allegations to World Triathlon's Lead Welfare Officer.
- 62. In the circumstances, the KTF's new safeguarding policy must, among other mandatory elements, make provision for the appointment of lead welfare officers whose function and obligations are clear and unambiguous.

63. Further, to ensure that the KTF's lead welfare officers are fully aware of their obligations and are properly trained to deal with safeguarding matters, the KTF must ensure that at least one of its appointed lead welfare officers completes the International Olympic Committee's 'Safeguarding Officer in Sport' certificate course. The course is designed to equip those involved with safeguarding athletes of all ages from harassment and abuse in sport with the knowledge, skills and confidence needed to fulfil the role of Safeguarding Officer/Focal Point for their sport organisation. Course details and the application process are found here: https://www.sportsoracle.com/Safeguarding/Home/

ON THESE GROUNDS

The Panel of the World Triathlon Tribunal decides that:

- 1. The KTF has committed the violations of chapter 3 of the World Triathlon Safeguarding Policy Against Harassment and Abuse In Triathlon as alleged in the Notification of Charge dated 9 July 2021.
- 2. The KTF must, within three months of the date of this decision, produce a safeguarding policy, approved by its executive body, which is in accordance with:
 - a. its applicable law;
 - b. World Triathlon's Safeguarding Policy; and
 - c. the Safeguarding Policy' Guide provided by World Triathlon.
- 3. A copy of the policy, evidencing compliance with this order, must be submitted to the World Triathlon Lead Welfare Officer within the time specified.
- 4. The KTF must enrol at its cost at least one of its lead welfare officers appointed under its new safeguarding policy in the International Olympic Committee 'Safeguarding Officer in Sport' certificate course.
- 5. The KTF must provide evidence of completion of the course by its appointed lead welfare officer(s) within twelve months of the date of this order to the World Triathlon Lead Welfare Officer.
- 6. The KTF must ensure that for the period of five years from the date of this order at least one of its lead welfare officers has completed the International Olympic Committee 'Safeguarding Officer in Sport' certificate course.

COSTS

The Panel decides not to impose procedural costs upon the KTF.

Lausanne, Switzerland, 7 February 2022

WORLD TRIATHLON TRIBUNAL

Barry Lipp Barry Lipp (Feb 9, 2022 13:30 GMT+11)

> Barry Lipp Chair of the Panel

nique Houten :37 GMT+1)

Sarah Springman Sarah Springman (Feb 8, 2022 09:02 GMT)

Monique Houten Member of the Panel Dame Sarah Springman DBE Member of the Panel

Appeal to the Court of Arbitration for Sport

According to Article 52 of the Constitution as well as Article 45 of the ITU (World Triathlon) Disciplinary Rules, final decisions made by World Triathlon under the Constitution may be appealed exclusively to the CAS which will resolve the dispute definitively in accordance with the CAS Code of Sports–related Arbitration.

Any appeal must be filed with the CAS within twenty-one (21) days of the party's reception of the written, reasoned decision of World Triathlon in question.

Pending resolution of the appeal by the CAS, the decision being appealed shall remain in full force and effect unless the CAS orders otherwise.

Publication

According to section 8 of the World Triathlon Safeguarding Policy 2019, the sportive sanctions taken by the Ethics Panel of the World Triathlon Tribunal will be published on World Triathlon's website as long as the sanctions are applicable.

Tribunal-SafeSport-2021-01 KTF final decision

Final Audit Report

2022-02-09

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