



**Tribunal Arbitral du Sport
Court of Arbitration for Sport**

CAS 2012/A/2791 World Anti-Doping Agency (WADA) v. Norjannah Hafiszah Jamaludin, Nurul Sarah Abdul Kadir, Mohamad Noor Imran Hadi, Siti Zubaidah Adabi, Siti Fatimah Mohamad, Yee Yi Ling, Harun Rasheed & Malaysia Athletic Federation (MAF)

AWARD

delivered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Conny Jörneklint, Chief Judge in Kalmar, Sweden

Arbitrators: Mr Quentin Byrne-Sutton, Attorney-at-law in Geneva, Switzerland

Mr Cecil Abraham, Advocate & Solicitor in Kuala Lumpur, Malaysia

in the arbitration between

WORLD ANTI-DOPING AGENCY, Montreal, Canada

Represented by Mr. Olivier Niggli and Mr. Ross Wenzel, Carrard & Associés, Lausanne, Switzerland

- Appellant -

v.

NORJANNAH HAFISZAH JAMALUDIN, ATHLETE 1

NURUL SARAH ABDUL KADIR, ATHLETE 2

MOHAMAD NOOR IMRAN HADI, ATHLETE 3

SITI ZUBAIDAH ADABI, ATHLETE 4

SITI FATIMAH MOHAMAD, ATHLETE 5

YEE YILING, ATHLETE 6,

all residents of Kuala Lumpur, Malaysia

- First to Sixth Respondents -

HARUN RASHEED, THE COACH, resident of Kuala Lumpur, Malaysia

- Seventh Respondent -

MALAYSIAN ATHLETIC FEDERATION, Kuala Lumpur, Malaysia

- Eighth Respondent -

1. THE PARTIES

- 1.1 The World Anti-Doping Agency ("the Appellant") is a Swiss private law Foundation. Its seat is in Lausanne, Switzerland, and its headquarters is in Montreal, Canada. The Appellant is an international independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.
- 1.2 Norjannah Hafiszah Jamaludin, Nurul Sarah Abdul Kadir, Mohamad Noor Imran Hadi, Siti Zubaidah Adabi, Siti Fatimah Mohamad, Yee Yi Ling are six Malaysian athletes ("Athletes 1 to 6") of international-level affiliated with the MAF.
- 1.3 Harun Rasheed is the coach ("the Coach") who has been involved in coaching Athletes 1 to 6 since 1980 and he is also affiliated to the MAF.
- 1.4 The Malaysian Athletic Federation, ("MAF"), is the governing body for athletics in Malaysia. It is a member of the International Association of Athletics Federations, ("IAAF").
- 1.5 The First to Eighth Respondents are collectively referred to as the Respondents.

2. FACTUAL BACKGROUND

- 2.1 The relevant facts and allegations based on the parties' written submissions, pleadings, and evidence adduced are summarised below. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
- 2.2 On 24 May 2011 at 8.30 am Athletes 1, 2, 4, 5 and 6 attended a medical examination at the National Sport Institute of Malaysia ("NSIM"). During the medical examination they were notified of a doping-control test to take place the same day ("doping test"). They chose not to attend the doping test and left the premises of NSIM.
- 2.3 On the afternoon of 24 May 2011, Athlete 3 was informed by the Coach that a doping test was to be conducted.
- 2.4 On the evening of 24 May 2011, a meeting took place at the Serdang Steak House ("Restaurant") at Sri Serdang, Selangor, Malaysia at which Athletes 1, 2, 3, 4 & 5 met the Coach and Mr. Karim Ibrahim, the Deputy President of MAF and Coaching Chairman ("Karim Ibrahim"). The conversation during the meeting was recorded se-

- cretly by Athlete 5 on her mobile phone, which she copied onto a compact disc ("CD") and subsequently delivered a copy of to the MAF.
- 2.5 On 25 May 2011, Athletes 1, 2 and 3 left for a training session in Bulgaria. Their trip was initially scheduled for 28 May 2011 but on the evening of 24 May 2011 the trip was rescheduled to 25 May 2011. The Coach left for Bulgaria on 13 June 2011.
- 2.6 On 26 May 2011, from 08.30am till 10.20am, Athletes 4, 5 and 6 attended a doping test at the NSIM ("second doping test") after being persuaded to do so by Athlete 5. The results of their doping tests, which were received on 31 May 2011 from the laboratory by the Result Management Committee of the Anti Doping Agency of Malaysia (ADAMAS), was negative. Athletes 1, 2 and 3 did not attend the second doping test, having already left for Bulgaria.
- 2.7 On 2 June 2011, the Result Management Committee of ADAMAS held a meeting during which they recommended that Athletes 1 to 6 be deemed to have committed an anti-doping violation under article 2.3 of the World Anti-Doping Code for having refused or failed without compelling justification to submit to sample collection after notification, but with mitigating circumstances.
- 2.8 The Result Management Committee also requested that their recommendations "... be made know officially to the related parties concerned which are the NSC and the Malaysian Athletics Union (MAU) for them to conduct appropriate investigation/hearing and to take the necessary sanctions as per the World Anti Doping Code and their own rules".
- 2.9 However, it was not until 12 September 2011, after having appointed a "Special Committee" to investigate, that the MAF undertook what was named an "*Investigative Interview of Athletes who did not attend "Out of Competition" Urine Test by ISN*", on the basis of which the Special Committee issued a "Private & Confidential" report (the "MAF Report") in which "*The Panel recommends that any further interpretation/clarification required on the doping rule must seek the advise of ADAMAS/WADA or IAAF Doping Committee*". In conclusion, the MAF Report contained "Panel's Findings" with regard to Athletes 1 to 6 and to the Coach but none relating to the possible role played by the Deputy President of MAF and Coaching Chairman, Karim Ibrahim.
- 2.10 Thereafter, no further action was announced by the MAF for a period of four months.
- 2.11 This led Athletes 1 to 6 and the Coach to subsequently write a letter to Mr. Lamine Diack, President of the IAAF, with copies to the IAAF Secretary General and its Anti-Doping Administrator, to complain in the following terms that the MAF enquiry had

just been a cover up and had not been publicized in order to protect the then Deputy President of the MAF, Karim Ibrahim:

“[...] The ... Inquiry by the Malaysian Athletics Federation (MAF) was held because ADAMS (Anti Doping Agency Malaysia) was aware that we the athletes were not present at a doping test. MAF had no way of covering it up as the incident was widely publicized by the press.

MAF needed to cover up the incident as certain leaders in the Association itself had full knowledge of what had transpired and they were in full support of the Deputy President who at all the material time also the Coaching Chairman.

Everything that was done by the coach had the instructions and blessing from the Deputy President. That is the reason for the non disclosure of the findings of the Inquiry Board by the President.

The MAF, only after having one of their athletes being found positive on doping test at the 28th SEA Games 2011 in Indonesia released the Inquiry Board report in February 2012. If there were not incidents at the SEA Games, this issue would have been buried by the MAF and all involved would have gone scot-free.

The Inquiry Report itself is incomplete and appears to be favouring the Deputy President of MAF who was called by the BOI. The Q&As that took place at the inquiry and the tape recording that implicates the Deputy President was no where to be seen in the final report.

The report was only signed by the Chairman of the BOI who is also one of the Vice Presidents of MAF. The other members of the enquiry committee did not sign the report. As the athletes and coach involved, we were not shown the draft of the report before it was finalized.

The report is biased, as it is only a narration of the Chairman's opinion of what took place at the Inquiry. Hence the report only depicts half the picture of what really happened. The coercion and deception by certain MAF Officials were masked in the report [...].”

- 2.12 In the foregoing letter to the IAAF, the Athletes also stated: *“[...] The MAF had only warned us by issuing letters to the effect. This only goes to show that the MAF knew that they were wrong all along and we the athletes were just the victims. We have been training all along and participating in all events without hindrance, as we were only warned. The coach has been suspended for a year by MAF”.*

- 2.13 Only on 10 January 2012 did the MAF write to Athletes 1 to 6 to inform them that, further to an Emergency Council Meeting of 9 January 2012, which had discussed the topic, it was sanctioning them with a “severe warning” for a violation of article 2.3 of the World Anti Doping Code.
- 2.14 Thereafter, on 2 February 2012, the MAF held a Special Council Meeting, which included a final discussion and decision upon the sanctions to be applied to Athletes 1 to 6 and to the Coach. During that meeting the MAF decided to give a “stern warning” to the Athletes as sanction and to suspend the Coach for a period of one year with effect from 12 September 2011 (the “Appealed Decision”).
- 2.15 On 3 February 2012, the MAF informed the Result Management Committee of ADAMAS as follows:
- “[...] Glad to inform you that the result from the Investigation Panel on the 6 athletes evading doping on 24th May 2011, matter was discussed in length in the Special Council Meeting as above. In relevant to that, I am directed by YB Dato Seri Shahidan Kassim, the President of MAF to inform you that because the athletes don't bear clear wrongdoing because they were directed by someone higher and with that MAF decided to give “stern warning” to all 6 athletes who failed to attend doping test on 24th May 2012.*
- [...] With reference to the report by the Investigation Panel, it was noted that the coach to the 6 athletes Mr Harun Rasheed directed the athletes not to give their urine samples for the above test. With that, the Special Committee meeting on 2nd Feb 2012 also decided to suspend the affected coach Mr Harun Rasheed for 1 year with effect from 12 Sep 2011 from carrying out duties as coach”.*
- 2.16 By letter of the same day, the MAF notified its above decision directly to the Coach.
- 2.17 On 8 February 2012, two petitions were deposited, one signed by 42 athletes, the other by 6 coaches, to request an independent enquiry into the circumstances surrounding the doping issues that had arisen and in particular the role played by the Deputy President of MAF and Coaching Chairman, Karim Ibrahim.
- 2.18 This resulted in an Independent Committee being appointed to undertake a full investigation into the matter and to hold hearings, which took place in June and July 2012.
- 2.19 The Independent Committee issued its report on 19 September 2012.
- 2.20 On 11 October 2012, Karim Ibrahim was suspended for six years by the MAF after being found guilty of doping offences.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 3.1 On 7 May 2012, the Appellant filed its Statement of Appeal with CAS requesting the following relief:
1. The Appeal of WADA is admissible;
 2. The Appealed Decision is set aside;
 3. Each of the Athletes is sanctioned with a period of ineligibility up to a maximum of four years, starting on the date on which the CAS award enters into force. Any period of ineligibility (whether imposed to or voluntarily accepted by Athlete) before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served;
 4. All competitive individual results obtained by each of the Athletes from 24 May 2011 through the commencement of the applicable period of ineligibility shall be annulled;
 5. The Coach is sanctioned with up to a maximum of life time ineligibility; and
 6. WADA is granted an award for costs.
- 3.2 On 19 June 2012, the Appellant filed its Appeal Brief and Exhibits with the CAS, in which it confirmed its request for relief as set out above.
- 3.3 On 9 July 2012, the MAF submitted its Statement of Defense. The MAF expressed that it wanted to clarify on behalf of the MAF Council that no directives were given to any Office Bearer, Council Members or the Coaches of MAF to instruct the Athletes not to attend the anti-doping test. The Athletes did not file any answers.
- 3.4 On 3 August 2012, the parties were advised that the Panel had been constituted as follows: Mr Conny Jörneklint, Chief Judge in Kalmar, Sweden (President), Me Quentin Byrne-Sutton Attorney-at-law in Geneva, Switzerland, and Mr Cecil Abraham, Attorney-at-law in Kuala Lumpur, Malaysia (Arbitrators).
- 3.5 On 24 October 2012, pursuant to Articles R57 and R44.3(2) of the Code of Sports-related Arbitration ("the Code"), the Panel put certain questions to the Respondents, which were set out in questionnaires. Athletes 1 to 5 and the Coach returned the answers to the questions on 19 November 2012. Athlete 6 answered the questionnaire on 26 November 2012. The transcript of the recording made by Athlete 5 of the conversation that took place on 24 May 2011 was sent to the CAS on 29 November 2012. The Coach and Athletes 1 to 6 requested the Panel to render its award on the documents and dispense with an oral hearing.
- 3.6 On 29 November 2012, the Appellant filed an amended version of its Appeal Brief in light of the new evidence on record. This Appeal brief included an amended prayer for relief requesting that the sanction on the Athletes be limited to a period of ineligibility of two years, accompanied by the following explanation: "*Based on its appreciation of*

all the circumstances of the case, WADA has decided to withdraw its request for an increased sanction (against the Athletes) based on aggravated circumstances. WADA requests that a period of ineligibility of two years is imposed on each of the Athletes”.

- 3.7 Since neither the Appellant nor the Respondents requested the holding of an oral hearing, the Panel decided in accordance with Article R57 of the Code, to issue an award on the basis of the Appellant's and Respondents' written submissions. On 5 February 2013 the Panel sent an Order of Procedure to the Appellant and the Respondents. By executing the Order, the Appellant and Respondents confirmed that they accepted that the Panel may decide on the matter on the basis of the Appellant and Respondents' written submissions and documents. The Appellant and MAF signed the Order of Procedure.

4. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions

- 4.1 In summary, the Appellant submits the following in support of its appeal.

4.2 Applicable Rules

The IAAF Anti-Doping Rules in force at the time of the anti-doping violations by Athletes 1 to 6 are applicable to the substantive issues with which these proceedings are concerned and are contained in the 2010/2011 IAAF Competition Rules, effective as of 1 November 2009 (the “**Previous IAAF Anti-Doping Rules**”).

The current IAAF Anti-Doping Rules contained in the 2012/2013 IAAF Competition Rules, effective as of 1 November 2011 (the “**Current IAAF Anti-Doping Rules**”) are applicable to the procedural aspects of this appeal and, in particular, govern the right of the Appellant to appeal to CAS against the Appealed Decision.

Both the Previous IAAF Anti-Doping Rules and the Current IAAF Anti-Doping Rules provide in Rule 30.1 as follows:

“The Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to Athletes, Athlete Support Personnel and other Persons who participate in the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorization, accreditation or participation in their activities or competitions.”

Furthermore, the MAF made numerous references in the first instance national proceedings to the IAAF Anti-Doping Regulations which supplement the IAAF Anti-

Doping Rules and relate to inter alia test planning, sample collection and results management; see in particular, page 8 of the Investigative Interview.

The IAAF Anti-Doping Rules are therefore applicable to this case. In particular, the current IAAF Anti-Doping Rules are applicable to the establishment of the Appellant's right of appeal to CAS.

4.3 Admissibility of the Appeal

The Appellant's Right of Appeal

According to Rule 42.6 of the Current IAAF Anti-Doping Rules:

"In any case which does not involve an International-Level Athlete or his Athlete Support Personnel, the following parties shall have the right to appeal the decision to the national level appeal body: [...] (e) WADA."

Furthermore, Rule 42.1 of the Current IAAF Anti-Doping Rules – which reflects the terms of Article 13.1.1 of the World Anti-Doping Code – provides:

[...]where WADA has a right of appeal and no other party has appealed a final decision under the applicable rules, in which case WADA may appeal such decision directly to CAS without having to exhaust any other remedies [...]" [emphasis added]

In light of the foregoing, the Appellant has a right of appeal to the national level appeal body. However, Rule 42.1 expressly entitles the Appellant to appeal directly to CAS.

Compliance with the deadline to appeal

Rule 42.14 of the Current IAAF Anti-Doping Rules provides that:

"The filing deadline for an appeal to CAS filed by WADA shall be the later of (a) twenty-one (21) days after the last day on which any party entitled to appeal in the case could have appealed; or (b) twenty-one (21) days after WADA's receipt of the complete file relating to the decision."

The Appellant received documents relating to the file on 16 April 2012. The Appellant considers that the file provided to it is not complete. However, even if one assumes that the Appellant did receive the complete file on 16 April 2012, *quod non*, the deadline for this appeal to CAS would be no earlier than 7 May 2012.

The Statement of Appeal is therefore filed in a timely fashion.

4.4 Anti-Doping Rules Violation

Athletes 1 to 6's Violations

Rule 32.2 (c) of the Previous IAAF Anti-Doping Rules reads as follows:

"Refusing or failing without compelling justification to submit to Sample collection after notification as authorized in applicable anti-doping rules or otherwise evading Sample collection."

CAS has enforced the terms of this particular anti-doping violation strictly (See CAS 2004/A/714; CAS 2004/A/718; CAS 2005/A/925 and CAS 2008/A/1470). The defence of a "*compelling justification*" has been interpreted restrictively. In CAS 2005/A/925, - the Panel in paragraph 75 stated as follows:

"No doubt, we are of the view that the logic of the anti-doping tests and of the DC Rules demands and expects that, whenever physically, hygienically and morally possible, the sample be provided despite objections by the athlete. If that does not occur, athletes would systematically refuse to provide samples for whatever reasons, leaving no opportunity for testing." [emphasis added]

Athletes 1, 2, 4, 5 and 6 followed the Coach's advice to leave the premises of NSIM prior to the doping test. On the basis of the facts set out above, it is beyond dispute that Athletes 1, 2, 4, 5 and 6 both refused and failed to submit to, and deliberately evaded, sample collection. There is no suggestion of a compelling justification. The fact that Athletes 1, 2, 4, 5 and 6 may have followed the instruction of the Coach or Karim Ibrahim does not constitute a compelling justification. The anti-doping violation for Athletes 1, 2, 4, 5 and 6 is therefore established.

Although Athlete 3 may not have been immediately notified of the sample collection at the NSIM premises, he was amongst the three Athletes who left for Bulgaria on 25 May 2011. It is clear from the summary testimony of Athlete 5 and the Signed Athletes' Statement that the departure of the three Athletes for Bulgaria on 25 May 2011 was earlier than originally scheduled.

The answer of Athlete 3 to question 12 shows that he was aware of the doping test. Athlete 3 had intended to attend the medical examination but was running late. As it would appear that he ultimately never arrived at NSIM's premises on 24 May, the obvious (if not to say only) inference is that he had been "tipped off" about the doping test. Indeed, Athlete 3 attended the meal at the Restaurant later on 24 May 2011 (see final paragraph of the answers of Athlete 5). It is also noteworthy that the Coach, in his answer to question 16, refers to six athletes evading the doping test. It follows that Athlete 3 must have

been informed of the earlier (than scheduled) departure for Bulgaria. Plainly, one or more of the Coach, the other athletes or Karim Ibrahim (or other MAF officer) would have informed Athlete 3 of the reason for moving the departure date forward (i.e. the events surrounding the attempted doping tests at NSIM on 24 May 2011).

Athlete 3 became aware on 24 May 2011 that the Anti-Doping Agency of Malaysia ("ADAM") had wanted to conduct a doping test upon him (as one of the athletes scheduled to go abroad). Rather than contact ADAM or return to NSIM at the earliest opportunity, Athlete 3 agreed to depart for Bulgaria the following day.

This behavior amounts to an evasion of sample collection for the purposes of Rule 32.2 (c) of the Previous IAAF Anti-Doping Rules. Indeed, in the case of CAS 2004/A/718, the athlete was held to have "*otherwise evaded Sample collection*" by not making himself available for testing when he was aware that an anti-doping organization intended to conduct a test upon him. In particular, the Panel held at paragraph 38 that the second limb or art. 2.3 (i.e. otherwise evading sample collection) "*does not require a notification.*"

It is also worth highlighting that the Appealed Decision did not find that Athlete 3 was less culpable than Athletes 1, 2, 4, 5 and 6, imposing the same (albeit inadequate) sanction.

Coach's Violation

The anti-doping violation set out in Rule 32.2(h) of the Previous IAAF Anti-Doping Rules reads as follows:

"Administration or Attempted administration to any Athlete In- Competition of any Prohibited Method or Prohibited Substance, or administration or Attempted administration to any Athlete Out-of-Competition of any Prohibited Method or Prohibited Substance that is prohibited Out-of-Competition or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation." [emphasis added]

The scope of this provision was considered in detail by the Panel in the case of CAS 2007/A/1286. The Panel found that:

- (i) *the "language of Article 2.8 is broad in order to capture any form of complicity" (paragraph 9.55);*
- (ii) *"the latter part, "assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any attempted violation," is intended to be very broad and to cover any ADR violation by any person bound by the ADR, including a coach or a support staff member, and is not limited to the ADR violations of fellow athletes." (paragraph 9.55); and*

- (iii) in the "*absence of proof of physical assistance, a violation of Article 2.8 can also be established by what might be termed "psychological assistance." Psychological assistance would be any assistance that was not physical assistance, such as, for example, any action that had the effect of encouraging the violation.*" (paragraph 9.57) [emphasis added].

The anti-doping rule violations of the Athletes are established above. The Coach instructed various Athletes not to attend the doping test. He therefore encouraged the relevant Athletes to commit the anti-doping violation, thus violating Rule 32.2(h). It is no defense for the Coach to claim that he was merely following instructions: See in particular, answers 15, 16, 19, 20, 22, 24, 26, 31 and 32. Bearing in mind that the Coach was even prepared to tell the Athletes to take "foreign" urine to a medical examination, the Coach must have (at the very least) been aware that there was an attempt to conceal illicit practices (see Coach's answer to question 12).

The Coach's instruction to certain athletes to use "foreign" urine in their medical examination, his statement to Athlete 5 that he had removed drugs and medication from premises where they might be discovered and complicity in arranging for certain Athletes to leave the country the next day are other (albeit superfluous) elements which would fall within the scope of Rule 32.2(h) above.

4.5 Determining the Sanction

Athletes 1 to 6

Rule 40.3(a) of the Previous IAAF Anti-Doping Rules provides that a violation of Rule 32.2(c) "*shall be two (2) years unless the conditions provided in Rule 40.5, or the conditions provided in Rule 40.6, are met.*"

Pursuant to Rule 40.5 of the Previous IAAF Anti-Doping Rules, a period of ineligibility may be eliminated or reduced on the basis of exceptional circumstances. More particularly, the period of ineligibility may be eliminated in the event that the athlete (or other person) bears no fault or negligence with respect to the anti-doping violation (Rule 40.5 (a) Previous IAAF Anti-Doping Rules) or reduced by no more than half of the otherwise applicable period of ineligibility if the athlete or other person establishes that he does not bear significant fault or negligence (Rule 40.5(b) Previous IAAF Anti-Doping Rules).

In addition to the above, up to three quarters of the otherwise applicable period of ineligibility may be suspended (subject to possible reinstatement in certain circumstances) in the event that an athlete or person provides Substantial Assistance (Rule 40.5(c) Previous IAAF Anti-Doping Rules).

Substantial Assistance is defined in the following terms in the Previous IAAF Anti-Doping Rules: "*For the purposes of Rule 40.5(c), a Person providing Substantial Assistance must (i) fully disclose in a signed written statement all information he possesses in relation to anti-doping rule violations and (ii) fully co-operate with the investigation and adjudication of any case related to that information, including for example, presenting testimony at a hearing if requested to do so by the prosecuting authority or hearing panel. Further, the information provided must be credible and must comprise an important part of any case which is initiated or, if no case is initiated, must have provided a sufficient basis on which a case could have been brought.*"

The Substantial Assistance must be provided to *inter alia* a criminal authority, professional disciplinary body or Anti-Doping Organization and result "*in the IAAF, National Federation or Anti-Doping Organisation discovering or establishing an Antidoping rule violation by another Person or resulting in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another Person.*" At this date, none of Athletes 1 to 6 has provided Substantial Assistance.

Finally, where an athlete admits an anti-doping violation before being notified of the same and that admission is the only reliable evidence of that violation, the period of ineligibility may be reduced by up to a maximum of one half of the otherwise applicable period (Rule 40.5(d) Previous IAAF Anti-Doping Rules). None of Athletes 1 to 6 admitted an anti-doping violation before receiving notice of the same.

It cannot sensibly be argued that Athletes 1 to 6 bore no fault in relation to the anti-doping violation they committed. Indeed, even the Appealed Decision acknowledged an element of fault by imposing a reprimand on each of Athletes 1 to 6.

The only theoretical basis, upon which the two-year period of ineligibility might be reduced, therefore, is if Athletes 1 to 6 establish that they bore no significant fault. However, Rule 40.5(b) may only lead to a reduction of the period of ineligibility in truly exceptional circumstances (see Commentary to art. 10.5.1 of the World Anti-Doping Code).

Athletes 1 to 6's only justification for evading the sample collection appears to be that they followed the instructions of their Coach. Misplaced faith in, or obedience to, a member of their entourage cannot be regarded as an exceptional circumstance justifying a reduction of the applicable ineligibility period.

The entire anti-doping system is predicated on personal responsibility and an imputed knowledge of the anti-doping rules. Indeed, Rule 32.2 of the Previous IAAF Anti-Doping Rules states that "*Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation.*"

The standard two-year period of ineligibility cannot therefore be eliminated or reduced on the basis of Rule 40.5 of the Previous IAAF Anti-Doping Rules.

In other cases concerning Article 2.3 of the World Anti-Doping Code, athletes have sought to explain their refusal to submit to sample collection by inter alia (i) a feeling of being unfairly disturbed (CAS 2008/A/1564), (ii) uncertainty as to the authority/identity of the doping control officers (CAS 2008/A/1470), (iii) the allegedly "aggressive" behavior of the doping control officers (CAS 2004/A/714) and (iv) an urgent and important prior engagement (Decision of the Irish Sport Anti-Doping Appeal Panel in the case of WADA v/ Irish Sport Anti-Doping Disciplinary Panel & Julie McHale).

Whereas these explanations have not amounted to a compelling justification, Athletes 1 to 6 have offered no other relevant explanations in this case.

There are numerous indications of organised anti-doping practices amongst Athletes 1 to 6 and the Coach (see above). Indeed, the fact Athletes 1, 2, 4 and 5 used foreign urine for the NSIM medical examination is clear evidence that they were aware of the need to conceal the presence of substances they had ingested. The refusal/failure of Athletes 1 to 6 to submit to (or evasion of) sample collection can only sensibly be considered as a deliberate attempt to conceal anti-doping practices.

The commentary to Article 10.6 of the WADA Code sets out a non-exhaustive list of circumstances which may be considered aggravating; these include committing an anti-doping violation as part of a doping plan or scheme or engaging in deceptive or obstructing conduct to avoid the detection of an anti-doping violation.

However, based on its appreciation of all the circumstances of the case, the Appellant decided to withdraw its request for an increased sanction (against the Athletes) based on aggravated circumstances.

As its final prayer for relief in this respect, the Appellant therefore requests that a period of ineligibility of two years is imposed on each of the Athletes.

Coach

Rule 40.3(b) sets the period of ineligibility for a breach of Rule 32.2(h) at between four years and lifetime, unless one of the provisions at Rule 40.5 applies to eliminate or reduce the sanction. It reads as follows:

"For violations of Rule 32.2(g) (Trafficking or Attempted Trafficking) or Rule 32.2(h) (Administration or Attempted Administration of a Prohibited Substance or Prohibited

Method), the period of Ineligibility imposed shall be a minimum of four (4) years up to lifetime Ineligibility unless the conditions in Rule 40.5 are met."

The Coach apparently argues that the reason for giving the instruction not to submit to the anti-doping control was his belief that it was compulsory for athletes to be accompanied by their coach in such circumstances (see the Detailed MAF Report at Exhibit 6). This belief, even if one accepts that the Coach genuinely held it, is mistaken.

Furthermore, on the basis of numerous elements arising from the testimonies of Athletes 1 to 6, it seems clear that the Coach's instruction to Athletes 1, 2, 3, 4 and 6 to leave NSIM before the doping test had less innocent motives than a mere insistence on procedural propriety. The Appellant refers, in particular, to the following:

- The Coach had apparently instructed (at least some of) the Athletes to use third party urine in the medical test at NSIM;
- There is some evidence that some of the Athletes were taking prohibited substances as part of their training regime; even ignoring the descriptions of the anabolic effects of the pills given to the Athletes, the Coach apparently assured Athlete 5 shortly after her departure from NSIM that he had removed the drugs and medication from his room at "CASA";
- Athletes 4, 5 and 6 state in their Signed Athletes' Statement that the Coach seemed frightened and panicked on learning of the anti-doping tests; and
- The Coach met with Athletes 1 to 6 and Karim Ibrahim on the evening of 24 May 2011, the day of the evaded tests. At this meeting, the Athletes were encouraged to leave the country for Bulgaria the following day.

The Coach has neither admitted an anti-doping violation of his own nor provided substantial assistance in discovering another person's anti-doping violation. There are plainly no exceptional circumstances which justify an elimination or reduction of the minimum sanction of four years. Indeed, all the factual elements suggest that the Coach acted in bad faith and with a view to dissimulating doping practices.

In these circumstances, the Appellant must maintain its request in the Statement of Appeal for up to a maximum lifetime period of ineligibility to be imposed on the Coach.

B. The MAF's Submissions

On 6 July 2012, the MAF submitted its Statement of Defense. The MAF stated that the results of the doping tests of Athletes 4, 5 and 6 taken on 26 May 2011 at NSIM

and that the results were negative. MAF also stated that in-competition tests conducted in Bulgaria on Athletes 1, 2 and 3 on 23 June 2011 were negative. MAF clarified on behalf of the MAF Council that no directives were given to any Office Bearer, Council Members or the Coaches of the MAF to instruct the athletes not to attend the anti-doping test.

C. The Athletes' Response

In their co-signed letter to the IAAF (which was also signed by the Coach), Athletes 1 to 6 stated, among others, the following regarding the circumstances surrounding their decision to not attend the doping control on 24 May 2011:

"[...] We were called for a medical test by the National Sports Institute personnel. As always, we will inform our Coach (Harun) of our movement. It was then that the coach told us to conceal and carry our friend's urine for the medical test.

When we later told the coach that we were called for doping test, he told us the Coaching Chairman's instruction was, not to attend the test and to meet the Coaching Chairman at a restaurant the same day. We were also told to switch off our mobile phones so that the NSI personnel cannot reach us.

The same day when we met the Coaching Chairman (Deputy President) together with Coach Harun, the Coaching Chairman told us that we would be sent off to Bulgaria for training immediately to avoid the testing. He also told us that no one has the authority to instruct the athletes to go for dope test.

We as athletes and coach of MAF are bound to the instruction of the Coaching Chairman (Deputy President). We are even not allowed to make any press statements on any issue [...]"

With reference to their subsequent answers to the questionnaires, the Athletes and the Coach's positions can be summarized as follows:

Ms. Norjannah Hafiszah Jamaludin (Athlete 1)

She is a Malaysian citizen and she was born on 23 May 1986. Her national language is Bahasa Malaysia ("Malay") and her second language is English. She competes in the following events namely 100 meters, 200 meters and relays. She has been involved in athletics for 11 years. She has competed both at national and international level. Her most important competition was the World Championship in 2011 and her best performance is 11.60 in the 100 meters.

She has got a lot of information about the fight against doping in sports, about anti-doping rules and about her rights and duties as an athlete in connection with the anti-doping rules and procedures since she began competing. She wants to emphasize that the fight against doping must be carried on in strict compliance with the law and also to make sure that individual athlete's rights are respected. She was taught to follow the rules laid down in the anti-doping law-code.

She was told to attend a medical examination at the NSIM on 24 May 2011. She was informed about this by her Coach during an afternoon training session on 21 May 2011. The Coach informed her that all athletes scheduled for the European training stint must undergo a full medical examination at NSIM on that day. However, he did not mention anything about any doping test. She was also told to bring a friend's urine when undergoing the medical examination and so she did. The Coach told her that Karim Ibrahim had instructed him to do so.

While undergoing the medical test, when she was in the cardiac screening room, she was informed that she had to go for a doping test. She did not submit the doping test because when she informed the Coach about the test he asked her not to go for the test. The Coach was instructed by Karim Ibrahim that the Athletes were not supposed to undergo any doping test before leaving for the European training stint. In a second answer to the same question the Athlete has written: *"When I was told by NSIM staff that we have to for doping test, than I call Karim Ibrahim, using my cell phone regarding that doping test matter and he then asked us not to do this doping test. I call my coach Harun, he also mentioned to follow what Karim has told you. Karim also call me again, he wanted us to meet him at Maulana Restaurant in Sri Serdang at the same day. During the briefing by Karim, he had mentioned that he had made the necessary arrangement through the Bulgarian coach for all the athletes to fly to Bulgaria on 25 May 2011 and also train under this Coach"*.

She does not acknowledge that she has ingested any doping substances. She was told by her Coach that the supplements that were given to her were only vitamins and not doping substances. She was confused when she was told not to undergo the doping test because if she has not done anything wrong, then there was no necessity for her to undergo a doping test. She states that as an athlete she has to follow the instructions of Karim Ibrahim. During her meeting with her Coach and Karim Ibrahim at the Restaurant Karim Ibrahim mentioned that they did not have to worry because neither the National Sports Council of Malaysia (NSCM), nor NSIM or the ADAM had the authority to conduct a doping test on the athletes without prior notice and that he would deal with the doping issue later. During the dinner Athlete 5 recorded most of the conversation using her mobile phone. She later transferred the voice recording onto a CD. During the independent inquiry, which was conducted by the MAF and headed by a retired Appeal Court Judge ("independent Inquiry"), everyone present listened to the CD

which was provided by Athlete 5. The voice recording showed clearly that the Coach had nothing to do with the Bulgarian trip.

She only used supplements given to her by NSIM and not any doping substances. She had undergone doping tests during the training stint in Sliven, Bulgaria, and during the World Championships in Korea, which tests were negative.

She is very sad that Karim Ibrahim misused his power and ordered them not to attend the doping test. If they did not follow his instructions they would not be allowed to participate in any overseas competition. Due to all these problems she has given up her athletic carrier. She had a wonderful time training with her Coach. She did her best time and the relay team broke the national record. She really hopes that her Coach should be given a second chance to be national coach again.

She wants the Panel to make a decision on documentary evidence.

Ms. Nurul Sarah Binti Abdul Kadir (Athlete 2)

She is a Malaysian citizen and she was born on 2 June 1988. Her national language is Malay and her second language is English. She competes in the 100 meters, 200 meters and relays. She has been involved in athletics for 15 years. She has competed at international level in the World University Games.

Since she started to participate in athletics she was instructed to follow the anti-doping rules. She has also learned the procedures of anti-doping in sport.

She was told to attend a medical examination at the NSIM on 24 May 2011. She was informed about this by her Coach during an afternoon training session on 21 May 2011. She was informed that all athletes scheduled for the European training stint must undergo a full medical examination at NSIM on that day. However, the Coach did not mention anything about any doping test. She was also told to bring a friend's urine when undergoing the medical examination and so she did.

She was informed of the doping test by the NSIM staff when she was in the cardiac screening room. She did not submit to the doping test. She merely followed the instructions given to her by her Coach, who said that Karim Ibrahim has told the Coach that they did not need to go for the doping test. She was told by Athlete 1 that Karim Ibrahim had called her and that Karim Ibrahim wanted to see Athletes 1 to 6 and their Coach at the Restaurant on the same day at 6 pm in the evening.

She is not sure if she has ingested any forbidden substances. She has only taken substances given to her by the NSIM. She was confused when she was asked not to submit to the doping test. If she has not done anything wrong, then why should she not

just go for the doping test. But as an athlete she has to follow what she was told by Karim Ibrahim and her Coach. During their meeting with Karim Ibrahim and her Coach at the Restaurant Karim Ibrahim mentioned that they did not have to worry because neither the NSCM nor the NSIM had the authority to conduct this doping test on the athletes without prior notice and that he would deal with the doping issue matter later. During the dinner Athlete 5 recorded the conversation using her mobile phone. She later transferred the voice recording on to a CD. During the independent inquiry Athlete 5 handed the CD to the inquiry.

She states that, as an athlete, she has to follow the instructions of Karim Ibrahim or else she would not be allowed to compete in overseas competitions. In her opinion Karim Ibrahim misused his position by sending the athletes to Bulgaria earlier than the scheduled date.

She was tested during the training stint in Bulgaria 2011. It was negative.

She wants the Panel to make a decision on documentary evidence.

Mohammad Noor Imran A Hadi (Athlete 3)

He is a Malaysian citizen. He was born on 31 May 1985. His national language is Malay and his second language is English.

He competes in the 100 meters, 200 meters and relays. He has been involved in athletics for six years. He has been competing at both national and international level. His highest performance is in the World Championships 2011. His best time in 100 meters is 10.40.

He states that as an athlete he has learnt about the anti-doping procedures. He was taught to follow the rules laid down in the anti-doping code.

He was told to attend a medical examination at the NSIM on 24 May 2011 by his Coach during an afternoon training session on 21 May 2011. He was informed that Athletes 1 to 6 scheduled for the European training stint must undergo a full medical examination at NSIM on that day. However, his Coach did not mention anything about any doping test. He was also told by this Coach to bring a friend's urine when undergoing the medical examination. His Coach told them that the instruction about the urine came from Karim Ibrahim.

He did not attend the medical examination. He told his Coach that he had some family matters to attend to. He was informed of the doping test matter by this Coach and his Coach requested him not to submit to the test as these were the instructions of Karim Ibrahim. His Coach also told him that his Coach and Karim Ibrahim wanted to meet

Athletes 1 to 6 at the Restaurant at 6:00 p.m. on the same day. During the meeting Karim Ibrahim told Athletes 1 to 6 that he had made the necessary arrangements through a Bulgarian coach for all Athletes 1 to 6 to fly to Bulgaria on 25 May 2011 to undergo training under the said Bulgarian coach.

He only used supplements given to him by NSIM. He was told by his Coach that all supplements were vitamins and not related to doping substances. He was confused when Karim Ibrahim did not want them to attend the medical test. As an athlete, he was bound by the instructions given to him by Karim Ibrahim. During their meeting with Karim Ibrahim and his Coach at the said Restaurant Karim Ibrahim mentioned that they did not have to worry because the NSCM and the NSIM did not have the authority to conduct this doping test on Athletes 1 to 6 without prior notice. Karim Ibrahim also told him that he would deal with the doping issue matter later. In his opinion Karim Ibrahim had misused his powers. He states that if he did not follow Karim Ibrahim's instructions he would not be allowed to compete overseas. He feels that both he and his Coach were victims as they had no choice but to follow Karim Ibrahim's instructions.

He does not think that he has at any time has taken any forbidden substances. He attended a doping test in Bulgaria during the training stint in 2011 and he also submitted to a doping test in Korea during the World Championships in 2011 and both tests were negative.

He and the other 5 Athletes are happy that Karim Ibrahim has been suspended. He hopes that his Coach will be reinstated to his coaching position because he likes to train under an experienced coach. He has improved in training and his best time is 10.40 in 100 meters.

He wants the Panel to make a decision on documentary evidence.

Siti Zubaidah bt Adabi (Athlete 4)

She was born on 30 September 1986 in Malaysia and she understands Malay and English.

She competes in the 100 meters and 200 meters and her best time in both events is 11.81 and 24.34 respectively. She has been competing in sprints for two years. She has competed at both national and international levels. She participated in the Asian Games in 2010 and the Southeast Asian Games in 2007 and 2009.

She did not get any proper or detailed information about the anti-doping rules and the fight against doping. She understands the basics that, as an athlete, she has to undergo a doping test after winning a race.

She was informed of the medical examination orally by her Coach on 23 May 2012. Her Coach asked her to bring a friend's urine but she did not have anyone to ask for a urine sample so that is the reason why she did not bring someone else's urine.

During the medical examination at around 8.30 – 9.00 am she was informed of the doping test by the NSIM staff. She did not attend the doping test because she was instructed by her Coach not to submit to the doping test as these were the instructions of Karim Ibrahim.

On 26 May 2011 she chose to submit the doping test at NSIM at 8.30 – 10.00 am after being advised by Athlete 5.

She states that she has only taken supplements given to her by NSIM and her Coach. She was not forced to take any drugs and she is not aware if these supplements contained any forbidden substances. Her Coach told her that the supplements were to assist her recovery and it was in order for her to take those pills.

She states that she is not guilty of any doping offence as she was merely following instructions from her Coach.

She prefers the Panel to make a decision on documentary evidence.

Siti Fatimah bt Mohamad (Athlete 5)

She is a Malaysian citizen and was born on 25 March 1986. Her languages are English, Malay and Mandarin and she writes in English and Malay.

She has been involved in athletics since she was 10 years old. She has competed at international level namely in the Hong Kong, Sri Lanka and Thailand Open Championships.

She states that she did not receive much information about doping. She was merely told by her friends after the doping incident happened. She is not aware of the rules pertaining to doping nor her rights.

She was informed by her Coach about the medical examination on 23 May 2011. Her Coach did not inform about the doping test, but she was requested to bring a urine sample that did not belong to her, which she did. After her medical examination, she was informed of the doping test but she did not submit to the test. She was instructed by her Coach not to attend the doping test as these were the instructions of Karim Ibrahim. Her Coach also informed her that NSIM needed to have approval from MAF before they conducted the doping tests of Athletes 1 to 6.

She is not aware that she had used any banned substances. Her Coach told her that the pills were vitamins and recovery supplements. She ingested the pills but she was completely unaware that the pills were doping substances. She was not forced by her Coach to consume the banned substances as she was of the view that these were vitamin pills. She consumed these pills from the end of March to the middle of May 2011. She trusted her Coach and did not suspect that there was anything wrong. She states that she was naïve and immature and did what she was told. She also never questioned her Coach's action as she perceived that he was doing an honest job. She was also subjected to peer-pressure since all her other athletes were consuming the same substance and she did not want to be the exception.

She states that she is sorry for what has transpired and she regrets her acts and she now understands the consequences. She should have enquired before consuming the pills if she was unaware that the pills were banned substances. She hopes to learn from her mistakes and promises to be more diligent in the future and not blindly obey orders.

She attended the meeting at the Restaurant with Athletes 1, 2, 3, 4, one Mohd Ikhwan, Karim Ibrahim and her Coach. Athlete 6 did not attend the meeting. The purpose of the meeting was to clarify what was happening. Karim Ibrahim advised them to travel to Bulgaria and not to attend any doping tests. Karim Ibrahim told them not to tell anyone about this doping incident. He also arranged for flight tickets and accommodation for the Bulgarian coach and the other Athletes. She secretly recorded what transpired at the restaurant on her mobile phone, which she subsequently transferred on to a CD that was handed over to the MAF during the internal inquiry. She recorded the meeting secretly in order to have evidence against Karim Ibrahim.

She does not want an oral hearing and agrees to the Panel making rendering an award on documents.

Yee Yi Ling (Athlete 6)

She is a Malaysian citizen and was born on 22 August 1984. Her languages are Malay, Chinese and English.

She competes in 100 meters and relay. She has been involved in athletics for 16 years. She has competed at an International level in the Asian Games and the Southeast Asian Games.

She states that since she participated in athletics, she was instructed to follow the rules laid down on anti-doping and as an athlete she is familiar with the procedures of anti-doping in athletics.

She was told to attend a medical examination at the NSIM on 24 May 2011 by her Coach during an afternoon training session on 21 May 2011. She was informed that all athletes scheduled for the European training stint must undergo a full medical examination at NSIM on that day. However, her Coach did not mention anything about any doping test. She was also told by her Coach that it was Karim Ibrahim's idea that they should bring a friend's urine when undergoing the medical examination and so she did.

During the medical examination at NSIM she was informed by the staff that she had to undergo a doping test. She did not attend the doping test. She merely followed the instructions of her Coach who said that Karim Ibrahim had given instructions that there was no need for a doping test and that they should not follow the instructions of NSIM. She was told by Athlete 1 that Karim Ibrahim had called her and told her that he wanted to meet Athletes 1 to 6 and her Coach at the Restaurant. She did not attend the meeting. She was informed later by her Coach that Karim Ibrahim had said that all the athletes should get ready to leave for Bulgaria on 25 May 2011. Her Coach also told her that during the meeting Karim Ibrahim had mentioned that he had made the necessary arrangements for them to leave for Bulgaria on 25 May 2011 with the assistance of a Bulgarian coach and arrangements had been made for them to train under the said Bulgarian coach. Karim Ibrahim had also told them not to worry and that he would deal with the doping issue later.

She does not think that she used any forbidden substances. She states that she only used the supplements that were given to her and she was told that these were vitamins supplied by NSIM. She was confused when she was asked not to submit to the doping test. If she has not done anything wrong then why should she not just go for the doping test. But as an athlete, she has to follow what she was told by her Coach and Karim Ibrahim. During their meeting at the Restaurant, Karim Ibrahim told them that neither the NSCN nor the NSIM had the authority to conduct a doping test on the athletes without prior notice. She underwent a doping test on 26 May 2011 together with Athlete 4 and 5 and the tests were negative. The three of them as well as their Coach did not leave for Bulgaria as they felt that Karim Ibrahim had done something that was against the WADA Rules.

She states that she was not forced to take any drugs and as an athlete she trusted her Coach and Karim Ibrahim.

She is unhappy with what transpired.

She was informed that during the dinner at the Restaurant, Athlete 5 recorded what transpired at the restaurant using her mobile phone, which she subsequently transferred on to a CD that was handed over to the MAF during the inquiry. The recording is evidence that Karim Ibrahim has misused his position. If Athletes 1 to 6 had not fol-

lowed his instructions he would not have sent them for competitions overseas. She is planning to come back to training. She feels that she and all the other Athletes and the Coach were misled by Karim Ibrahim.

She does not want an oral hearing and agrees to the Panel rendering an award on documents.

Harun Rasheed B. Othuman (the Coach)

He is a Malaysian citizen born on 5 June 1954. His first language is Malay and his second language is English.

He used to compete in the 100 meters, 200 meters and relays. He has been a coach since 1980. He was trained as a coach in Malaysia and in England. He has been a coach for many athletes including Athletes 1 to 6.

He is aware of the anti-doping procedures through the various athletic courses that he has attended and through his many years of experience both as an athlete and as a coach.

He was informed by the Sports Manager of NSCM Datuk M Magendran that some of his athletes were required to attend a medical examination at NSIM on 24 May 2011 when he attended a meeting on 20 May 2011, at 2.30 pm, a week before the scheduled trip for Bulgaria. The meeting was attended by him and two other athletic coaches, MAF's Program Coordinator and MAF's General Manager were also present at this meeting. They were informed that all athletes scheduled for the European training stint must undergo a full medical examination at the NSIM on 24 May 2011. The Sports Manager did not mention anything about a doping test. He informed all the athletes training under him to attend the medical examination. He reminded Athletes 1 to 6 to bring along urine samples of their friends to the examination as instructed by Karim Ibrahim earlier.

On 24 May 2011, between 9.30 and 10.00 am, as the athletes were undergoing the medical examination, he learnt about the doping test. On 24 May 2011, at 8.30 am he met Athletes 1, 2, 4, 5 and 6 at NSIM. Athlete 3 had informed him earlier that he would be late for the medical examination. While the athletes were undergoing the medical examination, an officer from the ADAM came to inform him that all the athletes were also required to undergo the doping tests after their medical examination. He instructed Athletes 1, 2, 4, 5 and 6 "to do the necessary" and left NSIM. Minutes later Athlete 1 called to inform him that she had contacted Karim Ibrahim and that Karim Ibrahim had given instructions that Athletes 1 to 6 are to avoid the doping test. Karim Ibrahim also instructed Athletes 1 to 6 to leave NSIM and the national training centre immediately and also instructed them to switch off their mobile phones. Upon

hearing this, the Coach called Karim Ibrahim and Karim Ibrahim told the Coach to inform Athletes 1 to 6 not to submit to the doping test. The Coach on the instructions of Karim Ibrahim, instructed Athletes 1 and 6 not to submit to the test.

Athlete 1 informed the Coach that Karim Ibrahim had called her and informed her that he wanted to meet the Coach and all the athletes who avoided the doping test at the Restaurant, not far from the national training ground. They first met at the Maulana Restaurant and then moved to the Restaurant. During this meeting Karim Ibrahim told them not to worry because neither the NSCM, nor the NSIM or ADAM had the authority to conduct doping tests on the athletes without prior notice. Karim Ibrahim also mentioned that he had made the necessary arrangements through a Bulgarian coach, who was sponsored by the MAF to visit Malaysia in March 2011, for all the athletes to fly to Bulgaria on 25 May 2011. Karim Ibrahim also mentioned that he would deal with the doping issue later. In the Coach's opinion, Karim Ibrahim by avoiding the doping test for the athletes misused his position by sending the athletes to Bulgaria earlier than the scheduled date.

Athlete 5 secretly recorded the conversation that took place between them and Karim Ibrahim using her mobile phone. She handed the recording to the MAF and later to the Independent Inquiry Committee ("Committee"). Athlete 5 explained to the Committee that she felt that something was wrong with the whole arrangement made by Karim Ibrahim and therefore it was necessary to record the conversation.

He never provided Athletes 1 to 6 with banned substances. He only gave them supplements given to him by NSIM.

On 25 May 2011, four athletes left for Bulgaria; Athletes 1, 2, 3 and another athlete of his, who was not in the National Training Program, Mohd Ikhwan Nor. He did not accompany them to Bulgaria as he had family matters to deal with. All the arrangements including return tickets and logistics during the entire trip was made by Karim Ibrahim.

He did not take part in any discussions about the possibility to move this trip forward. He only listened and took instructions from Karim Ibrahim.

He told the athletes not to submit to the doping test as instructed by Karim Ibrahim. As a coach of MAF he was bound by the instructions of Karim Ibrahim and not allowed to make any press statements on any issue. As a Chief Coach in MAF, he is duty bound to take instructions from Karim Ibrahim.

He went to Bulgaria on 13 June 2011, as instructed by Karim Ibrahim, to settle payments for all matters pertaining to the training stint in Bulgaria. He came back to Ma-

aysia on 12 July 2011. The athletes continued their training with the Bulgarian coach until 6 August 2011 when they returned to Malaysia.

Currently he is unemployed as a result of the doping issue and the NSCM stopped paying his salary of 4.000 RM a month since June 2011. Karim Ibrahim promised him that the MAF would continue to pay his salary from June 2011 but it never did. After the Southeast Asian Games in Indonesia, he resigned as coach of the MAF. He and his athletes are victims for following Karim Ibrahim's orders. If he is offered a coaching job again he will accept it.

Karim Ibrahim has mercilessly misused his power and forcefully ordered him to follow his instructions. As far as the MAF is concerned, proposals to hire or fire coaches were under the direct responsibility of the Coaching Committee of the MAF and anyone who opposed the wishes of Karim Ibrahim - would have had their contracts terminated.

He wants the Panel to make a decision on documentary evidence.

D. The Report and the Transcript

The Panel requested the MAF to provide the Panel with the report of the Independent Inquiry Committee dated 19 September 2012 and a transcript and a translation into English of the conversation recorded in the restaurant on 24 May 2011. The MAF has provided the CAS with these documents on 23 October 2012 and 23 November 2012.

E. Appellant's comments on the Report, the Transcript and the Answers from Athletes 1 to 6 and the Coach

In its letter dated 29 November 2012 the Appellant makes the following observations on the report, the transcript and the answers from Athletes 1 to 6 and the Coach.

The Appellant's global appreciation of the Respondents' Answers, the Report and the Transcript is that they do not materially affect the arguments set out in their Appeal Brief.

In particular, the Coach concedes that he instructed the Athletes to evade the doping test at NSIM on 24 May 2011. For their part, the Athletes do not contest that they evaded the doping test on 24 May 2011 and offer no compelling justification for the same.

The Appellant submits that the Transcript is (for the most part) incomprehensible. Indeed, the Report states that "what was said was not always comprehensible" (paragraph 21.3). However, the references, in quick succession on page 7 of the Transcript,

to taking and bottling blood, making payments and "catching" people certainly suggest that the conversation was not of a wholly innocent nature.

The exhibits to the Appellant's Statement of Appeal and Appeal Brief, the Report - including the part of the Report relating to Mohd Yunus Lasaleh at paragraph 18.1 *et seq.* - and the Transcript (to the extent that it is intelligible) all indicate that the MAF (or certain elements within it) has been engaged in systematic and organised doping practices.

Notwithstanding any role which Karim Ibrahim, who is not a party to these proceedings may have had in such doping practices, it is very difficult to accept that the Coach and the Athletes were not at least aware of and complicit in such practices.

In particular, the fact that the Coach was prepared to instruct the Athletes to take someone else's urine to a medical examination indicates that he was, at the very least, aware of doping practices and was prepared to take steps to conceal the same. The instruction to evade the doping test was a further element in such concealment.

The Appellant has resolved, based on its appreciation of all the facts of the case, to modify its conclusions and request that a period of ineligibility of two years (as opposed to its initial request of up to a maximum of four years) is imposed on each of the Athletes. Subject to this one modification, the Appellant maintains the requests set out in its Appeal Brief, including up to a maximum of lifetime ineligibility for the Coach.

LEGAL ANALYSIS**5. JURISDICTION OF THE CAS**

5.1 Article R47 of the CAS Code provides as follows:

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.

5.2 Article 42.1 of the IAAF Anti-Doping Rules in both the Current and the Previous versions (IAAF ADR) states inter alia the following:

Decisions subject to Appeal

1. Unless specifically stated otherwise, all decisions made under these Anti-Doping Rules may be appealed in accordance with the provisions set out below. All such decisions shall remain in effect while under appeal unless the appellate body orders otherwise or unless otherwise determined in accordance with these Rules (see Rule 42.15). Before an appeal is commenced, any post-decision review provided in these Anti-Doping Rules must be exhausted (except where WADA has a right of appeal and no other party has appealed a final decision under the applicable rules, in which case WADA may appeal such decision directly to CAS without having to exhaust any other remedies).

5.3 Article 42.3 of the IAAF ADR states:

Appeals Involving International-Level Athletes: *in cases involving International-Level Athletes or their Athlete Support Personnel, the first instance decision of the relevant body of the Member shall not be subject to further review or appeal at national level and shall be appealed only to CAS in accordance with the provisions set out below.*

5.4 In Article 42.5 IAAF ADR it is said that the Appellant is one of the persons which are entitled to appeal in cases under Article 42.3.

5.5 In light of the evidence adduced, the Panel deems that all Athletes 1 to 6 in this case are international level athletes.

5.6 None of the parties has contested that the CAS has jurisdiction in this dispute.

5.7 According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

6. ADMISSIBILITY

6.1 In reference to paragraph 6.3 above Article 42.3 of the Current and the Previous version of IAAF ADR states that in cases involving international level athletes or their athlete support personnel, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court.

6.2 Article 42.14 of the IAAF ADR provides that "*The filing deadline for an appeal to CAS filed by WADA shall be the later of (a) twenty-one (21) days after the last day on which any party entitled to appeal in the case could have appealed; or (b) twenty-one (21) days after WADA's receipt of the complete file relating to the decision.*"

6.3 The Appellant has stated that it was notified of the Appealed Decision by an e-mail from ADAM on 12 March 2011 and it contended in its Appeal Brief that on 7 May 2012 it had still not received the whole file. These allegations have not been contradicted by the Respondents.

6.4 In light of the above, the Panel finds the Appeal admissible.

7. APPLICABLE LAW

7.1 Article R58 of the CAS Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

7.2 It seems to be common ground between the Appellant and MAF that the applicable regulations in this case are the version of the IAAF ADR in force prior to 1 November 2011 (hereinafter referred to as the IAAF ADR), which applies to all members and participants in the activities of the IAAF or of its member federations. Therefore, the IAAF ADR shall be applied on the merits. As to procedural issues, the procedural rules of the CAS Code, supplemented if necessary by Swiss procedural law and principles, shall be applied.

8. THE PANEL'S FINDINGS ON THE MERITS

8.1 Anti-Doping Violation:

The Athletes

8.1.1 Rule 32.2 IAAF ADR defines that "*The following constitute anti-doping rule violations:*

(c) Refusing or failing without compelling justification to submit to Sample collection after notification as authorized in applicable anti-doping rules or otherwise evading Sample Collection."

8.1.2 Athletes 1 to 6 have admitted that they intentionally refused to submit to doping test of 24 May 2011. According to Athlete 1, Athlete 2, Athlete 4, Athlete 5, and Athlete 6, they were all notified of the doping test at the NSIM, while the medical examination was being conducted. They all decided, after having received instructions to that effect from the Coach and/or Karim Ibrahim, not to submit to the doping test of that day.

8.1.3 Athlete 3 did not attend the medical examination on 24 May 2011. He has stated in his answers that he learned about the doping test on 21 May 2011, but the Panel finds that is probably a mistake, since, according to all the other evidence adduced, none of the other Athletes nor the Coach learnt of the doping test of 24 May 2011 before they went to the medical examination at the NSIM that day. Athlete 3 however did hear about the doping test from the Coach during the day of 24 May 2011 and also stated that he had planned to bring to the medical test the urine of another person. Furthermore, he joined the other Athletes during the meeting at the Restaurant in the afternoon/evening and, despite learning that ADAM wanted him and the others to undergo another doping test, which took place on 26 May 2011, he left for Bulgaria on 25 May 2011. For the foregoing reasons, the Panel finds that Athlete 3 also intentionally evaded sample collection.

8.1.4 The Panel has to answer the question if there is any compelling justification for Athletes 1 to 6 not to submit to sample collection. Athletes 1 to 6 have referred to the fact that they felt obliged to follow the instructions of the Coach and Karim Ibrahim or else they would have been punished by not being permitted to go abroad for important competitions. More specifically, Athletes 1 to 6 argue that they felt compelled to obey the underlying orders of Karim Ibrahim, who held the highest authority as Managing Coach and Deputy President of the MAF.

8.1.5 Generally speaking, the Panel finds that the fact of an athlete feeling obliged to avoid an anti-doping test due to having received instructions to do so from a coach and/or a manager and/or another member of his/her entourage and/or an official whose authori-

ty he/she must normally respect - under the threat that any disobedience would lead to reprisals affecting the athlete's rights to train and compete in a normal manner - cannot, in principle, be deemed a compelling justification, since an athlete will normally be able to and should take the responsibility of denouncing any such threats to a superior authority at national and/or international level.

- 8.1.6 The anti-doping system codified by the World Anti-Doping Code is predicated on the personal responsibility of individual athletes, which encompasses the responsibility of understanding anti-doping rules and resisting any undue pressures to violate them in any manner. If this personal responsibility of athletes were not systematically and strictly enforced, it would leave room for persons in their entourage and/or dishonest officials to attempt exercising undue pressures, which ultimately would harm the athletes and encroach upon their freedom, and would also risk inciting unscrupulous athletes to attempt using members of their entourage or other persons as scapegoat for undue actions of their own.
- 8.1.7 The Panel finds that no exceptional circumstances have been adduced in this case that should lead it to a different finding, even if the alleged pressure on Athletes 1 to 6 and the alleged threat to their training/competing rights came partly from the Deputy President of the MAF. At the time of this alleged undue pressure and threat, Athletes 1 to 6 were between the ages of 22 (the youngest) and 27 (the oldest) years old, i.e. they were adults and not minors, and the alleged threat (to be barred from training/competing abroad) was not of a nature and so serious that it could not be resisted, even if it concerned their activity/career as athletes. At that age, and even if "whistle-blowing" is not easy, they were adult enough to understand that they could complain to the anti-doping authorities (nationally and internationally) and even to a higher authority within the MAF (as they ultimately did) and/or to the IAAF (as they also subsequently did). The Panel understands that for cultural reasons athletes may react to authority in different manners. However, differences in attitude towards authority stemming from cultural diversity may not stand in the way of a uniform application of anti-doping rules, since the rules represent a world-wide international system for regulating and fighting doping in sport that cannot afford to account for national or regional particularities. Allowing the contrary would lead to differences of treatment between sports and/or athletes that would undermine the level playing field, which is one of the fundamentals of fairness in sporting competitions.
- 8.1.8 Furthermore, the Panel notes that before the Deputy President of the MAF got directly involved (by meeting them at the Restaurant), Athletes 1 to 6 were prepared to go very far to conceal the possible presence of prohibited substances in their bodily system, since all of them have admitted that they were prepared to bring another person's urine to the medical examination, upon the mere request of their coach. Athlete 4 has explained that the reason why she brought a urine sample of her own was simply that she did not find any person to give her a urine sample.

- 8.1.9 The Panel finds that such behaviour demonstrates a significant lack of responsibility on the part of Athletes 1 to 6 and disrespect for basic anti-doping rules, independently from any pressure or threat that was subsequently exercised on them not to undergo an anti-doping test.
- 8.1.10 For the foregoing reasons, the Panel finds that the circumstances evidenced in this case are clearly not of a nature which can be deemed to amount to a compelling justification for Athletes 1 to 6 not to submit to the sample collection on 24 May 2011.
- 8.1.11 Accordingly, the Panel finds that Athletes 1 to 6 all committed an Anti-Doping Violation as defined under Rule 32.2 IAAF ADR.

The Coach

- 8.1.12 IAAF ADR in 32.2 defines the following as an anti-doping rule violation:

(h) Administration or Attempted administration to any Athlete In-Competition of any Prohibited Method or Prohibited Substance, or administration or Attempted administration to any Athlete Out-of-Competition of any Prohibited Method or Prohibited Substance that is prohibited Out-of-Competition or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation.

- 8.1.13 In this case, the Appellant is arguing that the Coach committed a serious anti-doping offence by allegedly encouraging Athletes 1 to 6 to bring someone else's urine to the medical examination, by instructing them not to submit to sample collection and by covering up for the Athletes by rescheduling a flight to Bulgaria so that the Athletes could leave Malaysia on the day after they were notified of the doping test.
- 8.1.14 Even if the Coach has argued that he was obeying the orders of Karim Ibrahim, he has admitted that he advised Athletes 1 to 6 not to bring their own urine to the medical examination and to evade the doping test. In relation to the rescheduled flight, he has stated that he was following the instructions of Karim Ibrahim who organized everything regarding the travel to Bulgaria. The Panel finds that the recording of the meeting at the Restaurant on the evening of 24 May 2011 gives at least some support to the standpoint of the Coach as far as the rescheduled flight is concerned. Also, the evidence given by the Coach is largely consistent with the statements submitted by Athletes 1 to 6.
- 8.1.15 However, the Panel finds that, whether or not the coach was submitting to the orders of his superior, Karim Ibrahim, he clearly committed an anti-doping violation as defined in Rule 32.2 (h) IAAF ADR by first instructing the Athletes to bring samples of urine of other persons and then participating in instructing them not to take part in the

anti-doping control of 24 May 2011. As a very experienced coach, he clearly must have understood what he was doing and intended the actions he undertook and should have resisted any such orders from his superior Karim Ibrahim.

8.2 Determining the sanction

8.2.1 According to Rule 40.3 (a) of the IAAF ADR the following sanctions are applicable.

Ineligibility for Other Anti-Doping Rule Violations

3. *The period of Ineligibility for anti-doping rule violations other than as provided in Rule 40.2 shall be as follows:*

(a) For violations of Rule 32.2(c) (refusing or failing to submit to Sample collection) or Rule 32.2(e) (Tampering with Doping Control), the period of Ineligibility shall be two (2) years unless the conditions provided in Rule 40.5, or the conditions provided in Rule 40.6, are met.

The Rules 40.5 and 40.6 provides the following:

Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

5. *(a) No Fault or Negligence: If an Athlete or other Person establishes in an individual case that he bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated.*

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(b) No Significant Fault or Negligence: If an Athlete or other Person establishes in an individual case that he bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Rule may be no less than eight (8) years.

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(c) Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations: The relevant tribunal of a Member may, prior to a final appellate decision under Rule 42 or the expiration of the time to appeal (where applicable in the case of an International-Level Athlete having referred the matter to the Doping Review Board for its determination under Rule 38.16) suspend a part of the period of Ineligibility imposed in an individual case where the Athlete or other Person has provided Substantial Assistance to the IAAF, his National Federation, an Anti-Doping Organisation, criminal authority or professional disciplinary body resulting in the IAAF, National Federation or Anti-Doping Organisation discovering or establishing an antidoping rule violation by another Person or resulting in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another Person. After a final appellate decision under Rule 42 or the expiration of time to appeal, an

Athlete or other Person's period of Ineligibility may only be suspended by a Member if the Doping Review Board so determines and WADA agrees. If the Doping Review Board determines that there has been no Substantial Assistance, the determination shall be binding on the Member and there shall be no suspension of Ineligibility. If the Doping Review Board determines that there has been Substantial Assistance, the Member shall decide on the period of Ineligibility that shall be suspended. The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in Athletics. No more than three-quarters of the otherwise applicable period of Ineligibility may be suspended. If the otherwise applicable period of Ineligibility is a lifetime, the non-suspended period under this Rule must be no less than eight (8) years. If the Member suspends any part of the period of Ineligibility under this Rule, the Member shall promptly provide a written justification for its decision to the IAAF and any other party having a right to appeal the decision. If the Member subsequently reinstates any part of the suspended period of Ineligibility because the Athlete or other Person has failed to provide the Substantial Assistance which was anticipated, the Athlete or other Person may appeal the reinstatement.

(d) Admission of an Anti-Doping Rule Violation in the Absence of Other Evidence: Where an Athlete or other Person voluntarily admits the commission of an anti-doping rule violation before having received notice of a Sample collection which could establish an anti-doping rule violation (or, in the case of an anti-doping rule violation other than Rule 32.2(a), before receiving first notice of the admitted violation pursuant to Rule 37) and that admission is the only reliable evidence of the violation at the time of the admission, then the period of Ineligibility may be reduced but not below one-half of the period of Ineligibility otherwise applicable.

Rule 40.6 states the following:

Aggravating Circumstances which may Increase the Period of Ineligibility

If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.

(a) Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the antidoping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or

used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility.

(b) An Athlete or other Person can avoid the application of this Rule by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation (which means no later than the date of the deadline given to provide a written explanation in accordance with Rule 37.4(c) and, in all events, before the Athlete competes again).

The sanction for the Athletes

- 8.2.2 As underlined by the Comment to the World Anti-Doping Code ("WADC") to Articles 10.5.1 and 10.5.2 - which correspond to 40.5 (a) and (b) in IAAF ADR - and as confirmed by a long line of CAS jurisprudence, Articles 10.5.1 and 10.5.2 only apply in circumstances which are truly exceptional.
- 8.2.3 Furthermore, in this Panel's view, lack of intention is a necessary but by no means sufficient condition for justifying a reduction under Articles 10.5.1 and 10.5.2 WADC and under the corresponding Rules 40.5 (a) and (b) in IAAF ADR.
- 8.2.4 Consequently, and because Athletes 1 to 6 have admitted that they intentionally chose not to submit to the sample collection, the Panel considers that neither Rule 40.5 (a) nor Rule 40.5 (b) of the IAAF ADR is applicable and the sanction cannot be reduced on such basis.
- 8.2.5 It is theoretically possible for a violation to be committed intentionally but under such pressure that the intention is not deemed punishable, however that is precisely one of the exceptions that Rule 32.2 IAAF ADR accounts for by allowing an athlete to prove that he/she had a "compelling justification" to refuse or fail to submit to a sample collection. However, in this case, the Panel has already explained above the reasons for which it finds that in the circumstances of this case Athletes 1 to 6 have not established the existence of a compelling justification.
- 8.2.6 The next issue for the Panel is to decide whether Athletes 1 to 6 have established substantial assistance in discovering or establishing anti-doping rule violations as defined by Rule 40.5 (c) IAAF ADR.

- 8.2.7 Athlete 5 made a recording during the meeting at the Restaurant between Athletes 1, 2, 3, 4, 5, one Mohd Ikhwan, the Coach and Karim Ibrahim during the night of 24 May 2011. This recording was handed over to the MAF and it was one element in the further investigation regarding the doping practices within the MAF and the participation in such practices of, among others, Karim Ibrahim, the then Deputy President of the MAF. It is clear in the report of 19 September 2012 of the Independent Inquiry Committee that the recording represented evidence that Karim Ibrahim had been involved in the doping practices within the MAF. Karim Ibrahim was on 11 October 2012 suspended for six years by the MAF after being found guilty of doping offences.
- 8.2.8 The question is whether Athlete 5 has provided substantial assistance to the MAF resulting in the National Federation discovering or establishing an anti-doping rule violation by another person or resulting in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another person.
- 8.2.9 The Panel finds that Athlete 5 has provided the MAF with facts concerning a cover-up of the doping practice in which Karim Ibrahim was deeply involved and that this contribution was one part in the chain leading to the suspension of Karim Ibrahim from the board of MAF. In that relation, the Independent Inquiry Committee expressed its appreciation of what they called "whistle-blowing".
- 8.2.10 In this case, the Panel deems that the Athlete's assistance was substantial because it represented an early piece of evidence that partook in enabling the MAF to establish an anti-doping rule violation by its Deputy President, which led to his suspension and allowed to uncover a very serious doping scheme that had developed within the MAF.
- 8.2.11 Consequently, Athlete 5 is entitled to a reduction of the two year Ineligibility period to which she is subject on the basis of the Panel's findings. The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the seriousness of the anti-doping rule violation committed by an Athlete or other person and the significance of the substantial assistance provided by an Athlete or other person to the effort to eliminate doping in athletics. A maximum of three-quarters of the otherwise applicable period of Ineligibility may be suspended. In the present case, the Panel deems a reduction of six months in the otherwise applicable period of two years of Ineligibility to be appropriate, i.e. a reduction of suspension representing a quarter of the otherwise applicable sanction.
- 8.2.12 Finally, where an athlete admits an anti-doping violation before being notified of the same and that admission is the only reliable evidence of that violation, the period of ineligibility may be reduced by up to a maximum of one half of the otherwise applicable period (Rule 40.5(d) IAAF ADR). Even if three athletes voluntarily contributed to sample collection two days after 24 May 2011, it clearly cannot be deemed a situation

in which the period of Ineligibility can be reduced with reference to the conditions of Rule 40.5 (d) IAAF ADR.

8.2.13 This means that for Athletes 1, 2, 3, 4 and 6 the period of Ineligibility shall be two years and for Athlete 5 one year and six months.

The sanction for the Coach

8.2.14 The Coach has been found guilty of a doping violation against IAAF ADR in Rule 32.2, which means assisting, encouraging, aiding, abetting and covering up the anti-doping rule violations of Athletes 1 to 6.

8.2.15 The Coach contends that he was obliged to follow the instructions of Karim Ibrahim and that he would have been dismissed from his task as coach within the MAF if he did not obey the instructions of Karim Ibrahim.

8.2.16 What the Panel has found in relation to the personal responsibility of the Athletes is also applicable mutatis mutandis to the Coach, in particular that the Coach acted intentionally when undertaking the serious anti-doping violation he committed. Furthermore, he did not individually contribute to uncovering the anti-doping violations committed by his superior Karim Ibrahim. Consequently, the Panel finds that the Coach cannot rely on any part of Rule 40.5 IAAF ADR to obtain a reduction of his period of Ineligibility.

8.2.17 Furthermore the Panel finds there are aggravating elements in this case as set out in Rule 40.6 IAAF ADR. Examples of aggravating circumstances which may justify the imposition of a period of eligibility greater than the basic sanction are if an athlete or other person committed the anti-doping rule violation as part of a doping plan or scheme either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations or if an athlete or other person is engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, it is noteworthy that the examples of aggravating circumstances referred to in Rule 40.6 IAAF ADR are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility.

8.2.18 It is established that the Coach instructed Athletes 1 to 6 to use third party urine in the medical test at the NSIM. This strongly indicates that he was aware that Athletes 1 to 6 were involved in a programme which included banned substances. He also recommended Athletes 1 to 6 to evade the sample collection and to leave the NSIM after the notification of the doping test, which is a further indication that he was aware of illicit doping practices within the MAF, which he was deliberately trying to conceal.

- 8.2.19 There is a rich CAS jurisprudence concerning sanctions for members of athlete's entourage (see among others CAS 2002/A/389 393; CAS 2008/A/1513; CAS 2009/A/1817 & 1844 and CAS 2010/A/2184).
- 8.2.20 The Panel finds that given the Coach's long-time experience in his position and the seriousness of the doping practices that he deliberately took part in covering up, the aggravating circumstances are considerable. Among the aggravating factors listed in Rule 40.6 of the IAAF ADR, the Panel finds he notably undertook seriously deceptive and obstructive actions by instructing Athletes 1 to 6 to act as they did. The Appellant has submitted that the Coach should be punished up to a lifetime ban from all sports activities.
- 8.2.21 Karim Ibrahim, who was involved in the activities that the Coach was helping to cover up by not denouncing them and inciting the Athletes 1 to 6 to avoid anti-doping tests, got a suspension of six years. However, the Panel finds that the sanction for Karim Ibrahim does not seem appropriate and that such sanction cannot therefore be used as reference.
- 8.2.22 The Panel finds that deceptive and obstructive actions by coaches or managers aimed at covering up systematic and widespread doping practices of a serious nature (because of the type of products involved) may lead to the highest possible sanction, i.e. to a life ban. However, because in this case the Coach was subordinate to Karim Ibrahim and the exact scope, timeframe and nature of the underlying doping practices which the Coach took part in covering up through obstructive action is not clearly established by the evidence on record, it is appropriate to not apply the highest possible sanction and to instead sanction the Coach with a ten year period of Ineligibility.
- 8.3 What is the starting point of Ineligibility?
- 8.3.1 Pursuant to Rule 40.10 IAAF ADR "*the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served*".
- 8.3.2 According to the decision of the MAF the start of the Ineligibility period for the Coach was on 12 September 2011. The Panel finds it appropriate that such date also be the commencement of the ten year sanction, which the Panel has decided, meaning that in effect the period of Ineligibility already served since such date by the Coach is being credited against the total sanction.
- 8.3.3 For the moment, Athletes 1 to 6 have not suffered any suspension since they were only admonished by the MAF. Furthermore, in a letter they wrote to the IAAF in 2012, af-

ter having been notified of their sanction in February 2012, the Athletes indicated that *"...The MAF only warned us by issuing letters to the effect ... We have been training all along and participating without hindrance, as we were only warned ..."*. The Panel finds therefore that in terms of advancing their careers and competing the Athlete's have not been prejudiced by the length of the proceedings in front of the MAP and the CAS, and that there is no Ineligibility period to deduct. Hence, the two-year period of Ineligibility for Athletes 1 to 6 shall start on the date of this award.

9. DISQUALIFICATION OF RESULTS

9.1 Rule 40.8 of IAAF ADR provides that *"In addition to the automatic disqualification of the results in the Competition which produced the positive Sample under Rules 39 and 40, all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prize and appearance money"*.

9.2 Based on Rule 40.8 of IAAF ADR the Panel finds that all competitive results obtained by Athletes 1 to 6 from 24 May 2011 until the date of this decision shall be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes and appearance money.

10. COSTS

10.1 Article R64.4 of the CAS Code provides:

" At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties."

10.2 Article R64.5 of the CAS Code provides:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties."

- 10.3 In the case at hand, the appeal filed by the Appellant is upheld. In light of the outcome of this appeal, the Panel determines that the costs of arbitration, to be calculated by the CAS Court Office and communicated separately to the parties, shall be borne entirely by the MAF. As a general rule, the CAS grants the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. The CAS may however depart from that principle under certain circumstances, in particular when such a burden put on the losing party would put its financial situation at stake. Such appears to be the case here concerning Athletes 1 to 6 and the Coach. As a consequence, the Panel takes the view that it is reasonable in the present case to order that each party shall bear its own legal fees in respect of the dispute between the Appellant, the Coach and Athletes 1 to 6. The Panel orders the MAF to make a total contribution of CHF 5,000 towards the Appellant's legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:


1. The appeal of the World Anti-Doping Agency filed on 7 May 2012 is upheld.
2. The decision of the Malaysia Athletic Federation rendered on 2 February 2012 is set aside.
3. Norjannah Hafiszah Jamaludin, Nurul Sarah Abdul Kadir, Mohamad Noor Imran Hadi, Siti Zubaidah Adabi and Yee Yi Ling are sanctioned with a two year period of ineligibility, which shall commence on the date of this award.
4. Siti Fatimah Mohamad is sanctioned with an eighteen month period of ineligibility, which shall commence on the date of this award.
5. Harun Rasheed is sanctioned with a ten year period of ineligibility, which commenced on 12 September 2011.
6. All competitive results obtained by Norjannah Hafiszah Jamaludin, Nurul Sarah Abdul Kadir, Mohamad Noor Imran Hadi, Siti Zubaidah Adabi, Siti Fatimah Mohamad and Yee Yi Ling from 24 May 2011 until the date of this award shall be disqualified, with all the resulting consequences including forfeiture of any medals, points, prizes and appearance money.
7. The costs of arbitration, to be calculated by the CAS Court Office and communicated separately to the parties, shall be borne entirely by the Malaysia Athletic Federation.
8. The Malaysia Athletic Federation is ordered to pay to the World Anti-Doping Agency a contribution towards its legal fees and other expenses incurred in connection with the present arbitration procedure in an amount of CHF 5,000 (five thousand Swiss Francs). The other parties shall bear their own legal fees and other expenses.
9. All other prayers for relief are dismissed.

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Seat of arbitration: Lausanne, Switzerland
Date: 24 May 2013

THE COURT OF ARBITRATION FOR SPORT



Conny Lorenz
President of the Panel