



IDSF DISCIPLINARY COUNCIL

Formal Decision
as of
3 June 2009

regarding

VIOLATION OF THE IDSF ANTI-DOPING CODE

by

Boris Maltsev,

Yesayer str. 20, flat 28, Almaty City, 050026 / Kazakhstan,

and

Zarina Shamsutdinova

Rosibakiev str. 125/4, flat 2, Almaty City, 050060 / Kazakhstan

- Athletes -

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1. The Athletes have been found **guilty** of a violation of the IDSF Anti-Doping Code.
 2. The Athletes shall be declared **ineligible for competition for one year** (12 months), starting from 7 December 2008, date of the sample collection.
 3. The Athletes shall pay the amount of **CHF 200,00** (two hundred Swiss Francs) as the minimum costs for the proceedings.
 4. The expenses of this procedure incurred with the IDSF Disciplinary Council shall be borne by the IDSF.
 5. The Athletes shall bear their own costs and expenses of the present procedure.



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Reasons for the Decision

1. Facts of the Case

- 1.1. On Sunday, the 7th of December 2008, the 2008 IDSF Asian Championships Latin took place at Taipei, Chinese Taipei.
- 1.2. Mr. Boris Maltsev and Mrs. Zarina Shamsutdinova – Kazakhstan – (in the following referred to as the Athletes) were participants in the competition.
- 1.3. At the said competition, an anti-doping control was held by the Anti-Doping Office of Chinese Taipei Olympic Committee corresponding to the rules of the IDSF Anti-Doping Code (IADC - Issue 2008 effective July 1st 2007).
- 1.4. At 21.20 h, after having completed the competition, the Athletes, as the winning couple of the competition, were notified by the Chaperones, that due to their 1st place they had been selected beforehand to be tested and because of that they would have to report to the anti-doping control room.
- 1.5. At 21.25 h both Athletes refused to countersign the notification form but agreed to go to the doping-control room being escorted by the Chaperones.
- 1.6. Upon their arrival at the anti-doping control room at 21.40 h the Doping Control Officer (DCO) communicated with the Athletes about the possible consequences of refusing the anti-doping test.
- 1.7. Refusing the procedure the Athletes stated:
 - We did not receive an IDSF Consent Form about free will doping control passing before the start of the competition.
 - We were not warned about doping control in the Asian Championships.
 - There was no representative of the Kazakhstan Dance Sport Federation (KDSF) present.
 - We have signed no document about free will doping control passing.
- 1.8. The Athletes then requested to change dress and left the doping-control room at 21.45 h escorted by the Chaperones.
- 1.9. Back at the doping-control room at 21.55 h the Athletes refused firmly to submit to Doping Control and to provide a urine Sample as requested by the DCO.
- 1.10. The Athletes were informed by the DCO that the refusal may result in sanction for an anti-doping rule violation and - under witness signature - did sign the Doping Control Officer Report Form and the Supplementary Report Form Nr.



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#000452 which document the facts including the reasons for refusal given by them.

- 1.11. To ensure that the doping-control procedure in this case had been conducted correctly the engaged Ant-Doping Organization (ADO) was contacted and did get the reports.
- 1.12. Dated December 20th 2008 the IDSF Anti-Doping Director sent a notification of the above described anti-doping test incident to the Athletes and the KDSF announcing that the case would be issued to the IDSF Disciplinary Council (IDSF DC) to be decided according to the rules of the IDSF Anti-Doping Code and the Code of the IDSF DC.
- 1.13. Additionally the Athletes were provisionally suspended from all IDSF competitions and/or national competitions until the case is decided by the IDSF DC.
- 1.14. Dated December 30th 2008 the IDSF Anti-Doping Director officially submitted the above described anti-doping test incident to the President of the IDSF DC to decide the question of an anti-doping rule violation.
- 1.15. On January 26th 2009 the President of the IDSF DC - according to Art. 2 of the IDSF Disciplinary Council Code and due to the two official complaints submitted by the IDSF Anti-Doping Director - appointed the following Chamber in Charge responsible to deal with the present case:
 - **Christoph Rubien (Germany) Chamber Chair**
 - **Lars Wallin (Sweden)**
 - **Antun Marki (Croatia)**
- 1.16. Because of the fact, that the respective decision had not been appealed within the given period, the provisional suspension remained in force.
- 1.17. On January 28th 2009 the Athletes did send a message to the Chamber Chair explaining their "incorrect behavior" mainly with the specified reasons laid down in the reports given after the competition.
- 1.18. On February 4th 2009 the Chamber Chair asked the Athletes a few more questions pleading for further information within a short period.
- 1.19. In the following time, the Chamber Chair asked the IDSF Anti-Doping Director to provide additional facts and/or information, which had not already been raised in the precedent proceedings.
- 1.20. The appointed Chamber in Charge took its decision unanimous, unaffected and in full consciousness of the responsibility for our sport based on the following:



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2. Considerations

- 2.1. Pursuant to Art. 1.VII.3. of the IADC the following constitutes an anti-doping rule violation:
"Refusing, or failing without compelling justification, to submit to SAMPLE collection after notification as authorized this CODE , or otherwise ...".
- 2.2. Art. 5.VI.2. of the IADC establishes that:
"The refusal to submit to Doping Control or to provide a blood or urine sample is a frustration of evidence and a violation of the Athletes cooperation duties (Art. 4. II.2., 4.II.4.)".
- 2.3. In the present case the Athletes, who had been chosen accordingly to the IADC (Art. 4.VI.2.) to undergo a Doping Control, were requested by notification by the Chaperones of the Doping Control Team (DCT) to make their way to the doping control room in order to be tested due to their 1st Place in the event. This proceeding corresponds with the WADA-Guideline for Urine Sample Collection (5.5), which is an appendix of the IADC.
- 2.4. Participants in IDSF competitions and/or championships have to recognize, that the IDSF Competition Rules (Rule 2) and the IADC (Art. 3.I.1.) are applicable and therefore have to be accepted by all of them. According to this all Athletes are subject to Doping Controls (Art. 3.I.5. IADC) and must tolerate the carrying out of Doping Controls and, insofar as is necessary, must actively participate (Art. 4.II.4 IADC). This obligation to tolerate controls leaves no opportunity for something like a "free will" to cooperate as claimed by the Athletes in this case. Their statement, not to have received an IDSF Consent Form about free will doping control passing before the start of the competition and not to have signed any document like this, has to be rejected as irrelevant.
- 2.5. Furthermore it is the duty of all participants, before they take part in an IDSF-granted Dance Sport event, to agree to comply with the IADC by completing and signing the forms of consent and to ensure that they are sent to the Member who is nominating the Participant or to the Organizer of the event (Art. 3.I.5. IADC). Corresponding to this, it can't be the liability of the Organizer or the DCT to present such forms of consent to the participants before the start of the competition as it has been suggested by the Athletes. If they had missed the presentation of the forms, they could have asked. The later expressed suggestion of the Athletes, the procedure could have changed, has to be qualified as an allegation. Also there is no duty to announce a doping control or to "warn" the participants, if such a testing is provided. This would turn the sense of such doping controls upside down! All athletes are subject to doping controls wherever and whenever they take place in accordance to the IADC.



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- 2.6. In contrast to the statement of the Athletes there is no obligation for a representative of the Dance Sport Federation of the participant who is going to be tested to be present at the doping control. The athlete is entitled to present himself/herself for the Sample collection with a person of his/her own choice (official, trainer, physician, masseur, etc.) (Art. 4.VI.3. IADC). This is only a discretionary clause to strengthen the position of the participants to be tested. The absence of a representative cannot be an excuse for a misinterpretation or breach of the obligation to tolerate controls.
- 2.7. After all of this, the Athletes could not state the selection and notification to be tested as invalid. The couple is placed 157th of 3482 on the IDSF World Ranking List and therefore the chamber cannot believe that the Athletes are totally inexperienced in handling the anti-doping rules. So in principle an anti-doping rule violation pursuant to Art. 1.VII.3 + 5.VI.2. IADC has to be stated in this case.
- 2.8. Nevertheless this chamber has its serious doubts, that the procedure at this event did fulfill the standards set by the IADC. The organizer of the 2008 IDSF Asian Championships approached the Anti-Doping Office of Chinese Taipei Olympic Committee – a national anti-doping organization under authority of Sports Affairs Council (SAC), the government authority and National Anti-Doping Policy – for undertaking the doping control program for this event. It is not sure that they did serve all requirements of the IADC. Especially according to the anti doping form signed by the couples (forms of consent) the report of the IDSF Chairman Keji Ukai dated December 9th 2008 establishes that the organizing committee did not have prepared the papers. Art. 3.I.3. IADC settles that the forms of consent must be forwarded to the Anti-Doping Representative of the Dance Sport event. There the Anti-Doping Director checks whether the participants have signed the forms of consent. Missing forms can be signed by the athlete at check-in for the event. The forms are administered by the Anti-Doping Director. The statement of the Athletes, not having been asked about a form of consent and the declaration of the Chairman K. Ukai together do show, that the procedure at least in this point has not been formally correct. A consequent and accurate handling of this rule would have had the result that the Athletes could have signed a missing form before the start of the competition and on the strength of it no anti-doping rule violation would have taken part. So this failure has to be taken into consideration substantially.
- 2.9. Besides that we do have the statement of the Secretary of the KDSF dated March 19th 2009 saying that – unfortunately – earlier the Anti-Doping Code was not included in the rules of the KDSF. Understanding the importance of the matter, the presidium of the KDSF had made a decision to include the Anti-Doping Code obligatory into the rules of KDSF. All sportsmen from the KDSF will – now – be acquainted with the requirements of the IDSF and IOC Anti-



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Doping rules and with Anti-Doping Test procedures. For the future KDSF plans the presence of official representatives at competitions of such ranking. This chamber estimates this declaration as confession of the inactivity of the KDSF with regard to the Anti-Doping so far. Art. 3.I.2. IADC settles the scope of Anti-Doping as each Member of the IDSF must inform its registered member dancers, trainers and functionaries about the IADC. Any Member that nominates a participant to any IDSF-granted Dance Sport event is deemed to have recognized the IADC and to undertake to nominate to such events only participants who have agreed to comply with all of the duties set out in and flowing from the IADC and who have signed the corresponding forms of consent. After the above mentioned statement by the secretary of the KDSF this chamber is not convinced that this scope has been inspired by the KDSF! Therefore an eventual lack of information cannot go to the debit of the Athletes. The members of the IDSF have to live Anti-Doping as one of the main objects of the IDSF Statutes without restrictions and exemplary for their athletes first. The behavior of the KDSF does not meet this claim and it cannot be that the athletes have to blame for this.

- 2.10. Although the IADC follows in general the "strict liability principle" and a respective violation of the Anti-Doping Code would have to be sanctioned with a certain period of ineligibility (min. 2 years for a first violation) the Chamber in Charge takes the view, that sanctioning the Athletes with such a period of ineligibility under the circumstances of this case would constitute an inappropriate sanction. On the other hand the Chamber in Charge clearly sees a rule violation committed by the Athletes. If the Athletes – in time - would have verified their obligations under the IADC properly and especially if they had familiarized themselves with the respective procedure to obtain an urine sample, they could have prevented the violation themselves, this being the reason why the Chamber in Charge is not in the position to refrain from any sanction at all, but to see a case of no significant fault or negligence when viewed in the totality of the circumstances and taking the behavior and the excuses of the Athletes into account. According to Art. 5.VI.2. IADC the period of ineligibility in such a case may be reduced, but not less than one year for first violations as given here.
- 2.11. Corresponding to Art. 5.X.1. IADC the IDSF DC may start the period of ineligibility – where required by fairness or other aspects of doping control not attributable to the athlete - at an earlier date commencing as early as the date of the sample collection. At this point the Chamber in Charge judges the joint responsibility of the organizer of the 2008 IDSF Asian championships together with the approached Anti-Doping Office and the KDSF as other aspects of doping control which were not attributable to the Athletes. Therefore the one year period of ineligibility shall start at December 7th 2008, the date of the sample collection.



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3. Costs / Expenses

- 3.1. According to Art. 16 of the IDSF Disciplinary Council Code the party, which is not the prevailing party, will have to bear for the costs of the proceedings before the Disciplinary Council. The minimum costs for any proceedings are CHF 200.00 in all cases, which are sanctioned with more than a reprimand. Therefore the Athletes shall pay the amount of CHF 200,00 (two hundred Swiss Francs).
- 3.2. The expenses of this procedure incurred with the IDSF Disciplinary Council shall be borne by the IDSF
- 3.3. As the Athletes have been found responsible for the Chamber in Charge of an anti-doping rule violation they shall bear their own costs and expenses of the present procedure.

4. Appeal

- 4.1. The formal decision of the IDSF Disciplinary Council may be appealed to the Court of Arbitration for Sport ("CAS") in Lausanne, Switzerland, according to its rules and jurisdiction.
- 4.2. According to Art. 11 of the IDSF Disciplinary Council Code any such appeal must be made within two months after the reception of this decision.
- 4.3. Filing an appeal does not suspend or affect the IDSF Disciplinary Councils decision, which shall remain in full force until the CAS has taken its respective decision.
- 4.4. According to Art. 6.VI. of the IADC and applicable to this case the following persons shall have the right to appeal to CAS:
 - The Athlete or other person who is the subject of the decision being appealed;
 - The International DanceSport Federation (IDSF);
 - The World Anti-Doping Agency (WADA)

Bremen (Germany), 3 June 2009

IDSF DISCIPLINARY COUNCIL Chamber in Charge

Christoph Rubien
Chairman

Lars Wallin

Antun Marki