



**Arbitration CAS 2013/A/3147 Khaled Mohammad Sharahili v. Saudi Arabian Football Federation (SAFF), award of 2 May 2014**

Panel: Prof. Luigi Fumagalli (Italy), President; Prof. Ulrich Haas (Germany); Mr Graeme Mew (Canada)

*Football*

*Doping (11-nor-9-Carboxy-delta-THC)*

*Absence of arbitration clause*

**There is no arbitration clause binding the national football association where the national football association did not issue the challenged decision, nor was it a party to the proceedings that led to the challenged decision, and no provision contained in the applicable regulations shows that the national football association accepted (or somehow envisaged) the CAS jurisdiction for doping-related disputes regarding players sanctioned by the anti-doping disciplinary bodies. A general reference in the national football association statutes to the anti-doping rules is not sufficient to ground an acceptance by the national football association of the CAS jurisdiction: such reference, indeed, intends to bind the players to observe the provisions in the Anti-Doping Code, but it cannot create an obligation for the national football association to submit to arbitration with respect to disputes to which it is not a party.**

## **1. BACKGROUND**

### **1.1 The Parties**

1. Khaled Mohammad Sharahili (hereinafter referred to as the “Player” or the “Appellant”) is a professional football player of Saudi Arabian nationality born on 3 February 1987. In the season 2012/2013, the Appellant was a player registered with Al Hilal Club, a football club participating in the Zain Professional League, the main competition of professional football in the Kingdom of Saudi Arabia.
2. The Saudi Arabian Football Federation (hereinafter referred to as “SAFF” or the “Respondent”) is the national federation governing the sport of football in the Kingdom of Saudi Arabia.

## 1.2 The Dispute between the Parties

3. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence given in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
4. On 9 December 2012, the Player underwent an in-competition anti-doping control on the occasion of the football match played between Al Hilal and Al Itthiad in Sharaya-Makkah (Saudi Arabia).
5. The A sample provided by the Player, bearing the identification No. A2671658, was analyzed by the Swiss Anti-doping Laboratory of Lausanne, Switzerland (hereinafter also referred to as the “Laboratory”), which is accredited by the World Anti-Doping Agency (hereinafter referred to as the “WADA”).
6. On 10 January 2013, the Laboratory reported the presence, in the A sample provided by the Player, of 11-nor-9-Carboxy-delta-THC in the concentration of 303 ng/ml, a substance prohibited “*in-competition*” appearing in class S.8 – *Cannabinoids* of the 2012 WADA list of prohibited substances (hereinafter also referred to as the “Prohibited List”).
7. On 13 January 2013, the Player was informed of the adverse analytical finding reported by the Laboratory (hereinafter referred to as the “Adverse Analytical Finding”) and that he had been provisionally suspended from national and international competitions pursuant to Article 7.6 of the Saudi Arabian Anti-Doping Committee Rules (hereinafter also referred to as the “SAADC Code”).
8. On the same 13 January 2013, the Player waived his right to have the B sample analysed and requested that a hearing be held in his case pursuant to Article 8 of the SAADC Code.
9. On 22 January 2013, a hearing was held before the Saudi Arabian Anti-Doping Disciplinary Committee (hereinafter also referred to as the “Disciplinary Committee”).
10. On 23 January 2013, the Disciplinary Committee issued a decision (hereinafter also referred to as the “DC Decision”) imposing on the Player the “*suspension for a period of two years as of the date of the temporary suspension*” (<sup>1</sup>). The Disciplinary Committee indicated that such sanction was imposed:

*“after reviewing the minutes of the hearing session and the complete file of the case, after ensuring accuracy of all proof documents and the correct procedures of the doping control, and per stipulations of the Saudi Arabian Anti-Doping Control Regulations:*

- *Article 2-1 stating “presence of prohibited substance or its metabolites or markers in an athlete’s sample”.*

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<sup>1</sup> The Panel refers to the English translation of the DC Decision provided to the CAS by the Respondent. The translation of the operative part of the DC Decision filed by the Appellant has an equivalent content.

- *Article 2-1-1 it is each athlete's personal duty to ensure that no prohibited substance enters his body, athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the athlete's part be demonstrated in order to establish an anti-doping rule violation under article 2-1.*
- *In accordance with stipulations in the Saudi Arabian Anti-Doping Control Regulations article 10-2 stating the following: imposition of ineligibility for prohibited substance and prohibited methods the first instance: ineligibility for a period of two (2) years”.*

11. The minutes of the hearing read as follows:

*“The hearing session started with an introduction and welcome of the attendees. Copy of the doping control report received from the laboratory in Switzerland showing the result of the tested sample.*

*The attendees reviewed the report submitted by the Saudi Arabian Anti-Doping Committee as follows:*

- *Review the doping control report received from the laboratory in Switzerland showing presence of a substance which is prohibited in sport during sport competitions in accordance with the rules and regulations of the World Anti-Doping Agency (WADA).*
- *The tested sample is related to Player/Khaled Mohammed Sharahili (football player of Al Hilal Club).*
- *The sample was taken through doping control procedures during competitions of Zain Professional League (the match between Al Ittihad vs. Al Hilal) held at King Abdulaziz Sport City in Sharaya – Makkah on 9 December 2012.*
- *The player is temporary suspended for participation at all competitions (national and international) as of 1/3/1434H corresponding to 13/1/2013 until the cases is decided in accordance with the rules and regulations of WADA.*
- *The player declares his un-willingness to open sample (b).*

*Thereafter, several questions were addressed to the player and he replied in writing ... as follows:*

- *The player was asked if he has any objection or comments on the doping control procedures or the results of the laboratory which shows presence of prohibited substance in his sample: he replied: I don't have objections ... .*
- *The player was asked on the way that substance (11-nor-9-Carboxy-delta-THC) found in his body and from where he got such substance?: he replied: on Thursday 6 December 2012 I was invited by one of my friends for a dinner party and after having the dinner I face a huge pressure and embarrassment by some of my friends to smoke with them, I smoked three or more cigarettes stuffed with Hashish, the place was closed and all the present people smoked the same substance” ... .*
- *The player was given the opportunity to add any statements or comments, he replied: “I would like to explain to the esteemed panel that I explained and stated in details and accuracy on how such substance entered into my body, also, I promised that my act was not to enhance my sporting performance, I am immensely regret my act and seek relief from the esteemed committee. I hope that I can return to my sporting career and to serve my country. Such act will be a lesson for me in the future. ... .*

*The hearing session concluded with the following recommendations:*

- 1- *Approve accuracy of the doping control procedures in compatible with the international rules in anti-doping control.*

- 2- *Approve the result of the international laboratory and proved presence of substance (11-nor-9-Carboxy-delta-THC) which is a substance prohibited in sport during sport competitions as per rules and regulations of WADA.*
  - 3- *Continue temporary suspension of player/ Khaled Mohammed Sharahili, football player of Al Hilal Club until his case is decided.*
  - 4- *Refer the case to the Saudi Arabian Anti-Doping Disciplinary Committee to issue its final decision on this case”.*
12. The DC Decision was communicated to the Player under letterhead of the Respondent on 24 January 2013.
13. On 6 February 2013, the Player filed with the Saudi Arabian Anti-Doping Appeal Panel (hereinafter also referred to as the “Appeal Panel”) an appeal against the DC Decision pursuant to Articles 13.2.3 and 13.6.1 of the SAADC Code.
14. On 30 March 2013, the Appeal Panel issued a decision (hereinafter also referred to as the “AP Decision”) (²) as follows:
- “1. *Reject the appeal of the player in terms of facts*
  2. *Support the decision of the Saudi Anti-doping Disciplinary Panel number 158 dated in 23/01/2013 imposing 2-year ineligibility against the player starting from the date of the Provisional Suspension*
  3. *Forfeit the appeal fees*
  4. *Report the matter of smoking hashish to the Chairman of the Saudi Arabian Olympic Committee (The Executive Office) to take the proper action”.*
15. The AP Decision, in its pertinent portions, reads as follows:
- “... - Facts
- The decision of the Saudi Anti-doping Disciplinary Panel No. 158, dated 23/01/2013 was issued imposing 2-year Ineligibility against the player starting from the date of the Provisional Suspension in 13/01/2013.*
- The player – Khaled Mohammad Sharabeeli – submitted his appeal against the decision of the Saudi Anti-doping Disciplinary Panel as referred above, which was 9 pages and 7 attachments; consisting of (Attachment 1) that included the written acknowledgement of witness Mr. Ali Mohammad Sharabeeli about their smoking hashish together in the evening of Thursday 06/12/2012. The rest of attachments are in English; some of which are translated into Arabic and all are revolving about the relationship between Hashish and sport and some of the cases in which the same substance was used but outside the kingdom.*
- In his appeal, the player confirmed the validity of all the procedures done in his case starting from the sample collection and the decision of the Saudi Anti-doping Disciplinary Panel ending up with the submission of his appeal. He also confirmed that he had smoked prohibited substance in Saudi Arabia and he did not know that it was one of the prohibited substances in sports, which might be attributed to lack of his knowledge about*

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<sup>2</sup> The Panel refers again to the English translation of the AP Decision provided by the Respondent. The translation of the operative part of the same AP Decision filed by the Appellant has an equivalent content (except for point 4, not mentioned in the Appellant’s translation).

*prohibited substances in sport. He explained the details of how this substance was found in his body:*

*(On Thursday, 6 December, 2012, I was invited by one of my friends to dinner. After finishing the dinner meal, I was under so much pressure and embarrassment from my friends trying to convince me to share with them smoking Hashish. I had smoked three or more cigarette stuffed with hashish. The room was closed and all the people there were smoking the same substance.)*

*The player clarified that he had not taken that prohibited substance in order to enhance and boost his performance in sport, and that he had taken that substance 72 hours prior to the match as per the witness of Mr. Ali Mohammad Sharabeeli – attached with the Appeal (attachment 1) – The player mentioned in his statement some studies about the use of drugs in the English football. He concluded his appeal with the following requests:*

- 1. The cancellation of the above-mentioned decision of the Saudi Anti-doping Disciplinary Panel,*
- 2. To consider the reduction of sanction to the minimum as per article 10-4 of the Saudi Anti-Doping Code.*
- 3. If Ineligibility were to be imposed, it should start from the date of collecting the sample in 09/12/2012 as per article 10-9-4 of the Saudi Anti-Doping Code*

*Procedures done by the Panel*

*The Panel met and studied the case, the player's appeal and the attached documents. It decided to summon the appealed player to a hearing session in 18/05/1434 H. corresponding to 30/03/2013. An invitation to attend the hearing session was also sent to the Saudi Arabian Football Federation, the Saudi Arabian Olympic Committee and to the Saudi Arabian Anti-doping Committee as per Article 13-6-7 of the Saudi Anti-doping Code.*

*At the hearing session, the Panel asked the player the following questions:*

*Question 1: Do you recognize the validity of the procedures done by the Saudi Arabian Anti-Doping Committee and the Saudi Anti-doping Disciplinary Panel?*

*The player replied: "There is no problem or objection on the validity of those procedures".*

*Question 2: Did you take this prohibited substance In order to enhance your performance in sport?*

*The Player: Not at all. I had taken it for the reasons mentioned in the appeal.*

*Question 3: You had already mentioned that the prohibited substance found in analysis of your sample was (11-nor-9-Carboxy-delta-THC) hashish, in that true:*

*The Player: yes.*

*Question 4: How was this prohibited substance found in your body?*

*The player: Five friends, including me, were taking dinner in the house of one friend. After dinner, I had been subject to lots of pressure, insistence and seduction from my friends to try to smoke hashish. The pressures were very strong and embarrassing to me. All are smoking except me. So I smoked some cigarettes just for fun and entertainment only. I spent in that room from 7-8 hours smoking. It was a 6mx4m room. It was closed completely even the ventilation windows. All this happened 72 hours prior to the match. I confirm my knowledge that this substance is legally prohibited in Saudi Arabia, but I did not know that it was prohibited in sports due to my negligence. I regret it so much. What happened was a hard lesson to me. It happened in a moment of weakness that I could not help it.*

... – *Merits*

... *the appeal of the player Khaled Mohammad Sharabeeli was submitted in a timely manner and met all the formal conditions,*

*The Panel can also confirm, after studying the file of the case, the validity of the procedures done by the doping control team during the match including the procedures of selection, sample collection, handling, and sending, in addition to the validity of the procedures and the results of the international laboratory of Switzerland, and the confirmation of the presence of the (11-nor-9-Carboxy-delta-THC) substance in the player's sample in the range of 303 while the normal range is supposed to be 3.4 which means 100X.*

... *the player leaned in his appeal on what he stated: (he had not taken that prohibited substance in order to enhance and boost his performance in sport), and based on the following articles of the Saudi Anti-Doping Code:*

*Article 2, (2-1-1): (It is each Athlete's personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any prohibited substance or its metabolites or markers found to be in their samples. Accordingly, it is not necessary that intent, fault, negligence, or knowing use on the athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2-1.*

... *Article 10-2 states (Imposition of 2-year Ineligibility for prohibited substances and prohibited methods for the First Violation),*

... *it has been clear to the Panel – after studying and examining the appeal of the player and hearing his statement – the invalidity of the player's claims”.*

16. The AP Decision was communicated to the Player under letterhead of the Respondent on 30 March 2013.

## **2. THE ARBITRAL PROCEEDINGS**

### **2.1 The CAS Proceedings**

17. On 22 April 2013, the Appellant filed a statement of appeal with the CAS pursuant to Article R47 of the Code of Sports-related Arbitration, 2013 edition (hereinafter referred to as the “Code”) against SAFF to challenge the AP Decision.
18. The statement of appeal, accompanied by 21 exhibits, contained the appointment of Prof. Haas as arbitrator, an application for the extension of the deadline to file the appeal brief under Article R51 of the Code, and a request for disclosure of documents. More specifically, in this latter respect, the Appellant requested the CAS to issue an order against the SAFF “*that the Federation disclose to the Appellant ... its entire file relevant to this case, e.g. the file including, but not limited to letters, faxes, emails, internal notes, committee agendas, minutes and reports relating to the hearing of the Appellant before the Saudi Commission for Doping Control*”.
19. Concurrently with his statement of appeal, the Appellant also filed an application for a stay of the AP Decision, pursuant to Article R37 of the Code.
20. On 15 May 2013, the Respondent filed its answer to the Appellant's application for a stay,

requesting its dismissal, as the CAS would not have jurisdiction to hear the appeal filed against the AP Decision, or, subsidiarily, because the criteria for the stay are not met.

21. In the same letter of 15 May 2013, the Respondent appointed Mr Graeme Mew as arbitrator. At the same time, the Respondent requested that the Appellant's request for disclosure be dismissed, because *"the request is not specific, it does not relate to documents that the Appellant has demonstrated do exist, and certainly does not relate to documents that the Appellant has demonstrated to be relevant ... to any specific arguments being advanced"* and *"the Appellant has not made any reasonable effort to locate the documents in question"*, and that the Appellant's request for an extension of time to file his appeal brief be also denied.
22. On 27 May 2013, the Appellant, following the CAS Court Office's letters of 16 and 22 May 2013, filed his submissions with respect to the Respondent's objection to CAS jurisdiction, insisting that his requests for disclosure, extension of the time limit to file the appeal brief and stay of the AP Decision be granted.
23. On 14 June 2013, the Deputy President of the CAS Appeals Arbitration Division (hereinafter also referred to as the "Deputy President") issued an Order on Request for a Stay (hereinafter also referred to as the "Order of the Deputy President") as follows:
  1. *The application for a stay filed by Khaled Mohammed Sharahili on 22 April 2013, in the matter CAS 2013/A/3147 Khaled Mohammed Sharahili v. Saudi Arabian Football Federation is rejected.*
  2. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration".*
24. In support of such conclusion, the Deputy President noted the following:
  - i. with respect to the jurisdiction of CAS :

*"4.11 The Deputy President of the CAS Appeals Arbitration Division considers that, prima facie, even though the Appellant is a national-level athlete and that he was tested during a national competition who would fall under the provisions of Article 13.5.4 SAADR [the SAADC Code] which does not contain any reference to an appeal to the CAS, the lecture of Article 13.5.4 SAADR seems, contrary to the Respondent's arguments, to allow appeals to the CAS against decisions rendered by the Saudi Anti-Doping Appeal Panel regarding procedural defects, such defects being argued by the Appellant. Based on the foregoing, in principle, the CAS has jurisdiction to decide the present dispute, without prejudice of any other decision that the Panel could take once constituted";*
  - ii. with regard to the criteria for the stay:

*"5.6 The Deputy President of the CAS Appeals Arbitration Division notes that the next game of the Saudi Arabian football team is scheduled on 15 October 2013 ...; that the Saudi championship concluded on 27 April 2013 and that the Appellant's club has already been eliminated from the end-of-season Saudi King Cup of Champions; and that the Appellant's club has lost in the knock-out round of 16 of the AFC Champions League against the Qatar club of Lekhwiya ... .*

- 5.7 *In view of the above, on a sportive standpoint, the Deputy President of the CAS Appeals Arbitration Division considers that the Appellant would not suffer any irreparable harm should the Decision not be stayed as a final award is likely to be rendered before the next game the Appellant would be eligible to play in case his appeal is successful, at least partially.*
- 5.8 *Furthermore, the Deputy President of the CAS Appeals Arbitration Division recalls that, according to the CAS constant jurisprudence, a damage which cannot be compensated financially at a later stage cannot constitute an irreparable harm.*
- 5.9 *In view of the above, in the absence of any irreparable harm, the Deputy President of the CAS Appeals Arbitration Division decides to reject the Appellant's request for a stay of the Decision".*
25. In a letter dated 27 May 2013, then, the CAS Court Office informed the parties that the Deputy President of the CAS Appeals Arbitration Division had also decided that:
- “• *the Appellant's request for disclosure shall be decided by the Panel upon its constitution;*
  - *the Appellant's request for an extension of the deadline to file his appeal brief shall be decided by the Panel together with the Appellant's request for disclosure; in the meantime, the Appellant's deadline to file the appeal brief remains suspended”.*
26. By communication dated 1 July 2013, the CAS Court Office informed the parties on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Prof. Ulrich Haas and Mr Graeme Mew, arbitrators.
27. In a letter of 15 July 2013, the Respondent insisted that the Appellant's request for document production be dismissed, contending that the SAFF has no standing to be sued in these proceedings, since “*SAFF was not the Decision-Making Body*”, “*SAFF was not the Prosecuting Body or Counterparty*” and “*SAFF had no Role in the proceedings*”. In addition, the Respondent confirmed that it does not consent to the joining of any other party to these proceedings as an additional respondent.
28. On 25 July 2013, the CAS Office advised the parties of the following Panel's decisions:
- “• *The Appellant shall provide the CAS with a full English version of exhibit 7 to the Statement of Appeal by 9 August 2013, as exhibit 8 seems to be a partial translation of such exhibit.*
  - *The Respondent shall provide the CAS with complete English versions of the Saudi Arabian Anti-Doping Rules, the Statutes of the SAFF and of the Saudi Arabian National Olympic Committee by 9 August 2013. Within the same deadline, the Respondent shall provide any anti-doping regulations proper to it or any provision in its regulations referring to the Saudi Arabian Anti-Doping Rules.*
  - *The Respondent shall file its comments on the fact that the first instance decision was communicated on its letterhead, also by 9 August 2013.*
  - *The Respondent shall take the necessary steps to require from the relevant authorities and file with the CAS, by 9 August 2013, a copy of the laboratory's document package.*
  - *The Appellant shall then be granted a deadline of two weeks from the receipt of the above documents to*

*comment on the issue of the Respondent's standing to be sued.*

*Thereafter, the Panel reserves its right to render a preliminary decision on the issues of CAS jurisdiction and admissibility and decide whether to hold a hearing on the same.*

*The other procedural pending issues shall be decided upon by the Panel, in due course and if relevant”.*

29. In a letter of the same 25 July 2013, the Appellant stated his position in reply to the Respondent's submission of 15 July 2013.
30. On 25 July 2013, the CAS Court Office, writing on behalf of the President of the Panel, advised the parties that *“in view of the fact that such letter [the Appellant's letter of today] was sent notwithstanding my previous facsimile of today, ... the Appellant ... will be allowed to file, if it deems it necessary, an additional submission to complete his position on the issue of the Respondent's standing to be sued, once received the information and documents requested by the Panel”.*
31. The deadlines indicated in the CAS letter dated 25 July 2013 were thereafter postponed following an exchange of correspondence on the basis of the agreement of the parties as follows:
  - i. by one week (Respondent's letter of 9 August 2013);
  - ii. by an additional week (Respondent's letter of 16 August 2013);
  - iii. by another week (Respondent's letter of 23 August 2013);
  - iv. by two weeks (Respondent's letter of 29 August 2013).
32. On 2 September 2013, the Appellant lodged with the CAS Court Office the translation into English of its Exhibit 7 (described to be the AP Decision).
33. On 12 September 2013, the Respondent informed the CAS Court Office that the parties had agreed to suspend the pending time limits, set by the Panel in its letter of 25 July 2013, until further notice by either one of the parties. Such communication was acknowledged by the CAS Court Office by letter dated 13 September 2013.
34. On 22 November 2013, the Respondent informed the CAS Court Office that the parties wished to recommence the arbitration proceedings and had therefore agreed that *“each party shall file a written submission on the issues of (a) jurisdiction and (b) standing to be sued”*, with the indication that *“the Respondent shall file its submission within 25 days and the Appellant shall file his submission within 20 days of receipt of the Respondent's submission”.*
35. In a letter of 22 November 2013, the CAS Court Office acknowledged receipt of such communication and of the deadlines agreed by the parties. At the same time, however, the CAS Court Office reminded the parties of the requests for documents and information contained in the Panel's letter of 25 July 2013.
36. The time limits indicated in the Respondent's letter of 22 November 2013 were thereafter postponed, following an exchange of correspondence on the basis of the agreement of the

parties, as follows:

- i. to 23 December 2013 (CAS Court Office letter of 16 December 2013);
  - ii. to 27 December 2013 (CAS Court Office letter of 23 December 2013);
  - iii. to 30 December 2013 (CAS Court Office letter of 30 December 2013).
37. On 30 December 2013, the Respondent filed its submission on the issues of jurisdiction and standing to be sued, together with 19 exhibits (which included a copy of the Laboratory Documentation Package, the entire text of the SAADC Code) and a copy of an English version of the Statutes of SAFF and of the Statutes of the Saudi Arabian Olympic Committee (hereinafter referred to as the “SAOC”).
38. On 31 December 2013, the Appellant filed a new application for the stay of the AP Decision, pursuant to Article R37 of the Code.
39. On 9 January 2014, the Respondent filed its answer to the Appellant’s renewed application for a stay, requesting that such application be dismissed.
40. On 14 January 2014, the Panel issued the operative part of an Order on the Appellant’s Request for Provisional and Conservatory Measures, ruling as follows:
1. *The application for the stay of the decision issued on 30 March 2013 by the Saudi Arabian Anti-Doping Appeal Panel, filed by Khaled Mohammad Sharahili on 31 December 2013 is dismissed.*
  2. *The costs of the present preliminary decision will be determined in the final award”.*
41. The Order on the Appellant’s Request for Provisional and Conservatory Measures with the grounds supporting it was issued by the Panel on 22 January 2014.
42. On 17 February 2014, within a deadline extended upon his request, the Appellant filed with the CAS his answer to the Respondent’s submissions on the issues of jurisdiction and standing to be sued.
43. With notification issued on 11 April 2014, the CAS Court Office informed the parties that the Panel had considered itself sufficiently well informed and had decided, pursuant to Article R57, second paragraph of the Code, to issue an award on the issues of CAS jurisdiction and admissibility of the appeal brought by the Player on the basis of the parties’ written submissions only.

## 2.2 The Position of the Parties

44. The following outline of the parties’ positions is illustrative only and does not necessarily comprise every contention put forward by the parties. In addition, as the subject of this Award is strictly limited to two preliminary objections raised by the Respondent, regarding the lack of jurisdiction of CAS and the lack of standing to be sued, the summary of the parties’ positions is in consequence limited to what is necessary to rule on these question. In any case,

the Panel has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

**a. *The Position of the Appellant***

45. In his statement of appeal, the Appellant requested that the CAS:
- “√ *Cancels the decision of the Saudi Anti-Doping Appeal Panel issued on March 31, 2013 to suspend him for two years from participating in international and local sports competitions as from 13 January 2013.*
  - √ *Considers reduced punishment to the minimum in accordance notably with Article 10/4 of the Saudi Arabian Anti-doping Regulation in Sports and the international relevant regulations and case law.*
  - √ *In the event of the imposition of any suspension, considers it starts from the collection date of the sample on 9 December 2012 in accordance with the provisions of Article 10/9/4 of such Regulation”.*
46. In support of its appeal the Appellant makes submissions both with respect to the CAS jurisdiction, the Respondent’s standing to be sued, and the merits of the relief he is seeking.
47. The Appellant submits that CAS has jurisdiction to hear his appeal based on the fact that:
- i. the Appeal Panel, empowered by Article 13.2.3 of the SAADC Code to hear appeals against the Disciplinary Committee’s decisions, cannot be considered to be an “*independent and impartial body*” within the meaning of Article 13.2.2 of the World Anti-Doping Code (hereinafter referred to as the “WADC”) established by the World Anti-Doping Agency (hereinafter referred to as the “WADA”). In fact, according to the Appellant, contrary to Article 13.2.2 WADC (under which the rules for appeals involving national-level athletes, to be established by the national anti-doping organizations, have to respect the principles of a timely hearing, a fair, impartial and independent hearing panel, the right to be represented by counsel, and the right to a timely, written, reasoned decision), the Appeal Panel did not state any reason in the AP Decision, and its deliberations were private. As a result, there was “*a serious infringement of the right of the defence*”, as the issuance of the reasons of the AP Decision is “*a guarantee of the fairness, the impartiality and the independence of the hearing panel and a protection against any arbitrary decision*”;
  - ii. Article 13.5.4 of the SAADC Code explicitly provides for the CAS to be the only jurisdiction competent to hear appeals against a decision rendered by the Appeal Panel, for procedural defects and at least if such decision is a “*miscarriage of justice*”. And in the case of the Player “*it appears obvious that the Saudi Anti-Doping Appeal Panel issued a decision which is undoubtedly a miscarriage of justice*”.
48. Contrary to the Respondent’s objection, then, the Appellant submits that SAFF is an appropriate respondent and has a standing to be sued in these arbitration proceedings brought to challenge the AP Decision. In that respect, the Player underlines that he named the SAFF to be the Respondent before CAS because both the DC Decision and the AP Decision were

notified to the Appellant by the SAFF and not by the Disciplinary Committee or the Appeal Panel. In the Appellant's opinion, this circumstance shows that SAFF was a party to the anti-doping proceedings before the Disciplinary Committee and the Appeal Panel, since those decisions were transmitted by those bodies to the SAFF and Article 13.8.4 of the SAADC Code provides that the decisions issued by such bodies are to be "*advised to the parties of the proceedings*". The explanation given by the Respondent (i.e. that communications between governmental and regulatory bodies and athletes are conducted through the relevant national sport federation) in order to contradict such conclusion "*has no legal grounds*". In addition, the SAFF has a standing to be sued because the AP Decision has, under the SAADC Code, "*a direct impact on the Saudi Arabian Football Federation's authority since the Federation has to apply the Anti-Doping Rules and execute any decision related to the Anti-Doping matters*".

49. As to the merits, and at the same time in order to show that the AP Decision is a "*miscarriage of justice*" (for the purposes mentioned at § 47(ii) above and therefore with submissions relevant also for this award on jurisdiction), the Appellant submits that:
- i. the AP Decision does not state the reasons to support the sanction imposed on the Player, which is a "*serious infringement of the right of the defence and the evidence of a lack of protection against the arbitrary*";
  - ii. the Appeal Panel does not comply with the "*key principles*" laid down in Article 13.2.2 WADC, since, without the grounds of the AP Decision, it is not possible to know whether it is an independent and impartial body;
  - iii. the prohibited substance was not intended to improve the Players' sporting performance, and the Appellant gave (and is in a position to give in this arbitration) evidence of how it entered his body;
  - iv. the Appeal Panel failed to follow the internationally recognised principles for doping cases involving cannabis;
  - v. other sporting bodies adopted a completely different approach, and applied milder sanction, with respect to cannabis;
  - vi. a review of international practice shows that for cannabis-related infringements "*the period of suspension is of 3 to 6 months on average and most of the time it is of 3 months*".

**b. *The Position of the Respondent***

50. The Respondent, in a letter of 15 May 2013, requested the CAS to:

*"recognise that there is clearly no jurisdiction agreement referring to CAS or that agreement is clearly not related to the dispute at stake"*.

51. The Respondent, then, in a letter of 15 July 2013, contended that:

*"it has no standing to be sued in these proceedings"*.

52. SAFF, in other words, requests that the appeal brought by the Player be dismissed for reasons relating to jurisdiction and/or its standing to be sued.

53. The Respondent submits in fact that the CAS does not have jurisdiction to hear the appeal filed by the Player, because:
- i. the parties did not conclude any specific arbitration agreement;
  - ii. the SAFF Statutes do not contain any provision contemplating an appeal to CAS against SAFF decisions, and, failing any arbitration agreement in the statutes of the federation that issued the decision appealed against, the mere fact that the FIFA Statutes provide for CAS jurisdiction does not create it on the basis of the federation's affiliation with FIFA and its obligation to comply with FIFA regulations;
  - iii. the SAADC Code does not contain any provision allowing the Appellant to challenge the AP Decision before the CAS. In fact:
    - the anti-doping rule violation imputed to the Player is "*an exclusively national matter*", since the Appellant is not an international-level athlete and his case does not arise from a competition in an international event. As a result, only the rules in the SAADC Code concerning national-level athletes apply to the Player;
    - under those rules, the Appellant had only a right of appeal to the Appeal Panel, a right which he exercised, presenting his submissions, attending an oral hearing and receiving a final decision;
    - "*in no circumstances ... does an athlete have an initial right of appeal to the ... Appeal Panel and a subsequent right of appeal to the CAS*";
  - iv. as a result, there is no arbitration agreement contemplating an appeal to CAS against the AP Decision.
54. In addition, the Respondent denies its standing to be sued in this arbitration, started by the Player to challenge the AP Decision. In such respect, the Respondent submits that:
- i. "*SAFF was not the Decision-Making Body*": the AP Decision was rendered by the Appeal Panel under the SAADC Code. The Appeal Panel is not a body of SAFF, but, in the same way as the Disciplinary Commission, an independent body appointed by the SAOC;
  - ii. "*SAFF was not the Prosecuting Body or Counterparty*": the disciplinary proceedings for the anti-doping rule violation of the Player were conducted by the Saudi Arabian Anti-Doping Committee, a committee attached to the SAOC, and not by SAFF, which had only the right to attend the hearings as an observer;
  - iii. "*SAFF had no role in the proceedings*" and was not a party thereto. It only forwarded to the Appellant the decisions rendered by the Disciplinary Committee and the Appeal Panel, as well as other correspondence, acting as a "*point of contact*" according to a consistent practice, since communications between governmental and regulatory bodies and athletes are conducted through the relevant national sport federation;
  - iv. the Appellant is not seeking a relief against the SAFF, and the position under both Saudi Arabian and Swiss law is that a party only has standing to be sued if it has a stake in the dispute due to something being sought against it. Therefore, a party cannot be summoned before the CAS as a respondent if the relief that the Appellant is seeking

may not be sought against such party.

### 3. LEGAL ANALYSIS

#### 3.1 Jurisdiction

55. The jurisdiction of the CAS to hear the appeal brought by the Appellant against the AP Decision is disputed by the Respondent. In fact, the Appellant, on one hand, alleges that the SAFF and FIFA Statutes offer a sufficient basis for this Panel to find the CAS jurisdiction; the Respondent, on the other hand, maintains that this Panel does not have jurisdiction to hear an appeal against the AP Decision.
56. It is undisputed that this arbitration has its seat in Lausanne, Switzerland (Article R28 of the Code), and involves two non-Swiss (Saudi) entities/persons. In the present case, therefore, the provisions of the Swiss Private International Law Act (hereinafter referred to as the “PIL”) apply, pursuant to its Article 176 para. 1, as *“the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland”*.
57. In accordance with Article 186 of the PIL, this CAS Panel has the power to decide upon its own jurisdiction.
58. Article R47 of the Code states that *“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”*.
59. Therefore, in order for the CAS to have jurisdiction to hear an appeal, an arbitration clause (i) covering the challenged decision and (ii) binding the parties must exist. Such clause can be contained either in the statutes or regulations of the sports federation from whose decision the appeal is being (which expressly recognise the CAS as an arbitral body of appeal), or in a specific arbitration agreement referring to CAS, as concluded between the parties.
60. In this case, it is undisputed that no specific arbitration agreement has been concluded between the parties, granting the CAS the jurisdiction to settle the dispute regarding the AP Decision. In fact, the Appellant’s submissions, developed in order to find a jurisdictional basis for this CAS Panel, within the meaning of Article R47 of the Code, to hear the appeal filed against the AP Decision, are based on provisions set in the SAADC Code: no further provision, contained in the SAFF Statutes or in other texts, has been invoked by the Appellant.
61. In this respect, in order to find CAS jurisdiction in this case, two questions need to be answered in a positive way: (i) whether an arbitration clause referring to CAS disputes regarding the AP Decision is provided, and (ii) whether such clause binds the parties to the current arbitration, i.e. the Player and the SAFF.

62. The SAADC Code provisions <sup>(3)</sup> that have been invoked in these proceedings with regard to the CAS jurisdiction include the following:

**Article 13.2.3**

*In cases involving national-level Athletes, as defined by each National Anti-Doping Organization, do not have a right to appeal under Article 13.2.1 [rectius: 13.2.2] <sup>(4)</sup>, the decision may be appealed to the Saudi Anti-Doping Appeal Panel.*

**Article 13.2.5 <sup>(5)</sup>**

*... In cases under Article 13.2.2 [rectius: 13.2.3], the parties having the right to appeal to the Saudi Appeal Panel shall at a minimum include the:*

*(1) Athlete or other Person who is subject of the decision being appealed ...*

*For cases under Article 13.2.2 [rectius: 13.2.3], WADA and the International Federation shall **also** have the right to appeal to CAS with respect to the decision of the Saudi Arabian Anti-Doping Panel. ...*

**Article 13.5.4**

*No final decision of, or Consequences of Anti-Doping Rule Violations imposed by, the Saudi Anti-Doping Appeal Panel may be quashed, varied or held invalid, by any court, arbitrator, tribunal or other hearing body other than CAS for any reason including for reason of any defect, irregularity, omission or departure from the procedures set out in the Saudi Arabian Anti-Doping Rules provided there has been no miscarriage of justice.*

**Article 13.8.4**

*The decision of the Saudi Anti-Doping Appeal Panel shall be advised to the parties to the proceedings and to the Saudi Arabian Anti-Doping Committee SAADC if not a party to the proceedings as soon as practicable after the conclusion of the hearing.*

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<sup>3</sup> Unchallenged translation filed by the Respondent. The portions of SAADC Code lodged with CAS by the Appellant have an identical wording.

<sup>4</sup> The express reference to Article 13.2.1 of SAADC Code contained in Article 13.2.3 is a clear mistake and should be understood to be a reference to Article 13.2.2 of the same. In fact, Article 13.2.1 of SAADC Code enumerates the decisions that can be challenged, implementing *verbatim* Article 13.2 of WADC in the Saudi Arabian anti-doping regulations. Then, Article 13.2.2 of SAADC Code governs appeals involving international-level athletes (reproducing Article 13.2.1 of WADC) and Article 13.2.3 of SAADC Code concerns appeals involving national-level athletes, corresponding to Article 13.2.2 of WADC. Indeed, in Article 13.2.2 of WADC a reference is made to those athletes “*who do not have a right to appeal under Article 13.2.1*” of the same WADC (i.e. under the provision referring to international-level athletes). It is apparent that, in the implementation of the WADC in the SAADC Code, the reference to Article 13.2.1 of SAADC Code should have been corrected with the mention of its Article 13.2.2, i.e. of the provision referring to international-level athletes.

<sup>5</sup> The Panel notes that the same problem as in Article 13.2.3 of the SAADC Code, deriving from the automatic *verbatim* transcription of the WADC into the SAADC Code, affects other SAADC Code provisions, in particular Article 13.2.5. The reference contained therein to Article 13.2.1 is to be intended as a reference to Article 13.2.2 and the reference to Article 13.2.2 as a reference to Article 13.2.3. All these conclusions are dictated by a general principle of interpretation, according to which a provision should be interpreted also according to its legislative history and its intent (in the case, to give effect to the WADC in the Saudi Arabian system), and according to a principle of “effectiveness”, under which when a rule is open to two interpretations, but one of them deprives it of any meaning, good faith requires that the effective interpretation is applied.

63. Under those provisions, in cases regarding national-level athletes:
  - i. decisions rendered by the Disciplinary Commission can be appealed to the Appeal Panel, and not to CAS; and
  - ii. decisions rendered by the Appeal Panel can be challenged only before CAS.
64. In this case it is undisputed that the Player is a national-level athlete for the purposes of the SAADC Code. Therefore, the DC Decision could be challenged only before the Appeal Panel (Article 13.2.3); and it can be argued that an appeal to CAS against the AP Decision is contemplated by Article 13.5.4 of SAADC Code, at least for the purposes of invoking the existence of “procedural defects”.
65. As a result, it could be concluded that the arbitration clause invoked by the Appellant (Article 13.5.4 of SAADC Code) covers the subject matter of the dispute: i.e. that an arbitration agreement referring to CAS the appeals against decisions rendered by the Appeal Panel is contained in the SAADC Code.
66. The Panel, however, does not need to reach a final conclusion on the point, as its majority finds that such arbitration clause would not, in any case, bind the Respondent with respect to the AP Decision. The SAFF, in fact, did not issue the challenged decision, nor was it a party to the proceedings that led to the AP Decision, and no provision contained in the SAADC Code or elsewhere shows that SAFF accepted (or somehow envisaged) the CAS jurisdiction for doping-related disputes regarding Saudi Arabian players sanctioned by the Saudi Arabian anti-doping disciplinary bodies.
67. This conclusion, according to the majority of the Panel, comes from a plain reading of the relevant text of the SAADC Code and the anti-doping system it created for Saudi Arabia. In its respect, in fact, it can be noted that:
  - i. the SAADC Code is intended to implement in the Saudi Arabian system the WADC, of which the SAOC is a signatory;
  - ii. in fact, according to Article 4.4 of its Statutes, the role of SAOC is, *inter alia*, to “fight against doping and all sorts of substances prohibited by the World Anti-Doping Agency. Adopt and implement the World Anti-Doping Code, thereby insuring that the Saudi Arabian Olympic Committee’s policies, rules, Members and/or funding requirements and results management procedures conform with the World Anti-Doping Code and respect all the roles and responsibilities for NOCs as listed in the World Anti-Doping Code”;
  - iii. on such basis, the Saudi Arabian Anti-Doping Committee (hereinafter referred to as the “SAADC”) was established and “charged with implementation of a national anti-doping program and all anti-doping related matters at local, regional, continental and international levels” (Introduction to the SAADC Code);
  - iv. SAADC is a “consultative, legislative and executive committee, attached to the executive office of Saudi Arabian National Olympic Committee. It is an independent distinct body and is a reference in all anti-doping matters nationwide in the Kingdom of Saudi Arabia. It is the sole authority to represent Saudi Arabia at International anti-doping events. SAADC operates within the policies of Saudi Arabian

- National Olympic Committee*” (Introduction to the SAADC Code);
- v. the SAADC Code applies to “*all participants in programs and activities supervised by Saudi Sports Federations and Organizations*” and to “*all Doping Controls over which SAADC has jurisdiction*” (Introduction to the SAADC Code). In addition, according to Article 1 of the SAADC Code:
- “1.1.1 *Saudi Arabian Sports Federations shall accept the Saudi Arabian Anti-Doping Rules and incorporate the Saudi Arabian Anti-Doping Rules either directly or by reference into their governing documents, constitution and/or rules and thus as part of the rules of sport and the rights and obligations governing their members and participants.*
- 1.1.2 *The application of the Saudi Arabian Anti-Doping Rules to participants is based on the membership obligations that exist between Saudi Arabian Sports Federations and their members or participants through those individuals’ agreement to participate in sport according to its rules*”;
- vi. pursuant to Article 8 of the SAADC Code, and in order “*to hear and determine all issues arising from any matter which is referred to it pursuant to the Saudi Arabian Anti-Doping Rules*” and “*to determine the Consequences of Anti-Doping Rule Violations to be imposed pursuant to the Saudi Arabian Anti-Doping Rules*”, the SAOC appointed the Disciplinary Committee;
- vii. in the same way, according to Article 14.4.1 of SAADC Code, the SAOC appoints the Appeal Panel, “*independent and impartial in the performance of its functions*” (Article 13.5.2), with “*the power to hear and determine all issues arising from any matter which is appealed to it pursuant to the Saudi Anti-Doping Rules*” (Article 13.5.1);
- viii. when it appears that the SAADC Code may have been violated, the matter is referred to the Disciplinary Committee for adjudication by the SAADC;
- ix. the national federation concerned (“*if not a party to the proceedings*”) has the right to attend the hearings before the Disciplinary Committee (Article 8.3.6 of SAADC) and before the Appeal Panel (Article 13.6.8 of SAADC) as an “*observer*”.
68. On the basis of these provisions, in other words, the majority of the Panel finds it clear that the DC Decision and the AP Decision were adopted by bodies acting under the SAADC Code and appointed by the SAOC. In such proceedings, the SAADC enforced *vis-à-vis* the Player his obligation to abide by the SAADC Code. Therefore, the parties concerned by the “disciplinary relation”, established by reference to the SAADC Code, were only the Player and the SAADC: SAFF was not a party thereto. And “*if not a party to the proceedings*” (as it would be the case, for instance, in proceedings directly against it and based on Article 12 of SAADC Code), the SAFF, not mentioned or referred to in any rule of the SAADC Code, derives no obligation to arbitrate before CAS, under Article 13.5.4 of SAADC Code, any dispute regarding the consequences of the anti-doping rule violation imposed on one of his players.
69. The majority of the Panel underlines that a general reference in the SAFF Statutes to the Saudi anti-doping rules is not sufficient to ground an acceptance by SAFF of the CAS jurisdiction: such reference, indeed, intends to bind the players to observe the provisions in the SAADC Code; it cannot create an obligation for SAFF to submit to arbitration with respect to disputes to which it is not a party.

70. The above conclusion, in addition, is not contradicted, in the opinion of the majority of the Panel, by the argument invoked by the Appellant, based on Article 13.8.4 of SAADC Code. The fact that the AP Decision (in the same way as the DC Decision) was communicated to the Player through the SAFF does not mean *per se* that SAFF was a party to the anti-doping proceedings. Indeed, the line of reasoning suggested by the Appellant, if followed to all its consequences, would lead to untenable results. In fact, since only SAFF received direct communications from the anti-doping entities, and the Player received communications only through the SAFF, the Appellant's reasoning would imply that only the SAFF and not the Player (i.e., the very subject sanctioned for an anti-doping rule violation!) was a party to the anti-doping proceedings: conclusion which is obviously absurd. The explanation given by SAFF for such practice of communications (i.e. act as "*point of contact*") is more convincing.
71. In summary, an arbitration clause referring to CAS between the Appellant and the Respondent is lacking.

### **3.2 Conclusion**

72. In light of the foregoing, the majority of the Panel finds that it has no jurisdiction to hear the appeal brought by the Player against the AP Decision.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport by majority rules:**

1. The Court of Arbitration for Sport has no jurisdiction to decide upon the appeal filed on 7 June 2011 by Khaled Mohammad Sharahili against the Saudi Arabian Football Federation to challenge the decision adopted on 30 March 2013 by the Saudi Arabian Anti-Doping Appeal Panel.
2. (...).
3. (...).
4. All other prayers for relief are dismissed.