



Arbitration CAS 2018/A/5785 Karim Ibrahim v. International Association of Athletics Federation (IAAF), award of 17 December 2018

Panel: Mr Murray Rosen QC (United Kingdom), Sole Arbitrator

Athletics

Eligibility of an applicant for consideration as an IAAF official under the IAAF Vetting Rules

Administrative nature of the decision appealed against

Non-retroactivity of the Vetting Rules

Inapplicability of the principle of Ne bis in idem

Fairness of the challenged decision

1. A distinction shall be drawn between the administrative nature of a decision determining the non-eligibility for consideration of an applicant as an IAAF official under the IAAF Vetting Rules, and a disciplinary decision taken by a jurisdiction such as that of the IAAF Ethics Board. The Vetting Rules were introduced as part of a wholesale governance reform of the IAAF and apply equally to all IAAF Officials and Applicants. Their overarching function is to seek to ensure and protect the management and reputation of the IAAF and the sport of athletics, going forwards. They do not fulfill any disciplinary purpose, by way of punishment for past mismanagement or harm.
2. CAS jurisprudence has long recognised the prohibition on rules having retroactive effect. However, according to CAS case law, the principle of non-retroactivity does not generally apply to eligibility schemes such as the IAAF Vetting Rules. In any event, given the purpose of the Vetting Rules, it would be nonsensical if they did not cover actions that occurred prior to their introduction. Thus under Article 12.3, the Vetting Panel may consider whether an IAAF Official or Applicant is, “or has been” the subject of an investigation or any public controversy or has “at any time” not complied with the law and the Vetting Disclosure Form. Accordingly, the Vetting Rules are not retroactive in their application so as to offend any principle of law. The Vetting Panel must take into account relevant conduct, whenever it occurs or whenever it is discovered, in order to decide on whether the relevant person may lack the necessary integrity and good reputation. That is not a retroactive decision.
3. The principle of *ne bis in idem* prevents a second sanction i.e. with the same parties and aim from being imposed in respect of the same facts. However the aim of the Vetting Panel i.e. to decide on whether a relevant person is eligible for consideration as an IAAF official under the applicable rules is different from the aim of the Ethics Board which is to sanction an unethical conduct. Furthermore, the two bodies apply different rules with different purposes. Therefore, the principle of *Ne bis in idem* is not applicable.

4. **An applicant for consideration as an IAAF official under the IAAF Vetting Rules who failed to satisfy the Integrity Check and also failed to meet his disclosure obligations according to the stringent criteria set out in the Vetting Rules; whose position before CAS was indefensible since he did not claim that he was eligible but was evasive; whose legal principles which he sought to invoke were not to the point; and whose persistence was without any proper foundation, both as regards to the proper interests of the IAAF and its officials and as a matter of justice and fairness cannot be found eligible. The Vetting Panel was fully entitled to find that the appellant was not eligible and there was nothing unfair about the process and result of its investigation to that effect. Neither the passage of time, nor the appellant's reliance on the absence of effective sanctions against him, militated to the contrary.**

I. PARTIES

1. Mr. Karim Ibrahim ("Mr Ibrahim" or the "Appellant") is President of the Malaysian Athletics Federation ("MAF") and a former member of the IAAF Council.
2. The International Association of Athletics Federations (the "IAAF" or the "Respondent") is the world governing body for the sport of athletics. Its highest executive organ is its Council, responsible for overseeing and supervising the activities of the IAAF and reporting to Congress every two years.

II. FACTUAL BACKGROUND

3. Mr. Ibrahim has sought to appeal a final Decision by the IAAF Vetting Panel dated 15 May 2018 (the "Decision") determining that he was not eligible for consideration as an IAAF Official under the IAAF Vetting Rules as referred to further below.
4. The following is a summary of the facts to assist as background to the Sole Arbitrator's reasoning. It does not set out all the evidence and arguments submitted, which he has duly reviewed; and to the extent necessary, additional facts may be mentioned later.

A. The complaints against Mr. Ibrahim

5. In February 2012, the MAF established an Independent Enquiry Committee ("IEC") to investigate complaints against Mr Ibrahim in a petition signed by 42 athletes and 15 coaches in respect of his activities in 2009 to 2011, in particular (a) in July 2009 in Mannheim, Germany; (b) in May 2011 in Malaysia; and (c) in September/October 2011 in Miri and Brunei, when Mr. Ibrahim was Vice-President of the MAF and Chair of its Coaching Committee.
6. The IEC (comprising Tan Sri Dato' George, a retired judge of the Court of Appeal of Malaysia;

Dato' W.S.W. Davidson, a former member the Hong Kong Attorney-General's Chambers; and Vinayak Pradhan, a former partner in the Malaysian law firm Skrine) issued a report on 19 September 2012 (the "IEC Report").

7. With regards to the various allegations made, the IEC Report found first, that
 - (a) the Appellant had been provided with money in the amount of RM 66,800 that was intended to cover the subsistence allowance of the athletes and coaches during a training camp in July 2009 in Mannheim, Germany but that several athletes and coaches complained that they did not receive their subsistence allowance;
 - (b) the Appellant initially told the IEC that he could not recall handling the money, but *"eventually admitted that because the athletes had left for Germany, he personally took the cash to Germany"* allegedly because the MAF had not known how long it would take to transfer the money; however, this explanation was *"unacceptable"* and the Appellant *"had not made any attempt to ensure that the athletes and coaches received their daily allowances"*; and
 - (c) the Appellant's *"statements to the Committee in respect of this matter were wholly misleading and calculated to portray himself as one who sacrifices his time and money for athletics in Malaysia when in fact it is clear that both the cost of his travel to Mannheim and his stay there were paid by MAF"* and that the Appellant *"had deliberately misled the Committee, this time by attempting to conceal his active role in organising the training stint in Mannheim"*.
8. Second, with regards to the Malaysian athletes selected to undergo doping control at the National Sports Institute on 24 May 2011 before departing for a training camp in Bulgaria, the IEC found that
 - (a) the Appellant and the athletes' coach Harun Rasheed had *"advised the athletes not to undergo the doping test and had told them to keep away from the National Sports Institute"* and they had indeed evaded that doping control;
 - (b) it was admitted by the Appellant that he had met up with the athletes in a restaurant on the evening of that day and arranged for their departure to Bulgaria to be brought forward but *"No explanation was provided at the Enquiry as to why it was decided to expedite the departure to Bulgaria"*.
9. It may also be noted with regards to this second matter that, as referred to further below:
 - (a) previously, the MAF had appointed a special investigative panel chaired by Mr R. Annamalai, which reported on 12 September 2011 on the athletes' doping violations and on the suspicions against the coach and as regards the restaurant meeting; and
 - (b) subsequently, in an appeal by WADA to CAS (2012/A/2791) it was held in an Award issued on 24 May 2013 that the athletes and their coach had evaded doping control and while Mr Ibrahim was neither a party nor a witness in that proceeding, the Award stated that he was *"involved [in the] cover-up of the doping practice [and]...in the activities that the Coach was helping to cover up by not denouncing them, and inciting the Athletes ... to avoid doping tests"*.

10. Third, with regards to training camps in Miri (Malaysia) and Brunei prior to the SEA Games in Indonesia in November 2011 - at which the Malaysian 4x400m team won the gold medal but the athlete who ran the anchor leg Yunus Lasaleh subsequently tested positive for the anabolic steroid methandienone - the IEC Report found among other things that *“a vote of no confidence against [Mr. Ibrahim was] amply justified”* since
 - (a) the positive doping control resulted from *“some substance prescribed and provided to Yunus Lasaleh by [a] Bulgarian Doctor at Miri and/or Brunei”* and that the Appellant *“was ... in the know that expensive drugs would be administered to the athletes”* and
 - (b) the Appellant was *“very much involved in arranging and paying for the Bulgarian coach and Bulgarian Doctor’s involvement in the exercise at Miri”* and was lying when he sought to deny that he had arranged for the Doctor to travel and stay in Miri.
11. Following the IEC report, the Appellant was banned from any role in the MAF for a period of six years. He successfully challenged this sanction before the High Court of Malaysia which did not overturn or otherwise disturb the factual findings and conclusions of the IEC but found, by an order dated 29 November 2013, that the MAF did not have jurisdiction to impose any sanction on him as he was unaffiliated with the MAF at the time.

B. The IAAF Vetting Rules

12. Under Article 19 of the relevant IAAF Constitution:
 - 19.1 a *“person seeking election or applying to be an IAAF Official (Applicant), or to remain in office as an IAAF Official (Existing IAAF Official) shall be Eligible”*;
 - 19.2 in order to *“... be Eligible, every Applicant and Existing IAAF Official shall be approved to: (a) Have satisfied the Integrity Check including all applicable disclosure obligations as required and specified in the Rules and Regulations; and (b) Not be Ineligible”*;
 - 19.3 the *“decision to approve that an Applicant and Existing IAAF Official is Eligible, or otherwise shall be made by the Vetting Panel”*; and
 - 19.4 the circumstances rendering a person Ineligible within the meaning of article 19.2(b) include, for example, being an undischarged bankrupt or convicted of a criminal offence punishable with a term of imprisonment of at least two years or a minor.
13. As stated in CAS 2015/A/4311, *“... an integrity check is rather an abstract test as to whether a person, based on the information available, is perceived to be a person of integrity for the function at stake”*.
14. The inaugural Vetting Panel approved by the IAAF Congress pursuant to article 19.8 of the IAAF Constitution was comprised of (a) Akere Muna (Chair), former Sanctions Commissioner of the African Development Bank (b) Don Mackinnon, a partner in the New Zealand law firm SBM Legal and (c) Mark Pieth, former head of the OECD Working Group on Bribery.
15. The latest version of the IAAF Vetting Rules came into effect on 13 August 2017. Their stated purpose in Article 3 is to *“establish a process for determining that each IAAF Official is, and remains, Eligible”*.

That process provided among other things for notifications, preliminary findings, and investigations including an Ethical Compliance Officer (“ECO”) to assist the vetting process under the oversight and direction of the Vetting Panel.

16. Pursuant to Articles 11.1.8 and 11.1.9 of the Vetting Rules, the ECO (upon instruction of the Vetting Panel) carries out an assessment of whether any of the circumstances for Ineligibility set out in Article 19.4 of the IAAF Constitution applies and makes a corresponding recommendation to the Vetting Panel.
17. Under Article 12 of the Vetting Rules:
 - “12.2 For an Applicant or Existing IAAF Official to Satisfy and Integrity Check, the Vetting Panel must determine on the basis of all relevant information available to it, that there is not reason to believe the person is unable to meet the high standards of conduct and integrity required of an IAAF Official
 - 12.3 These standards of conduct and integrity include (but are not limited to) whether the Applicant or Existing IAAF Official is: ... 12.3.2 considered to be of good character and reputation, taking into account whether the person (a) is, or has been, the subject of an investigation or disciplinary action, in any sporting context including within Athletics ... [or] (b) in which the person’s credibility, integrity, honesty or reputation has been questioned or adversely affected; ... or (d) has been the subject of public controversy bringing the person into such disrepute that his or her association, or continued association with the IAAF is considered to adversely affect the reputation or interests of the IAAF
 - 12.6 The nature and extent of Integrity Checks on Applicants and Existing IAAF Officials under these Rules shall be established by the Vetting Panel but shall be consistent with the following: 12.6.1 ‘Level 1’ – For decision-making roles such as ... members of the ... Council... the Integrity Check shall include: ... (c) research of publicly available sources of information sources and other information made available to the IAAF; (d) in-depth specialist research commissioned from independent experts; and (e) such further inquiry as deemed necessary by the Vetting Panel ...”.
18. Under Article 11.1.4 of the Vetting Rules, “... every Existing IAAF Official is obliged to promptly update his or her Declaration Form (or, where applicable, Vetting Disclosure Form) to ensure it is complete and accurate at all times and to promptly note the Vetting Panel if he or she is or is likely to become no longer Eligible”; and under Article 14.2.4, a failure by an IAAF Official to provide or update a Vetting Disclosure Form “in a timely, accurate and complete manner may be grounds for a finding by the Vetting Panel that the [...] Existing IAAF Official is not Eligible or is no longer Eligible ...”.
19. Pursuant to Article 19.5 of the IAAF Constitution, a declaration by the Vetting Panel that an IAAF Official (or Applicant) is not Eligible is to have immediate effect. Under Article 8.4 of the Vetting Rules, a decision of the Vetting Panel may be appealed to the Court of Arbitration for Sport but it “shall only be overturned on appeal if the CAS Panel is of the view that the Vetting Panel [...] could not reasonably have come to the conclusion reached”.

C. The vetting process regarding Mr. Ibrahim

20. On 2 January 2018, Mr Ibrahim was requested to complete a Vetting Disclosure Form as part of the vetting of all IAAF Council Members to be undertaken in the first quarter of 2018.

21. Following various reminders, the Appellant eventually filed Consent and Disclosure Forms on 7 February 2018 signing to the following statements:

“I am aware of and have had the opportunity to review the IAAF Vetting Rules (the ‘Rules’) and the IAAF Integrity Code of Conduct available on the IAAF website at <https://www.iaaf.org/about-iaaf/documents/rules-regulations>... I agree to comply with and be bound by the rules and the Integrity Code of Conduct (and any amendments to the Rule and the Code of Conduct as may be made from time to time)... I agree in particular to be subject to Vetting as an Existing IAAF Official in accordance with the Rules and to remain subject to Vetting on an ongoing basis throughout any term I serve as an IAAF Official... I consent to the use of my personal data by the IAAF and agree to waive my privacy rights (in accordance with applicable data protection and privacy laws and regulations), as required for the purposes of carrying out the Vetting... I agree to submit on a timely basis for review by the Vetting Panel an accurate and complete Disclosure Form and Reporting Statement... I am not aware of any act or omission on my part, or of any information that relates to me, that could adversely affect the image or reputation of the IAAF. I acknowledge that I have an on-going obligation to bring any such matters to the attention of the IAAF Ethical Compliance Officer”.

22. In the meantime, having received allegations regarding the Appellant’s integrity arising from the period 2009 to 2011 above, the Chair of the IAAF Ethics Board, Mr. Michael Beloff QC, wrote a letter dated 12 January 2018 to the Chair of the Vetting Panel Akere Muna stating that the Ethics Board did not have jurisdiction to entertain such complaints since they did *“not raise a prima facie case of breach of any Code of Ethics in force at the time of the alleged acts”* but this did not *“involve any substantive evaluation of the merits of the allegations”* and, given the seriousness of the matters of complaint, it was *“... appropriate to bring these matters to the attention of the Vetting Panel”*.

23. On 14 February 2018, commissioned investigators called *“Control Risks”* issued a report to the Vetting Panel based on publicly available information, stating among other things that Mr Ibrahim

“... has a high public profile in the English- and Malay-language public domain. Citations mostly consist of media reports regarding his leadership of the MAF and his involvement in two doping scandals in 2011 ... Karim [Ibrahim]’s reputation was tarnished by his involvement in two doping scandals that occurred in 2011. In October 2012, a month after he lost his position as deputy president in an MAF general meeting, the federation found Karim [Ibrahim] guilty of hiring a doctor who prescribed drugs to a relay runner during the 2011 South East Asian Games, causing the athlete to fail a drugs test. Karim [Ibrahim] also allegedly told six Malaysian athletes to skip a drug test in September 2011 and failed to account for funds intended for a 2009 training programme in Germany. As a result, MAF imposed on Karim a six-year ban from athletics, the MAA [Malaysian Athletics Association] forced him to step down as vice president, and the AAA [Asian Athletics Association] expelled him from the association. In November 2013, the Malaysian High Court lifted Karim [Ibrahim]’s six year suspension after ruling that according to MAF ’s constitution, he was technically no longer a member of the federation when the suspension was issued in October 2012 and that MAF did not have the authority to take disciplinary action against him. In 2014, he was elected president of the MAF. Karim [Ibrahim]’s return to MAF was controversial, and the Malaysian Minister of Youth and Sports Khairy Jamaluddin told Malaysian media that he would not tolerate any mismanagement on the part of Karim [Ibrahim]. He was also re-elected an AAA council member in June 2015. Since then, there have not been any adverse reports in the media pertaining to Karim [Ibrahim] ...”.

24. On 20 February 2018, the Chair of the Vetting Panel wrote to the Appellant, advising him of the

vetting process and requesting among other things that he provide a copy of the MAF decision to ban him for six years and the related judgment of the High Court of Malaysia.

25. On 22 February 2018, pursuant to Article 11.1.8 of the IAAF Vetting Rules, the ECO confirmed that the Appellant was not Ineligible on the basis of any of the circumstances specified in Article 19.4 of the IAAF Constitution. The Vetting Panel therefore instructed the ECO to proceed to compile the relevant documentation for an Integrity Check pursuant to article 11.1.10(b) of the Vetting Rules.
26. On 26 February 2018, the Vetting Panel convened and made a Preliminary Finding in accordance with Article 11.1.11 that the Appellant might not be Eligible, and on 28 February 2018, the ECO informed the Appellant of this by telephone and sent a copy of it to the Appellant by email and, pursuant to Article 11.1.12 of the Vetting Rules, granted a deadline of five working days (until 7 March 2018) for him to respond.
27. On 6 March 2018, at Mr Ibrahim's request, he was granted an additional 10 days until 16 March 2018 to provide his response to the Preliminary Finding and an additional 17 days until 23 March 2018 to provide translations of the documents on which he intended to rely. He duly filed his response on 13 March 2018 and filed further documents (including translations) on 19 March 2018.
28. A hearing was held before the Vetting Panel via video-conference on 19 April 2018. The Appellant submitted among other things that (a) the MAF's special investigative panel investigation cleared him of any wrongdoing as regards the evasion of the doping control on 24 May 2011; (b) that the IEC proceedings breached natural justice; (c) that the six-year ban imposed by the MAF had been overturned by the High Court of Malaysia; (d) that the CAS Award on WADA's appeal had found that there was no clear evidence as to how the cover-up took place; and (e) that the requirement to provide and update the relevant Disclosure Form under Article 14.2.4 of the IAAF Vetting Rules in a timely, complete and accurate manner, was not part of his declaration.

D. The Decision under appeal to CAS

29. Following the hearing, the Vetting Panel issued its final Decision dated 15 May 2018 (the "Decision") finding that Mr Ibrahim was not Eligible on the basis of the established facts and arguments before it, which it set out in some 88 reasoned paragraphs. On the same day, the ECO orally notified the Appellant of the Decision and sent him a copy, but because of public holidays in Malaysia it was only received on 21 May 2018.
30. Among other things, the Decision held against Mr Ibrahim's submissions in that:
 - (a) on its face, the MAF's special investigative panel's report of 12 September 2011 had not cleared him of wrongdoing;
 - (b) the IEC process (which was inquisitorial rather than adversarial against the Appellant as defendant) was fairly conducted, not least since he was allowed to and did file multiple

written statements with supporting evidence, call witnesses, have legal counsel present at the hearing and to cross-examine other witnesses;

- (c) the quashing of the MAF sanction by the Malaysian High Court was on its face based solely on jurisdictional grounds only and “... *in no way sets aside or even addresses the issues determined by the IEC... Mr Ibrahim’s interpretation of this decision is again incorrect. Put simply, the panel clearly considered he was “deeply involved” in the cover up of doping practices*”;
- (d) the Award in CAS 2012/A/2791 had on its face made no findings tending to exonerate Mr. Ibrahim but had positively found that he was deeply involved in the cover-up of doping control evasions; and
- (e) Mr Ibrahim had, by his Consent Form dated 7 February 2018, agreed to be bound by the Vetting Rules (including Article 14.2.4) and to “*submit on a timely basis for review by the Vetting Panel an accurate and complete Disclosure Form and Reporting Statement*” but had failed to mention anything about the IEC Report and related matters and instead claimed not to be “*aware of any act or omission ... that relates to me, that could adversely affect the image or reputation of the IAAF*”.

- 31. The Decision thus found, on the basis of the IEC Report and media reports relating to the controversies of 2009 to 2011 which also surfaced again with the CAS Award 2012/A/2791 in May 2013 and when Mr Ibrahim was elected President of the MAF in 2014, that he had been the subject of a public controversy and that there was a “*serious likelihood of damage to the reputation of Athletics and/or the IAAF*”.
- 32. The Vetting Panel emphasised in the Decision that its role was not to assess whether the IEC Report was correct but instead to assess (on the balance of probabilities) whether the Appellant met “*the high standards of conduct and integrity required of an IAAF Official*” and was of “*good character and reputation*”. Since the Appellant (a) was involved in an investigation that resulted in “*extremely adverse factual findings [being] made about him and in which his credibility, integrity, honesty and reputation were all deeply impinged*” and (b) “*... was found to have lied to, and misled the IEC, mismanaged funds and supported attempts to avoid doping detection*” which went “*to the very heart of the issue of integrity in sport*”, he did not meet those standards and was not of that character and reputation; and his failure to provide and update his Vetting Disclosure Form in a timely, accurate and complete manner pursuant to Article 14.2.4 of the Vetting Rules, was a separate further basis for the determination that he was not Eligible.

III. THE PROCEEDINGS BEFORE CAS

- 33. On 12 June 2018, the Appellant filed a statement of appeal/appeal brief against the IAAF with respect to the Decision pursuant to Article R48 and R51 of the Code of Sports-Related Arbitration 2017 (the “Code”). Within his statement of appeal/appeal brief, he also made an application to stay of execution of the Decision. The Appellant also requested that this procedure be referred to a Sole Arbitrator.
- 34. On 17 July 2018, the President of the Appeals Arbitration Division of CAS ordered that the Appellant’s application for a stay of execution of the Decision was dismissed and that the

costs of that order be determined in the final determination of the arbitration.

35. On 22 June 2018, the Respondent confirmed its agreement to refer this procedure to a Sole Arbitrator.
36. On 25 July 2018, the Respondent filed its Answer under Article R55 of the Code.
37. On 14 August 2018, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed that Mr Murray Rosen QC, barrister in London, United Kingdom, was appointed as Sole Arbitrator.
38. On 23 and 24 October 2018, the Appellant and Respondent, respectively, signed and returned an Order of Procedure.
39. On 26 October 2018, a hearing took place at the CAS Court Office in Lausanne, Switzerland. In attendance were the Appellant and his advocate Mr Bernard Francis; Messrs Ross Wenzel and Niels Lindholm on behalf of the Respondent; and Mr Brent J. Nowicki as CAS Managing Counsel.
40. In the course of the hearing the Appellant gave evidence and made a closing oral statement. At the outset and conclusion both parties stated that they had no objection to the constitution of the Sole Arbitrator, complaints as to procedure, and their rights to a fair hearing were respected. They asked for the CAS award to be issued as soon as possible, in advance of the IAAF Council meeting in early December 2018.

IV. THE PARTIES' SUBMISSIONS

41. The Sole Arbitrator has considered all the parties' submissions, and the following is a summary to assist in following the decision below. It is not intended to be – nor does it need to be - a comprehensive reiteration of every point raised by the parties.

A. The Appellant's Submissions

42. The Appellant's main submissions were as follows:-
 - (a) The application of the Vetting Rules against him was prohibited in law as going to "*events completed in the past*" that is, amounting to retrospective regulation or sanction.
 - (b) Under the principle *ne bis in idem* (or "*the rule against double jeopardy*"), it was also forbidden to try the Appellant or make the Decision against him because he had been "tried" and/or acquitted as regards the same or similar matters in the past.
 - (c) It was unfair for the Vetting Panel to decide in 2018 that he was not eligible, given that the matters against him had been repeatedly ventilated and considered several years earlier and he had been a loyal member of the IAAF Council since then.
43. In his statement of appeal/appeal brief, the Appellant requested the following relief, namely

that:

- 49.1 *the IAAF Vetting Panel dated 15 May 2018 be set aside;*
- 49.2 *the Appellant be eligible to remain as an Official of the Respondent;*
- 49.3 *the Respondent be ordered to take all necessary measures to ensure the implementation of this decision;*
- 49.4 *the Respondent be ordered to bear all legal costs incurred by the Appellant in relation to the present appeal; and*
- 49.5 *the Respondent be ordered to bear all costs incurred by the Appellant in relation to the present appeal.*

B. The Respondent's Submissions

44. The IAAF's main submissions were, in summary:-

- (a) The Vetting Panel had fully investigated and considered the history of the matter, including Mr Ibrahim's submissions, and was entitled to find that he was not Eligible in the light of the suspicions as to his integrity and reputation, and his non-disclosures in the Vetting Disclosure Form.
- (b) The principles against retroactivity and *nemo bis in idem* had no application to the case, since the Decision was not by way of sanction against Mr Ibrahim and there had been no previous finding regarding his eligibility or dismissing the complaints against him.
- (c) Far from being unfair, the Decision was in accordance with the IAAF Rules which Mr Ibrahim himself had supported and which were for a crucial sporting purpose, namely to exclude officials, especially senior officials, whose conduct and public standing might cast aspersions on the IAAF's integrity.

45. In their answer, the IAAF requested the following relief, namely that:

- (i) *the appeal is dismissed;*
- (ii) *the arbitration costs be borne entirely by the Appellant; and*
- (iii) *the IAAF is awarded a contribution to its legal costs.*

V. JURISDICTION

46. Article R47 of the Code states:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

47. The Appellant relies on IAAF Constitution Article 20 and Vetting Rule 8.4 as conferring a right to appeal the Decision to the CAS. Rule 8.4 provides as follows: *"the decision of Eligibility*

... shall be final, subject to a right of appeal to the Court of Arbitration for Sport (CAS)”.

48. The IAAF does not contest that CAS should hear and adjudicate this matter and confirmed as much when signing the order of procedure. The Sole Arbitrator, therefore, determines that CAS has jurisdiction to decide the appeal.

VI. ADMISSIBILITY

49. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

50. The Decision was received by Mr Ibrahim on 21 May 2018. He filed his Statement of Appeal on 11 June 2018 and therefore within the deadline specified in Article R49 of the Code. The IAAF does not dispute the admissibility of the appeal and the Sole Arbitrator determines that it is admissible.

VII. APPLICABLE LAW

51. Article R58 of the Code states:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

52. In the present case, the applicable regulations are the IAAF Constitution and Vetting Rules. If and insofar as there is any need to invoke national law, the IAAF is domiciled in Monaco and its law is accordingly the subsidiary applicable law.

VIII. MERITS

53. In his appeal against the Decision to the effect that he is not Eligible to be an IAAF Official, the Appellant makes no substantive submissions to the effect that he *is* Eligible under the Vetting Rules. Instead, he claims that two legal principles, retroactivity and *ne bis in idem*, invalidate the application of the Vetting Rules to him, and make the Decision unfair, whether or not he could otherwise be treated as not Eligible by reason of the complaints regarding his activities in 2009-2011.

A. The nature of the Decision

54. The Claimant rightly drew a distinction between the administrative nature of the Decision, and a disciplinary jurisdiction such as that of the IAAF Ethics Board. He did so in order initially to submit that it was wrong on principle for such an administrative decision to post-date the determination of a disciplinary process based on the same allegations, claiming that the latter was effected by Mr Beloff's letter of 12 January 2018 which he characterised as finding that there was no *prima facie* case again. However, his counsel eventually abandoned that argument, conceding that it arose from a "misreading" of the letter.
55. The Sole Arbitrator is bound to comment that such "misreadings" have permeated the Appellant's case both before the IEC and CAS. He repeatedly ignored the clear fact that neither the MAF special investigative panel of the MAF, nor the Award in CAS 2012/A/2791, nor the Malaysian High Court, nor Mr Beloff's letter "cleared" him of anything. Indeed his evidence before us evaded the passages in the written record to the opposite effect.
56. The Vetting Rules were introduced as part of a wholesale governance reform of the IAAF and apply equally to all IAAF Officials and Applicants. Their overarching function is to seek to ensure and protect the management and reputation of the IAAF and the sport of athletics, going forwards. They do not fulfill any disciplinary purpose, by way of punishment for past mismanagement or harm.
57. An analogy may be drawn with CAS 2011/A/2426, concerning a member of the FIFA Executive Committee, in which it was held that "*officials as highly ranked as the Appellant must under any circumstance appear as completely honest and beyond any suspicion. In the absence of such clean and transparent appearance by top football officials, there would be serious doubts in the mind of the football stakeholders and of the public at large as to the rectitude and integrity of football organisations as a whole. This public distrust would rapidly extend to the general perception of the authenticity of the sporting results and would destroy the essence of the sport*".
58. In short, the Decision was made under the Vetting Rules on the basis of the Appellant's **current** Eligibility or not, albeit necessarily based on an **historic** investigation of activities and their consequences calling into question his integrity and the reputation of the IAAF.
59. That the Appellant was not effectively sanctioned in the nearly 10 years since his activities in 2009-2011, was because of jurisdictional and procedural complications. Whether or not the scrutiny of such activities in the period of 2012-2014 and not since, can or does make it unfair for him now to be considered not Eligible as an IAAF Official, is addressed below.

B. Retroactivity

60. CAS jurisprudence has long recognised the prohibition on rules having retroactive effect (see CAS 2006/A/1181 as cited on behalf of the Appellant). As stated in CAS 2008/A/1584 "*... as regards the principle of non-retroactivity, ... this is a fundamental legal principle, which does - basically - apply to measures taken by associations having the character of a sanction*".

61. However, the principle of non-retroactivity does not generally apply to eligibility schemes such as the Vetting Rules. Thus in CAS 2014/A/3625 it was held that a provision in the UEFA regulations rendering a club that has been directly or indirectly involved in match-fixing ineligible for UEFA competitions for one year was not a sanction since it “*aimed not to sanction the club but to protect the values and objectives of UEFA’s competition, its reputation and integrity, not only to prevent a club which has violated such values from taking part in the competitions organized by UEFA (ie to protect the integrity of the competition), but to also to dispel any shadow of doubt in the public about the integrity, the values and the fair play of its competitions (ie to protect the reputation of the competition)*”.
62. In any event, given the purpose of the Vetting Rules, it would be nonsensical if they did not cover actions that occurred prior to their introduction in 2017. The question for the Vetting Panel was whether in view of that conduct and its consequences, the relevant person can be considered to be of good reputation and character and to fulfil the high standards of conduct and integrity required of an IAAF official.
63. Thus the Vetting Rules, as explicitly accepted by the Appellant, provided expressly that conduct prior to the entry into force of the Vetting Rules may be taken into account. Thus under Article 12.3, the Vetting Panel may consider whether the IAAF Official or Applicant is, “or has been” the subject of an investigation or any public controversy or has “at any time” not complied with the law; and the Vetting Disclosure Form signed by the Appellant on 7 February 2018 stated that he was not aware of any ongoing “or previous matter” in which he was or had been involved that would constitute a breach of the IAAF Integrity Code of Conduct and that he had “never” been declared bankrupt, or the subject of formal proceedings by creditors.
64. Accordingly, the Vetting Rules are not retroactive in their application so as to offend any principle of law. The Vetting Panel must take into account relevant conduct, whenever it occurs or whenever it is discovered, in order to decide on whether the relevant person may lack the necessary integrity and good reputation. That is not a retroactive decision.
65. Moreover, the Appellant failed during the vetting process and after the entry into force of the Vetting Rules, to fulfil his disclosure obligations under Article 14.2.4 of the Vetting Rules and under Article 19.2 of the IAAF Constitution, an IAAF Official must satisfy all disclosure obligations (as well as the Integrity Check) in order to be Eligible.

C. *Ne Bis In Idem*

66. It was submitted on behalf of the Appellant that “*the principle of non bis in idem forbids a defendant from being tried again on the same charges following a legitimate acquittal or conviction*” as recognized in CAS cases such as CAS 2013/A/3256 and CAS 2014/A/3665, 3666 & 3667.
67. However, there is no basis whatever in this case to invoke the principle of *ne bis in idem* and the vetting process for Mr Ibrahim and the Decision did not involve or amount to any risk of double jeopardy, by reason of the letter dated 12 January 2018 from the Chairman of the IAAF Ethics Board or otherwise.

68. The application of this principle usually centers on whether a previous decision has decided a dispute as to the same alleged misconduct for the same purpose. Thus “*the conclusive and preclusive effects of an award are limited to decisions on the merits by which the arbitral tribunal fully or at least partly decides the dispute brought before it*” (see eg CAS 2007/A/1396 & 1402 and CAS 2013/A/3256).
69. The letter of 12 January 2018 did not constitute a decision that precludes the IAAF Vetting Panel from rendering a (second) decision on the same facts. The Chairman of the Ethics Board made it clear beyond any “misreading” that he did not entertain the merits of the matter; It could not be sensibly contended that the Ethics Board had determined the matter, whether or not in Mr Ibrahim’s favour (as regards to “sanction”) so that the Vetting Panel could not “redecide” the matter (albeit “administratively”).
70. On the contrary, the IAAF Ethics Board did not have jurisdiction to hear the matter and referred it on the Vetting Panel in case it was relevant for their (different) purposes. The Appellant’s attempt to argue initially otherwise, was as fundamentally deficient as his false claim, in which he persisted throughout his evidence, that the Malaysian High Court had dismissed the complaints against him, rather than deciding that the MAF had no jurisdiction to sanction him in 2012/3.
71. In any event, the principle of *ne bis in idem* prevents a second sanction (i.e. with the same parties and aim) from being imposed in respect of the same facts. The aim of the Vetting Panel is, unlike that of the Ethics Board, not to sanction and the two bodies apply different rules with different purposes.

D. Fairness

72. In the end, the Appellant sought to persuade the Sole Arbitrator that because the relevant matters took place many years ago and were ventilated before the Malaysian High Court and others, and he had since been loyal to the IAAF, they should be treated as if “spent” for the purpose of his alleged integrity and reputation.
73. The Sole Arbitrator rejects that position. The Vetting Panel was fully entitled to find that Mr Ibrahim was not Eligible and there was nothing unfair about the process and result of its investigation to that effect. Neither the passage of time, nor the Appellant’s reliance on the absence of effective sanctions against him, militated to the contrary.
74. While the Appellant sought to argue at that stage that, notwithstanding the complaints against him, he fulfilled the stringent criteria set out in the Vetting Rules, the Decision carefully considered the relevant rules and evidence and was satisfied otherwise. The Appellant failed to satisfy the Integrity Check and also failed to meet his disclosure obligations. His position before CAS was indefensible. He did not claim that he was Eligible but was evasive; the legal principles which he sought to invoke were not to the point; and his persistence was without any proper foundation, both as regards to the proper interests of the IAAF and its officials and as a matter of justice and fairness.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of Karim Ibrahim against the Decision of the IAAF Vetting Panel dated 15 May 2018 is dismissed.
2. (...).
3. (...).
4. All and any other and further prayers and requests for relief are dismissed.