Arbitration CAS 2019/A/6275 Mauricio Álvarez-Guzman v. Professional Integrity Tennis Officers (PTIOs), award of 20 January 2021

Panel: Mr Andre Brantjes (The Netherlands), President; Mr George Abela (Malta); Prof. Ulrich Haas (Germany)

Tennis
Match-fixing and corruption
Standard of proof
Autonomy of the sport-governing body in the conduct of the investigation

1. **The standard of preponderance of the evidence provided by Section G(3)(a) of the 2016 Uniform Tennis Anti-Corruption Program (TACP) is met if the proposition that a player engaged in attempted match fixing is more likely to be true than not true. As sport-governing bodies can in principle validly choose to impose their own concept of the applicable standard of proof, there is no reason to deviate from it if it is not challenged.**

2. **Although the more serious the offenses with which a player is charged, the higher the degree of confidence a CAS panel needs in the quality of the evidence, it is up to the sport-governing body to decide how to conduct its investigation and whether to broaden the scope of the latter. It is therefore free to decide to conclude its investigation if it considers the evidence gathered to be sufficient to substantiate the charges brought. It is then for the CAS panel to assess whether the facts and results of the investigation back the charges brought.**

I. PARTIES

1. Mr Mauricio Álvarez-Guzmán (the "Appellant" or the "Athlete") is a professional tennis player of Chilean nationality.

2. The Professional Tennis Integrity Officers (the "PTIOs" or the "Respondent") fall under the umbrella of the Tennis Integrity Unit ("TIU") – i.e. the anti-corruption body for the WTA Tour, Inc., the International Tennis Federation (the "ITF"), the Grand Slam Board, and the ATP Tour, Inc., respectively. The ITF is the International Olympic Committee-recognized international sports federation for the sport of tennis that has its headquarters in London, United Kingdom.

II. FACTUAL BACKGROUND

3. The relevant facts according to the Parties' submissions to date are briefly summarized below, without prejudice to any eventual findings of fact by the Panel.

A. The Player's Registration

4. The Appellant first registered for an ITF International Player Identification Number ("IPIN") in 2015 and also registered for an IPIN in 2016. When registering, the Appellant confirmed his agreement to a Player Welfare Statement, which included the following:

> *"I declare that I am aware and will abide by the Rules of Tennis, as approved by the International Tennis Federation…The Rules include...the Uniform Tennis Anti-Corruption Program…. Finally I understand that this agreement will remain in full force and effect until I further advise the ITF in writing that I am permanently retiring from participation in tennis with immediate effect".*

5. Section K.6 of the 2016 Uniform Tennis Anti-Corruption Program ("TACP") provides that:

> *"This Program is applicable prospectively to Corruption Offenses occurring on or after this Program becomes effective".*

B. The Information Provided by X. Concerning Match-fixing

6. On 8 October 2016, the ATP World Tour received an email from a […] Tennis Player, X., indicating he had information about match fixing. […] X. provided information about the Appellant approaching him.

7. On 13 November 2016, X. sent the […] an email with, *inter alia*, the following content:

> *"When I was in […] I received a call from Mauricio Alvarez from chile and asked me if I wanted to fix the match against […] I don't remember his name… […], that's the guy… this year […]… I told him that I was gona play normal… […] anyways he played really hard first set he won it […]* [sic] […]*".*

8. On 30 November 2016, […], an investigator employed by the TIU, conducted an interview in […] with X. on a without-notice basis. […].

9. X. stated that the Appellant had offered him EUR 1,000 to lose the first set of the match at the […] Tournament in […], against Y. on […] 2016 (the "[…] Match"). X. also provided the investigators with WhatsApp messages and played some voice mail messages.

C. The Events at and following the Orlando Qualifying Match

10. On 10 February 2017, both TIU investigators approached the Appellant in Orlando, Florida, after a qualifying match. The investigators asked the Appellant to show them the two mobile phones he carried with him. One belonged to him and the second phone, according to the

Appellant, belonged to Ms […].

11. The Appellant allowed the TIU investigators to download the contents of his phone, but refused to give permission to download the contents of the second phone. The Appellant also refused to provide the pin required to access the second phone.

12. The Appellant signed an Explanatory Notice confirming that he understood the demand to examine the second phone. The Appellant subsequently took or wanted to take legal advice. The investigators retained possession of the second phone while this advice was taken.

13. In a meeting room at the United States Tennis Association ("USTA") later that day, a first interview was conducted with the Appellant. The contents of the first phone were downloaded.

14. On 11 February 2017, the Appellant informed the TIU investigators that he would not give permission to download the contents of the second phone. The TIU investigators subsequently returned the second phone to the USTA offices. […]. The investigators asked Ms […] to unlock the phone, but she refused.

15. In WhatsApp on the Appellant's phone, correspondence was found between the Appellant and a Mr […] discussing, *inter alia*, a wild card for an […] event in […] in […] 2016 (the "[…] Tournament").

16. On 25 November 2017, a second interview took place with the Appellant and TIU investigators at the Talca Tournament in Chile. The Appellant denied offering X. money to lose a set in the […] Match and denied having paid for a wild card to enter the […] Tournament.

17. The investigation showed that the official tournament hotel in […] was the […] Hotel and that the price of a shared double room was EUR 73 per night including breakfast, lunch and dinner. The Appellant stayed in the hotel from […] to […] 2016 and the total costs were EUR 292.

D. Proceedings before the Anti-Corruption Hearing Officer

18. On 16 May 2018, the PTIOs brought charges of match-fixing and corruption against the Appellant in a Notice of Charge. This notice stated:

> *"In […] 2016 you exchanged WhatsApp messages with an individual named […]. It is alleged that during this exchange you arranged to purchase wild cards for the singles and/or doubles competitions of the […] tournament in […], which took place from […] (the* ***[…] Tournament****). You then gained entry to the singles competition of the […] Tournament as a result of a wild card. However, your partner in the doubles preferred to play in the qualifying rounds and therefore you did not purchase the wild card for the doubles. You thereby contrived and/or attempted to contrive an aspect of the […] Tournament by contriving and/or attempting to contrive the draws.*

It is alleged that on or around […] 2016 you offered X. money (in the amount of Euros 1000) to lose a set in his match against Y. at the […] Tournament in […] (the ***[…] Match****)".*

19. The following charges were filed against the Player:

- The First Charge was:

  "You are charged with breaching Section D.1.d of the 2016 TACP: "No Covered Person shall, directly or indirectly, contrive or attempt to contrive the outcome or any other aspect of any Event".

  It is alleged that:
  1. *in […] and […] 2016 you contrived an aspect of the […] Tournament by contriving the draw through purchasing a wild cart for the singles competition;*
  2. *in […] and […] 2016 you attempted to contrive an aspect of the […] Tournament, being the doubles competition draw, by seeking to purchase a wild card for the doubles competition;*
  3. *on or around […] 2016 you attempted to contrive an aspect of the […] Match by offering X. money to lose a set in the match".*

- The Second Charge was:

  "You are charged with breaching Section D.1.e: "No Covered Person shall, directly or indirectly, solicit or facilitate any Player to not use his or her best efforts in any Event".

  It is alleged that on or around […] 2016 you solicited X. not to use his best efforts in the […] Match by asking him to lose a set in the match".

- The Third Charge was:

  "You are charged with breaching section D.1.g: "No Covered Person shall, directly or indirectly, offer or provide any money, benefit or Consideration to any other covered Person with the intention of negatively influencing a Player's best efforts in any Event".

  It is alleged that on or around […] 2016 you offered X. money (Euros 1000) to lose a set in the […] Match".

20. Sections D.1.d, D.1.e and D.1.g of the TACP provide as follows:

"D.1.d: No Covered Person shall, directly or indirectly, contrive or attempt to contrive the outcome or any other aspect of any Event.

D.1.e: No Covered Person shall, directly or indirectly, solicit or facilitate any Player not to use his or her best efforts in any Event.

[…]

D.1.g: No covered Person shall, directly or indirectly, offer or provide any money, benefit or Consideration to any other Covered Person with the intention of negatively influencing a Player's best efforts in any Event".

21. A hearing took place on 11 March 2019 before the Anti-Corruption Hearing Officer ("AHO"), Mr Charles Hollander QC. The Appellant appeared by video conference and was represented by counsel.

22. The evidence consisted of the statement of X. and WhatsApp messages. These messages provided as follows:

Player to X. at 11.45 am: *"[…]. We're a bit short of time. If you can tell me anything, later, later that would be great, […]. I'm waiting for you".*

X. to Player at 12.30pm: *"Old man, the truth is that you really tempted me with what you put to the test … my personality and… I'm going to play, I'm going to play well and nothing , and I'm going to play my normal game. Cheers. See you".*

Player to X. at 12.32pm: *"[…], what a bloody shame to not have spoken to you before in person because I could explain loads of things and improve everything so much more clearly. Oh God, let's see. How to tell you. In reality, you don't even have to do anything, but rather simply co-operate and in the end you'll end up winning anyway and if they're not going to play to their best ability and well the other guy also plays well and that's it. I was assuring you a victory that's all but hey, it's still in your hands so there's no pressure from this either. Just be clear that if you manage to do the first set you're still not going to lose the match. Better said, there's no way you are at risk of losing the match. I want that to be quite clear".*

23. The Appellant denied all of the charges. He denied that he had made any offer to X. and only gave advice about how to play his opponent in the […] Match.

24. The Appellant criticized the veracity of the statement of the witness X. and argued that the latter was pressured by the investigators. The Appellant also criticized that the investigators failed to contact the opponent of X. in the […] Match.

25. The evidence in the […] Tournament was, *inter alia*, based on WhatsApp messages between the Appellant and Mr […]. These messages provided as follows:

Player to Mr […] […] at 18.00:
"Hello good afternoon I'm Mauricio Alvarez –Guzman
[…] gave me your number
To talk about Wild Cards in […]".

Mr […] then states that he will call the Player back in 15 minutes.

Player to Mr […] […] at 18.49:
"Amigo is possible to include in our deal wc for doubles? Because I have 900 ranking but my friend has no points. So it's not sure that we get in…".

Mr […] to Player […] at 11.27:
"First week we don't have availability. But for second one it is no problem. And of course if something change and we will have availability, we will use for you".

Player to Mr […] […] at 18.00:
"My sponsor is little bit angry
He said that friend of him bought 3 wc in […] for 800€ ☹ i didn't know. So he told me he will not pay more than 400€ per wc and we stay in official hotel. I have no information so I thought was ok the price…i never bought wc before".

Mr […] to player […] at 16.35
"Our Last price is 600€. Please decide till tomorrow morning".

Player to Mr […] on […] at 16.36:
"hi amigo I was playing. Ok i will try to push my sponsor. Sorry for the problems 👍".

Player to Mr […] on […] at 12.48:
"My friend for sure I will take the wc
I'm manage the sending
The second week wc I let you know when I arrive".

Player to Mr […] […] at 17.10:
"[…]
Sender: […]
From: […]
[…]
There is the code, my friend, Western Union, so … see you on Monday. Thank you".

Mr […] to player […] 17.21:
"How much he send?".

Player to Mr […]on […] at 17.44:
"600€".

26. Before the AHO, the Appellant's defence with respect to the […] Tournament was that he did not try to buy a wild card. He admitted he asked Mr […] for a wild card and offered to stay in the official hotel. The discussion concerning the various amounts all related to the costs of staying in the official hotel and were not an alleged remuneration for buying a wildcard.

27. Before the AHO, the Appellant also criticized that the investigator had not attempted to find or contact Mr […] and the tournament management in order to find out what really happened. According to the Appellant, the TIU investigation failed to exhaust all avenues of enquiry.

28. The Appellant also criticized the investigator […] for trying to obtain access to the phone of Ms […], and argued that the investigator breached her rights by doing so.

29. On 14 March 2019, the AHO issued his decision (the "Appealed Decision"), which states as follows in relation to the […] Match:

"I accept X.'s evidence and reject that of Mr Alvarez-Guzman on this issue. X.'s version of events has been essentially consistent throughout. […] after he had been told this was not possible, and told that he had an obligation to report any corrupt approach, that he provided the information and named Mr Alvarez-Guzman. I do not accept that his evidence was untruthful and I do not accept the alternative submission that he was in any way confused. Moreover, the whatsApp messages are entirely consistent with his evidence and not at all consistent with Mr Alvarez-Guzman's evidence. […]. Nor does the reference to losing the first set and winning the match make sense on his version".

I do not accept that there was any abnormal pressure on X. or that his evidence should be declared inadmissible. His evidence was not merely the interview […], he also gave evidence by telephone at the hearing and there is no possible reason why that should be inadmissible.

By D.1.g: "No Covered Person shall, directly or indirectly, offer or provide any money, benefit or Consideration to any other Covered Person with the intention of negatively influencing a Player's best efforts in any Event". Both Mr Alvares-Guzman and X. were Covered Persons and the […] Match fell within the definition of Event. Event" is defined in Section B of the TACP as "those professional tennis matches and other tennis competitions identified in Appendix 1". Appendix 1 includes […] Tournaments. The […] Match was a first round qualifying match in the […] tournament.

In asking X. to lose a set in the […] Match, the Player indirectly attempted to contrive an aspect of an Event in breach of Section D.1.d by contriving the score. Further, by asking X. to lose the set he thereby asked X. not to use his best efforts in an Event in breach of Section D.1.e. Finally the offer of €1000 was made with the intention of negatively influencing X.'s best efforts given that the money was offered in return for deliberately losing a set in the […] Match.

Section G.3 provides that the standard of proof under the TACP is the preponderance of the evidence. The standard required to prove charges on the preponderance of the evidence is equivalent to the English law "balance of probabilities" standard of proof. In Kollerer v ATP et al (CAS 2011/A/2490), the Panel stated that, "This [preponderance of the evidence] standard is met if the proposition that the Player engaged in attempted match fixing is more likely to be true than not true". I find the charge prove to that standard".

30. The AHO stated the following in relation to the […] Tournament:

"Mr Alvarez-Guzman said that he did not try to buy a wild card. He admitted that he asked Mr […] for a wild card and offered to stay in the official hotel (which he said presumably would be to the financial advantage of the organisers) and that he received a wild card. However, he said the discussion about money was concerned with staying in the official hotel, not payment for the wild card. It was put to him that this should have cost E73 per night for his share of a double room and even with airport transport transfers this did not get near to the E600 which the messages state was paid. In response Mr Alvares-Guzman said (for the first time during his evidence) that he had paid double, as he paid for his roommate's share of the room too.

Mr Oros was in his submissions highly critical of the investigation. Firstly, there had been no effort to find Mr […]. He said the investigation had failed to exhaust all avenues of enquiry. The payment voucher for the E600, which would have shown what the payment was for, had not been obtained. He was also critical of the investigator, […].

In my judgment Mr Alvarez-Guzman's account is entirely inconsistent with the WhatsApp messages, which are clear, and I reject his evidence completely. It is obvious these messages show him purchasing a wild card for himself in the singles and then seeking to do so for the doubles, although he did not go ahead with that when his doubles partner refused to go along with it. The fact was that he did obtain a wild card, as he accepted. In interview he said that he subsequently met Mr […] at the reception desk of the tournament, so it is difficult to accept the submission that Mr […] has not been shown to exist".

31. The Appealed Decision issued the following sanction against the Player:

"It is apparent from this that the offence of purchasing a wild card seems to be regarded rather less seriously, and I take that into account in the sanction.

What is particularly troubling is that in relation to all offences charged, although the evidence against Mr Alvarez-Guzman was, frankly, overwhelming, Mr Alvarez-Guzman nevertheless sought to deny all charges, and put forward a series of unrealistic and, in my judgement, untruthful explanations to explain away the evidence against him. This is not therefore a case where the player showed remorse; nor can one have any confidence at all that he will not reoffend. Moreover, in relation to the whatsapp messages with X., although dealings with Y. were not part of the charge, Mr Alvarez-Guzman appears clearly to be telling X. that Y. has been bribed to lose the second and third sets.

It is vital for the integrity of tennis that match fixing is stamped out. In my judgment the only possible sanction here is a lifetime ban in relation to the charges relating to the […] Match. In those circumstances I do not propose to impose a separate penalty in relation to the […] Tournament charges, although if I had not found the charges relating to the […] Match proved I would have imposed a penalty in relation to the (less serious) […] Tournament offences".

32. The operative part of the Appealed Decision provided:

"All charges are proved.

In relation to the charges relation to the […] Match, a lifetime ban is imposed on Mr Alvarez-Guzman in relation to any event organised by any Governing Body.

In the circumstances, it is not necessary to impose a separate penalty in relation to the […] Tournament charges.

Under Section I this decision may be appealed to CAS by the parties in this proceeding within a period of twenty business days from the date of receipt of the Decision by the appealing party".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

33. On 10 April 2019, the Appellant filed a Statement of Appeal/Appeal Brief before the Court of Arbitration for Sport ("CAS") in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (2019 edition) (the "Code") against the PTIOs of the ITF with respect to the Appealed Decision.

34. In his Statement of Appeal, the Appellant nominated Dr George Abela, Attorney-at-Law, Valetta, Malta, as arbitrator.

35. On 19 April 2019, 25 April 2019 and 11 May 2019, further to invitations from the CAS Court Office, the Appellant completed his appeal by submitting additional information, pursuant to, e.g., Article R48 of the Code, including filing a Request for a Stay of the Appealed Decision.

36. On 15 May 2019, the CAS Court Office initiated an appeals arbitration proceeding under the reference *CAS 2019/A/6275 Mauricio Álvarez-Guzman v. International Tennis Federation (ITF)* and invited the Respondent to file its response to the Request for a Stay.

37. On 21 May 2019, the PTIOs, who were not then named as a respondent, stated that they should be the only Respondent in this proceeding and that the case was improperly filed against the ITF. Therefore, the PTIOs accordingly asked that the case reference be amended to reflect the proper Parties.

38. On the same date, 21 May 2019, the CAS Court Office invited the Appellant to clarify whether he would like to withdraw his claim against the ITF and substitute the PTIOs as the Respondent.

39. On 5 June 2019, the Appellant stated that the Respondents in this proceeding were: (i) the AHO; (ii) the PTIOs; and (iii) the ITF.

40. On 6 June 2019, the CAS Court Office informed the Parties that the case reference was now *CAS 2019/A/6275 Mauricio Álvarez-Guzman v. International Tennis Federation (ITF), Anti-Corruption Hearing Officer & Professional Tennis Integrity Officers*.

41. On 10 June 2019, the PTIOs reiterated that they were the only proper Respondent, and asked again that the Appellant amend his appeal to name only the PTIOs as a respondent, and not the ITF or the AHO.

42. On 21 June 2019, the Appellant stated that the respondents in this proceeding were: (i) the PTIOs; and (ii) the AHO.

43. On the same date, 21 June 2019, the CAS Court Office informed the Parties that the case reference was now *CAS 2019/A/6275 Mauricio Álvarez-Guzman v. Anti-Corruption Hearing Officer & Professional Tennis Integrity Officers*.

44. On 27 June 2019, the PTIOs timely filed its Response opposing the Appellant's Request for a Stay.

45. The AHO did not file a Response on the Appellant's Request for a Stay within the deadline (or subsequently).

46. On 28 June 2019, the PTIOs filed an application requesting the CAS Court Office to remove the AHO as a respondent.

47. On 9 July 2019, the PTIOs asked the CAS Court Office to extend the deadline for the Answer until 14 days after the Panel had made its decision concerning whether to remove the AHO as a Respondent in this proceeding.

48. On 17 July 2019, the PTIOs nominated Dr Ulrich Haas, Professor in Zurich, Switzerland, as an arbitrator.

49. On 24 July 2020, the Dr Haas made a disclosure to the Parties further to Article R33 of the Code. None of the Parties challenged his appointment based on this disclosure within the seven-day deadline under Article R34 of the Code (or subsequently).

50. On 26 July 2019, the Appellant objected to the request of the PTIOs to extend the deadline to file the Answer.

51. On 5 August 2019, the CAS Court Office informed the Parties that only the Appellant could designate the respondents in the proceeding, and that the PTIOs must file the Answer within 14 days of 29 July 2019.

52. On 7 August 2019, the Deputy President of the CAS Appeals Arbitration Division issued an Order on the Request for a Stay, denying the Appellant's request.

53. On 8 August 2019, the PTIOs filed their Answer in accordance with Article R55 of the Code. The AHO did not file an Answer.

54. On the same date, 8 August 2020, the President of the Panel appointed further to Article R54 of the Code, Mr Klaus Reichert, Barrister in London, United Kingdom, made a disclosure to the Parties further to Article R33 of the Code. None of the Parties challenged his appointment based on this disclosure within the seven-day deadline under Article R34 of the Code (or subsequently).

55. On 19 August 2019, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division and further to Article R54 of the Code, that the arbitral tribunal for the present matter was constituted and comprised of:

President:	Mr Klaus Reichert S.C., Barrister in London, United Kingdom
Arbitrators:	Dr George Abela, Attorney-at-Law, Valetta, Malta
	Dr Ulrich Haas, Professor, Zurich, Switzerland

56. On 21 August 2020, after receiving the case file, Mr Reichert made a second disclosure to the Parties further to Article R33 of the Code.

57. On 27 August 2020, the Appellant challenged the appointment of Mr Reichert as President of the Panel under Article R34 of the Code.

58. On 29 August 2020, the Parties were informed that Mr Reichert has resigned from his appointment in light of the Appellant's challenge.

59. On 4 September 2019, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division and further to Articles R36 and R54 of the Code, that the arbitral tribunal for the present matter had been re-constituted and was comprised of:

President:	Mr Andre Brantjes, Attorney-at-Law, Amsterdam, the Netherlands
Arbitrators:	Dr George Abela, Attorney-at-Law, Valetta, Malta
	Mr Ulrich Haas, Professor, Zurich, Switzerland

60. On 13 September 2019, the CAS Court Office invited the Appellant and the AHO to file their responses to the PTIOs' requests: (i) to remove the AHO as a respondent; and (ii) that the Panel take a preliminary decision on the issue of whether or not the AHO has standing to be sued in the present matter.

61. On 23 September 2019, the Appellant responded that he did not agree to remove the AHO as a respondent.

62. On 24 September 2019, the AHO responded that he considered it inappropriate for him to be joined to the appeal as he was involved as an arbitrator earlier, but that it was a matter for the CAS to decide (a position he had previously expressed in this proceeding).

63. On 14 October 2019, the CAS Court Office informed the Parties that, pursuant to Article R44.2 of the Code, the Panel had decided to make a preliminary determination on the issue of the AHO's standing to be sued and deemed itself sufficiently well informed to decide about the status of the AHO based on the written submissions only, without the need to hold a hearing.

64. On 24 February 2020, the Panel issued a Partial Award, in which it decided: that the AHO did not have standing to be sued and that the appeal with respect to him was dismissed; that the appeal with the remaining Parties would continue; and that the costs of the Partial Award would be decided in the final Award.

65. On 26 February 2020, after consulting the Parties, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing on the merits, further to Article R57 of the Code.

66. On 3 March 2020, the Appellant requested to participate in the hearing by video-conference.

67. On 16 March 2020, the Court Office informed the Parties that an in-person hearing would be held on 16 June 2020, but that the Appellant would be allowed to participate via video-conference, further to Articles R44.2 and R57 of the Code.

68. On 14 May 2020, the CAS Court Office informed the Parties that the Panel had decided to hold the hearing entirely by video-conference pursuant to the CAS COVID-19 Emergency Guidelines of 16 March 2020.

69. On 9 June 2020, the Parties signed the Order of Procedure.

70. On 12 June 2020, the Appellant requested the Panel to allow him to call Ms […] as a witness.

71. On 15 June 2020, the CAS Court Office informed the Parties that the Panel decided to allow the witness Ms […] to be heard.

72. On 16 June 2020, a video-hearing was held. At the outset of the hearing, the Appellant and the PTIOs confirmed not to have any objection as to the constitution and composition of the arbitral tribunal.

73. In addition to the Panel and Ms Kendra Magraw, CAS Counsel, the following persons participated in the video-hearing:

a) For the Appellant:

1) Mr Esteban Oros-Bravo, Counsel;
2) Mr […], Interpreter; and
3) The Appellant.

b) For the Respondent:

1) Ms Kendrah Potts, Counsel;
2) Mr William Harman, Counsel;
3) Mr Bill Babcock, PTIOs;
4) Ms Gayle Bradshaw, PTIOs;
5) Mr Nigel Willerton, TIU Director of Integrity; and
6) Ms […], Interpreter.

74. The Panel heard evidence from the following persons:

1) Ms […] (witness called by the Appellant);
2) Mr […], TIU (witness called by the Respondent); and
3) X. (witness called by the Respondent).

75. The Appellant also was given the opportunity to provide a statement and his version of the facts to the Panel.

76. The Parties had full opportunity to examine and cross-examine the witnesses, present their case, submit their arguments and answer the questions posed by the Panel.

77. Before the hearing was concluded, the Parties expressly stated that they did not have any

objection with the procedure adopted by the Panel and that their right to be heard had been respected.

78. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

79. The Appellant's Appeal Brief contained the following requests for relief:

> *"I beg you, please revoke the resolution which condemns my represented to a life ban to participate in tennis events and ultimately proceed to apply a temporary suspension or sanction arising from a legal and correct appraisal of the evidence.*
>
> *Instead of the above this defence comes in requesting clemency from his grace, considering that my represented is a young person full of dreams and aspirations, and that, if he had made a mistake, this was because of his immaturity and his hardworking life as a professional tennis player, as he was separated from his parents at a very young age for his long path of professional tennis.*
>
> *Err is human, and in this case my represented cloud have made a mistake without measuring the consequences, is for this reason we respectfully ask you to not to apply the sanction of lifetime ban, since such punishment would destroy the dreams of a young person who just entered the threshold of life".* [sic]

80. The Appellant's submissions, in essence, may be summarized as follows:

- The AHO did not value the evidence using legal arguments.
- […], the TIU investigator, retained the phone of Ms […], […] citizen, for 24 hours […].
- The standard of balance of probabilities cannot be reached because the investigation is not completed and the investigator did not use all professional zeal required.
- Mr […] was neither traced nor questioned.
- The […] Tournament was not asked questions about how many wild cards were issued.
- No one of the […] Tournament was investigated.
- The statements of X. have not been correctly assessed, as the Appellant only gave him some tips to play the […] Match.
- Because X. wanted money for his statement initially, his statement is not credible as he would declare anything to get money.

- X. stated he was pressed by […] at the AHO hearing and that this statement was not taken into account.
- The opponent of X. in the […] Match was not investigated.
- There is no material evidence of any payment to X. or of the offering of any payment.
- The Appellant agrees with the preponderance of the norm of balance of probabilities, but due to the poorly conducted investigation, this proof is not met.

81. The Respondent's Answer contained the following request for relief:

a. The Player's appeal is dismissed;

b. The Player is to pay the costs of the arbitration and the PTIOs legal costs and expenses in such amount as the Panel considers appropriate.

82. The Respondent's submissions, in essence, may be summarized as follows:

- The evidence of X. and the WhatsApp messages clearly show that the Appellant asked X. to lose a set in the […] Match.
- There is no reason to doubt the evidence of X. because he voluntarily reported the incident of 8 October 2016, his account is consistent with the WhatsApp messages, he knew the Appellant reasonably well and that there is no reason why X. would make up the allegations.
- By asking X. to lose a set, the Appellant indirectly attempted to contrive the score and asked X. not to use his best efforts. The offer of EUR 1,000 was made with the intention of negatively influencing X.'s best efforts.
- The Appellant therefore breached Sections D.1.d, D.1.e and D.1.g of the TACP as a result of the approach of 13 August 2016.
- It is clear from the WhatsApp messages that the Appellant agreed to purchase a wild card for the singles competition for EUR 600 and that he asked to purchase a wild card for the doubles competition for the […] Tournament.
- The Appellant's explanation that he was paying for the hotel with that sum is not true.
- Contriving a draw is a breach of Section D.1.d. of the TACP.
- There is no obligation on the TIU to speak to any particular individual during the investigation. If the Appellant wished to present evidence from other individuals, he was free to do so.

- No information was downloaded from the second phone which the Respondent believed to also belong to the Appellant.

- In any event, even if there was a breach (*quod non*), such breach would have occurred vis-à-vis Ms […] and, therefore, would be irrelevant to the determination of the charges against the Player.

- All messages were properly obtained.

- X. was not paid for his information and provided his information knowing that he would not be paid.

- X. was not pressured to give a statement. The TACP imposes a duty on the players to cooperate.

- There are aggravating factors, such as age, knowledge of the rules and multiple charges.

V. JURISDICTION

83. In accordance with Article 186 of the Swiss Private International Law Act ("PILA"), the CAS has the power to decide upon its own jurisdiction.

84. Article R47 of the Code states that:

> *"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".*

85. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.

86. The jurisdiction of CAS, which is not disputed between the Parties, derives from, e.g., Article I(1) of the TACP. In addition, the Appealed Decision states in para 47 that *"Under Section I, this decision may be appealed to CAS by the parties in this proceeding within a period of twenty business days from the date of receipt of the Decision by the appealing party".*

87. None of the Parties have objected to the jurisdiction of the CAS. The jurisdiction is further confirmed by the Parties signing the Order of Procedure.

88. In light of the above, the Panel finds that the CAS has jurisdiction to hear this matter.

VI. ADMISSIBILITY

89. According to Article R49 of the Code, *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against"*.

90. Paragraph 47 of the Appealed Decision states that *"Under Section I, this decision may be appealed to CAS by the parties in this proceeding within a period of twenty business days from the date of receipt of the Decision by the appealing party"*. Section I (3) of the TACP provides that *"The deadline for filing an appeal with CAS shall be twenty business days from the date of receipt of the decision by the appealing party"*.

91. The Appealed Decision was issued on – and notified to – the Appellant on 14 March 2019. The Appellant filed his complete Statement of Appeal on 10 April 2019.

92. Therefore, the Panel finds that the appeal is admissible.

VII. APPLICABLE LAW

93. Article R58 of the CAS Code provides the following:

> *"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"*.

94. The Appellant did not make any submissions with respect to the applicable law, but submitted with his Statement of Appeal a version of the 2019 edition of the TACP.

95. The PTIOs state that the Appellant is subject to the TACP, without specifying which edition of the TACP.

96. The Panel observes that the events in question occurred in 2016 and that the Athlete was found in the Appealed Decision to have violated the 2016 TACP. However, the Panel observes that neither Party submitted a version of the 2016 edition of the TACP; however, the Panel was able to locate one in the public domain.

97. With regard to applicable law, Article K.3 of the 2016 TACP determines the following:

> *"This Program shall be governed in all respects (including, but not limited to, matters concerning the arbitrability of disputes) by the laws of the State of Florida, without reference to conflict of laws principles"*.

98. As such, the Panel is satisfied that it should accept the primary application of the TACP and, subsidiarily, the laws of the US State of Florida.

VIII. MERITS

99. The Player has appealed the Appealed Decision on the basis that the charges have not been sufficiently proven and – subsidiarily – that the sanctions were disproportionate. Before discussing the substance of the case, the Panel will first analyse which standard of proof it must apply in this case.

A. The Standard of Proof

100. Section G(3)(a) of the TACP provides that, *"… The standard of proof shall be whether the PTIO has established the commission of the alleged Corruption Offense by a preponderance of the evidence"*. This standard is met if the proposition that the Player engaged in attempted match fixing is more likely to be true than not true.

101. The Panel observes that – in principle – legal commentators have held that CAS has consistently upheld the validity of sport-governing bodies choosing to impose their own concept of the applicable standard of proof (RIGOZZI/QUINN, International Sports Law and jurisprudence of the CAS, Bern 2014, pp. 1-55).

102. As the Appellant did not challenge the applicable standard of proof applied by the Respondent, the Panel sees no reason to deviate from the standard of proof set out in the TACP in this case.

103. As the Appellant registered for an ITF IPIN in 2015 and 2016, the TACP 2016 Rules applied to him in 2016 pursuant to Section K.6 TACP.

104. The Panel finds that the […] Match and the […] Tournaments are both Events as defined in Section B of the TACP and that the Appellant is a Covered Person as defined in Section C of the TACP. All of this is not in dispute between the Parties.

B. Overview over the Charges

105. The Panel notes that the Appellant did not dispute that the TIU investigators downloaded the content of his phone with his approval to that in February 2017 in Orlando during the first TIU interview.

106. The Panel observes that, on 16 March 2018, the Appellant was charged as follows:

> *"You are charged with breaching Section D.1.d of the 2016 TACP: "No Covered Person shall, directly or indirectly, contrive or attempt to contrive the outcome or any other aspect of any Event".*
>
> *It is alleged that:*
> 1. *in […] 2016 you contrived an aspect of the […] Tournament by contriving the draw through purchasing a wild cart for the singles competition;*
> 2. *in […] 2016 you attempted to contrive an aspect of the […] Tournament, being the doubles competition draw, by seeking to purchase a wild card for the doubles competition;*

3. on or around […] 2016 you attempted to contrive an aspect of the […] Match by offering X. money to lose a set in the match.

You are charged with breaching Section D.1.e: "No Covered Person shall, directly or indirectly, solicit or facilitate any Player to not use his or her best efforts in any Event".

It is alleged that on or around […] 2016 you solicited X. not to use his best efforts in the […] Match by asking him to lose a set in the match.

You are charged with breaching section D.1.g: "No Covered Person shall, directly or indirectly, offer or provide any money, benefit or Consideration to any other covered Person with the intention of negatively influencing a Player's best effort in any Event".

It is alleged that on or around […] 2016 you offered X. money (Euros 1000) to lose a set in the […] Match".

107. The decision the Panel must make is whether, on a preponderance of the evidence, it finds that the Appellant is guilty of all charges and whether or not it upholds the Appealed Decision.

108. In assessing the evidence, the Panel is aware that the Appellant has been charged with serious offenses. The Panel considers that it therefore needs to have a high degree of confidence in the quality of the evidence.

109. The Panel points out it can rely in this case on an extensive case file, containing verbatim transcripts of interviews from the initial investigation, translated WhatsApp messages, the Parties' submissions and witness statements in the procedure before the AHO, and the Parties' submissions and witness statements in the procedure before the CAS.

110. The Panel will refer to the paragraph order in the notice of 16 March 2018.

C. The […] Tournament

111. The Panel found that the TIU investigator […] was a reliable witness. He confirmed his written statement of 30 May 2019. He was very composed during the hearing. He repeated his recollection of events in very clear and simple terms, and refused to speculate about issues he could not clearly recall.

112. In his investigation, […] relied on the WhatsApp messages obtained by him during the investigation. The WhatsApp messages were downloaded from the phone of the Appellant in Florida. Relevant are the following messages:

"The WhatsApp exchange contained the following messages […]*:*

a. Player to Mr […] […] 2016 at 18.00:
"Hello good afternoon Im Mauricio Alvarez-Guzman
[…] gave me your number

To talk about Wild Cards in […]".

b. Mr […] then states that he will call the Player back in 15 minutes.

c. Player to Mr […] […] at 18.49:
"Amigo is possible to include in our deal wc for doubles? Because I have 900 ranking but my friends has no points. So its not sure that we get in…".

d. Mr […] to Player […] at 11.27:
"First week we don't have available. But for second one is no problem. And of course if something change and we will have available, we will use for you".

e. Player to Mr […] […] at 18.00
"My sponsor is little bit angry
He said that friend of him bought 3 wc in […] for 800€ ☹ i didn't know. So he told me he will not pay more than 400€ per wc and we stay in officcial hotel. I have no information so I thought was ok the price…i never bought wc before ".

f. Mr […] to player […] at 16.35
"Our Last price is 600€. Please decide till tomorrow morning".

g. Player to Mr […] on […] at 16.36:
"Hi amigo I was playing. Ok i will try to push my sponsor. Sorry for the problems 👍".

h. Player to Mr […] on […] at 12.48:
"My friend for sure I will take the wc
Im manage the sending
The second week wc I let you know when I arrive".

i. Player to Mr […][…] at 17.10:
"[…]
Sender: […]
From: […]
[…]
There is the code, my friend, Western Union, so … see you on Monday. Thank you".

j. Mr […] to player […] 17.21:
"How much he send?".

k. Player to Mr […] on […] at 17.44:
"600€"".

113. The message of […] 2016 shows that the discussion between the Appellant and Mr […] had the objective to obtain wild cards in […] Futures.

114. The Panel finds therefore that based on the WhatApp messages, it is not credible that the Appellant wanted to discuss the hotel fees. The messages clearly show that the Appellant negotiated a price for the wild cards.

115. The Panel also established the mismatch between the explanation and interpretation of the WhatsApp messages by the Appellant and the amount of EUR 600. The price of the hotel he indicated clearly deviated from the EUR 600 mentioned in the WhatsApp messages.

116. Based on the witness statements and WhatsApp messages above, the Panel is convinced on a balance of probabilities that the PTIOs' charges are proven. The Panel was not persuaded by the Player's defence in his Appeal Brief and during the hearing relating to failures to properly investigate the events around the […] Tournament.

117. The Panel finds that there was no need for the Respondent or the TIU investigators to broaden the scope of its investigation. This case is not a criminal case, and the Respondent was free to conclude its investigation any time if it considered the evidence gathered was sufficient to substantiate the charges brought. It is then up to the Panel to assess whether the facts and results of the investigation back the charges brought under the TACP. The Panel therefore rejects the Appellant's defence that the Respondent did not exhaust all avenues of enquiry, as this was not necessary. This is all the more true, considering that this is a procedure governed by the adversarial principle.

118. As argued by the PTIOs, wild cards should be used to provide opportunities to deserving players (often, for example, young players) who would not otherwise be able to enter the tournament. The purpose of wild cards would be undermined if they were given to players who offered money for them or if they could be used by tournaments to make money.

119. The prohibition for players to purchase wild cards is set out at Section IV(B) of the ITF Pro Circuit Regulations 2016:

> *"Players and tournaments may not offer and/or receive any compensation for receiving or awarding a wild card* […]*".*

120. Whether Mr […] was affiliated with the […] Tournament is irrelevant, because the Appellant believed he was and this did not stop him from purchasing wild cards.

121. After careful assessment of the evidence, the Panel finds that the Respondent's evidence must prevail over the Appellant's and that the Appellant breached Section D.1.d of the TACP. The first charge is thereby established.

D. The […] Match

122. The Panel finds that X. was a reliable witness. The Panel finds him be an honest and credible witness who had no motive to fabricate the evidence he gave.

123. X., the main witness in the TIU's case relating to the […] Match, stated that he was offered

EUR 1,000 by the Appellant to lose the first set.

124. X.'s statement is confirmed by the WhatsApp messages submitted by the Respondent between X. and the Appellant. The following messages are relevant:

> Player to X. at 11.45 am: *"[…]. We're a bit short of time. If you can tell me anything, later, later that would be great, […]. I'm waiting for you".*
>
> X. to Player at 12.30 pm: *"Old man, the truth is that you really tempted me with what you put to the test … my personality and……I'm going to play, I'm going to play well and nothing, and I'm going to play my normal game. Cheers. See you".*
>
> Player to X. at 12.32 pm: *"[…], what a bloody shame to not have spoken to you before in person because I could explain loads of things and improve everything so much more clearly. Oh God, let's see. How to tell you. In reality, you don't even have to do anything, but rather simply co-operate and in the end you'll end up winning anyway and if they're not going to play to their best ability and well the other guy also plays well and that's it. I was assuring you a victory that's all but hey, it's still in your hands so there's no pressure from this either. Just be clear that if you manage to do the first set you're still not going to lose the match. Better said, there's no way you are at risk of losing the match. I want that to be quite clear".*

125. In his WhatsApp messages, the Appellant clearly tried to tempt X. not to play his best tennis in the first set, but assured him that he would win the match anyway. The Panel finds that there is no other reasonable way to interpret these messages.

126. The Panel questioned X. why he did not reach out to the Respondent earlier and waited until October 2016, some months after the […] Match, to report the attempt by the Appellant to manipulate the match. X. explained that he was reluctant to do so because of his relationship with the Appellant. The Panel finds that the fact that X. waited some time before providing the information does not make him an unreliable witness. The Panel does not believe that X. only provided the information in order to obtain money. In any event, the Panel finds that X. provided the information even though he was clearly advised by the TIU that he would not be paid. Consequently, the primary motive of X. to provide the information was not financially-driven.

127. The Panel found that the statement of […] was not credible and not relevant for the case. She stated that the second phone belonged to her, but could not give a credible explanation why she did not carry the phone with her in Florida in February 2018 and why this second phone was in the possession of the Appellant, i.e. in his bag at the relevant time.

128. The Panel questioned Ms […] in detail as to which phone she used to call for legal assistance in Florida and how she could remember the number of her lawyer without having possession of her phone. Her response was that she first called someone else who knew the number of the lawyer. This course of events, however, contradicts the declarations that she had previously submitted and with the fact she did not carry her own phone. In view of all of the above, the Panel finds that her statements are not credible.

129. The Panel finds that there is no evidence that the TIU investigators might have been aggressive vis-à-vis Ms […]. Be it as it may, even if true and even if it would constitute a breach under US law to retain the phone that Ms […] claimed to be hers for 24 hours, nothing follows from this for the case-at-hand. No evidence was downloaded from the phone. Instead, the evidence in this case relies solely on the witness statements, (translated) WhatsApp messages and voice mail messages downloaded from the phone of the Appellant to which he consented.

130. Based on this evidence, the Panel has no doubt that the Appellant offered money to X.to lose the first set of the […] Match, i.e. he directly solicited X. not to use his best efforts, thereby violating Section D.1.e of the TACP.

131. Based on the same evidence, the Panel also has no doubt that the Appellant offered EUR 1,000 to X. for not using his best efforts in the […] Match, i.e. he directly offered money to another covered person with the intention of negatively influencing his best efforts.

132. Considering all of the above, the Panel is satisfied that the Appellant attempted to engage in match fixing. The Respondent has met its burden of proof. The Panel confirms the Appealed Decision and upholds also the second and third charge against the Appellant relating to his attempts to fix the […] Match.

133. The Panel finds therefore that the Appellant breached Section D.1.e and D.1.g of the TACP.

E. Sanctions

134. Section H(1)(a) of the TACP provides that a penalty for the corruption offence committed by the Player may include *"(i) a fine of up to $250,000 plus an amount equal to the value of any winnings or other amounts received by such Covered Person in connection with any Corruption Offense"* and *"(iii) … ineligibility for participation in any event organized or sanctioned by any Governing Body for a maximum period of permanent ineligibility"*.

135. Given the gravity of the offences, the AHO considered that it was necessary to sanction them with a lifetime ban.

136. In the Appealed Decision, no fine was imposed on the Appellant and the Respondent has not requested to impose a fine in addition to a life ban. Thus the Panel is bound to the requests of the Parties and is prevented from imposing any fine.

137. In his requests for relief, the Appellant argues that the Panel should show clemency and only apply a temporary suspension indicating that if he made a mistake, this was because of his immaturity and his hardworking life as a professional tennis player, as he was separated from his parents at a young age.

138. The Appellant has also argued that a lifetime time ban is disproportionate, in particular given the impact this would have on his future earnings.

139. The Respondent argues that match fixing is the worst offence possible under the TACP and

that it undermines the sport as a whole.

140. The Panel finds the Appellant's request for relief to be in contradiction with his submissions in his Appeal Brief and his statements at the hearing. The Appellant tried to convince the Panel that he was not guilty of the charges by arguing, *inter alia*, in addition to denying all of the allegations against him, that the TIU investigation was conducted poorly and the rights of Ms […] were violated. But at the same time, he is asking for leniency of the Panel should the latter conclude that – contrary to his primary submissions – the charges would be correct. The Panel finds these submissions self-serving and not conclusive. The Appellant was not truthful, has battled the charges until the last second and incited […] Ms […] to give testimony that was wholly incredible. In a situation like this there is – in the Panel's view – no room for clemency.

141. This is all the more true, considering that the Appellant did not show any remorse. The Panel also finds the age of the Appellant in 2016 to be rather relevant. If one were to take the age into account, it would rather be an aggravating factor, since at the time when the offense was committed, the Appellant was already an experienced professional tennis player and aware of his obligations under the TACP and the sanctions in case of breach.

142. The Panel takes guidance in para 66 in *CAS 2011/A/2490* for the case-at-hand:

> *"As explained in detail by the Governing Bodies, the sport of tennis is extremely vulnerable to corruption as a match-fixer only needs to corrupt one player (rather than a full team). It is therefore imperative that, once a Player gets caught, the Governing Bodies send out a clear signal to the entire tennis community that such actions are not tolerated. This Panel agrees that any sanction shorter than a lifetime ban would not have the deterrent effect that is required to make players aware that it is simply not worth the risk".*

143. After careful deliberation, this Panel sees no option other than to confirm the lifetime ban imposed by the AHO.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Mauricio Álvarez-Guzman against the decision rendered on 14 March 2019 by the Anti-Corruption Hearing Officer of the International Tennis Federation is dismissed.

2. The decision issued of by the Anti-Corruption Hearing Officer of the Professional Tennis Integrity Officers is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.