TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/A/10101 Sanjar Fayziev v. International Tennis Integrity Agency

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof. Stefano Bastianon, Professor of Law, Bergamo, and Attorney-at-Law, Busto Arsizio, Italy

Arbitrators: Mr Timour Sysouev, Lawyer, Minsk, Belarus

Mr Manfred Peter Nan, Attorney-at-Law, Amsterdam, The Netherlands

in the arbitration between

Sanjar Fayziev, Tashkent, Uzbekistan

Represented by Ms Feruza Bobokulova, Tashkent, Uzbekistan

Appellant

and

International Tennis Integrity Agency, London, United Kingdom

Represented by Mr Ross Brown and George Cottle, Onside Law LLP, London, United Kingdom

Respondent

I. THE PARTIES

1. Mr Sanjar Fayziev (the "Appellant" or the "Athlete") is an international tennis player of Uzbekistani nationality.

2. The International Tennis Integrity Agency (the "Respondent" or "ITIA") is a non-profit organization under the laws of United Kingdom. Its registered seat is in London, United Kingdom. It is the international body for integrity issues in the sport of tennis and is the entity responsible for enforcing the Tennis Anti-Corruption Program ("the "TACP").

3. The Athlete and ITIA are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced during these proceedings including at the remote hearing held on 14 May 2024. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. The present appeal arbitration proceedings concern an appeal filed by the Athlete against the Ruling on liability and the Decision on sanction issued by the Anti-Corruption Hearing Officer (the "AHO") on 25 July 2023 and on 4 October 2023 (the "Appealed Decisions") in which it was held that the Athlete had committed one breach of Section D.1.d of the 2018 TAPC, one breach of Section D.1.d and D.1.f of the 2018 TACP and two breaches of Section D.2. a.i. of the 2018 TACP and a three-year and six-month (with six months suspended) period of ineligibility as well as a USD 15'000 fine were imposed on the Athlete.

A. Background Facts

6. On 13 December 2022, the ITIA sent a Notice of Major Offence pursuant to Section G. 1 of the 2022 TACP to the Athlete informing him that he was the subject of the following charges:

(i) one alleged breach of Section D.1.b (facilitation of betting) and Section D.1.d (contriving) of the 2016 TACP ("Charge 1");

(ii) two alleged breaches of section D.1.d (contriving) of the 2018 TACP ("Charge 2");

(iii) one alleged breach of Section D.1.f (acceptance of money) of the 2018 TACP ("Charge 3");

(iv) additionally, and/or alternatively, one alleged breach of Section D.2.a.i. (failing to report) of the 2016 and 2018 TACP ("Charge 4").

7. Charge 1, Charge 2, Charge 3 and Charge 4 are hereinafter jointly referred to as the "Charges".

8. Pursuant Section G.1.c.iii 2022 TACP, the Appellant's case was consolidated with the cases of Messrs Igor Slimanski and Timur Khabibulin, since "*all charges being faced by* [these] *three Covered Persons pertain to the same alleged conspiracy, comme scheme or plan*". A single hearing for those three players was held on 29 and 30 June 2023, but separate ruling has been made for each of them.

B. The Appealed Decisions

9. On 25 July 2023 the AHO issued her Ruling on liability in respect of the Charges and the Appellant was found liable for Charges 2, 3 and 4. The Appellant was not found liable for Charge 1.

10. The AHO's Ruling on liability contains the following order:

"*ORDER*

137. The AHO finds that the Covered Person [i.e. the Athlete], is liable as follows:

- *One breach of Section D.1.d of the 2018 Program in relation to his match against* [redacted]

- *One breach of Section D.1.d of the 2018 Program in relation to an unidentified match for which $ 6000 was received.*

- *Two breaches of Section D.2.a.i. of the 2018 Program for failing to report Mr. Khabibulin's corrupt approaches to the ITIA.*

138. As provided in paragraph 40 of the Procedural Order 1 and Section G.4.a of the TACP, a provisional suspension is to be immediately imposed on Mr. Fayziev pending the AHO's Decision on Sanction.

139. As agreed by all the Parties at the hearing, the ITIA's submissions on sanction are to be filed within four weeks of the issuance of this Ruling on Liability and Mr. Fayziev's Submissions on sanction are to be filed within four weeks of the ITIA's deadline. The AHO will then issue a Decision on Sanction in accordance with the TACP, which will be appealable to the Court of Arbitration for Sport".

11. In finding the Appellant liable for Charges 2, 3 and 4, the AHO argued as follows:

(a) pursuant to Section G.3.a of the TACP "*the ITIA shall have the burden of establishing that a Corruption Offense has been committed. The standard of proof shall*

be whether the ITIA has established the commission of the alleged Corruption Offense by a preponderance of the evidence";

(b) the standard of proof to establish a Corruption Offence "*is the equivalent of the English law's 'balance of probabilities' and it can be satisfied by any reliable means so long as the means and or evidence relied upon are sufficiently compelling to meet the evidentiary standard*";

(c) "*it would certainly have been desirable for* [redacted] *to testify directly at the hearing. His non-attendance does not amount to a violation of Mr. Fayziev's right to a fair trial but it does result in the reliability and weight of* [redacted] *evidence being largely reduced*";

(d) "*the AHO is satisfied that a forensic download and analysis of* [redacted] *phone (...) was undertaken and confirmed the messages were not made up. The AHO is also satisfied that no one stole Mr. Khabibulin's phone or phone number or could have engaged in over two years of messaging without Mr. Khabibulin being aware of the same*";

(e) "*inference does allow a decision maker to make a decision on a balance of probabilities/preponderance of probabilities or the 'more likely than not' legal standard*";

(f) as regard Charge 2, the comprehensive WhatsApp messages produced in evidence present a compelling case that the Appellant was approached by Mr Khabibulin to fix the match against [redacted] and proceeded to do so. "*The messages are very clear. They are unambiguous and explicit. They can only be explained by match-fixing. There is no other basis for the messages being exchanged between* [redacted] *and Mr. Khabibulin*";

(g) although there is no specific match identified in Charge 3, the clear and obvious inference from two separate Western Union payments to Mr Fayziev and [redacted] is that the Appellant fixed a match in order to earn that payment. That conclusion receives further support given the payments were for just over USD 6'000 US Dollar and Mr Mikos offered Mr Fayziev "*6000 more*" for a further fixing arrangement;

(h) the Appellant did not bring forward any logical alternative explanation as to why [redacted] individuals linked to [redacted] syndicate would be sending Mr Fayziev and [redacted] money, if it were not as payment for match-fixing;

(i) as regard Charge 4, "*Mr Fayziev failed to report the corrupt approaches made to him by Mr. Khabibulin in relation to Charges 2 and 3 in contravention to Section D.2.a.i of the TACP*" and he is therefore liable.

12. On 4 October 2023, the AHO issued her Decision on sanction and imposed the following sanctions upon the Athlete:

"*71. Pursuant to the TACP, the sanctions imposed upon Mr. Fayziev as a result of these Corruption Offenses are:*

i. Pursuant to TACP Section H.1.a.(iii), three years and six months ban from "participation in any sanctioned events", as defined in TACP Section B.26, starting effectively from the date of this Decision (with a credit for any period of provisional suspension already served). Six months of the participation ban are to be suspended should this Decision be respected by the Covered Person after three years and he not be found guilty or [sic] *any other Corruption Offenses.*

ii. A 15 000 USD fine as prescribed in TACP Section H.1.a(i), which may be repaid in accordance with an agreed upon payment plan.

72. Pursuant to TACP Section G.4.e, this Decision on Sanction is to be publicly reported".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 3 November 2023 by email and on 7 November 2023 via e-Filing, pursuant to Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed a Statement of Appeal against the Respondent with respect to the Ruling on liability and Decision on sanction issued by the AHO of the Respondent on 25 July 2023 and 4 October 2023. In his Statement of Appeal, the Appellant proposed that the case be submitted to a Sole Arbitrator.

14. Together with his Statement of Appeal, the Appellant also submitted an application for a stay and requested the CAS Court Office "*to stay the execution of the Decisions rendered by the AHO and to allow the Appellant to play professional tennis*".

15. On 8 November 2023, the CAS Court Office initiated the present appeals arbitration procedure under the reference *CAS 2023/A/10101 Sanjar Fayziev v. International Tennis Integrity Agency* and invited the Respondent to express its views on the Appellant's Request for a Stay and for the appointment of a Sole Arbitrator.

16. On 10 November 2023, the Respondent informed the CAS Court Office that it objected to the Appellant's request that the case be submitted to a Sole Arbitrator

17. On 13 November 2023, the Appellant filed his Appeal Brief together with a request to be allowed "*to supplement his Appeal Brief and to submit the evidence and arguments as he may deem appropriate or as may be required or appropriate in response to* [the Respondent's] *position*".

18. On 20 November 2023, the Respondent objected to the Appellant's Request for Stay and requested the suspension of the time-limit for filing its Answer until the Appellant's request to be allowed "*to supplement his Appeal Brief and to submit the evidence and*

the arguments as he may deem appropriate (...)" had been resolved by the President of the Panel, once constituted.

19. On 24 November 2023, the CAS Court Office informed the Parties that, pursuant to Article R50 of the CAS Code, the Deputy President of the CAS Appeals Arbitration Division has decided to submit the case to a Panel composed of three arbitrators and invited the Parties to nominate their respective arbitrators.

20. On 27 November 2023, the Appellant (i) requested to be allowed to supplement his Appeal Brief, (ii) agreed with the suspension of the time-limit for the filing of the Respondent's Answer until a decision has been made on his request to supplement his Appeal Brief, and (iii) requested to be granted with the opportunity to reply to the Respondent's Answer to his Request for Stay.

21. On 1 December 2023, the Respondent informed the CAS Court Office that (i) it did not object to the Appellant's request to be allowed to supplement his Appeal Brief, and (ii) it objected to the Appellant's request to be granted to file a Reply to the Respondent's Answer to his Request for Stay.

22. On 3 December 2023, the Appellant informed the CAS Court Office that he appointed Mr Timour Sysouev as arbitrator.

23. On 11 December 2023, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division, informed the Parties that the Appellant's request to be allowed to respond to the Respondent's Answer to the Request for Stay has been dismissed.

24. On 12 December 2023, in view of the Parties' agreement, the CAS Court Office confirmed the following procedural calendar: (ii) filing of the supplement to the Appeal Brief by 4 January 2024; (ii) filing of the Answer by 24 January 2024.

25. On 14 December 2023, the Respondent informed the CAS Court Office that it appointed Mr Manfred Peter Nan as arbitrator.

26. On 4 January 2024, the Appellant filed his supplement to the Appeal Brief.

27. On 23 January 2024, the CAS Court Office informed the Parties that, in view of the Parties' agreement, the Respondent was invited to file its Answer on or before 29 January 2024.

28. On 29 January 2024, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.

29. On 30 January 2024, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division dismissed the Appellant's Request for Stay.

30. On 31 January 2024, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, confirmed the constitution of the Panel in this procedure as follows:

President: Prof. Stefano Bastianon, Professor of Law and Attorney-at-Law in Bergamo, Italy

Arbitrators: Mr Timour Sysouev, Lawyer in Minsk, Belarus

Mr Manfred Peter Nan, Attorney-at-Law in Amsterdam, The Netherlands

31. On 1 February 2024, the Respondent informed the CAS Court Office that he requested the holding of a hearing, but not of a Case Management Conference ("CMC").

32. The Appellant did not express his position on both the hearing and the CMC within the relevant time-limit.

33. On 23 February 2024 and after having duly consulted the Parties, the CAS Court Office, on behalf of the Panel, informed the Parties as follows:

"*Remote hearing*

While the Panel would have preferred to have a hearing in person, in view of the Parties joint preference it agrees with the holding of a remote hearing and would further be available on 14 May 2024".

34. On 24 April 2024, an Order of Procedure was sent to the Parties, who returned it duly signed, on 5 April, respectively 13 May, 2024.

35. On 14 May 2024, a hearing was held by video-conference (via Cisco Webex).

36. In addition to the Panel and Ms Pauline Pellaux (CAS Counsel), the following persons attended the hearing:

- For the Appellant:
  - Mr Sanjar Fayziev (Athlete)
  - Ms Feruza Bobokulova (Counsel)
  - Mr Saidkomi Ibodullaev (Counsel)
- For the Respondent:
  - Mr Rose Brown (Counsel)
  - Mr George Cottle (Counsel)
  - Ms Julia Lowis (ITIA Legal Counsel)
  - Mr Ben Rutherford (Senior Director, ITIA's Legal)

- Ms Denis Bain (Witness)

- As observers:

  - Mr Gayle Bradshaw (ATP/ITIA Rules Committee Member)
  - Mr Stuart Miller (Senior Director of Legal and Integrity, ITF)

37. At the outset of the hearing, the Parties confirmed that they had no objection to the appointment of the Panel.

38. During the hearing, the Parties were given full opportunity to present their case, submit their arguments and submissions, and answer the questions posed by the Panel. The Parties and the Panel had the opportunity to examine and cross-examine the Athlete and witness Ms Denis Bain, who was informed by the President of the Panel to tell the truth subject to sanction of perjury under Swiss law.

39. After the Parties' final arguments, the Parties' counsels confirmed that they were satisfied with the hearing and that their right to be heard had been fully respected.

40. Be as it may, the following three procedural issues were raised by the Appellant during the hearing.

41. First, during the cross-examination of Mr Sanjar Fayziev, the latter pointed out that "Fayziev" is the name used in the tennis world whereas "Fayziyev" is the correct name used in official documents. To substantiate Mr Fayziev's explanations, his counsel sent an email to the CAS Court Office, copied directly to the Respondent's counsel, and to which a copy of Mr Fayziev's driving license was attached. According to the Appellant, the relevance of this document lies in the fact that in the Western Union transfer slips referred to Mr Fayziev, the latter's name is written "Fayziev", not "Fayziyev". Therefore, according to the Appellant, Mr Fayziev would never been able to collect the money. Against this, the Respondent claimed that the correct spelling of the name "Fayziev" has never been raised in the Appellant's written submissions. However, the Appellant replied that the correct spelling of the name Fayziev was not raised by the Appellant but came up during Mr Fayziev's cross-examination by the Respondent.

42. Second, during the closing statements, the Appellant argued that some documents submitted by the Respondent should be excluded, and therefore not admitted to the CAS file.

43. Third, while the Appellant did not address the imposed sanction in his written submissions, in his closing statement the Appellant requested the issuance of a "*fair and just decision*" and that, if a certain charge was retained, "*the sanctioning will be proportionate, fair and just as well*".

44. In light of the above, on 21 May 2024, the CAS Court Office, on behalf of the Panel, invited:

(a) the Respondent to express its position on the admissibility of the Appellant's driving licence and request of a fair, just and proportionate sanction on or before 28 May 2024;

(b) the Appellant to specify, also on or before 28 May 2024, (i) which documents should be excluded from the CAS file and (ii) the legal provision on which such request is based.

45. On 28 May 2024, the Respondent wrote to the CAS Court Office, *inter alia,* as follows:

(i) "*the Respondent does not seek to challenge the admissibility of the driving licence and subject to the views of the CAS panel on the possible grounds of inadmissibility, is prepared for it to be admitted to the CAS file*";

(ii) "*if the driving licence is admitted to the CAS file, the Respondent submits that it should not be considered probative evidence relevant to CAS Panel's disposal of this matter*";

(iii) assuming that the query of the CAS Court Office concerning the Appellant's request for relief relates to the amendment to the wording of Charge 3 occurred shortly before the first instance hearing, "*the position of the Respondent is that the Appellant's submission is irrelevant and should be rejected*".

46. The Appellant failed to specify his request for the exclusion of some documents from the CAS file within the granted deadline.

47. On 5 June 2024, the CAS Court Office, on behalf of the Panel, informed the Parties as follows:

(i) "*In view of the absence of objection from the Respondent, the Appellant's driving licence is admitted in the CAS file, with the Respondent's relating comments*";

(ii) "*The Panel has taken due note of the Respondent's comments relating to the amended wording of Charge 3*";

(iii) "*The Panel however notes that there is apparently a misunderstanding on this point and (...) clarifies as follows its query of 21 May 2024:*

- *In his appeal brief, the Appellant requested the dismissal of all charges brought against him without addressing the imposed sanctions, while at the hearing the Appellant further expressly requested the issuance of a "fair and just decision" and that, if a certain charge was retained, "the sanctioning will be proportionate, fair and just as well";*

- *In light of the above and unless an objection that would be sent by email on or before 11 June 2024, it will be considered that both Parties agree with the issuance of an award in which the Panel, inter alia, will decide on the Appellant's liability and, if needed, also on the appropriate sanction*";

(iv) *"The Panel notes that the Appellant failed to specify his request for the exclusion of some documents within the granted deadline (...), accordingly:*

- *The Appellant is invited to clearly specify by email on or before 11 June 2024: a) which documents should, according to him, be excluded from the CAS file; and b) the legal provision on which is request is based.*

- *Please note that in case the Appellant would fail to specify his request within this time-limit, it will be understood that he waives this request and accept the CAS file as it is, while in case the requested clarifications are provided, the Respondent will then be granted a short time-limit to address the Appellant's request*".

48. On 6 June 2024, the Respondent informed the CAS Court Office that it was "*content for the Award to: (i) determine the Appellant's liability; and (ii) if applicable, consider the appropriate sanction*".

49. Since the Appellant failed to specify his request for the exclusion of some documents from the CAS file within the granted deadline, on 13 June 2024, the CAS Court Office informed the Parties as follows:

"- in view of both Parties (tacit or express) agreement, in its award, the Panel will decide on the Appellant's liability and, if needed, on the appropriate sanctions;

- since the Appellant has not specified [his] *request for the exclusion of some documents from the CAS file within the granted time-limit, it is, as announced, considered that he waives this request and agrees with the issuance of a decision on the basis of the CAS file in its current state".*

50. On 5 July 2024, the Appellant sent an email to the CAS Court Office arguing that:

"*1. The Appellant confirms that he challenges both the Liability decision as well as the Sanctions decision of the AHO (The First Issue) and*

2. The Appellant confirms that he remains in his position in respect of the inapplicability of the new evidence that was submitted by the Respondent on January 29, 2024, due to which these documents should not be considered by the Panel when rendering its decision in respect of the current appeal case. In particular, the Appellant is referring to DB6, DB7, DB8, DB11, DB12, DB13, DB14, DB15, DB16, and DB18 (as named by the Respondent in the CAS E-Filing system). In the CAS E-Filing system, these documents are shown to have been submitted on January 30, 2024. These documents will be referred to as "New Evidence" further in the text (The Second Issue)".

51. In particular, as regard the "Second Issue", the Appellant relied on the following arguments:

(a) the "New Evidence" submitted by the Respondent on 29 January 2024 did not constitute part of the file of any of the Parties during the proceedings before the

AHO. Moreover, the Appellant did not know about the existence of this "New Evidence" until the day of the hearing, i.e. 14 May 2024. Therefore, this "New Evidence" was not considered by the AHO in her Ruling on liability and Decision on sanctions.

(b) As the current proceedings represent an appeal brought against the AHO's Ruling on liability and Decision on sanctions, the "New Evidence" cannot be considered as part of the appeal case. Accordingly, the decision in respect of the present appeal should be rendered only with due consideration of the evidence and documents, on which the AHO decisions were based.

(c) Consideration of the "New Evidence" by the Panel in the present proceedings would be against the fundamental principles of justice, fairness, and due process.

(d) The Appellant did not have a chance to present his case in respect of this "New Evidence", given that:

(i) the Appellant submitted his Statement of Appeal, Appeal Brief, and Supplement to Appeal Brief on 3 November 2023, 13 November 2023, and on 4 January 2024 respectively whereas the Respondent submitted the "New Evidence" on 29 January 2024;

(ii) according to the relevant provisions of the CAS Code (i.e. Article R51 and Article R56), the Appellant had already exhausted his right to make any submissions by the time when the Respondent presented its "New Evidence". Hence, the Appellant did not have any chance to respond to or to comment on the "New Evidence" submitted by the Respondent or to present his case in respect of this "New Evidence".

(e) DB6, DB7, DB8, and DB18 are totally new documents, which have never been seen by the Appellant.

(f) DB11, DB12, DB13, DB14, DB15, and DB16 contain the same messages to a certain extent. Even if some part of them were provided by the Respondent as part of its case against the Appellant during the proceedings with the AHO, most part of these documents were in the redacted form. The full version of these documents was provided by the Respondent on 29 January 2024 and hence, the Appellant has never had a chance to consider these documents and to comment on them: neither during the proceedings with the AHO nor during the present proceedings.

(g) Moreover, none of the "New Evidence" demonstrates the engagement of the Appellant in any of the charges that had been brought against him and hence, does not prove the position of the Respondent. Similarly, none of the witness statements of Mr. Khabibulin given during the hearing with the AHO proves the Respondent's position.

52. The Appellant also argued that all the above-mentioned points were raised during the hearing. Accordingly, provided that the Appellant expressed his position in respect of both issues during the hearing and gave all the details, the Appellant cannot be considered to have waived his right to the exclusion of the "New Evidence" as it was written in the CAS letter dated 13 June 2024. Moreover, the Appellant apologized for sending his letter beyond the dates set by the Panel but requested the Panel to give due regard to all points raised in the letter and to exclude the "New Evidence" from the CAS file.

53. On 8 July 2024, the CAS Court Office, on behalf of the Panel, invited the Respondent to comment on the Appellant's communication dated 5 July 2024, by 12 July 2024.

54. On 12 July 2024, the Respondent submitted its comments. In particular, the Respondent argued that:

(a) the Appellant has been given two opportunities to set out his position but has failed to take those opportunities. Accordingly, the Appellant should be deemed to have waived his opportunity to seek the documents excluded from the CAS file;

(b) Exhibits DB11 to DB16 were available at the time of the first instance hearing and were in the possession of the Appellant at that time;

(c) Exhibit DB18, showing publicly accessible betting odds, was an image included within DB11, so was also available to the Appellant at the first instance hearing, albeit it was not included as a standalone document;

(d) Exhibit DB6 was not in the hearing bundle as it was an email that was only sent the day before the hearing commenced (so after the hearing bundle was prepared) in order to clarify the nature of Mr Timur Khabibulin's admissions. However, Ms Bobokulova the Appellant's counsel was copied to that email;

(e) Exhibits DB7 and DB8 did not exist at the time of the first instance proceedings so could not be relied upon then;

(f) in accordance with Article R57 of the CAS Code, both Parties are free to introduce and rely on evidence and arguments that they did not rely on at first instance (*de novo* proceedings);

(g) from 29 January 2024, or at least no later than 30 January 2024, the Appellant had all the information he could possibly require to understand what the documentation being relied upon by the Respondent was.

IV. SUBMISSION OF THE PARTIES

A. The Appellant

55. The Appellant requests the following reliefs:

"*a) Accept this Supplemented Appeal Brief pursuant to Section R51 of the Code of Sports-related Arbitration and*

b) Dismiss all charges brought against the Appellant".

56. In support of his requests for relief, the Appellant relied on the following main arguments:

(a) The ITIA failed to satisfy its burden of proof. In particular, the Athlete argues that:

(i) the section of the AHO's Decision on liability addressing the applicable standard of proof deals with submissions which were not made by the Appellant;

(ii) [redacted] testimony is neither relevant nor reliable because the witness is not neutral, independent and impartial; despite this, the AHO wrongly treated [redacted] Facebook and WhatsApp messages as the main evidence in finding the Appellant liable in breaching the relevant sections of the TACP;

(iii) [redacted] did not attend the hearing and, therefore, the Appellant was deprived of his fundamental right to question [redacted] during the hearing;

(iv) Ms Dee Bain's written statement is contradictory, inaccurate and not supported by any other evidence;

(v) the AHO did not take into account the statements made by Mr Timur Khabibulin during his interviews and at the hearing before the AHO;

(vi) with respect to the applicable standard of proof, the Appealed Decisions are not consistent with the decision issued in the *Crepattte* case expressly referred to by the AHO in her decisions;

(vii) the Decision on liability demonstrates the AHO's ignorance of the possibility of the Covered Person being unaware of any match fixes even if his/her name appears in the communication of a third party.

(b) The AHO wrongly found the Appellant liable for committing a breach of Section D.1.d of the 2018 TACP (Charge 2). In particular, the Appellant argues that:

(i) the exchange of messages between [redacted] and Mr Khabibulin, which the AHO relied on in her Decision on liability, does not support the charge against the Athlete or show the agreement of the Athlete to any match fixing activity;

(ii) the WhatsApp messages exchanged between [redacted] and Mr Khabibulin mentioning the name "Fay" cannot be referred to the Appellant because no one calls him "Fay";

(iii) in the WhatsApp messages exchanged between [redacted] and Mr Khabibulin there is no evidence capable of demonstrating the Appellant's involvement in the match fixing;

(iv) the WhatsApp messages exchanged between [redacted] and Mr Khabibulin fail to satisfy the "preponderance of evidence" standard and also fall short of amounting to inferences capable of demonstrating the involvement of the Appellant in the match fixing;

(v) the AHO did not take the limbs of Section D.1.d of the 2018 TACP into account, given the Appellant's victory in the concerted match against [redacted]

(vi) the Respondent used the same facts to bring two charges in violation of the principle of due process;

(vii) none of the inferences referred to by the AHO at para. 119 of the Decision on liability (i.e. Mr Fayziev's match against [redacted] was to be fixed, when the weather intervened; Mr Fayziev was nonetheless to be partially paid for the same; Mr Fayziev was in contact with Mr Khabibulin to this end; for an additional USD 6'000 Mr Fayziev would be fixing one or two matches in the future) was supported by the facts of the case.

(c) The AHO wrongly found the Appellant liable for committing a breach of Section D.1.f of the 2018 TACP (Charge 3). In particular, the Appellant argues that:

(i) the AHO did not take the following factors into account: the transfer of USD 6'001 was not made by [redacted] there is no evidence on file that the two individuals who made the transfer were associates of [redacted] and members of the [redacted] betting syndicate; the Respondent did prove neither the soliciting nor the acceptance of the money by the Appellant;

(ii) on 27 June 2023, i.e. two days before the hearing, the Respondent introduced a modification to the wording of Charge 3 to overcome the lack of evidence to prove the original Charge 3. However, in this way, the Respondent fundamentally changed the essence of Charge 3 and the Appellant had not been able to present his case on the basis of the modified Charge 3.

(d) The Appellant was found to be liable for breach of Section D.2.a.i. of the 2016 and 2018 TACP (Charge 4) despite the lack of any evidence clearly demonstrating the fact that he had been approached by anyone. Accordingly, the ITIA did not satisfy its burden of proof in respect of Charge 4.

(e) The AHO's Decision on liability contains the following mistakes:

(i) para. 12 of the Decision on liability refers to "*Schedule 2 of the Notice of Charge sent to Mr. Fayziev*", whereas Schedule 2 refers to Mr Igor Smilansky, not the Appellant;

(ii) paras. 22-27 of the Decision on liability contain the submissions made by Mr Igor Smilansky, not the Appellant. Accordingly, the analysis of the AHO contained in the referred paras. cannot be applied to the Appellant;

(iii) at para. 57 of the Decision on liability, the AHO writes that the stakes in the amount of more than GBP 55'000 were made from two betting accounts backing [redacted] to win the match, which was seen in the evidence submitted by the ITIA. However, the calculation of the bets placed from the mentioned betting accounts shows the figure of GBP 44'048.5, not any figure greater than GBP 55'000;

(iv) at para. 57 of the Decision on liability, the AHO writes that "*two bettors were working with Mr. Khabibulin and Mr. Fayziev, whether directly or indirectly*". However, no such evidence demonstrating any relationship between the bettors and any of Mr Khabibulin or Mr Fayziev was submitted by the ITIA;

(v) at paras 81 and 89 of the Decision on liability, the AHO quotes some statements allegedly attributed to the Athlete which the Appellant never made. In particular, the Appellant argues that no statement about [redacted] being a liar or about his relationship with [redacted] mafia has ever been made. Accordingly, "*on the basis of the scrutiny of the submissions of the Appellant made in respect of* [redacted] *during the proceedings with the AHO as well as of paras.81 and 89 of the Liability Decision of the AHO, it can be said that the Liability Decision does not provide an accurate summary of the Appellant's position*";

(vi) at para. 94 and in several other paras. of the Decision on liability, the AHO refers to statements allegedly attributed to the Appellant which the Appellant never made. The Appellant understands that these paras. are the paras. concerning the position expressed by Mr Smilansky. Hence, the Appellant's assumes that these paras. were not deleted by the AHO when she was using her decision issued in respect of Mr Smilansky as a draft for the Appellant's case.

(f) As already observed (see paras. 43, 49 and 50 above), during the hearing the Appellant also requested the issuance of a fair, just and proportionate sanction.

B. The Respondent

57. The Respondent requests the following reliefs:

"*a. Dismiss the Appeal;*

b. Uphold the Decisions in their entirety;

c. Order the Appellant to pay the Respondent a contribution towards its legal fees and other expenses incurred in defending the Appeal pursuant to Article R65.3 of the CAS Code; and

d. Dismiss any request from the Appellant for an order that the Respondent pay him a contribution towards his legal fees and other expenses incurred in these proceedings".

58. In support of its requests for relief, the Respondent relies on the following main arguments:

(a) the fact tha[redacted] did not attend the hearing does not amount to any violation of due process. His contemporaneous WhatsApp messages still read in the same way, as do the detailed descriptions of his match-fixing operations in various interviews with the Respondent.

(b) Ms Bain has been clear in her evidence to date regarding what she could or could not confirm from a factual perspective and her testimony is credible.

(c) The mistakes allegedly made in the Decision on liability are irrelevant because (i) CAS proceedings are held on a *de novo* basis and, therefore, any errors as those alleged by the Appellant are cured; (ii) the mistakes referred to in paras. 52 and 53 of the Decision on liability relate to Charge 1 for which the Appellant was found not liable.

(d) As regard Charge 2, the WhatsApp messages described by Ms Bain in her witness statement present an overwhelming case that the Appellant fixed a match, having worked with Mr Khabibulin and [redacted] In particular, the Respondent argues that:

(i) the messages are very clear and can only be explained by match-fixing;

(ii) there can be no doubt that [redacted] and Mr Khabibulin are discussing the match involving the Appellant and they are both following the match very closely as they are aware of the rain interruptions;

(iii) the Appellant was referred to in the exchanges making it abundantly clear that he is the person of focus, and the person Mr Khabibulin is liaising with to arrange the fix;

(iv) the familiarity of the language used in the messages strongly suggests that this match is not the first time that [redacted] and Mr Khabibulin have discussed the Appellant;

(v) [redacted] is a professional match-fixer with significant experience of doing so and one of his principal contacts was Mr Khabibulin;

(vi) the extent of the relationship between [redacted] and Mr Khabibulin is portrayed across the available WhatsApp messages as they speak in detail about the possibility of fixing matches, and can be seen in the language used and references to their shared experiences;

(vii) there is no basis for suggesting that [redacted] would have been engaging in match-fixing in such detail if he did not think that he stood a chance of making significant sums of money from it;

(ix) the WhatsApp exchanges between [redacted] and Mr Khabibulin clearly show two things: firstly, that there was an arrangement to fix the match involving [redacted] Mr Khabibulin and the Appellant. There are clear references to the "6000" being available for this match, a reference to the first set scoreline being on interest, the fact that rain stopped play and that Mr Khabibulin and [redacted] agreed that the Appellant should be paid for that match, with Mr Mikos committing to doing so. Secondly, although something appears to have gone wrong with the fix (due to the rain), [redacted] and Mr Khabibulin are then immediately discussing when the Appellant can fix another match.

(e) The reference to "*6000 more*" is likely to be [redacted] telling Mr Khabibulin what he will pay with it then being a matter for Mr Khabibulin how he splits that sum out between himself and the Appellant.

(f) It is irrelevant whether the Appellant refers to himself as "Fay" or whether unrelated third parties refer to him as "Fay" All that matters is that (i) [redacted] and Mr Khabibulin clearly refer to "Fayziev" on one occasion; (ii) "Fay" is an obvious abbreviation of "Fayziev"; (iii) there is no other professional tennis player known with the name Fayziev for [redacted] and Mr Khabibulin to be referring to instead.

(g) The existence of the Western Union transfer to the Appellant and screenshots of betting odds, also support the inference of references in the messages being to the Appellant.

(h) It is incorrect to suggest that the Appellant cannot have contrived the outcome of the match simply because he won the match, given that offers to fix can relate to the outcome of specific sets, games or points, It is therefore quite possible, and indeed common, for a player to fix elements of the match bust still have the chance to win the match.

(i) The payment of USD 6'000 relates to the Charge 2 match and the attempted match-fixing there, but a separate sum is then paid some weeks later following the Appellant fixing another match as addressed in Charge 3. The point is that the Appellant's expectation of receiving USD 6'000 in relation to Charge 2 match is relevant to that Charge, whilst the Appellant's subsequent receipt of USD 6'000 is relevant to Charge 3.

(j) Charge 3 relates to an unknown match played by the Appellant at some point after his match against [redacted] (which is the subject of Charge 2). The WhatsApp exchanges between [redacted] and Mr Khabibulin demonstrate that the Appellant informed Mr Khabibulin that he would fix another match later in 2018. A match was indeed the subject of a successful fixing arrangement between [redacted] Mr Khabibulin and the Appellant as demonstrated by the subsequent payments made through Western Union money transfers to the Appellant and [redacted]

(k) This submission is further supported since the two transfers of money totalled just over USD 6'000 and [redacted] can be seen offering the Appellant via Mr Khabibulin "*6000 more*" in the WhatsApp exchanges for a further fixing arrangement.

(l) The amendment of the wording of Charge 3 before the hearing is not relevant, given that the Appellant was found liable for Charge 3 under the terms of the original wording of that Charge, so any alleged issues caused by the amendment did not prejudice the Appellant. Moreover, any alleged procedural flaw before the AHO is cured by the CAS proceedings.

(m) As regard Charge 4, it is submitted that, for the reasons provided under Charges 2 and 3, the Appellant was directly approached by Mr Khabibulin in connection with fixing matches, and, therefore, the Appellant was required to report that information to the Respondent at the relevant time. Unfortunately for him, he decided not to do so and that failure is a clear breach of Section d.2.a.i of the 2018 TACP.

(n) As regard the sanction, the Respondent argued that the sanction imposed on the Appellant by the AHO is very lenient, given that the Appellant was held liable for two match-fixing offences. Nonetheless, the Respondent specified that it dit not intend to contest either the imposed ban of 3.5 years (with 6 moths suspended) or the fine of USD 15'000.

V. CAS JURISDICTION

59. Article R47.1 of the CAS Code provides as follows:

"*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS 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.*"

60. Section I. of the 2022 TACP provides as follows:

"*1. Any Decision (i) that a Corruption Offense has been committed, (ii) that no Corruption Offense has been committed, (iii) imposing sanctions for a Corruption Offense, or (iv) that the AHO lacks jurisdiction to rule on an alleged Corruption Offense or its sanctions, may be appealed exclusively to CAS (...)*".

61. The Panel notes that CAS jurisdiction is not disputed by the Parties. Moreover, the Parties confirmed CAS jurisdiction by signing the Order of Procedure.

62. It follows that CAS has jurisdiction to adjudicate and decide on the present appeal.

VI. ADMISSIBILITY OF THE APPEAL

63. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*"

64. Section I of the 2022 TACP provides as follows:

"*3. 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*".

65. The Appealed Decisions were issued on 25 July 2023 (Decision on liability) and on 4 October 2023 (Decision on sanction). It is not in dispute that the Appellant received the Decision on sanction on 6 October 2023. The Appeal was filed by email on 3 November 2023 and on 7 November 2023 via e-Filing. The Statement of Appeal was thus filed by email within the deadline of twenty business days established by the TAPC. It is further only due to administrative prerequisites related to the CAS Court Office, that the Appellant was not able to upload the Statement of Appeal onto the e-Filing platform before 7 November 2023. This was through no fault or delay on his part and the Panel thus considers that the appeal is timely. Furthermore, the Panel notes that this view is backed by CAS jurisprudence (CAS 2020/A/7241) and that the admissibility of the Appeal is not disputed by the Parties. The Statement of Appeal also complied with the

requirements of Articles R47 and R48 of the CAS Code, including the payment of the CAS Court Office fee.

66. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

67. Article R58 of the CAS Code provides as follows:

"*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.*"

68. The Panel notes that the Appeal is directed against two decisions issued by the AHO of the Respondent concerning several corruption offenses under the TACP. The Appellant did not dispute that he is subject to and bound by the terms of the TACP.

69. Accordingly, the Panel concludes that the "*applicable regulations*" for the purposes of Article R58 of the CAS Code are those of the 2018 TACP. The Panel's conclusion is further supported by the fact that the applicable law is not disputed by the Parties.

70. More specifically, the following provisions of the 2018 TACP are material to this appeal:

(a) Section C Covered Players, Persons and Events

"*1. All Players, related Persons, and Tournament Support Personnel shall be bound by and shall comply with all of the provisions of this Program and shall be deemed to accept all terms set out herein as well as the Tennis Integrity Unit Privacy Policy which can be found at www.tennisintegrityunit.com*".

(b) Section D Offences

"*(...)*".

1. Corruption Offenses

"*a. (...)*

b. No covered Person shall, directly or indirectly, solicit or facilitate any other person to wager on the outcome or any other aspect of any Event or any other tennis competition. For the avoidance of doubt, to solicit or facilitate to wager shall include, but not be limited to: display of live tennis betting odds on a Covered Person website;

writing articles for a tennis betting publication or website; conducting personal appearances for a tennis betting company; and appearing in commercials encouraging others to bet on tennis.

c. (...)

d. No Covered person shall, directly or indirectly, contrive or attempt to contrive the outcome or any other aspect of any Event.

e. (...)

f. No covered person shall, directly or indirectly, solicit or accept any money, benefit or Consideration with the intention of negatively influencing a Player's best efforts in any Event.

(...)".

2. Reporting Obligation

"*a. Players*

i. In the event any Player is approached by any person who offers or provides any type of money, benefit or Consideration to a Player to (i) influence the outcome or any other aspect of any Event, or (ii) provide Inside Information, it shall be the Player's obligation to report such incident to the TIU as soon as possible".

(c) Section G Due Process

"*(...)*".

3. Burdens and Standards of Proof

"*a. The PTIO* [i.e. the Professional Tennis Integrity Officer] *(...) shall have the burden of establishing that a Corruption Offense has been committed. The standard of proof shall be whether the PTIO has established the commission of the alleged Corruption Offense by a preponderance of the evidence.*

b. (...)

c. The AHO shall not be bound by any jurisdiction's judicial rules governing the admissibility of evidence. Instead, facts relating to a Corruption Offense may be established by any reliable means, as determined in the sole discretion of the AHO.

(d) Section H Sanctions

"*(...)*".

"*H.1.a With respect to any Player, (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, (ii) ineligibility from Participation in any Sanctioned Events for a period of up to three years unless permitted under Section H.1.c., and (iii) with respect to any violation of Section D.1., clauses (d)-(j), Section D.2. and Section F. ineligibility from Participation in any Sanctioned Events for a maximum period of permanent ineligibility unless permitted under Section H.1.c*".

VIII. PRELIMINARY MATTERS

71. As already observed (see para 50 ff above), after the hearing, by email dated 5 July 2024, the Appellant raised a twofold argument. On the one hand, the Appellant argued that the Respondent's Exhibits DB6, DB7, DB8, DB11, DB12, DB13, DB14, DB15, DB16, and DB18 constitute "New Evidence" and therefore are not admissible; on the other hand, according to the Appellant's counsel, she had already exhausted the Appellant's right to make any submissions by the time when the Respondent presented these Exhibits. Hence, the Appellant did not have any chance to respond to or to comment on the alleged "New Evidence" submitted by the Respondent.

72. The Panel considers the Appellant's email dated 5 July 2024 belated, given that (i) Article R56 of the CAS Code clearly states that "*unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their arguments, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer*"; (ii) Appellant twice failed to specify his request for the exclusion of the alleged new Exhibits from the CAS file within the two granted deadlines and did not provide any form of explanation nor did he refer to or substantiate exceptional circumstances.

73. However, in light of the Appellant's argument that these issues allegedly were already raised at the hearing, the Panel decided to examine them anyway.

74. Article R57 of the CAS Code provides as follows:

"*The panel has full power to review the facts and the law. (...)*

(...)

The panel has discretion to exclude evidence presented by the Parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. (...).".

75. Pursuant to CAS 2014/A/3486 (paras. 51 – 53), "*[a] Panel's power to review an appeal on a de novo basis is well established in a long line of CAS jurisprudence. Indeed, this basis of review is, in essence, the foundation of the CAS appeals system and the standard of review should not be undermined by an overly restrictive interpretation of Article*

R57.3 of the Code. The Panel's inherent discretion to exclude certain evidence under this provision of the Code is just that, i.e. a discretionary power to exclude (or admit) certain evidence based on the Panel's own assessment of the case at hand. Thus, the Panel is free to accept or reject any such evidence and doing such should not disrupt the fundamental principle of de novo review. The Panel is of the opinion that Article R57.3 of the Code should be construed in accordance with the fundamental principle of the de novo power of review. As such, the Panel also considers that the discretion to exclude evidence should be exercised with caution, for example, in situations where a party may have engaged in abusive procedural behavior, or in any other circumstances where the Panel might, in its discretion, consider it either unfair or inappropriate to admit new evidence".

76. Similarly, legal scholars have underlined that Article R57.3 of the CAS Code "*should be used with restraint in order to preserve the fundamental de novo character of the review by the CAS*" and that "*the rationale of Article R57 paragraph 3 is to avoid evidence submitted in an abusive way and/or retained by the parties in bad faith in order to bring it for the first time before the CAS*" (MAVORMATI, REEB, *The Code of the Court of Arbitration for Sport*, 2015, pp. 520-521).

77. In light of the above and of the points mentioned below, the Panel finds that the Respondent did not engage in any abusive or otherwise unacceptable procedural conduct and does not consider it either unfair or inappropriate to admit the Respondent's Exhibits DB6, DB7, DB8, DB 11, DB 12, DB 13, DB14, D15, DB16 and DB18.

78. In reaching this conclusion, the Panel also took into consideration the following points:

(a) Exhibit DB6 is not "new", given that it is an email dated 28 June 2023 and copied to the Appellant's counsel; accordingly, the Appellant was aware of Exhibit DB6 well before the filing of his written submissions (Statement of Appeal, Appeal Brief and Supplement to Appeal Brief);

(b) Exhibits DB7 and DB8 are dated 17 August 2023 and 18 September 2023 respectively and therefore were not available at the time of the Decision on liability dated 25 July 2023, but the Panel did not consider these exhibits relevant for its decision.

(c) Exhibits DB11 to DB16 are not "new", given that they were included as Documents 84 to 89 of the hearing bundle before the AHO;

(d) Exhibit DB18 is an image included in Exhibit DB11 and, accordingly, it was available to the Appellant during the proceedings before the AHO;

(e) apart from Exhibit DB18, all other Exhibits referred to by the Appellant have no material bearing on the Panel's decision;

(f) the Appellant twice failed to specify his request for the exclusion of some documents from the CAS file within the granted deadlines and did not provide any form of explanation;

(g) the Appellant never requested a second round of written submissions to comment on the alleged new character of the Respondent's Exhibits on the basis of exceptional circumstances in accordance with Article R56 of the CAS Code;

(h) the Appellant errs in arguing that he did not know about the Respondents' Exhibits DB6, DB7, DB8, DB 11, DB 12, DB 13, DB14, D15, DB16 and DB18 until the day of the hearing, given that:

(i) the Appellant does not dispute that the above-mentioned Exhibits were submitted by the Respondent on 29 January 2024;

(ii) on the same day the Respondent's Exhibits were uploaded onto the e-Filing platform and therefore made available to the Appellant; moreover, the Respondent's Answer and Ms Denise Bain's written statement were also attached to an email the Respondent sent to the CAS Court Office, to which the Appellant's counsel was copied. This email reads as follows: "*We confirm that these two documents plus all 21 of the exhibits referred to in Ms Bain's statement have been uploaded to the CAS e-filing platform*";

(iii) on 30 January 2024 the CAS Court Office sent a copy of the Respondent's Answer to the Appellant by email;

(iv) in its Answer's footnotes and in Ms Denise Bain's written statement, the Respondent mentioned all the exhibits submitted;

(v) accordingly, on 30 January 2024 at the latest the Appellant was in a position to know and examine all the exhibits submitted by the Respondent.

79. In light of the above, the Panel concludes that the alleged "New Exhibits" submitted by the Respondent are admissible and should not be removed from the CAS file.

IX. THE MERITS

80. In his Appeal Brief, the Athlete basically argues that the Respondent has failed to satisfy the burden of proof required to establish the alleged corruption offenses. By contrast, the Respondent claims that it has fully satisfied its burden of proof and, therefore, the alleged corruption offenses shall be considered established. It is not disputed between the Parties that the burden of establishing that a corruption offense has been committed lies on the Respondent.

81. Then, in view of the Parties requests and submissions (both written and oral), the Panel must determine:

(a) the standard of proof required to establish that a corruption offense has been established ("The Standard of Proof");

(b) whether the Respondent has satisfied the burden of proof for each corruption offense ("The Burden of Proof");

and, in the affirmative:

(c) the relevance of the alleged mistakes in the AHO's Ruling on liability;

(d) the proportionality of the imposed sanction ("Proportionality").

(a) The Standard of Proof

82. Section G.3.a of the TAPC provides that "*the PTIO* [i.e. the Professional Tennis Integrity Officer] *(...) shall have the burden of establishing that a Corruption Offense has been committed. The standard of proof shall be whether the PTIO has established the commission of the alleged Corruption Offense by a preponderance of the evidence*". Moreover, Section G.3.c of the TAPC provides that "*the AHO shall not be bound by any jurisdiction's judicial rules governing the admissibility of evidence. Instead, facts relating to a Corruption Offense may be established by any reliable means, as determined in the sole discretion of the AHO*".

83. In light of the above the Panel considers that the standard of proof that applies is clearly the one provided for in the TAPC, i.e. a preponderance of the evidence. Such preponderance of the evidence is the equivalent of the English law's balance of probabilities, and it can be satisfied by any reliable means so long as the means and or evidence relied upon are sufficiently compelling to meet the evidentiary standard.

84. This conclusion is also supported by CAS 2011/A/2490 where the Panel affirmed that "*the fact that a player has been charged with serious offences does not require that a higher standard of proof should be applied than the one applicable*" (para. 40).

85. Moreover, the Swiss Federal Tribunal recently confirmed that it was correct for an AHO and then the CAS on appeal, to have applied the standard of proof of a balance of probabilities, as provided in the TACP, when making its finding on liability: "*in this case, the Panel, by referring to the applicable regulatory provisions and the case law of the CAS, apportioned the burden of proof and correctly determined the degree of proof required to find the existence of an infringement of the TACP*" (para. 8 of 4A_486/2022. Free translation from French).

86. As has been recognized and applied in CAS cases, the Panel considers that an international association has discretion to determine the applicable standard of proof (i) in the absence of any overarching regulation (ii) subject to mandatory national and/or international rules of public policy (CAS 2011/A/2490; CAS 2011/A/2621). In the case

at hand, the Panel has been shown no such overarching regulation. It has also no reason to consider that the application of the standard of proof of preponderance of evidence is contrary to any national and/or international rules of public policy.

87. On the contrary, the Panel finds that the application of the preponderance of evidence is warranted in the case of match-fixing allegations. As noted by some CAS Panels, gathering evidence in relation to the offenses in question can be difficult because of the inherently concealed nature of the corrupt acts. This explains why the application of the preponderance of evidence test is appropriate (CAS 2010/A/2172; CAS 2011/A/2621).

88. Accordingly, the Panel concludes that the standard of proof applicable in the present case is a *preponderance of evidence/balance of probabilities*. This standard is met if the proposition that the athlete engaged in match fixing is more likely to be true than not true.

(b) The Burden of Proof

89. In the present matter it is not disputed that, pursuant to Section G.3.a of the TACP, the burden of proving the alleged offenses lies within the Respondent. That said, according to the principle *actori incumbit probatio*, each party shall bear the burden of proving the specific facts and allegations on which it relies. This is all the more relevant when, as noted in several CAS precedents, while assessing the evidence this Panel has to bear in mind that "*corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing*" (CAS 2010/A/2172, para. 54; CAS 2014/A/3537, para. 82).

90. In addition, as stated in CAS 2014/A/3537, "*the more detailed are the factual allegations the more substantiated must be their rebuttal. As a result, therefore, the Appellant has a certain duty to contribute to the administration of proof in the present matter by presenting evidence in support of their line of defence*".

91. That said, before assessing the evidence on file, the Panel deems appropriate to address two preliminary claims raised by the Appellant: (i) the inability to cross-examine [redacted] and (ii) [redacted] independence and impartiality as witness.

92. In particular, the Appellant argues that the inability to cross-examine [redacted] during the proceedings before the AHO deprived him "*of his fundamental right to test the evidence presented by the ITIA in the form of questioning of* [redacted] *during the hearing. This demonstrates a considerable departure from the due process*". Moreover, the Appellant questions "*the status of* [redacted] *as that of a neutral, independent, and impartial witness, who has no personal gain from providing his witness statements to the Appellant's case*".

93. The Panel notes that before the AHO, the ITIA explained that [redacted] was no longer a person subject to TACP and therefore he could not be compelled to testify under the TACP. The ITIA also confirmed that the AHO could not compel [redacted] to testify. These circumstances are not disputed by the Appellant.

94. In light of the above, the Panel is of the opinion that [redacted] non-attendance before the AHO does not amount to a violation of the Appellant's right to a fair trial. In any case, the full power of review under Article R57 of the CAS Code means that procedural flaws which occurred during the proceedings of the previous instance, if any, can be cured by the CAS Panel.

95. In the present case, however, neither the Appellant nor the Respondent have called [redacted] to testify. Accordingly, the Panel finds the non-attendance of a witness that neither party has called to testify before the CAS cannot constitute a violation of the Appellant's right to a fair trial.

96. As regard [redacted] independence and impartiality, the Panel considers that [redacted] evidence was legally tested by an AHO prior to agreeing to gran[redacted] a reduction of his sanction to substantial assistance provided and then by the ITIA prior to proceedings with the charges. These circumstances are not disputed by the Appellant.

97. Similarly, the circumstance that "*a forensic download and analysis of* [redacted] *phone (...) was undertaken and confirmed the messages were not made up*" is non disputed by the Appellant.

98. Accordingly, the Panel sees no reasons to not consider the WhatsApp messages and Facebook posts a reliable source of evidence, or to depart from the AHO's decision on liability according to whic[redacted] testimony "*is deemed admissible but given very little weight due to* [redacted] *lack of viva voce testimony*".

99. That said, the Panel turns now to examine each charge brought against the Appellant and the relevant evidence.

(a) Charge 2: one breach of Section D.1.d of the 2018 Program in relation to his match against [redacted]

100. According to Section D.1.d. of the 2018 TAPC, "*No Covered person shall, directly or indirectly, contrive or attempt to contrive the outcome or any other aspect of any Event tennis*".

101. In finding against the Appellant, the AHO's Decision on liability mainly relies on the following evidence:

(i) a WhatsApp audio message sent from [redacted] to Mr Khabibulin in which [redacted] is heard saying: "*Habi, Fayziev have you seen? And they stopped due to rain. If you can ask him for Set 2. Tomorrow if he play, I give you 6000 more what do you think?*"

(ii) the WhatsApp conversation (in both audio and written formats) between Mr Khabibulin and [redacted] that reads as follows:

[redacted] *"... how many % give That Fay will make one set in final if [tomorrow] we give this 10. We will give anyway I just ask so that I will know if I buy one more account [tomorrow]"*

M. Khabibulin: *"tell me how many % u will send money tomorrow?"*

[redacted] *"... what % that he will make set in final"*

Mr Khabibulin: *"no but give 1 or 2 match's till end of the year. Same like yesterday"*.

(iii) the following WhatsApp messages exchanged between [redacted] and Mr Khabibulin:

Date	**Sender**	**Message**
9/11/2018 – 10:02:18	[redacted]	Is him?
9/11/2018 – 10.02:22		He win 2 6
9/11/2018 – 12.28:47	[redacted]	??
9/11/2018 – 13.09:48	Mr Khabibulin	Kidding me?
9/11/2018 – 13:12:03	[redacted]	Audio: speak with The Fay, devi devi devi
9/11/2018 – 13:55:12	Mr Khabibulin	I just spoke whit fay
9/11/2018 – 13:55:12	Mr Khabibulin	For last match
9/11/2018 – 13:55:12	Mr Khabibulin	Can understand I have to give this money to fay
9/11/2018 – 13:55:22	[redacted]	Ok is perfect
9/11/2018 – 13:55:29		We give 10 more
9/11/2018 – 13:55:41	Mr Khabibulin	No body care what u give more
9/11/2018 – 13:55:43	[redacted]	I can't' say something whatever u want I just say
9/11/2018 – 13:58:40		Audio: Listen what I will say, how many % you give That fay will make one set in final if tomorrow we give this 10. We will give anyway I just ask so that I will know if I buy one more account tomorrow

9/11/2018 – 14:07:47	Mr Khabibulin	Tell me how many % u will send money tomorrow?
9/11/2018 – 14:07:59	Mr Khabibulin	I have the same question
9/11/2018 – 14:08:11	[redacted]	100, now tell me
9/11/2018 – 14:08:19	Mr Khabibulin	100
9/11/2018 – 14:08:30	[redacted]	That he will make set in final?
9/11/2018 – 14:09:30	Mr Khabibulin	No but he give 1 or 2 match's till end of the year
9/11/2018 – 14:09:36	Mr Khabibulin	Same like yesterday
9/11/2018 – 14:09:47	[redacted]	Good perfect
9/11/2018 – 14:09:49	[redacted]	Ok
9/11/2018 – 14:09.56	[redacted]	Any way I will send tomorrow

102. The Appellant argues that (i) in these messages between [redacted] and Mr Khabibulin there is no evidence capable of demonstrating the Appellant's involvement in the match fixing; (ii) these messages also fall short of amounting to inferences capable of demonstrating the engagement of the Appellant in the match-fixing; (iii) the Appellant could not have contrived the outcome of the match, given that he won the match; (iv) Charge 2 is based on the same factual background used to substantiate Charge 3.

103. By contrast, the Respondent claims that (i) these messages present an overwhelming case that the Appellant fixed the match in agreement with [redacted] and Mr Khabibulin; (ii) the fact the Appellant won the match against [redacted] is irrelevant, given that it is common for a player to fix elements of the match, but still have the chance to win the match; (iii) the fact that the same factual background has been used across Charges 2 and 3 does not amount to a violation of due process.

104. Based on the above-mentioned WhatsApp messages, the Panel is of the opinion that [redacted] and Mr Khabibulin are clearly discussing a current fix and an additional 6.000 US Dollar payment to Mr Khabibulin and Mr Fayziev for the match which will resume on the following day. The match at hand is the semi-final match agains[redacted] [redacted] played on [redacted] by Mr Fayziev in the [redacted] in [redacted] Mr Fayziev won the match [redacted]

105. In particular, there can be no doubt that [redacted] and Mr Khabibulin are discussing the match involving the Appellant, given that both [redacted] and Mr Khabibulin are

following the case very closely, they are perfectly aware of the rain interruptions, and the Appellant's name (Fayziev and/or Fay) is clearly referred to.

106. It is the Panel's view that the WhatsApp messages referred to at para. 101 above constitute strong evidence of Mr Fayziev's involvement in the fixing. The only reasonable interpretation of the terms of the message sent from [redacted] to Mr Khabibulin is that the former is talking to "*Habi*", i.e. Mr Khabibulin, about "*Fayziev*", i.e. the Appellant ("*Habi, Fayziev have you seen?*"), whereas the sentence "*and they stopped due to rain*" clearly refers to the match between Mr Fayziev and [redacted] which was actually interrupted because of the rain.

107. Moreover, [redacted] is inviting Mr Khabibulin ("*you*") to ask Mr Fayziev ("*him*") to fix "*for Set 2*". At the same time, [redacted] is informing Mr Khabibulin that "*Tomorrow, if he play*", i.e. if Mr Fayziev wins the semi-final match against [redacted] and therefore will play the final match, [redacted] is ready to offer "*6000 more*" for another fix. 21 seconds after this message, [redacted] sent a WhatsApp message to Mr Khabibulin with an image of Bet 365 odds for the match between [redacted] and Mr Fayziev.

108. This conclusion is further supported by:

a) the WhatsApp conversation (in both audio and written formats) between [redacted] and Mr Khabibulin according to which: i) Mr [redacted] is exploring the possibility that "*Fay*", i.e. the Appellant, "*will make one set in final*", i.e. will fix one set in the final match; ii) Mr Khabibulin says "*No but he give 1 or 2 matchs till end of the year*", i.e. Mr Khabibulin is informing [redacted] that Mr Fayziev is not ready to fix the final match (since it is usual for a tennis player to try his best to win a final), but he is ready to fix one or two other matches until the end of the year;

b) Ms Bain's written statement according to which "*my understanding of these exchanges is that Mr Khabibulin has spoken with Mr Fayziev and confirmed that Mr Fayziev was prepared to fix at least one more match in 2018 with* [redacted] *and to do so on the same basis upon which he fixed the match with* [redacted] *agrees to that and confirms that he will make a payment on the following day in relation to the match with* [redacted]

109. To this regard, the Panel considers irrelevant the fact that the Appellant does not use the abbreviated version of his name, and no one calls him Fay. Indeed, on one occasion [redacted] and Mr Khabibulin expressly referred to the Appellant with his full name Fayziev. Moreover, the Panel notes that there is no other professional tennis player known with the name Fay. Accordingly, the Panel is of the opinion that it is more likely than not that the term "Fay" corresponds to the Appellant's name.

110. In light of the above, the Panel finds that the comprehensive messages in the CAS file present a compelling case that the Appellant was approached by Mr Khabibulin to fix the match agains[redacted] By contrast, the Appellant has provided no reasonable

explanations, if any at all, as to why his name is mentioned in numerous WhatsApp messages between [redacted] and Mr Khabibulin (who used to play doubles with the Appellant in the past as was confirmed by the Appellant at the hearing) and why two well-known individuals liable for extensive match-fixing are discussing his matches in detail and are planning to pay him.

111. Moreover, the Panel considers relevant the Facebook Messenger messages between the Appellant and Mr Khabibulin in which the Appellant informs Mr Khabibulin that "*I would like to get the money, bruv*" and "*You know, bruv, I'll do anything for you*". Although the date of these messages is 9 February 2019, it is the Panel's opinion that these messages confirm that the Appellant and Mr Khabibulin had direct contact. By contrast, the Appellant did not provide any explanation regarding these messages.

112. As a result, the Panel finds that, considered altogether, there is sufficient evidence on the record to establish, on a preponderance of evidence, that the Appellant contrived, whether directly or indirectly, the outcome of the match against [redacted]

(b) Charge 3: one breach of Section D.1.f of the 2018 Program in relation to an unidentified match for which 6.000 UD Dollars was received.

113. According to Section D.1.f. of the 2018 TAPC, "*No covered Person shall, directly or indirectly, solicit or accept any money, benefit or Consideration with the intention of negatively influencing a Player's best efforts in any Event*".

114. The Appellant argues that (i) the transfer of USD 6'000 was not made by [redacted] but by two individuals; (ii) there is no evidence on file that those two individuals were in fact associates of [redacted] and members of the [redacted] betting syndicate; (iii) there is no evidence on file that the Appellant accepted or solicited "*any money, benefit or Consideration*"; (iv) Charge 3 has been modified two days before the hearing in breach of the Appellant's right to be heard; (v) Mr Fayziev's name on the Western Union transfer is spelled incorrectly as explained during the hearing.

115. By contrast, the Respondent argues that (i) there is evidence on file of two Western Union transfers for just over USD 6'000 to the Appellant and [redacted] (ii) the Appellant has failed to provide any explanation about those two Western Union transfers; (iii) the WhatsApp messages exchanged between [redacted] and Mr Khabibulin show that [redacted] offered the Appellant, via Mr Khabibulin, "*6000 more*" for a further fixing arrangement; (iv) the amendment of Charge 3 shortly before the hearing before the AHO did not prejudice the Appellant since he was found liable for Charge 3 under the terms of its original wording; in any case, even assuming (*quod non*) a procedural flaw at first instance, such flaw is now cured by the *de novo* review before the CAS; (vi) the alleged incorrect spelling of Mr Fayziev's name on the Western Union transfer is irrelevant, given that:

a) the Appellant is the only Sanjar Fayziev that plays professional tennis and one that happens to have [redacted]

b) there is no reason for the two Western Union transfers to have been made if they were not to two names approved by the Appellant (and only one of which is now criticised);

c) there is no evidence in the CAS file regarding how Western Union operates generally or in Uzbekistan or Kazakhstan specifically;

d) there is no indication between [redacted] and Mr Khabibulin that there was any problem with the transfer;

e) pursuant to Sections D.1.d. and D.1.f. of the 2018 TAPC the payment is not needed to find liability.

116. As already observed at paras. 101 and 106 above, in a WhatsApp audio message sent from [redacted] to Mr Khabibulin, [redacted] is heard saying: "*Habi, Fayziev have you seen? And they stopped due to rain. If you can ask him for Set 2. Tomorrow if he play, I give you 6000 more what do you think?*".

117. The WhatsApp messages of 26 November 2018 between [redacted] and Mr Khabibulin also explain how the payment was to be made and to whom. In particular, the relevant messages are as follows:

[redacted]*: I will check for day tomorrow if in I will fly for money before (...)*

(...) ok Send me name exactly correct

Khabi: (...) Which name u want first?

[redacted] *(...)* [redacted]

Khabi: yes

[redacted] *ok*

Khabi: And one more?

[redacted] *Fayziev Sanjar*

Khabi: [redacted] *Sanjar*".

118. It is the Panel's opinion that the messages between Mr Khabibulin and [redacted] clearly indicate that payment was to be made to the Appellant ("*Fayziev Sanjar*") and [redacted], and in what amount [redacted] *Sanjar*").

119. Moreover, the Panel also notes that there is evidence on file of two Western Union transfers to the Appellant and [redacted] for a total amount of USD 6'001.

120. In her written statement, confirmed at the hearing, Ms Bain, who the Panel finds reliable, stated that in her opinion the WhatsApp messages exchange referred to above (para. 116) is "*a reference to a payment being made.* [redacted] *only makes payments when a match has been successfully fixed so my understanding is that Mr Fayziev must, therefore, be being paid for his match fixing services. The usual approach at that time was to make payment using the money transfer services of Western Union or MoneyGram, where cash can be deposited in one jurisdiction and then can be collected in a different jurisdiction. It is common practice for match-fixers to receive payments in more than one instalment and sometimes indirectly via a family member, relative or friend. This is because of the daily limits imposed by money transfer services providers and because doing so makes it harder to trace transactions directly to the player. Mr. Fayziev confirmed in an interview with me that* [redacted] *Therefore, I interpret this exchange to mean that, having agreed a fix with Mr Fayziev,* [redacted] *is instructing Mr Khabibulin to send payment of 4.000 to Mr Fayziev* [redacted] *and a payment of 2.000 to Mr Fayziev directly (...)*".

121. Against this, the Panel notes that the Appellant has only argued that he neither accepted or solicited these payments, but he has advanced no other explanations as to why [redacted] would send him and [redacted] such a significant amount of money and as to why the Appellant and [redacted] names were mentioned and the amount of money to be paid to them discussed in the WhatsApp messages between [redacted] and Mr Khabibulin.

122. As regard the alleged incorrect spelling of the Appellant's name, the Panel considers the Appellant's arguments irrelevant, given that:

(i) the Appellant did not provide the Panel with any other explanation of the reason his name, although written incorrectly, is found on the Western Union transfer;

(ii) there is no evidence on file regarding how Western Union operates generally or in Uzbekistan or Kazakhstan specifically. To this regard, the Panel agrees with the Respondent's arguments according to which nothing has been proven regarding: a) Western Union's rule for collecting funds in Uzbekistan or Kazakhstan; b) if an identification document is required to collect funds and, if so, whether the name on the identification document must exactly match the Western Union transfer document; c) whether a driving licence is a permissible identification document under Western Union's rules;

(iii) during both the proceedings before the AHO and the proceedings before the CAS the Appellant always used the name Fayziev without ever specifying that the spelling was incorrect, and it would have been preferable to use the name Fayziyev.

(iv) under Section D.1.f. of the 2018 TACP it is possible for the Appellant to solicit money or even accept a payment by agreeing for a Western Union transfer to be sent, even if the Appellant did not collect the money.

123. As regard the amendment of Charge 3 two days before the hearing in the first instance proceedings, the Panel notes that Article R57 of the CAS Code grants it full power to review this matter on a *de novo* basis and this has been confirmed by numerous CAS precedents.

124. Accordingly, even assuming (*quod non*) the existence of a procedural flaw before the AHO, the Panel notes that this full power of review means that procedural flaws, if any, in a first instance decision can often be cured by a CAS proceeding (CAS 2016/A/4387).

125. In CAS 2008/A/1574, the Panel dealt with the meaning of a CAS Panel's *de novo* powers and ruled that a *de novo* hearing is: "*a completely fresh hearing of the dispute between the parties, any allegation of denial of natural justice or any defect or procedural error even in violation of the principle of due process which may have occurred at first instance whether within the sporting body or by the Ordinary Division CAS panel, will be cured by the arbitration proceedings before the appeal panel and the appeal panel is therefore not required to consider any such allegations*" (CAS 2008/A/1574, at 42. See also CAS 2012/A/2702).

126. Amongst the procedural violations in a first instance decision that can be cured by a *de novo* CAS proceeding is the 'right to be heard', and this has been consistently established in CAS jurisprudence (See for example, CAS 2012/A/2913, CAS 2012/A/2754, CAS 2011/A/2357 and TAS 2004/A/549). The Swiss Federal Tribunal ("SFT") has also confirmed the legality of the curing effect of the CAS de novo review. Accordingly, infringements on the Parties' right to be heard can generally be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal in the first instance and in front of which the right to be heard had been properly exercised (See ATF 124 II 132 of 20 March 1998).

127. The Panel acknowledges that some serious procedural violations cannot be cured by a *de novo* hearing under Article R57 of the CAS Code. The non-analysis of an athlete's B sample in a doping dispute is one such example. However, it is the Panel's opinion that the alleged procedural violations concerning the amendments of Charge 3 are not of such a character that they cannot be cured by a *de novo* CAS hearing.

128. In light of the above, the Panel considers that the degree of persuasion of the corroborating elements considered together constitute sufficient circumstantial evidence from which it can be inferred that it is more likely than not that the payment of 6.001 US Dollars was made to the Appellant and [redacted] as a payment for fixing one match or more.

(c) Charge 4: Two breaches of Section D.2.a.i. of the 2018 Program for failing to report Mr Khabibulin's corrupt approaches to the ITIA

129. According to Section D.2.a.i. of the 2018 TAPC, "*In the event any Player is approached by any person who offers or provides any type of money, benefit or Consideration to a Player to (i) influence the outcome or any other aspect of any Event, or (ii) provide*

Inside Information, it shall be the Player's obligation to report such incident to the TIU as soon as possible".

130. The Appellant argues that there is no evidence demonstrating that he was approached by Mr Khabibulin to commit a corruption offense under Section D.2.a.i. of the 2018 TAPC and that such a charge cannot be proved based upon inference.

131. As already observed (see para. 88 above), although the standard of proof under Section G.3.a of the 2018 TACP is a preponderance of evidence/balance of probabilities, the lack of direct evidence does not preclude the establishing of a corruption offense. Indeed, inference does allow the panel to issue a decision on a balance of probabilities/preponderance of probabilities legal standard.

132. In particular, the Panel notes that, as determined in the *Crepatte* case, "*in some instances, the weight of the evidence may enable the drawing of a logical inference or a reasonable inference which is similar to a finding of fact even where there is no direct evidence to support the finding. In other instances, there may also be a logical deduction made from an assessment of the reliability or sufficiency of the evidence which permits the inferred finding that a Corruption Offense has occurred. In all of these instances, the AHO's conclusion can be considered to meet the test of preponderance of the evidence as being more likely than not*".

133. Moreover, according to the 2018 TACP, the burden of proof may be satisfied by any reliable means. Accordingly, it is the Panel's opinion that, in order to determine if corruption offenses have occurred, it must consider all the evidence on file (i.e. direct and indirect evidence) and may draw inferences from the same so long as the evidence is sufficiently reliable and compelling.

134. In light of the above, having established, on the balance of probabilities, that the Appellant is liable for Charge 2 and Charge 3, the Panel also concludes that the Appellant failed to report the corruption approaches made to him by Mr Khabibulin in relation to the said Charges. Therefore, the Appellant contravened Section D.2.a.i of the 2018 TACP and is liable for the same.

(c) The alleged mistakes in the AHO's Decision on liability

135. As regard the alleged mistakes in the AHO's Decision on liability, the Panel finds them irrelevant for the following reasons:

(i) the reference to Schedule 2 of the Notice of Charge sent to Mr Fayziev is a mere typo not affecting the principle of due process;

(ii) even assuming that the Decision on liability contains some submissions made by Mr Smilansky, not the Appellant, this fact in itself is not sufficient to conclude that the Appellant has not been judged for his own case;

(iii) the alleged incorrect reference to the sum of £ 55'000 at para. 57 of the Decision on liability refers to Charge 1, for which the Appellant was not found liable, and therefore is irrelevant in the present matter;

(iv) even assuming that at paras 81, 89, 94 and several other paras the Decision on liability contains some statements allegedly attributed to Mr Fayziev which the Appellant never made, the Panel does not consider such statements as decisive (both in law and in fact) for the ascertained Appellant's liability. Accordingly, he Panel finds such alleged incorrect reference to statements never made by the Appellant cannot be considered as a breach of the principle of due process..

(d) Proportionality

136. Having established the Appellant's liability, in view of the Parties agreement the Panel has the duty to decide also on the appropriate sanction to be imposed on the Appellant.

137. As already observed (see paras. 43, 49 and 50 above), the Panel notes that, while the Appellant did not address the imposed sanction in his written submissions, at the hearing he requested the issuance of "*fair and just decision*" and that, if a certain charge was retained, "*the sanctioning will be proportionate, fair and just as well*".

138. By contrast, in its Answer the Respondent did not "*seek to disturb either the imposed ban or fine albeit the Respondent considers the ban imposed to be a lenient one given that the Appellant was found liable for two match-fixing offences and did not provide any mitigation in his Submissions on Sanction dated 19 September 2023*".

139. Against this, the Panel notes that in her Ruling on sanction the AHO imposed on the Appellant a period of ineligibility of 3.5 years (with 6 months suspended) and a fine of 15.000 US Dollars.

140. According to well-established CAS jurisprudence, CAS panels should exert self-restraint in reviewing the level of a sanction imposed by a first instance disciplinary body (cf. CAS 2017/A/5086 at para. 206, CAS 2015/A/3875 at para. 108, CAS 2012/A/2824 at para. 127, CAS 2012/A/2702 at para. 160, CAS 2012/A/2762 at para. 122, CAS 2009/A/1817 & 1844 at para. 174, CAS 2007/A/1217 at para. 12.4) and should reassess sanctions only if they are evidently and grossly disproportionate to the offence or if a different conclusion is reached on the substantive merits of the case than did the first instance body (cf. CAS 2017/A/5086 at para. 206, CAS 2009/A/1817 & 1844 at para. 174 with references to further CAS case law, CAS 2012/A/2762 at para. 122, CAS 2013/A/3256 at paras. 572-572, CAS 2016/A/4643 at para. 100).

141. CAS jurisprudence also specifies that, far from excluding or limiting the power of a CAS panel to review *de novo* the facts and the law of the dispute at hand (pursuant to Article R57 of the CAS Code), such indication only means that a CAS panel would tend to pay respect to a fully reasoned decision and would not easily "tinker" with a well-reasoned sanction, not considering it proper to just slightly adjust the measure of the sanction (cf. CAS 2015/A/3875 at para. 109, CAS 2011/A/2645 at para. 94, CAS

2011/A/2515 at paras. 66-68; CAS 2011/A/2518 at para. 10.7, CAS 2010/A/2283 at para. 14.36).

142. The Panel notes that the Appellant has never contested, neither in his written submissions nor at the hearing, the disproportionate nature of the sanction imposed by the AHO. At the hearing, as observed, the Appellant just requested the issuance of "*fair and just decision*", without arguing why and to what extent the sanctions imposed were not fair or proportionate.

143. Having confirmed the AHO's Decision on liability, and in the absence of any allegation by the Appellant on the unfair and/or disproportionate nature of the sanction imposed on him, the Panel finds no reason to reduce the sanction that have been ruled appropriate by the AHO on the basis of the applicable rules.

X. COSTS

144. Article R65.1 of the CAS Code provides:

"*This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. It is not applicable to appeals against decisions related to sanctions imposed as a consequence of a dispute of an economic nature. In case of objection by any party concerning the application of Article R64 instead of R65, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the Panel on the issue*".

145. Article R65.2 of the CAS Code provides:

"*Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.*

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000. - without which CAS shall not proceed and the appeal shall be deemed withdrawn.

(...)".

146. It is undisputed between the Parties that the present case involves an appeal "*against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body*" under Article R65.1 of the CAS Code. Accordingly, pursuant to Article R65.2 of the CAS Code, the present case shall be free of costs except for the CAS Court Office filing fee of CHF 1'000 already paid by the Appellant, which is retained by the CAS Court Office.

147. Article R65.3 of the CAS Code provides:

"*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties*".

148. In light of the foregoing, having taken into account the outcome of the arbitration, the conduct of the Parties, and all the circumstances of the case, the Panel holds that the Appellant shall pay an amount of CHF 3'000 (Three-thousand Swiss francs) to the Respondent as a contribution towards its legal fees and other expenses incurred in the present arbitration.

*****

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Sanjar Fayziev on 3 November 2023 against the Ruling on liability and the Decision on sanction issued by the Anti-Corruption Hearing Officer on 25 July 2023 and on 4 October 2023 is dismissed.

2. The Ruling on liability and the Decision on sanction issued by the Anti-Corruption Hearing Officer on 25 July 2023 and on 4 October 2023 are confirmed.

3. The award is pronounced without costs, except for the CAS Court Office fee of CHF 1'000 (one thousand Swiss Francs) paid by Mr Sanjar Fayziev in respect of his appeal, which is retained by the CAS.

4. Mr Sanjar Fayziev is ordered to pay CHF 3'000 (Three-thousand Swiss francs) to International Tennis Integrity Agency as a contribution to its legal costs and other expenses.

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

Seat of arbitration: Lausanne, Switzerland
Date: 30 September 2024

THE COURT OF ARBITRATION FOR SPORT

Prof. Stefano Bastianon
President of the Panel

Mr Timour Sysouev
Arbitrator

Mr Manfred Peter Nan
Arbitrator