

In the matter of alleged Corruption Offences under the Tennis Anti-Corruption Program

The International Tennis Integrity Agency

-and-

Igor Smilansky

Before Anti-Corruption Hearing Officer:

Janie Soublière

Representing The International Tennis Integrity Agency:

George Cottle

Ross Brown

Julia Lewis

Representing Igor Smilansky:

Dr. Lucien Valloni

DECISION ON SANCTION

SUMMARY

1. Igor Smilansky was found liable for three breaches of the Tennis Anti-Corruption Program (TACP) related to the fixing of a match in 2018.
2. The AHO's reasoned Ruling on Liability is attached as an Addendum to this Decision on Sanction.
3. Mr. Smilansky is hereby sanctioned with two-year participation ban and a \$4 000 fine as a consequence to his TACP breaches.

INTRODUCTION

4. This dispute involves the International Tennis Integrity Agency ('ITIA') and Igor Smilansky, a professional tennis player.

5. On 13 December 2022, the ITIA charged Mr. Igor Smilansky, Mr. Sanjar Fayziev and Mr. Timur Khabibulin (all 'Covered Persons' or individually 'the Player' herein) with various TACP Corruption Offences. The three (3) Charges Mr. Smilansky faced related to his involvement in the fixing of two (2) professional tennis matches played at tournaments in 2018.
6. Janie Soublière holds an appointment as an AHO per Section F.1 of the TACP. The AHO was appointed without objection by any party to these proceedings as the independent and impartial adjudicator to determine this matter as set out in the 2022 TACP, which governs all procedural aspects of this dispute.
7. Mr. Smilansky denied the charges and requested a hearing before an Anti-Corruption Hearing Officer ('AHO') which was held on 29 and 30 June 2023.
8. The case was consolidated with the cases of Messrs. Sanjar Fayziev and Timur Khabibulin pursuant to Section G. 1. c.iii of the TACP because all charges being faced by the three Covered Persons pertain to the same alleged conspiracy, common scheme or plan. Thus, the procedure for all Covered Persons has been joined with a sole hearing being held. However, separate Rulings on Liability and Sanction are being issued for each Player.
9. The AHO issued a Ruling on Liability on 25 July 2023 finding Mr. Smilansky liable for two out of three Charges brought against him amounting to three TACP breaches. This is the AHO's Decision on Sanction.

THE PARTIES

10. The ITIA is appointed by the Governing Bodies who participate in the TACP, namely the ATP Tour Inc., the Grand Slam Board, the International Tennis Federation ('ITF') and the Women's Tennis Association ('WTA') Tour Inc., to administer the TACP. Professional tennis is structured such that top-level men's tournaments are organized by the ATP, whereas lower-level men's tournaments, such as ITF Futures tournaments which are part of the ITF Pro Circuit, are organized by the ITF. A player must register with the relevant Governing Body to be eligible to compete in their tournaments. The ITIA is empowered to investigate potential breaches of the TACP and to later bring charges against Covered Persons where they conclude that there are sufficient grounds to do so.
11. Mr. Smilansky is 28-year-old Israeli national and a professional tennis player who reached his career-high singles ranking of 451 in March 2018. All players who wish to play in professional tennis tournaments must register for an ITF International Player Identification Number ('IPIN'). Mr. Smilansky first registered in January 2010 and received the IPIN SMI1244209. Professional tennis players are required to endorse the ITF Player Welfare

Statement ('PWS') expressly on an annual basis which requires compliance with the TACP and the Tennis Anti-Doping Programme. The PWS contains clear wording that the relevant player is bound by the terms of the TACP, and the player acknowledges and accepts this by confirming their agreement to the content of the PWS. Mr. Smilansky has endorsed the PWS every year from 2010 to 2022 save for 2020. The mandatory Tennis Integrity Protection Programme (TIPP) is an online educational tool to assist a Covered Person with understanding their responsibilities under the TACP and how to spot when other individuals are breaching the terms of the TACP (including match-fixing and corrupt approaches). Mr. Smilansky completed the mandatory TIPP on several occasions, most recently on 1 May 2021.

APPLICABLE LAW AND JURISDICTION

12. Mr. Smilansky and the ITIA agree that the substantive allegations of this dispute are governed by the TACP in force when the alleged Corruption Offences brought against him occurred and that he is considered a Covered Person under each respective TACP.
13. Mr. Smilansky and the ITIA agree that the procedural rules applicable to the resolution of this dispute are the 2022 TACP and that he is considered a Covered Person under the same.
14. Mr. Smilansky has not objected to the appointment of the AHO, undersigned, to decide this matter. She has been properly appointed and seized of the matters in dispute.
15. No other matters relating to jurisdiction or the arbitrability of these matters have been raised by Mr. Smilansky.

PROCEDURAL BACKGROUND

16. On 25 July 2023, immediately after the issuance of each individual Ruling on Liability, the AHO issued Procedural Order 2 to all parties outlining the procedural calendar that had been agreed upon at the outset of the hearing. All parties respected the procedural calendar with regards to the Submissions on Sanctions.

THE PLAYER'S LIABILITY

17. In the AHO's Liability decision on 25 July 2023 Decision, Mr. Smilansky was found to be liable for the following TACP breaches:

- One breach of Section D.1.b and one Breach of D. 1 d of the 2018 Program in relation to his match against Cheng- Yu Yu.

“No Covered Person shall, directly or indirectly, contrive the outcome, or any other aspect, of any Event.”

- One breach of Section D.2.a.i of the 2018 Program for failing to report Mr. Khabibulin’s corrupt approaches to the ITIA.

“In the event any Player is approached by any person who requests the 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 ITIA as soon as possible, even if no money, benefit or Consideration is offered or discussed.”

PARTIES’ SUBMISSIONS ON SANCTION

18. The AHO has carefully considered the totality of the Parties’ written Submissions on Sanction. They are summarised below. Additional facts and allegations found in the Parties’ submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. The AHO refers in its award only to the submissions and evidence it considers necessary to explain her reasoning.

I. ITIA

19. The ITIA seeks for Mr. Smilansky to be banned from the sport of tennis of six years as well as the imposition of a fine in the \$10,000 and \$15,000 range.

20. The ITIA relies on the ITIA Sanctioning Guidelines (the Guidelines which were first issued in March 2021 by the Tennis Integrity Supervisory Board (the Supervisory Board) and updated on 1 July 2022. They outline the following five-step process by which to determine the appropriate sanction in a particular case:

1. Determining the category of offence;
2. Assessing the starting point for a sanction and where in the applicable range the case of Mr. Smilansky falls. This includes the impact of applicable aggravating or mitigating factors;
3. Consideration of any appropriate reduction for early admissions;
4. Consideration of any other factors which may merit a reduction in sanction, such as the provision of Substantial Assistance to the ITIA; and
5. Determining the appropriate fine (if any).

21. The Guidelines provide that where *“there are multiple Corruption Offenses, in the interests of efficiency, they should ordinarily be taken together in one concurrent sanctioning process*

(albeit taking particular cognizance of the offense(s) which carry(ies) the highest sanction)”. The ITIA submits therefore that all offences where liability is found are relevant to the consideration of sanction.

The Offences

22. The ITIA recalls that Mr. Smilansky has been found liable for one offence under section D.1.b of the TACP (facilitating betting), one offence under D.1.d of the TACP (match-fixing) and one offence under section D.2.a.i of the TACP (non-reporting).
23. The ITIA submits that match-fixing strikes at the very heart of the sport and poses a huge threat to the integrity of tennis and that the match-fixing offence which Mr. Smilansky has been found liable for represents an extremely serious Corruption Offense and is a severe risk to the sport of tennis.
24. The ITIA further recognizes that the offence of facilitating others to wager and non-reporting may not be as significant as match fixing. However it is still a serious offence which carry the possibility of a lengthy sanction as here the offence derives from the act of match-fixing and thus must be treated with a similar level of seriousness.
25. As to the offence of failing report corrupt approached the ITIA submits that:
 - It relies on Covered Persons to understand the TACP and to make a confidential report to the ITIA about any issues that concern them as potentially being some kind of corrupt approach that is in breach of the TACP.
 - Covered Persons are the most important third party since they are the direct recipient of corrupt approaches by match-fixers and gambling syndicate.
 - It is vital to the ITIA’s work that any Covered Person under the TACP is aware of the importance of reporting a corrupt approach made to them.
 - It is crucial for Covered Persons to understand that it is better, and in their best interests, to confidentially report their concerns rather than stay silent and hope they do not need to confront them.
 - Too many Covered Persons prefer to ignore their concerns and let breaches of the TACP continue on unchallenged.
26. As a result, the ITIA submits that the sanction imposed on Mr. Smilansky must reflect the necessary deterrent effect that this sanction can, and should, have towards all Covered Persons to ensure that they report their concerns to the ITIA and do so promptly.

The ITIA's Application of the Guidelines to Mr. Smilansky's offences

Step 1: Category of Offence

27. The ITIA explains that under the Guidelines, the category for an offence is split into two parts. The first is the level of culpability which determined by “weighing up all the factors of the case” and then ranked against various criteria in categories A to C. The second is the level of impact that a Covered Person's actions have had which are then ranked against various criteria in categories 1 to 3.

28. As to culpability, relying on the facts and evidence and the reasons of the Ruling on Liability the ITIA submits that:

- Mr. Smilansky clearly displayed “some planning or premeditation” in the offences for which he has been found liable. Relying on the facts and evidence in the case file and the AHO findings in the Ruling on Liability, Mr. Smilansky was involved in the match-fixing discussions very clearly displayed in the WhatsApp exchanges between he and Mr. Khabibulin. He was thus involved in some planning or premeditation with Mr. Khabibulin in respect of the offences with which he had been found liable.
- Given the conduct described above and in the Liability Ruling, it is clear that Mr. Smilansky is also liable for “acting in concert with others”. Mr. Smilansky acted directly or indirectly in concert with Mr. Khabibulin and indirectly with Mr. Mikos irrespective of the extent to which he knew (or claims to have known) of Mr. Mikos' involvement in the operation.
- Mr. Smilansky committed “several offences” namely three separate breaches of the TACP in 2018.

29. As to impact, relying on the facts and evidence and the reasons of the Ruling on Liability the ITIA submits that Mr. Smilansky falls between Category 1 and Category 2, but closer to Category 2 on the basis that:

- Mr. Smilansky's conduct involved “Major TACP Offense(s)”. Match-fixing and facilitating betting are two of the most serious forms of offence under the TACP, and Mr. Smilansky has been found liable for two such offences. They are undoubtedly Major TACP Offenses, albeit they do only relate to one match.
- Mr. Smilansky's conduct resulted in a “Material impact on the reputation and/or integrity of the sport”. All match-fixing offences damage the reputation and integrity of the sport. That impact is exacerbated by multiple offences which were fixed for substantial profit, Mr. Smilansky's willingness to corrupt his own matches and the involvement of both Mr. Khabibulin and Mr. Mikos.
- There was clearly a “Relatively high value of illicit gain” for Mr. Smilansky personally. The WhatsApp exchanges between Mr. Mikos and Mr. Khabibulin in respect of Mr.

Smilansky's match against Mr. Yu in November 2018 clearly demonstrate Mr. Mikos' intent for Mr. Smilansky to be paid "6000" for the match despite the pre-arranged fix in question not going exactly to plan. The ITIA therefore submits that Mr. Smilansky has received a significant sum for his role in fixing the match which he has been found liable for. He has therefore made a "Relatively high value of illicit gain", and particularly so when it is considered against the potential limited earnings that Mr. Smilansky might hope to earn from an ITF tournament.

Steps 2 -4: Starting point and Range

30. The ITIA notes that under the Guidelines, which as not prescriptive, the starting point for Category B.1 is a 10-year suspension, whereas the starting point for Category B.2 is a three-year suspension. The ITIA thus submits that the appropriate starting point for Mr. Smilansky would be a five-year suspension.
31. The ITIA further submits that there is no basis for any portion of this ban being suspended but that the starting point of a five-year ban can be amended depending on the relevance of any aggravating or mitigating factors.
32. The ITIA considers the following aggravating factors:
 - Mr. Smilansky impeded, hindered or wasted the ITIA's time by never making admissions throughout the process.
 - Mr. Smilansky's Multiple completions of TIPP training.
33. The ITIA has not identified any mitigating factors that could reduce the sanction notably because not admission of liability or expressions of remorse have been made. The ITIA also notes that no offers of substantial assistance have been made and thus there is no other reason for a reduction in sanction.
34. The ITIA thus submits, given that the starting point should be a five-year suspension, the aggravating factors identified serve to increase this to a suspension of six years and that this uplift of one year is appropriate in respect of the aggravating factors identified.

Step 5: Determining the Fine

35. The ITIA considers that a fine is appropriate and that such a fine would reflect the key aims of the TACP in reaching a reasonable and proportionate sanction which acts as an effective deterrent.

36. As Mr. Smilansky has been found liable for two out of the three Charges, which equates to three Major Offenses, the Fines Table in the Guidelines suggests that the appropriate fine for 1-5 Major Offenses is between \$0 and \$25 000.
37. The ITIA believes from the witness interviews in the case file that Mr. Smilansky has received a significant payment in respect of his match-fixing activities and submits that the appropriate fine should be between \$10 000 and \$15 000, without any portion being suspended.
38. On the basis of these submissions, the ITIA submits that it is reasonable, proportionate and in keeping with the Guidelines, that Mr. Smilansky be ordered to serve a ban from the sport of tennis for a period of six years and pay a fine between \$10 000 and \$15 000.

II. Mr. Smilansky

39. Mr. Smilansky first takes note of the AHO's Ruling on Liability, reserves his right to appeal the eventual Decision on Sanction and submits that he should not be sanctioned as requested by the ITIA.
40. While contesting the Ruling on Liability, Mr. Smilansky's submissions are made as if the Ruling on Liability was final and binding.
41. While the ITIA stated that the Player was willing to corrupt his own matches, he has in fact only been found liable for fixing one match, and no proof has been adduced by the ITIA that Mr. Smilansky made or received money from this match. Therefore the ITIA's allegation of Mr. Smilansky having "relatively high value of illicit gain" is incorrect. This cannot be considered an element to consider by the AHO's in the sanctioning decision. Therefore, the Categorisation under the Guidelines should be a C and not a B which means that the starting point for his sanction under the Guidelines should be a sanction of no more than six months.
42. In terms of aggravated factors identified by the ITIA, Mr. Smilansky rebuts them as follows:
 - He has and holds the right to contest allegations brought against him. That he did not and continues not to do so rather than admit and accept the charges cannot be held against him as an aggravated factor.
 - He did cooperate in his interview and freely handed over access to his Facebook account, these therefore should be considered mitigated factors.
 - The non reporting offence can be more or less consumed by the more severe offence and sanction for match fixing.

- There was little or not planning and premeditation – this cannot be considered an aggravating factor and should lead to lower culpability, if any.

43. The Player also argues that the ITIA failed to consider as mitigating factors the fact that he has never committed any disciplinary offence prior to this, holds a clean record, has a good character and always showed exemplary conduct on the court. He was also at the time of the offence, as submitted previously, going through a very difficult and fragile time in his life, when he “lost a little bit track of his life”.

44. The Player knew he could never make a living from professional tennis. He did not earn much from tennis during his career and simply played because it had always been his dream. He cannot pay the heavy fine proposed by the ITIA. A sanction that would not allow the Player to work in his profession and prohibit him from earning money during his sanction would be too severe a sanction. As he is uneducated, he can only work as a tennis coach or trainer.

45. Finally, even though the Procedural Order 2 indicated that the proceedings must continue to be conducted in the strictest of confidence, the press was informed about his Provisional Suspension for match fixing. This is a very big mitigating element, given that the Player is willing to appeal this decision.

DELIBERATIONS

46. The sanctions which may be imposed by the AHO are set out in section H.1.a of the 2022 TACP. That section reads as follows:

“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 (c)-(p), 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.”

Preliminary comments

47. In issuing this decision, the AHO reiterates that match fixing is a serious menace to tennis. Match fixing is a deliberate, intentional offense directly threatening the purity of competition by eliminating the uncertainty of its outcome, which is the very heart of each tennis match. This is even more so when players work with others, further tarnishing and

corrupting the sport and when conspiracies are formed and perpetuated to this end. The imposition of lenient sanctions would defeat not only the TACP's attempts and efforts to eradicate such corruption, but also the TACP's efforts to circumvent recidivism and deter other players from being swayed by the possible windfalls of match fixing, which the AHO fully appreciates are often considerably greater than a player's usual earnings for the event in question.

The ITIA's public reporting of the Provisional Suspension

48. The Player argues that the fact his Provisional Suspension was publicly reported is a breach of his rights and the AHO's Procedural Order 2 and a procedural breach on which an appeal may be based.

49. However, TACP section F.3.b provides that the imposition of a Provisional Suspension is Mandatory as in Section G.4.a. (and F.3.d.) and Section G.4.a reads:

"In the event that the Covered Person is found liable of one or more of the charges against them and sanction is not determined at the same time as the decision on liability, the AHO, either of the AHO's own volition or on an application by the ITIA, must impose a Provisional Suspension pending the final decision on sanction".

50. TACP Section G.4.e clearly provides that:

If the AHO determines that a Corruption Offense has been committed, the ITIA will publicly report the Decision in full, subject to any necessary information that the ITIA considers to be sensitive or confidential". (emphasis added)

51. Here the AHO had determined that a Corruption Offense was committed by Mr. Smilansky and issued a Ruling on Liability to this effect on 25 July 2023 in accordance with the TACP. Therefore, the ITIA was entitled under the TACP to report both the Ruling on Liability and the Provisional Suspension imposed under the same, as provided at Paragraph 141 of the AHO's Ruling on Liability which imposed the Provisional Suspension pursuant to Section G.4.a.

The Appropriate Participation Ban

52. As provided at the outset of the same, the Sanctioning Guidelines:

"are a reference tool for AHOs which aim to provide a framework to support fairness and consistency in sanctioning across the sport. The Guidelines are not binding on AHOs but set out principles and various indicators and factors which AHOs may

consider appropriate to take into account in their decision making. AHOs retain full discretion in relation to the sanctions to be imposed in accordance with the TACP and may apply or depart from the guidelines in accordance with the circumstances of the case.”

53. Relying on the Guidelines, the ITIA seeks a participation ban of six years, and deems that Mr. Smilansky offences sit between a B.1 (10 years) and B2 (three years) classification, thereby meriting a six-year ban due to aggravating factors.
54. Relying on the Guidelines, the Athlete argues that the only match he has been found liable for fixing should fall under the Guidelines C category and thus carry a six-month ban.
55. The AHO accepts that the Guidelines provide that where *“there are multiple Corruption Offenses, in the interests of efficiency, they should ordinarily be taken together in one concurrent sanctioning process (albeit taking particular cognizance of the offense(s) which carry(ies) the highest sanction)”*.
56. Mr. Smilansky’s argument that his Major Corruption Offence which carries the highest sanction is the only one that should be the one relied upon to determine the appropriate sanction. It goes without saying that all the other offences (e.g. non-reporting) flow out of the occurrence of the main match fixing offence. However, a Major Corruption Offence is just that – major. It is an important breach of the TACP and a serious threat and insult to tennis. It must be sanctioned as such.
57. To a limited degree, the AHO does accept some of the mitigating elements the Player has brought forth: his cooperation to a certain extent with the investigation and his good character. More importantly, he has again reinforced the fact that he admits and concedes, as supported by his wife’s testimony, that he was in a “bad place” mentally at the time the match fixing offence was committed. His concession in this regard is taken as a quasi-admission, which plays in his favor in terms of sanctioning as it is perceived as a notable mitigating factor.
58. On all the evidence and circumstances, the AHO finds that the Player falls within the Guidelines B.2 Category. Keeping in mind the unique circumstances of this case, legal precedent, the Guidelines and both parties’ submissions, notable the mitigating circumstances raised by the Player, the AHO finds that the imposition of a two-year ban on Mr. Smilansky is reasonable, proportionate and appropriate.

The Appropriate Fine

59. The AHO notes that very little in terms of reliable and verifiable evidence has been adduced by the ITIA to confirm how much money Mr. Smilansky earned as a result of his match fixing activities. The AHO agrees with Mr. Smilansky that the ITIA has not established to the required standard of proof that it was a “Relatively high value of illicit gain”.
60. The ITIA’s submissions also rely on the testimony of Mr. Mikos and Mr. Kassanov who in interview both said that they made money. Mr. Mikos allegedly made hundreds of thousands with Mr. Smilansky’s help. However, as found in the Ruling on Liability as the key reason why the first Charge against Mr. Smilansky could not be established because Mr. Mikos’ testimony has not been tested by cross examination, it can be given very little weight and cannot be the basis upon which the AHO can arrive at even an approximate quantification of the amount of money allegedly made by Mr. Smilansky.
61. However, the TACP, CAS case law and ITIA precedent and the Guidelines all provide that imposing a fine in addition to a ban is entirely appropriate¹. The AHO does believe that a fine should be imposed as a result of the Major Offence that has been committed. Even if the ITIA could not bring forward any compelling evidence to quantify the amounts Mr. Smilansky might have made, there is of course also a strong inference that Mr. Smilansky did make some money from his match fixing. This is because match-fixers are in the business to make money; there is no other reason why a player would risk so much.
62. The Player has also argued that for a fine to be imposed on him in addition to the impossibility to coach or train others would be excessive. The Ikhlef matter (where the player was fined 100 000 USD), provides additional insightful relevant commentary on the role and appropriateness of fines in addition to bans under the TACP:

*“The role of the fine in the TACP is not well understood or appreciated particularly when it comes occasionally to review by the CAS. The early CAS cases were not receptive to fines apparently thinking that a lifetime ban meant a person was unable to play tennis. **The sanction of ineligibility under the TACP is limited to the inability to participation in eligible tournaments and Events set out in the Appendix 1 to the TACP. A lifetime ban does not mean a complete inability to play or coach tennis (...).**”*

63. It bears mention that according to Section B.26 of the TACP “participation” refers *playing in, coaching at, accessing, attending or in any way receiving accreditation for, any*

¹See for example ITIA v Hossam 2022 and CAS 2020A7129& 7130 and all other cases posted on the ITIAs’ website Sanctions page.

Sanctioned Event. There is thus nothing preventing the Player from working as a coaching or trainer, so long as it is not in a “Sanctioned Event”.

64. Keeping in mind all the evidence and the circumstances of this case as discussed in the AHO’s Ruling on Liability and the fines proposed by the Guidelines and ITIA, the AHO finds that in addition to the two-year participation ban that is being imposed upon him, the total fine to be paid by Mr. Smilansky as a result of his corruption offences is to be set at four thousand US dollars (4 000 USD), with one thousand dollars suspended so long as Mr. Smilansky is not found liable for any other corruption offences in the future and respects his participation ban.

ORDER

65. The Player, Igor Smilansky, a Covered Person as defined in Section B.10 of the TACP, has been found liable for Corruption Offenses pursuant to Sections D 1. b, D 1. d., and D.2 a. i. of the 2018 TACP.

66. Pursuant to the TACP and the ITIA Sanctioning Guidelines, the sanctions imposed upon Mr. Smilansky as a result of these Corruption Offenses are:

- i. As prescribed in TACP Section H1a(iii), a two-year ban from “participation” in any sanctioned event, as defined in Section B.17 of the TACP effective on the date of this Decision with a credit for any period of provisional suspension previously served.
- ii. A 4 000 USD fine as prescribed in TACP Section H1a(i), to be repaid in accordance with a payment plan agree upon with the ITIA, with one thousand USD suspended should Mr. Smilansky continue to respect this ruling after his participation ban has lapsed.

67. Pursuant to TACP Section G.4.e., this award on sanction along with the AHO’s reasoned decision on liability are to be publicly reported.

68. Pursuant to TACP Section G.4.d. this award on sanction, read in conjunction with the AHO’s Ruling on Liability, is a full, final, and complete disposition of this matter and is binding on all parties.

69. This Decision can be appealed to Court of Arbitration for Sport in Lausanne, Switzerland within twenty business days from the date of receipt of the decision by the appealing party.

Dated at Beaconsfield, Quebec this 4th day of October 2023

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Janie Soublière C. Arb.
Anti-Corruption Hearing Officer

In the matter of alleged Corruption Offences under the Tennis Anti-Corruption Program

The International Tennis Integrity Agency

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Igor Smilansky

Before Anti-Corruption Hearing Officer :

Janie Soublière

Representing The International Tennis Integrity Agency :

George Cottle

Ross Brown

Julia Lowis

Representing Igor Smilansky:

Dr. Lucien Valloni

RULING ON LIABILITY

SUMMARY

The International Tennis Integrity Agency (hereinafter the 'ITIA') charged Igor Smilansky (along with Sanjar Fayziev and Timur Khabibulin) with corruption offences under the Tennis Anti-Corruption Program (hereinafter 'Program' or 'TACP').

The three Charges brought against Igor Smilansky relate to the alleged fixing of two matches in 2018 and together amount to five possible TACP offences as detailed herein:

Charge 1

- One alleged breach of Section D.1.b of the 2018 Program by directly or indirectly soliciting or facilitating any other person to wager on the outcome or any other aspect of any Event or any other tennis competition;

- One alleged breach of Section D.1.d of the 2018 Program by directly or indirectly contriving or attempting to contrive the outcome or any other aspect of any Event.

Charge 2

- One alleged breach of Section D.1.b of the 2018 Program by directly or indirectly soliciting or facilitating any other person to wager on the outcome or any other aspect of any Event or any other tennis competition;
- One alleged breach of Section D.1.d of the 2018 Program by directly or indirectly contriving or attempting to contrive the outcome or any other aspect of any Event.

Charge 3

- In addition to or in the alternative, one alleged breach of Section D.2.a.i of the 2018 Program by failing to report a corrupt approach.

Further to the conclusion of the first step in this adjudication process, Igor Smilansky has been found liable on a balance of probabilities for two of the three Charges.

Mr. Smilansky is to be sanctioned by the Anti-Corruption Hearing Officer (hereinafter the 'AHO') in a forthcoming decision once written submissions on sanctions have been made and the AHO has carefully considered the same.

INTRODUCTION

1. This dispute involves the TIA and Igor Smilansky, a professional tennis player.
2. On 13 December 2022, the ITIA charged Mr. Igor Smilansky, Mr. Sanjar Fayziev and Mr. Timur Khabibulin (all 'Covered Persons' or individually 'the Player' herein) with various Tennis Anti-Corruption Program ('TACP') Corruption Offences.
3. As outlined later in this Ruling, the three (3) Charges Mr. Smilansky relate to his involvement in the fixing of two (2) professional tennis matches played at tournaments in 2018.
4. Mr. Smilansky denied the Charges and requested a hearing before an AHO.
5. Janie Soublière holds an appointment as an AHO per Section F.1 of the TACP. The AHO was appointed without objection by any party to these proceedings as the independent and impartial adjudicator to determine this matter as set out in the 2022 TACP, which governs all procedural aspects of this dispute.
6. The case was consolidated pursuant to Section G.1.c.iii of the TACP because all charges being faced by the three Covered Persons pertain to the same alleged conspiracy, common

scheme or plan. Thus, the procedure for all Covered Persons has been joined with a sole hearing being held. However, a separate ruling is issued for each Player.

7. This is the AHO's Ruling on Liability.

THE PARTIES

8. The ITIA is appointed by the Governing Bodies who participate in the TACP, namely the ATP Tour Inc., the Grand Slam Board, the International Tennis Federation ('ITF') and the Women's Tennis Association ('WTA') Tour Inc., to administer the TACP. Professional tennis is structured such that top-level men's tournaments are organized by the ATP, whereas lower-level men's tournaments, such as ITF Futures tournaments which are part of the ITF Pro Circuit, are organized by the ITF. A player must register with the relevant Governing Body to be eligible to compete in their tournaments. The ITIA is empowered to investigate potential breaches of the TACP and to later bring charges against Covered Persons where they conclude that there are sufficient grounds to do so.
9. Mr. Smilansky is 28-year-old Israeli national and a professional tennis player who reached his career-high singles ranking of 451 in March 2018. All players who wish to play in professional tennis tournaments must register for an ITF International Player Identification Number ('IPIN'). Mr. Smilansky first registered in January 2010 and received the IPIN SMI1244209. Professional tennis players are required to endorse the ITF Player Welfare Statement ('PWS') expressly on an annual basis which requires compliance with the TACP and the Tennis Anti-Doping Programme. The PWS contains clear wording that the relevant player is bound by the terms of the TACP, and the player acknowledges and accepts this by confirming their agreement to the content of the PWS. Mr. Smilansky has endorsed the PWS every year from 2010 to 2022 save for 2020. The mandatory Tennis Integrity Protection Programme (TIPP) is an online educational tool to assist a Covered Person with understanding their responsibilities under the TACP and how to spot when other individuals are breaching the terms of the TACP (including match-fixing and corrupt approaches). Mr. Smilansky completed the mandatory TIPP on several occasions, most recently on 1 May 2021.
10. Although Mr. Smilansky challenges being so, for the reasons outlined, he is a Covered Person under the TACP.

THE NOTICE OF CHARGE

11. The alleged Corruption Offences that Mr. Smilansky has been charged with are outlined in the ITIA's 13 December 2022 *Notice of Major Offence under the 2022 Tennis Anti-Doping Program and referral to Anti-Corruption Hearing Officer* ('Notice of Charge').

12. Three Charges have been brought against Mr. Smilansky consisting of five TACP Offences. Some of the Charges brought against Mr. Smilansky are also being brought against Mr. Khabibulin for his involvement in fixing the same relevant match.
13. Schedule 2 of the Notice of Charge sent to Mr. Smilansky outlines the factual background giving rise to the Corruption Offences brought against him. These are reproduced below as the AHO could not summarize them any better:

“Former Greek professional tennis player, Konstantinos Mikos, was investigated for match fixing and betting on tennis by the ITIA (then known as the Tennis Integrity Unit) in 2014 and 2015. In May 2017, Mr. Mikos, was issued with a life ban by the ITIA for, amongst other things, making corrupt approaches to other Covered Persons. Mr. Mikos later contacted the ITIA in January 2020 to provide a considerable amount of information to assist the ITIA in its match-fixing investigations (the “Investigation”) so that he could benefit from Substantial Assistance. Mr. Mikos was interviewed by the ITIA on several occasions during 2020 and subsequently, including in 2022 (the “Interviews”). The content of Mr. Mikos’ personal mobile phone was also forensically downloaded and reviewed by the ITIA as part of the Investigation. Mr. Mikos provided, during the course of the Interviews, extensive details of his relationship and corrupt match fixing and betting activities with various individuals over the course of several years, one of which he alleges was Kazakhstani tennis player, Timur Khabibulin, and another he alleges was you. The messages and files contained on Mr. Mikos’ personal mobile phone demonstrate the extensive discussions Mr. Mikos had with Mr. Khabibulin including in relation to match-fixing arrangements involving you. The evidence of Mr. Mikos, or provided by him, is relevant to all of the Charges against you.. (...)”

14. The two main Charges against Mr. Smilansky relate to two separate matches in which he competed in November 2018 and make the same broad allegation that he worked directly with Mr. Khabibulin who, in turn, acted as an intermediary on behalf of Mr. Mikos to fix those matches. The remaining Charge relates to Mr. Smilansky’s failure to report the match-fixing approaches.
15. For the first Charge, the ITIA submits, given the admissions of Mr. Mikos and the evidence of betting operators, that Mr. Smilansky agreed directly with Mr. Khabibulin (and therefore indirectly with Mr. Mikos) that he was to lose the first set of a match played on 7 November 2018 in order to facilitate the successful bets of a third party in breach of Section D.1.b of the 2018 Program. In doing so, Mr. Smilansky contrived the outcome of an aspect of an Event (or ‘match’, hereinafter) in breach of Section D.1.d of the 2018 Program.

16. For the second Charge, the ITIA submits that, given the admissions of Mr. Mikos, the WhatsApp exchanges between Mr. Mikos and Mr. Khabibulin and the corroborating evidence from betting operators provided to the ITIA, that Mr. Smilansky agreed with Mr. Khabibulin that he would intentionally lose a match on 13 November 2018 in order to facilitate the successful bets of a third party in breach of Section D.1.b of the 2018 Program. In doing so, Mr. Smilansky also contrived the outcome of, or an aspect of, an Event in breach of Section D.1.d of the 2018 Program.
17. For the third Charge, the ITIA infers, as a minimum, that Mr. Smilansky was the recipient of a corrupt approach from Mr. Khabibulin for each of the matches. As he is required under the terms of the Program to have reported these corrupt approaches to the ITIA and failed to do so, the ITIA submits that he breached the Program on each occasion.
18. Mr. Smilansky denied all Charges and requested a hearing before an AHO.

APPLICABLE LAW AND JURISDICTION

19. All Parties to this matter agree that the substantive allegations of this dispute are governed by the TACP in force when the alleged Corruption Offences brought against each Covered Person occurred and that each respective Player is considered a Covered Person under each respective TACP. Mr. Smilansky had expressly reserved the right to make submissions on the applicable law, yet later agreed that the substantive allegations of the Charges brought against him are governed by the 2018 TACP and that he is a Covered Person under the same. Therefore, the 2018 TACP applies to the substantive allegations of this dispute.
20. All Parties to this matter agree that the procedural rules applicable to the resolution of this dispute are the 2022 TACP and that each relevant Player is a Covered Person under the same. Mr. Smilansky had expressly reserved the right to make submissions on the applicable procedural rules, but later agreed that the procedural rules applicable to all procedural aspects of this dispute are the 2022 TACP and that he is considered a Covered Person under the same.
21. Mr. Smilansky has not objected to the appointment of the AHO, undersigned, to hear this matter. She has been properly appointed and seized of the matters in dispute.
22. No other matters relating to jurisdiction or the arbitrability of these matters have been raised by any party.

BURDEN AND STANDARD OF PROOF

23. Section G.3.a of the TACP provides that *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.*
24. Section G.3.c. of the TACP 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.*
25. Relying on CAS 2011/A/2566, Mr. Smilansky argued that in some cases where more serious offences are alleged to have been committed, Court of Arbitration for Sport ('CAS') panels have agreed to apply a higher standard of proof. The ITIA rightly rebutted this argument clarifying that the case relied upon was a doping case and that the Rules in doping cases clearly provide that the standard of proof is that of comfortable satisfaction. This standard of proof does not apply here. When rejecting a similar argument, the Swiss Federation Tribunal recently held in 4A_486/2022 at paragraph 8.2 that the fact that doping cases provide for a higher standard of proof can have no bearing on match-fixing cases when it said:

(free translation from French)

"The fact that the anti-doping regulations set a stricter standard of proof than that applicable in the present case for finding the existence of an offence does not appear to be an issue. Given the difficulties inherent in proving cases of corruption and manipulation of sports matches and the limited investigative powers of the judicial bodies of sports federations, the standard of proof required by the TACP does not offend the sense of justice."

26. The Player has argued that given the severity of the Charges brought against him, the standard of proof should be higher than 51%. The TACP clearly states, however, that the standard of proof is to be on the balance of probabilities. This has also been confirmed by the CAS in CAS 2011/A/2490 when the Panel held 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"*.
27. The Swiss Federal Tribunal at paragraph 8.2 of 4A_486/2022 also confirmed that it was correct for an AHO and the CAS on appeal, to have applied the standard of proof of a balance of probabilities, as provided in the TACP, when making its findings on liability.

(free translation from French)

"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."

28. The standard of proof that applies is the one provided for in the TACP, which is unequivocally *a preponderance of the evidence*. Given the severity of the Charges, the AHO is ready to accept that the weight and quality of the evidence tendered by the party holding the burden of proof, here the ITIA, is all the more important. But the standard of proof remains as legislated in the TACP.
29. Thus, the ITIA bears the burden of proof, and the standard of proof to establish the corruption offences is the equivalent of the English law's *"balance of probabilities"* and 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 established by the governing regulation.

PROCEDURAL BACKGROUND

30. On 13 December 2022, the ITIA sent the Notice of Charge to Messrs. Smilansky, Khabibulin and Fayziev outlining the allegations and charges against the three Covered Persons, informing them of the identity of the AHO responsible for deciding this dispute, explaining that the allegations fall within the scope of Article G.1.c. TACP and that the cases were to proceed on a consolidated basis, without objection from any party. In the Notice of Charge, the Covered Persons were given ten Business Days to respond, either by requesting a hearing, making submissions, or other.
31. All three Covered Persons requested a hearing and a Conference Call was convened with all Parties, their Counsel and the AHO in order to set a Procedural Calendar. Directions were discussed and agreed upon by all Parties.
32. Further to this call, and after giving the Parties an opportunity to comment on the same, Procedural Order 1 ('PO1') was formally issued reflecting the directions agree upon.
33. On 8 February 2023, Mr. Smilansky objected to the concurrent disclosure and filing of documentation. The AHO rejected the application as follows:

"In response to Dr Valloni's request, the AHO notes that 3 February 2023 was the date by which he was to return proposed changes of this nature to the Draft PO1,

which he elected not to do. The AHO further notes that Dr. Valloni had expressly agreed to concurrent disclosure (along with all other procedural calendar items) during the Conference Call.

Thus, as expressly agreed upon by all during the Conference Call, all parties will be expected to produce all of the documents and information on which they intend to rely upon during the hearing by 27 February 2023 pursuant to paragraphs 15 and 16 of Procedural Order 1. The parties may, of course, supplement their documentation at a later date in accordance with paragraph 18 of Procedural Order 1.

Under the circumstances, the AHO considers this to be a fair procedure in accordance with TACP Section G.2.c. and thanks all parties for their cooperation.”

34. As agreed and procedurally ordered, all parties concurrently submitted a full and complete production of all documents and information which they intended to rely upon during the hearing and such other document(s) and other information in their possession and control which are or may be relevant in these proceedings on 27 February 2023, except for Mr. Khabibulin who elected not to do so.
35. Prior to the 5pm GMT deadline on 27 February 2023, Counsel for the ITIA informed all Parties and the AHO that although it had started uploading all its documents onto the SharePoint file, there was some delay in the system upload and thus some of the documents would effectively be uploaded after the established deadline of 5pm. No Parties immediately objected to the same.
36. On 16 March 2023, Mr. Smilansky filed an objection applying to exclude all the documents the ITIA had disclosed after the 5pm deadline on 27 February 2023. The AHO requested the other Parties to respond to Mr. Smilansky’s objection. Mr. Fayziev did not, and the ITIA objected on multiple grounds. The AHO then ruled as follows:

“The AHO acknowledges receipt of both Dr. Valloni’s request/Application on behalf of Mr. Smilansky and Mr. Cottle’s response to the same on behalf of the ITIA.

The AHO finds that the ITIA’s expressly disclosed and (sic) inadvertent delay in uploading the Documents was in fact due to technical issues and that the minor technical delay in successfully uploading the documents neither caused prejudice to any Party to these proceedings nor breached any Rules of the TACP or of natural justice.

Thus, the AHO holds that all Documents uploaded into the SharePoint by the ITIA on 27 February 2023 (regardless of the time uploaded) shall be included into the case file.”

37. Mr. Smilansky later maintained his objection in writing and at the outset of the hearing, which was duly noted by the AHO.

38. On 3 April 2023, Counsel for the ITIA requested an extension to file its written submissions further to which the AHO invited the other parties to make submissions on the same. Although none of the Covered Persons responded to the AHO’s invitation, on 5 April 2023, the AHO denied the request and ruled as follows:

“Counsel for the ITIA’s request for extension to file its submissions has been received.

The AHO notes that during the Procedural Call, the timeline for the ITIA’s submissions was first proposed by the ITIA’s counsel and then agreed upon by the parties and the AHO, with the rest of the procedural calendar being set as a result. PO1 was issued further to the same as also agreed upon by the ITIA’s counsel.

Neither Mr. Fayziev’s counsel, Mr. Smilansky’s counsel nor Mr. Khabibulin have made submissions objecting to the ITIA’s request in the short timeline that was provided for them to do so.

Nonetheless, considering the various other procedural requests, objections raised and ruled on to date, the AHO hereby denies the ITIA’s request for a one-week extension to 18 April 2023 to file its written submissions.

Given the Easter break, the AHO does extend the ITIA’s deadline to file its submissions by two days to 13 April 2023 5 pm GMT.

Without needing to alter the rest of PO1’s procedural calendar, the AHO also extends by two days Mr. Fayziev’s, Mr. Smilansky’s and Mr. Khabibulin’s deadline to file their submissions to 25 May 2023 5 pm GMT.”

39. The ITIA later filed its written submissions in a timely manner.

40. On 24 May 2023, Counsel for Mr. Fayzeiv requested an extension of 7 days to file her submissions without objection from any Party. The AHO granted an extension to all Covered Persons to 30 May 2023 to file their Response submissions, and modified the rest of the Procedural Calendar accordingly.

41. Both Messrs. Fayziev and Smilansky filed their Response submissions in a timely manner on 30 May 2023. Mr. Khabibulin did not.

42. On 5 June 2023, the AHO wrote to the Parties (i) asking Mr. Khabibulin to confirm his intention to participate in the hearing, and asking him to file submissions by 7 June 2023, if he wished to do so, (ii) asking Counsel for Mr. Fayziev to confirm if he intended to give evidence and be cross-examined at the hearing and if so, to file a will-say statement by 8 June 2023 and (iii) asking Counsels for Mr. Fayziev and Mr. Smilansky to inform the AHO if the respective Players would agree to waive confidentiality, which they both eventually did.
43. On 6 June 2023, Mr. Khabibulin confirmed that he intended to participate in the hearing but did not file his submissions by the extended deadline of 20 June 2023.
44. As directed by the AHO, the ITIA filed its Rejoinder in relation to Mr. Smilansky (and Mr. Fayziev) on 13 June 2023. While Mr. Fayziev filed a Rejoinder, Mr. Smilansky elected not to do so.
45. On the eve of the hearing, Mr. Khabibulin made a full admission to the AHO, admitted that he had committed all the Offences for which he had been charged and confirmed that he would be attending the hearing unrepresented. Later that same day, he recanted part of his admission to exclude charges related to any matches involving other Covered Persons, including those involving Mr. Smilansky.
46. A hearing was held by video conference, as scheduled, on 29 and 30 June 2023.
47. Attending the hearing were:

AHO	Janie Soublière
For the ITIA	Julia Lowis – Counsel George Cottle – Counsel Ross Brown - Counsel Denise Bain – Witness
For Mr. Smilansky	Igor Smilansky – Covered Person Dr. Lucien Valloni – Counsel Denisa Smilansky - Witness
For Mr. Fayziev	Sanjar Fayziev – Covered Person Feruza Bobokulova – Counsel
For Mr. Khabibulin	Timur Khabibulin – Covered Person

48. Prior to the closing of the hearing, subject to his procedural objections, notably that of not having the right to cross-examine Mr. Konstantinos Mikos, Mr. Smilansky confirmed that he was satisfied that the hearing had been conducted in respect of all his rights to natural justice.

PARTIES' SUBMISSIONS ON LIABILITY

49. The AHO has carefully considered the totality of the Parties' written submissions. They are summarised below. Additional facts and allegations found in the Parties' submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. The AHO refers in its award only to the submissions and evidence it considers necessary to explain her reasoning.

SUBMISSIONS AND EVIDENCE

I. ITIA

50. The ITIA submits that Mr. Smilansky is liable for all the Charges. On a preponderance of the evidence there is strong evidence of Mr. Smilansky's involvement in match-fixing activities during the relevant period in respect of his own matches. The evidence demonstrates Mr. Smilansky's involvement in these activities and paints a clear picture of an individual who was content to corrupt the sport of tennis for his own financial gain. That is the most logical conclusion to draw from the evidence that is available. It is also supported by admissions made by Mr. Mikos in the course of his interviews with the ITIA. The ITIA submits that there is no credible alternative explanation for the evidence available.

The Evidence

51. The evidence the ITIA relies upon is varied. The sources of evidence are outlined as follows:

Evidence from Betting Operators

52. The ITIA explains that it works closely with betting operators and related organisations to target corruption in tennis. This relationship is mutually beneficial: the ITIA is able to locate, identify and sanction individuals who seek to corrupt the sport of tennis to the detriment of all those who play it, and the betting organisations protect their members and

customers from being negatively impacted by corruption and those who profit from illegal activity. The ITIA receives reports of suspicious betting patterns either directly from betting operators or from organisations like the International Betting Integrity Association (formerly known as ESSA) or Sportradar AG.

53. Information received by the ITIA from betting operators relates to Charges 1 and 2.

Admissions in Interview

54. The ITIA interviewed Mr. Mikos on six separate occasions between February 2020 and July 2022. During the course of those interviews, Mr. Mikos explained how he, Mr. Khabibulin and Mr. Smilansky fixed two separate matches in 2018.

55. The information obtained by the ITIA in its interviews with Mr. Mikos relates to Charges 1 and 2.

Forensic Mobile Phone Download

56. The forensic download of Mr. Mikos' phone produced a significant amount of WhatsApp exchanges between Mr. Mikos and Mr. Khabibulin between 2017 and 2019 and other relevant documentary evidence, such as screenshots of betting odds for relevant matches.

57. The content of Mr. Mikos' forensic phone download is relates to Charges 1 and 2.

ITIA Documents

58. The ITIA relies on documents produced internally or by tennis governing bodies, such as match scorecards.

The Charges

59. On the basis of the available evidence, the ITIA submits that Mr. Smilansky should be found liable for all of the alleged breaches of the TACP that are the subject of the Charges below.

60. The ITIA's submission first addresses Charge 2 given the more fulsome WhatsApp exchanges seen in that Charge before addressing Charge 1 to which it applies the same analysis.

Charge 2

61. This Charge concerns the singles match between Mr. Smilansky and Cheng-Yu Yu, which took place on 13 November 2018 as part of an ITF Futures F9 tournament in Bangkok, Thailand. Mr. Yu won the match 6-4, 6-1.

62. The ITIA submits that the WhatsApp messages, tendered into evidence by the ITIA and reviewed at length during the hearing, present an overwhelming case that Mr. Smilansky was involved in fixing this match alongside Mr. Khabibulin and Mr. Mikos. The messages are very clear and can only be explained by match-fixing. There is no other basis for the messages being exchanged between Mr. Mikos and Mr. Khabibulin. Mr. Mikos has confirmed that Mr. Khabibulin acted as an intermediary in order for Mr. Smilansky to fix this match. To the ITIA, there is no reason to disbelieve Mr. Mikos' position in his interview transcripts, as all he was doing was confirm what is clear from the messages themselves.
63. Ms. Bain's witness statement and oral evidence explain that match fixing is a coordination exercise that requires for arrangements to be made and put in place with the relevant player, the fixer and usually an intermediary, keeping in mind the odds, the betting limits and the markets, whilst trying to avoid raising suspicion of betting operators.
64. Against that background, the ITIA submits that there is simply no basis for suggesting that Mr. Mikos was at the time engaging with this process in such detail if he did not think that he stood to make significant sums of money from it. There can be no doubt that Mr. Mikos thought this match was fixed. Mr. Khabibulin delivers the crucial messages from Mr. Smilansky being that he is available and willing to fix the match to Mr. Mikos. It is clear that Mr. Smilansky is in contact with Mr. Khabibulin – there is no other way to read the messages.
65. This match is also notable for Mr. Smilansky appearing to execute the fix incorrectly as Mr. Mikos gives an unusual level of detail in explaining what went wrong. It is clear from his comments that the betting was intended to affect three aspects of the match: 1) for Mr. Yu to be the first player to score and reach four games in the first set 2) for Mr. Yu to be the first to score and reach five games in the first set and 3) for Mr. Yu to win the first set itself. However, Mr. Smilansky reached four games first in the first set, meaning the bets made in favour of the first outcome were lost.
66. The ITIA explains that:
- From the WhatsApp messages, it is clear upon reading that Mr. Mikos is seemingly furious with this outcome and blames Mr. Smilansky for the mistake.
 - He tells Mr. Khabibulin that he is not interested in hearing any explanation for the error from Mr. Smilansky and confirms that, regardless of the overall outcome, he is still prepared to pay Mr. Smilansky the agreed fee for the fix – in this case, "6000".
 - This clearly demonstrates that Mr. Smilansky had agreed to fix the match in return for financial gain – there is no other reason Mr. Mikos would be agreeing to pay him.

67. To the extent that any additional evidence is required, the nature of the bets themselves lends further support to the ITIA's position. The account that placed the Bet365 bets was linked to Mr. Mikos, either through the individual being an associate or through it being an account Mr. Mikos had control over.
68. Very significant bets were placed with over €18,000 wagered by Mr. Mikos and his team. That is plainly a very substantial sum, which, the ITIA submits, would not have been gambled had Mr. Mikos, a professional match-fixer, not been certain about being successful and which demonstrates that at the time of placing the bets he had complete confidence in the outcome – he thought the deal with Mr. Khabibulin and Mr. Smilansky was infallible.
69. The ITIA therefore submits that, with regards to Charge 2, Mr. Smilansky facilitated another party to wager on the outcome or an aspect of an Event and that he also contrived the outcome or an aspect of an Event in breach of Sections D.1.b and D.1.d of the 2018 TACP, respectively.

Charge 1

70. This Charge concerns the singles match between Mr. Smilansky and Abhinav Sanjeev Shanmugam, which took place on 7 November 2018 as part of an ITF Futures F8 tournament in Nonthaburi, Thailand. Mr. Shanmugam won that match 6-4, 7-5.
71. The ITIA does not have any WhatsApp exchanges between Mr. Mikos and Mr. Khabibulin in relation to this Charge. Ms. Bain has explained that they are likely to exist but are just not available to the ITIA (for an unknown reason).
72. The ITIA submits that there are two potential reasons that this match was likely subject to match-fixing. The first is that the match relevant to this Charge takes place less than a week before the Charge 2 match, for which there are extensive exchanges. The second is that those exchanges for the Charge 2 match open with the comment, "*Smilansky already in*". That plainly suggests that the Charge 2 exchanges were not the first time that Mr. Smilansky was being discussed.
73. The ITIA submits that there remains sufficient evidence to prove this Charge.
- Mr. Mikos was clear when interviewed that this match was fixed, and he offered some points of detail which demonstrate his own clear recollection of that fact. Firstly, he made a specific reference to an Israeli player whom Mr. Khabibulin had forged a relationship with. This is a reference to Mr. Smilansky.

- Mr. Mikos recalled the successful nature of the betting on this match due to the significant sums won. He referred to €30,000 in total, with Mr. Khabibulin receiving “6,000 plus 5,000 extra” as well as it being “the best ITF match” that he had ever been involved with. The inferences being that a proportion of the winnings, the “5,000 extra” was for Mr. Smilansky and that it was higher than usual for an ITF match.
- Mr. Mikos recalled the agreed fix for the match where he stated it was “First set, max 6-4, no Tie-break in the Match”. That is borne out by what happened in the match with the first set being won by Mr. Shanmugam 6-4 and there being no tiebreak.
- Mr. Mikos recalled how payment was made for this match, by reference to meeting a woman, sent by Mr. Khabibulin, at an airport to hand over match-fixing payments in cash, including the one for Mr. Smilansky following his fixing of this match.

74. The ITIA also submits that Mr. Mikos’ admissions are of some significance.

- He was, for several years, a professional gambler and match-fixer. He made substantial profits from his corrupt activity.
- One of Mr. Mikos’ principal contacts was Mr. Khabibulin. They were close and their relationship was at times a strong one as they worked together for significant financial return.
- He described the basis of his relationship with Mr. Khabibulin as being about the business of match-fixing for profit and the extent of the relationship 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. The messages are, of course, contemporaneous and speak for themselves. They are of significant evidential value in these proceedings and provide relevant background to this Charge.

75. As a result, the ITIA submits that there is no reason to doubt the admissions of Mr. Mikos in interview or any of the related descriptions of his match-fixing empire. Mr. Mikos is simply describing to the ITIA what is already evident from the WhatsApp messages so his comments in interview also have evidential value in these proceedings.

76. The ITIA submits that its conclusion is further supported by the bets themselves:

- Bet365 reported six bets placed by one bettor, within a minute, all on Mr. Shanmugam to win and on him to win the first set.
- The total sum of the bets stands out with £5,627 placed across the six bets which generated a total profit of £16,419.

77. Therefore, the ITIA submits that Mr. Smilansky facilitated another party to wager on the outcome or an aspect of an Event and that he also contrived the outcome or an aspect of an Event in breach of Sections D.1.b and D.1.d of the 2018 TACP, respectively.

Charge 3

78. In addition, or in the alternative, to Charges 1 and 2 above, the ITIA submits that Mr. Smilansky failed to report corrupt approaches made to him, as per Section D.2.a.i of the TACP.
79. The ITIA alleges that Mr. Khabibulin directly approached Mr. Smilansky in connection with fixing tennis matches and that it is inconceivable that Mr. Smilansky did not have knowledge of Mr. Khabibulin's corrupt practices. Mr. Smilansky was therefore required to report that information to the ITIA at the relevant time. By electing not to do so, he breached Section D.2.a.i of the 2018 TACP.

II. Mr. Smilansky

80. Mr. Smilansky firmly contests the three Charges brought against him.
81. He first argues that the standard of proof applicable to this matter should be higher than 51% relying on what he refers to as *"the well-established rule in disciplinary matters that the heavier the allegations made, the higher the standard of the burden of proof must be"*.
82. He submits that an allegation of match fixing is similar to an allegation of fraud and that clear and direct proof of match-fixing is necessary to safeguard the rights that derive from the application of Article 6 of the European Convention of Human Rights which he says applies because of the forced arbitration situation in which the Player finds himself. He says speculation is insufficient to meet the evidentiary standard when considering that there is not one single proven contact between the Player and the match-fixers. And finally he argues that given the seriousness of the allegations, the AHO must have a very high degree of confidence in the quality of the evidence to confirm the Charges brought against him and that there is no such evidence here.
83. Mr. Smilansky submits that he does not know Mr. Mikos and has never been in contact with him. He also submits that while he has heard of Mr. Khabibulin, he has never been in contact with him; other than saying mundane words like *"hello"* or *"good morning"*. There is no evidence in the case file or in Ms. Bain's interview which confirms that Mr. Smilansky was ever in direct contact with Mr. Khabibulin or Mr. Mikos to fix matches.
84. With regards to the two matches, the first that he played on 7 November 2018 and lost 4-6, 5-7, and the second, on 13 November 2018 and lost 4-6, 1-6, he relies on Mindverse, an artificial intelligence research company that is designed to build digital consciousness with

autonomous consciousness and digital thinking ability. He argues that according to Mindverse 6-4 is statistically the most common result in a tennis match.

85. He explains, as confirmed by his wife, that when he was in Thailand to play these tournaments, his physical and mental condition was poor. He attributes this to the fact that he had recently been in a motorcycle accident and had broken up with his long-time girlfriend (now his wife). Rather than focusing on his tennis, he was going out, drinking, smoking, eating and sleeping poorly. This, added to the hot and humid conditions, made him feel physically weak.

86. He describes the reasons he lost all his matches in Thailand as follows:

"I was feeling devastated and, as mentioned above, could not find my confidence in myself as a player, which was visible to the outside. As a player, it is crucial to have mental and physical strength and peace, both of which I was lacking during the tournaments in Thailand. After the motorcycle accident and the breakup, I did not stick to my trainings as I should have, did not eat how I should during tournaments and was not at peace with my heart and thoughts."

87. This is the only reason he lost these matches. They were not fixed.

88. Mr. Smilansky disputes Ms. Bain's witness statement in its entirety. First, he clarifies, unlike she alleged therein, that he could have adapted to the Thai climate before his matches, considering he had arrived in Thailand on 15 October 2018, three weeks ahead of the matches in question. However, according to the evidence he adduced, Mr. Smilansky was in Israel on 15 October 2018, and not Thailand.

89. Second, Mr. Smilansky contests that he acknowledged that the diminutive "smil" referred to him in his interview with Ms. Bain. What he acknowledged was that he changed his name from Smilanski to Smilansky and nothing more. (Both Ms. Bain and the ITIA later conceded this point.)

90. Third, he rebuts Ms. Bain's assertion that he was unconvincing and evasive when she showed him a WhatsApp exchange between Mr. Mikos and Mr. Khabibulin where the diminutive "smil" was used. At page 26 of the interview transcripts, he stated that *"the allegations are wrong and that he did not fix a match and that he played to win the match 100%"*. There is nothing more he could say about something he knows nothing about and individuals he did not know.

91. Mr. Smilansky is offended by the treatment he has received by the ITIA considering he was cooperating with the investigation. He feels that he was bullied by the interviewers and

the ITIA and that he has been unfairly charged with offences that have nothing to do with him and that are tarnishing his reputation.

92. He also notes that:

- Mr. Khabibulin has contested all allegations and claims someone misused his phone.
- Perhaps the Russian Mafia is responsible for Mr. Khabibulin misusing his phone.
- Mr. Smilansky has nothing to hide. He immediately gave Ms. Bain his Facebook password for the purpose of her investigation and she failed to find anything.

93. Specifically, with respect to Charge 1, Mr. Smilansky argues that:

- Information relating to this alleged fix is vague, speculative and based purely on Ms. Bain's interview with Mr. Mikos.
- Ms. Bain reports that Mr. Mikos allegedly handed over money to an unknown woman in a Starbucks, but there is no evidence linking the Player to this exchange of money.
- Mr. Mikos' evidence is not convincing as he initially stated that he exchanged the money in 2019, but then amended this date to 2018 when Ms. Bain corrected him.
- There is no evidence to confirm the EvaBalta76 betting account belonged to Mr. Mikos. This is Ms. Bain's vague and unconvincing conclusion.
- Even if Ms. Bain does not believe him, his explanation as to why he lost the match is persuasive, as corroborated by his wife.

94. Specifically with respect to Charge 2, Mr. Smilansky argues that:

- The ITIA has no proof that he made himself available or was willing to fix a match.
- There is no proof whatsoever that Mr. Khabibulin was ever in contact with him in relation to this alleged fix and it cannot be accepted that Mr. Khabibulin told Mr. Mikos that Mr. Smilansky had been contacted about the fix when that was never the case.
- The outcome of the match which is the object of the second Charge did not even yield the outcome expected, which makes it more likely that Mr. Khabibulin simply made Mr. Mikos believe that he had spoken to him but never had.
- Ms. Bain's unsupported assertion that the "karolos1925" betting account was registered to Georgios Karalis and controlled by Mr. Mikos is speculative and vague as are most of her statements in relation to this Charge, notably the one regarding the "over and above" €6000 profit that was allegedly made.

95. Finally, with respect to Charge 3, Mr. Smilansky argues that:

- He was never in touch with Mr. Khabibulin or Mr. Mikos and knew nothing of their match-fixing operation.
- The assumption that Mr. Smilansky was either the recipient of corrupt approaches or that he had knowledge of these two men's activities is speculative as there is no proof

of any kind of conversation having occurred between Mr. Smilansky and either Mr. Mikos or Mr. Khabibulin.

96. Mr. Smilansky also rebuts many of the ITIA's allegations as follows:

- The ITIA's submission that Mr. Mikos has control over some of the accounts from which many of the bets related to Charge 1 and 2 were placed is unproven. It appears simply to be Ms. Bain's belief as Mr. Mikos does not appear to have corroborated with the ITIA's investigation in this regard.
- The fact that he could not comment on the WhatsApp exchange between Mr. Mikos and Mr. Khabibulin cannot be held against him and lead to the conclusion that he was being evasive: *"What kind of explanation could he give when asking about a conversation between two people he does not know nor had any contact with?"*
- There is no direct evidence that the Player was ever in contact with Mr. Mikos or Mr. Khabibulin. He was not involved in any kind of match-fixing and was never approached to fix a match. Most of the ITIA's allegations and Ms. Bain's beliefs are speculative and vague.

97. Therefore, given the seriousness of the allegations and the weak evidence tendered to support the same, the Player submits that he should not be found liable for any of the three Charges brought against him.

DELIBERATIONS

98. Prior to assessing the merits of each Charge, the AHO first addresses key arguments raised by Mr. Smilansky in the course of these proceedings.

Substantial Assistance

99. Mr. Smilansky argues that the ITIA should never have agreed to reducing Mr. Mikos' sanction based on his substantial assistance because he is a liar, connected to the Mafia and that he probably made everything up. He has argued that Mr. Mikos' testimony is unreliable because he is a liar and would have said anything to get a reduced sanction, including making up lies about other players. He chastised the ITIA for reducing Mr. Mikos' sanction and charging innocent players with corruption offences based solely on his unreliable testimony, but presents no facts to support the speculative character assassination assertions made in this regard.

100. The ITIA strongly rebutted the allegation made against it claiming that it is an (other) Anti-Corruption Hearing Officer, who further to having the matter brought before them, agreed to a partial coaching reinstatement for Mikos' Substantial Assistance. The ITIA argued that

Substantial Assistance can only be given if specific criteria are fulfilled and that in this case the AHO found that they were.

101. The AHO thus felt it imperative to verify what is effectively required under the TACP in order for the Substantial Assistance clauses of the TACP to be applied. This, in turn, has justified the AHO relying, albeit to a very limited extent, on some of Mr. Mikos' evidence even though he was not present at the hearing to be cross-examined on the same.

102. Section B.35 of the 2022 TACP defines Substantial Assistance as *"assistance given by a Covered Person to the ITIA that results in the discovery or establishing of a corruption offense by another Covered Person"*.

103. Section H6 of the 2022 TACP provides:

"Substantial Assistance. At any time other than during the pendency of an appeal of a Decision, the AHO may reduce any period of ineligibility if the Covered Person has provided Substantial Assistance to the ITIA. Upon application by the Covered Person pursuant to this provision, the AHO shall establish an appropriate procedure for consideration of the application, including the opportunity for the Covered Person and the ITIA to make submissions regarding the application. Where a Covered Person commits a Corruption Offense in order to provide Substantial Assistance, the commission of the Corruption Offense shall invalidate the Substantial Assistance application and the ITIA will, notwithstanding any prior contrary order of an AHO, publicly report the Decision in full, subject to any necessary information that the ITIA considers to be sensitive or confidential and the exceptions set forth in Section G.4.e. Further, such Corruption Offense may be the subject of a separate prosecution by the ITIA. The AHO has complete discretion in consideration of an application for reduction of a penalty under this provision."

104. The AHO is thus satisfied that a robust process to test the legal validity and reliability of Mr. Mikos' evidence and admissions was followed prior to granting Mr. Mikos some leniency to his lifetime ban, and that the evidence Mr. Mikos provided during this process was legally tested both by the ITIA and an Anti-Corruption Hearing Officer prior to the Substantial Assistance provisions of the TACP effectively being implemented.

105. As Mr. Mikos' evidence and admissions have been scrutinized and tested to a certain degree by an Anti-Corruption Hearing Officer and the ITIA in order for him to benefit from Substantial Assistance provisions of the TACP, the AHO finds that attributing some very limited evidentiary weight to the evidence Mr. Mikos provided in no way breaches Mr. Smilansky's right to a fair trial and falls within an AHO's discretionary powers under Section G.3.c of the TACP.

The inability to cross-examine Mr. Mikos

106. The AHO next addresses the argument raised by Mr. Smilansky (and Mr. Fayziev) with regards to Mr. Mikos not being available for cross-examination. The AHO would have compelled Mr. Mikos to attend if she had this power. The TACP does not provide a power for the AHO to compel witnesses to present themselves at a hearing.
107. Mr. Smilansky strongly argues that his inability to cross-examine Mr. Mikos and to test his evidence and allegations is a significant, if not fundamental, breach of his right to a fair hearing. He argues that the ITIA wrongly relies on Ms. Bain's interview transcripts and "beliefs" in relation to Mr. Mikos' admissions and that any evidence given by Mr. Mikos cannot be relied upon. He is a liar, a known cheater and match-fixer, and a member of the Greek Mafia, who cannot be trusted. He has made up stories about other innocent players like himself in order to benefit from a reduction in his lifetime ban.
108. The ITIA, on the other hand, explains that it wanted Mr. Mikos to be present at the hearing for direct examination as he could have confirmed all his admissions made in interview with Ms. Bain and could have explained in greater detail how all the matches were fixed for a significant profit. Counsel for the ITIA explains that as Mr. Mikos is no longer a Covered Person, he could not be compelled to testify under the TACP. The ITIA also confirmed, as suggested by the AHO at the outset of day two of the hearing, that the AHO could also not compel Mr. Mikos to testify.
109. It would certainly have been desirable for Mr. Mikos to testify directly at the hearing. His non-attendance does not amount to a violation of Mr. Smilansky's right to a fair trial but it does result in the reliability and weight of Mr. Mikos' evidence being extensively reduced as it was not tested by the Covered Persons who have been charged with Corruption Offences as a result of his admissions.
110. Where the ITIA's Charges appear to flow mostly from Mr. Mikos' untested statements, the AHO has not considered the evidence as being legitimate as it remains untested, and thus it is not sufficiently compelling to even consider the drawing of inferences.
111. Therefore, although the AHO could only attribute very limited weight to Mr. Mikos' evidence due to the fact that he was not available for cross-examination, given that Mr. Mikos' evidence was legally tested by an Anti-Corruption Hearing Officer prior to agreeing to grant Mr. Mikos a reduction in sanction based on Substantial Assistance and then by the ITIA prior to proceeding with these Charges, and given its detail and its ability to corroborate the other evidence adduced (WhatsApp messages, wire transfers, etc.) it is

deemed admissible but given very little weight due to Mr. Mikos' lack of viva voce testimony.

The WhatsApp Messages between Mr. Khabibulin and Mr. Mikos

112. All three Covered Persons have alleged that the pages upon pages of spreadsheets containing detailed WhatsApp messages between Mr. Khabibulin and Mr. Mikos, whether text, video or audio could either all have been fabricated by Mr. Mikos, or that someone else (unidentified) has stolen Mr. Khabibulin's phone or had hacked into it and, unbeknownst to Mr. Khabibulin, had chatted with Mr. Mikos and set up detailed operations (identified players, picked events, organized payment, etc.) and fixes for matches for months and years on end. The AHO rejects all such arguments.
113. Even if Mr. Mikos was the one who willingly provided his phone and cannot be cross-examined on the same, the AHO is satisfied that a forensic download and analysis of Mr. Mikos' phone (as explained by the ITIA) 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. To suggest the same is non-sensical. Finally, the AHO is also satisfied that Mr. Khabibulin's phone was not hacked by an unknown person and that all the WhatsApp conversations between him and Mr. Mikos are true and accurate representations of real conversations that were exchanged in real time between them.
114. Thus, significant weight has been attributed by the AHO to the incriminating and highly compelling WhatsApp messages which remain unsuccessfully challenged.
115. The WhatsApp messages are direct documentary evidence which has incriminated Mr. Khabibulin and led to him being found liable for all the Corruption Offences for which he has been charged. The WhatsApp messages have also been considered compelling and reliable documentary evidence that has incriminated Mr. Fayziev in a parallel ruling, together with other compelling documentary and betting operator evidence, and resulted in him being found liable for some Corruption Offences. And finally, so too can these WhatsApp messages be considered highly incriminating, compelling and reliable documentary evidence that has incriminated Mr. Smilansky.

Lack of direct evidence

116. The AHO next addresses Mr. Smilansky's other main contention, which is that there is a lack of direct evidence linking Mr. Smilansky to either Mr. Mikos or Mr. Khabibulin.

117. Mr. Smilansky takes exception to the fact that none of the evidence relied upon by the ITIA directly involves him in any match-fixing and that without direct evidence, the case simply must fail. The ITIA, on the other hand, submits that inference is what TACP cases are often based upon as match-fixing allegations are usually very difficult to uncover.
118. The ITIA further submits that it is not surprising for there to be little or no written communication between Mr. Smilansky and either Mr. Mikos or Mr. Khabibulin, as for a number of reasons it is common in anti-corruption proceedings not to have direct communications between the player and fixer. Whereas Mr. Smilansky argues that the ITIA has “*nothing*” and its evidence fails to link Mr. Smilansky in any way to Mr. Mikos, the ITIA argues that the evidence in the case file is strong and sufficiently compelling to conclude that the Player committed all the offences for which he has been charged and that it would not have proceeded with the Charges otherwise. In this regard, the ITIA reiterates that the only logical or reasonable conclusion to draw from the evidence (in particular the extensive WhatsApp messages between Mr. Mikos and Mr. Khabibulin which explicitly reference Mr. Smilansky’s surname in full and by diminutive on numerous occasions and which discuss Mr. Smilansky’s matches), is match-fixing and there can be no other plausible explanation.
119. 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. As determined in the 2023 *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 the preponderance of the evidence as being more likely than not.”

120. *Crepatte* also clearly determined that “...it is possible to find a breach of the TACP without *direct evidence*”. And, as provided in the TACP, the burden of proof may be satisfied by any reliable means. Thus, in order to determine if TACP breaches have occurred in this case, the AHO must consider all the evidence in the case file, which in fact includes evidence that is both direct and indirect, and may draw inferences from the same so long as the evidence is sufficiently reliable and compelling.
121. Consequently, applying the above established applicable legal principles, ITIA case law, the TACP and the rules of natural justice, the AHO has considered all of the evidence in the case file, attributed weight to each party’s tendered evidentiary elements and arguments, and makes the following succinct findings with regards to each Charge.

Charge 1

122. Charge 1 relies predominantly on Mr. Mikos' recollection of this fix. Yet, Mr. Mikos is not available for examination, and there are no WhatsApp messages to corroborate Mr. Mikos' admissions in relation to Charge 1.

123. Mr. Smilansky's and his wife (who was his girlfriend at the time) testified to the effect that he was physically and mentally unwell during the period this match was played and that he had no involvement in the fixing of this match.

124. It appears that Mr. Smilansky may have been involved in fixing this match: the fact that he was the higher-ranked player and expected to win, and the fact that a flurry of betting activity surrounding him losing the first set to Mr. Shanmugam, his lower-ranked opponent, led to significant amounts of money being gambled and paid out, all increase the likelihood of rendering a finding on a balance of probabilities possible. Ms. Bain also testified that Mr. Mikos had a clear recollection of this match, because it earned him so much money, as corroborated by the bettor in question whom Ms. Bain believes was controlled by Mr. Mikos and the Greek Betting syndicate with which Mr. Mikos was associated. While the AHO has not accepted Ms. Bain's beliefs and opinion as fact, the scale of the betting involved in this match, nonetheless could support the conclusion that Mr. Smilansky was in on the fix.

125. However, the evidence before the AHO is not sufficient to draw this inference and without Mr. Mikos being able to testify in order to corroborate the contents of his interview, with no additional evidence from which to draw reasonable or logical inferences of Mr. Smilansky's involvement, the weight to be given to his testimony is not sufficient to allow the ITIA to satisfy its legal burden.

126. Charge 1 is therefore not established to the required standard of proof and Mr. Smilansky cannot be found liable for the same.

Charge 2

127. The WhatsApp messages, described in some detail by Ms. Bain, produced in evidence and meticulously reviewed by the ITIA in the course of the hearing present a compelling case that Mr. Smilansky was involved in fixing this match alongside Mr. Khabibulin and Mr. Mikos. The messages are unambiguous. They can only be explained by match-fixing.

128. The Player has argued that Mr. Mikos' non-attendance at the hearing should *de facto* result in the AHO ruling that the WhatsApp messages mentioning Mr. Smilansky, as well as Mr. Mikos' statements to Ms. Bain in interview are inadmissible and that, as a result, the Charge must be dismissed because there is no evidence that can establish the same. Conversely, the ITIA has argued that there is no reason to disbelieve Mr. Mikos' position in his interview transcripts, as all he is doing is confirming what is clear from the WhatsApp messages themselves, which are convincing contemporaneous evidence of the match-fixing involving Mr. Smilansky. Notably, Mr. Smilansky is referred to on nine (9) occasions in the WhatsApp exchanges, which to the ITIA makes it abundantly clear that he is the person of focus and whom Mr. Khabibulin is liaising with to arrange the fix. The AHO has already found above that the WhatsApp messages are not only admissible, but also reliable and highly compelling.

129. The relevant sequence of WhatsApp messages indicates Mr. Mikos and Mr. Khabibulin are discussing this match involving Mr. Smilansky. The discussions take place the day before this match was played and on the day of the match, prior to, during and after the match. It is clear from the exchanges that both Mr. Mikos and Mr. Khabibulin are following the match very closely as they refer to specific events taking place, such as a warm-up and the score. Mr. Smilansky was referred to in the exchanges on nine occasions making it abundantly clear that he is the person of focus and who Mr. Khabibulin is liaising with to arrange the fix.

130. For ease of reference the conversation is as follows:

Date	Sender	Message
9 November 2018		
10:02:18	Konstantinos MIKOS	Is him
9 November 2018 10:02:22	Konstantinos MIKOS	He win 2 6
9 November 2018 12:28:47	Konstantinos MIKOS	??
9 November 2018 13:09:48	Timur KHABIBULIN	kidding me?
9 November 2018 13:12:03	Konstantinos MIKOS	Audio: speak with The Fay, devi devi devi
9 November 2018 13:55:12	Timur KHABIBULIN	i just spoke whit fay
9 November 2018 13:55:12	Timur KHABIBULIN	for last match
9 November 2018 13:55:12	Timur KHABIBULIN	can understand I have to give this money to fay
9 November 2018 13:55:22	Konstantinos MIKOS	Ok is perfect
9 November 2018 13:55:29	Konstantinos MIKOS	We give 10 more
9 November 2018 13:55:41	Timur KHABIBULIN	No body care what u give more
9 November 2018 13:55:43	Konstantinos MIKOS	I can't say something whatever u

		want i just say
9 November 2018 13:58:40	Konstantinos MIKOS	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 November 2018 14:07:47	Timur KHABIBULIN	tell me how many % u will send money tomorrow ?
9 November 2018 14:07:59	Timur KHABIBULIN	i have the same question
9 November 2018 14:08:11	Konstantinos MIKOS	100 , now tell me
9 November 2018 14:08:19	Timur KHABIBULIN	100
9 November 2018 14:08:30	Konstantinos MIKOS	That he will make set in final?
9 November 2018 14:09:30	Timur KHABIBULIN	No but he give 1 or 2 match's till end of the year
9 November 2018 14:09:36	Timur KHABIBULIN	same like yesterday
9 November 2018 14:09:47	Konstantinos MIKOS	Good perfect
9 November 2018 14:09:49	Konstantinos MIKOS	Ok
9 November 2018 14:09:56	Konstantinos MIKOS	Any way i will send tomorrow

Later in the match the following messages were exchanged between Mr. Mikos and Mr. Khabibulin complete exchange):

Date	Sender	Message
13 November 2018		
09:09:24	Konstantinos MIKOS	Smyl must not make mist
13 November 2018		
09:09:34	Timur KHABIBULIN	he will not
13 November 2018		
09:10:47	Konstantinos MIKOS	Man he plaay good
13 November 2018		
09:10:50	Konstantinos MIKOS	I see match
13 November 2018		
09:10:53	Konstantinos MIKOS	What is this
13 November 2018		
09:11:40	Konstantinos MIKOS	Is 3 1
13 November 2018		
09:12:13	Konstantinos MIKOS	15 15
13 November 2018		
09:12:29	Timur KHABIBULIN	i wach it
13 November 2018		
09:13:12	Konstantinos MIKOS	He trybtro make it not

		understand
13 November 2018		
09:13:15	Konstantinos MIKOS	Is ok
13 November 2018		
09:13:17	Konstantinos MIKOS	I hoppe
13 November 2018		
09:20:06	Konstantinos MIKOS	We made 0
13 November 2018		
09:20:08	Konstantinos MIKOS	0
13 November 2018		
09:20:14	Konstantinos MIKOS	I played fucking first to 4
13 November 2018		
09:20:21	Konstantinos MIKOS	And we make just the player
13 November 2018		
09:20:32	Timur KHABIBULIN	what

131. From the evidence, there was clearly something that went wrong with this fix, and Mr. Smilansky did not do what he was expected to do – perhaps this is because he no longer wanted to fix the match, or misunderstood what was expected of him. However, the AHO finds that this does not lead to the conclusion that he was not involved in the fix. Rather it appears, relying on the WhatsApp and audio messages that were tendered, that he was (at least initially) involved in the fix and that the betting agreed upon for the same was in three parts – for Mr. Yu to be the first player to score four games in the first set, the first to score five games in the first set and then to win the first set itself. However, Mr. Smilansky reached four games first in the first set meaning the first part of the bets were lost. Mr. Mikos then appears furious with this, yet confirms that, regardless of the outcome, he is still prepared to pay Mr. Smilansky the agreed fee for the fix – in this case, “6000”.

132. Mr. Smilansky does not agree that any reference to a diminutive of his surname in the WhatsApp messages must refer to him. On this point, the AHO finds that Mr. Smilansky has failed to put forward a credible, alternative explanation for the WhatsApp messages and his name being expressly referred to therein. In the face of all the evidence tendered which supports the ITIA’s charge, the Player’s simple denial that “smil” is not a reference to him is insufficient – this is notably so when there appears to be no other individual who “smil” could be other than Mr. Smilansky. And even more so when his last name is fully written one of the WhatsApp messages with reference to match fixing and there is no other player called Smilansky who plays tennis.

133. "What we do with Smilansky?" ... "When will Smil answer" "Ready" and "Smyl is in" all certainly allows for a direct and logical inference that Mr. Khabibulin was informing Mr. Mikos that Mr. Smilansky he was "in" to fix the match. There is no alternative explanation for these messages given the extensively well organised and operated match fixing business Mr. Mikos and Khabibulin were running, and for which Mr. Khabibulin has been found liable in a parallel ruling.
134. From a simple reading of the above WhatsApp exchange and the ensuing ones, which are all quite compelling, the AHO finds it more likely than not that Mr. Smilansky had agreed to fix the match in return for financial gain.
135. The betting operator evidence only corroborates and reinforces the foregoing conclusion. It indicates a flurry of bets being placed at the outset of this match at the same time that Mr. Mikos writes "And he in bet live" at 53 minutes past the hour supports the fact that the match was fixed and that the bets were being placed at the very beginning of the match. In fact, the bet time that seven bets were placed merely 4 minutes later in a 90-second period at 57 and 58 minutes past the hour. As the ITIA explained convincingly with reference to the betting evidence at the hearing:

" If we look at the score card, it shows that the match started at 56 minutes past the hour local time. So we (the ITIA) say all these bets were placed very quickly after the match had started with no time to see how the match was going, no time to assess players and performance, no rationale to decide that in play going to decide what the outcome is. We (the ITIA) say therefore these bets are clearly planned in advance.

(Scrolling right on the betting evidence) Here we see the markets and the participant names. What they show is that all the betting is on Cheng-Yu Yu to either win the set or be the first to reach four games or the first to reach five games. To put it another way, they were all betting on Mr. Smilansky to lose.

Scrolling further on the betting we can see that the second and the fifth bets, which were the first to four games were lost, and that where we see the fixing, or we say the fixing going wrong in the WhatsApps, where Mr. Smilansky reaches four games first, and Mr. Mikos is not happy about that, because he's bet on Mr. Cheng-Yu Yu to reach four games first. So if you go to the right, you can see that what is shown, and you can also see the size of the stakes and the returns and the profit. So the ones in brackets show a loss, and you can see obviously there is an impact on the overall profit with the two lost bets, but there is still sizeable sums being earned; as Mr. Mikos said, he still "earned enough to pay Mr. Smilansky and a little bit extra."

136. The AHO finds that the documentary evidence from four bettors from Skybet further corroborates the finding. All bettors from Skynet and Bet 365 made the same bets: on Mr. Smilansky to lose the first set.

137. Moreover, on Ms. Bain's evidence, the account that placed the Bet365 bets was directly or indirectly linked to Mr. Mikos and significant bets were placed with over €18,000 wagered by Mr. Mikos and his team. The ITIA submits that this bet would not have been placed so early in such an insignificant match had Mr. Mikos as "*a professional match-fixer not been certain that they would be successful*". The AHO certainly finds it more probable than not that this is the case considering the evidence before her.

138. An assessment of all the evidence tendered leads to the cogent finding that the ITIA has succeeded in establishing on the preponderance of the evidence that Mr. Khabibulin had approached Mr. Smilansky to fix this match and attempted to contrive it. Echoing the findings of the CAS panel at paragraph 284 of CAS 2018/A/6049, this was *not mere happenstance but the execution of an agreed plan*. Mr. Smilansky thus is liable for contriving the outcome or an aspect of this match in breach of Section D.1.b and D.1.d of the 2018 TACP.

Charge 3

139. The AHO finds that Mr. Smilansky failed to report corrupt approaches made to him by Mr. Khabibulin in relation to Charge 2 (the Cheng-Yu Yu match) in contravention to Section D.2.a. i of the TACP. He is therefore liable for the same.

140. The ITIA does not succeed in satisfying its burden in this regard in relation to Charge 1.

RULING

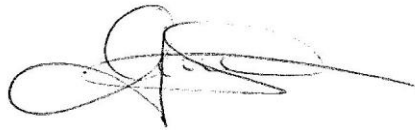
141. The AHO finds that the Covered Person is liable as follows:

- One breach of Section D.1.b and one Breach of D. 1 d of the 2018 Program in relation to his match against Cheng- Yu Yu.
- One breach of Section D.2.a.i of the 2018 Program for failing to report Mr. Khabibulin's corrupt approaches to the ITIA.

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

143. As agreed by all 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. Smilansky'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.

Dated at Beaconsfield, Quebec this 25th day of July 2023

A handwritten signature in black ink, appearing to read 'Janie Soublière', written over a horizontal line.

Janie Soublière C. Arb.
Anti-Corruption Hearing Officer