**Arbitration CAS 2022/A/9053 Abderahim Gharsallah v. International Tennis Integrity Agency (ITIA), award of 26 March 2024**

Panel: Prof. Eligiusz Krześniak (Poland), President; Mr Pierre Muller (Switzerland); Prof. Martin Schimke (Germany)

*Tennis*
*Disciplinary – Match-manipulation*
*Preponderance of the evidence*
*Legitimate actions*
*Principles of legality and in dubio contra proferentem*
*Interpretation of a rule subject to sanctions*
*Facilitation of betting as per section D.1.b TACP*
*Review of sanctions by CAS panels*

1. **According to section G.3.a. of the 2020 Tennis Anti-Corruption Program (TACP), the International Tennis Integrity Agency (ITIA) bears the burden of proof in cases under section D.1. TACP. Accordingly, the relevant standard is whether the ITIA can establish a preponderance of the evidence, which is even less than "comfortable satisfaction". It is sufficient that the chances of the allegation being true are more than 50%, while a comfortable satisfaction has consistently been defined in match-fixing cases as higher than mere probability, but less than proof beyond a reasonable doubt. Additionally, the fact that no payments to the perpetrator of the manipulation are apparent is irrelevant according to section E.2. TACP.**

2. **While no sporting organization or sport federation can cause an otherwise legitimate behaviour to become illegal in the legal sense (e.g., criminalize such behaviours), a sports federation or a sports body can prohibit its direct and indirect members from participating in legitimate actions in order to maintain sports integrity.**

3. **Any decision rendered by a sports-related body must adhere to the principle of legality. Thereby, every action undertaken by a sporting authority necessitates a distinct and unequivocal regulatory foundation. Due to the principle of *in dubio contra proferentem*, ambiguities in regulations are at the expense of the rule maker. Whenever there is uncertainty or a lack of clarity in the application of regulations, this must be construed against the relevant federation and the principle of *contra preferentem* applies, such that the construction to be preferred is the one that favours athlete.**

4. **When analysing a provision of a sport federation subject to sanctions, a restrictive interpretation is required.**

5. **The purpose of section D.1.b TACP is to ensure that sport integrity is protected. The**

**rule examples in section D.1.b TACP achieve this by protecting the integrity of covered persons (which includes referees) by not allowing them to have any links to betting operators through their public appearance. *In casu*, entering the score in an electronic handheld scoring device is directly related to the activity as a referee and concerns match management itself. If the rule is interpreted restrictively to the detriment of the user, as required by the principle of *contra proferentem*, it follows that incorrectly entering the score does not constitute facilitation of betting as provided for in section D.1.b TACP.**

6. **CAS panels should exert self restraint in reviewing the level of a sanction imposed by a first instance disciplinary body and should reassess such sanctions only if they are evidently and grossly disproportionate to the offence or if a different conclusion is reached on the substantive merits of the case than did the first instance body. Far from excluding or limiting the power of a CAS panel to review *de novo* the facts and the law of the dispute at hand (pursuant to Article R57 of the CAS Code), a CAS panel would tend to pay respect to a fully-reasoned decision and would not easily "tinker" with a well-reasoned sanction, not considering it proper to just slightly adjust the measure of the sanction. The general considerations to weigh in the assessment of the proportionality of a sanction thus include (i) severity (the gravity of the illegal act committed), (ii) deterrence (the potential of the sanction to dissuade repeated illicit conduct of the same nature), and (iii) the importance of the rule being protected.**

## I. PARTIES

1. Mr. Abderahim Gharsallah (the "Appellant" or "Mr. Gharsallah") is a Tunisian national and a Chair Umpire certified by the International Tennis Federation ("ITF").

2. The International Tennis Integrity Agency (the "Respondent" or "ITIA") is an independent body established by the international tennis governing bodies to promote, encourage, and safeguard the integrity of professional tennis worldwide.

3. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

## II. FACTUAL BACKGROUND

### A. Introduction

4. The present dispute concerns the decision rendered by the Anti-Corruption Hearing Officer Jane Mulcahy KC ("AHO") on 4 July 2022 (the "Decision"). In the Decision, AHO found that the Appellant is liable in relation to four charges of corruption offences brought by ITIA under the terms of the 2020 Tennis Anti-Corruption Program ("TACP") and set him a 7-year ineligibility period as of the date of his provisional suspension (i.e., 16 October 2020).

5. The pertinent facts and allegations based on the Parties' written submissions and on the CAS files are summarized below. References to additional facts and allegations found in the Parties' written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to those submissions and evidence it deems necessary to explain its reasoning.

## B. Background facts

6. The Appellant is an experienced international tennis umpire. By his own admission, he has umpired over 1,500 matches in the recent years, including in 2017 and the subsequent years.

7. In March 2020, the Appellant was an umpire at the ITF W15 tournament in Monastir, Tunisia, during which he umpired the match between Susanne Celik and Jenny Duerst on 7 March 2020.

8. In October 2020, the Appellant was an umpire at the ITF M15 and ITF W15 tournaments in Monastir, Tunisia, during which he umpired several matches.

9. In particular, during the above-mentioned ITF M15 tournament, he umpired matches between Mats Rosenkranz and Mirko Martinez on 13 October 2020 and Laurynas Grigelis and Daniil Glinka on 15 October 2020.

10. Also, at the ITF W15 tournament, he umpired the match between Ines Ibbou and Kathleen Kanev on 15 March 2020 (collectively with the matches referred to in Para. 9 above the "Matches").

11. When officiating a tennis match, an umpire carries a so-called Handheld Electronic Scoring Device (the "Device"). The umpire enters the match results into the Device in real time, i.e. after each individual player scores a successive point. The Device automatically transmits the score straight to the betting markets. This allows players to make real-time bets on scoring individual points.

12. When umpiring the Matches, the Appellant was using such a Device.

13. On 9 March 2017, a betting operator, William Hill, raised concerns with the Tennis Integrity Unit, the precursor of ITIA (the Tennis Integrity Unit was subsumed into ITIA in 2021), in relation to a match umpired by the Appellant. As a result of these concerns, the Appellant's matches were removed from the betting markets later that day.

14. On 12 March 2020, the International Betting Integrity Association ("IBIA") contacted the Respondent with concerns in respect of a match officiated by the Appellant. The IBIA did so following reports from betting operators in relation to bettors who achieved a suspicious level of success betting on players to win specific points.

15. Next, in October 2020, the Respondent received suspicious betting alerts from the IBIA, the Sportradar group ("Sportradar"), which specializes in delivering sports data and content to

media companies, sports federations and the betting industry, as well as from two tournament supervisors in relation to a number of matches at the ITF M15 and ITF W15 tournaments (including the Matches), which were taking place at the same time in Monastir, Tunisia.

16. The Appellant officiated at the Matches and – according to the Respondent – when doing so, he committed certain corruption offences.

## C. Proceedings before ITIA and AHO

17. Following the reports from William Hill, the IBIA, Sportradar and the tournament supervisors, the Respondent investigated the Appellant's involvement.

18. In particular, the Respondent reviewed the audio recordings from certain matches, including the Matches, umpired by the Appellant and compared the scores announced by the Appellant verbally with the scores entered into his Device. The Respondent noted that there were several discrepancies between the recordings and the scores entered into the Device.

19. The Respondent thus concluded that the Appellant was intentionally delaying and/or manipulating the scores that he was entering into his Device. This, in turn, may render him liable for breaching TACP.

20. On 15 October 2021, the Respondent sent the Appellant a Notice of Major Offence (the "Notice"). The Respondent charged the Appellant with the following corruption offences set out in five distinct charges:

    (a) Five breaches of section D.1.b of the 2017 and 2020 TACP; and

    (b) Five breaches of section D.1.d of the 2017 and 2020 TACP.

21. AHO ordered that the proceedings against the Appellant be consolidated and heard together with the related proceedings regarding other umpires at the same tournaments at which the Matches took place - Mr. Affi and Mr. Snene. The two latter umpires allegedly acted jointly or similarly with the Appellant in the commission of certain corruption offences.

22. On 4 July 2022, by virtue of the Notice, AHO ruled that the Appellant had breached certain rules. AHO found that four of the five charges brought against the Appellant were proven.

23. According to the Decision:

    *"[…] Mr Gharsallah's misconduct is limited to four charges being proven in relation to conduct in 2020 only. […]*

    *[…] As for categorising impact, the offences were major ones and impinged on the integrity of tennis. But I am not at all sure that either Mr Snene or Mr Gharsallah benefitted in any monetary way. There is certainly no evidence to show that they did. […]*

    *[…] But I accept the offences are serious. […]".*

24. The operative part of the Decision reads as follows:

*"Mr Snene's and Mr Gharsallah's periods of ineligibility are each seven years beginning with the date of their provisional suspensions, which Mr Gharsallah told me was, in his case, 16 October 2020".*

## III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 23 July 2022, the Appellant filed with CAS his Statement of Appeal pursuant to Article R47 of the Code of Sports-Related Arbitration (the "CAS Code"). The Appellant opted to submit the dispute to a sole arbitrator in accordance with Article R50 of the CAS Code.

26. The CAS Court Office acknowledged receipt of the Statement of Appeal on 27 July 2022, served its copy on the Respondent, which was, *inter alia*, invited to accept whether the dispute be submitted to a sole arbitrator.

27. On 28 July 2022, the Respondent filed with CAS the answer to the CAS letter of 27 July 2022. The Respondent objected to French being the language of the proceedings and requested that the proceedings be conducted in English. Moreover, the Respondent objected to the procedure being submitted to a sole arbitrator and requested that a panel of three arbitrators be appointed in accordance with Articles R53 and R54 of the CAS Code.

28. The CAS Court Office acknowledged receipt of the Respondent's letter of 28 July 2022 on 2 August 2022, served its copy on the Appellant and invited the Appellant to answer certain issues raised in the Respondent's letter.

29. On 5 August 2022, the Appellant emailed CAS his response to the Respondent's letter of 28 July 2022. The Appellant maintained his request to proceed in French or, alternatively, proposed to implement a bilingual arbitration procedure.

30. The CAS Court Office acknowledged receipt of the Appellant's e-mail of 5 August 2022 on 8 August 2022, served its copy on the Respondent and invited the Respondent to answer it.

31. On 9 August 2022, the Respondent filed with CAS the answer to Appellant's e-mail of 5 August 2022. The Respondent maintained its previous requests in full. The CAS Court Office acknowledged receipt of the Respondent's letter of 9 August 2022 on 10 August 2022 and served its copy on the Appellant.

32. On 15 August 2022, the President of the CAS Appeals Arbitration Division, ruling *in camera*, pronounced that the language of the proceedings should be English.

33. The CAS Court Office served a copy of Order of the President of the CAS Appeals Arbitration Division on the Parties on 15 August 2022. The CAS Court Office also informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the dispute to a three-member panel and invited the Appellant to nominate an arbitrator by 22 August 2022.

34. On 22 August 2022, the CAS Court Office noted that the Appellant had nominated Mr. Jean-Paul Costa as arbitrator pursuant to Article R53 of the CAS Code and invited the Respondent to nominate an arbitrator by 29 August 2022.

35. On 26 August 2022, the CAS Court Office noted that the Respondent had nominated Prof. Dr. Martin Schimke as arbitrator pursuant to Article R53 of the CAS Code.

36. Since Mr. Jean-Paul Costa declined to serve as an arbitrator, the Appellant was accordingly asked on 30 August 2022, to nominate another arbitrator by 5 September 2022.

37. On 5 September 2022, the CAS Court Office noted that the Appellant had nominated Mr. Pierre Muller as arbitrator pursuant to Article R53 of the CAS Code.

38. On 14 September 2022, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.

39. On 15 September 2022, the CAS Court Officer served a copy of the Appeal Brief on the Respondent, which was invited to submit its answer.

40. On 5 December 2022, the Respondent filed the Answer to the Appeal Brief pursuant to Article R55 of the CAS Code.

41. By communication dated 6 December 2022, the CAS Court Office informed the Parties, on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Dr. Eligiusz Krześniak, President of the Panel; Mr. Pierre Muller and Prof. Dr. Martin Schimke, Arbitrators.

42. On 13 December 2022, both Parties requested a hearing.

43. On 22 December 2022, the Panel decided to hold an in-person hearing and provided the available dates.

44. On 3 January 2023, the Respondent confirmed its availability for the proposed hearing dates. The Appellant conveyed that they would be unable to attend the in-person hearing on the proposed dates and requested a postponement to late April 2023.

45. On 5 January 2023, the Panel provided its new availability for the in-person hearing at the Appellant's request and invited the Parties, by 12 January 2023, to inform the CAS Court Office of any impossibility to attend the hearing.

46. On 9 January 2023, the Respondent informed that it is available to attend a hearing on the proposed dates.

47. On 12 January 2023, the Appellant informed that it is available to attend a hearing on the proposed dates.

48. On 20 January 2023, the Panel informed the Parties that the in-person hearing would take place on 26 April 2023 at the CAS Court Office in Lausanne.

49. On 28 February 2023, the Deputy President of the CAS Appeals Arbitration Division informed that the deadline to communicate the Arbitral Award to the Parties, pursuant to Article R59 of the Code of Sports-Related Arbitration, has been extended until 30 June 2023.

50. On 1 March 2023, the Parties received a copy of the Order of Procedure and were requested to sign and return the document to the CAS Court Office by 31 March 2023.

51. On 21 March 2023, the Respondent sent a copy of the Order of Procedure, duly signed.

52. On 29 March 2023, the Appellant sent a copy of the Order of Procedure, duly signed.

53. Between 6 and 25 April, the CAS Court Office - with the Panel involved - communicated extensively with the Parties as to the technicalities of the hearing, including the necessary translation services.

54. On 26 April 2023, the scheduled hearing was held in Lausanne with some participants joining remotely via Webex. Apart from the Panel and Mr. Fabien Cagneux, Counsel to the CAS, the following participants attended the hearing:

For the Appellant:

- Mr. Malek Ben Rjiba, Attorney-at-Law
- Mr. Mohamed Fahmi Belhadj, Attorney-at-Law

For the Respondent:

- Ms. Hannah Kent, Attorney-at-Law
- Mr. Ross Brown, Attorney-at-Law
- Ms. Julia Lowis, Legal Counsel, ITIA
- Mr Ben Rutherford, Senior Director, Legal, ITIA
- Ms Jodie Cox (Case Manager, ITIA)
- Mr Nathan Chambers, Trainee Solicitor

Witnesses:

- Mr. Marwen Boughanda
- Mr. Yassine Lakhdhar

- Ms. Helen Calton

- Mr. James Keothavong, ITIA

Translator:

- Mr. Ahmed Mustapha

55. The witnesses and the interpreter were invited by the President of the Panel to tell the truth, subject to sanctions of perjury. The Parties and the Panel had the opportunity to examine and cross-examine the witnesses. At the conclusion of the hearing the Parties expressly stated that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.

## IV. SUBMISSIONS OF THE PARTIES

56. This section of the Award does not exhaustively list the Parties' contentions, its aim being to summarize the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including the allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

### A. The Appellant's Position

57. The Appellant's submission, as drafted in the Appeal Brief dated 13 September 2022 and reiterated further during the hearing, may in essence be summarized as follows:

(a) The Appellant contested AHO Decision of 4 July 2022, as it was fundamentally flawed and in breach of the law. The Appellant raised several arguments.

(b) First, the Appellant stated that the Decision was based only on assumptions and that the fact of his corruption practices was never proven. The Appellant argued that the discrepancies themselves do not prove any betting manipulations or corruption. The reasons for these discrepancies are simply errors when entering the results into the Device.

(c) In this regard the Appellant stated that:

*"These allegations are based purely and simply on assumptions and theories that have never been proven by the person who adopts them since errors can occur in the sport of tennis or otherwise".*

(d) Second, the Appellant pointed that when issuing the Decision, AHO relied on the fact that the Appellant and Mr. Affi, Tunisian Chair Umpires, knew each other very well (they accepted they were friends). Particularly on that basis, AHO stated that there was a

combined bet which included matches involving both Mr. Affi and the Appellant. However, according to the Appellant:

*"The presumed relationship of friendship and the common nationality of the referees cannot alone be sufficient to establish proof of the alleged facts, especially since the only relationship between them being the function of referees (they reside in 3 different cities in Tunisia)".*

(e) Third, the Appellant argued that this case lacks the intentional element on the part of the Appellant. The Decision does not clarify how the Appellant may have benefited from the alleged corruption offence.

(f) On that note, the Appellant pointed that:

*"[…] the intentional element is lacking in this case, Regardless the fact that no financial gain has been made by Mr. Gharsallah to characterize the material aspect of the bribery offence".*

(g) Fourth, the Appellant stated that he handed over his mobile phone and provided the password examination, which did not unearth any evidence of a corruption offence. It is the Appellant's position that this precluded any possibility of fraud.

(h) Finally, the Appellant argued that AHO did not discover any link between the Appellant and the sports betting companies, nor the bettors, which is crucial to establishing the commission of a corruption offense.

58. In the Appeal Brief, the Appellant submitted the following requests for relief [verbatim transcription]:

*"We ask your honorable court to hear our witness Mr Marouane Boughanda, tennis referee in Tunisia since 2007 (telephone 0021624033842) for more clarification concerning the facts attributable to Mr Gharsallah and the reversal of the contested decision purely and simply and judge that the appellant Mr. Abderrahim Gharsallah is not guilty with regard to the charges".*

## B. The Respondent's Position

59. The Respondent's position, as presented in the Answer to the Appeal Brief dated 5 December 2022 and reiterated further during the hearing, may be summarized as follows:

(a) The Respondent stated that the Decision was not based on *"assumptions and theories"*. From the Respondent's point of view, the evidence submitted by the Respondent demonstrates that the Appellant facilitated the third-party betting activities and/or contrived the aspects of the Matches.

(b) The Respondent emphasized that the Appellant's attempts to justify incorrectly entering the score into the Device as "mistakes" are flawed.

(c) First, the Respondent pointed that it is very easy to correct any data erroneously entered into the Device – either by using the "Back" button, if a wrong Chair Umpire name is selected, or by using the "Undo" button during the match.

(d) Second, such kinds of mistakes occur very rarely given the Appellant's experience. On that note the Respondent pointed that:

*"This is all the more unlike given the Appellant's level of experience (he has officiated approximately 1,500 matches); the fact that the Appellant selected the wrong Chair Umpire's name in three matches over the period of three days, between 13 and 15 October 2020; and the pattern of the same "mistakes" being made on the same points or games from match to match".*

(e) Third, the Respondent emphasized that the Appellant's mistakes followed the same pattern those made by Mr. Affi and Mr. Snene. It is not credible that their common scheme and methodology could be attributed to a series of random mistakes.

(f) Fourth, the Respondent stated that:

*"the alleged mistakes does not alter or explain the suspicious betting. The* existence *of those betting alerts cast further doubt on the defence of "mistake"".*

(g) Fifth, the Respondent pointed that the alleged mistakes were not reflected in the audio recordings of the matches officiated by the Appellant.

(h) Finally, the Respondent contested the Appellant's previous allegations regarding the Devices' poor working order. According to the Respondent:

*"the PDAs [the Devices] were in good working order in October 2020 (relevant to Charges 3, 4 and 5) and that in his experience, a PDA has never indicated an incorrect score due to a technical glitch".*

(i) Next, the Respondent emphasized that the financial element or the *"intentional element"* was not part of the charges brought against the Appellant. Moreover, the Respondent stated that:

*"it is not uncommon for the ITIA to be unable to locate evidence of payments made to individuals who have committed corruption offences. This is for a variety of reasons, e.g., individuals may be paid in cash, or may delete any records of electronic transfers".*

(j) The Respondent stated that the examination of the Appellant's mobile phone does not preclude a possibility of fraud. The Respondent explained that the Appellant was interviewed by an ITIA investigator remotely on 16 October 2020 in the presence of Mr. Lakhdhar. Initially, the Appellant refused to hand over his devices, yet shortly thereafter, the Appellant provided Mr. Lakhdhar with his login details for a rudimentary review of his social media and messaging applications. Such a review was not comparable to an ordinary forensic download usually carried out by the Respondent. Therefore, the review did not preclude the possibility of fraud, as claimed by the Appellant.

60. In the Answer to the Appeal Brief, the Respondent submitted the following requests for relief:

*"In light of the foregoing, the ITIA respectfully requests that the CAS Panel rule as follows:*

*a. Dismiss the Appeal;*

*b. Uphold the Decision in its entirety;*

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

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

## V. JURISDICTION OF THE CAS

61. Pursuant to Article 186 (1) of the Swiss Private International Law ("PILA"), the CAS has the power to decide upon its own jurisdiction.

62. Article R47 of the CAS Code states that:

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

63. In this case, the Appellant relies on Article I.1 of the 2021 TACP. Article I.1 of the 2021 TACP provides that:

*"Any decision by an AHO (i) that a Major Offense has been committed, (ii) that no Major Offense has been committed, (iii) imposing sanctions for a Major Offense (all three of which amount to a Decision under section G.4.b), or (iv) that the AHO lacks jurisdiction to rule on an alleged Major Offense or its sanctions, may be appealed exclusively to CAS in accordance with CAS's Code of SportsRelated Arbitration and the special provisions applicable to the Appeal Arbitration Proceedings, by either the Covered Person who is the subject of the decision being appealed, or the ITIA. For the avoidance of doubt, a decision to impose, or not to impose, a provisional suspension cannot be appealed to CAS".*

64. Neither Party has questioned the jurisdiction of the CAS in these proceedings and they both expressly recognize it. Both Parties further signed the Order of Procedure.

65. As a result, CAS has jurisdiction to hear and adjudicate the case.

## VI. ADMISSIBILITY OF THE APPEAL

66. Pursuant to Article R49 of the CAS Code:

*"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".*

67. Section I.4 of the 2021 TACP specifies that the appeal to CAS against the AHO decision can be made within 20 business days of the appealing party' receipt of the decision. Therefore, the 20 business days deadline applies.

68. The Decision was issued on 4 July 2022 and the Appellant filed its Statement of Appeal on 23 July 2022.

69. Therefore, the Appeal is admissible.

## VII. APPLICABLE LAW

70. A vast majority of cases resolved by CAS has an international aspect. Commonplace are cases in which each of the parties to a dispute resides or is established in another country, and the federation or sports body whose decision is the focal point of the dispute is established in yet another country. What complicates matters further is that the sports regulations themselves may point to a governing law other than Swiss.

71. To define the point of departure for analyzing the possible governing law choices, the Panel follows the conclusions from CAS 2020/A/7194. These are:

    (a) There is a difference between the governing law (the law applicable to the contract) and the so called *lex arbitri* - the arbitration law of the seat. *Lex arbitri* is the relevant source of the legal norms for external (court) supervision. External supervision includes not only setting aside the award, but it can also include appointment, challenges, ordering provisional relief, and judicial assistance in taking evidence. All these issues would be resolved under the arbitration law of the seat of the arbitration institution selected.

    (b) Undoubtedly, *lex arbitri* for all CAS cases is the Swiss law, since CAS has its seat in Lausanne, Switzerland (Article S1, R28 of the CAS Code). Therefore, the Swiss arbitration law has been applied.

    (c) The Swiss arbitration law distinguishes between national and international arbitration proceedings. According to Article 176 (1) PILA, PILA shall always apply if the place of residence and/or domicile of at least one party was outside Switzerland at the time of concluding the arbitration agreement. This prerequisite has been fulfilled in the case at hand and, therefore, PILA applies.

(d) Pursuant to Article 187 (1) PILA, the Arbitral Tribunal shall decide the case according to the rules of the law chosen by the parties or, in the absence thereof, according to the rules of the law with which the case has the closest connection.

(e) The above means that *lex arbitri* (for any cases heard by CAS, this will always be the Swiss law) and that the governing law, applicable to the merits and according to which a dispute shall be resolved, may differ.

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

73. *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.

74. The "applicable regulations", referred to in Article R58 of the CAS Code, are in this case most notably TACP. This conclusion stems from section G.3.d of the 2021 version of TACP, according to which the facts relating to a corruption offence may be established by any reliable means, as determined in the sole discretion of AHO and from section C.1 of the TACP 2021, according to which TACP expressly applies to Tournament Support Personnel, such as umpires.

75. The corruption offences giving rise to the four charges that were upheld in the Decision occurred on 7 March 2020 (Charge 2), 13 October 2020 (Charge 3) and 15 October 2020 (Charges 4 and 5). The 2020 TACP came into effect on 1 January 2020; accordingly, the 2020 TACP applies to the substantive aspects of the appeal.

76. However, the procedural aspects of the case shall be governed by the 2021 TACP. This is due to the rules provided in the 2021 TACP Sections K.5. and K.6.:

"*K.5. This Program is applicable prospectively to Corruption Offenses occurring on or after the date that this Program becomes effective. Corruption Offenses occurring before the effective date of this Program are governed by any applicable earlier version of this Program or any former rules of the Governing Bodies which were applicable on the date that such Corruption Offense occurred.*

*K.6. Notwithstanding the section above, the procedural aspects of the proceedings will be governed by the Program applicable at the time the Notice is sent to the Covered Person"*.

77. While the "applicable regulations" referred to in the CAS Code is TACP, TACP in turn, refers to the laws of the State of Florida. Under the section K-1 of the 2021 TACP, the 2020 Tennis Anti-Corruption Program *"shall be governed in all respects (including, but not limited to, matters concerning the arbitrability of disputes) by the laws of the State of Florida, without reference to conflict of laws principles"*.

78. In the case at hand, the Parties did not choose any other law.

79. The Panel may only speculate that TACP refers to the State of Florida law, in section K-1 TACP, to make TACP more specific and to ensure uniform interpretation of the industry

standards [see also HAAS U., *Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law*, Bulletin TAS CAS 2015/2, p. 15]. To that end, one may avail oneself of the laws of the state of Florida if the applicable regulations, the TACP, are not clear or contain regulatory lacunae. In short - in the event a question is not answered by the TACP, the laws of the State of Florida merely apply subsidiarily.

80. The Panel thus accepts the TACP as applicable regulations, in the meaning of Article R58 of the CAS Code, and that they apply primarily. The Panel also acknowledges that the applicable regulations refer directly to the laws of the State of Florida which shall be subsidiarily used when interpreting the TACP.

81. In addition, neither the Appellant, nor the Respondent, nor AHO referred to the laws of the State of Florida in a substantial manner.

82. Taking the above into consideration, the Panel notes that this Award can, therefore, be based on the principles adopted in CAS jurisprudence regarding integrity and corruption, mostly driven by the *lex sportiva*.

## VIII. MERITS

83. In order to resolve the present matter, the Panel was faced with the following questions:

1) Did the Appellant take any actions that were the basis for the four charges for which he was found liable?

2) Can the Appellant's actions be treated as violating section D.1.b TACP?

3) Can the Appellant's actions be treated as violating section D.1.d TACP?

4) If, having duly analyzed the case material, the Panel finds that the Appellant had breached the anti-corruption rules, is the extent of the sanction commensurate?

### 1. Did the Appellant take the actions which were the basis for the four charges for which he was found liable?

84. The Decision determined that the Appellant manipulated the output of the Devices in order to corrupt the sport of tennis for various individuals' financial gain. As stated in the Decision, *"[t]he manipulation centred around the data input into the Devices which, said the ITIA, did not always reflect the actual points won by the players on the court"*.

85. By way of an example, if the Appellant needed a particular game to go to deuce (to satisfy the bettors' interests), but that score did not arise from normal play, the Appellant would input false information to show the deuce while calling the correct – and different – score. The aim was for the information input into the Device to go according to a pre-arranged plan. While in some

cases the reality – by pure luck – must have corresponded to this plan (i.e. the goal was to report a deuce in a given game and a deuce did in fact occur), in some other cases, the actual outcome of the game was different. In such cases, false information would be recorded in the Device. This, in turn, must have enabled gamblers to win even though the chosen score in a particular game was not achieved, since the result from the device (and not the one announced at the tennis court) was transmitted to the betting markets.

86. Such manipulation must have led to the discrepancy between the actual result of the game as called out and communicated to the players and the audience orally, and the results as transmitted to the betting market. In order to "catch up" with the correct score, the Appellant allegedly made up for the "missing" points by artificially creating and inputting non-existent points into the Device.

87. The Appellant has been found liable of such manipulation in the Matches, i.e. four tennis matches which he umpired during the ITF M15 and ITF W15 tournaments in Monastir, Tunisia between March and October 2020.

88. In order to determine whether the alleged practices did take place, the Panel must first establish the applicable burden of proof.

89. The Panel notes that in the disciplinary proceedings brought before the CAS, there are at least three levels of burden of proof possible – "balance of probabilities", "comfortable satisfaction" and "beyond a reasonable doubt", with the last one applying in criminal procedures and the second one applying in most CAS disciplinary proceedings.

90. According to section G.3.a. TACP, the Respondent bears the burden of proof in cases under section D.1. TACP. Accordingly, the relevant standard is whether the Respondent can establish a preponderance of the evidence, which is even less than "comfortable satisfaction".

91. Therefore, the allegations by the Respondent have to be more likely to be true than not true. It is sufficient that the chances of the allegation being true are more than 50% (CAS 2011/A/2490, para. 25), while a comfortable satisfaction has consistently been defined in match-fixing cases as higher than mere probability, but less than proof beyond a reasonable doubt (CAS 2016/A/4650, para. 64; CAS 2017/A/5338, para. 64).

92. The betting data, together with the discrepancies in the results data, clearly suggest that the Appellant manipulated the results. It is also more likely than not that there was collusion with Mr. Affi, especially given the overlap with Mr. Affi's match according to the betting data. That all the discrepancies that occurred in the above matches were human errors seems to the Panel rather unlikely. This is for at least five reasons.

93. First, the Appellant is a very experienced umpire. It appears highly improbable that an umpire of such significant experience, having presided over approximately 1,500 matches, would recurrently commit inaccuracies in tasks as basic as registering Chair Umpire's name or entering points. Particularly noteworthy is the occurrence of such discrepancies within the same tournament, the same week, and with two such selections - on the very same day.

94. Second, as demonstrated by the expert witness, Mr. James Keothavong, errors can be corrected with a "back" or "undo" button. These buttons are simple to use.

95. Third, the alleged errors occurred at similar stages of different sets and matches. It seems highly unlikely that any genuine errors would consistently occur at the same stage of each game. If these were genuine errors, they would likely occur at different stages of each match.

96. Fourth, as evidenced by the audio recordings of the matches presided over by the Appellant, the number of the errors he committed was markedly limited. Any errors that did occur seemingly pointed towards the Appellant's attempts in implementing the pre-agreed scheme.

97. Fifth, the notion that the Appellant's erroneous recording of the match score was not a mere random mistake is substantiated by suspicious betting activity.

98. And finally, the Appellant, on three out of four Matches (games between Mats Rosenkranz and Mirko Martinez, Laurynas Grigelis and Daniil Glinka, and finally between Ines Ibbou and Kathleen Kanev), selected the wrong umpire name in the Device. By not putting his own name, but that of another umpire, the Appellant must have attempted to hide his participation in the scheme.

99. The fact that no payments to the Appellant are apparent is irrelevant according to section E.2. TACP.

100. The wrong name, the betting alerts, the discrepancies between the audio and point-to-point data, and the unrealistic timings are striking. Taking the above into consideration, the Panel believes that the evidence certainly meets the preponderance of evidence standard, and in fact goes even beyond that to the point of meeting the comfortable satisfaction standard.

**2. Can the Appellant's actions be treated as violating section D.1.b TACP?**

101. The first of the relevant norms that the Appellant had allegedly breached is section D.1.b TACP. According to this rule *"No Covered Person shall, directly or indirectly, facilitate any other person to wager on the outcome or any other aspect of any Event or any other tennis competition. For the avoidance of doubt, to facilitate a person to wager shall include, but not be limited to: display of live tennis betting odds on a Covered Person's website; writing articles for a tennis betting publication or website; conducting personal appearances for, or otherwise participating in any event run by, a tennis betting company or any other company or entity directly affiliated with a tennis betting company; promoting a tennis betting company to the general public through posts on social media; wearing clothing which includes a tennis betting company name or logo; and appearing in commercial advertisements that encourage others to bet on tennis".*

102. The Panel starts its analysis by noting that the wording of "for the avoidance of doubt" part of section D.1.b and the relatively low sanction for violating this provision (three years) both indicate that the goal of this provision was to make certain behaviours – otherwise not punishable (i.e., legitimate actions) – punishable under TACP. In other words, the aim of this provision is not to eliminate corruption (for which there is zero tolerance under virtually any legal system), but to "capture" perfectly legitimate actions, such as participating in charity events

organized by the betting companies and the like and to render such actions "illegal" in light of TACP. While no sporting organization or sport federation can cause an otherwise legitimate behaviour to become illegal in the legal sense (e.g., criminalize such behaviours), a sports federation or a sports body can, of course, prohibit its direct and indirect members from participating in such actions in order to maintain sports integrity.

103. For this reason alone, the Panel has serious doubts as to whether the Appellant's actions can be seen as being falling under section D.1.b TACP.

104. Further, the core of section D.1.b is "to facilitate any other person to wager". "Facilitate" is defined in the Collins English Dictionary as *"To facilitate an action or process, especially one that you would like to happen, means to make it easier or more likely to happen"*. This also includes the behaviours described in the second sentence of this norm, which are not to be understood as exhaustive examples of the rules in place. The behaviours relate to actions beyond the pitch referee activities. This suggests that only those behaviours are included that are not directly related to the activity as a referee - i.e. match management. However, since the list is not exhaustive, match management could also fall under the term "facilitate". Thus, in this respect, the regulation may lack clarity.

105. Pursuant to section B.1 TACP, an "event" is considered as "professional tennis competitions identified in Appendix 1". Explicitly, Appendix 1 TACP incorporates ATP World Tour Tournaments, excluding Junior Tournaments. The tournaments overseen by the Appellant are part of the ITF World Tour Tournaments and are not classified as Junior Tournaments. Thus, these tournaments align with the definition delineated in section B.1 TACP.

106. Moreover, the term "wager" in section B.28 TACP refers to *"a wager of money or consideration or any other form of financial speculations"*.

107. Tennis has therefore prohibited its practitioners from facilitating wagers through non-match-related undertakings, such as authoring articles, making publications, or participating in promotional activities.

108. As per the firmly established CAS jurisprudence, any decision rendered by a sports-related body must adhere to the principle of legality (CAS 2020/A/7504 at para. 60). Thereby, every action undertaken by a sporting authority necessitates a distinct and unequivocal regulatory foundation.

109. Due to the principle of *in dubio contra proferentem*, ambiguities in regulations are at the expense of the rule maker. As per the robustly established CAS precedents: *"whenever there is uncertainty or a lack of clarity in the application of Regulations, this must be construed against the federation"* (CAS 2020/A/7504, see also CAS 2007/A/1437) and *"the principle of contra preferentem applies, such that the construction to be preferred is the one that favours the Athlete"* (CAS 2011/A/2384 & 2386, para. 228).

110. A restrictive interpretation is also required given the fact that a violation of the provision is subject to sanctions. The purpose of section D.1. TACP is to ensure that sport integrity is

protected. The rule examples in section D.1.b TACP achieve this by protecting the integrity of the Covered Persons (which includes referees, see section B.6 TACP) by not allowing them to have any links to betting operators through their public appearance. Through the rule examples, it should be clear from an objective recipient/observer perspective that they may not show any connections to betting providers in public. A restrictive interpretation does not indicate that "facilitate" also includes conduct that is directly related to match management. This restrictive interpretation also does not create any protection gaps, since facilitating betting by manipulation is covered by section D.1.d TACP. Consequently, also as a result of the systematic view, no extension of section D.1.b TACP to conduct directly related to match-fixing is warranted.

111. The Appellant in the present case has not shown any conduct corresponding or close to any of the rule examples. Entering the score is directly related to the activity as a referee. It concerns match management itself. If the rule is interpreted restrictively to the detriment of the user, as required by the principle of *contra proferentem*, it follows that incorrectly entering the score does not constitute facilitation of betting as provided for in section D.1.b TACP.

112. The Panel thus concludes that the Appellant had not breached section D.1.b TACP.

**3. Can the Appellant's actions be treated as violating section D.1.d TACP?**

113. The second of the relevant norms that the Appellant had allegedly breached is section D.1.d TACP. According to section D.1.d TACP: *"No Covered Person shall, directly or indirectly, contrive the outcome, or any other aspect, of any Event"*.

114. "Contrive" is defined in the Collins English Dictionary as *"If you contrive an event or situation, you succeed in making it happen, often by tricking someone"*. This is probably closest to the term "manipulate", i.e. steering in a certain direction as a result of deliberate influence.

115. The Panel believes it to be of paramount importance in the context of the current case to comprehend the meaning of the phrase "any other aspect". Concerning the term "any other aspect", the Panel holds that this encompasses elements both within and beyond the court. Consequently, this not only envelops on-court elements, such as calling the score out loud on the court, but it may also extend to actions that have the potential to manipulate the online betting markets. Such an interpretation ensures comprehensive coverage of potential instances of conduct detrimental to tennis integrity.

116. The Panel is convinced that the Appellant had contrived an aspect of an Event, explicitly by altering the outcome of the game points in the Device. While such manipulation did not *per se* distort the essence and the competition outcome (since the Appellant called out the correct score on the court), it did distort one aspect of the competition – the point-by-point summary of the individual points scored, as notified to the outside world via the Device and then on-line. This in turn undermined tennis integrity.

117. The stance held is validated by the assertion that, in the Panel's assessment, the Appellant's erroneous recording of scores into the Device was an intentional act. Numerous pieces of evidence lend credence to this conclusion.

118. First, the Appellant's errors in recording the scores into the Device were not random, but occurred during specific matches and at specific points, thus revealing a consistent and logical pattern in the Appellant's actions.

119. Second, an analysis of the audio recordings does not suggest any errors made by the Appellant during the live score announcement during the match, despite the discrepancies in the scores recorded in the Device. This discrepancy further supports the assertion of intentional manipulation.

120. Third, the Appellant had the opportunity, at any given point, to rectify the errors he had made, yet chose not to seize this opportunity, further indicating intentionality of his actions.

121. Fourth, an observed surge in betting activity at specific moments corresponding to the Appellant's recording errors suggests premeditation, implying these errors had been "planned" in advance.

122. Deliberately creating wrong score input into the Device, in the Panel's view, clearly qualifies as contriving an aspect of the game of tennis. Therefore, the Panel concludes that the Appellant had breached section D.1.d TACP.

**4. If, having duly analyzed the case material, the Panel finds that the Appellant had breached the anti-corruption rules, is the extent of the sanction commensurate?**

123. According to well-established CAS jurisprudence, CAS panels should exert self-restraint in reviewing the level of a sanction imposed by a first instance disciplinary body (cf. CAS 2017/A/5086 at para. 206, CAS 2015/A/3875 at para. 108, CAS 2012/A/2824 at para. 127, CAS 2012/A/2702 at para. 160, CAS 2012/A/2762 at para. 122, CAS 2009/A/1817 & 1844 at para. 174, CAS 2007/A/1217 at para. 12.4) and should reassess such sanctions only if they are evidently and grossly disproportionate to the offence or if a different conclusion is reached on the substantive merits of the case than did the first instance body (cf. CAS 2017/A/5086 at para. 206, CAS 2009/A/1817 & 1844 at para. 174 with references to further CAS case law, CAS 2012/A/2762 at para. 122, CAS 2013/A/3256 at paras. 572-572, CAS 2016/A/4643 at para. 100, CAS 2019/A/6344 at para. 501). The above does not mean that CAS's powers are somehow formally limited. It rather means that - far from excluding or limiting the power of a CAS panel to review *de novo* the facts and the law of the dispute at hand (pursuant to Article R57 of the CAS Code) - a CAS panel would tend to pay respect to a fully-reasoned decision and would not easily "tinker" with a well-reasoned sanction, not considering it proper to just slightly adjust the measure of the sanction (cf. CAS 2015/A/3875 at para. 109, CAS 2011/A/2645 at para. 94, CAS 2011/A/2515 at paras. 66-68; CAS 2011/A/2518 at para. 10.7, CAS 2010/A/2283 at para. 14.36). In other words – the reference to a sanction being "grossly and evidently disproportionate to the offence" should be understood as a guideline rather than a binding norm, aimed at restraining CAS's powers.

124. Having said the above, the Panel is also aware of another CAS decision in which the threshold of review might be seen as somewhat lower: *"[t]here is well-recognized CAS jurisprudence to the effect that whenever an association uses its discretion to impose a sanction, CAS will have regard to that association's*

*expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its de novo powers of review, be free to say so and apply the appropriate sanction (see CAS 2015/A/4338, at para. 51)"* (see CAS 2017/A/5003; CAS 2020/A/7596, para 251). Similarly, in yet another CAS decision, the panel stated that the jurisprudence according to which CAS should reassess sanctions only if they are evidently and grossly disproportionate to the offence *"should be interpreted (and applied) with care"* since CAS *"powers to review the facts and the law of the case are neither excluded nor limited"* (see CAS 2018/A/5808).

125. Whether the threshold is that the sanction has to be "evidently and grossly disproportionate" or simply "disproportionate", the decision set out below as to the sanction to be applied to the Appellant would have been identical.

126. In the present matter, the Panel found a detailed explanation in the Decision as to why AHO deemed it appropriate to impose a *"period […] of ineligibility [of] […] seven years beginning with the date of [his] provisional suspensions […]"*.

127. The Panel may, thus, analyse the provided explanation while taking into account its own reasons in assessing the appropriate measure of the sanction in accordance with the principle of proportionality.

128. With respect to the factors to take into account in determining a sanction, the Panel finds the reasoning of the Panel in CAS 2019/A/6219 (and in CAS 2019/A/6344) helpful:

*"In the Panel's opinion […] when imposing a sanction, account has to be taken […] of the following relevant factors:*

- *the nature of the violation;*
- *the impact of the violation on the public opinion;*
- *the importance of the competition affected by the violation;*
- *the damage caused to the image of FIFA and/or other football organizations;*
- *the substantial interest of FIFA, or of the sporting system in general, in deterring similar misconduct;*
- *the offender's assistance to and cooperation with the investigation;*
- *the circumstances of the violation;*
- *whether the violation consisted in an isolated or in repeated action(s);*
- *the existence of any precedents;*
- *the value of the gift or other advantage received as a part of the offence;*
- *whether the person mitigated his guilt by returning the advantage received, where applicable;*

• *whether the offender acted alone or involved other individuals in, or for the purposes of, his misconduct;*

• *the position of the offender within the sports organization;*

• *the motives of the violation;*

• *the degree of the offender's guilt;*

• *the education of the offender;*

• *the personality of the offender and its evolution since the violation;*

• *the extent to which the offender accepts responsibility and/or expresses regret".*

129. Summarizing, the general considerations to weigh in the assessment of the proportionality of a sanction thus include (i) severity (the gravity of the illegal act committed), (ii) deterrence (the potential of the sanction to dissuade repeated illicit conduct of the same nature), and (iii) the importance of the rule being protected (CAS 2019/A/6432 at para. 250 *et seq.*).

130. Having said the above, the Panel would like to note that no list of criteria, however detailed, should obscure the fact that a sanction applies to a particular conduct on the basis of all the circumstances.

131. The same principle applies to any guidelines that may be derived from earlier CAS rulings. Although jurisprudence in other corruption cases could be a helpful guide, there is no principle of binding precedents at the CAS. While CAS rulings can be a useful guide, each case must be decided on its own facts and *"although consistency of sanctions is a virtue, correctness remains a higher one; otherwise unduly lenient (or, indeed, unduly severe) sanctions may set a wrong benchmark inimical to the interests of sport"* (see CAS 2011/A/2518, para. 10.23, see also CAS 2019/A/6344). While it may sound obvious the Panel believes it ought to remind that no two cases are identical.

132. Having set the stage for its analysis the Panel will now move on to the details of the case at hand.

133. The TACP, which has been in effect since 2020, contains rather thorough provisions on integrity and conflicts of interest (sections D and E TACP). The latter constitute roughly 20% of the length of TACP and spell out not only certain problematic situations constituting self-dealing, but also shed light on some violations of tennis integrity and offenses associated with corruption.

134. The extent of these considerations of corruption and integrity in TACP indicate their importance, which is clearly substantial. Its drafters recognized the risks inherent to sport, particularly at the international level, where such infringements profoundly impact the tennis integrity and shape its perception amongst the stakeholders and the general public. Indeed, as stated by another CAS panel, *"the standards of conduct required of officials of an international federation […] must be of the highest level because the public must perceive sports organizations as being upright and*

*trustworthy, in order for those organizations to legitimately keep governing over their sports worldwide"* (CAS 2017/A/5086 at para. 154).

135. The breach of this provision is also far from innocuous in terms of severity, given the fact that not only had tennis integrity suffered, but also the bookmakers and innocent bettors might have been defrauded because the online betting markets had received the incorrect score. It was not necessary for the Appellant to have a personal financial stake in the bets (as stated in CAS 2011/A/2364 para. 75: *"a player who is involved in a fix breaches […] notwithstanding that he does not benefit financially from doing so. Accordingly, the Panel does not consider the absence of financial gain to be determinative in sanctioning the infringement for which he has been found liable"*).

136. The Panel notes that the sanction meted out on the Appellant was not the most severe, considering that a seven-year suspension is not a lifetime ban, and that the person sanctioned is an umpire and not a player with a short-term career. At the same time the Panel notes that there is a major gap between the lowest sanction applied for an offence, i.e. a warning or a reprimand and a seven-year suspension, applied in this case.

137. The Panel further notes that the Decision found that the Appellant had breached sections D.1.b and D.1.d TACP.

138. The Panel notes that according to section H.1.b the 2021 TACP, the penalty for any Corruption Offense may include: *With respect to any Related Person or Tournament Support Person, (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, 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*.

139. This Panel concludes that the Appellant only breached section D.1.d.

140. The Panel notes, however, that violating section D.1.d TACP in itself can lead to permanent ineligibility, while violating section D.1.b TACP can only lead to ineligibility for up to three years. Since in the case of several violated provisions, only one sanction can be recognized and the overall sanction is determined according to the most severe sanction, it is irrelevant for the duration of the ineligibility whether or not section D.1.b TACP was additionally violated. The fact that this Panel rejects the Appellant's violation of section D.1.b TACP does not, in its own right, lead to disproportionality of the sanction.

141. The Panel notes several aggravating factors, which need to be taken into account. These are:

(i) the nature of the violation (interference in the betting markets which – if made widely known – could easily bring the sport of tennis into major disrepute),

(ii) the fact that the Appellant committed repeated actions,

(iii) the fact that the Appellant acted with other individuals and the offenses must have taken planning and a thorough organization in the background,

(iv) the position of the Appellant within the sport of tennis, since an umpire is the symbol for fair play and is tasked to uphold the rules.

The Panel also notes several circumstances and factors, which weigh in the Appellant's favour. These are:

(i) no financial gain proven;

(ii) no negative impact on the game itself, since the Appellant was each time calling the correct score,

(iii) no major impact with regards to media coverage, especially because the umpire did not influence the outcome of the game *per se*,

(iv) relatively low importance of the tournaments in question,

(v) limited interest of the sport federation, since the damage mostly concerned betting operators – and even with respect to the latter it is not known whether they did in fact suffered any harm and to what extent,

(vi) the Appellant's cooperation in handing over his device and skype details.

142. The Panel notes, however, that some of the above mitigating circumstances have already been taken into account by AHO in the Decision. This most notably includes the absence of information about financial circumstances and monetary gain by the Appellant.

The Panel also notes that during the Proceedings before AHO, the Respondent considered a 12 to 15 years as a starting point for a ban for the Appellant.

143. On balance, the Panel considers that the Decision is well-reasoned, and it takes into account factors and circumstances that the Panel also considered when evaluating the sanction. In light of the fact that the seven-year suspension is not disproportionate to the offense when taking into account the totality of the circumstances, the Panel refrains from further reassessment of the sanction, a seven-year period of ineligibility.

144. In view of the above circumstances and factors, the Panel confirms the decision of AHO.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed on 23 July 2022 by Mr. Abderahim Gharsallah, against the decision of the Anti-Corruption Hearing Officer rendered on 4 July 2022 is dismissed.

2. The decision issued on 8 November 2022 by the Anti-Corruption Hearing Officer is confirmed.

3. (…).

5. (…).

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