Arbitration CAS 2011/A/2490 Daniel Köllerer v. Association of Tennis Professionals (ATP), Women's Tennis Association (WTF), International Tennis Federation (ITF) & Grand Slam Committee, award of 23 March 2012

Panel: Mr Romano Subiotto QC (United Kingdom), President; Mr Quentin Byrne-Sutton (Switzerland); Mr Henri Alvarez QC (Canada)

Tennis
Match fixing
Determination of the applicable standard of proof
Evidence of the commission of corruption offences by a player
Determination of the disciplinary sanction

1. **By signing a consent form, a player agrees to the standard of proof provided for by the applicable rules i.e. the "preponderance of the evidence" or proof on the balance of probabilities. This standard is met if the proposition that a player engaged in attempted match fixing is more likely to be true than not true. There is no requirement for a CAS panel to apply a different standard of proof on the basis of CAS jurisprudence**, as t**here is no universal (minimum) standard of proof for match-fixing offences. While consistency across different associations may be desirable, in the absence of any overarching regulation, such as the WADA Code for doping cases, each association can decide for itself which standard of proof to apply, subject to national and/or international rules of public policy. Applying the "preponderance of the evidence" standard, does not violate any rules of national and or international public policy. Finally, the standard of proof clause is not void for unconscionability.**

2. **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. A high degree of confidence in the quality of the evidence is however necessary. In this respect, the evidence of reliable witnesses can meet the standard of the preponderance of evidence needed to establish that a player violated the applicable rules and committed the corruption offences by attempting to fix matches.**

3. **Match fixing is the worst offence possible under the applicable rules as it undermines the sport as a whole. Whether a person is successful in actually fixing a match is irrelevant. According to the applicable regulations, the applicable sanction is a lifetime ban. Any sanction shorter than a lifetime ban would not have the deterrent effect that is required to make players aware that it is simply not worth the risk. In certain circumstances, it is however inappropriate to impose a financial penalty, as the sanction of permanent ineligibility provides for the deterrence that corruption offences call for. The lifetime ban also has a considerable financial effect on a player because it**

significantly impacts the player's future earnings by eliminating tennis as a source of revenue.

The Appellant, Daniel Köllerer (the "Player"), is an Austrian professional tennis player born on August 17, 1983. Köllerer has been a professional tennis player since 2002, achieving his highest ATP World Tour Ranking, 55th in the world, in October 2009.

The Respondents are four international sports bodies in the field of tennis: the Association of Tennis Professionals (ATP); the International Tennis Federation (ITF); the Women's Tennis Association; and the Grand Slam Committee. The Respondents are referred to collectively as the "Governing Bodies", and, together with the Player, as the "Parties".

The Tennis Integrity Board (TIB) was initially named as a respondent in this procedure but further to the Parties' agreement, as of 22 July 2011, the TIB is no longer a party in this matter. The TIB is the executive body of the Tennis Integrity Unit (TIU), an initiative formed by the Governing Bodies to investigate suspected breaches of the Uniform Tennis Anti-Corruption Program (UTACP) and issue penalties accordingly.

On January 24, 2011, the Governing Bodies notified the Player of their findings that he had allegedly made invitations to other tennis players to fix matches five times between […] 2009, and […] 2010. A copy of the notice was sent to Mr. Tim Kerr QC, the Anti-Corruption Hearing Officer (AHO) under the UTACP.

The charges were as follows:

(1) On […], Mr Köllerer requested that […] deliberately lose a match at […].

(2) During the […], Mr Köllerer advised […] that he had offered compensation to […] to fix his match. During the same tournament, Mr Köllerer advised […] that if he was interested in fixing a match he should let him know as he is in touch with the people that do it.

(3) On […] in […], Mr Köllerer asked […] if he was interested in making some money through a combination of tennis bets which would not put his ranking status at risk.

(4) In […], Mr Köllerer contacted […] at […] in […], and offered […] approximately €10,000 to lose his match against […].

(5) In […], Mr. Köllerer contacted […] at […] in […] and offered […] approximately €10,000 to lose his match against […].

Mr. Köllerer's alleged actions qualify as corruption offenses in Articles D.1.d, e and g of the 2011 UTACP, formerly Articles D.1.c, d and f of the 2010 UTACP.

By decision of May 31, 2011, the AHO held that the Player was guilty of three counts of attempted match-fixing (the "Decision"). He found the Player guilty of the first, fourth and fifth charges, and

dismissed the second and the third. The AHO ruled that Köllerer be permanently ineligible for participation in any event organized or sanctioned by the Governing Bodies, and required him to pay a fine in the amount of US$100,000.

On June 28, 2011, the Player filed a Statement of Appeal to the CAS, requesting the CAS to set aside the Decision with respect to the finding that the match-fixing charges alleged by the Governing Bodies were proven, and to set aside the sanctions imposed by the AHO.

Together with its Statement of Appeal, the Player filed a request for a stay of the challenged decision. Further to the Governing Bodies' (partial) objection to this request, the Panel dismissed it by Order of September 8, 2011. The grounds of this decision were notified to the parties on November 25, 2011.

By letter of June 28, 2011, the Governing Bodies sent a letter to the CAS, acknowledging that the time limit to appeal the Decision would expire on the same day. As the Player had not yet filed an appeal, the Governing Bodies wanted to inform the CAS that they *"reserve all their rights to an appeal against the decision of the AHO to dismiss the second and third charges by way of a counterclaim in their answer to any appeal submitted by* [the Player] *under rule R55 of the Rules"*.

The Player filed his Statement of Appeal at 22h12 on June 28, 2011, the last day of his time limit to appeal. By letter of June 30, 2011, the CAS acknowledged receipt of the Statement of Appeal of the Player and notified the Statement of Appeal to the Governing Bodies. The CAS also indicated that Article R55 of the Code of sports-related arbitration (the "Code") does not provide for the filing of counterclaims.

The Governing Bodies replied by letter of July 1, 2011, explaining that as they had not received the Statement of Appeal by midnight on June 28, 2011, they therefore could not file an appeal within the applicable deadline. (In the absence of an appeal by the Player, the Governing Bodies would not have appealed two of the five charges since the other three were already proven).

The CAS replied on the same day, explaining that the filing of counterclaims is no longer possible under the 2010 version of the Code. Reference was made to CAS 2010/A/2108, where the Panel rejected the counterclaim filed by the respondent party in the following terms: *"the Panel notes that the version of the Code, which entered into force on 1 January 2010, no longer contemplates the possibility for respondents to file counterclaims. In other words, the subject-matter of any counterclaims must form part of an appeal against the decision at issue, meaning that the relevant deadlines are those that apply to appeals, as provided for by R49 of the Code"*.

By letter of July 5, 2011, the Player provided a number of preliminary comments on the Governing Bodies' communications concerning the right for the filing of a counterclaim. In particular, the Player noted that the Code does not provide for a remedy to *"reserve an appeal"*, and, since the deadline for an appeal had elapsed, the Decision of the AHO with respect to the second and third charges had become final and binding.

The Governing Bodies replied on the same day, arguing that their letter of June 28, 2011 concerned a Statement of Appeal, and that Article R48 of the Code allowed them to correct and supplement this appeal to ensure satisfaction of all specific requirements. Further letters were sent by the Parties on this subject on July 6 and 7, 2011.

By letter of July 15, 2011, the Deputy President of the CAS advised the Parties that the CAS would not entertain the letter of the Governing Bodies of June 28, 2011 as an appeal, given that it did not clearly contain any requests for relief, but rather announced the intention to file a counterclaim against a possible appeal by the other party. By letter of July 20, 2011, the Governing Bodies stated that they considered the refusal to entertain the letter of June 28, 2011 as an appeal *"a fundamental denial of due process"* and reserved their right to raise the issue with the Panel. Other than to *"wish to register their significant concern that the CAS refused the Respondent's automatic right of appeal on such basis as it did,"* the Governing Bodies did not in fact raise the issue in their Response or during the oral hearing; accordingly, the Panel does not consider it necessary to take any decision in this regard.

On July 8, 2011, the Player filed his Appeal Brief. The Player filed the following requests for relief:

(a) To rule that the appeal of Daniel Köllerer is granted and declare that the first, fourth and fifth charges have not been sufficiently proven;

(b.1) To set aside the Judgment in part with respect to

(i) the finding that the first, fourth and fifth charges against the Appellant under Section D UTACP are proven;

(ii) the ruling that the Appellant is permanently ineligible for participation in any event organized or sanctioned by any of the Respondents; and

(iii) the ruling imposing on the Appellant a fine of USD 100,000.00.

(b.2) Alternatively, should the Panel find that any of the charges against the Appellant are proven, to rule that

(i) the sanctions imposed on the Appellant were excessive;

(ii) the life-long ban imposed on the Appellant is rescinded and is replaced by a temporary ban of appropriate and proportional duration; and

(iii) the fine imposed on the Appellant is reduced to an appropriate and proportional amount.

(c) To rule that the Respondents shall reimburse to the Appellant, upon service of the award, all the costs arising out of and in connection with these proceedings, including the fees and expenses of the Appellant's legal counsel in respect of these arbitration proceedings as well as the proceedings before the AHO, as well as any expert and executive costs.

(d) To award the Appellant such other and further relief as the Panel may deem appropriate.

On August 8, 2011, the Governing Bodies submitted their Response, which contained the following requests for relief:

(a) Rejecting the Appellant's appeal of the Judgment;

(b) Ordering that the Appellant shall indemnify the Respondents within 30 days of the date of the award, for all costs arising out of and in connection with these proceedings, including the fees and expenses of the Respondents' legal counsel in respect of these arbitration proceedings as well as the proceedings before the

AHO, as well as any expert and other reasonable related costs (including in particular the cost of witnesses and interpreters); and

(c) Granting the Respondents such other and further relief as the Panel may deem appropriate.

By letter of September 20, 2011, the CAS informed the Parties that a hearing would be held in Lausanne, on November 28 and 29, 2011.

LAW

CAS Jurisdiction

1. Article R47 of the Code provides that:

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

2. Section I(1) of the UTACP provides that:

"Any Decision (i) that a Corruption Offense has been committed, (ii) that no Corruption Offense has been committed, (iii) imposing sanctions for a Corruption Offense, or (iv) that the AHO lacks jurisdiction to rule on an alleged Corruption Offense or its sanctions, may be appealed exclusively to CAS in accordance with CAS's Code of Sports-Related 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 TIB".

3. Section I(1) of the UTACP thus provides the CAS with exclusive competence to consider appeals against the Decision of the AHO. The Panel therefore has jurisdiction to consider the Player's appeal, as also confirmed by the Parties' signed Orders of Procedure, signed by the Player and by the Governing Bodies on November 22, 2011.

Applicable law

4. Article R58 of the Code provides as follows:

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

5. The Decision, against which the appeal was brought, was issued under the UTACP, and there is no dispute as to the applicability of the UTACP.

6. Moreover, Florida law is applicable as Section J(3) of the UTACP provides that it is governed by the laws of the State of Florida. There is no dispute as to the applicability of Florida law.

Admissibility

7. The statement of appeal was filed on June 28, 2011, which is within the deadline established under Section I(3) of the UTACP, and is therefore admissible.

The Corruption offences of which the player was found guilty

8. In his Decision, the AHO has meticulously set out the background to the charges. The following briefly summarizes the statements and facts on which the AHO based his decision that the Player was guilty of three corruption offences.

A. The […] Charge

9. The first charge of which the Player was found guilty reads as follows:

(1) On […], Mr Köllerer requested that […] deliberately lose a match at […].

10. The Player participated in the […], and was drawn to play his first match against […]. On […], both the Player and […] took breakfast at […]. The Player was there with his manager and his mental coach. […] was there with […]. The Player and […] greeted each other, and, according to […], the Player asked him for his room number sometime during breakfast. […] gave his room number and asked the Player why he needed it. The Player responded that he would tell him later.

11. The following day, on […], again during breakfast, the Player and […] had a brief discussion at the cereal buffet, where the Player asked once again for […] room number, saying again that he would explain later why he needed it. This time […] insisted that the Player explain why he needed it, and the Player allegedly responded by asking […] if he could let him win the first round. […] responded that he was not interested.

12. The match took place late on […]. […] lost to the Player in straight sets. Some 30 minutes after the match, he ran into his ex-coach, […], and told him about the incident at breakfast. […] advised him to report the incident, and accompanied […] to the tournament supervisors. They immediately called the TIU and handed the phone over to […] so that he could report the incident.

13. The Player and […] did not have any further contact during the tournament, other than a short encounter in the elevator during which nothing significant was said.

B. The […] Charges

14. The other two charges of which the Player was found guilty read as follows:

(4) In […], Mr Köllerer contacted […] at […] in […], and offered […] approximately €10,000 to lose his match against […].

(5) In […], Mr. Köllerer contacted […] at […] in […] and offered […] approximately €10,000 to lose his match against […].

15. On […], […] arrived in […] for a tournament. Soon after the aircraft landed, he received a phone call from a number he did not recognize. […] did, however, recognize the Player by his voice (who addressed him in English).

16. During the call, the Player asked […] if he wanted to make some money by "tanking" (the idiom used by tennis players to deliberately lose) his first round match against […]. The Player offered […] €10,000. When […] declined, the Player offered to increase the amount, but […] insisted that he was not interested.

17. […] did not report the incident to the tennis authorities, as he wanted to focus on the tournament.

18. On […], […] overheard […] and […] speaking about the Player, and asked them if they had anything to share about him. […] left, but […] told […] about another incident relating to the Player. […] then told […] about the phone call he received.

19. On […], both the Player and […] were due to play in […]. When checking in into his hotel, […] received another call from the Player, who once again offered €10,000 or €15,000 to tank his first round match against […]. Again, […] did not recognize the number, but recognized the voice of the Player. He declined the offer.

20. […] also did not report the second call to the tennis authorities. […] only disclosed the phone calls when speaking to Mr. Willerton of the TIU on August 25, 2010. Mr. Willerton had contacted him after he had learned about the conversation between […] and […] in […]. Mr. Willerton found out about this through […], who had volunteered this information during an interview with Mr. Willerton on July 24, 2010, when discussing another incident involving the Player.

C. The Finding of the AHO

21. The AHO concluded that he preferred the evidence of […] and […] to that of the Player. The AHO also considered that […], […], and […] were truthful witnesses. […].

22. With respect to the Player, the AHO was unable, *"with regret and considerable reflection, … to accept him as a witness of truth in the most important issue which is his denial that he acted corruptly"*.

23. On this basis, and applying the standard of "preponderance of the evidence" as provided for by Section G(3)(a) of the UTACP, the AHO found the Player guilty of three counts of attempted match-fixing, which actions qualify as corruption offenses under Articles D.1.d, e and g of the 2011 UTACP.

Merits

24. The Player has appealed the Decision on the basis that the charges have not been sufficiently proven. Before discussing the substance of the case, the Panel will therefore first analyze which standard of proof it must apply in this case.

A. The Standard of Proof

a) The Applicable Standard of Proof

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

26. The Player challenges the applicable standard of proof applied by the AHO, alleging that the AHO improperly considered himself limited by the UTACP in applying a "preponderance of the evidence" standard.

27. The AHO stated that he could not find *"any jurisprudence which empowers me to do other than apply, albeit with some unease, the standard of proof provided for in the Program, which is the ordinary standard of proof by a preponderance of the evidence, which, I accept, would in England be described as proof on the balance of probabilities"*. Moreover, the AHO could not find *"any support in Florida law ... that this standard must, in the present context, be interpreted as proof beyond reasonable doubt or something close to it"*.

28. This Panel agrees with the AHO. First, while Florida law might impose a mandatory standard of proof in cases involving punitive damages, the current case relates to sanctions that follow from a breach of contract. By signing a consent form, the Player agreed to both the standard of proof and the contractual sanctions in case of breach. Therefore, neither Section 768.72 of the Florida Statutes nor the cases to which the Appellant referred are applicable.

29. Second, the Panel does not agree with the Appellant that it is required to apply a different standard of proof on the basis of CAS jurisprudence. There is no universal (minimum) standard of proof for match-fixing offences. The cases to which the Appellant refers concerned match-fixing under the UEFA rules, which did not provide for an applicable standard of proof, and the UEFA itself proposed to apply in these cases the standard of proof of *"comfortable satisfaction"*. While the Panel acknowledges that consistency across different associations may be desirable,

in the absence of any overarching regulation (such as the WADA Code for doping cases), each association can decide for itself which standard of proof to apply, subject to national and/or international rules of public policy. The CAS has neither the function nor the authority to harmonize regulations by imposing a uniform standard of proof, where, as in the current case, an association decides to apply a different, specific standard in its regulations.

30. Finally, the Panel does not consider that applying the standard of proof provided for by the UTACP would violate any rules of national and/or international public policy. The Appellant argued that the standard of proof used by the Governing Bodies is inappropriate for the sanctions connected with corruption offences, but has not cited any supporting authority. This Panel does not consider that the Governing Bodies have violated any principle of public policy by applying the standard of proof for corruption offences provided for by the UTACP.

31. Accordingly, the Panel accepts that the applicable standard of proof in this case is *"a preponderance of the evidence"*.

b) Unconscionability of the Standard of Proof Clause

32. The Panel finds that the standard of proof is not void on the ground of unconscionability. It is undisputed that the Player signed a form granting his consent to the ATP Official Rulebook and the UTACP at the start of the ATP tournament in Chennai, India, in January 2009. Moreover, he could have reviewed the UTACP when it was sent to him in December 2008, or by accessing it on the ATP website.

33. The Panel also takes into consideration that the Player had already consented to the same standard of proof clause contained in the ATP rules on multiple occasions in the past. Finally, the Panel notes that the ATP has established a Player Council in an effort to balance any unequal bargaining power that the Governing Bodies might have over individual players, and that no issue has been raised by the Player Council in respect of this standard of proof in the UTACP.

34. The Panel also considers that the standard of proof does not unreasonably favour the ATP. Even under a *"preponderance of the evidence",* the Governing Bodies must establish that it is more likely than not that a corruption offence has been committed. Clearly, this does not mean that the ATP could arbitrarily remove players that they do not like on their tour for corruption offences, as the Appellant has suggested.

35. In sum, by deciding on the issue on a preponderance of the evidence, the Panel considers that the AHO applied the correct standard of proof, and the Panel does not find that the standard of proof clause contained in the UTACP is void for unconscionability. The Panel must therefore determine whether the AHO has applied this standard correctly, taking into account all the arguments and testimonies that the Parties have submitted in their written filings and during the Oral Hearing before the CAS.

B. The Corruption Offences

36. The Panel notes that it has benefited from an extensive case file, containing verbatim transcripts of interviews from the initial investigation by the Governing Bodies, the Parties' submissions and witness statements in the procedure before the AHO, and the Parties' submissions and witness statements in the procedure before the CAS. The file has allowed the Panel to form a very clear and complete picture of the background to the charges and the Decision.

37. The decision that this Panel must make is whether on the preponderance of evidence it finds that the Player committed the corruption offences. In this regard, the Panel must determine whether it prefers the evidence of the Governing Bodies, in the form of testimonies from […], instead of the evidence proffered by the Player, consisting of his own testimonies (corroborated by the witness testimonies of Mr. Nareyka).

38. Given that the various witnesses involved have been asked to provide information on multiple occasions, with varying degrees of proximity to the event in regard to which they were testifying, it is inevitable that the file – and the numerous statements therein – contain certain inconsistencies. This is true both for the evidence provided by the Player and for the evidence provided by the Governing Bodies. The Panel, however, considers that the witnesses, whose testimonies the Panel has considered, have been quite consistent, and the inconsistencies to which the Parties have extensively referred in their submissions and during the Oral Hearing, were not decisive in the Panel's appreciation of the evidence.

39. […].

40. In assessing the evidence the Panel has borne in mind that the Player has been charged with serious offences. While this does not require that a higher standard of proof should be applied than the one applicable according to the UTACP, the Panel nevertheless considers that it needs to have a high degree of confidence in the quality of the evidence.

41. In this regard, the Panel is confident in and persuaded by the evidence of the Governing Bodies presented in support of the charges. Applying the standard of the preponderance of the evidence, the Panel is satisfied that the Player violated the UTACP and committed the corruption offences by attempting to fix matches. As discussed in more detail below, the Panel considers that both […] and […] are reliable witnesses, and it prefers their evidence to that of the Player. In arriving at its Decision, the Panel found the oral evidence given in person during the Oral Hearing by the Player, […], and […] particularly important.

a) The […] Charge

42. The Panel found […] to be a reliable witness. He was very composed during the Oral Hearing. He repeated his recollection of events in very clear and simple terms, and refused to speculate about issues he could not clearly recall. Nothing in his composure suggested he was nervous or

otherwise uncomfortable, and the presence of the Player in the room did not seem to affect him.

43. When asked by the Panel, […] confirmed that he had not misunderstood the Player's words when the latter had offered him to fix a match while talking at the cereal buffet. […] was very sure of this because the Player had even mentioned that he knew how many points […] needed to qualify for […], and reminded him that he only needed a few more wins, which he could easily secure in other tournaments. To […], this clearly revealed the intentions of the Player.

44. […] refuted the suggestion that he reported the Player because he lost to him. […] reminded the Panel that he […] loses matches every week. He reported the incident after the match because he wanted to avoid any distractions in his preparation for the match.

45. The Panel also found Mr. Nareyka, the Player's manager, to be an honest witness. He stated that he had not heard the Player ask […] for his room number from over the table, and assured he would have recalled such a question as it is not very usual. Moreover, Mr. Nareyka was working hard to improve the Player's behaviour (the Player had a mental coach who was also present at breakfast) so that the Player's alleged behaviour would definitely have led to a discussion. He would have also raised questions if he had noticed that the Player had a particularly long discussion with his opponent at the cereal buffet, but this was not the case.

46. However, Mr. Nareyka did not clearly remember whether the Player spoke to […] at the cereal buffet, while the Player has confirmed that a conversation took place. This conversation did not need to last long. Also, Mr. Nareyka claims he is not aware of any match-fixing attempts by the Player, and was not with the Player when he called […]. His testimony is therefore only relevant with respect to the allegation that the Player allegedly asked for […]'s room number from across the table.

47. Mr. Nareyka is convinced this did not happen. However, all witnesses that were heard during the Oral Hearing confirmed that the distance between the two tables was not particularly large, and, according to […], the tables were sufficiently close for the Player to approach him without having to shout. It is therefore not implausible that the Player found an opportunity to address […] at some stage without being overheard, particularly when the other people at the Player's table had gone to the self-service buffet to get some breakfast.

48. This leaves only the testimony of the Player. As mentioned above, he does not dispute that a conversation took place during breakfast. However, he denies that he asked for […]'s room number, either from over the table or when speaking at the cereal buffet. The Player is convinced that […] must have misunderstood him.

49. The Panel was not convinced by the Player's testimony. He recalled certain facts very clearly (for example, the Player remembered that the draw for the first match was on Saturday at 10 a.m., […]), but his memory failed him on more important points. For example, he was not clear about the conversation that took place between him and […]. Rather than clearly stating what, according to him, was said at the cereal buffet, he relied on the argument that […] must have

misunderstood him because of his poor English. The Panel notes that the Player has used this argument more than once when charged with (and found liable for) insulting officials and opponents during tennis matches. Based on their testimonies at the hearing, the Panel is convinced that both men's proficiency in English is sufficient for them to have had a comprehensible conversation.

50. After careful deliberations, the Panel therefore finds that it prefers the evidence of […] to that of the Player.

b) The […] Charges

51. The Panel also found that […] was a reliable witness. Like […], he was very composed, and gave a clear recollection of events. He was convinced that the person who called him was the Player. He thinks one of the reasons that the Player contacted him could be that […] and because […].

52. […] further explained that it is not uncommon for tennis players to tank matches, for example when they want to participate in different tournaments that take place at the same time (players usually receive money for participating in tournaments). He suspects that the Player has tanked certain matches, explaining that this could be detected when the Player is not giving his best effort, given that he is normally very eager and goes for every ball. However, […] was not aware of any matches (other than those reported in the press) that were tanked for betting purposes, neither by the Player nor by other players.

53. In addition, the Panel considers that the witness statements of […], and […], corroborate the evidence provided by […]. […].

54. The Player simply argues that he never called […], suggesting that, unlike the scenario with […], a third scenario was possible here, namely that someone else called […], pretending to be the Player, in an attempt to set him up.

55. The Panel finds […] to be an honest and credible witness who had no motive to fabricate the evidence he gave. The Panel therefore believes that […] is speaking the truth, and that he did indeed receive the two phone calls. The question is therefore whether these calls were made by the Player or by someone else. The Panel does not consider the fact that the Player's phone records report no calls from his phone to […] to be particularly relevant, as he could have easily used a phone that he has not reported to the TIU.

56. In this respect, the Panel questioned […] in detail as to whether he was sure that the Player called him, […]. […] was convinced that he recognized the voice of the Player, and had no doubt that it was him who called.

57. Moreover, the Panel is not persuaded by the alternative scenario suggested by the Player. While the Panel cannot completely exclude the possibility that someone impersonated the Player, it

considers this to be highly unlikely in the circumstances. If there was indeed a conspiracy against the Player, this would mean that […] and […] (or a third person that called […], pretending to be the Player), together with a number of other witnesses, and – as at times suggested by the Player – perhaps even the Governing Bodies, have conspired to plot against the Player. The Panel finds this very implausible on the basis of the evidence adduced. The Panel sees no incentive for the witnesses to give incomplete or false evidence and risk their careers to remove a single player from the competition. […].

58. While it cannot be denied that the Player has his fair share of opponents in the tennis community, there is no credible evidence that he was the subject of a conspiracy to remove him from this community and to end his career. In sum, the Panel considers that […] is a more credible witness than the Player, and that it is likely that the Player did indeed call […] in order to attempt to fix a match.

59. Counsel for the Appellant raised a concern that, if the Panel were to apply a test that allows for the conviction of an athlete on the basis of a single witness' testimony, a tennis player could get rid of competitors or rivals simply by reporting them to the TIU (or even by threatening to do so).

60. While the Panel cannot exclude the possibility that an athlete would falsely report a competitor to gain personal advantage, the argument of the Appellant fails to acknowledge that the officers of the TIU will have to weigh the value of the testimony and compare it to the testimony of the accused athlete (and, ultimately, the AHO and the CAS arbitrators must also be convinced). Only reporting a player is clearly not sufficient to remove him from competition.

61. Moreover, counsel for the Appellant fails to recognize the implications of such an action. This case makes clear that any corruption allegations will be followed by an intensive procedure. The main witnesses in the current proceedings had to report their allegations to the TIU on separate occasions, and confirm them under oath before the AHO and once again before the CAS.

62. Considering all of the above, the Panel is satisfied that the Player attempted to engage in match fixing. The Governing Bodies have met their burden of proof. The Panel confirms the Decision of the AHO and upholds the three charges against the Player relating to his attempts to fix matches.

C. The Applicable Sanction

63. Given the gravity of the offences, the AHO considered that it was necessary to mark these with a substantial fine, and imposed a financial sanction in addition to the lifetime ban. The Player has argued that these sanctions are disproportionate, in particular given that the impact it will have on his future earnings is not proportionate to the effects of the offences. The Governing Bodies argue that match fixing is the worst offence possible under the UTACP and that it undermines the sport as a whole. Whether a person is successful in actually fixing a match is irrelevant.

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

65. The AHO has a fair measure of discretion in setting a penalty. Section G(4)(a) of the UTACP provides that when the AHO finds that a corruption offence has been committed and Section H of the UTACP specifies a range of possible sanctions for that offence, *"the AHO shall also fix the sanction within that range, after considering any submissions on the subject that the parties may wish to make"*.

66. After careful deliberation, this Panel sees no option other than to confirm the lifetime ban imposed by the AHO. As explained in detail by the Governing Bodies, the sport of tennis is extremely vulnerable to corruption as a match-fixer only needs to corrupt one player (rather than a full team). It is therefore imperative that, once a Player gets caught, the Governing Bodies send out a clear signal to the entire tennis community that such actions are not tolerated. This Panel agrees that any sanction shorter than a lifetime ban would not have the deterrent effect that is required to make players aware that it is simply not worth the risk.

67. The Governing Bodies also claim that a substantial fine in addition to the lifetime ban is proportionate. To support their claim, the Governing Bodies rely on a number of cases in which large fines were imposed on those guilty of lesser disciplinary offences. The Panel, however, does not consider that the cases to which the Governing Bodies refer justify imposing both a lifetime ban and a substantial fine.

68. In CAS 2009/A/1920, the president of a professional football club was found guilty of match-fixing. He received a life-time ban, but no further financial sanction. Similarly, in CAS 2010/A/2172, a referee of professional football matches was found guilty of match-fixing. He also received a life-time ban but no further financial sanction. The Governing Bodies also referred to a case against John Higgins, who received a six-month (not a lifetime) ban and a fine of £75,000 for *"intentionally giving the impression to others that they were agreeing to act in breach of the Betting Rules"*. Finally, the case against Serena Williams to which the Governing Bodies refer concerned a totally unrelated offence (aggravated behaviour), and Ms. Williams received only a conditional ban in addition to a financial sanction.

69. In their submission to the AHO in relation to sanctions, the Governing Bodies set out a number of additional cases in which lifetime bans were served for match-fixing. However, in none of these cases were financial penalties imposed in addition to the lifetime ban.

70. In the current case, the Parties have gone to great lengths to explain the gravity of match-fixing offences, and, as described above, the Panel acknowledges that any sanction should be sufficiently high to reflect the fact that corruption offences are not taken lightly. However, taking into account the particular circumstances of the current case, the Panel considers that it

would be inappropriate to impose a financial penalty in addition to the lifetime ban, as the sanction of permanent ineligibility provides for the deterrence that corruption offences call for.

71. The Player was still in the midst of his career, so by imposing a lifetime ban the Governing Bodies show that they are not reluctant to ban tennis players for life, whatever the stage of their career and age, if they attempt to fix matches (even if these attempts are unsuccessful).

72. The lifetime ban also has a considerable financial effect on the Player because it significantly impacts the Player's future earnings by eliminating tennis as a source of revenue. In this respect, the AHO noted that the Player's means are limited and that he is in substantial debt, a fact that has not been challenged by the Respondents. Indeed, no evidence was put forward that the Player benefited (financially or otherwise) from any of the charges for which he has been found liable.

73. The Panel therefore considers that the lifetime ban in itself is sufficiently high to reflect the seriousness of the corruption offences, and sets aside the Decision of the AHO with respect to the imposition of the fine of $100,000.

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr. Daniel Köllerer on June 28, 2011 is partially upheld.

2. The decision of the Anti-Corruption Hearing Officer under the UTACP of May 31, 2011 to rule that Mr. Daniel Köllerer is permanently ineligible for participation in any event organized or sanctioned by any of the four Governing Bodies is confirmed.

3. The decision of the Anti-Corruption Hearing Officer under the UTACP of May 31, 2011 to impose a fine of $100,000 on Mr. Daniel Köllerer is set aside.

4. The proceedings will be free, except for the Court Office filing fee of CHF 500 already paid by Mr. Daniel Köllerer, which is retained by the CAS.

5. (…).

6. All other requests for relief are denied.