Arbitration CAS 2018/A/5939 Patricio Heras v. Tennis Integrity Unit / Professional Tennis Integrity Officers (PTIOs), award of 1 October 2019

Panel: Mr Ken Lalo (Israel), Sole Arbitrator

Tennis
Match-fixing
Proper respondent in any appeal to CAS under the Uniform Tennis Anti-Corruption Program
Scope of the appeal
CAS power of review of decisions on sanctions
Proportionality of sanctions

1. **The 2015 Uniform Tennis Anti-Corruption Program does not specify who should be named as a respondent in any appeal to CAS. The Professional Tennis Integrity Officers (PTIOs), who do not represent any legal entity but are merely an acronym for a group of natural persons vested with the responsibility to administer the Program, are mandated with the execution of disciplinary procedures under the Program and are parties to the proceedings which conclude with the issuance of violation and sanction decisions under such Program. As such the PTIOs are the correct respondents to the CAS proceedings.**

2. **In case two different decisions have separately established the commission of a match-fixing violation, respectively the measure of the sanction to be imposed for the violation, but no appeal was lodged against the decision regarding the violation, a player cannot use the appeal against the decision regarding the sanction to challenge and question the decision regarding the violation.**

3. **Whilst a hearing before the CAS is a hearing *de novo*, the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules should be reviewed by a CAS panel only when the sanction is evidently and grossly disproportionate to the offense, and not merely when alternative or modified sanctions may have been better suited in the CAS panel's discretionary opinion.**

4. **In match-fixing cases in which players ask another player to fix an aspect of a match, a lifetime ban has been found to be a proportionate sanction. In cases in which players fix their own match, periods of ineligibility of 5 to 10 years (with part of such period suspended) were imposed. This approach includes the need for sanctions to act as deterrent.**

I. PARTIES

1. Patricio Heras (the "Appellant" or "Player") is a professional tennis player from Buenos Aires, Argentina.

2. The Tennis Integrity Unit (the "TIU") is responsible for enforcing a zero tolerance policy towards gambling-related corruption in the sport of tennis. The Professional Tennis Integrity Officers ("PTIOs") employed by the TIU are appointed by each of the four Governing Bodies (ATP Tour Inc. ("ATP"), International Tennis Federation ("ITF"), WTA Tour Inc. ("WTA") and the Grand Slam Committee ("GSC")) participating in the 2015 Uniform Tennis Anti-Corruption Program (the "Program").

3. As set below, Counsel for the PTIOs entered an appearance in this procedure and suggested that the proper respondent to this appeal shall be the PTIOs, not the TIU. No reasons for such suggestion were provided. The Appellant noted the PTIOs' suggestion and stated as follows: *"it is mainly the TIU who should attend this appeal as a defendant, and the PTIO and the AHO as executors hired by the TIU"*. In consideration of the parties' positions in this regard, and as set out below, the PTIOs, as executors hired by the TIU, and the TIU itself, shall be collectively referred to as the "Respondent" in this Award.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. Summary

5. On 16 July 2018, an Anti-Corruption Hearing Officer under the Program (the "AHO") issued a decision finding the Appellant guilty of violating (1) Section D.1.d of the Program by contriving the outcome of a match between the Player and Mr. Facundo Mena at the Baranquilla tournament in Colombia on 8 September 2015 (the "Match"); and (2) Section D.2.a.i of the Program by failing to report corrupt approaches on or around August 2015 and on 4 September 2015 (the "Violation Decision").

6. The Appellant did not appeal the Violation Decision.

7. Following the Violation Decision, on 3 September 2018, the AHO issued a second decision, this time imposing a 5-year period of ineligibility (with 2 years suspended on the condition that he committed no further breaches) and a fine of USD 25,000 on the Appellant (the "Sanction Decision").

8. As discussed below, it is from the Sanction Decision only that the Appellant now appeals to the Court of Arbitration for Sport ("CAS").

9. In his statement of appeal and appeal brief, the Appellant admits his guilt as it concerns the second charge, namely failing to report corrupt approached. However, the Appellant denies the first change, namely contriving the outcome of the Match.

10. In its answer, the Respondent asserts that the deadline to appeal the Violation Decision has long expired and that this appeal should only concern the Sanction Decision. In this respect, the Sanction Decision is reasonable and proportionate given the violations, and should be maintained.

B. The Alleged Fix and Approaches

11. On 14 August 2015, the Player received an email from Mr. Marco Trungelliti, a professional tennis player, who, through a sequence of events, had met a man named Mr. Ivan Kovacic who wished to discuss a potential sponsorship opportunity with them. Mr. Trungellitti proceeded to meet with Mr. Kovacic in a bar near Mr. Trungelliti's home in Buenos Aires where he learned that Mr. Kovacic did not have a potential sponsorship opportunity, but instead, proposed to work with Mr. Trungellitti to fix various tennis matches. During this conversation, Mr. Kovacic informed Mr. Trungellitti that he has previously worked with the Player to fix matches.

12. Mr. Trungelliti did not agree with Mr. Kovacic's approach and reported the conversation to the TIU.

13. On or around 4 September 2015, the Player received a message from a man named Mr. Fede Fernandez through Facebook who invited the Player to meet with him and Mr. Kovacic about an ongoing relationship to fix matches. Specifically, Mr. Fernandez explained to the Player that there was money available if he were to lose the Match.

14. On 8 September 2015, the Player lost the Match (7-6, 6-0).

15. On 9 September 2015, the TIU received an email alert from Betfair indicating that it had certain concerns around betting patterns that occurred during the Match. On the same day, the TIU also received an email from Ladbrokes reporting suspicious betting patterns on a match between Mr. Nicolas Kicker and Mr. Federico Coria – two other players that were also named by Mr. Kovacic in his conversation with Mr. Trungellitti. The Ladbrokes email also noted that they were aware of suspicious activity surrounding the Match.

16. On 18 September 2015, a Senior Intelligence Officer at the Gambling Commission sent an email to the TIU confirming that it has received reports of suspicious betting on the Match from three betting operators, namely Betfair, Betfred, and PaddyPower.

17. Suspicious betting patterns were also noted in an online article entitled *"How to fix a tennis match"*, which expressly referred to the Kicker-Coria game and the Match.

18. An analysis of the betting patterns through Betfair indicated a large number of bets by Mr. Pablo Serra, who is known by the TIU to be an associate of Mr. Kovacic.

19. The TIU interviewed the Player on 8 November 2015 about the suspicious betting patterns around the Match.

20. A second interview subsequently took place on 12 November 2015, following which the Player admitted that corrupt approaches were indeed made. The Player voluntarily turned over his telephone to the TIU for examination, along with various documents requested by the TIU (with the exception of bank records which were not available).

21. The Player's telephone had Mr. Fernandez as a contact and a WhatsApp exchange between the Player and Mr. Fernandez was the only communication deleted from his telephone.

22. On 23 August 2017, the Player was charged with violating Sections D.1.d and D.2.a.i of the Program.

23. Following the exchange of written submissions, a hearing was held of 6 April 2018.

24. The Violation Decision was rendered on 16 July 2018. The Sanction Decision was rendered on 3 September 2018.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 26 September 2018, the Player filed his statement of appeal with the CAS against the Respondent with respect to both the Violation Decision and the Sanction Decision in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "Code"). Within his statement of appeal, the Player requested that this procedure be referred to a Sole Arbitrator.

26. On 9 October 2018, the Respondent noted that while the Player appealed against both the Violation Decision and the Sanction Decision, only the Sanction Decision was ripe for appeal as the deadline to file an appeal against the Violation Decision (dated 23 August 2018) had long expired. In this respect, to the extent the Player confirmed that he was indeed only appealing the Sanction Decision, the Respondent agreed to refer this procedure to a Sole Arbitrator.

27. Moreover, the Respondent asserted that the correct Respondent to this procedure should be the PTIOs not the TIU. No reason was provided by the Respondent as to why the PTIOs as opposed to the TIU should be the proper respondent in this procedure.

28. On 11 October 2018, the Player confirmed that he was only appealing the Sanction Decision.

29. On 12 October 2018, the Player filed his appeal brief in accordance with Article R51 of the Code.

30. On 16 October 2018, Mr. Juan Manuel Alasia, counsel for the Player, further confirmed that the Player was solely appealing the Sanction Decision. Additionally, Mr. Alasia confirmed the Player's position that the TIU should be maintained as the Respondent, and the *"PTIO and the AHO as executors hired by the TIU"*.

31. On 22 October 2018, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of Mr. Ken Lalo, Attorney-at-Law, Gan-Yoshiyya, Israel as Sole Arbitrator.

32. On 2 November 2018, the Respondent noted that despite the Player's confirmation that he was only appealing the Sanction Decision, his appeal brief sought to overturn both the Violation Decision and the Sanction Decision.

33. On that same day, 2 November 2018, the CAS Court Office again sought clarification from the Player as to the scope of his appeal.

34. On 8 November 2018, the Respondent filed its answer in accordance with Article R55 of the Code.

35. On 9 November 2018, the CAS Court Office noted that the Player did not timely clarify the scope of his appeal and unless otherwise informed, the CAS Court Office would consider that he was only appealing the Sanction Decision as previously announced.

36. On 15 November 2018, the Player informed the CAS Court Office that he was no longer represented by Mr. Alasia and confirmed that the scope of his appeal was against the Sanction Decision only. He also noted that he preferred that the Sole Arbitrator decide this appeal based solely on the parties written submissions.

37. On 19 November 2018, the Respondent confirmed that they also preferred for this appeal to be decided based solely on the parties' written submissions.

38. On 14 January 2019, the Sole Arbitrator deemed himself sufficiently well informed to render a decision in this procedure without a hearing in accordance with Article R57 of the Code.

39. On 18 and 21 January 2019, the Player and Respondent signed and returned the order of procedure to the CAS Court Office.

IV. SUBMISSIONS OF THE PARTIES

40. The Appellant's submissions, in essence, are summarized as follows:

- There is no direct link through which is can be established that the Player contrived the match.

- The only player to testify at the underlying hearing was Mr. Trungelitti, and he only testified against Mr. Kicker saying that his match looked suspicious. Importantly, Mr.

Trungelitti stated that he did not think that the Player was involved in the matters in question.

- The Player, who was injured during the Match (and whose injury continued for two months after the Match) was not the favorite to win in any event. Indeed, he had lost to his opponent, Mr. Mena, on other occasions.

- The sanction equates to a three-year ban from playing with a fine of USD 25,000 which must be paid within the first three years. This is untenable as playing tennis is his only source of income and without being able to play, he is unable to pay the fine.

- The penalty is the same penalty applied to Mr. Kicker who admitted fixing two matches, which is unlike this case where there is no extreme circumstantial evidence of the Player fixing a match (and the Player disputing that he fixed any matches).

- The Player admits having failed to report a corrupt approach but is innocent for having received any money for a corrupt act.

- The Player mistakenly forgot that he deleted the WhatsApp message with Mr. Fernandez simply because it happened two years before the underlying hearing and he cannot be expected to remember everything. Similarly, the passage of time precluded the Player from recalling where he learned of Mr. Kovacic's name.

- The AHO did not value the fear that the corrupt offer could have caused the Player, or his open approach to the investigation and cooperation. Moreover, the AHO simply ignored the gaps in factual issues and testimonies against the Player.

- The Sanction Decision is arbitrary and unfounded as the AHO stated that Mr. Kicker was *"more guilty"* yet the same penalty was imposed on him. Further, even though the evidence established that Mr. Coria arranged matches and evidence against him was strong, he only received the minimum sanction just for *"not reporting"*. The reality is that there are no similar cases to his and he should not be punished for more than what he did.

41. In his appeal brief, the Appellant sought the following relief:

> *"I appeal the judgment of September 3, 2018, requesting that the fine originally requested to the AHO of USD5,000 be imposed (since it is the only one I can pay without playing) and a year and a half of ineligibility, with an effective compliance of 8 months".*

42. The Respondent's submissions, in essence, are summarized as follows:

- The Player is precluded from asserting any arguments against the Violation Decision given that his time limit to appeal this decision expired on 13 August 2018 and his statement of appeal was only filed on 26 September 2018. Therefore, it is understood that the Player only challenges the Sanction Decision, which is confirmed by his counsel's letter dated 16 October 2018.

- The Sanction Decision is entirely reasonable and proportionate given the offense committed, the circumstances of the Player and his conduct, and the relevant precedents under the Program.

- The Sole Arbitrator should exercise discretion and only review the appealed decision when sanction is evidently and grossly disproportionate. This is not the case here because the Player was represented by counsel at first-instances and all evidence and submissions were heard by an experienced arbitrator.

- The range of sanctions available for violations of Sections D.2.d and D.2.a.i is a fine up to USD 250,000 and a period of ineligibility up to permanent ineligibility. In order for a sanction to be proportionate, a reviewing tribunal should consider the seriousness of the offense, relevant precedents, and any aggravating or mitigating factors.

- Match fixing is a serious offense which threatens the integrity of sport. In cases where players fix their own matches, sanctions range from 5 to 10 years (with a maximum of 2 years suspended). Significant sanctions are therefore justified to act as a deterrent.

- While not binding, the Sole Arbitrator should respect the decisions rendered in other similar cases such as PTIOs v. Kryvonos 2017, PTIOs v. Kocyla 2015, PTIOs v. Olaso 2013, and PTIOs v. Kicker 2018.

- There are no mitigating factors to be applied in this procedure.

- There are, however, aggravating factors as follows: (1) the Player was fully aware that he had to comply with the Program having completed the Tennis Integrity Protection Program online test; (2) the Player did not show any remorse for his actions (even for failing to report an approach which he readily admitted); (3) the Player committed multiple charges; (4) the Player was dishonest when he gave an untruthful account of what happened, which casts doubt on his credibility; and (5) the Player fails to appreciate the seriousness of his conduct.

- The Player's sanction is at the lower end of the scale (compared with the 10 years or full 5 years imposed on other players).

43. In its answer, the Respondent sought the following relief:

> *"For the reasons above, the Tribunal is respectfully invited to uphold the September Decision and dismiss the Player's appeal. Further, the PTIOs reserve their right to request a contribution to their legal fees pursuant to R.65.3".*

V. JURISDICTION

44. Article R47 of the Code provides as follows:

> *"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 Appellant 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".*

45. Section I.1. of the Program provides that *"Any Decision (i) that a Corruption Offense has been committed […] (iii) imposing sanctions for a Corruption Offense […] 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 PTIO".*

46. No party has objected to CAS jurisdiction and the parties expressly consented to such jurisdiction when signing the order of procedure.

47. The Sole Arbitrator, therefore, confirms that the CAS has jurisdiction to decide this dispute.

VI. ADMISSIBILITY

48. Article R49 of the Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".*

49. Section I.3. of the Program also provides that *"The deadline for filing an appeal with CAS shall be twenty business days from the date of receipt of the Decision by the appealing party".*

50. The Sole Arbitrator notes that by letter dated 16 October 2018 and 15 November 2018 the Player confirmed that he was only appealing the Sanction Decision (irrespective of the pleas set out in his appeal brief). The Sanction Decision was issued on 3 September 2018 and the statement of appeal was filed on 26 September 2018, i.e. within the twenty business day deadline set out in Section I of the Program.

51. In its answer, the Respondent confirms that the Player's appeal from the Sanction Decision is admissible.

52. In consideration of the foregoing, the Sole Arbitrator confirms that the appeal from the Sanction Decision is admissible.

53. For the avoidance of doubt, however, the Sole Arbitrator notes that the Violation Decision was rendered on 16 July 2018. Therefore, to the extent the Player seeks to appeal this decision, his statement of appeal filed on 26 September 2018 would be untimely and any such appeal inadmissible.

VII. APPLICABLE LAW

54. According to Article I.1. of the 2013 Program, the appeal to CAS is to be conducted *"[…]in accordance with CAS's Code of Sports-Related Arbitration and the special provisions applicable to the Appeal Arbitration Proceedings"*.

55. Article R58 of the Code provides as follows:

> *"The 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"*.

56. In the present case the *"applicable regulations"* for the purposes of Article R58 of the Code are, indisputably, those contained in the Program, since the appeal is against the Sanction Decision issued by the AHO applying the Program's rules and regulations. Applying the law in force at the time of the act, the Sole Arbitrator shall apply the 2015 Program.

57. Section K.3. of the 2013 Program provides that:

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

58. Therefore, the applicable law, accordingly to which the Sole Arbitrator will decide the present appeal, is the 2015 Program and, subsidiarily, the laws of the State of Florida, USA.

VIII. MERITS

A. Who is the proper Respondent?

59. The Player filed the appeal against the TIU. The Respondent asserted in its letter of 9 October 2018 that the correct Respondent to this procedure should be the PTIOs not the TIU, specifying no reason for such assertion. The Respondent did not seek to delete or replace the TIU as a respondent. On the other hand, the TIU did not participate in these proceedings and there is only representation of the PTIOs who also accepted CAS jurisdiction over this matter and have fully participated in these proceedings.

60. The Player, by his letter of 16 October 2018, confirmed his position that the TIU should be maintained as the Respondent, and the *"PTIO and the AHO as executors hired by the TIU"*.

61. The Program specifies that tasks and responsibilities of the TIU, the PTIOs and various other bodies which carry certain rights and responsibilities regarding the Program and its administration. The Program does not specify who should be named as a respondent in any appeal to CAS and thus leads to the present confusion. Noting that this is not the first time

such confusion regarding the proper respondent has arisen (see, e.g. CAS 2018/A/5999), it is suggested that the TIU make clear who the proper respondent should be in the next edition of the Program.

62. The PTIOs, who do not represent any legal entity but are merely an acronym for a group of natural persons vested with the responsibility to administer the Program, are mandated with the execution of disciplinary procedures under the Program and were parties to the proceedings which concluded with the issuance of the Violation Decision and the Sanction Decision.

63. The Sole Arbitrator concludes that as such the PTIOs are the correct respondents to these proceedings. The TIU is maintained as a party since its deletion was not required. It is understood, however, that the decision in this appeal will be executed by the PTIOs.

B. What is the appropriate sanction to be imposed on the Player?

64. The sole matter for decision on appeal by the Sole Arbitrator is whether the sanctions imposed on the Player under the Sanction Decision are appropriate or should be modified.

65. The Sanction Decision imposed on the Player a 5-year period of ineligibility (with 2 years suspended on the condition that he commits no further breaches) and a fine of USD 25,000.

66. The Player argues that the sanction imposed on him was arbitrarily decided, did not consider all facts and circumstances including mitigating factors and is in conflict with sanctions imposed on other players under similar circumstances. The Player concludes that the sanction should be reduced to *"a year and a half of ineligibility, with an effective compliance of 8 months"* and a fine of USD 5,000.

67. The Player supports his arguments in part on his assertion that he should have been found guilty only for one of the two violations confirmed by the Violation Decision. The Sole Arbitrator notes that, for the purposes of deciding the sanction, the Violation Decision which has not been timely appealed should be accepted and cannot be questioned through this "back door" review of the appropriate sanction.

68. The Sole Arbitrator accepts the approach taken by previous CAS panels in the context of reviewing a decision on sanctions, according to which:

> *"… whilst a hearing before the CAS is a hearing de novo the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules should be reviewed only when the sanction is evidently and grossly disproportionate to the offense" (*see CAS 2014/A/3467, para. 121; TAS 2004/A/547, paras. 66 and 124; CAS 2004/A/690, para. 86; CAS 2005/A/830, para. 10.26; CAS 2005/C/976 & 986, para. 143; CAS 2006/A/1175, para. 90; CAS 2007/A/1217, para.12.4; CAS 2010/A/2209, para. 68).

69. In the present case, the AHO considered all the evidence, including hearing evidence from the Player and submissions on sanctions from both parties and determined appropriate sanctions in his view which were explained in the Sanction Decision.

70. Therefore, in order to modify the sanction, the Sole Arbitrator will need to conclude that the sanction imposed on the Player is evidently and grossly disproportionate to the offenses determined in the Violation Decision, and not merely that alternative or modified sanctions may have been better suited in his discretionary opinion.

71. Any disproportionality to the offenses is as pronounced in the Violation Decision and not to limited or reduced offenses argued by the Player on appeal. The Violation Decision has not been timely appealed and thus its findings cannot be questioned or modified in arguing the appropriate sanctions.

72. The range of sanctions that may be imposed under Section H.1 of the Program for the breaches committed by the Player include a fine of up to USD 250,000 and a period of ineligibility up to a maximum period of permanent ineligibility. Thus the sanctions imposed on the Player were definitely not at the high range of possible sanctioning.

73. In order for a sanction to be proportionate, a tribunal should consider the seriousness of the offence or offences, relevant precedents and any aggravating and mitigating factors.

74. Match-fixing poses a huge threat to the integrity of sports. It endangers the essence of the sport, its moral values and its sporting value as well as its appeal to spectators, the media and sponsors. In effect it endangers the existence of the sport itself. In cases in which players ask another player to fix an aspect of a match, CAS has confirmed that a lifetime ban is a proportionate sanction (CAS 2011/A/2490; CAS 2011/A/2621).

75. This approach, including the need for sanctions to act as a deterrent, was summed up by the panel in CAS 2011/A/2490 noting that, *"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. The 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"* (at para. 123).

76. In cases in which players fix their own match, as in the present case, a suspension of 5 years appears to be clearly within the range of sanctions in cases having similar characteristics, in which periods of ineligibility of 5 to 10 years (with part of such period suspended) were imposed.

77. In the 2017 decision of PTIOs v. Kryvonos, the player was sanctioned with a 10-year period of ineligibility and a fine of USD 20,000. In the present case, the Player committed a breach of D.1.d and a further offense of a failure to report, while Mr. Kryvonos committed a breach of D.1.d and a further offence of a failure to cooperate. Further considerations were given to: (i) Mr. Kryvonos's admission of one charge and no contest to the other, thereby removing the need for a hearing, which was not present in the present proceedings; (ii) the use of the

mobile phone during the relevant match, which is an aggravating factor that is not present in the present case; and (iii) the experience of the player which is also present in regard to the Player.

78. In the 2015 case of PTIOs v. Kocyla, the player was sanctioned with a 5-year period of ineligibility and a fine of USD 15,000 having been found guilty of two breaches of D.1.d offenses, as well as failing to report a corrupt offence and failing to report knowledge of a corruption offence. In deciding the sanctions, the AHO took into account: (i) that the player was young and in his inaugural year as a professional player, which differs from the present proceedings; (ii) that the player only undertook integrity training after the offences took place, which also differs from the present proceedings; and (iii) that only attempt to match-fixing was evidenced and not one which succeeded. Therefore, in Kocyla there were a larger number of violations, but on the other hand mitigating factors not present in the current proceedings.

79. In CAS 2014/A/3467, the Panel upheld the sanction imposed by the AHO of a period of ineligibility of 5 years (with 18 months suspended) and a fine of USD 25,000 for one offence of contriving or attempting to contrive a match and two breaches of failing to report. The partial suspension of the period of ineligibility was based on *"some signs of the possibility of rehabilitation"* presented by the player.

80. In the 2018 case of PTIOs v. Kicker, the player was sanctioned with a period of ineligibility of 6 years (with three years suspended) and a fine of USD 25,000 for two breaches of Section D.1.d and one breach of D.2.a.i. In that case, the decision was also influenced by the admission of the offences by the player after the decision on liability and his, albeit belated, remorse.

81. The AHO, after considering the relevant precedents determined that the case of CAS 2014/A/3467 represented *"the best starting point since that involved one charge of contriving a game whereas Kicker and Kocyla involved two"*.

82. The AHO considered that the Player's offer to assist the TIU demonstrated *"some signs of the possibility of rehabilitation in his offer to the TIU to cooperate in whatever way seems appropriate"*. The AHO thus considered that the Player's case was analogous to that of CAS 2014/A/3467, who was also found to have shown signs of potential for rehabilitation.

83. The AHO took the CAS 2014/A/3467 case as a starting point for deciding the sanctions. The Player highlights what he perceives to be differences between his case and the CAS 2014/A/3467 case, namely that: (i) the player in CAS 2014/A/3467 did not cooperate fully with the investigation; (ii) it has been proven that the player in CAS 2014/A/3467 had fixed the match; (iii) a witness stated that he wanted to give the player in CAS 2014/A/3467 EUR 2,000 in an envelope; (iv) there is concrete evidence that the player in CAS 2014/A/3467 had arranged the match for a sum of money if he lost; and (v) Skype messages have proven the match arrangement.

84. The Sole Arbitrator considers that the AHO has fully and appropriately explained the choice of the CAS 2014/A/3467 case as a starting point for deciding the appropriate sanctions.

85. The factual differences pointed out by the Player regarding the two cases are of lesser significance since the Violation Decision clearly determined that the Player was involved in one charge of contriving the outcome of the Match and one charge of failing to report corrupt approaches. The Player does not point to mitigating factors in his case, but for some assistance in the proceedings and some late indications of remorse which were taken into account by the AHO.

86. The Player also points to what he believes to be an unexplained inconsistency in the Sanction Decision. The AHO stated that Kicker is more culpable than the Player, but in essence imposed a similar sanction on the Player; namely, Kicker received an ineligibility period of 6 years with half of it suspended and the Player 5 years with only 2 years suspended; thus the same 3-year period which was not suspended. The Sole Arbitrator notes that the length of the ineligibility period is substantially higher in the Kicker case – one full year.

87. In regard to other cases pointed out by the Player, most of the arguments made by the Player refer to factual facets of the cases and the Player's notion that *"[w]ith all due respect, there is no jurisprudence that could be similar to my case because the PTIO has not been able to prove during the procedure that I participated in the settlement of a party, despite the ruling of July 16, 2018"*. Such arguments are not accepted by the Sole Arbitrator. The AHO properly based the Sanction Decision on the rulings of the Violation Decision. The Player failed to present any mitigating factors not considered by the AHO.

88. The AHO concluded that the Player had *"committed a serious offence"* and considered that a period of ineligibility of 5 years (with 2 years suspended) and a fine of USD 25,000 was proportionate. Such sanction is indeed consistent with the 5 years (with 18 months suspended) and USD 25,000 fine imposed on the player in CAS 2014/A/3467.

89. Possible aggravating factors do exist in the present case, as follows: (i) the Player was experienced and fully aware that he had to comply with the Program, given that he completed the Tennis Integrity Protection Program online test on 10 September 2011; (ii) the Player still argues that the violations contained in the Violation Decision are not well established despite not having appealed such decision; (iii) the case involves two separate violations; and (iv) failure to accept that his conduct breached the rules or undermined the integrity of tennis.

90. The Sole Arbitrator accepts that primary mitigating factors in Kocyla (age, lack of integrity training and the fact the player attempted to, and did not in fact, contrive his match) are not present in this case. The Player cannot benefit, as Mr. Kryvonos and Mr. Kicker did, from the fact that he admitted (or did not contest) charges. The sanction imposed on the Player is at the lower end of the scale, compared with the 10 years or full 5 years imposed on other players, and the fine is consistent with fines imposed in other cases.

91. Regarding the fine, the Sole Arbitrator notes that in the Kryvonos case the AHO considered that *"more recent CAS decisions have accepted the imposition that fines on a player is an appropriate sanction where the earlier jurisprudence was more equivocal"*. In the Kocyla case, the AHO noted that in setting the amount of the fine, *"the amount needs to be sufficient to deter future conduct by both the Player and*

other players and also reflect punishment of the present conduct". A fine is, in part, an additional punishment for the misconduct.

92. However, in imposing a fine one should also consider the financial strain of its imposition on an individual player. The Player argues financial hardship, indicating that on the filing of the appeal he was still out of a job and that he cannot pay the fine before starting to play tennis again as tennis is his only source of income.

93. On this point, the Sole Arbitrator also concludes that the sanction imposed on the Player is not *"evidently and grossly disproportionate to the offense"*. The Player should bear the consequences of his conduct and the violations. The sum involved is not unreasonable compared with the maximum penalty and fines imposed in other cases and the player has a long period of time in which to pay it.

94. The Sole Arbitrator concludes that the Sanction Decision should be upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Patricio Heras on 26 September 2018 against the decision of the Anti-Corruption Hearing Officer of 3 September 2018 is dismissed.

2. (…).

3. (…).

4. All other or further motions or prayers for relief are dismissed.