

DECISION OF THE ANTI-CORRUPTION HEARING OFFICER

IN THE PROCEEDINGS

B E T W E E N:

PROFESSIONAL TENNIS INTEGRITY OFFICERS

And

MAURICIO ALVAREZ GUZMAN

The Charges

1. By Notice of Charge dated 16 May 2018, the Professional Tennis Integrity Officers ("PTIOs") brought charges against Mr Alvarez-Guzman. The Notice provided as follows:

*"In June and July 2016 you exchanged WhatsApp messages with an individual named [REDACTED]. It is alleged that during this exchange you arranged to purchase wild cards for the singles and/or doubles competitions of the ITF F27 Futures tournament in Antalya, Turkey, which took place from 4 to 10 July 2016 (the **Turkey Tournament**). You then gained entry to the singles competition of the Turkey Tournament as a result of a wild card. However, [REDACTED] and therefore you did not purchase the wild card for the doubles. You thereby contrived and/or attempted to contrive an aspect of the Turkey Tournament by contriving and/or attempting to contrive the draws.*

*It is also alleged that on or around 13 August 2016 you offered [REDACTED] [REDACTED] money (in the amount of Euros 1000) to lose a set in his match against [REDACTED] at the ATP Challenger Tournament in Meerbusch (the **Meerbusch Match**)."*

2. The Charges were as follows:

First charges

You are charged with breaching Section D.1.d of the 2016 TACP: "No Covered Person shall, directly or indirectly, contrive or attempt to contrive the outcome or any other aspect of any Event."

It is alleged that:

1. in June and July 2016 you contrived an aspect of the Turkey Tournament by contriving the draw through purchasing a wild card for the singles competition;
2. in June and July 2016 you attempted to contrive an aspect of the Turkey Tournament, being the doubles competition draw, by seeking to purchase a wild card for the doubles competition;
3. on or around 13 August 2016 you attempted to contrive an aspect of the Meerbusch Match by offering [REDACTED] money to lose a set in the match.

Second charge

You are charged with breaching Section D.1.e: “No Covered Person shall, directly or indirectly, solicit or facilitate any Player to not use his or her best efforts in any Event.”

It is alleged that on or around 13 August 2016 you solicited [REDACTED] not to use his best efforts in the Meerbusch Match by asking him to lose a set in the match.

Third charge

You are charged with breaching Section D.1.g: “No Covered Person shall, directly or indirectly, offer or provide any money, benefit or Consideration to any other Covered Person with the intention of negatively influencing a Player's best efforts in any Event.”

It is alleged that on or around 13 August 2016 you offered [REDACTED] money (Euros 1000) to lose a set in the Meerbusch Match.

3. The Player first registered for an ITF IPIN in 2005 and was registered for an IPIN in 2016 when the events giving rise to the Charges took place .When registering for the ITF IPIN, the Player confirmed his agreement to a Player Welfare Statement which included the following:

“I declare that I am aware of and will abide by the Rules of Tennis, as approved by the International Tennis Federation... The Rules include but are not limited to.... the Uniform Tennis Anti-Corruption Program... Finally, I understand that this agreement will remain in full force and effect until I further advise the ITF in writing that I am permanently retiring from participation in tennis with immediate effect. “

4. Section K.6 of the 2016 TACP provides that, “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 the former rules of the Governing Bodies which were applicable on the date that such Corruption Offense occurred.”

5. The alleged Corruption Offenses took place in 2016. Therefore the 2016 TACP is applicable to the substantive issues in this matter.

The Hearing

6. An oral hearing took place before me on 11 March 2019. Ms Kendrah Potts and Mr William Harman represented the PTIOs. Mr Alvarez-Guzman and his lawyer Mr Esteban Mauricio Oros Bravo attended by video link. Oral evidence was heard from [REDACTED]. There was cross-examination of the witnesses. I am grateful for the assistance I received from counsel on both sides.
7. Mr Alvarez-Guzman denied all the charges. He gave evidence that he had played tennis since he was a small boy, had had great success as a player, loved the game and would never do anything which was corrupt.

The Meerbusch match

8. PTIOs allege Mr Alvarez-Guzman offered [REDACTED] E1000 to lose the first set of a match at the ATP Challenger tournament at Meerbusch against [REDACTED].
9. [REDACTED] gave evidence by telephone. He said that whilst driving to the match he received whatsapp messages from Mr Alvarez-Guzman, who then phoned him offering him E1000 to “tank” the first set of the match. His evidence was that he was told he would go on to win the match because the final two sets would be fixed in his favour. [REDACTED] said he would think about it and get back to Mr Alvarez-Guzman. He then discussed it with his wife and then told Mr Alvarez-Guzman he would not accept the offer. [REDACTED].
10. On 8 October 2016 [REDACTED] sent an email to the ATP Tour stating that he had information about match fixing. The email was provided to the TIU, which contacted [REDACTED] to request further information. [REDACTED] asked for money in return for providing the information. He was told that TIU did not pay for information and that he had an obligation under the rules to report any corrupt approach. Thereafter [REDACTED] provided information about the approach from Mr Alvarez-Guzman.
11. The evidence of the approach before me consisted of [REDACTED] oral evidence and whatsapp messages downloaded from [REDACTED] phone. The messages (translated from the original Spanish) included the following:

Player to [REDACTED] at 11.45am: *“Animal. We’re a bit short of time. If you can tell me anything, later, later that would be great, animal. I’m here waiting for you”*

[REDACTED] to Player at 12.30pm: *“Old man, the truth is that you really tempted me with what you put to the test...my personality and I’m going to play, I’m going to play well and nothing, and I’m going to play my normal game. Cheers. See you.”*

Player to ██████ at 12.32pm: *“Animal, what a pity, what a bloody shame to not have spoken to you before in person because I could explain loads of things and improve everything so much more clearly. Oh God, let’s see. How to tell you. In reality, you don’t even have to do anything, but rather simply co-operate and in the end you’ll end up winning anyway and if they’re not going to play to their best ability and well the other guy also plays well and that’s it. I was assuring you a victory that’s all but hey, it’s still in your hands so there’s no pressure from this either. Just be clear that if you manage to do the first set you’re still not going to lose the match. Better said, there’s no way you are at risk of losing the match. I want that to be quite clear.”*

12. ██████ told the Player in his subsequent messages that he would not agree to lose the first set and intended to play “full”. At 12.34am ██████ sent a message to the Player saying that the Player had *“made him open the Bible and everything”* and quoting a passage from the Bible about the conflict in serving God and money.
13. Mr Alvarez-Guzman denied that he had made such an offer. He said that he had offered to give ██████ advice about how to play his opponent which ██████ had rejected and indicated he would play “full”, meaning (he said) his normal game.
14. ██████ was asked questions by Mr Oros. It was submitted that his evidence should not be relied upon given that he asked for money. It was also put to him that he had been confused and misunderstood what Mr Alvarez-Guzman was asking him. Mr Oros said that it was apparent from ██████ evidence that he had been under pressure from the investigators. He said that evidence taken under pressure should not be admitted.
15. Mr Oros also criticised the failure to contact the opponent, ██████, particularly as there seemed to be an allegation that he had agreed to lose the second and third sets. But this was not a necessary element in the charge, which focused on the conversations between ██████ and Mr Alvarez-Guzman.
16. I accept ██████ evidence and reject that of Mr Alvarez-Guzman on this issue. ██████ version of events has been essentially consistent throughout. I take into account that he originally asked for money before providing information, but it was only after he had been told this was not possible, and told that he had an obligation to report any corrupt approach, that he provided the information and named Mr Alvarez-Guzman. I do not accept that his evidence was untruthful and I do not accept the alternative submission that he was in any way confused. Moreover, the whatsapp messages are entirely consistent with his evidence and not at all consistent with Mr Alvarez-Guzman’s evidence. Saying *“you really tempted me”* and sending a quote from the bible about the conflict between serving God and money make no sense on Mr Alvarez-Guzman’s version. Nor does the reference to losing the first set and winning the match make sense on his version.
17. I do not accept that there was any abnormal pressure on ██████ or that his evidence should be declared inadmissible. His evidence was not merely the interview

(which was argued to be under pressure, although I reject that), he also gave evidence by telephone at the hearing and there is no possible reason why that should be inadmissible.

18. By D.1.g: *“No Covered Person shall, directly or indirectly, offer or provide any money, benefit or Consideration to any other Covered Person with the intention of negatively influencing a Player's best efforts in any Event.”* Both Mr Alvarez-Guzman and ██████████ were Covered Persons and the Meerbusch Match fell within the definition of Event. Event” is defined in Section B of the TACP as *“those professional tennis matches and other tennis competitions identified in Appendix 1”*. Appendix 1 includes ATP Challenger Tour Tournaments. The Meerbusch Match was a ██████████ match in the ATP Meerbusch Challenger tournament.
19. In asking ██████████ to lose a set in the Meerbusch Match, the Player indirectly attempted to contrive an aspect of an Event in breach of Section D.1.d by contriving the score. Further, by asking ██████████ to lose the set he thereby asked ██████████ not to use his best efforts in an Event in breach of Section D.1.e. Finally, the offer of €1000 was made with the intention of negatively influencing ██████████ in best efforts given that the money was offered in return for deliberately losing a set in the Meerbusch Match.
20. Section G.3 provides that the standard of proof under the TACP is the preponderance of the evidence. The standard required to prove charges on the preponderance of the evidence is equivalent to the English law “balance of probabilities” standard of proof. In *Kollerer v ATP et al* (CAS 2011/A/2490), the Panel stated that, *“This [preponderance of the evidence] standard is met if the proposition that the Player engaged in attempted match fixing is more likely to be true than not true”*. I find the charge proved to that standard.

The Turkey Tournament

21. The Player is charged with contriving the Singles Draw and attempting to contrive the Doubles Draw of the Turkey Tournament by purchasing wild cards to the Tournament.
22. The TIU first interviewed the Player, in the light of the separate allegations of ██████████, on 10 February 2017. At the time of the Interview the TIU served a Demand on the Player pursuant to Section F.2.c to take a download of his mobile telephone. At that time the Player was in possession of two mobile telephones. The Player agreed that the TIU could take a download of one mobile phone but claimed that the other mobile phone belonged to ██████████, and that the TIU could therefore not take a download of it. The TIU agreed that the second mobile telephone would not be downloaded at that time and that the Player could take legal advice. The next day the Player confirmed to the TIU that he would not allow the second mobile phone to be downloaded. The Player ██████████ refused the TIU’s request that ██████████ enter the phone’s pin code to prove that the phone in fact belonged to ██████████. ██████████ evidence complained as to the conduct of the investigator, ██████████, and that he would not accept ██████████ confirmation that the second phone was ██████████.

23. The whatsapp messages between Mr Alvarez-Guzman and [REDACTED] provided as follows;

Player to [REDACTED] 25 June 2016 at 18.00:

*"Hello good afternoon I'm Mauricio Alvarez-Guzman
[REDACTED] gave me your number
To talk about Wild Cards in turkey futures"*

[REDACTED] then states that he will call the Player back in 15 minutes.

Player to [REDACTED] 25 June at 18.49:
"Amigo is possible to include in our deal wc for doubles? Because I have 900 ranking but [REDACTED] has no points. So its not sure that we get in..."

[REDACTED] to Player 27 June at 11.27:
*"First week we don't have available. But for second one it is no problem.
And of course if something change and we will have available, we will use for you."*

Player to [REDACTED] 25 June at 18.00
*"My sponsor is little bit angry
He said that friend of him [REDACTED] i didn't know. So
he told me he will not pay more than 400€ per wc and we stay in official hotel.
[REDACTED]"*

[REDACTED] to Player 27 June at 16.35
"Our Last price is 600€. Please decide till tomorrow morning."

Player to [REDACTED] on 27 June at 16.36:
*hi amigo I was playing. Ok i will try to push my sponsor. Sorry for the
problems 🙏"*

Player to [REDACTED] on 28 June at 12.48:
*"My friend for sure i will take the wc
I'm manage the sending
The second week wc I let you know when I arrive"*

Player to [REDACTED] 29 June at 17.10:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
*There is the code, my friend, Western Union, so... see you on Monday. Thank
you"*

[REDACTED] to Player 29 June at 17.21:
"How much he send?"

Player to [REDACTED] on 29 June at 17.44:
"600€"

24. Mr Alvarez-Guzman said that he did not try to buy a wild card. He admitted that he asked [REDACTED] for a wild card and offered to stay in the official hotel (which he said presumably would be to the financial advantage of the organisers) and that he received a wild card. However, he said the discussion about money was concerned with staying in the official hotel, not payment for the wild card. It was put to him that this should have cost E73 per night for his share of a double room and even with airport transfers this did not get near to the E600 which the messages state was paid. In response Mr Alvarez-Guzman said (for the first time during his evidence) that he had paid double, as he paid for his roommate's share of the room too.
25. Mr Oros was in his submissions highly critical of the investigation. Firstly, there had been no effort to find [REDACTED] and it was not clear that he even existed. The charge required both sides to be party to any deal and there had been no effort to trace [REDACTED] [REDACTED]. It was not clear that even if [REDACTED] existed, whether he had authority to offer wild cards. He said the investigation had failed to exhaust all avenues of enquiry. The payment voucher for the E600, which would have shown what the payment was for, had not been obtained. He was also critical of the investigator, [REDACTED], and his attempts to obtain access to [REDACTED] phone which he said breached [REDACTED] rights.
26. In my judgment Mr Alvarez-Guzman's account is entirely inconsistent with the whatsapp messages, which are clear, and I reject his evidence completely. It is obvious these messages show him purchasing a wild card for himself in the singles and then seeking to do so for the doubles, although he did not go ahead with that [REDACTED] [REDACTED]. The fact was that he did obtain a wild card, as he accepted. In interview he said that he subsequently met [REDACTED] at the reception desk of the tournament, so it is difficult to accept the submission that [REDACTED] has not been shown to exist.
27. As to the criticism put forward by Mr Oros that [REDACTED] has not been traced, I should point out that the evidence before me suggests [REDACTED] himself may well have a case to answer for corruption offences, so his evidence might well not be reliable in any event. The offence does not require evidence from [REDACTED]. PTIOs rely upon Mr Alvarez-Guzman's own whatsapp messages.
28. As to the mobile phone incident, I understand [REDACTED]' perspective and complaint. But I also understand the position of the investigator, [REDACTED], who was concerned that he should be refused access to potentially vital evidence of a phone located in Mr Alvarez-Guzman's tennis bag, and was reluctant to accept the word of a player who might have committed serious offences [REDACTED] that the phone was not his, without having the opportunity to check from the phone itself whether it was indeed [REDACTED] phone. In my judgment all parties behaved reasonably. But even if I was wrong on

that, any breach of rights was a breach of [REDACTED] rights, not Mr Alvarez-Guzman's rights and thus irrelevant to the determination of the charges.

29. It is the PTIOs' position that by purchasing or attempting to purchase wild cards to the Turkey Tournament, the Player contrived or attempted to contrive aspects of the Turkey Tournament by contriving the players who would be entered into the Tournament and therefore the draws of the competitions. In contrast to the singles competition, the Player only attempted to contrive the Doubles Draw.
30. Contriving the draw of an Event constitutes an "aspect of an Event" is a breach of Section D.1.d:

a. In *PTIOs v Renard* (Decision dated 22 December 2011), the player offered €600 to another player if he would withdraw from his first round main draw singles match so that the player could take his place in the draw. In that decision, the AHO stated that, "*the activity here was to attempt to try and contrive the order of play in the Aamulehti Tampere Open... that system does not contemplate a Lucky Loser bribing their way into the order of play. It is this aspect of the conduct which has the effect on the integrity of the tennis competition*" (at paragraph 3). The player was therefore found guilty of a breach of Section D.1.

b. In *PTIOs v Trusendi* (Decision dated 23 December 2013), the player agreed to withdraw from a tournament to let another player take his place in the main draw as a lucky loser in return for the first round prize money. In that case, the player claimed that he had to pull out because he was sick; however, the AHO considered that in breach of Section D.1.d the player had contrived an aspect of an event by seeking to procure that someone take his place and pay him the first round prize money (at paragraphs 13-15);

c. In *PTIOs v Rousset* (Decision dated 24 March 2015): the player agreed to pay another player the first round prize money if he withdrew from the main draw so that the player could replace him in the draw in breach of Section D.1.d; and

[REDACTED]

31. Wild cards should be used to provide opportunities to deserving players (often, for example, young players) who would not otherwise be able to enter the tournament. The purpose of wild cards would be undermined if they were given to players who offered money for them or if they could be used by tournaments to make money. The

definition of wild cards at section IV(B) of the ITF Pro Circuit Regulations 2016 provides as follows:

“Players accepted directly into the Main Draw or Qualifying at the discretion of the sanctioning National Association...”

“Players and tournaments may not offer and/or receive any compensation for receiving or awarding a wild card...”

32. To date, the cases in which players have been charged with contriving the draw of a tournament in breach of Section D.1.d have involved one player paying another to take their place in the draw. But that where a player, in breach of the regulations, agrees to pay for a wild card, the position is no different. The effect is the same as a player has paid to get into, or bribed his way into, the draw. As the AHO noted in *Renard*, *“the system does not contemplate [a player] bribing their way in to the order of play.”* This is because it undermines the integrity of tennis and is unfair on other players, including, for example, those who have suffered through qualifying rounds.
33. In these circumstances I find the charges proved. The standard of proof is that stated above.

Sanctions

34. Section H.1 provides that the range of sanctions that may be imposed for breaches of Sections D.1.d, D.1.e and D.1.g is a fine of up to \$250,000 and a period of ineligibility up to a maximum period of permanent ineligibility.
35. The CAS panel in *Savic v PTIOs (CAS 2011/A/2621)*, at paragraph 8.33 (**Savic**) noted that a sanction *“must not be disproportionate to the offence and must always reflect the extent of the athlete’s guilt”*. Further, a sanction should take into account the fact that the sanctions for a breach of the TACP must be sufficient to serve as a deterrent (CAS Panel in *Kollerer v ATP (CAS 2011/A/2490)* at paragraph 123 (**Kollerer**)). The CAS Panel in *Kollerer* also noted (at paragraph 123) 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.”*
36. The CAS panel noted in *Savic* (at paragraph 8.33), *“Match fixing is the most serious corruption offence in tennis and a threat to the integrity of professional sport.”* Any effort by a Covered Person to persuade other participants in the sport to engage in such activities is particularly serious given that it not only increases the threat to the integrity of tennis but also puts unfair pressure on third parties. Consequently, lifetime bans have been imposed in the majority of cases under the TACP in which the Covered Person sought to corrupt a third party.

37. The one case (apart from cases where the player offered substantial assistance) ie involving a corrupt approach in which a lifetime ban was not imposed was *PTIOs v Gadomski* (10 September 2015), in which the player was sanctioned with a period of ineligibility of 7 years. In *PTIOs v Carpen* (9 January 2017) (**Carpen**) the AHO commented in respect of the Gadomski decision that, “As a starting point for sanction I have in mind the CAS decisions of *Kollerer*, *Savic* and *Jakupovic*, all of which indicate that – in the case of a corruption offence such as that committed by the Player [i.e. making a corrupt approach] – a lifetime ban from playing tennis is a proportionate sanction. *Gadomski* is therefore something of an anomaly in that, notwithstanding Mr *Gadomski* committing three separate breaches of section D.1.d (and three other offences), he was sanctioned with only a seven year period of ineligibility. Having read the AHO’s decision, I confess it is not clear to me why Mr *Gadomski* received such lighter sanction, save that paragraph 108 appears to indicate it was by comparison to a five year suspension imposed on a younger and more inexperienced player who Mr *Gadomski* was found to have influenced”.
38. As the AHO in *Carpen* noted, lifetime bans have also been upheld in corrupt approach cases by CAS in *Kollerer* and *Savic*, and, more recently, *Jakupovic v PTIOs* (CAS 2016/A/4388) (**Jakupovic**). In *Kollerer and Jakupovic*, the Panels stated that any sanction less than a lifetime ban would not be a sufficient deterrent (*Kollerer* at paragraph 123, and *Jakupovic* at paragraph 99). In *Jakupovic*, the Panel further stated, “It is therefore essential in the Panel’s view for sporting regulators to demonstrate zero-tolerance against all kinds of corruption and to impose sanctions sufficient to serve as an effective deterrent to people who might otherwise be tempted through greed or fear to consider involvement in such activities” (at paragraph 96).
39. In respect of the breaches of Section D.1.d relating to the Turkey Tournament, the sanctions imposed in previous cases in which a Covered Person contrived the draw of a tournament are as follows:
- a. ***PTIOs v Peng* (7 August 2018)**: the Player was found guilty of one breach of Section D.1.d as a result of trying to change doubles partner in the 2017 Wimbledon tournament. She was given a period of ineligibility of 6 months (with half suspended on the condition that she did not commit any further violations) and a fine of \$10,000 (with half suspended on the same condition);
 - b. ***PTIOs v Renard* (22 December 2011)**: the player was given a period of ineligibility of 6 months (of which 4 months were suspended on the conditions that he committed no further offences, attended anti-corruption training and maintained good conduct) and fined US\$5,000. The AHO took into account that the player admitted the offence, demonstrated remorse and was relatively young;
 - c. ***PTIOs v Trusendi* (23 December 2013)**: the player was given a period of ineligibility of 6 months and a fine of \$5,000. The AHO took into account that the player had failed to appreciate the seriousness of his conduct and therefore did not suspend any of the period of ineligibility;

d. *PTIOs v Rousset (24 March 2015)*: the AHO imposed a 6 month period of ineligibility

(with 3 months suspended provided that the Player committed no further violations and maintained his good conduct record for 6 months) and a fine of \$5,000 (with \$3,000 suspended);

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██
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40. It should also be noted that the ITF Pro Circuit Code of Conduct 2016 provides as follows:

WILD CARDS
No player, directly or indirectly, shall offer, give, solicit, receive or accept, or agree to offer, give solicit, receive or accept anything of value in exchange for a Wild Card. Violation of this section shall result in a fine of up to \$5000.
In circumstances that are flagrant and particularly injurious to the success of an ITF Futures Tournament, or are singularly egregious, a single violation of this Section shall also constitute the Major Offence of "Aggravated Behaviour."

41. It is apparent from this that the offence of purchasing a wild card seems to be regarded rather less seriously, and I take that into account in the sanction.

42. What is particularly troubling is that in relation to all the offences charged, although the evidence against Mr Alvarez-Guzman was, frankly, overwhelming, Mr Alvarez-Guzman nevertheless sought to deny all the charges, and put forward a series of unrealistic and, in my judgment, untruthful explanations to explain away the evidence against him. This is not therefore a case where the player showed remorse; nor can one have any confidence at all that he will not reoffend. Moreover, in relation to the whatsapp messages with ██████████, although dealings with ██████████ were not part of the charge, Mr Alvarez-Guzman appears clearly to be telling ██████████ that ██████████ has been bribed to lose the second and third sets.

43. It is vital for the integrity of tennis that match fixing is stamped out. In my judgment the only possible sanction here is a lifetime ban in relation to the charges relating to the Meerbusch match. In those circumstances I do not propose to impose a separate penalty in relation to the Turkey tournament charges, although if I had not found the charges relating to the Meerbusch match proved I would have imposed a penalty in relation to the (less serious) Turkey Tournament offences.

Award

44. All charges are proved.

45. In relation to the charges relating to the Meerbusch Match, a lifetime ban is imposed on Mr Alvarez-Guzman in relation to any event organised or sanctioned by any Governing Body.
46. In the circumstances, it is not necessary to impose a separate penalty in relation to the Turkey Tournament charges.
47. Under Section I this Decision may be appealed to CAS by the parties in this proceeding within a period of twenty business days from the date of receipt of the Decision by the appealing party.

London, England

**Charles Hollander QC
Anti-Corruption Hearing Officer
14 March 2019**

[REDACTED]