



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2024/A/10484 Dragos Madaras v. International Tennis Integrity Agency (ITIA)**

## **ARBITRAL AWARD**

delivered by the

### **COURT OF ARBITRATION FOR SPORT**

sitting in the following composition

President: Ms Annett Rombach, Attorney-at-Law, Frankfurt am Main, Germany  
Arbitrators: Mr Giacomo Bei, Attorney-at-Law in Florence, Italy  
Rt. Hon Lord John A. Dyson, Retired Judge in London, United Kingdom

between

**Dragos Madaras**, Sweden

Represented by Mr Cristian Cernodolea, Independent Solicitor, London, United Kingdom

**Appellant**

**and**

**International Tennis Integrity Agency (ITIA)**, London, United Kingdom

Represented by Mr Rick Liddell KC and Mr James Pheasant, Attorneys-at-Law, London, United Kingdom

**Respondent**

## I. THE PARTIES

1. Mr Dragos Madaras (the “**Player**” or the “**Appellant**”) is a Swedish professional tennis player.
2. The International Tennis Integrity Agency (the “**ITIA**” or the “**Respondent**”) is an independent body established in 2021 by the international tennis governing bodies to promote, encourage, enhance and safeguard the integrity of professional tennis worldwide. The ITIA is responsible, *inter alia*, for enforcing the Tennis Anti-Corruption Program.
3. The Appellant and the Respondent are collectively referred to as the “**Parties**”.

## II. FACTUAL BACKGROUND

### A. Introduction

4. The present dispute concerns an appeal against the decision rendered by the Anti-Corruption Hearing Officer Charles Hollander (“**AHO**”) issued on 5 March 2024 (the “**Appealed Decision**”). In the Appealed Decision, the AHO found that the Appellant was guilty of non-co-operation under the terms of the Tennis Anti-Corruption Program (2023) (“**TACP**”) and imposed a period of ineligibility of 4 years and 6 months, together with a monetary fine of USD 2,500.00.
5. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

### B. Background Facts

6. Every year since 2010, the Player has endorsed the International Tennis Federation’s Player Welfare Statement, thereby confirming that he is bound by and would comply with the TACP.
7. Between 2017 and 2020, the ITIA had been investigating a series of betting alerts and suspicious betting activity related to matches involving the Player.
8. In [REDACTED] 2022, Mr Alan Boyd, an ITIA investigator, encountered the Player at a tournament in [REDACTED], and made a forensic examination of a telephone handset which had been provided by the Player after a demand. The handset contained little data. The ITIA’s conclusion at the time was that this was not the Player’s primary mobile device. During an interview conducted by the ITIA on 26 July 2022, in connection with five match alerts from betting operators in relation to suspicious betting on matches in which the Player had played, the Player denied any corruption activity.
9. The corruption charges relevant to the present Appeal arise from an incident on 28 June 2023 at the Wimbledon Qualifying Event in London, UK (the “**Event**”). The Player

participated in the Event, and he was accompanied by his brother, Patrick Madaras (“**Player’s Brother**”), who had been accredited to the Event as the Player’s “hitting partner”. By signing the official guest registration form for the 2023 Wimbledon Championships, the Player’s Brother expressly confirmed his acceptance of and compliance with the Terms & Conditions of Accreditations, which included compliance with the TACP. As a result, it is undisputed that the Player’s Brother became a “Related Person” bound by the TACP, as well as the Player himself.

10. In the morning of 28 June 2023, the Player played his second round qualifying match at the Event, which he lost. After the match, between 1:00 PM and 1:30 PM, two ITIA investigators, Mr John Nolan and Mr Alan Boyd (the “**ITIA Investigators**”), approached the Player and asked him to hand over a black mobile phone they considered to be the Player’s primary mobile device (the “**Black Phone**”). The events following the ITIA Investigator’s oral request for the Black Phone (the “**Incident**”) are contested between the Parties. In essence, it is contested whether the Black Phone was the Player’s phone (as alleged by the ITIA), or whether the Black Phone belonged to the Player’s Brother (as alleged by the Player), and who was in possession of the Black Phone at the precise moment of the oral request. It is, however, undisputed that the ITIA Investigators had not been in possession of a formal written demand when they approached the Player, and that the Black Phone was not turned over to the ITIA. Instead, the Player’s Brother left the site carrying the Black Phone with him.
11. After the Player’s Brother had left with the Black Phone, the Player took from his tennis bag a blue Samsung Galaxy A14 phone (the “**Blue Phone**”). He handed the Blue Phone over to the ITIA Investigators. Upon forensic examination, it turned out that limited data was available on the Blue Phone. The Blue Phone did not include any messaging app (such as WhatsApp or Telegram), and did not indicate any gaming or website access activity. The telephone call history started on 5 May 2023 and consisted of only a handful of calls other than on or just before 28 June 2023.
12. Shortly thereafter, at 2:21 PM, a formal written demand (the “**Demand**”) was provided to the Player, which (in relevant part) reads as follows:

*“The international Tennis Integrity Agency (the ITIA) believes that you may have committed one or more Corruption Offenses in breach of the TACP.*

*As a result, and in accordance with the terms of Section F.2.d of the TACP, the ITIA is making a Demand that you provide the personal devices and/or information set out in Schedule 1 to this Demand to the ITIA within the time period stated”.*
13. The Player signed the Demand. It is undisputed that the Demand did not include “Schedule 1” indicated therein. The Player did not hand over the Black Phone.
14. Also on 28 June 2023, at 2:30 PM, the Player was interviewed by the ITIA, denying any corruption activity.
15. On 17 August 2023, the ITIA issued a notice of provisional suspension (“**Provisional Suspension**”) against the Player. The Player appealed the Provisional Suspension.
16. At the end of August 2023, the ITIA interviewed the Player’s Brother.

17. On 22 September 2023, AHO Richard McLaren rejected the Player's appeal and upheld the Provisional Suspension.

**C. The Proceedings before the AHO**

18. On 9 November 2023, the Respondent sent a "Notice of Major Offense" under the TACP to the Appellant, charging him with the following offenses:

- obtaining accreditation which led, directly or indirectly, to the commission of a corruption offense (D.1.c. of the TACP),
- obtaining an accreditation by misrepresentation (D.1.1. of the TACP),
- failure to cooperate (F.2.b. of the TACP),
- failure to comply with a demand (F.2.d. of the TACP).

19. On the same day, the Player's Brother was charged with failure to cooperate (F.2.b. of the TACP) and failure to preserve evidence (F.2.c. of the TACP). The Player's Brother was ultimately found guilty of non-cooperation under Section F.2.b. of the TACP, resulting in a sanction of a ban of two (2) years and six (6) months from participation in any sanctioned event. The Player's Brother did not appeal the decision against him to CAS.

20. On 28 February 2024, a remote hearing took place before the AHO.

21. On 5 March 2024, the AHO issued the Appealed Decision, received by the Parties on the same day. The operative part of the Appealed Decision reads as follows:

*"a. Dragos is guilty of non-cooperation under F.2.b of the TACP.*

*b. The sanction will be a ban of four (4) years and six (6) months from Participation in any Sanctioned Event and a fine of US\$2500. Time spent under the Provisional Suspension (issued on 17 August 2023) will count towards this. The ban will end on 16 February 2028.*

*c. There will be no separate penalty for the accreditation charge under D.1.1.*

*d. Patrick is guilty of non-co-operation under F.2.b of the TACP.*

*e. The sanction will be a ban of two (2) years and six (6) months from Participation in any Sanctioned Event from the date when Patrick receives this decision.*

*f. All other charges against Dragos and Patrick are dismissed".*

22. The Appellant is primarily appealing against point a. and subsidiarily against point b. of the operative part of the Appealed Decision.

23. The pertinent parts of the Appealed Decision state the following:

***"The Charges: Dragos***

*32. F.2.d (Failure to comply with a Demand). Mr Nolan said he left the written Demand in the ITIA offices, which are situated in the grounds where the Wimbledon*

*Qualifying Event took place, and it was not provided until 2.21pm, during the subsequent interview with Dragos. As worded, the Demand requires Dragos to hand over devices referred to in the Schedule, but no devices are referred to in the Schedule. Therefore, it does not seem consistent with the wording of the charge to treat the fact Dragos knew what the ITIA wanted was the Black phone as sufficient for this charge to be proved. I do not find this charge proved.*

*33. F.2.b (Failure to co-operate) Although failure to comply with a Demand (which I have found was not breached) is part of this charge, this charge is not so limited. I find the failure to hand over the Black phone a breach by Dragos of F.2.(b).*

*34. D.1.c (Obtaining accreditation which leads to the commission of a Corruption Offense) The obtaining of accreditation did not, directly or indirectly, lead to the commission of a Corruption Offence. There is no causal connection between Patrick's accreditation and the failure to co-operate by Dragos. This charge was never intended to apply in circumstances such as these and I do not find it proved.*

*35. D.1.1 (Obtaining accreditation by misrepresentation) This charge is admitted because Patrick was not Dragos' "hitting partner". However, if he had sought accreditation for Patrick as his brother, he could have obtained accreditation, although Patrick would not have had access to courts or changing rooms, neither of which have any significance in the present case. So this seems to me a breach which, in the present case, was not at all serious".*

24. Regarding sanctions against the Player, the Appealed Decision found as follows:

*"39. I refer to my recent decision in ITIA v Broville (11 January 2024) at [63], commenting on the Note in the Sanction Guidelines :*

*"An example illustrates the point being made. A policeman stops a car driving erratically and seeks to breathalyse the driver. He refuses to be breathalysed. The punishment for refusal is normally the same as if the breathalyser had shown a positive result. Any other result would encourage non-compliance.*

*The present case provides a vivid illustration of the point. The ITIA had evidence which potentially implicated M Broville on charges of match fixing, which if proved would have led to a long ban. They made it clear they were investigating match fixing and asked for his electronic devices in order to obtain the first hand evidence which would potentially prove those charges. M Broville refused to give it and indeed the ITIA still has not seen his phone. The position is the same as in the breathalyser example and the Note to the Sanctioning Guidelines makes precisely this point.... it is important that players understand they cannot get out of match fixing allegations by refusing to hand over mobile devices. Otherwise the enforcement system would entirely break down ."*

*40. I heard submissions on where this sits in the Sanctioning Guidelines. In the Broville case, I banned M Broville for 7 years for refusing to hand over his phone against the background of match fixing suspicions. I have found here that Dragos*

*refused to hand over his phone but passed it by a subterfuge to his brother and untruthfully claimed it was his brother's phone. It is relevant to note the Investigators did not refer to match fixing on the present occasion. I regard a four (4) year six (6) months ban as appropriate.*

*41. I do not impose a separate sentence on the more minor accreditation charge.*

*42. I invited Dragos to provide information as to his means, as it would be inappropriate to order a fine he cannot pay. He said:*

*"I am currently unemployed. [REDACTED]*

*43. Given that he will in effect be deprived of his livelihood, and his difficult financial position I will limit the accompanying fine to US \$2500".*

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

25. On 29 March 2024, the Appellant filed a Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport (the "CAS") in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "CAS Code"). In the Statement of Appeal, the Appellant nominated Mr Carlo Dalla Vedova, Attorney-at-Law in Rome, Italy, as arbitrator.
26. On 9 April 2024, the Appellant nominated Mr Giacomo Bei, attorney-at-law in Florence, Italy as arbitrator.
27. On 15 April 2024, the Appellant filed his Appeal Brief.
28. On 19 April 2024, the Respondent nominated Rt. Hon Lord John Dyson, Judge in London, United Kingdom, as arbitrator.
29. On 24 May 2024, within the time limit extended by the CAS Court Office upon the Respondent's request, the Respondent filed its Answer.
30. On 3 June 2024, following an invitation from the CAS Court Office to express their respective preferences, the Respondent indicated the Parties' common preference for a hearing to be held.
31. On 19 June 2024, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel appointed to decide the present case was constituted as follows:  
  
President: Ms Annett Rombach, Attorney-at-Law in Frankfurt, Germany  
  
Arbitrators: Mr Giacomo Bei, Attorney-at-Law in Florence, Italy  
Rt. Hon Lord John A. Dyson, Judge in London, United Kingdom
32. On 5 and 9 September 2024, respectively, the Respondent and the Appellant returned duly signed copies of the Order of Procedure to the CAS Court Office.
33. On 24 September 2024, a hearing was held via videoconference. In addition to the Panel,

Ms Amelia Moore, CAS Counsel, Ms Gabriella Erdi and Mr Tommaso Landi, Law Clerks, the following persons attended the hearing:

For the Appellant: Mr Dragos Madaras, the Player  
Mr Cristian Cernodolea, Legal Counsel  
[REDACTED], interpreter

For the Respondent: Mr Richard Liddell, Legal Counsel  
Mr Ben Rutherford, Legal Counsel  
Ms Julia Lowis, Legal Counsel  
Ms Jodie Cox, Legal Counsel

34. The Panel heard evidence from the following witnesses, in order of appearance:

Mr Dragos Madaras, the Player  
Mr John Nolan, ITIA investigator, called by the Respondent  
Mr Alan Boyd, ITIA investigator, called by the Respondent  
[REDACTED] at the All  
England Tennis Club, called by the Respondent  
Mr Patrick Madaras, the Player's Brother, called by the  
Appellant.

35. The hearing began at 9:35 AM and ended at 5:21 PM (UTC+02:00) without any technical interruption or difficulty. At the outset of the hearing, the Parties confirmed not to have any objections as to the constitution and composition of the Panel. Afterwards, the Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The witnesses were questioned by the Parties and the Panel.

36. After the Parties' final and closing submissions, the hearing was closed, and the Panel reserved its detailed decision for this written award. At the end of the hearing, the Parties expressly confirmed that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings.

37. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarized or referred to in the present arbitral award.

#### **IV. THE POSITIONS OF THE PARTIES**

38. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

##### **A. The Appellant's Position and Request for Relief**

39. The Appellant's submissions, as contained in his written submissions and oral pleadings may be summarized, in essence, as follows:

**a) *On the alleged charges under F.2. of the TACP***

- The ITIA attempted to use match alerts from more than six years ago to construct a narrative suggesting the motive behind the Player's alleged misconduct of 28 June 2023.
- The Player is not aware of any investigation conducted against him by any law enforcement body, was never interrogated as a witness or a suspect, was never formally charged with any offense by any law enforcement entity and was never charged with any match-fixing offenses by the ITIA.
- The Black Phone did not belong to the Player nor was it under the Player's effective control at the time the ITIA Investigators approached him on 28 June 2023. The Black Phone belonged to the Player's Brother who had full control and possession of it at the time they were approached by the ITIA Investigators. The Player only occasionally used the Black Phone to communicate with his family and with another woman. However, the Black Phone was still his brother's device.
- Following the issuance of the Demand at 2:21 PM on 28 June 2023, the Player fully cooperated with the ITIA Investigators and handed over the Blue Phone (which was his device), making it available for a forensic download. The Player also agreed to be interviewed by the ITIA Investigators twice on 28 June 2023, and again in July 2022. The Player's Brother also made himself available for the ITIA's questioning.
- The Demand required the Player to hand over the devices mentioned in Schedule 1, however, no schedule was attached. Therefore, the Player was never effectively requested to hand over any devices, let alone the Black Phone.
- The absence of a formal written demand at the time of the Incident fundamentally undermines the ITIA's allegations of the Player's failure to cooperate with the investigation. The Player was not required to hand over any phone without a proper formal written demand, which he was not shown when the ITIA Investigators first met him on 28 June 2023. The subsequent provision of the Demand does not validate the alleged verbal request retrospectively. The required formalities of the TACP (including regarding Demands) are not mere technicalities but essential components of the fairness and integrity of the investigative and disciplinary procedures under the TACP.
- Despite CCTV being installed at the premises where the Incident occurred, and the Player requesting the footage during his interview on 28 June 2023, the footage was not provided to him.

**b) *On sanctions***

- The sanction imposed on the Player is evidently and grossly disproportionate, under established CAS jurisprudence. Even if some degree of non-cooperation by the Player were found by the Panel, the Player did not act deliberately, nor did he intend to conceal evidence or tamper with it.
- Any unintentional behaviour by the Player that could be deemed as non-



cooperation would be Category 3 (other TACP offense, minor impact on the integrity and/or reputation of the sport, little or no material gain), Culpability C offense (little or no planning, single offense, acting alone) as per the note to the TACP: Sanctioning Guidelines (Commencement Date: 1 July 2022) (the “**Sanctioning Guidelines**”).

**c) Requests for relief**

40. In his Appeal Brief, the Appellant submitted the following requests for relief:

*“29. We conclude that for the above reasons, evaluating on the preponderance of evidence, Mr. Dragos Madaras shall not be liable for a breach of section F.2.b of the Program by failing to cooperate with an ITIA investigation. ITIA’s charge of non-cooperation is strictly related to the Black Phone, and AHO Hollander has already determined that my client has not breached section F.2.d of the Program by failing to comply with a Demand. Therefore, we respectfully demand that the Panel finds Dragos Madaras not guilty of one alleged breach of section F.2.b of the Program by failing to co-operate with an ITIA investigation, overturn AHO Hollander’s decision adopted at paragraph 46 point a), uphold the appeal and remove both the suspension and the fine applied against my client.*

*30. Subsidiarily, should the Panel determine any degree of my client’s culpability, we respectfully demand that the Panel considers previous CAS jurisprudence as quoted above and finds the current sanction to be evidently and grossly disproportionate. Consequently, we respectfully demand that the Panel shall significantly reduce Dragos Madaras’s ineligibility period from four (4) years and six (6) months, to an Admonishment or a maximum suspension of 6 months and a fine aligned to my client’s financial means as per AHO Hollander’s Decision”.*

**B. Respondent’s Position and Request for Relief**

41. The submissions of the Respondent, as contained in its written submissions and oral pleadings may be summarized, in essence, as follows:

**a) On the alleged charges under F.2. of the TACP**

- Two days before the Incident, on 26 June 2023, Mr Nolan observed the Player speaking on the Black Phone, before he handed it to his brother. Subsequently, on the same day, Mr Nolan once again saw the Player using the Black Phone. Before his second-round match on 28 June 2023, the Player again used the Black phone, in a private area at the rear of the Bank of England.
- After the Player’s second-round match had finished, the ITIA Investigators observed the Player holding the Black Phone to his ear. The Player’s Brother stood next to him. When the Player was approached by the ITIA Investigators, he immediately stopped using the Black Phone and held it in his right hand.

- Upon Mr Nolan's request to hand over the Black Phone, the Player passed the device to his brother, who refused handing it over, and ultimately ran away with the Black Phone in his hand. The Black Phone was still in the Player's hand, and therefore in his possession and control, at the time he was orally requested by the ITIA Investigators to hand it over. The Player ignored the oral demand. Both the Player and the Player's Brother knew that they were "Covered Persons" under the TACP, and that refusal to hand over the requested phone upon Mr Nolan's oral demand could be classified as non-cooperation.
- The Player was aware that Mr Nolan and Mr Boyd were ITIA Investigators and that he was under an ITIA investigation at the time he was requested to hand over the Black Phone and not to hand it over to the Player's Brother.
- The Black Phone belonged to the Player, or at the very least, he had unrestricted access to it and could have handed it over to the ITIA without requiring the Player's Brother's consent. Even if the Black Phone belonged to the Player's Brother (*quod non*), the Player was still in possession and control of it when he was requested to hand it over to the ITIA.
- The Blue Phone that the Player delivered to the ITIA Investigators was not his primary and personal mobile phone.
- Although the Demand did not specifically identify the Black Phone (because Schedule 1 was not attached to it), the Player was well aware that the ITIA required him to provide the Black Phone and any other mobile phones he used.
- Section F.2.b. of the TACP (failure to cooperate) does not require a written demand to be made. The Player must fully cooperate with the investigators, which means that the Player, as a measure of cooperation, was obliged to hand over the Black Phone to Mr Nolan upon his oral demand.
- Under Section F.2.d. of the TACP (failure to comply with a demand) the ITIA is entitled to request that a Covered Person provides a mobile phone without first having to provide a formal written demand. In the present case, the Demand was given to the Player just an hour later.
- The CCTV cameras had been decommissioned some time before the Incident and there were no other functioning CCTV cameras in the area where the Incident took place.

**b) On sanctions**

- The Player's behaviour and conduct were not unintentional, and the Player's case can be placed between Category 1 and Category 2, with Culpability B according to the Sanctioning Guidelines.
- If the CAS were to find that the Player was not in breach of Section F.2.b. (failure to cooperate) of the TACP, the Player would be still in breach of Section D.1.1. (accreditation misrepresentation) of the TACP.

**c) Requests for relief**

42. The Respondent requests the following relief:

*“For all the reasons set out above, the ITIA submits that it has plainly met its burden of proof and respectfully requests that CAS dismisses Dragos’ appeal and orders as follows:*

*73.1 Confirm that Dragos is in breach of Section F.2.b (non-cooperation) of the TACP.*

*73.2 Confirm that Dragos is in breach of Section D.1.1 (accreditation misrepresentation) of the TACP.*

*73.3 Confirm that Dragos will be banned for four (4) years and six (6) months from Participation in any Sanctioned Event and required to pay a fine of US\$2,500. Time spent under the Provisional Suspension (issued on 17 August 2023) will count towards this. The ban will end on 16 February 2028”.*

**V. JURISDICTION**

43. Article R47 of the CAS Code provides as follows:

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

44. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognize the CAS as an arbitral body of appeal.

45. In the present case, the jurisdiction of the CAS derives from Section I.1. of the TACP, which provide as follows:

*“The Covered Person or the ITIA may appeal to the CAS: (i) a Decision, provided the Decision (in combination with earlier orders from the AHO) includes all elements described in Section G.4.b; (ii) a determination that the AHO lacks jurisdiction to rule on an alleged Major Offense or its sanctions; or (iii) a decision by an AHO pursuant to Section H.5 to extend the period of ineligibility from Participation previously imposed in a Decision issued pursuant to Section G.4. The foregoing is an exhaustive list. A Covered Person may not appeal any other matter to the CAS, including without limitation a decision regarding a Provisional Suspension or a decision (or a part thereof) regarding Substantial Assistance. For the avoidance of doubt, appeals against more than one of the elements of a Decision set out in Section G.4.b must be made to the CAS together. Where separate decisions are rendered by an AHO for one or more elements of a Decision set out in Section G.4.b, the time to appeal shall commence running on the date of receipt by the appealing party of the last such decision. The appeal shall be conducted in accordance with CAS’s Code of Sports-Related*

*Arbitration and the special provisions applicable to the Appeal Arbitration Proceedings”.*

46. The Player is undisputedly a Covered Person within the meaning of Section I.1. of the TACP, and the Appealed Decision is a decision against which a CAS appeal is admissible.
47. Furthermore, the Parties expressly confirmed the CAS’s jurisdiction through their respective signing of the Order of Procedure.
48. In light of the above, the Panel finds that the CAS has jurisdiction to hear this matter.

## **II. ADMISSIBILITY**

49. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document”.*

50. Section I.4. of the TACP provides as follows:

*“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”.*

51. The Appellant received the Appealed Decision on 5 March 2024. Hence, the time limit of twenty business days to file the Appeal expired on 4 April 2024, taking into account that 29 March 2024 and 1 April 2024 were bank holidays in the United Kingdom. Therefore, the Appellant’s Statement of Appeal submitted on 29 March 2024 was filed within the prescribed time limit.
52. The Statement of Appeal also complied with the requirements of Article R48 of the CAS Code. The Appeal is therefore admissible.

## **III. APPLICABLE LAW**

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

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

54. The “*applicable regulations*” for the purposes of Article R58 of the CAS Code are those contained in the TACP because the Appeal is directed against a decision issued by the AHO, which was passed applying the TACP.

55. In terms of the applicable edition of the TACP *ratione temporis*, Section K.5. and K.6. provide the following:

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

**K.6.** *Notwithstanding the section above, the procedural aspects of the proceedings will be governed by the Program applicable at the time the Notice is sent to the Covered Person, save that the applicable sanctioning guidelines shall be those in force at the time of the sanctioning exercise”.*

56. The Panel observes that the Incident, which is at issue in the present proceeding, occurred in June 2023, while the Notice of Charge was issued in November 2023, and while the TACP became effective on 1 January 2023. Accordingly, pursuant to Sections K.5. and K.6. of the TACP, both the substantive and the procedural issues are subject to the TACP.

57. As to the law subsidiarily applicable, Section K.2. of the TACP states the following:

*“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. As such, the Panel is satisfied that it should accept the primary application of the TACP and, subsidiarily, the laws of the State of Florida, USA.

#### **IV. SCOPE OF REVIEW**

59. According to Article R57 para. 1 of the CAS Code,

*“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.*

60. CAS panels have repeatedly referred to Article R57 granting them full power to examine all facts and legal issues of a dispute and to hold a trial *de novo* (see the extensive references to CAS jurisprudence in MAVROMATI/REEB, The Code of the Court of Arbitration for Sport (2015), R57 para. 12 footnote 7). Against this background, the Panel finds that its power to review the facts and the law of the present case is not limited.

#### **V. MERITS**

61. The Player challenges the Appealed Decision on the basis that the charge submitted by the ITIA under Section F.2.b. (failure to “fully cooperate”) has not been sufficiently proven and (subsidiarily) that the imposed sanctions are disproportionate.

62. For the Panel’s assessment of whether the Player is guilty of a corruption offense, it has

to establish the applicable standard and burden of proof, as well as the admissible means of proof. In this respect, Section G.3. of the TACP provides the following:

*“G.3.a. The ITIA (which may be represented by legal counsel at the Hearing) shall have the burden of establishing that a Corruption Offense has been committed. The standard of proof shall be whether the ITIA has established the commission of the alleged Corruption Offense by a preponderance of the evidence.*

*G.3.b. Where this Program places the burden of proof upon the Covered Person alleged to have committed a Corruption Offense to rebut a presumption or establish facts or circumstances, the standard of proof shall be by a preponderance of the evidence.*

*G.3.d. The AHO shall not be bound by any jurisdiction’s judicial rules governing the admissibility of evidence. Instead, facts relating to a Corruption Offense may be established by any reliable means, as determined in the sole discretion of the AHO”.*

63. In accordance with Section G.3. of the TACP, the ITIA bears the burden of proof to demonstrate that the Player committed an offense under the program. The standard of proof is that of preponderance of evidence, which is met if the proposition that the Player engaged in a corruption offense is more likely to be true than not.

64. In light of these findings, the questions the Panel has to resolve in the present Appeal are the following:

A. Has the Player infringed the TACP?

B. If A. is answered affirmatively, what is the appropriate sanction?

**A. Has the Player infringed the TACP?**

65. The Appealed Decision (paras. 32-35) found the Player guilty of the following charges:

- obtaining an accreditation by misrepresentation (Section D.1.1. of the TACP);
- failure to cooperate (Section F.2.b. of the TACP).

66. In the present appeals proceedings, the Player only challenges the non-cooperation charge under Section F.2.b of the TACP.

67. As a first step, the Panel will establish, based on the evidence on record (including the oral testimony heard at the hearing), the relevant course of events it considers did happen before, during and after the Incident on 28 June 2023 (below at **1.**).

68. As a second step, the Panel will analyse whether the established facts give rise to an infringement of Section F.2.b. of the TACP (failure to cooperate), in light of the fact that the ITIA undisputedly made certain procedural errors that resulted in the AHO’s refusal to find proved the charge of F.2.d. (failure to comply with a Demand) (below at **2.**).

**1. The relevant facts underlying the ITIA's non-cooperation charge**

69. Before addressing the evidence in respect of the controversial events relevant for the non-cooperation charge, the Panel finds it useful to summarize the undisputed facts in this case:
- It is undisputed that the Player, a “Covered Person” within the meaning of Section B.10. of the TACP, had been the subject of previous investigations carried out by the ITIA between 2017 and 2020, and in 2022, and that these investigations had not resulted in any charges against the Player.
  - It is undisputed that the Player was approached by the ITIA Investigators after he had finished his second round qualifying match in Wimbledon on 28 June 2023, and that Mr John Nolan asked the Player to hand over the Black Phone. It is also undisputed that Mr Nolan did not carry with him a formal written demand, and that – eventually – the Black Phone was not handed over to the ITIA Investigators. Instead, the Player took from his tennis bag the Blue Phone which he handed over to the ITIA Investigators for forensic examination. The Blue Phone, however, contained little or no data.
  - It is further undisputed that, within an hour of the Incident, the Player was given the Demand which requested him to provide “*personal devices*” as “*set out in Schedule 1*”, that the Player signed the Demand, and that the Player was then interviewed by the ITIA Investigators. It is undisputed that Schedule 1 was not attached to the Demand.
70. What is disputed between the Parties is whether the Black Phone belonged to the Player or to the Player's Brother, and whether the Blue Phone was the Player's primary phone or an ancillary device. It is also disputed whether the Player and/or the Player's Brother were (physically) intimidated by the ITIA Investigators, and in whose possession the Black Phone was at the time of the oral request.
71. As confirmed by [REDACTED] at the All England Tennis Club) in [REDACTED] witness statement and during the hearing, there was no operationally viable video surveillance available at the place where the Incident took place. Hence, the Panel's only source of information is the written and oral testimony provided by the involved persons (the Player, the Player's Brother and the ITIA Investigators).
72. Based on such testimony, the Panel is persuaded that the Black Phone was the Player's phone, or that he had, at the very least, unrestricted access to this phone. The Panel found the ITIA Investigators to be credible witnesses who provided detailed and consistent testimony both in their written statements as well as in their oral evidence. Mr Nolan confirmed that he had observed the Player using the Black Phone at least twice on 26 June 2023 (two days before the Incident). He also testified that he had observed the Player using the Black Phone before his qualifying match on 28 June 2023, when he took it out of the right pocket of his tennis shorts and returned it there after finishing his call. Mr Nolan's observations, described in a clear and very detailed manner, are corroborated by forensic evidence, including a video recording showing the Player using the Black Phone, and by Mr Boyd. Mr Boyd, who stood next to Mr Nolan while observing the Player before his match on 28 June 2023, confirmed that he had a clear and unobstructed

view on the Player, and his detailed descriptions of the Player's use of the Black Phone match Mr Nolan's perceptions.

73. Similarly, both ITIA Investigators have coherently described that when the Player was approached by Mr Nolan after his qualifying match, he held the Black Phone in his right hand. Upon Mr Nolan's request to hand the Black Phone over to him, the Player passed the device to his brother, who stood next to him, and the Player's Brother left the scene with two mobile devices (including the Black Phone) in his hands. The Panel is sufficiently convinced that the ITIA Investigators properly identified themselves, and that they did not intimidate the Player in any way. It has no reason to doubt the credibility of these witnesses, or the reliability of their testimony.
74. Conversely, based on the impression they gave during their respective examinations at the oral hearing, the Panel did not consider the Player and the Player's Brother to be credible witnesses. In fact, their testimony was very vague and evasive, and it suffered from multiple inconsistencies. For example, while the Player admitted during the interview conducted at 2:30 PM, shortly after the Incident, that he had the Black Phone in his hand when the ITIA Investigators approached him (thereby initially confirming Mr Nolan's and Mr Boyd's testimony), he later claimed that it was already in his brother's possession at that time. Furthermore, the Player's claim that the Blue Phone was his primary personal phone is contradicted by the forensic evidence, which indicates little or no use of the Blue Phone. No messenger (such as WhatsApp or Telegram) was installed on the Blue Phone, and no typical activity (such as gaming or website browsing) could be discovered either. This is surprising in view of the Player's explanation to Mr Nolan during the interview on 28 June 2023 that he would make his phone calls via WhatsApp (an app not installed on the Blue Phone). Between 5 May 2023 and 28 June 2023, only 28 calls were logged, with 23 of these calls occurring on one day, 23 June 2023. In other words, only 5 calls were made/received by the Player on the other days during a period of more than 7 weeks. It is highly implausible that an international tennis player, travelling extensively over weeks and months, would have no mobile activity on his phone during his absences from home. The Player could not provide a plausible explanation for the lack of any personal data on the device. The Panel believes that the explanation is that the Black Phone was the Player's primary device, as evidenced by the Player's observed repeated use of this phone in the time period before and up to the Incident.
75. Furthermore, handing over the Blue Phone to the Investigators marks the second time that the ITIA received a mobile device from the Player with little or no personal data within one year. In July 2022, the Player alleged that the phone examined by the ITIA was new, because he had lost his old phone. The Panel considers this pattern of repeatedly handing over devices with almost no personal information or traces of typical use to be rather suspicious.
76. Based on the foregoing, the Panel bases its legal analysis below on the established facts that:
  - The Black Phone belonged to the Player, or could be used by him without any restrictions;
  - The Player had custody and control over the Black Phone when Mr Nolan asked



him to hand it to him during the Incident;

- The Blue Phone was not the Player's primary mobile device.

## 2. *Legal Assessment*

77. In the Appealed Decision, the AHO found that the Player's refusal to hand over the Black Phone during the Incident, while not constituting a failure to comply with a demand under Section F.2.d. of the TACP, qualifies as a breach of the Player's duty to "fully cooperate" under Section F.2.b. of the TACP. Sections F.2.b. and F.2.d. of the TACP read as follows:

*"F.2.b. All Covered Persons must cooperate fully with investigations conducted by the ITIA including giving evidence at hearings, if requested. Even in the case where a Covered Person is represented by a legal counsel, the Covered Person is still personally responsible for ensuring that they cooperate fully with the investigation. The Covered Person shall be deemed not to have cooperated if the Covered Person's legal counsel interferes with an ITIA investigation. A Covered Person's failure to comply with any Demand, preserve evidence related to any Corruption Offense or otherwise cooperate fully with investigations conducted by the ITIA, may result in an adverse factual inference against the Covered Person in any matter referred to an AHO"*.

*"F.2.d. If the ITIA has reasonable grounds to believe that a Covered Person may have committed a Corruption Offense and that access to the following sources is necessary to assist the investigation, the ITIA may make a Demand to any Covered Person to furnish to the ITIA any object or information regarding the alleged Corruption Offense, including, without limitation, (i) personal devices (including mobile telephone(s), tablets and/or laptop computers) so that the ITIA may copy and/or download data and/or other information from those devices relating to the alleged Corruption Offense, (ii) access to any social media accounts and data accessed via cloud services by the Covered Person (including provision of user names and passwords), (iii) hard copy or electronic records relating to the alleged Corruption Offense(s) (including, without limitation, itemized telephone billing statements, text of SMS and WhatsApp messages received and sent, banking statements, cryptocurrency wallets, transaction histories for any money transfer service or e-wallet, Internet service records), computers, tablets, hard drives and other electronic information storage devices, and (iv) a written statement setting forth the facts and circumstances with respect to the alleged Corruption Offense(s). The Covered Person shall furnish such object or information immediately, where practical to do so, or within such other time as may be set by the ITIA. [...]"*.

78. A "Demand" within the meaning of Section F.2.d. of the TACP is – per the definition in Section B.12. of the TACP – a "formal written demand for information issued by the ITIA to any Covered Person". It is undisputed that the ITIA's oral demand for the delivery of the Black Phone does not constitute a "formal written demand" within the meaning of the TACP. Mr Nolan expressly admitted this formal error both in writing and orally during the hearing. The Panel agrees with the AHO's finding that the ITIA's failure to provide the Player with a formal written demand at the time is fatal to the ITIA's charge under Section F.2.d. of the TACP. Hence, the AHO correctly decided that the Player cannot be

sanctioned for a failure to comply with a demand under this provision.

79. The AHO found, however, that the Player's refusal to comply with Mr Nolan's oral demand to hand over the Black Phone was a breach of the Player's duty to "cooperate fully" under Section F.2.b. of the TACP. The Appellant challenges this interpretation, arguing that Section F.2.d. is a *lex specialis* which prevails over Section F.2.b., and that the ITIA cannot apply the general non-cooperation clause as a fall-back when it failed to fulfil the requirements of a provision (Section F.2.d.) specifically included in the TACP to deal with demands. Hence, the central question the Panel has to address is the relationship between Sections F.2.b. and F.2.d. of the TACP.
80. If the TACP did not include Section F.2.d., there would be no doubt that Section F.2.b. would be wide enough to extend to an obligation to comply with an oral request for an object. The language of the obligation to "cooperate fully" is clear and certainly wide enough. However, it is the Panel's view that, under the principle of *lex specialis derogat generali*, Section F.2.b. does not apply to oral demands. It cannot have been intended that the carefully drafted provisions of Section F.2.d. could be circumvented by the use of oral demands and reliance on the more general provisions of Section F.2.b., for the following reasons:
- Section F.2.d. says that the object or information shall be furnished "immediately"; this is different from the obligation to cooperate "fully";
  - The last sentence of Section F.2.d. imposes on the ITIA (a) specific obligations of confidentiality and (b) restrictions on use of information furnished pursuant to a Demand: there are no similar obligations and restrictions in Section F.2.b. if this provision applies to information provided pursuant to an oral demand;
  - If it had been intended that Section F.2.b. should apply to oral demands, this could have been achieved by prefacing Section F.2.d. with words like "*without prejudice to the generality of F.2.b. ...*". However, no such preface exists.
81. This interpretation of the relationship between Sections F.2.b. and F.2.d. of the TACP is further corroborated by the general system underlying Section F.2. (a.-d.), which describes a cascade of increasingly intense measures of investigations the ITIA is permitted to apply to obtain evidence against a Covered Person, and – simultaneously – increasingly enhanced obligations on the Covered Person to support the investigation.
82. The Panel concludes that Section F.2.b. of the TACP does not subsidiarily apply in cases in which the investigatory measure requires a formal written demand under Section F.2.d. of the TACP. Therefore, contrary to the conclusions in the Appealed Decision, the Player's failure to hand over the Black Phone upon Mr Nolan's oral demand does not constitute a failure to "cooperate fully" under Section F.2.b. of the TACP.
83. However, the Panel wishes to highlight that its finding does not mean that the Player is therefore released from his general duty, as a Covered Person, to "*cooperate fully with investigations conducted by the ITIA*". In other words, while the Player had the right not to hand over the Black Phone in the absence of a formal written demand when he was first approached by Mr Nolan, this right did not give him "carte blanche" not to cooperate fully on other aspects of the investigation. In this respect, the Panel reiterates that the duty to "cooperate fully" is wide. It does not only include the Player's duty to comply with

other requests made by the ITIA (*i.e.* requests for which no formal written demand is required), but also prohibits the Player from obstructing the investigations by manipulation or deceit aimed at the prevention of the discovery of a corruption offense. In assessing whether the Player complied – before, during and after the Incident – with his duty to “cooperate fully”, the Panel is entitled to assess all facts before it on a *de novo* basis under Article R57 of the CAS Code (*supra*, Section IV.).

84. The facts surrounding the Incident have been pleaded by both Parties extensively. They were at the heart of the oral hearing. It has been revealed that the Player’s (justified) refusal to hand over the Black Phone was not his only response to the investigations. In fact, Mr Nolan testified, and the Appellant did dispute that he informed the Player that he would finalize a Demand in the office immediately. Hence, the Player knew that the ITIA would not “let him go” after the Incident, but was looking to receive the Black Phone for a forensic examination as soon as possible. As outlined above, the Panel is also convinced, based on the evidence before it, that the Black Phone, which the Player used frequently in the days up until the Incident, belonged to him, or that he had, at least, unrestricted access to this device.
85. In the Panel’s view, it was in response to the imminent threat that the Player would have to hand over the Black Phone within minutes or hours after the Incident that he gave the ITIA Investigators the Blue Phone, pretending (at least tacitly) that this was his primary phone. In fact, the Player was under no duty to give the ITIA Investigators the Blue Phone. No formal written demand had been made. It is precisely for this reason that the Player refused to hand over the Black Phone. Mr Nolan testified that the Player’s Brother had specifically asked him about his authorization (“*Show me your power*”). There is no innocent explanation for why the Player would refuse to provide the Black Phone, based on the lack of a written demand, but – at the same time – voluntarily offer the ITIA Investigators to provide the Blue Phone. The Panel believes it is likely that the Player’s intent in handing over the Blue Phone was to trick the ITIA into believing that this phone – and not the Black Phone – was his primary device, and that the Player hoped that the ITIA would (temporarily) have lost interest in the Black Phone, at least until the conclusion of the forensic examination of the Blue Phone. Hence, handing over the Blue Phone to distract the ITIA’s attention from the Black Phone (which, in the Panel’s view, was the Player’s primary phone) was an act of non-cooperation. The duty to “cooperate fully” includes the duty not to obstruct pending investigations. During the Incident, the Player was only allowed to refuse the delivery of the Black Phone (in the absence of a formal written demand). He was not, however, allowed to mislead the ITIA Investigators.
86. The Player’s attempt to hinder the ITIA Investigators from obtaining the Black Phone continued during the interview. While the Panel acknowledges that the Demand handed over to the Player during the interview was formally invalid, because it did not include a schedule identifying the devices to be handed over, the Player’s contradictory explanations during the interview, which were aimed at making the ITIA believe that the Blue Phone (and not the Black Phone) was his primary device, exacerbated his breach to cooperate fully that had begun during the Incident. Based on the foregoing, the Panel notes that although the ITIA made formal errors during the investigation, these mistakes do not compromise the proceedings to the extent that would justify fully acquitting the Player of the charges.
87. In summary, the Panel finds that the Player breached Section F.2.b. of the TACP by

attempting to deceive the ITIA into believing that the Blue Phone, which he voluntarily gave the ITIA Investigators despite the lack of a formal written demand, was his primary phone, with the aim to distract the ITIA's attention from the Black Phone, which the Player knew the ITIA wanted to examine urgently.

88. Furthermore, the Panel agrees with the AHO's decision that the Player breached Section D.1.I. of the TACP by falsely identifying his brother as his "hitting partner" to obtain his accreditation.

**B. What is the Player's sanction?**

89. The Appellant submits that the sanction imposed on the Player – a ban of four (4) years and six (6) months from participation in any sanctioned event, along with a fine of USD 2,500.00 – is evidently and grossly disproportionate. The Appellant further claims that any unintentional behaviour by the Player that could be deemed as non-cooperation would be Category 3, Culpability C offense as per the note to the TACP Sanctioning Guidelines ("**Guidelines**").

90. The Respondent, on the other hand, argues that the Player's behaviour and conduct were not unintentional, and the Player's case can be placed between Category 1 and Category 2, with Culpability B. The Respondent also reminds the Panel that even if it finds the Player not in breach of Section F.2.b. (failure to cooperate) of the TACP, the Player would be still in breach of Section D.1.I. of the TACP (accreditation misrepresentation).

91. As per its own preamble, the Guidelines "*are a reference tool for AHOs which aim to provide a framework to support fairness and consistency in sanctioning across the sport*". While the Guidelines are non-binding, they set out principles and various indicators and factors which may be considered appropriate to take into account in the decision making. The Guidelines highlight, however, that:

*"AHOs retain full discretion in relation to the sanctions to be imposed in accordance with the TACP and may apply or depart from the guidelines in accordance with the circumstances of the case. For the avoidance of doubt, an AHO's departure from the guidelines is not a valid ground for an appeal"*.

92. The relevant steps regarding the determination of the sanction are described in the Guidelines as follows (emphases in the original):

***"Step 1 – Determining the offense category***

*The AHO may first determine the **offense category** with reference only to the factors in the tables below. In order to determine the category, the AHO should assess **culpability** and the **impact on the sport**.*

*The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the AHO should balance these characteristics to reach a fair assessment of the offender's culpability.** Not all factors under a particular header need be present for that categorization to apply.*

## ***CULPABILITY***

### ***A – High culpability***

- *High degree of planning or premeditation*
- *Initiating or leading others to commit offenses*
- *Multiple offenses over a protracted period of time*

### ***B – Medium culpability***

- *Some planning or premeditation*
- *Acting in concert with others*
- *Several offenses*

### ***C – Lesser culpability***

- *Little or no planning*
- *Single offense*
- *Acting alone*
- *Perhaps involved through coercion, intimidation, or exploitation*

## ***IMPACT***

### ***Category 1***

- *Major TACP offenses*
- *Significant, material impact on the reputation and/or integrity of the sport*
- *Holding a position of trust/responsibility within the sport*
- *Relatively high value of illicit gain*

### ***Category 2***

- *Major TACP offense(s)*
- *Material impact on the reputation and/or integrity of the sport*
- *Material gain*

### ***Category 3***

- *Other TACP offense*
- *Minor impact on the integrity and/or reputation of the sport*
- *Little or no material gain*

*Note: The culpability and impact of a Covered Person's failure to cooperate should ordinarily be linked to the underlying Corruption Offense(s) that the ITIA is investigating. For example, if the ITIA is investigating a relatively minor Corruption Offense which would qualify for disposition under TACP Section F.6. (no more than a six month suspension and/or \$10,000 fine), the failure to cooperate with an ITIA investigation related to that matter should ordinarily be categorized in Category 3 and receive no more than a six month suspension and/or \$10,000 fine.*

*Alternatively, if the ITIA is investigating one or more Major Offenses, then the Covered Person's failure to cooperate with the ITIA's investigation of those offenses should*

*ordinarily be categorized akin to the Major Offense(s) being investigated and therefore carry a correspondingly high sanction to avoid incentivizing a Covered Person to fail to cooperate to avoid a more serious charge and sanction.*

**Step 2 – Starting point and category range**

*Having determined the category at step one, the AHO may use the corresponding starting point to reach a sanction within the category range below. The starting point applies to all offenders irrespective of plea or previous sanctions which may be considered at the subsequent stage which considers aggravating and mitigating factors.*

<b>Impact</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b>	<b>Starting point</b>	<b>Starting point</b>
	<i>Life Ban</i>	<i>10 Year suspension</i>	<i>3 year suspension</i>
	<b>Category range</b>	<b>Category range</b>	<b>Category range</b>
	<i>10 year – Life Ban</i>	<i>5 year – Life Ban</i>	<i>6 month – 5 year suspension</i>
<b>Category 2</b>	<b>Starting point</b>	<b>Starting point</b>	<b>Starting point</b>
	<i>10 Year suspension</i>	<i>3 year suspension</i>	<i>6 month suspension</i>
	<b>Category range</b>	<b>Category range</b>	<b>Category range</b>
	<i>5 year – Life Ban</i>	<i>6 month – 5 year suspension</i>	<i>Admonishment – 2 year suspension</i>
<b>Category 3</b>	<b>Starting point</b>	<b>Starting point</b>	<b>Starting point</b>
	<i>3 year suspension</i>	<i>6 month suspension</i>	<i>3 month suspension</i>
	<b>Category range</b>	<b>Category range</b>	<b>Category range</b>
	<i>6 month – 5 years</i>	<i>Admonishment – 2 year suspension</i>	<i>Admonishment to 6 month suspension</i>

93. The AHO imposed a suspension of four years and six months on the Player, for his refusal to hand over the Black Phone. In his analysis on sanctions, the AHO does not refer to the two steps set out in the Guidelines referring to the offense category and culpability.
94. For the sake of consistency and transparency, the Panel prefers to stick with the Guidelines and follow the two-step approach of determining the level of culpability and impact of the offense as a starting point for determining the appropriate sanction.
95. Regarding Culpability, the Panel considers it appropriate to place the Player in category B (medium culpability). His decision to hand over to the ITIA Investigators the Blue Phone

as his alleged primary phone, while he withheld his real primary device (the Black Phone) demonstrates he was acting in concert with his brother. Furthermore, the Player's failure to cooperate continued throughout the interview, in which the Player reiterated his attempts to mislead the ITIA into believing that the Blue Phone, and not the Black Phone, was his primary phone. Under these circumstances, the Panel cannot classify the Player's case as one of "lesser culpability". On the other hand, the Panel has no evidence of any of the criteria necessary to establish "high culpability".

96. Regarding Impact, the Panel finds that the Player's breach of his duty to fully cooperate amounts to a Category 2 offense (major TACP offense, material impact on the reputation and/or integrity of the sport, material gain). The Player's non-cooperation offense was likely aimed at preventing the detection of a potentially grave corruption offense. The Player had been the target of ITIA investigations for years, and there was a reasonable prospect that the Black Phone would provide the ITIA with proof of the suspected corruption offenses.
97. The range for a B.2-offense is a suspension between 6 months and 5 years, with a starting point of 3 years. The AHO's sanction of 4 years and 6 months is at the upper end of this range, and it assumes that the Player unlawfully refused to hand over the Black Phone. As explained in this Award, the Panel does not share the AHO's assessment. Rather, the Panel has found that the Player's fault was not his refusal to hand over the Black Phone (*i.e.* to follow a legal instruction), but his actions to prevent that he would have to hand over the Black Phone at a later point, when the ITIA would have shown him a formal written demand. He did so by attempting to make the ITIA believe that the Blue Phone was the true object of its investigation. The whole situation developed when the Player was approached by the ITIA Investigators, where he had to react spontaneously to an uncommon situation, including to the fact that the ITIA Investigators did not hold the required papers in their hands for seizing the Black Phone.
98. Taking into account all of the above, including the impact of sanctions on the Player's remaining (professional) career, the Panel determines that a period of ineligibility of two (2) years is appropriate in the circumstances. The Panel also considers the fine of USD 2,500 to be appropriate in accordance with Step 5 of the Guidelines. Finally, the Panel agrees with the AHO that the sanction for the Player's breach of Section D.1.I. of the TACP (accreditation misrepresentation) is subsumed under the sanction imposed for his breach of Section F.2.b. of the TACP.

## VI. COSTS

99. These proceedings fall under Article R65.1 of the CAS Code, which reads as follows:

*"This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. [...]"*
100. Article R65.2 of the CAS Code provides as follows:

*"Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together*

*with the costs of CAS are borne by CAS.*

*Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.-- without which CAS shall not proceed and the appeal shall be deemed withdrawn.*

[...]

101. Article R65.3 of the CAS Code provides:

*“Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties”.*

102. Article R65.4 of the CAS Code reads as follows:

*“If the circumstances so warrant, including whether the federation which has rendered the challenged decision is not a signatory to the Agreement constituting ICAS, the President of the Appeals Arbitration Division may apply Article R64 to an appeals arbitration, either ex officio or upon request of the President of the Panel”.*

103. Because the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to CAS by the Parties beyond the Court Office fee of CHF 1,000 paid by the Athlete with the filing of the Statement of Appeal, which is in any event retained by CAS.

104. Having taken into account the outcome of the proceedings, in particular the fact that the Athlete’s appeal resulted in a significant reduction of the period of ineligibility, that the ITIA made procedural errors making contributing to the necessity of the present proceedings, but also the Player’s whole conduct around the time of the Incident, the Panel rules that both Parties shall bear their own fees and other expenses incurred in connection with the present arbitration.



## ON THESE GROUNDS


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

1. The appeal filed by Mr Dragos Madaras against the decision rendered on 5 March 2024 by the Anti-Corruption Hearing Officer of the International Tennis Federation is partially upheld.
2. Mr Dragos Madaras is suspended for two (2) years from Participation, as defined in Section B.26. of the TACP, in any Sanctioned Event as prescribed in Section B.32. of the TACP, effective retrospectively from 17 August 2023 (the starting date of the provisional suspension).
3. Mr Dragos Madaras is fined USD 2,500 (two thousand five hundred United States Dollars), being due upon the issuance of the present Award.
4. This Award is pronounced without costs, except for the Court Office fee of CHF 1,000 paid by Mr Dragos Madaras which is retained by the Court of Arbitration for Sport.
5. Both Parties shall bear their own legal fees and other expenses incurred in connection with this arbitration.
6. All other and further motions or prayers for relief are dismissed.


Seat of arbitration: Lausanne, Switzerland

Date: 24 January 2025

## THE COURT OF ARBITRATION FOR SPORT



Annett Rombach  
President of the Panel



John Dyson  
Arbitrator



Giacomo Bei  
Arbitrator