

In The Matter of a Notice of Major Offenses pursuant to the Tennis Anti-Corruption Program ("TACP") (2022)

Before Anti-Corruption Hearing Officer, Ian Mill KC

BETWEEN:

INTERNATIONAL TENNIS INTEGRITY AGENCY

-AND-

**(1) NASTJA KOLAR
(2) ALEXANDRA RILEY**

**DECISION ON SANCTION
AND ORDER**

Introduction

1. On 13 March 2023, I issued my Decision on Liability in this case. On the following day, 14 March 2023, in response to an application from the ITIA, I issued an Order by way of a Provisional Suspension pursuant to Section G.4.a of the TACP 2022 against both of the Respondents ("the players") in the following terms:

"You are henceforth, and will remain, ineligible from all Participation in any Sanctioned Event until such time as a final decision on sanctions in respect of the Corruption Offenses which you have been found to have committed has been issued and taken effect.

Capitalised terms in the above Order bear the meanings respectively ascribed to them in the TACP 2022".

2. Shortly thereafter, I gave directions to the parties with a view to ascertaining their respective submissions on the sanctions that I should impose on the players in the light of my findings on liability.
3. Having now received those submissions, for which I am grateful, I am in a position to proceed with this Decision on Sanctions.
4. Upon the issue of the Order set out at the end of this document, the term of the Provisional Suspension imposed on both the players will come to an end.
5. I will deal with each of the players separately, commencing with Ms Kolar.

Ms Kolar

(1) Summary of Liability Findings

6. The ITIA succeeded in establishing the following, in particular, against Ms Kolar:
 - a. 17 instances of Ms Kolar contriving aspects of six matches in which she herself participated.
 - b. Five instances of conspiring with Ms Riley to contrive aspects of four matches in which Ms Riley participated.

Facilitation by Ms Kolar of wagering on tennis matches through courtsiding.

7. Additionally, the ITIA had some measure of success in establishing wagering on tennis matches by Ms Kolar, as well as proving failure by Ms Kolar to report Corruption Offenses committed by Ms Riley.

(2) Period of Ineligibility

8. In its written submissions, the ITIA diligently analysed these Offenses by reference to the criteria to be found in its non-binding Sanctioning Guidelines ("the Guidelines"). That analysis did not however yield any conclusion in relation to the appropriate period of ineligibility that was not already apparent both as a matter of CAS jurisprudence and common sense. The well-known CAS tennis-related decisions in *Kollerer v ATP et al* (CAS 2011/A/2490), *Savic v PTIOs* (CAS 2011/A/2621) and *Jakupovic v TIU et al* (CAS 2016/A/4388) all rightly focus on the need to send a zero-tolerance message to the entire tennis community in the wake of corrupt activity. The ban imposed must act as a sufficient deterrent to make those involved in the sport aware that acting corruptly is just not worth the risk.
9. Ms Kolar has committed multiple corruption offences of the highest order of severity and over an extended period of time. She remains defiant in the face of my findings, continuing to maintain her innocence and showing a total lack of contrition or remorse.
10. There is only one possible period of ineligibility for her in the light of the above. Ms Kolar is to receive a lifetime ban in the terms set out in paragraph 1 of the Order below.

(3) The amount of any fine

11. In his written submissions on behalf of Ms Kolar, Mr Pajk referred to CAS jurisprudence allegedly to the effect that "*if a life ban is imposed, then a fine cannot and should not be imposed in addition.*" The cases upon which he relied were the *Kollerer* and *Savic* cases referred to above. It is correct that the CAS panel in *Kollerer* (at paragraph 70) considered that "*it would be inappropriate to impose a financial penalty in addition to the lifetime ban, as the sanction of permanent ineligibility provides for the deterrence that corruption offences call for*" and that the CAS panel in *Savic* was content to adopt the same position. However, both those decisions were expressly stated to be based on the particular circumstances of the case in issue, not as a matter of principle of general application.

12. In response, the ITIA has drawn my attention to two recent tennis-related CAS decisions (*Bracciali v PTIOs* (CAS 2018/A 6048) and *Feitt v PTIOs* (CAS/A/7975)), in each of which on the facts the imposition of a substantial fine as well as a lifetime ban was upheld on appeal. In *Feitt*, the CAS panel expressly rejected the same argument as is now advanced on Ms Kolar's behalf. The panel in that case observed (at paragraph 122) that Section H.1.a of the TACP in terms contemplated that both a fine and a lifetime ban might be imposed at the same time. Secondly, it pointed out (at paragraph 123 and 124) that in both *Kollerer* and *Savic* no evidence had been put forward that the player had benefitted financially from the corrupt activity involved - whereas in *Feitt* the player had on the evidence received commissions for his match-fixing activities.

13. Mr Pajk's further submission is that the ITIA has failed to establish any or any substantial financial benefit on the part of Ms Kolar, and that therefore for this additional reason no fine should be imposed on her.

14. The ITIA's response - and my comments thereupon - are as follows:

- a. Firstly, Section H.1.a.(i) of the TACP provides for the imposition of a fine as well as the return of financial benefits received, which must mean that the ITIA need not demonstrate the amount Ms Kolar received from her Corruption Offenses for a fine to be appropriate. There is something in this point. Nonetheless, it seems to me on a fair reading of the authorities that the likely extent of any financial reward (based on the evidence) should be a factor in the size of an appropriate fine, if any.
- b. Secondly, the Guidelines provide for a minimum fine of \$75,000 where 15 or more Major Offenses are established. I remind myself that the Guidelines are not binding on me. However, I cannot entirely ignore the fact that I am required to consider Guidelines which appear to contemplate, in circumstances of very considerable corrupt activity, a substantial fine irrespective of the state of the evidence of financial gain from that activity. It is also to be noted in this context that it is inherently unlikely that evidence showing a precise total amount received will be established where the extent of the misconduct is

significant and over time.

- c. Thirdly, it is said that the ITIA established receipt by Ms Kolar of substantial sums in connection with her misconduct. Justifiably, reference is made to evidence adduced at the hearing of Ms Kolar asserting sums due or payable for courtsiding (\$3,000 for courtsiding at two tournaments) and match fixing (\$2,000 for fixing a set) which would suggest the receipt by her of substantial sums over the six year period of her corrupt activities. However, it is also relevant to note that the ITIA was substantially unsuccessful in establishing that Ms Kolar benefitted financially from wagering on tennis matches.
- d. Fourthly, it is suggested that the maximum amount permitted by the TACP of \$250,000 should in all the circumstances be imposed by way of a fine. Reliance was placed upon the decision of AHO Richard McLaren in the case against Karen Khachatryan in which he imposed a lifetime ban and the maximum fine upon a player who was guilty of *"a total and complete disregard for all of the principles of the [TACP]"* and who likely had gained significant income from his misconduct over a three-year period. I would not consider it appropriate slavishly to follow such a decision on its own particular facts. It is nonetheless helpful to note another AHO's willingness to impose a substantial fine in the absence of detailed evidence of the extent of any financial benefit by the corrupt player.

15. Finally, I note two further matters that I have considered in the exercise of my discretion:

- a. The observation in *Kollerer* that a lifetime ban *"has a considerable financial effect on the Player because it significantly impacts the Player's future earnings by eliminating tennis as a source of revenue"*.
- b. The absence of any evidence adduced by Ms Kolar as to the extent of her means and of her ability to pay a substantial fine. I note that such evidence was adduced in both the cases upon which Mr Pajk relied in support of his case against the imposition of a fine.

16. My overall conclusion in the light of the above is that Ms Kolar is to pay a fine of \$175,000.

Ms Riley

(1) Summary of Liability Findings

17. The ITIA succeeded in establishing, in particular, against Ms Riley:
 - a. Six instances of Ms Riley contriving aspects of five matches in which she participated as a player.
 - b. Six instances of Ms Riley facilitating wagering on matches in which she participated as a player.
 - c. The facilitation by Ms Riley of wagering on tennis matches by courtsiding.
18. Ms Riley was also found to have failed to preserve evidence and to have failed to report Ms Kolar's Corruption Offenses.

(2) Period of Ineligibility

19. Similarly to Ms Kolar, Ms Riley:
 - a. Committed a series of Corruption Offenses (eight in her case) which were punishable by permanent ineligibility under the TACP in effect at the relevant time.
 - b. Does not accept my findings against her and she has shown no remorse for her actions.
20. The submissions filed on her behalf contained the following passage:

"the ITIA offered absolutely no factual evidence during the hearing as to any impact or effect Ms. Riley's alleged offenses had "on the reputation and/or

integrity of the sport." Indeed, most of the Offenses alleged against Ms. Riley related to contriving individual points and games, which the ITIA admits did not affect the outcome of any matches. These lost individual points and games likely would have gone unnoticed and had little or no effect on the reputation of tennis, but for the automated electronic alerts, which flagged the unusual bets placed on esoteric aspects of these isolated matches. Furthermore, it is undisputed that Ms. Riley does not hold a "position of trust/responsibility within the sport," such as a judge or official."

21. This ill-judged and misguided submission attracted the following response from the ITIA:

"Ms. Riley's match fixing necessarily had a significant impact on the reputation and integrity of tennis. The very essence of sport, and its attraction to spectators, is a fair competition in which the outcome is uncertain. In professional tennis, match-fixing and other types of corruption are a major and world-wide concern for regulators.

Activity which damages the public's perception of tennis as a clean sport hurts professional tennis and all those associated with it. When it is known that players contrive the outcome of tennis events, the public develops a negative perception of the integrity of all professional tennis competitions. Because match-fixing poses a significant threat to the integrity of professional tennis, tennis regulators demonstrate zero tolerance against match-fixing and impose sanctions that both punish a corrupt player and serve as an effective deterrent for others who may be tempted to corrupt tennis competition."

22. I entirely agree with the sentiments expressed in this response. They are consistent with the approach adopted in the CAS jurisprudence to which I have referred in paragraph 8 above. Those representing Ms Riley would appear to have failed to appreciate or, at any rate, to perceive the need to address, the wider ramifications of their client's conduct.

23. There are significant differences between the ITIA and Ms Riley as to the extent to which I should regard the corrupt activities of Ms Riley as premeditated and whether

those activities are more appropriately described as isolated or continuous. I do not regard it as necessary to wrestle with or resolve such issues. For the reasons given in paragraphs 8 and 17 to 22 above, there is for Ms Riley, as for Ms Kolar, only one proportionate period of ineligibility. Ms Riley is to receive a lifetime ban in the terms set out in paragraph 3 of the Order below.

(3) The amount of any fine

24. I have set out a number of criteria relevant to the question of the amount (if any) of a fine to be imposed on Ms Riley in paragraphs 11 to 13, 14(a) and (b) and 15 above. They are to be treated as repeated here.

25. I note the following additional points relevant to the circumstances of Ms Riley's case:

- a. In the introduction to the submissions filed on her behalf, Ms Riley asserts that a fine in the order of \$75,000 to \$100,000 would be one which she simply could not afford to pay. However, at no point in the submissions that follow is any substance given to that assertion beyond the following:

"...because Ms. Riley is 32 years old, any suspension imposed that is longer than a couple years is effectively a "lifetime ban" because it will prematurely end her professional tennis career and mitigate any need to impose a monetary sanction. Accordingly, Ms. Riley respectfully requests that the AHO impose either no fine or a de minimis amount as a monetary sanction."

In the above circumstances, and given her apparent ability to afford US legal representation throughout these proceedings, I propose to proceed on the basis that potential inability to pay a substantial fine has not been shown by Ms Riley to be a factor which I should take into account in her favour.

- b. There is a dispute as to the correct minimum/maximum amount of any fine under the Guidelines, in the circumstances of Ms Riley's Offenses. The ITIA is correct that the applicable figures are \$50,000 to \$75,000. The contrary argument, in support of a lower bracket of \$25,000 to \$50,000, was based on

a misreading of the term "Major Offenses" (of which Ms Riley was found by me to have committed 15). Again, I remind myself that the Guidelines are not binding on me.

- c. It is asserted on behalf of Ms Riley that the ITIA has failed to provide any evidence that she profited from any of the conduct giving rise to the Major Offenses which I have found that she has committed. The ITIA refers in response to the evidence to which I have referred in paragraph 14(c) above and invites me to infer that the same levels of remuneration will have been earned by Ms Riley. I am not satisfied that I should do this, albeit that I accept that some measure of financial benefit for her corrupt activities can properly be inferred against her. I also note that I have dismissed for lack of evidence the only Charges against Ms Riley that alleged her receipt of money.

26. My overall conclusion from the above is that Ms Riley is to pay a fine of \$50,000.

Order

I therefore order as follows:

- a. Ms Kolar:
 1. Ms Kolar is henceforth, and will remain for the rest of her life, ineligible from all and any Participation in any Sanctioned Event.
 2. Ms Kolar is to pay a fine of \$175,000.
- b. Ms Riley:
 3. Ms Riley is henceforth, and will remain for the rest of her life, ineligible from all and any Participation in any Sanctioned Event.
 4. Ms Riley is to pay a fine of \$50,000.

Capitalised terms in the above Order bear the meanings respectively ascribed to them in the TACP 2022.

This Decision (and my Decision on Liability) may be appealed exclusively to the Court of Arbitration for Sport in accordance with Section I of the 2022 TACP.

A handwritten signature in black ink, appearing to read "Ian Mill". The signature is written in a cursive, slightly stylized font.

Ian Mill KC, AHO

9 June 2023