

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE 2018 TENNIS ANTI-DOPING PROGRAMME

Before:

Kate Gallafent QC
Colin Murdock
Prof. Isla Mackenzie

BETWEEN:

International Tennis Federation (“ITF”)

Anti-Doping Organisation

And

César Macnaught Ramírez Rodríguez

Respondent

FINAL DECISION OF THE INDEPENDENT TRIBUNAL

A. INTRODUCTION

1. This is the final decision of the Independent Tribunal appointed pursuant to Article 8.1.2 of the 2018 Tennis Anti-Doping Programme (“TADP”) to determine a charge brought by the ITF against César Macnaught Ramírez Rodríguez on 14 June 2018.

2. Mr Ramírez has been charged with an Anti-Doping Rule Violation (“ADRV”) in breach of Article 2.1 of the TADP¹ as a result of the presence of the metabolites of Prohibited Substances (nandrolone (19-norandrosterone); boldenone or boldenone-related steroids; drostanolone; and stanozolol) in a urine Sample provided by him on 12 April 2018.
3. Mr Ramírez does not dispute that he committed the ADRV and no issue of jurisdiction arises. However, he argues that the otherwise applicable four year period of Ineligibility should be reduced on the basis that there was no intent to commit the ADRV and furthermore that there was No Significant Fault or Negligence (and in the case of stanozolol it came from a Contaminated Product). He also submits that given the time that has elapsed since the Sample date this should effectively be considered as ‘time served’ or a very short period of Ineligibility be imposed (such as one month), and that if a period of Ineligibility is imposed it runs from the date of Sample collection.
4. In accordance with directions made by the Chair of the Independent Tribunal on 1 October 2018, as subsequently varied, Mr Ramírez served evidence and a written brief, in response to which the ITF served an answer brief. The hearing of the charge took place in London on 16 January 2019. Mr Ramírez was represented by Mr Max Shephard of Counsel and the ITF was represented by Mr Richard Bush. Mr Ramírez gave evidence and was cross-examined, as was Mr Alvaro Lira who he called on his behalf. For reasons further explained below, it was not possible to conclude the hearing on that date and the parties were therefore directed to provide written closing submissions, which the ITF did on 1 February 2019 followed by an amended version on 11 February 2019, to which Mr Ramírez responded on 25 February 2019. The ITF then submitted comments on Mr Ramírez’s submissions on 27 February 2019 to which Mr Ramírez responded on 2 March 2019.
5. We are grateful to both parties for their detailed and helpful written and oral submissions.

¹ The 2018 edition of the TADP applies as the Sample was collected on 28 April 2018.

B. LEGAL FRAMEWORK

6. Mr Ramírez has admitted the charge and the only issue is therefore the consequences to be imposed upon him. These fall into two types.
7. First, TADP Article 9.1 provides that an ADRV committed by a Player in connection with or arising out of an In-Competition test automatically leads to disqualification of the results obtained by the Player in the competition in question. Where the results are obtained in a doubles Competition the results of the Player's doubles partner are also disqualified (TADP Article 9.2).
8. Secondly, the TADP provides for a period of Ineligibility.
9. Where the ADRV does not involve a Specified Substance (as in this case) the starting point is that the period of Ineligibility is to be four years unless the Player or other Person establishes that the Anti-Doping Rule Violation was not intentional (TADP Article 10.2.1(a)).
10. Guidance on the meaning of the word "*intentional*" in this context is provided at TADP Article 10.2.3:

"As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Participants who cheat. The term, therefore, requires that the Participant engaged in the conduct which he or she knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk. An ADRV resulting from an Adverse Analytical Finding for a substance that is not only prohibited In-Competition (a) shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Player can establish that it was Used Out of Competition; and (b) shall not be considered "intentional" if the substance is not a Specified Substance and the Player can establish that it was Used Out-of-Competition in a context unrelated to sport performance."

11. If the Player establishes that the ADRV was not intentional then the period of Ineligibility is two years, subject to potential reduction or suspension pursuant to TADP Article 10.4, 10.5 or 10.6.
12. TADP Article 10.4 provides for the elimination of the Period of Ineligibility on the grounds of No Fault or Negligence.
13. TADP Article 10.5 provides for the reduction of the Period of Ineligibility on the grounds of No Significant Fault or Negligence. If the Player can establish that the detected Prohibited Substance came from a Contaminated Product, then it can be reduced to no Period of Ineligibility (TADP Article 10.5.2(b)); in all other cases it can be reduced by up to one-half of the otherwise applicable period (TADP Article 10.5.2).
14. The Period of Ineligibility starts on the date that the decision is issued, provided that any period of Provisional Suspension served by the Participant must be credited against the total period of Ineligibility to be served (TADP Article 10.10.3(a)). The Period may also be backdated so as to commence as early as the date of Sample collection where the Player admits the ADRV after being confronted with it by the ITF, subject to the proviso that the Player must actually serve at least half of the Period of Ineligibility (TADP Article 10.10.3(b)).

C. THE EVIDENCE

Mr Ramirez

15. Mr Ramirez is a professional tennis player who is 28 years old. He is a Mexican national.
16. In his witness statement dated 10 November 2018 Mr Ramirez stated that he had met the personal trainer Alvaro at the Veracruz sports gymnasium where he went to play tennis, and had known him for approximately six years. In January 2018, following Mr Ramirez's second surgery on his arm, Alvaro had offered to work with him for his physical recovery from all the injuries that he had sustained, so that in the future Mr Ramirez might hire him as his full time fitness coach. After a few chats

Alvaro recommended that Mr Ramírez take some Maxi Plus Suplexx pills of natural origin which would help him burn off fat and have more energy and regenerate tissue. Mr Ramírez would be taking two pills of the product each day.

17. In his oral evidence Mr Ramírez said that he had met Alvaro in Mexico City when he had been speaking about his injuries with an actor friend and Alvaro suggested that he could help him, and Mr Ramírez saw him two or three weeks later at the club. Mr Ramírez told the Tribunal that although he could not recall the exact date it is thought that he started taking the pills in February, and that he had taken them for at least 30 – 40 days. He said that he had not finished the pot but had thrown it away, and that he didn't feel any different while he was taking them. He couldn't remember when he stopped taking them, but suggested that it was some 3 – 5 weeks before the event. He said that Alvaro had charged him about 1,900 pesos (c. £85 – 90) for the pills. He did not undertake any investigations into the pills but simply relied on Alvaro.
18. Mr Ramírez also said in his witness statement that Alvaro had given him three injections approximately 15 days before the ATP Challenger CDMX Open event that took place on 9-15 April 2018 ("the Event"), which he understood to be vitamin and analgesics (known as a 'vampiro'). In cross-examination he said that there were three injections in a pack of vampiros, and the idea was that there would be a day on then a day off so he was injected every other day. He said that Alvaro administered the injections himself and did not charge him for them. Mr Ramírez also said that prior to these injections he had previously been administered a 'vampiro' by his aunt in November 2017 and by the Mexican Federation doctor around three months earlier.
19. On 7 April 2018 Mr Ramírez was admitted to the Metropolitan Angeles Hospital in Mexico City having suffered a "hyper sensitivity reaction". He was discharged the following day, having been diagnosed with an allergy. The discharge report records that he was taking Celestamine, Andontil, Avapena and Alin, and that he had been treated with anti-histamines.
20. Mr Ramírez's ATP ranking was protected from October 2016 when he had his first surgery on his arm, and he had used it to enter the Event. He said that although he

wasn't planning to play he was encouraged to do so by his girlfriend, as all of his friends would be playing, some of whom he hadn't seen for two years. As a result of his allergic reaction he requested a late start to his participation in the tournament and first played on Wednesday 11 April. He played one more round on 12 April 2018 and told the Tribunal that he had then stopped because he wasn't ready to compete. In fact, he lost in the quarter finals on that date.

21. After that match, he was notified that he had been selected to provide a urine Sample, which he duly provided. Under the 'declaration of use' section of the Doping Control Form, in response to the requirement that he declare any prescription / non-prescription medications or supplements, including vitamins and minerals, taken over the previous seven days, he declared that he had taken Alin, Celebrex, Celestamine, Loradatina and Arcoxia. He also stated that he had a Therapeutic Use Exemption ("TUE") on file.
22. It appears from an email disclosed the evening before the hearing that at some point prior to 15.10 BST on 12 April 2018 Mr Ramírez's doctor (the official doctor at the Event, Dr Tobon) had sent an email to tue@idtm.se (the helpline for the TADP dedicated to enquiries about TUEs) including documents for a TUE application, to which they had responded indicating that all applications had to be made via the TUE portal, and that the documents previously provided by email had been deleted and would not be processed.
23. On 11 May 2018, the Montreal laboratory to which Mr Ramírez's Sample had been sent for analysis reported an Adverse Analytical Finding ("AAF") in respect of his A Sample, having found metabolites of (i) nandrolone, (ii) boldenone or boldenone-related steroids, (iii) drostanolone, and (iv) stanozolol.²
24. Nandrolone, boldenone, drostanolone and stanozolol are all anabolic androgenic steroids listed in section S1.1 of the WADA Prohibited List, use of which is banned at all times.

² See the Montreal laboratory's A Sample documentation package dated 28 May [DB tab 5], p.94.

25. In accordance with TADP Article 7.3.5, the ITF referred the Montreal laboratory's AAF in respect of the Player's Sample to an independent three-member Review Board, which confirmed that there were no apparent departures from the applicable Sample collection procedures or the applicable Sample analysis procedures that might have caused the AAF, that the Player did not have a TUE giving him permission to use any of the four steroids, and that therefore the Player had a case to answer for breach of TADP Article 2.1.
26. On 14 June 2018 the ITF sent a Notice of Charge to the Player, informing him that he was being charged with an ADRV under TADP Article 2.1 on the basis that the Montreal laboratory had found those metabolites in his Sample, and he did not have any applicable TUE.
27. The Prohibited Substances for which metabolites were present in the Player's Sample are non-Specified Substances, and as such the Player was subject to a mandatory Provisional Suspension pursuant to TADP Article 8.3.1(1) with effect from 28 June 2018.
28. The Player provided his initial response to the charge on 28 June 2018. He admitted the charge, and stated:

"I would like to highlight that said Anti-Doping Rule Violation was not intentional and/or, in any case, there was no significant fault or negligence on my part. Said statement is based on the fact that five weeks before the Event, I underwent a muscle infiltration procedure to mitigate an injury in the ligaments of my wrist. For that reason and in order to re-establish my health, I was prescribed with the medications that I declared in the Doping Control Form, which are the following: Diprospan y Alin.

On April 7th, 2018, I had a strange general rash from which the cause could not be determined. For that reason, I was interned at the Metropolitan Angeles Hospital.

On April 8th, 2018, I was discharged from the hospital and was prescribed, to re-establish my health, with the medications that I declared in the Doping Control Form, which are the following: Alin, Celestamine, Loratadina, Arcoxia y Celebrex.

All of the above detailed procedures and medications were duly informed to the Mexican Tennis Federation. Furthermore, I filed the procedure to obtain the corresponding TU[E].

It is worth observing that said treatment and procedures were declared during the competition by/to the medical personnel of the tournament (Mr Ramiro Aymard Tobon), as well as to the authorities of the International Tennis Federation.

[...]

The commission of the Anti-Doping Rule Violation incurred by me, was neither with the intention to improve my performance, nor mask the use of some other illegal substance aimed at improving my performance, and also was not intentional. Likewise, I bear no fault or negligence for the presence of metabolites of nandrolone, boldenone, drostanolone and stanozolol in my system, or, in any case, this was not significant, because the aforementioned disease and injury treatment occurred suddenly and unpredictably, and it was necessary to follow the medical instructions to restore and avoid further complications or permanent injury to my health and wellbeing, in light of such exceptional circumstances.

[...]

Based on the provisions of Article 10.9 of the World Anti-Doping Code, I voluntarily accept the provisional suspension decreed on June 14th, 2018, entering into effect from June 28th, 2018, which is why I request that this period of provisional suspension be deducted from any future/further suspension that, in this case, shall be definitely imposed on me."

29. Although Mr Ramírez had not requested the testing of his B Sample, this was done at the request of the ITF and an AAF reported on 12 July 2018 for the same metabolites as found in the A Sample.
30. The ITF's solicitors conducted some preliminary research into the six medications identified by Mr Ramírez as possible sources for the ADRV, which it shared with Mr Ramírez on 10 July 2018, together with a series of questions in relation to his use of those medications and the basis for his assertion that they had caused the ADRV, and his application for a TUE. On 28 August 2018 Mr Ramírez's counsel emailed solicitors for the ITF indicating that they understood that it would be unlikely to see anabolic agents as active ingredients in therapeutic medications, and conducted further investigations themselves. He stated that "*we have now identified the source of the ADRV*", which he described in the following terms:

"Mr Ramírez is of limited means and separate to his tennis coach, whilst training in a gym in Mexico City encountered a gym trainer, called Alvaro Gonzalez. Mr Gonzalez is a Venezuelan national. Mr Ramírez had an injury approaching the time of the ADRV. Due to his injury Mr Ramírez was not training tennis and did not intend on playing tennis at all. Our understanding is that Mr Gonzalez does not assist with other tennis players and is a gym trainer as opposed to a tennis specific trainer. Mr Gonzalez sold Mr Ramírez the supplement detailed below.

The name of the supplement was 'Maxi Plus Suplexx' and the container contained 50 pills. Mr Ramírez took this supplement for approximately 70 days. Unfortunately, we do not have any pictures of the packaging nor any leaflets that came with it. The supplement was taken orally.

Mr Ramírez will state that [he] had no idea that he was engaging in conduct that he knew constituted an ADRV nor did he know that there was a significant risk that his conduct might constitute or result in an ADRV and manifestly disregard that risk. Mr Ramírez believed at the material time he was adhering to the relevant rules."

31. In his witness statement Mr Ramírez said that he knew that Alvaro had changed the pills since when he gave a positive result at the tournament in Mexico City it was news at national level and when Alvaro understood what he had done to Mr Ramírez's career he decided to confess to him that he had switched the pills in the Maxi Plus Suplexx bottle for some that contained stanozonol.
32. When asked when Mr Ramírez suspected that Alvaro was behind the positive test he told the Tribunal that it was after the email from the ITF's solicitors when he started to think how it was possible that he had tested positive for four different substances. He said that it was then that he asked Alvaro what he had given him, as that was the only different thing he had done lately. They agreed to have a conversation and it was Alvaro who told him when they met on 28 September 2018. In cross-examination Mr Ramírez said that between late June (when the newspaper reports about his suspension started) and then Alvaro did not mention anything about what he had done, and they did not speak.
33. Mr Ramírez told the Tribunal that the conversation started quite nicely, and Alvaro told him that he had seen the reports about Mr Ramírez's doping in the newspapers and asked him why Mr Ramírez hadn't told him that he was going to take part in the

competition, then said that he had swapped over the supplements. Alvaro said that he had given steroids to Mr Ramírez to gain credibility so that Mr Ramírez would use him as he wanted to get Mr Ramírez's help to get into the world of sports people, having worked with actors and models.

34. In his witness statement Mr Ramírez said that Alvaro confessed he had changed the 'vampiro' for Deca-Durabolin (nandrolone, drostanolone and boldenone).
35. In support of his evidence as to the fact and date of this meeting Mr Ramírez relied upon a screenshot of a WhatsApp message of that date in support of this evidence, in which they agreed to meet on a street in Marti, a copy of which had been disclosed to the ITF on the evening prior to the hearing. During cross-examination Mr Ramírez confirmed that he had other messages both before and after that meeting. Accordingly, the Tribunal adjourned the hearing in order to allow copies of those messages to be made and translated.
36. Initially, copies of other WhatsApp messages were obtained from earlier on 28 September 2018, and from January 2019, which were translated with the assistance of the interpreter, Ms Crispina Sanders. However, during that process it became clear that it was extremely difficult to follow the thread of these conversations and the hearing was then adjourned for a second time to enable copies to be made of all WhatsApp messages on Mr Ramírez's phone between himself and Alvaro, starting with the first message from Mr Ramírez sent to Alvaro at 17.42 (UK time, 11.42am in Mexico City) on 26 September 2018. These additional messages were not translated during the course of the hearing as by this point it was nearly 2pm. The full set of exchanges is set out below, with those shaded in grey being messages which were not the subject of translation at the hearing, but which were subsequently translated by a trainee solicitor at the ITF's solicitors, Bird & Bird, the majority of which (but not all) were then also translated by a professional translation service.

Date	Time shown	Time in Mexico City ³	Mr Lira ('Chicharo')	The Player
26/09/18				
Messages to this chat and calls are now secured by end-to-end encryption. Tap for more info. ⁴				
	17:42	11:42		Bro what's up I need a favour!
				As brothers
				And I know you can help me
	17:46	11:46	Talk to me	
				Beer?
			With pleasure	
			Hahaha	
			[Smiley faces and beer emoticons]	
			Plenty	

³ It is not disputed that the time shown in the messages is UK time (GMT), and that the actual time that the messages were sent was that in Mexico on the relevant dates.

⁴ It is not disputed that this message indicates that this is the first conversation between Mr R and Alvaro over What'sApp.

			Hahaha	
				Not so many
				Hahaha
	17:47	11:47	Hahahahaha	
			If you call me frog, I jump	
			Hahaha	
				I'll let you know when I'm out of the [tennis] club
				5pm?
				Mate
			Done	
			[Two thumbs up emoticons]	
	17:49	11:49		Hurry up
	1:23	19:23		Mate
				I left later mate
				How are you getting on

	1:38	19:38		Mateeee
	2:51	20:51	Little Cesar I was waiting	
			I'm with my kids	
			But in a bit	
			I'm going to have a chill dinner	
	2:52	20:52	Chill	
			And I'm inviting a [girl] friend	
			What about you	
	3:02	21:02		Ok mate
				I left late mate
				Let me know when you leave
				We'll have a few beers mate
				Or I'll come whenever you're at
27/09/18 ⁵				

⁵ This date is based on the time in Mexico, rather than the time in the UK as shown on the What'sApp messages when screenshots were taken in the UK.

	17:31	11:31		Dudeeee Dudeee
				Where you at?
			What's up brother, just in the gym	
	17:32	11:32		What time are you leaving or I'll call you mate
				How about 20 minutes
				What gym do you go to?
			We're going for a drink this afternoon as we couldn't yesterday	
			Americas	
			Smart fit	
				Yes bro I need to talk to you about a personal issue
				But this afternoon
			Ok ok	
				Come with me to the door?
			Sure	

			Coming	
				I invite you there
			I'll confirm OK	
	17:33	11:33		OK
			[Thumbs up emoticon]	
				I need to see you, but in any case I need for you to come today
				Big hug
				Off to Florida
				Tomorrow
	19:36	13:36	Oh yes champion	
			Shall we meet around 7?	
			A few beers down at Marti's?	
	19:55	13:55		Sure mate
	20:25	14:25	OK	
	22:27	16:27		What's going on?

	23:24	17:34		Mate, mate
				Report to me
	0:01	18:01	What's going on?	
			Just finishing work	
			Saying goodbye to people	
			Going for a sholer	
			Shower	
			What's going on	
			I'm tiredddd	
			Meet at Marti	
			Or what?	
	0:02	18:02		Few cold beers to recover
	0:04	18:04	OK	
			We'll agree	
			Marti's at 8	
			We can eat something at	

			Mozzarella	
	0:05	18:05	Then see what happens	
	0:08	18:08		OK agreed
	0:16	18:16	Ok ready see you there	
	1:41	19:41		Where are you?
	1:42	19:42		Want to stop by the house
				Before
				2 blocks away from Marti's
	1:44	19:44	OK	
			On my way	
	1:45	19:45		OK mate
				See you here
				[image of map showing what appears to be Mr Ramirez's home address as detailed in his witness statement]
	01:52	19:52	Marti Mozzarella	
			Yes	

				OK
	01:57	19:57	2 min	
	02:12	20.12	Where are you	
			??	
	4:33	22:33	I'm at the door	
	[unknown time]			I will leave in 15 mins mate
05/01/19				
	0:13	18:13		
				Mate
				How you doing?
				All's good
				Happy new year
				I need to talk to you
				Get back to me
				Sent some questions from the ITF that we have to answer

	0:14	18:14		Solicitor has asked me to
				Need to do Skype call
				Can you do tomorrow?
	01:44	19:44		????
				Chicharo
	02:06	20:06		Mate?
				It's urgent, hearing is 12 th January
				My future depends on it
	02:08	20:08	[Thumbs up emoticon]	
08/01/19				
	02:44	20:44		Big hug mate
				When can I speak to you?
				Big hug
	11:33	15:33		Good morning mate
				We've got to have the conference call with the solicitor
				Thursday 5.30am bro

				Please
	11:34	05:34		What time can I call you today so we can agree please
				Big hug
	19:06	13:06	What's going on?	
	19:09	13:09		Can I call you at about 7.30am?
				What time will you be free so I can steal you for 10 minutes mate
	23:51	17:51		Mate
	03:20	21:20		Hello brother
				Flying to London on Saturday
				If you're not there anything we might say will just be useless
	03:23	21:23		We should have talked with lawyers today
				::/
10/01/19				
	11:29	05:29		Hello mate good morning

				What's going on? Tried to call you several times
				Come on, just let me know
	11:31	05:31	Call me later please	
	c.15:10	c.09:10		You call me whenever suits, life or death case for me
	22:45	16:45		Mate

Alvaro Lira

37. Alvaro Lira also gave evidence on behalf of Mr Ramírez. In his witness statement he stated that he had helped Mr Ramírez with his physical recovery from the year 2008. In January 2018 he purchased a bottle of "Maxi Plus Suplexx" from a health food store called "La Bodeguita Natural".
38. In his statement Alvaro stated that he was helping Mr Ramírez to recover and increase his strength and decided to give him stanozolol from the Landerlan laboratory. In his evidence before the Tribunal by video link Alvaro said that he had got them from friends of his in the gyms who support and back him when there was a need, who he later identified as Miguel Basan.
39. So that Mr Ramírez would not know what Alvaro was doing, Alvaro switched the stanozolol pills for the pills in the 'Maxi Plus Suplexx' bottle. He told Mr Ramírez to take two pills a day for 50 days, except on weekends, and that the purpose of the pills was to reduce his body fat, regenerate muscles, and increase his energy levels. Of 100 tablets his instructions were for Mr Ramírez to take two pills a day for 50 days except on weekends.

40. Alvaro also stated that 18 days before the Event (at which nobody knew he was going to play) he gave Mr Ramírez an injection that he told him was a 'vampiro'. Instead, it contained boldenone, nandrolone and derivatives of drostanolone, which he bought on the black market from a body builder friend. He gave Mr Ramírez three injections, the second one three days after the first and the third one three days after the second.
41. Alvaro stated that he did all of this in order that Mr Ramírez might recover more quickly and in order to be able to give short-term results, so that he might feel like beginning a more formal and long-term working relationship, since it was important to him to continue working with Mr Ramírez to strengthen his CV. He stated "*I never thought this was going to happen to Cesar and since I was hurting his image and his career I decided to tell him the truth about everything.*" In his evidence to the Tribunal Alvaro said that he first told Mr Ramírez about what he had done on or around 27 – 29 September 2018, which he remembered as it was his birthday on 26 September. He said that he had heard on the news what had happened, and that news travels fast, and he decided to offer himself up to testify as he could see Mr Ramírez was in an unpleasant situation, which is why he was giving evidence to the Tribunal.
42. When asked by Mr Bush who had requested the September meeting Alvaro said that "*it was both of us, really*" that he was worried, and in some way he was looking to meet him, and it was he who proposed it but both coincided, and he wanted to express his guilt. He said that he hadn't spoken to him between late June 2018 and the end of September because when a person comes up against problems they have to think deeply, and he wanted to meet him face to face and tell him what his part had been.
43. When asked if he used What'sApp Alvaro said he did not. When asked if he recollected using What'sApp he said that he wouldn't say that he and Mr Ramírez talked frequently, and they didn't communicate as a rule, and before the September communications it was probably 4 or 6 months since they had last exchanged communications. He said that the reason for this was because he was busy with his own business and Mr Ramírez was traveling and training and he didn't want to interfere.

44. When it was put to Alvaro that he had a close relationship as a gym trainer but no communication with Mr Ramírez he said that he did not like to be on top of people that he trained, or to put pressure on, but to let the results speak for themselves, and that if they wanted to call him, fine, but he didn't want to pressurise them.
45. Alvaro exhibited to his statement pictures of the substances that he said that he had given to Mr Ramírez. In giving his evidence to the Tribunal he clarified that those images had come from the Internet, and that the original packaging had been thrown away.

Dr Tobon

46. In a witness statement dated 8 August 2018 (but which was an error, the correct date being 8 November 2018), Dr Ramiro Eymard Tobon Rodriguez stated that he was the team doctor who treated Mr Ramírez when he was involved as a Davis Cup player, and who also treated him at the Event. He confirms that at Davis Cup meetings he would give players doses of 'Dolo Neurobin' (complex B vitamins + Diclofenac), that no player he has treated had had a positive test result, and that he did not give the Player any drug by intravenous and/or intramuscular administration at the Event.
47. In his evidence to the Tribunal by video link Dr Tobon stated that the last time he had administered a 'vampiro' to Mr Ramírez was probably in 2015, and that he had not seen him between 2015 and 2018. Dr Tobon said that Mr Ramírez did not strike him as an experienced steroid taker, and he had never seen that in his body.

D. PRELIMINARY MATTERS

48. As noted above, there were several adjournments during the course of the hearing to deal with the issue of disclosure of What'sApp messages. As a result, although the Tribunal extended the hearing to enable all live evidence to be given, it was not able

to hear closing submissions orally and directions were therefore made for the sequential exchange of written submissions. Following receipt of the ITF's submissions Mr Ramírez's counsel objected to the introduction of what he described as potentially "scientific evidence through the back door". The Tribunal therefore did not read those submissions or the attachments to it, and the parties sought to reach agreement on the matter. In the event, the ITF adopted a pragmatic approach by making some amendments to its submissions but without accepting that the substance of Mr Ramírez's objections were valid.

49. In response to the amended submissions, Mr Ramírez took two points. First, he contended that the ITF had included in its submissions untested and unsubstantiated scientific submissions (at paragraph 2.5 of their closing submissions, together with all associated footnotes). At that paragraph the ITF had sought to rely upon "*the broad scientific consensus ... that the excretion period for the metabolites of orally consumed steroids can be measured in a matter of days, not weeks*", on the basis of which it made submissions as to the likely period between the Sample collection and Mr Ramírez's last ingestion of the 'Maxi Plus Suplexx' pills. In a footnote the ITF asserted that this broad scientific consensus arises commonly in anti-doping cases such that it may be considered "common knowledge", but that the ITF "*stands ready to provide material to support this submission*".
50. In its comments to Mr Ramírez's closing statement the ITF indicated that the exhibits to its original closing submissions which it had removed had supported its submissions at paragraph 2.5, and reiterated that it was ready to produce that evidence to the Tribunal. In response, Mr Ramírez objected to the ITF introducing new evidence at this stage, six weeks after the oral hearing, in circumstances where the ITF had chosen not to file any scientific evidence before the hearing, and had not sought to correct Mr Shephard's opening statement that there was no scientific evidence in this case.
51. We note that the ITF has not made any application to file the proposed scientific evidence in this case. Rather, what it has sought to do is to make it a matter for the Independent Tribunal as to whether it wishes to ask the ITF to file such evidence. In our view this is not the appropriate course to have taken. Whilst the burden of proof is on the Player to satisfy the Tribunal that the ADRV was not intentional, that does

not relieve the ITF of its responsibility to adduce such evidence as it considers relevant on that issue. Although it is correct that Mr Ramírez did not give evidence as to the date on which he stopped taking the “Maxi Plus Suplexx” tablets until asked by the Chair, the potential for that to be an issue was clear not only from Mr Lira’s statement in which he stated that in January 2018 he had instructed Mr Ramírez to take two pills a day for 50 days, but from Mr Shephard’s email to the ITF’s solicitors on 28 August 2018 in which he stated that Mr Ramírez had taken the supplement for approximately 70 days. If the ITF had wished to adduce evidence on the half-life of orally consumed steroids then they could have done so in advance of the hearing.

52. In all the circumstances, we do not invite the ITF to provide the scientific evidence referred to.
53. The other point taken by Mr Ramírez concerns the What’sApp messages. His position is that it is wholly unsatisfactory that the certified translation does not contain translations of all of the messages (as opposed to the translation provided by the trainee at the ITF’s solicitors). Mr Ramírez leaves the issue of the weight to be attached to such messages to the Tribunal.
54. We note that Mr Ramírez does not suggest that the translations by the trainee of any of those messages are wrong or misleading. It therefore appears that his concern is one of principle rather than of substance. In the absence of any suggestion that the trainee’s translations are inaccurate we proceed on the basis that they are accurate and can be relied upon. We therefore treat those messages in the same way as those which were translated by the interpreter during the course of the hearing, and the certified translator following the hearing, and give them the same weight.
55. For completeness, we do not consider that there is anything counterintuitive in the ITF only obtaining certified translations for those messages which were not translated by the interpreter during the course of the hearing. It was only necessary to translate messages which had not previously been translated, and that translation was noted down not just, of course, by the ITF as Mr Ramírez suggests, but also by the Tribunal.

F. FINDINGS

Was the ADRV Intentional?

56. It is common ground that the key issue in this case is the credibility of Mr Ramírez and Mr Lira's 'spiking' account, and that it is for Mr Ramírez to persuade the Independent Tribunal that "*the occurrence of a specified circumstance is more probable than its non-occurrence*".⁶ It is therefore largely unnecessary to consider the case law referred to by the ITF in its Answer Brief in which athletes have sought to rely upon a 'spiking' explanation, save to note that:

56.1. We agree with and accept the approach identified in *UKAD v Anderson*⁷ that "*in alleged spiking cases, particularly when the substance ingested has clear performance enhancing potential, the tribunal must be especially cautious before accepting an athlete's case because of the obvious potential for collusion, even where the alleged spiker is said to have admitted the spiking.*" That is not, of course, to say that the athlete must satisfy some higher standard of proof than a balance of probabilities, simply that in considering whether he has satisfied that standard a tribunal must take into account the likelihood of collusion, particularly, we accept, where the alleged spiker is not subject to the WADA Code as applicable at national level.

56.2. We also agree with Mr Ramírez's submission that corroboration is not a necessary requirement in order for an athlete's account to be accepted,⁸ but the existence or absence of corroboration may be relevant, depending on the individual circumstances of the case.

⁶ *Alabbar v FEI CAS 2013/A/3124*, and *WADA v IWF & Caicedo CAS 2016/A/4377*.

⁷ SR/0000120082 NADP decision dated 15 May 2013.

⁸ By contrast to the position under the 2009 WADA Code in relation to Specified Substances whereby a reduction could be obtained if an athlete could establish how the substance entered his body and that it was not intended to enhance his sport performance, which required the athlete to produce corroborating evidence in addition to his word (WADA Code 10.4).

WhatsApp messages

57. The only contemporaneous evidence available in relation to Mr Ramírez's conduct in connection with Mr Lira⁹ is the WhatsApp messages. In our view these are highly material to the issue of Mr Ramírez's (and Mr Lira's) credibility, and the likelihood of Mr Ramírez's account being more probable than not.
58. The first message that Mr Ramírez exchanged with Mr Lira via WhatsApp was on 26 September 2018, when he wrote to him "*Bro what's up I need a favour!*"
59. According to both Mr Ramírez and Mr Lira, before that time there had not been any communication between them for a considerable time (Mr Lira suggested that it had been "*4-6 months*"). If that is right, then the question arises as to what had prompted Mr Ramírez to communicate with Mr Lira on that date (and by WhatsApp for the first time).
60. Mr Ramírez's evidence was that he first suspected that Mr Lira was behind the positive test after receiving the ITF's email (i.e. its email of 10 July 2018). His counsel had responded to that on his behalf on 28 August 2018 and identified one Alvaro Gonzalez (who is said to be the same person as Mr Lira) as the individual who sold Mr Ramírez Maxi Plus Suplexx. Given that Mr Ramírez had identified Mr Lira as the source of the ADRV at that time, we find it difficult to understand why Mr Ramírez would not have contacted Mr Lira before that email was sent (particularly in circumstances where, as Mr Ramírez himself has pointed out, there is no information about that supplement available online). We equally find it difficult to understand why, even if he did not, Mr Ramírez would have waited another month before contacting him. Mr Ramírez having done so is, in any event, inconsistent with Mr Lira's evidence that it was Mr Lira who had proposed meeting up.
61. In this context we have had regard to Mr Lira's evidence that he substituted the supplements and 'vampiro' injections with steroids in order to persuade Mr Ramírez

⁹ We, like the ITF, have presumed that the Alvaro referred to as "Alvaro Gonzalez" in Mr Ramírez's counsel's email to the ITF of 28 August 2018 is the same person as Alvaro Lina who provided a witness statement, and the "Chicharo" with whom Mr Ramírez communicated via WhatsApp.

to take him on as a personal trainer, and bolster his CV. In our view, were this to have been Mr Lira's motivation for doing so he would not simply have ceased to have contact with Mr Ramírez soon after providing him with the stanozolol pills and administering the other steroids by injection, but would have had a clear interest in contacting him to see if the steroids were having the desired effect and to encourage Mr Ramírez to commit to training with him.

62. We also have regard to the content of the first three messages sent by Mr Ramírez. In his closing submissions Mr Ramírez suggested that he *"needed to speak to Alvaro as the only different supplement he had taken came from him. It is logical that Alvaro, given he was the person who had provided the supplement, would be in a good position to say a) where the supplement comes from and b) any other information the Player may need."*
63. In our view this does not adequately explain the content and tone of these first messages. If the relationship between Mr Ramírez and Mr Lira was as they have claimed, that is, a personal trainer providing some services on a trial basis with a view to starting a professional relationship, we cannot see why Mr Ramírez would have suggested that he needed a 'favour', as opposed simply to needing some information. We also do not see why Mr Ramírez would have sought to make it clear that the favour was needed *"as brothers"*.
64. We also do not find it at all easy to read the subsequent messages from Mr Lira as indicative of him feeling guilty for having substituted the supplements and vampiro injections for steroids, or keen to meet Mr Ramírez in order to confess to him.
65. The following day Mr Ramírez indicated to Mr Lira that he needed to talk to him that afternoon *"about a personal issue"*. We find it difficult to understand why Mr Ramírez would not simply have referred to the Maxi Plus Suplexx supplements if Mr Lira had given them to him in January 2018, either at this point in the conversation or elsewhere.
66. We find it more difficult to reach any conclusion as to how long Mr Ramírez and Mr Lira then met for (which, based on the time in Mexico, was on the evening of 27 September 2018 rather than the early morning of 28 September 2018) during which time Mr Lira allegedly confessed to having substituted the supplements and

vampiros, based on the exchange of messages "*I am at the door*" / "*I will leave in 15 minutes*" which could be read in a number of different ways.

67. We do, though, accept the ITF's submissions that the apparent gap in communications between 27 September 2018 and 5 January 2019 is very surprising if Mr Ramírez's and Mr Lira's accounts were true. This is particularly the case given that Mr Lira made a witness statement on behalf of Mr Ramírez which was served on the ITF in November 2018.
68. In their closing submissions the ITF invited Mr Ramírez to confirm in his closing submissions whether or not he exchanged any further WhatsApp messages with Mr Lira between 28 September 2018 and 5 January 2019, and if so the basis upon which such messages have been withheld. Mr Ramírez did not do so.
69. As for the content of the messages sent in January 2019, we accept that Mr Lira only responded intermittently and far more succinctly than in September 2018, but there may be a number of reasons for that, so we do not consider that it takes matters much further forward.
70. Mr Ramírez submits that in considering these messages we must appreciate the practicalities of litigation, and that it was in Mr Ramírez's interests to avoid alienating Mr Lira in order to ensure that he gave evidence for him at the hearing, such as to explain the use of words like 'bro' and 'brother'. We recognise, in principle, the difficulty that a Player may find himself in when seeking to ensure that a person who has confessed to having spiked the Player gives evidence to a tribunal, but in the circumstances of this case we are not persuaded that this was the reason for Mr Ramírez's tone with Mr Lira (and, in particular, it does not explain the need for the 'favour' requested at the outset to be one 'as brothers').
71. Mr Ramírez also submits that the fact that Mr Ramírez named Alvaro in the email to the ITF of 28 August 2018 prior to him contacting Mr Lira militates against any suggestion that there was any conspiracy between them. However, all that is said about Mr Lira in that email was that he had provided Mr Ramírez with Maxi Plus Suplexx, and there is therefore relatively little 'story' to have got straight at that point. In this context, we note Mr Ramírez's submission that Mr Lira's evidence was consistent with his. However, at least in one respect Mr Lira's evidence was *too*

consistent with Mr Ramírez's, that is, as to the date on which they met, which it is clear from the WhatsApp messages when read in full was 27 September 2018 rather than 28 September 2018 as they both asserted. In other words, where there has been collusion consistency on core issues is, to a large extent, to be expected.

72. We have had due regard to the evidence of Dr Tobon, and in particular his statement that Mr Ramírez did not strike him as an experienced steroid user for reasons such as musculature. We accept this evidence. However, it does not follow – as Mr Ramírez suggests – that it is extremely unlikely in those circumstances, and against a background of 25 to 30 doping tests, that Mr Ramírez would jump straight to having four different powerful anabolic steroids. Indeed, we note that before the Event Dr Tobon had not seen Mr Ramírez since 2015, and on Mr Ramírez's own account he had not been taking steroids for more than a few months by the time of the Event, following a second surgery. We do not find it surprising that a Player might choose to turn to performance enhancing drugs at a point where his career might appear to be languishing as a result of injuries.
73. Finally, we have considered Mr Ramírez's argument that there is no mention of the Prohibited Substances for which he tested positive in the hospital report from his stay on 7-8 April 2018, which is consistent with him not having any knowledge of having taken them at that time in circumstances where the nurses had told him that he could have died. We see the potential force in that submission, but note that it is not suggested that the nurses told him that he could die before he was treated, but only afterwards (he *could have* died). We therefore consider it possible that Mr Ramírez did not tell any of the medical practitioners that he was taking steroids at the time.
74. For all the reasons set out above, we are not persuaded that it is more probable than not that Mr Lira substituted four different steroids for Maxi Plus Suplexx and vampiro injections without Mr Ramírez's knowledge. We do not accept Mr Ramírez's and Mr Lira's version of events to this effect. Mr Ramírez has therefore failed to establish that the ADRV was not intentional; he engaged in conduct which he knew constituted an ADRV, or knew there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk.

75. In his closing submissions Mr Ramírez submitted that the ITF has failed to raise an alternative explanation to his, and never put it to Mr Ramírez that he was lying, or that he had conspired with Mr Lira in his version of events. To the extent that these submissions are intended to suggest that in those circumstances it is not open to us to reject his evidence, we do not accept them.

76. The principle established in *Contador*,¹⁰ and applied in *Warbuton & Williams*,¹¹ is that in certain circumstances a duty of co-operation arises on the party contesting the facts where the other party faces a difficulty in providing “negative facts” (*Contador* §§102-106). Thus, in those cases, where the party alleged contamination for which direct proof was not possible, he needed to prove not only that such contamination was possible but that the other sources from which the Prohibited Substances may have entered his body either did not exist or were less likely.

77. That is not the case in these proceedings.¹² In principle, Mr Ramírez would have been fully able to prove that the source of ingestion of the Prohibited Substances was Mr Lira’s administration. No duty of co-operation therefore arose on the ITF.

78. As for it not being put to Mr Ramírez that he was lying, and had conspired with Mr Lira, that that was the ITF’s position was abundantly clear from its Answer Brief dated 19 December 2018. We not consider in those circumstances that any unfairness arises to Mr Ramírez that that position was not put to him directly in cross-examination.

NO SIGNIFICANT FAULT OR NEGLIGENCE

79. TAPD Article 10.2.2 provides for a potential reduction of the Period of Ineligibility if TAPD Article 10.2.1 does not apply. Having found that the ADRV was intentional it follows that TADP Article 10.2.1 *does* apply, and accordingly no reduction is available on the basis of No Significant Fault or Negligence.

¹⁰ CAS 2011/A/2384 & CAS 2011/A/2386.

¹¹ SR/0000120227.

¹² Mr Ramírez accepts that his argument on contaminated supplements is academic (as it is relevant only to the stanozolol) and we therefore do not consider it further.

START OF THE PERIOD OF INELIGIBILITY

80. Mr Ramírez submits that the period of Ineligibility should run from the date of Sample collection, pursuant to TADP Article 10.10.3(b). The ITF submits that the start of the period of Ineligibility should not be backdated further than 28 June 2018 (to reflect TADP Article 10.10.3(a)), on the basis that Mr Ramírez has committed a very serious violation.
81. We agree, and have found, that Mr Ramírez committed a very serious violation. However, we are not persuaded that TADP Article 10.10.3(b) permits us to decline to exercise our discretion to back date the period of Ineligibility as far back as the date of last occurrence of the ADRV on that basis. The objective of that provision is clear; it is to avoid the need for evidence and argument on the fact of an ADRV, saving time and cost to all parties. Just like a reduction in sentence for a guilty plea, there is nothing to suggest that a reduction for a prompt admission reflects the nature of the ADRV as opposed to the Player's approach to the proceedings arising from it. Although characterised as a discretion (the period of Ineligibility "*may*" be backdated), two limits upon that discretion are established under TADP Article 10.10.3(b) itself, neither of which concern the nature of the ADRV.
82. We therefore accede to Mr Ramírez's request that the period of Ineligibility be backdated to the date of Sample collection, that is, 12 April 2018.

G. CONCLUSION

83. For the reasons set out above, we find that:

Mr Ramírez has committed an ADRV under TADP Article 2.1 as a result of the presence of the metabolites in his urine Sample collected on 12 April 2018;

Mr Ramírez's results, and that of his doubles partner, from the ATP Challenger CDMX Open event held in Mexico City, Mexico on 9-15 April 2018 are Disqualified pursuant to TADP Articles 9.1 and 9.2.

Mr Ramírez is subject to a period of Ineligibility for four years, with a commencement date of 12 April 2018, to expire on 11 April 2022, pursuant to TADP Articles 10.2.1 and 10.10.3(b).

In accordance with TADP Article 12 the parties (as defined therein) may appeal against this decision to the Court of Arbitration for Sport according to the applicable time limits at Article TADP 12.5.



Kate Gallafent QC, Chair
On behalf of the Independent Tribunal
London, UK
18 March 2019





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