

**DECISION OF THE INTERNATIONAL TENNIS FEDERATION
PURSUANT TO ARTICLE 7.14 OF THE 2021 TENNIS ANTI-DOPING PROGRAMME**

I. Introduction

1. The International Tennis Federation (the **ITF**) is the international governing body for the sport of tennis. Further to its obligations as a signatory to the World Anti-Doping Code (the **Code**) and its responsibilities as custodian of the sport, the ITF has issued the 2021 Tennis Anti-Doping Programme (the **TADP** or the **Programme**), which sets out Code-compliant anti-doping rules applicable to players competing in Covered Events.¹
2. Alejandro Gomez (the **Player**) is a 30-year-old tennis player from Colombia. He has competed in Covered Events (in both singles and doubles competitions) since May 2007. When he registered online for an International Player Identification Number (IPIN) in 2011 and in subsequent years, the Player expressly agreed to be bound by and to comply with the Programme. By virtue of that agreement, and by virtue of his participation in Covered Events, the Player became bound by and was required to comply with the Programme.
3. The ITF charged the Player with the commission of an Anti-Doping Rule Violation under the TADP and has proposed certain Consequences based on its analysis of the degree of Fault that the Player bears for that violation. The Player has admitted the Anti-Doping Rule Violation charged and acceded to the Consequences proposed. The ITF therefore issues this decision further to TADP Article 7.14, which provides:

7.14.1 At any time prior to a final decision by the Independent Tribunal, the ITF may invite the Player [...] to admit the Anti-Doping Rule Violation(s) charged and accede to specified Consequences [...]

7.14.2 In the event that [...] the Player [...] admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the ITF [...], the ITF will promptly issue a reasoned decision confirming [...] the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences [...], will send notice of the decision to the Player [...] and to each Interested Party, and (if applicable) will Publicly Disclose the decision in accordance with Article 8.6.

7.14.3 Any decision issued by the ITF in accordance with Article 7.14.2 that an Anti-Doping Rule Violation has been committed [...] will address and determine (without limitation): (1) the factual basis of the decision that an Anti-Doping Rule Violation was committed; and (2) all of the Consequences to be imposed for such Anti-Doping Rule Violation, including the reasons for imposing the Consequences specified [...].

II. The Player's commission of an Anti-Doping Rule Violation

4. On 19 October 2021, while competing at the ATP Bogotá Challenger 80 event held in Bogotá, Colombia, from 18 to 24 October 2021 (the **Event**), the Player was required to provide a urine sample for drug testing under the TADP. The sample was given reference number 3164328, and was split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the WADA-accredited laboratory in Montreal, Canada (the **Laboratory**) for analysis. The Laboratory reported an Adverse Analytical Finding for a metabolite of cocaine (benzoylecgonine) in an amount greater than the minimum reporting level (being 50 ng/mL).

¹ Any term in this Decision that begins with a capital letter and is not otherwise defined in this Decision has the meaning given to it in the Programme.

5. Cocaine is prohibited In-Competition under section S6 (Stimulants) of the 2021 Prohibited List. It is not a Specified Substance. The Player does not have a Therapeutic Use Exemption permitting use of cocaine.
6. The Adverse Analytical Finding reported by the Laboratory in respect of the A sample was considered by an independent Review Board in accordance with TADP Article 7.4. The Review Board did not identify any apparent departures from the sample collection procedures set out in the International Standard for Testing and Investigations or from the sample analysis procedures set out in the International Standard for Laboratories that could have caused the Adverse Analytical Finding. It therefore decided that the Player had a case to answer for breach of TADP Article 2.1 and/or TADP Article 2.2.
7. The ITF sent the Player a (pre-charge) Notice on 30 November 2021, notifying him that he may have committed an Anti-Doping Rule Violation under TADP Article 2.1 (presence of a Prohibited Substance in his Sample) and/or TADP Article 2.2 (Use or Attempted Use of a Prohibited Substance), and inviting him to respond by 10 December 2021. The Player was informed that the B sample would be analysed at the Laboratory if he so requested or if he did not admit the violations by 10 December 2021. Given that cocaine is not classified as a Specified Substance under the TADP, the Player was also informed that he would be subject to a mandatory provisional suspension under TADP Article 7.12.1, with effect from 15 December 2021.
8. On 21 December 2021, the Player responded to the Notice, denying commission of an Anti-Doping Rule Violation, denying knowing use of cocaine or any cocaine product, and requesting analysis of the B sample.
9. On 21 December 2021, the ITF notified the Player of the results of the B sample analysis, which had taken place on 10 December 2021 (because the Player had not admitted the charge by that date). Consistent with the A sample analysis results, the B sample analysis results confirmed the presence of a metabolite of cocaine (benzoylecgonine).
10. On 23 December 2021, the ITF formally charged the Player with the commission of an Anti-Doping Rule Violation under TADP Article 2.1 and/or TADP Article 2.2. TADP Article 2.1 is a strict liability offence that is established simply by proof that a Prohibited Substance was present in the Sample, i.e., the ITF does not have to prove how the substance got into the Player's system or that the Player took the substance intentionally (or even knowingly).
11. On 13 January 2022, the Player replied to the Charge Letter, asserting that he did not accept the charges and was engaging two expert toxicologists to assist in the investigation of the Adverse Analytical Finding and possible cause. The ITF agreed to a stay of proceedings in order to allow the Player to take these further investigatory steps.
12. On 25 July 2022, following further investigations and discussions with the ITF, the Player accepted that he had ingested a product containing cocaine or its metabolite and therefore admitted that he had committed the Anti-Doping Rule Violation with which he was charged, but denied that his violation was 'intentional' for the purposes of TADP Article 10.2 and disputed the default consequences set out in the Charge Letter.

III. Consequences

III.A Period of Ineligibility

(a) How the cocaine metabolite got into the Player's system

13. The Player asserts that he did not intend to ingest cocaine or any cocaine product, and that his positive test was caused by his ingestion of tea that, unknown to him, contained coca leaves, which in turn contained cocaine or its metabolite. In summary, the Player asserts that (i) on 18 October 2022, while in Bogotá for the Event, he and his girlfriend ate dinner at a restaurant; (ii) at the conclusion of their meal, they ordered and drank 'Sonora Soledad', a tea that was listed by name on the menu without ingredients, and described to them by the server at the restaurant as a peppermint tea; (iii) the Sonora Soledad tea was brewed and served in a French press containing various tea leaves; (iv) subsequent investigations revealed that the Sonora Soledad tea contains (among other things) peppermint leaves and coca leaves; and (v) consequently, his consumption of that tea the evening before sample collection is how cocaine and/or its metabolites entered his system and were found to be present in his urine.
14. In support of his explanation, the Player provided (among other things):
 - 14.1 witness statements by the Player and his girlfriend that explained (among other things) their attendance at the restaurant on 18 October 2021 and their orders and enquiries regarding the meal and the Sonora Soledad tea;
 - 14.2 the Player's girlfriend's credit card records showing payment on 18 October 2021 for the meal at the restaurant;
 - 14.3 a letter from a senior officer of the restaurant chain confirming the contents of the menu used in the restaurant as at 18 October 2021, and enclosing a copy of the till purchase receipt setting out the food and drinks order made by the Player and his girlfriend on 18 October 2021 (which included two Sonora Soledad teas);
 - 14.4 an expert report by Professor Luis Ferrari, which described the method and results of a simulation experiment he had conducted, whereby independently-sourced Sonora Soledad tea was brewed and analysed to determine whether it contained cocaine or its metabolite (Professor Ferrari detected benzoylecgonine in the Soledad Sonora tea and concluded that consumption of the tea in the manner described by the Player 15 hours before sample collection could have caused the Adverse Analytical Finding); and
 - 14.5 an expert report from Dr Pascal Kintz, who conducted analysis of a sample of the Player's hair, found that the hair did not contain cocaine or benzoylecgonine, and concluded therefore that the Player was not a cocaine addict or a recreational cocaine user.
15. The ITF consulted Professor Christiane Ayotte, Director of the Laboratory, who indicated that the presence and concentration of the cocaine metabolite in the Player's Sample was compatible with ingestion of tea containing coca leaves in the manner asserted by the Player and therefore could explain the Adverse Analytical Finding reported by the Laboratory.
16. In all the circumstances, the ITF accepts that the Player has established that it is more likely than not that the presence of cocaine metabolite (benzoylecgonine) found in his urine Sample 3164328 was caused by his ingestion on 18 October 2021 of a tea brewed with coca leaves in the manner asserted by the Player.

(b) TADP Article 10.2

17. This is the Player's first Anti-Doping Rule Violation.
18. In order to calculate the relevant period of Ineligibility, TADP Article 10.2.1 specifies that a TADP Article 2.1 violation that is 'intentional' attracts a mandatory four-year ban. If the Prohibited Substance in question is not classified as a Specified Substance (as here), TADP Article 10.2.1.1 states that the Player has the burden of proving that the violation was not 'intentional'. If the Player can do so, then TADP Article 10.2.2 provides for a two-year period of ineligibility, subject to potential further mitigation. TADP Article 10.2.3 explains that in this context 'the term 'intentional' is meant to identify those Players or other Persons who engage in conduct that they knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk'. The jurisprudence is clear that what counts in this context is what the Player actually knew, not what he should have known.²
19. However, notwithstanding the definition of 'intentional' at TADP Article 10.2.3, in circumstances where the Anti-Doping Rule Violation (1) involves a Substance of Abuse, and the Player can establish that (2) the context of the ingestion was In-Competition and (3) unrelated to sport performance, then the violation 'will not be considered intentional for purposes of Article 10.2.1' (TADP Article 10.2.4.2).
20. In this case, each of those three criteria is met.³ Accordingly, the ITF accepts that the Player's commission of the violation was not 'intentional' within the meaning of TADP Articles 10.2.1 and 10.2.3, given the circumstances of ingestion (i.e., given that the ITF has accepted that the Player has shown that it was more likely than not that the source of the cocaine metabolite (benzoylecgonine) in his Sample was his consumption of Soledad Sonora tea that, unknown to him, contained coca leaves. The two-year period of Ineligibility prescribed by TADP Article 10.2.2 therefore applies, subject to possible elimination or reduction in accordance with TADP Articles 10.5 or 10.6.

(c) TADP Articles 10.5 and 10.6

21. For the sanction to be eliminated or reduced below two years, the Player must show that he bears 'No Fault or Negligence' for the violation under TADP Article 10.5, or (alternatively) that he bears 'No Significant Fault or Negligence' for the violation under TADP Article 10.6.
22. TADP Article 10.5 provides that if a player establishes that they bear No Fault or Negligence for the Anti-Doping Rule Violation in question, the otherwise applicable period of Ineligibility will be eliminated. No Fault or Negligence is defined in the TADP as follows: 'The Player or other Person establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule'.

² ITF v Sharapova, Independent Tribunal decision dated 6 June 2016, para 77 ('It is clear from the wording of article 10.2.3 that whether conduct is intentional is to be judged on the actual knowledge of the player, not on the basis of what she ought to have known or understood') and para 71 ('the concession that the player did not know that she was taking a Prohibited Substance resolves both elements of article 10.2.3. On neither basis was the conduct of the player intentional').

³ For the avoidance of doubt, TADP Article 10.2.4.1 does not apply here because the ingestion took place not Out-of-Competition but instead during the In-Competition period as defined in TADP Article 5.3.3.

23. TADP Article 10.6.1 provides for reductions in the otherwise applicable period of ineligibility where the Anti-Doping Rule Violation in question involves (a) a Specified Substance or Specified Method, (b) a Prohibited Substance that is not a Substance of Abuse, where the origin of such substance was a Contaminated Product, and (c) Protected Persons or Recreational Athletes. None of these provisions are applicable to the Player's case.
24. Under TADP Article 10.6.2, '[i]n an individual case where Article 10.6.1 is not applicable' (as here) 'if a Player [...] establishes that they bear No Significant Fault or Negligence for the violation, then (subject to further reduction or elimination as provided in Article 10.7) the otherwise applicable period of Ineligibility may be reduced based on the Player's [...] degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable'. No Significant Fault or Negligence is defined in the TADP as follows: 'The Player or other Person establishing that his/her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the Anti-Doping Rule Violation'.
25. It is a precondition of any mitigation of a sanction for No (or No Significant) Fault or Negligence that the player proves on the balance of probabilities⁴ how the Prohibited Substance(s) found in their Sample entered their system.⁵ Otherwise, it is impossible to assess the degree of Fault that the player bears for the Prohibited Substance(s) being in their system. As detailed above, the Player has met that burden on the facts of this case.
26. A plea of No Fault or Negligence or No Significant Fault or Negligence is assessed by considering how far the player departed from their duty under the TADP to use 'utmost caution' to ensure that they would not ingest any Prohibited Substances or otherwise do anything that might constitute or result in the commission of an Anti-Doping Rule Violation.⁶ 'The difference between the two [...] is one of degree: to establish No Fault or Negligence, the athlete must show that he took every step available to him to avoid the violation, and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant'.⁷ The TADP definition of 'Fault' makes clear that the first question is how far the player departed from the

⁴ See TADP Article 3.1.2 ('Where this Programme places the burden of proof on the Player or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish facts or circumstances, then except as provided in Articles 3.2.4 and 3.2.5 the standard of proof will be by a balance of probability').

⁵ See the TADP definitions of 'No Fault or Negligence' and 'No Significant Fault or Negligence' ('[...] Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1 the Player must also establish how the Prohibited Substance entered their system').

⁶ See, e.g., *Kutrovsky v ITE*, CAS 2012/A/2804, para 9.49 ('the athlete's fault is measured against the fundamental duty that he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any prohibited substance'); *FIFA & WADA*, CAS 2005/C/976 & 986, paras 73-75 ('The WADC imposes on the athlete a *duty of utmost caution* to avoid that a prohibited substance enters his or her body. [...] It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified').

⁷ *IBAF v Luque*, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

duty of utmost caution (objective fault) and the second question is whether there is any acceptable explanation for that failure (subjective fault).⁸

27. The jurisprudence is clear that the standard of 'utmost caution' is very onerous and requires a player to show that they 'made every conceivable effort to avoid taking a prohibited substance'.⁹ It follows that 'even in cases of inadvertent use of a Prohibited Substance, the principle of the Athlete's personal responsibility will usually result in a conclusion that there has been some degree of fault or negligence'.¹⁰
28. The Player (rightly) does not plead No Fault or Negligence. However, for the reasons explained below, the ITF accepts that, in the specific circumstances of this case, the Player has established that he bears No Significant Fault or Negligence within the meaning of TADP Article 10.6.2, therefore justifying a reduction from the two-year starting point (but to a level no lower than 12 months, being half of the otherwise applicable period of Ineligibility).
29. TADP Article 10.6.2 gives the ITF discretion to propose a sanction in the range between 12 and 24 months, based on the degree of Fault borne by the Player.
 - 29.1 The CAS panel's decision in Cilic v ITF, CAS 2013/A/3327, paras 69 *et seq*, provides helpful guidance on assessing where a player's Fault lies within a range. In discussing Article 10.4 of the 2009 World Anti-Doping Code – where a reduction below two years was permitted if the athlete could establish how a Specified Substance entered their body and that such Specified Substance was not intended to enhance sport performance or mask the use of a performance-enhancing substance – the panel established the following three categories of fault: (a) a '[s]ignificant degree of or considerable fault: 16 – 24 months, with a "standard" significant fault leading to a suspension of 20 months'; (b) a '[n]ormal degree of fault: 8 – 16 months, with a "standard" normal degree of fault leading to a suspension of 12 months'; and (c) a '[l]ight degree of fault: 0 – 8 months, with a "standard" light degree of fault leading to a suspension of 4 months'.¹¹
 - 29.2 However, since the adoption of the 2015 World Anti-Doping Code – which did not contain a provision equivalent to Article 10.4 of the 2009 World Anti-Doping Code – a reduction below two years based on the degree of Fault borne by an athlete has been permitted only if the athlete can establish No Significant Fault or Negligence for their Anti-Doping Rule Violation. Consequently, CAS panels have adapted the Cilic framework accordingly: 'The time span of 24 months which is still available [under the 2015 WADA Code] now covers only two instead of three categories of fault: normal degree of fault (over 12 months and up to 24 months with a standard normal degree leading to an 18-month period of ineligibility); and light degree of fault (0-12 months with a standard light degree leading to a 6-month period of ineligibility). The other guiding principles

⁸ See the TADP definition of 'Fault' ('[...] In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behaviour').

⁹ Knauss v FIS, CAS 2005/A/847, para 7.3.1; WADA v NSAM et al, CAS 2007/A/1395, para 80 ('The burden is therefore shifted to the athlete to establish that he/she has done all that is possible to avoid a positive testing result').

¹⁰ Adams v CCES, CAS 2007/A/131, para 155.

¹¹ ITF v Cilic, CAS 2013/A/3327, para 70.

identified in *Cilic* in order to determine the degree of fault in an individual case continue to be applicable'.¹²

29.3 In Article 10.6.2 cases, the maximum possible reduction is 12 months, so the *Cilic* approach has to be further adapted: 'In light of the jurisprudence in CAS 2013/A/3327 & 3335 CAS Panels distinguish between different categories of negligence, i.e. light, normal and significant negligence. Only the first two categories allow for a reduction of the otherwise applicable period of ineligibility according to Art. 22 (2) ADR [FIFA's No Significant Fault or Negligence rule]. In case of NSF, the applicable sanction can be reduced down to one half of the otherwise applicable sanction. Accordingly the applicable scale of sanction in the case at hand extends from 12 – 24 months. Applying the above categories of negligence to this scale of sanction, the Panel concludes that in case of: a. light degree of negligence, the applicable period of ineligibility ranges from 12-18 months, and b. in the case of normal degree of negligence, the applicable range is from 18-24 months'.¹³

29.4 The CAS Panel in *ITF v Cilic* stated that:¹⁴

29.4.1 it is 'helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities';

29.4.2 'the objective element should be foremost in determining into which of the three relevant categories [now two relevant categories] a particular case falls'; and

29.4.3 'the subjective element can then be used to move a particular athlete up or down within that category' (or, exceptionally, between categories).

30. Assessing the Player's objective level of Fault, it is clear – and it is accepted by the Player – that he departed from the standard of utmost caution required of him:

30.1 It is the 'personal responsibility' of each player bound by the TADP to 'be knowledgeable of and comply with this Programme at all times', to 'take responsibility for what they Use', and to 'carry out research regarding any products or substances that they intend to Use to ensure that Using them will not constitute or result in an Anti-Doping Rule Violation' (TADP Article 1.3.1).

30.2 The Player could have done more to check the ingredients of the tea that he was going to consume, rather than relying on the lack of information on the menu and the assertion of the server at the restaurant. This is particularly so in circumstances where the use of coca leaves in tea is not uncommon in Colombia, and the Player was at the

¹² *Errani v ITE*, CAS 2017/A/5301, paras 194-195. See also *ITF v Kozlova*, ITF agreed decision dated 27 May 2015, para 2.12.1.

¹³ *FIFA v CFS & Fernández*, CAS 2016/A/4416, para 77. See also *Stewart v Federation Internationale de Motocyclisme*, CAS 2015/A/3876, para 84 ('[t]he period of ineligibility available in a case of "No Significant Fault or Negligence" ranges between 12 months up to 24 months. Generally speaking, this range can be split into a sub-range" for "normal fault" going from 18 to 24 months and "light fault" ranging from 12 to 18 months').

¹⁴ *ITF v Cilic*, CAS 2013/A/3327, paras 71-73.

time aware of the dangers of coca tea in an anti-doping context. While the Player's ingestion of tea containing coca leaves was inadvertent, this does not excuse his failure to abide by the standard of utmost caution.

31. However, consistent with previous case law that has dealt with Anti-Doping Rule Violations resulting from ingestion of coca tea, it is inherently less likely that tea (as opposed to medicine or a supplement) will contain a Prohibited Substance, which serves to mitigate the level of blame to be attributed to the Player for his failure to make extensive enquiries about the tea's contents.¹⁵ As noted above, the Player did make some effort to check the ingredients of the tea, but his enquiries were not adequately extensive. These factors provide some explanation as to why the Player failed to exercise the 'utmost caution' expected of him, and consequently are relevant to the Fault analysis.
32. In light of the above, the ITF considers that the Player bears a degree of Fault towards the middle of the 'low' range for his Anti-Doping Rule Violation, and has proposed, and the Player has acceded to, a period of Ineligibility of 14 months.
33. In accordance with TADP Article 10.13.2, the Player is entitled to credit for the period that he has been provisionally suspended. His 14-month period of Ineligibility will therefore be deemed to have commenced from 15 December 2021, and so will expire at midnight on 14 February 2023.

III.B Disqualification of results

34. The Player's results at the Event are automatically disqualified in accordance with TADP Articles 9.1 and 10.1.1 (including forfeiture of any medals, titles, ranking points, and prize money received as a result of participation in the Event).
35. While the general rule is that the results obtained by the Player in the period between the date of Sample collection and this Decision will be disqualified pursuant to TADP Article 10.10, in the specific circumstances of this case (in particular, that the Player ingested tea containing cocaine and/or its metabolite, benzoylecgonine, once, on 18 October 2021), fairness requires otherwise, and so the Player will retain his results obtained between the date of Sample collection and the date of this Decision.

III.C Costs

36. Each party shall bear its own costs of dealings with this matter.

III.D Publication

37. In accordance with TADP Articles 7.14.2 and 8.6, this Decision will be publicly reported by being posted (in full and/or summary form) on the ITF's website.

¹⁵ See Guerrero v FIFA, CAS 2018/A/5571, para 82(i): 'The Prohibited substance was in tea, not in a medicine or supplement where the risk of it being contaminated with such substance is inherently more likely to occur than in a common or garden drink, even taking account of the Peruvian context'. See also FEI v Walker, FEI Tribunal decision dated 4 June 2021, para 27.

III.E Acceptance by the Player

38. The Player has accepted the Consequences proposed above by the ITF for his Anti-Doping Rule Violation and has expressly waived his right to have those Consequences determined by the Independent Tribunal at a hearing.

IV. Rights of appeal

39. This Decision constitutes the final decision of the ITF, resolving this matter pursuant to TADP Article 7.14.
40. Further to TADP Article 13.2, each of WADA and the National Anti-Doping Agency of Colombia (**COLDEPORTES**) has a right to appeal against this Decision to the Court of Arbitration for Sport (**CAS**) in Lausanne, Switzerland, in accordance with the procedure set out at TADP Article 13.9.
41. As part of the resolution of this matter, the Player has waived his right to appeal against or otherwise challenge any aspect of this Decision (both as to the finding that the Player has committed an Anti-Doping Rule Violation and as to the imposition of the Consequences set out above), whether pursuant to TADP Article 13.2 or otherwise. However, if an appeal is filed with the CAS against this decision either by WADA or COLDEPORTES, the Player will be entitled (if so advised) to exercise his right of cross-appeal in accordance with TADP Article 13.9.4.

London, 10 August 2022