
Access to Justice in Tennis Disputes

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1 Introduction

One must distinguish between regulatory and contract-based disputes in professional tennis. The latter are resolved by reference to the parties' contract, which dictates their obligations, choice of dispute resolution forum (i.e. litigation or arbitration) and the place, as well as the chosen applicable law. Contractual disputes typically arise between players and agents, tournament organisers/player associations and advertisers/sponsors and others. Regulatory disputes concern infractions of rules set out and agreed in advance by the International Tennis Federation (ITF), Women's Tennis Association (WTA), Association of Tennis Professionals (ATP) and, to a lesser degree tournament organisers, to which players and national tennis federations have agreed to adhere. The dispute resolution mechanisms spelt out by these rules are thus obligatory on the parties involved, chiefly players and professional associations and the ITF. Unlike contractual disputes where players negotiate the terms of access to justice in the event of dispute, there is no such possibility on the occasion of regulatory disputes. This chapter will focus mostly on ITF-related mechanisms given that these generate the biggest number of disputes, namely, its internal mechanisms, the Internal Adjudication Panel and the ITF Independent Tribunal. Another sub-section will deal with the relation of these entities with the Court of Arbitration for Sport (CAS), and yet another will explore dispute resolution in the context of the ATP. It should be stated from the outset that since the ITF is the sport governing body (SGB) recognised by the International Olympic Committee (IOC), all doping and integrity (e.g. match-fixing) violations by ATP and WTA players are handled by the ITF and its adjudicatory mechanisms (subject to some exceptions, such as an ATP tour violation). This is why this chapter reserves only a limited amount of discussion to the relevant mechanisms of the WTA and ATP. A small sub-section at the beginning of this chapter will

demonstrate the limited role for mediation and alternative dispute resolution (ADR) (other than arbitration) more generally. The role and jurisdiction of the ITF Ethics Commission and of the Independent Panel in the resolution of disputes arising from the ITF Code of Ethics will be explored in detail in Chapter 13 of this volume. Appeals to CAS against decisions from national anti-doping organisations are explored in Chapter 10 of this volume.

While this book was going into production in late 2024, several developments occurred which concern this chapter. First and foremost, the 2025 ITF Constitution has changed the sequence of provisions on dispute resolution analysed here and the pertinent provisions on the jurisdiction of the CAS are more elaborate in comparison to their predecessors. In addition, in 2025, new procedural rules were promulgated for both the Independent Tribunal and the Internal Adjudication Panel. These changes come into effect on 1 January 2025 and hence the authors and editors are unable to incorporate these into the book as the cut-off date was late May 2024. Readers are advised to compare the text in this chapter with the amended constitution and regulations.

2 ADR in Tennis

The regulatory ‘disputes’ as set out in the introduction concern specific rules-based infractions and hence are not amenable to negotiation and mediation. In any event, the pertinent judicial and quasi-judicial institutions do not enjoy authority to make or accept mediated settlements. Settlements are, however, common in contract-based disputes, chiefly by means of negotiation, irrespective of the stage of the proceedings before the courts or arbitral tribunals. A sphere of disputes which is not discussed in this chapter concerns collective disputes between players and professional tennis associations. Although these are not common, there have existed circumstances where players threatened to boycott a tournament if fundamental concerns were not met. These disputes were resolved through ADR mechanisms without having to resort to litigation.¹ Collective bargaining negotiations and settlements are explored in Chapter 6 of this volume. In addition, there is a limited scope in corruption offences whereby a covered person may in consultation with the International Tennis Integrity Agency

¹ See Bradley Raboin, ‘Accepting a Double Fault: How ADR Might Save Men’s Professional Tennis’ (2014) 3 Mississippi Sports L Rev 206; see generally, Ilias Bantekas, ‘The Resolution of Professional Tennis Disputes’ (2023) 14 JIDS 488.

(ITIA) agree on a sanction in line with the appropriate sanctioning guidelines. This is exceptional, however.

3 Internal ITF Mechanisms

The following sub-section will explore in brief key ITF/ITIA mechanisms set up to undertake on-site investigations and impose sanctions at first instance. The on-site authority of the various ITF/ITIA entities does not strictly pertain to dispute resolution, particularly those dealing with disciplinary sanctions and doping and corruption offences in professional tennis. Their inclusion in this chapter serves to allow readers to achieve a comprehensive and rounded account of the ITF judicial and quasi-judicial architecture. Similar on-site mechanisms exist in the ATP Code.² This chapter will not discuss disciplinary actions under the ITF Code of Ethics.

3.1 *On-Site Quasi-Adjudicatory Mechanisms*

While the Internal Adjudication Panel and the Independent Tribunal remain the two key judicial institutions in the ITF architecture, the ITF has further given authority to certain other entities to administer on-site investigations and impose sanctions. These on-site sanctions typically concern corruption and doping offences, although other welfare violations are not uncommon, and are handed down once a *prima facie* case has been established by the relevant entity/officer, following an investigation (in the case of corruption) or a doping test.³ By way of illustration, before the Independent Tribunal can exercise its first-instance jurisdiction over a corruption-related violation, Article I.E.2 of the ITF Women's World Tour Tennis Regulations stipulates that the ITF's anti-corruption hearing official shall have exclusive jurisdiction, in the first instance, over allegations that the Tennis Anti-Corruption Program (TACP) has been breached. This authority is also granted to an Anti-Corruption Hearing Officer (AHO) for breaches of the TACP.⁴ For a fuller account and discussion of the AHO, readers are directed to Chapter 10 of this volume.

² ATP Code, Arts 8.01(G) and 8.03(G), which provide authority for on-site investigations to the Senior Vice-President, Rules and Regulations.

³ The sanction may well be provisional until a full investigation takes place. See ITIA, 'Six Moroccan Tennis Players Provisionally Suspended', available at: <https://itia.tennis/news/sanctions/six-moroccan-players-suspended/>

⁴ Specifically, TACP (2021), Art. F.3 stipulates that: 'The ITIA may at any time make an application to an AHO for a Provisional Suspension of a Covered Person, including (i)

In addition, the ITF Supervisor possesses authority to make decisions over particular matters. His or her decisions can be challenged by way of appeal to the Panel.⁵ The entity of the ITF has granted itself investigative powers in respect of certain types of cases. In accordance with Article VI.C of the ITF Code of Conduct, the ITF has the power to investigate any alleged major offence and it is mandatory for all players and related persons to cooperate fully with such investigation. This may include a request by the ITF to furnish evidence, information or attend a hearing and provide a written statement. Where, as a result of such investigation, there is *prima facie* evidence that the underlying offence has been committed, the ITF shall refer the matter not to the Panel or the Independent Tribunal, but to its Review Board. Under the same provision the ITF will identify one or more experts who shall be independent of the ITF with a view to re-evaluating the evidence and determine whether 'there is a case to answer'. The Review Board's decision in this regard must be unanimous. Although the Code of Conduct is silent, it is presumed that two avenues are available to concerned parties about the independence of the expert chosen by the ITF to perform this function. The first is to trigger the Panel's supervisory function (described elsewhere below) and the second is by recourse to the courts of the forum (i.e. English courts), whether as a right of access to justice or on the basis of breach of contract (i.e. that the ITF breached its contractual obligation to appoint a suitable expert).

Moreover, the ITF Executive Director possesses authority, among others, to provisionally suspend a player from ITF tournaments in the event of conduct contrary to the integrity of the game.⁶ Finally, in accordance with Article 7(a) of the ITF Bylaws, the ITF Board of Directors possesses power to 'investigate and bring a complaint' against a national tennis federation for any violation of the ITF Constitution, rules and regulations and for bringing the game to disrepute or for failure to represent the game adequately in its territory. This prosecutorial function of the Board and any evidence collected therefrom will serve as a basis to further refer the matter either to the

before a Notice of Major Offense has been issued, (ii) before a Hearing or (iii) at any time after a Hearing but prior to the AHO's issuance of a written Decision. Provisional Suspensions (and challenges and reviews thereof under this Section F.3) shall ordinarily be determined on written submissions unless the AHO considers an oral hearing necessary.'

⁵ ITF Women's World Tour Regulations, Art. I.E.4.

⁶ ITF Code of Conduct, Art. VI.B.

International Adjudication Panel or the Independent Tribunal.⁷ The Tribunal enjoys authority to suspend the concerned national federation in question from entry into official team competitions, whether provisionally or finally.⁸

4 The Internal Adjudication Panel

Article 9.1(j) of the ITF Bylaws sets forth the Internal Adjudication Panel, the powers and functions of which are spelt out in the Panel's Procedural Rules. The jurisdiction of the Panel and the Independent Tribunal over alleged infractions of ITF rules by professional athletes is grounded in the initial agreement of national tennis federations to abide by such rules governing ITF tournaments. Professional players, as members of national federations, are hence bound by such rules, which in turn provide jurisdiction to the Panel and the Independent Tribunal.

Article 33 of the 2023 ITF Constitution provides for concurrent jurisdiction to both the Panel and the Independent Tribunal in respect of disputes falling within the ITF's Rules of Tennis. The ITF Constitution, however, provides no further information about the Panel. The Procedural Rules of the Panel were promulgated in late 2018 and became effective on 1 January 2019 and form an integral part of the ITF Constitution. The delineation of authority between the Panel and the Tribunal is described in the following sections and sub-sections.

4.1 *The Panel's Judicial Function, Jurisdiction and Powers*

If the Independent Tribunal was clearly meant to constitute an arbitral institution and its awards subject to the English Arbitration Act of 1996, it is unclear whether a judicial function was conferred also on the Panel. Its Procedural Rules stipulate that it is a standing committee composed of the ITF's Board of Directors.⁹ The Board acts by majority to appoint the Panel and has absolute discretion. Although the Panel's Procedural Rules are silent on the selection of Panel members, because Sport Resolutions acts as

⁷ ITF Bylaws, Art. 7(b).

⁸ ITF Bylaws, Art. 7(c). An ITF Extraordinary General Meeting (EGM) unanimously ratified the Board's suspension of Belarussian and Russian tennis federations from ITF memberships and by extension from ITF competitions. See EGM Decision of 9 May 2022, available at: www.itftennis.com/en/news-and-media/articles/itf-member-nations-ratify-suspension-of-russian-tennis-federation-and-belarus-tennis-federation-at-egm/.

⁹ ITF Internal Adjudication Panel Procedural Rules, Art. 1.1.

secretariat, in practice the latter compiles a list of potential Panel members and draws from that list. Upon appointment, the Panel possesses authority to: (1) decide any eligibility issue or other dispute¹⁰ under the ITF Rules;¹¹ (2) authoritatively interpret ITF Rules following a referral by the Board;¹² (3) hear and determine allegations concerning the breach of ITF Rules, but not allegations submitted to the Independent Tribunal;¹³ (4) decide whether a suspension of an individual or legal person by a national tennis federation should be recognised by the ITF;¹⁴ (5) have a residual role to hear any other dispute referred to it by the Board;¹⁵ and (6) hear appeals against decisions made by ITF individuals or entities, if such authority is indeed conferred on the Panel by any ITF rule or regulation.¹⁶

The Panel possesses *kompetenz-kompetenz* power as stipulated under Article 1.4 of its Procedural Rules, and any 'decisions' rendered by it may be 'appealed' to the Independent Tribunal.¹⁷ Although the Panel's Procedural Rules seemingly downplay its powers, it is evident that while it was not meant to serve as an arbitral tribunal, its decisions are binding on the parties and any complaints to the courts can only be brought once the ITF's internal adjudication procedures have been completed. The legal nature of the Panel is similar, although hardly identical to that of so-called expert determination. In construction disputes, it is usual for the parties to resort to expert determination whereby the dispute is submitted to an independent technical expert (chosen from a list pre-agreed by the parties) who determines purely technical issues (not matters of law) and whose decision is final and binding as a matter of contract.¹⁸ The test used by common law courts to distinguish arbitration from expert determination is whether the relevant process was in the nature of a judicial inquiry.¹⁹ In the

¹⁰ Ibid., Art. 1.1.1.

¹¹ The 'ITF Rules' is a broad umbrella encompassing ITF Rules of Tennis, the ITF Davis Cup Regulations, the ITF Fed Cup Regulations, the ITF Pro Circuit Regulations, the ITF Wheelchair Tennis Regulations, the ITF Wheelchair Tennis Classification Manual, the ITF Junior Circuit Regulations, the ITF Junior Team Competitions Regulations, the ITF Senior Regulations, the ITF Beach Tennis Rules, the Code of Conduct for Officials and/or any other rules and regulations of the ITF.

¹² ITF Internal Adjudication Panel Procedural Rules, Art. 1.1.2.

¹³ Ibid., Art. 1.1.3.

¹⁴ Ibid., Art. 1.1.4.

¹⁵ Ibid., Art. 1.1.5.

¹⁶ Ibid., Art. 1.2.

¹⁷ Ibid., Arts 1.4 and 6.

¹⁸ *Douglas Harper v. Interchange Group Ltd* [2007] EWHC 1834 (Comm); *Union Discount v. Zoller* [2002] 1 WLR 1517.

¹⁹ *Age Old Builders Pty Ltd v. Swintons Pty Ltd* [2003] VSC 307.

case at hand, the Swiss Federal Tribunal and the European Court of Human Rights (ECtHR), which considered CAS and, finding it to be an independent arbitration system, distinguished it from other processes of adjudication by internal federation bodies.²⁰

The Panel's jurisdiction is threefold, namely: (1) as a primary decision-maker; (2) as an appellate entity; and (3) through the exercise of supervisory powers. The Panel serves as a first-instance entity when any dispute falling under Article 1 of its Procedural Rules comes before it for the first time.²¹ Its appellate authority arises where the right to appeal a decision made by an ITF individual or entity is authorised under the ITF Rules. All of these three functions/powers of the Panel presuppose that some members possess sound legal qualifications, given that certain determinations require entrenched legal skills and expertise. The judicial function of the Panel is further confirmed by the broad powers conferred upon it by its Procedural Rules. More specifically, it is endowed with the power to conduct relevant investigations;²² invite persons to make written or oral submissions;²³ and require ITF personnel and entities under the ITF's authority to provide information and documents under their possession, or to attend Panel hearings and offer oral or written statements.²⁴ These powers are further reinforced by concrete enforcement authority, which is highly unusual for arbitral tribunals as well as expert determination. Under Article 4.3 of its Procedural Rules:

Failure to cooperate with the Panel (including failure without good cause to comply with a requirement of the Panel within the scope of paragraph 4.2.5 or 4.2.6) shall constitute misconduct, for which the ITF may bring proceedings before the Independent Tribunal to sanction the person or entity involved.

This is unusual because the standard outcome in arbitral and other (non-court) proceedings is an adverse inference,²⁵ which is sufficient for the parties to generally comply. Moreover, in accordance with Article

²⁰ See e.g. the recent decision of Swiss Federal Supreme Court in *A v. International Biathlon Union*, Case 4A_232/2022 (22 December 2022). See Note available at: www.sportlegis.com/2023/01/12/qualification-of-the-cas-anti-doping-division-and-coexistence-with-the-cas-appeal-division/.

²¹ ITF Internal Adjudication Panel Procedural Rules, Arts 4.1.1 and 4.1.2.

²² *Ibid.*, Art. 4.2.3.

²³ *Ibid.*, Art. 4.2.4.

²⁴ *Ibid.*, Arts 4.2.5 and 4.2.6.

²⁵ This is puzzling, since Art. 6.3 of the ITF Independent Tribunal's Procedural Rules expressly states that where a party fails to appear at a hearing or refuses to respond to a question (and by implication to submit requested evidence without justification) the Tribunal may make adverse inferences. The ICC Arbitration Rules take this for granted

5.3.6 of its Procedural Rules, the Panel possesses authority to impose a particular set of sanctions if it finds that ITF Rules have been breached, including cautions, fines, compensation, disqualification, ineligibility or other. The following sub-sections explore the three types of jurisdiction conferred upon the Panel, namely, first instance, appellate and supervisory, by reference to the relevant ITF Rules.

4.1.1 The Panel's First-Instance Jurisdiction

Article I.E.2 of the ITF Men's World Tennis Tour Rules and Regulations (2022)²⁶ (hereinafter, Men's World Tour Rules) stipulates that the Panel possesses exclusive first-instance jurisdiction over the following matters:

- a) any request for a decision that is entrusted under these Regulations (including the Code of Conduct) to the ITF Internal Adjudication Panel;
- b) any dispute or question about the proper interpretation of these Regulations (including reviewing as appropriate any on-site interpretation by the ITF Supervisor);
- c) any dispute or question about player eligibility arising under these Regulations;
- d) any allegation that a Covered Person has committed a breach of the Welfare Policy;
- e) any allegation that a player, Related Person or other person or entity bound by these Regulations has failed to comply with any other aspect of these Regulations (unless expressly referred elsewhere); and
- f) any other dispute arising out of or relating in any way to these Regulations that is referred to it by the Board.²⁷

The Panel's first-instance authority extends also to the determination of requests for change of nationality. The Panel has discretion to decide whether such change is genuine and not intended to circumvent ITF regulations. The Panel may request the player to provide further information regarding this request.²⁸ The decision of the Panel may be appealed to the Independent Tribunal.²⁹

A significant dimension of the Panel's quasi-judicial function relates to what Article IX of the ITF's Code of Conduct misleadingly describes as

and make no direction mention. Article 26(2) of the ICC Rules simply endorses so-called default proceedings.

²⁶ ITF Men's and Women's World Tennis Tour Regulations (2023), available at: www.itftennis.com/media/9100/2023-itf-world-tennis-tour-regulations.pdf.

²⁷ A verbatim provision is set out in Art. I.E.2 of the ITF World Women's Tennis Tour Rules and Regulations (2022) (hereinafter, ITF World Women's Rules). These have now been replaced with the combined Men's and Women's Regulations, *ibid*.

²⁸ ITF World Women's Rules, Art. III.A.2.

²⁹ *Ibid*.

reciprocity. Article IX stipulates that the ITF reserves the right to ask the Panel 'to affirm, modify, extend, or reject with respect to any or all ITF World Tennis Tour Tournaments, a suspension or other sanction issued against a Covered Person³⁰ either by or on behalf of the ITF pursuant to a conduct or disciplinary process under any ITF code or policy or by any other tennis organisation'. Under the particular terms of this process, the Panel has discretion to conduct an investigation or share information with any tennis organisation or other authorities (civil or criminal).

4.1.2 The Panel's Appellate Function

The drafters of Article 6 of the Panel's Procedural Rules thought it wise to conflate several conflicting rules, probably thinking that what they were suggesting was unenforceable under English law. Article 6.7 of the Panel's Procedural Rules stipulates that appellate decisions are final, binding and not subject to any further appeal.³¹ It then goes on to say that the parties 'waive irrevocably any right to any form of appeal, review or recourse by or in any court or judicial authority in respect of such [Panel] decisions, in so far as such waiver may validly be made'. It must surely have been evident to the drafters of the Rules that such waiver by contract is unenforceable because it violates a fundamental rule of public policy, namely, that waivers infringing access to (civil) justice are null and void. If the Panel were an arbitral tribunal, then its procedural guarantees would have provided sufficient counterweight against the loss of access to justice provided by the courts; however, because the Panel is not an arbitral tribunal, it provides no such guarantees to the parties before it and hence the parties are not allowed to waive their right to access the courts.

Article 6.7 of the Panel's Procedural Rules goes on to refer to the English Arbitration Act as though it were applicable to proceedings before it. It stipulates that 'for the avoidance of doubt, such a waiver [of the right to claim before the courts] extends to any rights that would otherwise arise under sections 45 and 69 of the [English] Arbitration Act'. Both of these provisions provide the parties with challenges on points of law. Such challenges are exceptional and are of two types: namely, those

³⁰ As defined in Art. XIII of the ITF Welfare Policy.

³¹ Such waivers are acceptable as a matter of public policy. See Art. 26.8 of the London Court of International Arbitration Rules, whereby the parties irrevocably waive their right to appeal before state courts or state authorities. Rowan Platt, 'The Appeal of Appeal Mechanisms in International Arbitration: Fairness over Finality?' (2013) 30 J Int Arb 548.

that seek a clarification of an important – and far-reaching – legal issue; and those that seek the correction of a legal mistake made by the tribunal. Applications for the clarification of important legal issues are not challenges per se, but are encompassed here for the purpose of coherency, clarity and completeness. The drafters of Article 6.7 of the Panel's Procedural Rules must have been aware of the likelihood that their reference to sections 45 and 69 were inapplicable. As a result, they introduced a further exception to the original exception (i.e. that the parties waive recourse to the courts) by stipulating that where a party desires (nonetheless) to challenge an appellate decision of the Panel, this shall be submitted to 'the exclusive jurisdiction of English courts, applying English law'.³²

From a procedural point of view, two types of proceedings are envisaged in Articles 6.5 and 6.6 of the Panel's Procedural Rules: (1) those requiring a fresh re-hearing of the facts in true appellate fashion in order to do justice in the circumstances of a case; and (2) proceedings not requiring a fresh re-hearing of the facts, but instead limited to a 'consideration of whether the decision being appealed was erroneous'.

4.1.3 The Panel's Supervisory Function

The supervisory jurisdiction of the Panel encompasses complaints against any ITF decision that is not susceptible to a first-instance or appellate hearing. In such cases, while not permitted to review the merits of the case, the Panel may uphold the claim if the party making the claim satisfies it that:

- (a) the decision is irrational (i.e., it falls outside the range of what a reasonable person might decide), arbitrary or capricious;
- (b) the decision is based on an error of law (i.e., it is contrary to the ITF Rules, properly construed, or to applicable law); or
- (c) the procedure that was followed in reaching the decision was so unfair as to be contrary to natural justice.³³

This function is similar, yet hardly the same or comparable, to set aside proceedings in arbitration. Where the composition of the Panel lacks legal expertise, errors of law or unfair processes are not unlikely, even if unintentional. This is a welcome function that is meant to correct gross errors, particularly where the penalties are steep.

³² ITF Internal Adjudication Panel Procedural Rules, Art. 6.8.

³³ *Ibid.*, Art. 4.1.3.2.

5 The Independent Tribunal

The Independent Tribunal's jurisdiction is chiefly found in Article 33 of the ITF Constitution. Paragraph (a) of Article 33 provides for the scope of such jurisdiction, which encompasses all types of disputes arising between: (1) the legal entity of the ITF and one or more of its members (essentially national federations); (2) the ITF and any individual or legal person that does business with the ITF, or which is otherwise involved in any of the circuits or competitions under the aegis of the ITF, 'or that otherwise operates within the sport of tennis'; and (3) one or more members of the ITF.

The ITF Constitution, as well as the Independent Tribunal's Procedural Rules, operate as an agreement to arbitrate in the sense of Article 7 to the UN Commission of International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, or as terms and conditions appended to ITF contracts with contractors to the same effect (as an agreement to arbitrate). That is precisely why Article 33(b) to the ITF Constitution stipulates that where a dispute between parties under paragraph (a) arises and falls under ITF rules and regulations, the parties are deemed to have accepted the exclusive authority of the Independent Tribunal under its procedural rules and that in turn they have waived the right to litigation or arbitration in another forum. In equal measure, Article 1.3 of the Independent Tribunal's Procedural Rules stipulates that consent to the ITF Rules (in the umbrella sense provided above) serves to confer jurisdiction to the Independent Tribunal, with proceedings seated in London. It is implied that the parties have waived recourse to litigation. Domestic and international courts have unanimously accepted that such waivers do not offend the right to fair trial where the arbitral mechanism in question satisfies fair trial guarantees.³⁴ It is for this reason that the 'right to a hearing' is expressly recognised in the ITF Rules.³⁵ Alternatively, where a particular dispute does not fall under the ITF's rules and regulations, the parties are presumed to have accepted the jurisdiction of the CAS, and agree to be bound by the CAS award.³⁶ Of course, what the parties may not validly do, even voluntarily, is to waive their right to set aside proceedings under the laws of the seat, as this is considered a fundamental procedural guarantee.³⁷

³⁴ Ilias Bantekas, 'Equal Treatment of Parties in International Commercial Arbitration' (2020) 69 ICLQ 991, exploring the boundaries of equal treatment in the context of the right to fair trial.

³⁵ ITF Code of Conduct, Art. VI.C.

³⁶ ITF Constitution, Art. 33(c).

³⁷ In *X v. ATP Tour*, decided by the CAS Appellate Chamber, the duration of the suspension was reduced. More significantly, the tennis player had signed a waiver of the right to bring

It is beyond any doubt that the Independent Tribunal is an arbitral institution in the same manner as other similar institutions. This is clearly spelt out in two relevant instruments. First, the Panel's Procedural Rules emphasise that the Independent Tribunal is an arbitral tribunal, whose proceedings are governed by English law and subject to the English Arbitration Act.³⁸ This is equally reiterated by Article 1.3 of the Tribunal's own Procedural Rules. Even so, Article 3.2 of the Tribunal's Procedural Rules goes on to say that the primary source of (substantive) obligations is to be found in the ITF Rules and the Tribunal's Procedural Rules, with English law retaining a subsidiary role. Moreover, in the event of conflict, the ITF Rules prevail over those governing the Independent Tribunal. No doubt, this hierarchy makes absolute sense, albeit it needs to be consistent throughout the ITF's various instruments.³⁹

Just like other sports tribunals, as well as international criminal tribunals established in the context of transitional justice, the ITF Independent Tribunal has assumed more than just a dispute resolution role. It clearly perceives itself as the guardian of the integrity of the game of tennis and the purity of its image to young athletes and their parents across the globe. In the *Nastase* case, which involved a string of welfare violations, including sexual harassment, assault and racist behaviour, the ITF Tribunal declared that it was:

conscious of the message whatever sanction is ordered sends to the tennis world and the public more generally in a high-profile sports appeal such as the present one. For example, the Tribunal has regard to what young tennis players in clubs around the world take away from this decision in

setting-aside proceedings against future arbitral awards against the ITF. The CAS was unambiguous in its decision that such waiver agreements are not valid, even if express among the parties, in accordance with Art. 192 of the Swiss (Federal) Private International Law Act (PILA).

³⁸ ITF Constitution, Arts 7.3 and 7.4; this is also reiterated in Art. I.E.5 of the Men's World Tour Regulations, which emphasises that any dispute arising 'out of or in connection' with the Regulations, including also non-contractual claims, shall be governed and construed in accordance with English law, to the exclusion of English private international law.

³⁹ See *ITF and Anti-Doping Organization v. Stephane Houdet*, SR/005/2022, at para. 84, where the ITF Independent Tribunal emphasised that the World Anti-Doping Code and the International Doping Tests & Management (IDTM) constitute its general frameworks, with each federation free to construct its own rules as long as they are compliant with these rules (cf. *Coleman v. World Athletics*, CAS 2020/A/7528, at paras 159–60). In the case at hand, it found that the dispute was governed by the ITF Rules and that the Tribunal has recourse to the Tennis Anti-Doping Program (TADP), the IDTM and the TADP Protocol.

terms of what is inappropriate conduct in breach of the applicable rules and what is the appropriate sanction for such conduct.⁴⁰

This so-called ‘public purpose’ of broader adjudicatory mechanisms,⁴¹ as opposed to narrow arbitral institutions that are client-oriented, as is the case with the ITF Independent Tribunal, is emblematic of its broader function.

5.1 *Procedures of the Independent Tribunal*

Although elements of the constitution and regulation of the Independent Tribunal may be found in the ITF Constitution and ITF Rules, the Tribunal’s Procedural Rules comprise the definitive instrument setting out all procedures before it. It is instructive that the Tribunal’s Rules are tailor-made, and its drafters did not rely on model laws. However, this is also a reflection of the complexity underlying ITF dispute resolution processes. It should be pointed out from the outset that the administration and secretarial function of the Tribunal is outsourced to a private non-profit entity, Sport Resolutions.⁴² This is an important observation because unlike traditional arbitral institutions, Sport Resolutions has been granted authority to organise a pool of expert arbitrators (known as the Independent Panel) from which independent tribunals are composed. This particular role of Sport Resolutions is in fact expressly stated in the Tribunal’s Rules.⁴³

Unlike ordinary arbitration whereby the parties are typically allowed to (at least) select an arbitrator of their choice (assuming a three-panel member composition), this is not the case with the Independent Tribunal. Instead, the panel Chairman chooses one to three panel members, including him- or herself, whereupon the Tribunal is constituted with the panel members transformed into arbitrators.⁴⁴ It should be stated that the Chairman is a person appointed on a standing basis for a definite amount of time. The parties may challenge the arbitrators on the basis of

⁴⁰ *Ilie Nastase v. ITF*, Independent Tribunal Decision, SR/913/2017, at para. 104.

⁴¹ Ilias Bantekas, ‘The Public Interest Perspective of International Courts and Tribunals’ (2021) 38 *Ariz J Int & Comp L* 61.

⁴² Its legal status and operations is available at: www.sportresolutions.com. In this sense, Sport Resolutions acts as a secretariat of ITF arbitrations, much like the ICC Council that administers arbitrations on behalf of its clients. Sports Resolutions is a non-profit entity incorporated in the United Kingdom, in the same manner that the ICC is a non-profit chamber of commerce.

⁴³ ITF Independent Tribunal Rules of Procedure, Art. 1.1.

⁴⁴ *Ibid.*, Art. 2.2.

partiality and lack of independence, but other than that they have no other control over the appointment process.⁴⁵ The Chairman possesses further authority to consolidate two or more separate proceedings and act as emergency arbitrator.⁴⁶ The latter role could have benefitted from more precision in the Rules, particularly since more experienced arbitral institutions have been at pains to elaborate this function in their own rules.⁴⁷

Article 3.5 of the Independent Tribunal's Procedural Rules stipulates that it has both *kompetenz-kompetenz* and inherent powers. Although both of these qualities are *sine qua non* requirements of judicial entities, the latter is limited in accordance with the overall mandate and powers conferred on the entity in question. Certain of the powers enumerated in Article 3.5 are not ordinarily inherent powers of arbitral tribunals. This includes: the power to appoint an expert (independently of the wishes of the parties) and allocate the costs at its discretion;⁴⁸ to order a party to make available for inspection a property, document or thing in its possession or under its control;⁴⁹ to allow one or more third parties to intervene or be joined in the proceedings.⁵⁰ These three powers stand out as being atypical of the powers usually conferred on arbitral tribunals and which generally require the parties' consent and cooperation. This is because these powers are associated with some degree of compulsion and consequences, which is not ordinarily the case in arbitral proceedings. Their atypical character does not in any way denote that they are unlawful, unenforceable or null and void as they do not violate any mandatory laws or offend public policy.

Also atypical is the fact that the Chairman of the Tribunal is given authority to take unilateral action in certain matters without conferring with other members, or at least seeking their opinion. Article 3.6 of the Tribunal's Rules makes the rather unusual statement that 'any procedural rulings may be made by the Tribunal Chairman alone, unless he prefers to have the full independent Tribunal make the ruling in any particular instance'. Although unusual, and undermines the authority of the members

⁴⁵ Ibid., Arts 2.3–2.6.

⁴⁶ Ibid., Art. 2.7.

⁴⁷ See e.g. International Chamber of Commerce (ICC) Arbitration Rules, Art. 29 and Appendix V to the Rules, 'Emergency Arbitrator Rules'.

⁴⁸ Independent Tribunal Procedural Rules, Art. 2.3(b); by way of contrast, see ICC Arbitration Rules, Art. 25(3), which stipulates that the tribunal can only appoint an expert after consulting the parties, both of which must consent.

⁴⁹ Ibid., Art. 3.5(e).

⁵⁰ Ibid., Art. 3.5(f); by way of contrast, see ICC Arbitration Rules, Art. 7, which requires consent of the current parties for the joinder of a pertinent claim by a third party.

of the Tribunal and its collegial character, it is not atypical and exists in the CAS framework. Such unilateral authority is also evident in Article 3.7 of the Tribunal's Procedural Rules, which grant authority to the Chairman to issue procedural orders.

In consonance with international standards, Article 6 does not set out an elaborate set of evidentiary rules; Article 6.1 of the Independent Tribunal's Procedural Rules stipulates that 'facts may be established by any reliable means'.⁵¹ The consistent practice of the CAS and other specialised sports tribunals, especially as regards doping and corruption, has created an elaborate body of evidentiary rules that have attained precedential value and which the ITF Independent Tribunal cannot depart from. By way of illustration, the ITF Tribunal has accepted the CAS approach in *WADA v. Abdelrahman*,⁵² whereby it was held that the standard of evidence tendered has to be persuasive, specific, objective and concrete.⁵³ As to the burden of proof in doping cases, in following CAS jurisprudence, the ITF Tribunal has held that the literal reading of Article 10.2.3 of the Tennis Anti-Doping Program (TADP) 2020 requires the player to disprove engaging in conduct that he or she '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'. This means that the player must not just have not known that the action constituted an ADRV, she or he must also have not known that there was a significant risk.⁵⁴ Moreover, other instruments already set out evidentiary rules⁵⁵ to which the ITF Tribunal must turn when deciding pertinent cases.⁵⁶

⁵¹ This is very close to the language in ICC Arbitration Rules, Art. 25(1), which refers to 'all appropriate means'.

⁵² CAS 2017/A/5036.

⁵³ *ITF and Anti-Doping Organization v. Shoshkyna*, SR/262/2020, at para. 78.

⁵⁴ *Ibid.*, at para. 124; equally, in agreeing with *Dylan Scott v. ITF*, CAS 2018/A/5768, the ITF Tribunal held that should there be a gap in scientific knowledge and that it is not known whether or not a particular proposition is true, and therefore the hypothesis as to source remains unverified, the benefit of the doubt goes against the player, because it is the player that bears the burden of proof on this point.

⁵⁵ Pursuant to TADP, Art. 3.1.1, the burden is on the ITF to establish each of the elements of the ADRVs charged 'to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.'

⁵⁶ See *ITF and Anti-Doping Organization v. Lepchenko*, SR/254/2021, at para. 38, where the ITF Tribunal accepted that where an athlete is unable to identify how a prohibited S= substance entered his or her body, it is very difficult for the athlete to discharge the burden of proof that his or her conduct that led to the positive test was not intentional.

What is, however, controversial is the stipulation in Article 6.2, which suggests that the parties are bound by facts determined by a final court judgment or arbitral award of competent jurisdiction. This is highly problematic and defies elementary notions of justice because many competent courts are autocratic and, in many cases, controlled or heavily influenced by the state or even national sporting federations.

It should be noted that the Independent Tribunal is bound to act fairly without bias. Such an assessment may be made by the competent court as an annulment claim, or as a preliminary/procedural issue during the course of the proceedings. In *Wilander v. Tobin*, anti-doping under ITF mechanisms was challenged by Wilander as being unfair. At the High Court, Lord Woolf emphasised the existence of an implied contractual duty of fairness in disciplinary matters administered by the ITF.⁵⁷ Failure to do so gave rise to a private cause of action. Such an implied contractual duty must therefore extend also to the Panel.

5.2 *The Three Types of Jurisdiction Conferred on the Independent Tribunal*

Just like the Panel, the ITF Independent Tribunal possesses jurisdiction to hear disputes at first instance, as an appellate entity and on the basis of a supervisory function. Each of these will be examined in discrete subsections. Without a detailed examination of the ITF Rules, such a task would be meaningless, since the Tribunal's Rules of Procedure do not spell this out.⁵⁸ Lack of space precludes us from examining in detail appeals against decisions of the Internal Adjudication Panel, as well as the Independent Tribunal's supervisory function.

5.2.1 *The First-Instance Jurisdiction of the Independent Tribunal*

As already mentioned, the first-instance jurisdiction of the Independent Tribunal is found in the various ITF Rules. Article I.E.2 of the ITF Men's World Tennis Tour Regulations stipulates that the Independent Tribunal possesses exclusive jurisdiction in the first instance over the following matters:

⁵⁷ *Wilander v. Tobin* [1997] 2 Ll Rep 293, at 299–300.

⁵⁸ In fact, Art. 2.1 of the Independent Tribunal's Rules emphasises that the precise contours of its jurisdiction should be sought in the ITF Rules.

- a) any request for a decision that is entrusted under these Regulations to the Independent Tribunal;
- b) an allegation that a player, Related Person or other person participating on the Men's ITF World Tennis Tour has breached the Tennis Anti-Doping Programme [sic];
- c) an allegation that a player or Related Person has committed a Major Offence under the Code of Conduct;
- d) any allegation that a Tournament Offence has been committed under the Code of Conduct; and
- e) any other dispute arising out of or relating in any way to these Regulations that is referred to it by the Board.

These five grounds of jurisdiction are reproduced verbatim in Article I.E.2 of the Women's World Tour Regulations and it is natural no doubt that the exact same grounds are listed.

In addition, Article 8.1 of the TADP Rules provides that the Independent Tribunal possesses jurisdiction in respect of the anti-doping violations in Article 8 therein. The Tribunal will proceed with the merits of the dispute in accordance with its own Procedural Rules. The Tribunal is convened where a player charged with a pertinent violation disputes all or part of the charge and requests a hearing.⁵⁹ Once appointed, the Chair of the Independent Tribunal will convene a preliminary meeting with the ITIA and its legal representatives, and with the player or other person and/or their legal representatives (if any), unless directions are agreed by the parties and approved by the Chair.⁶⁰ The purpose of the preliminary meeting is to set the agenda and streamline any procedural issues, although practice suggests that TADP violations are accepted by players, but intent is generally refuted.⁶¹

The Independent Tribunal further possesses jurisdiction over so-called major offences, in accordance with Article VI.C of the ITF's Code of Conduct. It will be recalled from our analysis in the introduction to this chapter that where there is *prima facie* evidence of a major offence, the ITF shall convene a Review Board, which in turn will investigate whether a major offence has taken place. Where the Board determines

⁵⁹ TADP Rules, Art. 8.2.1.

⁶⁰ *Ibid.*, Art. 8.3.1.

⁶¹ See e.g. *ITF and Anti-Doping Organization v. Kratzer*, SR/085/2020, where the athlete unsuccessfully argued that she was given the banned substance by an unknown coach of the Chinese Tennis Federation while training abroad. She alleged that the substance must have been in a herbal cream meant to treat a foot irritation.

that a player or related person has a case to answer, the ITF will transmit a notice of charge to the Chairman of the Independent Tribunal. This process will have set out the bulk of the investigation on which the Tribunal will rely, albeit where the player or related person denies the veracity of the charge or the sequence of facts, he or she may seek a full determination of the dispute by the Independent Tribunal. The player or related person must respond to the notice and request a hearing within ten days of receipt of the notice, failing which he or she is deemed to have admitted commission of the major offence.⁶² In the event the ITF withdraws the notice of charge, or the player accepts the charges, there shall be no hearing before the Independent Tribunal.⁶³

6 Appeals against the Independent Tribunal's Awards to CAS

Article 9.2 of the Independent Tribunal's Procedural Rules allows appeals to the CAS. As a general rule, only first-instance awards of the Independent Tribunal may be appealed to the CAS and not its appellate awards – given that the latter were already the subject of an appeal from a decision of the Panel.⁶⁴ Once again, the right to appeal a first-instance award to the CAS must be found in the ITF Rules. Article I.E.4 of the Men's World Tour Rules stipulates that unless otherwise provided: 'c) decisions of the Independent Tribunal (sitting as a first-instance tribunal) may only be challenged by way of appeal to the Court of Arbitration for Sport, as set out in the Independent Tribunal Procedural Rules.'⁶⁵ In equal measure, first-instance awards rendered by the Tribunal in respect of major offences shall be appealed to the CAS.⁶⁶

It should be noted that the CAS is governed by its own procedural rules, known as the CAS Code of Sports-Related Arbitration.⁶⁷ The CAS operates at both first-instance (ordinary arbitration division) and appellate (appeals arbitration division) levels and further encompasses an anti-doping division.⁶⁸ In the case at hand, appeals from the ITF Independent Tribunal to the CAS engage the jurisdiction of the CAS Appellate

⁶² ITF Code of Conduct, Art. VI.C(d).

⁶³ *Ibid.*

⁶⁴ See limitations to CAS jurisdiction as outlined in the Independent Tribunal's Procedural Rules, Art. 9.1, explained in detail in sub-section 3.1 of this chapter.

⁶⁵ A verbatim provision also exists as Art. I.E.4 of the Women's World Tour Rules (2022).

⁶⁶ ITF Code of Conduct, Art. VI.F.

⁶⁷ CAS Code (2022), available at: www.tas-cas.org/fileadmin/user_upload/CAS_Code_2022_EN.pdf.

⁶⁸ *Ibid.*, s. 20.

Chamber. The CAS Code includes a set of Procedural Rules. Rule 27 serves as the basis for the jurisdiction of the CAS Arbitral Chamber. It goes on to say that:

These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).

The reference or otherwise agreement to arbitrate before the CAS clearly arises in the various ITF Rules, as well as Articles 9.2 and 9.4 of the ITF Independent Tribunal's Procedural Rules. In accordance with Article 9.3 of the Independent Tribunal's Procedural Rules, the deadline for filing an appeal to the CAS shall be twenty-one days from the date of receipt of the decision in question by the appealing party. The decision being appealed will remain in full force, pending determination of the appeal unless the CAS orders otherwise. Once the application has been submitted, it is the CAS Code that prevails from a procedural point of view,⁶⁹ albeit the governing substantive law remains the ITF Rules and English law in a subsidiary role.⁷⁰

In closing, it should be emphasised that an appeal against the Independent Tribunal's award is highly unusual from the perspective of transnational arbitral practice. Awards rendered by arbitral tribunals, such as the ITF Independent Tribunal, are not susceptible to further layers of appeal, but only set aside proceedings for failure to observe a closed list of procedural safeguards.⁷¹ An appeal to the CAS against a decision of the Panel or an ITF entity is certainly acceptable, albeit an appeal against a final award does not sit well with the arbitral nature of the ITF Independent Tribunal.

7 ATP Dispute Resolution

As has already been made clear from the introduction, doping and match-fixing (as well as other pertinent regulatory matters) infractions/

⁶⁹ See Johan Lindholm, *The Court of Arbitration for Sport and Its Jurisprudence: An Empirical Inquiry into Lex Sportiva* (Asser Press, 2019), 35–8.

⁷⁰ Independent Tribunal Procedural Rules, Art. 9.4.

⁷¹ See English Arbitration Act, s. 68.

allegations are handled under the aforementioned ITF procedures. As regards anti-doping claims, on-site investigations are administered by the ITIA, the decisions of which may be appealed to the CAS Anti-Doping Tribunal under the same grounds as decisions from the ITF judicial mechanisms. This is specifically mentioned in Article 1.07(2) of the ATP Circuit Regulations. Any other disputes, whether contractual or regulatory, arising from the ATP Rules are subject to those Rules' dispute resolution mechanism.

Under Articles 8.01(G) and 8.03(G) of the ATP Code, authority for on-site investigations is conferred to the Senior Vice-President, Rules and Regulations. Appeals against its decisions are available before the Tribunal established by the ATP's Board of Directors and CEO, in accordance with Article 8.04(K) of the ATP Code. Decisions of the Senior Vice-President concerning major offences may be appealed to the ATP CEO, in accordance with Article 8.05(B) of the ATP Code within five days from the day the decision was rendered. Once the CEO offers the decision on appeal, this is final on the parties.⁷² Not all disputes, however, can be resolved under this mechanism. Article 8.07 of the ATP Code provides as follows:

Any dispute between or among ATP, its Tournaments or its players (with the exception of any dispute relating to or arising out of a change in tournament class membership status) arising out of the application of any provision of this Rulebook which is not finally resolved by applicable provisions of the Rulebook shall be submitted exclusively to the Court of Arbitration for Sport ('CAS') for final and binding arbitration in accordance with CAS's Code of Sports-Related Arbitration. The decision of CAS in that arbitration shall be final, non-reviewable, non-appealable and enforceable. No claim, arbitration, lawsuit or litigation concerning the dispute shall be brought in any other court or tribunal.

8 WTA Dispute Resolution

The WTA's extensive Rulebook⁷³ sets out a number of obligations on all stakeholders. The enforcement of this body of rules has given rise to three distinct internal organs, each with specific competence. In brief, the Code of Conduct Committee possesses jurisdiction to hear disputes concerning

⁷² ATP Code, Art. 8.05(B)(5).

⁷³ The 2024 version of the WTA Rulebook is available at: <https://photorresources.wtatennis.com/wta/document/2024/02/12/1a78ea3b-3a70-4847-9951-d59307c2655d/2024-WTA-Rulebook-2-11-2024-.pdf>.

alleged violations of the WTA Code of Conduct.⁷⁴ The Standards Committee examines disputes in connection with its Standards.⁷⁵ Any violations of these Rules which do not specify a process for imposition of a penalty shall be decided by the CEO and such decision of the CEO may be appealed to the Board of Directors.⁷⁶ The Board of Directors possesses other quasi-judicial authority, as, for example, in respect of deciding applications for reinstatement of tournament class membership.⁷⁷

Just like the ATP, only disputes arising from the WTA's Rulebook are susceptible to the arbitral mechanism envisaged in section XIX of said Rulebook. Unlike the ATP and the ITF, the WTA has not opted for an internal tailor-made arbitral mechanism. Instead, Article B(2) of section XIX provides that any dispute – save for those arising out of a change in tournament class membership status – that has not been finally resolved by other means provided for in the Rulebook shall be submitted to the American Arbitration Association (AAA). The AAA is an arbitral institution just like the ICC. It is instructive that the parties are restricted to the AAA's Expedited Procedures Commercial Arbitration Rules;⁷⁸ that the dispute be heard by a single arbitrator; and that the request be filed with the AAA within twenty-one days from the date the action for the request arose. Where the parties are unable to mutually choose an arbitrator, he or she shall be selected by the AAA in accordance with its own rules.⁷⁹ It is a credit to the WTA that while all submissions shall remain confidential, the dispute itself and the findings of the arbitral tribunal and the other three aforementioned internal entities shall be made public.

9 Contractual Disputes and the Role of National Courts

The range of disputes discussed in the aforementioned sections concerned regulatory infractions predicated on the internal rules of the ITF (and its integrity affiliates), the ATP and the WTA. In both professional and amateur tennis, however, a good number of relationships are established by contracts and these are wholly distinct from the rules set out in ITF, WTA and ATP regulations. Such relationship may include player-agent

⁷⁴ Ibid., s. XVII.

⁷⁵ Ibid., s. XVIII.

⁷⁶ Ibid., s. I(C).

⁷⁷ Ibid., s. XII(G)(b)(ii)(b).

⁷⁸ The AAA's Expedited Rules are part of its ordinary rules (Rules E1–E10), available at: <https://adr.org/sites/default/files/Commercial%20Rules.pdf>.

⁷⁹ Ibid., Rule E4.

agreements, agreements between tournament organisers and sponsors/advertisers, players and sponsors and many others. Any disputes arising from such agreements may be submitted to the most appropriate national court, unless the parties mutually agree to bring the matter before an arbitral tribunal. Moreover, disputes might also arise from an alleged infraction of the law, as is the case with unlawful reproduction of tennis tournaments, as well as similar infractions of intellectual property rights. Given the absence of a contract in the latter cases, the injured party will seek redress from the courts.

The limited available case law indicates that litigation is prevalent, with choice of court clauses favouring English courts, in conjunction with English substantive law as the parties' choice of law in player-agent disputes. The tennis-specific case that stands out is *Zverev v. Ace International Group Ltd*, despite the fact that the parties ultimately settled.⁸⁰ Although the agent, based in London, had no doubt driven the choice of law clause (the player was not at any time a UK national or resident), in the circumstances of the case, the application of the common law doctrine of restraint of trade turned out to favour the player.⁸¹

For disputes concerning the contractual liberty of the ITF or ATP/ WTA to remove a tournament from its calendar or relegate it to a lower tier, choice of court clauses vary. In *Deutscher Tennis Bund v. ATP Tour Inc.*,⁸² two ATP tournaments, namely, Hamburg and Doha (Qatar), had been relegated to a lower tier, which necessarily meant brand depreciation and an inability to attract top tennis players to the tournaments. This in turn had a direct impact on profits. Both tournament organisers challenged their downgrading before US courts. The District Court rejected the arguments, confirming in the process that the ATP can re-organise professional tournaments and relegate one or another to a lower tier without breaching anti-trust rules.⁸³ Here, the claimants' argument,

⁸⁰ *Zverev v. Ace Group International Ltd* [2020] EWHC 3513 (Ch).

⁸¹ In *Proactive Sports Management Ltd v. Rooney* [2011] EWCA Civ 1444, the 17-year-old football star had entered into an image rights representation agency agreement with a company called Stoneygate. The latter agreed to pay a 20 per cent commission to Proactive for the duration of its agreement with Rooney. When a few years later Rooney terminated its contract, the agent sued for breach of contract. The Court of Appeal found the particular terms of the agency agreement unenforceable on several grounds, namely: (1) Rooney at the time was a minor without the benefit of legal advice; (2) the duration of contract was unduly long and certainly far beyond what was customary at the time.

⁸² *Deutscher Tennis Bund v. ATP Tour Inc.*, 610 F.3d 820 (3d Cir. 2010), cert. denied, 562 US 1064, 131.

⁸³ *Ibid.*

unlike *Zverev*, centred on anti-trust violations⁸⁴ as well as breach of contract. Ordinarily, and in line with Article 8.07 of the ATP Code, this dispute should have been referred to the CAS. The claimants, however, relied on their anti-trust claim, which is of a public policy nature, to submit the dispute before a US district court.

Other chapters in this volume discuss the role of litigation in tennis disputes, particularly as regards the enforcement of morality clauses,⁸⁵ competition claims⁸⁶ and intellectual property infractions.⁸⁷

⁸⁴ See George A. Metanias, Thomas J. Cryan and David W. Johnson, 'A Critical Look at Professional Tennis under Anti-Trust Law' (1987) 4 U Miami Ent & Sports L Rev 57; equally, *Volvo North America Corp. v. Men's International Professional Tennis Council*, 857 F.2d 55 (2d Cir. 1988), one of the earlier cases concerning whether an international tennis federation is susceptible to the Sherman Act, 15 USC § 1 (1982).

⁸⁵ See Chapter 4.

⁸⁶ See Chapter 12.

⁸⁷ See Chapter 3.