

The Regulation of Ethics in the ITF's Governance

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1 Introduction

It may not be apparent in what manner a discussion of ethics will add value to this book and its specialist subject matter. Indeed, non-ethics experts are usually surprised when they realise the range of issues left untouched by normative-based regulation. It is also surprising to learn that ethical rules are no less normative, as are their consequences. This chapter aims to fill the ethical gap that was not touched upon in other chapters in this book. The chapter's focus shall be restricted to the extensive ethical regulation of the International Tennis Federation (ITF) and hence will not examine equivalent developments in national tennis federations, the Women's Tennis Association (WTA) or the Association of Tennis Professionals (ATP).¹ Given the limited length of the chapter, we shall not cover the 2024 ITF Code of Conduct for Officials, which jointly covers ITF, ATP, WTA and Grand Slam Board. Unlike the ITF Code of Ethics, which applies 'at all times', the Code of Conduct applies during official tennis duties.² It is hoped that based on the analysis offered in this chapter, readers will be able to appreciate ethical rules in all tennis entities.

The chapter concentrates on the various ethical duties set out in the ITF Code of Ethics³ and the consequences that arise from their breach. As will be demonstrated, these duties are of a contractual nature and by extension their breach entails breach of contractual consequences in the form of prescribed sanctions. The chapter goes on to show that while

¹ Chapter VIII of the 2024 ATP Official Rulebook, available at: www.itftennis.com/media/11553/2024-rulebook-atp.pdf, titled 'The Code', contains a significant amount of provisions of legal and ethical value. The distinction between the two is unclear and the term 'ethics' is not mentioned anywhere in the Rulebook.

² Available at: www.itftennis.com/media/2511/2024-code-of-conduct-for-officials.pdf. There are several ethical rules in this Code.

³ The Code was adopted in 2019 and slightly amended in 2023. It is available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.itftennis.com/media/7246/2023-itf-code-of-ethics-english.pdf. The most notable additions in the 2023 version were references to WTA and ATP employees regarding duties of loyalty and disclosure.

the Ethics Commission enjoys the right to investigate alleged breaches of the Code and impose sanctions where the official in question does not contest the findings of the investigation or the sanction, where the official denies the charges or the sanction, the matter is referred to the ITF's Independent Tribunal. The Ethics Commission further enjoys authority to assess whether candidates comply with the ITF's Candidacy Rules.

2 What Are Ethics and Are They Different from Law?

Ethics or ethical conduct is generally conduct that is fair and serves the best available outcome under the particular circumstances. While there is a body of ethical rules that guide social life and inter-personal relations in a non-binding manner (i.e. lying or cheating on one's spouse), many ethical rules have found their way into the regulatory realm. Tax professionals, certified accountants and lawyers are subject to ethical rules as part of their profession, whether nationally or internationally.⁴ To understand why this is so, it is perhaps instructive to briefly examine the key justifications for the regulation of lawyers, namely: the *cynical*, the *client protection* and the *public interest* perspectives. In one of the major reviews of the legal profession in England and Wales in 2004, Sir David Clementi identified the roles justifying regulation of the legal profession, namely: access to justice, maintenance of the rule of law, protection of consumer interests, promotion of healthy competition among well-trained lawyers and promotion of a public understanding of citizens' rights.⁵

Such ethical rules with defined consequences arise for most professional fields, regardless of their classification as regulated 'professions' or not.⁶

There are several models of regulation for the professions and it is assumed that these models apply also to non-recognised professions,

⁴ For instance, the American Institute of Certified Public Accountants (AICPA) subjects its members to standards contained in the AICPA Code of Professional Conduct, available at: <https://pub.aicpa.org/codeofconduct/Ethics.aspx>; see also the AICPA Statements on Standards for Tax Services No. 1–7, available at: www.aicpa.org/content/dam/aicpa/interestareas/tax/resources/standardsethics/statementsonstandardsfortaxservices/downloadabledocuments/ssts-effective-january-1-2010.pdf.

⁵ See David Clementi, Review of the Regulatory Framework for Legal Services in England and Wales: Final Report (2004).

⁶ See Austin Sarat, 'The Profession versus the Public Interest: Reflections on Two Reifications' (2002) 54 Stanford L Rev 1491. The EU Directive on Recognition of Professional Qualifications, 2005/36/EC, defines liberal professions as 'those practiced on the basis of relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual and conceptual services in the interest of the client and the public'.

such as the executive, judicial or governing entities and persons of sports governing bodies.⁷ These models consist of: *rules-based*, enforced by a regulatory body; *outcomes-based*, which relies significantly on personal discretion to achieve fair outcomes (premised on consequentialism and rule-consequentialism); *self-enforcement*, in the sense that a profession develops ethical rules and procedures that must meet the approval of a regulator; and *competitive regulation*, which is grounded on enhanced regulation following consultation with the profession.⁸

In practice, the professions have been allowed to self-regulate attendant ethical issues and considerations and the same is true with regard to sports governing bodies through so-called *lex sportiva*.⁹ While self-contained entities such as the ITF can devise their own internal ethics rules, the creation of a coherent body of transnational ethical rules is more complex and requires consistent practice over time. A good example is illustrated by the regulation of the impartiality of arbitrators in international arbitral proceedings. While originally an ethical standard whose breach entailed the ridicule of the impugned arbitrator and loss of future work, it is now a hard rule in all arbitral statutes. Article 12(1) of the UNCITRAL Model Law on International Commercial Arbitration¹⁰ posits a general principle in this sense by demanding that an arbitrator 'shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.' All institutional rules encompass relevant ethics provisions, in addition to more detailed ethical codes, such as the American Association of Arbitration (AAA) Code of Ethics for Arbitrators and the International Bar Association (IBA) Rules of

⁷ For a sociological perspective, see Andrew Abbott, *The Theory of Professions* (University of Chicago Press, 1998).

⁸ Jonathan Herring, *Legal Ethics* (Oxford University Press, 2016), 76.

⁹ See Antoine Duval, 'Transnational Sports Law: The Living Lex Sportiva' in Peer Zumbansen (ed.), *The Oxford Handbook of Transnational Law* (Oxford University Press, 2021), 493; and Lorenzo Casini, 'The Making of a Lex Sportiva by the Court of Arbitration for Sport' (2011) 12 German LJ 1317. Both articles emphasise that the particular status of the institutions forming the international sports order renders its regulatory ambit transnational in nature, albeit in synergy with national laws.

¹⁰ The 2016 version of the Model Law is available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf.

Ethics for International Arbitrators.¹¹ Although it is expected that arbitrators must be impartial and independent, lest the award be set aside under the *lex arbitri* or refused enforcement at a later stage, there is no single internationally accepted standard of impartiality.¹² As a result, while ethical issues are largely driven by institutional codes of conduct which prescribe, among others, the extent of disclosure and possible conflicts of interest, the ultimate arbiter of such issues are the courts of the seat. These in turn are not averse to relying on the standards adopted in institutional rules.¹³

There are several theories about the nature of ethical rules and the expected conduct of human actors. We will mention just two here with the aim of facilitating the discussion. *Deontology* pays less attention to the consequences of one's actions¹⁴ and elevates one's adherence or application to a set of rules. Thus, a deontologist will be justified to act immorally if the action is backed by rules, as is the case with lawyer-client confidentiality. Such rules-based confidentiality justifies adherence even if a client's actions are otherwise illegal. Virtue ethics suggests that unless a person is born virtuous, virtue has to be acquired through acquiring the right habits, in which case both the socio-economic environment and the legal system play important roles in forming a virtuous person.¹⁵ The keen reader will perhaps distil many of these theories in the ITF's Code of Ethics.

¹¹ Mini codes of ethics may also be found in some multilateral treaties, such as Annex 14(c) of the EU-Korea FTA and the code of conduct prescribed for persons sitting on dispute settlement panels under chapters 19 and 20 of NAFTA.

¹² English courts are generally in agreement that the appropriate test for impartiality is that of 'real possibility of bias', as per the judgment in *AT&T Corp. v. Saudi Cable Co.* [2000] 2 Lloyd's Rep 127; the IBA Rules of Ethics, on the other hand, provide that prospective arbitrators should disclose all facts or circumstances that may give rise to 'justifiable doubts' as to their impartiality; Art. 3(1) of the Portuguese Chamber of Commerce Code of Ethics introduces an 'absolute' impartiality test.

¹³ US courts rely heavily, for example, on the AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes in order to decide issues of independence and impartiality. See *Merit Insurance Co. v. Leatherby Insurance Co.*, 714 F.2d 673 (7th Cir. 1983); *Brandeis Instel Ltd v. Calabrian Chemicals Corp.*, 656 F.Supp. 160 (SDNY 1987); *Reeves Brothers, Inc. v. Capital-Mercury Shirt Corp.*, 962 F.Supp. 408 (SDNY 1997).

¹⁴ See the ethical theory of consequentialism: Pe Bryne, 'Consequentialist Moral Theory' in *The Philosophical and Theological Foundations of Ethics* (Palgrave Macmillan, 1999); Paul Zwier, 'The Consequentialist/Nonconsequentialist Ethical Distinction: A Tool for the Formal Appraisal of Traditional Negligence and Economic Tort Analysis' (1985) 26 BCL Rev 905.

¹⁵ Herring, *Legal Ethics*.

3 The ITF's Substantive Ethical Rules

As will become evident in this section, the ITF's Ethics Rules concern integrity-related conduct by officials in governance, administrative or official positions (e.g. investigators, umpires). As such, they exclude integrity-related infractions committed by athletes and coaches, all of which are dealt under discreet rules and subject to the jurisdiction of the ITF's judicial entities.¹⁶ The point of reference for our discussion is the ITF's Code of Ethics (hereinafter, the Code). It expressly builds on the International Olympic Committee (IOC) Code of Ethics¹⁷ and best practice.

3.1 Covered Persons

In accordance with Article 1.3 of the Code, its provisions are applicable to so-called 'officials', as follows:

- 1.3.1. each person serving as a director of the ITF, or of any subsidiary or associated company of the ITF (an Associated Company) from time to time (each, a Director);
- 1.3.2. the President and the Chief Operating Officer of the ITF (each, an Officer);
- 1.3.3. each person serving as a member of a committee, commission, taskforce or working party of the ITF or any Associated Company, and each person appointed to represent the ITF or any Associated Company on a committee, commission, taskforce or working party of another body (each, a Committee Member); and
- 1.3.4. each person who is a candidate for election or appointment as a Director or Officer or Committee Member (a Candidate), provided that while such persons are only Candidates (and not a Director or Officer or Committee Member), the only substantive requirements in this Code that are applicable to them are the requirements set out at Articles 2.6.2 and 2.8.

The Code is concerned with the ITF's integrity and its credibility towards its various stakeholders. The Code applies as a contract between the ITF and its officials because their actions are subject to the jurisdiction of the ITF Ethics Commission irrespective if the

¹⁶ See Chapter 4 of this volume on the dispute resolution mechanisms of the ITF.

¹⁷ IOC Code of Ethics 2023, available at: <https://olympics.com/ioc/code-of-ethics>.

impugned action also befalls the authority of the host state's (forum) criminal or labour courts.¹⁸

All of the obligations incumbent upon ITF officials are subject to a test of knowledge, intention, recklessness or negligence.¹⁹ Given that these standards of knowledge require different standards of proof in criminal proceedings, as opposed to civil proceedings, it must generally be assumed that evidence with a probative value suffices so long as procedural fairness prevails.

3.2 Basic Obligations

The ITF Code of Ethics distinguishes between general 'basic' obligations, which are meant to guide all actions of ITF officials, and other more specific obligations. Article 2.1 of the Code puts forth the following basic obligations:

- 2.1.1. [maintain the] highest standards of honesty and integrity;
- 2.1.2. respect for human rights ... [including] human dignity; non discrimination ... on grounds of race, color, sex, gender, sexual orientation, language, religion, political or other opinion, national or social origin, disability, or any other unlawful ground; and not committing any form of harassment or abuse of any person, whether physical, professional, sexual, psychological or otherwise;²⁰
- 2.1.3. respect the Olympic principles of autonomy from government interference and political neutrality ... and;
- 2.1.4. refrain at all times ... from any fraudulent or corrupt act, or [acts] that bring or risks bringing the ITF or the sport of tennis into disrepute.²¹

¹⁸ ITF Code, Art. 1.6.

¹⁹ Ibid., Art. 2.

²⁰ See ITF Ethics Commission Decision against Evgeniy Zukiin. Decision of the ITF Ethics Commission (25 July 2022) (hereinafter, *ITF Ethics Commission v. Zukiin*), available at: www.itftennis.com/media/8735/itf-ethics-commission-decision-zukiin-25-july-2022-publication.pdf. Slapping another official during dinner (i.e. outside official ITF duties) was found to be a breach of this provision. It should be noted that this Decision was appealed to the Independent Tribunal and a final award was issued on the matter in late December 2024, which partially upheld the findings of the Ethics Commission. *Evgeniy Zukiin v. ITF*, SR/076/2024 (10 December 2024), available at: www.sportresolutions.com/assets/documents/241210_-_Zukiin_v_ITF_Ethics_Commission_-_Decision_%28Amended%29_1.pdf.

²¹ Ibid., equally bringing the ITF and the game of tennis into disrepute.

These basic obligations are meant to apply 'at all times', that is, regardless as to whether the official is acting in an official or private capacity. The private lives of ITF officials are inextricably interwoven with their professional dimension by reason of contract.

3.3 *Other Substantive Duties and Obligations*

A key duty of officials is that of 'undivided loyalty' to the ITF.²² This entails that in the execution of their duties, officials must always act in the interests of the ITF, its members and tennis as a whole.²³ In addition, where there is an apparent, actual or potential conflict of interest,²⁴ the official in question must make a full disclosure to the ITF without delay.²⁵ This duty is of a continuing nature and in respect of Directors in particular an annual disclosure statement is required, while other officials are bound to do so every two years.²⁶ Any covered person subject to a conflict must excuse him- or herself from a meeting even if the conflict has been registered in a disclosure statement.²⁷ Conflicts of interest may not only give rise to a breach of the employment contract, but also constitute infractions under the criminal law of the forum, in addition to claims of compensation under the law of torts.²⁸

Bribery and corruption are particularly singled out in Article 2.3 of the Code. Officials must not directly or indirectly solicit, accept or offer any form of undue remuneration, commission or concealed benefit or

²² ITF Code of Ethics, Art. 2.2.

²³ Ibid., Art. 2.2.1.

²⁴ The ITF Ethics Commission issued in 2021 a simplified 'Guide to Conflict of Interest Declarations' to assist officials in avoiding conflicts and filing their disclosure statements, available at: www.itftennis.com/media/7245/ethics-commission-conflict-of-interest-guide-english.pdf.

²⁵ ITF Code of Ethics, Art. 2.2.2.

²⁶ In Decision of the ITF Ethics Commission against Iva Majoli (3 August 2022) (hereinafter, *ITF Ethics Commission v. Majoli*), available at: www.itftennis.com/media/8678/itf-ethics-commission-decision-majoli-3-august-2022.pdf, an official had been repeatedly asked to complete her conflicts of interest declaration and failed to respond. The Commission noted that: 'The reason for ensuring that conflicts are declared prior to or during any meeting of an ITF Committee, Commission or Taskforce is that a conflict of interest calls into question whether a decision, a vote, or the work of an Official is truly in the interests of the ITF or whether that decision furthers the interest of that Official, their family and associates, and/or their employer. Any doubt as to the motivations of an Official can undermine the integrity of the ITF's work.'

²⁷ ITF Code of Ethics, Arts 2.2.2.1–2.2.3.3.

²⁸ This is in fact envisaged in Art. 2.9 of Appendix 1 to the ITF Code of Ethics.

service, nor misuse their position for private aim.²⁹ It is equally prohibited to accept any kind of bribe or improper payment in order to influence decision-making³⁰ within the ITF or any associated company. A particular form of corruption arises where an ITF official interferes with the integrity of the bidding process in order to accrue financial benefit for himself or others.³¹

Article 2.4 of the Code imposes on all officials a strict duty of confidentiality, whether for personal gain or otherwise. This duty is always subservient to the requirements of local law, particularly in the determination of unlawful acts,³² and it is of credit to the ITF that this is explicitly stated in Article 2.4.2 of the Code.

The duty not to violate the integrity of ITF competitions is paramount to the basic duties of officials. It requires that officials do not influence the course or result of a tennis match or event with a view to achieving an advantage for themselves or others, or otherwise engage in any action that may undermine the integrity of a competition.³³ In addition, ITF officials must not in any way facilitate or assist in the breach of ITF integrity rules (doping, match-fixing).³⁴

Any person, whether an existing official or other, who is in the process of campaigning for election to the Board of Directors of the ITF (candidates) must abide by the ITF candidacy rules and those who are not candidates must respect the candidacy process.³⁵ This is not a straightforward ethical rule because candidates who are not already ITF officials are not ordinarily bound by the ITF Code in the contractual manner that other officials are. The same is true of non-candidates (who are equally non-officials) interfering with the integrity of candidates. Candidacy rules are set out in Appendix 4 to the ITF Code of Ethics (hereinafter, *Rules of Candidates*). Key obligations include: (1) refraining from sending official campaign material prior to the public announcement of all ITF candidates; (2) conducting one's campaign with dignity and respect for opponents; (3) avoiding exerting improper influence over the process; (4) refraining from seeking or using financial, political or other support from any regional association or

²⁹ Echoes Art. 15 of the 2003 UN Convention against Corruption.

³⁰ See *ibid.*, Art. 18 (trading in influence).

³¹ ITF Code of Ethics, Art. 2.7.

³² In 2019, the European Union adopted Directive 2019/1937 through the EU Parliament and the Council, On the Protection of Persons Who Report Breaches of Union Law, OJ L 305/17 (16 November 2019) (hereinafter, *Whistleblower Directive*).

³³ ITF Ethics Code, Art. 2.5.1.

³⁴ *Ibid.*, Art. 2.5.2.

³⁵ *Ibid.*, Art. 2.6.

other ITF partner or supplier; (5) refraining from soliciting or accepting any benefits with the aim of using one's influence upon election; (6) refraining from receiving or offering improper hospitality gifts; and (7) duly disclose any gifts received to the Ethics Commission. Article 14 of the Rules of Candidates stipulates that:

unless in the ordinary course of their business as an existing Official, [officials shall] not receive individual or special support or services from the ITF, or ITF staff, including any consultants, agents or advisors engaged by the ITF (or their related or connected affiliates), beyond general administrative support and services provided to ensure that candidacies are conducted in a fair, open and consistent manner.

In a case decided in 2010 (and when Article 16 of the 2023 Code was Article 14 of the 2019 version of the Code), the incumbent ITF President was running for re-election and solicited the services of a private consultancy firm. The Commission interpreted the relevant provision as being:

intended to prevent the ITF from providing favourable services to any particular Candidate or Candidates. It is also intended to ensure that Candidates who are also ITF Officials are not able to exploit their position within the ITF to gain favourable services from the ITF. The scope of Article 14 extends beyond ITF staff, to 'any consultants, agents or advisors engaged by the ITF'. If a consultant, agent, or advisor is not engaged by the ITF, it does not fall within the scope of Article 14.³⁶

Given that the consultancy firm in question was not engaged by the ITF at the same time, the Ethics Commission did not find a violation of Article 14 and proceeded to dismiss the case.³⁷ It should be noted that the Ethics Commission issued a statement in March 2019 by which to clarify the Candidacy Rules.³⁸

³⁶ Ethics Commission Decision, Art. 14 Candidate Rules (15 July 2019) (*ITF Ethics Commission Re. Art. 14 Candidate Rules*), available at: www.itftennis.com/media/2336/decision-regarding-matters-raised-in-relation-to-article-14-of-the-rules-for-candidates-in-the-2019-itf-presidential-elections-15-july-2019.pdf.

³⁷ See also Ethics Commission Decision, Art. 12 Candidate Rules (15 July 2019) [*ITF Ethics Commission Re. Art. 12 Candidate Rules*], available at: www.itftennis.com/media/2335/decision-regarding-matters-raised-in-relation-to-article-12-of-the-rules-for-candidates-in-the-2019-itf-presidential-elections-15-july-2019.pdf, which concerned allegations that a candidate for elections participated in a public event to support his campaign without making such forum available to other candidates. The allegation was not proven and the case was dismissed.

³⁸ Available at: www.itftennis.com/media/6261/itf-ethics-commission-statement-candidacy-rules-2019-elections.pdf.

In order for the ITF to achieve integrity in all of its functions and operations, it is imperative that all of its officials cooperate and report anything that comes to their attention. This obligation is set out in Article 2.8 of the Ethics Code, according to which officials must without delay report ‘any information they have that a reasonable person would consider might evidence or otherwise reflect’ any form of infraction of the Code, especially if instigated by a non-ITF official. This obligation entails that disclosure shall be made to the ITF Ethics Commission, unless exceptionally the official in question considers in good faith that the issue is best dealt under another discreet ITF procedure. The duty to cooperate entails that officials do so ‘truthfully, fully and in good faith’, including by answering any questions and providing access to any information, data and/or documentation; as well as by ensuring that they do not obstruct, prevent, delay or otherwise interfere with or frustrate any investigation. This duty further entails that officials do not make a report in bad faith, with malicious intent or other improper purpose.

4 The ITF Ethics Commission

The relatively large volume of integrity infractions by athletes and coaches and the low number of ethical violations by ITF officials has necessitated their diffusion to two distinct bodies. Whereas the ITF’s judicial entities entertain infractions of ITF/International Tennis Integrity Agency (ITIA) regulations by athletes and coaches, the ITF’s Ethics Commission possesses jurisdiction over the conduct of its ‘officials’. While this bifurcation is consistent with the practice of sports governing bodies experiencing large volumes of violations, those with smaller volumes do not set up a discreet ethics commission and hence generally subsume ethical disputes within the jurisdiction of an existing judicial entity. By way of illustration, the Badminton World Federation’s (BWF) Independent Hearing Panel (IHP) is its key dispute settlement body in respect of intra-governance and regulatory/ethical disputes. Under the terms of Article 7.5.1 of the BWF Judicial Procedures, it possesses authority over: (1) *integrity and ethics disputes* as these arise under the BWF Code of Ethics;³⁹ and (2) alleged breaches of the BWF Code of Conduct in respect of

³⁹ BWF Code of Ethics, available at: https://system.bwfbadminton.com/documents/folder_1_81/Statutes/CHAPTER-2—ETHICS/Section%202.1%20-%20Code%20of%20Ethics.pdf.

actions or omissions by electoral candidates⁴⁰ and elected officials.⁴¹ It also encompasses alleged infractions arising from the BWF Code on the Prevention of Manipulation of Competitions and the BWF Para Badminton Classification Regulations in respect of intentional misrepresentation.⁴² As the chapter will go on to demonstrate, the ITF's Independent Tribunal does exercise authority over ethical breaches, but only above a specific threshold.

It should be stated from the outset that while the ITF Code of Ethics confers jurisdiction on the Commission to investigate any infraction of the duties set out in the previous section, where the impugned official entertains a grievance against this process, he or she may ultimately resort to the English courts.⁴³ The case would be different where the ITF Constitution or other instrument conferred authority over such issues on the ITF's other judicial organs. As we go on to show, where an impugned official does not admit a violation under investigation by the Commission, the Chair may among other options refer the case to the ITF's Independent Tribunal, in accordance with Article 4.3 of Appendix 1 to the ITF Code of Ethics. In the event that such dispute is ultimately referred to English courts, they are bound to construe the Code in accordance with English law.⁴⁴

Appendix 1 to the ITF Code of Ethics establishes the Ethics Commission and sets out its mandate. The Commission is an independent body.⁴⁵ This in no way suggests that it is a judicial entity or an arbitral

⁴⁰ BWF Candidates for Election Code of Conduct, available at: www.badmintonpanam.org/wp-content/uploads/2018/04/2.2.1-Candidates-for-Elections-Code-of-Conduct-01062017.pdf.

⁴¹ BWF Code of Conduct for Elected Officials, available at: www.badmintonpanam.org/wp-content/uploads/2021/01/2.2.2-CC-Elected-Officials-Effective-Date-19-July-2020.pdf.

⁴² In 2017, the BWF set up an External Judicial Experts Group under Art. 31.1.4 of the 2017 version of the BWF Judicial Procedures to hear doping and ethics-related disputes (also referred to as the Doping Hearing Panel), but with the coming into effect of the current Constitution and Judicial Procedures, this entity has been effectively abolished. See <https://corporate.bwfbadminton.com/news-single/2017/07/13/experts-to-judge>. It did, however, entertain a few cases, such as *BWF v. Kate Jessica Foo Kune*, Decision 2019/04 (21 October 2019). The BWF appealed the decision to the Court of Arbitration for Sport (CAS) and as a result decided to refer future doping cases to the CAS. BWF-related anti-doping cases have been delegated under Art. 8.1.1 of the BWF's Anti-Doping Regulations to the CAS Anti-Doping Division, which it now has authority over first-instance hearings or waivers thereof and decision-making powers. The BWF Anti-Doping Regulations are available at: <https://extranet.bwf.sport/docs/document-system/81/1466/1468/2.3.%20Anti-Doping%20Regulations.pdf>.

⁴³ ITF Code of Ethics, Art. 4.4.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, Art. 1.1, Appendix I.

tribunal. It simply means that it is independent from other officials or entities within the ITF and that it is under no circumstances subservient to their authority or influence.⁴⁶ Even so, the ITF Board appoints the Chair, following which the Chair appoints other members, at least three of whom (inclusive of the Chair) must have a legal background.⁴⁷ No member may be removed other than for 'just cause'. The need for enhanced legal expertise aptly demonstrates that the ITF Code of Ethics has effectively been transformed into the species of legal ethics one finds at lawyers' bar associations and which bring about legal consequences. In short, these ethical duties are effectively binding duties. The Commission is aided by a Legal Secretary, to whom all communications are directed.⁴⁸ The Commission is tasked with oversight of elections and/or appointments to the Board of Directors. This function is both regulatory (i.e. approval of candidate rules) and adjudicatory, particularly in respect of candidate eligibility,⁴⁹ or concerning its determination as to whether an ethical duty has been breached.

4.1 Investigations

Any person or entity may file a complaint concerning potential violations of the Code.⁵⁰ Upon receipt, the Chair may request further information from the complainant.⁵¹ Where the Chair considers that the complaint is not frivolous or malicious and hence warrants investigation, an independent (from the ITF) investigator shall be appointed.⁵² In practice, investigators are members of the Commission.⁵³ Even so, the investigation is led by the Chair of the Commission and as such it may be instigated *proprio motu* without grounds even in the absence of a complaint (e.g. by an anonymous complaint).⁵⁴ The Chair may at any

⁴⁶ See *ibid.*, Art. 1.4.

⁴⁷ *Ibid.*, Art. 1.2.

⁴⁸ *Ibid.*, Art. 1.3.

⁴⁹ *Ibid.*, Art. 1.7.

⁵⁰ *Ibid.*, Art. 2.1. In the case against Evgenyi Zukiin, the complaint was filed by Tennis Europe Board of Management. See Decision of the ITF Ethics Commission (25 July 2022), available at: www.itftennis.com/media/8735/itf-ethics-commission-decision-zukiin-25-july-2022-publication.pdf.

⁵¹ *Ibid.*, Art. 2.3.

⁵² *Ibid.*, Art. 2.5.

⁵³ By way of illustration, Jack Anderson was tasked to investigate allegations against Evgeniy Zukiin. See Decision of the ITF Ethics Commission (25 July 2022).

⁵⁴ ITF Code of Ethics, Arts 2.6 and 2.7.

stage of the investigation approach an impugned official and after explaining how they may have breached the Code ask whether said official wishes to admit the breach. Admission culminates in termination of the investigation and imposition of sanctions, which if accepted by the impugned official will lead to a written decision that is binding on the parties and final.⁵⁵ If the impugned official does not admit the violation, the Chair may initiate or continue the investigation, make a finding or refer the case to the ITF's Independent Tribunal, in accordance with Article 4.3 of Appendix 1 to the ITF Code of Ethics. It is not improbable that the issue in question involves a criminal, administrative or other offence of the forum. In this case, the Chair may refer the matter to the relevant authorities, or if it is already under investigation therein, the Commission may pause its own investigation until the local authorities conclude theirs.⁵⁶

The investigation is not kept confidential from the parties. Rather, where this is initiated by the Chair of the Commission, the parties must be informed of the alleged violations, as well as 'the materials on which the Chair has relied in deciding that the matter warrants investigation'.⁵⁷ In all other respects, the proceedings are confidential and the same is true in respect of information arising from the investigation.⁵⁸ The investigated party may be represented by legal counsel at its own expense and make written submissions.⁵⁹ The investigator may seek evidence from any source, within or outside the ITF,⁶⁰ and if during the course of the investigation evidence arises concerning violations by other officials, the Chair may decide to expand the scope of the investigation.⁶¹ Upon conclusion of the investigation, the investigator shall make a comprehensive report with the available evidence and provide an assessment of culpability along with a recommendation as to whether the matter should be dealt with by the plenary of the Commission.⁶²

⁵⁵ Ibid., Arts 2.8 and 2.8.1.

⁵⁶ Ibid., Art. 2.9.

⁵⁷ Ibid., Art. 3.1.

⁵⁸ Ibid., Art. 9.1. Exceptionally, the Ethics Commission may publicise relevant information in order to inform the public, avoid reputational damage to the official and protect the integrity of the game, in accordance with *ibid.*, Art. 9.2.

⁵⁹ Ibid., Art. 3.3.

⁶⁰ Ibid., Art. 3.4.

⁶¹ Ibid., Art. 3.5.

⁶² Ibid., Art. 3.6.

4.2 *Decision Following the Investigator's Report: Aggravated and Non-Aggravated Breaches*

The Chair of the Commission has several options following receipt of the investigator's report. Depending on the sufficiency of the evidence and whether this meets the standard of proof, the Chair may request further investigation, dismiss the case,⁶³ proceed to a finding or otherwise refer the case to the ITF's Independent Tribunal.⁶⁴ Where the Chair accepts that a breach has occurred, it may issue a warning, a reprimand or a fine of US\$20,000 and/or a suspended period of ineligibility if it reckons that a higher and more aggravated sentence is disproportionate to the violation. The impugned official has twenty-one days from receipt of the decision to appeal it to the Independent Tribunal,⁶⁵ which shall sit as an appellate panel.⁶⁶ If no appeal is filed, the Commission's decision becomes final and binding.⁶⁷ It should be made clear that because the Commission is not an arbitral tribunal or a court, its decisions are binding as a matter of contract. This is best described as a species of expert determination, as is the case with the Independent Hearing Panel of the BWF.⁶⁸

Where the Chair considers that the violations are of a more serious nature, a written notice of charge will be served on the investigated official.⁶⁹ This shall advise the person that they have a case to answer, set out the provisions alleged to have been violated, in addition to the evidence relied upon and the sanctions sought by the Commission.⁷⁰ More importantly, the investigated person will be informed that in respect of serious breaches it is not the Commission that will adjudicate the dispute, but the Independent

⁶³ In ITF Ethics Decision against Bernard Guidicelli (16 November 2020) [*ITF Ethics Commission v. Guidicelli*], available at: www.itftennis.com/media/4294/itf-ethics-commission-decision-on-complaint-against-bernard-guindicelli.pdf, it was held that the official in question was only negligent and had not intentionally lied on his resume. The Commission decided to publish the decision in accordance with Art. 9.2.2. of its Code of Ethics in order to correct damaging information and avoid the spread of rumours.

⁶⁴ ITF Code of Ethics, Art. 4.1.

⁶⁵ *Ibid.*, Art. 4.2.

⁶⁶ Procedural Rules Governing Proceedings before an Independent Tribunal Convened under ITF Rules, Art. 9, available at: www.itftennis.com/media/5989/2019-procedural-rules-itf-iap.pdf.

⁶⁷ ITF Code of Ethics, Art. 4.2, Appendix 1.

⁶⁸ See Ilias Bantekas, 'The Dispute Resolution Mechanism of the Badminton World Federation: Sui Generis Expert Determination?' (2024) 20 South Carol J Int Law & Bus 1.

⁶⁹ According to Art. 7.1 of Appendix 1 to the ITF Code of Ethics, no notice charging an official with breach of the ITF Ethics Code may be sent more than twelve years after the date on which the breach is alleged to have occurred.

⁷⁰ ITF Code of Ethics, Arts 4.3.1–4.3.4, Appendix 1.

Tribunal, sitting as a first-instance body.⁷¹ This is an important development because the Independent Tribunal has the status of an arbitral tribunal and its awards are binding in accordance with the 1996 English Arbitration Act.

4.3 *The Suspensive Effect of the Notice of Charge*

Where a notice of charge has been issued, the Commission *may* provisionally suspend the official from all official duties.⁷² Article 4.4.1.1 goes on to add a layer of complexity by suggesting that where the provisional suspension is aimed at a Director, this shall be done in accordance with the laws of the Bahamas and the ultimate decision taken by the Board of Directors. This is clearly done because the ITF is incorporated as a commercial entity in the Bahamas and any action affecting its corporate governance must be consistent with the law of that country.

Provisional suspensions may be resisted by written application to the Independent Tribunal under Article 3.5 of the Tribunal's Procedural Rules.⁷³ The only admissible grounds by which to contest the suspension are that:

- a. the charge(s) has/have no reasonable prospect of being upheld, e.g., because of a patent flaw in the case against the Official; or
- b. other facts exist that make it clearly unfair, in all of the circumstances, to impose a provisional suspension prior to a full hearing on the merits of the charge(s) against the Official. This ground is to be construed narrowly, and applied only in exceptional circumstances.⁷⁴

In every other respect, the Independent Tribunal shall follow its prescribed rules and procedures and its Chairman shall determine whether an oral hearing is required in the circumstances of the case.⁷⁵

5 Recourse to the Independent Tribunal and CAS

The procedure provides ample opportunities for non-contentious resolution.⁷⁶ The official has fourteen days to respond to the notice of

⁷¹ Ibid., Art. 4.3.5.

⁷² Ibid., Art. 4.4, Appendix 1.

⁷³ Ibid., Art. 4.4.2.

⁷⁴ Ibid.

⁷⁵ Ibid., Art. 4.4.3.

⁷⁶ A significant incentive for the official is that if he or she loses its case the likelihood that the tribunal will order the payment of costs is very high. This includes the expenses of the Independent Tribunal, in addition to possible fines. See *ibid.*, Art. 6.4.

charges. Where the official admits the charges and consents to the proposed sanctions, this will be recorded by the Chair of the Commission in a published decision.⁷⁷ Where the official disputes the findings of the investigation and/or the sanctions, the case is referred to the Independent Tribunal.⁷⁸ In the event that the official does not offer a reasoned submission to the charges, it is presumed that he or she has not only waived his or her right to a hearing, but also accepted the charges. Consequently, the Commission will confirm the breaches in a public decision.⁷⁹

Article 5.3 of Appendix 1 to the ITF Code of Ethics emphasises that while proceedings before the Independent Tribunal are brought in the name of the ITF, the prosecuting party is the Ethics Commission. The latter may act on its own or instruct legal counsel to act on its behalf.⁸⁰ Exceptionally, if the official and the Ethics Commission so agree, the case may be referred directly to the CAS, the award of which will be subject to no further appeal.⁸¹

The decisions of the Independent Tribunal may be appealed by the official or the Commission *solely* to the CAS, just like all other decisions of this entity.⁸² In the event of an appeal by the official, the respondent will be the ITF and not the Commission.⁸³ Appeals against the decisions of the Independent Tribunal are referred to the jurisdiction of the CAS:

save that the appeal will only take the form of a *de novo* hearing where that is required in order to do justice (for example, to cure procedural errors at the hearing of first instance). In all other cases, the appeal will not take the form of a *de novo* hearing but instead will be limited to consideration of whether the decision of the Independent Tribunal that is being appealed was erroneous.⁸⁴

5.1 Sanctions

Sanctions are a necessary component of any value system, whether this is normative or ethical. Without appropriate and proportionate sanctions,

⁷⁷ Ibid., Art. 5.1.1.

⁷⁸ Ibid., Art. 5.1.2.

⁷⁹ Ibid., Art. 5.2.

⁸⁰ Ibid., Art. 5.3.

⁸¹ Ibid., Art. 5.5.

⁸² Ibid., Art. 5.4.

⁸³ Ibid.

⁸⁴ Ibid.

the goals of the Code of Ethics could never be achieved. Article 6.1 of Appendix 1 to the ITF Code of Ethics stipulates that any of the following sanctions may be imposed:

- 6.1.1. a warning as to future conduct (i.e., a reminder of the substance of the provision of the Code of Ethics that has been infringed, together with a threat of sanction in the event of further infringement);
- 6.1.2. a reprimand (i.e., an official written pronouncement of disapproval);
- 6.1.3. a fine in an amount proportionate to the breach;
- 6.1.4. an order of reimbursement or restitution;
- 6.1.5. removal of any award or other honour previously bestowed by the ITF;
- 6.1.6. removal from office, or suspension from office for a specified period;
- 6.1.7. disqualification from acting as a Director and/or as an Officer and/or as a Committee Member and/or as a Candidate for a specified period (of up to a lifetime); and/or
- 6.1.8. any other sanction(s) that may be deemed appropriate and proportionate.

The appropriate sanction shall be imposed by taking into regard all relevant factors, including the seriousness of the breach, the need to protect the integrity of tennis, deterrence, the existence of mitigating or aggravating circumstances and others.⁸⁵ In the case against Evgenyi Zukin, although it was found that the impugned official had slapped a colleague in public, the Commission acknowledged that the incident had taken place a few days following the Russian invasion of Ukraine (Zukin was a Ukrainian national) and hence the official was emotionally charged and there was evidence that his sincere apology had been accepted by the victim of his outburst. The Commission proceeded to impose a warning and a reprimand.⁸⁶ In the case against Iva Majoli, where the officer in question failed following several requests to complete her conflicts of interest declaration, the Ethics Commission considered that the appropriate sanction was a suspended period of ineligibility during which time Ms Majoli would not be permitted to participate in the ITF Coaches Commission.⁸⁷

⁸⁵ Ibid., Art. 6.2.

⁸⁶ See above note 20 for the Decision.

⁸⁷ ITF Ethics Commission Decision against Majoli, *ITF Ethics Commission v. Majoli*.

6 The Elections and Eligibility Panel

The Ethics Commission enjoys authority over the eligibility of candidates for election to the various positions within the ITF. The Chair and two other Commission members will form a sub-group with oversight of elections and/or appointment to the Board of Directors. This sub-group is known as the Elections and Eligibility Panel.⁸⁸ Its functions are:

- 1.9.1. to approve the Candidate Rules and issue updates to those Candidate Rules from time to time (the Candidate Rules as currently in force are set out at Appendix 4);
- 1.9.2. without prejudice to the procedures detailed in Article 3 to 6 of this Appendix, to ensure Candidates comply with the Candidate Rules;
- 1.9.3. to monitor and where necessary adjudicate upon (i) the eligibility of Candidates, and (ii) the ongoing eligibility of members of the Board of Directors (including the President) following their election or appointment, pursuant to Articles 19(c)(iii) and 21(l) of the ITF Constitution and in accordance with the provisions of Article 9 of this Appendix 1; and
- 1.9.4. to ensure the proper administration of all tasks relating to elections and/or appointments to the Board of Directors (including the President) in collaboration with the ITF (as more fully set out in the Commission's Terms of Reference).

In certain other sports governing bodies, this task, as well as/or the broader function of assessing applicants, is performed by so-called vetting bodies.⁸⁹

Where the Commission is tasked with assessing the eligibility of candidates who have been the subject of criminal convictions, the Ethics Commission is once against transformed into the Eligibility Panel. These issues are regulated by the ITF Constitution, particularly Articles 19(c)(iii) and 21(k) thereof. The role of the Commission is to determine whether the criminal conviction of an ITF official should result in the post becoming vacant.⁹⁰ The mere conviction of an ITF official does not automatically entail their dismissal from office. Indeed, the impugned official may plead their case by providing relevant documents and attend a hearing in inquisitorial proceedings if the

⁸⁸ ITF Code of Ethics, Art. 9.1, Annex 1.

⁸⁹ BWF Constitution, Appendix II, available at: <https://extranet.bwf.sport/docs/document-system/81/1466/1467/BWF%20Constitution%20-%20May%202023.pdf>.

⁹⁰ ITF Code of Ethics, Art. 8.1, Annex 1.

Commission so determines.⁹¹ The Commission shall determine the case by simple majority and provide reasons. Its decision shall be final without recourse to appeal. Its determination, however, can be subject to challenge as a decision of the Board of Directors, in accordance with the ITF Constitution's provisions on internal arbitration (i.e. through the Independent Panel) and recourse to the CAS (ordinary arbitration procedure).⁹²

⁹¹ Ibid., Art. 8.2.

⁹² Ibid., Art. 8.3.