

The Regulation of Legal Ethics in Professional Tennis

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The International Tennis Federation (“ITF”) has carved a small place for the ethical regulation of its officials and in addition created an independent ethics commission to administer disputes under its ethics code. The limited application of the code and the commission is evident from the fact that the majority of issues regulated by the ITF through its internal institutional rules is subjected to the jurisdiction of one or more arbitral tribunals. Even so, the role of the ITF’s Ethics Commission is not trivial. It has authority to investigate any action whereby an official brings the sport into disrepute, from bribe-taking to indecent behavior in and off the tennis courts, as well as any actions that interfere with its nomination and election processes. It is suggested that ethical instruments and entities of this kind enhance the work of international sports governing bodies, but ultimately such bodies rely on arbitral awards to retain some degree of consistency and uniformity in their overall work. This is something that ethics commissions cannot deliver. While 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 key aim of the article is to demonstrate how a top-range Sport Governing Body (“SGB”) such as the ITF regulates ethical issues and in what manner it integrates these within its broader range of regulated conduct and disputes. Ultimately, on the basis of the available evidence, ethical regulation occupies a rather minute part of the ITF’s broader regulatory scheme.

I. INTRODUCTION	186
II. WHAT ARE ETHICS AND ARE THEY DIFFERENT FROM LAW?	192
III. THE ITF’S SUBSTANTIVE ETHICAL RULES	194
A. Covered Persons.....	194
B. Basic Obligations	195
C. Other Substantive Duties and Obligations	196
IV. THE ITF ETHICS COMMISSION	199
A. Investigations.....	201
B. Decision Following the Investigator’s Report: Aggravated and Non-Aggravated Breaches.....	203
C. The Suspensive Effect of the Notice of Charge.....	204
V. RECOURSE TO THE INDEPENDENT TRIBUNAL AND CAS	204
A. Sanctions.....	205
VI. THE ELECTIONS AND ELIGIBILITY PANEL	206
VII. CONCLUSION	207

I. INTRODUCTION

The vast majority of professional and amateur sports are regulated by a single Sport Governing Body (“SGB”) at the international level. This is the case with World Athletics (track and field), World Aquatics (swimming-related sports) and the Fédération Internationale de Football Association (FIFA) (which went ahead to create continental confederations such as the Union of European Football Associations (UEFA)). Unlike these other sports, professional tennis is ‘regulated’ by three distinct entities (namely, the ITF, WTA and ATP). The key criterion for each is the level of tournaments they can organize, which itself is predicated on the participation of the world’s elite players. The International Tennis Federation (“ITF”) organizes the four Grand Slams,¹ and on behalf of the International Olympic Committee (“IOC”) it also administers the Davis Cup and the Olympic tennis tournament. Even so, it does not organize the most lucrative events, and that is one of the reasons why it has turned its sights to organized gambling as a means of bolstering its income.² Unlike the vast majority of SGBs that are typically organized as non-profit associations,³ the ITF is incorporated as a limited liability company in the Bahamas,⁴ but is otherwise headquartered

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¹ *Grand Slam Tournaments*, INT’L TENNIS FED’N, <https://www.itftennis.com/en/itf-tours/grand-slam-tournaments/> [https://perma.cc/8HUY-H6ER] (last visited Mar. 18m 2025) (noting the four Grand Slams (Australian Open, French Open, Wimbledon and US Open) as well as the Davis Cup are regulated by the ITF. There is agreement between the Grand Slams and the Association of Tennis Professionals (ATP) as to the use of ATP entry and ranking systems for qualification and ultimate ranking, save for Wimbledon which in addition to the ATP formula applies its own rules).

² In September 2023, the ITF announced that following a fresh bid, Sportradar was to be replaced by Infront until 2029. *See Infront to Become ITF Official Data Partner*, INT’L TENNIS FED’N (Sep. 15, 2023), <https://www.itftennis.com/en/news-and-media/articles/infront-to-become-itf-official-data-partner/> [https://perma.cc/5WZD-NZ5W]; see ADAM LEWIS QC ET. AL., INDEPENDENT REVIEW OF INTEGRITY IN TENNIS ¶102 (2018), <https://www.itia.tennis/media/bjuateer/irp-report-final.pdf> [https://perma.cc/T6FB-8JFT] (emphasizing the “strong causal connection between the sale of official live scoring data to the Lowest Level and the growth in betting on matches at that level.”).

³ Int’l Olympic Comm., *Olympic Charter*, § 15, ¶ 1 (Jan. 30, 2025), <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/IOC-Publications/EN-Olympic-Charter.pdf> [https://perma.cc/DE7U-DMWA]; see Margareta Baddeley, *The Extraordinary Autonomy of Sports Bodies Under Swiss Law: Lessons to be Drawn*, INT’L SPORTS L.J., Dec. 20, 2019, at 3, 5, <https://link.springer.com/content/pdf/10.1007/s40318-019-00163-6.pdf> [https://perma.cc/E8EF-R63M]; see also Ilias Bantekas & Hakan Sahin, *Non-Profit Entities as Foreign Investors? The Case of Sport Governing Bodies*, 60 STAN. J. INT’L L. 70, 70 (2024).

⁴ Int’l Tennis Fed’n, *The Constitution Of ITF Limited 2025: Trading As International Tennis Federation*, § III, at 1, (2025) <https://www.itftennis.com/media/2431/the-constitution-of-the-itf-2024-web.pdf> [https://perma.cc/WKC7-MD5Z]; Until 2018, companies registered in the Bahamas but operating exclusively outside of the country, as was the case with the ITF, (which is headquartered in London and without any events in the Bahamas) were entitled to preferential exemptions from taxes in accordance with the International Business Companies Act 2017, c. 309 (Bah.); the Exempted Limited Partnership Act 2001 c. 312 (Bah.); the Investment Condominium Act 2014 (Bah.); and the Executive Entities Act 2011 (the “Preferential Exemption Acts”). Under pressure from the Organization for Economic Cooperation and Development (OECD) such laws had to be scrapped and in 2018 they were replaced by the Removal of Preferential Exemption Act 2018 (Bah.); see Bantekas and Sahin, *supra* note 3, at 81–83.

in London.⁵ The Association of Tennis Professionals (“ATP”), which is organized as a non-profit entity, is the governing body of only some men’s professional circuits, namely the ATP Tour, the ATP Challenger Tour and the ATP Champions Tour. The ATP Tour is effectively the most lucrative tennis event in the world of male tennis and attracts the highest level of sponsorship and advertising.⁶ Even so, the governance of the ATP has traditionally excluded professional players from any serious representation,⁷ which has led to the unionization of current and former professionals with a view to having a greater role in the game’s governance.⁸ Since the era known as “Open Tennis” in 1968, professional players have endeavored to influence the governance of tennis through the transformation of the ATP and WTA.⁹ Professional athletes are ‘workers’ and when the ATP and WTA served as player associations, one is justified in as performing the role of professional tennis player unions. However, when the ATP and WTA were transformed into corporate entities with limited player participation in their board of governance,¹⁰ they no longer functioned as unions. That is why the need for a distinct union under the banner of the PTPA was formed as distinct from the ATP and WTA in order to better serve the interests of players. An additional peculiarity of tennis is the bifurcation of men

⁵ Bantekas & Sahin, *supra* note 3, at 82.

⁶ *Tournaments*, ASS’N TENNIS PRO. TOUR, <https://www.atptour.com/en/tournaments> [<https://perma.cc/LF52-UVW5>] (last visited Feb. 10, 2025); see also Ilias Bantekas, *Dispute Resolution in the Badminton World Federation: Sui Generis Expert Determination?*, 20 S. C. J. INT’L L. BUS. 1, 6 (2023).

⁷ See Elizabeth Priest, *Working Toward Break Point: Professional Tennis and the Growing Problem with Employee and Independent Contractor Misclassifications*, 75 SMU L. REV. 943, 944–47 (2022); U.N. Office High Comm. Hum. Rts., *United Nations Guiding Principles on Business and Human Rights*, U.N. Doc. HR/PUB/11/04 (2011); Brendan Schwab, *Protect, Respect and Remedy: Global Sport and Human Rights*, 4 INT’L SPORTS L. REV. 52, 52–53 (2019); Matt Fitzgerald, *The ATP in 2021: The ATP Player Council vs. the PTPA*, TENNIS (Dec. 27, 2020), <https://www.tennis.com/news/articles/the-atp-in-2021-the-atp-player-council-vs-the-ptpa> [<https://perma.cc/EXV4-5W2V>]. All this ultimately led to the creation of the Professional Tennis Players Association (PTPA). See PTPA (Professional Tennis Players Association), <https://www.ptpaplayers.com/> (last visited Feb. 10, 2025); *The Professional Tennis Players Association Appoints Eight Players to First-Ever Executive Committee; Unveils Principles to Respect, Protect & Guarantee Fundamental Rights*, PTPA (Jan. 10, 2023, 10:23AM), <https://www.ptpaplayers.com/the-professional-tennis-players-association-appoint-eight-players-to-first-ever-executive-committee-unveils-principles-to-protect-respect-guarantee-fundamental-rights/> [<https://perma.cc/EXL3-LQ9U>] [hereinafter *PTPA Executive Committee*].

⁸ *PTPA Executive Committee*, *supra* note 7 (noting the first principle of the PTPA is geared toward setting up a framework of trade union rights among its members, chiefly predicated on a “collective”, “freedom of association”, and “the right to organize”. It acknowledges that “[t]ennis is predominantly an individual sport, but that should not mean individual players are isolated and divided.”).

⁹ Elizabeth Priest, *Working Toward Break Point: Professional Tennis and the Growing Problem with Employee and Independent Contractor Misclassifications*, 75 SMU L. REV. 943, 947–949 (2022).

¹⁰ The ATP Board consists of a Chairman, four tournament representatives, and four player representatives. The twelve-member *ATP Player Advisory Council* delivers advisory decisions to the Board of Directors, albeit these are not binding. See *Articles of Incorporation*, art. 8., Int’l Tennis Fed. Tour, <https://s3.eu-west-2.amazonaws.com/document-api-images-live.ch.gov.uk/docs/qkow6QCm4ITqi0hVCTIAIOLJG4ZM0lrInTETdZbkszk/application-pdf?X-Amz> (last visited April 10, 2025).

and women under distinct SGBs. The Women's Tennis Association ("WTA"),¹¹ founded in 1973, is responsible for professional tournaments for women. This includes the WTA Tour, but not the Grand Slam, the Davis Cup, and the Olympic tennis tournament, all of which are organized in the same manner as the men's game by the ITF.¹² Although female professionals have not been as active in unionizing as their male counterparts, there are a number of features of their game that are controversial, including equal pay¹³ and human rights more generally.¹⁴ Given the complexity of the three-fold organization of global tennis and the fact that all three entities earn significant profits, there is little prospect of change.

There is little doubt that all three entities have promulgated an elaborate set of internal rules with the aim of regulating all aspects of the game, both on-court rules,¹⁵ as well as out-of-court conduct. The latter includes rules on match-fixing and corruption,¹⁶ more generally, doping,¹⁷ some degree of human rights,¹⁸

¹¹ WOMEN TENNIS ASS'N, <https://www.wtatennis.com> [https://perma.cc/T78Y-862V] (last visited Feb. 10, 2025).

¹² *Tournaments*, WOMEN TENNIS ASS'N, <https://www.wtatennis.com/tournaments> [https://perma.cc/FX92-D5LF] (last visited Feb. 10, 2025); see also *WTA Prize Money Leaders*, WOMEN TENNIS ASS'N (Nov. 6, 2023), https://wtafiles.wtatennis.com/pdf/rankings/PrizeMoney/prize_money_2023.pdf [https://perma.cc/E7GS-J7SP].

¹³ See Matthew Futterman, *WTA Facing Rebellion from Numerous Top Players Over Pay and Conditions on Women's Tour*, THE ATHLETIC (Oct. 13, 2023), <https://theathletic.com/5014481/2023/10/30/wta-female-players-letter-push/> [https://perma.cc/9P39-7JZ6]; Isabel Cepeda, *Wage Inequality of Women in Professional Tennis of the Leading International Tournaments: Gender Equality vs Market Discrimination?* 22 J. INT'L WOMEN'S STUD. 407, 407–09 (2021); Collin R. Flake, *Getting to Deuce: Professional Tennis and the Need for Expanding Coverage of Federal Anti-Discrimination Laws*, 16 TEX. REV. ENT. SPORTS L. 51, 51–54 (2014); Collin R. Flake et al., *Advantage Men: The Sex Pay Gap in Professional Tennis*, 48 INT'L REV. SOC. SPORT 366, 373–74 (2013) (suggesting that female tennis players' exposure to media is far lower as compared to male tennis players and this is also true regarding their salaries).

¹⁴ See generally Ilias Bantekas, *Human Rights Concerns in Professional Tennis*, 34 MARQ. SPORTS L. REV. 115 (2023) (criticizing human rights record of professional tennis, particularly its three SGBs).

¹⁵ See generally Int'l Tennis Fed., *ITF Rules of Tennis*, (2025), <https://www.itftennis.com/media/7221/2025-rules-of-tennis-english.pdf> [https://perma.cc/HNE8-V92Y].

¹⁶ See Int'l Tennis Integrity Agency, *Tennis Anti-Corruption Program (2024)*, at 1–5 (Jan. 01, 2024), <https://www.itia.tennis/media/rmhpqcfq/tacp-2024.pdf> [https://perma.cc/5LVG-85LJ] (noting in 2020 the ITF established an independent entity, known as the International Tennis Integrity Agency (ITIA). It was formed as a limited liability company in the UK, without share capital. In 2021, the ITIA replaced the corruption-related functions of its predecessor, the Tennis Integrity Unit).

¹⁷ Int'l Tennis Integrity Agency, *Tennis Anti-Doping Program 2024*, ¶ 1.1.1, (Jan. 01, 2024), <https://www.itia.tennis/media/10ojihy2/tadp-2024.pdf> [https://perma.cc/KP74-AAEL] (noting the ITF is a signatory to the World Anti-Doping Code (WADC) and is accountable for its compliance with its own tennis-specific code).

¹⁸ See generally Bantekas, *supra* note 14 (noting that since SGBs effectively operate as corporations, it is no surprise that the transnational legal framework has been described as being akin to the growing field of business and human rights).

as well as dispute resolution.¹⁹ This detailed regulation of professional tennis, in conjunction with whatever state mandatory law may equally be applicable, is not viewed or designated as ethical by any of the concerned stakeholders. Doping or corruption disputes, at least from a sports-related perspective (as opposed to their criminal law dimension), are resolved through arbitration and culminate in binding arbitral awards.²⁰ This is not the case with the residual issues designated as ethical by the three tennis SGBs, which form the substance of this paper. This suggests that ethical rules were never high on the agenda of the three SGBs.

It may not be apparent in what manner a discussion of ethics would add value to this otherwise vast array of institutional rules. Indeed, non-ethics experts are usually surprised when they realize 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. The distinction between ethical and normative rules is relatively clear in national legal systems, as is the case with lawyers' bar associations and state laws.²¹ Sub-state institutions, such as lawyer associations or arbitral institutions adopt institutional rules that are binding by reason of contract (or association, if different) and these rules must be consistent with the laws of the forum. Hence, the distinction between ethical and normative (i.e., as is the case with the regulation of the legal profession) is blurred, if not eliminated, in national legal systems, chiefly because 'ethical' rules carry the same kind of obligations and consequences as ordinary rules (i.e., lawyers risked getting disbarred and tort liability for breaching client confidentiality).

Whereas SGBs, on the other hand, do not view their institutional rules as ethical in nature. Doping and match-fixing are treated as breaches that attract expulsion from the sport and possibly also fines.²² It is required by treaties that

¹⁹ See Ilias Bantekas, *The Resolution of Professional Tennis Disputes*, 14 J. INT'L DISP. SETTLEMENT 1, 1–4 (2023) (noting the ITF, among others, has established an independent tribunal, which issues awards in the same manner as other arbitral tribunals, as well as a Panel, which does not possess such authority. Depending on the issue, decisions or awards of either body may be appealed to the Court of Arbitration for Sport).

²⁰ The World Anti-Doping Code (WADC), adopted by the World Anti-Doping Agency (WADA) is now integrated in all SGB institutional rules. These generally provide that any alleged doping violations are assessed by an internal organ (arbitral or otherwise) of the SGB in question, with any appeals against the decision of said internal organs being referred to for final determination to the Appeals Chamber of CAS. See PAUL DAVID, A GUIDE TO THE WORLD ANTI-DOPING CODE 328–535 (2017) (noting this page range covers the relevant chapters eight through ten).

²¹ See e.g., Int'l Bar Ass'n, *Rules of Ethics for International Arbitrators*, <https://www.ibanet.org/document?id=Rules-of-ethics-for-international-arbitrators> [<https://perma.cc/27M9-UFJZ>] (last visited Feb. 10, 2025); Int'l Bar Ass'n, *International Bar Association International Code of Ethics* (1988), <https://www.ibanet.org/MediaHandler?id=DAD036E7-AF03-4BFC-806B-6A5CA4A0775A> [<https://perma.cc/WU6K-BZC8>]; *SRA Standards and Regulations*, SOLIC. REG. AUTH., <https://www.sra.org.uk/solicitors/standards-regulations/> [<https://perma.cc/6FXS-4C5M>] (last visited Feb. 10, 2025).

²² See e.g., Int'l Ass. Athletics Fed'n, IAAF Medical & Anti-Doping Department: Advisory Note — Anti-Doping Rule Violations and Sanctions, 2015 (2015).

SGBs be wholly independent from states²³ whether home states or other in which they operate. Politically, state institutions have not traditionally interfered in their law-making, even when their rules and practices violated anti-competition laws.²⁴ SGB institutional rules are binding by reason of contract²⁵ and are largely autopoietic in nature. All disputes thereunder are subject to pre-defined arbitral mechanisms. National courts have been disinclined from subjecting these contracts or institutional rules to the same degree of scrutiny one finds in adhesion or other contracts encompassing a much weaker party.²⁶ By way of clarification, national courts do not possess jurisdiction over sport-related disputes because the parties subject all such disputes to specialized arbitration. Even so, national courts do enjoy authority to review these awards and decide whether they comply with fundamental human rights or public policy. The ongoing *Semenya* case, which is now before the European Court of Human Rights (“ECtHR”), clearly supports this conclusion.²⁷

²³ Olympic Charter, *supra* note 3, art. 15(1) (noting the IOC’s constitutional instrument is its Olympic Charter and section 15(1) of the Charter states that: “The IOC is an international non-governmental not-for-profit organisation, of unlimited duration, in the form of an association with the status of a legal person, recognised by decree of the Swiss Federal Council in accordance an agreement entered into force on 1 November 2000.”); see *Council of Europe Convention on the Manipulation of Sports Competitions*, COUNCIL EUR., art. 1(1) (Sept. 14, 2014), <https://rm.coe.int/16801cdd7e> [<https://perma.cc/83NA-XNAD>]; *Fédération Internationale de Football Ass’n, 2022 FIFA Statutes May 2022 Edition*, art. 15 (Mar. 31, 2022), https://digitalhub.fifa.com/m/3815fa68bd9f4ad8/original/FIFA_Statutes_2022-EN.pdf [<https://perma.cc/BYT4-6T9V>].

²⁴ See Case C-124/21, *International Skating Union v. EU Comm.*, ECLI:EU:C:2023:1012, ¶¶ 136-138 (Dec. 21, 2023); Case C-33/21, *European Super League Co. v. Union of Euro. Football Ass’n (UEFA) and Fédération Internationale de Football Ass’n (FIFA)*, ECLI:EU:C:2023:1011, ¶¶ 129-130 (Dec. 21, 2023) (noting both cases involved SGBs, namely UEFA, FIFA and the ISU that restricted their members’ capacity to form break-away leagues or participate in external tournaments); Ilias Bantekas & Pablo J. Mercado, *Addressing the Unfettered Authority of Sport Governing Bodies Through EU Competition Law: The Effect of International Skating Union and European Super League*, 46 CAMBRIDGE Y.B. EUR. L. STUD. 1, 1–5 (2024).

²⁵ The *lex sportiva* is effectively a vertical line of contracts with the IOC at the apex, followed by SGBs, then by national sport federations, whereas at the bottom one finds national clubs and individual athletes. See Alan Sullivan, *The Role of Contract in Sports Law*, 5 AUSTL. N.Z. SPORTS L.J. 1 (2015); John H. Shannon & Richard Hunter, *Principles of Contract Law Applied to Entertainment and Sports Contracts: A Model for Balancing the Rights of the Industry with Protecting the Interests of Minors*, 48 LOY. L.A. L. REV. 1171 (2015); see also, *Baker v. Jones* [1954] 1 WLR 1005 (Eng.) (concerning whether an SGB, the British Amateur Weightlifters’ Association, could bypass its own by-laws in order to pay legal costs on behalf of its members. The court held that the bylaws in constitution constituted a contract); *Enderby Town v. Football Association* [1971] EWCA Civ J1012-4 (Eng.).

²⁶ See, e.g., *Semenya v. Switz.*, App. No. 10934/21, ¶¶ 175-177, Eur. Ct. H.R. (July 11, 2023), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-226011%22%7D> [<https://perma.cc/24G9-RXUM>] (noting that in *Semenya v. Switzerland*, the CAS failed to take into consideration several fundamental human rights of the applicant. Despite the existence of article 396(2) of the Swiss Code of Civil Procedure permitting that the parties may request the Federal Supreme Court to review an arbitral award on the ground that it has violated the European Convention of Human Rights (ECHR), the Court declined the argument that Swiss public policy had been violated by the CAS award, thus upholding the internal instrument of World Athletics); *Tribunal fédérale [TF] Aug. 25, 2020, 4A_248/2019 (Switz.)*; *Tribunal fédérale [TF] Aug. 25, 2020, 4A_398/2020 (Switz.)*.

²⁷ Ilias Bantekas, *Sport Arbitration and Human Rights: An Overview of the Semenya Judgment before the European Court of Human Rights*, HARV. HUM. RTS. J. (forthcoming 2025).

As a result of this state of affairs, the vast majority of SGB institutional rules are defined as either contracts or as transnational law, otherwise known in this context as *lex sportiva*.²⁸ The latter suggests a species of private custom or industry practice that is viewed by state laws as being of equal value as formal (state) law.²⁹ Hence, it is very rare that the need for ethical rules arises in the law-making function of SGBs.

This article aims to fill the ethical gap that was not touched upon by the institutional rules adopted by the aforementioned SGBs. The article's focus shall be restricted to the ethical regulation of the ITF and hence will not examine equivalent developments in national tennis federations, the WTA, or the ATP.³⁰ Given the limited scope of this article, it shall not cover the 2022 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.³¹ Hopefully based on the analysis offered in this article, readers will appreciate ethical rules as these are promulgated and applied by all tennis entities.

The article concentrates on the various ethical duties set out in the ITF Code of Ethics³² 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 article goes on to show that while 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 Commissions further enjoys authority to assess whether candidates comply with the ITF's Candidacy Rules.

The article is organized as follows: Section 2 explores briefly how ethics differ from formal statutory regulation. Section 3 discusses the key ethics instrument in the ITF's armory. Its various subsections set out the range of covered persons, and their basic obligations. Section 4 analyses the specialist

²⁸ See Antoine Duval, *Transnational Sports Law: The Living Lex Sportiva*, in THE OXFORD HANDBOOK OF TRANSNATIONAL LAW 493, 493–95 (Peer Zumbansen ed., 2021); Leonardo Casini, *The Making of a Lex Sportiva by the Court of Arbitration for Sport*, 12 GER. L.J. 1317, 1317–20 (2011).

²⁹ GUNTHER TEUBNER, *Global Bukowina: Legal Pluralism in the World Society*, in GLOBAL LAW WITHOUT A STATE 15, 15–18 (Gunther Teubner ed., 1997) (noting the ultimate validation of *lex mercatoria* rests on the fact that not all legal orders are created by the nation state and accordingly that private orders of regulation can create law).

³⁰ ASS'N TENNIS PRO., *The Code*, in THE 2023 ATP OFFICIAL RULEBOOK 205, 205–39 (2023) (noting 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).

³¹ See generally Int'l Tennis Fed'n, *Code of Conduct Men's and Women's IIF World Tennis Tour 2023* (2023), <https://www.itftennis.com/media/8955/world-tennis-tour-code-of-conduct.pdf> [https://perma.cc/R3J7-89YB] (noting there are several ethical rules in this Code).

³² *Id.* (noting the Code was adopted in 2019 and slightly amended in 2023. The most notable additions in the 2023 version were references to WTA and ATP employees regarding duties of loyalty and disclosure).

quasi-judicial entity established by the ITF to adjudicate ethical infractions, namely the Ethics Commission. Section 5 examines in what manner decisions from the Commission may be appealed to CAS and the range of available sanctions. Section 6 explores the role and function of the Elections and Eligibility Panel.

II. WHAT ARE ETHICS AND ARE THEY DIFFERENT FROM LAW?

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.³³ 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 citizen's rights.³⁴ Such ethical rules with defined consequences arise for most professional fields, regardless of their classification as regulated 'professions' or not.³⁵

There are several models of regulation for the professions and it is assumed that these models apply also to non-recognized professions, such as the executive, judicial or governing entities and persons of sport governing bodies.³⁶ 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

³³ For instance, the American Institute of CPAs (AICPA) subjects its members to standards contained in the AICPA Code of Professional Conduct. See generally *AICPA Code of Professional Conduct*, AICPA (Dec. 14, 2014), <https://pub.aicpa.org/codeofconduct/Ethics.aspx> [<https://perma.cc/2PDP-6ACX>]; see also Tax Executive Committee, *Statements on Standards for Tax Services No. 1-7 (Prior to 1/1/2024)*, AICPA (Apr. 29, 2018), <https://www.aicpa-cima.com/resources/download/statements-on-standards-for-tax-services-no-1-7> [<https://perma.cc/V36U-B85W>].

³⁴ See DAVID CLEMENTI, REVIEW OF THE REGULATORY FRAMEWORK FOR LEGAL SERVICES IN ENGLAND AND WALES: FINAL REPORT 81–92 (David Clementi ed., 2004).

³⁵ See Austin Sarat, *The Profession versus the Public Interest: Reflections on Two Reifications*, 54 STAN. L. REV. 1491, 1493–96 (2002); Directive 2005/36/EC, ¶43, 2005 O.J. (L 255) 22 (noting the EU Directive on Recognition of Professional Qualifications defines liberal professions as "those practised 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.").

³⁶ For a sociological perspective, see ANDREW ABBOTT, THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR 2-3 (Univ. of Chicago Press ed., 1988).

the approval of a regulator and; *competitive regulation*, which is grounded on enhanced regulation following consultation with the profession.³⁷

In practice, the professions have been allowed to self-regulate attendant ethical issues and considerations and the same is true with respect to sport governing bodies through so-called *lex sportiva*.³⁸ 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. The original punishment for a breach of ethical standards for arbitrators was 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 Arbitration³⁹ 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.⁴⁰

All institutional rules encompass relevant ethics provisions, in addition to more detailed ethical codes, such as the International Bar Association (“IBA”) Rules of Ethics for International Arbitrators.⁴¹ 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.⁴² As a result, while ethical

³⁷ JONATHAN HERRING, *LEGAL ETHICS* 76 (Oxford Univ. Press ed., 2017).

³⁸ See Duval, *supra* note 28, at 450–53; Casini, *supra* note 26, at 1321–24 (noting both articles emphasize 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).

³⁹ U.N. COMM’N ON INT’L TRADE L., UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION 1985: WITH AMENDMENTS AS ADOPTED IN 2006, Art 12(1), U.N. Sales No. E.08. V.4 (2008).

⁴⁰ *Id.*

⁴¹ *Rules of Ethics for International Arbitrators*, *supra* note 21. Codes of ethics are nowadays also abound in bilateral and multilateral instruments that have little to zero connection with ethical determinations. See Council Decision 2011/265, 2011 O.J. (L 127) 1, 1342 (EU) (EU South Korea Free Trade Agreement) (noting mini codes of ethics may also be found in some multilateral treaties); see also North American Free Trade Agreement art. 19–20, Dec. 17, 1992, 32 I.L.M. 289 (describing the code of conduct prescribed for persons sitting on dispute settlement panels).

⁴² It is clear that there is no consensus on a single test of impartiality and hence it is of little surprise that tests of all latitudes are in existence throughout the globe. Compare *AT&T Corp. v Saudi Cable Co.*, [2000] 2 Lloyd’s Rep. 127 (Eng.) (noting English courts are generally in agreement that the appropriate test for impartiality is that of “real possibility of bias”), and *Rules of Ethics for International Arbitrators*, *supra* note 21, §§ 3–4 (providing that prospective arbitrators should disclose all facts or circumstances that may give rise to “justifiable doubts” as to their impartiality), with Portuguese Chamber of Commerce Arbitrators’ Code of Ethics, art. 3(1),

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.⁴³

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, but these have played no obvious role in the design of the ITF's ethics rules. *Deontology* pays less attention to the consequences of one's actions⁴⁴ and elevates one's adherence or application to a set of rules. Thus, a deontologist will be justified in acting 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.⁴⁵ The keen reader will perhaps distill some of these theories in the ITF's Code of Ethics. In the opinion of this author, the ITF's ethical rules, as indeed those of all SGBs, are largely predicated on deontological ideals, despite the absence of philosophical discourses among their drafters.

III. 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.⁴⁶ The point of reference for our discussion is the ITF's Code of Ethics [Code]. It expressly builds on the IOC Code of Ethics⁴⁷ and best practice.

A. Covered Persons

https://www.centrodearbitragem.pt/xms/files/Arbitrators_Code_of_Ethics_2014.pdf [https://perma.cc/P48D-VUWA] (last visited Mar. 18, 2025) (introducing an "absolute" impartiality test).

⁴³ 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 Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673 (7th Cir. 1983); *Brandeis Instel, Ltd. v. Calabrian Chems. Corp.*, 656 F. Supp. 160 (S.D.N.Y. 1987); *Reeves Bros., Inc. v. Capital-Mercury Shirt Corp.*, 962 F. Supp. 408 (S.D.N.Y. 1997).

⁴⁴ Paul Zwier, *The Consequentialist/Nonconsequentialist Ethical Distinction: A Tool for the Formal Appraisal of Traditional Negligence and Economic Tort Analysis*, 26 B.C.L. REV. 905, 906–09 (1985).

⁴⁵ Herring, *supra* note 37, at 26–27.

⁴⁶ See Bantekas, *supra* note 14, at 3–4 (discussing the various arbitral and quasi-judicial entities in the ITF's armory).

⁴⁷ See generally Int'l Olympic Comm., *Code of Ethics*, (Aug. 2024), <https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/Documents/Code-of-Ethics/Code-of-Ethics-ENG.pdf> [https://perma.cc/PH7Y-FZLA].

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 2.8.⁴⁸

The Code is concerned with ITF’s integrity and 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 impugned action also befalls the authority of the host state’s (forum) criminal or labor courts.⁴⁹ All the obligations incumbent upon ITF officials are subject to a test of either knowledge, intention, recklessness, or negligence.⁵⁰ Were the same breaches to be decided before the criminal courts of the country with jurisdiction, the standard of proof for assessing liability would be different, as would also be the standards of evidence.

B. Basic Obligations

The ITF Code of Ethics distinguishes between general ‘basic’ obligations, which are meant to guide all actions of ITF officials from 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

⁴⁸ Int’l Tennis Fed’n, *ITF Code of Ethics*, art. 1.3 (Apr. 1, 2023) <https://www.itftennis.com/media/7246/2023-itf-code-of-ethics-english.pdf> [https://perma.cc/97XX-K8SQ].

⁴⁹ *Id.* art. 1.6.

⁵⁰ *Id.* art. 2.

ground; and not committing any form of harassment or abuse of any person, whether physical, professional, sexual, psychological or otherwise;⁵¹

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.⁵²

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. It is the opinion of this author that the private lives of ITF officials are inextricably interwoven with their professional dimension by reason of contract. There is no discernible limit in the ITF’s Rules or its practice. In the opinion of this author, because ITF covered persons serve as ambassadors of the ITF’s global brand, any integrity violation has the potential to harm said brand. The violation of Article 2.1 therefore will culminate in a right of dismissal by the ITF.⁵³

C. Other Substantive Duties and Obligations

A key duty of officials is that of “undivided loyalty” to the ITF.⁵⁴ 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.⁵⁵ In addition, where there is an apparent, actual, or potential conflict of interest,⁵⁶ the official in question must make a full disclosure to the ITF without delay.⁵⁷ This duty is of a continuing nature for all positions within the ITF. Directors are required to present an annual disclosure statement, while other officials are bound to do so every two years.⁵⁸ Any covered person subject to a conflict must excuse themselves from a

⁵¹ See Int’l Tennis Fed’n, *ITF Ethics Commission Decision on Zukin*, at 5 (July 25, 2022), <https://www.itftennis.com/media/8735/itf-ethics-commission-decision-zukin-25-july-2022-publication.pdf> [<https://perma.cc/2MT6-6V2Z>] (finding that slapping another official during dinner—outside official ITF duties—was found to be a breach of this provision).

⁵² *Id.* (bringing the ITF and the game of tennis into disrepute).

⁵³ ITF Code of Ethics, *supra* note 48, art. 2.1.

⁵⁴ *Id.* art. 2.2.

⁵⁵ *Id.* art. 2.2.1.

⁵⁶ ITF Ethics Comm’n, *Code of Ethics a Guide to Conflict of Interest Declarations*, (Dec. 2021), <https://www.itftennis.com/media/7245/ethics-commission-conflict-of-interest-guidance-english.pdf> [<https://perma.cc/C5MG-S3LW>].

⁵⁷ ITF Code of Ethics, *supra* note 48, art. 2.2.2.

⁵⁸ Int’l Tennis Fed’n, *ITF Ethics Commission Decision on Majoli*, at 1 (Aug. 3, 2022), <https://www.itftennis.com/media/8678/itf-ethics-commission-decision-majoli-3-august-2022.pdf> [<https://perma.cc/3CQY-AU2H>] (noting 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”).

meeting even if the conflict has been registered in a disclosure statement.⁵⁹ Conflicts of interest may give rise to a breach of employment contracts, may constitute a violation of criminal law, and may give rise to claims of compensation under tort law.⁶⁰

Bribery and corruption in particular are singled out in article 2.3 of the Code.⁶¹ Officials must not directly or indirectly solicit, accept, or offer any form of undue remuneration, commission or concealed benefit or service, nor misuse their position for private aim.⁶² It is equally prohibited to accept any kind of bribe or improper payment in order to influence decision-making⁶³ within the ITF or any associated company. A particular form of corruption arises where an ITF official interferes with the integrity of the bidding processes in order to accrue financial benefit for himself or others.⁶⁴ Bidding may involve corporate sponsorship, broadcasting rights, gambling agents, hospitality for events and many others. The ITF has earned significant profits by the introduction of gambling in all tournaments, which has led to a spike in match-fixing violations by players that find it difficult to make a living from this sport.⁶⁵ Although the decision to adopt such policies was made by covered officials, the ITF has not in any way impugned its officials.⁶⁶

Article 2.4 of the Code imposes on all officials a strict duty of confidentiality, whether for personal gain or otherwise.⁶⁷ This duty is always subservient to the requirements of local law, particularly in the determination of unlawful acts⁶⁸ and it is of credit to the ITF that this is explicitly stated in article 2.4.2 of the Code.⁶⁹

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

⁵⁹ ITF Code of Ethics, *supra* note 48, art. 2.2.2.1–2.2.3.3.

⁶⁰ *Id.* app. 1 art. 2.9.

⁶¹ *Id.*, art 2.4.

⁶² G.A. Res. 58/4, art 15, United Nations Convention against Corruption (Oct. 31, 2003).

⁶³ *See id.* art. 18 (trading in influence).

⁶⁴ ITF Code of Ethics, *supra* note 48, art. 2.7.

⁶⁵ *See* Ilias Bantekas, *Is Organized Gambling a Threat to the Integrity of Transnational Individual Sport Competitions?*, 25 SAN DIEGO INT'L L.J. 23, 30–33 (2024).

⁶⁶ *Id.*, 31–32 (arguing that despite the report of an ITF-appointed independent committee's findings that the introduction of gambling at the lower levels of tennis competitions creates serious incentives for match-fixing, this has not in any way deterred the ITF).

⁶⁷ ITF Code of Ethics, *supra* note 48, art. 2.4.

⁶⁸ The ITF Code of Ethics is a private institutional arrangement that is contractual in nature for the parties concerned. Hence, it cannot override mandatory laws in the countries where it is applied. By way of illustration, the confidentiality imposed by the ITF Code of Ethics cannot in any override the statutory rights of whistleblowers under EU law. In 2019 the EU adopted Directive 2019/1937 of Nov. 16, 2019, of the European Parliament and of the Council on the Protection of Persons who Report Breaches of Union Law, O.J. (L 305), 1, 17 [Whistleblower Directive].

⁶⁹ ITF Code of Ethics, *supra* note 48, art. 2.4.2.

themselves or others, or otherwise engage in any action that may undermine the integrity of a competition.⁷⁰ In addition, ITF officials must not in any way facilitate or assist in the breach of ITF integrity rules (doping, match-fixing).⁷¹

Any person, whether an existing official or other person acting on behalf of the ITF, 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.⁷² This is not a straightforward ethical rule because non-ITF official candidates 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 [Rules of Candidates]. Key obligations include: a) refraining from sending official campaign material prior to the public announcement of all ITF candidates; b) conducting one's campaign with dignity and respect for opponents; c) avoiding exerting improper influence over the process; d) refraining from seeking or using financial, political or other support from any regional association or other ITF partner or supplier; e) refraining from soliciting or accepting any benefits with the aim of using one's influence upon election; f) refraining from receiving or offering improper hospitality gifts; g) duly disclose any gifts received to the Ethics Commission.⁷³ Article 14 of the Rules of Candidates stipulates that:

[U]nless 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.⁷⁴

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:

[I]ntended 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

⁷⁰ *Id.* art. 2.5.1.

⁷¹ *Id.* art. 2.5.2.

⁷² *Id.* art. 2.6.

⁷³ *Id.* app. 4.

⁷⁴ *Id.* app. 4, art 14.

ITF". If a consultant, agent, or advisor is not engaged by the ITF, it does not fall within the scope of Article 14.⁷⁵

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.⁷⁶ It should be noted that the Ethics Commission issued a statement in March 2019 by which to clarify the Candidacy Rules.⁷⁷

In order for the ITF to achieve integrity in all its functions and operations it is imperative that all 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.⁷⁸ This obligation entails that disclosure shall be made to the ITF Ethics Commission, unless the official in question considers in good faith that the issue is best dealt with under another discreet ITF procedure.⁷⁹ 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.⁸⁰ This duty further entails that officials do not make a report in bad faith, with malicious intent or other improper purpose.⁸¹

IV. 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 into two distinct bodies. Whereas the ITF's judicial entities entertain infractions of ITF/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 sport governing bodies experiencing large volumes of violations, those with smaller volumes do not set up a discreet

⁷⁵ ITF Ethics Comm'n, *Decisions on Certain Matters Relating to Article 14 of the Rules for Candidates*, at 2 (July 15, 2019), <https://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> [<https://perma.cc/5JPL-TV9R>].

⁷⁶ See ITF Ethics Comm'n, *Decisions on Certain Matters Relating to Article 12 of the Rules for Candidates*, at 2 (July 15, 2019), <https://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> [<https://perma.cc/72XM-AG72>] (noting this 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).

⁷⁷ Int'l Tennis Fed'n, *Statement from the Independent ITF Ethics Commission*, <https://www.itftennis.com/media/6261/itf-ethics-commission-statement-candidacy-rules-2019-elections.pdf> [<https://perma.cc/84B5-QJ98>] (last visited March 18, 2025).

⁷⁸ ITF Code of Ethics, *supra* note 48, art 2.8.

⁷⁹ *Id.* art. 2.8.1.2.

⁸⁰ *Id.* arts. 2.8.2–2.8.3.

⁸¹ *Id.* art. 2.8.4.

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 to intra-governance and regulatory or ethical disputes. Under the terms of article 7.5.1 of the BWF Judicial Procedures it possesses authority over: *integrity and ethics disputes* as these arise under the BWF Code of Ethics,⁸² as well as alleged breaches of the BWF Code of Conduct in respect of actions or omissions by electoral candidates⁸³ and elected officials.⁸⁴ 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. In 2017, the BWF set up an External Judicial Experts Group (EJEG) 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.⁸⁵ As this article will go on to demonstrate, the ITF's Independent Tribunal does exercise authority over all 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.⁸⁶ 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 has several options, including referring the case to the ITF's Independent Tribunal, in accordance with article 4.3 of Appendix 1 to the ITF Code of Ethics.⁸⁷ In the event that such dispute is ultimately referred to English courts, they are bound to construe the Code in accordance with English law.⁸⁸

⁸² Badminton World Fed'n, *BWF Judicial Procedures*, at art. 7.5.1 (May 22, 2018); Badminton World Fed'n, *BWF Code of Ethics*, at § 3.1 (June 1, 2017).

⁸³ Badminton World Fed'n, *Code of Conduct: Candidates for Election*, at § 2.2.1 (June 1, 2017).

⁸⁴ Badminton World Fed'n, *Code of Conduct: Elected Officials*, at § 2.2.2 (Aug. 27, 2023).

⁸⁵ See *Experts to Judge*, BWF (July 13, 2017), <https://corporate.bwfbadminton.com/news-single/2017/07/13/experts-to-judge> [<https://perma.cc/V75E-26HC>]. It did, however, entertain a few cases, such as *BWF v. Kate Jessica Foo Kune*, Decision 2019/04 (Oct. 21, 2019). The BWF appealed the decision to CAS and as a result decided to refer future doping cases to CAS. BWF-related anti-doping cases are no longer within the purview of its Ethics Committee. In accordance with Art 8.1.1 of the BWF's Anti-Doping Regulations, anti-doping disputes are now referred to the CAS Anti-Doping Division (ADD). The ADD possesses first instance authority and decision-making powers. *BFW Statutes*, BFW, <https://corporate.bwfbadminton.com/statutes/#1513733305001-7485aaef-d176> (last visited March 18, 2025) (noting the BWF Anti-Doping Regulations are under § 2.3 of the Ethics statute).

⁸⁶ ITF Code of Ethics, *supra* note 48, art. 4.4.

⁸⁷ *Id.* app. 1, art. 4.3.

⁸⁸ *Id.*

Appendix 1 to the ITF Code of Ethics establishes the Ethics Commission and sets out its mandate. The Commission is an independent body.⁸⁹ This in no way suggests that it is a judicial entity, or an arbitral tribunal. It simply means that it is independent from other officials or entities within the ITF and under no circumstances is subservient to their authority or influence.⁹⁰ 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.⁹¹ This has always been a requirement, demonstrating the importance of law in the limited ethics regulation of the ITF. It is also emblematic of the perception that ethical considerations necessitate a legal lens and sound legal expertise, if for no other reason than the dire implications for the breach of said ethical rules. When assessing adherence with the rules, the Committee cannot remove a member 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.⁹² The role of the Secretary is no different to that of a commission of inquiry or a case manager of arbitral proceedings. Typically, secretaries are lawyers. Given the confidential nature of the proceedings and the evidence that needs to be managed, it is presumed that lawyers are best suited to address these sensitivities, thus confirming the legal nature of ethics-related proceedings. 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) as well as adjudicatory, particularly in respect of candidate eligibility,⁹³ or concerning its determination as to whether an ethical duty has been breached.

A. Investigations

Any person or entity may file a complaint concerning potential violations of the Code.⁹⁴ Upon receipt, the Chair may request further information from the complainant.⁹⁵ 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.⁹⁶ In practice, investigators are members of the

⁸⁹ *Id.* app. 1, art. 1.1.

⁹⁰ *See id.* app. 1, art. 1.4.

⁹¹ *Id.* app. 1, art. 1.2.

⁹² ITF Code of Ethics, *supra* note 48, app. 1, art. 1.5.

⁹³ *Id.* app. 1, art. 1.9.3.

⁹⁴ *Id.* app. 1, art. 2.1; *see* Int'l Tennis Fed'n, *Decision of the ITF Ethics Commission*, (July 25, 2022), www.itftennis.com/media/8735/itf-ethics-commission-decision-zukin-25-july-2022-publication.pdf [<https://perma.cc/H3K2-H3Q4>] (in this case against Evgenyi Zukiin, the complaint was filed by the Tennis Europe Board of Management).

⁹⁵ ITF Code of Ethics, *supra* note 48, art. 2.3.

⁹⁶ *Id.* art. 2.5.

Commission.⁹⁷ 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).⁹⁸ At any stage of the investigation, the Chair may approach an impugned official and after explaining how they may have breached the Code ask whether said official wishes to admit the breach.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ It is not improbable that the issue in question could involve 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.¹⁰²

The investigation is not kept confidential from the parties. Rather, where an investigation 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."¹⁰³ In all other respects, the proceedings are confidential and the same is true in respect of information arising from the investigation.¹⁰⁴ The investigated party may be represented by legal counsel at its own expense and make written submissions.¹⁰⁵ The investigator may seek evidence from any source, within or outside the ITF,¹⁰⁶ 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.¹⁰⁷ 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 by the plenary of the Commission.¹⁰⁸

⁹⁷ See generally *ITF Ethics Commission Decision on Zukin*, *supra* note 51 (illustrating that Jack Anderson was tasked to investigate allegations against Evgeniy Zukin).

⁹⁸ ITF Code of Ethics, *supra* note 48, app. 1, art. 2.6–2.7.

⁹⁹ *Id.* app. 1, art. 2.8.

¹⁰⁰ *Id.* app.1, arts. 2.8, 2.8.1.

¹⁰¹ *Id.* app. 1, arts. 2.8.2, 4.3.

¹⁰² *Id.* app. 1, art. 2.9.

¹⁰³ *Id.* app. 1, art. 3.1.

¹⁰⁴ ITF Code of Ethics, *supra* note 48, app. 1, art. 9.1 (noting that the Ethics Commission may publicize relevant information in order to inform the public, avoid reputational damage to the official and protect the integrity of the game]; *Id.* art. 9.2.

¹⁰⁵ *Id.* art. 3.3.

¹⁰⁶ *Id.* art. 3.4.

¹⁰⁷ *Id.* art. 3.5.

¹⁰⁸ *Id.* art 3.6.

B. 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,¹⁰⁹ proceed to a finding, or otherwise refer the case to the ITF's Independent Tribunal.¹¹⁰ Where the Chair accepts that a breach has occurred, it may issue a warning, a reprimand or a fine of \$20,000 USD (which is not variable) and/or a suspended period of ineligibility if it reckons that a higher and more aggravated sentence is disproportionate to the violation.¹¹¹ The impugned official has twenty-one days from receipt of the decision to appeal it to the Independent Tribunal,¹¹² which shall sit as an appellate panel. If no appeal is filed the Commission's decision becomes final and binding.¹¹³ 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.¹¹⁴

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.¹¹⁵ 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.¹¹⁶ 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 Tribunal, sitting as a first instance body.¹¹⁷ 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.

¹⁰⁹ See Sandra Osborne, *Decision of the ITF Ethics Commission*, INT'L TENNIS FED'N (Nov. 16, 2020), <https://www.itftennis.com/media/4294/itf-ethics-commission-decision-on-complaint-against-bernard-giudicelli.pdf> [<https://perma.cc/4DSJ-X5NY>] (holding 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 rumors).

¹¹⁰ ITF Code of Ethics, *supra* note 48, app. 1, art. 4.1.

¹¹¹ *Id.* app. 1, art. 4.2.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ See Ilias Bantekas, *Dispute in the Badminton World Federation: Sui Generis Expert Determination?*, 20 S.C. J. INT'L L. BUS. 1, 7–8 (2023) (pointing to the distinction between arbitral awards and expert determinations. The former are binding and executable and have the same force as court judgments. The latter are only binding as contracts and if a party refuses to adhere to the expert determination, this constitutes a breach of contract).

¹¹⁵ See ITF Code of Ethics, *supra* note 48, app. 1, art. 7.1 (stating that 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).

¹¹⁶ *Id.* app. 1, art. 4.3.1–4.3.4.

¹¹⁷ *Id.* art. 4.3.5.

C. 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.¹¹⁸ 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.¹¹⁹ 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 challenged by written application to the Independent Tribunal under article 3.5 of the Tribunal’s Procedural Rules.¹²⁰ 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.¹²¹

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.¹²²

V. RECOURSE TO THE INDEPENDENT TRIBUNAL AND CAS

The procedure provides ample opportunities for non-contentious resolution.¹²³ The official has fourteen days to respond to the notice of charges.¹²⁴ If the official admits to the charges and consents to the proposed sanctions, Chair of the Commission will release a published decision which shall include the official’s admission.¹²⁵ Where the official disputes the findings of the investigation and/or the sanctions, the case is referred to the Independent

¹¹⁸ *Id.* app. 1, art. 4.4 (emphasis added).

¹¹⁹ *Id.* app. 1, art 4.4.1.1.

¹²⁰ *Id.* app. 1, art 4.4.2.

¹²¹ ITF Code of Ethics, *supra* note 48, app. 1, art 4.4.2.

¹²² *Id.* app. 1, art 4.4.3.

¹²³ It is important to emphasize the financial dimension of resolution. 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 id.* app. 1, art 6.4.

¹²⁴ *Id.* app. 1, art. 5.1.

¹²⁵ *Id.* app. 1, art. 5.1.1.

Tribunal.¹²⁶ 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 their right to a hearing but also accepted the charges.¹²⁷ Consequently, the Commission will confirm the breaches in a public decision.¹²⁸

Article 5.3 of Appendix 1 to the ITF Code of Ethics emphasizes that while proceedings before the Independent Tribunal are brought in the name of the ITF, the prosecuting party is the Ethics Commission.¹²⁹ The latter may act on its own or instruct legal counsel to act on its behalf.¹³⁰ Exceptionally, if the official and the Ethics Commission so agree, the case may be referred directly to CAS, the award of which will be subject to no further appeal.¹³¹

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.¹³² In the event of an appeal by the official “the respondent will be the ITF, not the Commission.”¹³³ Appeals against the decisions of the Independent Tribunal are referred to the jurisdiction of CAS:

[S]ave 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.¹³⁴

A. Sanctions

Sanctions are a necessary component of any value system, whether normative or ethical. Without appropriate and proportionate sanctions, 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 (in addition to any of the penalties discussed in previous sections of this article) 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);

¹²⁶ *Id.* app. 1, art 5.1.2.

¹²⁷ ITF Code of Ethics, *supra* note 48, app. 1, art. 5.2.

¹²⁸ *Id.* app. 1, art 5.2.

¹²⁹ *Id.* app. 1, art 5.3.

¹³⁰ *Id.*

¹³¹ *Id.* app. 1, art 5.5.

¹³² *Id.* app. 1, art 5.4.

¹³³ ITF Code of Ethics, *supra* note 48, art 5.4.

¹³⁴ *Id.* app. 1, art. 5.4.

- 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.¹³⁵

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, and the existence of mitigating or aggravating circumstances.¹³⁶ In the case against Evgenyi Zukiin, 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 (Zukiin was a Ukrainian national), hence the official had been emotionally charged.¹³⁷ There was evidence that his sincere apology had been accepted by the victim of his outburst, and the Commission proceeded to impose a warning and a reprimand.¹³⁸ In the case against Iva Mazoli, where the officer in question failed to complete her conflicts of interest declaration following several requests, the Ethics Commission considered that the appropriate sanction was a suspended period of ineligibility, during which time Ms. Mazoli would not be permitted to participate in the ITF Coaches Commission.¹³⁹

VI. 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 form a sub-group with oversight of elections and/or appointment to the Board of Directors.¹⁴⁰ This sub-group is known as the Election and Eligibility Panel.¹⁴¹ Its functions are:

¹³⁵ *Id.* app. 1, arts. 6.1.1–6.1.8.

¹³⁶ *Id.* app. 1, art. 6.2.

¹³⁷ *ITF Ethics Commission Decision on Zukiin*, *supra* note 51, at 3.

¹³⁸ *See* Osborne, *supra* note 109.

¹³⁹ *Id.*

¹⁴⁰ ITF Code of Ethics, *supra* note 48, app. 1, art. 1.9.

¹⁴¹ *Id.*

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).¹⁴²

In certain other sports governing bodies, this task, sometimes including the broader function of assessing applicants, is performed by so-called vetting bodies.¹⁴³

Where the Commission is tasked with assessing the eligibility of candidates that have been the subject of criminal convictions, the Ethics Commission is once again transformed into the Eligibility Panel.¹⁴⁴ 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 their post becoming vacant.¹⁴⁵ 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 attending hearings in inquisitorial proceedings if the Commission so determines.¹⁴⁶ The Commission shall determine the case by simple majority and provide reasons. Its decision shall be final without recourse to appeal.¹⁴⁷ Its determination, however, be subject to challenge as a decision of the Board of Directors, in accordance with Article 33 of the ITF Constitution (arbitration) and the CAS code of sports-related arbitration (ordinary arbitration procedure).¹⁴⁸

VII. CONCLUSION

¹⁴² *Id.* app. 1, art. 1.9.1–1.9.4.

¹⁴³ Badminton World Federation, *Constitution to the Badminton World Federation*, at app. II (May 28, 2023).

¹⁴⁴ ITF Code of Ethics, *supra* note 48, app. 1, art. 8.1.

¹⁴⁵ *Id.* app. 1, art. 8.2.

¹⁴⁶ *Id.* app. 1, art. 8.2.2.

¹⁴⁷ *Id.* app. 1, art. 8.3.

¹⁴⁸ *Id.*

This article has attempted to highlight one of the rare examples of ethical regulation in the context of a SGB. Given the abundance of arbitral or other internal adjudicatory mechanisms, at both the ITF and CAS, the need for a specialized ethical body of rules, let alone an ethics body with adjudicatory powers is surprising. The ITF could have just as well decided that its existing mechanisms were sufficient to deal with the ethical concerns raised in its Ethics Rules. Even so, the scope of these Rules is limited and affects only a very small number of actors and circumstances. Other situations not covered by the ITF's Ethics Rules are spread throughout its other institutional rules—and those of the ATP and WTA—but the underlying claim is that those are of a contractual nature, or that they are part of the *lex sportiva*. This article has not attempted to assess whether such a distinction—with ethical rules being effectively sidelined in favor of the *lex sportiva*—serves the interests of SGBs or not, or whether it enhances the organizational effectiveness of such entities. The best response to this question is that to the degree that state laws allow, explicitly or implicitly, SGBs to color their institutional rules as contracts there is no reason why the latter will increase the volume of their ethical rules. This is especially the case in the transnational sporting context, where institutional rules are not endowed with the safeguards typically associated with adhesion contracts. Hence, the more powerful parties, namely SGBs, can manipulate such contracts/institutional rules to their sole advantage and remove any human rights guarantees. The transformation of these contracts into ethical rules would remove the unilateral law-making power of SGBs irrespective of how such powers were framed in the relevant instrument.

The article has demonstrated that ethical rules and institutions can and do exist in sport governing bodies of a transnational nature. In the case of professional tennis, their role is generally limited to high-ranking officials and although other issues could fall within the purview of these ethical rules they are subjected to disciplinary institutional rules. In equal measure, the ITF's ethical rules are assessed by a specialized quasi-judicial body, in contrast to the ITF's other institutional rules. What does this division tell us about the ITF's perception of ethics and ethical rules? The ITF is not alone, among SGBs, in its thinking. Doping and corruption offenses are clearly the domain of criminal law, as well as punitive sanctions under institutional rules that must be consistently applied across all sports. Although they raise ethical issues, there is a clear consensus that they should be dealt with through binding (arbitral) awards through which the sanctioned athlete cannot return to their sport. Ethics commissions cannot produce arbitral awards and hence cannot prohibit sanctioned athletes from competing again. There is rule of domestic or international law that prohibits ethics commissions from producing arbitral awards; this is merely a matter of convention. Many issues that are considered ethical in other contexts, other than sports, are the subject matters of criminal investigations or even arbitral awards (as well as other alternative dispute resolution (ADR) mechanisms). Be that as it may, ethics commissions in sport, despite their seemingly minor role, have not been completely sidelined. The role and function of the ITF's Ethics Commission has demonstrated that it is a useful tool against those that bring the sport into disrepute. It is hoped that the work

of these commissions in other SGBs will grow in order to provide similar outcomes.