

IN THE MATTER OF AN APPEAL BROUGHT AGAINST A DECISION OF THE ITF ETHICS COMMISSION BEFORE THE INDEPENDENT TRIBUNAL PURSUANT TO THE 2023 ITF CODE OF ETHICS

BETWEEN:

MR EVGENIY ZUKIN

Appellant

and

INTERNATIONAL TENNIS FEDERATION

Respondent

**DECISION OF THE INDEPENDENT TRIBUNAL
PURSUANT TO THE ITF CODE OF ETHICS**

A. INTRODUCTION

1. The Appellant, Mr Evgeniy Zukin, is the Chief Executive Officer ('CEO') of the Ukrainian Tennis Federation (the 'UTF'). He also serves as a member of the International Tennis Federation ('ITF') Davis Cup Committee. Mr Zukin used to be a professional tennis player participating in international competitions.
2. The Appellant is represented *pro bono* by Mr Igor Shavrov, of Shavrov Law, Odessa, Ukraine.
3. The ITF is the international governing body of the sport of tennis, wheelchair tennis, and beach tennis. The ITF organises annual team competitions for men ('Davis Cup'), women ('Billie Jean King Cup'), and mixed teams ('Hopman Cup'), as well as tennis and wheelchair tennis events at the Summer Olympic and Paralympic Games on behalf of the International Olympic Committee.

4. While the ITF is the Respondent named in these proceedings, the prosecuting party in this case is the ITF Ethics Commission (the 'EC'). The EC therefore appeared before the Independent Tribunal on behalf of the ITF.
5. The EC is an independent body, formed to uphold the ITF's commitment to integrity, governance and transparency. It defines, reviews and enforces the framework of ethical principles outlined in the ITF Code of Ethics (the 'Code'). While the EC's work is completed independently of the other organs of the ITF, it is funded by, and from a strict legal perspective is an agent or emanation of, the ITF.
6. The EC is represented by Mr Diarmuid Laffan, Of Counsel, and Ms Lauren Pagé and Mr Zac Randall, Bird and Bird, London, United Kingdom.
7. The EC is competent to issue reasoned decisions with sanctions which should not be more than a warning, a reprimand, a fine of USD 20,000, and/or a suspended period of ineligibility.
8. A decision of the EC was issued on 28 February 2024 (the 'Decision')¹. The Appellant was found to have acted in a way that risks bringing the ITF and the sport of tennis into disrepute, contrary to his obligations under Article 2.1.4 of the 2023 the Code. The Decision provided for a fine of USD 10,000 and a twelve (12) month suspended period of ineligibility to act on the ITF Davis Cup Committee, commencing on the date of the Decision.

B. JURISDICTION

9. Article 4.2 of Appendix 1 of the Code confers jurisdiction to the Independent Tribunal to hear appeals of a decision of the EC.

¹ Another version of the Decision, dated 23 February 2024, was circulated and submitted to the Independent Tribunal. Neither version was contested. Therefore, on the balance of probabilities, the Independent Tribunal decided to rely on the Decision, dated 28 February 2024. Therefore, 28 February 2024 is the relevant date.

10. The ITF has, pursuant to Article 1.1 of the Procedural Rules Governing Proceedings Before an Independent Tribunal convened under ITF Rules (the 'Procedural Rules'), elected to refer cases to an Independent Tribunal for resolution.
11. No objection in relation to either the current composition of the Independent Tribunal or the jurisdiction of the Independent Tribunal to determine this matter was raised by either the Appellant or the Respondent (the 'Parties') during this procedure.
12. The Independent Tribunal finds that it has jurisdiction to hear this appeal.

C. FACTUAL BACKGROUND

13. On 4 July 2022, the ITF and the UTF received a letter from a number of Ukrainian tennis players (the 'Complainants'), raising a complaint concerning the conduct of the Appellant (the 'Complaint').
14. The Complaint concerned a disagreement between the Complainants and the Appellant and called for the Appellant to be "*officially and publicly dismissed from his positions at the [UTF] and at the ITF Davis Cup Committee, dismissed from his role as an ITF referee and from any other position he may hold within the ITF organization [sic].*"
15. On 7 July 2022, the ITF received a letter from Mr Sergiy Lagur, President of the UTF, stating that the UTF Board had met to discuss the contents of the Complaint against the Appellant and, after "*thorough discussion and investigation [...] found no evidence of th[e] allegations' set out in the Complaint*".
16. On 22 September 2022, the EC appointed Mr David Howman as the investigator responsible for the investigation, in accordance with paragraph 2.5 of Appendix 1 of the Code.
17. On 27 March and 8 April 2023, the EC wrote to the Appellant to provide him with an opportunity to respond to the allegations made by the Complainants. On 10 April 2023,

the Appellant provided the EC with his written response to the allegations made against him.

18. On 21 July 2023, the EC held a meeting via Zoom with the Complainants to clarify facts relating to the Complaint and provide the Complainants with an opportunity to respond to the statements made by the Appellant.
19. On 23 September 2023, the EC held a hybrid meeting with the Appellant. The EC Chair, Ms Sandra Osborne SC, the Deputy Chair/Investigator, Mr David Howman, and the Appellant met in person, while the EC's Legal Secretary attended by Zoom. The discussion focused on clarifying facts relating to the Appellant's response to the Complaint and to provide him with an opportunity to respond to the further statements made by the Complainants.
20. The Decision was rendered on 28 February 2024, in which the EC Chair detailed the EC's conclusion that the Appellant *"has acted in a way that risks bringing the ITF and the sport of tennis into disrepute, contrary to his obligations under Article 2.1.4 of the Code"*. The following sanction was imposed: *"a fine of \$10,000 and a twelve (12) month suspended period of ineligibility to act on the ITF Davis Cup Committee"*.

D. PROCEDURE BEFORE THE INDEPENDENT TRIBUNAL

21. Article 4.2 of Appendix 1 of the Code provided the Appellant with twenty-one (21) days to appeal the Decision. The Appellant consequently submitted a Notice of Appeal on 20 March 2024.
22. By letter of 21 May 2024, Mr William Norris KC, Chairman of the Independent Panel, appointed Dr Stephan Netzle as Chair of the Independent Tribunal determining the appeal as a sole arbitrator.
23. On 10 June 2024, a case management conference ('CMC') was held, attended by the representatives of both Parties, and served to determine the next procedural steps. The

ITF participated in the CMC in order to clarify its role in these proceedings. It was confirmed that the ITF would remain as the named party in the proceedings given that it would be bound by the decision reached. However, in the light of the first instance decision having been reached independently, by the EC, it would be the EC that would respond to the appeal filed and take part in these proceedings on behalf of the Respondent. Neither the Appellant nor the EC objected to proceeding in this manner.

24. On 12 July 2024, the Appellant submitted his Appeal Brief.
25. On 9 August 2024, the Respondent provided its Reply to the Appeal Brief including 19 Exhibits and Authorities and an additional 20 Appendices to the Decision.
26. On 16 August 2024, a further CMC was held. The Appellant was then invited to submit a written reply limited to responding directly to the Respondent's Reply Brief, which he did on 29 August 2024.
27. On 13 September 2024, the Respondent furnished a rejoinder responding to the issues addressed in the Appellant's Reply.
28. Witness statements of Ms Elina Svitolina Monfils and Mr Sergiy Stakhovsky, which had been requested by the Tribunal Chair, were submitted on 1 October 2024.
29. On 8 October 2024, a hearing was held by videoconference. The hearing was attended by:

For the Tribunal and Secretariat: Dr Stephan Netzle, Tribunal Chair

Astrid Mannheim, Senior Case Manager, Sport Resolutions

For the Appellant: Evgeniy Zukin, Appellant

Igor Shavrov, Appellant's Counsel

For the Respondent:

Diarmuid Laffan, Respondent's Counsel

Lauren Pagé, Legal Representative

Zac Randall, Legal Representative

Sandra Osborne SC, ITF EC Chair

Elina Svitolina Monfils, witness

Sergiy Stakhovsky, witness

30. The Parties were given the opportunity to present their cases, submit their arguments, and answer the questions posed by the Tribunal Chair.
31. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Independent Tribunal and that their right to be heard had been respected.

E. POSITION OF THE PARTIES

32. The following summaries of the Parties' positions are illustrative only and do not necessarily encompass every submission advanced by the Parties. However, the Independent Tribunal confirms that it has carefully considered all the submissions made by the Parties, regardless of whether specific reference is made to them in the following summaries.

I. The Appellant's Position

33. The Appellant disagrees with the Decision and the imposed sanctions, consisting of a fine of USD 10,000 and a twelve (12) month suspended period of ineligibility to act on the ITF Davis Cup Committee. He demands to be cleared of the accusation of violating the Code and for the sanctions to be lifted.

34. The disciplinary procedure which led to the Decision was initiated by the Complaint, by Ukrainian tennis players, submitted to the ITF, which lacked specific facts but instead reflected personal subjective opinions.
35. The Complainants claimed that they had been coerced to play for their national team, which, according to the Appellant, makes no sense because representing one's country in international competitions is an honour and not an obligation.
36. Events to which the Respondent referred to in its written submissions, which took place prior to the Complaint of 4 July 2022, should be disregarded because the Decision was a consequence of the Complaint only.
37. The concerns of the EC about the Appellant's conduct consist of "*merely baseless accusations designed to tarnish [the Appellant's] reputation and undermine his credibility within the tennis community.*"
38. The Appellant's actions were entirely justified under the circumstances. The Appellant did not disclose any personal information about any of the players named in the Complaint. The Appellant confirmed that there was no non-disclosure agreement between the players and the UTF or the Appellant. The information that the Appellant shared with the media was justified by public interest and protected by the freedom of speech. In the Appellant's opinion, "[m]erely questioning the veracity of a statement of a player does not ipso facto constitute an ethical transgression".
39. It is true that the Appellant commented publicly on the reasons Ms Svitolina Monfils gave as to why she did not participate in the 2019 Billie Jean King Cup on behalf of the Ukrainian team. He had been informed that the UTF and the player's agent had not been able to agree on the financial terms for her participation in the competition.
40. All public statements made by the Appellant were true to the best of the Appellant's knowledge. His declarations were always correct and "*intended to apprise the public of the prevailing issues within the national teams of Ukraine [...] Transparency is imperative for attaining favourable outcomes.*"

41. In an open statement, published online on 11 July 2022, professionals and officials of the UTF confirmed the Appellant's commitment to the development of tennis in Ukraine and that he always behaved professionally and with high moral standards.
42. The Appellant felt attacked by Ms Svitolina Monfils and Mr Stakhovsky. The Appellant never had any issues with the other Complainants, and there is no evidence of harm or violation of specific rights of them. Ms Svitolina Monfils and Mr Stakhovsky used their popularity and their large community of followers on social networks to discredit the Appellant.
43. The dispute with Mr Stakhovsky existed for a long time and is personal. That dispute did not generate much public attention. In this context, the Appellant did not make any untrue or defamatory statements about the fees paid to Mr Stakhovsky.
44. The Appellant disputes that he caused actual damage to the reputation of the sport of tennis and the ITF, as alleged by the Respondent, as was set out in paragraphs 19 and 23 of its Reply to the Appeal Brief. He held that he had acted truthfully and transparently. The Appellant additionally claimed that the Respondent's allegation is limited to the mere possibility that his conduct would cause reputational damage to the sport of tennis and the ITF.
45. There is, however, no evidence of potential harm caused by the Appellant's statement, and his personal correspondence with the Complainants did not contain insults or threats but was of a private nature.
46. The disciplinary procedure, conducted by the EC, caused irreparable harm to the Appellant's reputation.
47. The sanctions imposed by the Decision are "*excessively severe and do not adhere to the principle of proportionality.*" Furthermore, the Appellant never got the opportunity to cross-examine the Complainants.
48. In his Notice of Appeal, the Appellant requested the following:

"I request a reconsideration of the unjust sanctions outlined in the decision dated 28 February 2024.

[...]

I request that the Independent Tribunal conduct a thorough and unbiased review of the facts, free from any preconceived notions or personal biases.

[...]

I expect the Independent Tribunal to rectify this egregious miscarriage of justice as soon as possible."

49. In his Appeal Brief, the Appellant made the following submission:

"On these grounds:

Appellant asks to revoke the decision of the ITF Ethics Commission dated February 23, 2024, and issue a new decision declaring the Appellant innocent of violating the ITF Code of Ethics."

50. The Independent Tribunal understands that the appeal is directed at both the findings of the EC that the Appellant violated the Code and the imposition of the sanctions.

II. The Respondent's Position

51. The Respondent lists a number of events which led to the present dispute.

52. In 2019, a dispute emerged between Ms Svitolina Monfils and the Appellant regarding the player's withdrawal from the Ukrainian team for a Billie Jean King Cup tie in Poland. While the player's account was that "*after lengthy consultations with doctors*" she withdrew due to an injury she had sustained earlier in the year in Australia, the Appellant went on to publicly question the player's explanation, and when asked about the composition of the Ukrainian team, Mr Zukin commented publicly that Ms Svitolina Monfils had through her agent made "*impossible financial demands*", that he would not respond to "*ultimatums and*

blackmail”, and that he questioned whether Ms Svitolina Monfils would be picked for future teams.

53. On 19 March 2022, Ms Svitolina Monfils and Ms Kostyuk withdrew from a Billie Jean King Cup fixture. Ms Svitolina Monfils withdrew because of a back injury, and Ms Kostyuk withdrew following a disagreement with the Appellant regarding a lack of financial and other support from the UTF. Following Ms Kostyuk’s withdrawal from the 2022 Billie Jean King Cup fixture, the Appellant messaged Ms Kostyuk’s father stating, *“I have seen enough at this point. But I did not expect such disgusting behaviour from your family. [...] It will not be long before my response.”* Later the same day, he messaged Ms Kostyuk: *“You went too far. But there is still a chance to get out of the situation without major image losses. I wait for your decision to play the match. Today. No money. Your debt stays in full”*.
54. On 11 April 2022, a complaint was sent by Tennis Europe to the EC regarding the Appellant’s conduct in Antalya, Turkey in February 2022 (the ‘Tennis Europe Complaint’). The Appellant was alleged to have “physically assaulted a Tennis Europe official by slapping him across the head, resulting in the official being taken to hospital and lodging a complaint to the local police”.
55. On 17 April 2022, when asked why Ukraine was not able *“to field the most complete team”* for the Billie Jean King Cup fixture (following the withdrawal of Ms Svitolina Monfils and Ms Kostyuk), the Appellant commented in the press that it was *“difficult to assess the veracity of the reasons for which they refused, athletes always have some injuries that they can present. But we expected a completely different reaction from the players”* following Russia’s invasion and that he hoped they would *“change their attitude”*. He added *“[i]t’s easy to be a patriot on Instagram. Maybe they don’t think it’s important to play for the national team.”*
56. On 4 July 2022, the ITF and the UTF received the ‘Complaint’. The Complainants included Ms Lyudmyla Kichenok, Ms Nadiia Kichenok, Ms Marta Kostyuk, Mr Illya Marchenko, Mr Sergiy Stakhovsky, Ms Elina Svitolina Monfils, and Ms Lesia Tsurenko.

57. On 7 July 2022, UTF President, Mr Sergiy Lagur, sent a letter to the ITF stating that the UTF Board had met to discuss the contents of the Complaint. After “*thorough discussion and investigation the Board found no evidence of th[e] allegations*” set out in the Complaint.
58. On 11 July 2022, the UTF published “*An Open Letter from Representatives of the Tennis Community of Ukraine*”. The authors said they were “*ashamed*” of the Complainants and called the letter a “*disgrace to all tennis in Ukraine.*” The authors said they were fully supportive of Mr Zukin and his work for the UTF.
59. On 21 July 2022, the EC notified the Appellant, the Complainants, the UTF, and the ITF that it would be considering the Complaint. The EC’s letter to the Complainants (sent to Ms Svitolina Monfils) requested further information regarding the Complaint and the Appellant’s conduct.
60. On 25 July 2022, the EC issued its decision in respect of the Tennis Europe Complaint mentioned in para. 54 above. The EC found that the Appellant had breached Code Articles 2.1.2 (respect for human rights), specifically, 2.1.2.3 (prohibition of harassment or abuse), and 2.1.4 (conduct likely to bring the ITF or the sport of tennis into disrepute).
61. The Appellant was sanctioned with a reprimand and a warning as to future conduct under Articles 6.1.1 and 6.1.2 of Appendix 1 of the Code.
62. Further in July 2022, the Appellant and Mr Stakhovsky exchanged WhatsApp messages in respect of the Complaint.
- 62.1 The Appellant threatened court action against Mr Stakhovsky by stating, “*all of the above is slander. I will file a court claim against each of you. The proceedings will be long, but the result is obvious*”, adding that Mr Stakhovsky had ruined his reputation and that “*the court will make you say sorry again*”.
- 62.2 The Appellant wrote to Mr Stakhovsky “*do not be surprised when you receive an inquiry from the tax authorities*”. When Mr Stakhovsky replied that “*the question will*

be for the [Ukrainian Tennis Federation]” and asked, “where did they [take] the money from?”, the Appellant responded, “The President has millions of dollars in white money. So we have nothing to worry about.”

62.3 The Appellant's messages to Mr Stakhovsky included that “[e]veryone is against you in tennis” and he compared Mr Stakhovsky and Ukrainian tennis player “Lashkul” to “Putin with NATO [...] Plus, Svetova with Crimea and Russian Flags”.

63. On 6 September 2022, in a Facebook exchange, the Appellant alleged “*extortion*” and tax fraud against Mr Stakhovsky and published information regarding Mr Stakhovsky’s earnings. The post was picked up by Ukrainian media. The Appellant's public comments on Facebook included the following:

63.1 “*Look, Mr Stakhovsky knows how much money he got in cash from my hands. But only he knows how much [tax] he paid on them.*”

63.2 “*This is the price of patriotism:*

Spain, 2013 \$15,000.00;

Romania, 2014 \$55,000.00

Sweden, 2014 \$40,000.00

Belgium, 2014 \$45,500.00

Poland, 2015 \$15,000.00

Austria, 2016 \$22, 500.00

Japan, 2016 \$15,000.00

Israel, 2017 \$22,500.00

Sweden, 2018 \$18,000.00

Portugal, 2018 \$20,000.00

Hungary, 2019 \$18,675.00

Taipei, 2020 \$16,656.00

Israel, 2021 \$31,593.00

Norway, 2021 \$15,000.00

Sum - \$350,424.00

From this, 18% +1.5% (from mid-2014) should have been paid to the budget of Ukraine. If this has happened, I am ready to publicly apologize.”

63.3 *“Sergiy Stakhovsky, I guarantee the veracity of these figures. There is not a single person who I would cheat even by a dollar. Of course, now you can deny anything and lie about paying taxes. But we both know the truth. End of story”.*

64. On 27 January 2023, the Appellant commented in the press that the reason certain Ukrainian players had not played in the Billie Jean King Cup and the Davis Cup in 2022 was due to their disputes with the UTF about financial support:

64.1 The Appellant stated that the UTF had fulfilled *“all the materials obligations”* and that players were *“simply lying”* if they claimed otherwise. The Appellant added that there were *“stories that we stole some aid... We need to figure it out.”* When asked *[e]verything rested only on the financial issue?”*, the Appellant responded, *“[e]xactly”* and that players were *“fighting the federation for royalties”*.

64.2 The Appellant reiterated his previous public comments that he had hoped that the war in Ukraine would stir emotions but that this had not been the case: *“we forgot the word “patriotism” a long time ago”*.

64.3 The Appellant confirmed that the players had played the March 2022 Davis Cup fixture for free, and when asked about the players’ claims *“that they were told that the money that was allocated for the match will go to help the Armed Forces?”*, the Appellant denied having made such a statement and described the players’ comments as *“fantasies”*.

65. On 2 October 2023, the Appellant emailed the EC providing a link to an exchange between him and Mr Stakhovsky (addressing Mr Stakhovsky’s finances) posted on social media. The Appellant alleged that Mr Stakhovsky had convinced players not to play in the Davis

Cup and then accused the Appellant, by way of the social media post, of not being able to put up the best team. The Appellant also stated, in the 2 October 2023 email, that the accusations in the Complaint are false and that there was no Non-Disclosure Agreement or prohibition covering his public statements about prize money paid to players.

66. Based on these facts, the EC concluded that the Appellant had acted in a way that risks bringing the ITF and the sport of tennis into disrepute, contrary to his obligations under Article 2.1.4 of the Code and sanctioned the Appellant with a fine of USD 10,000 and a 12-month suspended period of ineligibility to act on the ITF Davis Cup Committee.
67. The Respondent requests that the Decision should be upheld for the reasons set out in the Decision itself. By engaging with the Complainants in public regarding contractual negotiations that should have taken place in private, calling the honesty, integrity, and patriotism of the players into question on various occasions, disclosing confidential information on public platforms, and acting unprofessionally towards a large part of the upper echelon of Ukrainian tennis, The Appellant has himself acted without integrity and in an unprofessional manner.
68. Viewed objectively the Appellant's public communications regarding the Complainants' and, in particular, Ms Svitolina Monfils' representation of Ukraine in international matches risk bringing the sport of tennis and the ITF into disrepute.
69. Not only did the Appellant's behaviour risk bringing the sport of tennis and the ITF into disrepute, but the evidence attached to the Decision also shows that actual disrepute or loss of reputation was caused, as comments in the media demonstrate.
70. Also the "*public spat*" between the Appellant and Mr Stakhovsky on Facebook brought the sport of tennis and the ITF into disrepute, as comments of other Facebook users demonstrate.
71. When determining the sanction, the Independent Tribunal should take into consideration that the Appellant's breaches of Article 2.1.4 of the Code are serious ones, that the sanction should have a deterrent effect, as he had already received a reprimand and a

warning as to future conduct following the decision regarding the Tennis Europe Complaint and it appears to have had no controlling effect on his conduct; that the Appellant holds senior and leading roles in tennis in the UTF and also the ITF Davis Cup Committee and is expected to adhere to high standards, and that there is a risk that his behaviour will escalate in the future and will increase the risk of harm to the reputation of the sport of tennis even more.

72. The Independent Tribunal understands from the Respondent's submissions that it requests the Decision to be upheld in full.

III. Witness Statement of Elina Svitolina Monfils

73. On 1 October 2024, Ms Svitolina Monfils submitted a Witness Statement in support of the submissions of the ITF.
74. Ms Svitolina Monfils referred to the Complaint of 4 July 2022, and alleged that the Appellant had “*often failed to communicate properly with players*” and that his tone as “*often rude and disrespectful*”, that he threatened the player, “*forced*” them to play in competitions and “*to play without financial or other support from the UTF*”. Since he was not acting in the best interest of Ukrainian tennis, the Complainants asked for him to be removed from his positions at the UTF and the ITF.
75. In addition to the Complaint, Ms Svitolina Monfils attested that the Appellant had made statements to her, and in the public about her, which were “*untrue and also unprofessional given his senior role at the UTF*”.
76. Ms Svitolina Monfils explained that in 2019, she sustained an injury which required her to withdraw from the Billie Jean King Cup fixture in Poland. The Appellant subsequently criticised her publicly for her decision and made public comments suggesting that her injury was not a legitimate reason to withdraw from the match. The true reason, he stated to the media, was that she had made “*impossible*” financial demands that were “*ultimatums or blackmail*”. Such statements, according to Ms Svitolina Monfils, were “*untrue, hurtful and damaging to [her] reputation in Ukraine. Mr Zukin also made similar*

damaging statements about other players.” Ms Svitolina Monfils justified her decision to post on Facebook was in order to state the truth and protect her reputation.

77. Ms Svitolina Monfils further stated that when, in 2022, she sustained a back injury that prevented her again from competing in a Billie Jean King Cup qualifying tie against the USA, the Appellant criticised her again, suggesting that her injury was not a legitimate reason to withdraw from the match. The Appellant made inappropriate comments in public. From Ms Svitolina Monfils’ perspective, his statements suggested that she might have lied about her injury. He criticised her attitude, while making a direct link to the invasion of Ukraine, which was, in Ms Svitolina Monfils’ view, *“unprofessional and hurtful”*.
78. Ms Svitolina Monfils stated in December 2023, that her foundation took on the responsibility of organising the national team at the Billie Jean King Cup.
79. In Ms Svitolina Monfils' view, the Appellant's conduct was *“unacceptable, unprofessional, and hurtful, and also damaging to [her] and the other affected tennis players, and ultimately Ukrainian tennis.”*

IV. Witness Statement of Mr Sergiy Stakhovsky

80. On 1 October 2024, Mr Stakhovsky also submitted a Witness Statement in support of the submissions of the ITF.
81. Mr Stakhovsky referred to the Complaint as well. He outlined that the Appellant had made *“accusations and threats against players, and had communicated poorly and unprofessionally with players”*. In particular, he stated that the Appellant had made unprofessional and hurtful public statements about players not competing for the Ukrainian team. Since, in Mr Stakhovsky’s opinion, the Appellant was not acting in the best interest of Ukrainian tennis, the Complainants asked for him to be removed from his roles, which *“would be a strong start to help our Federation restore its credibility and reputation.”*

82. Mr Stakhovsky stated that in July 2022, shortly after the Complaint was sent, the Appellant messaged him via WhatsApp. In those messages, the Appellant threatened court action against Mr Stakhovsky and other signatories to the Complaint, criticised Mr Stakhovsky and the other Complainants, accused Mr Stakhovsky of tax evasion, and compared Mr Stakhovsky to Vladimir Putin.
83. Mr Stakhovsky further stated that the Appellant had also had private and public debates about players' participation for the Ukrainian team and criticised players' character and patriotism.
84. Mr Stakhovsky confirmed that in September 2022, he posted on Facebook asking, "[d]id the best sports manager of Ukraine fail to negotiate with the players??" He further stated that the Appellant responded to this Facebook post by accusing Mr Stakhovsky of not paying taxes on his earnings.
85. Mr Stakhovsky concluded his Witness Statement as follows:

"In my view, Mr Zukin's conduct has been unacceptable, unprofessional, and damaging to me, other tennis players, and also the image of Ukrainian tennis as a whole."

F. FINDINGS

I. Applicable regulatory provisions

86. The relevant provisions of the Code are the following:

86.1 Article 1.3.:

*"Each of the following individuals (each, an **Official**) is bound by and is required to comply with this Code of Ethics:*

- 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**);*

[...]

1.3.3 *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**)”.*

86.2 Article 1.4.:

*“Officials who fail to comply with the Code may be sanctioned in accordance with the provisions of Appendix 1 to this Code. Officials are bound to submit to the jurisdiction of the ITF Ethics Commission, the Independent Tribunal and the Court of Arbitration for Sport (or **CAS**), as applicable, in relation to the enforcement of the Code, and may not bring any proceedings in any court or other forum that are inconsistent with that submission.”*

86.3 Article 2 “Substantive Requirements”:

“Save where otherwise stated, the following requirements apply to Officials at all times, i.e., whether or not they are acting in their capacity as Officials at the time in question. All Officials are responsible for acquainting themselves with this Code of Ethics, and shall be deemed to know its provisions by virtue of being bound. Any knowing, intentional, reckless or negligent failure to comply with these requirements shall amount to a breach of this Code of Ethics.”

86.4 Article 2.1. “Basic obligations”:

“Officials must:

2.1.1. *act in accordance with the highest standards of honesty and integrity in all of their activities as Officials;*

[...]

2.1.4. *refrain at all times (i.e., whether acting in a personal capacity, in their capacity as an Official, or in any other capacity) from any fraudulent or corrupt act, or that brings or risks bringing the ITF or the sport of tennis into disrepute.”*

86.5 Article 2.4.1.:

“Officials must not disclose to any third party (whether for personal gain or otherwise) any information disclosed to them (or otherwise learned) in confidence in their capacity as Officials or otherwise as a result of their ITF activities.”

86.6 Article 4.3.:

“Any gap in this Code of Ethics shall be filled, and any unforeseen circumstances arising in relation to the Code of Ethics shall be addressed by reference to, and in a manner consistent with, the objectives underlying this Code of Ethics.”

87. The Procedural Rules state:

87.1 Article 8.5:

“The Independent Tribunal will have full power to hear the matter under appeal de novo, as if it were deciding the matter as the first instance decision-maker. It will have all of the powers that the actual first instance decision-maker would have had under the applicable ITF Rules in relation to the facts as found by the Independent Tribunal on appeal. Where it sees fit, however, the Independent Tribunal may remit the matter to the first instance decision-maker for rehearing.”

G. DISCUSSION

88. The facts on which the Respondent bases its allegations against the Appellant are set out in the Decision and reiterated in detail by the Respondent in its submissions in the proceedings before the Independent Tribunal. They are not disputed by the Appellant and therefore, the Tribunal does not intend to reiterate descriptions already addressed in the Respondent's Position above.² The sole issue for the Independent Tribunal to determine in these proceedings is whether the Appellant's conduct was in breach of the Code and, if so, what sanction is appropriate.

² See para. 52 et seq., above.

89. The EC has found that the Appellant breached Article 2.1.4. of the Code and sanctioned him according to Article 6. of Appendix 1 to the Code.
90. The Appellant is a Committee Member of the Davis Cup Committee which is a committee of the ITF under Article 1.3.3. of the Code. He therefore qualifies as an Official bound by and required to comply with the Code.
91. According to Article 2 of the Code *"[s]ave where otherwise stated, the following requirements apply to Officials at all times, i.e. whether or not they are acting in their capacity as Officials"*.
92. The Independent Tribunal shares the view of the EC that the Appellant engaged in the behaviour, which gave rise to the Decision, when acting in his capacity as the CEO of the UTF and not as a Committee Member. Therefore, only those requirements of the Code apply to the Appellant which he must follow at all times and not only when acting as an Official. Article 2.1.4. of the Code is one of them.
93. Article 2.1.4. of the Code reads as follows:
- "Officials must:*
- [...]
- refrain at all times (i.e., whether acting in a personal capacity, in their capacity as an Official, or in any other capacity) from any fraudulent or corrupt act, or that brings or risks bringing the ITF or the sport of tennis into disrepute."*
94. The question of whether the Appellant fulfils the requirements of Article 2.1.4. of the Code is therefore to be assessed independently of whether he was acting as CEO of the UTF or as member of an ITF Committee. On the other hand, it is essential to determine whether he has jeopardised the reputation of the ITF and the sport of tennis or the reputation of his own national association or that of individual players.

95. Like the EC, the Independent Tribunal must decide the question of whether, on a balance of probabilities, the Appellant engaged in a way that *"brings or risks bringing the ITF or the sport of tennis into disrepute."*
96. The EC adopted the definition of *"disrepute"* as a loss of reputation or diminishment of public opinion, as repeatedly applied by CAS jurisprudence. It specifies that *"such loss of reputation must be of sufficient gravity"*, it *"must be that of the ITF and/or the sport of tennis, as opposed to the UTF, Mr Zukić or the players"*, and *"the extent [...] may be reflected in media attention, and media reports can be a cause of disrepute."*
97. It is a special feature of the obligation to refrain from conduct that brings or risks bringing an organisation or a sport into disrepute that it seems to rely on the impact of certain behaviour instead of the nature and reprehensibility of the behaviour itself.
98. From a legal perspective, it is desirable to have objective and consistent standards for the assessment of the seriousness of the alleged conduct and the severity of the impact on reputation. Otherwise, there is a risk that *"bringing the sport into disrepute"* is used as a broad catch-all charge when specific rule violations may not apply or apply only under certain conditions.
99. The requirement for measurable or at least comprehensible criteria must also apply when, as in the present case, the risk of a loss of reputation must be assessed when such a loss has not been proven. One should not simply jump from the assessment of the seriousness of the alleged conduct to the conclusion that the alleged conduct necessarily leads to a risk of disrepute of such gravity that it calls for a sanction.
100. Therefore, all three elements of Article 2.1.4. of the Code must pass a certain materiality test, namely that (i) the alleged behaviour shows a certain degree of severity that either (ii) results in the reputation of the ITF and/or the sport of tennis being harmed or (iii) risks the reputation of the ITF and/or the sport of tennis being harmed.

A. The alleged behaviour of the Appellant

101. The Appellant's behaviour that is the subject of the Decision and has been specified in detail by the Respondent is ultimately related to the fact that certain Ukrainian top tennis players withdrew their participation in the international team events of the ITF, namely the Billie Jean King Cup and the Davis Cup.
102. The animosities between the Appellant and Mr Stakhovsky seem to be rooted in other reasons as well, but this was not discussed any further in these proceedings and ultimately does not seem relevant either.
103. The Appellant does not dispute that he made the alleged comments. He submits, however, that his comments correspond to the truth, and it was also legitimate to ask questions about the veracity of the players' excuses. That was, after all, his job as the CEO of the UTF, namely to make sure that the best available players should represent their country, especially in a time of war. The Complainants rather used their popularity to put him under pressure.
104. The standard against which to measure the severity of the Appellant's verbal reactions are the values that govern Olympic sports in general and the sport of tennis in particular. Such standards are reflected in Article 2.1.1 of the Code (although this provision is not directly applicable as a basis for sanctions in this case) which demands Officials to act in accordance with the highest standards of honesty and integrity. Integrity combines certain core values such as honesty, fairness, respect, dependability, and responsibility. It can be expected that a sports leader attempts to resolve disputes with athletes or staff members in constructive and respectful dialogue and not in a spiteful tone and/or in public.
105. While it is accepted that one of the Appellant's tasks as CEO of the UTF is to agree on the necessary arrangements that put forward the strongest possible teams, this purpose does not justify the contentious tone he repeatedly applied. Of course, he may and should ask the players why they are withdrawing their participation in the national team competitions and may not be content with the first answer they give him. However, his job

as the CEO is to persuade players through direct dialogue, not to force them under threat. To achieve this, it was neither necessary nor appropriate to criticise the players publicly or on social media or to put pressure on the parents of the players.

106. As CEO of the UTF and the person responsible for the player representation of the UTF in international competitions, he has a duty of care for the players on the team. As a former player himself, he should know that forced participation in an event is not an effective motivator for success. The communication of the Appellant with the Ukrainian players and his statements in the media was, without question, inappropriate, especially when taking the Appellant's role and function in the UTF into account. The fact that Mr Stakhovsky, for example, was not shying away from exposing the Appellant on Facebook does not justify the harsh reaction. In his role as CEO of the UTF, the Appellant should not be retaliating in kind but should remain objective.

107. The Independent Tribunal therefore finds that the Appellant's reported statements concerning Ukrainian players in the media, on social media, and also to members of a player's family were inappropriate, considering his leading function in the UTF.

B. The detrimental impact of the Appellant's behaviour on the reputation of the ITF and/or the sport of tennis

108. The Respondent submits that certain comments of the Appellant made in public regarding Ms Svitolina Monfils withdrawal from the Ukrainian team in respect of the 2022 Billie Jean King Cup caused *actual* disrepute, as is evidenced by three articles published in Ukrainian newspapers. (Emphasis added) Likewise, the Appellant's online dispute with Mr Stakhovsky brought the sport of tennis and the ITF into disrepute, as demonstrated by two Facebook posts and one article in the Ukrainian press. In this respect, the Respondent goes further than the Decision.

109. The Independent Tribunal accepts that the reputations of those participating in the disputes, i.e., Ms Svitolina Monfils and Mr Stakhovsky, but also the Appellant, were affected by the content and tone of the dispute. Furthermore, an unbiased reader of these

articles and posts may indeed come to the conclusion that the UTF is not in control of its own affairs, which may well be considered damaging to its reputation.

110. However, the Independent Tribunal fails to see how these discussions, as unprofessional as they may have been, had any effect on the reputation of the ITF or the sport of tennis as a whole. The Respondent has not provided evidence in support of its assessment, such as public surveys, comments from stakeholders and partners of the ITF, broadcasters, tournament organisers, other ITF member federations, or international media to substantiate this claim.
111. While the nature or tone of posts on social media may indeed indicate reputational damage has occurred, such posts have remained very rare in this case and seem to have had, neither directly nor indirectly, demonstrable impact on the reputation of the ITF or the sport of tennis.
112. The EC concluded that because the animosity between the Appellant and the players arose from his negotiations of the terms of the players' participation in the Billie Jean King Cup and disclosure of a player's earnings from his participation in the Davis Cup, which both are ITF events, the matters raised in the Complaint must have had reputational implications for the ITF. In the absence of any conclusive evidence submitted in support of actual reputational damage to the ITF, the Independent Tribunal finds this a rather bold conclusion. This conclusion therefore fails to meet the materiality test.
113. The Independent Tribunal does not dispute that the Appellant's behaviour damaged the reputation of *the UTF* and also had a negative impact on the reputations of Ms Svitolina Monfils and Mr Stakhovsky. However, there is no evidence to substantiate that the Appellant's conduct also had any relevant impact on the reputation of the ITF or the sport of tennis as such.

C. The risk that the Appellant's behaviour might be damaging to the reputation of the ITF and/or the sport of tennis

114. While there is no evidence of *actual* damage to the reputation of the ITF and/or the sport of tennis caused by the Appellant's behaviour, Article 2.1.4 of the Code is also violated if an Official behaves in a way that *risks* bringing the ITF and/or the sport of tennis into disrepute.
115. According to the Cambridge Dictionary, in simple terms, "*risk*" is the possibility that something bad might happen, for example, reputational loss. However, it makes little sense in the context of a Code of Conduct, which allows for the imposition of sanctions, to focus on the mere possibility of loss, however remote the chance of occurrence may be. The *probability* of the risk must also be taken into account. This must apply not only when determining the sanction to be applied, but already when deciding whether the relevant offence has been committed.
116. Assessing and measuring the risk of conduct that could bring a sport or international sports federation into disrepute is challenging as it involves both objective and subjective criteria. The Independent Tribunal also recognises that an international sports organisation should take appropriate steps to proactively avoid risk, rather than waiting for the risk to materialise and respond with reactive measures. This task is further complicated by the fact that the possible reputational damage that *the ITF or the sport of tennis as a whole* could suffer must be assessed.
117. The Appellant's comments have attracted little interest and response, except from those directly involved. Nevertheless, the Appellant's accusations may well give the impression that some top players are only interested in making as much personal profit as possible by participating in international team tournaments, and that they couldn't care less about the honour of representing their country in international competitions. This can certainly damage the reputation of such tournaments by reducing them to just another way for well-paid professional players to make money. In this respect, the Independent Tribunal agrees that the Appellant's allegations against the Complainants had the potential to spread

beyond the UTF and to damage the reputation of the two most important international tennis tournaments of the ITF and the sport of tennis.

118. There is no evidence that this happened, but that is the result of a perspective in hindsight. Since such risk cannot be denied, the Independent Tribunal finds that the Appellant engaged in conduct which had the potential of bringing the ITF and the sport of tennis into disrepute.
119. On the other hand, there are three further allegations, namely (i) the Appellant's snide comments about Ms Svitolina Monfils' injuries, (ii) the Appellant's improper influence on Ms Kostyuk's parents, and (iii) the allegations that Mr Stakhovsky was evading taxes. Such behaviour was obviously inappropriate for a sports leader who should care about the success of his national team. However, the Independent Tribunal cannot see the connection between these behaviours and the reputation of the ITF and the sport of tennis.
120. The Decision also refers, among other things, to public comments that the Appellant made in relation to Ms Svitolina Monfils in 2019. The Independent Tribunal finds that the result of the Decision, which found in favour of the claim that the alleged behaviour was damaging, must lie in a close temporal context with the alleged behaviour. Even if, as here, the findings focus mainly on the *risk* of reputational damage, such risk should have materialised by now. One cannot forever rely on past behaviour to prove future risk. Corresponding proof is missing from the Respondent's submissions and there is no reference to any interventions made by or on behalf of Ms Svitolina Monfils or the Respondent towards the Appellant at the time.
121. The events in 2019 are therefore irrelevant to the Independent Tribunal's assessment of whether the Appellant has acted in a manner that risks bringing the ITF or the sport of tennis into disrepute.
122. There remains the risk of this conduct repeating in the future.

122.1 After all, the Appellant had already been warned by the EC, after he deliberately slapped the CEO of Tennis Europe on the back of the head, while attending a dinner in Antalya, Turkey in February 2022.

122.2 Also, in the events that led to the current proceedings, the Appellant has shown a tendency to react emotionally to actions and statements by third parties, and to lose his composure, required by his functions in representing the UTF and the ITF.

The risk, therefore, that the Appellant will be led to rash reactions if he feels that he, the UTF, or his homeland have been treated unfairly appears noteworthy, as does the risk that further actions or statements may spill over the Ukrainian borders and in turn, bring the ITF and the sport of tennis into disrepute.

123. However, the task of the EC and the Independent Tribunal is to assess the reputational risks for the ITF and/or the sport of tennis caused by the identified behaviour of the Appellant, and not to order precautionary measures to prohibit future risks. Even if disciplinary measures also have a deterrent effect, they are to be determined on the basis of the established previous rule violations and not with regard to possible future breaches.

124. The responsibility of taking preventative measures or providing the Appellant with specific instructions lies with the organisations, which appointed the Appellant and supervise his performance.

H. SANCTION

125. According to Article 6.1. of Appendix 1 of the Code, "*[a]ny one or more of the following sanctions may be imposed for a proven breach of the Code of Ethics*". An exhaustive list of possible sanctions is set out thereafter.

126. The Independent Tribunal agrees with the EC that it is not appropriate for the Appellant, as an Official under the Code, to make unsuitable public comments with respect to the participation of high-profile players in the two main team competitions of the ITF and that

such comments created a risk of bringing the ITF as the organiser of these competitions as well as the sport of tennis into disrepute. The Independent Tribunal therefore upholds the sanction of a twelve (12) month suspended period of ineligibility to act on the ITF Davis Cup Committee imposed by the EC, according to Article 4.2. of Appendix 1 of the Code.

127. According to Article 6.1.3. of Appendix 1 of the Code, “*a fine in an amount proportionate to the breach*” may also be imposed. The imposition of a fine is not a necessary consequence of a breach of the Code. The Decision does, however, not establish why a fine of USD 10,000 was imposed and why such amount was deemed proportionate to the breach. The incriminating behaviour was also not connected with any intention of enrichment on the part of the Appellant.
128. On the other hand, the Decision does not address any mitigating factors, which should definitely be taken into account. The Independent Tribunal respects the laudable intention of the Appellant to convince the best Ukrainian players to join the national team in the Cup events, even if he chose the wrong means to do so.
129. In addition, the Appellant has helped to ensure that at least the Billie Jean King Cup team will be managed by the Elina Svitolina Foundation in the future and this matter will no longer belong to his own responsibilities. According to corresponding statement from the Appellant and Ms Svitolina Monfils at the hearing, this transfer of responsibility has been handled in a professional manner. This also reduces the risk of a repeat of the offending behaviour in the future.
130. The Independent Tribunal therefore finds the imposition of a fine not necessary and proportionate and cancels it.

I. SUMMARY

131. The Independent Tribunal finds that the Appellant has not acted in a way which caused *actual* reputational damage to the ITF or the sport of tennis.

132. However, the reckless and unprofessional comments of the Appellant, may create the impression that when high profile players are called up to the national teams for international competitions, their concern is mainly about their personal earning potential and not about representing their country. But that is not the purpose of international competitions, such as the Billie Jean King Cup and the Davis Cup organised by the ITF. Such an impression has indeed the potential to bring the ITF and the sport of tennis into disrepute

133. The Independent Tribunal, however, sees no reason for a fine payable to the ITF.

134. As set out in Article 9.1.2 of the Procedural Rules, this decision of the Independent Tribunal sitting as an appeal body, shall be final and binding on all Parties.

J. COSTS

135. Each of the Parties will bear their own costs, and the ITF will bear their own costs of convening the Independent Tribunal.

K. DECISION

136. The appeal filed by Mr Evgeniy Zukin against the Decision of the ITF Ethics Commission, dated 28 February 2024, is partially upheld.

137. The sanction of a twelve (12) month suspended period of ineligibility to act on the ITF Davis Cup Committee starting on 29 February 2024 is upheld.

138. The sanction of a fine of USD 10,000 is dismissed.

139. The costs of convening the Independent Tribunal are borne by the ITF.

140. Each of the Parties bears its own costs and expenses.

141. All other Requests for Relief are dismissed.

Dr. Stephan Netzle

Chair of the Independent Tribunal, on behalf of the Independent Panel

London, UK

10 December 2024



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