



Arbitration CAS 2022/A/8914 Belarus Tennis Federation (BTF) v. International Tennis Federation (ITF), award of 9 February 2024

Panel: Judge Jan Paulsson (France); Prof. Ulrich Haas (Germany); Mr Romano Subiotto KC (United Kingdom)

Tennis

Suspension of a national tennis federation's membership in the ITF

Admissibility of appeals regarding a suspension of membership and an exclusion from team competitions

Admissibility of exhibits / submissions

Due process compliance

Nature of the suspension of membership

CAS standard of review

Legal basis for the suspension of membership

Compatibility of the suspension of membership with overriding principles

- 1. The decision to suspend a national tennis federation's membership in the ITF, and the decision to exclude a national tennis federation's participation in the ITF's team competitions shall be distinguished. Membership is dealt with constitutionally in two stages: a provisional decision by the ITF Board requiring ratification by the higher body, i.e. the ITF Council. The decision of exclusion from team competitions is dealt with separately by the ITF Board and does not require ratification by the ITF Council. The significance thereof is that challenges to Board decisions, being final as acts of the ITF, are subject to a separate, earlier deadline than decisions that require ratification. The CAS panel scope of review only covers appeals made within the time limit running from the decision challenged.**
- 2. Article R31 (3) of the CAS Code provides that in case a party files a submission by email, such submission must also be sent by courier, or uploaded on the CAS e-filing platform within the first subsequent business day following the expiration of the deadline. Consequently, exhibits filed by email on the expiration day and uploaded during the next business day are admissible.**
- 3. A "resolution" of the ITF Council to suspend a national federation's membership in the ITF based on the agenda of the general meeting at which it is to be moved, complies with the prerequisites of the ITF Constitution. A "reasoned decision" is not required. Because the reasons for the decision of suspension can be found in the agenda of the Extraordinary General Meeting provided well in advance, the format of said resolution does not impinge on the national federation's rights of defense. Thus, no failure of due process is established.**

4. Whether a matter is disciplinary in nature must be determined objectively, more particularly having regard to the object and the purpose of the decision. Emphasis must be put on what were the “intentions” of the organ that issued the decision in question. In case adverse effects are inflicted on a party because of a previous behaviour, this indicates a disciplinary character. A membership suspension imposed by an international federation on a member to sanction a behaviour that brought the sport of tennis into disrepute and damaged the ‘international standing of tennis’, is a disciplinary measure.
5. Article R57 (1) of the CAS Code provides that CAS panels have full power to review the facts and the law. Yet a CAS panel in appeals arbitration proceedings will not readily interfere with a well-reasoned decision from a sports body. Judicial restraint is even more advisable when, under the applicable rules the first instance body enjoys a certain margin of discretion and/or appreciation, when the way this discretion / appreciation is to be exercised involves a sport-specific judgment. In this respect, the decisive issue is therefore whether the membership suspension was made lawfully, and not whether a CAS panel might have decided it differently in substance.
6. Article 4(b) of the ITF Constitution provides a sufficient legal basis for the membership suspension of a national federation if the quorum and majority requirements it contains are complied with. It is a *lex specialis* that supersedes any other disciplinary provisions in the ITF Constitution. Whether the criterion “*seriously damage the international standing of tennis as a world sport*” is met is first and foremost a matter for the ITF Council to assess, since the requirement constitutes a general term and requires a sport-specific valuation. In this respect, when a significant part of the international community, and a correspondingly dominant proportion of the ITF membership, condemn a massive disruption of world peace i.e. the invasion of Ukraine by Russia, the notion that a member should be tolerated for merely “supporting and facilitating” it - as if merely expressing a difference of political opinion - needs only to be stated to be dismissed.
7. A membership suspension does not violate the Olympic principles of neutrality and autonomy if there is no evidence that the ITF Council acted under pressure from governments. A decision to exclude a member federation based on a provision of the ITF Constitution applicable to all members equally is not discriminatory. The decision is also proportionate if the ITF allowed individual athletes to continue to participate in international competitions and it was taken with the legitimate aim of protecting the international status of tennis as defined in the ITF Constitution, by preserving the integrity of tennis.

I. THE PARTIES

1. The Belarus Tennis Federation (the “Appellant” or “BTF”) is the national federation for tennis of Belarus, headquartered in Minsk.
2. The International Tennis Federation (the “Respondent” or “ITF”), a non-profit organization, is the world governing body for tennis, headquartered in London, UK. It organizes international competitions in which players compete in the name of their countries or national associations as well as in events where players compete as individuals.

II. THE FACTUAL BACKGROUND

3. The ITF has taken two distinct decisions in the immediate aftermath of the Russian invasion of Ukraine in February 2022. The first, taken by ITF’s Board of Directors (“ITF Board”) on 1 March 2022, was – *inter alia* – to revoke the BTF’s entries in 2022 for all ITF competitions (hereafter the “Competitions Decision”). The second, taken by the ITF Council on 6 May 2022 at the Extraordinary General Meeting (“EGM”), was to suspend BTF from membership in the ITF (hereafter the “Membership Decision”). In the present proceedings BTF seeks the annulment of the Membership Decision.
4. The Membership Decision was taken on the grounds that the Russian invasion was “supported and facilitated” by Belarus, and that the international standing of tennis would be seriously damaged by continued membership in the ITF of the national federations of Russia and Belarus.
5. The Russian invasion took place in the night of 23 and 24 February 2022. The United Nations General Assembly declared that it considered the attack to be contrary to the principles of the Charter of the United Nations (“UN”), and deplored “*the involvement of Belarus in this unlawful use of force against Ukraine*”. (United Nations General Assembly Resolution A/RAEES/ES-11/1, adopted 2 March 2022, at 3/4, para. 19.) The UN estimated that the Russian invasion notably had the effect of displacing 12 million Ukrainians and killing 3,000 Ukrainian civilians (as the ITF’s President was to highlight in his introductory remarks to the EGM, in the course of which he also mentioned the overall figure of 46,000 deaths reported by Reuters). For its part, Belarus (along with Russia, Eritrea, North Korea, and Syria) voted against the aforementioned UN General Assembly Resolution.
6. As soon as 24 February 2022, the International Olympic Committee (“IOC”) e-mailed all IOC members circulating a “Statement” by which the IOC President “*strongly condemns the breach of the Olympic Truce by the Russian government*”. The same day, the Icelandic Tennis Federation wrote to Tennis Europe, anticipating the imminent annual general meetings and asking: “*Do we welcome a hostile nation into a peaceful gathering?*”.
7. The next day, the Norwegian Tennis Federation wrote to Tennis Europe stating that it “*strongly supports the question raised by Iceland*” and questioned whether Russia should be welcomed at the AGM. Meanwhile, the ITF announced that it had cancelled all ITF events taking place in Russia “*indefinitely, with*

immediate effect". This Presidential message attached the IOC Statement. The same day, the President of the Icelandic Tennis Federation emailed Tennis Europe expressing his assumption that the latter would *"take similar steps in line with ITF announcement"*. Also on the same day, the IOC issued an Executive Board statement urging *"all International Federations to relocate or cancel their sports events currently planned in Russia or Belarus"*.

8. On 27 February 2022, the Ukrainian Tennis Federation's President, Sergiy Laguur, asked ITF in writing *"to immediately expel"* the Russian Tennis Federation and BTF from membership in the ITF. On the same day, David Haggerty, the ITF President, was contacted by the President of the Norwegian Tennis Association, who called for the *"full exclusion of both Russian and Belarusian sports"*, and the Polish National Tennis Association informed the ITF that it would not compete against Russia.
9. On 28 February 2022, Tennis Lithuania addressed a message to the ITF, Tennis Europe and all ITF Member States, calling on *"all organizations to have all formal relations with any official institutions of the aggressor countries suspended until further notice... anything else than that implies the tacit recognition and support of those regimes and their war crimes"*.
10. In his witness statement in these proceedings, Mr Haggerty states, in para. 21 that

over the next few weeks, I received a significant number of oral and written communications from our Members seeking the exclusion of the BTF and/ or Belarusian players ... I did not receive a single letter suggesting that the ITF should not take action in respect of Belarus, opposing any particular measure(s) or suggesting that the BTF and/ or Belarusian athletes should be treated any differently from their Russian counterparts (other than from Belarus itself).
11. On 28 February 2022, the Executive Board of the IOC found that the Belarusian Government (as well as the Russian Government) had committed a violation of the Olympic truce. It recommended in consequence that, in order to protect the integrity of global sports competitions and for the safety of all participants, international sports federations were given the recommendation that they should *"not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions"*.
12. On 1 March 2022, the Nordic Tennis Federations (including Denmark, Finland, Iceland, Norway, and Sweden) wrote to the ITF and Tennis Europe referring to the *"Russian attack on Ukraine, supported by Belarus"* as *"a blatant breach on international law"* and *"unacceptable"*; those Federations concluded that

It is our very clear opinion that:

**Russian and Belarussian athletes shall not participate in international sports events outside of Russia and Belarus.*

**All planned events to take place in Russia and Belarus to be cancelled indefinitely, with immediate effect.*

**Russian and Belarussian sports leaders and officials shall be suspended from their international positions.... To ensure the global tennis community stand united and strong in these times, we also request ITF to put pressure on ATP and WTA to adopt the above sanctions.*

13. The same day, the President of the BTF, Siarhei Rutenka, addressed a letter to the President of the ITF by email. Its full text reads as follows (omitting salutations):

I am writing to you with regards of the letter that was sent to you by the Ukrainian Tennis Federation about the exclusion of our federation from the members of the ITF.

We are regret what is happening in Ukraine and ready to provide all kinds of support to Ukrainian tennis players of any age. As a sports organization, we adhere to sports principles and the Olympic spirit.

We urge you to guide sports principles when considering the letter of the Ukrainian Tennis Federation.

The Belarus Tennis Federation, from the moment of its foundation, has made every effort to develop tennis in our country, has always been as open as possible to cooperate with all countries and has done everything possible to develop and popularize tennis not only in Belarus, but also in the world. We have repeatedly held events of various levels under conduction of the ITF at a high level. Over the years, our players (Victoria Azarenka, Olga Govortsova, Irina Shimanovich, Alexandra Sasnovich, Vera Lapko, Ksenia Milevskaya, Kristina Dmitruk, Evelina Laskevich, Ilya Ivasenko, Vladimir Ignatik and many others) participated in many development programs under conduction of the International Tennis Federation and International Grand Slam Player Development Programme.

Recently, in particular for 2 years we have been already deprived of the opportunity to hold junior and professional tournaments of the ITF Calendar in our country. And you can see that the number of Belarus players has decreased.

We will respect your decision, but at the same time we express the hope that your decision will not contradict the goals outlined in the ITF Constitution.

Once again we express our concern about the situation in Ukraine and confirm that we are ready to provide assistance to Ukrainian athletes.

14. Still the same day, an urgent meeting was convened of the ITF Board. The ITF Board resolved to suspend the BTF from membership on a provisional basis with immediate effect, pending ratification by the Council in accordance with Article 4(b) of the ITF Constitution at the next General Meeting. The ITF Board's resolutions usefully set out the motivation of its decision as follows:

On 24 February 2022, the Russian Government launched a full-scale military invasion of the sovereign state of Ukraine. The Belarusian Government publicly supported and facilitated the invasion by permitting Russia access to Belarus airspace and allowing Russian troops to access Belarus territory from which they entered Ukraine. Both Russia's and Belarus' actions have been condemned by the international community, with wide-ranging international sanctions imposed.

The President of the International Olympic Committee (IOC) issued a statement on 28 February 2022 strongly condemning Russia's and Belarus' grave violation of the Olympic Truce. The IOC further recommended

that, in order to protect the integrity of global sports competitions and for the safety of all the participants, “international sports federations ... not invite or allow the participation of Russian and Belarussian athletes and officials in international competitions”. This supplemented the IOC’s prior recommendation that all sporting events or competitions refrain from taking place in Russia or Belarus.

By 28 February 2022, the ITF had received requests from the Ukraine Tennis Federation (‘UTF’) and more than ten other ITF members to expel RTF and BTF from membership. Two additional members informed the ITF that they would not compete against either RTF or BTF in ITF events.

On 1 March 2022, the Board of Directors resolved to suspend RTF and BTF from ITF membership with immediate effect and until further notice, pending ratification by the Council at an EGM. The Board considered that the international standing of tennis as a world sport would be seriously damaged by the continued membership of RTF and BTF.

On 26 March 2022, Tennis Europe voted to suspend RTF and BTF from its membership.

15. The ITF Board explained the basis of their decision as follows:

The Board understands the extreme and unprecedented nature of its recommendation and does not do so lightly. However, the Board considers that such action is proportionate and necessary due to the gravity of the circumstances and the grave contravention of the principles and values of unity and peace upon which the international tennis community is based.

By virtue of Russia’s and Belarus’ actions, the international standing of tennis as a world sport would be seriously damaged if RTF and BTF membership were not suspended. Further, the reputation and standing of the ITF both in the international tennis community, international sport community and the world at large would be brought into dispute if suspensions were not imposed.

16. Yet again the same day, Mr Haggerty wrote to Mr Rutenka to make clear that “*the Board has resolved to refuse and/or revoke the entry of BTF teams into all ITF competitions listed in Bye-Law 2.1(a) of the ITF Constitution ... with immediate effect and until further notice*”.

17. Mr Rutenka protested by letter the following day (2 March 2022), invoking “*the sports principles of the Olympic Charter, which does not allow discrimination against athletes*”.

18. Mr Haggerty of the ITF answered the same day, notably stating:

Whilst the actions we have been forced to take are significant, you will appreciate that, at this stage, Belarussian athletes remain free to compete in individual events as neutral athletes. We consider that our actions are entirely consistent with the statement issued by the International Olympic Committee on 28 February 2022 and with the duties placed on the Board by the ITF Constitution and by the various cited competition Regulations.

19. On 3 March 2022, the Polish Tennis Federation made a statement commencing with reference to the “*bloody war in Ukraine caused by the barbaric aggression of Russia. With full premeditation, the aggressor kills the civilian population and a hail of bombs rains on Ukrainian cities...*” and objecting to

the fact that the other governing bodies in tennis such as ITF, ATP and WTA had done no more than to prevent athletes from competing under the Russian and Belarussian flags, and to suspend the national teams of the two countries from team competition. It continued:

However, athletes from both countries can still participate in individual tennis competitions and earn huge amounts of money and enjoy tennis in the most expensive and exclusive venues in the world. Limiting ourselves to prohibiting. The use of representative symbols by these tennis players is a blow to the Olympic ideals, a slap on Ukrainian citizens dying in the war and a slap against the community of all countries in the world supporting a free and independent Ukraine.

20. For its part, the Japanese Tennis Federation also on 3 March 2022 wrote to the ITF that “*we welcome and applaud the courageous decisions which the Board of the International Tennis Federation made on 1 March*”.
21. On 11 March 2022, the President of the IOC signed a four-page declaration concluding inter alia that “*we urge every sports organisation in the world to protect the integrity, fairness and safety of their competitions by not allowing Russian and Belarussian athletes to take part or in special circumstances to at least prohibit any identification of their nationality*”.
22. A meeting of the ITF Board on 24 March 2022 noted the requirement of a six-week notice to hold an EGM and accordingly decided by vote to hold an EGM on 6 May 2022 “*to ask the Council to approve the ITF Board’s decision to suspend*” the Russian and Belarus Federations.
23. This was followed by a letter from Mr Haggerty on 30 March 2022 setting out the detailed “*consequences of suspension ... in light of Belarus’ facilitation of Russia’s unjustified invasion of the sovereign state of Ukraine and gross violation of the Olympic Truce*”, and concluding with this sentence: “*We encourage you, as representatives of both the ITF and the international tennis community and as keepers of the principles of unity and peace enshrined in the Olympic Charter, to plead with your government to cease its facilitation of the unjustified military action in Ukraine*”.
24. On 29 April 2022, Mr Rutenka wrote to Mr Haggerty, insisting that “*the actions of the Russian (!) government against Ukraine (equally as any actions of any foreign country) cannot be attributed to the Belarussian athletes and the BTF*” and that the suspension violated due process, was discriminatory, and violated “*the principles of political neutrality and the autonomy of sports*”. He requested that he be informed whether ITF was making a disciplinary decision, and that ITF “*accordingly*” indicate the timing and procedure for appeal.
25. The EGM -- the first in 49 years -- took place on 6 May 2022. Conducted by videoconferencing, the EGM lasted nearly two hours; 119 of the 213-member national federations were registered participants (although 17 were in arrears of membership fees and therefore had non-voting observer status).
26. A video recording was made available to the Panel. Mr Rutenka made a substantive intervention on behalf of the BTF just short of five minutes in length (as it happens in fluent

Spanish). Mr Hjortur Thor Grjetarsson, President of the Icelandic Tennis Association, asked for the floor to do no more than ask the following simple question directly to the BTF:

Do you oppose and condemn the invasion of the Russian army supported by Belarus?

27. This question was not answered.
28. The EGM ratified the provisional decision taken by the ITF Board on 6 May 2022, thus making the Membership Decision final as to both the RTF and BTF. The vote against Belarus was affirmative by some 80 %.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. BTF filed its Statement of Appeal against the Membership Decision on 26 May 2022 pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”) with the Court of Arbitration for Sport (“CAS”). Therein the BTF suggested the nomination of a sole arbitrator. BTF’s full Appeal Brief was submitted on 6 June 2022.
30. On 7 June 2022, the CAS Court Office acknowledged receipt of the Appellant’s Appeal Brief and invited the Respondent to file the Answer within 20 days as of receipt of its letter.
31. On 13 June 2022, the ITF requested a 20-day extension of the deadline to file its Answer. Furthermore, the ITF informed the CAS Court Office that it objected to a sole arbitrator and wished a three-member panel to decide the dispute. In addition, it nominated Mr Romano Subiotto KC, Solicitor/Advocate, as arbitrator.
32. On 14 June 2022, the CAS Court Office invited the Appellant to comment on Respondent’s request for an extension of the deadline.
33. With letter dated 15 June 2022, the Appellant objected to the Respondent’s request for an extension of the deadline to file the Answer.
34. By application dated 15 June 2022, BTF sought provisional measures to: reinstate BTF teams in the ITF team competitions in 2022, and the European Summer Cups (U14 and U16); restore access to ITF funding; permit BTF to hold tournaments in Belarus; permit officiating schools to be held in Belarus; and restore the right of Belarusian Grand Slam players to receive grants and participate in the Grand Slam Player Development Program.
35. The first of these requested remedies sought to overturn the effects of the 2022 Competitions Decision made on 1 March 2022; the others addressed the effects of the Membership Decision made on 6 May 2022. The significance and effect of this distinction will be set out in the section on admissibility below.

36. On 15 June 2022, the Respondent requested that its deadline to file the Answer be fixed after the payment by the Appellant of its share of the advance on costs, pursuant to Article R55(3) of the Code.
37. On 16 June 2022, the CAS Court Office set aside the deadline for filing the Answer and advised the Parties that a new time limit would be fixed upon payment of the Appellant's share of the advance on costs.
38. On the same day, the CAS Court Office acknowledged receipt of the Appellant's request for provisional measures and invited the Respondent to comment thereon by 22 June 2022.
39. On 22 June 2022, the ITF filed its response to the Appellant's request for provisional measures.
40. On 23 June 2022, the CAS Court Office acknowledged receipt of the ITF's response to BTF's request for provisional measures. Furthermore, it advised the Respondent that its exhibits 1 to 31 were not accessible and invited it to refile the exhibits without delay.
41. On 23 June 2022, ITF informed the CAS Court Office that the exhibits had been uploaded on the e-Filing platform.
42. On the same day, BTF objected to the "late filing" of Respondent's exhibits.
43. On 24 June 2022, the CAS Court Office took note of BTF's objection to the admissibility of the exhibits filed by ITF and advised the Parties that the issue would be decided by the President of the Appeals Arbitration Division, or her Deputy, in the Order for Provisional Measures.
44. On the same day, in an unsolicited letter to the CAS Court Office, BTF insisted on the inadmissibility of the exhibits filed by ITF and commented on what it described "*obvious and blatant false and offensive statements*" by ITF in its response to BTF's request for provisional measures.
45. Still on the same day, the CAS Court Office reminded BTF that unsolicited letters are not permitted and that therefore its letter dated the same day would not be taken into consideration.
46. The application for provisional measures was rejected by a decision of the President of the Appeals Arbitration Division dated 6 July 2022 containing the operative part only.
47. On 8 August 2022, the CAS Court Office informed the Parties that the issue relating to the application of Article R64 or R65 of the Code in this matter would be decided by the Panel once constituted. The letter continues to state that in the meantime the CAS Court Office is not prevented from claiming the payment of the advance on costs. Furthermore, the CAS Court Office informed the Parties that the Division President had decided to submit the

matter to a three-member panel and, thus, invited BTF to nominate an arbitrator by 15 August 2022.

48. On 15 August 2022, BTF complained that as of today it had not received the reasons for the dismissal of its request for provisional measures. Furthermore, the BTF observed that even though it had filed its Appeal Brief on 5 June 2022, it still had not received the Respondent's Answer. Finally, it reiterated its observation that the present proceedings should be free of charge within the meaning of Article R65.1 and R65.2 of the Code.
49. On 16 August 2022, the CAS Court Office advised BTF that the reasons for the Order on Provisional Measure will be provided in due course, that the deadline to file the Answer would be fixed once BTF had paid its share of the advance on costs and that the CAS Court Office's position remained unchanged to the effect that for the time being the this would not be considered free of charge. The letter continued to observe that BTF had failed to nominate an arbitrator and that it was granted a last final deadline to do so until 18 August 2022.
50. On 18 August 2022, BTF nominated Prof. Dr Ulrich Haas as an arbitrator. Furthermore, it informed the CAS Court Office that "*we do not object to mediation in this case*".
51. On the same day, the CAS Court Office acknowledged receipt of the above letter and noted that the Appellant was interested in submitting the matter to CAS Mediation. It reminded BTF that in the absence of an answer or in case of an objection from ITF, mediation would not be pursued.
52. On 23 September 2022, the CAS Court Office informed the Parties that BTF had paid its share of the advance on costs and set a deadline of 20 days for ITF to file its Answer.
53. On 5 October 2022, ITF requested an extension of 10 days to file its Answer.
54. On 6 October 2022, the CAS Director General granted the request for an extension pursuant to Article R32(2) of the Code.
55. ITF's Answer was submitted on 24 October 2022.
56. On 25 October 2022, the CAS Court Office acknowledged receipt of ITF's Answer and invited the Parties to inform it by 1 November 2022 whether they wished a hearing in this matter.
57. On 28 October 2022, ITF informed the CAS Court Office that it wished an "oral hearing" to be held.
58. On 31 October 2022, BTF noted that the Exhibits to ITF's Answer were uploaded on 25 October 2022 only and that, therefore, BTF objected to their admissibility. Furthermore, BTF complained that it was not treated fairly by the CAS Court Office in these proceedings. In addition, BTF – *inter alia* – requested information whether the ITF had paid its share of the

advance on costs and when the grounds of the Order on Provisional Measures would be issued. It also noted that so far it had not received the reasons for the Appealed Decision and that, therefore, it *“reserves all rights to proper enforce its rights of defense and to be heard, including those set forth in the p. 179 of the Appeal Brief”*.

59. On the same day, the CAS Court Office informed the Parties that ITF had complied with the prerequisites of Article R31(3) of the Code which provides that in case a party files a submission by email, such submission must also be sent by courier, or uploaded on the CAS E-filing Platform within the first subsequent business day following the expiration of the deadline. Since in the present case the deadline to file the Answer expired on 24 October 2022 and ITF's submission were filed by email on the same day, it sufficed to upload the relevant documents in the course of the next business day, i.e. on 25 October 2022. Furthermore, the CAS Court office informed that ITF had paid its share of the advance on costs within the prescribed deadline. Finally, the CAS Court Office stated that the reasons order on Provisional Measures *“is under finalization and will be notified to the Parties in due course”*.
60. On 22 November 2022, BTF reminded the CAS Court Office that its letter dated 31 October 2022 has partially remained unanswered.
61. On 2 December 2022, the CAS Court Office provided the Parties with the grounds of the Order on Provisional Measures.
62. On the same day, the CAS Court Office informed the Parties that the Panel to decide the present dispute was constituted as follows:

President: Prof. Jan Paulsson, Court of Cassation, Bahrain

Arbitrators Prof. Dr. Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany

Mr Romano F. Subiotto KC, Solicitor/Advocate, Brussels, Belgium.
63. On 27 January 2023, the CAS Court Office informed the Parties that the Panel has decided to hold a hearing and would be available on 16 February 2023 and invited the Parties to state whether they were available on such date.
64. On 31 January 2023, ITF confirmed that it was available for a hearing on 16 February 2023.
65. On 1 February 2023, BTF informed that CAS Court Office that it was not available for a hearing on the date proposed.
66. On the same date, ITF provided the CAS Court Office with a list of dates on which it was available for a hearing in order to assist the Panel.
67. On 14 February 2023, the CAS Court Office offered further dates for a hearing to the Parties and invited them to comment on their availabilities by 14 February 2023.

68. On 16 February 2023, ITF indicated its availabilities in response to the above CAS Court Office letter.
69. On 17 February 2023, BTF indicated its availabilities.
70. On the same day, the CAS Court Office informed the Parties that a hearing would be held on 17 April 2023 by videoconference. Furthermore, the letter invited the Parties to provide a list of the names of the persons attending the hearing on their respective behalf by 17 March 2023.
71. On 1 March 2023, the CAS Court Office issued an Order of Procedure (“OoP”) and invited the Parties to return a signed copy thereof by 17 March 2023.
72. On 8 March 2023, ITF returned a signed copy of the OoP.
73. BTF made a proposal of settlement of the dispute on 15 March 2023. It was copied to the Panel. It was not accepted by ITF and is not taken into account by the Panel.
74. On 17 March 2023, BTF returned a signed copy of the OoP.
75. Following a document request made by BTF, ITF provided a set of documents by e-link on 27 March 2023.
76. On 13 April 2023, both Parties provided lists of persons that would attend the hearing on their behalf.
77. On the same day, the CAS Court Office acknowledged receipt of the Parties’ letters and noted that no objections had been raised by the Parties against the hearing schedule.
78. A hearing by videoconference was held on 17 April 2023. In attendance for BTF was its Counsel, Mr Maxim Tatarovich, as well as its President, Mr Siarhei Rutenka; in attendance for the ITF were Ms Kendrah Potts, Counsel; Mr David Haggerty, ITF’s President; and Mr Dario Giovannelli, Executive Director, ITF legal services. At the outset of the hearing the Parties confirmed that they had no objection to the constitution of the Panel. The Panel heard the testimony of Mr Siarhei Rutenka, President of the BTF and of Mr David Haggerty, President of the ITF. At the closing of the hearing both Parties confirmed that their right to be heard had been respected.

IV. THE PARTIES’ SUBMISSIONS AND REQUESTS FOR RELIEF

(A) BTF’s arguments and submissions

79. Procedurally, BTF maintains that it was denied the right to be heard and thus deprived of due process before the ITF.

80. Substantively, BTF submits that sports organizations cannot and should not evaluate the actions of particular governments: such actions “directly violate” the Olympic Charter and the ITF Constitution; sports organizations must maintain neutrality, the main and fundamental principle of sports. The Membership Decision was not valid under the ITF constitution because it was of a “purely general nature” lacking any legal basis (para. 88).

81. BTF makes the point that the population of Belarus is not complicit in the Russian aggression in Ukraine, pointing to an opinion poll said to indicate that 59% of the country’s population after the outbreak of the war favoured either a declaration of complete neutrality and the expulsion of all foreign troops or condemnation of the Russian action without engaging in the conflict.

82. BTF considers that the Membership Decision constitutes a “*gross violation of the well-known fundamental Olympic principles such as the prohibition of any form of discrimination, the political neutrality and the autonomy of sport*”; that the ITF “*apparently*” acted “*under the pressure of the ‘dominant political trends’, thereby violating the ITF Constitution and the Olympic Charter*”. BTF notably invokes Article 5.2 of the Olympic Charter, which identifies part of the “*Mission and role of the IOC*” as

“... to take action to strengthen the unity of the Olympic Movement, to protect its independence, to maintain and promote its political neutrality and to preserve the autonomy of sport...”

83. In BTF’s submission, the prejudice that flows from this conduct by ITF affects “*first of all*” young tennis players, including minors, who cannot bear any responsibility for the acts of the Russian government. The “*military conflict between Russia and Ukraine, which has been started more than 8 years ago*”, belongs “*to the sphere of purely international law*”.

84. BTF submits that for the following reasons it is disingenuous for ITF to repeat that Belarusian athletes are free to compete in individual events as neutral athletes (Paragraphs 67-68):

... the decision to suspend the BTF and its representative teams of the ITF could not in any way affect the Belarusians, who are professional athletes and are properly protected by the ATP and WTA organizations.

It is also important to consistently note here that adult Belarusian tennis players continue their performances in ATP and WTA tournaments, while please note that there are no incidents related to allegedly anti-Belarusian sentiments against our athletes, as well as any questions to ensure safety and security.

... in practice it turned out that most Belarusian junior and young tennis players, unlike adult athletes whose rights are successfully protected by the ATP and WTA, as we mentioned above, in fact simply cannot take part in tournaments due to the decision of the ITF, including as individual athletes.

The ITF Decision means that our junior players and their coaches can sort of play tournaments but, in reality, cannot receive hospitality by organizer (i.e. hospitality includes meals, bed and breakfast or full hospitality depends on tournament category) at the ITF or Tennis Europe events. This means now junior player must spend more money for participation in the international competitions.

85. BTF observes the fact that the IOC has on many occasions, including recently by its current President, stressed the desirability of avoiding the politicization of the Olympic Movement. It observes that a fundamental principle of Olympism, reflected in the terms of its Charter, is “*to place sport at the service of the harmonious development of humankind*”.

86. Immediately after quoting this phrase, BTF gives the following instances by way of what it suggests should be understood as confirmations of the Olympic determination to eschew politicization (Brief, paras 20-21 and 23):

... both USA and USSR Olympic committees, nor their national sports federations and teams were banned for military operations in Afghanistan (2001-2021 and 1979-1989, respectively). Iraqi athletes were not suspended from Olympic Games and other sport tournaments despite Iran v. Iraq War in 1980-1988, and numerous resolutions of United Nations Security Council condemning the war.

Moreover, none of the states directly or indirectly involved in the Vietnam War (1955-1975) was sanctioned or suspended in the field of Olympic committees or national sporting federation and teams.

The above also applies to modern examples of periodically flaring military conflicts between Palestine and Israel, Azerbaijan and Armenia, India and Pakistan, or, for example, to the military intervention of some Arab states (Saudi Arabia, Bahrain, Kuwait, Jordan ...) in an internal conflict to Yemen, etc.

It should be emphasized that it is also well known that these conflicts are historically protracted and their aggravation occurs, including during the Olympic Truce and even the Olympic Games.....

... it is also important to take into account the experience of the reaction of the IOC and the ITF regarding the outbreak of the military conflict between Russia and Ukraine in 2014 – then the actions of the Olympic Movement were aimed at creating any opportunities and points of communication, and this should be the way it should continue – the IOC and the ITF should not aggravate conflicts and create additional barriers to the dialogue and communications which are so necessary for everyone today.

Therefore, the Appellant is of the opinion that the military conflict between Russia and Ukraine should be interpreted in the same way as previous (and ongoing!) similar cases which have been construed – no suspension for national Olympic committees or their teams and national sporting federations is allowed.

87. In its letter to the ITF of 29 April 2022, the BTF pointed out that a regional human rights body based in Warsaw, namely the OSCE Office for Democratic Institutions and Human Rights (ODIHR)

on 13 April 2022, in its Report on violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022, clearly indicates that Belarus, as of 1 April 2022 is not a party to the military conflict between Russia and Ukraine.

88. This observation is made more than once by the BTF, which summarizes its contentions in this regard as follows, in Paragraph 56 of its Appeal Brief:

we can draw the following obvious undeniable minimal logical conclusions regarding the ITF Decision, which:

- (i) was solely based on the IOC Recommendations;*
- (ii) does not indicate any references (justifications) to the norms of the ITF Constitution and/or the Olympic Charter, and does not contain any indication of the period of such suspension (incl. sports consequences of the suspension, in relation to the ranking, standings of the BTF teams, etc.);*
- (iii) does not raise any safety and security concerns with the possible participation of Belarusian tennis players and BTF teams in the ITF competitions; but*
- (iv) contains political-military assessments that are unacceptable under the Olympic Charter and the ITF Constitution, as well as (also without any justification) the following unsubstantiated claims that [...].*

89. A series of arguments on the part of BTF do not require much elaboration, and will be recited for now in lapidary fashion: the Membership Decision was discriminatory in its effect on Belarusian players; it was also inconsistent with ITF's reactions to similar instances of military conflicts; and it was disproportionate.

90. BTF concludes by requesting the following relief:

... taking into account all abovementioned, the Appellant respectfully applies that the CAS rules as follows:

- 1. The BTF's Appeal is upheld.*
- 2. The ITF Counsel Decision dated 6 May 2022 to suspend the membership of the BTF and suspend the participation of BTF teams in ITF competitions breaches the ITF Constitution and is therefore annulled.*

PRIMARILY:

- 3. The ITF is obliged to restore the membership to the BTF and to restore all the teams of the BTF in the ITF Official Team Competitions (as defined in Bye-law 2.1, i.e. Davis Cup by Rakuten, Billie Jean King Cup by BNP Paribas, juniors Davis Cup and Billie Jean Cup by BNP Paribas, ITF World Junior Tennis Finals, the BNP Paribas World Team Cup etc.) in full (in the corresponding tournament positions / stages) with all of the BTF team's coefficient points in the ITF Official Team Competitions where it is relevant.*

IN THE ALTERNATIVE:

- 4. Alternatively, the ITF is obliged to restore the membership of the BTF in the ITF and to restore all BTF teams in the ITF Official Team Competitions (in the corresponding tournament position / stages) and allow them to compete as neutral teams with all of the BTF team's coefficient points in the ITF Official Team Competitions where is relevant.*

Restore access to the BTF and its members to programmes, funding or day-to-day support for the development that would only be offered to Class B National Associations.

Allow BTF to hold the tournaments of all ITF world tennis tour (juniors, women's, men's, seniors, wheelchair and so on) in Belarus directly by the BTF or by a third party organizer.

- 4.3 *Allow the BTF officiating schools to be held in Belarus, as well as allow Belarussian certified officials to attend the ITF officiating schools or other (sic) the ITF officiating programmes, and in addition allow Belarussian officials to officiate in the ITF team competitions.*
- 4.4 *Restore the right to receive grants for Belarussian Grand Slam players and to participate in the tour teams of the Grand Slam Player Development Program.*

IN ANY EVENT:

5. *The ITF is obliged to restore the membership of the BTF in the ITF and to restore all BTF teams in the ITF Official Team Competitions (in the corresponding tournament positions / stages) with all of the BTF team's coefficient points in the ITF Official Team Competitions where it is relevant (or to calculate all of the BTF team's coefficient points as the CAS believes fair, sane, non-discriminative, and justified).*
 - 5.1. *Restore access to the BTF and its members to programmes, funding or day-to-day support for development that would only be offered to Class B National Associations.*
 - 5.2 *Allow BTF to hold the tournaments of all ITF world tennis tour (juniors, women's, men's, seniors, wheelchairs and so on) in Belarus directly by the BTF or by a third party organizer.*
 - 5.3. *Allow the ITF officiating schools to be held in Belarus, as well as allow Belarussian certified officials to attend the ITF officiating schools or other (sic) the ITF officiating programmes.*
 - 5.4 *Restore the right to receive grants for Belarussian Grand Slam players and to participate in the tour teams of the Grand Slam Player Development Program.*
 - 5.5. *Order the Respondent to bear all procedural costs of the arbitration, if any, and to reimburse to the Appellant any fees and/or advance payments paid by the Appellant to the CAS.*
 - 5.6. *Order the Respondent to pay the BTF a contribution toward its legal and other costs, in the amount to be determined at the CAS's discretion but not least (sic) EUR 29,000 (twenty thousand) net.*

(B) ITF's arguments and submissions

91. ITF calls attention to the fact that BTF's prayers for relief "interlink" requests for membership to be reinstated and for reinstatement to 2022 ITF team competitions. The latter is inadmissible since the Competition Decision was taken by the Board in March 2022 and not appealed in time; only the Membership Decision, taken by the Council on 6 May 2022, is not barred by the statutory time limit.

92. ITF also observes that in its view the impact of the latter has been significantly overstated by BTF. As a practical matter, ITF summarises its consequences thus (Answer, para. 41):

1. *Belarus is not permitted to compete in ITF team competitions (such as the BJK Cup, Davis Cup, junior BJK Cup and Davis Cup and ITF World Junior Tennis);*
2. *Significantly, however, individual players, coaches and officials may still participate in all ITF events that are not team competitions, such as the ITF's tours;*
3. *Belarus is not permitted to host ITF sanctioned events in Belarus. BTF complains that this is a disadvantage because it is easier for players, particularly juniors, to win their first ranking points in home tournaments. However, the BTF has not, in fact, held any ITF sanctioned events since 2019. Further, not all Members host ITF events and therefore it is not the case that all Members are in a position where their junior players can compete at home. Further, there is a strong argument that it would be unfair to permit tournaments to proceed in Belarus when it is probable (given the international condemnation of Belarus and the fact that a war has been launched via its territory) that no (or very few) players from other countries would attend. This would give Belarusian players an advantage as a result of its involvement in the invasion of Ukraine because they would have easier access to ITF, ATP and WTA ranking points that are the currency for entry to tennis tournaments; that cannot be a fair outcome;*
4. *Belarus cannot vote in ITF general meetings;*
5. *The BTF has no direct membership right to funding from the ITF. However, the ITF does not simply distribute cash to its members. Rather, the ITF supports the development of tennis by making participation and development payments to Members (i.e. when they participate in or host ITF competitions or for specific development programs (for example developing specific facilities)) or providing access to free or subsidised development programmes. Further, to the extent that the BTF has not then hosted events or participated in the competitions the further consequence is that the BTF has not incurred costs related to the same. As to the BTF's complaint that it was not compensated for lost costs associated with its cancelled Davis Cup tie against Mexico: the ITF agreed to compensate the BTF for 90% of the travel costs it incurred in connection with the tie;⁴²*
6. *The BTF cannot host official ITF officiating schools. However, no ITF officiating schools have been held in Belarus for many years and none were scheduled to be held in Belarus in 2022.*

93. The Membership Decision was made pursuant to Article 4(b) of the ITF Constitution, which provides that where continued membership of a national association would, in the opinion of the Council, “seriously damage the international standing of tennis as a world sport” the Member shall be suspended if a resolution to that effect is passed. As recognised in both English law and CAS jurisprudence, international federations are entitled to determine their own criteria for membership, including conditions for remaining a member. In this case, the Constitution provides that a condition for continued membership is that the member’s continued membership does not seriously damage the international standing of tennis. The ITF cites

notably CAS 2007/O/1237 to the effect that “*the principle of autonomy of the association ... means, inter alia, that the association is free to accept or refuse members*”.

94. ITF contends that while the CAS may control the constitutional legality of a decision on entitlement to membership, it is not incumbent on the CAS to substitute its evaluation of what may “*seriously damage the international standing of tennis as a world sport*” for that of the constituted organs of the federation making that determination in accordance with its constitutive statutes. The Membership Decision “*was not irrational: it was plainly a decision that a reasonable governing body could reach in the circumstances and it was based on justified and objective reasons*”. Its rationale was set out in the EGM Agenda and addressed in detail by the presiding office. Many other international federations could be said to have gone further than the ITF, which prohibited Belarusian athletes from competing in any events at the international level, a fact which commands the conclusion that the ITF’s Decision cannot be said to have lacked proportionality.

95. Moreover, as the ITF puts it in para. 69 of its Answer, the Membership Decision had “*a justified and objective basis*” as follows:

On any view, facilitating an unprovoked invasion of a reign state satisfies the criteria for suspending membership under Article 4(b)... In circumstances where the international community swiftly rallied to condemn the action, the standing of tennis would have been seriously undermined if it had taken no action in response to Belarus’ actions, Even in the sports context, there was a general consensus that sport could not simply take no action. This was reflected in the IOC Resolution and the 8 March 2022 Statement, which expressly called on Ifs to take steps to condemn the actions of Russia and Belarus. The IFT would have been acting contrary to the recommendations of the IOC and against the tide of international opinion is it had taken no action.

96. A central element of the ITF’s defence is that the Membership Decision was in no sense disciplinary; it was not a punishment for violations of breaches of the rules, but rather an issue of entitlement to remain a member in light of a criterion such as the notions of being “*a member in good standing*” common to the law of associations; Article 4(b) is “*akin to such a criterion*” and there is no requirement for the ITF to identify particular violations of the regulations of the federation. CAS decisions do not suggest that.

97. The ITF requests the following relief:

1. *dismissal of BTF’s appeal;*
2. *an order for BTF to pay a contribution to the*
3. *IFT’s costs; and*
4. *an order that BTF pay the CAS costs.*

V. JURISDICTION

98. The BTF invokes this Panel’s jurisdiction pursuant to Articles R27 and R47 of the Code, as enlivened by Article 33(c) of the ITF Constitution, which calls for adjudication “*in accordance*

with the Code of Sports-Related Arbitration” (unless the ITF Rules calls for reference to the ITF Internal Adjudication Panel or Independent Tribunal).

99. The ITF accepts CAS jurisdiction explicitly in Paragraph 45 of its Answer, with the exception of the Competitions Decision with respect to which it asserts that the appeal is time barred (see the section on Admissibility below).
100. To the extent that the appeal impugns actions of the entity known as Tennis Europe, the present Panel has no jurisdiction for the simple reason that Tennis Europe is a separate legal entity and not a party to these proceedings. (Tennis Europe apparently was scheduled to organize junior tournaments in Belarus in 2022; BTF was excluded from its membership some time before March 2022.)

VI. ADMISSIBILITY

101. As an entity, the Respondent ITF takes different actions through different organs, and with different degrees of finality. In the present case, this abstract proposition amounts to a concrete distinction between the decision to suspend BTF’s membership in the ITF, on the one hand, and, on the other hand, the decision to exclude BTF’s participation in the ITF’s 2022 team competitions.
102. As seen, the issue of membership was dealt with constitutionally in two stages: a provisional decision by the Board requiring ratification by the higher body, i.e. the ITF Council. This will be referred to hereafter as “the Membership Decision”.
103. The decision of exclusion from team competitions, hereafter “the Competitions Decision”, was dealt with separately by the Board (exercising its constitutional authority to refuse or cancel entries) and did not require ratification by the Council. The significance thereof is that challenges to Board decisions, being final as acts of the ITF, are subject to a separate, earlier deadline than decisions that require ratification. (That the *provisional* decision of suspension of membership was subject to the same earlier deadline is conceivable in the abstract, but does not require resolution in the present case.)
104. The Statement of Appeal was filed on 26 May 2022, i.e. within the 21-day statutory time limit as provided for in Article R49 of the Code. Furthermore, the Appeal Brief was filed on 5 June 2022, within the 10-day limit after the Statement of Appeal. This is not contested by the ITF, and admissibility is thus confirmed with respect to the Membership Decision. That conclusion does not apply to the Competitions Decision for the simple reason that under the ITF Constitution the latter had been decided previously by the Board with finality. Any recourse to CAS on account thereof required action by the Appellant within a deadline running from the date of that Decision. No such action was filed within the time limit, and it is therefore inadmissible. Thus, the outcome that the Appellant cannot enter teams in team competitions is final and binding and not part of the Panel’s scope of review according to Article R57 of the Code.

VII. APPLICABLE LAW

105. The law of the seat, which in accordance with Article R29 of the Code is Lausanne, has the effect that the provisions of Chapter 12 of the Swiss Private International Law Statute (“PILA”) are applicable as the *lex arbitri*. Furthermore, it follows from Article 182(1) PILA, the agreement of the Parties, and the signed OoP that the provisions of the Code shall apply to conduct of the proceedings.

106. As for the law applicable to the merits Article R58 of the Code provides:

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

107. The Panel shall primarily apply the ITF Constitution and the Olympic Charter. As Article R58 of the Code stipulates, the law of the federation having issued the challenged the decision shall apply “subsidiarily”. Given that the ITF has its seat in England, that means that the subsidiarily applicable law is that of England, and not, as the Appellant wrongly asserts, Swiss law.

VIII. OTHER PROCEDURAL ISSUES

A. Late Filing of Respondent’s exhibits

108. BTF submits that ITF filed its exhibits to its Answer late and that they therefore must be struck from the file. The CAS Court Office in its letter dated 31 October 2022 advised the Parties that ITF had complied with the prerequisites of Article R31(3) of the Code. The Panel subscribes to this finding. Article 31 (3) of the Code provides that in case a party files a submission by email, such submission must also be sent by courier, or uploaded on the CAS E-filing Platform within the first subsequent business day following the expiration of the deadline. Here the deadline to file the Answer expired on 24 October 2022 and ITF’s materials were filed by email on the same day. Consequently, it sufficed to upload the relevant documents in the course of the next business day, i.e. on 25 October 2022. This is exactly what happened in the case at hand.

B. BTF’s Evidentiary Request

109. BTF further submits that there was a failure of due process because it was not provided with a “reasoned” decision. The Panel notes that the format of the Membership Decision complies with the prerequisites in Article 4 lit. b of the ITF Constitution. The latter provides for a “Resolution” of the Council and not for a “reasoned decision”. Furthermore, Article 4 lit. g of the ITF Constitution provides that “[n]otice of any proposed suspension ... shall appear on the agenda of the General Meeting at which it is to be moved”. This requirement has also been complied with in the case at hand. The Panel does not agree that the format of the Membership Decision

impinges on BTF's rights of defense when compared to a reasoned decision. The "Resolution" was taken based on the item of the agenda. BTF was provided with the agenda for the EGM well in advance. The agenda contained not only the motions on which the EGM would have to decide, but moreover the member federations (including BTF) were provided with the detailed "Rationale" of the motion and the legal provisions on which the motion is based. The reasons for the Membership Decision, thus, can be found in the agenda of the EGM. Furthermore, Mr Haggerty at the EGM on 6 May 2023 orally introduced the items on the agenda to the member federations in attendance and, again, explained their scope. In view of all of the above, the Panel rejects BTF's submission that it was not provided with the reasons of the Membership Decision. It is unclear for the Panel what additional information BTF would need in order to defend itself against the Membership Decision in these appeal arbitration proceedings.

110. The Panel, thus, concludes that BTF was provided with full documentation in these proceedings to properly defend its case before the CAS.

C. ITF's Objection to BTF's written submissions produced after the hearing

111. BTF produced written submissions on 18 April 2023 on which ITF at that point had no possibility to comment. ITF therefore sought their suppression. The Panel observes that the text was in substance the argument presented on BTF's behalf and contained nothing new of a nature to affect the outcome. There is thus no need for a ruling.

IX. THE PANEL'S DETERMINATIONS

112. At the outset, the Panel makes clear that it gives no decisive weight to ITF's insistence that BTF has over-emphasised the effect of the Membership Decision apart from its relevance to the subsidiary issue of proportionality. ITF may well be right; it is certainly evident that the Belarusian complaint would be exacerbated, along with the plausible unhappiness of the Belarusian public, if the country's leading players were excluded from competing individually. But the degree of involvement of national federations in individual careers varies from one country to another, and above all the simple point is that a decision which is not legally justified does not escape censure because its effects might have been more severe if its scope had been wider.

A. The Nature of the Membership Decision

113. The Parties dispute the nature of the Membership Decision. While the Appellant is of the view that the decision is disciplinary in nature, the Respondent submits that it is of an "administrative" or "membership" nature. The Panel notes that in case the appealed decision is of a disciplinary nature, different principles apply than those that attach to decisions of an administrative character (CAS 2012/A/2912, no. 98; TAS 2007/A/1381, no. 30 et seq.).

114. The fact that a decision has detrimental effects on a party is a necessary but not a sufficient criterion to qualify it as disciplinary. In the case at hand, it is undisputed that the Membership Decision has detrimental effects on the Appellant. The latter are described in Article 4 lit. h of the ITF Constitution as follows:

Any Member who is suspended shall not be entitled to submit resolutions to, attend or vote at any General Meeting of the Company and shall not participate in the Official Team Competitions of the Company.

115. The CAS has been faced numerous times with the question how to differentiate disciplinary matters from other kinds of decisions (e.g. eligibility issues or administrative issues). According to CAS jurisprudence, whether a matter is disciplinary in nature must be determined objectively, more particularly having regard to the object and the purpose of the decision (cf. CAS 2011/O/2422, no. 8.19; TAS 2007/A/1381, no. 39 et seq.). In CAS 2022/A/8709 at no. 95 et seq., the panel also put emphasis on what the “intentions” of the organ were that issued the decision in question. In particular, in case adverse effects are inflicted on a party because of a previous behaviour, this indicates a disciplinary character.

116. The Respondent submits that Article 4 lit. b of the ITF Constitution allows the suspension of membership completely unrelated to any behaviour of the party concerned. It simply deals – according to the Respondent – whether or not a member is in “good standing”. The Panel is not persuaded by this. The Panel notes that all the other paragraphs that deal with suspension of membership in Article 4 of the ITF Constitution clearly show a link between the respective member’s behaviour and the suspension imposed on it (“not adequately representing the game of tennis” [lit. c]; “failing ... to pay subscriptions” [lit. d]; in case the autonomy of a member federation is compromised [e]; “not fulfilling financial obligations” [e], and so forth.).

117. The Panel further finds that the standing of a member primarily depends on its behaviour. It is the behaviour displayed by a member that may damage the “international standing of tennis”. This is – in any event – what is reproached against the Appellant in the case at hand. That there is a strong link between the BTF’s behaviour and the decision to suspend its membership is evidenced by several factors. In the letter to the BTF dated 30 March 2022 Mr. Haggerty wrote – *inter alia* – as follows:

“We encourage you, as representatives of both the ITF and the international tennis community and as keepers of the principles of unity and peace enshrined in the Olympic Charter, to plead with your government to cease its facilitation of the unjustified military action in Ukraine”.

118. Thus, it is obvious from the above letter that the ITF thought that the international standing of the sport would be damaged if BTF failed to protest the actions of the Belarus government to facilitate the war against Ukraine. The Panel further notes that before passing the Membership Decision, Mr Hjortur Thor Grjetarsson, President of the Icelandic Tennis Association, asked for the floor and put the following question to the BTF:

Do you oppose and condemn the invasion of the Russian army supported by Belarus?

119. The purpose of the question was clear, i.e. to find out whether or not the BTF supported the actions of the Belarus government that facilitated the invasion of Ukraine. Thus, what brought the world of tennis into disrepute – according to the ITF – was BTF’s refusing to condemn the Russian invasion and thereby making itself complicit with the Belarus government. Consequently, there is a clear link in the case at hand between the consequences imposed on BTF by the Membership Decision and BTF’s behaviour.

120. The above also follows from the witness statement of Mr Haggerty filed in these proceedings. Therein he states as follows:

At the EGM the BTF was asked by the representatives of the Iceland Tennis Federation whether it opposed and condemned Russia’s invasion of Ukraine. In fact, the BTF had previously been asked to give such confirmation in writing by way of letter from the Icelandic Tennis Association to the BTF. However, on both occasions, the representative of the BTF declined to respond.

121. It follows from this statement that it was decisive for the ITF in the case at hand that “BTF declined to respond”, i.e. declined to resist the Russian war against Ukraine. This finding is further backed by Mr Haggerty’s testimony at the hearing where he stated that in case BTF would have distanced itself clearly from the actions of the Belarus government and condemned Russian’s invasion of Ukraine, this would have had an impact on the Membership Decision.

122. The Panel further notes that the procedure in which the Membership Decision was taken resembles a disciplinary procedure. Mr Haggerty in his testimony stated that BTF was given the floor at the EGM (prior to taking the resolution) in order to be “fair” and grant it the “right to be heard”. The above is rather unusual for an “administrative” measure. However, granting the right to be heard prior to inflicting detrimental effects on the party concerned is the typical procedural way forward in disciplinary proceedings.

123. The Respondent made further submissions at the hearing to differentiate its Membership Decision from a disciplinary matter. Thus, Mr Haggerty stated that the Membership Decision had no disciplinary character because it had been issued by the highest organ with the ITF. This, however, is not a relevant criterion to qualify the nature of a decision. The ITF further submitted that the nature of the decision must be administrative, since suspending membership is the flipside of granting membership. The latter, however, is an administrative decision and in consequence the suspension of membership must also be of the same character. The Panel is not persuaded by this. Of course, a decision to grant a party a right (not possessed previously) is different in nature (and hence subject to different rules) than suspending or cancelling a legal status rightfully obtained by said party.

124. The ITF finally submits that qualifying its decision as disciplinary in nature would be incompatible with CAS jurisprudence. More particularly, the ITF makes reference to the recent CAS decisions in the matters CAS 2022/A/8708 and CAS 2022/A/8709. It is true that in both proceedings the panel qualified the measure imposed by the respective sport governing

body as “administrative” in nature. Yet these decisions are simply not comparable with the matter at stake.

125. In CAS 2022/A/8709, the Football Union of Russia (“FUR”) appealed a decision of UEFA according to which “*all Russian representative teams and clubs are suspended from taking part in UEFA competition matches, until further notice*”. Similarly, CAS 2022/A/8708 concerned a decision of FIFA according to which “[a]ll teams of the FUR or otherwise affiliated to the FUR are suspended from participating in FIFA competitions until further notice and until the situation improves sufficiently to allow teams of the FUR or otherwise affiliate to the FUR to be readmitted”. Thus, differently from the case at hand, CAS 2022/A/8708 and CAS 2022/A/8709 do not deal with a **suspension of membership**. Instead, the decisions under appeal in both matters addressed the question whether or not Russian teams **were eligible to participate in competitions**. Not only was the subject matter in CAS 2022/A/8708 and CAS 2022/A/8709 significantly different from the case at hand; the objective pursued by FIFA and UEFA with their respective decisions also differed significantly. FIFA and UEFA imposed participation bans on Russian teams in order to protect the smooth running of their respective competitions and to avoid security issues. The reasons provided by UEFA for the ban on Russian participation reads as follows:

In addition, an increasing number of UEFA national associations publicly voiced their intention to not participate in matches against teams from the Russian Football Union (RFU).

Further, the general public’s reaction has the consequence that, even if matches against Russian teams would be staged on a neutral territory, there are serious concerns about the ability to ensure the safety and security for all those involved, i.e. delegations, players, supporters etc. This is of paramount importance for UEFA.

Equally, it has become known that several governments and the EU institutions have imposed flight bans from or to the Russian territory. This would have an additional considerable impact on the smooth staging and running of UEFA competition matches. ...

(emphasis added).

126. The situation in the case at hand is very different. There was no security issue or other threats to ITF events that needed to be addressed in May 2022. These issues had already been tackled by the Competition Decision. On 1 March 2022, the ITF Board had decided as follows:

The ITF Limited Board of Directors decided:

Davis Cup / Billie Jean King Cup / ITF international team competitions

- i. RUS and BLR entries revoked for 2022, and no entries to be accepted for future years until further notice;
- ii. For the avoidance of doubt, this means that RUS and BLR will be out of the DC and BJKC for the rest of 2022 and no route back despite any change in circumstances. This is important to ensure proper conduct of the competition including certainty for upcoming draws for the DC Finals event, and ability to manage the Qualifiers and remaining draws for BJKC.

127. The above decision did not need ratification by the Council according to the ITF Constitution (and as a matter of fact was not ratified by the Council on 6 May 2022). Furthermore, ITF had

submitted that – in the context of the admissibility of the present appeal – the ineligibility of BTF to participate in ITF team events was not within the scope of review of this Panel, because this matter had been finally and bindingly disposed of in the Competition Decision. It follows from the above that the purpose and the intent of the Membership Decision – unlike the decisions issued by UEFA and FIFA forming the matter in dispute in CAS 2022/A/8708 and 2022/A/8709 – was not to protect the ITF events and competitions. The main purpose of the Membership Decision was to inflict adverse effects on these federations for making themselves complicit with the actions of the Belarus government in the context of the invasion of Ukraine.

128. The above conclusions of this Panel are further backed when looking at other federations that reached similar decisions as that of ITF by suspending membership of the Belarus and Russian Federations. Thus, e.g., World Athletics on 1 March 2022 issued the following press release:

*World Athletic Council **sanctions** Russia and Belarus*

The World Athletic Council has today agreed to impose sanctions against the Member Federations of Russia and Belarus as a consequence of the invasion of Ukraine (emphasis added).

129. World Rugby issued a similar press release on 1 March 2022:



World Rugby confirms sporting sanctions for Russia and Belarus:

1. Suspension of Russia & Belarus from international & cross border rugby
 2. Suspension of Russia from World Rugby membership (Belarus is not a World Rugby member)
- Effective immediately

130. It clearly follows from these examples (provided by ITF in these proceedings) that international federations that suspended membership clearly qualified such measures as a “sanction”.

B. Alleged failure of Due Process

131. The Panel now turns to BTF’s complaints as to the process before moving to the substance of the Membership Decisions. BTF’s allegation of a failure of due process in the course of the deliberations that led to the Membership Decision consists of unsubstantiated assertions. As should be clear from this Award, the Panel has reviewed the record of the ITF’s administration of the steps that led to the Membership Decision and finds no lack of due process. It is often the case that parties who assert that they have been wrongfully treated in substance contend that they have also been denied a fair hearing. But those matters are of course distinct. In the

case at hand BTF was given the opportunity to address the issues at stake at the EGM. The Panel further notes that BTF could make the submissions it wished before the Council and that it did not request more time to state its position. The Panel further notes that no objections by BTF were recorded in the minutes of the EGM as to the procedure.

132. Finally, the Panel notes that even if there had been procedural flaws at the previous instance such failures were susceptible to cure before CAS. This is all the more true in light of BTF's acknowledgement at the end of the hearing that its right to be heard had been respected by the Panel. CAS has described this "curing effect" in the following terms (CAS 2006/A/1177, no. 19):

"The virtue of an appeal system which allows for a rehearing before an appealed body is that issues relating to the fairness of the hearing before the Tribunal of First Instance 'fade to the periphery' (CAS 98/211, published in Digest of CAS Awards II, pp. 255 at 264, citing Swiss doctrine and case law). Furthermore, the case law of the Swiss Supreme Court clearly establishes that any infringement of the right to be heard can be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal of first instance and in front of which the right to be heard had been properly exercised (see [BGE] 124 II 132, especially p. 138; [BGE] 118 Ib 111, especially p. 120 and [BGE] 116 I a 94, especially p. 95)".

133. This Panel adheres to the above jurisprudence.

C. The Standard of Review

134. The Parties are in dispute concerning the standard of review to be applied by this Panel. It appears debatable whether the standard of review is a question of the merits or procedure. The Panel can leave this question unanswered, since the Parties agreed to Article R57 (1) of the Code, which provides that the Panel has full power to review the facts and the law. Having said this, the Panel is aware that there is a line of CAS jurisprudence according to which a CAS panel in appeals arbitration proceedings will not readily interfere with a well-reasoned decision from a sports body. The panel in CAS 2012/A/2959 (para. 8.2) has expressed this in the following terms:

This is not, of course to say that the independence, expertise and quality of the first instance tribunal or the quality of its decision will be irrelevant to the [panel]. The more cogent and well-reasoned the decision itself, the less likely a CAS panel would be to overrule it; nor will a CAS panel concern itself in its appellate capacity with the periphery rather than the core of such a decision.

Judicial restraint is all the more advisable when, as it is the case here, under the applicable rules the first instance body enjoys a certain margin of discretion and/or appreciation, in particular when the manner in which this discretion / appreciation is to be exercised involves a sport-specific judgment (RIGOZZI/HASLER, in ARROYO M. (ed.), *Arbitration in Switzerland*, 2nd ed. 2019, Article 57 CAS Code no. 30). The Panel subscribes to the above approach and finds that its view further backed by the following argument.

135. Since the law applicable to the merits in the case at hand is English law, the Panel must resort to the latter when interpreting the provisions in the ITF Constitution. English law is, thus, the legal framework of reference in light of which the provisions of the ITF Constitution have been drawn up. This is particularly important where – as in the case at hand – the relevant provisions of the instrument in question are expressed in general terms. In such case English law gives deference to the sports body when interpreting such general terms.
136. ITF has invoked a decision of 16 June 2017 of the International Cricket Council Dispute Resolution Chamber sitting in Dubai, in which a panel presided by Michael Beloff QC (as he then was) upheld the expulsion of the USA Cricket Association from the ICC. That decision usefully sets out the relevant English principles as follows:

whether the issue of the propriety of the proposed expulsion is approached through the lens of company law, the law of associations, or the principles of public law which have migrated to into the private sector, especially where powerful sports governing bodies are concerned ... the approach will essentially be the same, the starting point is that sports governing bodies know is what is best for their sport. The law's intervention therefore is consciously restrained ... the role of an arbitral panel reviewing a decision to expel a member of an international federation is not to "make policy for sports federations" i.e. by evaluating whether it thinks that the entity is a suitable member, but is rather to verify the legal bases of federal actions, irrespective of their wisdom or otherwise, in the interest of the parties who have a stake in the proper functioning of the federation, including persons or entities who at a particular moment may find themselves in the minority (ICC v USACA, extracts published in LEWIS/TAYLOR, Sports Law and Practice).

137. That decision in turn invoked a CAS case, namely CAS 2009/A/1823 (also extracted in LEWIS/TAYLOR, *op. cit.*), in which the panel explained at paras. 9.1 and 9.2:

The CAS has neither the authority nor the ambition to make policy for sports federations. In particular, it is not for the CAS to say whether one entity or another is a more suitable member of a federation. The CAS's authority is rather to verify the legal bases of federal action, irrespective of their wisdom or otherwise, in the interest of parties who have a stake in the proper functioning of the federations, including persons or entities who at a particular moment may find themselves in the minority" (It is to be noted that the previously cited International Cricket Council case reprised the last sentence of the just-quoted passage).

It follows from the above that also according to English law when it comes to the interpretation of general terms in the rules and regulations of a sports body it is not for an external adjudicatory body (such as the CAS) to substitute its interpretation of the applicable regulations for that of the initial decision-makers. The decisive issue is therefore whether the Membership Decision was made lawfully, and not whether a CAS Panel might have decided it differently in substance.

D. The Legal Basis for the Membership Decision

138. BTF's claim that the Membership Decision was impermissible under the ITF Constitution, but of a "purely general nature" lacking a legal basis, calls for a review of the relevant standards before considering the specifics of the present case.

139. LEWIS/TAYLOR put the matter simply and clearly as follows (at A1.54):

... if an international federation's suspension or expulsion ... is challenged, the supervising court or arbitral panel will not second-guess the merits of that decision, but rather simply ensure that it respects ... legal constraints" which the authors then enumerate as three: first, that the offending conduct fall under a clear provision of the applicable rules; second, that the process by which the facts and consequences are determined must respect "the member's right to natural justice (or, in civil law terms, the right to be heard"; and third, that "the decision must not be arbitrary or irrational; it must be grounded in objective fact.

140. The Dispute Panel in *ICC v USACA*, upholding the ICC's expulsion of the US Cricket Association from membership, stated as a general proposition (at para. 57) that "*sports bodies are afforded a wide margin of appreciation, in particular in respect of membership matters*" (The USACA had suffered much internal turbulence – apparently refused to allow 32 or 47 eligible voters from taking part in a general election, incurred large financial debts leading to the cancellation of various competitions – and been suspended three times in the decade preceding its expulsion yet ultimately refused to adopt a constitution which would cure recurrent issues of governance).

141. LEWIS/TAYLOR moreover observe (at A1.57) that the CAS jurisprudence takes a similar approach, as reflected by the panel's comment in the case CAS 2007/A/1424, to the effect that it would "*give priority in the political debate to the principle of independence and autonomy of international federations*"; it furthermore observed that CAS jurisprudence has "*repeatedly affirmed the importance of safeguarding the independence and autonomy of international federations in relation to the administration of their sport*".

142. The basis for the Council's Membership Decision (as set forth in the EGM agenda circulated in advance of the Council meeting), was Article 4(b) of the ITF's Constitution. The latter provision reads as follows:

Any Class B Member or Class C Member whose continued Membership would, in the opinion of the Council, seriously damage the international standing of tennis as a world sport, shall be suspended as a Member of the Company if a Resolution of the Council to that effect is carried by a two-thirds majority. Any such suspension shall be effective at the conclusion of the General Meeting at which such Resolution is passed but may be reviewed at any subsequent Annual General Meeting of the Company.

143. The Panel finds that this provision provides a sufficient legal basis for the disciplinary measure imposed on BTF. It is a *lex specialis* that supersedes any other disciplinary provisions in the ITF Constitution. Consequently, BTF's reference to Article 33 lit. a of the ITF Constitution and its special procedure for dealing with complaints among national federations, is not applicable in the case at hand. Consequently, there was no need for ITF – following the Ukrainian Tennis Federation's letter requesting Russian and Belarusian expulsion – to implement the process provided for in Article 33 of the ITF Constitution. The Panel incidentally adheres to ITF's statement (with a considerable dose of understatement) in para. 80 of its Answer: "*given that the issue concerns the invasion of a sovereign state, it is not a matter which the*

ITF Board could 'investigate'. Nor would a disciplinary process have been an appropriate procedure given that a tribunal would not be in a position to make determinations regarding the legality of Belarus' conduct". Indeed, the ITF is not a body constituted to decide issues of public international law implicating national States as such.

144. The Panel also finds that the provision in Article 4 lit. b of the ITF Constitution clearly defines the consequences and the conditions under which such consequences shall be imposed. Furthermore, it clarifies which is the competent organ within ITF to impose such measure. The Panel also notes that the required quorum of members was present, and the vote was passed with a substantial margin over the two-thirds required majority. Furthermore, the Panel finds that whether the criterion ("*seriously damage the international standing of tennis as a world sport*") was met is first and foremost a matter for the Council to assess, since the requirement constitutes a general term and requires a sport-specific valuation. Consequently, the Panel must exercise judicial restraint when reviewing the Council's decision.

E. Serious danger for the standing of international tennis

145. If a decision is irrational, it may be rejected on the grounds of arbitrariness. The BTF's complaint is in effect that this was the case because the Membership Decisions was not based on justified and objective reasons. Seeking to make good on a claim to that effect, the BTF launches the claim that the ITF acted out of impermissible political motives. The Panel disagrees.

146. A fundamental starting point is the second of the Olympic Charter's fundamental Principles of Olympism:

The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.

147. The international community has broadly reacted with indignation at the armed aggression visited upon Ukraine. The BTF finds no traction in insisting that the Membership Decision was politically motivated, as though a hostile invasion is a "political" choice as to which reasonable persons may differ and cannot justify the reaction of the ITF.

148. True enough, the sixth Principle of Olympism commands sports organisations within the Olympic Movement to "*apply political neutrality*". But it would be an outrage to consider that "political neutrality" requires turning a blind eye to armed aggression seeking territorial conquest – as well as *support and facilitation* thereof - at the cost of tens of thousands of lives and incurring condemnation by a Resolution of the UN General Assembly. And the second sentence of the sixth principle shows how far the Charter is from such a conceivable interpretation. It provides:

"They [sports organizations] have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right

of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied”.

149. This is a rule of political non-interference in the way “organisations” – notably national and international federations – are created and run, with the sole limitation of “*responsibility for ensuring ... good governance...*”.
150. This is a long way from paralyzing international federations from reacting to a member’s *support and facilitation* of military aggression in violation of fundamental tenets of international law.
151. The consequences of the suspension of membership were set out in a paper submitted to the Board and approved by it on 4 March 2022 by a majority of 14 to 3, and confirmed in writing by the ITF to the BTF on 30 March 2022. In summary, these consequences were said to be:
- 28.1. **Governance:** *no right to attend or vote at the ITF’s AGM or for Belarusian nationals to be elected or appointed to a position on an ITF committee, commission etc;*
- 28.2. **Development:** *no access to programmes, funding or day-to-day support for development;*
- 28.3. **Competitions:** *no tournaments to be held in Belarus and no right to enter (future) official team competitions;*
- 28.4. **Finance:** *ITF to pay accrued expenses but not payments falling due during the period of suspension;*
- 28.5. **Officiating:** *no officiating schools to be held in Belarus, and Belarusian nationals would not be permitted to attend ITF-run officiating schools or programmes or to officiate in ITF team competitions.*
152. These consequences were moderated by the facts, as the ITF considered, that:
- (i) *individual players, coaches/team and officials would be permitted to continue to play in, attend or officiate at ITF tournaments where they were not representing the national association; (ii) existing ITF committee members would not be removed from their positions; (iii) entitlement to continue to receive Grand Slam Player Grants (of which two Belarusian players were at that time in receipt) would be at the discretion of the Grand Slam Player Development Programme Administrative Committee.*
153. On 8 March 2022, thirty-seven governments signed up to a statement condemning Russia’s and Belarus’ actions and calling on IFs, *inter alia*, to prohibit sports events from being held in Russia or Belarus and banning athletes and teams from competing internationally (TAB 20).
154. In his written witness statement, the ITF President stated in para. 22 with respect to the situation his organization faced in the end of February and beginning of March 2022 that he was aware that various nations

were already considering how they would approach the issue of participating against Belarus (or Russia) if they were drawn to compete in team and individual competition. This was a significant and urgent consideration.... While individual players were still permitted to play under a neutral flag, a team competition presented a different consideration as the players would be representing their country and the team would be funded by their national tennis association, which in my experience in the overwhelming majority of national tennis associations would mean indirect financial support from the government. Essentially, there is a very high degree of connection between the national team and the national government.

155. When such a significant part of the international community, and a correspondingly dominant proportion of the ITF membership, condemn a massive disruption of world peace, the notion that a member should be tolerated for merely “supporting and facilitating” it -- as if merely expressing a difference of political opinion -- needs only to be stated to be dismissed. To intimate that this conclusion on the part of the ITF Council was hasty or somehow idiosyncratic is if anything even less credible given the corresponding reactions of international federations in other sports – not of course to mention international organizations led by the United Nations.
156. The review of the record in the five-preceding paragraphs invalidates BTF’s argument to the effect that that the Membership Decision was wrongly based on the IOC’s recommendation, which ITF (according to BTF) wrongfully considered to be binding on it. This contention founders on the EGM Minutes themselves, which stress the independence of each international federation, and records the President’s explanation that the Board had given “*due regard to the IOC’s position without being restricted or controlled by it*”. (ITF1, p. 334.) There is no evidence that this was not so. Moreover, it would have been incomprehensible if the Board had ignored the reaction of the international community when considering its duty to safeguard the international standing of tennis.
157. For this reason, the BTF’s complaint that the Membership Decision does not “*speak about any violations of the Olympic Charter and/or the ITF Constitution by the BTF*” (96-97) misses the mark. The BTF was simply found not to be in compliance with the criterion inherent in Article 4 lit. b) of the ITF Constitution, which requires a mechanism to protect the standing of tennis internationally, an objective expressed in Article IV(e) of the ITF’s Constitution.

F. The Compatibility of the Membership Decision with Overriding Principles

158. Ultimately, the essence of BTF’s rejection of the Membership Decision is its contention that the Membership Decision constituted a violation of the Olympic principles of neutrality and autonomy (para.116). Much was made of this at the hearing, but to no avail. The Panel can do no better than to reproduce the following paragraphs from ITF’s Answer, which conclusively defeats this argument and are fully endorsed by the present Panel:

The primary purpose of these principles is to ensure that sport operates independently of, and without pressure from, government. The principles do not preclude IFs from taking into account political events in their decision-making. If the principles were applied to force IFs to ignore international political events, this would artificially and arbitrarily cause IFs to disregard factors that could affect the proper organisation of their sport (including

the safety of participants in the sport). For example, the invasion of Ukraine caused large public protests that justifiably caused concern about hosting events in Russia, Belarus or Ukraine and/or between those nations. Decisions as to whether to cancel or relocate matches necessarily take into account political developments. By extension, the principles cannot be applied in such a way that an IF could be forced to ignore political events where to do so would be damaging to the sport.

Further, sport has often been used as a vehicle for social change, including seeking to make progress in respect of attitudes to issues such as race, sexual orientation and gender. All of these issues may, to some extent, be considered political. However, sport and IFs have not shied away from making statements on these issues, nor from establishing sporting policy in a way that some countries may consider to be contrary to a domestic political position.

The fact that the IOC principles do not preclude IFs from taking into account political considerations is evident from the IOC Resolution itself, which recommended, inter alia, that IFs “not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions”. Plainly the IOC did not consider that it was infringing its own principles. Another example is the IOC’s exclusion of South Africa from the Olympic Games in 1964. The IOC passed a resolution requiring SANOC to obtain from the South African government a change in policy regarding racial discrimination in sports and competitions in the country.

Consequently, the BTF’s suggestion that “political neutrality” means that it is not appropriate for the ITF to take any stance or decision that is, on the BTF’s case, in any sense impacted by political events is wrong. The BTF does not cite any case law in support of its contention that where a decision is impacted by political considerations, that is per se a ground on which to set the decision aside. ...

In the present case, there is no evidence that the Council acted under pressure from governments. The Council appropriately took into account how the international community reacted to the invasion of Ukraine; however, the Membership Decision was taken by the Members independently of political pressure based on their assessment of the potential harm to the international standing of tennis.

159. The Panel now turns to a series of incidental arguments raised by BTF which may be described and dealt with succinctly.
160. BTF asserts that the Membership Decision was discriminatory in that it had the effect of excluding Belarusian players from competition. This argument is scarcely serious; it fails for the simple reason that Article 4 lit. of the ITF Constitution applies to all members equally, and the fact that one member infringes it obviously does not indicate discrimination. The fact that individual athletes may be adversely affected is a matter between the athletes and their federation, and of course in this case ultimately decisions of national authority in the nature of force majeure.
161. BTF advances a contention of a species which in social media is dismissively referred to as *what about them?* arguments, i.e. that others who had engaged in allegedly similar conduct had not been sanctioned. LEWIS/TAYLOR observe at B3.131 that in

“most cases” such arguments “have not been successful. Rather, panels have emphasized that their role is to judge the case on its own particular facts”.

162. An exception might be made, the authors note, if a challenging party can establish a “legitimate expectation” that the circumstances had been created by demonstrable “policy or established practice” that the impugned conduct would not lead to sanctions.

163. ITF’s written Answer successfully refutes this argument in the following passage:

The BTF provides limited examples of cases which it claims show that the BTF has been treated differently and no details of those military conflicts to permit any sensible comparison. [Footnote 73: The absence of details and analysis of each such military conflict is unsurprising given the difficulties inherent in such a task. This underlines the fact that a panel should not engage in an exercise of comparing different military action.] Consequently, there is no factual basis for the Panel to find that there has been unequal treatment (given that the burden is on the BTF to establish that the decision was discriminatory).

164. As for the lack of proportionality asserted by BTF, while the Panel accepts that this criterion applies to the Membership Decision, it finds that the Decision was in fact not disproportionate. When taking the Membership Decision, ITF permitted individual athletes to continue to compete internationally (in contrast to many other IFs), prohibiting them only from competing in team events on behalf of BTF/Belarus and removing the other benefits of membership of the ITF.

165. Even a panel with the duty and authority to conduct a *de novo* review must still afford an element of reasonableness, a margin of appreciation, or latitude, to the decision-maker and not simply substitute its view as to what is proportionate. If a decision is a sanction, then the sanction must be proportionate in that it must serve a legitimate purpose, be effective to achieve that purpose and go no further than necessary to achieve the purpose.

166. In the present case, the Membership Decision was taken with the legitimate aim of protecting the international standing of tennis as set out in the ITF Constitution; notably preserving the integrity of tennis and *“taking such measures as may appear expedient for advancing the interest of Tennis from an international point of view”*.

167. Moreover, the Membership Decision may have been more lenient than necessary to achieve the legitimate objective as it, in contradistinction from many other federations, significantly moderated the impact on individual Belarusians involved in the sport by permitting continued participation in ITF events on their own, thus striking a what it was entitled to consider a measured balance between the competing interests of the federation and individuals involved in the sport as such.

168. A final aspect of BTF’s appeal is derived from its attempt to cast itself in something like the role of an innocent bystander suffering on account of actions by a State for which it is not responsible. It mentions a public opinion survey which (leaving aside the questions one might have as to the possibility of conducting such sensitive surveys with any confidence in their

accuracy) casts doubt upon the level of popular support in Belarus for its Government's "support and facilitation" of the Russian invasion. By inference, it seems that BTF seeks benefit of an assumption that it may perhaps be opposed to the Russian attack. The Panel notes that there is no evidence on file of BTF (or any of its leaders) expressing such views. The panel also notes that when BTF was given the opportunity to state its position on the occasion of the EGM, BTF (or its representatives) never distanced themselves from the invasion of Ukraine that was to a significant extent waged from Belarus territory. It may well be that there is little popular enthusiasm in Belarus for the Government's role in this invasion, and it may also be that BTF would have preferred that its Government's policy be different. The fact, however, is that BTF never distanced itself from the above event and thereby brought international tennis into disrepute. Absent any action by BTF to the contrary, BTF implicitly aligned itself to the policy of its rulers. In such case, however, the governed suffer the consequences of the conduct of their rulers, and that this very fact is ultimately, and perhaps necessarily, conducive to resistance to policies that undermine international peace. And in this case, it is relevant to consider that national associations are the national representative organisation of their country and may be closely linked to, and funded by, their government. BTF's Appeal Brief (at [69]) confirms that the BTF is a "*public organisation with a very limited budget*". And, once again, the ITF's Membership Decision affected the BTF without interfering with players participating events as individuals.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Belarus Tennis Federation against the decision issued on 6 May 2022 by the International Tennis Federation Council at the Extraordinary General Meeting is dismissed.
2. The decision issued on 6 May 2022 by the International Tennis Federation Council at the Extraordinary General Meeting is confirmed.
3. (...).
4. (...).
5. Any other motions or requests for relief are dismissed.