



**INTERNATIONAL TABLE TENNIS FEDERATION  
ITTF TRIBUNAL**

**ITTF 2021-1 – Thomas Weikert v. ITTF Executive Committee members**

**ORDER ON THE INTERIM RELIEFS**

Issued by the  
**ITTF Tribunal**

Sitting in the following composition:

President: Mr Jorge **Ibarrola**, ITTF Tribunal Chair, Attorney-at-law,  
Switzerland  
Panel Members: Mrs Morenike **Obi-Farinde**, Attorney-at-law, Nigeria  
Ms Anna **Smirnova**, Attorney-at-law, Russian Federation

In the following matter:

Thomas **Weikert**, Germany, President of the ITTF,  
Represented by Prof. Dr Anne Jakob, Attorney-at-Law, Karben, Germany

**The Claimant**

**v.**

Ms Petra **Soerling**, Sweden  
Mr Masahiro **Maehara**, Japan  
Mr Alaa **Meshref**, Egypt  
Mr James **Morris**, New Zealand  
Mr Zhihao **Shi**, China  
Mr Bruce **Burton**, Canada  
Mr Nestor **Tenca**, Argentina  
Mr Seung-Min **Ryu**, Korea Republic

And

Mr Khalil **Al-Mohannadi**, Qatar  
Represented by Solesbury Gay Limited, London, United Kingdom

**The Respondents**

## I. THE PARTIES

1. Mr Thomas Weikert (the "**Claimant**") is the President of the International Table Tennis Federation ("**ITTF**").
2. Ms Soerling and Messrs Maehara, Meshref, Morris, Shi, Burton, Al-Mohannadi, Tenca and Ryu (the "**Respondents**") are some members of the ITTF Executive Committee ("**ITTF ExCo**").
3. The Claimant and the Respondents are hereinafter jointly referred to as the "**Parties**".

## II. SUMMARY OF FACTS

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.
5. In 2017, the Respondent Khalil Al-Mohannadi (hereinafter also referred to as the "**Respondent Al-Mohannadi**") was re-elected as ITTF ExCo member and appointed by the Claimant as Deputy President, in accordance with article 1.5.4.2 of the ITTF Handbook.<sup>1</sup>
6. For different reasons that do not need to be elaborated at this stage, the Claimant decided on 22 February 2021 to remove the Respondent Al-Mohannadi from his position as Deputy President. Such decision was effective as of 23 February 2021 (the "**Removal Decision**") and was communicated to the ITTF ExCo members on 25 February 2021. Mr Al-Mohannadi remained however in his position as ITTF ExCo member.
7. On 28 February 2021, the Claimant received a communication purportedly issued by the ITTF Executive Vice-Presidents but actually not signed by the latter, saying in substance that the ITTF President did no longer have the confidence and the support of the ITTF Executive Vice-Presidents and that neither of them would accept to be appointed as Deputy President of the ITTF ExCo in lieu of Mr Al-Mohannadi. Therefore, the position of Deputy President would remain vacant.

---

<sup>1</sup> The applicable regulations to this matter are contained in the ITTF Handbook 2021, which includes nine chapters, amongst which chapter 1 relating to the ITTF Constitution and chapter 8 relating to the ITTF Tribunal regulations, which are of relevance in this matter.

8. On 2 March 2021, Mr Al-Mohannadi asked the ITTF Legal Counsel to issue a legal opinion on the Removal Decision.
9. On 3 March 2021, Mr Dylan Mah, the ITTF Legal Counsel, issued a legal opinion, concluding, in substance, that the ITTF President did not have the power to issue the Removal Decision.
10. On 4 March 2021, the Claimant wrote to the ITTF ExCo and submitted that the ITTF Executive Committee should suspend Mr Al-Mohannadi with immediate effect from 18 March 2021 until the allegations against the latter be reviewed and resolved.
11. On 5 March 2021, Counsel for Mr Al-Mohannadi sent a letter to the Claimant, arguing that the latter did not have the power to remove the Deputy President, but only to appoint him. According to Mr Al-Mohannadi, such power pertained to the ITTF ExCo, in accordance with the ExCo's residual competence provided at article 1.5.4.1.12 of the ITTF Constitution. Besides, Mr Al-Mohannadi complained that his procedural rights had not been abided by and that this constituted a fundamental breach of the rules of natural justice and procedural fairness.
12. Counsel for Mr Al-Mohannadi concluded:

*Consequently, we would ask you to recognise that you had no power to remove Mr Al-Mohannadi as Deputy President with immediate effect. If you do not do so, we will commence proceedings against you personally before CAS, seeking an order that your decision be set aside and you and the ITTF pay Mr Al-Mohannadi's costs.*

*We would strongly advise you to take your own personal legal advice on this letter. Unless we have a positive response to this letter by 5:00pm GMT on Wednesday 10 March 2021, we will commence proceedings on behalf of our client without further notice.*
13. On the same day, Counsel for Mr Al-Mohannadi forwarded this letter to the other ITTF ExCo members, pointing out again that the Removal Decision was likely to be referred to the CAS and that he would possibly request for "*Provisional or Conservatory measures under Article R37 of Code of Sports-Related Arbitration against Mr Weikert and the ITTF.*"
14. On 9 March 2021, the Claimant informed the other ITTF ExCo members that the communication dated 28 February 2021 from the ITTF Vice-Presidents was neither signed, nor approved by all ITTF Executive Vice-Presidents. Besides, he denied all the allegations contained in such letter.

15. On 12 March 2021, Mr Rudolf Sporrer, ITTF Rules Committee Chairman, informed all ITTF ExCo of the following:

*From the point of view of the Rules Committee this Constitutional Law entitles the President to nominate his Deputy at any time (not necessarily straight after the election) and as a consequence also entitles him to recall or replace the Deputy President at any time on his discretion*

16. On 21 March 2021, the ITTF ExCo published a statement, according to which:  
*The EC voted in favour to re-instate Mr. Khalil Al-Mohannadi as the ITTF Deputy President until such time as the initial purported decision-making authority of the President and any and all allegations against the Deputy President have been fully clarified and dealt with in accordance with due process and natural justice and as set out in the ITTF Constitution.*

### **III. PROCEEDINGS BEFORE THE ITTF TRIBUNAL AND THE PARTIES' SUBMISSIONS**

#### **a) PROCEEDINGS BEFORE THE ITTF TRIBUNAL**

17. On 22 March 2021, the Claimant filed a request for proceedings before the ITTF Tribunal against the decision taken by the ITTF ExCo on 20 March 2021, re-instating Mr Khalil Al-Mohannadi as the ITTF Deputy President (hereinafter referred to as the "**Challenged Decision**").
18. By letter of 24 March 2021, the ITTF Tribunal Chair acknowledged receipt of the request for proceedings filed by the Claimant and requested the latter, pursuant to article 8.25.2 of the ITTF Regulations, to proceed with the payment of a non-refundable fee of USD 1,000 immediately upon receipt of said letter.
19. On the same day, the Claimant paid the administrative fee of USD 1,000.
20. On 30 March 2021, the ITTF Tribunal Chair, served on the Respondents the request for proceedings filed by the Claimant and invited them to express their positions on the Claimant's request for interim relief within a deadline of 9 April 2021.
21. On 9 April 2021, the Respondents Soerling, Maehara, Meshref, Morris, Burton and Tenca lodged a common submission including their observations on the Claimant's request for interim relief, without producing any evidence.
22. On 9 April 2021 too, Counsel for the Respondent Al-Mohannadi filed observations on the Claimant's request for interim relief, together with a supporting bundle of documents contained in a pdf document of 107 pages.
23. The Respondents Shi and Ryu did not file any submission.

24. On 12 April 2021, the ITTF Tribunal Chair granted the parties a deadline of 15 April 2021 to file the following additional information:
- The Respondents Soerling, Maehara, Meshref, Morris, Burton and Tenca and the Respondent Al-Mohannadi were invited to file a copy in pdf format of their submissions, signed by each of them or by a common representative, duly authorised as per an appropriate power of attorney, to be provided simultaneously.
  - The Respondent Al-Mohannadi was invited to file a power of attorney attesting of the representation powers of his counsels.
  - The Claimant was invited to express his views regarding the counterclaims submitted by the Respondents Soerling, Maehara, Meshref, Morris, Burton and Tenca and the Respondent Al-Mohannadi in their observations on the Claimant's request for interim relief.
25. On 13 April 2021, the Respondent Al-Mohannadi submitted a power of attorney and a copy of his observations on the Claimant's request for interim relief, signed by one of his legal representatives.
26. On 14 April 2021, each of the Respondents Soerling, Maehara, Meshref, Morris, Burton and Tenca filed a signed copy of their observations on the Claimant's request for interim relief.
27. On 15 April 2021, the Claimant filed unsolicited additional comments on the Respondents' answers.
28. On 15 April 2021, the Respondents were invited to submit their final comments on the Claimant's request for interim relief within a deadline of 20 April 2021.
29. On 19 April 2021, the Respondent Tenca filed his final comments; on 20 April 2021, the Respondents Soerling, Maehara, Meshref, Morris and Burton filed their final comments.
30. The Respondent Al-Mohannadi and the Respondents Shi and Ryu did not file any further observations.

**b) THE PARTIES' SUBMISSIONS AND PRAYERS FOR RELIEF**

31. In his request for proceedings of 22 March 2021, the Claimant requests from the ITTF Tribunal "a declaratory judgement by way of affirmative action" (interim reliefs) that the EC Members were not entitled to re-instate Mr. Khalil Al-Mohannadi as ITTF Deputy President".

32. In substance, the Claimant's arguments in support of his application are the following:

- The ITTF President has the power to appoint the Deputy President, pursuant to article 1.5.4.2 of the ITTF Constitution and, therefore, he also has the power to remove the Deputy President from this position.
- In the absence of any rule in the ITTF regulations, Swiss law applies and provides that, if an association's legal body ("**organ**") is competent to appoint an organ, it has also the power to revoke such organ, in the absence of any rule providing otherwise in the association's regulations.
- In the present case, ITTF regulations only entitle the ITTF President to appoint the Deputy President and do not provide anything about the removal of the latter.
- Regarding the requirements to issue an interim order, the Claimant submits the following:

*28. This competence derives from the competence provided in Art. 1.5.4.2. of the ITTF Handbook which states as follows:*

*The Executive Committee shall consist of the President, the Chair of the Athletes Commission and 8 Executive Vice-Presidents of which one shall be appointed by the President as Deputy President and another one shall be appointed for finances. ...*

*29. Hence, if the President has the power to appoint his deputy, he must also have the power to remove a person from this position (actus contrarius).*

*30. The Claimant's view is supported by Swiss law, which shall apply subsequently if the ITTF Handbook is silent*

33. On 9 April 2021, the Respondent Al-Mohannadi filed his answer to the request for proceedings, arguing, in substance, the following about the application for interim relief:

- The Claimant's application is not a proper request for interim relief, as it does not seek for temporary relief pending a full hearing but for a final relief.
- The Claimant's application does not fulfil the requirements provided at article 8.24.4 of the ITTF Tribunal regulations, namely that the measures must be necessary to protect the applicant from irreparable harm, that such application is likely to be successful on its merits and the applicant's interests outweigh the respondents' interests.
- Mr Al-Mohannadi contends that the Claimant, as ITTF President, has the power to appoint the Deputy President, in accordance with article 1.5.4.2

of the ITTF Constitution, but has no power to remove or replace him. Only the ITTF ExCo has specific power to take such action under article 1.5.4.1.12 on the ITTF Constitution.

- Mr Al-Mohannadi further alleges that even assuming that the ITTF President has the power to remove the Deputy President, such power may only be exercised in a manner which is procedurally fair, which was not the case here.
  - As a counterclaim, Mr Al-Mohannadi *“seeks a declaration that the Claimant is bound by and must observe the terms of the resolution limiting his powers and rights of action, as set out in the Executive Committee Resolution dated 20 March 2021”*. In support of such *“requirements or interim relief”*, he supports that:
    - There is a risk of irreparable harm that *“the Claimant will continue to act in an authoritarian fashion without any recourse to the governing Executive Committee”* and that the Claimant *“is currently causing and will continue to cause irreparable harm to the interests of the ITTF”*.
    - The Mr Al-Mohannadi’s case is likely to succeed as *“powers of the Executive Committee as the sole executive body of the ITTF are clearly stated under the [ITTF] Rules. The ITTF President has no such powers.*
    - With regards to the balance of interests, *“it is impossible to identify any interest he may have, other than remaining in office, that might outweigh those of the Executive Committee. This is not a legitimate interest”*.
34. On 9 April 2021, the other Respondents Sorling, Maehara, Meshref, Morris, Burton and Tenca (hereinafter referred to as “the **Other Respondents**”) filed a common submission, containing the following:
- Pursuant to article 1.5.4.1.11 of the ITTF Constitution, the ExCo has the authority to decide any matters not attributed to any other party in the ITTF regulations. Therefore, *“as the ITTF Constitution does not specify who may remove the ITTF Deputy President from his position, the power must fall to the EC, not the Claimant”*.
  - The Claimant’s decision to remove Mr Al-Mohannadi from his position as Deputy President was in breach of natural justice and due process.

- These Respondents further point out that pursuant to article 1.5.4.4.2 of the ITTF Constitution, *“in the event of a vacancy arising in the post of Deputy President, the President may only ‘nominate’ a replacement and the EC members would retain the option to accept or not accept the nomination and in the latter event the position would remain vacant”*.
  - These Respondents’ prayers for reliefs are the following:
    1. *The proper interpretation of the ITTF Constitution, both from a grammatical and semantic perspective, as well as a systematic and teleological or purposive approach, allows us to conclude that the Claimant does not have the power to revoke the appointment of the ITTF Deputy President.*
    2. *The Claimant's actions in removing Mr Al-Mohannadi from his position as ITTF Deputy President were ultra vires.*
    3. *If, which is denied, the Claimant had the authority to remove Mr Al-Mohannadi, his actions in any event amount to a breach of natural justice in not providing sufficiently detailed and justifiable reasoning and in not affording Mr Al-Mohannadi due process.*
    4. *The resolution of the EC to reinstate Mr. Khalil Al Mohannadi as ITTF Deputy President is in accordance with the ITTF Constitution and the law and was necessary to restore the institutional integrity of the ITTF.*
    5. *The Request for interim relief should be denied on the grounds that this relief is not necessary to protect the Claimant from irreparable harm, the interests of the Claimant do not outweigh those of the Respondents and, finally the likelihood that the Claimant's claim on the merits will not be successful.*
    6. *A declaration be granted to limit the Claimant's future conduct in accordance with the decision of the EC dated 20 March 2021.*
    7. *The Claimant pay the costs of these proceedings personally.*
35. On 15 April 2021, the Claimant filed a further, unsolicited, submission to the Respondents’ answers (the **“Response”**), submitting in substance the following:
- The removal of the Deputy President is not a disciplinary sanction and does not require any proceedings or hearing or statement of grounds.
  - The power to remove the Deputy President derives from rules provided in the Swiss Civil Code (**“SCC”**) and the Swiss Code of Obligations (**“SCO”**), in particular from articles 61(1) SCC, 705(1) SCO and 890(1) SCO. Accordingly, unless the ITTF regulations provide otherwise, the ITTF President has the power to remove the Deputy President.
  - Article 1.5.4.1.12 [*recte* 1.5.4.1.11], relating to the ExCo’s residual competence, does not apply, as the ITTF President is not an ITTF body. *“If the Respondents believe that the Claimant’s action of revoking the Deputy President would infringe their rights or ITTF rules, then, following*



*their argumentation, they were obliged to bring the case before the ITTF Tribunal instead of re-instating the Deputy President on their own initiative”.*

- Regarding the Respondents’ counterclaims, the ITTF ExCo has and will always decide by simple majority. Therefore, the counterclaim in that regard is totally unnecessary.
36. The Respondent Al-Mohannadi did not file any reply to the Claimant’s response. On 20 April 2021, the Other Respondents filed identical Replies to the Claimant’s Response, submitting the following:
- The Claimant does not have the ability of removing the Deputy President as a "mere personal decision." If the ITTF President had this power in a personal capacity it would give rise to undue and coercive pressure toward the ITTF Deputy President and Executive Vice-Presidents for Finance as it would mean that the President could, at any time he deemed it appropriate, dismiss them.
  - The Swiss Civil Code and Swiss Code of Obligations refers to "election" and "the power to elect." The Deputy President, however, was not elected by the President but by the Member Association. After Mr Al-Mohannadi's election, in accordance with the ITTF Constitution, he was appointed to Deputy President by the Claimant. Therefore, the Claimant's reliance on this section of the Swiss Civil Code is incorrect.
  - It would appear particularly pedantic to expect a sporting federation's constitution to expressly state which individuals are to be regarded as a 'body' under their Constitution. Given the general drafting style of the ITTF Constitution, Article 1.5.4.1.11 was not drafted to restrict the power of the EC but rather that 'body' was used as a catch-all phrase to encompass, inter alia, all roles and committees in the ITTF.
37. These Respondents’ prayers for relief are the following:
1. *The proper interpretation of the ITTF Constitution allows us to conclude that the Claimant does not have the power to revoke the appointment of the ITTF Deputy President.*
  2. *If, which is denied, the Claimant had the authority to remove Mr Al-Mohannadi, his actions in any event amount to a breach of natural justice in not providing sufficiently detailed and justifiable reasoning and in not affording Mr Al-Mohannadi due process.*
  3. *The resolution of the EC to reinstate Mr. Khalil Al Mohannadi as ITTF Deputy President is in accordance with the ITTF Constitution and the EC*

*followed procedure in not escalating the allegation to the ITTF Integrity Officer or the ITTF Tribunal.*

4. *The Request for interim relief should be denied on the grounds that this relief is not necessary to protect the Claimant from irreparable harm, the interests of the Claimant do not outweigh those of the Respondents and, finally the likelihood that the Claimant's claim on the merits will not be successful. Since the Claimant's original submission considerable time has passed thereby demonstrating that this matter lacks any urgency.*

#### **IV. APPLICABLE LAW**

38. According to article 8.17 of the Handbook, the ITTF's decisions shall be based on:

8.17.1. primarily, on the ITTF Constitution, the Laws of Table Tennis, the other chapters of the ITTF Handbook, and the decisions of any competent ITTF body;

8.17.2. and subsidiarily, on Swiss law and such other law that the Hearing Panel deems applicable.

Accordingly, the Panel will apply the rules contained in the ITTF Handbook and, subsidiarily, Swiss law or any other law that the Panel may deem applicable.

#### **V. JURISDICTION OF THE ITTF TRIBUNAL and ADMISSIBILITY OF THE APPEAL**

##### **a. Formal requirements**

39. According to article 8.16.1 of the ITTF Handbook, and subject to articles 8.16.2 and 8.16.3, the ITTF Tribunal shall have jurisdiction to hear and decide any alleged infringement of any article under the ITTF Constitution or any other rule or regulation of the ITTF Handbook or any related document except:

- any provision under Chapter 5 of the ITTF Handbook (ITTF Anti-Doping Rules);
- any provision of the Classification Rules of ITTF Para Table Tennis.

40. According to article 8.16.2 of the ITTF Handbook, the ITTF Tribunal has the original jurisdiction to hear and decide any alleged infringement of any provision or such other claims arising from any provision under Chapters 1, 2, 6 and 7 of the ITTF Handbook.

41. Pursuant to article 8.16.3 of the ITTF Handbook, the ITTF Tribunal has the appellate jurisdiction to hear and decide any appeal of any decision made by the appropriate decision-making body on alleged infringements of any provision or such other claims arising from any provision under Chapters 3 and 4 of the ITTF Handbook.

42. Article 8.16.4 of the ITTF Handbook provides that, where the ITTF Tribunal exercises its appellate jurisdiction pursuant to article 8.16.3:
- the provision of these ITTF Tribunal Regulations will apply in appeal proceedings before the ITTF Tribunal mutatis mutandis, unless they are inconsistent with or pre-empted by the provisions of article 8.15.1.5;
  - unless otherwise specified in any provision of the ITTF Handbook, the Request for Proceedings of the appeal must be filed with the ITTF Tribunal no later than 21 days after the date that the appealing party receives the decision in question. The decision being appealed will remain in full force and effect pending determination of the appeal, unless the Hearing Panel (or the ITTF Tribunal Chair, if the Hearing Panel has yet to be formed) orders otherwise; and
  - the Hearing Panel has full power to hear the matter under appeal de novo and it will have all of the powers that the actual first instance decision-maker would have had under the applicable provision in the ITTF Handbook. Notwithstanding the foregoing, the Hearing Panel may remit the matter to the first instance decision-maker for re-hearing, if it deems appropriate.
43. The Claimant's request for proceedings consists in an appeal against the Challenged Decision issued on 20 March 2021 by the ITTF ExCo.
44. The ITTF Tribunal Panel (hereinafter referred to as "the **Panel**") is satisfied that, at least prima facie, it has jurisdiction to decide on the present dispute and on the Parties' prayers for reliefs submitted so far, which is not disputed by the Respondents.
45. The request for proceedings was filed on 22 March 2021, namely within the 21-day deadline provided at article 8.16.4 of the ITTF Handbook.
46. Therefore, the Panel considers that it has jurisdiction to rule on the Claimant's request for proceedings and that such request is admissible, without prejudice to any final decisions in these respect by the Panel in the decision on the merits.

**b. Declaratory Reliefs**

47. All parties are seeking for declaratory reliefs.
48. The Claimant's prayers for relief are as follows:

*4. The Claimant request from the ITTF Tribunal a declaratory judgement by way of affirmative action (interim relief) that the EC members were not entitled to re-instate Mr. Khalil Al-Mohannadi as ITTF Deputy President.*

49. The 6 Respondents' prayers for relief are as follows:
6. A declaration be granted to limit the Claimant's future conduct in accordance with the decision of the EC dated 20 March 2021.
50. As mentioned above, Swiss law subsidiarily applies in the present matter. Swiss law subjects the possibility for an appellant or claimant to obtain a declaratory judgment from a Swiss court to extremely strict conditions. Such requirements are also relevant in proceedings before the ITTF or the CAS when Swiss law applies.<sup>2</sup>
51. The party seeking declaratory relief must show not only a legal interest, but a special legal interest to do so and such legal interest that must be alleged and proven.<sup>3</sup> Such a special legal interest is given if the three following prerequisites are met. First, there must be a legal uncertainty. Second, this legal uncertainty must be unacceptable and third there is no other way to resolve the legal uncertainty, in particular not with a further claim. No declaratory relief will be

---

<sup>2</sup> In CAS 2015/0/4113 (confidential ordinary case), the Panel held (emphasis added):

*The Code does not regulate the declaratory judgment; therefore, within the scope of Article 182 para. 2 PILA, the Panel decides on the applicable procedural rules. The reference to Swiss law does not lead to the direct applicability of Swiss procedural law, but the Swiss procedural law can be applied by analogy. The application of the principles of Swiss law regarding the declaratory judgment is confirmed by CAS Jurisprudence (CAS 2009/A/1870 World Anti-Doping Agency [WADA] v. Jessica Hardy & United States Anti-Doping Agency [USADA], para. 132; CAS 2011/A/2612 Liao Hui v. International Weightlifting Federation [IWF], para. 52). It also has to be noted, that in the various jurisdictions the conditions for a declaratory judgment vary considerably. The majority of the Panel in the case at hand seeks guidance in the rules on civil procedure applicable before state courts. According thereto, a claimant requires not only a legal interest, but a special legal interest. According to the prevailing view in the legal literature such **special legal interest** is given if the **three following prerequisites** are met. **First** of all there must be a **legal uncertainty**. The foregoing of this **legal uncertainty must be unacceptable** and finally there is **no other way to resolve the legal uncertainty, in particular not with a further claim**. No declaratory relief will be sought for abstract legal questions or to determine factual circumstances. Furthermore, in state court proceedings declaratory relief is not intended to protect the parties from further proceedings (cf. the legal doctrine in Switzerland Besenich/Bopp in: Thomas Sutter-Somm!Franz Hasenboehler/Christoph Leuenberger [Ed.], Kommentar zur Schweizerischen Zivilprozessordnung, 3. Edition, Zürich 2016, Ali. 88 fig. 1 et seq.; Weber in: Karl Spühler/Luca Tenchio/Dominik Infanger [Ed.], Basler Kommentar Schweizerische Zivilprozessordnung, 2. Edition, Basel 2013, Art. 88 fig. 1 et seq. and the CAS jurisprudence CAS 2009/A/1870 World Anti-Doping Agency [WADA] v. Jessica Hardy & United States Anti-Doping Agency [USADA]; CAS 2011/0/2574 UEFA v. FC Sion 1 OLA SA).*

<sup>3</sup> In CAS 2013/A/3272 Ik-Jong Kim v. FILA, the Panel held (emphasis added):

*68. The Panel finds that the request to "declare that the Bureau of the Fédération Internationale des Luttes Associées (FILA) is improperly constituted" is inadmissible.*

*69. According to well-settled CAS jurisprudence, **declaratory relief can be granted only if the requesting party establishes a special legal interest to obtain such declaration** (see, ex multis, CAS 2009/A/1870, para. 132; CAS 2011/0/2574, para. 49; CAS 2011/A/2612, para. 48). The Panel does not see any reason to deviate from that case law, which is also supported by an arbitral award rendered by an ICC tribunal sitting in Zurich (cf. SCHNEIDER/KNOLL, Performance as a Remedy: Non-Monetary Relief in International Arbitration, page 29; it should be noted that MICHAEL E. SCHNEIDER himself holds a different view, *ibid.*, page 30).*

*70. **Mr. Kim has not alleged – let alone proven – any legal interest** in the declaration sought. Such interest was expressly contested by FILA. While **Mr. Kim certainly has a legal interest in having the Decision set aside, this interest does not require the declaration sought in addition to the requested annulment of the Decision**. Because Mr. Kim failed to show any further legal interest that he could have in that declaration, his prayer for declaratory relief is inadmissible.*

sought for abstract legal questions or to determine factual circumstances. Furthermore, in state court proceedings declaratory relief is not intended to protect the parties from further proceedings.<sup>4</sup>

52. Furthermore, there must be some urgency to resolve the uncertainty to protect the respective party's right, namely an immediate interest for solving the uncertainty.<sup>5</sup>
53. In the present case, the special legal interest alleged by the Claimant resides in the resolution of the question of whether the ExCo members were entitled to re-instate Mr. Khalil Al-Mohannadi as ITTF Deputy President. Such legal interest does not exist for the following reasons:
- On a preliminary basis, the Claimant is all but clear as to the purpose of his request for a declaratory relief. He does not say what he intends to do if such relief is granted. In particular, he does not explain what damage he seeks to prevent or what kind of compensation he wants to secure in relation to the Challenged Decision.
  - The Claimant does not explain why there would be any (1) unacceptable (2) uncertainty that (3) could not be resolved otherwise (the three above-mentioned prerequisites).
  - **First**, to rule on the Claimant's prayers for relief relating the validity of the Challenged Decision, the ITTF Tribunal will undoubtedly have to address and decide whether such decision violates ITTF Handbook or not. As held in the above-mentioned award CAS 2013/A/3272, while the Appellants may have a "*legal interest in having the Decision set aside, this interest does not require the declaration sought in addition to the requested annulment of the Decision*". There is thus **no uncertainty**.
  - **Second**, the Claimant does not explain why such purported uncertainty would be unacceptable. This prerequisite is neither proven, nor even alleged and for that mere reason, the request for the declaratory relief should be dismissed. Therefore, there is **no unacceptable uncertainty**.

---

<sup>4</sup> CAS 2015/0/4113, op. cit., ibid.

<sup>5</sup> CAS 2009/A/1870, paragraphs 132 in fine:

*Finally, there must be a **certain urgency to resolve the uncertainty** in order to protect the respective party's right, i.e. there must be an **immediate interest for solving the uncertainty now** (Vogel/Spühler, Grundriss des Zivilprozessrechts, 8. Aufl. 2006, no 23 et seq.). ff.*

See also CAS 2011 A 2612, paragraph 52 and CAS 2013 A 3272, paragraphs 68ff.

- **Third**, the Claimant does not say anything about the fact that the purported unacceptable uncertainty could not be resolved otherwise. Such third requirement is neither proven, nor even alleged. Like for the second prerequisite, such failure shall lead to the inadmissibility of the request for the declaratory relief.
  - Finally, the Claimant does not prove nor even allege any possible **urgency** in resolving the purported and non-existent uncertainty in a declaratory judgement.
54. In light of the foregoing, the ITTF Tribunal also struggles to see the actual need of the Respondents' requests for declaratory relief, namely a declaration to limit the Claimant's future conduct in accordance with the Challenged Decision. The ITTF Tribunal also notes that the Respondents do not reiterate such request in their second submission.
55. Although the admissibility of the declaratory reliefs sought by the parties is doubtful, this issue may remain unanswered in view of the Panel's decision to dismiss the Parties requests, as elaborated hereunder.

## **VI. INTERIM ORDER**

56. The Claimant's request for interim order is aimed at staying the Challenged Decision issued by the ExCo to reinstall the Deputy President.
57. This request shall be examined in light of articles 8.23.1 and following of the ITTF Handbook, which provide for the competence and applicable requirements in this regard.
- i) **Competence:**
58. Article 8.23.1 of the ITTF Handbook states that:  
The Hearing Panel (or the ITTF Tribunal Chair, in cases before the Hearing Panel is appointed) is entitled to grant interim relief.
59. In the case at stake, the Hearing Panel has already been appointed, and has authority to decide over this issue.
- ii) **Requirements:**
60. Under article 8.23.4 of the ITTF Handbook:  
In considering whether to pronounce interim relief, the Hearing Panel (or the ITTF Tribunal Chair, in cases before the Hearing Panel is appointed) shall consider whether the measure necessary to protect the applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the interests of the applicant outweigh those of the respondent.

61. Therefore, the ITTF Regulations provide for the three cumulative requirements to be fulfilled:
- Whether the measure is necessary to protect the applicant from irreparable harm
  - likelihood of success on the merits
  - balance of interests, where the applicant's interests must outweigh the respondent's interests
62. These conditions are identical to those provided in Swiss civil law and in most other civil and common law jurisdictions. They are also identical to those provided by article R37 of the Code of Sports-related Arbitration (the "**CAS Code**") of the Court of Arbitration for Sport (**CAS**). The CAS jurisprudence in such area appears thus relevant to be considered in an application for interim relief under the ITTF Regulations.
63. According to the CAS jurisprudence (CAS 2017/A/4957 and the cited jurisprudence), which the Panel endorses, when deciding whether an application for provisional measures should be ordered, the following factors must be taken into consideration:
- (a) whether the stay is necessary to protect the applicant from irreparable harm ("risk of irreparable harm"): the applicant must demonstrate that the requested stay is necessary to protect its position from damage or risks that would be impossible or very difficult, to remedy or cancel at a later stage;
  - (b) whether the applicant has reasonable chances to succeed on the merits ("likelihood of success"): the applicant must demonstrate that its position is not obviously groundless and that it has reasonable chances eventually to win the case;
  - (c) whether the interests of the applicant outweigh those of the opposite party and of third parties ("balance of convenience" test): the applicant must demonstrate that the harm or inconvenience it would suffer from the refusal of the requested measure would be comparatively greater than the harm or inconvenience other parties would suffer from the granting of the measure.
64. Under the CAS jurisprudence, the three requirements for the granting of provisional measures (i.e. irreparable harm, likelihood of success on the merits of the appeal and balance of interests) are cumulative, which is explicitly provided in the ITTF regulations, at article 8.23.4 of the ITTF Handbook, the using of the word "shall" before the three requirements, and the word "and"

and not “or” before the last requirement.

65. Finally, according to the CAS jurisprudence (see e.g. CAS 2010/A/2266, N & V vs. Union European de Football Association), the three cumulative requirements for provisional measures must be explicitly alleged (brief, evidence, arguments).
66. If one of these cumulative conditions is not fulfilled, the ITTF Tribunal will not need to review the others.

1. Likelihood of success on the merits

67. As a preliminary remark, the Panel notes that the Respondent Al-Mohannadi was removed by the Claimant, in a decision taken on 22 February 2021. Whether the ITTF President or the ExCo had the authority to take that decision, which is disputed between the parties, it seems that Mr Al-Mohannadi could and should have challenged it, as acknowledged explicitly by his counsel in his letter of 5 March 2021 (see §13 above). Counsel of Mr Al-Mohannadi submitted that the competent authority would have been the CAS, whereas the Panel is of the opinion that the ITTF Tribunal would probably have had jurisdiction to rule on an appeal against the ITTF President’s Removal Decision, pursuant to article 8.16.3 of the ITTF Handbook.
68. Therefore, it appears doubtful that the ITTF ExCo had the jurisdiction to invalidate the ITTF President’s Removal decision and it seems that such decision was not formally challenged by the Respondent Al-Mohannadi.
69. Irrespective of the foregoing and of the material arguments relied upon for the relief sought by the Claimant on the merits of the case, an applicant must show that he has standing to appeal and that the Respondent has standing to be sued.

- a. *Standing of the Claimant to Challenge a Decision Taken by the ExCo*

70. The first question to solve is whether or not the President has the standing to challenge a decision taken by the ExCo.
71. According to established CAS jurisprudence,<sup>6</sup> only parties that have a “*direct, personal and actual interest*” are considered to have legal standing to appeal or challenge a decision.

---

<sup>6</sup> CAS 2016/A/4924 & CAS 2017/A/4943 Paolo Barelli v. FINA (§§85-86).



72. In CAS 2016/A/4924 and CAS 2017/A/4943, the Panel held that (emphasis added):

*Third parties generally have standing before the CAS in two cases. **First**, when a regulation explicitly confers it. **Secondly**, when an association's measure affects not only the rights of the addressee, but also and directly those of a third party, that third party is considered "directly affected" and thus enjoys standing to sue<sup>7</sup>. This is consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake may bring a claim, even if they are not addressees of the measure being challenged.*

73. In the present matter, the Challenged Decision reinstates Mr Al-Mohannadi as ITTF Deputy President, which the Claimant submits it is under his own prerogatives.

74. Under article 1.5.4.2 of the ITTF Handbook:

The Executive Committee shall consist of the President, the Chair of the Athletes Commission and 8 Executive Vice-Presidents of which one shall be appointed by the President as Deputy President and another one shall be appointed for finances. In addition, any IOC member may be an ex officio Executive Committee member without voting rights by decision of the Executive Committee.

75. Under article 1.5.4.4.2 of the ITTF Handbook:

A vacancy arising in the post of Deputy President shall be filled by an Executive Vice-President nominated by the President.

76. The Challenged Decision states:

*The EC voted in favour to re-instate Mr. Khalil Al-Mohannadi as the ITTF Deputy President until such time as the initial purported decision-making authority of the President and any and all allegations against the Deputy President have been fully clarified and dealt with in accordance with due process and natural justice and as set out in the ITTF Constitution.*

77. It appears therefore that the ExCo has taken a decision which falls under the exclusive authority of the ITTF President: the appointment or replacement of the ITTF Deputy President.

78. Accordingly, the Claimant is affected directly by the ExCo decision, in that it disposed of a right falling under his competence.

79. Therefore, the Panel considers that the Claimant has standing to appeal in the present matter.

*b. Standing to be sued of the ExCo Members*

80. The Claimant's request for proceedings is directed at the Respondents, who are members of the ITTF ExCo. It is not aimed at the ITTF ExCo itself – or even at

---

<sup>7</sup>CAS 2008/A/1583 Sport Lisboa e Benfica Futebol SAD v. UEFA and FC Porto Futebol SAD & CAS 2008/A/1584 Vitoria Sport Clube de Guimaraes v. UEFA and FC Porto Futebol SAD (§32).

all ExCo members as Mr Zoran PRIMORAC, ExCo member and Chair of the Athletes' Commission, is not identified as a Respondent –, although the ExCo is an actual body of the ITTF, nor against ITTF itself, as a legal entity.

81. Under Swiss Law,<sup>8</sup> the defending party has standing to be sued if it is personally obliged by the "disputed rights" at stake. In other words, a party has standing to be sued and thus may be summoned before a tribunal or any authority, only if it has some stake in the dispute because something is sought against it. A claim has to be filed against the "debtor of the disputed right" ("*L'action doit être ouverte contre celui qui est l'obligé du droit litigieux*").<sup>9</sup> Seen from another perspective, if a claimant seeks relief against someone, this person shall be named as a defending party.
82. If a prayer for relief is sought against a party which has not been named as a Respondent by the Claimant in the procedure, such claim has to be rejected, at least to the extent that it does not affect the Respondent.<sup>10</sup> In CAS 2013/A/3437,<sup>11</sup> the Panel held (emphasis added):
- Whilst (...) it may well be the obligation of the Appellant to identify the proper respondent at the outset of the procedure (...), the consequences of not identifying all proper respondents is not that the appeal is wholly inadmissible, but only that the Panel may decline orders against a person who is a proper respondent but has not been joined or may limit the scope of its review to the orders sought against the party properly joined as a respondent.*
83. In the case at stake, the Challenged Decision was issued by the ITTF ExCo, as a legal body of ITTF, respectively by ITTF, a legal entity. Therefore, the appeal should have been aimed at ITTF, respectively the ITTF ExCo, and not against some of the ExCo members, individually, who are not personally empowered to issue a decision on behalf of the ExCo, but strictly entitled to participate in the decision process, the decision being ultimately rendered by the ITTF ExCo and not by its members.
84. An interim order to be rendered by this Panel must be directed against a party which is able to abide by it. An order whereby the members of the ExCo would be compelled to cancel, even provisionally, a decision issued by the body they

---

<sup>8</sup> See, amongst others the constant jurisprudence by the Swiss Supreme Court, reflected notably in ATF 142 III 782, Judgement 4A\_635/2016 of 22 January 2018, Judgement 4A\_560/2015 of 20 May 2016; Mavromati & Reeb, *The Code of the Court of Arbitration for Sport*, pp. 411-413, more specifically p. 413.

<sup>9</sup> MAVROMATI & REEB, *The Code of the Court of Arbitration for Sport*, pp. 411-413, more specifically p. 413.

<sup>10</sup> The following CAS awards are particularly relevant: CAS 2011/A/2654, CAS 2016/A/4668, CAS 2017/A/5524, TAS 2017/O/5062, CAS 2013/A/3437.

<sup>11</sup> CAS 2013/A/3437, ISSF v/ WADA, in particular §§281-284.

belong to, would be totally unenforceable, as it would in fact not be directed at the ExCo as a body or at the ITTF as a legal entity, but only at the individuals being part of such body.

85. Had the application be also directed against the ITTF or against the ITTF ExCo, an order could have been issued affecting the latter, even if no order could have been issued against the other Respondents. Such is not the case.
86. Therefore, this Panel has no choice but to conclude that the Respondents do not have the standing to be sued in the present case, at least *prima facie*, and that, accordingly the Claimant's application is unlikely to succeed and shall thus be dismissed.

### 2. Irreparable harm

87. As the requirements for an interim order are cumulative and as the requirement relating to the likelihood of success is not fulfilled, it does not appear necessary to examine whether the other requirements are met.
88. However, the Panel considers it appropriate to point out that the Claimant has limited himself to submit the following, with regard to the risk of irreparable harm:
- 28. To pronounce an interim relief is required because the behavior of the EC members and the so-called re-instatement are doing harm to the Claimant's work and credibility as ITTF President and further to the ITTF as such.*
89. The Panel finds that the Claimant does not prove nor even allege to a sufficient extent that the Challenged Decision creates a risk of irreparable harm.
90. Therefore, the ITTF Tribunal also considers that this requirement is not met.

### 3. Balance of interests

91. As two out of three requirements for the issuance of an interim order are not fulfilled, the Panel considers that it does not need to address the third requirement regarding the balance of convenience.

## **VII. SUMMARY OF THE SPECIFIC PROCEDURAL MATTERS**

92. The Claimant has standing to challenge the ExCo decision.
93. The Claimant's request is directed against certain individual members of the ExCo, not against the ExCo itself, as a body which issued the Challenged Decision, or the ITTF, as a legal entity. The Respondents, i.e. certain members of ExCo, do not have standing to be sued, and no relief can be issued against them.

94. The Claimant's and Respondents' requests for declaratory reliefs are inadmissible.
95. The Claimant's request for interim relief must be dismissed because the cumulative requirements set for at article 8.23.4 of the ITTF Handbook in this regard are not met.

### **VIII. COSTS**


96. Pursuant to 8.37 of the ITTF Handbook:
  - 8.37 Costs
    - 8.37.1 The Hearing Panel may, at its sole discretion, order any party to the proceedings to pay some or all of the costs of the proceedings, including any one or more of the following:
      - 8.37.1.1 the costs of holding the hearing; and
      - 8.37.1.2 the legal fees, the accommodation costs, travel costs or such other expenses incurred as a result of the proceedings for
        - 8.37.1.2.1 the Hearing Panel members;
        - 8.37.1.2.2 any party to the proceedings;
        - 8.37.1.2.3 any witness; and
        - 8.37.1.2.4 any independent expert.
    - 8.37.2 Without limiting the Hearing Panel's discretion as stated in R8.37, the Hearing Panel may award costs against a party for advancing any claim that is frivolous, vexatious, or entirely without merit.
97. In the present circumstances, the Panel considers that the parties shall bear the costs of this Order in a proportion of 64% to be borne by the Claimant and 4% by each of the Respondents.
98. The final amount of the costs will be communicated to the parties per separate communication.

## IX. ON THESE GROUNDS

### The International Table Tennis Tribunal rules that:

1. The Claimants' and Respondents' requests for interim reliefs and other requests are dismissed, if admissible.
2. The costs of the proceedings shall be borne by the parties in the following proportion:
  - Mr Thomas Weikert shall bear 64% of the costs
  - Ms Petra **Soerling** shall bear 4% of the costs
  - Mr Masahiro **Maehara** shall bear 4% of the costs
  - Mr Alaa **Meshref** shall bear 4% of the costs
  - Mr James **Morris** shall bear 4% of the costs
  - Mr Zhihao **Shi** shall bear 4% of the costs
  - Mr Bruce **Burton** shall bear 4% of the costs
  - Mr Nestor **Tenca** shall bear 4% of the costs
  - Mr Seung-Min **Ryu** shall bear 4% of the costs
  - Mr Khalil **Al-Mohannadi** shall bear 4% of the costs
3. Each party shall bear its own legal and other costs.

Lausanne, on 26 April 2021



Jorge Barrola  
President of the Panel



Morenike Obi-Farinde



Ms Anna Smirnova