

INTERNAL ADJUDICATION PANEL OF THE INTERNATIONAL TENNIS FEDERATION

DECISION IN THE MATTER OF INTERNATIONAL TENNIS FEDERATION V. ILIE NĂSTASE

A. Introduction

1. The parties in this matter (each, a **Party**, together, the **Parties**) are:
 - 1.1. Ilie Năstase. A former elite-level tennis player; now the Captain of the Romanian Fed Cup team.
 - 1.2. The International Tennis Federation (**ITF**). The International Olympic Committee-recognized international sports federation for the sport of tennis, with its headquarters in London, United Kingdom.
2. On 20-23 April 2017, the Fed Cup World Group II Playoffs tie between Romania and Great Britain (**Tie**) was held in Constanta, Romania. During the Tie, Mr. Năstase allegedly breached the Welfare Policy and was provisionally suspended following an application by the ITF Executive Director Professional Tennis.
3. On 28 April 2017, Mr. Năstase was charged by the ITF with various breaches of the Welfare Policy.
4. This Internal Adjudication Panel (**Panel**) is convened under Article (b) of the 2017 Fed Cup Welfare Policy (**Welfare Policy**). The role of the Panel is to determine whether Mr. Năstase breached the Welfare Policy and, if so, what, if any, sanctions or penalties should be imposed on him for such breach(es).

B. The Charges

5. Mr. Năstase was charged with the following breaches of the Welfare Policy (each, a **Charge**, together, the **Charges**):
 - 5.1. Making a comment about Serena Williams's unborn child that may be interpreted as racist, in breach of the Introduction to the Welfare Policy, and Articles a.ii.a and a.v.b (the **Serena Williams Charge**);
 - 5.2. Making advances of a sexual nature towards Anne Keothavong, the Captain of the Great Britain team, in breach of Articles a.iv.c and a.v.b (the **Anne Keothavong Charge**);
 - 5.3. Entering, without authorisation, the Great Britain Team Lounge without being given any authorisation, in breach of Article a.ii.a (the **GB Lounge Charge**);
 - 5.4. Making abusive and insulting comments to a member of the accredited press, in breach of Articles a.iii.b and a.v.b (the **Press Charge**);

- 5.5. Making abusive and offensive comments to the match officials and to members of the Great Britain team, refusing to leave the court, and inciting the crowd, in breach of Articles a.ii.a, a.iii.a, a.iii.b and a.v.b (the **On-Court Charge**).
- 5.6. Mr. Năstase's conduct as a whole, in breach of the introduction to the Welfare Policy (the **Overall Conduct Charge**).

C. Proceedings before the Panel

6. On 5 May, Mr. Năstase requested an extension to the deadline (of 8 May) for submitting his response and requested an oral hearing.
7. The ITF did not object to the request for an extension. The IAP granted a one-week extension to the response deadline (i.e. until 15 May).
8. On 15 May, Mr. Năstase submitted his response to the Charges.
9. On 17 May, the ITF requested the opportunity to make further submissions in response to Mr. Năstase's submissions.
10. On 19 May, the IAP granted both Parties the opportunity to respond.
11. The ITF made its second submission on 24 May.
12. Mr. Năstase made his second submission on 30 May.
13. On 8 June, the Panel informed the Parties that the matter would be decided on the sole basis of written submissions, since there was no material factual dispute between the parties.

D. Rules

14. The applicable rules are the Welfare Policy that is set out at Appendix I of the 2017 Fed Cup Regulations:

Any team member coach, trainer, manager, agent, medical or para-medical personnel and/or family member, tournament guest, or other similar associate of any player or team (together "Player Support Team Member"), any player and any tournament personnel, such as an official, tournament director, staff, volunteer, sponsor, health care provider, ITF staff member and members of the media (together "Credentialed Person") shall conduct himself/herself in a professional manner at all times and in accordance with this ITF Welfare Policy. In this ITF Welfare Policy Player Support Team Members, players and Credentialed Persons shall be defined as "Covered Persons".

a. *Elements of the Welfare Policy.*

i. Application

- a) Covered Persons shall be familiar with, and must abide by, this ITF Welfare Policy.*

ii. Unfair and/or Discriminatory Conduct

- a) *Covered Persons shall not engage in unfair or unethical conduct including any attempt to injure, disable or intentionally interfere with the preparation or competition of any player.*
- b) *Covered Persons shall not discriminate in the provision of services on the basis of race, ethnicity, gender, national origin, religion, age or sexual orientation.*

iii. *Abuse of Authority; Abusive Conduct*

- a) *Covered Persons shall not abuse his or her position of authority or control, and shall not attempt to or compromise the psychological, physical or emotional wellbeing of any player.*
- b) *Covered Persons shall not engage in abusive conduct, either physical or verbal, or threatening conduct or language directed toward any Covered Person, parent, spectator or member of the press/media.*
- c) *Covered Persons shall not exploit any player relationship to further personal, political or business interests at the expense of the best interests of the player.*

iv. *Sexual Conduct*

In order to prevent sexual abuse and the negative consequences resulting from the imbalance of a dual relationship, sexual conduct of any kind between any player and his/her Player Support Team Members and/or Credentialed Persons is discouraged.

In addition, the following conduct is specifically prohibited:

- a) *Covered Persons shall not make sexual advances towards, or have any sexual contact with, any player who is (i) under the age of 17, or (ii) under the age of legal majority in the jurisdiction where the conduct takes place or where the player resides.*
- b) *Covered Persons shall not sexually abuse a player of any age. Sexual abuse is defined as the forcing of sexual activity by one person on another person (i) of diminished mental capacity; or (ii) by the use of physical force, threats, coercion, intimidation or undue influence.*
- c) *Covered Persons shall not engage in sexual harassment - for example, by making unwelcome advances, requests for sexual favours or other verbal or physical conduct of a sexual nature where such conduct may create an intimidating, hostile or offensive environment.*
- d) *Player Support Team Members and Credentialed Persons shall not share a hotel room with a player who is (1) under the age of 17, or (2) under the age of legal majority in the jurisdiction where the hotel is located or where the player resides, unless such Player Support Team Member or Credentialed Person is the player's parent or is related to the player and authorised in writing by the player's parent. Penalties will apply to any underage player who is found to have violated this Hotel Room Policy. These penalties can include: forfeiture of points from the tournament(s) where the violation occurred and/or monetary fines equal to the amount of the hotel room rates and/or forfeiture of hotel per diem rates as applicable, for the tournament(s) where the violation occurred.*

Such penalty shall be in addition to any penalties that may be imposed on the Player Support Team Member or Credentialed Person pursuant to sub-Section b below.

v. *Other matters*

(a) *Criminal Conduct – Covered Persons shall comply with all relevant criminal laws. For greater certainty and without limiting the foregoing, this obligation is violated if a Covered Person has been convicted of or entered a plea of guilty or no contest to a criminal charge or indictment involving (a) an offence involving use, possession, distribution or intent to distribute illegal drugs or substances, (b) an offence involving sexual misconduct, harassment or abuse, or (c) an offence involving child abuse. Further, this obligation may be violated if a Covered Person has been convicted of or entered a plea of guilty or no contest to an offence that is a violation of any law specifically designed to protect minors.*

(b) *Conduct in General – Covered Persons shall not conduct himself or herself in a manner that will reflect unfavourably on the ITF, any tournament, event or circuit owned or sanctioned by the ITF (the “ITF Tournaments”), any player, official or the game of tennis.*

[...]

E. The Facts

15. The following is a summary of the relevant facts of the case as submitted by the Parties. Only those facts that the Panel considers necessary to explain the reasoning underlying the decision in the case are referred to. The Panel notes that there is no material factual dispute between the Parties, since Mr. Năstase does not deny any of the behaviours with which he has been charged. He does, however, provide context for those behaviours.
16. On 20 April, during his speech at the Official Dinner, Mr. Năstase put his arm around Great Britain captain Anne Keothavong and asked her for her hotel room number. Mrs. Keothavong responded to Mr. Năstase’s request with words to the effect that she was married, to which Mr. Năstase replied ‘so am I, four times’.
17. On 21 April 2017, during a press conference after the Official Draw, while a member of the Romanian team was answering a question about Serena Williams’ pregnancy, Mr. Năstase made a comment in Romanian to another Romanian team member about Ms. Williams’ unborn child, which has been translated as: ‘Let’s see what colour it is. Chocolate with milk?’
18. At a photo session following the Official Draw, Mr. Năstase repeated his request to Mrs. Keothavong for her room number, reportedly adding “[w]e keep being attracted”, this time sufficiently loudly to be overheard by attending members of the media.
19. On the instruction of the ITF, Andreas Egli (the Tie Referee) held a meeting with Mr. Năstase on 22 April, around ninety minutes before play started. Also in attendance at that meeting were George Cosac (President of the Romanian Tennis Federation) and Razvan Itu (Vice-President of the Romanian Tennis Federation). In that meeting, Mr. Egli informed Mr. Năstase that the ITF had initiated an investigation in relation his (Năstase’s) comment about Ms. Williams’ unborn baby.

20. Shortly after his meeting with Mr. Egli, Mr. Năstase entered the GB Lounge while making a phone call, sat on a sofa for approximately five minutes while continuing that call, then left. During the phone call(s), Mr. Năstase waved at (but didn't speak to) the GB Team members who were present.
21. After leaving the GB Lounge, but prior to the start of play, Mr. Năstase entered the Press Room, where he had an altercation with Eleanor Crooks (an accredited journalist for the Tie). According to Ms. Crooks, Mr. Năstase repeatedly called Ms. Crooks "stupid" and asked her why his comments about Ms. Williams' unborn baby (which Ms. Crooks had reported) were racist. Mr. Năstase also stated that the English media were 'out to get him'.
22. Early in the second set of the second singles match on 22 April between Sorana Cirstea and Johanna Konta, Mr. Năstase entered into a conversation with the match Umpire, after Ms. Keothavong told the Umpire that some spectators in a corner were talking loudly. Mr. Năstase swore at the Umpire and verbally insulted him, as a result of which the Umpire issued Mr. Năstase with a warning for unsportsmanlike conduct.
23. Shortly afterwards, Mr. Năstase effectively accused the Umpire of favouring the GB team. Mr. Egli came onto court and spoke with Mr. Năstase. Following that conversation, Mr. Egli instructed the match Umpire to issue Mr. Năstase with a second warning for unsportsmanlike conduct, on the basis that Mr. Năstase had questioned the integrity of the match officials. Mr. Năstase then verbally insulted Mr. Egli, as a result of which Mr. Egli ordered the removal of Mr. Năstase from the court.
24. Mr. Năstase refused to leave the court for several minutes and, instead, sat on the Romanian Team bench. Mr. Năstase then stood up and swore at Mr. Egli. On being persuaded to leave the court by a representative of the Romanian Tennis Federation, Mr. Năstase approached the GB team bench and swore at members of the GB team. Having left the court, Mr. Năstase then sat in the front row of the players' area in the stand, but was escorted out of the arena shortly afterwards.
25. While being escorted from the building, Mr. Năstase was filmed by Ms. Crooks. Mr. Năstase swore at Ms. Crooks and also tried to approach her, but was prevented from doing so by security guards.
26. On the evening of 22 April, Mr. Năstase requested that an apology note be read out to the crowd and the GB team the next day. That request was refused by the Referee.
27. The next day (23 April), Mr. Năstase sent flowers to the GB Team as an apology. Mr. Năstase requested that they be presented on court, but at the insistence of the ITF Representative they were presented in the GB Lounge instead.

F. The ITF's case

1. The Serena Williams Charge

28. The ITF argues that Mr. Năstase's comment was unethical, unprofessional, unacceptable, offensive, derogatory, and may be interpreted as racist. The important element of such comments is the words used and how they may be interpreted and affect the recipient. Mr. Năstase's cultural background does not excuse his comment. He has been in the public eye for most (if not all) of his adult life and so should have a broader understanding of culture.

29. The examples of unethical conduct provided in Article a.ii.a of the Welfare policy are non-exhaustive (“..., including any attempt to injure, disable or intentionally interfere with the preparation or competition of any player”), and so Mr. Năstase’s comment cannot be excluded from falling within its scope.

2. *The Anne Keothavong Charge*

30. By asking Ms. Keothavong for her room number when both she and he were married, Mr. Năstase made a sexual advance, which was unwelcome and constituted sexual harassment under Article a.iv.c of the Welfare Policy. The Welfare Policy wording, which states that Covered Persons “shall not engage in sexual harassment” means that a breach of this element of the Welfare Policy does not require intent.
31. Having been told by Ms. Keothavong that she was married and having not given him her hotel room key, Mr. Năstase should have been clear that his comment was unwelcome. However, he persisted and repeated the request, this time during a photo opportunity.
32. Because Mr. Năstase’s comments were widely reported in the media, they reflected unfavourably on the ITF, the Fed Cup, and tennis, contrary to Welfare Policy Article a.v.b.

3. *The GB Lounge Charge*

33. Mr. Năstase had no authorisation to enter the GB Lounge and knew that he had no such authorisation. Despite this, he still entered the GB Lounge. Mr. Năstase must, therefore, have intended to do so and therefore must also have intended to interfere with the preparation of the GB team.
34. By acknowledging members of the GB team while he was in their Lounge, Mr. Năstase must have realised that he was in a place that he had no authorisation to be. In addition, there were other clear indicators that he was in the wrong Lounge, including a GB sign on the door outside the Lounge and GB team branding on the wall inside the Lounge.

4. *The Press Charge*

35. By verbally abusing an accredited member of the press on two occasions on 22 April, which was widely reported, Mr. Năstase breached Articles a.iii.b and a.v.b of the Welfare Policy. Following his meeting with Mr. Egli, but prior to the start of play, Mr. Năstase deliberately entered the Press Room with a view to haranguing one or more members of the British media for their reports of his comments about Ms. Williams’ unborn baby.
36. When Mr. Năstase was being escorted from the stadium following the on-court incidents, he saw that he was being filmed by Ms. Crooks (who had been the primary recipient of his abuse in the Media Room) and again verbally abused her. Mr. Năstase’s state of mind at the time does not excuse his conduct.

5. *The On-Court Charge*

37. Mr. Năstase directed verbal abuse at the Chair Umpire, the Referee and the GB Captain and players. His comments interfered with the competition, compromised the wellbeing of the GB

players, and constituted abuse under the Welfare Policy. He also threatened the Referee by saying “you know you are not going to leave the country”.

38. By refusing to leave the court after his third warning, Mr. Năstase’s actions also incited the crowd to become more partisan and affected the psychological and emotional well-being of the players on court.

6. The Overall Conduct Charge

39. When taken together, the charges, which individually constitute a breach of the Welfare Policy, increase the severity of Mr. Năstase’s conduct. Mr. Năstase displayed a lack of respect for both teams, disregarded the authority of the match officials and the ITF. Mr. Năstase’s conduct was, on the whole, unprofessional, in breach of the Introduction to the Welfare Policy.
40. Any genuine contrition by Mr. Năstase only occurred a significant time after the Tie.

G. Mr. Năstase’s case

41. As a general point, Mr. Năstase denies breaching Articles a.ii.a, a.iii.a and a.iv.c of the Welfare Policy.

1. The Serena Williams Charge

42. Mr. Năstase accepts that he made an unfortunate choice of words when commenting on Ms. Williams’ unborn baby, but submits that they were intended as a joke and were misinterpreted. As they were made on the spur of the moment, they also could not be construed as being premeditated. Mr. Năstase subsequently apologised to Ms. Williams in a private letter.
43. Mr. Năstase also submits evidence in mitigation, in that he comes from a nation where racism is not ‘as delicate an issue as it may be in other parts of the world’. There is also no prior evidence of Mr. Năstase being racist; his friendships and partnerships with contemporaries such as Arthur Ashe and Yannick Noah stand as evidence to the contrary.
44. Mr. Năstase argues that the intent underlying his words is relevant and that there is a distinction to be made between remarks that are intentional and those which are not, but which may be misinterpreted. In addition, Mr. Năstase’s comment does not meet any of various definitions of racism, including the UK 2010 Equality Act.

2. The Anne Keothavong Charge

45. Mr. Năstase does not deny the comments, but claims that he had no intention to emotionally or physically harm the members of the GB team (including Ms. Keothavong). His remarks did not constitute sexual innuendo, nor did they meet the definition of sexual harassment under the UK 2010 Equality Act.
46. Because Mr. Năstase made the requests in public, it shows that they were intended as jokes to ‘reduce tension surrounding the Tie’ and to display a ‘friendliness’ towards the GB team. Mr. Năstase only repeated the request because he believed that it had been received by the audience (including Ms. Keothavong) as a joke. Had he been aware that anyone had been made uncomfortable, he would not have done so.

47. When specifically asked by Ms. Victoria Clutterbuck (the ITF Representative) whether she wished to complain, Ms. Keothavong did not do so or even suggest that a complaint was necessary, indicating that she (Ms. Keothavong) did not perceive any sexual harassment.
48. Despite the lack of intent, Mr. Năstase acknowledges and regrets that his attempted joke was inappropriate and apologised to Ms. Keothavong in a private letter.

3. The GB Lounge Charge

49. Mr. Năstase denies that his entry into the GB Lounge was intentional, and as such could not be deemed to have been intended to interfere with the preparation of the GB team Mr. Năstase admits to knowing the rules, which prevent members of the opposition from entering a team's lounge without authorisation.
50. Mr. Năstase explains that he simply confused the two lounges. The two lounges were located close to each other and he was distracted due to being on a phone call at the time he entered the GB Lounge, and heavily affected by his prior meeting with Mr. Egli.
51. As confirmed by evidence provided by GB team members, Mr. Năstase made no attempt to disturb anyone in the GB Lounge. Instead, he sat on a sofa, waved at GB team members and completed his phone call before leaving without talking to any of them.

4. The Press Charge

52. Mr. Năstase admits that his comments were inappropriate, but submits in mitigation that they were made in frustration and at a time of vulnerability, in response to a biased and exaggerated media coverage that was more interested in non-tennis events, and following a tense discussion with the Referee and the on-court incidents.
53. Mr. Năstase points to his private apology by letter to Ms. Crooks as evidence of his remorse. According to Mr. Năstase, Ms. Crooks acknowledged the mitigating circumstances and he invites the Panel to do the same.

5. The On-Court Charge

54. Mr. Năstase accepts that he lost his temper and made inappropriate remarks to the Chair Umpire, Referee, GB Captain and GB players. However, he claims that his comments were precipitated by unequal treatment of the two teams (in favour of GB) by the match Umpire, in that he permitted a player to directly address him (rather than through the Captain), while rejecting Mr. Năstase's own objections and questions. The Chair Umpire also failed to apply the Fed Cup Regulations properly when dealing the GB team's complaints of an overly-partisan crowd.

6. The Overall Conduct Charge

55. In response to the ITFs charge relating to his overall conduct, Mr. Năstase points to his various attempts to apologise and submits that these attempts constitute mitigating factors that go to his overall conduct.

7. *Mitigating circumstances*

56. Mr. Năstase submits the following evidence as general mitigation:

- 56.1. He has shown remorse for his actions, both publicly and privately, including apologising in writing to each person affected by his conduct, and sending flowers to the GB team and a note of apology to be read to the crowd on 23 April;
- 56.2. His overall behaviour was indicative of his well-known unconventional humour and impulsive character rather than any wrongful intent;
- 56.3. Exaggerated and biased media reporting, by which he was characterised as a 'provocateur' and his reactions to events were exaggerated, all of which affected his composure;
- 56.4. The unfair and unequal treatment of the teams by the match officials and the tense meeting with the Referee prior to play on 22 April, which caused Mr. Năstase to become frustrated and eventually lose control.
- 56.5. His on-court conduct and that in relation to Ms. Crooks was influenced by his meeting with Mr. Egli prior to play on 22 April. Mr. Năstase characterises Mr. Egli's behaviour during that meeting as "nervous, provocative and intimidating".

H. Analysis

57. The Panel accepts that, at the relevant times, Mr. Năstase was a Covered Person under the Welfare Policy. As indicated above (at paragraph 15), Mr. Năstase does not deny any of the behaviours which form the basis for the Charges. Instead, he contextualises those behaviours. Therefore the Panel must determine whether those behaviours constitute breaches of the Welfare Policy and, if so, what sanction(s) should be imposed.

1. *The Serena Williams Charge*

58. The Panel has considered the evidence submitted by the Parties and concludes that the comment was highly inappropriate and racially insensitive. There is simply no valid reason why a person in Mr. Năstase's position should be verbally speculating on the colour of Ms. Williams' unborn baby. He either knew, or ought to have known, that such comments were unprofessional and insensitive.
59. Mr. Năstase has travelled the world for over fifty years and during that time has been closely involved in tennis circles. Tennis is a diverse sport, played equally by people of many backgrounds, races and cultures, and Mr. Năstase's comment undermines the integrity of the sport, and, because it was made at a time when he was acting in an official capacity as Captain of the Romanian Fed Cup team, reflects badly on that competition and the ITF.
60. Mr. Năstase's current or prior friendships with other tennis players of colour have no bearing on the Panel's conclusion. Although the Panel accepts that the comment was made on the spur of the moment, that does not mitigate the circumstances, as they were his words, he chose them and must be held responsible for them.

61. The Panel does not draw any conclusion as to whether Mr. Năstase is racist. Such a conclusion is not, in the Panel's view, supported by the limited evidence available.
62. Based on the foregoing, the Panel concludes that Mr. Năstase's comment constitutes a violation of general introductory provisions of the Welfare Policy requiring him, as a Covered Person, to conduct himself in a "professional manner at all times". The comment also reflects unfavourably on the Fed Cup, the ITF and tennis, and so breaches Article a.v.b.

2. The Anne Keothavong Charge

63. The Panel concludes that Mr. Năstase clearly engaged in a form of sexual harassment when he asked Ms Keothavong for her hotel room key on two separate occasions during the Tie. The comments had sexual implications and it should have been clear to any reasonable person that they were unwelcome.
64. The fact that the comments were made in public and that Ms. Keothavong did not make any immediate objection to them, or that Mr. Năstase did not intend to make a sexual advance are irrelevant. In the circumstances, Ms. Keothavong had little choice other than 'minimise' the situation at the time of the incidents by 'laughing it off'.
65. Mr. Năstase's actions and justification of events suggests that he views these events through a paradigm of a bygone era. Simply put, Mr. Năstase's status in tennis or other public persona that he has cultivated should not be permitted to override modern norms of social behaviour as it relates to sexual harassment. Making sexist comments in public, and the lack of any immediate complaint by Ms. Keothavong does not, in the Panel's view, justify this behaviour.
66. The events in question, when placed in full context do not represent the most serious form of sexual harassment. However, a visiting Fed Cup Captain should never be subjected to any form of unwelcome sexual advances and humiliation (in public or private), whether explicitly intentional or when cloaked as a gesture of friendliness towards the opposing team.
67. The Panel concludes that Mr. Năstase's actions constitute a violation of Article a.iv.c of the Welfare Policy.

3. The GB Lounge Charge

68. Having considered the evidence relating to the GB Lounge Charge, the Panel concludes that it does not constitute a violation of the Welfare Policy.
69. While Mr. Năstase was clearly in the wrong lounge, there is no evidence that, by his mere presence, he intended to, or did, interfere with the preparation of the GB team. A contemporaneous email from the GB team Press Officer, who was present at the time, confirms this view: "[Mr. Năstase] came into our team room plonked himself down on the sofa and made a five minute phone call waving at us then left."
70. The Panel concludes that it is likely that Mr. Năstase's attention was diverted by the phone call and/or his prior meeting with Mr. Egli and that he inadvertently entered the GB Lounge. This would explain why Mr. Năstase acknowledged GB team members as if nothing was amiss. Furthermore, none of the GB team pointed out Mr. Năstase's error and, once he had finished his phone call, he left the lounge without speaking to anyone.

4. *The Press Charge*

71. The Panel concludes that the incidents between Mr. Năstase and Ms Crooks constitute a serious violation of Article a.iii.b of the Welfare Policy by Mr. Năstase.
72. Mr. Năstase has lived in a world of media attention for more than fifty years. He is aware that the sports media is entitled to (and will) cover whatever story they believe to be relevant and of interest to their audience. Over the years, Mr. Năstase has received more than his fair share of such media attention. The Panel is not surprised that his behaviour attracted media attention. Neither should he have been.
73. In the first of the two incidents, Mr. Năstase expressed his displeasure to Ms. Crooks at what she had reported. His words were not, in the Panel's view, made on the spur of the moment, as he deliberately went to the Press Room and therefore intended to make those comments. Mr. Năstase directed similar abusive and threatening comments toward Ms. Crooks a second time as he was being escorted out of the stadium by security later that day. The Panel finds that there is no reasonable justification for those actions, irrespective of his state of mind at the time.
74. The Panel does not accept Mr. Năstase's submissions that the press was more preoccupied with covering his reactions (in an exaggerated and speculative manner) than the tennis matches and that this somehow justified his reaction.
75. Members of the media must remain free to write the stories they feel are relevant, without fear, threat or intimidation. While Mr. Năstase may be angry or disappointed in the choice of stories or the nature of coverage, he must also, as a Covered Person, understand that freedom of the press is a value that must be protected, including in tennis.

5. *The On-Court Charge*

76. Mr. Năstase does not deny the conduct that forms the basis of the On-Court Charge. The events in question took place during the second set of the match between Sorana Cirstea and Johanna Konta, between the scores of one game all, advantage Romania, and two games to one to Romania. The essence of Mr. Năstase's behaviour is that he:
 - 76.1. Verbally abused the Chair Umpire, including by saying to him "[w]hat's the fucking problem?" and "[y]ou're stupid too";
 - 76.2. Repeatedly verbally abused the Referee, including by calling him "a fucking asshole", "a cocksucker" and "fucking stupid";
 - 76.3. Threatened the Referee, by saying "you know you're not going to leave the country";
 - 76.4. Questioned the integrity and independence of the Chair Umpire and Referee, by saying "[t]he LTA is controlling the ITF and you are part of it";
 - 76.5. Verbally abused GB team members, calling them "fucking bitches";
 - 76.6. Refused to leave the court area, having been instructed to do so.
77. The Panel has no difficulty in concluding that the conduct referred to above constitutes a clear and serious breach of the Welfare Policy. We also find the comment (which is not denied)

directed at the Referee in which Mr. Năstase said to Mr. Egli “you know that you are not going to leave the country” to be particularly egregious, deliberate and designed to threaten Mr. Egli. The security of all officials is of paramount importance to sports organisations, including the ITF, and Mr. Năstase’s comment fundamentally undermines that security.

78. The Panel finds that the protracted nature of Mr. Năstase’s tirade against the Chair Umpire and Referee, and his initial refusal to leave the court (having been instructed to do so), is an aggravating factor. On finally leaving the court, he swore at GB team members, which the Panel concludes was a deliberate attempt to interfere with their competition and compromise their psychological wellbeing.
79. Mr. Năstase’s complete disregard for any decision by, or respect for, the Fed Cup and its officials is similarly troubling. Mr. Năstase failed to control his emotions. Captains play a pivotal role in the Fed Cup. Because they are representing their country, there is naturally prone to be a higher degree of emotion and passion involved. However, this does not give license to a Captain to be abusive and disrespectful. On the contrary, Captains (especially those with the tennis experience of Mr. Năstase) are required to stay balanced, maintain their composure and ensure that the competition is conducted in the spirit of fair play.
80. The Panel does not accept that Mr. Năstase’s behaviour was an attempt to ‘secure equality for his team’ or that his words weren’t intended to disrupt GB players. He deliberately spoke directly to them. He knew, or ought to have known, that his actions would have a negative effect on the GB team. Mr. Năstase had no right or reason to approach opposing players and the Panel concludes that doing so was a deliberate attempt to compromise the wellbeing of those players. What Mr. Năstase characterises as defending his own team, the Panel concludes was deliberate interference with the opposing team.
81. Mr. Năstase seeks to mitigate the seriousness of the on-court events (and the press incidents) by contextualising them within the circumstances of his interactions with the Referee earlier in the tie, and suggesting that the match officials were biased in favour of the visiting nation. In particular, Mr. Năstase claims that his on-court behaviour was significantly affected by his earlier meeting with Mr. Egli, who Mr. Năstase states was “nervous, provocative and intimidating.” On the evidence provided, the Panel concludes that Mr. Egli did not act in such manner. He (Egli) was simply acting under instruction from the ITF and, even on the evidence of Mr. Itu, discharged that responsibility in a calm and balanced manner. The Panel finds it more likely than not that it was Mr. Năstase who was provocative and intimidating. For example, Mr. Egli’s evidence (which was not rebutted) is that Mr. Năstase stated during the meeting that he would sue the ITF for conducting an investigation into his conduct, and also words to the effect that the LTA and ITF are ‘out to get him’.
82. Moreover, the Panel finds that Mr. Itu’s statement does little to support Mr. Năstase’s version of that meeting. That is, in his witness statement, Mr. Itu states that:
 - 82.1. Prior to the meeting, he “warned Mr. Egli that Mr. Năstase would probably feel offended by the receipt of such message just an hour before the match.”
 - 82.2. From the moment Mr. Năstase was notified of the meeting “it became clear that the meeting would be very difficult”.
 - 82.3. During the meeting, Mr. Năstase’s “entire behaviour was defensive and full of mistrust towards Mr. Egli.”

82.4. “Mr. Egli tried to keep his calm and avoid getting into any conflict with Mr. Năstase.”

82.5. Mr. Egli “tried to send some balanced messages...[but] ignored both the delicate (or even inappropriate) timing of the discussion and the state in which Mr. Năstase came to the meeting.”

83. Based on the Panel’s review of all the evidence, there was no justification for Mr. Năstase’s uncontrolled behaviour on court. Therefore, the Panel concludes that Mr. Năstase’s on court conduct constitutes serious violation of Articles a.ii.a, a.iii.a, a.iii.b and a.v.b of the Welfare Policy.

6. The Overall Conduct Charge

84. The Panel concludes that while Mr. Năstase’s overall conduct may have some bearing on the penalty imposed, the Panel is not prepared, in this case, to consider it as a separate charge under the Welfare Policy.

I. Conclusion and Final Disposition

85. For the reasons set out above the Panel finds that the following charges are made out: (i) the Serena Williams Charge; (ii) the Anne Keothavong Charge; (iii) the Press Charge; and (iv) the On-Court Charge.

86. We now turn to the issue of the sanctions that should be imposed on Mr. Năstase. In determining this issue the Panel has considered a number of issues, including:

86.1. The severity of each alleged violation;

86.2. Whether there are any useful precedents to guide its determination;

86.3. If there are any overriding mitigating or aggravating factors that would impact any such sanctions;

86.4. The principles of proportionality. In doing so the Panel must take into consideration the integrity of the competition, the significance of the offences and the explanation provided by, and impact of sanctions on, Mr. Năstase.

87. The ITF submits that Mr. Năstase (i) was a team Captain in a position of leadership; (ii) committed a number of breaches of the Welfare Policy in quick succession; (iii) caused wide and negative press coverage; and (iv) delayed (and has not been consistent) in showing full remorse for his actions.

88. The ITF accepts that a lifetime sanction would be disproportionate under the circumstances of this case. Instead, it proposes the following sanctions:

88.1. A ban from acting as a Captain for the Fed Cup for a period of 5-10 years;

88.2. A ban from attending (or receiving accreditation to) any ITF tournaments for a period of 1-3 years;

- 88.3. A fine of US\$20,000-30,000;
 - 88.4. Attendance at a diversity/racial awareness course, to be selected at the ITF's discretion, for which Mr. Năstase would be entitled to a reduction in the otherwise applicable sanction by up to 20%.
89. In respect to mitigating factors, and in particular Mr. Năstase's various apologies, the ITF argues that:
- 89.1. The initial apology to Mr Egli and was not full or complete because he did not apologise for any specific behaviour;
 - 89.2. The flowers Mr. Năstase attempted to send to the GB team appeared to be more of a "media stunt" than a genuine apology;
 - 89.3. Media reports several days after the event suggest that he was defending his conduct rather than expressing genuine contrition;
 - 89.4. Other personal apologies appear to have been sent on or around 11 May, i.e. 2-3 weeks after the Tie.
90. Mr. Năstase invites the Panel to:
- 90.1. Find him not guilty of breaching articles a.ii.a, a.iii.a and a.iv.c of the Welfare Policy;
 - 90.2. In the alternative, if he is found guilty of any breaches, he should receive a proportional and fair sanction, based on; his lack of misplaced intent, the background and causes of his conduct, mitigating circumstances, his place in tennis history, and precedents in comparable cases (which lie in the range of a one-year suspension and a fine for intentional racism; £10,000-27,500 and suspended ban for abuse, with no evidence of permanent bans);
 - 90.3. Issue such sanction solely in relation to his capacity as Captain of the Fed Cup and/or Davis Cup;
 - 90.4. Issue such sanction on probation (i.e., suspended in whole or in part), on the grounds of article 4.2.6 of the *Procedural Rules for an Internal Adjudication Panel Convened under ITF Rules*.
91. Mr. Năstase also argues that there is no reason for prohibiting him from attending ITF tournaments as the events in question occurred in the heat of the moment when he was involved in competitions and he never behaved improperly as a spectator at tennis matches.
92. The Panel has considered the submissions in respect to penalties. The Panel finds little use in the precedents provided by the Parties. As indicated above, the sequence of events, the number of incidents and severity of some of them do not permit the Panel to compare the events to prior cases cited by the Parties. The Panel accepts that the facts of this case are unique.
93. The Panel finds that the only mitigating factor in this case relates to Mr. Năstase's argument that his initial apologies were genuine, extensive and timely, and that it would be unreasonable to only give minimal mitigating effects to his efforts to apologise.

94. Mr. Năstase's typed apology to the GB team of 22 April was timely, but it lacked any specific identification of what he was apologising for, or to whom and, he did not accept full responsibility for his actions. Indeed, he attempted to rationalise his behaviour on the basis of tension and his persona as 'the crazy guy from tennis'. Mr. Năstase later undermined his apology by providing an interview to the *Daily Mirror* (a newspaper from the British media which, according to the evidence of Ms. Crooks, Mr. Năstase believes is 'out to get him') on 23 April. In that interview, Mr. Năstase is quoted as saying "I don't regret it [swearing at GB team members during the on-court incidents] and they can send me to prison if they want – I don't care."
95. In respect to the later personal apologies, which Mr. Năstase wrote to Ms. Williams, Ms. Keothavong and the GB team, the Chair Umpire, the Referee and Ms. Crooks, Mr. Năstase argues that, immediately following the Tie, he too was heavily affected by events and that it 'took time for him to reflect on those events and finding a proper way of dealing with those mistakes'. The Panel notes that, while those later apologies appear to have been genuine, they were sent after he was notified of the charges that have given rise to these proceedings.
96. Without repeating findings made in respect of each separate incident, the Panel concludes that the events, taken as a whole, are very serious. Mr. Năstase showed total disrespect to officials and members of the opposing team. In addition, Mr. Năstase's sexual innuendo, and racially insensitive comments made at official events and harassment of a member of the media amounted to a level of unprofessional conduct that cannot be excused by contextualisation of facts or claimed lack of intent.

J. Decision

97. The Panel has given due consideration to the appropriate sanction that should be applied in this case. It has concluded that a suspension and a fine are appropriate. Specifically, the Panel hereby determines that Mr. Năstase:
- 97.1. Is suspended from acting in an official capacity (including, but not limited to, team Captain) in all Official ITF Team Competitions included under Bye-Law 2.1(a) of the ITF Constitution, individual competitions included under Bye-Law 2.2(2), and Official ITF Tennis Circuits included under Bye-Law 2.2(3) until 31 December 2020.
- 97.2. Shall be denied access to, or otherwise granted accreditation for, the competitions and circuits described in paragraph 97.1 until 31 December 2018;
- 97.3. Is fined a sum of US\$10,000.

The commencement of the period of suspension shall be deemed to be 23 April 2017, the date on which Mr. Năstase was provisionally suspended. For the avoidance of doubt, Grand Slam events are not included within the above sanction, as they lie outside the jurisdiction of the ITF.

K. Conditions of Reinstatement

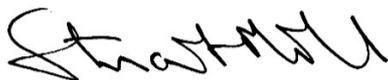
98. Once the period of suspension has expired, and provided that Mr. Năstase has (i) not breached the terms of his suspension (to which, see below), and (ii) has paid the imposed fine in full, he will automatically become eligible again and no application for reinstatement will be necessary.
99. In the event that Mr. Năstase breaches the terms of his suspension, the ITF may apply to the Panel to consider whether any further sanction should be imposed.

Appeal

100. This decision is subject to appeal, as set out in Article 6 of the Internal Adjudication Panel's Procedural Rules.



Jack Graham QC – Chair



Dr. Stuart Miller



Soeren Friemel

20th July 2017