



**INTERNATIONAL TABLE TENNIS FEDERATION
ITTF TRIBUNAL**

2022-02 – ITTF Integrity Unit v. XU Ke

DECISION

Issued by the
ITTF Tribunal

Sitting in the following composition

President: Mr Jorge **Ibarrola**, ITTF Tribunal Chair, Attorney-at-law, Switzerland
Panel Members: Ms Sally **Clark**, Attorney-at-law, in United Arab Emirates
Mr Kok Keng **Lau**, Attorney-at-law in Singapore

In the following Matter:

ITTF Integrity Unit

Represented by Mr Kevin Carpenter, Head of the ITTF Integrity Unit

The **Claimant**

Mr Xu Ke

The **Respondent**

I. THE PARTIES

1. The Claimant is the Integrity Unit of the International Table Tennis Federation (“**ITTF**”)
2. Mr Xu Ke (the “**Respondent**”) is a table tennis coach and former table tennis player of international level.
3. The Applicant and Respondent are hereinafter jointly referred to as “**Parties**”

II. SUMMARY OF FACTS

4. Below is a summary of the main relevant facts and allegations based on the Parties’ submissions and allegations. Additional facts and allegations may be set out where relevant in connection with the legal discussion that follows. The Panel has considered

all the facts, allegations and legal arguments and evidence submitted by the parties in the proceedings. In this Decision the Panel only refers to the submissions and evidence it considers necessary to explain its reasoning.

5. On 31 December 2020 at a training camp in [REDACTED], organised cooperatively between the national association (“**Association**”) and the ITTF, the Respondent invited four players to his room for drinks to continue the celebrations after a New Years Eve event, ATHLETE, WITNESS-1, WITNESS-1’s coach, and the SURVIVOR.
6. In and around the early hours of 1 January 2021 the ATHLETE and WITNESS-1 were the last persons remaining in the Respondent’s room when WITNESS-1 proceeded to leave. The SURVIVOR wanted to leave with WITNESS-1, however she was convinced by the ATHLETE to stay in the room. After some time, the SURVIVOR wanted to go back to her room, and upon leaving the Respondent’s room, the Respondent hugged the SURVIVOR as she was going to leave.
7. After the SURVIVOR had returned to her room, the Respondent sent a message to the SURVIVOR via WeChat asking what her room number was as he wished to keep talking in person with her. The SURVIVOR gave the Respondent her room number but added that she was tired and wished to go to sleep.
8. A short while after, the Respondent knocked on the SURVIVOR’s door, the SURVIVOR opened the door to find that it was the Respondent. He then allegedly forced open the door, picked the SURVIVOR up and put her on her bed and sexually assaulted her forcing his hand down her pants and inside of her, despite the SURVIVOR saying “no” repeatedly.
9. After the incident, at the camp, WITNESS-2, [REDACTED], was tasked with handling the incident, although she had no experience or training in support and management of such incidents. Some days after the incident, it was decided by WITNESS-2 and in consultation with others who were made aware of the incident, that the Respondent was to leave the camp and that the incident was to never be discussed again. The Respondent subsequently left the camp on 5 January 2021.
10. On 23 November 2021, [REDACTED], WITNESS-2 submitted a formal report to the ITTF Integrity Unit.
11. On 2 November 2022, the ITTF Integrity Unit provisionally suspended the Respondent. The Respondent at the date of this decision remains provisionally suspended.

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

12. On 28 October 2022, the ITTF Tribunal received a Request for Proceedings submitted by the ITTF Integrity Unit in accordance with the ITTF Rules.
13. On 29 November the ITTF Tribunal Chair acknowledged the request for proceedings and invited the Respondent to submit an answer by 20 December 2022, in accordance with article 8.24.4 of the 2022 ITTF Handbook.
14. On 11 January 2023, the ITTF Tribunal Chair informed the Parties that no answer had yet to be filed by the Respondent and that a Hearing Panel of one or three members would be appointed.
15. On 14 March 2023, the ITTF Tribunal Chair informed the Parties, pursuant to article 8.25 of the 2022 ITTF Handbook, that Ms Sally Clark, Mr Lau Kok-Keng and Mr Jorge Ibarrola had been appointed to the ITTF Hearing Panel (the "**Hearing Panel**") for the hearing.
16. On 23 March 2023, the Hearing Panel invited the ITTF Integrity Unit to submit an additional written submission with all facts, legal arguments and relevant supporting evidence, and granted a 21-day deadline for the submission to be filed. The Hearing Panel also granted the Respondent an identical 21-day deadline to submit his answer upon receipt of the ITTF Integrity Unit's submission.
17. On 27 March 2023, the ITTF Integrity Unit acknowledged receipt of the above and requested an extension until 21 April 2023 to file their submission, due to the original deadline of 17 April 2023 falling during the Easter holiday period.
18. On 14 April 2023, the Hearing Panel acknowledged that the communication of 27 March 2023 from the ITTF Integrity Unit had failed to be delivered correctly. Subsequently, the Hearing Panel granted an extension of the deadline for the ITTF Integrity Unit to make their submissions until 30 April 2023.
19. On 26 April 2023, the ITTF Integrity Unit requested an extension of the deadline until 5 May 2023, due to various ITTF events in which the SURVIVOR and other witnesses were participating coinciding with the deadline period. The Hearing Panel granted the request, extending the deadline for the submission until 5 May 2023.
20. On 5 May 2023, the ITTF Integrity Unit filed their submission. They pointed out that the witness statement of the SURVIVOR was unsigned and advised that it would be provided imminently to the Panel. The subsequent signed witness statement was filed on 9 May 2023.

21. On 11 May 2023, the Hearing Panel acknowledged receipt of the ITTF Integrity Unit's submissions and invited the Respondent to provide his answer within 21 days. The Respondent did not reply.
22. On 19 July 2023, the Hearing Panel invited the ITTF Integrity Unit to answer a number of questions and provide relevant supporting documentation in relation to their submission regarding the jurisdiction of the ITTF Tribunal. A deadline to submit the requested information was granted until 2 August 2023.
23. On 30 July 2023, the ITTF Integrity Unit requested an extension of the deadline to provide the additional information until 7 August 2023. The Hearing Panel, on 4 August 2023, approved the request and extended the deadline until 7 August 2023.
24. On 7 August 2023, the ITTF Integrity Unit filed their answers to the Hearing Panel's questions.
25. On 8 August 2023, the Hearing Panel acknowledged receipt of the ITTF Integrity Unit's answers and invited the Respondent to submit a reply no later than 22 August 2023. The Respondent did not reply.
26. On 11 October 2023, the Hearing Panel requested the ITTF Integrity Unit to provide further information by 18 October 2023.
27. On 18 October 2023, the ITTF Integrity Unit requested an extension to provide the additional information until 23 October 2023. The Hearing Panel extended the deadline until 23 October 2023.
28. On 23 October 2023, the ITTF Integrity Unit submitted the additional information as requested to the Hearing Panel.
29. On 8 November 2023, the Hearing Panel informed the parties that it would proceed to a hearing. It provided three dates on which the hearing could be held and requested the parties to inform the Hearing Panel of their availability by 13 November 2023.
30. On 9 November 2023, the ITTF Integrity Unit requested an extension of this deadline until 6 December 2023. The Hearing Panel granted an extension until 6 December 2023 to both parties.
31. On 11 January 2023, the Hearing Panel notified the parties that they were called to appear, with their expected witnesses, at a hearing on 20 March 2024 at 8:00 CET. A deadline of 29 February 2024 was provided to the parties to submit the names of all persons that would be attending the hearing including any witnesses and interpreters.
32. On 12 January 2023, the ITTF Integrity Unit, upon the request of the SURVIVOR's lawyers, requested for the hearing to be postponed to a date sometime in September after

- the conclusion of the 2024 Summer Olympic Games. On the date of the original scheduled hearing, the SURVIVOR was to be in preparation for her association's Team Trials.
33. On 5 June 2023, the Hearing Panel notified the parties that it intended to call the parties to a hearing on 18 September 2024.
 34. On 10 September 2023, the ITTF Integrity Unit provided the Hearing Panel with concerns regarding the principal witness giving oral evidence and proposed an alternative hearing schedule to accommodate for the witness depending on her whereabouts. On 12 September 2023 the Hearing Panel replied that no changes would be made to the start time of the hearing and provided all parties with the hearing schedule.
 35. On 15 September 2023, the ITTF Integrity Unit wrote to the Chair of the Hearing Panel seeking to amend the hearing schedule to accommodate for the primary witness and informed the Hearing Panel that with the exception of the SURVIVOR, no other witnesses would be attending the hearing.
 36. On 16 September 2023, the Chair of the Hearing Panel notified the parties that there shall be no changes made to the previously provided hearing schedule. The parties were further notified of the times that they were expected to join the hearing as outlined in the hearing schedule.
 37. The link to join the online hearing was provided to the parties on 17 September 2024.
 38. The hearing was held on 18 September 2024. It started at 8:00 CET. The ITTF Integrity Unit was represented by Mr Kevin Carpenter. The SURVIVOR and her lawyer, Ms Renata Parras, attended. The SURVIVOR gave oral evidence. No other witness attended the hearing. The Respondent did not attend. The hearing concluded at 10:35 CET.

IV. APPLICABLE LAW

39. The ITTF Integrity Unit contends that the Anti-Harassment Policy and Procedures, chapter 7 of both the 2020 and 2021 ITTF Statutes (the **Policy**) apply. It further submits that the procedural provisions of the ITTF Statutes 2022, chapter 8 regarding the ITTF Tribunal and chapter 9 regarding the ITTF Integrity regulations, are applicable.
40. According to article 8.16 of the ITTF Statutes (2022 & 2024), the ITTF's decisions shall be based on:

Article 8.16.1: 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; and

Article 8.16.2: subsidiarily, on Swiss law or such other law that the Hearing Panel deems applicable, in the latter case, the Hearing Panel shall give reasons for its decision.

41. The ITTF Statutes do not contain any rule governing their applicability of different versions depending on in time.
42. According to the consistent CAS jurisprudence on the principle of *tempus regit actum*, an offence is to be judged on the basis of the **substantive rules** in force at the moment the alleged offence was committed, subject to the principle of *lex mitior*. However, the **procedural aspects of the proceedings** are governed by the regulations in force at the time the appeal was lodged (see CAS 2022/A/8651 § 94, CAS 2022/A/9033 § 123, CAS 2018/A/5920 §§ 64-69).
43. Therefore, the Panel will apply the substantive rules included in the Anti-Harassment Policy and Procedures, chapter 7 of both the 2020 and 2021 ITTF Handbooks, and the procedural rules included in the ITTF Statutes 2022 (the request for proceedings was submitted on 28 October 2022), chapter 8 regarding the ITTF Tribunal and chapter 9 regarding the ITTF Integrity regulations.

V. JURISDICTION OF THE TRIBUNAL

44. The Respondent has been charged with physical contact, fondling, pinching or kissing by the ITTF Integrity Unit (“**IU**”) under article 7.3.2.10 of the 2021 ITTF Handbook Anti-Harassment Policy and procedures (the **Policy 2021**):.
45. According to Article 8.15.1 of the 2022 ITTF Handbook:

Subject to articles 8.15.2 and 8.15.3, the ITTF Tribunal has the original 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 and any Related Document except:

 - 8.15.1.1 any provision under Chapter 5 of the ITTF Handbook (ITTF Anti-Doping Rules); and
 - 8.15.1.2 any provision of the Classification Rules of the ITTF Para Table Tennis.
46. According to 8.15.2 of the 2022 ITTF Handbook, the 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 and any Related Document
47. The ITTF Integrity Unit’s request for proceedings requires a first instance hearing in relation to the allegation of harassment by the Respondent on 1 January 2021, in breach of Chapter 7 of the Handbook.

A. Position of the Parties

48. In its written submission of 3 May 2023, the ITTF Integrity Unit submits that the Respondent was employed as a coach to the ATHLETE, through a private company in the Republic of Korea.
49. The Respondent attended the 2020 ITTF Women's World Cup held in Weihai, China from 8 to 10 November 2020 as coach of the ATHLETE.
50. The ITTF Integrity Unit argues that as part of the event accreditation process the Respondent would have been provided a copy of the 'Prospectus – Information' document. The document contained a section entitled 'Important Information' which stated:
- "By entering the event, all delegation members agree to abide by all ITTF rules and regulations of the Organizing Committee, including, but not limited by the ITTF's anti-doping rules and COVID-19 guidelines."*
51. The ITTF Integrity Unit makes the further assertion that the "ITTF Rules" were those contained in the 2020 Handbook publicly available on the ITTF website.
52. The ITTF Integrity Unit submits that article 7.2 of the 2020 Policy defines who the Anti-Harassment policy is applicable to. It provides:
- 7.2.1 This policy applies to all members (Associations and continental federations) as well as all officials, players, players' entourage and persons involved in the ITTF's operations.
- 7.2.2 This policy applies to harassment which may occur during the course of all ITTF business, activities, and events. It also applies to harassment between individuals associated with the ITTF but outside the ITTF business, activities, and events when such harassment adversely affects relationships within the ITTF work and sport environment.
53. The ITTF Integrity Unit further submits that, by virtue of obtaining accreditation for the 2020 ITTF Women's World Cup, the Respondent was part of ATHLETE's entourage as her coach and was thus bound by the Policy 2020 after the end of the event, for a duration at least until the first event in 2021. The ITTF Integrity Unit further explains that an alternative interpretation may be to argue that the Respondent would be bound to the ITTF regulations only until the end of the calendar year of 2020. However, this would create an "absurd situation" where there would be a period from the end of 2020 to the first event in 2021 where individuals like the Respondent would be free to harass others.
54. The Respondent did not make any submissions as to the jurisdiction of the Tribunal to hear the matter.

B. Position of the Panel

55. The Panel shall consider its own jurisdiction to decide on the matter at hand.
56. In interpreting article 7.2.1 and 7.2.2 the Panel sought further information from the ITTF Integrity Unit with a series of questions clarifying the circumstances of ITTF events and accreditations in a letter dated 19 July 2023. The questions posed were as follows:

*This is to inform you that the Panel has decided to order the ITTF Integrity Unit (the "**Claimant**") to answer the following questions and provide the **supporting documentation/evidence** where relevant:*

- A. *At section C of ITTF Integrity Unit's written submissions dated 5 May 2023 (the "Written Submission"), the Claimant relies on the accreditation of the Respondent for the 2020 ITTF Women's World Cup as the basis of the ITTF Tribunal's jurisdiction to hear Case Reference 2022-02. Specifically, the Claimant referred to the Prospectus which states at page 3 that by entering "the event", all delegation members agree to abide by all ITTF rules, which the Claimant submits includes Regulation 7.2 of the 2020 Policy. Can the Claimant provide its submissions on the following points:*
1. *Whether "the event" extended to (a) the training camp which took place in [REDACTED] some 7 weeks after the 2020 ITTF Women's World Cup had ended; and (b) the celebrations that started on New Year's Eve 2020 and continued till New Years' Day 2021; and if so, how so?*
 2. *Whether the [REDACTED] training camp was an ITTF business, activity or event, and if so, how so?*
 3. *Whether the celebrations that started on New Year's Eve 2020 and continued till New Years' Day 2021 was part of the [REDACTED] training camp, and if so, how so?*
 4. *If the said celebrations were outside the ITTF business, activities and events, whether the alleged acts of the Respondent had adversely affected*
- B. *At paragraphs 22 and 22 of the Claimant's Written Submissions dated 5 May 2023, the Claimant states that by virtue of Regulation 7.2 the Respondent was bound to the Policy "after the event" and until (i) at least the first ITTF event in 2021 or (ii) the end of the calendar year 2020. Can the Claimant please explain the basis upon which it claims that the Policy extends to bind the Respondent to the Policy and the ITTF rules after the conclusion of the event he was participating in.*
- C. *At paragraph 24 of section C of the Claimant's Written Submissions dated 5 May 2023, the Claimant had stated that both the Chinese Table Tennis Association and the Korea Table Tennis Association had no records of the Respondent. If so, would the Respondent still be considered to be an*

"individual associated with the ITTF" for purposes of Regulation 7.2.2 of the 2020 Policy, and if so, how so?

57. The ITTF Integrity Unit answered on 7 August 2023. In response to the Hearing Panel's question A.1 and A.2, the ITTF Integrity Unit submitted that
- the [REDACTED] Training Camp and subsequent New Year's Eve celebrations did not form part of "the event" (2020 ITTF Women's World Cup);
 - the Respondent was initially bound by the 2020 ITTF Policy by virtue of being part of the "entourage" as coach for the ATHLETE during the "the event";
 - the Respondent was "involved in the ITTF's operations" and this involvement is captured by article 7.2.1 of the 2020 ITTF Policy;
 - the wide jurisdiction of the policy binds the Respondent to the regulations.
 - the [REDACTED] training camp was an "ITTF business, activity or event" by the ITTF Integrity Unit for the purposes of article 7.2.2 of the 2020 ITTF Policy and was an "ITTF activity" evidenced by the ITTF press release attached to the ITTF Integrity Unit's response on 7 August 2023 from the Integrity Unit on 7 August 2023, which reads "*...the joint efforts of the International Table Tennis Federation through their High Performance and Development Department (ITTF) and the ASSOCIATION to make this happen.*"
58. The Hearing Panel considers that the accreditation provided to the Respondent for the 2020 ITTF Women's World Cup applies to the corresponding "event". However, it does not bind an accredited person to future events which requires subsequent accreditation, (e.g. the [REDACTED] training camp and New Year's Eve celebrations). The Hearing Panel, however, accepts that the [REDACTED] training camp, collaboratively organised by the ASSOCIATION and the ITTF qualifies to form part of the ITTF's business, activities and events for the purposes of 7.2.2 of the Handbook.
59. According to the ITTF Integrity Unit's response to the Panel's question A.3 the New Year's Eve Celebrations did form a part of the [REDACTED] training camp as the celebrations were put on by the ASSOCIATION for players and coaches which had been attending the training camp, a "*key element of the playing and training opportunities being jointly provided for with ITTF for a period of 3 months.*" Further the ITTF Integrity Unit submitted that, in any case, the alleged assault took place after the formal celebrations had finished in the accommodation within the [REDACTED] training base where all participants in the camp were staying.
60. The Hearing Panel's view based upon the information provided by the ITTF Integrity Unit and the corresponding witness statements is that New Year's Eve celebration did

form a part of the training camp hosted by the ASSOCIATION. Whilst the celebration does not appear to be part of the official training schedule, its close link that it was exclusive to members of the training camp including coaches is a sufficient link for the celebration to be considered as part of the training camp in the form of its social programming.

61. In response to the Panel's question A.4, the ITTF Integrity Unit submitted that, as a consequence of the alleged conduct of the Respondent from 1 to 3 January 2021,

"there were significant adverse impacts on relationships within the sport environment between the actors involved," as evidenced in the witness statements where the SURVIVOR states *"The ATHLETE wanted to speak with me for some reason. XU Ke was the ATHLETE's coach. I remember her saying to me 'you have just been really sad here' as if she was trying to take blame away from XU Ke. I remember apologizing to her because I felt bad that this was affecting her training."*

62. The Panel is satisfied that the alleged harassment has adversely affected relationships within the ITTF sporting environment.

63. Regarding the ITTF Integrity Unit's response to its question B, the Hearing Panel was referred to the answers provided in A.1 and A.2. The ITTF Integrity Unit further explained that the Respondent was only attending the camp by virtue of being a part of the "ITTF World Professionals" team, a team jointly organised through the collaboration of the ITTF and of the ASSOCIATION. The training base in [REDACTED] was also under the coordination of ITTF representative WITNESS-2. Consequently, the ITTF Integrity Unit submitted that, from a combination of these factors, the Respondent fell under the jurisdiction of the ITTF for the relevant period until he left the training camp on 5 January 2021.

64. The ITTF Integrity Unit submitted in response to the Hearing Panel's question C, whether the Respondent is an "individual associated with the ITTF," for the purposes of art 7.2.2 of the 2020 ITTF Policy, that the New Year's Eve celebrations formed part the training camp and were an "ITTF activity" under article 7.2.1 of the Handbook and therefore article 7.2.2 of the 2020 ITTF Policy is not applicable.

65. The Panel finds that the accreditation does not bind the Respondent to the 2020 ITTF Policy and the ITTF rules after the conclusion of the event (the 2020 ITTF Women's World Cup).

66. On 11 October 2023, the Panel requested the Parties to submit the following additional information:

1. **Any document/information** relating to the participation of Mr XU Ke in ITTF **Women's World Cup** held in Weihai, China, between 8-10 November 2020, as Coach of the ATHLETE, including in particular

- a. the **registration forms** submitted by Mr XU Ke and the ATHLETE;
- b. copies of the **accreditations** delivered to the two latter persons and any terms and conditions of accreditation; and
- c. any other documentation relating to the organisation of this event and to the **rules applicable** to its participants (except for the Prospectus - Information already submitted by the Integrity Unit with its written submissions dated 5 May 2023 (see page 41-43 of the ITTF Integrity Unit's bundle of exhibits).

2. **Any document/information** relating to the participation of Mr XU Ke in the **training camp** that took place at the [REDACTED], organised by the ITTF, including in particular

- a. the **registration forms** of Mr XU Ke and the ATHLETE, if any;
- b. copies of the **accreditations** and written approvals delivered to the two latter persons and any terms and conditions of accreditation, if any; and
- c. any other documentation relating to the organisation of and/or participation in this event, including any terms and conditions of participation and the **rules applicable** to participating players, coaches, trainers and support staff.

67. On 23 October 2023, as per the Hearing Panel's request for additional information, the ITTF Integrity Unit provided the "Participation Agreement – Training Camp in [REDACTED]" form, providing the following under ITTF's letterhead

"I acknowledge and agree that the ITTF will be my representative in event participation and especially contract negotiation with [REDACTED] clubs; the ITTF will oversee my activities while I remain in [REDACTED] and make sure I follow Laws of [REDACTED], regulations of [REDACTED] and other regulations and rules.

68. The Respondent executed the document on 28 November 2020, thereby binding the Respondent to ITTF regulations in general and to the 2020 ITTF Policy in particular, at the time of the training camp and New Year's Eve Celebrations.

69. The ITTF Integrity Unit further submitted as Enclosure 4 a copy of an email of an email of 4 January 2021 from the ATHLETE, stating (emphasis added):

*My coach XU Ke will officially conclude his participation in the ITTF [REDACTED] training camp on 5th [REDACTED].
Since leaving the training base, he will no longer bound by the ITTF training camp rules and no longer under the management of ASSOCIATION. From this point onwards, he will be responsible for his behaviors.*

70. Finally, the ITTF Integrity Unit provided as Enclosure 5 a copy of an undertaking signed by the Respondent on 4 January 2021 which reads,

"I confirm I will on 5th January 2021 formally finish with the ITTF training camp activities and will not participate in subsequent activities.

Since leaving the [REDACTED] training base, I will no longer be bound by the ITTF training camp requirements, and will no longer be under the management of the ASSOCIATION,"

71. On the basis of the foregoing, the Panel finds that firstly, the training camp and the New Years Eve celebration were an ITTF event, and secondly, that the Respondent's undertaking of 4 January 2021 demonstrated that the Respondent was aware he was bound by the ITTF rules and regulations while attending the training camp and NYE celebrations. The document "*Participation Agreement – Training Camp in [REDACTED]*" showed that all participants including the Respondent had submitted to the authority of the ITTF and agreed to abide by the regulations and rules governing their activities as overseen by ITTF. This establishes the jurisdiction of the ITTF over the Respondent and the Respondent's agreement to be bound by the ITTF Handbook. Therefore, pursuant to article 7.2.2 of the 2020 ITTF Policy, the Anti-Harassment Policy and Procedures apply to the Respondent.
72. For the sake of completeness, the Panel underlines that the mere fact the Chinese Table Tennis Association and the Korean Table Tennis Association do not have records of the Respondent being a member or associated to their organisations does not in and of itself mean the Respondent is not an individual associated with the ITTF. The ITTF Integrity Unit is relying on the wording of article 7.2.1 of the 2020 ITTF Policy that as the coach of the ATHLETE, the Respondent was part of the players "*entourage*".
73. "*Entourage*" is not defined in the 2020 Handbook nor has the ITTF Integrity Unit defined it in their submissions to the Panel. The Panel therefore will consider the definition of "*entourage*" with its ordinary meaning in the context. The Merriam-Webster dictionary defines "*entourage*" as "*One's attendants or associates.*" Further in the sporting context the IOC Athletes Entourage Committee defines "*entourage*" as, "*The Entourage comprises all the people associated with the athletes, including, without limitation, managers, agents, coaches, physical trainers, medical staff, scientists, sports organisations, sponsors, lawyers and any person promoting the athlete's sporting career, including family members.*"
74. According to the above definitions the Panel is satisfied that, as coach of the ATHLETE, the Respondent did form part of the ATHLETE's "*entourage*" pursuant to article 7.2.1 of the 2020 ITTF Policy, and that by attending the [REDACTED] training camp and New Year's Eve celebrations, he subjected himself to the ITTF Anti-Harassment Policy and Procedures.
75. Therefore, the Panel rules that the 2020 ITTF Policy is applicable to the Respondent and that, accordingly, it has jurisdiction to decide on the ITTF Integrity Unit's requests

VI. MERITS

A. Main submissions of the ITTF Integrity Unit

76. The ITTF Integrity Unit submits the Respondent has violated article 7.3.2.10 of the 2020 Policy, namely "*Physical contact, pinching or kissing.*"
77. The conduct engaged in by the Respondent meets the requirements for an offence to be found under article 7.3.2 of the 2020 ITTF Policy states:
- For the purposes of this policy, any form of harassment is defined as unwelcome, often persistent, attention. It may include particularly, but not limited to, discrimination or harassment on the basis of gender, religious background, race...
78. Therefore, the mere act of harassment is grounds to bring an action against the Respondent.
79. The conduct amounts to sexual harassment as defined by the Merriam-Webster English Dictionary as an "*uninvited and unwelcome verbal or physical behaviour of a sexual nature especially by a person in authority toward a subordinate (such as an employee or student).*"
80. Coaches' status and influence in sport gives them a position of power over athletes in sport and places them in a position of influence amongst athletes. This position of influence unfortunately gives rise to opportunities for coaches to abuse this power to exploit athletes, including sexually.
81. The Respondent's first error of judgement on the evening of the incident was inviting athletes and participants, including those of the opposite sex, back to his room to continue the celebrations, a "poor practice" as the ITTF Integrity Unit submitted. This event was the catalyst for a sequence of unwanted acts to then be committed by the Respondent against the SURVIVOR.
82. The first unwanted physical act was an unsolicited hug when the SURVIVOR tried to leave the Respondent's room. The second unwanted act was to then go to the room of the SURVIVOR which was within the accommodation of the training base. The Respondent forced open the door when it was only opened slightly by the SURVIVOR. The SURVIVOR had given the Respondent her room's number over WeChat but only did so to appease him and to attempt to stop him from pressuring her. It was very clear from the WeChat audio recording of the conversation between the Respondent and the SURVIVOR that the SURVIVOR had told the Respondent in no uncertain terms that she was tired and that she wished to go to sleep. Finally, the Respondent committed a forceful non- consensual sexual act against the SURVIVOR, in spite of the SURVIVOR repeatedly saying no while the sexual act was occurring.

83. The evidence provided by the ITTF Integrity Unit and witness statements support the sequence of events which were told by the SURVIVOR in both her written witness statement and oral testimony.
84. The conduct committed by Respondent against the SURVIVOR had the effect of violating her basic human rights and damaged her mental and physical dignity similar to the conduct found in CAS 2019/A/6388.¹

B. Submissions of the Respondent.

85. The Respondent, despite numerous attempts by the Hearing Panel to involve him in the hearing process, was unresponsive to all requests, did not participate in the hearing, and did not make any formal submissions to the Panel in defence of himself.

C. Merits

86. The Hearing Panel carefully considered the evidence and submissions produced by the ITTF Integrity Unit and the relevant findings given by the SURVIVOR at the hearing on 18 September 2024.
87. The ITTF Integrity Unit in its submission provided witness statements from WITNESS-1, WITNESS-2, and WITNESS-3, a coach at the training camp when the incident occurred. Each of these witnesses did not attend the hearing to support their witness statement orally.
88. According to 8.31.3 of the 2022 ITTF Handbook, parties shall ensure the availability of the witnesses they have submitted before the hearing to be heard by the Hearing Panel and be responsible for the witnesses and/or experts' cost of attending the hearing. Further, article 8.31.4 of the 2022 ITTF Handbook provides that if a witness who has been requested to attend the hearing fails to appear, any witness statement or declaration related to that witness will be disregarded, unless the Panel otherwise decides in exceptional circumstances.
89. In the Hearing Panel's view the ITTF Integrity Unit has not raised any exceptional circumstances that would warrant admitting the aforementioned written witness statements into evidence. That being said, the Hearing Panel notes that the content of these written witness statements is consistent with the SURVIVOR's oral evidence and in any event does not change any material facts of the matter.

¹The Panel found at paragraph 231 of the Award:

"...the offenses committed by the Appellant violated basic human rights and damaged the mental and physical dignity and integrity of young female players. With his appalling acts, the Appellant has destroyed not only their careers, but severely or irreparably damaged their lives."

90. The hearing was subject to multiple delays since the initial complaint was lodged in November 2021. Since the initial complaint and until the hearing, both parties had equal time and opportunity to present material to the Hearing Panel upon request. The Respondent took it upon himself to not engage in the proceedings and opted to wash his hands of the incident. The Hearing Panel finds that the ITTF Integrity Unit has discharged its duty to investigate complaints, interview witnesses and request additional information when required.
91. In the absence of any CCTV footage being available or any other visual or written evidence that may have been able to demonstrate the veracity of the complaint, the Panel primarily relies on the written witness statement of the SURVIVOR, her oral testimony and the WeChat voice messages translated transcript as evidence.
- C. The Panel is of the view that coaches inviting players back to their rooms after celebrations involving alcohol, is not behaviour that can be considered acceptable in a sporting environment in general and in the circumstances of an elite athlete camp in particular. This is where the first incident of unwanted touching occurred in the form of the Respondent hugging the SURVIVOR. This is undisputed and is confirmed in an email from the Respondent to the ITTF Integrity Unit dated 2 May 2022 ,when the Respondent was initially participating in the investigation.
92. The SURVIVOR’s oral testimony and witness statement remained consistent upon the Panel asking questions regarding the sequence leading the Respondent going to her room, knocking on the door and forcing it open. This sequence of event is further supported by the WeChat translated transcript.

Mandarin Transcription	English Translation
[女] 我的我的网不行，我真的听不见你说话，但是我真的困了。	[Female] My network isn't working. I really can't hear what you are saying. I am really sleepy.
[男] 确实信号不是很好，我说你不应该困啊，今天才第一天，怎么应该困了？	[Male] The signal is definitely not good. I said "you shouldn't be sleepy. Today is just the first day, why are you so sleepy?"
[女] 哎呀，三点半了还不困吗？你比我厉害OK，哈哈哈。	[Female] Oh, how can you be not sleepy at 3:30? You're stronger than me, okay, hahaha.
[男] 你肯定比我厉害的多，你住哪个房间啊？	[Male] I bet you are stronger than me. Which room are you in?
[女] 这是不可能的，哈哈哈。你比我厉害多的多的多，我是，我也不知道，305，但是我真的要睡了，已经刷完牙，真的要睡了。	[Female] No way! Hahaha. You're much, much stronger than me. I'm in, I don't know, 3... 305. I really need to sleep. I've brushed my teeth already. I'm really going to sleep.
[女] Goodnight, OK? Happy New Year.	[Female] Good night, okay? Happy New Year.
[男] Happy New Year 很 OK，但是 Goodnight 不 OK，你开一下房间门吧，我再跟你聊一会儿。305 吗？	[Male] Happy New Year is fine, but not good night. Please open the door and I'll chat with you for a bit. Is it 305?
[女]不聊了，不聊了，我真的要睡觉了，我在刷牙呢。	[Female] No more chatting, no more chatting. I really need to go to bed. I'm brushing my teeth now.

93. The Respondent decided to go to SURVIVOR's room to continue conversing with her even after he had been told that she did not want to continue chatting and would like to go to sleep.
94. The Hearing Panel finds that the Respondent forced his way into the SURVIVOR's room, picked her up and committed a sexual assault against her. The SURVIVOR was questioned by the Hearing Panel as to why she did not seek to go to law enforcement regarding the incident. She answered that she was concerned by the cultural differences that are apparent when instances of such misconduct are reported.
95. Accordingly, with the Respondent failing to participate in the proceedings and there being no substantial evidence to suggest the incident did not occur, the Panel is comfortably satisfied that the Respondent has committed the infringement provided by article 7.3.2.10 of the 2021 ITTF Policy.

D. Sanction

96. Having found that the Respondent has committed an infringement of article 7.3.2.10 of the 2021 ITTF Policy, the Hearing Panel turned to the issue of sanction. The Hearing Panel noted that article 8.34 of the ITTF Policy provides that *"if the Hearing Panel determines that an infringement of any article under the ITTF Constitution or any other rule or regulation of the ITTF Handbook or any Related Document has been committed, the Hearing Panel will impose the appropriate sanction(s) in accordance with 8.34.2, unless any specific sanction is provided set out in such rules or their associated documents for such infringement."*
97. In considering the issue of the appropriate sanction to impose, pursuant to articles 8.34.3 and 8.34.4, the Hearing Panel is to consider relevant aggravating and mitigating factors in order to determine the seriousness of an infringement.
98. The sanctions open to the Hearing Panel are contained within article 8.34.2.
99. In its written submissions, the ITTF Integrity Unit requests the ITTF Tribunal to sanction the Respondent with a *"10-year suspension from all table-tennis activities; and undertaking of an accredited education program in safe sport and sexual consent (at the Respondent's expense)*. The Hearing Panel interprets this to be a reference to sanctions under articles 8.34.2.5 (*"to participate or complete in any rehabilitation programme"*) and 8.34.2.10 (*"a period of ineligibility (which may be for life) from participating in any capacity in Table Tennis or in any activities organised, controlled, authorised, sanctioned, supported or recognised in any way by ITTF, any member association of ITTF or any other associated organisation of ITTF, other than permitted rehabilitation programmes"*).
100. The ITTF Integrity Unit's prayers for relief read:

“41. It is for that reason, when considering the facts and the nature of the violation XK has committed, the Integrity Unit believes the following sanctions to be proportionate [R8.34]:

- i. 10-year suspension from all table tennis activities; and
- ii. Undertaking of an accredited education program in safe sport and sexual consent (at the Respondent’s expense).

The education program is to be completed prior to any attempt to return to the sport once the 10-year period has elapsed.

42. In arriving at these sanctions, the Claimant considered the following aggravating factors to be relevant from those stated in Regulation 8.34.3:

- *The vulnerability of the SURVIVOR for the reasons set out in paragraph 28 of these submissions [R8.34.3.3]; and*
- *The substantial harm done to the SURVIVOR through both physical and mental distress caused by XK’s conduct. [R8.34.3.4] [34 (¶ 12-14), 35 (¶ 18 and 20)].”*

101. The Hearing Panel, having considered the facts of the complaints against the Respondent and, in particular, the evidence of the SURVIVOR, considers that the following factors are present and aggravate the seriousness of the infringement:

- a. The vulnerability of the the SURVIVOR (article 8.34.3.3);
- b. the substantial harm that the conduct clearly caused to the SURVIVOR (article 8.34.3.4);
- c. the Respondent’s failure to cooperate during the proceedings (article 8.34.3.6); and
- d. the Respondent’s lack of remorse (article 8.34.3.7).

102. Other than the fact that the Respondent does not appear to have had any prior infringements of the ITTF Policy, the Hearing Panel does not consider that there are any other mitigating factors to be considered.

103. In light of the above, the Hearing Panel agrees with the ITTF Integrity Unit’s submission that the Respondent’s conduct is, apart from rape, the most serious type of sexual harassment. This, coupled with the aggravating factors mentioned above and the limited mitigating factors in play, means that a sanction at the higher end of the spectrum is necessary to address the Respondent’s actions.

104. Having considered the ITTF Integrity Unit’s request for sanction, in light of the seriousness of the Respondent’s actions, and the substantial harm that resulted therefrom, the Hearing Panel finds that a sanction of a 10-year period of ineligibility is a reasonable, proportionate and appropriate sanction for the Respondent’s

offending. During his period of ineligibility, the Respondent is prohibited from participating in any capacity in Table Tennis or in any activities organised, controlled, authorised, sanctioned, supported or recognised in any way by ITTF, any member association of ITTF or any other associated organisation of ITTF, other than permitted rehabilitation programmes.

105. The Respondent's period of ineligibility will commence from the date of this decision, but he will be given credit for the period of provisional suspension he has served since 2 November 2022.

106. In addition, the Hearing Panel directs that the Respondent must undertake (at his own expense) an accredited programme in safe sport and sexual consent before he can make any attempt to return to participation (in any form) in the sport of table tennis following the expiry of his 10-year period of ineligibility.

VII. COSTS

108. Pursuant to article 8.36 of the ITTF Handbook:

8.36 COSTS

8.36.1 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:

8.36.1.1 the costs of holding the hearing; and

8.36.1.2 the legal fees, the accommodation costs, travel costs or such other expenses incurred as a result of the proceedings for

8.36.1.2.1 the fees of the Hearing Panel members, as approved by the ITTF Executive Board;

8.36.1.2.2 any party to the proceedings;

8.36.1.2.3 any witness; and

8.36.1.2.4 any independent expert.

8.36.2 Without limiting the Hearing Panel's discretion as stated in R8.36.1, the Hearing Panel may award costs against a party for advancing any claim that is frivolous, vexatious, or entirely without merit.

109. In view of the outcome of the present proceedings and taking into account all relevant circumstances, the Hearing Panel finds that the Respondent shall bear the costs of this procedure, which shall be determined by the ITTF Executive Board and notified to the Respondent in due course.

110. Moreover, the Respondent shall be ordered to pay a contribution to the ITTF Integrity Unit in an amount of USD 3,000.

VIII. ON THESE GROUNDS

The International Table Tennis Tribunal rules that:

1. The request of the ITTF Integrity Unit for disciplinary sanctions to be imposed on the Respondent is granted.
2. A ten-year period of ineligibility is imposed on Mr Xu Ke from the date of this decision during which time he will be prohibited from participating in any activity relating to Table tennis, under the auspices of the ITTF, its National Federations and continental confederations. Mr Xu Ke will receive credit for the period of provisional suspension he has served since 2 November 2022.
3. Mr Xu Ke must undertake (at his own expense) an accredited programme in safe sport and sexual consent before he can make any attempt to return to participation (in any form) in the sport of table tennis following the expiry of his 10-year period of ineligibility.
4. Mr Xu Ke is ordered to pay the arbitration costs to the ITTF in an amount which shall be determined by the ITTF Executive Board and notified to the Respondent in due course.
5. Mr Xu Ke is ordered to pay to the ITTF Integrity Unit a contribution to its legal and other costs in an amount of USD 3,000.
6. All other or further prayers for relief are dismissed.

Lausanne, on 17 December 2024



Jorge Ibarrola
President of the Hearing Panel



Kok Keng Lau
Panel Member



Sally Clark
Panel Member