

In the Matter of

TOURS VOLLEY-BALL CLUB
(hereinafter: “the Appellant”)

vs.

EUROPEAN VOLLEYBALL CONFEDERATION (CEV)
(hereinafter: “the Respondent”)

DECISION

of the FIVB APPEALS PANEL in the Case 2017-03

Date: 16 January 2018.

This is an appeal made by Tours Volley-Ball Club against the European Volleyball Confederation (CEV) Legal Chamber decision n° CEV 2017-01 dated on 13 December 2017 to dismiss the protest by the Appellant in relation with the match 3-215 of the CEV Volleyball Challenge Cup - Men (hereinafter: “the Decision”).

I. FACTUAL BACKGROUND

1. The following is an overview of the relevant facts of this case, listed in a summary manner for the sake of brevity. However, the FIVB Appeals Panel notes that it has considered every submission in the file thoroughly even if it has not been specifically addressed herein.
2. The match 3-215 of the CEV Volleyball Challenge Cup - Men between Tours Volley-Ball Club and Olympiacos Piraeus (3-0: 26-24; 25-21; 25-23) took place on 6 December 2017, at 18:00, in Rentis – Piraeus, Greece (hereinafter “the Match”).
3. During the first set of the Match (score 24-24), Mr. Nathan Wounembaina (Tours Volley-Ball Club) was excluded by the 1st referee for leaving the field of play without authorization.

4. Tours Volley-Ball Club supports that the actions by Mr. Nathan Wounembaina were triggered by racist chants.
5. Tours Volley-Ball Club lost the Match and filed a protest (hereinafter: “the Protest – CEV 2017-01”).
6. Between 6 and 8 December 2017, CEV requested all parties (i.e. Tours Volley-Ball Club, Olympiacos Piraeus, the CEV Supervisor, the 1st referee and 2nd referee) to provide detailed reports.
7. On 14 December 2017, the President of the CEV Legal Chamber issued the Decision.
8. On the same day, CEV initiated an investigation with regards to the alleged racist chants. The procedure is recorded under the following number: DP-CEV 2017-02. The FIVB Appeals Panel understands that the investigation in relation with this case is currently ongoing.
9. On 19 December 2017, Olympiacos Piraeus lost to Tours Volley-Ball Club the away match (0-3: 25-22; 25-21; 25-20). Tours Volley-Ball Club and Olympiacos Piraeus played a Golden Set (11-15). Olympiacos Piraeus qualified for the next phase of the 2018 CEV Volleyball Challenge Cup – Men.

II. THE DECISION UNDER DISPUTE

10. The Decision is structured in six (6) sections: 1. Summary of the Protest; 2. Proceedings; 3. Facts; 4. Admissibility; 5. Further remarks; and 6. Decision.
11. Having considered all relevant items under sections 1-5, the President of the CEV Legal Chamber declared the Protest – CEV 2017-01 inadmissible¹, confirmed the

¹ Obiter dictum: The FIVB Appeals Panel notes that the President of the CEV Legal Chamber used the words “inadmissible” in section 4 and “dismissed” in section 6. The FIVB Appeals Panel understands that the President of the CEV Legal Chamber declared the Protest – CEV 2017-01 inadmissible because of the language used in section 5 let. f, which reads as follows: “If this case would be admissible, ...”. This suggests that the Protest – CEV 2017-01 was indeed inadmissible under the relevant rules.

results of the Match and the disqualification of Mr. Nathan Wounembaina (Tours Volley-Ball Club).

III. THE APPEAL BY TOURS VOLLEY-BALL CLUB AGAINST THE DECISION

a) Proceedings before the Appeals Panels

12. On 21 December 2017, the Appellant filed an appeal against the Decision.
13. On 22 December 2017, the FIVB Appeals Panel Secretariat notified the Respondent of the existence of the appeal submitted by Tours Volley-Ball Club and provided the Respondent with the opportunity to file an answer by no later than 8 January 2018. The FIVB Appeals Panel Secretariat also informed Tours Volley-Ball Club that the FIVB Finance Department must be able to confirm receipt of the administration fee by no later than 5 January 2018 for the appeal not to be deemed withdrawn by the FIVB Appeals Panel.
14. On 5 January 2018, the FIVB Appeals Panel Secretariat informed the Appellant that the FIVB Finance Department was not able to confirm receipt of the administrative fee and requested the Appellant to submit a proof of the transfer of the administrative fee to the FIVB Appeals Panel by close of business. The Appellant provided further evidence with regards to the payment of the administrative fee and the FIVB Finance Department was able to confirm receipt of the administrative fee on the FIVB bank account.
15. On 8 January 2018, the Respondent filed its answer with the FIVB Appeals Panel Secretariat.
16. On 10 January 2018, the Appellant submitted an unsolicited communication to the FIVB Appeals Panel Secretariat informing the FIVB Appeals Panel that the Appellant would not comment on the answer filed by the Respondent but reiterated the emergency, in its view, to conclude the present proceedings.

17. On 12 January 2018, the FIVB Appeals Panel Secretariat informed the Appellant and the Respondent of the composition of the FIVB Appeals Panel.

b) Positions of the Parties

18. The position of Volley-Ball Tours Club may be summarized as follows:
- Tours Volley-Ball Club contended that the procedure to deal with protest does not respect equality of treatment (i.e. adversarial principle).
 - Tours Volley-Ball Club contested the findings of the President of the CEV Legal Chamber with regards to the admissibility of the Protest – CEV 2017-01.
 - Tours Volley-Ball Club insisted that the disqualification of Mr. Nathan Wounembaina was an illegal sanction and further insisted on the personal and sporting consequences of said disqualification on Mr. Nathan Wounembaina and Tours Volley-Ball Club respectively.
19. The position of the European Volleyball Confederation (CEV) may be summarized as follows:
- CEV insisted on the existence of two (2) separate proceedings, namely the Protest – CEV 2017-01 and DP-CEV 2017-02.
 - The CEV regulatory framework with regards to protests respects equality of treatment (i.e. adversarial principle).
 - CEV stands by the Decision with regards to the inadmissibility of the protest and elected not to comment on the disqualification of Mr. Nathan Wounembaina.

IV. THE FIVB APPEAL PANEL DECISION

a) FIVB Appeals Panel Competence: Prerequisites

20. The FIVB Appeals Panel notes that certain admissibility requirements must be fulfilled for the FIVB Appeal Panel to consider an appeal. With regards to the foregoing, the Appellant must:
- i. file the appeal within fourteen (14) days of notification of the decision (Article 31.1 of the FIVB Disciplinary Regulations 2017). The Respondent

- notified the Decision to the Appellant on 14 December 2017. The Appellant filed the appeal with the FIVB Appeals Panel on 21 December 2017; and
- ii. pay an administrative fee of CHF 2'000 (Article 31.2 of the FIVB Disciplinary Regulations 2017). The FIVB Finance Department confirmed receipt of the administrative fee within the deadline set by the FIVB Appeals Panel (Article 31.2 of the FIVB Disciplinary Regulations 2017).
21. In light of the above, the FIVB Appeals Panel is satisfied that the Appellant complied with both requirements.

b) FIVB Appeals Panel Competence: General principles

22. The FIVB Appeals Panel is competent to hear appeals filed by an affected party against decisions of FIVB bodies or Confederation bodies (Article 30.1 of the FIVB Disciplinary Regulations 2017). In the present case, it is undisputed that:
- i. the Appellant is an affected party within the meaning of Article 30.1 of the FIVB Disciplinary Regulations 2017. The CEV Legal Chamber declared inadmissible the Protest – CEV 2017-01 filed by the Appellant after the Match; and
 - ii. the Decision was issued by a Confederation body within the meaning of Article 30.1 of the FIVB Disciplinary Regulations 2017. The Respondent is the Confederation recognised by the FIVB for Europe (Article 2.10.1.2 FIVB Constitution 2014) and the CEV Legal Chamber is a body of said Confederation (Article 1.1 §1 let. d CEV Constitution 2017).
23. In light of the above, the FIVB Appeals Panel appears to be, on a *prima facie* basis only, competent to hear the appeal filed by the Appellant.

c) FIVB Appeals Panel Competence: Exclusion of certain appeals

24. The FIVB Appeals Panel notes however that not all decisions by FIVB bodies or Confederations bodies may be appealed. In other words, appeals complying with the conditions set forth in para 20 and 22 above may prove to be inadmissible for other grounds. Particular attention should be given to Article 30.2 of the FIVB Disciplinary Regulations 2017 in this respect. This provision reads as follows:

“Decisions arising from complaints against referee’s decisions are final and not subject to appeal before the Appeals Panel or the Court of Arbitration for Sport”.

25. The FIVB Appeals Panel must therefore assess the nature of the Decision against the restriction set forth in Article 30.2 of the FIVB Disciplinary Regulations 2017. This course of action will enable the FIVB Appeals Panel to decide whether it is competent to hear the present appeal. The FIVB Appeals Panel shall first define the concept of “complaints against referees’s decisions” under the meaning of the FIVB Disciplinary Regulations and, then, define that of decisions arising from such concept.
26. There is no doubt in the mind of the FIVB Appeals Panel that a complaint against a referee decision refers to the institution of “protest” under the Official Volleyball Rules 2017-2020 (Articles 5.1.2.1, 5.1.3.2, 23.2.4 and 25.2.3.2 Official Volleyball Rules 2017-2020). In short, this institution serves the purpose to record that a team Captain (and by extension a team) does not agree with the application or the interpretation of the rules by the 1st referee (Articles 5.1.2.1, 5.1.3.2, 23.2.4 and 25.2.3.2 Official Volleyball Rules 2017-2020) during a specific match.
27. The institution of protest is further implemented by the FIVB or the Confederations in their respective regulatory framework.
28. Within the CEV regulatory framework, the institution of protest is governed by Article 15.1 CEV Competitions Regulations 2017. This provision applies to all CEV Competition (the definition of CEV Competitions includes the CEV Challenge Cup [Article 8 §5 let. f CEV Competitions Regulations 2017]) and establishes three (3) routes in relation with the handling of protests in relation with CEV Competitions:
 1. protest for single matches (Article 15.1.2 CEV Competitions Regulations 2017);
 2. protest for qualification or final phase without Jury (Article 15.1.3 CEV Competitions Regulations 2017); and
 3. protest for qualification or final phase with Jury (Article 15.1.4 CEV Competitions Regulations 2017).

29. The FIVB Appeals Panel notes that both the Appellant and the Respondent considered the proceedings before the CEV Legal Chamber being in relation with a protest for a single match and have acted consistently in this regard since. The FIVB Appeals Panel concurs with this interpretation and the position of the Parties. Thus, the next question for the FIVB Appeals Panel to consider is whether the present proceedings revolves around a “decision” arising from a protest.
30. The FIVB Appeals Panel shall define what constitutes a “decision” in order to do so. With this approach in mind, the FIVB Appeals Panel shall first rationalize on the form and the impact of the “decision” on terms of the possible legal consequences and implications such decision may have for the Appellant, and in this sense found that:
- a. The term “decision” is interpreted broadly by CAS Panels. *“According to the relevant CAS case law, the form and/or denomination of the challenged act are not decisive. What matters is whether the latter contains a ruling affecting the parties’ legal positions. In sum, (i) the qualification of an act as a decision is a matter of substance, not form; (ii) a decision must be intended to affect the legal rights of a person usually, if not always, the addressee; (iii) a decision is to be distinguished from the provision of information”* (See CAS 2015/A/4181 and CAS 2008/A/1633 and CAS 2007/A/1355).
 - b. *“The form of the communication has no relevance to determine whether there exist a decision or not, in particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal”* (See CAS 2015/A/4181, para 74).
 - c. *“In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties”* (See CAS 2015/A/4181, para 74).
 - d. *“A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects”* (See CAS 2015/A/4181, para 74).
31. The FIVB Appeals Panel notes that the CEV Legal Chamber is the competent body to address protests for single matches (Article 15.1.2 §5 CEV Competitions Regulations 2017). The question before the FIVB Appeals Panel is whether the Decision by the

CEV Legal Chamber constitutes a “decision” according to the conditions set forth in para 30 above.

32. The FIVB Appeals Panel notes that the Decision is identified has such on the first and last pages of the communication (i.e. “Decision of 13. December 2017 in the Protest-matter of Tours VB” and “6. Decision” respectively) by the CEV Legal Chamber. The FIVB Appeals Panel further notes that the CEV Legal Chamber dismissed – via the Decision – the prayers for relief of the Appellant in its entirety and, as such, affected the legal situation of the Appellant. With the results of the Match standing, the Appellant is no longer a participating team to the 2018 CEV Challenge Cup – Men.
33. In light of the above, the FIVB Appeals Panel is satisfied that the Decision constitutes a decision within the meaning of para 30. By the same, this means that the Decision is a decision arising from a complaint against a referee decision (i.e. a protest).
34. Consequently, the FIVB Appeals Panel finds that the appeal falls within the restriction of Article 30.2 of the FIVB Disciplinary Regulations 2017. It should be noted that the wording of Article 15.1.3 §5 CEV Competitions Regulations 2017 – which reads as follows: “The decision taken by the President of the CEV Legal Chamber (or the appointed Member) as to the protest shall be definitive” – mirrors this understanding².
35. The legal consequence of above is as follows: the FIVB Appeals Panel does not have the competence to decide upon the appeal submitted by the Appellant. In other words, the FIVB Appeal Panel does not have the power to discuss the grounds of the petition due to the inadmissibility of the appeal.

V. COSTS

36. The FIVB Appeals Panel notes that Article 31.2 *in fine* of the FIVB Disciplinary Regulations 2017 provides that the administrative fee can be reimbursed if a party

² Obiter dictum: The FIVB Appeals Panel notes that the diagram on page 3 of the CEV Legal Chamber Regulations 2017 is misleading in the sense that it does not reflect the content of Article 15.1.3 §5 CEV Competitions Regulations 2017 and suggests that an appeal to the FIVB Appeals Panel is possible. The FIVB Appeals Panel recommends CEV to amend the diagram and clarify that no appeal may be filed with the FIVB Appeals Panel in relation with a protest.

prevails. In the present case, no party prevail on its appeal. Consequently, the FIVB Appeals Panel finds that it cannot reimburse the administrative fee paid by the Appellant.

VI. FIVB APPEALS PANEL DECISION

For the reasons set forth above, the FIVB Appeals Panel decides as follows:

- 1. The appeal filed by Tours Volley-Ball Club is inadmissible.**
- 2. Any other requests for relief are dismissed.**

Lausanne, 16 January 2018

Ms. Damaris Young
Chairperson

Ms. Emba Wun Man Leung
Member

Mr. Jorge Granja Cobos
Member

NOTICE OF APPEALS

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with

- Article 32 of the FIVB Disciplinary Regulations 2017 which provides as follows:

“A further appeal against the decision by the Appeals Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following receipt of the decision”.

- The CAS Code of Sport-related Arbitration, which is available under www.tas-cas.org

The address and contact details of the CAS are the following:

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In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.