

In the Matter of

[Name of the Appellant]
(hereinafter: “the Appellant”)

vs.

FÉDÉRATION INTERNATIONALE DE VOLLEYBALL
(hereinafter: “the Respondent”)

DECISION
of the FIVB APPEALS PANEL in the Case 2018-03

Date: 13 December 2019.

This is an appeal brought by [the Appellant]¹ against the Fédération Internationale de Volleyball decision dated 9 November 2018 (hereinafter: “the **Decision**”) to declare that [the Appellant]’s application to change his Federation of Origin was not complete because he did not satisfy the relevant conditions provided in the FIVB Sports Regulations.

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 Appellant is a professional volleyball player, who was born in [the Appellant’s date and place of birth]) to [country of citizenship of the Appellant’s parents, hereinafter “Parents’ Country”] Thus, he was able to obtain citizenship of both [the Appellant’s country of birth, hereinafter “Country of Birth”], through birth, and [Parents’ Country], through descent. For most of his life, his parents maintained a residence in [place in Parents’ Country].

¹ In the interest of the protection of privacy, this is a redacted version of the decision. Any reductions are marked with bold brackets.

- 3 The Appellant began his volleyball activities and was first registered in [Country of Birth] during his early education. It is uncontested that his original Federation of Origin is [Country of Birth]. The Appellant played for [Country of Birth] national team at a junior level.
- 4 In 2014 through April 2018, the Appellant moved to the [country that is neither the Country of Birth nor the Parents' Country, hereafter "Third Country"] to attend [a certain University]. He would travel to [Parents' Country] regularly during his breaks in school in order to spend time with his family.
- 5 Upon graduation from university, the Appellant moved to [Parents' Country].
- 6 On 28 April 2018, the [Parents' Country's National Federation, hereinafter the "National Federation"] filed an application to request to change the Appellant's Federation of Origin.
- 7 On 2 May 2018, the Respondent acknowledged receipt of the Appellant's application to change his Federation of Origin.
- 8 On 1 June 2018, the Appellant signed a professional contract with the [Parents' Country's] club [name of the club].
- 9 On 28 August 2018, the FIVB informed the Appellant of the following:

"Upon review of the application to Change Federation of Origin by [the Appellant], the FIVB would like to inform the [National Federation] that the conditions for a Change of Federation Origin are not met in the present case. [The Appellant has not been residing in the territory under the jurisdiction of the [National Federation] for the two years immediately prior to filing his application to Change Federation of Origin to [the Parents' Country] from [the Country of Birth] with the FIVB. This is evidenced by the fact that [the Appellant] was residing in the [Third Country] between 2015 and 2018 because [the Appellant] was studying and playing volleyball at [a certain University]
[...]

In light of the above, the FIVB kindly invites the [National Federation] and [the Appellant] to file an application with the FIVB when [the Appellant] will have met the conditions set forth in the FIVB Sports Regulations 2018.”

- 10 On 7 November 2018, the Appellant filed a request for reconsideration to the FIVB challenging the findings of the FIVB communication dated 28 August 2018.

II. THE DECISION UNDER DISPUTE

- 11 On 9 November 2018, the FIVB issued the Decision under dispute, which read as follows:

“Reference is made to your Request for reconsideration dated 7 November 2018 with regards to the application to Change Federation of Origin by [the Appellant].

The Fédération Internationale de Volleyball (FIVB) understands from the content of your Request for reconsideration that your Client wishes the FIVB to review its findings of the FIVB communication dated 28 August 2018.

The FIVB has carefully reviewed the information you have provided with in your Request for reconsideration and hereby confirms the findings of the FIVB communication referred to above in their entirety.

Consequently, the FIVB decides as follows:

- 1. The FIVB confirms the findings of the FIVB communication dated 28 August 2018; and*
- 2. The application to Change Federation of Origin by by [the Appellant] cannot be considered complete because by [the Appellant] does not meet the conditions set forth in the FIVB Regulations.*

*An appeal may be filed against this **decision** exclusively before the FIVB Appeals Panel, in accordance with the FIVB Disciplinary Regulations (available using: <http://www.fivb.org/EN/FIVB/Legal.asp>).*

The FIVB wishes to stress that [the Appellant] may file an application to Change Federation of Origin when [the Appellant] will have met the conditions set forth in the FIVB Sports Regulations.”

III. APPEAL BY [THE APPELLANT] AGAINST THE DECISION

a) Proceedings before the Appeals Panel

- 12 On 23 November 2018, the Appellant filed the present appeal against the Decision. This appeal is recorded under the following case number: Case AP 2018-03.
- 13 On 28 November 2018, the FIVB Appeals Panel Secretariat acknowledged receipt of the appeal by the Appellant, provided a deadline of 3 December 2018 to pay the administrative fee for the proceedings, informed the Appellant that the FIVB Appeals Panel would consist of the FIVB Appeals Panel Chairperson, Ms. Damaris Young, and two additional members, stating that the proceedings would be conducted in English and providing the Appellant with the relevant information regarding the FIVB Disciplinary Regulations.
- 14 On 3 December 2018, the FIVB Appeals Panel Secretariat acknowledged receipt of the payment of administration fee by the Appellant and fixed a deadline of 7 January 2019 for the FIVB to file its Answer in the present proceedings.
- 15 On 3 January 2019, the Respondent filed a request to extend the deadline to file its Answer until 17 January 2019.
- 16 On 7 January 2019, the request for extension was granted by the FIVB Appeals Panel Chairperson.
- 17 On 17 January 2019, the Respondent filed its Answer.

- 18 On 18 January 2019, the FIVB Appeals Panel Secretariat acknowledged receipt of the Respondent's Answer and informed the Parties of the composition of the FIVB Appeals Panel. The FIVB Appeals Panel was to sit in the following composition:
- Ms. Damaris Young (PAN), Chairperson;
 - Ms. Emba Wu-Man Leung (CHN), Member; and
 - Mr. Thomas Berend (LUX), Member.

The FIVB Appeals Panel Secretariat further informed the Appellant and the Respondent that the FIVB Appeals Panel will now review their respective submission(s) and was to deliberate on the Case AP 2018-03 in due time.

b) Positions of the Parties

- 19 The position of [the Appellant] may be summarized as follows:
- The [National Federation] filed the Appellant's request before the current edition of the FIVB Sports Regulations became applicable. Consequently, the 2017 edition of the FIVB Sports Regulations are applicable to this case, which is consistent with the international law principles that laws should not be applied retroactively (*lex retro non agit*).
 - Given that i) the FIVB Sports Regulations 2017 do not include a definition of residency, and that ii) the Appellant is a [Parents' Country's] citizen who is applying to change his Federation of Origin to the [National Federation], the [country of which the Appellant's parents are citizens] law applies to determine the Appellant's residence.
 - In light of the applicable [Parents' Country's] law provisions, specifically, Article 25 of the [Parents' Country's] Act of 23 April 1964 Civil Code, the residence of the Appellant is effectively in [the Parents' Country] due to both external factors, i.e. his actual residence, which is not necessarily defined in a continuous manner, and internal factors, i.e. his intention to establish [the Parents' Country] as his permanent residence, based on [the Parents' Country] being the centre of the Appellant's personal and economic interests in accordance with the following facts:

- He has maintained a permanent address of residence from 26 May 1997 to 30 March 2015 and 20 December 2017 to the date of the filing of the Appeal Brief.
- Although the Player studied in the [Third Country] for a period, this was only a temporary break which did not constitute a change of place of residence. The centre of his personal and economic interests remained in [the Parents' Country] notably in light of the fact that he returned there during every summer and Christmas break.
- The Player has always maintained his “intention of permanent residence” in [the Parents' Country] and has always felt connected to [the Parents' Country] based on his upbringing in the language and culture [of the Parents' Country] despite being born and raised in [the Country of Birth].
- [The Parents' Country] is also where the Player has established the centre of his activity, where he intends to stay permanently and to start a professional and family life, given that he has registered as an entrepreneur, rented an apartment and moved to [the Parents' Country] with his fiancée who is not [a national of the Parents' Country].

20 The Request for Relief of the Appellant was as follows:

1. *“that the application of Change of Federation of Origin is legitimate and the Appellant meets the conditions concluded in Article 5.1 of the FIVB Sports Regulations, so the Appellant is able to change his Federation of Origin from [the Country of Birth] to [the Parents' Country].*
2. *that CHF 2,000 administrative fee shall be reimbursed or credited towards the CHF 15,000 fee concluded in Article 5.3.2 of FIVB Sports Regulations”.*

21 The position of the Respondent may be summarized as follows:

- The applicable law in the present case are the FIVB rules and regulations, specifically, the FIVB Sports Regulations. Swiss law applies subsidiarily in line with the constant jurisprudence of the FIVB Appeals Panel and in order to ensure consistency in the event that the case is appealed before the Court of Arbitration for Sport in accordance with Article R58 of the Code of Sports-related Arbitration.

- The Appellant does not meet the cumulative conditions set out in Article 5.2 of the FIVB Sports Regulations because:
 - The Appellant fails to satisfy the residence requirement of two years immediately prior to his application.
 - The term “residence” has to be interpreted in a uniform manner to prevent “nation shopping” and to avoid unequal treatment of its member federations through interpretation based on different national legislations. This purpose can only be achieved through a review under a consistent set of rules, the FIVB regulations and, supplementarily, Swiss law.
 - The definition of “residence” provided in the most recent version of the FIVB Sports Regulations were merely a clarification of the consistent interpretation of “residence” used by the FIVB. Thus, the “retroactivity” principle argued by the Respondent was not applicable in light of the fact that this definition was not changed by the new regulation.
 - Likewise, under CAS jurisprudence and Swiss law would support the FIVB’s interpretation in the present case. Both examine this issue with a “centre of life” analysis, i.e. where the person usually returns and stays at night. A temporary stay of a certain length would also qualify as a residence.
 - In the present case, the Appellant stayed in the [Third Country] for more than three years spending the most of his everyday life in the [Third Country]. Therefore, he cannot prove that he has been residing in [the Parents’ Country] for a minimum of two continuous years immediately prior to filing his application.
 - The Appellant failed to pay the applicable administration fee for the change of Federation of Origin. The Appellant confirmed this in his Request for Relief by asking that the administrative fee for the present proceedings be credited towards the administration fee for his Change of Federation of Origin.

22 The Request for Relief of the Respondent was as follows:

1. *“dismiss the Appellant’s appeal,*
2. *confirm the 9 November 2018 decision of the FIVB,*

3. *order the Appellant to pay the entire costs of the proceedings*
4. *order the Appellant to pay a contribution to the Respondent's legal fees".*

IV. ADMISSIBILITY OF THE APPEAL BY [THE APPELLANT]

23 The Parties have noted that two set of FIVB Disciplinary Regulations may apply to the admissibility of the appeal by the Appellant, namely:

- The FIVB Disciplinary Regulations 2017, which were approved by the FIVB Board of Administration on 5 May 2017 and entered into force on 8 June 2017; and
- The FIVB Disciplinary Regulations 2018, which were approved by the FIVB Board of Administration on 4 May 2018 and entered into force on 1 June 2018.

24 Thus, it is incumbent on the FIVB Appeals Panel to first determine which version of the FIVB Sports Regulations are applicable to this dispute both for procedural matters and on the merits.

25 In examining this issue, the FIVB Appeals Panel stated the following in AP 2015-01 Gotch vs. FIVB:

“Regulations come into effect from the time that they are entered into force until such time that they are replaced by another regulation. As it relates to the merits of a dispute, general principles of law dictate that the applicable regulations related to the substantive matters of the dispute are those regulations that are in place at the time that the events giving rise to the dispute occurred. The purpose of this is to avoid the unfair retroactive application of regulations to circumstances that were not in place at the time of the dispute.” (see para. 79)

26 Therefore, the question before the FIVB Appeals Panel in the present case is which events give rise to the dispute. The Appellant emphasizes the date of the filing of the application to change the Appellant's Federation of Origin, which it argues would mean that the FIVB Sports Regulations 2017 would be applicable whereas the Respondent seems to emphasize the date of the Decision, which took place after the FIVB Sports Regulations 2018 went into force, although it does not clearly take a position.

27 The FIVB Appeals Panel finds that events giving rise to the present dispute began with the filing of the application, which is the event in time that began the present dispute. The Appellant submitted his application with the view that it would be submitted to the FIVB Executive Committee in its meeting on 2 May 2018 immediately prior to the FIVB Board of Administration that approved the FIVB Sports Regulations 2018. Consequently, whether to submit said application to the FIVB Executive Committee taking place on 2 May 2018 would have been conducted in accordance with the FIVB Sports Regulations 2017. Any other interpretation would allow the FIVB, which has full control over the promulgation of regulations, to delay a decision until after new regulations are approved. Consequently, the FIVB Appeals Panel finds that the applicable version of the FIVB Sports Regulations to the merits of the present case is the 2017 version of the FIVB Sports Regulations. The implications of this holding on the Appellant's argument related to retroactive application of the FIVB Sports Regulations 2018 will be discussed in greater detail below.

28 However, the FIVB Appeals Panel finds that, in accordance with general principles of law, the relevant regulations related to procedural matters are those in place at the time that the action is commenced. As the appeal was filed after the FIVB Disciplinary Regulations 2018 went into effect on 1 June 2018², this version of the FIVB Disciplinary Regulations will guide the FIVB Appeals Panel with regards to any other procedural issue related to the present proceedings (e.g. allocations of costs).

a) FIVB Appeals Panel Competence: Pre-requisites

29 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). The Appellant filed an appeal

² Relevant changes to the FIVB Disciplinary Regulations 2018 from the FIVB Disciplinary Regulations 2017 with regards to the FIVB Appeals Panel related only to the composition of the FIVB Appeals Panel (creation of substitute members) and the authority to appoint a replacement in case a member is unavailable, resigns, has the same nationality as one of the parties or conflicted (see Articles 29.1 and 29.3.1 of the FIVB Disciplinary Regulations 2018).

with the FIVB Appeals Panel on 23 November 2018, namely fourteen (14) after receipt of the Decision on 9 November 2018; and

- ii. pay an administrative fee of CHF 2'000 (Article 31.2 of the FIVB Disciplinary Regulations 2017). The Appellant paid the administrative fee within the deadline set by the FIVB Appeals Panel Secretariat. The FIVB Appeals Panel Secretariat confirmed receipt of the administrative fee on 3 December 2018.

30 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

31 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 2018). 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 2018. The FIVB held that the Appellant did not meet all the conditions to request a change of Federation of Origin at the time of his application; and
- ii. the Decision was issued by an FIVB body within the meaning of Article 30.1 of the FIVB Disciplinary Regulations 2018. The Respondent is the FIVB and the FIVB Secretariat is acting under the authority of the FIVB President, who is considered a "Governing Institution" of the FIVB (Article 2.1.2.1 of FIVB Constitution in conjunction with Article 8.1 of the FIVB General Regulations).

32 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 against the Decision.

c) FIVB Appeals Panel Competence: Exclusion of certain appeals

33 The FIVB Appeals Panel notes that not all decisions by FIVB bodies or Confederations bodies may be appealed.

34 The FIVB Appeals Panel is satisfied that the restriction set forth in Articles 28.6 and 30.2 of the FIVB Disciplinary Regulations 2018 does not apply in the present case because the appeal does not concern a fine in an amount of less than CHF 5'000 or a referee's decision.

35 In light of the above, the FIVB Appeals Panel is satisfied that the FIVB Appeals Panel is competent to hear the appeal filed by the Appellant against the Decision.

V. THE APPEAL PANEL DECISION

36 The FIVB Appeals Panel shall a) decide on the law applicable to the present dispute before examining the merits of the decision. As it relates to the merits, the FIVB Appeals Panel must then determine whether b) the Appellant satisfied the conditions to change his Federation of Origin at the time that the Decision was issued.

a) The Law Applicable to the Appeal

37 The Appellant has made his arguments based on the application of [the Parents' Country's] law. His argument is that, as there is no definition in the FIVB Sports Regulations, the FIVB must examine national legislation to provide such definition. Given that the Appellant is a [citizen of the Parents' Country], his new proposed Federation of Origin is [the Parents' Country's National Federation] and the Appellant has to establish residence in the country of his new Federation of Origin, the Appellant states that [the Parents' Country's] law is applicable.

38 On the other hand, the Respondent argues that the FIVB rules and regulations and, subsidiarily, Swiss law is applicable. The Respondent emphasized the need for the application of the FIVB rules and regulations in a consistent and predictable manner. Thus, the interpretation of this rule cannot be subject to different national legislations; otherwise, such purpose is not served. As the Respondent is an association organised under Swiss law, the Respondent contends that Swiss law, not [the Parents' Country's] law, would be applicable when interpreting the FIVB rules and regulations. Moreover, it would likewise be more advantageous to apply Swiss law as the Court of

Arbitration for Sport would apply Swiss law if the case were appealed in accordance with Article R58 of the Code of Sports-related Arbitration.

39 Having examined the arguments above, the FIVB Appeals Panel finds that Swiss law should be applied in the present case. The FIVB Appeals Panel agrees with the Respondent regarding the need for consistency and predictability in the application of the FIVB Regulations. The approach requested by the Appellant would potential result in a different application of the FIVB Regulations that would depend on where one of the Parties is located. Thus, an appeal by player from [the Parents' Country] and an appeal from a player from a different territory could result in a different application of the regulation. Such an approach would not result in the consistency or predictability that would desirable for all parties applicable to the rules.

40 Additionally, the FIVB Appeals Panel also notes that the approach argued by the Respondent would also ensure that there is a consistency in the applicable law throughout the entire appeals procedure defined in the FIVB Sports Regulations, i.e. an appeal before the Court of Arbitration for Sport. It is clear from Article R58 of the Code of Sports-related Arbitration that Swiss law would be applied. The Court of Arbitration for Sport's jurisprudence from a previous appeal of an FIVB Appeals Panel case applied this provision and found that Swiss law applied subsidiarily (see CAS 2015 A 4095), para. 58). Based on the above, the FIVB Appeals Panel finds that the FIVB regulations apply with Swiss law applied subsidiarily in the present case.

b) Did the Appellant satisfy the conditions to change his Federation of Origin at the time of the Decision?

41 The crux of this dispute is whether the Appellant satisfied the conditions to change his Federation of Origin at the time that the Decision was issued. The relevant conditions to change Federation of Origin are defined in Article 5.2 of the FIVB Sports Regulations:

"A change of Federation of Origin (hereinafter "the Change") may be approved only if the following conditions are cumulatively met:

- 5.2.1 *The player has established residence in the country of his new Federation of Origin (hereinafter “the new Federation”) for a minimum of two (2) continuous years immediately prior to the time of filing the application for the Change.*
- 5.2.2 *The player has obtained the nationality of the country of the new Federation.*
- 5.2.3 *The player’s Federation of Origin agrees to the Change.*
- 5.2.4 *The new Federation agrees to the Change.*
- 5.2.5 *The applicable administration fee for the Change has been paid to the FIVB (see Article 5.3 below).”*

42 It is uncontested between the Parties that the conditions found in Articles 5.2.2, 5.2.3 and 5.2.4 are met in the present case. Thus, the crux of this dispute is whether the Appellant met the conditions found in Articles 5.2.1 and 5.2.5 were met at the time of the Decision. The FIVB Appeals Panel will examine each of these conditions in turn.

- i. Does the Appellant meet the condition of establishing residence in his new Federation of Origin for a minimum of two continuous years immediately prior to the filing of his application?

43 The key issue before the FIVB Appeals Panel is defining the term “residence” in this particular condition in order to provide clarity as to whether the Appellant satisfy this issue. As described above, the applicable law for the present dispute is the FIVB regulations and, subsidiarily, Swiss law.

44 The Appellant contends that the definition of “residence” is not defined in the FIVB Sports Regulations 2017 and that the application of the definition found in the FIVB Sports Regulations 2018 would result in a retroactive application in violation of general principles of law. On the other hand, the Respondent contends that, even if the definition found in the FIVB Sports Regulations 2018 was not explicitly applicable, the use of such definition would not, in fact, result in a retroactive application as the subsequent codification of the definition of “residence” found in the FIVB Sports Regulations 2018 was merely a clarification of the definition already in use at the time of the Appellant’s Change of Federation of Origin application.

- 45 The principle against retroactive application of a law or rule that derives from criminal law. This principle is based on a concept of fairness that it would be unfair to apply a rule that has been passed to conduct that occurred before such rule went into effect, especially in the context of criminal cases where the penalties imposed include severe implications, such as the deprivation of freedom. In the context of sports, the Court of Arbitration for Sport has discussed this principle in the context of disciplinary matters (see CAS 2017/A/4947, paras. 123-128).
- 46 The FIVB Appeals Panel notes that the current proceedings are not disciplinary in nature but rather related to an appeal of an administrative decision. Moreover, in the context of the appealed decision, the Decision did not foreclose or deprive the Appellant of a right for a substantial period of time. Rather, it merely required the Appellant to re-submit his application when he satisfied the condition.
- 47 Regardless, having reviewed the submissions of the Parties, the FIVB Appeals Panel finds that the interpretation of “residence” by which the FIVB evaluated the application made by the Appellant did not violate the principle against retroactive application. While the definition of “residence” was not included in the FIVB Sports Regulations 2017, the Respondent has been applying an interpretation of the term “residence” in line with this definition before the Appellant filed his application. The Respondent provided evidence demonstrating that this interpretation had been applied in January and February 2018. Consequently, the definition of “residence” provided in the FIVB Sports Regulations 2018 was not a new regulation but was rather a codification of an existing interpretation under the FIVB Sports Regulations. Consequently, the assessment of “residence” by the Respondent does not constitute a violation of the principle against retroactive application.
- 48 Even if one could assert that there was a *lacuna* in the FIVB Sports Regulations 2017 given that there was no definition explicitly provided therein, the FIVB Appeals Panel finds that the Respondent would naturally examine Court of Arbitration for Sport jurisprudence and Swiss law, given its applicability as defined above, to fill this *lacuna*. In CAS 2007/A/1377, the Court of Arbitration for Sport examined the definition of the word “residence” in the context of a residency requirement in a dispute over the sporting nationality of a swimmer. In examined the literal definition of “residence” and

the revision of the relevant rule, the text of which had been adopted by the Respondent in its Sports Regulations 2018, it found that this definition of “residence” was straightforward leading to a predictable application (see CAS 2007/A/1377, paras. 21-47).

- 49 The interpretation used by the FIVB is also in line with Article 23 of the Swiss Civil Code, which finds that a person’s residence is defined by the “centre of life” where a person usually returns in the evening and stays for the night. The FIVB Appeals Panel notes that Swiss law scholars have explicitly noted that a temporary stay could also constituted a person’s residence if such stay is of a certain length, e.g. a three year study program.
- 50 Given the above context, the FIVB Appeals Panel finds that the FIVB did not err in finding that the Appellant did not satisfy the two year residency condition defined in Article 5.2.1 of the FIVB Sports Regulations. It notes that it was uncontested that the Appellant went to study at [a certain University] in the [Third Country] from 2014 through April 2018. During this time, he lived and spent the majority of his time in the [Third Country], returning only during breaks in his studies. Whether examining the Appellant’s life from the interpretation used by the FIVB or CAS or through a “centre of life” analysis, the FIVB Appeals Panel finds that the Appellant had not established that [the Parents’ Country] was his residence for two continuous years immediately prior to the filing of his application on 28 April 2018 given that he has residing in the [Third Country]from 2014 until his graduation in April 2018.
- 51 For the sake of completeness, the FIVB Appeals Panel highlights that the Appellant’s main argument in support that he satisfied the residency condition was based on [the Parents’ Country’s] law because he maintained a residence in the Parents’ Country] while he was studying in the [Third Country], i.e. external factors, and always intended to establish his residence in [the Parents’ Country], i.e. internal factors. Additionally, the Appellant’s centre of the Appellant’s personal and economic interests were in [the Parents’ Country].
- 52 At the outset, the FIVB Appeals Panel has already found that [the Parents’ Country] law is not applicable in this case. Consequently, an examination of the relevant conditions to define “residence” under [the Parents’ Country] law is not necessary in

the present case. Regardless, the FIVB Appeals Panel is skeptical that he could satisfy such a condition given the time that he spent in the [Third Country] while at university.

53 Based on the above, the FIVB Appeals Panel finds that the Decision did not err in finding that the Appellant did not satisfy the residency condition under Article 5.2.1 in order to change his Federation of Origin.

ii. Does the Appellant meet the condition of paying the administration fee to the FIVB?

54 Article 5.2.5 of the FIVB Sports Regulations also contains a condition in which a party seeking to change his Federation of Origin must pay an administration fee to the FIVB.

55 The Appellant has not asserted that he has paid the administration fee. In fact, in his Request for Relief, the Appellant specifically requests that the administrative fee for the proceedings be credited towards the administration fee payable for his change of Federation of Origin.

56 Given that the conditions to change Federation of Origin in Article 5.2 of the FIVB Sports Regulations 2017 must be cumulatively met and that it is uncontested that the Appellant has not paid the administration fee for the change of Federation of Origin, the FIVB Appeals Panel that the Appellant failed to satisfy all of the conditions of Article 5.2 of the FIVB Sports Regulations 2017 in order to change his Federation of Origin.

VI. SUMMARY

57 The FIVB Appeals Panel finds that the Appellant failed to satisfy the conditions in Articles 5.2.1 and 5.2.5 in order to change his Federation of Origin and, thus, the Decision is upheld.

58 The decision above does not prevent the Appellant from re-submitting his application to change his Federation of Origin once he satisfies all of the conditions defined in Article 5.2 of the FIVB Sports Regulations.

VII. COSTS

59 The FIVB Appeals Panel notes that Article 31.2 *in fine* of the FIVB Disciplinary Regulations 2018 provides that the administrative fee can be reimbursed if a party prevails. In the present case, the Appellant did not prevail on its appeal. Consequently, the FIVB Appeals Panel finds that it cannot reimburse the administrative fee paid by the Appellant.

60 The FIVB notes that there is no provision in the FIVB Disciplinary Regulations 2018 with regards to legal costs which allows for the FIVB Appeals Panel to attribute said costs to a specific party. Consequently, the FIVB Appeals Panel finds that the Appellant and the Respondent shall bear their own costs.

VIII. FIVB APPEALS PANEL DECISION

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

1. **The appeal filed by [the Appellant] is dismissed;**
2. **The FIVB decision dated 9 November 2018 is confirmed;**
3. **No reimbursement of the administrative fee shall be granted;**
4. **Each party shall bear their own legal costs and**
5. **Any other requests for relief are dismissed.**

Lausanne, 6 January 2020

Ms. Damaris Young
Chairperson

Ms. Emba Wun Man Leung
Member

Mr. Thomas Berend
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 2018 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:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org

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