

In the Matter of

[The Appellant]¹

(hereinafter: “the Appellant”)

vs.

[a continental volleyball federation, hereafter “Continental Federation”]
(hereinafter: “the Respondent”)

DECISION

of the FIVB APPEALS PANEL in the Case [year]-01

This is an appeal brought by [the Appellant] against [the Continental Federation] decision dated [date of the Decision] (hereinafter: “the Decision”) to declare that the Appellant was ineligible to run as a candidate for President [of a specific zone] under the [Continental Federation] Constitution and [Continental Federation] General 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 In [year], the Appellant, whose candidature was submitted by the [a country from Africa, hereinafter the “Appellant’s Country”] Volleyball Federation, was elected as President [of a specific zone], one of the zones of National Federations affiliated to the Respondent. In accordance with Article 2.4.1.1.B of the [Continental Federation] Constitution, he also became an *ex officio* member of the Respondent’s Board of Administration due to his election as President [of a specific zone].
- 3 On [date], [another country from Africa, hereinafter the “Second Country”] Volleyball Association sent a letter to the Appellant appointing him as an “Honorary Member” of

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

the [Second Country's volleyball association] as of [date] due to cooperation related to the organization of [an event in the specific zone].

- 4 On [date], the [Second Country's volleyball association] submitted the candidature of the Appellant for the position of President [of a specific zone] to the Respondent.
- 5 On [date], the [Continental Federation] Board of Administration held a meeting in which it analyzed the candidatures that it received for the elections that would be held at the next [Continental Federation] Congress. Regarding the discussion related to the candidature of the Appellant, the minutes of the meeting reflects the following discussion:

"[President of the Respondent's Legal Commission] stated that there was also an issue with respect to [a specific zone]; He explained that [the Appellant] had been nominated for the position of President [of a specific zone] by [Second Country]. He clarified that they had checked the regulation and it was a unique situation and there was no guidance in any documents or the constitution, so he proposed to refer the matter to the FIVB Legal Commission as well as their decision.

[Third person] agreed with [President of the Respondent's Legal Commission] to refer both issues to the FIVB Legal Commission since the situations were not clear cut in the [Continental Federation] regulations and constitution, adding that [President of the Respondent's Legal Commission] might have an FIVB Legal Commission meeting in January so he could engage the FIVB on the two issues."

- 6 On [date], [Second Country's volleyball association] submitted a letter supporting the Appellant's candidature to the FIVB Legal Commission in anticipation of its review.
- 7 On [date], the FIVB Legal Commission discussed [name] request for advice related to the candidature of the Appellant. The minutes of the Legal Commission reflect the following relevant discussion related to the present appeal:

"[President of the Respondent's Legal Commission] took the floor to explain two issues related to candidatures received by [Continental Federation] in [date] for

positions in the [Continental Federation] Board of Administration and FIVB Board of Administration based on a request submitted by the [Continental Federation] Legal Commission. The first issue involved the current President [of a specific zone] who was from [Appellant's Country] but was nominated by the [Second Country] Volleyball Federation for election to the [Continental Federation] Board of Administration. The President [of a specific zone] was granted honorary membership in the [Second Country] Volleyball Federation to circumvent the [Continental Federation] Constitution and General Regulations, which provided that an outgoing member of the [Continental Federation] Board of Administration can nominate himself as long as his National Federation does not nominate someone else. In this case, the [Appellant's Country] Volleyball Federation nominated someone else.

[Third person] stated that, while this appears to be an effort to circumvent the regulations, [Continental Federation] must find a specific provision either in its regulations or the FIVB Regulations that would require to be nominated by his previous National Federation. The concept of Federation of Origin does not apply to officials per se but, if the regulations require a link, then potentially that would be way to prevent this type of circumvention.

[Third person] suggested that Article 2.4.1.3 of the [Continental Federation] Constitution would be such a provision.

It was agreed thereafter that this nomination was in violation of the [Continental Federation].”

- 8 On [date], the FIVB Legal Commission President issued an advisory opinion (“LC Opinion”) based on the above discussions that states the following in relevant part.

The nomination of the incumbent President [of a specific zone]

Based on the file provided to the FIVB Legal Commission, [the Appellant], the current President [of a specific zone], is from [Appellant's Country]. However, [Appellant's Country] nominated a new candidate for President [of a specific zone]. Thus, [the Appellant] was nominated by the [Second Country] Volleyball Federation instead.

The relevant provision in this case is Article 2.4.1.3 of the [Continental Federation] Constitution, which provides the following:

“The outgoing members of the Executive Committee and Board are eligible to present their candidature for re-election to the Board, without the approval of their NF, provided that their NFs do not present written objection, deemed valid by the [Continental Federation] or that the NFs do not present another candidature at the time of closing of the candidature for a position on the Board, in which case only the candidate presented by the NF shall be eligible. (emphasis added)”

Thus, the question presented to the FIVB Legal Commission was whether the candidature of [the Appellant] was valid as presented by [Second Country] given that , [Appellant’s Country], his current NF, presented another candidate.

In analyzing this question, the FIVB Legal Commission first notes that the language of the provision above an outgoing member of the [Continental Federation] Board of Administration may put forward his own nomination so long as the National Federation that he represented while serving as a member does not present 1) a written objection or 2) another candidature. If the National Federation does present another candidate, then the National Federation’s candidate would prevail. The intent of this provision is very clear: the National Federation’s choice regarding a candidate for the [Continental Federation] Board of Administration should prevail and a candidate should at least not be contested by his National Federation.

As President [of a specific zone], [the Appellant], as a [citizen of the Appellant’s Country], was presented by the [Appellant’s Country] Volleyball Federation. However, for the upcoming nomination, [Appellant’s Country] chose to submit the candidature of [Continental Federation] for President [of a specific zone]. Thus, because of his National Federation’s chose to submit another candidate, [the Appellant] was not entitled to nominate himself.

From the above, it is foreseen from the regulation quoted above that there should be a strong nexus between the candidate and the National Federation nominating the candidate. To interpret this provision otherwise would result in a circumvention of a

National Federation's right to choose the candidate from the persons within the National Federation.

Instead, [the Appellant] received an honorary membership in the [Second Country] Volleyball Federation. From the file before it, it is the FIVB Legal Commission's understanding that [the Appellant] is a [Appellant's Country] national, whose only link to the [Second Country] Federation is his honorary membership. An honorary membership is a title given as a title without the normal privileges or duties associated with full membership. Thus, it typically does not have the same rights and obligations attached to full membership. Consequently, it is the FIVB Legal Commission's opinion that an honorary membership granted to a foreign national is insufficient to create the necessary nexus between the National Federation and a candidate to allow the candidate to be nominated by that National Federation.

The FIVB Legal Commission's opinion above is further supported by the timing of this honorary membership. It is the FIVB Legal Commission's understanding that in very close proximity to the nomination deadline for candidates to the [Continental Federation] Board of Administration. This was foreseen by [Second Country] Volleyball Federation as a way to prevent [Appellant's Country] from blocking the candidacy of [the Appellant]. However, if [Continental Federation] were to allow this candidature to proceed, then this would create a precedent allowing a candidate to circumvent the will of his or her National Federation in contradiction to the intent of Article 2.4.1.3 of the [Continental Federation] Constitution. Therefore, the FIVB Legal Commission is of the opinion that the above candidature is not in line with the intent of Article 2.4.1.3 of the [Continental Federation] Constitution.

[...]

The abovementioned opinions are given in an advisory capacity to the [Continental Federation] based on its request and do not constitute a final, binding decision by the FIVB related to the two candidatures in question. The [Continental Federation] is ultimately responsible for taking the final decision related to the two candidatures. The FIVB Legal Commission notes that any decision taken by [Continental Federation] would be appealable to the FIVB Appeals Panel within fourteen (14) days of notification of the decision in accordance with Article 30.1 of the FIVB Disciplinary Regulations.”

II. THE DECISION UNDER DISPUTE

- 9 On [date of the Decision], the Respondent issued the Decision under dispute, which read as follows:

“Dear [the Appellant]

Please be advised that the FIVB Legal Commission were of the opinion that your nomination for President [of a specific zone] was irregular and not constitutional. The [Continental Federation] Board has decided that it will abide by the FIVB Legal Commission opinion. Accordingly your nomination is regarded as irregular. You have 14 days to appeal this decision to FIVB Appeals panel within 14 days.

Yours faithfully,

[name]Legal Commission President of [Continental Federation]”

- 10 The FIVB Appeals Panel notes that the Decision was not signed by a member of the [Continental Federation] Board of Administration, did not include a copy of LC Opinion and was not sent to [Second Country’s volleyball association].

III. APPEAL BY [THE APPELLANT] AGAINST THE DECISION

a) Proceedings before the Appeals Panel

- 11 On [date], the Appellant filed the present appeal against the Decision. This appeal is recorded under the following case number: Case AP [year]-01.
- 12 On [date], after confirming receipt of the administration fee, the Appeals Panel Secretariat acknowledged receipt of the Notice of Appeal, the payment of the administrative fee and invited the Appellant to file his Reasons for Appeal by no later than [date].

- 13 On [date], the FIVB Appeals Panel noted that the Appellant did not file an additional submission and informed the Parties that his submission dated [date] would be treated as his entire submission for purposes of the appeal and provided a date of [date] for the Appellant to file its Answer.
- 14 On [date], the Appellant issued his Reasons for Appeal and argued that he was unable to get certain documentation in order to submit it earlier due to a lockdown caused by the COVID-19 pandemic.
- 15 On [date], the FIVB Appeals Panel Secretariat acknowledged receipt of the Appellant's Reasons for Appeal, noted that a final decision related to the admissibility of the Appellant's delayed submission would be issued in the final decision and asked the Respondent to provide its position on this submission in its Answer, which would be filed no later than [date]. It also informed the Parties of the composition of the Panel for this case.
- 16 On [date], the FIVB Appeals Panel Secretariat noted that the Respondent failed to file its Answer within the given deadline and provided it with a final opportunity to do so by no later than [date]. It emphasized that a failure to file an Answer within this deadline would be deemed a waiver of its right to be heard.
- 17 On [date], the FIVB Appeals Panel Secretariat noted that the Respondent failed to provide its Answer within the final deadline provided by the FIVB Appeals Panel, which was deemed a waiver of its right to be heard in this case. Additionally, the FIVB Appeals Panel highlighted that the appeal was filed against "*the decision taken by the FIVB Legal Commission on my Candidature at the position of President [of a specific zone]*" and that such decision was not currently part of the file. Therefore, in accordance with Article 31.5 of the FIVB Disciplinary Regulations, the FIVB Appeals Panel accepted to join the FIVB Legal Commission to the present proceedings in order to allow it to file a copy of its decision and any additional comments that it wished to file on the appeal by no later than [date].
- 18 On [date], the FIVB Legal Commission President filed his comments and a copy of the abovementioned decision.

- 19 On the same day, the FIVB Appeals Panel Secretariat invited the Appellant to provide his comments on the FIVB Legal Commission's submission by no later than [date].
- 20 On [date], the Appellant filed his comments on the FIVB Legal Commission's submission.
- 21 On [date], the FIVB Appeals Panel Secretariat acknowledged receipt of the Appellant's submission and informed the Parties that the file would now be forwarded to the FIVB Appeals Panel for its review.
- 22 On [date], the FIVB Appeals Panel Secretariat requested the Appellant to provide a copy of the [Second Country's volleyball association] statutes and regulations by no later than [date].
- 23 On [date], the Appellant submitted copies of the [Second Country's volleyball association] statutes and the [Second Country's volleyball association] Financial and Administrative Regulations as well as additional comments.
- 24 On the same day, the FIVB Appeals Panel Secretariat acknowledged receipt of the Appellant's submission and the documentation of [Second Country's volleyball association] and stated that it would forward this documentation to the FIVB Appeals Panel.
- 25 On [date], the FIVB Appeals Panel Secretariat requested the Respondent to provide 1) a copy of the decision signed by the [Continental Federation] Board of Administration declaring the Appellant's candidature ineligible and 2) the minutes of the meeting where such decision took place by no later than noon on [date].
- 26 On the same day, the Respondent provided the minutes to the [Continental Federation] Board of Administration from [date], the Decision and a copy of the email communicating the Decision to the Appellant. It clarified that the Respondent's President mandated the President of the Respondent's Legal Commission to respond on behalf of the Respondent's Board.
- 27 On the next day, the Appellant submitted an unsolicited response to the submission provided by the Respondent.

28 On the same day, [date], the FIVB Appeals Panel Secretariat acknowledged receipt of the submissions by the Respondent and the Appellant respectively; reminded the Parties that submissions should only be made upon request of the FIVB Appeals Panel with the admissibility of any unsolicited submissions to be reviewed by the FIVB Appeals Panel and informed the Parties that the FIVB Appeals Panel would issue further requests or a decision in due course.

b) Positions of the Parties

29 The position of the Appellant in the Notice of Appeal and Reasons of Appeal may be summarized as follows:

- The Appellant filed the appeal due to [Continental Federation]'s decision to declare his candidature for President [of a specific zone] irregular and unconstitutional under the [Continental Federation] Constitution and Regulations.
- Even though the Appellant is **[a citizen of the Appellant's Country]**, he is a member of the [Second Country] Volleyball Association, which presented him as a candidate for President [of a specific zone] in accordance with Articles 2.1.5 and 2.8.1.4 of the [Continental Federation] Constitution and Articles 1.2.2.1 and 1.2.2.2 of the [Continental Federation] General Regulations.
- The [Continental Federation] Constitution and [Continental Federation] General Regulations stipulate that a candidate must be a member of the National Federation that presents him, which is the case here, but does not require him to hold the nationality of that National Federation.
- If [Continental Federation] wishes to impose a requirement of nationality, then [Continental Federation] has to amend its regulations and such requirement cannot be imposed at this time.
- In the Treaty for the Establishment of the [community of a region in the relevant continent], which includes [Second Country] and [Appellant's Country], persons, labor and services are allowed to move freely between these countries without changing nationality.
- The Appellant was unable to file his Reasons within the time limit because of a lockdown that prevented him from accessing all of the necessary documentation until [date].

- He highlighted the following provisions from the [Continental Federation] Constitution and [Continental Federation] General Regulations:
 - Article 2.1.5 of the [Continental Federation] Constitution: “Only members of NFs that have participated in senior, junior or Youth at [Continental Federation] continental championships level shall have the right to apply for candidatures position as member of the Board or any other official position for the following term”
 - Article 2.8.1.4 of the [Continental Federation] Constitution: “Only members of NFs that participated in the last Senior, Junior or youth Zones’ Championships at any stage have the right to be elected members of the Executive Committee for the next term.”
 - Article 1.2.2.1 of the [Continental Federation] General Regulations: “Every affiliated National Federation up to date in its obligations and financial commitments as a [Continental Federation] member is entitled to present only one candidate for one position to the [Continental Federation] Board of Administration during a mandate.”
 - Article 1.2.2.2 of the [Continental Federation] General Regulations demonstrates all of the requirements to be a Board member.
- Even though the Appellant is [a citizen of the Appellant’s Country] he is a member of the [Second Country] Volleyball Association, which satisfies the requirements of the [Continental Federation] Constitution, which refers to “membership”, not “nationality.”
- The [Second Country] Volleyball Association respected the provisions of the [Continental Federation] General Regulations by being up-to-date with its obligations, and the Appellant claimed to satisfy all of the requirements to be a [Continental Federation] Board member.
- There are no provisions in the [Continental Federation] Constitution or General Regulations that require that a candidate to have the nationality of the National Federation that he is representing.
- Thus, the Appellant’s candidature was regular as it was presented by a National Federation in time and respected all of the provisions of the [Continental Federation] Constitution and General Regulations.
- The Request for Relief of the Appellant was as follows:

“Therefore, I would like to request you to validate my candidatures at the Position of President [of a specific zone] in order to give equal changes and treatment to all countries which want to be represented at the elections and to give me the opportunity to be among the candidates who should be elected to serve our beloved volleyball especially since the final decision about the elections will be made by the General Assembly of [a specific zone] which will decide if I deserve to be re-elected as the President [of a specific zone].”

30 The Respondent did not submit a formal position despite having multiple opportunities to do so.

31 The FIVB Legal Commission was invited to submit its comments, which it did as follows:

- The FIVB Legal Commission is not a decision-making body but, upon request, may issue non-binding opinions related to legal controversies within the FIVB family.
- It deliberates on issues brought before it and reaches consensus opinions with differing opinions being reflected in the minutes of the Legal Commission meeting.
- After issuing its opinion, the corresponding decision-making body takes its own decision giving weight to the opinion of the FIVB Legal Commission’s opinion as it sees fit. In this case, an opinion was issued by the FIVB Legal Commission based on a request from the [Continental Federation] Legal Commission.
- The FIVB Legal Commission President attached the LC Opinion, the excerpt of the minutes from the FIVB Legal Commission and [Continental Federation]’s original request for advice.

32 The Appellant filed the following comments related to the LC Opinion:

- The FIVB Legal Commission based its decision on Article 2.4.1.3 of the [Continental Federation] but this did not concern his case because he did not present himself for re-election by [Appellant’s Country] but rather was

presented by the [Second Country] Volleyball Association, of which he is a member. Additionally, he did not request the invalidation of the candidate from [Appellant's Country] but instead to present both candidates.

- The refusal of a valid candidate submitted by the [Second Country] Volleyball Federation would be a denial of its right to be represented by the candidate that it wanted to represent it as well as a denial of the Appellant's right to represent the [Second Country] Volleyball Federation.
- Both the candidates from [Appellant's Country] and the candidate from [Second Country] should be allowed to run for election in order to allow [the specific zone] to decide who to elect.
- The Legal Commission's opinion that an honorary membership to a foreign national does not create the necessary nexus between the National Federation and a candidate is a matter of interpretation not reflected in the [Continental Federation] Constitution or General Regulations and is not based on the language of Articles 2.1.5 and 2.8.1.4 of the [Continental Federation] Constitution, which refers to Members of National Federations without specify the category of membership.
- The Legal Commission's interpretation about the timing of the honorary membership is not based on a legal provision in the relevant regulations because the timing of the membership does not matter. The Appellant has done a lot of work for the [Second Country] Volleyball Association as reflected by several trips over the last year in his passport.
- The Legal Commission's interpretation that allowing the Appellant's candidature to continue would result in a precedent in which a candidate could circumvent the will of his or her National Federation is not accurate or fair because the [Second Country] Volleyball Association did not intend to prevent the [Appellant's Country] Volleyball Federation from blocking the Appellant's candidature (which is regrettable if the case) but, rather, it wanted to keep the Appellant in the world of volleyball because the [Second Country] Volleyball Association knows that it would be beneficial.
- The rejection or invalidation of the Appellant's candidature would create a precedent allowing people to block others or do other things based on their own interpretation with a legal basis to do so.

- The FIVB Legal Commission properly concluded its opinion by stating that it was issued in an advisory capacity and did not constitute a final, binding decision by the FIVB.
- The [Continental Federation] Legal Commission did not take it upon itself to properly interpret its regulatory documents and has not been fair to all candidates presented by different countries by filling the gaps of the [Continental Federation] Constitution and General Regulations. Additionally, [Continental Federation] did not comment on the appeal so its silence can be viewed as consent with the appeal.
- Moreover, the [Continental Federation] Legal Commission President merely stated that it would follow the decision of the FIVB Legal Commission without presenting the opinion to the [Continental Federation] Board of Administration for a decision.
- Thus, the Appellant hoped to receive a final decision from the FIVB Appeals Panel validating the Appellant's candidature because there is no article in the [Continental Federation] Constitution or General Regulations that prevents it from being validated before the [Continental Federation] Congress, which is scheduled to be held on [date].
- The Appellant then reiterated his position as expressed in his previous submissions as well as his previous request for relief.

IV. ADMISSIBILITY OF THE APPEAL BY THE APPELLANT

- The Parties have noted that the FIVB Disciplinary Regulations 2019, which were approved by the FIVB Board of Administration on 24 May 2019 and entered into force on 31 May 2019, applies to the admissibility of the appeal by the Appellant,.

a) FIVB Appeals Panel Competence: Pre-requisites

33 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

- with the FIVB Appeals Panel on [date], i.e. less than fourteen (14) days after receipt of the Decision on [date of the Decision]; and
- ii. pay an administrative fee of CHF 2'000 (Article 31.2 of the FIVB Disciplinary Regulations). 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 [date].

34 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

35 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 2019). 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 2019. The Respondent held that the Appellant was not eligible to run as a candidate for President [of a specific zone] from [Second Country]; and
- ii. the Decision was issued by a Confederation body within the meaning of Article 30.1 of the FIVB Disciplinary Regulations 2019. The Respondent is the [Continental Federation] and the Decision states that it was issued by the Respondent's Board of Administration, who is considered a "Governing Institution" of the Respondent (Article 2.1.2.b of the [Continental Federation] Constitution).

36 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

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

38 The FIVB Appeals Panel is satisfied that the restriction set forth in Articles 28.6 and 30.2 of the FIVB Disciplinary Regulations 2019 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.

39 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

40 The FIVB Appeals Panel shall examine a) the flaws in the procedure used by the Respondent in issuing the Decision and b) whether the Decision to declare the Appellant ineligible to run for President [of a specific zone] is supported by the Respondent's governing documents.

a) Procedural Flaws in the Issuance of the Decision

41 The FIVB Appeals Panel has closely analyzed the procedure followed by the Respondent in issuing its decision. It notes that a decision to declare the Appellant ineligible for election has the effect of depriving rights from two parties, the Appellant and [Second Country's volleyball association] , in this case. For the Appellant, he is deprived of the opportunity to run as a candidate for President [of a specific zone]. For [Second Country's volleyball association] , it is deprived of its right to present a candidate for President [of a specific zone] if the Appellant is declared ineligible. Given that there would be no way to cure the deprivation of these rights, it is imperative that the Respondent followed the proper procedure when examining the eligibility of the Appellant for election.

42 When depriving a party of a right, fundamental legal principles require that the party conducting the procedure respects certain due process rights, such as the right to be heard and the right to be informed, before the deprivation of such right can occur. This principle is fundamental to legal systems around the world and, therefore, it is imperative that said due process rights are respected.

- 43 Moreover, a body taking a decision must respect its regulations and the authority provided within its regulations when taking a decision that deprives a party of its rights. The regulations of the governing body provide specific competences to take decisions, and such decisions must be taken by the authority that has been provided the power to take such a decision.
- 44 In the present case, the FIVB Appeals Panel has noted several issues with the procedure conducted by the Respondent. First, while the Appellant as a Board member of the Respondent was entitled to participate in the meeting of the Respondent's Board of Administration held on [date], he did not have the opportunity to address the LC Opinion nor was there any evidence that he even received before it was submitted in these proceedings by FIVB Legal Commission President. If the Respondent had properly respected the Appellant's due process rights, it would have provided him with a copy of the LC Opinion and allowed him to comment on its contents before a final decision was taken.
- 45 Additionally, there is no evidence that the Respondent's Board of Administration conducted any further deliberation after receiving the LC Opinion. Based on the evidence before the FIVB Appeals Panel, there is no explicit provision that determines which entity is responsible for examining the candidatures submitted to the Respondent to determine whether or not a candidate is eligible. However, the FIVB Appeals Panel understands that this process has been conducted by the Respondent's Board of Administration in the past.
- 46 Given that the Respondent's Board of Administration is responsible for the overall administration and management of the Respondent under Article 2.4.2.1 of the [Continental Federation] Constitution, the FIVB Appeals Panel understands that the determination of eligibility could fall under the purview of the Respondent's Board of Administration. While this may not be in line with good governance principles given that the Respondent's Board of Administration members may decide on the eligibility of other candidates that may displace them on the Respondent's Board of Administration, the Respondent's regulations govern the process of eligibility and elections related to the governing bodies of the Respondent.

- 47 The one thing that is apparent from the Respondent's regulations is that there is no right for the FIVB Legal Commission to take such a decision. The LC Opinion makes it clear that it is only an advisory opinion based on the request that it received, and the information provided by it. It was not a formal decision. However, by not conducting an additional deliberation after the LC Opinion was provided and issuing a decision based on the LC Opinion, the Respondent's Board of Administration, in essence, delegated authority in a manner not provided for in the [Continental Federation] Constitution to the FIVB Legal Commission. At minimum, it should have conducted another meeting to deliberate about the validity of the Appellant's candidature after receiving the LC Opinion.
- 48 Finally, the FIVB Appeals Panel notes that the Decision was issued on behalf of the Respondent's Board of Administration but was not signed by a member of said Board of Administration. Instead, it was signed by the President of the Respondent's Legal Commission. Moreover, it was not communicated to [Second Country's volleyball association] , but only to the Appellant.
- 49 A decision should be signed and issued by the authority rendering the decision. In this case, that did not occur. The Respondent's Legal Commission President is not a member of the Respondent's Board of Administration. He does not have a right to issue decisions on its behalf. While he could have communicated the Decision, the Decision should have ultimately been signed by, at least, a member of the Respondent's Board of Administration, ideally the Respondent's President.
- 50 The Decision also impacted the rights of [Second Country's volleyball association] , who, as a member in good standing of the Respondent, had the right to submit a candidate for President [of a specific zone]. However, despite having its rights impacted by the Decision, the Respondent did not inform [Second Country's volleyball association] of the decision or provide it with an opportunity to comment on the LC Opinion. This procedural flaw is monumental in the present case as it deprived [Second Country's volleyball association] from receiving the Decision (and deciding what if any steps that it wanted to take in furtherance of its rights), which impacted one of its rights under the Respondent's governing documents, and cannot be cured in the present proceedings.

51 Based on the above, the FIVB Appeals Panel finds that the Decision must be declared void due to the procedural flaws in the process of issuing the Decision. The FIVB Appeals Panel would like to emphasize that the due process rights of parties must be respected throughout the FIVB.

b) Brief Comments on the factual issues raised by this appeal

52 While the FIVB Appeals Panel does not need to thoroughly analyze the substantive issues raised by this appeal in depth, it notes that the above raises a conflict of rights within the Respondent's governing documents. On the one hand, the [Appellant's Country] Volleyball Federation has the right to prevent an incumbent candidate from nominating himself, and, on the other hand, [Second Country's volleyball association] has the right to nominate any candidate that deems appropriate and suitable.

53 Based on the timing of the events in question, it appears as if the Appellant knew he no longer had the support of his own national federation, the [Appellant's Country] Volleyball Federation, and found another national federation, [Second Country's volleyball association] , to support his candidature in order to circumvent the issue related to his self-nomination. However, if the Respondent wishes to avoid this practice in the future, it must change its regulations to explicitly bar these types of circumventions in the future given the impact that it has on the right of a national federation to nominate the candidate that it deems appropriate and suitable.

VI. SUMMARY

54 The FIVB Appeals Panel finds that the Appellant's appeal is upheld due to the violation of due process rights in the procedure of issuing the Decision.

VII. COSTS

55 The FIVB Appeals Panel notes that Article 31.2 *in fine* of the FIVB Disciplinary Regulations 2019 provides that the administrative fee can be reimbursed if a party prevails. In the present case, the Appellant prevailed on his appeal. Consequently, the FIVB Appeals Panel finds that the administrative fee shall be reimbursed.

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 upheld;**
2. **The [Continental Federation]'s decision dated [date of the Decision] is declared void;**
3. **The reimbursement of the administrative fee shall be granted to [the Appellant] and**
4. **Any other requests for relief are dismissed.**

Lausanne, [date]

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.