

THE FIVB DISCIPLINARY PANEL

composed by

Mr. Tomohiro Tohyama (JPN)	Chairperson
Ms. Margaret Ann Fleming (SCO)	Member
Mr. Mounir Ben Slimane (TUN)	Member

Case DP 2017-02

I. PARTIES

1. The Volleyball Federation of Venezuela (hereinafter the “Volleyball Federation of Venezuela”, the “National Federation” or the “Respondent”) is the national federation governing the sport of Volleyball in Venezuela. The Volleyball Federation of Venezuela is affiliated with the Fédération Internationale de Volleyball (FIVB) and the South American Volleyball Confederation (CSV).
2. The Estonian Volleyball Federation (hereinafter the “Interested Party I”) is the national federation governing the sport of Volleyball in Estonia. The Estonian Volleyball Federation is affiliated with the Fédération Internationale de Volleyball (FIVB) and the European Volleyball Confederation (CEV).
3. The German Volleyball Federation (hereinafter the “Interested Party II”) is the national federation governing the sport of Volleyball in Germany. The German Volleyball Federation is affiliated with the Fédération Internationale de Volleyball (FIVB) and the European Volleyball Confederation (CEV).

II. FACTUAL BACKGROUND

4. On 6 and 7 April 2016, the FIVB Board of Administration approved the following proposal by the FIVB Sports Event Council: “All participating teams in any competitions and in any age category will pay travel costs from 2017 onwards” [Minutes of the FIVB Board of Administration dated 6 and 7 April 2016, page 20]. The Minutes of the FIVB Board of Administration were circulated to all national federations affiliated with the FIVB, including the Volleyball Federation of Venezuela, on 31 May 2016.

5. On 13 September 2016, the FIVB World League Council took place (the Volleyball Federation of Venezuela was excused). The composition of the different pools for the 2017 FIVB World League was decided at that time, namely that the Volleyball Federation of Venezuela was to travel to Austria first (changed to Germany in November 2016) and subsequently to Estonia.
6. On 25 September 2016, the Volleyball Federation of Venezuela registered to participate in the 2017 FIVB World League by filing with the FIVB a signed and stamped Letter of Participation.
7. On 31 May 2017, the German Volleyball Federation and the FIVB Supervisor agreed to inform the public as to the likely cancellation of the 2017 FIVB World League – Group 3 match between the Volleyball Federation of Venezuela and the Volleyball Federation of Austria scheduled to take place on 2 June 2017 at 13:00 (GMT) in Frankfurt, Germany (hereinafter “the Match”) due to the late arrival of the National Federation on site. The German Volleyball Federation also proceeded to inform the Host Television Broadcaster accordingly. The German Volleyball Federation and the FIVB further proceeded to inform the relevant stakeholders that should the match between the Volleyball Federation of Venezuela and the Volleyball Federation of Austria take place at a later time, no television broadcast would be required nor the public allowed to attend the event.
8. In a letter dated 1 June 2017, the FIVB informed all teams participating in the FIVB World League and the FIVB World Grand Prix that the Volleyball Federation of Venezuela would not be able to participate in the Match due to the late arrival of the National Federation on site. In the same letter, the FIVB also reminded “all National Federations participating in the World League and World Grand Prix that they [bore] the responsibility to book their own transportation – which [was] the reason for the diminution of the entry fee – and to ensure they [would] be present on site for the Preliminary Inquiry and the General Technical Meeting“. The FIVB further reminded all National Federations that failure to comply with the foregoing constituted a violation of Article 15.3.6 of the FIVB Disciplinary Regulations 2016 and listed the relevant sanctions.
9. On 2 June 2017, the Volleyball Federation of Venezuela failed to appear at the beginning of a competition, namely the FIVB World League – Group 3 match against the Volleyball

Federation of Austria scheduled at 13:00 (GMT) in Frankfurt, Germany. In addition to the foregoing, the National Federation did not participate in the Preliminary Inquiry and the General Technical Meeting prior to the beginning of Pool C3.

10. In a letter dated 13 June 2017, the Ministry of Sport of the Bolivarian Republic of Venezuela apologized for the inconvenience and explained that the above was due to a case of *force majeure* (“*fuerzas mayores*”), i.e. communication issues between the travel agency and the airline which prevented the printing of the airline tickets (and ultimately delayed the departure of the team).
11. On 21 June 2017, the FIVB Disciplinary Panel Secretariat notified the Volleyball Federation of Venezuela of the opening of disciplinary proceedings. The deadline to provide the FIVB Disciplinary Panel Secretariat with a response was 5 July 2017. These disciplinary proceedings have later been recorded under the case DP 2017-02.
12. On 28 June 2017, the Estonian Volleyball Federation informed the FIVB that the Volleyball Federation of Venezuela had arrived early in Estonia to participate in the in Pool D3 of the 2017 FIVB World League. Accordingly, additional accommodation and local travel arrangements had to be made in order to accommodate the National Federation. The Estonian Volleyball Federation incurred additional costs in the amount of EUR 3’400.
13. On 22 July 2017, the Volleyball Federation of Venezuela failed also to appear at the beginning of a competition, namely the 2017 FIVB World Grand Prix Finals – Group 3 to be held on 22-23 July 2017 in Canberra, Australia (hereinafter the “Event”). Ultimately, the Volleyball Federation of Venezuela failed to participate in the Event. The FIVB Disciplinary Panel Secretariat notified the Volleyball Federation of Venezuela of the opening of disciplinary proceedings with regards to the Event. The deadline to provide the FIVB Disciplinary Panel Secretariat with a response was 9 August 2017. These disciplinary proceedings were recorded under the case DP 2017-07 and will be referred to whenever necessary.
14. The Volleyball Federation of Venezuela did not file a specific statement of defense within the applicable deadline (i.e. 5 July 2017). On 9 August 2017, the Volleyball Federation of

Venezuela filed however a statement of defense with the FIVB with regards to the case DP 2017-07. The statement of defense included information with regards to the case DP 2017-02 as well.

15. On 14 August 2017, the FIVB Disciplinary Panel Secretariat acknowledged receipt of the letter dated 13 June 2017, of the statement of defense with regards to the case 2017-07, including the relevant information with regards to the case DP 2017-02, and informed the Volleyball Federation of Venezuela that the FIVB Disciplinary Panel would evaluate the evidence before it.

III. COMPETENCE

16. The FIVB Disciplinary Panel is competent to hear this case as per Article 26.5 of the FIVB Disciplinary Regulations 2018 (Article 17.5 of the FIVB Disciplinary Regulations 2017 at the time of the opening of the disciplinary proceedings).
17. The FIVB Disciplinary Panel further notes that the National Federation did not challenge the competence of the FIVB Disciplinary Panel to hear the present case.

IV. APPLICABLE LAW

18. The FIVB Disciplinary Panel notes that the FIVB Constitution and Regulations apply to this case. Since FIVB has its seat in Switzerland, Swiss law may apply subsidiarily.
19. The FIVB Disciplinary Panel further notes that three sets of FIVB Disciplinary Regulations may apply to the resolution of the case at hand:
 - The FIVB Disciplinary Regulations 2016, which were approved by the FIVB Board of Administration on 7 April 2016 and entered into force on 8 April 2016 (hereinafter “FIVB DR 2016”);
 - 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 (hereinafter “FIVB DR 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 (hereinafter “FIVB DR 2018”).

20. Failure to attend the Preliminary Inquiry, the General Technical meeting or to appear at the beginning of the competition (i.e. the Match) occurred on or before 2 June 2017. The FIVB Disciplinary Panel notes that the FIVB DR 2017 were not in force at that time. Consequently, the FIVB Disciplinary Panel finds that the conduct of the National Federation is to be reviewed under the FIVB DR 2016. The FIVB Disciplinary Panel finds however that the FIVB DR 2018 apply to the present case insofar as they concern the procedure governing these proceedings.

21. In the Charge Letter dated 21 June 2017, the FIVB Disciplinary Panel qualified the alleged violations of the FIVB DR 2016 by the National Federation as follows:

- Failure to attend the Preliminary Inquiry;
Relevant provision: Article 13.1.3 of the FIVB Event Regulations 2016 (hereinafter “FIVB ER 2016”).
- Failure to attend the General Technical meeting; and
Relevant provision: Article 13.1.4 of the FIVB ER 2016.
- Failure to appear the beginning of a competition, namely the 2017 FIVB World League – Group 3 match against Austria scheduled on 2 June 2017 at 13.00 (GMT) in Frankfurt, Germany.
Relevant provision: Article 15.3.6 of the FIVB DR 2016.

The substantives rules which are relevant for the resolution of this dispute are quoted in the following paragraphs.

22. Article 13.1.3 of the FIVB ER 2016 provided the following with regards to the duty to attend the Preliminary Inquiry:

“[...] The preliminary inquiry consists of a meeting in which take part the team manager, the team doctor, the members of the Control Committee nominated for this purpose and a representative of the Organising Committee. It must take place on the same day as the arrival of the teams or on the following day at the latest, always before the General Technical Meeting”.

23. Article 13.1.4 of the FIVB ER 2016 provided the following with regards to the duty to attend the General Technical Meeting:

“The conducting of a General Technical Meeting twenty-four (24) hours before the start of the competition with the Control Committee members, team managers, coaches, referees, doctors, interpreters and organisers (if applicable). [...]”.

24. Article 15.3.6 of the FIVB DR 2016 provided the following regarding non-appearance at the beginning of a competition:

“Withdrawal during the course of an official competition organized by the FIVB (or during the qualification phase) or non-appearance at the beginning of the competition shall be sanctioned with:

a) in all cases, compulsory reimbursement to the Organizing Committee and the FIVB of the expenses made on behalf of the withdrawing delegation and team, plus damages for loss of income and other financial consequences; and

b) fine of up to CHF 50,000; and/or

c) suspension from international competitions for up to two (2) years”.

V. PROCEDURE

25. By letter dated 21 June 2017, the FIVB Disciplinary Panel informed the Volleyball Federation of Venezuela that disciplinary proceedings were opened against the National Federation and that the FIVB Disciplinary Panel would adjudicate this case. The FIVB Disciplinary Panel provided the Respondents with the opportunity to submit their respective position in writing by no later than 5 July 2017.

26. The National Federation did not file a statement of defense within the applicable deadline (i.e. 5 July 2017). The National Federation had however previously filed with the FIVB a letter dated 13 June 2017 by the Ministry of Sport of the Bolivarian Republic of Venezuela. The National Federation has subsequently filed with the FIVB a statement of defense with regards to the case DP 2017-07, which included information with regards to the case DP 2017-02

VI. LEGAL CONSIDERATIONS

(a) Violation

27. Article 15.3.1 of the FIVB DR 2016 made it clear that “[National Federations] have the obligation to enter and participate in all official competitions organized by the FIVB when they have obtained the right to participate” (emphasis added).

28. The FIVB Disciplinary Panel notes that the National Federation registered to participate in the 2017 FIVB World League and, accordingly, obtained the right to participated in said competition (see above para 6). Thus, the FIVB Disciplinary Panel finds that the conduct of the Venezuela Volleyball Federation was subject to the obligation referred to above. In addition to the foregoing, Article 15.3.6 of the FIVB DR 2016 provided for sanctions in case of non-compliance with said obligation.

29. The FIVB Disciplinary Panel notes that Article 15.3.6 of the FIVB DR 2016 required the withdrawal during the course of a competition (or during the qualification phase) or the non-appearance at the beginning of a competition.

30. The FIVB Disciplinary Panel understands that the conjunction “or” instituted two alternative violations of Article 15.3.6 of the FIVB DR 2016, namely the case of a team:

- withdrawing from an ongoing competition or qualification phase (Hypothesis 1); alternatively
- not appearing at the beginning of a competition (Hypothesis 2).

The FIVB Disciplinary Panel further understands that Hypothesis 1 posited the team to have entered and effectively participated in the competition before withdrawing whereas Hypothesis 2 posited the team to have entered but not to be present at the beginning of the competition. With regards to Hypothesis 2 specifically, the FIVB Disciplinary Panel also understands that said hypothesis did not oppose the team to effectively participate in the competition at a later time (if allowed by the FIVB). Equally, the FIVB Disciplinary Panel also understands that failure to attend the Preliminary Inquiry and the General Technical Meeting did not constitute separate rules violations in the present case but were incorporated in the systematic of Article 15.3.6 of the FIVB DR 2016.

31. The FIVB Disciplinary Panel is satisfied that Hypothesis 2 applied to the present case because the evidence before the FIVB Disciplinary Panel shows that the National Federation did not appear in the Match but effectively participated in the rest of the 2017 FIVB World League (<http://worldleague.2017.fivb.com/en/competition/results-and-ranking/group3>). Because of the alternative nature of the violations set forth in Article 15.3.6 of the FIVB DR 2016, the FIVB Disciplinary Panel will not discuss Hypothesis 1 further.

32. The National Federation did not challenge that the conditions of Hypothesis 2 were met in the present case. The National Federation purported however the following with regards to the case DP 2017-02 (in the statement of defense filed in relation with the case DP 2017-07):
- The National Federation is a quasi-public body under the Laws of the Bolivar Republic of Venezuela (see Article 6 and 9 of the Organic law on Sport, Physical Activity and Physical Education);
 - The National Federation had requested – on multiple occasions – financial support from the Ministry of Sport of the Bolivarian Republic of Venezuela to make the necessary travel arrangements to attend all stages of the 2017 FIVB World League; and
 - The National Federation alleged finally that the international sanctions against the Bolivar Republic of Venezuela hindered the travel plans of the Volleyball Federation of Venezuela because many if not all major airlines had suspended their operation to/from Venezuela.
33. In addition to the above, the National Federation further purported – via the Ministry of Sport of the Bolivarian Republic of Venezuela – the existence of a case of force majeure (“fuerzas mayores”) to explain the absence of the Volleyball Federation of Venezuela at the Match (see above para 10).
34. The FIVB Disciplinary Panel understands that a case of *force majeure* (“fuerzas mayores”) *“implies an objective, rather than personal impediment, beyond the control of the obliged party, that is unforeseeable, that cannot be resisted, and that renders the performance of the obligation impossible. In addition, the conditions for the occurrence of force majeure are to be narrowly interpreted, since force majeure introduces an exception to the binding force of an obligation”* (CAS 2016/A/4692, ad para 7.20; CAS 2006/A/1110, ad para 17)
35. With regards to the case at hand and having the above in mind, the FIVB Disciplinary Panel understands that the defense by the National Federation shall fell short because i) the timeline set forth in the Facts section (see above para 5 ff) shows that the date and place of the Match had been known to the National Federation for months and ii) the explanation in the letter dated 13 June 2017 shows, in reality, that no advance preparation was made by

the National Federation to attend the Match. In other words, the FIVB Disciplinary Panel believes that the non-appearance at the beginning of the Match is due to a lack of organization by the National Federation rather than an unforeseen, irresistible impediment beyond the control of the National Federation. Accordingly, the FIVB Disciplinary Panel finds that a case of *force majeure* (“*fuerzas mayores*”) cannot shield the National Federation from liability.

36. In summary, the FIVB Disciplinary Panel finds that the National Federation i) did not appear in the FIVB World League – Group 3 match against the Volleyball Federation of Austria scheduled at 13:00 (GMT) in Frankfurt, Germany and ii) that the non-appearance of the Volleyball Federation of Venezuela to participate in the Match cannot be explained by a case of *force majeure* (“*fuerzas mayores*”).
37. Based on the above, the National Federation is liable for the violation of Article 15.3.6 of the FIVB DR 2016.

(b) Sanction

38. When determining the applicable sanctions, the FIVB Disciplinary Panel must look at the sanctions provided in the applicable regulations.
39. In addition to the above, the FIVB Disciplinary Panel notes that Article 28.4.1(a) of the FIVB DR 2018 now clarifies that “When determining the appropriate sanctions applicable, the competent FIVB body shall take into consideration all aggravating and mitigating circumstances and shall detail the effect of such circumstances on the final sanction in the writing decision”.
40. Consequently, the FIVB Disciplinary Panel will use the sanctions provided for in the relevant provisions as the starting point for the sentencing of the Respondents and adapt the final sanction taking into consideration the principle referred to in Article 28.1.4(a) of the FIVB DR 2018.

(1) General consideration

41. Article 15.3.6 of the DR 2016 provided that a national federation had to mandatorily reimburse the Organizing Committee and the FIVB of the expenses made on behalf of the withdrawing delegation and team, plus damages for loss of income and other financial consequences and could be fined of up to CHF 50,000; and/or suspended from international competitions for up to two (2) years.
42. With regards to the proper interpretation and application of Article 15.3.6 of the FIVB DR 2016, the FIVB Disciplinary Panel understands that the reimbursement plus damage for loss of income and other financial consequences and the imposition of a fine are mandatory consequences to the rule violation (Article 15.3.6(a)(b) of the FIVB DR 2016) whereas a suspension from international competitions may be imposed *in addition* to said mandatory consequences (Article 15.3.6(c) of the FIVB DR 2016).
43. The FIVB Disciplinary Panel notes that there is no specific case law with regards to the application of Article 15.3.6 of the FIVB DR 2016. In the case DP 2017-01, the FIVB President had however sanctioned the Kenya Volleyball Federation with an exclusion from the 2018 edition of the FIVB World Grand Prix for withdrawing from the 2017 FIVB World Grand Prix – Group 2 after the drawing of lots but more than sixty (60) days from the start of the competition (Article 15.3.3 of the FIVB DR 2016).

(2) Reimbursement and fine

44. The FIVB Disciplinary Panel will discuss first the financial consequences of the rule violation and then proceed to discuss the fine to be imposed upon the Respondent.
45. The FIVB Disciplinary Panel notes that the Estonian Volleyball Federation has requested the reimbursement of EUR 3,400 for additional costs caused by the early arrival of the Respondent in Estonia (*see above para 12*). The FIVB Disciplinary Panel understands that the request by Interested Party I did not fall within the scope of Article 15.3.6 of the FIVB DR 2016, which dealt only with the reimbursement of costs in relation with Hypothesis I and Hypothesis II, not the early arrival of a delegation on the site of a competition. Thus, the

FIVB Disciplinary Panel finds it cannot award any financial compensation to Interested Party I because the cause of the additional costs did not stem from a hypothesis covered by Article 15.3.6 of the FIVB DR 2016. The FIVB Disciplinary Panel suggests however the Volleyball Federation of Venezuela and the Estonian Volleyball Federation to find an agreement with regards to the reimbursement of additional costs incurred by Interested Party I because of the conduct of the Respondent, as per the FIVB World Grand Prix 2017 Handbook – Group 3.

46. The FIVB Disciplinary Panel notes that the German Volleyball Federation did not file a request for reimbursement (e.g. with regards to organizational costs, expenses made on behalf of the withdrawing team or damages for loss of income) with the FIVB. Thus, the FIVB Disciplinary Panel finds that it cannot award any financial compensation to Interested Party II because the German Volleyball Federation has not requested any compensation nor substantivized any damage. The FIVB Disciplinary Panel understands that the foregoing shall be considered an exception to the mandatory reimbursement process set forth under Article 15.3.6(a) of the FIVB DR 2016.
47. Turning now to the fine to be imposed upon the Volleyball Federation of Venezuela, Article 15.3.6(b) of the FIVB DR 2016 provided that the Respondent could be fined up to CHF 50'000. The FIVB Disciplinary Panel acknowledges the existence of different scenarios established by the FIVB with regards to withdrawal from international competitions (see Articles 15.3.1 ff of the FIVB DR 2016). The FIVB Disciplinary Panel further acknowledges that the FIVB had the intention to punish more severely cases of withdrawals during a competition or non-appearance at the beginning of a competition than cases of non-registration to a competition for instance. In the case at hand, the FIVB Disciplinary Panel notes that the National Federation i) was aware of its obligation to travel to Germany and make the necessary arrangements for months and ii) participated in the 2017 FIVB World League but for the Match. The FIVB Disciplinary Panel further notes that the National Federation was not ordered to reimburse Interested Party I and Interested Party II and is a first time offender. The FIVB Disciplinary Panel finds that the degree of fault of the National Federation is somewhat in the middle range.
48. Therefore, the National Federation shall be sanctioned with a monetary fine of CHF 20'000.

(3) Suspension from international competitions

49. Article 15.3.6(c) of the DR 2016 provided that the National Federation may be suspended for up to two years in addition to be ordered to reimburse certain costs and handed a fine.
50. In the case DP 2017-01, the FIVB President excluded the Kenya Volleyball Federation from the 2018 edition of the FIVB World Grand Prix because the Kenya Volleyball Federation had withdrawn from the 2017 FIVB World Grand Prix after the drawing of lots but more than sixty days before the start of said competition (Article 15.3.3 of the FIVB DR 2016). The FIVB Disciplinary Panel believes the case DP 2017-02 to be similar to the case DP 2017-01 to a certain extent because both national federations had *voluntarily* signed a Letter of Participation and *registered* to participate in a competition under the authority of the FIVB. The FIVB Disciplinary Panel finds that the Volleyball Federation of Venezuela shall also be excluded from the next edition of the FIVB World League (or its equivalent tournament) in addition to be fined¹.

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¹ The FIVB Disciplinary Panel notes that the FIVB World League was cancelled as of 2018 and replaced by the Volleyball Nations League and the Volleyball Challenger Cup. Because the Volleyball Federation of Venezuela was not invited by the FIVB to participate in the first edition of the Volleyball Nations League, the Volleyball Challenger Cup shall be considered the equivalent tournament to the FIVB World League for the purpose of the suspension imposed upon the Volleyball Federation of Venezuela.

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The Volleyball Federation of Venezuela has committed a rule violation (Article 15.3.6 of the FIVB DR 2016) and shall be sanctioned with a fine in the amount of CHF 20'000 and an exclusion from the 2019 edition of the Men's Volleyball Challenger Cup.
2. The Estonian Volleyball Federation and the German Volleyball Federation shall not be entitled to any financial compensation.
3. This decision may be appealed in accordance with the attached Notice of Appeals.

Lausanne, 12 June 2019

For the FIVB DISCIPLINARY PANEL



Mr. Tomohiro Tohyama

Chairperson

NOTICE OF APPEALS

1. Parties who are affected by a decision of a FIVB body (e.g. the President, the Board of Administration, the Disciplinary Panel etc.) can file an appeal to the FIVB Appeals Panel unless otherwise provided in the FIVB Constitution and Regulations.
2. Appeals must be made in writing and must be received by the FIVB Secretariat within fourteen (14) days from notification of the decision, failing which the appeal will be considered inadmissible.
3. Appeals shall be accompanied by a copy of the decision appealed against and a bank certificate confirming payment of the administrative fee of CHF 2,000 into the following account:

Banque Cantonale Vaudoise (BCV)

Place Saint-François 14

CH-1001 Lausanne / Switzerland

Account: T 5344.53.25

IBAN: CH33 00767 000T 5344 5325

BIC Code (Swift Address): BCVLCH2LXXX

Bank clearing: 767

4. Failure to pay the administrative fee within the deadline fixed by the FIVB Secretariat will result in considering the appeal withdrawn. The FIVB Appeals Panel may decide that the administrative fee be reimbursed in the event that the appeal is successful.
5. The appeal can be filed by a proxy if he/she presents a written power of attorney.
6. For details of the appeals procedure please refer to Section III of the FIVB Disciplinary Regulations (<http://www.fivb.org/EN/FIVB/Legal.asp>).
7. A further appeal against the decision by the FIVB 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.