

## THE FIVB DISCIPLINARY SUB-COMMITTEE

composed by

Ms. Margaret Ann Fleming (SCO)	Member
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### Case DP 2019-01

#### I. PARTIES

1. Mr. [name]<sup>1</sup> (hereinafter the “**Player**”) is a volleyball player and captain of the [Player’s country’s] Men’s national team.

#### II. FACTUAL BACKGROUND AND PROCEDURE

2. On [date], the Player gave an online YouTube interview broadcasted by the “[name of the channel]” channel. During this interview, the Player stated the following:

*“Oni zawsze grają niewiniątka. Są niby super i fajni, a my najgorsi. Ale tak wcale nie jest. Ale są to fatalni ludzie -takie jest moje osobiste zdanie-, złośliwi i chamscy ludzie. I są po prostu fatalni, jeżeli chodzi o ludzi i naród. I dla mnie są skreśleni, dla mnie ten naród nie istnieje. Mimo tego, że oni nie nazywają się [...] tylko [...]. Dla nich [...], a tak naprawdę są zwykłymi leszczami. I takie jest moje zdanie na ich temat. Ja też Ci nie powiem, że ich lubię, bo coś tam. Dla mnie ten naród nie istnieje i oni są. Trzeba czasami z nimi zagrać. Dla mnie jest to w ogóle dramat i tragedia. Nie chce mi się w ogóle o nich rozmawiać. ”*

[Free English translation provided by the [...]Volleyball Federation]

*“They always play such innocents and all, that they’re all so super and cool and we are the worst. But it’s not like that at all, because they are terrible people - that’s my personal opinion – spiteful, rude. And just terrible, as far as the people and nation are concerned, I’m done with them. For me that nation doesn’t exist. Even though they don’t call themselves [people from a certain part of the world] but [people from a certain country]. To them [their country] is all, but the truth is that they’re just ‘breams’. And that’s my opinion about them. I’m not going to say that I like them because of this or that. That nation doesn’t exist for me – they are there, sometimes we have to play with them, but for me all this is just a shame and a tragedy. I don’t even want to talk about them.”*

The Player’s comments were subsequently picked up by [the Player’s country’s]websites: [\[names of websites\]](#).

3. On [date], the Player issued a statement on his Instagram page in which he addressed the media response to his statement. In his statement, the Player first emphasized his right to express his own opinion and then clarified that he had been the subject of threats and insults from [an opposing national team’s]players and their fans. His

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

previous comments were limited to those [opposing national team's] players and fans that had wronged him and his family in the past. He emphasized that he was not xenophobic or racist in any way. A copy of his statement was subsequently posted on the [Player's National Federation's website].

4. On [date], the Volleyball Federation of the [opposing national team's country] filed a complaint with the FIVB regarding the Player's comments.
5. On [date], the FIVB charged the Player with violations of Articles 20.1, 20.2, 20.4 and 20.5 of the FIVB Disciplinary Regulations and began the present proceedings (hereinafter "**Charge Letter**"). The FIVB Disciplinary Panel Sub-Committee invited the Player to respond by no later than [date] to the charge.
6. On [date], the [Player's National Federation] acknowledged receipt of the disciplinary action against the Player and informed the FIVB Disciplinary Panel that it had begun its own disciplinary investigation with the intention to announce its decision by no later than [date].
7. On [date], the Player filed his response to the charge with the FIVB Disciplinary Panel. In his response, the Player did not deny what he said. However, he questioned the translation provided in the Charge Letter as well as emphasized that he had been victim of verbal abuse from players of the [opposing national team's country] national team and their fans, evidence of which he submitted. He also highlighted that he made a subsequent statement whereby he stated that he meant his comments only at the people that had insulted him, not the country or the people of [the opposing national team's country]. He also regretted that the interview stirred the emotions of and offended people who had not insulted him.
8. On [date], the Disciplinary Department of the [Player's National Federation] sanctioned the Player with a reprimand, a fine and six match suspension. The [Player's National Federation] provided the FIVB with a copy of the decision on [date].

### III. COMPETENCE

9. The FIVB Disciplinary Panel Sub-Committee is competent to hear this case as per Article 26.6 of the FIVB Disciplinary Regulations 2019, which provides that the FIVB Disciplinary Panel Sub-Committee is competent to impose sanctions for simple and major offences "*arising on the occasion of the competition for which it is appointed*". As the Player's statement was made in an interview that, in part, was about the start of the [event], with [the Player's country] hosting a [pool] and the Complaint from the Volleyball Federation of the [opposing national team] was filed after the Preliminary Inquiry of the first week of the [event], this charge falls on the occasion of the [event].
10. The FIVB Disciplinary Panel Sub-Committee further notes that the Player did not challenge the competence of the FIVB Disciplinary Panel Sub-Committee to hear the present case.

### IV. APPLICABLE LAW

11. The FIVB Disciplinary Panel notes that the FIVB Constitution and Regulations apply to this case. Additionally, Swiss law is applicable subsidiarily to the FIVB Disciplinary Regulations in accordance with Article 1.2.
12. The FIVB Disciplinary Regulations 2019 are applicable as to the substantive rules of the present dispute as they were passed by the FIVB Board of Administration on 24 May 2019 and provided to the Player with the Charge Letter. The FIVB notes that the substantive provisions cited in the Charge Letter were not amended during the FIVB Board of Administration on 24 May 2019.
13. The substantives provisions which are relevant for the resolution of this dispute are quoted in the following:

***“20. VIOLENT CONDUCT***

*20.1 Any action, attitude or public statement displaying an improper use of physical or emotional force in order to injure, intimidate or defame the FIVB, its guests or any of the persons listed in Article 1 herein is considered a violent conduct which shall be sanctioned in accordance with the seriousness of the violation.*

*20.2 Violent conduct in connection with a competition or in general a Volleyball activity shall be sanctioned as a major offence. Sanctions shall be imposed on the persons involved and/or the national federation or club accountable for such actions (see Article 14.4 above).*

*[...]*

*20.4 Harassment, insult, verbal or physical abuse by a coach, player, team delegation member, official to or against a player or any other team member or official present, shall be sanctioned by the Appeal Sub-Committee [now Disciplinary Panel Sub-Committee] with suspension for one or more matches or exclusion from the competition depending on the seriousness of the violation.”*

**V. LEGAL CONSIDERATIONS**

**(a) Violations**

**(1) Violent Conduct**

14. The FIVB Disciplinary Panel Sub-Committee notes that the Player did not challenge the fact that he made the statement nor that his comments were directed at the [opposing national team] and its fans. The Player’s subsequent statement explicitly stated that he was directing his comments towards those players and fans who had insulted him in the past. While the FIVB Disciplinary Panel Sub-Committee notes that the Player may have been provoked by insults and attacks from [the opposing national team’s] players and fans in the past and recognizes that this might have led to frustration for him, the Player should have conducted himself during the interview in a manner that was more becoming of a captain of [a very successful national team] by not lowering himself to the level of the others who insulted him. Additionally, the freedom of the Player to

express his opinion does not shield him from being held responsible for the consequences of such expression (see CAS 2015/A/4095, para. 86).

15. It is clear that the comments were insulting and negatively impacted the Volleyball Federation of [the opposing national team]. Also, given that it led to negative press statements associated with the [Player's national team], the publication of the Player's negative statements clearly impacted the [Player's National Federation] as well. Additionally, as captain of [a very successful national team], his statements about a competitor also negatively impact the entire sport of volleyball.
16. Hence, the Player is liable for the violations of Articles 20.1 and 20.4 given that the Player made a public statement defaming the [opposing national team], for which a Volleyball Federation of [opposing national team's country], and that his remarks was detrimental to that National Federation, which falls under the definition of persons under Article 1 of the FIVB Disciplinary Regulations. Article 20.2 is also applicable as it took place in connection with a competition.

**(b) Sanction**

17. When determining the applicable sanctions, the FIVB Disciplinary Panel Sub-Committee notes that the Disciplinary Department of the [Player's National Federation] implemented a sanction of a reprimand and a six-match sanction. Additionally, the [Player's National Federation] informed the FIVB in a separate communication that the Player would also not be entitled to receive any prize money for the [event] under his contract with the [Player's national team]. Therefore, the FIVB must examine whether an additional sanction is warranted on top of the sanction already imposed by the Disciplinary Department of the [Player's National Federation].
18. Examining FIVB jurisprudence involving violations of Articles 20.1 and 20.5, particularly, FIVB 2014-01, the FIVB Disciplinary Panel Sub-Committee finds that the sanction of a reprimand and a six-match sanction, which would be served during [the remainder of the event], is in line with other cases involving violations of Articles 20.1 and 20.5 based on previous cases involving demeaning public statements. Therefore, the FIVB Disciplinary Panel Sub-Committee finds that this sanction would be sufficient under the FIVB Disciplinary Regulations.
19. However, the FIVB Disciplinary Panel Sub-Committee additionally strongly recommends that the [Player's National Federation] should examine whether to require the Player to issue a written public apology that should be read during the match between [Player's country] and [opposing team's country] during [the remainder of the event]. This written apology could be submitted to the FIVB for approval before it is read in order to ensure that the appropriate contriteness in line with the standards of the FIVB.
20. Additionally, the FIVB notes that the Player still has the right to appeal the decision of the Disciplinary Department of the [Player's National Federation] and that the Player will not serve the sanction until [the remainder of the event]. Consequently, the FIVB Disciplinary Panel Sub-Committee reserves the right to re-open the present proceedings in the event that an appeal of the decision of the Disciplinary Department of the [Player's National Federation] or if the Player fails to serve his six-match sanction.

**Taking all the above into consideration**

**THE FIVB DISCIPLINARY PANEL SUB-COMMITTEE**

**Concludes and Decides**

1. The Player has committed violations of Articles 20.1, 20.2 and 20.4 of the FIVB Disciplinary Regulations.
2. The Player shall be sanctioned with a reprimand and six-match sanction to be served during Weeks 3 and 4 of the Volleyball Nations League 2019 in accordance with the decision rendered by the Disciplinary Department of the [Player's National Federation], which has been accepted by the FIVB Disciplinary Panel Sub-Committee.
3. The FIVB Disciplinary Panel Sub-Committee recommends that the [Player's National Federation] require the Player to issue a written apology, the contents of which shall be approved by the FIVB and which shall be read during the match between [the Player's country] and [the opposing team's country] during [the remainder of the event].
4. The FIVB Disciplinary Panel Sub-Committee reserves the right to re-open this case in the event of an appeal of the decision of the Disciplinary Department of the [Player's National Federation] or if the Player, fails to serve his sanction.
5. In accordance with Article 26.6.3, this sanction is final for the duration of the [remainder of the event].

Lausanne, 6 June 2019

**For the FIVB DISCIPLINARY PANEL SUB-COMMITTEE**

Ms. Margaret Ann Fleming

