

THE FIVB DISCIPLINARY PANEL

composed by

Ms. Sabinah Clement (IVB)	Chairperson
Ms. Margaret Ann Fleming (SCO)	Member
Mr. Mounir Ben Slimane (TUN)	Member

Case DP 2019-04

I. PARTIES

1. Mr. [name]¹, Mr. [name] and Mr. [name] are players of the men's national team of [**non-Asian country**] (hereafter the "**Players**") and members of the [Volleyball Federation of that country] (hereafter the "**National Federation**") (together referred to as the "**Parties**").

II. FACTUAL BACKGROUND AND PROCEDURE

2. On [date], during [an Olympic qualifier] (hereafter the "**Tournament**"), a match took place in between the [Players' national team] (hereafter the "**Team**") and [the opposing team, from the Asian continent] at 19:30 local time (hereafter the "**Match**").
3. [The Players' team] beat [the opposing team] in five sets and qualified to the[event name].
4. Immediately following the Match, the [Players' national team] posed for a celebratory team photo during which the Players made "slant-eye" gestures (hereafter the "**Gestures**").
5. During the Preliminary Inquiry, the FIVB's Technical Delegate for [the relevant pool], Mr. [name], briefed all the teams on the topic of displaying inappropriate behaviour, notably during celebrations. The National Federation had representatives present at this Preliminary Inquiry.
6. This was particularly important as one week prior to the Tournament, during[another tournament], a complaint was filed against an assistant coach for making "slant-eye" gestures while celebrating his team's victory.
7. After the Tournament, [one of the Players] published an apology on his Instagram story (hereafter the "**Apology**").
8. In his Apology, [the Player]stated, in particular, the following:

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

"I wanna say SORRY to all [opposing team's country's] volleyball fans that felt unrespected after last match celebration

The idea was that we became Japanese because we are going to Olympics in Tokyo

It had nothing to do with no respecting [the opposing team's country] or Japan!

Now we know it wasn't a good idea, and i regret making you feel that way!" [sic]

9. On [date], the FIVB Disciplinary Panel charged the Players and the National Federation with violations of Articles 20.1, 20.4 and 20.5 of the FIVB Disciplinary Regulations and opened the present proceedings (hereafter the "**Charge Letter**").
10. In light of the upcoming men's South American Volleyball Championship, the FIVB Disciplinary Panel invited the Players and the National Federation to respond to the charges by no later than midnight on 20 August 2019 (hereafter the "**Answer**").
11. No later than on [date], the Parties sent a written apology to the [opposing team's Volleyball Federation] explaining that they did not intend to offend anyone and acknowledged that the Gestures could have been misunderstood. The Parties asserted their belief in the value of fair play and "withdrew" the Gestures.
12. On [date], the Players and the National Federation filed their Answer which submitted, in essence, the following:
 - They denied making any culturally insensitive gestures.
 - Although the photographic evidence in the file suggests this, the Gestures were not intended to insult, offend or mock Asian people.
 - The Gestures were made in the extremely unique context of celebrating the team's qualification to the Tokyo 2020 Olympic Games, which caused the Players to not consider the potential consequences of their actions in relation to the [opposing team's country's] community
 - In [the Players' country], the meaning of such gestures is a celebration of the team's destination, i.e. in this case, Japan. Consequently, it is not perceived as aggressive or offensive, which is why it has been used as a celebratory sign by numerous famous athletes across the world ([names of other athletes]). According to [the Players' country] culture, such gestures are harmless and could only be interpreted to demonstrate endearment and happiness. They could never denote an offensive meaning. The potential misinterpretation of their intentions has definitely caused the Players and the [Players' National Federation] to learn from this experience.
 - In similar circumstances, [a football player] was initially suspended for four official matches by FIFA, a sanction that was overturned by FIFA's Appeal Committee, in light of the fact that such gestures are common and acceptable in [the football player's country] culture.
 - The [Players' National Federation] and the Players constantly represent and defend the value of fair play. This is evidenced by the fact that neither of them has ever

been sanctioned in the past (in and/or out of competitions) despite their long careers in international sporting events.

- The Gestures were aimed at the Players' loved ones, which they have not been able to see due to a busy calendar filled with competitions.
- The [Player's National Federation] and the Players are willing to issue another apology, in addition to i) [one of the Players'] Apology, and ii) the apology submitted as evidence (entitled "OFFICIAL STATEMENT"), which was sent to the [opposing team's Volleyball Federation].
- The [Players' National Federation] and the Players requested a sanction exemption or, subsidiarily, a simple warning.

III. COMPETENCE

13. The FIVB Disciplinary Panel is competent to hear this case as per Article 26.5 of the FIVB Disciplinary Regulations 2019, which provides the following:

"26.5 The FIVB Disciplinary Panel is competent to impose sanctions for simple offences, when the matter is referred to it by the FIVB President, for major offences, and as provided by the FIVB Medical and Anti-Doping Regulations."

14. The FIVB Disciplinary Panel further notes that the Players and the National Federation did not challenge the competence of the FIVB Disciplinary Panel to hear the present case.

IV. APPLICABLE LAW

15. 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.

16. 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 Players and the National Federation with the Charge Letter.

17. 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-Committee² with suspension for one or more matches or exclusion from the competition depending on the seriousness of the violation.*

20.5 *The NFs and their Organising Committee of a Competition must deal courteously and considerately with the FIVB, its officials and the members of the Control Committee, referees, participating team delegations and guests. Any commentary or remark expressed publicly through the media, detrimental to the image or the reputation of the FIVB and its institutions or any of its officials is considered violent conduct.”*

“14. GENERAL PRINCIPLES

[...]

14.3 *Unless otherwise specified, offences are sanctionable regardless of whether they have been committed intentionally or negligently.*

14.4 *In addition to personal responsibility, national federations and clubs are accountable, and may be sanctioned accordingly, for the conduct of their players, members, officials, supporters and any persons exercising a function within the federation or the club and/or during the organization of a match on behalf of the federation or club.*

[...]

14.8 *All sanctions imposed by the FIVB on leagues, clubs, teams and their administrators, team managers, players, coaches, technical and support personnel, FIVB officials and referees and referees affiliated to a NF shall also apply at a continental and national level, unless otherwise decided by the FIVB.”*

“17. EXECUTION OF SANCTIONS

[...]

² As the gesture in question happened after the last match of the Tournament and, thus, the sanction imposed would extend beyond the Tournament, the case was referred to the FIVB Disciplinary Panel in accordance with Article 26.6.2 of the FIVB Disciplinary Regulations 2019.

17.5 Disqualification of players and coaches

17.5.1 Disqualification must be applied to the FIVB and/or other competitions (as applicable) immediately following notification.

17.5.2 If a coach or player participates in a match while he is suspended or disqualified, his team shall forfeit the match and the sanction will be doubled or restart, as decided by the body which imposed it."

18. Furthermore, the FIVB Official Volleyball Rules 2017-2020 (approved by the 35th FIVB Congress 2016) (hereafter the "**Official Rules**") also contain substantive provisions pertaining to participants' conduct. It should be noted that the term "Participants" includes players, as per the definition in Article 4.1.1 of the Official Rules.
19. The substantive provisions of the Official Rules, which are also relevant for the resolution of this case, are quoted in the following:

"20 REQUIREMENTS OF CONDUCT

20.1 SPORTSMANLIKE CONDUCT

20.1.1 Participants must know the "Official Volleyball Rules" and abide by them.

[...]

20.2 FAIR PLAY

20.2.1 Participants must behave respectfully and courteously in the spirit of FAIR PLAY, not only towards the referees, but also towards other officials, the opponent, teammates and spectators."

V. LEGAL CONSIDERATIONS

(a) Violations

(1) Violent Conduct

20. The FIVB Disciplinary Panel notes that the Parties appear to have denied the culturally insensitive and discriminatory nature of their actions but did not deny making the Gestures.
21. The FIVB Disciplinary Panel observes that the Players did not intend to offend anyone during the celebrations of their victory.
22. The FIVB Disciplinary Panel also notes that only [one of the Players] issued a spontaneous public apology on social media. In his Apology, [that Player] stated that he regretted having caused any offense to the [opposing team's country] and Japanese volleyball community; he attempted to justify the Gestures by explaining that they were

a symbol of them “becoming Japanese” due the Team’s qualification to the Tokyo 2020 Olympic Games. The Parties also sent a written apology to the [opposing team’s Volleyball Federation] which was submitted with the Answer. Consequently, it is apparent that the Parties became aware that the Gestures were offensive to other people.

23. It is, however, apparent that the Gestures were culturally insensitive and insulting. Not only did the [opposing team’s country’s] press immediately report the actions of the Players online³, but this also followed the public outcry regarding a [other nationality, not involved in this case] assistant coach who made a similar slant-eye gesture during [another event] one week prior to the Tournament that caused the [other Volleyball Federation from Asia, not involved in this case] to file a complaint⁴. Furthermore, the FIVB’s Technical Delegate for [the relevant pool] explicitly warned the teams participating in the Tournament about inappropriate behaviours, in particular during celebrations.
24. In addition, the Parties – who acknowledged that they did not consider the potential implications of the Gestures for the [opposing team’s country’s] community– argued that the Gestures were made according to [country] culture and that they were “unfortunately” interpreted by other cultures as aggressive and/or discriminatory. The Parties also emphasised that the Players are experienced international sportsmen, who have been participating in international sporting events since 2008 and who have never been sanctioned in and/or out of competitions.
25. However, the FIVB Disciplinary Panel notes that such imprudent behaviour is incompatible with the principles of fair play, Olympism and the protection of human rights as reminded namely in Article 20.2.1 of the Official Rules. It is important that experienced international sportsmen should be aware and accept that some actions that might not be offensive to people at home may impact other cultures in a different manner. The Gestures, which have been reported by expressing outrage in several media outlets around the world, demonstrate that such behaviour is viewed as offensive in not just Asian cultures, but in Western cultures as well. As such, the Gestures have been recognised on a global scale as distasteful and offensive. Moreover, in an environment such as the Tournament, particularly given the importance of the Match, i.e. Olympic qualification on the line, and the crowd full of people of Asian descent, including children, the Players, as professional and experienced international athletes – as insisted upon by the Parties in their Answer – should have used precaution and a higher level of prudence, sensitivity and sportsmanship towards the international community. Given that this is not the only time that such gesture is made (see the case of the [another nationality, not involved in this case]assistant coach mentioned above), the FIVB Disciplinary Panel strongly believes that it must take a strong stance to ensure that players consider their actions before taking them in order to eliminate such offensive gestures from the sport of volleyball.

³ [\[source\]](#).

⁴ [\[complaint\]](#).

26. The Parties also attempted to justify the Gestures by making reference to other worldwide athletes including [a football player] who received a four-match suspension for similar actions during the 2018 FIFA World Cup. The Parties underlined that the suspension was later overturned because *“the expressions that he used were common and acceptable in [their] culture”*. However, the Parties did not submit a copy of the relevant decisions or provide any specific reference number. Moreover, FIFA’s disciplinary regime is different from the FIVB. Also, the FIVB Disciplinary Panel notes that [the football player] was banned for having directed insulting words at an assistant referee⁵. Consequently, the circumstances are not comparable to those involving the Players. Furthermore, the alleged motives for which the four-match suspension was overturned have not been sufficiently evidenced and, as such, are insufficient to provide any meaningful guidance to the FIVB Disciplinary Panel.
27. Regarding the liability of the National Federation, the FIVB Disciplinary Panel finds that there are two additional reasons to extend liability to the National Federation in the present case. First, this case involves multiple players from the National Federation’s national team making the Gestures. Under Article 14.4 of the FIVB Disciplinary Regulations 2019, the National Federation is responsible for the conduct of its players. Second, the National Federation’s representatives were present at the Preliminary Inquiry during which the teams were warned about appropriate behaviours during team celebrations. If this information was not subsequently conveyed to its players, then this is also a failure of the National Federation because it was responsible for ensuring that important information from the Preliminary Inquiry was conveyed to its players. Consequently, the FIVB Disciplinary Panel also finds liability against the National Federation.
28. In light of the above, the Players are liable for the violations of Article 20.1, 20.2 and 20.4 of the FIVB Disciplinary Regulations 2019, and the National Federation is liable for the violations of Article 20.1, 20.2 and 20.5 of the FIVB Disciplinary Regulations 2019. Article 20.2 of the FIVB Disciplinary Regulations 2019 is also applicable as the Gestures were made in connection with a competition (the Tournament).

(b) Sanction

29. When determining the applicable sanctions, the FIVB Disciplinary Panel notes that:
- a. [One of the Player] issued a public apology on social media on his own initiative;
 - b. After being informed of the charges in the Charge Letter, the Parties sent a written apology to the [opposing team’s Volleyball Federation]; and
 - c. The [Players’ National Federation] has not sanctioned the Players.
 - d. The Parties have requested a sanction exemption, or, subsidiarily, a simple warning.

⁵ <https://www.fifa.com/worldcup/news/Inamesuspended-for-four-matches-2877817>.

30. As a preliminary remark, it should be noted that in light of the circumstances at hand and the severe violations of the Parties, a decision imposing no sanction or a simple warning is not acceptable in the present case.

Players

31. Examining FIVB jurisprudence involving violations of Articles 20.1 and 20.5, particularly, FIVB DP 2014-01, FIVB DP 2019-01 and FIVB DP 2019-03, the FIVB Disciplinary Panel finds that, with regards to the Players, a match suspension is in line with FIVB jurisprudence.
32. As regards [one of the Players], given that he issued a public apology on social media on his own initiative, a total sanction of a two-match suspension is in line with FIVB jurisprudence, sufficient and proportionate to the severity of the violations.
33. As regards [the other Players], given that they sent a written apology to the **[opposing team's Volleyball Federation]** after the start of the present proceedings, a three-match suspension is in line with FIVB jurisprudence, sufficient and proportionate to the severity of the violations.
34. In this regard, the provisions, which are relevant for the execution of the sanction, are quoted in the following:

Article 17 of the FIVB Disciplinary Regulations 2019

"17. EXECUTION OF SANCTIONS

[...]

17.5 Disqualification of players and coaches

17.5.1 Disqualification must be applied to the FIVB and/or other competitions (as applicable) immediately following notification.

17.5.2 If a coach or player participates in a match while he is suspended or disqualified, his team shall forfeit the match and the sanction will be doubled or restart, as decided by the body which imposed it."

Article 1.3 of the FIVB Event Regulations 2019

"1.3 CATEGORIES OF INTERNATIONAL VOLLEYBALL COMPETITIONS

The categories of international Volleyball competitions are:

- a. FIVB competitions;*
- b. World competitions;*
- c. Official competitions;*
- d. Recognized competitions; and*

e. Registered competitions.”

35. In the present case, the aforementioned match suspensions are to be served during the next official matches of the [Players’ national team], i.e. during [event]⁶. For the sake of clarity, the aforementioned championship falls under any of the letters c) to e) of Article 1.3 of the FIVB Event Regulations 2019 defining International Volleyball Competitions and can thus be considered as “*other competitions*” under Article 17.5.1 of the FIVB Disciplinary Regulations. Additionally, Article 14.8 of the FIVB Disciplinary Regulations 2019 allows a sanction imposed by the FIVB to be applied at a continental level.
36. Finally, the FIVB Disciplinary Panel reserves the right to re-open the present proceedings in the event that any of the Players fail to serve their respective match suspension.

National Federation

37. As regards the National Federation, a study of similar cases involving other sports⁷ shows that a fine is an appropriate sanction. It should be noted that in the aforementioned cases, the monetary fines varied in between CHF 10’000 and CHF 90’000. Violations under Article 20.1, 20.2 and 20.5 of the FIVB Disciplinary Regulations 2019 are considered a major offence. Pursuant to Article 16.2 of the FIVB Disciplinary Regulations, a monetary fine of more than CHF 10’000 may be imposed for a major offence. Consequently, given that the National Federation sent a written apology to the [opposing team’s Volleyball Federation], a monetary fine in the amount of **CHF 15’000** is in line with relevant jurisprudence, sufficient and proportionate to the severity of the violations.

⁶ http://www.voleysur.org/v2/resultados/juegos_tabla_livescore.asp?IDcamp=228&IDtab=767.

⁷ Arbitration CAS 2015/A/4256 Feyenoord Rotterdam N.V. v. Union des Associations Européenes de Football (UEFA), award of 24 June 2016; Arbitration CAS 2017/A/5306 Guangzhou Evergrande Taobao FC v. Asian Football Confederation (AFC), award of 5 March 2018 (operative part of 15 January 2018); <https://img.fifa.com/image/upload/yaopnxsgb2kcaovzhrb.pdf>.

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The Players, Mr. [name], Mr. [name] and Mr. [name] have committed violations of Article 20.1, 20.2 and 20.4 of the FIVB Disciplinary Regulations 2019.
2. The [Players' National Federation] has committed violations of Article 20.1, 20.2 and 20.5 of the FIVB Disciplinary Regulations 2019.
3. The Player, Mr. [name],, shall be sanctioned with a total sanction of a suspension for two matches.
4. The Players, Mr. [name], and Mr. [name], shall be sanctioned with a total sanction of a suspension for three matches.
5. The Players, Mr. [name],, Mr.[name], and Mr. [name], shall serve their respective match suspension during their respective sanctions at the 2019 Men's South American Volleyball Championship.
6. The [Players' National Federation] shall be sanctioned with a fine in the amount of **CHF 15'000**.
7. The [Player's National Federation] is ordered to make payment of the abovementioned fine **within 30 days** from notification of the decision to the following bank 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

8. The FIVB Disciplinary Panel reserves the right to re-open this case in the event that any of the Players, Mr. [name] and/or Mr. [name] and/or Mr. [name], fail to serve their respective sanction.

9. This decision may be appealed in accordance with the attached Notice of Appeals.
10. This decision shall be communicated to the South American Volleyball Confederation for its information and to ensure its enforcement.

Lausanne, 5 September 2019

For the FIVB DISCIPLINARY PANEL

Ms. Sabinah Clement
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 IV 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.