



The

FIVB TRIBUNAL

hereby issues the following

DECISION

2021-01

on the Request for Review of [case number]¹ filed by

[The Player] (“Claimant”)
represented by [the Player’s lawyers]

vs.

[The Club] (“Respondent”)
represented by [the Club’s representative]

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

1. The Parties

1. [The Player] is a professional volleyball player from [the Player's country] ("**Claimant**" or "**Player**").
2. [The Club] is a [the Club's country] professional volleyball club ("**Respondent**" or "**Club**").

2. The FIVB Tribunal

3. Article 19.1.5 of the FIVB Sports Regulations dated 3 November 2020 ("**FIVB Sports Regulations**") provides as follows:

"Cases before the FIVB Tribunal shall be heard by the Chairperson, provided that the amount in dispute does not exceed CHF 200'000 (two hundred thousand Swiss Francs). [...] If the Chairperson is unavailable or ineligible due to reasons of conflict (see Article 20.4), he/she shall be replaced by the Vice-Chairperson. The Chairperson may appoint another member of the FIVB Tribunal to hear a case instead of the Chairperson."

4. The request for review is heard by a single judge because the amount in dispute does not exceed CHF 200,000. On [date], the FIVB Tribunal Chairperson, Dr. Karsten Hofmann from Germany, appointed FIVB Tribunal Vice-Chairperson, Francisco A. Amallo from Argentina, to hear this case as a single judge ("**FIVB Tribunal Judge**").

3. Facts

5. On [date], the parties signed an agreement ("**Agreement**"), under which the Player agreed to play for the Club's team for the [year]/[year] [Club's country's] Championship in exchange for, *inter alia*, a total salary of EUR 90,000 net to be paid in ten instalments from [date] to [date]. The Player was entitled to terminate the Agreement without prior notice in case the Club delayed the payment of the monthly salary for more than 60 days.²
6. On [date], the parties signed a sports contract ("**Sports Contract**"), under which the Player agreed to provide sports services to the Club from [date] to [date] , in exchange for, *inter alia*, a total

² Player's RFR, Exhibit 2, and Club's RFR, Exhibit 3, clauses 1 and 2.

salary of EUR 113,888.89 to be paid in nine instalments, the first due on [date] and the last on [date]. The Player was entitled to terminate the Sports Contract without prior notice in case the Club failed to comply, totally or partially, with its payment obligations for 30 days.³

7. On [date], the Player issued Invoice No. 1/[year] for EUR 21,638.89 ([the Club's country's currency, hereafter "Local Currency"] 92,980.15), setting [date] as the due date.⁴
8. On [date], the Player issued Invoice No. 2/[year] for EUR 11,009.26 ([Local Currency] 47,306.79), setting [date] as the due date.⁵
9. On [date], the Club transferred [Local Currency] 92,980.15 to the Player as payment of Invoice No. 1/[year].⁶
10. On [date], the Player issued Invoice No. 3 for EUR 11,009.26 ([Local Currency] 46,918.16), setting [date] as the due date.⁷
11. On [date], the parties amended the payment schedule under the Sports Contract ("**Amendment**"), establishing that the nine instalments were due on [date], [date], [date], [date], [date], [date], [date], [date], and [date].⁸
12. On [date], the Club transferred to the Player the amount of [Local Currency] 10,000 as payment of Invoice No. 2/[year] and [Local Currency] 10,000 as payment of Invoice No. 3/[year].⁹
13. On [date], the Player issued Invoice No. 4 for EUR 11,009.26 ([Local Currency] 46,925.87), setting [date] as the due date.¹⁰
14. On [date], the Player's counsel sent a formal notice to the Club, requesting the payment of EUR

³ Player's RFR, Exhibit 3, and Club's RFR, Exhibit 4, clauses 7, 8 and 12.

⁴ Player's RFR, Exhibit 4.

⁵ Player's RFR, Exhibit 4.

⁶ Club's submission dated [date], Exhibit 2.

⁷ Player's RFR, Exhibit 4.

⁸ Player's RFR, Exhibit 6, and Club's RFR, Exhibit 7, clause 1.

⁹ Club's submission dated [date], Exhibits 3 and 4.

¹⁰ Player's RFR, Exhibit 4.

28,986 as overdue payables by [date].¹¹

15. On [date], the Club transferred EUR 8,682 to the Player as payment of Invoice No. 2/[year]¹²

16. On [date], the Player's counsel sent a termination letter to the Club in the following terms:

"... we address you this notice to inform the Club that the Player hereby terminates the Agreement and Complementary Agreement for cause at the Club's tort and with immediate effect, as per article 12 of the Complementary Agreement as well as general principles of contract and sports law, following the Club's continuous failure to comply with its obligations by:

- *failing -after a thirty-day grace period- to fully pay the third instalment due by [date]; and*
- *failing to pay twenty thousand three hundred four Euro (€ 20.304) as salary in due time.*

It is to be reminded that since [date], the Player has been entitled to terminate the Agreement and Complementary Agreement, as per aforementioned article 12:

| <i>Instalment</i> | <i>Due date</i> | <i>Full payment date</i> | <i>Delay</i> |
|---------------------|-----------------|--------------------------|--------------------|
| <i>Instalment 1</i> | [date] | [date] | <i>55 days</i> |
| <i>Instalment 2</i> | [date] | [date] | <i>55 days</i> |
| <i>Instalment 3</i> | [date] | - | <i>>40 days</i> |
| <i>Instalment 4</i> | [date] | - | <i>>10 days</i> |

*This situation has lasted for too long. The Player is not willing anymore to suffer from the Club's wrongful behaviour and breach of its most fundamental obligation towards the Player, as acknowledged by the [the continental federation, hereafter "**Continental Federation**"], FIVB and CAS case law."¹³*

17. On [date], the Club sent a notice to the Player stating that, in the absence of any significant

¹¹ Player's RFR, Exhibit 7.

¹² Club's submission dated [date], Exhibit 5.

¹³ Player's RFR, Exhibit 8.

reasons justifying the early termination, the contracts remained valid. The Club emphasized “*that the 30-day period from the date of payment indicated in the VAT invoice no. 3/[year] ([date]) has not expired. As of today the Club has not received any VAT invoice no. 3/[year] correction related to change of date payment.*” The Club further requested the Player to immediately return to the Club and continue fulfilling her contractual obligations.¹⁴

18. On the same date, the Club sent a letter to the Player stating that it maintained its position as to the unauthorized termination of the contracts and that it was ready to agree on the termination of the contracts provided that no further compensation or remuneration had to be paid to the Player.¹⁵
19. Also on the same date, the Player’s counsel confirmed the termination of the contracts and stated that they were nevertheless open to considering a settlement.¹⁶
20. On [date], the Player’s counsel sent an e-mail to the Club stating that a settlement was impossible due to the Club’s lack of intent to pay any overdue payables and termination indemnity to the Player.¹⁷
21. On the same date, the Player filed a complaint against the Club with the (“*[Continental Federation]*”). The Player claimed, *inter alia*, EUR 20,304 as overdue payables and EUR 69,444.44 exclusive VAT as termination indemnity, plus a 5% interest per annum.
22. On [date], the [Continental Federation] issued a decision (“**Decision**”) ruling, *inter alia*, that the Club had to pay to the Player EUR 69,444.44 excluded VAT as compensation for breach of contract and EUR 130.15 net as late payment interest. The Decision was delivered to the parties on [date].

4. The Proceedings before the FIVB Tribunal

23. On [date], both the Club and the Player filed a request for review (“**RFR**”) of the Decision before the FIVB Tribunal.

¹⁴ Player’s RFR, Exhibit 9.

¹⁵ Player’s RFR, Exhibit 9.

¹⁶ Player’s RFR, Exhibit 10.

¹⁷ Player’s RFR, Exhibit 12.

24. On [date], the FIVB Tribunal Secretariat acknowledged receipt and invited each party to file an answer to the other party's RFR by [date]. It also invited the Player to provide her position on the Club's request for a stay of the Decision by [date]. Furthermore, the parties were informed that the dispute would be heard by the FIVB Tribunal Chairperson, Dr Karsten Hofmann.
25. On [date], the Player submitted her position regarding the Club's request for a stay of the execution of the Decision.
26. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Player's position.
27. On [date], the FIVB Tribunal Chairperson granted the request for a stay, and each party submitted its answer to the other party's RFR ("**Answer**").
28. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the parties' Answers.
29. On [date], the FIVB Tribunal Chairperson requested the Player to submit the translation of an invoice and further information by [date].
30. On [date], the Player submitted the translation and information requested by the FIVB Tribunal Chairperson.
31. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Player's submission and invited the Club to file its comment by [date].
32. On [date], the Club filed its comments to the Player's submission.
33. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Club's comments.
34. On [date], the FIVB Tribunal Secretariat informed the parties that, in accordance with article 19.1.5 *in fine* of the FIVB Sports Regulations, the FIVB Tribunal Chairperson, Dr. Karsten Hofmann, appointed the FIVB Tribunal Vice-Chairperson, Francisco A. Amallo, to hear the present case.
35. On [date], the FIVB Tribunal Judge informed the parties that he had reviewed all the submissions and would proceed to issue a decision. He also requested the parties to provide a detailed

account of their respective costs as well as supporting documentation by [date].

36. On [date], the Club made its submission on costs.

37. On [date], the Player made her submission on costs.

5. The Parties' Submissions

38. The following section provides a summary of the parties' submissions and does not purport to include every contention set forth by them. However, the FIVB Tribunal Judge has thoroughly considered all the evidence and arguments submitted by the parties, even if no specific or detailed reference has been made to those arguments in this section.

5.1. The Player's Request for Relief and Position

39. In her RFR, the Player submitted the following request for relief:

"The Player requests a decision to be rendered, per which:

- *the [Continental Federation's] Decision shall be confirmed with respect to:*
 - *general principles of justice and fairness governing the proceedings which led to the [Continental Federation's] Decision instead of national or international law;*
 - *the validity of both the Agreement and Complementary Agreement which complement each other as well as the latest will of the parties -i.e. a thirty day grace period;*
 - *the Player's rightful termination of the Agreement for just cause at the Club's tort;*
 - *the termination indemnity -sixty-nine thousand four hundred forty-four euro and forty-four cents (€ 69.444,44) exclusive VAT- to be paid by the Club to the Player;*
 - *the [Continental Federation] handling fee -four hundred euro (€ 400)- to be paid by the Club to the Player; and*
 - *the contribution towards the Player's legal expenses -two thousand three hundred fifty-six euro and fifty cents (€ 2.356,50)- to be paid by the Club to the Player.*
- *the effects of the [Continental Federation's] Decision are not suspended during the proceedings before the FIVB Tribunal; and*
- *the [Continental Federation's] Decision shall be completed by ordering the Club, consequently, to:*

- *pay the Player an aggregate amount of twenty thousand three hundred four euro (€ 20.304) in principal as overdue payables;*
- *pay the Player late payment interests at a rate of five percent (5%) per annum as detailed under section III.3.D of the present Request for Review;*
- *reimburse the Player all costs of the present Request for Review, being the amount of two thousand Swiss Franc (CHF 2.000) as FIVB Tribunal handling fee; and*
- *indemnify the Player for incurred legal expenses (including attorney's fees), at the moment of the filing of the present Request for Review amounting to three thousand euro (€ 3.000) exclusive VAT, being three thousand six hundred thirty euro (€ 3.630) inclusive VAT.”¹⁸*

40. In support of her request for relief, the Player argued as follows:

- a) The Decision is correct in several aspects but should be completed by ordering the Club to pay EUR 20,304 as overdue payables and late payment interest at a rate of 5% per annum.¹⁹
- b) It is undisputed that all the contracts are valid.²⁰
- c) The Player rightfully terminated the contracts because the Club failed to comply with the payment schedule.²¹
- d) The [Continental Federation] rightfully decided that the Club had to pay EUR 69,444.44 as compensation to the Player.²²
- e) The Club should also pay EUR 20,304 as overdue payables for the Player's participation in the Club team's activities before the termination of the contractual relationship.²³
- f) The late payment interests amount to EUR 130.15 plus late payment interests for the third instalment, fourth instalment and termination indemnity to be calculated at the date of

¹⁸ Player's RFR, ¶ 84.

¹⁹ Player's RFR, ¶¶ 27-28.

²⁰ Player's RFR, ¶¶ 29-31.

²¹ Player's RFR, ¶¶ 32-52.

²² Player's RFR, ¶¶ 53-58.

²³ Player's RFR, ¶¶ 59-63.

complete payment.²⁴

41. In her Answer, the Player claims that the Club's sole argument regarding Invoice No. 3 should be dismissed because the due date agreed by the parties in the Amendment prevails over the due date set in that invoice. In any case, the Club's argument is irrelevant because the issuance of Invoice No. 3 does not impact the Player's entitlement to terminate the contracts, as the Club failed to comply with its financial obligations from [date].²⁵

5.2. The Club's Request for Relief and Position

42. In its RFR, the Club submitted the following request for relief:

"... the Club:

1) challenges [the Continental Federation's] decision of [date] in part which awarded compensation to the Player with interest and costs of proceedings, and requests that this decision be amended by dismissing the complaint of the Player;

2) requests the Player to reimburse the Club the costs of this request for review, i.e. handling fee of CHF 2,000;

3) requests that the Player be ordered to pay to the Club the costs of legal representation in these proceedings, which at the time of submitting the request for review amount to €2,000.00 net, ie €2,460.00 gross."²⁶

43. In support of its request for relief, the Club argued that the Player's complaint should have been dismissed because the [Continental Federation] failed to assess the key factor in the case: the issuance of Invoice No. 3/[year] and the Amendment. The 30-day grace period expired on [date] because the Player set that date as the due date of Invoice No. 3/[year]. Although the parties agreed in the Amendment that the third instalment was due on [date] the Player never issued a new invoice, as required by [the Club's country's] law. Therefore, the Player terminated the Sports Contract prematurely.²⁷
44. In its Answer, the Club argued that the Player's RFR should be dismissed and that it maintained

²⁴ Player's RFR, ¶¶ 68-71.

²⁵ Player's Answer, ¶¶ 2-11.

²⁶ Club's RFR, ¶ 32.

²⁷ Club's RFR, ¶¶ 12-22.

all the arguments and statements made in the [Continental Federation's] proceeding and its RFR.²⁸

6. Jurisdiction

45. The FIVB Tribunal must first examine whether it has jurisdiction to hear the present dispute. To do so, it must first look at the relevant provisions of the FIVB Sports Regulations.

46. Article 19.2.1 of the FIVB Sports Regulations reads as follows:

“The FIVB Tribunal is competent to decide financial disputes of an international dimension between clubs, players, FIVB-licensed agents and coaches from within the world of volleyball. The FIVB Tribunal’s jurisdiction extends also to financial disputes of an international dimension between a coach and a National Federation.”

47. Article 19.2.2 of the FIVB Sports Regulations stipulates that the FIVB Tribunal can only resolve disputes:

“19.2.2.1 arising between the natural and legal persons/entities mentioned in Article 19.2.1; and

19.2.2.2 decided previously by the FIVB / a Confederation or referred by the FIVB/a Confederation to the FIVB Tribunal”

48. Article 19.2.3 of the FIVB Sports Regulations grants the FIVB Tribunal the power to rule on its jurisdiction.

49. The FIVB Tribunal Judge finds that this dispute is a financial dispute of an international dimension under Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations because it involves a claim between a Player from [the Player's country] and a Club from [the Club's country] concerning the payment of the remuneration agreed in a contract. The dispute also complies with Article 19.2.2.2 of the FIVB Sports Regulations because it was decided previously by the [Continental Federation].

50. The FIVB Tribunal's jurisdiction is also undisputed by the parties. Therefore, the FIVB Tribunal has jurisdiction over the present dispute under the FIVB Sports Regulations.

²⁸ Club's Answer.

7. Admissibility

51. Article 18.2 of the FIVB Sports Regulations reads as follows:

“Within fourteen (14) days from notification of the decision under Article 18.1 above, any affected party may request that the case be reviewed by the FIVB Tribunal.”

52. The Decision was notified to the parties on [date]. Both parties submitted their RFR on [date], within the fourteen-day deadline. Thus, the parties’ RFR are admissible.

8. Applicable law

53. Article 20.9 of the FIVB Sports Regulations reads as follows:

“Unless otherwise agreed by the parties, the Tribunal shall apply general considerations of justice and fairness without reference to any particular national or international law (ex aequo et bono).”

54. The parties did not make any submissions as to the applicable law but relied on principles of *ex aequo et bono*.²⁹ Thus, based on the above and in the absence of an agreement to the contrary, the FIVB Tribunal Judge will decide the dispute *ex aequo et bono* (i.e., applying general considerations of justice and fairness without reference to any particular national or international law).

9. Findings

55. In the previous instance, the [Continental Federation] concluded that the Player was entitled to terminate the contractual relationship because the Club had failed to comply with its financial obligations. In making that ruling, the [Continental Federation] made the following determinations:

- a) The Sports Contract superseded the Agreement. Therefore, the Player was entitled to terminate the contractual relationship in case the Club delayed fully paying the Player’s

²⁹ Club’s RFR, ¶ 17. Player’s RFR, ¶¶ 54, 67.

remuneration for 30 days.³⁰

- b) The Club failed to fully pay the first and second instalments of the Sports Agreement within the 30-day grace period. The fact that the Player continued performing her contractual obligations did not constitute an implicit extension of the grace period.³¹
- c) The Club failed to fully pay the third instalment of the Sports Agreement within the 30-day grace period. The payment of the third instalment was not conditioned to the issuance of a correct invoice by the Player, and partial payments did not interrupt the grace period.³²

56. As a result of the above, the [Continental Federation] ruled, *inter alia*, that the Club had to pay to the Player EUR 69,444.44 net as compensation for breach of contract and EUR 130.15 net as late payment interest.³³

57. Both parties have requested the FIVB Tribunal to review the Decision.

58. The FIVB Tribunal Judge will start by analysing whether the Player terminated the contractual relationship with just cause and subsequently, if that were the case, the compensation to which she would be entitled.

9.1 Termination of the contracts

59. In the previous instance, the [Continental Federation] concluded that the Sports Contract superseded the Agreement. This has been uncontested by the parties. Therefore, the FIVB Tribunal Judge will not depart from the Decision in this regard.

60. Clause 7(1) of the Sports Contract reads as follows:

“For the performance of services hereunder the Player will receive from the Club remuneration in amount 113.888,89 euros increased by VAT (if it occurs) according to the schedule:

³⁰ Decision, p. 12.

³¹ Decision, p. 12.

³² Decision, p. 13.

³³ Decision, pp. 14-15.

- a) 17.592,59 € - paid till [date];
- b) 8.950,62 € – paid till [date];
- c) 8.950,62 € – paid till [date];
- d) 8.950,62 € – paid till [date];
- e) 21.296,30 € – paid till [date]
- f) 11.419,75 € – paid till [date];
- g) 11.419,75 € – paid till [date];
- h) 11.419,75 € – paid till [date];
- i) 13.888,89 € – paid till [date].”³⁴

61. In the Amendment, the parties modified clause 7(1) of the Sports Contract as follows:

“For the performance of services hereunder the Player will receive from the Club remuneration in amount 113.888,89 euros increased by VAT (if it occurs) according to the schedule:

- a) 17.592,59 € - paid till [date];
- b) 8.950,62 € – paid till [date];
- c) 8.950,62 € – paid till [date];
- d) 8.950,62 € – paid till [date];
- e) 21.296,30 € – paid till [date];
- f) 11.419,75 € – paid till [date];
- g) 11.419,75 € – paid till [date];
- h) 11.419,75 € – paid till [date];
- i) 13.888,89 € – paid till [date].”³⁵

62. Clause 12(1) of the Sports Contract sets forth:

“The Player shall be entitled to terminate the Contract with immediate effect in case of delay by the Club in performing whole or part the obligations under § 7 paragraph 1 for 30 days. The Player in the event of such a situation can suspend its performance without any prior notice and the Club will give to the player a letter of release to move to another club without anything to pay.”³⁶

63. Based on these provisions, the Player was entitled to terminate the contractual relationship with just cause in case (i) the Club totally or partially failed to comply with its payment obligation within

³⁴ Player’s RFR, Exhibit 3, and Club’s RFR, Exhibit 4.

³⁵ Player’s RFR, Exhibit 6, and Club’s RFR, Exhibit 7.

³⁶ Player’s RFR, Exhibit 3, and Club’s RFR, Exhibit 4.

the agreed terms and (ii) the Club's failure lasted 30 days. Therefore, the FIVB Tribunal Judge will analyse instalment by instalment to determine whether the Player was entitled to terminate the contractual relationship with just cause on [date].

a) First instalment

64. Clause 7(1)(a) of the Sports Contract sets forth that the first instalment was EUR 17,592.59 net and had to be paid by [date].
65. On [date], the Player issued Invoice No. 1/[date] for EUR 21,638.89 (EUR 17,592.59 + VAT). Based on the exchange rate of [date], the invoice states that EUR 21,638.89 equalled [Local Currency] 92,980.15.³⁷
66. On [date], the Club transferred [Local Currency] 92,980.15 to the Player as payment of Invoice No. 1/[year]³⁸
67. The Player argues that she was entitled to terminate the contractual relationship from [date] because the Club had only partially paid the first instalment. According to the Player, the Club paid EUR 21,124.65 on [date]. In support of her argument, the Player submitted a bank statement (Exhibit 13 of her RFR).³⁹
68. The Club contends that it paid the full amount of the invoice. In support of its argument, the Club also submitted a bank statement (Exhibit 2 of its submission dated [date]).
69. The bank statement submitted by the Club states that the latter transferred [Local Currency] 92,980.15 to the Player as payment of Invoice No. 1/[year]. The amount transferred by the Club coincides with the amount in [Local Currency] established by the Player in Invoice No. 1//[year].
70. The bank statement submitted by the Player contains a reference to an amount of EUR 21,124.65. However, it also contains a reference to [Local Currency] 92,980.15. As the payment made by the Club was in [Local Currency], it is unclear to the FIVB Tribunal Judge where that amount in EUR

³⁷ Player's RFR, Exhibit 4.

³⁸ Club's submission dated [date], Exhibit 2.

³⁹ Player's submission dated [date], ¶ 4. Player's RFR, ¶¶ 9, 41-42.

comes from. Considering (i) the fact that both bank statements coincide with the amount in [Local Currency], (ii) the amount transferred by the Club coincides with the amount in [Local Currency] of the Invoice No. 1/[year], (iii) the Player accepted to receive the payment corresponding to the first instalment in [Local Currency], and (iv) the Player's lack of explanations as to why the Club would have made a partial payment, the FIVB Tribunal Judge concludes that the Club paid the first instalment in due time.

b) Second instalment

71. Clause 7(1)(b) of the Sports Contract sets forth that the second instalment was EUR 8,950.62 net and had to be paid by [date].
72. On [date], the Player issued Invoice No. 2/[year] for EUR 11,009.26 (EUR 8,950.62 + VAT). Based on the exchange rate of [date], the invoice states that EUR 11,009.26 equalled [Local Currency] 47,306.79.⁴⁰
73. On [date], the Club transferred [Local Currency] 10,000 as payment of Invoice No. 2/[year].⁴¹
74. On [date], the Club transferred EUR 8,682 as payment of Invoice No. 2/[year].⁴²
75. The Player argues that she was entitled to terminate the contractual relationship from [date] because the Club did not fully pay the second instalment by [date].⁴³
76. The Club's position regarding the second instalment is contradictory. On the one hand, the Club contends that the Club settled the payment under Invoice No. 2/[year] on [date].⁴⁴ On the other hand, the Club acknowledged that it paid Invoice No. 2/[year] "in part in the grace period" and in full on [date].⁴⁵
77. The evidence in the record shows that the Club failed to pay the second instalment by [date], as

⁴⁰ Player's RFR, Exhibit 4.

⁴¹ Club's submission dated [date], Exhibit 3.

⁴² Club's submission dated [date], Exhibit 5.

⁴³ Player's RFR, ¶¶ 41-42.

⁴⁴ Club's submission dated [date], ¶¶ 10-11, 20. Club's RFR, ¶ 9.

⁴⁵ Club's submission dated [date], ¶¶ 17, 9.

it only paid a part of the second instalment on [date] and the remainder on [date].⁴⁶

78. According to clause 12 of the Sports Contract, the Player was entitled to terminate the contractual relationship in case of delay by the Club in performing whole or part of its payment obligations for 30 days. This means that had the Club wanted to avoid the termination of the contracts due to lack of payment, it should have fully paid the second instalment by [date]. The Club failed to do so because most of the second instalment was paid on [date]. Therefore, the Player was entitled to terminate the contracts from [date].

c) Third and fourth instalments

79. The FIVB Tribunal Judge has already concluded that the Player was entitled to terminate the contractual relationship on [date]. Therefore, the parties' dispute about the third and fourth instalments is moot.

9.2 Compensation

80. The [Continental Federation] ordered the Club to pay the Player EUR 69,444.44 net as compensation for breach of contract and EUR 130.15 net as late payment interest.
81. The Club did not contest the [Continental Federation's] decision on quantum. The Club requested the FIVB Tribunal to review the [Continental Federation's] decision as to the termination of the contractual relationship but did not argue that the compensation should be different in case the FIVB Tribunal Judge upheld the [Continental Federation's] decision regarding the termination of the contracts.
82. The FIVB Tribunal Judge notes that, on [date], the FIVB Tribunal Chairperson requested further information about the Player's impossibility to find a new club for the remainder of the [year]-[year] season. The Player answered the request and the Club commented on the Player's answer. Notwithstanding that the FIVB Tribunal Judge considers the Player's explanations credible and reasonable, it is a fact that the Club did not question the quantum of the compensation granted by the [Continental Federation]. Therefore, the FIVB Tribunal Judge considers the issue moot and

⁴⁶ Club's submission dated [date], Exhibits 3 and 5.

finds no reason to depart from the Decision.

83. The Player argues that the compensation and interest granted by the [Continental Federation] are insufficient. The Player requests the review of two issues:

a) The Player claims that the [Continental Federation] omitted to address her claim for overdue payables. The Player asserts that she requested EUR 20,304 as overdue payables and that the Club never objected to it. Therefore, she concludes that the Club must pay her that amount.⁴⁷

b) The Player claims that late payment interests shall be applied at a rate of 5% per annum.⁴⁸

84. In its Answer, the Club referred to its arguments and statements in the previous instance and its RFR.⁴⁹ The Club's RFR does not address any of the issues raised by the Player. In the previous instance:

a) The Club argued that it paid Invoice No. 1/[year] in full on [date], Invoice No. 2/[year] in full on [date] and [date], Invoice No. 3/[year] partially ([Local Currency] 10,000) on [date], and acknowledged not having paid Invoice No. 4/[year].⁵⁰

b) The Club did not address the Player's claim of interest.

85. Both issues will be addressed separately.

a) Overdue Payables

86. Despite acknowledging partial payments and lack of payments, the Club requested the [Continental Federation] and the FIVB Tribunal to dismiss the Player's claim.⁵¹ The Club has not provided any explanation as to why the Player would not be entitled to overdue payables.

87. In clause 7(1) of the Sports Contract, the Club agreed to pay the Player's remuneration. In clause

⁴⁷ Player's RFR, ¶¶ 59-63.

⁴⁸ Player's RFR, ¶¶ 68-71.

⁴⁹ Club's Answer.

⁵⁰ Club's submission dated [date], ¶ 9.

⁵¹ Club's submission dated [date], ¶ 39. Club's Answer. Club's RFR, ¶¶ 32.

12(2) of the Sports Contract the parties also agreed that, in case of termination of the contract by the Player, the Club would not be released from its obligation to pay all the amounts due thereunder. A contract validly entered into is binding upon the parties. Therefore, the Club must pay overdue payables to the Player.

88. The FIVB Tribunal Judge has already determined that the Club fully paid Invoice No. 1/[year] on [date] and Invoice No. 2/[year] on [date] and [date]. With regard to the third and fourth instalments:

a) Invoice No. 3/[date] was for EUR 11,009.26 (EUR 8,950.62 + VAT). The Club acknowledged having partially paid ([Local Currency] 10,000) that invoice on [date].⁵² This is consistent with the evidence on record.⁵³ However, the parties have not provided information on how many EUR those [Local Currency] are equivalent to. Therefore, the FIVB Tribunal Judge will take as a parameter the payments made in relation to Invoice No. 2/[year]. On [date] (i.e., the same date on which the Club paid [Local Currency] 10,000 to the Player), the Club made an identical partial payment ([Local Currency] 10,000) for Invoice No. 2/[year]. On [date], the Club paid EUR 8,682 to cancel Invoice No. 2/[year]. It is undisputed between the parties that the invoice was paid in full on [date]. Therefore, the FIVB Tribunal Judge assumes that the difference in EUR (EUR 11,009.26 - EUR 8,682 = EUR 2,327.26) is equal to [Local Currency] 10,000. Thus, the Club owes EUR 8,682 to the Player.

b) Invoice No. 4/[year] was for EUR 11,009.26 (EUR 8,950.62 + VAT). The Club acknowledged not having paid that invoice.⁵⁴ Therefore, the Club owes EUR 11,009.26 to the Player.

89. Consequently, the Club must pay EUR 19,691.26 (EUR 8,682 + EUR 11,009.26) to the Player as overdue payables.

b) Interest

90. The Club did not address the Player's claim of interest. It simply requested the [Continental

⁵² Club's submission dated [date], ¶ 9.

⁵³ Club's submission dated [date], Exhibit 4.

⁵⁴ Club's submission dated [date], ¶ 9.

Federation] and the FIVB Tribunal to dismiss the Player's claim.⁵⁵ The Club has not provided any explanation as to why the Player would not be entitled to interest.

91. The Sports Contract does not provide for any obligation by the Club to pay interest in case of a non-payment. However, it is a generally accepted principle embodied in most legal systems and reflected in the FIVB jurisprudence, that interest can be awarded even if the underlying agreement does not explicitly provide for a respective obligation.⁵⁶
92. If a party does not pay a sum of money when it falls due, the aggrieved party is entitled to interest upon that sum as of one day after the payment fell due until the date of full payment. The FIVB Tribunal regularly grants a 5% interest per annum.⁵⁷ Therefore, the interest rate claimed by the Player is fair and in line with FIVB Tribunal's jurisprudence.
93. Based on the above, the Club must pay late payment interest to the Player as follows:
 - a) First instalment: no interest is due because the FIVB Tribunal Judge has already determined that Invoice No. 1/[year] was paid within the agreed term.
 - b) Second instalment: the [Continental Federation] awarded EUR 36.36 from 1 to [date] (partial payment) and EUR 29.56 from [date] to [date] (payment of the balance).⁵⁸ This calculation of interest by the [Continental Federation] was uncontested by the parties. Therefore, the FIVB Tribunal Judge finds no reason to depart from it. Thus, the Club must pay EUR 65.85 to the Player as late payment interest.
 - c) Third instalment: the [Continental Federation] awarded EUR 60.43 from [date] to [date] (partial payment).⁵⁹ The [Continental Federation's] calculation of interest for this partial payment was uncontested by the parties. Therefore, the FIVB Tribunal Judge finds no reason to depart from it. However, the Player also claims interest for the remainder of the third instalment.⁶⁰ For the reasons mentioned in paragraphs 91 and 92, the FIVB Tribunal Judge

⁵⁵ Club's submission dated [date]2020, ¶ 39. Club's Answer. Club's RFR, ¶¶ 32.

⁵⁶ See, for example, FIVB decisions 2018-05 and 2018-06.

⁵⁷ See, for example, FIVB decisions 2018-05 and 2018-06.

⁵⁸ Decision, p. 15.

⁵⁹ Decision, p. 15.

⁶⁰ Player's RFR, ¶¶ 68-71.

agrees with the Player that the [Continental Federation] should have awarded her interest for the balance (EUR 8,682) from the day after the partial payment until the date of complete payment. Thus, the Club must pay EUR 60.43 to the Player plus a 5% interest per annum over EUR 8,682 from [date] until the date of complete payment.

d) Fourth instalment: for the reasons mentioned in paragraphs 91 and 92, the FIVB Tribunal Judge agrees with the Player that the [Continental Federation] should have awarded her interest for the fourth instalment (EUR 11,009.26) from the day after the due date until the date of complete payment. Thus, the Club must pay the Player a 5% interest per annum over EUR 11,009.26 from [date] until the date of complete payment.

94. The Player also claims interest for the termination indemnity (EUR 69,444.44) from [date] until the date of complete payment. However, the Player has not explained why she would be entitled to interest from [date] for the compensation granted by the [Continental Federation].

95. Clause 12(2) of the Sports Contract sets forth that the termination of the agreement did not release the Club from the obligation to pay all the amounts due thereunder, but it does not establish any date for making the payment of the compensation granted by the [Continental Federation].

96. Although the Player terminated the contractual relationship on [date], on that occasion the Player stated to the Club: *"We will revert back to you in short notice with respect to the termination indemnity to be paid by the Club to the Player."*⁶¹ There is no evidence in the record of the Player formally identifying and claiming the termination indemnity to the Club, except for the filing of her complaint before the [Continental Federation] on [date]. The Club could have paid the Player after being served of the complaint on [date], thus avoiding the dispute referred to it, but instead decided to reject the Player's complaint. The [Continental Federation] and FIVB Tribunal were not persuaded by the Club's defences; therefore, the FIVB Tribunal Judge deciding *ex aequo et bono* considers it fair that interest runs from [date]. Consequently, the Club must pay to the Player a 5% interest per annum over EUR 69,444.44 from [date] until the date of complete payment.

⁶¹ Player's RFR, Exhibit 8.

9.3 Costs in the previous instance

97. In its Decision, the [Continental Federation] ordered the Club to pay EUR 2,356.50 (CHF 2,500) to the Player as a contribution to her legal expenses and the handling fee.⁶²
98. The Club requested the FIVB Tribunal to amend the Decision and dismiss the Player's claim, including the [Continental Federation's] decision on costs.⁶³ The Club has not provided any explanation as to why the Player would not be entitled to a contribution to her legal costs and the handling fee. The FIVB Tribunal Judge finds the Decision on costs to be fair and reasonable because of the outcome of the previous instance proceedings. Therefore, the Decision is upheld in this regard.

10. Costs

99. Each party requested the FIVB Tribunal to order that the other party pays the costs and expenses of these proceedings.⁶⁴
100. The Club paid the handling fee corresponding to its RFR (CHF 2,000) on [date]. The Player paid the handling fee corresponding to her RFR (CHF 2,000) on [date].
101. On [date], the Club quantified its legal expenses at EUR 3,108.68 (including VAT) and submitted as evidence the invoice issued by its counsel. On [date], the Player quantified her legal expenses at EUR 7,001.92 (including VAT), representing 23:10 hours of counsel work at an hourly rate of EUR 250 (excluding VAT).
102. Article 20.11.2 of the FIVB Sports Regulations allows the prevailing party to be granted a contribution towards legal fees and expenses, including the applicable handling fee. When deciding on this contribution, the FIVB Tribunal Judge shall consider the outcome of the proceedings, as well as the conduct and financial resources of the parties. In the case at hand, the parties have not made any submissions concerning their financial resources and have behaved appropriately during the proceedings. Thus, the FIVB Tribunal Judge will decide upon

⁶² Decision, p. 15.

⁶³ Club's RFR, ¶ 32.

⁶⁴ Club's RFR, ¶ 32. Player's RFR, ¶¶ 78-83.

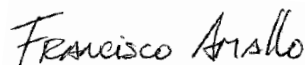
the distribution of the costs according to the outcome of the proceedings.

103. Considering that the Club's request for relief was dismissed and the Player's request for relief was granted almost in full, and that the Player has not submitted evidence of the invoice issued by her counsel and the payment thereof, the FIVB Tribunal Judge determines, in accordance with article 20.11.2 of the FIVB Sports Regulations, the reasonable contribution to be CHF 4,500. Thus, the Club shall pay the Player's legal costs in the amount of CHF 4,500 and bear its own legal costs as well as the handling fee.

For the reasons set forth above, the FIVB Tribunal Judge decides as follows:

1. The Request for Review filed by [the Club] is dismissed.
2. The Request for Review filed by [the Player] is partially upheld.
3. The decision rendered by the [Continental Federation] dated [date] is amended in its first two bullet points as follows:
 - [The Club] (621 + NF-[the Club's country]) shall pay [the Player] (621 + NF-[the Club's country]) the amount of EUR 69,444.44 excluded VAT net as compensation for the breach of the Agreement and EUR 19,691.26 net to the Player as overdue payables.
 - [The Club] (621 + NF-[the Club's country]) shall pay to [the Player] (621 + NF-[the Club's country]) the amount of EUR 126.28 as late payment interest, plus a 5% interest per annum over EUR 8,682 from [date] until the date of the complete payment, plus a 5% interest per annum over EUR 11,009.26 from [date] until the date of the complete payment, plus a 5% interest per annum over EUR 69,444.44 from [date] until the date of the complete payment.
4. The remainder of the decision rendered by the [Continental Federation] dated [date] is upheld.
5. [The Club] shall pay [the Player] CHF 4,500 as a contribution towards legal fees and expenses, including the handling fee. [The Club] shall bear its own legal costs and the handling fee.
6. Any other requests for relief are dismissed.

[Date of the decision] Lausanne, Switzerland



Francisco A. Amallo

NOTICE OF APPEALS

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with

- a) Article 20.12 of the FIVB Sports Regulations:

“Decisions of the FIVB Tribunal can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within twenty-one (21) days from the receipt of the decision. The CAS shall decide the appeal ex aequo et bono and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure.”

- b) 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:

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