The

FIVB TRIBUNAL

herewith issues the following

DECISION

2018-05

on the Requests for Review of CC163/2018 filed by

Chemik Police S.A.
("Claimant 1" and "Respondent 2")
represented by Mr. Michal Malicki,
Legal Counsel

and

Ms. Maret Lieneke GROTHUES
("Claimant 2" and "Respondent 1")
represented by Mr. Sébastien Ledure and Mr. Wouter Janssens,
Attorneys-at-law

1. The Parties

1. The Claimant 1 / Respondent 2 is a professional volleyball club with its legal seat in Poland (hereinafter the "Club").

2. The Claimant 2 / Respondent 1 is a professional female volleyball player from the Netherlands (hereinafter the "Player").

2. The FIVB Tribunal (FIVB Tribunal Judge)

3. Article 19.1.5 of the 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). All other cases shall be heard by the Chairperson and two (2) other members of the FIVB Tribunal, appointed by the Chairperson.* […]*"*

4. Because the amount in dispute in the present case does not exceed CHF 200,000.00, this Request for Review will be heard by the Chairperson as a single judge. Dr. Karsten Hofmann from Germany is the current Chairperson of the FIVB Tribunal and, thus, was appointed as the single judge in the present case (hereinafter the "FIVB Tribunal Judge").

3. Facts and Proceedings

3.1 Background Facts

5. On or before 20 June 2017, the Club and the Player signed an agreement regarding the 2017-2018 volleyball season dated 16 June 2017 (hereinafter the "Agreement"). According to clause 2 of the Agreement, the salary of EUR 160,000.00 net "*will be divided into 2 independent contracts: sport contract and imagine contract*". In addition, clause 11 of the Agreement provides as follows: "[…] *Sport Contract and Imagine Contract, regulating arrangements between the Parties will be signed until 30th of June 2017*".

6. On 21 June 2017, the Player was presented as new player on the Club's official social media.

7. Thereafter, the Player´s agent, Mr. Jakub Dolata (hereinafter the "Agent"), and the Club discussed drafts of the two contracts to be concluded in accordance with clause 11 of the Agreement. Such discussions lasted until autumn 2017 and included the calculation of amounts to be paid, including its tax implications (net or gross), as well as the Agent´s commission. However, the Parties failed to reach an agreement on the draft contracts.

8. In September 2017, the Player's International Transfer Certificate (ITC) was issued and the corresponding fees paid. Upon the request of the Club to the CEV, the Player was registered for the 2017-2018 CEV Volleyball Champions League - Women.

9. After playing the final of the European Championships with the Dutch national team on 1 October 2017, the Player arrived in Poland, started participating in the Club´s training sessions and friendly matches and played for the Club´s team in a match of the Polish Super Cup on 6 October 2017. However, the Club did not select the Player for further official matches.

10. As of 19 October 2017, the Club and the Player met for discussions and the Club sent a document to the Player containing, *inter alia*, the Club´s offer for payments of remuneration under a "sports contract" and for image rights. By email dated 27 October 2017, the Agent requested the Club to fulfil its contractual obligations, in particular, to pay outstanding remuneration by 30 October 2017. The Club did not pay any amounts but rather requested the Player to sign the two further contracts. However, she rejected to sign because of the differing amounts in those proposed contracts as compared to the Agreement.

11. On 10 November 2017, the Club lodged a petition before a Polish court (Regional Court of Szczecin) in order to oblige the Player to conclude the two further contracts.

12. On 16 November 2017, the Player´s counsels sent a formal notice to the Club to fulfil its contractual obligations under the Agreement and reserved the Player's right to terminate the Agreement and to transfer to another club. By email of the same day, the Player´s counsels informed the CEV about the situation. On 24 November 2017, the Player´s counsels sent again the communication dated 16 November 2017 to the Club.

13. On 29 November 2017, the Club answered the Player´s counsels by designating the Agreement not as an employment agreement but as a preliminary agreement.

14. On 1 December 2017, the Club and the Player´s counsels discussed the terms and conditions of a possible amicable solution. In this context, the Player´s counsels sent a draft agreement to the Club on 3 December 2017. During the next days, the Player´s counsels and the Club exchanged some communications, including a letter from the Club´s President dated 4 December 2017 but did not reach an agreement.

15. By registered letter dated 6 December 2017, the Player´s counsels informed the Club about the Player´s termination of the Agreement following the failure of the Club to comply with its obligations under the Agreement.

16. By letter dated 9 December 2017, the Player´s counsel informed CEV of the situation and requested to withdraw the Player´s registration for the 2017-2018 CEV Volleyball Champions League - Women concerning the Club. By email dated 11 December 2017, the CEV informed the Player´s counsels of the procedure to register the Player for another club.

17. On 18 December 2017, the Player filed a Complaint with the CEV and paid the requested handling fee of EUR 400.00 to the CEV.

18. On 1 January 2018, the Player and an Italian club signed an agreement in order for the Player to offer her services as volleyball player from 20 January to 20 June 2018 in exchange of EUR 55,000.00 net.

19. On 3 January 2018, the Club sent a letter to the FIVB, CEV and Polish Volleyball Federation, summarising the facts related to the present case, stating its opinion and requesting actions to be taken against the Player.

20. On 7 January 2018, the Player requested her release from the Club to be confirmed by the FIVB in order to be transferred to the Italian club and the FIVB signed the release of the Player´s ITC on behalf of the Club on 8 January 2018.

21. The proceedings before the CEV continued with submissions of the parties and the CEV issued its decision in the case “Financial Dispute - CC163/2018” on 16 October 2018 (hereinafter the “CEV Decision”). The CEV found, *inter alia*, that the Club should pay to the Player the total amount of EUR 121,699.72 for outstanding instalments, compensation for the termination of

the Agreement and reimbursement of legal costs and handling fee while the Player should pay to the Club the amount of EUR 77,254.72 for failing to act in good faith during the term of the Agreement.

3.2 The Proceedings before the FIVB Tribunal

22. By email dated 19 November 2018, the FIVB Tribunal Secretariat acknowledged receipt of both the Club´s Request for Review on 29 October 2018 (including a request to suspend the effect of the CEV Decision until a final decision of the FIVB Tribunal) and the Player's Request for Review on 30 October 2018. It also acknowledged receipt of the relevant applicable handling fees paid by both Parties. The FIVB Tribunal Secretariat forwarded each of the Requests for Review to the other party and invited them, in accordance with Article 20.5 of the FIVB Sports Regulations, to file an answer by no later than 10 December 2018 (hereinafter the "Answers"). Furthermore, the Parties were informed that the dispute would be heard by the Chairperson of the FIVB Tribunal, Dr. Karsten Hofmann, in accordance with Article 19.1.5 of the FIVB Sports Regulations.

23. By email dated 26 November 2018, the FIVB Tribunal Secretariat informed the parties on the decision of the FIVB Tribunal Judge to request the FIVB and/or CEV to stay the effect of the CEV Decision until the date of a decision on the merits by the FIVB Tribunal. Furthermore, in accordance with Article 19.4.2 of the FIVB Sports Regulations, the Club was invited to provide to the FIVB Tribunal an English certified translation of the Club´s attachment to its Request for Review, namely a decision of a Polish state court, by no later than 10 December 2018.

24. By email dated 18 December 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Player´s Answer and the Club's English translation of the Polish state court decision, both received on 10 December 2018. Moreover, the FIVB Tribunal Secretariat informed the Parties that the FIVB Tribunal Judge would determine in his sole discretion whether a further exchange of documents is necessary. Consequently, no additional submissions would be accepted unless otherwise prompted by the FIVB Tribunal.

25. On 7 January 2019, the FIVB Tribunal Secretariat received an unsolicited email of the Club´s counsel submitting "*the Club´s response to the evidence reported by the player*".

26. On 11 January 2019, the FIVB Tribunal Secretariat received an unsolicited email of the Player´s counsels referring to the Club´s submission of 7 January 2019 and requesting the FIVB Tribunal Judge to disregard the Club's submission while also requesting the FIVB to open disciplinary proceedings against the Club.

27. By email dated 18 January 2019, the FIVB Tribunal Secretariat acknowledged receipt of the Parties´ unsolicited submissions of 7 and 11 January 2019 and informed the Parties that the FIVB Tribunal Judge should render a decision on the admissibility of these submissions and how to proceed further in due course. In addition, the Parties were informed to refrain from providing any future submissions until requested to do so by the FIVB Tribunal Judge.

28. By email dated 11 March 2019, the FIVB Tribunal Judge found that the Player´s exhibits no. 39 and no. 40 as well as the Club´s submission dated 7 January 2019 were taken on file but the FIVB Tribunal would not open disciplinary proceedings against the Club. The Player was invited to submit comments on the Club´s latest submission by 1 April 2019 while the comments should be strictly limited to the Club´s submission dated 7 January 2019.

29. By email dated 2 April 2019, the FIVB Tribunal Secretariat acknowledged receipt of the Player´s submission on 1 April 2019. The Parties were informed that no additional submissions would be accepted unless otherwise prompted by the FIVB Tribunal Judge.

30. By email dated 18 April 2019, the FIVB Tribunal Secretariat requested the Parties to provide a detailed account of their costs as well as supporting documentation in relation thereto by 2 May 2019.

31. By email dated 3 May 2019, the FIVB Tribunal Secretariat acknowledged receipt of the Parties´ submissions on costs received on 1 and 2 May 2019.

32. By email dated 6 May 2019, the FIVB Tribunal Judge invited the Parties to submit comments on the opposing party´s account of costs by 16 May 2019. The Player submitted comments on 15 May 2019 while the FIVB Tribunal did not receive any comments from the Club.

4. The Parties' Submissions

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

4.1 The Claimant 1's / Respondent 2's Position (Club)

4.1.1 The Club´s submissions in the present proceedings

34. The CEV Decision violates the "principle *lis alibi pendens*" because the CEV was not competent to hear and adjudicate the case. It is the Polish Regional Court in Szczecin which has exclusive jurisdiction, and the present case has already become pending before it. This court confirmed its jurisdiction and that there is no provision whatsoever under which this case could be referred to the exclusive jurisdiction of an authority other than a common court. Moreover, according to EU law, when a claim is brought before an EU member state´s court, each court of another EU member state will suspend the later proceedings. In addition, the Parties did not agree on any arbitration clause, in particular, the Club did not at any time voluntarily agree to an "arbitration court (CEV)". Thus, the CEV Decision violates the "principle *pacta sunt servanda*" as well as Polish law and EU law.

35. The present dispute between the Player and the Club is no financial dispute in a contractual or legal meaning but rather concerns the "*non-performance of the preliminary agreement and consequently failure to conclude two final agreements: the sporting contract and image contract*". The term for conclusion of those further contracts as fixed in the Agreement (until 30 June 2017) "*is not an ultimate deadline but only a date of performance, the expiration of which does not result in the expiry of the obligation to conclude the promised agreements*".

36. The Agreement was just a preliminary agreement, which expired on 30 June 2017. Thus, there was no possibility to terminate the Agreement in December 2017. Moreover, the Agreement was only a legal instrument leading to the conclusion of promised (final) contracts, namely a

sports contract and an image rights contract. There is no "remuneration obligation" under a preliminary contract like the Agreement, which was a "*preparatory contract and should be distinguished from a definitive agreement that implements the economic goal intended by the parties*". The Agreement was neither a sporting contract nor an image rights contract and does not contain the necessary issues for sports contracts as set out in the Professional Volleyball Competition Rules required by the Polish Volleyball Federation (PZPS) and the Professional Volleyball League SA (PLPS SA).

37. It was the Player and the Agent, who refused to conclude the promised contracts. The Club did not undertake any action, which could be understood as refraining from concluding the promised agreements. However, the Agent unlawfully demanded from the Club remuneration in excess to the amounts determined for the Player and the Agent. He demanded that the Club should pay an extra amount of EUR 30,000.00 "*as a tax equal to 20% and 1%*", despite the fact that such taxes do not occur in Poland. This Agent´s action caused the Player to refuse signing the "*final contracts (the sporting contract and image contract)*".

38. The CEV Decision violates the "principles of equity" because it charges legal costs solely to the Club, whereas the CEV Decision itself states that both Parties (partially) prevailed and, therefore, should be charged for legal costs equally.

39. The CEV Decision violates the "principle of free evaluation of evidence" because it gives "*credence only to pieces of evidence*" submitted by the Player while ignoring the evidence submitted by the Club, "*without giving a reason for this and despite the fact that there was no basis for such a position*".

40. Finally, the Player´s filing of exhibits no. 39 and no. 40 with her Answer on 10 December 2018 was late because these documents already existed during the first instance proceedings before the CEV. Moreover, the content of these documents is wrong because the Club did not agree to the taxes mentioned by the Player in the Answer.

4.1.2 The Club´s Request for Relief

41. The Club requested in its Request for Review dated 29 October 2018 – and in the meantime did not amend the request for relief – as follows:

*"**III.** I apply for:*

1) reversal of the appealed judgement in whole/part indicted in point I above due to the judgement's being in serious breach of the Polish and EU provisions of law and contradiction to the principles of logical reasoning;

2) suspension of the enforcement of the Financial Dispute CEV CC 163/2018 in relation to the Club KPS Chemik Police SA until the issuance of the decision by the FIVB Tribunal due to the gross unlawfulness of the decision of the CEV;

3) ordering that the Claimant pays to the Club the legal costs for both instances (including a CHF 2000 return)."

42. By email dated 1 May 2019, upon request by the FIVB Tribunal to provide a detailed account of the respective costs, the Club submitted the following statements:

"In reply to the email, I kindly inform you that the Club upholds its previously claimed requests for reimbursement and compensation.

With respect to the present case, as a result of the unlawful action of the Player and her Agent, Mr. Jakub Dolata, the Club requests reimbursement of EUR 14.000 (fourteen thousands) of the court fees incurred in the proceedings before the Polish District Court in Szczecin and initiated on account of the Player being at fault, EUR 12.000 (twelve thousand) as reimbursement of the costs of the apartment and the car and EUR 160.000 (one hundred and sixty thousand) as compensation for unlawful failure to conclude two promised agreements, namely the sports contract and the image rights contract. The Club suffered image losses valued at EUR 160.000 (one hundred and sixty thousand).

I kindly ask you to pay 20,092 (twenty thousand ninety-two) Euro [10,046 (ten thousand forty six) Euro for the first CEV instance and 10,046 (ten thousand forty six) euro for the second instance before the FIVB Tribunal] in accordance with the JURY OF JUSTICE REGULATION of 22 October 2015 on fees for legal advisors (IU Journal of Laws of 2018 item 265.) and 896 (eight hundred ninety six) euro administrative costs (invoices for inspection) and 2,000 (two thousand) CHF appeal fees."

4.2 The Claimant 2´s / Respondent 1's Position (Player)

4.2.1 The Player´s submissions in the present procedure

43. The CEV was competent to handle the dispute in the first instance: the principle of *lis alibi pendens* does not apply.

44. The validity of the Agreement is "*confirmed by the fact that the Parties had started its execution*": The Player was presented to the fans on the Club's social media; the Club paid the fees to her international transfer and registered the Player to the CEV Volleyball Champions League. Additionally, at the beginning of October 2017, after her participation in the final of the CEV Volleyball European Championships, the Player arrived in Poland, joined the training sessions and friendly matches of the Club and was provided by the Club with a flat and a car.

45. The Player fulfilled all her obligations towards the Club while the Club breached the Agreement: the Club failed to pay the Player the salary instalments due on 15 October and 15 November 2018 of EUR 20,000.00 net each; the Club did not select the Player for official first team matches, except for one game on 6 October 2017; the Club effectively did not offer the Player the agreed remuneration of EUR 160,000.00 net but only gross and the Club rejected the Player´s attempt to find a *bona fide* amicable solution.

46. The Player undertook numerous actions in order to safeguard the contractual stability and ensure the execution of the Agreement but the Club refused to match the financial terms initially agreed. As a result, the Player refused the subsequent agreements proposed by the Club. The Player has always acted *bona fide*, and the compensation of EUR 77,254.72 granted by the CEV to the Club is completely disproportionate, which is not linked to any damages effectively suffered by Respondent.

47. Because of the Club´s failure to execute the Agreement, the Player terminated it on 6 December 2017. The "*sixty (60) days delay*" for termination as stipulated in clause 2 of the Agreement became obsolete after the Club President´s statement of 4 December 2017, i. e. not to pay the October and November 2017 salary to the Player.

48. In the end, the following elements of the CEV Decision shall be confirmed:

- the CEV was competent to handle the dispute in first instance;
- the CEV rightfully dismissed the Club´s procedural objection based upon the principle of *lis pendens*;

- the Agreement signed by the Player and the Club is valid and binding;
- the Player is entitled to overdue payables from the Club up to 6 December 2018 plus late payment interests at 5% per year;
- the Player unilaterally terminated the Agreement for just cause (overdue salaries) and, consequently, is entitled to a termination indemnity from Respondent;
- the CEV rightfully instructed the Club to provide the Player with a tax certificate; and
- the CEV rightfully dismissed the Club´s claim for legal fees (EUR 11,000.00), administrative expenses (EUR 5,000.00), car and flat expenses (EUR 12,000.00) and indemnity with respect to further contracts (EUR 160,000.00).

49. However, the following elements of the CEV Decision shall be reviewed and amended:

- the Player is entitled to an amount of EUR 54,000.00 net as overdue salaries instead of EUR 39,245.28 net;
- the Player is entitled to an amount of EUR 62,500.00 as termination indemnity instead of EUR 77,254.72;
- the Club is not entitled to any compensation for the Player allegedly failing to act *bona fide* during the term of the Agreement, *quod non*; and
- late payment interests also apply to the termination indemnity instead of only to overdue salaries.

4.2.2 The Player´s Request for Relief

50. The Player concluded in her submission dated 30 October 2018 as follows:

> *"Claimant requests a decision to be rendered per which:*
>
> - *the . Claimant rec*[sic] *d.d. October 16, 2018 in case CC163/2018 shall be confirmed with respect the rightful termination of the Agreement for just cause by Claimant; and*
> - *Respondent, consequently, shall:*
>   - *pay Claimant an aggregate amount of fifty-four thousand Euro (€ 54.000) net in principal as overdue payables;*

- *pay Claimant an amount of sixty-two thousand five hundred Euro (€ 62.500) net in principal as termination indemnity;*
- *provide Claimant with a tax certificate evidencing the net nature of all payments under the Agreement, the CEV's decision and/or the FIVB Tribunal's decision;*
- *pay Claimant late payment interests at a rate of 5 % per annum on the principal amount of twenty thousand Euro (€ 20.000) as from October 15, 2017 until the day of complete payment;*
- *pay Claimant late payment interests at a rate of 5 % per annum on the principal amount of twenty thousand Euro (€ 20.000) as from November 15, 2017 until the day of complete payment;*
- *pay Claimant late payment interests at a rate of 5 % per annum on the principal amount of fourteen thousand Euro (€ 14.000) as from December 6, 2017 until the day of complete payment;*
- *pay Claimant late payment interests at a rate of 5 % per annum on the principal amount of sixty-two thousand five hundred Euro (€ 62.500) as from December 6, 2017 until the day of complete payment;*
- *reimburse Claimant all costs of the Complaint and the Request for Review, being the amounts of four hundred Euro (€ 400) and three thousand Swiss Francs (CHF 3.000) as CEV respectively FIVB Tribunal Handling Fee; and*
- *indemnify Claimant for all incurred legal expenses (including attorney's fees) up to an amount to be determined during the FIVB Tribunal proceedings, and at the moment of the filing of the present Complaint amounting to eighteen thousand five hundred Euro (€ 18.500) exclusive VAT, being twenty-two thousand thee hundred and eighty-five Euro (€ 22.385) inclusive VAT."*

51. In her submission dated 10 December 2018, the Player amended her claim concerning indemnification of legal expenses and stated that her current "*legal expenses amount to twenty-one thousand two hundred and fifty Euro (€ 21.250) exclusive VAT, being twenty-five thousand seven hundred and twelve Euro (€ 25.712) inclusive VAT*".

52. By letter dated 2 May 2019, the Player submitted the following request concerning costs:

"Considering all of the above, we respectfully request the FIVB Tribunal to include the following amounts for the Club to pay to the Player in the decision to be rendered:

- *thirty-two thousand four hundred twenty-eight Euro (€ 32.428);*
- *four hundred Euro (€ 400); and*
- *three thousand Swiss francs (CHF 3.000)."*

5. Jurisdiction

5.1 The FIVB Tribunal´s competence

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

54. 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."*

55. 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"*

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

57. Thus, in order for the FIVB Tribunal to have jurisdiction over the dispute, the FIVB Tribunal Judge shall examine whether the conditions of both Articles 19.2.1 and 19.2.2 of the FIVB Sports Regulations are satisfied.

58. The present dispute involves claims submitted by a club from Poland and a Player from the Netherlands against each other concerning compensation allegedly owed related to actions of the respective Parties in accordance with the provision of services of player to perform for a club. The FIVB Tribunal Judge finds that this dispute clearly qualifies as a financial dispute of an international dimension between a player and a club in accordance with Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations. The claim filed by the Player against the Club with the CEV in the first instance was for payment of certain amounts related to the Agreement. No matter what the legal nature of the Agreement is (preliminary agreement or not); it is the basis for a claim for payment, and, therefore, a financial dispute.

59. Furthermore, the two Requests for Reviews at hand are made against the CEV Decision, which was rendered by the CEV Legal Chamber. Therefore, the present Request for Reviews (of both parties) stem from a decision of a Confederation and the FIVB Tribunal Judge holds that Article 19.2.2.2 of the FIVB Sports Regulations is also satisfied.

60. Based on the above, the conditions of Articles 19.2.1 and 19.2.2 of the FIVB Sports Regulations are satisfied.

61. Additionally, the two Requests for Review were filed within the 14-day period described in Article 18.2 of the FIVB Sports Regulations, specifically the Club´s Request for Review on 29 October 2018 and the Player's Request for Review on 30 October 2018.

62. Therefore, the FIVB Tribunal has jurisdiction over the present Requests for Review pursuant to the Regulations.

5.2 The CEV´s competence in the first instance

63. In the first instance proceedings and in its Request for Review, the Club objected to the CEV's competence to hear and decide the present dispute in the first instance because it contends that the Polish Regional Court in Szczecin has exclusive jurisdiction over any claims between the Parties.

64. In this context, the Club referred to a decision of the Regional Court in Szczecin dated 24 July 2018 and to clause 2 of the Agreement, which states in the relevant part as follows:

> *"- In case of any dispute between the parties relating to this agreement, the courts of lawful jurisdiction are the Civil courts in Poland, the Polish Volleyball League, Norceca, FIVB and the International Volleyball Tribunal."*

65. If an issue arises where there are more than one forum that may be competent to address the same financial dispute, the FIVB needs to look at the specific language of the dispute resolution provision to see if that contract establishes an exclusive choice of forum. If the contract establishes an exclusive choice of forum, the FIVB will have to adhere to that and respect the will of the parties. Otherwise, the FIVB will determine competence based on the forum in which the dispute was first filed. The arguments set out in Section 4.1 of the CEV Decision reflect the jurisprudence of the FIVB Tribunal, particularly, FIVB 2018-04 (decision dated 30 October 2018) and FIVB 2018-03 (decision dated 20 September 2018) and FIVB 2015-07 (decision dated 12 April 2016).

66. Concerning the present case, the FIVB Tribunal Judge holds that clause 2 of the Agreement neither provides for exclusive jurisdiction before the competent courts in Poland nor an explicit exclusion of FIVB jurisdiction. Rather, clause 2 of the Agreement instead grants different fora to file a claim under the Agreement, including "FIVB" as one option of "*the courts of lawful jurisdiction*". According to Article 18.1 lit. h of the FIVB Sports Regulations, the FIVB has the power to delegate the competence to a Confederation (here: to the CEV) to decide financial disputes between players and clubs in the first instance. Thus, the competence provided to the FIVB includes the respective competence of the CEV.

67. Moreover, the present dispute involves parties subject to the regulatory framework enacted and implemented by the FIVB, including the FIVB Sports Regulations. The Confederations, the National Federations and their members acknowledge and agree to abide by the FIVB Sports Regulations. None of the Parties has submitted any arguments to the contrary; therefore, the FIVB Tribunal Judge finds that all Parties agreed to comply with the FIVB Sports Regulations by competing in official competitions (the Club and the Player) organised by the FIVB's member federations. Moreover, because the FIVB Tribunal is not an arbitral tribunal but a judicial body inside the FIVB (the same applies to the "CEV Legal Chamber" in the first instance instance, which issued the CEV Decision under review), a regulatory basis is sufficient to justify jurisdiction of the FIVB and CEV in general so long as the Parties do not specifically exclude it, which is not the case here as decided above, and, thus, no "arbitration competence clause" is needed for proceedings before the FIVB Tribunal and CEV as mentioned in the Club´s Request for Review to the contrary.

68. The Club argued that it had filed a claim with the Polish Regional Court in Szczecin first and, therefore, any further claim before CEV should be considered a violation of the principle "*lis alibi pendens*". Under general principles of law, the principle of *lis alibi pendens* allows a decision-making body to refuse to exercise jurisdiction over a claim if there is a parallel litigation before another jurisdiction. However, such principle is only applicable if the subject matter of the claim, i.e. its facts and the requests made to the parallel court, are the same. The FIVB Tribunal Judge finds that the subject matter of the proceedings before the Polish Regional Court in Szczecin, and the one before the CEV in the first instance – now under review by the FIVB Tribunal – are different. The CEV´s correct finding in section 4.2 of the CEV Decision is supported by the "Order" of the "Regional Court in Szczecin I Civil Division" dated 24 July 2018: according to this decision, the Club requested "*an injunctive relief that would prohibit the Respondent* [Player] *to conclude any sports contracts and image rights contracts with any entities other than the Claimant* [Club] *and to desist, for the duration of the proceedings, from concluding such contracts with any other entities but the Claimant* [Club]" but this motion for interim relief was dismissed (*see* page 18 of the English translation provided by the Club).

69. Therefore, the FIVB Tribunal Judge is satisfied that CEV properly determined that it had jurisdiction in the first instance. Moreover, the FIVB Tribunal Judge emphasises that the Club did not contest the jurisdiction of the FIVB Tribunal concerning the present Requests for Review.

6. Procedural Issues

6.1 The Club´s request for stay

70. In its Request for Review, the Club requested to suspend the effect of the decision under appeal. Upon review of the Parties´ respective submissions, on 26 November 2018, the FIVB Tribunal Judge complied with the Club´s request, in particular, for the following reasons:

a) First of all, the FIVB Tribunal Judge had taken note of exceptional circumstances of the present case: The CEV Decision orders both, the Club and the Player, to pay specified amounts to the other party. Both the Club and the Player filed a Request for Review. This situation is quite exceptional and needs to be taken into consideration when deciding on the possibility of the execution of the CEV Decision while under review.

b) The FIVB Tribunal Judge had taken into consideration consistent CAS jurisprudence which has held that a decision of a financial nature issued by a private Swiss association is not enforceable under appeal. In the present case, the decision under review stems from the CEV, which is headquartered in Luxembourg instead of the FIVB with its headquarters in Switzerland. However, given the fact that first instance decisions for review by the FIVB Tribunal can be rendered by the FIVB itself (see Articles 18.1 and 19.2.2.2 of the FIVB Sports Regulations 2018), the FIVB Tribunal Judge recognized the reasonable effect of a similar approach for any decisions under review.

c) Finally, the FIVB Tribunal Judge found that a stay of the effect of the CEV Decision would not cause irreparable harm to the Player, given that she had been under contract with other clubs from the beginning of the 2018 calendar year.

6.2 The Parties´ unsolicited and/or late submissions

71. In its unsolicited submission dated 7 January 2019, the Club claimed that the Player´s exhibits no. 39 and 40 to her Answer were "*late and can not be the basis for any decision*" because this evidence already existed during the first instance proceedings and could have been filed already then.

72. In her unsolicited submission dated 11 January 2019, the Player requested the FIVB Tribunal to "*disregard the Club's submission*" dated 7 January 2019 because it did not comply with the instructions given by the FIVB Tribunal in its email dated 18 December 2018, i.e. that "*additional submissions were no longer accepted*".

73. The FIVB Tribunal Judge rejected the Club´s procedural request to disregard the Player's exhibits no. 39 and 40 and also rejected the Player´s procedural request to disregard the Club´s submission dated 7 January 2019 for the following reasons:

a) The Player filed her Answer within the time limit set by the FIVB Tribunal, i.e. by 10 December 2018. The Answer referred, *inter alia*, to the Club's statements on page 7 and 8 of its Request for Review, namely statements concerning tax issues including specific tax rates ("*20% and 1%*") and amounts ("*EUR 30,000*"). The Answer was the Player's first reply to that submissions filed by the Club in the present proceedings before the FIVB Tribunal.

The FIVB Sports Regulations do not restrict parties to submit only such evidence already submitted in the first instance proceedings. On the contrary, the relevant provisions regarding the content of a Request for Review and an Answer stipulate that all available written evidence on which the respective party intends to rely shall be contained (Articles 20.3.2 lit. e and 20.5 lit. c of the FIVB Sports Regulations). Consequently, the FIVB Tribunal Judge found that the Player's exhibits no. 39 and 40 were in line with the applicable rules.

b) The Club's submission dated 7 January 2019 was filed after the expiration of the time limit to submit an answer, i.e. by 10 December 2018. The Club did not provide any explanation why it was not able to file a submission on the merits on time but only about one month later. Therefore, the FIVB Tribunal Judge did not consider the Club's submission dated 7 January 2019 to be its answer on the Player's Request for Review dated 30 October 2018. However, the FIVB Tribunal Judge considered the Club's submission dated 7 January 2019 to be its reply to the Player's Answer. In this context, one has to take into consideration that the present proceeding is based on the automatic consolidation of two separate Requests for Review in relation to the same decision (see Article 20.3.4 of the FIVB Sports Regulations). Consequently, the FIVB Tribunal has to take into account the equal treatment of the parties and their rights to be heard (see Article 20.1.2 of the FIVB Sports Regulations) in relation to both Requests for Reviews. The Player submitted evidence in her Answer, namely exhibits no. 36 – 40, which the Club had no chance to response at that time. Thus, the FIVB Tribunal Judge in any case would have invited the Club to provide a reply to the Player's Answer within a reasonable time limit. Taking into consideration the holiday season at the end of 2018 and the beginning of 2019, the time limit set by the FIVB Tribunal for the Club to submit a reply would have been at least not earlier than 7 January 2019. Thus, the Club's unsolicited submission dated 7 January 2019 was taken on file as its reply to the Player's Answer.

6.3 The Player´s request to open disciplinary proceedings against the Club

74. In its unsolicited submission dated 11 January 2019, the Player claimed a breach of Article 6.8.4 of the FIVB Sports Regulations by the Club in relation to filing a claim before a Polish civil court and requested "*the FIVB to open disciplinary proceedings against the Club*".

75. The FIVB Tribunal Judge informed the Parties that the FIVB Tribunal would not deal with the Player´s request for the following reasons: The FIVB Tribunal is competent to decide financial

disputes in accordance with Article 19.2.1 of the FIVB Sports Regulations but not to impose any sanctions concerning transfers of players in accordance with Article 6 of the FIVB Sports Regulations. In addition, the Player´s request for disciplinary proceedings was addressed to the FIVB ("*we request the FIVB to open disciplinary proceedings*") but not to the FIVB Tribunal.

7. Discussion

7.1 Applicable Law

76. Under the heading "Law Applicable to the Merits", 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)."*

77. The Club made some references to Polish law and EU law but did not specifically contest the applicability of *ex aequo et bono* to the present dispute. Most of those references concern the Club´s arguments on "*lis alibi pendens*", which have already been addressed.

78. However, the FIVB Tribunal Judge has not been provided with an agreement of the Parties to apply an alternative law as *ex aequo et bono*. Because Article 20.9 of the FIVB Sports Regulations requires such an agreement in order to not apply *ex aequo et bono* ("*Unless otherwise agreed by the parties* […]"), absent such agreement, the FIVB Tribunal Judge will decide the issues submitted in this proceeding *ex aequo et bono*.

79. In substance, it is generally considered that an arbitrator/judge deciding *ex aequo et bono* receives "*a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case*" (POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626).

80. In light of the foregoing matters, the FIVB Tribunal Judge decides as follows:

7.2 Findings

81. In the essence, the Club requests the FIVB Tribunal to annul the CEV Decision to find that it does not owe any amounts to the Player; while, the Player requests the FIVB Tribunal to amend the CEV Decision regarding the amount to be paid to the Player and to find that the Club is not entitled to any compensation from the Player.

82. The FIVB Tribunal Judge has reviewed the CEV Decision by considering the Parties´ submissions and the evidence before him and makes the following findings:

7.2.1 The validity and binding effect of the Agreement

83. The Club argues that the Agreement was just a preliminary agreement, which expired on 30 June 2017, and was only a legal instrument leading to the conclusion of promised (final) contracts, namely a sports contract and an image rights contract. Therefore, no "remuneration obligation" applied under the Agreement.

84. The Player argues that the validity of the Agreement is "*confirmed by the fact that the Parties had started its execution*", e. g. that the Club paid the fees to her international transfer and registered the Player to the CEV Volleyball Champions League.

85. Section 4.4 of the CEV Decision states that in order to consider an agreement valid and binding "*all essential terms shall be mentioned and the parties shall express a mutual intent with regard to them*". The CEV concluded that the Agreement "*includes such essential elements: name of the parties, their main rights and obligations, the duration of their relationship and the remuneration the Player is entitled to*". Moreover, the CEV analysed in detail the Parties´ mutual intent for a valid and binding contract (wording and content of the Agreement) being supported by the Parties´ behaviour (e. g. registration for the CEV Volleyball Champions League and supplying a flat and a car).

86. The FIVB Tribunal Judge fully confirms such findings in the CEV Decision. The Agreement contains all *essentialia negotii* for a contract between a player and a club. In addition to the issues listed in the CEV Decision, the Agreement also contains the Parties´ consent on "flight tickets" (clause 4 of the Agreement), "flat accommodation" (clause 5), "rent a car" (clause 6), "transfer fee"

(clause 7), "medical insurance" (clause 8), "work permit" (clause 10) and "agent fees" (clause 12). Even the remuneration for the Player is sufficiently stipulated to consider the Agreement a valid and binding contract: the Parties agreed on a specific amount (EUR 160,000.00 net of any taxes) and payment details (eight equal and consecutive monthly instalments to be paid from 15 October 2017 to 15 May 2018) as well as the conditions of the "sports contract" (PLN 27,000.00 gross) and the remaining payment ("*rest of remuneration and bonuses will be contained in image contract, enlarged by due tax VAT*"); finally, they also agreed on the payment on bonuses in detail. Thus, the additional provision in clause 11 of the Agreement for "final agreements" to be signed by 30 June 2017 was just an obligation to comply with the requirements set by the national Volleyball organisations ("sports contract") and relevant for the execution of the payments agreed but not a condition precedent for the validity and binding effect of the Agreement.

87. Consequently, the FIVB Tribunal Judge finds – in line with the CEV Decision – that the Agreement was valid and binding for both, the Player and the Club.

7.2.2 Breach of the Agreement

88. It is undisputed between the Parties that the Club did not pay the Player any of the amounts agreed under the Agreement. According to the above findings, the Agreement was valid and binding on the Parties. Thus, the Club was obliged to pay the amount of EUR 20,000.00 net by 15 October 2017 and further EUR 20,000.00 net by 15 November 2017 (clause 2 of the Agreement) to the Player. The Club failed to pay these amounts, and the Club´s President, Mr. Pawel Frankowski, made it very clear in his email dated 4 December 2017 (see the Player´s exhibit 16) that the Club would maintain its refusal to pay ("*The Club will not pay the competitor for October and November 2017, because the competitor did not provide services for the benefit of the Club in any league match, because she could not be entered for the games as a result of the refusal to conclude a sports contract.*"). Even if the Player was not permitted to play in league matches because of a failure to sign a "sports contract", she had already been registered for the CEV Volleyball Champions League and was permitted to play in Super Cup matches as explained by the Club´s President in his letter dated 29 November 2017 (see the Player´s exhibit 14). Taking into consideration that one of the main obligations of a club – if not the main one – is the payment of a player (see also section 4.4. lit. k. of the CEV Decision), failure to pay any salary to

the Player was not justified by the failure to sign any of the subsequent contracts provided in clause 11 of the Agreement.

89. Consequently, the FIVB Tribunal Judge finds that the Club breached the Agreement. The consequences of such breach will be analysed separately later.

90. It is also undisputed between the Parties that the Player refused to sign the "sports contract" as stipulated in clause 11 of the Agreement. Both parties submitted arguments on this issue. The Club, *inter alia*, submitted that the Agent´s demand for alleged extra payments was an unlawful action "*and caused the Player to refuse to enter into final contracts (the sporting contract and image contract)*" (see page 8 of the Club´s Request for Review on 29 October 2018). The Player, *inter alia*, submitted that she was left in complete uncertainty concerning the tax issue and, therefore, "*had no choice but to protect her interests and refuse to sign the Further Contracts, at the sole responsibility of the Club*." (see para. 30 of the Player´s submission dated 10 December 2018). The FIVB Tribunal Judge has taken note of the Parties´ different views on the tax rates (applicability of the 20% and 1% taxes), which are relevant for calculation of the gross amount in relation to the amount of EUR 160,000.00 net as agreed under the Agreement. However, the FIVB Tribunal Judge understands that this issue relates only to the content of the image rights contract but does not concern the "sports contract", for which the respective gross amount had already been agreed in clause 2 of the Agreement (PLN 27,000.00 gross). There are no sufficient reasons on file which would justify the refusal of signing the "sports contract", which is independent from any image rights contract.

91. Consequently, the FIVB Tribunal Judge finds that also the Player breached the Agreement. Again, the consequences of such breach will be analysed separately later.

92. Moreover, both Parties argue that the other party breached the Agreement by not consenting to sign an image rights contract ("imagine contract"). Again, the FIVB Tribunal Judge has taken note of the Parties´ different views on the tax rates to be applied (or not). However, according to the Parties´ Requests for Relief, the FIVB Tribunal is not requested to decide on the applicability of any tax rates and/or the correct gross amounts to be paid by the Club to the Player, if any.

93. Consequently, and in view of the breaches by both parties already mentioned above, the FIVB Tribunal Judge finds it irrelevant for the present dispute before him whether the Parties also breached the Agreement by not consenting to sign an image rights contract ("imagine contract").

7.2.3 Consequences of the Club´s breach of the Agreement

94. As mentioned above, the Club breached the Agreement by failing to pay any salary to the Player agreed under the Agreement.

95. Clause 2 of the Agreement contains "Legal notes" and the first one reads as follows: *"- In case of delay in payment of the monthly salary for more than 60 days the Player can suspend its performance without any prior formal notice and the Club will give to the player a letter of release to move freely to another club without anything to pay. In any case, whether tolerance can never be considered as tacit renunciation by the player and in case of termination of the contract, the Club will pay to the Player the amount of the contract not yet paid."* Although this wording is not totally clear in favour of a termination right for the Player, the FIVB Tribunal Judge confirms the finding in the CEV Decision that the Player´s termination notice of 6 December 2017 unilaterally terminated the Agreement with cause.

96. The "Legal notes" provide the Player´s right to suspend her performance if payment of the salary agreed under the Agreement is more than 60 days late but suspending the own performance is *per se* not the same as a right for termination of a contract. However, in the present case, the "Legal notes" contain a second consequence if salary payments are more than 60 days late, namely "*the Club will give to the player a letter of release to move freely to another club without anything to pay"* and later on the "Legal notes" use the term "*in case of termination of the contract*". This can only be understood as a termination right by the Player. The FIVB Tribunal Judge has taken note that the first salary instalment under clause 2 of the Agreement was due by 15 October 2017 but the Player´s termination notice was issued on 6 December 2017, i.e. only 52 days after the due date. However, on 4 December 2017, the Club´s President made the unambiguous statement in an email to the Player´s counsel that the Club "*will not pay the competitor* [Player] *for October and November 2017*" (see the Player´s exhibit 16). Taking into consideration that this statement was made after the Parties´ detailed efforts to find an amicable solution, it was legitimate for the Player to take this statement very seriously and

understand that the Club would not honour its obligation before the sixty day period expired. Thus, the Player no longer had an obligation to wait for further eight days until terminating the Agreement. To do so, would impose an undue, overly formalistic burden on the Player given the Club's clear statement of intent.

97. Therefore, the Player´s notice of 6 December 2017 terminated the Agreement with just cause because of the non-payment of any salary to the Player. According to the "Legal notes" in clause 2 of the Agreement, in principle, the Club was obliged to pay the Player "*the amount of the contract not yet paid*", i. e. the amount of EUR 160,000.00 net of any taxes. In view of the above wording, the FIVB Tribunal Judge does not deem it necessary to differentiate between "outstanding instalments" and "compensation for the termination" as done in the CEV Decision. No pro-rata calculation is needed because the entire amount of EUR 160,000.00 was "*not yet paid*".

98. The FIVB Tribunal Judge agrees with the general finding in the CEV Decision that the Player had a duty to mitigate damages (see section 4.4 lit. q. of the CEV Decision). However, the FIVB Tribunal Judge finds that the entire amount earned by the Player with her new Italian club until the end of the 2017/2018 season (EUR 55,000.00 net of any taxes) has to be deducted and not only a partial amount of EUR 43,500.00. The CEV Decision states in its section 4.4 lit. r. that the agreement with the Player´s new Italian Club "*ran from 20 January 2018 to 20 June 2018*" and, based on this assumption, the CEV calculated the deduction of EUR 43,500.00. However, the Player´s exhibit 26 (agreement with the Player´s new Italian Club) states as follows: "***1. DURATION OF THE AGREEMENT*** *From 2 January 2018 until the end of the Italian Championship 2017/2018*." The period of 20 January to 20 June 2018 is mentioned in clause 2 of this agreement to be the payment period of the agreed six monthly instalments.

99. Thus, the Player´s new contract ran until the end of the respective Italian season just like the Agreement did until the end of the respective Polish season. There is no evidence on file and public available information do not support that the two national Championships did end at substantial different times to justify a recalculation. Furthermore, there is no evidence on file that the Player actually played any matches with her new Italian club beyond the last match of the Club in the 2017/2018 Polish Championships, i.e. the finals end of April 2018.

100. The payment dates of any instalments in the contract with the new Italian club are irrelevant in this context because the duty to mitigate damages shall avoid that the Player ending up in a better financial position than by fulfilling the Agreement. Not deducting the full salary earned under the Player´s new contract would put her in a better position which needs to be avoided.

101. Thus, deciding *ex aequo et bono*, the FIVB Tribunal Judge finds that the Club´s breach of the Agreement, in principle, resulted in the Club´s obligation to pay the Player the amount of EUR 105,000.00 net of any taxes (EUR 160,000.00 – EUR 55,000.00).

7.2.4 Consequences of the Player´s breach of the Agreement

102. As mentioned above, the Player breached the Agreement by refusing to sign the "sports contract". The Agreement does not contain any provision stipulating consequences for such kind of breach. However, under *ex aequo et bono* it seems fair that damage shall be compensated.

103. According to the CEV Decision, in the first instance proceedings, the Club claimed "*compensation for the unlawful failure to conclude the two promised contracts*" in the amount of EUR 160,000.00 and further amounts as legal fees for the Polish state court proceedings (EUR 11,000.00), administrative expenses (EUR 5,000.00) and car and flat expenses (EUR 12,000.00).

104. In the present Request for Review, the Club did not specifically request payment of any compensation but rather requested a "*reversal*" of the CEV Decision "*in whole/part*". Only in its submissions on costs dated 1 May 2019, the Club specifically informed that it "*upholds its previously claimed requests for reimbursement and compensation*" and more precisely "*as a result of the unlawful action of the Player and her Agent, Mr. Jakub Dolata, the Club requests reimbursement of EUR 14.000 (fourteen thousands) of the court fees incurred in the proceedings before the Polish District Court in Szczecin and initiated on account of the Player being at fault, EUR 12.000 (twelve thousand) as reimbursement of the costs of the apartment and the car and EUR 160.000 (one hundred and sixty thousand) as compensation for unlawful failure to conclude two promised agreements, namely the sports contract and the image rights contract*" by suffering "*image losses valued at EUR 160.000 (one hundred and sixty thousand)*".

105. First, the FIVB Tribunal Judge has taken note that the amount stated by the Club for legal fees related to the Polish state court proceedings increased from EUR 11,000.00 in the CEV proceedings to EUR 14,000.00 in the present FIVB Tribunal proceedings without any explanation.

106. Second, the CEV dismissed the claims for legal fees, administrative expenses and car and flat expenses totalling to EUR 28,000.00 because of the Club´s failure to submit any evidence (see section 4.4 lit. dd. – ff. of the CEV Decision). The FIVB Tribunal Judge confirms such findings, particularly because the Club neither provided sufficient evidence in the present proceedings before the FIVB Tribunal nor requested payment of these amounts in its Request for Review or in any submissions until the Parties were informed about the closing of the exchange of submissions by email of the FIVB Tribunal Secretariat dated 2 April 2019.

107. Third, concerning the Club´s claim for compensation (EUR 160,000.00), the CEV found that "*the Player shall compensate the Club in the amount of EUR 77,254.72*" (see section 4.4 lit. t. - bb. of the CEV Decision). The FIVB Tribunal Judge agrees with most of the CEV´s detailed arguments stated in the CEV Decision on the issue "compensation", e. g. that the related damages by the Club must be compensated by the Player but the compensation shall not be disproportionate in comparison of the financial resources of the Player (see section 4.4 lit. z. of the CEV Decision). However, the FIVB Tribunal Judge has taken note that the compensation determined in the CEV Decision is exactly the same amount that was awarded to the Player for compensation to be paid by the Club but the link between the two different kinds of amounts is not explained in the CEV Decision.

108. The FIVB Tribunal Judge does not follow the CEV´s finding on the concrete amount for compensation to be paid by the Player to the Club. The Club failed to provide evidence for any specific damage caused by the Player´s breach of the Agreement. In particular, the Club did not claim any specific amount for compensation to be paid by the Player to the Club. However, the Club has submitted that the Player "*could not be entered for games as a result of the refusal to conclude a sports contract*" (see the Club President´s email of 4 December 2017; the Player´s exhibit 16). Moreover, in the Club´s letter of 29 November 2018 (the Player´s exhibit 14), the Club stated that "*pursuant to the regulations of PZPS and PLPS SA*" the Club could not report the Player "*to the PLPS SA games for season 2017/2018*" based on the Agreement only but "*in accordance with the PLPS regulations*" the Player "*was able to play in the Super Cup, because for those games players need to be reported to PLPS on the F-02 form (there is no obligation to sign*

a contract)". From the above, the FIVB Tribunal Judge understands that a "sports contract" (uniformed league contract) is a requirement for being permitted to play in Polish league games, however, the Player was allowed to play in the Polish Super Cup games and in the CEV Volleyball Champions League, for which she had been registered already prior to her arrival in Poland.

109. When determining the quantum of the compensation to be paid by the Player to the Club for the Player's failure to sign the "sports contract", the FIVB Tribunal Judge takes into consideration that the Club could use the Player´s services for games in the Polish Super Cup and the CEV Volleyball Champions League but not in the Polish volleyball league. Therefore, deciding *ex aequo et bono*, the FIVB Tribunal Judge finds that the Player shall compensate the Club by 50% of the amount she is entitled to receive from the Club as found above (EUR 105,000.00 net of any taxes), i.e. the Club is entitled to compensation from the Player in the amount of EUR 52,500.00 net of any taxes).

110. Consequently, setting off the payment obligations of both Parties, the Club is obliged to pay the Player EUR 52,500.00 net of any taxes.

7.2.5 Interest

111. The Player claims interest at a rate of 5% per annum on different amounts. The CEV Decision has awarded "*a 5% late payment interest applying as of 15 October and 15 November 2017*" regarding "*the net amount of EUR 39,245*".

112. The FIVB Tribunal Judge confirms the CEV´s arguments in section 4.4 lit. jj) of the CEV Decision that late payment interest is a general principle of law that a regular payment made after the due date is subject to interest at a rate of 5% per annum under *ex aequo et bono* and standing jurisprudence of the CEV and also the FIVB Tribunal. Even if a contract does not provide for the payment of interest – as is the case in the present dispute with no specific provision in the Agreement – default interest is a generally accepted principle which is embodied in most legal systems. Indeed, payment of interest is often a customary and necessary compensation for late payment and, according to FIVB Tribunal jurisprudence, the FIVB Tribunal Judge further considers that 5% per annum is a reasonable rate of interest.

113. The starting date of interest shall be the first day after a payment became due (due dates under the Agreement or date of termination as any remaining amounts under the Agreement would become due upon the date of termination) while the FIVB Tribunal Judge takes into consideration his above finding on the 50% compensation reduction. Thus, the FIVB Tribunal Judge holds that the Player is entitled to interest at a rate of 5% per annum

- on the amount of EUR 10,000.00 as of 16 October 2017 until payment,
- on the amount of EUR 10,000.00 as of 16 November 2017 until payment, and
- on the amount of EUR 32,500.00 as of 7 December 2017 until payment.

7.2.6 Tax certificate

114. The Player also claims to be provided with a "*tax certificate evidencing the net nature of all payments under the Agreement, the CEV´s decision and/or the FIVB Tribunal´s decision*". The CEV Decision states that the Club "*shall issue a tax certificate*" to the Player "*as per its obligations mentioned in the Agreement*".

115. According to the second bullet point of the "Legal notes" contained in clause 2 of the Agreement, the Club "*will release an official document from the Polish Tax Office with the definitive proof of payment of the taxes to avoid the double taxation*" for the Player.

116. Sticking to the wording agreed be the Parties in the Agreement, the FIVB Tribunal Judge finds that the Club is obliged to provide to the Player an official document from the Polish Tax Office with the definitive proof of payment of the taxes concerning the Agreement.

7.2.7 Summary

117. The Agreement was valid and binding for both Parties upon it was signed on or before 20 June 2017.

118. Both parties breached the Agreement. The Club did not pay the Player, and the Player did not sign the "sports contract".

119. In principle, the Player is entitled to receive the amount of EUR 105,000.00 net of any taxes (EUR 160,000.00 as agreed under the Agreement minus EUR 55,000.00 as earned under a new contract with an Italian club). However, this amount shall be reduced by 50% because of the Player´s breach of the Agreement.

120. In line with standing jurisprudence, the Club is obliged to pay interest on the amount of EUR 52,500.00.

121. The Club is obliged to provide to the Player an official document from the Polish Tax Office with the definitive proof of payment of the taxes concerning the Agreement.

122. Consequently, the CEV Decision is partially upheld.

7.3 Costs

123. In the CEV Decision, the CEV ordered the Club to reimburse to the Player 50% of the first instance handling fee, namely EUR 200.00 of the total amount of EUR 400.00 paid by the Player to the CEV (typo in the sixth bullet point of CEV Decision: "*Chemik Police S.A. shall pay the amount of EUR 200 to Chemik Police S.A. as reimbursement of the handling fee*."; but correctly stated in section 4.4 lit. ll. of the CEV Decision). Furthermore, the CEV ordered the Club to reimburse to the Player the amount of EUR 5,000.00 for "legal costs".

124. Given that the CEV Decision is amended, the FIVB Tribunal Judge makes one finding on the reimbursement of handling fees and legal costs for both instances.

125. 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). However, legal fees must be reasonable. When determining the contribution, the FIVB Tribunal Judge must take into account the outcome of the proceedings as well as the conduct and financial resources of the Parties.

126. In addition, according to Article 18.1 lit. e. of the FIVB Sports Regulations concerning the procedure before the FIVB/Confederation, "[t]*he FIVB may award a contribution of up to CHF 2,500.00 towards the prevailing party´s reasonable legal fees and other expenses incurred in*

connection with the proceedings (including the applicable handling fee and the costs of witnesses and interpreters)". In this context, the FIVB Tribunal Judge draws the Parties´ attention to the fact that any reimbursement of legal costs in a first instance proceeding before the FIVB would have been limited to CHF 2,500.00 (including the handling fee of CHF 500.00) at the maximum.

127. In the present proceedings before the FIVB Tribunal, the Club paid a handling fee of CHF 2,000.00 and requests payment of a total amount of EUR 20,092.00 as legal fees for both instances (EUR 10,046.00 each) plus EUR 896.00 as administrative costs. The Player paid a handling fee of CHF 3,000.00 (overpayment of CHF 1,000.00) and requests payment of a total amount of EUR 32,428.00 including VAT (EUR 26,800.00 net) as legal fees and further EUR 400.00 as first instance handling fee.

128. Given that both Parties´ Requests for Review are (partially) dismissed and the Player´s first instance claim was not fully awarded, also taking into consideration not only the findings on the merits but also on the procedural requests made by both Parties, the FIVB Tribunal Judge holds that both Parties have to bear some costs related to the two instances of the present dispute.

129. Regarding the handling fees paid by the Parties to the CEV and the FIVB, the FIVB Tribunal Judge finds that

    a) each party has to bear EUR 200.00 of the first instance handling fee paid by the Player to the CEV (EUR 400.00 in total), thus, the respective finding in the CEV Decision, namely that the Club has to pay the amount of EUR 200.00 to the Player, is confirmed;

    b) the present proceedings before the FIVB Tribunal are covered by a total handling fee of CHF 4,000.00 (CHF 2,000.00 to be paid by the Club for its Request for Review and CHF 2,000.00 to be paid by the Player for her Request for Review), of which each party has to bear CHF 2,000.00;

    c) the overpayment of CHF 1,000.00 on the handling fee paid by the Player will be reimbursed to the Player by the FIVB.

130. Regarding the Parties´ legal fees and further costs, the FIVB Tribunal Judge finds that the amounts requested by the Parties are not reasonable according to Article 20.11.2 of the FIVB

Sports Regulations and substantially exceed the maximum contribution stipulated in Article 18.1 lit. e. of the FIVB Sports Regulations. Setting off any reimbursements to the opposite party and deciding *ex aequo et bono*, the FIVB Tribunal Judge holds that the Club shall pay to the Player the amount of EUR 5,000.00 as reimbursement of her legal fees and costs in both, the first and the second instance.

131. Consequently, the Club shall pay to the Player the additional amount of EUR 5,200.00.

DECISION

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

1. The Requests for Review filed by both, Chemik Police S.A. and Ms. Maret Lieneke Grothues, are (partially) dismissed.

2. The decision rendered by the CEV in CC163/2018 dated 16 October 2018 is partially confirmed and the first six bullet points amended as follows:

   a. Chemik Police S.A. shall pay to Ms. Maret Lieneke Grothues the amount of EUR 52,500.00 net of any taxes with interest at the rate of 5% per annum

      i. on the amount of EUR 10,000.00 as of 16 October 2017 until payment,

      ii. on the amount of EUR 10,000.00 as of 16 November 2017 until payment, and

      iii. on the amount of EUR 32,500.00 as of 7 December 2017 until payment.

   b. Chemik Police S.A. shall provide to Ms. Maret Lieneke Grothues an official document from the Polish Tax Office with the definitive proof of payment of the taxes concerning the "AGREEMENT SPORT SEASON 2017/18" dated 16 June 2017.

   c. Chemik Police S.A. shall pay to Ms. Maret Lieneke Grothues the amount of EUR 5,200.00 as a contribution towards her reasonable legal *tees* and costs for both instances, i.e. including the proceedings before the FIVB Tribunal.

3. Chemik Police S. A. and Ms. Maret Lieneke Grothues shall bear 50% each of the costs of the present proceedings before the FIVB Tribunal, i.e. CHF 2,000.00 each. The overpayment of CHF 1,000.00 paid by Ms. Maret Lieneke Grothues on her handling fee to the FIVB shall be reimbursed to her by the **FIVB.**

4. Any other requests for relief are dismissed.

Lausanne, seat of the proceedings, 8 January 2020

Dr. Karsten Hofmann

FIVB Tribunal Chairperson

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 Tribunal Regulations which provides as follows:

> *"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:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
email: info@tas-cas.org

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.