

In the Matter of

[The Appellant]¹

(hereafter the “**Club**” or “**Appellant**”)

vs.

[a Continental Volleyball Federation]

(hereafter “**Continental Federation**” or the “**Respondent**”)

DECISION

of the FIVB APPEALS PANEL in the Case [year]-01

This is an appeal brought by the Club against a decision issued by the Managing Director of the [Continental Federation] dated [date of the decision] (hereafter the “**Decision**”) by which the [Continental Federation] imposed a financial sanction in the amount of EUR 25,000 on the Club.

I. FACTUAL BACKGROUND

The following is an overview of the relevant facts of this case, listed in a summary manner for the sake of brevity. However, the FIVB Appeals Panel notes that it has considered every submission in the file thoroughly even if it has not been specifically addressed herein.

- 1 The Appellant is a volleyball club from [the Appellant’s city], [the Appellant’s Country], that was founded in [year]. It is a member of the Respondent.
- 2 In the [year] season, the Appellant participated in the [Event] (hereafter the “**[Event]**”), a competition organised by the Respondent.
- 3 During [year] season, the [Player’s Nationality] player (hereafter the “**Player**”) played for the Club and was registered to participate in six matches of the [Event].
- 4 The Respondent is the governing body of the sport of volleyball in [Continent].

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

II. THE DECISION UNDER DISPUTE

5 On [date] the Respondent issued the Decision imposing a financial sanction in the amount of EUR 25,000 on the Appellant for failure to provide accurate information.

6 In its relevant part, the Decision reads as follows:

“Your Club provided inaccurate information regarding the situation of the [Player]. More specifically, the player was registered to participate in the matches listed below of the [Event] with your club despite her lack of national license issued by the [The Player’s National Federation]:

- Match N° [number], ([The Appellant] vs. [Club 2])
- Match N° [number] ([The Appellant] vs. [Club 3])
- Match N° [number] ([Club 4] ISTANBUL vs. [The Appellant])
- Match N° [number] ([The Appellant] vs. [Club 2])
- Match N° [number] ([The Appellant] vs. [Club 3])
- Match N° [number] ([Club 4] vs. [The Appellant])

[...]

Given the repeated violations of the [Event] Regulatory Framework and the fact that your club provided inaccurate information which led to the registration of a player who did not meet the requirements in the [Event] in [Event’s Location 1] between [date] to [date] and in [Event’s Location 2] between [date] to [date] the [Continental Federation] has decided the following:

- *to impose the financial sanction of 25,000 Euro for failure to provide accurate information.”*

III. APPEAL BY THE CLUB AGAINST THE DECISION

a) Proceedings before the FIVB Appeals Panel

7 On [date], the Appellant filed an appeal (hereafter the “**Appeal**”) against the Decision.

- 8 On [date], the FIVB Appeals Panel Secretariat (hereafter the “**Secretariat**”) acknowledged receipt of the Appeal and of the payment of the administrative fee and invited the Respondent to file its answer by no later than [date].
- 9 On [date], the Respondent filed its answer along with certain exhibits (hereafter the “**Answer**”).
- 10 On [date], the Secretariat acknowledged receipt of the Respondent’s Answer and reminded the Parties that the dispute would be heard by the FIVB Appeals Panel Chairperson and two additional members designated by the Chairperson in accordance with Article 17.3.1 of the 2020 FIVB Disciplinary Regulations. Additionally, the Secretariat informed the Parties that the proceedings would be conducted in English.
- 11 On [date], the Secretariat informed the Parties that the Appeals Panel would be composed as follows to hear the present dispute: Ms. Damaris Young (PAN), chairperson, Mr. Gavin Dingley (RSA) and Mr. Paul Greene (USA), members. In addition, the Secretariat informed the Parties that it would deliberate on the case shortly and issue further instructions or a decision in due course based on the written submissions filed by the Parties.

b) Positions of the Parties

- 12 The position of the Appellant can be summarised as follows:
 - **As to the facts of the case:**
 - On [date], the Player terminated her professional volleyball and employment contract dated [date] (hereafter the “**Contract**”) with the [another club from the same country as the Appellant, hereafter “the previous club”].
 - As the main reason for termination, the Player stated in her termination letter that [the previous club] had dissolved its women’s volleyball team and did not participate in volleyball competitions any longer. Additionally, [the previous club] had repeatedly been in breach of the Contract by not paying the Player’s salary, not providing the Player with access to its sports facilities and not participating in volleyball competitions.

- [The previous club] objected to the termination by the Player.
- On [date], the Player requested the Transfer Commission of [the Club's National Volleyball Federation, hereafter the "CNVF") to establish that the Contract had been terminated effectively.
- On [date], the Transfer Commission of the CNVF responded as follows:

"[...] the termination of contracts concluded between a volleyball club and a player is not within the competence of the Transfer Commission, therefore it does not take a decision on this request. The competent body for issues related to the termination of contracts and any disputes between the parties arising from the respective contractual relations is the [State] court."
- On [date], the Appellant applied for registration of the Player with the Respondent for [Continental] competitions.
- On [date], the Appellant concluded a professional volleyball and employment contract with the Player.
- On [date], the Appellant and the Player applied for registration of the Player with the Appellant for the [year] season before the "Technical [sic, arguably Transfer]" Commission of the [CNVF] (hereafter the "National License"). At the moment of submission of the application, the Player was not registered with any volleyball club.
- The registration of players for the [Continental] competitions precedes the national registration period of the [CNVF], which started as of [date]. Therefore, it was impossible for the Player to have the National License when the registration for the [Continental] competitions opened.
- On [date], a representative of the [Club's Country] National Volleyball League sent an email to the Appellant, informing it that the Transfer Commission of the [CNVF] considered that the Player must be denied registration with the Appellant.
- On [date], the Appellant filed a complaint with the Appeals Commission of the [CNVF] against the refusal of the Transfer Commission to register the Player.
- On [date], [the previous club] submitted a protest with the FIVB, claiming that it had a valid employment contract with the Player. In doing so, [the previous club] acted in bad faith because, one month before, the executive agency of the [Club's Country] General Labour Inspectorate had informed the Player that compulsory administrative

measures had been taken against [the previous club], by which the latter was obliged to formalize the termination of the Contract. Therefore, when [the previous club] submitted its protest, it knew that the Contract had been duly terminated.

- On [date], the Appellant replied to a request for clarification by the Respondent, submitting essentially the following:
 - “[...] *the contractual agreement between [the athlete] and [the previous club] has been terminated on [date] [...]*”
 - *“All relevant documents and legal papers have been made available to the [Club’s Country] Volleyball league when [the Club] has tried to register the player for the [Club’s Country] Volleyball league. The reason she cannot play in the [Club’s Country] league is an internal guidance stating that even when a contract has been officially terminated the player still needs a letter of release from the previous club.”*
- On [date] and [date], the [CNVF] Appeals Commission held an oral hearing with the concerned parties via Zoom.
- On [date], the Respondent issued the Decision, imposing a financial sanction on the Appellant for failure to provide accurate information.
- On [date], the [CNVF] Appeals Commission issued a decision holding that the [CNVF] Transfer Commission had illegally refused to register the Player with the Appellant. In relevant parts, the decision reads as follows:
 - *“With view of the above, AC at [CNVF] finds the following factual background established: as at the time of filing [the Club] application for registration of [the athlete], for which the processed refusal for registration was enacted, [the athlete] has not been registered in any volleyball club, has had a valid contract of professional athlete in accordance with the provisions of article 77 of [the applicable substantive law] concluded with the sports club that has applied for the registration ([the Club]), the employment contract between [the athlete] and [the previous club] has been terminated as from [date], and there is a dispute between the parties with regard to the contract between the athlete and [the previous club].”*

- *“The Commission assumes that all requirements of the law ([the applicable substantive law]) that should have been met for the registration of [the athlete] in [the Club] are met [...]”*
- **“With view of the above arguments, AC at [CNVF]**

DECIDED:

Repeals Decision of TC at [CNVF] of [date] refusing to register [the athlete], Personal ID No [number] as a professional volleyball player of [the Club]. This decision is final and is not subject to appeal.”

- **As to the merits of the case:**

- The FIVB has jurisdiction to decide on this Appeal based on Article 9.6 of the [Continental Federation] Disciplinary Regulations and on the FIVB Disciplinary Regulations.
- The Player had effectively terminated the Contract. Therefore, the [CNVF] Transfer Commission refused the registration of the Player with the Appellant without any valid reason.
- The Appellant provided accurate information to the Respondent. It did not lie about the situation with the Player, but rather explained it to the Respondent as it was, e.g. by way of its email dated [date].
- Pursuant to Section 10, Article 166 para. 1 of the 2021 [Continental Federation] Volleyball Competition Regulations, the gravity of the failure is to be taken into account upon determination of the financial sanction. However, it was not the Appellant who was at fault, but the [CNVF] “*Technical* [sic, arguably Transfer]” Commission as well as [the previous club] that behaved in an unsportsmanlike manner.
- Furthermore, the Appellant draws attention to Section 10, Art. 166 par. 3 of the 2021 [Continental Federation] Volleyball Competition Regulations, which reads as follows:

“In case of a late – after the correct or expected time or deadline – performance or late success of an expected or required action mentioned in these regulations, the amounts stated in the above table are reduced by half.”

- The decision of the [CNVF] Appeal Commission confirms that the [CNVF] Transfer Commission illegally objected to the registration of the Player with the Appellant.

- **Prayers for relief:**

“The Appellant hereby respectfully asks the FIVB’s Appeals Panel:

1. To set aside and annul the entire decision passed on [date] by the [Continental Federation].

Alternatively, only if the above is rejected

2. To reduce the amount to the minimum of 1400 Euro, Art. 166 of [Continental Federation] Competition Regulations.

In any event

3. To order the Respondent to bear all the costs incurred with the present procedure.

4. To order the Respondent to pay the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the FIVB’s Appeals Panel.”

13 The position of the Respondent may be summarised as follows:

- **As to the facts of the case:**

- On [date], the Appellant requested the player license for the Player in relation to [continental] competitions (hereafter the “**Continental License**”) by registering her in “form 04” (Registration of Players), while the period to register a player in [the Club’s Country] did not start until [date]. Therefore, it was impossible for the Player to be registered and in possession of the National License on [date].
- On [date], the Respondent confirmed the Player’s [Continental] License based on the information provided by the Appellant on [date].
- Despite the fact that the [Club’s Country] National Volleyball League had informed the Appellant that the [CNVF] Transfer Commission had denied the Player’s National License, the Appellant, on [date], inserted the Player into “form 09” for the first three of the Club’s matches in the 4th round of Pool C of the [Event] in [Event’s Location 1] from [date] to [date] without notifying the Respondent about the missing National License.
- The Player participated for the Appellant in all of the three before-mentioned matches.

- On [date], [the previous club] submitted a protest with the FIVB, claiming that it had a valid employment contract with the Player.
- On [date], the Respondent turned to the [CNVF] and asked for clarification regarding the Player's National License.
- On [date], the [CNVF] confirmed that it had not issued any National License for the Player for the [year] season.
- On [date], the Appellant inserted the Player into "form 09" for the second three of the Club's matches in the 4th round of Pool C of the [Event] in [Event's Location 2] scheduled from [date] to [date]. The Appellant still had not informed the Respondent about the Player's missing National License.
- The Player participated for the Appellant in all of the three before-mentioned matches.
- **As to the merits of the case:**
 - According to Article 9.3.5 para. 2 of the [Continental Federation] Disciplinary Regulations, a party shall declare if it accepts a sanction imposed on it within five days after notification. Pursuant to Article 9.3.5 para. 4 of the [Continental Federation] Disciplinary Regulations, in case of non-acceptance, the affected party shall submit the matter with a reasoning to the [Continental Federation] Legal Chamber within five days of reception of the notification. The present case, however, has not been submitted to the [Continental Federation] Legal Chamber. Therefore, the FIVB Appeals Panel should declare the Appeal inadmissible.
 - On [date], on [date] and on [date], the Appellant, deliberately and with full knowledge of the facts, provided incorrect information to the Respondent in order to be able to register the Player for [Continental Federation] competitions. Thereby, the Appellant violated its duty to provide the [Continental Federation] with "*complete, true and accurate data necessary to the organization of a [Continental Federation] competition*" pursuant to Section 2, Chapter 3, Article 19.6 para. 1 of the [Continental Federation] Volleyball Competition Regulations. Such violation is subject to a fine of between EUR 1,400 and 28,000 under Section 10, Article 166 para. 2 of the [Continental Federation] Volleyball Competition Regulations.
 - The Player playing for the Appellant without the National License could also be considered a major offense pursuant to Article 6.9 para. 1 and 2 of the [Continental Federation] Disciplinary Regulations in connection with Article 33.1 para. 1 of the [Continental Federation] Volleyball Competition Regulations.

- The financial sanction imposed on the Appellant was proportionate to the fault committed and could even have been more severe.

- **Prayers for relief:**

“In conclusion, for all the above-mentioned arguments, the FIVB Appeals Panel should dismiss the appeal by [the Club].”

IV. ADMISSIBILITY OF THE APPEAL BY THE APPELLANT

- 14 In accordance with general procedural principles, the relevant regulations applicable for procedural purposes are those in force at the time that the action was commenced.
- 15 The FIVB Appeals Panel notes that the Appeal was filed with the FIVB Appeals Panel Secretariat on [date], i.e. when the 2020 FIVB Disciplinary Regulations (hereafter the “**FIVB DR**”) and the 2020 [Continental Federation] Disciplinary Regulations (hereafter the “**CF DR**”) were in force. Consequently, the FIVB Appeals Panel finds that the admissibility of the Appeal (and other procedural issues such as, for example, allocation of costs) shall be examined based on the criteria set forth in the FIVB DR and the CF DR.²

a) FIVB Appeals Panel Competence: Pre-requisites

- 16 The FIVB Appeals Panel notes that certain admissibility requirements must be fulfilled for the FIVB Appeal Panel to consider an appeal. With regards to the foregoing, the Appellant must:
- i. file the appeal within fourteen (14) days of notification of the decision (Article 19.1 of the FIVB DR); and
 - ii. pay an administrative fee of CHF 2,000 (Article 19.2 of the FIVB DR).

² For the sake of completeness and transparency, the FIVB Appeals Panel notes that there have been no changes to the admissibility requirements with regard to appeals against decisions by Confederation bodies between the 2020 edition of the FIVB DR and the 2022 edition of the FIVB DR. Similarly, the relevant Article 9 of the CF DR has not been amended between 2020 and 2022.

17 The Appellant filed its Appeal with the FIVB Appeals Panel on [date], i.e. fourteen (14) days after receipt of the Decision on [date]. Moreover, the Appellant paid the administrative fee, whose receipt on [date] was confirmed by the FIVB Appeals Panel Secretariat [date].

18 In light of the above, the FIVB Appeals Panel is satisfied that the Appellant complied with the requirements of Article 19.1 and 19.2 of the FIVB DR.

b) FIVB Appeals Panel Competence: General principles

19 The FIVB Appeals Panel is competent to hear appeals filed by an affected party against decisions of FIVB or Confederation bodies (Article 18.1 of the FIVB DR). In the present case, it is undisputed that:

- i. the Appellant, being obliged by the Decision to pay EUR 25,000, is an affected party within the meaning of Article 18.1 of the FIVB DR; and
- ii. the Decision was issued by a Confederation body within the meaning of Article 18.1 of the FIVB DR.

20 The Respondent, however, argues that the FIVB Appeals Panel should declare the Appeal inadmissible because the present matter has not been submitted to the [Continental Federation] Legal Chamber. In the Respondent's view, given that the Appellant obviously did not accept the sanction imposed on it by way of the Decision, it should have declared so and submitted the matter with a reasoning to the [Continental Federation] Legal Chamber within five days after notification (cf. Article 9.3.5 para. 4 of the CF DR). With its Appeal, however, the Appellant turned directly to the FIVB.

21 While the Respondent is right that, according to its own regulations, the present matter should have been submitted to the [Continental Federation] Legal Chamber with a reasoning of the Appellant, the Respondent errs in concluding that the Appeal would therefore be inadmissible.

22 First, Article 18.1 of the FIVB DR takes precedence over Article 9.3.5 of the CF DR, given that, in case of conflict or contradiction, the regulations of the FIVB prevail (see Article 2.2.3 of the 2021 FIVB Constitution). Secondly, the Decision issued by the Respondent did not in fact refer the Appellant to the requirement of bringing the case to the [Continental Federation] Legal Chamber according to Article 9.3.5 of the CF DR if it sought to challenge the Decision. Instead, the Decision explicitly referenced Article 9.6 of the CF DR, according to which the Appellant may lodge an appeal before the FIVB Appeals Panel within 14 days. Under these circumstances, the Respondent cannot in good faith invoke Article 9.3.5 of the CF DR as an obstacle to the admissibility of the present appeal.

23 In light of the above, the FIVB Appeals Panel appears to be, on a *prima facie* basis only, competent to hear the appeal filed by the Appellant against the Decision.

c) FIVB Appeals Panel Competence: Exclusion of certain appeals

24 The FIVB Appeals Panel notes that not all decisions by FIVB or Confederation bodies may be appealed.

25 However, the FIVB Appeals Panel is satisfied that the restrictions set forth in Articles 16.6 and 18.2 of the FIVB DR do not apply in the present case because the appeal neither concerns a reprimand nor a warning nor a fine in an amount of less than CHF 5,000 nor a referee's decision.

26 In light of the above, the FIVB Appeals Panel is satisfied that it is competent to hear the appeal filed by the Appellant against the Decision.

V. THE FIVB APPEALS PANEL DECISION

27 The FIVB Appeals Panel shall (a) decide on the law applicable to the present dispute before (b) examining the merits of the decision.

a) The Law applicable to the merits of the Appeal

- 28 Neither the Appellant nor the Respondent made any submission with regard to the applicable law. The FIVB Appeals Panel finds that FIVB and [Continental Federation] Regulations shall apply primarily and Swiss law subsidiarily (cf. Article 58 of the CAS Code of Sports-related Arbitration as well as CAS 2015/A/4095, para. 58).
- 29 In accordance with general principles of law, the relevant regulations related to procedural matters are those in place at the time the action is commenced. As mentioned in paragraph 15 above, any procedural issues (e.g. allocation of costs) shall be governed by the FIVB DR and the CF DR.
- 30 With regard to the merits of the case, it appears that the Decision was issued based on the 2021 edition of the [Continental Federation] Volleyball Competitions Regulations. However, at the time the Decision was issued, i.e. [date], the 2020 edition of the [Continental Federation] Volleyball Competitions Regulations was in force. Apart from that, the FIVB Appeals Panel notes that the Decision should have been based on the regulations in force at the time of the occurrence of the contentious facts. Accordingly, the [Continental Federation] would have had to apply the 2019 edition of the [Continental Federation] Volleyball Competitions Regulations (hereafter the “**CF CR**”). Therefore, it is the [CC] CR that shall apply to the merits of the Appeal.³

b) Merits

- 31 Section 2, Chapter 3, Articles 18 and 19.6 para. 1 of the CF CR read as follows:

“Chapter 3: Participation

The provisions of this chapter apply for all [Continental Federation] competitions. These provisions are completed either by the provisions for National Team competitions or Club competitions.

18 GENERAL PROVISIONS

³ The FIVB Appeals Panel notes that the 2019, 2020 and 2021 editions of the CF CR are identical with regard to the provisions relevant for the outcome of the case at hand – apart from the numbering of the provisions under Section 10.

§1 A National Federation, Club or Player is eligible to participate to a [Continental Federation] competition when it is registered to such competition and confirmed by the [Continental Federation].

§2 A Participant shall fulfil the requirements of these regulations and comply with such regulations.

[...]

19. TEAM ELIGIBILITY – REGISTRATION IN A [Continental Federation] COMPETITION

[...]

19.6 Data

§1 A National Federation or Club provides the [Continental Federation] with the complete, true and accurate data necessary to the organisation of a [Continental Federation] competition and promotion of Volleyball.”

32 In addition, Section 2, Chapter 5, Article 33.1 para. 1 of the CF CR provides as follows:

“Chapter 5: Club competitions

[...]

33. PLAYER ELIGIBILITY – REGISTRATION OF PLAYERS IN A [Continental Federation] COMPETITION

33.1 Registration criteria

§1 The Player has a national licence issued by a National Federation for the same season as the [Continental] Cups season for which the Player applies for registration. Such national licence exclusively associates the Player and the Club for which such Player intends to play a match of a Club competition.”

33 Furthermore, Section 10, Article 166 para. 1 of the CF CR reads as follows:

“A breach of these regulations is an offence which will be sanctioned with a financial sanction as mentioned in Art. 167 and/or other sanctions enforced according to the [Continental Federation] Disciplinary Regulations.”

34 Pursuant to Section 10, Article 167 para. 1 of the CF CR,

“[t]he amount of a financial sanction is determined according to the following criteria:

- a. The relevant [Continental Federation] competition in which the failure happens,*
- b. The level of the [Continental Federation] competition in which the failure happens,*
- c. The gravity of the failure,*
- d. The minimum and maximum amounts mentioned in the below table.”*

35 Section 10, Article 167 para. 2 of the CF CR provides as follows:

“The amount of a financial sanction is determined according to the following table: [...] Failure to provide accurate information 1,400 € [minimum] 28,000 € [maximum]”

36 In view of the above regulations and taking into account the principle of proportionality, the FIVB Appeals Panel has to decide on two issues, i.e. whether (i) the Appellant’s behaviour constitutes a violation of Section 2, Chapter 3, Article 19.6 para. 1 of the CF CR and (ii) the imposed sanction, i.e. a fine of EUR 25,000, is lawful.

i. Appellant’s violation of Section 2, Chapter 3, Article 19.6 para. 1 of the CF CR

37 According to Article 19.6 of the CF CR, clubs have to provide “*complete, true and accurate*” information that is “*necessary to the organisation of a [Continental Federation] competition*”. Given the heading of Article 19 of the CF CR, this provision applies in particular, if not solely, to the registration of a team to a [Continental Federation] competition. As follows from Article 33.1 of the CF CR, any players registered for a [Continental Federation] competition must have a National License. Therefore, in order to put the [Continental federation] in a position to assess whether Article 33.1 of the CF CR is complied with by the registering team, the information whether a player of that team possesses a National License is certainly “*necessary to the organisation of a [Continental Federation] competition*”.

38 Both parties agree that the Appellant requested the [Continental] License for the Player by registering her in “form 04” on [date], and that the Appellant inserted the Player’s data into “form 09” on [date] as well as on [date]. Furthermore, it is undisputed that the Appellant, upon its first registration of the Player on [date], knew that the period for registration of players with the [CNVF] would not start until [date]. Also afterwards, the Appellant was aware that the Player did not hold the National License for the [year] season, a fact that is evident from the Appellant's exchange with the [CNVF], the FIVB and [the previous club] in the period from [date] to [date].

39 Therefore, it becomes clear that the Appellant filled out “form 04” once and “form 09” twice, i.e. requested the [Continental] License for the Player, respectively registered the Player for a competition of the [Continental Federation], although it was aware that the Player did not have the necessary National License. By filling out those forms, the Appellant at least tacitly confirmed that the Player met the registration criterion of a National License, as laid out in Section 2, Chapter 5, Article 33.1 para. 1 of the CF CR.

40 In view of the above, the FIVB finds that the [Continental Federation] was right in determining that the Appellant had violated its obligation to “*provide the [Continental federation] with the complete, true and accurate data*” pursuant to Section 2, Chapter 3, Article 19.6 para. 1 of the CF CR. This violation cannot be cured retroactively by the Appellant’s further explanation of [date], which is why the Appeals Panel may leave open whether this explanation was “*complete, true and accurate*” at the time.

ii. Proportionality of the imposed sanction

41 Pursuant to Section 10, Article 167 para. 2 of the CF CR, a fine imposed by the Respondent shall not be less than EUR 1,400 and not more than EUR 28,000. The fine of EUR 25,000 imposed on the Appellant by way of the Decision therefore falls within the regulatory parameters set by the CF CR.

42 Notwithstanding the above, fines within these parameters may be disproportionate subject to the particular circumstances of the case. In this regard, established CAS jurisprudence holds that “*the principle of proportionality requires an assessment of whether a sanction is appropriate to the violation committed in the case at stake.*”

Excessive sanctions are prohibited.” (see CAS 2017/A/5031, para. 72 with further references). In assessing the gravity of the sanction, the sanctioning body shall take into account: (a) the nature of the offence, (b) the seriousness of the loss or damage caused, (c) the level of culpability, (d) the offender’s previous and subsequent conduct in terms of rectifying and/or preventing similar situations; (e) the applicable case law and (f) other relevant circumstances (see CAS 2014/A/3813, para. 288). The latter is also partly reflected in Section 10, Article 167 para. 1 of the CF CR which, inter alia, mentions the “*gravity of the failure*” as a factor to be considered upon imposing a sanction.

- 43 Turning to the case at hand, the FIVB finds that the fine in the amount of EUR 25,000 imposed on the Appellant is disproportionate.
- 44 First, neither the Decision nor the Answer contain any relevant deliberations of the Respondent with regard to the proportionality of a fine in the amount of EUR 25,000 to the detriment of the Appellant. While the Decision lacks any deliberations, the Answer merely states that “*the financial sanction taken toward the Appellant by the [Continental federation] Secretariat was proportionate to the fault committed and could have been more severe.*” However, simply stating that a sanction is proportionate does not render said sanction proportionate. There are no hints as to the Respondent actually having assessed whether the sanction imposed on the Appellant by way of its Decision is proportionate. In particular, neither the Decision nor the Answer indicate that the Respondent has taken into account any of the above-mentioned factors.
- 45 Secondly, taking into account the specific circumstances of the case at hand, a fine in the amount of EUR 25,000 appears excessive. In particular, the Appellant tried to obtain the National License for the Player by way of its request dated [date] but the Transfer Commission of the [CNVF] illegally refused to issue such license, as confirmed by a decision of the Appeal Commission of the [CNVF]. Admittedly, the Club had already filled out Form 04 incorrectly, i.e. illegitimately requested the [Continental] License, at that time. However, the Club's effort to obtain the National License must be taken into account in view of the subsequent entries in Form 09 on [date] as well as on [date]. Moreover, the Appellant could not have expected [the previous club] to submit a protest for having a valid employment contract with the Player, given that already in [date] administrative measures had been taken against [the previous club],

by which the latter was obliged to formalize the termination of the Contract with the Player. If [the previous club] had not protested to the [CNVF], the Appellant presumably would have been granted the National License for the Player without the need to file an appeal to the Appeal Commission of the [CNVF]. After all, the [CNVF] would then have had no reason to refuse its issuance. Subsequently, the Club would very likely not have given any incorrect information to the [Continental federation] on [date] and [date]. In addition, the Appellant, on [date], replied truthfully and in detail when asked by the Respondent for clarification of the facts at issue. Thus, the Appellant acted cooperatively and thereby contributed to resolving the case.

46 In view of the above, the FIVB finds that a sanction in the amount of half of the sum imposed by the Respondent, i.e. EUR 12,500, is proportionate to the violation of Section 2, Chapter 3, Article 19.6 para. 1 of the CF CR by the Appellant.

47 The Respondent invoking Article 6.9 para. 1 and 2 of the 2020 [Continental Federation] Disciplinary Regulations in order to demonstrate that the Appellant's sanction could have been more severe, is irrelevant. First, the Respondent did not rely on Article 6.9 para. 1 and 2 of the 2020 [Continental Federation] Disciplinary Regulations upon issuing the Decision. Secondly, pursuant to Article 3 para. 1 of the 2020 [Continental federation] Disciplinary Regulations, it is the [Continental Federation] Legal Chamber – and not the [Continental Federation] Secretariat (cf. Article 8 para. 1 of 2020 [Continental federation] Disciplinary Regulations), represented by the [Continental Federation] Managing Director – that would have been competent to impose a sanction for violation of Article 6.9 para. 1 and 2 of the 2020 [Continental federation] Disciplinary Regulations. The FIVB Appeals Panel cannot impose upon appeal a sanction that the first instance body failed to impose, much less in the absence of any request for relief by the Respondent to that effect.

VI. COSTS

48 The FIVB Appeals Panel notes that Article 19.2 *in fine* of the FIVB DR provides that the administrative fee can be reimbursed if a party prevails. In the present case, the Appellant prevailed on its appeal by 50 %. Consequently, the FIVB Appeals Panel finds that the Appellant should be reimbursed 50 % of the administrative fee.

- 49 The FIVB notes that there is no provision in the FIVB DR with regard to legal costs which allows for the FIVB Appeals Panel to attribute said costs to a specific party. Consequently, the FIVB Appeals Panel finds that the Appellant and the Respondent shall bear their own legal costs.

VII. FIVB APPEALS PANEL DECISION

For the reasons set forth above, the FIVB Appeals Panel decides as follows:

- 1. The appeal filed by [The Appellant] is partially upheld.**
- 2. The decision rendered by the [Continental federation] dated [date] is amended on page 3 as follows:**
 - to impose the financial sanction of 12,500 Euro for failure to provide accurate information.**
- 3. The remainder of the decision rendered by the [Continental Federation] dated [date] is confirmed.**
- 4. [The Appellant] shall be entitled to reimbursement of 50% of the administrative fee.**
- 5. Each party shall bear their own legal costs.**
- 6. Any other requests for relief are dismissed.**

Lausanne, [date of the decision]

Ms. Damaris Young
Chairperson

Mr. Gavin Dingley
Member

Mr. Paul Greene
Member

NOTICE OF APPEALS

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

- Article 20 of the 2020 FIVB Disciplinary Regulations that provides as follows:

“A further appeal against the decision by the Appeals Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following receipt of the decision”.

- 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 Bergières 10
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In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.