

In the Matter of

**[The Appellant]<sup>1</sup>**

(hereinafter the “**Player**” or “**Appellant**”)

vs.

**Fédération Internationale de Volleyball**

(hereinafter “**FIVB**” or the “**Respondent**”)

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DECISION

of the FIVB APPEALS PANEL in the Case [year]-03

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This is an appeal brought by the [Appellant’s Nationality] Player against a decision (hereinafter the “**Decision**”) issued by the International Transfer Coordinator of the Respondent dated [date] by which the Respondent decided that the Federation of Origin of the Appellant is the [Appellant’s Country] Volleyball Association (hereinafter “**ACVBA**”).

**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 [age] and a professional volleyball player who currently plays for the [Country of Appellant’s club], hereafter [“Club’s Country”], “[Name of Appellant’s Club]” (hereinafter the “**Second [Club’s Country] Club**”).
- 2 The Appellant was born in [Appellant’s city of birth], [Appellant’s Country], on [date of birth] and lived in [Appellant’s Country] until [year].
- 3 In [year], the [ACVBA] participated in the FIVB [Continent] Dream project which involved establishing volleyball sports centres throughout [Continent], in particular also

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<sup>1</sup> In the interest of the protection of privacy. This is a redacted version of the decision. Any reductions are marked with [brackets].

- in [Appellant's Country]. In this context, the Player started playing volleyball in the [Appellant's city of birth] Dream Project Centre in [Appellant's city of birth], [Appellant's Country].
- 4 In [year], the Player was called to the "[Appellant's city of birth] Volleyball Club" (hereinafter the "**[Appellant's Country] Club**") and made her debut season in the [Appellant's Country] national championships for the women volleyball team of the [Appellant's Country] Club.
  - 5 From [year] to [year], the Player attended the [name of the school] basic cycle school (hereinafter the "**School**") in [Appellant's city of birth], [Appellant's Country], where she played, trained and practised volleyball.
  - 6 From [date] to [date], the Player participated in the [Event] in [Event's Location], for the under [age] beach volleyball national team of the [ACVBA]. The Player was registered in the [Continental Federation] Teams Entry List.
  - 7 At the beginning of [year], the Player moved to [Country of Appellant's club].
  - 8 On [date], the Player entered into an employment contract (hereinafter the "**Contract**") with the [Country of Appellant's club] club "[Name of Appellant's First Club]" (hereinafter the "**First [Club's Country] Club**") and thus became a member of the latter.
  - 9 At the request of the Volleyball Federation of [Club's Country] (hereinafter the "**VFCC**") and before registration of the Player with the First [Club's Country] Club, the latter acquired an attestation from the President of the [ACVBA] dated [date] (hereinafter the "**Attestation**") that read as follows:

*"The Volleyball Federation of The [Appellant's Country] hereby declares that the athlete, born on [date of birth] has never been represented at The [Appellant's Country] national team or any [Appellant's Country] clubs and she does not have any connection or relation with the [Appellant's Country] National Teams or any clubs right now either."*
  - 10 On [date], the Player was registered as a player of the First [Club's Country] Club for the [year/year] and [year/year] seasons and participated in the national championship,

the national cup, the [Continental Federation] Volleyball Cup and the [Continental Region] Volleyball Zonal Association ([CRVZA]) Cup.

11 In [year], the Player entered into a two-year contract with the Second [Club's Country] Club. During the [year/year] season, the Player was registered as a player of the Second [Club's Country] Club and participated in the national championship, the national cup, the [Continental Federation] Volleyball Cup and the [CRVZA] Cup.

12 Having been registered as a player with different [Club's Country] clubs for [number] consecutive seasons, the Player, with substantial help of the [VFCC], started the process of acquiring the [Club's Country] citizenship. In addition, the [VFCC] started with the registration proceedings of the Player for the [Club's Country] national team. It was only during such process that the [VFCC] found out that the Player already had a VIS profile with the FIVB (FIVB No. [Number]).

13 On [date], the [VFCC] sent an email to the FIVB asking for help in verifying the authenticity of the VIS profile of the Player with the FIVB.

14 On [date], the President of the [ACVBA] sent an email to the FIVB stating essentially as follows:

*"I wish to confirm that the said player ([the Appellant]) has represented The [Appellant's Country] in [year] [Event] in [Event's Location] in Beach Volleyball."*

15 Subsequently, the [VFCC] requested an explanation from the [ACVBA] regarding the new circumstances. The latter responded by saying that the only occasion when an FIVB profile of the Player could have been created was at the time of the beach volleyball tournament in [Event's Location] to which the Player participated in [year]. Explicitly, the [ACVBA] stated as follows:

*"The [Event] took place in [Event's Location] from [date] to [date]. The [Event] featured approximately [number] athletes from [number] [Continent] countries who competed in [number] sports. [Event's Location] was awarded the games by Association of National Olympic Committees of [Continent]. The [Appellant's Country] delegation comprised of judo, athletic volleyball and Beach Volleyball [age]; The competition was a multi sport. The [Appellant's Country] volleyball*

*federation sent her in [city] through the national Olympic committee. Apart from that he have never participate in any other competition.”*

## II. THE DECISION UNDER DISPUTE

16 On [date], the International Transfer Coordinator of the FIVB held in the Decision that the Appellant’s Federation of Origin was the [ACVBA].

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

*“In light of the above, the FIVB decides as follows:*

1. ***The Federation of Origin of [the Player] is [[ACVBA]].***
2. *the Federation of Origin of [the Player] is indeed [[ACVBA]] as currently reflected in the Volleyball Information System (VIS)” (emphasis added)*

## III. APPEAL BY THE PLAYER AGAINST THE DECISION

### a) Proceedings before the FIVB Appeals Panel

18 On [date], the Appellant filed a statement of appeal (hereinafter the “**Statement of Appeal**”) against the Decision and paid the applicable handling fee.

19 On [date], the FIVB Appeals Panel Secretariat (hereinafter the “**Secretariat**”) acknowledged receipt of the statement of appeal and the proof of payment of the administrative fee. The Secretariat noted, however, that 1) the Appellant had not provided a copy of the decision appealed against and 2) the FIVB Finance Department had only confirmed receipt of the administrative fee in the amount of CHF 1,949.03 on [date]. Therefore, the Secretariat invited the Appellant to provide a copy of the decision under appeal and to pay the outstanding amount of the administrative fee (CHF 50.97) by no later than [date]. The Appellant was warned that a failure to pay the outstanding amount within said deadline would result in the Appeal being considered withdrawn. In addition, the Secretariat informed the parties that the dispute would be heard by the FIVB Appeals Panel Chairperson, Ms. Damaris Young (PAN), and two additional

members designated by the Chairperson in accordance with Article 17.3.1 of the 2020 FIVB Disciplinary Regulations. Finally, the Secretariat set a deadline for the Appellant to file her Reasons for Appeal by no later than [date].

- 20 On [date], the Appellant sent a confirmation of payment of EUR 60 as outstanding administration fee as well as a copy of the decision under appeal to the Secretariat.
- 21 On [date], the Secretariat acknowledged receipt of the Appellant's communication and the outstanding amount of the administrative fee. It reminded the Appellant that the deadline to file her reasons for appeal was by no later than [date].
- 22 On [date], the Appellant requested an extension of her deadline to file the reasons for appeal.
- 23 On [date], the Secretariat acknowledged receipt of the Appellant's request for a deadline extension and noted that, in view of the request, the Appellant's deadline to submit her reasons for appeal was suspended pending the FIVB Appeals Panel's decision on the Appellant's request for a deadline extension. Additionally, the Secretariat invited the Respondent to submit its position on the Appellant's request for a deadline extension by no later than [date]. Finally, the Secretariat noted that a failure by the Respondent to submit its position within the set deadline would be deemed as an acceptance of the Appellant's request.
- 24 Also on [date], the Respondent's counsel sent a power of attorney to the Secretariat and, on behalf of the Respondent, agreed to the Appellant's request for extension of deadline provided that the Appellant would also agree to a similar request (if any) of the Respondent for filing its answer.
- 25 On [date], the Secretariat acknowledged receipt of the Respondent's email dated [date] and informed the parties that it would forward the request for extension to the FIVB Appeals Panel, which would deliberate on the request shortly.
- 26 On the same day, the Secretariat announced that the FIVB Appeals Panel had decided to grant the Appellant's request for extension of deadline, given the Respondent's agreement, that the Appellant submitted her request within the deadline and that an extension of the deadline would not unduly delay the proceedings. Consequently, the Appellant had to file her Reasons for Appeal by no later than [date]. Finally, the

Secretariat held that no further extensions would be granted and that a failure to file a submission within the given deadline would result in the Appeal being considered withdrawn.

- 27 On [date], the Appellant submitted her reasons for appeal (hereinafter the “**Reasons for Appeal**”).
- 28 On [date], the Secretariat acknowledged receipt of the Reasons of Appeal and noted that they contained a request for joinder of the [VFCC]. In light thereof, the Secretariat invited the Respondent to submit its position on such request for joinder by no later than [date]. Finally, the Secretariat noted that a failure by the Respondent to submit its position within the set deadline would be deemed as an acceptance of the Appellant’s request.
- 29 On [date], the Respondent submitted its position on the Appellant’s request for joinder, stating that it had no objections.
- 30 On the same day, the Secretariat acknowledged receipt of the Respondent’s position on the joinder request and informed that it would forward such submission to the FIVB Appeals Panel, which would decide on the request shortly.
- 31 On [date], the [VFCC] filed a submission declaring that it agreed with the Appellant’s Reasons for Appeal and that it would like to join the appeal proceedings as party.
- 32 On [date], the Secretariat informed the parties that the FIVB Appeals Panel would be composed as follows to hear the present appeal: Ms. Damaris Young (PAN), Chairperson, Mr. Thomas Berend (LUX) and Mr. Gavin Dingley (RSA), Members. Subsequently, the Secretariat acknowledged receipt of the submission by the [VFCC]. In light of the content of such submission, given that all parties agreed to the Appellant’s joinder request and appreciating that the [VFCC] justified an interest in being joined in the present case, the FIVB Appeals Panel found it appropriate to join the [VFCC] in the proceedings as a joined party (hereinafter the “**Joined Party**”). Furthermore, the Secretariat informed the parties that the FIVB Appeals Panel understood that the [VFCC] shared the position set out in the Reasons for Appeal in its entirety and did not currently have to add anything to it. Finally, the FIVB Appeals Panel fixed a deadline of no later than [date] for the Respondent to file its answer.

- 33 On [date], the Respondent filed its answer (hereinafter the “**Answer**”).
- 34 On [date], the FIVB Appeals Panel acknowledged receipt of the Answer and noted that the FIVB Appeals Panel would deliberate on the case shortly. In addition, the Secretariat informed the parties that the FIVB Appeals Panel would issue further instructions or a decision in due course based on the written submissions filed by the parties.
- 35 On [date] and [date], respectively [date], [date], the Appellant and the Joined Party contacted the FIVB requesting a right to comment on the Respondent’s Answer.
- 36 On [date], the Secretariat acknowledged receipt of the Appellant’s and the Joined Party’s emails dated [date] and [date] and held that the FIVB Appeals Panel granted the Appellant and the Joined Party the opportunity to comment on the Respondent’s Answer dated [date] by no later than [date].
- 37 On [date], the Joined Party requested an extension of the deadline for filing its comments on the Respondent’s Answer by [number] days. The reason it gave for this request was the organisation of the [Event 2] in [Event’s Location 2], which it argued took up all of its resources.
- 38 On the same day, the Secretariat acknowledged receipt of the Joined Party’s request for a deadline extension and noted that the Joined Party’s deadline to submit its comments is suspended pending the FIVB Appeals Panel’s decision on the Joined Party’s request for a deadline extension. In addition, the Secretariat invited the Respondent to submit its position – by no later than [date] – on the Joined Party’s request for a deadline extension.
- 39 On [date], the Respondent informed the Secretariat that it had no objections against the Joined Party’s request for an extension of the deadline to file its comments.
- 40 On the same day, the Secretariat informed the Parties that, given that the Respondent had no objection to the Joinder Party’s request and considering that an extension of the deadline would not unduly delay the proceedings, the FIVB Appeals Panel provided the Joined Party with a deadline of no later than [date] to file its comments on the Respondent’s Answer. Finally, the Secretariat noted that no further extensions

would be granted and that a failure to submit the aforementioned documentation within the given deadline would result in the Joined Party being deemed to have waived its right to provide the comments on the Respondent's Answer.

- 41 On [date], the Joined Party filed its comments on the Respondent's Answer.
- 42 On [date], the Secretariat acknowledged receipt of the Joined Party's comments and noted that the Appellant had not submitted any comments within the deadline. In addition, the Secretariat held that the FIVB Appeals Panel 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.
- 43 On [date], the Secretariat invited the Respondent to submit its comments on the Joined Party's submission dated [date] by no later than [date].
- 44 On [date], the Respondent filed its comments on the Joined Party's submission dated [date].
- 45 On the same day, the Secretariat acknowledged receipt of the Respondent's comments and held that the FIVB Appeals Panel 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**

- 46 The position of the Appellant can be summarised as follows:
  - **As to the facts of the case:**
    - The Player was born in [Appellant's Country] on [date of birth]. She is a professional volleyball player who is currently under contract with the Second [Club's Country] Club.
    - The Player attended the School.
    - In [date], the Player participated in the [Event] in [Event's Location]. Prior to that, the Player had been approached by the beach volleyball coach of the [ACVBA] who asked her whether she would like to attend an international tournament in [Country].



The Player did not have any knowledge about potential substantial and long-lasting consequences of such a participation and was not warned about such consequences by anyone from the [ACVBA].

- At the beginning of [year], the Player moved to [Club's Country].
- On [date], the Player entered into the Contract with the First [Club's Country] Club and thus became a member of the latter.
- At the request of the [VFCC] and before registration of the Player with the First [Club's Country] Club, the latter acquired the Attestation from the President of the [ACVBA].
- Pursuant to the Contract and taking into the account the Attestation, the Player was registered as a player of the First [Club's Country] Club and, thus, registered for the first time as [Club's Country] player.
- In [year], the Player entered into a two-year contract with the Second [Club's Country] Club.
- As the Player had been registered as a [Club's Country] player with two different [Club's Country] clubs for [number] consecutive seasons and had shown great potential, the Player, with substantial help of the [VFCC], started the process of acquiring the [Club's Country] citizenship.
- At the same time, the [VFCC] started with the registration proceedings of the Player for the [Club's Country] national team, making inquiries with the FIVB in relation to the Player's status. In the course of this, the [VFCC] found out that the Player already had a VIS profile with the FIVB (FIVB No. [number]).
- According to the Player's knowledge, it is established practice by the FIVB that upon creation of a profile for a player such profile will be connected to the player's email address in order for the player to receive the FIVB's emails about his/her status and to be able to confirm or decline events through the FIVB profile system. However, neither the Player nor her parents have ever been asked or instructed in any way by any volleyball governing body, be it national or international, to sign anything or to provide the Player's email address. Moreover, the Player has never received any communication in this regard. According to the information available to the Player and in line with the Attestation, the Player's FIVB profile was never active.

- On [date], the [VFCC] sent an email to the FIVB asking for help in verifying the profile of the Player in FIVB “vis2009”.
- On [date], the President of the [ACVBA] sent an email to the FIVB confirming that the Player had represented [Appellant’s Country]’s national beach volleyball team in the [Event].
- The [VFCC] requested an explanation from the [ACVBA] regarding the new circumstances. The latter responded by saying that the only occasion when the FIVB profile could have been created was at the time of the [Event] in [Event’s Location] to which the Player participated in [year].
- **As to the merits of the case:**
  - The Decision implies that the registration with the [ACVBA] was automatic and conducted without the Player’s consent. It is, however, a well-established principle in the world of sports that a contractual nexus between an athlete and sports organisation has to be established in order for an athlete to be bound by the rules of such sports organisation.
  - Given that neither the Player nor her parents/legal guardians have ever applied for membership or registered or gave consent to become a member of any member club and/or the [ACVBA] itself, there is no contractual nexus between the Player and the [ACVBA]. Consequently, there was also no contractual nexus between the Player and the FIVB prior to the Player’s registration with the [VFCC] and the First [Club’s Country] Club.
  - Registration of a player cannot and should not be a unilateral act of a sports governing body (national and/or international), but rather has to derive from a player’s wish and explicit written consent to become a member and thus be registered.
  - The School is not a “volleyball school”, let alone a club as implied in the Decision. The School is not in any way connected to the [ACVBA] and any such connection cannot be simply assumed or implied.
  - In her “Volleyball Curriculum” dated [date] (see Appellant’s Exhibit A5), the Player stated that “[v]olleyball coach [Coach’s name] invited me to his volleyball school [School’s name] basic cycle school in [her] home town [Appellant’s home town

*name]*. What the Player meant thereby is that she started to practice volleyball at the School. Prior to that, she was practicing football. Despite the unfortunate wording of the Player, it cannot simply be assumed that state schools are in any way under jurisdiction of a national federation or even the FIVB. The fact that the School is not linked to the [ACVBA] is also evidenced by a witness statement of [school headmaster's name]<sup>2</sup>, headmaster at the School.

- Attending a high school cannot present a sufficient circumstance or fact to establish a contractual relationship between the Player and the [ACVBA] – even if the Player played volleyball for a school team. The FIVB, via its member federations, does not have jurisdiction over state schools, even if the FIVB wanted and even if it had enshrined state schools in its regulations. Schools are no members of NFs and/or the FIVB. Therefore, the School is neither directly nor indirectly affiliated with the [ACVBA].
- Based on the Attestation it can be concluded that the Player has not joined any club in [Appellant's Country] and has never submitted herself to any rules of the [ACVBA] and/or the FIVB.
- In order to be registered with the [ACVBA], the Player would have had to sign a membership form. No membership can simply be implied, for example from the Player's participation in the [Event].
- The Player was not given any (legal) warning of what the consequences of her participation in [Event] would be. The Player did not sign any agreement with the [ACVBA] and/or the organizer of [Event]. Therefore, no legal consequences – such as a registration with the [ACVBA] – can derive from the Player's participation.
- Additionally, the Player had no legal capacity to enter into any legal relationship with the [ACVBA] at the age of [age]. Any document would have had to be approved and/or co-signed by at least one of her parents under the laws of [Appellant's Country] (see the Appellant's Exhibit A9). Therefore, if the Player had no legal capacity to enter into any contract, the [ACVBA] would have had no legal ground to unilaterally register her.

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<sup>2</sup> In the Reasons for Appeal, the Player states that the witness statement stems from a [witness' name]. The Appellant's Exhibit A8, however, says otherwise.

- Alternatively, should the Appeals Panel decide that there is a contractual nexus between the Player and the [ACVBA] and the FIVB, the [ACVBA]'s failure to act in accordance with the rules and regulations in relation to issuance of the Attestation cannot go to the detriment of the Player and the [VFCC].
- The [ACVBA] violated the principle of *venire contra factum proprium*, which results in the modification of the Player's and the [VFCC]'s rights.
- The [VFCC] acted in accordance with FIVB Regulations as it requested information concerning the Player from the [ACVBA] and therefore had any and all reasons to believe that the Player was not registered with the [ACVBA]. The [VFCC] acted in reasonable reliance on [ACVBA]'s behaviour. Consequently, the [VFCC] should not face any negative consequences of the [ACVBA]'s failure to provide the [VFCC] with accurate information.

- **Prayers for relief:**

- The Appellant originally requested that the [VFCC] joins the present proceeding on the side of the Appellant. The FIVB Appeals Panel granted such request by its decision dated [date].
- Other than that, the Appellant's prayers for relief read as follows:

*"The Player hereby requests the Decision to be set aside and the [Club's Country] Volleyball Federation is considered as the [Appellant]'s the Federation of Origin. [...] The Player requests the reimbursement of the administrative fee in the amount of CHF 2.000."*

47 The position of the Joined Party may be summarised as follows:

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

- The Joined Party refers to the Reasons for Appeal, which shall be deemed fully incorporated into the Joined Party's comments.
- Before registration of the Appellant with the First [Club's Country] Club, the Appellant had acquired the Attestation. The First [Club's Country] Club relied on such Attestation and registered the Appellant on [date] as [Club's Country] player.

- Neither the Appellant nor her parents have ever been asked or instructed by any volleyball governing body (national and/or international) in any way to create an FIVB profile. Moreover, the Appellant has never received any communication in this regard.
- The “[Continental Federation] Teams Entry List – Women” for the [Event] (see Exhibit R4) has not been signed by the Appellant. Rather, it was filled in and filed by the [ACVBA].

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

- The Joined Party refers to the Reasons for Appeal, which shall be deemed fully incorporated into the Joined Party’s comments.
- The Decision was based on an email by the [ACVBA]’s President dated [date] in which he, contrary to the Attestation, stated that the Player had represented the [ACVBA] in the [Event], [Event’s Location]. The Joined Party, however, relied on the Attestation when registering the Appellant, fulfilling its duty of care and acting in good faith.
- The organization of the FIVB is based on the principles of the “[Continental] sports model”. A crucial part of this model is the membership system, the key principle of which is that a natural or a legal person may become a member of any sports organization (be it a club or federation) only by expressing a clear and unambiguous will to become a member.
- There should be no legal basis which binds an individual to the regulations of an organization without the individual’s consent. It is essential that an individual is aware of the consequences that a particular membership contains. Therefore, any organization must acquire consent from anyone that it wants to register as its member. A registration cannot be a unilateral process.
- When asked by the [ACVBA] whether she would like to attend an international tournament in [Event’s Location], the Appellant did not have any knowledge about potential substantial and long-lasting consequences of such participation and was not warned of such consequences by anyone from the [ACVBA]. The Appellant should not retroactively bear any negative consequences regarding her Federation of Origin since she has never been warned about such consequences.

- The Respondent suggests that a player can be registered with a federation without his/her knowledge and more importantly without accepting its obligations and rights resulting from such registration. This cannot be right.
- If the Appeals Panel were of the opinion that the FIVB's regulations are drafted in a way that reflects the Respondent's reasoning, it should be established that such regulations are in breach of fundamental principles of the [Continental] sports model, which is based on a voluntary membership in a sports organization.
- The Respondent is cherry-picking when it relies on the necessity of a contractual nexus in order to support its own line of argumentation but denies its necessity when it comes to the Appellant's argumentation.
- The FIVB Appeals Panel should clearly establish that there must be a contractual nexus between a player and a club or federation. In [Club's Country], anyone has to sign a membership form to become member of a club. Thereby, a contractual nexus is established. In case of an underage player, such membership form also has to be signed by the player's parents or legal guardians.
- The Decision indicates that the Joined Party should have checked the information it obtained from the [ACVBA], although such information was obtained from the legal representative of the [ACVBA] and was therefore legitimately considered as reliable. It is not acceptable that the Joined Party should further verify the information it received from the official representative of an organization/association within the FIVB. The dilemma presented may only be solved by the FIVB deciding that the Appellant's Federation of Origin is the Joined Party.

- **Prayers for relief:**

The Joined Party requests the FIVB Appeals Panel to set aside the FIVB's decision dated [date] and the Joined Party to be considered as the Appellant's Federation of Origin.

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

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

- The Respondent acknowledges that the facts of the present case have, in essence, been presented to the FIVB Appeals Panel in the Reasons for Appeal. In addition, the Respondent points out to the following facts.
- The Player was born in [Appellant's Country], raised in [Appellant's Country] and went to the School in [Appellant's Country] until the beginning of [year] when she moved to [Club's Country].
- In [year], the [ACVBA] participated in the FIVB [Continental] Dream project. In this context, the Player started playing volleyball in the [Appellant's home town] Dream Project Centre in [Appellant's home town], [Appellant's Country].
- In [year], the Player was called to the [Appellant's Country] Club and made her debut season in the [Appellant's Country] national championships for the women volleyball team of the [Appellant's Country] Club.
- From [year] to [year], the Player attended the School where she played, trained and practised volleyball.
- In [year], the player was awarded with the "Emerging Talent Award" by the Sports Journalists' Association of [Appellant's Country].
- From [date] to [date], the Player participated in the [Event] for the under [age] beach volleyball national team of the [ACVBA]. The Player was registered in the [Continental Federation] Teams Entry List.
- For the purpose of registering the Player for the [Event], the FIVB VIS profile for the Player was created. Consequently, at least since [year], the Player was registered in the VIS database under the VIS profile with the FIVB registration number [Number] and was listed to play for the [ACVBA].

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

- The FIVB rules and regulations, in particular the FIVB Sports Regulations, shall apply primarily and Swiss law subsidiarily.

- The Player received first registration with the [ACVBA] when she participated in the [Event] in [year].
- The Player's participation with the Beach Volleyball under [age] national team of the [ACVBA] in the [Event] in [year] constituted the registration of the Player within the meaning of Article 2.4.1 lit. a. of the FIVB Sports Regulations.
  - The Player and the FIVB agree in that the Player participated at the [Event] in [year].
  - The [Event] serve as the [Continental] qualification competition for the [Event 3] and, as such, are "[Event 4]" pursuant to Article 2.4 lit. e. of the FIVB Event Regulations. The [Event] are therefore an "*Official Competition*" within the meaning of Article 2.4 of the FIVB Event Regulations and Article 2.4.1 lit. a. of the FIVB Sports Regulations.
  - The [Continental Federation] Teams Entry List, in which the Player was listed (see Respondent's Exhibit R4), is the official, final registration for teams and players participating in the [Event]. Such list is therefore the equivalent of the FIVB 0-2bis Form (cf. Article 2.4.1 lit. a. of the FIVB Sports Regulations).
  - Alternatively, the Player was in any case "*otherwise registered*" with the [ACVBA] within the meaning of Article 2.4.1 lit. b. of the FIVB Sports Regulations by way of her participation at the [Event] in [year].
  - For a federation to be determined a player's federation of origin, Article 2.4.1 lit. b. of the FIVB Sports Regulations provides that three elements need to be established cumulatively: (1) the federation issues a national license for the player or otherwise registers the player within its federation; (2) the federation must be the first to issue the national license or otherwise register the player and (3) registration must not take place before the season in which the Player turns fourteen.
  - For the [ACVBA], all of the three aforementioned elements can be established and, therefore, the [ACVBA] was correctly determined as the Player's Federation of Origin.
  - Even if registering the Player in the [Continental Federation] Teams Entry List were not to be considered a registration pursuant to Article 2.4.1 lit. a. of the FIVB Sports Regulations, the Player would in any case have been "*otherwise*



*registered*” (cf. Article 2.4.1 lit. b. of the FIVB Sports Regulations). The [ACVBA] was the first federation to register the Player, as the Player had not been registered with any other federation before and her VIS profile was only created in [year]. Finally, at the time of registration the Player was fifteen years of age.

- The [ACVBA] could also be correctly determined as the Player’s Federation of Origin, as all elements of Article 2.4.1 lit. b. of the FIVB Sports Regulations (“otherwise registered”) can be established following from the Appellant playing for the [Appellant’s Country] Club in [Appellant’s Country]. Article 2.4.1 last paragraph of the FIVB Sports Regulations provides that the element of registration of a player shall be fulfilled, inter alia, if the player has played in a volleyball club. The [Appellant’s Country] Club is affiliated with the [ACVBA].
- Apart from that, the Decision could also have been based on Article 2.4.1 lit. b. read in conjunction with Article 2.4.1 last paragraph of the FIVB Sports Regulations because the Player started her volleyball career in [Appellant’s Country] and played at the School.
  - The rationale behind the FIVB’s rule to establish the Federation of Origin of a player is to determine the federation in which the player first started playing the sport of volleyball and where the development of a player with regard to setting the basis for his/her volleyball career has taken place. The FIVB has constantly applied the concept of Federation of Origin based on such rationale.
  - With the aforementioned in mind, the Player’s Federation of Origin can only be the [ACVBA], given that it was in [Appellant’s Country] where (1) the Player first practised volleyball in the [Appellant’s home town] Dream Project Centre in [year] (see Respondent’s Exhibit R1), (2) the Player played and trained for the [Appellant’s Country] Club (see Respondent’s Exhibit R2) and (3) the Player attended the School and trained and developed her volleyball-specific skills (see Appellant’s Exhibit A5).
  - Consequently, all of the Player’s volleyball-specific training and development at the early stages of her volleyball career were received in [Appellant’s Country] and not in [Club’s Country]. In fact, the Player received such a high-level volleyball-specific training in [Appellant’s Country] that she was awarded with the “Emerging Talent Award” in [year] (see Respondent’s Exhibit R3). In [Club’s Country], the Player was immediately contracted by clubs paying her money for

her athlete's services which corroborates that she has acquired outstanding volleyball skills in [Appellant's Country].

- Contrary to the Appellant's claim, the registration of the Player is not determined by any contractual nexus between the Player and a federation. Instead, registering a player does not necessitate a contractual nexus.
  - A federation's act of registering a player is determined on the basis of objective criteria. Such objective criteria shall also be considered when determining a player's Federation of Origin. A contractual nexus could be deemed as relevant factor, its lack, however, is of no significant relevance. The determination of a player's Federation of Origin cannot be up to the disposition of the affected parties.
  - In addition, the [ACVBA] neither acted in bad faith nor secretly registered the Player in order to gain some kind of advantage. Rather, the [ACVBA] had asked the Player whether she wanted to participate in the [Event] in [year] and the Player agreed.
  - As a result, the lack of a contractual nexus between the Player and the [ACVBA] is irrelevant for the determination of the Player's Federation of Origin.
- Contrary to the Appellant's claim, the Player's legal capacity or the Player's parents' consent is irrelevant for the existence of a "registration" of the Player with the [ACVBA] in accordance with Article 2.4.1 of the FIVB Sports Regulations.
  - The act of registering is to be determined by objective criteria. Subjective elements – such as a player's legal capacity or a player's parents' consent – are irrelevant.
  - Apart from that, it is not true that the registration with the [ACVBA] unreasonably and irreversibly affects the Player's career. Article 5 of the FIVB Sports Regulations provides for a mechanism to change a player's Federation of Origin.
- Finally, neither the Appellant nor the [VFCC] are entitled to rely on the principle of *venire contra factum proprium* towards the FIVB.
  - While it is correct that the Attestation and the [ACVBA]'s statement dated [date] are contradictory, it was the Respondent that issued the Decision. The [ACVBA]

is not a party to the present proceedings. For this reason alone, the Player cannot rely on *venire contra factum proprium vis-à-vis* the FIVB.

- Apart from that, the First [Club's Country] Club demanded the Attestation from the [ACVBA] on [date], i. e. at a time when the Player had already entered into the Contract with the First [Club's Country] Club. Additionally, the alleged lack of notification to the Player about her registration with the [ACVBA] in VIS is irrelevant for the Decision. Notifying a player about a successful registration with a federation, or the lack thereof, cannot have the consequence of influencing the determination of such player's Federation of Origin.
  - The Joined Party's reliance on statements made by a third party (here the [ACVBA]) that is not under the control of the Respondent is of no relevance to the present proceedings (see para. 75 of the Answer for more details). It may be regrettable that a legal representative of the [ACVBA] made a statement such as the Attestation; however, this does not influence the question of the Appellant's Federation of Origin.
  - The principle of nationality and solidarity on which the concept of Federation of Origin is based, is well accepted in the [Continental Union] based on Article 165 of the Treaty on the Functioning of the [Continental Union]. In line with jurisprudence of the Respondent (see for example FIVB AP 2021-02), determination of a player's Federation of Origin in accordance with the FIVB Sports Regulations does not depend on subjective elements such as a player's explicit consent or any contractual nexus. It is therefore immaterial to the present proceedings whether the Appellant explicitly consented, knew about the registration and consequently the existence of her FIVB profile, had been warned by the [ACVBA] about the consequences of the registration or signed the [Continental Federation] Teams Entry List.
  - Contrary to the Joined Party's allegation, the [ACVBA]'s act of registering the Player was certainly not made against the Player's will or without her knowledge. Rather, the [ACVBA] has asked the Player whether she wanted to participate for the [ACVBA] in the [Event] in [year] and the Player (voluntarily) agreed.
- **Prayers for relief:**
  - The Respondent requests the Panel to

"1. *dismiss the Appellant's Appeal in its entirety;*

- II. *confirm the decision of the FIVB dated [date]*
- III. *order the Appellant to pay the entire costs of the present proceedings;*
- IV. *order the Appellant to pay a contribution to the Respondent's legal fees."*

#### **IV. ADMISSIBILITY OF THE APPEAL**

49 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.

50 The FIVB Appeals Panel notes that the Appeal was filed with the FIVB Appeals Panel Secretariat on [date], i.e. when the 2022 FIVB Disciplinary Regulations (the "2022 FIVB 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 2022 FIVB DR.

##### **a) FIVB Appeals Panel Competence: Pre-requisites**

51 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 2022 FIVB DR); and
- ii. pay an administrative fee of CHF 2,000 (Article 19.2 of the 2022 FIVB DR).

52 The Appellant filed an 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 in full on [date] was confirmed by the FIVB Appeals Panel Secretariat on [date].

53 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 2022 FIVB DR.

**b) FIVB Appeals Panel Competence: General principles**

54 The FIVB Appeals Panel is competent to hear appeals filed by an affected party against decisions of FIVB bodies or Confederation bodies (Article 18.1 of the 2022 FIVB DR). In the present case, it is undisputed that:

- i. the Appellant, whose Federation of Origin has been established as the [ACVBA] and not the [VFCC], is an affected party within the meaning of Article 18.1 of the 2022 FIVB DR; and
- ii. the Decision was issued by an FIVB body within the meaning of Article 18.1 of the 2022 FIVB DR.

55 In addition, neither of the parties has challenged the jurisdiction of the FIVB Appeals Panel.

56 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**

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

58 However, the FIVB Appeals Panel is satisfied that the restrictions set forth in Articles 16.6 and 18.2 of the 2022 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.

59 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

60 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

61 The FIVB Appeals Panel finds that FIVB Regulations shall apply primarily and Swiss law subsidiarily.

62 The subsidiary applicability of Swiss law ensures that there is consistency in the applicable law throughout the entire appeals procedure defined in the FIVB Disciplinary Regulations, i.e. an appeal before the CAS. It is clear from Article R58 of the Code of Sports-related Arbitration that Swiss law would be applied. The CAS confirmed this approach in a previous appeal against a FIVB Appeals Panel decision and found that Swiss law applied subsidiarily (CAS 2015/A/4095, para. 58). In addition, the FIVB Appeals Panel observes that Article 1.2 of the 2022 FIVB DR explicitly states that Swiss law shall be applicable to the merits.

63 The FIVB Appeals Panel notes that the Decision was issued based on the FIVB Regulations in the edition in force at the time of its issuance, i.e. the 2020 edition of the FIVB Sports Regulations. However, the FIVB Appeals Panel finds that the Decision should have been based on the regulations in force at the time of the occurrence of the contentious facts. Accordingly, the FIVB would have had to apply the 2018 edition of the FIVB SR. Therefore, it is the 2018 edition of the FIVB SR that shall apply to the merits of the Appeal.<sup>3</sup>

### b) Merits

64 With regard to the merits, the FIVB Appeals Panel must determine whether requirements of Article 2.4.1 of the 2018 FIVB SR were met.

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<sup>3</sup> The FIVB Appeals Panel notes that the 2018 and 2022 editions of the FIVB SR are largely identical with regard to the provisions relevant for the outcome of the case at hand. The age limit in Article 2.4.1 lit. b as well as the additional paragraph of Article 2.4.1, both introduced by way of the 2022 edition of the FIVB SR, do not change the FIVB Appeals Panel's legal assessment of the case at hand.

65 Article 2.4.1 of the 2018 FIVB SR reads as follows:

*“2.4.1 The Federation which is the first to:*

- a. register the player in its national team for an FIVB, World or Official Competition through the final FIVB O-2bis Form, with the player’s presence being certified by the Control Committee; or*
- b. issue a national license for the player or otherwise register the player within its Federation;*

*is considered to be the player’s Federation of Origin regardless of the player’s nationality.”*

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

*“In the present case, the FIVB notes the following:*

- The Player was born on [date of birth], in [Appellant’s city of birth], [Appellant’s Country].*
- In [year], the Player started playing Volleyball at the Volleyball school [School’s name] basic cycle school, in [Appellant’s city of birth], [Appellant’s Country].*
- In [year], the Player represented [Appellant’s Country] as a beach Volleyball Player during the [Event] in [Event’s Location].*

*The above confirms the FIVB’s view that it is uncontested that the Player was first registered with [[ACVBA]]. Her first registration in volleyball was received in [Appellant’s Country]. Moreover, [[ACVBA]] has declared that the Player has been registered with its National Federation since [year].*

*The rationale of this finding is that the FIVB Sports Regulations foresee that any club (be it a school, a private club or a company) belongs directly to the National Federation of the country of its residence (Article 7.2.2 FIVB Sports Regulations 2020).*

*In light of the above, the FIVB decides as follows:*

1. *The Federation of Origin of [the Player] is [[ACVBA]].*
2. *the Federation of Origin of [the Player] is indeed [[ACVBA]] as currently reflected in the Volleyball Information System (VIS)”*

67 The FIVB Appeals Panel finds that the FIVB’s line of argument is largely convincing.

68 It is not convincing insofar as the FIVB held that the Appellant having played volleyball at the School was a decisive factor for determining her Federation of Origin.

69 In this regard, the Respondent argues that the Appellant started her volleyball career in [Appellant’s Country] and played at the School. Given that the Player first practised volleyball in the [Appellant’s home town] Dream Project Centre in [year] (see Respondent’s Exhibit R1) and attended the School from [year] to [year], the Respondent holds that it was within [Appellant’s Country], where the Appellant started playing and training volleyball. This is further corroborated by the fact that the Appellant was awarded with the “Emerging Talent Award” in [year] (see Respondent’s Exhibit R3), i.e. when she was still in [Appellant’s Country]. The Appellant, by contrast, argues that the School is not a “volleyball school”, but merely a regular school that offers volleyball training. According to the Appellant, the FIVB only came to the assumption of the School being a “volleyball school” because the Appellant had written in her “Volleyball Curriculum” dated [date] (see Appellant’s Exhibit A5) that that “[v]olleyball coach [Coach’s name] invited me to his volleyball school [School’s name] basic cycle school in [her] home town”. What the Player meant thereby was that she started practicing volleyball at the School. Prior to that, she had been practicing football. In addition, the School is not in any way connected to the [ACVBA] and any such connection cannot be simply assumed or implied.

70 The FIVB Appeals Panel finds the FIVB’s line of argument unconvincing.

71 Reference is made in this regard to Article 2.4.1 last paragraph of the 2022 FIVB SR, which reads as follows:

*“For purposes of this provision, the act of registering a player shall mean that the player has been registered to play in a volleyball competition for a club, team, school or other volleyball entity that is affiliated either directly or indirectly with the Federation.”*



- 72 Such wording is clear in that the act of registering a player within the meaning of Article 2.4.1 of the FIVB SR requires that said player has been registered to play in a volleyball competition. While the last paragraph of Article 2.4.1 was not added to the FIVB SR until 2020, the FIVB is of the opinion that there is good reason to assume that the 2018 FIVB SR must also be read to reflect such understanding of the word “*register*”. First and foremost, it is the literal meaning of “*register*” that speaks in favour of the said understanding, since registering requires that there is something specific to register for, such as, for example, a competition.
- 73 Therefore, registering within the meaning of Article 2.4.1 of the 2018 FIVB SR necessitates that a player was registered for and participated in an official volleyball competition. However, neither by practising volleyball in the [Appellant’s home town] Dream Project Centre in [year] nor by attending the School has the Appellant participated in any “*volleyball competition*” within the meaning of Article 2.4.1 last paragraph of the 2022 FIVB SR. Therefore, both the Appellant practising volleyball in the [Appellants’ home town] Dream Project Centre in [year] and attending the School are aspects that are irrelevant for the determination of the Appellant’s Federation of Origin.
- 74 Nevertheless, the FIVB Appeals Panel agrees with the FIVB’s overall reasoning, given that the Appellant was in any case “*registered*” pursuant to Article 2.4.1 lit. a. of the 2018 FIVB SR and “*otherwise registered*” within the meaning of Article 2.4.1 lit. b. of the 2018 FIVB SR.
- 75 It is undisputed between the parties that the [ACVBA] included the Appellant in the [Continental Federation] Teams Entry List for the [Event] in [year] (see Respondent’s Exhibit R4). The [Event] are “*Regional Games*” pursuant to Article 2.4 lit. e. of the 2018 FIVB Event Regulations and therefore an “*Official Competition*” within the meaning of Article 2.4 of the 2018 FIVB Event Regulations as well as Article 2.4.1 lit. a. of the 2018 FIVB SR. The [Continental Federation] Teams Entry List is the official and final registration for teams and players participating in the [Event]. Such list is therefore the equivalent of the FIVB 0-2bis Form (see Article 2.4.1 lit. a. of the FIVB SR). Consequently, the Appellant’s inclusion in the [Continental Federation] Teams Entry List for the [Event] in [year] constituted a registration of the Appellant within the meaning of Article 2.4.1 lit. a. of the 2018 FIVB SR.

- 76 In addition, the Player was in any case “*otherwise registered*” with the [ACVBA] within the meaning of Article 2.4.1 lit. b. of the 2018 FIVB SR.
- 77 “*Otherwise registered*” pursuant to Article 2.4.1 lit. b. of the 2018 FIVB SR necessitates that two elements need to be established cumulatively: (1) the federation otherwise registers the player within its federation and (2) the federation must be the first to otherwise register the player.
- 78 The [ACVBA] was undisputedly the first federation ever to approach the Appellant on the occasion of the [Event].
- 79 With regard to the term “*register*”, the act of registering a player requires, as laid out above, that the player has been registered to play in a Volleyball (in either form) competition for a club, team, school or other volleyball entity in the territory of a National Federation.
- 80 First, the Appellant undisputedly participated in the [Event], i.e. was registered to play in a volleyball competition for a team within the aforementioned meaning. Secondly, according to the substantiated statement by the FIVB (see Exhibit R 1), which has neither been contested by the Appellant nor by the Joined Party, the Appellant made her debut for the women volleyball team of [Appellant’s Country] Club in the [Appellant’s Country] national championships in [year]. [Appellant’s Country] Club is a volleyball club affiliated with the [ACVBA]. Therefore, also from this perspective, the Appellant must be deemed as having been “*otherwise registered*” with the [ACVBA].
- 81 Both the Appellant and the Joined Party are of the opinion that there must be some kind of contractual nexus between the Appellant and the [ACVBA] in order for the Appellant to be deemed registered with the [ACVBA], which however is not the case.
- 82 Insofar, the FIVB is right in that a federation’s act of registering a player, which is in turn of relevance to determining said player’s Federation of Origin, must be assessed on the basis of objective criteria. The determination of a player’s Federation of Origin cannot be up to the disposition of the affected parties. In addition, the wording of Article 2.4.1 of the 2018 FIVB SR provides no indication that a contractual nexus would be

required. Therefore, the lack of any contractual nexus is irrelevant when determining a player's Federation of Origin.

- 83 Contrary to the Joined Party's allegation, the [ACVBA]'s act of registering the Appellant was not performed against the Appellant's will or without her knowledge. Rather, the [ACVBA] asked the Appellant whether she wanted to participate for the [ACVBA] in the [Event] in [year] and the Appellant agreed. With this in mind, it is also not correct that neither the Appellant nor her legal guardian consented to any form of registration with the [ACVBA]. By contrast, both the Appellant and her parents agreed to the Appellant participating at the [Event] in [year].
- 84 Even assuming the Appellant had not consented to participating at the [Event], this would not be of any relevance to the question of determining the Appellant's Federation of Origin. Article 2.4.1 of the 2018 FIVB SR merely requires that objectively there was a registration, which there was. Should the [ACVBA] in fact not have warned the Appellant of the consequences of a registration prior to the [Event], this is most regrettable. However, it cannot affect the application of Article 2.4.1 of the 2018 FIVB SR, not least because introducing such subjective element would subject the very important question of a player's Federation of Origin to significant uncertainty.
- 85 Whether or not the Appellant had the capacity to enter into a legal relationship with the [ACVBA] in [year], i. e. at the age of [age], is of no relevance. The FIVB only applies its own regulations and does not take recourse to the regulations of any national legislation and/or federation.
- 86 Furthermore, the Appellant may not rely on the [ACVBA] having violated the principle of *venire contra factum proprium* before the FIVB Appeals Panel. Even if the [ACVBA] had violated such principle (which may remain undecided), this would not create a defence against a decision taken by the FIVB, rather than the [ACVBA].
- 87 Finally, it is of no relevance that the Joined Party, according to its own statement, fulfilled its duty of care and acted in good faith relying on the Attestation when registering the Appellant. The Decision is merely about objectively determining the Player's Federation of Origin, not about any misbehaviour on the part of the Joined Party.

## **VI. COSTS**

88 The FIVB Appeals Panel notes that Article 19.2 *in fine* of the 2022 FIVB DR provides that the administrative fee may be reimbursed if a party prevails. In the present case, the Appellant did not prevail on his appeal. Consequently, the FIVB Appeals Panel finds that it cannot reimburse the administrative fee paid by the Appellant.

89 The FIVB notes that there is no provision in the 2022 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 dismissed.**
- 2. The FIVB decision dated [date] is confirmed.**
- 3. No reimbursement of the administrative fee shall be granted.**
- 4. Each party shall bear their own legal costs.**
- 5. Any other requests for relief are dismissed.**

Lausanne, [date of the decision]

Ms. Damaris Young  
Chairperson

Mr. Thomas Berend  
Member

Mr. Gavin Dingley  
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 2022 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](http://www.tas-cas.org)

The address and contact details of the CAS are the following:

Court of Arbitration for Sport  
Avenue Bergières 10  
1004 Lausanne, Switzerland  
Tel: +41 21 613 50 00  
Fax: +41 21 613 50 01  
email: [info@tas-cas.org](mailto:info@tas-cas.org)

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