

In the Matter of

STEPHEN GOTCH,
the Canadian Volleyball Player
(Appellant)

Vs.

The Decision issued by the Fédération Internationale de Volleyball (FIVB) on 17 July
2015
in the Case 2015-01

DECISION
of the FIVB APPEALS PANEL

Date : 10 March 2017.

This is an appeal made by the Appellant against the decision made by the FIVB on 17 July 2015 (“Decision”).

Factual Background

1. 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.
2. On 24 September 2014, the Appellant filed a complaint against the Greek Club Foinikas Syros (“Greek Club”) before the FIVB seeking outstanding salaries, a cancelled bank note and damages for the 2011/12 season totaling EUR 37,978.
3. On 1 October 2014, the FIVB acknowledged receipt of the Appellant’s Complaint and informed the Appellant that the Appellant’s Complaint, along with another case in CEV involving the Greek Club, may constitute potential repeated failure to honour contracts by the Greek Club in violation of Article 45.10.2 of the FIVB Sports Regulations (2014). Additionally, the FIVB invited the Greek Club to submit its comments by no later than 31 October 2014.
4. On 31 October 2014, the Greek Club submitted its comments in which it stated

that it had filed a complaint against the Player in Greece before the “athletic justice body” and that the Player had participated in those proceedings. Additionally, it claimed that this “court” would reach a decision shortly.

5. On 5 January 2015, FIVB acknowledged receipt of the Greek Club’s Reply and requested additional information from the Parties regarding: 1) which court has been “seized”; 2) who initiated the proceedings; and 3) on which grounds had the Greek court been “seized” and provided a deadline of 14 January 2015 to submit this additional information.
6. On 14 January 2015, the Greek Club submitted the additional requested information. Regarding a procedure involving a EUR 10,000 bank check, the Greek Club stated that this had been adjudicated in a Greek civil court in favour of the Greek Club. Regarding the other claims brought by the Appellant, the Greek Club provided a letter from the Hellenic Volleyball League’s Financial Dispute Resolution Committee for Professional Volleyball Players (“EODAP”) which claimed to have jurisdiction to settle the dispute between the Appellant and the Greek Club under Greek law. The EODAP also informed the FIVB that the Greek Club had filed its application in December 2011 and that a hearing was conducted on 23 May 2012. The EODAP had not yet issued a decision in this dispute. The Appellant contests the Greek Club’s assertion that the procedure involving the EUR 10,000 bank check has been adjudicated. Rather, he contends that the trial was delayed due to a strike by the court’s secretary, and a new court date has yet to be arranged.
7. On 11 February 2015, the Appellant emailed the FIVB in which he 1) answered to the Greek Club’s submissions; 2) informed the FIVB that the Appellant’s Greek attorney was going to provide a report on the proceedings in Greece; 3) stated that he had no intention of filing a law suit or administrative complaint against the Greek Club and only found out about the Greek Club’s complaint through the internet; and 4) requested an extension of the deadline to 15 March 2015 to provide the Appellant’s formal response.
8. On 13 February 2015, the FIVB acknowledged receipt of the Greek Club’s submission and the Appellant’s extension request. The FIVB granted the Appellant’s request to file his Reply by no later than 15 March 2015.
9. On 11 March 2015, the Appellant stated that he had yet to receive an answer from his Greek attorney and, thus, requested a further extension of two weeks or possibly a month. Moreover, the Appellant confirmed 1) the Greek Club initiated the proceedings in Greece against the Appellant; 2) the proceedings in

Greece had yet to be decided and the Appellant was unsure about when they would receive a final decision; 3) if the Appellant lost the proceedings in Greece, it would be a travesty not due to the merits of the dispute but due to the practical barriers of the proceedings, i.e. ineffective counsel, inability to pay substantial legal costs, lack of attendance at court hearings, and an incredibly flawed legal system in Greece. The Appellant also contended that the Greek Club's claim was based on the issue of an alleged wrongful dismissal, i.e. that the Appellant abandoned the Greek Club, whereas the Appellant's claim was based on outstanding salary obligations owed to the Appellant based on the Club's alleged improper termination.

10. On 23 March 2015, the FIVB acknowledged receipt of the Appellant's second request for a time extension and granted another time extension until no later than 30 April 2015.
11. On the same day, the Appellant sought clarification regarding the questions posed by the FIVB in its email on 5 January 2015. Specifically, he requested clarification as to what the FIVB meant by the word "seized" in its first and third questions and whether the FIVB was requesting who initiated the proceedings for the second question.
12. On 2 April 2015, the FIVB provided the requested clarification to the Appellant regarding the questions posed by the FIVB in its email on 5 January 2015. In particular, the FIVB provided the following answers to the Appellant's questions: 1) "in other words, to which court the case has been referred to?"; 2) "the below is correct"; and 3) "In other words, on which grounds relies the claim."
13. On 29 April 2015, the Appellant acknowledged the final deadline but requested a third extension for the following reasons: 1) the Appellant needed additional time to receive more complete information from his previous legal counsel; 2) the Appellant had since changed counsel in an attempt to provide complete and accurate responses; and 3) the Appellant wanted to provide proper support which would be difficult within the deadline.
14. On 30 April 2015, the Appellant, his father, and the Appellant's attorney all sent messages to the FIVB requesting that the FIVB grant an additional extension.
15. On 1 May 2015, the FIVB acknowledged receipt of the Appellant's attorney's Power of Attorney to act on behalf of the Appellant as well as his request for a further extension. The FIVB granted the extension request, set a deadline of 22 May 2015, but noted that no further extensions would be granted.

16. On 4 May 2015, the Hellenic Volleyball League sent a letter to the FIVB confirming that it had two claims before it, one from the Greek Club and one from the Appellant. The Greek Club had filed its claim on 5 December 2011, and the Appellant had filed his counterclaim on 9 March 2012. The Hellenic Volleyball League stated that it had already conducted a hearing but had not yet issued a decision because of an ongoing dispute regarding the financial compensation for the EODAP members. A decision would be issued once this dispute had been resolved.
17. On 6 May 2015, the FIVB acknowledged receipt of the letter from the Hellenic Volleyball League and provided the letter to the Appellant and the Greek Club.
18. On 20 May 2015, the Appellant thanked the FIVB for the extension and requested the file for this dispute in order to help the Appellant's attorney prepare his response.
19. On 23 May 2015, the Appellant submitted his response with the FIVB. Regarding the first question posed by the FIVB, the Appellant stated that there was no claim that had been filed before the Greek state courts. Rather, the Greek Club filed before EODAP and then the Appellant subsequently filed a counterclaim. The EODAP held a hearing on 23 May 2012 on both claims, and the Hellenic Volleyball Federation ruled in favour of the Greek Club. No decision had been issued in the case, and the Appellant's attorney was awaiting further documentation.
20. Regarding the third question posed by the FIVB, the Appellant directed the FIVB to his previous email responses and his Petition filed before the EODAP which would sufficiently answer the its question.
21. Additionally, the Appellant called the FIVB's attention to emails between the Appellant's agent and the Greek Club, witness testimony, and submissions made before the EODAP regarding the merits of the dispute. The Appellant also provided evidence supporting his assertion that there was no pending lawsuit against the Appellant despite the Greek Club's claim otherwise. He also stated that there was evidence proving the validity of the contract that he submitted as part of the Appellant's Complaint. The Appellant requested additional time to provide more evidence because the Appellant was unable to obtain all of the evidence from the Greek proceedings that he needed in order to provide a complete submission. Finally, the Appellant informed the FIVB that that case before the Judge of Peace in Syros regarding the bank check allegedly owed to the Appellant was still pending.

22. On 12 June 2015, the FIVB acknowledged receipt of the Appellant's submission, noted that no additional submissions would be accepted, and stated that the matter was now under review by the FIVB.

The Decision

23. On 17 July 2015, the FIVB issued the Decision, which stated the following:

*“Reference is made to the dispute involving **MR STEPHEN GOTCH** (CAN; the “Player”) and the club **FOINIKAS SC SYROS** (GRE; the “Club”).*

The FIVB complaint process for Financial Disputes between players, coaches and clubs (article 45.11 of the FIVB Sports Regulations) entered into force during the 2012/13 season. Consequently, only cases which arose during the 2012/13 season (or later) are admissible as Financial Disputes under the procedure of Art. 45.11 of the FIVB Sports Regulations.

Nevertheless, alleged contractual violations relating to previous seasons may, depending on their circumstances, fall under the scope of Art. 45.10.2 of the FIVB Sports Regulations.

Consequently, since the present dispute arose before the 2012-13 season (i.e. 2011/12 season), the framework under which FIVB has reviewed this case is Art. 45.10.2 of the FIVB Sports Regulations, as follows:

- 1. After a thorough review of the parties' submissions it appears that prior to the initiation of the present proceedings by the Player, both parties filed an action against each other for the same dispute before the Hellenic Volleyball League's Financial Dispute Resolution Committee for Professional Volleyball Players (“EODAP”) and the respective actions are still pending in front of the EODAP according to the statement of the Hellenic Volleyball League submitted on 04 May 2015;*

2. *In view of the above, the FIVB cannot admit the present dispute and consider it on its merits until the EODAP issues a decision. The FIVB will decide whether and to what extent it can take its own decision when the EODAP decision will be issued and becomes final;*
3. *In the meantime, the FIVB urges the Hellenic Volleyball Federation and the Hellenic Volleyball League to use their best efforts for a prompt resolution of this matter.*

This decision is made without prejudice to any rights which the Club and/or the Player may have against each other under the contract(s) signed by them. In addition, this decision is not binding on the FIVB or CEV bodies (or CAS upon final appeal), in the event that said bodies are requested to resolve a dispute among the parties.

Thank you for your understanding and cooperation.”

APPEAL

Proceedings before the Appeals Panels and Positions of the Parties

24. On 30 July 2015, the Appellant emailed to the FIVB and stated that he did not accept the Decision and asked following six requests seeking additional information in order to appeal the Decision:
 - “1. *Copy of article 45.11 as referred to in your letter.*
 2. *Copy of article 45.10.2 as referred to in your letter*
 3. *Copy of whatever provisions or articles you rely on that would permit you, within the bi-laws or mandates of your organization, to deny involvement and/or ruling on a matter of serious potential wrongdoing on the part of a member club simply because a complaint was filed by a player and/or club with their respective league office/authority, and in this case a complaint that has not even been responded to years after it was filed and may never be responded to.*
 4. *There is no reference in your February 17th letter to the appeal processes available to us, as well as the timelines and procedures for such processes. Please provide this information to us.*

5. *There is no reference in your February 17th letter to any mandated or expected timelines for the Hellenic Volleyball League to deal with this matter, raising the possibility that your deflection of responsibility to them could have the equivalent affect of indefinitely deferring this case thereby handing a virtual victory to the Syros Club. Please explain why you would leave out such a critical detail and if that was done in error advise us at a minimum how you will propose to remedy that error.*
 6. *Will you review further with a view towards reversing your decision to effectively deny us access to the FIVB complaint process in a manner that would include a fair and impartial review and ultimately a fair decision regarding our claim?"*
25. On 31 July 2015, the Appellant requested a response from the FIVB regarding his previous email, reiterated his belief that the Decision was incorrect and stated that *"As such, you may consider this email/letter my official request to have my entire file submitted to the FIVB Tribunals secretariat or whomever else is charged with the responsibility of facilitating the official appeal process"*.
 26. On 1 August 2015, the Appellant again requested a response to his message.
 27. On 4 August 2015, the FIVB responded by apologizing for the delay and informed the Appellant that his file had been transferred to the FIVB Appeals Panel.
 28. On the same day, the Appellant sent an email to the FIVB noting that it had not responded to the Appellant's requests and requesting a response to his requests.
 29. On 7 August 2015, the FIVB Appeals Panel Secretariat responded to the Appellant's message noting that the Appellant intended to appeal the Decision and informed him that in order to proceed with the appeal, the Appellant had to pay the administrative fee of CHF 2,000 by no later than 14 August 2015. The FIVB Appeals Panel also informed the Appellant that the Appeals Panel Chairman would fix a time to file his Appeal upon receipt of the administrative fee.
 30. On the same day, the Appellant replied to the FIVB Appeals Panel's email in which he reiterated his request for answers to the questions that he posed on 30 July 2015 and objected to the payment of the administrative fee.
 31. On 10 August 2015, the Appellant emailed the FIVB and requested answers to his questions posed in his letter on 30 July 2015.
 32. On 11 August 2015, the FIVB responded to the Appellant's questions by

providing a link to the FIVB's website where he could find the relevant regulations and informed the Appellant that the FIVB would provide its position on his appeal through its legal advisor but would make any further statements while the appeal was pending.

33. On 14 August 2015, the Appellant urgently requested answers to his previous questions as well as requested whether: 1) the current FIVB enforcement mechanism would be used in the event that the Decision was overturned; 2) payment requirements in order to pay the handling fee and to extend the timeline to pay the handling fee if the FIVB required more time to answer the Appellant's questions. The Appellant stated that he required answers to these questions in order to have sufficient information to make a decision on whether or not it was financially worth it to file an appeal.
34. On the same day, the Appellant sent an email to the FIVB President criticizing the FIVB's non-responsiveness to his appeal and seeking answers to the questions that it posed to the FIVB on 30 July 2015 and in its email earlier on 14 August 2015 given that the deadline to pay the handling fee expired at the end of the day.
35. On 15 August 2015 (Lausanne time), the Appellant attached a copy of the bank transfer confirming the payment of the handling fee for his appeal while noting that the Appellant had serious reservations about how the proceedings had been handled to date and still sought answers to its questions.
36. On 24 August 2015, the FIVB Appeals Panel Secretariat acknowledged receipt of the handling fee and invited the Appellant to submit his reasons for appeal and supporting documentation by no later than 23 September 2015.
37. On the same day, the Appellant requested answers to his previous questions and that his father be included on all correspondence related to his appeal.
38. On 17 September 2015, the Appellant noted that some information had been provided in his original appeal but that he intended to supplement the documentation provided. Additionally, he stated that he was waiting for answers to some of his questions from the FIVB Legal Department. Consequently, he requested a one month extension.
39. On 18 September 2015, the FIVB Appeals Panel Secretariat acknowledged receipt of his request, informed him that his request had been forwarded to the Chairman of the Appeals Panel, and suspended the deadline to file his reasons for appeal.

40. On the same day, the Appellant requested clarification as to what was meant by the suspension of the deadline and the amount of time it would take to receive an answer on his extension request.
41. Later that day, the FIVB Appeals Panel Secretariat informed the Appellant that the suspension of the time limit meant that the time limit could not expire until the Chairman of the Appeals Panel decided on his extension request and that it could not inform him as to how long it would take the Chairman of the Appeals Panel to make a decision on his request.
42. On 23 September 2015, the Appellant's attorney emailed the FIVB stating the following: 1) he informed the FIVB Appeals Panel that he was mandated to represent the Appellant in his proceedings in Greece and assist him with the proceedings before the FIVB; 2) he explained that he was notified of the appeal against the Decision; 3) he was aware of the deadline for the Appellant to file his reasons for appeal as well as the Appellant's request for an extension; 4) he highlighted the fact that he was unavailable over the last ten days because of the National Parliamentary elections; 5) he requested that the FIVB Appeals Panel grant the extension requested and 6) he noted that the FIVB had failed to provide the requisite information requested and, additionally, that the Appellant was challenging the FIVB's decision on the grounds that 1) the body taking the decision was irregularly composed and did not have the competence to take the decision; 2) that the proceedings before the FIVB violated the Appellant's due process rights; 3) that the proceedings before the FIVB violated fair and equal treatment as the Appellant questioned the impartiality of the FIVB in handling the Appellant's Complaint; 4) the FIVB violated the Appellant's right to be heard; 5) the Decision failed to contain the legal basis and reasoning for rejecting the Appellant's appeal; 6) the FIVB failed to respect the proportionality principle; 7) the FIVB violated international human rights protections by failing to issue a final decision on the merits and 8) the FIVB failed to consider the serious questions raised by the Appellant regarding the impartiality of the EEODAP given the unreasonable delay of the proceedings.
43. On 24 September 2015, the FIVB Appeals Panel Secretariat informed the Appellant that his request for an extension had been granted by the Appeals Panel Chairman and invited him to submit his reasons for appeal by no later than 24 October 2015.
44. On 20 October 2015, the Appellant explained that the FIVB had failed to provide answers to the important questions that he asked as well as he has experienced delays to other personal matters based on the financial burden caused by his

claim. He additionally noted that the original appeal submission as well as further information had already been sent but that he wished to provide additional information to the FIVB Appeals Panel. Thus, the Appellant requested an additional one month extension to submit his reasons for appeal.

45. On 23 October 2015, the Appellant requested an acknowledgment of receipt of his request for an extension from the FIVB Appeals Panel.
46. On 4 November 2015, the FIVB Appeals Panel Secretariat acknowledged receipt of the Appellant's extension request and informed the Appellant that he had been granted an extension until 16 November 2015 to file his reasons for appeal. Additionally, the FIVB Appeals Panel Secretariat noted that no more extensions would be granted and that the appeal would be dismissed without prejudice if he did not file his reasons for appeal within the deadline.
47. On the same day, the Appellant responded to the FIVB Appeals Panel Secretariat by stating that the extension until 16 November 2015 was insufficient due to the time that it took for the FIVB Appeals Panel to respond to the Appellant's request as well as the questions that the FIVB had not yet responded to. Thus, he requested a further extension until 30 November 2015. Additionally, the Appellant requested clarification as to what was meant by "dismissing without prejudice" given that he had already filed basic reasons for appeal but was seeking to provide more comprehensive information.
48. On 5 November 2015, the FIVB Appeals Panel Secretariat explained that the FIVB Appeals Panel fully considered his request for an extension and decided to grant a shorter extension in light of the fact that it had already granted a one month extension. Additionally, it informed the Appellant that his appeal would be dismissed because he failed to provide his reasons of appeal within the time limit provided. The FIVB Appeals Panel Secretariat additionally noted all of the submissions that it had received from the Appellant and requested the Appellant's confirmation that the Appellant's attorney, in fact, represented him. Finally, the FIVB Appeals Panel Secretariat provided an overview of what information is submitted in the reasons for appeal.
49. On 6 November 2015, the Appellant responded to the FIVB Appeals Panel Secretariat by 1) stating that the concern for efficiency and effectiveness of the proceedings but failed to discuss the Appeals Panel's interest in the fairness of the proceedings; 2) the Appellant had already submitted arguments related to his appeal in his original request; 3) the FIVB has failed to respond to the Appellant's request for answers to his questions despite multiple requests to do

so; 4) the Appellant had no doubt that the FIVB Appeals Panel would rule against the Appellant and uphold the Respondent's decision and 5) the Appellant invited the FIVB Appeals Panel to explain if there was any misunderstanding and requested that the FIVB Appeals Panel reconsider his request for an extension.

50. On 19 November 2015, the FIVB Appeals Panel Secretariat, on behalf of the FIVB Appeals Panel Chairman, informed the Appellant that he had decided to grant a final extension until 8 December 2015 for the Appellant to file his Reasons for Appeal. In particular, the FIVB Appeals Panel Chairman considered 1) that the Appellant's request for information and answers to his questions were given by the FIVB; 2) no more extensions would be granted and 3) it was imperative that the Appellant explain why the Decision was wrong. Moreover, the FIVB Appeals Panel Chairman acknowledged that the attorney represented the Appellant and, thus, it would take into account his submission.
51. On 8 December 2015 (Eastern Standard Time), the Appellant submitted his Reasons for Appeal. In his Reasons for Appeal, the Appellant argued, in essence, the following:
 - The Respondent's decision not to hear the Appellant's claim caused the Appellant to incur significant additional legal expenses and granted a virtual victory to the Greek Club because the case was left to be decided by the EODAP, which had failed to render a decision for several years and which would likely lead to a partial decision in favour of the Greek Club;
 - The Respondent's decision to refuse to involve itself in the Appellant's case deflected the case to the EODAP without a deadline to issue a decision and, thus, meant that the Respondent could effectively turn their backs on the Appellant's claim forever, which is contrary to the Respondent's established policies regarding judicial fairness, ethics, impartiality, cost effective mediation and its duty towards athletes that may have fallen victim to the improper conduct of clubs;
 - The Respondent has failed in its duty to provide the Appellant with reasonable and cost effective mediation and, in fact, had increased the financial burden of the Appellant in a way that could only lead to a failure of the Appellant's claim based on prohibitive costs;
 - The Respondent has failed to answer the Appellant's basic questions pertaining to his claim and, thus, have deprived him of the ability to make fully informed decision regarding his claim;

- The primary legal arguments before the EODAP pertain to the Greek Club's allegations that the Appellant wrongfully terminated the contract between himself and the Greek Club. The Appellant has purposely avoided the discussion of this issue in his claim before the FIVB and, rather, has focused on outstanding amounts owed to him by the Greek Club. Consequently, the FIVB decision erred by basing its decision not to accept competence of the Appellant's claim on the existence of the claim before the EODAP and
- It has never been established that the EODAP has sole competence to decide the Appellant's claim.

Additionally, the Appellant referred the Panel to the submission made by his attorney on 23 September 2015.

52. On 7 January 2016, the FIVB Appeals Panel Secretariat informed the Appellant that it had received a letter from the Hellenic Volleyball League on 17 December 2016 in which the Hellenic Volleyball League stated that the EODAP had reached a decision in the Appellant's case before it. Given this new information, the FIVB Appeals Panel Secretariat requested that the Appellant inform it as to whether or not he wished to continue the proceedings by no later than 15 January 2016.
53. On 18 January 2016, the FIVB Appeals Panel Secretariat noted that the Appellant did not inform the FIVB Appeals Panel as to whether or not he wished to continue with the proceedings within the deadline and set a final deadline of 22 January 2016 to inform the FIVB Appeals Panel as to whether or not he wished to continue with the proceedings. It also informed the Appellant that if he failed to respond within the deadline, then his appeal would be deemed withdrawn.
54. On 20 January 2016, the Appellant emailed the FIVB noting that the EODAP has appeared to have issued a decision against the Appellant. Before providing a final decision as to whether or not the Appellant wished to withdraw his appeal, the Appellant requested clarification as to whether the FIVB intended to re-open the Appellant's claim before the FIVB based on the fact that the alleged reason for denying the Appellant's claim was based on the proceedings before the EODAP and a copy of the decision from the EODAP. In the meantime, the Appellant stated that he did not want his appeal withdrawn while he waited for this additional information.
55. On the same day, the FIVB Appeals Panel Secretariat acknowledged receipt of the Appellant's email and confirmed his desire to continue with the proceedings.

Regarding his question, the FIVB Appeals Secretariat informed him that the proceedings would continue and invited the Respondent to submit its Answer to Mr. Gotch's Reasons for Appeal and his questions by no later than 17 February 2016.

56. On the same day, the Appellant responded to the FIVB Appeals Panel Secretariat stating that he neither confirmed nor denied the continuation of the proceedings but rather requested more information from the Respondent before making said decision and an extension of the deadline to make said decision until said information was obtained. Additionally, the Appellant provided a summary of his questions that required answers before he could make a determination as to whether or not he wished to continue, which were:
 - 1) Will there be an immediate reopening of the original claim before the FIVB based on the fact that the basis for the Decision, i.e. the proceedings before the EODAP, no longer existed;
 - 2) if the case is reopened by FIVB, will it conduct a review of the merits and, subsequently, a sound decision and
 - 3) will the monies paid to the FIVB be refunded in the event that the appeal is withdrawn.
57. On 21 January 2016, the Appellant requested a response to his email as well as his questions so that he could consider whether to withdraw his appeal. Additionally, in the event that more time was needed, the Appellant requested an extension of the 22 January 2016 deadline to make said determination.
58. On 22 January 2016, the FIVB Appeals Panel Secretariat acknowledged receipt of the Appellant's emails dated 20 and 21 January 2016 and clarified that the FIVB was the respondent in the present proceedings whereas the FIVB Appeals Panel was the independent panel deciding the appeal. Regarding the Appellant's questions, it invited the Respondent to provide its answers to the Appellant's questions by no later than 3 February 2016 and would provide a later deadline to file its appeal on the merits should the Appellant wish to continue his appeal. Additionally, the FIVB Appeals Panel Secretariat suspended the deadline to provide confirmation as to whether he wished to withdraw his appeal until further notice.
59. On 3 February 2016, the Respondent submitted its answers to the Appellant's questions, which were the following:
 - There was no reason to re-open the proceedings because the Decision provided the FIVB with the option, not the obligation, to consider the merits of the Appellant's claim. Instead, the Respondent asserted that the fact that the EODAP issued a decision which could be appealed in

Greece led to the opposite conclusion, i.e. that the FIVB decision was correct;

- The Respondent had to comply with its regulations and also had to respect the Parties' choice of forum. The Appellant and the Greek Club chose to file their claims against each other before the EODAP and, additionally, the Respondent asserted that it had acted independently and objectively towards both Parties by highlighting the fact that it had previously awarded and enforced a decision in favour of the Appellant in one case and against the Greek Club in another case
- The Respondent stated that it would support the reimbursement of the amounts paid by the Appellant related to these proceedings if he were to withdraw his appeal in February 2016.

Additionally, the Respondent requested to provide its Answer on the merits by 10 March 2016 with the FIVB Appeals Panel's approval.

60. On 4 February 2016, the FIVB Appeals Panel acknowledged receipt of the FIVB's Answer to the Appellant's questions, which was attached for the Appellant's review, and invited the Appellant to state whether he wished to continue the proceedings by no later than 18 February 2016.
61. On 16 February 2016, the Appellant requested that the deadline to make a decision as to whether or not he wished to continue the proceedings be extended to 10 March 2016 because the Appellant had more questions and still had not yet received a copy of the EODAP's decision. Additionally, the Appellant asked, in essence, the following additional questions and comments: 1) he requested further clarification as it related to the enforcement of a possible FIVB decision; 2) the Appellant did not choose to file his claim in Greece but was forced to because he had to defend himself before the EODAP after the Club filed a claim against him; 3) the Appellant has a strong claim against the Greek Club as he was able to obtain a release from the FIVB and the FIVB's decision not to decide on the financial aspect of this case raised some serious questions about the FIVB's ethical and moral behaviour in handling the Appellant's complaint; 4) the examples provided by the Respondent raise a large concern because the Greek Club had to have some motivation besides their rules to comply with the FIVB's decision; 5) the Appellant may have appealed the EODAP's decision but always using the FIVB as the forum for a decision on his claim and 6) the Respondent showed too much deference to the EODAP's decision in light of the evidence provided to the Respondent as part of

Appellant's claim but the evidence provided in the Appellant's claim before the Respondent was different than the evidence provided to the EODAP.

62. On 17 February 2016, the FIVB Appeals Panel Secretariat acknowledged receipt of the Appellant's submission and stated that it would be taken into account by the FIVB Appeals Panel as part of its decision. Additionally, the FIVB Appeals Panel shall grant a final deadline of 10 March 2016 for the Appellant to provide his answer regarding whether or not he wishes to continue with the proceedings and stated that any submission beyond the answer to that question would not be taken into account by the FIVB Appeals Panel. Additionally, the FIVB Appeals Panel invited the Respondent to submit its answer by no later than 20 March 2016 in the event that the Appellant chose to continue with the proceedings.
63. On the same day, the Appellant thanked the FIVB Appeals Panel for its prompt response but stated that it did not answer his questions. In particular, he wanted to know 1) what the FIVB's enforcement "latitudes" would be if it ruled in favour of the Appellant on the merits and 2) at what point the FIVB would be willing to issue and enforce a decision on the Appellant's complaint. Additionally, the Appellant requested a copy of the EODAP decision if the FIVB had it in their possession.
64. On 22 February 2016, the Respondent responded the Appellant's submission by stating that the questions posed by the Appellant could not be answered by the FIVB Appeals Panel as they go to the merits of the dispute, i.e. what would happen if the FIVB Appeals Panel overturned the Decision. The Respondent noted that the Appellant's questions would be moot unless the Appellant's claim was reopened, which could only be done by a decision of the FIVB Appeals Panel since the FIVB strongly objected to the reopening of Appellant's claim. Additionally, the Respondent asserted that answers to the Respondent's questions would constitute legal advice. The Respondent contended that the FIVB Appeals Panel cannot issue a decision until the Respondent was provided with an opportunity to file its Answer on the merits and requested that the Appellant be compelled to respond as to whether or not he wished to continue with the proceedings so that the proceedings could continue.
65. On the same day, the Appellant responded stating that the questions asked were relevant as they are important questions related to enforceability that needed to be answered before he could make an informed decision on whether to continue with the proceedings. Instead of being helpful, the Respondent merely deflected to the FIVB Sports Regulations. Additionally, the FIVB's suggestion that it was only fair that it have an opportunity to provide its position

made it seem like there was additional information to come, which may be relevant to the Appellant's decision to withdraw the appeal. Finally, the Appellant did not accept the FIVB Appeals Panel's decision to fail to respond to the Appellant's questions and, in the event that it continues to not respond to his questions, the Appellant requested a refund of the handling fee for the appeal.

66. On 29 February 2016, the FIVB Appeals Panel Secretariat provided the Parties with a copy of the decision taken by the EEODAP.
67. On 3 March 2016, the FIVB Appeals Panel Secretariat informed the Parties that no further submissions would be admitted to the record except the Appellant's response as to whether he wished to continue with the present proceedings unless otherwise prompted by the FIVB Appeals Panel. Additionally, the FIVB Appeals Panel reminded the Parties that it was before an FIVB judicial body and, thus, a separation must be maintained between the Appeals Panel and the Parties. The FIVB Appeals Panel states that it could not provide legal advice to the Parties and invited the Parties to remit their questions to their counsel or consult the regulations.
68. On 4 March 2016, the Appellant replied with an unsolicited submission stating that the FIVB Appeals Panel was a division of the FIVB and not a separate entity. The response from the FIVB Appeals Panel led the Appellant to conclude that it was acting in concert with the FIVB in a biased manner in support of Greek Club. The Appellant argued that the Respondent had to stop viewing the Appellant as an adversary that had to be defeated and should proceed with an open mind by answering the Appellant's questions rather than disregarding them as submissions. The Appellant clarified that it was not seeking legal assistance but merely requested an answer to his questions. However, if the Respondent continued its approach, it would do so with the idea that the handling fee would be refunded regardless of the outcome.
69. On 9 March 2016, the Appellant again filed additional unsolicited submission requesting answers to his questions or, alternatively, confirmation of the acceptance of his demand that the appeal move forward with the understanding that the handling fee would be refunded regardless of the outcome. Additionally, the Appellant highlighted an alleged bigger problem in that he had reviewed the EEODAP decision and it was filled false statements made by the Greek Club against the Appellant. The Appellant asserted that the Respondent had to get involved now because it could not support the Greek Club's behaviour and the incompetence of the EEODAP. Thus, the Appellant requested an extension of

the timeline for submissions until 11 April 2016 or alternatively to proceed on the understanding that the applicable handling fee would be refunded regardless of the outcome.

70. On 11 March 2016, the FIVB Appeals Panel Secretariat noted that the Appellant had not responded as to whether he wished to continue with the proceedings. Because the Appellant did not withdraw his appeal, the FIVB Appeals Panel stated that the proceedings would continue as scheduled. It invited the Respondent to submit its Answer by no later than 20 March 2016. Additionally, it stated that no further submissions would be admitted to the file with the exception of the Respondent's Answer.
71. On the same day, the Appellant again requested an answer to his questions. Additionally, it also ignored his request for extension and failed to respond to the question of having the handling fee refunded. Additionally, the Appellant wondered if the turnover in key employees at the Respondent had led to the direction of these proceedings and its loyalty to the Greek Club. The Appellant also asserted that it was convenient that the Respondent would restrict further submissions just after the EODAP's decision was received. The Appellant reiterated his demand to be reimbursed the handling fee once the FIVB Appeals Panel ruled in favour of the Respondent and the Greek Club.
72. On 21 March 2016, the Respondent requested an extension of one day to file its Answer due to logistical issues.
73. On the same day, the FIVB Appeals Panel Secretariat informed the Respondent that his request for an extension of one day had been granted.
74. On 22 March 2016, the Appellant responded by stating that FIVB Appeals Panel's decision to grant the Respondent's extension request served to only benefit the Respondent to the detriment of the Appellant. It was unacceptable that the FIVB Appeals Panel would accept this extension while refusing to respond to the Appellant's submissions was completely unacceptable.
75. On the same day, the Respondent submitted its Answer. In its Answer, it argued, in essence, the following:
 - The Decision correctly found that the Respondent could not admit the Appellant's Complaint because it was bound by the dispute resolution procedure during the 2011/12 season and the Respondent was legally prevented from retroactively applying the 2014 FIVB Sports Regulations. Thus, the only applicable dispute resolution mechanism available to

resolve the Appellant's Complaint was Article 45.10.2 of the FIVB Sports Regulations, which only allowed the Respondent to sanction the Greek Club, not awarded financial compensation;

- The Respondent could not accept the Appellant's Complaint based on its request for relief because the Respondent could not grant the Appellant the relief requested in his Complaint because he was seeking financial damages rather than sanctions against the Greek Club;
- The Appellant had multiple options for filing his dispute before the FIVB at the time that the dispute took place but, instead, chose to file a counterclaim against the Greek Club before the EODAP. Thus, the Respondent correctly decided to wait until the conclusion of the proceedings before the EODAP based on the Appellant's choice;
- The Appellant's claim could not have succeeded on the merits even if he had requested proper relief and chosen the Respondent to handle his dispute because the Greek Club could not be found to have "repeatedly failed to honour" its contracts as required in Article 45.10.2 of the FIVB Sports Regulations.

76. On the same day, the FIVB Appeals Panel Secretariat acknowledged receipt of the Respondent's Answer and stated that no further submissions would be accepted unless otherwise requested by the FIVB Appeals Panel.
77. On 23 March 2016, the Appellant submitted his unsolicited comments on the Respondent's Answer. In particular, the Appellant noted both factual and legal arguments of the Respondent and concluded by that the Respondent be held responsibility to exercise its fundamental duty to protect its athletes against the actions of the Greek Club.

Appeals Panel Decision

Applicable Regulations

78. The FIVB Appeals Panel notes that the merits of the Appellant's complaint is based on facts and circumstances that take place during the 2011/12 season whereas the Appellant's complaint was filed during the 2014/15 season. Thus, the FIVB Appeals Panel must determine which version of the regulations apply to the present dispute.
79. Regulations come into effect from the time that they are entered into force until such time that they are replaced by another regulation. As it relates to the merits of a dispute, general principles of law dictate that the applicable regulations

related to the substantive matters of the dispute are those regulations that are in place at the time that the events giving rise to the dispute occurred. The purpose of this is to avoid the unfair retroactive application of regulations to circumstances that were not in place at the time of the dispute.

80. Applying the above to the present dispute, it is undisputed that the merits of the Appellant's complaint take place during the 2011/12 season, i.e. that he is seeking a decision on his dispute based on outstanding salaries allegedly owed by the Greek Club during the 2011/12 season. From the record before it, the FIVB Appeals Panel notes that Article 113.1 of the FIVB Sports Regulations (2011 edition) provides that the 2011 edition of the FIVB Sports Regulations entered into force on 8 April 2011. It was subsequently replaced on 20 July 2012 according to Article 111.1 of the FIVB Sports Regulations. Consequently, the FIVB Appeals Panel finds that the 2011 edition of the FIVB Sports Regulations were the applicable regulations in place at the time that the facts and circumstances of the Appellant's complaint took place.
81. For the sake of completeness, the FIVB Appeals Panel finds that provisions under the 2014 edition of the FIVB Sports Regulations are not applicable to the present case because that edition of the FIVB Sports Regulations did not enter into force until 15 May 2014.
82. For purposes of the present dispute and based on the above determination, the following provisions of the FIVB Sports Regulations (2011) are relevant to the Applicant's complaint:

Article 45.11.3

"45.11.3 The FIVB may impose the sanctions provided in Article 45.12.3 on a player or club who repeatedly fail to honour contracts or terminate them without just cause."

Article 45.12

"45.12 DISPUTES

45.12.1 At the request of a NF, a club or a player, the FIVB is entitled to mediate between the parties by facilitating negotiations and proposing solutions, with a view to settle a financial dispute.

45.12.2 At the request of a club or a player and provided that an arbitration agreement has been signed to that effect, the IVT or another arbitral tribunal established by FIVB, or the Court of Arbitration for

Sport (CAS) may act as an arbitrator in all financial disputes arising from a contract.

45.12.3 *If a party to proceedings before the IVT or another arbitral tribunal established by FIVB, or before the Court of Arbitration for Sport (CAS), fails to execute the final decision of said tribunal, it commits a disciplinary offence. After denunciation to the FIVB by anyone with legitimate interest, this party may be subject to the following sanctions:*

a) Warning;

b) Fine up to CHF 50,000;

c) Prohibition of receiving an ITC (for clubs) or prohibition to transfer internationally (for players);

d) Prohibition of registering and lining-up foreign players in any competition (for clubs);

e) Prohibition of participating in international competitions.

The above sanctions can be applied more than once.”

83. Therefore, the FIVB Appeals Panel will examine the Appellant’s complaint and the subsequent Decision based on the above applicable regulations.

FIVB Appeals Panel Competence

84. Before turning to the appeal of the Decision, the FIVB Appeals Panel first examine whether or not it has competence to decide an appeal of the Respondent’s decision.

85. Under the applicable regulations, the FIVB Appeals Panel has competence to decide on decisions of FIVB bodies, e.g. the President, the Board of Administration, the Disciplinary Panel, etc., or Confederation bodies. Additionally, a party wishing to bring an appeal before the FIVB Appeals Panel must file its appeal within fourteen days of notification of the decision and pay an administrative fee of CHF 2,000.

86. In the present case, the Decision was issued by the FIVB General Director, who is part of the FIVB Secretariat. The FIVB Appeals Panel finds that this is sufficient to qualify as one of the “FIVB bodies” referred to in the applicable regulations. Moreover, the Decision was issued on 17 July 2015, and the Appellant subsequently informed the FIVB that he did not accept the Decision on 30 July

2015. While the Appellant's submission may not have formally followed the typical filing of an appeal seen in sports proceedings, the FIVB Appeals Panel finds that his email is sufficient to put the FIVB on notice that he wished to challenge the Decision. Hence, the FIVB Appeals Panel finds that he filed an appeal within fourteen days of receipt of notification of the Decision. Finally, the FIVB Appeals Panel fixed a final deadline of 14 August 2015 to pay the administrative fee. The Appellant paid the handling fee on that date. Therefore, the FIVB Appeals Panel finds that it can decide the present appeal submitted by the Appellant.

FIVB Appeals Panel Rationale

87. At the outset, the FIVB Appeals Panel would first like to highlight that it can only make decisions on appeals based on the legal considerations in accordance with applicable rules and regulations and principles of law. It must examine the evidence before it and apply this evidence in view of the applicable regulations and general principles of law.
88. With this approach in mind, the FIVB Appeals Panel first states that, under these general principles of law, there are two bases which would allow the Respondent to accept the Appellant's complaint: 1) the Appellant's contract with the Greek Club or 2) the Respondent's Regulations. Under general principles of law, the Respondent's Regulations act as a default rule for competence related to contractual disputes whereas the Appellant's contract can choose to derogate from said default rule depending on the wording of the agreement. What this means is that the Parties can choose to have a different body decide their dispute. However, the Parties' derogation must be sufficiently clear and unequivocal otherwise the applicable regulations could also potentially apply to disputes under the contract.
89. Applying the above to the present case regarding dispute resolution under, the Respondent provided the FIVB Appeals Panel with the relevant dispute resolution clause from the Appellant's contract with the Greek Club. The relevant dispute resolution clause reads as follows:

"Both parts accept and appoint exclusively competent for the solution of any differences that may appear between them in the future, the Athletic Justice bodies as they are defined in article 95 of the Law in force 2725/99, accepting the above mentioned procedure and all the articles of the Regulation of Relations between Payable Volleyball Players and Departments of Volleyball Payable Athletes." (emphasis added)

90. Thus, the dispute resolution clause above clearly and unequivocally states that the Greek “Athletic Justice bodies” are exclusively competent to resolve any differences between the Parties under the Appellant’s contract. The FIVB Appeals Panel would like to emphasize that the Player voluntarily entered into the contract containing this provision with the Greek Club. The FIVB Appeals Panel finds that the above language, which explicitly states that the Greek “Athletic Justice bodies” were exclusively competent to decide the contractual dispute between the Appellant and the Greek Club, has the legal effect of being a complete derogation of the FIVB Regulations related to dispute resolution.
91. Additionally, the FIVB Appeals Panel finds that, even if it found that the FIVB Regulations had not been completely derogated (*quod non*), the Appellant’s request for relief still could not be granted under the FIVB Sports Regulations applicable at the time. The FIVB Sports Regulations (2011) creates two potential avenues for a player to bring a claim against a club: either 1) the International Volleyball Tribunal (“IVT”) or other FIVB body to arbitrate a financial dispute between the Parties under Article 45.12.2 or 2) a request for sanctions for a repeated failure to under Article 45.11.3.
92. Article 45.12.2 of the FIVB Sports Regulations (2011) requires the Parties to have an arbitration clause in favour of the IVT or other FIVB body in order for it to be able to arbitrate a dispute. As already discussed above, the Appellant has failed to demonstrate an arbitration clause in favour of the IVT or any other FIVB body was agreed upon in the Appellant’s contract with the Greek Club. Thus, Article 45.12.2 could not be applied to the Appellant’s complaint.
93. Article 45.11.3 of the FIVB Sports Regulations (2011) would have allowed the FIVB to impose sanctions on a club who “*repeatedly failed to honour contracts*”. Based on the evidence before it, it appears as if the Appellant did not request any kind of sanctions but rather asked for outstanding salaries and financial damages. Consequently, the FIVB Appeals Panel finds that the Appellant’s request for relief could not have been granted by the FIVB because it did not have competence under Article 45.12.2 of the FIVB Sports Regulations (2011) and could not order financial damages under Article 45.11.3 of the FIVB Sports Regulations (2011).
94. Additionally, the FIVB Appeals Panel notes that it is dubious whether the Appellant could have even succeeded on the merits of his claim under Article 45.11.3 of the FIVB Sports Regulations (2011) because there appears to be little evidence on the record that the Greek Club had repeatedly failed to honour its contracts at the time of the filing of the complaint. Regardless, the FIVB Appeals

Panel finds that it does not need to make a determination on this argument for the reasons already stated above.

95. Consequently, based on the above, the FIVB Appeals Panel finds that the Respondent properly rejected the Appellant's complaint under both the language of the contract and the applicable FIVB Sports Regulations.
96. As a final point, the FIVB Appeals Panel would like to add one additional comment regarding the allegations made by the Appellant due to the Respondent's failure to answer his questions. Several of the Appellant's questions related to the merits of the dispute, i.e. what would happen in the event that the FIVB Appeals Panel overturned the decision and accepted the Appellant's complaint. However, the Respondent, as the opposing party in the present appeal, had no obligation to provide legal advice to the Appellant, especially when the appeal was against it. The Appellant could have consulted his counsel with these questions who could have examined the applicable regulations and provided him with the answers that he sought. While the FIVB Appeals Panel sympathises with the Appellant's arguments related to costs of such advice, that does not inherently create an obligation for the Respondent to answer his questions. The role of the Respondent in the present dispute was to act as an impartial body reviewing the Appellant's complaint in the first instance and then as an opposing party once the appeal was filed.

Costs

97. The FIVB Appeals Panel notes that the relevant regulations provide that the administrative fee can be reimbursed if a party prevails. In the present case, the Appellant did not prevail on his appeal.
98. The FIVB Appeals Panel also notes that the Respondent at one point in time offered to reimburse the administrative fee if the Appellant dropped his appeal. Given that the Appellant did not accept this offer, the FIVB Appeals Panel finds that there was no agreement and, thus, this offer cannot be enforced by the FIVB Appeals Panel. Consequently, the FIVB Appeals Panel finds that it cannot reimburse the administrative fee paid by the Appellant.

FIVB Appeals Panel Decision

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

- 1. The appeal filed by Stephen Gotch is dismissed in its entirety;**
- 2. The decision rendered by the FIVB on 17 July 2015 is upheld;**
- 3. Any other requests for relief are dismissed.**

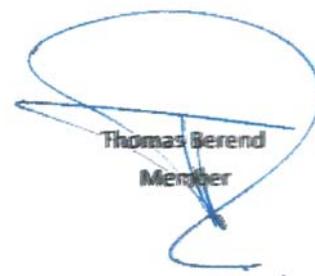
Lausanne, 10 March 2017



Damaris Young
Chairperson



Emba Wun Man Leung
Vice- Chairperson



Thomas Berend
Member

NOTICE OF APPEALS

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

- a) Article 23 of the FIVB Disciplinary Regulations which 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.”

- b) The CAS Code of Sport-related Arbitration, which is available under www.tas-cas.org

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

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

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