

THE FIVB DISCIPLINARY PANEL

composed by

Dr. Wanderly Rebello Filho (BRA)	Chair
Ms. Sabinah Clement (IVB)	Member
Mr. Mounir Ben Slimane (TUN)	Member

I. FACTUAL BACKGROUND

1. On 27 March 2014, the FIVB received Vadym Likhosherstov's (hereinafter "Player") application to change his Federation of Origin from Ukraine to Russia. The application was supported by the Volleyball Federation of Russia (hereinafter "VFR").
2. On 3 and 4 April 2014, the FIVB Board of Administration held its annual meeting. During this meeting and also in the presence of VFR representatives, the FIVB Board of Administration approved the Player's change of Federation of Origin request, subject to the FIVB's receipt of the administration fee.
3. The administration fee was not paid before the start of the 2014/15 season.
4. During the 2014/15 season, the Player played for the Russian Club Volleyball Club Fakel Novy Urengoy (hereinafter "Club") as a Russian. No International Transfer Certificate ("ITC") was issued or even requested for this Player although his Federation of Origin was still Ukraine.
5. In May 2015, the General Manager of the VFR, Mr. Roman Stanislavov, met with the FIVB to discuss issues related to financial disputes involving the Club and informed FIVB that the Club had new management since April 2015. During this meeting, the FIVB drew VFR's attention to the fact that the administration fee for the Player's change of federation of origin had not been paid.
6. On 21 May 2015, the Club paid the administration fee for the Player to the VFR.

7. On 8 June 2015, the FIVB received the payment of the administration fee for the Player from the VFR and, consequently, the Player's request to change his Federation of Origin from Ukraine to Russia was granted.

II. COMPETENCE

8. The Panel is competent to hear this case as per Article 17.5 of the 2014 FIVB Disciplinary Regulations (hereinafter "DR"). This fact was not challenged by the Respondents.

III. APPLICABLE LAW

9. The Panel notes that the FIVB Constitution and Regulations apply to this case. Since FIVB has its seat in Switzerland, Swiss law may apply subsidiarily. The rules which are relevant for the resolution of this dispute are quoted in this section.

10. Article 44.2 of the FIVB Sports Regulations (hereinafter "SR") provides the conditions for a change of a Federation of Origin as follows:

"A change of Federation of Origin (hereinafter "the Change") may be approved only if the following conditions are cumulatively met:

44.2.1 The player has established residence in the country of his new Federation of Origin (hereinafter "the new Federation") for a minimum of two (2) continuous years.

44.2.2 The player has obtained the citizenship of the country of the new Federation.

44.2.3 The player's Federation of Origin agrees to the Change.

44.2.4 The new Federation agrees to the Change.

44.2.5 The applicable administration fee for the Change has been paid to the FIVB (see Article 44.3.2 below)." (emphasis added)

11. Article 1.5.3 of the FIVB Financial Regulations (hereinafter "FR") deals with the administration fees for the change of a Federation of Origin and provides the following relevant to the present case:

"1.5.3.1 A change of the Federation of Origin is subject to the conditions set out in the FIVB Sports Regulations, including the payment of an administration fee as follows:

1.5.3.2 The FIVB must receive, from either the new National Federation or from the player, an administration fee of CHF 15,000 for a change of the Federation of Origin application... (emphasis added)

12. Articles 45.7.2 and 45.7.3 SR provide the following regarding the lack of an ITC and the consequences of a violation of the transfer regulations:

“45.7.2 Lack of ITC

A player who plays outside his Federation of Origin without a valid ITC shall be suspended for a period of up to one year.

Control Committees of Volleyball tournaments, including Continental competitions, shall carefully examine the transfer certificates of foreign players on a club team and notify the FIVB in case of violation or unclear situation.

45.7.3 Further consequences in cases of violation

Sanctions may also be applied to those NFs and clubs which have violated the established transfer procedure, or have not fulfilled the conditions agreed upon in the ITC.

(see also Article 1.4.4 of the FIVB Financial Regulations and Article 14 of the FIVB Disciplinary Regulations).”

13. Article 1.4.4 of the FR provides the following:

“Article 1.4.4 Sanction for Registering Foreign Players Without an International Transfer Certificate

A National Federation registering foreign players of its clubs without having duly completed the ITC procedure will be sanctioned according to the FIVB Sports Regulations and Disciplinary Regulations.”

14. Article 14.4 of the FIVB Disciplinary Regulations (hereinafter “DR”) deals with the unauthorized registration of foreign players and states the following:

“Unauthorized registration or lineup of foreign players

14.4.1 NFs that permit their leagues and/or clubs to register or line up players of a different Federation of Origin without the official authorization established by the FIVB Sports Regulations for the transfer of players between NFs, shall be fined up to CHF 30,000 for each player illegally registered or lined up.

14.4.2 The player in question shall be suspended for up to one (1) year. The club in question shall be sanctioned for a major offence; sanctions may include forfeiture of the match(es) played with the illegally registered or lined up player. The league in question shall be fined up to CHF 5,000 for each player illegally registered or lined up.”

15. Article 7.2 DR provides the following for sanctions of a major offense:

“The following sanctions may be imposed for a major offense;

a) Monetary fine of more than CHF 10,000

b) Repeal of a right (for example a suspension, i.e. prohibition from participation, for a given period of time, in any official activity within the sphere of the FIVB) up to six (6) months;

c) Disqualification;

d) Forfeit of match(es);

e) Deduction of point(s);

f) A combination of the above sanctions.”

IV. PROCEDURE

16. By letter dated 1 October 2015, the FIVB Disciplinary Panel informed the Player, the Club, and the VFR (hereinafter collectively the “Respondents”) that disciplinary proceedings were opened against them and that the FIVB Disciplinary Panel would adjudicate this case. The FIVB Disciplinary Panel provided the Respondents with the opportunity to submit their position in writing by no later than 21 October 2015.

17. On 20 October 2015, the Respondents submitted their position in a joint letter, through VFR, whereby they “recognize[d] the violation” and explained the circumstances behind the non-payment of the fee. The Club claimed that its non-payment to the VFR was due to the fact that its former director had improperly fulfilled his duties. Upon discovery of the issue after a discussion with the FIVB in May 2015, the Club immediately rendered payment to the VFR, who then transferred the payment to the FIVB on 8 June 2015. The Respondents requested a warning as a sanction.

V. LEGAL CONSIDERATIONS

(a) Violation: Illegal Transfer of the Player

18. The FIVB Disciplinary Panel notes that the Respondents have all recognized their violation because the FIVB administration fee was not paid in order to finalise the Player's change of Federation of Origin from Ukraine to Russia. The Respondents did not challenge the fact that the Player played as a Russian before his change of Federation of Origin request was finalised nor that the Player did not have a valid ITC for the 2014-15 season.

19. The FIVB Disciplinary Panel notes that both Article 44.2 SR and Article 1.5.3 FR require the payment of the administration fee as a condition to a change of Federation of Origin being approved by FIVB. The FIVB Disciplinary Panel highlights the fact that without a change of the Federation of Origin, the Player was required to have an ITC under the FIVB Sports Regulations because he was still considered a Ukrainian player for the purposes of an international transfer.

20. Articles 45.7.2 and 45.7.3 SR, Article 1.4.4 FR and Article 14.4.1 DR provide for sanctions if a player is fielded without a valid ITC.

21. The FIVB Disciplinary Panel finds that the Respondents are all liable for the violation. The Club and the VFR are both liable because they both had a responsibility to ensure that the Club did not field a player who had not finalized his change of Federation of Origin and who did not have a valid ITC. Both the Club and the VFR had access to the Volleyball Information System (hereinafter "VIS") and could have checked the Player's status before allowing him to play.

22. Additionally, Article 1.5.3.2 of the FR states that either the Player or the VFR are responsible for paying the administration fee for a change of Federation of Origin. Consequently, both the Player and the VFR are liable for their respective failure to pay the administration fee. Moreover, it is clear from how the payment was subsequently rendered by the VFR on 8 June 2015 after it had received payment from the Club on 21 May 2015 that the VFR first had to receive the corresponding amount from the Club before it would pay the administration fee to the FIVB.

23. Based on the above, the Respondents are all liable for the violations of Articles 44.2, 45.7.2, and 45.7.3 SR, Articles 1.5.3 and 1.4.4 FR and Article 14.4 DR due to the Player's improper transfer.

(b) Sanctions

24. When determining the applicable sanctions, the FIVB Disciplinary Panel must look at the sanction provide in the applicable regulations as well as in Article 7 DR.

(1) VFR

25. Article 14.4 DR provides that a National Federation can be fined up to CHF 30,000 for each player illegally registered and lined up. The FIVB Disciplinary Panel recognizes that the VFR's violation occurred due to an administrative error, caused primarily by the lack of diligence by the Club's then management; however, the VFR is responsible for the registration of athletes with its clubs and especially for athletes who – exceptionally – change their Federation of Origin from one country into Russia. In addition, the DR have been intentionally designed to punish transfer violations severely in order to protect the status of athletes and the integrity of the competitions. Therefore, the VFR shall be sanctioned with a monetary fine of CHF 10,000 for its violation.

(2) Club

26. Article 14.4 DR provides that a violation for illegally registering and lining up a player must be treated as a major offense. Under Article 7.2 DR, a major offense requires, amongst other sanctions, a monetary fine of more than CHF 10,000. The FIVB Disciplinary Panel likewise recognizes that the Club's violation occurred due to an administrative error in paying the administration fee for the Player's change of Federation of Origin. Regardless of the change in its management, the Club is liable for the actions and omissions of its representatives, particularly considering the long period (entire 2014/15 season) during which the violation persisted. On the other hand, it is noteworthy that the new management, upon being informed by the FIVB (through the VFR) that the matter was still pending, remitted the necessary amount to the VFR within a few days. The FIVB Disciplinary Panel finds that this violation warrants the minimum sanction allowable under the DR, for the additional reason that all substantive documentation had been properly filed by the Club, and the Player had been approved by the FIVB; however, the DR have

been intentionally designed to punish transfer violations severely, as stated above, and the FIVB Disciplinary Panel is bound by Article 7.2 DR. Therefore, the Club shall be sanctioned with a monetary fine of CHF 10,001 for its violation.

(3) Player

27. Article 14.4 DR provides that the Player shall be suspended for up to one year based on the fact that he was registered illegally with a Russian club and played without the necessary ITC. The FIVB Disciplinary Panel recognizes that the Player's violation occurred due to the Club's administrative error in paying the fee for his change of Federation of Origin, and the fact that the Player might have understood that his Federation of Origin request had been approved because his documentation was complete. Although there is no evidence on record that the Player was informed about the remaining condition of the fee payment, he could have easily accessed the VIS and found out that he was still registered as a Ukrainian player during the entire 2014/15 season. The FIVB Disciplinary Panel finds that this error does not warrant the maximum allowable sanction under the DR but, rather, justifies a significantly lower sanction. It is important to reiterate that the DR have been intentionally designed to punish transfer violations severely and appear to require a suspension of the Player involved, who benefited without doubt from the fact that he could play as Russian for the Club. Therefore, the Player shall be sanctioned with a suspension of fifteen (15) calendar days, starting from the date of this decision, for his violation.

* * *

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. A monetary fine of CHF 10,000 is imposed on the Volleyball Federation of Russia.
2. A monetary fine of CHF 10,001 is imposed on the Club Fakel Novy Urengoy.
3. A suspension of fifteen (15) calendar days is imposed on Mr. Vadym Likhoshevstov.

Lausanne, 25 November 2015

For the FIVB DISCIPLINARY PANEL

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Dr. Wanderly Rebello Filho

Chair

NOTICE OF APPEALS

1. Parties who are affected by a decision of a FIVB body (e.g. the President, the Board of Administration, the Disciplinary Panel etc.) can file an appeal to the FIVB Appeals Panel unless otherwise provided in the FIVB Constitution and Regulations.
2. Appeals must be made in writing and must be received by the FIVB Secretariat within fourteen (14) days from notification of the decision, failing which the appeal will be considered inadmissible.
3. Appeals shall be accompanied by a copy of the decision appealed against and a bank certificate confirming payment of the administrative fee of CHF 2,000 into the following account:

Bank: UBS AG, CH-1002 Lausanne, Switzerland

Account beneficiary: Federation Internationale de Volleyball

Account number: 0243-146146.60U

Swift: UBSWCHZH80A

IBAN: CH660024324314614660U

4. Failure to pay the administrative fee within the deadline fixed by the FIVB Secretariat will result in considering the appeal withdrawn. The FIVB Appeals Panel may decide that the administrative fee be reimbursed in the event that the appeal is successful.
5. The appeal can be filed by a proxy if he/she presents a written power of attorney.
6. For details of the appeals procedure please refer to Section III of the FIVB Disciplinary Regulations (<http://www.fivb.org/EN/FIVB/Legal.asp>).
7. A further appeal against the decision by the FIVB 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.