

THE FIVB DISCIPLINARY PANEL

composed by

Ms. Sabinah Clement (IVB)	Chairperson
Ms. Margaret Ann Fleming (SCO)	Member
Mr. Mounir Ben Slimane (TUN)	Member

I. FACTUAL BACKGROUND

1. The 2017 CEV Cup match between Vojvodina NS Seme Novi SA and C.S. Arcada Galati (3-0; 25-16; 25-21; 25-22) took place on 11 January 2017, at 19:00, in Novi Sad, Serbia (hereinafter "the Match").
2. On 11 January 2017, the International Olympic Committee (IOC) Integrity Betting Intelligence System (IBIS) received an alert with regards to an alleged breach of sports integrity in the sport of Volleyball and, accordingly, informed the IBIS Single Point of Contact for FIVB, Mr. Yann Hafner. The alleged breach of the FIVB regulatory framework arose from bets which have been placed on the Match.
3. On 11 January 2017, the FIVB and CEV requested the CEV Supervisor on site to read a declaration concerning betting and manipulation of matches before the start of the Match and to have it signed by the captain and the team manager of each team. The captain and the team manager of each team signed the declaration.
4. On 20 January 2017, the IOC Ethics and Compliance Office provided the FIVB with a Report (hereinafter "the First Report") confirming that two (2) players of the team C.S. Arcada Galati had placed bets against their own team.
5. On 10 March 2017, the IOC Ethics and Compliance Office provided the FIVB with another Report (hereinafter "the Second Report") confirming the information referred to in para 4 above and informing FIVB that Mr. Andrei Ursache (VCM LPS Piatra Neamț) had placed a bet on the Match.

6. On 5 May 2017, the FIVB Board of Administration approved the FIVB Disciplinary Regulations 2017, which entered into force on 8 June 2017. Relevant changes to the FIVB Disciplinary Regulations 2017 with regards to the present case were as follows:
 - The FIVB Board of Administration confirmed FIVB's exclusive jurisdiction to adjudicate disciplinary cases with regards to betting and match manipulation; and
 - The FIVB Board of Administration adopted new procedural provisions with regards to disciplinary cases.
7. On 21 June 2017, the FIVB Disciplinary Panel Secretariat notified Mr. Andrei Ursache of the opening of disciplinary proceedings. The deadline to provide the FIVB Disciplinary Panel with a response was 5 July 2017. Mr. Andrei Ursache did not file a statement of defense within the set time limit.
8. On 10 July 2017, the FIVB Disciplinary Panel Secretariat provided Mr. Andrei Ursache with a final deadline file a statement of defense, i.e. 17 July 2017.
9. On 17 July 2017, Mr. Andrei Ursache filed his statement of defense with the FIVB Disciplinary Panel Secretariat.
10. On 21 July 2017, the FIVB Disciplinary Panel Secretariat informed Mr. Andrei Ursache of the next steps of the procedure (i.e. whether he would be heard in person or in writing).
11. On 8 August 2017, the FIVB Disciplinary Panel Secretariat informed Mr. Andrei Ursache of the following:
 - a) Date of the hearing: 23 August 2017;
 - b) Composition of the FIVB Disciplinary Panel in the present case, namely: Ms. Sabinah Clement, Chairperson, Mr. Mounir Ben Slimane and Ms. Margaret Ann Fleming, Members; and
 - c) Presence of an expert during the hearing: Mr. Friedrich Martens, Head of Integrity Betting Intelligence System at the IOC.
12. On 23 August 2017, the FIVB Disciplinary Panel heard Mr. Andrei Ursache. Mr. Andrei Ursache was assisted by Ms. Raluca Iosif, Legal Advisor to VCM LPS Piatra Neamț, during the

hearing. During the hearing, the Respondent confirmed his statement of defense. The Respondent stated that he intended to place a bet but his *Betfair* betting account was suspended and that he received his money back from the betting operator. The Respondent offered to share with the FIVB Disciplinary Panel the communication between the betting operator and the Respondent.

13. On 23 and 29 August 2017, the IOC confirmed that Mr. Andrei Ursache placed a total of four (4) bets on the Match. The details of the bets were as follows:

- a) Bet 1: Stake: EUR 250.-. Winnings: EUR 403.85.-
- b) Bet 2: Stake: EUR 18.-. Winnings: EUR 35.14.-
- c) Bet 3: Stake: EUR 11.-. Winnings: EUR 19.80.-
- d) Bet 4: Stake: EUR 11.-. Winnings: EUR 41.25.-

All were bets placed on 10 January 2017, while the Respondent account was active. The account was suspended on 11 January 2017 after the investigation started (e.g. sharing with IBIS) and the winning are “frozen” in the account (hereinafter “the Third Report”).

14. On 25 August 2017, Mr. Andrei Ursache provided additional evidence in the form of two (2) communications by Betfair and an official translation of one (1) of the two (2) communications.

15. On 5 October 2017, the FIVB Disciplinary Panel decided to provisionally suspend Mr. Andrei Ursache.

16. On 11 October 2017, Mr. Andrei Ursache requested the FIVB Disciplinary Panel to lift the provisional ban imposed upon him by the FIVB Disciplinary Panel.

17. On 11 October 2017, the FIVB Disciplinary Panel Secretariat acknowledged receipt of the request by Mr. Andrei Ursache.

18. On 20 October 2017, the FIVB Disciplinary Panel Secretariat informed Mr. Andrei Ursache that the FIVB Disciplinary Panel had dismissed his request.

II. COMPETENCE

19. The FIVB Disciplinary Panel is competent to hear this case as per Article 17.5 of the FIVB Disciplinary Regulations 2016 (now Article 26.5 of the FIVB Disciplinary Regulations 2017).

20. In addition to the above, the FIVB Disciplinary Panel notes that the FIVB Board of Administration clarified the exclusive jurisdiction of the FIVB with regards to betting and match manipulation cases in May 2017. Article 26.7 of the FIVB Disciplinary Regulations 2017 reads as follows:

“The Confederations are competent to impose sanctions at the continental level provided that the matter does not fall within the competence of an FIVB body are has been delegated expressly to them by the FIVB in a specific case. For this purpose, they must adopt the same procedural provisions as provided herein. FIVB has exclusive jurisdiction in:

- [...]
- Cases of betting and manipulation of competitions” (emphasis added).

21. The FIVB Disciplinary Panel further notes that the Respondent did not challenge the competence of the FIVB Disciplinary Panel to hear the present case.

III. APPLICABLE LAW

22. The FIVB Disciplinary Panel notes that the FIVB Constitution and Regulations apply to this case. Since FIVB has its seat in Switzerland, Swiss law may apply subsidiarily.

23. The FIVB Disciplinary Panel further notes that two set of FIVB Disciplinary Regulations may apply to the resolution of the case at hand:

- The FIVB Disciplinary Regulations 2016, which were approved by the FIVB Board of Administration on 7 April 2016 and entered into force on 8 April 2016 (hereinafter “FIVB DR 2016”); and
- The FIVB Disciplinary Regulations 2017, which were approved by the FIVB Board of Administration on 5 May 2017 and entered into force on 8 June 2017 (hereinafter “FIVB DR 2017”).

24. The Match took place on 11 January 2017, i.e. when the FIVB DR 2016 were in force. Consequently, the FIVB Disciplinary Panel finds that the conduct of Mr. Andrei Ursache is to be reviewed under the FIVB DR 2016. The FIVB Disciplinary Panel finds however that the FIVB DR 2017 apply to the present case insofar as they concern the procedure governing these proceedings.

25. In the Charge Letter dated 21 June 2017, the FIVB Disciplinary Panel reserved its right to expand factually the disciplinary proceedings against Mr. Andrei Ursache and to refer to other regulations.

26. In light of the statement of defense submitted by Mr. Andrei Ursache and the declarations by Mr. Andrei Ursache during the disciplinary hearing, the FIVB Disciplinary Panel has decided to maintain the alleged violation of the FIVB DR 2016 by Mr. Andrei Ursache as follows:

- Article 12 of the FIVB DR 2016 in conjunction with Appendix B, Article B.2.1 of the FIVB DR 2016; and

The substantives rules which are relevant for the resolution of this dispute are quoted in the following paragraphs.

27. Article 12.1 of the FIVB DR 2016 prohibited the following conduct:

"The conduct described in Appendix B, Articles B.2.1 and B.2.2, shall be sanctioned as a major offence, subject the specific provisions set out below".

28. Appendix B, Article B.2.1 of the FIVB DR 2016 read as follows:

"Direct or indirect involvement of a Participant in any form of Betting related to a Competition, including Betting with another Person on the result, progress, outcome, conduct of any other aspect of such a Competition" (emphasis added).

29. Appendix B, Article B.1 of the FIVB DR 2016 defined the terms underlined above as follows:

"[...]"

"Betting": shall mean making, accepting, or laying a wager of money or any other form of financial speculation and shall include, without limitation, activities commonly referred to as sports betting such as fixed and running odds,

totalizator/toto games, live betting exchange, spread betting and other games offered by sports betting operators;

“Competition” shall mean any competition organised or recognised by FIVB, as mentioned in the Sports Regulations;

[...];

“Participant” means any Player, Player Support Personnel, judge referee, delegate, technical official, FIVB representative, Control Committee or Appeal Sub-Committee member, competition official, National Federation team or delegation member and any other accredited person;

[...]”.

30. Article 12.4 of the FIVB DR 2016 provided the following sanction with regards to betting and manipulation of results:

“Individual persons found responsible for a violation under this Article shall be sanctioned with a fine of a minimum of CHF 50,000 and a suspension from participation in any official activity within the sphere of the FIVB at national, continental and world-wide level for a period of between five (5) years and a life ban”.

IV. PROCEDURE

31. By letter of 21 June 2017, the FIVB Disciplinary Panel informed Mr. Andrei Ursache (hereinafter “the Respondent”) that disciplinary proceedings were opened against him and that the FIVB Disciplinary Panel would adjudicate this case. The FIVB Disciplinary Panel provided the Respondent with the opportunity to submit his position in writing by no later than 5 July 2017. The Respondent did not respond at first. The FIVB Disciplinary Panel issued a final deadline to the 17 July 2017 for the Respondent to submit his position.

32. On 17 July 2017, the Respondent submitted his position directly to the FIVB Disciplinary Panel Secretariat, whereby he wrote “I would like you to know what i place my bets for Arcada Galati-Vojvodina Novi Sad, game knowing that the most important players from Arcada Galati will not be on the volleyball field during it.I had this information from media (newspapers, internet).I had no internal informations and I also didn’t try to manipulate the resault of this game, actually it was impossible for me to do that as I am not a player of

Arcada Galati". The Respondent further stated that his betting account had been cancelled and his money refunded because the bet was not validated.

33. On 23 August 2017, the FIVB Disciplinary Panel heard Mr. Andrei Ursache by telephone. During the hearing, Mr. Andrei Ursache admitted to have the intention to bet on the Match but denied having the possibility to do so because his account was allegedly blocked. Mr. Andrei Ursache offered to provide evidence to that effect to the FIVB Disciplinary Panel. Mr. Andrei Ursache further denied any past history of betting and apologized for his conduct. Mr. Andrei Ursache confirmed that he was aware of the prohibition to bet on the sport of Volleyball for volleyball players. Mr. Andrei Ursache confirmed that Mr. Alexandru Cersemba and he have been teammates before Mr. Alexandru Cersemba joined C.S. Arcada Galati. Mr. Andrei Ursache stated however that he learned of the composition of the team C.S. Arcadia Galati in the media (i.e. that the team was missing its best players). Mr. Andrei Ursache is currently under contract with the club VCM LPS Piatra Neamț. Mr. Andrei Ursache emphasized that the sport of Volleyball was his only source of income and he was inexperienced.
34. On 25 August 2017, Mr. Andrei Ursache filed with the FIVB Disciplinary Panel two (2) communications by Betfair and an official translation of one (1) of the communications. The communications are dated 12 and 26 January 2017 respectively. The first communication is addressed to the same email address as to the one used by the Respondent during the current proceedings and informed the Respondent that his account had been suspended pending an investigation. The betting operator identified the transaction due to the unusual "match odds". The second communication informed the Respondent that the profit in relation with the Match were frozen. The winnings totalized EUR 210.04.- (two hundred and ten euros and four cents).
35. On 29 August 2017, the IOC Ethics and Compliance Office confirmed to the FIVB Disciplinary Panel that a total of four (4) bets had been placed using the account of the Respondent. The IOC further confirmed that the bets were accepted by the betting company and that the account was only suspended on 11 January 2017, i.e. not until after the start of the investigation. The winnings have not been paid by the betting operator.

36. On 5 October 2017, the FIVB Disciplinary Panel decided to provisionally suspend the Respondent from all volleyball related-activities at world-wide level.

37. On 20 October 2017, the FIVB Disciplinary Panel dismissed a request by the Respondent to have the provisional suspension lifted.

V. LEGAL CONSIDERATIONS

(a) Violations:

(1) Betting

38. The FIVB Disciplinary Panel notes that Appendix B, Article B.2.1 of the FIVB DR 2016 requires the direct or indirect involvement of a Participant in any form of Betting related to a Competition.

39. The FIVB Disciplinary Panel is satisfied that the Respondent is a Participant under the definition of Appendix B, Article B.1 of the FIVB DR 2016 because the Respondent is a volleyball player (<http://www.voleiromania.ro/echipe/vcm-lps-piatra-neamt-242.html>).

40. The FIVB Disciplinary Panel is satisfied that the Respondent participated in a Betting activity under the definition of Appendix B, Article B.1 of the FIVB DR 2016 because the Respondent placed four (4) separate bets with one (1) betting operator (the Second Report and the Third Report).

41. The FIVB Disciplinary Panel is satisfied that the Respondent placed bets in relation with a Competition under the definition of Appendix B, Article B.1 of the FIVB DR 2016 because the Match is recognized by the FIVB. The FIVB Disciplinary Panel notes that the Match was part of the 2017 CEV Cup – Men organised by the European Volleyball Confederation (CEV) and Article 2.7.3 of the FIVB Event Regulations 2016 stated that international competitions, such as the CEV Cup, must be approved by the relevant Confederation (i.e. CEV in the present case). Thus, the FIVB Disciplinary Panel finds that the FIVB delegated the authority to CEV to recognize international competitions within its jurisdiction and, by doing so, that the Match is a competition recognized by the FIVB for the purpose of the application of the FIVB DR 2016.

42. The Respondent has recognized the violation by explaining why he had bet on the Match. The Respondent challenged however that the bets had been validated by the betting operator. The FIVB Disciplinary Panel notes that the second communication – sent to the FIVB Disciplinary Panel by the Respondent himself – contradicts this statement. The FIVB Disciplinary Panel notes that constitutive elements of this rule violation require the bet to be placed, not being accepted by the betting operator. The FIVB Disciplinary Panel would like to further clarify that the intent of the Respondent is not relevant in relation with the present rule violation because intent is not a constitutive element of said rule violation.

43. Based on the above, the FIVB Disciplinary Panel finds that the Respondent is liable for the violation of Article 12.1 of the FIVB DR 2016 in connection with Appendix B, Article B.2.1 of the FIVB DR 2016 due to bets placed against his own team, namely C.S. Arcadia Galati.

(b) Sanction

44. When determining the applicable sanctions, the FIVB Disciplinary Panel must look at the sanctions provided in Article 12.4 of the FIVB Dr 2016.

45. The FIVB Disciplinary Panel notes that Article 12.4 of the FIVB Dr 2016 provides for i) a suspension from participating in any official activity within the sphere of the FIVB at national, continental and world-wide level for a period between five (5) years and a life ban and ii) a minimum fine in the amount of CHF 50'000.-.

46. The FIVB Disciplinary Panel notes that Article 28.4.1(a) FIVB DR 2017 states that “When determining the appropriate sanctions applicable, the competent FIVB body shall take into consideration all aggravating and mitigating circumstances and shall detail the effect of such circumstances on the final sanction that the sanction”.

47. Consequently, the FIVB Disciplinary Panel will use the sanctions provided for in Articles 12.4 of the FIVB DR 2016 as the starting point for the sentencing of the Respondent and adapt the final sanctions taking into consideration the principles referred to in Article 28.4.1(a) FIVB DR 2017, which includes that of proportionality in the opinion of the FIVB Disciplinary Panel.

(1) Suspension from participating in any official activity within the sphere of the FIVB at national, continental and world-wide level

48. Article 12.4 of the FIVB DR 2016 provide for a suspension from participating in any official activity within the sphere of the FIVB at national, continental and world-wide level for a period between five (5) years and a life ban.
49. The FIVB Disciplinary Panel recognizes that the wording of the FIVB DR 2016 make it clear that five (5) year constitutes the minimum duration of the suspension. A life ban being the maximum sanction in the present case. In light of the foregoing, the FIVB Disciplinary Panel finds that Article 12.4 of the FIVB DR 2016 institutes a scenario of mandatory sentencing.
50. The FIVB Disciplinary Panel understands and accepts that the concept of separation of powers applies in disciplinary proceedings and that the selection of sanctions to be applied for a specific offence does not lie with the FIVB Judicial Bodies but with another branch of the FIVB, i.e. with the FIVB Board of Administration.
51. The FIVB Disciplinary Panel is however concerned that the suspension provided for in Article 12.4 of the FIVB DR 2016 (and by the same in Article 21.1 of the FIVB DR 2017) may prove to be extremely severe compared to the seriousness of the infringements by the player. In other words, the FIVB Disciplinary Panel would like to stress the importance of the concept of proportionality in the application of the FVB DR 2016 by the FIVB Disciplinary Panel [TAS 2007/A/1252 Fédération Internationale de Natation (FINA) c. M. & Fédération Tunisienne de Natation (FTN) dated 11 September 2007, at para 32 ff].
52. When determining the appropriate sanction, the FIVB Disciplinary Panel shall take into consideration all aggravating and mitigating circumstances (i.e. behavior of the athlete, past betting history, personal situation). The FIVB Disciplinary Panel shall also take into consideration the fact that a violation of Article 12.4 of the FIVB DR 2016 carries a mandatory fine. Thus, the suspension shall be appraised as part of a global sanction (i.e. the duration of the suspension and the amount of the fine shall not be disproportionate) [TAS 2011/A/2325 UCI c/ Roel Paulissen & Royale Ligue Vélocipédique Belge (RLVB) dated 23 December 2011, at para 185].

53. The FIVB Disciplinary Panel notes that the Respondent admitted during the hearing that betting on the sport of Volleyball was a mistake and regretted his actions. The Respondent pointed out that a five (5) year suspension would – in effect – end his professional career, which is his only revenue stream. The FIVB Disciplinary Panel further notes that the FIVB and CEV had not conducted any integrity seminar with regards to betting and match-manipulation before the Match.
54. In light of the above, the FIVB Disciplinary Panel finds that the minimum five (5) years suspension provided for in Article 12.4 of the FIVB DR 2016 is not proportionate to the violation by the Respondent, especially in connection with the monetary fine provided in the same provisions.
55. Therefore, the Respondent shall be sanctioned with a suspension from participating in any official activity within the sphere of the FIVB at national, continental and world-wide level for a period of six (6) months. The *dies a quo* of the suspension shall be discussed next.
56. Article 28.7.2 of the FIVB DR 2017 mandates that where a provisional measure is imposed, this shall be taken into consideration in the determination of any sanction which may ultimately be imposed.
57. For the record, the FIVB Disciplinary Panel has provisionally suspended Mr. Andrei Ursache as of 5 October 2017.
58. In light of the above, the FIVB Disciplinary Panel finds that the time already served by Mr. Andrei Ursache shall be taken into account and, accordingly, that the *dies of quo* of the suspension shall be 5 October 2017.
59. Therefore, the Respondent shall be sanctioned with a suspension from participating in any official activity within the sphere of the FIVB at national, continental and world-wide level until 4 April 2018.

(2) Minimum fine

60. Article 12.4 of the FIVB DR 2016 provides for a minimum fine in the amount of CHF 50'000.- (fifty thousand Swiss Francs).

61. The FIVB Disciplinary Panel recognizes that the wording of the FIVB DR 2016 make it clear that CHF 50'000.- (fifty thousand Swiss Francs) constitutes the minimum amount of the fine. There is no maximum amount indicated in the FIVB DR 2016. In light of the foregoing, the FIVB Disciplinary Panel finds that Article 12.4 of the FIVB DR 2016 institutes a scenario of mandatory financial sentencing.
62. The FIVB Disciplinary Panel reiterates the general concerns exposed in the previous section but this time with a particular focus on the existence of a regime of mandatory financial sentencing and the application of the principle of proportionality. For instance, the FIVB Disciplinary Panel notes that the national minimum wage is of EUR 500 (five hundred Euros) per month in Romania (http://ec.europa.eu/eurostat/statistics-explained/index.php/Minimum_wage_statistics).
63. The Respondent indicated to the FIVB Disciplinary Panel that the sport of volleyball was his only source of income and that he would lose his current contract in case of suspension.
64. The FIVB Disciplinary Panel notes that the Respondent would not have been in a position to (ever) pay the minimum fine had the Respondent been sanctioned with a five (5) year suspension. Thus, the FIVB Disciplinary Panel shall fine the Respondent in an amount which is proportionate and does not jeopardize the financial future of the Respondent while being a proper sanction at the same.
65. Because the sanction must be assessed globally (i.e. the duration of the suspension and the amount of the fine shall be appraised together by the FIVB Disciplinary Panel), the FIVB Disciplinary Panel held that the amount of the fine shall correspond to the amount betted by the Respondent and the winnings stemming from the four (4) bets the Respondent has placed had they been paid by the betting operators. For the sake of clarity, the bets and potential winning were as follows:
- Bet 1: Stake: EUR 250.-. Winnings: EUR 403.85.- = Total Bet 1: EUR 653,85.-
 - Bet 2: Stake: EUR 18.-. Winnings: EUR 35.14.- = Total Bet 2: EUR 53,14.-
 - Bet 3: Stake: EUR 11.-. Winnings: EUR 19.80.- = Total Bet 3: EUR 30,80.-
 - Bet 4: Stake: EUR 11.-. Winnings: EUR 41.25.- = Total Bet 4: EUR 52.25.-

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The athlete Mr. Andrei Ursache (Romania) has committed a disciplinary rule violation (betting and manipulation of results: Betting) according to Article 12 of the FIVB DR 2016 in conjunction with Appendix B, Article B.2.1 of the FIVB DR 2016.
2. A sanction of six (6) months of ineligibility shall be imposed on Mr. Andrei Ursache.
3. The period of ineligibility shall start on 5 October 2017 and end on 4 April 2018, as per Article 28.7.2 of the FIVB DR 2017.
4. A monetary fine of EUR 790.04 shall be imposed on Mr. Andrei Ursache.
5. This decision may be appealed in accordance with the attached Notice of Appeals.

Lausanne, 26 January 2018

For the FIVB DISCIPLINARY PANEL

Ms. Sabinah Clement
Chairperson

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:

Banque Cantonale Vaudoise (BCV)

Place Saint-François 14

CH-1001 Lausanne / Switzerland

Account: T 5344.53.25

IBAN: CH33 00767 000T 5344 5325

BIC Code (Swift Address): BCVLCH2LXXX

Bank clearing: 767

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.