**Arbitration CAS 2021/A/7630 Da Nang FC v. Banik Prievidza FC & Fédération Internationale de Football Association (FIFA), award of 2 May 2023**

Panel: Mr Edward Canty (United Kingdom), Sole Arbitrator

*Football*
*Training compensation*
*Applicable law and the principle of tempus regit actum*
*Admissibility of an appeal against a letter containing a decision*
*Burden of proof to the required standard (FIFA proceedings)*
*Transfer Matching System (TMS) obligations*
*The principle of venire contra factum propium*
*TMS categorization of clubs for training compensation purposes*

1. **The relevant applicable editions of the FIFA Statues and regulations are those that were in force at the time of the procedural acts in question. The fact that further versions were issued whilst the underlying dispute was in progress does not have any effect on this. In addition, according to the consistently applied principle of *tempus regit actum*, substantive aspects of a proceeding are governed by the regulations in force at the time of the relevant facts, while procedural matters are governed by the rules in force at the time when the procedural action occurs. Questions relating to jurisdiction are procedural issues as they relate to the procedure rather than the nature of the obligations arising from a legal relationship.**

2. **Article R47 of the CAS Code stipulates, *inter alia*, that an appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement, and if the appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. The term "decision" in the above-referenced provision has been broadly interpreted by CAS panels. However, CAS jurisprudence has consistently approached the requirements for a decision to be based on the content rather than the form of the document. As such, it is irrelevant that a decision taken by a federation, association or sports-related body is set out in the form of a letter, as it has no importance to the determination as to its status as a decision, as long as all the formal and material elements of a decision are contained therein.**

3. **The standard of proof which applies to proceedings of the FIFA judicial bodies is that the members of FIFA's judicial bodies decide based on their "personal conviction". This standard has been constantly equaled to the standard of "comfortable satisfaction", which is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt". The**

**"comfortable satisfaction" standard is commonly adopted in CAS jurisprudence.**

4. **Even though the COVID-19 pandemic certainly brought challenges of working arrangements, the fact remains that there is a clear obligation on clubs to check and monitor the FIFA Transfer Matching System (TMS) on a very regular basis, for this very reason, as evidenced by the FIFA Regulations on the Status and Transfer of Players ("RSTP"). In that regard, TMS is a platform that can be accessed from any device with a connection to the internet and, even if a TMS manager of a club is unable at some point to have access to an internet-enabled device, it is possible, for example, to instruct another employee of the club to carry out the task of revising its open TMS matters.**

5. **The principle of *venire contra factum proprium* centres on the Swiss law principle of legitimate expectations, whereby if the actions (or inactions) of one party leads to legitimate expectations in the other party, the first party is prevented from changing its approach if it would cause damage to the second party.**

6. **The categorisation of clubs in TMS will be used by FIFA to calculate the proposals for settling training compensation claims. It is also the responsibility of clubs to ensure that its information on TMS as regards its correct categorisation is up to date and correct, particularly for the purposes of training compensation.**

## I. PARTIES

1. Da Nang FC (the "Appellant" or the "Vietnamese Club") is a football club with its registered office in Da Nang, Vietnam. The Vietnamese Club is registered with the Vietnam Football Federation ("VFF"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA"), and is currently participating in the V.League 1.

2. Banik Prievidza FC (the "First Respondent" or the "Slovakian Club") is a football club with its registered office in Prievidza, Slovakia. The Slovakian Club is registered with the Slovak Football Association ("SFA"), which in turn is affiliated with FIFA, and is currently participating in the 3. Liga.

3. The Fédération Internationale de Football Association (the "Second Respondent" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory, and disciplinary functions over national associations, clubs, officials, and football players worldwide.

## II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established based on the Parties' written submissions and the evidence examined in the course of the present appeals arbitration

proceedings[1]. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

## A. Background Facts

5. The player Mr P. (the "Player") was born in Slovakia on 13 March 1996 with Vietnamese nationality. He was registered with and trained by the Slovakian Club between his 12th and 21st birthday.

6. On 12 February 2019, an International Transfer Certificate ("ITC") was issued to allow the Player to transfer from the Slovakian Club to the Vietnamese Club.

7. On 22 February 2019, the Player signed as a professional for the first time with the Vietnamese Club.

8. On 2 April 2019, the Slovakian Club sent a letter to the Vietnamese Club requesting payment of the training compensation that fell due following the Player signing as a professional with the Vietnamese Club. The letter stated, inter alia, as follows:

> *"[…]*
>
> *The claimant claims the training compensation in accordance with FIFA Regulations on the Status and Transfer of Players Art. 20 and Annexe 4 for the player P. born 16 March 1996 based on the transfer of the player to your club from the claimant on 22 February 2019 and signing his first contract as professional (see attached the player's passport).*
>
> *In accordance with the training costs published by FIFA and in accordance with the attached player's passport the claimant claims the training compensation in the amount of 63.000,- USD (sixty three thousand US Dollars). According to FIFA Regulations, on registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players' career history as provided in the player passport).*
>
> *[…]".*

9. Due to the lack of response from the Vietnamese Club, this was followed by further correspondence sent by the Slovakian Club to the Vietnamese Club to repeat the claim for the payment of training compensation on 7 May 2019 and 8 June 2020.

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for the sake of efficiency and to facilitate the reading of this Award, not all of the misspellings have been identified with a [sic] or otherwise.

## B. Proceedings before the FIFA Dispute Resolution Chamber

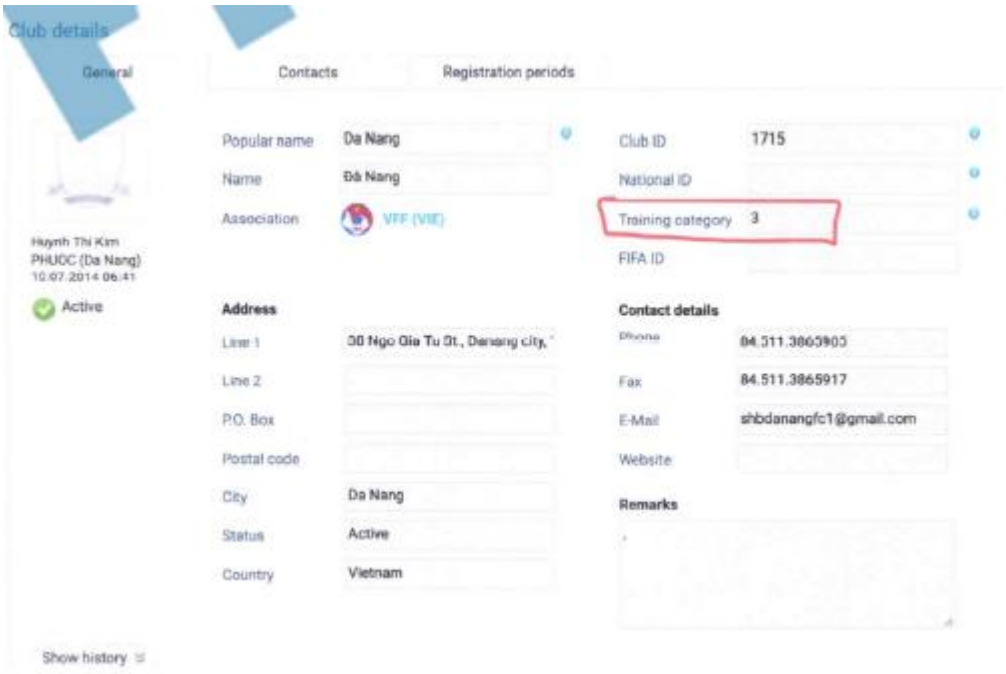
10. On 2 October 2020, the Slovakian Club filed a claim before FIFA for the unpaid training compensation and included the following information:

*"[…]*

*1. Claimant is a Category IV football club based in Prievidza, Slovakia, member of the Slovak Football Association (SFZ).*

*2. Respondent is a Category III football club based in Da Nang, Vietnam, member of the Vietnam Football Federation (VFF).*

[INTENTIONALLY BLANK]




*3. The player in question who was transferred to Respondent is* ***P.,*** *born 16 March 1996, at the time of transfer (15 February 2019) 22 years of age, season 2018/2019 being the season of his 23rd birthday.*

*4. The Player was registered with the Claimant on 14 September 2006 as an amateur and was since this date effectively trained by the Claimant until 14 March 2017 and then from 01 July 2017 until 31 January 2018. (****Evidence 1 – International Player Passport****).*

*5. On 15 February 2019 the Player first registered as professional with the Respondent and the player was transferred through FIFA Transfer Matching System that was at that time exclusively used for the international transfer of football players.*

*[…]"* (emphasis in original).

11. On 26 October 2020, FIFA issued its proposal based on Article 13 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, June 2020 edition (the "FIFA Procedural Rules") as follows (the "Proposal Letter"):

*"**Proposal from the FIFA Administration with regard to the distribution of the training compensation in connection with the registration of the player Pham Thanh TIEP Ref. nr. TMS 6970** (please always include this reference)*

*Dear Sirs,*

*FIFA has been informed by FC Banik Prievidza with its correspondence uploaded in TMS on 15 and 19 October 2020, that it has not yet received the payment established in article 20 and Annexe 4 to the FIFA Regulations on the Status and Transfer of Players regarding training compensation related to the registration of the player, P., in your club. This information is contained in TMS for your perusal.*

*On account of the above and in accordance with Article 13 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, i.e. the Procedural Rules, and the FIFA Circular 1689, please find enclosed the proposal made by the FIFA secretariat in accordance with the above mentioned provision (Enclosure 1).*

*In sum, the proposed amount due by the respondent to the claimant is as follows:*

***USD 60,904.11 as training compensation, plus 5% interest p.a. as of the due date***

*In accordance with Article 13 of the Procedural Rules, it is informed that the parties have to either accept or reject the proposal **within the 15 days following this notification via TMS, i.e. until 10 November 2020.** In this regard, the Claimant is limited to only to accept or reject the proposal, excluding hereby any possibility to amend its original claim.*

*In case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA Player Status' Department within stipulated deadline, the proposal will become binding.*

*In case of rejection by the respondent, the latter will have **five additional days, i.e. until 15 November 2020** to provide its position to the claim. Should the respondent wish to extend its deadline to file its position, it must request said extension before the expiration of the above mentioned date, in which case the deadline is automatically extended for **ten (10) additional days, i.e. until 25 November 2020** in accordance with Article 16 par. 11 of the Procedural Rules.*

*Please also be informed that in case of rejection of the proposal by one of the parties, a formal decision on this matter will be taken by the Single Judge of the sub-committee of Dispute Resolution Chamber in due course.*

*Equally, we wish to point out that the relevant proposal will always be without prejudice to any formal decision which could be passed by the competent deciding body in the matter at a later stage in case the proposal is rejected by one of the parties.*

*[…]"* (emphasis in original).

12. On 6 November 2020, the Slovakian Club accepted the proposal as set out in the Proposal Letter by FIFA's Transfer Matching System ("TMS").

13. The Vietnamese Club failed to respond before the issued deadline, or at all, which lead to FIFA issuing a further letter dated 9 December 2020 confirming that the proposal had become binding (the "Appealed Decision"):

*"[…]*

*As mentioned in our previous communication, in case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA administration within the stipulated deadline, the proposal will become binding.*

*Bearing the above in mind, we would like to inform the parties involved that the proposal has become binding. Consequently, the Respondent,* ***Da Nang****, has to pay to the Claimant,* ***FC Banik Prievidza****, within 30 days as from the date of this notification, if not done yet, the amount of* ***USD 60,904.11, plus 5% interest p.a. as of the due date*** *until the date of effective payment.*

*In the event that the aforementioned sum is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

*[…]"* (emphasis in original).

14. On 28 December 2020, the Vietnamese Club wrote to FIFA requesting that it annul the Appealed Decision for the following reason:

*"[…]*

*3.*

*Article 2 of Annex 4 FIFA RSTP states that the obligation (to pay training compensation) does not arise if a former club terminates a player's contract without just cause, when a professional reacquires amateur status in moving clubs, or when a player transfers to a so-called "Category 4" club.*

*In this perspective, it is essential to point out that Respondent has always been categorized as a Category 4 club and thus is unfamiliar with any TMS procedure to pay training compensation. Any different categorization can simply not be accepted as FIFA and the national association didn't have any other category at their disposal following the FIFA guidelines published each year (FIFA circulars).*

*All Vietnamese clubs are Category 4, this has been confirmed in FIFA circulars on a yearly basis.*

*4.*

*On 2 October 2020, FC Banik sent a claim to FIFA against Da Nang FC.*

*As this claim solely concerned the training compensation, FIFA decided to communicate with the Parties only through the TMS system.*

*Being a Category 4 club, the Respondent considered the TMS notification merely as an administrative mistake from FIFA and did not respond.*

*On 26 October 2020, considering Da Nang FC's lack of response, FIFA decided that Respondent had to pay the FC Banik a training compensation. In this communication FIFA wrongfully states that the reasoning and calculation made by FC Banik was entirely correct.*

*FIFA proceeded to its calculation process and concluded that Respondent had to pay 60,904.11 USD + 5% interest per year.*

*5.*

*On 9 December 2020, FIFA decided that this "proposal" was final and binding.*

*FIFA imposed Da Nang FC a final deadline of 30 days to proceed with the payment of 60.904,11 USD as compensation to FC Banik.*

*This decision is based upon a mistake as Da Nang has, like any other Vietnamese club, been a Category 4 club from its origin until today.*

*6.*

*Based on FIFA's clear exception for Category 4 clubs, Banik FC is not entitled to receiving any training compensation. FIFA wrongfully processed Respondent as a Category 3 club.*

*After a thorough study of the available documentation, Respondent concluded that this wrongful calculation is based on the wrong assumption that Da Nang FC is a Category 3 Club.*

*Respondent had no other option than to lodge the current application to annul the proposal dd. 9 December 2020 and urges FIFA to review and reconsider its calculations.*

*[…]"* (emphasis in original).

15. Upon lodging the application with FIFA to annul the Appealed Decision, the Vietnamese Club received notification from FIFA that the FIFA offices were closed from 24 December 2020 to 3 January 2021 inclusive. Therefore, the Vietnamese Club decided to lodge this appeal to protect its position and in order to ensure the appeal was made within the required timescale.

## III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 30 December 2020, the Vietnamese Club lodged an appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2020) (the "CAS Code") naming FC Banik Prievidza and

FIFA as the Respondents. In this Statement of Appeal, the Vietnamese Club requested that the appeal be submitted to a Sole Arbitrator and requested that the appeal be suspended pending the determination of its application to annul the Appealed Decision sent to FIFA on 28 December 2020.

17. On 12 January 2021, FIFA informed the CAS that it agreed with the appointment of a Sole Arbitrator (provided they are selected from the football list) but objected to the suspension request on account of it having addressed this request by letter of the same date. A copy of this letter sent to the Vietnamese Club was also enclosed and concluded as follows:

*"[…]*

*In this context, we would also like to kindly refer you to our proposal of 26 October 2020, by means of which the parties were informed, inter alia, that they had "(…) to either accept or reject the proposal* ***within the 15 days following this notification via TMS, i.e. until 10 November 2020****" and that in the event "(…) a proposal is accepted by all parties or* ***the parties fail to provide an answer to the FIFA Player Status' Department within the stipulated deadline, the proposal will become binding****".*

*With the above in mind, and considering that the club Da Nang failed to provide an answer to FIFA within the stipulated deadline i.e. on or before 10 November 2020, the proposal which became final and binding cannot be annulled nor changed by our services.*

*[…]"* (emphasis in original).

18. On 11 January 2021, the Slovakian Club agreed to the appointment of a Sole Arbitrator and objected to the Vietnamese Club's application to suspend the proceedings.

19. On 18 January 2021, the CAS Court Office wrote to the Parties to confirm that on account of the lack of response from the Vietnamese Club to the request from the CAS Court Office to confirm whether it wished to maintain its application for the suspension of the proceedings considering FIFA's letter of response dated 12 January 2021, the suspension application was considered as withdrawn.

20. On 12 February 2021, after having been granted several extensions further to Article R32 of the CAS Code, the Vietnamese Club filed its Appeal Brief further to Article R51 of the CAS Code.

21. On 15 February 2021, the Slovakian Club asked that the deadline for its Answer be fixed once the Vietnamese Club had paid the advance of costs, further to Article R55 of the CAS Code.

22. On 16 February 2021, the CAS Court Office confirmed that the Vietnamese Club had already paid the advance of costs and therefore the deadline for the Answer of both the Slovakian Club and FIFA remained as previously indicated in accordance with Article R55 of the CAS Code. Furthermore, in accordance with Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:

Sole Arbitrator: Mr Edward Canty, Solicitor in Manchester, United Kingdom

23. On 15 March 2021, the CAS Court Office confirmed receipt of the Slovakian Club's Answer filed by email on 5 March 2021 but requested proof of its filing by courier or via the CAS E-filing Platform within the deadline established by Article R31 of the CAS Code.

24. Also on 15 March 2021, the Slovakian Club confirmed it had immediately uploaded its Answer and Exhibits to the CAS E-filing Platform upon receipt of the letter from the CAS Court Office of the same date.

25. Still also on 15 March 2021, the CAS Court Office wrote to the Parties requesting that the Vietnamese Club and FIFA provide their comments on the admissibility of the Answer filed by the Slovakian Club, since it was filed by email on 5 March 2021 but was not filed by courier and only uploaded to the CAS E-filing Platform on 15 March 2021.

26. On 26 March 2021, the CAS Court Office provided a copy of the Vietnamese Club's letter of 17 March 2021, in which it objected to the admissibility of the Slovakian Club's Answer due to its late filing and noted that FIFA had not provided its position as to the admissibility of the Slovakian Club's Answer within the stipulated deadline.

27. On 30 March 2021, the CAS Court Office provided a copy of the Slovakian Club's comments as to the admissibility of its Answer and requested the other Parties to provide their comments.

28. On 2 April 2021, the Vietnamese Club maintained its objection to the admissibility of the Slovakian Club's Answer.

29. On 6 April 2021, FIFA indicated that it had no comments to make regarding the admissibility of the Slovakian Club's Answer.

30. On 12 April 202, after having been granted several extensions further to Article R32 of the CAS Code, FIFA filed its Answer further to Article R55 of the CAS Code.

31. On 13 April 2021, the Parties were informed that the Sole Arbitrator had decided that the Slovakian Club's Answer was inadmissible.

32. On 19 April 2021, the Vietnamese Club indicated that it would prefer to have a hearing or in the alternative, that it be granted the right to reply in writing to FIFA's Answer.

33. On 19 April 2021, the Slovakian Club indicated that it did not consider a hearing was necessary and that a decision should be issued based on the Parties' written submissions.

34. On 20 April 2021, FIFA indicated that it did not consider a hearing was necessary and that a decision should be issued based on the Parties' written submissions.

35. On 22 April 2021, further to Articles R44.3 and R57 of the CAS Code, the Parties were informed that the Sole Arbitrator had decided that a hearing would not be held but instead the Parties would be granted the opportunity to file further written submissions in reply.

36. On 17 May 2021, after having been granted an extension of time further to Article R32 of the CAS Code, the Vietnamese Club filed its Reply.

37. On 2 June 2021, the Slovakian Club filed its Rejoinder.

38. On 14 June 2021, after having been granted an extension of time further to Article R32 of the CAS Code, FIFA filed its Rejoinder.

39. On 5 July 2021, 21 June 2021, and 18 June 2021 respectively, the Vietnamese Club, the Slovakian Club and FIFA returned duly signed copies of the Order of Procedure to the CAS Court Office.

## IV. SUBMISSIONS OF THE PARTIES

40. The following is a summary of the Parties' submissions and does not purport to be comprehensive. However, the Sole Arbitrator has thoroughly considered all the evidence and arguments submitted by the Parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

41. The Vietnamese Club's submissions, in essence, may be summarized as follows:

- An ITC was issued via TMS on 12 February 2019 to allow the Player to transfer from the Slovakian Club to the Vietnamese Club.

- According to Article 20 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), training compensation is payable to a player's training clubs (the clubs he was registered with between the ages of 12 and 21) when a player first registers as a professional and each time he is transferred as a professional up to the end of the season of his 23rd birthday.

- Article 2 of Annex 4 of the FIFA RSTP states that the obligation to pay training compensation does not arise in certain situations, including when a player transfers to a Category 4 club.

- Each year every national association must categorize its clubs according to the guidelines published by FIFA, based on the expenditure for each club in training young players.

- In this regard, the VFF has always determined that all clubs in Vietnam, including the Vietnamese Club, are Category 4 and therefore, in accordance with the Commentary on the FIFA RSTP (2007 edition), the allocation occurs automatically for national associations that only have Category 4 clubs.

- The Slovakian Club submitted its claim for training compensation to FIFA on 2 October 2020 and FIFA began a procedure, communicating by TMS. The Vietnamese Club considered the TMS notification to be an administrative mistake on the part of FIFA, given it was a Category 4 club, and did not respond.

- On 26 October 2020, FIFA issued its calculation for training compensation payable by the Vietnamese Club in the sum of USD 60,904.11 (the "Settlement Amount"), which was based on a false premise that it was a Category 3 club rather than a Category 4 club.

- Based on the Vietnamese Club's continued lack of response, FIFA issued the final and binding Appealed Decision on 9 December 2020.

- Whilst FIFA Circular No 1689 sets out the procedure followed by FIFA in issuing proposals for the payment of training compensation, in this case FIFA proceeded based on an administrative mistake with the Vietnamese Club wrongly categorized on TMS as a Category 3 club rather than a Category 4 club. But for this mistake, training compensation would not be payable.

- FIFA was at fault for entering the wrong categorization on TMS and the VFF was at fault for erroneously confirming it was correct. Therefore, FIFA should have annulled the Appealed Decision when requested to do so by the Vietnamese Club by its letter of 28 December 2020 (but refused to do so in its response of 12 January 2021).

- In the alternative, FIFA should have applied Article 5 paragraph 4 of Annex 4 of the FIFA RSTP which provides FIFA with the discretion to adjust the amounts of training compensation based on the principles of proportionality.

- The reason for the Vietnamese Club's delay in dealing with the TMS communication was because the Vietnamese Club had appointed a TMS Manager who had access to and responsibility for TMS; however, due to the Covid-19 pandemic, the Vietnamese Club staff were all working from home and the machine to access TMS was at the Vietnamese Club's premises. It was therefore difficult to maintain a regular review of TMS notifications and it was only sometime after receipt of the Appealed Decision, due to another staff member checking TMS, that the Vietnamese Club became aware of the situation and able to react and respond.

- FIFA was wrong to apply the fast-track procedure to this claim for training compensation because of the specific circumstances and error of categorization, and by refusing to annul the Appealed Decision, undermined the fundamental principle of the right to be heard.

- The Vietnamese Club maintains that CAS jurisprudence determines that it is a club's categorization at the time of the transfer of the player which is decisive, and, according to FIFA Circulars, the Vietnamese Club could only be a Category 4 club. In particular, regarding the season in question, FIFA Circular No 1627, issued on 9 May 2018, confirms that clubs under the jurisdiction of the VFF could only be categorized in Category 4.

- The VFF also confirms in correspondence provided by way of supporting evidence that the Vietnamese Club was a Category 4 club at the time of the Player's transfer from the Slovakian Club, as indeed were all clubs in Vietnam.

- Indeed, according to the FIFA guidelines issued in relation to the categorization of clubs, this confirms that it is only possible to categorize the Vietnamese Club as Category 4.

- The details of the Vietnamese Club were set up in TMS by FIFA on 25 March 2009 and this included a reference to training Category 3. Despite certain updates by FIFA later in 2009, there was no change made to the Category 3. The Vietnamese Club only amended their details (adding relevant contact details) on 10 July 2014 but did not adjust the reference to Category 3 because it did not have authority to do so and because it did not want to doubt the information FIFA inputted. It was not until after receipt of the Appealed Decision that the Vietnamese Club contacted the VFF and TMS was changed to show Category 4 by the VFF on 21 December 2020.

- The Vietnamese Club should not be held responsible for the collective errors of FIFA and the VFF, and in any event, the actual categorization at the time of a transfer is the relevant determining factor as opposed to what TMS may say at any given time.

- FIFA Circular No 1249 provides that in cases of manifest discrepancy, the training category in accordance with the issued FIFA guidelines should be followed despite the fact that a national association may have indicated a different categorization, and this is supported by the jurisprudence of the FIFA Dispute Resolution Chamber (the "FIFA DRC").

- The Vietnamese Club is facing severe financial challenges and would face financial ruin and bankruptcy if it had to pay the Settlement Amount set out in the Appealed Decision to the Slovakian Club.

- In the alternative, notwithstanding the administrative error, if it is determined that the Vietnamese Club should be considered a Category 3 club, the Settlement Amount should be reduced to the absolute minimum in accordance with the discretion provided by Article 5 paragraph 4 of Annex 4 of the FIFA RSTP because the payment of any training compensation would be disproportionate and unreasonable.

- The Player was signed as a free agent; however, shortly afterwards, he requested that his contract with the Vietnamese Club be terminated due to homesickness, a request which was granted, and he returned to Slovakia. The Player had paid a monthly training fee to the Slovakian Club and therefore it would be inappropriate for it to be compensated twice by the awarding of training compensation.

- Finally, given that all clubs in Vietnam should be Category 4 and therefore training compensation would not be payable, to uphold the Appealed Decision would be unreasonable and disproportionate as it would place the Vietnamese Club at a disadvantage to all other clubs in Vietnam which could have signed the Player without any training compensation cost due to the administrative error by FIFA and the VFF in categorizing the Vietnamese Club as Category 3.

42. Accordingly, the Vietnamese Club submitted the following requests for relief:

*"The Appellant request that the CAS admits this Statement of Appeal against the Decision rendered by the FIFA administration dd. 9 December 2020. In this perspective, and based on CAS code R48.5, to suspend the execution of the Decision under Appeal.*

***The Appellant requests the Court of Arbitration for Sport to:***

1. *Declare this Appeal admissible;*

2. *Annul and review the Decision under Appeal rendered by the FIFA administration on 9 December 2020;*

3. *Declare that Da Nang was a Category 4 club at date of transfer;*

4. *Declare that based on this Category 4 status Da Nang has no obligation to pay any training compensation.*

***In the alternative: reject the request for training compensation or lower it to an absolute minimum by:***

5. *Applying Art. 5 Par. 4 Annex 4 FIFA RSTP;*

6. *Applying the principles of reasonableness and proportionality.*

***In any event:***

8. *[sic] Order the Respondents to bear the costs of proceedings before the Court of Arbitration for Sport;*

9. *Award a contribution to be established at 10.000,00 EUR to cover the legal fees and expenses of the Appellant.*

***

***The Appellant expressly reserves the right to amend and/or expand upon the above prayers for relief after reception of the statement of response by Respondent"*** (emphasis in original).

43. The Vietnamese Club's Reply, in essence, may be summarized as follows:

- The Proposal Letter contains the following caveat that *"the relevant Proposal will always be without prejudice to any formal decision"* and FIFA itself indicates in its Answer that it was issued to *"try and settle the dispute"*. In contrast, the Appealed Decision is the only document which sets out the binding decision despite FIFA's attempts to argue that it failed to contain the essential elements of a decision. This is incorrect and the Appealed Decision should be viewed as a decision capable of appeal before the CAS and therefore the appeal is admissible.

- The use of the training compensation procedure by FIFA removes the possibility for a club to appeal which does not lead to fair decision-making. For instance, if a club fails to

respond within 15 days to the proposal, an appeal before CAS is deemed impossible which means FIFA is promoting a closed legal system.

- Indeed, the suggestion that any objection to the Proposal Letter must be made within 15 days is inconsistent with FIFA's position that it is the only appealable decision, for which the CAS deadline is 21 days after issue.

- The latest version of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, issued in 2021 (the "2021 FIFA Procedural Rules") contains a new paragraph 3 which states that *"the confirmation letter shall be considered a final and binding decision pursuant to the FIFA Regulations on the Status and Transfer of Players"*. Therefore, FIFA is seeking to adopt a stance in direct contradiction to its latest guidance in respect of the FIFA RSTP which demonstrates that the position it is adopting in this case is incorrect.

- The Vietnamese Club refers to CAS jurisprudence to support its argument that the Appealed Decision has all the elements of a decision. The form (a letter) has no relevance, nor does the reference to it being a *"confirmation"*, because the Appealed Decision is in substance to be interpreted as a decision. It is also the only document which contains the actual ruling that the Vietnamese Club must pay the Slovakian Club the Settlement Amount. It also produces legal effects because it holds no further reservations and states that the payment of the Settlement Amount must be made within 30 days of the date of the Appealed Decision. It also has *animus decidendi* because it clearly holds an intention to decide on a matter. The Proposal Letter held an explicit reservation whereas the Appealed Decision finally determines the legal position of both clubs. In addition, the 2021 FIFA Procedural Rules confirm that a confirmation letter is a *"final and binding decision"*.

- Therefore, the appeal should be determined to be admissible, and the CAS is able to use its *de novo* powers to issue a replacement decision.

- The Vietnamese Club accepts that it only provided its position concerning the Slovakian Club's training compensation claim on 28 December 2020. However, it maintains that the effect of the Covid-19 pandemic was very challenging for the Vietnamese Club and provides evidence from the TMS operator as to the practical effect of not being able to access club premises, and therefore the TMS system (since the log-in details were stored there), during this period. The area around the Vietnamese Club was one of the first in the world to face a cluster of cases, including within the community of the Vietnamese Club, and it admits that TMS was not a priority at this time.

- Indeed, FIFA issued Circulars and guidance in relation to the Covid-19 pandemic to counter the effects, calling the situation *"an exceptional circumstance that requires exceptional measures and decisions"*, and afforded some flexibility to procedural rules, contractual terms, and deadlines.

- The first time the Vietnamese Club became aware of the claim was in December 2020 when restrictions were lifted. It had not received the earlier emails from the Slovakian

Club, despite being sent to several club email addresses, perhaps because these went to spam email.

- The Vietnamese Club refers to CAS jurisprudence which determines that it is possible to admit arguments and evidence at a late stage in proceedings.

- The Vietnamese Club is itself unable to correct its categorization on TMS and the error of recording it as Category 3 stems back to FIFA when it registered the Club on 25 March 2009, with further changes made by FIFA shortly afterwards. The individuals who registered and amended the Vietnamese Club's entry on TMS also travelled to Vietnam to introduce TMS to the clubs of the VFF and the Vietnamese Club assumes that FIFA would always be correct and to doubt them would be a sign of disrespect. Notwithstanding this, it was always convinced that it, and all other clubs in Vietnam, were Category 4.

- The jurisprudence of the FIFA DRC is clear that the categorization of clubs in the FIFA regulations and the annual circular letter should be applied rigorously and FIFA Circular No 1627 (dated 9 May 2018) shows that it is impossible to categorize any club in Vietnam in any category other than Category 4. Therefore, the Vietnamese Club could only be categorized and treated as a Category 4 club at the relevant time.

- In terms of FIFA's argument that there are other clubs in Vietnam that hold Category 3 status, these are all similar errors as they include clubs in the second and third division and even a youth team of a professional club, which shows that other errors of categorization occur.

- The error in categorization by FIFA (and confirmed by VFF) was unknown to the Vietnamese Club and its silence cannot be held as acceptance. The Vietnamese Club had never before dealt with a training compensation claim, and this proves that most clubs assumed that it held Category 4 status.

- This case was not suitable to be dealt with under the fast-track procedure set out in Article 13 of the 2021 FIFA Procedural Rules because there is no ability within that process to request FIFA to correct a mistake it had made in TMS.

- The CAS must have the ability to change the incorrect categorization despite FIFA's argument that the information in TMS must be considered correct. This is in breach of the legal principles of legal security, the right to be heard, the right to a fair trial and the right to appeal a unilateral decision of a sports body because this categorization can only be changed by FIFA and therefore could be manipulated by FIFA without any control.

- The Vietnamese Club notes that FIFA can substitute an incorrect categorization inputted by a national association, as shown in the FIFA DRC jurisprudence, and therefore the CAS should have the power to do the same when it is FIFA which has inputted the incorrect categorization.

- In terms of actual training costs, a Category 3 club in Vietnam equates to USD 10,000 per youth player; the Vietnamese Club's training budget is USD 1,997.41 per youth player which is within the parameter for a Category 4 club (USD 2,000 per youth player). In addition, the Player's salary at EUR 850 per month corresponds with the salary of a Category 4 club.

- FIFA's arguments on the principle of estoppel and *venire contra factum proprium* should be dismissed because the estoppel argument is based on a hypothetical situation which the Vietnamese Club had no influence over; indeed, it was FIFA that was responsible for inputting the categorization. The CAS jurisprudence shows that the doctrine of *venire contra factum proprium* provides that where the conduct of one party induces legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party. However, the Vietnamese Club has not made any statement or admission about its categorization, and it was FIFA's actions alone which meant that the Vietnamese Club appeared as Category 3 on TMS, so therefore this principle cannot be used against the Vietnamese Club.

- The Vietnamese Club notes that FIFA does not contest its position that Article 5 Paragraph 4 Annex 4 of the FIFA RSTP can apply to adjust training compensation amounts if clearly disproportionate, in the alternative to the above arguments, and the principle of reasonableness and proportionality should result in the reduction of the Settlement Amount to the Slovakian Club. Given the Vietnamese Club has already demonstrated that it should be a Category 4 club, then the Settlement Amount should be reduced to zero. Considering the training budget of USD 2,000 per youth player for the Vietnamese Club, to uphold the Settlement Amount awarded in the Appealed Decision would amount to the actual training budget for 30 youth players, which is clearly disproportionate.

44. The Vietnamese Club adjusted its requests for relief as follows (emphasis added by the Sole Arbitrator to identify the requests for relief which were amended from the Appeal Brief):

*"The Appellant request that the CAS admits* ***the Statement of Appeal, Brief Appeal and this Additional Statement*** *against the Decision rendered by the FIFA administration dd. 9 December 2020. In this perspective, and based on CAS code R48.5, to suspend the execution of the Decision under Appeal.*

*The Appellant requests the Court of Arbitration for Sport to:*

*1. Declare this Appeal admissible;*

*2. Annul and review the Decision under Appeal rendered by the FIFA administration on 9 December 2020;*

*3. Declare that Da Nang was a Category 4 club at date of transfer;*

*4. Declare that based on this Category 4 status Da Nang has no obligation to pay any training compensation.*

*In the alternative: reject the request for training compensation or lower it to an absolute minimum by:*

*5.* ***In application of Art. 5 Par. 4 Annex 4 FIFA RSTP by Applying the principles of reasonableness and proportionality to decide that Appellant:***

***- Should not pay any training compensation given that the categorization stems from an administrative error out of control of Appellant;***

***- In alternatively: order Appellant to pay a training compensation of maximum of 12.000, USD corresponding the actual cost of training in accordance with provided documentation.***

*In any event:*

***6.*** *Order the Respondents to bear the costs of proceedings before the Court of Arbitration for Sport;*

***7.*** *Award a contribution to be established at 10.000,00 EUR to cover the legal fees and expenses of the Appellant".*

45. The Slovakian Club's Answer was deemed inadmissible since it was not filed in accordance with Article R31 of the CAS Code and therefore it failed to make any submissions or any requests for relief.

46. The Slovakian Club's Rejoinder, in essence, may be summarized as follows:

- The Slovakian Club contacted the Vietnamese Club regarding its training compensation claim by letters dated 2 April 2019, 7 May 2019 and finally on 8 June 2020 without any response, with the first letter sent a year before the start of the Covid-19 pandemic.

- The Slovakian Club is in agreement with FIFA regarding the inadmissibility of the appeal as it has been filed against a final and binding decision, as shown by the terms of the Proposal Letter and Article 13 of the FIFA Procedural Rules which confirm that in the event that a party fails to request a formal decision from the relevant FIFA decision-making body, such will result in *"the proposal being regarded as accepted by and binding on all parties"*. This is also supported by Article 15.2 of the FIFA Procedural Rules, which states that parties have 10 days to request the grounds for a decision and failure to do so results in the decision becoming final and binding, and the parties are deemed to have waived their right to file an appeal.

- Even though there are no grounds which can be requested in respect of the process set out in Article 13 of the FIFA Procedural Rules because it deals with disputes without complex factual or legal issues or where there is clear, established jurisprudence, it should be viewed analogically given that the Appealed Decision should be considered to be a decision pursuant to the FIFA RSTP. If the Vietnamese Club had rejected what was put forward in the Proposal Letter, the dispute would be referred to the FIFA DRC.

- Given that the Appealed Decision is a final and binding decision, the Parties have waived their right to file an appeal and therefore the appeal filed by the Vietnamese Club should be considered inadmissible.

- Accordingly, the appeal should be deemed inadmissible or alternatively dismissed in full and the Vietnamese Club should bear all arbitration costs.

47. FIFA's submissions, in essence, may be summarized as follows:

- The basis of the appeal is an attempt by the Vietnamese Club to cure its negligent procedural stance it adopted during the proceedings relating to the training compensation dispute with the Slovakian Club through TMS. The Vietnamese Club missed the opportunity to take a position on the Proposal Letter in order to settle the dispute pursuant to Article 13 of the FIFA Procedural Rules. Due to the silence of the Vietnamese Club, it tacitly accepted the Proposal Letter which became final and binding on the two clubs 15 days later, i.e., on 10 November 2020.

- The system implemented by Article 13 of the FIFA Procedural Rules allows the FIFA Administration to make written proposals to clubs in limited matters (including training compensation) which the clubs can either accept or reject within 15 days, and failure to answer will be deemed as an acceptance to the proposal and it will have binding effects. This was introduced with the principle of procedural economy in mind to speed up the decision-making process in training compensation cases. However, if there is any objection (within the 15-day period), then FIFA Circular No 1689 confirms the dispute would then follow the dispute procedure set out in the FIFA Procedural Rules.

- To find in favour of the Vietnamese Club would allow clubs to appeal matters which had become final and binding and thereby fundamentally undermine the system adopted by FIFA in accordance with Article 13 of the FIFA Procedural Rules. The Vietnamese Club had ample opportunity to present its objection and CAS jurisprudence clearly supports the principle of *"venire contra factum proprium"*, which can be viewed as *"where the conduct of one party has led to the legitimate expectations on the part of a second party, the first party is estopped from changing its course of action to the detriment of the second party"*.

- Accordingly, the Vietnamese Club is estopped from appealing the Proposal Letter after 10 November 2020 because it led to the legitimate expectation that it had accepted its content and the dispute was already settled. The attempt to now appeal is to the detriment of the Slovakian Club, FIFA, and the adopted system of resolving training compensation claims.

- There is a lack of clarity in the appeal brought by the Vietnamese Club, in particular in relation to the content and effect of the Proposal Letter and the Appealed Decision. The Vietnamese Club has failed to take into account: which letter communicated the Settlement Amount (i.e., the Proposal Letter); when it became binding; and what the Appealed Decision actually meant.

- The Vietnamese Club claims that its appeal is against the decision contained in the Appealed Decision and therefore, according to FIFA, this appeal should be deemed inadmissible because it was only the Proposal Letter which contained a 'decision' because the Appealed Decision did not contain a 'decision'.

- The Appealed Decision did not contain the essential elements required to constitute a decision:

  - it must contain a ruling: the Appealed Decision did not contain a ruling; it did not resolve any issues in a final way and had a mere informative nature. It did not decide that the Proposal Letter became binding because this had already happened after the 15-day period had elapsed, it was a mere informative letter which communicated and confirmed that the Proposal Letter had become enforceable since 10 November 2020. In contrast, the Proposal Letter did contain a (proposed) ruling which would become binding subject to objection in the defined period. Therefore, if the appeal is made against the Appealed Decision, it is inadmissible as it does not contain a ruling and is just informative;

  - it must intend to produce legal effects: the Appealed Decision did not intend to produce legal effects. Even though it set a deadline to pay the Settlement Amount in the Proposal Letter, it did not set a starting point for payment because this had already been set because payment fell due as soon as the Proposal Letter became binding on 10 November 2020. Further, the Appealed Decision did not establish that the matter would automatically be submitted to the FIFA Disciplinary Committee in case of default as this would only happen if payment was not made within the 30-day deadline and upon the request of the Slovakian Club. Indeed, even if the 30-day deadline and the potential for disciplinary proceedings produced legal effects, the Vietnamese Club is not appealing against those aspects, but instead appealing to avoid the payment of the Settlement Amount itself. Therefore, if the Vietnamese Club wanted to appeal any decision or communication intended to produce legal effects, it should have challenged the Proposal Letter within the 15-day deadline, and within the framework of Article 13 of the FIFA Procedural Rules;

  - it must have *"animus decidendi"*: the Appealed Decision did not have *"animus decidendi"* because it was just informative, instead this was found in the Proposal Letter which was a communication directed at the clubs and *"based on the intention of a body of the association to decide on a matter"*. It offered an amount to settle the training compensation issue and granted a 15-day period to accept or reject the proposal. Further, it set out that it would become binding if the amount was agreed or if the clubs failed to provide an answer (as the Vietnamese Club did, despite being clearly notified of the result of failing to object to the proposal). Therefore, the matter became decided from 10 November 2020 when the 15-day period elapsed and the Appealed Decision on 9 December 2020 was a mere reminder that the Proposal Letter had become binding and that the Vietnamese Club had to pay the Settlement Amount.

- The CAS jurisprudence is clear that appeals are inadmissible when filed against *"implementation"* or *"reminding"* letters issued by FIFA in disciplinary matters because the essential elements required for a decision are absent.

- In the alternative, if the appeal is deemed admissible, this case of training compensation was simple and raised no complex legal or factual issues to warrant a departure from the procedure set out in Article 13 of the FIFA Procedural Rules. The failure of the Vietnamese Club to deal with the claim in the normal way and its belated attempts to remedy this does not constitute a complex issue.

- The Vietnamese Club's right to be heard was fully respected and this argument should be dismissed. The use of the procedure set out in Article 13 of the FIFA Procedural Rules is not arbitrary and does not limit the rights of the clubs involved. The Proposal Letter was clear and stated a specific time limit; the fault lies with the Vietnamese Club for failing to respond and only presented its position on 28 December 2020, 48 days late.

- The procedure for training compensation claims was strictly followed, as indicated by Annexe 6 of the FIFA RSTP. The fact that the communication was through TMS did not violate the Vietnamese Club's right to be heard in any way, indeed Annexe 6 of the FIFA RSTP states that all claims for training compensation must be submitted and managed through TMS. Furthermore, Article 2 of Annexe 6 of the FIFA RSTP places an obligation on clubs to check TMS at least every three days and that clubs are *"fully responsible for any procedural disadvantages that may arise due to a failure to respect"* this obligation. Therefore, the Vietnamese Club cannot argue its right to be heard was interfered with simply because it failed to participate in the procedure, and it must bear the consequences of this.

- The fact of the Covid-19 pandemic requiring staff from the Vietnamese Club to work from home, including the TMS operator, could not have affected the ability to access TMS. It does not require any special equipment, merely an internet connection, use of which was not restricted by the pandemic. Indeed, Article 3(2) of Annexe 3 of the FIFA RSTP establishes that TMS users should check the system at regular intervals on a daily basis.

- Furthermore, the Vietnamese Club was well aware that the Slovakian Club intended to lodge a claim for training compensation due to the previous correspondence between the clubs, and therefore the suggestion that the Vietnamese Club makes that upon receiving the Proposal Letter on TMS, it viewed this as an administrative mistake by FIFA, so took no further steps, is not credible. Indeed, the attempts to rely on the Covid-19 pandemic do not ring true because the pandemic continued throughout the relevant period and the fact that the Vietnamese Club could finally react in December 2020 showed that the pandemic was not a genuine barrier to the Vietnamese Club dealing with this properly at the relevant time.

- FIFA has verified the activity of the Vietnamese Club on TMS, and this shows that it did not access TMS from 12 March 2020 to 15 December 2020, which shows a negligent attitude to its obligations to keep TMS under daily review according to the FIFA RSTP, and the Covid-19 pandemic had nothing to do with the unawareness of the claim given previous correspondence. The Vietnamese Club simply failed to apply the required diligence during the training compensation claim and is now seeking to remedy its own fault by this (inadmissible) appeal.

- In terms of the categorization of the Vietnamese Club, the relevant category is the one stated in TMS at the time the training compensation became due. TMS relies on the accuracy of the data in the system. In terms of club categorization, FIFA Circular No 1223 states that only the categorization in TMS will be taken into consideration, and FIFA Circular No 1299 states that this will prevail over any conflicting categorization for a club, which was further confirmed by FIFA Circular No 1726.

- In addition, CAS jurisprudence supports the contention that the information contained within TMS is viewed as valid to ensure the system is not undermined. The Vietnamese Club accepts they knew that they were a Category 3 club in TMS since 2009 and it was only after it was ordered to pay training compensation to the Slovakian Club in late 2020 that it took any steps to change the category. Therefore, it could be considered that the Vietnamese Club consented to its categorization before this. FIFA bears no responsibility for the categorization of clubs in TMS, which is left to the relevant national association and club. Despite the amendment made by the VFF on 21 December 2020, the Appealed Decision had already been issued and the Settlement Amount had become binding.

- The Vietnamese Club is incorrect when it states that all clubs in Vietnam are Category 4 and there have never been clubs in Vietnam at Category 3. In actual fact, since TMS was created, there have been 21 clubs in Vietnam in Category 3, eight of which remain at Category 3.

- Furthermore, the Vietnamese Club updated TMS on 10 July 2014 by adding its address and contact details but did not make any change (nor request the VFF to make a change) to its Category 3 status. It accepted this for more than 11 years and is estopped from requesting a retroactive change of category. CAS jurisprudence supports that the Vietnamese Club should be estopped because it allowed other stakeholders to believe in good faith that it was a Category 3 club.

- In addition, the Vietnamese Club has not adduced any argument or evidence that may justify its request to be recategorized from Category 3 to Category 4. This can only be done in exceptional cases and is always analyzed on a case-by-case basis and must be supported by evidence, but the Vietnamese Club has failed to satisfy this. It refers to severe financial challenges but then fails to produce any evidence to support this.

- In terms of costs, the Vietnamese Club should not be entitled to any contribution because the appeal should fail; in the alternative, if it succeeds (in part or whole), this will have to be based on information not supplied to the FIFA DRC (despite it being able to have done so) and therefore there should be no contribution to costs awarded.

48. Accordingly, FIFA submitted the following requests for relief (which it reiterated in its Rejoinder):

*"**B. Prayers for Relief***

*129. Based on the foregoing, FIFA respectfully requests CAS to issue an award on the merits:*

*a. To declare the present appeal inadmissible;*

*b. Alternatively, to reject the appeal on the merits;*

*c. To order the Appellant to bear all costs incurred with the present procedure"*

(emphasis in original).

49. FIFA's Rejoinder, in essence, may be summarized as follows:

- FIFA notes that the Vietnamese Club has not contested FIFA's submissions on applicable law but requests that the 2021 FIFA Procedural Rules are applied in place of the 2020 FIFA Procedural Rules. However, the matter developed during 2020 and in accordance with the principle of *"tempus regit actum"*, the applicable regulations are the FIFA RSTP and the FIFA Procedural Rules that were in force in 2020, not those which came into force in 2021. FIFA rejects the accusation it is acting in bad faith; it is simply applying the correct regulations and any attempts to rely on regulations not in force at the time should be inadmissible.

- The Vietnamese Club is seeking to misrepresent the reference in the Proposal Letter that the *"Proposal will always be without prejudice to any formal decision"* by suggesting that the Proposal Letter therefore cannot be a decision; it is clear from the terms of the Proposal Letter that this states that a formal decision can then be taken if either party rejects the proposal within 15 days, but absent this, the Proposal Letter becomes a final and binding decision. The reference FIFA makes in its Answer that the Proposal Letter was an attempt to *"try and settle the dispute"* should also not be misinterpreted; it means that if the parties agree / fail to object to its contents, the Proposal Letter will settle the dispute by becoming a final and binding decision. This is in line with the principle of *"venire contra factum proprium"* and supported by CAS jurisprudence.

- FIFA disagrees with the Vietnamese Club's argument that the Appealed Decision is the decision (as opposed to the Proposal Letter) because the Appealed Decision does not contain any ruling or *animus decidendi* on the amount due. In addition, the Appealed Decision does not produce legal effects because whilst it may have determined the deadline by which the Settlement Amount should be paid, it did not produce any (other) legal effects because it did not determine the Settlement Amount because this was already established at the moment the Vietnamese Club failed to object to the Proposal Letter.

- In the alternative, if the Appealed Decision is found to be a decision, in any event an unchallenged Proposal is never subject to review on appeal.

- The attempts by the Vietnamese Club to rely on the impact of the Covid-19 pandemic (and the statement from its TMS operator) is misleading because TMS is a digital platform which by its very nature is accessible anywhere and therefore negates the effects of club staff working remotely at times. Indeed, FIFA is clear and consistent regarding the

obligation on TMS users to check the system very regularly; for example, see Article 2(1) of Annexe 6 of the FIFA RSTP, Article 3(2) of Annexe 3 of the FIFA RSTP, Article 3.1(2) of Annexe 3 of the FIFA RSTP and FIFA Circular No 1689.

- The arguments of the Vietnamese Club's TMS operator that she did not access TMS during this period because she did not need it is not correct; all users have an obligation to check TMS, not least in case a claim is made for training compensation, as indeed happened in this case. In addition, her argument that she could not log on due to not having the password is completely undermined as the system provides a facility to change the password online, together with guidance and instructions on the system, and the TMS Helpdesk is also available for any queries at any time.

- The Club's negligence becomes bad faith if the claim is also sent by the Slovakian Club because it therefore chose to ignore it.

- The consequences of the Vietnamese Club's failure to object to the Proposal Letter in a timely fashion are clearly set out in the regulations. Article 2(2) of Annexe 6 of the FIFA RSTP states that it would be fully responsible for any procedural disadvantages that may arise, and Article 13 of the FIFA Procedural Rules equates a party's silence to an acceptance of a proposal, supported by FIFA Circular No 1689 and referenced in the Proposal Letter.

- As supported by CAS jurisprudence, allowing the Vietnamese Club to appeal against the Proposal Letter which it had tacitly accepted and had induced legitimate expectations on the Slovakian Club and FIFA that it accepted the Proposal Letter would be a violation of the principle of *venire contra factum proprium*. Therefore, the Vietnamese Club should be estopped from contesting the Settlement Amount in the Proposal Letter, meaning that the arguments to contest the amount cannot be analysed.

- In the alternative to the above estoppel argument, the relevant TMS category for a club is the one stated in TMS at the time the training compensation became due. The Vietnamese Club was listed as a Category 3 club on TMS for more than 10 years, during such period that it used the system, and failed to raise any issue with such categorization which is commonly held to prevail over any conflicting categorization. It is not FIFA's responsibility to verify the training category of each club once the member association (the VFF in this case) inserts them in TMS (not FIFA as the Vietnamese Club suggests in error), but rather it is the responsibility of the member association and the club itself to check and take all necessary steps to correct any inaccuracies. The only involvement by FIFA was to insert the training categories it is given by the member associations when TMS was first established, but this does not mean FIFA takes any responsibility for, or unilaterally selected, the training category of the Vietnamese Club. The fact remains that the Vietnamese Club amended much of the information on TMS to add contact details but failed to take any steps regarding this categorization until after it received the Appealed Decision.

- The attempts by the Vietnamese Club to suggest that Article 14(5) of the FIFA Procedural Rules can be used to correct the merits of a decision is misplaced because this is only intended to correct mere typographical errors or mistakes in calculation (which is not the case here) and therefore should be ignored in this case.

- FIFA is not involved in the selection of categories for clubs; this remains the responsibility of the member associations and they have the obligation to insert the correct data into TMS each year.

- Accepting the request for re-categorization now would contravene the principle of *venire contra factum proprium* for the reasons above as well as the Vietnamese Club's tacit acceptance of the Proposal Letter. Rejecting this request would be based on the principle of estoppel and linked to the principle of legal certainty.

- If the Vietnamese Club wanted its training category to be analysed by the FIFA DRC, then it should have objected to the Proposal Letter which would have allowed that to happen, and by failing to do so, renders it impossible to analyze such aspect of this dispute.

50. FIFA reiterated the requests for relief from its Answer in its Rejoinder.

## V. JURISDICTION

51. The jurisdiction of CAS, which is not disputed, derives from Article R47 of the CAS Code, which states *"[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body"*.

52. Article 58(1) of the FIFA Statutes (2020 edition) then provides that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"*.

53. The Parties do not dispute the jurisdiction of the CAS and confirmed it by signing the Order of Procedure.

54. It follows that the CAS has jurisdiction to decide on the present dispute.

## VI. APPLICABLE LAW

55. Article 187 para. 1 of the Swiss Private International Law Act ("PILA") provides the following:

*"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection"*.

56. Article R58 of the CAS Code provides the following:

*"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

57. Article 57(2) of the FIFA Statutes (2020 edition) stipulates the following:

*"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

58. In general terms, the Vietnamese Club and FIFA both accepted that the regulations of FIFA should apply, with Swiss law in the alternative if required. Despite not making specific reference, the Slovakian Club did not object and sought to rely on FIFA's regulations.

59. However, the Vietnamese Club argues that the 2021 FIFA Procedural Rules should be applied because they were released during the course of the procedure and available for reliance, particularly as there are changes introduced compared with the FIFA Procedural Rules (June 2020 edition), which are relevant to the matter at hand.

60. FIFA's position is that given the Vietnamese Club is challenging a letter from the FIFA Players' Status Department, the FIFA Statutes and Regulations in force at the time of the Player's first registration as a professional triggering training compensation (which took place on 22 February 2019) with regard to the FIFA RSTP and those in force at the date the claim is made for training compensation (which took place on 2 October 2020) with regard to the FIFA Procedural Rules constitute the applicable law, namely the FIFA RSTP (June 2018 edition) and the FIFA Procedural Rules (June 2020 edition), with Swiss law applying should the need arise to fill a possible gap in the FIFA regulations.

61. The Slovakian Club relied upon references from the FIFA Procedural Rules (June 2020 edition), so it is assumed that they agree with FIFA that they are the relevant set of FIFA Procedural Rules applicable to the present dispute.

62. The Sole Arbitrator has considered the respective positions of the Parties and determines that the relevant edition of the FIFA Statutes and Regulations are those that were in force at the time of the procedural acts in question. The Player was first registered as a professional thereby triggering training compensation on 22 February 2019 and at that time, the applicable regulations in force were the FIFA RSTP (June 2018 edition); and the Slovakian Club filed its claim for training compensation on 2 October 2020 and at that time, the applicable regulations in force were the FIFA Statutes (2020 edition) and the FIFA Procedural Rules (June 2020 edition). The fact that further versions were issued whilst the underlying dispute was in progress does not have any effect on this.

63. This conclusion is reached by the application of the principle of *tempus regit actum* which is consistently applied in CAS jurisprudence. For example, it was held in CAS 2020/A/7144 as

follows:

*"According to this principle, substantive aspects are governed by the regulations in force at the time of the relevant facts, while procedural matters are governed by the rules in force at the time when the procedural action occurs (CAS 2016/O/4683, para. 50; CAS 2016/O/4883, para. 47; CAS 2018/A/5628, para. 70). Questions relating to jurisdiction are procedural issues as they relate to the procedure rather than the nature of the obligations arising from a legal relationship (CAS 2018/A/5628, para. 70)".*

64. Therefore, the Sole Arbitrator finds that primarily the various regulations of FIFA are applicable, in particular the FIFA Statutes (2020 edition), the FIFA RSTP (June 2018 edition) and the FIFA Procedural Rules (June 2020 edition), and, additionally, Swiss law will apply should there be a need to fill a possible gap in FIFA's various regulations.

65. In addition, this proceeding is further governed by the Articles 176 et seq. of the PILA, since at least one of the Parties is domiciled outside Switzerland and because the seat of the arbitration is in Switzerland (Article R27 of the CAS Code).

## VII. ADMISSIBILITY

66. Article R49 of the CAS Code provides as follows:

*"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document".*

67. According to Article 58(1) of the FIFA Statutes (2020 edition), appeals *"shall be lodged with CAS within 21 days of receipt of the decision in question".*

68. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes (2020 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

69. Notwithstanding this, the Slovakian Club and FIFA dispute the admissibility of the Vietnamese Club's appeal on the basis that there had been no objection to the Proposal Letter and therefore this had already entered into force such that the Appealed Decision could not be treated as an appealable decision but rather it was simply a letter of an informative nature.

70. Further, the Slovakian Club and FIFA argue that if the Vietnamese Club did not wish to be required to pay the sum set out in the Proposal Letter regarding training compensation (USD 60,904.11), then it was incumbent on the Vietnamese Club to raise an objection within the requisite time frame set out.

71. In that regard, the Proposal Letter sets out, *inter alia*, as follows:

*"In accordance with Article 13 of the Procedural Rules, it is informed that the parties have to either accept or reject the proposal* ***within the 15 days following this notification via TMS, i.e. until 10 November 2020.*** *In this regard, the Claimant is limited only to accept or reject the proposal, excluding hereby any possibility to amend its original claim.*

*In case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA Player Status' Department within stipulated deadline, the proposal will become binding.*

*In case of rejection by the respondent, the latter will have* ***five additional days, i.e. until 15 November 2020*** *to provide its position to the claim. Should the respondent wish to extend its deadline to file its position, it must request said extension before the expiration of the above mentioned date, in which case the deadline is automatically extended for* ***ten (10) additional days, i.e. until 25 November 2020*** *in accordance with Article 16 par. 11 of the Procedural Rules.*

*Please also be informed that in case of rejection of the proposal by one of the parties, a formal decision on this matter will be taken by the Single Judge of the sub-committee of Dispute Resolution Chamber in due course.*

*Equally, we wish to point out that the relevant proposal will always be without prejudice to any formal decision which could be passed by the competent deciding body in the matter at a later stage in case the proposal is rejected by one of the parties.*

*[…]"* (emphasis in original).

72. The Appealed Decision sets out, *inter alia*, as follows:

*"As mentioned in our previous communication, in case a proposal is accepted by all parties or the parties fail to provide an answer to the FIFA administration within the stipulated deadline, the proposal will become binding.*

*Bearing the above in mind, we would like to inform the parties involved that the proposal has become binding. Consequently, the Respondent,* ***Da Nang****, has to pay to the Claimant,* ***FC Banik Prievidza****, within 30 days as from the date of this notification, if not done yet, the amount of* ***USD 60,904.11, plus 5% interest p.a. as of the due date*** *[cf. art. 3 par. 2 of Annexe 4 of the Regulations on the Status and Transfer of Players] until the date of effective payment.*

*In the event that the aforementioned sum is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

*[…]"* (emphasis in original).

73. FIFA maintains that the Appealed Decision is not a decision as it is missing the necessary elements which are required to constitute a decision, and in fact, it is only the Proposal Letter that does contain all those necessary elements and is therefore the only decision; hence the appeal against the Appealed Decision should be rendered inadmissible.

74. The Sole Arbitrator has considered the terms of the Appealed Decision carefully and concludes that there were several elements within the Appealed Decision which were not present in the

Proposal Letter and only became final and binding against the Vietnamese Club by virtue of the Appealed Decision.

75. In particular, it was only the Appealed Decision that: confirmed that the Settlement Amount set out in the Proposal Letter had become final and binding; confirmed that the Vietnamese Club must pay the amount of USD 60,904.11 to the Slovakian Club (whereas the Proposal Letter simply put this forward for approval or objection by both clubs); set out that interest would be payable in addition at the rate of 5% per annum until the date of effective payment; and decided that the Settlement Amount must be paid by the Vietnamese Club within 30 days of the date of the Appealed Decision and that if the Vietnamese Club failed to do so, then the matter would be referred to FIFA's Disciplinary Committee for consideration and a formal decision to be passed in relation to such non-compliance. Furthermore, the Slovakian Club was directed to inform the Vietnamese Club of its bank account details to allow payment to be made and to notify the FIFA DRC of every payment received.

76. As noted above, the proposal set out in the Proposal Letter only becomes final and binding if it is accepted by the two parties or there is no objection raised to it within the period set out. However, the two parties will not know whether it has become final and binding until such time as there is an issuance of further instruction from FIFA, i.e. in this case, the Appealed Decision. Therefore, for this reason, the Sole Arbitrator is satisfied that the Proposal Letter is not a decision, whereas the Appealed Decision is for the reasons set out above; it is the only document which definitely affects the legal position of the two parties.

77. CAS jurisprudence has consistently approached the requirements for a decision to be based on the content rather than the form of the document; therefore, the fact the Appealed Decision is set out in letter form has no relevance to the determination as to its status as a decision. This is shown in CAS 2009/A/1781 as follows:

*"6. CAS Panels have interpreted the term "decision" within the meaning of Article R47 of the Code broadly (cf. CAS 2008/A/1583&1584, no. 5.2.1). The concept of an appealable decision has been defined in the case law of the CAS as follows:*

*"A decision is thus a unilateral act, sent to one or more recipients and is intended to produce legal effects" (CAS 2004/A/659, no. 36; CAS 2004/A/748, no. 89)*

*"In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. However, there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility or a request, without addressing the merits of such request" (CAS 2008/A/1705, para. 5.2.1; CAS 2005/A/899, no. 61; CAS 2004/A/748, no. 89).*

*7. The Sole Arbitrator is satisfied that, although the Decision of the DRC issued on 9 January 2009 and notified to the parties on 23 January 2009 does not address the grounds on which the decision was passed, it clearly shows all formal and material characteristics of a "decision" in the sense of Article R47 of the Code. On a material level, it shows the outcome of the deliberations regarding the issue of the training compensation owed for the Player. Therefore, the content of this text represents a "unilateral act" which aims at affecting the legal*

*situation of the addressee. On a formal level, the letter carries the heading "decision", was passed by an organ of FIFA (the DRC) and was signed by the FIFA Deputy General Secretary. The fact that the decision is not motivated can, as such, not affect it being a "decision" (cf. CAS 2008/A/1705, para. 5.2.2; cf. also CAS 2004/A/748, no. 91)".*

78. The Sole Arbitrator is satisfied that the Appealed Decision shows all the formal and material elements of a decision in keeping with Article R47 of the CAS Code. The Vietnamese Club has referred to the 2021 FIFA Procedural Rules and, whilst the Sole Arbitrator has determined that these are not the version which govern this dispute (which is the June 2022 FIFA Procedural Rules), nonetheless it is noted that the status of the Appealed Decision as a decision is supported by Article 13(3) of the 2021 FIFA Procedural Rules, thereby reflecting FIFA's current view, as follows:

*"Where a proposal is accepted:*

*a) a confirmation letter shall be issued;*

*b) the confirmation letter shall be considered a final and binding decision pursuant to the FIFA Regulations on the Status and Transfer of Players".*

79. The Vietnamese Club refers to CAS 2018/A/5746 which supports the conclusion that the Appealed Decision has the relevant and necessary elements within it to constitute a decision.

80. In contrast, the Sole Arbitrator has considered the CAS jurisprudence referred to by FIFA in this aspect and finds that these can be distinguished from this matter in hand. In terms of CAS 2020/A/6732, there was a ruling issued that if the outstanding sum was not paid, then the creditor could request the relegation of the debtor which would happen automatically without the need for any further decision to be issued. That can be distinguished from the case in hand because the Proposal Letter was clearly set out as a proposal which necessitated both steps to be taken (or not) by the two clubs and for FIFA to then issue a letter which confirmed whether that proposal had been accepted or rejected by the two clubs. It still required a decision to be issued which set out the conclusion of its proposal and was the first time such conclusion would be shared with the two clubs. In addition, FIFA also refers to CAS 2019/A/6406; however, this can also be distinguished as it related to a letter sent following a decision of the FIFA Disciplinary Committee reminding the national association to impose a penalty on one of its clubs; again this is different to the purpose and content of the Appealed Decision, which was a requirement that FIFA had to issue in order to make the proposal set out in the Proposal Letter binding and enforceable.

81. Therefore, the Sole Arbitrator finds, to his comfortable satisfaction, that the Vietnamese Club is correct that the Appealed Decision is a decision which is capable of appeal before the CAS and does not agree with the contention of the Slovakian Club and FIFA that the appeal is inadmissible.

82. It follows therefore that the Sole Arbitrator finds that the Vietnamese Club's appeal against the Appealed Decision is admissible.

## VIII. MERITS

83. The main issues to be determined are:

(i) What is the burden of proof and the standard of proof applicable to the present matter?

(ii) Did FIFA follow the correct procedure in determining the training compensation claim?

(iii) What are the consequences that flow from the Vietnamese Club's failure to respond to the Proposal Letter?

(iv) Should the Vietnamese Club be re-categorised for the purposes of this training compensation claim?

### A. What is the burden of proof and standard of proof applicable to the present matter?

84. Before assessing the main issues of the present dispute, the Sole Arbitrator deems it necessary to first establish the burden of proof and the standard of proof applicable to the present matter.

85. The concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence. It was set out in CAS 2007/A/1380 as follows:

*"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code "Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right" (free translation from the French original version – "Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit"). It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party"* (see also CAS 2005/A/968 and CAS 2004/A/730).

86. This concept was further explained in CAS 2011/A/2384 & 2386 as follows:

*"Under Swiss law, the 'burden of proof' is regulated by Art. 8 of the Swiss Civil Code (the "CC"), which, by stipulating which party carries such burden, determines the consequences of the lack of evidence, i.e., the consequences of a relevant fact remaining unproven … Indeed, Art. 8 CC stipulates that, unless the law provides otherwise, each party must prove the facts upon which it is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce such evidence. Furthermore, the burden of proof not*

*only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court/tribunal. It is the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court/tribunal".*

87. In CAS 2003/A/506, it was held:

*"[In] CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence".*

88. This position is further supported by the provisions of Article 12 para. 3 of the FIFA Procedural Rules which states:

*"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof. During the proceedings, the parties shall submit all relevant facts and evidence of which they are aware at that time, or of which they should have been aware if they had exercised due care".*

89. It follows therefore that each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Sole Arbitrator that the facts it pleads are established.

90. The standard of proof which applies to proceedings of the FIFA judicial bodies is that the members of FIFA's judicial bodies decide based on their "personal conviction" and CAS jurisprudence has consistently equalled this standard to the standard of "comfortable satisfaction". It is a standard that is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt" (see CAS 2010/A/2172; CAS 2009/A/1920).

91. This is supported by and consistent with the Swiss Civil Code as set out in CAS 2014/A/3562:

*"The Panel observes that according to Swiss Civil procedure law the standard of proof to be applied is in line with such jurisdiction (see STAEHELIN / STAEHELIN / GROLIMUND, Zivilprozessrecht, § 18, N 38) and fully adheres to the above-mentioned reasoning in CAS 2011/A/2426 and will therefore also give such meaning to the applicable standard of 'personal conviction'/ 'comfortable satisfaction'".*

92. Based on the foregoing, the Sole Arbitrator is content to adopt the standard of comfortable satisfaction, commonly adopted in CAS jurisprudence, as the standard of proof to apply in this case.

93. Finally, in accordance with Article R57 of the CAS Code, *"[t]he Panel has full power to review the facts and the law"*, which means that the CAS appellate arbitration procedure provides for a *de novo* review of the merits of the case. Accordingly, as is well-established in CAS jurisprudence, a panel is not limited to deciding if the Appealed Decision is correct or not, but rather its function is to make an independent determination as to the merits.

**B. Did FIFA follow the correct procedure in determining the training compensation claim?**

94. The respective positions of the Parties, set out in summary above, are clear. The Vietnamese Club maintains that due to the legal complexities in this training compensation claim, it was not appropriate to deal with it by way of the fast-track procedure and, by doing so, FIFA undermined its own FIFA Procedural Rules and the Vietnamese Club's fundamental right to be heard. The Slovakian Club disagrees and maintains that FIFA followed the correct procedure, a position supported by FIFA, which argues that the right to be heard is fully respected through the procedure in place to deal with such training compensation claims.

95. Article 13 of the FIFA Procedural Rules states as follows:

> *"1. In disputes relating to training compensation and the solidarity mechanism without complex factual or legal issues, or in cases in which the DRC already has clear, established jurisprudence, the FIFA administration (i.e. the Players' Status Department) may make written proposals, without prejudice, to the parties regarding the amounts owed in the case in question as well as the calculation of such amounts. At the same time, the parties shall be informed that they have 15 days from receipt of FIFA's proposals to request, in writing, a formal decision from the relevant body, and that failure to do so will result in the proposal being regarded as accepted by and binding on all parties.*
>
> *2. If a party requests a formal decision, the proceedings will be conducted according to the provisions laid down in these rules".*

96. This provision provides FIFA with the regulatory basis to deal with this claim in accordance with that procedure, given that it is a training compensation claim. Turning to the issue of complexity, the Vietnamese Club maintained that its training compensation categorisation on TMS was incorrect and therefore this evidences sufficient *"complex factual or legal issues"* so as to render this procedure inappropriate in the circumstances. The Sole Arbitrator does not share this view. The Vietnamese Club was afforded the opportunity to respond to the Proposal Letter within a 15-day period and it was perfectly possible for it to have rejected the settlement proposal on the basis of its position that its training compensation categorisation on TMS was incorrect (leading to an inflated settlement proposal). The fact that it did not, nor did it respond at all, does not therefore mean the procedure was inappropriate. The Vietnamese Club suffered no prejudice by FIFA's decision to utilise the procedure set out in Article 13 of the FIFA Procedural Rules because it was open to it to reject the proposal and seek to remedy the situation regarding its categorisation on TMS.

97. The Sole Arbitrator therefore finds that FIFA did follow the correct procedure in determining the training compensation claim and there is no justification for arguing that, in so doing, it in any way interfered with the Vietnamese Club's right to be heard.

**C. What are the consequences that flow from the Vietnamese Club's failure to respond to the Proposal Letter?**

98. Having established that FIFA followed the correct procedure in determining the training compensation claim and based upon the Vietnamese Club's failure to respond to the Proposal

Letter, it is then necessary to determine the consequences that follow.

99. The Vietnamese Club states that one of the effects of the Covid-19 pandemic and the resulting requirement for its staff to work remotely and not be present at the Club's offices was that the staff member tasked with checking TMS was unable to access TMS for a lengthy period of time; hence, the Proposal Letter and Confirmation Letter were not seen for some time, and this was the reason for its failure to respond in a timely fashion. The Vietnamese Club argues that it should be afforded some flexibility given the challenging circumstances that the pandemic brought which impacted on the normal working of the Vietnamese Club.

100. Whilst the Sole Arbitrator accepts that the pandemic brought challenges for all in terms of working arrangements, the fact remains that there is a clear obligation on clubs to check and monitor TMS on a very regular basis, for this very reason, as evidenced by the FIFA RSTP. For example, Article 2 of Annexe 6 of the FIFA RSTP states as follows:

> *"1. All clubs and all member associations shall check the "Claims" tab in TMS at regular intervals of at least every three days and pay particular attention to any petitions or requests for statements.*
>
> *2. Professional clubs and member associations will be fully responsible for any procedural disadvantages that may arise due to a failure to respect paragraph 1 above".*

101. In addition, Article 1(1) of Annexe 6 of the FIFA RSTP states as follows:

> *"All claims related to training compensation according to article 20 and to the solidarity mechanism according to article 21 must be submitted and managed through TMS".*

102. Despite the challenging times, the fact remains that TMS can be accessed from any device with a connection to the internet, as confirmed by FIFA, and the Vietnamese Club has not put forward any evidence to demonstrate that the TMS operator did not have access to an internet-enabled device during the period in question. Indeed, even if the TMS operator at the Vietnamese Club was unable to have access to an internet-enabled device, it was possible for the Vietnamese Club to instruct another employee to carry out this task who did have such access. In the alternative, at the very least, it could have contacted FIFA and / or the Slovakian Club (being on notice of the claim for a considerable period) to explain it could not access TMS during this period and seek to protect its position. In addition, the Vietnamese Club's argument that the password was at the office is not convincing, since it is possible to request to change the password via the website. The Vietnamese Club apparently took no such steps.

103. It follows therefore, in accordance with Article 8 of the Swiss Civil Code, that the Vietnamese Club has failed to discharge its burden to prove that its TMS operator was prevented from accessing TMS during this period; it is immaterial that they may not have done so, the fact remains that they could have done so and had they done so, the existence of the Proposal Letter would have been known and could have been dealt with in a timely fashion. The Sole Arbitrator has also kept in mind that the Vietnamese Club was actually on notice of a claim from the Slovakian Club given the previous correspondence between the two clubs. It is noted from the correspondence supplied that, notwithstanding the Vietnamese Club's position that it did not

receive any of this correspondence, it was apparently sent by email to two representatives of the Vietnamese Club and two representatives of the VFF.

104. Indeed, by way of reminder, the Vietnamese Club has confirmed it did actually receive the Proposal Letter before the Appealed Decision but dismissed it as *"an administrative mistake"* and only then reacted to the Appealed Decision, which therefore means it may well have been in receipt of the Proposal Letter at a time when it could have meaningfully engaged in the process. The Vietnamese Club confirms as follows:

*"The club's staff and employees stayed at home as much as possible, as gatherings in the headquarters were prevented.*

*Because of these government guidelines, the Club could not maintain a strict follow-up of the TMS notifications. The Club only noticed the notification in TMS with a delay. Furthermore, it was not the TMS-manager (who was working from home without access to TMS) but another club representative who finally checked the TMS system and noticed FIFA's notification.*

*Since all Vietnamese clubs are "Category 4", the club representative considered the TMS notification of a "proposal" merely as an administrative mistake from FIFA and did not respond nor informed the TMS-manager.*

*Only upon reception of the final decision dd. 9 December 2020, the Club realized there was a claim and that it had to respond".*

105. The statement above of the Vietnamese Club thus indicates that the Vietnamese Club itself recognizes that it was possible for its staff to go to the office, that other members of the staff had access to TMS besides the one designated TMS manager, and that the Vietnamese Club received the Proposal Letter but chose to ignore it rather than respond.

106. The result of a failure to respond is clear from not only the Proposal Letter and Article 13 (1) of the FIFA Procedural Rules but also FIFA Circular No 1689, which states as follows:

*"The relevant article grants the PSD the power to offer a written proposal to the parties to a dispute. This proposal will become final and binding after 15 days following its notification if it is accepted by all parties or the parties fail to provide an answer within the deadline.*

*[…]*

*Once the proposal of the PSD has been notified to the parties via TMS, the parties will have* ***15 days*** *to either accept or reject the proposal and provide the reasons which could justify the rejection. If one of the parties rejects the proposal, the proceedings will continue according to the pertinent provisions laid down in the Procedural Rules. In the case of rejection by the respondent club, the latter shall provide its position to the claim within the stipulated time frame.*

*We wish to point out that the relevant proposal is without prejudice to any formal decision which may be passed by the competent deciding body, if the proposal is rejected by one of the parties.*

*Should none of the parties reject the proposal of the PSD* ***within the 15 days following its notification via TMS****, the proposal will become binding on them.*

*Finally, we kindly remind you that according to art. 2 par. 1 of Annexe 6 of the RSTP, all clubs and all member associations shall check the "Claims" tab in TMS at regular intervals of at least every three days"* (emphasis in original).

107. FIFA uploaded the Proposal Letter to TMS on 26 October 2020 and therefore both the Vietnamese Club and the Slovakian Club were duly notified of the Proposal Letter as at that date. As noted above, there is an obligation on all clubs to check the "Claims" tab in TMS on a very regular basis, at least every three days. The Slovakian Club abided by this obligation, as evidenced by its acceptance of the Proposal Letter on 6 November 2020. The Vietnamese Club failed to respond within the period specified (15 days); had it acted in accordance with its obligation to check TMS on a very regular basis, it would have had ample notice of the Proposal Letter to be able to respond comfortably within the time limit specified. The Sole Arbitrator is satisfied, in accordance with Article 2 of Annexe 6 of the FIFA RSTP, that the Vietnamese Club must bear the consequences of its failure to check TMS on a regular basis and its failure to respond to the Proposal Letter. A failure to check TMS is not a valid excuse for any resulting procedural disadvantages that may then follow.

108. The Sole Arbitrator is satisfied that a failure to respond to the Proposal Letter can be judged to be an acceptance of the settlement proposal contained therein and does not agree that there is any justification for departing from this conclusion in this case, notwithstanding the arguments put forward by the Vietnamese Club, which have been fully considered.

## D. Should the Vietnamese Club be re-categorised for the purposes of this training compensation claim?

109. Having established that the Vietnamese Club's failure to respond to the Proposal Letter is considered to be an acceptance of the settlement terms once the 15-day period had elapsed on 10 November 2020, notwithstanding the requirement for FIFA to issue the Appealed Decision on 9 December 2020 which confirmed the proposal was binding on the Slovakian Club and the Vietnamese Club, it remains necessary to consider the arguments put forward by the Vietnamese Club for why the Settlement Amount should be adjusted.

110. In terms of the Vietnamese Club's categorisation on TMS at the material time, which was Category 3, the arguments put forward by the Vietnamese Club that, in short, it should not be penalised for an administrative error by FIFA and/or the VFF is difficult to advance given the Vietnamese Club's acceptance both that it had updated its profile on TMS itself and that it was aware that it showed Category 3 before the material time. It was open to the Vietnamese Club to ask the VFF to amend this if this category was incorrect at the time; it was aware of this issue and its explanation for the failure to do so (a demonstration of respect for FIFA and the VFF) is not compelling.

111. It is clear from CAS jurisprudence that the categorisation on TMS will be used by FIFA to calculate the proposals for settling training compensation claims and it is also the responsibility

of clubs to ensure that its information on TMS is up to date and correct, particularly with respect to its categorisation for the purposes of training compensation.

112. Turning to the alternative argument that the Settlement Amount should be reduced based on the principle of proportionality, this is based on Article 5 paragraph 4 of Annex 4 of the FIFA RSTP, which states as follows:

*"The Dispute Resolution Chamber may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review".*

113. As a preliminary point, it is noted that this envisages a situation where a club rejects the proposal set out by FIFA in correspondence and then the matter is transferred to the FIFA DRC for determination. In this regard, it is further noted that the Proposal Letter contains the following provisions:

*"Please also be informed that in case of rejection of the proposal by one of the parties, a formal decision on this matter will be taken by the Single Judge of the sub-committee of Dispute Resolution Chamber in due course.*

*Equally, we wish to point out that the relevant proposal will always be without prejudice to any formal decision which could be passed by the competent deciding body in the matter at a later stage in case the proposal is rejected by one of the parties".*

114. Accordingly, whilst the Vietnamese Club had the opportunity to reject the Proposal Letter and ask that the FIFA DRC consider the Settlement Amount when no doubt it would have sought to raise arguments in respect of both the error in its categorisation in TMS and general arguments of proportionality, the fact remains that it failed to take advantage of this when it failed to respond to the Proposal Letter.

115. The consequences of failing to respond to the Proposal Letter are clear, from both the terms of the Proposal Letter and the relevant FIFA regulations, that the Vietnamese Club is deemed to have accepted the proposal which is then confirmed in the Appealed Decision. Even though this still requires the production of the Appealed Decision to act as the decision passed by FIFA, the Vietnamese Club has foregone the opportunity to challenge the Settlement Amount. Therefore, it follows that the discretion afforded by Article 5 paragraph 4 of Annex 4 of the FIFA RSTP is not relevant to the case in hand in the circumstances.

116. It is relevant to note that the FIFA RSTP firstly apply to the case in hand, with Swiss law being applied if required to complete any gap or to provide any interpretation of the FIFA RSTP.

117. In that regard, the Sole Arbitrator notes the position FIFA puts forward that to allow any modification of the Settlement Amount, whether by way of a recategorization of the Vietnamese Club or a general modification for proportionality, would run contrary to the principle of *venire contra factum proprium*. This principle centres on the Swiss law principle of legitimate expectations, whereby if the actions (or inactions) of one party leads to legitimate expectations in the other party, the first party is prevented from changing its approach if it would cause damage to the second party. This is a principle which is fully supported by CAS

jurisprudence, such as in CAS 2002/O/410 as follows:

*"Even if the New Rule was to be regarded as a rule dealing only with procedural aspects, the Panel is of the opinion that its application in this matter would entail a violation of general principles of law which are widely recognised, particularly the principles of fairness and of good faith. In particular, the Panel refers to the principle of venire contra factum proprium. This principle provides that when the conduct of one party has led to raise legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party (see, AEK Athens and SK Slavia Prague vs. UEFA, CAS 98/200, in Digest of CAS Awards II, op. cit., pp. 38 and seq.; S. vs. FINA, CAS 2000/A/274, section 37, in Digest of CAS Awards II, op. cit., p. 400; Art. 2 of the Swiss Civil Code)".*

118. In CAS OG 02/006, this doctrine of estoppel is set out as a general principle of law as follows:

*"[…] a doctrine firmly established in common law and known in other legal systems even though under a different heading (e.g. reliance in good faith, venire contra factum proprium). This doctrine which the Panel applies as a general principle of law (art. 17 of the CAS ad hoc Rules) is defined as:*

*"An estoppel that arises when one makes a statement or admission that induces another person to believe something and that results in that person's reasonable and detrimental reliance on the belief" (Blacks Law Dictionary, 7th ed. 1999)".*

119. Therefore, in its failure to object to the Proposal Letter, the Vietnamese Club induced legitimate expectations on the part of both the Slovakian Club and FIFA that it had accepted the proposal of the Settlement Amount and should therefore be estopped from seeking to change its position at this stage to the detriment of the Slovakian Club.

120. It follows therefore, notwithstanding what is set out above, that the Sole Arbitrator is prevented from considering any modification to the Settlement Amount whether by way of a re-categorisation of the Vietnamese Club for the purposes of training compensation, or on the grounds of proportionality, or financial difficulties or any other reason. Therefore, the Settlement Amount is confirmed as due and payable by the Vietnamese Club.

121. Finally, in accordance with both the Appealed Decision and Article 104 of the Swiss Code of Obligations, the Vietnamese Club has to pay interest at the rate of 5% per annum on the amount due, calculated from the date the sum fell due for payment until the date of effective payment.

## E. Conclusion

122. Based on the above, and having considered all the arguments put forward and the evidence supplied, the Sole Arbitrator finds that:

(a) the Vietnamese Club has to pay to the Slovakian Club the amount of USD 60,904.11 plus interest at the rate of 5% per annum as from the due date until the date of effective payment;

(b) the Vietnamese Club´s appeal against the Appealed Decision dated 9 December 2020 is dismissed.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed on 30 December 2020 by Da Nang FC against the decision issued on 9 December 2020 by the FIFA Administration is admissible.

2. The appeal filed on 30 December 2020 by Da Nang FC against the decision issued on 9 December 2020 by the FIFA Administration is dismissed.

3. The decision passed on 9 December 2020 by the FIFA Administration is confirmed.

4. (…).

5. (…).

6. All other and further motions or prayers for relief are dismissed.