CAS 2021/A/8325 Ararat Armenia FC v. FC Baltika

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

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

in the arbitration between

Ararat Armenia FC, Armenia

Represented by Mr Yuriy Yurchenko, Attorney-at-Law, Kyiv, Ukraine

- Appellant -

and

FC Baltika, Russian Federation

- Respondent -

I. PARTIES

1. Ararat Armenia FC (the "Appellant" or "Ararat") is a football club with its registered office in Yerevan, Armenia. Ararat is registered with the Football Federation of Armenia (the "FFA"), which in turn is affiliated with the *Fédération Internationale de Football Association* ("FIFA") and is currently participating in the Armenian Premier League, the first division in the Armenian football league system.

2. FC Baltika (the "Respondent" or "Baltika") is a football club with its registered office in Kaliningrad, Russian Federation. Baltika is registered with the Football Union of Russia ("FUR"), which in turn is affiliated with FIFA and is currently participating in the Russian Premier League, the first division in the Russian football league system.

3. Ararat and Baltika are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the Parties' written and oral 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 Edgar Khachikian (the "Player") was born on 19 September 1999.

6. The Player transferred from Baltika to Ararat on 13 March 2019 as a professional (free agent) and entered into a playing contract with Ararat valid from 25 February 2019 to 1 February 2020 (the "Ararat Playing Contract"). According to the Ararat Playing Contract the Player was *inter alia* entitled to receive a monthly remuneration of Armenian Dram (AMD) 60,000.

7. On 13 March 2019, the FUR issued a player passport in relation to the Player (the "FUR Player Passport") as follows:

[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.

Season	Birthday	Club(s)	Registration dates	Status
2011	12th	FC Baltika Kaliningrad	Entire year	Amateur (Permanent)
2012	13th	FC Baltika Kaliningrad	Entire year	Amateur (Permanent)
2013	14th	FC Baltika Kaliningrad	Entire year	Amateur (Permanent)
2014	15th	FC Baltika Kaliningrad	Entire year	Amateur (Permanent)
2015	16th	FC Baltika Kaliningrad	Entire year	Amateur (Permanent)
2016	17th	FC Baltika Kaliningrad	01/01/16 – 11/04/16	Amateur (Permanent)
		FC Strogino Moscow	12/05/16 – 31/12/16	Amateur (Permanent)
2017	18th	FC Strogino Moscow	01/01/17 – 19/03/17	Amateur (Permanent)
		FC Baltika Kaliningrad	20/03/17 – 31/12/17	Amateur (Permanent)
2018	19th	FC Baltika Kaliningrad	Entire year	Amateur (Permanent)
2019	20th	FC Baltika Kaliningrad	01/01/19 – 13/03/19	Amateur (Permanent)

8. On 3 April 2019, Baltika requested EUR 122,932 as training compensation from Ararat based on the first registration of the Player as a professional with Ararat before the end of the season of his 23rd birthday, arguing that in accordance with the FIFA Circular 1627 the clubs of Armenia in the first division should be in training category III (not training category IV).

9. On 16 April 2019, Ararat dismissed the request on the basis that it was in training category IV and therefore, in accordance with Article 2, paragraph 2 of Annex 4 of the

Regulations on the Status and Transfer of Players (the "FIFA RSTP"), training compensation was not payable.

10. There was further correspondence between the Parties of a similar nature, sent in May 2019, June 2019, and February 2021, repeating the same claims and arguments without reaching any conclusion.

B. Proceedings before the FIFA Dispute Resolution Chamber

11. On 12 March 2021, Baltika filed a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") in which it requested EUR 122,932 as training compensation based on the first registration of the Player as a professional with Ararat before the end of the season of his 23rd birthday.

12. Baltika acknowledged that Ararat was classified under training category IV and therefore, in principle, no training compensation would be due (in accordance with Article 2 paragraph 2 lit. ii) of Annexe 4 of the FIFA RSTP).

13. However, it argued that FIFA Circular 1249 provided for the FIFA DRC to recategorize a club for the purposes of training compensation in case there was a manifest discrepancy between the guidelines set out in that Circular and the actual categorization of clubs by their national association. In this regard, given that Ararat won the Armenian first division title and the Armenian Supercup in the 2018-2019 season (the season it signed the Player) and then took part in the UEFA Europa League the following season and had 34 players under contract which was the highest squad value in Armenia, it could not be considered to be correctly categorised in training category IV and instead should be in training category III.

14. Baltika based its claim on the fact that the Player was registered with it from 1 January 2011 to 11 April 2016 and from 20 March 2017 to 13 March 2019, which therefore constituted (based on the season running from 1 July to 30 June):

    a. The entire season of the Player's 12th, 13th, 14th and 15th birthdays;

    b. 286 days of the season of his 16th birthday;

    c. 102 days of the season of his 17th birthday;

    d. The entire season of his 18th birthday; and

    e. 256 days of the season of his 19th birthday.

15. Therefore, the value of the claim was calculated based on EUR 10,000 (pro rata) (corresponding to category IV clubs) for the seasons of his 12th to 15th birthdays, and then, basing it on a category III club, EUR 30,000 (pro rata) for the seasons of his 16th to 19th birthdays.

16. On 26 April 2021, Ararat responded to the claim by rejecting the arguments of Baltika. It was correctly categorised in training category IV up to and including the 2018-2019

season and then was recategorized in the 2019-2020 season to training category III, based on the sporting success referred to by Baltika. It noted that in the preceding season (2017-2018), Ararat was competing in the Armenian second division. Furthermore, the Player was only earning AMD 60,000 per month, which equated to approximately EUR 113, without any accommodation or expenses being covered and therefore it was such a low salary that the Player would not qualify as a professional.

17. On 13 May 2021, Baltika reiterated its claim based on the fact that the Player was undeniably registered as a professional for the first time with Ararat.

18. On 27 May 2021, Ararat maintained its position and filed a letter in support from the FFA which confirmed that Ararat was correctly classified as training category IV in the 2018-2019 season, in line with its expenditure on youth players over the previous season.

19. On 2 August 2021, the FIFA DRC rendered its decision (the "FIFA DRC Decision" or the "Appealed Decision"), with the following conclusions and operative part:

> *"11. In accordance with the aforementioned jurisprudence, a player in order to be considered as professional does not have to be able to make a living from his footballing activity and may still need to pursue other working activities in order to earn enough for a living. However, as long as the remuneration he receives from his club is higher than the expenses he effectively incurs, he shall be considered a professional.*
>
> *12. The Respondent did not submit any evidence in support of its allegations.*
>
> *13. In view of the above, it cannot be established that the monthly salary of the player was lower than the expenses he incurred.*
>
> *14. Thus, the argumentation of the Respondent in this respect shall be rejected (cf. art. 12 par. 3 of the Procedural Rules).*
>
> *15. As such, it is considered that the player's monthly salary constitutes a remuneration that is higher than the expenses he incurred, if any, when registered with the Respondent, and the remuneration prerequisite of art. 2 par. 2 RSTP is met.*
>
> *16. Therefore, it is determined that the player was a professional when he registered with the Claimant on 13 March 2019.*
>
> *17. In Russia, the season for amateurs runs as from 1 January to 31 December.*
>
> *18. Thus, the player registered as a professional for the first time during the course of the season of his 20th birthday.*
>
> *19. Since the player was registered as an amateur in Russia and, upon transferring from the Claimant, registered with the Respondent as a professional, it can be*

concluded that his registration with the latter constituted his first registration as a professional.

20. *In accordance with art. 3 par. 1 of Annexe 4 RSTP, for the first registration of a player as a professional, 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 and that has contributed to his training starting from the season of his 12th birthday.*

21. *However, as per art. 2 par. 2 lit. ii) of Annexe 4 RSTP, no training compensation is due to the former club of the player when said player registered with a category IV club.*

22. *The Respondent was classified as a training category IV club by its member association, the FFA, upon registering the player as a professional, and therefore, in principle, no training compensation would be due to the Claimant.*

23. *The Claimant contested the aforementioned categorization of the Respondent arguing that the latter was to be considered a training category III club.*

24. *According to art. 5 par. 4 of Annexe 4 of the Regulations, the DRC "may review disputes concerning the amount of training compensation payable and shall have discretion to adjust the amount if it is clearly disproportionate to the case under review."*

25. *FIFA Circular 1249 of 6 December 2010 stipulated that in principle, clubs shall be categorized by their respective member associations according to the following principles:*

    a. *Category I (top-level, high-quality training centre): All first-division clubs of member associations investing, on average, a similar amount in training players;*

    b. *Category II (still professional, but at a lower level): All second-division clubs of member associations in category I and all first-division clubs in all other countries with professional football;*

    c. *Category III: All third-division clubs of member associations in category I and all second-division clubs in all other countries with professional football;*

    d. *Category IV: All fourth- and lower-division clubs of the member associations in category I, all third- and lower-division clubs in all other countries with professional football and all clubs in countries with only amateur football.*

26. *What is more, in accordance with FIFA Circular 1249 "in such a case of manifest discrepancy, the DRC normally applies the training categories in*

accordance with the guidelines, despite the fact that the member association concerned had indicated a different categorisation".

27. *According to FIFA Circular 1627 of 9 May 2018, the FFA may classify its clubs between the following two training categories, i.e.:*

    a. *Category III, with training costs of EUR 30,000 per year; and*

    b. *Category IV, with training costs of UEUR 10,000 per year.*

28. *In countries where there is more than one category available, i.e. more than category IV, category IV is in principle reserved for amateur clubs.*

29. *The Respondent was classified as category IV by the FFA when it registered the player as a professional.*

30. *The FFA confirmed that it had been classified as such at the beginning of season 2018/2019 in view of the Respondent's investment on the training of young players.*

31. *However, the player was recruited as a professional player by the Respondent.*

32. *The Claimant provided evidence that the Respondent competed in the Armenian first division for season 2018/2019, and that the Respondent won the Armenian first division at the end of said season, and subsequently participated in UEFA club competitions the following season.*

33. *Consequently, the category of the Respondent in TMS, i.e. category IV, cannot not* (sic) *be taken into consideration. In fact, the Respondent is not a purely amateur club.*

34. *Based on the evidence on file, it is determined that the Respondent shall be considered as an established first division club in Armenia.*

35. *In view of all the above, it is established that the Respondent shall be considered a training category III club, as per FIFA Circular 1249 of 6 December 2010 and FIFA Circular 1627 of 9 May 2018 in combination with art. 5 par. 4 of Annexe 4 RSTP.*

36. *Consequently, training compensation is due to the Claimant on the basis of the first professional registration of the player with the Respondent.*

37. *Art. 3 par. 1 of Annexe 4 RSTP stipulates that for a first registration of a professional player, 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 and that has contributed to his training starting from the season of his 12th birthday. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club.*

38. It is undisputed that the player was registered with the Claimant as from 1 January 2011 until 11 April 2016, and as from 20 March 2017 until 13 March 2019, always as an amateur.

39. In Russia, the season for amateurs runs as from 1 January to 31 December.

40. Therefore, it is established that the player was registered with the Claimant as follows:

- For the entire season of the player's 12th birthday;

- For the entire season of the player's 13th birthday;

- For the entire season of the player's 14th birthday;

- For the entire season of the player's 15th birthday;

- For the entire season of the player's 16th birthday;

- For 102 days of the season of the player's 17th birthday;

- For 287 days of the season of the player's 18th birthday;

- For the entire season of the player's 19th birthday; and

- For 72 days of the season of the player's 20th birthday;

41. According to art. 5 par. 2 of Annexe 4 RTSP, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the season of the player's 12th birthday to the season of his 21st birthday.

42. As established above, the Respondent is considered to be a training category III club. Training costs for category III clubs within UEFA are set at EUR 30,000 per year.

43. Art. 5 par. 3 of Annexe 4 RSTP stipulates that ensure that training compensation for very young players is not set at unreasonably high levels, the training costs for players for the seasons between their 12th and 15th birthdays (i.e. four seasons) shall be based on the training and education costs of category 4 clubs.

44. Training costs for category IV clubs within UEFA are set at EUR 10,000 per year.

45. Consequently, on the basis of the first registration of the player as a professional with the Respondent, the Claimant should in principle be entitled to receive training compensation in the amount of EUR 137,890.41, corresponding to:

- EUR 10,000 for training and education for the entire season of the player's 12th birthday;

- EUR 10,000 for training and education for the entire season of the player's 13th birthday;

- EUR 10,000 for training and education for the entire season of the player's 14th birthday;

- EUR 10,000 for training and education for the entire season of the player's 15th birthday;

- EUR 30,000 for training and education for the entire season of the player's 16th birthday;

- EUR 8,383.56 for training and education for 102 days of the season of the player's 17th birthday;

- EUR 23,589.04 for training and education for 287 days of the season of the player's 18th birthday;

- EUR 30,000 for training and education for the entire season of the player's 19th birthday; and

- EUR 5,917.81 for training and education for 72 days of the season of the player's 20th birthday;

46. *Nevertheless, the Claimant limited its claim to EUR 122,932.*

47. *Consequently, in line with the legal principle of non ultra petita, the claim of the Claimant is accepted and the Claimant shall be awarded* ***EUR 122,932*** *as training compensation.*

48. *Procedural costs in the maximum amount of CHF 25,000 may be levied for decisions passed by the subcommittee of the DRC in disputes related to training compensation (cf. art. 18 par. 1 of the Procedural Rules).*

49. *The amount claimed by the Claimant corresponds to EUR 122,932, i.e. above CHF 100,000 and below CHF 150,000. Therefore, procedural costs levied in this respect shall not exceed the sum of CHF 15,000 (art. 1 of Annexe A of the Procedural Rules).*

50. *In consideration of the amount claimed by the Claimant, costs of the current proceedings shall be set at CHF 13,000.*

51. *In view of the degree of success of the Claimant, the costs shall be borne in full by the Respondent.*

52. *The relevant provisions of art. 24bis RSTP are applicable in the present matter.*

III. DECISION

1. The claim of the Claimant, FC Baltika Kaliningrad, is accepted.

2. The Respondent, FC Ararat Armenia, shall pay to the Claimant EUR 122,932 as training compensation.

[…]

6. The final costs of the proceedings in the amount of CHF 13,000 are to be paid by the Respondent to FIFA with reference to case no. TMS 8002 (cf. note relating to the payment of the procedural costs below)." (emphasis in original)

20. The Appealed Decision with grounds was notified to the Parties on 30 August 2021.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 20 September 2021, the Appellant 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 2021) (the "CAS Code") naming Baltika and FIFA as respondents and requesting that the case be submitted to a sole arbitrator.

22. On 22 September 2021, the CAS Court Office provided a copy of the Statement of Appeal to Baltika and FIFA.

23. On 27 September 2021, Baltika confirmed its agreement to the case being submitted to a sole arbitrator.

24. On 28 September 2021, FIFA requested that it be excluded from the procedure because it was not a party to the underlying dispute and simply acted as the competent deciding body of the first instance.

25. On 5 October 2021, the Appellant confirmed the withdrawal of its appeal against FIFA and on 6 October 2011, the CAS Court Office confirmed that FIFA was no longer a party in the procedure.

26. On 10 October 2021, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code, a copy of which was circulated to the Respondent on 11 October 2021.

27. On 28 October 2021, in accordance with Article R54 of the CAS Code, and on behalf of the 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.

28. On 29 October 2021, the Respondent filed its Answer pursuant to Article R55 of the CAS Code. Together with its Answer the Respondent transmitted several "*internal*

documents of FC Baltika Academy starting from the 2014 to 2019 regarding the Player", and referred to further documents of the "*Football federation of the Kaliningrad Region (game protocols and etc.) and from medical institutions (regarding medical tests of the Player)*", stating that it had not been possible to submit those at that time due to the Covid pandemic, but that it should be possible to submit these after 7 November 2021, when the lockdown should be finished.

29. On 1 November 2021, the CAS Court Office circulated a copy of the Respondent's Answer to the Parties and invited the Parties to indicate their preference for a hearing to be held or for the matter to be determined based on the written submissions filed.

30. On 7 November 2021, the Appellant indicated that it wished to have a hearing.

31. On 8 November 2021, the Respondent indicated that it did not wish to have a hearing and was content to have the case determined on the basis of the written submissions.

32. On 30 November 2021, the CAS Court Office wrote to the Parties to confirm the Sole Arbitrator's decision, pursuant to Articles R44.2 and R57 of the CAS Code, to hold a hearing by video conference. In addition, the Sole Arbitrator invited the Appellant to comment on the Respondent's request to file additional exhibits which could not be filed earlier "*due to a COVID pandemic and permanent lockdown in the region*".

33. On 3 December 2021, after consulting the Parties, the CAS Court Office fixed the date of the hearing as 3 March 2022.

34. On 7 December 2021, the Respondent submitted the additional documents referred to in its Answer. Also on 7 December 2011, the Appellant objected to the Respondent's request to file additional exhibits.

35. On 21 December 2021, the CAS Court Office wrote to the Parties to confirm the Sole Arbitrator's decision to grant the Respondent's request to file additional exhibits and accordingly provided copies of the same to the Appellant.

36. On 19 January 2022 and 24 January 2022 respectively, the Appellant and the Respondent returned duly signed copies of the Order of Procedure to the CAS Court Office.

37. On 3 February 2022 and 7 February 2022 respectively, the Appellant and the Respondent provided their lists of attendees for the hearing.

38. On 28 February 2022, the Appellant's representative wrote to the CAS requesting that the forthcoming hearing be postponed because he was unable to attend the hearing due to the war between the Russian Federation and Ukraine, with the latter being placed under martial law, and the fact that he was based in Kyiv in Ukraine.

39. On 28 February 2022, the Respondent confirmed that it did not object to the request for the hearing to be postponed.

40. On 1 March 2022, the CAS Court Office confirmed the postponement of the hearing.

41. On 4 July 2022, in response to an enquiry from the CAS Court Office, the Respondent indicated that in its view, the hearing could be rescheduled.

42. On 6 July 2022, the Appellant confirmed that the situation remained the same with regard to the ongoing conflict and therefore it was unable commit to the rescheduling of the hearing at that time.

43. On 30 May 2023, the Appellant wrote to the CAS Court Office and indicated, notwithstanding the ongoing conflict, that it thought that the hearing could be rescheduled.

44. On 8 June 2023, after consulting the Parties, the CAS Court Office fixed the date of the hearing as 27 June 2023.

45. On 15 June 2023, the Parties provided their lists of attendees for the hearing.

46. On 21 June 2023, the CAS Court Office circulated a proposed schedule for the forthcoming hearing.

47. On 26 June 2023, the Appellant's representative wrote to the CAS Court Office to advise that, given the situation in Ukraine, he "*cannot guarantee or ensure that tomorrow there will not be an unforeseen circumstance that objectively prevents me and the interpreter from participating in the hearing* […] *In order not to deprive the Appellant of legal support in this matter in the event of unforeseen circumstances, I am sending additional argumentation regarding the Answer of the Respondent and the documents submitted by it (which were not present during the consideration of the matter in the FIFA DRS),* [sic] *which I ask to be taken into account and attached to the case file if my participation in the hearing on 27 June 2023 will be impossible due to unforeseen circumstances. This document, in fact, only duplicates the position and arguments of the Appellant, which will be voiced at the hearing, in case of impossibility to participate in it.*" Accordingly, on the same date, the CAS Court Office circulated a copy of the Appellant's additional written submissions.

48. On 27 June 2023, a hearing was held by video conference.

49. In addition to the Sole Arbitrator and Ms Delphine Deschenaux-Rochat, Counsel to the CAS, the following persons attended the hearing:

    For the Appellant:

    a. Mr Yuriy Yurchenko, Counsel

    b. Mr Poghos Galstyan, General Director of the Appellant

    c. Mr Edgar Khachikian, Player, witness

    d. Mr Vardan Nikoghosyan, expert

    e. Mr Sergiy Poltavskyy, translator.

For the Respondent:

a. Mr Kirill Volzhenkin, General Director of the Respondent

b. Mr Ilya Kuznecov, in-house Counsel.

50. The Player was heard as a witness and Mr Nikoghosyan was heard as an expert. They gave their testimony after being duly invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witness and the expert. In addition, the translator was also reminded of his duty to provide a true and accurate translation, subject also to the sanctions of perjury under Swiss law.

51. At the outset of the hearing, the Parties confirmed they did not have any objection to the constitution and composition of the arbitral tribunal.

52. The Parties had full opportunity to present their case, submit their arguments and answer the questions posed by the other Party and the Sole Arbitrator.

53. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard and to have been treated equally and fairly in these arbitration proceedings had been respected.

54. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

55. The following summaries of the submissions of the Parties are illustrative only and do not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to a particular submission or evidence in the following summaries.

A. The Appellant

56. The Appellant's submissions, in essence, may be summarized as follows:

- The Appealed Decision is illegal, does not comply with the FIFA regulations and the actual circumstances of the case and also violates the principle of legal certainty.

- The information in the FUR Player Passport, which the Appealed Decision was based on, was incorrect and the FFA issued a statement on 27 September 2021 (the "FFA Player Statement") which confirmed that the Player was actually registered with FC Pyunik in Armenia between 20 September 2011 and 1 July 2014 for the seasons of his

12th, 13th and 14th birthdays (and therefore was not trained by Baltika in this period), as follows:

Club	**Registration Start / End Date**	**Season**	**Status**
FC Pyunik	20.09.2011 – 01.07.2014	**2011/2012** **2012/2013** **2013/2014**	**Amateur**
FC Ararat-Armenia	13.03.2019 – 26.06.2019	**2018/2019**	**Professional**
FC Ararat	01.08.2019 – 11.12.2019	**2019/2020**	**Professional**

- In addition, the Player was registered with FC Strogino since 25 March 2015, not since 12 May 2016 as indicated by the FUR Player Passport, and therefore was not training with Baltika for this period either based on both the distance between the two clubs (more than 1,200 km) and also given the prohibition of being registered for more than one club as set out in Article 5 of the FIFA RSTP.

- Therefore, even prior to considering the remaining arguments, Baltika's claim for training compensation for the period between 11 April 2011 and 1 July 2014 should be disregarded because the Player was registered and trained with FC Pyunik. Furthermore, the claims for the period between 25 March 2015 and 11 April 2016 should be disregarded as well because the Player was registered and trained with FC Strogino during that time. Given the clear inaccuracies in the FUR Player Passport, which cast doubt on its reliability, it should be disregarded as evidence.

- The FFA is the only organisation authorized by FIFA to set the training compensation categories for its clubs, based on Annexe 4, Article 4, paragraph 1 of the FIFA RSTP and FIFA Circular 1627. Based on this, the FFA categorized Ararat as a category IV club for the 2018-2019 season, and this categorization should apply for the whole season because the FFA was not permitted to amend categorizations during seasons and its selection should prevail over any conflicting categorization.

- Training compensation is not due if a player moves to a category IV club and, when signing for Ararat on 25 February 2019, the latter was a category IV club for the 2018-2019 season, and therefore training compensation is not due.

- It is clear from Annexe 4, Article 4, paragraph 1 of the FIFA RSTP and FIFA Circular 1627 that FIFA considers that the main reason for the division of clubs into different categories for training compensation purposes is the club's financial investment in training players, and therefore the definition of the club category is not based on the

club's membership in a particular division at any given time. If it was based on the latter, there would be no need to pass the responsibility for club categorization to national associations as instead this could be done centrally by FIFA itself.

- The Appealed Decision relies on FIFA Circular 1249 which categorizes clubs based on the division they are in; however, this would lead to all clubs in the Armenian Premier League to be in category II and all clubs in the Armenian First League to be in category III. However, FIFA Circular 1627 makes it clear that the financial capabilities of the clubs should be taken into account and determined that all clubs in Armenia should be classified by the FFA into just two categories, either III or IV. This confirms that it is financial expenditure, not the division a club plays in, which is the determinative factor for categorizing clubs in Armenia.

- Furthermore, FIFA Circular 1249 states that there is "*some degree of flexibility in these guidelines*" which is necessary to take into account the expenditure of clubs in training young players. This Circular refers to categorization based on the amateur status of clubs, but this also allows non-amateur clubs to be included in the same category.

- The FFA confirms that there were only two clubs in category III in 2020 (FC Pyunik and FC Urartu (formerly FC Banants) and it was only in 2020, after improving its financial situation and increasing expenditure for training of young players, that Ararat were then placed in category III as well. FIFA has never objected to the FFA's approach to club categorization, in particular that most of its professional clubs were put into category IV.

- It should be added that Ararat has no control over the category that the FFA places it into and nor would the FFA deliberately place it in a lower category so that it would not have to pay training compensation. The FFA shares all the categorization of clubs with FIFA, and the latter has not raised any issue with the selection by the FFA. Therefore, this supports that the classification by the FFA does not contradict the FIFA RSTP or the principles of club categorization.

- Indeed, FIFA recognizes the need to take a personalized approach to the categorization of clubs based on financial grounds, as supported by FIFA Circular 1752.

- Therefore, the conclusion of the Appealed Decision that in countries where there is more than one category available, the category IV is reserved for amateur clubs, contradicts the regulations of FIFA.

- Furthermore, the Appealed Decision went beyond the FIFA DRC's scope of authority because Annexe 4, Article 5, paragraph 4 of the FIFA RSTP provided the FIFA DRC with the "*discretion to adjust*" the amount of training compensation if it is "*clearly disproportionate to the case under review*" but not to adjust the categorization of the relevant club. Therefore, if training compensation is not payable in accordance with the FIFA RSTP, then this cannot be adjusted so that training compensation becomes payable because this would not be an adjustment to the original amount.

- The Appealed Decision also sought to rely upon FIFA Circular 1249 (dated 6 December 2010) and FIFA Circular 1627 (dated 9 May 2018). The former indicated that there was "*some degree of flexibility in these guidelines*" however the latter stated that "*only the categorisation of clubs inserted into ITMS will be taken into consideration and will prevail over any conflicting categorisation received for an ITMS-participating club through other means*". Given that FIFA Circular 1627 was issued after FIFA Circular 1249 it is fair to assume that FIFA Circular 1627, as a norm adopted later in time, cancels the earlier Circular and is the rule to rely upon.

- Therefore, it is the national association, in this case the FFA, which has the sole responsibility for the categorization of the clubs in Armenia and the FIFA DRC can only adjust the amount of training compensation if there is a manifest discrepancy and the obligation to pay is supported by the FIFA RSTP. Therefore, given there is no obligation to pay as Ararat was a category IV club then the FIFA DRC has no authority to establish an obligation to pay training compensation and determine the amount of training compensation.

- If Baltika considers that the FFA has miscategorized Ararat for training compensation purposes, which has prevented Baltika from receiving training compensation, then it should have filed a claim against the FFA for damages, not against Ararat which was not responsible for its categorization.

- Furthermore, in awarding training compensation to Baltika, the FIFA DRC did not carry out an exercise in establishing and substantiating the disproportionate amount of training compensation given that no evidence was put forward to support such an adjustment. In contrast, the FFA has all relevant financial information to hand and decided that Ararat should be a category IV club. In setting the category, the relevant financial information relates to the previous year, so in the case of the 2018-2019 season, it is the financial information relating to 2017. In the 2017-2018 season, Ararat had 134 players (20 professional and 114 amateur) and the total cost of maintaining the entire club amounted to AMD 28,620,000 (EUR 49,336), therefore the costs of training one player were AMD 213,582 (EUR 368). Even if the 'player factor', i.e., that not all amateurs will become professionals, but only 10% would do (which was a rather pessimistic assumption), is included, then Ararat only spent EUR 3,680 on the training of one player which is significantly lower than the costs of category IV clubs, and even more so for category III clubs. These figures were even lower in 2018-2019, when the Appellant had 140 amateur players and a total cost of AMD 14,266,126 (EUR 25,004), which resulted in a training cost of EUR 178.60 per player, or, when applying the 10% 'player factor', EUR 1,786 per player.

- Therefore, the FIFA DRC awarded training compensation without any consideration of the actual costs Ararat incurs in training young players and the amount was clearly disproportionate. Baltika tried to rely on the sporting results of Ararat to suggest Ararat's high financial stability, but this was based on performances in the 2018-2019 and the 2019-2020 seasons, which was irrelevant because the categorization had been carried out in 2018, before the start of the 2018-2019 season. When calculating training compensation, the category of the club in the season in which the player was contracted is to be taken into account. Furthermore, information on the website

www.transfermarkt.com should be discounted because it is not based on any accurate information.

- The salary of the Player was AMD 60,000 per month which converted to EUR 113 and was less than the expenses he incurred because he was not provided with any other benefits, such as accommodation, so therefore he should have been considered to be an amateur player not a professional.

- The Appealed Decision was contrary to the principle of legal certainty. The Appellant was able to make a decision, including the conclusion of contracts with young players, based on it being placed by the FFA into category IV and therefore the absence of the obligation to pay training compensation. The FIFA DRC therefore violated the principle of legal certainty by allowing interference with the property rights of the Appellant. Taking into account the actions of both FFA and FIFA, the Appellant could not have foreseen such consequences. If FIFA had properly monitored the categorization carried out by the FFA then it would have prevented a possible mistake in the categorization of the Appellant. If the Appellant had been categorized as a category III club for the 2018-2019 season it would not have signed the Player because the amount of training compensation would not have corresponded with the costs of the Player and the financial capabilities and plans of the Appellant at that time.

- If the Appellant was categorized incorrectly, then this is not due to the Appellant but instead due to the ambiguous interpretation of the FIFA regulations, the actions of the FFA (which is authorized by FIFA) in categorizing the Appellant incorrectly and the actions of FIFA in violating the property rights of the Appellant which it could not have foreseen. This is a gross violation of the principle of legal certainty and the rule of law. If the Respondent considers that it has been denied the right to training compensation, it is able to bring a claim against those at fault, namely the FFA and FIFA.

57. Accordingly, the Appellant submitted the following requests for relief:

"*1. Issue a new decision and rule that:*

- the decision of the Sub-Committee of the FIFA Dispute Resolution Chamber dated 2 August 2021 regarding training compensation in relation with the registration of the player Edgar KHACHIKIAN Ref. Nr. TM S 8002 is set aside;

- the claim of the FC Baltika Kaliningrad is dismissed or at least the amount payable as training compensation to the FC Baltika Kaliningrad is subject to reduction;

- the costs of the proceedings before FIFA in the amount of CHF 13,000 are to be paid by the FC Baltika Kaliningrad to the Appellant.

2. Rule that the costs of the arbitration before the CAS shall be borne by the FC Baltika Kaliningrad."

B. The Respondent

58. The Respondent's submissions, in essence, may be summarized as follows:

- The Player was registered with the Respondent's academy as an amateur player from 11 April 2004 until 11 April 2016 and from 20 March 2017 until 13 March 2019 as confirmed by the FUR Player Passport. In March 2019, the Appellant requested the ITC of the Player and registered him as a professional for the first time.

- In April 2019, the Respondent sent a request for training compensation in the sum of EUR 122,932 to the Appellant based on FIFA Circular 1627, dated 9 May 2018, which stated that clubs in the first league of Armenia should be category III and therefore, in accordance with the FIFA RSTP (specifically Article 20, Annexe 4 article 2 paragraph 1 and Annexe 4 article 4 paragraph 1), training compensation should be paid.

- In accordance with FIFA Circular 1627, dated 9 May 2018, the club categories for clubs in Armenia were fixed in either category III or IV. FIFA Circular 1249, dated 6 December 2010, set out the principles of club categorisation and confirmed that all professional clubs of the first division of member associations which have only categories III and IV should be allocated to category III. FIFA Circular 1249 also confirms that where there is a "*manifest discrepancy*" between the guidelines and the actual categorisation a national association places a club in, then "… *the DRC normally applies the training category in accordance with the guidelines, despite the fact that the member association concerned has indicated a different categorization.*"

- In addition to the above reason for the correct re-categorisation of the Appellant to category III, its strong financial position should also be considered. Furthermore, its sporting performance should be taken into account. In the 2017-2018 season, the first team of the Appellant was promoted to the Armenian Premier League, which is the top football competition in Armenia. In the 2018-2019 season, when the Appellant signed the Player, the Appellant won the Armenian Premier League. In the following 2019-2020 season, the Appellant won both the Armenian Premier League and the Armenian Super Cup. The Appellant also took part in the qualification rounds of the UEFA Champions League and the UEFA Europa League for two consecutive seasons. In order to participate in UEFA competitions, a club has to fulfil various licence criteria, including financial, infrastructural and relating to youth football development, to get the UEFA Licence. Therefore, it was obvious that the Appellant was the leading club in the country and should therefore have been assigned to the highest possible category.

- According to the website www.transfermarkt.com, in the 2018-2019 season, the Appellant signed contracts with 34 new players, including one from Atlético Madrid, and had the highest squad value in Armenia for three seasons in a row. This shows the strength of its financial position. Therefore, in accordance with FIFA Circular 1627, dated 9 May 2018, the best professional club in the highest league of Armenia should be in the highest possible category, which for Armenia is category III.

- In cases of incorrect categorization, a financially strong club enjoys an unfair advantage over its competitors that have to pay training compensation, which leads the club to

adopt a model in which it spends the bare minimum on its youth football, instead preferring to sign players trained at other clubs for free.

- It is clear that there is a "*manifest discrepancy*" in the Appellant's categorization; as per the FIFA guidelines, all first division clubs in all countries with professional football shall be assigned to either category II or III. The Appellant is the leading club in Armenia and has consistently participated in UEFA club competitions since the 2018-2019 season. Indeed, other countries in the region, such as Georgia, Latvia, Lithuania and Moldova have complied with the guidelines and allocated their top division clubs to category III. The FUR, even though the minimum salary in Russia is only slightly more than Armenia, has allocated all its clubs in its top division to category II, the highest training category available to it.

- Furthermore, the fact that the FFA allocated the Appellant to category III in August 2020, as well as a few other clubs from the top division that play in European competitions, demonstrates that the Appealed Decision was correct.

- Indeed, as part of the Appellant's requests for relief, where it asks for "*at least the amount payable … is subject to reduction*", shows that even the Appellant recognises that the categorization could be changed, and training compensation should be paid.

- Annexe 4, article 5, paragraph 4 of the FIFA RSTP provides the FIFA DRC with the power to review disputes and adjust the amount of training compensation payable. This power to adjust includes the ability to alter the categorization of a particular club. This is supported by the historic background to this provision of the FIFA RSTP, such as FIFA Circular 769, dated 24 August 2001, FIFA Circular 826, dated 31 October 2002, and the FIFA Commentary to the FIFA RSTP. The latter confirms that "*"Disproportionate" means that the amount is clearly either too low or too high with respect to the effective training costs incurred in the specific case*". Furthermore, FIFA Circular 1249, dated 6 December 2010, confirms that the FIFA DRC "*can apply the training category in accordance with the guidelines, despite the fact that the member association has indicated a different categorization*" provided there is "*manifest discrepancy between the above-mentioned guidelines and the actual assignment of a specific respondent club*". Therefore, it is clear that the FIFA DRC has the power to both change a club's categorization and/or change the amount of training compensation which means that the Appellant's arguments regarding legal certainty should be dismissed.

- The Appellant's arguments that its training costs of young players is very low and much lower than the two Armenian clubs in category III at the time (FC Pyunik and FC Urartu) should be dismissed. Most of the players the Appellant included were younger than 12 years of age and according to Article 20 and Annexe 4, Article 5, paragraph 2 of the FIFA RSTP, training is only relevant for the ages 12-21, so younger players should not be taken account of in the calculation. The Appellant also provided financial information for the 2017-2018 season which was not relevant because it was playing in the second division in that season and was in category IV with much lower training costs for young players. In terms of the information provided about the costs in 2018, it is not

clear which teams were included in this cost, for instance it is not clear if the reserve team is included - which it should be - and would therefore affect the calculations.

- In any event, drawing a distinction between the Appellant's training costs and the costs of FC Pyunik and FC Urartu does not therefore mean the Appellant should be in category IV; instead, its training costs should be viewed against all other clubs in category IV to see if it should be placed in category III instead. The fact remains, in any event, that it would still be inherently unfair to keep the Appellant in category IV because this just allows it to have an unfair advantage over its competitors by attracting foreign players without paying training compensation in addition to saving costs on youth expenditure. FIFA Circular 1249, dated 6 December 2010, flagged this as an undesirable practice which creates a "*manifest discrepancy*" in which case "*the DRC normally applies the training category in accordance with the guidelines, despite the fact that the member association concerned has indicated a different categorization*".

- In accordance with Annexe 4, Article 3, paragraph 1 of the FIFA RSTP, the player passport is the only official document which should be used to confirm a player's playing history and therefore calculate training compensation. If the Player played in Armenia, then he should have been registered with the FFA and this would appear on the FUR Player Passport. The Respondent provided documentary evidence of the Player's registration with its academy between 2014 and 2019, however older documents could not be found due to the archive having been lost.

- The Appellant's arguments that the Player's salary is so low that he should not be considered to be a professional should be disregarded. Annexe 4, Article 2, paragraph 1 of the FIFA RSTP confirms that training compensation is due when "*a player is registered for the first time as a professional*". Therefore, the determinative factor is the registration as a professional, not the salary paid. The Appellant signed a contract with the Player, received the ITC and registered him as a professional; therefore, the conditions were met. The Appellant could have signed him as an amateur but did not do so as it clearly wanted to then give him a chance to sign for another professional club without the other club having the obligation to pay training compensation. It is also obvious that the Player has Armenian roots and a place to live there with support from the Appellant and/or his family, otherwise he would not have moved from Russia to Armenia, given the financial conditions indicated in the Appeal Brief.

- Taking all of the above into account, it is obvious that the assignment of the Appellant in category IV is a manifest discrepancy, and it should be assigned to category III and consequently obliged to pay training compensation in accordance with the FIFA RSTP.

59. Accordingly, the Respondent submitted the following requests for relief:

"*1) to dismiss the appeal;*

2) to uphold the Decision of the FIFA Dispute Resolution Chamber passed on 02 August 2021;

3) to establish that the costs of the proceeding before FIFA are to be paid by the Appellant;

4) to establish that the Appellant bears all procedural costs, legal fees as well as any additional costs that CAS may deem appropriate to levy as a result of consideration of the case in question."

V. JURISDICTION

60. The jurisdiction of CAS, which is not disputed, derives from Article R47 paragraph 1 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*".

61. 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* […]".

62. Furthermore, the Appealed Decision provides that "[p]*ursuant to article 58 paragraph 1 of the FIFA Statutes, this decision may be appealed before the Court of Arbitration for Sport within 21 days of notification.*"

63. The Appealed Decision is a decision passed by a legal body of FIFA, specifically the FIFA DRC, which means the requirements above are fulfilled.

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

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

VI. 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 Appealed Decision was passed on 2 August 2021 and notified to the Parties with grounds on 30 August 2021. The time limit to file an appeal runs from receipt of the

notification of the decision with grounds, i.e., 30 August 2021. Therefore, given the appeal was filed on 20 September 2021, 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. It follows that the appeal is admissible.

VII. APPLICABLE LAW

70. 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."

71. 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."

72. In accordance with the long-standing CAS jurisprudence in relation to appeals against the decisions of FIFA legal bodies, by accepting the jurisdiction of CAS as established in the FIFA Statutes, in line with the abovementioned provisions from the CAS Code and the FIFA Statutes, CAS panels decide the dispute based on the rules and regulations of FIFA, with Swiss law being applied on a subsidiary basis if necessary (see MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport – Commentary, Cases and Materials*, 2015, p. 544, para. 99; see also RIGOZZI/HASLER, in ARROYO M. (ed.), Arbitration in Switzerland, The Practitioner's Guide, Art. R58 CAS Code, N10 and HAAS U., *Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law* -, CAS Bulletin 2015-2, p. 13). Therefore, by appealing to the CAS, in reliance on the FIFA Statutes, the Parties have accepted the application of the CAS Code and the FIFA regulations, in particular the FIFA RSTP.

73. It is well-established CAS jurisprudence that Swiss law does not take priority when faced with a conflict between the FIFA regulations and Swiss law, for example, as confirmed by the panel in CAS 2008/A/1705, "*the referral to Swiss Law in Art. 62(2) of the FIFA Statutes does not comprise a comprehensive remission to Swiss law, rather it only states that Swiss law is to apply "additionally". The CAS panels have rightly interpreted this in the past to the effect that Swiss law serves only to fill lacunae in the rules and regulations of FIFA. Wherever the latter contain a ruling, Swiss law, which has been declared to apply "additionally", must give way even if the otherwise*

applicable provision of Swiss law were mandatory (CAS 2005/A/983 & 984, no. 92 et seq.; CAS 2004/A/791, no. 60)."

74. Accordingly, the Sole Arbitrator is satisfied that primarily the various regulations of FIFA are applicable to the substance of the case, and additionally Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. FILING OF ADDITIONAL WRITTEN SUBMISSIONS

75. As a preliminary issue, the Sole Arbitrator considered the additional written submissions filed by the Appellant on 26 June 2023, the day before the hearing, which had been provided in case the Appellant's representative and legal counsel were prevented from attending the hearing by video conference due to the conflict in Ukraine. The Sole Arbitrator had reserved his position to determine the admissibility of such additional written submissions in this Award.

76. The Appellant's representative and legal counsel were able to attend the hearing by video conference as planned. Accordingly, the Respondent objected to the additional written submissions being admitted to the case file because they had only been provided in the event that the Appellant's representative and legal counsel were unable to attend the hearing and given that they had been able to attend, these additional written submissions should be disregarded.

77. The Sole Arbitrator has considered the respective positions of the Parties and based on the fact that the Appellant's representative and legal counsel were able to attend the hearing as planned (with the additional written submissions being filed in case they were prevented from attending) and taking into account the Respondent's objection, the Sole Arbitrator finds that the additional written submissions filed by the Appellant on 26 June 2023 should not be admitted. Furthermore, the Sole Arbitrator notes that the Appellant, in the correspondence which enclosed the additional written submissions, confirmed that the "*document, in fact, only duplicates the position and arguments of the Appellant, which will be voiced at the hearing.*" As an aside, the Sole Arbitrator notes that both Parties confirmed at the hearing that their right to be heard had been respected.

IX. MERITS

78. 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 the Player sign as a professional player for the Appellant?

(iii) Which clubs did the Player play for and for what periods of time?

(iv) Which category should the Appellant be deemed to be in during the 2018-2019 season for the purposes of training compensation?

(v) What are the consequences that follow from the conclusions reached to the above questions?

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

79. 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.

80. To start with the Sole Arbitrator notes that the provisions of Article 13 para. 5 of the FIFA Procedural Rules Governing the Football Tribunal (2021 edition) states:

"*A party that asserts a fact has the burden of proving it*."

81. Furthermore, the latest version of the Commentary to the FIFA RSTP (released on 28 November 2023, following the CAS hearing of this appeal) reads, in relation to Annexe 4, Article 5, page 390, in the relevant part, as follows:

"*The burden of proof lies with the party claiming an adjustment of the amounts due*."

82. The Sole Arbitrator further notes that Article 8 of the Swiss Civil Code (the "SCO") stipulates as follows:

"*Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact*."

In summary, according to Article 8 SCO, any party has the burden of proving the facts underlying its claim(s).

83. Furthermore, the concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence.

84. CAS 2009/A/1810 & 1811 determined as follows:

"*… 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 (CAS 2003/A/506, award of 30 June 2004, p. 10, par. 54).*"

85. Furthermore, CAS 2007/A/1380 set out 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. 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.

89. The assessment of the standard of proof in CAS jurisprudence can differ depending on the specific circumstances of the case, in particular whether relating to disciplinary issues or contractual matters. Given the case at hand relates to the latter, then the Sole Arbitrator is content to adopt the approach and reasoning in CAS 2021/A/8277 which states as follows:

"*The standard of proof describes the degree to which a judge / arbitral tribunal needs to be persuaded in order to accept or not to accept an alleged fact. The question of the standard of proof is a procedural question governed in an international arbitration by Article 182 of the Swiss Private International Law Act. Absent any provision agreed upon by the Parties, the Sole Arbitrator is inspired by Swiss law when determining the applicable standard of proof. According thereto absolute certainty is not required. Instead, it suffices if the judge / arbitral tribunal has no serious doubt about the existence of the alleged facts or if any remaining doubt appears to be tenuous (SFT 130 III 321, consid. 3.3).*"

90. Finally, in accordance with Article R57 paragraph 1 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 CAS 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 the Player sign as a professional player for the Appellant?

91. Article 2 of the FIFA RSTP reads as follows:

"***2 Status of players: amateur and professional players***

1. Players participating in organised football are either amateurs or professionals.

2. A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs.

92. Article 20 of the FIFA RSTP regarding training compensation reads as follows:

"***20 Training compensation***

Training compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a ***professional****, and (2) each time a* ***professional*** *is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations. The principles of training compensation shall not apply to women's football*."

93. Annexe 4, Article 2 of the FIFA RSTP reads as follows:

"***2 Payment of training compensation***

1. Training compensation is due when:

*i. a player is registered for the first time as a **professional**; or*

*ii. a **professional** is transferred between clubs of two different associations (whether during or at the end of his contract) before the end of the season of his 23rd birthday.*

2. Training compensation is not due if:

i. the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs); or

ii. the player is transferred to a category 4 club; or

iii. a professional reacquires amateur status on being transferred."

94. Accordingly, the first substantive issue to be determined is the status of the Player when signing for the Appellant and this must be done as a preliminary issue in the context of determining a training compensation claim (see CAS 2005/A/838 and CAS 2006/A/1177).

95. The Player was registered with the Appellant on 13 March 2019 and signed the Ararat Playing Contract which was entitled "*Employment Contract*" and specified that the Player "*is accepted for employment at the Club, as a professional footballer… The work under the present employment contract is considered as the main job for the football player*." The Player was paid a monthly salary of AMD 60,000.

96. According to Article 2, paragraph 2 of the FIFA RSTP, a player is considered to be a professional if he has signed a written contract with a club and is receiving a reward, in financial terms and/or in kind, for his footballing activity which is greater than the expenses that he incurs.

97. As set out above, the first requirement is plainly satisfied. As to the second requirement, to rebut the presumption that a player is earning more than the expenses incurred, evidence would need to be adduced to support this. It is not sufficient to presume that a low amount of salary rebuts this presumption; indeed, a professional does not have to make a living out of footballing activity and may have to carry out other work to make a living, whilst still remaining a professional. In the case at hand, while the Appellant has provided some information about average selling prices for minimum consumer baskets in Armenia in 2019 and 2020, it has failed to adduce any evidence which demonstrates that the Player incurred more expenses than the amount he received in salary. As per Article 8 of the SCO, a party carries the burden to prove the facts supporting its claim and therefore, in this respect, the Appellant carries this burden to prove the Player incurred more expenses than his salary amount. It is relevant to also

note that the Appealed Decision also referenced the lack of evidence to support the Appellant's contention, and despite being effectively on notice as to what is required, the Appellant has not adduced any supportive evidence.

98. Therefore, the Sole Arbitrator is satisfied that the Player was a professional player when he registered with the Appellant on 13 March 2019.

C. Which clubs did the Player play for and for what periods of time?

99. Annexe 4, Article 3, paragraph 1 of the FIFA RSTP reads as follows:

"***3 Responsibility to pay training compensation***

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) and that has contributed to his training starting from the season of his 12th birthday****. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club*." (emphasis added).

100. As outlined above, given that according to Article 8 of the SCO, a party has the burden of proving the facts underlying its claim(s), it follows therefore that in the present case it is for the Appellant to establish which clubs the Player played for during the relevant part of his career if it wishes to rebut the presumption that the FUR Player Passport is correct.

101. It is the Appellant's position that the FUR Player Passport is not correct and should be disregarded in favour of the FFA Player Statement. According to that document, the Player was registered with FC Pyunik from 20 September 2011 to 1 July 2014, then with FC Strogino from 25 March 2015 to 19 March 2017 and then he was registered with Baltika from 20 March 2017 to 13 March 2019 before moving to Ararat on 13 March 2019.

102. In contrast, the Respondent maintains that the FUR Player Passport is correct and that therefore the Player was registered with Baltika from 11 April 2004 to 11 April 2016, then with FC Strogino from 12 May 2016 to 19 March 2017 and then with Baltika from 20 March 2017 to 13 March 2019 before joining Ararat on 13 March 2019.

103. Therefore, there is a clear dispute between the Parties as to when the Player was registered with the various different clubs.

104. In order to support its position, the Appellant relied upon the FFA Player Statement as well as the witness statement of the Player and the evidence the latter gave at the hearing. The Player confirmed in his witness statement as follows:

"*I, football player Edgar Khachikian, born on 19 September 1999, confirm with this*

that at the age of 10 I started training at the Football Club Pyunik, Yerevan, Armenia. Since April 2011, I was declared and took part in matches for the youth team Pyunik-3-99, which played among the U-13 teams. I was registered for FC Pyunik and played for its teams in the age category until July 1, 2014, after which I moved to the Russian Federation.

I can confirm these testimonies personally by means of a conference call."

105. Furthermore, the Player confirmed in his evidence at the hearing that his first club was FC Pyunik and then he moved to FC Strogino. He then joined Baltika and remained there between 20 March 2017 and 13 March 2019 before he then signed for Ararat.

106. In support of the Player's registration at FC Pyunik, in addition to the above, the Appellant also relied on the squad lists for FC Pyunik for the 2011, 2012-2013 and 2013-2014 seasons from the official FFA Information Base which showed the registration of the Player with FC Pyunik for each of those seasons, as well as a letter from FC Pyunik, dated 16 December 2015, confirming that it did not have any claims in respect of the Player's transfer and that he was "*free to play for any club*". In addition, the Appellant also adduced in evidence some match reports from the official FFA website which referenced the participation of the Player in matches for FC Pyunik during this period (specifically his name in the list of goal scorers). Furthermore, the Appellant also provided a copy of a certificate issued to the Player in the FFA Awards for being part of the FC Pyunik team which won the first place in the 2011 Armenian U-13 junior football league.

107. In support of the Player's registration at FC Strogino, in addition to the above, the Appellant also relied upon a Records Classification Book of the Ministry of Sport of the Russian Federation which confirmed that the Player was registered with FC Strogino on 25 March 2015 and included a photo of the Player and the FC Strogino club stamp. In addition, the Appellant also provided a copy of a letter from FC Strogino, dated 31 March 2016, which confirmed that the Player was "*an athlete of our school, regularly attends training sessions, takes part in tournaments and the Moscow City Football Championship.*"

108. In support of its contrary position, the Respondent relied upon internal documents from the FC Baltika Academy for the period from 2014 to 2019 which list the Player as one of the players enrolled for each year. In respect of earlier years, "[o]*lder documents of the club or it's Academy could not be found due to the fact that the archive was lost.*" Furthermore, the Respondent confirmed the following:

"*Documents from Football federation of the Kaliningrad Region (game protocols and etc.) and from medical institutions (regarding medical tests of the Player) could not be submitted at the moment due to a COVID pandemic and permanent lockdown in the region. Above-mentioned documents could be presented to CAS after 07 November 2021 when the lockdown should be finished.*"

109. The Sole Arbitrator notes that notwithstanding the above, the Respondent did not provide any further documents to support its position regarding the Player's career.

110. Further, the Sole Arbitrator notes that the Appellant has adduced different supportive evidence for its position including, crucially, documents that are not self-generated by the Appellant nor produced by the relevant clubs (FC Pyunik and FC Strogino) but instead include FFA material in relation to the Player's time at FC Pyunik and independent material in relation to his time at FC Strogino. In addition, the Appellant also adduced written evidence from both FC Pyunik and FC Strogino in support. Furthermore, the Appellant has adduced the written testimony of the Player himself, who also appeared at the hearing to give evidence and be cross-examined, and he confirmed in evidence the position put forward by the Appellant. As an aside, the Sole Arbitrator notes that the Player was no longer a player with the Appellant at the time he gave his written testimony, or when he appeared at the hearing as a witness, having left the Appellant when the Ararat Playing Contract was terminated early, on 18 June 2019. In contrast, the Respondent simply asserted that the FUR Player Passport was correct and adduced various internal, self-generated documents which listed the Player as part of its youth squads between 2014 and 2019. It did not provide any independent corroborative evidence nor any supportive witness testimony, for instance, from the coaches and other players, to confirm the Player's playing involvement with the Respondent.

111. Taking all of the above into account, the Sole Arbitrator is satisfied that the Appellant has discharged its burden and that the Player played for the following clubs during the relevant period:

Season	**Birthday**	**Club**	**Registration Dates**	**Status**
2011-2012 2012-2013 2013-2014	12th 13th 14th	FC Pyunik	20 September 2011 – 1 July 2014	Amateur
2015-2016 2016-2017	15th 16th	FC Strogino	25 March 2015 – 19 March 2017	Amateur
2017-2018 2018-2019	17th 18th	FC Baltika	20 March 2017 – 13 March 2019	Amateur
2018-2019	19th	FC Ararat	13 March 2019 – 24 June 2019	Professional

D. Which category should the Appellant be deemed to be in during the 2018-2019 season for the purposes of training compensation?

112. It follows from the applicable rules and regulations that it is the category of the club to which a player transfers, at the time of the transfer, which is the decisive element for the determination of training compensation and thus training compensation is payable and calculated in accordance with the correct (re)categorization of the Appellant at the time of the transfer of the Player. As follows from Annexe 4, Article 2, paragraph 2 of the FIFA RSTP, training compensation is not due if a player is transferred to a category IV club.

(a) The Parties' positions

113. It is the Appellant's position that the FFA had correctly placed it in category IV for the 2018-2019 season, which was confirmed by the entry in the ITMS system and should prevail over any conflicting categorisation. The categorisation of a club is based upon the club's expenditure for the training of young players and not based upon the particular division that a club is in from time to time.

114. In contrast, the Respondent maintains that the Appealed Decision is correct in adjusting the Appellant's category to III for the purposes of training compensation, based on the "*manifest discrepancy*" with the original categorisation, and in such circumstances "*the DRC normally applies the training category in accordance with the guidelines*" (FIFA Circular 1249).

(b) Relevant provisions of the FIFA RSTP, FIFA Circulars and FIFA publications

(1) The FIFA RSTP

115. The most relevant provisions of the FIFA RSTP are set out below.

116. Annexe 4, Article 4 of the FIFA RSTP reads as follows:

"***4 Training costs***

1. In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player.

2. The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website (www.FIFA.com). They are updated at the end of every calendar year. Associations are required to keep the data regarding the training category of their clubs inserted in TMS up to date at all times (cf. Annexe 3, article 5.1 paragraph 2)."

117. Annexe 4, Article 5 of the FIFA RSTP reads, *inter alia*, as follows:

"***5 Calculation of training compensation***

[…]

4. 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."

118. The Commentary to the FIFA RSTP, in relation to Annexe 4, Article 5 reads, *inter alia,* as follows:

"*The general rule provides that training compensation is generally calculated by taking the training costs which the new club would have incurred according to its category and multiplying this figure by the number of years of training it would have provided. In principle, this multiplier corresponds to the period between the calendar year of the player's 12th birthday and their 21st birthday. The words "in principle" here indicate that a club may still demonstrate that an individual player's training was completed before the end of the calendar year of their 21st birthday. Where this can be demonstrated, the calendar years between the player's 12th birthday and the calendar year in which their training period was effectively completed will be considered.*

The category that should be applied to the training club is dependent on timing. Generally speaking, the category used for calculation purposes is the one the club is in when the player registers with the new club [DRC decision of 19 September 2019, no. 09192966; DRC decision of 22 June 2019, no. 06190545; TAS 2012/A/3009, Arsenal FC v. Central Español FC].

As mentioned above, for the first time a player registers as a professional, the amount payable is calculated on a pro rata basis according to the period the player effectively spent with each training club [DRC decision of 26 September 2019, no. 09190902-E; DRC decision of 8 November 2019, no. 11193766-E; DRC decision of 25 September 2019, no. 09192370; DRC decision of 25 September 2019, no. 09192372]. If a player goes on to be involved in an international transfer as a professional, compensation is calculated by taking the new club's training costs and multiplying them by the number of years (or months) of training provided by the player's previous club [DRC decision of 21 November 2019, no. 11194351-E; DRC decision of 26 July 2019, no. 07191275-E; DRC decision of 23 October 2019, no. 10192755-E].

[…]

The DRC can review whether training compensation calculated based on the Regulations is disproportionate in a specific case. Should it deem so, the DRC is entitled to adjust it to reflect the particularities of the case concerned.

[…]

The burden of proof lies with the party claiming an adjustment of the amounts due.

In this respect, given the wording of the provision ("clearly disproportionate"), the DRC will only proceed to adjust the training compensation due if evidence is provided to prove unequivocally that the amount calculated based on indicative average training costs is disproportionate. Moreover, only economic aspects will be taken into consideration. Neither the player's talent, their importance to the club, the fact that they may have played in matches for the first team, nor any other non-economic factors will be considered in assessing whether the training compensation payable as per the indicative training costs ought to be considered clearly disproportionate in a specific case.

[…]

However, the DRC started to develop jurisprudence regarding the recategorization of certain clubs that had registered professional players whilst listed by their member associations as category 4 [DRC decision of 16 April 2021, Mason]. In this instance, the DRC may consider adjusting an amount of training compensation that is deemed to be too low (or in the case of a new club being listed under category 4, not existent) should it deem that (1) the DRC recognises that there is a manifest discrepancy between the category assigned to a club and the categories available in the country (i.e. there is more than only category 4 in the country of the club concerned), and (2) the claimant has provided proof that the new club is not assigned the category that corresponds to its level. In other words, the DRC, whilst remaining within the spirit of the Regulations and, in this particular case, in the spirit of the training categories system, permitted the assignment of a different category that would be available to one member association in order to reflect the true football pyramid of the said country. In doing so, the DRC applies the content of FIFA circular no. 1249, which establishes certain parameters and guidelines for national associations to categorise their clubs, states that the DRC will intervene only in cases of manifest discrepancy between the category assigned by the national association and the actual training costs of a club.

In its decision of 16 April 2021, the DRC considered that the respondent, a US club competing in the second professional division in the country, could not be considered a category 4 club. In fact, the DRC deemed that since categories 2, 3 and 4 were available to the USSF, clubs of the second professional division in the US, such as the respondent, should in principle be considered category 3.

It shall be noted that such recategorisation interferes, to a certain degree, with the powers generally conferred to the national associations by article 4 paragraph 1 of Annexe 4, Regulations to allocate categories to their clubs. In general, associations are better placed than the DRC to determine the training and education costs of their members and which categories should be allocated correspondingly. As such, the DRC applies a high threshold and a strict approach vis-à-vis the proof to be submitted by the respective party."

The former club as well as the new club may ask the DRC to review disputes concerning the amount of training compensation (derived from the mathematical calculation) if they deem that this amount is clearly disproportionate to the case under review. "Disproportionate" means that the amount is clearly either too low or too high with

respect to the effective training costs incurred in the specific case. The club alleging the disproportion in the amount of training compensation shall submit all necessary evidence substantiating the demand of review."

(2) FIFA Circulars

119. FIFA Circular 769 was issued on 24 August 2001 and set out, *inter alia*, as follows:

"*(iii) Disputes as to training compensation*

If in a particular case there is a dispute about (the level of the) training compensation fees, any party can submit this dispute to FIFA's Dispute Resolution Chamber. The Chamber will rule on this dispute within 60 days. It has discretion to adjust the training compensation fee resulting from the application of the principles outlined above, if the Chamber finds that the fee is clearly disproportionate in the individual circumstances of the case. Any ruling of the Chamber regarding training compensation can be appealed against to the Arbitration Tribunal for Football."

120. FIFA Circular 826 was issued on 31 October 2002 and set out, *inter alia*, as follows:

"*Any party that objects to the result of a calculation based on the rules on training compensation is entitled to refer the matter to the Dispute Resolution Chamber. The Chamber will then review whether the training compensation fee calculated on the basis of the indicative amounts and the principles of the revised regulations, as simplified below, is clearly disproportionate to the case under review in accordance with Art. 42.1.b.(iv) of the Basic Regulations, while taking into account the indicative nature of these amounts. Whenever particular circumstances are given, the Dispute Resolution Chamber can adjust the amounts for the training compensation so as to reflect the specific situation of a case. For this task the Dispute Resolution Chamber can ask for all documents and/or information it deems necessary, such as invoices, training centres budgets, etc*."

121. FIFA Circular 1249 was issued on 6 December 2010 and set out, *inter alia*, as follows:

"*Despite no longer being explicitly included in the Regulations on the Status and Transfer of Players, the relevant principles still apply and have remained unchanged during recent years. Accordingly, when assigning their clubs to the various training categories available, the associations should proceed in full respect of the following criteria:*

Category 1 (top level, e.g. high-quality training centre):

- all first-division clubs of member associations investing on average a similar amount in training players.

Category 2 (still professional, but at a lower level):

- all second-division clubs of member associations in category 1 and all first-division clubs in all other countries with professional football.

Category 3:

- all third-division clubs of member associations in category 1 and all second-division clubs in all other countries with professional football.

Category 4:

- all fourth and lower-division clubs of the member associations in category 1, all third and lower-division clubs in all other countries with professional football and all clubs in countries with only amateur football.

There is some degree of flexibility in these guidelines. For example, a club in a lower division may be placed in a category with clubs of a higher division if it makes a similar investment to those clubs in training young players.

Furthermore, the FIFA Executive Committee acknowledged that in recent times, the Dispute Resolution Chamber (DRC) has been facing an increasing number of cases in which there has been a manifest discrepancy between the above-mentioned guidelines and the actual assignment of a specific respondent club (e.g. first-division clubs of associations without high-quality training centres but with established professional football being assigned to category 3 or even 4 instead of category 2). This tendency has to be seen in connection with the amendment to the Regulations on the Status and Transfer of Players, according to which, as a general rule, to calculate the training compensation due to a player's former club, it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself (cf. Annexe 4, art. 5 par. 1 of the relevant Regulations). Furthermore, Annexe 4, art. 2 par. 2 ii. of the said Regulations establishes that no training compensation is due if the player is transferred to a category 4 club.

In such cases of manifest discrepancy, the DRC normally applies the training category in accordance with the guidelines, despite the fact that the member association concerned has indicated a different categorization.

In view of the above, and while emphasising that proper categorisation of the various clubs is indispensable for a fair and well-functioning implementation of the entire training compensation system, the FIFA Executive Committee has deemed it appropriate to issue a directive authorising the DRC to refer the matter to the FIFA Disciplinary Committee for further investigation if the DRC deems that systematic, manifest abuse of the system might have taken place. (emphasis in original)

122. FIFA Circular 1627 was issued on 9 May 2018 and set out, *inter alia*, as follows:

"*1. Training compensation*

*With regard to **training compensation**, the Regulations stipulate that each association must classify its clubs into different categories based on the extent of each club's expenditure for training of young players. The category specified **must be reviewed every year**. The enclosed table shows the categories into which the associations in each*

confederation are required to divide their clubs and the amount of compensation applicable to the various club categories in each confederation.

Please ensure that, once again, you classify your clubs into the categories shown in the table. If all of your clubs come under category IV, you will not need to classify any of your clubs. FIFA will publish the compensation for training in the various categories and the club classifications of each association on the FIFA website.

*Each association is kindly requested to insert the relevant data concerning the categorisation of its affiliated clubs concerned into ITMS **by no later than 1 July 2018**. Please do not use any other form or means to notify your clubs' categorisation, unless the club is not listed in ITMS. In the latter case, notification of categorisation by means of written communication to the FIFA Players' Status Department must be done by 1 July 2018. With respect to clubs participating in ITMS, we would like to point out that only the categorisation of clubs inserted into ITMS will be taken into consideration and will prevail over any conflicting categorisation received for an ITMS-participating club through other means.*

[…]

Training Costs and Categorisation of clubs for the year 2018

The training costs listed hereunder are established on a confederation basis for each category of clubs. In accordance with art. 4 of Annexe 4 of the Regulations for the Status and Transfer of Players, these training costs will be updated at the end of every calendar year.

Confederation	***Category I***	***Category II***	***Category III***	***Category IV***
AFC		*USD 40,000*	*USD 10,000*	*USD 2,000*
CAF		*USD 30,000*	*USD 10,000*	*USD 2,000*
CONCACAF		*USD 40,000*	*USD 10,000*	*USD 2,000*
CONMEBOL	*USD 50,000*	*USD 30,000*	*USD 10,000*	*USD 2,000*
OFC		*USD 30,000*	*USD 10,000*	*USD 2,000*
UEFA	*EURO 90,000*	*EURO 60,000*	*EURO 30,000*	*EURO 10,000*

In continuation, you will find a table for each confederation, setting out the categories in which each association is asked to allocate its clubs. No allocation will be required if all your clubs fall under category 4.

[…]

TABLE 6 – UEFA

National Association	***Category I***	***Category II***	***Category III***	***Category IV***
[…]				
Armenia			*X*	*X*
[…]				

[…]" (emphasis in original)

123. FIFA Circular 1752 was issued on 26 March 2021 and set out, *inter alia*, as follows:

"***(i) Training Compensation 2.0 – financial data for categorisation and calculation of training costs***

In short, Training Compensation 2.0 will:

(i) categorise clubs individually, at first instance, based on their gross business revenue. In the current system, club categories are determined predominantly by the national competition in which they participate, which creates an unbalanced system where clubs with vastly varying investment in youth development that participate in the same competition are afforded the same status equally.

(ii) calculate the training costs that are assigned to each category of each confederation, based on objective data.

The current training costs have not been updated since the mid-2000s.

In order to achieve these objectives, it is necessary for FIFA to receive financial data from its affiliated clubs across the world regarding their gross business revenue and expenditure on youth development. In that regard, a short survey has been established within the FIFA Professional Football Landscape to capture such data."

124. To start with, the Sole Arbitrator notes that the application of FIFA Circulars to the determination of training compensation issues, and the application of Circulars to the FIFA regulations is confirmed by the CAS jurisprudence, as CAS 2015/A/3981 states:

"*…pursuant to what is envisaged by art. 4.2 of Annexe 4 of the RSTP, FIFA has issued a certain number of Circular Letters aimed to establish some guidelines in connection with the method of calculation of the training compensation, as well as to classify the clubs, on an annual basis, into different categories based on the extent of each club's expenditure for training young players, leading to certain indicative amount in concept of training costs that would apply to each category…In this regard, as it has been*

constantly determined by CAS in the past, although these Circular Letters are not regulations in a strict legal sense, they reflect the understanding of FIFA and the general practice of federations and associations belonging thereto (see, e.g., CAS 2009/A/1908). The Panel does not see any reason to consider the legal nature of FIFA Circular Letters in a different way. Accordingly, the Panel considers that FIFA Circular Letters are relevant for the interpretation of the relevant FIFA rules, here the RSTP, and thus shall be taken into account to decide the present dispute."

- Furthermore, the Sole Arbitrator has taken note of the Appellant's argument that given that FIFA Circular 1627 was issued after FIFA Circular 1249, FIFA Circular 1627 cancels the earlier Circular and is therefore the relevant rule to rely upon.

125. In this context, CAS jurisprudence has provided useful guidance, which the Sole Arbitrator adopts in reaching his conclusions in the case at hand, regarding the weight to be attributed to the FIFA regulations in comparison to the FIFA Circulars, and the effect of later FIFA Circulars on earlier ones, as set out in CAS 2006/A/1125, as follows:

"Regulations cannot be amended or expanded by circular unless the express power to act in that way is given. FIFA's statutes do not give that power. The Regulations are, in effect, acts of FIFA passed in its legislative capacity. The Circular is a purely administrative act of FIFA's executive. This view is consistent with the decision in CAS 2003/O/506:

"the FIFA Circulars are administrative measures which are – as sources of law within the FIFA legal system – hierarchically subordinate to the FIFA Regulations. Accordingly, although FIFA Circulars usefully and legitimately serve the purposes of implementing, detailing and interpreting the FIFA Regulations, they may not amend them. As a result, if a provision contained in a FIFA Circular is incompatible with a provision contained in FIFA Regulations, the former should yield to the latter (lex superior derogat inferiori). In addition, if different FIFA Circulars contain incompatible provisions, the later in time must prevail (lex posterior derogat priori)".

(c) Did the FIFA DRC have the authority to re-categorise the training compensation category for the Appellant and, if so, did it place the Appellant in the correct category for the purposes of training compensation for the 2018-2019 season?

126. The onus rests on the party that raises the argument that the indicative amount of training compensation is clearly disproportionate. In the present case, it is the Appellant that, based on the argument that it had been wrongly re-categorized in the Appealed Decision, contests the amount of training compensation awarded and therefore, according to the general principles of burden of proof outlined above, it is the Appellant's burden to proof this allegation.

127. The Sole Arbitrator notes that the Appellant was put in category IV by the FFA for the 2018-2019 season. However, the Appealed Decision determined that there was a

"*manifest discrepancy*" in this categorization and re-categorized the Appellant to category III for the 2018-2019 season.

128. By way of reminder, FIFA Circular 1249, issued on 6 December 2010 and quoted above at paragraph 121, set out a specific approach which national associations should take with respect to the categorization of its member clubs, categorizing them in four different categories. However, according to FIFA Circular 1627, issued on 9 May 2018, clubs in Armenia should be placed either in category III, for which the applicable training costs are EUR 30,000, or category IV, for which the applicable training costs are EUR 10,000.

129. Furthermore, there is well-established jurisprudence by the FIFA DRC that first division clubs should be assigned to the highest category available to the relevant national association. For example, this issue was considered in FIFA DRC Decision 08131149, dated 30 August 2013, as follows:

"*11. In continuation, the members of the Dispute Resolution Chamber emphasized that, in accordance with the FIFA Circular 1299, clubs in country Z shall be allocated either in category III or IV.*

12. With this established, the Chamber carefully examined the documents on file. In particular, it noted that, in accordance with the clarification of the ZFA dated 26 June 2013, the Respondent has been allocated in the category IV between the seasons 2008/2009 and 2012/2013, as well as that it had continuously played in the first division of country Z during said period.

13. In this context, the DRC was of the view that there are good reasons to deem that the allocation of the Respondent in category IV is not justified in view of the specific circumstances of the present matter. Consequently, the Chamber decided that the club category III shall apply to the Respondent and, therefore, training compensation is due."

130. There is also support in CAS jurisprudence for the categorization of first division clubs in the highest category available to a national association. CAS 2006/A/1167 sets out as follows:

"*According to the FIFA Circular no. 826 dated 31 October 2002 and Annex to Circular no. 826, which regards the categorization of clubs, DSC Arminia is a first division club, belonging to category 1 in Germany and FK Sarajevo is a first division club, belonging to category 3 in Bosnia and Herzegovina. Annex to Circular no. 826 provides for a 4-category system for Germany and a limited 2-category system for Bosnia and Herzegovina*."

131. It follows therefore, based on the above, that first division clubs in Armenia should be placed in category III for the purposes of training compensation.

132. The Appellant has argued that this categorization would be clearly disproportionate, and it should remain in category IV, arguing that it is only the national association which

can set this category and that its actual training costs are much lower than the indicative amounts set out in FIFA Circular 1627.

133. As regards the first point, in the Sole Arbitrator's view the FIFA DRC does indeed have the authority to re-categorize a club if it deems that the categorization by the national association shows a "*manifest discrepancy*" against the guidelines issued by FIFA. This is confirmed by FIFA Circular 1249 (cited at paragraph 121 above), specifically by the following wording:

"*In such cases of manifest discrepancy, the DRC normally applies the training category in accordance with the guidelines, despite the fact that the member association concerned has indicated a different categorization.*

In view of the above, and while emphasising that proper categorisation of the various clubs is indispensable for a fair and well-functioning implementation of the entire training compensation system, the FIFA Executive Committee has deemed it appropriate to issue a directive authorising the DRC to refer the matter to the FIFA Disciplinary Committee for further investigation if the DRC deems that systematic, manifest abuse of the system might have taken place." (emphasis in original)

134. Furthermore, the Sole Arbitrator also notes that the latest version of the FIFA Commentary to the FIFA RSTP adds the helpful commentary (set out in detail at paragraph 118) which confirms that:

"*…the DRC started to develop jurisprudence regarding the recategorization of certain clubs that had registered professional players whilst listed by their member associations as category 4 [DRC decision of 16 April 2021, Mason]. In this instance, the DRC may consider adjusting an amount of training compensation that is deemed to be too low (or in the case of a new club being listed under category 4, not existent) should it deem that (1) the DRC recognises that there is a manifest discrepancy between the category assigned to a club and the categories available in the country (i.e. there is more than only category 4 in the country of the club concerned), and (2) the claimant has provided proof that the new club is not assigned the category that corresponds to its level. In other words, the DRC, whilst remaining within the spirit of the Regulations and, in this particular case, in the spirit of the training categories system, permitted the assignment of a different category that would be available to one member association in order to reflect the true football pyramid of the said country. In doing so, the DRC applies the content of FIFA circular no. 1249, which establishes certain parameters and guidelines for national associations to categorise their clubs, states that the DRC will intervene only in cases of manifest discrepancy between the category assigned by the national association and the actual training costs of a club.*"

135. Accordingly, contrary to the Appellant's argument, in case the FIFA DRC considers the amount of training compensation to be "*clearly disproportionate to the case under review*", the FIFA DRC's scope of authority does not only comprise the "*discretion to adjust*" the amount of training compensation, but also to adjust the categorization of the relevant club. In conclusion, the Sole Arbitrator holds that the FIFA DRC did indeed

have the authority to re-categorize the Appellant if it deemed that the categorization by the FFA showed a "*manifest discrepancy*" against the guidelines issued by FIFA.

136. In respect of the second point, i.e., whether the FIFA DRC has placed the Appellant in the correct category for the 2018-2019 season for the purposes of training compensation, the Sole Arbitrator notes that the Appellant had been put in category IV by the FFA for the 2018-2019 season. However, the Appealed Decision determined that there was a "*manifest discrepancy*" in this categorization and re-categorized the Appellant to category III for the 2018-2019 season.

137. By way of reminder, FIFA Circular 1249, issued on 6 December 2010 and quoted above at paragraph 121, set out a specific approach which national associations should take with respect to the categorization of its member clubs, categorizing them in four different categories. However, according to FIFA Circular 1627, issued on 9 May 2018, clubs in Armenia should be placed either in category III, for which the applicable training costs are EUR 30,000, or category IV, for which the applicable training costs are EUR 10,000.

138. Furthermore, there is well-established jurisprudence by the FIFA DRC that first division clubs should be assigned to the highest category available to the relevant national association. For example, this issue was considered in FIFA DRC Decision 08131149, dated 30 August 2013, as follows:

"*11. In continuation, the members of the Dispute Resolution Chamber emphasized that, in accordance with the FIFA Circular 1299, clubs in country Z shall be allocated either in category III or IV.*

12. With this established, the Chamber carefully examined the documents on file. In particular, it noted that, in accordance with the clarification of the ZFA dated 26 June 2013, the Respondent has been allocated in the category IV between the seasons 2008/2009 and 2012/2013, as well as that it had continuously played in the first division of country Z during said period.

13. In this context, the DRC was of the view that there are good reasons to deem that the allocation of the Respondent in category IV is not justified in view of the specific circumstances of the present matter. Consequently, the Chamber decided that the club category III shall apply to the Respondent and, therefore, training compensation is due."

139. There is also support in CAS jurisprudence for the categorization of first division clubs in the highest category available to a national association. CAS 2006/A/1167 sets out as follows:

"*According to the FIFA Circular no. 826 dated 31 October 2002 and Annex to Circular no. 826, which regards the categorization of clubs, DSC Arminia is a first division club, belonging to category 1 in Germany and FK Sarajevo is a first division club, belonging to category 3 in Bosnia and Herzegovina. Annex to Circular no. 826 provides for a 4-category system for Germany and a limited 2-category system for Bosnia and Herzegovina*."

140. It follows therefore, based on the above, that first division clubs in Armenia should be placed in category III for the purposes of training compensation.

141. However, as outlined above, according to the Appellant, its categorization in category III is clearly disproportionate given that its actual training costs are much lower than the indicative amounts set out in FIFA Circular 1627.

142. Regarding the question of the Appellant's actual training costs, the Sole Arbitrator refers to the well-established position in CAS jurisprudence regarding such issues, for example, as set out in CAS 2009/A/1810 & 1811:

"*The rules however give the possibility to a club objecting to a training compensation calculated on the basis of the indicative amounts mentioned in the FIFA regulations, to prove that such compensation is disproportionate on the basis of concrete evidentiary documents, such as invoices, costs of training centers, budgets, and the like. It shall thus prove such disproportion, failing which the indicative, general amount would apply (CAS 2003/O/500, award of 24 February 2004, p. 13, par. 7.10; CAS 2003/A/527, p. 14, par. 7.4.3; CAS 2004/A/560, p. 15, par. 7.6.2; CAS 2006/A/1027, p. 18, par. 8.40; CAS 2007/A/1218, p. 18, par. 82)*."

143. In the present case, the Appellant provided a copy of its annual accounts for the period ending 31 December 2018, an internal document which set out some staff costs and expenses. The Appellant further provided lists of players registered with the club for 2017 and 2018, as well as some general information relating to the cost of living in Armenia. In addition, Mr Nikoghosyan, the Appellant's auditor, was called to give evidence at the hearing to confirm the Appellant's figures. In summary, based on the above, the Appellant set out that the actual training costs in the 2017-2018 season ranged from EUR 368 to EUR 3,680, and in the 2018-2019 season they ranged from EUR 178.60 to EUR 1,786. The Appellant focussed exclusively on its own training costs to argue that the awarded training compensation was excessive.

144. The Sole Arbitrator has carefully considered all of the material provided by the Appellant, and the testimony of Mr Nikoghosyan. However, there was a clear lack of clarity in the material submitted with reference to the underlying question of training costs, as well as a lack of primary evidence to demonstrate the actual costs incurred.

145. The Appellant has not provided any material such as copies of original documents, for instance invoices, supportive evidence of the actual costs of training centres, employment contracts for staff and players, payroll records etc., upon which such an assessment could be independently carried out. What has been provided is not sufficient to ascertain such costs, and in such regard, the Sole Arbitrator concurs with and adopts the conclusion reached in the aforementioned case, CAS 2009/A/1810 & 1811, as follows:

"*The Sole Arbitrator is of the opinion that the evidence provided by the Appellant is not clear and convincing enough to establish, to his comfortable satisfaction, that the training compensation awarded is clearly disproportionate. As a matter of fact, the training costs submitted by the Appellant cannot be truly verified, as the latter has not*

submitted any accounts, coaches' or players' contracts, invoices, receipts or payroll slips. Moreover, in the light of generally accepted accounting principles, auditing standards and business reporting standards, the Sole Arbitrator finds that the audited list of expenses submitted by the Appellant is not satisfactory, at least for the purposes of dealing with the issue at stake in the present dispute. The quality of information displayed in audited accounts and audited financial statements should be such as to allow any interested third party – including judges or arbitrators – to evaluate in depth an entity's economic performance and to verify in depth whether true and fair values were used for measuring, presenting, and disclosing specific components of assets, liabilities and the like. The Sole Arbitrator, upon review of the documentation submitted, comes to the conclusion that he cannot rely on such evidence to arrive at any kind of accurate verification of the Appellant's alleged training costs and, in any event, to arrive to the conclusion that the general compensation would be, in the present case, disproportionate."

146. The Sole Arbitrator also notes that the Respondent argued that the material adduced by the Appellant included in the majority players who were under the age of 12 and therefore should not be taken into account based on the relevant age groups for the purposes of training compensation being 12 – 21 years of age. The Sole Arbitrator notes from the material provided by the Appellant, specifically its lists of players for 2017 and 2018, that these contained a large proportion of players under the age of 12, based on their date of birth set out in the lists. This was not contested by the Appellant at any time.

147. It follows, therefore, that the Sole Arbitrator is not persuaded by the material and arguments put forward by the Appellant to justify an adjustment to the re-categorization determined by the FIFA DRC in the Appealed Decision.

148. The Sole Arbitrator also reiterates that it is well-established CAS jurisprudence that the system of training compensation is intended to reward clubs for training young players, which is in the wider interests of football generally, rather than to reimburse for actual costs incurred. CAS 2003/O/506 confirms that the system of training compensation "*intends to reward clubs for the worthy work done in training young players and is not designed to simply reimburse the club for its actual costs incurred in cultivating youth teams. The training compensation appears to be a reward and an incentive rather than a refund*".

149. In summary, the Sole Arbitrator notes that the Appellant is a well-established club which was competing at the highest level in the first division of the Armenian league in the 2018-2019 season and went on to win the championship in that season and then competed in UEFA tournaments. Given that FIFA Circular 1249 sets out that category II should apply to clubs in the first division, while thereupon FIFA Circular 1627 determined that there were only two training categories available in Armenia (III and IV), it follows that the Appellant should be classified in category III for the 2018-2019 season, not in category IV.

150. Therefore, in conclusion and taking all of the above into account, the Sole Arbitrator finds that the Appellant should be categorized as a UEFA category III club for the

relevant 2018-2019 season. Accordingly, the Appealed Decision is confirmed in that regard.

E. What are the consequences that follow from the conclusions reached to the above questions?

151. Having established that the Player was registered as a professional player with the Appellant and that the Appellant should have been a UEFA category III club for the relevant 2018-2019 season, and accordingly, in order to calculate the training compensation, the Appellant was a category III club according to the FIFA RSTP, the Sole Arbitrator needs to determine the consequences that follow from this.

152. Further to the above, the Sole Arbitrator concludes that the period to be considered when determining the training compensation owed is the period of time which the Player was registered with the Respondent, which was 20 March 2017 to 13 March 2019.

153. CAS jurisprudence confirms that part of a month should be calculated as a full month if the club has provided training to a player for more than half a month, to avoid any duplication whereby multiple clubs claim an entitlement to a full month of training compensation. This is supported by CAS 2008/A/1705, CAS 2011/A/2681 and CAS 2013/A/3119, with the latter stating as follows:

"*… CAS jurisprudence shows that a part of a month has to be calculated as a full month (2008/A/1705, §47).*

The Panel finds that this jurisprudence should be interpreted in the sense that a part of a month has to be calculated as a full month, only in the event a club has provided training to a player throughout more than half of the month. A different interpretation could lead to a situation in which over the course of one month multiple clubs are entitled to a full month of training compensation (e.g. in case a player is transferred from training club A to training club B during the course of a month and is subsequently transferred to club C). This would impose a disproportionate burden on any club interested in acquiring the services of the player."

154. The Sole Arbitrator supports this established position which means that, given the Player was registered on 20 March 2017, then this is less than half the month, so the start of the period for purposes of calculation should be April 2017, and his registration terminated on 13 March 2019, which again is less than half the month, so the end of the period should be February 2019. Therefore, the period that the Player was registered for, and trained by, the Respondent runs for 9 months in 2017 (April – December 2017 inclusive), 12 months in 2018 and 2 months in 2019 (January – February 2019) which is a total of 1 year and 11 months.

155. By way of reminder, FIFA Circular 1627, issued on 9 May 2018, confirmed that the indicative amount within UEFA for category III clubs is EUR 30,000. As confirmed in Annexe 4, Article 2, paragraph 2 of the FIFA RSTP, training compensation is not due if a player is transferred to a category IV club; however at the time of the transfer of the Player to the Appellant, the latter should have been a category III club and therefore, in

principle, training compensation is payable. It is the category of the club to which the player transfers, at the time of the transfer, which is the triggering event and thus training compensation is payable and calculated in accordance with the correct re-categorization at the time of the transfer of the player.

156. Therefore, the calculation of training compensation is EUR 30,000 for a full year and EUR 27,500 for 11 months (EUR 30,000 / 12 x 11 = EUR 27,500) which comes to a total of EUR 57,500.

157. The Sole Arbitrator notes that, in its requests for relief, the Appellant requested that "*the claim of the FC Baltika Kaliningrad is dismissed or at least the amount payable as training compensation to the FC Baltika Kaliningrad is subject to reduction*" and therefore the reduction of the training compensation from EUR 122,932 to EUR 57,500 is consistent with the requests for relief and, for the avoidance of doubt, the principle of *non ultra petita*.

158. Finally, the Appealed Decision established that in view of the success of Baltika, the Appellant was to pay the entirety of the costs of the proceedings in front of the FIFA DRC, i.e. CHF 13,000 corresponding to the costs of those proceedings. The Appellant in the present proceedings requested that the costs of the proceedings before FIFA are to be paid by the FC Baltika to the Appellant.

159. CAS Panels have already confirmed in the past that *"it is not for the CAS to reallocate the costs of the proceedings before previous instances, and that therefore the appeal shall be dismissed in this respect"* (see, for example, CAS 2017/A/4994; CAS 2013/A/3054; CAS 2016/A/4387). Furthermore, the Sole Arbitrator notes that the Appellant has not put forward any reasons why the Sole Arbitrator should deviate from this jurisprudence in this case.

160. Accordingly, the Sole Arbitrator upholds the allocation of costs of the proceedings made by the FIFA DRC in the Appealed Decision.

161. Therefore, the Sole Arbitrator finds that the Appellant must pay the reduced amount of training compensation of EUR 57,500.

F. Conclusion

162. Based on the above, and having taken into account all the arguments put forward and the evidence adduced by the Parties, the Sole Arbitrator finds that:

(a) the Appellant's appeal against the Appealed Decision is partially upheld;

(b) the Respondent is entitled to receive training compensation from the Appellant for the period it trained the Player, which was effectively 1 year and 11 months;

(c) for the 2018-2019 season, the Appellant should have been placed in category III for the purposes of training compensation according to the FIFA RSTP and relevant FIFA Circulars; and

(d) therefore, the Appellant has to pay to the Respondent EUR 57,500 as outstanding training compensation.

163. Accordingly, the Appellant's appeal against the Appealed Decision is partially upheld and the said decision is amended in accordance with the findings above.

X. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 20 September 2021 by Ararat Armenia FC against FC Baltika with respect to the decision issued on 2 August 2021 by the FIFA Dispute Resolution Chamber is partially upheld.

2. The decision issued on 2 August 2021 by the FIFA Dispute Resolution Chamber is amended as follows:

   - Ararat Armenia FC is ordered to pay to FC Baltika the sum of EUR 57,500 as training compensation.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 24 February 2025

THE COURT OF ARBITRATION FOR SPORT

Edward Canty
Sole Arbitrator