Arbitration CAS 2020/A/7265 FK Ventspils v. Fédération Internationale de Football Association (FIFA), award of 10 November 2021

Panel: Mr Wouter Lambrecht (Belgium), Sole Arbitrator

Football
Disciplinary sanction for failure to comply with a FIFA decision
Ownership of a training compensation claim after a club's disbandment and qualification of FIFA's letters
FIFA DC's power of review
Violation of the principle of legal certainty and predictability
Lack of national association's entitlements under Article 3.3 of Annex 4 FIFA RSTP
Status of indirectly affected parties

1. **When a football club that has been granted the right to receive training compensation from another club by decision of the FIFA Dispute Resolution Chamber (DRC) is disbanded, disaffiliated and/or put into liquidation shortly thereafter, the question arises as to who holds its claim. In this context, FIFA's letters to the national association that intends to recover such claim do not constitute a decision, if they only aim to clarify the situation without definitively settling the issue of entitlements. They do not render *res judicata effect* and do not bar the FIFA Disciplinary Committee (FIFA DC) from adjudicating and deciding on the association's subsequent request for enforcement.**

2. **The tasks performed by the FIFA DC are limited and such tasks are of purely vertical nature. The FIFA DC must verify whether a club failed to comply with its obligations as an indirect member of FIFA by not paying another person a sum of money even though instructed to do so by another FIFA body pursuant to a final and binding decision, and if indeed so, impose the proportionate sanction. It is not entitled to re-analyse a case already decided as its substance.**

3. **The FIFA Disciplinary Code does not contain any provision that gives the FIFA DC Single Judge the possibility to designate a new creditor (e.g. by replacing a creditor club by its national association) when undertaking such limited assessment nor impose a sanction on the debtor club. Nor is it a case of qualified silence allowing for flexibility, since the opposite situation, namely the liquidation of a debtor, is expressly regulated by the Code. As a result, any decision to re-assign and designate a creditor anew violates the principle of legal certainty and predictability and must be set aside.**

4. **Article 3.3 of Annex 4 of the FIFA Regulations on the Status and Transfer of Players (RSTP), which governs national associations' entitlement to receive training compensation which would be due to affiliated clubs, does not contemplate the situation in which a final and binding decision has been issued in a horizontal dispute between two clubs. Rather, this article applies to the situation that exists prior to a**

decision being rendered by FIFA, the so-called (pre-)adjudication phase, as it deals with the question of who is entitled to receive the amount in the first place and who, if necessary, can claim the amount of training compensation in front of FIFA when the due payment is not forthcoming. Once a claim for training compensation is recognised in favour of a club, it can no longer be invoked by national associations and, in case of liquidation, logically falls into the bankrupt estate of the said club, so as not to harm its potential creditors.

5. The national association that is denied the right to receive the claim originally belonging to its club does not have to be part of CAS proceedings, since such proceedings are of a disciplinary nature, aimed to rule on the situation of a debtor club, and follow a FIFA procedure in which it did not participate.

I. PARTIES

1. FK Ventspils (the "Appellant", "Ventspils" or "the Club") is a football club with its registered office in Ventspils, Latvia. The Club is registered with the Latvian Football Federation (the "LFF"), which in turn is affiliated to the Fédération Internationale de Football Association.

2. The Fédération Internationale de Football Association (the "Respondent" or "FIFA") is an association under Swiss law with registered office in Zurich, Switzerland. FIFA is the governing body of international football exercising regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players at worldwide level.

3. Ventspils and FIFA are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts based on the Parties' written submissions and the evidence adduced during the course of the present proceedings. This background is made for the sole purpose of providing a summary of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

A. Proceedings before the FIFA Dispute Resolution Chamber

5. On 22 February 2016, the Nigerian football player Mr Abdullahi Alfa, born on 29 July 1993, (the "Player") was registered for the first time as a professional player and this with Ventspils. Prior to being registered for the first time as a professional player with Ventspils, he was registered as an amateur player with the Nigerian clubs Stallion Football Academy, Football College Abuja ("FC Abuja") and Gidi Football Club.

6. On 9 June 2017, FC Abuja lodged a claim with the FIFA Dispute Resolution Chamber ("FIFA DRC") requesting to be awarded training compensation in the amount of EUR 87,616.43, plus interest. Said claim was registered as *FIFA TMS nº1601*.

7. Ventspils disputed FC Abuja's claim.

8. On 26 June 2018, the Single Judge of the sub-committee of the FIFA DRC (the "FIFA DRC Single Judge") rendered his decision (the "FIFA DRC Decision"), containing the following operative part:

> *"1. The claim of* [FC Abuja] *is accepted.*
>
> *2. The* [Club] *has to pay to* [FC Abuja] ***within 30 days*** *of the date of notification of this decision, the amount of EUR 87,616.43, plus 5% interest p.a. on said amount as of 9 June 2017 until the date of effective payment.*
>
> *3. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
>
> *4. The final amount of costs of the proceedings in the amount of CHF 8,000 is to be paid by the* [Club] ***within 30 days*** *as from the date of notification of the present decision as follows:*
>
> *4.1 The amount of CHF 6,000 has to be paid to FIFA* […]
>
> *4.2 The amount of CHF 2,000 has to be paid to* [FC Abuja].
>
> *5.* [FC Abuja] *is directed to inform the* [Club] *immediately and directly of the account number to which the remittances under points 2. and 4.2. above are to be made and to notify the Single Judge of the sub-committee of the DRC of every payment received".*

9. The operative part of the FIFA DRC Decision was notified to FC Abuja and Ventspils on 29 June 2018.

10. On 5 October 2018, the NFF informed FIFA that FC Abuja had been *"disbanded"*.

11. On 26 November 2018, following a request thereto from Ventspils, FIFA issued the grounds of the FIFA DRC Decision.

12. No appeal was filed against the FIFA DRC Decision, which therefore became final and binding.

B. The aftermath of the FIFA DRC Decision

13. On 4 January 2019, Mr Vyacheslav Bytsanyov, the lawyer representing FC Abuja during the FIFA DRC proceedings, provided the Club with an invoice requesting that the amount payable in accordance with the FIFA DRC Decision be paid on the bank account of his firm.

In his letter, Mr Bytsanyov referred to a power-of-attorney that had allegedly been issued on 30 December 2017.

14. On 9 January 2019, Mr Bytsanyov informed FIFA that Ventspils had not complied with the terms of the FIFA DRC Decision and requested disciplinary proceedings to be opened.

15. On 18 January 2019, FIFA asked Ventspils to provide it with the proof of payment of the relevant amount by no later than 7 February 2019.

16. On 24 January 2019, Ventspils informed FIFA that it was willing to pay the relevant amount to FC Abuja, but that the power-of-attorney presented by Mr Bytsanyov appeared outdated and that it wanted to be sure to pay to the right organisation in order to avoid any risk and claims from FC Abuja.

17. On 8 February 2019, FIFA informed Ventspils and FC Abuja FC of the NFF's correspondence dated 5 October 2018 relating to FC Abuja's disbandment, indicating, *inter alia*, that *"as a general rule, our services and decision-making bodies (i.e. the Players' Status Committee and the Dispute Resolution Chamber) cannot deal with cases of clubs which are not, or no longer, affiliated to the relevant member association and/or which are not, or no longer, actively participating in any competition organized under the auspices of a member association"*.

18. On 19 February 2019, Mr Bytsanyov requested the NFF whether it had any record of FC Abuja in the register of the NFF and whether FC Abuja applied for participation in competitions in 2019.

19. On 20 February 2019, the NFF informed Mr Bytsanyov that FC Abuja *"was taken off the register of the NFF in 2018 because they did not renew affiliation with the NFF or any affiliate of the NFF*" and that it had *"not announced its intention to participate in competitions for 2019 Football Seasons"*.

20. On 10 April 2019, Mr Bytsanyov, now acting on behalf of the NFF, requested FIFA to enforce the FIFA DRC Decision in favour of the NFF, claiming that the NFF was entitled to receive the amount awarded, submitting, *inter alia*, the following reasons:

> *"Despite the above mentioned we are still sure that* [the Club] *cannot be released from obligation to pay training compensation. According to par. 3 art 3 of Regulations on the Status and Transfer of Players "An association is entitled to receive the training compensation which in principle would be due to one of its affiliated clubs, if it can provide evidence that the club in question – with which the professional was registered and trained – has in the meantime ceased to participate in organised football and/or no longer exists due to, in particular, bankruptcy, liquidation, dissolution or loss of affiliation. This compensation shall be reserved for youth development programmes in the association(s) in question"*.
>
> *Taking into account the fact that the club lost its affiliation with NFF after the decision was rendered, we believe that there is no need to consider the case again for the purpose of proving the right of NFF to receive training compensation. Based on the above evidence, it is obvious that the right to recover the amount of money stipulated by the decision through the Disciplinary Committee is transferred directly to NFF.*

Please find enclosed a power of attorney dated 25.02.2019 issued to our firm by NFF (Annex 3). We would also ask you to pass the case files to the Disciplinary Committee for consideration".

21. On 2 May 2019, FIFA, *inter alia*, informed the NFF as follows:

"Based on the foregoing circumstances, you deem that the [NFF] *is entitled to receive the training compensation as already decided upon in* [the FIFA DRC Decision] *(cf. art. 3 par. 3 of Annexe 4 of the Regulations on the Status and Transfer of Players).*

In this respect please be informed that in order to establish the possible entitlement of the [NFF] *to training compensation, a new petition would have to be presented in accordance with art. 9 par. 1 of the Procedural Rules.*

In view of the foregoing, we kindly ask you to enter a new claim into TMS, indicating the relevant details of your claim, as well as indicating the [NFF] *as Claimant.*

Finally, please take note that the aforementioned information is based only on the documents and information currently in our possession and is without prejudice whatsoever" (emphasis in original).

22. On 4 June 2019, and as a consequence of the above letter, the NFF lodged a claim with the FIFA DRC, requesting to be awarded training compensation from Ventspils in the amount of EUR 87,616.43, plus interest.

23. On 23 September 2019, FIFA requested Ventspils to pay the training compensation in accordance with the applicable rules or to provide its services with valid reasons which might justify a possible refusal.

24. On 7 October 2019, Ventspils filed its reply, submitting that the NFF's claim was time-barred and that it was therefore inadmissible, and that it should in any event be rejected.

25. On 27 January 2020, FIFA, informed the NFF, *inter alia*, as follows:

"After having analysed the documentation submitted by you via the TMS in the above-mentioned matter, it appears that the present matter is intrinsically linked to the case with reference number TMS 1601, between [FC Abuja] *and the* [Club]. *In said matter, the Single Judge of the sub-committee of the* [FIFA DRC] *already passed a decision on 26 June 2018.*

Considering that your petition, submitted in TMS on 16 June 2019 with the reference number TMS 4337, contains the same facts and prayers for relief as the case already decided upon by the Single Judge of the sub-committee of the [FIFA DRC] *on 26 June 2018, we regret to inform you that our deciding bodies do not appear to be in a position to deal with the present matter. Consequently, we will proceed with the closure of the case with reference number TMS 4337.*

Notwithstanding the above, please be informed that we will proceed to submit the [FIFA DRC Decision] *to the Disciplinary Committee of FIFA.*

Finally, please take note that all of the above-mentioned information, based on the documentation at our disposal, is of a general nature only".

26. On 18 March 2020, and in the absence of further information, the NFF requested FIFA to confirm that the case had been transferred to the FIFA Disciplinary Committee (the "FIFA DC").

27. On 25 March 2020, the FIFA DC requested Mr Bytsanyov to provide an updated power-of-attorney duly authorising him to represent the *"creditor"*, the bank details / account number to which the amounts due by the debtor were to be paid, proof that the afore-mentioned bank details were duly notified to the relevant parties and an updated power-of-attorney authorising him to receive payments on behalf of the *"creditor"*.

28. On 27 March 2020, Mr Bytsanyov provided the FIFA DC with the requested information and documentation and shared an updated invoice that had been sent to the Club on the same day.

C. Proceedings before the FIFA Disciplinary Committee

29. On 9 April 2020, the FIFA DC informed the LFF that disciplinary proceedings had been opened against its member club Ventspils for a potential breach of Article 15 of the FIFA Disciplinary Code (2019 edition – the "FDC") / Article 64 FDC (2017 edition).

30. On 10 April 2020, Ventspils, now represented by legal counsel, informed the FIFA DC as follows:

> *"*[…] *I could not identify which the party invoking the right to enforce the* [FIFA DRC Decision] *is – i.e.,* [FC Abuja] *(which is mentioned in your notification and its attachments) or the* [NFF] *(which has provided a lawyer with a power of attorney). In other words,* ***which is the party with a direct interest in seeking enforcement of the relevant DRC decision?*** *That is a decisive preliminary issue that must be clarified before we proceed further, in view of the provision of Article 55(c) of the 2019* [FDC]*"* (emphasis in original).

31. On the same date, 10 April 2020, the FIFA DC, with reference to Article 3(3) of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), sent a reply to Ventspils informing them, *inter alia*, as follows:

> *"*[…] [W]*e confirm to the* [Club] *that the Creditor seeking enforcement of the* [FIFA DRC Decision] *is in fact the* [NFF] ***on behalf of the club*** [FC Abuja]*, as it was also stated in the TMS system under the information regarding claim 1601"* (emphasis added by the Sole Arbitrator).

32. Still on 10 April 2020, the FIFA DC again informed the LFF that disciplinary proceedings had been opened against its member club Ventspils for a potential breach of Article 15 FDC (2019 edition) / Article 64 (2017 edition), rectifying a mistake in the letter dated 9 April 2020.

33. On 14 April 2020, Ventspils sent another request for clarification to the FIFA DC requesting, *inter alia*, the following:

> *"I would be grateful if you could clarify whether the NFF is acting in the name of and "on behalf of* [FC Abuja]*" (as you stated in your email dated 10 April 2020) or NFF is acting on its behalf and in its name (as one could imply from your reference to Article 3.3 of Annex 4 RSTP). That is a decisive preliminary issue that must be clarified before* [the Club] *could proceed with its position.*
>
> *Your email dated 10 April 2020 did not shed light on this issue.*
>
> *Should you sustain that NFF is acting "on behalf of* [FC Abuja]*" and not on its behalf and in its name, then* [the Club] *respectfully asks the Disciplinary Department to close the proceedings based on Article 55(c) of the 2019* [FDC]*".*

34. On the same date, 14 April 2020, the FIFA DC requested the following information from the NFF:

> *"Inform us of the current status of the club* [FC Abuja] *(i.e. club bankrupt and disappeared, or undergoing bankruptcy proceedings, or affiliated to the association but not participating, or disaffiliated, etc). In this regard, please provide us with the relevant documentation to prove the club's status.*
>
> *Confirm to us, in accordance with the abovementioned status of the club* [FC Abuja]*, whether the* [NFF] *is acting in the current disciplinary proceedings in the federation's own name and behalf in order to claim the amounts that would be due to the club* [FC Abuja] *or, on the contrary, the* [NFF] *is acting in the name and on behalf of the club* [FC Abuja]*".*

35. On 17 April 2020, the NFF informed the FIFA DC as follows:

> *"*[FC Abuja] *lost its affiliation with* [NFF] *due to disbandment. I hereby attach a request from NFF (Annex 1) where the Federation asked FIFA to deactivate the club's account. At the moment it is easy to check that the account was not re-activated.*
>
> *Please also take into account the fact that* ***NFF acts on its own behalf in this case and not on behalf of*** **[FC Abuja]***"* (emphasis added by the Sole Arbitrator).

36. On 21 April 2020, Ventspils provided the FIFA DC with its written response to the NFF's claim, containing the following prayers for relief:

> *"1. To render the new request filed by the* [NFF] *inadmissible.*
>
> *2. Alternatively, to reject the new request filed by the* [NFF]*".*

37. On 25 May 2020, a Single Judge of the FIFA DC (the "FIFA DC Single Judge") rendered her decision (the "Appealed Decision") in which the NFF's claim was upheld as follows:

> *"1. The* [Club] *is found guilty of failing to comply in full with the* [FIFA DRC Decision]*, according to which it was ordered to pay:*

To [FC Abuja]*, and consequently to the* [NFF] *further to the disaffiliation of* [FC Abuja]:

EUR 87,616.43 *within 30 days of the date of notification of the decision plus 5% interest p.a. on said amount as of 9 June 2017 until the date of effective payment;*

CHF 2,000 *as costs of the proceedings.*

To FIFA:

CHF 6,000 *as costs of the proceedings.*

2. *The* [Club] *is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the present decision.*

3. *The* [Club] *is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the* [NFF] *and to FIFA.*

4. *If payment is not made to the* [NFF] *and proof of such a payment is not provided to* [FIFA DC Secretariat] *and to the* [LFF] *by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the* [Club]. *Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the* [LFF] *and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the* [FIFA DC] *or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the* [Club] *– first team and youth categories –. The* [Club] *shall be able to register new players, either nationally or internationally, only upon the payment to the* [NFF] *of the total outstanding amount. In particular, the* [Club] *may not make use of the exception and the provisional measures stipulated in article 6 of the* [FIFA RSTP] *in order to register players at an earlier stage.*

5. *As a member of FIFA, the* [LFF] *is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the* [LFF] *does not comply with this decision, the* [FIFA DC] *will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.*

6. *The* [Club] *is directed to notify the* [FIFA DC Secretariat] *as well as the* [LFF] *of every payment received".*

38. The grounds of the Appealed Decision were notified to Ventspils on 25 June 2020 and read, *inter alia*, as follows:

*"**I. Analysis of the entitlement of the NFF to act as Creditor in the disciplinary proceedings***

The Single Judge notes, firstly, that "an affected party" is entitled to request the commencement of disciplinary proceedings, as provided in art. 15 par. 2 FDC.

Moreover, the Single Judge notes that the club FC Abuja appears as Creditor in the [FIFA DRC Decision]. *However, the Single Judge notes that, further to providing proof of the disaffiliation of*

FC Abuja and in accordance with art. 3 par. 3 of Annexe 4 of the RSTP, the NFF would be entitled to receive the training compensation that in principle would be due to the aforementioned club.

In light of the foregoing, the Single Judge considers that in accordance with art. 3 par. 3 of Annexe 4 of the RSTP, the NFF is entitled to receive the amount due to FC Abuja as training compensation and, consequently, the NFF is to be considered an affected party that can request the commencement of the disciplinary proceedings, as per art. 15 par. 2 FDC.

II. Analysis of the facts in light of art. 15 FDC

The above having been established, the Single Judge notes that the terms of the [FIFA DRC Decision] *were duly communicated, amongst others, to the parties on 29 June 2018. Moreover, the Single Judge notes that the* [Club] *requested the grounds of the* [FIFA DRC Decision], *which were communicated, amongst others, to the parties on 26 November 2018. Finally, the Single Judge notes that no appeal was filed before CAS, so therefore the* [FIFA DRC Decision] *became final and binding.*

In view of what has been explained […] *above, the Single Judge is not allowed to analyse the case decided by the* [FIFA DRC Single Judge] *as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the* [Club] *complied with the final and binding* [FIFA DRC Decision].

As the [Club] *did not comply with the* [FIFA DRC Decision], *and is consequently withholding money from the Creditor, it is considered guilty of non-complying with a financial decision, under the terms of art. 15 of the FDC.*

III. Summary

In view of the foregoing, the Committee concludes that the [Club], *by its conduct as described above, violated art. 15 of the FDC.*

Therefore, the Committee considers that the [Club] *is to be sanctioned for the aforementioned violations.*

IV. The determination of the sanction

With regard to the applicable sanctions for the present case, the Committee observes in the first place that the [Club] *is a legal person, and as such it can be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.*

The fine to be imposed under the above-referenced art. 15 par. 1 a) of the FDC in combination with art. 6 par. 4 of the FDC shall range between CHF 300 and CHF 1,000,000.

The [Club] *withheld the amount unlawfully from the Creditor. Even FIFA's attempts to urge the* [Club] *to fulfil its financial obligations failed to induce it to pay the total amount due. In view of all the circumstances pertaining to the present case and by taking into account the outstanding amount*

due, the Single Judge regards a fine amounting to CHF 15,000 as appropriate. This amount complies with the Committee's established practice.

In application of art. 15 par. 1 b) of the FDC, the Single Judge considers a final deadline of 30 days as appropriate for the amount due to be paid to the Creditor.

In accordance with art. 15 par. 1 c) of the FDC, the [Club] *is hereby warned and notified that, in the case of default within the period stipulated, a transfer ban (at national and international level) will be automatically imposed until the complete amount due is paid.*

[…]*".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 15 July 2020, Ventspils lodged an appeal against the Appealed Decision and this pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2020) (the "CAS Code"), naming FIFA as the sole respondent and requesting a sole arbitrator to be appointed.

40. On 22 July 2020, FIFA indicated that it agreed to submit the present matter to a sole arbitrator.

41. On 20 August 2020, the Club filed its Appeal Brief, in accordance with Article R51 of the CAS Code.

42. On 24 August 2020, the Club informed the CAS Court Office that it would not ask for a hearing and that this would be taken into account in determining the advance of costs to be paid.

43. On 30 October 2020, FIFA filed its Answer, in accordance with Article R55 of the CAS Code.

44. On 3 November 2020, the Club requested an opportunity to respond to *"FIFA's position, evidence, and inappropriate and disrespectful language used in the Answer either through a hearing or by granting a second round of written submissions".*

45. On 6 November 2020, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the Parties were informed that the arbitral tribunal appointed to decide the present matter was constituted by:

Sole Arbitrator: Mr Wouter Lambrecht, Attorney-at-Law in Barcelona, Spain

46. On 9 November 2020, FIFA indicated that it did not consider it necessary to hold a hearing.

47. On 18 November 2020, Ventspils clarified that the main reason to request a hearing or a second round of written submissions was *"FIFA's bad faith"*, as it considered FIFA's submissions regarding *res judicata* to be inconsistent with FIFA's position in other similar cases and that such was not a part of the Appealed Decision. The Club also submitted that FIFA's arguments on the interpretation of Article 3(3) of Annexe 4 FIFA RSTP were new. Later,

Ventspils withdrew its request for a hearing, but maintained its request for a second round of written submissions.

48. On 19 November 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to grant Ventspils the possibility to file a Reply to FIFA's Answer, limited to i) the issue of *res judicata*; ii) the interpretation of Article 3(3) of Annexe IV FIFA RSTP; and iii) Ventspils' willingness to pay the training compensation.

49. On 26 November 2020, Ventspils' filed the following requests for production of documents:

> *"- All working documents concerning the amendment and transformation of Article 19 of the 2001 RSTP into Article 3.3 of Annex 4 of the 2015 RSTP (e.g., minutes of the relevant FIFA committee(s) meeting(s) and/or the FIFA Congress and the various documents distributed by FIFA to its members (e.g., circular(s));*
>
> - *All working documents concerning the amendment of Article 3.3 of Annexe 4 of the 2005 RSTP in the edition 2012 of the RSTP (e.g., minutes of the relevant FIFA committee(s) meeting(s) and/or the FIFA Congress and the various documents distributed by FIFA to its members (e.g., circular(s), except Circular 1327 of 2 November 2012, which the Appellant already has);*
>
> - *All formal decisions related to training compensation and solidarity contribution issued by the DRC in the period from the enacting of the 2005 RSTP to the date of enforcement of the 2012 RSTP, which form "the established jurisprudence of the DRC" mentioned in Circular 1327, page 3, lit. A(i), which has prompted FIFA to amend the rule once more in the 2012 RSTP.*
>
> *As the legislator, FIFA should have those materials. FIFA's working documents are relevant to the historical/purposive interpretation of Article 3.3 of Annex 4 RSTP (cf. CAS 2017/O/5264, 5265 & 5266, para. 208 et seq.)".*

50. On 26 November 2020, FIFA requested that Ventspils' request for production be dismissed, submitting that i) Ventspils had failed to make such requests in its Appeal Brief as a consequence of which its request was late and inadmissible, noting that the interpretation of Article 3(3) of Annexe 4 FIFA RSTP was already addressed in the Appeal Brief; that ii) Ventspils' request was overly broad and vague; and that iii) Ventspils had failed to prove the relevance of its request to the present proceedings.

51. On 27 November 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had rejected Ventspils' request for production of documents, holding as follows:

> *"Consequently, the Sole Arbitrator has decided to reject the* [Club's] *requests for production of documents, because (i) the request for production of documents is made late and no exceptional circumstances were presented that would allow for an exception to Articles R51 para. 2 and R56 CAS Code, and (ii) because the* [Club] *failed to establish the relevance of the requests made".*

52. On the same date, 27 November 2020, Ventspils filed its Reply in accordance with the instructions of the Sole Arbitrator.

53. On 11 December 2020, FIFA filed its Rejoinder in accordance with the instructions of the Sole Arbitrator.

54. On 23 December 2020, FIFA and the Club returned duly signed copies of the Order of Procedure to the CAS Court Office, thereby, *inter alia*, confirming that no hearing would be held and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

55. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by Ventspils and FIFA. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties during the proceedings irrespective of whether or not a specific reference is made to them in the following summary.

A. Ventspils' Appeal Brief

56. Ventspils submitted the following requests for relief in its Appeal Brief:

> *"1. Set aside and annul the decision issued on 25 May 2020 by a member of the FIFA Disciplinary Committee in case Ref. No. 200497.*
>
> *2. Declare inadmissible the request filed by the Nigerian Football Federation to the FIFA Disciplinary Committee on 18 March 2020 in connection with the decision issued on 26 June 2018 by the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber in case TMS 1601.*
>
> *3. Dismiss all charges against FK Ventspils.*
>
> *4. Annul all sanctions imposed by FIFA on FK Ventspils.*
>
> *5. Order FIFA to bear all costs incurred with the present procedure.*
>
> *6. Order FIFA to pay FK Ventspils a contribution towards its legal and other costs in an amount to be determined at the discretion of the Sole Arbitrator".*

57. In support of its Appeal Brief, Ventspils has, in essence, submitted that:

- The NFF's first request for enforcement dated 10 April 2019 was (implicitly) considered inadmissible by FIFA by means of its letter dated 2 May 2019, in which FIFA indicated that in order to establish the possible entitlement of the NFF to receive training compensation, a new petition would have to be presented in accordance with art. 9 par. 1 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") ("the First Request for Enforcement"). The NFF did not appeal this letter from FIFA.

- Once the NFF's claim with the FIFA DRC was left undecided, the NFF filed a second request for enforcement on 18 March 2020, based on which the FIFA DC opened disciplinary proceedings against the Club ("the Second Request for Enforcement").

- While Ventspils challenged i) the admissibility of the Second Request for Enforcement based on the principle of *res judicata*; and challenged ii) the NFF's entitlement to execute the FIFA DRC Decision instead of FC Abuja, the Single Judge of the FIFA DC failed to address the Club's arguments in that she did not address the arguments related to *res iudicata* and only summarily addressed the Club's argument relating to the NFF's lack of standing to seek execution of the FIFA DRC Decision.

(i) As to the argument of Res judicata

- At the time of filing the Second Request for Enforcement, no new FIFA DRC decision had been issued in favour of the NFF even though such a decision was required as indicated in FIFA's letter dated 2 May 2019.

- Since the NFF did not bring forward any new elements that could sustain its request to re-open the disciplinary proceedings against the Club, the FIFA DC had to consider the Second Request for Enforcement inadmissible due to the *res judicata* effects.

- *Res judicata* because FIFA's letter dated 2 May 2019, indicating that a new decision of the FIFA DRC would be necessary to establish the possible entitlements of the NFF, was not appealed to the CAS notwithstanding that this FIFA letter was a final and binding decision.

- The FIFA letter dated 2 May 2019 was a final decision as it affected the legal situation of the NFF and this, irrespective of whether FIFA had *animus decidendi* when issuing its letter.

(ii) As to the NFF's lack of standing to execute the FIFA DRC Decision

- Neither Article 64 FDC (2017 edition) nor Article 15 FDC (2019 edition) contain any specification that would allow the list of persons entitled to request the enforcement of FIFA DRC decisions to be extended to third parties (such as associations, as in the present case). It is a recognised practice of the FIFA DC that only the original creditor, party to the proceedings before the FIFA DRC, is entitled to request the enforcement of the relevant decision.

- Equally, in proceedings conducted according to Article 64 FDC (2017 edition)/Article 15 FDC (2019 edition), the FIFA DC, like any enforcement authority, cannot review or modify the substance of a previous decision or resolution of FIFA's deciding bodies. The scope of the proceedings is to ensure that the debtor (named in the decision) pays the amount owed to the creditor (named in the decision) and, eventually, where needed, to impose a sanction on the debtor for his failure to comply with a final and binding decision.

- A narrow approach concerning the entitlement to initiate proceedings under Article 64 FDC (2017 edition)/Article 15 FDC (2019 edition) is perfectly justified, also considering the practical consequences that an extensive interpretation of said article would lead to. In particular, the FIFA DC would be compelled to conduct, in circumstances like the one at stake, extensive assessments and reviews concerning the facts as well as to the law. It would require an assessment of which law would apply to the issue of the validity of the assignment, and relevant provisions of applicable foreign law would have to be applied. Such evaluations and examinations concern matters of private international law and international civil procedure and would entail severe and considerable efforts for FIFA, which would be disproportionate and unreasonable for the FIFA DC to be compelled to deal with, in addition to which that it would go beyond the FIFA DC's scope of competence.

(iii) As to the Interpretation of Article 3(3) of Annexe 4 FIFA RSTP

- Considering its wording, the intent of the legislator as reflected, amongst others, in the regulatory context in which the article in question is located and its historical background, Article 3(3) of Annexe 4 FIFA RSTP (2015 edition) cannot be interpreted as a legal provision that assigns FC Abuja's claim to the NFF.

- The words "to receive" and "in the meantime" contained in Article 3(3) of Annexe 4 FIFA RSTP are considered particularly important to correctly interpret said article.

- Analysing the historical background of this article, it must be concluded that, as the right to training compensation was both born and claimed by FC Abuja while it was still active and affiliated to the NFF, its right cannot be assigned to the NFF pursuant to Article 3(3) of Annexe 4 FIFA RSTP. Holding the opposite would violate the rights of FC Abuja's creditors, which is in *"liquidation"* and is *"not removed from the trade registry,"* whilst it would also violate the applicable national laws, not only on the assignment of claims, but also on enforcement, insolvency, and bankruptcy, which take precedence over the FIFA rules and regulations.

- It was up to FC Abuja and its creditors to follow through and decide whether they would continue to pursue the claim, would waive it or would let it extinguish, as it was confirmed by FIFA in its letter dated 8 February 2019.

- Consequently, Ventspils's liability to pay training compensation for the Player ended on 8 February 2019 at the latest, and the NFF does not have standing to enforce the FIFA DRC Decision instead of FC Abuja via the FIFA DC.

B. FIFA's Answer

58. FIFA submitted the following request for relief in its Answer:

"a) rejecting the requests for relief sought by the Appellant;

b) confirming the Appealed Decision;

c) ordering the Appellant to bear the full costs of these arbitration proceedings".

59. In support of its Answer, FIFA has, in essence, submitted the following:

(i) As to the argument of Res judicata

- Keeping in mind relevant CAS jurisprudence, it is evident that there is no *res judicata* in the case at hand since the FIFA letter dated 2 May 2019 cannot be considered i) a judgment or a decision and even if so; ii) it was not a decision on the merits; iii) it was not final and binding; and iv) it did not contain any "dispositive" part that could trigger the effects of *res judicata*.

- FIFA never declared the First Request for Enforcement inadmissible. What FIFA did in said letter was inform the NFF that before opening disciplinary proceedings against the Club, the FIFA DRC would have to establish the possible entitlement of the NFF over FC Abuja's credit.

- As can be seen from its content, the FIFA letter of 2 May 2019 was of mere informative nature, and it did not contain any ruling on the requests made by the NFF. Therefore, it cannot be considered a decision.

- The FIFA letter of 2 May 2019 i) did not decide whether the NFF was entitled to receive the amounts due to FC Abuja; but ii) neither did it deny the NFF's request to transfer the case to the FIFA DC. In other words, it did not enter nor analyse the claim of the NFF and, thus, it did not decide anything on the merits. On the contrary, the NFF was informed that, before opening disciplinary proceedings, "a new petition" to establish the possible entitlement of the NFF needed to be presented. This is quite different from ending the proceedings or declaring a request inadmissible.

- By means of its letter of 27 January 2020, FIFA considered that the execution of the original FIFA DRC Decision with reference TMS 1601 could continue and that the claim of the NFF could be disregarded as intrinsically linked to the FIFA DRC Decision. Ventspils accepted the continuation of case TMS 1601 by not appealing the FIFA letter of 27 January 2020 which referred to the continuation of said execution proceedings.

(ii) As to the NFF's alleged lack of standing to execute the FIFA DRC Decision and interpretation of Article 3(3) of Annexe 4 FIFA RSTP

- It shall be recalled that on 24 January 2019, Ventspils wrote to FIFA that *"our concern is that we are afraid to pay to the wrong entity"* and that *"[w]e want to make the payment under You[r] safe approval and guidance in order to avoid any risks"*. The FIFA DC resolved this perceived risk in the Appealed Decision by clarifying that it was the NFF who was the ultimate and correct beneficiary of the FIFA DRC Decision. However, instead of

paying the amounts provided therein, the Club, who had indicated they were willing to pay, decided to appeal the Appealed Decision before the CAS relying on unfounded arguments.

- Ventspils' interpretation of Article 3(3) of Annexe 4 FIFA RSTP is a bold one and is not supported by its literal wording.

- Article 3(3) of Annexe 4 FIFA RSTP is abundantly clear by stating that i) the association will **receive** the training compensation, ii) if its beneficiary club, iii) ceased to participate in organized football and/or no longer exists. Nothing more, nothing less. Said provision applies directly to the case at hand, as the NFF has been able to prove that FC Abuja is no longer affiliated to the NFF and does not participate in organized football anymore. Contrary to what the Club alleges, the notion *"in the meantime"* in Article 3(3) of Annexe 4 RSTP does not refer to the *"the period before the date of the event giving rise to the right "to receive" training compensation"*.

- Applying the historical interpretation method to Article 3.3 of Annexe 4 FIFA RSTP, there is no indication that an association would only be entitled to training compensation if the club no longer existed at that moment in time when the event *"giving rise to receive training compensation"* occurred.

- According to a systematic interpretation, the notion *"in the meantime"* is not and should not be given any special or relevant meaning and such a systematic interpretation does not support the interpretation that the Club draws from its wording. For example, in the Spanish and French versions of the same article, the phrase *"in the meantime"* does not appear.

- In accordance with a teleological interpretation, it is irrelevant whether FC Abuja was disaffiliated either before or after the training compensation arose. What is important is that what cannot be paid to a club anymore, be used by the association in favour of development and training programs.

- Objectively, Article 3(3) of Annexe 4 FIFA RSTP is clear by stating that the association should **receive** the training compensation if it can prove that the initial beneficiary club no longer exists or is disaffiliated.

- The Club's interpretation is also not supported in legal doctrine.

C. Ventspils' Reply

60. The Club's Reply, in essence, may be summarised as follows:

(i) As to the argument of Res judicata

- FIFA interprets its own letters depending on how it suits its position. The same FIFA letter, depending on FIFA's interest, can either be of mere informative nature or a

final and binding decision vested with *res judicata* effects when such would serve FIFA's interests. In this respect, it is notable that whilst FIFA submits that its letter dated 2 May 2019 is a letter of mere informative nature, FIFA states that *"the Appellant accepted the continuation of case TMS 1601 by not appealing the Letter of 27 January 2020"*.

- The prevailing opinion in CAS jurisprudence differs from FIFA's stance, and determines that the form of communication has no relevance, in that a communication is qualified as a decision if it contains a "ruling" either intending or capable of affecting the legal situation of the addressee, entailing the creation or suppression of a right by the authority in question.

- The FIFA letter dated 2 May 2019 should be deemed a decision as it was issued as an answer to the NFF's First Request of Enforcement. This FIFA letter implied that the NFF's First request for Enforcement was not admissible because the NFF was invited to file a new claim with the FIFA DRC for it to establish the NFF's possible entitlements.

- Faced with the FIFA Letter dated 2 May 2019, Mr Bytsanyov made two procedural mistakes. First, he did not file a new request on behalf of his client FC Abuja to enforce the FIFA DRC Decision upon receiving the letter dated 2 May 2019, which he was entitled to do. Second, he did not appeal the letter dated 2 May 2019 before CAS, although he had the right to do so on behalf of FC Abuja.

- Even though the FIFA letter dated 2 May 2019 did not contain a ruling on the merits, the Swiss Federal Tribunal (the "SFT") and CAS jurisprudence hold that decisions on admissibility can also be appealed.

- FIFA contradicts itself when it claims that the FIFA letter dated 2 May 2019 *"did not put an end to the procedure"*, as in this letter FIFA refused to commence proceedings to enforce the FIFA DRC Decision in favour of the NFF since it told the NFF to submit a new claim with the FIFA DRC to obtain a new decision. Notably, in line with such letter, the NFF submitted a new claim and the FIFA DRC opened new proceedings which were registered as TMS 4337. Hence, unlike what FIFA says, an eventual FIFA DRC decision in the case TMS 4337 in favour of the NFF, and its possible execution, would not result in the continuation of the proceedings registered under TMS 1601 and the enforcement of the FIFA DRC Decision.

- FIFA's argument that *"the Player's Status Department considered that the original procedure (TMS 1601) could continue and disregarded the new petition of the NFF"* deserves special attention. In fact, FIFA erred when it opted to revive case TMS 1601 since in doing so FIFA acted contrary to the FIFA letter dated 2 May 2019 and the principle of *venire contra factum proprium*. However, this issue is moot since the above is not why the FIFA DC decided to open disciplinary proceedings against Ventspils and which finally led to the Appealed Decision. The reason for opening a new disciplinary procedure was the Second Request for Enforcement of the NFF. This clearly shows from the Appealed Decision which states that *"On 18 March 2020, the Creditor* […] *requested the*

Disciplinary Committee to act accordingly in application of Article 15 FDC". The only submission filed by the NFF to FIFA on 18 March 2020 was the Second Request for Enforcement.

(ii) As to the alleged willingness to pay training compensation

- Ventspils understands that FIFA's allegation is not related to the question of preclusion and admissibility of the appeal but constitutes a far-fetched attempt to create the impression that the Club is violating the principle of *venire contra factum proprium*.

- In doing so, FIFA goes beyond responding to the Club's appeal and is seeking to file a counterclaim, circumventing the CAS Code, by claiming that the Club was allegedly willing to pay training compensation.

- As FIFA did not provide any legitimate reason why said element was not presented during the proceedings leading to the Appealed Decision, the Sole Arbitrator should render FIFA's argument inadmissible. Ventspils challenged the Appealed Decision exactly because it disagrees with FIFA's assessment that the NFF is *"the correct beneficiary"* of the training compensation under the Appealed Decision.

(iii) As to interpretation of Article 3(3) of Annexe 4 FIFA RSTP

- FIFA suggests that the Sole Arbitrator should adopt a reading that would render the expression *"in the meantime"* redundant or without legal effect, which would be contrary to the principle of effectiveness. Based on dictionaries, the period *"in the meantime"* ends with the occurrence of a particular event. Even if one would adopt the broadest most advantageous interpretation for FIFA, the period has a clear and absolute end date of two years given that this is the statute of limitation set forth in Article 25(5) FIFA RSTP.

- The First Request for Enforcement was filed on 10 April 2019, way after the expiry of the statute of limitation.

- The reference in Article 3(3) of Annexe 4 FIFA RSTP to the notion *"in the meantime"* would make sense and would be legally sound if it is interpreted in such a way as to refer to the period when the training compensation *"in principle would be due"* in theory but not in practice, i.e. after the player left the training club and before the training compensation "is due" in practice. Hence, the training club's existence at the time the training compensation "is due" is the decisive factor to see whether an association can or cannot exercise its subsidiary right contained in Article 3(3) of Annexe 4 FIFA RSTP.

- Since FC Abuja was active on 22 February 2016, claimed training compensation on 1 June 2017 and received the FIFA DRC Decision on 26 June 2018, i.e. after the expiry of the statute of limitation, when FC Abuja was still active, the Sole Arbitrator should

conclude that the NFF was not legally entitled to claim training compensation, let alone would it be entitled to enforce the FIFA DRC Decision for its own benefit implying that the Appealed Decision should be set aside without further considerations.

- Alternatively, as to the historical interpretation of Article 3(3) of Annexe 4 FIFA RSTP as proposed by FIFA, FIFA did not submit any "working documents" whatsoever and even refused to produce such evidence following the Club's explicit request thereto. The Sole Arbitrator should infer that such "working documents" would be adverse to FIFA's interests in that the rule contained in Article 3(3) of Annexe 4 FIFA RSTP never provided the possibility for an association to receive training compensation after it was already claimed by the relevant club, as in the present case.

- As to the systematic/purposive interpretation of Article 3(3) of Annexe 4 FIFA RSTP, the French version of the FIFA RSTP does include the word *"entre-temps"*, which literally translates as *"in the meantime"*. In any event, the English text of the FIFA RSTP is authoritative.

- Article 3(3) of Annexe 4 FIFA RSTP does not and cannot be applied to proceedings instigated based on Article 15 FDC (2019 edition). There is no such precedent in FIFA and CAS practice. Once the right to receive training compensation is born for the club, it is impossible to transfer said right to the national association under the current FIFA rules, nor during the "debt recognition" proceedings when considering the principle of *tempus regit actum*, let alone at the stage of "debt enforcement", as FIFA did in this case at hand and this only to help the NFF.

D. FIFA's Rejoinder

61. FIFA's Rejoinder, in essence, may be summarised as follows:

(i) As to the argument of Res judicata

- At no point did FIFA dismiss the First Request for Enforcement. The Club erroneously concludes that the FIFA letter dated 2 May 2019 rejected once and for all the NFF's claim. A procedural direction (i.e. to file a new claim before assessing the NFF's petition) does not constitute a complete rejection. There is nothing in the FIFA letter dated 2 May 2019 that could make someone suppose that FIFA would not entertain the NFF's First Request for Enforcement if the latter complied with FIFA's procedural directions. If this were the intention of FIFA, it would simply have stated that the NFF's request was inadmissible altogether or that FIFA would not appear to be in a position to entertain the NFF's request. The NFF's First Request for Enforcement was decided on 27 January 2020 and not on 2 May 2019. Since the letter of 2 May 2019 was not a decision on admissibility, it could never produce *res judicata* effects.

- Ventspils' argument that *"FIFA has never officially notified NFF of the* [FIFA DRC Decision]*, and that the* [FIFA DRC Decision] *has never intended to produce legal effects vis-à-vis NFF"* is completely new and shall be rejected as it is out of the scope of the framework set by the Sole Arbitrator in the CAS Court Office letter dated 19 November 2020.

- In any case, it is irrelevant for whom the FIFA DRC Decision was to produce effects at the time of its notification, since the legal effects vis-à-vis the NFF were produced at a later stage, when FC Abuja was disaffiliated from the NFF.

- Contrary to the FIFA letter of 2 May 2019 (which only contained procedural directions), the FIFA letter of 27 January 2020 clearly decided that case TMS 4337 should be closed and that the decision in TMS 1601 would be sent to the FIFA DC. Therefore, in contrast to the FIFA letter dated 2 May 2019, the FIFA letter of 27 January 2020 can in fact be considered a formal decision which the Club did not appeal.

- Ventspils made the same procedural mistakes it accuses Mr Bytsanyov of by not appealing this "continuing letter", although it had the right to do so. By not appealing the FIFA letter of 27 January 2020, Ventspils accepted the closing of the case with reference TMS 4337 and accepted that the FIFA DRC Decision with reference TMS 1601 would be sent to the FIFA DC for follow up (therefore deciding on the NFF's First Request for Enforcement of 10 April 2019). By alleging that the case with reference TMS 1601 should remain closed, after having accepted the continuation of the procedure, the Club is acting against the principle of *venire contra factum proprium*, as it is changing its course of action in detriment to FIFA and the NFF.

(ii) As to the alleged willingness to pay training compensation

- Ventspils' reaction in its Reply is exaggerated and disproportionate, especially when FIFA only addressed this issue in two paragraphs of its Answer.

- Ventspils' statement showed a willingness to make the payment, regardless of who was the beneficiary. The Club's initial concerns to make the payment were indeed clarified.

- FIFA has the right to point out the different positions taken by the Club, which only sought to entangle a straightforward case.

(iii) As to the interpretation of Article 3(3) of Annexe 4 FIFA RSTP

- While pointing out the correct means of interpretation that are used to seek the true meaning of a provision, Ventspils overlooks that the statutes and rules of a sport organisation, such as FIFA, must be interpreted analysing the purpose sought, the interest protected as well as the intent of the legislator.

- The main – if not exclusive – driving force behind the introduction of a system of training compensation in the FIFA RSTP was the necessity to bolster youth football development, in a transformed transfer market context whereby small clubs would otherwise lose their training incentives. While the Club correctly acknowledges that the provision needs to be read as a whole, it in fact focuses on a complex interpretation of the phrases *"in the meantime"* and *"in principle"* without paying adequate attention to the rationale of the system and to the rest of the provision itself.

- Ventspils' interpretation given to Article 3(3) of Annexe 4 FIFA RSTP partly would render the article ineffective in practice and this due to a simple matter of timing: it would in fact be required that a dissolution, disaffiliation, bankruptcy, etc. of the relevant club occurs in its entirety during those few days between the moment in which the player *"has left the training club"* and the moment in which the new club has to pay compensation (normally 30 days). It is evident that this was not the intention of the FIFA legislator.

- The Club's alternative conclusion that the NFF can only claim training compensation within the statute of limitation provided by Article 25(5) FIFA RSTP is also flawed. In particular this position is unsound in light of i) a comprehensive literal interpretation of Article 3(3) of Annexe 4 FIFA RSTP and ii) the rationale of the system of training compensation described above.

- From a literal point of view, the aim of this article is to potentially encompass the right to training compensation for a national association from the moment in time in which it arises up until the moment in time in which the creditor is ultimately satisfied. "Potentially", since it is subject to the disappearance of the club otherwise entitled to it.

- Had it been the intention of the legislator to limit the entitlement for the association up until the moment in time in which it can be claimed, i.e. 2 years from the event giving rise to it, the provision would have indicated expressly that *"[a]n association is entitled to* ***claim*** […] rather than *"[a]n association is entitled to* ***receive*** […]*"* (emphasis added by FIFA). This literal interpretation acquires all the more meaning when the rationale of the system of training compensation is taken into account. Certainly not by coincidence, in its closing lines Article 3(3) of Annexe 4 FIFA RSTP expressly establishes that *"This compensation shall be reserved for youth football development programmes in the association(s) in question"*.

- When the ultimate purpose is to bolster youth football, the literal interpretation of the provision and the use of the notion *"receive"* become even clearer: in the eyes of the FIFA legislator – in cases in which the young player's training club disappears – it is more desirable to have the relevant portion of training compensation devolved to the national association, which has the duty to reserve it for youth development programs as seen above, rather than to no one at all.

- Lastly, after making flawed arguments related to the literal, historical and systematic interpretation of the provision, the Club completely forgets the teleological and objective interpretation in accordance with the rules of good faith.

V. JURISDICTION

62. The jurisdiction of CAS, which is not disputed, derives from Article R47 of the CAS Code, Article 58(1) of the FIFA Statutes edition 2019 ("the FIFA Statutes") and Articles 49 and 57 FDC.

63. Article R47 of the CAS Code provides, amongst other things, as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".*

64. Accordingly, Article 58 of the FIFA Statutes states as follows:

> *"1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*
>
> *2. Recourse may only be made to CAS after all other internal channels have been exhausted. (…)".*

65. Article 49 and 57 of the FDC edition 2019 provide as follows:

> *"Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes".*
>
> *"An appeal may be lodged with the Appeal Committee against any decision passed by the* [FIFA DC]*, unless the disciplinary measure pronounced is:*
>
> […]
>
> *e) decisions passed in compliance with article 15 of this Code".*

66. As the Appealed Decision is based on the application of Article 15 FDC, Ventspils was not required to file an appeal with the FIFA Appeals Committee and could directly appeal the Appealed Decision to the CAS.

67. It thus follows that CAS has jurisdiction to decide this matter, which is further confirmed by the Order of Procedure signed by the Parties.

VI. ADMISSIBILITY

68. Article 58.1 of the FIFA Statutes states as follows:

> *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

69. FIFA did not contest the admissibility of the Appellant's appeal.

70. The Statement of Appeal was filed on 15 July 2020, within 21 days following the notification of the grounds of the Appealed Decision on 25 June 2020. Moreover, the appeal complied with all other requirements of Article R48 of the CAS Code.

71. Consequently, it follows that Ventspils' appeal is admissible.

VII. APPLICABLE LAW

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

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

73. Article R58 of the CAS Code provides as follows:

> *"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".*

74. Article 57.2 of the FIFA Statutes states 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".*

75. The Club submits that the FDC (2019 edition) entered into force on 15 July 2019 and applies to all disciplinary offences committed following said date as well as to all disciplinary offences committed before the afore-mentioned date, subject to any milder sanction that would apply under previous rules. On this basis, the Club concludes that the potential failure of the Club to comply with the FIFA DRC Decision was committed when the FDC (2017 edition) was in force. As a result, the merits of this case fall under the FDC (2019 edition), subject to any milder sanction that would apply under the FDC (2017 edition).

76. FIFA refers to Article 57(2) FIFA Statutes and Article R58 CAS Code and submits that given that the Appealed Decision was rendered by the FIFA DC Singe Judge, the FIFA Statutes and

regulations – namely the FIFA RSTP and the FDC –, constitute the applicable law to the matter at hand and, subsidiarily, Swiss law shall be applied should the need arise to fill a possible gap in the FIFA regulations.

77. The Sole Arbitrator is satisfied with the submissions of both Parties in this respect and finds that primarily the various regulations of FIFA are applicable to the substance of the case, in particular the FDC (2019 edition), subject to potentially milder sanctions being applicable under the FDC (2017 edition), and additionally Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. Introduction

78. The issue at the centre of the dispute is whether or not Ventspils failed to comply with the FIFA DRC Decision and whether the FIFA DC Single Judge was correct in finding a breach of Article 15 FDC.

79. In this respect, the issues to be resolved by the Sole Arbitrator are the following:

i. As a preliminary issue, was the FIFA DC Singe Judge barred from adjudicating and deciding on the NFF's Request for Enforcement because of FIFA's letter dated 2 May 2019 resorting *res judicata* effects?

ii. Did Ventspils fail to comply with the FIFA DRC Decision and should it be sanctioned?

i. Was the FIFA DC Single Judge barred from adjudicating and deciding on the NFF's Request for enforcement because of a res judicata *effect of FIFA's letter dated 2 May 2019?*

80. The Parties to this dispute hold diametrically opposed views to the aforementioned question and in order to answer this question, it is useful to revisit the wording of the FIFA letter dated 2 May 2019. It is reminded that Ventspils considers that the FIFA letter dated 2 May 2019 put an end to the NFF's First Request for Enforcement, as it allegedly constituted a final and binding decision as it considered the NFF's claim inadmissible; a decision which should have been appealed by the NFF to the CAS but which was not.

81. The letter at the centre of this specific topic reads as follow:

> *"Based on the foregoing circumstances, you deem that the* [NFF] *is entitled to receive the training compensation as already decided upon in* [the FIFA DRC Decision] *(cf. art. 3 par. 3 of Annexe 4 of the Regulations on the Status and Transfer of Players).*

> *In this respect please be informed that in order to establish the possible entitlement of the* [NFF] *to training compensation, a new petition would have to be presented in accordance with art. 9 par. 1 of the Procedural Rules.*
>
> *In view of the foregoing, we kindly ask you to enter a new claim into TMS, indicating the relevant details of your claim, as well as indicating the* [NFF] *as Claimant.*
>
> *Finally, please take note that the aforementioned information is based only on the documents and information currently in our possession and is without prejudice whatsoever"* (emphasis in original).

82. As a preliminary remark, the Sole Arbitrator considers that the form of the communication is not decisive in determining whether it can be considered an appealable decision or not. As held in prevailing CAS jurisprudence, *"[t]he decisive criteria, thus, is whether or not the act in question impacts upon the legal situation of the Appellant. If that is the case (independent of what the intentions of the relevant sports organisation were), there must be access to justice for the person concerned"* (CAS 2015/A/4612, para. 52 of the abstract published on the CAS website).

83. When carefully reading said letter, the Sole Arbitrator finds that the FIFA letter dated 2 May 2019 does not, in an explicit way, determine that the NFF's First Request for Enforcement was inadmissible. This finding is also acknowledged by Ventspils, as it maintains that *"FIFA* ***implicitly*** *rendered the First Request inadmissible"* (emphasis added by the Sole Arbitrator).

84. Therefore, the Sole Arbitrator needs to analyse whether the FIFA letter dated 2 May 2019 **implicitly** rendered the NFF's request for enforcement inadmissible in a final and binding manner.

85. In this respect, the Sole Arbitrator notes that the Club relies on the following considerations of the Swiss Federal Tribunal (the "SFT") for what concerns the concept of *res judicata*:

> *"The principle of* res judicata *prohibits an identical claim that has already been decided in a final manner being reheard in a new procedure between the same parties. The judge in a new trial is bound by everything that has been decided in the operative part of the previous judgment; this is the prejudicial or binding effect (ATF 142 III 210 at 2 p. 212).* […]
>
> *Only the operative part of the judgment is vested with* res judicata. *It is sometimes necessary to refer to the grounds to determine its precise scope, in particular when the operative part merely indicates that the request is rejected (ATF 136 III 3453 at 2.1 p. 348; 121 III 474 at 4a p. 478; 116 II 738 at 2a); insofar as the factual findings and the legal grounds do not form part of res judicata, the grounds do not bind the judge (Françoise Bastons Bulletti, in CPC Online, note of October 5, 2016, in Judgment 4A_696/2015). Thus, the factual findings and the legal grounds do not form part of* res judicata *and as such do not bind the judge in a new procedure (ATF 123 III 16 rec. 2a; 121 III 474 at 4a p. 478).* […]
>
> *In principle, only a final judgment to the merits has the force of* res judicata. *When a procedure ends with a judgment declaring a claim inadmissible, the* res judicata *effect of this judgment is limited to the condition of admissibility that had been discussed and found to be defective (ATF 134 III 467 at 3.2 p.*

469; 127 I 133 at 7a p.139; judgments 4A_394/2017 of December 19, 2018 at 4.2.2; 4D_88/2014 of March 25, 2015 at 3)" (SFT 4A_536/2018, paras. 3.1.1 – 3.1.2).

86. The Sole Arbitrator fully endorses this approach of the SFT and notes that, whilst the Club infers from said considerations that the FIFA letter dated 2 May 2019 should be afforded *res judicata* effect, the subsequent paragraph in the same SFT decision actually points towards a different conclusion:

> *"The first Award of 2016 is a final decision to the merits in so far as it definitively rejects the claim for payment of the commission of EUR 400'000 provided for in Art. 2(a)-(bb) of the contract. It also constitutes a procedural judgment in so far as it refuses to enter into the merits of the claim based on Art. 2(b), for lack of sufficient interest. The use of the verb "dismiss" (reject; no. 1 of the operative part of the 2016 Award; cf. also para. 55 of the Award under appeal) to define the overall fate of the first request filed on June 10, 2015, cannot be misleading with respect to the nature of the decision relating to the declaratory conclusion. The reasons that led to the refusal to rule on the conclusion here – as presented in the Award under appeal, which the Appellant does not dispute on this point – leave no room for doubt (cf. ATF 115 II 187 at 3b in fine p. 191). However, such an inadmissibility decision did not preclude a new claim requesting the payment of a sum of money"* (SFT 4A_536/2018, para. 3.3.2).

87. Simply put, in the above-mentioned case, the SFT held that a declaratory judgment in a first CAS proceedings declaring a request inadmissible did not preclude the possibility to introduce a new claim requesting payment of a sum of money in second proceedings before CAS.

88. Hence, even if the Sole Arbitrator would follow the Club's position, in that the FIFA letter dated 2 May 2019 implicitly declared the NFF's claim inadmissible – which by no means is certain as said letter does not contain any explicit statement in this respect – such decision on admissibility would not have precluded a second request by the NFF seeking to be paid an amount of money and thus an adjudication on the merits (provided the new request is admissible).

89. In any case, the Sole Arbitrator considers that the FIFA letter dated 2 May 2019 is clear in that it does not *"definitely reject"* the claim of the NFF. Conversely, said letter leaves open whether the NFF may be entitled to the amount of training compensation awarded to FC Abuja. In fact, in its letter, FIFA merely suggested the NFF to file a new claim before the FIFA DRC, so as to examine whether the NFF would be entitled to FC Abuja's credit. If it would have been the intention of FIFA to *"definitely reject"* the NFF's request for enforcement of the FIFA DRC Decision, there would have been no such referral nor invitation and FIFA would not have concluded the letter with the statement that *"the aforementioned information is based only on the documents and information currently in our possession and is without prejudice whatsoever"*. As such, the Sole Arbitrator considers that the filing of a new claim by the NFF with the FIFA DRC, as requested by FIFA, is and was to be seen as a pre-condition for the admissibility of the NFF's request for enforcement. The FIFA letter dated 2 May 2019 was hence without prejudice to any future decision of FIFA once the NFF had filed a new petition with the FIFA DRC.

90. In fact, after the filing of a claim with the FIFA DRC, FIFA informed the NFF as follows on 27 January 2020:

> *"After having analysed the documentation submitted by you via the TMS in the above-mentioned matter, it appears that the present matter is intrinsically linked to the case with reference number TMS 1601, between* [FC Abuja] *and the* [Club]. *In said matter, the Single Judge of the sub-committee of the* [FIFA DRC] *already passed a decision on 26 June 2018.*
>
> *Considering that your petition, submitted in TMS on 16 June 2019 with the reference number TMS 4337, contains the same facts and prayers for relief as the case already decided upon by the Single Judge of the sub-committee of the* [FIFA DRC] *on 26 June 2018, we regret to inform you that our deciding bodies do not appear to be in a position to deal with the present matter. Consequently, we will proceed with the closure of the case with reference number TMS 4337.*
>
> *Notwithstanding the above, please be informed that we will proceed to submit the* [FIFA DRC Decision] *to the Disciplinary Committee of FIFA.*
>
> *Finally, please take note that all of the above-mentioned information, based on the documentation at our disposal, is of a general nature only".*

91. Notably, the above letter dated 27 January 2020 (decision) was issued prior to the NFF's letter dated 18 March 2020, which Ventspils considers to be the NFF's "Second Request for Enforcement". This is relevant for two reasons.

92. First, FIFA already decided to refer the matter to the FIFA DC before the NFF allegedly made such "Second Request for Enforcement", proving that FIFA's letter dated 17 January 2020 was actually premised on the NFF's "First Request for Enforcement" dated 10 April 2019.

93. Second, the Sole Arbitrator finds that the NFF's letter dated 18 March 2020 cannot be qualified as a request for enforcement. In fact, in its letter dated 18 March 2020, the NFF refers to FIFA's letter dated 17 January 2020 and indicates that *"Due to the fact that we still have not received notice of the opening of disciplinary proceedings, we ask you to confirm the transfer of the case to the Disciplinary Committee"*, which the Sole Arbitrator considers to be a mere enquiry as to the status of the proceedings, rather than a (second) request for enforcement. This, according to the Sole Arbitrator, establishes that FIFA's letter dated 27 January 2020 was mistakenly premised on the NFF's letter dated 18 March 2020, as indicated in para. 4 of the Appealed Decision.

94. Accordingly, after the NFF did as it was instructed to do as per the FIFA letter dated 2 May 2019, i.e. after complying with the pre-condition set by FIFA, FIFA analysed the situation and considered it appropriate to forward the NFF's "First Request for Enforcement" to the FIFA DC after all, which subsequently adjudicated and decided on the NFF's "First Request for Enforcement", holding that:

"However, the Single Judge notes that, further to providing proof of the disaffiliation of FC Abuja and in accordance with art. 3 par. 3 of Annexe 4 of the RSTP, the NFF would be entitled to receive the training compensation that in principle would be due to the aforementioned club.

In light of the foregoing, the Single Judge considers that in accordance with art. 3 par. 3 of Annexe 4 of the RSTP, the NFF is entitled to receive the amount due to FC Abuja as training compensation and, consequently, the NFF is to be considered an affected party that can request the commencement of the disciplinary proceedings, as per art. 15 par. 2 FDC".

95. The Sole Arbitrator finds that although, with the hindsight of time, the instruction contained in FIFA's letter dated 2 May 2019 inviting the NFF it to file a new claim with the FIFA DRC may appear superfluous, it did enable FIFA to obtain a better understanding of the situation at hand, based on which it finally forwarded the NFF's request for enforcement to the FIFA DC on its own initiative, i.e. without a "Second Request for Enforcement" being made. The Sole Arbitrator considers that such "process" does not contradict the content of FIFA's letter dated 2 May 2019. Indeed, FIFA's letter dated 2 May 2019 refers to the *"possible entitlement of the* [NFF] *to training compensation"*, thus explicitly leaving open the possibility that the NFF would be entitled to the relevant amount.

96. Consequently, unlike what Ventspils has submitted, the Sole Arbitrator finds that the FIFA DC Single Judge was not barred from adjudicating and deciding on the NFF's Request for Enforcement because the FIFA letter dated 2 May 2019 did and does not render *res judicata* effect.

97. In similar fashion, the FIFA letter dated 27 January 2020 does not resort *res judicata* effects since it does not contain a decision on the NFF's entitlements. Rather, the letter seems contradictory in that it states that *"FIFA cannot deal with the petition as it contains the same facts and prayers for relief as the case already decided upon by the Single Judge of the FIFA DRC"* whilst at the same it states, *"please be informed that we will proceed to submit the* [FIFA DRC Decision] *to the Disciplinary Committee of FIFA"*, leaving open the question by whom such decision may be enforced.

ii. Did Ventspils fail to comply with the FIFA DRC Decision and should it be sanctioned?

98. Having determined that neither the FIFA letter dated 2 May 2019, nor the FIFA letter dated 27 January 2020 resort *res judicata* effect, the Sole Arbitrator must address whether Ventspils violated Article 15 FDC as held by the FIFA DC Single Judge in the Appealed Decision.

99. In order to answer the above question, it seems desirable to recall the wording of Article 15 FDC (headed *"Failure to respect decisions"*), which provides as follows:

> *"1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS:*

a) will be fined for failing to comply with a decision; in addition:

b) will be granted a final deadline of 20 days in which to pay the amount due or to comply with the non-financial decision;

c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.

[…]*".*

100. Keeping in mind the wording of Article 15 FDC, the operative part of the FIFA DRC Decision provides, *inter alia*, as follows:

> *"The* [Club] *has to pay to* [FC Abuja] ***within 30 days*** *of the date of notification of this decision, the amount of EUR 87,616.43, plus 5% interest p.a. on said amount as of 9 June 2017 until the date of effective payment"* (emphasis in original).

101. The operative part of the Appealed Decision provides, *inter alia*, as follows:

> *"The* [Club] *is found guilty of failing to comply in full with the* [FIFA DRC Decision]*, according to which it was ordered to pay:*
>
> *To* [FC Abuja]*, and consequently to the* [NFF] *further to the disaffiliation of* [FC Abuja]:
>
> ***EUR 87,616.43*** *within 30 days of the date of notification of the decision plus 5% interest p.a. on said amount as of 9 June 2017 until the date of effective payment;*
>
> ***CHF 2,000*** *as costs of the proceedings.*
>
> *To FIFA:*
>
> ***CHF 6,000*** *as costs of the proceedings".*

102. A plain reading of the above shows that the FIFA DRC Decision designates FC Abuja as Ventspils' creditor (and not the NFF) whist Article 15 FDC provides for the possibility to impose sanctions should Ventspils not correctly pay the designated creditor as per the FIFA DRC Decision. At the same time, the above referenced also shows that the NFF only appears for the very first time in the Appealed Decision, issued by the FIFA DC, as Ventspils' creditor.

103. In this respect, it should be noted that the tasks to be performed by the FIFA DC are limited and that such tasks are of purely vertical nature, i.e. the FIFA DC must verify whether Ventspils failed to comply with its obligations as a(n) (indirect) member of FIFA by not paying another person a sum of money even though instructed to do so by a FIFA body and this

pursuant to a decision which has become final and binding, and if indeed so, impose the proportionate sanction.

104. In fact, the FIFA DC Single Judge described this limited framework in which she operates accurately in the Appealed Decision:

> *"In view of what has been explained* […] *above, the Single Judge is not allowed to analyse the case decided by the* [FIFA DRC Single Judge] *as to the substance, in other words, to check the correctness of the amount ordered to be paid, but has as a sole task to analyse if the* [Club] *complied with the final and binding* [FIFA DRC Decision]*".*

105. As such, keeping in mind the limited power of the FIFA DC, in that it could only analyse whether Ventspils complied with the FIFA DRC Decision, the Sole Arbitrator needs to analyse whether such limited power encompassed the possibility for the FIFA DC Single Judge to also designate anew the credit previously assigned and awarded to FC Abuja by means of the FIFA DRC Decision. In other words, should the FIFA DC have limited itself to review whether Ventspils correctly paid FC Abuja as per the FIFA DRC Decision or could the FIFA DC Single Judge, as she effectively did, first decide that the correct creditor was not FC Abuja but the NFF, due to FC Abuja's disaffiliation, and then review whether Ventspils had correctly paid the NFF.

106. According to the Sole Arbitrator, the answer to the above question depends on whether there is a legal basis for this two-step approach.

107. When analysing the above question, one must take into account, as previously mentioned, that the scope of assessment of the FIFA DC is very limited in nature since the only power installed on the FIFA DC Single Judge pursuant to the FDC was to review whether Ventspils has failed to pay another person (*"such as a player, a coach or a club"*) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision).

108. Having carefully considered this question, the Sole Arbitrator did not find any article in said regulations that gave the FIFA DC Single Judge the possibility to designate a new creditor when undertaking such limited assessment, nor does Article 3.3 of Annexe 4 FIFA RSTP, as inferred by FIFA, serve such purpose (*cfr. infra*).

109. Lacking any regulatory basis that enables the FIFA DC Single Judge to re-assign and designate a creditor anew, the Sole Arbitrator finds that the Appealed Decision violates the principle of legal certainty, i.e. it was not predictable for Ventspils that it could be sanctioned for failing to pay the NFF a sum of money, while the FIFA DRC Decision required it to pay such sum of money to FC Abuja.

110. As held in established CAS jurisprudence:

> *"*[…] *[C]AS jurisprudence requires, for a sanction to be imposed, that sports regulations proscribe the misconduct with which the subject is charged, i.e. nulla poena sine lege (principle of legality), and that the*

> *rule be clear and precise, i.e. nulla poena sine lege clara (principle of predictability). As a matter of course, CAS panels have held that sports organizations cannot impose sanctions without a proper legal or regulatory basis and that such sanctions must satisfy a predictability test. See CAS 2001/A/330 at para. 17, CAS 2007/A/1363 at para. 16, CAS 2008/A/1545 at paras. 93-97, CAS 2014/A/3516 at para. 104, CAS 2014/A/3832 & 3833 at paras. 84-86"* (CAS 2017/A/5086, para. 149).

111. Consequently, the Sole Arbitrator holds that Appealed Decision runs counter with the principle of *ultra vires* and must thus be considered invalid and be set aside (cfr. CAS 2010/A/2401).

112. Moreover, the Sole Arbitrator does not consider this lack of a valid legal basis to be a mere *lacuna* for the reasons set out below.

113. Firstly, it should be reminded that FIFA DRC decisions regarding training compensation disputes settle horizontal disputes between two football clubs. The NFF was not a party to the proceedings leading to the FIFA DRC Decision and the FIFA DRC, adjudicating the claim of FC Abuja, purely acted as an adjudicatory body without a direct interest in the underlying horizontal dispute.

114. Horizontal disputes have been defined as follows in legal doctrine:

> *"Horizontal disputes do not affect the actual membership sphere, i.e. the participation rights of a member in the co-management of the federation's affairs or the usage rights of an individual member with respect to the association's facilities. Instead, horizontal disputes originate in a legal relationship amongst individual members"* (HAAS U., Standing to Appeal and Standing to be Sued, in BERNASCONI/RIGOZZI (Eds.), International Sports Arbitration, 6th CAS & SAV/FSA Conference Lausanne 2016, Editions Weblaw, p. 77).

> *"*[…] [O]*ne can distinguish between so-called "horizontal" and "vertical" disputes. Horizontal disputes concern disputes between two (direct or indirect) members, e.g. two football clubs, where the association passes a judgment as a kind of internal judge or as an adjudicatory mediator. If such a decision is contested by one of the two members, the legitimate interest in the proceeding is not directed against the association, but primarily against the other association's member. Although the association has a reasonable interest that its statutes and regulations apply properly, this interest cannot be compared with the interest of the other member or with the interest of the association regarding a challenge of an association's resolution in a vertical dispute, e.g. by issuing a doping sanction"* (BERNASCONI/TRUNZ, Standing to Appeal in Proceedings before CAS, in BERNASCONI/RIGOZZI (Eds.), International Sports Arbitration, 6th CAS & SAV/FSA Conference Lausanne 2016, Editions Weblaw, p. 96-97).

115. Since no appeal was lodged against the FIFA DRC Decision, it became final and binding.

116. The FIFA DRC Decision, once it became final and binding, had the legal effect of transposing FC Abuja's claim into a legally enforceable title and credit and, at the same time, into a debt

for Ventspils (*Cfr. CAS 2012/A/2754 for what concerns the nature of a FIFA DRC decision and the difference between a recognition of debt vis-a-vis enforcement procedures*).

117. Unless exceptional circumstances arise, such as for instance in case of a legal succession, only the creditor itself, *in casu* FC Abuja, can freely dispose of such title and credit.

118. This is confirmed both in legal doctrine, as well as in CAS jurisprudence:

> *"Finally, it should be noted that an association's competence when deciding horizontal disputes is very different from the powers exercised in vertical disputes. The association only intervenes in horizontal disputes if the claim is brought before its association tribunal by one of the members. Thus, it cannot alter the relationship between the parties ex officio, but only intervenes upon a specific request of the parties. In addition – and very different from vertical disputes – once the association tribunal has exercised its (adjudicatory) function, the association's powers are at an end. In other words, as soon as the association (through its association tribunal) has exercised its jurisdictional powers, the only remaining persons entitled to freely dispose of the claim underlying the decision are the members. The association can neither amend nor lift or correct its previous decision once issued (nor the underlying claims). Given this – limited – power of the association when intervening in horizontal disputes the association is not the correct obligor against whom the challenge should be directed"* (HAAS U., Standing to Appeal and Standing to be Sued, in BERNASCONI/RIGOZZI (Eds.), International Sports Arbitration, 6th CAS & SAV/FSA Conference Lausanne 2016, Editions Weblaw, p. 84).

> *"*[…] [T]*he Parties being bound by a bilateral contract under which the Parties' rights and obligations have not been assigned or taken over in any manner by a third party, the Respondent owns the corresponding contractual obligations and hence is the only person against whom the Appellant can seek to enforce them. FIFA, on the other hand, does not own any of the contractual rights or obligations in dispute and therefore has no standing"* (CAS 2013/A/3278, para. 59 of the abstract published on the CAS website).

119. The Sole Arbitrator adheres to such interpretations and finds that once the FIFA DRC Decision was issued (and became final and binding) in what concerns a horizontal dispute, FC Abuja disposed of a legally enforceable title and credit and, consequently, FC Abuja was the sole entity entitled to dispose of such title and credit in whatever way it deemed fit. Consequently, if only FC Abuja was entitled to dispose of its title and credit, the FIFA RSTP or FDC do not and cannot contain a *lacuna* in this respect.

120. Secondly, the finding that the regulations do not contain a mere *lacuna* is further strengthened when keeping in mind that the exact opposite situation, namely the liquidation of a debtor, as opposed to that of a creditor, is indeed correctly dealt with in Article 15 (4) of the FDC, in that it provides *"that the sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned"*. The existence of a clear wording for the "opposite" situation, strengthens the Sole Arbitrator's finding that the FDC do not contain a *lacuna* for what concerns the case under review.

121. Moreover, FIFA's contention that *"the ultimate purpose is to bolster youth football"* and that *"in the eyes of the FIFA legislator – in cases in which the young player's training club disappears – it is more desirable to have the relevant portion of training compensation devolved to the national association, which has the duty to reserve it for youth development programs as seen above, rather than to no one at all"*, albeit very laudable, is, at least for the case at hand, based on the wrong premise that such credit would no longer be due to FC Abuja, as set out below.

122. The mere fact that FC Abuja is no longer affiliated to the NFF does not mean that FC Abuja automatically lost its title and credit as established by the FIFA DRC Decision. In fact, the Sole Arbitrator is convinced that any such finding, linked to the mere disaffiliation of a club, would set a dangerous precedent as it would undermine the rights of the disaffiliated legal entity holding such title or that of its own creditors.

123. Whereas the legal status of FC Abuja following its disaffiliation is not entirely clear, in that during the CAS and FIFA procedure reference was made to the notions *"disbandment"*, *"liquidation"*, *"the club having moved locations"* and *"FC Abuja still being registered with its local register of commerce"*, the Sole Arbitrator finds that there is insufficient evidence on file to conclude that FC Abuja no longer exists. Also in case FC Abuja would have entered into liquidation following its disaffiliation, still in such case the FIFA DC cannot reassign the credit to a third party, since in such cases a court appointed administrator, in managing the assets and liabilities of the creditor's estate, should be able to obtain the remaining assets, titles and credits of the club, as may be contained in either FIFA DRC, FIFA PSC decisions or CAS awards, in order to distribute the credits stemming from such titles, if any, amongst the creditors of the entity undergoing bankruptcy and/or liquidation proceedings.

124. In managing the creditor's estate, FC Abuja and/or its Court-appointed administrator have different options at their disposal and this irrespective of whether FC Abuja is still affiliated to the NFF. For example, nothing precludes FC Abuja (or its Court-appointed administrator) from:

- trying to enforce its credit and title foreseen in the FIFA DRC Decision via other means, such as for example through civil courts.

- trying to execute the FIFA DRC Decision via FIFA's private enforcement mechanism, even following FC Abuja's disaffiliation from the NFF, a possibility which should not *de facto* be ruled out keeping in mind that i) an enforcement procedure as per the FDC is a (natural) continuation of the procedure before the FIFA DRC; ii) the FDC, in general, nor article 15 FDC specifically, limit the personal scope of application of whom can seek enforcement of FIFA or CAS decisions vis-à-vis FIFA members; nor iii) does the FDC define when FC Abuja's standing to sue (seek enforcement) must be assessed.

- Disposing of it in a different way (*infra*).

125. The above considerations are important because they evidence that the assumption according to which if a club is disaffiliated it would be desirable to have the relevant amount devolved to the national federation, is legally incorrect, in that the disaffiliation of a club does not *per se*

lead to the club no longer being able or entitled to claim such amounts, whilst, the same considerations also undermine the interpretation given to Article 3.3 of Annexe 4 FIFA RSTP by FIFA and the FIFA DC Single Judge.

126. In fact, the Sole Arbitrator considers that Article 3.3 of Annexe 4 FIFA RSTP, as advanced by FIFA, does not provide for a valid legal basis to take the Appealed Decision; aforementioned article reading as follows:

> *"An association* ***is entitled to receive*** *the training compensation which in principle would be due to one of its affiliated clubs, if it can provide evidence that the club in question – with which the professional was registered and trained – has in the meantime ceased to participate in organised football and/or no longer exists due to, in particular, bankruptcy, liquidation, dissolution or loss of affiliation. This compensation shall be reserved for youth football development programmes in the association(s) in question"* (emphasis added by the Sole Arbitrator).

127. The Sole Arbitrator finds that this provision does not cover the case under review, as it neither implicitly nor explicitly refer to a loss of credit nor to an assignment of a credit. At the same time, the Sole Arbitrator concurs with Ventspils that the association's right to receive *"training compensation which in principle would be due to one of its affiliated clubs"* must refer to a specific point in time when the credit would in principle be due to one of its member club but where it has not yet been recognised in a (final and binding) decision.

128. In other words, the Sole Arbitrator finds that Article 3.3 of Annexe 4 FIFA RSTP does not, for the obvious reasons set out above, contemplate the situation in which a (final and binding) decision has been issued in a horizontal dispute between two clubs. Rather said articles applies to the situation that exists prior to a decision being rendered by FIFA, the so-called (pre-) adjudication phase, as it deals with the question who is entitled to receive the amount in the first place and who, if necessary, can claim the amount of training compensation in front of FIFA when the due payment is not forthcoming. Once a claim for training compensation (or solidarity contribution) is recognised in favour of a club, Article 3.3 of Annexe 4 FIFA RSTP can no longer be invoked by associations.

129. FIFA's submissions of how the notion *"entitled to receive"* differs from the notion *"to claim"* and that thus the notion *"to receive"* would encompass the situation of the case under review is a contention that cannot be followed. More precisely, (i) such contention runs counter to the findings above, (i.e. horizontal v. vertical disputes and the question of whom may dispose of a title and credit), (ii) omits to take into account the time-limits foreseen in Article 25 (5) FIFA RSTP. The aforementioned finding is further strengthened when reading Article 2 of Annexe 5 FIFA RSTP which contains the exact same notion as it reads *"a training club is entitled to receive (a proportion of) the 5% solidarity contribution in the following cases"*, an article and wording from which the Sole Arbitrator understands that the notion "entitled to receive" must be interpreted as was done in the preceding paragraph.

130. Hence, when a decision is rendered by FIFA, thereby designating the party to whom an amount is *"due"* and who *"is entitled to receive"* a payment, be it the club or a federation as the case may be, as of that moment in time, FIFA can no longer cancel the credit and title of that

party during disciplinary proceedings nor can it do so without the involvement of the original designated creditor.

131. In light of all the above, the Sole Arbitrator finds that only FC Abuja was entitled to dispose of its title and credit and that lacking such disposal by FC Abuja, for example by means of an assignment of credit, the FIFA DC Single Judge was not entitled to effectively cancel FC Abuja's credit in favour of the NFF. By doing so, the FIFA DC Single Judge acted *ultra vires*.

132. The FIFA DC Single Judge had no legal basis to entertain the NFF's request for enforcement of the FIFA DRC Decision in its own name and for its own benefit and such request should have been dismissed. Moreover, the NFF could not be considered an affected party as it had no rights of its own.

133. Consequently, the Appealed Decision must be set aside.

134. The Sole Arbitrator is cognisant that this decision has an indirect impact on the NFF while it was not a party to the present appeal arbitration proceedings. However, the Sole Arbitrator considers that this is justified since the matter under review is primarily a disciplinary procedure, requiring the Sole Arbitrator to verify whether the FIFA DC Single Judge had a valid legal basis to issue the Appealed Decision and sanction Ventspils, which was not the case. Additionally, whereas this decision may indirectly have an impact on the NFF, the Sole Arbitrator observes that the Appealed Decision directly affected FC Abuja's credit and title while the latter was not a party to the proceedings before the FIFA DC Single Judge either.

135. Finally, the Sole Arbitrator wishes to point out that this case contains a very specific and unusual set of facts which he understands FIFA dealt with in the most pragmatic way whilst noting that this assessment may have been different in case FC Abuja had formally assigned its credit to the NFF, because in that case FC Abuja had freely disposed of its credit.

B. Conclusion

136. Based on the foregoing, the Sole Arbitrator holds that:

i. The FIFA DC Single Judge was not barred from adjudicating the NFF's Request for Enforcement as FIFA's letter dated 2 May 2019 does not resort a *res judicata* effect.

ii. The FIFA DC Single Judge did not have a valid legal basis to cancel FC Abuja's credit and award the same to the NFF;

iii. Consequently, the FIFA DC Single Judge acted contrary to the principle of *ultra vires*, and the Appealed Decision is to be set aside since Ventspils could not be sanctioned for its failure to comply with the FIFA DRC Decision.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 15 July 2020 by FK Ventspils against the decision issued on 25 May 2020 by the Single Judge of the Disciplinary Committee of the *Fédération Internationale de Football Association* is upheld.

2. The decision issued on 25 May 2020 by the Single Judge of the Disciplinary Committee of the *Fédération Internationale de Football Association* is set aside.

3. (…).

4. (…).

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