



Arbitration CAS 2014/A/3553 FC Karpaty v. FC Zestafoni, award of 6 October 2014

Panel: Mr Ivaylo Dermendjiev (Bulgaria), Sole Arbitrator

Football

Compensation for training

Standing to be sued

Objective of training compensation

New club in the meaning of the RSTP

Determination of training period

Early termination of training period

1. A party has standing to be sued (*légitimation passive*) and may thus be summoned only if it has some stake in the dispute because something is sought against it. Put differently, the defending party has standing to be sued if it is personally obliged by the “disputed right” at stake.
2. The RSTP, in particular the regulations concerning the payment of training compensation, reflect the importance of developing young players. Accordingly, a player’s training club shall be compensated by the player’s new club for the entire period the training club effectively trained the player between the ages of 12 and 21 subject to the factual question of whether the player’s training has in fact been completed earlier. The objective of training compensation is thus to ensure that training clubs are sufficiently compensated for the costs incurred in training their young players, with the aim of maintaining the competitive balance between clubs. Training compensation therefore plays an important role in the development of young players and in maintaining the stability and integrity of the sport.
3. According to the definition of the RSTP, the new club is the club that the player is joining. In this context, the question of which club the player is joining is an issue of fact, not of mere formality. This is because it is the club that effectively benefits from the training efforts invested by another club that should be obliged to pay training compensation. Therefore, in circumstances where formally, a player is first transferred to a “new” club with which he/she, for example, a) only stays for a very short time (e.g. 19 days) prior to being transferred to another club; b) does not play a single match during the time it is linked to the “new” club; c) the “new” club is playing in a lower league than the club where the player is ultimately transferred to, the club to which the player is ultimately transferred to is the one who has to be considered the “new” club under the RSTP.
4. The decision on whether and when the formation/training of a player has been completed has to be taken on a case-by-case basis, taking into consideration all the

circumstances and the evidence produced. For the purpose of determining the training compensation under the RSTP, the training of a player is considered to take place not only during the season but also during the entire cycle of the year including the period before the first matches of the season.

5. The burden of proof for any earlier completion of a player's training period lies with the party that is arguing the earlier completion. The FIFA Dispute Resolution Chamber and the CAS have adopted a strict approach when establishing the early completion of the player's training before the age of 21. Generally, the number of matches played by the player with his team is not per itself necessarily decisive insofar as a player could be required to play on a regular basis although his formation is not yet finished, according to the standards of other stronger teams. On the other hand, the number of matches played with the player's club's first team and the value of the player for that club have been identified in CAS jurisprudence as factors determining the earlier completion of a player's training. Further the fact that the player is (or has been) summoned to play in his country's first national team may be taken into account too.

I. THE PARTIES

1. FC Karpaty (hereinafter referred to as "Karpaty" or the "Appellant") is an Ukrainian professional football club having its seat in Lviv, Ukraine. The Appellant is affiliated with the Football Federation of Ukraine (hereinafter referred to as the "FFU") and currently competes in the Ukrainian Premier League. The FFU is a member both of the Union of European Football Associations (hereinafter referred to as the "UEFA") and of the Fédération Internationale de Football Association (hereinafter referred to as the "FIFA").
2. FC Zestafoni (hereinafter referred to as "Zestafoni" or the "Respondent") is a Georgian professional football club having its seat in Zestafoni, Republic of Georgia. The Respondent is affiliated with the Georgian Football Federation (hereinafter referred to as the "GFF") and currently competes in the Georgian Premier League. The GFF is also a member of UEFA and FIFA.

II. THE FACTS

3. This appeal was filed by Karpaty against the decision rendered by the FIFA Dispute Resolution Chamber (hereinafter referred to as the "DRC") passed on 31 October 2013 (hereinafter referred to as the "Appealed Decision"). The grounds of the Appealed Decision were notified to the Appellant on 12 March 2014.

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed on the basis of the Appellant's submissions¹, the evidence adduced to them and the parties' oral pleadings during the hearing. Additional factual background may also be mentioned in the legal considerations of the present award. While the Sole Arbitrator duly took note of all the evidence and legal arguments raised, in this award the Sole Arbitrator only refers to the submissions and evidence it considers necessary to explain his reasoning.
5. The present dispute is related to the right of the Respondent to receive training compensation and the respective amount thereof for the player M. (hereinafter referred to as the "Player"). The Player is a Georgian national born in the Republic of Georgia on 1 May 1989 and was registered with Zestafoni from 30 August 2005 until 1 January 2012 as a professional player.
6. For his first two seasons (2005/2006 and 2006/2007) the Player was mainly fielded with the second team of the Respondent. Starting from the 2007/2008 season at the age of 18 the Player began playing for the first team of Zestafoni on a more regular basis. In that season the Player took part in 10 out of 26 Championship matches and 4 out of 11 Cup matches for his club. In the following seasons the Player's statistics were as follows: season 2008/2009 - 23 out of 33 Championship matches, 4 out of 4 Cup matches, 2 out of 2 Europa League matches; season 2009/2010 - 32 out of 36 Championship matches, 3 out of 3 Cup matches, 3 out of 4 Europa League matches; season 2010/2011 - 30 out of 36 Championship matches, 4 out of 5 Cup matches, 3 out of 6 Champions' League matches.
7. The Player's participation in the season 2011/2012 was of marginal importance for his club (2 out of 36 Championship matches, 0 out of 7 Cup matches, 4 out of 4 Champions' League matches) since somewhere at the beginning of the 2011/2012 season tensions between the Player and the Respondent arose with respect to the extension of their contractual relationship as a result of which the Player was moved to the second team.
8. On various occasions during his career with Zestafoni the Player was a member of the U-17, U-19 and U-21 national teams of Georgia. Since 2008 the Player became also a member of the first national team of Georgia.
9. The football seasons in Georgia during which the Player was registered with the Respondent are as follows:
 - 2005/2006: from 31 July 2005 until 9 May 2006;
 - 2006/2007: from 29 August 2006 until 20 May 2007;
 - 2007/2008: from 10 August 2007 until 20 May 2008;
 - 2008/2009: from 14 September 2008 until 23 May 2009;
 - 2009/2010: from 2 August 2009 until 20 May 2010;
 - 2010/2011: from 15 August 2010 until 22 May 2011;
 - 2011/2012: from 7 August 2011 until 20 May 2012.
10. On 31 December 2011, the employment contract between the Player and Zestafoni expired.

¹ The late filing of the Respondent's Answer will be further explained below in the award.

11. Following a match played against Zestafoni in the qualification phase of the UEFA Europa League on 29 July 2010, the Appellant became interested in the Player and began following his performance. Further on, during the summer of 2011, the Appellant contacted the Player and also gave clear signs to the Player's representatives of its readiness to hire the Player at the end of his contractual relationship with the Respondent.
12. In August 2011, the Appellant's website and other media releases published thereafter announced that the Player and Karpaty signed a contract providing that the Player would join the Appellant as of the beginning of 2012.
13. In the first days of 2012, the Player came to Lviv, Ukraine, the home city of the Appellant. He further took part in a training camp of Karpaty held in Turkey within the period 22 January - 5 February 2012.
14. On 17 January 2012, Zestafoni wrote to Karpaty naming it the new club of the Player and demanded a training compensation for the Player in the amount of EUR 60,000 for each year the Player had spent in the Respondent's club, i.e. a total of EUR 360,000. Zestafoni grounded its request on Article 20 of the FIFA Regulations on the Status and Transfer of Players (hereinafter referred to as the "RSTP") and Annex 4 thereto. The amount of the training compensation claimed (EUR 60,000 per year) was based on the fact that Karpaty was a second category club as per the classification established by FIFA.
15. In reply to the Respondent's letter dated 17 January 2012, on 7 February 2012, the Appellant answered that, while in general it recognised its obligation to pay training compensation as provided in the RSTP, the Respondent was wrong in calculating the exact amount of such compensation. With reference to Articles 1 and 5 of Annex 4 to the RSTP, the Appellant claimed that the Player had already terminated his training before the 2008/2009 season, thus arguing that training compensation was due to Zestafoni for the following seasons only: 2005/2006, 2006/2007 and 2007/2008.
16. Further, in its letter dated 7 February 2012, the Appellant stated that as of that time a preliminary agreement between Karpaty and the Player was concluded only, while a labour contract might be concluded and registered in course of the winter registration period starting in Ukraine on 31 January and finishing on 1 March 2012 or in the course of the summer registration period when no training compensation would be due to the Respondent as the Player will have already turned 23 years old. With the latter possibility in mind, the Appellant made a counter-proposal to the Respondent which was in the following terms: (i) USD 50,000 would be paid to Zestafoni within 10 banking days counting from the signature of the labour contract with the Player and after receipt of the Player's ITC; (ii) Zestafoni would reserve 10% of a subsequent transfer of the Player to any other club to be paid within 10 banking days from receipt of the proceeds of such transfer contract in the Appellant's bank account.
17. On 10 February 2012, the Player and FC Lviv (a club of third category playing in the second ranked Ukrainian football division) signed an employment contract valid until 31 December

2013 whereby the Player would be employed by FC Lviv against a remuneration in accordance with staff prescription of the said club. This contract dated 10 February 2012 was registered with the professional football league of Ukraine on 1 March 2012.

18. On 23 February 2012, the GFF was approached by FC Lviv for the issuance of an ITC of the Player. The ITC was delivered on 24 February 2012 and received by FC Lviv on 5 March 2012.
19. On 29 February 2012, FC Lviv loaned the Player to Karpaty until 31 December 2012 pursuant to a contract dated 29 February 2012, entered into between FC Lviv, Karpaty and the Player. According to its terms, FC Lviv loaned to Karpaty 100% of the sporting rights for the Player until 31 December 2012 against a fee of UAH 6,000 (equal to appr. EUR 575), VAT included, payable by Karpaty before 1 March 2012. In addition, the parties to the contract agreed that FC Lviv would terminate the employment contract with the Player for the period ending on 31 December 2012. Accordingly, Karpaty undertook to conclude an employment contract with the Player for the same period.
20. By a supplementary agreement to the contract dated 29 February 2012 of the same date, the parties agreed that the fee for the transfer of rights under the contract would be in the amount of UAH 400,000 (equal to appr. EUR 36,700) to be paid by Karpaty by 15 April 2012 with partial payments being acceptable.
21. On the same date (29 February 2012), the Appellant and the Player concluded an employment contract valid until 31 December 2012 which was registered with FFU on 1 March 2012.
22. On 27 March 2012, the President of the GFF contacted the President of the FFU requesting the assistance of the FFU for resolving the conflict between their affiliated clubs. In essence, in his letter dated 27 March 2012, the President of the GFF described the events from the perspective of Zestafoni and expressed the view that the best way to solve the issue would be the voluntary payment by Karpaty of compensation for training and education of the Player in the amount of EUR 380,000 no later than 6 April 2012.
23. Having been provided with the letter of the President of the GFF by the FFU, on 6 April 2012, the Appellant responded to the Executive Director of the FFU and denied its obligation to pay any training compensation in relation to the Player.
24. According to a transfer contract dated 9 July 2012 entered into between FC Lviv, Karpaty and the Player, the sport and economic rights of the Player were fully transferred to the Appellant.

III. THE FIFA DISPUTE RESOLUTION CHAMBER PROCEEDINGS

25. On 25 May 2012, Zestafoni filed a petition with the DRC requesting *“that the Panel issues an arbitral award*
 - *obliging FC Karpaty to pay to FC Zestafoni the training compensation for the player M. in the amount of 380’000,00 EUR;*

- *obliging FC Karpaty to indemnify FC Zestafoni for the loss of profit in the amount of 6% per annum, as well as the inflation losses and 3% interest per annum for whole period of delay in payment of the compensation up to the moment of the effective payment;*
 - *laying disciplinary responsibility on FC Karpaty as an organizer of the transfer machination scheme;*
 - *imposing the arbitration costs in the case at stake on FC Karpaty”.*
26. In its answer dated 27 August 2012, Karpaty requested the DRC to dismiss Zestafoni’s claim on the following grounds:
- *“FC Karpaty has no standing to be sued, being not the Player’s new club;*
 - *any possible training compensation due to FC Zestafoni shall be reduced given that the Player has completed his training at the end of the 2007/2008 season, thus before his 21st birthday;*
 - *FC Zestafoni did not suffer any additional damage”.*
27. On 31 October 2013, the DRC issued its decision, partially upholding Zestafoni’s claim and ordering the Appellant to pay an amount of EUR 295,000 within 30 days as of notification of the decision.
28. After finding that it was competent to deal with the matter at stake relating to training compensation between clubs belonging to different associations, the DRC confirmed that as to the substance, the RSTP (edition 2010) was applicable to the matter.
29. The DRC decision was based on the grounds that it was Karpaty (and not FC Lviv) which had to be considered the new club of the Player in light of the provisions regarding training compensation. In this context, the DRC referred to the evidence in the file and in particular to the extract of Karpaty’s official website dated 20 August 2011 from which it inferred that the Player was, at least, in contact with the Appellant since August 2011. Furthermore, the DRC noted that the Player participated in a training camp with Karpaty in January 2012, and that the Appellant informed the Respondent in a letter dated 7 February 2012 that *“as a conclusion, training compensation is due to FC Zestafoni for the seasons 2005/2006, 2006/2007 and 2007/2008 only”*. Moreover, the DRC considered the Appellant’s confirmation that it had discussed the terms of a potential employment contract with the Player in 2011.
30. Further, with regard to one of the crucial issues in dispute, namely Karpaty’s standing to be sued, the DRC provided the following reasoning:
- “15. Furthermore, the Chamber referred to the employment contract signed between the player and FC Lviv, dated 10 February 2012, and to the loan agreement signed between the Respondent and FC Lviv, dated 29 February 2012.*

16. In this respect, the Chamber pointed out that there was a very short period of time between the moment that the player was transferred to FC Lviv and when he was loaned to the Respondent. Furthermore, the player was transferred from FC Lviv to the Respondent for a very low amount of money, i.e. 6.000 UAH (approximately EUR 575).

17. In addition, the Chamber considered that the Respondent and FC Lviv are from the same city, that FC Lviv belonged to a lower club category than the Respondent, and that the player has been playing for the Respondent ever since his loan transfer from FC Lviv to the Respondent and did not play a single match for FC Lviv.

18. In view of all the above, taking into consideration all the surrounding circumstances of this specific matter as well as the documentation presented during the present proceedings, the DRC concluded that there were numerous elements speaking in favour of a situation of circumvention of the Regulations regarding the payment of training compensation by the Respondent. Indeed, the Chamber emphasised that the fact that the Respondent, according to its own website, had already signed a contract with the player in August 2011, the fact that the player went on training camp with the Respondent in January 2012, that there was only a very short period of time between the moment that the player was transferred to FC Lviv and when he was loaned from FC Lviv to the Respondent for a very low amount, can lead to no other conclusion than that the Respondent was the new club of the player in the sense of the Regulations. Therefore, the Chamber held that the Respondent should be considered the player's new club".

31. Having found that Karpaty was the new club of the Player, the DRC referred to Article 1 par. 1 of Annex 4 in combination with Article 2 of Annex 4 of the RSTP, providing that training compensation is due to the player's former club, as a general rule, for training incurred between the ages of 12 and 21 when a player is registered for the first time as a professional before the end of the season of the player's 23rd birthday or when a professional is transferred between clubs of two different associations before the end of the season of the player's 23rd birthday. In case the latter occurs, Article 3 par. 1 sent. 3 of Annex 4 RSTP sets forth that training compensation will only be owed to the player's former club for the time he was effectively trained by that club.
32. Regarding the alternative pleading of Karpaty for reduction of the training compensation on the account that the Player had completed his training at the end of season 2007/2008, the DRC made reference to Article 1 par. 1 sent. 2 of Annex 4 RSTP which provides that training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21.
33. In this respect, the DRC emphasised that cases involving a possible early completion of a player's training period have to be analysed on a case-by-case basis, taking into consideration all the specific circumstances and all the evidence produced. Thus, in the DRC's view, several factors and indications have to be considered in order to establish whether a particular player's training has indeed been completed before the age of 21. The DRC further pointed out that both the DRC and the CAS have adopted a strict approach in establishing the early completion

of the player's training before the age of 21, so as to not jeopardize the right of training clubs to, in principle, receive training compensations.

34. In order to dismiss Karpaty's argument for earlier completion of the Player's training, the DRC noted that from the evidence produced it could be established that during the season 2007/2008 the Player had also played 5 matches for Zestafoni's second team and hence, contrary to the opinion of Karpaty, the Player was not a regular first team player during the season 2007/2008. Further, the DRC did not consider the fact that the Player was voted best player in Georgia in the 2010/2011 season as evidencing earlier completion of Player's training before his 21st birthday.
35. Having found that Karpaty was liable for payment of training compensation to Zestafoni and denying the earlier completion of Player's training, the DRC went on with determining the amount of the training compensation due. In doing so, the DRC based its calculation on the effective time of registration with the training club. Therefore, the DRC considered that Zestafoni was entitled to receive training compensation for the period as from 31 August 2005 until 31 July 2010, i.e. for a period of 59 months between the seasons of the Player's 17th and 21st birthdays.
36. Considering that Karpaty belonged to the category II (indicative amount of EUR 60,000 per year), the DRC calculated the training compensation due by Karpaty to Zestafoni in the amount of EUR 295,000.
37. The Appealed Decision with its supporting grounds was notified to the parties on 12 March 2014.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

38. On 2 April 2014 the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS") challenging the Appealed Decision. Pursuant to Article R50 of the Code of Sport related Arbitration (hereinafter referred to as the "Code"), the Appellant applied that the appeal should be submitted to a sole arbitrator considering the low level of legal complexity of the case.
39. On 14 April 2014, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.
40. By letter of 22 April 2014, Counsel for the Respondent objected to the Appellant's request for appointment of a sole arbitrator considering the considerable complexity of facts of the case and the substantial amount of money at stake. Counsel for the Respondent further requested that the time limit for the filing of its Answer be fixed after the payment by the Appellant of its share of the advance of costs in accordance with Article R64.2 of the Code.
41. On 23 April 2014, the President of the CAS Appeals Arbitration Division decided to submit the procedure to a sole arbitrator in view of the low amount in dispute and in order to reduce

the arbitration costs and the Respondent's failure to give its position regarding the numbers of arbitrators within the deadline prescribed by the CAS (such position was due by 14 April 2014).

42. By letter dated 4 June 2014, the CAS Court Office informed the parties that the Sole Arbitrator appointed to decide the case is Mr. Ivaylo Dermendjiev, attorney-at-law in Sofia, Bulgaria. The parties were served with a notice of formation of a Panel and a copy of the acceptance and statement of independence form signed by the Sole Arbitrator. The CAS Court Office further advised the Respondent that, pursuant to Article R55 of the Code, it shall file with the CAS its Answer within a time limit of 20 days of receipt of the letter.
43. By letter dated 25 June 2014, the Respondent filed its Answer. The Respondent further requested the presence of the Appellant's witness (the Player) for providing oral explanations in addition to the written ones, the latter qualified as being *"quite contradictory"*.
44. By letter dated 30 June 2014, the CAS Court office acknowledged receipt of Respondent's Answer and invited the Appellant to state whether it agreed to the admissibility of such Answer considering the fact that the deadline for filing it had expired on 24 June 2014.
45. By letter dated 7 July 2014, Counsel for the Respondent expressed his preference for holding a hearing *"since both parties have stated that the witness M. shall participate in the proceedings and be examined"*. Counsel for the Respondent did not specify any exceptional circumstances for the late filing of the Answer and rather attributed it to a miscalculation of time limits and misunderstanding.
46. By letter dated 7 July 2014, Counsel for the Appellant objected to the admissibility of the Respondent's Answer and the evidence produced therewith. The Appellant further submitted that the matter can and should be decided on the sole basis of the written submissions. In this respect, the Appellant explained that it based its case almost exclusively on written evidence and that it called the Player as only witness for the mere purpose of confirming the witness statement produced with the Appeal Brief while the Respondent did not call any witness. Lastly, the Appellant stressed that given the fact that the Respondent failed to pay its share of the advance of costs it would be inappropriate for it to request holding of a hearing at the expenses of the Appellant.
47. Having considered the exchanged correspondence and the statements of the parties, by decision dated 9 July 2014, the Sole Arbitrator decided that the Respondent's Answer was belated and was therefore inadmissible, the Respondent failing to specify exceptional circumstances for the late filing. Nevertheless, the Sole Arbitrator decided to hold a hearing in order for the Respondent to still be able to make its arguments orally.
48. On 22 July 2014 the parties signed the Order of Procedure.
49. A hearing was convened and held on 21 August 2014 in Lausanne, Switzerland. The Sole Arbitrator was assisted at the hearing by Mr. William Sternheimer, Managing Counsel & Head of Arbitration to the CAS. The following persons attended the hearing:

- i. for the Appellant: Mr. Jorge Ibarrola, Counsel
Mrs. Natalie St. Cyr Clarke, Co-Counsel
- ii. for the Respondent: Mr. Ilya Skoropashkin, Counsel
Mrs. Anna Kryvovs, interpreter

50. The Player was not presented at the hearing. His witness statement will be estimated in the legal analysis section of this award taking into consideration the circumstances of the case.

V. POSITIONS OF THE PARTIES

V.1 Position of the Appellant

51. Regarding the facts, in its submissions, the Appellant asserts as follows:

- *“FC Karpaty did not enter in any formal negotiations and did not sign any preliminary agreement with the Player before the expiring of his employment relationship with FC Zestafoni on 31 December 2011;*
- *The sole purpose of the information published by FC Karpaty in the media was merely to dissuade potential competitors to enter into negotiations with the Player;*
- *The Player participated to the training camp organised in Turkey in January 2012 only to be tested by FC Karpaty;*
- *FC Karpaty renounced to the Player’s services because it failed to find a reasonable agreement with the Respondent regarding the training compensation due to the latter;*
- *Meanwhile, informed of FC Karpaty’s interest for the Player and seeing a financial opportunity, FC Lviv requested the ITC and signed an employment contract with the Player on 10 February 2012;*
- *FC Lviv and FC Karpaty are two different clubs and two different legal entities, both registered with the trade register;*
- *The two clubs found an agreement in order for the Player to play on loan for FC Karpaty;*
- *The Player was loaned to FC Karpaty for a significant amount of around EUR 40,000 (and not EUR 575);*
- *Given the amount FC Lviv would have had to pay as training compensation, this deal was indeed financially interesting for the club”.*

52. Regarding the merits, the Appellant invokes Karpaty’s lack of standing to be sued. The Appellant submits that it never tried to circumvent the FIFA regulations and that the DRC erred in considering FC Karpaty, in lieu of FC Lviv, as the Player’s new club within the meaning of Article 5(2) *in fine* of Annex 4 RSTP. As a result, the DRC erred in acknowledging the standing to be sued of the Appellant.

53. In support of its objection for lack of standing to be sued, the Appellant refers to Article 20 RSTP:

“Training compensation shall be paid to player’s training club(s): (1) when a player signs his first contract as a professional and (2) each time a professional is transferred until the end of the season of his 23rd

birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annex 4 of these regulations".

And further:

Articles 3(1) and 5(2) of the Annex 4 of the RSTP provide that:

"3 Responsibility to pay training compensation

1. *On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the player's career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday.*
(...)

5 Calculation of training compensation

- (...)
2. *Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training in principle from the season of the player's 12th birthday to the season of his 21st birthday. **In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club**" (emphasis added by the Appellant).*

54. The Appellant further relies on *"the consistent CAS jurisprudence (CAS 2008/A/1517 [...], award of 23 February 2009, § 22 and quoted references ...):*

*"(...) neither the FIFA Regulations nor the CAS Code contain any specific rule regarding the standing to be sued. Therefore, the Panel studies the definition given to the term "standing to be sued" by the CAS jurisprudence. In the case CAS 2007/A/1329-1330, the Panel ruled that "(u)nder Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (légitimation passive) if **it is personally obliged by the "disputed right" at stake (see CAS 2006/A/1206 [...]).** In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189; CAS 2006/A/1192)" (CAS 2007/A/1329-1330, pg. 5, para 27)" (emphasis added).*

55. The Appellant submits that to be legally valid, Zestafoni's claim for training compensation should have been directed against FC Lviv and not against FC Karpaty, which is not personally obliged in this case and has no standing to be sued. *"This is true, even assuming, quod non, the existence of a purported plot put in place by FC Karpaty and FC Lviv; in such case, FC Zestafoni should have directed its claim for a similar amount against FC Lviv and it would have been for the latter to cause FC Karpaty to participate in the arbitration".*

56. The Appellant argues that the Respondent cannot invoke the case CAS 2009/A/1757 where Inter Milan was convicted to have hired a player through a Maltese club in breach of the FIFA regulations on training compensation and ordered to compensate the player's former club. This is so because the standing to be sued of Inter Milan was not challenged in this case.
57. The Appellant subsidiarily supports that the DRC failed to correctly assess the training compensation due to FC Zestafoni for the Player should its objection for lack of standing to be sued be rejected.
58. In this regard, the Appellant draws attention to Article 1 of Annex 4 RSTP, emphasizing in relevant parts the following:

“Objective

*I. A player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, **unless it is evident that a player has already terminated his training period before the age of 21.** In the latter case, training compensation shall be payable until the end of the season in which the player reaches the age of 23, **but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training**” (emphasis added by the Appellant).*

59. In support of its position that the amount of matches played by the Player is relevant to the issue concerning the possible early completion of the training period, the Appellant refers to relevant CAS jurisprudence (CAS 2003/O/527, award of 21 April 2004; CAS 2006/A/1029, award of 2 October 2006). The Appellant concludes that it follows clearly from the above quoted jurisprudence and practice that if a player's training period ends **before** the season during which he plays regularly with his team, which is the “season *a quo*”, the team is no longer entitled to any training compensation for the player.
60. In order to refute the DRC's consideration on that issue, the Appellant pointed to relevant, in its view, key elements of the case and legal arguments. In the Appellant's opinion, the Player completed his training during the 2007/2008 season, thus at the end of May 2008 and he started the season 2008/2009 as a fully-trained professional player. In particular, the Appellant reminded the following facts:
 - “The number of matches played by the Player with the first team of FC Zestafoni has consistently increased;
 - During the 2007/2008 season, the Player played 38% of the championship's matches and 36% of the Cup's matches with FC Zestafoni's first team and won the cup title;
 - At that time, the Player was already a capital player of the youth national teams of Georgia;
 - Starting from the 2008/2009 season, he became a key player for FC Zestafoni's first team with which he played 70% of the championship's matches, 100% of the cup's matches and 100% of the Europa League's matches;
 - During this period, the Player was selected three times to play with the first national team of Georgia, where he played more than 77 minutes in each matches;

- *His involvement with FC Zestafoni's first team and the first national team even increased in the following years;*
 - *During the season 2010/2011, the Player was indeed considered as the best Georgian footballer".*
61. Accordingly, any possible training compensation due to Zestafoni in relation to the Player should have been calculated for the period from 30 August 2005 until 20 May 2008, *"thus for a period of 28 months"* [recte: 33 months]. Therefore, the Appellant continues, should the CAS confirm that FC Karpaty has standing to be sued in the present dispute, the Respondent may not be awarded more than EUR 165,000.
62. At any rate, the Appellant purports that the training compensation as calculated by the DRC is disproportionate and should be reduced at the discretion of the Sole Arbitrator.
63. On a principal basis, the Appellant's requests for relief are as follows:
- the appeal is upheld;
 - FC Karpaty has no standing to be sued;
 - The FIFA decision is annulled.
64. Should the CAS consider that Karpaty has standing to be sued in the present proceedings, the Appellant applies for partial annulment of the Appealed Decision to the effect that Karpaty is ordered to pay to Zestafoni an amount not exceeding EUR 165,000 as training compensation for the Player.

V.2 Position of the Respondent

65. As detailed above, the Respondent's Answer was declared inadmissible. The Respondent did not advance any exceptional circumstances for the late filing of the Answer and the Sole Arbitrator had no reason to authorize the Respondent to resubmit its Answer and evidence and/or supplement its request and argument or to produce new evidence at the hearing.
66. Notwithstanding the above, the Respondent was provided the possibility to present its arguments orally. The Respondent presented the facts of the case from its own perspective and suggested its evaluation of events. The Respondent claimed that it was entitled to receive training compensation for the Player from the Appellant since the latter should be considered as being the Player's new club in light of relevant provisions of the RSTP. The Respondent pleaded that FC Lviv registered the Player formally but that it is the Appellant only that is responsible for the payment of training compensation in view of the fact that the Player never played with FC Lviv and was loaned to the Appellant within a very short time frame after his arrival in Ukraine.
67. With respect to the Appellant's relief sought subsidiarily, the Respondent maintained that the training period of the Player with Zestafoni had not completed as of the season 2007/2008.

68. At the hearing, the Sole Arbitrator was also referred to various internet sources allegedly in support of the Respondent's position.
69. In sum, the Respondent requests that the Appealed Decision is upheld and the Appellant is ordered to pay to the Respondent training compensation in the amount of EUR 295,000 with additional financial penalty in case of failure to do so.

VI. LEGAL ANALYSIS

VI.1 Jurisdiction of the CAS

70. The jurisdiction of the CAS, which is not disputed and which has been confirmed by the parties in signing the Order of Procedure, derives from Article 67 of the FIFA Statutes.
71. It follows that the CAS has jurisdiction to decide this dispute.

VI.2 Admissibility

72. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

73. The grounds of the Appealed Decision were notified on 12 March 2014 and the Statement of Appeal filed on 2 April 2014. This was within the required twenty one days set in Article R49 of the Code and in Article 67.1 of the FIFA Statutes.
74. Furthermore, no objection has been raised by the Respondent in this respect.
75. It follows that the appeal is admissible.

VI.3 Law applicable to the merits

76. Article R58 of the Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

77. The matter at stake relates to an appeal against a FIFA decision, and reference must hence be made to Article 66.2 of the FIFA Statutes which states that:

“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”.

78. In light of the above, the fact that the parties did not refer to any specific law but only to the RSTP, the Sole Arbitrator is of the view that the law applicable to the present appeal shall be primarily the FIFA regulations and Swiss law as a subsidiary.
79. In relation to which FIFA regulations should be applicable to the present case, the Sole Arbitrator, as the DRC found in the Appealed Decision, confirms that in accordance with Articles 26.1 and 26.2 RSTP, and considering that the matter before the DRC was filed on 29 May 2012 and the Player was registered with the Appellant on 1 March 2012, the RSTP 2010 edition is applicable to the matter at hand as to the substance.

VI.4 The merits of the Appeal

80. The core principle applicable by CAS is the *de novo* principle resulting from Article R57 of the Code. According to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.
81. Based on the parties' submissions and oral argument, the issues for determination are the following:
 - a) Is Zestafoni entitled to receive training compensation?
 - b) Depending on the answer to (a) above, pursuant to the FIFA regulations, who is responsible for paying Zestafoni training compensation?
 - c) Depending on the answer to (b) above, is the amount of training compensation awarded in the Appealed Decision in accordance with the FIFA regulations?
 - d) Depending on the answer to (c) above, what is the amount of training compensation due to Zestafoni?

a) *Is Zestafoni entitled to receive training compensation?*

82. As a starting point, the Sole Arbitrator notes that the importance of developing young players is reflected in the RSTP and, in particular, in the regulations concerning the payment of training compensation. Article 20 and Annex 4 RSTP set out the system whereby a player's training club shall be compensated by the player's new club for the entire period the training club effectively trained the player between the ages of 12 and 21 subject to the factual question of whether the player's training has in fact been completed earlier.

83. The FIFA training compensation system ensures that training clubs are adequately rewarded for the efforts they have invested in training their young players. The objective of training compensation is thus to ensure that training clubs are sufficiently compensated for the cost incurred in training their young players. This concept is aimed at maintaining the competitive balance between clubs and allows them to continue training and developing players in the knowledge that they will be adequately compensated for their efforts. Training compensation therefore plays an important role in the development of young players and in maintaining the stability and integrity of the sport.
84. Article 20 RSTP provides:

“Training compensation shall be paid to a player’s training club(s): (1) when a player signs his first contract as a professional and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player’s contract. The provisions concerning training compensation are set out in Annex 4 of these regulations”.
85. Article 1(1) of Annex 4 RSTP provides:

“A player’s training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. (...)”.
86. Article 2(1) of Annex 4 RSTP provides:

“Training compensation is due when:
i. (...); or
ii. a professional is transferred between clubs of two different associations (whether during or at the end of his contract) before the end of the season of his 23rd birthday”.
87. It is not in dispute between the parties that the Player was registered as a professional with Zestafoni for the period 30 August 2005 until 1 January 2012 before he moved to Ukraine after the expiry of his contract with Zestafoni.
88. Furthermore, the Appellant does not dispute whether Zestafoni is entitled to training compensation. Rather, the Appellant contends that Zestafoni must claim such compensation from FC Lviv as the Player’s immediate club after his transfer from Georgia.
89. It is further not in dispute that Zestafoni has received no training compensation for the Player, whether from FC Lviv or from Karpaty.
90. For the present purposes, the Sole Arbitrator does not need to address the issue of whether the Respondent (the Player’s former club) has offered the Player a new contract before the expiry of his current contract within the meaning of Article 6(3) of Annex 4 RSTP in order to be entitled to receive training compensation. This is so because the said provision placed under

the heading “Special provisions for the EU/EEA” is inapplicable in the present dispute since the interested parties are not from EU/EEA countries.

91. It therefore follows that Zestafoni is entitled to training compensation from the Player’s new club after leaving Zestafoni in the beginning of 2012.

b) Pursuant to the FIFA regulations, who is responsible for paying Zestafoni training compensation?

92. Article 3(1) of Annex 4 RSTP provides:

“3. Responsibility to pay training compensation”

1. On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the player’s career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club”.

93. On the other hand, Article 5(1) and (2) of Annex 4 RSTP provides:

“5 Calculation of training compensation

1. As a general rule, to calculate the training compensation due to a player’s former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself.

2. Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the season of the player’s 12th birthday to the season of his 21st birthday. In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club”.

94. Articles 3(1) and 5(1) and (2) RSTP read in combination with Article 2(1)(ii) of Annex 4 RSTP, providing that training compensation is due when a professional is transferred between clubs of two different associations (whether during or at the end of his contract) before the end of the season of his 23rd birthday, leave no doubt that the new club with which the player is registered is responsible for the training compensation to his former club for the time he was effectively trained by that club.

95. The Appellant asserts that the new club of the Player is FC Lviv with which the Player entered into a contractual relationship on 10 February 2012 and was only loaned to Karpaty on 29 February 2012.

96. On the contrary, the Respondent avers that the registration of the Player with FC Lviv was only a formal one and the legal connection between them was fabricated only to avoid payment of the training compensation by Karpaty and to circumvent the FIFA regulations.

97. It is clear from the parties' assertions that the core issue for determination is the establishment of which club the Player transferred to after leaving Zestafoni and if Karpaty has standing to be sued in the present case.
98. As properly noted by the Appellant, according to the CAS jurisprudence and Swiss law, applicable pursuant to the FIFA Statutes and to Article R58 of the Code, a party has standing to be sued (*légitimation passive*) and may thus be summoned only if it has some stake in the dispute because something is sought against it (CAS 2006/A/1189; CAS 2006/A/1192; CAS 2007/A/1329 & CAS 2007/A/1330; CAS 2007/A/1367; CAS 2008/A/1517; CAS 2008/A/1518). In other words, the defending party has standing to be sued if it is personally obliged by the "disputed right" at stake (CAS 2006/A/1206; CAS 2008/A/1468; CAS 2008/A/1517; CAS 2008/A/1518).
99. In that respect, it is necessary to determine if Karpaty has some stake in the dispute because something is sought against it and it is thus personally obliged by the "disputed right".
100. The Sole Arbitrator is of the opinion that it is necessary to explore if the Appellant is the new club of the Player as per the meaning ascribed to this term in the RSTP and as such is obliged to pay training compensation to the Respondent.
101. According to the definition in the RSTP, the new club is *the club that the player is joining*. In that regard, the Sole Arbitrator deems it appropriate to note that in his view such joining is an issue of fact, not of mere formality.
102. The Sole Arbitrator recalls here the relevant facts and highlights some serious inconsistencies in the chain of events laid forth by the Appellant.
103. Following a match played against Zestafoni in the qualification phase of the UEFA Europa League on 29 July 2010, the Appellant became interested in the Player and began to closely follow his performance. As acknowledged by the Appellant, somewhere in the summer of 2011 it gave clear signs to the Player's representatives of its readiness to hire the Player at the end of his contractual relationship with the Respondent.
104. In August 2011, the Appellant's website announced that the Player and Karpaty signed a contract providing that the Player would join the Appellant as of the beginning of 2012. A photo of the Player and official of the Appellant holding the club's jersey with number 88 designated for the Player was uploaded on the club's website. The Appellant's explanation that the publications on its website and other media were released only as a precaution measure in order to exclude potential competitors for the Player's signature is not convincing. At the very least, it appears that the Appellant was in close contact with the Player with a view to attract him once the contract of the Player with Zestafoni would expire on 1 January 2012.
105. In his witness statement, the Player confirms that he refused to extend his contract with Zestafoni because of the Appellant's interest to sign him shown in the summer of 2011. At the

same time, the witness explains that he had no direct contacts with the Appellant. The witness statement does not give much detail on how and under what circumstances the Player was approached by FC Lviv. The Sole Arbitrator notes that, contrary to what was stated in the Appeal Brief, the Appellant did not summon the Player to orally confirm the contents of his statement, or enable the Sole Arbitrator to question and/or seek clarification. On its own, the Player's witness statement cannot prove on a balance of probability that the Player did not have an agreement with Karpaty already before his contract with Zestafoni had expired. The Sole Arbitrator cannot give any weight to the Player's sole written statement, especially as he is still employed by the Appellant.

106. In a contemporaneous statement, the Appellant admits the fact that *"up to this moment preliminary agreement between FC Karpaty and footballer M. is concluded (...)".* Therefore, the Appellant admitted to the Respondent that it had concluded a (preliminary) agreement with the Player even before the employment contract between FC Lviv and the Player dated 10 February 2012 was entered into.
107. In the beginning of 2012, the Player left Zestafoni and moved to Lviv, Ukraine, the home city of the Appellant. The Player further joined a training camp of Karpaty held in Turkey within the period 22 January - 5 February 2012. Thus, his pre-seasonal preparation and training was exclusively connected with Karpaty.
108. Following the receipt of the Respondent's letter of 17 January 2012 claiming training compensation for the Player, the Appellant answered on 7 February 2012 (i.e., after the training camp in Turkey) that *"we are not refusing the obligation to pay the training compensation to the club which has been involved in training of the player as provided in the FIFA Regulations on the Status of the Players, edition 2010".* The only reservation made by the Appellant related to the amount of such compensation which in the Appellant's view should have taken into account the earlier completion of the Player's training that allegedly occurred before he reached the age of 21. The Appellant further proposed a payment plan of the training compensation due for the Player. Therefore, as of that time, the Appellant was aware of its duty to pay training compensation to the Respondent, albeit in a reduced amount.
109. On 10 February 2012, the Player and FC Lviv (a club of third category playing in the second ranked Ukrainian football division) signed an employment contract valid until 31 December 2013 whereby the Player would be employed by FC Lviv against a remuneration in accordance with unspecified staff prescription. The contract was registered with the professional football league of Ukraine on 1 March 2012. The Appellant's submissions do not shed much light on the involvement of FC Lviv with the Player and specifically how and when FC Lviv got informed of Karpaty's hesitations. As stated in the witness statement, the Player was offered a contract by that club and was promised that FC Lviv would find him a new club from the Premier league quickly. Not surprisingly, this new club turned out to be the Appellant which was willing to obtain the services of the Player since a long time ago. At any rate, the evidence in the record shows that FC Lviv, despite signing on 10 February 2012 a contract valid until 31 December 2013 (i.e. for almost two years), never foresaw to keep the Player in its squad.

110. After 19 days only, on 29 February 2012, FC Lviv loaned the Player to Karpaty until 31 December 2012 pursuant to a loan contract dated 29 February 2012, entered into between FC Lviv, Karpaty and the Player. According to its terms, FC Lviv transferred to Karpaty 100% of the sporting rights for the Player until 31 December 2012 against a fee of UAH 6,000 (equal to appr. EUR 575), VAT included, payable by Karpaty before 1 March 2012, that is before the end of the registration period. The amount of the fee seems embarrassingly low as it was agreed as a lump sum for the entire period of the contract and not as monthly remuneration.
111. By a supplementary agreement to the loan contract of the same date, the parties agreed that the fee for the transfer of rights under the loan would be in the amount of UAH 400,000 (equal to appr. EUR 36,700) to be paid by Karpaty by 15 April 2012 with partial payments being acceptable. It seems peculiar and remained unanswered for what reason the parties to the loan signed the supplementary agreement on the same date amending the amount of the fee and prolonging the originally agreed maturity date of payment. Whatever such reasons, the agreed fee (be it under the original loan contract or under the supplementary agreement thereto) is not of such considerable amount for obtaining the services of a foreign national team player. This does not fully correspond with the prospect of good financial opportunity allegedly sought by FC Lviv. Further, the payment under the supplementary agreement was executed on 11 April 2012; that is to say after the registration of the loan contract with the FFU on 1 March 2012. The Sole Arbitrator is mindful of the fact that, as of the date of payment, the parties were already in conflict regarding the training compensation for the Player.
112. On 29 February 2012, the Appellant and the Player entered into an employment contract valid until 31 December 2012 which was registered with the FFU on 1 March 2012. It is not fully comprehensible why a talented and skilled promising player would under unclear financial conditions sign a contract with a club struggling at the bottom of the second ranked Ukrainian division and suffering financial troubles and would stay there only for 19 days before moving to the Appellant's team.
113. It is not disputed that the Player did not play a single match for FC Lviv or attend training exercises ever since he signed with that club.
114. According to a transfer contract dated 9 July 2012 entered into between FC Lviv, Karpaty and the Player, the sport and economic rights of the Player were fully transferred to the Appellant for an agreed fee of UAH 900,000. No evidence was presented as to if this amount was ever transferred by Karpaty to FC Lviv.
115. The circumstances of the present case bear strong resemblance to the ones discussed in case CAS 2009/A/1757 where the respondent club was ordered to pay training compensation after having hired a player through a Maltese club in breach of FIFA regulations. The Sole Arbitrator does not find it appropriate to depart from the reasoning of the panel in that case:

“Furthermore, bearing in mind what has been said above and, in particular, since it is Inter that has benefited from the training efforts invested by MTK, it is also Inter that should be obliged to pay any sum of training compensation determined by the Panel. In this respect, Pieta Hotspurs does not appear to have benefited from

the training efforts invested by Inter because, as the record shows, the player was only registered with that club for 9 days and never even played a competitive match in Malta.

It may be noted that in certain previous cases (for example, CAS 2008/A/1521), referred to above) CAS was reluctant to oblige a new club to pay training compensation in circumstances where the new club may really not have known that it might be liable to pay training compensation in the event of the transfer of the player, for example, as the new club was not privy to any negotiations that may have taken place between the player and his previous club (see, in particular, paragraph 65 of the Award in CAS 2008/A/1521). However, the Panel considers that the present case represents a different set of circumstances and notes, in particular, that Inter has not suggested that it was unaware that it might be obliged to pay training compensation in the case of F. Indeed, the facts of the case point to the opposite conclusion.

As a related matter, the Panel also observes that it is difficult to understand why a player who is rated highly and who has captained the Hungarian under 19 team and who has attracted the attention of Inter Milan should elect to move to a club in Malta and stay there for little more than a week before moving on to Italy. No doubt this unusual pattern of movement was also what the DRC had in mind when, at paragraph II.16 of its Decision, it stated as follows: “Yet the Chamber deemed it important to emphasize that should it become aware of any blatant circumvention of the regulations or that a party makes abuse of its legal rights, such stance would be severely punished”.

116. Likewise, it is Karpaty that has benefited from the training efforts invested by Zestafoni in relation to the training of the Player and thus it is Karpaty that should be obliged to pay training compensation to be determined by the Sole Arbitrator. In this respect, the Appellant failed to prove that FC Lviv has ever benefited from the training efforts in the Player since the latter was formally linked with that club for some 19 days and never played a match for it.
117. Similarly, as was the case in CAS 2009/A/1757, the Appellant has not suggested that it was unaware that it might be obliged to pay training compensation. On the contrary, before the dispute was referred to the DRC for resolution, the Appellant recognized in principle its duty to pay training compensation to the Respondent with respect to the Player, although arguing the exact amount claimed by Zestafoni.
118. Further, as reflected in the above-referred case, the Sole Arbitrator is not satisfied with the Appellant’s explanation as to why a talented skilled player who has attracted the attention of top Russian and Ukrainian clubs (as stated in the witness statement) should elect to join a second class team and to stay there for just 19 days before moving to a premier league team which happened to be exactly the Appellant.
119. The Appellant denies the applicability of the precedent in CAS 2009/A/1757 given the standing to be sued of Inter Milan was not challenged in that case. It is irrelevant if the respondent there did challenge its standing to be sued and such challenge was dismissed or the panel implied *ex officio* that Inter Milan was the right respondent and thus it had standing to be sued.
120. It therefore follows that Karpaty is liable to pay Zestafoni training compensation.

c) *Is the amount of training compensation awarded in the Appealed Decision in accordance with the FIFA regulations?*

121. Having found that Karpaty is responsible to pay training compensation to Zestafoni, it remains for the Sole Arbitrator to decide whether the training compensation awarded in the Appealed Decision is in accordance with the FIFA regulations.
122. Article 1(1) of Annex 4 RSTP provides that a player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, *unless it is evident that a player has already terminated his training period before the age of 21*. In the latter case, training compensation shall be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training.
123. Further, Article 4(1) and (2) of Annex 4 RSTP provide that in order to calculate the compensation due for training and education costs, clubs of different associations are divided into four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player. The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website (www.FIFA.com). They are updated at the end of every calendar year.
124. Under FIFA circular Nr. 1264 of 19 May 2011, which was the circular applicable when the Player joined Karpaty, the training and education costs applicable to category II clubs were EUR 60,000 per season.
125. The Appellant asserts that the Player completed his training before he reached the age of 21. In support of this assertion, the Appellant refers to: the number of matches played by the Player with the first team of FC Zestafoni in relevant periods; the participation of the Player in the national teams of Georgia; the recognition of the Player as the best Georgian footballer during the season 2010/2011. Therefore, the Appellant claims that, should the CAS confirm that Karpaty has standing to be sued, the training compensation (if any) must be determined in consideration of Player's training period having completed at the end of season 2007/2008.
126. The Respondent argues that these factors do not prove the completion of the Player's training before the age of 21 requiring reduction of the compensation.
127. In the Appealed Decision, the DRC accepted that the specific circumstances in the case do not trigger payment of reduced training compensation as a result of early completion of the Player's training period before his age of 21.
128. In particular, the DRC noted that in the season 2007/2008 the Player had played in 10 matches with the Respondent's first team, however also playing 5 matches for the Respondent's second

team in the same season. Hence, the DRC concluded that it could not be established that the Player was a regular first team player during the season 2007/2008. In addition, the fact that the Player was voted the best player in Georgia in the 2010/2011 season did not imply that his training period had been completed.

129. Article 20 and Annex 4 RSTP set out the system whereby a player's training club shall be compensated by the player's new club for the entire period the training club effectively trained the player between the ages of 12 and 21 subject to the factual question of whether the player's training has in fact been completed earlier.
130. The decision on whether and when the formation of a player has been completed has to be taken on a case-by-case basis, taking into due consideration all the circumstances and the evidence produced.
131. Pursuant to Article 12.3 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber edition 2010, "[a]ny party claiming a right on the basis of an alleged fact shall carry the burden of proof". In relation to the fact of earlier completion of the Player's training before the age of 18, the Sole Arbitrator confirms that the burden of proof lies with the Appellant.
132. The Appellant has adduced evidence to its submission demonstrating that starting from the 2007/2008 season (10 August 2007 - 20 May 2008), already at the age of 18, the Player (born on 1 May 1989) began playing for the first team of Zestafoni on a more regular basis. In that season the Player took part in 10 out of 26 Championship matches and 4 out of 11 Cup matches for his club. The Sole Arbitrator concurs with the conclusion of the DRC that such amount of matches played for the particular season (roughly one third of all the club's matches) is not sufficient to prove earlier completion of the Player's training as of that season.
133. In the following seasons, however, the Player's statistics with respect to participation in the first team matches were considerably improved. In the season 2008/2009, the Player played in 23 out of 33 Championship matches (70%), 4 out of 4 Cup matches (100%), 2 out of 2 Europa League matches (100%); season 2009/2010 - 32 out of 36 Championship matches (89%), 3 out of 3 Cup matches (100%), 3 out of 4 Europa League matches (75%); season 2010/2011 - 30 out of 36 Championship matches (83%), 4 out of 5 Cup matches (80%), 3 out of 6 Champions' League matches (50%).
134. The Player's participation in the season 2011/2012 (2 out of 36 Championship matches, 0 out of 7 Cup matches, 4 out of 4 Champions' League matches) is not indicative since as of that time the Player apparently had already been contacted by the Appellant and the Player was reluctant to extend his contract with the Respondent which obviously must have caused tension with his club as a result of which the Player was moved to the second team.
135. The Sole Arbitrator also notes that as of the 2008/2009 season, the Player began to be summoned for the first national team of Georgia and played in three games during that period.

136. The above figures were not addressed by the DRC in the Appealed Decision. The DRC ended the discussion by reference to the 2007/2008 season only when the Player was truly not a regular player of the team.
137. The Sole Arbitrator is aware of the strict approach adopted by the DRC and the CAS when establishing the early completion of the player's training before the age of 21. On the other hand, the number of matches played with the first team and the value of the player for that club have been identified in CAS jurisprudence as factors determining the earlier completion of player's training (CAS 2003/O/527 and CAS 2006/A/1029).
138. Regarding whether the Player's training was completed, the Sole Arbitrator states that the number of matches played is not per itself necessarily decisive. As a matter of fact, a player could be required to play on a regular basis although his formation is not yet finished, according to the standards of other stronger teams. In the case at hand, however, the Sole Arbitrator notes that during the relevant period Zestafoni was a Premier league team, it regularly finished on top position in the championship and played in the UEFA competitions. A team with such record, class and striving for the best results (for the standards and the level of the Georgian football) would hardly allow itself to use in its first team untrained players on a regular basis.
139. As regards the value of the Player for the club, the Sole Arbitrator is comforted with the evidence gathered and accepts that the Appellant has demonstrated that the Player was recognized by the club for having significant technical skills. Further, the Player was given non-amateur statute already since the 2005/2006 season at the age of 16.
140. Therefore, the Sole Arbitrator concludes that, considering the specific circumstances of the case, the Player had completed his training as of the beginning of the season 2008/2009 when he was regularly playing for the Respondent. Therefore, the Appealed Decision should be amended accordingly.
141. In its Appeal Brief, the Appellant maintains that according to jurisprudence and practice, a player's training period ends before the season during which he plays regularly with his team, which is the "season a quo" the team is no longer entitled to any training compensation. In the present award, the Sole Arbitrator confirmed that understanding. In contrast to its previous statement, the Appellant however claims that the Player completed his training *during the 2007/2008 season, thus at the end of May 2008*.
142. For the reasons stated above, the Sole Arbitrator already denied that the Player had completed his training in the season 2007/2008. The Sole Arbitrator finds that a player's training period ends before the season during which he plays regularly with his team and not immediately after the preceding season when he was not fully trained yet. A simple logic leads to the corollary that to achieve the status of a regular player he must have gone through some additional training during pre-seasonal preparation of the club. Therefore, it cannot be assumed that the Player completed his training at the end of season 2007/2008 (end of May 2008) when he was not a regular player. For the purposes of determining the training compensation under the RSTP, the training of a player is considered to take place not only during the season but during the entire

cycle of the year including the period before the first matches of the season. That is why the Sole Arbitrator deems it correct that *in casu* the training of the Player completed before the beginning of the 2008/2009 season (end of August 2008) when he became a regular player.

d) What is the amount of training compensation due to Zestafoni?

143. Having established that Karpaty is responsible to pay Zestafoni training compensation, the Sole Arbitrator finds that the amount of training compensation owed by Karpaty to Zestafoni for the Player's training compensation must be determined according to the exception in Article 1(1) of Annex 4 RSTP: "*A player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21 ...*".
144. In the latter case, training compensation shall not be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training.
145. In relation to the specific amount due for the aforementioned period, Article 5(1) of Annex 4 RSTP states that in calculating training compensation "*(...) it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself*". This amount is calculated by taking the training costs of the new club multiplied by the number of years of training.
146. For the reasons stated above, the Sole Arbitrator finds that the period with relation to training compensation for the Player starts on 30 August 2005 (date of registration with the Respondent) and ends on 31 August 2008 (completion of training before the 2008/2009 season) and amounts to 36 months.
147. As established above, the period during which the Player was effectively trained by the Respondent was in the range of 36 months divided in the following segments:
 - year 2005: 4 months (September to December inclusive);
 - year 2006: 12 months (January to December inclusive);
 - year 2007: 12 months (January to December inclusive);
 - year 2008: 8 months (January to August inclusive);

Total: 36 months (30 August 2005 - 31 August 2008)
148. It is not in dispute that Karpaty has been classified as a category II club by UEFA. The training costs applicable to category II clubs are EUR 60,000 per season. Therefore, training compensation due by Karpaty to Zestafoni for the Player must be in the amount of EUR 180,000 (EUR 60,000/12 = EUR 5,000 x 36 months = EUR 180,000).
149. The Appellant pleaded that the training compensation as calculated by the DRC is disproportionate and should be reduced accordingly. Of course, any compensation due in

respect of player training should not be “disproportionate”. In this connection, since the FIFA multiples are based on real training costs incurred by clubs and the calculations of the DRC are herewith modified, the Sole Arbitrator is perfectly satisfied that the award in this case complies with the relevant provisions of the FIFA regulations.

150. In view of all the above, the Sole Arbitrator finds that the Appealed Decision passed on 31 October 2013 shall be set aside, and the appeal filed by Karpaty partially upheld.
151. Karpaty is therefore ordered to pay Zestafoni a total amount of EUR 180,000 as training compensation. Since the Appealed Decision is being amended, interest from the said amount shall accrue at an annual rate of 5% with effect from thirty days upon the date of notification of the present award.
152. Any other requests submitted by the parties to the Sole Arbitrator are accordingly dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Karpaty on 2 April 2014 is partially upheld.
2. The decision of the FIFA Dispute Resolution Chamber of 31 October 2013 is set aside.
3. FC Karpaty is ordered to pay to FC Zestafoni an amount of EUR 180,000 as training compensation for the player M.
- (...)
6. All other motions or prayers for relief are dismissed.