



Arbitration CAS 2014/A/3793 Fútbol Club Barcelona v. Fédération Internationale de Football Association (FIFA), award of 24 April 2015 (operative part of 30 December 2014)

Panel: Prof. Petros Mavroidis (Greece), President; Mr Efraim Barak (Israel); Prof. Ulrich Haas (Germany)

Football

International transfer of minor players

Definition of the “association” responsible for the registration of minors under the RSTP

Obligation of the clubs to observe the ban on transfer of minor players

Principles of interpretation of a provision

Transfer of players under the age of 12

Sanctions on the clubs that reached an agreement for the transfer of a minor player

Obligation of the club to report players attending its academy

Obligation of the club to initiate and comply with the procedure aiming at obtaining an ITC

Proportionality of the sanction

1. **The FIFA Statutes, to which the FIFA Regulations on the Status and Transfer of Players (RSTP) make explicit reference, define the term “association” as “a football association recognized by FIFA. It is a member of FIFA, unless a different meaning is evident from the context”.** A regional association which is a separate entity that was established and operates under a national sport structure is not a member of FIFA and, thus, is not an “association” under the terms of the FIFA Statutes. Furthermore, the basis and the rationale of the RSTP is, *inter alia*, to govern the international transfer of players in between national federations. Therefore, the “association” that should maintain not only the responsibility, but also the actual control and the registration of minors under the RSTP is the national association and not its affiliated regional association.
2. **Art. 19 para. 1 RSTP is clear in that it, in principle, bans transfers of under-aged players. Since only clubs can initiate the process of the transfer of players, the clubs must primarily observe this ban. To underscore this point, Art. 19 para. 4 RSTP explicitly states that “associations” must ensure that clubs behave in accordance with the prescription embedded in this provision. In this respect, a club cannot attempt to hide behind the violations of the rules apparently committed by the national and the regional associations since from the beginning the club should have been aware of the simple fact that the national and the regional associations could not register the minors in any legitimate way under the RSTP. In other sectors of law, such behaviour is known as “wilful ignorance” or, more colloquially, “deliberate shutting of eyes”, and might lead to the imposition of legal responsibility to a specific way of conduct made under such circumstances.**

3. An interpreter, like a CAS panel, must privilege the interpretation that allows the various provisions in a statute to coexist, and cannot and should not interpret one provision so as to eliminate the scope of another one (*ut regis valeat quam pereat*).
4. The absence of an obligation to issue an international transfer certificate (ITC) for players below the age of 12 (Art. 9 para. 4 RSTP) does not eliminate the obligation to observe the in principle transfer ban for under-aged players (Art. 19 RSTP). Thus, players under 12 can be transferred only if the club requesting registration has proven that it complies with the requirements embedded in Art. 19 para. 2 RSTP.
5. Art. 19 para. 4 RSTP calls for the imposition of sanctions also on the clubs that reached an agreement for the transfer of a minor. As many of the international transfers of minors are made without the agreement of the players' former club, it is unreasonable to limit the applicability of Art. 19 para. 4 RSTP to cases of "agreements between clubs" only. The interpretation of the word "agreement" should be wider, and include also agreements concluded between the registering club and the player himself, his parents, agents, etc.
6. The obligation imposed by Art. 19-bis RSTP on clubs to report minors attending an academy to the relevant association is a further, and different, obligation than the one concerning the registration of the players. In other words, it cannot be considered that by registering a player a club would automatically comply also with the obligation to "report" players who are attending its academy.
7. Art. 9 para. 1 RSTP states that international transfers cannot take place without an ITC. Pursuant to Annex 3 of the RSTP, it is the new club which has to initiate the procedure aiming at obtaining an ITC, by submitting a request to the competent association, to be filed by the club by using the FIFA TMS. If the club does not initiate the procedure for the issuance of the ITC nor complies with it, it is in breach of Art. 9 para. 1 RSTP.
8. Proportionality requires a benchmark, a "comparator". Although various benchmarks are relevant, and indeed are used in various legal orders, there are three benchmarks that most legal orders agree between them that must anyway be accounted for when measuring a "proportional" sanction: the gravity of the illegal act; the power to dissuade the offender from repeating the same illegality in the future; the importance of the rule of law that is being protected.

1. THE PARTIES

- 1.1 Fútbol Club Barcelona (hereinafter also "FCB" or the "Appellant") is a Spanish multi-disciplinary sporting club based in Barcelona, well-known for its football team and affiliated

with the Real Federación Española de Fútbol (hereinafter the “RFEF”) as well as to the Federació Catalana de Fútbol (hereinafter the “FCF”)¹. FCB is currently playing in the Spanish 1st division (“Liga”). The RFEF is a member of the Fédération Internationale de Football Association (“FIFA”).

- 1.2 The Fédération Internationale de Football Association (hereinafter “FIFA” or the “Respondent”) is an international association of national and international football associations/federations, and is the governing body of football worldwide, dealing with all matters relating thereto and exercising regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players belonging to its affiliated. The FIFA is the organizing authority of all football competition for national clubs and national teams at world level, among which the “FIFA World Cup” and the “FIFA Club World Cup”. The FIFA has its seat in Zurich (Switzerland) and enjoys legal personality under Swiss law.

2. BACKGROUND FACTS

- 2.1 The background facts stated herein are a summary of the main relevant facts, as established on the basis of the parties’ written and oral submissions and of the evidence examined in the course of the proceedings. Additional facts will be presented, when warranted, in connection with the discussion of the Parties’ factual and legal submissions.
- 2.2 The facts in the present proceedings concern the international transfer and/or the registration of thirty-one under-aged (*i.e.* under 18 at the time of the transfer/registration) players of different nationalities to FCB from 2005 until 2012. There is disagreement between the Parties as for, in particular, the alleged breach by FCB of the FIFA Regulations on the Status and Transfer of Players (hereinafter the “RSTP”) when transferring/registering these players.
- 2.3 In January 2013, the Department of Integrity and Compliance of Transfer Matching System GmbH (the body in charge of supervising the compliance by the stakeholders with the use of the “Transfer Matching System”, hereinafter the “FIFA TMS”) was made aware of a potential breach committed by FCB of the RSTP with regard to the transfer of a player, namely A. (hereinafter “player 1”), registered with the FCF on 23 September 2011.
- 2.4 In view of the above, on 4 February 2013, the FIFA TMS sent a letter to the RFEF and FCB requesting information about this player. FCB provided the FIFA TMS with an answer by a letter dated 15 February 2013. In the same letter, FCB provided information about B., another player in its ranks (hereinafter “player 2”).

¹ The Federació Catalana de Futbol is the regional football association of Catalunya (one of the 17 autonomous communities composing the sovereign state of Spain), it is affiliated to the RFEF and thus performs its activities and carries out its competences under the powers conveyed to such regional federation by the relevant Spanish legislation and the statutes and regulations of the RFEF.

- 2.5 On 11 March 2013, the FIFA requested from the RFEF to provide information on all minor foreign players registered with FCB and possibly attending its academy. On 14 March 2013, the RFEF replied by stating that player 1 and player 2 were not “*registered with or authorized by*” the RFEF and, consequently, that it could not provide information on their participation in official competitions organized under its aegis.
- 2.6 On 25 March 2013, the FIFA TMS requested from the RFEF to provide additional information on player 1 and player 2, and on other players as well, namely, C. (hereinafter “player 3”), D. (hereinafter “player 4”) and E. (hereinafter “player 5”). On 1 April 2013, the RFEF replied by stating that players 1-5 were neither registered with, nor authorized to play by the RFEF, and that, accordingly, it could not provide any information/documentation on them, including information regarding their International Transfer Certificate (hereinafter the “ITC”).
- 2.7 On 6 May 2013, the FIFA TMS requested from FCB and the RFEF to provide information on the following players: players 3-5; F. (hereinafter “player 6”); G. (hereinafter “player 7”); H. (hereinafter “player 8”); I. (hereinafter “player 9”); J. (hereinafter “player 10”); K. (hereinafter “player 11”); L. (hereinafter “player 12”); M. (hereinafter “player 13”); N. (hereinafter “player 14”); O. (hereinafter “player 15”); P. (hereinafter “player 16”); Q. (hereinafter “player 17”). On 16 May 2013, the RFEF submitted to the FIFA TMS information on the registration of the players at issue.
- 2.8 On 16 May 2013, FCB provided the FIFA TMS with information on players 3-17 and on the following players: R. (hereinafter “player 18”); S. (hereinafter “player 19”); T. (hereinafter “player 20”); U. (hereinafter “player 21”); V. (hereinafter “player 22”); W. (hereinafter “player 23”); X. (hereinafter “player 24”); Y. (hereinafter “player 25”); Z. (hereinafter “player 26”); AA. (hereinafter “player 27”); BB. (hereinafter “player 28”); CC. (hereinafter “player 29”); DD. (hereinafter “player 30”); EE. (hereinafter “player 31”).
- 2.9 On 24 May 2013, the FIFA TMS requested from the RFEF to provide information about the players 18-31. The requested information was submitted by the RFEF on 30 May 2013. Meanwhile, *i.e.* in the period between February-June 2013, the FIFA TMS had been collecting information on the transfer/registration of the players referred to above from their respective national federations/associations.
- 2.10 On 1 July 2013, the FIFA Disciplinary Committee informed the RFEF and FCB that a preliminary investigation concerning the issue of the transfer/registration of the players mentioned above (1-31) had been opened. The preliminary investigation concerned alleged violations of the FIFA rules committed by both RFEF, as well as FCB. On the same date, the FIFA Disciplinary Committee also requested from FCB to provide additional information on the mentioned players. This information was submitted by FCB on 17 July 2013.
- 2.11 On 25 September 2013, the FIFA Disciplinary Committee informed FCB, via the RFEF, that disciplinary proceedings against FCB had been opened with regard to the transfer and/or registration of each one of the 31 players referred to above. FIFA claimed that various breaches

of the RSTP had been committed when transferring/registering the 31 players mentioned above to/with FCB. Separate proceedings concerning each one of the players were initially started. They were eventually consolidated into one process, in the course of which FCB was given the possibility to file briefs and explain its position with regard to the alleged breaches of the RSTP.

2.12 On 28 November 2013, the FIFA Disciplinary Committee issued its decision regarding the proceedings opened against the RFEF, holding, *inter alia*:

- “1. *La Real Federación Española de Fútbol, es declarada culpable de violaciones al art. 19 apdo. 1 y art. 19 apdo. 3 del Reglamento de la FIFA sobre el Estatuto y la Transferencia de Jugadores (RETJ), en relación, respectivamente, con la prohibición de hacer transferencias internacionales de jugadores menores de 18 años y la prohibición de registrar jugadores menores de 18 años no inscritos previamente y no naturales del país en el que se desea inscribir por primera vez;*
2. *La Real Federación Española de Fútbol, es declarada culpable de violaciones al art. 19 apdo. 4, en conjunto con los Anexos 2 y 3 del Reglamento de la FIFA sobre el Estatuto y la Transferencia de Jugadores (procedimiento para la solicitud de la primera inscripción y transferencia internacional de jugadores menores de edad) y del art. 5 apdo. 1 y el art. 9 apdo. 1 del Reglamento de la FIFA sobre el Estatuto y la Transferencia de Jugadores.*
3. *Se sanciona a la Real Federación Española de Fútbol a pagar una multa por el monto de CHF 500,000 (...)*
4. *En aplicación al art. 14 del CDF [i.e. the FIFA Disciplinary Code] se emite una reprensión en contra de la Real Federación Española de Fútbol, en vista de su comportamiento y conducta en los hechos aquí descritos.*
5. *Se concede a la Real Federación Española de Fútbol un plazo de un (1) año para regularizar el marco y el sistema regulatorio aplicable. En particular, la Real Federación Española de Fútbol debe cumplir con sus obligaciones correspondientes, de acuerdo al art. 7 par. 3 (a) del RETJ.*
6. *La Comisión decide fijar las costas y gastos en CHF 30,000, mismas que en aplicación de lo establecido en el art. 105, apdo. 1 del CDF quedan a cargo de la Real Federación Española de Fútbol (...)*”.

This decision was appealed by the RFEF before the FIFA Appeal Committee on 14 May 2014.

2.13 On 19 August 2014, the FIFA Appeal Committee issued its final decision on the appeal filed by the RFEF on 14 May 2014, dismissing its appeal and confirming the decision issued by the FIFA Disciplinary Committee on 28 November 2013.

2.14 On 28 November 2013, the FIFA Disciplinary Committee issued a decision on the proceedings opened against FCB. The operative part of the decision, notified to FCB on 2 April 2014, reads, *inter alia*, as follows:

- “1. *El club – Fútbol Club Barcelona (FCB) – es declarado culpable de violaciones del art. 19 apdo. 1 y art. 19 apdo. 3 del Reglamento FIFA sobre el Estatuto y la Transferencia de Jugadores, en relación, respectivamente, con la prohibición de hacer transferencias internacionales de jugadores menores de 18 Años y la prohibición de registrar jugadores menores de 18 años no inscritos previamente y no naturales del país en el que se desea inscribir por primera vez;*
2. *El club – Fútbol Club Barcelona (FCB) – es declarado culpable de violaciones del art. 19 apdo. 4, en conjunto con los anexos 2 y 3 del Reglamento FIFA sobre el Estatuto y la Transferencia de Jugadores (procedimiento para la solicitud de la primera inscripción y transferencia internacional de jugadores menores de edad) y del art. 5 apdo. 1, 9 apdo. 1 y 19-bis apdo. 1 del Reglamento FIFA sobre el Estatuto y la Transferencia de Jugadores.*
3. *En aplicación del art. 12 letra a) y del art. 23 del Código Disciplinario de la FIFA, se prohíbe al club – Fútbol Club Barcelona (FCB) – inscribir jugadores, tanto a nivel nacional como internacional, durante los dos (2) periodo de transferencia, completos y consecutivos, siguientes a la notificación de la presente decisión.*
4. *Se sanciona al – Fútbol Club Barcelona (FCB) – a pagar una multa por el monto de CHF 450,000 (...).*
5. *En aplicación al art. 14 del CDF se emite una reprensión en contra del club – Fútbol Club Barcelona (FCB) – en vista de su comportamiento y conducta en los hechos aquí descritos.*
6. *Se concede al club – Fútbol Club Barcelona (FCB) – un plazo de 90 días para regularizar la situación de los jugadores menores de edad en el club. En concreto, el club presentará, sin demora alguna, las debidas solicitudes ante la Sub-comisión de la Comisión del Estatuto del Jugador y ha de cumplir con todas las demás directrices de procedimiento pertinentes en relación a los casos específicos. En caso de que el club obtenga una aprobación por parte de la subcomisión para el registro/transferencia de un jugador en particular, el club estará exento de la prohibición impuesta por la presente decisión, para la transferencia/registro de dicho jugador menor autorizado al club.*
7. *La Comisión decide fijar las costas y gastos en CHF 30,000, mismas que en aplicación de lo establecido en el art. 105, apdo. 1 del CDF queda a cargo del club – Fútbol Club Barcelona (FCB) (...).”*

2.15 In reaching its decision, the FIFA Disciplinary Committee found, in particular, that:

- FCB had violated the prohibition on the international transfer of under-aged players envisaged in Art. 19.1 RSTP in nine (9) cases, namely, with respect to players 1-5, 14, 20, 27 and 30;
- FCB had violated the prohibition on the first registration of under-aged players enshrined in Arts. 19.1, and 19.3 RSTP in one (1) case, namely, that of player 31;
- FCB had violated the procedural rules set forth in Art. 19.4 RSTP, read in conjunction with Annex 2 RSTP in six (6) cases, namely those of players 1-5 and 20 and the procedural

rules set forth in Art. 19.4 RSTP, read in conjunction with Annex 3 RSTP in five (5) cases, namely those of players 1, 2, 4, 5 and 20;

- FCB had breached the provision of Art. 19-bis.1 RSTP, with regard to the obligation to report under-aged players attending an academy with a legal, financial or *de facto* link to a club to the relevant federation/association (*i.e.* “*the association upon whose territory the academy operates*”) in the cases of all thirty-one (31) players involved;
- FCB had breached the provision of Art. 9.1 RSTP, with reference to the obligation of registering players with a new association once the former association has issued an ITC with respect to six (6) players, namely players 1-5 and 20, all under-aged but over than 12 years old;
- FCB had breached the provision of Art. 5.1 RSTP for failing to register players participating in organized football with the relevant association within the meaning of “association” envisaged in the section “Definitions” (par. 2) of the FIFA Statutes, with respect to all thirty-one (31) players involved, since these players had been registered with the FCF and not with the RFEF.

2.16 On 4 April 2014, FCB informed the FIFA of its intention to file an appeal against the decision issued by the FIFA Disciplinary Committee and to request its provisional suspension.

2.17 On 11 April 2014, FCB filed an appeal against the decision with the FIFA Appeal Committee, and requested its provisional suspension. Its request to provisionally suspend the decision by the FIFA was successful. The decision issued on 23 April 2014 by the FIFA Appeal Committee ruled as much. The hearing for the remainder part of the claims presented by FCB was scheduled for August 2014, that is, almost at the end of the transfer period. Since FCB's request had won its argument and the provisional suspension of the decision was granted, it could legitimately transfer players during the transfer period of summer 2014.

2.18 On 19 August 2014, a hearing was held before the FIFA Appeal Committee for the discussion of the appeal filed by FCB. Following the hearing, the FIFA Appeal Committee issued a decision by means of which the appeal filed by FCB was dismissed. The ‘operative part’ of the decision rendered by the FIFA Appeal Committee reads as follows:

- “1. *El recurso interpuesto por el club Fútbol Club Barcelona es rechazado.*
2. *La decisión de la Comisión Disciplinaria de la FIFA tomada en fecha 28 de noviembre de 2013 es confirmada en su totalidad.*
3. *Las costas y gastos de este procedimiento en cuantía de 3,000 CHF correrán a cargo del FCB (...).”*

2.19 The full decision, where the rationale for the ‘operative part’ was reflected in full (hereinafter the “Appealed Decision”), was issued by the FIFA Appeal Committee at a subsequent stage, and notified to FCB on 3 October 2014.

3. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

- 3.1 On 28 October 2014, the CAS Court Office acknowledged receipt of the Statement of Appeal, dated 22 October 2014, filed by FCB against the Appealed Decision. In its Statement of Appeal, the Appellant had requested that the proceedings be conducted in an expedited manner, pursuant to Art. R52.3 of the Code of Sports-related Arbitration and Mediation Rules (hereinafter the “CAS Code”), and that the Parties be granted the right to file their submissions and witness statements both in English as well as in Spanish, without the need for a translation, as long as English remained the language for the conduct of the hearing. In its Statement of Appeal, FCB emphasized the importance that a decision be issued before the beginning of the “winter transfer window”, which in Spain starts on 2 January 2015.
- 3.2 On 29 October 2014, the FIFA communicated to the CAS Court Office its agreement with the request made by FCB regarding an ‘expedited’ procedure, as well as its request to file submissions and witness statements both in English and Spanish, without the need for a translation. It further agreed that the hearing should be conducted in English.
- 3.3 On 30 October 2014, the CAS Court Office confirmed to the Parties that the process would be ‘expedited’, and that they were granted the possibility to file documents both in English and in Spanish, without the need for a translation, while the hearing would be conducted in English.
- 3.4 On 3 November 2014, FCB filed its Appeal Brief with the CAS Court Office.
- 3.5 On 12 November 2014, the CAS Court Office gave notice of the formation of the Panel for the present dispute. The Panel was composed by Mr Petros C. Mavroidis as President, Mr Efraim Barak as arbitrator appointed by the Appellant and Mr Ulrich Haas as arbitrator appointed by the Respondent. No party, either at this or at any later stage, objected to composition of the Panel.
- 3.6 On 25 November 2014, the CAS Court Office acknowledged receipt of the Respondent’s Answer filed on 24 November 2014 and advised the Parties that, in accordance with Art. R56 of the CAS Code, they would, in principle, not be authorized to supplement their requests and arguments, produce new exhibits or add evidence that had not been included in the Appeal Brief or in the Answer.
- 3.7 On 27 November 2014, the CAS issued an order of procedure, which was duly signed by both Parties on 1 December 2014.
- 3.8 A hearing took place in Lausanne on 5 December 2014. The Appellant was represented and assisted by its Director, Mr Albert Soler, and by its attorneys at law Mrs Laura Anguera, Mr Juan de Dios Crespo Pérez, Mr Paolo Lombardi, Mr Augustín Amorós Martínez and Mr Enric Ripon Gonzalez. The FIFA was represented by Mr Marc Cavaliero, Mr José Rodríguez and Mr Bernardo Palmeiro. The Panel was assisted by Mr Daniele Bocucci, who acted as clerk, and Mr

Fabien Cagneux, lawyer and counsel at the CAS. At the hearing, the Appellant called on the following witnesses: Mrs Esther Balmaña Gelpí, Mr Kepa Larumbe Beain, Mr Carles Folguera, Mr Ekpolo Godswill and Mr Joseph Fabrice Ondoa. The Parties confirmed at the end of the hearing that their right to be heard and to be equally treated had been respected, as they had been given ample opportunity to present their views, submit their arguments and answer to the questions by the Panel.

- 3.9 On 22 December 2014, the CAS Court Office submitted, on behalf of the Panel, a written question to Mr Kepa Larumbe Beain (Legal Director of the RFEF, who had appeared as witness at the hearing before the Panel). The question aimed to clarify information that had been submitted during the hearing regarding the Spanish regulation and practice as far as Arts. 5 and 19-bis RSTP were concerned. Mr Larumbe provided his reply on the same day.
- 3.10 On 23 December the CAS Court Office, acting on behalf of the Panel, communicated to the Parties the content of Mr Larumbe's statement, and informed them that they had been granted a deadline expiring at the closing of business of that day (23 December 2014) to file their comments and observations. Both Parties responded within the time-limits set by the Panel. In its submission, the FIFA noted its *"astonishment with the manner the case was handled at [that] stage, especially bearing in mind the fact that extensive submissions were exchanged and a hearing – in which Mr. Larumbe was present as witness – took place on 4 December 2014"*. In the Panel's view, this statement was unwarranted, especially when taking into account the deadlines within which it was called to issue its decisions (deadlines that were requested by the Appellant and agreed by the FIFA itself), and the lack of comprehensive information in the submissions regarding registration of players, an issue which constituted one of the 'pillars' of the claims made by FCB. The Panel wishes to underscore that its power to request additional information from Mr Larumbe (or any person appearing at the hearing, for that matter) cannot be questioned.

4. OUTLINE OF THE PARTIES' REQUESTS FOR RELIEF AND SUBMISSIONS

In what follows, the Panel would not purport to include every argument put forward to support claims advanced by the Parties. Nevertheless, the Panel has carefully considered and taken into account in its discussions and subsequent deliberations all of the evidence and arguments submitted by the Parties. It limited its explicit references to those arguments that are necessary in order to justify its decision.

4.1 FC Barcelona

4.1.1 In its Appeal Brief, filed with the CAS Court Office, FCB requested the Panel *"to:*

1. *Accept the [...] appeal against the decision rendered by the FIFA Appeal Committee on 19 August 2014.*

2. *Annul the FIFA Appeal Committee decision dated 19 August 2014 in its entirety.*
3. *Render a new decision in which, in case the Panel understood that FCB is to be sanctioned, the sanction imposed is of less gravity than the one imposed in the Appealed Decision, and in particular it consists of a reprimand, or subsidiarily, of a reprimand and a fine for a maximum amount of 450,000 CHF, or subsidiarily, of a reprimand and a transfer ban for one period, or subsidiarily, of a reprimand, a fine for a maximum amount of 450,000 CHF and a transfer ban for one period, or of any other sanction of less gravity that the Panel may deem appropriate.*
4. *Condemn FIFA to pay all legal costs and other expenses incurred by the Appellant with regard to the present procedure”.*

4.1.2 The submissions of FCB may be summarized as follows.

- (a) FCB always acted in compliance with the rules and procedures set forth in the RFEF Regulations, those of the FCF and the relevant provisions of Spanish law, and especially the Spanish Constitution, which recognizes the competence of the “Comunidades Autónomas”, like Catalonia, in the field of sport. The interaction between national sports associations and the “Comunidades Autónomas” is further detailed in the Spanish Law on Sport (Ley 10/1990), pursuant to which national sports associations must act in coordination with the associations of the “Comunidades Autónomas” for the general promotion of sport throughout the national territory. The various “Comunidades Autónomas” are regional associations with specific territorial competence in the field of sport. For the purposes of the present dispute, it is the regional association of Catalonia (Cataluña), the FCF, that matters. In order to be compliant with the provision of Spanish law and sports regulations, FCB, so the argument goes, had to be mandatorily affiliated with the FCF, and comply with its regulations. FCB must, *inter alia*, comply with the regulations regarding licensing and registration of players participating in competition within the territory of Cataluña. Under the Spanish national structure of sport governance, the FCF is the only competent authority in Spain to issue licenses and register players participating in regional competitions, that is, competitions organized on its territory. Registration with the RFEF (and the corresponding issuance of a license by this entity) is compulsory only for players participating in competition(s) at the national level.
- (b) The FIFA has recognized and accepted the Statutes of the RFEF, which is a member of the FIFA. These statutes expressly provide that regional associations, such as the FCF, represent the RFEF and exercise their competences in the field of sport at the regional (Spanish) level. The FIFA, therefore, was perfectly aware of the distribution of competences in Spain, and had at the very least acquiesced. It cannot and should not be allowed to adopt, at a later stage, a contradictory attitude, and contest the well-founded of the Spanish system.
- (c) With regard to the alleged breach of Art. 9.1 RSTP, read in conjunction with Annex 3 RSTP, and of Art. 19 RSTP, read in conjunction with Annex 2 RSTP, FCB claimed that

it had fully complied with the procedures of the FCF. With regard to FIFA's claims under Art. 9 RSTP in particular, FCB noted that the procedure established is exclusively before the FCF. Every single step (*e.g.* the request of an ITC, the issuance of a license, the registration of the player, etc.) must be taken before the FCF, since it is the FCF that has the competence to deal with these issues. The hands of FCB were thus 'tied', as it had to follow the procedures established by the law and by the RFEF, and submit the requests for registration to the FCF. The same is true with respect to FIFA's claims concerning Art. 19 RSTP. Since it had complied with the requirements of the FCF Regulations, FCB legitimately expected that its requests would be properly handled by the FCF.

- (d) FCB did not breach Art. 5.1 RSTP either. This provision requires that a player must be registered with an association in order to be eligible to participate in organized football. All of the players mentioned above were duly registered with the competent association, that is, the FCF. FCB, in fact, had no other option than registering them with the FCF, since they were participating merely in regional (Catalonian) competition and they could not, therefore, be registered with any other association, including the RFEF. The Spanish legal framework is public and well-known, and has been applied by the RFEF itself for a very long time, without FIFA raising any complaint regarding its consistency with the FIFA Statutes. In any case, given the fact that the FCF is to be considered as a representative of the RFEF in Catalonia, the registration with the FCF has to be considered valid even if one would admit that the FIFA does not recognize regional associations. Under the circumstances, FCB had legitimately assumed that the FCF would inform the RFEF about registrations of players, and that the FCF would carry out its competences in compliance with the relevant FIFA rules.
- (e) FCB did not breach the provision of Art. 19-bis.1 RSTP. This provision requires that players attending an academy linked to a club must be reported to the "*association upon whose territory the academy operates*". FCB, indeed, duly reported the players attending "La Masia" (*i.e.* the 'academy' of the FCB) to the FCF, which is the association on the territory of which La Masia operates. The issuance by the FCF of licences for the players is the best evidence of compliance by FCB with the requirement of Art. 19-bis.1 RSTP. In the course of the hearing, FCB contested that La Masia could be considered as an "academy" within the meaning of the FIFA RSTP, and maintained that it rather had to be considered as "residence" where invited players were hosted.
- (f) In any case, the sanction imposed on FCB is absolutely disproportionate. The FIFA Disciplinary Committee and the FIFA Appeals Committee did not properly evaluate the offender's degree of fault, when assessing the gravity of the violation committed and the extent of the sanction to be imposed. This contradicts both Art. 39.4 of the FIFA Disciplinary Code and the principles consistently reiterated in the jurisprudence of the CAS and enshrined in Swiss law. This is the case for various reasons. First, the Appealed Decision did not pay any attention to the fact that Arts. 9 and 19 RSTP impose obligations on associations and not on clubs. The FCF and the RFEF had issued licenses for the players mentioned above. Consequently, FCB legitimately took the view that it

had been acting in full compliance with the applicable rules. For this reason, it is astonishing that the FIFA bodies imposed a much harsher sanction on FCB than they did on the RFEF. Second, with regard to the registration of players under the age of 12, the wording of Art. 9.4 RSTP and the FIFA commentary to the same provision led the RFEF and the FCF to understand that this provision was inapplicable as far as players aged below 12 were concerned. Indeed, this message had been forwarded by the RFEF and the FCF to Spanish clubs, and had also been confirmed in a letter sent by the FIFA to the RFEF on 17 April 2014, and signed by two senior FIFA officials, namely Mr Villiger (head of the Legal Service of FIFA), and Mr Ongaro (head of the FIFA Players' Status and Governance Department). Even in the unlikely case that the analysis above did not suffice to persuade the Panel about the robustness of the claims advanced by FCB, doubts on the ambit of this provision should be interpreted *contra proferentem*, that is, *contra* the FIFA, and not the addressees.

- (g) The FIFA decision-making bodies erroneously considered that the conduct of FCB put the integrity of the players in danger. All of the players attending La Masia or participating in the club's football programs are given not only a top quality football training but also a personal and academic education with the goal of providing them with all of the possible tools for success in life, not limited to football success only. By the same token, the Appealed Decision is ill-grounded when it states that FCB placed its economic interests before the players' interest, since the main concern of FCB has always been the protection of minor football players. The Appealed Decision is, furthermore, also misleading when stating that the Appellant's behavior entailed serious financial consequences for the clubs from which the players were transferred, since those clubs did not receive any training compensation, to which they would have been entitled in accordance with the RSTP. It must be noted, in fact, that no club has ever submitted any claim or complaint to FCB in this regard.
- (h) The sanction imposed on FCB is disproportionate and fails to meet the goal of congruence. The FIFA bodies did not take into account all of the mitigating circumstances in favour of FCB, whereas non-existing aggravating factors were wrongly considered. Attention should be paid, when discussing of proportionality, to the CAS jurisprudence in the proceedings CAS 2008/A/1485, in which, as a consequence of the breach of Art. 19 RSTP, the club was sanctioned only with a "strong warning". The transfer ban imposed through the Appealed Decision relates to full-aged players. There is no link between the violations allegedly committed and the sanction imposed. What is more, it would not be consistent to impose on FCB the harshest of the sanctions provided for in the FIFA Disciplinary Code for a conduct which does not represent the most serious of infringements which might be committed by a club.

4.2 The FIFA

4.2.1 In the Respondent's Answer filed with the CAS Court Office, the FIFA requested the Panel:

- “1. To reject all the reliefs sought by the Appellant.
2. To confirm in its entirety the decision hereby appealed against.
3. To order the Appellant to bear all costs incurred in connection with these proceedings and to cover all legal expenses of the Respondent in connection with these proceedings”.

4.2.2 The submissions of the FIFA may be summarized as follows.

- (a) The FIFA is composed of member associations, which, pursuant to the FIFA Statutes, are responsible for organizing and supervising football in their respective sovereignties. Member associations are national football association, like the RFEF. The FIFA statutes do not recognize any ‘association’ below the ‘national association’-level. The internal organization of a member association cannot and does not have any impact on the application of the FIFA Regulations. What is more, there is no conflict between the Spanish legal framework and the FIFA Regulations, as the Spanish regulations faithfully reproduce the FIFA Statutes with respect to transfers of minors.
- (b) Art. 19 RSTP prohibits, in principle, international transfers of players under the age of 18. This general prohibition, enshrined in Art. 19.1 RSTP, entails specific obligations for both clubs as well as national associations. As far as clubs are concerned, they must, *inter alia*, refrain from being involved in international transfers of players under the age of 18, unless one of the exceptions mentioned in Art. 19.2 RSTP has been met. With regard to the facts discussed in the present proceedings, it is clear that FCB violated the general prohibition of transfer established in Art. 19.1 RSTP in nine (9) cases (*i.e.* players 1-5, 14, 20, 27 and 30). FCB was involved in the international transfer of these players without invoking any of the grounds, which could be invoked in order to justify an exception to the general prohibition (Art. 19.2 RSTP).
- (c) According to the provision of Art. 19.3 RSTP, the general prohibition on the transfer of minors also applies to the case of players who have never been previously registered with a club and are not national of the country in which the first registration is requested. In this latter case, clubs have to make sure that the provision of Art. 19.3 RSTP has been complied with. Pursuant to Annex 2 RSTP, the association requiring the approval of the competent FIFA bodies needs to be provided with the relevant documents justifying the exception from the general prohibition. That considered, FCB violated the provision of Art. 19.3 RSTP in one (1) case (*i.e.* player 31), in which a player under the age of 18, of a foreign nationality, was registered for the first time in the absence of the grounds which would justify an exception to such general prohibition pursuant to Art. 19.2 RSTP.

- (d) The provision of Art. 19.4 RSTP sets forth the procedural guidelines that must be complied with in case of an international transfer and a first registration of an under-aged player. Pursuant to this provision (the version in force until the 2009 Edition of the RSTP, when the facts disputed in the present litigation had occurred), each association had to ensure compliance with the requirements of Art. 19 RSTP by its affiliated clubs. In case of non-compliance, the association had to refuse to register the player and, if it had granted the registration all the same, both the association and the club could have been sanctioned. The provision of Art. 19.4 RSTP was modified with the 2009 Edition of the RSTP, so that any international transfer pursuant to Art. 19.2 RSTP and every first registration pursuant Art. 19.3 RSTP be subjected to a preliminary approval by the competent sub-committee appointed by the FIFA Players' Status Committee. The modification of Art. 19.4 RSTP entails that clubs and associations must file the submission for approval to the sub-committee at issue even if they feel sure about the subsistence of necessary prerequisites which, according to Art. 19.2 RSTP, would justify an exception to the general prohibition established in Art. 19.1 RSTP. In addition, the new version of Art. 19.4 RSTP explicitly states that clubs involved in the transfer/registration of the player may be sanctioned in case of non-compliance with this provision. Annexes 2 and 3 RSTP underline the central role of the TMS and the clubs requesting registration in this respect. Based on those considerations, it must be concluded that FCB had violated the provision of Art. 19.4 RSTP, read in conjunction with Annex 2 RSTP in six (6) cases (*i.e.* players 1-5 and 20) and of Art. 19.4 RSTP, jointly with Annex 3 RSTP in five (5) cases (*i.e.* players 1-2, 4-5 and 20). In these cases, FCB did not request any approval from the Sub-committee appointed by the Players' Status Committee for the transfer or the players at issue.
- (e) Art. 19-bis.1 RSTP imposes an obligation on the club to periodically report all of the minors attending an academy linked to the club as indicated in the same provision. This obligation is different from the obligation to submit a request for approval of transfer or first registration pursuant Art. 19.4 RSTP. The registration of the players with the FCF is, therefore, utterly irrelevant: licensing/registering of the players had to be made with the RFEF; moreover, the obligation imposed by Art. 19-bis on the clubs is different from that concerning the registration of the players. It must be concluded, therefore, that FCB breached the provision of Art. 19-bis in all of the thirty-one (31) cases discussed in these proceedings.
- (f) Pursuant to Art. 5.1 RSTP, only players that have been registered with a member association can participate in organized football. For the reasons set out before, the registration with the FCF cannot be considered to be a registration with a member association within the meaning and scope of the FIFA Regulations. The request for registration of players had to be submitted to the RFEF, and not the FCF. Considering, therefore, that none of the players at issue had been registered with the RFEF, and that all of them had participated in competitions, FCB was in breach of Art. 5.1 RSTP in all of the thirty-one (31) cases discussed in the present proceedings.

- (g) Art. 9 RSTP requires that, in the case of an international transfer, an ITC must be requested and obtained in advance, that is, prior to the registration with a new club. This provision establishes that a player already registered in an association may only be registered with a new association (and a new club) when the latter has received an ITC for the player from the former association. In any case, considering that the procedure for the issuance of an ITC may be initiated only when the club to which the player is moving files an application to its association, this club is also responsible for ensuring that the ITC has been actually issued and received in a timely fashion. Failure to submit the mentioned application, and to report the international transfer to the new association represent a breach of Art. 9.1 RSTP. The only exception to this rule is the case in which the transfer concerns players under the age of 12, for whom no ITC is required. This exception, however, concerns the issuance of an ITC only, as it has no impact on the general prohibition on the transfer of players under the age of 18, enshrined in Art. 19 RSTP, which is applicable in any case. In view of those remarks, it is clear that FCB violated the provision of Art. 9.1 RSTP in six (6) cases (*i.e.* players 1-5 and 20), in which players older than 12 were transferred by FCB without obtaining any ITC.
- (h) The sanction imposed on FCB in the Appealed Decision is proportionate and adequate. The conduct of FCB was, indeed, reckless. FCB committed several infringements of different rules over a significant period of time. FCB placed its economic interests before the interests of minors to an integral and stable development of under-aged players. It must also be noted that the treatment received by the players at “La Masia” cannot be considered as a mitigating circumstance, since, once the players have been transferred and “removed” from the social context in which they live, the right safeguarded by the FIFA Regulations has already been jeopardized. What is more, in the course of the proceedings before the FIFA Disciplinary Committee, FCB acted in bad faith, providing false information and omitting to provide relevant data. The conduct of FCB also prejudiced the applicability of the FIFA Regulations regarding the safeguarding of the position of teams, which had trained a player (and invested in his development). The sanction imposed on FCB had both a punitive as well as a dissuasive aim.

5. JURISDICTION OF THE CAS

5.1 Art. R47 of the CAS Code reads 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 him prior to the appeal, in accordance with the statutes or regulations of that body”.

The Panel, therefore, shall enjoy jurisdiction in case the following three prerequisites have been met, namely: i) there must be a “decision” of a federation, association or another sports-related body; ii) the “internal remedies available prior to the appeal” to CAS must have been exhausted,

in accordance with the statutes or regulations of the mentioned bodies; and iii) the parties must have submitted their dispute to CAS.

- 5.2 The Appealed Decision must be considered as a “decision of an association” within the meaning of Art. R47 of the CAS Code, so that the first prerequisite has been fulfilled. As indicated *supra*, the FIFA is an international association of football associations/federation.
- 5.3 The internal remedies available at the FIFA level have been exhausted. Art. 126 of the FIFA Disciplinary Code states that “[t]he Appeal Committee rules, in principle [as it is in the present case], as a body in the last instance”. Furthermore, par. 2 of the provision at issue stipulates that “[t]he right is reserved for an appeal to be made to the Court of Arbitration for Sport in Lausanne (CAS)” by making reference also to Art. 128 of the Code, pursuant to which “[t]he FIFA Statutes stipulates which decision passed by the judicial bodies of FIFA may be taken before the Court of Arbitration for Sport”. Art. 66 of the FIFA Statutes, indeed, provides that “FIFA recognises the independent Court of Arbitration for Sport (...) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs Players, Official and licensed match agents and players’ agents”. The second prerequisite has thus been met as well.
- 5.4 The third prerequisite is also met. This follows from the (*supra* par. 5.3) provisions that FCB, through its affiliation and registration with the RFEF, which is, in turn, member of the FIFA, must observe, including the FIFA Regulations, and the acceptance of the arbitration clause in favour of the CAS, provided for in the mentioned FIFA Statutes and by-laws. The jurisdiction of the CAS to rule on the present dispute, furthermore, can be also inferred from the content of the Order of Procedure, duly signed by the Parties and their acceptance of such jurisdiction. It must be, finally, noted that the jurisdiction of the Panel has not been contested by any Party to this proceeding and has been explicitly recognised by the Parties in their briefs.
- 5.5 It follows that the CAS has jurisdiction over the present arbitration proceedings.

6. MISSION OF THE PANEL

- 6.1 According to Art. R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision, which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

7. ADMISSIBILITY

- 7.1 Art. R49 of the CAS Code reads as follows:

“In the absence of a time limit set in the statutes or regulation of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against (...).”

7.2 This provision, therefore, stipulates that the time-limit of 21 days for the filing of the appeal may be derogated by the statutes or regulation of the association concerned. In this regard, it must be noted that Art. 67.1 of the FIFA Statutes merely confirms the referred time-limit by providing that:

“Appeals against final decisions passed by the FIFA legal bodies (...) shall be lodged with CAS within 21 days of notification of the decision in question”.

7.3 The Appealed Decision, along with the grounds on which it is based, was communicated to FCB on 3 October 2014.

7.4 On 22 October 2014, FCB filed with the CAS Court Office its Statement of Appeal against the Appealed Decision. The time limit of 21 days for the filing of the appeal was, therefore, complied with by FCB.

7.5 Art. R51 of the CAS Code stipulates that:

“Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal (...)”.

7.6 On 3 November 2014 FCB filed its Appeal Brief. The Appellant complied with the time-limits prescribed by the FIFA Statutes and by the CAS Code. The appeal is, therefore, admissible.

8. APPLICABLE LAW

8.1 Art. 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”.

8.2 The subject matter of the appeal relates to the alleged breach by FCB of the FIFA RSTP. It is thus clear that for the resolution of the present dispute the FIFA Statutes, rules and by-laws, and the FIFA RSTP (in the edition applicable *ratione temporis* to the facts of the case) must be primarily applied. The Parties to the dispute, by signing the Order of the Procedure, confirmed the applicability of the FIFA Statutes, rules and by-laws, and the FIFA RSTP to the present dispute.

8.3 The issue of applicability of domestic law was raised by the Parties, which disagreed on this score. The Panel decides not to address this issue, since it takes the view that the relevant FIFA statutes by and large suffice to address all claims raised in effective manner. However, the issue of the national Spanish law in respect of the Spanish national structure of sport governance, which may be relevant, if necessary, in the resolution of the dispute is contested between the Parties and shall, therefore, be discussed in the merits of the case.

8.4 The Panel found further support for its conclusions above in the text of Art. 66.2 of the FIFA Statutes, which stipulates that “[t]he provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings” and that “CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

9. THE MERITS OF THE DISPUTE

a) *On the breach of article 19.1 RSTP*

9.1 Art. 19.1 RSTP imposes a ban on the transfer for under-aged players, who can be exceptionally transferred if they fall under one of the categories mentioned in Art. 19.2 RSTP. In the Appealed Decision, the FIFA body had found that FCB had violated this provision with respect to players 1-5, 14, 20, 27, and 30. FCB does not contest that there is, in principle, a prohibition to transfer under-aged players. In its view, it fully complied with the relevant FIFA Statutes in this respect when submitting a request with the FCF asking that the players mentioned in this part of the award be duly registered. In response to a question by the Panel whether it had also explained what were the grounds justifying registration of the under-aged players, FCB claimed that it had not even initiated this process, since all it had managed to accomplish at the moment when this dispute arose was to alert the FCF to the registration of the players concerned.

9.2 The Panel finds that FCB has committed a breach of Article 19.1 RSPT in all nine (9) cases, namely, with respect to players 1-5, 14, 20, 27 and 30 for the reasons mentioned in what follows. There should be no doubt that the ban on transferring under-aged players is addressed to both “associations” and clubs. The Panel notes in this respect that it follows the definition of the term “association” in the FIFA Statutes, to which the RSTP make explicit reference, throughout this award: “a football association recognized by FIFA. It is a member of FIFA, unless a different meaning is evident from the context”. In the instant case, it is the RFEF that corresponds to our usage of the term “association”. The FCF being a “regional association” which is a separate entity that was established and operates under the Spanish national Sport structure however it is for sure not a member of the FIFA and, thus, is not an “association” under the terms of the FIFA Statutes. The Panel notes that in this respect the definition of “association” must be imported and applied also in respect of the RSTP in spite of the fact that the RSTP itself do not define “association”, since accepting the theory that a regional association can also be considered as an “association” for the purposes of the RSTP would actually bring about absurd results (for instance that a transfer from on “regional association” to another “regional association” within the same state would have been governed by the RSTP and not the domestic and national transfer regulations). Furthermore, the basis and the rationale of the RSTP is, *inter alia*, to govern the international transfer of players in between national federation and as such it is only obvious and natural that such activities should remain in the hands of the national associations and not conferred to regional associations.

- 9.3 Saying that, the Panel still notes, and would like to emphasize, that the existence of regional associations being members of the affiliated associations of the FIFA is acknowledged and accepted by the FIFA in principle, either without the specific mentioning of the term “regional association” but only referring to “members” (such as for instance in Art. 13(1) (d) of the FIFA Statutes) as well as clearly referring to the specific term (such as in the preamble of Chapter II “Membership” of the FIFA standard Statutes, 2005 ed. as well as Art. 10 (1)(b) and others in the same document). Indeed, one could have expected from FIFA that once it formally accepted and acknowledged the existence of regional associations affiliated to its members, and even referred to such entities in the standard statutes addressed to its members as an example of good governance, FIFA would clarify in its statutes and regulations which duties and responsibilities may be conferred by the national association to a regional association and which are those that must remain under the full observance and management *de facto* of the national association (as seems to be the case with international transfer and registration of minors), in order to avoid that such important issue be decided *a posteriori* in the framework of a specific case. But since this was not done, it is indeed the duty of the judicial bodies to clarify the matter in order to avoid future misunderstandings. And thus based on the above arguments, this Panel agrees with the interpretation of the disciplinary bodies of the FIFA in the sense that the “association” that should maintain not only the responsibility, but also the actual control and the registrations of minors under the RSTP is the national association and not its affiliated regional association.
- 9.4 Art. 19.1 RSTP is clear in that it, in principle, bans transfers of under-aged players. Since only clubs can initiate the process of the transfer of players, the clubs must primarily observe this ban. To underscore this point, Art. 19.4 RSTP explicitly states that “associations” must ensure that clubs behave in accordance with the prescription embedded in this provision. The Panel finds further support, in its view, that clubs must observe the, in principle, ban on transfers of under-aged players in Art. 1.4 of the introductory provisions of the RSTP, which states, *inter alia*, that the Regulations “*are binding for all associations and clubs*”. Under these circumstances, FCB is under the direct and primary obligation to avoid transferring under-aged players, unless it can demonstrate that one of the statutory exceptions embedded in Art. 19.2 RSTP have been met. This is so because Art. 19.2 RSTP is the only statutory exception to the in principle ban established in Art. 19.1 RSTP. The three exceptions mentioned therein are carefully drafted, and correspond to situations where the framers of the statutes felt that minors would be adequately protected, the presence of a transfer notwithstanding. In this respect, the Panel denies the attempt of FCB to hide behind the violations of the rules apparently committed by the RFEF and the FCF since from the beginning FCB did not even try to request the transfers based on any one of the exceptions. FCB should have been aware of the simple fact that the FCF or the RFEF could not register the minors in any legitimate way under the RSTP. In other sectors of law, such behaviour is known as “wilful ignorance” or, more colloquially, “deliberate shutting of eyes”, and might lead to the imposition of legal responsibility to a specific way of conduct made under such circumstances.
- 9.5 Since Art. 19.2 RSTP circumscribes exceptions, it is for the party invoking them to provide the evidence that one (or more) of the circumstances provided for in Art. 19.2 RSTP have been

met. Indeed, while one could legitimately ask question regarding the ‘burden of persuasion’ in this context (how much evidence is necessary to make the case that Art. 19.2 RSTP has been complied with?), there should be no issue regarding the ‘burden of production’ of proof (who should bring forward the evidence?). It is common place in legal orders to assign the responsibility to provide the evidence to the party invoking the exception. Indeed, a Roman law maxim (*quicumque exceptio invocat ejusdem probare debet*) has been transplanted in both civil- as well as common law systems. It is, thus, irrelevant whether the Panel applies Swiss or Spanish law, as the solution is the same. It is for FCB to explain why, abiding by its obligation to avoid transferring under-aged players, it has requested the registration of the aforementioned players all the same. If FCB could simply send a list of names of under-aged players without any justification why its request for registration should be granted, it would be violating Art. 19.1 RSTP anyway. Moreover, FCB did not point to any procedure applicable in Spain where clubs must first send the list, and then and only at a later stage explain the grounds justifying registration. Even assuming *arguendo* that the list had to be sent to the FCF and not the RFEF, FCB could not point to the submission of evidence justifying registration.

- 9.6 At the hearing, Mr Kepa Larumbe Beain stated that Spanish clubs (among which FCB) had been trained, and were fully aware of the functioning of the FIFA TMS. Consequently, the Appellant was aware of the kind of documents that needed to be provided in order to demonstrate the grounds for a possible exception to the general rule of Art. 19.1 RSTP and the necessary steps to be followed for the registration. FCB did not provide any reason or explanation for which the players at issue would have been entitled to be registered, their minor age notwithstanding. What is more, from the information provided by the Parties, it appears to be clear that none of those players could have obtained a licence, since the prerequisites set out in Art. 19.2 RSTP had not been met (this holds true both as for the registration of players 1-5, 14, 20, 27 and 30, registered because of international transfers, and for the “first” registration of player 31, the case of whom we discuss in the next sub-section).
- 9.7 There are three cases with an idiosyncratic element. Players 27, 30 and 31 are minors but also below the age of 12 (and not between 12 and 18, like the players the legal situation of who we have discussed in the immediately preceding paragraphs). The Appellant claims that the joint reading of Art. 19 RSTP with Art. 9.4 RSTP (Edition 2010) should lead to the conclusion that there are no prohibitions for the transfer of players under the age of 12. The Appellant alleges that attention should be paid also to the commentary to Art. 9 of the 2006 Edition RSTP which reads as follows: “[f]or players younger than 12, the Regulations do not provide for an obligation to issue an ITC for international transfers. This avoids placing a supplementary burden on the associations. Furthermore, transfers before the age of 12 have no effect in relation to the provisions of the Regulations, since the training compensation and solidarity mechanism are calculated only as from this age”. In addition to this, the Appellant further alleges that the letter sent by the FIFA to the RFEF on 17 April 2014 (see *supra* par. 4.1.2 (f)) would confirm the validity of its interpretation according to which there would be no prohibition or restriction at all with regard to the transfer of player under 12.
- 9.8 The Panel came to the conclusion that as a matter of the right and proper interpretation of the rules it cannot accept this argument. The scope of Art. 19 RSTP is different from that of Art. 9

RSTP. Whereas Art. 19 RSTP imposes a general prohibition of the transfer for all minors under the age of 18, Art. 9.4 RSTP (Edition 2010), refers to the (absence of) an obligation to issue an ITC for players below the age of 12. Absent this provision (Art. 9.4 RSTP), an ITC would have to be issued even for transfers of players below the age of 12. The issuance (or lack) of an ITC does not however, eliminate the obligation to observe the in principle transfer ban for under-aged players. It only addresses the question of the ‘procedural vehicle’ necessary to make a transfer happen. The substantive conditions for legal transfer of under-aged players (players below 18 irrespective whether they are above or below 12) are explained in Art. 19 RSTP, and not in Art. 9 RSTP. Thus, players under 12 can be transferred only if the club requesting registration has proven that it complies with the requirements embedded in Art. 19.2 RSTP. An interpreter, like this Panel, must privilege the interpretation that allows the various provision in a statute to coexist, and cannot and should not interpret one provision so as to eliminate the scope of another one (*ut regis valeat quam pereat*). This maxim, which guides all interpreters precisely because an interpreter is an agent entrusted with the interpretation of a statute, and not a principal entrusted with law-making and enactment of statutes, leads us to the following construction: no ITC was required when the transfers occurred for players below the age of 12; their transfer nevertheless, can only be lawful if it complies with the requirements embedded in Art. 19.2 RSTP. In this way, both provisions (Art. 9.4 and Art. 19.2 RSTP) can enjoy their scope.

- 9.9 As for the FIFA’s letter dated 17 April 2014, the Panel notes that its content could – if addressed to FCB (*quod non*) – lead to misunderstandings regarding the scope of Arts. 9.4, and 19.4 RSTP. In this letter, FIFA confirmed that, according to Art. 19.4 RSTP, the sub-committee of the Player Status Commission at its meeting in October 2009 had decided that, with respect to for transfers of minors under the age of 12, there was no need to ask it for prior approval. It is the federation concerned that would ensure compliance with the applicable rules, and its activities would be monitored by FIFA. Art. 19.4 RSTP states that:

“Every international transfer according to paragraph 2 and every first registration according to paragraph 3 is subject to the approval of the subcommittee appointed by the Players’ Status Committee for that purpose”.

It is therefore understood that the process embedded in Art. 19.4 RSTP (with the establishment of the sub-committee monitoring international transfers) was aimed at safeguarding compliance of transfers and first registrations with Arts. 19.2, and 19.3 RSTP. The letter from FIFA that dealt with the competent organ for implementing and monitoring the application of the relevant rules fell short of clarifying the relationship between the two provisions mentioned above. The Panel believes that its discussion and decision of this issue as reflected *supra*, brings in the necessary clarity and establishes once and for all the relationship between Arts. 9.4, and 19.2 RSTP. In any event, the Panel notes the new amendments to the RSTP, which will come into force on 1 March 2015 (FIFA’s circular No. 1468 dated 23 January 2015), stipulate that from now on an ITC will not be required for players under the age of 10. What is more, it should also be noted that the new amendments referred to above stipulate that from the date of the entry into force of the relevant modifications to the RSTP, an ITC will not be required for players under the age of 10, while the calculation of the training compensation remained unchanged, circumstance which, in the Panel’s view, seems to confirm the lack of a real linkage

between Art. 9.4, the need of an ITC and the calculation of the training compensation. While the Panel believes that the correct interpretation of the scope of the two provisions should not have led to misunderstandings, it welcomes the amendment, which, in its view, leaves no doubt regarding the relationship of Art. 9.4 with Art. 19.2 RSTP.

b) *On the breach of article 19.3 RSTP*

- 9.10 The FIFA Appeal Committee had also found that FCB had breached Art. 19.3 RSTP in one (1) case, namely that of player 31. FCB appeals this finding as well, and claims that it has not breached Art. 19.3 RSTP for the same reasons that it has not breached Art. 19.1 RSTP since the player had already been registered in the FCF (with its affiliated club CF Sagrada Familia) before he was transferred and registered with FCB. FCB argues that this case is similar to cases where the Disciplinary Committee of FIFA had exonerated FCB (cases of players 6, 10-13, 15-17, 22-26, 28 & 29) since the registration of player 31 with FCB was neither a result of an international transfer nor a first registration.
- 9.11 Both provisions (Art. 19.1 and Art. 19.3 RSTP) concern the prohibition on the transfer of under-aged players, and, consequently, share the same rationale. They are distinguished in one respect only: one refers to the transfer of players already registered with another association, while the other refers to the registration of players for the first time that is to the registration of players who have not been previously registered with another association.
- 9.12 The difference between player 31 and the cases where FCB had been exonerated from liability is simple: in the latter cases, the FIFA Disciplinary Committee had indeed found that the players were already previously registered in other clubs in Spain; player 31 had been registered only with FCB, as there was no evidence of prior registration of the player with any other club in Spain. Furthermore the RFEF confirmed, in a letter sent on 30 May 2013 that the first date of registration was the date in which the player was registered with the FCF as a player of FCB (see page 54, § 103 of the decision of the FIFA Disciplinary Committee). Consequently, the Panel rejects the claim by FCB for the reasons already advanced with respect to our findings under Art. 19.1 RSTP. In short, FCB is bound to observe the ban on prohibition to transfer and/or register for the first time under-aged players, unless if it can successfully invoke one of the grounds mentioned in Art. 19.2 RSTP. It did not, either before the Spanish association or before the FIFA or before the Panel, and hence its claim must be rejected.

c) *On the breach of article 19.4 RSTP*

- 9.13 Art. 19.4 RSTP requests from associations to ensure respect of the substantive obligations embedded in the body of Art. 19 RSTP by clubs coming under their jurisdiction. It thus imposes an obligation on associations in case clubs have not behaved in a manner consonant with the remaining parts of this provision (Arts. 19.1-3 RSTP). This Panel however, has no jurisdiction to decide eventual failures of the RFEF to live up to the standards included in Art. 19.4 RSTP.

In 2009, the RSTP were modified in an effort to further strengthen protection of minors. International transfers of players between 2010 and 2012 must henceforth observe a new requirement, namely that the transfer or registration “*is subject to the approval of the sub-committee appointed by the Players’ Status Committee for that purpose*” pursuant to Art. 19.4 RSTP (Edition 2009 ff.). The same provision (*i.e.* Art. 19.4 RSTP in the wording of the Edition 2010 ff.) further stipulates that its violation shall be sanctioned and that “*in addition to the association that failed to apply to the sub-committee, sanctions may also be imposed (...) on the clubs that reached an agreement for the transfer of a minor*”.

- 9.14 The Panel notes that this provision calls for the imposition of sanctions also on the clubs “*that reached an agreement for the transfer of a minor*”. This sentence may be wrongly interpreted as if it applied only to agreements between two clubs. In this line of thinking, unless two clubs were involved, the provision would be totally inapplicable. In the same vein, since there were no agreements between FCB and other clubs regarding the transfer of the players, one may be tempted to argue that FCB should not be found in violation of this provision. The Panel finds, nevertheless, that this interpretation is not reasonable in light of the overall context, and rationale for the rules concerning transfer of minors. It is not doubted that many of the international transfers of minors are made without the agreement of the players’ former club. It is thus unreasonable, under the circumstances, to limit the applicability of Art. 19.4 RSTP to cases of “agreements between clubs” only. The interpretation of the word “agreement” should be wider, and include also agreements concluded between the registering club and the player himself, his parents, agents etc.
- 9.15 The Appellant has not contested the Respondent’s argument that no request of authorization of the transfer of players 1-5 and 20 was ever submitted to the competent FIFA authorities. It relied, in this case too, on the role of the FCF in the whole process. The Panel also finds that the Appellant committed a violation of Art. 19.4 RSTP with regard to the transfer of the players 1-5 and 20.

d) On the breach of Article 19-bis RSTP

- 9.16 This provision requires from clubs to “report” players registered in their “academy”. The FIFA body had considered that, in the Appealed Decision, “La Masia”, the centre of training for youth of FCB, to be an academy, and, since FCB had not “reported” information regarding the development of youth there, found that FCB was in violation of Art. 19-bis RSTP. The Appellant rejects that it has committed a breach of Art. 19-bis RSTP. The Appellant maintains that “La Masia” could not be considered as an “academy” within the meaning of the RSTP but merely a “residence” where the players were hosted. In addition to this, moreover, the Appellant also maintains that since Art. 19-bis RSTP imposes on clubs that operate an academy the obligation to report minors attending the academy to the “*association upon whose territory the academy operates*”, FCB would have, in any case, complied with this obligation, when considering that all its players had been duly registered with the FCF.

- 9.17 The definition of “academy” contained in the RSTP reads as follows: academy is “*an organization or an independent legal entity whose primary, long-term objective is to provide players with long-term training through the provision of the necessary training facilities and infrastructure*”. This is what “La Masia” does where, according to testimonies by officials of FCB and former trainees, players live and train in football. The obligation imposed by Art. 19-bis RSTP on clubs to report minors attending an academy to the relevant association is a further, and different, obligation than the one concerning the registration of the players. In other words, it cannot be considered, as the Appellant submits, that by registering a player a club would automatically comply also with the obligation to “report” players who are attending its academy. This is so because of the rationale behind Art. 19-bis RSTP, which is based on the consideration that a distinction should be made between under-aged players who are registered with the club but do not attend an academy, and under-aged players not only registered with the club but also attending its academy and, most important, under-aged players who are not registered with the club but still train and play in the academy. This distinction is based on the consideration and the understanding that minors move from one country to another, and join academies where they may stay for several years until they reach the age of 18 (when they will be formally registered for the first time), without registering with associations. Furthermore, players attending an academy may need additional supervision and protection by the competent authorities, in order to ascertain that their interests are not jeopardized. It is highly likely that players attending an academy are no longer living with their families but are hosted and educated at the premises of the academy and might require additional attention. Art. 19-bis RSTP requires thus, additional information regarding the attendance of the academy regardless of the question whether players have been registered with the relevant association or not. Neither the information provided when carrying out an international transfer pursuant to Art. 19 RSTP, nor the simple registration of the player with an association may suffice. This is so, since a player who is transferred to a foreign club, or registered with an association does not necessarily attend an academy. Even more so, in case a player moves to an academy abroad and is not registered at all with the relevant association.
- 9.18 It cannot be held, therefore, that the mere registration (even if it had been made with the competent association) may suffice in order to discharge the obligation to report minors attending an academy. In the light of these considerations, even assuming, as the Appellant submitted, that the FCF would have been the competent association for the registration of the players, FCB did not provide this kind of additional information with regard to any of the players. The breach by FCB of Art. 19-bis is established for all of the thirty-one (31) players involved. It should finally be noted that in the statement provided on the Panel’s request by Mr Kepa Larumbe Beain on 22 December 2014, the latter declared that, in any case, regional associations regularly send to the RFEF reports on minors attending the academy of the affiliated club (if the regional federation is provided by the clubs with the relevant information) and that, “*contrary to what occurred in relation with Article 5 [RSTP]*” (as it will be explained below) “*the club could theoretically also report additionally [i.e. in addition to the report which would be made to regional associations] the players attending their academy to the RFEF*”.
- 9.19 The Panel wishes to make clear two points. First, its finding regarding Art. 19-bis RSTP concerned a procedural violation only, that is, the lack of reporting of information regarding

the progress and development of players participating in “La Masia”. Second, the Panel does not question the quality of services offered in “La Masia”. In fact, the opposite is true. The Panel recognizes the contribution of the FCB academy to the overall development of athletes that have spent time in “La Masia”. Indeed, both on the sporting level (where the numbers of home grown players actually playing in the first team of FCB and elsewhere are proof enough of the quality of training received), as well on the education level, FCB is a leading institution at the European - and the world level. Various witnesses underscored the impressive numbers of players that go through secondary education in reputed schools in Spain, and some even further. In this respect the Panel cannot agree with the findings of the FIFA Appeals Committee that the players attending, training and playing at “La Masia” were put in danger or that their potential football career was endangered. No proof to support these findings was submitted, and, in the Panel’s eyes, this statement remains an allegation, an unproven conjecture. The Panel, through its various findings, sanctioned FCB for the conditions under which players “accessed” “La Masia”, and not for the conditions reigning once access had been guaranteed. It is in this line that the findings regarding Art. 19-bis RSTP should be understood. In fact, by respecting transparency, and observing the “reporting” requirements embedded in Art. 19-bis RSTP, FCB will be contributing to the overarching principles governing protection of minors, since it will be providing other clubs with an enviable benchmark for the education and training of players.

e) On the breach of Article 9.1 RSTP

9.20 Art. 9.1 RSTP states that international transfers cannot take place without an ITC (international transfer certificate). In the Appealed Decision, the FIFA body had found that FCB had violated this provision, since no ITC had been issued for players 1-5, and 20. The Appellant requests from the Panel to reverse this finding, because it had relied on the FCF to fulfil this obligation. The fact that no ITC was obtained for players 1-5 and 20 by the FCF could not be detrimental to the position of FCB.

9.21 In the Panel’s view, the Appellant, however, fails to consider that, pursuant to Annex 3 of the RSTP, it is the new club (*i.e.* the club to which the player moves in the context of an international transfer) which has to initiate the procedure aiming at obtaining an ITC, by submitting a request to the competent association, to be filed by the club by using the FIFA TMS. The Panel stated *supra* that Mr Kepa Larumbe Beain testified at the hearing that Spanish clubs (among them, FCB as well) had been trained in order to get accustomed to the functioning of the FIFA TMS. The Appellant was, thus, fully aware of the fact that the system was (and is) run at a national level by the RFEF and that the latter was, indeed, the sole authority running the system in Spain and interacting with the FIFA. The Appellant, therefore, cannot claim that, having complied with the requirements imposed by the FCF, it had absolved its obligations regarding the issuance of an ITC.

9.22 The procedure for the issuance of an ITC begins with a request by the club to which the player moves, which must be submitted by the club itself through the FIFA TMS. It is clear that no

ITC was ever been issued, since the Appellant never submitted any request to this purpose for players 1-5 and 20. The Appellant, therefore, did not initiate the procedure for the issuance of the ITC for the players at issue. This omission results, in the eyes of the Panel, in a breach of Art. 9.1 RSTP in the six (6) cases mentioned above, namely, with respect to players 1-5, and 20.

f) On the breach of Art. 5 RSTP

- 9.23 Art. 5 RSTP reads in its pertinent part that “a player must be registered at an association to play for a club as either a professional or an amateur”, and that “only registered players are eligible to participate in organized football”. The FIFA body found that this provision had been breached because all thirty-one (31) players had been registered with FCF and not with RFEF. The Appellant requests from the Panel to vacate this finding. It submits that it had no choice but to register all thirty-one (31) players with the FCF, since they were playing only at a regional level and, therefore, no registration could have been requested with the RFEF. The regulations of the RFEF allow clubs to file requests for registration only for players participating in competition at the national level.
- 9.24 The claim thus, as the Panel understands it, is whether players 1-31, irrespective of the illegality concerning their transfers to or first registration by FCB, have been properly registered with an association. Recall that the term “association” can only refer to the RFEF, and not to the FCF, as per our findings *supra*. Since, players 1-31 have not been registered with the RFEF, then *ipso facto*, one would have been led to conclude that FCB had violated Art. 5 RSTP as well. Indeed this is what the FIFA Appeals Committee found, and what the FIFA has argued before the Panel. This conclusion nevertheless, is premature, as the Panel found mitigating factors sufficient to put into question the validity of this conclusion.
- 9.25 At the hearing before the Panel, as well as in his written response to the questions asked by the Panel that were submitted on 22 December 2014, Mr Kepa Larumbe Beain declared that Spanish clubs, by virtue of Spanish law, cannot request the registration directly with the RFEF of players participating in competition organized at the regional level only. Requests may be submitted directly to the RFEF only when players begin to participate in competition at the national level. Mr Larumbe further confirmed that the only way to register a player participating at a competition at the regional level is through a request to the regional authority, which is the authority enjoying exclusive competence to organize competitions at the regional level. Following Mr Larumbe’s declaration before the Panel and his written statement to it, FCB could only register players 1-31, and indeed any other player participating in a regional competition with the FCF. This is so, because, as FCB stated before the Panel, players 1-31 were eligible to participate only at the regional level. The representatives of the FIFA appearing before the Panel did not adduce any evidence to the opposite.
- 9.26 The Panel notes the interpretation of the term “organized football”. In the Definitions section of the RSTP, this term is interpreted in the following manner: “Organized football: association football organized under the auspices of FIFA, the confederations and the associations, or authorized by them”. To the

extent that competitions at the regional level are “authorized” by the RFEF, players should have been registered with the RFEF even if they were called to play at the regional level only. In this vein, the response would depend on whether regional competition are (or not) authorized by the RFEF. A finding on this issue concerns the compatibility of statutes adopted by the RFEF with the relevant FIFA rules, and not the direct responsibility of FCB. It is hence, a question which is not properly before this Panel.

- 9.27 For the purposes of this dispute, the Panel has to address one issue only: since FCB cannot register players 1-31 with the RFEF (because they participate only in regional competitions), can it still be held liable for breaching Art. 5 RSTP? The Panel believes that this should not be the case. Indeed, FCB had no discretion, since, applying the statutes adopted by the RFEF, the “institutional” interlocutor of the FIFA, but to register players 1-31 with the FCF. It bears repetition that the question of the consistency of the Spanish regime in this respect with the relevant FIFA Statutes is not part of scope of this Panel.
- 9.28 The Panel felt it necessary to clarify one issue at this stage. Art. 19 RSTP concerns substantive obligations addressed to both clubs and associations. Indeed, Art. 19.1 RSTP reads: “*International transfers of players are only permitted if the player is over the age of 18*”. It is clubs that transfer players, and not associations. Associations, because of the importance of this issue, come into the picture when warranted, that is, in order to ensure that deviating clubs are brought into the realm of legality. This is the *ratio legis* for Art. 19.4 RSTP, which we cited *supra*, and, at the risk of repetition, re-cite here: “*Each association shall ensure the respect of this provision by its clubs*”. How can an association do that? Art. 19 RSTP does not prescribe a particular method. It is akin to an *obligation of result*, and not to an *obligation of specific conduct*. Associations cannot register under-aged players, unless if the conditions of Art. 19.2 RSTP have been met. Where does this all lead the Panel? The obligation to respect the ban on international transfers of under-aged players is absolute, that is, independent of the forum for registration. Indeed, registration can only occur if the transfer is lawful. Since the two obligations are independent from each other, one can very well imagine a case where one of the two obligations has been violated, whereas this is not the case for the other. Indeed, this is what happened in this case. Furthermore, we are not suggesting here that FCB acted in accordance with Art. 5 RSTP. We are suggesting that it was prevented to act in accordance with Art. 5 RSTP because of elements idiosyncratic to Spanish law regarding the registration process, that is, the quintessential field of competence of “associations”.

g) Sanction

- 9.29 The Appeals Committee had punished FCB by banning all transfers to the club for two consecutive transfer seasons. The Appellant alleges that this sanction is disproportionate and incongruent. The breaches committed, assuming the Panel finds that FCB’s practices qualify as such, do not deserve a harsh punishment, like the one imposed. Moreover, the alleged breaches, so the argument goes, took place in the context of the transfer of under-aged players, while the

sanction ban the activity related to any transfer, even of full-aged players. The FIFA requests a confirmation of the punishment imposed.

9.30 The Panel wishes to first recall the relevant provisions of the FIFA Disciplinary Code:

“Article 39 – General rule

1. *The body pronouncing the sanction decides the scope and the duration of it.*
2. *Sanctions may be limited to a geographical area or to one or more specific categories of match and competition.*
3. *Unless otherwise specified, the duration of a sanction is always defined.*
4. *The body shall take account of all relevant factors in the case and the degree of the offender’s guilt”;*

“Article 40 – Repeated infringements

1. *Unless otherwise specified, the [judicial] body may increase the sanction to be pronounced as deemed appropriate if an infringement has been repeated. (...);*

“Article 41 – Concurrent infringements

1. *If several fines are pronounced against someone as a result of one or more infringements, the relevant body bases the fine on the most serious offence committed and, depending on the circumstances, may increase the sanction up to fifty per cent of the maximum sanction specified for that offence.*
2. *The same applies if a person incurs several time sanctions of a similar type (two or more match suspensions, two or more stadium bans etc.) as the result of one or several infringements. (...);*

“Article 12 – Sanctions applicable to legal persons

The following sanctions are applicable only to legal persons:

- a) *transfer ban;*
- b) *playing a match without spectators; playing a match on neutral territory;*
- c) *ban on playing in a particular stadium;*
- d) *annulment of the result of a match;*
- e) *expulsion;*
- f) *forfeit;*
- g) *deduction of points;*
- h) *relegation to a lower division”.*

9.31 The Panel wishes to start its review with the claim by the Appellant to the effect that the sanction imposed would not meet the goal of congruence. Were one to follow the argument presented by FCB on this score, one could only punish violations regarding transfer of under-aged players with a ban in transfer of under-aged players. Such restriction of the authority of FIFA to punish violations is totally unsupported by both textual as well as contextual elements. Indeed, nowhere does the Statutes make such a link. What FIFA has to observe when sanctioning violations is the principle of proportionality to which we return *infra*. Nothing in

the provisions mentioned *supra* suggests that the discretion of a body imposing a sanction is narrowed in this manner. While this could have been a sanction that the FIFA bodies might have imposed, nothing in the statutes obliges the FIFA bodies to act in this way.

- 9.32 The heart of the claim by FCB is that the sanction imposed is disproportionate, indeed the “harshes” among those envisaged by the FIFA Disciplinary Code, as FCB many times claimed at the hearing. This view is not being shared by the Panel. In the abstract, some of the possible sanctions that could be imposed by the FIFA Disciplinary Code seem, *prima facie* at least, much “harsher”: the expulsion from a competition (Article 28); the relegation to a lower division (Article 29); even the deduction of a fair amount of points (Article 30). The question, however, is whether, under the circumstances, similar sanctions, and indeed the imposed transfer ban, are disproportionate?
- 9.33 There is no disagreement among the parties to the dispute that sanctions imposed must be proportional. Proportionality is a well-known maxim in various legal regimes. It is so well-known that it is often not even spelled out explicitly in statutes, since it is expected that recourse to it will be made anyway. It is considered integral part of the “implied powers” that bodies like the FIFA Disciplinary Committee possess and must use when calculating the appropriate sanction. It is well-known, but at the same time elusive as well, for proportionality requires a benchmark, a “comparator”. The sanction must be proportional to what? In principle, various benchmarks seem appropriate: the gravity of the illegal act, for its own thing to punish a crime, and a different altogether to punish a misdemeanor; the power to dissuade the offender from repeating the same illegality in the future; the importance of the rule of law that is being protected. Although other benchmarks are also relevant, and indeed are used in various legal orders, these are the three benchmarks that most legal orders agree between them that must anyway be accounted for when measuring a “proportional” sanction.
- 9.34 Was the Panel to apply them in the instant case, this is what this Panel believes it would obtain. One cannot overstate the importance of “protection of minors”. FIFA moved in to introduce Art. 19 RSTP, following a serious discussion on the dangers associated with removing youth from its natural “habitat” so to speak. Statistically, very few “hopeful” players make it to the professional leagues. Professional or quasi-professional training of future players starts at an ever increasing younger age. The prospect of professional success can help lure into the training camps around the world youth from everywhere. Little is known to them about the minute probability that they might succeed, and even if similar information is disseminated, it is easy to understand why youthful minds might discard its validity. Art. 19 RSTP aims to strike a balance between the requirement to train at a young age, and the risks that this requirement might comport when football is practiced away from home, and especially in a foreign country. It is not accidental that geographic proximity in Europe with the family of the player features in two of the three exceptions (and thus the application of the same exemptions in other continents should be seriously considered). Violations thus, of Art. 19 RSTP should be taken seriously. The Panel wishes to underscore once again at this stage of its analysis, that it does not dispute at all the quality of training and overall education that players enjoy in “La Masia”. It is only questioning the methods used to bring youth there. Art. 19 RSTP was not drafted having “La

Masia” in mind, but all sorts of training camps and academies that might (and very often do) offer a much inferior welcome to youth. Law, however, has to be applied in non-discriminatory manner. Because of the importance of protection of minors, violations of Art. 19 RSTP are grave. Finally, what would take to ensure that FCB will not repeat similar violations in the future? It is of course, almost impossible to respond to this question since it requires knowledge of elements “endogenous” to the thinking of FCB officials. One thing is for sure, though, in the eyes of the Panel. Imposing a sanction, which is arguable a mid-level sanction as per our analysis *supra*, the FIFA Disciplinary Committee wanted to send a strong signal not only to FCB but to other potential violators of this provision, that it will be taking protection of minors seriously, as it should. A “lighter” sanction, a reprimand for example, might have imposed “reputation costs” on FCB. Similar sanctions however, are hardly ever dissuasive enough, since episodes of the sort are forgotten rather quickly.

- 9.35 Lastly, the Panel notes that the argument, raised by the Appellant regarding the relevance of previous CAS jurisprudence in the proceedings CAS 2008/A/1485 is of no avail to its position. There is substantial difference between the facts discussed therein and those from which the present proceedings originate. First of all, it must be observed that in the aforementioned case, the number of the under-aged players involved in international transfer (six overall) was significantly lower, than the number of players involved in the present proceedings (thirty-one). In the case mentioned beforehand, transfer-activity was carried out over a period of less than eight (8) months, while the corresponding activity of FCB was carried out over a time period of over seven (7) years. This fact points to a systematic approach adopted by FCB (hardly comparable with the conduct of Midtjylland). In the “Midtjylland” case, the only breach committed by the club was that of Art. 19 RSTP, while, as it was established *supra*, other provisions as well were breached by the Appellant. The sanction imposed was consonant with prior practice by the FIFA bodies. The Panel conducted its own research in this area within the parameters of the claim made by FCB that the sanction was disproportional. It noted the decision issued by the FIFA Resolution Chamber on 16 April 2009 imposing a two-period transfer ban on FC Sion. In this case, the sanction on the club was imposed on the basis of a sole breach of the provision of Art. 17 RSTP: FC Sion was sanctioned for having concluded a contract with a player without the consent of his former club. Considering, therefore, the fact that FCB breached several provisions of the RSTP, that the provisions breached cannot, certainly, be deemed to be less important than the one of Art. 17 RSTP (which aims at safeguarding contractual stability, arguably less of a value than protection of minors), FCB cannot claim that the FIFA has acted inconsistently with its previous practice and jurisprudence in this respect.
- 9.36 For all the reasons mentioned *supra*, the Panel believes that the sanction imposed by the FIFA Disciplinary Committee against FCB should be confirmed, as it should not be considered as disproportionate.

10. FINAL FINDINGS

- 10.1 In view of the foregoing, the appeal filed by FCB must be dismissed.
- 10.2 The decision issued by the FIFA Appeal Committee and the sanction imposed on FCB must be confirmed.
- 10.3 Any other further motion or prayers for relief of the Parties must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Fútbol Club Barcelona on 22 October 2014 against the decision issued by the FIFA Appeals Committee on 19 August 2014 is dismissed.
2. The decision issued by the FIFA Appeals Committee on 19 August 2014 is confirmed.
- (...)
5. All further prayers for relief are hereby dismissed.