



Arbitration CAS 2014/A/3813 Real Federación Española de Fútbol (RFEF) v. Fédération Internationale de Football Association (FIFA), award of 27 November 2015

Panel: Mr Rui Botica Santos (Portugal), President; Mr José Maria Alonso Puig (Spain); Prof. Ulrich Haas (Germany)

Football

Transfer of minors

Right to be heard

Protection of minors in the context of international transfers

Role of the national associations in the protection of minors

Obligation to abide by Art. 19 RSTP even when no International Transfer Certificate (ITC) is required

Liability of the national associations for failure of their members to comply with Article 19.4 RSTP

Duties of national associations under Article 5.1 RSTP

Principles for mitigating or aggravating disciplinary sanctions

Final nature of decisions regarding the amount and allocation of costs and expenses imposed by FIFA disciplinary bodies

- 1. It is constant CAS jurisprudence that any violation of a party's right to be heard occurred in first instance proceedings would be cured during the proceedings before CAS through hearing the case *de novo*.**
- 2. Whereas the European Union recognises the freedom of movement and the right to work, certain checks and balances have been placed on these rights in situations where minors are involved and/or likely to be directly affected by their parent's migration. To this end, FIFA, together with the European Union, came to a consensus in 2001 that the international transfer of minors is generally prohibited, which was passed into law vide Article 19 FIFA Regulations on the Status and Transfer of Players (RSTP). Article 19 RSTP as approved by the European Union to a greater extent proves that an individual's freedom of movement and the right to work does not override the specific interest of protecting minors from the social dangers inherent in their international transfer in football. The rules pertaining to the protection of minors are of great significance in that they aim at protecting the most vulnerable stakeholders in the sport of football. They have been implemented to prohibit the "commercialisation" of young players and to allow them to develop and grow within their natural environment.**
- 3. National associations play an important role in the protection of minors. They are the primary guardians of FIFA's regulations with power to take action on any member who breaches the said regulations. They must assume an oversight and supervisory role, a duty stipulated in general and abstract terms in the FIFA regulations.**
- 4. The primary purpose of an International Transfer Certificate (ITC) is to facilitate the**

registration of players at the new association. As such, Article 9 RSTP is an administrative procedure as opposed to a substantive provision governing the international transfer of minors *per se*. Whereas Article 9.4 RSTP excluded minors aged below 12 years (since FIFA Circular No. 1468: 10 years) from ITC requirements, this exclusion did not affect the substance RSTP provisions on the international transfer of minors as provided for under Article 19 RSTP. Therefore, if a member association intends to register players under the age of 10, despite the fact that no ITC and no application to the sub-committee appointed by the Players' Status Committee will be required, it is all the more the responsibility of the association intending to register players under the age of 10 to verify and ensure that the requirements for the protection of minors established in Article 19 para. 2 RSTP are met.

5. Article 19.4 RSTP has been drafted in a manner that an association cannot avoid liability even if it is its members that are largely responsible for its breach. An association which fails to ensure that its members act in accordance with the FIFA regulations may itself – by default or omission – breach Article 19.4 RSTP as read together with Annexes 2 and 3.
6. A national association has an ancillary duty to play in ensuring full compliance of Article 5.1 RSTP. This role entails undertaking both preventive and curative measures in monitoring clubs' compliance of Article 5.1 RSTP. As a preventive measure, national associations are required to ensure that clubs follow the procedure laid down under Article 5.1 RSTP. As a curative role, national associations are generally and by implication empowered to take disciplinary action on clubs that field players who have not been registered at the national association.
7. The following basic and guiding principles, although not exhaustive, govern a decision making body in fixing the level of pecuniary sanctions: (a) the nature of the offence; (b) the seriousness of the loss or damage caused; (c) the level of culpability; (d) the offender's previous and subsequent conduct in terms of rectifying and/or preventing similar situations; (f) the applicable case law and (g) other relevant circumstances.
8. It follows from Article 105.4 FIFA Disciplinary Code that decisions regarding the amount and allocation of costs and expenses by the FIFA disciplinary bodies are final and un-appealable – at least to CAS.

I. THE PARTIES

1. The Real Federación Española de Fútbol (the "RFEF" or the "Appellant") is the governing body of football in the Kingdom of Spain and is a member of the Fédération Internationale de Football Association. It consists of 19 regional and territorial football federations (the "Regional Associations"), comprising the different autonomous regions in Spain. Each Regional

Association is subordinate to, and performs its activities under the powers conveyed to it by the relevant Spanish legislation and the statutes and regulations of the RFEF.

2. The Fédération Internationale de Football Association (“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. FIFA is the organizing authority of all football competitions for national clubs and national teams at world level. FIFA has its seat in Zurich (Switzerland) and enjoys legal personality under Swiss law.

II. THE APPEAL

3. This matter is related to an appeal filed by the RFEF against the decision rendered by the FIFA Appeals Committee (the “Appeal Committee”) on 19 August 2014 (the “Appealed Decision”). The grounds of the Appealed Decision were notified to the RFEF on 22 October 2014.
4. The cause of action arose as a result of the international transfer of foreign under-aged players to Spanish football under the auspices of the RFEF. It is and was the Respondent’s contention that the Appellant breached a number of its statutory obligations under the FIFA regulations in passively or otherwise overseeing these transfers and should therefore be sanctioned in the terms of the Appealed Decision. The Appellant does not deny the facts as set out below but joins issue with the Respondent’s contention and the Appealed Decision.
5. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions and relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

III. THE FACTUAL BACKGROUND

- a) **The registration of minors at the Federación Catalana de Fútbol and the role of the RFEF**
6. On diverse dates between 2005 and 2012, 31 underage foreign players (the “Minors”) were either de-registered from their maternal football associations and/or transferred to various Spanish clubs, a majority of them to Futbol Club Barcelona (“Barcelona”).
7. The Minors were subsequently registered as players at the following Regional Associations:
 - a) the Federación Catalana de Fútbol, (the “FCF”);
 - b) the Federación Andaluza de Fútbol (the “FAZ”); and
 - c) the Federación de Fútbol de la Comunidad Valenciana FCF (the “FCV”).

8. In January 2013, FIFA's Integrity and Compliance of Transfer Matching System GmbH department (the "FIFA TMS Department") noticed an irregularity in relation to Barcelona's transfer of A., ("Player 1").
9. On 4 February 2013, the FIFA TMS sought further information from Barcelona and the RFEF regarding Player 1.
10. On 15 February 2013, the RFEF replied to FIFA's letter dated 4 February 2013 by forwarding a letter dated 15 February 2013 received from Barcelona. In the said letter, Barcelona also adduced further information in relation to another player, B., ("Player 2").
11. On 11 March 2013, FIFA sought further information from the RFEF with regard to the backgrounds of all foreign minors registered for Barcelona.
12. On 14 March 2013, the RFEF stated that Player 1 and 2 had not been registered with or authorised by the RFEF and that it could therefore not adduce information related to their participation in official competitions organised under its aegis.
13. On 25 March 2013, FIFA TMS sought specific information from the RFEF in relation to Players 1 and 2 and also the following players:
 - (a) C., ("Player 3"); (b) D., ("Player 4"); and (c) E., ("Player 5").
14. On 1 April 2013, the Appellant informed FIFA TMS that Players 1-5 had not been registered at the RFEF.
15. On 6 May 2013, FIFA TMS sought specific information from Barcelona and the Appellant in relation to the following players:
 - (a) F., ("Player 6"); (b) G., ("Player 7"); (c) H., ("Player 8"); (d) I., ("Player 9"); (e) J., ("Player 10"); (f) K., ("Player 11"); (g) L., ("Player 12"); (h) M., ("Player 13"); (i) N., ("Player 14"); (j) O., ("Player 15"); (k) P., ("Player 16"); and (l) Q., ("Player 17").
16. On 14 May 2013, the RFEF reverted to the FIFA TMS with the information requested above.
17. On 16 May 2013, Barcelona provided the FIFA TMS with information related to Players 6-17 but also adduced further information in relation to Players 3-5 and the following players:
 - (a) R., ("Player 18"); (b) S., ("Player 19"); (c) T., ("Player 20"); (d) U., ("Player 21"); (e) V., ("Player 22"); (f) W., ("Player 23"); (g) X., ("Player 24"); (h) Y., ("Player 25"); (i) Z., ("Player 26"); (j) AA., ("Player 27"); (k) BB., ("Player 28"); (l) CC., ("Player 29"); (m) DD., ("Player 30"); and (n) EE., ("Player 31").
18. On 24 May 2013, the FIFA TMS requested further information from the RFEF in relation to Players 18-31, which information was provided on 30 May 2013.
19. The table below summarises the key data surrounding the Minors' transfers and subsequent registrations at the Regional Associations further to the information received from Barcelona and the RFEF:

Subject	Nationality	Date of birth	Registration status at immediate former Football Association	Status at Regional Association	Date of registration at the Regional Association	Spanish club(s) registered for
Player 1	South Korean	6 January 1998	Korea Football Association	Registered at the FCF	23 September 2011	Barcelona
Player 2	South Korean	4 April 1998	Korea Football Association	Registered at the FCF	23 September 2011	Barcelona
Player 3	South Korean	17 March 1997	Korea Football Association	Registered at the FCF	21 September 2010	Barcelona
Player 4	Dutch	14 February 1999	Royal Dutch Football Association	Registered at the FCF	11 October 2011	Barcelona
Player 5	Cameroonian	18 January 1999	Fédération Camerounaise de Football	Registered at the FCF	16 November 2012	Barcelona
Player 6	Dominican Republican by birth. Naturalised Spanish citizen in May 2004	4 February 1994	None	Registered at the FCF	27 July 2005	CD Sant Gabriel Barcelona
Player 7	Cameroonian	8 March 1994	None	Registered at the FCF	16 May 2006	Barcelona
Player 8	Cameroonian	24 December 1995	None	Registered at the FCF	15 May 2009	Barcelona
Player 9	Cameroonian	16 September 1997	None	Registered at the FCF	16 September 2008	Barcelona

Subject	Nationality	Date of birth	Registration status at immediate former Football Association	Status at Regional Association	Date of registration at the Regional Association	Spanish club(s) registered for
Player 10	Senegalese by birth. Naturalised Spanish citizen in December 2004	19 January 1996	None	Registered at the FCF	14 October 2005	CD Blanes Barcelona
Player 11	Senegalese by birth. Naturalised Spanish citizen in May 2010	9 November 1999	None	Registered at the FCF	23 September 2008	UE Rubí Barcelona
Player 12	Guinean	3 August 1998	None	Registered at FAF Registered at the FCF	1 July 2011 21 September 2011	Sevilla Football Club, S.A.D Barcelona
Player 13	German	25 November 1998	Deutscher Fußball-Bund (i.e the German Football Federation)	Registered at the FCF	20 February 2008 14 October 2009	Fundación Marcet Barcelona
Player 14	American	8 May 2000	United States Soccer Federation	Registered at the FCF	21 September 2011	Barcelona

Subject	Nationality	Date of birth	Registration status at immediate former Football Association	Status at Regional Association	Date of registration at the Regional Association	Spanish club(s) registered for
Player 15	Believed to be of Kosovar descent	28 February 2000	None	Registered at the FCF	9 October 2008	Sallent CF
					25 September 2009	Gimnastic Manresa
					23 September 2010	Barcelona
Player 16	Moroccan by birth. Naturalised Spanish citizen in May 2012	13 January 1996	None	Registered at the FCF	26 September 2006	CD La Floresta
					9 September 2009	RCD Espanyol
					28 July 2010	Barcelona
Player 17	Moroccan	6 January 1997	None	Registered at the FCF	2 December 2005	UD Cerdanyola Mataró
					20 July 2007	Fundación Privada ESP Mataró
					29 September 2011	Barcelona
Player 18	Senegalese by birth. Naturalised Spanish citizen in 2012	23 February 1996	None	Registered at the FCF	8 August 2005	Barcelona

Subject	Nationality	Date of birth	Registration status at immediate former Football Association	Status at Regional Association	Date of registration at the Regional Association	Spanish club(s) registered for
Player 19	Moroccan	28 June 1998	None	Registered at the FCF	29 October 2007	Barcelona
Player 20	French	27 May 1997	Fédération Française de Football	Registered at the FCF	21 September 2012	Barcelona
Player 21	Ecuadorian	3 February 1997	None	Registered at the FCF	11 October 2005	Barcelona CF Sant Vincenti
Player 22	Argentinean	27 May 1999	None	Registered at the FCF	26 August 2006 17 July 2009	UE Barri Santes Creus Barcelona
Player 23	Ecuadorian	7 February 1999	None	Registered at FCV Registered at the FCF	13 October 2005 21 September 2012	Kelme CF Barcelona
Player 24	Russian	20 October 1999	None	Registered at the FCF	16 April 2007 27 August 2009	UD AT Gramanet Milan Barcelona
Player 25	Moroccan	2 April 2000	None	Registered at the FCF	18 December 2009 23 September 2011	EFB Calafell CF Barcelona

Subject	Nationality	Date of birth	Registration status at immediate former Football Association	Status at Regional Association	Date of registration at the Regional Association	Spanish club(s) registered for
Player 26	Equatoginean	31 October 2002	None	Registered at the FAZ	16 September 2010	Sevilla Football Club, S.A.D
				Registered at the FCF	21 September 2012	Barcelona
Player 27	Japanese	4 June 2001	Japanese Football Association	Registered at the FCF	6 October 2011	Barcelona
Player 28	Moroccan	1 June 2002	None	Registered at the FCF	14 October 2008	Escuela de Llavarenes CF
					8 October 2010	Club Fundació Privada Escola Fútbol Calella
Player 29	Guinean	19 January 2003	Fédération Guinéenne de Football	Registered at the FCF	23 September 2011	Barcelona
					15 January 2010	RCD Espanyol
Player 30	French	26 August 2002	Fédération Française de Football	Registered at the FCF	30 September 2011	Barcelona
					14 October 2010.	Barcelona
Player 31	Guinean	2 January 2004	None	Registered at the FCF	7 October 2011	Barcelona

20. Before their immediate transfers to Barcelona, Players 1-5, 14, 20, 27 and 30 had been registered as players of Incheon United FC (Korea), FC Pohang Steelers (Korea), Suwonsamsung FC (Korea), AFC Ajax (Holland), AS Ngangue Foot Academy (Cameroon), North Valley soccer Club (United States), US Colomiers (France) Kawasaki Frontale (Japan) and FC Gerland (France). Players 12, 25, 26, 29 and 31 had never previously been registered with a club and were only registered for the first time in their careers as players of Spanish clubs FC Sevilla, EFB Calafell, FC Sevilla, RCD Espanyol and CF Sagrada Familia.
21. The RFEF never received the International Transfer Certificate (the “TTC”) of Players 1-5 and 20. In addition to this, the RFEF did not file any application to a sub-committee to be appointed by the FIFA Players’ Status Sub-Committee seeking the sub-committee’s approval of the international transfer and/or first registration of Players 1-5, 12 and 20.
- b) FIFA’s investigations into the transfer of minors to Barcelona and the subsequent FIFA Disciplinary Committee Proceedings**
22. On 25 September 2013, the secretariat to the FIFA Disciplinary Committee (the “Disciplinary Committee”) informed the RFEF that the Disciplinary Committee had launched investigations against Barcelona and the RFEF in relation to the possible international transfer and/or first registrations of the Minors.
23. It was the RFEF’s position that:
 - a) They could not provide any information on Players 1-5, as the said players had neither been registered with nor authorised by the RFEF;
 - b) Players 6-8 were transferred before the current FIFA Regulations on the Status and Transfers of Players (the “FIFA RSTP”) came into force; and
 - c) With the exception of Player 20, Players 9-31 were registered prior to their 12th birthdays and therefore no violations of the FIFA RSTP had taken place in relation to their transfers.
24. On 28 November 2013, the Disciplinary Committee rendered its decision (the “Disciplinary Committee Decision”) and held as follows:

“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 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. 1 par. 3 (a) del RETJ.*

6. *La Comisión decide fijar las costas y gastos en CHF 30,000, (...) quedan a cargo de la Real Federación Española de Fútbol (...)*”.

(free English translation):

“1. The Spanish Football Association is found liable for violations of art.19 para.1 and art.19 para.3 of the FIFA Regulations on the Status and Transfer of Players in relation, respectively, to the prohibition against the international transfers of players under 18 years of age and the prohibition against registering players under 18 years of age who were not registered previously and are not nationals of the country in which registration is intended for the first time.

2. The Spanish Football Association is held liable for violations of art.19 para.4 in conjunction with Annexes 2 and 3 of the FIFA Regulations on the Status and Transfer of Players (procedure for requesting first registration and international transfer of minor players) and of art.5 para.1, and art.9 para.1 of the FIFA Regulations on the Status and Transfer of Players.

3. The Spanish Football Association is sanctioned with the payment of a fine in the amount of CHF 500,000 (...).

4. Pursuant to art.14 of the FDC a reprimand is issued against the Spanish Football Association in view of its behaviour and conduct in the events described here.

5. The Spanish Football Association is granted a period of 1 year to rectify the applicable regulatory framework. Specifically, the Spanish Football Association must respect its obligations pursuant to art.1 par.3 (a) of the FIFA Regulations on the Status and Transfer of Players.

6. The Committee decides to set the costs and expenses at CHF 30,000 (...) to be borne by the Spanish Football Association (...)”.

25. The Disciplinary Committee Decision was based on the following grounds:

- a) The RFEF had breached Article 19.1 of the FIFA RSTP in relation to Players 1-5, 14, 20, 27 and 30. It also appeared as though the RFEF had breached Article 19 in relation to Players 7, 8, 9, 13, 15, 17, 18, 19, 22, 23, 24 and 28. However, given the fact that these breaches took place before the FIFA RSTP 2009 edition came into force, the Disciplinary Committee lacked jurisdiction to sanction the RFEF because Article 19.5 of the FIFA RSTP 2008 edition and the edition before then stated that “[t]he Players’ Status Committee [and not the Disciplinary Committee] shall be competent to decide on any dispute arising in relation to these matters and shall impose appropriate sanctions in the event of violations of this provision”;
- b) The RFEF had breached Article 19.3 of the FIFA RSTP on 5 occasions, in relation to Players 12, 25, 26, 29 and 31;

- c) The RFEF had breached Article 19.4 of the FIFA RSTP as read together with Annexe 2 thereof on 7 occasions, in relation to Players 1-5, 12 and 20;
 - d) The RFEF had breached Article 19.4 of the FIFA RSTP as read together with Annexes 3 thereof on 6 occasions, in relation to Players 1, 2, 4, 5, 12 and 20;
 - e) The RFEF had breached Article 9.1 of the FIFA RSTP on 6 occasions, in relation to Players 1-5 and 20;
 - f) The RFEF had breached Article 5.1 of the FIFA RSTP in relation to all the Minors;
 - g) By allowing these grave and inexcusable breaches, the RFEF contravened its duties under Article 13 of the FIFA Statutes;
 - h) Articles 19.1 and 19.3 of the FIFA RSTP constituted the most serious of the breaches committed by the RFEF. Therefore, and in accordance with Article 10 and 15 of the FIFA Disciplinary Code, the RFEF was to be fined CHF 350,000 for breaching Articles 19.1 and 19.3 of the FIFA RSTP;
 - i) In addition, given (i) the RFEF's duties under Article 13.1 (d) of the FIFA Statutes and (ii) the number of breaches committed over a prolonged period of time, the Disciplinary Committee referred to Article 41 of the FIFA Disciplinary Code and imposed an additional fine of CHF 150,000 for breaching (1) Article 19.4 of the RSTP as read together with Annexes 2 and 3 thereof, (2) Article 5.1 of the FIFA RSTP and (3) Article 9.1 of the FIFA RSTP; and
 - j) The Disciplinary Committee referred to Article 14 of the FIFA Disciplinary Code and reprimanded the RFEF in relation to its conduct and also granted it one year within which to align its regulatory system in conformity with the provisions of Article 1.3 (a) of the FIFA RSTP.
26. On 28 November 2013, the Disciplinary Committee also rendered its decision regarding FC Barcelona's transfers/registrations of minors (the "Barcelona Disciplinary Committee Decision") in relation to the investigations opened against Barcelona and held 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 jugado-res 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 Jugado-res.*
- 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. (...).*
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) (...).*

(free English translation):

- “1. *The club - Fútbol Club Barcelona (FCB) is found liable for violations of art.19 para.1 and art.19 para.3 of the FIFA Regulations on the Status and Transfer of Players in relation, respectively, to the prohibition against the international transfers of players under 18 years of age and the prohibition against registering players under 18 years of age who were not registered previously and are not nationals of the country in which registration is intended for the first time.*
 2. *The club - Fútbol Club Barcelona (FCB) is held liable for violations of art.19 para.4 in conjunction with Annexes 2 and 3 of the FIFA Regulations on the Status and Transfer of Players (procedure for requesting first registration and international transfer of minor players) and of art.5 para.1, art.9 para.1 and art.19bis para.1 of the FIFA Regulations on the Status and Transfer of Players.*
 3. *Pursuant to art.12 (a) and art. 23 of the FIFA Disciplinary Code, the club - Fútbol Club Barcelona (FCB) is banned from signing players at national and international level for a period of two consecutive transfer windows following notification of this decision.*
 4. *The club - Fútbol Club Barcelona (FCB) is sanctioned with the payment of a fine in the amount of CHF 450,000 (...).*
 5. *Pursuant to art.14 of the FIFA Disciplinary Code a reprimand is issued against Fútbol Club Barcelona (FCB) in view of its behaviour and conduct in the events described here.*
 6. *Fútbol Club Barcelona (FCB) is granted 90 days to review the situation regarding the minors at its club (...).*
 7. *The Committee decides to set the costs and expenses at CHF 30,000 (...) to be borne by the club - Fútbol Club Barcelona (FCB) (...).*”
27. On 10 April 2014, the RFEF sought FIFA’s clarification as to whether the transfer of players aged below 12 years had to be compliant with Article 9.4 of the FIFA RSTP in the context of international transfers effected in accordance with Article 19 of the FIFA RSTP. It specifically sought to know whether an ITC was required for the international transfer of players aged below 12 years and whether an application for approval had to be filed to the FIFA Players’ Status Sub-Committee.
 28. On 11 April 2014, Barcelona lodged an appeal against the Barcelona Disciplinary Committee Decision at the Appeal Committee.

29. On 17 April 2014, in reply to the letter dated 10 April 2014, FIFA informed the RFEF that “(...) at its meeting of October 2009, the Players’ Status Sub-committee clarified that there was no need to seek the sub-committee’s approval under Article 19.4 of the FIFA RSTP before requesting an ITC and/or effecting a first registration of a player aged below 12 years (...). However, any association intending to register minors aged below 12 years for one of its affiliate clubs carries a greater responsibility of ensuring that the well-being of the children in question is not under threat (...) in line with the spirit and principles of the relevant regulations on the protection of minors (...)”.

c) The FIFA Appeal Committee Proceedings

30. On 14 May 2014, the RFEF filed its appeal against the Disciplinary Committee Decision before the Appeal Committee.

31. It was the RFEF’s submission that:

- a) There exists a conflict between Spanish law and the FIFA regulations, with the former prevailing over the latter specifically as regards the registration and issuance of player’s licenses, which it claimed was the exclusive mandate of the regional Spanish football associations;
- b) The sanctions were based on an alleged violation of Article 13 of the FIFA Statutes, which law the RFEF was never given an opportunity to defend itself on;
- c) Any transfer of a minor aged below 12 years was not punishable under the FIFA RSTP in light of the contents of FIFA’s letter dated 17 April 2014;
- d) The alleged violation of Article 5.1 of the FIFA RSTP was purely a sporting infraction which could only be committed by clubs;
- e) In order to play in Spain’s regional tournaments, players only required a license from the Regional Association and not from the RFEF. The Minors could therefore take part in competitions organised by the FCF;
- f) 21 out of the 31 Minors were aged below 12 years at the time of registration. Thus, in accordance with Article 9.4 of the FIFA RSTP, their registration was legal;
- g) It was unaware of the Minors’ registration at the FCF and should therefore not be liable for the illegalities performed by Barcelona and the FCF;
- h) In accordance with Article 67 of the FIFA Disciplinary Code, an association cannot be sanctioned for the breaches committed by its regional affiliate members, *in casu* the FCF; and
- i) The sanctions imposed in the Disciplinary Committee Decision were disproportionate *vis-a-vis* the facts and circumstances.

32. On 19 August 2014, the Appeal Committee rendered the Appealed Decision and held as follows:

“1. El recurso interpuesto por la Real Federación Española de Fútbol 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 cuanta de 3,000 CHF correrán a cargo de la Real Federación Española de Fútbol. Este monto se compensa con el monto de 3,000 CHF que fue pagado como depósito”.*

(free English translation):

“1. The appeal filed by the Real Federación Española de Fútbol is dismissed.

2. The FIFA Disciplinary Committee Decision dated 28 November 2013 is upheld.

3. The costs and expenses relating to these proceedings, amounting to CHF 3,000 shall be borne by the Real Federación Española de Fútbol. This amount will be offset by the CHF 3,000 that had been deposited”.

33. The Appealed Decision, which mirrored the Disciplinary Committee Decision, was based on the following grounds:

- a) There existed no conflict between the FIFA regulations and Spanish law. The FIFA regulations prevail over any national or regional laws, rendering the latter laws inapplicable in international transfers;
- b) Article 13 of the FIFA Statutes specifies the association’s obligations to generally comply with the FIFA regulations. The mere fact that Article 13 of the FIFA Statutes was mentioned in the Disciplinary Committee Decision did not imply that the RFEF’s right to defend itself had been violated;
- c) Article 9 of the FIFA RSTP does not affect the prohibitions on the international transfer of all minors (regardless of their age) as set out under Article 19.1 of the FIFA RSTP. FIFA’s letter dated 17 April 2014 was clear that in accordance with Article 19.4 of the FIFA RSTP, an application for the approval of the international transfer of minors ought to have been filed to the FIFA Players’ Status Sub-Committee;
- d) The age limit established under Article 9.4 of the FIFA RSTP was strictly limited to the said provision and had nothing to do with the registration of the minors aged below 12 years as required under Article 5.1 of the FIFA RSTP;
- e) Article 5.1 of the FIFA RSTP was not exclusively applicable to clubs but also to associations, which must ensure that their internal State structures conform with the FIFA regulations;
- f) The RFEF cannot impute any liability on Barcelona or the FCF. Article 19 of the FIFA RSTP imposes a direct obligation on the RFEF as an association;
- g) The RFEF had been sanctioned for breaches committed by itself and not by its affiliate members, such as the FCF. Therefore, Article 67 of the FIFA Disciplinary Code could not be applied in this particular case; and
- h) The sanctions were proportionate. The RFEF had an additional duty to ensure that acts done within Spanish football did not contravene the RFEF’s duties and obligations towards FIFA.

34. On the same date, the Appeal Committee also rendered its decision (hereinafter referred to as the “Barcelona Appeal Committee Decision”) in relation to Barcelona’s appeal and held 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 (...).”

Free translation:

“1. Fútbol Club Barcelona’s appeal is dismissed.

2. The FIFA Disciplinary Committee decision dated 28 November 2013 is upheld.

3. FCB shall bear the costs of this appeal at an amount of CHF 3,000.”

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 28 October 2014, Barcelona appealed the Barcelona Appeal Committee Decision before the Court of Arbitration for Sport (the “CAS”).
36. On 7 November 2014, the Appellant filed its Statement of Appeal in Spanish before the CAS, pursuant to Article R48 of the Code of Sports-related Arbitration (edition 2012) (the “CAS Code”). The Appellant nominated Mr. José María Alonso Puig, attorney-at-law in Madrid, Spain, as arbitrator and proposed bilingual proceedings, with either party being allowed to file its submissions in Spanish or English without any need of a translation and the award being drafted in English. On the same date, the CAS Court Office granted the Respondent 10 days to nominate its arbitrator.
37. On 13 November 2014, the Appellant informed the CAS Court Office of its wish to file all its submissions in Spanish. On the same date, the CAS Court Office sought the Respondent’s position in regard to the language of the proceedings.
38. On 17 November 2014, the Respondent informed the CAS Court Office of its consent to the proceedings being conducted in Spanish and English without either party having to adduce translations. The Respondent however stated its wish to have the hearing conducted in English. At the same time, the Respondent nominated Mr. Ulrich Haas, Professor in Zurich, Switzerland, as arbitrator.
39. On 21 November 2014, the Appellant filed its Appeal Brief together with exhibits and a list of witnesses it intended to rely on. On the same date, the CAS Court Office granted the Respondent 20 days within which to file its Answer.
40. On 1 December 2014, the Respondent requested that its deadline for filing the Answer be extended to no later than 19 December 2014, a request granted by the CAS Court Office on the same date.

41. On 19 December 2014, the Respondent filed its Answer together with exhibits and a list of witnesses it intended to rely on.
42. On 23 December 2014, the CAS Court Office asked the Parties to state whether they wanted a hearing or preferred to have the matter decided on the basis of their written submissions.
43. On 7 and 8 January 2015, the Appellant and the Respondent respectively indicated their wish for a hearing.
44. By communication dated 8 January 2015, the CAS Court Office informed the Parties that the Panel had been constituted as follows:
 - a) President: Mr. Rui Botica Santos, Attorney-at-law, Lisbon, Portugal
 - b) Mr. José Maria Alonso Puig, Attorney-at-law in Madrid, Spain
 - c) Mr. Ulrich Haas, Professor in Zurich, Switzerland
45. The Panel also appointed Mr. Felix Majani, Attorney-at-law in Nairobi, Kenya, as *ad hoc* clerk.
46. Upon gaining cognisance of a circular issued by FIFA (the “FIFA Circular No. 1468”) on 23 January 2015, the Appellant filed further submissions (the “Supplementary Brief”) on 29 January 2015, which it considered ought to be admitted on exceptional grounds pursuant to Article R56 of the CAS Code because:
 - a) The said brief was not an introduction of new arguments. It only sought to annex the new FIFA Circular No. 1468; and
 - b) FIFA Circular No. 1468 constituted the Appellant’s key evidence and principally its main submissions as highlighted in its Appeal Brief. Together with the Supplementary Brief. The Circular corroborated and supplemented the Appellant’s arguments that the approval of the FIFA Players’ Status Sub-Committee was not required for the international transfer of minors aged below 12 years.
47. On 18 February 2015, the CAS Court Office granted the Respondent 10 days to comment on the admissibility of the Supplementary Brief.
48. On 2 March 2015, the Respondent objected to the admission of the Supplementary Brief on grounds that:
 - a) There existed no exceptional circumstances warranting its admission as the Appellant had not “thoroughly explained” how FIFA Circular No. 1468 was decisive to the outcome of the appeal, and
 - b) FIFA’s decision to lower the age at which an ITC is required from 12 to 10 years did not have any impact on the obligations which existed prior to the issuance of the said circular. Neither does FIFA Circular No. 1468 nor Article 19.4 of the FIFA RSTP mean that the international transfer of minors as prohibited under Article 19.1 of the FIFA RSTP is allowed for minors aged below 12 years.
49. On 9 March 2015, the CAS Court Office informed the Parties that the Panel had admitted the Supplementary Brief and that the grounds thereof would be developed in this Award. The

admission is based and informed on the following facts, circumstances and provisions of Article R56 of the CAS Code:

- a) That in order for a party to be allowed to supplement its arguments and/or adduce new evidence, it must establish the existence of exceptional circumstances which prevented it from adducing the said arguments or evidence within the deadline fixed under Article R51 or Article R55 of the CAS Code as the case may be;
 - b) That the supplementary submissions or new evidence must be relevant to the issues and case at stake; and
 - c) That a party filing supplementary submissions or new evidence must do so within a fairly reasonable time *vis-à-vis* the date it acquired knowledge of the facts or evidence in question.
50. Relating the above to the facts, the Panel found that:
- a) There existed exceptional circumstances for the Appellant to adduce the Supplementary Brief because FIFA Circular No. 1468 was released after the Appeal Brief had been filed. Consequently, the Supplementary Brief could not have been adduced earlier;
 - b) The Supplementary Brief did not change the course or direction of the RFEF's arguments but rather expounded on an aspect which the RFEF had from the very onset deemed to be relevant and important as highlighted in its Appeal Brief, *i.e.* whether or not there was a breach of the FIFA RSTP in as far as the international transfer of minors aged below 12 years was concerned; and
 - c) In filing the Supplementary Brief on 29 January 2015, the Appellant did so within a fairly reasonable and acceptable time given the fact that FIFA Circular No. 1468 had only been released and drawn to its attention 6 days earlier, *i.e.* on 23 January 2015.
51. On 2 April 2015, the Order of Procedure was sent to the Parties and respectively signed on 8 April 2015.
52. On 24 April 2015, the CAS rendered the grounds of the award in the matter CAS 2014/A/3793 regarding Barcelona's appeal and fully upheld the Barcelona Appeal Committee Decision.
53. On 6 May 2015, the hearing was held in Lausanne, Switzerland. The Panel was assisted at the hearing by Mr. Fabien Cagneux, Counsel to the CAS.
54. The Appellant was represented by Mr. Kepa Larumbe Beain, Legal Director, RFEF and Mr. Jorge Vaquero Villa, In-House Counsel.
55. The Respondent was represented by Mr. Marc Cavaliero together with Mr. José Rodriguez and Mr. Bernardo Palmeiro, legal counsel at the FIFA Disciplinary & Governance Department.
56. Mr. Salvador Noguera Muñoz, a director at the licensing, registration and FIFA TMS department of the RFEF also testified as a witness summoned by the Appellant and he was aided by Mr. Gavin Powell who acted as his translator.
57. The Panel members, together with the CAS Counsel, Mr. Fabien Cagneux were also present.

58. At the end of the hearing, the Parties acknowledged that they had no objection in respect to the manner in which the hearing had been conducted and that, in particular, their right to be heard and to be treated equally in the arbitration proceedings had been respected by the Panel. The Panel also invited the Parties to explore the possibility of a post-hearing settlement and requested the Appellant to send a breakdown of its budget for the 2014 season.
59. On 20 and 21 May 2015, the Respondent and the Appellant respectively informed the Panel that they had been unable to reach an out of court settlement. The Appellant also reverted with a detailed breakdown of its budget for the 2013-2014 season.

V. THE PARTIES' POSITION

60. The following outline is a summary of the Parties' main positions and does not comprise each and every contention put forward by them. The Panel has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what follows. The Parties' written submissions, the documentary evidence, the contents of the Appealed Decision and the oral submissions at the hearing were all taken into consideration. The witness testimonies were also taken into consideration and such reference will be made in the merits section, if and when appropriate.

V.1 The Appellant's Submissions

a) *Prayers and requests*

61. In its Appeal Brief, the RFEF seeks the following prayers and requests from the CAS:

"1. That as the main prayer, the Appealed Decision together with the costs imposed on the RFEF be set aside and the sanctions imposed on the RFEF be rendered ineffective.

2. Alternatively, in case prayer 1 above is not granted, that the appeal be partially upheld with the Appealed Decision being left without effect and at the same time, account be taken of the facts and circumstances at stake to the effect that the sanctions imposed on the RFEF be reviewed and replaced with a reprimand in accordance with article 14 of the FIFA Disciplinary Code, or in subsidiary,

a) With a reprimand and a fine proportionally adjusted to the facts and circumstances concurrent to the RFEF, with the maximum fine being CHF 100,000".

b) *In General*

62. In a nutshell, the RFEF bases its appeal on an apparent conflict between Spanish law and the FIFA regulations. It denies having breached the FIFA RSTP and particularly insists that no breach was committed in relation to 21 of the Minors. It claims to have at all material times acted in good faith and imputes any breaches of the FIFA regulations to Barcelona and the FCF notwithstanding the fact that the Appellant's right to defend itself in regards to Article 13 of the FIFA Statutes was violated at FIFA judicial level. It insists that the sanctions imposed are disproportionate as are the procedural costs and expenses imposed by the Disciplinary Committee.
63. The RFEF's submissions are in essence summarised as follows:

c) *The Appealed Decision disregarded an apparent conflict of laws*

64. Although subject to the FIFA regulations, the RFEF must also abide by Spanish laws (CAS 2012/A/2750) by virtue of its status as a body registered in Spain, meaning that Spanish law should prevail over the FIFA regulations in case of a conflict between the two.
65. The Appealed Decision erred in overlooking the apparent conflict between Spanish law and the FIFA RSTP, in particular Ley 19/2007 which prohibits the discrimination of foreigners *vis-à-vis* Spanish nationals in matters relating to sports by requiring sporting entities to remove “(...) *any obstacle or restriction which impedes or makes it difficult for foreigners legally residing in Spain and their families from participating in amateur sporting activities*”.
66. The FIFA RSTP’s ITC requirements and also its provisions regarding the approval of the international transfer of minors is in the eyes of Spanish law discriminatory against foreigners.
67. Any violation of Ley 19/2007 could expose the RFEF to sanctions from the Spanish authorities. For example:
- a) On 24 September 2014, Spain’s Basque Government issued an order (the “Basque Order”) reversing a decision rendered by the Regional Association of the *Federación Vasca de Fútbol* (the “FVF”) declining to register 15 Spanish resident minors of Moroccan nationality on grounds that the minors’ club, CD Otxartabe, had not applied for their registration in accordance with the FIFA RSTP. It granted the FVF 24 hours to register the said minors or face administrative sanctions, stating that foreign minors legally residing in the autonomous Basque region ought to be accorded the same treatment as the rest of the minors and that Article 19 of the FIFA RSTP cannot be applied to the prejudice of foreign minors. Following the Basque Order, the RFEF sought FIFA’s clarification on the way forward through a letter dated 29 September 2014.
 - b) On 14 November 2014, the Galician parliament issued a directive (the “Galician Directive”) ordering the RFEF to allow all foreign minors to take part in football competitions without any restrictions.
68. The RFEF should therefore be absolved from any liability regarding breach of the FIFA regulations.

d) *Nulla poena sine culpa*

69. The current practice in Spanish football as regards the international transfer of minors involves a three-staged system whereby (i) the clubs wishing to register the minor must first request the relevant regional association for the minor’s ITC, (ii) the regional associations must thereafter ask the RFEF to process the ITC and (iii) upon receiving this request, the RFEF’s duty is then to seek the FIFA Players’ Status Sub-Committee’s approval for the international transfer of the minors.
70. Therefore, the moment the regional association fails to ask the RFEF to process the ITC and instead proceeds to directly register the minors, the RFEF would not be in a position to seek the FIFA Players’ Status Sub-Committee’s approval and there is nothing the RFEF can do other

than to revoke these registrations – which it did – upon acquiring knowledge of the situation. The RFEF would therefore not be said to have breached Article 19.4 of the FIFA RSTP.

71. It is the FCF and Barcelona who breached the regulations by registering the Minors without the RFEF's knowledge. Neither Article 13.1 (d) of the FIFA Statutes nor the FIFA RSTP imputes liability on a football association for the acts or omissions committed by its affiliate members.
 72. The doctrine of *nulla poena sine culpa* requires an accused to first be found culpable for an offence before being punished. It states that a punishment cannot be meted in the absence of any illegality.
 73. The above doctrine is also embedded in:
 - i. Article 63 of the Swiss Penal Code, which states that “[t]he judge shall sentence in accordance with the accused’s culpability and also take into account his background and personal circumstances”;
 - ii. Article 7 of the FIFA Disciplinary Code, which states that:

“Section 1. Conditions for sanctions

7 Culpability

1. Unless otherwise specified, infringements are punishable regardless of whether they have been committed deliberately or negligently”; and
 - iii. FIFA’s cooperation with the World Anti-Doping Agency, which states that: “[t]he principles of fault and individual case management are essentials of Swiss sanction law and therefore have to be considered when imposing private sanctions. Every sanction contains a distinct individual component, because every sentence has to take into account the fault of the delinquent”.
 74. Therefore, the RFEF did not commit any voluntary or involuntary breach of Articles 19(1), (3) and (4) of the FIFA RSTP as read together with Annexes 2 and/or 3 thereof, and neither did it breach Article 9.1 of the FIFA RSTP.
- e) *Violation of the right to be heard and self defence***
75. The sanctions imposed in the Appealed Decision were apparently based on an indirect breach by the Appellant of Article 13 of the FIFA Statutes.
 76. This led to a denial of the Appellant’s right to be heard and to defend itself on this particular provision of the FIFA Statutes because the FIFA Disciplinary Committee proceedings were opened on the premise that the RFEF had breached certain provisions of the FIFA RSTP and not Article 13 of the FIFA Statutes, thereby causing the RFEF to focus its defence on issues which eventually proved to be irrelevant to FIFA.
- f) *The RFEF acted in good faith***
77. The RFEF acted in good faith and complied with the FIFA RSTP. It was not privy to or aware of the Minors’ transfers and cannot be held liable for the FCF’s transgressions since it has no control over the regional tournaments.

78. The RFEF drew the attention of its Regional Associations (including the FCF) and member clubs to the relevant FIFA regulations and directives in relation to the international transfer of minors, including (i) FIFA's new requirements that the international transfer of minors be approved by the FIFA Players' Status Sub-Committee (ii) RFEF Circular No.27 of 27 November 2009 which required all member clubs seeking to effect an international transfer of a minor or a first registration thereof to make this request through the FIFA TMS by sending the application to the RFEF and (iii) the FIFA RSTP 2009/2010 amendments on the protection of minors through Circular No. 11.
79. In addition, on 5 February 2013, the RFEF immediately cancelled the licenses issued by the FCF to the players aged 12 and above, *i.e.* Players 1-5 and Player 20 once it became aware of the illegalities performed by the FCF.
- g) *The RFEF cannot be sanctioned for any breach of Article 5.1 of the FIFA RSTP***
80. Article 5.1 of the FIFA RSTP can only possibly be breached by a club and any such breach is purely a sporting infraction punishable in accordance with Article 55 of the FIFA Disciplinary Code.
81. In accordance with Article 55 of the FIFA Disciplinary Code, a team which fields an ineligible player in an official match is subject to a minimum fine of CHF 6,000 and a minimum fine of CHF 4,000 if it fields the player in a friendly match.
82. Therefore, an association cannot be sanctioned for any breach of Article 5.1 of the FIFA RSTP and the RFEF and could only possibly be exposed to sanctions under Article 13 (d) of the FIFA Statutes for having allowed ineligible players to be fielded in official matches contrary to Article 55 of the FIFA Disciplinary Code. However, no such sanctions can be imposed in this particular case because Article 55 of the FIFA Disciplinary Code only applies to FIFA organised competitions, with the RFEF Disciplinary Code being applicable for sanctioning any players ineligible fielded in national competitions.
83. Article 148 of the Spanish Constitution grants each autonomous region in Spain, (one of which is Catalonia) the right to promote sports and leisure. The FCF is exclusively in charge of running and organising competitions in Catalonia and decides on which players are eligible to take part. The RFEF cannot therefore be said to have breached Article 5.1 of the FIFA RSTP.
84. Whereas Article 122 of the RFEF General Regulations empowers the Appellant to issue licenses for footballers aged 18 years and above to take part in national competitions, the laws of Catalonia exclusively empower the FCF to license players to take part in official competitions in Catalonia, and the RFEF cannot control or supervise the issuance of licenses at regional level as doing so would amount to the Appellant exceeding its powers.
85. Therefore, there was no breach of the regulations in as far as the licensing of the Minors was concerned because none of them was over 18 and FIFA erred by finding that the Appellant had failed to ensure the Minors' direct registration at the RFEF.
86. Although the Minors were not registered at the RFEF, they did not take part in any RFEF organised competitions and in any case, in the unlikely event of the Panel finding Article 5.1 of

the FIFA RSTP to be applicable to the RFEF, then any violation thereof could only have been committed in relation to 10 of the Minors and not the ones aged below 12 years.

h) *There was no breach of the FIFA RSTP in relation to 21 of the Minors*

87. Pursuant to Article 9.4 of the FIFA RSTP, an ITC is not required for a player under the age of 12 years.
88. Therefore, there was no breach in as far as the RFEF's failure to receive an ITC from the former associations of 21 of the Minors, *i.e.* Players 6, 9, 10, 11, 13-19, 21, 22 and 24-31 is concerned because the said players were all aged below 12 years when they were transferred.
89. Although FIFA has now amended the FIFA RSTP to require an ITC for players aged 10 years or more, this does not change the fact that 21 of the 31 Minors in question were aged below 12 years at the time of their respective transfers.
90. This is corroborated by (i) Article 9.4 of the FIFA Commentary to the RSTP which states in part that "(...) *any transfers before the age of 12 have no effect in relation to the provisions of the Regulations (...)*"; (ii) FIFA's conduct and statements at various seminars and workshops, and (iii) FIFA's letter dated 17 April 2014.
91. Therefore, the 21 Minors do not fall under the FIFA RSTP and in particular Article 19 thereof, meaning no sanctions ought to have been imposed on the RFEF or Barcelona in regards to them.
92. Sanctions can only be imposed in relation to 10 of the Minors – all of whom were aged above 12 years - these being Player 1-5, 7, 8, 12, 20 and 23 for violations related to the following provisions:
 - a) Article 19.1 of the FIFA RSTP in relation to the international transfer of Players 1- 5;
 - b) Article 19.3 of the FIFA RSTP in relation to the international transfer of Player 12;
 - c) Article 19.4 and Annexes 2 and 3 of the FIFA RSTP in relation to the international transfer of Players 1-5 and 20; and
 - d) Article 5.1 of the FIFA RSTP in relation to the international transfer of Players 1-5, 7, 8, 12, 20 and 23.

i) *Alleged breach of article 19.4 of the FIFA RSTP*

93. The RFEF denies breaching Article 19.4 of the FIFA RSTP and states that it could only have complied with this provision had it received a petition for registration of the Minors from Barcelona.

j) *The fine is disproportionate*

94. The fine imposed in the Appealed Decision is unreasonable and disproportional *vis-à-vis* the facts and circumstances and should be reduced.

95. The Appealed Decision failed to take into account all relevant factors in the case and the degree of the offender's guilt when imposing the fine and also the principle of proportionality as laid forth in CAS 2006/A/1025.
96. The Appealed Decision particularly erred in arriving at its fine by:
- i. Basing its fine on the alleged endangerment of minors as prohibited under Article 19.1 of the FIFA RSTP*
97. None of the Minors was endangered. The programs and facilities Barcelona offers its players at the internationally renowned "La Masia" are not and were not in any way an avenue for the exploitation of minors but a means of protecting and enhancing opportunities for them. Pursuant to Article 99.1 of the FIFA Disciplinary Code, FIFA has failed to discharge its burden of proving that the Minors had been endangered.
- ii. Disregarding the following relevant factors specific to the case:*
- a) The structure, legal organisation and administration of sports in Spain and in particular the RFEF's duty to comply with Spanish laws and the possibility of minors being registered by the regional associations without the RFEF's knowledge;
- b) The RFEF's position as a third party who behaved in good faith during the breaches committed by Barcelona and the FCF;
- c) The RFEF's immediate act of cancelling the registrations of Players 1-5 and 20 upon acquiring knowledge of their illegal transfers;
- d) The RFEF's genuine belief that the Players aged below 12 years were legally registered; and
- e) That in accordance with Article 67 of the FIFA Disciplinary Code, an association should not be held liable for the acts of its affiliate members.
- iii. Imposing a fine never before imposed in organised football*
98. The fine imposed in the Appealed Decision is excessive *vis-à-vis* the following fines previously imposed by FIFA on parties found to have breached the FIFA regulations:
- i. A fine of CHF 50,000 imposed on the Zambian Football Association (the "ZFA") in February 2014 for transferring 8 players without an ITC contrary to Articles 6, 8 and 9 of the FIFA RSTP together with Articles 3.2 (1), 5.2 (2) and 8.2 (2) of Annexe 3 to the FIFA RSTP as well as Article 4 Annexe 3 thereof. If FIFA fined the ZFA CHF 50,000 for transferring 8 players, then if the same criteria were applied, the RFEF ought to have been fined at most CHF 193,750 (50,000 x 3,875);
- ii. A fine of CHF 40,000 imposed on Uruguayan club Institución Atlética Sud América, (together with a two window transfer ban at national and international level), and a fine of CHF 50,000, 40,000, 20,000 and 15,000 respectively on Argentinean clubs IA Central Córdoba, CA Independiente, Racing Club and CA Rosario Central (together with a warning on all the said clubs) for "bridge transfers", contrary to Article 3.1, Article 4.2, Article 8.3(3) and Article 9.1 (2) of Annexe 3 of the FIFA RSTP in March 2014. Neither the Argentinean Football Association, nor the Uruguayan Football Association was

sanctioned for the breaches committed by the said clubs and for failing to register the players in question at the relevant national associations;

- iii. A fine of CHF 100,000 imposed on the Egyptian Football Federation in May 2010 for failing to ensure the safety and security of the Algerian football delegation and the Cairo International Stadium during a 2010 FIFA World Cup qualifying match;
- iv. A fine of CHF 30,000 imposed on the Croatian Football Federation and its player Josip Simunic in December 2013 as a result of discriminatory behaviour by the latter;
- v. A fine of CHF 45,000 imposed on the Ukrainian Football Federation in September 2013 for the offensive and discriminatory acts of a group of Ukrainian fans during a match between Ukraine and San Marino; and
- vi. Finally, the RFEF also highlights that the fine imposed is greater than that imposed by FIFA in the Barcelona Disciplinary Committee Decision notwithstanding the RFEF's innocence and the fact that it was Barcelona's acts together with those of the FCF which led to these proceedings.

iv. Imposing excessive procedural costs on the RFEF

99. In ordering the RFEF to pay CHF 30,000 as procedural costs the Disciplinary Committee did so disproportionately by failing to consider the fact that FIFA's investigations into both cases (*i.e.* the proceedings involving Barcelona and the RFEF) were basically aided by Barcelona. The procedural costs ought to take into account that FIFA incurred less investigation expenses and also the fact that the Barcelona and RFEF cases are similar and involved one consolidated investigation. Therefore, by ordering the RFEF to pay CHF 30,000 as procedural costs and Barcelona an additional CHF 30,000, FIFA arrived at a total of CHF 60,000 as procedural costs, which is excessive.

V.2 The Respondent's Submissions

a) Prayers and requests

100. In its Answer, FIFA asks the CAS to:

- "1. Reject all the reliefs sought by the Appellant.*
- 2. Confirm in its entirety the decision hereby appealed against.*
- 3. 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".*

b) In general

101. In a nutshell, FIFA avers that the RFEF committed the following breaches:

- a) Article 5.1 of the FIFA RSTP in relation to all the Minors;
- b) Article 19.1 of the FIFA RSTP in relation to Players 1-5, 14, 20, 27 and 30.
- c) Article 9.1 of the FIFA RSTP in relation to Players 1-5 and 20

- d) Article 19.3 of the FIFA RSTP in relation to Players 12, 25, 26, 29 and 31
- e) Article 19.4 of the FIFA RSTP as read together with Annexe 2 thereof in relation to Players 1-5, 12 and 20; and
- f) Article 19.4 of the FIFA RSTP as read together with Annexe 3 thereof in relation to Players 1, 2, 4, 5, 12 and 20

102. FIFA maintains that the fine as upheld in the Appealed Decision is proportionate.

c) *The alleged conflict of laws*

- 103. There exists no conflict between the FIFA regulations and Spanish law. Both laws co-exist. Nevertheless, the FIFA regulations, and in particular Article 19 and 19bis of the FIFA RSTP are exclusively applicable and binding at national level and must be included in the association's regulations without any modifications. In any case, Article 19 of the FIFA RSTP generally prohibits the international transfer of minors regardless of the provisions of a country's national laws or an association's regulations and the FIFA regulations prevail in case of any inconsistency.
- 104. The doctrine of *lex sportiva* requires an association to apply and abide by the hierarchical structure of rules and regulations in cases of conflict of laws.
- 105. Pursuant to Article 10.1 of the FIFA Statutes, the RFEF, as a FIFA member, is responsible for organising and supervising football in Spain. FIFA does not recognise any other football association in Spain.
- 106. In any case, the RFEF ought to have first drawn FIFA's attention to any conflict of laws.

d) *The RFEF breached Article 19.1 of the FIFA RSTP*

- 107. Article 19.1 of the FIFA RSTP only allows the international transfer of players aged 18 and above subject to the exceptions stipulated under Article 19.2 thereof.
- 108. Regardless of the role played by the FCF and/or Barcelona, the RFEF breached its duty to ensure in a preventive and active manner that its national football stakeholders did not breach Article 19.1 of the FIFA RSTP and the RFEF's duty to this effect had been specified in FIFA Circular No.1190.
- 109. In this context, the RFEF knowingly breached Article 19.1 of the FIFA RSTP by allowing the international transfer of Players 1-5, 14, 20, 27 and 30.

e) *The RFEF breached Article 19.3 of the FIFA RSTP*

- 110. Article 19.3 generally prohibits the international transfer of minors even if the minor(s) in question has never previously been registered with a club and is not a national of the country in which he wishes to be registered for the first time.
- 111. The RFEF breached its duty to ensure in a preventive and active manner that its national football stakeholders did not breach Article 19.3 of the FIFA RSTP. It failed to prevent its affiliated clubs from registering under-aged players who were not Spanish citizens and that such

players were only registered if the exceptions laid forth under Article 19.2 of the FIFA RSTP had been met.

112. In this regard, the RFEF further breached Article 19.3 of the FIFA RSTP in relation to the international transfer of Players 12, 25, 26, 29 and 31 by allowing their first registration despite the said players being under aged foreigners who had never previously been registered with a Spanish club.

f) *The RFEF breached Article 19.4 of the FIFA RSTP as read together with Annexe 2 and/or 3 thereof*

113. Article 19.4 of the FIFA RSTP requires all associations, including the RFEF to seek the FIFA Players' Status Sub-Committee seeking the committee's approval for the international transfer of minors even if they are of the opinion that a club has met the exceptions laid forth under Article 19.2 of the FIFA RSTP.

114. The RFEF contravened Article 19.4 of the FIFA RSTP together with Annexe 2 thereof in relation to the international transfer of Players 1-5, 12, and 20 and breached Article 19.4 of the FIFA RSTP together with Annexe 3 thereof in relation to the international transfer of Player 1, 2, 4, 5, 12 and 20. It cannot invoke the acts of any of its member clubs or a regional association unknown to and unrecognised by FIFA (the FCF) in absolving itself from any liability or responsibility.

g) *The RFEF breached Article 5.1 of the FIFA RSTP*

115. The Appellant breached Article 5.1 of the FIFA RSTP by failing to ensure that the Minors were registered at the RFEF and instead permitted them to play for Barcelona in organised football competitions in Spain without registration.

116. The FCF is neither a FIFA member nor a football association recognised by FIFA within the definition accorded to the term "association" as defined in the FIFA Statutes and, as such, a player registered at the FCF cannot be deemed to have been properly registered within the meaning of Article 5.1 of the FIFA RSTP.

117. A violation of Article 5.1 of the FIFA RSTP cannot therefore be regarded as a purely sporting breach that can only be committed by clubs. Article 5.1 of the FIFA RSTP obliges associations to ensure registration of players.

h) *The RFEF breached Article 9 of the FIFA RSTP*

118. Article 9.1 of the FIFA RSTP requires the new association (*in casu* the RFEF) to request and receive the player's ITC from the former associations before proceeding to register the players in question.

119. However, the RFEF breached this provision by failing to request the ITC's of Players 1-5 and 20 from their former associations.

120. Whereas the process of requesting an ITC is initiated by the clubs, as an association, the RFEF remained directly responsible for ensuring compliance with the procedures laid out for international transfers, one of which requires them to request and receive the player's ITC.

121. The RFEF cannot therefore absolve itself from this liability by invoking the acts or omissions done by the FCF or Barcelona.

j) The RFEF's denial of having committed a breach in relation to the 21 Minors

122. Although an ITC is generally not required for players aged below 12 years (cf. Article 9.4 of the FIFA RSTP), this in its very self is not a license for clubs and associations to breach Articles 5 and 19 of the FIFA RSTP. Articles 5 and 19 of the FIFA RSTP must be followed in all cases involving the international transfer of players aged below 12 years regardless of whether or not an ITC is required. It is absurd for the RFEF to imply that the conditions for the registration of minors aged below 12 years are less stringent as compared to those applicable to minors aged 12 and above.

123. The FIFA letter dated 17 April 2014 only refers to an association's general duty to submit an application for the international transfer and first registration of a minor to the sub-committee of the FIFA Players' Status Committee for approval and does not refer to or change the prohibition on the international transfer of minors. Furthermore, the said letter is clear that the RFEF was duly bound to guarantee that all registrations of players below 18 years was made in accordance with the spirit and principles of the FIFA regulations.

j) The alleged defence of nulla poena sine culpa

124. Whether or not the RFEF is culpable and/or intended to breach the FIFA RSTP provisions is irrelevant. It has been established that the RFEF was aware of and allowed the first registration of Players 12, 25, 26, 29 and 31 and it cannot be exonerated on grounds of acts committed by a non-FIFA member.

k) The alleged violation of the RFEF's right to be heard and to defend itself

125. The Disciplinary Committee Decision refers to Article 13 of the FIFA Statutes so as to generally highlight the duty of an association as a FIFA member to ensure compliance with FIFA's regulations. It is the RFEF's breach of these obligations which led to the sanctions imposed in Disciplinary Committee Decision and the Appealed Decision. At no stage did the Disciplinary Committee impose objective liability on the RFEF.

l) The proportionality of the fine

126. The fine imposed in the Appealed Decision is proportionate *vis-a-vis* the facts and circumstances and was based on the following principles:

- a) FIFA's objective to protect minors as enshrined under Article 19 of the FIFA RSTP.
- b) The RFEF's reckless and reprehensible conduct which endangered the Minors particularly by:
 - i. Failing to put in place proper structures to regulate the prohibition of the international transfer of minors in line with FIFA's mandatory provisions; and
 - ii. Knowingly yielding to Barcelona's international transfer of minors without taking any action.

- c) The RFEF's infringement of various regulations of the FIFA RSTP over an extended period of time in regards to the international transfer of minors, *in casu* Article 19.1, 19.3, 19.4 as read together with Annexe 2 and 3 thereof, Article 5.1 and Article 9.1 of the FIFA RSTP.
 - d) Articles 41.1 and 41.2 of the FIFA Disciplinary Code, the degree of the offender's guilt as required under Article 39.4 of the FIFA Disciplinary Code, which led to the conclusion that the RFEF was guilty of a combination of infractions which necessitated an increase in the otherwise applicable sanctions based on the following criteria and specific circumstances:
 - i. That in accordance with Articles 10 and 15 of the FIFA Disciplinary Code, a fine in these circumstances be imposed for breaching Article 19.1 and 19.3 of the FIFA RSTP, as this would serve as a more effective measure of punishing and deterring the Appellant. Given that the fines imposable range between CHF 300 and CHF 1,000,000, the FIFA Disciplinary committee deemed a fine of CHF 350,000 to be appropriate in the circumstances; and
 - ii. That the RFEF had engaged in repeated and combined violations of the FIFA RSTP for a prolonged period of time. Further reference was therefore to be made to Article 41 of the FIFA Disciplinary Code according to which a fine is to be based on the most serious violation committed and could be increased depending on the circumstances. Therefore, given the RFEF's additional breach of Article 19.4 as read together with Annexe 2 and 3 thereof and Article 5.1 and Article 9.1 of the FIFA RSTP, an additional fine of CHF 150,000 was to be imposed and the RFEF reprimanded as to its conduct and given one year to rectify its internal legal framework.
127. The fine was imposed in accordance in with the principle autonomy of associations and in exercise of the discretion that comes with it (Article 60 *et seq.* of the Swiss Civil Code as read together with Article 1.1 of the FIFA Statutes).
128. Pursuant to Article 75 of the Swiss Civil Code, a decision rendered by a private association can only be challenged if it violates the law or the association's own statutes and other regulations (cf. Hans Michael Riemer, no. 4).
129. The Panel can only reduce the fine imposed if it feels that FIFA acted arbitrarily and exceeded its discretionary powers as an autonomous association (*quod non*).
130. The role played by the FCF is irrelevant in determining the fine because the same is not a FIFA member.
- m) *No mitigating circumstances***
131. There exists no mitigating circumstances. The facilities installed at "La Masia" by Barcelona are in no way linked to the RFEF and cannot exonerate the latter from its legal obligations under the FIFA regulations.
132. The Minors' lives were endangered from the moment they were taken away from their families.

133. The RFEF's acts of cancelling the FCF's registrations of Players 1-5 and 20 is irrelevant because the cancellations took place after FIFA had already opened internal investigations.
134. The RFEF was not a third party in the Minors' transfers. Therefore, the Appellant cannot seek to have the sanctions mitigated by shifting the blame to Barcelona and the FCF.

V.3 The Supplementary Briefs

a) *The Appellant*

135. By stating in part that *"(...) while referring to the reasoning behind the contents of art. 9 par. 4 of the Regulations, on the occasion of its meeting of October 2009, the sub-committee appointed by the Players' Status Committee had clarified that no application for approval according to art. 19 par. 4 of the Regulations was required prior to any request from an association for an ITC and/or first registration of players under the age of 12"*, FIFA Circular No. 1468 proves that FIFA has only now changed its interpretation of Article 9.4 following the RFEF's Appeal Brief submissions.
136. FIFA Circular No. 1468 corroborates the Appellant's submissions that in accordance with Article 9.4 of the FIFA RSTP, the FIFA RSTP is not applicable to minors aged below 12 years, reasons wherefore the RFEF was not obliged to seek the FIFA Players' Status Sub-Committee's approval. This is further proved by the said circular, which states that *"(...) in respect of art. 9 par. 4, the member associations will be obliged to submit applications for approval of any international transfer of a minor player or first registration of a foreign minor player to the subcommittee appointed by the Players' Status Committee for any player as of the age of 10 (cf. art. 19 par. 4 of the Regulations)"*.
137. Therefore, no sanctions ought to be imposed on the RFEF in relation to the transfers of any of the minors aged below 12 years because no law was breached in relation to their transfers.

b) *The Respondent*

138. FIFA Circular No. 1468 does not intend to change FIFA's policies, regulations or those of the FIFA Players' Status Sub-Committee. It only lowers the ITC age requirement from 12 to 10 years.
139. As a general rule, Article 19.1 and 19.3 of the FIFA RSTP still prohibit the international transfer or first registration of minors save for the exceptions laid forth under Article 19.2 thereof. FIFA Circular No. 1468 is clear on this by stating that *"(...) if a member association intends to register players under the age of 10 (currently 12), despite the fact that no ITC and no application to the sub-committee appointed by the Players' Status Committee will be required, it is all the more the responsibility of this association to verify and ensure that the requirements for the protection of minors established in art. 19 par. 2 of the Regulations are met"*.
140. It was also made clear to the RFEF in FIFA's letter dated 17 April 2014 that the FIFA Players' Status Sub-Committee's approval under Article 19.4 of the FIFA RSTP was not required prior to an association's petition for an ITC and/or first registration of players aged below 12 years. Article 19.4 does not affect the overall prohibition on the international transfer or first registration of minors. This prohibition applies to all players aged below 18 years.

VI. LEGAL ANALYSIS

VI.1 Jurisdiction of the CAS

141. The jurisdiction of the CAS, which is not disputed, derives from Article R47 of the CAS Code as read together with Articles 66 and 67.1 of the FIFA Statutes (edition 2014). These provisions read as follows:

Article R47 of the CAS Code:

“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”.

Article 66 of the FIFA Statutes:

“1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players’ agents.

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

Article 67.1 of the FIFA Statutes:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

142. The jurisdiction of the CAS has also been confirmed by the Parties through their signed Orders of Procedure.

143. It therefore follows that the CAS has jurisdiction to decide the present dispute.

VI.2 Mission of the Panel

144. In accordance with Article R57 of the CAS Code, the Panel has full power to review the facts and the law and to issue a decision replacing the one challenged and/or to annul the said decision and to refer the case back to the previous instance.

VI.3 Admissibility

145. In accordance with Article 67.1 of the FIFA Statutes, *“[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.*

146. The grounds of the Appealed Decision were notified on 22 October 2014 and the Statement of Appeal filed on 7 November 2014. This was within the required 21 days.

147. It follows that the appeal is admissible. Furthermore, no objection has been raised by the Respondent.

VI.4 Applicable Law

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

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

149. Article 66.2 of the FIFA Statutes so provides:

“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

150. Therefore, the Panel holds that the dispute must be decided in accordance with the FIFA regulations, in particular the FIFA RSTP, the FIFA Statutes and the FIFA Disciplinary Code supplemented by Swiss law, if necessary. Indeed, this has also been confirmed and agreed by the Parties as evidenced in their submissions and signed orders of the Order of Procedure.

151. As to which edition of the FIFA RSTP is applicable to this matter, the Panel notes that various breaches took place at different periods between 2005 and 2012 during which periods various editions of the FIFA RSTP were in force.

152. Therefore, when mentioning the FIFA RSTP, the Panel shall by implication be referring to the FIFA RSTP edition which was then in force *vis-à-vis* the specific facts or issues under consideration.

153. The Panel also notes the Appellant’s reference to Spanish law in addressing certain issues but is satisfied at this preliminary stage, like its predecessor in CAS 2014/A/3793, that the FIFA regulations to a greater extent address all the relevant issues for determination in this matter. Nevertheless, Spanish law could be referred to if need be in resolving any misunderstanding between the Parties as discussed in the merits section of this award.

VII. MERITS OF THE APPEAL

I) PROCEDURAL ISSUES

154. As a matter of procedure, the Panel must decide the following issues before addressing the substance of the dispute:

- a) **Was the RFEF’s right to be heard violated at FIFA judicial level?**
- b) **Is there a conflict between the FIFA regulations and Spanish law? If there is, to what extent was the RFEF prevented from complying with its duties as a FIFA member?**

a) Was the RFEF's right to be heard violated at FIFA judicial level?

155. The RFEF claims that the Disciplinary Committee Decision and the Appealed Decision were effectively based on Article 13 of the FIFA Statutes, a provision it had not envisaged would be relevant or applied in determining the matter.

156. This, according to the RFEF, led to a denial of its right to be heard and to submit on this particular provision since it had been led to believe that the disciplinary proceedings had been opened on the premise that certain provisions of the FIFA RSTP had been breached.

157. FIFA denies having violated the RFEF's right to be heard. It reiterates that the RFEF was not sanctioned for having breached Article 13 of the FIFA Statutes *per se* and that the said provision was mentioned in general terms to highlight the RFEF's duties as a FIFA member. FIFA states that it was the RFEF's breach of a number of its obligations as set out under the FIFA RSTP that led to the sanctions.

158. Article 13.1 (d) of the FIFA Statutes states as follows:

"Members have the following obligations: to ensure that their own members comply with the Statutes, regulations, directives and decisions of FIFA bodies".

159. Pursuant to Article 13.2 of the FIFA Statutes, "[v]iolation of the above-mentioned obligations by any Member may lead to sanctions provided for in these Statutes".

160. Reading through the Disciplinary Committee Decision, the Panel extracts the following statements in relation to Article 13 of the FIFA Statutes:

Paragraph 143: *"(...) the fact that the RFEF allowed clubs under its jurisdiction to breach the FIFA regulations over a prolonged period of time in contravention of art.13 para 1(d) of the FIFA Statutes not only shows a breach of responsibility but also demonstrates extreme imprudence (...) art 19 para 1 and 19 para 3 of the FIFA RSTP are not merely administrative provisions but are aimed at effectively protecting the integration and development of human beings (...)"*;

Paragraph 144: *"(...) the association tolerated the continued breaches of the FIFA RSTP by clubs under its jurisdiction – contrary to the provisions of art. 13 par. 1 (d) of the Statutes – and consequently in breach of various provisions of the FIFA RSTP on the RFEF's part (...)"*;

Paragraph 149: *"Further to what has been established above, (...) the RFEF (...) has on the other hand committed several breaches of article 19.4 as read together with annexes 2 and 3 of the FIFA RSTP. Finally, the RFEF has breached article 5.1 and 9.1 of the FIFA RSTP"* (free translation).

161. It is evident from the above statements that the RFEF was *stricto sensu* sanctioned for breaching the FIFA RSTP provisions, *in casu* Article 19.1, 19.3, 9.1, 5.1 and 19.4 as read together with Annexes 2 and 3 thereof and not Article 13 of the FIFA Statutes.

162. In the Panel's eyes, reference to Article 13. 1 (d) of the FIFA Statutes in the FIFA decisions was purely aimed at establishing a link between the breaches committed by the FCF and Barcelona and the RFEF's duties and obligations as a FIFA member with a view to forming a basis on which the RFEF could be sanctioned for breaching the FIFA RSTP provisions.

163. Notwithstanding the above, it was obvious or known to the RFEF that FIFA had opened disciplinary proceedings against them by virtue of its status as a FIFA member.
164. As a prudent member of FIFA who was facing sanctions, one would have expected the RFEF to be aware that the FIFA laws and regulations were applicable to the matter as a whole and to prepare its defence by, among others, referring to the FIFA Statutes with a view to identifying its obligations as established thereunder *vis-à-vis* the charges.
165. Therefore, the RFEF cannot claim to have been denied its right to be heard on Article 13 of the FIFA Statutes as this right was availed to it from the onset.
166. In any case, Article R57 of the CAS Code empowers the Panel to “*review the facts and the law*”.
167. Therefore, even if the RFEF’s right to be heard had been violated (*quod non*), this violation would be cured during the proceedings before CAS through hearing the case *de novo* in accordance with the constant jurisprudence of the CAS (CAS 2014/A/3516, CAS 2013/A/3170 and CAS 2012/A/2702).

b) Is there a conflict between the FIFA regulations and Spanish law? If there is, to what extent was the RFEF prevented from complying with its duties as a FIFA member?

168. The RFEF claims to have been prevented from complying with its obligations as FIFA member as a result of a conflict between the FIFA regulations and Spanish law. It states that it would have been sanctioned by the Spanish authorities had it acted in violation of Spanish law because as a body registered in Spain, it is subject to and must abide by Spanish laws (CAS 2012/A/2750).
169. It particularly cites several directives issued by the Spanish executive bodies and also argues that:
 - a) Ley 19/2007 prohibits the discrimination of foreigners *vis-à-vis* Spanish nationals in matters relating to sports and states that FIFA’s ITC requirements for foreigners amounts to discrimination; and
 - b) In accordance with Spanish law, regional associations such as the FCF are not subject to the FIFA or RFEF regulations when licensing and registering players aged below 18 years to play in regional competitions and as such, the RFEF could not interfere with the FCF’s exclusive licensing activities.
170. FIFA denies the existence of any conflict between its regulations and Spanish law, saying both laws co-exist and that the RFEF ought to have first drawn FIFA’s attention to any conflict of laws.
171. In any case, FIFA avers that Article 19 of the FIFA RSTP is binding at national level and must be included in the association’s regulations without any modifications regardless of the provisions of a country’s national laws. FIFA also asserts that in case of an inconsistency between its regulations and national laws, the former prevails and reiterates that its Statutes do not recognise any football association in Spain other than the RFEF.

172. In accordance with Article 12.3 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, "[a]ny party claiming a right on the basis of an alleged fact shall carry the burden of proof".
173. The burden lies on the Appellant to prove that there exists a conflict between Spanish law and the FIFA regulations and that this conflict prevented the RFEF from complying with the FIFA regulations.
174. In attempted discharge of the above, the Appellant cites (i) the Galician Directive; and (ii) the Basque Order.
175. Looking at the nature of the Galician Directive, the Panel notes that it "*Urges the Galician Government to:*
1. *Submit a proposal to the Galician Football Federation asking the latter to stop discriminating Galician minors of foreign origin in the acquisition of federative licenses to play in sports competitions held in Galicia, guaranteeing equality (...) in sports.*
 2. *Submit a proposal to the [RFEF] (...) asking the latter to stop discriminating Galician minors of foreign origin in the acquisition of federative licenses to play in basic competitions (...) in a manner which guarantees the unifying value of sports.*
 3. *Demand that the [RFEF] immediately removes all barriers currently affecting the Galician minors of foreign origin in the acquisition of federative licenses to (...) so that they can be registered to play in the current season".*
176. In essence, the Galician Directive amounts to an administrative act merely urging the Galician Government to submit certain proposals to the Galician Football Federation and the RFEF in relation to the treatment of Galician minors of foreign origin. There is no evidence that the Galician Government ever undertook the said requests and/or formally passed certain laws to the effect that the RFEF had to forthwith change the manner in which it treated Galician minors of foreign origin.
177. As such, the Panel finds the Galician Directive to be devoid of any legal force and/or binding nature in the Kingdom of Spain.
178. Looking at the Basque Order, the Panel notes that it orders the FVF to issue licenses to non-EU foreign minors who prove to be resident in the Basque Country within 24 hours failure to which the FVF will be sanctioned in accordance with Article 31.4 of law decree 16/2006. In its enclosing letter to FVF, the Basque Government states that the said order has been "*(...) expended in an administrative manner and (...) an administrative appeal can be filed before the Appeals Administrative Tribunal of the Superior Justice of the Basque Country (...)*".
179. Being an executive order subject to appeal before the national courts, the Basque Order did have some binding effect at law. It however appears that its legal effects do not extend to these appeal proceedings *per se* because the Order, issued on 24 September 2014, only came into force after the facts, issues and breaches giving rise to this appeal had long arisen in 2005 and culminated in 2012. The RFEF cannot therefore claim to have been prevented from complying with its duties as a FIFA member at least between 2005 and 2012. To this end, the Panel also refers to long standing CAS jurisprudence in accordance with which the substantive aspects of

an appeal are to be governed by the laws which were in force at the time the facts at issue occurred (CAS 2000/A/274 at para. 208-209: “*Under Swiss law, the prohibition against the retroactive application of law is well-established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time the facts at issue occurred (...)*”).

180. It therefore follows that the Basque Order has no effect on the substantive aspects of this appeal.
181. As for the RFEF’s reference to CAS 2012/A/2750, the Panel notes that the facts and circumstances relating to that case are completely different from those before this Panel in that the former concerned the enforcement of a FIFA disciplinary committee decision against an insolvent Spanish club and not the international transfer of minors.
182. In CAS 2012/A/2750, the Spanish commercial courts had issued orders restraining the RFEF from enforcing a FIFA disciplinary committee decision against one of its clubs pending the resolution of the insolvency proceedings opened by the said club. The panel therein took specific note of this fact when it stated that FIFA had rightfully refrained from insisting that the RFEF deducts 6 points from the said club, given that doing so would contravene the Spanish commercial court’s orders, which obviously had to be given due consideration following the relevance of national laws (*in casu* Spanish law) in insolvency proceedings.
183. In doing so, CAS 2012/A/2750 did not make a blanket ruling to the effect that there existed a conflict between Spanish law and the FIFA regulations. In fact, the Spanish commercial court’s orders were not weighed against the FIFA regulations. CAS 2012/A/2750 merely recognised the need to ensure a smooth transition of the debtor club from its insolvency status to normal operation before FIFA could intervene with disciplinary measures.
184. The Panel thus finds the principles behind CAS 2012/A/2750 to be inapplicable to this matter.
185. Notwithstanding the above, the alleged conflict of laws could only plausibly be said to exist if it can be established that an individual’s right to freely move from country to country far overrides FIFA’s objectives in as far as the protection of minors is concerned.
186. Whereas the European Union recognises the freedom of movement and the right to work, certain checks and balances have been placed on these rights in situations where minors are involved and/or likely to be directly affected by their parent’s migration.
187. To this end, FIFA, together with the European Union, came to a consensus in 2001 that the international transfer of minors is generally prohibited and this was passed into law vide Article 19 of the FIFA RSTP. As a member of the European Union, the Kingdom of Spain has invariably acknowledged the application of this general prohibition throughout Spain and there is no express Spanish law which has been brought to the Panel’s attention stating otherwise.
188. The RFEF also seems to have acknowledged and accepted the application of the FIFA RSTP in Spanish football by virtue of its status as FIFA member and also through Article 1.4 (c) of the RFEF Statutes, wherein it undertakes to “*at all times respect the statutes, regulations and decisions of FIFA (...)*”. It follows that the RFEF has subjected itself to the FIFA legal system, whose predominant interest is the protection of minors across the globe.

189. Therefore, Article 19 of the FIFA RSTP as approved by the European Union to a greater extent proves that an individual's freedom of movement and the right to work does not override the specific interest of protecting minors from the social dangers inherent in their international transfer in football. The RFEF has not adduced any evidence discharging its burden of proving otherwise.
190. The RFEF cannot therefore argue that the FIFA RSTP is incompatible and/or in conflict with Spanish law.
191. If the RFEF felt that there were certain Spanish laws conflicting with the FIFA RSTP, it was duty bound to draw this to FIFA's attention before or at the time the facts at stake ensued (*i.e.* between 2005 and 2012) and not after the Appealed Decision was rendered as it did in its letter to FIFA dated 29 September 2014.
192. Finally, the issues as seen by the Panel seem strictly related to establishing whether or not the RFEF failed to perform its oversight role in ensuring the protection of minors as envisaged under the FIFA regulations. Indeed, the Panel does not know the full extent of the implications Spanish law could have on the operations of the RFEF, given Spain's division into various autonomous regions, each with its own system of law and governance.
193. In view of the foregoing, the Panel finds that the RFEF has failed to establish the existence of a conflict between Spanish law and the FIFA regulations and/or that any such conflict prevented it from complying with its duties as a FIFA member.

II) SUBSTANTIVE ISSUES

194. There is no dispute between the parties regarding the facts as set out in the former parts of this award. They disagree on liability and the proportionality of the fine imposed, if liability is established. The Appellant also questions the proportionality of the CHF 30,000 procedural costs imposed by the Disciplinary Committee. Based on the evidence and submissions adduced by the Parties, the Panel must therefore address the following substantive issues:
 - a) **Did the RFEF breach the FIFA RSTP provisions on minors?**
 - b) **If the answer to the above is affirmative, are the sanctions imposed on the RFEF fair and proportionate?**
195. A finding on the above necessitates the Panel to first and foremost look into the mischiefs which prompted FIFA to introduce regulations governing the protection of minors and actual statutory structures and frameworks that have been established by FIFA towards protecting minors.
196. In doing this, guidance shall be lent from relevant extrinsic documents which preceded the amendment of the FIFA RSTP in 2001 to include provisions on the protection of minors and subsequent amendments in 2005 and 2009.
 - I. FIFA's statutory framework and structures for the protection of minors
197. In its Circular No. 769 of 24 August 2001, FIFA highlighted the need for "(...) *strict conditions for the international transfer of minors in order to provide a stable environment for the training and education of*

players”. To this end, the Circular proposed to empower “(...) national associations [to] impose disciplinary measures on players agents who have been involved in the improper transfer and/or registration of a minor” and added that “(...) FIFA, in cooperation with UEFA, will establish a Code of Conduct which should be followed by national associations (...). National associations can carry out on the spot investigations at clubs to verify compliance with the Code of conduct (...)”.

198. In its Circular No. 801 of 28 March 2002, FIFA stated that the ban on international transfers of players under the age of 18 years was there “(...) in order to guarantee the well-being of all young football players”. It added that “[t]he intention [was] not to prevent young players from enjoying the game but rather, to avoid abuse and exploitation of young talents”.
199. In its July 2007 White Paper on Sport, the European Commission noted with grave concern that: “[t]he exploitation of young players [was] continuing. The most serious problem concern[ed] children who are not selected for competitions and abandoned in a foreign country, often falling in this way in an irregular position which fosters their further exploitation. (...)”. It emphasised that “Protective measures for unaccompanied minors in Member State immigration laws [had] to be applied rigorously (...)” and stated that “[t]he Commission [would] propose to Member States and sport organisations to cooperate on the protection of the moral and physical integrity of young people through the dissemination of information on existing legislation, establishment of minimum standards and exchange of best practices”.
200. FIFA duly took note of the above and, in introducing Article 19.4 and Article 19 bis of the current FIFA RSTP provisions in 2009, stated in its circular No. 1190 of May 2009 that the new amendments would “better monitor and control the observance of the rules pertaining to the protection of minors in order to safeguard young players as well as training clubs from being exploited”.
201. When introducing Annexe 2 of the current FIFA RSTP provisions in its 2009 FIFA RSTP edition, FIFA also stated in its circular No. 1206 of 13 October 2009 that the reasons therefor was the hope that it would “(...) improve the procedure in order to better monitor and control the observance of the rules concerning the protection of minors”.
202. It is on the spirit and letter of the above reports and circulars that FIFA periodically amended the FIFA RSTP to introduce certain provisions regarding the international transfer of minors as contained in the latest edition with the aim of curbing the rampant and wanton trafficking, exploitation and abandonment of minors in foreign territories within the world of football and to regulate their transfer.
203. Reading through the current FIFA RSTP edition, it is apparent that the following statutory provisions, structures and frameworks have been established by FIFA towards the protection of minors:
 - a) That as FIFA members, national football associations must ensure that their own members comply with FIFA’s Statutes, regulations, directives and decisions in relation to the protection of minors (cf. Article 13.1 (d) of the FIFA Statutes).
 - b) That as a general rule, the international transfer of minors is strictly prohibited unless certain exceptions as set out under Article 19.2 of the FIFA RSTP are met. Article 19.2 of the FIFA RSTP states as follows:

“The following three exceptions to this rule apply:

- a) The player's parents move to the country in which the new club is located for reasons not linked to football.*
- b) The transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between 16 and 18. In this case, the new club must fulfil the following minimum obligations:*
- i. It shall provide the player with an adequate football education and/or training in line with the highest national standards.*
 - ii. It shall guarantee the player an academic and/or school and/or vocational education and/or training, in addition to his football education and/or training, which will allow the player to pursue a career other than football should he cease playing professional football.*
 - iii. It shall make all necessary arrangements to ensure that the player is looked after in the best possible way (optimum living standards with a host family or in club accommodation, appointment of a mentor at the club, etc.).*
 - iv. It shall, on registration of such a player, provide the relevant association with proof that it is complying with the aforementioned obligations.*
- c) The player lives no further than 50km from a national border and the club with which the player wishes to be registered in the neighbouring association is also within 50km of that border. The maximum distance between the player's domicile and the club's headquarters shall be 100km. In such cases, the player must continue to live at home and the two associations concerned must give their explicit consent".*
- c) That in order to enable associations to monitor and/or detect any possible breach of the above prohibition by clubs, FIFA has entrusted all national football associations with a duty of care by directing them to:
- i. Ensure that Article 19 and 19bis of the FIFA RSTP have been included in the association's regulations without modification (cf. Article 1.3 (a) of the FIFA RSTP);
 - ii. Ensure that clubs that operate an academy with legal, financial or de facto links to the club report all minors who attend the academy to the association upon whose territory the academy operates (cf. Article 19bis.1 of the FIFA RSTP);
 - iii. Ensure that all players (amateur or professional) desirous of playing for a club in organized football have been registered at the national association (cf. Article 5.1 of the FIFA RSTP);
 - iv. Sanction any club and/or player who appears for a club in any official match without having been registered at the association (cf. Article 11 of the FIFA RSTP);
 - v. Register a player (either as an amateur or professional) only upon receiving an ITC from the player's former association (cf. Article 9.1 of the FIFA RSTP);
 - vi. Check the "Minors" tab in TMS at regular intervals of at least every three days (cf. Annexe 2 Article 2.1 of the FIFA RSTP);

- vii. Keep a register comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies (cf. Article 19bis.2 (a) of the FIFA RSTP); and
 - viii. Submit all applications for the international transfer of minors subject to Article 19.2 and 19.3 of the FIFA RSTP to the sub-committee appointed by the Players' Status Committee for approval.
- d) That as football's world governing body, FIFA has retained the right to sanction associations and clubs that do not comply with the FIFA laws on the protection of minors and/or FIFA's regulations in general (cf. Article 19.4 and Article 19bis para5 of the FIFA RSTP and Article 13.2 of the FIFA Statutes) and has placed full liability on all associations for any procedural disadvantages that may arise due to a failure to check the "Minors" tab in TMS at regular intervals of at least every three days (cf. Annexe 2 Article 2.2 of the FIFA RSTP).
204. In essence, the structure has it that the national football associations are the primary guardians of FIFA's regulations on the protection of minors with power to take action on any member who breaches the said regulations. On their part, the clubs must comply with these regulations, with FIFA ultimately reserving the right to enforce its laws on the protection of minors by taking action on any of its members or clubs.
- a) Did the RFEF breach the FIFA RSTP provisions on minors?**
205. As detailed in the Parties' position section, it is FIFA's assertion that the RFEF breached Articles 5.1, 19.1, 9.1, 19.3 and 19.4 of the FIFA RSTP as read together with Annexes 2 and 3 thereof.
206. The RFEF denies having breached any of the FIFA RSTP provisions and particularly insists that that no breach was committed in relation to 21 of the Minors, arguing that they did not fall under the scope of the then FIFA RSTP by virtue of having been aged below 12 years.
207. In view of this, the Panel must first establish whether the then FIFA RSTP did not apply to minors aged below 12 years as this, the Panel believes, is one of the backbones of the RFEF's appeal whose finding could have an ultimate bearing on whether the RFEF committed a majority of the breaches alleged by FIFA.
- (i) Did Article 9.4 of the FIFA RSTP exclude minors aged below 12 years from the FIFA RSTP provisions in general?**
208. The RFEF avers that in accordance with Article 9.4 of the FIFA RSTP, minors aged below 12 years did not fall under the FIFA RSTP. It therefore argues that no breaches (and in particular Article 9.1 and 19 of the FIFA RSTP) were committed in relation to the transfer of 21 of the 31 Minors, *i.e.* Players 6, 9, 10, 11, 13-19, 21, 22 and 24-31 because they were then aged below 12 years. According to the RFEF, breaches could only possibly have been performed in relation to 10 of the Minors – all of whom were aged above 12 years – these being Players 1-5, 7, 8, 12, 20 and 23.

209. The RFEF relies on (i) Article 9.4 of the FIFA RSTP and the FIFA Commentary thereto, (ii) FIFA's conduct and statements at various seminars and workshops, (iii) FIFA's letter dated 17 April 2014 and (iv) FIFA Circular No. 1468.
210. FIFA states that its letter dated 17 April 2014 does not refer to or change the prohibition on the international transfer of minors and that FIFA Circular No. 1468 only lowers the ITC requirement from 12 to 10 years. It insists that regardless of the provisions of Article 9.4 of the FIFA RSTP, Articles 19.1 and 19.3 thereof still prohibit the international transfer or first registration of minors save for the exceptions laid forth under Article 19.2 thereof.
211. An apt interpretation of the drafter's intention behind Article 9.4 of the FIFA RSTP requires it not be read in isolation but together with the entire texts that accompany and/or form part and parcel of Article 9 of the FIFA RSTP.
212. Article 9.4 of the FIFA RSTP, titled "International Transfer Certificate" reads as follows:
- "1. Players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC) from the former association. The ITC shall be issued free of charge without any conditions or time limit. Any provisions to the contrary shall be null and void. The association issuing the ITC shall lodge a copy with FIFA. The administrative procedures for issuing the ITC are contained in Annexe 3, article 8, and Annexe 3a of these regulations.*
- 2. Associations are forbidden from requesting the issue of an ITC in order to allow a player to participate in trial matches.*
- 3. The new association shall inform the association(s) of the club(s) that trained and educated the player between the ages of 12 and 23 (cf. article 7) in writing of the registration of the player as a professional after receipt of the ITC.*
- 4. An ITC is not required for a player under the age of 12 years".*
213. The FIFA Commentary to Article 9.4 of the FIFA RSTP states that "[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, any 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".
214. The title to Article 9 of the FIFA RSTP suggests that it is purely aimed at regulating ITC requirements. The primary purpose of an ITC, as evidenced from Article 9 of the FIFA RSTP, is to facilitate the registration of players at the new association. As a secondary purpose, it could be that Article 9.4 of the FIFA RSTP is aimed at establishing a link between an ITC and the concepts of training compensation and solidarity mechanism. However, there seems to be no unequivocal link between these two concepts, as indeed held in CAS 2014/A/3793 given the fact that FIFA Circular No. 1468 did not match the amendments made to Article 9.4 of the FIFA RSTP by lowering the age at which training compensation and solidarity mechanism are calculated from 12 to 10 years.
215. As such, Article 9 of the FIFA RSTP is an administrative procedure as opposed to a substantive provision governing the international transfer of minors *per se*.

216. Whereas Article 9.4 of the FIFA RSTP excluded minors aged below 12 years from ITC requirements, this exclusion did not affect the substance of the FIFA RSTP provisions on the international transfer of minors as provided for under Article 19 of the FIFA RSTP.
217. Corroborating the above is the award in CAS 2014/A/3793, which held that “[t]he 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 (...). 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 (...) 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”.
218. Article 9.4 of the FIFA RSTP was therefore not a license for breaching the prohibitions contained under Article 19 of the FIFA RSTP by transferring minors aged below 12 years merely because of Article 9.4 of the Commentary’s provision that “any transfers before the age of 12 have no effect in relation to the provisions of the Regulations”.
219. Through the Commentary to Article 9.4 of the FIFA RSTP, it was FIFA’s sole intention to exclude minors aged below 12 years from the calculation of training compensation and solidarity mechanism, “(...) since the training compensation and solidarity mechanism are calculated only as from this age” and in order to “avoid placing a supplementary burden on the associations”.
220. Looking at FIFA’s letter dated 17 April 2014, it states in part that “(...) at its meeting of October 2009, the Players’ Status Sub-committee clarified that there was no need to seek the sub-committee’s approval under Article 19.4 of the FIFA RSTP before requesting an ITC and/or effecting a first registration of a player aged below 12 years (...). However, any association intending to register minors aged below 12 years for one of its affiliate clubs carries a greater responsibility of ensuring that the well-being of the children in question is not under threat (...) in line with the spirit and principles of the relevant regulations on the protection of minors (...).”
221. It could be that the said letter carried an inference to the effect that the RFEF was not obliged to seek the FIFA Sub-Committee’s approval before requesting any ITC and/or a first registration for the transfer of minors aged below 12 years, or “could [have led] to misunderstandings regarding the scope of Arts. 9.4, and 19.4 RSTP (...)” as noted by the panel in CAS 2014/A/3793. However, this misunderstanding, together with the conduct and/or statements allegedly issued by FIFA at various seminars and workshops did not in any way override the FIFA RSTP’s express provisions on the protection of minors and in particular “the spirit and principles of the relevant regulations on the protection of minors”.
222. As for FIFA Circular No. 1468, it merely reduces the age at which an ITC is required from 12 to 10 years “due to the increased number of international transfers of players younger than 12” and “[i]n order to strengthen the protection of minors”. It clarifies that “(...) if a member association intends to register players under the age of 10 (currently 12), despite the fact that no ITC and no application to the sub-committee appointed by the Players’ Status Committee will be required, it is all the more the responsibility of this association to verify and ensure that the requirements for the protection of minors established in art. 19 par. 2 of the Regulations are met”.

223. In effect, nothing can be inferred from FIFA Circular No. 1468 that players aged below 12 years were exempted from the FIFA RSTP's general prohibition of the international transfer of minors.

224. The Panel thus regards all the 31 Minors as having been subject to the FIFA RSTP and shall therefore proceed and make determinations as to whether the RFEF committed the alleged breaches below.

(ii) Did the RFEF breach Article 19.1 of the FIFA RSTP?

225. The FIFA disciplinary bodies sanctioned the RFEF for allegedly overseeing the international transfer of Players 1-5, 14, 20, 27 and 30 in contravention of Article 19.1 of the FIFA RSTP.

226. The RFEF denies these allegations, arguing that sanctions for any possible breach of this provision can only be imposed in relation to the transfer of Players 1-5 and not Players 14, 20, 27 and 30, who were then aged below 12 years. It invokes (i) Article 9.4 of the FIFA RSTP together with the FIFA Commentary thereto, (ii) FIFA's conduct and statements at various seminars and workshops, (iii) FIFA's letter dated 17 April 2014 and (iv) FIFA Circular No. 1468.

227. It is an undisputed fact that before their immediate transfers to Barcelona, Players 1-5, 14, 20, 27 and 30 had been registered as players of Incheon United FC (Korea), FC Pohang Steelers (Korea), Suwonsamsung FC (Korea), AFC Ajax (Holland), AS Ngangue Foot Academy (Cameroon), North Valley soccer Club (United States), US Colomiers (France) Kawasaki Frontale (Japan) and FC Gerland (France) at a time when they were aged below 18 years.

228. It has also gone on record and undisputed by the RFEF that none of the above players was internationally transferred under the exceptions laid forth under Article 19.2 of the FIFA RSTP.

229. Article 19.1 of the FIFA RSTP is clear that the "[i]nternational transfers of players are only permitted if the player is over the age of 18". This, the Panel reiterates, is the backbone of the FIFA RSTP provisions on the protection of minors and is a provision that must be complied by clubs and associations alike, save for the exceptions laid forth under Article 19.2 thereof.

230. Indeed, Article 1.3 (a) of the FIFA RSTP states that Article 19 is "*binding at national level and must be included without modification in the association's regulations*".

231. As such, by moving from one club to another club in another country whilst aged below 18, Players 1-5, 14, 20, 27 and 30 were internationally transferred in contravention of Article 19.1 of the FIFA RSTP.

232. To this end, the Panel notes that as the body in charge of running football in Spain and by virtue of its status as a FIFA member, the RFEF was obliged by Article 13.1 (d) of the FIFA Statutes to ensure full compliance of Article 19.1 of the FIFA RSTP by its member, *in casu* Barcelona.

233. However, through its inaction, the RFEF breached this oversight role by failing to make use of the statutory frameworks and tools at its disposal to ensure the full protection of minors as imposed under Article 13.1 (d) of the FIFA Statutes and Article 1.3 (a) of the FIFA RSTP.

234. The Panel disagrees with the RFEF that Article 19.1 of the FIFA RSTP was not breached in relation to Players 14, 20, 27 and 30 merely because they were aged below 12 when they were transferred. For the reasons advanced at section VII B (a) (i) above, the Panel reiterates that Article 9.4 of the FIFA RSTP was in no way a license for the international transfer of minors, save for the exceptions set out under Article 19.2 and 3 of the FIFA RSTP, which were not met in these particular transfers.
235. It therefore follows that by failing to perform its oversight role as required under Article 13.1 (d) of the FIFA Statutes, the RFEF by default or omission breached Article 19.1 of the FIFA RSTP.

(iii) Did the RFEF breach Article 19.3 of the FIFA RSTP?

236. FIFA claims that the RFEF breached Article 19.3 of the FIFA RSTP in relation to the transfer of Players 12, 25, 26, 29 and 31.
237. The RFEF denies this, claiming that the only minor who can be sanctioned for a possible breach of Article 19.3 of the FIFA RSTP is Player 12, because he was aged over 12 years at the time of his transfer (Article 19.4 of the FIFA RSTP).
238. Looking at the facts as undisputed by the RFEF, it is apparent that Players 12, 25, 26, 29 and 31 had never previously been registered with a club and were only registered for the first time in their careers as players of Spanish clubs FC Sevilla, EFB Calafell, FC Sevilla, RCD Espanyol and CF Sagrada Familia respectively whilst still minors of foreign nationalities.
239. Article 19.3 of the FIFA RSTP, which must specifically be read together with Articles 19.1 and 19.2 thereof, states that “[t]he conditions of this article shall also apply to any player who has never previously been registered with a club and is not a national of the country in which he wishes to be registered for the first time”.
240. Article 19.3 of the FIFA RSTP is in fact one of the mandatory provisions which associations must incorporate into their regulations without any modification as directed by Article 1.3 (a) of the FIFA RSTP. In essence, Article 19.3 of the FIFA RSTP prevented the international transfer of Players 12, 25, 26, 29 and 31 given that they were foreign minors and did not fall under any of the exceptions mentioned under Article 19.2 thereof and had never previously been registered with a club before moving to Spain.
241. Article 13.1 (d) of the FIFA Statutes required the RFEF to ensure that Barcelona and the FCF strictly complied with the above provision and by failing to see to this, the RFEF was negligent and passively allowed the breach of Article 19.3 of the FIFA RSTP.
242. The arguments advanced by the RFEF as to why it should not be found to have breached this provision in relation to Player 25, 26, 29 and 31 given their ages is rejected for the reasons already advanced at section VII B (a) (i) of this award.
243. By therefore neglecting its oversight role as required under Article 13.1 (d) of the FIFA Statutes, the RFEF by default or omission breached Article 19.3 of the FIFA RSTP.

(iv) Did the RFEF breach Article 19.4 of the FIFA RSTP as read together with Annexes 2 and 3?

244. FIFA claims that the RFEF breached Article 19.4 of the FIFA RSTP as read together with Annexe 2 in relation to Players 1-5, 12 and 20 and Article 19.4 of the FIFA RSTP as read together with Annexe 3 in relation to Players 1, 2, 4, 5, 12 and 20.
245. The RFEF generally denies breaching Article 19.4 of the FIFA RSTP and the related Annexes, stating that it could only have complied with this provision had it received a petition for registration of the Minors from Barcelona.
246. The Panel notes that FIFA rightfully and sensibly only took action for breach of the above provisions in relation to the transfer of Players 1-5, 12 and 20 given that the rest of the minors were transferred at a time when the FIFA Disciplinary Committee lacked jurisdiction to impose sanctions for any breach of these provisions, with the same having been vested on the FIFA Players' Status Committee.
247. The relevant FIFA RSTP provisions claimed to have been breached by the RFEF state as follows:

Article 19.4:

“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. The application for approval shall be submitted by the association that wishes to register the player. The former association shall be given the opportunity to submit its position. The sub-committee’s approval shall be obtained prior to any request from an association for an International Transfer Certificate and/or a first registration. Any violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code. In addition to the association that failed to apply to the sub-committee, sanctions may also be imposed on the former association for issuing an International Transfer Certificate without the approval of the sub-committee, as well as on the clubs that reached an agreement for the transfer of a minor”.

Annexe 2:

Article 1.1 *“All applications for a first registration of a minor according to article 19 paragraph 3, or an international transfer involving a minor according to article 19 paragraph 2, must be submitted and managed through TMS”.*

Article 2.1 *“All member associations shall check the “Minors” tab in TMS at regular intervals of at least every three days and pay particular attention to any enquiries or requests for statements”.*

Annexe 3:

Article 1.3 *“TMS helps safeguard the protection of minors. If a minor is being registered as a non-national for the first time or is involved in an international transfer, an approval must be given by a sub-committee appointed by the Players’ Status Committee for that purpose (cf. article 19 paragraph 4). The request for approval by the association that wishes to register the minor on the basis of article 19 paragraphs 2 and 3 and the subsequent decision-making workflow must be conducted through TMS (cf. Annexe 2)”.*

248. It is evident from the above provisions *vis-à-vis* the facts that:

- a) The RFEF did not seek the approval of the subcommittee appointed by the Players' Status Committee in relation to the international transfer and/or first registration of Players 1-5, 12 and 20;
 - b) The RFEF did not submit any application (by TMS or otherwise) for the international transfer and/or first registration of the minors in question; and
 - c) There is no tangible evidence that the RFEF was constantly checking the "Minors" tab at intervals of at least every three days.
249. It is also reasonably arguable that the RFEF could possibly have been in a better position to perform the above duties had it received proper information and/or a request from Barcelona in relation to the players in question. To this extent, the Panel sympathizes with the RFEF's predicament.
250. However, Article 19.4 of the FIFA RSTP seems to have been drafted in such a manner that an association cannot avoid liability even if its members are largely responsible for its breach by stating that "[a]ny violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code", with Annexe 2 Article 2.2 of the FIFA RSTP being clear that "[m]ember associations will be fully responsible for any procedural disadvantages that may arise due to a failure to respect paragraph 1 above".
251. Article 19.4 of the FIFA RSTP and Annexe 2 and 3 thereof cannot be read in isolation. They must be read together with Article 13.1 (d) of the FIFA Statutes with a view to identifying the RFEF's primary duty in relation to the transfer of the players in question. In this regard, had the Appellant been conducting impromptu spot checks on the activities of Barcelona, it could probably have been in a better position to ensure compliance with Article 19.4 of the FIFA RSTP and Annexes 2 and 3 thereof and therefore fulfilled its duties under Article 13.1 (d) of the FIFA Statutes.
252. It therefore follows that by failing to ensure its members acted in accordance with the FIFA regulations as required under Article 13.1 (d) of the FIFA Statutes, the RFEF by default or omission breached Article 19.4 of the FIFA RSTP as read together with Annexes 2 and 3.

(v) Did the RFEF breach Article 5.1 of the FIFA RSTP?

253. The RFEF denies breaching Article 5.1 of the FIFA RSTP. It avers that this provision can only be breached by a club and that any such breach is purely a sporting infraction punishable in accordance with Article 55 of the FIFA Disciplinary Code. It further denies liability by imputing the same on Barcelona and/or the FCF's failings (*nulla poena sine culpa*), also arguing that in accordance with Spanish law, the FCF is exclusively in charge of running and organising competitions within the Catalan region. Finally, it reiterates that although the Minors were not registered at the RFEF, they did not take part in any RFEF organised competitions.
254. FIFA refutes that Article 5.1 of the FIFA RSTP can only be breached by clubs. It states that this provision obliges associations to ensure registration of players and that it was breached in relation to all the Minors.

255. Article 5.1 of the FIFA RSTP provides as follows: “[a] player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of article 2. Only registered players are eligible to participate in organised football. By the act of registering, a player agrees to abide by the statutes and regulations of FIFA, the confederations and the associations”.
256. It has not been disputed for a fact that none of the Minors was directly registered at the RFEF. Rather, they were registered at the FCF and took part in FCF competitions.
257. Looking at Article 5.1 of the FIFA RSTP, the Panel regards it as a provision whose proper realization entails the performance of certain duties on the part of both clubs and national associations.
258. Whereas it is true that the process of registration is in most cases first moved by the new club (*in casu* Barcelona) by petitioning its association to register the players in question, it is not true that an association’s duty ends or ceases in the absence of any registration petition from the clubs as implied by the RFEF.
259. The RFEF had an ancillary duty to play in ensuring full compliance of Article 5.1 of the FIFA RSTP. This role entailed undertaking both preventive and curative measures in monitoring clubs’ compliance thereof.
260. As a preventive measure, the RFEF was by virtue of Article 13.1 (d) of the FIFA Statutes required to ensure that Barcelona followed the procedure laid down under Article 5.1 of the FIFA RSTP.
261. The RFEF could possibly have done this by conducting spot checks on all organized football tournaments held in the Kingdom of Spain with a view to deterring its member clubs from fielding unregistered players.
262. As a curative role, the national associations are generally and by implication empowered to take disciplinary action on clubs that field players who have not been registered at the national association.
263. Indeed, Article 3 of the RFEF Disciplinary Code states as follows:

“1. La Real Federación Española de Fútbol ejerce la potestad disciplinaria deportiva sobre todas las personas que forman parte de su propia estructura orgánica; sobre los clubes y sus futbolistas, técnicos y directivos; sobre los árbitros; y, en general, sobre todas aquellas personas o entidades que, estando federadas, desarrollan funciones, ejercen cargos o practican su actividad en el ámbito estatal.

2. La obligación que impone el artículo anterior es exigible, no sólo por los actos u omisiones propios, sino por los de aquellas personas de quienes se debe responder”.

Free translation:

“1. The Royal Spanish Football Federation exercises disciplinary authority on all persons who are part of its own organizational structure; on the clubs and their players, technicians and managers; on referees; and, in general, on all persons or affiliate entities which hold positions or practice their activity at the state level.

2. *The obligation imposed under the preceding article is due, not only as a result of acts or omissions, but also from those persons who ought to respond*".

264. As such, Article 5.1 of the FIFA RSTP entails dual responsibilities on clubs and associations and the Panel therefore rejects the RFEF's assertion that the said provision can only be breached by clubs.
265. For the reasons already advanced in section VII– A (b) above, the Panel also rejects the RFEF's assertion that it had no jurisdiction to oversee the implementation of Article 5.1 of the FIFA RSTP on alleged grounds that Spanish law placed exclusive authority to do this on the FCF. As a FIFA member, the RFEF agreed and undertook to be fully bound by the FIFA regulations.
266. With regard to the RFEF's assertion that it did not breach Article 5.1 of the FIFA RSTP because the Minors did not take part in any RFEF organised competitions, the Panel refers to page 5 of the definitions section of the FIFA RSTP, which defines "Organised football" as "*association football organised under the auspices of FIFA, the confederations and the associations, or authorised by them*".
267. It is not in dispute that the FCF is a regional football organization in Spain recognized and authorized to operate as such by the RFEF within the Spanish region of Catalonia and that the Minors in question represented Barcelona in various tournaments organized by the FCF.
268. As a matter of fact, the RFEF has not come out claiming to have stopped or asked the FCF to cease organizing regional football competitions in Catalonia.
269. It therefore follows that the tournaments run by the FCF were duly authorized by the RFEF and qualified as organized football within the meaning of the FIFA RSTP. The Panel thus rejects the RFEF's assertion that it did not breach Article 5.1 of the FIFA RSTP merely because the Minors took part in FCF competitions.
270. Finally, the Panel wishes to emphasize that as a regional association, the FCF is not a FIFA member and is therefore not an "association" within the meaning of the FIFA Statutes. Any attributions made by the RFEF to the FCF in defence are therefore rejected. Indeed, recognizing and/or equating regional associations to national associations would "bring about absurd results" (CAS 2014/A/3793) and would effectively take away the associations powers to run the sport at national level as vested by FIFA, which was not the latter's intention.
271. In view of the foregoing, the Panel finds that by failing to perform its oversight role as required under Article 13.1 (d) of the FIFA Statutes, the RFEF by default or omission breached Article 5.1 of the FIFA RSTP.

(vi) *Did the RFEF breach Article 9.1 of the FIFA RSTP?*

272. FIFA claims that the RFEF breached Article 9.1 of the FIFA RSTP by failing to request the ITC's of Players 1-5 and 20 (who were then aged above 12 years and as such required ITC's in accordance with Article 9.4 of the FIFA RSTP) from their former associations and that the acts or omissions of the FCF and/or Barcelona cannot be invoked in exonerating the RFEF.
273. The RFEF invokes the doctrine of *nulla poena sine culpa* and denies having breached Article 9.1 of the FIFA RSTP, attributing any such breach to Barcelona.

274. Article 9.1 of the FIFA RSTP states as follows:

“Players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC) from the former association. The ITC shall be issued free of charge without any conditions or time limit. Any provisions to the contrary shall be null and void. The association issuing the ITC shall lodge a copy with FIFA. The administrative procedures for issuing the ITC are contained in Annexe 3, article 8, and Annexe 3a of these regulations”.

275. It is a fact that:

- a) players 1-5 and 20 had previously been registered at the Korea Football Association, Royal Dutch Football Association, Fédération Camerounaise de Football and Fédération Française de Football, respectively;
- b) the RFEF failed to request and/or receive the ITC’s of Players 1-5 and 20 from the aforementioned associations;
- c) the said players were never directly registered with the RFEF but were registered at the FCF, a regional and subordinate body to the RFEF; and
- d) the said players were all registered at the FCF when they were aged 13, 13, 13, 12, 13 and 15 years respectively, *i.e.* when they were aged 12 or more years.

276. Although the players in question were never directly registered at the RFEF, the Panel finds that through its silence, inaction or otherwise, the RFEF effectively ratified their registration at the FCF and consequently at the RFEF, given the fact that the former is a subordinate of the latter.

277. It is true that the process of dispatching an ITC to the new association is first moved by the new club. To this end, the Panel sympathizes with the RFEF to the extent that it could only possibly have complied with Article 9.1 of the FIFA RSTP had it received proper instructions and information from Barcelona.

278. However, Barcelona’s failures did not prevent the RFEF from performing its supervisory duties, *i.e.* that of ensuring that its members complied with Article 9.1 of the FIFA RSTP as envisaged under Article 13.1 (d) of the FIFA Statutes. The Panel therefore rejects the RFEF’s argument of *nulla poena sine culpa* and finds the RFEF to have neglected its statutory ancillary duties, thereby assuming liability for failing to ensure that it received the ITC’s of the players in question, which would have ensured compliance with Article 9.1 of the FIFA RSTP.

279. In view of the foregoing, the Panel finds that by failing to perform its oversight role as required under Article 13.1 (d) of the FIFA Statutes, the RFEF by default or omission breached Article 9.1 of the FIFA RSTP.

b) Are the sanctions imposed on the RFEF fair and proportionate?

280. The Appellant makes no express challenge and/or submissions in relation to the Disciplinary Committee’s order (i) reprimanding the RFEF and (ii) granting the RFEF one year within which

to align its regulatory system in conformity with the provisions of Article 1.3 (a) of the FIFA RSTP.

281. However, it specifically joins issue with the CHF 500,000 fine imposed by the Disciplinary Committee, saying the same is disproportionate for having failed to consider:
- a) The apparent conflict between Spanish law and the FIFA regulations;
 - b) That none of the Minors was endangered and were in fact well protected at “*La Masia*”;
 - c) That, pursuant to Article 67 of the FIFA Disciplinary Code, an association should not be held liable for the acts of its affiliate members;
 - d) That it acted in good faith and in fact cancelled the registrations of Players 1-5 once it became aware of the illegalities performed by the FCF;
 - e) That 21 of the 31 Minors were below 12 years;
 - f) The doctrine of proportionality as laid forth in CAS 2006/A/1025, the specific facts behind the present case and the degree of the offender’s guilt;
 - g) The fines previously imposed by FIFA for breaches of the FIFA RSTP; and
 - h) That the RFEF was fined less than what Barcelona was fined in the Barcelona Disciplinary Committee Decision.
282. FIFA upholds the proportionality of the fine imposed by its disciplinary bodies, saying it took into account:
- a) The need to protect minors;
 - b) The RFEF’s reckless and reprehensible conduct;
 - c) That various FIFA RSTP provisions had been infringed over an extended period of time; and
 - d) The principle autonomy of associations to issue sanctions and the discretion that comes with it.
283. FIFA reiterates that the facilities installed at “*La Masia*” are not linked to the RFEF and cannot exonerate the latter from its legal obligations under the FIFA regulations, and that the RFEF was not a third party in the Minors’ transfers and cannot therefore seek to have the sanctions mitigated by shifting the blame to Barcelona and the FCF.

(i) Preliminary Remarks

284. The Panel generally agrees with FIFA that under the circumstances, the imposition of a pecuniary sanction – a fine – is appropriate in addition to the sanctions already imposed and uncontested by the RFEF. Furthermore, the Panel is of the view that the grounds a), b), c), e) and h) submitted by RFEF as mitigating factors cannot be taken into account from the outset.

- As stated supra (section VII.I (b)), there is no apparent conflict between Spanish Law and the FIFA regulations that could have prevented RFEF from observing the FIFA provision on the protection of minors.
 - Furthermore, the quality of the facilities (“La Masia”), which has accommodated the minors, cannot be taken into account when determining the appropriate sanction for the RFEF. What is at stake in the present matter is the violation of rules by the RFEF that enabled the (unlawful) transfer of minors. This infraction committed by the federation cannot be cured or mitigated by looking at the behaviour of a third party, *i.e.* the club.
 - In addition, the Panel finds that no issue in relation to Article 67 of the FIFA Disciplinary Code arise here. The Panel does not hold RFEF liable for violations committed by its affiliate. Instead, the Panel has determined that the RFEF itself committed a breach of the rules on the protection for minors and, thus, looks for the appropriate sanction in relation to such infraction.
 - The fact that 21 of the 31 players were minors aged below 12 is – in principle – of no avail. The RFEF submits that it should be absolved *vis-à-vis* the infractions committed because it could in good faith believe that the rules on the protection of minors were wholly or partially inapplicable to minors aged below 12. As stated supra (section VII.II (a (i))), the Panel is of the view that the RFEF cannot be exonerated for adopting such an understanding of the FIFA RSTP and, thus, cannot take this ground into account when determining the sanction.
 - Contrary to the RFEF’s view, the pecuniary fine in the matter CAS 2014/A/3793 is not an appropriate benchmark for determining the appropriate sanction, since the Panel in that matter imposed a combination of sanctions on Barcelona, the stiffest being a ban on national and international transfers for two consecutive transfer windows. *A contrario*, the matter before hand involves the sole assessment of a pecuniary fine.
285. To conclude therefore, the Panel finds that it must solely look at the principle of proportionality when assessing the appropriateness of the fine as well as the principle of equal treatment. Ground d) as submitted by the Appellant will be considered in this context. Furthermore, the Panel is of the view that the principle of proportionality requires that FIFA’s longstanding disciplinary practice be taken into account when looking at the appropriateness of the fine.

(ii) The fine imposed by FIFA

286. Looking at the Disciplinary Committee Decision, it seems as though FIFA arrived at the fine of CHF 500,000 in the following manner:
- a) It declared itself competent to adjudicate and sanction the RFEF for breaching Articles 19.1 and 19.3 of the FIFA RSTP only in relation to 14 of the minors, these being Players 1-5, 14, 20, 27 and 30 (for Article 19.1 of the FIFA RSTP) and Players 12, 25, 26, 29 and 31 (for Article 19.3 of the FIFA RSTP). It did not sanction the RFEF for breaching Articles 19.1 and 19.3 of the FIFA RSTP in relation to the other 17 minors because it was of the opinion that in accordance with the regulations then in force, jurisdiction to do so only lay with the FIFA Players’ Status Committee.

- b) For the above 14 minors, the Disciplinary Committee deemed a fine of CHF 350,000 to be appropriate and considered the violations of Articles 19.1 and 19.3 of the FIFA RSTP to be the most serious infringements. In doing so the Disciplinary Committee regarded a “basic fine” of CHF 25,000 to be appropriate for every minor (CHF 350,000/14).
- c) Given the number of concurrent infringements committed over a prolonged period of time and the RFEF’s duties under Article 13.1 (d) of the FIFA Statutes, reference was to be made to Article 41 of the FIFA Disciplinary Code and an additional fine of CHF 150,000 be imposed for breaching Articles 5.1, 9.1, and 19.4 of the RSTP as read together with Annexes 2 and 3 thereof.

(iii) The “basic fine”

287. The Panel does not question FIFA’s discretion to arrive at what it considers to be a fair basic fine of CHF 350,000. However, this discretion must be exercised conscientiously whilst taking into account the particular circumstances of the case and must rationally strive to stay within the limits that reasonably befits the offence. The FIFA Disciplinary Code establishes maximum and minimum limits for the applicable pecuniary sanction, with Article 39.1 thereof requiring the deciding body to “(...) take account of all relevant factors in the case and the degree of the offender’s guilt when imposing the sanction”. However, the FIFA Disciplinary Code does not state the specific principles and elements which could guide the deciding body in either mitigating or aggravating the sanction when assessing the relevant factors.
288. In the Panel’s mind, the following basic and guiding principles, although not exhaustive but relevant to this case, govern a decision making body in fixing the level of pecuniary sanctions: (a) the nature of the offence; (b) the seriousness of the loss or damage caused; (c) the level of culpability; (d) the offender’s previous and subsequent conduct in terms of rectifying and/or preventing similar situations; (f) the applicable case law and (g) other relevant circumstances.
289. Partially corroborating the above is the Advisory Opinion of the CAS in the matter FIFA & WADA, CAS 2005/C/976&986 at paragraph 139, where it held that:
- “The right to impose a sanction is limited by the mandatory prohibition of excessive penalties, which is embodied in several provisions of Swiss law. To find out whether a sanction is excessive, a judge must review the type and scope of the proved rule violation, the individual circumstances of the case, and the overall effect of the sanction on the offender. However, only if the sanction is evidently and grossly disproportionate in comparison to the proved rule violation and if it is considered as a violation of fundamental justice and fairness, would the Panel regard such a sanction as abusive and, thus, contrary to mandatory Swiss law”.*
290. The Panel observes that there is only little jurisprudence from FIFA on how to operate these principles in practice when it comes to an infraction of the FIFA RSTP by federations. The closest case to the one at hand is probably the case involving a fine imposed by FIFA on the ZFA in the amount of CHF 50,000 for breaching (on eight occasions) Article 6, 8 and 9 of the FIFA RSTP. This amounts to a basic fine of CHF 6,250 per player. There are, however, also important differences between this benchmark and the case at hand.
291. In order to assess the fairness of sanction, the Panel deems essential to highlight the following findings, facts and circumstances of the case:

- **The nature of the RFEF’s breaches:** Unlike in the ZFA case, the RFEF did not only violate procedural rules in the context of transfers of players, but substantive rules, *i.e.* the rules pertaining to the protection of minors in Articles 19.1 and 19.3 of the FIFA RSTP. These rules are of great significance in that they aim at protecting the most vulnerable stakeholders in the sport of football. They have been implemented to prohibit the “commercialisation” of young players and to allow them to develop and grow within their natural environment. The national federations play an important role in the protection of minors. They must assume an oversight and supervisory role in respect of the relevant FIFA rules, a duty stipulated in general and abstract terms in the FIFA regulations. Therefore, a violation of these FIFA rules on the protection of minors should be taken (particularly) seriously (CAS 2014/A/3793, para. 9.34). The RFEF breached the very core of the FIFA RSTP provisions on the protection of minors, *in casu* Articles 19.1 and 19.3 in relation to 14 of the minors, these being Players 1-5, 14, 20, 27 and 30 (for Article 19.1 of the FIFA RSTP) and Players 12, 25, 26, 29 and 31 (for Article 19.3 of the FIFA RSTP).
- **The seriousness of the loss or damage caused:** A further aggravating factor is that in this matter – as opposed to the ZFA case – minors were affected. Minors are without doubt a legal asset that require maximum care and protection and the FIFA RSTP breaches definitely caused damage to the Minors in as far as their rights and interests are concerned. In addition, damage has not only been inflicted on the Minors, but also on the national federations and the clubs to whom these Minors originally belonged. Although the damage inflicted on the Minors cannot be quantified, the Panel considers it to be serious from a material perspective. In particular, the breaches related to some of the very best and talented young foreign prospects and it is therefore rather obvious that the damage exacted on the other stakeholders is very high. In any event, the purpose of the pecuniary sanction must be to deter future offences.
- **The RFEF’s level of culpability:** the Panel finds the RFEF to have been rather **negligent** in performing its oversight role enshrined in Articles 19.1 and 19.3 of the FIFA RSTP in relation to the 14 minors. Indeed, it has (blindly) trusted that the Regional Associations (and also the clubs involved in transfers) fulfil the obligations incumbent on them. The Panel has not been availed with evidence to the contrary. In particular, based on the evidence before it, the Panel is convinced that the RFEF neither colluded and/or knowingly conspired with Barcelona or the competent Regional Associations. Although it is true that the RFEF could have gained knowledge of the transfers and taken appropriate measures had it wanted, it is also apparent that the violations were initiated by Barcelona and facilitated by a Regional Association failing to inform or involve the RFEF in the procedures leading to the transfer and registration of the Minors. The Panel also notes that in accordance with the RFEF Disciplinary Code, the RFEF has legal means and good legal cause – if it so wishes –, to initiate disciplinary proceedings against those it considers to be the key perpetrators of the acts leading to the breach of Articles 19.1 and 19.3 of the FIFA RSTP.
- **The RFEF’s previous and subsequent conduct in terms of rectifying and/or preventing similar situations:** the RFEF is a first offender in as far as failing to perform its oversight role *vis-à-vis* the international transfer of minors is concerned and following FIFA’s disciplinary proceedings into this matter sought FIFA’s assistance with regard to the

alleged conflict of law - vide its letter dated 29 September 2014 - in order to forestall future breaches and to give it greater control over the international transfer of minors. In the Panel's opinion, the manner in which the RFEF conducted itself before and after the infringements came to FIFA's full knowledge not only demonstrate a remorseful acknowledgement of an involuntary omission but also a positive desire to prevent a repeat of the same with good prospects of rehabilitation.

292. Therefore, to conclude, the Panel finds that it should start from the presumption that the starting point for the "basic fine" for the breach of the substantive provisions in Articles 19.1 and 19.3 of the FIFA RSTP is CHF 20,000 per minor. Thus, the basic fine for the violations committed against the 14 minors in this case is CHF 280,000 (14 x 20,000).

(iv) *The increase of the basic fine*

293. Since the RFEF had also breached some procedural rules, *i.e.* Article 5.1 of the FIFA RSTP in relation to all the Minors, Article 9.1 in relation to Players 1-5 and 20, Article 19.4 as read together with Annexe 2 in relation to Players 1-5, 12 and 20 and Article 19.4 as read together with Annexe 3 in relation to Players 1, 2, 4, 5, 12 and 20, FIFA imposed an additional fine of CHF 150,000 according to Article 41 of the FIFA Disciplinary Code. The latter provision reads as follows:

"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 by up to fifty per cent of the maximum sanction specified for that offence.*

2. (...).

3. *The body that determines the fine in accordance with par. 1 is not obliged to adhere to the general upper limit of the fine (cf. art. 15 par. 2)".*

294. Pursuant to the above provision, the basic sanction **may**, "*depending on the circumstances*", be increased in case of concurrent infringements.
295. It is not entirely clear to the Panel why the Disciplinary Committee thought that an increase of basic sanction was warranted in the case at hand. In the Panel's view, the substantive provisions on the protection of minors could not have been infringed without the simultaneous infraction of the respective procedural rules. Given that a valid and transparent international transfer of the 14 Minors in this particular case required the RFEF to undertake the procedural requirements set out under Articles 5.1, 9.1 and 19.4 of the FIFA RSTP as read together with Annexes 2 and 3 thereof but failed to do so, the Panel considers the RFEF's breach of these procedural requirements to also to be part of the overall breach of Articles 19.1 and 19.3 of the FIFA RSTP. Had the RFEF observed the procedural rules, the Minors could not have been transferred (without anyone noticing and, thus, preventing it). If, however, the infraction of the procedural rules on the transfer of players is typically inherent to a violation of the substantive rules on the protection of minors, then – absent any particular circumstances of the case – no increase of the basic sanction is warranted.

296. The Respondent has failed to show why in this particular case the basic sanction does not effectively also encompass the infringements committed in relation to the procedural rules. Therefore, the Panel finds that no increase of the sanction is justified in the case at hand.

v) Conclusion

297. In view of the abovementioned grounds, the Panel concludes that a fine of CHF 280,000 (14 x 20,000) should be imposed on the RFEF for the infringements committed

c) Are the procedural costs imposed by FIFA excessive?

298. The RFEF wants the CHF 30,000 FIFA procedural costs imposed on it reduced. It claims it failed to consider the reduced investigatory costs FIFA incurred following the joint investigation of the Barcelona and the RFEF cases and the fact that FIFA seems to have levied a total of CHF 60,000 as procedural costs from both matters, given that Barcelona was also ordered to pay CHF 30,000 as procedural costs.

299. FIFA makes no specific submissions on this issue.

300. Article 105.4 of the FIFA Disciplinary Code states as follows:

“The body that rules on the substance of the matter decides how costs and expenses shall be allocated and the relevant amounts are stipulated by the chairman. These rulings are not subject to appeal”.

301. Article 105.4 of the FIFA Disciplinary Code could in some circles be seen as harsh in that it denies the losing party an opportunity to challenge what it genuinely believes is an excessive procedural order on costs rendered following and within the substantive framework of disciplinary proceedings heard and determined at FIFA level.

302. However strict, it must be construed in its ordinary literal sense to the effect that decisions regarding the amount and allocation of costs and expenses by the FIFA disciplinary bodies are final and un-appealable, - at least to the CAS.

303. As such, that part of the Disciplinary Committee’s decision imposing an amount of CHF 30,000 on the RFEF as procedural costs cannot be reviewed and is therefore deemed to be final and binding.

d) Final findings

304. The Panel finds the Appellant to have breached its oversight role under Article 13.1 (d) of the FIFA Statutes and consequently occasioned a passive infringement of the following provisions:

- a) Article 19.1 of the FIFA RSTP in relation to Players 1-5, 14, 20, 27 and 30
- b) Article 19.3 of the FIFA RSTP in relation to Players 12, 25, 26, 29 and 31
- c) Article 19.4 of the FIFA RSTP as read together with Annexe 2 thereof in relation to Players 1-5, 12 and 20;

- d) Article 19.4 of the FIFA RSTP as read together with Annexe 3 thereof in relation to Players 1, 2, 4, 5, 12 and 20;
 - e) Article 5.1 of the FIFA RSTP in relation to all the Minors; and
 - f) Article 9.1 of the FIFA RSTP in relation to Players 1-5 and 20.
305. Of the above infringements, Articles 19.1 and 19.3 of the FIFA RSTP is considered to be the most serious offence. Consequently, the Appellant is fined CHF 280,000 to be paid within 30 days following the communication of this award. The rest of the Appealed Decision is fully upheld.
306. In conclusion, the Panel must commend the attorneys appearing in this appeal, Mr. Beain and Mr. Villa for the Appellant, and Mr. Villiger and Mr. Cavaliero for the Respondent for their extensively researched presentations. If we have not mentioned all the submissions and authorities referred to, it is not because they were not enlightening in the determination of this appeal.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Real Federación Española de Fútbol against the FIFA Appeal Committee decision dated 19 August 2014 is partially upheld.
 2. The FIFA Appeal Committee decision dated 19 August 2014 is partially modified and the Real Federación Española de Fútbol is ordered to pay a fine of CHF 280,000 (two hundred and eighty thousand Swiss francs).
 3. The rest of the orders made in the FIFA Appeal Committee decision dated 19 August 2014 are fully upheld.
- (...)
6. Any other or further claims are dismissed.