Arbitration CAS 2016/A/4903 Club Atlético Vélez Sarsfield v. The Football Association Ltd., Manchester City FC & Fédération Internationale de Football Association (FIFA), award of 16 April 2018

Panel: Mr Efraim Barak (Israel), President; Prof. Gustavo Albano Abreu (Argentina); Prof. Ulrich Haas (Germany)

Football
Transfer of minor players
Request for intervention of a party involved in the first instance proceedings but that did not appeal the decision
Procedural violations that can be cured by de novo proceedings
Standing to sue
Interpretation of the statutes and regulations of a sport association
Right to move and reside freely within the territory of a Member State of the EU
Distortion of the transfer market

1. **Admitting a natural or legal person which failed to timely lodge an independent appeal, while it was a party in the proceedings leading to the appealed decision, as a party to CAS proceedings would *de facto* lead to a circumvention of the strict deadline of 21 days to challenge a decision and might set a dangerous precedent in which a direct party to a dispute before a first instance fails to comply with the CAS Code and does not submit an appeal on time, but rather would be permitted to *"enter through the back door"* and join the proceedings if its request for intervention as a party would be upheld, while filed only after the expiry of the time limit to appeal. Such a request for intervention has to be rejected.**

2. **Amongst the procedural violations in a first instance decision that can be cured by a *de novo* CAS proceeding is the right to be heard. Infringements on the parties' right to be heard can generally be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which has the same power to review the facts and the law as the tribunal in the first instance and in front of which the right to be heard has been properly exercised.**

3. **A non-addressee of a first instance decision only has a right to appeal in very restricted cases. As a general rule, the appellant's interest must be concrete, legitimate, and personal. A purely theoretical/indirect interest is not sufficient. In addition, the decision being challenged must affect the appellant directly, concretely, and with more intensity than others. Finally, the interest must exist not only at the time the appeal is filed but also at the time when the decision is issued. CAS jurisprudence found that in order to have standing to sue, the appellant must have an interest worthy of protection or a legitimate interest. This is found to exist if (i) the appellant is sufficiently affected by the appealed decision, and if (ii) a tangible interest of a financial or sporting nature**

is at stake. Only an aggrieved party who has something at stake and thus a concrete interest in challenging a decision adopted by a sports body may appeal against that decision to CAS. Sufficient interest is a broad, flexible concept free from undesirable rigidity and includes whether the appellant can demonstrate a sporting and financial interest.

4. **The statutes and regulations of an association shall be interpreted and construed according to the principles applicable to the interpretation of the law rather than to contracts. The interpretation of the statutes and rules of a sport association has to be rather objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located.**

5. **Free movement of workers does not only contemplate a right to move freely within EU territory for EU citizens, but also to reside freely on EU territory. A provision in the FIFA Regulations on the Status and Transfer of Players (RSTP) preventing football players with an EU passport that are registered with clubs based in non-EU/EEA countries from transferring to clubs based in EU/EEA countries, while permitting football players with an EU passport that are registered with clubs based in EU/EEA countries from transferring to clubs based in other EU/EEA countries would clearly constitute a violation of the principle of free movement of workers, particularly because no justification for such diversified approach is given. This conclusion is also supported by the fact that Article 19 RSTP is addressed and refers only to players over the age of 16 which is, in many countries, the minimum age in which an employment contract may be signed and thus the minors are entitled to be employed as workers. As such, and in order to prevent inconsistencies between different rights of EU/EEA citizens deriving merely from their residence, there is sufficient legal justification to the interpretation of Article 19(2)(b) RSTP as being also applicable to transfers of players with an EU passport from clubs based in non-EU/EEA countries to clubs based in EU/EEA countries.**

6. **The different treatment of minors and the different age limits between clubs based in EU/EEA countries and clubs based in other parts of the world leads to a distortion of the transfer market, since clubs based in EU/EEA countries are able to attract minors between 16 and 18 years of age from all over the world as long as the minor concerned has an EU/EEA passport, whereas clubs based in non-EU/EEA countries can never attract minors until they turn 18, regardless of their nationality, unless Article 19(2)(a) or (c) FIFA RSTP applies.**

I. PARTIES

1. *Club Atlético Vélez Sarsfield* (the "Appellant" or "Vélez Sarsfield") is a football club with its registered office in Buenos Aires, Argentina. Vélez Sarsfield is registered with the *Asociación del Fútbol Argentino*.

2. The Football Association Ltd. (the "First Respondent" or the "FA") is the governing body of football at domestic level in the United Kingdom. The FA has its registered office in London, United Kingdom, and is affiliated to the *Fédération Internationale de Football Association*.

3. Manchester City FC (the "Second Respondent" or "City") is a football club with its registered office in Manchester, United Kingdom. Manchester City is registered with the FA.

4. The *Fédération Internationale de Football Association* (the "Third Respondent" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

5. The *Asociación del Fútbol Argentino* (Argentine Football Association – "AFA") is the governing body of football at domestic level in Argentina. AFA has its registered office in Buenos Aires, Argentina, and is also affiliated to FIFA. AFA is no party to the present dispute, but is nonetheless granted limited rights as an *amicus curiae*.

II. BACKGROUND

6. Below is a summary of the main relevant facts, as established on the basis of the parties' written submissions and the evidence examined in the course of the present appeals arbitration proceeding and at the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

A. Background Facts

7. On 1 October 2010, B. (the "Player") a football player of Argentinian nationality born in 2000, was registered with Vélez Sarsfield when he was 11 years of age. During his registration with Vélez Sarsfield, he was called up to represent AFA's national youth teams.

8. On 22 June 2016, shortly before the Player's 16th birthday, Manchester City sent an email to Vélez Sarsfield with the following content, in a translation into English from the original Spanish language provided by Vélez Sarsfield:

> *"We hereby inform you that the* [Player] *and his parents have taken the decision to join our club next July.*

In this way, Manchester City will bear the payment that stipulates the FIFA on the rights of training of the player.

We also wanted to offer to the Club that you preside over the following bonuses for the future trajectory that the player could develop.

- *[…].*
- *[…].*
- *[…]".*

9. On 23 June 2016, Vélez Sarsfield rejected Manchester City's offer, informing it as follows:

"We are hereby addressing you on behalf of [Vélez Sarsfield]*, in connection with the email received on June 22, 2016, where you state your intention of registering minor player* [the Player]*, who as of this date is registered with our Institution.*

In this sense, we inform you that our Club registered the Player with [AFA] *when he was 11 years old, date since when he has been formed as a person and as a player by our Institution. Currently, the Player is playing in our lower divisions, with a very good performance and great possibilities, as well as in the national team corresponding to his age, for which reason it is our intention to offer him the opportunity of executing a professional contract as from the moment he becomes of age, according to the laws of Argentina.*

Due to the above mentioned reasons we wish to inform our express refusal to transfer the Player in any way to your Club. For all purposes we state that your Club's intention of internationally transferring the Player without our consent would not only infringe our federative rights with respect to the Player, but it would also be contrary to good faith, confraternity, solidarity and respect for the regulations applicable to football, all of them characteristics of any Club with renowned performance and prestige as is in this case Manchester City.

We also wish to emphasise that according to Section 19 of the FIFA Regulations on the Status and Transfer of Players (2016 edition), international transfers of players are allowed only when the player is over the age of 18, except for exceptional cases which are specifically stated in the mentioned regulations. These exceptional cases, in case of being applicable, must be duly accredited before the Sub-Committee appointed by the FIFA Players' Status Committee.

For the above mentioned reasons, we expressly reserve the right to bring a legal action before the Sub-Committee appointed by the Players' Status Committee to provide all the information available so as to defend the rights of our Institution, as well as to report any simulated action that could be taken to the detriment of the loyal fulfilment of the provisions of the FIFA Regulations on the Status and Transfer of Players and other applicable rules.

We hope this reply is sufficiently clear so as to state our position, so that your Club refrains from taking any measure or action which in any way implies violating the rights of Velez and/or breaching FIFA regulations".

10. On 27 June 2016, the Player obtained an Italian passport, besides his Argentinian passport.

11. On 11 July 2016, the day the Player turned 16, he entered into an employment contract with Manchester City, valid as from the date of signing until 10 July 2018.

B. Proceedings before the Single Judge of the Sub-Committee of the FIFA's Players' Status Committee

12. On 2 August 2016, the FA introduced through FIFA's Transfer Matching System ("TMS") a request for approval by the Sub-Committee of the FIFA Players' Status Committee (the "Sub-Committee") for the international transfer of the Player to Manchester City. The FA's request was based on the exception stipulated in Article 19(2)(b) of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"): *"The transfer takes place within the territory of the European Union (EU) or the European Economic Area (EEA) and the player is aged between 16 and 18".*

13. On 9 August 2016, AFA filed its position in respect of the FA's request. AFA provided the Sub-Committee with a letter from Vélez Sarsfield, arguing that Manchester City's proposal of 22 June 2016 violated Article 19 FIFA RSTP. AFA itself also requested the Sub-Committee to dismiss the FA's request.

14. On 16 August 2016, AFA forwarded further documentation from Vélez Sarsfield, including a document dated 27 June 2016, whereby Vélez Sarsfield expressed its desire to enter into a contract with the Player, once the minimum legal age had been reached under Argentine labour law.

15. The FA subsequently provided the Sub-Committee with documentation relating to the academic education, accommodation and care of the Player in England.

16. On 24 August 2016, the Single Judge of the Sub-Committee rendered his decision (the "Appealed Decision"), with the following operative part, in a translation into English from the original Spanish language provided by Vélez Sarsfield:

"The application of the [FA] *on behalf of its affiliated club Manchester City for the approval prior to the request of the International Transfer Certificate of the minor player B. (Italia) is accepted".*

17. On 21 November 2016, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following, in a translation into English from the original Spanish language provided by Vélez Sarsfield:

- *"[…] The Single Judge began by acknowledging that the* [Player]*, born on July 11, 2000, is a minor. In this sense, the Single Judge pointed out that, in principle, international transfers of players are only allowed if the player is over 18 years of age.*

- *The* [Single] *Judge then pointed out that The FA based its request for approval of the subcommittee prior to the international transfer of the Italian minor player,* [the Player]*, on the exception stipulated in art. 19 par.2 (b) of the Regulations, according to which a player between the ages of 16 and 18 may be transferred internationally within the territory of the European Union (EU) or the European Economic Area (EEC), subject to additional requirements stipulated in art. 19 par. 2 (b) points i, ii and iii. The first of these additional requirements stipulates that the club shall provide the player with an adequate football education and/or training in line with the highest national standards. The second requirement, stipulates that the club shall guarantee to the player an academic and/or school and/or vocational education and/or training. The third obligation is for the club to make all necessary arrangements to ensure that the player is assisted and lodged in the best possible way.*

- *The Single Judge then noted that the player is of Italian nationality, was last registered with a club affiliated with* [AFA]*, and wishes to be transferred to a club affiliated with The FA. The Single Judge therefore concluded that the present case concerns an international transfer of a player with the passport of an EU country (Italy),* [from] *a club affiliated to an association which is not in the territory of the EU or of the EEA to a club situated in an EU State of which it has no nationality.*

- *In this sense, the Single Judge took into account the fact that the player is of Italian nationality, who was enrolled in an Argentine club and wishes to be transferred to an English club. In this context, the Single Judge summarized that the logic of art. 19 par. 2 (b) of the Regulations was to ensure that European legislation concerning the free movement of workers is respected in matters of international transfers of underage players. Having said this, and recognizing that the player in question was last registered in a non-EU club, the Single Judge considers that the citizens of the EU member states must maintain the same rights with respect to free movement, whether or not they are currently registered with the EU/EEA. Due to the above, and according to the permanent jurisprudence established by the competent body that has been confirmed by the Court of Arbitration for Sport (CAS) in its acronym in French on one occasion (see TAS 2012/A/2862), the Single Judge declared that, in principle, art. 19 par. 2 (b) of the Regulation was applicable to the present case, however, the requirements set out in points (i), (ii) and (iii) of that exception would have to be fulfilled.*

- *[…] [T]he Single Judge emphasized that in the case in question, according to the documentation provided in the TMS, it would appear that items i, ii and iii of art. 19 par. 2 (b) of the Regulation are fulfilled.*

- *On the other hand, the Single Judge took note of the position of the Argentine club,* [Vélez Sarsfield]*, which is opposed to the international transfer of the player since in his opinion, is violating art. 19 of the Regulations* [sic]*. However, the Single Judge insisted that, having thoroughly analyzed all the documents at his disposal, he found nothing that could revoke the fact that the transfer seems to comply with the requirements of art. 19 par. 2 (b) of the Regulations.*

- *Based on the above, the Single Judge decided to accept the application for approval before the international transfer of the minor player,* [the Player]*, made by The FA, in favor of its affiliated club Manchester City FC".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 12 December 2016, Vélez Sarsfield lodged a Statement of Appeal, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2016) (the "CAS Code"). In this submission, Vélez Sarsfield nominated Prof. Gustavo Albano Abreu, Professor of Law in Buenos Aires, Argentina, as arbitrator.

19. On 3 January 2017, FIFA informed the CAS Court Office that, following a discussion with the other respondents, they jointly nominated Prof. Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrator.

20. On 4 January 2017, upon the request of Vélez Sarsfield, the CAS Court Office provided the parties with two arbitral awards (TAS 2012/A/2787 and TAS 2015/A/4312) concerning the protection of minors issued by CAS, as referred to by FIFA on its website.

21. On 5 January 2017, Vélez Sarsfield filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained a statement of the fact and legal arguments giving rise to the appeal. Vélez Sarsfield challenged the Appealed Decision, submitting the following requests for relief:

"100. Be it taken as duly submitted the Appeal Brief.

101. Be taken into consideration the documentary and testimonial evidence.

102. Be kept the reserve of the federal case elaborated.

103. Be it present that the FA and MC are sued because they are who generated and pulled through the maneuver [sic] *that derived in FIFA's decision which we hereby challenge. In such position, they must exercise their right to defense in the process, since they have been sued financially in views to repair the serious damages which this has caused us. An* [sic] *in view of the argument that their defense may allege, we shall proceed to file the corresponding accusations before the Disciplinary Committee of FIFA, so that they be sanctioned for their wrongful and their anti-regulation proceed* [sic].

104. An exemplary sanction be imposed to MC and FA plus the bearing of the legal costs and attorneys fees due to the wrongful and unacceptable proceed [sic] *by MC, the FA and FIFA.*

105. Finally, we request that the authorization granted in the challenged decision, by which it was accepted the international transfer of the minor B. to MC, upon request by the FA (TMS reference G-0001126) at the request of MC, shall be dismissed and rejected, rejection which shall be decided because of the non compliance of the requirements stipulated in article 19 paragraph 2, subparagraph b) RSTP of FIFA, based on the ground elaborated in the preceding points".

22. On 3 February 2017, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the parties were informed that the arbitral tribunal appointed to decide the present matter was constituted by:

- Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, as President;
- Prof. Gustavo Albano Abreu, Professor of Law in Buenos Aires, Argentina; and
- Prof. Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrators

23. On 15 February 2017, the FA filed its Answer, pursuant to Article R55 of the CAS Code. The FA submitted the following request for relief:

> *"29. The Appeal should therefore be rejected, and CAVS should be ordered to pay the FA's costs of the proceedings".*

24. On 15 February 2017, Manchester City filed its Answer, pursuant to Article R55 of the CAS Code. Manchester City submitted the following requests for relief:

> *"I. This Answer is admissible and well-founded;*
>
> *II. The Appellant does not have sufficient standing to challenge the Decision and thus this appeal must be summarily dismissed;*
>
> *III. Alternatively, the Appellant's appeal must be dismissed in its entirety and the Decision is upheld on the basis that it is lawful;*
>
> *IV. The Appellant must pay in full, or, in the alternative, a contribution towards, the costs and expenses, including the Second Respondent's legal costs and expenses, pertaining to these appeal proceedings before the CAS".*

25. On 15 February 2017, FIFA filed its Answer, pursuant to Article R55 of the CAS Code. FIFA submitted the following request for relief:

> *"[…] In view of all the above, we respectfully request that the challenged decision be confirmed in its entirety. Finally, we request that all costs related to the present procedure shall not be borne by FIFA".*

26. On 22 February 2017, upon being invited by the CAS Court Office to express their views in this respect, FIFA, the FA and Manchester City indicated that they were of the opinion that a hearing was not necessary, whereas Vélez Sarsfield indicated that a hearing must be held.

27. On 2 March 2017, upon the request of the President of the Panel pursuant to Article R57 of the CAS Code, FIFA provided the CAS Court Office with a copy of its file related to the proceedings leading to the Appealed Decision. FIFA however indicated that it deemed that, for confidentiality reasons, the file was only to be disclosed to the Panel and solely to be used within the context of the present arbitration proceedings and for no other purpose.

28. On 17 March 2017, upon being invited by the Panel to express their views in this respect, the FA indicated that *"if the Panel is going to consider the File for the purposes of reaching its decision, the File should be made available to the other parties in order for there to be a fair hearing"*. Vélez Sarsfield and Manchester City failed to respond.

29. On 5 April 2017, the CAS Court Office informed the parties that the Panel considered it necessary to hold a second round of written submissions, limited to the question of standing to appeal. The parties were advised to further develop the issue concerning the legitimate interest of Vélez Sarsfield in being affected by the Appealed Decision and the effect, if existent, of the fact that Vélez Sarsfield had no employment contract with the Player at the time of the transfer. Furthermore, the Panel decided to partially uphold FIFA's request in that all parties would be provided with the FIFA file, except for the document "Schedule One – Scholarship Allowance", which would remain confidential. The Panel did not consider this document to be relevant in respect of the issues at stake.

30. On 12 April 2017, Vélez Sarsfield filed its written submission on its standing to appeal, requesting the objections brought by Manchester City in this regard to be dismissed and rejected.

31. On 18 April 2017, AFA filed a request for intervention.

32. On 19 April 2017, the FA filed its written submission on Vélez Sarsfield's standing to appeal, reiterating that it did not accept Vélez Sarsfield's submission on the issue of whether it has standing to challenge the Appealed Decision, expressing that it was *"content to leave that issue to be argued by the other parties"*. FIFA indicated that it had no further comments on this issue.

33. On 21 April 2017, upon Manchester City's request to be provided with a CAS award referred to by Vélez Sarsfield in its submission dated 12 April 2017, the CAS Court Office informed Manchester City that it was unable to disclose the requested award since it was confidential.

34. On 25 April 2017, upon being invited by the CAS Court Office to express their positions in this respect, Vélez Sarsfield indicated that it had no objection to the intervention of AFA, Manchester City indicated that AFA's request should be refused, FIFA indicated that it did not wish to submit any comment on this issue. The FA did not respond.

35. Also on 25 April 2017, Manchester City filed its written submission on Vélez Sarsfield's standing to appeal, arguing that Vélez Sarsfield did not have sufficient standing to challenge the Appealed Decision. Furthermore, Manchester City argued that Vélez Sarsfield should not be permitted to rely upon the CAS award referred to in its submission dated 12 April 2017 as it did not consider itself to be in a position to respond to a short quote taken out of context.

36. On 6 June 2017, the CAS Court Office informed the parties on behalf of the Panel that AFA's request for intervention was rejected and that the grounds of this decision would be included in the final award on the merits. The Panel however decided to provide AFA with a copy of

the complete file and to allow AFA to participate at the hearing with a limited status under the following orders:

> *"(i) AFA is entitled, if it so wishes, to file an amicus curiae brief no longer than 5 pages within* ***five (5) days*** *of receipt of this letter by courier. Such amicus curiae brief shall be limited only to legal arguments and shall not contain any facts that normally require the support of a witness statement. If the amicus curiae brief will not comply with these instructions, the Panel will ignore any factual matter contained in such brief. The amicus curiae brief shall be filed by e-mail to the following CAS e-mail address: procedures@tas-cas.org. Thereafter, the Panel will grant to the parties the opportunity to file their comments regarding such amicus curiae brief.*
>
> *(ii) AFA will be entitled, to attend the hearing scheduled on 3 July 2017 in Lausanne, Switzerland (at the CAS Court Office, Avenue de Beaumont 2, 1012 Lausanne, Switzerland) through no more than one representative and one legal counsel, with no right to intervene during the hearing with the exception of what it is* [sic] *indicated in the following item (iii).*
>
> *(iii) AFA will be granted the right to orally plead at the hearing for no longer than 15 minutes prior to the parties' closing submissions.*
>
> *(iv) For the avoidance of doubts* [sic]*, AFA is advised that it is not authorized to file any motion or prayers for relief at its own initiative. Furthermore, AFA is advised that it is not entitled to request any contribution to the legal fees and expenses that it may incurred in relation to these proceedings".*

37. On 13 June 2017, AFA filed its *amicus curiae* brief.

38. On 13, 14 and 15 June 2017 respectively, FIFA, Vélez Sarsfield, Manchester City, and the FA returned duly signed copies of the Order of Procedure to the CAS Court Office. AFA was not requested to sign the Order of Procedure as it was no party to the dispute.

39. On 22 June 2017, further to an invitation from the CAS Court Office, the FA and Manchester City submitted their comments on AFA's *amicus curiae* brief, whereas FIFA indicated that it did not wish to submit any comments in light of the passive stance adopted.

40. On 3 July 2017, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed that they had no objection to the constitution and composition of the Panel.

41. In addition to the Panel, Mr Antonio De Quesada, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

For Vélez Sarsfield:

- Mr Rafael Trevisán, Counsel;
- Mr Santiago Casares, Counsel;

- Mr Gabriel Córdova, Interpreter

For the FA:

- Mr Tom Cleaver, Counsel

For Manchester City:

- Mr Matthew Bennet, Counsel;
- Mr Simon Cliff, General Counsel Manchester City

For FIFA:

- Mr Gaudenz Koprio, FIFA Legal Counsel

For AFA:

- Mr Ariel Reck, Counsel;
- Mr Andres Paton Urich, AFA Legal Counsel

42. The Panel heard evidence from Mr Raúl Gámez, President of Vélez Sarsfield, witness called by Vélez Sarsfield.

43. Mr Gámez was invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. Each party and the Panel had the opportunity to examine and cross-examine the witness in person.

44. Although Vélez Sarsfield initially also called Mr Fabian Verlanga, Vélez Sarsfield's Head of Youth Divisions, to be heard, such person finally did not appear before the Panel.

45. The parties were afforded full opportunity to present their case, submit their arguments and answer the questions posed by the Panel. Also AFA was allowed to present its case, subject to the limitations communicated to it before.

46. Before the hearing was concluded, all parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.

47. The Panel confirms that it carefully heard and took into account in its discussions and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

48. Vélez Sarsfield's Appeal Brief, in essence, may be summarised as follows:

- Vélez Sarsfield submits that it is legitimately entitled to challenge the Appealed Decision, as it is the most interested party in revoking said decision. There is no doubt that Vélez Sarsfield has a clear and evident financial, normative, regulatory and sporting interest, as it is formally and materially impaired by the Appealed Decision, by which FIFA in a surprising and arbitrary way agreed to Manchester City's malicious manoeuvre under the FA's umbrella, moving away from the true spirit and objective of Article 19 FIFA RSTP, as well as the jurisprudence that prevails on the subject. The sports and financial damage is revealed in the non-signing of the first employment contract (which can be signed when the Player is 16 years old, or older, according to the legislation in force in Argentina). Vélez Sarsfield is also affected by the Appealed Decision, in regards to the omission of the Single Judge of the Sub-Committee when he ignored and did not treat Manchester City's conduct as fraudulent, although its real interest was to *"buy the minor player"*, or *"to register a player at an early age"*, or *"to get him before his competitors"* as the approach was made when the Player was 15 years of age.

- The arbitrary, recurrent and discriminatory treatment of FIFA in favour of the most powerful clubs of UEFA and in detriment of the clubs that develop talents, especially CONMEBOL and CAF, cannot be allowed. The Appealed Decision must be revoked in order to protect the minors and in order to achieve equal treatment towards the 209 member associations of FIFA, since the incorrect interpretation of Article 19(2)(b) FIFA RSTP goes against the balance, allowing European clubs to capture young talents before they are 18 years old. With reference to Article 75 of the Swiss Civil Code (the "SCC") and CAS jurisprudence, there is no doubt that Vélez Sarsfield is entitled to challenge the Appealed Decision.

- Vélez Sarsfield maintains that the Appealed Decision cannot be confirmed because this would be allowing and admitting within the football family a visible, inadmissible and recurrent discriminatory treatment against one of the parties of the system. It is important to bear in mind that even though FIFA established in its general principles the expressed prohibition to internally transfer players under 18 in 2001, during the negotiation with the EU it was agreed to grant one of the three exceptions to said prohibition, allowing the international transfer of the minors who are between 16 and 18 years of age, that take place within the territory of the EU or the EEA. This exception was confirmed by many CAS precedents. In the Appealed Decision, the exception is however applied to all associations outside the territory of the EU/EEA and who have registered players between 16 and 18 years of age who bear a European Community passport.

- Besides the clear and evident discriminatory treatment of FIFA towards Vélez Sarsfield, there was also a manifest violation of the right to defence and to the guarantee of due process, because the Single Judge of the Sub-Committee decided not

to hold a hearing and because of FIFA's malicious intent to affect the right to access to a double instance by, unreasonably, denying Vélez Sarsfield's right to challenge the Appealed Decision before CAS, and because FIFA failed to prosecute Manchester City and the FA *ex officio* in terms of Article 108(1) of the FIFA Disciplinary Code.

- The training of the Player by Vélez Sarsfield was abruptly interrupted by the illegal interference of Manchester City, persuading the Player and his parents with the promise of millionaire salaries and a great career so that he would leave Vélez Sarsfield. It is admitted that the Player has the Italian nationality, but the truth is that it was obtained mainly to transgress and infringe the system and to take the Player from Argentina, which becomes clear just by checking the date of Vélez Sarsfield's rejection of Manchester City's offer (23 June 2016) and the date the Player obtained the Italian passport (27 June 2016).

- While the Single Judge of the Sub-Committee acknowledged that the conditions stipulated in Article 19(2) FIFA RSTP had to be interpreted strictly, he departs from the fundamental principles of the FIFA RSTP, puts in danger the protection of minors, and contradicts the uniform criteria in force which establish that the exceptions stipulated in Article 19 FIFA RSTP must be applied in a strict and restrictive way.

- Article 19(2)(b) FIFA RSTP was wrongfully interpreted by the Single Judge of the Sub-Committee. The historical elements, the true intention of the legislator, a grammatical a teleological interpretation of the exception all point towards interpreting this provision in a way that it is limited solely to transfers within the territory of the EU or the EEA, which has also been confirmed by CAS jurisprudence. The legislator had to strike a balance between the protection of minors and the free movement of workers and Article 19(2)(b) FIFA RSTP was the result and was approved by the EU.

- The Single Judge of the Sub-Committee committed an unacceptable abuse of his jurisdictional powers when he tried to substantiate his clear deviation of the regulations in force, when he wrongly sustains that *"the citizens of the EU member states must keep the same rights regarding free circulation, whether they are currently registered within the EU, the EEA, or not. Due to the above, and pursuant to the permanent jurisprudence established by the competent body which has been confirmed by the Court of Arbitration for Sports (TAS 2012/A/2862), the Single Judge stated, firstly, that art 19 par. 2 b) of the Regulations is applicable to the matter at hand"*. The Single Judge of the Sub-Committee went too far when he tried to legislate the matter, pretending to ignore with his decision the objective condition of territory and the genesis and origin of the rule. The present case must not and cannot be decided by invoking the European community legislation, since the Panel must limit its task to the application and interpretation of the scope of Article 19(2)(b) FIFA RSTP.

- Although referring to *"permanent precedents"* the Single Judge of the Sub-Committee did not mention any specific decisions, whereby he infringed Vélez Sarsfield's right to

defence. Furthermore, with reference to the decision of FIFA that finally led to the arbitral award issued by CAS in TAS 2012/A/2862 (the "Vada II" case), it is submitted that FIFA rejected to make an exception based on the literal nature of the rule: *"*[t]*he Single Judge considered that the exception was based in the objective criteria of territory, without taking into account the criterion of personality. This way, the Single Judge considered that the exception in question should only apply when the transfer of a player was from a club within the EU or the EEA to another club in the EU or EEA territory, this is to say that a "sine que non" condition for the application of said exception for cases of international transfer, is the fact that the player comes from a club registered within the EU or the EEA.* […] *Moreover, the Single Judge emphasized that the mentioned considerations are applicable not only by the reading of the regulation, but it also reflect the content of the agreement signed by the European Commission and FIFA/UEFA in 2001, regarding in particular the protection of the minor players".*

- There are no motives for FIFA to move away from the mentioned criteria, since Article 19(2)(b) FIFA RSTP was not modified and is still in force. Furthermore, CAS awards, such as the one issued in the Vada II case, do not constitute binding precedents. In any event, the members of the CAS panel in the Vada II case went beyond their limits and wrongly affirmed that the list of exceptions in Article 19(2) FIFA RSTP does not seem to be thorough, which resulted in the unacceptable precedent on which FIFA now pretends to base the Appealed Decision. In the Vada II case, there were particular circumstances that affected and influenced the spirit of the members of the CAS panel at the moment of granting the registration, that are not present in the matter at hand.

- Finally, the position of Vélez Sarsfield is corroborated by a letter dated 4 January 2017 sent by the President of CONMEBOL to the President of FIFA, expressing his concern about the effects of the Appealed Decision for South American football.

49. The FA's Answer, in essence, may be summarised as follows:

- Although the FA is the First Respondent to this appeal, it neither made nor benefitted from the Appealed Decision. The FA will therefore confine its Answer to brief submissions on what it considers to be the short issue of law which is raised by this appeal, namely whether the Single Judge erred in deciding that Article 19(2)(b) FIFA RSTP applied to the transfer of the Player.

- The FA further summarises its Answer as follows:

  - *"Article 19.2(b) RSTP provides that a player between the ages of 16 and 18 may be transferred internationally if "The transfer takes place within the territory of the European Union" and certain other conditions relating to his education, training and wellbeing are met.*

  - *The Single Judge decided in August 2016, having considered submissions from multiple parties including the* [AFA] *and* [Vélez Sarsfield] *itself, and in reliance on CAS jurisprudenæ on*

precisely the same issue, that Article 19.2(b) applied to the Player, an Italian who transferred from an Argentinian club to an English club.

- *As the Single Judge succinctly explained, and as the CAS had previously concluded in* [the Vada II case] *(overruling a Single Judge who had adopted a different view):*
  - *Article 19.2(b) was introduced in order to give effect to the free movement rights of EU citizens;*
  - *Those rights apply whether the individual is moving between Member States or whether he is coming to a Member State from outside the EU;*
  - *There is therefore no reason why Article 19.2(b) should be interpreted as drawing a distinction between players who move between Member States and players who move to a Member State from outside the EU;*
  - *Article 19.2(b) should therefore be interpreted as applying in the case of the Player, as long as the other conditions were met, which the Single Judge concluded they were.*
- *That conclusion is obviously right. If Article 19.2(b) were construed in the manner for which* [Vélez Sarsfield] *contend, it would breach EU law. That is significant for two main reasons:*
  - *First, in circumstances where the rule was introduced by FIFA as part of an agreement with the EU Commission arising out of an investigation into the non-compliance of the previous rules with EU free movement rights, an interpretation which <u>still</u> failed to comply with EU free movement rights should clearly be avoided if at all possible;*
  - *Second, if there were truly no scope for interpreting the rule so as to comply with EU free movement rights, it would contravene a fundamental rule of EU law and the Tribunal would have to disapply it".*

50. Manchester City's Answer, in essence, may be summarised as follows:

- Manchester City submits that in order to have standing to appeal before the CAS, an appealing party must be affected by the decision it seeks to appeal. With reference to CAS jurisprudence, it is argued that a party only has standing to appeal if it can show sufficient legal interest in the matter being appealed. Vélez Sarsfield is not a party to the Appealed Decision nor was it entitled to be as the Appealed Decision only exists following an application having been made by the FA on behalf of Manchester City for the approval of the Player's transfer pursuant to Article 19 FIFA RSTP. The right to request the grounds of the Appealed Decision vests with national associations only and not the clubs. In the absence of a regulatory basis upon which to bring this appeal, Vélez Sarsfield must demonstrate that it has sufficient legal interest in the matter being appealed. In this respect, reference is made to jurisprudence of the Swiss Federal Tribunal.

- Vélez Sarsfield is not affected in any way by the Appealed Decision and does not have any legal interest whatsoever in the case. The Player was registered as an amateur with Vélez Sarsfield and the latter had no contractual rights or entitlements in respect of the Player. The Player was entitled to leave Vélez Sarsfield at any time and it is important to emphasise that it has not raised any arguments or claims in these proceedings that any of its own legal rights have been infringed. The present appeal is motivated by a desire to interfere with the Player's career with Manchester City and these appeal proceedings thus amount to an abuse of process. It follows that Vélez Sarsfield has suffered no legally identifiable or protectable loss as a result of the Appealed Decision and this is evidenced by the fact that a determination in this appeal would have no impact upon Vélez Sarsfield given that the Player will not become re-registered with it under any circumstances. In essence, Vélez Sarsfield's appeal amounts to a "complaint" about the way in which the Player has become registered with Manchester City. Vélez Sarsfield is asking the Panel to perform the role a quasi-disciplinary review panel and to take action that it is not empowered to do namely, to impose sanctions on parties when it has no legal or regulatory basis upon which to do so, it being noted that the role of CAS is simply to act as an appellate body to determine whether the Appealed Decision is lawful.

- In the event however that the Panel determines that Vélez Sarsfield does have standing to bring this appeal, there is no basis upon which the Appealed Decision can be annulled.

- The established position is that the principle of Article 19(2)(b) FIFA RSTP not only applies to those minors over the age of 16 transferring within the EU or EEA, but that it applies equally to minors who are citizens of EU States who seek to transfer into the EU/EEA whether or not they are currently resident in the EU or EEA. It is submitted that any derogation from this established position would constitute a breach of EU law.

- In support of the decision and its validity under the FIFA RSTP and EU law, at para. 94 the CAS award in the Vada II case noted that the Commentary on the FIFA Regulations on the Status and Transfer of Players (the "FIFA Commentary") expressly states that the exception set out at Article 19(2)(b) FIFA RSTP *"was included so as not to contravene the free movement of employees within the EU/EEA"*. As the Panel will be aware, by virtue of Article 3(2) of the Treaty on European Union and Article 45 of the Treaty on the Functioning of the European Union, the right of freedom of movement within the EU/EEA extends to every EU citizen including those who are outside of the EU/EEA.

- Vélez Sarsfield's argument that the exceptions listed at Article 19 FIFA RSTP are exhaustive is contrary to CAS jurisprudence. The CAS jurisprudence cited by Vélez Sarsfield in this respect is not relevant since they concern attempts to seek further exceptions to Article 19(1) FIFA RSTP.

- As provided in the Appealed Decision, it is accepted that the Article 19(2)(b) FIFA RSTP exception only applies where the conditions set out at Article 19(2)(b)(i) to (iv) (inclusive) FIFA RSTP, are satisfied.

- The established position set out above has been accepted by key international stakeholders, including FIFA, UEFA, FIFPro (the World Players' Union), the European Club Association ("ECA") and the Association of European Professional Football Leagues ("EPFL").

- The established nature of the principle is borne out by the fact that during the period from August 2014 to date hereof, Manchester City understands from the FA that there have been 17 applications made by the FA to the FIFA PSC Single Judge for the approval of the international transfer of minors who are EU/EEA citizens but who were residing outside the EU/EEA, all of which were approved by the Single Judge.

- Specifically, in respect of the allegations made by Vélez Sarsfield, which are considered to be spurious and defamatory, it is submitted that Manchester City acted with the upmost good faith in respect of Vélez Sarsfield and in full compliance with the applicable regulations and the law. It is denied that *"the training and education of* [the Player] *was abruptly interrupted by the illegal interference of* [Manchester City] *who violated the FIFA Regulations"* and that the Player was *"uprooted"* by Manchester City, rather the Player and his family desired his transfer to Manchester City and he has received to date and shall continue to receive the highest standard of education, training and accommodation that it is able to provide. Manchester City has neither violated the FIFA RSTP. As to Vélez Sarsfield's claim that the offer made by Manchester City's in June 2016 implies that it sought to transfer the Player contrary to the FIFA RSTP has been disingenuously misrepresented by Vélez Sarsfield. Manchester City did not even need to make such approach given that the Player was an amateur player and free from any contractual or regulatory restrictions and upon attaining 16 years of age, could join Manchester City without the permission of Vélez Sarsfield. In this respect, it is again noted that Vélez Sarsfield has not brought any claims whatsoever against either the Player or Manchester City which are based on a contractual right or entitlement. Indeed, it is important to note that due to the conduct of Vélez Sarsfield throughout this matter, including the submission of a frivolous appeal, it is in fact Manchester City and, more importantly, the Player, who have suffered loss and damage. Specifically, due to the late release of the TPO letter by Vélez Sarsfield, the Player was unable to be registered and thus not play in matches for Manchester City for five months from the date he moved to the United Kingdom, which has impacted upon his development as a professional football player.

51. FIFA did not submit any specific arguments, but referred to the Appealed Decision, which it considered to be very clear and self-explanatory and which it endorsed in its entirety.

52. AFA's *Amicus Curiae Brief*, in essence, may be summarised as follows:

- AFA submits that it is irrelevant whether Vélez Sarsfield was part of the FIFA procedure leading to the Appealed Decision. With reference to CAS jurisprudence, it is maintained that it is relevant whether Vélez Sarsfield has sufficient legal interest in the matter being appealed.

- While the FIFA TMS is designed to be conducted between federations, this means nothing as to the parties with a legally protected interest in its outcome. With reference to CAS jurisprudence, AFA submits that CAS has admitted the standing to sue not only of the player and his new club, but also the standing to appeal of the former club. Several provisions in the FIFA RSTP explicitly or implicitly consider the involvement of clubs in the process (new and former clubs).

- Since the various regulations of FIFA do not address the question of standing to appeal, and with reference to CAS jurisprudence, AFA maintains that this silence shall be construed against the drafter of the regulation and in favour of the party claiming a right from such rule, in application of the *contra proferentem* principle, and with reference to Article 75 SCC.

- With reference to FIFA Circular Letter 1190, AFA maintains that the revision of the FIFA RSTP was motivated by the need *"to safeguard young players as well as training clubs from being exploited"*. Abuses to minors can be achieved indirectly by abusing training clubs or academies and this is the reason why clubs entering into an agreement for the transfer of a minor can be sanctioned under Article 19 FIFA RSTP. According to AFA, this protection of training clubs grants Vélez Sarsfield a present and concrete right to challenge the Appealed Decision.

- The sporting and financial interest of Vélez Sarsfield are both clear and concrete and are also projected towards the future, since the same situation occurred in the part and will certainly occur in the future if FIFA maintains its invalid interpretation.

- With reference to jurisprudence of the Swiss Federal Tribunal, AFA maintains that *"[t]he interest must be present, that is it must exist not only at the time the appeal is made but also when the decision is issued* […]. […] *As a matter of exception, it can be derogated from the requirement of a present interest when the dispute on which the decision under appeal is based may arise again at any time under identical or analogous circumstances"*.

- AFA argues that in concrete, contrary to the allegations of Manchester City, the practical effect of the cancellation of the minor exception will be the return of the Player's registration with Vélez Sarsfield. Although the Player cannot be forced to return or to perform for Vélez Sarsfield, any club that shall contract the Player will be obliged to wait until his 18th birthday to register him and will have to pay two more years of training compensation to Vélez Sarsfield. The financial interest of Vélez Sarsfield is therefore clear.

- As to the sporting interest, AFA submits that it is obvious that the Player, facing the situation of not being able to play for any other club than Vélez Sarsfield until his 18th, would resume his sporting career in Argentina and this is irrespective of the chance of signing him on a contract. Still as an amateur, Vélez Sarsfield holds a concrete and protectable sporting interest in having an U18 national player in its youth squad.

- By challenging the Appealed Decision, Vélez Sarsfield is protecting not only the registration of the Player, but the entire group of minors that conform its youth divisions. If the wrongful interpretation of Article 19 FIFA RSTP that FIFA endorsed after the Vada II case is not amended, Vélez Sarsfield faces a serious danger with the chance of further cases resolved under the same erroneous interpretation of Article 19 FIFA RSTP.

- In respect of the merits of the case, AFA adheres to everything expressed by Vélez Sarsfield in its Appeal Brief. In addition, AFA maintains that the Vada II exception was never included in the FIFA RSTP, which confirms that the FIFA Sub-Committee (or at least some of its members) are trying to artificially create a new rule, unwritten and against the written applicable rules. Instead, AFA indicated to concur with the reasoning of the CAS panel in CAS 2014/A/3813.

- In the present case, Vélez Sarsfield is challenging the move of another big club and the erroneous attempt by the FIFA administration (not the FIFA lawmaker) to relax the strict rules in place.

53. The FA's comments on AFA's *Amicus Curiae Brief*, in essence, may be summarised as follows:

- The FA submits that the legal principle identified by AFA – that a party will in principle have standing to challenge a decision if a) it is "sufficiently interested" by the decision and b) it has a tangible interest at stake – is uncontroversial. With reference to jurisprudence of the SFT, the FA submits that the important point is that the party must have a tangible interest at stake. In other words, the outcome of the proceedings must be capable of affecting the party's present position in relation to something tangible.

- AFA's allegation that if the Appealed Decision were overturned at this stage the Player would happily return to Vélez Sarsfield is a factual matter which is outside the scope of what AFA had permission to adduce and is therefore inadmissible. The best Vélez Sarsfield has been able to say on that issue is that it could have become the beneficiary of the Player's services if the Player had not been able to register with Manchester City. That counterfactual scenario, concerning what might have happened if the Appealed Decision had never been made, does not assist Vélez Sarsfield in establishing a present interest. In any event, this scenario depends upon the idea that i) the Player would have been happy to return to Vélez Sarsfield; ii) that he would in fact have played for Vélez Sarsfield in at least 25% of matches in the 2016/17 season after turning 16, without injury or any other problems interfering; and iii) Vélez Sarsfield would have

chosen by 31 May 2017 to offer him a contract. The FA submits that this is purely speculative and that there is no evidence at all as to the likelihood that those facts would actually have come about.

- As to the "exception" identified in the decision of the SFT, the FA submits that the purpose of that exceptional category is to allow parties, in cases where it may not be possible or practical for an issue to be determined by a court or tribunal while it remains live, to establish legal certainty in relation to that issue for the future. According to the FA, that justification does not apply in this case, because there is already a precedent governing exactly this issue, namely the Vada II decision.

- Insofar AFA maintains that Vélez Sarsfield has a role to play in protecting minors by creating a *"stable environment of the training and education of players"* and that this role requires it to challenge FIFA decisions which might affect its ability to do so, the FA submits that the mere fact that the issue is connected with the protection of young people from exploitation does not mean that a) Vélez Sarsfield is "sufficiently affected" by the decision to give it standing; or b) that it has a tangible interest at stake.

- As to the submissions of AFA in respect of the merits of the case, the FA argues that no amendment of Article 19 FIFA RSTP was necessary following the Vada II decision because the decision in Vada II was that this provision already had the effect that EU Member State nationals fell within the exception in Article 19.2(b) FIFA RSTP. The fact that this provision was not amended indicates that there was no intention to depart from or override the decision in Vada II as to the effect of the existing rules.

- As to the argument of AFA that exceptions should be granted only restrictively, the FA maintains that there are certain "checks and balances" in place and that in view of those safeguards, and the process for evidencing and verifying compliance with them by the new club, it is not necessary to give a strict interpretation to the provision which establishes the category of case in which those safeguards may apply. The idea that it is necessary in the Player's interest that he be prevented from signing for one of the world's leading clubs is fanciful.

54. Although invited to do so, FIFA indicated, in accordance with the passive stance adopted, it did not wish to submit any comments on the issue concerning the *amicus curiae* brief filed by AFA. FIFA however drew the attention of the Panel to CAS jurisprudence which it considered relevant in respect of Vélez Sarsfield's standing to appeal.

55. Manchester City's comments on AFA's *Amicus Curiae Brief*, in essence, may be summarised as follows:

- Manchester City maintains, with reference to CAS jurisprudence, that unlike suggested by AFA, the standing of Vélez Sarsfield as the Player's former club, must be differentiated from the standing to appeal of a player, because Vélez Sarsfield has no *"actual interest to appeal"* as it has, by its own admission, no legal right to retain the

Player's registration. In this respect Manchester City refers to Vélez Sarsfield's statement in its Appeal Brief that *"the player cannot be forced to return or perform for* [Vélez Sarsfield]*"*.

- Manchester City further argues that each reference to a "club" or a "federation" in the FIFA RSTP is singular and refers solely to the new club which is registering the player. It expressly does not refer to the club or the federation with whom the player was previously registered. This reference recognises expressly the lack of sufficient interest by the former club where it has no right to the Player's registration at the time of the registration with the new club.

- According to Manchester City, AFA makes it clear that it would be entirely satisfied that if as a consequence of Vélez Sarsfield's claim being successful, the Player would be unable to play football for two years. This, in itself, shows the perverse nature of the appeal and that neither Vélez Sarsfield nor AFA has shown any interest in the Player's well-being or future career.

- Manchester City argues that AFA's suggestion that the intention of Article 19 FIFA RSTP is to protect the training club at the expense of the minor in order to give Vélez Sarsfield standing to appeal is an entirely misconceived and self-serving interpretation of the purpose and intent behind this provision. The rights of a training club are protected by the relevant article in the FIFA RSTP in relation to training compensation and solidarity contribution. Manchester City submits that this is Vélez Sarsfield's only interest in respect of the Player, but that such interest is not a relevant consideration in the present proceedings and is subject to separate correspondence between Vélez Sarsfield and Manchester City.

- Manchester City maintains that the argument of AFA that the FIFA RSTP were amended following the Vada II case and did not include a provision allowing free movement of minors outside of the EU, is irrelevant. With reference to CAS jurisprudence, Manchester City maintains that the exceptions set out in Article 19 FIFA RSTP are not exhaustive and thus the FIFA PSC Single Judge has the power to authorise application for the movement of minors even if the basis of the application does not otherwise fall within one of the expressly stated exceptions.

V. JURISDICTION

56. The jurisdiction of the CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2016 edition), providing that *"[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"* and Article R47 of the CAS Code.

57. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by both parties.

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

VI. ADMISSIBILITY

59. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

60. It follows that the appeal is admissible.

VII. APPLICABLE LAW

61. Manchester City submits that CAS shall primarily apply the FIFA RSTP and, additionally, Swiss law. Vélez Sarsfield, the FA and FIFA, did not make any specific submissions in respect of the applicable law. The positions of the parties however differ in respect of the extent to which the interpretation of Article 19 FIFA RSTP is influenced by EU law.

62. 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".*

63. Article 57(2) of the FIFA Statutes stipulates the following:

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

64. The Panel is satisfied that primarily the various regulations of FIFA are applicable, in particular the FIFA RSTP (edition 2016), and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA. The extent to which the interpretation of Article 19 FIFA RSTP is influenced by EU law will be examined in more detail below.

VIII. PRELIMINARY ISSUES

A. Dismissal of AFA's request for intervention

65. As communicated to the parties on 6 June 2017, the Panel decided to reject AFA's request for intervention and that the grounds for this decision would be included in the final award on the merits.

66. The main argument for the dismissal of the request was the fact that AFA failed to lodge an independent appeal, while it was a party in the proceedings leading to the Appealed Decision. Admitting AFA as a party to the present proceedings would *de facto* lead to a circumvention of the strict deadline of 21 days to challenge the Appealed Decision and might set a dangerous precedent in which a direct party to a dispute before a first instance fails to comply with the CAS Code and does not submit an appeal on time, but rather would be permitted to *"enter through the back door"* and join the proceedings if its request for intervention as a party would be upheld, while filed only after the expiry of the time limit to appeal.

67. Notwithstanding the rejection of AFA's request to intervene, the Panel was of the view that the participation of AFA in the proceedings, without allocating it any procedural rights as a party, could facilitate the Panel in resolving the matter since under Article 19(4) FIFA RSTP the national association is the formal party to the application for approval of an international transfer of a minor, and as AFA – due to this regulation – had been directly involved in the proceedings before the Single Judge of the Sub-Committee of FIFA. The Panel also deemed it important to hear the views of AFA in respect of Vélez Sarsfield's allegation that it is a recurring issue that EU/EEA clubs try to register minor players between 16 and 18 years of age under the EU/EEA exception of Article 19(2)(b) FIFA RSTP.

68. The Panel therefore allowed AFA to file a written submission limited to legal arguments and that it would be allocated a restricted time limit to plead during the hearing, as communicated to the parties on 6 June 2017 by the CAS Court Office. The Panel believes that the parties' right to be heard was respected by allowing them to comment on AFA's *amicus curiae* brief.

B. Alleged violation of Vélez Sarsfield's procedural rights in proceedings before Single Judge of the Sub-Committee of FIFA

69. As to Vélez Sarsfield's argument that the Single Judge of the Sub-Committee committed a manifest violation of its right to defence and the guarantee of due process, the Panel finds that this argument must be dismissed.

70. The mere fact that the Single Judge of the Sub-Committee decided not to hold a hearing does not constitute a violation of any procedural rights. Particularly so in view of the fact that the Club failed to establish why such hearing had to be held. Insofar Vélez Sarsfield wanted a hearing to be held in order for witnesses to be heard, such right was granted to it by the Panel in the present appeal arbitration proceedings before CAS.

71. Also FIFA's argument in the present proceedings that Vélez Sarsfield does not have standing to challenge the Appealed Decision does not result in the violation of any procedural rights, because this was of no concern in the proceedings before the Single Judge of the Sub-Committee.

72. Finally, FIFA's failure to take disciplinary action against Manchester City for an alleged breach of the FIFA Disciplinary Code does not constitute a violation of any procedural rights, because the Single Judge of the Sub-Committee decided that the Player's registration with

Manchester City was valid, and therefore, as long as this decision is valid and is not set aside by a superior legal instance, FIFA was right in not taking disciplinary measures against Manchester City.

73. In any event, the Panel finds that even if any procedural deficiencies had occurred throughout the proceedings before the Single Judge of the Sub-Committee, such deficiencies may be and were cured in the present proceedings before CAS. The Panel feels itself comforted in this conclusion by consistent CAS jurisprudence:

> *"Amongst the procedural violations in a first instance decision that can be cured by a de novo CAS proceeding is the 'right to be heard', and this has been consistently established in CAS jurisprudenæ [See for example, CAS 2012/A/2913, CAS 2012/A/2754, CAS 2011/A/2357 and TAS 2004/A/549]. The Swiss Federal Tribunal ("SFT") has also confirmed the legality of the curing effect of the CAS de novo review. Accordingly, infringements on the parties' right to be heard can generally be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal in the first instance and in front of which the right to be heard had been properly exercised [See ATF 124 II 132 of 20 March 1998]".* (CAS 2016/A/4387, para. 148 of the abstract published on the CAS website)

IX. MERITS

A. The Main Issues

74. The main issues to be resolved by the Panel are:

i. How is Article 19(2)(b) FIFA RSTP to be interpreted?

ii. Did the Single Judge to the Sub-Committee of the FIFA PSC correctly approve the Player's registration with Manchester City?

iii. If not, does Vélez Sarsfield have standing to challenge the Appealed Decision?

75. The Panel observes that two key issues are at stake in the proceedings at hand: the respondents maintain that Vélez Sarsfield lacks standing to challenge the Appealed Decision and the parties have different views in respect of whether the Single Judge to the Sub-Committee of the FIFA PSC correctly applied Article 19(2)(b) FIFA RSTP.

76. The plea relating to the lack of standing to sue, is – according to settled jurisprudence of the CAS (*cf.* CAS 2009/A/1869; CAS 2015/A/3959; CAS 2015/A/4131) and the SFT (see SFT 128 II 50, 55) – a question related to the merits of the case.

77. Regarding CAS jurisprudence, in order to have standing to sue, the appellant must have an interest worthy of protection (CAS 2013/A/3140 para. 8.3) or a legitimate interest (CAS 2015/A/3880 para. 46 with further references). This is found to exist if (i) the appellant is sufficiently affected by the appealed decision, and if (ii) a tangible interest of a financial or

sporting nature is at stake (CAS 2015/A/3880 para. 46 with further references; see also to that effect CAS 2013/A/3140 para. 8.3; CAS 2014/A/3665, 3666 & 3667 para. 47; CAS 2015/A/3959 par. 143 *et seqq.*). According to CAS 2009/A/1880 & 2009/A/1881 para. 29, only an aggrieved party who has something at stake and thus a concrete interest in challenging a decision adopted by a sports body may appeal against that decision to CAS. Finally, the panel in CAS 2008/A/1674 para. 11 of the abstract published on the CAS website, states that *"[s]ufficient interest is a broad, flexible concept free from undesirable rigidity and includes whether the Appellant can demonstrate a sporting and financial interest"*.

78. Even if the rules and jurisprudence in relation to the right of a party to appeal a decision that was rendered by a state authority do not directly apply to the right of a party to appeal the decision of an association, the Panel still finds it useful to take inspiration from such rules and jurisprudence in order to determine whether or not a party may have an interest worthy of protection or a legitimate interest.

79. In this respect, the Panel notes that both academics and the jurisprudence hold that a non-addressee of a first instance decision only has a right to appeal in very restricted cases (ATF 131 II 649 consid. 3.1 and references). As a general rule, the appellant's interest must be concrete, legitimate, and personal (DONZALLAZ Y., Loi sur le Tribunal Fédéral, p. 909, para. 2366 and 2369, Berne 2008 and quoted cases). A purely theoretical/indirect interest is not sufficient (ATF 133 II 353). In addition, the decision being challenged must affect the appellant directly, concretely, and with more intensity than others (ATF 131 II 649; consid. 3.1; see also CAS 2009/A/1880, 1881 par. 29). Finally, the interest must exist not only at the time the appeal is filed but also at the time when the decision is issued (ATF 137 I 296 at 4.2 p. 299; 137 II 40 at 2.1 p. 41).

80. Applying the above principles to the matter at hand, the Panel discussed the issue of Vélez Sarsfield's standing at length, but did not reach a unanimous decision regarding the conclusion to be drawn. Without having the need, for the reasons hereby explained, to further elaborate at this stage the different possible conclusions and the grounds for these conclusions, the Panel finds that the issue of the standing of Vélez Sarsfield (or of any other football club affiliated to a national association that is affiliated to FIFA) when the issue of an international transfer of a minor is at stake raises very specific and complicated questions in respect of legitimate interest since different aspects that compose the elements that must be taken into account lead to different directions while there is no element that can be easily identified as decisive or prevailing on the others. This complexity is enhanced by the fact that while the FIFA RSTP identify the national associations as the parties to an application to approve the transfer of a minor, it is clear from the content of the FIFA file that the actual acting parties are the clubs, while the national associations take the role of representing the interests of the clubs. This can be clearly seen, for instance, considering the fact that the correspondence and arguments based on which the Single Judge dealt with the matter were actually (at least from AFA's side) the submissions presented by Vélez Sarsfield. Furthermore, while the national associations have the "final word" on the matter and are the "official parties" to the proceedings before the Sub-Committee, Article 19 FIFA RSTP also stipulates that the clubs may be sanctioned in case they reach an agreement for a transfer of a minor in violation of

the same rule. One can ask, how can a "remote and indirect party" be sanctioned for violating a process in which it has no interest worthy of protection in the sense of these proceedings, particularly because clubs are considered and recognised as indirect members of FIFA and therefore subject to rights and duties under the Statutes and regulations of FIFA.

81. The Panel is however unanimously of the view that the issue of Vélez Sarsfield's standing to challenge the Appealed Decision does not necessarily have to be addressed first because standing is a question related to the merits of a case and because an arbitral tribunal is free to determine how to address the sequence of the different substantive questions at stake in legal proceedings.

82. Consequently, the Panel will address the interpretation of Article 19(2)(b) FIFA RSTP first and will only subsequently address the standing of Vélez Sarsfield afterwards, if necessary.

i. How is Article 19(2)(b) FIFA RSTP to be interpreted?

83. The Panel observes that Article 19 FIFA RSTP determines the following:

> *"1. International transfers of players are only permitted if the player is over the age of 18.*
>
> *2. 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 dub 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.*
>
> *[…]*
>
> *4. Every international transfer according to paragraph 2 and every first registration according to paragraph 3, as well as every first registration of a foreign minor player who has lived continuously for at least the last five years in the country in which he wishes to be registered, 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 subcommittee, as well as on the clubs that reached an agreement for the transfer of a minor".*

84. Whereas Vélez Sarsfield submits that Article 19(2)(b) FIFA RSTP is only applicable in case of transfers from one club based in an EU/EEA country to another, the FA and Manchester City submit that, regardless of the plain and clear wording of the rule, the nationality of the football player concerned is decisive, *i.e.* Article 19(2)(b) FIFA RSTP is also applicable to transfers from a club based in a non-EU/EEA country to a club based in an EU/EEA country if the player concerned is an EU citizen. The latter view also prevailed in the Appealed Decision, to which FIFA conforms itself.

85. One of Vélez Sarsfield's concerns is that if such interpretation of Article 19 (2)(b) FIFA RSTP were to be followed, clubs domiciled in EU/EEA countries will continue to register minors between 16 and 18 years of age that have EU citizenship, while clubs domiciled outside the EU/EEA do not have such possibility under the FIFA RSTP and that this difference is discriminatory.

86. The Panel observes that indeed in the past FIFA used to adopt the interpretation of Vélez Sarsfield, including and up to the moment in which the CAS decision in the Vada II case was rendered, and that following the decision of CAS in the Vada II case, FIFA has factually changed its policy, respecting – as indeed expected – the interpretation given to Article 19 FIFA RSTP by CAS and adopted since then the interpretation of the FA and Manchester City. As such, FIFA changed its interpretation from an analysis based on the domicile of the transferring clubs involved in the relevant transfer to an analysis based on the nationality of the player and the domicile of the new club concerned.

87. It is further to be noted that FIFA changed its policy without amending the wording of Article 19(2)(b) FIFA RSTP. In theory, different conclusions can be deduced from the fact that FIFA did not find it necessary to amend the relevant provision:

- On the one hand, and as argued by Vélez Sarsfield, because the relevant provision was not changed and because FIFA did not inform its members through circular letters or otherwise that it would change its policy following the CAS ruling in Vada II, it could legitimately be understood that FIFA would maintain the pre-Vada II interpretation.

- On the other hand, and as argued by the FA and Manchester City, because the relevant provision was not changed and because FIFA factually changed its policy following the CAS ruling in Vada II, it could legitimately be understood that FIFA endorsed the Vada II interpretation.

88. The uncertainty deriving from such change of policy is enhanced by FIFA's silence on this issue. Besides the fact that the wording of the provision was not changed, FIFA also did not inform its members through circular letters or otherwise of its different approach towards the interpretation of Article 19(2)(b) FIFA RSTP. Also in the present appeal arbitration proceedings before CAS, although FIFA had the opportunity to explain its conduct as to what seems to be on the face of the matter a contradiction between the plain wording of Article 19(2)(b) FIFA RSTP and the wide interpretation of the rule applied by FIFA, especially if one considers the rules of interpretation of regulations under Swiss law, FIFA elected not to make any submissions on how Article 19(2)(b) FIFA RSTP is to be interpreted, *i.e.* why it did not find it important to clarify the rules by harmonising the wording and the interpretation and preferred to take a passive stance in these proceedings without making any submissions, besides referring to the Appealed Decision. As a consequence of such silence, the Panel finds that the deference that would normally be applied in respect of FIFA's policy towards such matters does not come into play.

89. In analysing the wording of Article 19(2)(b) FIFA RSTP in light of the CAS jurisprudence on this issue, the Panel finds that the Single Judge of the Sub-Committee of the FIFA PSC, following the interpretation given to the rule in the Vada II case and in order to maintain stability in the transfer system, interpreted the provision as expected from a lower instance which is supposed to apply the CAS jurisprudence on a similar matter. Indeed, the plain wording may reasonably and without considering other rules of interpretation lead one to think that the exception can only be invoked in case of a transfer taking place from a club based in one EU/EEA country to another. However, the Panel finds that such interpretation disregards the "legislative environment" and the surrounding circumstances of the legislation process that led to the inclusion of this rule in the FIFA RSTP following the discussions with the European Commission.

90. This approach when interpreting rules and regulations of an association is perfectly in line with Swiss law and CAS jurisprudence. According thereto, the statutes and regulations of an association shall be interpreted and construed according to the principles applicable to the interpretation of the law rather than to contracts (BSK-ZGB/HEINI/SCHERRER, Art. 60 SCC

no. 22; BK-ZGB/RIEMER, Systematischer Teil no. 331; BGE 114 II 193, E. 5a). The Panel concurs with this view, which is also in line with CAS jurisprudence, which has held in the matter CAS 2010/A/2071 as follows:

> *"The interpretation of the statutes and rules of a sport association has to be rather objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body - in this instance the Panel - will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further* ***to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located*** *[…]"* (CAS 2010/A/2071, para. 20 of the abstract published on the CAS website) (emphasis added by the Panel).

91. It is uncontroversial that Article 45(3)(b) of the Treaty on the Functioning of the European Union ("TFEU") (the provision establishing the principle of "free movement of workers" within the EU) played an important role in the genesis of the rule and its application in practice. This Article 45(3)(b) contains similar wording as Article 19(2)(b) FIFA RSTP, but this wording has consistently been interpreted as applying also to workers possessing an EU passport domiciled in non-EU/EEA countries, but willing to move to an EU/EEA country.

92. Article 45 TFEU determines the following:

> *"1. Freedom of movement for workers shall be secured within the Union.*
>
> *2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.*
>
> *3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:*
>
> *(a) to accept offers of employment actually made;*
>
> *(b) to move freely within the territory of Member States for this purpose;*
>
> *(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;*
>
> *(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.*
>
> *4. The provisions of this article shall not apply to employment in the public service".*

93. As to the free movement of workers, the Panel observes that Directive 2004/38/EC introduced EU citizenship as the basic status for nationals of the Member States when they exercise their right to move and reside freely on EU territory (Free Movement of Workers Fact Sheet, 06-2017). This also follows from Article 20(2)(a) TFEU, determining that *"Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia: (a) the right to move and reside freely within the territory of the Member States"*. Free movement of workers therefore does not only contemplate a right to move freely within EU territory for EU citizens, but also to reside freely on EU territory. A provision in the FIFA RSTP preventing football players with an EU passport that are registered with clubs based in non-EU/EEA countries from transferring to clubs based in EU/EEA countries, while permitting football players with an EU passport that are registered with clubs based in EU/EEA countries from transferring to clubs based in other EU/EEA countries would clearly constitute a violation of the principle of free movement of workers, particularly because no justification for such diversified approach is given. This conclusion is also supported by the fact that Article 19 FIFA RSTP is addressed and refers only to players over the age of 16 which is, in many countries, the minimum age in which an employment contract may be signed and thus the minors are entitled to be employed as workers.

94. As such, and in order to prevent inconsistencies between different rights of EU/EEA citizens deriving merely from their residence, the Panel finds sufficient legal justification to the interpretation of Article 19(2)(b) FIFA RSTP as being also applicable to transfers of players with an EU passport from clubs based in non-EU/EEA countries to clubs based in EU/EEA countries.

95. However, while adopting such interpretation, the Panel notes that such interpretation would indeed in certain circumstances also lead to unequal treatment between football players living (them and their families) in EU/EEA countries but holding citizenship of a non-EU/EEA country and football players living in EU/EEA countries and holding a EU/EEA citizenship. Moreover, such non EU/EEA players living in EU/EEA countries are treated differently from football players living in non-EU/EEA countries but holding EU/EEA citizenship. Furthermore, there is no apparent justification for FIFA to apply such dissimilar treatment between EU/EEA citizens and non-EU/EEA citizens, at least in cases where either by bilateral agreements between two specific countries or under international (including regional) treaties and conventions, the freedom of movement of employees is or will be recognised and accepted between countries which are not EU/EEA countries.

96. This unequal treatment, when applied to the facts of the present case or any other case in which a minor holds two (or more) nationalities becomes even more apparent, because the transfer of the Player (carrying both the Argentinian as well as the Italian nationality) from Vélez Sarsfield to Manchester City would be permissible, whereas the Player or any other minor player holding the Italian (or any other EU/EEA) nationality would not be allowed to transfer from Manchester City to Vélez Sarsfield, even though he holds also the Argentinean nationality and thus for sure the player would have the right to be employed in Argentina. The same will of course also apply to any other minor player not holding the Italian (or any other EU/EEA) nationality. Here again, such player would not be allowed to transfer from

Manchester City to Vélez Sarsfield. The Panel considers that this unequal treatment regarding EU/EEA and non EU/EEA Players and Clubs should be avoided.

97. The Panel understands that while FIFA's initial and right intention was to restrict the transfer of minors and has sympathy for the fact that FIFA, following discussions with the European Commission back in 2001, seems to have had no choice but to decrease the age limit from 18 to 16 for transfers *"within the territory of the European Union (EU) or European Economic Area (EEA)"* to be in compliance with the EU Law. However, this does not explain why – if FIFA was of the opinion that the new system allowing transfers within the EU/EEA sufficiently secured the important principle of protecting the minors – still the age limit of 18 for transfers that did not fall within this category was maintained.

98. The Panel is not concerned by the question of whether the appropriate age limit for transfers of minors should be 16 or 18, what concerns the Panel is that in certain situations an age limit of 16 applies, whereas in other situations an age limit of 18 applies, without there being any justification for such different treatment.

99. The Panel is fully aware of the fact that this case concerns the principle of protection of minors and in no way in protecting the interests of clubs. Nevertheless, the Panel also cannot ignore the fact that this should be an equilibrated system while this different treatment of minors and the different age limits also leads to a distortion of the transfer market, since clubs based in EU/EEA countries are able to attract minors between 16 and 18 years of age from all over the world as long as the minor concerned has an EU/EEA passport, whereas clubs based in non-EU/EEA countries can never attract minors until they turn 18, regardless of their nationality, unless Article 19(2)(a) or (c) FIFA RSTP applies.

100. The Panel does not see any reason, nor has FIFA or any of the parties involved in the present arbitration given one, to justify why clubs based in EU/EEA countries deserve such preferential treatment over clubs based in other parts of the world. The Panel specifically raised this issue during the hearing and addressed the question to the parties present at the hearing, but is of the view that none of the parties – especially FIFA – could not come up with a satisfactory justification.

101. Indeed, from the evidence submitted by the FA it appears that17 minor players between 16 and 18 years of age were registered with clubs domiciled in England following a transfer from a club domiciled in a non-EU/EEA country based on Article 19(2)(b) FIFA RSTP since August 2014, which corroborates the proposition that the exception is invoked quite frequently, whereas clubs based in non-EU/EEA countries are prevented from benefitting from such exception.

102. This view is also corroborated by a letter dated 4 January 2016 from the President of CONMEBOL to FIFA, submitted by Vélez Sarsfield together with its Appeal Brief, in which the concern was expressed that the Appealed Decision and the interpretation of Article 19(2)(b) FIFA RSTP so as to apply to a transfer of a 16 year old player from Argentina to

England would violate CONMEBOL's *"responsibility for the care and protection of* [its] *underage players"*.

103. As touched upon during the hearing, the Panel finds that distance can certainly not be considered as a relevant factor in justifying the differential treatment, because pursuant to Article 19(2)(b) FIFA RSTP, a transfer of a 16-year old EU/EEA citizen from Cyprus to Iceland is permitted, but the transfer of a 16-year old between clubs domiciled in non-EU/EEA neighbouring countries, such as for instance from Argentina to Uruguay, not (unless Article 19(2)(a) or (c) FIFA RSTP applies). Distance therefore certainly does not justify the unequal treatment brought about by Article 19(2)(b) FIFA RSTP.

104. The consequence of this finding is not that Article 19(2)(b) FIFA RSTP is invalid, because this would negatively affect players holding the EU/EEA citizenship that can legitimately rely on this exception. However, in the opinion of the Panel, this finding suggests that the territorial scope of the provision should no longer be restricted to transfers *"within the territory of the European Union (EU) or European Economic Area (EEA)"*.

105. The application of Article 19(2)(b) FIFA RSTP beyond the scope of its clear wording was followed by FIFA as a consequence of CAS' interpretation in the Vada II case. Led by the same legal perception, this Panel considered lengthily whether to establish already in this case that Article 19(2)(b) FIFA RSTP should be applicable to all transfers worldwide, as long as the material requirements set out in Article 19(2)(b)(i)-(iv) FIFA RSTP are complied with. However, considering the implications of such decision, the Panel finds that the matter should be dealt with first by FIFA, which is expected to duly consider the findings of this award. FIFA will then be able to determine whether to amend the regulations, or to adopt a different interpretation of the rule through circular letters, or otherwise, which is of course its prerogative.

ii. Did the Single Judge to the Sub-Committee of the FIFA PSC correctly approve the Player's registration with Manchester City?

106. The consequence of the above interpretation of Article 19(2)(b) FIFA RSTP is that the registration of the Player with Manchester City was valid, because at the time of the FA's request to FIFA to register the Player for Manchester City, the Player was 16 years of age and his registration with Manchester City was in line with this interpretation of Article 19(2)(b) FIFA RSTP.

107. Consequently, the Panel finds that the Single Judge of the Sub-Committee of the FIFA PSC correctly approved the Player's registration with Manchester City. In view of this conclusion, the Panel does not deem it necessary to determine whether Vélez Sarsfield has standing to challenge the Appealed Decision.

B. Conclusion

108. Based on the foregoing, the Panel holds that:

i. The Single Judge of the Sub-Committee correctly approved the Player's registration with Manchester City.

ii. FIFA is expected to duly consider the findings of this award and to determine whether to amend the regulations, or to adopt a different interpretation of the rule through circular letters, or otherwise.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 12 December 2016 by *Club Atlético Vélez Sarsfield* against the decision issued on 24 August 2016 by the Single Judge of the Sub-Committee of the Players' Status Committee of the *Fédération Internationale de Football Association* is dismissed.

2. The decision issued on 24 August 2016 by the Single Judge of the Sub-Committee of the Players' Status Committee of the *Fédération Internationale de Football Association* is confirmed.

3. (…).

4. (…).

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