



Arbitration CAS 2013/A/3140 A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol (RFEF) & Fédération Internationale de Football Association (FIFA), award of 10 October 2013

Panel: Prof. Petros Mavroidis (Greece), President; Mr Rui Botica Santos (Portugal); Mr Michele Bernasconi (Switzerland)

Football

International transfer of minor players

Deadline to file the appeal brief

Legitimate interest and standing to sue

Standing to be sued

Restrictive interpretation of Art. 19 para. 2 RSTP

Aim of Art. 19 para. 2 lit. a RSTP

Burden of proof

1. The twenty-one days deadline as per Article R49 of the CAS Code (and Article 67 of the FIFA Statutes) to file a statement of appeal is a deadline that cannot be extended. This is not the case for the ten days deadline of Article R51 of the CAS Code.
2. In principle, standing to sue is recognised if a person appealing against a certain decision can demonstrate that he or she is sufficiently affected by the appealed decision and has a tangible interest, of financial or sporting nature, at stake. Although he may not have been a party in the first procedure before the FIFA, a minor player has a sufficient interest to file an appeal with the CAS, as he is affected by the decision and has an actual interest to appeal against it, in particular to submit that he has to be considered as benefitting from an exception to Article 19 RSTP.
3. The decision regarding a first registration of a player within a national federation touches upon the relationship between FIFA and its members. When assuming the competences conferred on it according to the RSTP, at least as regards registration, FIFA is exercising an administrative function and, thus, having an impact on its individual members, or on the rights of indirect members. It results from these principles that the motion to amend an “*administrative*” decision by an organ of a federation – like FIFA in the present case – is to be directed against FIFA. It is then not required to direct the appeal against the national federation, which transmitted the request to FIFA, and against the club where the player wanted to register.
4. Article 19 RSTP sets key principles designed to protect the interests of minor players. Therefore, it must be applied in strict, rigorous and consistent manner. This means that there can be no other exceptions to the principle of Article 19 RSTP than those carefully drafted in paragraph 2 of said provision.

5. **Article 19 para. 2 (a) RSTP aims to protect the young player who follows his family moving abroad for personal reasons, and not the parents who follow their child in the view to integrate a club situated abroad. The test is thus, to assess the true intention and motivation of the player's parents.**
6. **Article 19 para. 2 RSTP has to receive a strict construction. In that respect, the party requesting for a registration has the burden of proof, and has to establish that the conditions set in this provision have been met. The player claiming for the benefit of the exception of Article 19 para. 2 (a) RSTP therefore has the burden of proof to establish that football is not the reason, or one of the reasons, for the move of his parents to the country in which the new club is located.**

I. PARTIES

- 1.1 A. (hereinafter also referred to as the "*Appellant*" or "*Player*") is a minor football player. He was born in 1999 in California and is a US citizen. He resides in Madrid, Spain.
- 1.2 Club Atlético de Madrid SAD (hereinafter also referred to as the "*First Respondent*" or "*Club*" or "*Atlético de Madrid*") is a football club with its registered office in Madrid, Spain. It is affiliated to the Real Federación Española de Fútbol – RFEF (hereinafter also referred to as the "*Second Respondent*" or "*RFEF*"), which in turn has been affiliated with the Fédération Internationale de Football Association since 1904.
- 1.3 Fédération Internationale de Football Association – FIFA (hereinafter also referred to as the "*Third Respondent*" or "*FIFA*") is the governing body of international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players, worldwide. FIFA is an association established in accordance with Article 60 ff. of the Swiss Civil Code (hereinafter also referred to as the "*CC*") and has its seat in Zurich, Switzerland.

II. FACTUAL BACKGROUND

- 2.1 The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the submissions of the parties, the exhibits produced and the declarations of the witnesses. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

- 2.2 The Player A. is the youngest son of B. and C., both US citizens. B. and C. are also the parents of a daughter called D., older sister of A., and of a son called E., older brother of A.
- 2.3 C., father of the Player is a successful businessman. He created a company in the United States in 1997. He sold the company a few years later, for an important amount of money. He is furthermore the chairman of the Board of Directors of the company he founded and sold.
- 2.4 According to a letter dated 12 November 2012, sent to FIFA on behalf of the US Soccer Federation, the Player A. had no prior registration history.
- 2.5 According to exhibits filed by FIFA, the Player competed with a football team called "*the Mustang Boys U10 Red Bulls*", at the end of the year 2009, in California. The Player also played football for a club called "*Chicago Magic*". It also appears that the Player played several games for the club "*Chicago Fire Soccer Club*" in June and July 2012.
- 2.6 Heard as a witness during the hearing, the father of the Player explained that his son was talented for sports. He also declared that when the family lived in California, the Player practised football at summer camps and played a few games. He continued to do so when the family lived in Chicago.
- 2.7 The father of the Player also explained that when residing in the United States, the game of football was not the main sporting activity of his son. It is only when the family arrived in Spain that the Player realised how football was important in his new country. The Player then asked his parents to play football on regular basis, and expressed the will to play for one of the renowned football clubs of Madrid.
- 2.8 The club, Atlético de Madrid, has established a strategic alliance with the Chicago Fire Soccer Club. A Brazilian and Mexican clubs are also part of this alliance. Atlético Madrid has other partnerships with clubs in Asia, in the Middle East and in Africa. According to the explanations of a representative of Atlético de Madrid heard through video conference during the hearing, these partnerships do not allow the transfer of players under 16 years old and no one from the club Atlético de Madrid works or searches young talents in the Chicago Fire Soccer Club. The same representative of the club explained that the first time he heard about the Player was in September 2012, when this Player showed up at the facilities of the club, to take a physical test.
- 2.9 The Appellant's family is multicultural. The mother of the Player is of Colombian origin, and the family lived in Colombia as well. The older sister of the Player, D., has been living in Europe, studying at King's College London. She was studying in Prague when the hearing of this case took place.
- 2.10 According to the declarations of the father of the Player, the family decided to increase its international experiences and to live outside the United States of America. Considering their good command of the Spanish language, the family decided to settle in Spain.
- 2.11 In October and November 2011, the father of the Player took several contacts, via e-mails, with

Spanish lawyers, in order to apply for resident and/or working permit for him and his family, in Spain.

- 2.12 Between the end of 2011 and the beginning of 2012, the father of the Player took several steps in order to get residing permits for him and for his family in Spain.
- 2.13 In April and May 2012, the father of the Player contacted schools in Madrid, explaining that the family was relocating to Madrid from Chicago during the summer of 2012 and that he was therefore investigating schools for their sons.
- 2.14 The Spanish authorities delivered residence permits to the Appellant's family on 16 May 2012.
- 2.15 The father of the Player explained that the family house in Chicago was sold, and that the family had moved to Spain on 27 July 2012. The family first settled in a place situated in the centre of Madrid. As of September 2012 the family decided to move to the outskirts of Madrid, next to Las Rozas. This place was more convenient for the family, and closer to the private school where the Player was enrolled.
- 2.16 The new place is very close to some training facilities of the club Atlético de Madrid.
- 2.17 When arriving in Madrid, the Player understood that the game of football was an important activity in Spain, both as a sport and as a social activity. The Player then wanted to play with the school football team. According to the declarations of his father, the Player quickly realized that playing with his school team was not enough in order to seriously practice the game of football.
- 2.18 The Player then insisted to practice more seriously, and to this effect, to integrate one of the famous clubs of the area of Madrid.
- 2.19 As the facilities of Atlético de Madrid were very close to their new home, the parents of the Player became aware of this club, this also on the basis of information distributed in the school attended by the Player. The Player was directed to take a physical test with the football academy of the club. These tests were organised by the club, between 3 and 28 September 2012, for children born between 1999 and 2006, and open to anyone interested. As regards the Player, the results of the test, which took place during the week of 17 September, were good. In consequence, the club requested the registration of the Player. During the proceedings before the Court of Arbitration for Sport (the "CAS"), Club Atlético Madrid explained that it had no special sporting interest in the Player, but that the Player would be integrated in one of the many junior teams, if the registration was accepted.
- 2.20 In October 2012, the Player presented himself on the website of his school as coming from Chicago to Spain because "*I got accepted in to the football club called Atlético de Madrid*". During the hearing, the father of the Player explained that he learned about this declaration of his son when receiving the answer of FIFA filed during the proceedings in the CAS. The father of the Player explained that he was very surprised of this commentary, repeated that the reason for the family to move in Spain was not the football activity of the Player, and explained that he assumes that

his son wanted to impress his schoolmates by declaring that he came from Chicago to play for Atlético de Madrid.

- 2.21 An application for the first registration of the Player, as an amateur player, was filed with FIFA, as the relevant statutes provide for under-age foreign players, on 11 October 2012. The reason indicated was *“Move of player’s parents for reasons not linked to football”*. According to the FIFA Transfer Matching System (*“TMS”*), the application was entered by the RFEF, on behalf of Atlético Madrid. Subsequent to this application, other supporting documents were filed as well.
- 2.22 On 30 November 2012, the FIFA Players Status Sub-Committee issued a decision which rejected the application (the *“Appealed Decision”*).
- 2.23 The grounds of the Appealed Decision, drafted in Spanish, were issued on 22 March 2013, stating, amongst others, that :

“(…)

En vista de todo lo antes mencionado, en particular, la situación en relación a los motivos declarados por parte del padre y su actividad profesional del padre del jugador así como también tomando en cuenta el corto tiempo entre el proceso de inscripción del jugador por parte del club español, la residencia oficial de los padres del jugador en España y la prueba oficial de aptitud del jugador, además considerando la categoría del club, el Juez Único determinó que persisten las dudas que los motivos de la mudanza de los padres del jugador no sean relacionados al fútbol.

(…)

Por tanto, el Juez Único determinó – aplicando estrictamente el Reglamento – que en el presente asunto, los requisitos establecidos en el art. 19 par. 2 a) del Reglamento no se cumplen.

(…)”

In English, a free translation could be:

“(…)

In light of the above and, in particular, the reasons explained by the player’s father and his professional activity, as well as considering the short time frame between the registration process of the player by the Spanish club, the player’s family residence in Spain and the player’s aptitude test, especially considering the club’s category, the Single Judge ruled that doubts still persist that the move of player’s parents did not occur for reasons linked to football.

(…)

Therefore, the Single Judge rules – applying strictly the Regulations – that in the present matter, the requisites prescribed in Art. 19, par. 2 a) of the Regulations are not met. (…)”

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 3.1. On 4 April 2013, the Player filed a statement of appeal with the CAS, pursuant to Article R48 of the Code of Sports-Related Arbitration (Edition 2013) (the “Code”), directed against FIFA, the RFEF and Atlético de Madrid, with respect to the Appealed Decision. Within his statement of appeal the Appellant nominated Mr. Rui Botica Santos, attorney-at-law in Lisbon, Portugal, as arbitrator.
- 3.2. On 18 April 2013, the RFEF informed the CAS that it waived its right to intervene in the present arbitration proceedings.
On 22 April 2013, the Appellant informed the CAS Court Office that he wanted to maintain the RFEF and Atlético de Madrid as a party.
In his statement of appeal, the Player requested that Spanish should be selected as the language of the arbitration. Considering the objection of the Second and Third Respondents to this request, and pursuant to Article R29 of the Code, the CAS Court Office informed the parties on 22 April 2013 that the procedure should be conducted in English.
- 3.3. On 23 April 2013, the Player filed his appeal brief, pursuant to Article R51 of the Code. The appeal brief was drafted in Spanish. On 26 April 2013, the Appellant filed an English translation of his appeal brief. The parties, however, agreed to leave the Appealed Decision in Spanish, i.e. without any translation.
- 3.4. On 3 May 2013 and following consultations with the Respondents, they jointly nominated Mr. Michele Bernasconi, attorney-at-law in Zurich, Switzerland, as arbitrator.
- 3.5. On 3 May 2013 the Third Respondent requested the time limit to file the answer to be fixed after the payment by the Appellant of his share of the advance of costs, pursuant to Article R55, para. 3 of the Code.
- 3.6. On 21 May 2013, the CAS Court Office informed the parties of the formation of the Panel composed of Mr Petros C. Mavroidis as President and Mr Rui Botica Santos and Mr Michele Bernasconi as Arbitrators.
- 3.7. On 17 May 2013 the First Respondent filed its answer.
- 3.8. On 20 May 2013 the Second Respondent filed its answer.
- 3.9. On 24 May 2013 the Third Respondent wrote to the CAS Court Office and raised some remarks with respect to the fact of the First Respondent being called as a respondent by the Appellant. In this respect, the Third Respondent requested that this issue should be solved by the Panel prior to proceed with the case, as well as the suspension of its time limit to file the answer pending a decision on this issue.

- 3.10. In view of the Third Respondent's letter of 24 May 2013, the Appellant filed his comments on 29 May 2013, refuting FIFA's rationale and reaffirming his arguments previously raised within his submissions.
- 3.11. On 30 May 2013, the First Respondent replied and informed, in general lines, that it did not challenge the Appealed Decision because it has not a special sportive interest in the Player and also due to the high costs of an appeal before the CAS. However, in the event the CAS rules that the Player could be registered, the Club would proceed with the registration of the Player.
- 3.12. On 30 May 2013, the Second Respondent also submitted its comments and averred, in general, that in the event the Club had no interest in registering the Player, the present proceedings would lack any object and should, therefore, be closed. The RFEF further alleged that in the event the appeal is upheld, both the Player and the Club would directly benefit from this outcome, which would be contrary to the Club's position as a respondent in these proceedings.
- 3.13. On 6 June 2013, the Panel informed the parties that it had decided not to take any decision at this stage concerning the admissibility of the appeal or the right to sue or to be sued of any of the parties. In that occasion, the Third Respondent's time limit for filing the answer was resumed.
- 3.14. On 12 June 2013, considering that the Third Respondent still had to file its answer, the CAS Court Office provisionally consulted the parties with respect to their availabilities for a possible hearing in the present matter, in the event it was finally held. In this respect, none of the parties considered a hearing necessary at that stage.
- 3.15. On 20 June 2013, the CAS Court Office informed the parties of the appointment of Mr. Luc Pittet as *ad hoc* clerk.
- 3.16. On 24 June 2013 the Third Respondent filed its answer.
- 3.17. On 28 June 2013, the CAS Court Office invited the parties, on behalf of the Panel, to express again their preference for a hearing to be held or for the case to be decided on the basis of the written submissions. In said correspondence, the parties were also informed that the Panel would be available on 10 July 2013 – date which had been previously agreed by the parties in the event a hearing was held.
- 3.18. Following consultations with the parties, only the Appellant deemed necessary that a hearing was held and, on 4 July 2013, the Panel decided to hold a hearing on 10 July 2013.
- 3.19. The parties received the Order of Procedure on 5 July 2013 and they duly signed and returned a copy thereof within the set time limit, without any observations or remarks.
- 3.20. A hearing was held on 10 July 2013, at the CAS Headquarters in Lausanne. The Appellant was represented by his father C., assisted by Mr Sergio Antonio Sanchez Fernandez, attorney-at-law in Cáceres, Spain. The First Respondent was not represented, as previously announced. The

Second Respondent was represented by Ms Marta Ruiz-Ayúcar Torres, Head of the Department Legal Affairs of the RFEF and by Mr Kepa Larumbe Beain, Legal Director of the RFEF. The Third Respondent was represented by Mr Patrick Wilson, legal counsel to FIFA.

- 3.21 During the hearing, the Panel heard C., father of the Player. The Panel also heard, by video conference, Mr Antonio Rivera, administrative officer of Atlético de Madrid.
- 3.22 The parties had ample opportunity to present their case, submit their arguments and answer to the questions of the Panel. After the parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties even if they have not been summarized in the present award. Upon closure, the parties expressly stated that they did not have any objection to the conduction of these proceedings, in respect of their right to be heard and to be treated equally in these arbitration proceedings.

IV. SUBMISSIONS OF THE PARTIES

A. *The Appellant's submissions*

- 4.1. The Appellant submitted the following requests for relief within his statement of appeal:

"i) That the Player A. be authorized to be registered on the Spanish Football Federation (RFEF), in favour of Club Atlético de Madrid SAD.

ii) That all the costs derived of this procedure be paid by FIFA, added to a compensation towards our legal cost caused for this procedure".

- 4.2. The Appellant further submitted the following requests for relief within his appeal brief:

"To take cognizance of the lodging of this written statement setting out the grounds for the appeal, to file it and, after the completion of all the legal formalities, to agree according to what was requested in the appeal notice, revoking the appealed resolution and, instead, authorizing the registration of the minor A., in the Real Federación Española de Fútbol [Royal Spanish Football Federation], with the Club Atlético de Madrid, imposing the payment of the arbitration costs to the FIFA, as well as the payment of the arbitration costs to the FIFA, as well as the payment of a compensation not lower than 10.000.- CHF, as contribution towards the legal expenses of this party".

- 4.3. The Appellant's submissions, in essence, may be summarized as follows:

- All the conditions provided for the application of Article 19 para. 2 a) of the Regulations on the Status and Transfer of Players (hereinafter also referred to as the "RSTP") had been met: the change of residence of the Appellant's family had nothing to do with football, and was not motivated by any sports-related cause. The challenged Decision was based on assumptions which did not correspond to the facts resulting from the evidence provided.
- In case the Player was deprived of practicing a sporting activity, with no reason other than the fact that he is a US-American citizen, Article 3.1 of the *Spanish Ley Orgánica 4/2000*,

governing the individual rights and liberties of the foreign nationals living in Spain would have been violated. Due to this violation, the FIFA Regulations would have to be considered as null and void, according to Swiss law, namely, Article 3 of the Swiss Federal Constitution, and the Treaty concluded between the Swiss Confederation and the United States of America on 25 November 1850.

- 4.4. In the appeal brief, the Appellant confirmed its prayers for relief and requested to have C., father of the Player, and Mr Antonio Rivera, administrative officer of the Club Atlético de Madrid SAD, responsible for the lower level categories, heard as witness, during a hearing.

B. *Atlético de Madrid's submissions*

- 4.5. On 17 May 2013, Atlético de Madrid filed an Answer, requesting CAS:

“to consider this document as lodged as a defense to the appeal, with the attached documents, and following the appropriate procedures it dictates the resolution that corresponds to law.

Since we do not expressly oppose to the appeal, CLUB ATLETICO MADRID SAD should be relieved of any liability for costs and expenses incurred, which must be assumed by the party whose claims have been rejected”.

- 4.6. Atlético de Madrid submitted, in essence, that in the present case, it is undisputed that the Player's parents moved to Spain for reasons other than football-related causes. The Club also emphasized that it had no special sporting interest in the Player, so that it would abide any decision taken by the CAS, although, in its opinion, the Player should be registered according to Article 19 para. 2 a) RSTP.

C. *The RFEF's submissions*

- 4.7. On 20 May 2013, RFEF filed its Answer, requesting CAS :

“1. Prior to studying and issuing a ruling on the roots of the matter, CAS rules on the issue of the RFEF's lack of standing to be sued.

2. Subsidiarily, in the event that the Panel deems that the RFEF has standing to be sued to the present proceedings, CAS rejects the Appellant's request and confirms the Single Judge of the FIFA's Players Status Sub-Committee on 30 November 2011 [recte 2012], on the basis of the arguments put forward in section B of the present brief.

3. In both cases, CAS awards the costs of the Appeal as determined by the CAS Secretariat, against the Appellant”.

- 4.8. The RFEF's submissions, in essence, may be summarized as follows:

- In this case, RFEF only initiated the approval of a first registration before FIFA, through the TMS system, according to the FIFA Regulations. RFEF should not be a party in these proceedings: only FIFA should have standing to be sued (*locus standi*) in this Appeal, as RFEF has no competence regarding the registration of the Player; the role of RFEF was

merely procedural, that is, to transmit the documents to FIFA as it had to do in order to be in compliance with the relevant FIFA Regulations.

- Subsidiarily, RFEF submitted that the challenged Decision was correct, in that the FIFA instance did not err in law when considering that the parents of the Player had moved to Spain for reasons linked to football and that the exception of Art. 19 para. 2 a) could not be apply in this case.

D. FIFA's submissions

4.9. On 24 June 2013, FIFA filed an Answer, requesting CAS:

- "1. Primarily, to declare the present Appeal withdrawn.*
- 2. Subsidiarily, to examine whether the Appellant has a legitimate interest to bring his Appeal before CAS. In the negative, the Appeal should be considered inadmissible and the present procedure should be withdrawn.*
- 3. In any case, to exclude Atlético de Madrid SAD as a party from the present procedure, or, alternatively, to disregard the club's Answer to the Appeal.*
- 4. Alternatively, to reject as to its substance, the present Appeal against the Decision passed by the Single Judge of the Player's Status Sub-Committee on 30 November 2012 and to confirm the relevant Decision in its entirety.*
- 5. In any event, to order the Appellant to cover all the costs incurred with the present procedure as well as to bear all legal expenses of the Respondent 3 related thereto".*

4.10. The FIFA's submissions, in essence, may be summarized as follows:

- As primary request, FIFA submitted that the Appeal Brief had been filed late, and that the Appeal should be declared inadmissible, by virtue of Article R51 para. 1 of the Code. In that respect, FIFA submitted that the Appealed Decision would have been notified via the TMS on 22 March 2013, and that the time-limit to submit the Appeal Brief had expired on 22 April 2013. The Appeal Brief was submitted to CAS on 23 April 2013 only, and was thus filed one day late.
- FIFA subsidiarily submitted that the Player had no legitimate interest in the present appeal. In that respect, FIFA underlined that the Atlético de Madrid did not appeal against the Decision: the application for registration of a player needs to be submitted by a club to its association, according to Article 6 para. 3 of the Regulations; the relevant Decision had been accepted by the Club, and, consequently, the Player lacked legitimate interest in the present Appeal.
- FIFA also submitted that the Club had no standing to be sued, and that the fact that the Club was called as Respondent constituted a prejudice for FIFA's rights to a proper defence, due to the fact that a party with antagonistic interests to FIFA was given the possibility to provide its position against the Appealed Decision (without having challenged the Appealed Decision).
- As to the substance, FIFA recalled the background and purpose of Article 19 RSTP: it mentioned that the Sub-Committee appointed since October 2009 had created a very strict

jurisprudence, allowing exceptions to Article 19 RSTP only in cases where the conditions of the provision had been “*doubtlessly fulfilled*”. FIFA also recalled that the experiences during the past years had shown that agents and (some) clubs had elaborated very creative solutions in order to circumvent the FIFA provisions, so that it was only by enforcing the rules in consistent and strict manner that abuses could be avoided.

- FIFA then recalled the jurisprudence of CAS which, on various occasions, underlined the importance (and the proportional character) of Article 19 RSTP. With regard to the appreciation as to whether the Player’s parents move was linked to football or not, FIFA mentioned the CAS jurisprudence which held that the timeline surrounding the Player’s parents’ move, in combination with the other circumstances of the relevant move, was a factual element which had to be taken into consideration when analysing a case.
- FIFA then analysed in details the circumstances of this case. As regards the argumentation of the Appellant, FIFA submitted that the relevant timeline allowed by no means to conclude that the move was not linked to football-related reasons. In FIFA’s view, the timeline of the events did not establish, beyond doubt, that the real intention of the Player’s parents was not linked to football. According to FIFA, it had not have been proven that the cultural and linguistic reasons were predominant for the move of the Appellant’s family.
- Moreover, FIFA submitted evidence supporting that the move had indeed been football-related: a certain number of exhibits showed that the Appellant had already competed with several clubs in the United States, such as the Mustang Boys U10 Red Bulls, the Chicago Magic, and finally the Chicago Fire Soccer Club. FIFA also pointed out that the Chicago Fire Soccer Club had a partnership agreement with the Club Atlético de Madrid and that the Appellant himself, on his school’s website, when presenting himself, stated: “*I came to Spain because I got accepted in to the football club called Atlético de Madrid*”.
- Finally, FIFA insisted on the fact that the wealth of the family was not a relevant condition according to Article 19 RSTP, and that this provision was not discriminatory against American citizens, referring to the relevant jurisprudence stating that this provision did not violate any mandatory principle, such as public order (*ordre public*), and did not constitute any restriction to the fundamental rights.

V. ADMISSIBILITY

5.1. Article R49 of the Code provides as follows:

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

5.2. FIFA questions the timeliness of the appeal. In this respect, FIFA submits that the parties had been notified on 22 March 2013 of the Appealed Decision and that this was the day when the full reasoning of the Appealed Decision was uploaded into TMS.

- 5.3. In his statement of appeal, the Appellant submits that he was notified on 25 March 2013 of the Appealed Decision.
- 5.4. It is undisputed that the statement of appeal was filed within the twenty-one (21) days deadline provided by Article 67 of the FIFA Statutes (July 2012 edition), which, as stated *supra*, is applicable by virtue of Article R47 of the Code. The statement of appeal was received by the CAS Court Office on 8 April 2013, which is seventeen (17) days after 22 March 2013, the day of notification according to FIFA's allegation. On this basis, the statement of appeal is admissible.
- 5.5. In FIFA's view, however, the Appellant failed to comply with the ten (10) days deadline embedded in Article R51 of the Code, during which it must file the appeal brief. Article R51, par. 1 of the Code reads as follows :
- "Within ten days following the expiry of the time-limit for the Appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which he intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time-limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit".*
- 5.6. If notified on 22 March 2013, the thirty-one (31) day time limit to file the Appeal Brief would have expired on 22 April 2013. As the appeal brief was filed on 23 April 2013, the question arises whether the appeal shall be deemed withdrawn.
- 5.7. The Panel notes that the twenty-one days deadline as per Article R49 Code (and Article 67 of the FIFA Statutes) to file a statement of appeal is a deadline that cannot be extended. This is not the case for the ten days deadline of Article R51 of the Code (cf. Article R32 of the Code).
- 5.8. In the present case, it is undisputed that the Appellant did not ask explicitly for an extension of the ten days deadline to file his appeal brief. However, upon submission of the appeal brief, the Appellant requested an extension of time to submit an English translation thereof. Respondents accepted such request, and neither of the Respondents raised any issue as with respect to the deadline originally applicable. In fact, it was only with the Answer filed by FIFA that the issue was raised.
- 5.9. In these circumstances, the Panel is of the view that the deadline to file the appeal brief had been extended and, therefore, the appeal shall not be deemed withdrawn.

VI. JURISDICTION

- 6.1 Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific

arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

- 6.2. The jurisdiction of the CAS, which is not disputed, derives from Article 67 of the FIFA Statutes (July 2012 edition), which is applicable by virtue of Article R47 of the Code. It is further confirmed by the Order of Procedure, which has been duly signed by the parties.
- 6.3. It follows that CAS has jurisdiction to decide on the present dispute.
- 6.4. Pursuant to Article R57 of the Code, the Panel has full power to review the facts and the law.

VII. APPLICABLE LAW

- 7.1 Article R58 of the Code provides that:

“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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

- 7.2. According to Art. 66 para. 2 of the FIFA Statutes, 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.
- 7.3. Regarding the issue at stake, the Panel notes that the parties have not chosen the applicable law to the dispute. As a result, subject to the primacy of applicable FIFA’s Regulations, Swiss law shall apply complementarily.

VIII. LEGAL DISCUSSION

VIII.1. Preliminary issues

A. Legitimate interest and standing to sue of the Appellant

- 8.1. FIFA submits that Atlético de Madrid did not challenge the Appealed Decision, and that it no longer intends to register the Player; consequently, the Player has no legitimate interest in the present appeals proceedings.
- 8.2. The various Regulations of FIFA do not address the question of the standing to appeal against a FIFA decision, nor the conditions of legitimate interest of the Appellant.
- 8.3. The requirement of standing to sue or standing to appeal has been dealt with many times by CAS panels, in particular in connection with appeals against decisions of sporting bodies. In principle, standing to sue is recognised if a person appealing against a certain decision has an

interest worthy of protection, i.e. a sufficient interest in the matter being appealed (cf. CAS 2008/A/1674; CAS 2010/A/2354). In other words, an appellant has to demonstrate that he or she is sufficiently affected by the appealed decision and has a tangible interest, of financial or sporting nature, at stake (cf. DE LA ROCHEFOUCAULD E., *Standing to sue, a procedural issue before the CAS*, CAS Bulletin 1/2011, p. 13 *et seq.*).

- 8.4. In the present case, the Panel has no difficulty to admit that the Player is concerned by the Decision issued by FIFA in a way which justifies hearing the appeal. It is undisputed that the Appealed Decision has practical and important effects on the situation of the Player. These effects are of factual and to some extent of legal nature: if confirmed, the Appealed Decision will make impossible for the Player to play for Atlético de Madrid, and extremely difficult for him to register in Spain for another club in the coming years, probably not before he reaches the age of 18. It must be emphasized that, in a situation similar to the present one, FIFA has expressly admitted the existence of a sufficient interest for a minor player to file an appeal at CAS although he was not a party in the first procedure before the FIFA Players Status Sub-Committee (CAS 2011/A/2354, para. 41).
- 8.5. In view of the above mentioned, the Panel is satisfied that the Player is affected by the Appealed Decision, and has an actual interest to appeal against it and in particular to submit that he has to be considered as benefitting from an exception to Article 19 RSTP.
- 8.6. The abovementioned consideration is in line with Swiss law, according to which a decision issued by an association like FIFA may be challenged pursuant to Article 75 CC, which reads as follows:
“Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month from the day on which he became cognizant of such resolution”.
- 8.7. The party having standing to sue in matters covered by Article 75 CC is not only a member of the association which issued the decision; according to the Swiss case law (and legal doctrine), a legal person member of an association affiliated to the one issuing a decision (indirect member) has standing to sue when it is submitted to the regulations of the association that has issued the contested decision (see FOËX B., *Commentaire Romand – CC I*, n. 5 ad Art. 75; DFT 119 II 71). This is exactly the situation of a player challenging a decision of FIFA.
- 8.8. In conclusion, the Panel considers that the Appeal is admissible as regards the legitimate interest and the standing to sue of the Player, as Appellant.

B. Standing to be sued

- 8.9. As stated above, on 18 April 2013 the RFEF requested to be excluded from this procedure. In its answer, the RFEF further requested the CAS to issue a decision on its lack of standing to be sued.

- 8.10. The question of the standing to be sued in disputes relating to registrations by FIFA has been examined in details by the Panel which rendered the award CAS 2008/A/1639.
- 8.11. The Panel in the present case shares the views expressed in the above mentioned award as regards the standing to be sued in disputes concerning the registration of a player by FIFA. In particular, the Panel considers that the question must be examined in the light of Article 75 CC, quoted *supra*: the party having the standing to be sued is only the association which issued the decision.
- 8.12. The decision regarding a first registration of a player within a national federation touches upon the relationship between FIFA and its members. When assuming the competences conferred on it according to the RSTP, at least as regards registration, FIFA is exercising an administrative function and, thus, having an impact on its individual members in the sense of Article 75 CC, or on the rights of indirect members, according to the case law of the Swiss Federal Tribunal (see DFT 119 II 271 and references mentioned previously in connection with the standing to sue). It results from these principles that the motion to amend an “*administrative*” decision by an organ of a federation – like FIFA in the present case – is to be directed against FIFA.
- 8.13. In turn, this request is not to be directed against other parties, such as members of FIFA like the RFEF in the present case. Nor is the request to be directed against a club, like Atlético de Madrid in the present case.
- 8.14. It is then not required to direct the appeal against the national federation, which transmitted the request to FIFA, and against the club where the Player wanted to register. This conclusion also results from the reading of the main prayer for relief of the Appellant, which is to “*be authorised to be registered on the Spanish Football Federation in favour of Club Atlético de Madrid*”. According to the FIFA Regulations, such an authorisation cannot be issued by the RFEF, nor by the Club.
- 8.15. In consequence, the First and the Second Respondents have no standing to be sued in the present case. The Appeal will be rejected as regards these two parties, the Panel holding that the question of the standing to be sued relates to the merits of the case, and not to the admissibility of the Appeal (in that respect, see CAS 2008/A/1639, para. 11.2 and DFT 128 III 50, c. 2, p. 55). Just for good order it may be clarified at this point that in the remaining parts of the present Award the Panel may refer to the positions or statements of all Respondents, without limiting its comments on the position and statements of FIFA, just to facilitate the reading. Of course, the appeal being rejected against First and Second Respondent, their positions and statements were not relevant for the outcome of the present case.

VIII.2. Merits

A. Article 19 of the RSTP

- 8.16. Article 19 of the RSTP is entitled “*Protection of minors*”. It holds that, in principle (para. 1 of Article 19), international transfers of players are only permitted if the player is over the age of

18. Exceptions are permitted and are exhaustively mentioned in the remaining paragraphs of this provision.
- 8.17. In the present case, it is undisputed that Article 19 of the RSTP is applicable, and the dispute among the parties concerns basically the applicability of one of the exceptions mentioned in said provision.
- 8.18. The Panel understands that Article 19 of the RSTP covers not only cases of transfers, but also cases of first registration with a club, as is the situation in the present dispute. Para. 3 of this provision provides unambiguous support for this approach:
“The conditions of this article shall also apply to any Player who has never previously been registered with a club and is not a national of the country in which he wishes to be registered for the first time”.
- 8.19. The first registration of the Player, US citizen, in Spain, a country of which he is not a national, is in consequence submitted to the provisions set in Article 19 of the RSTP.
- 8.20. The principle set in the article at stake has three exceptions, among which features Article 19 para. 2 (a) of the RSTP, which reads as follows :
“The player’s parents move to the country in which the new club is located for reasons not linked to football”.
- 8.21. In light of the above, it follows that a player below the age of 18 can be transferred to a foreign club (or registered for the first time by a foreign club) if his parents moved to the country of the (new) club for reasons not linked to football. The heart of this dispute concerns the question whether the factual issues present support or not the application of this ground.
- 8.22. The Panel would like to stress at the outset, that it wholeheartedly shares the views expressed by FIFA that Article 19 of the RSTP is a very important provision, which sets key principles designed to protect the interests of minor players. Numerous CAS decisions have recognized its importance (see CAS 2005/A/955 and 956 and in CAS 2008/A/1485).
- 8.23. Considering the above mentioned, the Panel is convinced of the need to apply the rules on the protection of minors in strict, rigorous and consistent manner.
- 8.24. In the Panel’s view, this means that there can be no other exceptions to the principle of Article 19 of the RSTP than those carefully drafted in paragraph 2 of said provision. It is also the opinion of the Panel that Article 19 para. 2 of the RSTP has to receive a strict construction. In that respect, the party requesting for a registration has the burden of proof, and has to establish that the conditions set in this provision have been met.
- 8.25. The Panel shares the views expressed in CAS 2011/A/2494 that Article 19 para. 2 (a) of the RSTP aims to protect the young player who follows his family moving abroad for personal reasons, and not the parents who follow their child in the view to integrate a club situated abroad (see CAS 2011/A/2494, para. 63). The test is thus, to assess the true intention and motivation of the player’s parents. In that respect, it is not sufficient to establish that the parents do not seek, as primary or main objective, to achieve the footballing activities of their child

abroad: for Article 19 para. 2 (a) of the RSTP to apply, the move of the family must not be linked to football.

- 8.26. In view of the above mentioned, the player claiming for the benefit of the exception of Article 19 para. 2 (a) of the RSTP has the burden of proof to establish that football is not the reason, or one of the reasons, for the move of his parents to the country in which the new club is located.
- 8.27. The above-mentioned test requires careful assessment of the relevant facts. The relevant questions are merely factual. The issue to be resolved by the Panel in the present case is then whether the facts presented by the parties are to be considered as establishing that the intention of the Appellant's family to move in Spain was linked to football or not.
- 8.28. The Panel is of the opinion that the Appealed Decision is *prima facie* not erroneous. Given the very few facts and explanations presented before FIFA, its Sub-Committee could not accept that there was sufficient evidence that the intentions of the family to move to Spain were not linked to football. In terms of time line, the situation presented to FIFA showed that the registration process, initiated in September 2012, was very close to the arrival of the family in Madrid, at the end of July 2012. Furthermore, the change of location of the family, between July and September 2012, could lead to the conclusion that the family was organizing its life in Madrid according to the footballing activity of the Player.
- 8.29. As previously noted, the Panel has full power to review the facts and the law, according to Article R57 of the Code. Pursuant to the case law of CAS, the Panel can try the case *de novo*. Accordingly, the Panel performed its own review of the factual situation, taking into account all the elements, old and new, brought up by the parties during the proceedings before the CAS. In this assessment process, the Panel has distinguished between the elements which are to be considered as *contra* or *pro* the application of the exception of Article 19 par. 2 (a) of the RSTP.
- 8.30. The elements *contra* are the following :
- As retained by the FIFA Sub-Committee in the Appealed Decision, the time line between the arrival of the Player in Madrid and the registration request cannot lead to exclude that there was a previous intention of the Player and his family to be registered with Atlético de Madrid before arriving in Spain. In that respect, the Panel points out that it was only six weeks after the arrival of the family in Spain that the Player took a physical test with the club. Moreover, as mentioned by FIFA, the Appellant did not give any evidence as to the date when he started school year in 2012, nor any evidence as to his participation to the school football team. Assessing these facts, the Panel can only conclude that the test took place one or two weeks after the Player began school and that the version of the Appellant as regards the time when he intended to join the club is doubtful.
 - The version of the Appellant raises doubts as regards his previous footballing activities. During the proceedings, the Appellant's version was that he hardly had played football at all. He would have practiced the game of football during holidays, in Colombia. Nevertheless, as evidenced by FIFA, the Appellant had already played football quite seriously and participated in numerous football matches, as a player of a team. The Player

has played football in California when he was about nine-ten years old. Later, the Player took part in matches with the Chicago Magic. Finally, in June and July 2012, the Player competed in the “USL Super Y-League” with the Chicago Magic Soccer Club, which is a club which has a partnership with Atlético de Madrid.

- Furthermore, the declaration of the Player, reported on the official website of his school, cannot be ignored either. The Player expressly stated that the reason of his move to Spain was the possibility that he has been given to play with the Club Atlético de Madrid.

8.31. The elements speaking *pro* the Appellant’s position are the following :

- The Appellant’s family is multicultural and multilingual. The family was able to explain the background for the choice of Europe, and in particular for Spain and Madrid. The mother of the Player is of Colombian origin and one can easily understand that the family wanted to immerse in a Hispanic environment, both for reasons of culture and language.
- The family is wealthy and has the privilege to have the choice to settle between several countries. The basic maintenance of the family is not dependent of a working activity of the parents. One can also, in light of the sums involved when selling the company of the father of the Player, as well as the wealth situation resulting therefrom, exclude that the family’s maintenance depends on the professional evolution of the Player. The father is still a member of the Board of the company which he founded, is free to perform this activity from everywhere in the world. In that respect, it is plausible that the family had several reasons to move outside of the United States, not linked with the football activity of their son A. It may be noted in this respect that the sister of the Player had already moved to Europe when the remaining part of the family moved to Spain.
- It results undoubtedly from the file that the first steps to prepare the move to Spain have been taken at the end of the year 2011. The father of the family got in touch with several lawyers, in October and November 2011 and filed applications for the family to get a visa. The visas, for the whole family, were delivered in May 2012, which is several months before the test taken by the Appellant with the club, on the one side, and at a time when there is no evidence of any link or contact between the club and the Player, on the other side.
- There is absolutely no evidence that the club would have a particular interest in the Player other than having in its team a teenager which may have a certain talent for football, such as many others in the Madrid area. It has remained undisputed that the family did not move to Spain following an invitation by Atlético de Madrid. It is further beyond doubt that the Appellant is not regarded as a particularly or exceptionally talented Player: indeed, the official of Atlético de Madrid that submitted evidence at the hearing explained that the Club has not particular interest in the Player. In that respect, it is hard to conclude that an entire family, such as the family of the Player, would have made important choices as regards its place of location, for grounds linked to the footballing activity of the Player. As mentioned previously, it appears that the Appellant’s family has many possibilities to live in different places in the United States and outside the United States, as they did already in the past, so that it is doubtful that the location of a particular football club would have played any role in the organisation of the family life. Even if the family would be keen in

favouring the football activities of the Player, one can think that such activities could have been performed in many other places all over the world.

- 8.32. In view of the above mentioned facts, and after due assessment and consideration of these facts, the Panel considers that there is no link between the move of the family and the footballing activity of the Player. Even if the time line between the arrival of the family in Spain and the request for registration of the Player with Atlético de Madrid is tight, it is not sufficient to establish that the intention of the move was linked to football.
- 8.33. As regards the footballing activity of the Player in the United States, the Panel points out that this activity is not exceptional or particular. The Player had already played football, which is the case of thousands of boys of his age, both inside and outside of the United States. It is furthermore logical that a young teenager arriving in Spain, or anywhere in the world, and requesting to be registered with a club, has already played football, in his country of origin. Furthermore, the games played with the Chicago Magic Soccer Club are not sufficient to admit that there was a previous intention to be registered with Atlético de Madrid, before the decision of the family to move to Madrid. Atlético de Madrid has partnerships with clubs of other cities than Chicago. The fact that the family moved from Chicago to Madrid, and that there is a partnership agreement between a club of Chicago and a club of Madrid, can be seen as a coincidence: it does not satisfy by itself the tight requirements of causal link as embedded in Article 19 para. 2 of the RSTP. Finally, the matches that the Player played with Chicago Magic took place in June and July 2012. This is after the visa has been delivered to the family. In consequence, one cannot see these matches as kinds of previous tests, passed in the United States, for the registration of the Player with Atlético de Madrid, before the family made the choice to move to Madrid.
- 8.34. Last but not least, after due consideration, the Panel decided not to pay particular attention to the declarations of the Player on the website of his school. The Player is a teenager, whose daily life was totally modified by a change of cities, countries, and continents. In that respect, the Panel is of the opinion that it is plausible that the declaration of the Player did not correspond to the true intentions behind the move of his parents, and that he probably wanted to impress his new friends, football being of utmost social importance in countries such as Spain.

B. Conclusion

- 8.35. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made, the Panel finds that the registration of the Appellant must be accepted, because the criteria for the exception to the prohibition of international transfers of minors, pursuant to Article 19 par. 2 (a) of the RSTP have been met in the present case.
- 8.36. The Panel wants to add that the set of facts of this case is truly exceptional, and reiterates that the Appealed Decision derives from the facts of this particular case. Further, a large part of the facts have been submitted at the hearing before CAS, while several of the statements and allegations made by Appellant in his written submissions have remained unproven. It was

therefore groundless for the Appellant to allege “paranoia” or gross negligence of the FIFA deciding bodies, and Appellant would have been netter advise to focus on relevant facts from the very beginning of these proceedings.

- 8.37. The Player’s appeal is therefore accepted, as far as directed against FIFA. Due to the lack of standing to be sued, the Player’s appeal directed against the RFEF and against the Club is dismissed.
- 8.38. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 4 April 2013 by A. against the decision issued on 30 November 2013 by the FIFA Players’ Status Sub-Committee is partially upheld.
 2. The decision issued on issued on 30 November 2013 by the FIFA Players’ Status Sub-Committee is set aside.
 3. The application filed by the Real Federación Española de Fútbol on behalf of Club Atlético de Madrid SAD to register A. as amateur player is admitted.
 4. All other prayers for relief, in particular any and all prayers directed against Club Atlético de Madrid SAD and the Real Federación Española de Fútbol are dismissed.
- (...).