



**Arbitration CAS 2022/A/8592 USD Lavagnese 1919 v. Fédération Internationale de Football Association (FIFA), award of 17 April 2023 (operative part of 20 June 2022)**

Panel: Mrs Leanne O’Leary (New Zealand), President; Mr Jacopo Tognon (Italy); Mrs Anna Bordiugova (Ukraine)

*Football*

*Registration of minor players in breach of Article 19 RSTP*

*Purpose of Article 19 RSTP*

*Substantive and procedural contents of Article 19 RSTP*

*Responsibility of an amateur club to familiarise itself with Article 19 RSTP*

*De novo power of the CAS to determine sanctions*

*Assessment of the proportionality of the sanction*

- 1. Although the regulations regarding minors have been modified since 2001, the key aim of the provisions nonetheless remains the same: to protect the welfare of young players and minimise potential for commercial exploitation or abuse of minors in the process. Article 19 of the FIFA Regulations on the Status and Transfer of Players (RSTP) is a very important provision that sets the key principles designated to protect the interest of minor players. The general prohibition contained in article 19(1) FIFA RSTP is based on the fact that, while international transfers might in very specific cases, be favourable to a young player’s sporting career, they are very likely to be contrary to their best interest as minors. The interest of protecting the adequate and healthy developments of a minor as a whole must prevail over purely sporting interests. The established exceptions need to be applied in a strict, rigorous, and consistent manner.**
- 2. Article 19 contains both a procedural and a substantive element. The substantive element is set out in Article 19 (1) and (3) and, in effect, prohibits the registration of minors under the age of 18. Article 19 (4) is the procedural element which outlines the procedure to follow when processing an international transfer or registration of a minor that relies on an exception in Article 19 (2) or a player’s first registration under article 19 (3). The process requires a national association to seek approval from the FIFA Sub-Committee that considers such applications. A national association, however, is not obliged to submit a transfer application for approval if it has been granted an exemption from doing so from FIFA, with the effect that the national association can approve the registration application itself if satisfied that the requirements of an exception under Article 19 (2) are met.**
- 3. An amateur club has responsibility to familiarise itself with Article 19 (1) since it may be sanctioned for a breach of Article 19 (1) irrespective of the national association’s actions or knowledge of the regulation. While, ordinarily, reliance on regulatory guidance provided by a national association will suffice, insofar as Article 19(1) is concerned, an**

amateur club cannot rely on the registration granted by a national association as a defence to an allegation of an Article 19 (1) breach, particularly if the circumstances show that the registration application should never have been made. It is incumbent on an amateur club to make reasonable enquiries as to how a player came to be in the country and consider for itself whether it should apply for a foreign minor player's registration.

4. While it should not easily tamper with the sanction imposed in the first instance decision, its *de novo* power of review allows a CAS panel to find that sanctions are disproportionate and to determine more appropriate sanctions. The sanctions imposed in any disciplinary proceeding are case specific and turn on the facts, and the interests at stake must be balanced in respect of the principle of proportionality.
5. An amateur club that is registering a foreign minor player must be curious as to the circumstances in which the player came into the country and consider for itself whether registering the player will breach Article 19. Violations of Article 19 should be taken seriously and when allegations of an Article 19 breach are proved, then the sanctions against professional and amateur clubs must be significant to deter similar conduct in the future. Moreover, imposing a tough sanction sends a strong signal, not only to the perpetrator, but to other potential violators of this provision. Be that as it may, the fact that the sanction is imposed upon an amateur club that evolves in a very different context than professional clubs that participate in highest division competitions as well as the fact that the cases regarding professional clubs have typically involved many more infringements and a greater number of minor players, must also be taken into account when assessing the proportionality of the sanction.

## I. INTRODUCTION

1. This is an appeal against the decision of the Fédération Internationale de Football Association ("FIFA") Appeals Committee passed on 11 November 2021. It arises from an investigation undertaken by the FIFA Regulatory and Compliance Department into the Appellant's alleged involvement in a scheme known as the "Nigeria System", and the subsequent adjudication of alleged breaches of Articles 9, 19 (1) and 19 (4) of the FIFA Regulations on the Status and Transfer of Players ("RSTP") by the FIFA Disciplinary Committee.

## II. PARTIES

2. USD Lavagnese ("Lavagnese" or the "Appellant") is an amateur football club situated in Lavagna, Italy. It is affiliated to the Federazione Italiana Giuoco Calcio (the "FIGC"), which, in turn, is affiliated to the FIFA.

3. FIFA is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body for international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.
4. Collectively, Lavagnese and FIFA will be referred to as the Parties.

### III. FACTUAL BACKGROUND

#### A. Background Facts

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and oral submissions made at the remote hearing held on 24 May 2022. 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.
6. In February 2018, the Italian Police commenced an investigation into allegations of crimes related to the illegal trade and use of doping substances for football players at the professional club Spezia Calcio s.r.l ("Spezia Calcio"). Although the investigation into those allegations was subsequently closed without prosecution, it uncovered potential breaches of Italian immigration law involving the transfer of 13 football players under the age of 18 from Nigeria to Italy. Below are extracts from pages 3 to 7 of the La Spezia Police Report submitted to the Public Prosecutor's Office at the Ordinary Court, La Spezia, in Criminal Proceedings no. 328/18 R.G.N.R, which describe the System:

*"The 'Nigeria System' adopted by Spezia Calcio to illegally bring athletes into the country as early as 2013, appears to have begun when, for the first time, in 2013, a temporary visa was requested for entry into Italy for some Nigerian athletes, who were minors, and who had distinguished themselves in their country of origin for their football talent, through a selection made by the football school, 'Football College Abuja', based in Abuja-Nigeria ...*

*It is revealed that the so-called 'Nigeria system' was found, during the investigation, to be managed directly by the city of La Spezia, where the head office of the professional football club 'Spezia Calcio s.r.l' is located ....*

*It was shown that the credentials for young athletes, i.e. the invitations to take part in sporting events, which are essential for non-EU minors in order to obtain an entry visa, originate precisely from La Spezia. The invitation, issued on 'Spezia Calcio' letterhead and addressed to the Consulate General of Italy in Lagos, among other things, contained the formal promise to respect the laws on immigration and to guarantee the economic sustenance of the minors during their stay in Italy, as well as the promise to ... 'ensure their return to their country of origin within the terms of the entry visa' ....*

*The city of La Spezia was also the starting point for all the directives concerning the management of young athletes who, once they arrived in this city, were de facto managed and maintained - albeit in a hidden way - by the aforementioned professional club ....*

*[From] the beginning, the procedures for the temporary entry of underage athletes on the occasion of their participation in showcase tournaments, such as the Viareggio tournament, or for other occasions, through tourist entry visas, were in fact intended to facilitate their permanent stay within the national territory, or at least for some of them, in violation of the provisions governing the matter.*

*In particular, although some of the foreigners have obtained more tourist visas over the years, the so-called 'Nigeria System' was activated for the most promising athletes when they came of age. Once the athletic skills of the young athletes had been tested during their previous stays in Italy, generally after they had reached the age of majority, the issue of the last visa for tourism purposes was, in reality, ab origine aimed not at the temporary stay of the foreigner within the national territory but the definitive stay ....*

*[Once] the letter of invitation was obtained from Spezia Calcio, the football school 'Football College Abuja' submitted to the Italian Consulate in Nigeria the necessary documentation for the issue of a visa for tourism purposes, together with the proxies signed by the parents of the minors in favour of ..., [a] legal representative and coach/selector of the aforementioned football school ....*

*[Non- EU] minors, therefore, arrived in Italy with their legal guardian/escort, ..., with a tourist visa valid for 90 days.*

*Before the expiration of the entry ticket, the minors subject to the 'Nigeria System' despite having already been formally entrusted to the coach/legal guardian ... were in fact passed into the hands of other individuals, in any case indirectly linked to SPEZIA CALCIO, who, provided with further ad hoc proxies signed by the parents of the minors took action at the office of the Giudice Tutelare [Judge supervising guardianship] of the Court of Genoa to obtain the order appointing the guardian of the aforementioned minors ....*

*The documentation acquired at the Court of Genoa, which had appointed the guardians of the minors, who were de facto leading figures of Spezia Calcio, showed that all young Nigerian athletes had been specifically registered at a school in Chiavari (GE), as required by both the Italian Civil Code, as regards the procedures for the protection of minors, and the rules of the Italian Football Federation, which in turn are modulated on those of the World Federation.*

*Subsequent investigations revealed that the registration was only fictitious and that none of the minors had ever attended the aforementioned school. It is clear that the registration at the school, provided for by the above-mentioned regulations, without actually attending classes, is only an artifice to make the procedure and the reasons for guardianship appear legal, with the sole purpose of obtaining the subsequent issue of the residence permit. In fact, although school attendance is not indispensable in order to obtain a residency permit, it is an indispensable element as far as the guardianship of the minor is concerned, and this guardianship is in turn instrumental and essential for the issue of the residency permit ....*

*Once they had obtained the residence permit, the young Nigerians, entirely managed by the Spezia Calcio club ... were 'initiated' into the sporting path that would have gradually led them to professionalism ....*

*In order to avoid that too many young foreigners appeared in the 'youth league' of Spezia and avoid attracting the attention of the Football League, some of them were 'parked' in complacent amateur teams, as occurred in 2017 when three young talents ... were registered in the amateur team of Valdivara 5Terre ....*

*The investigations have clearly shown that the whole 'Nigeria system' was designed and implemented to ... attract young talents with the ultimate aim of creating a significant gain from their transfer to other professional clubs, as actually occurred for some of them in previous years".*

7. The Police Report identified 13 players who had been brought into Italy from Nigeria, four of whom were registered with Lavagnese. A summary of the relevant details of the four Lavagnese-registered players who are known as Players 1, 2, 4 and 5, is as follows:

Player No	Name	ITC	Date of Entry into Italy	Date of FIGC Registration	Transfer to Spezia
1	[A.]	N/A	30/09/2013 (16 years old)	20/02/2014 (17 years old)	Yes 29/08/2014
2	[B.]	N/A	30/09/2013 (16 years old)	20/02/2014 (17 years old)	Yes 29/08/2014
4	[C.]	N/A	26/08/2014 (16 years old)	03/09/2015 (18 years old)	Yes 19/01/2016
5	[D.]	N/A	26/08/2014 (17 years old)	31/07/2015 (18 years old)	Yes 28/07/2016

8. Following receipt of information about the alleged Nigeria System, on 14 August 2018, FIFA's TMS Global Transfer and Compliance Team wrote to Lavagnese, requesting further details of the registration of Player 1.
9. On 24 August 2018, Lavagnese replied indicating that Player 1 was in Italy for study reasons under the supervision of a tutor, that Player 1 had never been registered with another club and that Player 1 had been registered by the FIGC as an amateur.
10. On 7 March 2019, the FIFA TMS Global Transfer and Compliance Team wrote again to Lavagnese requesting further information about Player 1 and also information about Player 2.

11. On 12 March 2019, Lavagnese replied, indicating that both players were registered with the FIGC, both had registered for the first time in Italy and the players had been registered following FIGC's procedure.
12. On 25 November 2020, FIFA's Regulatory Enforcement Department wrote to Lavagnese putting the club on notice that FIFA was investigating potential breaches of Articles 9, 19 and Annexes 2 and 3 of the FIFA RSTP, and seeking information regarding the registration of five Nigerian players.
13. On 8 December 2020, Lavagnese responded reiterating that: it was not involved in the Nigeria System; it had never been investigated by the La Spezia Public Prosecutor's Office; its company and representatives were not mentioned in investigation and court documents; Lavagnese had fulfilled its obligations properly; and the Nigeria System was completely unknown to the club.
14. On 26 April 2021, FIFA informed Lavagnese that the matter in relation to Players 1, 2, 4 and 5 had been transferred for consideration by the FIFA Disciplinary Committee. A copy of the FIFA Case Transfer Report was provided to Lavagnese.
15. On 3 and 10 May 2021, Lavagnese responded to the allegations in writing to FIFA.
16. On 30 June 2021, the FIFA Disciplinary Committee considered whether Lavagnese had failed to comply with Article 9 (1), Article 19 (1), (3) and (4), Article 1 (1) of Annexe 2, and Article 1 (3) of Annexe 3 of the FIFA RSTP. Following a consideration of the evidence, the FIFA Disciplinary Committee concluded that the allegations were proved and banned Lavagnese from registering new players, both nationally and at an international level, for four entire and consecutive registration periods. It also ordered Lavagnese to pay a fine of CHF 4,000.

**B. Proceedings before the FIFA Appeal Committee**

17. On 23 August 2021, Lavagnese notified FIFA of its intention to appeal the Disciplinary Committee decision and filed an appeal on 10 September 2021.
18. Before the Appeal Committee, Lavagnese argued that:
  - The applicable law was the FIFA RSTP, with Swiss law applying subsidiarily, although it contended that due consideration should also be given to Italian law and the FIGC rules. Lavagnese submitted that the FIFA Regulatory Compliance Department relied on evidence collected by La Spezia Police as part of a criminal investigation that had not yet been assessed by a competent criminal court. It rejected the admissibility of the Police Report.
  - The Police Report did not state that it was a part of the Nigeria System. It contended that the Disciplinary Committee had erroneously assessed Lavagnese as part of the Nigeria System. Nothing in the case file linked Lavagnese or its representatives to the Nigeria

System, in particular, no one attached to Lavagnese was under investigation by the Police and there was no evidence of payment being made to Lavagnese or its representatives. Furthermore, Lavagnese had never tried to circumvent the rules; it had followed the FIGC registration procedure for foreign minor players and complied with Italian law.

- It did not breach Article 19 (4) of the FIFA RSTP. Players 4 and 5 were registered by Lavagnese with FIGC after the players turned 18 years old and Article 19 did not apply to them. Players 1 and 2 had registered with FIGC after FIGC granted Lavagnese an exemption; Lavagnese should not be blamed or sanctioned for FIGC's actions.
  - It did not breach Article 19 (1) and (3) of the FIFA RSTP. The players were already in Italy, without any involvement of Lavagnese when they were registered with FIGC. A violation of Article 19 only arises once a minor player is transferred to, or registered with, a club and not "*when he entered into Italy*". Players 4 and 5 were registered after 18 years of age and were not registered with a prior club in Nigeria; there was no infraction committed as regards Players 4 and 5. FIGC owed a duty to assess the criteria for registration and should have rejected the registration requests for Players 1 and 2 if not in compliance with the applicable regulations.
  - Article 19 was not directly applicable to it because FIGC had not incorporated it into its regulations. Moreover, FIGC's guide for registration of amateur minors expressly permitted registration of a player in the care of a guardian and not a parent. Lavagnese followed the FIGC procedure and the registration requests were accepted. Also, in 2013 there was no clear FIFA or Court of Arbitration for Sport ("CAS") jurisprudence regarding the status of a guardian appointed in the place of a parent. The uncertainty was only clarified in a CAS decision in 2017.
  - It did not breach Article 9 (1) of the FIFA RSTP because the evidence showed that the players were not registered with another association. Consequently, an International Transfer Certificate ("ITC") was not required.
  - The sanctions were disproportionate and did not take into account: the non-profit status of an amateur club; the fact that Lavagnese had no choice but to follow FIGC rules; that Lavagnese acted with FIGC approval and in compliance with Italian law; and it did not benefit economically from the Nigeria System. Also, a transfer ban was reserved for the "big clubs" that transferred "*dozens of players and deliberately violated FIFA rules to get an advantage*".
  - The Appeal Committee should uphold the appeal and set aside the sanction, or, subsidiarily, reduce the sanction according to justice and suspend its implementation for a period of up to four years.
19. The Appeal Committee by its decision dated 11 November 2021 ("Appealed Decision") partially upheld Lavagnese's appeal as follows:

“1. *The appeal lodged by the club USD Lavagnese 1919 against the decision passed by the Disciplinary Committee on 30 June 2021 is partially upheld. Said decision is amended as follows:*

1. *The club USD Lavagnese 1919 is banned from registering new players, both nationally and international level, for two (2) entire and consecutive registration periods following the notification of this decision for failing to comply with the relevant provisions of the RSTP related to the protection and transfer of minors.*
2. *The club USD Lavagnese 1919 is ordered to pay a fine to the amount of CHF 4,000.*
3. *The above fine is to be paid within thirty (30) days of notification of the present decision.*

2. *The club USD Lavagnese 1919 is ordered to pay the costs of the proceedings in the amount of CHF 1,000. This amount is offset against the fee of CHF 1,000 paid by the club USD Lavagnese 1919”.*

20. The reasons for this decision were as follows:

- Regarding the procedural arguments, the Appeal Committee accepted that the appeal was admissible, and that the applicable law was the FIFA RSTP (2012 and 2014 editions) and Swiss law on a subsidiary basis. Italian law and FIGC rules could be taken into account. The burden of proof of establishing the infringements rested with FIFA to the standard of comfortable satisfaction. Article 35 (1) of the FIFA Disciplinary Code stated that “*any type of proof may be produced*” and that the competent judicial body has absolute discretion regarding the evidence evaluation. Accordingly, the Police Report could be admitted even though its reliability had not yet been tested in a competent Italian court.
- Regarding the merits, the Appeal Committee concluded that given the lack of evidence linking Lavagnese to Spezia Calcio in the Nigeria System, the Disciplinary Committee had erred in finding that Lavagnese was a part of the Nigeria System. It was “*highly suspicious*” that Players 1 and 2 who entered Italy on 30 September 2013, and Players 4 and 5 who entered Italy almost a year later on 26 August 2014, were all unaccompanied and assigned to two different guardians, all landed with Lavagnese for a period of time before being transferred to Spezia Calcio within a year of their official registration. Nonetheless, the Appeal Committee expressed serious doubts as to Lavagnese’s involvement in the Nigeria System, which was set up by Spezia Calcio, because there was no corroborating evidence of Lavagnese’s alleged involvement.
- Although FIGC had been delegated with authority to approve amateur foreign minor registrations for an amateur club instead of the FIFA Sub-Committee, nonetheless, the international transfer of a minor player and the first registration of a foreign minor player required approval from the FIFA Sub-Committee in accordance with Article 19 (4) of the FIFA RSTP. Players 1 and 2 did not satisfy any of the exceptions listed in Article 19 (2) of the FIFA RSTP. The wording of the exception is clear that the figure of guardian/tutor cannot encompass the notion of parent included in Article 19 (2) (a) of the FIFA RSTP. Also, the exception contemplates that the minor moves with his parents which did not



occur because the Players came to Italy alone and were subsequently assigned a tutor or guardian prior to their registration. Article 6 (3) of the FIFA RSTP states that the registration process is always triggered by a request from a club.

- Lavagnese was negligent in registering the minors because it should have known that such registrations were not possible using the available resources and should not have started the process once it identified that the parents were not present. In 2011, CAS rendered an award in which it was unambiguously stated that Article 19 (2) (a) “*did not cover the situation where the minor player’s residence may be at his aunt’s house, as the latter is not a ‘parent’ to the minor player in the sense of [this provision]*”.
- It concluded that Players 1 and 2 had been wrongly registered as their situations did not fall within one of the Article 19 (2) exceptions and the transfers infringed Article 19 (1). As an application to the Sub-Committee was not made, the Club breached Article 19 (4) of the FIFA RSTP, and Articles 1 (1) Annexe 1 and Article 1 (3) Annexe 3. The Appeal Committee also concluded that an ITC was required for Players 1 and 2 to register them correctly, which was absent, and it held that Lavagnese also breached Article 9 (1) of the FIFA RSTP.
- Regarding Players 4 and 5, the Appeal Committee noted that there was no evidence of the players’ participation in organized football with Lavagnese while under the age of 18, or that they were already “parked” with Lavagnese until they could be registered once turning 18 years old. Although Mr Roberto Sannino, a person who is subject to criminal proceedings for his involvement in the Nigeria System, was the guardian of Players 4 and 5 and co-coach of Lavagnese at the time the players were registered, the Committee considered that there were “*serious and insurmountable doubt*” as to whether the players were with Lavagnese when they were minors. There was no evidence to conclude that Lavagnese breached Article 19 in respect of Players 4 and 5, and the findings of the Disciplinary Committee in that regard were set aside.
- The only element linking Lavagnese to Spezia Calcio was Lavagnese’s former co-coach and the guardian of Players 4 and 5 who appears to have been heavily involved in the Nigeria System. With the setting aside of the findings in relation to Players 4 and 5, and the Appeal Committee’s own conclusion that there was no link between Lavagnese and Spezia Calcio in relation to Players 1 and 2, the Appeal Committee was unable to conclude that Lavagnese was involved in the Nigeria System due to a lack of evidence. It noted however, that the circumstances by which the players came to be at Lavagnese were “*highly suspicious*”.
- On the issue of the proportionality of the sanction, the Appeal Committee noted that the breaches regarding Players 1 and 2 were confirmed, and the violations annulled against Players 4 and 5. Taking into account the circumstances of the case, and the materials at Lavagnese’s disposal to familiarise itself with the scope of Article 19 (e.g. the FIFA RSTP, its Commentary and CAS decisions) and the reference in the FIGC Guide to the FIFA

Regulations, the Appeal Committee decided to halve the registration ban to two registration periods and confirm the fine of CHF 4,000.

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

21. On 8 January 2022, pursuant to Article R48 of the Code of Sports-related Arbitration (the “Code”) the Appellant filed a Statement of Appeal, against the Respondent regarding the Appealed Decision, with the CAS. In its Statement of Appeal, the Appellant requested an expedited procedure in accordance with Article R52 of the Code, with a decision before 30 June 2022. It also nominated Mr Jacopo Tognon, Attorney-at-law in Padova, Italy, as arbitrator, and chose English as the language of the arbitration.
22. On 13 January 2022, the Appellant notified the CAS Court Office that it had agreed an expedited procedural calendar with the Respondent under Article R52 (4) of the Code, aimed at obtaining the Operative Part of a Final Award by 30 June 2022.
23. Also, on 13 January 2022, the CAS Court Office invited the Respondent to confirm in writing whether it agreed to the procedural calendar notified by the Appellant.
24. On 14 January 2022, the Respondent informed the CAS Court Office that it agreed to the procedural calendar outlined in the Appellant’s communication, and agreed to English as the official language of the procedure.
25. Still on 14 January 2022, the CAS Court Office confirmed the expedited procedural calendar agreed by the Parties in accordance with Article R52 (4) of the Code.
26. On 24 January 2022, the Respondent informed the CAS Court Office that it appointed Dr Anna Bordiugova, Attorney-at-law in Kyiv, Ukraine, as arbitrator.
27. On 8 February 2022, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, confirmed the constitution of the Panel as follows:  
  
President: Dr Leanne O’Leary, Solicitor in Lancashire, United Kingdom  
  
Arbitrators: Mr Jacopo Tognon, Attorney-at-law in Padova, Italy  
Dr Anna Bordiugova, Attorney-at-law in Kyiv, Ukraine
28. On 15 February 2022, the CAS Court Office informed the Parties that the proceedings had been set down for a hearing on 24 May 2022.
29. On 17 February 2022, the Appellant informed the CAS Court Office of its preference for the hearing to be held by videoconference.
30. Still on 17 February 2022, the Respondent informed the CAS Court Office that it did not object to a hearing held by videoconference.

31. On 28 February 2022, in accordance with Article R51 of the Code and within the time outlined in the expedited hearing calendar, the Appellant filed its Appeal Brief.
32. On 29 March 2022, the CAS Court Office confirmed that the hearing scheduled for 24 May 2022 would be held by videoconference.
33. On 19 April 2022, in accordance with Article R55 of the Code, the expedited procedural calendar and a previously agreed extension of time, the Respondent filed its Answer.
34. On 22 April 2022, the CAS Court Office forwarded the Order of Procedure to the Parties, which the Respondent returned in duly signed copy on the same day and the Appellant returned in signed copy on 29 April 2022.
35. On 24 May 2022, a hearing took place by video-conference. Besides the Panel and Mr Fabien Cagneux, CAS Managing Counsel, the following people also attended:

For the Appellant:

Mr Luca Smacchia, Legal Counsel

Mr Federico Menichini, Legal Counsel

For the Respondent:

Mr Miguel Liétard Fernández-Palacios, Director of Litigation

Mr Saverio Paolo Spera, Senior Legal Counsel

36. At the outset of the hearing, the Parties confirmed that they had no objections in respect of the Panel and that the Panel had jurisdiction over the present dispute.
37. The Appellant then raised a preliminary matter regarding the date for the Operative Part of the Final Award, which had previously been agreed for 30 June 2022. For operational reasons relating to the end of the football season, the Appellant requested that the date for the Operative Part of the Final Award be brought forward to 15 June 2022. The Respondent did not object and the Panel confirmed 15 June 2022 as the date by which the Operative Part of the Final Award would be provided.
38. The Parties were given the opportunity to present their oral pleadings. No witnesses attended to give oral evidence.
39. Before the hearing concluded, the Parties confirmed that they did not have any objection with the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.

## V. SUBMISSIONS OF THE PARTIES

40. Lavagnese's submissions, in essence, may be summarized as follows:

- According to Article 49 of the FIFA Disciplinary Code and Article 58 of the FIFA Statutes, appeals against final decisions of FIFA's legal bodies shall be lodged with CAS. The jurisdiction of the CAS is not disputed.
- The Appeal Brief was filed within the time prescribed under Article R51 of the Code and is admissible.
- Under Article R58 of the Code, Article 57 (2) of the FIFA Statutes and Article 5 of the FIFA Disciplinary Code, the applicable law is the FIFA RSTP (editions 2012 and 2014), together with Swiss law on a subsidiary basis. As the Appellant is a private association incorporated under Italian law and affiliated to FIGC, due consideration should also be given to the applicable and mandatory Italian law and the FIGC rules.
- The FIFA Appeal Committee correctly concluded that there was no evidence that Lavagnese received any benefit from Spezia Calcio and no evidence that Lavagnese was a part of the Nigeria System. The FIFA Appeal Committee set aside the violations in relation to Player 4 and Player 5 and imposed a grossly disproportionate sanction of a ban for two consecutive registration periods in respect of violations regarding Players 1 and 2.
- Lavagnese considers that it acted in line with the applicable rules and that Player 1 and Player 2 were correctly registered. In 2009, FIGC was granted approval by FIFA to register an amateur minor player with an amateur club without prior approval of the FIFA Sub-Committee. Lavagnese respected the FIGC rules and submitted registration requests for Player 1 and Player 2 to FIGC, which were approved. Lavagnese was not obliged to obtain the prior approval of the FIFA Sub-Committee or refer any request for registration to the FIFA Sub-Committee. At the relevant time, Lavagnese was not permitted to apply to FIFA and could only apply to FIGC.
- Any procedural violation should be attributed to FIGC and not Lavagnese (*see* CAS 2016/A/4805 which confirms that certain procedural violations in relation to Article 19 cannot be attributed to a club). It is up to a national association to decide whether to refer a request to the FIFA Sub-Committee (*see* CAS 2016/A/4805).
- Lavagnese is an amateur club with no experience in international football or FIFA Regulations and has no specialized personnel. It followed the official FIGC guidance released during the 2013/2014 football season, which clearly highlighted the exception for the registration of a minor with an amateur club who had a guardian present and not his parents.

- Under Italian law (Article 357 of the Civil Code) a guardian is “*the person who takes care of the minor, represents him in all civil acts, and administers his assets*”. Exercising its power granted by FIFA, FIGC treated Players 1 and 2 as minors living with their parents and approved the exception in writing.
- Lavagnese acted *bona fide* and submitted all documentation required to gain the registrations. Article 19 was not incorporated in FIGC rules and was not directly applicable to the Appellant. Lavagnese was only required to follow the FIGC guidance and Italian law.
- Any substantial violation of Article 19 is attributable to FIGC because FIGC registered the Players, not Lavagnese, and the registrations were approved because they were made in compliance with the Italian Civil Code.
- The Appealed Decision requires an amateur club to have complete knowledge of FIFA provisions and their interpretation, FIFA jurisprudence, CAS jurisprudence and to ignore the rules of its national association and state laws, which is unrealistic. A club is required to comply with the rules of its national association and to develop a relationship with FIFA only indirectly. A club has trust in and a legitimate expectation that its national association will not be negligent.
- It is not known whether FIGC has been sanctioned for its actions. FIGC was approving many registrations of minors without parents but with a guardian, without FIFA ever intervening in the practice. In 2013, there was no clear FIFA or CAS jurisprudence which confirmed that a guardian with parental authority was not the same as a parent.
- A guardian is not a relative but a legal role that substitutes for that of the parents. Under Italian law, a guardian has the legal power to represent the minor and has “parental authority”. The registration of Players 1 and 2 occurred at a time when there was uncertainty regarding the conflict between the FIFA RSTP and Italian immigration law and the FIGC granted registrations to avoid being sued for discrimination (*see* Ordinanza of the Tribunale di Palermo of 18 December 2015). The relationship between national law and FIFA Regulations was only confirmed in June 2017. Lavagnese should not be penalized because of the uncertainty at the time the breach occurred.
- The Nigerian Football Association (the “NFA”) was not required to issue an ITC in respect of Players 1 and 2. Player 1 confirmed that he was not registered with any prior club or national association, his parents confirmed, the NFA confirmed, and it was verified by the FIGC. Player 2 also confirmed that he was not registered with any prior club or national association, as did his parents and the NFA. FIGC subsequently confirmed the fact with the NFA directly.
- The sanction is grossly disproportionate because it consists of a transfer ban, which applies at a national and international level, and corresponds to one year, namely 1 January - 30 June 2022 (first registration period) and 1 July – 31 December 2022 (second

registration period), and a fine of CHF 4,000. Lavagnese always acted in line with applicable laws and regulations and did not commit the violations alleged.

- Relying on CAS 2017/A/5496, CAS 2018/A/5864, CAS 2017/A/5117, CAS 2018/A/6239, CAS 2013/A/3358, the proportionality of a sanction must be determined on a case-by-case basis considering: the specific circumstances at issue; the behaviour and degree of responsibility of the defaulting party; any possible aggravating or mitigating factor; and the interests at stake.
- An infringement of Article 19 contains a procedural element and a substantive element. For the procedural element, Lavagnese had no choice other than to follow the FIGC rules and it cannot be held liable for something beyond its control. With respect to the substantive element, Lavagnese had FIGC approval and complied with Italian law.
- Lavagnese did not seek to intentionally circumvent the rules and there is no evidence that Lavagnese gained financially from registering the players.
- In mitigation, Lavagnese is a not-for-profit amateur club, operated by volunteers, with no professionals involved in its management. The facts relate to an isolated incident that happened once, involved two minors and are not part of a pattern of habitual conduct, were not intentional, and had the approval of FIGC.
- The severity of the sanction is unprecedented when considering the sanctions imposed in comparable cases involving big professional clubs that are operated by paid employees, have registered many players across a lengthy period, and intentionally violated FIFA rules regarding minors for financial advantage. For example, in CAS 2016/A/4785, Real Madrid was found liable for 37 violations of FIFA rules in relation to minors and had a sanction reduced on appeal from two registration bans to one, and a fine imposed of CHF 240,000. In CAS 2019/A/6301, Chelsea FC, which was found liable for 66 violations of FIFA rules in relation to minors, incurred a transfer ban of one entire and consecutive registration period and a fine of CHF 300,000. In CAS 2014/A/3793, FC Barcelona committed 31 violations, 10 of which were substantial violations of Article 19, and received a ban for two entire and consecutive registration periods and a fine of CHF 240,000. In CAS 2016/A/4805, Atlético de Madrid SAD committed 153 violations of FIFA rules in relation to minors, 26 of which were substantial violations of Article 19, and had a ban of two entire and consecutive registration periods imposed, together with a fine of CHF 550,000.
- Regarding the level of fine imposed on the professional clubs when compared to the revenues incurred during the football season, Real Madrid reported revenue in the football season 2016/2017 of EUR 671 million and a fine of CHF 240,000 is equal to approximately 0.0357% of its revenue. Similarly, Chelsea FC reported EUR 498 million and a fine of CHF 300,000 equated to almost 0.0602% of its revenue. Proportionately, a fine of CHF 4,000 imposed on the Appellant would require revenue of at least EUR 8 million and Lavagnese's revenue is closer to EUR 441,000.

- Lavagnese enters year-long contracts only and every player becomes a free agent at the end of the football season. If a transfer ban of two registration periods is confirmed, Lavagnese will lose a lot of players now playing in its first team and will not be able to register new ones. It could potentially lead to the end of the club as it will not be able to field a team with enough players to compete in the competition. Also, the transfer ban imposed, *de facto*, limits Lavagnese for more than two registration periods because, in 2022, FIGC has provided amateur clubs with more than two registration periods.
- In its Appeal Brief, Lavagnese submitted the following request for relief:
  - “USD Lavagnese lodges the present Statement of Appeal requesting to the CAS:
    - *in the merit, to uphold the present appeal and annual the ban on registering new players imposed to the Appellant by the FIFA Appeals Committee;*
    - *subsidiarily, to reduce said sanction according to justice”.*

41. FIFA’s submissions may be summarised as follows:

- It does not dispute the jurisdiction of CAS to determine this appeal, which is filed pursuant to Article 58 (1) of the FIFA Statutes. It also does not dispute the admissibility of Lavagnese’s appeal.
- The FIFA Statutes and regulations, specifically the FIFA RSTP and the FIFA Disciplinary Code constitute the applicable law and Swiss law shall be applied subsidiarily.
- Italian law does not apply to the present matter because: under Article R28 of the Code, as the seat of the arbitration is Lausanne, Switzerland, the *lex arbitri* or procedural law applicable to the present matter is Swiss arbitration law; Article 176 (1) of the Swiss Private International Law Act (the “PILA”) provides that international arbitration law applies when at least one of the parties is resident or domiciled outside Switzerland; ordinarily Article 187(1) PILA applies to determine the applicable law, however, by agreeing to the jurisdiction of CAS, the parties implicitly declare that they agree to the application of the Code and not Article 187(1); the relevant rules are Article R58 of the Code, and Article 57(2) of the FIFA Statutes, therefore the dispute must be decided according to the FIFA Regulations and subsidiarily, Swiss law. Italian law is irrelevant.
- These rules regarding the applicable law are necessary and desirable because sport is a phenomenon that crosses borders. It is important, at an international level to have uniform legal standards that apply to everyone who participates to ensure the integrity and equal opportunity of sporting competition.
- Article 19 (1) RSTP forbids the international transfer of minors. Its aim is to protect minors and avoid the circumvention of FIFA’s rules. In the 1990s complaints were made regarding the human trafficking of football players, including minors, from Africa and South America to clubs in Europe. FIFA adopted strict rules on international transfers

of young players and the protection of minors was one of the principles included in the agreement between FIFA, UEFA and the European Commission and is one of the essential pillars of the RSTP.

- Articles 19 (2) and (3) provide exceptions to the prohibition and allow for the international transfer of a player before the age of 18 subject to the fulfilment of strict conditions. CAS jurisprudence establishes that these restrictions are applied restrictively (see CAS 2014/A/3793, CAS 2011/A/2354 and CAS 2013/A/3140).
- When considering an alleged breach of Article 19, the Panel must bear in mind the aim and purpose of Article 19 RSTP, the interest protected and the intent of the legislator (SFT 4A\_600/2016, 28 June 2017; CAS 2013/A/3365 & 3366, para 86; CAS 2017/A/5356, para 89; CAS 2017/A/5173, para 74; CAS 2020/A/7008 & 7009, para 61-62 and 65.)
- The present proceedings arise in the context of a child trafficking scheme in which Lavagnese registered four minor players (two prior to their 18<sup>th</sup> birthdays) who came to Italy under the so-called Nigeria System. The Nigeria System was orchestrated by Spezia Calcio, involved Lavagnese and others, and involved the creation of fake guardianships to facilitate the profit, or attempt to profit, from thirteen underage players who were brought to Italy.
- FIFA submitted that Lavagnese profited from the Nigeria System by unlawfully registering the minors, and even if it did not, which it submits is unlikely, Lavagnese registered the players and transferred them to Spezia Calcio.
- Lavagnese breached Article 19 (1) of the RSTP, cannot rely on the exceptions contained in Article 19 (2) (a), and the sanction imposed was just and proportionate.
- Regarding the Article 19 (1) breach, while evidentially it was difficult to prove that Lavagnese received benefits from Spezia Calcio, Lavagnese's co-coach was one of the guardians and Lavagnese registered players who were unlawfully drawn by Spezia Calcio's accomplices from the Abuja academy in Nigeria and transferred to Spezia Calcio as part of an elaborate child trafficking scheme.
- Lavagnese's reliance on the FIGC Rules in its defence is misplaced because: a) the relevant FIGC rules state that the RSTP have primacy; and b) Article 1 (3) of the RSTP specifically states the Article 19 RSTP is binding at a national level.
- Article 19 applies equally to amateur and professional players (CAS 2016/A/4805; CAS 2008/A/1485), and to amateur and professional football clubs, including Lavagnese.
- Lavagnese's claim that the FIGC is responsible for the violation of Article 19 because it operates the national registration of players should be dismissed because only a club can initiate the transfer process by submitting a request to the relevant national association



(CAS 2014/A/3793, para 9.4). Lavagnese should have been aware that the Nigerian players could not be registered in any legitimate way under the FIFA RSTP and its wilful ignorance can lead to the imposition of sporting sanctions.

- Lavagnese's argument that it met the requirements for the exception under Article 19 (2) of the FIFA RSTP by virtue of Italian immigration law is irrelevant because Italian law does not apply. Furthermore, for the exception to apply, the minor must move with his/her parents for reasons unrelated to football. It is undisputed that none of the Nigerian minors moved with their parents. The term "parent" is also interpreted in a strict way and a stranger who assumes the role of guardian cannot be considered a parent. Also, the move of all players under the Nigeria System occurred for reasons linked to football.
- Lavagnese's claim that as an amateur club it could not be expected to know about the FIFA RSTP is untenable. Ignorance of the law is no excuse and permitting such a defence would be detrimental to the system of international football. It would require establishing the accused's knowledge of the FIFA RSTP and incentivize others to circumvent the rules.
- Although CAS 2016/A/4805 considered the compatibility between national and FIFA regulations was decided after Lavagnese committed the breach, the strict interpretation of Article 19 is clear and has been established in CAS jurisprudence since 2005.
- Lavagnese was also held to have breached Articles 19 (4), Article 19 (1), and Annex 2 and 3 of the RSTP. It was demonstrated that the minor players were transferred to Italy and that an ITC was not requested for Players 1 and 2 thereby violating Article 9. Lavagnese registered the players by misusing the Limited Minor Exception (LME), which is strictly limited to the exceptions provided in Article 19 (2). Their enrolment in a school was a façade because the players never attended school. Lavagnese failed to obtain the relevant approval from FIFA before registering the players.
- Notwithstanding Article R57 of the Code, the Panel shall amend a disciplinary decision of a FIFA body only in cases in which the relevant FIFA judicial body exceeded the margin of discretion accorded to it by the principle of association autonomy i.e., only in cases where the FIFA body is held to have acted arbitrarily.
- Lavagnese's violations of FIFA rules justifies the imposition of a significant sanction. The transfer ban of two registration periods and a fine of CHF 4,000 is just and proportionate. The sanction is not disproportionate, in fact, there are other harsher sanctions that might have been imposed (CAS 2014/A/3793, para 9.32). The conduct occurred in the context of a wider child trafficking scheme and a serious sanction is required as a deterrent measure.
- In its Answer, the Respondent submitted the following requests for relief:

*“Based on the foregoing, FIFA respectfully requests CAS to issue an award on the merits:*

- (a) *rejecting the reliefs sought by the Appellant;*
- (b) *confirming the appealed decision;*
- (c) *ordering the Appellant to bear the full costs of these arbitration proceedings”.*

## **VI. JURISDICTION**

42. Article R47 of the Code provides:

*“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”.*

43. Article 49 of the FIFA Disciplinary Code (2019 edition) states that:

*“Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes”.*

44. Article 58 (1) of the FIFA Statutes provides as follows:

*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”.*

45. The Appellant relied on Article 49 of the FIFA Disciplinary Code and Article 58 of the FIFA Statutes as conferring jurisdiction on the CAS. The Respondent did not object to the jurisdiction of the CAS.

46. The jurisdiction of CAS is further confirmed by the Parties’ signatures on the Order of Procedure. Accordingly, on the basis of the above, the Panel holds that the CAS has jurisdiction to adjudicate the present dispute.

## **VII. ADMISSIBILITY**

47. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*

48. According to Article 57 of the FIFA Statutes:

*“1. Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*

*2. Recourse may only be made to CAS after all other internal channels have been exhausted”.*

49. The Panel notes that the FIFA Appeal Committee rendered the Appealed Decision on 11 November 2021 and notified the grounds of the Appealed Decision to the Appellant on 20 December 2021.
50. The Appellant filed its Statement of Appeal on 8 January 2021, i.e. within the deadline of 21 days prescribed in the FIFA Statutes and the Code. Furthermore, the Statement of Appeal complied with the other requirements of Article R48 of the Code. The Panel considers that the Appellant exhausted all other internal channels for appeal.
51. Accordingly, the Panel is satisfied that the Appeal was filed in time and is admissible.

### **VIII. APPLICABLE LAW**

52. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute:
- “according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
53. Article 56 (2) of the FIFA Statutes also indicates that:
- “... CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*
54. Since the Parties have accepted the jurisdiction of the CAS and the application of the Code to this dispute, the FIFA rules and regulations apply primarily, with Swiss law applying subsidiarily.
55. The Appellant, however, submits that owing to its status as a private association incorporated under Italian law and affiliated to FIGC, due consideration should be given to Italian law and the FIGC rules. The Respondent, on the other hand, denies the relevance of Italian law.
56. The Panel is mindful that the Appellant has: accepted the jurisdiction of CAS; accepted that the Code applies; signed the Order of Proceedings; expressly acknowledged that the FIFA rules and regulations are the applicable law, with Swiss law applying subsidiarily; and has raised no objections. Furthermore, the Appellant is challenging the decision of a judicial body of an organisation located in Switzerland, which also applied FIFA rules and regulations and Swiss law when reaching its decision.

57. Although the Appellant is located in a country other than Switzerland, and these proceedings may be characterised as international arbitration proceedings to which the PILA applies, by accepting the CAS jurisdiction and the Code's application, the Appellant has expressly and implicitly accepted that the law applicable to this dispute is the rules and regulations of FIFA, with Swiss law applying subsidiarily (*see* CAS 2019/A/6246, paras 89-91).
58. The Panel considers that while Italian law and the FIGC rules may provide an explanation for why the Appellant acted as it did – discussed further in the paragraphs below – neither Italian law nor FIGC rules are *relevant* to determining the present proceedings. The applicable law is established by Article R58 of the Code and is that agreed by the Parties, namely: the FIFA rules and regulations and Swiss law subsidiarily.
59. The Panel notes that the applicable regulations are based on the date on which the registration of the minors, alleged to be irregular, occurred. In this case, Players 1 and 2, whose registrations are the subject of this appeal, occurred on 20 February 2014. The applicable version of the FIFA RSTP is that which was in force on that date, namely the FIFA RSTP edition 2012 which, pursuant to Article 29 of the FIFA RSTP came into force on 1 December 2012. Moreover, the FIFA Statutes in place at the time and applicable to these proceedings is the FIFA Statutes edition July 2012.
60. Finally, the Panel notes that disciplinary proceedings were commenced in 2021 and that the relevant version of the FIFA Disciplinary Code applicable to the proceedings is the edition 2019 which entered into force on 15 July 2019 (*see* Article 72).

## **IX. MERITS**

61. The issues of dispute in this case arise out of the registration of two minor foreign players for Lavagnese on 20 February 2014. Allegations regarding the players' registration only came to light following a police investigation several years after the players had been registered, transferred to Spezia Calcio and then onto another club.
62. Pursuant to Article 36 of the FIFA Disciplinary Code, the burden of proof to establish a disciplinary infringement rests on FIFA. When deciding this matter, the Panel bears in mind that this appeal is conducted by way of a *de novo* review and:

*“[I]n CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”* (e.g. CAS 2009/A/1810 & 1811, para 18; and CAS 2020/A/6796, para 98).

63. On the basis of the Parties' written and oral submissions, the Panel considers that there are two issues for determination, namely: whether Lavagnese breached Articles 19 (1), 19 (4), 9 (1) and Article 1 (1) of Annexe 2 and Article 1 (3) of Annex 3 of the RSTP; and if so, whether the sanction imposed by the Appeal Committee is proportionate. Dealing with each of the issues in turn.
- A. Did Lavagnese breach Articles 19 (1), 19 (4), 9 (1) and Article 1 (1) of Annex 2 and Article 1 (3) of Annex 3 of the FIFA RSTP?**
64. Lavagnese submits that it is not liable for a breach of Article 19 (1) because: it acted *bona fide*, in line with the applicable FIGC Rules; at the relevant time it was not obliged to apply to FIFA and could only submit an application to FIGC; the onus was on FIGC to apply to the FIFA Sub-Committee for approval; FIGC validly issued the exception because under Italian law a "guardian" has the same legal status as a "parent"; any procedural or substantive violation should be attributed to FIGC and not to Lavagnese; it is an amateur club with no experience in international football or knowledge of FIFA regulations; an amateur club is required to follow the rules of its national association only and develops a relationship with FIFA only indirectly. In short, Lavagnese contends that it is not liable because it had no knowledge of the FIFA RSTP, and it followed and received an exception from FIGC upon whom it has a legitimate expectation to guide it correctly.
65. FIFA, on the other hand, contends that Lavagnese cannot rely on the exception outlined in Article 19 (2) (a) because its conditions were not satisfied. FIGC rules state that the FIFA RSTP have primacy, Article 19 applies to amateur and professional clubs, and Article 1 (3) of the FIFA RSTP specifically states that Article 19 is binding at a national level. Ignorance of the law is no excuse and Lavagnese should have been aware that the players could not have been registered in any legitimate way.
66. Before considering the substance of the Parties' arguments, the Panel considers it helpful to outline generally the scope and purpose of the FIFA RSTP provisions that protect minors. The purpose is relevant, together with the literal meaning of the relevant regulation, when interpreting the FIFA RSTP (*see* CAS 2020/A/7008 and 7009, para 61 and 73-75, including relevant Swiss Federal Tribunal references).
67. Football can provide opportunities for a young player that may not be readily available in the player's own country, e.g. educational opportunities, economic opportunities, amongst others. The international transfer process has, however, brought harm to some young players, and, in 2001, FIFA adopted strict rules regarding the international transfer of minors. The need to strictly regulate the international transfer process became apparent following documented instances in the 1990s of professional clubs in the European leagues recruiting young players from abroad, and bringing the player to the club, only for the player to be abandoned in a country where the language and culture was entirely unknown and sometimes without the means to return home if the player's performance did not meet expectation.

68. Article 12 of the FIFA RSTP 2001 (now Article 19) was the product of discussions with FIFA, UEFA, FIFPRO (the international players' association), the European Commission, football confederations and associations, leagues and clubs, and aims to balance the interests of all football stakeholders. The regulations have been modified since 2001. Nonetheless, the key aim of the provisions regarding minors remains the same: to protect the welfare of young players and minimise potential for commercial exploitation or abuse of minors in the process.
69. The framework established to protect young players is primarily laid out in the FIFA RSTP, and is supported by the broader duty placed on a national association to ensure members comply with FIFA Statutes and regulations, and the competence of FIFA's judicial bodies to enforce breaches of its regulations. Article 1 (1) states that the RSTP "*lay down global and binding rules concerning the status of players, their eligibility to participate in organised football, and their transfer between clubs belonging to different associations*". Pursuant to Article 1 (3) (a), certain regulations **must** be included in a national association's regulations, without modification, and these include Article 19.
70. A FIFA member has an obligation to ensure that its members comply with FIFA Statutes, regulations, directives and decisions of FIFA bodies (Statutes 2012, Article 13 (1) (d); Statutes 2021, Article 14 (d)). Article 53 of the FIFA Disciplinary Code 2019 establishes a competence on FIFA's judicial bodies to sanction any breach of FIFA Regulations which does not come under the jurisdiction of another body. The framework for protecting young players has been summarised in CAS 2014/A/3813, para 204, as follows:
- "In essence, the structure has it that the national football associations are the primary guardians of FIFA's regulations on the protection of minors with power to take action on any member who breaches the said regulations. On their part, the clubs must comply with these regulations, with FIFA ultimately reserving the right to enforce its laws on the protection of minors by taking action on any of its members or clubs"*.
71. CAS jurisprudence acknowledges that Article 19 is a "*very important provision that sets the key principles designated to protect the interest of minor players*", and that the established exceptions need to be applied in a "*strict, rigorous, and consistent manner*" (CAS 2020/A/7503, para 85; CAS 2013/A/3140, para 8.24). This is also supported by CAS 2016/A/4805 which states, "*[t]he general prohibition contained in article 19(1) FIFA RSTP is based on the fact that, while international transfers might in very specific cases, be favourable to a young player's sporting career, they are very likely to be contrary to their best interest as minors. The interest of protecting the adequate and healthy developments of a minor as a whole must prevail over purely sporting interests*" (CAS 2016/A/4805 para 177; CAS 2020/A/7503, para 88).
72. With these points in mind, the Panel now turns to the substance of the alleged breach.
73. Article 19 of the FIFA RSTP (edition 2012) states that:
- "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.*

...

*3. 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.*

*4. Every international transfer according to paragraph 2 and every first registration according to paragraph 3 is subject to the approval of the sub-committee appointed by the Players' Status Committee for that purpose. The application for approval shall be submitted by the association that wishes to register the player. The former association shall be given the opportunity to submit its position. The sub-committee's approval shall be obtained prior to any request from an association for an international transfer certificate and/ or a first registration. Any violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code. In addition to the association that failed to apply to the sub-committee, sanctions may also be imposed on the former association for issuing an International Transfer Certificate without the approval of the sub-committee, as well as on the clubs that reached an agreement for the transfer of a minor.*

*5 The procedures for applying to the sub-committee to register a first registration and an international transfer of a minor are contained in Annex 2 of these regulations”.*

74. Article 9 states that:

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

*2. Associations are forbidden from requesting the issue of an ITC in order to allow a player to participate in trial matches.*

*3. The new association shall inform the associations of the club(s) that trained and educated the player between the ages of 12 and 23 (cf. article 7) in writing of the registration of the player as a professional after receipt of the ITC.*

*4. An ITC is not required for a player under the age of 12 years”.*

75. Pursuant to Article 1 (1) of Annexe 2:

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

76. Furthermore, under Article 1 (3) of Annexe 3:

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

77. The Panel notes that Article 19 contains both a procedural and a substantive element. The substantive element is set out in Article 19 (1) and (3) and, in effect, prohibits the registration of minors under the age of 18. Article 19 (4) is the procedural element which outlines the procedure to follow when processing an international transfer or registration of a minor that relies on an exception in Article 19 (2) or a player’s first registration under article 19 (3). The process requires a national association to seek approval from the FIFA Sub-Committee that considers such applications. A national association, however, is not obliged to submit a transfer application for approval if it has been granted an exemption from doing so from FIFA. FIFA Circular No 1209 dated 30 October 2009 notified national associations of a change in procedure for the registration of minor players. A national association could apply to the Players’ Status Committee for an exemption from the obligation to refer applications for approval under Article 19 (4). The exemption was limited to the registration of an amateur player with an amateur club. FIGC applied and was granted such an exemption, with the effect that it was not obliged to submit a registration application for an amateur player under the age of 18 to the FIFA Sub-Committee for approval but could approve the registration application itself if satisfied that the requirements of an exception under Article 19 (2) were met.
78. Lavagnese applied to FIGC to register Players 1 and 2 in late-2013. In support of its application, Lavagnese informed FIGC in correspondence dated 15 January 2014 that with respect to Player 1 and 2, *“Dichiara che i giocatori sono in Italia a seguito provini e che i genitori per problem di lavoro non possono seguirli e quindi affidati ad un tutore come da documentazione”*, which informally translated, means that the players, *“are in Italy following sporting trials and that the parents for problems of work cannot follow them and they were entrusted to a tutor as per the documents”*. The tutor was Giuseppe Addiego Mobilio who was appointed by the Tribunale di Genova on 12 November 2013 as the players’ guardian. Lavagnese also submitted all other documents required to register the players, according to the FIGC rules in effect at the time.
79. The players were under the age of 18 and Lavagnese relied on the exception set out in Article 19 (2) (a), namely that the players had moved with their parents to Italy for non-football related reasons. FIGC registered the players in the club’s favour on 20 February 2014. It did not seek approval from the FIFA Sub-Committee prior to registering the players, instead relying on the exemption that it had received from the FIFA Players’ Status Committee to register an amateur player with an amateur club without seeking prior approval from the FIFA Sub-Committee.
80. It is undisputed that Lavagnese followed the FIGC procedure for obtaining registration of a foreign minor and that the registrations were issued on the basis of the exception under Article 19 (2) (a). In the Panel’s view, however, the exception did not apply and the registrations were incorrectly approved by FIGC. The players came to Italy on tourist visas to play football in a



tournament, accompanied by an adult connected to Spezia Calcio. The players' parents did not move but remained in Nigeria and a legal guardian only appears to have been appointed under Italian law after the players' arrival in Italy. Those facts alone, in the Panel's view, are sufficient to confirm that the exception under Article 19 (2) (a) never applied, and the registrations ought not to have been made. Lavagnese's letter to FIGC dated 15 January 2014 clearly stated how the players came to be in Italy and it should have prompted FIGC to enquire further or even seek approval from the FIFA Sub-Committee. For whatever reason, that did not occur and the players were registered. Accordingly, the Panel finds that Lavagnese, as the club responsible for initiating the registration process for Player 1 and Player 2, breached Article 19 (1) when it applied for, and was granted, the minor players' registrations.

81. Lavagnese contends that it should be able to rely on Article 19 (2) (a) because of a conflict between the FIFA RSTP and Italian immigration law, which recognises that a child's guardian has the same legal status as a parent, and that a foreign minor player's registration should be accepted if they have a legal guardian. It states that a conflict exists between Italian law and the FIFA RSTP, and that FIGC is obliged to register a minor who has a legal guardian in place of a parent.
82. The Panel recalls that CAS jurisprudence establishes that the fact registration is permissible or required under national law does not automatically mean that a minor must be registered by the club in violation of the FIFA RSTP without any consequences for the club in question (CAS 2016/A/4805, paras 95 - 96). In the present case, the Panel does not find it necessary to determine whether a conflict exists between Italian immigration law and the FIFA RSTP since it observes that the players appear only to have had a formal guardian appointed under Italian immigration law after the players had moved from Nigeria and not before. Even assuming the exception in Article 19 (2) (a) applied to include a legal guardian - and the Panel does not consider it necessary to make a finding in that regard - the players did not move with a legal guardian to Italy for a non-football-related reason. The players moved to play football.
83. Lavagnese submits that it should not be accountable for following FIGC procedures and for its absence of knowledge of the FIFA RSTP. The Panel accepts that the Appellant is an amateur club that serves a community of approximately 13,000 people on the Mediterranean coast, in the north west of Italy, and which, in 2022/2023, will play in the fifth division of the Italian football competition. It is generally staffed by volunteers and it relies on FIGC for the communication of football rules and regulations. It does not communicate with, or seek information directly from, FIFA. The practical reality is that an amateur club operating in these circumstances relies on a national association to guide its operations and compliance with football's rules and regulations.
84. Nonetheless, as the Appellant's representatives acknowledged, the system for registering foreign minor players with FIGC is different to registering Italian minor players, and from the football regulatory perspective, it is different for a reason: to safeguard foreign minor players. Those who operate football clubs, whether amateur or professional, know that they are subjected to a regulatory regime that those outside football are not. Article 19 is a part of that regime. There is a clear regulatory interest and broader public interest of protecting players

under the age of 18, which is demonstrated through the involvement of the football stakeholders, European Commission and other bodies of the European Union when the international transfer regulations were reformed in 2001.

85. It may seem unfair to hold an amateur club in the Appellant's circumstances accountable when it appears not to have known of Article 19 and to have relied on FIGC to seek approval from the FIFA Sub-Committee. Nonetheless, it is a situation that the Appellant implicitly accepts by operating within the regulatory regime, and in circumstances where broader regulatory and public interest considerations must prevail. While, ordinarily, reliance on regulatory guidance provided by a national association will suffice, insofar as Article 19(1) is concerned, an amateur club cannot rely on the registration granted by a national association as a defence to an allegation of an Article 19 (1) breach, particularly if the circumstances show that the registration application should never have been made.
86. In the Panel's view, it is incumbent on an amateur club to make reasonable enquiries as to how a player came to be in the country and consider for itself whether it should apply for a foreign minor player's registration. In most cases, an amateur club will be satisfied that a player has moved with their parents for circumstances unconnected to football and that there is nothing untoward about how the player came to be in the country. An amateur club has responsibility to familiarise itself with Article 19 (1) since it may be sanctioned for a breach of Article 19 (1) irrespective of the national association's actions or knowledge of the regulation. The Panel observes that in the present case there were two references to the FIFA Regulations in FIGC's guidance to the registration of foreign minor players. In the Panel's view, Lavagnese should have enquired further as to the content of the FIFA regulations that the guidance referred to, if it was unfamiliar with those regulations.
87. For the reasons set out above, the Panel finds that the Appellant is liable for a breach of Article 19 (1). There was no application for approval made to the FIFA Sub-Committee and, accordingly, Lavagnese also breached Article 19 (4) and Article 1 (1) of Annex 2 and Article 1 (3) of Annex 3.
88. In respect of the alleged breach of Article 9 (1), Lavagnese states that an ITC was not requested of the NFF because the players were not a member of any association. FIFA contends that the ITC was never requested and that Lavagnese breached Article 9. The Panel notes that the information submitted by Lavagnese to FIGC for the players' registrations included affidavits from the mother and father of each of the players, all dated 5 December 2013, which stated that Player 1 and Player 2 were not registered with any football club or association in Nigeria. On that basis, it would appear that, to the best knowledge of Lavagnese, on the date of request for and the registration with FIGC, the players were not registered with any football club or association in Nigeria and therefore an ITC was not required. The Panel notes that an email from the NFF dated 25 August 2014 in reply to an email of FIGC, confirmed the players were not registered with the NFF, although the correspondence between FIGC and the NFF arose after the registrations had been confirmed. The Panel also observes that the Appeal Committee appears to have had the benefit of documents not made available to the Panel, namely: copies of the players' football passports and the register of the

Football College Abuja. Therefore, based on the evidence available to it, the Panel finds that Lavagnese did not breach Article 9 (1) of the FIFA RSTP.

89. The next issue to consider is the proportionality of the sanction.

**B. Is the sanction proportionate?**

90. Lavagnese contends that the sanction is grossly disproportionate when considering the sanctions imposed in comparable cases involving large professional clubs that are operated by paid employees, have registered many minor players across a lengthy period, and intentionally violated FIFA rules regarding minors for financial advantage. Furthermore, Lavagnese's players are engaged on contracts of one-year duration only. Every player becomes a free agent at the end of the football season. If the transfer ban of two registration periods is confirmed, Lavagnese will lose many of its players now playing in its first team and will not be able to register new ones. It may not be able to field a team with sufficient players to compete in the competition next season, which could potentially lead to the club's demise.
91. FIFA, for its part, submits that the sanction is proportionate, and to some extent, *"even too lenient considering the seriousness of the context in which the violation occurred"*. FIFA contends that a serious sanction is required as a deterrent measure and a transfer ban is by no means the harshest sanction that may be imposed.
92. The Panel observes that pursuant to Article 24 (3) of the FIFA Disciplinary Code a competent FIFA judicial body, *"determines the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances"*. In particular, under Article 24 (3), *"when determining the disciplinary measure the judicial body shall take into account all relevant factors of the case, including any assistance of and substantial cooperation by the offender in uncovering or establishing a breach of any FIFA rule, the circumstances and the degree of the offender's guilt and any other relevant circumstances"*. The types of sanctions that may be imposed are listed in Article 6 (1) of the FIFA Disciplinary Code and legal persons, including clubs, may be sanctioned with a: warning, reprimand, fine, return of awards, and withdrawal of title. Additionally, under Article 6 (3) measures such as a transfer ban, playing a match without spectators, amongst others, may be imposed. Fines may not be less than CHF 100.00 or more than CHF 1,000,000 and disciplinary measures may be combined (*see* Articles 6 (4) and 6 (6) respectively).
93. In the present case, the FIFA Disciplinary Committee held Lavagnese liable for infringements of the FIFA RSTP in respect of four players, fined Lavagnese CHF 4,000 and imposed a transfer ban for four entire and consecutive registration periods. Its reasons for so doing were that while Lavagnese was not the main beneficiary of the Nigeria System and it had acknowledged the allegations and accepted responsibility, the gravity of the infringements was unprecedented, and Lavagnese had not inadvertently disregarded the rules, but *"had helped to set up a systematic and organized system for moving foreign minors with the main aim of making financial gains"*.

94. The FIFA Appeal Committee set aside the violations in respect of Players 4 and 5, and upheld the infringements of the FIFA RSTP in respect of Players 1 and 2. On the issue of sanction, it took into consideration that there was no evidence on file to link Lavagnese to the Nigeria System, and that Players 1 and 2 had been “*irregularly registered*” with FIGC. It noted that registration bans had been imposed in previous cases involving professional clubs but that the bans had not been systematically linked to the number of players involved. It considered that the peculiarities by which Players 1 and 2 came into the country should have raised the suspicions of a diligent club, that Lavagnese had sufficient materials at its disposal to familiarise itself with the FIFA RSTP, and FIGC Guidance in respect of the registration of minors advised clubs to read the FIFA Regulations. The Appeal Committee noted that the ban of two registration periods was higher than the one imposed in a case concerning the football club Real Madrid, but the fine of CHF 4,000 was much lower than Real Madrid CF was ordered to pay. It also noted that a registration ban is not systematically linked to the number of players involved in the relevant case. Accordingly, the Appeal Committee imposed a reduced sanction of two registration periods and confirmed the fine of CHF 4,000.
95. Except for the alleged breach of Article 9 (1), the Panel in the present case has confirmed Lavagnese’s liability for breaches of the FIFA RSTP in respect of Players 1 and 2 and must now consider whether the sanction imposed on Lavagnese is proportionate. To that end, the Panel is mindful that, while it should not easily tamper with the sanction imposed by the Appealed Decision, its *de novo* power of review allows it to find that sanctions are disproportionate and to determine more appropriate sanctions (see CAS 2020/A/7008 & 7009, para 123, with reference to CAS 2018/A/5977, para 178; CAS 2017/A/5003 and CAS 2015/A/4338). CAS jurisprudence, however, is clear that sanctions imposed by FIFA disciplinary bodies can only be reviewed when they are evidently and grossly disproportionate to the offence (CAS 2017/A/5496, para 123; CAS 2018/A/6239, para 133 and the cases cited). The sanctions imposed in any disciplinary proceeding are case specific and turn on the facts, and the interests at stake must be balanced in respect of the principle of proportionality (CAS 2017/A/5496, para 123).
96. Violations of Article 19 “*should be taken seriously*” and imposing a tough sanction “*sends a strong signal*”, not only to the perpetrator, “*but to other potential violators of this provision*” (CAS 2014/A/3793, para 9.34). In CAS 2014/A/3793, a case involving Article 19, the Panel emphasized, at para 9.32, that a transfer ban is not the harshest sanction available, but that expulsion from a competition, relegation to a lower division or even a points deduction could be viewed as “*much harsher*”.
97. Regarding the sanctions imposed in some previous cases, in CAS 2016/A/4785, the Panel reduced a registration ban from 2 registration periods to one as it considered that Real Madrid CF had infringed the regulations on two occasions, instead of eight occasions, and imposed a fine of CHF 240,000. In CAS 2019/A/6301, the Sole Arbitrator reduced the sanction to a single-period registration ban and a fine of CHF 200,000 for Chelsea F.C.’s seven infringements of the FIFA RSTP involving minors. The fact the Chelsea F.C. did not impair or harm the minors’ health and development, or with respect to most of the minors, prefer its own financial and sporting interests ahead of the minors’ health and well-being, were

factors in the Sole Arbitrator's decision (CAS 2019/A/6301, para 194). In CAS 2014/A/3793, the Panel confirmed a sanction against FC Barcelona of a registration ban for two consecutive registration periods and a fine of CHF 450,000. FC Barcelona was found to have infringed the FIFA RSTP in several ways, including Article 19 with regards to the registration of nine young players across a seven year-period.

98. In CAS 2016/A/4805, the Panel confirmed a two-period registration ban against Atlético de Madrid and reduced a fine from CHF 600,000 to CHF 550,000. Atlético de Madrid was found to have committed over one hundred violations of the RSTP in respect of at least 35 young players, including 26 substantive violations of Article 19 (1) and (3) and 22 infringements of Article 19 (4). The Panel reduced the fine because the number of total violations were reduced on appeal.
99. The Panel in the present case observes that the cases mentioned above relate to professional clubs that participate in highest division competitions, and in the Champions League, which is a very different context to that of an amateur club. The cases have typically involved many more infringements and a greater number of minor players. The fines imposed were considerably higher, most likely because of the extent of the clubs' commercial revenues, and the registration bans were between one and two periods long, with none of the sanctions imposed leading to a club's demise. The Panel notes that the fine amount of CHF 4,000 entered against Lavagnese is the same as that suggested by Lavagnese in its letter to FIFA dated 10 May 2021 and prior to the Disciplinary Committee decision. In the same letter, Lavagnese also suggested a personal ban against its President, "*if deemed necessary*" with no mention made of a registration ban.
100. The Panel also observes that while the La Spezia Police Report mentioned Lavagnese as an amateur club through which several Nigerian players passed, the Police Report did not implicate Lavagnese, did not disclose any evidence that Lavagnese benefited financially, and none of its representatives were investigated. The only connection appears to have been through Mr Roberto Sannino, who was a co-coach of the Lavagnese first team and also the person appointed as guardian of Players 4 and 5 who were registered in 2015. The Appeal Committee previously dismissed the allegations against Lavagnese in respect of Players 4 and 5. The Panel acknowledges that there is no evidence that links the Appellant directly to the Nigeria System. There is also no evidence that describes how the Players, who were accompanied into the country by someone connected to Spezia Calcio to play football, found their way to an amateur football club situated in Lavagna, approximately 50 kms from the town of La Spezia.
101. The Panel reiterates that an amateur club that is registering a foreign minor player must be curious as to the circumstances in which the player came into the country and consider for itself whether registering the player will breach Article 19. When allegations of an Article 19 breach are proved, then the sanctions against professional and amateur clubs must be significant to deter similar conduct in the future. Be that as it may, and noting that a cross appeal was not filed, the Panel considers that the sanction in the present case is disproportionate for the following reasons:

- Despite the broader circumstances that led to the disciplinary proceedings, there is no direct evidence that Lavagnese or its representatives were involved in the Nigeria System. Lavagnese and its representatives are not the subject of criminal proceedings in relation to the scheme. There is no evidence that Lavagnese benefited financially from the registration of Players 1 and 2, their subsequent transfer, or at all from the Nigeria System.
  - A transfer ban that extends across a few registration periods can have a harsh effect on an amateur club that engages its players on one-year contracts. Lavagnese submitted evidence of their players' contract status which showed that the club will have a limited number of players available to it for the next season and it will be unable to field a team in the competition. FIFA did not provide any comment or objection in this regard.
  - There was no evidence submitted to the Panel that showed Lavagnese placed its own interests ahead of the minors' interests and also no evidence that the minors suffered harm while registered with Lavagnese.
  - The allegation of a breach of Article 9 (1) has not been proved to the Panel's comfortable satisfaction.
  - Registration bans of between 1 – 2 registration periods were imposed in CAS cases against professional clubs that had committed more breaches of Article 19 than Lavagnese and involved more minor players than the present case. In CAS 2019/A/6301, which involved Chelsea FC, the sanction was reduced to a single registration period ban. The Panel accepts that the fines imposed in those cases were considerably higher but is mindful of the commercial revenues to which a professional club has access that an amateur club does not.
102. For the reasons set out above, the Panel concludes that the sanction imposed on Lavagnese is grossly disproportionate and that it is appropriate to reduce the registration ban to one registration period ban. It confirms the fine of CHF 4,000.00.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by USD Lavagnese 1919 on 8 January 2022 against the decision issued by the Appeal Committee of the *Fédération Internationale de Football Association* on 11 November 2021 is partially upheld.

2. The decision rendered by the Appeal Committee of the *Fédération Internationale de Football Association* on 11 November 2021 is confirmed, save for item n. 1.1 which is amended as follows:
  1. *The club USD Lavagnese 1919 is banned from registering new players, both nationally and international level, for one (1) entire registration period following the notification of this decision for failing to comply with the relevant provisions of the RSTP related to the protection and transfer of minors.*
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.